

**Problematizing the Construction of Women in Transitional
Justice: An Analysis of the Relationship Between Women's
Participation and their Portrayal in the Reports of the Liberian
Truth and Reconciliation Commission**

By

Conor Hill

A thesis submitted in fulfilment of the requirements for the degree of

Doctor of Philosophy

School of Law, Faculty of Humanities and Social Sciences, University of Strathclyde

2024

Declaration of Authenticity and Author's Rights

This thesis is the result of the author's original research. It has been composed by the author and has not been previously submitted for examination which has led to the award of a degree.

The copyright of this thesis belongs to the author under the terms of the United Kingdom Copyright Acts as qualified by University of Strathclyde Regulation 3.50. Due acknowledgement must always be made of the use of any material contained in, or derived from, this thesis.

Signed: *Conor Hill*

Date: 10 May 2024

To Mum and Dad, for everything.

Abstract

This thesis problematises women's participation in transitional justice processes by analysing the relationship between women's participation in these processes, and the ways in which women are discursively constructed in transitional justice contexts. This thesis thus responds to research to date in the transitional justice field which has proposed that women's participation in transitional justice processes is inadequate, while processes are gendered to disadvantage women. In doing so, the thesis asks: *"what relationship exists between women's portrayal in transitional justice processes and the modes of participation available to them in law?"* To answer this question, the thesis adopts a methodology referred to as "critical spatial discourse analysis". By using legal geographical concepts to understand how legal discourses constitute women in the transitional justice context, this thesis makes a unique contribution to the transitional justice field. Applying this method to the reporting of the Liberian Truth and Reconciliation Commission as its case study, the thesis argues that the discursive practices which emerge through the TRC's reports established a conceptual, discursive space, with that space constituting women as participants in the TRC. It proposes that this discursive space produced "flattened" portrayals of women which emphasised their victimhood, their vulnerability, and their passivity, while reducing them to their gender. The thesis proposes that this "constitutivity" of women is rooted in the TRC's "documentary heritage". It argues that the TRC's mandate and international legal standards on participation provide limited opportunities for women to participate in transitional justice processes, which in turn produce a limited construction of the woman subject of transitional justice. In this way, the thesis argues that a mutually constituting and reinforcing relationship exists between women's portrayal in transitional justice processes and the modes of participation available to them in law. As such, the thesis reveals law's role in perpetuating women's participation "problem".

Acknowledgements

Firstly, I would like to extend my thanks to my wonderful supervisors, Therese O'Donnell and Professor Jane Scoular, for their invaluable guidance at every stage of this process. Both Therese and Jane supported me in my PhD application and have been unwavering in their support ever since. I'm so incredibly grateful for all of their advice, feedback, and encouragement, without which I could not have completed this thesis. I would also like to thank Dr Saskia Vermeulen for her support as my reviewer. Her insightful comments and suggestions have been a great help in shaping my work.

It's also important to acknowledge the support that I have received from colleagues in the Law School and the Graduate School over the past few years. I'm thankful that I have had the opportunity to work with many fantastic people – more than I can name – and to have been offered many opportunities that have helped me to develop as a researcher. In addition, over the past six months, I've been lucky enough to gain new colleagues and friends at Glasgow Caledonian University, and I would like to thank them for their warmth, their advice, and their camaraderie during the final stages of my PhD.

I owe a tremendous debt of gratitude to my family for their support and understanding during this process. I would like to offer my thanks to my mum and dad, Gail and Ian, to whom I owe everything, and whom I admire endlessly. My brother Evan and sister Niamh have been such fantastic friends to me, and I'd be lost without them. My nieces and nephews, Andrew, Megan, Rosie, Cian, Amelie, Louis, and Josh, bring me such joy on even the most difficult days. I'm also grateful to my brothers-, sisters-, and mother-in-law for their support and companionship.

Finally, I am forever indebted to my husband and partner Paul for his seemingly endless encouragement and patience, and for more or less keeping me alive in the final, demanding stages of writing. I mean it when I say that I could not have finished this thesis without him. I'm not sure that I'll ever be able to repay him for the support he's given me since we met, but I'm thankful to have our lifetime together to try.

List of Acronyms and Abbreviations

Accra Agreement	Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the political parties
African Charter	African Charter on Human and People's Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CFPAF	Charter of Feminist Principles for African Feminists
ECOWAS	Economic Community of West African States
Hinterland Rules and Regulations	Revised Rules and Regulations Governing the Hinterland of Liberia
HRPS	United Nations Mission in Liberia Human Rights and Protection Section
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
Liberian TRC	Republic of Liberia Truth and Reconciliation Commission
LOAC	Law of Armed Conflict
LURD	Liberians United for Reconciliation and Democracy
MODEL	Movement for Democracy in Liberia
OHCHR	Office of the United Nations High Commissioner on Human Rights
TRC Act	Act to Establish the Truth and Reconciliation Commission of 12 May 2005
TWAIL	Third World Approaches to International Law
UDHR	Universal Declaration of Human Rights
UN Charter	Charter of the United Nations
UNCRC	Convention on the Rights of the Child
UNMIL	United Nations Mission in Liberia
UNSCR	United Nations Security Council Resolution
WPS Agenda	United Nations Security Council Resolutions on Women, Peace and Security
WONGOSOL	Women's NGO Secretariat of Liberia

Table of Contents

Declaration of Authenticity and Author’s Rights	ii
Abstract	iv
Acknowledgements	v
List of Acronyms and Abbreviations	vi
Table of Contents	viii

1 – Introduction

1.1 – The Research at a Glance	1
1.2 – Setting the Scene	1
1.3 – Problematising Women’s Participation	3
1.4 – The Discursive Contribution.....	8
1.5 – A Case Study Approach	13
1.6 – Positioning the Research	15
1.7 – Positioning the Researcher	19
1.8 – Navigating the Thesis	22

2 - Transitional Justice, Participation, and Space: A Review of Contemporary Scholarship

2.1 – Introduction	28
2.2 – Transitional Justice and the “Participation Problem”	30
2.2.1 –The Gendered Nature of Transitional Justice.....	31
2.2.1.1 – Liberalism as Patriarchy.....	34
2.2.1.2 – Liberalism as Western Imperialism	38
2.2.1.3 – Liberalism as a Barrier to Participation	42
2.2.2 – Vulnerability and Victimhood.....	43
2.2.3 – Why Participation?.....	46
2.2.4 – Reflections on Transitional Justice’s “Participation Problem”	48
2.3 – Critical Participation.....	48
2.3.1 – Approaches to Participation in Transitional Justice Literature	50
2.3.2 – Participation in Other Disciplines	52
2.3.3 – The Emergence of Critical Participation Scholarship	54
2.3.4 – Participation as Access to Space	57
2.3.5 – Reflections on Critical Participation Scholarship.....	59
2.4 – A Spatial Approach	60
2.4.1 – Background and Development of Legal Geography	61
2.4.2 – Broadening the Application of Legal Geography	62
2.4.2.1 – Legal Geography and the Realm of the International	62
2.4.2.2 – Legal Geography and Critical Feminist Approaches	63
2.4.2.3 – Legal Geography and Transitional Justice.....	64

2.4.3 – Embracing the Spatial Turn.....	66
2.5 – Conclusions	68

3 - Participation in Transitional Justice Processes: Towards a Critical Spatial Discourse Analysis..... 70

3.1 – Introduction	70
3.2 – Legal Geography as a Theoretical Framework.....	72
3.2.1 – Space	72
3.2.2 – Constitutivity.....	74
3.2.3 – Complexity	75
3.2.4 – The Production of Space, Law, and Subject	77
3.3 – The Space, Constitutivity, and Complexity of Transitional Justice.....	77
3.3.1 – Transitional Justice and its Relationship with Space	78
3.3.2 – The Spatial ‘Strand’ – Constituting Spaces through Participation	80
3.3.3 – The Legal ‘Strand’ – Participating in a Legally Complex Space	84
3.3.4 – The Social ‘Strand’ – Constituting Women as Participants	84
3.3.5 – The Spatial, Legal, and Social ‘Strands’ – A Case Study Approach.....	88
3.4 – A Critical Spatial Discourse Analysis	90
3.4.1 – Law as Discourse	93
3.4.2 – The Constitutive Power of Discourse.....	94
3.4.3 – Towards a Critical Spatial Discourse Analysis	97
3.5 – Conclusions	104

4 – The Complex Legal Spaces of the Liberian Truth and Reconciliation Commission..... 106

4.1 – Introduction	106
4.2 – Introducing the Liberian Truth and Reconciliation Commission	107
4.2.1 – An Overview of the Liberian Truth and Reconciliation Commission.....	108
4.2.2 – The Liberian TRC as a Legal Geographical Case Study.....	111
4.2.2.1 – The TRC’s Reports	111
4.2.2.2 – Positioning Women in the Liberian Truth and Reconciliation Commission	114
4.3 – The TRC’s Reporting as a Form of Discursive Space.....	117
4.3.1 – Lefebvre’s “Conceptual Triad”	118
4.3.2 – Discursive Space	119
4.3.3 – Constituting Discursive Space.....	119
4.4 – The Liberian TRC as a Complex Legal Space	122
4.5 – The Spatial ‘Strand’ – The Liberian TRC as a Complex Space	123
4.5.1 – Operational Complexities.....	124
4.5.2 – Geographical Complexities	126
4.5.3 – Social Complexities.....	129
4.5.4 – The TRC’s Diaspora Project	131
4.5.5 – International Influences.....	137
4.5.6 – Reflections on the Spatial Complexities of the Liberian Truth and Reconciliation Commission.....	141

4.6 – The Legal ‘Strand’ - The Legal Complexity of the Liberian TRC	142
4.6.1 – The Legal Complexity of Transitional Justice	143
4.6.2 – Complexity through Scale	145
4.6.2.1 – Hybrid International Law	146
4.6.2.2 – International Law v Domestic Law	147
4.6.2.3 – “Formal” Law v “Traditional” Law	150
4.6.3 – Complexity in Conflict Contexts	158
4.6.4 – Temporal Complexities	159
4.6.5 – Reflections on the Legal Complexity of the Liberian Truth and Reconciliation Commission	161
4.7 – Conclusions	162

5 - Participation in a Legally Complex Space..... 165

5.1 – Introduction	165
5.2 – Participation in International Law	168
5.2.1 – A Right to Participation in International Law	169
5.2.2 – A Right to Participation in Transitional Justice Contexts	172
5.2.3 – Interpreting Participation in International Law	175
5.3 – Constituting Participation	177
5.4 – Participation in the Law of the Liberian TRC	180
5.4.1 – Participation in the Liberian TRC’s Foundational Documents	181
5.4.2 – Participation in the Reports of the TRC	186
5.5 - Conclusions	193

6 – Participation and Portrayal in the Liberian Truth and Reconciliation Commission: Constituting Women as Participants 196

6.1 – Introduction	196
6.2 – Two-Dimensional Portrayals, Three-Dimensional Spaces	199
6.3 – The Conflation of “Women” and “Gender”	202
6.3.1 – Defining Gender in the TRC’s Reports	203
6.3.2 – Gendered Harms	205
6.3.3 – Marginalising Gender	207
6.4 – The Conflation of “Women” and “Victims”	209
6.4.1 – Emphasising Women’s Victimhood	211
6.4.2 – The Victim/Perpetrator Binary	216
6.5 – The Conflation of “Women” and “Vulnerable”	219
6.5.1 – Participating as a “Vulnerable Group”	221
6.5.2 – Vulnerability and Agency	222
6.6 – Passivity over Participation	224
6.6.1 – Empowerment or Marginalisation?	224
6.6.2 – “Survivors and Peacemakers”	225
6.6.3 – Overlooked Identities	229
6.7 – The “Constitutivity” Gap	232
6.8 - Conclusions	234

7 – Constitutivities in Context	237
7.1 – Introduction	237
7.2 – The Constitutive Forces of Transitional Justice	240
7.2.1 – Constituting Space through Discourse	241
7.2.2 – The “Documentary Heritage” of the Liberian TRC	243
7.2.2.1 – Women in International Law	243
7.2.2.2 – Women, Peace and Security.....	246
7.2.3 – The Culture of International Law	247
7.3 – The “Women” in Women, Peace and Security.....	252
7.3.1 – Women and Gender.....	252
7.3.2 – Women and Victimhood/Vulnerability	256
7.3.2.1 – Prioritising Protection over Participation.....	257
7.3.2.2 – Emphasising Victimhood.....	260
7.3.2.3 – Emphasising Sexual Violence.....	264
7.3.2.4 – ““Women and Children’ Syndrome”.....	267
7.3.3 – Women as Peaceful/Peaceable	269
7.3.4 – Reflections on the “Women” in the TRC’s Documentary Heritage.....	277
7.4 - Conclusions	279
8 – Conclusions	282
Bibliography	290

1 – Introduction

1.1 – The Research at a Glance

This thesis will analyse the relationship that exists between women’s participation in transitional justice processes, and the ways in which women are discursively constructed in the law, policy, reports, and literature associated with transitional justice. In doing so, the thesis will ask: “*what relationship exists between women’s portrayal in transitional justice processes and the modes of participation available to them in law?*” In answering this question, the thesis will adopt an analytical approach which combines insights from critical feminisms, critical legal geography, and critical discourse analysis, referred to for the purposes of this project as “critical spatial discourse analysis”. Applying this mode of analysis to the reporting of the Republic of Liberia Truth and Reconciliation Commission (hereafter “Liberian Truth and Reconciliation Commission” or “Liberian TRC”) as a case study, the thesis will explore how women were discursively constituted by these reports, and whether a mutually constituting and reinforcing relationship exists between their portrayal and the modes of participation available to them in law.

1.2 – Setting the Scene

Transitional justice exists as a response to widespread, systematic abuses of human rights. Transitional justice processes may respond to the violence of armed conflict, to the human rights violations committed by a repressive regime, or to any other type of large-scale abuses. It can be a “catalyst for change for societies at large”,¹ aiding in a nation’s transformation from one afflicted by war or repression to a peaceful,

¹ United Nations Secretary-General, “Guidance Note of the Secretary-General: Transitional Justice A Strategic Tool for People, Prevention and Peace” (2023) <https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf> 2

democratic state. It can also be a “critical modality of redress” for those affected by conflict, repressive rule, or other forms of “[s]ocial fractures”.² What happens in transitional justice contexts therefore significantly impacts those affected by these fractures moving forward, while the nature of the harms involved means that those affected might comprise entire populations. Transitional justice processes serve as the location for vital debates about a given state’s future structure, governance, and centres of power as it emerges from its troubled history. They provide opportunities for individual citizens to share testimony, to seek redress, and to receive justice. They are the forum – in some cases, the only forum – where those affected by abuses of state power can hold that power to account. They can be locations of reconciliation, transformation, and possibility, but only for those people able to access them.

The matter of access to transitional justice processes has been an area of focus in feminist scholarship on transitional justice.³ This focus on access has been described as providing a vital shared objective for feminist scholars: while views on the political objectives of transitions may diverge, it can be agreed that women ought at least to be involved in transitional justice processes.⁴ The need to improve women’s participation in transitional justice processes has thus been identified as a key priority in research. Further research has explored the potential barriers to participation that may affect women in transitional contexts,⁵ and has proposed means by which these barriers might be overcome.⁶ Alongside this research, an international legal framework to ensure

² *ibid* 2-3

³ Catherine O’Rourke, “Feminist scholarship in transitional justice: a de-politicising impulse?” (2015) 51 *Women’s Studies International Forum* 118, 118. See also, e.g. Christine Bell and Catherine O’Rourke, “Does Feminism Need a Theory of Transitional Justice? An Introductory Essay” (2007) 1 *International Journal of Transitional Justice* 23; Christine Chinkin and Mary Kaldor, “Gender and New Wars,” (2013) 67(1) *Journal of International Affairs* 167; Alexandra Zetes, “Beyond Passive Victimhood: The Narrative and Reality of Women in Transitional Justice” (2016) 48 *New York University Journal of International Law & Politics* 1293

⁴ Bell and O’Rourke (n 3) 31; Catherine O’Rourke, “Walk[ing] the Halls of Power – Understanding Women’s Participation in International Peace and Security” (2014) 15 *Melbourne Journal of International Law* 128, 133

⁵ For discussion of these barriers, refer to the subsequent section of this chapter and to Chapter 2 of this thesis.

⁶ Monica McWilliams and Fionnuala Ní Aoláin, “‘There is a War Going on You Know’: Addressing the Complexity of Violence Against Women in Conflicted and Post Conflict Societies” (2013) 1(2)

women's participation in post-conflict processes has emerged. Both this framework and its potential effectiveness in addressing issues connected to women's participation have, in turn, been subject to feminist legal analysis and critique in transitional justice scholarship.⁷ However, while this scholarship has explored barriers to women's participation, as well as potential means to improve that participation, less attention has been paid to the role that the law itself may play in perpetuating these issues.

Law is "instrumental".⁸ In the context of armed conflict, international law has been argued "to function as a conflict management tool".⁹ Law can, in theory, function as a tool to improve women's participation in transitional justice processes, but how law actually does this depends on how participation is understood in law and, crucially, how *women* are understood in law. This is because while law is an instrument, "what it is an instrument for cannot be fixed outside the political process of which it is an inextricable part."¹⁰ This thesis therefore seeks to explore law's positionality in the "political" process of transition by interrogating how women are portrayed in law, and how this impacts their participation. To do this, this thesis, through its analysis, will explore what relationship exists between women's participation in transitional justice processes, and the ways that women are discursively constructed in law, policy, reports, and literature associated with transitional justice.

1.3 – Problematising Women's Participation

The motivation for this research project began with the articulation of a "problem". Across a varied body of research, scholarship, United Nations Security Council

Transitional Justice Review 4, 7. See also Patricia Lundy and Mark McGovern, "Whose Justice? Rethinking Transitional Justice from the Bottom Up" (2008) 35(2) *Journal of Law and Society* 265

⁷ This legal framework and associated critique will be discussed in further detail in Chapters 5 and 7 of this thesis.

⁸ Martti Koskenniemi, "What is International Law for?" in Malcolm D Evans (ed), *International Law* (Oxford University Press 2018) 48

⁹ Hannah Birkenkötter, "International law as a common language across spheres of authority?" (2020) 9(2) *Global Constitutionalism* 318, 319

¹⁰ Koskenniemi "What is International Law for?" (n 8) 48

Resolutions (UNSCRs), policy documents, and NGO reports, a clear theme emerges: that women’s participation in transitional justice processes is in some way *not enough*. Not enough women are participating in transitional justice processes, in court proceedings, in truth commissions, in reparations programmes, in disarmament, demobilisation and reintegration processes, as victims, as witnesses, as citizens.¹¹ There is not enough support for women to share their testimonies, to access redress, to care for their families.¹² There is neither enough focus nor attention on women’s experiences of conflict, of violence, of repression.¹³ Women are perceived as not safe enough, not educated enough, not capable enough to participate meaningfully in the processes that have been created for them.¹⁴ Not enough women are able to contribute to creating these processes in the first place.¹⁵ Transitional justice, it would seem, is not doing enough for women, and women are not able to do enough in the transitional justice context.

Securing women’s participation in transitional justice processes can be challenging. Indeed, transitions are times of great upheaval, and as such their associated justice processes face many practical challenges. Transitional states experience “weak institutions, depleted social capital, fragmented civil societies, severe capacity and

¹¹ See, e.g. Bell and O’Rourke (n 3); O’Rourke, “Walk[ing] the Halls of Power” (n 4). See also Chapter 2 of this thesis.

¹² See, e.g. Kristine Höglund, “Testimony Under Threat: Women’s Voices and the Pursuit of Justice in Post-War Sri Lanka,” (2019) 20 Human Rights Review 361

¹³ See, e.g. Madeleine Rees and Christine Chinkin, “Exposing the Gendered Myth of Post Conflict Transition: The Transformative Power of Economic and Social Rights” (2016) (48) NYU Journal of International Law and Politics 1211; Fionnuala Ní Aoláin and Michael Hamilton, “Gender and the Rule of Law in Transitional Societies” (2009) 18 Minnesota Journal of International Law 380; Bell and O’Rourke (n 3)

¹⁴ See, e.g. Christine Chinkin, “Gender, Human Rights, and Peace Agreements” (2003) 18(3) Ohio State Journal on Dispute Resolution 867; Lisa Davis, “ISIL, the Syrian Conflict, Sexual Violence, and the Way Forward: Syrian Women’s Inclusion in the Peace Processes” (2016) 48 New York University Journal of International Law & Politics 1157; Zetes (n 3)

¹⁵ See, e.g. Judy El-Bushra, “How Should We Explain the Recurrence of Violent Conflict, and What Might Gender Have to Do with It?” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018); Dubravka Zarkov, “From Women and War to Gender and Conflict?: Feminist Trajectories” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)

resource constraints” and deep social divisions.¹⁶ In these circumstances, they must provide complex accounts of violence committed by multiple actors, accounting for the fact that the “perpetrator/victim line is often porous”.¹⁷ In addition, transitional states may be hugely affected by “security concerns” which function as “powerful disincentives” to participation at all levels.¹⁸ This heightened insecurity can also result in gender concerns being relegated to a lower status than some of the more “immediate” concerns of conflict. Determining priorities in a transitional justice context can be a contested process, with these decisions ultimately made by elite actors, and often to the detriment of women.¹⁹ Related to this concern, Cynthia Enloe has discussed the “patriarchal time zone”, which refers to the notion that emergencies do not allow sufficient time to address gender concerns.²⁰ This results in issues related to gender equality being postponed to some later stage of the reconstructive process.²¹ However, transitional justice processes, by their very nature, are “later”. They are part of the effort made to recover from the emergency, and as such represent an ideal time to address women’s concerns.

Participation’s transformative potential is further limited by the available modes of participation. Feminist scholarship has argued that participation often means little more than the inclusion of a few women in existing processes which are based on male assumptions, experiences, and biases, with little to no acknowledgement of structural

¹⁶ United Nations Human Rights Council, “Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Grieff” (28 August 2013) UN Doc A/HRC/24/42, [29]

¹⁷ *ibid.* The “porous” line between the categories of “victims” and “perpetrators” will be explored in further detail later in this thesis, and particularly in Chapter 6.

¹⁸ *ibid.* See also, e.g. Kris Brown and Fionnuala Ní Aoláin, “Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change” (2015) 9(1) *International Journal of Transitional Justice* 127, 135; Zetes (n 3) 1306

¹⁹ See, e.g. Monica McWilliams and Avila Kilmurray, “From the global to the local: Grounding UNSCR 1325 on women, peace and security in post-conflict policy making” (2015) 51 *Women’s Studies International Forum* 128

²⁰ Cynthia Enloe, *The Curious Feminist: Searching for Women in a New Age of Empire* (University of California Press 2004) 215, cited in Nadine Puechguirbal, “Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents” (2010) 17(2) *International Peacekeeping* 172, 179

²¹ *ibid*

gender discrimination.²² As a result, where inclusion in transitional justice processes is facilitated, this often involves little more than what critics have described as “an add women and stir” approach.²³ By this, it is meant that participation becomes “a numbers game based on the conventional binary of men and women with the vague hope that adding a few women to such processes will induce change.”²⁴ This is problematic, since it has been argued that merely including women does not ensure that transitional justice processes will give adequate attention to issues of gender.²⁵ Indeed, without women’s presence in processes and influence in their design, the most significant issues affecting women may go unaddressed altogether.²⁶ As Monica McWilliams has argued, without women’s involvement, processes could “be heavily influenced by a different kind of gender dynamics.”²⁷

These problems have not gone unaddressed by law. Since 2000, a growing body of United Nations Security Council Resolutions on Women, Peace and Security (known collectively as the “WPS Agenda”) have sought to improve women’s participation in post-conflict processes and ensure their safety throughout armed conflicts.²⁸ These ten resolutions aim to address women’s experiences of armed conflict, and to ensure their representation in all conflict-related decision making and post-conflict processes. Importantly, each of the resolutions contains some reference to increasing participation

²² Bell and O’Rourke (n 3) 34; Rees and Chinkin (n 13) 1214-15; Zarkov (n 15) 22

²³ El-Bushra “How Should We Explain the Recurrence of Violent Conflict” (n 15) 49

²⁴ Rees and Chinkin (n 13) 1214

²⁵ United Nations Security Council, “Report of the Secretary-General on women, peace and security” (16 October 2002) UN Doc S/2002/1154, [29]

²⁶ Bell and O’Rourke (n 3) 30; O’Rourke, “Walk[ing] the Halls of Power” (n 4) 132

²⁷ Monica McWilliams, “Women at the Peace Table: the Gender Dynamics of Peace Negotiations” in Maureen P Flaherty, Sean Byrne, Hamdesa Tusso and Thomas G Matyók (eds), *Gender and Peacebuilding: All Hands Required*, (Lexington Books 2015) 230

²⁸ United Nations Security Council Resolution 1325 (31 October 2000) UN Doc S/RES/1325; United Nations Security Council Resolution 1820 (19 June 2008) UN Doc S/RES/1820; United Nations Security Council Resolution 1888 (30 September 2009) UN Doc S/RES/1888; United Nations Security Council Resolution 1889 (5 October 2009) UN Doc S/RES/1889; United Nations Security Council Resolution 1960 (16 December 2010) UN Doc S/RES/1960; United Nations Security Council Resolution 2106 (24 June 2013) UN Doc S/RES/2106; United Nations Security Council Resolution 2122 (18 October 2013) UN Doc S/RES/2122; United Nations Security Council Resolution 2242 (13 October 2015) UN Doc S/RES/2242; United Nations Security Council Resolution 2467 (23 April 2019) UN Doc S/RES/2467; United Nations Security Council Resolution 2493 (29 October 2019) UN Doc S/RES/2493

in these processes. The first of these resolutions – UNSCR 1325 – continues to be one of the most influential with regard to women’s participation in transitional justice processes. Reports on the implementation of UNSCR 1325 have attested to the importance of women’s participation in transitional justice processes, claiming that there are “many positive examples of women making a critical difference in the promotion of peace”.²⁹ Recognising the need to “enhance women’s participation” in processes related to peace and justice, additional documentation of the United Nations further argues that such processes must give “systematic attention to gender issues”.³⁰ Indeed, the UN Security Council appears to understand participation as an important prerequisite to addressing gendered harms and experiences in the transitional justice context, and has recommended exploring “differential impact” of conflict on “women and children”, and that transitional justice efforts “ensure gender sensitivity” and the “full participation of women”.³¹ Whether evidence of the “mainstreaming” of gender concerns at the United Nations, or a recognition of enduring issues related to women’s participation in transitional justice processes, law and policy at the international level seems to reflect many of the calls made by some feminist scholarship on transitional justice outlined earlier in this introductory chapter.

It has been argued that “[t]here is no UN Security Council Resolution more quoted, relied upon, or used as a rallying cry” than UNSCR 1325.³² However, UNSCR 1325’s repeated invocation has not necessarily translated into practical action to improve women’s participation. It has been argued that UNSCR 1325 has “yet to bring about representational equality for women, in regard to either percentage or influence”.³³ In particular, the participation facilitated by UNSCR 1325 has been described as ensuring women’s “presence as advisors or observers, neither of which can be seriously

²⁹ United Nations Security Council “Report of the Secretary-General” (2002) (n 25) [27]

³⁰ United Nations Security Council, “Women and peace and security: Report of the Secretary-General” (13 October 2004) UN Doc S/2004/814 [25]

³¹ *ibid* [49]

³² Rees and Chinkin (n 13) 1215

³³ Aurora E Bewicke, “Beyond Borders and Binaries: A Feminist Look at Preventing Violence and Achieving Peace in an Era of Mass Migration” in Seema Shekhawat (ed), *Gender, Conflict, Peace, and UNSC Resolution 1325* (Lexington Books 2018) 124

considered as providing an equal participatory role or influence”.³⁴ Partly for this reason, in the decades since UNSCR 1325 was passed, scholars have continued to argue that post-conflict processes “remain gendered to men’s advantage” and that they are based on principles which systematically exclude women.³⁵ As a result, women’s participation in transitional justice processes remains low, with women critically underrepresented in official roles in peace and post-conflict processes.³⁶ Because of this, Cahn notes an “implementation gap” whereby a broad range of resolutions and normative frameworks have been created to ensure women’s participation in post-conflict processes, but without producing any transformative results.³⁷ This raises the question of how law can bring about such transformation. How is it that law influences practice, or in this case, participation? How does the written language of law shape the material world?

1.4 – The Discursive Contribution

The “problem” of women’s participation outlined in the previous section has been expressed and explored by various actors in the transitional justice sphere, with a variety of solutions proposed. And yet, this problem seems to persist. This raises the question of *why*, and leads to another key motivation for this research project. If the motivation for this project began with the articulation of the problems described above, it crystallised with a curiosity about the role that law plays in shaping those problems

³⁴ Rees and Chinkin (n 13) 1216

³⁵ Brown and Ní Aoláin (n 18) 135. See also Zetes (n 3) 1295-6

³⁶ See, e.g. Pablo Castillo Diaz and Simon Tordjman, “Women’s Participation in Peace Negotiations: Connections between Presence and Influence” (2nd ed UN Women 2012)

<<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/10/WPSourcebook-03A-WomenPeaceNegotiations-en.pdf>> 3; Anne Marie Goetz and Rob Jenkins, “Participation and Protection: Security Council Dynamics, Bureaucratic Politics, and the Evolution of the Women, Peace, and Security Agenda” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018) 119

³⁷ Naomi Cahn, “Introduction: Mapping the Terrain: Gender and Conflict in Contemporary Perspective” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018) xxxviii

and their potential solutions. Laws have emerged to solve these problems, but could law play a role in perpetuating them? How has law understood “participation” as a concept, and, importantly, how has it understood women as participants?

The WPS Agenda’s understanding of women as participants in transitional justice processes has been widely researched and has been subject to significant scholarly critique. In particular, the WPS Agenda has been criticised for its focus on women’s experiences as victims of sexual violence, at the expense of efforts to include women in all facets of post conflict processes.³⁸ For example, Otto argues that the language of the WPS resolutions envisages women’s contribution to conflict-related decision making as improving the protection of women and children from conflict-related sexual violence and improving the reporting rates for such violence.³⁹ This, she argues, does not amount to “equal” participation.⁴⁰ Further scholarship has explored women’s portrayal primarily as victims in documentation related to the WPS Agenda.⁴¹ Indeed, country reports on the implementation of UNSCR 1325 have been shown to primarily refer to women “as victims of armed conflict and not as potential actors” in conflict-related processes, where they refer to women at all.⁴² This is problematic, because it has been argued that victimhood as a basis for participation in transitional justice mechanisms can be limiting at best, and damaging at worst. This is because it can strip participants of their agency and create competition between different groups based on their conflict experiences and their access to post-conflict resources.⁴³

Existing scholarship has thus proposed that women’s portrayal in the resolutions of the WPS Agenda has been limited. Furthermore, perceptions about women have been

³⁸ *ibid* xxxviii; Zetes (n 3) 1303-4

³⁹ Dianne Otto, “Women, Peace, and Security: A Critical Analysis of the Security Council’s Vision” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018) 109

⁴⁰ *ibid*

⁴¹ See, e.g. R Charli Carpenter, *Innocent Women and Children: Gender, Norms and the Protection of Civilians*, (Ashgate 2007); Puechguirbal “Discourses on Gender, Patriarchy and Resolution 1325” (n 20)

⁴² United Nations Security Council “Women and peace and security” (2004) (n 30) [112]

⁴³ Paul Gready and Simon Robins, “From Transitional to Transformative Justice: A New Agenda for Practice” (2014) 8 *International Journal of Transitional Justice* 339, 358

argued to act as a barrier to women’s participation in post-conflict processes. The United Nations, for example, in an early report on the implementation of UNSCR 1325, argued that women may be excluded from participating in transitional justice processes on the basis of their non-combatant status, or because they are “not military leaders or political decision-makers”.⁴⁴ As a result, their interests may be perceived as “broader than those of the men involved in the negotiations.”⁴⁵ The report further cites assumptions about women’s level of negotiating experience or expertise as reasons for their exclusion, attributing such assumptions to “discrimination and stereotypical thinking”.⁴⁶ However, there remains an opportunity for exploration of how these portrayals translate from the international to the national scale of law. For example, how do these portrayals translate to the documentation associated with a given transitional justice process, and how do they link to women’s participation in that process? Does any relationship exist between the ways in which women participate (or do not participate) in transitional justice processes, and their portrayals in associated documentation? Does the way in which they participate in legal processes, in turn, shape the development of future law?

This thesis proposes to investigate the potential consequences of women’s portrayal in international law. In particular, what this thesis seeks to do is to explore whether a mutually constituting and reinforcing relationship exists between women’s portrayal in the reporting of transitional justice processes and the modes of their participation in these processes. It proposes that the investigation of such a relationship could reveal, at least to some extent, why women’s participation continues to be limited both in numbers and in substance. In doing so, the thesis takes a textual approach to its analysis. Indeed, the starting point for this analysis lies in an interrogation of the *language* of the law. Andreas Philippopoulos-Mihalopoulos has described “textuality” as law’s defining feature.⁴⁷ That is, the law represents the world through language. But

⁴⁴ United Nations Security Council “Report of the Secretary-General” (2002) (n 25) [28]

⁴⁵ *ibid*

⁴⁶ *ibid*

⁴⁷ Andreas Philippopoulos-Mihalopoulos, “And For Law: Why Space cannot be understood without Law” 2018 *Law, Culture and the Humanities* 1, 5

the world is a complex place, consisting of many people, things, spaces, and stories. Law and legal language cannot always contend with this complexity. Rather, the inherent “textuality” of the law simplifies the many narratives that make up the social world by “lying things out side by side”.⁴⁸ In this way, complex narratives – about the social world, about transitional justice, and about women as participants in in transitional justice processes – are *flattened*.

This thesis will explore the discursive practices by which women and their experiences might be flattened by law. Understanding this phenomenon is important because, according to McEvoy, law “shapes our political relations, our language, even the way we think”.⁴⁹ A flattened portrayal of women in law is therefore likely to have significant social consequences. Fionnuala Ní Aoláin has argued that transitional justice, as a concept, represents a form of “discursive colonization”.⁵⁰ The language of transitional justice and the mechanisms it employs serve to “codify knowledge in ways that exclude and produce hierarchies of value” as the transition progresses.⁵¹ The result is the continuation of the “hegemonic reach of legal liberalism”, to which she argues there has yet to emerge any “fully articulated” challenge.⁵² While this thesis does not intend to represent a holistic challenge to this hegemony, it nevertheless seeks to contribute to any ongoing challenge. This thesis seeks to interrogate this hegemony and reveal the processes by which the discourses of transitional justice (re)produce constructions of women which limit their participatory opportunities.

Importantly, in its analysis of the “problem” established in this introduction – that women’s participation in transitional justice processes is often low or inadequate – this thesis does not seek to redefine “participation”, nor to reconstruct “women” as legal subjects. Furthermore, it is not the intention of this thesis to propose new models of

⁴⁸ *ibid*

⁴⁹ Kieran McEvoy “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice” (2007) 34(4) *Journal of Law and Society* 411, 416

⁵⁰ Fionnuala Ní Aoláin, “Advancing Feminist Positioning in the Field of Transitional Justice” (2012) 6 *International Journal of Transitional Justice* 205, 206

⁵¹ *ibid*

⁵² *ibid*

participation to “correct” the issues related to women’s participation that it has previously discussed. Instead, this thesis follows Davies in her assertion that change need not be brought about through development of new theoretical models; instead, small, cumulative analytical changes “across a broad spectrum of types of intervention” can serve to transform understanding.⁵³ Therefore, this thesis aims to challenge the hegemony described above by observing it from a different vantage point.⁵⁴ The thesis thus proposes an approach to analysing transitional justice which asks, “*what relationship exists between women’s portrayal in transitional justice processes and the modes of participation available to them in law?*” To answer this question, the thesis will refer to the reports of the Liberian Truth and Reconciliation Commission as a case study. In doing so, the thesis adopts an analytical lens rooted in critical feminisms, critical legal geography, and critical discourse analysis, with the resulting method termed “critical spatial discourse analysis”.

Laura Shepherd, in her analysis of the language of the WPS Agenda, has proposed that it is the “discursive terrain” of the institutions associated with the WPS Agenda that shapes the Agenda itself.⁵⁵ What this thesis attempts to discern is how this discursive shaping translates from the international to the domestic scale. In doing so, this thesis attempts to track the relationship between the language and discourse of transitional justice and transitional justice as a form of *space*. As such, the reports of the Liberian Truth and Reconciliation will be considered as a form of space, constituted through the discourse of that reporting. There is both a power and a benefit in analysis of this type of conceptual space. It requires an analysis of the texts of that transitional justice mechanism, rather than an ethnographic approach. While many analyses of participation involve an ethnographic methodology, this thesis aims to make a unique contribution to the field by using legal geographical principles to analyse the language of the law, and its consequences for women, their portrayals, and their participation.

⁵³ Margaret Davies, *Law Unlimited: Materialism, Pluralism, and Legal Theory* (Routledge 2017) 18

⁵⁴ *ibid*

⁵⁵ Laura J Shepherd, “Sex, Security and Superhero(in)es: From 1325 to 1820 and Beyond” (2011) 13(4) *International Feminist Journal of Politics* 504, 506

1.5 – A Case Study Approach

This thesis is concerned with how the legal, social, and spatial aspects of a transitional justice process come together to produce space, and the consequences that this has for women and their participation. Therefore, this project uses the Liberian Truth and Reconciliation Commission as a case study in order to examine how women participate in transitional justice processes; how they are portrayed in these processes; and what relationship exists between their participation and their portrayal. In order to assess women's portrayal in the Liberian TRC, this project will involve a critical discourse analysis of the TRC's reporting. In doing so, the project imagines the reporting as creating a distinct conceptual space, through which women are constructed in numerous forms.

In 2004, a report on the implementation of UNSCR 1325 specifically called for further information on the ways in which truth commissions “directly or indirectly support women”, arguing that the level of women's involvement and the extent to which their needs are addressed by these commissions “is not well known”.⁵⁶ As a truth commission, the Liberian TRC provides an opportunity for analysis to address this gap in knowledge. In fact, the Liberian TRC has unique potential as a case study because of the volume and availability of its reports, and the particular attention these reports pay to women's experiences of conflict and transition.⁵⁷ Importantly for the type of analysis envisaged by this project, the final output of the Liberian TRC was its final report, published as three volumes.⁵⁸ This provides a rich, textual basis for analysis of women's portrayal and participation in the process. The reporting itself demonstrates a distinct self-consciousness about the participation “problem” outlined earlier in this introduction, and features chapters and an entire appendix dedicated to women's

⁵⁶ United Nations Security Council “Women and peace and security” (2004) (n 30) [52]

⁵⁷ The reasons behind the selection of this case study, while summarised in this section, will be explained in detail in Chapter 4 of this thesis.

⁵⁸ For a detailed discussion of the final reports of the Liberian Truth and Reconciliation Commission, see Chapter 4 of this thesis.

experiences of the Liberian civil war.⁵⁹ These reports, and the stories they tell about women, exist alongside a wealth of research on women's activism in Liberia which attests to women's invaluable contributions to the Liberian peace process and to public life more broadly.⁶⁰ On first reading, this literature contrasted with some of the more limited portrayals of women's vulnerability and victimhood that appeared to emerge from the TRC's reports.⁶¹ As such, these more limited portrayals invited further attention and analysis.

Furthermore, in the post-conflict context, issues of gender equality have remained on Liberia's political agenda. Abramowitz and Moran discuss that considerable efforts have been made to implement UNSCR 1325 in Liberia, though to varying levels of success.⁶² For example, the inclusion of a specific mandate for "the protection of women and children" in the United Nations Mission in Liberia (UNMIL) has been listed by the United Nations as a positive achievement in the implementation of UNSCR 1325.⁶³ It has also been argued that the participation of a gender advisor in UNMIL's operations "resulted in a better reflection of gender issues in reports" to the Security Council, which in turn perpetuated the inclusion of gender issues in subsequent UNSCRs.⁶⁴ Indeed, Liberia has been described as "becoming renowned globally as a leader" in its efforts to secure post-conflict gender equality, while also providing "a living example of the ongoing struggle to make the application of

⁵⁹ Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title I: Women and the Conflict* (30 June 2009) <http://trcofliberia.org/resources/reports/final/volume-three-1_layout-1.pdf> ("Women and the Conflict' Appendix"). For a detailed discussion, see Chapter 6 of this thesis.

⁶⁰ See, e.g. Erica S Lawson and Vaiba K Flomo, "Motherwork and gender justice in Peace Huts: a feminist view from Liberia" (2020) 41(11) *Third World Quarterly* 1863; Andrea Hilkevitz, "Beyond Sex Strikes: Women's Movements, Peace Building, and Negotiation in *Lysistrata* and *Pray the Devil Back to Hell*" 2014 *Journal for the Study of Peace and Conflict* 124; Peace A Medie, "Fighting Gender-Based Violence: The Women's Movement and the Enforcement of Rape Laws in Liberia" (2013) 112(448) *African Affairs* 377; Mary Moran, "Our Mothers Have Spoken: Synthesizing Old and New Forms of Women's Political Authority in Liberia" (2012) 13(4) *Journal of International Women's Studies* 51; and Leymah Gbowee, *Mighty Be Our Powers: A Memoir* (Beast Books, 2011)

⁶¹ For a detailed discussion, see Chapter 6 of this thesis.

⁶² Sharon Abramowitz and Mary H Moran, "International Human Rights, Gender-Based Violence, and Local Discourses of Abuse in Postconflict Liberia: A Problem of 'Culture'?" (2012) 55(2) *African Studies Review* 119, 127-8

⁶³ United Nations Security Council "Women and peace and security" (2004) (n 30) [5]

⁶⁴ *ibid*

Resolution 1325 meaningful in a humanitarian crisis”.⁶⁵ In addition, the destruction of Liberia’s infrastructure by the civil conflict, while devastating, has been argued to have created opportunities for initiatives connected to UNSCR 1325. These include the creation of Women and Children Protection Sections (described as “physical units” established “adjacent to” police stations and staffed by police officers to investigate cases of sexual and gender-based violence), as well as the creation of a joint UN and Liberian strategy to implement UNSCR 1325, and the creation of a Ministry of Gender and Development.⁶⁶ Furthermore, in the years since the conflict and TRC, Liberia has launched a National Action Plan for the implementation of UNSCR 1325 and committed to the development of an accountability and monitoring system for that implementation.⁶⁷ Thus, the unique circumstances of the Liberian transition and transitional justice process provide an opportunity for exploration of women’s portrayal and participation.

1.6 – Positioning the Research

This thesis is concerned with discourse, space, and how language locates women within the law. Given this focus on positioning, it seems apt to outline the position of the project itself, and in particular to engage with some of the potentially contested terminologies used throughout this thesis. Firstly, this thesis employs a *feminist* approach to analysis. In their seminal work, “Feminist Approaches to International Law”, Charlesworth, Chinkin and Wright describe feminist legal theorising as being concerned with “the role of the legal system in creating and perpetuating the unequal

⁶⁵ Abramowitz and Moran (n 62) 127-8

⁶⁶ Niels Nagelhus Schia and Benjamin de Carvalho, “Reforms, Customs and Resilience: Justice for Sexual and Gender-Based Violence in Liberia” in Anastasia Powell, Nicola Henry, and Asher Flynn (eds), *Rape Justice: Beyond the Criminal Law* (Palgrave MacMillan 2015) 146

⁶⁷ United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights on the progress made in the situation of human rights in Liberia and activities undertaken in the country” (27 August 2009) Un Doc A/HRC/12/42, 8

position of women.”⁶⁸ This thesis is also primarily concerned with this objective. In particular, it seeks to understand the role that legal systems play with regard to women’s construction in transitional justice contexts. It has been argued that a feminist approach to research involves an interrogation of the “language available for theoretical purposes and the constraints it places on what can be said”.⁶⁹ Following this approach, feminist scholarship has proposed that law can form a “productive force” in shaping the ways in which women and gender are understood.⁷⁰ What this thesis seeks to investigate is the productive forces of law which shape women and gender in the transitional justice context, and how these forces can be understood spatially.

In analyses of participation, Cornwall proposes interrogating “what is being assumed about spaces for participation... and the extent to which these assumptions are actually being borne out in practice”.⁷¹ This thesis develops its approach from Cornwall’s, asking what is being assumed about *women*, and how this impacts the ways in which they participate in transitional justice processes. Thus, in its interrogation of women’s portrayal and participation in transitional justice processes, this thesis discusses the processes of gender essentialisation, or flattening, which can be observed in the formation of discourses of transition. Feminist scholarship has acknowledged that gender essentialism is a prominent feature of feminist theorising more generally, perhaps at the expense of other vectors of identity.⁷² Indeed, it has been argued that the focus on gender essentialism can have the effect of “marginalizing issues of class,

⁶⁸ Hilary Charlesworth, Christine Chinkin and Shelley Wright, “Feminist Approaches to International Law” (1991) 85 *American Journal of International Law* 613, 613

⁶⁹ Elizabeth A Grosz, “Feminist Theory and the Challenge to Knowledges” (1987) 10(5) *Women’s Studies International Forum* 475, 479. See also Laura J Shepherd, *Gender, Violence and Security: Discourse as Practice* (Bloomsbury 2008) 3

⁷⁰ Carol Cohn, Helen Kinsella & Sheri Gibbings, “Women, Peace and Security: Resolution 1325” (2004) 6(1) *International Feminist Journal of Politics* 130, 136. See also Shepherd, *Gender, Violence and Security* (n 69) 8.

⁷¹ Andrea Cornwall, “Making spaces, changing places: situating participation in development” (Institute of Development Studies Working Paper 170, October 2002) 5

⁷² Ní Aoláin “Advancing Feminist Positioning” (n 50) 220

ethnicity, race and culture”.⁷³ As a result, Ní Aoláin argues that any feminist analysis of transitional justice requires “some complex interweaving”.⁷⁴

Part of the complex interweaving of this thesis involves drawing from different scholarly traditions in order to understand the construction of the women subject of transitional justice. As a result, the thesis does not necessarily locate itself primarily within any particular feminist school of thought. In her research on the WPS Agenda, Shepherd acknowledges “the intellectual heritage of feminisms that seek to claim rights on behalf of a stable subject”, relying on “the universal category of ‘women’”.⁷⁵ Nevertheless, she understands gender not as “stable” and “universal” but as “product/productive of the performances of violence and security” she investigates in her research.⁷⁶ This thesis adopts a similar approach. While acknowledging the potential value in articulating a universal subject to whom rights are owed and whose experiences must be addressed in the transitional justice context, this thesis nevertheless seeks to unravel this subject, at least to some extent. In doing so, this thesis does not understand the woman subject of transitional justice as a real, identifiable woman existing in the material world, but nevertheless acknowledges the “intellectual heritage” of feminist schools of thought which would do so.⁷⁷ As such, this research does not embark on a deconstruction of identity, or of all of the behaviours that come together to produce gender.⁷⁸ Rather, the thesis attempts to understand how the woman subject of transitional justice is discursively produced and constituted in the context of a given transitional justice process. It attempts to understand *how* this process of essentialisation or flattening occurs and obscures other aspects of identity. It argues that this understanding reveals the assumptions which preclude proper engagement with issues of class, of ethnicity, of race, and of culture. This, it is argued, allows for an understanding of how essentialised or flattened

⁷³ Berta Esperanza Hernández-Truyol, “Las Olvidadas – Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law” (1998) 1 *Journal of Gender, Race and Justice* 353, 400

⁷⁴ Ní Aoláin “Advancing Feminist Positioning” (n 50) 220

⁷⁵ Shepherd, *Gender, Violence and Security* (n 69) 3

⁷⁶ *ibid* 3

⁷⁷ *ibid*

⁷⁸ See, e.g. Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1999), cited in Shepherd, *Gender, Violence and Security* (n 69) 3

portrayals of women are able to persist in law and in policy, which in turn can reveal how women's participatory opportunities are limited in the transitional sphere.

Secondly, this thesis engages with *transitional justice* contexts as sites wherein women are constructed in law. Feminist approaches to transitional justice have been described as a practice of being “attuned to the inherent bias of transitional justice as a grounding structure while utilizing it gainfully to advance women's interests”.⁷⁹ This research project takes this as a starting point. It seeks to understand the inherent biases of transitional justice as a concept, and transitional justice processes as a form of justice practice, but does not seek to redefine nor to reconstruct these ideas. As such, the thesis follows the definition of transitional justice put forward in UN sources. The United Nations, since 2004, has defined transitional justice as “the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of largescale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”⁸⁰ These processes and mechanisms may be “judicial and non-judicial” in nature, and can include any combination of “individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals”.⁸¹ The United Nations Secretary-General, in updated guidance on transitional justice, requires that transitional justice processes be “normative”.⁸² By this, it is meant that transitional justice processes ought to be compliant with the standards of international law, centring “human rights and other international norms and standards that protect people's dignity”.⁸³ This definition clearly encapsulates the Liberian Truth and Reconciliation Commission which this thesis employs as a case study.

⁷⁹ Ní Aoláin “Advancing Feminist Positioning” (n 50) 221

⁸⁰ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 2; United Nations Secretary-General, “Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice” (2010) <<https://digitallibrary.un.org/record/682111?ln=en&v=pdf>> 2

⁸¹ *ibid*

⁸² United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 5

⁸³ *ibid*

1.7 – Positioning the Researcher

Ní Aoláin cautions against the “fundamental mistakes” that feminist researchers can make in their engagement with transitional justice.⁸⁴ For her, one of these mistakes is “not seeing one’s own position in the project of moulding the field”.⁸⁵ As such, it is important to acknowledge the position of the author. Decolonial feminist scholars have warned against Western women imposing their understanding of concepts such as liberation upon women from outside the hegemonic West.⁸⁶ Indeed, just as the masculine assumptions underpinning international law can marginalise “both female and non-European” perspectives, “feminist concerns in the Third World” can be “largely ignored or misunderstood by western feminists”.⁸⁷ Amina Mama has argued that “in a world as complicated [as] postcolonial Africa”, the practice of naming is complex, and so what Western scholars might name as “feminism”, “freedom”, and “justice” may be named differently depending on the context.⁸⁸ As such, it would be inappropriate to assume that such terms have only the meanings given to them “externally or by the globally dominant West”.⁸⁹ Acknowledging these realities of the postcolonial world is vital, but poses obvious challenges for this thesis, authored as it is by a white, Western woman using feminism as a basis for the analysis.

How, then, can *feminist* theory be applied to an analysis of a transitional *justice* process, when “feminist” and “justice” may differ in meaning from one context to the next? Davies, for one, has noted the inherent difficulty in approaching the law from a theoretical tradition that is different to one’s own culture, and notes that this may

⁸⁴ Ní Aoláin “Advancing Feminist Positioning” (n 50) 220

⁸⁵ *ibid*

⁸⁶ Ramón Grosfoguel, “Decolonizing Western Uni-versalisms: Decolonial Pluri-versalism from Aimé Césaire to the Zapatistas” (2012) 1(3) *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World* 88, 97, citing Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practising Solidarity* (Duke University Press 2003) and Asma Lamrabet, *El Corán y las mujeres* (Icaria 2011)

⁸⁷ Charlesworth, Chinkin and Wright (n 68) 619. For further discussion of these issues, see Chapter 2 of this thesis.

⁸⁸ Amina Mama, “‘We will not be pacified’: From freedom fighters to feminists” (2020) 27(4) *European Journal of Women’s Studies* 362, 363

⁸⁹ *ibid*

produce a “hybrid theoretical result”.⁹⁰ However, to simply ignore such cultural differences would produce a different problem. Grosfoguel, for example, has criticised the production of knowledge “from the zero-point”. By this, he means producing knowledge “without questioning the place from which [the author] speaks and produce[s] this knowledge”.⁹¹ Such approaches are often associated with a universalist approach which assumes an abstract subject “without relation to anyone outside him”.⁹² How, then, to avoid these pitfalls? The intention here is certainly not to assume such a universalist approach in the production of this thesis. Nor does the thesis presume that the knowledges used in its production are themselves abstract and universal. Thus, the methodological approach must account both for the particular position of the author, and for the positionality of the subjects of the research.

Malidoma Somé has discussed the process of finding one’s “center” – one’s own unique position and experience.⁹³ This thesis will be intentionally mindful of this: the research is conducted from the perspective of the author, and neither the author’s experience nor position can be substituted for anyone else’s. Following Bode, this thesis considers the finding of one’s centre as an “opportunity” for research.⁹⁴ For Bode, interpretations of texts “are not meant to be authoritative”; instead, they recognise that “a narrative always implies interpretation” on the part of author and reader.⁹⁵ This constitutes an opportunity, as it presents the possibility for different researchers to bring their own unique interpretation to analysis of the texts in question.⁹⁶ Indeed, it is important to acknowledge that there is no “single school of feminist jurisprudence”.⁹⁷ Rather, the value in a feminist engagement with law emerges from the “diversity of voices” which seek to articulate the realities of women’s

⁹⁰ Davies, *Law Unlimited* (n 53) 3

⁹¹ Grosfoguel (n 86) 97

⁹² *ibid*

⁹³ Malidoma Patrice Somé, *Of Water and the Spirit: Ritual, Magic, and Initiation in the life of an African Shaman* (Putnam 1994) 198

⁹⁴ Ingvild Bode, “Women or Leaders? Practices of Narrating the United Nations as a Gendered Institution” (2020) 22 *International Studies Review* 347, 354

⁹⁵ *ibid*

⁹⁶ *ibid*

⁹⁷ Charlesworth, Chinkin and Wright (n 68) 613

experiences.⁹⁸ Because there does not exist “one, true, feminist story of reality”,⁹⁹ it is necessary to “embrace instead the permanent partiality of feminist inquiry”.¹⁰⁰

Katharine Bartlett has articulated a method of feminist research she terms “asking the woman question”. By this, she means interrogating the gendered aspects of law in order to better understand how law might contribute to women’s inequality or marginalisation in society.¹⁰¹ Building on this, Durojaye and Oluduro have proposed an “African woman question” as a means of responding to the “peculiar circumstances of African women who are confronted on a daily basis with cultural and religious practices that relegate them to the background”.¹⁰² At the African Feminist Forum which took place in Accra, Ghana in 2006, organised by the African Women’s Development Fund, a “Charter of Feminist Principles for African Feminists” (hereafter “CFPAF”) was adopted.¹⁰³ One of the intentions behind the CFPAF is to guide both analysis and practice in the field.¹⁰⁴ One of the principles of “individual ethics” provided by the CFPAF is the “recognition and presentation of African women as the *subjects* not the *objects* of our work, and as agents in their lives and societies”.¹⁰⁵ Josephine Jarpa Dawuni has emphasised this idea, arguing that “there is no such thing as ‘African women’”, neither are African women’s experiences homogenous and discrete.¹⁰⁶ Rather, she argues, women in Africa are a diverse group with their experiences overlapping at “intersecting junctures”.¹⁰⁷ Thus, it is vital to avoid the “objectification” of African women, and instead to recognise African women as

⁹⁸ *ibid* 614

⁹⁹ Sandra G Harding, *The Science Question in Feminism* (Open University Press 1986) 28

¹⁰⁰ *ibid* 194

¹⁰¹ Katharine T Bartlett, “Feminist Legal Methods” (1990) 103(4) *Harvard Law Review* 829

¹⁰² Ebenezer Durojaye and Olubayo Oluduro, “The African Commission on Human and People’s Rights and the woman question” (2016) 24(3) *Feminist Legal Studies* 315, 318

¹⁰³ African Feminist Forum, “Charter of Feminist Principles for African Feminists” (African Women’s Development Fund 2007) available at: <<http://www.africanfeministforum.com/feminist-charter-introduction/>>

¹⁰⁴ *ibid* 2

¹⁰⁵ *ibid* 7 [emphasis added]

¹⁰⁶ Josephine Jarpa Dawuni, “Matri-legal feminism: an African feminist response to international law” in Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing Limited 2019) 445

¹⁰⁷ *ibid*

subjects in scholarly work.¹⁰⁸ Additionally, the CFPAP enshrines the need to credit the labour of African women, “intellectual and otherwise”, in all work, which seems a very broad and open approach.¹⁰⁹ These guiding principles will be essential in informing this research.

Bearing these critiques in mind, this work intends to be guided by the principles of the CFPAP, treating the women who participated in the Liberian Truth and Reconciliation Commission as complex legal subjects, and acknowledging their contributions and the contributions of African scholars. At this point, it is important to note that, while the work of some African scholars might certainly be described as feminist, Wane has noted the reluctance on the part of some to use the word “feminist” to describe themselves and their work, perhaps seeing the word as “constituted through the lived experiences of white European women”.¹¹⁰ Thus, while the thesis refers to feminist scholarship and to the feminist motivations of women participating in political and public life, it is acknowledged that this label may not be one that women apply to their own contributions.

1.8 – Navigating the Thesis

This introductory chapter has outlined the “problem” that prompted the analysis to be conducted throughout this thesis: that, in spite of legal advances to facilitate it, women’s participation in transitional justice processes remains low. Even when women are able to participate, these processes have been argued to be gendered to men’s advantage, meaning that women’s experiences and rights claims are left unaddressed in the post-conflict context. With that established, the second chapter of the thesis moves to an exploration of three key bodies of literature which underpin its analysis, beginning with critical feminist scholarship on transitional justice. This thesis

¹⁰⁸ *ibid* 450

¹⁰⁹ African Feminist Forum, “CFPAP” (n 103) 10

¹¹⁰ Njoki Wane, “African Indigenous Feminist Thought: An Anti-Colonial Project” in Njoki Wane, Arlo Kempf and Marlon Simmons (eds), *The Politics of Cultural Knowledge* (SensePublishers 2011) 13

has already been clear in its intention to take an explicitly feminist approach in its analysis, and so the literature review in the second chapter will first establish how feminist scholarship, and critical feminist scholarship in particular, has understood and addressed issues of women's participation and portrayal in the transitional justice context. This second chapter will argue that, while much scholarship addresses women's low participation, its possible causes, and means to improve it, less attention has been paid to the possibility that women's poor participation may be directly linked to their limited and limiting portrayal in law, with that portrayal in turn shaped through women's participation. The chapter will then move to an exploration of critical participation scholarship. In doing so, it will demonstrate that, while there has emerged a range of literature on participation and participatory practices in the field of development studies, there exists a gap for exploration of participation within transitional justice. This thesis will propose that it can address this gap by considering participation in transitional justice processes as a matter of access to spaces. As such, legal geographical scholarship is the third body of literature to be reviewed in the second chapter. Engaging in a review of legal geography literature, the chapter will propose that an analysis grounded in legal geographical scholarship can provide analytical tools to bridge these gaps in knowledge.

The third chapter will build upon the conclusions of the second chapter by establishing the theoretical framework and methodology which underpin the analysis and conclusions of this thesis. This chapter will argue that women's participation in transitional justice processes cannot be fully understood without an understanding of the spatial, legal, and social context(s) which set the conditions for that participation, thus grounding the analysis in legal geographical theory. In particular, the chapter will explain the concepts of space, complexity, and constitutivity which inform the analysis. It will propose that these concepts provide an understanding of the inextricable and mutually constituting relationships that exist between space, law, and legal subject. As such, it will argue that understanding this relationship, the complexities it produces, and its constitutive impacts, can provide a lens for the examination of participation and portrayal in the transitional justice context. The

chapter will further explain the methodological approach used to explore the links between participation and portrayal in transitional justice processes. This method, grounded in critical discourse analysis and incorporating the aforementioned legal geographical elements, is what this thesis terms “critical spatial discourse analysis”. As will be explained, this method involves understanding discourses as forms of space, both product and productive of law and legal subjects.

The fourth chapter will begin this analysis by engaging with the Liberian TRC as *space*. In doing so, the chapter will first introduce the case study, providing a background to the Liberian civil conflict, the Liberian Truth and Reconciliation Commission, and its associated documentation. The chapter will explain why Liberia is an appropriate choice of case study by highlighting the comparatively high number of women who participated in its activities, and that the reporting demonstrates a consciousness of the need to represent women and their experiences. The chapter will then embark on an analysis of the spatial aspects of the Liberian TRC by considering how this transitional justice process itself may have constituted multiple spaces, and how these spaces evolved over time. Through this exploration, the chapter will argue that it is not possible to conceive of the Liberian TRC as a singular, bounded space. Rather, the legal and spatial aspects of the TRC will be argued to be defined by their complexities. The TRC, along with its reporting, will be argued to produce multiple, overlapping spaces, each mutually constitutive of the other, of women as participants, and of their modes of participation in the process. Furthermore, and importantly for the analysis in the rest of the thesis, the chapter will consider the reporting of the TRC itself as a form of discourse. Following the method outlined in the third chapter, this allows it to be understood as a form of conceptual, discursive space, itself inseparable from its participants. In this understanding, participation is thus determined by the mutually constituting relationship of the TRC, its participants, and the available modes of participation.

The fifth chapter deals with the concept of participation, how it has been handled in law, and the modes of participation available at the Liberian Truth and Reconciliation Commission. Given the mutually constituting relationship that has been established

between space, law, and subject, this chapter proposes that an understanding of what participation means in law is essential to this analysis. As such, the chapter first explores the treatment of participation at the international scale of law. In particular, it proposes that interpretation of provisions of international human rights law has resulted in the emergence of a “right to participation” in public and political life. This is in addition to a range of soft law standards which specifically address women’s participation in transitional justice contexts. With that established, this chapter then moves to explore how participation was understood in the “foundational documents”¹¹¹ of the Liberian TRC. The chapter will argue that the modes of participation available to women in law are ultimately constitutive of women as participants, thus proposing a link between women’s participation and their portrayal in transitional justice processes.

The sixth chapter, further establishing this link, will analyse how women have been constituted and portrayed in the reports of the Liberian TRC. Thus, this chapter, through the critical spatial discourse analysis established in the third chapter, will analyse how women were constituted through and by the reports of the Liberian Truth and Reconciliation Commission. In doing so, the chapter will reaffirm that women, as subjects of transitional justice, cannot be understood separately from their relationship with the space(s) of transitional justice, forming as they do an inextricable part of that space.¹¹² Importantly, the chapter will argue that women were constituted through the discourse of the Liberian TRC. It will be argued that its reports often engaged in essentialised portrayals of women, through which women and their experiences were conflated with “gender”; with constructions of “victimhood” and “vulnerability”; and with a universal, peaceful, passive subject of transitional justice. The chapter will ultimately propose that the reporting of the Liberian TRC thus opened a “gap” between the realities of women’s experiences and their portrayals in the reports.

¹¹¹ Benjamin Thorne, “Remembering atrocities: legal archives and the discursive conditions of witnessing” (2021) 25(3) *International Journal of Human Rights* 467, 474

¹¹² Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Abingdon Routledge 2015) 58-9

This will lead to the seventh chapter, which will explore the extent to which the constitutivities outlined in the sixth chapter, and the constitutivity “gap” they produce, have been themselves constituted by the international law and standards on women’s participation in transitional justice processes. The chapter will propose that the textual representations of women found in the TRC’s reporting – as reduced to their gender, as victims, as vulnerable, and as inherently peaceful – are not fixed, but come into being through the dynamic process by which law, space, and subjects are constituted. The chapter will demonstrate that the ways in which women are constituted in other discourses will necessarily impact the ways in which they are discussed in the discursive space of the Liberian TRC. It will therefore argue that the participatory opportunities outlined in the fifth chapter, as well as the constructions of women outlined in the sixth chapter, are informed, at least in part, by the modes of participation available to women in law, and by the ways in which they are constituted by that law. To do this, the chapter will engage in an analysis of the “documentary heritage” of the Liberian TRC; that is, the sources which contributed to shaping it.¹¹³ In particular, the chapter will refer to the WPS Agenda – a series of standards which have focused on women’s participation in transitional justice processes, but also their protection.

Structured in this way, this thesis is able to embark on a full exploration of the relationship between women’s participation and their portrayals in transitional justice processes. The next chapter of the thesis will position this project at the intersection of the three bodies of research which inform the methodological approach taken in its analysis. Having positioned the research in this way, that method and its associated theoretical framework can then be fully explained in the third chapter. With the third chapter explaining the centrality of space to this analysis, the fourth chapter can undertake the task of spatialising the Liberian TRC. A spatial understanding of the case study invites an understanding of participation as a form of access to space, and so an exploration of participation – both in law and in the foundational documents of the Liberian TRC – naturally follows in the fifth chapter. With the available modes of participation explained, what is required is an understanding of the participant. As

¹¹³ Shepherd, *Gender, Violence and Security* (n 69) 108

such, the thesis then moves to explore women's portrayal in the reports of the Liberian TRC in the sixth chapter. The seventh chapter then places those portrayals in a broader context, thus illuminating the constitutive relationship between portrayal and participation that is the focus of this thesis.

Ultimately, this thesis will conclude that there exists a mutually constituting relationship between women's participation and their portrayal in transitional justice processes. Legal standards which have developed to ensure women's participation nevertheless present women in limited ways. These limited portrayals have limiting consequences: they result in narrow opportunities for participation, which in turn generate narrow portrayals of women in transitional justice processes. Although critical in its analysis and articulating a further "problem" for women in the transitional justice context, this thesis nevertheless ends optimistically. The development of transitional justice, as a concept and as a field of practice, has been described as "both an opportunity and a warning".¹¹⁴ While the emergence of comparatively new areas of law and practice can bring "new opportunities, ideas and sites of intervention", it can nevertheless hide "deep pitfalls of structural and entrenched gender discrimination".¹¹⁵ As a result, transitional justice processes bring with them the hope that their effects will be transformative for women, "but rarely deliver".¹¹⁶ The final chapter of this thesis proposes that to "deliver" requires an understanding of these "deep pitfalls" associated with transitional justice processes. This thesis thus aims to contribute to scholarship on women's participation in transitional justice by uncovering the discursive conditions which have led to the limited and limiting constitutivities outlined therein. Indeed, although women's portrayals serve to limit their participation, such constitutivities are not fixed, but exist in constant flux, and are able to be changed where there exists the will to do so.

¹¹⁴ Ní Aoláin "Advancing Feminist Positioning" (n 50) 207

¹¹⁵ *ibid*

¹¹⁶ *ibid*

2 - Transitional Justice, Participation, and Space: A Review of Contemporary Scholarship

2.1 – Introduction

The previous chapter introduced a “problem” that has been articulated in relevant transitional justice literature. That is, that women’s participation in transitional justice processes is lacking, with insufficient numbers of women participating in these processes, and insufficient opportunities for meaningful participation in these processes available to women. What this chapter will do is begin an engagement with the questions of “*why?*” and “*how?*”: why does this problem persist, and how is it perpetuated? As this chapter will demonstrate, much scholarship addresses women’s low participation, explores the possible causes of that low participation, and suggests means to improve it. However, less attention has been paid to the relationship between women’s participation and the ways in which women are presented and portrayed in law. Related to this gap in transitional justice scholarship are concerns around “a broader lack of theorization of why women’s participation matters”.¹¹⁷ It is with this lack that this thesis concerns itself.

The previous chapter outlined the principal aim of this thesis: to investigate the relationship between women’s participation in transitional justice processes, and the ways in which women are discursively constructed in the law, policy, reports, and literature associated with transitional justice. To foreground such an analysis, this chapter will embark on a review of existing scholarship, beginning with a review of critical feminist scholarship on transitional justice. Given the explicitly feminist approach of the thesis, it is necessary to first establish how feminist scholarship, and critical feminist scholarship in particular, has understood and addressed participation. To this end, the chapter will follow Ní Aoláin’s approach of “eclectic theorization” adopted in a 2012 review of feminist theorising on transitional justice.¹¹⁸ Such an

¹¹⁷ O’Rourke, “Feminist scholarship in transitional justice” (n 3) 125

¹¹⁸ Ní Aoláin “Advancing Feminist Positioning” (n 50) 208

approach allows the literature review to draw from many feminist schools of thought in order to identify those “substantial elements of feminist methodology” which have “already been in play in the transitional context, and to distinguish where further use could be made of them.”¹¹⁹

The chapter will then move to an exploration of critical participation scholarship. A significant body of scholarship which takes a critical approach to research on participation and participatory practices has emerged in recent decades, particularly in the field of development studies. While this thesis is firmly located in the legal discipline, this chapter nevertheless proposes that it is possible, and indeed useful, to explore this literature even as a non-expert in the field of development studies. As will be argued in this chapter, transitional justice is an area of cross-pollination: a field drawing interest from a broad range of legal and non-legal scholars. Critical participation scholarship as it has emerged in development studies can thus provide an additional facet to the study of transitional justice processes, and particularly to the issue of participation therein. This scholarship traces the evolution of participatory approaches to development from a radical form of grassroots organising to a mainstay of the mainstream development toolbox. Although critical of the mainstream appropriation of participation and participatory approaches, this literature nevertheless attests to these concepts’ enduring legitimacy, and proposes possible avenues for their future development. One particular redemptive possibility drawn from this literature is the imagining of participation as a matter of access to spaces. This chapter will thus explore this imagining, arguing that a spatial understanding of participation opens distinct methodological possibilities for the analysis to be conducted in this thesis.

With this in mind, the chapter will then move to a review of legal geographical scholarship. It will propose that legal geography – as the field of study which interrogates the relationship between law and space – can provide a meaningful and fruitful analytical lens through which to view the issue of women’s participation in transitional justice. As such, the chapter will propose an approach to analysing

¹¹⁹ *ibid*

transitional justice which asks, “*what relationship exists between women’s portrayal in transitional justice processes and the modes of their participation?*” and which employs legal geographical concepts to answer this question. This chapter thus grounds the analysis in its three foundational literatures – critical feminisms, critical participation, and legal geography – allowing the subsequent chapter to then establish the theoretical framework of the thesis.

2.2 – Transitional Justice and the “Participation Problem”

Bell, in a 2009 review of the transitional justice “field”, proposed that there existed three key themes in transitional justice research, namely research on whether transitional justice is successful in achieving its aims; research which is critical of the notion of transitional justice and its consequences for conceptions of justice more generally; and research on the interaction between transitional justice and gender.¹²⁰ This section will focus on that final body of research. Feminist analyses of transitional justice have been described as “complex, multi-layered and still in the process of engagement”, with their relevance “only slowly being revealed” through such engagement.¹²¹ Indeed, categorising scholarship as feminist itself can be controversial, given the roots of feminist legal theory in “a range of different political, cultural, and philosophical traditions”.¹²² These diverse roots, coupled with the “diversification” of feminist legal theory over recent decades, have made it more and more difficult to identify any “characteristic theoretical positions” such as “liberal, radical, postmodern” and so on.¹²³ This thesis, in exploring feminist critiques of transitional

¹²⁰ Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’” (2009) 3 *International Journal of Transitional Justice* 5

¹²¹ Ní Aoláin “Advancing Feminist Positioning” (n 50) 205

¹²² Joanne Conaghan, “Reassessing the Feminist Theoretical Project in Law” (2000) 27(3) *Journal of Law and Society* 351, 357

¹²³ Margaret Davies, “Unity and Diversity in Feminist Legal Theory” (2007) 2(4) *Philosophy Compass* 650, 650. See also Susan B Boyd and Debra Parkes, “Looking Back, Looking Forward: Feminist Legal Scholarship in SLS” (2017) 26(6) *Social and Legal Studies* 735, 737

justice, thus follows Ní Aoláin's approach of an "eclectic theorization" of feminism.¹²⁴ In doing so, it does not seek to provide a complete account of feminist critique of transitional justice; rather, it understands feminist research as an opportunity to "highlight and explore the gendered content of law" to challenge the presumptions of neutrality that underpin it, and to "track and expose law's implication in women's disadvantage".¹²⁵ As such, this section will explore how feminist literature has thus far explored the gendered nature of transitional justice. Through this exploration, it will be shown that participation emerges as a key theme within this literature, but that the varying perspectives on the concept require a more sustained engagement with what participation is and why it is important.

2.2.1 –The Gendered Nature of Transitional Justice

While authors including Teitel¹²⁶ and Arthur¹²⁷ have provided accounts of the historical development of transitional justice, Ní Aoláin has argued that no "macro women's history of transitional justice" has yet been produced.¹²⁸ There has, however, been significant feminist engagement with international law since the "formidable groundwork"¹²⁹ laid by Charlesworth, Chinkin and Wright in their 1991 work "Feminist Approaches to International Law".¹³⁰ Transitional justice scholarship has been argued to have enjoyed a "healthy cross-pollination" with this strand of enquiry, and its exploration of the many ways in which law is gendered to men's advantage.¹³¹ In order to understand how such critiques relate and apply to the transitional justice field, it is necessary to first examine the legal norms and principles which underpin transitional justice.

¹²⁴ Ní Aoláin "Advancing Feminist Positioning" (n 50) 208

¹²⁵ Conaghan (n 122) 359

¹²⁶ Ruti G Teitel, "Transitional Justice Genealogy" (2003) 16 Harvard Human Rights Journal 69

¹²⁷ Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice" (2009) 31(2) Human Rights Quarterly 321

¹²⁸ Ní Aoláin "Advancing Feminist Positioning" (n 50) 210

¹²⁹ *ibid*

¹³⁰ Charlesworth, Chinkin and Wright (n 68) 613

¹³¹ Ní Aoláin "Advancing Feminist Positioning" (n 50) 210

There remains debate within transitional justice discourses about what transitional justice actually is, what it aims to achieve, and what circumstances can be said to constitute transition. For example, the United Nations' definition of transitional justice adopted by this thesis understands transitional justice as "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".¹³² However, this definition does not explicitly outline what types of abuses might require a transitional response, nor in what circumstances such a response might be warranted. Indeed, debate exists in scholarship as to whether transitional justice ought to be limited to extraordinary circumstances, or whether it can be employed as a means of addressing continuous violence not associated with armed conflict.¹³³ Furthermore, scholars are divided on whether or not transitional justice can actually be said to constitute its own field of practice and scholarship.¹³⁴ As such, a great deal of scholarship interrogates the circumstances that ought to require a transitional justice process; and when the transition itself can be said to have begun and ended.¹³⁵

In her seminal work, *Transitional Justice*, Ruti Teitel notes the endurance of "the question of transition to what?"¹³⁶ At its core, this is a question about the objectives

¹³² United Nations Secretary-General, "Guidance Note of the Secretary-General" (2010) (n 80) 3

¹³³ See, e.g. Teitel, "Transitional Justice Genealogy" (n 126); Pádraig McAuliffe, "Transitional Justice's Expanding Empire: Reasserting the Value of the Paradigmatic Transition" (2011) 2(2) *Journal of Conflictology* 32; Fionnuala Ní Aoláin and Colm Campbell, "The Paradox of Transition in Conflicted Democracies" (2005) 27 *Human Rights Quarterly* 172; Pablo de Grieff, "The Future of the Past: Reflections on the Present State and Prospects of Transitional Justice" (2020) 14(2) *International Journal of Transitional Justice* 251; Naomi Roht-Arriaza, "The New Landscape of Transitional Justice" in Naomi Roht-Arriaza and Javier Murrizcuena (eds), *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge University Press 2006); and Juan E Mendez, "Accountability for Past Abuses" (1997) 19 *Human Rights Quarterly* 255.

¹³⁴ Teitel, for example, conceives of transitional justice as an interdisciplinary field of study and practice, while Bell argues that transitional justice is merely a name given to a set of competing priorities in the post-conflict context. De Grieff considers transitional justice to have succeeded in becoming a "field" both academically and in practice, to the extent that it has become "normalised"; that is, it is now somewhat expected that transitional states will implement measures associated with transitional justice. See Ruti G Teitel, "Symposium: Dialogues of Transitional Justice: Keynote Speech" (2014) 32 *Quinnipiac Law Review* 587, 593; Bell, "Transitional Justice" (n 120) 15; and de Grieff, "The Future of the Past" (n 133) 251

¹³⁵ See, e.g. Roht-Arriaza (n 133) 1; Bronwyn Anne Leebaw, "The Irreconcilable Goals of Transitional Justice" (2008) 30(1) *Human Rights Quarterly* 95, 101

¹³⁶ Ruti G Teitel, *Transitional Justice* (Oxford University Press 2000) 5

that communities hope to achieve through transitional justice processes, and the types of societies they hope to build. The United Nations has argued that transitional justice is pursued “in order to ensure accountability, serve justice and achieve reconciliation”.¹³⁷ Transitional justice scholarship proposes a variety of additional aims, including creating an historical record of abuses,¹³⁸ promoting reconciliation through shared narratives;¹³⁹ maintaining delicate power balances in the post-conflict state;¹⁴⁰ engaging non-state actors;¹⁴¹ societal change;¹⁴² capacity building;¹⁴³ and human security.¹⁴⁴ However, even with such a broad range of aims, transitional justice is commonly understood as “change in a liberalizing direction” based on liberal, Western values such as the promotion of democracy and the rule of law.¹⁴⁵ It has been argued that this understanding has itself been fuelled by the involvement of international organisations in transitional justice, with its “normative framework” largely a result of the United Nations’ promotion of international law norms in transitioning societies.¹⁴⁶ The promotion of liberal democracy has been argued to be desirable because, of all constitutional models, liberal democracy is perceived as the best available.¹⁴⁷ However, these liberal underpinnings have invited critique, particularly in feminist scholarship on international law.

¹³⁷ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 2; United Nations Secretary-General, “Guidance Note of the Secretary-General” (2010) (n 80) 3

¹³⁸ Ruti G Teitel, *Globalizing Transitional Justice: Contemporary Essays* (Oxford University Press 2014) 105

¹³⁹ *ibid* 109

¹⁴⁰ Christine Bell and Kevin McNicholl, “Principled pragmatism and the ‘Inclusion Project’: Implementing a gender perspective in peace agreements” (2019) 9(1) *feminists@law* 1, 28

¹⁴¹ Teitel, “Keynote Speech” (n 134) 591

¹⁴² *ibid*

¹⁴³ *ibid*

¹⁴⁴ *ibid*

¹⁴⁵ Teitel, *Transitional Justice* (n 136) 5. See also Teitel, *Globalizing Transitional Justice* (n 138) 96; Gready and Robins (n 43); Roland Paris, *At War’s End: Building Peace After Civil Conflict* (Cambridge University Press 2012)

¹⁴⁶ Leena Grover, “Transitional Justice, International Law and the United Nations” (2019) 88(3) *Nordic Journal of International Law* 359, 397

¹⁴⁷ See, e.g. McAuliffe (n 133) 34; Francis Fukuyama, “The End of History?” (1989) (16) *National Interest* 3, 4

2.2.1.1 – *Liberalism as Patriarchy*

Feminist engagement with international law and with transitional justice more specifically has noted with discomfort the relationship between international law's liberal underpinnings and patriarchy. Charlesworth, Chinkin and Wright's early feminist intervention in the field of international law identified this issue. They proposed that, by assuming that international norms are applied universally and neutrally, international jurisprudence precludes an understanding of the gendered nature of these norms, and their differential impacts on men and women.¹⁴⁸ As a result, men's experiences may be treated as the default, while "women's experiences of the operation of these laws tend to be silenced or discounted."¹⁴⁹ This can be seen in the field of international human rights law, which has been argued to be based on masculine assumptions and primarily concerned with "protecting men from state intervention in areas of predominant concern to men rather than upon guaranteeing human dignity and human choice to all individuals."¹⁵⁰ By virtue of the legal roots of the transitional justice field, such critiques can be extended to transitional justice processes.¹⁵¹ Indeed, it has been argued that transitional justice's normative roots in "the fields of armed conflict, human rights and international criminal law" position women "as outsiders to the mainstream of contemporary legal norms".¹⁵²

Furthermore, Chinkin has argued that concepts such as "democracy, the rule of law, and human rights" themselves are gendered, because they are "based upon male premises about law and governance", and understand the "universal citizen" as male.¹⁵³ Indeed, various strands of feminist scholarship have highlighted the ways in which the presumed neutrality of concepts such as the rule of law can obscure

¹⁴⁸ Charlesworth, Chinkin and Wright (n 68) 625

¹⁴⁹ *ibid*

¹⁵⁰ Chinkin "Gender, Human Rights, and Peace Agreements" (n 14) 868

¹⁵¹ See, e.g. Catherine O'Rourke, "Transitional Justice and Gender" in Cheryl Lawther and Luke Moffett (eds), *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2023) 77

¹⁵² Ní Aoláin "Advancing Feminist Positioning" (n 50) 211

¹⁵³ Chinkin "Gender, Human Rights, and Peace Agreements" (n 14) 868

structural, gendered inequalities.¹⁵⁴ For example, scholars have criticised the understanding of the rule of law as “universal rules uniformly applied,” noting that this presumes against the pervasive gender inequality which produces violence against women in the private sphere.¹⁵⁵ This can be seen in the transitional justice context, where narrow, “legalistic” understandings and interpretations of the “harms” of armed conflict can further exclude women and their experiences from the scope of transitional justice processes.¹⁵⁶ In addition, it has been argued that state-centric processes are unlikely to fully address gender concerns because the construction of the state within law depends on an outdated paradigm of men occupying public and political life and women relegated to the home.¹⁵⁷ Others have argued that the rule of law itself is “compatible with gross violations of human rights” because it is more concerned with the interpretation of rules than their actual content.¹⁵⁸ As such, the implementation of a particular set of laws in a transitional society does not necessarily denote any commitment to social or political transformation nor to improving women’s lives.¹⁵⁹ Indeed, some scholars have even argued that law, by its nature, is a tool for enforcing “women’s oppression”.¹⁶⁰

The grounding of transitional justice processes in liberal values and norms is further reflected in scholarly argument that transitional justice processes afford more attention to civil and political rights than to economic and social.¹⁶¹ For example, a reliance on

¹⁵⁴ In addition to the scholarship discussed in this subsection, various strands of African feminist scholarship and Third World Approaches to International Law (TWAAIL) scholarship have interrogated the liberal ideals inherent in international law. For discussion of these bodies of work, see subsection 2.2.1.2 in this thesis.

¹⁵⁵ Ní Aoláin and Hamilton (n 13) 386-7. See also Keenan (n 112) 21; Fionnuala Ní Aoláin, “Women, Security and the Patriarchy of Internationalized Transitional Justice” (2009) 31(4) Human Rights Quarterly 1055, 1068; Judith Gardam, “The Silences in the Rules That Regulate Women during Times of Armed Conflict” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018) 40-1

¹⁵⁶ O’Rourke, “Transitional Justice and Gender” (n 151) 77

¹⁵⁷ Ní Aoláin and Hamilton (n 13) 387

¹⁵⁸ *ibid* 385

¹⁵⁹ *ibid*

¹⁶⁰ J Oloka-Onyango and Sylvia Tamale, “‘The Personal is Political,’ or Why Women’s Rights are Indeed Human Rights: An African Perspective on International Feminism” (1995) 17(4) Human Rights Quarterly 691, 721

¹⁶¹ Gready and Robins (n 43) 341. Even where social and economic concerns are addressed in transitional justice contexts, this can occur in *ad hoc* ways. An example of this tendency can be seen in

civil and political rights in transitional justice processes has been argued to neglect the material needs of citizens in favour of creating democratic institutions.¹⁶² Furthermore, a focus within transitional justice processes on civil and political rights does not adequately attend to the underlying causes of conflicts, which may be social and economic in nature.¹⁶³ Indeed, in reacting to “crises”, international law makes invisible the violence against women that forms part of the “status quo” and thus fails to fall within the remit of international law.¹⁶⁴ This has been acknowledged to some extent in international “soft law” standards such as the Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation, which explains that “reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of violations of women’s and girls’ human rights predate the conflict situation”.¹⁶⁵ Such violations are not only physical or sexual, but may have “economic, social, and political dimensions”,¹⁶⁶ and thus may not fit comfortably within the scope of human rights violations covered by the mandates of transitional justice processes.¹⁶⁷ For example, the economic inequalities and marginalisation experienced by women often not only predate “the direct violence of war” but are also “frequently exacerbated by war and its aftermath”, and yet are seldom addressed by post-conflict accountability mechanisms.¹⁶⁸ Nevertheless, the “dominance of legalism” in transitional justice processes has been described as a “key trend” in transitional justice scholarship and

Colombia, where a policy of short-term reparations was adopted rather than any comprehensive attempt to address structural socioeconomic concerns. This led Pamina Firchow to ask “Must our communities bleed to receive social services?”. See Pamina Firchow, “Must Our Communities Bleed to Receive Social Services? Development Projects and Collective Reparations Schemes In Colombia” (2013) 8(3) *Journal of Peacebuilding and Development* 50

¹⁶² Gready and Robins (n 43) 341-2

¹⁶³ *ibid* 342

¹⁶⁴ Hilary Charlesworth, “International Law: A Discipline of Crisis” (2002) 65(3) *Modern Law Review* 159

377, 389

¹⁶⁵ Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation (2007). Available at <https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf>

¹⁶⁶ Cahn “Introduction” (n 37) xxxix

¹⁶⁷ See, e.g. Fionnuala Ní Aoláin and Catherine Turner, “Gender, truth and transition” (2007) 16 *UCLA Women’s Law Journal* 229, 238, which criticises the truth commissions in Chile and El Salvador for their failure to address the wide range of violations experienced by women.

¹⁶⁸ Wendy Lambourne and Vivianna Rodriguez Carreon, “Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women” (2016) 17 *Human Rights Review* 71, 85

practice.¹⁶⁹ Within this trend, those “thinner” approaches to transitional justice which are limited to “formal or instrumental aspects of a legal system”¹⁷⁰ have been critiqued for their failure to account for the political, social, and economic realities which impact on the realisation of rights.¹⁷¹

The patriarchy inherent in international legal norms is problematic because research has proven a causal link between patriarchal systems of governance and the outbreak of conflict.¹⁷² As such, the “almost unquestioning faith” placed on principles such as democracy and the rule of law to restore peace, regardless of local context, has been argued to undermine attempts to build gender considerations into transitional justice processes.¹⁷³ This has led to arguments that it is only by challenging the underlying, artificial masculine constructions which underpin conflict that further violence can be prevented.¹⁷⁴ Furthermore, limited, legalistic approaches to transitional justice which centre on restoring democracy and the rule of law can result in social and economic considerations being overlooked during the transition. Such an oversight is problematic from a feminist perspective. Feminist scholars have noted that violations of social and economic rights are often described by women as their most significant experiences of conflict,¹⁷⁵ while social and economic rights also feature prominently in women’s demands for the future, post-transitional state.¹⁷⁶ A failure to address these rights thus calls into question the claim that all rights are “universal, indivisible and interdependent and interrelated”.¹⁷⁷ Crucially, without access to basic economic and

¹⁶⁹ McEvoy, “Beyond Legalism” (n 49) 412

¹⁷⁰ *ibid* 414

¹⁷¹ *ibid* 419; Colm Campbell and Catherine Turner, “Utopia and the doubters: truth, transition and the law” (2008) 28(3) *Legal Studies*, 374, 379

¹⁷² Rees and Chinkin (n 13) 1216

¹⁷³ Chinkin “Gender, Human Rights, and Peace Agreements” (n 14) 868

¹⁷⁴ Chinkin and Kaldor (n 3) 181

¹⁷⁵ Fionnuala Ní Aoláin, “Political Violence and Gender During Times of Transition” (2006) 15(3) *Columbia Journal of Gender and Law* 829, 841-2

¹⁷⁶ Chinkin “Gender, Human Rights, and Peace Agreements” (n 14) 880

¹⁷⁷ United Nations General Assembly, *Vienna Declaration and Programme of Action* (25 June 1993) UN Doc A/CONF.157/23, 1993 I [5]

social provisions, women are unlikely to be able to participate in transitional justice processes.¹⁷⁸

2.2.1.2 – Liberalism as Western Imperialism

A broad range of feminist scholarship has highlighted the patriarchy inherent in international law, but this scholarship does not present the only challenge to the liberal assumptions underpinning that law. In addition, scholars from a range of theoretical backgrounds, including “Third World Approaches to International Law” (TWAIL), have expressed concern about liberalism’s inherent Western imperialism. Mutua, for example – in work that has been described as critiquing human rights through post-colonial, critical race theory and TWAIL lenses¹⁷⁹ – has denounced the “Universal” of the Universal Declaration of Human Rights, instead seeing it as evidence of the “conceptual, cultural, economic, military and philosophical domination of the European West over non-European peoples and traditions.”¹⁸⁰ Indeed, Mutua posits that “modern international law was inimical to Africa’s interests”, and that it has been used to “cannibalize Africa’s resources and people”.¹⁸¹ Furthermore, the very history of law’s role in colonialism is sufficient to generate negative perceptions of international law which are not easily dismissed. Scholars from Oloka-Onyango and Tamale¹⁸² to Orford¹⁸³ have highlighted the role that law played in the facilitation of colonialism, arguing that any claim of law’s “neutrality, impartiality, and rationality” is undermined by its role as one of the principal tools of colonisation.¹⁸⁴ Similar

¹⁷⁸ Rees and Chinkin (n 13) 1219

¹⁷⁹ Ben Golder, “Beyond redemption? Problematizing the critique of human rights in contemporary international legal thought” (2014) 2(1) *London Review of International Law* 77, 80

¹⁸⁰ Makau Mutua, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press, 2008) 154

¹⁸¹ Makau Mutua, “Typologies of Scholarship on Africa” (2013) 107 *Proceedings of the Annual Meeting (American Society of International Law)* 189, 190

¹⁸² Oloka-Onyango and Tamale (n 160)

¹⁸³ Anne Orford, “Ritual, Mediation and the International Laws of the South” (2007) 16(2) *Griffith Law Review* 353

¹⁸⁴ Oloka-Onyango and Tamale (n 160) 723

observations have led Sally Engle Merry to compare international human rights law itself to colonialism.¹⁸⁵

Further scholarship has expressed concern about the dominance of human rights language in the framing of justice and the expression of justice claims, arguing that human rights has become something of a default vocabulary in this regard.¹⁸⁶ While such critiques acknowledge the potential usefulness of a common language in articulating harms, they caution that this can have the unintended effect of obscuring alternative framings of justice, which in turn (re)produce a (sometimes inappropriate) discourse modelled on Western values of liberalism within non-Western cultures.¹⁸⁷ Expanding on this, Orford has further expressed concern that human rights language has been employed to justify and legitimise Western military interventions in the global South. She argues that the use of the language of rights in this way constrains its future use, resulting in human rights discourse becoming a language of the state, rather than one used to make claims against state aggression.¹⁸⁸ In addition, the perpetuation of Western rights discourses by the human rights movement in turn perpetuates conceptions of Western states as civilised and/or saviour states, and non-Western states as uncivilised, oppressive, or as victims, reflecting a colonial mindset and overlooking the complex reality of each state's political situation.¹⁸⁹

TWAIL scholarship has been described as “an attempt to understand the history, structure and process of international law from the perspective of third world states.”¹⁹⁰ In this way, TWAIL scholarship has been argued to reflect “an intellectual (and political) commitment to address the situation of the marginalised Third World peoples

¹⁸⁵ Sally Engle Merry, *Human Rights & Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006) 226

¹⁸⁶ Keenan (n 112) 53. See also Inderpal Grewal, *Transnational America: Feminisms, Diasporas, Neoliberalisms* (Duke University Press 2005) 121-122; Paulina García-Del Moral, “Feminicidio: TWAIL in Action” (2016) 110 *AJIL* unbound 31, 34

¹⁸⁷ Keenan (n 112) 53, citing Grewal (n 186)

¹⁸⁸ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003) 188

¹⁸⁹ Keenan (n 112) 53

¹⁹⁰ B S Chimni, “The Past, Present and Future of International Law: A Critical Third World Approach” (2007) 8 *Melbourne Journal of International Law* 499, 499

though various fields of international law”.¹⁹¹ The objectives of TWAIL scholarship can, in many ways, be seen to converge with those of feminist approaches to international law. For example, it has been argued that both bodies of work interrogate the foundational principles of international law with a view to “challenging its value-neutral assumptions”.¹⁹² In this way, TWAIL has been described as providing an “oppositional alternative” to traditional approaches to international law.¹⁹³ Furthermore, both TWAIL and feminist legal theory have been argued to be primarily concerned with power: its exercise, its reproduction, and how hierarchical systems of power at the international scale of law might be contested and transformed.¹⁹⁴ These convergences may give rise to work that can be described as both feminist and TWAIL in its approach, and such feminist TWAIL approaches can provide a challenge both to the hegemony inherent in international law, and to Western feminist approaches to international law which, themselves, reinforce a hegemony of Western imperialism which privileges certain female experiences at the expense of others.¹⁹⁵

Such feminist TWAIL scholarship has highlighted the ways in which the underlying masculine assumptions of international law can particularly disadvantage women in the Global South. For example, it has been argued that international law affords privilege to “Western feminists” over “non-Western women”, producing a “presumptive positionality” of Western women as problem solvers and making invisible the agency of non-Western women.¹⁹⁶ Furthermore, the hierarchy of harms that emerges in the transitional space is based on a set of Western assumptions and values by virtue of the involvement of the international organisations and legal actors, who themselves frequently fail to adequately estimate their own gender biases.¹⁹⁷ As a result, these various actors, by virtue of their involvement in a transitional justice

¹⁹¹ Mosope Fagbongbe, “The Future of Women’s Rights from a TWAIL Perspective” (2008) 10 *International Community Law Review* 401, 401

¹⁹² *ibid* 403

¹⁹³ *ibid* 402

¹⁹⁴ Dianne Otto, “The Gastronomies of TWAIL’s Feminist Flavourings: Some Lunch-Time Offerings” (2007) 9(4) *International Community Law Review* 345, 347-8

¹⁹⁵ Fagbongbe (n 191) 403

¹⁹⁶ Jarpa Dawuni (n 106) 452-3

¹⁹⁷ Ní Aoláin, “Women, Security and the Patriarchy” (n 155) 1058-9

process, can export their own particular brand of patriarchy, replicating Western gender biases in the transitional justice context in question.¹⁹⁸ The subsequent failure of such actors to recognise this influence compounds the failure to adequately include women in transitional justice processes.¹⁹⁹ As such, women's interests can be perceived to be, or may actually be, inadequately served by transitional justice processes which are based on these assumptions,²⁰⁰ especially in the absence of any interrogation of these assumptions and how they have been produced.

Related to these issues is the perception that international law is motivated by “[r]escuing the ‘other woman’”.²⁰¹ “Rescuing the ‘other woman’” is a narrative by which (usually Third World) women must be incorporated into liberal rights discourses of international law in order to access “progress and modernity”.²⁰² Feminist approaches have interrogated this narrative.²⁰³ By questioning the “perceived gains of feminism” associated with “the institutional human rights complex”, such scholarship has argued that human rights law and its associated discourses “have not perceptibly led to more liberation” for women in the Global South.²⁰⁴ Instead, through a process of “epistemic violence”, women's emancipation has been appropriated in order to pursue liberal, imperial projects.²⁰⁵ In this way, liberalism is reproduced using “assumed knowledge about the ‘other woman’ without doing the hard work of knowing her”.²⁰⁶ Feminist perspectives, including feminist TWAIL perspectives, are therefore instructive in their engagement with “complex questions regarding identity and

¹⁹⁸ Ní Aoláin and Hamilton (n 13) 398; *ibid* 1078

¹⁹⁹ Ní Aoláin, “Women, Security and the Patriarchy” (n 155) 1078

²⁰⁰ *ibid* 1060

²⁰¹ Ratna Kapur, “‘The First Feminist War in All of History’: Epistemic Shifts and Relinquishing the Mission to Rescue the ‘Other Woman’” (2022) 116 *AJIL unbound* 270, 270

²⁰² *ibid*

²⁰³ See, e.g. Catherine Powell and Adrien K Wing, “Introduction to the Symposium on Feminist Approaches to International Law Thirty Years on: Still Alienating Oscar?” (2022) 116 *AJIL unbound* 259

²⁰⁴ Kapur, “The First Feminist War in All of History” (n 201) 274

²⁰⁵ *ibid*

²⁰⁶ *ibid*. See also Lindsay Naylor, Michelle Daigle, Sofia Zaragocin, Margaret Marietta Ramírez, and Mary Gilmartin, “Interventions: Bringing the decolonial to political geography” (2018) 66 *Political Geography* 199, 199

power”.²⁰⁷ Such questions can reveal the “multidimensionality” of Third World Women’s identities, and how issues relating to their “race, class, ethnicity, culture and gender” come to shape their experiences.²⁰⁸

2.2.1.3 – Liberalism as a Barrier to Participation

The above discussion points to a key theme emerging in scholarship discussed thus far: that the liberal underpinnings of transitional justice gender the concept so as to be disadvantageous to women, and particularly those women from the most globally marginalised groups. The grounding of transitional justice in gendered assumptions, in turn, produces gendered transitional justice processes, with their gendered nature then acting as a barrier to women’s participation. Research carried out in Peru, Rwanda, and Sierra Leone with support from the United Nations Development Fund for Women demonstrates that justice mechanisms based on masculine values and assumptions are likely to exclude women from participating.²⁰⁹ This trend has been observed at every stage of post-conflict processes, from peace negotiations and peace agreements, to the design and operation of transitional justice processes.²¹⁰ In this way, it has been argued that the “majority” of citizens not actively involved in directing armed conflict have their needs dictated by a “minority” of (usually male) conflict actors whose participation in post-conflict processes is prioritised.²¹¹ This domination of transitional justice processes by certain men also affects the types of harms that are addressed, meaning that male concerns are prioritised while women’s experiences of violence are afforded less attention, if they are addressed at all.²¹² This is not to say that women’s experiences of conflict and its associated violence are hegemonic. Women may experience conflict in diverse ways. However, without affording

²⁰⁷ Fagbongbe (n 191) 404

²⁰⁸ *ibid*

²⁰⁹ Nahla Valji, “Gender and Transitional Justice Programming: A Review of Peru, Sierra Leone and Rwanda” (United Nations Development Fund for Women 2010) <<https://www.un.org/ruleoflaw/files/Guidance%20note%20on%20Gender%20&%20Transitional%20Justice.pdf>> 14

²¹⁰ Rees and Chinkin, for example, have argued that conflict resolution has centred on gathering the primarily male protagonists of conflict together for mediation. See Rees and Chinkin (n 13) 1216

²¹¹ *ibid*

²¹² Ní Aoláin, “Political Violence and Gender” (n 175) 829-30. See also Ní Aoláin, “Women, Security and the Patriarchy” (n 155) 1062; Ní Aoláin and Hamilton (n 13) 399

attention to the full range of women's experiences, processes risk reducing women to a singular victim category, as will be explored in the following subsection.

2.2.2 – Vulnerability and Victimhood

Feminist literature on transitional justice has proposed that patriarchal norms can make women more vulnerable to violence during conflict. Davis, for example, argues that women's vulnerability to violence and discrimination is rooted in norms arising from patriarchal systems of power, with that vulnerability more pronounced when gender is combined with other identities, such as race, ethnicity, religion, or sexuality.²¹³ This vulnerability to violence has been argued to prevent women from being able to meaningfully participate in transitional justice processes.²¹⁴ However, there is concern within such scholarship that transitional justice discourses – whether in scholarship or in the processes themselves – emphasise women's vulnerability to violence above all else, thus obscuring their other experiences of conflict. Engle has argued that the two principal legal and political “understandings of the relationship between gender and conflict today” are that sexual violence forms the primary concern regarding gender and conflict, and that sexual violence is employed as a deliberate “tactic of war” and requires a criminal response.²¹⁵ For example, Diane Orentlicher, arguing that increased attention to “the special concerns of women” is a success of contemporary transitional justice efforts, bases this argument only on the attention given to sexual crimes in the transitional context.²¹⁶ While important, this provides only a limited view of women and their experiences of conflict. This subsection will therefore explore how such a limited view has been perceived to disadvantage women in the transitional context.

²¹³ Davis (n 14) 1173

²¹⁴ McWilliams and Ní Aoláin (n 6) 17-18

²¹⁵ Karen Engle, “A Genealogy of the Centrality of Sexual Violence to Gender and Conflict” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018) 132

²¹⁶ Diane F Orentlicher, “‘Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency” (2007) 1 *International Journal of Transitional Justice* 10, 17

Feminist literature on transitional justice is highly critical of processes which are interpreted as reducing women to victims, thereby stripping them of their agency.²¹⁷ For example, within transitional justice literature, there are emerging critiques of the WPS Agenda for its focus on women's experiences as victims of sexual violence at the expense of their full range of conflict-era experiences.²¹⁸ The construction of women as subjects of the WPS Agenda will be discussed in detail in the seventh chapter of this thesis, but it is important to note here that, while research has acknowledged the importance and enduring influence of UNSCR 1325,²¹⁹ critics have noted with concern its focus on women's experiences and needs as victims over their meaningful contributions to transitional justice processes.²²⁰ Zarkov has argued that, according to the resolutions of the WPS Agenda, "the rape of a local woman by a local man" poses a worse threat to international security than the destruction and/or theft of the same woman's property, land, and social and economic resources.²²¹ She argues that this has allowed racist and colonial narratives of conflict to (re-)emerge whereby local women are victimised by primitive local men, requiring intervention by the West.²²² Indeed, it has been argued that Western academics continue to speak for subjects of transitional justice, assuming that they are best placed to understand their needs.²²³ Similarly, the law of armed conflict (LOAC) has been criticised for relying on the construction of two essentialist genders: the masculine "warrior" and the feminine victim requiring protection.²²⁴ Gardam has argued that this results in the perpetuation of "limiting and destructive gender stereotypes" every time that this law

²¹⁷ See, e.g. Zetes (n 3) 1295-6; Karen Engle, "The Grip of Sexual Violence: Reading UN Security Council Resolutions on Human Security" in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave Macmillan 2014) 33

²¹⁸ Cahn "Introduction" (n 37) xxxviii; Engle, "The Grip of Sexual Violence" (n 217) 26

²¹⁹ Rees and Chinkin (n 13) 1215

²²⁰ Zetes (n 3) 1303-4; Zarkov (n 15) 28

²²¹ Zarkov (n 15) 28

²²² *ibid*

²²³ Kieran McEvoy and Kirsten McConnachie, "Victims and Transitional Justice: Voice, Agency and Blame" (2013) 22(4) *Social & Legal Studies* 489, 498; Gayatri Chakravorty Spivak, "Can the subaltern speak?" in Cary Nelson and Lawrence Grossberg (eds), *Marxism and the Interpretation of Culture* (MacMillan 1988) 305

²²⁴ Gardam, "The Silences in the Rules" (n 155) 35-6

is applied, and has criticised the lack of critical feminist engagement with this area of law.²²⁵

When discussing victims of a conflict or repressive regime, it must be acknowledged that the “victim” in each context will always be a *construction* and depend on the perception of those using the label.²²⁶ Furthermore, through the “production” of the victim in the narrative of the transitional justice process, a “language of victimisation” emerges, limiting participants in such processes in what they are able to say and how they are able to say it.²²⁷ Perhaps for this reason, it has been argued that facilitating participation in transitional justice processes only on the basis of individuals’ experiences of victimhood can undermine the agency of those victims.²²⁸ The differences between victims, and the particularities of their experiences, are thus “erased under the power of an internationally sanctified vocabulary for their self-understanding, self-presentation and representation as ‘victims’ of human rights abuse”.²²⁹ Such constructions also obscure the reality that victims and perpetrators are not mutually exclusive categories. As will be outlined in the sixth chapter of this thesis, individuals may variously occupy either identity at different times during conflict and transition.²³⁰

These constructions of women as victims have been argued to contribute to actors at the United Nations level placing greater emphasis on protecting women from conflict-related sexual violence than on ensuring their meaningful participation in processes

²²⁵ *ibid*

²²⁶ McEvoy and McConnachie (n 223) 497. For discussion about how victims are discursively constructed in the transitional justice context, see Chapter 6 of this thesis.

²²⁷ David Kennedy, “The International Human Rights Movement: Part of the Problem?” (2001) 3 *European Human Rights Law Review* 245, 263

²²⁸ Gready and Robins (n 43) 358

²²⁹ Kennedy (n 227) 255

²³⁰ McEvoy and McConnachie (n 223) 493. See also Rosalind Shaw and Lars Waldorf, “Introduction: Localizing Transitional Justice” in Rosalind Shaw, Lars Waldorf, and Pierre Hazan (eds), *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford University Press 2010); Margarida Hourmat, “Victim-Perpetrator Dichotomy in Transitional Justice: The Case of Post-Genocide Rwanda” (2016) 4(1) *Narrative and Conflict: Explorations in Theory and Practice* 43; Engle, “The Grip of Sexual Violence” (n 217) 38

related to conflict and transition.²³¹ Furthermore, a focus on women as victims of violence, particularly sexual violence, has been argued to detract from efforts to facilitate women's meaningful participation in transitional justice processes,²³² while the ways in which initiatives define victims or the categories of harms on which they allow testimony have been argued to prevent meaningful engagement of some participants.²³³ What is less clear, from this scholarship, is how this occurs. What is the process by which portrayals of vulnerability and constructions of victimhood actually inhibit meaningful participation in transitional justice processes? What is the relationship between women's portrayal and their participation?

2.2.3 – Why Participation?

Women's participation in legal and political processes has been described as a key facet of women's "empowerment", and a key objective in the pursuit of gender equality.²³⁴ O'Rourke, in a 2015 review of feminist transitional justice scholarship, proposed that women's participation in the "processes and institutions of transitional justice" was one of three "feminist priorities" observed in the literature, along with the recognition of gendered harms experienced by women, and addressing those structural inequalities that disadvantage them.²³⁵ This literature advocates for improving participation, and outlines ways in which participation in transitional justice processes might be improved.²³⁶ While the wide spectrum of feminist scholars may not always agree on the political objectives of transitions, there is broad agreement across transitional justice scholarship that women ought to be involved in these processes.²³⁷ In fact, Bell and O'Rourke argue that it is perhaps the divergence of opinion in feminist scholarship regarding the goals of transitional justice, at global and local scales, that

²³¹ Goetz and Jenkins (n 36) 119-20

²³² Engle, "The Grip of Sexual Violence" (n 217) 23

²³³ Leebaw (n 135) 113

²³⁴ Blanca Rodriguez Ruiz and Ruth Rubio-Marin, "The gender of representation: On democracy, equality, and parity" (2008) 6(2) *International Journal of Constitutional Law* 287, 287

²³⁵ O'Rourke, "Feminist scholarship in transitional justice" (n 3) 118

²³⁶ McWilliams and Ní Aoláin (n 6) 7. See also Lundy and M McGovern (n 6)

²³⁷ Bell and O'Rourke (n 3) 31

has led to the feminist focus on participation.²³⁸ They, for their part, suggest that contemporary scholarship features two principal arguments for improving women's participation. The first is that, simply by virtue of making up half of the population (sometimes more in transitional societies), women ought to be included in the processes.²³⁹ The second argument centres around the specific, gendered needs of women in the transitional phase, which are unlikely to be addressed without women's involvement in the processes.²⁴⁰ This argument can also extend to other "protected" categories, including "religion [and] ethnicity".²⁴¹ There also exists a third argument in favour of expanding women's participation in transitional justice processes: that their participation brings about better outcomes for the community as a whole.²⁴² It is argued that women's broad and varied experiences of conflict can be distinct from men's, meaning that their contributions are indispensable to the construction of transitional justice processes.²⁴³ As such, it has been argued that failure to include these perspectives risks the overall success of these processes.²⁴⁴ These arguments are reflected in the emphasis that the WPS Agenda places on securing women's participation in post-conflict justice processes.²⁴⁵ The prominence of participation in that Agenda therefore raises the questions of why and how women's participation is limited in the first place. It is these questions that this thesis seeks to address. It is argued here that, while much scholarship addresses women's low participation, barriers to women's participation, and how these barriers might be overcome, less attention has been paid to the relationship between this underrepresentation of women, and how they are constructed as subjects of transitional justice. That is, the relationship

²³⁸ *ibid*

²³⁹ *ibid* 30

²⁴⁰ Davis (n 14) 1188; Rees and Chinkin (n 13) 1224; Ní Aoláin, "Political Violence and Gender" (n 175) 829-30. See also Ní Aoláin, "Women, Security and the Patriarchy" (n 155) 1062; Ní Aoláin and Hamilton (n 13) 396

²⁴¹ Davis (n 14) 1168

²⁴² Zetes (n 3) 1321

²⁴³ Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War, and the Post-Conflict Process* (Oxford University Press 2011) 181-2

²⁴⁴ Bell and O'Rourke (n 3) 31

²⁴⁵ Otto "Women, Peace, and Security" (n 39) 109

between women's participation, and their portrayal. It is proposed here that this presents an opportunity for an exploration and interrogation of this relationship.

2.2.4 – Reflections on Transitional Justice's "Participation Problem"

This section has demonstrated how contemporary feminist scholarship considers the liberal, Western underpinnings of transitional justice as a form of patriarchy, with an impact on the ways they are portrayed in the transitional context, and on the ways in which women are able to participate in transitional justice processes. Various strands of scholarship make clear arguments about how the gendered nature of these processes acts as a barrier to participation and perpetuates limited portrayals of women characterised by vulnerability and victimhood. However, this literature does not fully contend with the relationship between participation and portrayal. While some scholarship has explored the construction of the victim subject, and particularly the woman victim subject, of transitional justice, it is argued here that there remains an opportunity to explore the relationship between such constructions and the ways in which women participate in transitional justice processes. As such, the next section of this chapter seeks to unpack this opportunity. It will explore how critical analyses of participation have been carried out in other fields of study, with a view to understanding how this relationship between portrayal and participation might be analysed for the purposes of this thesis.

2.3 – Critical Participation

As has been discussed thus far, contemporary scholarship on transitional justice argues that women's participation in transitional justice processes remains inadequate. This occurs in spite of the existence of a regulatory framework requiring their participation on an equal basis with men.²⁴⁶ Increasing women's participation in transitional justice

²⁴⁶ Goetz and Jenkins (n 36) 119; Zetes (n 3) 1295-6. For an overview of this regulatory framework, see Chapters 5 and 7 of this thesis.

is a prominent focus of feminist scholarship in the field,²⁴⁷ with some scholars arguing for increased inclusion of women in transitional justice processes on the basis of their potential positive contributions to these processes.²⁴⁸ In addition to this feminist focus on women's participation, securing broad public participation in transitional justice mechanisms is increasingly seen as central to their success. The United Nations Secretary-General has argued that "the most successful [transitional justice] experiences owe a large part of their success to the quality and quantity of public and victim consultation carried out".²⁴⁹ Orentlicher has further advocated for approaches which allow for the participation of victims in order to ensure that transitional justice processes are designed according to their needs.²⁵⁰ However, this does not provide clarity as to what participation means in a transitional justice context, or as to what types of participatory practices could satisfy such calls for participation.

This thesis has been clear in its intention to analyse the relationship between women's participation and their portrayal in transitional justice processes. In order to further ground this analysis, this section will explore what participation has been understood to mean in transitional justice contexts. It will do so by first exploring how participation has been treated in broader transitional justice scholarship, arguing that such scholarship has not yet produced any clear consensus about what participation means for the purposes of transitional justice processes. Scholarly attention to participation is not limited to the transitional justice field, but has become particularly prominent in related fields such as development²⁵¹ and peace studies.²⁵² This has led to the emergence of a growing body of critical participation scholarship in these fields. As such, having explored how participation is treated in transitional justice literature, this section will then turn to critical participation scholarship to explore how it has

²⁴⁷ Bell and O'Rourke (n 3) 31; Valji, "Gender and Transitional Justice Programming" (n 209); Rees and Chinkin (n 13); Zetes (n 3)

²⁴⁸ Zetes (n 3) 1306

²⁴⁹ United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General" (23 August 2004) UN Doc S/2004/616

²⁵⁰ Orentlicher, "'Settling Accounts' Revisited" (n 216) 18-19

²⁵¹ Yvette Selim, "The Opportunities and Challenges of Participation in Transitional Justice: Examples from Nepal" (2017) 29 *Journal of International Development* 1123, 1123

²⁵² See, e.g. Bell and McNicholl (n 140); Davis (n 14) 1168; McWilliams and Kilmurray (n 19)

approached participation. While the critical participation scholarship explored does not emanate from the same legal discipline within which this thesis is located, there are nevertheless significant convergences between the fields of development and transitional justice. Indeed, as Dixon has argued, both development and transitional justice concern themselves with “understanding and influencing interrelated processes of social, political and economic change”, with “developing countries” also those most likely to experience transitional justice in some form.²⁵³ As such, it will be argued that a careful and thoughtful exploration of this different (although related) field of study provides instructive insights which can bolster the analysis undertaken in this thesis. This section will therefore conclude by proposing that the linking of participation with space in this critical participation scholarship, and particularly as pioneered in the work of Andrea Cornwall, provides a fruitful avenue for the analysis in this thesis. In particular, it will be argued that the inherent spatiality of participation as a concept invites a spatial analysis, and the exploration of legal geography as an analytical lens for this research.

2.3.1 – Approaches to Participation in Transitional Justice Literature

Participatory practices differ depending on the type of justice mechanism being employed.²⁵⁴ With this in mind, some key themes emerge in transitional justice literature as regards its treatment of participation and participatory efforts. First, a range of transitional justice scholarship often discusses the timing of participatory practices in transitional justice mechanisms. Many scholars have argued that those implementing processes should aim to ensure that the public are able to participate in these processes at the earliest possible stage. Triponel and Pearson, for example, argue that encouraging public participation during the design of the mechanism “paves the

²⁵³ Peter Dixon, “Transitional justice and development” in Cheryl Lawther and Luke Moffett (eds), *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2023) 360. See also Rama Mani, “Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development” (2008) 2 *International Journal of Transitional Justice* 253

²⁵⁴ Anna Triponel and Stephen Pearson, “What do you think should happen? Public participation in transitional justice” (2010) 22(1) *Pace International Law Review* 103, 116

way for increased participation throughout its period of operation”.²⁵⁵ Selim argues for participation “at *every stage*” of the transitional justice process, beginning with asking affected communities whether transitional justice is something they want to pursue in the first place.²⁵⁶ From a feminist perspective, El-Bushra argues that ensuring women’s participation is most important at the early stages of transitional justice and peacebuilding processes, as once the parameters for the process have been established, the opportunities to increase participation will be limited and will likely be defined according to the views of the dominant parties to the conflict and resultant post-conflict efforts.²⁵⁷

A second theme that emerges concerns opportunities to participate in the design of the processes. It has been highlighted that transitional justice often involves the imposition of models and mechanisms which have been designed by international experts with little input from the affected community.²⁵⁸ Feminist scholarship has argued that participation often means little more than the inclusion of a few women in existing processes which are based on male assumptions, experiences, and biases, with little to no acknowledgement of structural gender discrimination.²⁵⁹ This is compounded when one looks at the participation of non-Western women, with Oloka-Onyango and Tamale arguing against the “charade of ‘participation’” created “when Western and multilateral institutions graft a ‘gender agenda’ onto their activities”, arguing that such processes are emblematic of the fact that conversations about international feminism continue to exclude “third world women”.²⁶⁰ This is what Josephine Jarpa Dawuni has termed the “add African/Third World women and stir” approach.²⁶¹ Because of this, Otto cautions against facilitating participation in existing, gendered frameworks for peace, and instead advocates for a stronger understanding of the gendered nature of conflict and transition.²⁶² This reflects critiques of women’s inadequate participation

²⁵⁵ *ibid* 108

²⁵⁶ Selim (n 251) 1130 [original emphasis]

²⁵⁷ El-Bushra “How Should We Explain the Recurrence of Violent Conflict” (n 15) 53

²⁵⁸ Selim (n 251) 1130

²⁵⁹ Bell and O’Rourke (n 3) 34; Rees and Chinkin (n 13) 1214-15; Zarkov (n 15) 22

²⁶⁰ Oloka-Onyango and Tamale (n 160) 698-9

²⁶¹ Jarpa Dawuni (n 106) 452-3

²⁶² Otto “Women, Peace, and Security” (n 39) 114-15

outlined in the thesis thus far, but does not necessarily clarify an understanding of participation as a concept for the purposes of transitional justice.

As such, while there does appear to be agreement that the most successful participatory efforts will take place from the beginning of the process, and will involve a broad range of voices in their conception, there is still a dearth of legal, transitional justice scholarship which specifically explores participation either as a concept or in practice. Selim proposes that participation literature has been prevalent in discourses on development but has yet to be fully explored in terms of transitional justice.²⁶³ Given that transitional justice (and particularly truth and reconciliation commissions) “has increasingly been framed as a victim-centred process”, this presents an opportunity for further exploration of participation in a transitional justice context.²⁶⁴

2.3.2 – Participation in Other Disciplines

It has been argued that “a growing number of academics, practitioners and policy makers have advocated for the adaptation of participatory methods from development studies” to the field of transitional justice.²⁶⁵ This is important, as without a clear understanding of what participation is or ought to be, it becomes difficult to improve. Looking at how participation has been addressed in other fields of scholarship reveals that defining it as a concept is not uncontroversial. Writing in 2003, Andrea Cornwall described “participatory alternatives to expert-driven process” as having “gained ground”, increasing in both popularity and legitimacy in the development field.²⁶⁶ However, despite the concept’s popularity, she has described participation as an “infinitely malleable concept” which can mean “almost anything that involves people”.²⁶⁷ Croft and Beresford have further described participation as “one of those contentious words... which can seem to mean everything and nothing” within its own

²⁶³ Selim (n 251) 1123

²⁶⁴ *ibid* 1124

²⁶⁵ *ibid*. See also Lundy and McGovern (n 6); McEvoy, “Beyond Legalism” (n 49)

²⁶⁶ Cornwall, “Making spaces, changing places” (n 71) 1

²⁶⁷ Andrea Cornwall, “Unpacking ‘Participation’: Models, Meanings and Practices” (2008) 43(3) *Community Development Journal* 269, 269

constantly evolving rhetoric.²⁶⁸ Because of this, it is argued that participation can “easily be reframed to meet almost any demand made of it”, with the concept therefore potentially holding conflicting meanings depending on the context.²⁶⁹ Indeed, scholarship from the transitional justice and development fields variously describes participation as a “means” of improving the efficiency or efficacy of processes, or as an “end” in itself.²⁷⁰ Furthermore, discussing the WPS Agenda in the international relations context, Kirby and Shepherd argue that the requirement for participation is not always adhered to, and that when it is, starkly different forms of participation could be interpreted as having fulfilled that requirement.²⁷¹ For example, a quantitative measure of participation – that is, the number of people who have been involved in a particular process – will not always provide much information about participation, given that “presence does not indicate participation”.²⁷² As Awuh argues, participation is often imagined as an “in-between stage” existing between the conception of a project and the achievement of outcomes.²⁷³ What actually happens during the participation stage is often unclear: it is “viewed as a maze in which ‘something happens’ and an outcome is derived – basing the idea of participation on assumptions and speculations”.²⁷⁴ Perhaps as a result of these ambiguities, a distinct body of critical participation scholarship has emerged particularly in the field of development studies. The subsequent sections will explore insights from this scholarship, arguing that a renewed focus on participation in transitional justice can allow for an analysis of the

²⁶⁸ Suzy Croft and Peter Beresford, “The Politics of Participation” (1992) 12(35) *Critical Social Policy* 20, 20

²⁶⁹ Cornwall, “Unpacking ‘Participation’” (n 267) 269

²⁷⁰ See, e.g. Selim (n 251) 1125; Nour Mohammad and Yasmin Farjana, “Participation as a Human Right: A Rights-based Approach to Development” in Shahla Seifi and David Crowther (eds), *Stakeholders, Governance and Responsibility* (Emerald Publishing 2018) 35

²⁷¹ Paul Kirby and Laura J Shepherd, “Women, Peace, and Security: Mapping the (Re)Production of a Policy Ecosystem” (2021) 6(3) *Journal of Global Security Studies* oga045, 4

²⁷² Harrison Esam Awuh, “Geography of Participation: Deepening the Understanding of the Participation Process in Time and Space” (2022) 113(3) *Tijdschrift voor Economische en Sociale Geografie* 273, 273

²⁷³ *ibid* 274

²⁷⁴ *ibid*

relationship between women's participation in transitional justice processes, and their portrayals in these processes.

2.3.3 – The Emergence of Critical Participation Scholarship

Christens and Speer have traced the evolution of participatory approaches within international development discourses and praxis.²⁷⁵ They describe “visible early promoters of participatory techniques in development and research”, such as Chambers in the 1980s,²⁷⁶ and Fals-Borda and Rahman²⁷⁷ in the early 1990s, as “vociferously opposed to the existing ‘top-down’ approaches of institutions.”²⁷⁸ As such, the advent of such participatory approaches was, in itself, a critical response to the entrenched power relations of traditional approaches to development. However, over time, such ideas are argued to have lost their critical edge. As Christens and Speer note, what was once “a radical critique” of development has, in the span of only a few decades, “become a staple of international development practice”, and has, for many scholars, failed to live up to its aims.²⁷⁹ Indeed, it has been argued that participation is now considered a right by the United Nations Development Programme, with consequences for how development projects are designed and managed.²⁸⁰ Cornwall has further argued that, in the development sphere, the use of the term “empowerment” appears to centre on the idea of “*relocating* the poor with the prevailing order”.²⁸¹ Within this paradigm, global power relations are not disrupted; rather, marginalised communities are invited to participate in processes that have been designed without their input. The emphasis is on “bringing them in, finding them a place, lending them opportunities, empowering them, *inviting them to participate*.”²⁸² Thus, over time, a

²⁷⁵ Brian Christens and Paul W Speer, “Tyranny/Transformation: Power and Paradox in Participatory Development” (2006) 7(2) *Forum: Qualitative Social Research*, Article 22 [2]

²⁷⁶ See Robert Chambers, *Rural development: Putting the last first* (Longman 1983)

²⁷⁷ See Orlando Fals-Borda and Muhammad Rahman, *Action and Knowledge: Breaking the Monopoly with Participatory Action Research* (Apex Press 1991)

²⁷⁸ Christens and Speer (n 275) [2]

²⁷⁹ *ibid*

²⁸⁰ Selim (n 251) 1125

²⁸¹ Cornwall, “Making spaces, changing places” (n 71) 2

²⁸² *ibid* 3 [emphasis original]

once radical term used to describe self-actualisation has become “an instrument of managed intervention”.²⁸³

In the opening chapter of their edited collection, *Participation: The New Tyranny*, Cooke and Kothari describe participation in development projects as a form of “tyranny” which undermines its suggested transformative effects.²⁸⁴ This “tyranny” emerges in three distinct ways. First, Cooke and Kothari argue that decision-making powers remain with development institutions and funders, who continue to dominate participatory processes, albeit counter to the bottom-up ethos of participation.²⁸⁵ Second, they argue that discourses and practices of participation do not account for existing group power dynamics, and as a result can reinforce or exacerbate existing local power imbalances. Rather than address these issues, they argue that such problems are overlooked or ignored by scholarship which advocates for participation.²⁸⁶ Third, it is argued that the participatory methods advanced by such scholarship have not been appropriately debated or scrutinised, and as such, an overwhelming focus on participation obfuscates other methods which might be appropriate within development settings.²⁸⁷

For Christens and Speer, the “tyranny” of participation arises from its “largely maintaining existing power relationships, though masking this power behind the rhetoric and techniques of participation”.²⁸⁸ Further critical participation literature explores the relationship between participation and power. Croft and Beresford, for example, have discussed this uneasy relationship, arguing that while many associate involvement in processes with ideas like influence or empowerment, these ideas “are not necessarily synonymous with the *practice* of participation.”²⁸⁹ Research by Hildyard, Hegde, Wolvekamp and Reddy argues that, as a result of development

²⁸³ *ibid*

²⁸⁴ Bill Cooke and Uma Kothari, “The Case for Participation as Tyranny” in Bill Cooke and Uma Kothari (eds), *Participation: The New Tyranny?* (Zed Books 2001) [emphasis added]

²⁸⁵ *ibid* 7

²⁸⁶ *ibid* 7-8

²⁸⁷ *ibid* 8

²⁸⁸ Christens and Speer (n 275) [17]

²⁸⁹ Croft and Beresford (n 268) 37 [original emphasis]

institutions' blindness to power relations at the local level, local knowledge is always a reflection of local power dynamics.²⁹⁰ This is reflected in Cornwall's observation of the similarities between participatory practices within development and colonial structures of governance,²⁹¹ themselves reminiscent of the colonial echoes within the modern day human rights movement. A further critique proposes that while participation has been imagined as a challenge to "managerial and professional power", in reality participatory processes themselves tend to marginalise "critical voices", further undermining participation's "potential as a countervailing power".²⁹² This, again, reflects critiques of international law and the international human rights movement outlined in the previous section, which caution against allowing human rights language, as a default vocabulary, to marginalise alternative framings of justice. The marginalisation of critical voices by participatory approaches may particularly be observed in "invited spaces";²⁹³ that is, spaces of/for participation "orchestrated by an external agency of some kind, be it state or non-governmental" (discussed in further detail in the next subsection).²⁹⁴ Because of this, and the decision of some potential participants not to participate, Glimmerveen, Ybema, and Nies argue that participatory processes feature mostly those participants who are willing to "participate as partners rather than as critical challengers", whilst excluding those who might take a more "antagonistic stance".²⁹⁵ In this way, participatory approaches may produce a dichotomy of insiders and outsiders – a phenomenon which will be discussed in further detail in the context of women's participation later in this thesis.²⁹⁶ Furthermore, it has been argued that participatory processes can "reinforce exclusion of women, the poor and the socially marginalized".²⁹⁷ Such exclusions can undermine both the objectives

²⁹⁰ Nicholas Hildyard, Pandurang Hegde, Paul Wolvekamp, and Somasekhare Reddy, "Pluralism, Participation and Power: Joint Forest Management in India" in Bill Cooke and Uma Kothari (eds), *Participation: The New Tyranny?* (Zed Books 2001)

²⁹¹ Cornwall, "Making spaces, changing places" (n 71) 12

²⁹² Ludo Glimmerveen, Sierk Ybema and Henk Nies, "Who Participates in Public Participation? The Exclusionary Effects of Inclusionary Efforts" (2022) 54(4) *Administration and Society* 543, 544

²⁹³ Cornwall, "Unpacking 'Participation'" (n 267) 281

²⁹⁴ *ibid*

²⁹⁵ Glimmerveen, Ybema and Nies (n 292) 544

²⁹⁶ See, in particular, Chapters 6 and 7 of this thesis.

²⁹⁷ Christens and Speer (n 275) [17]

and the transformative potential of the participatory process. Even where marginalised groups are able to access such processes, scholarship has further noted, with concern, the difficulties associated with translating participation into “influence”.²⁹⁸ It has been argued that there is no “magic participation wand” that conjures up empowerment.²⁹⁹ That is, participation alone may be insufficient to address ongoing social marginalisation.

Even given these strong critiques of participation, this critical scholarship does not necessarily see the concept as beyond redemption. A later edited collection titled *From Tyranny to Transformation*³⁰⁰ – published just three years after *The New Tyranny* – does not attempt to deny any of the arguments made in *The New Tyranny* but rather seeks to extend the critical debate. While featuring critique of participation, the book does not seek to wholly undermine the scholarship and practice associated with it. Rather, one of its principal recommendations is for “more modest and gradualist rhetoric”;³⁰¹ that is, a more realistic discussion of what participation can actually achieve. Importantly, the book features contributions on the *spatial* aspects of participation, proposing that spatial understandings of participation might offer redemptive possibilities. With this in mind, the next subsection will argue that this *spatial* theme, in particular, provides useful insights which help to bring together scholarship on participation with the issue of women’s participation in transitional justice processes.

2.3.4 – Participation as Access to Space

One of the reasons that participation is so important for women in the transitional justice context is that, unless they are able to participate in transitional justice processes, women will ultimately be unable to make further rights claims through these processes. Furthermore, they may, in turn, find it difficult to make rights claims

²⁹⁸ Cornwall, “Unpacking ‘Participation’” (n 267) 278

²⁹⁹ *ibid*

³⁰⁰ Samuel Hickey and Giles Mohan (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004)

³⁰¹ Christens and Speer (n 275) [17]

through any institutions that are produced by these processes, having been excluded from early discussions about their design.³⁰² In this vein, Gaventa describes the right to participation as “the right to claim rights”; as “necessary for making other rights real”.³⁰³ In this way, participation functions as a “gateway” to rights claims, with any associated right to participation existing as something of a “gateway right”. Participation, therefore, is a matter of *access*. Cornwall has described participation as “[l]evering open spaces once closed off to citizen voice or public scrutiny”.³⁰⁴ Indeed, she describes participation itself as an “inherently spatial” concept, conjuring “images of people together – in lines, to vote; in circles, to deliberate and to plan; in rows, to be consulted in public meetings and so on.”³⁰⁵ For her, from her perspective as a political anthropologist, participation is a means of “*positioning* citizens in newly emerging political and policy arenas, and *repositioning* them with regard to older structures”.³⁰⁶ As such, participation is not only about repositioning citizens within public arenas; it is about expanding and reshaping those public arenas themselves. Participation has a (re)constituting effect on the spaces in which it occurs.³⁰⁷

Describing the various spaces in which participation might occur, or to which participation might grant access, Cornwall distinguishes between “invited spaces” and spaces “that people create for themselves”, noting that while the first can be important and effective, they are not always sufficient in securing participation.³⁰⁸ Such invited spaces are inherently heterogenous. They involve “various kinds of authorities” bringing together different groups of people into processes which may be “regularized” or “more transient” in nature.³⁰⁹ The groups invited to participate are

³⁰² El-Bushra “How Should We Explain the Recurrence of Violent Conflict” (n 15) 53

³⁰³ John Gaventa, “Towards participatory governance: assessing the transformative possibilities” in Samuel Hickey and Giles Mohan (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004) 29

³⁰⁴ Cornwall, “Making spaces, changing places” (n 71) 1

³⁰⁵ *ibid* 2

³⁰⁶ *ibid* 1 [original emphasis]

³⁰⁷ The idea of constituting spaces through participation will be explored in further detail in the next chapter.

³⁰⁸ Cornwall, “Unpacking ‘Participation’” (n 267) 275

³⁰⁹ Gaventa (n 303) 34

likely to have different interests and levels of involvement in processes, with accompanying assumptions about these interests. This will then contribute to shaping the space.³¹⁰ These “invited spaces” are distinct from “popular spaces”³¹¹ or “[c]laimed/created spaces”.³¹² These are sites of participation which are “claimed by less powerful actors”³¹³ as forms of “collective action, self-help initiatives or everyday sociality”.³¹⁴ Such self-mobilised spaces “are often marked less by the considerable differences of status and power” seen in invited spaces.³¹⁵ This is important, since critical participation scholarship has previously highlighted the need to correct power “imbalances” in order to counter the marginalisation of groups who have been excluded from formal spaces of participation.³¹⁶ Nevertheless, Cornwall discusses the ambiguities and unstable borders existing between radical spaces formed by marginal communities and those spaces into which they are invited. For Cornwall, such spaces “are not separable”; that is, spatial practices within one space will affect the other “as relations of power within and across them are constantly reconfigured”.³¹⁷ Thus, such an understanding of participation requires an understanding of space.

2.3.5 – Reflections on Critical Participation Scholarship

This section has elaborated on the extent to which transitional justice scholarship has engaged with the notion of participation, and has tracked the development of a critical participation scholarship in adjacent fields. This critical scholarship provides useful insights for an analysis of participation in the transitional justice context, in particular the idea of considering participation as access to space. Cornwall envisages the spatial

³¹⁰ Andrea Cornwall, “Spaces for transformation? reflections on issues of power and difference in participation in development” in Samuel Hickey and Giles Mohan (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004) 76

³¹¹ *ibid*

³¹² Gaventa (n 303) 34

³¹³ *ibid*

³¹⁴ Cornwall, “Spaces for transformation?” (n 310) 76

³¹⁵ Cornwall, “Unpacking ‘Participation’” (n 267) 275

³¹⁶ Katsuhiko Masaki, “The ‘transformative’ unfolding of ‘tyrannical’ participation: the *corvée* tradition and ongoing local politics in Western Nepal” in Samuel Hickey and Giles Mohan (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004) 125

³¹⁷ Cornwall, “Spaces for transformation?” (n 310) 78

aspects of participation and illustrates participation's inherent spatiality through her distinction between invited and self-mobilised spaces of participation. An understanding of these various spaces of participation, how women access them, and the extent to which they are able to engage in associated participatory practices therefore requires an understanding of *space*. The exploration of space and the inherent spatiality of participation can be contextualised as part of a broader "spatial turn" in social research over recent decades.³¹⁸ This spatial turn, particularly in legal research, will be explored in the subsequent section. As such, the section will engage with space as a concept emerging from legal geography. It will ultimately argue that legal geography can provide an analytical lens through which to view the issue of women's participation in transitional justice contexts, uniting the fields of transitional justice and participation.

2.4 – A Spatial Approach

Thus far, this chapter has explored critiques related to women's inadequate participation in transitional justice processes, which themselves are gendered to women's disadvantage. The chapter has further explored the emergence of critical participation scholarship, which illuminates the inherent spatiality of participation as a concept. As such, this chapter has proposed that understanding participation as access to space offers a potential avenue for analysis of women's participation in transitional justice processes. To explore this avenue, the chapter must now engage with the concept of space, as it has emerged in legal geography. In a 2003 piece on legal geography, Blomley stated that, in any legal geographical analysis, "the question that needs to be asked is 'so what?' What is gained by such an association? What difference does space make to the analysis of law?"³¹⁹ Here, this thesis will follow Blomley's lead by asking: *what difference does an understanding of space make to the*

³¹⁸ See, e.g. Keenan (n 112) 5; Margaret Davies, *Asking the Law Question* (Law Books Co. Thomas Reuters Limited 2017) 438-9

³¹⁹ Nicholas Blomley, "From 'What?' to 'So What?': Law and Geography in Retrospect" in Jane Holder and Carolyn Harrison (eds), *Law and Geography* (Oxford University Press 2003) 24

understanding of women's participation in transitional justice processes? It will ultimately be argued that it is only by considering how women are mutually constituted by the spaces and processes of transitional justice itself that it is possible to better understand how and to what extent they participate in these processes.

2.4.1 – Background and Development of Legal Geography

Many scholars have used the term “spatial turn” to describe developments in social research, with Davies describing this turn as the application of geographical concepts to understand “the ways in which social formations are embedded in space.”³²⁰ Keenan similarly proposes that the “spatial turn” describes “attention to space in any analysis of the social,” with legal geography the field of scholarship which brings space into legal discourse.³²¹ Traditional legal analyses have had a tendency to neglect spatial considerations. Blomley, for example, has reflected on this tendency, and has proposed that such blindness to local realities is a deliberate effort on the part of early jurists to ensure a vision of law as universal.³²² Legal geography thus challenges the notion that space is simply a “blank” or “smooth” area in which law happens.³²³ By applying legal geographical method, legal geographers can challenge conceptions of how law operates within spaces: universally, evenly, without prejudice, politics, or agenda.³²⁴ In this way, legal geography recognises the “relationality” or “co-constitutive” nature of law and space.³²⁵ Delaney asserts that the “starting point” for critical scholarship in general is “the recognition that what the world is like strongly conditions what it’s like to be and live in the world.”³²⁶ Legal geography, as a form of critical scholarship, acknowledges this reality. It begins with the assumption that the ways in which spaces

³²⁰ Davies, *Asking the Law Question* (n 318) 438-9

³²¹ Keenan (n 112) 5

³²² Blomley, “From ‘What?’ to ‘So What?’” (n 319) 25

³²³ Keenan (n 112) 21

³²⁴ *ibid*

³²⁵ Robyn Bartel, Nicole Graham, Sue Jackson, Jason Hugh Prior, Daniel Francis Robinson, Meg Sherval, and Stewart Williams “Legal Geography: An Australian Perspective” (2013) 51(4) *Geographical Research* 339, 344

³²⁶ David Delaney, “At Work in the Nomosphere” in Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014) 239

are produced, given meaning, and “invested with power” fundamentally shape social life and “what it *feels* like to be.”³²⁷ Legal geography therefore allows for increased attention to and analysis of how law operates in *context*, and as such aligns with the critiques of law’s universality presented earlier in this thesis.

2.4.2 – Broadening the Application of Legal Geography

Since the advent of this “spatial turn” in legal scholarship, geographical principles have been applied to a broad range of legal issues. However, there remains an opportunity to expand the application of legal geography further into international law and non-Western legal contexts; into critical feminist analyses of law; and into studies of transitional justice processes. This subsection will demonstrate how a legal geographical analysis of women’s participation in transitional justice has the potential to address a gap in existing scholarship, before going on to explain how such an analysis provides a useful vantage point for exploration of these issues.

2.4.2.1 – Legal Geography and the Realm of the International

While there exists a growing body of literature that explores “the international” through the lens of legal geography, international law and processes have been specifically identified as an area which would benefit from further attention.³²⁸ In a similar vein, Carmalt argues that critical geography has neglected study of human rights and human rights law in particular.³²⁹ Scholarship has also encouraged application of legal geography to a broader range of geographical contexts. Gillespie, for example, has advocated for the extension of legal geography beyond its application to Western notions of territoriality into “non-Western contexts”.³³⁰ Others have

³²⁷ *ibid* [original emphasis]

³²⁸ David Delaney “Legal geography III: New worlds, new convergences” (2017) 41(5) *Progress in Human Geography* 667, 670

³²⁹ Jean Connolly Carmalt, “Critical Geographies of Human Rights and the Spatial Dimensions of International Law Violations in Rakhine State, Myanmar” (2019) 109(6) *Annals of the American Association of Geographers* 1829, 1829

³³⁰ Josephine Gillespie, “A legal geography of property, tenure, exclusion and rights in Cambodia: exposing an incongruous property narrative for non-Western settings” (2016) 54(3) *Geographical Research* 256

similarly argued that, while legal geography has become a rich area of study in the “Global Northwest”, the development of the scholarship beyond this geographical region to include contexts in the Global South, non-urban contexts, and “marginalized contexts” ought to be encouraged.³³¹

2.4.2.2 – Legal Geography and Critical Feminist Approaches

Keenan has argued that even critical branches of law have not sufficiently focused their analysis on space, thus opening the field for a broader range of spatial analyses.³³² In this vein, legal geographical scholarship has called for further “convergences” between legal geography and critical feminist approaches.³³³ Feminist legal scholarship has, for a long time, taken account of the “uneven” application of law to different groups, and the failure of law to “take account of women’s particular locations and the constitutive realities of their lives”.³³⁴ Of course, these notions – by reference to “locations” and the “uneven” terrain of the law – have an implied spatiality, conjuring images of women’s positionality within a legal “domain”. However, it has been suggested that engagement between the fields of “feminist geography, the legal geographies project, and feminist legal studies is still in its infancy” with collaboration between the disciplines frequently “implicit” rather than explicitly sought.³³⁵ For this reason, Cuomo and Brickell have called for enhanced relationships between feminist theory and legal geography, in the same way that scholars such as Blomley have worked to bring together law and geography in the first place.³³⁶ Furthermore, enhancing the relationship between feminist and legal geographical approaches can provide a means of undertaking more intersectional

³³¹ Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar, “Introduction: Expanding the Spaces of Law” in Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014) 9

³³² Keenan (n 112) 20

³³³ Delaney, “Legal geography III” (n 328) 670

³³⁴ Dana Cuomo and Katherine Brickell, “Feminist legal geographies” (2019) 51(5) *Environment and Planning A: Economy and Space* 1043, 1045. See also Katherine Brickell and Dana Cuomo, “Feminist geolegality” (2019) 43(1) *Progress in Human Geography* 104, which outlines the case for integrating legal geography with “feminist geopolitics”.

³³⁵ Cuomo and Brickell, “Feminist legal geographies” (n 334) 1047

³³⁶ *ibid* 1044

analysis, with “intersection” itself being another term with inferred spatiality.³³⁷ Calls within feminist scholarship for a more “multidimensional” analysis can thus be viewed as calls for further spatialisation of such analysis.³³⁸ Keenan proposes that legal geography is a means of answering these calls, with an analysis that is explicitly spatial able to acknowledge the inequalities produced along identity lines, but allowing for this to be done in a way which places these inequalities in their broader contexts.³³⁹ As such, this thesis locates itself in this emerging area of study, and positions itself as an early response to these calls for enhancing the relationships between these theoretical fields.

2.4.2.3 – Legal Geography and Transitional Justice

Transitional justice is a further area of study which is argued to have an implied spatiality, thus making it an appropriate topic for spatial analysis. Scholarship on conflict argues that “situating” war and peace within space and time allows us to better understand the transient nature of the concepts; to understand that they are not discrete and mutually exclusive, but often exist concurrently.³⁴⁰ As such, transitions from conflict to peace cannot be described as clearly demarcated periods: there is not a neat line between war and peace; rather, transition exists as a period without clear boundaries. Scholarship has argued that studies on conflict first “fail to systematically link the physical/material and sociopolitical aspects of collective conflicts” and, second, reinforce the notion of the state as a bounded “container”, with geographical analysis proposed as a corrective for these issues.³⁴¹ Indeed, it has been argued that states fail to improve conditions for their citizens because they impose laws without

³³⁷ Keenan (n 112) 20

³³⁸ *ibid*

³³⁹ *ibid*

³⁴⁰ Annika Björkdahl and Susanne Buckley-Zistel, “Spatializing Peace and Conflict: An Introduction” in Annika Björkdahl and Susanne Buckley-Zistel (eds), *Spatializing Peace and Conflict: Mapping the Production of Places, Sites and Scales of Violence* (Palgrave Macmillan 2016) 2

³⁴¹ Sven Chojnacki and Bettina Engels, “Overcoming the Material/Social Divide: Conflict Studies from the Perspective of Spatial Theory” in Annika Björkdahl and Susanne Buckley-Zistel (eds), *Spatializing Peace and Conflict: Mapping the Production of Places, Sites and Scales of Violence* (Palgrave Macmillan 2016) 31

taking into account “the complex, lived reality of the social and physical space where [they operate]”.³⁴² This can be seen in the actions of states and intra-state organisations during and post-conflict, which often fail to account for multifaceted experiences of conflict, instead favouring simplistic narratives. A legal geographical analysis could, therefore, allow for a more contextual approach which reveals the broader social and spatial conditions which make such narratives possible.

Even with their implied spatiality, it has been argued that studies of conflict, transition, and peace have as yet been neglected as a topic for spatial analysis.³⁴³ While Selim’s work critically analyses the opportunities and challenges for participation in transitional justice contexts,³⁴⁴ this project attempts to understand the relationship between participation and portrayal in a way which has yet to be attempted. Benjamin Thorne has conducted research which explores the pre-trial processes of the International Criminal Tribunal for Rwanda (ICTR), using Michel Foucault’s insights on discourse to discern how these processes, the language of legal documents, and legal actors come together to “shape who can be a witness and what witnesses can recount from their memories”.³⁴⁵ Through a textual analysis of documentation associated with the ICTR, he argues that it is possible to ascertain how the witness and their testimony are constituted by the “discursive conditions” of the ICTR.³⁴⁶ This thesis employs some of Thorne’s insights about the discursive construction of participants in legal processes, however it is distinct in its use of legal geography as a lens for its analysis. In the transitional justice context, the woman participant in a transitional justice process – just like Thorne’s witness at the ICTR – is established through the discursive conditions of the law, policy, mandate, or reporting of a particular transitional justice mechanism. However, the analysis proposed in this thesis goes further by understanding the law, policy, mandate, reporting, and so on as a form

³⁴² Keenan (n 112) 29, citing James C Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1998)

³⁴³ See, e.g. Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340)

³⁴⁴ See Selim (n 251), which uses Nepal and Liberia as case studies.

³⁴⁵ Thorne (n 111) 467

³⁴⁶ *ibid* 473

of space. The next chapter will demonstrate that space is a process, and through their interactions with space, legal subjects are constituted and reconstituted, taken apart and reconfigured.³⁴⁷ If participation is understood as access to space, participation too has a constitutive effect on the participants in that space. In this way, this research project builds on the discursive insights described previously by adding these spatial elements to the analysis.

2.4.3 – Embracing the Spatial Turn

Rees and Chinkin have argued that the effectiveness of transitional justice processes is determined by conflict experiences of violence; gender constructs and patriarchy; economic considerations; and the interactions of these elements with each other.³⁴⁸ As such, they argue that research on transitional justice requires a means of analysis which allows for an exploration of these dynamics and how they interact to shape the post-conflict space.³⁴⁹ Indeed, much transitional justice scholarship is explicit in its calls for greater attention to context in transitional justice practice and research, and in cautioning against overlooking the specific local contexts of transitional societies.³⁵⁰ However, legal geographers argue law is uninterested in context: it operates as an almost self-sufficient system with its own language, knowledge, and practitioners, and treats its subjects “as if the social and physical contexts of their lives were irrelevant.”³⁵¹ Legal geography, by contrast, is focused on the differing contexts and

³⁴⁷ See Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (Pantheon Books 1972) 188

³⁴⁸ Rees and Chinkin (n 13) 1213

³⁴⁹ *ibid*

³⁵⁰ See, e.g. Ruti G Teitel, “Editorial Note - Transitional Justice Globalized” (2008) 2 *International Journal of Transitional Justice* 1; Ruti G Teitel, “The Universal and the Particular in International Criminal Justice” (1999) 30 *Columbia Human Rights Law Review* 285; Karen Engle, “Anti-Impunity and the Turn to Criminal Law in Human Rights” (2015) 100 *Cornell Law Review* 1069, 1122. See also Lundy and McGovern (n 6); McEvoy, “Beyond Legalism” (n 49) 424; Laurel E Fletcher and Harvey M Weinstein, “Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation” (2002) 24(3) *Human Rights Quarterly* 573

³⁵¹ Keenan (n 112) 22-3. See also Nicholas K Blomley and Joel C Bakan, “Spacing Out: Towards a Critical Geography of Law” (1992) 30(3) *Osgoode Hall Law Journal* 661, 663-666; W Wesley Pue, “Wrestling with Law: (Geographical) Specificity vs (Legal) Abstraction” (1990) 11(6) *Urban Geography* 566

social meanings “embedded within spaces”.³⁵² As such, it has been argued that embracing the spatial turn in law can reveal factors which might otherwise have gone unnoticed in a traditional legal analysis.³⁵³

It is argued here that there is immense potential in a spatial analysis in the field of transitional justice. Traditional, liberal analyses have noted that law is “shaped by the political circumstances” but ultimately argue that law “is not mere product but itself structures the transition”.³⁵⁴ Such a view, while acknowledging the constitutive power of law, nevertheless obscures how space, law, subjects, and objects come together to constitute the transitional justice process. A spatial analysis will therefore reveal factors which have as yet gone unseen. As such, a “spatial” approach provides a means of examining women’s participation in transitional justice processes by understanding participation itself as access to spaces. It also allows for an examination of the ways in which participants are constituted as actors within those spaces, particularly through an understanding of the texts and documentation associated with those spaces, and the new discursive spaces that this documentation creates. This provides an opportunity to go beyond evaluating the level or quality of women’s participation, and to explain how women participate, which women participate, and the process by which this participation is shaped. Importantly, this approach also allows for an intersectional analysis of women’s participation, as it requires an exploration of how different women are constituted in different ways in different processes, with these processes changing over time.

It is important to note here that this approach is not intended to “cure” the “problem” of women’s participation in transitional justice processes. Rather, it intends to uncover the relationship between portrayal and participation in a way that acknowledges broader context, and which might reveal further factors which affect women’s participation. Such an analysis also has the potential to provide some response to the myriad calls for the expansion of the legal geography field outlined above, while

³⁵² Keenan (n 112) 22-3

³⁵³ *ibid* 5

³⁵⁴ Teitel, *Transitional Justice* (n 136) 6

making a unique contribution to knowledge by bringing together transitional justice, participation, and legal geography. Scholarship which specifically brings together legal geography, transitional justice, and women's experiences in these processes appears to be limited, presenting an opportunity for a unique analysis which draws from broader legal geographical scholarship on international law and its local impacts. Applying legal geographical concepts to transitional justice contexts, and the context of the Liberian Truth and Reconciliation Commission in particular, would expand its application beyond the West to "international" and "Global South contexts". Not only that, using these concepts to examine how women are constituted and participate in these contexts generates "convergences" between legal geography, critical feminisms, and the thus far neglected area of human rights. In extending legal geography to the study of participation in transitional justice contexts, this thesis will apply the concepts of space, complexity, and constitutivity. The following chapter will explain why these concepts, in particular, lend themselves to a critical analysis of women's portrayal and participation in transitional justice processes.

2.5 – Conclusions

This thesis proposes a critical approach to transitional justice which asks: "*what relationship exists between women's portrayal in transitional justice processes and the modes of participation available to them in law?*". In this chapter, it has been argued that this approach will allow for an exploration of the circumstances, choices, and judgments which produce gendered processes. This will be achieved through a spatial approach to analysis based in legal geography, which will form the basis for the rest of the thesis. It is argued that such an approach, considering individual transitional justice mechanisms and transitional justice generally as *spaces*, will allow for a more nuanced understanding of the dynamics and relationships at play during these processes. This approach has the potential to go beyond understanding transitional justice mechanisms as neutral places which women struggle to enter, to reveal how laws, actors, and places in the transitional context are mutually constitutive

of one another. Understanding how women are constituted as actors in these processes not only allows us to understand how they interact with the space of participation, but to understand their portrayal in the process, and the constitutive relationship between this portrayal, or construction, and their participation as a form of spatial practice.

In the next chapter, the thesis will develop its mode of spatial analysis by reference to theoretical work in the field of legal geography. In conducting this spatial analysis, the thesis will employ a methodology that uses the Liberian Truth and Reconciliation Commission as a case study, referring to its reporting and mandate, as well as relevant international law, policy, and literature. In conducting this analysis, it will be important to remain mindful of Western biases inherent in transitional justice literature, instead recognising the multidimensional nature of all spaces. The analysis will also demonstrate a consciousness of historical contexts, noting the temporary nature of these spaces. With the methodology established, the thesis will go on to explore the conceptual spaces of participation of the Liberian TRC established through its reporting. This will involve examining the complexities at play during transitional justice processes – the multiple laws, cultures, and customs which compete for primacy – and how these dynamics change or are reified at different points during the process. The thesis will then analyse how women have been constituted through and by that process. Finally, the thesis will explore the links between the modes of women’s participation provided for in law and women’s portrayal in the reports of transitional justice mechanisms, investigating the mutually constitutive relationship between women’s construction and their limited participation.

3 - Participation in Transitional Justice Processes: Towards a Critical Spatial Discourse Analysis

3.1 – Introduction

This thesis has thus far established its aim to explore the problem of women's inadequate participation in transitional justice processes by unearthing what relationship, if any, exists between participation and portrayal in transitional justice processes and their associated documentation. This chapter's distinct contribution to this aim will be to establish the theoretical framework and methodology to be used in this analysis. This chapter argues that it is impossible to fully understand women's participation in transitional justice processes without understanding the spatial, legal, and social context(s) which set the conditions for that participation. As was discussed in the previous chapter, a range of feminist theorising has critiqued women's participation in transitional justice processes without necessarily engaging with what participation actually means in a transitional justice context. While literature reviewed in the previous chapter has acknowledged the malleability of terms such as "transitional justice" and "participation", this chapter will argue that terms such as "women", "woman", and "gender" may also come to hold distinct meanings in the transitional justice space, with that space itself serving to constitute women as legal subjects. As such, the analysis attempted in this thesis must be able to examine *how* such terms are constructed in the transitional space.

In its analysis of the "problem" of women's low or inadequate participation in transitional justice processes, the thesis does not seek to redefine terms such as "transitional justice", "participation", or "women"; nor does it aim to propose new models of participation to "correct" the issues it has previously discussed. The introduction to this thesis cited Davies, who has argued that the development of a field of study is not always the result of a grand re-imagining of that field; rather, it can be brought about by an accumulation of smaller, more modest analytical changes "across

a broad spectrum of types of intervention”.³⁵⁵ Therefore, what this thesis aims to do is to observe this problem from a different vantage point.³⁵⁶ Bennett and Layard argue that a legal geographical analysis involves investigation of how “the spatial, the social and the legal are braided together” to produce a particular site.³⁵⁷ As such, they argue that the resultant task for legal geographers is to “identify each of the braids, to tease them apart and to attempt to identify what work law and spatiality are doing at any particular place and time.”³⁵⁸ In the transitional justice context, this means accounting for the context of the transition, the laws being applied, and the actors involved. These factors represent these “braids” or “strands”: understanding the context of the transition involves observing the *spatial* construction of the process; the laws being applied within that space form the *legal* dimension of the analysis; and the actors involved in the process represent a *social* strand.

This chapter will begin to explore these spatial, legal, and social strands that have been braided together in transitional justice contexts and will establish how these might be “teased apart”. In doing so, the chapter will provide a detailed overview of the theoretical framework and methodological tools to be employed throughout the rest of the thesis. In particular, the chapter will return to legal geography, having introduced the field briefly in the preceding chapter. In doing so, this chapter will explain the legal geographical concepts of space, complexity, and constitutivity which will inform the analysis in the rest of the thesis. In order to explore the links between participation and portrayal in transitional justice processes, the thesis will use an approach which incorporates these spatial elements, and which is grounded in critical discourse analysis, producing a method which this thesis terms “critical spatial discourse analysis”.

³⁵⁵ Davies, *Law Unlimited* (n 53) 318

³⁵⁶ *ibid*

³⁵⁷ Luke Bennett and Antonia Layard, “Legal Geography: Becoming Spatial Detectives” (2015) 9(7) *Geography Compass* 406, 409

³⁵⁸ *ibid*

3.2 – Legal Geography as a Theoretical Framework

This chapter will now turn to the theoretical framework which will underpin the analysis to be conducted in the rest of this thesis. This framework is constructed around the concepts of space, constitutivity, and complexity, each drawn from legal geography. This section will now explain these concepts, and will explain how they will be used to “untangle” the spatial, legal, and social strands of transitional justice in subsequent chapters. It will argue that, by “unpicking” these strands, it is possible to observe how women and their participation were constituted for the purposes of the Liberian Truth and Reconciliation Commission, thereby revealing the relationship between women’s participation and their portrayal.

3.2.1 – Space

In legal geography, law is conceived as taking place in particular spaces, removing it from the abstract and bringing together “law, society, and space”.³⁵⁹ These spaces may be “perceived,” “conceived,” or “lived,” with these elements interacting to produce spaces in different ways according to geographical and historical contexts.³⁶⁰ Massey posits that space “stretches beyond its (permeable) boundaries so that the inside defines part of the outside, and the outside part of the inside”.³⁶¹ In this way, space becomes “plural,” “layered,” and “multidimensional”.³⁶² It reveals “a series of carefully worked-up connections through which what we know as the world interacts.”³⁶³ Multiple spaces may exist and overlap at once, and the relationship between these spaces will further impact individual experiences, just as individual presences in those spaces will impact the way they are shaped.³⁶⁴

³⁵⁹ Keenan (n 112) 5

³⁶⁰ Henri Lefebvre, *The production of space* (Blackwell 1991) 33

³⁶¹ Doreen Massey, *Place, Space and Gender* (Polity Cambridge 1994) 5

³⁶² Davies, *Asking the Law Question* (n 318) 441

³⁶³ Nigel Thrift, “Space: The Fundamental Stuff of Geography” in Nicholas J Clifford, Sarah L Holloway, Stephen P Rice, and Gill Valentine (eds), *Key Concepts in Geography* (Sage 2009) 88

³⁶⁴ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, “Places That Come and Go” in Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014) 32-3

Space is also fundamentally shaped by law. Through its analysis of space, legal geography uncovers the how law produces spaces and is itself produced by space, with spaces themselves “loaded with social meaning” and biased towards certain “identities and practices”.³⁶⁵ Furthermore, Delaney argues that law, in the form of “rules and rights”, has a direct geographical impact through the way that it physically divides spaces, but also constitutes “spatial tactics” which determine how people access or interact with those spaces.³⁶⁶ Delaney describes this as the “nomosphere”: the inextricably interlinked and mutually constitutive relationship between law and space.³⁶⁷ Philippopoulos-Mihalopoulos has similarly defined what he terms “the lawscape” as “the way the tautology between law and space unfolds as difference”.³⁶⁸ That is, the “lawscape” represents the understanding that law and space cannot and do not exist separately from one another. For Philippopolous-Mihalopolous, space without law would be “a nullifying expanse” that could exist only in the absence of conflict or difference, because conflict and difference require rules and processes to navigate.³⁶⁹ By the same token, law without space could only ever exist in the abstract “as a universal, floating above spatial difference” but never able to be applied in context.³⁷⁰ The term “lawscape” then functions as a means of explaining the mutually reinforcing relationship between law and space and how they are “folded into each other”.³⁷¹ It understands law and space as “co-emerging, co-constituting and co-evolving”.³⁷² This reflects Massey’s view of space as representative of the possibility of multiplicities, and, crucially, as a “process”.³⁷³ Indeed, for Massey, space is “always under construction... never finished, never closed”.³⁷⁴ Thus, space, as a concept,

³⁶⁵ Keenan (n 112) 18-19

³⁶⁶ David Delaney, “Legal Geography I: Constitutivities, complexities and contingencies” (2015) 39(1) *Progress in Human Geography* 96, 99

³⁶⁷ David Delaney, *The Spatial, the Legal, and the Pragmatics of World-Making: Nomospheric Investigations* (GlassHouse Books 2010) 25

³⁶⁸ Philippopoulos-Mihalopoulos “And For Law” (n 47) 11

³⁶⁹ *ibid*

³⁷⁰ *ibid*

³⁷¹ *ibid*

³⁷² *ibid*

³⁷³ *ibid* 4

³⁷⁴ Doreen Massey, *For Space*, (Sage Publishing 2005) 9

provides a lens through which the complex interrelations of space, law, and social relations can be understood, making it a valuable theoretical vantage point for the study of these elements in the transitional context.

3.2.2 – Constitutivity

The previous subsection explained that in legal geography, law and space are mutually constitutive, with each being shaped by the other. Delaney describes “constitutivity” as the process by which people and things, including the law itself, are continuously constituted and reconstituted through numerous iterations.³⁷⁵ These processes “call [the person or thing] into being or modify its social significance through the distinctive practices of naming, classifying, ruling, governing, or ordering associated with law most broadly conceived.”³⁷⁶ In this way – and by imbuing them with legal “signifiers” such as “rules, rights, obligations,” – the person or thing becomes legally constituted.³⁷⁷ In explaining the constitutive process, Delaney asserts that it is not the thing known as “law” which legally constitutes things and relationships: this is done by “social actors” as agents of law, whether they themselves have been “constituted” by law with state power or act privately.³⁷⁸ Davies argues that this requires an understanding that it is the movement, actions, and interactions of people in their environments that give meaning to law and space. In other words, “both law and space are constituted by the practices and interactions of people and things.”³⁷⁹

While law and space are mutually constitutive of one another, they further “actively shape and constitute society, while being themselves continuously socially produced”.³⁸⁰ Social relations may be legally constituted through the iterative process of dividing the world into binaries such as “public and private” or “domestic and

³⁷⁵ Delaney, “Legal Geography I” (n 366) 98

³⁷⁶ *ibid*

³⁷⁷ *ibid*

³⁷⁸ *ibid*

³⁷⁹ Davies, *Asking the Law Question* (n 318) 446

³⁸⁰ Sarah Blandy and David Sibley, “Law, Boundaries and the Production of Space” (2010) 19(3) *Social & Legal Studies* 275, 278

international”.³⁸¹ Furthermore, Massey has discussed the constitutive power of social relations themselves, describing space as “the materialization of social relations which have sedimented over time and which are therefore contingent”.³⁸² In other words, for Massey, space does not exist as a concrete and abstract entity; rather, it is produced over time by social relations.³⁸³ Lefebvre similarly posits that social space – far from existing as a container for subjects, objects, and relations – is itself a social process.³⁸⁴ As such, individuals will experience and form part of space in different ways,³⁸⁵ with their experiences shaped by structural concerns such as law and culture.³⁸⁶ Indeed, it has also been argued that space is “political”: feminist and race scholars have uncovered the ways in which law, presumed neutral, produces spaces which have gendered or racial consequences for the distribution of power and resources.³⁸⁷ As such, this process of constitutivity results in inextricable links between law and legal subject.³⁸⁸ Keenan has particularly argued against the “conception of the subject as divorced from her surrounding space”,³⁸⁹ proposing instead that “they are themselves a part of space as space is a part of them”.³⁹⁰

3.2.3 – Complexity

Legal geography recognises the relationship between law and space as kinetic, complex, and constantly evolving.³⁹¹ It has been argued that international law is “not static, linear and ordered”.³⁹² Instead, it is “complex, fluid and uncertain”, undergoing constant evolutions through the social interactions of practitioners.³⁹³ Part of this can

³⁸¹ Delaney, “Legal Geography I” (n 366) 98

³⁸² Massey, *Place, Space and Gender* (n 361) 154

³⁸³ *ibid* 5

³⁸⁴ Lefebvre (n 360) 26-27

³⁸⁵ von Benda-Beckmann and von Benda-Beckmann (n 364) 32-3

³⁸⁶ *ibid*

³⁸⁷ Davies, *Asking the Law Question* (n 318) 442

³⁸⁸ Davies, *Law Unlimited* (n 53) 29

³⁸⁹ Keenan (n 112) 8

³⁹⁰ *ibid* 161

³⁹¹ See, e.g. Delaney, “Legal Geography I” (n 366) 98; Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere*, (Routledge 2015)

³⁹² Zoe Pearson, “Spaces of International Law” (2008) 17(2) *Griffith Law Review* 489, 495-6

³⁹³ *ibid* 496

be explained by reference to law's complexity. Within any space, overlapping laws from a variety of sources are applicable. Indeed, many authors have cautioned against the concept of law as a "system" or series of systems.³⁹⁴ Griffiths, for example, has argued that law cannot be neatly compartmentalised into systems; instead, "legal reality is a rather unsystematic collage of inconsistent and overlapping parts".³⁹⁵ The tensions, incompatibilities, or inconsistencies produced by the presence of multiple laws and legal systems in one space have been described as pluralisms,³⁹⁶ oppositions,³⁹⁷ and complexities.³⁹⁸

Delaney explains that "complexity" in legal geography does not refer to the complex nature of the space itself, but to the tensions that arise in the ways that legal practices operate within it.³⁹⁹ That is to say, the "contradictions, gaps, and slippages in how 'law makes space'".⁴⁰⁰ Complexities will evolve through numerous iterations, alongside and influenced by the evolution of the space. Spaces and laws may "fade in," with laws being observed before they have been officially enacted, particularly in the case of international "soft law" standards.⁴⁰¹ Spaces may disappear, or may "linger", whereby the transition between one space and another produces plurality in a legal system.⁴⁰² Spaces and laws emerge in a way which is "multiscalar", consisting of overlapping bodies of local, national, and international law: formal and informal, statutory and customary, and so on.⁴⁰³ These overlapping laws do not sit neatly on top of one another. Rather, they form an intricately entangled web of law and space.⁴⁰⁴ Furthermore, Davies has discussed the "Brighton rock" phenomenon: that law is not constant at all

³⁹⁴ See, e.g. Davies, *Law Unlimited* (n 53) 30

³⁹⁵ John Griffiths, "What is legal pluralism?" (1986) 18(24) *Journal of Legal Pluralism and Unofficial Law* 1, 4

³⁹⁶ Davies, *Asking the Law Question* (n 318)

³⁹⁷ Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006)

³⁹⁸ Delaney, "Legal Geography I" (n 366) 98

³⁹⁹ *ibid* 100

⁴⁰⁰ *ibid*

⁴⁰¹ von Benda-Beckmann and von Benda-Beckmann (n 364) 40

⁴⁰² *ibid* 41

⁴⁰³ Bartel *et al* (n 325) 344

⁴⁰⁴ *ibid*. See also von Benda-Beckmann and von Benda-Beckmann (n 364) 34

levels and from all vantage points.⁴⁰⁵ As well as a plurality of laws, there exists a plurality of vantage points from which and lenses through which to view those laws.⁴⁰⁶ In fact, the inherent complexity of the transitional context means that the extent to which rights are addressed in these processes will reflect “*choices*” by actors,⁴⁰⁷ emphasising the role of social relations in producing space.

3.2.4 – The Production of Space, Law, and Subject

This section has explained the inextricable relationships that exist between space, law, and subject, with each existing and mutually constituting the others in a constant state of flux. The complex legal reality of space, alongside the complex web of human social relationships existing throughout that space, converge to produce space itself and to shape and reshape these spatial, legal, and social elements. The following section will explore these themes as applied to the issue of women’s participation in transitional justice processes, illustrating how understanding the complex nature of space and its constitutive impact provides a lens for examination of participation and portrayal in the transitional justice context. The chapter will then move on to explain how these legal geographical concepts can contribute to a unique methodology for the study of transitional justice, as applied to the reporting of the Liberian Truth and Reconciliation Commission.

3.3 – The Space, Constitutivity, and Complexity of Transitional Justice

The previous section outlined the concepts of space, constitutivity, and complexity drawn from legal geographical scholarship, proposing that they provide a useful framework for analysis of women’s participation in transitional justice processes. This section will outline how these concepts will be employed in such an analysis. It will

⁴⁰⁵ Davies, *Law Unlimited* (n 53) 24

⁴⁰⁶ *ibid*

⁴⁰⁷ McEvoy and McConnachie (n 223) 496-7

propose that transitional justice contexts, by virtue of their complex and shifting nature, lend themselves particularly well to a spatial analysis. Further, it will argue that the inherent spatiality of participation as a concept, especially when considered as access to space, provides a further basis for a spatial analysis. It will be proposed that a spatial understanding of transitional justice and participation allows for an understanding of how the category of “women” is constituted through and by the transitional justice process, thus illuminating the relationship between the modes of women’s participation and women’s portrayal in these processes.

3.3.1 – Transitional Justice and its Relationship with Space

Transitional justice processes are a particularly appropriate subject for legal geographical analysis, given the implicit spatialities of conflict, transition, and peace that were discussed to some extent in the previous chapter. Indeed, scholarship has argued in favour of spatial analyses of peace and conflict by asserting that “both war and spatial structures are products of human activities”.⁴⁰⁸ That is to say, wars are the product of human action: of conflict over borders, territories, political power, all of which are produced by people through their social interactions.⁴⁰⁹ This generates “an intrinsic link” between how space is produced and the occurrence of a conflict or period of peace.⁴¹⁰ Furthermore, the language of conflict, transition, and peace often exhibits an inherent spatiality. Marks, for example, argues that democracy is often conceived of as a “place”; that is, the endpoint on a journey, or a destination towards which societies progress.⁴¹¹ The concept of “reconciliation” has also been argued to possess an inherent spatiality, while reconciliation processes are shaped by “spatial interventions”.⁴¹² As such, it has been proposed that understanding the spatial elements of conflict and peace is vital to the understanding of conflict and peace as a whole.⁴¹³

⁴⁰⁸ Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340) 6

⁴⁰⁹ *ibid*

⁴¹⁰ *ibid*

⁴¹¹ Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press 2003) 66

⁴¹² Elly Harrowell, “Towards a spatialised understanding of reconciliation” (2018) 50(2) *Area* 240, 245

⁴¹³ Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340) 6

If transitional justice is the means by which a conflict is brought to a close and a period of peace brought about, it follows then that understanding the spatial elements of the conflict will further the understanding of the transition itself.

Jeffrey has argued that transitional justice is also an inherently spatial concept, which “operates through distance”.⁴¹⁴ That is to say, transitional justice processes, as situated legal practices, create boundaries and distance through their operations.⁴¹⁵ In any number of transitional justice processes, physical boundaries are produced through the physical locations of transitional justice mechanisms as multidimensional spaces, for example: the international criminal tribunal, the truth commission, the legislature where institutional reform takes place, the grassroots justice organisation, and so on. Boundaries are defined by their complexities. Rather than delineating space, they too are an inextricable part of it. As Nedelsky argues, rather than simply producing “separation and opposition”, boundaries actually represent the “complex, fertile, and tension-laden interconnection between self and others”.⁴¹⁶ As such, while physical boundaries are important in constituting space, these do not represent the only boundaries in question; rather, they interact with other forms of boundary to shape space. For example, transitional justice processes also create boundaries through jurisdictional limits, drawing a line around the particular geographical sites that they will consider in their activities. Jeffrey further describes how such processes might produce temporal distance by addressing the crimes of past regimes,⁴¹⁷ through which a further boundary will be drawn around the particular times period(s) the process is mandated to investigate. Another more neglected form of boundary produced in the transitional context is the boundary drawn around the legal subject. This chapter has already established that legal subjects exist in an inextricable relationship with law and space. As such, transitional justice processes, through their operation, will create boundaries around the legal subject, organising them into categories such as

⁴¹⁴ Alex Jeffrey, “The political geographies of transitional justice” (2011) 36(3) *Transactions of the Institute of British Geographers* 344, 347

⁴¹⁵ Alex Jeffrey, *The Edge of Law: Legal Geographies of a War Crimes Court* (Cambridge University Press 2019) 1

⁴¹⁶ Jennifer Nedelsky, “Law, Boundaries, and the Bounded Self” (1990) 30 *Representations* 162, 182

⁴¹⁷ Jeffrey, “The political geographies of transitional justice” (n 414) 347

“combatant”, “civilian”, “perpetrator”, “victim”, and so on. The drawing of these boundaries may then create conditions as to who can and cannot participate in a given process. This necessarily has consequences for women and their participation in transitional justice processes. Where processes provide opportunities for participation to a category of “women”, the boundaries drawn around that category can permit or preclude participation.

3.3.2 – The Spatial ‘Strand’ – Constituting Spaces through Participation

The previous chapter established participation as an inherently spatial concept, understanding it as a means of accessing space. It discussed that Cornwall, in particular, has explored the spatial nature of participation in her work, and has argued in favour of the usefulness of a spatial lens for understanding issues of participation. She argues that understanding participation as a form of “spatial practice” allows an understanding of the “situated nature” of participatory practices, and the idea of participation as access to “bounded yet permeable arenas”.⁴¹⁸ Space is, itself, produced through the participatory process, “creating spaces where there were previously none”.⁴¹⁹ Indeed, as Cornwall has argued, the very act of participation “can be seen as bringing spaces to life as well as carving out new spaces and creating new social forms with their own momentum and impetus.”⁴²⁰

Further emphasising the inherent spatiality of participation and participatory discourses, the previous chapter discussed the proposed existence of “spaces” of participation. Gaventa has described that the various spaces of participation proposed by Cornwall exist along a “continuum”.⁴²¹ While “[c]losed spaces” are those decision-making spaces which are inaccessible to the public and offer no opportunities for participation, “[i]nvited spaces” are those into which participants are invited by

⁴¹⁸ Cornwall, “Spaces for transformation?” (n 310) 75

⁴¹⁹ Cornwall, “Making spaces, changing places” (n 71) 2. See also Massey, *Place, Space and Gender* (n 361) 5

⁴²⁰ Cornwall, “Making spaces, changing places” (n 71) 2

⁴²¹ Gaventa (n 303) 34

authority figures to participate in decision-making, often in clearly delineated ways.⁴²² Progressing along the continuum, “[c]laimed” or “created spaces” are those which “are claimed by less powerful actors from or against the power-holders”.⁴²³ These may be more “organic” or spontaneous sites in which actors with common interests or concerns come together in pursuit of shared goals.⁴²⁴ And yet, the boundaries between spaces of participation are not so clearly demarcated. These spaces are not necessarily mutually exclusive, but “exist in dynamic relationship to one another, and are constantly opening and closing through struggles for legitimacy and resistance, cooptation and transformation.”⁴²⁵ Spaces are not discrete and singular, but overlap and reshape one another in a state of constant flux.⁴²⁶ Spaces are also shaped by the people who occupy them.⁴²⁷ Importantly, such spaces are heterogenous by their nature, with invited spaces in particular bringing together groups who might otherwise never encounter one another.⁴²⁸ These groups may have different interests and levels of involvement in processes, and bring with them their own assumptions about the processes themselves. As Cornwall has argued, “those who participate in any given space are also, necessarily, participants in others”, and in navigating these spaces of participation and the spaces between them, “people carry with them experiences and expectations” that influence how and to what extent they interact with these spaces and with each other.⁴²⁹ Keenan takes this idea further, suggesting that in carrying experiences and expectations with them, people actually carry *space* with them, thus bringing different spaces of participation into contact with one another.⁴³⁰

⁴²² *ibid*

⁴²³ *ibid*

⁴²⁴ *ibid*

⁴²⁵ *ibid*

⁴²⁶ von Benda-Beckmann and von Benda-Beckmann (n 364) 32-3

⁴²⁷ *ibid*. See also Keenan (n 112)

⁴²⁸ Cornwall, “Spaces for transformation?” (n 310) 77

⁴²⁹ *ibid* 78

⁴³⁰ Keenan (n 112) 151

This can be illustrated by reference to a story relayed by Cole in relation to Fambul Tok, an informal justice programme established in post-conflict Sierra Leone.⁴³¹ Cole describes a meeting of organisers, at which they debated allowing involvement of a perpetrator of conflict-era abuses in their programme. Their primary concern at his involvement was that it could open him to “persecution” by the Special Court for Sierra Leone, in turn inviting the Special Court into their work and creating the unwanted impression that Fambul Tok – an organisation heavily critical of the Special Court – was collaborating with it.⁴³² While Cole uses this story to illustrate the benefits of her ethnographic research methods, the anecdote reveals a spatial dimension: that the movement of one individual into a space might bring another space with him, reconstituting the first space through convergence with the second. This has particular ramifications for participation in transitional justice processes: the mere presence of certain participants within a space could fundamentally reconstitute it, or bring it into contact with other spaces that the participants carry with them. In this way, the social and power relations within any given space are influenced and shaped by previous relationships: “the traces of these relationships, and of previous experiences in other spaces” ultimately constitute “what is said, and what is sayable, within any given space”.⁴³³ The lived experience of a space “condition(s) the subject’s presence, action and discourse, [their] competence and performance”.⁴³⁴ By carrying spaces with them wherever they go, “their subjectivity and what is materially within their reach is constantly (re)determined by where they have been and what has happened around them”.⁴³⁵ The way in which a subject is constituted thus affects how they are able to live, and whether and how they access different spaces.⁴³⁶ As such, space, participation, and participant exist as mutually constitutive components.

⁴³¹ Courtney E Cole, “Beyond ‘Being There’: Space and Mobility in Ethnographic Peace and Transitional Justice Research” in Gearoid Millar (ed), *Ethnographic Peace Research: Approaches and Tensions* (Palgrave Macmillan 2018) 241-2

⁴³² *ibid*

⁴³³ Cornwall, “Making spaces, changing places” (n 71) 8

⁴³⁴ Cornwall, “Spaces for transformation?” (n 310) 83

⁴³⁵ Keenan (n 112) 151

⁴³⁶ Delaney, “Legal Geography I” (n 366) 99

If subjects carry spaces with them throughout their social interactions, it follows that spaces will be shaped by who has previously occupied them, rendering those spaces more receptive to certain identities over others.⁴³⁷ Cornwall has argued that no space of participation, whether invited or claimed, is ever neutral; rather, they are always infused with “existing relations of power”.⁴³⁸ In this way, participatory practices within spaces “etch distinctive traces” onto the spaces themselves.⁴³⁹ Through this “generative past”, the space is constituted, and reciprocally constitutes the social relations and social actors themselves.⁴⁴⁰ Furthermore, and as was noted in the previous chapter, spatial practices within one space will affect the other “as relations of power within and across them are constantly reconfigured”.⁴⁴¹ As such, any interactions occurring within these spaces are likely to “reproduce, rather than challenge hierarchies and inequalities”.⁴⁴² If spaces and the laws applied within them are understood to be constituted by the “practices and interactions” of the people able to access them,⁴⁴³ the ability to participate in transitional justice processes becomes particularly important, with the processes constituted by who is able to participate, and who is able to participate dependent on how they are constituted as legal actors within the process itself. Again, this can be seen in the transitional justice context, where processes remain “gendered to men’s advantage” and difficult for certain groups to access.⁴⁴⁴ This means that the participants within a given transitional justice process are as important as the physical spaces in which the process takes place. The presence of participants in participatory spaces contributes to shaping those spaces: such is the constitutive process. This mutual constitutivity of subject and space requires that the contexts of such participatory spaces – including their legal complexity – be examined more closely.

⁴³⁷ Keenan (n 112) 96

⁴³⁸ Cornwall, “Spaces for transformation?” (n 310) 81

⁴³⁹ *ibid* 77

⁴⁴⁰ Lefebvre (n 360) 110

⁴⁴¹ Cornwall, “Spaces for transformation?” (n 310) 78

⁴⁴² *ibid* 81

⁴⁴³ Davies, *Asking the Law Question* (n 318) 446

⁴⁴⁴ Brown and Ní Aoláin (n 18) 135

3.3.3 – The Legal ‘Strand’ – Participating in a Legally Complex Space

Transitional justice mechanisms are notable for their inherent complexities. Teitel has argued that international law performs a bridging function during transitions by being employed to address failures of domestic legal systems in addressing systemic abuses.⁴⁴⁵ However, this argument is problematic in that it obscures the inherent complexity of the transitional period and its associated legal context. During any one process, international humanitarian law, international human rights law, international criminal law, international refugee law, domestic law, and the United Nations Security Council Resolutions on Women, Peace, and Security, each bringing their own normative basis and set of assumptions, may be simultaneously relevant, but may also be inconsistent with each other. This has implications for women’s participation in transitional justice contexts. Women may be argued to have a right to participate in transitional justice processes.⁴⁴⁶ The extent to which this right is fulfilled, however, will be a consequence of the space itself. Spaces are more than a setting for “political and legal struggles,” rather they are “an integral part” of that action.⁴⁴⁷ The extent to which this right to participate is fulfilled will also be based on decisions taken by various actors about the way that competing laws will be applied according to the competing interests of participants.⁴⁴⁸ As such, the legal complexity of the transitional justice process is mutually constituted by the spatial and social strands of that process.

3.3.4 – The Social ‘Strand’ – Constituting Women as Participants

While transitional justice processes are notable for their legal complexity, they are similarly complex with regard to their participants. The transitional justice context features multiple complex relationships between a wide variety of actors – international and non-international, state and non-state – who become involved at varying stages of the conflict and to varying degrees, each with their own distinct

⁴⁴⁵ Teitel, “Keynote Speech” (n 134) 595-6

⁴⁴⁶ For a detailed discussion regarding the existence of a “right to participation” in the transitional justice context and in international law more generally, see Chapter 5 of this thesis.

⁴⁴⁷ Keenan (n 112) 39

⁴⁴⁸ McEvoy and McConnachie (n 223) 496-7

experiences of conflict and with their own interests in the outcome of a given transitional justice process.⁴⁴⁹ In the previous chapter, it was argued that women's experiences of conflict may be distinct from men's, and that their post-conflict demands may vary as a result. This divergence of needs and demands not only exists between men and women but between women, and between different feminist traditions. As such, it has been argued that, when considering women's rights in the post-conflict context, it is important to consider that women's experiences of conflict vary, and so therefore will their post-conflict needs and priorities.⁴⁵⁰

In addition, an individual woman's needs and demands may equally vary depending on the time and place these demands are made. Davies has argued that a human being can be "inscribed with different legal meanings at different scales of law", arguing that one person may at different scales be considered "a citizen and subject... a bearer of human rights... a combatant or non-combatant... an asylum seeker, a shareholder, a consumer, a tenant, an owner, an Indigenous person...".⁴⁵¹ This is true in transitional justice processes, where women may simultaneously be an ex-combatant, a victim of conflict-related violence, a daughter of a disappeared father, a mother, a head of a household, and so on. In a participation context, this can mean that "someone looked up to with respect in one sphere may find themselves patronized and even derided in another."⁴⁵²

In spite of these multiple and complex identities, in transitional justice discourses, women are sometimes presented collectively, as a homogenous group. They are often portrayed as victims,⁴⁵³ with men's experiences assumed the default.⁴⁵⁴ Women may be flattened by the reporting of transitional justice processes, which can reduce their multiple and complex experiences and identities to singular narratives. Participation in such processes may result in participants' experiences being distilled and

⁴⁴⁹ Ní Aoláin, "Women, Security and the Patriarchy" (n 155) 1058-9

⁴⁵⁰ Chinkin "Gender, Human Rights, and Peace Agreements" (n 14) 876

⁴⁵¹ Davies, *Law Unlimited* (n 53) 96

⁴⁵² Cornwall, "Spaces for transformation?" (n 310) 80

⁴⁵³ Bell and McNicholl (n 140) 32

⁴⁵⁴ *ibid* 16

constructed into an overarching narrative of the conflict, which does not necessarily confirm nor lend credibility to their stories.⁴⁵⁵ This phenomenon of flattening may be exacerbated in the context of women from the Global South, with some arguing against use of terms like “third world woman” in the belief that they overlook the diversity of women in that group.⁴⁵⁶ It is argued here that understanding the differences between people is important, since conflicts “are experienced differently by different groups in the society and affect their sense of everyday security differently”,⁴⁵⁷ with these diverse identities themselves being socially and historically constructed.⁴⁵⁸ As will be argued throughout this thesis, this heterogeneity of women and their needs underscores the importance of avoiding essentialisation and flattening of women in the transitional justice context.

A spatial analysis is useful in this regard, as it provides an opportunity for an understanding of how this flattening might occur. Hickey and Mohan have proposed that essentialist analyses of participation can be avoided where scholarship accounts for the complex social nature of spaces of participation.⁴⁵⁹ They cite Massey’s metaphor of the “layering” of space to illustrate how identities are formed by and within space and social practice.⁴⁶⁰ This can be seen in the transitional justice context. Not only are women constituted as actors in and by the transitional justice process; they are constructed out of prior processes, with those prior processes shaped by outside influences, and so on. In this way, the constitutivity of women can be shaped by a broad range of social and legal contexts, as they have evolved over time. This

⁴⁵⁵ Noga Glucksam, “I Fear, Therefore I Am: Victimhood and the Struggle for Ontological Security in the Liberia Truth Commission” (2018) 20(1) *Civil Wars* 89, 98

⁴⁵⁶ See, e.g. Jarpa Dawuni (n 106) 452-3; Saba Fatima, Kristie Dotson, Ranjoo Seodu Herr, Serene J Khader, and Stella Nyanzi, “Contested Terrains of *Women of Color* and *Third World Women*” (2017) 32(3) *Hypatia* 731

⁴⁵⁷ Glucksam (n 455) 90

⁴⁵⁸ Amina Mama, “Is It Ethical to Study Africa? Preliminary Thoughts on Scholarship and Freedom” (2007) 50(1) *African Studies Review* 1, 6

⁴⁵⁹ Sam Hickey and Giles Mohan, “Towards participation as transformation: critical themes and challenges” in Samuel Hickey and Giles Mohan (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004) 17-18

⁴⁶⁰ *ibid* 17, citing Doreen Massey, “Thinking Radical Democracy Spatially” (1995) 13 *Environment and Planning D: Society and Space* 283, 286

reflects Keenan's argument that subjects carry with them these complex identities by virtue of their experiences.⁴⁶¹ Women in a courtroom, for example, may be categorised as vulnerable victims without critical analysis of the role that the physical space of the court room setting itself has played in constituting that identity. Indeed, the subject cannot be considered as separate from this setting, rather, she ought to be "understood as an entity that is inseparable from the spaces through which she moves and the spaces in which she is embedded."⁴⁶² The physical setting alone is not responsible for the constitutivity of the subject, which is also dependent on power regimes and "pre-existing classification systems" that pre-date the space itself.⁴⁶³ In the transitional justice context, this means that the ways in which women are constituted are not just a product of the physical room in which the process takes place, but are dependent on every aspect of the spatial, legal, and social strands of the transition:⁴⁶⁴ the attitudes of the actors who come into that room; the social attitudes and cultural mores of the country in which the court room is located; the ways in which these attitudes are influenced by colonial histories, and so on.

One of the ways in which this constitutive process occurs is through discourse. Cornwall argues that "discourses of participation" define the limits of what can be achieved in any given participatory process by delineating specific "subject positions for participants to take up".⁴⁶⁵ For example, the language of a participatory process in a development context might constitute participants as "'beneficiaries', 'clients' or 'citizens'", with each label carrying its own set of rules and assumptions about what those participants will be expected or able to contribute to the process, or entitled to receive from it.⁴⁶⁶ In "peacekeeping and peacebuilding", identities such as "victims" and "perpetrators" or "terrorists" and "rebel groups" may be constructed according to "structurally embedded binaries in an attempt to make sense of violence and present

⁴⁶¹ Keenan (n 112) 40

⁴⁶² *ibid* 8

⁴⁶³ *ibid* 41

⁴⁶⁴ von Benda-Beckmann and von Benda-Beckmann (n 364) 32

⁴⁶⁵ Cornwall, "Spaces for transformation?" (n 310) 83

⁴⁶⁶ *ibid* 84

an illusion of security”.⁴⁶⁷ In the transitional justice context, subjects may be constructed as a “perpetrator”, “witness”, or “victim”, with each category already imbued with social meaning. As Cornwall argues, the perceptions carried by each identity “means that they are never neutrally positioned players”; rather, their “location as speakers fundamentally affects the nature and effects of their participation: it influences what they say, and how and whether they are heard”.⁴⁶⁸ These perceptions thus condition “possibilities for agency and voice”.⁴⁶⁹ Therefore, the rights claims that women make and the ways in which these rights are addressed must vary depending on the way that individual is discursively constituted for the purposes of the rights claim. In addition, the modes of participation in a given transitional justice process will vary depending on how women are constituted as participants through, by, and within that process. In the transitional justice context, this is very important. Women accessing transitional justice processes do not only carry with them their experiences of conflict, but their experiences of the pre- and post-conflict worlds. In addition, those actors inviting them into the space of participation carry with them assumptions and perceptions about women and their participation. It therefore becomes important to question these assumptions, and how they manifest in practical terms.⁴⁷⁰

3.3.5 – The Spatial, Legal, and Social ‘Strands’ – A Case Study Approach

Thus far, this section has argued that a spatial analysis provides a more nuanced and more inquiring means of examining women’s participation in transitional justice processes by understanding participation itself as access to spaces, and by exploring the ways in which participants are constituted as actors within those spaces. This provides an opportunity to go beyond evaluating the level or quality of women’s participation, in order to explain how women participate, which women have been allowed to participate, and why. For the purposes of this project, the concepts of space, constitutivity, and complexity will be applied in the hope of facilitating a greater

⁴⁶⁷ Bewicke (n 33) 123

⁴⁶⁸ Cornwall, “Spaces for transformation?” (n 310) 84

⁴⁶⁹ *ibid* 80

⁴⁷⁰ Cornwall, “Making spaces, changing places” (n 71) 5

understanding of the spatial, the legal, and the social aspects of transitional justice. Advocating for spatial analyses of law, Bennett and Layard use the example of sailors arriving into a nineteenth-century port to illustrate what they term the “co-constitution” of law and space.⁴⁷¹ They argue that the port is a place through which people, ships, and goods are continually moving, and that the people there “know how to behave in a port partly by custom and practice”, but also because of the omnipresence of law in that place, with law designating and continually reinforcing power relations.⁴⁷² Some of the physical points in the port are “focal points” imbued with a greater “legal ‘thickness’” by virtue of being “local beacons of law’s presence”.⁴⁷³ The authors cite the Customs House, the character of which as a “local beacon of law” is continually and “recursively reaffirmed and reinforced” by every arriving sailor and worker who treat it “as a focal point of the law and the state’s authority”.⁴⁷⁴ The authors argue that through “such recognition and iteration, the spatial, the social and the legal are braided together to produce sites”.⁴⁷⁵ The aim of this thesis is to identify the spatial, legal, and social strands of transitional justice, and to understand how they are braided together, and the consequences of this entanglement for women and their participation in these processes.

The case study of Liberia makes these strands discernible. The main room of the Liberian Truth and Reconciliation Commission was a “local beacon of law”, in that it was a place imbued with the legal mandate of investigating the conflict. But, as the next chapter will demonstrate, the space of the Liberian TRC spread beyond those walls, to the offices where research was carried out, reports filed, and invoices raised. To the counties where statement takers were trained and the testimonies of witnesses recorded. To the NGO offices where processes were evaluated and briefings written. Importantly, for the purposes of this analysis, the reports of the TRC, through their discursive practice, established a conceptual space which retroactively constituted

⁴⁷¹ Bennett and Layard (n 357) 409

⁴⁷² *ibid*

⁴⁷³ *ibid*

⁴⁷⁴ *ibid*

⁴⁷⁵ *ibid*

women as participants in that process. The legal aspect of the TRC did not end with the mandate which established it and gave it its powers, but also spread beyond the physical boundaries of the TRC room and, indeed, of the state itself, to encompass the customary law, domestic state law, and international legal standards upon which the TRC's definitions of crimes were based. Its legal strand also spread to individual rights, with participants in its processes able to attest to violations of their rights, or indeed to exercise their right to participate in the process. This leads to the social strand, whereby women interacted with the TRC process and the other actors as participants, with their right to participate in the process contingent on how their social interactions were braided together with the legal and spatial aspects of this particular transitional justice process. This thesis will explore each of these strands through the application of the legal geographical concepts explained above. The next section will elaborate on the methodology that will be employed to achieve this.

3.4 – A Critical Spatial Discourse Analysis

Delaney proposes two means of examining the relationship between law and space: “Law-in-Space” and “Space-in-Law”.⁴⁷⁶ First, “Law-in-Space” examines “the ways in which situated legal practices... contribute to the shaping and reshaping of the spatialities of social life”.⁴⁷⁷ It describes the ways in which “law is embedded in and emerges from the spaces around us.”⁴⁷⁸ This applies not only to physical spaces but also to things, and “the relationship between things, bodies, and meanings in space,” including how these interact to create and shape spaces.⁴⁷⁹ As such, Davies proposes that law-in-space analysis is not only concerned with the ways that law regulates or

⁴⁷⁶ David Delaney, “Beyond the Word: Law as a Thing of this World” in Jane Holder and Carolyn Harrison (eds), *Law and Geography* (Oxford University Press 2003)

⁴⁷⁷ *ibid* 68

⁴⁷⁸ Davies, *Asking the Law Question* (n 318) 445

⁴⁷⁹ *ibid*

defines spaces, but about how law interacts with things or relationships to create spaces, shape spaces, and give them meaning.⁴⁸⁰

By contrast, the notion of “Space-in-Law” explores the “discursive spatiality of law” or the presence of space and spatial metaphor within legal discourse.⁴⁸¹ These are the ways in which spatial vocabulary shapes the legal system. In law, things are often described being inside or outside certain areas of law. Because such terms are consistently used in legal discourse, they become “embedded in law [and] have an influence on the way that the legal world is experienced and made.”⁴⁸² As was discussed in the previous section, such spatial metaphors are prevalent in the language of transitional justice processes. Björkdahl and Buckley-Zistel have even argued that spatial analyses of peace and conflict derive value, in part, from the inherent spatialities of the language of the field.⁴⁸³ They cite terminologies such as “[w]ar zones, border disputes, [and] fights over land and territory...” as examples of such language.⁴⁸⁴ Concerning participation, Cornwall discusses the “spatial metaphors” that are common throughout development discourses, which frequently feature phrases such as “‘opening up’, ‘widening’, and ‘extending’” opportunities for participation.⁴⁸⁵ In particular, she highlights those which demonstrate how people are situated within power relationships, such as “‘positioned’, ‘situated’; and ‘dislocated’, ‘displaced’”.⁴⁸⁶ Despite the prevalence of such metaphors in the law and policy relating to transitional justice processes, Cole nevertheless concludes that, as yet, space has “not been engaged as a specific mode of inquiry and source of methodological insight” in this field.⁴⁸⁷ In making this argument, Cole acknowledges the existence of a significant volume of transitional justice and peace literature which demonstrates an “implicit spatial focus”, and posits that such research has offered increased attention to how

⁴⁸⁰ *ibid*

⁴⁸¹ Delaney, “Beyond the Word” (n 476) 69

⁴⁸² Davies, *Asking the Law Question* (n 318) 445

⁴⁸³ Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340) 5

⁴⁸⁴ *ibid*

⁴⁸⁵ Cornwall, “Spaces for transformation?” (n 310) 77

⁴⁸⁶ *ibid*

⁴⁸⁷ Cole (n 431) 236

“local and global” conditions interact and affect post-conflict communities.⁴⁸⁸ However, this research has not yet engaged explicitly with how space contributes to this “complex, frictious interplay”.⁴⁸⁹ In other words, while research has explored the legal and social strands of peace, conflict, and transitional justice, an opportunity remains to explore how these are woven together with the spatial strand.

Delaney argues that both “Space-in-Law” and “Law-in-Space” are “complementary moments” of analysis.⁴⁹⁰ As such, they are not necessarily separate in their application and are both potentially useful in an investigation of transitional justice. This thesis proposes a method which involves combining both “moments” of analysis, examining how discursive conditions – whether implicitly spatial or otherwise – form part of the complex interweaving of the spatial, legal, and social strands. Davies argues that legal theory has developed to include pluralism in terms of law, subject, space, and time, and in so doing reveals “the fractures and dynamism inherent in all of the formerly invariant dimensions of legal theory”.⁴⁹¹ She describes this “multidimensional” nature of legal theory not as a “singular conception of law” but as an “ethos”.⁴⁹² An “ethos” is not a singular theory or understanding of law to be adopted in any one specific area; rather, it is “an attitude of perception” which may be applied as broadly or narrowly as the analysis requires.⁴⁹³ It is within this dynamism that this thesis situates its methodology. The remainder of this chapter will explore how the *language* of transitional justice contributes to the “shaping and reshaping” of the transitional world,⁴⁹⁴ and how this conceived transitional justice space mutually constitutes women as participants. This section will begin by establishing law as a form of discourse, before exploring that discourse’s inherently constitutive effect. It will then propose a

⁴⁸⁸ *ibid*

⁴⁸⁹ *ibid*

⁴⁹⁰ Delaney, “Beyond the Word” (n 476) 71

⁴⁹¹ Davies, *Law Unlimited* (n 53) 5

⁴⁹² *ibid*

⁴⁹³ *ibid*

⁴⁹⁴ Delaney, “Beyond the Word” (n 476) 68

methodology of “critical spatial discourse analysis” which allows for an analysis of how women’s portrayal in transitional justice processes relates to their participation.

3.4.1 – Law as Discourse

The introduction to this thesis cited Philippopolous-Mihalopolous in his assertion that law’s “defining characteristic” is its “textuality”.⁴⁹⁵ Because textuality is “law’s main tool of representation”, law operates by translating the material world into legal language, which Philippopolous-Mihalopolous argues serves to flatten the multiple narratives of the space through which the law functions.⁴⁹⁶ As such, he proposes that “textuality” is frequently employed as a means of reducing the “multiplicity of narratives” which define space, into a “business of lying things out side by side”.⁴⁹⁷ In this way, law does not only function to regulate behaviour; it also shapes the social world in which people live, as well as their perceptions of it.⁴⁹⁸ As a result, no legal institution can exist separately “from the narratives that locate it and give it meaning”.⁴⁹⁹ For the purposes of this thesis, then, it is necessary to uncover the narratives which locate and give meaning to the Liberian Truth and Reconciliation Commission.

This objective makes imperative an examination of the language of various texts, as well as the constitutive consequences of such language for women in the transitional justice space. Koskenniemi, taking a critical approach to legal study, has discussed that legal language and its associated “grammar” can be employed to make competing arguments. He proposes that such arguments “frequently were not the product of objective legal analysis, but actually the result of the ‘structural bias’ of the persons

⁴⁹⁵ Philippopolous-Mihalopolous “And For Law” (n 47) 5

⁴⁹⁶ *ibid*

⁴⁹⁷ *ibid*

⁴⁹⁸ McEvoy, “Beyond Legalism” (n 49) 416

⁴⁹⁹ Robert M Cover, “Foreword: Nomos and Narrative” (1983) 97 *Harvard Law Review* 4, 4. See also Alex Jeffrey, “Legal geography 1: Court materiality” (2019) 43(3) *Progress in Human Geography* 565, 567; Jeffrey, *The Edge of Law* (n 415) 31

and institutions making them”.⁵⁰⁰ He therefore argues that it is important to understand these biases in order to ascertain how certain legal decisions are the product of conscious choices on the part of legal actors. Charlesworth has similarly argued that international lawyers “are not trained” to interrogate the “politics” of their choice of facts, since they rarely reflect on their own biases arising from their lives and experiences.⁵⁰¹ She proposes that this results in lawyers overlooking the potential inaccuracies or partialities of “facts”.⁵⁰² In the transitional justice context, McEvoy and McConnachie have employed the example of the South African Truth and Reconciliation Commission to illustrate that the extent to which victims are heard in transitional justice processes will reflect “choices” by those running the processes themselves.⁵⁰³ They argue that transitional justice mechanisms are more likely to give opportunities to speak to those whose testimony will match the desired outcomes of the process, and ignore those who may be critical of the process’s aims or procedures.⁵⁰⁴ This thesis will suggest that discourse analysis forms one way of investigating these choices.

3.4.2 – The Constitutive Power of Discourse

Grosfoguel critiques Cartesian notions of universality as assuming that the “epistemic subject has no sexuality, gender, ethnicity, race, class, spirituality, language, or epistemic location within power relations”, thus presenting them as a “faceless subject [which] floats through the sky without being determined by anything or anyone”.⁵⁰⁵ A legal geographical analysis that accounts for the social, as well as the legal and spatial, therefore argues that subjects cannot be considered outside of their relations with the outside world, including transitional justice processes. It is necessary to understand “the importance of the space in which the subject is located and the way in which the

⁵⁰⁰ Martti Koskenniemi, “What is Critical Research in International Law? Celebrating Structuralism” (2016) 29(3) *Leiden Journal of International Law* 727, 728

⁵⁰¹ Charlesworth, “A Discipline of Crisis” (n 164) 383-4

⁵⁰² *ibid*

⁵⁰³ McEvoy and McConnachie (n 223) 496-7

⁵⁰⁴ *ibid*

⁵⁰⁵ Grosfoguel (n 86) 89

subject is connected to that space.”⁵⁰⁶ In conducting a spatial analysis, Massey proposes an additional layering of social relations upon space. For Massey, space is not abstract but is itself socially produced.⁵⁰⁷ She argues that “what is always at issue is the *content*, not the spatial form, of the *relations through which*, space is constructed”.⁵⁰⁸ The social strand of transitional justice is thus indispensable to the constitutive process. One of the ways in which this social strand emerges is through language, which itself has a distinct constitutive power.⁵⁰⁹ As such, this analysis places emphasis on the language of the social and legal relationships that occurred and existed within the Liberian Truth and Reconciliation Commission as a case study, and the consequences of these for participants and their constitutivity.

Discourses play an important role in the constitutive process. Indeed, discourse has been described as having the power to “shape the very boundaries of agency” while “producing and embedding particular institutional forms, patterns and practices.”⁵¹⁰ Competing discourses may exist within one space. As Foucault has argued, there does not exist “on the one side, a discourse of power and opposite it, another discourse that runs counter to it”.⁵¹¹ Rather, “different and even contradictory discourses” can exist within the same “strategy”, process or movement.⁵¹² In this way, discourse mirrors the “plural,” “layered,” and “multidimensional”⁵¹³ nature of space. It is “the discursive practices of institutions and actors” that determine the conditions by which subjects are constructed and knowledge produced.⁵¹⁴ The ways in which crimes are defined and victims are constructed through testimony and reporting “discursively contribute to the ‘filtering’” of who can be a participant, who can be a victim, and what topics they

⁵⁰⁶ Keenan (n 112) 58-9

⁵⁰⁷ Massey, *Place, Space and Gender* (n 361) 5. See also Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340) 4

⁵⁰⁸ Massey, *For Space* (n 374) 101 [original emphasis]

⁵⁰⁹ See Hellen Venganai, “(Re)constructing positive cultures to protect girls and women against sexual violence” (2015) 29(3) *Agenda: Empowering Women for Gender Equity* 145, 147

⁵¹⁰ Cornwall, “Spaces for transformation?” (n 310) 81

⁵¹¹ Michel Foucault, *The History of Sexuality, Volume 1: An Introduction* (Pantheon Books 1978) 101

⁵¹² *ibid* 102

⁵¹³ Davies, *Asking the Law Question* (n 318) 441

⁵¹⁴ Thorne (n 111) 484

can discuss in the transitional context.⁵¹⁵ For example, Thorne argues that the social experiences of crimes are “fluid and multifaceted”, but that their legal definition serves to “temporally bind and otherwise restrict” their meaning.⁵¹⁶ In doing so, such definitions act as a discursive restriction on victims discussing their experiences of those crimes.⁵¹⁷ In the transitional justice context, it has been argued that the “prescribed mandates and official legal expectations” of processes such as truth commissions can constrain the narratives that are able to emerge through testimony.⁵¹⁸ Objects come into being by virtue of the “discursive rules of formation”, and as such, discourse does not simply describe objects; it constitutes them.⁵¹⁹

As was discussed in the previous section, the discourses associated with participation and with a particular participatory process can limit the “subject positions” that are available to participants in that context.⁵²⁰ This means that, in the transitional justice context, constituting the legal subject as a “perpetrator”, “witness”, or “victim” brings forth particular rules and assumptions associated with these identities. It has been argued that one of the primary objectives of feminist research is a willingness to engage with the “language available” in the field in question, and how it might facilitate or preclude certain discussions.⁵²¹ As such, Shepherd proposes that this gives particular importance to the language used to describe women, arguing that the “discursive constitution of gender” can “form the basis of an engaged critique”.⁵²² Shepherd’s research investigates the constitutive impacts of UNSCR 1325 on women and gender. This thesis aims to build on this research by investigating the constitutive impacts of transitional justice processes and their associated documentation on women and gender, and how this affects women’s participation in these processes.

⁵¹⁵ *ibid*

⁵¹⁶ *ibid* 476

⁵¹⁷ *ibid*

⁵¹⁸ Elisabeth Porter, “Gendered narratives: Stories and silences in transitional justice” (2016) 17(1) *Human Rights Review* 35, 37

⁵¹⁹ Thorne (n 111) 472

⁵²⁰ Cornwall, “Spaces for transformation?” (n 310) 83-4

⁵²¹ Grosz (n 69) 479, cited in Shepherd, *Gender, Violence and Security* (n 69) 3

⁵²² Shepherd, *Gender, Violence and Security* (n 69) 3-4

The reports of the Liberian Truth and Reconciliation Commission can provide a rich basis for this type of research. Thorne proposes that, given Foucault's understanding of discourses as "historically specific systems of meaning" which give shape to the identities of subjects and objects, investigating historical discourses can facilitate an understanding of how discourses, social practices, and institutions mutually shape one another.⁵²³ Thorne, while not engaging with the concept of constitutivity, nevertheless can be argued to evoke the constitutive process in his research on witnessing at the ICTR.⁵²⁴ Thorne describes the "witness" not as a "self-evident being" existing outside the legal process of the tribunal, but, quoting Foucault, as "continuously dissolved and recreated in different configurations, along with other forms of knowledge and social practices".⁵²⁵ Thus, Thorne explores how legal actors are constituted by the discursive elements of these processes.⁵²⁶ What this thesis proposes is that the textuality of the law flattens women through its representations of them in legal discourses, including TRC mandates and the WPS Agenda. The reporting of transitional justice processes creates distinct conceptual spaces but in doing so still tries to lay things out side-by-side, resulting in a legal world which does not fully represent women. In order to demonstrate this, it proposes a form of discourse analysis that is both critical and which accounts for the inherent spatiality of the context being investigated.

3.4.3 – Towards a Critical Spatial Discourse Analysis

This project uses a form of critical discourse analysis as its method. Critical discourse analysis seeks to uncover the "discursive strategies that legitimize control" or which allow a particular group to exercise power or dominance over discourse.⁵²⁷ Ní Aoláin has proposed that, for feminist scholarship, this means a reflection on how such "hegemonic discourses" generate "resistance to both 'naming' gendered harms and the

⁵²³ Thorne (n 111) 472; Foucault, *The Archaeology of Knowledge* (n 347) 55

⁵²⁴ *ibid*

⁵²⁵ *ibid* 473, citing Foucault, *The Archaeology of Knowledge* (n 347) 188

⁵²⁶ Thorne (n 111) 472

⁵²⁷ Teun A van Dijk, "Principles of Critical Discourse Analysis" (1993) 4(2) *Discourses and Society* 249, 254

appropriate legal and political mechanisms to address them”.⁵²⁸ This analysis will follow a similar approach by investigating how hegemonic discourse can produce singular conceptions of the “woman” for the purposes of transitional justice. The method employed resonates with Stubbs’ idea of language “above the sentence”.⁵²⁹ That is, it is concerned not only with the “story” or “narrative” being established in the documentation of the Liberian TRC, but with *how* that story is being told. The method employed for the purposes of this thesis involved three readings of the final reports of the Liberian TRC. The first reading allowed for a broad understanding of the narrative of the reporting. The second reading was more in-depth, and involved a process of coding of every time certain terms appeared. The terms specifically searched were: “woman”, “women”, “female”, and “man”, “men”, and “male” to allow for comparison. The appearance of each term was coded according to whether the occurrence related to participation in the TRC process, or to the parties’ experiences of conflict. Each appearance was then further coded according to whether the usage demonstrated agency or passivity on the part of the actors, with codes for “victimhood”, “vulnerability”, and “perpetrator” particularly employed. Again, this follows Ní Aoláin’s approach of first differentiating between women as “objects of transitional justice processes (primarily as victims) and women as exerting autonomous capacity in these processes (as negotiators, political actors and change agents)”.⁵³⁰ The critical discourse analysis also involved searching for each instance of the term “gender”, and coding it against whether it was used to refer to women, men or both. The third and final reading was a contextual reading of each occurrence of each term, providing insight about how the “story” is told. Following Bode’s work, this thesis acknowledges that its interpretations of the texts “are not meant to be authoritative”; rather, they recognise that “a narrative always implies interpretation” with neither the author(s) nor the reader/researcher having “full control” over that

⁵²⁸ Ní Aoláin “Advancing Feminist Positioning” (n 50) 221

⁵²⁹ Michael Stubbs, *Discourse Analysis: The Sociolinguistic Analysis of Natural Language* (Blackwell 1983) 1

⁵³⁰ Ní Aoláin “Advancing Feminist Positioning” (n 50) 209

narrative.⁵³¹ Bode proposes that this in fact produces an “opportunity” for research, by opening the possibility for different researchers to bring their own interpretation to analysis of the texts in question.⁵³²

In her own discourse analysis, Shepherd rejects the understanding of discourses as “frames”: as fixed frames of reference through which “[m]eaning is assumed constant and identifiable” and through use of which the effectiveness of discourses can be measured.⁵³³ Rather, she proposes that discourses themselves can shape meaning. It is this approach which is followed in this analysis, which considers discourses as a constitutive force. This involves an understanding of “discursive conditions”.⁵³⁴ Thorne understands these to mean “the way social power[,] abuse, dominance, and inequality are enacted, reproduced and resisted by writing and speaking”.⁵³⁵ As such, interrogating discursive conditions involves asking what rules were established in the texts in question and how they limit what is and can be said. This thesis ultimately argues that the discursive conditions of the Liberian TRC were set prior to the establishment of the TRC itself, with the TRC influenced and shaped by previous relationships, thus privileging certain identities. Following Thorne, the discursive conditions shaping the processes of participation at the Liberian TRC begin with its mandate, one of its “foundational documents” containing “*statements* which act to restrict individuals and objects”.⁵³⁶ Such statements shape “which individuals can and which individuals cannot, occupy a given subject position”. The statement thus “[c]irculates, is used, disappears, allows or prevents the realization of a desire, serves or resists various interests, participates in challenge and struggle, and becomes a theme of appropriation or rivalry”.⁵³⁷ As such, dominant statements of the Liberian TRC shape who is allowed to participate, under what circumstances, and in what role.

⁵³¹ Bode (n 97) 354

⁵³² *ibid*

⁵³³ Shepherd, *Gender, Violence and Security* (n 69) 17

⁵³⁴ Foucault, *The Archaeology of Knowledge* (n 347)

⁵³⁵ Thorne (n 111) 468

⁵³⁶ *ibid* 474 citing Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage Books 1977) [original emphasis]

⁵³⁷ Foucault, *The Archaeology of Knowledge* (n 347) 126

It is important to note that, as argued by Thorne, “Foucault’s thought on discursivity does not provide a complete method for conducting discourse analysis”.⁵³⁸ However, his ideas provide interesting insights as to how discourse can have materially constitutive effects. Shepherd has further argued that Foucault is “inconsistent” in his treatment of the “real” and “discursive” worlds, and explains that she draws from his notion of discourses as “practices” that shape the objects of which they speak.⁵³⁹ She ultimately rejects the notion prevalent in some forms of critical discourse analysis that there exists a discursive realm that is separate from reality, or the “real”, material world.⁵⁴⁰ This thesis also rejects this notion. While Shepherd’s “discourse-theoretical analysis” grounds itself in a post-structuralist approach which considers “the ways in which practices of (re)production, (re)presentation and (re)legitimization” are themselves discursive in nature, this thesis embarks on what will be described as a “critical spatial discourse analysis”, founded on the complexity and dynamism of space. Of course, “discourses are culturally constructed representations of reality rather than an objective account of reality”.⁵⁴¹ As such, this research does not attempt to “attain a true understanding of an existing reality”.⁵⁴² Rather, it attempts to understand how the representation of reality contained in the reports of the TRC came to be constituted. In doing so, it follows legal geographical conceptions of space, understanding any representation of reality as a space itself, and thus inseparable from all other space with which it comes into contact.

In Doty’s conceptualisation of discourse, discourses are inherently “open-ended and incomplete”.⁵⁴³ That is, they are “contingent” on the constitutive practices of the discourse in order to “(re)produce meaning”, while discursive practices “construct and constitute, legitimize, resist and suspend meaning”.⁵⁴⁴ Doty’s work encourages

⁵³⁸ Thorne (n 111) 473

⁵³⁹ Shepherd, *Gender, Violence and Security* (n 69) 19

⁵⁴⁰ *ibid* 20

⁵⁴¹ Thorne (n 111) 472

⁵⁴² *ibid*

⁵⁴³ Roxanne Lynn Doty, *Imperial Encounters: The Politics of Representation in North-South Relations* (University of Minnesota Press 1996) 6

⁵⁴⁴ Shepherd, *Gender, Violence and Security* (n 69) 21

researchers to ask “how meanings are produced and attached to various social subjects and objects, thus constituting particular interpretive dispositions that create certain possibilities and exclude others”.⁵⁴⁵ Building on this approach, this thesis suggests that discursive practices not only constitute discourse, but constitute *space*, and in particular call into being a conceptual space produced by the discourse itself. This approach understands the representations of the TRC’s reporting not as reality but as a separate space which exists within/on top of/throughout the actual lived space of the TRC. In this way, the method is explicitly spatial in its focus, relying on the legal geographical concepts explored earlier in this chapter as its theoretical framework.

This method accounts for *plurality*, using critical legal pluralism to allow resultant complexities to be observed. Legal pluralism is the “co-existence of multiple systems or forms of law within one geographical space.”⁵⁴⁶ Davies argues that pluralism can be preferable to monism because it allows us to see how non-legal systems or norms impact behaviour and power relations; it provides for “a more complex account” of the various sources of law in the international sphere, while also acknowledging the impact of grassroots sources of law.⁵⁴⁷ Such a lens of analysis therefore not only allows for examination of formal sources of law but can also lend credibility to informal or non-state sources of law,⁵⁴⁸ all of which occupy an increasing profile in transitional justice contexts. Indeed, von Benda-Beckmann and von Benda-Beckmann have discussed that legal pluralism “draws attention to the possibility” that different forms of law from different sources can co-exist in the same spaces, with the potential to produce multiple, overlapping conceptual spaces.⁵⁴⁹ They argue that in such legally plural contexts, spaces themselves become “multinormative”, with the legal, spatial, and power relations occurring within them determined by whomever exercises authority and for what purpose.⁵⁵⁰ If legally plural contexts are understood as a tangled

⁵⁴⁵ Doty, *Imperial Encounters* (n 543) 4

⁵⁴⁶ Davies, *Asking the Law Question* (n 318) 410

⁵⁴⁷ *ibid* 411

⁵⁴⁸ *ibid*

⁵⁴⁹ von Benda-Beckmann and von Benda-Beckmann (n 364) 34

⁵⁵⁰ *ibid* 36

mass of “inconsistent and overlapping parts”,⁵⁵¹ discourse, as a means of textually laying these parts out “side by side”,⁵⁵² becomes particularly important. Discourse becomes the process by which complex legal and spatial arrangements are presented and represented, with such presentations a matter of choices on the part of actors involved in generating that discourse.

This thesis has been clear in its intention to avoid essentialisation or flattening. In this vein, Davies has proposed the importance of recognising further varieties of legal pluralism, namely the legal pluralism of the international, which recognises law beyond the territorial boundaries of the nation state, and critical legal pluralism.⁵⁵³ Kleinhans and Macdonald have described critical legal pluralism as one which recognises the transformative capacity of the legal subject.⁵⁵⁴ While what they term a “[s]ocial-scientific legal pluralism” understands the subject as being “exclusively constituted by law”, a critical legal pluralism understands that legal subjects are not “wholly determined by law”, but that they themselves are able to “produce legal knowledge” and are themselves capable of mutually constituting the law which shapes their subjectivity.⁵⁵⁵ One of the ways in which this might happen is through their relationship with the legally plural environment. A critical legal pluralism, for Kleinhans and Macdonald, rejects the notion that there need exist a hierarchy of laws and legal sources within a given space. Rather, critical legal pluralism recognises that “[n]ormative heterogeneity exists both between various normative regimes which inhabit the same intellectual space, and within the regimes themselves”, with the ways in which legal subjects interact with these heterogenous regimes having a mutually constitutive effect on both subject and law.⁵⁵⁶

⁵⁵¹ Griffiths (n 395) 4

⁵⁵² Philippopoulos-Mihalopoulos “And For Law” (n 47) 5

⁵⁵³ Davies, *Asking the Law Question* (n 318) 421

⁵⁵⁴ Martha-Marie Kleinhans and Roderick A Macdonald, “What is a Critical Legal Pluralism?” (1997) 12(2) *Canadian Journal of Law and Society / La Revue Canadienne Droit et Société* 25, 37

⁵⁵⁵ *ibid* 38

⁵⁵⁶ *ibid* 39

In this way, the spatial discourse analysis described here is also *critical*. It is developed from Koskenniemi's approach of "regressive analysis". In a 2016 piece reflecting on *From Apology to Utopia*, Koskenniemi proposes an approach of "regressive analysis" in which the analyst does not propose new theories, rules, or models, but instead makes "explicit the conditions under which specific proposals seem professionally plausible and are accordingly either approved or rejected."⁵⁵⁷ As such, he proposes a research question which reflects the following: "What does one need to believe in order to think that rule X instead [of] Y should be applied, and that it should be applied in the way Z instead of W?"⁵⁵⁸ In this formulation, Koskenniemi is less concerned with evaluations of the effectiveness of individual laws or processes; rather, he advocates understanding the law or process as it is, how it is applied, and why it has been applied in that way. In doing so, he is clear that laws, processes, and policies are choices made by actors, based on considerations which make "some choices seem 'good' and others 'bad'".⁵⁵⁹ In the transitional justice context, this formulation allows for analysis which moves away from measuring and evaluating transitional justice processes and their outcomes for women, and instead explores what actually happens within these processes, how these things happen, and the dynamics which produce these conditions.

To this end, Madlingozi has questioned whether it is legitimate for "the transitional justice expert" to "speak about or for the victim".⁵⁶⁰ He quotes Alcott, who posed the following question:

*Is the discursive practice of speaking for others ever a legitimate practice, and if so, what are the criteria for validity? In particular, is it ever valid to speak for others who are unlike me or who are less privileged than me?*⁵⁶¹

⁵⁵⁷ Koskenniemi, "What is Critical Research in International Law?" (n 500) 730

⁵⁵⁸ *ibid* 732

⁵⁵⁹ *ibid*

⁵⁶⁰ Tshepo Madlingozi, "On Transitional Justice Entrepreneurs and the Production of Victims" (2010) 2(2) *Journal of Human Rights Practice* 208, 210

⁵⁶¹ Linda Alcott, "The Problem of Speaking for Others" (1991) 20 *Cultural Critique* 5, 7 cited in *ibid* 210

With this in mind, this thesis is not attempting to speak for victims, but to understand *how victims are spoken about*. Importantly, this thesis does not attempt to package the stories of women affected by the conflict for dissemination in the “First World”. It does not talk about these women, but the representations of these women. The women in the Liberian TRC’s reporting, it is argued, are conjured and brought into being by these representations. This analysis ultimately seeks to explore the relationship between discourses and discursive practices on one hand, and legal geography on the other. It proposes that existing concurrently with the physical/material space of the transitional justice mechanism is a conceptual space created and constituted through *discourse* in the form of the reports of the mechanisms, reports of the United Nations, and the international legal instruments that inform both.

3.5 – Conclusions

Legal geography proposes that law and society are woven together to produce space. Legal geographical analysis involves teasing apart the spatial, legal, and social strands of this braid to understand how these elements interact. Of course, any separation of these strands is necessarily artificial – they are inseparable, inextricably linked to and shaped by one another. Any attempt to tease them apart would nevertheless leave traces of their interweaving. However, it is proposed in this chapter that, by attempting to untangle the spatial, legal, and social strands of transitional justice, it is possible to better understand the space(s) of transitional justice, and how the complex legal environment of the transition is mutually constitutive of the transitional space, and the actors who participate in that space. Such an understanding allows an exploration of the relationship between women’s participation and their portrayal in these processes. This chapter has therefore proposed applying the legal geographical concepts of space, complexity, and constitutivity to unpick these spatial, legal, and social strands.

In order to unpick these strands, the chapter has proposed employing a method of “critical spatial discourse analysis”. This method recognises law as a form of discourse, and discourse as a constitutive force. Existing scholarship has recognised

discourses and discursive practices as constituting subject positions. In the context of participation, this means that who participates in a given process and the ways in which they participate are determined by the discursive conditions of that participatory practice. In this way, discourses can constitute participants as legal subjects. This analysis proposes that discourse is not only constitutive of subjects, but can also constitute *space*. In this way, the discursive practices of the Liberian Truth and Reconciliation Commission, as emerging through its reporting, themselves establish a conceptual discursive space, with that space contributing to how women are constituted as participants. Thus, by interrogating these discursive conditions, it is possible to understand how these conditions constitute women, and to begin to uncover a link between their portrayal and their participation. The next chapter will expand on these ideas by demonstrating how the reporting of the Liberian TRC established a discursive space, thus beginning to unpick the spatial and legal strands of the process.

4 – The Complex Legal Spaces of the Liberian Truth and Reconciliation Commission

4.1 – Introduction

This thesis has made clear its intention to explore the problem of women’s inadequate participation in transitional justice processes. In order to understand the relationship between their participation and their portrayal in such processes, it is necessary to look beyond the legal process itself and situate it within its wider context. The previous chapter proposed that such an understanding can be reached through a legal geographical analysis, which involves investigating the *spatial*, *legal*, and *social* elements of a given transitional justice process. This chapter will begin to embark on such an analysis by attempting to unpick the spatial and legal strands of the Liberian Truth and Reconciliation Commission. This chapter opens with a background to the Liberian civil conflict, the TRC, and its reporting. It explains the choice of Liberia as a case study, highlighting that a comparatively high number of women participated in the Liberian TRC, and that the reporting demonstrates a consciousness of the need to represent women and their experiences. The chapter then considers how this transitional justice process itself may have constituted multiple spaces and how these spaces evolved over time.

To understand the spatial and legal elements of the Liberian TRC, this chapter will attempt to establish it as a “situated legal practice”. It will argue that, through boundary- and distance-making actions, the space of the Liberian TRC was broadened beyond the physical space of the Commission into rural Liberia, and beyond the territorial borders of Liberia into diaspora communities, with profound consequences for how women participated in the process. Furthermore, the chapter will argue that it is not possible to conceive of the Liberian TRC as a singular distinct and bounded space. Rather, the TRC and its reports comprise a multiplicity of overlapping spaces, each mutually constitutive of the other, of women as participants, and of their modes of participation in the process. In order to ground its analysis of how women were

constituted in and by the TRC process, the chapter will consider how the reporting of the TRC itself establishes its own discursive space. This will then allow for further exploration of how spatial, legal, and social factors interacted to constitute women as participants in the TRC process. The chapter ultimately argues that the TRC is inseparable from its participants, with those participants forming part of the TRC space. This means that participation is determined by the mutually constituting relationship of the TRC, its participants, and their modes of participation, with the space shaped to be receptive to certain identities over others.

4.2 – Introducing the Liberian Truth and Reconciliation Commission

From 1989 until 1997, and again from 1999 until 2003, Liberia was engulfed by periods of complex and fragmented civil conflict, during which government armed forces and rebel factions committed widespread human rights violations.⁵⁶² This indiscriminate violence up-ended Liberian society, resulting in the destruction of the country's infrastructure⁵⁶³ and the mass-displacement of its population. Liberia's periods of civil conflict – described as “one of the worst civil wars in modern history”⁵⁶⁴ – eventually came to an end in 2003 with the signing of the Comprehensive Peace Agreement (or “Accra Agreement”).⁵⁶⁵ The agreement was signed by representatives of the Liberian government and from two prominent rebel groups –

⁵⁶² The Liberian TRC separates fighting factions into three categories according to the number of violations they are reported to have committed: “(1) Significant Violator Groups; (2) Less Significant Violator Groups; and (3) military institutions drawn into conflict by their defensive and offensive postures”. Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Two: Consolidated Final Report* (30 June 2009) <http://trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf> (“*Consolidated Final Report*”) 20

⁵⁶³ Shai André Divon and Morten Bøås, “Negotiating Justice: Legal Pluralism and Gender-Based Violence in Liberia” (2017) 38(6) *Third World Quarterly* 1381, 1381

⁵⁶⁴ Awa Dabo, “In the Presence of Absence: Truth-Telling and Displacement in Liberia” (International Center for Transitional Justice 2012) <<https://www.ictj.org/publication/presence-absence-truth-telling-and-displacement-liberia>> 4

⁵⁶⁵ Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the political parties (Accra, 18 August 2003), available at UN Doc S/2003/850 (“Accra Agreement”)

Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) – with negotiations having been supported by the Economic Community of West African States (ECOWAS), the United Nations, and the African Union.⁵⁶⁶ While a variety of transitional justice options were discussed during the negotiations that would eventually produce this agreement,⁵⁶⁷ the agreement ultimately provided for the creation of a truth commission as a forum to “address issues of impunity” and “to facilitate genuine healing and reconciliation”.⁵⁶⁸ The Liberian Truth and Reconciliation Commission – the only transitional justice mechanism provided for by the Accra Agreement – was subsequently established by the Act to Establish the Truth and Reconciliation Commission of 12 May 2005 (“TRC Act”), which also formed its mandate.⁵⁶⁹ This section will provide an overview of the Liberian Truth and Reconciliation Commission, explaining how its mandate and the circumstances of its operation make this particular transitional justice mechanism a useful case study for an analysis of women’s participation in transitional justice processes.

4.2.1 – An Overview of the Liberian Truth and Reconciliation Commission

The Liberian Truth and Reconciliation Commission has been described as a creation of “compromise at the peace talks”, with members of civil society on one side proposing a prosecution mechanism for perpetrators of wartime violence, and representatives of armed groups on the other side seeking to avoid their own prosecutions.⁵⁷⁰ Dhizaala notes that, while international observers and “[p]olitically

⁵⁶⁶ *ibid*; James Tonny Dhizaala, “Transitional Justice in Liberia: The Interface Between Civil Society Organisations and the Liberian Truth and Reconciliation Commission” in Jasmina Brankovic and Hugo van der Merwe (eds), *Advocating Transitional Justice in Africa: The Role of Civil Society* (Springer 2018) 44

⁵⁶⁷ See, e.g. Paul James-Allen, Aaron Weah and Lizzie Goodfriend, “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia” (International Center for Transitional Justice 2010) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Beyond-TRC-2010-English.pdf>> 5

⁵⁶⁸ Accra Agreement (n 565) Art.XIII

⁵⁶⁹ Act to Establish the Truth and Reconciliation Commission of 12 May 2005 (National Transitional Legislative Assembly of Liberia) (“TRC Act”)

⁵⁷⁰ Carla De Ycaza, “A Search for Truth: A Critical Analysis of the Liberian Truth and Reconciliation Commission” (2013) 14(3) *Human Rights Review* 189, 195

oriented [civil society organisations]” were against any amnesty for serious crimes prohibited by international law, negotiators at the peace talks were concerned that “any threat of prosecution would make it difficult to end the war, as the faction leaders vowed to continue fighting”.⁵⁷¹ Because of this, a truth commission was proposed in place of a war crimes tribunal.⁵⁷² One party to the negotiations, Liberian politician Conmany Wesseh, is quoted as saying that “the warring parties agreed to the truth commission concept because they wanted to prevent the establishment of a war crimes tribunal”.⁵⁷³ As such, the TRC can be seen to be a product of decision and agreement by the various actors involved in its creation, with their competing interests having ongoing ramifications for the constitutivity of the process itself.⁵⁷⁴

The TRC was inaugurated on 20 February 2006 and ran for three years until the end of its mandate on 22 June 2009. The mandate of the TRC was extended by the Liberian Legislature on 22 September 2008, having been originally scheduled to end on that date. The TRC’s own reporting describes its mandate as “expansive and complex”.⁵⁷⁵ Section 26 of the TRC Act required “the TRC to achieve multiple ends”, with its ultimate goal described as “promoting national peace, security, unity and reconciliation”.⁵⁷⁶ Though this goal is broad and multifaceted, the TRC Act nevertheless drew a series of boundaries around the topics and activities that fell within the TRC’s mandate,⁵⁷⁷ with these priorities again determined through negotiation and choices. The TRC’s reporting summarised its mandate as “to foster truth, justice and reconciliation by identifying the root causes of the conflict, and determining those who are responsible for committing domestic and international crimes against the Liberian

⁵⁷¹ Dhizaala (n 566) 48. See also Glucksam (n 455) 98.

⁵⁷² Dhizaala (n 566) 48

⁵⁷³ *ibid*

⁵⁷⁴ Koskeniemi “What is International Law for?” (n 8) 30

⁵⁷⁵ Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume One: Preliminary Findings and Determinations* (30 December 2008). <http://trcofliberia.org/resources/reports/final/volume-one_layout-1.pdf> (“*Preliminary Findings and Determinations*”) 16

⁵⁷⁶ *ibid* 16; TRC Act, s.26

⁵⁷⁷ See Blandy and Sibley (n 380) 276

people”.⁵⁷⁸ As such, throughout its period of operation, the TRC engaged in investigation of “gross human rights violations and violations of international humanitarian law” and serious domestic crimes;⁵⁷⁹ investigation of Liberia’s historical development⁵⁸⁰ and the root causes of the conflict;⁵⁸¹ and the publication of a comprehensive report of the TRC’s work and findings.⁵⁸²

The TRC’s final report clarifies that the TRC “is neither a criminal nor prosecuting institution”.⁵⁸³ As such, to achieve its mandate, the TRC conducted public hearings, gathered witness statements, and conducted desk-based research, rather than the types of criminal investigation that would be expected of a court or tribunal. Nevertheless, its findings were required to meet the “appropriate evidentiary standard of proof” of “[p]reponderance of evidence along with public information (notoriety)”.⁵⁸⁴ Additionally, the TRC had a power of subpoena in order to enforce compliance with its requests to appear, although this power was never used.⁵⁸⁵ The TRC’s Chairman has stated that this was a deliberate decision motivated by the Commissioners’ “commitment of reconciliation”.⁵⁸⁶ As a non-judicial institution, the outcome of the TRC’s years of investigation was not prosecution of perpetrators, but a series of recommendations for Liberia, its people, and the broader “international community”. These recommendations are presented across nine chapters and 64 pages of its final report, and so constitute a significant part of the TRC’s reporting. These recommendations include accountability measures for perpetrators, such as lustration of those in public office (including then-President Ellen Johnson Sirleaf) and the creation of an extraordinary criminal tribunal to prosecute alleged perpetrators of gross human rights violations, violations of international humanitarian law, and the most

⁵⁷⁸ Liberian TRC, *Consolidated Final Report* (n 562) 12

⁵⁷⁹ TRC Act, s.4(a)

⁵⁸⁰ TRC Act, s.4(d)

⁵⁸¹ TRC Act, s.4(c)

⁵⁸² TRC Act, s.4(f)

⁵⁸³ Liberian TRC, *Consolidated Final Report* (n 562) 18

⁵⁸⁴ *ibid*

⁵⁸⁵ Aaron Weah, “Hopes and Uncertainties: Liberia’s Journey to End Impunity” (2012) 6(2) *International Journal of Transitional Justice* 331, 338

⁵⁸⁶ *ibid*

serious domestic crimes.⁵⁸⁷ However, to date, such a tribunal has never been established. Further measures aimed at reconciliation were also recommended, including the re-establishment of the ‘Palava Hut’ system – a traditional truth-seeking practice based within communities.⁵⁸⁸ The TRC also made a series of recommendations aimed at societal transformation, for example the reformation of the country’s political and justice systems, and the promotion of women’s rights.⁵⁸⁹

4.2.2 – The Liberian TRC as a Legal Geographical Case Study

Lundy and McGovern describe truth commissions as “[b]y far the most popular transitional justice mechanism”,⁵⁹⁰ making a truth and reconciliation commission an apt choice of case study. While the mandate and aims of the Liberian TRC in many ways reflect those of previous truth and reconciliation commissions conducted in other states, this particular mechanism possesses some unique characteristics which make it a particularly appropriate case study for a spatial analysis of women’s participation in transitional justice processes. First, the TRC produced numerous reports, which provide a rich textual basis from which to draw in any analysis of the discursive practices of this particular transitional justice mechanism. Second, within that reporting, a great deal of attention is devoted to discussing women, their experiences, and the importance of their participation in the transitional justice process. In the remainder of this section, it will be established that, for these reasons, a critical spatial discourse analysis of the Liberian TRC has the potential to be highly revelatory in its exploration of the relationship between women’s participation and their portrayal.

4.2.2.1 – The TRC’s Reports

By the end of the TRC’s evidence-gathering activities, it had amassed a great deal of data, listed in its final reports as including more than 22,000 written statements; “several dozens” of personal interviews; over 500 live public testimonies; a national

⁵⁸⁷ For a summary, see James-Allen *et al* (n 567) 3

⁵⁸⁸ Liberian TRC, *Consolidated Final Report* (n 562) 363; *ibid* 3

⁵⁸⁹ Liberian TRC, *Consolidated Final Report* (n 562) 386

⁵⁹⁰ Lundy and McGovern (n 6) 270

regional consultation with stakeholders in Liberia’s counties; a “national conference on reconciliation”; “desk research”; and publications of both media organisations and “prominent international and local human rights institutions”.⁵⁹¹ However, for the purposes of this thesis, it is the TRC’s final reports that will be the focus of the analysis. These reports provide a wealth of material from which to draw for an analysis of women’s participation in transitional justice processes. The final reports of the TRC were published as three volumes. The first volume is a report of “Preliminary Findings and Determinations” (hereafter referred to as “the preliminary report”), which was published on 30 December 2008.⁵⁹² The preliminary report states that its publication intended to provide notice of the findings and determinations of the TRC process in advance of its completion,⁵⁹³ while other commentators have argued that it was published in order to deliver a report within the deadline of the first three-month extension to the TRC’s mandate.⁵⁹⁴ The second volume – the “Consolidated Final Report” (hereafter referred to as “the final report”) – was published on 30 June 2009, and presents the TRC’s ultimate findings and recommendations.⁵⁹⁵ The third volume of the report consists of 13 appendices on a variety of topics including, but not limited to, women’s experiences of conflict (hereafter referred to as the “‘Women and the Conflict’ appendix”);⁵⁹⁶ children’s experiences of conflict (hereafter referred to as the “‘Children’ appendix”);⁵⁹⁷ the role of religion and tradition in the conflict and in the subsequent transitional justice process (hereafter referred to as the “‘Conflict, Religion

⁵⁹¹ Liberian TRC, *Consolidated Final Report* (n 562) xxiv

⁵⁹² Liberian TRC, *Preliminary Findings and Determinations* (n 575)

⁵⁹³ *ibid* 2

⁵⁹⁴ James-Allen *et al* (n 567) 9

⁵⁹⁵ Liberian TRC, *Consolidated Final Report* (n 562)

⁵⁹⁶ Liberian TRC, “Women and the Conflict” Appendix (n 59)

⁵⁹⁷ Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title II: Children, the Conflict and the TRC Children Agenda* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-2_layout-1.pdf> (“‘Children’ Appendix”)

and Tradition’ appendix”;⁵⁹⁸ the TRC’s engagement with the media;⁵⁹⁹ and the experiences of the Liberian diaspora community (hereafter referred to as “the Diaspora Project report”).⁶⁰⁰ Of these 13 appendices, ten are available on the TRC website, with those that are unavailable largely technical in nature.⁶⁰¹ The final report indicates that a fourth volume was to be published containing transcripts of all testimonies, however this remains unpublished due to resource constraints.⁶⁰²

While a useful source for the analysis in this thesis, it is important to note that the TRC’s reporting has been subject to criticism.⁶⁰³ A report by the International Center for Transitional Justice (ICTJ) has found that the report lacks evidentiary data and fails to consistently cite sources.⁶⁰⁴ The same report notes that, paradoxically, the TRC has collected more data on the victims of conflict than “any other truth commission before

⁵⁹⁸ Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title IV: The Conflict, Religion and Tradition* (30 June 2009). <http://trcofliberia.org/resources/reports/final/volume-three-4_layout-1.pdf> (“Conflict, Religion and Tradition’ Appendix”)

⁵⁹⁹ Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title VI: Media and Outreach in the TRC Process* (30 June 2009). <https://www.trcofliberia.org/resources/reports/final/volume-three-6_layout-1.pdf>

⁶⁰⁰ Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title VII: A House with Two Rooms: Final Report of the Truth & Reconciliation Commission of Liberia Diaspora Project* (30 June 2009). <http://trcofliberia.org/resources/reports/final/volume-three-7_layout-1.pdf> (“A House with Two Rooms”). Further appendices address economic crimes during the conflict; the TRC’s conflict mapping project; and the post-conflict “psychosocial” needs of the “less fortunate”. See Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title III: Economic Crimes and the Conflict, Exploitation and Abuse* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-3_layout-1.pdf>; Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title V: Short Term Technical Assistance to the Truth and Reconciliation Commission (TRC) of the Republic of Liberia for Conflict Mapping Project* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-5_layout-1.pdf>; and Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume Three: Appendices Title VIII: Accounting for the “Less Fortunate” and their Psychosocial Needs* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-8_layout-1.pdf>.

⁶⁰¹ The missing appendices include a report of the TRC’s work in Liberia’s 15 counties; a report on the administrative and financial operations of the TRC; and a report on minority dissent, all of which are summarised in the Consolidated Final Report. See website of the Truth and Reconciliation Commission of Liberia, “Final Report” <<https://www.trcofliberia.org/reports/final-report.html>>

⁶⁰² As indicated by the TRC Chairman during a press conference on 8 December 2009. See James-Allen *et al* (n 567) 13

⁶⁰³ See, e.g. Jonny Steinberg, “Briefing: Liberia’s Experiment with Transitional Justice” (2009) 109 (434) *African Affairs* 135

⁶⁰⁴ James-Allen *et al* (n 567) 14

it” but that its conclusions are vague, failing to identify those who ought to receive reparations, and providing no criteria to make such a decision.⁶⁰⁵ Nevertheless, it is argued here that this reporting provides a rich textual basis for an analysis of women’s participation and portrayal in the Liberian TRC’s processes. The selection of this material is particularly motivated by its accessibility, and by its coherence as a form of discourse. While, at the time of writing, witness statements and transcripts of the TRC’s hearings have not been published, all volumes of the final reports have been published and are available to the public via the TRC’s website.⁶⁰⁶ More importantly, the reports represent the narrative of the Liberian conflict and transition that has been put forward by the TRC. These reports are not a scattered collection of unrelated testimonies; they are the synthesis of all of the evidence collected by the TRC during its mandate. These reports have been deliberately produced as a definitive construction of this period of Liberian history. Even bearing in mind the criticisms they have faced, the reports are the official output of the TRC, intended for its audience to access and to read. As such, they represent a distinct form of discourse about Liberia’s transitional justice process, which lends itself well to an analysis of this type.

4.2.2.2 – Positioning Women in the Liberian Truth and Reconciliation Commission

It has been argued that women are particularly adversely affected by armed conflict.⁶⁰⁷ The armed conflicts in Liberia were no different, with research reporting that 49% of women aged between 15 and 70 had experienced “at least one act of sexual violence by a soldier” during the first five years of conflict.⁶⁰⁸ Furthermore, as has been discussed in earlier chapters of this thesis, transitional justice processes have been critiqued for their exclusion of women. This issue is acknowledged in the reports of the Liberian TRC. The “Women and the Conflict” appendix states that women had not

⁶⁰⁵ *ibid* 15

⁶⁰⁶ Website of the Truth and Reconciliation Commission of Liberia, “Final Report” <<https://www.trcofliberia.org/reports/final-report.html>>

⁶⁰⁷ See, e.g. UNSCR 1325 (n 28)

⁶⁰⁸ Anne-Marie de Brouwer and Sandra Ka Hon Chu (eds), *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (Douglas & McIntyre 2009) 25

been well served by historical transitional justice processes, which have been “known to gloss over” both the gendered dimensions of conflict and broader society in favour of a narrow focus on civil and political rights violations.⁶⁰⁹ Indeed, the appendix argues that the relationship between transitional justice and gender equality had not been adequately explored within this field.⁶¹⁰ Cognisant of these historical failures, the final reports of the Liberian TRC exhibit a particular consciousness on the part of the drafters as to issues surrounding women’s conflict-era experiences and their participation in the transitional justice process. Perhaps for this reason, the final reports attempt to incorporate gender perspectives at many places throughout. For example, in addition to the “Women and the Conflict” appendix, both the preliminary and final reports dedicate entire sections to women’s participation in the TRC.⁶¹¹ As such, the acknowledgement of women’s experiences having been overlooked in past transitional justice processes appears to demonstrate an awareness of this problem, and the inclusion in the reports of chapters and sections which address women’s experiences demonstrates a desire to avoid this problem in this process.

In this way, it can be seen that the TRC’s reports are a product of design, deliberation, negotiation, and choices by their drafters.⁶¹² The drafting of the TRC reports thus exists at an intersection between the legal, social, and spatial aspects of the transitional justice process. Given the inseparability of these elements, the awareness of gender issues exhibited in the reports necessarily forms part of a layering of social relations upon space.⁶¹³ That is, it does not simply appear at the reporting stage, but finds its roots much earlier in the creation and development of the process. The Accra Agreement which provided for the TRC’s creation emphasises the importance of “an all inclusive [*sic*] participation in governance and the advancement of democracy in Liberia”.⁶¹⁴ Following on from this agreement, the TRC’s mandate further makes several express

⁶⁰⁹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 1

⁶¹⁰ *ibid*, quoting Irene Peitropaoli, Gender Advisor at Concern Worldwide

⁶¹¹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 34; Liberian TRC, *Consolidated Final Report* (n 562) 69

⁶¹² See, e.g. Koskenniemi “What is International Law for?” (n 8) 30

⁶¹³ Massey, *Place, Space and Gender* (n 361) 5

⁶¹⁴ Accra Agreement (n 565) Preamble

and implied references to participation in the TRC process, and a number of its provisions include measures intended to secure participation in the TRC's activities.⁶¹⁵ Indeed, the "Women and the Conflict" appendix describes this legislation as "a gender-sensitive Act of the National Transitional Legislative Assembly".⁶¹⁶ While the appendix does not elaborate on what this term means, nor what makes the mandate "gender-sensitive", it does go on to describe the mandate as being "explicit in its call for the participation and inclusion of women".⁶¹⁷ The TRC's reporting argues that several provisions across the TRC Act "speak to women's realities and how they should be incorporated in the TRC process."⁶¹⁸ Furthermore, the Act confirms Liberia's commitment to international standards for "the rights and protections of women and children"⁶¹⁹ which, as will be discussed in the next chapter, includes standards on participation. These provisions – by facilitating women's participation in the TRC's activities – again reflect an awareness of women's historical exclusion from transitional justice processes, and the lack of attention that had previously been afforded to their experiences.

As such, the preliminary report argues that these provisions "demand effective participation of women at all levels and in all aspects of the TRC process".⁶²⁰ As will be discussed in further detail in the next chapter, a variety of measures were taken to encourage women's engagement with the TRC as participants.⁶²¹ These measures ultimately produced "707 direct recorded engagements with women", from women's participation in meetings and workshops, to delivering testimony before the TRC.⁶²² These engagements, in turn, provided the opportunity for the drafters of the TRC's reports to address women's experiences therein. While the discussion of women's

⁶¹⁵ The provisions of the TRC Act which aim to facilitate women's participation in the TRC process will be discussed in detail in the next chapter of this thesis.

⁶¹⁶ Liberian TRC, "Women and the Conflict" Appendix (n 59) 10

⁶¹⁷ *ibid*

⁶¹⁸ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

⁶¹⁹ TRC Act, Preamble [12]

⁶²⁰ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

⁶²¹ For a detailed account of the measures taken to ensure women's participation in the TRC's activities, see Chapter 5 of this thesis.

⁶²² Liberian TRC, *Consolidated Final Report* (n 562) 71

participation and their experiences across the reports is not without critique,⁶²³ the reports nevertheless provide a wealth of discourse on women, their experiences of conflict, and their participation, from which to draw for a critical spatial discourse analysis. It is argued here that, given the clear intentions of those designing the TRC to include women and their perspectives at all stages of the process, this case study presents an opportunity for a spatial analysis which considers how women have been constituted by the discursive conditions of the TRC's reporting, and what that reveals about their participation in the TRC process. Subsequent sections in this chapter will illustrate these arguments further by investigating both the spatial and legal complexities of the TRC process, before the thesis moves to an analysis of the ways that women and their participation were constituted within that process.

4.3 – The TRC's Reporting as a Form of Discursive Space

This thesis has thus far established that law is a form of discourse, and that discourse has a constitutive effect on space. The previous chapter proposed that the reporting of the Liberian TRC, as a form of discourse, can thus construct and constitute a category of “women” through its discursive practices. It described how legal geography conceives of law as taking place in particular spaces, thus removing it from the abstract and situating it within its social and spatial context. Indeed, as has been argued previously, space is not merely the background for social practices; rather, it is constitutive of those practices and vice versa.⁶²⁴ Lefebvre describes spaces as having “perceived” or physical dimensions; “conceived” or mental dimensions; and “lived” dimensions.⁶²⁵ He proposes a “conceptual triad” through which these different dimensions of the space are produced.⁶²⁶ This section will refer to this conceptual triad in order to demonstrate how the reporting of the Liberian TRC – through its discursive

⁶²³ For a detailed account of women's participation as discussed in the TRC's reports, see Chapter 5 of this thesis. Chapter 6 will provide a detailed account of the ways in which women are portrayed within the TRC's reports.

⁶²⁴ Keenan (n 112) 39

⁶²⁵ Lefebvre (n 360) 33

⁶²⁶ *ibid*

practices – creates a distinct space in its own right, which in turn has a mutually constitutive effect on women as participants in that process.

4.3.1 – Lefebvre’s “Conceptual Triad”

Lefebvre proposes that space can be produced in three ways. First, “spatial practice” concerns the way that daily physical routines and occupation of spaces creates space, for example through the use of roads and paths, whether this use is institutionally imposed or otherwise.⁶²⁷ In a transitional justice context, such spatial practice might refer to attendance at particular locations to give statements, or occupying a certain seat in a public gallery to hear testimony. Second, “representations of space” (described by Davies as “abstract and ideological”)⁶²⁸ concern the creation of conceptual spaces.⁶²⁹ This involves spaces which are created or conceived in “idealistic and quantified ways” and is the conception of space “most obviously associated with formal law”.⁶³⁰ In a transitional justice context, this might refer to the territorial jurisdiction of a given process, or the drawing of particular conflict-affected sites onto a map. Finally, “representational spaces”⁶³¹ are those spaces which are formed through shared imagination and how “people generally think of and relate to the space around them”.⁶³² It has been argued that these spaces are the most likely sites for “resistance and restructuring by the population” because they allow for challenges to commonly accepted discourses.⁶³³ A representational space in the transitional justice context might refer to sites of local organising, or grassroots movements. Lefebvre notes that the above elements do not exist in isolation, but rather they interact with each other to produce spaces in different ways according to geographical and historical contexts.⁶³⁴ This section will explore this process by which space is produced, proposing that

⁶²⁷ *ibid*

⁶²⁸ Davies, *Asking the Law Question* (n 318) 440

⁶²⁹ Lefebvre (n 360) 33

⁶³⁰ Davies, *Asking the Law Question* (n 318) 440

⁶³¹ Lefebvre (n 360) 33

⁶³² Davies, *Asking the Law Question* (n 318) 440

⁶³³ *ibid*

⁶³⁴ Lefebvre (n 360) 40

discourse and the discursive practices of the TRC's reporting produced their own discursive space.

4.3.2 – Discursive Space

As has been discussed, geographers and lawyers have commented on a tension between law and space.⁶³⁵ This is because space is defined by “actually existing multiplicity”,⁶³⁶ in contrast with law's “textuality”, which instead aims to “flatten out the complexity of reality and convert it into admissible legal facts”.⁶³⁷ In this way, law translates reality into legal discourse, creating a “legal representation of reality” that does not fully represent the material world.⁶³⁸ The textuality of the law flattens women through its representations of them in legal and quasi-legal discourses, including TRC mandates and associated legal standards. The reporting of transitional justice mechanisms often attempts to provide more holistic narratives of conflict and of harms, but in doing so still to some extent lays things out side by side, resulting in a legal world which does not, and indeed cannot, fully represent women and their experiences of conflict and transition. As such, this research understands the representations of the TRC reporting not as reality but as a separate conceptual space which exists within, on top of, and throughout the actual material space of the TRC.

4.3.3 – Constituting Discursive Space

The previous chapter cited Gaventa in his assertion that all spaces of participation “exist in dynamic relationship to one another”; constantly “opening and closing”.⁶³⁹ The chapter argued that such spaces “are not separable”; that is, spatial practices within one space will affect the other through the iterative process of constitutivity.⁶⁴⁰ This is because, following Massey, the boundaries between spaces are “permeable”, to the

⁶³⁵ See, e.g. Blomley and Bakan (n 351)

⁶³⁶ Massey, *For Space* (n 374) 69

⁶³⁷ Philippopoulos-Mihalopoulos “And For Law” (n 47) 5

⁶³⁸ *ibid*

⁶³⁹ Gaventa (n 303) 34

⁶⁴⁰ Cornwall, “Spaces for transformation?” (n 310) 78

extent that “the inside defines part of the outside, and the outside part of the inside”.⁶⁴¹ That is, the boundaries between spaces, rather than simply delineating space, are an inextricable part of it.⁶⁴² In this way, spaces interact with one another across geographical, physical, material, and conceptual boundaries. Thus, the discursive space of the TRC is shaped by its relationship with other spaces, and the discursive practices of those other spaces. For example, the establishment of the TRC was partly shaped by transitional justice processes that had come before it. The drafters of the mandate, through visits and training, were influenced by mechanisms such as the South African Truth and Reconciliation Commission.⁶⁴³ In addition, the permeable nature of space’s boundaries means the space of the TRC was expanded in various ways beyond its offices in Monrovia into the rest of Liberia and the rest of the world. The expansion of this space was not uniform and even but created “uneven landscapes of power” across permeable boundaries.⁶⁴⁴

At the same time, the legal and social practices of the TRC served to shape this space, with the way that space was constituted then conditioning how that legal and social practice was able to evolve. For example, social actors, by entering spaces, can carry with them their experiences of spaces they have previously occupied.⁶⁴⁵ In this way, participants’ experiences and expectations can “influence how they make use of their agency when they are invited to participate, or when they create their own spaces”.⁶⁴⁶ The lived experience of a space, in turn, shapes the subject and conditions their possibilities for participation.⁶⁴⁷ In this way, space is never neutral, but “always already permeated with the power effects of difference”.⁶⁴⁸ As such, space is constituted by all participants: “those who are invited into them, as well as by those doing the inviting”.⁶⁴⁹ In the context of discursive space, this means that the space is constituted

⁶⁴¹ Massey, *Place, Space and Gender* (n 361) 5

⁶⁴² Nedelsky (n 416) 182

⁶⁴³ Liberian TRC, *Consolidated Final Report* (n 562) xxi. See also Dhizaala (n 566); and Glucksam (n 455) 90

⁶⁴⁴ Jeffrey, *The Edge of Law* (n 415) 4

⁶⁴⁵ Keenan (n 112)

⁶⁴⁶ Cornwall, “Spaces for transformation?” (n 310) 78

⁶⁴⁷ Lefebvre (n 360) 57

⁶⁴⁸ Cornwall, “Spaces for transformation?” (n 310) 83

⁶⁴⁹ *ibid* 80

not only by the subjects of the discourse, but by those who produce it. As a result, discursive space is constituted by social relations, and by the choices of social actors. Women accessing transitional justice processes and engaging with their discursive practices carry with them their experiences of conflict and of broader social life. In addition, those actors inviting them into the space of participation carry with them assumptions about women and their participation. A further discursive element is added, whereby women are constituted by their previous portrayals in discourses on transitional justice, further expanding this “discursive terrain”.⁶⁵⁰

Understanding the ways in which discursive spaces are shaped is important. Cornwall, in her work, has highlighted the constitutive impact of discourses, arguing that Foucault’s work in particular draws our attention to the ways in which discourses produce particular “institutional forms” which condition possibilities for participation.⁶⁵¹ An illustration of this can be seen with Orford’s critique of Australia’s Truth and Reconciliation Commission. Orford has argued that its final report served to reconstruct the state of Australia as one which engaged with the process “with an open heart and mind” and which “commits itself to reconciliation”.⁶⁵² In doing so, she proposes that the report constitutes the state as “an artificial entity”, existing constantly across time despite the myriad changes that had occurred in the law, in standards of morality, and in social practices across the country of Australia.⁶⁵³ This space exists outside of material reality, but nonetheless has an important constitutive effect on the spaces around it. It constructs the nation’s past crimes and “boundaries transgressed” into an accessible narrative, with a view to establishing a future “in which all are sorted back into their proper places”.⁶⁵⁴ Thus, the abstract space established by this report not only constitutes the past, but conditions the ways in which these issues might be understood in the present and the future. Understood as such, the discursive space of

⁶⁵⁰ Shepherd, “Sex, Security and Superhero(in)es” (n 55) 506

⁶⁵¹ Cornwall, “Spaces for transformation?” (n 310) 81, citing Michel Foucault, “Governmentality” in Graham Burchell, Colin Gordon, and Peter Miller (eds) *The Foucault Effect: Studies in Governmentality* (University of Chicago Press 1991)

⁶⁵² Orford, “Ritual” (n 183) 360

⁶⁵³ *ibid*

⁶⁵⁴ *ibid*

the Liberian TRC's reports is shaped by adjacent spaces, and by all of those who invite and are invited to participate in it, but it also has a constitutive effect on other spaces moving forward. An understanding of this space and the constitutive forces at play thus becomes imperative.

4.4 – The Liberian TRC as a Complex Legal Space

It has thus far been argued that the discourse and discursive practices of the reports of the Liberian TRC themselves established a distinct, conceptual space. This is important, because the “plural,” “layered,” and “multidimensional”⁶⁵⁵ nature of space means that this discursive space interacted with other forms of space related to the TRC. In this way, the discursive realm and the material realm are not separate, but form “a complex mosaic of legal (and illegal) geographies at different scales”.⁶⁵⁶ The social and discursive practices of the TRC as a discursive space thus impact what happens in other spaces. This means that there exists a mutually constituting relationship between the ways in which women are discursively constructed, and how women are able to access and participate in transitional justice processes.

If women, within this discursive space, are mutually constituted as subjects through their interactions with law and with space, then an unpicking of the social and legal strands of this process becomes particularly important. As such, the rest of this chapter will explore the ways in which the discourse of the TRC established and presented the *spatial* and *legal* aspects of the TRC and its operations. In doing so, this chapter will draw from the reports of the TRC in order to establish how the TRC is discursively constituted through the reporting. The chapter will also draw from literature which critically reviews the operation of the Liberian TRC. It will be argued that the TRC's reporting presents the TRC not as one distinct space but as multiple, mutually reinforcing spaces existing concurrently in a state of constant flux. The chapter will

⁶⁵⁵ Davies, *Asking the Law Question* (n 318) 441

⁶⁵⁶ Bartel *et al* (n 325) 344

further propose that the legal aspects of the TRC appear similarly complex, with that complexity contributing to the multiplicity of the TRC spaces. The chapter will ultimately conclude that the TRC's reports establish the TRC as a series of multiple, complex, and fluctuating legal spaces, themselves capable of constituting women and their participation.

4.5 – The Spatial ‘Strand’ – The Liberian TRC as a Complex Space

It has thus far been argued that a legal geographical analysis that accounts for the social, legal, and spatial elements of a transitional justice process is one which understands that subjects cannot be considered outside of their relations with the outside world. The inseparability of law, space, and subject thus means that, in order to understand how each has been constituted, it is necessary to understand the legal and spatial complexities at play in that particular context. In order to understand how women are portrayed and how they participate in transitional justice processes, it is therefore necessary to understand how women, as subjects, are located within and connected to space.⁶⁵⁷ The production of space has been described as “political” in nature; not neutral, but rather producing distributive consequences in terms of power and resources.⁶⁵⁸ The “social meaning” of spaces thus conditions them to be more receptive to certain identities and activities than to others.⁶⁵⁹ Indeed, as has been argued, the presence of certain identities within a given space contributes to the shaping of that space, given that subjects form part of space and vice versa.⁶⁶⁰ As such, the TRC spaces within Liberia were affected by the ways in which women accessed and were able to access them. This subsection will explore the spatial complexity of the Liberian TRC as presented in the TRC's final reports, in order to foreground an analysis of women's participation in that space. It will argue that the TRC space was

⁶⁵⁷ Keenan (n 112) 58-9

⁶⁵⁸ Davies, *Asking the Law Question* (n 318) 442

⁶⁵⁹ Delaney, *The Spatial, the Legal, and the Pragmatics of World-Making* (n 367) 25

⁶⁶⁰ Keenan (n 112) 29

not one discrete space, but rather a plurality of complex spaces, existing in dynamic relationship to one another.

4.5.1 – Operational Complexities

Glucksam, while acknowledging the TRC as “one of the most comprehensive attempts at a systematic truth and reconciliation process”, notes that the process was not without controversy, having faced significant challenges during its period of operation.⁶⁶¹ Indeed, the TRC is described as “riddled with administrative and financial challenges” and as having experienced “many political and social scandals,”⁶⁶² including condemnation by the final report of two Commissioners for having “systematically and consciously undermined the work of the Commission by their conduct and actions”.⁶⁶³ Furthermore, a report by the ICTJ points to the TRC’s inability to produce a “comprehensive staffing plan” and organisational structure; the failure to produce a full plan of their work; and the failure to produce a budget in advance of the TRC’s launch as additional problems.⁶⁶⁴ A one-year gap between the appointment of Commissioners and operational staff and the appointment of an Executive Secretary and Program Manager is also argued to have produced “imbalances” in the development of the TRC’s processes and in the ownership of those processes.⁶⁶⁵ The irregularity of funding in the early stages of the TRC has also been attributed to this delay.⁶⁶⁶ Indeed, funding challenges forced statement-taking activities to be suspended for a few months in 2007.⁶⁶⁷ These issues are argued to have “severely impacted the TRC’s later operational activities, including the process leading to its final report.”⁶⁶⁸

⁶⁶¹ Glucksam (n 455) 91

⁶⁶² *ibid*

⁶⁶³ Liberian TRC, *Consolidated Final Report* (n 562) 325

⁶⁶⁴ James-Allen *et al* (n 567) 7

⁶⁶⁵ Karen Campbell-Nelson, “Liberia is Not Just a Man Thing: Transitional Justice Lessons for Women, Peace and Security” (Initiative for Peacebuilding 2008) <<https://www.ictj.org/sites/default/files/ICTJ-IFP-Liberia-Gender-Cluster-2008-English.pdf>> 10

⁶⁶⁶ *ibid*

⁶⁶⁷ Priscilla Hayner, “Negotiating peace in Liberia: Preserving the possibility for Justice” (Centre for Humanitarian Dialogue and International Center for Transitional Justice 2007) <<https://www.ictj.org/publication/negotiating-peace-liberia-preserving-possibility-justice>> 22

⁶⁶⁸ James-Allen *et al* (n 567) 7

Furthermore, the TRC's lack of an in-house legal team led some commentators to question whether the TRC possessed the requisite expertise to evaluate whether or not the acts it investigated constituted violations of international law.⁶⁶⁹ The emergence of these myriad issues over the course of the TRC's operation illustrates the evolving nature of the TRC space itself. As a form of legal practice, the TRC space was "not static, linear and ordered" but "complex, fluid and uncertain", with these complexities informed by the social interactions of those involved in it.⁶⁷⁰

It has been argued that all of the challenges faced by the TRC led to a "lack of confidence in the TRC" both within Liberia and internationally.⁶⁷¹ This lack of confidence contributed to the constitution of the TRC space at a "lived" level, and impacted the extent to which participants chose to engage with it.⁶⁷² In fact, so strongly contested were the TRC's conclusions by leaders of fighting factions that a group of those recommended for prosecution in the final report brought a class action lawsuit against the TRC in Liberia's civil court, in an attempt to have both the TRC Act and its final reports declared "unconstitutional" on the basis that the reports' recommendations were reached "without respect for due process".⁶⁷³ In addition, research on access to justice in post-conflict Liberia has found that justice practices and their objectives are informed by the "uncertain post-conflict 'world' of Liberia", where maintaining security, peace and cohesion within communities is viewed as essential to the prevention of future violence.⁶⁷⁴ As such, at an individual level, people may prioritise maintaining their position and relationships within their community over access to justice, given the extent to which physical and economic security are dependent on these factors.⁶⁷⁵ This has clear consequences for the extent that people will choose to engage with transitional justice processes, which in turn has constitutive consequences for the ways in which the TRC was produced as a space. Lefebvre

⁶⁶⁹ De Ycaza (n 570) 196

⁶⁷⁰ Pearson (n 392) 495-6

⁶⁷¹ James-Allen *et al* (n 567) 7-8. See also Hayner (n 667) 21

⁶⁷² Lefebvre (n 360) 33

⁶⁷³ De Ycaza (n 570) 206

⁶⁷⁴ Divon and Bøås (n 563) 1387

⁶⁷⁵ *ibid*

describes that spaces are produced through “spatial practice”, but also through shared imagination – the ways in which people think about and relate to the spaces they access.⁶⁷⁶ As such, these operational and political issues, and the perceptions they generated about the TRC, are productive of the TRC space itself.

4.5.2 – Geographical Complexities

While the physical space from which the Commission began its initial work – located in the Liberian capital city of Monrovia – is described by the final report as a “three room shabby office space provided by the government of Liberia, absent a complementary full staff and without funding”,⁶⁷⁷ the work of the Commission took place all over the country. The expansion of the TRC’s activities beyond Monrovia was based on “grave concerns” that the TRC would be too centred in the capital, with many Liberians not engaging with the process in its early stages due to a general distrust of national institutions, or a perception of a bias towards Monrovia.⁶⁷⁸ In this way, it is possible to observe the “permeable” boundaries of the TRC space with other political and legal spaces in Liberia.⁶⁷⁹ Carrying with them their historical experiences of Liberian public life as centred in Monrovia, Liberian citizens interacting with the TRC constituted the space according to these perceptions.⁶⁸⁰ Furthermore, accessing the various sites of the TRC’s operation generated “spatial practice”, through which the occupation of spaces serves to produce the spaces themselves.⁶⁸¹

In any case, reaching “everyone in the community” is described by the final report as a “struggle”, especially for those “who are illiterate, live outside of Monrovia, or have not been active in the reconciliation process”.⁶⁸² The realities of operating in a post-conflict context further exacerbated these issues. Post-conflict Liberia has been

⁶⁷⁶ Lefebvre (n 360) 33

⁶⁷⁷ Liberian TRC, *Consolidated Final Report* (n 562) 176

⁶⁷⁸ *ibid* 203

⁶⁷⁹ Massey, *Place, Space and Gender* (n 361) 5

⁶⁸⁰ Keenan (n 112) 96

⁶⁸¹ Lefebvre (n 360) 33

⁶⁸² Liberian TRC, *Consolidated Final Report* (n 562) 203

described as a “collapsed state”, with physical infrastructure completely destroyed.⁶⁸³ The country, at the end of the conflict, was one of the world’s poorest, with almost half of the country living in “abject poverty”.⁶⁸⁴ Even in the years following the TRC, “the majority” of the state had no electricity or piped water.⁶⁸⁵ Because of the difficulties of reaching those affected by the conflict, and because inclusion in the TRC process was perceived as a means to “minimally redress” historical exclusion from governance processes in Liberia,⁶⁸⁶ the final reports claim that “outreach and inclusion of all Liberian Communities” was a “primary goal” of the TRC, regardless of place, ethnic group, or income level of those communities.⁶⁸⁷ Thus, in planning and carrying out these activities, the TRC created, in Lefebvre’s words, a “representation of space”⁶⁸⁸ which extended the space of the TRC into rural Liberia, if only on a conceptual or ideological level.

One of the primary ways that this extension of the TRC space occurred was through its hearings. Live hearings were an integral part of the work of the TRC. During its period of operation, the TRC conducted victims’ hearings to gather personal narratives of the conflict; nine thematic hearings, which explored “the trends, themes, and root causes of the conflict”;⁶⁸⁹ and a series of institutional hearings which reviewed how public institutions participated in and were affected by the conflict.⁶⁹⁰ While the thematic, institutional and perpetrator hearings were all held in Monrovia, victims’ hearings were held throughout all fifteen counties of Liberia.⁶⁹¹ Describing this activity, the reports again emphasise the physical location of the victims’ hearings,

⁶⁸³ Thomas Jaye, “Transitional Justice and DDR: The Case of Liberia” (International Center for Transitional Justice 2009) <<https://www.ictj.org/publication/transitional-justice-and-ddr-case-liberia-case-study>> 5

⁶⁸⁴ *ibid* 10-11

⁶⁸⁵ United Nations Human Rights Council, “National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Liberia” (23 August 2010) UN Doc A/HRC/WG.6/9/LBR/1 [56]

⁶⁸⁶ Liberian TRC, *Consolidated Final Report* (n 562) 203

⁶⁸⁷ *ibid*

⁶⁸⁸ Lefebvre (n 360) 33

⁶⁸⁹ Liberian TRC, *Consolidated Final Report* (n 562) 190

⁶⁹⁰ *ibid*

⁶⁹¹ *ibid* 191

describing them as “breaking away from the aged old practice which made Monrovia the centre of all public activities”.⁶⁹² As such, at the conceptual level, it is possible to observe the extension of the boundaries of the TRC beyond its “three room shabby office space” and beyond the country’s capital city. However, “spatial practice” and the conceived nature of the space constitutes these boundaries differently,⁶⁹³ with the permissible subject matter of the hearings constituting the space of the TRC itself. While victim hearings indeed took place in all fifteen counties, all other hearings were held in Monrovia.⁶⁹⁴ At each of the localised victims’ hearings, one day was set aside for county-specific institutional and thematic hearings, whereas matters of national importance or which featured expert testimony appear to have been reserved to locations in the capital.⁶⁹⁵ In this way, the drawing of conceptual boundaries around the subject matter deemed important enough to discuss at the hearings in the capital creates “distance” between these issues and the hearings taking place in the counties.⁶⁹⁶ Understanding space as “a socio-cultural construction” which both produces and is a product of social relations means that the sociolegal practice of the TRC process is co-constitutive of the space of the TRC itself.⁶⁹⁷ Holding those hearings focused on the experience of “society as a whole”⁶⁹⁸ in Monrovia thus positions the capital city as the primary locus of Liberian “society”. Therefore, while the border of the TRC extended beyond the capital, these activities produced multiple TRC spaces, with these spaces varying greatly according to geographical location and the activities that took place. Those activities, in turn, shaped the permissible forms of participation in each TRC space.⁶⁹⁹

An additional geographical consideration is that the reports present the different counties and cities of Liberia as having experienced the conflict differently. For

⁶⁹² *ibid*

⁶⁹³ Lefebvre (n 360) 33

⁶⁹⁴ Liberian TRC, *Consolidated Final Report* (n 562) 191

⁶⁹⁵ *ibid*

⁶⁹⁶ Jeffrey, “The political geographies of transitional justice” (n 414) 347

⁶⁹⁷ Awuh (n 272) 276

⁶⁹⁸ Liberian TRC, *Consolidated Final Report* (n 562) 190

⁶⁹⁹ Cornwall, “Spaces for transformation?” (n 310) 78

example, the majority of battles during the conflict are said to have taken place in Lofa County and Montserrado County,⁷⁰⁰ the latter being the site of the capital city of Monrovia. However, the types of violence experienced differed greatly, with Lofa the site of more battles between armed groups, and Montserrado most often experiencing violence in the form of riots and protests.⁷⁰¹ These different experiences of conflict almost inevitably informed post-conflict experiences, potentially affecting how residents in these counties viewed the TRC or chose to engage with it and impacting the construction of the TRC space. This is because armed conflict, as a product of human activities and interactions,⁷⁰² is itself productive of space,⁷⁰³ and so serves to constitute space through a constant, iterative process.⁷⁰⁴ Because space is “always under construction... never finished, never closed”, this constitutive effect extends even beyond the conflict’s end.⁷⁰⁵ Furthermore, the fifteen counties of Liberia “correspond to territories historically claimed by particular Liberian indigenous ethnic groups”.⁷⁰⁶ Legal geography understands that individual experiences of space are shaped by “a broad array of coexisting social, religious, economic, and political constructions”.⁷⁰⁷ As such, the geographical reality of Liberia also affects how the TRC space was extended into these counties, and adds further complexities. All of these factors constructed a fractured space in which ordinary citizens – of varying backgrounds, ethnicities, and experiences – may have been hard for the TRC to reach, with consequences for how different groups accessed the spaces of the TRC.

4.5.3 – Social Complexities

The TRC’s final report is emphatic in its assertion that the violence and associated violations of human rights emanating from the periods of conflict “gravely impacted

⁷⁰⁰ Caitriona Dowd and Clionadh Raleigh, “Mapping conflict across Liberia and Sierra Leone” (2012) 23 *Accord: an international review of peace initiatives* 13, 15

⁷⁰¹ *ibid*

⁷⁰² Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340) 6

⁷⁰³ Massey, *Place, Space and Gender* (n 361) 154

⁷⁰⁴ Massey, *For Space* (n 374) 9

⁷⁰⁵ *ibid*

⁷⁰⁶ Liberian TRC, *Consolidated Final Report* (n 562) 13

⁷⁰⁷ von Benda-Beckmann and von Benda-Beckmann (n 364) 32-3

all segments of the Liberian society”, including women, children, the elderly, the vulnerable, and those Liberians in the diaspora community.⁷⁰⁸ “Cultural, Traditional and Religious Institutions, and Public Institutions” are also argued to have been affected.⁷⁰⁹ Indeed, the TRC’s report on the experiences of the Liberian diaspora community states that “there is not a single Liberian anywhere who has not been affected in some way” by the conflict, including those members of diaspora communities who did not leave Liberia as a result of the conflict.⁷¹⁰ Perhaps partly because the conflict is described as such a universal and uniting experience, repeated throughout the reports and associated literature is the intention that the TRC be a uniquely “Liberian” process, for example having only Liberian commissioners.⁷¹¹ The TRC’s preliminary report states that the TRC sought to find a methodology which “complemented Liberia’s complex history while simultaneously comporting with domestic, regional and international norms”.⁷¹² Indeed, the report states that any approach to transitional justice had to be suitable for “the Liberian palate”,⁷¹³ suggesting the existence of a unique Liberian identity which could inform this process. However, even while drawing clear boundaries around a Liberian identity said to inform the process, the reporting nevertheless acknowledges the inherent complexity of this identity.

In legal geography, complexity is understood as emerging through the tensions, incompatibilities, or inconsistencies that are produced by the presence of multiple laws in one space.⁷¹⁴ Here, a similar complexity is observed in relation to the tensions, incompatibilities, and inconsistencies that emerge through the discourse of the TRC’s

⁷⁰⁸ Liberian TRC, *Consolidated Final Report* (n 562) 338. The extension of the TRC’s mandate to those in the Liberian diaspora community is a distinct aspect of this transitional justice process which will be discussed in further detail in the subsequent subsection.

⁷⁰⁹ *ibid*

⁷¹⁰ Liberian TRC, *A House with Two Rooms* (n 600) 11

⁷¹¹ Liberian TRC, *Consolidated Final Report* (n 562) 82. However, the choice to appoint only Liberian Commissioners to the TRC has been critiqued as having resulted in a TRC whose leadership lacked both experience and “political” and “moral clout”. See Lansana Gberie, “Briefing: Truth and justice on trial in Liberia” (2008) 107(428) *African Affairs* 455, 457

⁷¹² Liberian TRC, *Preliminary Findings and Determinations* (n 575) 24

⁷¹³ *ibid*

⁷¹⁴ Delaney, “Legal Geography I” (n 366) 100

reports as regards Liberian culture and identity. Indeed, culture itself is not a fixed entity, but is “plural”, “contested”, and “often takes the form of discourse(s)”.⁷¹⁵ The TRC’s final report discusses the historical duality of the state, with two Liberias “created within one geographic location: one belonging to the natives (referred to as barbarians) and the other to the settlers from the United States of America”.⁷¹⁶ Furthermore, over twenty indigenous languages are spoken in Liberia, in addition to English and Liberian English.⁷¹⁷ Even in the diaspora communities, the report describes “deep-rooted resentments and divisions” persisting “along ethnic and political lines”.⁷¹⁸ Diaspora communities are described as more likely to organise along tribal lines than “pan-Liberian”.⁷¹⁹ Beyond ethnicity, divisions in political, social, and economic life are described in the reports, indicating further tensions and complexities in terms of Liberian identity.⁷²⁰ All of this has important consequences for the drawing of the borders of the TRC. As a result, any space constructed around the ideological perception of shared Liberian identity will be informed by these multiple ethnic, cultural, political, social, and economic identities, the space becoming “loaded with social meaning” as a result.⁷²¹ The variety of languages, ethnicities, cultures, and political views in the country each produce a new “layer” of space, resulting in the space of the TRC becoming “plural,” “layered,” and “multidimensional”.⁷²²

4.5.4 – The TRC’s Diaspora Project

Further complexity is added to the TRC space when one considers the huge displacement of Liberia’s population during the conflict. During Liberia’s periods of conflict, 750,000 Liberians were displaced,⁷²³ with many seeking refuge in other parts

⁷¹⁵ Venganai (n 509) 146

⁷¹⁶ Liberian TRC, *Consolidated Final Report* (n 562) 111

⁷¹⁷ *ibid* 13

⁷¹⁸ *ibid* 286

⁷¹⁹ *ibid*

⁷²⁰ *ibid* 16

⁷²¹ Keenan (n 112) 18-19

⁷²² Davies, *Asking the Law Question* (n 318) 441

⁷²³ Laura Palmisano and Sulaiman Momodu, “UNHCR completes repatriation of 155,000 Liberians” (UN Refugee Agency, 4 January 2013)

of the world. One of the determinations made by the TRC is that “Liberians in the Diaspora are as much Liberians as Liberians at home”.⁷²⁴ The determination concludes by stating that they must be allowed to have a say and to have their concerns addressed, but acknowledges that members of this population had “supported [and] financed warring factions as an instrument for regime change”.⁷²⁵ Thus, Liberians outside of the country, like those in the country, are understood to have participated in the conflict in a multitude of ways.

The TRC process specifically engaged with the Liberian diaspora through its Diaspora Project, described as an “integral part” of the TRC’s work and the first project of its kind carried out by a truth and reconciliation commission.⁷²⁶ Through the Diaspora Project, statements on conflict-related experiences were collected from Liberian people in regions across the United States, in the United Kingdom, and at the Buduburam refugee settlement in Ghana.⁷²⁷ The final report states that 600 volunteers were trained to collect statements from Liberians in the United States, and that ten Liberians in the refugee camp in Ghana were trained as statement takers, as well as “[a]bout ten” resident in Nigeria.⁷²⁸ In addition, victims’ hearings were held in St Paul, Minnesota.⁷²⁹ Outreach work relating to the project took place both online and face-to-face. The final report mentions “apartment buildings or neighborhoods populated by Liberians” as well as “Liberian food shops, restaurants, beauty salons and barber shops” as sites of outreach, thus extending the space of the TRC into these everyday locations.⁷³⁰ The report also mentions conducting outreach at national conventions of community organisations and through religious leadership, mentioning specifically

<<https://www.unhcr.org/uk/news/makingdifference/2013/1/50e6af089/unhcr-completes-repatriation-155000-liberians.html>>

⁷²⁴ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 6

⁷²⁵ *ibid*

⁷²⁶ Liberian TRC, *Consolidated Final Report* (n 562) 80; Liberian TRC, *A House with Two Rooms* (n 600) 3

⁷²⁷ Liberian TRC, *Consolidated Final Report* (n 562) 82

⁷²⁸ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 31

⁷²⁹ Liberian TRC, *Consolidated Final Report* (n 562) 191; Liberian TRC, *A House with Two Rooms* (n 600) 3

⁷³⁰ Liberian TRC, *Consolidated Final Report* (n 562) 85

“numerous churches and mosques, soccer matches, county association meetings, and other local events”.⁷³¹ Thus, the space of the TRC, through the “spatial practice” of its Diaspora Project, was extended beyond Liberia’s state borders and into other countries, and beyond official sites and into communities.⁷³²

Much of the outreach and statement-taking work undertaken as part of the Diaspora Project was modelled on the activities occurring simultaneously in Liberia but “adapted for the circumstances of the Liberian Diaspora in the United States and the UK”.⁷³³ However, some important differences produced the space of the Diaspora Project quite differently to that of the TRC within the Liberian state. One key difference between the TRC space constructed in Liberia and those spaces in the diaspora relates to the Liberian character of the process. For example, the Advocates for Human Rights – an NGO which supported the outreach work of the Diaspora Project – is a US-based organisation. The final report states that a non-Liberian organisation was selected to lead on the Diaspora Project “because no Liberian entity would be seen as sufficiently neutral to be trusted by all segments of the community”.⁷³⁴ Indeed, as mentioned above, the TRC’s final report describes deep divisions within diaspora communities,⁷³⁵ which are argued to be more likely to organise according to ethnic group rather than Liberian nationality.⁷³⁶ Adding to this complex space was the significant variation in “political climate” between different US regions, meaning that the space of the TRC varied across community lines, with communities in differing US regions themselves a microcosm of communities in Liberia.⁷³⁷ This fractured Liberian identity further emphasises the multidimensional and layered nature of the space as described above.⁷³⁸ In addition, having a non-Liberian group leading the Diaspora Project produced further distance between the

⁷³¹ *ibid*

⁷³² Lefebvre (n 360) 33

⁷³³ Liberian TRC, *Consolidated Final Report* (n 562) 85

⁷³⁴ *ibid* 82

⁷³⁵ *ibid* 286

⁷³⁶ *ibid*

⁷³⁷ *ibid* 82

⁷³⁸ Davies, *Asking the Law Question* (n 318) 441

project and the activities of the TRC in Liberia, where all commissioners and staff were Liberian citizens.⁷³⁹ If spaces are given meaning through the movements, actions, and interactions of those who access them, the entry of this group into this TRC space constitutes the space itself.⁷⁴⁰ Indeed, while the final report argues that The Advocates for Human Rights involvement was welcomed,⁷⁴¹ it highlights that the engagement of a non-Liberian group was consistently questioned during the process, and that members of the project's community advisory committee "were reluctant to put their reputation on the line in support of the TRC before it had been proven a success".⁷⁴² Some members are even said to have gone "beyond reluctance to overt obstructionism".⁷⁴³ These perceptions about the project, and the relationship of the committee members to the project, are productive of "representational spaces", formed through this shared imagination.⁷⁴⁴

In spite of the assertion that the work of the Diaspora Project was an integral part of the TRC's core activities, the final report of the project argues that "many in the international community and sometimes the TRC itself" viewed the project as "very separate" from the work of the TRC being carried out in Liberia.⁷⁴⁵ Liberians in the diaspora, however, saw the project as "intimately connected" with the broader TRC.⁷⁴⁶ Indeed, Liberians in the diaspora perceived the project as "having influence over processes in Liberia", although by the Diaspora Project report's own admission, The Advocates for Human Rights "had no control over TRC policies, scope of work, or timeline of activities".⁷⁴⁷ Clear tensions emerge through these very different perceptions of the Diaspora Project, adding to the complexity of the space itself.⁷⁴⁸ Furthermore, these complexities exemplify the porous nature of borders between

⁷³⁹ See Jeffrey, "The political geographies of transitional justice" (n 414) 347

⁷⁴⁰ Davies, *Asking the Law Question* (n 318) 446

⁷⁴¹ Liberian TRC, *Consolidated Final Report* (n 562) 82

⁷⁴² *ibid*

⁷⁴³ *ibid*

⁷⁴⁴ Lefebvre (n 360) 33

⁷⁴⁵ Liberian TRC, *A House with Two Rooms* (n 600) 39

⁷⁴⁶ *ibid*

⁷⁴⁷ *ibid*

⁷⁴⁸ Delaney, "Legal Geography I" (n 366) 100

spaces, with perceptions varying according to positions within space, illustrating the existence of a “complex, fertile and tension-laden interconnection between self and others”.⁷⁴⁹ Regardless of such differing perceptions, the Diaspora Project report notes the mutually constitutive effects of the project and the TRC, with news about the TRC’s activities in Liberia having a “ripple effect on work in the diaspora”.⁷⁵⁰ The report cites events such as the TRC’s failure to call “major perpetrators” to hearings at early stages of the process, and the reluctance of certain actors to appear, as having “dampening effects” on diaspora communities’ participation in the project.⁷⁵¹ This serves as an illustration of Cornwall’s argument that “what happens in one [space] impinges on what happens in others” through the continuous and iterative process of constitutivity.⁷⁵²

The extension of the TRC space beyond the territorial borders of Liberia also has consequences for how the TRC was legally constituted in Liberia and in the diaspora. As has been discussed above, the TRC was established by an Act of the National Transitional Legislative Assembly of Liberia, which also formed its mandate. Because this was a piece of domestic legislation, it had no applicability outside of Liberia’s territorial borders, and thus did not confer any powers to the Diaspora Project operating in the United States, the United Kingdom, or Ghana.⁷⁵³ Similarly, this Act did not confer the same legal protections to participants in the diaspora as to participants in Liberia.⁷⁵⁴ As such, the Advocates for Human Rights developed statement-taking protocols for each state based on principles of local law in each jurisdiction.⁷⁵⁵ Critically, because Liberians in the diaspora could not be protected from “prosecution or other legal consequences in any jurisdiction”, participants were required to give their “fully informed consent” before participating, and were provided optional legal advice ahead of providing statements, with the option that those

⁷⁴⁹ Nedelsky (n 416) 182

⁷⁵⁰ Liberian TRC, *A House with Two Rooms* (n 600) 39

⁷⁵¹ *ibid*

⁷⁵² Cornwall, “Spaces for transformation?” (n 310) 78

⁷⁵³ Liberian TRC, *A House with Two Rooms* (n 600) 39-40

⁷⁵⁴ *ibid*

⁷⁵⁵ *ibid*

statements be anonymous.⁷⁵⁶ Outreach work also had to be “adapted for the circumstances of the Liberian diaspora in the United States and the United Kingdom”, though based on the outreach practices of the TRC in Liberia.⁷⁵⁷ In addition, differing levels of “security and psychosocial support” services were available across the communities involved in the Diaspora Project.⁷⁵⁸ As a result, participants accessed vastly different spaces depending on their geographical location and their available resources, with potential legal consequences and the availability of legal advice differing greatly depending on the jurisdiction. This adds further legal and spatial complexity to the process. The TRC’s activities expanded the space of the TRC beyond the territorial borders of Liberia, but the necessarily uneven application of law across multiple jurisdictions renders that space, “plural”, “layered”, and “multidimensional”.⁷⁵⁹ That law and space exist in a mutually reinforcing relationship means that the TRC space itself was not fixed, but was “co-emerging, co-constituting and co-evolving” with that law.⁷⁶⁰

While there were discrepancies in participatory opportunities across diaspora communities, there were also discrepancies between the diaspora community and those who had been internally displaced. It is estimated that half of Liberians suffered from displacement as a result of the conflict,⁷⁶¹ with 780,000 refugees and 500,000 internally displaced persons.⁷⁶² Indeed, forced displacement was the most recorded human rights violation by the TRC, accounting for over one third of all violations.⁷⁶³ However, it has been argued that while the TRC’s engagement with the Liberian diaspora was “noteworthy and groundbreaking”, the TRC failed to engage with

⁷⁵⁶ *ibid*

⁷⁵⁷ *ibid* 41. The report does not discuss whether and how outreach was conducted in Ghana.

⁷⁵⁸ Liberian TRC, *Consolidated Final Report* (n 562) 189. Such support, mentioned in the preliminary report, included informing victims in advance about the appearance of alleged perpetrators at the TRC to protect their “physical and psychological welfare”.

⁷⁵⁹ Davies, *Asking the Law Question* (n 318) 441

⁷⁶⁰ Philippopoulos-Mihalopoulos “And For Law” (n 47) 11

⁷⁶¹ Dabo (n 564) 4

⁷⁶² *ibid* 5

⁷⁶³ *ibid*

internally displaced persons and address their needs.⁷⁶⁴ No special project was established to attend to their needs, nor were they represented by a Commissioner, nor even mentioned in the TRC Act.⁷⁶⁵ Thus, the TRC's borders were expanded beyond the territorial boundaries of the Liberian state, but the space within that state in some cases was harder to access, with certain populations being overlooked. The situation becomes more complex in light of the fact that refugees and internally displaced persons are not distinct categories, with many people moving between categories throughout the conflict through a "cyclical process of fleeing and hiding both within and outside of the nation's borders".⁷⁶⁶ When considering how this affected women's participation, Dabo argues that in spite of the TRC's attention to women, their needs, and their participation in the process, "their heightened vulnerabilities as a result of their displacement were never considered".⁷⁶⁷

4.5.5 – International Influences

The Advocates for Human Rights were not the only non-Liberian organisation to be involved with the TRC process. While the uniquely Liberian character of the TRC is repeatedly asserted throughout the final reports, the nature of the production of the TRC space means that it cannot exist as a singularly Liberian justice practice, isolated from the rest of the world. Just as boundaries such as those of the TRC are porous and complex, so too are national borders.⁷⁶⁸ Indeed, it has been argued that the State, in spatial terms, cannot be considered as a bounded "container";⁷⁶⁹ rather, its borders are permeable and ever shifting.⁷⁷⁰ It has been argued that a "national pride that imagines a TRC process of, by, and for Liberians" may have prevented those involved with the process from learning from "outside expertise",⁷⁷¹ but such a view presumes insufficient expertise on the part of Liberians, and ignores the extent to which

⁷⁶⁴ *ibid* 4

⁷⁶⁵ *ibid* 9

⁷⁶⁶ *ibid* 5

⁷⁶⁷ *ibid* 10

⁷⁶⁸ Massey, *Place, Space and Gender* (n 361) 5

⁷⁶⁹ Chojnacki and Engels (n 341) 31

⁷⁷⁰ Massey, *Place, Space and Gender* (n 361) 5

⁷⁷¹ Campbell-Nelson (n 665) 10

international organisations and actors were involved in the TRC process. The TRC's relationships with such organisations and actors necessarily had important constitutive effects. Ambassador Prince Zeid of Jordan, for example, in his capacity as the UN Peacebuilding Commission Chair of the Configuration for Liberia, had stated that for peacebuilding efforts to be successful, "they must be authentically Liberian".⁷⁷² However, he goes on to state that the international actors involved ought then to "take [these ideas] on, embroider them, and draw on lessons from other places".⁷⁷³ Thus, international involvement is understood, at least at the UN-level, as shaping post-conflict processes to some extent, thereby shaping the spaces of these processes. The Liberian TRC is such a process, in that it was driven by Liberia but with an international influence embroidered into its work. Indeed, engagement with international actors appears, from the TRC's reports, to be deliberate and valued. For example, the "International Community" is described in the TRC's final statement as "the 'moral guarantors' of the Liberian peace process".⁷⁷⁴ Indeed, the final reports make recommendations explicitly addressed to this international community, requesting their continued engagement in the long-term security arrangements in Liberia.⁷⁷⁵ Furthermore, an International Technical Advisory Committee was established to support the commissioners in their roles, given their collective lack of previous experience working with truth commissions.⁷⁷⁶

The TRC also engaged with international organisations in order to complete some of its activities. For example, the TRC itself received funding and support from several international organisations, including UN bodies, foreign governments, and international NGOs. The TRC also commissioned a "conflict mapping project" facilitated by the EU in order to map "current and looming conflicts" and "to

⁷⁷² Elizabeth Drew, "The UN Peacebuilding Commission and Liberia's transition: A conversation with Ambassador Prince Zeid of Jordan" (2012) 23 *Accord: an international review of peacebuilding initiatives* 19, 20

⁷⁷³ *ibid*

⁷⁷⁴ Liberian TRC, *Consolidated Final Report* (n 562) xxiii

⁷⁷⁵ *ibid* 23

⁷⁷⁶ Dhizaala (n 566) 52

ameliorate the potential for future violent conflicts and civil unrest”.⁷⁷⁷ Furthermore, the TRC commissioned a “Statistical Interpretation” of victims’ statements entered into the TRC database by an American “human rights organization” called Benetech.⁷⁷⁸ The reports assert that the role played by Benetech primarily concerned data analysis and information management, and that this organisation had previously “worked with eight other truth commissions to incorporate information technology and scientific methods to support their truth-seeking mandates”.⁷⁷⁹ This brings the work of other truth commissions into the sphere of influence which helped to produce the TRC space.⁷⁸⁰

In fact, the TRC can be seen to be directly influenced by the work of previous truth commissions. Before being enacted, the TRC Act itself was subject to an international peer review process featuring “additional experts who had participated in truth commissions in other countries, especially South Africa and Sierra Leone”.⁷⁸¹ The opening pages of the TRC’s final report feature a quotation by Chilean President Patricio Aylwin on receipt of the final report of the Chilean Truth and Reconciliation Commission, before going on to quote Liberian President Ellen Johnson-Sirleaf at the inauguration of the Liberian TRC.⁷⁸² This illustrates that the TRC considers itself part of a legacy of previous truth commissions, their work being related. In addition, before the TRC had officially commenced its activities, its Commissioners visited South Africa for a “study tour” during which they were afforded “the rare opportunity to meet and speak one-on-one” with people involved in the South African Truth and Reconciliation Commission.⁷⁸³ Hayner argues that the South African Commission was most influential on the Liberian TRC, with many delegates at the Accra peace talks, including Liberia’s transitional head of state, “unaware of any other examples of truth commissions elsewhere in the world”.⁷⁸⁴ Perhaps as a result, the “main reference

⁷⁷⁷ Liberian TRC, *Consolidated Final Report* (n 562) 90

⁷⁷⁸ *ibid* vii

⁷⁷⁹ *ibid* 43

⁷⁸⁰ Cornwall, “Spaces for transformation?” (n 310) 78

⁷⁸¹ Dhizaala (n 566) 52

⁷⁸² Liberian TRC, *Consolidated Final Report* (n 562) 1. The report itself names the Chilean President as “Patricio Aluryn”.

⁷⁸³ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 29

⁷⁸⁴ Hayner (n 667) 17

source” for information on truth commissions at the talks was “background materials” on the South African process provided by the protocol officer of the South African embassy in Accra.⁷⁸⁵ Indeed, this influence has been criticised by Leymah Gbowee – recipient of the 2011 Nobel Peace Prize for her peace work in Liberia – who expressed doubt that the Liberian TRC would be as successful as South Africa’s, describing the TRC as “artificially imposed” by the Accra Agreement.⁷⁸⁶ This influence of international actors in the work of the TRC further affects how it was constituted as a situated legal practice, with the boundaries of the TRC space expanded by its engagement with actors beyond Liberia. Indeed, through its interactions with international actors, the TRC space was continually “opening and closing” its borders with these international spaces, existing in “dynamic relationship” to them.⁷⁸⁷ The inherent inseparability of spaces means that the spatial practices at play in these international organisations affected the TRC through the dynamic process of constitutivity.⁷⁸⁸

This international involvement predates the TRC, extending back through the peace process and periods of conflict to the historical development of Liberia. For example, the geographical space of the conflicts that took place in Liberia is much broader and more complex than it might first appear, stretching beyond Liberia as a “territorial container”.⁷⁸⁹ Such an impression of the conflict can be derived from the TRC’s reports. In its consolidated final report, one of the key findings presented by the TRC was that external state actors in “Africa, North America and Europe” played an active role in the conflict for “political, economic and foreign policy” gains.⁷⁹⁰ These actors are described as having “participated, supported, aided, abetted, conspired and instigated violence, war and regime change” in Liberia.⁷⁹¹ The consolidated final report highlights some states as having had particular involvement. For example, Liberia’s

⁷⁸⁵ *ibid*

⁷⁸⁶ Gbowee (n 60) 174

⁷⁸⁷ Gaventa (n 303) 34

⁷⁸⁸ Cornwall, “Spaces for transformation?” (n 310) 78

⁷⁸⁹ Chojnacki and Engels (n 341) 31

⁷⁹⁰ Liberian TRC, *Consolidated Final Report* (n 562) 18-19

⁷⁹¹ *ibid*

relationship with the United States is explored in particular detail in the TRC's reports. The final report's "Findings" chapter dedicates an entire section to the role of the USA in Liberia's history and in the development of the conflict. At 2058 words, it is one of the longest sections in the chapter, and is longer than the preceding three sections on "Historical Root Causes", "Antecedent Causes" and "Direct and Immediate Causes of the Conflict" combined. The report describes the United States as "intervening in the fate of this small West African territory" over a period of "decades", thus positioning Liberia as a small country alternately supported, exploited, and eventually abandoned by a much larger and more powerful one over time.⁷⁹² Later, it notes that fighting factions in the Liberian conflict "had been trained in Libya and that their arms had come from Burkina Faso, and they were getting full support from Côte d'Ivoire".⁷⁹³ Therefore, through these actions, all of these actors have contributed to the construction of the space of the conflict, even if from afar, expanding its borders beyond the state of Liberia. A spatial understanding of the Liberian conflict thus requires an understanding of how it was shaped by the social actions of these external actors beyond the "territorial container" of Liberia.⁷⁹⁴ Given that the notion of transition involves the construction and reconstruction of space as one space gives way to another, the Liberian transitional justice process was influenced by the spatial realities of the conflict itself.

4.5.6 – Reflections on the Spatial Complexities of the Liberian Truth and Reconciliation Commission

While the physical location of the Liberian TRC's offices in Monrovia appears to be a singular space, the TRC itself existed as a plurality of complex and overlapping spaces. The activities of the TRC expanded its boundaries beyond the building in Monrovia, beyond the border of Montserrado County, and beyond the borders of the Liberian state. However, the expansion of this space was neither fixed, nor even.

⁷⁹² *ibid* 303

⁷⁹³ *ibid* 308

⁷⁹⁴ Chojnacki and Engels (n 341) 31

Rather, the legal and social aspects of the space interacted to constitute a series of conceived, perceived, and lived spaces that were uneven in their terrain, and ever evolving.⁷⁹⁵ The mutually reinforcing relationship between space and law meant that the TRC space existed in a state of flux, informed and defined by its complexities. In the following section, this relationship between law and space will be explored further, in order to uncover the accompanying legal complexities of the TRC process.

4.6 – The Legal ‘Strand’ - The Legal Complexity of the Liberian TRC

This section has thus far demonstrated the spatial complexities of the Liberian Truth and Reconciliation Commission as presented in its reports. It has been argued that geographically, physically, materially, and conceptually, the space of the TRC was expanded in various ways beyond its offices in Monrovia into the rest of Liberia and the rest of the world. The expansion of this space was not uniform, but created an uneven terrain across permeable boundaries. In its “Final Statement”, the TRC’s final report acknowledges “the complexity of the Liberian conflict, the intractable nature of [Liberia’s] socio-cultural interactions, [and] the fluid political and fragile security environment”,⁷⁹⁶ demonstrating an awareness of the complexity of this landscape. This complexity is produced socially, linguistically, spatially, and importantly for this section, legally. The Liberian Truth and Reconciliation Commission was constituted by the interaction of international and domestic law, as well as the interaction of various sources of domestic law. This section will explore the overlapping and intersecting laws and areas of law that applied during the Liberian Truth and Reconciliation Commission’s activities, and how these laws interacted to produce complexities. It will be argued that the complexity of the Liberian TRC manifested particularly in a tense relationship between international law and human rights practice, on one side, and local custom and culture on the other. These divisions between the domestic and the international, the formal and the traditional, are

⁷⁹⁵ Lefebvre (n 360). See also Davies, *Asking the Law Question* (n 318)

⁷⁹⁶ Liberian TRC, *Consolidated Final Report* (n 562) xxiii

necessarily artificial. Dividing the world into such binaries is one of the ways in which law “constitutes much of modern reality through its relentless, if inconsistent, reiterations of divisions”.⁷⁹⁷ Such divisions can be seen emerging in the legal foundations and in the reports of the Liberian TRC. Through these divisions emerge tensions, “contradictions, gaps, and slippages in how ‘law makes space’”.⁷⁹⁸ It is these tensions – these legal complexities – which are argued to shape the reporting of the TRC as a conceived space, and which will be explored in the remainder of this chapter.

4.6.1 – The Legal Complexity of Transitional Justice

As was mentioned in the previous chapter, the transitional period sees the application of international humanitarian law, international human rights law, international criminal law, international refugee law, domestic law, and the WPS Agenda at various times and in various contexts. As such, these bodies of law and their various sources all have an important role to play in the governance of transitional justice processes. Indeed, the United Nations Secretary-General has confirmed that transitional justice processes ought to be “normative”, with international norms and standards promoted and complied with in all such processes.⁷⁹⁹ These many diverse bodies of law become relevant because transitional justice is, itself, not an area of law, but a field of practice informed by many overlapping areas of law.

Bell argues that transitional justice can be viewed as a “subfield” of human rights law, humanitarian law, and international criminal law,⁸⁰⁰ while Teitel describes transitional justice as embedded “*within*” human rights law and humanitarian law through the emergence of normative standards such as the right to truth.⁸⁰¹ Describing the relationship between these areas of law, Teitel proposes that humanitarian law “is the protection granted in a conflict situation” while human rights law offers protection to

⁷⁹⁷ Delaney, “Legal Geography I” (n 366) 98

⁷⁹⁸ *ibid* 100

⁷⁹⁹ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 5

⁸⁰⁰ Bell, “Transitional Justice” (n 120) 22

⁸⁰¹ Teitel, “Transitional Justice Globalized” (n 350) 4

citizens from their own states “primarily in times of peace”.⁸⁰² That is, human rights law continues to apply in situations of conflict as it does in situations of peace, although subject to the *lex specialis* of international humanitarian law. While states are entitled to derogate from some human rights obligations in limited circumstances, they must respect and protect human rights during conflict.⁸⁰³ As the International Court of Justice has held: “some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law”.⁸⁰⁴ In this way, it is possible to observe how these laws “fade in” and “linger”, thereby producing plurality and complexity which constitutes the transitional space.⁸⁰⁵

This layering of laws in the transitional justice space demonstrates the legal reality of transitional justice as an “unsystematic collage of inconsistent and overlapping parts”.⁸⁰⁶ The relationship between these overlapping areas of law has the potential to produce complexities: tensions and gaps in the law which affect the construction of the TRC space.⁸⁰⁷ This is important, because the critical method employed by this thesis goes beyond understanding the subjects of law as “exclusively constituted by law”, and instead recognises law and legal subject as mutually constituting.⁸⁰⁸ In doing so, it follows critical legal pluralism in its rejection of state-centrism: it does not seek to establish a hierarchy of laws and legal sources, but rather seeks to understand how legal subjects interact with these laws and legal sources, and how these interactions contribute to their mutual constitution “in any given time-space”.⁸⁰⁹

⁸⁰² Ruti G Teitel, *Humanity's Law*, (Oxford University Press 2011) 43

⁸⁰³ *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226 [25]

⁸⁰⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136 [106]

⁸⁰⁵ von Benda-Beckmann and von Benda-Beckmann (n 364) 40

⁸⁰⁶ Griffiths (n 395) 4

⁸⁰⁷ Delaney, “Legal Geography I” (n 366) 100

⁸⁰⁸ Kleinhans and Macdonald (n 554) 37

⁸⁰⁹ *ibid* 39

The previous chapter outlined the definition of legal pluralism as the “co-existence of multiple systems or forms of law within one geographical space.”⁸¹⁰ However, as Davies has argued, pluralism cannot be considered as simply a reflection of the complicated nature of daily life, or a recognition of the “multifaceted” nature of law.⁸¹¹ Rather it is “a material-social dialogue in process”.⁸¹² This dialogue may produce complexity, and thus changes understanding of law at its most basic material level.⁸¹³ As such, an analysis of legal pluralism, or complexity, goes beyond considering the plurality of the legal system as it developed over time, but involves exploring how legal systems influence one another as they are brought into contact: how they are mutually constituting.⁸¹⁴ This is especially so when considering “colonial and postcolonial law”, the legacies of which are argued to persist through “material, political, economic, and theoretical hierarchies” far beyond the colonial period.⁸¹⁵ As such, such contexts require an “archaeology of law: an historical analysis of layers of legality and the historical contexts of their deposition”.⁸¹⁶ These layers become even more complex in a multi-scalar environment such as a transitional justice process. The rest of this section will demonstrate the layers of law emerging through the legal plurality and complexity of the Liberian TRC.

4.6.2 – Complexity through Scale

Scale is instrumental to any understanding of the legal complexity of transitional justice spaces. The “complex mosaic of legal (and illegal) geographies at different scales”⁸¹⁷ produced by the entanglements and overlaps of local, national, international, statutory, and customary laws within the transitional justice system is inherently multi-

⁸¹⁰ Davies, *Asking the Law Question* (n 318) 410

⁸¹¹ Davies, *Law Unlimited* (n 53) 7

⁸¹² *ibid*

⁸¹³ *ibid*

⁸¹⁴ Sally Engle Merry, “Colonial and Postcolonial Law” in Austin Sarat (ed), *The Blackwell Companion to Law and Society* (Blackwell 2004) 570

⁸¹⁵ Jarpa Dawuni (n 106) 451

⁸¹⁶ Merry, “Colonial and Postcolonial Law” (n 814) 570. See also Debora L Threedy, “Unearthing subversion with legal archaeology” (2003) 13 *Texas Journal of Women and the Law* 133

⁸¹⁷ Bartel *et al* (n 325) 344

scalar, with these various scales being brought together within the mandate of the transitional justice mechanism in question. The multi-scalar nature of law and legal systems produces a web of overlapping jurisdictions, and indeed, of overlapping scales,⁸¹⁸ from the international to the domestic, and from formal sources of law to “informal” and cultural norms.⁸¹⁹ This generates “ongoing conflict of laws across and between scalar frames”, in turn perpetuating complexities.⁸²⁰ The reporting of the Liberian TRC demonstrates an awareness of the process’s legal complexity as it emerges through these various scales. In order to more precisely define its legal mandate, the TRC conducted a “legal audit” of over fifty international human rights law, international humanitarian law, and other treaties, as well as judgments and practices of international and *ad hoc* criminal tribunals and truth and reconciliation commissions.⁸²¹ The TRC reports assert that it is this complex ecosystem of international laws, as well as domestic law, which was to apply to questions of accountability raised by the TRC.⁸²²

4.6.2.1 – Hybrid International Law

The complexity at the international scale can be observed in the tendency of the reports to discuss these bodies of law in hybrid terms. The reports rarely discuss international criminal law, international humanitarian law, and international human rights law as discrete bodies of law; rather they draw them together into one space, cross-pollinating that space with elements of each. For example, in defining gross human rights violations, the TRC refers to the Rome Statute⁸²³ and to the “conventional and customary” international human rights law and international refugee law that predate the creation of the International Criminal Court, bringing together elements of each body of law.⁸²⁴ When defining crimes, the TRC provides three “primary

⁸¹⁸ Chojnacki and Engels (n 341) 34

⁸¹⁹ Bartel *et al* (n 325) 344

⁸²⁰ *ibid*

⁸²¹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 18

⁸²² *ibid* 6

⁸²³ Rome Statute of the International Criminal Court (17 July 1998) 2187 UNTS 90 (“Rome Statute”)

⁸²⁴ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 69

classifications”: “(1) Egregious Domestic Crimes; (2) Gross Violations of Human Rights Law; and (3) Serious Humanitarian Law Violations”, again producing overlap between each area of law, and adding an additional layer of complexity with the introduction of domestic crimes.⁸²⁵ In its observation that certain gross violations of human rights, “for example, enslavement, genocide and crimes against humanity... increasingly extend to private persons and to private action”, the preliminary report adds a further layer of complexity by alluding to a binary between public and private spaces.⁸²⁶ As was discussed previously in this chapter, transitional justice is notable for bringing together these areas of law in any given process, so this plural discussion of these areas of law by the TRC is not being critiqued here. Rather, it is argued that this demonstrates how these areas of law overlap, becoming entangled in a complex web within the TRC space. If complexity is understood as the tensions and contradictions that are produced by the presence of multiple laws and legal systems in one space,⁸²⁷ then the co-existence of these overlapping areas of law in the TRC space results in inherent legal complexities.

4.6.2.2 – International Law v Domestic Law

The addition of domestic law generates further complexity between the international and national scales. The final report of the TRC clarifies in its fifth “Finding” that, in the application of law to the TRC’s activities, international norms take precedence over domestic law, with domestic criminal law applying where, “in the determination of responsibility”, norms of international human rights law, international humanitarian law, and international criminal law do not apply.⁸²⁸ This same sentiment can be found in the sixth “Finding” of the TRC’s preliminary report.⁸²⁹ The TRC’s reporting further distinguishes “domestic law violations” from “violations of international criminal law, international human rights law and international humanitarian law, including war

⁸²⁵ *ibid* 21

⁸²⁶ *ibid* 69

⁸²⁷ Delaney, “Legal Geography I” (n 366) 100

⁸²⁸ Liberian TRC, *Consolidated Final Report* (n 562) 17

⁸²⁹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 4

crimes violations” in the third “Finding” of the preliminary report.⁸³⁰ As such, a further layer of plurality is added in the context of the interaction of domestic and international law within the process.

The TRC’s reporting also draws jurisdictional boundaries in its definition and classification of offences as being of either an international or domestic character. For example, the preliminary report states that the TRC, while mostly preoccupied with international human rights law and international humanitarian law, will also consider “other ‘abuses’ or crimes” which it describes as “not of an international character” but as within “the realm of domestic criminal law violations”.⁸³¹ This domestic realm is described as “including sexual violations (e.g. rape and molestation) and murder.”⁸³² This classification calls into question the TRC’s treatment of rape as an offence. It appears, from this line in the report, that the reports’ authors appeared not to deem sexual violence such as rape as a crime of international character, in spite of the incorporation of such offences into international law.⁸³³ Further complexities arise given the tensions and discrepancies arising between the definitions of crimes such as rape from the international to the national scale. The “Women and the Conflict” appendix to the final report notes that Liberia has a dual legal system of Anglo-American Common Law and customary law, which it argues leaves women in rural areas “subjected to a multiplicity of socio-cultural and legal regimes rendering them much more vulnerable”.⁸³⁴ In statute, the Liberian penal code has an exception for sexual assault “when they are not married to each other”,⁸³⁵ while rape is only recognised where committed by a male against a female “not his wife”.⁸³⁶ The “Women and the Conflict” appendix notes that while the definition of rape had been expanded in law at the time of drafting, it continued to exclude marital rape, which is often

⁸³⁰ *ibid*

⁸³¹ *ibid* 22

⁸³² *ibid*

⁸³³ See, e.g. Rome Statute (n 823) Art.7 and Art.8; *Prosecutor v Tadic*, Case No IT-94-1-T (7 May 1997); *Prosecutor v Akayesu*, Case No ICTR-96-4-T (2 September 1998)

⁸³⁴ Liberian TRC, “Women and the Conflict” Appendix (n 59) 61

⁸³⁵ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 65

⁸³⁶ *ibid*

reduced to “family problems”.⁸³⁷ By contrast, an annex to the TRC’s preliminary report which defines “‘Gross’ Human Rights Violations Applicable to Non-International Armed Conflict” provides a far more detailed definition of rape than that provided by the Liberian penal code, with no mention of marriage.⁸³⁸ The definition is, in fact, gender-neutral by its nature, and clarifies that the “concept of ‘invasion’ is intended to be broad enough to be gender-neutral”.⁸³⁹ Similarly, subsequent definitions of sexual slavery, enforced prostitution, enforced sterilisation and sexual violence in the reports are all gender-neutral.⁸⁴⁰ Elsewhere in the preliminary report, “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” as well as persecution on the basis of gender (among other reasons) are listed as crimes against humanity, bringing them back to the international scale.⁸⁴¹ As such, there are clear contradictions in the way that law relating to sexual offences is portrayed and constituted by and within the reporting of the TRC, producing a space which is especially complex for women attempting to access it to discuss these experiences.

Overlapping scales such as these produce complexities, and so understanding these complexities in the transitional justice context requires an understanding of how law operates at and between each level. Indeed, transitional justice processes are likely to be the sites of “co-existing legal spaces”⁸⁴², given their scalar implications. Franz von Benda-Beckmann and Keebet von Benda-Beckmann have discussed the ways in which different forms of law from different sources can co-exist in the same spaces, and indeed can produce multiple conceptual spaces which overlap.⁸⁴³ They describe that law “of various kinds”, varying in formality, and of various degrees of “legitimacy, validity, power, and authority” can exist simultaneously in the same space, though at

⁸³⁷ Liberian TRC, “Women and the Conflict” Appendix (n 59) 63

⁸³⁸ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 70

⁸³⁹ *ibid*

⁸⁴⁰ *ibid*

⁸⁴¹ *ibid* 73

⁸⁴² Cuomo and Brickell, “Feminist legal geographies” (n 334) 1047

⁸⁴³ von Benda-Beckmann and von Benda-Beckmann (n 364) 34

different scales.⁸⁴⁴ Where the space in question has a plural legal system, “more complex webs” of overlapping spaces may be produced.⁸⁴⁵ The result of these tensions or complexities arising between domestic and international law within the transitional justice process thus produces a complex web of overlapping spaces, wherein women’s experiences and access to justice may materialise very differently depending on which law is being applied at any given moment.

4.6.2.3 – “*Formal*” Law v “*Traditional*” Law

In transitional justice processes, international law norms are at times transplanted into legal systems without any attention given to how they will interact with law at the local or domestic scale. It is therefore important that the legal complexity of a given transition be considered in light of arguments regarding the appropriateness of applying international law in non-Western contexts without any consideration of local cultures and customs. Lawson and Flomo have, for example, argued that transitional justice exists in “multiple, negotiated and contested forms”.⁸⁴⁶ As such, they call for greater attention to customary mechanisms within transitional justice scholarship because of the “failure of universalising approaches”, noting that political and social realities in post-colonial societies prevent such approaches being “pursued within [their] own internal logics.”⁸⁴⁷ At the level of domestic law, the process of attempting to “harmonise” statutory and customary legal systems in the wake of the conflict can prove challenging, especially given “the tendency of the international community to prefer modern statutory laws as the basis for its post-conflict peace-building programmes”.⁸⁴⁸ Customary and statutory law may themselves be entangled in the transitional context, making this preference towards the statutory arbitrary. In Liberia, for example, it has been argued that customary justice is more “a reference to cultural principles rather than a set of clearly defined customary procedures”, or “an umbrella

⁸⁴⁴ *ibid*

⁸⁴⁵ *ibid*

⁸⁴⁶ Lawson and Flomo (n 60) 1865-6

⁸⁴⁷ *ibid*

⁸⁴⁸ Divon and Bøås (n 563) 1381-2

term” for any alternative to the statutory justice system.⁸⁴⁹ Customary justice in this context may not be drawn from traditional indigenous practices but, in its modern iteration, consist of “a variety of cultural ethnic and religious principles” combined with other historical, cultural, and community factors.⁸⁵⁰ Understanding the legal complexity of a given transitional context thus requires an understanding of how the law operates at and between each level.

Such tensions further emerge between “formal” sources of international and domestic law and Liberia’s traditional law and custom. The TRC’s preliminary report describes the challenging task of developing “a legal architecture and set of standards” which not only reflect Liberia’s international obligations but which were also “digestible to the Liberian palate and suitable to the Liberian experience”.⁸⁵¹ Thus, the TRC’s methodology was intended to complement “Liberia’s complex history while simultaneously comports with domestic, regional and international norms”.⁸⁵² This suggests a discomfort on the part of the TRC to apply law which it perceived as culturally or socially incompatible with Liberian attitudes, adding to the complexity of the TRC space. As such, clear tension exists between the universal application of “formal” international law at the TRC and the application of local, “traditional” law and custom which may run counter to international standards. The relationship between formal and customary norms is not limited to the TRC space, but can also be observed in the Liberian Constitution. Article 5(b) of the Constitution requires that the state “preserve, protect and promote positive Liberian culture”,⁸⁵³ though what constitutes “positive” culture is not defined anywhere in the state’s domestic law.⁸⁵⁴ The provision further states that such promotion is intended to ensure that “traditional values which are compatible with public policy and national progress are adopted and

⁸⁴⁹ *ibid* 1386

⁸⁵⁰ *ibid*

⁸⁵¹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 18

⁸⁵² *ibid* 24

⁸⁵³ Constitution of the Republic of Liberia (1986), Article 5(b)

⁸⁵⁴ United Nations Mission in Liberia, “An Assessment of Human Rights Issues Emanating from Traditional Practices in Liberia” (OHCHR 2015) <<https://www.ohchr.org/en/documents/country-reports/assessment-human-rights-issues-emanating-traditional-practices-liberia>> 14

developed as an integral part of the growing needs of the Liberian society”.⁸⁵⁵ Again, no indication is given as to what traditional values may be compatible with vague concepts such as “public policy and national progress”. As such, while the TRC sought a methodology and legal regime that was complementary to Liberia’s history and culture, the Constitution seeks to limit the interaction of culture and tradition to that which is “compatible with public policy and national progress”. In this way, these provisions avoid addressing or acknowledging any conflict between customary and statutory law. Rather, a dialogue is established between formal law norms, public policy aims, and traditional and cultural life in Liberia, with each being constituted so as to be compatible with the others while simultaneously producing frictions and tensions in the law.

It has been argued that international law excludes culture from its view of spaces, instead seeking to apply global principles of justice to local disputes as part of its “trajectory toward global peace.”⁸⁵⁶ However, in doing so, international law actually constitutes the “events and places” it views through its lens.⁸⁵⁷ How does this constitutivity emerge when the interaction of the international and the traditional produces complexities? Merry discusses the potential “demonization” of culture in the realm of international human rights law and discourse, through which local culture and custom are presented as a hindrance to the realisation of rights.⁸⁵⁸ Such an approach presents the supplantation of “harmful” cultural practices with “other cultural practices rooted in modern ideas of gender equality” as necessary for the move “into the realm of rights-bearing modernity”.⁸⁵⁹ Indeed, the interaction between traditional law, custom, and culture and international human rights standards more generally has been the subject of much legal and scholarly critique. The UN Human Rights Committee, for example, has affirmed that it will not accept “traditional,” “cultural,” or “religious

⁸⁵⁵ Constitution of the Republic of Liberia (1986), Article 5(b)

⁸⁵⁶ Keenan (n 112) 23

⁸⁵⁷ *ibid*

⁸⁵⁸ Merry, *Human Rights & Gender Violence* (n 185) 12

⁸⁵⁹ *ibid*

attitudes” as justification for abuses of women’s human rights.⁸⁶⁰ Article 4 of the 1993 Declaration on the Elimination of Violence against Women is similarly clear that states “should not invoke any custom, tradition or religious consideration to avoid their obligations” with respect to eliminating violence against women.⁸⁶¹ The UNMIL Human Rights and Protection Section (“HRPS”) has further described “some practices carried out under the *guise* of ‘tradition’ or ‘culture’” as incompatible with human rights standards, whether emanating from international human rights treaties, Liberian domestic law, or the norms of customary international law.⁸⁶² The use of the word “guise” suggests that HRPS rejects the notion that these practices are actually rooted in culture, or that cultural observance justifies them. Indeed, when traditional practices in Liberia are mentioned in reports of the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”), it is overwhelmingly in the context of those practices being “harmful”.⁸⁶³ In spite of this, the Liberian government, in its state reporting to the UN’s human rights monitoring processes, has invoked tradition as a justification for certain practices, such as female genital mutilation, that have been deemed harmful by delegations.⁸⁶⁴ As such, the way in which culture is presented appears to depend on the forum and audience for the presentation.

That elements of Liberia’s customary law have been subject to local and international criticism, particularly with regard to their incompatibility with international human rights norms, adds a further layer of tension and contradiction to their application in the TRC context. The UN Human Rights Committee, for example, has expressed concern about certain customary laws (as well as certain provisions of Liberia’s Constitution and statutory law) being incompatible with the International Covenant on

⁸⁶⁰ United Nations Human Rights Committee, “CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)” (29 March 2000) UN Doc CCPR/C/21/Rev.1/Add.10, [5]

⁸⁶¹ United Nations General Assembly, “Declaration on the Elimination of Violence against Women” (20 December 1993) UN Doc A/RES/48/104, Art.4

⁸⁶² United Nations Mission in Liberia (n 854) 2 [emphasis added]

⁸⁶³ CEDAW Committee, “Concluding observations of the Committee on the Elimination of Discrimination against Women” (7 August 2009) UN Doc CEDAW/C/LBR/CO/6, 10

⁸⁶⁴ United Nations Human Rights Council, “Report of the Human Rights Council on its sixteenth session” (14 November 2011) UN Doc A/HRC/16/2, [342]

Civil and Political Rights (ICCPR),⁸⁶⁵ while the CEDAW Committee has expressed particular concern about the potentially discriminatory effects of Liberia’s customary law.⁸⁶⁶ The United Nations Country Team in Liberia has also observed the “archaic and discriminatory” nature of customary laws such as the Hinterland Rules and Regulations,⁸⁶⁷ arguing that many provisions, including some in the country’s Constitution, were “inconsistent with international human rights obligations.”⁸⁶⁸

The Hinterland Rules and Regulations represent the partial codification of Liberia’s customary law, and are described by the final report of the TRC as having “allowed men to overtly oppress women and entrench the tendency to treat women unjustly”.⁸⁶⁹ These laws denied basic rights to women, including property ownership, participation in decision-making processes, and participation in certain forms of employment. Girls were also routinely denied the right to attend school, and as a result almost 80% of women were illiterate at the time the TRC reports were written.⁸⁷⁰ These laws also denied women rights in marriage, constituting them instead as property which could be “returned” by their husbands to their families at any time, even after having children.⁸⁷¹ The final report attributes these laws to cultural fears “that women would dominate their partners if allowed the ‘space’ to do so”,⁸⁷² and in so doing blames the culture entrenched by these laws, at least in part, for the conflict-related experiences of women.⁸⁷³ The final report states that, by denying women basic rights, such laws “laid the foundation for the extreme violations perpetrated during wartime because men had already been socialized to violate women with impunity”.⁸⁷⁴ These laws

⁸⁶⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

⁸⁶⁶ United Nations Human Rights Council, “Compilation on Liberia: Report of the Office of the United Nations High Commissioner for Human Rights” (6 March 2020) UN Doc A/HRC/WG.6/36/LBR/2, [5]

⁸⁶⁷ Revised Rules and Regulations Governing the Hinterland of Liberia (7 January 2001) (“Hinterland Rules and Regulations”)

⁸⁶⁸ UNHRC, “National report” (A/HRC/WG.6/9/LBR/1) (n 685) [4]

⁸⁶⁹ Liberian TRC, *Consolidated Final Report* (n 562) 314

⁸⁷⁰ *ibid*; Liberian TRC, “Women and the Conflict” Appendix (n 59) 9-10

⁸⁷¹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 9-10

⁸⁷² Liberian TRC, *Consolidated Final Report* (n 562) 314

⁸⁷³ *ibid*

⁸⁷⁴ *ibid*

contributed to the legal space of the conflict, and affected the ways in which women interacted with and were constituted by that space. Thus, it is possible to observe clear tensions between a TRC which aims to incorporate and apply legal standards insofar as they are deemed “suitable to the Liberian experience”,⁸⁷⁵ while simultaneously identifying the problematic nature of Liberia’s customary law and its treatment of women.

Further complexities arise in the portrayals of Liberia’s traditional and cultural practices throughout the reporting. An example of this is the contradicting representations of the traditional *Poro* and *Sande* societies. These are traditional cultural societies for men and women respectively, which themselves are permissible under Liberian customary law.⁸⁷⁶ Research by Richard Reeve and Jackson Speare on peace initiatives in Liberia and Sierra Leone argues that such societies “paradoxically represent both a force for social order and a potential impediment to the ability of the state to protect citizens and investigate crimes” owing to the “sometimes-uneasy partnership” such societies enjoy with “‘modern’ Liberian state security and justice institutions”.⁸⁷⁷ The Office of the High Commissioner on Human Rights has further named “forced initiation into secret cultural societies”, later clarified as the *Sande* and *Poro* societies, as one of many “[h]armful traditional practices” that have endured in Liberia, stating that such practices are “discriminatory, harmful and violate the dignity of the person on whom they are performed”.⁸⁷⁸ In fact, NGO submissions to the CEDAW Committee have associated the *Sande* society with “forced recruitment”⁸⁷⁹

⁸⁷⁵ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 18

⁸⁷⁶ Hinterland Rules and Regulations (n 867) art.68(a)

⁸⁷⁷ Richard Reeve and Jackson Speare, “Human security in Liberia: Local perspectives on formal and informal security sectors” (2012) 23 *Accord: an international review of peacebuilding initiatives* 40, 42

⁸⁷⁸ United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights” (2009) (n 67) [29]

⁸⁷⁹ Women NGO Secretariat of Liberia (“WONGOSOL”), “NGO Shadow Report to 7th & 8th Periodic Report of Liberia on Convention on the Elimination of all forms of Discrimination against Women (CEDAW)” (1 October 2015)

<[155](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=1KIk9bb9KdSzAa/6qWzHwxzYN20CnVPtbC0nACYDz+cR2u/U3vBRq8rw/qj9a6LB7MjFQXFbGdGiBUoso8JHhQ==> 13</p></div><div data-bbox=)

and female genital mutilation,⁸⁸⁰ while the CEDAW Committee itself attributes the increasing number of girls dropping out of school, at least in part, to recruitment into the *Sande* society.⁸⁸¹ Indeed, writing in 2015, the CEDAW Committee expressed concern about “the persistence of adverse cultural practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in society and in the family”,⁸⁸² proposing that such attitudes were “perpetuated” by societies such as the *Sande* and the *Poro*.⁸⁸³ The CEDAW Committee has also explained its concern that “such norms, customs and practices justify and perpetuate discrimination against women, violence against women and the persistence of harmful traditional practices” and has lamented a lack of “sustained and systematic action” by Liberia to address this.⁸⁸⁴ In fact, inequality and marginalisation of women are described by the CEDAW Committee as “entrenched in traditional and religious perceptions”.⁸⁸⁵

By contrast, these societies, along with traditional social structures in general, are portrayed generally positively in the reporting of the TRC. The preliminary report states that the “fabric of the nation and its people is deeply carved along cultural and traditional values, systems and practices.”⁸⁸⁶ The “Conflict, Religion and Tradition” appendix to the final report of the TRC describes the role of religion and tradition in Liberian society as “pivotal”,⁸⁸⁷ while religious and traditional institutions are described as “integrally responsible for peace processes” which led to the conclusion

⁸⁸⁰ Equality Now, “Information on Liberia for Consideration by the Committee on the Elimination of Discrimination against Women at its 62nd Session (26 October – 20 November 2015)” (2 October 2015) <https://www.ecoi.net/en/file/local/1211449/1930_1446201571_int-cedaw-ngo-lbr-21879-e.pdf> 2

⁸⁸¹ CEDAW Committee, “Concluding observations on the combined seventh and eighth periodic reports of Liberia” (24 November 2015) Un Doc CEDAW/C/LBR/CO/7-8 [35]

⁸⁸² *ibid* [21]

⁸⁸³ *ibid*

⁸⁸⁴ CEDAW Committee, “Concluding observations of the Committee on the Elimination of Discrimination against Women” (2009) (n 863) 4

⁸⁸⁵ CEDAW Committee, “Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined initial, second, third, fourth, fifth and sixth periodic reports of States parties – Liberia” (13 October 2008) UN Doc CEDAW/C/LBR/6, 32

⁸⁸⁶ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 40

⁸⁸⁷ Liberian TRC, “Conflict, Religion and Tradition” Appendix (n 598) 1

of the Accra Agreement.⁸⁸⁸ The TRC Act itself provides that the TRC was able to “seek assistance from Traditional and religious leaders in the furtherance of its mandate”,⁸⁸⁹ while a Traditional Advisory Council comprising chiefs and elders from around Liberia was established in 2007 “to involve the traditional population in the TRC process”.⁸⁹⁰ Related specifically to women’s participation in the TRC’s processes, the preliminary report notes that the TRC’s “gender program” conducted specific and targeted outreach with *Zoes* – the female traditional leaders of the *Sande* society – to assist in education of their communities about the TRC process.⁸⁹¹ The reports claim that, once the involvement of traditional leaders was known to the public, many women in their communities began approaching their leaders to help to engage with the TRC, showing how the traditional leader workshops lent “credibility” to the process.⁸⁹² Thus, there exist clear tensions and discrepancies in the portrayals of Liberia’s traditional law and practices. At the level of the TRC, Liberian traditional practices are an essential part of Liberia’s cultural identity and seen as indispensable to the TRC process, but the customary law which underpins some of those practices is portrayed as a hindrance to women’s equality. At the international level, such law and practices are viewed as actively violating women’s human rights. This demonstrates the intense legal complexity between and across the scales of this transitional space. If customary law and practices are constituted differently in different contexts – in different *discursive spaces* – what happens when these spaces come into contact with one another? The permeable boundaries between spaces, and the movement of legal subjects from one space to another, results in the constitutivities present in one space affecting the constitutive process in others.⁸⁹³ As a result, the contradictions in the constitutivity of customary law and practices across these conceptual, discursive spaces produces complexities in the reporting of the TRC.

⁸⁸⁸ *ibid* 4

⁸⁸⁹ *ibid* 1

⁸⁹⁰ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 41

⁸⁹¹ *ibid*

⁸⁹² Liberian TRC, “Women and the Conflict” Appendix (n 59) 18

⁸⁹³ Cornwall, “Spaces for transformation?” (n 310) 78

4.6.3 – Complexity in Conflict Contexts

The applicability of different laws at different scales is further informed by the space of the conflict, as well as the space of the transitional justice process. As discussed above, international humanitarian law is the *lex specialis* in situations of armed conflict. Its application in a transitional justice process therefore requires a determination of whether an armed conflict has in fact taken place. As such, adding to the complexity of the TRC’s work are the differing standards for determining whether a situation can be described as an armed conflict or simply armed violence. In recognition of the “complex nature” of the armed conflict in Liberia, the TRC’s preliminary report indicates that both Common Article 3⁸⁹⁴ and Protocol II⁸⁹⁵ standards were to apply.⁸⁹⁶ In doing so, the report explains that “a flexible juridical approach” is necessary to recognise “the blurred lines between armed conflict between organized armed groups and government, and opposing organized armed groups and armed splinter groups”, especially given that the governments in question often controlled less territory and had no military capacity.⁸⁹⁷ The TRC reporting considers, in some depth, which episodes of violence can be said to form part of an armed conflict and therefore fall within the scope of Common Article 3.⁸⁹⁸ Annex 1 of the final report uses a diagram and table to explain the presence or absence of armed conflict and the application of different bodies of law during each period.⁸⁹⁹ The transition in and out of armed conflict and the associated alternating application and irrelevance of international humanitarian law standards produce “slippages” in the law,⁹⁰⁰ and the

⁸⁹⁴ Common Article 3 to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949) 75 UNTS 31 (“First Geneva Convention”); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (12 August 1949) 75 UNTS 85 (“Second Geneva Convention”); Geneva Convention Relative to the Treatment of Prisoners of War (12 August 1949) 75 UNTS 135 (“Third Geneva Convention”); and Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949) 75 UNTS 287 (“Fourth Geneva Convention”)

⁸⁹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (8 June 1977) 1125 UNTS 609 (“Protocol II”)

⁸⁹⁶ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 21

⁸⁹⁷ *ibid*

⁸⁹⁸ *ibid* 20

⁸⁹⁹ *ibid* 62

⁹⁰⁰ Delaney, “Legal Geography I” (n 366) 100

way that law constitutes the space not only of the violent events themselves, but of the TRC. These transitions from armed conflict, to armed violence, and back again, resemble what von Benda-Beckmann and von-Benda Beckmann describe as spaces which “fade in”.⁹⁰¹ By this, they mean that law may begin to constitute a space before that law is officially enacted. In the context of the Liberian TRC, this could mean the application of international humanitarian law standards before a period of armed conflict can be legally established. Similarly, the space of armed conflict may “linger”,⁹⁰² with the application of humanitarian law to a space of armed conflict remaining even after that period conflict is deemed to have ended. This produces multiple layered spaces existing concurrently, with the legal framework of each informing the shapes those spaces take.⁹⁰³

4.6.4 – Temporal Complexities

The reporting of the Liberian TRC acknowledges the potential for “gaps” in the law produced by the complex and overlapping layers of law being variously applied over time.⁹⁰⁴ The TRC was mandated to investigate abuses which occurred from “January 1979 to 14 October 2003”. Section 4(c) of the TRC Act uses the word “antecedent”, stressing the importance for the TRC of establishing root causes and thus understanding how “the violent conflict” was constituted. Section 4(d) is also backward-looking, and states the intention of “establishing and giving recognition to historical truths in order to address falsehoods and misconceptions of the past”.⁹⁰⁵ As well as investigating violations themselves, the TRC aimed to establish “whether these were isolated incidents or part of a systemic pattern” by investigating antecedent causes of violence in addition to determining those responsible.⁹⁰⁶ In this way, the TRC mandate produces temporal distance by drawing boundaries around the particular time

⁹⁰¹ von Benda-Beckmann and von Benda-Beckmann (n 364) 40

⁹⁰² *ibid*

⁹⁰³ Delaney, *The Spatial, the Legal, and the Pragmatics of World-Making* (n 367) 25

⁹⁰⁴ Delaney, “Legal Geography I” (n 366) 100

⁹⁰⁵ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 17

⁹⁰⁶ Liberian TRC, *Consolidated Final Report* (n 562) 48

periods that the TRC was empowered to investigate.⁹⁰⁷ Acknowledging how this complex legal landscape was further complicated by the temporal mandate of the TRC, its preliminary report posits that “what may not have been an [international human rights law] or [international humanitarian law] violation in 1979 may have become one through treaty or customary law development by 1999”, and especially since the adoption of the Rome Statute in 1998.⁹⁰⁸ Further emphasising these temporal complexities, the report refers to the example of children. Additional instruments on the children’s human rights came into play during the civil conflict, creating a situation whereby persons whose substantive experiences as children were the same may nevertheless have been subject to different legal regimes.⁹⁰⁹ The TRC addresses “these temporal and substantive dichotomies by employing a sequential analysis for reviewing allegations”.⁹¹⁰ By this, it means that responsibility for harms was determined only on the basis of the law applicable at the time that the harm was committed.⁹¹¹

Time has been previously employed as an analytical category in legal geographical analyses.⁹¹² This thesis, by contrast, conceives of the TRC’s reports as forming a discursive space, somewhat abstracted from time and instead providing representations of Liberia, its conflicts, and its transitional justice process at the particular moment of the reports’ drafting. While this thesis thus does not employ the concept of time as a specific mode of analysis, it nevertheless argues that the TRC’s reports demonstrate the emergence of complexities in the interaction of law and time. This temporal complexity – whereby changing laws over time produced overlapping legal regimes within the conceived space of the Liberian TRC – can be observed as “contradictions, gaps, and slippages in how ‘law makes space’”.⁹¹³ The promulgation

⁹⁰⁷ Jeffrey, “The political geographies of transitional justice” (n 414) 347

⁹⁰⁸ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 18

⁹⁰⁹ *ibid* 18-19

⁹¹⁰ *ibid*

⁹¹¹ *ibid*

⁹¹² See, e.g. Mariana Valverde, “Time Thickens, Takes on Flesh” in Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014) for a discussion of legal geography’s relationship with time.

⁹¹³ Delaney, “Legal Geography I” (n 366) 100

of international human rights law instruments in the latter half of the twentieth century and during the time period covered by the TRC causes spaces and laws to “fade in,”⁹¹⁴ while previous legal regimes “linger” by virtue of the TRC’s temporal mandate.⁹¹⁵

4.6.5 – Reflections on the Legal Complexity of the Liberian Truth and Reconciliation Commission

Complexity arises when multiple laws, legal systems, and legal sources interact to produce overlaps, tensions or gaps in the law.⁹¹⁶ The result is an overlapping and entangled web of law and space. In the reporting of the TRC, complexities are produced through the application of various scales of law, and how these come together within the mandate of the TRC. The nature of the violence that took place in Liberia informed the ways in which that law was applied, while the way that law changed over time produced multiple spaces which faded in, faded out, and lingered as the conflict and the law evolved. The complexities produced by the contradictions between the formal and the customary, and international and traditional, were not easily reconciled by the TRC, with often gendered consequences. All of this creates distinct legal space, itself inseparable from these complexities. Understanding the spatial and legal complexities of the Liberian TRC is important because of the mutually constituting relationship between law, space, and subject. Complexity arising in the spatial and legal strands of the TRC process can then impact the ability of legal subjects to access it through participation. As such, having established the spatial and legal complexities of the Liberian TRC, this thesis can now explore how these spatial and legal strands interacted to constitute women’s participation in the TRC’s activities.

⁹¹⁴ von Benda-Beckmann and von Benda-Beckmann (n 364) 40

⁹¹⁵ *ibid* 41

⁹¹⁶ Delaney, “Legal Geography I” (n 366) 100

4.7 – Conclusions

Keenan has argued against the limiting legal conception of space as fixed, even, and static, arguing that such “closed” conceptions of space encourage equally closed conceptions of to whom space belongs.⁹¹⁷ This emphasises the importance of recognising the multidimensional nature of space. The law “acknowledges preexisting social spaces” but does so through an “active process” which can create, transform, or dissolve spaces as it recognises them.⁹¹⁸ Indeed, “when the law constitutes social spaces, it only rarely invents them out of thin air”.⁹¹⁹ That is, they are iterations of spaces that have preceded them or which exist alongside them. Even the “artificial” construction of space does not remain artificial for long, with such newly constructed spaces gaining “a life of their own, so that they are no longer a mere vehicle for achieving public goals, but also reflect authentic social relations and individual choice”.⁹²⁰ This thesis argues that, in the case of the transitional justice process, spaces do indeed obtain a life of their own, but that the law and the social activities of actors at the international level continue their influence from one life to the next.

The Liberian TRC existed as a series of distinct and overlapping spaces. As a conceived and a representational space,⁹²¹ the Liberian Truth and Reconciliation Commission stretched beyond Liberia’s state borders to allow and encourage access for every Liberian citizen. However, while in reality the TRC space expanded across counties and countries, the political nature of space and spatial practice of those able to access it resulted in fractured and uneven spaces, constituted differently by laws, actors, and resources. The TRC’s reporting, as a form of discourse, forms its own representation of space,⁹²² and one which through its portrayal of women, has important constitutive effects on their modes of participation. This is because spaces cannot exist in isolation, as discrete containers. Rather, they are separated by

⁹¹⁷ Keenan (n 112) 47

⁹¹⁸ Yishai Blank and Issi Rosen-Zvi, “The Spatial Turn in Legal Theory” (2010) 10(1) *Hagar* 37, 47

⁹¹⁹ *ibid*

⁹²⁰ *ibid*

⁹²¹ Lefebvre (n 360) 33

⁹²² *ibid*

permeable boundaries which themselves are inextricable from the space.⁹²³ Just as women are constituted through one space, their participation in others is also shaped. This chapter further proposed that one way in which the subject is connected to space is through law, and in particular through the world that the language of the law produces through its utterance. As such, this chapter has engaged with how law is constituted through the reporting of the Liberian TRC. Doing so through a spatial lens produces “a more complex account” of the various laws existing in a multiscale environment such as a transitional justice process.⁹²⁴ In this way, it is possible to observe the myriad “contradictions, gaps, and slippages in how ‘law makes space’”⁹²⁵ which emerged across scales, spaces, and time.

These spatial and legal elements of the Liberian TRC are important, because the nature of space and law impacts access to them. As such, having explored the spatial and legal dimensions of the TRC, it is now possible to investigate how these strands interacted to constitute women as participants. While the construction of space conditions who is able to participate, participants reciprocally shape the space through their participation. For example, “those who participate in any given space are also, necessarily, participants in others”.⁹²⁶ As these participants exist across multiple spaces at once and move “between domains of association” through permeable boundaries, they carry with them their experiences, their ideas, and their constitutive possibilities.⁹²⁷ In this way, participants shape the spaces of transitional justice, just as political circumstances, legal complexities, or geographical concerns do. The law similarly constitutes spaces, regulating social spaces through their creation. Where the law constructs a new social space – a transitional justice mechanism, for example – the law “becomes a constitutive element in the social realm, without which various social spaces would not exist altogether”.⁹²⁸ Therefore, it can once again be observed that the spatial, social, and legal elements of transitional justice are mutually

⁹²³ Davies, *Asking the Law Question* (n 318) 441

⁹²⁴ *ibid* 411

⁹²⁵ Delaney, “Legal Geography I” (n 366) 100

⁹²⁶ Cornwall, “Spaces for transformation?” (n 310) 78

⁹²⁷ *ibid*. See also Lefebvre (n 360) and Keenan (n 112)

⁹²⁸ Blank and Rosen-Zvi (n 918) 46

constituting. As such, a study of participation allows for an understanding of space, and vice versa. The next chapter will begin this study by exploring how participation was constituted in law for the purposes of the Liberian TRC. In particular, it will explore the opportunities for participation in the complex legal space of the Liberian TRC that were provided for in law, with a view to understanding how these opportunities could have constituted women in the TRC's reporting.

5 - Participation in a Legally Complex Space

5.1 – Introduction

The previous chapter explored the complexity of the multiple spaces and laws associated with the Liberian Truth and Reconciliation Commission. This chapter will engage with the concept of participation itself. It will interrogate what participation means in transitional justice contexts, intending to reveal what participatory opportunities were available to women at the Liberian TRC. This, in turn, will allow for an analysis of the relationship between women’s participation and their portrayal in the documentation associated with the TRC process. The second chapter in this thesis argued that transitional justice literature has made arguments about the levels or effectiveness of participation in such processes. However, the meaning of participation for these purposes is rarely explicitly discussed. This thesis has previously invoked Andrea Cornwall’s description of participation as an “infinitely malleable concept” which can mean “almost anything that involves people”.⁹²⁹ Because of this, she argues that the meaning of participation can be changed to meet the demands of the context in question.⁹³⁰ In this way, participation may cease to hold any meaning in its own right, instead being reconstituted to hold different and even contradictory meanings depending on the context. This is problematic, because without a clear statement of what participation is or ought to be, it becomes difficult to improve. Indeed, O’Rourke has argued that there exists an “acute need” to more clearly define what “participation” means in peace and security contexts in order to understand “how these different meanings might be working, ultimately, against women’s participation”.⁹³¹

Furthermore, the nature of space necessitates an analysis of what participation means in a transitional justice context. Space both “emerges from and maintains certain practices and relationships”.⁹³² As such, space can be “exclusionary and/or

⁹²⁹ Cornwall, “Unpacking ‘Participation’” (n 267) 269. See also Chapter 2 of this thesis.

⁹³⁰ *ibid*

⁹³¹ O’Rourke, “Walk[ing] the Halls of Power” (n 4) 135

⁹³² Awuh (n 272) 276

inclusionary”, with how space is constituted making it more receptive to certain identities over others.⁹³³ The construction and constitutivity of space thus has clear implications for the types of participatory practices which are available and which grant access to certain spaces; who is able to access those spaces and participate in those practices; and how this is able to happen. In addition, participatory practices – as a form of social relations – may actually “create new kinds of spaces”.⁹³⁴ What follows is the need to understand how these participatory practices make space, and the kinds of spaces that they make.

This chapter therefore seeks to understand what “participation” was understood to mean for the purposes of the Liberian Truth and Reconciliation Commission. As the previous chapter has argued, the Liberian TRC was – both spatially and legally – complex, plural, and layered. This chapter, through its analysis of participation, thus focuses on a specific aspect of the interrelation between law and space. Understood spatially, participation can be a means of accessing spaces, with law defining that access. As such, this chapter will interrogate the modes of participation available to women in law across the international and national scales of law. Through its analysis, this chapter will ultimately argue that the legal frameworks governing women’s participation in the Liberian TRC provided only limited participatory opportunities. It will argue that these limited opportunities for participation had a constitutive effect for women in the discursive space of the TRC, demonstrating that how women are constituted by transitional justice processes necessarily depends upon the understanding of participation being employed in that particular context.

Many theorists have proposed their own conceptions of what participation is or ought to be. As a result, there exists an extensive literature on participatory models and approaches.⁹³⁵ While this thesis does not seek to evaluate all of the various ideas and

⁹³³ *ibid*

⁹³⁴ Cornwall, “Making spaces, changing places” (n 71) 3-4

⁹³⁵ See, e.g. Sherry R Arnstein, “A Ladder of Citizen Participation” (2019) 85(1) *Journal of the American Planning Association* 24; Jules N Pretty, “Participatory learning for sustainable agriculture” (1995) 23(8) *World Development* 1247; Sarah C White, “Depoliticising development: the uses and abuses of participation” (1996) 6(1) *Development in Practice* 6; Mark S Reed, “Stakeholder

frameworks available, it does propose to draw from this literature in its analysis of the participatory opportunities provided for at the Liberian TRC. As such, this analysis takes inspiration from Farrington and Bebbington *et al*'s simple axis of participation, which assesses the depth and breadth of participation in particular processes.⁹³⁶ Participation, in this view, can range from “deep” to “shallow”, and from “wide” to “narrow”. Deep participation involves full engagement of actors at all stages of a process, from its inception to its conclusion, while a shallow participation might only consult actors, or inform them of the process’s progress. Wide participation denotes a broad range of actors being involved in the process in question, while narrow participation would suggest that only a select few have been invited to participate. These are not four distinct categories, but rather can overlap, with participation in a process being deep but narrow, and so on. This chapter will outline measures in the TRC’s mandate relating to participation, as well as the discussion of participatory efforts in the TRC’s reporting, and employ the critical spatial discourse analysis method explained earlier in the thesis to evaluate these measures along these axes of participation.

Previous chapters have established that the law is inseparable from the spatial and social elements of transitional justice: that law “cannot be understood separately from the narratives, myths, and patterns of behaviour that shape a community.”⁹³⁷ As such, the law constitutes one strand in the complexly woven braid of the transitional justice process. As was argued in the previous chapter, the relationship between law and space is “co-emerging, co-constituting and co-evolving”.⁹³⁸ In this vein, this chapter will therefore argue that the depth and breadth of participation in the Liberian TRC is constituted by the complex and multiscalar legal space of the TRC itself, with consequences not only for women’s participation, but also how they are discursively constructed in such processes. Importantly, the analysis in this chapter will set the

participation for environmental management: A literature review” (2008) 141(10) *Biological Conservation* 2417. See also Cornwall, “Unpacking ‘Participation’” (n 267)

⁹³⁶ John Farrington and Anthony Bebbington *et al*, *Reluctant Partners: Non-governmental Organisations, the State and Sustainable Agricultural Development* (Routledge 1993)

⁹³⁷ Davies, *Law Unlimited* (n 53) 122

⁹³⁸ Philippopoulos-Mihalopoulos “And For Law” (n 47) 11

scene for the analysis in the forthcoming chapter, which will argue that there exists a mutually constituting relationship between women's participation and the "narratives" and "myths" about women which emerge through the reporting of the Liberian TRC.

5.2 – Participation in International Law

In determining the areas of law to be applied in the context of the Liberian TRC, the preliminary report of the TRC lists international human rights law, international humanitarian law, international criminal law, and Liberian criminal law as being applicable in any effort to establish accountability.⁹³⁹ This is demonstrative of the multi-scalar nature of law that was discussed in the previous chapter. That chapter argued that scale necessarily informs the construction of the transitional justice space, because it is the interactions and entanglements of international, domestic, and local law which produce complexities and contradictions in the law.⁹⁴⁰ As such, any analysis of participation in the context of the Liberian TRC requires an interrogation of what participation has come to mean in law at both the international and domestic levels. This section will therefore begin with a review of how participation is understood in international law. In particular, it will explore the proposed emergence of a "right to participation" in transitional justice contexts. Aside from the rhetoric in transitional justice literature which espouses the importance of participation, scholarship has noted the emergence of such a right through "the interpretation by international and regional human rights bodies of norms in comprehensive human rights treaties".⁹⁴¹ However, neither the content of this right nor its practical implications are straightforward. Indeed, it has been argued that the existence of a right to participation raises "difficult

⁹³⁹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 6

⁹⁴⁰ Bartel *et al* (n 325) 344; von Benda-Beckmann and von Benda-Beckmann (n 364) 34

⁹⁴¹ Derek Inman and Pacifique Muhindo Magadju, "Prosecuting international crimes in the Democratic Republic of the Congo: Using victim participation as a tool to enhance the rule of law and to tackle impunity" (2018) 18(1) *African Human Rights Law Journal* 293, 299

interpretative questions”.⁹⁴² As such, this section will discuss the existence of a right to participation in international law generally and in relation to transitional justice processes. This will lay the groundwork for an analysis, in later sections, of the extent to which the existence of such a right can be said to have been observed in the context of the Liberian TRC.

5.2.1 – A Right to Participation in International Law

Research has noted that, through the interpretation of the provisions of international human rights law, it is possible to observe the emergence of a specific right to participation.⁹⁴³ At treaty level, the ICCPR provides a right to participation in Article 25, which guarantees in paragraph (a) the right “to take part in the conduct of public affairs directly or through freely chosen representatives”.⁹⁴⁴ This right is most commonly envisaged to apply to participation in elections, however, it has been argued that because paragraph (b) sets out the requirement for “genuine periodic elections”, implicitly, paragraph (a) “must contemplate additional means of influencing public policy” such as involvement in political parties, civil society organisations, campaigning groups, town meetings, trade unions, and “other institutions wielding influence over public policy”.⁹⁴⁵ Depending on the mandate and aims of a particular transitional justice process, bodies such as truth and reconciliation commissions could certainly be argued to wield such influence, bringing them within the scope of Article 25(a). Article 25 requires the right to be guaranteed “without any of the distinctions mentioned in Article 2 [of the ICCPR] and without unreasonable restrictions”. As

⁹⁴² Gregory H Fox, “The Right to Political Participation in International Law” in Gregory H Fox and Brad R Roth (eds), *Democratic Governance and International Law* (Cambridge University Press 2000) 55

⁹⁴³ Inman and Magadju (n 941) 299

⁹⁴⁴ ICCPR (n 865), Art.25(a)

⁹⁴⁵ Gregory H Fox, “The Right to Political Participation in International Law” (1992) 17 *Yale Journal of International Law* 539, 555

such, enjoyment of Article 25 cannot be restricted on grounds of sex, thus enshrining women's right to participate in public affairs.⁹⁴⁶

The concept of participation is also a feature of further international human rights treaties. Charlesworth, for example, traces the development of a right to participation to the adoption of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1979, arguing that it introduced the idea “that women had an equal right to participate in the development of international peace and security” into international debate.⁹⁴⁷ Article 7 of CEDAW provides the right of women to participate in various aspects of public and political life on an equal basis with men. In its General Recommendation No.23, the CEDAW Committee clarifies that fulfilling Article 7 does not limit states to ensuring the equal participation of women and men in the areas specified in subparagraphs (a), (b) and (c) of the Article; rather, the obligation “extends to all areas of public and political life” with “public and political life” defined in the broadest terms.⁹⁴⁸ As such, the right to participation enshrined in Article 7 can be argued to extend to transitional justice processes. In order to make effective this right, States may adopt temporary special measures “aimed at accelerating de facto equality between men and women” under Article 4(1) of CEDAW. While the ICCPR does not mention special measures in relation to Article 25, such measures have been previously accepted as compatible with that Covenant.⁹⁴⁹

⁹⁴⁶ The right to freedom from discrimination on the grounds of sex is codified in several other United Nations human rights treaties, including: Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (“UN Charter”) Preamble; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), Art.2; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 (ICESCR) Arts.2(2) and 3; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); and Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC) Art.2. Bennoune also argues that the principle of non-discrimination on the grounds of sex is regarded as a norm of customary international law. See K Bennoune, “Making rights a reality: Violence against women in armed conflict” (Amnesty International, ACT 77/050/2005) 29

⁹⁴⁷ Hilary Charlesworth, “Are Women Peaceful? Reflections on the Role of Women in Peace-Building” (2008) 16(3) *Feminist Legal Studies* 347, 349

⁹⁴⁸ CEDAW Committee, “General Recommendation No.23: Political and Public Life” (1997) UN Doc A/52/38, [5]

⁹⁴⁹ Daniel Moeckli, “Equality and Non-Discrimination” in Daniel Moeckli *et al* (eds), *International Human Rights Law* (Oxford University Press 2010) 165

Furthermore, a right to participation can also be observed in regional human rights instruments. Of particular relevance to Liberia is Article 13(1) of the African Charter on Human and People's Rights, which provides a right to participate in governance by stating that each citizen "shall have the right to freely participate in the government of his country" whether that participation be direct or through the election of representatives.⁹⁵⁰ While the scope of Article 13(1) appears to be limited to "political participation", the right is expanded to include equal access to "public service" in Article 13(2), and to "public property and services" in Article 13(3).⁹⁵¹ Again, depending on its mandate and purpose, a particular transitional justice mechanism could fall within the meaning of a "public service", bringing it within the scope of this right.

In addition to the rights in these international human rights law treaties, there are a range of "emerging soft law standards" which indicate a "growing international recognition" of the importance of women's participation in decision-making processes.⁹⁵² For example, the 1982 "Declaration on the participation of women in promoting international peace and cooperation"⁹⁵³ has been described as furthering international debate on women's equal participation public life.⁹⁵⁴ Furthermore, the 1995 "Beijing Platform for Action" sets objectives on women's participation in decision-making and lists "Women in Power and Decision Making" as a key area of focus,⁹⁵⁵ while the 2000 "Windhoek Declaration" and "Namibia Plan of Action" further discuss the importance of participation.⁹⁵⁶ As such, both hard and soft rules of

⁹⁵⁰ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 ("African Charter"), Art.13(1)

⁹⁵¹ See Morris Kiwinda Mbondenyi, "The right to participate in the government of one's country: An analysis of article 13 of the African Charter on Human and Peoples' Rights in the light of Kenya's 2007 political crisis" (2009) 9 African Human Rights Law Journal 183, 188

⁹⁵² Bell and O'Rourke (n 3) 31

⁹⁵³ United Nations General Assembly, "Resolution 37/63: Declaration on the participation of women in promoting international peace and cooperation" (3 December 1982)

⁹⁵⁴ Charlesworth, "Are Women Peaceful?" (n 946) 349

⁹⁵⁵ Fourth World Conference on Women, "Beijing Declaration and Platform for Action" (1995) UN Doc A/CONF.177/20, Strategic Objective G

⁹⁵⁶ Both the "Windhoek Declaration on the tenth anniversary of the United Nations Transition Assistance Group" and the "Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations" were included as annexes to the "Letter dated 12 July

international law feature a general right to participation in public and political life, whether related to transitional justice or not.

5.2.2 – A Right to Participation in Transitional Justice Contexts

Additional soft law standards have developed which relate specifically to transitional justice contexts, particularly in the area of international human rights law. In addition to the rights codified in international human rights law instruments, academic literature on the topic of transitional justice suggests the existence of a range of specific “transitional” rights emerging through these soft law standards.⁹⁵⁷ For example, in the 2010 guidance document on transitional justice, the United Nations Secretary-General proposed that there exists a right to justice, a right to truth, a right to reparations, and a right to guarantees of non-recurrence specific to transitional justice contexts.⁹⁵⁸ This has been further affirmed by the “Joinet/Orentlicher Principles”,⁹⁵⁹ publications by the Office of the United Nations High Commissioner on Human Rights (OHCHR),⁹⁶⁰ and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.⁹⁶¹ While these assertions do not represent binding provisions of international law, they nonetheless form persuasive interpretations of the law related

2000 from the Permanent Representative of Namibia to the United Nations addressed to the Secretary-General” (14 July 2000) UN Doc A/55/138-S/2000/693

⁹⁵⁷ See, e.g. Mendez, “Accountability for Past Abuses” (n 133); Ruti G Teitel, “Transitional justice and judicial activism - a right to accountability?” (2015) 48(2) Cornell International Law Journal 385; Diane F Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime” (1991) 100(8) Yale Law Journal 2537

⁹⁵⁸ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2010) (n 80) 3-4. The Guidance Note asserts that these rights are enshrined in various international law instruments, including, *inter alia*, the UDHR (n 946); ICCPR (n 865); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

⁹⁵⁹ United Nations Commission on Human Rights, “Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity” (8 February 2005) UN Doc E/CN.4/200/102/Add.1 (“Joinet/Orentlicher Principles”), 2. The Principles were initially drafted by Louis Joinet and approved by the United Nations Commission on Human Rights, before being revised by Diane Orentlicher at the behest of the Commission in 2005. As such, these can be argued to be an authoritative interpretation of the law.

⁹⁶⁰ United Nations, “Transitional Justice and Economic, Social and Cultural Rights” (2014) UN Doc HR/PUB/13/5, 5

⁹⁶¹ Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, “The gender perspective in transitional justice processes” (17 July 2020) UN Doc A/75/174

to transitional justice. Indeed, it has even been argued that the rights to justice and to truth may, in certain circumstances, have reached the status of customary norms of international law.⁹⁶²

Importantly, in addition to this proposed class of “transitional rights” described above, United Nations texts relating to transitional justice also emphasise the importance of participation. With specific reference to transitional justice contexts, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has emphasised the importance of eliminating gender bias from transitional justice processes in order to facilitate women’s full participation therein.⁹⁶³ Moreover, the Joinet/Orentlicher Principles require “[s]pecial efforts” to ensure equal participation of men and women.⁹⁶⁴ In addition, guidance of the United Nations Secretary-General on transitional justice issued in 2023 proposed that a “key contribution” of transitional justice is the inclusion in transitional justice processes of the “traditionally excluded and marginalized”.⁹⁶⁵ The guidance thus requires that there be a focus “on the promotion of meaningful participation and the leadership of women and girls”.⁹⁶⁶ The legal basis for this “meaningful participation” emanates, in large part, from UNSCR 1325.

The introduction to this thesis argued that the Women, Peace and Security Agenda and its first resolution, United Nations Security Council Resolution 1325, represent particularly important standards for women’s participation in post-conflict and transitional justice processes. UNSCR 1325 requires that states “ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict,” including transitional justice processes and mechanisms.⁹⁶⁷

⁹⁶² Orentlicher argues that customary law requires the prosecution of high-level figures responsible for torture, unlawful executions, and disappearances. See, “Settling Accounts” (n 958) 2599. In respect of a right to truth, see Mendez, “Accountability for Past Abuses” (n 133) 262.

⁹⁶³ Special Rapporteur, “The gender perspective in transitional justice processes” (n 961)

⁹⁶⁴ Joinet/Orentlicher Principles (n 959) 8

⁹⁶⁵ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 8

⁹⁶⁶ *ibid* 25

⁹⁶⁷ UNSCR 1325 (n 28) [1]

Because of this, UNSCR 1325 is described as having as its “centrepiece” recognition of “the need for women’s increased participation at all stages of peace processes”.⁹⁶⁸ As a result, participation is an important recurring theme in UNSCR 1325 and associated documentation. Indeed, this UNSCR has influenced the development of several further standards relating to Women, Peace and Security, all of which mention increasing women’s participation in some way.⁹⁶⁹ Moreover, reports on the implementation of UNSCR 1325 released in 2002 and 2004 highlight its importance in furthering women’s participation in post-conflict processes.⁹⁷⁰ The 2002 report of the UN Secretary-General on “women, peace and security”, for example, asserts that the participation of women and girls in post-conflict processes is “critical” to securing gender equality in the post-conflict context,⁹⁷¹ and to the “promotion of peace”.⁹⁷² As such, the report calls for women’s “full and equal” participation in such processes.⁹⁷³ However, a further report in 2004 reflecting on progress towards the implementation of UNSCR 1325 commented that, despite “significant achievements, major gaps and challenges remain[ed] in all areas”, and particularly in relation to women’s participation in post-conflict processes and their representation in decision-making fora.⁹⁷⁴ While this report nevertheless affirms the United Nations’ commitment to ensuring women’s participation and protecting their rights,⁹⁷⁵ the development of further WPS resolutions on participation, as well as the continued references to women’s participation in the Secretary-General’s guidance notes on transitional justice⁹⁷⁶ in the years since would suggest that these challenges persist.

⁹⁶⁸ Bell and O’Rourke (n 3) 32

⁹⁶⁹ See UNSCR 1325; UNSCR 1820; UNSCR 1888; UNSCR 1889; UNSCR 1960; UNSCR 2106; UNSCR 2122; UNSCR 2242; UNSCR 2467; UNSCR 2493 (n 28)

⁹⁷⁰ United Nations Security Council “Report of the Secretary-General” (2002) (n 25); United Nations Security Council “Women and peace and security” (2004) (n 30)

⁹⁷¹ United Nations Security Council “Report of the Secretary-General” (2002) (n 25) [26]

⁹⁷² *ibid* [27]

⁹⁷³ *ibid* [68]

⁹⁷⁴ United Nations Security Council “Women and peace and security” (2004) (n 30) [4]

⁹⁷⁵ *ibid* [121]

⁹⁷⁶ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1); United Nations Secretary-General, “Guidance Note of the Secretary-General” (2010) (n 80)

5.2.3 – *Interpreting Participation in International Law*

The emergence of a right to participation is particularly important for women in the transitional justice context, because as UNSCR 1325 asserts, “civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict.”⁹⁷⁷ If a right to participation can be observed in international law, the question arises as to how such a right has been or ought to be interpreted. Treaty provisions are to be interpreted according to their “ordinary meaning”.⁹⁷⁸ It has been argued that this ordinary meaning “may be derived from sources not formally linked to a treaty”.⁹⁷⁹ With respect to *political* participation – that is, participation in the governance of a state through, for example, voting in elections – Fox argues that the right is in fact “an emerging universal right... not contingent upon treaty agreements.”⁹⁸⁰ The existence of clear criteria to determine the extent to which the right has been made real are central to Fox’s argument of the right having attained this status.⁹⁸¹ These criteria have been established through decisions by the United Nations Human Rights Committee. The Committee expressed the view in a complaint relating to Article 25 that the right to participate in public affairs “cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs”.⁹⁸² This view has been confirmed in subsequent guidance. In 2018, the OHCHR issued a set of “draft guidelines” on the effective implementation of the right to participate in public affairs.⁹⁸³ While the “broad scope” of the guidelines means that they are “neither comprehensive nor able to address all aspects of the right to participate”⁹⁸⁴, they

⁹⁷⁷ UNSCR 1325 (n 28) Preamble

⁹⁷⁸ Vienna Convention on the Law of Treaties (23 May 1969) 115 UNTS 331, Article 31(1)

⁹⁷⁹ Fox (1992) (n 945) 588

⁹⁸⁰ *ibid* 543

⁹⁸¹ *ibid* 552

⁹⁸² *Mi’kmaq People v Canada* Communication No 205/1986 (3 December 1991) UN Doc CCPR/C/43/D/205/1986 [5.5]

⁹⁸³ United Nations Human Rights Council, “Draft guidelines for States on the effective implementation of the right to participate in public affairs: Report of the Office of the United Nations High Commissioner for Human Rights” (20 July 2018) UN Doc A/HRC/39/28

⁹⁸⁴ *ibid* [7]

nevertheless offer guidance in relation to participation in elections,⁹⁸⁵ in international affairs,⁹⁸⁶ and – importantly for transitional justice situations – in “non-electoral contexts”.⁹⁸⁷ The scope of the guidance and the wide range of contexts to which it can apply means that the “[p]ractical recommendations” it offers are necessarily broad.⁹⁸⁸ Importantly, the guidance confirms that a variety of “[m]odalities of participation” are permissible under the guidelines, and that “no specific set of modalities can be recommended in all contexts”.⁹⁸⁹ As such, a right to participation does not guarantee that women will be entitled to choose the method of their participation in a transitional justice process. Consequently, lesser or more modest forms of participation may suffice to fulfil the requirements of the right. A “clear-cut breach” of the right to participate will only have occurred “when participation in public affairs is arbitrarily denied”.⁹⁹⁰ For example, a 2015 OHCHR report on the right to participation gives the example of Roma women having been “denied access to political and public participation rights on the grounds of their minority status, citizenship and gender”.⁹⁹¹ Beyond circumstances as severe as these, it would appear that the right to participation would be subject to a broad interpretation.

The legal framework established by the WPS Agenda does little to clarify matters, given that it provides limited guidance on what participation means and the activities it requires in a transitional justice context. Research on the implementation of the WPS Agenda has found that the participation element is not always adhered to, and that

⁹⁸⁵ *ibid* [25]-[48]

⁹⁸⁶ *ibid* [95]-[114]

⁹⁸⁷ *ibid* [49]-[94]

⁹⁸⁸ *ibid*

⁹⁸⁹ *ibid* [54]

⁹⁹⁰ M Wählisch, *Peacemaking, Power-Sharing and International Law: Imperfect Peace* (Hart Publishing 2019) 119

⁹⁹¹ United Nations Human Rights Council, “Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them: Report of the Office of the United Nations High Commissioner for Human Rights” (23 July 2015) UN Doc A/HRC/30/26 [23]. See also United Nations Human Rights Council, “Good practices and challenges faced by States in using the guidelines on the effective implementation of the right to participate in public affairs – Report of the Office of United Nations High Commissioner for Human Rights” (2 February 2022) UN Doc A/HRC/49/42 for a discussion of ongoing challenges in relation to the realisation of the right to participation.

there is little guidance as to what this participation element requires.⁹⁹² This feeds into the “implementation gap” that exists in this regard, and which was discussed in the introduction to this thesis. This refers to the “gap” that emerges when the broad range of resolutions and normative frameworks that have been created to ensure women’s participation in post-conflict processes have not been translated into practical action.⁹⁹³ Furthermore, reports of UN Missions to the UN Security Council have been found to “contain far more detail on sexual violence than on women’s political participation and engagement in post-conflict priority-setting”.⁹⁹⁴ Indeed, as will be explored in the thesis, the absence of a clear definition of participation has opened this framework to criticism for its focus on women’s experiences as victims of sexual violence, at the expense of efforts to include women in all facets of transitional justice processes.⁹⁹⁵ This lack of clarity thus raises important interpretive questions regarding the right to participation, and how such a right might be constituted at the international and domestic scales of law. Where participation is not clearly defined, it may be understood in limited ways. Understanding participation in limited ways can, in turn, limit how women’s experiences of conflict are addressed in transitional justice contexts.

5.3 – Constituting Participation

Understanding participation as a right has important constitutive consequences. As will be recalled from earlier chapters in this thesis, Koskenniemi has argued that international law is a product of decision and agreement by the international actors involved in its creation.⁹⁹⁶ As a result, the meaning of terms espoused in international law is reliant on what those terms have been agreed to mean by these actors. The

⁹⁹² Kirby and Shepherd (n 271) 4

⁹⁹³ Cahn “Introduction” (n 37) xxxviii

⁹⁹⁴ Goetz and Jenkins (n 36) 123-4

⁹⁹⁵ Cahn “Introduction” (n 37) xxxviii; Zetes (n 3) 1303-4. This issue will be discussed in further detail in Chapter 7 of this thesis.

⁹⁹⁶ Koskenniemi “What is International Law for?” (n 8) 30

meaning of a right to participation in international law is therefore contingent on the meaning of participation “as agreed and understood between the members of the system”.⁹⁹⁷ This has important consequences for how such a right is constituted in the transitional justice space, because, as Koskenniemi cautions, such rights are rarely underpinned by “simple, well-identified objectives” but instead represent “legislative compromises” which express “conflicting considerations”.⁹⁹⁸ These compromises and considerations are always informed by power. This thesis argues that understanding what participation means for the purposes of a given transitional justice process is a matter of constitutivity. That is, participation, as a form of social relation, is both a product and productive of law and space. In this way, participation, like law, is concerned with power. Understood spatially, facilitating participation in a transitional justice process is not a matter of transferring power from a powerful group to a less powerful one. Rather, power must be understood as “relational”.⁹⁹⁹ Koskenniemi has explicitly described international law as an “instrument of power” which exists to “advance the values, interests, and preferences” of actors in powerful positions.¹⁰⁰⁰ However, at the same time, international law is an “instrument for the critique of power”, providing a vocabulary for the expression of justice and rights claims for historically marginalised and excluded groups.¹⁰⁰¹ This dichotomy means that the meanings of specific rules or terms in international law are not based on any objective understanding of those terms, but rather emerge through “polemical confrontations” between actors with often competing aims and objectives.¹⁰⁰² In this way, as was argued in the introduction to this thesis, “law is instrumental, but what it is an instrument for cannot be fixed outside the political process of which it is an inextricable part.”¹⁰⁰³ Law and rights are thus constituted through the political process and through its associated discourses, reflected in the political nature of space.

⁹⁹⁷ *ibid*

⁹⁹⁸ *ibid* 37

⁹⁹⁹ Selim (n 251) 1126

¹⁰⁰⁰ Koskenniemi “What is International Law for?” (n 8) 47-8

¹⁰⁰¹ *ibid* 48

¹⁰⁰² *ibid*

¹⁰⁰³ *ibid*

Scholars such as Chambers have described participation as expanding the sharing of knowledge beyond a linear relationship of knowledge-sharing “*from researchers/practitioners to the locals*” to a multifaceted relationship wherein knowledge is transferred “*from locals to the researchers/practitioners and between locals*”, thus disrupting conceptions of which types of knowledge are held to be “legitimate”.¹⁰⁰⁴ However, such ambitions are challenged when the forms of knowledge which are included in a process, and which are prioritised through its operation, continue to be based on choices of the most powerful actors.¹⁰⁰⁵ Thus, who participates and how they are constituted will impact the knowledge that is shared. Space, like power, has been argued to be “relational”; at once “structural, normatively constructed, relational, and individual at the same time”.¹⁰⁰⁶ As such, individuals will experience and form part of space in different ways, while at the same time those experiences will be shaped by law and by social practices.¹⁰⁰⁷ In this way, the presence of individuals in spaces serves to constitute those spaces, just as multiple overlapping spaces serve to constitute one another.¹⁰⁰⁸

It has been argued that the spatiality of international law affects the applicability of rights and the ways in which different forms of violence are categorised.¹⁰⁰⁹ Human rights in the transitional context are constituted by and within the realities of conflict: of enduring conflict; of ending conflict; of securing populations; of maintaining a fragile peace, and so on. As such, it is not only the transitional justice space which is constituted by this legal complexity, but also the rights being addressed by and within that space. When constituting rights, it is necessary not only to consider the content of those rights, but their constitutive function at that moment, whether that be as the vehicle to achieve favourable post-conflict outcomes, the destination of a rights-respecting society, or the benchmark by which outcomes in the post-conflict context

¹⁰⁰⁴ Robert Chambers, “Participatory rural appraisal (PRA): Challenges, potentials and paradigm” (1994) 22(10) *World Development* 1437, cited in Selim (n 251) 1126 [original emphasis]

¹⁰⁰⁵ Selim (n 251) 1126

¹⁰⁰⁶ von Benda-Beckmann and von Benda-Beckmann (n 364) 32-3

¹⁰⁰⁷ *ibid*

¹⁰⁰⁸ *ibid*

¹⁰⁰⁹ Braverman *et al*, “Introduction” (n 331) 8

ought to be measured.¹⁰¹⁰ The right is shaped by the constitutivities in place at a given time, with those constitutivities dependent on choices made by actors in the transitional justice space. Gorman has described precedent decisions as “socio-spatial vehicles through which legal categories are created, modified and enforced” by virtue of their reconfiguring of legal boundaries.¹⁰¹¹ Subsequent sections of this chapter will argue that a right to participation in a transitional justice process is similarly a “socio-spatial vehicle”, in that it grants access to the complex legal space of the transition, resulting in the reconstitution of that space through participation. The following section will investigate the way in which a right to participation, as a socio-spatial vehicle, constituted participation for the purposes of the Liberian TRC.

5.4 – Participation in the Law of the Liberian TRC

This section will examine provisions in the TRC’s mandate that were intended to secure participation in order to understand how these provisions constituted that right. In doing so, it will explore the opportunities for participation made available to women in the “foundational documents” of the Liberian TRC,¹⁰¹² including the peace agreement which provided for its creation,¹⁰¹³ and the Act which provided its mandate.¹⁰¹⁴ It will also analyse the ways in which women’s participation was discursively constituted through the reporting of the TRC itself. It will ultimately argue that the opportunities for participation provided through the law limited women to passive participation, largely on the basis of their victimhood or vulnerability. This, it

¹⁰¹⁰ See, e.g. Mohammad and Farjana (n 270), who argue that a right to participation is both a means to an end and an end in itself.

¹⁰¹¹ Cynthia S Gorman, “Feminist legal archeology, domestic violence and the raced-gendered juridical boundaries of U.S. asylum law” (2019) 51(5) *Environment and Planning A: Economy and Space* 1050, 1052

¹⁰¹² Foucault, *Discipline and Punish* (n 536)

¹⁰¹³ Accra Agreement (n 565)

¹⁰¹⁴ TRC Act (n 569)

will be argued, had potential consequences for how these women were then constituted for the purposes of the TRC process.

5.4.1 – Participation in the Liberian TRC’s Foundational Documents

This subsection explores how women’s participation is addressed in the foundational legal texts of the Liberian TRC. In providing for its creation and forming its mandate, the Accra Agreement and the TRC Act constitute “foundational documents” of the Liberian TRC.¹⁰¹⁵ For the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the function of such documents is to set out the duration of a TRC’s operation, its temporal mandate, its thematic mandate, its principal objectives, and the functions it will undertake to fulfil its objectives.¹⁰¹⁶ For the purposes of conducting a critical spatial discourse analysis, these foundational documents take on a further function of establishing the discursive conditions of the process itself.

The Accra Agreement, in first providing for the creation of a transitional justice mechanism for post-conflict Liberia, addresses the issue of participation in the TRC process. Its opening paragraphs emphasise the importance of “an all inclusive [*sic*] participation in governance and the advancement of democracy in Liberia”.¹⁰¹⁷ The Agreement’s opening paragraphs also state the intention of the parties to “establish mechanisms which will facilitate genuine healing and reconciliation amongst Liberians”, implying that their participation will follow.¹⁰¹⁸ As well as envisaging the participation of both victims and perpetrators of human rights violations,¹⁰¹⁹ the Agreement also requires the TRC’s membership to be “drawn from a cross-section of Liberian society”.¹⁰²⁰ Thus, the Agreement appears to envisage a wide participation of Liberians in the TRC process, though the depth of that participation is less clear. In terms of securing the participation of women in particular, the Accra Agreement

¹⁰¹⁵ Foucault, *Discipline and Punish* (n 536)

¹⁰¹⁶ United Nations Human Rights Council “Report of the Special Rapporteur” (2013) (n 16) [32]

¹⁰¹⁷ Accra Agreement (n 565) Preamble

¹⁰¹⁸ *ibid*, Preamble

¹⁰¹⁹ *ibid*, Art.XIII(1)

¹⁰²⁰ *ibid*, Art.XIII(4)

features no specific provision for women’s participation in the transitional justice process. Rather, the Agreement provides for a wide participation of citizens from across Liberia in general.

The TRC Act which followed the Accra Agreement and formed the TRC’s mandate, by contrast, makes several express and implied references to participation in the TRC process. The preliminary report of the TRC states that nine sections of the TRC Act, in addition to its Preamble, refer to women’s conflict-era experiences and how they ought to be “incorporated” into the TRC’s activities.¹⁰²¹ The TRC Act’s Preamble, for its part, affirms Liberia’s commitment to international standards for “the rights and protections of women and children”¹⁰²² which, as has been established, includes standards on participation. Regarding women’s participation in particular, the “Women and the Conflict” appendix of the TRC’s final report describes the TRC Act as being “explicit in its call for the participation and inclusion of women”.¹⁰²³ Relevant provisions of the TRC Act are said to “demand the effective participation of women at all levels and in all aspects of the TRC process”, regardless of their role.¹⁰²⁴ In making this assertion, the reporting of the TRC specifically acknowledges the existence of multiple identities for women, including “petitioners, victims, perpetrators, victim-perpetrators, and witnesses.”¹⁰²⁵ The phrase “at all levels and in all aspects” certainly suggests that the TRC reports regard the mandate as having required a deep participation, while the listing of multiple women’s identities suggests that participation ought also to be wide. However, further interrogation of the TRC’s mandate demonstrates that, in many ways, it envisaged women’s participation on the basis of their vulnerability or victimhood – a basis that was perhaps narrower than the TRC’s stated ambition.

¹⁰²¹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

¹⁰²² TRC Act, Preamble [12]

¹⁰²³ Liberian TRC, “Women and the Conflict” Appendix (n 59) 10

¹⁰²⁴ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

¹⁰²⁵ *ibid*

Section 4(e) of the TRC’s mandate explicitly provides for the adoption of “specific mechanisms and procedures” to ensure that women’s experiences were addressed by the TRC.¹⁰²⁶ In doing so, this provision lists women alongside “children and vulnerable groups” and implicitly includes them among “victims of human rights violations”. Furthermore, calling for procedures “to address the experiences of women”, although requiring the TRC to give attention to these experiences, is not an explicit call for women’s participation in the process itself. Later in the mandate, section 26(f) states that one of the TRC’s functions is to “restore the human dignity of victims and promote reconciliation” by providing opportunities for “victims, witnesses, and others to give an account of the violations and abuses suffered”. In doing so, the paragraph also requires “special attention to the issue of sexual and gender-based violence” and again groups women with children in its last clause. Thus, the participation envisaged in this section is based specifically on victimhood, narrowing its framing. Many women were victims of the Liberian conflicts and will have participated in the TRC to share their testimonies of victimhood. However, such testimonies do not represent the totality of every woman’s experience of this period of Liberian history, as will be discussed in the next chapter. The TRC Act nevertheless provides for women’s participation primarily on the basis of their presumed victimhood. This is problematic because, as was argued in the second chapter of this thesis, using victimhood as a basis for participation in transitional justice mechanisms can deprive participants of their agency,¹⁰²⁷ and narrowly pre-determines the scope of their involvement in the process. Furthermore, limiting legal avenues for participation in this way can cause divisions between different groups by forcing them to compete for access to post-conflict resources.¹⁰²⁸

The same provision of the TRC Act also states that the environment for participation must be “conducive to constructive interchange between victims and perpetrators”.¹⁰²⁹ By articulating two separate categories of victim and perpetrator, this section seems to

¹⁰²⁶ TRC Act, s.4(e)

¹⁰²⁷ Gready and Robins (n 43) 358

¹⁰²⁸ *ibid*

¹⁰²⁹ TRC Act, s.4(e)

reinforce a binary between the two. As will be discussed in the subsequent chapter, doing so precludes any investigation of the inherent complexities of the conflict period, wherein victims and perpetrators do not always exist as distinct categories but will likely overlap. Indeed, individuals may fall into one category, the other, or both depending on the context.¹⁰³⁰ In addition, section 26(n), which requires measures to ensure the safety, security, and protection of those testifying to the TRC, further requires “special programs for children and women both as perpetrators and victims under burdens of trauma, stigmatization, neglect, shame, ostracization, threats, etc.” In acknowledging that women can be both victims and perpetrators, this provision engages in a broader understanding of women’s conflict-era identities than the above provisions. However, in doing so, this provision nevertheless reinforces the binary between victim and perpetrator, and potentially limits the participatory opportunities available to those whose experiences do not fit neatly within either category. Furthermore, both section 26(n) and section 24, while acknowledging the potential of women perpetrators, nevertheless approach their participation through a lens of “protection”. Section 24, for example, requires “special mechanisms” to “handle women and children and perpetrators” in order to “protect their dignity” and avoid “retraumatization”. A later provision similarly emphasises women’s vulnerability when requiring the TRC to “employ specialists in children’s and women’s rights” and to adopt “special measures or mechanisms” to facilitate women’s testimony without endangering their physical security; their mental health; or their reintegration into society.¹⁰³¹ Furthermore, these provisions also group women with children in a way which can be argued to emphasise their vulnerability and need for protection. This linking of protection and participation is a common, but not unproblematic feature of the international legal framework on Women, Peace and Security, which will be discussed in further detail in Chapter 7.

In terms of their participation in the operation of the TRC, section 24 of the TRC Act requires full representation of women “at all levels of the TRC”, including as staff.

¹⁰³⁰ McEvoy and McConnachie (n 223) 493

¹⁰³¹ TRC Act, s.26(o)

However, by contrast, the participation envisaged by the provisions discussed earlier in this section appears to be based on an assumption of women's passivity. This is because they imply that women will not be involved in the creation or operation of the hearings; rather they will attend to give testimony as part of an established process. In addition, section 26(e) requires that the TRC gather information and receive evidence "from any person or persons" including "persons claiming to be victims", victims' representatives, groups, perpetrators, witnesses, and institutions. This provision can be understood as envisioning wide participation in the TRC, as it opens evidence-gathering activities to numerous categories of person. However, this shallow participation appears to be limited to information- and evidence-gathering. Thus, the extent to which actors participate in line with this provision will be limited to these activities as designed by the architects of the TRC process, without any clear engagement of the public in the design or execution of these activities.

Through an overview of these mandate provisions, it appears that, in spite of its "good intentions" in aiming to secure wide participation, the TRC Act may nevertheless have narrowed the participatory opportunities available to women through its drawing of boundaries around identity categories, such as victims and perpetrators. While women likely had experiences of conflict-era victimhood, there is little mention in the mandate of women's experiences outside of this. As such, while women are a broad population, the participation envisaged by this mandate is narrower than it might initially appear, because it appears to envisage women participating in the TRC in their capacity as victims or as a vulnerable group. Such a limiting of women's identities additionally suggests a shallower participation, as it potentially undermines their ability to engage with the process in other ways. Further, the participation envisaged in these provisions appears to invite women to participate in already-established processes, in specific and limited ways. Additionally, while the Act provides for "measures" to secure that participation, there is little detail available as to what those measures might be. A clearer understanding of the measures to secure participation therefore requires analysis of the how such measures are outlined in the TRC's reports.

5.4.2 – Participation in the Reports of the TRC

Women’s participation in the TRC process is discussed at several points throughout the TRC’s reports. For example, in addition to the “Women and the Conflict” appendix, both the preliminary and final reports dedicate entire sections to women’s participation in the Liberian TRC.¹⁰³² The final report particularly highlights the participation of women at the most senior levels of the TRC. Four of the nine Commissioners initially appointed to the TRC were women,¹⁰³³ as was explicitly required by the TRC’s mandate.¹⁰³⁴ However, the reports do not provide detailed information about the recruitment of the Commissioners, or how it went about securing the participation of the four women at this level. In any case, participation at this level of the TRC is necessarily narrow, by virtue of the small number of women (and men) to whom this role was available. Recruitment of women to positions within the TRC does not appear to have been limited to the level of Commissioner. As detailed above, section 24 of the TRC Act required that women be “fully represented and staffed at all levels of the TRC”. In this regard, the “Women and the Conflict” appendix describes specific efforts made to recruit women as statement-takers. The appendix states that, because women were initially under-represented among the applicants, the application deadline was extended, and women were targeted to apply through radio and newspaper advertising, and by posting advertisements in “beauty salons, market places, restaurants, university campuses, and pubs”.¹⁰³⁵ As a result of this targeting, 100 of the 198 statement-takers eventually recruited were women.¹⁰³⁶ While broadening women’s participation in the TRC, the recruitment of statement-takers is still relatively shallow participation, given that these women had to perform their roles to strict standards with little scope for deviation. Statements were taken according to

¹⁰³² Liberian TRC, *Preliminary Findings and Determinations* (n 575) 34; Liberian TRC, *Consolidated Final Report* (n 562) 69

¹⁰³³ Liberian TRC, *Consolidated Final Report* (n 562) 26. Nine commissioners were initially inaugurated to the TRC, but one (male) commissioner resigned and was not replaced.

¹⁰³⁴ TRC Act, s.7

¹⁰³⁵ Liberian TRC, “Women and the Conflict” Appendix (n 59) 14

¹⁰³⁶ *ibid*

pre-designed forms and using specific interview techniques,¹⁰³⁷ suggesting little room for improvisation on the part of statement-takers. The report is less specific about recruitment measures taken in relation to other roles. The final report indicates that attempts were made to secure a gender balance in its staff, stating that it “always encouraged female candidates to apply for advertised positions”.¹⁰³⁸ However, again, it is less clear what form this encouragement took, as the report does not detail what specific measures were taken to encourage women to apply for particular roles.

One of the Commissioners was assigned specific responsibility for the issue of gender and established a TRC Gender Unit along with her staff. This Gender Unit held responsibility for many of the outreach projects discussed throughout this section.¹⁰³⁹ The TRC also established a Gender Committee, involving “a wide spectrum of civil society and international partners” to advise the Commissioners on issues of gender.¹⁰⁴⁰ The appendix on “Women and the Conflict” describes the role of the Gender Committee as to engage women and mainstream “women, women’s experiences, and women’s roles in other core functions of the TRC”.¹⁰⁴¹ It further explains that part of the work of this Gender Committee was the drafting of a Gender Policy, which the appendix describes as containing not only recommendations for improving the situation of women in Liberia moving forward, but also detailed recommendations for the operation of the TRC.¹⁰⁴² However, the report states that this policy and plan were “stymied... by a variety of issues, including challenges with donor partners”.¹⁰⁴³ In addition, as will be discussed in further detail in the forthcoming chapter, it appears from the TRC’s reports that this Committee operated separately from the rest of the TRC’s activities,¹⁰⁴⁴ suggesting that women’s participation was something to be handled separately from the everyday work of the TRC. This has particular implications for the depth and breadth of women’s participation in the TRC, with each

¹⁰³⁷ Liberian TRC, *Consolidated Final Report* (n 562) 66

¹⁰³⁸ *ibid* 39

¹⁰³⁹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 15-16

¹⁰⁴⁰ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

¹⁰⁴¹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 11

¹⁰⁴² *ibid* 13. The Gender Policy is published as an annex to the “Women and the Conflict” appendix.

¹⁰⁴³ *ibid*

¹⁰⁴⁴ *ibid* 12-13

being affected by the interruptions faced by this Committee, and the separation of its work from the mainstream operations of the Commission.

Aside from the Gender Committee, the reports discuss further measures taken to encourage women's engagement with the TRC as participants. For example, the preliminary report states that the TRC conducted outreach and sensitisation projects to make women aware of its work and to encourage them to participate.¹⁰⁴⁵ Before the launch of the TRC, specific training in "communications and social mobilization" was delivered to "community mobilizations from various civil society organizations" from all over Liberia in preparation.¹⁰⁴⁶ The report details that this training included "a gender dimension that included emphasis on women and children's issues",¹⁰⁴⁷ but the report is much less clear on what the "gender dimension" included, and the impact that this training had on the TRC's activities. The reports also discuss measures taken during the course of the TRC's operation. For example, the preliminary report describes action taken to facilitate participation outside of the capital city, including town hall meetings in all fifteen counties of Liberia, as well as "four zonal workshops" which targeted "women's organizations in the counties".¹⁰⁴⁸ The final report details the "707 direct recorded engagements with women", which included psychosocial support, town hall meetings and workshops, referrals to services, testimonies, thematic hearings, and a National Conference.¹⁰⁴⁹ This would seem to suggest a broader engagement with the TRC beyond participating only as victims of the conflict, however the reports do not offer any statistical analysis of these engagements to substantiate this. In addition, during the course of the TRC's activities, nine thematic hearings took place, including a special thematic hearing for women at which eight women and no men appeared.¹⁰⁵⁰ However, women's participation in other thematic hearings was dramatically lower. For example, in the hearings on 'Contemporary

¹⁰⁴⁵ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 36

¹⁰⁴⁶ *ibid* 30

¹⁰⁴⁷ *ibid*

¹⁰⁴⁸ *ibid* 36

¹⁰⁴⁹ Liberian TRC, *Consolidated Final Report* (n 562) 71

¹⁰⁵⁰ *ibid* 200

History of the Conflict’, only one woman participated along with 73 men.¹⁰⁵¹ In the thematic hearings dedicated to diaspora experiences, women were outnumbered by men at a rate of 19 to ten.¹⁰⁵² In one thematic hearing – the historical review – no women appeared at all.¹⁰⁵³ Also provided were four workshops to train men to support their female partners attending the TRC, motivated by reports from women that their partners were dissuading them from attending to discuss their experiences of sexual violence for fear of shame or humiliation.¹⁰⁵⁴ The report argues that these workshops were successful, but does acknowledge that alone they were insufficient to change deeply entrenched gender stereotypes.¹⁰⁵⁵ Thus, while again lacking clarity over specific measures, the reports also illustrate a shallower participation, in which women are informed about activities which have been planned and designed without them. Again, well-intentioned measures result in narrowly configured outcomes.

In addition, the reports discuss measures taken to facilitate testimony during the TRC process. For example, regarding witness protection, the preliminary report states that “the TRC has instituted measures to protect the identity and physical person of those victims whose testimony puts them at grave risk of injury” (with the phrase “or peril to life” added to this in the final report),¹⁰⁵⁶ but does not elaborate on what these “measures” actually were.¹⁰⁵⁷ The final report further discusses the “security and psychosocial support” provided to individual witnesses.¹⁰⁵⁸ Such support, mentioned in the preliminary report, included informing victims in advance about the appearance of alleged perpetrators at the TRC to protect their “physical and psychological welfare”.¹⁰⁵⁹ In the interests of security, the TRC also “decided against” opportunities for accusers to confront the accused directly during the course of the TRC’s

¹⁰⁵¹ *ibid*

¹⁰⁵² *ibid*

¹⁰⁵³ *ibid*

¹⁰⁵⁴ Liberian TRC, “Women and the Conflict” Appendix (n 59) 18

¹⁰⁵⁵ *ibid*

¹⁰⁵⁶ Liberian TRC, *Consolidated Final Report* (n 562) 72

¹⁰⁵⁷ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 37

¹⁰⁵⁸ Liberian TRC, *Consolidated Final Report* (n 562) 189

¹⁰⁵⁹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 29

activities.¹⁰⁶⁰ These measures help to widen TRC participation by potentially facilitating the participation of a broader selection of witnesses, but again limit that participation to offering testimony at an already-established process.

The “Women and the Conflict” appendix details that over 200 women testified at the public hearings of the TRC.¹⁰⁶¹ Because of this, the appendix argues that women were more willing to talk about themselves and their own experiences than in previous truth commissions “[e]lsewhere in the world”, although it does not specify where.¹⁰⁶² The report also does not evidence this claim nor provide examples for context; rather, it attributes this assertion to “improved preparation through vigorous community outreach and pre-hearing support”.¹⁰⁶³ The final report provides further context for this figure, stating that 32% of those who participated in the public hearings were women.¹⁰⁶⁴ The final report provided specific figures for testimonies, noting that 206 women testified compared to 326 men.¹⁰⁶⁵ Elsewhere in the report, it is clarified that these testimonies given by women comprise part of the “707 direct recorded engagements with women”¹⁰⁶⁶ discussed earlier in this chapter. However, context is clearly needed for this figure, with no comparison offered for how 707 engagements compares to the engagements the TRC had with men. The report also mentions that this figure is not inclusive of additional work relating to women’s engagement with the TRC process carried out by civil society organisations and other partners.¹⁰⁶⁷ However, the report is again unable to detail the nature of this work, stating that the TRC was not provided with reports in spite of having requested this information “on numerous occasions”.¹⁰⁶⁸

¹⁰⁶⁰ *ibid*

¹⁰⁶¹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 14

¹⁰⁶² *ibid*

¹⁰⁶³ *ibid*

¹⁰⁶⁴ Liberian TRC, *Consolidated Final Report* (n 562) 200

¹⁰⁶⁵ *ibid*

¹⁰⁶⁶ *ibid* 71

¹⁰⁶⁷ *ibid*

¹⁰⁶⁸ *ibid*

The TRC's reports also discuss women's participation as statement-givers. During the course of the TRC's activities, over 20000 statements were collected from Liberians both in Liberia and in diaspora communities.¹⁰⁶⁹ Of these, the preliminary report states that approximately 47% were made by women.¹⁰⁷⁰ This figure is cited throughout the reports,¹⁰⁷¹ indicating that the report drafters placed some importance on the level of gender parity that the TRC was able to achieve through its statement collection. Indeed, in its "Women and the Conflict" appendix, the report argues that the proportion of statements collected from women was "as a result" of the gender-sensitive design of the statement form.¹⁰⁷² Elsewhere, the final report describes this 47% figure as "impressive"¹⁰⁷³ and "significant",¹⁰⁷⁴ and argues that this "helped the TRC reflect the experiences of women as well as men".¹⁰⁷⁵ Conversely, although the report confirms the proportion of statement-takers that were women, it does not confirm how many statements were actually taken by women. The recruitment of an almost-equal number of male and female statement-takers is not necessarily a guarantee that they will have taken an equal number of statements.

Measures to facilitate women's inclusion and participation are reported to have continued in the concluding stages of the TRC process. In September 2008, the TRC Gender Unit, two TRC Commissioners, UNIFEM, and civil society organisations came together to organise a "community dialogue" process, consisting of meetings with over 500 women to "evaluate the TRC process from a gender perspective" and to ask women for their additional recommendations moving forward.¹⁰⁷⁶ This demonstrates that the TRC placed importance on continued engagement with women, which could have boded well for their ongoing participation. In the words of the "Women and the Conflict" appendix, there is "value in sustaining interaction with the

¹⁰⁶⁹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 32

¹⁰⁷⁰ *ibid*

¹⁰⁷¹ See e.g. Liberian TRC, *Consolidated Final Report* (n 562) 273

¹⁰⁷² Liberian TRC, "Women and the Conflict" Appendix (n 59) 14

¹⁰⁷³ Liberian TRC, *Consolidated Final Report* (n 562) 273

¹⁰⁷⁴ *ibid* 187

¹⁰⁷⁵ *ibid*

¹⁰⁷⁶ Liberian TRC, "Women and the Conflict" Appendix (n 59) 26-7

people at community level” even after their statements have been taken.¹⁰⁷⁷ The appendix reports that women appreciated the opportunity to participate in this dialogue process and that it made them feel “cared about and valued, and that their contributions to peace in Liberia were essential”.¹⁰⁷⁸ However, there are some issues with the discussion of this activity in the reports. For example, the section dedicated to lessons from the community dialogue process mostly makes assertions that have been made elsewhere in the report: that women are still affected by the conflict; that their contributions to the process are essential; and that they must be involved on an ongoing basis.¹⁰⁷⁹

Indeed, considering the timing of certain measures, it does appear that some measures which could have facilitated women’s participation were instituted too late in the process to be fully effective. For example, consultative processes such as a national consultation and subsequent national conference took place in June 2009, when the preliminary report had already been completed and final report writing was already underway.¹⁰⁸⁰ These activities were significant opportunities for the public to engage with the TRC, but with final reports being drafted as they happened, there is a realistic risk that their contribution to the final reports was limited, thus limiting the depth of their participation in the process. Additionally, a “gender expert / advisor” was appointed to the TRC with funding from UNIFEM in August 2008, however this was very late in the process – just one month before the original planned completion date of the TRC.¹⁰⁸¹ As such, it seems that the TRC was well-intentioned in its attempts to implement measures to give effect to women’s right to participation. However, it seems that many of these measures came comparatively late in the process, while the reporting of these measures often lacks the detail needed to evaluate their success. As such, while the preliminary report emphasised that the mandate called for women’s

¹⁰⁷⁷ *ibid*

¹⁰⁷⁸ *ibid*

¹⁰⁷⁹ *ibid*

¹⁰⁸⁰ James-Allen *et al* (n 567) 10. See also Anu Pillay and Lizzie Goodfriend, “Evaluating Women’s Participation in Transitional Justice and Governance: A Community Dialogue Process in Liberia” (2009) 2 *Conflict Trends* 10

¹⁰⁸¹ This date was later extended. See James-Allen *et al* (n 567) 10; Liberian TRC, “Women and the Conflict” Appendix (n 59) 13

participation “at all levels and in all aspects of the TRC process”, it appears that women’s engagement with the process was generally shallow, with most only being able to participate in a limited way in activities that had been established without their input.

5.5 - Conclusions

The Liberian Truth and Reconciliation Commission was an inherently complex and legally plural space. The interaction of international, national, formal, and customary law within that space produced slippages and contradictions in the law, with consequences for the constitutivity of the space itself, and for the application of law in that space. While international legal standards exist around the right to participate in such processes, the constitutivity of this right is affected by the complex nature of the legal space to which the right grants access. In the absence of a clear definition of the type of participation which might satisfy such a right, what participation means in a transitional justice context must be observed through the language used to describe it. The Liberian TRC reports and mandate, in their discussion of women’s participation in the TRC process, describe this participation as “all inclusive”. However, analysis of the measures taken to facilitate women’s participation in the process suggests that that participation is perhaps narrower and shallower than that suggested by some of the language used to describe them. As part of this, women’s participation appears to have often been based on their presumed identity as victims of conflict-era violence, thus limiting the modes of participation available to them.

The CEDAW Committee, in its General Recommendation 23 describes “the gap between the de jure and the de facto”, or “the right as against the reality of women’s participation in politics and public life generally” as a “critical issue” relating to women’s participation in public and political life.¹⁰⁸² The Recommendation argues that

¹⁰⁸² CEDAW Committee, “General Recommendation No. 23” (n 948) [16]

the removal of “de jure barriers” to equal participation is essential but insufficient in ensuring women’s participation.¹⁰⁸³ It is argued here that the TRC attempted to facilitate women’s participation in the process, at least on a *de jure* basis, but failed to account for some of the *de facto* barriers that persisted even in spite of this. The objective of the thesis in making this observation is not to suggest that the TRC failed in its attempts to secure women’s participation. Indeed, that is not the conclusion that this chapter has reached. The TRC does appear to have taken measures which attempted to secure a wide participation, targeting women from all over Liberia to take part in these processes. As such, the thesis intends to highlight that the language used around women’s participation in public life, whether in international law or in the reporting of a specific process, does not always accurately capture what that participation looked like, and in fact perpetuates potentially limiting constitutivities of women. Thus, the ways in which women were able to participate in the process were pre-determined by the TRC’s foundational legal texts. These provided opportunities for women to participate passively, in ways which understood them as victims or in terms of their vulnerability.

The establishment of a participatory process, for example a truth and reconciliation commission, has been described as an “act of power”.¹⁰⁸⁴ In transitional justice contexts, power may be exercised by the facilitators, process organisers, researchers, and lawyers who create and operate transitional justice processes.¹⁰⁸⁵ However, it is also exercised by the affected population, for example, local people who testify within the space of the TRC in question. Selim argues that the means and extent of these people’s participation – “the extent to which people choose to participate and also who chooses not to participate” – also represent acts of power, and are indicative of where power lies within the process.¹⁰⁸⁶ Indeed, it has been argued that participation in a transitional justice process is not empowering by default. Rather, participation in such

¹⁰⁸³ *ibid* [15]

¹⁰⁸⁴ Selim (n 251) 1127

¹⁰⁸⁵ *ibid*

¹⁰⁸⁶ *ibid*

processes may “entrench unequal power relations” without precipitating any changes to the law and policy which underpins these relations.¹⁰⁸⁷ While participation has become a somewhat mainstream philosophy of international discourses, “often it is only the *language* that has changed with few stakeholders changing what they *do*.”¹⁰⁸⁸ Thus, just as participation in a given transitional justice process may empower and emancipate, so it may “*disempower, exclude and exploit*”, while lending legitimacy to the process as it does so.¹⁰⁸⁹

While the space of participation has been created for a specific purpose, those who engage with the process through their participation might actually conceive of the space in an entirely different way, and access it for different purposes.¹⁰⁹⁰ Thus, the abstract, ideological “representations of space”¹⁰⁹¹ of those designing, creating, and managing the transitional justice process interact with the “representational spaces”¹⁰⁹² of transitional justice as imagined, encountered, and lived by their participants. The constitutivities emanating from that process and its reporting are thus a product of the choices of these participants, but particularly its organisers and report-drafters. The next chapter will examine these constitutivities in order to investigate the links between participation and portrayal. It will use its method of critical spatial discourse analysis to investigate how women were discursively constructed by the conceived space of the Liberian TRC’s reporting, before undertaking an analysis of how such constructions correlate with the models of participation open to them in law. Understanding the law and space of the TRC as inherently and invariably complex, it will argue that this complexity has not been reflected in the TRC’s construction of women as a category of participant, proposing instead that this construction finds its roots in the foundational texts of the TRC.

¹⁰⁸⁷ *ibid.* See also Andrea Cornwall, “Locating citizen participation” (2002) 33(2) IDS Bulletin i

¹⁰⁸⁸ Selim (n 251) 1126 [original emphasis]

¹⁰⁸⁹ *ibid* 1127 [original emphasis]. See also Bill Cooke and Uma Kothari (eds), *Participation: The New Tyranny?* (Zed Books 2001)

¹⁰⁹⁰ Selim (n 251) 1127

¹⁰⁹¹ Lefebvre (n 360) 33

¹⁰⁹² *ibid*

6 – Participation and Portrayal in the Liberian Truth and Reconciliation Commission: Constituting Women as Participants

6.1 – Introduction

Now watch the reports again, but look more carefully, at the background, for that is where you will find the women. You'll see us fleeing, weeping, kneeling before our children's graves. In the traditional telling of war stories, women are always in the background. Our suffering is just a sidebar to the main tale; when we're included, it's for "human interest." If we are African, we are even more likely to be marginalized and painted solely as pathetic – hopeless expressions, torn clothes, sagging breasts. Victims. That is the image of us that the world is used to, and the image that sells.¹⁰⁹³

As Porter argues: “Stories are not neutral. Narratives are always contextual and often contested.”¹⁰⁹⁴ The second chapter in this thesis noted the contested nature of transitional justice terminologies, with the term “transitional justice” itself often meaning different things to different people and varying according to context. Discussed in the fifth chapter was that “participation”, too, is a broad term, with any right to participation in transitional justice processes potentially satisfied by varying standards of participation, representation, and inclusion. For these reasons, it has been argued that, in the absence of universally agreed upon definitions for what constitutes transitional justice and participation, it is necessary to evaluate each process according to its unique context, with a spatial analysis an appropriate means of doing so. Furthermore, gendered narratives of transition can impact how such participation is constituted in the transitional space. As such, in its aim to explore women’s participation in transitional justice processes, this thesis must embark on an investigation into not only what is meant by “participation” in the transitional justice

¹⁰⁹³ Gbowee (n 60) vii

¹⁰⁹⁴ Porter (n 518) 38

process in question, but how women themselves are constituted and portrayed for the purposes of that process. Thus, having explored the Liberian Truth and Reconciliation Commission as a complex legal space, and how participation was constituted as a form of access to that space, this chapter now turns to how women were constituted through and by that transitional justice process. This involves an analysis of how women have been portrayed in the reports of the Liberian TRC.

This thesis has previously argued, following Grosfoguel, that Cartesian notions of universality are inappropriate in their assumption of a “faceless subject [which] floats through the sky without being determined by anything or anyone”.¹⁰⁹⁵ A legal geographical approach, by contrast, proposes that the subject cannot be understood separately from their relationship with space, forming as they do an inextricable part of that space.¹⁰⁹⁶ Legal geographical analysis, as described in previous chapters, involves an understanding of how “the spatial, the social and the legal are braided together” to produce particular sites.¹⁰⁹⁷ An understanding of the subject’s inherent spatiality within the transitional justice process therefore requires an understanding of their complex and multifaceted identities, as constituted by the spatial, legal, and social aspects of that process. As has been explained, the constitutive process is the process by which a person or thing is “call[ed]... into being”, its “social significance” shaped through the “distinctive practices of naming, classifying, ruling, governing, or ordering”.¹⁰⁹⁸ Understanding women’s constitutivity in the Liberian TRC therefore requires an unpicking of the of the aforementioned strands of the transitional justice process, uncovering how these practices shaped the category of “woman” contained within the TRC’s reporting.

In outlining its method of critical spatial discourse analysis, this thesis has proposed that discourses and discursive practices create rules. These discursive conditions set out who belongs to certain categories of subject, such as victim, witness, participant,

¹⁰⁹⁵ Grosfoguel (n 86) 89

¹⁰⁹⁶ Keenan (n 112) 58-9

¹⁰⁹⁷ Bennett and Layard (n 357) 409

¹⁰⁹⁸ Delaney, “Legal Geography I” (n 366) 98

woman, and so on.¹⁰⁹⁹ In this way, it is discourse that “constitutes both objects and subjects”.¹¹⁰⁰ This chapter will argue that, through its reporting, the Liberian TRC acknowledged the influence of constitutive elements such as Liberian history and culture which affected women’s conflict-era experiences, and further acknowledged how these experiences were neglected by the mandates of historical truth commissions in other parts of the world. However, it will argue that, in spite of a consciousness of the need to address the broad range of women’s experiences, the reports often engaged in essentialised or flattened portrayals of women. The chapter will further argue that the Liberian TRC still, at times, treated women and their experiences as tangential to its core work, in which men were treated as the default. It will argue that where women’s experiences were addressed by the TRC – whether as part of its core operations or as part of its separate “gender” activities – it was often in ways which emphasised their victimhood or vulnerability, or which constituted them as passive recipients of action, rather than as agents in their own right. The chapter will propose that such portrayals serve to flatten women, thereby providing an incomplete and, at times, incoherent representation of women’s many roles, identities, and experiences in the conflict era and beyond.

It will ultimately be argued that the reporting of the Liberian TRC opens a “gap” between the realities of women’s experiences, and their portrayals in the reports. This gap has emerged, at least in part, because of the limited opportunities for participation in the Liberian TRC. Indeed, this chapter will argue that the flattened portrayals of women emerging in the TRC’s reports reflect the modes of participation outlined in the previous chapter. As such, the discursive conditions which determined women’s constitutivity in the TRC’s reports were in production before the TRC even commenced its operations. Analysing this idea further, the next chapter in this thesis will go on to explore the extent to which these constitutivities, this gap, and the modes of participation that shaped them have been constituted by the international law and policy on women’s participation in transitional justice processes. Doing so will reveal

¹⁰⁹⁹ Thorne (n 111) 473

¹¹⁰⁰ *ibid* 472

to what extent portrayals of women at different scales of law mutually shape the possibilities for their participation in such processes – the relationship between participation and portrayal.

6.2 – Two-Dimensional Portrayals, Three-Dimensional Spaces

As has been discussed in the fourth chapter of this thesis, the Liberian TRC’s reports demonstrate an awareness and consciousness of the importance of women’s participation in transitional justice processes, as well as women’s historical marginalisation and exclusion from these processes. This can be illustrated by reference to the “Women and the Conflict” appendix, which opens with a quote which asserts that the “strong links between transitional justice, development and gender equality have been overlooked and underdeveloped in both theory and practice”.¹¹⁰¹ The quote goes on to say that any efforts at social reconstruction in the post-conflict phase “must include women”.¹¹⁰² The reporting thus echoes a sentiment prevalent in feminist scholarship on transitional justice: that women are underrepresented in transitional justice processes, to the detriment of both these processes and the women they exclude.¹¹⁰³ In recognition of this exclusion, the same appendix describes a “marked effort to incorporate issues of gender” into the work of the TRC and post-conflict projects more generally.¹¹⁰⁴ In doing so, the reports specifically acknowledge that women may be victims, perpetrators, or indeed “victim-perpetrators”.¹¹⁰⁵ Furthermore, and as was outlined in the previous chapter, from its inception and throughout the TRC’s processes, many measures were mandated and taken to facilitate women’s participation. The TRC’s preliminary report dedicates an entire section to women’s participation in the TRC’s processes, again suggesting that gender equality

¹¹⁰¹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 1, quoting Irene Peitropaoli, Gender Advisor, Concern Worldwide

¹¹⁰² *ibid*

¹¹⁰³ See, e.g. Bell and O’Rourke (n 3)

¹¹⁰⁴ Liberian TRC, “Women and the Conflict” Appendix (n 59) 2

¹¹⁰⁵ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

and addressing women's issues were important ideas for the drafters to convey.¹¹⁰⁶ However, in spite of a clear intention to treat women's participation and their experiences as something of a priority, there are significant inconsistencies in the TRC reports' discussion of these issues. These inconsistencies form the basis of the discussion in the rest of this chapter, which will argue that the reports emphasised the importance of participation while simultaneously limiting and homogenising women through their portrayals.

As Sarat has argued, "Law is All Over".¹¹⁰⁷ It "does not stop at the utterance, but continues on" into the material world.¹¹⁰⁸ While Sarat was not investigating transitional justice processes, the experiences of the "welfare poor" he features in his research in many ways echo those of women participants in transitional justice processes. For example, neither is "a natural social group".¹¹⁰⁹ As such, within each group, members "neither share a distinctive background nor common ties of sentiment" and vary greatly in their experiences and circumstances.¹¹¹⁰ In spite of this, transitional justice discourses often present women collectively, as a homogenous group.¹¹¹¹ Gibbings attributes this to the perceptions of women as apolitical; as working "across political and ethnic divisions" in their pursuit of peace, rather than aligning with the ideas, interests or identities of their local community or other identity group.¹¹¹² As a result of this homogenised view, women may be flattened by the reporting of transitional justice processes, their broad and varied experiences of conflict distilled to form a singular narrative. Through this process of flattening, law "ruptures and fragments" the complex realities of social life in order to produce the legal subject, "excluding irrelevant facts and retaining only the ones that can be converted into legally ingestible

¹¹⁰⁶ *ibid* 34

¹¹⁰⁷ Austin Sarat, "'...The Law is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor" (1990) 2(2) *Yale Journal of Law and the Humanities* 343

¹¹⁰⁸ Delaney, "Beyond the Word" (n 476) 78

¹¹⁰⁹ Sarat (n 1107) 348

¹¹¹⁰ *ibid*

¹¹¹¹ Sheri Lynn Gibbings, "No Angry Women at the United Nations: Political Dreams and the Cultural Politics of United Nations Security Council Resolution 1325" (2011) 13(4) *International Feminist Journal of Politics* 522, 531

¹¹¹² *ibid*

bites”.¹¹¹³ Participation in such processes may also contribute to this flattening, resulting in participants’ experiences being repurposed and reconstituted in order to form part of an overarching narrative of the conflict which does not necessarily reflect their individual experiences.¹¹¹⁴ In this way, participants’ experiences are reshaped to conform to the stories the process looks to tell. The Liberian TRC’s reporting at times acknowledges the multiple and complex identities and roles that Liberian women took on or maintained during the country’s periods of conflict.¹¹¹⁵ However, the reports have nevertheless faced criticism from commentators who question the ability of these reports “to make findings that accurately reflect the multiplicity of roles played by women during the conflict beyond those of victims”.¹¹¹⁶ This thesis, in its fourth chapter, demonstrated that the TRC’s reporting established the TRC as a complex legal space. The analysis in this chapter seeks to establish whether this complexity continues into the reports’ construction of “women” as legal subjects, or whether that complexity becomes lost through the discursive practices of the TRC.

Through its analysis, this chapter argues that the reports often relied on gendered essentialisms in their portrayals of women, their experiences, and their needs in the transitional space. Harris has defined gender essentialism as “the notion that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation and other realities of experience”.¹¹¹⁷ Cynthia Cockburn describes essentialism as “a dangerous political force, designed to shore up differences and inequalities, to sustain dominations.” She argues that essentialism functions through the creation of “stereotypes” which concretise identities into fixed binaries, or “eternal dualisms: woman victim, man warrior”.¹¹¹⁸ Kapur further observes

¹¹¹³ Philippopoulos-Mihalopoulos “And For Law” (n 47) 6

¹¹¹⁴ Glucksam (n 455) 98

¹¹¹⁵ See, e.g. Liberian TRC, “Women and the Conflict” Appendix (n 59) 6

¹¹¹⁶ James-Allen *et al* (n 567) 15

¹¹¹⁷ Angela P Harris, “Race and Essentialism in Feminist Legal Theory” (1990) 42(3) *Stanford Law Review* 581, 585. See also Pascha Bueno-Hansen, “Decolonial Feminism, Gender, and Transitional Justice in Latin America” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018) 458

¹¹¹⁸ Cynthia Cockburn, *The Space between Us: Negotiating Gender and National Identities in Conflict*, (Zed Books 1998) 13. See also Gardam, “The Silences in the Rules” (n 155) 35-6.

essentialism as based on a “static” interpretation of the concept of “gender” and its conflation of gender with a fixed category of woman. She argues that all of the varied behaviours that constitute gender are flattened into the “existing narrow understanding of ‘woman’ as a fixed biological category within an axiomatic sex/gender binary”.¹¹¹⁹ This type of essentialism, she proposes, relies on woman’s vulnerability: “a victim in need of rescue and protection from predatory men”.¹¹²⁰ This chapter will argue that the reporting of the TRC demonstrates a tendency towards essentialism in its portrayals of women. It will argue that this essentialising process occurs in four principal ways: first, by conflating the terms “gender” and “women”, as described by Kapur; second, by emphasising women’s status as victims of conflict; third, by emphasising women’s vulnerability from Liberia’s establishment as a nation to the time of the TRC; and fourth, by portraying women as passive recipients of action, rather than as actors in their own right. These essentialisations reflect the opportunities for participation that were outlined in the previous chapter, which argued that the TRC’s mandate facilitated passive forms of participation based primarily on women’s victimhood or vulnerability. Each of these portrayals will now be explored in subsequent sections.

6.3 – The Conflation of “Women” and “Gender”

Cahn has argued that, in discussions of conflict and post-conflict justice generally, the words “gender” and “women” appear to be used interchangeably, thereby assuming men as the default position and essentialising women’s experiences of conflict.¹¹²¹ This section will argue that the same tendency can be observed in the reports of the Liberian TRC. It will be shown that the ways in which gender, as a concept, were defined, understood, and applied in this reporting had important consequences for the portrayal of women in those reports. Conflating women and gender in this way can be

¹¹¹⁹ Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2018) 107

¹¹²⁰ *ibid*

¹¹²¹ Cahn “Introduction” (n 37) xxxvi

problematic, because it obscures the constitutive power of gender; that is, the ways in which gender can shape how actors interact with the world around them.¹¹²² In this way, conflating women and gender can preclude an understanding of women’s “positionality” in the transitional justice context.¹¹²³ Ultimately, this section will argue that the conflation of women and gender functions as a form of gender essentialism. The ways in which this essentialism emerged in the TRC’s reports will now be explored in the rest of this section.

6.3.1 – Defining Gender in the TRC’s Reports

Issues arise in the TRC reports relating to the TRC’s use of “gender” as an analytical category. The mandate of the TRC requires special attention to gender-based violence and provides that gender-mainstreaming “characterizes its work, operations and functions”.¹¹²⁴ However, nowhere in the TRC Act is “gender” singularly defined for the purposes of the TRC’s work as a whole. Thus, while the reporting of the TRC frequently attests to the importance of gender as a consideration for its processes,¹¹²⁵ it appears to define gender differently in different contexts.¹¹²⁶ For example, the preliminary report, in its definition of harms under international law, describes gender as referring solely “to the two sexes, male and female, within the context of society”.¹¹²⁷ This definition is drawn from the Rome Statute of the International Criminal Court,¹¹²⁸ demonstrating the constitutive influence of international criminal law standards on the TRC’s operations. However, the Rome Statute’s definition has itself been described as “garbled”, and a product of “fear by some states that the concept of gender is a tool to destroy traditional sex roles”.¹¹²⁹ Thus, the application of this definition presents a real risk of limiting women’s portrayal to that “traditional” role. By contrast, the

¹¹²² Charlesworth, “Are Women Peaceful?” (n 946) 359

¹¹²³ Cahn “Introduction” (n 37) xxxvi

¹¹²⁴ TRC Act, s.24

¹¹²⁵ See, e.g. Liberian TRC, “Women and the Conflict” Appendix (n 59) 2, 11

¹¹²⁶ James-Allen *et al* (n 567) 6

¹¹²⁷ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 74

¹¹²⁸ Rome Statute (n 823) Art.7(3)

¹¹²⁹ Hilary Charlesworth, “Two Steps Forward, One Step Back?: The Field of Women’s Human Rights” (2014) 6 *European Human Rights Law Review* 560, 563

“Women and the Conflict” appendix attests that a “gender sensitive program of transitional justice” requires both judicial and non-judicial measures which account for “women and men’s different experiences of past gross human rights violations”, implying that an understanding of gender is an understanding of *difference* between the two binary sexes.¹¹³⁰ The same appendix later defines gender as “a broad term which inferred a commitment and sensitivity to women’s rights and needs *along with the rights and needs of children*, thereby including the girl child”.¹¹³¹ In fact, on eight occasions across the preliminary and final reports, the term “gender” is used to refer to women and children, rather than in any exploration of the roles or experiences of women and men. For example, the reporting claims that all training offered to TRC staff “focused a gender dimension that included emphasis on women and children’s issues”.¹¹³² On no occasion is the term used to refer to men alone, nor to men and children. Associating the term gender with the rights of women and children, with no mention of men and masculinity, is a choice on the part of the TRC: one which is indicative of the TRC’s priorities and which constructed the TRC space according to those priorities.¹¹³³ Importantly, it is a choice which reflects the TRC’s tendency to group women with children and other vulnerable populations, as will be discussed later in this chapter.¹¹³⁴

Each of the above definitions of the term gender are vastly different, and the TRC’s analysis and investigation could be significantly impacted depending on which definition was employed during the various phases of its operation. However, what is commonly seen throughout the reporting of the TRC is that, in place of applying any of the above definitions, the terms “gender” and “women” are conflated. Indeed, of the 56 times that the term “gender” is used in the final report, the majority refer only to women whether explicitly or impliedly. Analysis by the International Center for Transitional Justice echoes this finding, arguing that the TRC’s final report conflates

¹¹³⁰ Liberian TRC, “Women and the Conflict” Appendix (n 59) 1

¹¹³¹ *ibid* 11 [emphasis added]

¹¹³² Liberian TRC, *Consolidated Final Report* (n 562) 65

¹¹³³ Koskeniemi “What is International Law for?” (n 8) 30

¹¹³⁴ For a detailed account, see section 6.5 in this chapter.

“gender” with “women” or “women and girls” to the extent that the terms become interchangeable.¹¹³⁵ The term is never used to refer only to men and their experiences, illustrating that gender is understood only to be relevant to women, and that only women’s experiences of conflict are understood to be constructed by gender. This leaves men and their experiences “unexamined, as though they were somehow natural and immutable”.¹¹³⁶ In this way, men’s experiences of conflict are presumed to represent a default narrative of conflict – the violations they experience become the principal violations to be addressed by the transitional justice process. Women’s experiences of violence, by contrast, are marginalised. As will be explained later in this section, the Liberian TRC marginalised women’s experiences by treating issues relating to gender as tangential to its core activities.¹¹³⁷ In this way, by conflating women and gender, women’s experiences themselves become tangential, relegated to the side lines of the TRC process. As such, the way gender is defined for the purposes of a transitional justice process affects the “positionality” of women in that transitional justice space.¹¹³⁸ This, in turn, produces limited constitutivities of women and their experiences. In Charlesworth’s view, this phenomenon obscures “the relational nature of gender, the role of power relations, and the way that structures of subordination are reproduced”.¹¹³⁹ In the context of the Liberian TRC, this has clear implications for the ways in which the TRC addressed gendered harms throughout its reporting.

6.3.2 – Gendered Harms

A report of the International Center for Transitional Justice has argued that, whenever “gender-based violations” are explored in the TRC’s reporting, they refer only to women’s experiences.¹¹⁴⁰ Indeed, this analysis has found that, while that the reports and their appendices explore the gendered aspects of several different harms, their

¹¹³⁵ James-Allen *et al* (n 567) 6

¹¹³⁶ Charlesworth, “Are Women Peaceful?” (n 946) 359

¹¹³⁷ Liberian TRC, “Women and the Conflict” Appendix (n 59) 12-13. See also sections 5.4.2 and 6.3.3 in this thesis.

¹¹³⁸ Cahn “Introduction” (n 37) xxxvi

¹¹³⁹ Charlesworth, “Are Women Peaceful?” (n 946) 359

¹¹⁴⁰ James-Allen *et al* (n 567) 6

attempts to explore the “gender dimensions” of each type of harm amount to an exploration of the effect this harm had on women and girls.¹¹⁴¹ Indeed, in its use of “gender” as a term, the reports seem to distinguish men’s experiences of conflict-related violence and violations from those experienced by women, with only those offences directed towards women understood as gendered in nature. For example, the final report states that “[w]hile men, women and children all experienced the violence and trauma of the war, *women and girls were also targets of gender-based violence*”.¹¹⁴² Such phrasing suggests that gender-based violence was something that happened only to women and girls. Indeed, throughout the reports, women are repeatedly described as having been “targeted” for violence “on account of their gender”.¹¹⁴³ This is not to argue that an exploration of the ways in which women experience harms differently is unwelcome. Rather, it is to highlight that in limiting the exploration of these “gendered dimensions” to women’s experiences, the TRC reports continue to conflate the terms “gender” and “women”.

This conflation of gender with women’s experiences of violence further emphasises their victimhood and vulnerability in the conflict space, while failing to discuss the gendered nature of men’s experiences of conflict. On 14 occasions throughout the preliminary and final reports, the term “gender” is used to describe violence against women, for example alongside the phrases “sexual and gender based violence”, “sexual and gender based violations”, and “sexual and gender based crimes”. As will be discussed in the next chapter, these phrases appear in many sources of international law relating to women’s rights, which may explain their presence in the TRC’s reports. In any case, such phrasing is not used to describe men’s experiences, in spite of the fact that male experiences of violence during the Liberian conflict also appear to be shaped by gender. For example, the reports discuss that men and boys were “significantly overrepresented among victims of forced recruitment” into armed

¹¹⁴¹ See, e.g. Liberian TRC, “Women and the Conflict” Appendix (n 59) 33

¹¹⁴² Liberian TRC, *Consolidated Final Report* (n 562) 261 [emphasis added]

¹¹⁴³ *ibid* 273. See also *ibid* 19, “Determination 4”

factions.¹¹⁴⁴ Such explicit targeting of men and boys as potential conscripts for fighting factions is clearly, at least in part, based on gender. However, the reporting does not describe these experiences as gendered in nature. The reports further discuss that men constituted the larger victim category for violations reported to the TRC,¹¹⁴⁵ while the “Women and the Conflict” appendix further asserts that when the definition of the harm of sexual violence was expanded to include “undressing, humiliation, molestation and sexual servitude”, men constituted the larger victim category for that harm.¹¹⁴⁶ This presents an opportunity to explore these particular violations, and why they affected men more than women. However, while all instances of sexual violence against women are described as a form of gender-based violence, the gendered dimension of such violence against men again goes unexplored. As well as overlooking men’s experiences, such a limited exploration of gendered harm serves to essentialise women. Indeed, the “Women and the Conflict” appendix itself suggests that the way that “gender” was interpreted by the TRC “created a tendency for investigations to focus mainly and almost exclusively on victimhood in the form of sexual and physical violations”.¹¹⁴⁷ Law and legal practices, by drawing boundaries around subjects and around subject matter, serve to constitute both the subjects and spaces of transitional justice.¹¹⁴⁸ As such, by limiting its interpretation of gender-based violence to only the sexual violence experienced by women during the conflicts, the Liberian TRC produced a limited constitutivity of women principally as victims. This constitutivity will be explored in further detail in the next section of this chapter.

6.3.3 – Marginalising Gender

This chapter has previously argued that understanding “gender” as nothing more than a concern with women and their experiences can have a marginalising effect. This can be observed in the case of the Liberian TRC, which appears to have excluded issues

¹¹⁴⁴ *ibid* 275

¹¹⁴⁵ *ibid* 273

¹¹⁴⁶ Liberian TRC, “Women and the Conflict” Appendix (n 59) 40

¹¹⁴⁷ *ibid* 14

¹¹⁴⁸ See Blandy and Sibley (n 380) 276

affecting women from its core work. The “Women and the Conflict” appendix differentiates between “women-specific activities” and “the TRC’s core operations”, suggesting a distinction between work related to women and their experiences and the everyday work of the Commission.¹¹⁴⁹ For example, on ten occasions across the TRC’s preliminary and final reports, the term “gender” is used when referring to or explaining the work of the TRC’s “Gender Committee”. The “Women and the Conflict” appendix describes this Committee’s role as “advising and assisting the TRC in its work specifically targeting women”.¹¹⁵⁰ The same appendix further confirms that the Gender Committee “did not engage the TRC in its other core operations even though individual members and some organizations of the Committee worked with the TRC in various aspects of its work”.¹¹⁵¹ Rather, the Committee met “on an ad hoc basis” to support women’s outreach programmes, which “largely had independent funding, separate from the TRC’s principal budget”.¹¹⁵² In fact, all TRC programmes relating to gender appear to focus solely on women and their experiences. For example, the TRC’s “gender program” is said to have conducted outreach with *Zoes* – the female leaders of the traditional *Sande* society – but does not report any outreach with leaders of the equivalent male *Poro* society.¹¹⁵³ This reinforces the impression of separation between the TRC and its work relating to gender – of women’s participation being something to be handled separately from the TRC’s principal activities. In this way, the reports of the TRC create “distance” between women’s experiences of conflict and the TRC’s core activities, further marginalising women as a category.¹¹⁵⁴

This section has thus far argued that understanding gender as referring only to women has the effect of marginalising women and their experiences. It is further argued here that the marginalisation of gender in the reports of the Liberian TRC also contributed to women’s essentialisation throughout the TRC’s reporting. In legal geography, space

¹¹⁴⁹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 13

¹¹⁵⁰ *ibid* 12

¹¹⁵¹ *ibid*

¹¹⁵² *ibid*

¹¹⁵³ Liberian TRC, *Consolidated Final Report* (n 562) 76

¹¹⁵⁴ Jeffrey, “The political geographies of transitional justice” (n 414) 347

is understood to be constituted by the “practices and interactions of people and things”.¹¹⁵⁵ One of the ways that this constitutive process occurs is through discourse, with the discursive practices in a given space determining the conditions by which subjects are constituted.¹¹⁵⁶ In this way, the language used to define gender for the purposes of the TRC, and the discursive separation of gender from the TRC’s other activities within its reports, thus constituted gender as a concept. The constitutivity of gender in the discursive space of the TRC’s reports, in turn, mutually constituted women as participants in these reports. Because gender was understood to refer to a narrow category of harms falling outside of the TRC’s core operations, women were understood principally as victims of a narrow range of niche, gendered harms. As such, women’s experiences of conflict were flattened, and the woman subject herself was flattened to “a victim in need of rescue and protection from predatory men”, as described by Kapur.¹¹⁵⁷ The next section in this chapter will further demonstrate this phenomenon by exploring the flattening of women to the category of victim in further detail.

6.4 – The Conflation of “Women” and “Victims”

Shepherd argues that, while it is important to acknowledge women’s experiences of violence, and especially those which they themselves report as participants, it is also important to draw attention to the ways in which these accounts are constructed.¹¹⁵⁸ The construction of the “victim” is an important part of the transitional justice process. McEvoy and McConnachie state that justice for victims is often used as a justification for the immense effort required to undertake transitional justice processes.¹¹⁵⁹ Victims, as a category, are argued to represent the “sometimes practical but certainly always

¹¹⁵⁵ Davies, *Asking the Law Question* (n 318) 446

¹¹⁵⁶ Thorne (n 111) 484

¹¹⁵⁷ Kapur, *Gender, Alterity and Human Rights* (n 1119) 108

¹¹⁵⁸ Shepherd, *Gender, Violence and Security* (n 69) 39

¹¹⁵⁹ McEvoy and McConnachie (n 223) 490

symbolic beneficiaries” of the “legitimation work” of the transitional justice process.¹¹⁶⁰ That is, they serve to legitimise the “enormous financial, political, legal and psychological effort” that the transitional justice process itself requires.¹¹⁶¹ Without victims as a means of justification, other reasons to pursue transitional justice may seem insufficient or “too intangible” to necessitate the burden of such processes.¹¹⁶² In spite of this, it has been widely acknowledged that historically, victims’ concerns, opinions, and participation were given “only sparse consideration” in international justice processes.¹¹⁶³ Thus, attending to the needs of victims in transitional justice processes is argued to perform a mostly “rhetorical” function.¹¹⁶⁴ This rhetorical function is nevertheless fundamental in shaping who and what the “victim” is understood to be for the purposes of the transitional justice process.¹¹⁶⁵ Indeed, Lawther argues that “what we come to hear and know as ‘victims’ voices’ shapes the construction and reproduction of victimhood and often does so in profoundly discomfoting ways”, regardless of the extent to which these voices can be said to be representative of actual victims in the transitional justice context.¹¹⁶⁶ As such, this section will analyse how women’s victimhood was constructed in the discursive space of the Liberian TRC’s reports, arguing that this construction at times produced an essentialised and flattened constitutivity of women.

In doing so, it is not the intention of this section to argue that it is inappropriate for the TRC’s reports to analyse or emphasise women’s victimhood, or the categories of harms which particularly affected them. Rather, this section will argue that a narrow focus on women’s experiences of victimhood, often in the absence of evidence or contextualising information, risks precluding a more complex understanding of the full

¹¹⁶⁰ *ibid*

¹¹⁶¹ *ibid*

¹¹⁶² *ibid*

¹¹⁶³ Carla Ferstman, “International Criminal Law and Victims’ Rights” in William A Schabas and Nadia Bernaz (eds), *Routledge Handbook of International Criminal Law* (Routledge 2010) 407

¹¹⁶⁴ McEvoy and McConnachie (n 223) 494

¹¹⁶⁵ Thorne (n 111) 484

¹¹⁶⁶ Cheryl Lawther, “Transitional Justice and constructing victims and victimhood” in Cheryl Lawther and Luke Moffett (eds), *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2023) 179-80

range of women’s conflict-era experiences. When transitional justice processes produce narratives of victimhood, this often involves victims’ experiences being “picked out, appropriated and re-presented” in order to suit the objectives of the process.¹¹⁶⁷ As such, these narratives do not capture the “voices” of victims;¹¹⁶⁸ rather victims and victimhood are reconstituted by the discourse of the reports to fit the narrative of conflict being established therein. The problem with this is that “particular victims’ narratives ossify”: their experiences “are frozen in time and space” and offer a portrayal of the victim that is “static and stagnant”, or flattened.¹¹⁶⁹ In this way, women are essentialised as a singular victim subject that is “universal”, “uncomplicated”, and which thus “cannot accommodate a multi-layered experience”.¹¹⁷⁰ This section will explore the constitutivity of the woman subject of the Liberian TRC, proposing that the TRC’s discursive space was unable to capture their “multi-layered experience” and instead presented them as a “universal” victim category.¹¹⁷¹

6.4.1 – Emphasising Women’s Victimhood

The “Women and the Conflict” appendix to the TRC’s final reports argues that gender equality cannot be advanced in Liberia without an understanding of the “multiplicities, complexities and challenges” associated with women’s identities and experiences.¹¹⁷² Indeed, the reporting further argues that the TRC Gender Unit attempted to “guard against” the essentialisation of women as victims in order to uncover women’s full and multifaceted experiences of the conflict,¹¹⁷³ thus revealing the “total spectrum of women’s involvement in the war and their multiple identities”.¹¹⁷⁴ This intention is, in

¹¹⁶⁷ *ibid*

¹¹⁶⁸ *ibid*

¹¹⁶⁹ *ibid* 181

¹¹⁷⁰ Ratna Kapur, “The Tragedy of Victimization Rhetoric: Resurrecting the ‘Native’ Subject in International/Post-Colonial Feminist Legal Politics” (2002) 15 *Harvard Human Rights Journal* 1, 6. See also Shepherd, *Gender, Violence and Security* (n 69) 39

¹¹⁷¹ *ibid*

¹¹⁷² Liberian TRC, “Women and the Conflict” Appendix (n 59) 44

¹¹⁷³ *ibid* 14

¹¹⁷⁴ *ibid*

itself, significant, because it demonstrates a self-consciousness on the part of the reports' drafters about the risk of women's experiences being flattened to fit a particular narrative.¹¹⁷⁵ However, in a section of the "Women and the Conflict" appendix titled "Multiplicity, Complexity of Roles", the TRC reporting itself acknowledges that women may occupy many different roles in conflict, however "the general perception of women as victims-only persists".¹¹⁷⁶ Such a perception is perpetuated by the TRC's reporting, which, in spite of the apparent self-awareness it demonstrates, appears to have fallen into the same trap.

Of all of the times the word "woman" appears in the final reports of the TRC, the most common usage is in discussions of women's victimhood. In the final report's summary of its findings and determinations, where women are mentioned explicitly, it is exclusively as victims of conflict-related violence (particularly sexual violence) or general gender discrimination.¹¹⁷⁷ Similarly, in the reports' preliminary determinations, women are mentioned only as victims, or as members of a vulnerable category. In addition, a chapter of the preliminary report titled "Victims" describes itself as "present[ing] a summary of the impact of conflict on Liberian children and women".¹¹⁷⁸ Thus, while the chapter is titled only "Victims", it specifically considers women, alongside children. Furthermore, discussions of women's victimhood within the reports are not limited to descriptions of the periods of armed conflict, but stretch back throughout Liberia's history. The final report, for example, argues that the TRC's data "does not account for the marginalization; exclusion and outright denial of opportunities for self actualization women have, for over a century, endured in Liberia."¹¹⁷⁹ To illustrate this, the final report cites HIV prevalence, school enrolment and retention rates, illiteracy, teenage pregnancy rates, and infant and maternal mortality as evidence of the "long standing prejudice and inequality that have been the

¹¹⁷⁵ Philippopoulos-Mihalopoulos "And For Law" (n 47) 5

¹¹⁷⁶ Liberian TRC, "Women and the Conflict" Appendix (n 59) 43

¹¹⁷⁷ Liberian TRC, *Consolidated Final Report* (n 562) 16-21

¹¹⁷⁸ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 44

¹¹⁷⁹ Liberian TRC, *Consolidated Final Report* (n 562) 273

lot of Liberian women for well over a century”, but which ultimately were not captured by victims’ testimonies to the TRC.¹¹⁸⁰

This emphasis on women’s victimhood, prevalent throughout the reports, persists even during discussions of men’s experiences as victims of conflict-era harms. Indeed, the reports sometimes appear to struggle to reconcile men’s status as the larger victim category with the narrative of victimhood they establish for women. The TRC’s final report states that one third of reported violations had a female victim, with those with male victims accounting for almost half of all reported violations.¹¹⁸¹ Later, the report clarifies that women were the victims of 28% of the violations reported to the TRC, while men accounted for 47%.¹¹⁸² While men comprised a “larger victim category” (at least in terms of reported violations), women are described by the reports as “excessively affected” by the conflicts,¹¹⁸³ and “uniquely targeted because of their gender throughout the conflict”.¹¹⁸⁴ The reports thus emphasise women’s experiences of victimhood, even when statistics suggest that men reported more violations. Indeed, a later chapter of the final report itself concedes that “both men and women appeared to have been targeted in about equal proportions”.¹¹⁸⁵ Furthermore, on over a quarter of the occasions in which men’s status as victims is discussed, women’s victimhood is discussed concurrently. For example, the reports assert that men are “over represented” as victims of crimes such as “killing, assault, torture, forced labour and forced recruitment”,¹¹⁸⁶ but relates these statistics to women’s experiences of sexual violence. The final report states that this “data explains why women, despite being ready targets of sexual violence found themselves foraging for food for their families while men dared not venture out for fear of being killed.”¹¹⁸⁷ This emphasis placed on women’s victimhood not only results in men’s experiences of victimhood being

¹¹⁸⁰ *ibid*

¹¹⁸¹ *ibid* 69

¹¹⁸² *ibid* 273

¹¹⁸³ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 45

¹¹⁸⁴ Liberian TRC, *Consolidated Final Report* (n 562) 69

¹¹⁸⁵ *ibid* 273

¹¹⁸⁶ *ibid* 276

¹¹⁸⁷ *ibid*

overlooked; it also flattens women's experiences of conflict by distilling these experiences into a narrative of victimhood which the TRC's own data cannot sustain.¹¹⁸⁸

Indeed, there is further conflict in the reports regarding the demographics most affected by sexual violence during the Liberian conflict. As has been previously discussed, women's victimhood is particularly emphasised with regard to sexual violence. In both its findings and its determinations, the final report emphasises that all factions to the conflict engaged in sexual violence towards women,¹¹⁸⁹ with the final report's third additional finding further describing women as being "violated, degraded, abused and denigrated", by their experiences of "dehumanizing" sexual violence.¹¹⁹⁰ However, the statistics for sexual violence experienced by both women and men throughout the conflict are not clearly presented in the reports. The final report suggests in its methodology chapter that "above 70% of all sexual based violations reported were against women",¹¹⁹¹ and later asserts that that women "account for 63 per cent of all cases of rape reported to the TRC, as compared to only 6 percent for men."¹¹⁹² However, as discussed in the previous section, where the definition of sexual violence was expanded to include harms such as "undressing, humiliation, molestation and sexual servitude", men comprised the larger victim category.¹¹⁹³ In describing this situation, the "Women and the Conflict" appendix argues that men were "counter-intuitively" the larger victim category for sexual violations using the expanded definition.¹¹⁹⁴ The use of the phrase "counter-intuitively" seems to suggest that sexual violence is something that happens to women as a matter of course, whereas it is exceptional for it to happen to men.

¹¹⁸⁸ See Philippopoulos-Mihalopoulos "And For Law" (n 47) 6; Shepherd, *Gender, Violence and Security* (n 69) 39

¹¹⁸⁹ Liberian TRC, *Consolidated Final Report* (n 562) 17-19

¹¹⁹⁰ *ibid* 17

¹¹⁹¹ *ibid* 70

¹¹⁹² *ibid* 273

¹¹⁹³ Liberian TRC, "Women and the Conflict" Appendix (n 59) 40

¹¹⁹⁴ *ibid* 14

In any case, the focus in these final reports on women as victims of sexual violence is questionable in light of criticisms that the TRC was unable to “reach the majority of victims of sexual violence”.¹¹⁹⁵ Indeed, one of the final report’s additional findings is that sexual and gender-based violence against women were “under-reported to the TRC through its formal processes” for reasons such as “insecurity, stigma, etc”.¹¹⁹⁶ Furthermore, assertions regarding women’s status as victims of sexual violence are frequently unsubstantiated by the reports. While the reporting details some specific crimes,¹¹⁹⁷ perpetrators are rarely named, if ever. More commonly, the reporting describes broad categories of crime experienced by women without providing any substantiating detail on the nature and context of those particular crimes. For example, the final report states that women were “often brutally raped and kidnapped”, without providing any further detail on such offences.¹¹⁹⁸

As the introduction to this section emphasised, none of the preceding discussion is intended to argue that a focus on sexual violence is inappropriate, or that there is no place in the reports for broad discussions of particular harms. Rather, it is argued here that a singular focus on such experiences of victimhood – especially in the absence of vital contextual information – risks the erasure of more complex understandings of how diverse populations were affected by the Liberian conflict. Furthermore, such a narrow focus on women’s victimhood is “based on gender essentialism; that is, overgeneralized claims about women”.¹¹⁹⁹ Citing Chandra Mohanty, Kapur explains that such essentialism is based on the idea that “women have a coherent group identity within different cultures...prior to their entry in social relations”.¹²⁰⁰ In this way, the diversity of women is flattened in favour of an overarching narrative of victimhood.¹²⁰¹ The discursive space established by the TRC’s reports “ruptures and fragments” the

¹¹⁹⁵ James-Allen *et al* (n 567) 15

¹¹⁹⁶ Liberian TRC, *Consolidated Final Report* (n 562) 19

¹¹⁹⁷ See, for example, Chapter 8.2 in *ibid*

¹¹⁹⁸ *ibid* 69

¹¹⁹⁹ Kapur, “The Tragedy of Victimization Rhetoric” (n 1170) 6

¹²⁰⁰ *ibid*, citing Chandra Talpade Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses” in Chandra Talpade Mohanty *et al* (eds), *Third World Women and the Politics of Feminism* (Indiana University Press 1991)

¹²⁰¹ See Lawther, “Constructing victims and victimhood” (n 1166) 180

complex realities of women’s experiences in order to reconstitute them as legal subjects,¹²⁰² and in doing so flattens all of the varied behaviours that constitute women into a “narrow understanding” of women based on their victimhood and their vulnerability to male violence.¹²⁰³

6.4.2 – *The Victim/Perpetrator Binary*

Experiences of conflict, in general, are complex. For example, victims and perpetrators are not two distinct categories. While a person may fall neatly into one category or the other at any given time, a person may be both a victim and a perpetrator at different times depending on the context.¹²⁰⁴ However, it has been argued that transitional justice processes often struggle to contend with victims “who are not entirely blameless”.¹²⁰⁵ That is, transitional justice processes can struggle to fully capture the experiences of those people who may have been active participants in armed violence as well as victims of it. The preliminary report describes the TRC as “an opportunity for both victims and perpetrators of human rights violations to share their experiences”, thus creating a binary between the two groups and impliedly separating affected persons into one or the other.¹²⁰⁶ In its final statement, the TRC’s final report differentiates between the “vast majority of us who are victims or survivors” and the “few of us who commanded the forces of arms, financed, resourced and provided political and ideological guidance to several warring factions”,¹²⁰⁷ reproducing this victim/perpetrator binary established in the preliminary report. This reflects Glucksam’s argument that outreach conducted by the TRC “reaffirmed the balance of power in the victim/perpetrator identity divide”.¹²⁰⁸ Discussing identities of participants in the TRC’s processes, the final report further states that 93.9% of those

¹²⁰² Philippopoulos-Mihalopoulos “And For Law” (n 47) 6

¹²⁰³ Kapur, *Gender, Alterity and Human Rights* (n 1119) 107-8

¹²⁰⁴ Juan E Mendez, “Victims as Protagonists in Transitional Justice” (2016) 10 *International Journal of Transitional Justice* 1; McEvoy and McConnachie (n 223) 493

¹²⁰⁵ Lawther, “Constructing victims and victimhood” (n 1166) 175

¹²⁰⁶ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 16

¹²⁰⁷ Liberian TRC, *Consolidated Final Report* (n 562) xxiii

¹²⁰⁸ Glucksam (n 455) 98

who appeared at the TRC's hearings were classed as victims.¹²⁰⁹ However, the report does not clarify whether or not participants self-identified as victims or perpetrators, or whether these labels were applied by the staff of the TRC. Further, it is not clear whether any participants were in possession of a dual identity – at once a victim and a perpetrator. All of this has consequences for women's participation in the process, and the exercise of their agency as participants.¹²¹⁰ For this reason, Gready and Robins have argued in favour of a broad and transparent definition of victimhood which expands participation while empowering those involved.¹²¹¹ In addition, Theidon has discussed dichotomies produced in the testimonies of the Peruvian Truth and Reconciliation Commission, wherein rape is categorised as a crime which happens to women while stories of sexual violence experienced by males are treated very inconsistently.¹²¹² She argues that this results in a state of affairs where “the more complicated stories people tell about war are at risk of becoming unthinkable and, therefore, erased.”¹²¹³

This binary produced between victims and perpetrators is itself gendered in nature. As Walklate has argued, the ideal construction of the victim continues to be one that is “blameless”.¹²¹⁴ This section previously cited McEvoy and McConnachie in their assertion that victims often perform a largely “rhetorical” function in transitional justice contexts. The portrayal of the woman victim in the reporting of the Liberian TRC is often used as a rhetorical device to illicit concern or sympathy on the part of the reader.¹²¹⁵ The final report, describing the need for intervention to bring conflict to a halt, states that without it “more and more *innocent women and children* would continue to suffer and die”.¹²¹⁶ This phrase is intended to elicit emotion on the part of the reader, with the use of the word “innocent” immediately establishing a binary

¹²⁰⁹ Liberian TRC, *Consolidated Final Report* (n 562) 202

¹²¹⁰ Gready and Robins (n 43) 358

¹²¹¹ *ibid*

¹²¹² Kimberly Theidon, “1325 + 17 = ?: Filling in the Blanks of the Women, Peace, and Security Agenda” in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018) 150

¹²¹³ *ibid*

¹²¹⁴ Sandra Walklate, *Imagining the Victim of Crime* (Open University Press 2007) 110

¹²¹⁵ See Lawther, “Constructing victims and victimhood” (n 1166) 180

¹²¹⁶ Liberian TRC, *Consolidated Final Report* (n 562) 157 [emphasis added]

between victim and perpetrator, obscuring the multiplicity of identities discussed elsewhere in the reports. Furthermore, men are not mentioned, as though women are immediately assumed to be innocent and victims in the conflict, while men are not imagined in the same way. The final report also discusses the “heart breaking narratives” of women’s testimonies at the TRC.¹²¹⁷ This is another emotive term which again reifies women’s status as victims of armed conflict.

A focus on women’s experiences of victimhood is, of course, necessary and appropriate, and it is not the intention of this analysis to suggest that the reports ought not to engage in discussion of women’s experiences as victims. Indeed, in spite of the challenges of representing or “speaking for” victims in such contexts, McEvoy and McConnachie ultimately argue that, due to capacity and resource constraints faced by victims, this can be necessary in some circumstances, for example when victims lack the “relevant skills or capacity”, power, or resources to effectively advocate for themselves.¹²¹⁸ Indeed, “lawyers, NGO workers or other elite-level actors” may represent the only “available channels” for victims’ voices in the post-conflict context.¹²¹⁹ However, McEvoy and McConnachie have cautioned that those who attempt to advocate on behalf of victims must do so in possession of the full facts and an understanding of all of the complex dynamics at play.¹²²⁰ As Alcoff argues, those in a position to speak on behalf of victims must do so following “a concrete analysis of the particular power relations and discursive effects involved”.¹²²¹ As such, what is argued here is that the comprehensive and encompassing portrayals of women as victims contributed to an essentialised portrayal of women, with consequences for how victimhood was understood by the TRC itself. Such portrayals can serve to flatten the presentation of women and girls to the role of victim. This serves to erase the multiple roles, identities, and experiences that women may have had in the conflict-era. Furthermore, it has been argued that the treatment of sexual violence in international

¹²¹⁷ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 45

¹²¹⁸ McEvoy and McConnachie (n 223) 499

¹²¹⁹ See Lawther, “Constructing victims and victimhood” (n 1166) 180

¹²²⁰ McEvoy and McConnachie (n 223) 499

¹²²¹ Alcoff (n 561) 24

criminal law can have the parallel effect of creating a harmful narrative about victims and their communities, undermining their agency and presenting them as never able to recover from their experiences, those experiences' ramifications, and the ensuing "shame" and "stigma."¹²²² Women are not "exclusively the victims, the caregivers or the passive supporters of men in times of armed conflict".¹²²³ Research has shown that they may also be involved in conflict as perpetrators or members of fighting factions.¹²²⁴ As such, this "complexity and recognition of intersectionality in gender identity" ought to be reflected in their portrayal in legal responses to conflict in order to ensure that these responses adequately attend to women's needs.¹²²⁵

6.5 – The Conflation of “Women” and “Vulnerable”

Related to the TRC reports' portrayals of women as victims of conflict-era violence is the continued emphasis of women's vulnerability, whether to violence, to discrimination, or otherwise. Linking women's participation in transitional justice processes with their vulnerability can serve to undermine their agency to engage with the process as agents in their own right. It has been argued that "regarding victims as powerless and vulnerable" overlooks the ability of those victims to actively participate in transitional justice processes; to "exercise agency, resistance and defiance."¹²²⁶ Indeed, homogenised understandings of women preclude an understanding of the myriad, complex ways in which women "determine their own identities, agency and their relationship with place and space".¹²²⁷ In other words, women are understood as lacking the capacity to actively participate in transitional justice processes. Where it is

¹²²² Engle, "The Grip of Sexual Violence" (n 217)

¹²²³ Susan Harris Rimmer, "Sexing the Subject of Transitional Justice" (2010) 32(1) Australian Feminist Law Journal 123, 140

¹²²⁴ *ibid*

¹²²⁵ *ibid*

¹²²⁶ See Lawther, "Constructing victims and victimhood" (n 1166) 183. See also Eilish Rooney and Fionnuala Ní Aoláin, "Transitional Justice from the Margins: Intersections of Identities, Power and Human Rights" (2018) 12(1) International Journal of Transitional Justice 1

¹²²⁷ Sylvia Bawa & Grace Adeniyi Ogunyankin, "(Un)African women: identity, class and moral geographies in postcolonial times" (2018) 16(4) African Identities 444, 446

presumed that women lack the capacity to advocate for themselves, elite actors may instead speak for them, depriving women of the opportunity to testify to their full range of experiences and to make rights claims in the transitional justice sphere.¹²²⁸

The reports of the Liberian TRC frequently associate women with vulnerable groups, especially children. In the final report, of the 285 times the word “women” is featured, it is followed by the word “children” on 42 occasions. This is reminiscent of what Puechguirbal describes as “‘Women and Children’ Syndrome”.¹²²⁹ This phenomenon, which will be described in greater detail in the subsequent chapter, was coined following analysis of women’s portrayal in UN documents, and proposes that the portrayal of women “as civilians, victims, vulnerable and in association with children” at once essentialises women and undermines their agency.¹²³⁰ Furthermore, every time “vulnerable groups” are referenced in this report, they are listed alongside the category of “women”. Such depictions are not limited to any specific area of the report – to any one topic or time period – but occur throughout. When determining that the “gross violations and atrocities” committed during the conflict were “a systematic pattern of abuse” and the result of “deliberate planning”, the TRC also determines that such abuses disregarded “the rights of noncombatants, children, women, the elderly, disarmed or surrendered enemy combatants”.¹²³¹ Looking to Liberia’s post-conflict future, in its determination on reparations, the final report determines that any reparation programme ought to provide redress for human rights violations “committed against victim communities and individuals, especially women and children”.¹²³² In addition, one of the final recommendations made by the TRC’s final report is that the Government of Liberia guarantee “to women, children *and other vulnerable populations*” the full realisation of their human rights.¹²³³ Thus, the report stresses the importance of guaranteeing human rights to women, but in grouping them

¹²²⁸ See McEvoy and McConnachie (n 223) 499

¹²²⁹ Puechguirbal “Discourses on Gender, Patriarchy and Resolution 1325” (n 20) 175-6

¹²³⁰ *ibid* 172

¹²³¹ Liberian TRC, *Consolidated Final Report* (n 562) 19

¹²³² *ibid*

¹²³³ *ibid* 22 [emphasis added]

with children and “other vulnerable populations”, it stresses their vulnerability above all else.¹²³⁴ This section will explore the constitutivity of women as vulnerable in the reports of the Liberian TRC, arguing that this not only precluded an understanding of the full range of women’s experiences during the conflict, but that it also undermined their agency as participants in the TRC process.

6.5.1 – Participating as a “Vulnerable Group”

The reports emphasise women’s vulnerability when discussing their participation in the TRC’s processes. Of the 285 times that the word “women” appears in the final report, 56 appearances relate to women’s participation in the TRC and its processes. However, even when establishing the importance of women’s participation in transitional justice processes, the reports commonly link their participation with their victimhood and their vulnerability. On 15 occasions, the reports link women’s participation in the TRC’s activities to the participation of children. Both the preliminary and final reports state that “[s]pecial considerations were made” to facilitate testimony from those “under unique circumstances or categories like women, children, the elderly, youth and the handicap [*sic*]”.¹²³⁵ The use of the word “unique” overlooks that women are a huge proportion of the adult population. While the experience of each woman is undoubtedly unique, the report appears to suggest that to be a woman places one in a unique, homogenous category, further contributing to the essentialisation described throughout this chapter. It is also worth noting that the other groups listed alongside women – children, the elderly, and so on – are those that may require special measures due to their vulnerability or lack of capacity. Indeed, Shepherd proposes that this association of women with children is particularly “problematic” because children lack maturity and so are “depicted as not fully capable of rational thought” and as requiring protection and care.¹²³⁶

¹²³⁴ *ibid* 22

¹²³⁵ *ibid* 37; Liberian TRC, *Preliminary Findings and Determinations* (n 575) 37

¹²³⁶ Shepherd, *Gender, Violence and Security* (n 69) 41

This association of women with vulnerability and victim status also extends into the TRC's mandate. As discussed in the previous chapter, the TRC mandate provides for the adoption of "specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender-based violations".¹²³⁷ The same paragraph goes on to discuss "rehabilitation of the victims of human rights violations..."¹²³⁸ Thus, twice in the same paragraph women are defined by their vulnerability to violence. First, they are listed alongside "children and vulnerable groups". Second, by discussing the needs of victims, the paragraph implies that this is principal category to which women belong. This has consequences for how women were constituted by the process. If the mandate provides only for addressing their experiences as victims, how were women with varying experiences to participate in the process? If the mandate was unable to recognise, for example, that women's post-conflict needs may include rehabilitation as ex-combatants, would it be possible for this experience to be recognised by the TRC? This is addressed to some extent later in the mandate, which, as the previous chapter explained, requires "special programs for children and women both as perpetrators and victims under burdens of trauma, stigmatization, neglect, shame, ostracization, threats, etc."¹²³⁹ In these provisions, the TRC's mandate does acknowledge that women may have acted as perpetrators in the conflict, and appears to attempt to articulate something of the complexity of women's conflict experiences. However, in doing so, the mandate continues to associate women with children and discusses them in terms of their vulnerability, in this case in the context of their need for security and protection from "burdens" such as "ostracization" and "threats".

6.5.2 – Vulnerability and Agency

As was argued at the beginning of this section, the portrayal of women as particularly vulnerable can undermine women's agency in their interactions with the transitional

¹²³⁷ TRC Act, s.4(e)

¹²³⁸ *ibid.* See also Liberian TRC, *Preliminary Findings and Determinations* (n 575) 17

¹²³⁹ TRC Act, s.26(n)

justice process. Glucksam has argued that the Liberian TRC represented “an important opportunity” for Liberians affected by the conflict to exercise “the agency of telling their own stories on a national stage”, but that the power to construct these stories into an overarching narrative of the Liberian conflict remained with the nation’s elites.¹²⁴⁰ As a result, citizens’ stories of conflict were distilled into a narrative which did not necessarily reflect those stories, and which did not challenge entrenched and mutually exclusive constructions of perpetrators and victims.¹²⁴¹ While Glucksam ultimately argues that to share testimony, regardless of the result, remains impactful, there is cause for concern in a form of participation which rests on women’s vulnerability. Otto, for example, has cautioned that, where women are invited to participate in processes based on their contribution only as “women”, it then follows that “their political agency will be limited to what is made possible by that representation and restricted to ‘feminized’ tasks”.¹²⁴² In a spatial understanding, this is of course true: the discursive conditions of women’s participation constitute the participation itself, and vice versa.¹²⁴³ By constituting women as vulnerable, the discourse of the Liberian TRC limited the available “subject positions” that women were able to occupy within that space.¹²⁴⁴ The constitutivity of women as a “vulnerable group”, in turn, served to constitute the space itself.¹²⁴⁵ As such, inviting women to participate in transitional justice processes on the basis of their vulnerability, and reifying that vulnerability through reporting, thus conditions their participation in future processes.¹²⁴⁶

¹²⁴⁰ Glucksam (n 455) 98

¹²⁴¹ *ibid* 104

¹²⁴² Dianne Otto, “A sign of ‘weakness’? Disrupting gender uncertainties in the implementation of Security Council Resolution 1325” (2006) 13(1) *Michigan Journal of Gender and Law* 113, 139

¹²⁴³ See Cornwall, “Spaces for transformation?” (n 310) and Thorne (n 111).

¹²⁴⁴ Cornwall, “Spaces for transformation?” (n 310) 81

¹²⁴⁵ Keenan (n 112) 40

¹²⁴⁶ Davies, *Asking the Law Question* (n 318) 446

6.6 – Passivity over Participation

The TRC’s preliminary report acknowledges that women may be “petitioners, victims, perpetrators, victim-perpetrators, and witnesses”, and as such emphasises the importance of ensuring their participation regardless of their role in the conflict.¹²⁴⁷ However, as the previous section discussed, the continual listing of women alongside other identity categories commonly perceived as vulnerable – “noncombatants, children, and women, the elderly, disarmed or surrendered enemy combatants, etc.”¹²⁴⁸ – somewhat undermines the reports’ attempts to explore these diverse identities, and is emblematic of a further theme identified in the reporting: that of portraying women as passive (rather than active) participants, whether in conflict, in public life, or in the processes of the TRC themselves. This section will argue that, by including women in lists such as the one above, the TRC reporting portrays them not as active participants in the conflict, but as victims or bystanders and therefore as lacking in agency.¹²⁴⁹

6.6.1 – Empowerment or Marginalisation?

The TRC’s reports acknowledge that conflict affects men and women differently, with violence exacerbating “pre-existing societal marginalization and inequalities” and leaving women particularly vulnerable to violence.¹²⁵⁰ Furthermore, women are described as having been required to “shoulder the full burden of providing for their extended families” due to the social upheaval that accompanies conflict.¹²⁵¹ Interestingly, when discussing this phenomenon, the “Women and the Conflict” appendix argues that men joining or being coerced into fighting forces means that “women are *forced* to learn new skills and tasks that are frequently contrary to their traditional gender roles”.¹²⁵² The implication is that this is a negative phenomenon: the wording in the reporting appears to suggest that even when women are active participants in particular social relations – for example “learn[ing] new skills” or

¹²⁴⁷ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

¹²⁴⁸ *ibid* 5

¹²⁴⁹ *ibid*

¹²⁵⁰ Liberian TRC, “Women and the Conflict” Appendix (n 59) 1

¹²⁵¹ *ibid*

¹²⁵² *ibid* 2 [emphasis added]

supporting extended family – they are not in control of these situations. They have been “forced to learn new skills” or “shoulder the burden” of providing for their family’s economic needs. The action has, in some way, been forced or coerced, rather than an exercise of agency to materially improve their lives, albeit one that has been informed by the prevailing situation of armed conflict.

Conversely, elsewhere in the report it has been noted that women’s pre-existing inequality left them vulnerable.¹²⁵³ Even when emphasising the importance of equality between genders, the “Women and the Conflict” appendix objectifies women in its discussion. Arguing in favour of addressing the “root causes of women’s low status in society”, the appendix asserts that women “are not culturally and traditionally socialized to take up leadership positions which puts them above men and makes men accountable to them”.¹²⁵⁴ This is at odds with literature which discusses Liberian women’s broad and varied history of social and political activism.¹²⁵⁵ For example, it has been argued that “[h]istorically, Liberian women have mobilized to challenge policies and institutions that negatively affected them”.¹²⁵⁶ Indeed, the TRC reporting itself acknowledges Liberia as having been the first country in Africa to elect a female president; the first independent African country; and as having “provided guidance to the rest of Africa in the Continent’s struggle against colonialism”.¹²⁵⁷

6.6.2 – “Survivors and Peacemakers”

Where the reports do depict women as more active in their participation, it is in their portrayal of women as inherently peaceful, though even these portrayals can be limiting. Charlesworth has argued that, while arguments for women’s participation in peace processes “could be based on equality”, they are instead “typically made on the basis of women’s utility to peace”.¹²⁵⁸ This phenomenon can be observed in the context

¹²⁵³ Liberian TRC, *Consolidated Final Report* (n 562) 273

¹²⁵⁴ Liberian TRC, “Women and the Conflict” Appendix (n 59) 79-80

¹²⁵⁵ See, e.g. Inés Sánchez Díaz, “Women for Peace. Nonviolent methodologies in women peace movements: case studies” (2017) 10(2) *Revista de Paz y Conflictos* 265

¹²⁵⁶ *Medie* (n 60) 386

¹²⁵⁷ Liberian TRC, “Women and the Conflict” Appendix (n 59) 4

¹²⁵⁸ Charlesworth, “Are Women Peaceful?” (n 946) 350

of the TRC's reports. For example, a section of the final report is titled: "Women: Survivors and Peacemakers".¹²⁵⁹ The section begins by reiterating women's historical exclusion from public life in Liberia and noting the disparities which existed between urban and rural women. These are all descriptions not directly related to the heading and instead related to women's lives more generally, emphasising that womanhood appears to be assumed to be connected to these identities of survivors and peacemakers. The appendix then goes on to describe women's "peace work" throughout the conflict.¹²⁶⁰ Women are described as community organisers; as appealing internationally for support; as organising cross-border peace networks; as participating in peace talks; and as having "successfully brought the major warring groups together".¹²⁶¹ Thus, the report appears to be most comfortable describing women in terms of their peaceful nature, whether as victims of male violence or as peacefully resisting such violence. Charlesworth argues that the notion of women as inherently peaceful features frequently in literature on peace, conflict, and international politics.¹²⁶² Where it features, this notion is rarely addressed directly; rather, it features as a taken-for-granted idea about the way the world works.¹²⁶³ For Charlesworth, this notion is problematic in that "it can be used to keep women in their place."¹²⁶⁴ The notion is further problematic in its assumption that all women have a "natural affinity with peace", when in reality women have different ideas about peace and demonstrate different levels of commitment to peace processes.¹²⁶⁵

In addition, the depiction of women's peace activism in the reports further emphasises women's vulnerability in the post-conflict context. This activism is described in the reports as having been organised "[d]espite afflictions of the war, reduced earning potential, single parenting, etc."¹²⁶⁶ Thus, the reports emphasise women's vulnerability

¹²⁵⁹ Liberian TRC, *Consolidated Final Report* (n 562) 272

¹²⁶⁰ Liberian TRC, "Women and the Conflict" Appendix (n 59) 6

¹²⁶¹ *ibid* 6

¹²⁶² Charlesworth, "Are Women Peaceful?" (n 946) 348. For a detailed account of this literature, see Chapter 7 in this thesis.

¹²⁶³ *ibid* 348

¹²⁶⁴ *ibid*

¹²⁶⁵ Bewicke (n 33) 125

¹²⁶⁶ Liberian TRC, *Consolidated Final Report* (n 562) 274

while at the same time highlighting their active participation in public life. Furthermore, in these portrayals, women's peace work and activism are, at times, reduced by the language of the TRC to a more passive form of participation. While the reports, and especially the "Women and the Conflict" appendix, discuss women's peace activism as an important part of the conflict period in Liberia, there are significant omissions in their coverage of these issues. For example, the final report describes how women "became involved in the peace process" through activities such as marches, petitions, and attendance at peace conferences.¹²⁶⁷ However, suggesting that women simply "became involved in" an existing and ongoing peace process contradicts testimony from women at the time, which makes clear that many of them felt they had to carve out their own place in the process in the absence of opportunities to participate.¹²⁶⁸ Moreover, the reports' portrayals of women and their peace work contrast with research by Lawson and Flomo, who describe women's work in the Liberian peace and transitional justice processes as "a form of *labour* for gender justice".¹²⁶⁹ Gendered discourses on "women's 'peace-loving nature'" therefore fail to acknowledge it as such.¹²⁷⁰ Gbowee reinforces this point, noting that the Mass Action for Peace – a peace campaign organised and conducted by women in order to bring the conflict to an end – was often perceived as "spontaneous" activism by women, when in fact the organisation of the public protests was a huge logistical undertaking, managed at every step by the women involved.¹²⁷¹ She further notes the tensions that existed between and among groups of women involved in peace activism in Liberia at that time, describing the politics as "exhausting".¹²⁷² Thus, peace activism is not something that women did naturally and spontaneously, but was a difficult form of labour that they undertook despite obstacles. Moreover, at the end of its discussion of women as peacemakers, the report makes a series of concrete recommendations to ensure that women will be able to "become equal partners in peace",¹²⁷³ suggesting that

¹²⁶⁷ *ibid*

¹²⁶⁸ See, e.g. Gbowee (n 60)

¹²⁶⁹ Lawson and Flomo (n 60) 1873 [original emphasis]

¹²⁷⁰ *ibid*

¹²⁷¹ Gbowee (n 60) 138

¹²⁷² *ibid* 144

¹²⁷³ Liberian TRC, "Women and the Conflict" Appendix (n 59) 47

in spite of this extensive labour, peace work, at the time of drafting the reports, was still not something of which they could claim equal ownership.

The report also sometimes relies on the trope of the “super heroine”, as described by Cohn *et al*, who have asked whether we expect “more from women (super heroines) than we expect of men” in the transitional justice context.¹²⁷⁴ In the “Women and the Conflict” appendix, the report states that African women constitute “the majority” of Africa’s “marginalized and vulnerable masses”, but praises them for their “remarkable resilience” and “unshakeable commitment”.¹²⁷⁵ It describes them as “incredible”; as taking on “exceptional roles”; and as displaying “remarkable strength” through “awe-inspiring actions”.¹²⁷⁶ The report also leans on an image of the African woman as a mother, noting their commitment to build a better world “for their children and their children’s children”.¹²⁷⁷ Nowhere in the reports are men referred to in similar terms. The portrayal of women in terms of their vulnerability, but also as “strong” African women can perhaps be explained to some extent by Lawson and Flomo’s theory of politicised motherhood. Discussing the specific circumstances of the Liberian Mass Action for Peace, they argue that the movement gained widespread support from the public because its participants were viewed as mother figures, motivated to act by a sense of responsibility for their children and how they were affected by the conflict and, by extension, “a responsibility to ‘mother’ the nation as leaders”.¹²⁷⁸ Thus their radical actions were actually “within the purview of established but constrained social norms”.¹²⁷⁹ Lawson and Flomo argue that, in these circumstances, women can find themselves confined to the borders of this maternal identity; that they are entitled to their grief and activism as mothers, but nothing else.¹²⁸⁰

¹²⁷⁴ Cohn, Kinsella and Gibbings (n 70) 136

¹²⁷⁵ Liberian TRC, “Women and the Conflict” Appendix (n 59) 44

¹²⁷⁶ *ibid*

¹²⁷⁷ *ibid*

¹²⁷⁸ Lawson and Flomo (n 60) 1868

¹²⁷⁹ *ibid*

¹²⁸⁰ *ibid*

6.6.3 – Overlooked Identities

The presumed passivity discussed above is not limited to general depictions of women, but also underscores the reports' portrayal of women across many contexts, including their discussion of female combatants. In the preliminary report, it is estimated that the Liberian conflict "produced the highest number of female perpetrators in comparison to civil conflicts in other parts of the world."¹²⁸¹ However, it has been alleged that the TRC failed to "collect adequate information on the experiences of female combatants",¹²⁸² with this failure perhaps reflected in the reports' fragmented discussion of this group. The United Nations Mission in Liberia reported that 22,370 women and a further 2,440 girls were disarmed and demobilised at the close of the conflict.¹²⁸³ As such, women accounted for 22% of participants in Liberia's disarmament, demobilisation and reintegration process, but very few women discussed their experiences as combatants and ex-combatants with the TRC and its statement-takers.¹²⁸⁴ In fact, women were more likely to speak of their experiences as victims, regardless of whether they had participated in the fighting.¹²⁸⁵ Based on "[a]necdotal evidence", the "Women and the Conflict" appendix suggests that this was motivated by a reluctance to be identified as an ex-combatant.¹²⁸⁶ Perhaps as a result of the low numbers of women disclosing their ex-combatant status, the TRC's "Women and the Conflict" appendix refers to "studies" instead of testimony from women as witnesses when discussing issues surrounding the disarmament, demobilisation and reintegration process and its treatment of women ex-combatants.¹²⁸⁷ The citation provided for these studies reads only "ILO Study",¹²⁸⁸ and in the absence of a full citation it is difficult to investigate this data further. In what little space it devotes to them, the appendix talks about female ex-combatants as

¹²⁸¹ Liberian TRC, *Preliminary Findings and Determinations* (n 575) 35

¹²⁸² James-Allen *et al* (n 567) 15

¹²⁸³ Jaye (n 683) 15

¹²⁸⁴ Liberian TRC, "Women and the Conflict" Appendix (n 59) 41

¹²⁸⁵ *ibid* 41-2

¹²⁸⁶ *ibid* 41

¹²⁸⁷ *ibid* 49-50

¹²⁸⁸ *ibid* 98, at footnote xviii

having “no choice” but to participate in the conflict as combatants; that they did so “so they could feed themselves and their families” having lost “their livelihoods, families and self-determination”.¹²⁸⁹

In highlighting this, the intention is not to challenge the narrative that many women felt forced into combat. Rather, the intention is to highlight that male combatants’ motives are not discussed in this way within the TRC reports. In fact, the only time men’s reasons for joining a fighting faction are discussed is when the “Women and the Conflict” appendix later acknowledges that some women “admitted that they joined voluntarily, for many of the same reasons as male recruits”,¹²⁹⁰ with those reasons assumed and not explained. In addition, the minimal exploration of women’s experiences as combatants, and the presumed passivity inherent in these portrayals, are all the more striking when considering the TRC’s extensive investigation into the experiences of child soldiers.¹²⁹¹ Given that women and children have been grouped so frequently elsewhere in the reports, it seems somewhat paradoxical that the groups’ experiences of combat would be addressed so differently. De Ycaza notes that, according to the TRC itself, children made up about 10-20% of the membership of armed groups and were “central to the logistics and combat efforts”.¹²⁹² Statistics provided elsewhere suggest that female membership of armed groups was at least equal to this, if not higher, and yet female combatants receive next-to-no attention in the reports.

These descriptions further reflect a phenomenon which is described in critical feminist literature relating to DDR processes, wherein women who have participated as combatants are “reconstructed”¹²⁹³ as “supporters”, “camp-followers”, “dependents”,

¹²⁸⁹ *ibid* 44

¹²⁹⁰ *ibid* 48

¹²⁹¹ Liberian TRC, “Children” Appendix (n 597) 53

¹²⁹² De Ycaza (n 570) 204

¹²⁹³ For discussion of this literature, see Michanne Steenbergen, “Rethinking female ex-combatants, reintegration, and DDR: towards political reintegration?” (2021) 21(5) *Conflict, Security & Development* 641, 645

“bush wives”, and “sex slaves”.¹²⁹⁴ In this way, they are reimagined from women exercising a choice to become combatants, to helpless victims who had no choice at all, being stripped of their agency in the process.¹²⁹⁵ It is further argued here that this construction of women ex-combatants paints an incomplete picture of women’s reasons for joining an armed faction in Liberia.¹²⁹⁶ A report by the International Labour Organization on girl combatants in Liberia argues that, while the distinction between forced and voluntary recruitment in Liberia is “hard to uphold in practice” given the lack of viable alternatives for girls, many gave “explicitly ‘feminist’” reasons when asked why they had chosen to participate in combat.¹²⁹⁷ Some even stated that they had been motivated by “their suppressed role in traditional society”, with combat representing an opportunity to break away from such traditional, gendered roles.¹²⁹⁸ Utas proposes that the reasons may evolve over time and that they are also likely to be political in nature.¹²⁹⁹ Ex-combatant is, of course, just one of the many roles or identities that women may have held during the Liberian conflict, but it nevertheless received uneven and incomplete treatment in the reports. Without a full account of these women’s experiences by the Liberian TRC, how likely is it that their rights have been fully addressed by the process? It is argued here that, while the Liberian TRC acknowledged that women may play multiple roles and hold multiple identities in a conflict context, it struggled to articulate this reality in a meaningful way, and that this had consequences for the construction of the TRC space and for how women were able to access and participate in that space.

¹²⁹⁴ *ibid* 645 and 656. See also, e.g. Nadine Puechgirbal, “Peacekeeping, Peacebuilding and Post-Conflict Reconstruction” in Laura J Shepherd (ed), *Gender Matters in Global Politics: A Feminist Introduction to International Relations* (Routledge 2010); Alexis Leanna Henshaw, “Why Women Rebel: Greed, Grievance, and Women in Armed Rebel Groups” (2016) 1(3) *Journal of Global Security Studies* 204

¹²⁹⁵ Steenbergen (n 1293) 645

¹²⁹⁶ For a discussion of women as perpetrators of violence, see Bewicke (n 33) 126

¹²⁹⁷ Irma Specht, “Red Shoes: Experiences of girl-combatants in Liberia” (International Labour Organization 2006) <https://webapps.ilo.org/public/libdoc/ilo/2006/106B09_262_engl.pdf> 11

¹²⁹⁸ *ibid*

¹²⁹⁹ Mats Utas, “West-African Warscapes: Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman’s Social Navigation of the Liberian War Zone” (2005) 78(2) *Anthropological Quarterly* 403, cited in Steenbergen (n 1293) 649

6.7 – The “Constitutivity” Gap

While it may be helpful to identify particular groups affected by a conflict for the purposes of targeting them to involve them in the requisite transitional justice process, it must be recognised that these groups are not discrete and exclusive. Rather, “a dynamic understanding of people’s social networks and the institutions and dimensions of difference” is required.¹³⁰⁰ As Andrea Cornwall has argued, the separation of different segments of the affected population into distinct categories – “the poor’, ‘women’” – can lead to these categories being treated throughout the process as “unproblematic and bonded units”, when in fact the reality is likely to be far more nuanced.¹³⁰¹ Rather than observing themselves as represented by the category of “women”, women may instead identify with the interests of their families, of their workplace, of their religious community, of their social ties, and so on, without having “any particular sense of themselves as the kinds of subjects that [...] agencies represent them as.”¹³⁰² This thesis has previously argued that transitional justice, as a concept, “operates through distance”.¹³⁰³ It is proposed here that one of the ways in which the reports of the Liberian TRC operated through distance was by representing women in a way which flattened them as a group, with that depiction thus removed from reality. As such, the ways in which women were constituted by the discursive space of the Liberian TRC may in fact have existed apart from the ways in which these women identified themselves, producing a “gap” in constitutivities.

As has been argued previously, the subject of a transitional justice process exists in an inextricable relationship with the space of that process. The subject is not a discrete entity existing within space, but a part of the landscape itself: “they are themselves a part of space as space is a part of them”.¹³⁰⁴ The third chapter of this thesis outlined that spaces, be they “perceived,” “conceived”, or “lived”, are “plural”, “layered”, and

¹³⁰⁰ Cornwall, “Unpacking ‘Participation’” (n 267) 278

¹³⁰¹ *ibid* 277

¹³⁰² *ibid*

¹³⁰³ Jeffrey, “The political geographies of transitional justice” (n 414) 347

¹³⁰⁴ Keenan (n 112) 161

“multidimensional” in nature.¹³⁰⁵ The reports of the Liberian TRC may be a discrete set of documents with a fixed number of pages, but the world that they conjure, and its relationship to the spaces around it, are neither discrete nor static. Rather, the reports produced a space which existed concurrently and in a dynamic relationship with other spaces.¹³⁰⁶ In this dynamic relationship, spaces constantly move and shift, with the complex and plural nature of space producing overlaps, but also producing “gaps” between spaces, through and into which new spaces can emerge. This thesis has previously cited Delaney in his explanation of the “complexity” of space, with complexity the term used to describe the “contradictions, gaps, and slippages in how ‘law makes space’.”¹³⁰⁷ Others have described how spaces can “fade in” and “linger”.¹³⁰⁸ The Liberian TRC reports, establishing a conceptual space, produce such gaps in their construction of the archetypal “woman” subject of transitional justice, and in their construction of the TRC itself.

These gaps will exist when the constitutivity of women emerging through text – the law or legal documents, or the reports of the Liberian TRC, in this case – are essentialising and homogenising, limiting the understanding of women and their identities. Women, or any group of human beings, are not essentialisms, and are not homogenous in their identities and experiences. Rather, as has been argued throughout this chapter and throughout this thesis, they are multifaceted and complex in their identities and their social relations, with these identities and relations evolving over time, and often significantly in the case of an armed conflict and transition. As such, a gap is produced between women as subjects of a transitional justice process, and women as the broad and heterogenous group that exists in reality. The existence of such gaps is important, and has important constitutive consequences for women and their participation in the transitional justice process. Research has described the “circular” relationship between space and agency, arguing that space “provides the

¹³⁰⁵ Davies, *Asking the Law Question* (n 318) 441

¹³⁰⁶ Cornwall, “Spaces for transformation?” (n 310) 81

¹³⁰⁷ Delaney, “Legal Geography I” (n 366) 100

¹³⁰⁸ von Benda-Beckmann and von Benda-Beckmann (n 364) 40

structures that enable and constrain agency”.¹³⁰⁹ This is part of the mutually constituting relationship that exists between the spatial and the social strands of the transitional justice process: space shapes social interactions, which in turn shape space. In this way, spatial understandings can represent a challenge to understandings of agency; to the “image of the rational human actor detached from material surroundings”.¹³¹⁰ This has consequences for these women, their rights, and how they are able to access transitional justice processes. Where a transitional justice process constitutes female identity as one of victimhood, vulnerability, and passivity, women whose constitutivities in reality cannot conform to these boundaries will be unable to access the space on their own terms, thus limiting the participation that the process itself aims to promote.

6.8 - Conclusions

Across the preliminary and final reports of the Liberian Truth and Reconciliation Commission, the words “woman” and “women” appear 31 times and 359 times respectively. By contrast, the words “man” and “men” appear 33 times and 94 times in each respective volume. The reports acknowledge women’s historical marginalisation, both in Liberian society and in transitional justice processes the world over. In doing so, they attest to a conscious effort on the part of the process to include women in its operations, and to uncover their broad and multifaceted identities, experiences, and needs in order to secure to them the full range of human rights in the post-conflict context. The reports themselves paint a vibrant picture of historic, conflict-era, and post-conflict Liberia. They establish Liberia as a complex and dynamic space, shaped by its ethnic and tribal diversity; the social, cultural and economic differences existing across its fifteen counties; and the divergences in rural and city life. However, despite the reports’ acknowledgement of the many roles

¹³⁰⁹ Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340) 4

¹³¹⁰ Jeffrey, “Legal geography 1” (n 499) 566

women can occupy in the conflict context, women's portrayals across the reporting are far more limited.

In the reports of the Liberian TRC, women constitute a homogenous group – singular in their experiences of conflict, their relationships with their families, and their hopes for the future. In spite of the exhibited consciousness of women's marginalisation in society and in transitional justice, the prominent portrayals of women in the reports were often limiting, essentialising, and homogenising, emphasising their victimhood, vulnerability, and passivity. It is, of course, important to recognise that women often do experience disproportionate levels of violence and sexual violence during conflict, and the intention here is not to suggest that the reports of the TRC are wrong to highlight this. However, what is argued is that this affects how women are constituted by the TRC process. Gbowee has argued that the flattening of women to the role of victim is “the image that sells”.¹³¹¹ Women are “marginalized and painted solely as pathetic”, “a sidebar to the main tale”.¹³¹² They are portrayed “fleeing, weeping, kneeling before our children's graves” but, crucially, “always in the background”.¹³¹³ The homogenised construction of the “woman” in the reporting of the TRC is at odds with the complexity of space and law that these reports establish. In constructing a singular subject in a complex spatio-legal environment, the reports establish “contradictory discourses within the same strategy”.¹³¹⁴ A discourse of complex and multiple spaces and laws exists alongside a discourse of a single woman subject. A discourse that seeks to empower and include women competes directly with one which reduces them in agency and capacity. The result for women participating in the TRC is a constitutivity gap, whereby their identities, experiences, relationships, and needs are not captured by the limiting portrayal found in the TRC space. These portrayals reflect the fragmented possibilities for participation outlined in the previous chapter,

¹³¹¹ Gbowee (n 60) vii

¹³¹² *ibid*

¹³¹³ *ibid*

¹³¹⁴ Foucault, *The History of Sexuality* (n 511) 102

thus revealing a mutually constituting relationship between portrayal and participation in this context.

It has been argued that women “are not innately vulnerable”, but that they are made vulnerable by social, cultural, and economic factors.¹³¹⁵ These portrayals are not confined to the space of the TRC. Rather, their constitutivity was in production before the TRC process began, with similar portrayals found in the legal framework of the TRC, and in international discourses on women’s participation in post-conflict peace and justice processes. These constitutivities were also a product of choices made by actors in the TRC process, with these choices themselves a product of power relations among those actors. Having established how women were constituted through the reporting of the Liberian TRC, the next chapter will explore how this constitutive process happened: how the discursive conditions which created this particular, two-dimensional portrayal of women came about, and how this affected their participation. This will be done with particular reference to the international law and policy on women’s participation in transitional justice, in order to situate the TRC process within its broader, global context. In this way, the next chapter will explore how the gaps in constitutivity observed in this chapter give way to additional gaps at different scales of law. Through this exploration, the chapter will attempt to further uncover the mutually reinforcing relationship between participation and portrayal.

¹³¹⁵ Harris Rimmer (n 1223) 140

7 – Constitutivities in Context

7.1 – Introduction

The results of the critical spatial discourse analysis outlined in the previous chapter illustrated the representations of women that were called into being by the reporting of the Liberian Truth and Reconciliation Commission. The chapter argued that the conceptual space established by these reports constituted women and female identities in limited ways. As was discussed in the third chapter of this thesis, Keenan has described the constitutive relationship between space and subject.¹³¹⁶ She notes that, although space is argued to be multidimensional and in constant flux, “political campaigns and legal disputes” are often organised and carried out on the basis of singular identity groupings which assume shared experiences.¹³¹⁷ This phenomenon produces the kind of flattened portrayals that were observed in the reporting of the Liberian TRC, wherein textual representations of women appeared to be based on such an assumption of fixed identity. The previous chapter concluded that, in spite of the clear legal and spatial complexities associated with the Liberian Truth and Reconciliation Commission and with transitional justice contexts more generally, the discursive space of the TRC did not fully contend with the complexities of its women participants. Instead, the portrayals of women in the reporting of the TRC were flattened to present women as occupying singular and somewhat monolithic identities: as reduced to their gender; as victims; as vulnerable; and as inherently peaceful, and thus passive in their participation in the TRC’s processes. However, as Keenan has argued, identities are not “fixed across time and space”; rather, they are dynamic and kinetic in their relationship with space.¹³¹⁸ As such, these portrayals present only a limited telling of women’s experiences of conflict and transition.

¹³¹⁶ See Keenan (n 112)

¹³¹⁷ *ibid* 49

¹³¹⁸ *ibid*

The previous chapter established that these textual representations of women were brought into being through the dynamic process of constitutivity. As has been discussed previously,¹³¹⁹ this is the process by which spaces, laws, and legal subjects are called into being or imbued with social meaning, as they are continuously constituted and reconstituted through numerous iterations.¹³²⁰ This constitutive process produces an inextricable link between space and the legal subject,¹³²¹ through which the subject forms part of the space, and the space in turn forms part of the subject.¹³²² Thus, space and legal subjects are mutually constitutive of one another. Furthermore, it has been argued that continuous reconstruction of social relationships across spaces results in the spatial practices within one space affecting the constitutivity of others.¹³²³ Just as one space has a constitutive effect on others, the ways in which women are discursively constituted in one discourse will necessarily impact constitutivities in others. As such, the ways in which women were constituted by the discursive space of the Liberian TRC are necessarily impacted by the ways in which women have been constituted in other discursive spaces. This chapter therefore argues that the portrayals outlined in the previous chapter were informed, at least in part, by the ways in which women have been constituted by other discourses. In particular, it will be argued that the international legal framework which provides for women's participation in transitional justice processes constitutes women in the same limited fashion that can be observed in the texts of the Liberian TRC. These narrow constitutivities limit the modes of participation available to women in the transitional justice context, and result in the reproduction of the same limited identities across various spaces of transitional justice.

In making these arguments, this chapter will situate the Liberian case study outlined in the previous chapter in its broader, global context. The chapter proposes that, in order to understand the discursive conditions which produced the narrow

¹³¹⁹ See, e.g. section 3.2.2 in Chapter 3 of this thesis.

¹³²⁰ Delaney, "Legal Geography I" (n 366) 98

¹³²¹ Davies, *Law Unlimited* (n 53) 29

¹³²² Keenan (n 112) 161

¹³²³ Cornwall, "Spaces for transformation?" (n 310) 78

constitutivities of women in the reporting of the Liberian TRC, it is necessary to investigate the TRC's broader "documentary heritage" beyond its mandate; that is, the international sources of law which pre-dated the TRC and thus contributed to constituting it.¹³²⁴ Through an examination of this international "documentary heritage" and associated literature, the chapter proposes that the "flattening" of women outlined in the previous chapter is not a uniquely Liberian problem. Rather, it is a symptom of a trend towards a simplified female identity that can be observed at the international scale of law, and in particular in the Women, Peace and Security Agenda. This chapter will therefore explore this "archetypal women" and her available modes of participation as envisaged by international law and, in particular, the WPS Agenda. It will argue that this Agenda has prioritised protection over participation while simultaneously establishing a mutually reinforcing relationship between the two. The chapter will further propose that the limited portrayal of women at the international level has a mutually constituting relationship with women's participation. That is, the law and policy providing for participation in transitional justice processes directly constitutes women in these simplified forms. In turn, these simplified understandings of women preclude more complex or nuanced forms of participation in transitional justice processes. As such, the chapter will ultimately argue that the constitutivity of women in the TRC's reports was a product of the construction of such a subject in the international law that formed the TRC's documentary heritage, particularly those texts related to women's participation in transitional justice processes. As a result, it will be argued that a mutually reinforcing relationship exists between women's portrayal and the modes of participation available to them, whereby these constitutivities contribute to the discursive conditions which favour certain forms of participation and certain portrayals of women.

¹³²⁴ Shepherd, *Gender, Violence and Security* (n 69) 108

7.2 – The Constitutive Forces of Transitional Justice

The previous chapter established the importance of space for the constitutivities of women observed in the reporting of the Liberian Truth and Reconciliation Commission. Keenan argues that the spaces in which “political and legal struggles happen” are more than a setting for the action; rather, they are “an integral part” of that action, shaping its course and constituting the actors involved in it.¹³²⁵ A legal geographical analysis that accounts for the social, legal, and spatial elements of transitional justice therefore requires an understanding that subjects cannot be considered outside of their relations with space. Rather, such an analysis must acknowledge “the importance of the space in which the subject is located” as well as the subject’s relationship to that space.¹³²⁶ As such, the previous chapter argued that women, or representations of women, were constituted by the conceptual space of the Liberian TRC. However, the constitutive process is not limited to subjects being constituted by the spaces with which they interact.

The interaction of a space with laws and with other spaces can also have a similar, constitutive effect. Lefebvre argues that space always pre-exists the subject: it is “already in place before the appearance in it of actors”.¹³²⁷ This is important because, as the third chapter of this thesis argued, the social aspects of a space serve to shape that space in ways which make it more receptive to certain subjects and to certain social practices than to others.¹³²⁸ Furthermore, for Lefebvre, the “generative past” is visible in every space: that is, the space bears the marks of the processes of its own creation.¹³²⁹ As a result, spaces cannot be understood separately from their pasts – they carry with them previously held assumptions, purposes, and meanings.¹³³⁰ For Cornwall, this clarifies that spaces are inseparable, with the constitutivity of one in turn serving to constitute the next.¹³³¹ In this way, the discursive space established by

¹³²⁵ Keenan (n 112) 39

¹³²⁶ *ibid* 58-9

¹³²⁷ Lefebvre (n 360) 56

¹³²⁸ Keenan (n 112) 18-19

¹³²⁹ Lefebvre (n 360) 110

¹³³⁰ Cornwall, “Making spaces, changing places” (n 71) 7

¹³³¹ *ibid*

the reporting of the Liberian TRC is not only shaped by its subjects. It has also been constituted through its relationship with law, and with other spaces. The remainder of this section will explore the constitutive force of law and space in transitional justice processes, proposing that understanding these constitutive effects will aid in an understanding of how the reporting of the Liberian TRC was itself shaped.

7.2.1 – Constituting Space through Discourse

Law constitutes space in many ways, for instance by marking out territories and by setting out the rules for which laws, obligations, and rights may exist and for whom within each of these territories.¹³³² As von Benda-Beckmann and von Benda-Beckmann have argued, it is such legal categorisations which “define normatively the spaces for which law claims validity”.¹³³³ That is, legal rules and categories shape legal spaces at different scales, while also assigning functions to these spaces, and positioning “rights and obligations of persons” within those spaces.¹³³⁴ Space can also be constituted by law through the “*language*” of legal speech: that is, the conditions that make the rule or policy in question seem like the best option.¹³³⁵ Koskenniemi argues that structurally, the “deep-structure” or “*langue*” of the law precedes legal argument or doctrine.¹³³⁶ He argues that at the level of individual arguments, “human agents appear as conscious builders of the world.”¹³³⁷ However, they are limited by the boundaries set out at the deeper, structural level, which produces an “historically given code which the actors are routinely unable to transgress.”¹³³⁸ This inability to transgress, argues Koskenniemi, is itself a product of “*socialization*” whereby language determines belief, rather than vice versa.¹³³⁹ Thus, language can constrain the constitutive possibilities of spaces; it can constrain the ways in which subjects can be constructed within that space. In a similar vein, Spivak argues that representations of

¹³³² von Benda-Beckmann and von Benda-Beckmann (n 364) 33

¹³³³ *ibid*

¹³³⁴ *ibid*

¹³³⁵ Koskenniemi, “What is Critical Research in International Law?” (n 500) 730 [original emphasis]

¹³³⁶ Koskenniemi, *From Apology to Utopia* (n 397) 12

¹³³⁷ *ibid*

¹³³⁸ *ibid*

¹³³⁹ *Ibid* [original emphasis]

social relations (for example through text) do not merely describe those relations but are themselves constitutive of them.¹³⁴⁰ This is because discourses have “material as well as symbolic dimensions; they shape not only what is said and done, but what is sayable and do-able in any given social space, constituting what counts as knowledge and whose knowledge counts”.¹³⁴¹ In this way, discourses establish “discursive conditions”. Thorne describes “discursive conditions” as the “rules” which determine “who can be a given subject”.¹³⁴² In this way, discourse does not merely *describe* legal subjects; “discourse is what *constitutes* both objects and subjects.”¹³⁴³ Discourses thus define “the code of conduct” of a given space, in that they delineate the boundaries of permissible action in that space, and in this way are constitutive of the space itself.¹³⁴⁴ As such, women’s participation in a given transitional justice space is necessarily impacted by the constitutive forces which shape that space, and which shape women as participants. Their constitutivity within the discourse sets the limits for the level of their participation: it “influences what people are perceived to be able to contribute or entitled to know or decide, as well as the perceived obligations of those who seek to involve them.”¹³⁴⁵

It follows then that the representations of women in the reporting of the TRC are constituted, at least in part, by representations of women in the law which informed the TRC and its operations. In this way, representations of women’s participation in transitional justice processes mutually constitute women as actors within these processes, and the ways in which they are able to participate in these processes. An analysis of how women and their participation are represented in transitional justice discourses can thus reveal this constitutive effect. In the case of the Liberian Truth and Reconciliation Commission, the discursive conditions which contributed to the construction of the category of “woman” were constituted, in part, by the TRC’s

¹³⁴⁰ Spivak (n 223)

¹³⁴¹ Cornwall, “Making spaces, changing places” (n 71) 8, citing Foucault, *Discipline and Punish* (n 536) and Foucault, *The History of Sexuality* (n 511)

¹³⁴² Thorne (n 111) 467-8

¹³⁴³ *ibid* 472 [emphasis added]

¹³⁴⁴ Cornwall, “Making spaces, changing places” (n 71) 8

¹³⁴⁵ *ibid*

foundational legal texts, as was discussed in the fifth chapter of this thesis. This chapter argues that this constitutivity began even earlier, locating it in the portrayal of women in the international law and policy relating to transitional justice processes. These discourses of women in international law form part of the documentary heritage of the Liberian TRC, and thus set the rules for how women might be constituted in the discursive space of the TRC's reporting.

7.2.2 – The “Documentary Heritage” of the Liberian TRC

The United Nations Secretary-General, in the latest guidance issued on transitional justice, confirms that transitional justice processes ought to be based on the principle of normativity.¹³⁴⁶ Explaining this principle, the guidance clarifies that transitional justice processes ought to be carried out in “compliance with international norms and standards”, and particularly those emanating from “international humanitarian law and international human rights law”.¹³⁴⁷ The Liberian Truth and Reconciliation Commission, in its reporting and in its foundational documents, emphasises the importance of international law as a legal basis for its activities. Sources of international law therefore form an important part of the TRC's “documentary heritage”.

7.2.2.1 – Women in International Law

There are various sources of international law which specifically address women's rights, and women's rights in transitional justice or post-conflict settings. As was discussed in the fifth chapter of this thesis, the TRC Act, in its Preamble, reaffirms Liberia's commitment to the principles enshrined in “international conventions and protocols relating to the rights and protections of women and children”.¹³⁴⁸ However, at the time of the TRC's operations, the Liberian Government had not yet

¹³⁴⁶ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 5

¹³⁴⁷ *ibid*

¹³⁴⁸ TRC Act, Preamble [12]

“domesticated any of the human rights instruments which it [had] ratified”.¹³⁴⁹ Nevertheless, the provisions of international human rights law bind Liberia, even if ordinary Liberian citizens are unable to litigate these provisions due to their non-incorporation into domestic law. The principle of non-discrimination is a key feature of international treaty law and international customary law, and applies in times of peace and armed conflict alike.¹³⁵⁰ The right to be free from discrimination on the grounds of sex is codified across multiple international human rights law sources, including the Charter of the United Nations (“UN Charter”);¹³⁵¹ the Universal Declaration of Human Rights (UDHR);¹³⁵² the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);¹³⁵³ the International Covenant on Civil and Political Rights (ICCPR);¹³⁵⁴ the International Covenant on Economic, Social and Cultural Rights (ICESCR);¹³⁵⁵ and the Convention on the Rights of the Child (UNCRC).¹³⁵⁶ Furthermore, non-discrimination is an essential norm of international humanitarian law, applying in situations of non-international armed conflict such as Liberia’s through Common Article 3 of the four Geneva Conventions, which requires the humane treatment of civilians without discrimination on the basis of sex.¹³⁵⁷ In addition, the International Committee of the Red Cross (ICRC) has stated that 50 of the 160 articles of the Geneva Conventions and their Protocols address non-discrimination (prohibiting differential treatment of women and men where the distinction would be “adverse”) or “special protection for women”.¹³⁵⁸

¹³⁴⁹ United Nations Human Rights Council, “Summary prepared by the Office of the United Nations Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Liberia” (9 February 2015) UN Doc A/HRC/WG.6/22/LBR/3 [2]

¹³⁵⁰ Bennoune (n 946) 30

¹³⁵¹ UN Charter (n 946) Preamble

¹³⁵² UDHR (n 946) Art.2

¹³⁵³ CEDAW (n 946)

¹³⁵⁴ ICCPR (n 865), Art.2 and Art.26

¹³⁵⁵ ICESCR (n 946) Art.2(2) and Art.3

¹³⁵⁶ UNCRC (n 946) Article 2

¹³⁵⁷ Common Article 3 to the First Geneva Convention (n 894); Second Geneva Convention (n 894); Third Geneva Convention (n 894); and Fourth Geneva Convention (n 894)

¹³⁵⁸ Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law*, (Kluwer Law International 2001) 61

Gender-based violence has been recognised as a manifestation of discrimination against women by the CEDAW Committee, which defines such violence as “violence which is directed against a woman because she is a woman or that affects women disproportionately”¹³⁵⁹ and which “seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.¹³⁶⁰ The CEDAW Committee has even suggested that the “prohibition of gender-based violence against women has evolved into a principle of customary international law”.¹³⁶¹ As such, there exists a “complex legal framework” in relation to violence against women, with a “variety of specialized branches” that come into play depending on the situation and actors involved.¹³⁶² In particular, a range of hard and soft international law addresses the issue of gender-based violence against women during armed conflict. For example, violence against women and violations of their human rights during armed conflict were particularly recognized by the 1993 Vienna World Conference on Human Rights as “violations of the fundamental principles of international human rights and humanitarian law”.¹³⁶³ How transitional justice processes ought to address gender-based violence against women has been explored by the United Nations Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence in a report on the “gender perspective in transitional justice processes”.¹³⁶⁴ He has argued that truth commission mandates ought to “comprehensively address the impact of gender, including sexual and other gender-based violence suffered by all persons”.¹³⁶⁵ The Special Rapporteur further proposes that this can be achieved through the “concurrent application of the non-derogable core of human rights, the peremptory norms of general international

¹³⁵⁹ CEDAW Committee, “General recommendation No.19: Violence against women” (11th session, 1992) [6]. This definition was again endorsed by the CEDAW Committee in General recommendation No.35. See CEDAW Committee, “General recommendation No.35 on gender-based violence against women, updating general recommendation No.19” (26 July 2017) UN Doc CEDAW/C/GC/35 [1]

¹³⁶⁰ CEDAW Committee, “General recommendation No.19” (n 1359) [1]

¹³⁶¹ CEDAW Committee, “General recommendation No.35” (n 1359) [2]

¹³⁶² Bennoune (n 946) 8-9

¹³⁶³ United Nations General Assembly, “Vienna Declaration and Programme of Action” (n 177) [38]

¹³⁶⁴ Special Rapporteur, “The gender perspective in transitional justice processes” (n 961)

¹³⁶⁵ *ibid* [10]

law, human rights law, humanitarian law and international criminal law and respective case-law”.¹³⁶⁶

7.2.2.2 – Women, Peace and Security

In addition to the above-mentioned sources addressing discrimination and violence against women, the WPS Agenda represents a proliferation of UNSCRs relating to the experiences of women, children, and civilians during armed conflicts.¹³⁶⁷ The introductory chapter of this thesis introduced this Agenda, and UNSCR 1325 in particular, as important legal standards for facilitating women’s participation in transitional justice processes. This chapter will expand on this introduction by exploring the Agenda’s contribution to the documentary heritage of the Liberian TRC, and analysing its constitutive effects for women in the transitional justice context. Kirby and Shepherd argue that the WPS Agenda cannot be said to be a “discrete set of identifiable norms,” rather it is a “plural, overlapping, and ambiguous set of norms, ideas, principles, deeply held personal beliefs, and policy actions”.¹³⁶⁸ While not representing a finite set of norms, the Agenda has been described as organised around four principal “pillars”: “participation, protection, prevention, and post-conflict reconstruction”.¹³⁶⁹ References to increasing participation in conflict-related processes can be found in all ten Women, Peace, and Security resolutions (although not all reference “equal” participation).¹³⁷⁰ Thus, both “participation” and “protection” are each a key concern relating to women in the post-conflict space.

As was discussed in the introductory chapter, UNSCR 1325, as the first of the UNSCRs in the WPS Agenda, has long been heralded as representing a significant turning point for the representation and participation of women in transitional justice processes. Bell and McNicholl have proposed that UNSCR 1325 calls attention to

¹³⁶⁶ *ibid* [16]

¹³⁶⁷ See UNSCR 1325; UNSCR 1820; UNSCR 1888; UNSCR 1889; UNSCR 1960; UNSCR 2106; UNSCR 2122; UNSCR 2242; UNSCR 2467; UNSCR 2493 (n 28)

¹³⁶⁸ Kirby and Shepherd (n 271) 20

¹³⁶⁹ *ibid* 4

¹³⁷⁰ Otto “Women, Peace, and Security” (n 39) 109

three issues: the protection of women’s human rights “particularly as they relate to political and legal institutions”; the “special needs” of women during the post-conflict period; and women’s participation in post-conflict processes.¹³⁷¹ UNSCR 1325 has many provisions relating to women in situations of armed conflict, but crucially for transitional justice, it requires states to “ensure increased representation of women at all levels of decision-making, including in national, regional and international institutions which deal with conflicts”.¹³⁷² It also calls for the protection of women and girls and their human rights.¹³⁷³ Thus, UNSCR 1325 brings together these twin pillars of participation and protection within its text. Dianne Otto has argued that the resolutions of the WPS Agenda are an attempt by the UN to demonstrate credibility by showing a commitment to persons affected by armed conflict.¹³⁷⁴ In doing so, it is argued that these resolutions “attempt to reflect, if not promote, the collective good”.¹³⁷⁵ Expanding on this position, this thesis argues that, even when understood as a reflection of a “collective good” – as demonstrating a commitment to “civilians, children and... women”, if not actually transforming their experiences – the resolutions of the WPS Agenda nevertheless have a constitutive effect on the legal landscape of transitional justice.

7.2.3 – The Culture of International Law

A report by the Institute for Peace argues that UNSCR 1325 played a prominent role in the Liberian transitional justice process and beyond.¹³⁷⁶ For example, policies to implement UNSCRs 1325 and 1820 emerged during the post-conflict period.¹³⁷⁷ These policies themselves have been described as a natural progression from the peace work

¹³⁷¹ Bell and McNicholl (n 140) 19

¹³⁷² UNSCR 1325 (n 28) [1]

¹³⁷³ *ibid* [8]-[9]

¹³⁷⁴ Dianne Otto, “The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade” (2009) 10(1) *Melbourne Journal of International Law* 11, 21

¹³⁷⁵ Engle, “The Grip of Sexual Violence” (n 217) 37

¹³⁷⁶ Campbell-Nelson (n 665) 6

¹³⁷⁷ Veronica Fynn Bruey, “Redefining Women’s Roles in International and Regional Law: The Case of Pre- and Post-War Peacebuilding in Liberia” in Seema Shekhawat (ed), *Gender, Conflict, Peace, and UNSC Resolution 1325* (Lexington Books 2018) 22

conducted by women in Liberia during the conflict.¹³⁷⁸ International law therefore plays an important constitutive role in transitional justice contexts. Indeed, it can constitute domestic law and politics even outside of such contexts. This constitutive role of international law has some important implications for the transitional justice space. Orford has suggested that international human rights law is often regarded as “a source of potentially progressive norms” because it is “one of the few areas of international law that does acknowledge the existence of human beings”.¹³⁷⁹ However, she has also argued that international human rights law as applied in transitional justice can obscure demands for justice perhaps expressed through other laws, for example indigenous laws.¹³⁸⁰ She argues that the claimed universality of human rights law positions international lawyers “beyond any demand to enter into relation with particular laws.”¹³⁸¹ Thus, they struggle to acknowledge or accept “the need to limit their law in order to encounter the laws of others”.¹³⁸² In this way, “international human rights law does not see itself as one particular law involved in negotiations with other laws.”¹³⁸³ This can be observed in the Liberian context. The United Nations has been criticised for its engagement with Liberia and with Liberia’s traditional justice system in particular. For example, although the country is argued to have had “well-functioning non-Western” justice institutions in the post-conflict period,¹³⁸⁴ the UN has been accused of perpetuating a “fallacy of terra nullius”¹³⁸⁵ by failing to engage with those existing institutions, instead assuming that justice in the country must “start from zero”.¹³⁸⁶ In this way, international law’s implication in colonialism is reflected in the UN’s engagement in post-conflict Liberia.¹³⁸⁷ Furthermore, this view obscures the fact

¹³⁷⁸ *ibid*

¹³⁷⁹ Orford, “Ritual” (n 183) 354

¹³⁸⁰ *ibid* 366

¹³⁸¹ *ibid*

¹³⁸² *ibid*

¹³⁸³ *ibid*

¹³⁸⁴ Nagelhus Schia and de Carvalho (n 66) 145

¹³⁸⁵ Sarah Cliffe and Nick Manning, “Practical Approaches to Building State Institutions” in Charles T Call and Vanessa Wyeth (eds), *Building States to Build Peace* (Lynne Rienner, 2008) 165, cited in *ibid* 152

¹³⁸⁶ Nagelhus Schia and de Carvalho (n 66) 152

¹³⁸⁷ See section 2.2.1.2 in Chapter 2 of this thesis for a critique of international law’s relationship with Western imperialism.

that the UN itself possesses a “terra” – the United Nations and its institutions do not exist apart and abstractly from the countries with which they engage or the international law that they seek to uphold. Rather, the UN has its own space, which necessarily comes into contact with and interacts with others, engaging in a process of mutually constituting one another.¹³⁸⁸ As such, the international law which governs transitional justice processes can be argued to exercise a hegemonic culture over those processes, conditioning the acceptable forms of discourse therein.

A spatial analysis allows for an understanding of how this hegemonic culture is constituted and perpetuated across scales of law. Awuh has argued that it is space which “carries the cultural traditions and expectations” of any participatory practice.¹³⁸⁹ Therefore, in this way, an understanding of space is informed by an understanding of culture. Tamale has argued that all humans are “cultural beings” in that they are “influenced by an infinite number of social forces that have shaped our mental outlook and perspectives on life”.¹³⁹⁰ It is these social forces which collectively form what is termed “culture”.¹³⁹¹ For Tamale, culture has multiple iterations. This is an important point to note in the context of this thesis, given its focus on complexity and its arguments about “flattened” representations of legal subjects. In acknowledging the multiple iterations of culture, this thesis not only aims to highlight the complex and plural nature of “culture” as a concept, but it also aims to avoid “flattening” culture in its analysis. Tamale describes culture as others have understood space: never static but “constantly changing and responding” to forces existing simultaneously like economic, historical, and political factors.¹³⁹² Thus, while not using the language of space and constitutivity, she understands culture as being mutually constituted by and through the spaces in which and around which it exists.¹³⁹³

¹³⁸⁸ Cornwall, “Spaces for transformation?” (n 310) 78

¹³⁸⁹ Awuh (n 272) 275

¹³⁹⁰ Sylvia Tamale, “The right to culture and the culture of rights: A critical perspective on women’s sexual rights in Africa” (2008) 16 *Feminist legal studies* 47, 49

¹³⁹¹ *ibid*

¹³⁹² *ibid*

¹³⁹³ See, e.g. Keenan (n 112) 49; Philippopoulos-Mihalopoulos “And For Law” (n 47) 4; Massey, *For Space* (n 374)

In this way, culture can be recognised as a significant constitutive force. Culture, tradition, local histories, understandings, and expectations, can define what is said and what can be said in any given transitional justice context.

Tamale further argues that rights (and by extension, law) cannot be understood as outside of culture.¹³⁹⁴ Rights, law, and the processes by which these are created and articulated are themselves interconnected with culture. For example, human rights discourses emerge “from a specific historical context”.¹³⁹⁵ Thus, even the language of international law has its own culture. As was discussed in the third chapter of this thesis, the culture of international law is neither rational nor neutral. Rather, international law has been critiqued for its roots in Western ideals,¹³⁹⁶ and its underlying masculine assumptions.¹³⁹⁷ In this way, the culture of international law possesses own set of values, “greatly underpinned by a hegemonic philosophy and assumptions” that themselves reflect the values, interests, and expectations of those who write it and promote it.¹³⁹⁸ Hegemony itself has a constitutive effect. For Lefebvre, hegemony is “exercised over society as a whole”, meaning that it is exercised “over both institutions and ideas”.¹³⁹⁹ In this way, hegemony affects knowledge, and knowledge becomes one way in which power is maintained.¹⁴⁰⁰ Lefebvre thus finds it inconceivable that the exercise of hegemony would not have a constitutive effect on space. Space cannot be conceived of as only the “passive locus of social relations”,¹⁴⁰¹ rather, as has been established, it actively shapes and is shaped by those relations.¹⁴⁰²

¹³⁹⁴ Tamale, “The right to culture” (n 1390) 50. See also Sally Engle Merry, “Constructing a Global Law: Violence against Women and the Human Rights System” (2003) 28(4) *Law and Social Inquiry* 941, 973-4

¹³⁹⁵ Tamale, “The right to culture” (n 1390) 50

¹³⁹⁶ See, e.g. Mutua, *Human Rights* (n 180); Mutua, “Typologies of Scholarship on Africa” (n 181); Oloka-Onyango and Tamale (n 160); Orford, “Ritual” (n 183); and Merry, *Human Rights & Gender Violence* (n 185)

¹³⁹⁷ See, e.g. Charlesworth, Chinkin and Wright (n 68); Chinkin “Gender, Human Rights, and Peace Agreements” (n 14) 876

¹³⁹⁸ Tamale, “The right to culture” (n 1390) 50

¹³⁹⁹ Lefebvre (n 360) 10

¹⁴⁰⁰ *ibid*

¹⁴⁰¹ *ibid*

¹⁴⁰² Massey, *Place, Space and Gender* (n 361); Keenan (n 112) 39

With this in mind, it is proposed here that certain discursive conditions in play before the TRC began its operations conditioned who might participate as a “woman” in its processes, and what narratives could acceptably form that woman’s experience. For Koskenniemi, this type of analysis attempts to challenge legal concepts that have become so ubiquitous that their correctness is taken for granted.¹⁴⁰³ Keenan argues that the “social meaning” found within spaces is not produced solely by those spaces, but is dependent on power regimes and “pre-existing classification systems” that pre-date the space itself.¹⁴⁰⁴ As such, the construction of women in the discursive space of the Liberian Truth and Reconciliation Commission is contingent on the “pre-existing classification systems” that pre-dated the establishment of that TRC as a space. The rest of this chapter will argue that one such “pre-existing classification system” relates to the possible constructions of the “woman” subject. This chapter will demonstrate that the constitutivity of women in the reporting of the Liberian TRC was contingent on the construction of such a subject in international law more broadly, and particularly in texts related to women’s participation in transitional justice processes. These constructions are not, themselves, “an objective account of reality”; rather, discourses form “culturally constructed representations of reality”.¹⁴⁰⁵ As such, this chapter considers the *conditions* by which constituting women as vulnerable and as victims seems “professionally plausible”.¹⁴⁰⁶ In doing so, this chapter, rather than attempting an exploration of how women materially accessed the TRC itself, instead seeks to examine the discursive conditions emerging through law and policy which foregrounded their possible modes of participation.

¹⁴⁰³ Koskenniemi, “What is Critical Research in International Law?” (n 500) 728

¹⁴⁰⁴ Keenan (n 112) 41

¹⁴⁰⁵ Thorne (n 111) 472

¹⁴⁰⁶ Koskenniemi, “What is Critical Research in International Law?” (n 500) 730

7.3 – The “Women” in Women, Peace and Security

From an “analysis of UN documents”, Charlesworth has previously described “a developing institutional orthodoxy with respect to women and peace” which she proposes consists of four elements.¹⁴⁰⁷ One of these four elements is the need to include women in formal peace processes. This reflects the importance of participation described at many places throughout this thesis.¹⁴⁰⁸ Importantly, the three further elements of this orthodoxy – that the terms “women” and “gender” are used almost interchangeably; that women are particularly vulnerable; and that women are more naturally inclined towards peace than men – appear to reflect the findings of the analysis of the Liberian TRC’s reports conducted in the previous chapter. The remainder of this chapter will explore the elements of Charlesworth’s orthodoxy in order to argue that they not only reflect the representations of women observed in the reports of the Liberian TRC, but that they themselves are constitutive of these representations. Charlesworth argues that these elements are problematic in that they can exist in tension with one another “and do not form a consistent picture”.¹⁴⁰⁹ This chapter will argue that they are further problematic in that, through the exercise of the hegemonic culture of international law and policy, these elements form “discursive conditions” which delineate the possible portrayals of women in transitional justice processes. This, in turn, limits the possibilities for women’s participation in the transitional justice space.

7.3.1 – Women and Gender

The first constitutivity outlined earlier in this thesis was the notion of women as a homogenous group affected by “gender” concerns. It was argued that the reporting of the TRC conflated the terms “women” and “gender”, to the extent that they became

¹⁴⁰⁷ Charlesworth, “Are Women Peaceful?” (n 946) 351

¹⁴⁰⁸ See, for example, Chapters 1 and 2 of this thesis for an explanation of the importance of participation in transitional justice processes; and Chapter 5 for an overview of the “right to participation” in such processes.

¹⁴⁰⁹ Charlesworth, “Are Women Peaceful?” (n 946) 352

interchangeable. This phenomenon is not unique to the Liberian TRC, but is demonstrative of a broader, global tendency to understand the categories of “women” and “gender” in this way. Charlesworth has described the “language of gender” as having “become rather mangled”, clouding its useful application in the legal sphere.¹⁴¹⁰ This “mangled” vocabulary of gender emerges, in part, because of its singular application.¹⁴¹¹ Regarding the WPS Agenda, Shepherd proposes that in UNSCR 1325, gender is constructed in a way that assumes it to be “largely synonymous with biological sex”, with women constructed as “fragile, passive and in need of protection”.¹⁴¹² Her analysis of reports on UNSCR 1325 further found that they articulate gender in a way which is synonymous with women, with no attempt to interrogate the differences between sex and gender and the different ways in which these concepts might construct experiences of violence.¹⁴¹³ Furthermore, Cohn *et al* have noted a widespread tendency in international law discourses to “slip from gender to women and women to gender” without ever slipping “from gender to men”.¹⁴¹⁴

Because men are not considered as a gendered group at all, there persists an assumption that all men are able to freely participate in decision-making, while “the implicit assumption that communities comprise of men and women fulfilling stereotyped gender roles is consequently unchallenged”.¹⁴¹⁵ This, in turn, generates an understanding of gender as applying only to women, who as a group are perceived as weak and characterised by their need for attention.¹⁴¹⁶ Understanding gender in this way further obscures men and masculinity from view by interpreting their experiences as the default without any interrogation of how these experiences might also be constructed by gender.¹⁴¹⁷ The previous chapter argued that such an understanding of men, masculinity, and male experiences in turn affects the “positionality” of women

¹⁴¹⁰ Charlesworth, “Two Steps Forward, One Step Back?” (n 1129) 563

¹⁴¹¹ *ibid*

¹⁴¹² Shepherd, “Sex, Security and Superhero(in)es” (n 55) 506

¹⁴¹³ Shepherd, *Gender, Violence and Security* (n 69) 93

¹⁴¹⁴ *ibid* 91 citing Cohn, Kinsella and Gibbings (n 70) 136. See also Cahn “Introduction” (n 37) xxxvi

¹⁴¹⁵ Gina Heathcote, “Participation, Gender and Security” in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave Macmillan 2014) 53

¹⁴¹⁶ Shepherd, *Gender, Violence and Security* (n 69) 91

¹⁴¹⁷ Charlesworth, “Are Women Peaceful?” (n 946) 359. See also Cahn “Introduction” (n 33) xxxvi

in these same spaces.¹⁴¹⁸ It was argued that conflation of women and gender is problematic, because it fails to account for gender's relationship to power; that is, how gender itself is constituted by power, and how this reinforces "structures of subordination".¹⁴¹⁹ Such an understanding of gender precludes a full understanding of the way that gender shapes how actors interact with the world,¹⁴²⁰ and therefore "requires women to change, but not men".¹⁴²¹ The homogenising effect of gender essentialism further serves to obscure the differences between women, including their location in "very different power relationships".¹⁴²² In addition, Kapur has proposed that, in international human rights contexts, gender essentialism has had a "reactionary effect", generating the adoption of "universalizing strategies" to address violations of women's human rights by actors at the local, national, and international scales, regardless of the context of the violations and the experiences of the women affected.¹⁴²³ For example, it has been argued that women are homogenised by UNSCR 1325 without consideration of the "other vectors of privilege and marginalisation" that might affect their participation.¹⁴²⁴ Indeed, gender essentialism of this kind is further problematic given that the gender oppression experienced by many women is inextricable from the other oppressions they face,¹⁴²⁵ for example on the basis of race, ethnicity, class, sexuality, or other identity. Gender essentialism thus fails to adequately capture the full range of their experiences, and to account for the many barriers to participation which might affect them.

These essentialist conceptions of gender impact the ways in which women's participation is imagined in law. Heathcote has critiqued UNSCR 1325 for its focus on increasing participation without considering "which women gain access to decision-making forums".¹⁴²⁶ She further cautions that the UNSCR 1325 does not

¹⁴¹⁸ Cahn "Introduction" (n 37) xxxvi

¹⁴¹⁹ Charlesworth, "Are Women Peaceful?" (n 946) 359

¹⁴²⁰ *ibid*

¹⁴²¹ *ibid*

¹⁴²² Kapur, "The Tragedy of Victimization Rhetoric" (n 1170) 11

¹⁴²³ *ibid*

¹⁴²⁴ Heathcote, "Participation, Gender and Security" (n 1415) 53

¹⁴²⁵ Kapur, "The Tragedy of Victimization Rhetoric" (n 1170) 8

¹⁴²⁶ Heathcote, "Participation, Gender and Security" (n 1415) 52

identify “over-representation” of men in such fora as a barrier to women’s participation.¹⁴²⁷ In addition, it has been argued that the key actions provided by UNSCR 1325 are centred on data collection and collation, and so focus on “counting the women” without questioning the WPS Agenda’s own implicit gender essentialisms.¹⁴²⁸ Related to absences of gender-disaggregated data, it has been argued that there is “an enormous incentive” not to provide such data.¹⁴²⁹ This is because its absence “makes inequities visible”, thus also making invisible “the power dynamics that create those inequities”.¹⁴³⁰ As such, there is great motivation to be “uncurious”.¹⁴³¹ The absence of certain information is as constitutive of women as participants in the process as the information itself. With regard to the Liberian TRC, where the process organisers and report writers have chosen to focus their attention, or not to focus their attention – where they have chosen not to be curious – provides information about their priorities and the choices that were made in the reporting of the TRC’s activities.

Another way in which this understanding of gender constitutes possibilities for participation is that, by limiting the prevailing understanding of women to gender, any discussion of gender becomes relegated to the “rhetorical level, hanging on that one sentence usually appended onto policy statements”.¹⁴³² In this way, including a gender dimension in policy-making does not entail a potentially transformative examination of the ways in which gender constructs experiences, or of the norms and values underpinning certain policy decisions. Rather, any such gender dimension is “technical, static”, and capable of producing only “very limited outcomes”.¹⁴³³ This was observed in the way that gender was marginalised through the reporting of the

¹⁴²⁷ *ibid*

¹⁴²⁸ *ibid* 55

¹⁴²⁹ Cynthia Enloe and Nadine Puechguirbal, “Failing to Secure the Peace: Practical Gendered Lessons from Haiti & Iraq” (26 October 2004) Paper at the Boston Consortium on Gender, Security and Human Rights, Fletcher School of Law and Diplomacy, Tufts University, 6, cited in Puechguirbal “Discourses on Gender, Patriarchy and Resolution 1325” (n 20) 174

¹⁴³⁰ *ibid*

¹⁴³¹ *ibid*

¹⁴³² Josephine Ahikire, “African feminism in context: Reflections on the legitimisation battles, victories and reversals” (2014) 19(7) *Feminist Africa* 7, 17

¹⁴³³ *ibid*

Liberian TRC. The previous chapter detailed how the reports drew distinctions between “women-specific activities” and “the TRC’s core operations”, thus separating and sending to the periphery issues affecting women from the core work of the TRC.¹⁴³⁴ The nature of space and the constitutive process compounds this issue. Spaces and subjects cannot be understood separately from one another: the subject forms part of the space, while the space forms part of the subject.¹⁴³⁵ Both space and subject are thus mutually constituting through multiple iterations.¹⁴³⁶ For this reason, any portrayal of “gender” as a homogenous and static category, located on the periphery of a given space is problematic, since gender is better understood as being “continually reconstituted through social processes”.¹⁴³⁷

7.3.2 – Women and Victimhood/Vulnerability

When women are reduced to a singular gender identity, they risk becoming homogenised in their portrayals. In this vein, Charlesworth has also proposed that the developing institutional orthodoxy on women and peace is characterised by the assumption that women are “more vulnerable than men”.¹⁴³⁸ Intimately connected to this issue are portrayals of women’s innate victimhood. Indeed, one of the “shortfalls” of UNSCR 1325 in particular has been described as its recognition of women as “victims or peacemakers, rather than also perpetrators of violence”.¹⁴³⁹ In this way, it has been argued that UNSCR 1325 has “continued to reinforce essentialist attitudes”.¹⁴⁴⁰ Charlesworth has further argued that the idea that women require some form of special treatment to protect them from violations of their rights is a major theme that “infuse[s] the development of women’s human rights”.¹⁴⁴¹ In this way, the WPS Agenda provides an example of this protective “strand” which runs throughout

¹⁴³⁴ Liberian TRC, “Women and the Conflict” Appendix (n 59) 13

¹⁴³⁵ Keenan (n 112) 161

¹⁴³⁶ Delaney, “Legal Geography I” (n 366) 98

¹⁴³⁷ Vasuki Nesiah, “Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship” (1993) 16 *Harvard Women’s Law Journal* 189, 199

¹⁴³⁸ Charlesworth, “Are Women Peaceful?” (n 946) 351

¹⁴³⁹ Bewicke (n 33) 125

¹⁴⁴⁰ *ibid*

¹⁴⁴¹ Charlesworth, “Two Steps Forward, One Step Back?” (n 1129) 561

international discourses.¹⁴⁴² This protective strand that manifests in international legal discourses on transitional justice also had constitutive effects on the reporting of the Liberian TRC.

7.3.2.1 – Prioritising Protection over Participation

As has already been discussed, both participation and protection are key elements of the WPS Agenda. However, a broad range of feminist critique has argued that the Agenda has focused efforts on the “protection” pillar to the detriment of the “participation” element.¹⁴⁴³ Looking broadly at the WPS Agenda, Engle argues that there are two types of UNSCR which tend to “leapfrog over each other” in terms of their being passed by the UN Security Council: those which envisage women’s participation in peace and post-conflict processes, and those which envisage women as victims of armed conflicts.¹⁴⁴⁴ Thus, for Engle, there is a tension between those resolutions which concern women as victims and those which constitute them instead as agents of peace.¹⁴⁴⁵ For others, including Shepherd, the entire WPS Agenda and its related documentation are “associated with ‘girls in need of protection’”; the discourses connected to UNSCR 1325 “universally subordinate the feminine subject and require that female is equal to weak”.¹⁴⁴⁶ Discussing the representations of women in UNSCR 1325 and its associated reports, Shepherd argues that, by locating “vulnerability” as a central part of women’s experiences “specific to their gendered identity”, the resolution conflates femininity and vulnerability.¹⁴⁴⁷ This “universal subordination” of women is furthered in UNSCR 1325’s portrayal of adolescent girls – “burdened” by both their youth and their femininity” – which positions “femininity as vulnerability” and “femininity as low” in terms of status.¹⁴⁴⁸ Thus, UNSCR 1325

¹⁴⁴² *ibid*

¹⁴⁴³ Goetz and Jenkins (n 36) 120

¹⁴⁴⁴ Engle, “The Grip of Sexual Violence” (n 217) 23

¹⁴⁴⁵ *ibid*

¹⁴⁴⁶ Shepherd, *Gender, Violence and Security* (n 69) 106

¹⁴⁴⁷ *ibid* 87

¹⁴⁴⁸ *ibid*

becomes “accountable for the violent reproduction of gender through discursive violence”.¹⁴⁴⁹

The notion of “protection” is not only a feature of the WPS Agenda, but has been an object of feminist critique for its prevalence in international law more generally. For example, some contemporary feminists argue that the wording in international humanitarian law itself perpetuates discrimination, in turn leading to violence.¹⁴⁵⁰ Furthermore, treaty bodies and other UN personnel have emphasised women’s vulnerability and need for protection in the post-conflict or transitional space. The UN Human Rights Committee has described women as “particularly vulnerable” during situations of armed conflict, and requires states to “inform the Committee of all measures taken during these situations to protect women from rape, abduction and other forms of gender-based violence”.¹⁴⁵¹ The United Nations Special Rapporteur on violence against women has argued that there exists a duty on states to not only refrain from violence, but to prevent acts of violence by third parties through a strong legal framework.¹⁴⁵² The Declaration on the Protection of Women and Children in Emergency and Armed Conflict aims to “provide special protection of women and children belonging to the civilian population”.¹⁴⁵³ By contrast, the Beijing Platform for Action has been praised for its “broad view of women in armed conflict” beyond simply as victims of sexual violence by looking at multiple issues which can affect women.¹⁴⁵⁴ Among its strategic objectives are increasing the participation of women in conflict resolution processes; reducing human rights abuses during conflict; and promoting women’s contribution to peace.¹⁴⁵⁵ However, the Platform for Action does feature language relating to protection in the strategic objective relating to

¹⁴⁴⁹ *ibid* 106

¹⁴⁵⁰ Bennoune (n 946) 68

¹⁴⁵¹ UNHRC, “CCPR General Comment No.28” (n 860) [8]

¹⁴⁵² Bennoune (n 946) 19-20

¹⁴⁵³ *ibid* 39

¹⁴⁵⁴ *ibid* 42

¹⁴⁵⁵ *ibid* 42-3

participation, following this participatory language with the requirement to “protect women” during situations of armed conflict.¹⁴⁵⁶

Protecting people from harm is an important aspect of international human rights law, and an important objective related to the management of armed conflict. It is not being argued here that the existence of international norms which provide for women’s protection is inherently problematic. However, what is being argued is that, where women’s presence in international discourses is limited to their need for protection, this can result in potentially harmful essentialisms. Rimmer, following the ICRC, has argued that women’s vulnerability is not innate, but rather a product of their becoming emblematic representations of their “racial, cultural or religious identity” and of their importance in bearing future generations of these groups.¹⁴⁵⁷ Social, political, and economic factors can also compound this vulnerability.¹⁴⁵⁸ Thus, while women may be vulnerable in some contexts, it is incorrect to suggest that such vulnerability is an innate or natural characteristic. Rather, it is argued here that this vulnerability can be a product, in part, of the discursive conditions in operation within a transitional justice context, which delineate the identity groupings to which women can belong. This representation of women as “objects needing protection” is argued by Kapur to emanate from an international discourse in which gender “is equated with women, and women remain essentially differentiated from men”.¹⁴⁵⁹ As such, the WPS Agenda engages in a “persistent representation” of women as victims of male violence, with men portrayed “as either perpetrators or rescuers/custodians” even in contemporary gender, peace and security projects.¹⁴⁶⁰ This limits not only the discursive possibilities for the construction of female identity, but also the possibilities for accountability, which becomes reduced to protecting against and addressing those harms women experience by virtue of their female vulnerability.¹⁴⁶¹ It is this trend that the previous

¹⁴⁵⁶ “Beijing Declaration and Platform for Action” (n 955) Strategic Objective E1

¹⁴⁵⁷ Harris Rimmer (n 1223) 140, citing Charlotte Lindsay, *Women facing war: ICRC study on the impact of armed conflict on women* (International Committee of the Red Cross Geneva 2001) <https://www.icrc.org/en/doc/assets/files/other/icrc_002_0798_women_facing_war.pdf> 8-9

¹⁴⁵⁸ Harris Rimmer (n 1223) 140

¹⁴⁵⁹ Kapur, *Gender, Alterity and Human Rights* (n 1119) 101

¹⁴⁶⁰ *Ibid*

¹⁴⁶¹ Shepherd, *Gender, Violence and Security* (n 69) 106

chapter observed in the reporting of the Liberian TRC, which constituted a female subject defined by her innate vulnerability.

7.3.2.2 – *Emphasising Victimhood*

Related to this protective strand of international transitional justice discourses is an emphasis on women’s victimhood. The 2023 Guidance Note of the Secretary-General on transitional justice (an influential although non-binding set of principles for conducting transitional justice processes) constitutes women in similar terms.¹⁴⁶² Of the 16 times the word “women” appears in the body of the text of the document,¹⁴⁶³ ten occasions portray women in terms of their victimhood or vulnerability. For example, the guidance describes women as an “often marginalized or discriminated against” group¹⁴⁶⁴ whose experiences are compounded by “intersecting forms of vulnerability”.¹⁴⁶⁵ The need to include women and girls in transitional justice processes is described as necessary for a “victim-centred approach”.¹⁴⁶⁶ Furthermore, Engle has noted that some activists feel that the UNSCRs of the WPS Agenda are reductive in their over-emphasis on victim narratives.¹⁴⁶⁷ Zetes, for example, argues that even while promoting increased inclusion and representation of women in transitional justice processes, the majority of the rhetoric in UNSCR 1325 focuses on women’s experiences and needs as victims, instead of the meaningful contribution they make to transitional justice contexts.¹⁴⁶⁸ Orford has further argued that UNSCR 1325 “reinforces stereotypical views about women” by, for example understanding them “principally as victims of conflict”.¹⁴⁶⁹

¹⁴⁶² United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1)

¹⁴⁶³ That is, not in a caption or as part of a document title cited in footnotes.

¹⁴⁶⁴ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 8

¹⁴⁶⁵ *ibid* 10

¹⁴⁶⁶ *ibid* 8

¹⁴⁶⁷ Engle, “The Grip of Sexual Violence” (n 217) 26

¹⁴⁶⁸ Zetes (n 3) 1303-4

¹⁴⁶⁹ Anne Orford, “Feminism, Imperialism and the Mission of International Law” (2002) 71(1) *Nordic Journal of International Law* 275, 282

This trend, again, has made its way into the reporting of the Liberian TRC. For example, as has been discussed in the previous chapter, women involved in the Liberian TRC were at times reconstituted into identity groupings compatible with the perception of them as inherently vulnerable or as victims. This produces the phenomenon described in the previous chapter, wherein female combatants are “reconstructed” so as to be primarily understood in terms of their relationship with male combatants rather than as combatants in their own right.¹⁴⁷⁰ As discussed in the previous chapter, significant numbers of women participated in the Liberian civil war as combatants, and yet this particular identity is largely overlooked in the reports, with the vulnerability of combatants emphasised where they are discussed at all. Research on disarmament in Liberia challenges the narrative that all female combatants were forcefully recruited and sexually exploited, in turn challenging the portrayal of women as victims in the TRC reports. The research finds that, while many women certainly faced forced recruitment and/or exploitation, there were many other reasons why combatants chose to join, ranging from self-protection to protecting their loved ones.¹⁴⁷¹ These reasons demonstrate that, for many women, participation in the conflict as combatants was an active decision and a display of agency, rather than coerced. To overlook this thus undermines women’s agency in favour of a narrative of vulnerability and victimhood.¹⁴⁷²

The tendency to construct women in terms of their vulnerability and victimhood can be observed in the context of the Liberian TRC’s reporting, as was outlined in the previous chapter. It can also be observed in reporting elsewhere. For example, reports submitted by Liberia to United Nations human rights monitoring processes have also focused overwhelmingly on these aspects of women’s experiences. Speaking to the CEDAW Committee, the Liberian delegation continually paired women and children.¹⁴⁷³ The only mention of women in the Liberian government’s section on key

¹⁴⁷⁰ For a discussion of this literature, see Steenbergen (n 1293) 645

¹⁴⁷¹ *ibid* 649

¹⁴⁷² *ibid*

¹⁴⁷³ Liberian Delegation to the CEDAW Committee, Address of the Liberian Delegation to the Sixty-Second Session of CEDAW (CEDAW Committee, 29th November 2015)

national priorities in its 2010 submission to the UN Human Rights Committee is in relation to the need to “protect and promote the rights of vulnerable groups, such as women, children, persons with disabilities and the elderly”.¹⁴⁷⁴ The report describes them as “victims of forced displacement, killing, assault, abduction, torture, forced recruitment, [and] extensive destruction of property”, and states that they “were disproportionately targeted for rape, sexual abuse, sexual slavery, and forced pregnancy”.¹⁴⁷⁵ The report then goes on to describe “the physical, emotional, psychological and economic effects”; high rates of sexual violence; and barriers to participation in public life that women faced in the aftermath of Liberia’s periods of civil conflict.¹⁴⁷⁶ The paragraph does not mention any other contribution of women to the conflict or peace processes. Thus, again, women’s participation (or lack thereof) is invoked alongside the violence that women have experienced.

Furthermore, the construction of women as the “most” vulnerable group affected by conflict has been challenged in scholarship. Jones, for example, based on examples from conflict-affected regions around the world, has suggested that “the most vulnerable and consistently targeted population group, through time and around the world today, is non-combatant men”.¹⁴⁷⁷ The Liberian TRC reports themselves acknowledge that violence against women was under-reported through the TRC’s processes, and that men were victims of the majority of offences, and yet the portrayal of women as victims persists. Charlesworth has also described what she terms “competitive vulnerability”, in which women serve as a shorthand for the vulnerable victims of war, whereas the reality is far more complex.¹⁴⁷⁸ She further argues that men’s conflict experiences are also those of victimhood, even where they themselves have been perpetrators.¹⁴⁷⁹ In any case, Shepherd ultimately argues that people affected

<[¹⁴⁷⁴ UNHRC, “National report” \(A/HRC/WG.6/9/LBR/1\) \(n 685\) \[106\]](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=1KIk9bb9KdSzAa/6qWzHwwtuzgZqWMI6euH3dBCx5EqDpkY+s94lcAWGEK+Q/Xd2enjmlBbxvhaZnqFXisYA==> 1</p></div><div data-bbox=)

¹⁴⁷⁵ *ibid* [71]

¹⁴⁷⁶ *ibid*

¹⁴⁷⁷ A Jones, “Gendercide and Genocide” (2000) 2(2) *Journal of Genocide Research* 185, 186

¹⁴⁷⁸ Charlesworth, “Are Women Peaceful?” (n 946) 358

¹⁴⁷⁹ *ibid*

by conflict, whether men or women, ought not to have their rights enforced on the basis of their belonging to the group who has suffered “more”.¹⁴⁸⁰ Doing so limits any understanding of the relationship between “violence, gender and security”,¹⁴⁸¹ while also retreating to an unhelpful victim/perpetrator binary.

Nevertheless, it is important to acknowledge that articulating a victim subject can be useful, for example for providing a platform for discussion of previously overlooked human rights abuses, or providing “a shared location from which women from different cultural and social contexts can speak”.¹⁴⁸² Indeed, Kapur has argued that rights claims based on “a commonality of experience” can be more useful than division or “fragmentation of the subject”.¹⁴⁸³ However, while it is important to acknowledge women’s experiences of violence, it is imperative to understand how victimhood is discursively constructed.¹⁴⁸⁴ Shepherd proposes that discourses on “violence against women” attempt to claim a “truth based in experience” but are nevertheless “insensitive to the ways in which these claims appeal to the existence of an objective reality that is difficult to sustain”.¹⁴⁸⁵

While Kapur notes that the “women’s human rights movement” has revealed some of the material effects of power on women’s lives and experiences, she argues that the exclusive focus on the “victim subject” in international human rights law has “failed to develop” this understanding of the subject-power nexus further.¹⁴⁸⁶ Instead, by relying on a construction of women that centres their victimhood and vulnerability to violence, power is understood as “monolithic and emanating from a sovereign”, thus obscuring the diverse and complex power relationships that exist in women’s lives and the private, non-state acts of violence they experience.¹⁴⁸⁷ Indeed, with respect to the WPS Agenda, Orford argues that constructing women within these parameters aims to

¹⁴⁸⁰ Shepherd, *Gender, Violence and Security* (n 69) 115-16

¹⁴⁸¹ *ibid*

¹⁴⁸² Kapur, “The Tragedy of Victimization Rhetoric” (n 1170) 5

¹⁴⁸³ *ibid*

¹⁴⁸⁴ Shepherd, *Gender, Violence and Security* (n 69) 39

¹⁴⁸⁵ *ibid*

¹⁴⁸⁶ Kapur, “The Tragedy of Victimization Rhetoric” (n 1170) 34

¹⁴⁸⁷ *ibid*

establish women “as subjects of militarization and globalization” alongside men, without any “more subversive questioning” of the values and norms which underpin this militarised and globalised world order.¹⁴⁸⁸ All of this impacts the possibilities available for women’s participation. By imagining women principally as victims, in the absence of an interrogation of the power dynamics which produce such constitutivities, international legal discourses seek to ensure women’s participation in peacekeeping as it is currently imagined. These discourses thus engage in a project of retrenchment, whether conscious or not. In doing so, they preclude any interrogation of this imagining, notwithstanding the progressive tone of sources like UNSCR 1325.

7.3.2.3 – Emphasising Sexual Violence

One of the most prevalent ways in which the “protection” pillar is emphasised is through the WPS Agenda’s focus on and treatment of sexual violence. Engle has argued that sexual violence has become the “quintessential harm of war”, demonstrating a trend in the WPS Agenda away from “gender-based violence” against women and towards sexual violence committed against any victim.¹⁴⁸⁹ She has further argued that the portrayal in UN documentation of sexual violence itself as an experience from which victims are unable to recover serves to “oversimplify” conflict-related sexual violence.¹⁴⁹⁰ The former Secretary-General’s Special Representative on Sexual Violence in Conflict has argued that an increased focus on sexual violence within the WPS Agenda was necessary to address the previous lack of opportunity for discussion of sexual violence against men and boys.¹⁴⁹¹ This move by the WPS Agenda away from a focus on violence specifically experienced by women towards a focus on sexual violence as it affects everyone has been contextualised as beginning with criticism of UNSCR 1820.¹⁴⁹² Engle argues that, almost immediately after the passing

¹⁴⁸⁸ Orford, “Feminism, Imperialism and the Mission of International Law” (n 1469) 282

¹⁴⁸⁹ Engle, “The Grip of Sexual Violence” (n 217) 26

¹⁴⁹⁰ *ibid* 24

¹⁴⁹¹ United Nations Department of Public Information, “Security Council Adopts Text Requesting Detailed Information on Suspected Perpetrators of Sexual Violence during Armed Conflict” (Press Release No SC/10122, United Nations, 16 December 2010)

¹⁴⁹² Engle, “The Grip of Sexual Violence” (n 217) 28

of UNSCR 1820, the resolution became subject to criticism that it both undermined the agency of women affected by conflict, and that it allowed no space for discourse on men's roles in the myriad forms of conflict-related gender-based violence.¹⁴⁹³ However, while some approve of the evolution of the Agenda in this direction, others argue that failing to understand sexual violence as a subcategory of gender-based violence risks failing to treat its underlying structural causes.¹⁴⁹⁴ Furthermore, in 2018, Theidon argued that the language of the WPS Agenda still appeared to exclude men and boys from its treatment of sexual and gender-based violence in conflict.¹⁴⁹⁵ Thus, while the focus on sexual violence has been justified by the need for increased attention to the sexual violence experienced by men and boys during conflict, in fact the language of the Agenda continues to essentialise women while obscuring male experiences from view.

Over time, the WPS Agenda has been accused of increasing its focus on conflict-related sexual violence at the expense of participation which, although receiving some attention in recent UNSCRs, generally has been far more overlooked.¹⁴⁹⁶ Analysis by Goetz and Jenkins of thirty country-specific reports of the UN Security Council in 2013 found that in their operational paragraphs, any instructions relating to gender were most often related to sexual violence.¹⁴⁹⁷ By contrast, there were very few "concrete instructions" on women's participation, and the inclusion of instructions on issues relating to gender generally was inconsistent or missing altogether.¹⁴⁹⁸ Furthermore, even where specific operational instructions on gender issues were given, there was rarely any meaningful scrutiny of the extent to which these were carried out.¹⁴⁹⁹ As a result, this focus on sexual violence has the effect of limiting the ways in which women are able to participate in transitional justice processes. Otto has argued that the Agenda's focus on participation emanated from hope that increasing

¹⁴⁹³ *ibid*

¹⁴⁹⁴ *ibid* 30

¹⁴⁹⁵ Theidon (n 1212) 146

¹⁴⁹⁶ Goetz and Jenkins (n 36) 122

¹⁴⁹⁷ *ibid* 124

¹⁴⁹⁸ *ibid*

¹⁴⁹⁹ *ibid*

women's participation in post-conflict processes may reduce the perception of them as vulnerable victims requiring protection in the context of armed conflicts.¹⁵⁰⁰ In actuality, the language of certain UNSCRs in the WPS Agenda – particularly those later resolutions which focus on sexual violence – seems to envisage women's contribution to conflict-related decision-making as “instrumental”.¹⁵⁰¹ That is, these resolutions are premised on the idea that women's participation in such decision-making processes will offer “better protection” to women and children against sexual violence.¹⁵⁰² In addition, Heathcote proposes that later resolutions in the WPS Agenda position women's participation in post-conflict processes as a means of improving rates of reporting sexual violence.¹⁵⁰³ Thus, these subsequent UNSCRs introduce what Heathcote terms “‘protective’ participation”, where participation is constituted as a functional means to “protect women from the excesses of armed conflict”, rather than to promote equality.¹⁵⁰⁴

Engle similarly argues that the description of victims of sexual violence and their broader community networks in the WPS Agenda may go so far as to undermine the agency and participatory abilities of those groups.¹⁵⁰⁵ That is, the focus on women as victims of sexual violence in the WPS Agenda can detract from efforts towards their meaningful inclusion in peace and post-conflict processes.¹⁵⁰⁶ As such, within the WPS Agenda, protection and participation cannot be separated. They are inextricable parts of the Agenda as a conceptual space and of each other. Participation is thus limited to a means of reducing sexual violence. Such a limited view of women's participation in these decision-making processes cannot be argued to constitute “equal” participation,¹⁵⁰⁷ and also completely precludes women exercising any transformative influence on the way in which peace is conceptualised at the UN Security Council

¹⁵⁰⁰ Otto “Women, Peace, and Security” (n 39) 109

¹⁵⁰¹ *ibid*

¹⁵⁰² *ibid*

¹⁵⁰³ Heathcote, “Participation, Gender and Security” (n 1415) 53

¹⁵⁰⁴ *ibid*

¹⁵⁰⁵ Engle, “The Grip of Sexual Violence” (n 217) 32

¹⁵⁰⁶ *ibid* 23

¹⁵⁰⁷ Otto “Women, Peace, and Security” (n 39) 109

level.¹⁵⁰⁸ As such, these two pillars are mutually constituting and reinforcing; each held up by the other. This has an impact on the understanding of the representations of women in the Liberian TRC. If the women's portrayal in the reporting of the TRC is constituted by the representations of women in the WPS Agenda, participation and protection become interlinked and inextricable within the context of the Liberian transitional justice process, with the result of limiting women's opportunities for participation to the "protective' participation" described in this section.

7.3.2.4 – “Women and Children’ Syndrome”

The protective strand and the emphasis on female vulnerability discussed so far can further be observed in the tendency to link women with children. The previous chapter outlined that, in the reports of the Liberian TRC, women were often discursively associated with children and other vulnerable groups. These constructions of women and their participation are reflections of the international scale of law. Charlesworth notes that, in international legal discourses, the category of women is often “widened to include ‘women and children’”, with the “special needs” of women and girls often mentioned without any further explanation of what such needs might be.¹⁵⁰⁹ Analysis by Nadine Puechguirbal, published in 2010, shows that UN documents relating to peace operations repeatedly describe women in ways that emphasise their vulnerability, and, like the TRC, associate them with children. This is a phenomenon that Puechguirbal describes as “‘Women and Children’ Syndrome”.¹⁵¹⁰ Furthermore, Carpenter’s analysis of UN Security Council documentation on the protection of civilians found that the use of the term “women and children” (used 163 times) far exceeded the use of “women as combatants” (used 6 times), while “men as vulnerable” was used only once.¹⁵¹¹ As such, Carpenter argues that “[t]hrough their association with children, women, but not men, have been constructed as possessing the attributes

¹⁵⁰⁸ *ibid*

¹⁵⁰⁹ Charlesworth, “Are Women Peaceful?” (n 946) 351

¹⁵¹⁰ Puechguirbal “Discourses on Gender, Patriarchy and Resolution 1325” (n 20) 175-6

¹⁵¹¹ Carpenter (n 41) 31

associated with a claim to immunity: innocence and vulnerability”.¹⁵¹² Her work argues that the language of these documents places women in three categories: vulnerable women, mothers, and civilians.¹⁵¹³ For Carpenter, this perpetuates the assumption that “[i]f women can be assumed to be civilians, and are innocent and vulnerable, it is they in particular (along with children, the elderly and the disabled) who must be protected.”¹⁵¹⁴ Puechguirbal also poses the question of “why women are defined predominantly as mothers and always associated with children”, proposing that such constructions of womanhood constitute women as a homogenous group, regardless of the variety of experiences women may have over their lifetimes.¹⁵¹⁵ Indeed, not all women “have chosen to go through the sacrosanct process of maternity”, as she describes it, and those women who are mothers experience motherhood very differently over their lifetimes.¹⁵¹⁶ As such, she argues that the portrayal of women in UN documents “as civilians, victims, vulnerable and in association with children” is “not only essentialist’ but also “undermines women’s agency”.¹⁵¹⁷ Citing El-Bushra, Puechguirbal argues that women exercise agency in the absence of “formal power”.¹⁵¹⁸ However, this lack of formal power does not undermine their capacities in the post-conflict space.¹⁵¹⁹ Rather, women will exercise agency in difficult circumstances, and often with little support. Thus, it is argued that: “[b]y focusing on the vulnerabilities of women instead of tapping into their capacities, the UN system overlooks this resilience and marginalizes them”.¹⁵²⁰

¹⁵¹² *ibid*

¹⁵¹³ *ibid*

¹⁵¹⁴ *ibid*

¹⁵¹⁵ Puechguirbal “Discourses on Gender, Patriarchy and Resolution 1325” (n 20) 172

¹⁵¹⁶ *ibid* 175-6

¹⁵¹⁷ *ibid* 172

¹⁵¹⁸ *ibid* 178, citing Judy El-Bushra, “Transforming Conflict: Some Thoughts on a Gendered Understanding of Conflict Processes” in Susie Jacobs, Ruth Jacobson, and Jennifer Marchbank (eds), *States of Conflict, Gender, Violence and Resistance* (Zed Books 2000) 180

¹⁵¹⁹ Puechguirbal “Discourses on Gender, Patriarchy and Resolution 1325” (n 20) 178

¹⁵²⁰ *ibid*

7.3.3 – *Women as Peaceful/Peaceable*

The final element of Charlesworth’s proposed “developing institutional orthodoxy with respect to women and peace”¹⁵²¹ is an “assumption that women are better than men at developing and sustaining peace”.¹⁵²² She has argued that this notion of women as “peaceable” is “becoming orthodoxy in international institutions”.¹⁵²³ The 2023 Guidance Note of the UN Secretary-General on transitional justice, for example, attests to women’s contribution to peace work, listing women as “agents for peace”.¹⁵²⁴ Charlesworth has proposed that the language of UNSCR 1325 – affirming at once the important role women play in conflict-related processes, and the importance of their equal participation in the post-conflict world – suggests that “women should have a special role in conflict resolution and that this particularity should lead to their equality of participation in peace-building and conflict prevention”.¹⁵²⁵ However, while she acknowledges the progress made in including women and their perspectives in international policy-making, Charlesworth also argues that their inclusion in this limited way “is a troubling development”.¹⁵²⁶ Importantly for the purposes of this thesis, it has been argued that although the idea of women as naturally inclined towards peace and the idea of women’s equal right to participate in peace processes “have quite differing bases”, they are “uneasily and ambiguously” linked in UN documentation.¹⁵²⁷

These representations can be observed in the Liberian TRC’s reporting, as was illustrated in the previous chapter. However, these representations do not provide a full picture of women’s experiences as conflict actors. Research has argued that women in Liberia “are not shy or hesitant in expressing themselves in public settings, even to the extent of challenging the authority or competence of their ‘traditional’ leaders”.¹⁵²⁸ Furthermore, specifically discussing the Liberian context, Schia and de

¹⁵²¹ Charlesworth, “Are Women Peaceful?” (n 946) 351

¹⁵²² *ibid*

¹⁵²³ *ibid* 349

¹⁵²⁴ United Nations Secretary-General, “Guidance Note of the Secretary-General” (2023) (n 1) 8

¹⁵²⁵ Charlesworth, “Are Women Peaceful?” (n 946) 350

¹⁵²⁶ *ibid* 349

¹⁵²⁷ *ibid*

¹⁵²⁸ Abramowitz and Moran (n 62) 142

Carvalho have argued that, while the WPS Agenda has generated increased attention to women's experiences of conflict in research and policy, this has been at the expense of attention to their involvement in conflict resolution and peacebuilding at the local level.¹⁵²⁹ They argue that there exists a "mismatch" between the intentions of these resolutions and their effectiveness at the local level due to the resolutions being premised on the presence of "existing and well-functioning state institutions".¹⁵³⁰ In addition, they propose that a further "mismatch" may exist in UN peacekeeping work between the international and local scales of policymaking, given that policies are typically made at the international scale and implemented at the local level.¹⁵³¹ Indeed, Otto has argued that the "pressure" on local women's groups to rebrand their existing peace work and activities as being linked to UNSCR 1325 and the broader WPS Agenda risks undermining the effectiveness of those local programmes, thus disempowering the very groups that the Agenda ought to be empowering.¹⁵³²

International law in general, and especially "the women's human rights industry", has been argued to portray women as "more peaceful than men" and, furthermore, as "better equipped than men to prevent or resolve" situations of conflict.¹⁵³³ A 2002 report on the implementation of UNSCR 1325, for example, argues that there are "many positive examples" of the "critical difference" women make to peace processes.¹⁵³⁴ However, in describing their impact as occurring particularly in the areas of "preserving social order and educating for peace",¹⁵³⁵ the report locates women's contribution to peace processes in their peaceable nature, and in preserving a status quo whose gendered aspects go uninterrogated. As a result, in the transitional justice context, some arguments about women's participation understand that participation as important on the basis of women's utility to the processes themselves, rather than as the fulfilment of a right. Helen Kinsella has differentiated between an approach to

¹⁵²⁹ Nagelhus Schia and de Carvalho (n 66) 143

¹⁵³⁰ *ibid*

¹⁵³¹ *ibid* 144

¹⁵³² Otto "Women, Peace, and Security" (n 39) 110

¹⁵³³ Kapur, *Gender, Alterity and Human Rights* (n 1119) 101

¹⁵³⁴ United Nations Security Council "Report of the Secretary-General" (2002) (n 25) [27]

¹⁵³⁵ *ibid*

women's participation and one based on "use-value", wherein women are able to access peace processes not because "they have a right and reason as individuals" but because they conform to "somebody's vision of a peace-maker".¹⁵³⁶ Gibbings proposes that such "use-value" arguments which constitute women as a resource exist within the UN, its agencies, and their associated discourses, and represent "the logic of the market... extended to the operation of state functions".¹⁵³⁷ This raises questions about the purpose of transitional justice processes, and whether they are supposed to be good for women, or whether women are good for them. It has been further argued that the "construction of women as peacemakers and as pacifists" does not constitute them as "equal participants" in such processes.¹⁵³⁸ This is intimately connected to the above-mentioned rhetoric surrounding women's vulnerability. In this way, it can again be seen that a focus on singular aspects of women's identities at the expense of a broader focus on their capacity as agents of change results in women being overlooked and marginalised by the UN system.¹⁵³⁹

This tendency to portray women as naturally inclined towards the role of "peacemakers" can therefore undermine the many diverse roles women may undertake during post-conflict processes.¹⁵⁴⁰ For example, it has been noted that the UNSCRs of the WPS Agenda discuss women "in their capacity as caretakers, caregivers and providers",¹⁵⁴¹ and that they have been built upon "the notion that women are inherently peace loving".¹⁵⁴² It has further been argued that such "conventional and culturally sanctioned assumptions" are a feature of international law and international human rights law more broadly.¹⁵⁴³ In this way, the WPS Agenda establishes a set of discursive conditions which limit women's construction as conflict actors. Regardless of the role women occupy, Shepherd argues that women's agency is minimised by their portrayal

¹⁵³⁶ Cohn, Kinsella and Gibbings (n 70) 137

¹⁵³⁷ Gibbings, "No Angry Women at the United Nations" (n 1111) 530

¹⁵³⁸ Cohn, Kinsella and Gibbings (n 70) 137

¹⁵³⁹ Puechguirbal "Discourses on Gender, Patriarchy and Resolution 1325" (n 20) 178

¹⁵⁴⁰ Chinkin and Kaldor (n 3) 181

¹⁵⁴¹ Puechguirbal "Discourses on Gender, Patriarchy and Resolution 1325" (n 20) 173

¹⁵⁴² Kapur, *Gender, Alterity and Human Rights* (n 1119) 101

¹⁵⁴³ *ibid*

as having been “pushed” or “forced” into occupying positions of responsibility.¹⁵⁴⁴ Women have no choice but to become the head of their household when it loses its men and boys to conflict; female combatants are “driven” to take up arms; Liberian women are “associated with”¹⁵⁴⁵ armed factions during the conflict rather than members of those factions.¹⁵⁴⁶ This further entrenches a “narrow and traditional narrative of gender”¹⁵⁴⁷ based on women’s perceived natural roles as “providers and caregivers”¹⁵⁴⁸ and as “peacemakers”.¹⁵⁴⁹ The view of women as inherently nurturing and peaceful can therefore be limiting, and can be problematic in the sense that it marginalises other identities women may occupy, and that it may marginalise or even completely silence women who fail to conform to these “discursive regimes”.¹⁵⁵⁰

In this way, these imaginings of women fail to account for women who do not wish to participate in transitional justice processes, or who refuse to conform to the rules of language or the narrative structures required for such testimony. Gibbings has argued that women are often viewed as the embodiment of “universal principles of peace and security” as opposed to relating to the interests of other groups or communities of which they may form a part.¹⁵⁵¹ To illustrate this, she argues that UN agencies often impose linguistic standards to which speakers are expected to conform. The discourses which are “most valued” at the United Nations are those which are “uplifting, positive and present women as peacemakers”.¹⁵⁵² For women, this can mean that the “specifics of the particular country and its women’s activities [are] framed into a motivational and inspiring story”.¹⁵⁵³ By contrast, when women adopt more critical positions, audiences at the UN can react negatively where it is perceived that women are not

¹⁵⁴⁴ Shepherd, *Gender, Violence and Security* (n 69) 87

¹⁵⁴⁵ United Nations Security Council “Women and peace and security” (2004) (n 30) [24]

¹⁵⁴⁶ Shepherd, *Gender, Violence and Security* (n 69) 88

¹⁵⁴⁷ *ibid*

¹⁵⁴⁸ *ibid* 87

¹⁵⁴⁹ *ibid*

¹⁵⁵⁰ *ibid* 88

¹⁵⁵¹ Gibbings, “No Angry Women at the United Nations” (n 1111) 531

¹⁵⁵² *ibid* 526

¹⁵⁵³ *ibid*

fulfilling the role expected of them in such discursive fora.¹⁵⁵⁴ By way of illustration, Gibbings uses an example of two Iraqi women who were invited to a meeting with gender officers of the UN agencies. The women “condemned the invasion [of Iraq] by the USA and UK as imperialist and critiqued the UN for its lack of support”, and in turn were labelled “angry” by UN officials who were “disappointed and embarrassed” by their comments.¹⁵⁵⁵ This demonstrates how particular views of women perhaps become pervasive in international discourses: those uplifting discourses form a “master narrative” which is employed by the UN, its employees, and its representatives, who in turn expect it to be reproduced by ordinary citizens.¹⁵⁵⁶ In this way, the discursive conditions set at the scale of the international constitute the representations of women permissible at the national or local scales.¹⁵⁵⁷ As Gibbings argues: “a particular way of speaking at the UN shapes the possibility of action and limits a supposed freedom of political participation.”¹⁵⁵⁸

Furthermore, the WPS Agenda has been argued to conflate action with agency. This is because the UN, through this Agenda, has “albeit belatedly” recognised women as “actors”, but in doing so appears to conflate this with their being agents; that is, people with the capacity to act.¹⁵⁵⁹ In this sense, actors are understood as those participants “engaged in a consultative mode of participation”, while agents have the capacity to be “transformative” in their participation.¹⁵⁶⁰ Thus, in portraying women’s participation in conflict, in public life, and in the transitional process as passive, rather than active, participation, the reports of the Liberian TRC have also failed to account for the ways in which women themselves make choices, with these choices constitutive of identity. For example, the reporting of the TRC does not engage with any meaningful enquiry about the reasons women may have had for choosing not to engage with the TRC. The TRC’s reporting argued strongly that violations against women,

¹⁵⁵⁴ *ibid*

¹⁵⁵⁵ *ibid*

¹⁵⁵⁶ *ibid*

¹⁵⁵⁷ Thorne (n 111) 472

¹⁵⁵⁸ Gibbings, “No Angry Women at the United Nations” (n 1111) 526

¹⁵⁵⁹ Shepherd, “Sex, Security and Superhero(in)es” (n 55) 512

¹⁵⁶⁰ *ibid*

including sexual and gender-based violence, were “under-reported” by women to the TRC.¹⁵⁶¹ However, the TRC’s reports do not explore how this under-reporting might be related to women’s choices as to whether and how they engaged with the TRC process, instead arguing the under-reporting to be motivated by women’s fear of reprisals. Thus, the TRC’s reports located women’s lack of engagement with the TRC’s activities outside the TRC space, without any consideration of how the construction of the TRC space itself may have influenced women’s choices. While fear can be and has been a powerful barrier to certain forms of testimony in transitional justice contexts, it is but one of many possible motivations.¹⁵⁶² Indeed, the choice not to testify at the TRC could emanate from a distrust of justice systems unconnected to the transitional justice process.¹⁵⁶³

Orford asks how we ought to try to understand what she describes as “eloquent silence”.¹⁵⁶⁴ That is, how one ought to interpret the silence of a person “who will not speak her suffering in the time and place and languages offered to her by the mechanisms of transitional justice”.¹⁵⁶⁵ Höglund has argued that refusing to testify about certain experiences can also be considered as a form of agency on the part of the women who do so, as it allows them to preserve their personal security and relationships.¹⁵⁶⁶ Women’s testimony is constituted by the context, timing, and type of mechanism at which they tell their story.¹⁵⁶⁷ In particular, women may consciously shape or limit their testimonies based on their perceptions of the expectations of the audience, meaning that some elements of their stories will be emphasised and others played down or excluded altogether.¹⁵⁶⁸ This phenomenon can be observed in the reporting of the Liberian TRC. The “Women and the Conflict” appendix itself notes

¹⁵⁶¹ See, e.g. Liberian TRC, *Consolidated Final Report* (n 562) 19

¹⁵⁶² See, e.g. Johanna Mannergren Selimovic, “Gendered silences in post-conflict societies: a typology” (2020) 8(1) *Peacebuilding* 1 for a discussion of the difference between “disabling” and “enabling” silences.

¹⁵⁶³ See, e.g. Divon and Bøås (n 563)

¹⁵⁶⁴ Orford, “Ritual” (n 183) 365

¹⁵⁶⁵ *ibid*

¹⁵⁶⁶ Höglund (n 12) 377. See also Mannergren Selimovic (n 1562)

¹⁵⁶⁷ Höglund (n 12) 363

¹⁵⁶⁸ *ibid*

the prevalence of sexual violence in discourse on women's experiences of war and transitional justice.¹⁵⁶⁹ While it notes that it is important for sexual violence to be addressed fully, the report argues that because this type of violence “seems to capture the imagination of the international community”, many women who had suffered other violations may have been led to believe that their suffering was less worthy of attention.¹⁵⁷⁰ Thus, many women who had not experienced any form of sexual violence reported to the TRC that “nothing had happened to them, and yet later they spoke of their homes being burned to the ground or having been internally displaced since the war”.¹⁵⁷¹ Thus, the TRC's discursive conditions shaped the forms of permissible testimony in its activities, and shaped the testimony that women chose to share.

Perceptions about justice can also shape reporting and testimony. The “Women and the Conflict” appendix argues that “legal infrastructure” across the whole of Liberia was “weak and ill equipped” to address discrimination against women.¹⁵⁷² The appendix also notes that, at the time it was written, the criminal law against rape had been “weak” in its implementation.¹⁵⁷³ In addition, at the time of the TRC, while Article 11(b) of the Liberian Constitution guaranteed rights irrespective of sex, the Constitution provided no definition of discrimination.¹⁵⁷⁴ Lawson and Flomo have further argued that, even in the presence of laws against rape in Liberia, victims face limited access to the court system, and that the associated power dynamics are difficult to navigate.¹⁵⁷⁵ As a result, many women do not report rapes, faced with “the reality that very few assailants are brought to justice”.¹⁵⁷⁶ Divon and Bøås have also produced research on the choices that Liberian citizens make with regard to accessing justice in the state, and found that most “ordinary” Liberians still prefer customary justice

¹⁵⁶⁹ Liberian TRC, “Women and the Conflict” Appendix (n 59) 55

¹⁵⁷⁰ *ibid*

¹⁵⁷¹ *ibid*

¹⁵⁷² *ibid* 62

¹⁵⁷³ *ibid*

¹⁵⁷⁴ See CEDAW Committee, “Concluding observations of the Committee on the Elimination of Discrimination against Women” (2009) (n 863) 3

¹⁵⁷⁵ Lawson and Flomo (n 60) 1874

¹⁵⁷⁶ *ibid*

practices to statutory ones.¹⁵⁷⁷ This preference, they explain, is often “tactical” in nature.¹⁵⁷⁸ By this, they mean that people will choose a justice practice based on their immediate needs;¹⁵⁷⁹ or the justice practice which is most likely to yield a favourable outcome.¹⁵⁸⁰ In the case of gender-based violence, the choice is gendered, and is influenced by factors such as “*setting, type of offence, sexual maturity, and offender’s communal affiliation*”.¹⁵⁸¹ For example, women were more likely to pursue statutory justice for violence experienced outside the home, and customary justice in the case of domestic violence.¹⁵⁸² Perceived corruption in the judicial system may also discourage participation in the statutory justice system,¹⁵⁸³ while poverty may influence some victims to accept monetary compensation from perpetrators in exchange for their silence.¹⁵⁸⁴ Thus, in Liberia, decisions about engaging with justice processes are informed by the “uncertain post-conflict ‘world’ of Liberia”, where maintaining peace, security, and community harmony is essential to the prevention of violence.¹⁵⁸⁵ As such, while choosing customary justice practices which may even be discriminatory to women may appear controversial, the choice is actually demonstrative of exercising agency,¹⁵⁸⁶ albeit a more “tactical” rather than “strategic” form of agency.¹⁵⁸⁷ It is possible that women exercised similar tactical agency in their interactions with the TRC, perhaps explaining why some crimes were under-reported.

¹⁵⁷⁷ Divon and Bøås (n 563) 1381-2

¹⁵⁷⁸ *ibid* 1387

¹⁵⁷⁹ *ibid*

¹⁵⁸⁰ Lawson and Flomo (n 60) 1866

¹⁵⁸¹ Divon and Bøås (n 563) 1390 [original emphasis]

¹⁵⁸² *ibid*

¹⁵⁸³ Medie (n 60) 385, citing Deborah H Isser, Stephen C Lubkemann, and Saah N’Tow, “Looking for justice: Liberian experiences with and perceptions of local justice options” (Peaceworks 63 United States Institute of Peace 2009) <https://www.usip.org/sites/default/files/liberian_justice_pw63.pdf>

¹⁵⁸⁴ Medie (n 60) 385

¹⁵⁸⁵ Divon and Bøås (n 563) 1387

¹⁵⁸⁶ *ibid*

¹⁵⁸⁷ *ibid*

7.3.4 – Reflections on the “Women” in the TRC’s Documentary Heritage

For Shepherd, identity is always “contingent”: it is always constructed by “specific forms of identification”.¹⁵⁸⁸ From a legal geographical perspective, it can be argued that the constitutive process also conditions the ways in which identity is constructed and for what purpose. It has been proposed that the language of the WPS Agenda, and of UNSCR 1325 in particular, reinforces that it is the United Nations which sets the discursive parameters for issues of international security.¹⁵⁸⁹ This can be seen in the ways in which the United Nations is “repeatedly articulated as the organizer of knowledge” on issues affecting women during and post-armed conflict, with other stakeholders at the local scale placed “secondary” to the United Nations and its associated institutions within the texts.¹⁵⁹⁰ Thus, through “discursive violence”, secondary stakeholders are “identified” and “utilized” by the UN, implying the superiority of the UN’s knowledge and capabilities for guiding post-conflict processes.¹⁵⁹¹ Otto argues that the “top-down, imperial” approach of using UNSCRs as a means of securing transformative change is perhaps a reason for the slow implementation of UNSCR 1325 and subsequent resolutions in the WPS Agenda.¹⁵⁹²

The representations of women observed throughout the reporting of the Liberian TRC are not limited to the space of the TRC, nor to its reporting. The representations do not exist within a finite and contained space but come into being through a dynamic process of constitutivity.¹⁵⁹³ Representations of women as victims, as vulnerable, and as passive peacemakers can be observed through the TRC’s mandate, the Accra Agreement which provided for its initial creation, and also in the international framework for women’s participation in transitional justice processes. In this framework, participation and protection of women exist together, not simply side-by-side but mutually reinforcing and even becoming synonymised, with the

¹⁵⁸⁸ Shepherd, “Sex, Security and Superhero(in)es” (n 55) 515

¹⁵⁸⁹ Shepherd, *Gender, Violence and Security* (n 69) 96-7

¹⁵⁹⁰ *ibid*

¹⁵⁹¹ *ibid* 97

¹⁵⁹² Otto “Women, Peace, and Security” (n 39) 109

¹⁵⁹³ Delaney, “Legal Geography I” (n 366) 98

understanding of participation upheld and reinforced by the requirement for protection, and the construction of women as the objects of that protection. The ways in which these pillars themselves were constructed, understood, and applied – like all constitutivities – were a consequence of choices made by social actors.

It has been argued these portrayals in the Women, Peace, and Security Agenda undermine women’s agency and detract from efforts towards their participation.¹⁵⁹⁴ This is because women’s ability to participate in conflict-related decision-making is constricted by the normative standards of language used at the United Nations, which limits women’s ability to shape the processes in which they participate.¹⁵⁹⁵ This reflects the constitutive process described above by which representations shape identity, with participation contingent on the particular constitutivities in place at a given moment. It is therefore argued here that UNSCR 1325 and the WPS Agenda, in particular, played a constitutive role in the Liberian transitional justice process. The Women’s NGO Secretariat of Liberia (WONGOSOL) has described the “[m]ost [s]ignificant [c]hange” in relation to women, peace, and security as the “increased awareness on gender sensitive issues and accelerated support to the implementation of UN Resolution 1325”.¹⁵⁹⁶ Additionally, a report by the Institute for Peacebuilding attests that Liberia “has ensured the increased representation of women at decision-making levels called for by SCR 1325” since the end of its periods of civil conflict.¹⁵⁹⁷ UNSCR 1325 also guided the mandate of UNMIL in its efforts to “gender mainstream” its work.¹⁵⁹⁸ Thus, UNSCR 1325 forms part of the consciousness of post-conflict Liberia, both at the local and international scales. As such, when considering the construction of the TRC space which presents women as victims, as vulnerable, or as peacemakers, it is perhaps the case that, in seeking to adhere to international standards, these assumptions bled into the process, rather than being purely generated by the process itself. Indeed, the representations observed by feminist legal scholars in relation to the

¹⁵⁹⁴ Engle, “The Grip of Sexual Violence” (n 217) 23

¹⁵⁹⁵ Gibbings, “No Angry Women at the United Nations” (n 1111). See also, Otto “Women, Peace, and Security” (n 39) 109

¹⁵⁹⁶ WONGOSOL (n 879) 8

¹⁵⁹⁷ Campbell-Nelson (n 665) 6

¹⁵⁹⁸ *ibid*

WPS Agenda – that women are reduced to victimhood, to their vulnerability, to their assumed peaceful nature – reflect those found in the TRC’s reporting. The Agenda has had the impact of informing the language relating to women and conflict, thus likely influencing constitutivities in related documentation.

Keenan argues that the law operates by “imposing a conceptual grid on space”.¹⁵⁹⁹ By viewing space through this grid, it becomes manageable and easier to regulate and understand. However, this grid is actually “a social, cultural and political technique that tells particular stories about people and that can function as a cloaked tool of violence.”¹⁶⁰⁰ This grid can be observed in the transitional justice context, by virtue of its organising women into distinct categories and thus limiting their access to spaces. As has been discussed in previous chapters, Keenan has described how spaces are shaped by who has previously occupied them, rendering those spaces more receptive to certain identities over others.¹⁶⁰¹ It has been previously argued that this can be seen in the transitional justice context, where processes remain “gendered to men’s advantage” and difficult for certain groups to access.¹⁶⁰² Here, it is further argued that the continued construction of women as victims of violence perpetuates such a constitutivity in future, with women’s other experiences of conflict perhaps less frequently reported.

7.4 - Conclusions

This chapter has ultimately argued that the woman subject emerging in the Liberian TRC’s reports is not a pre-existing woman but one constituted by the discursive, conceived space of the reports themselves. This chapter described discourses as “culturally constructed representations of reality rather than an objective account of

¹⁵⁹⁹ Keenan (n 112) 28. See also Ronen Shamir, “Suspended in Space: Bedouins under the Law of Israel” (1996) 30(2) *Law & Society Review* 231

¹⁶⁰⁰ *ibid*

¹⁶⁰¹ Keenan (n 112) 96

¹⁶⁰² Brown and Ní Aoláin (n 18) 135

reality”.¹⁶⁰³ Thus, transitional justice does not exist as one space but as many, and it is this multi-spatiality that is argued here to inform participation. Space constitutes the acceptable practices and courses of action available to actors, but can also act as an obstacle to other practices. Space not only permits certain actions but can proscribe others. In this way, subject and space are not only mutually constituting but, importantly for any discussion of participation, they can be limiting of one another. In this way, spaces themselves can be mutually constituted by the presence of subjects, and law can have an equally significant constitutive effect.

Following arguments that assumptions about the social world are “played out” through space, Cornwall has argued that categories presumed homogenous, such as “women”, exist only within the spaces that have been created to engage them in participatory practices, with these practices serving to constitute them as a “collective entity”.¹⁶⁰⁴ The same can be observed in the context of the Liberian TRC, where a category as diverse as “women” is reconstituted as a homogenous group which exists only within the participatory opportunities afforded to it by the TRC process. The TRC’s reports actually go further, aligning this newly created group with others, such as children, the elderly, and the otherwise vulnerable, creating a new category of person defined by their vulnerability to violence, their victimhood, and their ongoing marginalisation. For Cornwall, this phenomenon is important to recognise, as she argues that agencies view their attempts to engage groups in participation as “a way of engaging or enlisting pre-existing collectivities”, when in fact the engagement is the constitutive force which creates the group itself.¹⁶⁰⁵

The reports of the Liberian Truth and Reconciliation Commission acknowledge women’s historical marginalisation, both in Liberian society and in transitional justice processes the world over. In doing so, they attest to a conscious effort on the part of the process to include women in its operations, and to uncover their broad and multifaceted identities, experiences, and needs in order to secure to them the full range

¹⁶⁰³ Thorne (n 111) 472

¹⁶⁰⁴ Cornwall, “Making spaces, changing places” (n 71) 6

¹⁶⁰⁵ *ibid*

of human rights in the post-conflict context. However, even with this consciousness, the prominent portrayals of women in the reports were often limiting, essentialising, and homogenising, emphasising women’s victimhood, vulnerability, and passivity. These portrayals are not confined to the space of the TRC. Rather, their constitutivity was in production before the TRC process began, with similar portrayals found in the legal framework of the TRC, and in international discourses on women’s participation in post-conflict peace and justice processes. These constitutivities were also a product of choices made by actors in the TRC process, with these choices themselves a product of power relations among those actors. Thus, the woman subject articulated through the reporting of the Liberian TRC does not exist as an independent entity – she is inextricably a part of that space, just as space is a part of her.¹⁶⁰⁶ The discursive space of the reporting thus becomes a “process”¹⁶⁰⁷ through which this subject is “continuously dissolved and recreated in different configurations”.¹⁶⁰⁸ This continual constitutivity of the subject is not only found in the Liberian TRC’s reporting but extends beyond that, into the international law and policy which shapes and regulates transitional justice and women’s participation therein. In this way, there exists a mutually constituting and mutually reinforcing relationship between participation and portrayal across the various scales of law, whereby legal standards on participation envisage a specific woman subject, resulting in the reproduction of that subject in the discourses associated with the transitional justice process.

¹⁶⁰⁶ Keenan (n 112) 161

¹⁶⁰⁷ Philippopoulos-Mihalopoulos “And For Law” (n 47) 4

¹⁶⁰⁸ Foucault, *The Archaeology of Knowledge* (n 347) 126. See also Thorne (n 111) 473

8 – Conclusions

Transitional justice scholarship has clearly articulated women’s uneven or inadequate participation in transitional justice processes as a problem. Both policy and academic literature locate this problem in the gendered nature of transitional justice processes themselves, which tend towards an overwhelming focus on women’s experiences of victimhood. This thesis has investigated the link between the portrayal of women – whether as victims or otherwise – and their participation in transitional justice processes in order to ascertain the extent to which low participation and reductive portrayals were mutually reinforcing. This thesis thus addressed the question of “*what relationship exists between women’s portrayal in transitional justice processes and the modes of their participation?*” in an attempt uncover the circumstances, choices, and judgments which produce gendered processes.

The thesis adopted a spatial approach to analysis which considered individual transitional justice mechanisms and transitional justice generally as *spaces*. This method of analysis, termed “critical spatial discourse analysis”, locates its theoretical framework in the field of legal geography. Because legal geography understands law and society as woven together to produce space, legal geographical analysis involves teasing apart the spatial, legal, and social strands of a given research subject to understand how these elements interact. This untangling of the spatial, legal, and social strands of transitional justice reveals how the complex legal environment of the transition is mutually constitutive of the transitional space, and the actors who participate in that space. The legal geographical concepts of space, complexity, and constitutivity serve as tools in unpicking these spatial, legal, and social strands. The thesis has argued that this approach expands understandings of transitional justice mechanisms beyond perceiving them as neutral places which women struggle to enter, thus revealing how laws, actors, and places are in fact mutually constituting. Revealing how women are constituted as subjects of transitional justice processes further reveals how they act, and are able to act, within spaces of participation, uncovering the constitutive relationship between portrayal and participation.

In conducting this “critical spatial discourse analysis”, the thesis referred to the Liberian Truth and Reconciliation Commission as its case study. This method of analysis understands the law which governed the TRC as a form of discourse, and discourse itself as a constitutive force which conditions participation by constituting participants as legal subjects. Importantly, this analysis proposed that discourse constitutes *space* as well as subjects. In this way, the discursive practices which emerge through the reporting of the Liberian TRC establish a conceptual discursive space, with that space serving to constitute women as participants in the TRC as a legal process. Using a “critical spatial discourse analysis” therefore allows for an understanding of how the TRC’s discursive conditions constituted women, and subsequently their participation. In doing so, this thesis has emphasised its understanding of space as multidimensional. It used the concept of complexity to illustrate the multidimensional nature of both space and the law that constitutes it. It proposed that the Liberian TRC existed as a series of distinct and overlapping spaces, at once physical and imagined – perceived and lived. Importantly, it proposed that the TRC’s reporting, as a form of discourse, formed its own representation of space. The permeable nature of space and its boundaries means that this discursive space of the TRC existed inextricably from the spaces which surround it, defined by its complexities. Law, as it emerges through the reporting of the Liberian TRC, is similarly complex, with multiple laws existing in a multiscale, transitional environment.

If law is understood as a means by which subjects are connected to space, this complexity becomes very important. The construction of space conditions who is able to participate, since participants reciprocally shape the space through their participation. The complex nature of space and law impacts access to each, and so the inherent complexity of the space and law of the TRC ought to have produced a construction of the woman subject which is similarly complex. However, this complexity was found not to be reflected in the TRC’s construction of women as a category of participant. The analysis of the reports of the TRC found that they acknowledge women’s historical marginalisation, and that they attest to a conscious

effort to include women in the TRC's operations, and to uncover their broad and multifaceted identities, experiences, and needs. However, the actual construction of a woman subject across the reporting is far more limited, with women constituted as a homogenous group – singular in their experiences and views. Overwhelmingly, the reports emphasised women's victimhood, vulnerability, and passivity, and understood gender in limited terms and as synonymous with women. This homogenised construction of the TRC's woman subject conflicts with the complexity of space and law that these reports establish. As such, the reports establish a discourse of complex and multiple spaces and laws alongside a discourse of a singular woman subject; a discourse that seeks to empower and include women in conflict with another which attributes to them reduced agency and capacity. Thus, the reports open a constitutivity gap, whereby women's identities and experiences are only partially captured by their portrayal, resulting in fragmented possibilities for participation.

This constitutivity did not arise spontaneously; rather, it found its roots in the documentary heritage of the TRC. Similar portrayals and constructions of the woman subject can be found in both the TRC's own legal framework and in broader international discourses on women's participation in post-conflict peace and justice processes. In particular, the construction of the woman subject in the Women, Peace and Security Agenda, and the shallow possibilities for participation which began at the international law scale and were translated to the scale of the TRC set discursive conditions for women and their participation. Such constructions were limited by the boundaries set out at the deeper, structural level, which produced a "historically given code" for women's portrayal and their participation.¹⁶⁰⁹ The inability to transgress this code, argues Koskenniemi, is itself a product of "*socialization*" whereby language determines belief, rather than vice versa.¹⁶¹⁰ Indeed, as Delaney has argued, things and relationships are not constituted by "law" but by "social actors,"¹⁶¹¹ whose ability to exercise constitutive choices is constrained by this "historically given code" or

¹⁶⁰⁹ Koskenniemi, *From Apology to Utopia* (n 397) 11

¹⁶¹⁰ *ibid*

¹⁶¹¹ Delaney, "Legal Geography I" (n 366) 98

“socialization” process.¹⁶¹² Thus, the constitutivity of women, as social actors, and of their participation in the TRC, as a form of social practice, are not constituted solely by law, but also by the choices of social actors at various stages throughout the process, with those choices limited by the discursive conditions of the process. This is particularly important in the transitional justice context, which involves multiple and complex relationships with a wide variety of actors – international and non-international, state and non-state – who become involved at varying stages of the conflict and to varying degrees, all with their own vested interests in the outcome.¹⁶¹³ This notion of legal constitution by actors is important in terms of women’s participation in transitional justice processes. This sees women’s lack of participation not as some unavoidable occurrence that happens in the wake of an unseen force called “law,” but rather as a choice made by actors who are empowered by their own legal constitution in a way that women in conflict scenarios often are not. In a similar way, the modes of participation available to women will be similarly constituted by the space of participation and by choices made by other actors able to access that space.

In the face of such critique, it might reasonably be asked “where do we go from here?”. This thesis suggests that its findings present an opportunity for further research in this area. This thesis was purposeful in its intent to pursue a discursive methodological approach. It made clear that conducting a critical spatial discourse analysis was a novel approach to research in this field, with the potential to reveal the relationship between women’s participation and their portrayal in transitional justice contexts. Applying this method to an analysis of the Liberian case study provided a further unique contribution to knowledge. In its analysis, this thesis has intended to contribute to an ongoing challenge to the “hegemonic reach of legal liberalism” that was described in the first chapter.¹⁶¹⁴ But this thesis alone cannot represent a holistic challenge to that hegemony. While the thesis has proposed that women’s opportunities for participation are presupposed by their limited constitutivity in law and in the discourses associated with transitional justice processes, these findings represent the beginning of this “story”. It

¹⁶¹² Koskenniemi, *From Apology to Utopia* (n 397) 11

¹⁶¹³ Ní Aoláin, “Women, Security and the Patriarchy” (n 155) 1058-9

¹⁶¹⁴ Ní Aoláin “Advancing Feminist Positioning” (n 50) 206

is proposed here that, with appropriate funding and further training, ethnographic research in this field could continue this challenge, while also developing the approach and the findings of this thesis.

Furthermore, in considering directions for future research, this thesis argues in favour of a greater consciousness of the constitutive power of law as a form of discourse, and of transitional justice processes as forms of space. International human rights law has been argued throughout this thesis to be neither as universal nor neutral in nature as sometimes presented, but perhaps a way forward is an acknowledgement of that fact. Discussing the formalism of international law, Koskenniemi proposes that formalism “can no longer be blind to its own politics”.¹⁶¹⁵ He suggests that, rather than considering international law as neutral standards universally applied, “it must enter the political terrain with a programme of openness and inclusiveness” as a “utopian commitment” which accounts for the subjectivity of international politics.¹⁶¹⁶ This thesis concludes with a similar argument. If international law – and transitional justice processes, by extension – cannot be said to be universal in nature, then this need not mean that these entities ought to be rejected entirely. It is not necessary to “surrender” the “field of international law”.¹⁶¹⁷ Rather, these concepts ought to be approached with an understanding of their history, of their politics, and of the culture in which they are being applied.¹⁶¹⁸ It must be acknowledged that transitional justice processes do not exist in a vacuum and are not applied on a blank, apolitical terrain. While the Liberian TRC’s reports demonstrate a consciousness of the historical pitfalls associated with ensuring women’s participation in transitional justice processes, and of addressing women’s experiences through such processes, they are nevertheless argued here to have been unable to countenance their own capacity for perpetuating these problems through their discourse. The approach to transitional justice suggested here therefore

¹⁶¹⁵ Martti Koskenniemi, “‘The Lady Doth Protest Too Much’ Kosovo, and the Turn to Ethics in International Law” (2002) 65(2) *Modern Law Review* 159, 174

¹⁶¹⁶ *ibid*

¹⁶¹⁷ Fagbongbe (n 191) 409

¹⁶¹⁸ Jane Holder and Carolyn Harrison, “Connecting Law and Geography” in Jane Holder and Carolyn Harrison (eds), *Law and Geography* (Oxford University Press 2003) 4

requires more than a self-consciousness with regards to the greater social, political, and historical context of the space; it requires an understanding of the process's position within that space: an understanding of its "spatiality".¹⁶¹⁹ Furthermore, it requires an understanding of how that position serves to shape the space itself. Transitional justice requires an approach which understands that transitional justice processes will mutually constitute the spaces, laws, and subjects that they encounter.

This thesis has critiqued the constitutivity of women through the reports of the Liberian TRC. However, in doing so, the aim of this thesis is not to deny that women experience victimhood during conflict; that conflict renders them vulnerable; that they are capable of extraordinary contributions to peace; or that their gendered concerns require specific attention. Rather, this thesis has aimed to interrogate these identities and how they are constructed by law and by space. Recognising women's experiences of violence, harm, abuse, and violation without reductively constructing them as victims is a "perennial question facing feminists".¹⁶²⁰ It has been argued that "liberal identity politics" are focused on facilitating particular groups' "inclusion within a system rather than systemic change."¹⁶²¹ This is reflected in mainstream feminist critiques of transitional justice and the approaches of states and the United Nations in improving women's participation in transitional justice processes. These efforts often aim to facilitate inclusion in existing processes, rather than eradicating the processes which facilitate women's continued exclusion. As such, Rimmer has argued that women in the transitional justice context "need to be offered a script which does not cast them only as victims of sexual violence."¹⁶²²

While the translation of discursive conditions from the international scale of law to the local has resulted in the constitutivities outlined in this thesis, that does not make the dominance of such portrayals inevitable. Legal rules, by their nature, are "open-

¹⁶¹⁹ Keenan (n 112) 40

¹⁶²⁰ Harris Rimmer (n 1223) 143

¹⁶²¹ Keenan (n 112) 18. See also Wendy Brown, "Wounded Attachments" (1993) 21(3) *Political Theory* 390, 398

¹⁶²² Harris Rimmer (n 1223) 143

ended”,¹⁶²³ and as such there is nothing to suggest that they can only be imagined in the way that they are currently. These rules are also defined by compromise, reflecting the conflicting objectives of the many states who came together to agree them.¹⁶²⁴ Having been agreed in this way gives rules a “validity” beyond the legal status of their legislation: that states agree rules of international law and each sign up to abide by those rules implies that states “give up their particularity in order to participate in what is general”.¹⁶²⁵ States are argued to put aside their subjective self-interest in the name of creating generalised standards which can be applied across numerous local cultural contexts. In the Liberian context, the application of such generalised standards was argued to have contributed to limited constitutivities of women. However, such an outcome is not to be taken for granted.

As Björkdahl and Buckley-Zistel have argued: “the local is not merely the victim of the global but always also has the potential for agency – that is, to contribute to the shaping of the global”.¹⁶²⁶ The Liberian TRC, while shaped by the discourse of its reporting, and those discourses associated with its documentary heritage, perhaps still offered an opportunity to conceive of transitional justice and women’s involvement therein in a different way. Perhaps through consideration of “alternative feminist practices articulated by peripheral subjects” and “appreciation of the lessons to be learnt” from the past, this relegation of peripheral subjects can be overcome.¹⁶²⁷ Indeed, Cornwall proposes, following Foucault, that the “strategic reversibility” of power relations means that no constitutivity is ever fixed: they always provide “possibilities for subversion, appropriation and reconstitution”.¹⁶²⁸ Law may draw boundaries around the woman subject of transitional justice, but it is always possible to reject “the boundaries that we are all tempted to erect for reasons of solidarity, safety, simplicity and loyalty”.¹⁶²⁹ Thus, an alternative constitutivity could allow for a “multidimensional

¹⁶²³ Koskeniemi “What is International Law for?” (n 8) 37

¹⁶²⁴ *ibid*

¹⁶²⁵ *ibid* 40

¹⁶²⁶ Björkdahl and Buckley-Zistel, “Spatializing Peace and Conflict” (n 340) 8

¹⁶²⁷ Heathcote, “Participation, Gender and Security” (n 1415) 50

¹⁶²⁸ Cornwall, “Spaces for transformation?” (n 310) 81, citing Foucault, “Governmentality” (n 651)

¹⁶²⁹ Otto, “The Gastronomics of TWAIL’s Feminist Flavourings” (n 194) 351

understanding of subjectivity” which accounts for women’s multiple and complex experiences,¹⁶³⁰ allowing women the opportunity to articulate these experiences, to articulate their needs, and to have these needs addressed in the transitional justice context. It could provide not for a singular, universal woman, but for a “universal rich with all that is particular”.¹⁶³¹

¹⁶³⁰ Heathcote, “Participation, Gender and Security” (n 1415) 49

¹⁶³¹ Aimé Césaire, *Discurso sobre el colonialismo* (Akal 2006) 84, cited in Grosfoguel (n 86) 95

Bibliography

Cases

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136

Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226

Mi'kmaq People v Canada Communication No 205/1986 (3 December 1991) UN Doc CCPR/C/43/D/205/1986

Prosecutor v Akayesu, Case No ICTR-96-4-T (2 September 1998)

Prosecutor v Tadic, Case No IT-94-1-T (7 May 1997)

Statutes

Act to Establish the Truth and Reconciliation Commission of 12 May 2005 (National Transitional Legislative Assembly of Liberia)

Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the political parties (Accra, 18 August 2003), available at UN Doc S/2003/850 (“Accra Agreement”)

Revised Rules and Regulations Governing the Hinterland of Liberia (7 January 2001) (“Hinterland Rules and Regulations”)

International Treaties and Conventions

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 ("African Charter")

Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI ("UN Charter")

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT)

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW)

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC)

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949) 75 UNTS 31 ("First Geneva Convention")

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (12 August 1949) 75 UNTS 85 ("Second Geneva Convention")

Geneva Convention Relative to the Treatment of Prisoners of War (12 August 1949) 75 UNTS 135 ("Third Geneva Convention")

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949) 75 UNTS 287 ("Fourth Geneva Convention")

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 (ICESCR)

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (8 June 1977) 1125 UNTS 609 (“Protocol II”)

Rome Statute of the International Criminal Court (17 July 1998) 2187 UNTS 90 (“Rome Statute”)

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

United Nations Security Council Resolutions

UNSCR 1325 (31 October 2000) UN Doc S/RES/1325

UNSCR 1820 (19 June 2008) UN Doc S/RES/1820

UNSCR 1888 (30 September 2009) UN Doc S/RES/1888

UNSCR 1889 (5 October 2009) UN Doc S/RES/1889

UNSCR 1960 (16 December 2010) UN Doc S/RES/1960

UNSCR 2106 (24 June 2013) UN Doc S/RES/2106

UNSCR 2122 (18 October 2013) UN Doc S/RES/2122

UNSCR 2242 (13 October 2015) UN Doc S/RES/2242

UNSCR 2467 (23 April 2019) UN Doc S/RES/2467

UNSCR 2493 (29 October 2019) UN Doc S/RES/2493

Other UN Sources

Castillo Diaz P and Tordjman S, “Women’s Participation in Peace Negotiations: Connections between Presence and Influence” (2nd ed UN Women 2012) <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/10/WPSsourcebook-03A-WomenPeaceNegotiations-en.pdf>>

CEDAW Committee, “General recommendation No.19: Violence against women” (11th session, 1992)

— — “General Recommendation No.23: Political and Public Life” (1997) UN Doc A/52/38

— — “Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined initial, second, third, fourth, fifth and sixth periodic reports of States parties – Liberia” (13 October 2008) UN Doc CEDAW/C/LBR/6

— — “Concluding observations of the Committee on the Elimination of Discrimination against Women” (7 August 2009) UN Doc CEDAW/C/LBR/CO/6

— — “Concluding observations on the combined seventh and eighth periodic reports of Liberia” (24 November 2015) UN Doc CEDAW/C/LBR/CO/7-8

— — “General recommendation No.35 on gender-based violence against women, updating general recommendation No.19” (26 July 2017) UN Doc CEDAW/C/GC/35

Liberian Delegation to the CEDAW Committee, Address of the Liberian Delegation to the Sixty-Second Session of CEDAW (CEDAW Committee, 29th November 2015) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=1KIk9bb9KdSzAa/6qWzHwwtuzgZqWMI6euH3dBCx5EeqDpkY+s94lcAWG EK+Q/Xd2enjrnIBbxvhaZnqFXisYA==>

Palmisano L and Momodu S, “UNHCR completes repatriation of 155,000 Liberians” (UN Refugee Agency, 4 January 2013) <<https://www.unhcr.org/uk/news/makingdifference/2013/1/50e6af089/unhcr-completes-repatriation-155000-liberians.html>>

Fourth World Conference on Women, “Beijing Declaration and Platform for Action” (1995) UN Doc A/CONF.177/20

United Nations, “Windhoek Declaration on the tenth anniversary of the United Nations Transition Assistance Group” and “Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations” (“Letter dated 12 July 2000 from the Permanent Representative of Namibia to the United Nations addressed to the Secretary-General”) (14 July 2000) UN Doc A/55/138-S/2000/693

— — “Transitional Justice and Economic, Social and Cultural Rights” (2014) UN Doc HR/PUB/13/5

United Nations Commission on Human Rights, “Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity” (8 February 2005) UN Doc E/CN.4/200/102/Add.1 (“Joinet/Orentlicher Principles”)

United Nations Department of Public Information, “Security Council Adopts Text Requesting Detailed Information on Suspected Perpetrators of Sexual Violence during Armed Conflict” (Press Release No SC/10122, United Nations, 16 December 2010)

United Nations General Assembly, “Resolution 37/63: Declaration on the participation of women in promoting international peace and cooperation” (3 December 1982)

— — *Vienna Declaration and Programme of Action* (25 June 1993) UN Doc A/CONF.157/23, 1993 I

— — “Declaration on the Elimination of Violence against Women” (20 December 1993) UN Doc A/RES/48/104

United Nations Human Rights Committee, “CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)” (29 March 2000) UN Doc CCPR/C/21/Rev.1/Add.10

United Nations Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights on the progress made in the situation of human rights in Liberia and activities undertaken in the country” (27 August 2009) UN Doc A/HRC/12/42

— — “National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Liberia” (23 August 2010) UN Doc A/HRC/WG.6/9/LBR/1

— — “Report of the Human Rights Council on its sixteenth session” (14 November 2011) UN Doc A/HRC/16/2

— — “Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Grieff” (28 August 2013) UN Doc A/HRC/24/42

— — “Summary prepared by the Office of the United Nations Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Liberia” (9 February 2015) UN Doc A/HRC/WG.6/22/LBR/3

— — “Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them: Report of the Office of the United Nations High Commissioner for Human Rights” (23 July 2015) UN Doc A/HRC/30/26

— — “Draft guidelines for States on the effective implementation of the right to participate in public affairs: Report of the Office of the United Nations High Commissioner for Human Rights” (20 July 2018) UN Doc A/HRC/39/28

— — “Compilation on Liberia: Report of the Office of the United Nations High Commissioner for Human Rights” (6 March 2020) UN Doc A/HRC/WG.6/36/LBR/2

— — “Good practices and challenges faced by States in using the guidelines on the effective implementation of the right to participate in public affairs – Report of the Office of United Nations High Commissioner for Human Rights” (2 February 2022) UN Doc A/HRC/49/42

United Nations Mission in Liberia, “An Assessment of Human Rights Issues Emanating from Traditional Practices in Liberia” (OHCHR 2015) <<https://www.ohchr.org/en/documents/country-reports/assessment-human-rights-issues-emanating-traditional-practices-liberia>>

United Nations Secretary-General, “Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice” (2010) <<https://digitallibrary.un.org/record/682111?ln=en&v=pdf>>

— — “Guidance Note of the Secretary-General: Transitional Justice A Strategic Tool for People, Prevention and Peace” (2023) <https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf>

United Nations Security Council, “Report of the Secretary-General on women, peace and security” (16 October 2002) UN Doc S/2002/1154

— — “The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General” (23 August 2004) UN Doc S/2004/616

— — “Women and peace and security: Report of the Secretary-General” (13 October 2004) UN Doc S/2004/814

United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, “The gender perspective in transitional justice processes” (17 July 2020) UN Doc A/75/174

Valji N, “Gender and Transitional Justice Programming: A Review of Peru, Sierra Leone and Rwanda” (United Nations Development Fund for Women 2010) <<https://www.un.org/ruleoflaw/files/Guidance%20note%20on%20Gender%20&%20Transitional%20Justice.pdf>>

Books, Book Chapters, and Journal Articles

Abramowitz S and Moran MH, “International Human Rights, Gender-Based Violence, and Local Discourses of Abuse in Postconflict Liberia: A Problem of ‘Culture’?” (2012) 55(2) African Studies Review 119

Ahikire J, “African feminism in context: Reflections on the legitimization battles, victories and reversals” (2014) 19(7) Feminist Africa 7

Alcoff L, “The Problem of Speaking for Others” (1991) 20 Cultural Critique 5

Arnstein SR, “A ladder of citizen participation” (2019) 85(1) Journal of the American Planning Association 24

Arthur P, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice” (2009) 31(2) Human Rights Quarterly 321

Awuh HE, “Geography of Participation: Deepening the Understanding of the Participation Process in Time and Space” (2022) 113(3) Tijdschrift voor Economische en Sociale Geografie 273

Bartel R, Graham N, Jackson S, Prior JH, Robinson DF, Sherval M and Williams S, “Legal Geography: An Australian Perspective” (2013) 51(4) Geographical Research 339

Bartlett KT, "Feminist Legal Methods" (1990) 103(4) Harvard Law Review 829

Bawa S & Adeniyi Ogunyankin G, "(Un)African women: identity, class and moral geographies in postcolonial times" (2018) 16(4) African Identities 444

Bell C, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'" (2009) 3 International Journal of Transitional Justice 5

Bell C and McNicholl K, "Principled pragmatism and the 'Inclusion Project': Implementing a gender perspective in peace agreements" (2019) 9(1) *feminists@law* 1

Bell C and O'Rourke C, "Does Feminism Need a Theory of Transitional Justice? An Introductory Essay" (2007) 1 International Journal of Transitional Justice 23

Bennett L and Layard A, "Legal Geography: Becoming Spatial Detectives" (2015) 9(7) *Geography Compass* 406

Bewicke AE, "Beyond Borders and Binaries: A Feminist Look at Preventing Violence and Achieving Peace in an Era of Mass Migration" in Shekhawat S (ed), *Gender, Conflict, Peace, and UNSC Resolution 1325* (Lexington Books 2018)

Birkenkötter H, "International law as a common language across spheres of authority?" (2020) 9(2) *Global Constitutionalism* 318

Björkdahl A and Buckley-Zistel S, "Spatializing Peace and Conflict: An Introduction" in Björkdahl A and Buckley-Zistel S (eds), *Spatializing Peace and Conflict: Mapping the Production of Places, Sites and Scales of Violence* (Palgrave Macmillan 2016)

Blandy S and Sibley D, "Law, Boundaries and the Production of Space" (2010) 19(3) *Social & Legal Studies* 275

Blank Y and Rosen-Zvi I, "The Spatial Turn in Legal Theory" (2010) 10(1) *Hagar* 37

- Blomley N, “From ‘What?’ to ‘So What?’: Law and Geography in Retrospect” in Holder J and Harrison C (eds), *Law and Geography* (Oxford University Press 2003)
- Blomley NK and Bakan JC, “Spacing Out: Towards a Critical Geography of Law” (1992) 30(3) *Osgoode Hall Law Journal* 661
- Bode I, “Women or Leaders? Practices of Narrating the United Nations as a Gendered Institution” (2020) 22 *International Studies Review* 347
- Boyd SB and Parkes D, “Looking Back, Looking Forward: Feminist Legal Scholarship in SLS” (2017) 26(6) *Social and Legal Studies* 735
- Braverman I, Blomley N, Delaney D, and Kedar A “Introduction: Expanding the Spaces of Law” in Braverman I, Blomley N, Delaney D, and Kedar A (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014)
- Brickell K and Cuomo D, “Feminist geolegality” (2019) 43(1) *Progress in Human Geography* 104
- Brown K and Ní Aoláin F, “Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change” (2015) 9(1) *International Journal of Transitional Justice* 127
- Brown W, “Wounded Attachments” (1993) 21(3) *Political Theory* 390
- Bruey VF, “Redefining Women’s Roles in International and Regional Law: The Case of Pre- and Post-War Peacebuilding in Liberia” in Shekhawat S (ed), *Gender, Conflict, Peace, and UNSC Resolution 1325* (Lexington Books 2018)
- Bueno-Hansen P, “Decolonial Feminism, Gender, and Transitional Justice in Latin America” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)
- Butler J, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1999)

Cahn N, “Introduction: Mapping the Terrain: Gender and Conflict in Contemporary Perspective” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)

Campbell C and Turner C, “Utopia and the doubters: truth, transition and the law” (2008) 28(3) *Legal Studies* 374

Carmalt JC, “Critical Geographies of Human Rights and the Spatial Dimensions of International Law Violations in Rakhine State, Myanmar” (2019) 109(6) *Annals of the American Association of Geographers* 1829

Carpenter RC, *Innocent Women and Children: Gender, Norms and the Protection of Civilians* (Ashgate 2007)

Césaire A, *Discurso sobre el colonialismo* (Akal 2006)

Charlesworth H, “International Law: A Discipline of Crisis” (2002) 65(3) *Modern Law Review* 159

— — “Are Women Peaceful? Reflections on the Role of Women in Peace-Building” (2008) 16(3) *Feminist Legal Studies* 347

— — “Two Steps Forward, One Step Back?: The Field of Women’s Human Rights” (2014) 6 *European Human Rights Law Review* 560

Chambers R, *Rural development: Putting the last first* (Longman 1983)

— — “Participatory rural appraisal (PRA): Challenges, potentials and paradigm” (1994) 22(10) *World Development* 1437

Charlesworth H, Chinkin C, and Wright S, “Feminist Approaches to International Law” (1991) 85 *American Journal of International Law* 613

Chimni BS, “The Past, Present and Future of International Law: A Critical Third World Approach” (2007) 8 *Melbourne Journal of International Law* 499

- Chinkin C, “Gender, Human Rights, and Peace Agreements” (2003) 18 (3) *Ohio State Journal on Dispute Resolution* 867
- Chinkin C and Kaldor M, “Gender and New Wars,” (2013) 67(1) *Journal of International Affairs* 167
- Chojnacki S and Engels B, “Overcoming the Material/Social Divide: Conflict Studies from the Perspective of Spatial Theory” in Björkdahl A and Buckley-Zistel S (eds), *Spatializing Peace and Conflict: Mapping the Production of Places, Sites and Scales of Violence* (Palgrave Macmillan 2016)
- Christens B and Speer PW, “Tyranny/Transformation: Power and Paradox in Participatory Development” (2006) 7(2) *Forum: Qualitative Social Research*, Article 22
- Cliffe S and Manning N, “Practical Approaches to Building State Institutions” in Call CT and Wyeth V (eds), *Building States to Build Peace* (Lynne Rienner 2008)
- Cockburn C, *The Space between Us: Negotiating Gender and National Identities in Conflict* (Zed Books 1998)
- Cohn C, Kinsella H & Gibbings S, “Women, Peace and Security: Resolution 1325” (2004) 6(1) *International Feminist Journal of Politics* 130
- Cole CE, “Beyond ‘Being There’: Space and Mobility in Ethnographic Peace and Transitional Justice Research” in Millar G (ed), *Ethnographic Peace Research: Approaches and Tensions* (Palgrave Macmillan 2018)
- Conaghan J, “Reassessing the Feminist Theoretical Project in Law” (2000) 27(3) *Journal of Law and Society* 351
- Cooke B and Kothari U, “The Case for Participation as Tyranny” in Cooke B and Kothari U (eds), *Participation: The New Tyranny?* (Zed Books 2001)
- Cornwall A, “Locating citizen participation” (2002) 33(2) *IDS Bulletin* i

— — “Making spaces, changing places: situating participation in development” (Institute of Development Studies Working Paper 170, October 2002)

— — “Spaces for transformation? reflections on issues of power and difference in participation in development” in Hickey S and Mohan G (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004)

— — “Unpacking ‘Participation’: Models, Meanings and Practices” (2008) 43(3) *Community Development Journal* 269

Cover RM, “Foreword: Nomos and Narrative” (1983) 97 *Harvard Law Review* 4

Croft S and Beresford P, “The Politics of Participation” (1992) 12(35) *Critical Social Policy* 20

Cuomo D and Brickell K, “Feminist legal geographies” (2019) 51(5) *Environment and Planning A: Economy and Space* 1043

Davies M, “Unity and Diversity in Feminist Legal Theory” (2007) 2(4) *Philosophy Compass* 650

— — *Asking the Law Question* (Law Books Co. Thomas Reuters Limited 2017)

— — *Law Unlimited: Materialism, Pluralism, and Legal Theory* (Routledge 2017)

Davis L, “ISIL, the Syrian Conflict, Sexual Violence, and the Way Forward: Syrian Women’s Inclusion in the Peace Processes” (2016) 48 *New York University Journal of International Law & Politics* 1157

de Brouwer AM and Ka Hon Chu S (eds), *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (Douglas & McIntyre 2009)

de Grieff P, “The Future of the Past: Reflections on the Present State and Prospects of Transitional Justice” (2020) 14(2) *International Journal of Transitional Justice* 251

Delaney D, “Beyond the Word: Law as a Thing of this World” in Holder J and Harrison C (eds), *Law and Geography* (Oxford University Press 2003)

— — *The Spatial, the Legal, and the Pragmatics of World-Making: Nomospheric Investigations* (GlassHouse Books 2010)

— — “At Work in the Nomosphere” in Braverman I, Blomley N, Delaney D, and Kedar A (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014)

— — “Legal Geography I: Constitutivities, complexities and contingencies” (2015) 39(1) *Progress in Human Geography* 96

— — “Legal geography III: New worlds, new convergences” (2017) 41(5) *Progress in Human Geography* 667

De Ycaza C, “A Search for Truth: A Critical Analysis of the Liberian Truth and Reconciliation Commission” (2013) 14(3) *Human Rights Review* 189

Dhizaala JT, “Transitional Justice in Liberia: The Interface Between Civil Society Organisations and the Liberian Truth and Reconciliation Commission” in Brankovic J and van der Merwe H (eds), *Advocating Transitional Justice in Africa: The Role of Civil Society* (Springer 2018)

Divon SA and Bøås M, “Negotiating Justice: Legal Pluralism and Gender-Based Violence in Liberia” (2017) 38(6) *Third World Quarterly* 1381

Dixon P, “Transitional justice and development” in Lawther C and Moffett L (eds), *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2023) 360

Doty RL, *Imperial Encounters: The Politics of Representation in North-South Relations* (University of Minnesota Press 1996)

Dowd C and Raleigh C, “Mapping conflict across Liberia and Sierra Leone” (2012) 23 *Accord: an international review of peace initiatives* 13

Drew E, “The UN Peacebuilding Commission and Liberia’s transition: A conversation with Ambassador Prince Zeid of Jordan” (2012) 23 *Accord: an international review of peacebuilding initiatives* 19

Durojaye E and Oluduro O, “The African Commission on Human and People’s Rights and the woman question” (2016) 24(3) *Feminist Legal Studies* 315

El-Bushra J, “Transforming Conflict: Some Thoughts on a Gendered Understanding of Conflict Processes” in Jacobs S, Jacobson R, and Marchbank J (eds), *States of Conflict, Gender, Violence and Resistance* (Zed Books 2000)

— — “How Should We Explain the Recurrence of Violent Conflict, and What Might Gender Have to Do with It?” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)

Engle K, “The Grip of Sexual Violence: Reading UN Security Council Resolutions on Human Security” in Heathcote G and Otto D (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave Macmillan 2014)

— — “Anti-Impunity and the Turn to Criminal Law in Human Rights” (2015) 100 *Cornell Law Review* 1069

— — “A Genealogy of the Centrality of Sexual Violence to Gender and Conflict” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)

Enloe C, *The Curious Feminist: Searching for Women in a New Age of Empire* (University of California Press 2004)

Fagbongbe M, “The Future of Women’s Rights from a TWAIL Perspective” (2008) 10 *International Community Law Review* 401

Fals-Borda O and Rahman M, *Action and Knowledge: Breaking the Monopoly with Participatory Action Research* (Apex Press 1991)

- Farrington J and Bebbington A, with Wellard K and Lewis DJ, *Reluctant Partners: Non-governmental Organisations, the State and Sustainable Agricultural Development* (Routledge 1993)
- Fatima S, Dotson K, Seodu Herr R, Khader SJ, and Nyanzi S, “Contested Terrains of *Women of Color* and *Third World Women*” (2017) 32(3) *Hypatia* 731
- Ferstman C, “International Criminal Law and Victims’ Rights” in Schabas W and Bernaz N (eds), *Routledge Handbook of International Criminal Law* (Routledge 2010)
- Firchow P, “Must Our Communities Bleed to Receive Social Services? Development Projects and Collective Reparations Schemes In Colombia” (2013) 8(3) *Journal of Peacebuilding and Development* 50
- Fletcher LE and Weinstein HM, “Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation” (2002) 24(3) *Human Rights Quarterly* 573
- Foucault M, *The Archaeology of Knowledge and the Discourse on Language* (Pantheon Books 1972)
- — *Discipline and Punish: The Birth of the Prison* (Vintage Books 1977)
- — *The History of Sexuality, Volume 1: An Introduction* (Pantheon Books 1978)
- — “Governmentality” in Burchell G, Gordon C, and Miller P (eds), *The Foucault Effect: Studies in Governmentality* (University of Chicago Press 1991)
- Fox GH, “The Right to Political Participation in International Law” (1992) 17 *Yale Journal of International Law* 539
- — “The Right to Political Participation in International Law” in Fox GH and Roth BR (eds), *Democratic Governance and International Law* (Cambridge University Press 2000)
- Fukuyama F, “The End of History?” (1989) (16) *National Interest* 3, 4

- García-Del Moral P, “Femicidio: TWAIL in Action” (2016) 110 AJIL unbound 31
- Gardam J, “The Silences in the Rules That Regulate Women during Times of Armed Conflict” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)
- Gardam J and Jarvis M, *Women, Armed Conflict and International Law*, (Kluwer Law International 2001)
- Gaventa J, “Towards participatory governance: assessing the transformative possibilities” in Hickey S and Mohan G (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004)
- Gberie L, “Briefing: Truth and justice on trial in Liberia” (2008) 107(428) African Affairs 455
- Gbowee L, *Mighty Be Our Powers: A Memoir* (Beast Books 2011)
- Gibbins SL, “No Angry Women at the United Nations: Political Dreams and the Cultural Politics of United Nations Security Council Resolution 1325” (2011) 13(4) International Feminist Journal of Politics 522
- Gillespie J, “A legal geography of property, tenure, exclusion and rights in Cambodia: Exposing an incongruous property narrative for non-Western settings” (2016) 54(3) Geographical Research 256
- Glimmerveen L, Ybema S and Nies H, “Who Participates in Public Participation? The Exclusionary Effects of Inclusionary Efforts” (2022) 54(4) Administration and Society 543
- Glucksam N, “I Fear, Therefore I Am: Victimhood and the Struggle for Ontological Security in the Liberia Truth Commission” (2018) 20(1) Civil Wars 89

Goetz AM and Jenkins R, "Participation and Protection: Security Council Dynamics, Bureaucratic Politics, and the Evolution of the Women, Peace, and Security Agenda" in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)

Golder B, "Beyond redemption? Problematising the critique of human rights in contemporary international legal thought" (2014) 2(1) *London Review of International Law* 77

Gorman CS, "Feminist legal archeology, domestic violence and the raced-gendered juridical boundaries of U.S. asylum law" (2019) 51(5) *Environment and Planning A: Economy and Space* 1050

Gready P and Robins S, "From Transitional to Transformative Justice: A New Agenda for Practice" (2014) 8 *International Journal of Transitional Justice* 339

Grewal I, *Transnational America: Feminisms, Diasporas, Neoliberalisms* (Duke University Press 2005)

Griffiths J, "What is legal pluralism?" (1986) 18(24) *Journal of Legal Pluralism and Unofficial Law* 1

Grosfoguel R, "Decolonizing Western Uni-versalisms: Decolonial Pluri-versalism from Aimé Césaire to the Zapatistas" (2012) 1(3) *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World* 88

Grosz EA, "Feminist Theory and the Challenge to Knowledges" (1987) 10(5) *Women's Studies International Forum* 475

Grover L, "Transitional Justice, International Law and the United Nations" (2019) 88(3) *Nordic Journal of International Law* 359

Harding SG, *The Science Question in Feminism* (Open University Press 1986)

Harris AP, “Race and Essentialism in Feminist Legal Theory” (1990) 42(3) *Stanford Law Review* 581

Harris Rimmer S, “Sexing the Subject of Transitional Justice” (2010) 32(1) *Australian Feminist Law Journal* 123

Harrowell E, “Towards a spatialised understanding of reconciliation” (2018) 50(2) *Area* 240

Heathcote G, “Participation, Gender and Security” in Heathcote G and Otto D (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave Macmillan 2014)

Henshaw AL, “Why Women Rebel: Greed, Grievance, and Women in Armed Rebel Groups” (2016) 1(3) *Journal of Global Security Studies* 204

Hernández-Truyol BE, “Las Olvidadas – Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law” (1998) 1 *Journal of Gender, Race and Justice* 353

Hickey S and Mohan G (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004)

— — “Towards participation as transformation: critical themes and challenges” in Hickey S and Mohan G (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004)

Hildyard N, Hegde P, Wolvekamp P and Reddy S, “Pluralism, Participation and Power: Joint Forest Management in India” in Cooke B and Kothari U (eds), *Participation: The New Tyranny?* (Zed Books 2001)

Hilkovitz A, “Beyond Sex Strikes: Women’s Movements, Peace Building, and Negotiation in *Lysistrata* and *Pray the Devil Back to Hell*” 2014 *Journal for the Study of Peace and Conflict* 124

Höglund K, “Testimony Under Threat: Women’s Voices and the Pursuit of Justice in Post-War Sri Lanka,” (2019) 20 *Human Rights Review* 361

Holder J and Harrison C, “Connecting Law and Geography” in Holder J and Harrison C (eds), *Law and Geography* (Oxford University Press 2003)

Hourmat M, “Victim-Perpetrator Dichotomy in Transitional Justice: The Case of Post-Genocide Rwanda” (2016) 4(1) *Narrative and Conflict: Explorations in Theory and Practice* 43

Inman D and Magadju PM, “Prosecuting international crimes in the Democratic Republic of the Congo: Using victim participation as a tool to enhance the rule of law and to tackle impunity” (2018) 18(1) *African Human Rights Law Journal* 293

Jarpa Dawuni J, “Matri-legal feminism: an African feminist response to international law” in Harris Rimmer S and Ogg K (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing Limited 2019)

Jeffrey A, “The political geographies of transitional justice” (2011) 36(3) *Transactions of the Institute of British Geographers* 344

— — “Legal geography 1: Court materiality” (2019) 43(3) *Progress in Human Geography* 565

— — *The Edge of Law: Legal Geographies of a War Crimes Court* (Cambridge University Press 2019)

Jones A, “Gendercide and Genocide” (2000) 2(2) *Journal of Genocide Research* 185

Kapur R, “The Tragedy of Victimization Rhetoric: Resurrecting the ‘Native’ Subject in International/Post-Colonial Feminist Legal Politics” (2002) 15 *Harvard Human Rights Journal* 1

— — *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2018)

— — “‘The First Feminist War in All of History’: Epistemic Shifts and Relinquishing the Mission to Rescue the ‘Other Woman’” (2022) 116 *AJIL unbound* 270

Keenan S, *Subversive Property: Law and the Production of Spaces of Belonging* (Abingdon, Routledge 2015)

Kennedy D, “The International Human Rights Movement: Part of the Problem?” (2001) 3 *European Human Rights Law Review* 245

Kirby P and Shepherd LJ, “Women, Peace, and Security: Mapping the (Re)Production of a Policy Ecosystem” (2021) 6(3) *Journal of Global Security Studies* oga045

Kleinhans MM and Macdonald RA, “What is a Critical Legal Pluralism?” (1997) 12(2) *Canadian Journal of Law and Society / La Revue Canadienne Droit et Société* 25

Koskenniemi M, “‘The Lady Doth Protest Too Much’ Kosovo, and the Turn to Ethics in International Law” (2002) 65(2) *Modern Law Review* 159

— — *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006)

— — “What is Critical Research in International Law? Celebrating Structuralism” (2016) 29(3) *Leiden Journal of International Law* 727

— — “What is International Law for?” in Evans MD (ed), *International Law* (Oxford University Press 2018)

Lambourne W and Rodriguez Carreon V, “Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women” (2016) 17 *Human Rights Review* 71

Lamrabet A, *El Corán y las mujeres* (Icaria 2011)

Lawson ES and Flomo VK, “Motherwork and gender justice in Peace Huts: a feminist view from Liberia” (2020) 41(11) *Third World Quarterly* 1863

- Lawther C, “Transitional Justice and constructing victims and victimhood” in Lawther C and Moffett L (eds), *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2023)
- Leebaw BA, “The Irreconcilable Goals of Transitional Justice” (2008) 30(1) *Human Rights Quarterly* 95
- Lefebvre H, *The production of space* (Blackwell 1991)
- Lundy P and McGovern M, “Whose Justice? Rethinking Transitional Justice from the Bottom Up” (2008) 35(2) *Journal of Law and Society* 265
- Madlingozi T, “On Transitional Justice Entrepreneurs and the Production of Victims” (2010) 2(2) *Journal of Human Rights Practice* 208
- Mama A, “Is It Ethical to Study Africa? Preliminary Thoughts on Scholarship and Freedom” (2007) 50(1) *African Studies Review* 1
- — “‘We will not be pacified’: From freedom fighters to feminists” (2020) 27(4) *European Journal of Women’s Studies* 362
- Mani R, “Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development” (2008) 2 *International Journal of Transitional Justice* 253
- Mannergren Selimovic J, “Gendered silences in post-conflict societies: a typology” (2020) 8(1) *Peacebuilding* 1
- Marks S, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press 2003)
- Masaki K, “The ‘transformative’ unfolding of ‘tyrannical’ participation: the *corvée* tradition and ongoing local politics in Western Nepal” in Hickey S & Mohan G (eds), *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development* (Zed Books 2004)

Massey D, *Place, Space and Gender* (Polity Cambridge 1994)

— — “Thinking Radical Democracy Spatially” (1995) 13 *Environment and Planning D: Society and Space* 283

— — *For Space*, (Sage Publishing 2005)

Mbondenyi MK, “The right to participate in the government of one’s country: An analysis of article 13 of the African Charter on Human and Peoples’ Rights in the light of Kenya’s 2007 political crisis” (2009) 9 *African Human Rights Law Journal* 183

McAuliffe P, “Transitional Justice’s Expanding Empire: Reasserting the Value of the Paradigmatic Transition” (2011) 2(2) *Journal of Conflictology* 32

McEvoy K, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice” (2007) 34(4) *Journal of Law and Society* 411

McEvoy K and McConnachie K, “Victims and Transitional Justice: Voice, Agency and Blame” (2013) 22(4) *Social & Legal Studies* 489

McWilliams M, “Women at the Peace Table: the Gender Dynamics of Peace Negotiations” in Flaherty MP, Byrne S, Tusó H and Matyók TG (eds), *Gender and Peacebuilding: All Hands Required*, (Lexington Books 2015)

McWilliams M and Kilmurray A, “From the global to the local: Grounding UNSCR 1325 on women, peace and security in post-conflict policy making” (2015) 51 *Women’s Studies International Forum* 128

McWilliams M and Ní Aoláin F, “‘There is a War Going on You Know’: Addressing the Complexity of Violence Against Women in Conflicted and Post Conflict Societies” (2013) 1(2) *Transitional Justice Review* 4

Medie PA, “Fighting Gender-Based Violence: The Women’s Movement and the Enforcement of Rape Laws in Liberia” (2013) 112(448) *African Affairs* 377

- Mendez JE, “Accountability for Past Abuses” (1997) 19 *Human Rights Quarterly* 255
- — “Victims as Protagonists in Transitional Justice” (2016) 10 *International Journal of Transitional Justice* 1
- Merry SE, “Constructing a Global Law: Violence against Women and the Human Rights System” (2003) 28(4) *Law and Social Inquiry* 941
- — “Colonial and Postcolonial Law” in Sarat A (ed), *The Blackwell Companion to Law and Society* (Blackwell 2004)
- — *Human Rights & Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006)
- Moeckli D, “Equality and Non-Discrimination” in Moeckli D *et al* (eds), *International Human Rights Law* (Oxford University Press 2010)
- Mohammad N and Farjana Y, “Participation as a Human Right: A Rights-based Approach to Development” in Seifi S and Crowther D (eds), *Stakeholders, Governance and Responsibility* (Emerald Publishing 2018)
- Mohanty CT, “Under Western Eyes: Feminist Scholarship and Colonial Discourses” in Mohanty CT *et al* (eds), *Third World Women and the Politics of Feminism* (Indiana University Press 1991)
- — *Feminism Without Borders: Decolonizing Theory, Practising Solidarity* (Duke University Press 2003)
- Moran M, “Our Mothers Have Spoken: Synthesizing Old and New Forms of Women’s Political Authority in Liberia” (2012) 13(4) *Journal of International Women's Studies* 51
- Mutua M, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press 2008)

— — “Typologies of Scholarship on Africa” (2013) 107 *Proceedings of the Annual Meeting* (American Society of International Law) 189

Nagelhus Schia N and de Carvalho B, “Reforms, Customs and Resilience: Justice for Sexual and Gender-Based Violence in Liberia” in in Powell A, Henry N, and Flynn A (eds), *Rape Justice: Beyond the Criminal Law* (Palgrave MacMillan 2015)

Naylor L, Daigle M, Zaragocin S, Ramírez MM, and Gilmartin M, “Interventions: Bringing the decolonial to political geography” (2018) 66 *Political Geography* 199

Nedelsky J, “Law, Boundaries, and the Bounded Self” (1990) 30 *Representations* 162

Nesiah V, “Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship” (1993) 16 *Harvard Women’s Law Journal* 189

Ní Aoláin F, “Political Violence and Gender During Times of Transition” (2006) 15(3) *Columbia Journal of Gender and Law* 829

— — “Women, Security and the Patriarchy of Internationalized Transitional Justice” (2009) 31(4) *Human Rights Quarterly* 1055

— — “Advancing Feminist Positioning in the Field of Transitional Justice” (2012) 6 *International Journal of Transitional Justice* 205

Ní Aoláin F and Campbell C, “The Paradox of Transition in Conflicted Democracies” (2005) 27 *Human Rights Quarterly* 172

Ní Aoláin F and Hamilton M, “Gender and the Rule of Law in Transitional Societies” (2009) 18 *Minnesota Journal of International Law* 380

Ní Aoláin F, Haynes DF, and Cahn N, *On the Frontlines: Gender, War, and the Post-Conflict Process* (Oxford University Press 2011)

Ní Aoláin F and Turner C, “Gender, truth and transition” (2007) 16 *UCLA Women’s Law Journal* 229

Oloka-Onyango J and Tamale S, “‘The Personal is Political,’ or Why Women’s Rights are Indeed Human Rights: An African Perspective on International Feminism” (1995) 17(4) *Human Rights Quarterly* 691

Orentlicher DF, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime” (1991) 100(8) *Yale Law Journal* 2537

— — “‘Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency” (2007) 1 *International Journal of Transitional Justice* 10

Orford A, “Feminism, Imperialism and the Mission of International Law” (2002) 71(1) *Nordic Journal of International Law* 275

— — *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003)

— — “Ritual, Mediation and the International Laws of the South” (2007) 16(2) *Griffith Law Review* 353

O’Rourke C, “Walk[ing] the Halls of Power – Understanding Women’s Participation in International Peace and Security” (2014) 15 *Melbourne Journal of International Law* 128

— — “Feminist scholarship in transitional justice: a de-politicising impulse?” (2015) 51 *Women’s Studies International Forum* 118

— — “Transitional Justice and Gender” in Lawther C and Moffett L (eds), *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2023)

Otto D, “A sign of ‘weakness’? Disrupting gender uncertainties in the implementation of Security Council Resolution 1325” (2006) 13(1) *Michigan Journal of Gender and Law* 113

— — “The Gastronomics of TWAIL’s Feminist Flavourings: Some Lunch-Time Offerings” (2007) 9(4) *International Community Law Review* 345

— — “The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade” (2009) 10(1) *Melbourne Journal of International Law* 11

— — “Women, Peace, and Security: A Critical Analysis of the Security Council’s Vision” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)

Paris R, *At War’s End: Building Peace After Civil Conflict* (Cambridge University Press 2012)

Pearson Z, “Spaces of International Law” (2008) 17(2) *Griffith Law Review* 489

Philippopoulos-Mihalopoulos A, *Spatial Justice: Body, Lawscape, Atmosphere*, (Routledge 2015)

— — “And For Law: Why Space cannot be understood without Law” 2018 *Law, Culture and the Humanities* 1

Pillay A and Goodfriend L, “Evaluating Women’s Participation in Transitional Justice and Governance: A Community Dialogue Process in Liberia” (2009) 2 *Conflict Trends* 10

Porter E, “Gendered narratives: Stories and silences in transitional justice” (2016) 17(1) *Human Rights Review* 35

Powell C and Wing AK, “Introduction to the Symposium on Feminist Approaches to International Law Thirty Years on: Still Alienating Oscar?” (2022) 116 *AJIL unbound* 259

Pretty JN, “Participatory learning for sustainable agriculture” (1995) 23(8) *World Development* 1247

Pue WW, “Wrestling with Law: (Geographical) Specificity vs (Legal) Abstraction” (1990) 11(6) *Urban Geography* 566

Puechguirbal N, “Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents” (2010) 17(2) *International Peacekeeping* 172

— — “Peacekeeping, Peacebuilding and Post-Conflict Reconstruction” in L Shepherd (ed), *Gender Matters in Global Politics: A Feminist Introduction to International Relations* (Routledge 2010)

Puechguirbal N and Enloe C, “Failing to Secure the Peace: Practical Gendered Lessons from Haiti & Iraq” (Paper at the Boston Consortium on Gender, Security and Human Rights, Fletcher School of Law and Diplomacy, Tufts University, 26 October 2004) <<https://genderandsecurity.org/sites/default/files/Consortium%20Lecture%20Nadine%20Puechguirbal%20&%20Cynthia%20Enloe%20%2010-26-2004.pdf>>

Reed MS, “Stakeholder participation for environmental management: A literature review” (2008) 141(10) *Biological Conservation* 2417

Rees M and Chinkin C, “Exposing the Gendered Myth of Post Conflict Transition: The Transformative Power of Economic and Social Rights” (2016) (48) *NYU Journal of International Law and Politics* 1211

Reeve R and Speare J, “Human security in Liberia: Local perspectives on formal and informal security sectors” (2012) 23 *Accord: an international review of peacebuilding initiatives* 40

Rodriguez Ruiz B and Rubio-Marin R, “The gender of representation: On democracy, equality, and parity” (2008) 6(2) *International Journal of Constitutional Law* 287

Roht-Arriaza N, “The New Landscape of Transitional Justice” in Roht-Arriaza N and Murrizcuena J (eds), *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge University Press 2006)

Rooney E and Ní Aoláin F, “Transitional Justice from the Margins: Intersections of Identities, Power and Human Rights” (2018) 12(1) *International Journal of Transitional Justice* 1

Sánchez Díaz I, “Women for Peace. Nonviolent methodologies in women peace movements: case studies” (2017) 10(2) *Revista de Paz y Conflictos* 265

Sarat A, “‘...The Law is All Over’: Power, Resistance and the Legal Consciousness of the Welfare Poor” (1990) 2(2) *Yale Journal of Law and the Humanities* 343

Scott JC, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1998)

Selim Y, “The Opportunities and Challenges of Participation in Transitional Justice: Examples from Nepal” (2017) 29 *Journal of International Development* 1123

Shamir R, “Suspended in Space: Bedouins under the Law of Israel” (1996) 30(2) *Law & Society Review* 231

Shaw R and Waldorf L, “Introduction: Localizing Transitional Justice” in Shaw R, Waldorf L and Hazan P (eds), *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford University Press 2010)

Shepherd LJ, *Gender, Violence and Security: Discourse as Practice* (Bloomsbury 2008)

— — “Sex, Security and Superhero(in)es: From 1325 to 1820 and Beyond” (2011) 13(4) *International Feminist Journal of Politics* 504

Somé MP, *Of Water and the Spirit: Ritual, Magic, and Initiation in the life of an African Shaman* (Putnam 1994)

Spivak GC, “Can the subaltern speak?” in Nelson C and Grossberg L (eds), *Marxism and the Interpretation of Culture* (MacMillan 1988)

Steenbergen M, “Rethinking female ex-combatants, reintegration, and DDR: towards political reintegration?” (2021) 21(5) *Conflict, Security & Development* 641

- Steinberg J, “Briefing: Liberia’s Experiment with Transitional Justice” (2009) 109 (434) *African Affairs* 135
- Stubbs M, *Discourse Analysis: The Sociolinguistic Analysis of Natural Language* (Blackwell 1983)
- Tamale S, “The right to culture and the culture of rights: A critical perspective on women’s sexual rights in Africa” (2008) 16 *Feminist legal studies* 47
- Teitel RG, “The Universal and the Particular in International Criminal Justice” (1999) 30 *Columbia Human Rights Law Review* 285
- — *Transitional Justice* (Oxford University Press 2000)
- — “Transitional Justice Genealogy” (2003) 16 *Harvard Human Rights Journal* 69
- — “Editorial Note - Transitional Justice Globalized” (2008) 2 *International Journal of Transitional Justice* 1
- — *Humanity’s Law*, (Oxford University Press 2011)
- — *Globalizing Transitional Justice: Contemporary Essays* (Oxford University Press 2014)
- — “Symposium: Dialogues of Transitional Justice: Keynote Speech” (2014) 32 *Quinnipiac Law Review* 587
- — “Transitional justice and judicial activism - a right to accountability?” (2015) 48(2) *Cornell International Law Journal* 385
- Theidon K, “1325 + 17 = ?: Filling in the Blanks of the Women, Peace, and Security Agenda” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)
- Thorne B, “Remembering atrocities: legal archives and the discursive conditions of witnessing” (2021) 25(3) *International Journal of Human Rights* 467

- Threedy DL, "Unearthing subversion with legal archaeology" (2003) 13 *Texas Journal of Women and the Law* 133
- Thrift N, "Space: The Fundamental Stuff of Geography" in Clifford NJ, Holloway SL, Rice SP, and Valentine G (eds), *Key Concepts in Geography* (Sage 2009)
- Triponel A and Pearson S, "What do you think should happen? Public participation in transitional justice" (2010) 22(1) *Pace International Law Review* 103
- Utas M, "West-African Warscapes: Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman's Social Navigation of the Liberian War Zone" (2005) 78(2) *Anthropological Quarterly* 403
- Valverde M, "Time Thickens, Takes on Flesh" in Braverman I, Blomley N, Delaney D, and Kedar A (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014)
- van Dijk TA, "Principles of Critical Discourse Analysis" (1993) 4(2) *Discourses and Society* 249
- Venganai H, "(Re)constructing positive cultures to protect girls and women against sexual violence" (2015) 29(3) *Agenda: Empowering Women for Gender Equity* 145
- von Benda-Beckmann F and von Benda-Beckmann K, "Places That Come and Go" in Braverman I, Blomley N, Delaney D, and Kedar A (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014)
- Walklate S, *Imagining the Victim of Crime* (Open University Press 2007)
- Wane N, "African Indigenous Feminist Thought: An Anti-Colonial Project" in Wane N, Kempf A and Simmons M (eds), *The Politics of Cultural Knowledge* (SensePublishers 2011)
- Weah A, "Hopes and Uncertainties: Liberia's Journey to End Impunity" (2012) 6(2) *International Journal of Transitional Justice* 331

Wählisch M, *Peacemaking, Power-Sharing and International Law: Imperfect Peace* (Hart Publishing 2019)

White SC, “Depoliticising development: the uses and abuses of participation” (1996) 6(1) *Development in Practice* 6

Zarkov D, “From Women and War to Gender and Conflict?: Feminist Trajectories” in Ní Aoláin F, Cahn N, Haynes DF, and Valji N (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018)

Zetes A, “Beyond Passive Victimhood: The Narrative and Reality of Women in Transitional Justice” (2016) 48 *New York University Journal of International Law & Politics* 1293

Reports of the Liberian Truth and Reconciliation Commission

Republic of Liberia Truth and Reconciliation Commission, *Final Report Volume One: Preliminary Findings and Determinations* (30 December 2008) <http://trcofliberia.org/resources/reports/final/volume-one_layout-1.pdf>

— — *Final Report Volume Two: Consolidated Final Report* (30 June 2009) <http://trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title I: Women and the Conflict* (30 June 2009) <http://trcofliberia.org/resources/reports/final/volume-three-1_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title II: Children, the Conflict and the TRC Children Agenda* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-2_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title III: Economic Crimes and the Conflict, Exploitation and Abuse* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-3_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title IV: The Conflict, Religion and Tradition* (30 June 2009) <http://trcofliberia.org/resources/reports/final/volume-three-4_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title V: Short Term Technical Assistance to the Truth and Reconciliation Commission (TRC) of the Republic of Liberia for Conflict Mapping Project* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-5_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title VI: Media and Outreach in the TRC Process* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-6_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title VII: A House with Two Rooms: Final Report of the Truth & Reconciliation Commission of Liberia Diaspora Project* (30 June 2009) <http://trcofliberia.org/resources/reports/final/volume-three-7_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title VIII: Accounting for the “Less Fortunate” and their Psychosocial Needs* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-8_layout-1.pdf>

— — *Final Report Volume Three: Appendices Title XII: Towards National Reconciliation and Dialogues: The Palava Hut or Peace Forums* (30 June 2009) <https://www.trcofliberia.org/resources/reports/final/volume-three-12_layout-1.pdf>

Website of the Truth and Reconciliation Commission of Liberia, “Final Report” <<https://www.trcofliberia.org/reports/final-report.html>>

NGO Reports and Publications

African Feminist Forum, “Charter of Feminist Principles for African Feminists” (African Women’s Development Fund 2007) <<http://www.africanfeministforum.com/feminist-charter-introduction/>>

Bennoune K, “Making rights a reality: Violence against women in armed conflict” (Amnesty International, ACT 77/050/2005)

Campbell-Nelson K, “Liberia is Not Just a Man Thing: Transitional Justice Lessons for Women, Peace and Security” (Initiative for Peacebuilding 2008) <<https://www.ictj.org/sites/default/files/ICTJ-IFP-Liberia-Gender-Cluster-2008-English.pdf>>

Dabo A, “In the Presence of Absence: Truth-Telling and Displacement in Liberia” (International Center for Transitional Justice 2012) <<https://www.ictj.org/publication/presence-absence-truth-telling-and-displacement-liberia>>

Equality Now, “Information on Liberia for Consideration by the Committee on the Elimination of Discrimination against Women at its 62nd Session (26 October – 20 November 2015)” (2 October 2015) <https://www.ecoi.net/en/file/local/1211449/1930_1446201571_int-cedaw-ngo-lbr-21879-e.pdf>

Hayner P, “Negotiating peace in Liberia: Preserving the possibility for Justice” (Centre for Humanitarian Dialogue and International Center for Transitional Justice 2007) <<https://www.ictj.org/publication/negotiating-peace-liberia-preserving-possibility-justice>>

Isser DH, Lubkemann SC, and N’Tow S, “Looking for justice: Liberian experiences with and perceptions of local justice options” (Peaceworks, 63, United States Institute of Peace, 2009) <https://www.usip.org/sites/default/files/liberian_justice_pw63.pdf>

James-Allen P, Weah A and Goodfriend L, “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia” (International Center for Transitional Justice 2010) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Beyond-TRC-2010-English.pdf>> 5

Jaye T, “Transitional Justice and DDR: The Case of Liberia” (International Center for Transitional Justice 2009) <<https://www.ictj.org/publication/transitional-justice-and-ddr-case-liberia-case-study>>

Charlotte Lindsay, *Women facing war: ICRC study on the impact of armed conflict on women* (International Committee of the Red Cross Geneva 2001) <https://www.icrc.org/en/doc/assets/files/other/icrc_002_0798_women_facing_war.pdf>

Specht I, “Red Shoes: Experiences of girl-combatants in Liberia” (International Labour Organization 2006) <https://webapps.ilo.org/public/libdoc/ilo/2006/106B09_262_engl.pdf>

Women NGO Secretariat of Liberia, “NGO Shadow Report to 7th & 8th Periodic Report of Liberia on Convention on the Elimination of all forms of Discrimination against Women (CEDAW)” (1 October 2015) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=1KIk9bb9KdSzAa/6qWzHwxzYN20CnVPtbC0nACYDz+cR2u/U3vBRq8rw/qj9a6LB7MjFQXFbGdGiBUoso8JHhQ==>>