

# DEVELOPING A GENDER METHODOLOGY FOR U.N. COMMISSIONS OF INQUIRY

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## I. INTRODUCTION

Over the past decade, the United Nations has created more than a dozen commissions of inquiry (COIs), which are expert fact-finding bodies mandated to investigate, legally analyze, and report on situations of armed conflict or mass atrocity. The international community increasingly relies on these commissions to provide an impartial assessment of human rights violations, and as a result, their reports are often viewed as authoritative statements of fact in the public eye. The rise to prominence of COIs has led scholars and practitioners to think critically about the role of COIs within the broader framework of transitional justice.<sup>1</sup> Often, a COI is the first opportunity for the United Nations to create a historical record of grave human rights violations, and it can also pave the way to future prosecutions through its preliminary assessment of criminal responsibility.

As the international community continues to contemplate the role and function of U.N. COIs in post-conflict societies, any assessment of COIs' work must also grapple with their ability to address women's experiences of conflict. Conflict disproportionately harms women,<sup>2</sup> but historically, women's voices have been silenced in human rights reporting.<sup>3</sup> As of yet, no

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1. Transitional justice is a field dedicated to the study of judicial and non-judicial measures that can be used to provide redress for massive human rights abuses. See NAHLA VALJI, UN WOMEN, *A WINDOW OF OPPORTUNITY: MAKING TRANSITIONAL JUSTICE WORK FOR WOMEN* 14 (Oct. 2012) ("Commissions of Inquiry can serve as important precursors to transitional justice mechanisms.").

2. See, e.g., Press Release, Sec. Council, Women Suffer Disproportionately During and After War, U.N. Press Release SC/7908 (Oct. 29, 2003), available at <http://www.un.org/News/Press/docs/2003/sc7908.doc.htm> (describing how women and girls do not experience conflict in the same way as men or boys, and "suffer disproportionately during and after war.").

3. ELISABETH REHN & ELLEN JOHNSON SIRLEAF, UNIFEM, *PROGRESS OF THE WORLD'S WOMEN—VOLUME 1: EXECUTIVE SUMMARY* 9 (2002), <http://www.unwomen.org/~media/Headquarters/Media/Publications/>

other scholar has reviewed past commissions' approaches to gender-sensitive investigation and legal analysis. More importantly, no other scholar has attempted to prescribe a gender-focused methodology for future commissions.<sup>4</sup> This Note seeks to fill this gap in the current scholarship. This Note's analysis centers on COIs with mandates from the U.N. Security Council and Human Rights Council because of the unique and important role these commissions play in setting international and domestic agendas for ending conflicts and building peace. In particular, this Note will focus on the role that U.N. COIs have played in leading the way for future prosecutions at the International Criminal Court (ICC).

Part II of the Note provides a brief introduction to the typical format of a U.N. COI, the mandate and goals of previous commissions, and the role of commissions during transitions from conflict to peace. Part III analyzes the reports of seven U.N. COIs over the last ten years, which were selected due to their similar mandates. This analysis focuses on issues that illustrate the COI model's strengths and weaknesses: gender balance and expertise among staff, reporting on sexual violence, mainstreaming of gender issues throughout the report, and quality of legal analysis regarding sexual and gender-based violence (SGBV).<sup>5</sup> Finally, Part IV develops an over-arching gender methodology for future COIs. In light of the quasi-judicial and truth-telling functions of COIs, this section examines the relevant gender methodologies of courts and truth commissions, and their possible application to the COI model. Drawing connections to the gender methodologies of these transitional justice mechanisms, this Note's analysis should yield an innovative approach to incorporating women's voices and experiences into the work of future U.N. COIs.

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UNIFEM/270\_exec\_summary.pdf ("Violence against women in conflict is one of history's great silences.").

4. This Note focuses primarily on the "gender methodology" of U.N. COIs as it pertains to adult women. Distinct—but often overlapping—gender methodologies focused on children and on sexual minorities are also critical to a COI's success, but are beyond the scope of this Note.

5. This Note uses the term "sexual and gender-based violence" to mean violence that is either of a sexual nature, or is directed at someone because of his or her gender. In order to narrow its scope, this Note primarily focuses on SGBV perpetrated against adult women, although the term applies to all genders, ages, and sexual orientations.

## II. BACKGROUND ON U.N. COMMISSIONS OF INQUIRY

The United Nations has long relied on commissions of experts to investigate and report on conflict situations and international incidents. Between 1946 and 1951, during its first five years of existence, the Security Council formed commissions to examine events in Indonesia, Greece, India and Pakistan, and Palestine, and has since created more than a dozen others.<sup>6</sup> The Human Rights Council (HRC), established in 2006 to replace the U.N. Commission on Human Rights, has largely supplanted the Security Council as the U.N. entity that requests and oversees the work of COIs.<sup>7</sup> The HRC has been prolific in its creation of COIs, mandating ten commissions during its first six years.<sup>8</sup>

COIs are led by three to five prominent international human rights experts who serve as commissioners. In addition, all recent U.N. COIs have been supported by a secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which assists with the commission's investigation and report writing. COIs are generally expected to undertake their investigations and report back to their mandating body within a period of two to nine months. COI reports vary dramatically in length, from 4 pages (the En-

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6. See *Repertoire and the Practice of the Security Council, Subsidiary Organs: Commissions and Investigative Bodies*, UNITED NATIONS, [http://www.un.org/en/sc/repertoire/subsidiary\\_organ/commissions\\_and\\_investigations.shtml](http://www.un.org/en/sc/repertoire/subsidiary_organ/commissions_and_investigations.shtml) (last visited July 22, 2013) (describing the COIs that have been mandated by the Security Council).

7. From 2006 to 2012, the Security Council mandated only one COI, to investigate the assassination of Pakistani Prime Minister Benazir Bhutto, while the HRC mandated ten. *Id.* (describing the COIs that have been mandated by the Security Council); U.N. Human Rights Council, *Commissions of Inquiry Conference Brief*, ACADEMIC PLATFORM SWITZ. UN & GENEVA ACAD. OF INT'L HUMANITARIAN LAW AND HUMAN RIGHTS, 1-7 (Dec. 1, 2011), <http://www.geneva-academy.ch/docs/news/HR-council-inquiry-conference-brief.pdf> (last visited Oct. 25, 2012) (describing the COIs that have been mandated by the HRC) [hereinafter *COI Conference Brief*].

8. In 2013 the HRC mandated its eleventh commission, to investigate alleged human rights violations in North Korea. See Human Rights Council Res. 22/13, Situation of Human Rights in the Democratic People's Republic of Korea, 22d Sess., Apr. 9, 2013, U.N. Doc. A/HRC/RES/22/13 (Mar. 21, 2013).

glish translation of the Côte d'Ivoire report) to 575 pages (the Gaza report).<sup>9</sup>

The mandate of a COI varies depending on the circumstances of the conflict and the outcomes desired from the commission. Typically, the mandate requests that the commission establish the facts and circumstances surrounding any violations of international human rights law during a certain period of time, identify those responsible, and recommend accountability measures.<sup>10</sup> Thus, most COI reports discuss both the evidence collected from fact-finding missions and the resulting legal findings. In many cases, a COI's findings provide a foundation for future criminal prosecutions. The Darfur COI, for example, led directly to a Security Council referral of the "situation in Darfur" to the ICC.<sup>11</sup> COIs can also inform ongoing criminal investigations, as illustrated by the ICC's use of the Libya COI's work in its ongoing investigations into violence in the country since February 2011.<sup>12</sup> In addition, the ICC Prosecutor cited the Côte d'Ivoire COI's findings in his request to open a formal investigation into crimes there.<sup>13</sup> Two of those named as primary suspects by the Guinea COI

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9. In recent years, a strict 25-page limit has been imposed on COI reports (of the reports studied in this Note, the restriction applied to the second Libya report, all Syria reports, and the Côte d'Ivoire report). The second Libya report and the Syria reports treat the first 25 pages as an executive summary, supplemented by annexes that describe the findings in greater detail, sometimes hundreds of pages in length.

10. For a complete list of COI mandates, see chart, *infra* pp. 597–600.

11. S.C. Res. 1593, ¶ 1, U.N. Doc. S/RES/1593 (Mar. 31, 2005) ("Taking note of the report of the International Commission of Inquiry . . . [the Security Council] refer[s] the situation in Darfur since 1 July 2002 to the [ICC]").

12. In a report to the Security Council on progress on prosecuting crimes in Libya, ICC Prosecutor Luis Moreno Ocampo directly cited the Libya COI report's careful coverage of sexual violence as a factor in his decision to investigate a second case on gender crimes. See ICC, OTP, *Third Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1970 (2011)*, ¶ 33 (May 16, 2012), available at [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/icc0111/reports%20to%20the%20uns/ Pages/reportmay2012.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0111/reports%20to%20the%20uns/ Pages/reportmay2012.aspx).

13. Situation in the Republic of Côte d'Ivoire, Case No. ICC-02/11-3, Request for Authorisation of an Investigation Pursuant to Article 15, ¶¶ 19, 63 (June 23, 2011), <http://www.icc-cpi.int/iccdocs/doc/doc1097345.pdf> (using the Côte d'Ivoire COI report's findings of international human rights law and international humanitarian law violations to support his request to open an investigation there).

have been indicted in a Guinean domestic court, demonstrating the impact COIs can also have on the domestic level.<sup>14</sup> Most recently, the U.N. High Commissioner for Human Rights, Navi Pillay, has invoked the work of the Syria COI in her calls for the Security Council to refer Syria to the ICC.<sup>15</sup>

Of course, one must be realistic about the power that COIs have to create change in conflict and post-conflict societies. COI reports are riddled with legal jargon and are often not translated into local languages, indicating that commissioners most likely never intended for affected communities to read their reports. However, COI reports do have an impact on international policies, and the effects of these policies eventually trickle down. Consequently, it is important that COIs accurately set a gender-sensitive tone that reflects the different ways that men and women experience a conflict.<sup>16</sup>

As a first step toward achieving accountability and documenting abuses, COIs underpin subsequent transitional justice processes.<sup>17</sup> Sexual violence is already particularly challenging to document and notoriously difficult to prosecute.<sup>18</sup> A COI

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14. The domestic court's indictment prevents the ICC Prosecutor from issuing her own indictments. See ICC, OTP, *Report on Preliminary Examination Activities 2012*, ¶¶ 154, 163 (Nov. 22, 2012) (explaining that these domestic proceedings prevent the ICC from having jurisdiction over the cases under the 'complementarity' regime).

15. See, e.g., Navi Pillay, United Nations High Comm'r for Human Rights, *Statement to the Side-event at the 21st Session of the UN Human Rights Council on "Bearing Witness: Human Rights and Accountability in Syria,"* OFF. HIGH COMM'R FOR HUM. RTS. (Sept. 10, 2012) (transcript available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12491&LangID=E>) (referring to the numerous gross violations of human rights, including war crimes, that the COI on Syria has uncovered in the country since the start of the uprising).

16. "Gender sensitivity" is awareness and recognition of difference and inequality between the experiences and needs of women and men.

17. "Given the role these bodies play in laying the foundation for future prosecutions, ensuring the full investigation of all SGBV crimes during the work of Commissions of Inquiry can significantly increase the likelihood of securing future justice for these crimes." VALJI, *supra* note 1, at 15.

18. See, e.g., Beth Van Schaak, *Obstacles on the Road to Gender Justice: The International Criminal Tribunal for Rwanda as Object Lesson*, 17 AM. U. J. GENDER SOC. POL'Y & L. 355, 368-69 (2009) (discussing unique challenges posed by SGBV investigations); see also Susana SáCouto & Katherine Cleary, *The Importance of Effective Investigation of Sexual Violence and Gender-Based Crimes at the International Criminal Court*, 17 AM. U. J. GENDER SOC. POL'Y & L. 337, 353 (2009) ("Another challenge to the successful prosecution of sexual violence

that catalogues these violations in detail<sup>19</sup> can prompt judicial action and help end the culture of impunity that often surrounds sexual violence in post-conflict environments.<sup>20</sup> The role that a COI plays in creating a historical record of all types of violations against women is also extremely important. For example, taboos against the discussion of gender-based violence and the systematic oppression of women prevail in societies where COIs operate, and women are often hesitant to speak about their experiences out of shame or fear of reprisals;<sup>21</sup> a commission report that accurately reflects the prevalence and nature of violence against women can be a first step toward removing the stigma associated with these crimes, opening up a space for dialogue about women's experiences.

### III. PAST EXPERIENCE: SELECTED U.N. COMMISSIONS OF INQUIRY IN FOCUS

U.N. COIs display astonishing disparities in their reporting of gender issues. Some COIs pay special attention to gender crimes, while others fail to assess the evidence collected

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and gender-based crimes has been the tendency of the tribunals to require that the prosecution meet higher evidentiary standards in these cases than in other types of cases.”). See generally Richard J. Goldstone, *Prosecuting Rape as a War Crime*, 34 CASE W. RES. J. INT'L L. 277 (2002) (describing the challenges faced by the ICTY in prosecuting sexual violence); Patricia Viseur Sellers, *Gender Strategy is Not a Luxury for International Courts: A Keynote Address by Patricia Viseur Sellers*, 17 AM. U. J. GENDER SOC. POL'Y & L. 301 (2009) (describing the difficulties and challenges of prosecuting sexual violence at numerous international and hybrid tribunals).

19. Necessary details include the location of the crime, the affiliation of the perpetrator, and the age, gender, and identity (ethnic, racial, national, religious, or political identity can all be important, depending on the nature of the conflict) of the victim. Although this Note focuses on adult women survivors of SGBV, a detailed report should include information about sexual violence against children, sexual minorities, and men.

20. See Margot Wallström, *Introduction: Making the Link between Transitional Justice and Conflict-Related Sexual Violence*, 19 WM. & MARY J. WOMEN & L. 1, 4 (2012) (stating that prosecutions have a deterrent effect because they send a message that there is no impunity for sexual violence). For example, the second Libya COI report is being used to inform the ICC's ongoing investigation in Libya in regards to SGBV. See *supra* text accompanying note 12.

21. Margot Wallström, the United Nations' first Special Rapporteur on Sexual Violence in Conflict, has noted, “[o]ne impediment to the work of truth commissions is the stigma surrounding war rape that hinders many women in talking about the atrocities.” Wallström, *supra* note 20, at 5.

for possible gender violations—some reports even make conflicting findings on the legal implications of evidence of sexual violence. This Part explores some of the key successes and failures of past commissions. In order to avoid comparing commissions that are vastly different, this Note analyzes a purposefully selected sample of COIs formed within the past decade that had similar mandates focused on violations of international human rights law and international humanitarian law in situations of armed conflict or mass atrocity. Because they were either too narrow or too broad in scope, this analysis omits several COIs that focused on individual assassinations,<sup>22</sup> the COIs on Israel (with the exception of the Gaza COI report, also known as the “Goldstone Report” which is included),<sup>23</sup> and a report investigating judicial redress for human rights violations in Timor-Leste.<sup>24</sup> This Note also omits a mapping re-

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22. See Letter dated 20 October 2005 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2005/662 (Oct. 20, 2005) (establishing the COI investigating former Lebanese Prime Minister Rafik Hariri’s death); Letter dated 2 February 2009 from the Secretary-General to the President of the Security Council, U.N. Doc. S/2009/67 (Feb. 3, 2009) (establishing the COI investigating former Prime Minister of Pakistan Mohtarma Benazir Bhutto’s death).

23. The HRC has authorized five investigations into the actions of Israel. See Human Rights Council Res. S-1/1, Human Rights Situation in the Occupied Palestinian Territory, U.N. Doc. A/HRC/RES/S-1/1, ¶ 6 (July 6, 2006) (establishing a fact-finding mission on the situation of human rights in the Occupied Palestinian Territory); Human Rights Council Res. S-2/1, The Grave Situation of Human Rights in Lebanon Caused by Israel Military Operations, U.N. Doc. A/HRC/RES/S-2/1, ¶ 7 (Aug. 11, 2006) (establishing a COI on human rights violations in Lebanon caused by Israeli military operations); Human Rights Council Res. S-3/1, Human Rights Violations Emanating from Israeli Military Incursions in the Occupied Palestinian Territory, Including the Recent One in Northern Gaza and the Assault on Beit Hanoun, U.N. Doc. A/HRC/RES/S-3/1, ¶ 7 (Nov. 15, 2006) (establishing a fact-finding mission to investigate human rights violations in Beit Hanoun); Human Rights Council Res. 14/1, The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy, U.N. Doc. A/HRC/RES/14/1, ¶ 8 (June 2, 2010) (establishing a fact-finding mission to investigate violations of international law resulting from Israeli attacks on a humanitarian flotilla). A fifth HRC COI focusing on the actions of Israel in Gaza will be analyzed in this Note. See Gaza Report, *infra* note 29.

24. See Letter Dated 24 June 2005 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2005/458, at 1 (July 15, 2005) (establishing a commission of experts to review the prosecution of serious violations of human rights in Timor-Leste).



port on the Democratic Republic of the Congo<sup>25</sup> and the second COI on Darfur.<sup>26</sup>

The chart below outlines the COIs analyzed in this Note chronologically according to report date, with asterisks denoting female commissioners.<sup>27</sup>

Commission	Reporting Body	Mandate Resolution No. & Date	Report No. & Date	Mandate	Members
<i>International Commission of Inquiry on Darfur</i>	Security Council	<i>S/RES/1564</i> <b>18 Sept. 2004</b>	<i>S/2005/60</i> <b>1 Feb. 2005</b>	“[T]o investigate reports of violations of <i>international humanitarian law and human rights law</i> in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.” <sup>28</sup>	Antonio Cassese  Mohamed Fayek  Hina Jilani*  Dumisa Ntsebeza  Therese Striggner-Scott*

25. See Human Rights Council Res. S-8/1, Situation of Human Rights in the East of the Democratic Republic of the Congo, 8th Sess., Dec. 1, 2008, A/HRC/RES/S-8/1, ¶ 11 (Dec. 1, 2008) (requesting thematic special procedures to examine the situation in the country, in order to provide a report to the HRC on how best to provide technical assistance to address the situation of human rights).

26. However, this Note includes the first Darfur COI report, which was instrumental in the Security Council’s referral of the Sudan to the ICC. See Human Rights Council Res. 4/8, Follow-Up to Decision S-4/101 of 13 December 2006 Adopted by the HRC at its Fourth Special Session Entitled “Situation of Human Rights in Darfur,” U.N. Doc. A/HRC/RES/4/8, ¶ 7 (Mar. 30, 2007) (convening a group of experts to work with the Government of the Sudan and the African Union, to ensure the implementation of U.N. resolutions and recommendations on Darfur).

27. For COIs that produced more than one report, the date of the first report is used.

28. U.N. S.C. Rep. of the International Commission of Inquiry on Darfur to the Secretary-General, Feb. 1, 2005, ¶ 12, U.N. Doc. S/2005/60 (2005) (emphasis added) [hereinafter Darfur Report].

<i>United Nations Fact Finding Mission on the Gaza Conflict</i>	Human Rights Council	A/HRC/RES/S-9/1 12 Jan. 2009	A/HRC/12/48 25 Sept. 2009	"[T]o investigate all violations of <i>international human rights law and international humanitarian law</i> that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after." <sup>29</sup>	Richard Goldstone  Christine Chinkin*  Hina Jilani*  Desmond Travers
<i>International Commission of Inquiry Mandated to Establish the Facts and Circumstances of the Events of 28 September 2009 in Guinea</i>	Security Council	S/2009/556 28 Oct. 2009	S/2009/693 18 Dec. 2009	"[T]o establish the facts and circumstances of the events of 28 September 2009 in Guinea and the related events in their immediate aftermath, qualify the <i>crimes perpetrated</i> , determine responsibilities, identify those responsible, where possible, and make recommendations." <sup>30</sup>	Mohammed Bedjaoui  Françoise Ngendahayo Kayiramirwa*  Pramila Patten*
<i>Secretary-General's Panel of Experts on Accountability in Sri Lanka</i>	Secretary-General	SG Statement 22 June 2010	[no U.N. document number] 31 Mar. 2011	"[T]o advise the Secretary-General regarding the modalities, applicable international standards and comparative experience relevant to an accountability process, having regard to the nature and scope of alleged violations of <i>international humanitarian and human rights law</i> during the final stages of the armed conflict in Sri Lanka." <sup>31</sup>	Marzuki Darusman  Steven Ratner  Yasmin Sooka*

29. Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict, Human Rights Council, ¶ 1, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009) (emphasis added) [hereinafter Gaza Report].

30. U.N. S.C. Rep. of the International Commission of Inquiry Mandated to Establish the Facts and Circumstances of the Events of 28 September 2009 in Guinea, ¶ 1, U.N. Doc. S/2009/693 (Dec. 18, 2009) (emphasis added) [hereinafter Guinea Report].

31. Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, U.N. Secretary-General, at i (Mar. 31, 2011) (emphasis added) [hereinafter Sri Lanka Report].

<i>International Commission of Inquiry on Libya</i>	Human Rights Council	A/HRC/RES/S-15/1 <b>25 Feb. 2011</b>  Extended: A/HRC/17/L.3 <b>10 June 2011</b>	A/HRC/17/44 <b>12 June 2012</b>  A/HRC/19/68 <b>8 Mar. 2012</b>	“[T]o investigate all alleged violations of <i>international human rights law</i> in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable.” <sup>32</sup>	M. Cherif Bassiouni  Asma Khader*  Philippe Kirsch
<i>International Commission of Inquiry on Côte d’Ivoire</i>	Human Rights Council	A/HRC/RES/16/25 <b>13 Apr. 2011</b>	A/HRC/17/48 <b>1 July 2011</b>	“[T]o ‘investigate the facts and circumstances surrounding the allegations of serious abuses and <i>violations of human rights</i> committed in Côte d’Ivoire following the presidential election of 28 November 2010, in order to identify those responsible for such acts and to bring them to justice. . . .’” <sup>33</sup>	Vité Muntarbhorn  Reine Alapini-Gansou*  Suliman Ali Baldo

32. Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya, Human Rights Council, 17th Sess., May 30–June 17, 2011, ¶ 3, U.N. Doc. A/HRC/17/44 (June 12, 2012) (emphasis added) [hereinafter *Libya I Report*]; Report of the International Commission of Inquiry on Libya, Human Rights Council, 19th Sess., Feb. 27–Mar. 23, 2012, at 1, U.N. Doc. A/HRC/19/68 (Mar. 8, 2012) [hereinafter *Libya II Report*].

33. Report of the International Commission of Inquiry on Côte d’Ivoire, Human Rights Council, 17th Sess., May 30–June 17, 2011, at 1, U.N. Doc. A/HRC/17/48 (Extract) (June 6, 2011) (emphasis added) [hereinafter *Côte d’Ivoire Report*].

<i>Independent International Commission of Inquiry on the Syrian Arab Republic</i>	Human Rights Council	A/HRC/RES/S-16/1 29 Apr. 2011	A/HRC/S-17/2/Add.1 23 Nov. 2011	“[T]o investigate all alleged violations of <i>international human rights law</i> since March 2011 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view of ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable.” <sup>34</sup>	Paulo Pinheiro
		Extended: A/HRC/RES/S-18/1 2 Dec. 2011	A/HRC/19/69 22 Feb. 2012		Yakin Ertürk* (first and second reports only)
		Extended: A/HRC/RES/19/22 10 Apr. 2012	A/HRC/21/50 16 Aug. 2012		Karen Koning AbuZayd*
		Extended: A/HRC/21/L.32 24 Sept. 2012	A/HRC/22/59 5 Feb. 2013		Carla Del Ponte* (fourth and fifth reports only)
		Extended: A/HRC/RES/22/24 12 Apr. 2013	A/HRC/23/58 4 June 2013		Vitit Muntarbhorn (fourth and fifth reports only)

Although each political and operational context is unique, the commissions outlined above all received broad mandates to investigate human rights violations. The diverse ways in which these mandates were interpreted, and the resulting differences in their investigations and reports, make these commissions useful tools for understanding the best practices and pitfalls of recent U.N. COIs.

34. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, 17th Special Sess., Aug. 22, 2011, ¶ 4, U.N. Doc. A/HRC/S-17/2/Add.1 (Nov. 23, 2012) (emphasis added) [hereinafter Syria I Report]; see also Human Rights Council Res. S-16/1, The Current Human Rights Situation in the Syrian Arab Republic in the Context of Recent Events, 16th Special Sess., Apr. 29, 2011, ¶ 7, U.N. Doc. A/HRC/RES/S-16/1 (May 4, 2011); Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, 19th Sess., Feb. 27–Mar. 23, 2012, ¶ 1, U.N. Doc. A/HRC/19/69 (Feb. 22, 2012) [hereinafter Syria II Report]; Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, 21st Sess., Sept. 10–28, Nov. 5, 2012, ¶ 1, U.N. Doc. A/HRC/21/50 (Aug. 15, 2012) [hereinafter Syria III Report]; Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, 22d Sess., Feb. 25–Mar. 22, 2013, ¶ 2, U.N. Doc. A/HRC/22/59 (Feb. 5, 2013) [hereinafter Syria IV Report]; Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 23d Sess., May 27–June 14, 2013, U.N. Doc. A/HRC/23/58 (July 18, 2013) [hereinafter Syria V Report].

### A. *Gender Balance and Staff Expertise*

The existence of gender balance among a COI's staff by no means guarantees that the commission will be gender sensitive;<sup>35</sup> however, it is nearly impossible to imagine how a commission could be gender sensitive without employing women.<sup>36</sup> There has been a discernible effort to ensure gender balance at the highest levels of COI staff: Twelve of the twenty-five commissioners involved in the COIs studied in this Note are women.<sup>37</sup> In addition, all COIs have had at least one commissioner with significant experience working on gender issues as a scholar or practitioner, which can also help to ensure gender-sensitive investigation and reporting. However, in the lower ranks of the commission's staff, there are fewer women and less gender expertise among them. For example, investigators and interpreters often do not possess sufficient experience working on SGBV to adequately ensure sensitivity toward victims' needs during the interview process.<sup>38</sup> This lack of sensitivity among a COI's more junior staff is particularly problematic because, although the commissioners are the international face of the COI, it is the investigators and interpreters who interact with the affected community.

The Darfur COI is an example of a commission where gender balance and expertise were present at the upper echelons of staff and all but forgotten at the lower levels. This COI had five commissioners, including two women, one of whom is an internationally recognized expert on gender issues.<sup>39</sup> In addition, the Executive Director of the OHCHR secretariat for

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35. The term "gender sensitivity" refers to an awareness and recognition of the difference of experience and inequality between women and men.

36. *See, e.g.*, Sellers, *supra* note 18, at 311 ("The basic premise of the 'internal' gender strategy [of the Office of the Prosecutor at the ICTY] resided in the belief that if teams were not gender integrated, and male colleagues did not respect the work of female colleagues, then, it would be difficult to investigate and prosecute sexual violence.").

37. M. Vitit Muntarbhorn and Hina Jilani have both served on two of the COIs analyzed in this Note. Muntarbhorn and Jilani are counted twice in the total number of commissioners, and Jilani is counted twice in the number of female commissioners, to give a more accurate depiction of the ratio of men to women on all commissions.

38. Anonymous Interview (Nov. 13, 2013).

39. Ms. Hina Jilani is a women's rights activist and lawyer, having established Pakistan's first all-women's law firm, represented UNIFEM (now UN Women) at regional and international meetings, and been honored with the

the Darfur COI was a woman with expertise on women's human rights,<sup>40</sup> and she was assisted by a staff of thirteen investigators, two of whom were women specializing in gender violence.<sup>41</sup> However, this COI's emphasis on gender was lost in its interactions on the ground: The secretariat completely failed to employ female interpreters for its field missions, and acknowledged that just *one* female interpreter was called in to join "the final stages of the investigation [in Southern Darfur] to assist, particularly in sexual assault matters."<sup>42</sup> Even if a commission goes so far as to employ and train female investigators on how to identify and respond to SGBV, unless an appropriately trained female interpreter accompanies the investigators, female survivors of SGBV may be reluctant to testify about their experiences.<sup>43</sup> This reluctance is evident in the Darfur COI's findings from its investigative missions. Investigators traveled to three regions and uncovered more than three times as many cases of rape and sexual assault in Southern Darfur—the region where the female interpreter assisted—than in the other two regions it investigated.<sup>44</sup>

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Amnesty International Genetta Sagan Award for Women's Rights. See Darfur Report, *supra* note 28, at 177–78.

40. Ms. Mona Rishmawi had been the Senior Human Rights and Gender Advisor to Sérgio Vieira de Mello, in his capacity as the Special Representative of the U.N. Secretary-General in Iraq. See *Biography of Mona Rismawi*, NATO, <http://www.aco.nato.int/resources/3/Events/2010/2010%20Legal%20Conference/Mona%20Rishmawi%20biodata.docx> (last visited Feb. 11, 2013).

41. See Darfur Report, *supra* note 28, Annex V (discussing the composition of the investigative team).

42. *Id.*

43. Amnesty International has produced a handbook on gender-sensitive methodology for research, which states, "If interviewing female rape victims, a female interpreter will be preferable in all cases." AGNÈS CALLAMARD, A METHODOLOGY FOR GENDER-SENSITIVE RESEARCH 31 (Amnesty Int'l & Int'l Ctr. for Human Rights & Democratic Dev. eds., 1999).

44. The investigative mission to Southern Darfur, the region where the female interpreter participated, collected information on thirty-nine cases of rape and sexual violence. The teams with no female interpreter investigated dramatically fewer cases of rape and sexual violence; the Annex reports that the missions investigated eleven cases in Western Darfur and none in Northern Darfur. See Darfur Report, *supra* note 28, Annex V. These numbers might lead one to conclude that fewer rapes occurred in these regions. However, elsewhere in the report, the Commission states that twenty instances of sexual violence were reported in Northern Darfur in the month of March

In sum, although the gender balance and expertise on COIs has improved over time,<sup>45</sup> systemic problems regarding gender representation and sensitivity training in investigative teams and among interpreters has led to underreporting of SGBV in past COI reports.<sup>46</sup>

### B. *Reporting on Sexual Violence*

With international attention increasingly focused on ending impunity for sexual violence, COI reports must accurately capture the nature and extent of this form of violence. Often, naming and shaming individuals and groups is a part of a COI's mandate;<sup>47</sup> this process must include those specifically suspected of sexual violence. Almost all COI reports studied in this Note featured a separate section on sexual violence.<sup>48</sup> However, these sections vary drastically in the quality and detail of information they provide. Some—like the Darfur, second Libya, and fourth Syria reports—describe both specific instances and larger patterns of sexual violence,<sup>49</sup> while others—

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2004 alone—instances that must not have been investigated on the team's field mission. *Id.* ¶ 337.

45. For example, all of the investigators on the Guinea COI had experience in investigation in SGBV. *See* Navanethem Pillay, U.N. Comm'r for Human Rights, Lecture: Human Rights Investigations and their Methodology (Feb. 24, 2010), <http://unispal.un.org/UNISPAL.NSF/0/C9222F058467E6F6852576D500574710>.

46. Anonymous interview (Nov. 13, 2013). Outside of the one example of gender imbalance described in the Darfur COI report, other COI reports analyzed for this Note are not forthcoming about the make-up and expertise of their staff. Therefore, information about gender balance and expertise, and inferences about its adverse impact on gender reporting, come only from confidential interviews with those familiar with U.N. commissions of inquiry.

47. For example, the Guinea COI was explicitly mandated to make findings on individual accountability. *See* Guinea Report, *supra* note 30, ¶ 1 (explaining that the Commission's mandate would include, among other things, identifying those responsible for the events of September 28, 2009).

48. The Gaza report does not have a section on sexual violence, but features a broader section on the impact of the conflict on women and children. Gaza Report, *supra* note 29, ¶¶ 1275–1282. Unfortunately, the first report from the Syria COI did not have a sexual violence section or discuss SGBV's impact. Syria I Report, *supra* note 34.

49. *See* Darfur Report, *supra* note 28, ¶¶ 333–355 (describing patterns of violence against women in the Darfur conflict and providing several case studies of such violence); Libya II Report, *supra* note 32, Annex I, ¶¶ 503–534; Syria IV Report, *supra* note 34, Annex IX, ¶¶ 5–8 (describing pat-

like the first Libya, first Syria, and Sri Lanka reports—provide only a few paragraphs of information on specific violations and are unable to report on widespread or systematic violence.<sup>50</sup>

The omissions of the first Libya, first Syria, and Sri Lanka reports are highly problematic, but at least they acknowledge that information on sexual violence is missing. They also attempt to explain this paucity of information, indicating their awareness of sexual violence and the difficulties involved in uncovering and exposing it.<sup>51</sup> Significantly more troublesome is the second Syria report, which only mentions sexual violence in one sentence and the word “women” once, without explaining why further information is missing.<sup>52</sup> This may lead the reader to incorrectly conclude that sexual violence was not a feature of Syria’s conflict.<sup>53</sup> The Côte d’Ivoire report is similarly worrying, as it offers only one paragraph of information on sexual violence. This paragraph states that despite challenges in collecting evidence of sexual violence, some victims did speak with the commission—but inexplicably, the report’s section on sexual violence ends there, and the evidence col-

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terms of sexual violence committed by government security and military forces and providing specific examples of such violence).

50. See Libya I Report, *supra* note 32, ¶¶ 202–209 (describing several specific instances of sexual violence); Syria I Report, *supra* note 34, ¶¶ 66–68 (describing testimonial evidence of sexual violence against male detainees); Sri Lanka Report, *supra* note 31, ¶¶ 152–153 (describing evidence of one possible instance of sexual violence).

51. The first Libya report cites “trauma, shame and stigma” as well as a domestic law that punishes with flogging sexual relations outside of marriage. Libya I Report, *supra* note 32, ¶ 202 (internal citation omitted). The first Syria report cites “the stigma that victims would endure if they came forward.” Syria I Report, *supra* note 34, ¶ 68. The Sri Lanka report cites the stigma attached to rape, and “[c]ultural sensitivities” as factors contributing to the reluctance of victims to speak out. See Sri Lanka Report, *supra* note 31, ¶ 152.

52. See Syria II Report, *supra* note 34, ¶ 99 (“In addition, security force commanders managed detention centres throughout the country where prisoners were subjected to torture, sexual assaults and other inhumane acts.”).

53. For example, Human Rights Watch has documented evidence of sexual violence in government detention sites in Syria since March 2011 (the Syria COI was mandated to document abuses since March 2011). See *Syria: Sexual Assault in Detention: Security Forces also Attacked Women and Girls in Raids on Homes*, HUMAN RIGHTS WATCH (June 15, 2012), <http://www.hrw.org/news/2012/06/15/syria-sexual-assault-detention>.



lected by the COI remains unpublished.<sup>54</sup> This is particularly disappointing because, as this Note will discuss later in Part IV, information that is collected but not included in the final report is never publicly shared. Therefore, the findings of the Côte d'Ivoire COI's sexual violence investigation have essentially been lost forever due to poor reporting. Investigating and reporting on sexual violence is often challenging, but with the correct allocation of resources and sufficient attention and sensitivity from all COI staff members, it is not as impossible as some COI reports might suggest.

### C. *Integrating Gender Throughout the Report*

Women experience conflict in diverse ways, so a COI must be careful to capture the reality of these different experiences. Although recording the nature and extent of sexual violence in conflict is extremely important for future prosecutions, women are not simply exposed to conflict as victims of rape and sexual abuse. Indeed, focusing on sexual violence at the expense of other experiences may obscure the realities of conflict for the majority of women.<sup>55</sup> The most thorough COI reports usually include a section providing background information on the conflict, which discusses women's status in the pre-conflict society as well as their role in the conflict and in peacebuilding attempts. For example, the Sri Lanka report's introduction discusses women's role in the failed peace process,<sup>56</sup> the difficulties faced by women living in internally displaced persons (IDP) camps,<sup>57</sup> and the vulnerabilities of women who were separated from their families during the con-

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54. See Report of the International Commission of Inquiry on Côte d'Ivoire, Human Rights Council, 17th Sess., ¶ 104, U.N. Doc. A/HRC/17/48 (June 14, 2011).

55. Professor Ní Aoláin and Professor Turner elaborate on this balance:

[A] narrow focus on bodily violation can operate to obscure the wider social context in which this violation occurs. The danger with placing too great an emphasis on sexual violence is that other experiences will become marginalized due to a perception that the gender aspect has been covered if sexual violence has been addressed.

Fionnuala Ní Aoláin & Catherine Turner, *Gender, Truth & Transition*, 16 UCLA WOMEN'S L.J. 229, 261 (2007).

56. Sri Lanka Report, *supra* note 31, ¶ 41.

57. See *id.* ¶ 72.

flict.<sup>58</sup> Similarly, the Gaza report's section on the context of the conflict discusses the responsibility of Palestinian women for the household and how this responsibility has caused women to conceal their personal suffering.<sup>59</sup> Finally, the first Libya report briefly contextualizes women's experiences of the conflict, noting that "Libyan society remains male-dominated, with gender-based discrimination widespread."<sup>60</sup>

Commissions must also identify when women have been victims of crimes other than those related to sexual violence; women are often targeted for crimes that do not necessarily appear gendered, such as abduction, torture, and murder.<sup>61</sup> If a COI assumes that these crimes primarily affect men and only sends male investigators and interpreters on missions to investigate these crimes, its assumption may become a self-fulfilling prophecy, with women victims unwilling to speak to male investigators about their experiences.<sup>62</sup> When a commission does not mention whether women were also victims of these "non-gendered" crimes,<sup>63</sup> it is unclear whether the COI simply failed to uncover female victims in its investigations or whether women truly did not experience these types of crimes. It is also important for COIs to acknowledge that women can also suffer harm in situations where a male family member is considered the primary victim. For example, the Gaza COI report found that women often became the sole breadwinners in families where "male family members had died or been injured as a

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58. *See id.* ¶ 140.

59. Many women interviewed by the Gaza COI reported suffering as a result of the failure to provide their children with the care and security they need. Gaza Report, *supra* note 29, ¶ 71.

60. Libya I Report, *supra* note 32, ¶ 23.

61. Other vulnerable groups like children and people with disabilities are also highly susceptible to violence. *See, e.g.,* Annelotte Walsh, *International Criminal Justice and the Girl Child: Different Needs, Equal Opportunities*, in *WOMEN AND TRANSITIONAL JUSTICE: THE EXPERIENCE OF WOMEN AS PARTICIPANTS* 54, 59–60 (Lisa Yarwood ed., 2013) (discussing how girl children are particularly susceptible to "generic" acts of violence because of the vulnerabilities associated with their gender and age).

62. *See supra* text accompanying notes 36, 43.

63. This is true, for example, in the first Libya report as regards enforced disappearances, torture and other forms of ill treatment, and the denial of access to medical treatment. In these sections of the report, a woman is mentioned only once: The eighteen-year-old daughter of a physician was disappeared along with her father and three other siblings. *See generally* Libya I Report, *supra* note 32, ¶¶ 92–109.

result of conflict or violence, or were imprisoned.” This responsibility created food insecurity due to a lack of employment opportunities for women, in addition to causing women to suffer “feeling[s] of inability to provide children with the care and security they need.”<sup>64</sup>

Finally, many COI reports fail to include important recommendations regarding women. For example, the Darfur COI does not recommend that the Sudanese government specifically end impunity for violence against women, despite having devoted twenty paragraphs earlier in the report to the government’s inadequate work in addressing sexual violence.<sup>65</sup> The Côte d’Ivoire report mentions women in its recommendations only vaguely, suggesting that assistance be provided to victims, “in particular women, children, older persons and persons with disabilities,”<sup>66</sup> and the second Syria report does not make any gender-specific recommendations. However, many reports make recommendations that have the potential to contribute to the transformation of women’s status and security in the post-conflict society. The third Syria report recommends that U.N. missions to Syria monitor human rights violations, including violence against women,<sup>67</sup> and that women be adequately represented in mechanisms to achieve reconciliation, truth, and accountability for gross human rights violations.<sup>68</sup> The second Libya report recommends that Libya establish gender-sensitive psychological, medical, legal, and social support services; recruit and train female investigators; encourage and support the establishment of civil society organizations to provide support to victims of sexual violence; establish awareness campaigns to support victims of sexual violence; and train judicial, police, military, and prison officials on the handling of sexual violence cases.<sup>69</sup>

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64. Gaza Report, *supra* note 29, ¶¶ 71, 1280–1289.

65. See Darfur Report, *supra* note 28, ¶¶ 465–487. However, the report does generally recommend that the Sudanese authorities, “[e]nd impunity for the war crimes and crimes against humanity committed in Darfur.” *Id.* ¶ 650(a).

66. Côte d’Ivoire Report, *supra* note 33, ¶ 9(f).

67. See Syria II Report, *supra* note 34, ¶ 134.

68. See *id.* ¶ 137.

69. Libya II Report, *supra* note 32, ¶¶ 127(j)–(k), (t).

#### D. *Legal Analysis of Gender Issues*

COI reports share evidence of human rights violations—but they must also go a step further and make legal findings indicating which specific international human rights laws and international humanitarian laws have been violated. Commissions often fail to consider sexual violence and other forms of violence against women in light of all of the possible legal regimes under their mandate. Of the twelve commission reports discussed in this Note, ten were explicitly mandated to identify human rights violations and only three did so to the fullest extent possible with regard to violations against women.<sup>70</sup>

Many of the COIs analyzed in this Note make findings that a pattern of sexual violence was a potential crime against humanity, but overlook the possibility that these same violations might also be categorized as war crimes or violations of international treaty obligations. For example, the first report of the Libya COI identifies sexual violence as a *possible* violation of several of Libya's treaty obligations, including the prohibition on torture and cruel, inhuman or degrading treatment contained in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the right to the highest attainable standard of physical and mental health contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>71</sup> However, the report does not make any findings as to whether such violations actually occurred.<sup>72</sup> Furthermore, the report does not mention the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in its section on sexual violence.<sup>73</sup> The Darfur report provides similar treatment of SGBV, mentioning that rape can constitute a violation of international human rights treaty obligations, including the ICCPR and the African Charter on

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70. Only the Guinea, Sri Lanka, and Gaza reports explicitly make findings regarding war crimes, crimes against humanity, and international human rights treaty law in relation to SGBV.

71. See Libya I Report, *supra* note 32, ¶ 203 (describing the international human rights law and international criminal law applicable to sexual violence).

72. See *id.*

73. The report references CEDAW in an introductory paragraph, listing the treaties to which Libya is a party. See Libya I Report, *supra* note 32, ¶ 59.

Human and Peoples' Rights (ACHPR), but fails to find on the matter.<sup>74</sup> The second Libya report and all five Syria reports also fail to make findings of violations against women under international human rights treaties.<sup>75</sup>

Including international human rights treaty law in legal analyses is extremely important, not only because it is required by the COI's mandate, but also because violations of treaties such as the ICCPR, ICESCR, and CEDAW can vividly depict how women experience systematic oppression and violence in conflict. For example, the Gaza report finds that Israel has violated pregnant Palestinian women's right to food, guaranteed under Article 12(2) of CEDAW;<sup>76</sup> the Sri Lanka report finds that the treatment of women in IDP camps and during resettlement processes violated Sri Lanka's obligation to ensure equal rights of women under the ICCPR, ICESCR, and CEDAW;<sup>77</sup> and the Guinea report finds that the sexual violence experienced by women constitutes a serious violation of their right to health contained in Article 12 of the ICESCR.<sup>78</sup>

An international criminal law analysis is also an important aspect of a COI's legal findings, as it can provide a first snapshot of the situation for future international criminal investigators. A COI should identify when crimes against women can be categorized as *both* crimes against humanity and war crimes (as well as genocide, in rarer circumstances). It is important to prosecute violations under all applicable headings in order to provide the most detailed and accurate historical record of a

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74. See Darfur Report, *supra* note 28, ¶ 356.

75. For example, the second Libya report, and the first and third Syria reports, mention that Libya and Syria have ratified CEDAW, but do not find any violations of the Convention. See Libya II Report, *supra* note 32, Annex I, ¶ 16 n.23; Syria I Report, *supra* note 34, ¶ 23; Syria III Report, *supra* note 34, Annex II, ¶ 8 n.e. The second, fourth, and fifth Syria reports do not mention CEDAW at all.

76. See Gaza Report, *supra* note 29, ¶¶ 937–941 (finding that, as a result of Israel's actions to destroy food and water supplies and infrastructure in Gaza, Israel has violated food rights contained in CEDAW).

77. See Sri Lanka Report, *supra* note 31, ¶¶ 227–228 (finding violations of ICCPR article 2(1) and 3; ICESCR article 2(1) and 3; and CEDAW article 2(e)).

78. See Guinea Report, *supra* note 30, ¶ 175 (adding that the government also violated Article 12 by failing to treat victims of the massacre, including survivors of rape, at state hospitals).

conflict.<sup>79</sup> Unfortunately, several commissions identify certain incidents of SGBV as possible crimes against humanity but fail to mention that they would also likely qualify as a war crime. The Darfur Report illustrates such inconsistent application of the law to the facts it uncovered on the ground. First, the report appropriately concludes that Janjaweed and Government soldiers committed rape as a crime against humanity and may have also committed sexual slavery and persecution as a crime against humanity.<sup>80</sup> However, although the Commission devotes several paragraphs to a discussion of rape as a war crime, it does not determine whether this war crime actually occurred.<sup>81</sup> The report also mentions in part of one sentence that rape *may* constitute genocide, but fails to find conclusively in this matter as well.<sup>82</sup> This is a particularly glaring omission in light of the ICC Pre-Trial Chamber's confirmation that there were "substantial grounds to believe" that the crime of rape as genocide was committed in Darfur.<sup>83</sup> Similarly, the second Libya report's section on sexual violence discusses evidence of crimes against humanity; however, only the report's Annex mentions that these crimes may also be considered war crimes and violations of international human rights treaty obligations.<sup>84</sup>

A close reading of COI reports also reveals several legal inconsistencies within individual reports, likely due to drafting and editing by multiple parties. In the introduction to an ad-

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79. When one criminal act is prosecuted under multiple headings, the question of double jeopardy is avoided at sentencing, by giving the defendant concurrent sentences. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, ¶¶ 461–470 (Int'l Crim. Trib. for Rwanda Sept. 2, 1998).

80. *See* Darfur Report, *supra* note 28, ¶¶ 352–353, 360. This conclusion is repeated in the report's section on "Conclusions and Recommendations." *See id.* ¶ 634.

81. *See id.* ¶¶ 357–360.

82. *See id.* ¶ 358.

83. *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09, Second Warrant of Arrest, at 6–8 (July 12, 2010) (finding that there were reasonable grounds to believe that the forces of the Government of Sudan had subjected thousands of women to acts of rape, acting with genocidal intent).

84. Libya II Report, *supra* note 32, ¶ 70 (discussing the lack of information on sexual violence used in a "widespread and systematic manner"—one of the elements of a crime against humanity); *id.* Annex I, ¶ 500 (discussing how crimes of sexual violence may be categorized as crimes against humanity, war crimes, and violations of international human rights law).

vanced version of the first report on Libya, the Commission found that sexual violence had been committed as a crime against humanity,<sup>85</sup> but the report's conclusions omit sexual violence from its list of crimes against humanity.<sup>86</sup> The second Libya report makes a similar error: This report's section on sexual violence concludes that the Commission did *not* find documented evidence of widespread and systemic sexual violence tantamount to crimes against humanity,<sup>87</sup> but in its section of overarching conclusions, the Commission found that "acts of murder, torture, enforced disappearance and *certain acts of sexual violence* committed by Qadhafi forces" *do* constitute crimes against humanity.<sup>88</sup>

Many COIs have focused on finding widespread and systematic violations—acts which might qualify as crimes against humanity under the Rome Statute—at the expense of other civil, political, economic, and social violations. Although it is often important for a COI to make a strong case to the Security Council to refer a conflict to the ICC, a commission that focuses solely on crimes against humanity may neglect reporting on harms that affect more women and more meaningfully represent a community's experience of a conflict.

### E. *Implications for Societies Emerging from Conflict*

The previous sections have illustrated some of the struggles U.N. COIs have faced over the past ten years: inadequate gender balance among staff, inconsistent reporting on sexual violence, failure to acknowledge the systemic hardships that women face or women's active participation in conflict and peacemaking,<sup>89</sup> and difficulties in identifying international

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85. Advance Unedited Version: Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya, Human Rights Council, 17th Sess., May 30–June 17, 2011, at 7, U.N. Doc. A/HRC/17/44 (June 1, 2011) ("[T]orture, persecution, enforced disappearance and *sexual abuse* that were committed by Government forces as part of a widespread or systematic attack against a civilian population with knowledge of the attack. Such acts fall within the meaning of 'crimes against humanity.'") (emphasis added). This introductory section was not included in the final version of the first report.

86. *Id.* ¶ 247.

87. *See* Libya II Report, *supra* note 32, Annex I, ¶ 536.

88. *Id.* ¶ 118 (emphasis added).

89. Although women often struggle to find a seat at the table during peace talks, there is never a dearth of women organizing to end conflict.

human rights law and international humanitarian law violations against women. These challenges adversely affect a COI's ability to provide a clear picture of a conflict or a reliable legal analysis of crimes committed—important contributions to any successful transition from conflict and impunity to peace and accountability. Although violations against women can be difficult to investigate and analyze, particularly in the challenging circumstances where COIs often operate, these problems can be mitigated or avoided altogether by constructing and implementing a rigorous gender methodology beginning from the COI's inception.

#### IV. DEVELOPING A METHODOLOGY FOR FUTURE U.N. COMMISSIONS OF INQUIRY

Not surprisingly, other transitional justice mechanisms have long dealt with similar challenges to those described above. Although the gender methodology of U.N. COIs has not yet come under the microscope of gender experts, transitional justice scholars and practitioners have long viewed truth commissions and international criminal courts and tribunals as phases of the transitional process in which maintaining a gender perspective is imperative to success.<sup>90</sup> While the gender methodologies of truth commissions and criminal pro-

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COIs ought to look beyond formal international negotiations, and acknowledge the important role that women play in peacebuilding in their communities. *See, e.g.*, Leymah Gbowee, Coordinator, WIPNET/WANEP, Address at the Meeting of the Boston Consortium of Gender, Security and Human Rights: A Conversation with Women Peacebuilders: Leymah Gbowee and Shobha Gautam (Mar. 8, 2006), <http://genderandsecurity.umb.edu/Leymah%20Gbowee%20and%20Shobha%20Gautam%203-8-06.pdf> (describing her experiences as a community organizer and peacebuilder, working outside formal peace talks in Liberia).

90. For a comprehensive gender analysis of truth commissions and their methodology, see generally VASUKI NESIAH ET AL., TRUTH COMMISSIONS AND GENDER: PRINCIPLES, POLICIES, AND PROCEDURES (Int'l Ctr. For Transitional Justice ed., 2006). For a comprehensive analysis of prosecution of gender-based international humanitarian law violations, see generally KELLY DAWN ASKIN, WAR CRIMES AGAINST WOMEN: PROSECUTION IN INTERNATIONAL WAR CRIMES TRIBUNALS (1997). Gender must also be a focus of domestic prosecutions of grave violations of human rights. However, the gender methodologies of domestic courts have been excluded from this Note's analysis because domestic prosecutions differ quite markedly from COIs, particularly in regards to access to witnesses and knowledge of local context.



ceedings are still far from perfect, they nonetheless hold many lessons for the U.N. COI model.

Although there are many similarities between the types of challenges faced by COIs and other transitional justice measures, there are also numerous issues specific to the COI format. COIs must report back to the United Nations within only a few months after the start of their mandate; truth commissions and criminal trials often have several years to create nuanced processes that can ensure that women's voices are heard.<sup>91</sup> COIs also have fewer human and financial resources at their disposal than truth commissions and international criminal tribunals typically do.<sup>92</sup> Perhaps most importantly, COIs often conduct their work while a conflict is still raging or where the government is unwilling to grant access to the country,<sup>93</sup> which creates obstacles to locating and interviewing wit-

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91. For the mandate lengths of the COIs analyzed in this Note, see *supra* notes 28–34. For the durations of truth commissions, see PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 256–64 (2d ed. 2011). For information on the duration of cases before the ICTY, see INT'L CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, THE CASES, <http://www.icty.org/action/cases/4> (last visited Mar. 19, 2013). For information on the duration of cases before the ICTR, see INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, STATUS OF CASES, <http://www.unict.org/Cases/StatusofCases/tabid/204/Default.aspx> (last visited Mar. 19, 2013).

92. COIs are comprised of three to five commissioners and a small support staff based in the OHCHR secretariat. For the names of commissioners leading the COIs analyzed in this Note, see *supra* notes 28–34. There is no publicly available information regarding the costs of individual COIs. The entire annual budget of the Office of the High Commissioner for Human Rights, which hosts each COI, was approximately \$160 million in 2010; each COI likely makes up only a fraction of overall spending. See OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, ABOUT OHCHR FUNDING (Dec. 31, 2010), <http://www.ohchr.org/EN/AboutUs/Pages/FundingBudget.aspx>. The operating budget for the ICTY from 2012–2013 topped \$250 million, and the budget of the ICTR from 2010–2011 was just over \$245 million. See INT'L CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, THE COST OF JUSTICE (last visited Mar. 19, 2013), <http://www.icty.org/sid/325>; INT'L CRIMINAL TRIBUNAL FOR RWANDA, GENERAL INFORMATION, <http://www.unict.org/AboutICTR/GeneralInformation/tabid/101/Default.aspx> (last visited Mar. 19, 2013). The South African TRC's annual budget was \$18 million at the height of its operations; the Guatemala TRC had an eighteen-month budget of \$9.5 million; the El Salvador TRC had an eight month-budget of \$2.5 million. See HAYNER, *supra* note 91, at 216–17.

93. For example, the Sri Lanka and Syria COIs were not able to enter the countries in question to conduct investigations; the Gaza COI was able to

nesses—challenges that are less common for truth commissions and criminal investigations.<sup>94</sup> These limitations have implications for all aspects of a COI's report, but in particular for SGBV. Despite their innate differences, COIs, truth commissions, and international criminal trials are sufficiently similar in many areas of their work to enable the sharing of best practices. A review of these practices reveals important lessons for strengthening the processes and content of future COIs.

### A. *Process-Based Methodology*

The process of planning any investigation must begin with thinking about how best to engage the cooperation and participation of women from affected communities. Truth commissions and tribunals have discovered that if the process of collecting evidence is not gender sensitive, the final product will reflect that insensitivity. During the drafting of the Rome Statute, Valerie Oosterveld writes that “[t]here was also widespread agreement, based on lessons learned from the international criminal tribunals, that a gender-sensitive ICC involves much more than the criminalization of gender-based violations: it requires judges, officials, and staff with knowledge in and experience with issues of gender-based violence; court procedures that will not retraumatize victims and witnesses; and gender-sensitive victim and witness protection.”<sup>95</sup> These lessons, among others, also readily apply to COIs.

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enter Gaza (via Egypt), but not Israel. *See* Sri Lanka Report, *supra* note 31, ¶ 22; Syria I Report, *supra* note 34, ¶ 13; Syria II Report, *supra* note 34, ¶ 4; Syria III Report, *supra* note 34, ¶¶ 5–6; Syria IV Report, *supra* note 34, ¶ 5; Syria Report V, *supra* note 34, ¶ 4; Gaza Report, *supra* note 29, ¶ 8.

94. The ICC also has difficulty accessing witnesses in countries with uncooperative governments, such as Sudan. *See, e.g.*, INTERNATIONAL BAR ASSOCIATION, WITNESSES BEFORE THE INTERNATIONAL CRIMINAL COURT 16 (2013), available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=9C4F533D-1927-421B-8C12-D41768FFC11F> (describing how ICC investigators have been unable to enter Sudan to gather evidence). When a COI does not have access to the country in question, it conducts interviews with refugees living outside the country, and with witnesses inside the country via Skype. *See, e.g.*, Syria V Report, *supra* note 34, ¶ 7.

95. Valerie Oosterveld, *Prosecution of Gender-Based Crimes in International Law*, in GENDER, CONFLICT, AND PEACEBUILDING 67, 67 (Dyan Mazurana et al. eds., 2005).

## 1. *Gender Balance and Staff Expertise*

In Part II, this Note described how COIs have often failed to ensure sufficient participation from women as investigators and interpreters, which has contributed to an underreporting of violations against women. However, while it is critical that COIs—like truth commissions and criminal tribunals—hire women as staff members, simply employing women is not enough to guarantee gender sensitivity. Each COI must also institute a gender policy, employ a gender advisor, and train all staff to be sensitive to issues that arise when working on SGBV.

### a. *Hiring Women*

Richard Goldstone, the first prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), was “amazed at the gender bias that emerged at our international office,” partly because the Office of the Prosecutor employed very few senior female investigators.<sup>96</sup> It is important to strike a gender balance in senior leadership positions and on investigative teams, in order to ensure that women’s issues are not “relegated to a special, limited category.”<sup>97</sup> Women investigators are also more likely to elicit testimony from female survivors of violence. In fact, a critical review of the ICTR’s work found that the absence of female investigators contributed to the under-reporting of sexual violence.<sup>98</sup> A manual on gender policy for truth commissions has also suggested that having more women on staff can make a truth commission “less alienating for female victims.”<sup>99</sup> It is particularly important for truth commissions to have sufficient numbers of women statement-takers, who are the victim’s first point of contact with a truth commission, because female witnesses and survivors often feel

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96. Goldstone, *supra* note 18, at 280.

97. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT’L L. 613, 625 (1991) (discussing why it is significant that “the major institutions of the international legal order are peopled by men”).

98. BINAIFER NOWROJEE, “YOUR JUSTICE IS TOO SLOW:” WILL THE ICTR FAIL RWANDA’S RAPE VICTIMS? 12 (2005) (“Investigators receive no training on interviewing methodology for rape victims, and the majority of the investigators are male.”).

99. NESIAH, *supra* note 90, at 10.

more comfortable speaking to women.<sup>100</sup> As discussed above, it is also critical that female interpreters are available to assist female investigators and statement-takers who are interviewing women.<sup>101</sup> The experience of truth commissions and international criminal courts and tribunals demonstrates that gender balance is an important first step toward gender sensitivity. Consequently, the OHCHR secretariat should ensure that such a balance is struck at all levels of staff, for all future commissions.<sup>102</sup>

b. *Creating and Implementing a Gender Policy*

Although employing a gender-balanced staff is necessary to ensure gender sensitivity, it is not sufficient. In order to promote gender-sensitive practices, the ICTY and ICTR have long adhered to gender policies in their respective Offices of the Prosecutor (OTP), and the ICC OTP is currently drafting a policy.<sup>103</sup> A gender policy at a tribunal requires the OTP to make strategic decisions on how sexual violence will be investigated, charged, prosecuted, proven, and potentially appealed in case of an acquittal. Such a policy also requires making gender crimes central to prosecutions, such that gender-based charges are indispensable even if time and resources are

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100. *See id.* (describing the influence that the gender of statement-takers can have on the statements collected from women witnesses and survivors).

101. *See* Peggy Kuo, *Prosecuting Crimes of Sexual Violence in an International Tribunal*, 34 CASE W. RES. J INT'L L. 305, 311 (2002) (describing her work investigating sexual violence for the ICTY: "We had to bring interpreters so that we could communicate, and most of the time, although not always, we used female staff members to make the women feel more comfortable and able to open up."); *see also supra* text accompanying note 43.

102. When hiring women and placing them into the field, a COI must also consider its female staff's safety and security, and take special precautions to ensure that their unique needs are met. For an introduction to security considerations for female human rights defenders, see ENRIQUE EGUREN FERNÁNDEZ & MARIE CARAJ, PROTECTION INTERNATIONAL, NEW PROTECTION MANUAL FOR HUMAN RIGHTS DEFENDERS 97–108 (2009).

103. Till Papenfuss, *Interview with Fatou Bensouda, Chief Prosecutor, International Criminal Court*, GLOBAL OBSERVATORY (Nov. 15, 2012), available at <http://www.theglobalobservatory.org/interviews/384-interview-with-fatou-bensouda-chief-prosecutor-international-criminal-court.html> (describing the importance of appointing a gender advisor and developing a gender policy); *see* Goldstone, *supra* note 18, at 280 (explaining how he "became convinced that if we did have an appropriate gender policy in the Office of the Prosecutor, we would have little chance of getting it right outside of the office.").

scarce.<sup>104</sup> Although not all of these policy decisions are relevant for COIs, it is important that each COI create a protocol which requires that its investigation and report writing are conducted in a gender-sensitive manner, and that gender issues are a significant focus of its efforts. Such a policy should include many of the recommendations made in this Part of the Note.

c. *Hiring and Empowering a Gender Advisor*

The gender policies at the ICTY and ICTR have included the appointment of a gender advisor, whose role is to provide expert advice on the prosecution of SGBV and ensure gender equality in the internal and external workings of the OTP.<sup>105</sup> The drafters of the Rome Statute took notice of the important role these gender advisors had in improving the gender sensitivity of prosecutions at the *ad hoc* tribunals, and formally required the appointment of a gender advisor at the ICC in the Statute.<sup>106</sup> Many truth commissions have also found it valuable to employ a special advisor on gender issues, appoint an experienced female commissioner to lead gender-focused ses-

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104. See Van Schaak, *supra* note 18, at 360 (explaining that a gender policy must be “fully institutionalized and operationalized such that it infuses the hiring, training, and day-to-day activities, and evaluation of all prosecutorial staff”); Binaifer Nowrojee, *We Can Do Better: Investigating and Prosecuting International Crimes of Sexual Violence* (paper presented at the Colloquium of Prosecutors of the International Criminal Tribunals, Arusha, Tanzania, Nov. 25–27, 2004) (“Without a master plan of sorts, that includes sexual violence as one aspect, investigative teams do not always pursue rape testimonies or utilize investigative methodology that is conducive to eliciting rape testimonies.”).

105. See Goldstone, *supra* note 18, at 280 (describing the appointment of the first legal advisor to the Office of the Prosecutor (ICTR) for Gender Crimes, Patricia Sellers).

106. See Rome Statute of the International Criminal Court art. 42(9), July 17, 1998, 2187 U.N.T.S. 90, 114 (“The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.”).

sions,<sup>107</sup> or have a separate Gender Unit to ensure that gender issues receive due attention.<sup>108</sup>

The United Nations recently recognized the important role that a gender advisor can play in ensuring the gender sensitivity of a COI's investigation. Accordingly, since 2011, the Secretary-General has required that U.N. Women send a gender advisor to work with each COI. Prior to this requirement, U.N. Women voluntarily sent gender advisors to support the Guinea and Sri Lanka commissions.<sup>109</sup>

However, simply having a gender advisor is insufficient; the gender advisor must have decision-making power and must be invited to participate in high-level meetings. Patricia Sellers, the gender advisor whom Prosecutor Goldstone appointed to the ICTR, was kept out of high-level meetings for a time, and had to fight to make her voice heard among the male senior investigators who set the office's long-term strategies.<sup>110</sup> Based on this experience, Sellers suggests that "[a]n effective advisor must be a member of the senior management . . . and be unquestionably recognized by her or his U.N.

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107. In Sierra Leone, the responsibility for ensuring that the TRC successfully addressed sexual abuses fell to commissioners with experience working on gender issues. According to Binaifer Nowrojee, "That they did this willingly and ably underscores the importance and need for the appointment of TRC commissioners and senior staff with a prior commitment to addressing, and experience in dealing with, gender crimes." Binaifer Nowrojee, *Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims*, 18 HARV. HUM. RTS. J. 85, 93 (2005). The Liberia TRC had a Gender Committee, and employed Anu Pillay as a gender advisor. See generally Anu Pillay, *Views from the Field: Truth Seeking and Gender: The Liberian Experience*, 9 AFR. J. ON CONFLICT RESOL. 91 (2009).

108. See WORLD BANK, GENDER, JUSTICE, AND TRUTH COMMISSIONS 4 (2006) (discussing the Peruvian TRC's use of a gender unit to ensure that a gender perspective was incorporated into the daily work of the truth commission).

109. In the Secretary-General's 2011 report to the Security Council on Women, Peace and Security, he committed "to ensuring that all commissions of inquiry and related investigative bodies established by the United Nations . . . have dedicated gender expertise and access to specific sexual violence investigative capacity, drawing on the support of UN-Women." U.N. Secretary-General, *Report on Women, Peace and Security*, ¶ 69, U.N. Doc. S/2011/598 (Sept. 29, 2011).

110. See Sellers, *supra* note 18, at 309 (describing how the Chief of Investigation appointed a member of his unit to head a team for sexual assault investigations, informing Prosecutor Goldstone that, "now, there will be no reason for [Sellers] to attend our meetings").

colleagues as a senior manager.”<sup>111</sup> In addition, COIs are expected to undertake their work at a lightning pace compared to courts, so they cannot risk delays in U.N. Women’s deployment of a gender advisor, who must be a necessary part of devising policy and procedure from the commission’s very inception.

d. *Training All Staff on Gender and Sexual Violence*

Although it is important to have a gender advisor specifically dedicated to ensuring the gender sensitivity of the transitional justice mechanism, it is also imperative that all staff be trained on gender-sensitive practices and SGBV evidence collection—techniques too numerous and complex for discussion in this Note.<sup>112</sup> Leaving gender-focused investigations only to female experts risks placing SGBV in a silo; other staff may be given the impression that gender sensitivity in their own work is not important and that the witnesses they interview have not experienced SGBV, which is not necessarily true. An investigator who does not set out to uncover SGBV but is nonetheless trained to pick up on a witness’s reticence in an interview may still be able to prompt conversation and uncover information about SGBV.<sup>113</sup>

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111. *Id.* at 308 n.17.

112. For one example of a guide on gender-sensitive evidence collection, see CALLAMARD, *supra* note 43, at 33–45.

113. Gender training was provided to the staff of TRCs in Peru, Ghana, and Timor-Leste, so that statement-takers could look for cues to patterns of abuses. See NESIAH, *supra* note 90, at 19. Binaifer Nowrojee also points out the importance of training all investigative and prosecutorial staff members at international criminal tribunals: “Even with a dedicated team dealing with the sexual violence charges, other investigators and lawyers will still need to be in contact and interact with rape victims.” Nowrojee, *supra* note 104. Male and female investigators must also be trained to uncover the signs of sexual abuse in male survivors. The high rates of sexual violence experienced by men in conflict have recently come to international attention, and such violations against men should not continue to go unreported and unpunished. See, e.g., Yovanka Perdigo, *Central Africa: Invisible Victims—Sexual Violence against Men in the Great Lakes*, THINK AFRICA PRESS (JUNE 28, 2012), available at <http://allafrica.com/stories/201206290101.html> (describing how the stigma attached to sexual violence, as being a crime purely directed at women, discourages men from speaking out). For a scholarly introduction to the topic, see generally Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 EUR. J. INT’L L. 253 (2007), available at <http://ejil.oxfordjournals.org/content/18/2/253.full.pdf>.

In addition to interview training, staff should receive education on how to write a report that “mainstreams” gender into all areas and fully acknowledges the diversity of women’s experiences. The importance of gender mainstreaming in report writing will be discussed further below, in the section on content-based methodology.

## 2. *Carrying out Investigations and Working with Witnesses*

COIs, like truth commissions and courts, must interview witnesses in order to understand and report on the situation on the ground. For each of these mechanisms, this involves a complex process of identifying geographic areas for investigative missions, contacting witnesses on the ground, taking steps to ensure the witnesses’ personal security, and managing witnesses’ expectations regarding the outcomes of their participation. All this happens within a short time frame and with limited human and financial capacity. Given the similarities of truth commissions and courts to COIs, their best practices with respect to gender sensitivity in working with witnesses are highly relevant to the COI model.

### a. *Planning Field Missions*

When a COI receives its mandate, commissioners and secretariat staff must quickly determine where and how they will conduct their field missions—decisions that will ultimately influence the information that appears in the final report. Sexual violence investigations frequently proceed more slowly than other investigations,<sup>114</sup> because investigators have the difficult task of identifying survivors and then winning their trust in order to elicit testimony.<sup>115</sup> As a result, when the COI secretariat plans field missions, investigators must have some idea of where SGBV has occurred in order to allocate additional time and staff—particularly female investigators and interpreters—to these areas. Often, local women’s non-governmental organizations (NGOs) and other groups working on SGBV in the region are the best source of information on patterns and loca-

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114. See Van Schaak, *supra* note 18, at 368–69 (describing why gender crimes are more difficult to investigate than other types of crime); see also *supra* text accompanying note 18.

115. See CALLAMARD, *supra* note 43, at 30 (“[I]nvestigation into sexual violence requires a great deal of effort in terms of breaking down barriers.”).



tions of crimes. COI investigators cannot wait until the investigative team begins its mission in the country to make contact with these groups—at this point it may be too late to change plans, reallocate staff, and spend more time in harder-hit areas.

When making similar decisions about the strategic allocation and use of resources in the field, the ICC often relies on information provided by domestic civil society organizations and international and local NGOs working in the country or region in question.<sup>116</sup> Local contacts are particularly important for COIs because commissioners and staff members often lack expertise regarding the context of the situation, and sometimes, as was the case with Sri Lanka and Syria, the commission is not allowed to enter the country and must conduct its investigation remotely.<sup>117</sup> However, U.N. COIs have an advantage over courts because they can easily access the vast network of U.N. agencies already working on the ground. These agencies are likely to have useful contextual information about the conflict, as well as pre-existing connections to local women's civil society groups.

In addition to helping map patterns and locations of sexual violence, organizations and individuals familiar with the local context can better foresee which norms and customs might require an alteration of interview protocol.<sup>118</sup> Women's civil society organizations have been instrumental in formulating

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116. In a 2003 draft policy document, the OTP describes a desire for “civil society to take ownership of the Court” and develop a network between the Prosecutor and non-governmental organizations “to ensure that in any kind of situation in which the Prosecutor is called upon to act, practical resources are made available to enable an investigation to be mounted.” OFFICE OF THE PROSECUTOR, INT’L CRIMINAL COURT, PAPER ON SOME POLICY ISSUES BEFORE THE OFFICE OF THE PROSECUTOR 2 (Sept. 2003), available at [http://www.icc-cpi.int/nr/rdonlyres/1fa7c4c6-de5f-42b7-8b25-60aa962ed8b6/143594/030905\\_policy\\_paper.pdf](http://www.icc-cpi.int/nr/rdonlyres/1fa7c4c6-de5f-42b7-8b25-60aa962ed8b6/143594/030905_policy_paper.pdf). For example, in its preliminary investigation into violations in Honduras, the OTP gathered information on the situation from sources including international and national NGOs. See OFFICE OF THE PROSECUTOR, INT’L CRIMINAL COURT, REPORT ON PRELIMINARY EXAMINATION ACTIVITIES ¶ 42 (Dec. 13, 2011).

117. See *supra* note 93 and accompanying text.

118. For example, in some contexts, women might respond well to closed-ended interview questions. In other settings, however, women will feel more comfortable when an interviewer asks open-ended questions that allow the woman to shape her testimony. See NESIAH, *supra* note 90, at 21.

truth commission processes and assisting commissioners in designing procedures that account for local sensitivities.<sup>119</sup> For example, the South African Truth and Reconciliation Commission (TRC) decided to hold closed women-only hearings as a result of a briefing paper submitted by women's rights activists and scholars.<sup>120</sup>

It is also important to note, however, that local organizations are not always aware of the occurrence of SGBV, particularly in places where women are highly unlikely to speak out about abuse.<sup>121</sup> For example, during the Guatemalan peace process, none of the parties—including civil society actors who were involved in the negotiations—raised the subject of sexual violence; it was only later that the country's Truth Commission uncovered the significant patterns of sexual violence that had taken place during the conflict.<sup>122</sup> This illustrates that a lack of local awareness about SGBV does not indicate that such abuse has not occurred. Investigators should probe the issue nonetheless, because with the appropriate guarantees of confidentiality and security, women survivors of SGBV may be willing to provide a statement to the COI.

#### b. *Identifying Witnesses*

When a COI investigative team reaches the country under investigation, it must continue to build relationships with U.N. agencies, NGOs, and civil society organizations, all of which can quickly connect investigators to victims and help build

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119. For example, "In South Africa, women's advocates provided intensive workshops for the truth commissioners early in the commission's tenure, assisting in the design of policies to best receive and be respectful of women's experiences." See HAYNER, *supra* note 91, at 89. For a discussion of women's groups' support to the Liberian TRC through the work of the Gender Committee, see Pillay, *supra* note 107, at 95 (2009).

120. The women's hearings had a panel of women-only commissioners. See HAYNER, *supra* note 91, at 89.

121. For example, in Libya, sexual relations outside of marriage (regardless of consent) can be punished by flogging. Such laws, combined with stigmatization and shame, prevented women from speaking about their experiences to the Libya COI. Libya I Report, *supra* note 32, ¶ 202.

122. See HAYNER, *supra* note 91, at 87 (describing civil society's failure to grasp the nature of sexual violence in Guatemala, prior to the work of the Truth Commission).

trust between the investigators and the community.<sup>123</sup> This assistance is particularly important for the investigation of sexual and gender-based crimes, whose victims may be more difficult to identify than victims of other types of violence.<sup>124</sup> Examining the methods used by the ICC for identifying witnesses reveals one possible way for COIs to ameliorate these challenges.

Like COIs, the ICC often has limited time and resources for its investigations, in addition to a lack of expertise in the local culture. As a result of these constraints, the ICC has relied heavily on the use of “intermediaries,” which are local groups or individuals who are formally engaged by the Court to facilitate its contact with those who can provide evidence. Intermediaries have been controversial,<sup>125</sup> but despite misgivings, their use has prevailed, largely because they allow the Prosecutor to engage in highly sensitive evidence collection in unsecure settings with minimal staff on the ground.<sup>126</sup> COIs conduct more limited investigations and have a lower evidentiary standard than the ICC,<sup>127</sup> and they can also rely on assistance from U.N. agencies already on the ground. Thus, it is

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123. Amnesty International recommends meeting with NGOs, lawyers, and hospitals that provide assistance to victims of rape. CALLAMARD, *supra* note 43, at 29.

124. See *supra* text accompanying notes 114–15; see also Alex Obote-Odora, *Rape and Sexual Violence in International Law: ICTR Contribution*, 12 NEW ENG. J. INT’L & COMP. L. 135, 140 (2005) (“Sex-based crimes are not easily identifiable, like gunshot wounds or amputated limbs. This is because these crimes inflict physical and psychological wounds, which women can conceal to avoid further emotional anguish, ostracization, and retaliation from perpetrators who may live nearby.”).

125. See Christian De Vos, *Someone Who Comes Between One Person and Another: Lubanga, Local Cooperation and the Right to a Fair Trial*, OPINIO JURIS (Dec. 7, 2011, 06:40 AM), <http://opiniojuris.org/2011/12/07/somone-who-comes-between-one-person-and-another-lubanga-local-cooperation-and-the-right-to-a-fair-trial/> (discussing fair trial concerns regarding the use of intermediaries at the Lubanga trial).

126. Intermediaries provide “scalpels . . . where the Court may otherwise approach the situation with a hatchet.” Holly Dranginis, *The Middle Man: The Intermediaries of International Criminal Justice*, JUSTICE IN CONFLICT (Aug. 21, 2011), available at <http://justiceinconflict.org/2011/08/21/the-middle-man-the-intermediaries-of-international-criminal-justice/>.

127. At a conference on COIs hosted by OHCHR, participants suggested that the criminal standard of proof was too high for COIs, because they do not establish criminal responsibility; a more reasonable standard was “the balance of probabilities.” *COI Conference Brief*, *supra* note 7, at 3.

probably unnecessary to contemplate COIs' heavy reliance on a vast network of intermediaries. However, in particularly difficult investigative circumstances, such as those where U.N. agencies cannot sufficiently assist, a COI may want to consider the tradeoffs and benefits of engaging local actors more formally in its investigation.

c. *Interviewing Witnesses*

The importance of having women investigators and interpreters available to interview women witnesses—and training all staff on collecting evidence of SGBV—cannot be overstated. Investigators must keep in mind that it is important to collect evidence of both the broad systematic oppression that women experience and specific instances of gender-based violations of the Rome Statute. Investigators should consider the possibility that a COI report might be used as the basis for an investigation and consequent prosecution at the ICC or in a domestic court. At present, there is no formal agreement between OHCHR and the ICC to share evidence collected beyond that which is included in the final report, for reasons of institutional independence and witness confidentiality.<sup>128</sup>

A foremost concern for all institutions involved in fact-finding should be the possibility of re-traumatizing victim-witnesses, some of whom may be called upon to testify about the same incident before both a COI and the ICC.<sup>129</sup> To the extent that collaboration is possible and desirable, the OHCHR secretariat and the Office of the Prosecutor at the ICC should discuss how COIs can craft reports that will better support future ICC investigations and minimize repeated interviews with traumatized witnesses. If steps are taken to begin formalizing a process for sharing evidence between the OHCHR secretariat and the ICC, OHCHR can alleviate issues of witness confiden-

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128. OHCHR does not have a formal evidence-sharing agreement with the ICC. Anonymous Interview (Nov. 13, 2013). However, one interviewee suggested that some informal sharing had occurred on an ad hoc basis in the past. Anonymous Interview (Apr. 12, 2013).

129. This is to say nothing of the interviews with victims and witnesses conducted by U.N. Special Rapporteurs, the Security Council's Sanctions Committee and Groups of Experts, and national and international NGOs. See NESIAH, *supra* note 90, at 20–21 (describing the emotional trauma of providing statements to truth commissions, particularly where the victim has been asked to recount her story by multiple parties).

tiality in the future by expressly asking for witnesses' consent for their statements to be shared with the Court.

d. *Providing Witness Protection and Support*

International criminal courts and tribunals have long understood the importance of providing gender-sensitive witness protection and support.<sup>130</sup> The Special Court for Sierra Leone developed a handbook of best practices for witness protection, which recommends that survivors of rape and sexual assault be provided with special preparation and support, including medical attention and psychological rehabilitation during the period of their interaction with the Court.<sup>131</sup> The Rome Statute codified the requirement that witness protection take into account the nature of the crime, "in particular, but not limited to, where the crime involves sexual or gender violence."<sup>132</sup> Witness support and protection services at the ICC begin in the investigation phase and carry through to the end of the trial.<sup>133</sup> Although few truth commissions have had the re-

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130. For a description of gender-sensitive witness protection at the ICTY, ICTR, and ICC, see generally Sylvia Pieslak, Comment, *The International Criminal Court's Quest to Protect Rape Victims of Armed Conflict: Anonymity as the Solution*, 2 SANTA CLARA J. INT'L L. 138 (2003).

131. SIMON CHARTERS ET AL., SPECIAL COURT FOR SIERRA LEONE, *Best-Practice Recommendations for the Protection & Support of Witnesses: An Evaluation of the Witness & Victims Section of the Special Court for Sierra Leone* 5, 14–15 (2008).

132. Rome Statute of the International Criminal Court art. 68(1), July 1, 2002, 2187 U.N.T.S. 90.

133. The Victims and Witnesses Unit in the Office of the Registrar at the ICC, in conjunction with the Gender & Children Unit in the OTP, offers extensive psychosocial support and medical care to victims and witnesses. These services are tailored to the victim or witness' individual needs, based on a preliminary assessment; the treatment plan is updated regularly based on the victim or witness' progress. Psychosocial support and medical treatment can last many years, given the length of investigations and trials at the Court. See generally INTERNATIONAL CRIMINAL COURT, VICTIMS AND WITNESSES UNIT: SUPPORT, [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/protection/Pages/victims%20and%20witness%20unit.asp](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/protection/Pages/victims%20and%20witness%20unit.asp) x (last visited Aug. 1, 2013) (describing the range of support offered to victims and witnesses, and the regular monitoring and tailoring of these services). See also INTERNATIONAL CRIMINAL COURT, SUMMARY REPORT ON THE SEMINAR ON PROTECTION OF VICTIMS AND WITNESSES APPEARING BEFORE THE INTERNATIONAL CRIMINAL COURT ¶¶ 18–21 (Nov. 24, 2010), available at <http://www.icc-cpi.int/NR/rdonlyres/08767415-4F1D-46BA-B408-5B447B3AFC8D/0/ProtectionseminarSUMMARY.pdf> (describing the vulnerability assessment,

sources to provide this level of protection and support for their witnesses, the South African TRC managed to place threatened witnesses in safe houses outside their communities.<sup>134</sup> Sometimes, as was the case for the El Salvador TRC, commission staff will meet with witnesses outside the country; most TRCs, however, can only provide security through a promise of strict confidentiality.<sup>135</sup>

COIs possess neither the resources nor the mandates to protect witnesses to the same extent as international criminal courts and tribunals; instead, their witness protection programs more closely align with the TRC model of “security through confidentiality.” For example, Navi Pillay has described how the Guinea COI met with civil society actors outside the country and “took precautions [inside the country] to ensure that information from complainants and their personal details were stored safely and selected secure and confidential locations to hold meetings to minimize the exposure of complainants.”<sup>136</sup> Given the limited resources available to COIs for witness protection, commissions must be particularly vigilant about women witnesses’ heightened risk for reprisal—not only from their government, but also from their own communities and families.

At present, it is likely beyond any COI’s capacity to offer medical or psychosocial support to witnesses,<sup>137</sup> despite the well-known fact that recounting an experience of sexual violence can be highly traumatic for the victim.<sup>138</sup> All human rights investigators must be ethically obligated not to subject

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which is performed prior to an investigative interview, and again before testimony); UCLA SCHOOL OF LAW’S INTERNATIONAL JUSTICE CLINIC & AIDS-FREE WORLD, *SAFETY DENIED: VICTIM AND WITNESS PROTECTION IN SEXUAL VIOLENCE CASES 5–11* (2011) (describing the support and protection provided to witnesses during each phase of the investigation and trial).

134. See HAYNER, *supra* note 91, at 232 (describing the South African TRC’s witness protection program).

135. See *id.* at 233 (describing the protection measures put in place for the El Salvador TRC as an example of providing security through confidentiality).

136. Pillay, *supra* note 45.

137. There is no publicly available information about witness support programs for U.N. COIs.

138. See, e.g., CALLAMARD, *supra* note 43, at 39 (“After disclosure, the survivor or witness frequently experiences traumatic reactions, including flashbacks and nightmares.”).

witnesses to undue risk of harm. Harming witnesses should be a particularly grave concern for COI investigators, because they cannot rely on post-interview psychological care if re-traumatization occurs. Thus, before a COI investigator begins an interview, she should carefully assess the potential psychological and physical harm that her questioning might cause the witness.<sup>139</sup> Only after such an assessment has been conducted, and risk of harm to the witness mitigated,<sup>140</sup> should the interview be allowed to proceed.

e. *Managing Witness Expectations*

It is extremely important for a COI to remain cognizant of its location in the broader sequence of conflict and post-conflict transitional justice mechanisms. A COI is often the first attempt at establishing responsibility and a modicum of accountability for international human rights violations, but in most cases, it is not the last. The experiences of truth commissions and international criminal courts and tribunals have shown that victims, witnesses, and their broader communities often have extraordinarily high expectations for what these transitional justice mechanisms can accomplish;<sup>141</sup> the same undoubtedly holds true for a COI. COIs are extremely limited

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139. Interview with Kelli Muddell, Dir., Gender Justice Program, Int'l Ctr. for Transitional Justice (Apr. 12, 2013).

140. Mitigating the risk to the witness will sometimes require that the investigator forgo the interview altogether. In other circumstances, risk can be mitigated by taking precautions such as offering the witness breaks if she becomes overwhelmed during the course of the interview.

141. *See, e.g.*, HUMAN RIGHTS WATCH, *COURTING HISTORY: THE LANDMARK INTERNATIONAL CRIMINAL COURT'S FIRST YEARS 128–29* (2008) (describing how Darfuri refugees in Chad had “a wildly unrealistic impression of the pace at which the ICC could conduct its investigations and issue arrest warrants,” and some “thought that the ICC was going to bring international troops to Darfur to restore peace”). The High Commissioner for Human Rights has also expressed concern regarding unrealistic victim expectations for transitional justice processes:

When considering and designing a truth commission, therefore, care should be taken not to raise undue and unfair expectations among the victims that they, or the country as a whole, will or should feel quickly “reconciled” as a result of knowing the truth about unspeakable past atrocities . . . .

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: TRUTH COMMISSIONS 2* (2006).

and unpredictable in what they can achieve,<sup>142</sup> so it is inevitable that some witnesses will have unrealistic expectations regarding the outcomes of their testimony. COI investigators must work with witnesses to make sure that they fully comprehend the likelihood of possible outcomes and understand how their testimony will be used. In so doing, COIs can help to ensure that witnesses will continue to cooperate with—and have faith in—future accountability, truth-telling, and reconciliation efforts.

### B. *Content-Based Methodology*

Transitional justice mechanisms have always faced the challenge of how to best include women's perspectives in the narratives that they create. Truth commissions are explicitly tasked with creating a historical narrative by reporting on a broad range of abuses, while courts and tribunals implicitly create history on a smaller scale through their selection of cases and their resulting legal judgments. COIs share traits of both, as they construct narratives through legal findings and share descriptions of the wider range of harms experienced during the conflict.

#### 1. *Focusing on Background Structures and Systematic Human Rights Violations*

Like TRC reports, COI reports create a narrative of past abuses, often following a similar format to a TRC's: The report begins by providing some contextual information about the conflict, then discusses specific violations organized by theme, and concludes with recommendations for redress. According to scholars Ní Aoláin and Turner, "the kind of narrative that emerges from [truth-telling] processes is critically important to the way women will experience change in such societies."<sup>143</sup> It is essential that a COI report capture incidents of SGBV for future criminal prosecutions; however, extracting single instances of violence from the broader context of discriminatory policies and attitudes toward women can obscure the most abusive aspects of the violation, distort the COI's analysis of

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142. Furthermore, there is no uniformity in achievement. For example, the Darfur COI resulted in a Security Council referral to the ICC, while the Syria COI has not.

143. Ní Aoláin & Turner, *supra* note 55, at 235.



accountability, and hamper efforts at prevention and redress.<sup>144</sup>

When a transitional justice mechanism fails to recognize the harm inflicted on women by both direct perpetrators and larger state and social structures, it ignores the true extent of the violation and perhaps even its root causes. For example, the conflict in Peru involved widespread rape and forced pregnancy, with the injury of the rape compounded by Peru's criminalization of abortion and the Catholic Church's condemnation of that practice.<sup>145</sup> A manual on gender and truth commissions recommends that investigators handle situations like this by thinking more broadly about the injury and the range of causal factors.<sup>146</sup> COIs are mandated to investigate international human rights law violations, which can allow them to conceptualize harm and injury as more than just a specific violation of international criminal law. Unfortunately, as the analysis in Part II demonstrated, many COIs do not sufficiently report on violations of human rights treaties such as the ICCPR and ICESCR.<sup>147</sup> Of course, if they investigate violations under these treaties, they might uncover systematic human rights violations that do not rise to the level of crimes against humanity or war crimes.

The failure of many COIs to find violations of international human rights treaties may indicate the increasing bifurcation of the field of human rights investigating, in which investigators are experts in either international criminal law or international human rights law—not both. Also, the singular focus of the international community on individual criminal accountability for human rights violations may help to explain the trend of COIs toward ignoring human rights treaty violations, which are not criminally justiciable offenses. Regardless of the cause of the neglect, both international criminal law and human rights treaty law violations deserve attention, and fact-finders should use every tool available to ensure both that

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144. NESIAH, *supra* note 90, at 21–22.

145. *See id.* at 22 (“The most abusive aspect of a human rights injury may not be the act alone, but the range of social attitudes and policy frameworks within which it is embedded.”).

146. *Id.* (recommending that a truth commission investigation “inquire into the range of factors that impacted the crime, including the legal and ideological landscape”).

147. *See supra* Part II.C.

individual violators are held accountable *and* that systems of oppression and violence are addressed.<sup>148</sup> If a COI uses its broad mandate as an opening to discuss systematic violations against women, it is possible that it might be used as a tool for social transformation, rather than creating only what is “essentially . . . a dossier prepared for use in a judicial process.”<sup>149</sup> A COI report that accurately describes the range of roles that women play in conflict, as well as the diverse violations they experience, can encourage international decision-makers to view these women as more than sexually vulnerable objects and engage meaningfully with them during peace processes and political transitions.<sup>150</sup>

## 2. *Reporting on Sexual Violence*

As important as it is for a commission to paint a broad picture of women’s experiences of human rights violations, accurately reporting specifically on sexual violence is also critical. Because COI reports receive significant media and political attention, they have an invaluable opportunity to bring these violations into the local and international discourse as well as pave the way for a criminal investigation. As discussed above, since the OHCHR secretariat does not share information beyond what is published in the COI’s final report, it is critical that the report provide as much detail as possible on incidents and patterns of sexual violence.

One way for a COI to fully expose the extent of sexual violence in a conflict—especially given the short time frame in

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148. Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles*, 21 BERKELEY J. INT’L L. 288, 292 (2003) (“Even within the context of war, international human rights law can still provide protections [to women].”) (referring to the Universal Declaration of Human Rights, ICCPR, CEDAW, and CAT, among other international human rights treaties and declarations).

149. U.N. Women, *Q&A with Expert on Criminal Courts and Prosecuting Gender-Based Violence Perpetrators, Bringing Victims in for Their Day in Court* (Sept. 19, 2012), available at <http://www.unwomen.org/2012/09/qa-with-expert-on-criminal-courts-and-prosecuting-gender-based-violence-perpetrators-bringing-victims-in-for-their-day-in-court> (describing the final report of a gender advisor from U.N. Women who was sent to work with the Guinea COI).

150. See Ní Aoláin & Turner, *supra* note 55, at 262–63 (discussing how transitional justice’s concentration on sexual violence undercuts women’s ability to become active participants in political transition).

which it has to conduct its investigation—is to make use of its flexible evidentiary standard. Courts strictly require that evidence prove guilt “beyond a reasonable doubt,” but a COI can determine for itself how strict a standard to apply.<sup>151</sup> Often, the “reasonableness” or “balance of the probabilities” standard is used to include allegations in a COI report.<sup>152</sup> Despite this lower evidentiary standard, the High Commissioner for Human Rights has stated that U.N. COIs validate testimony through “corroboration by at least two additional and independent sources.”<sup>153</sup> Although a COI should take precautions to ensure that witness accounts are verified to the greatest extent possible, of the ICC, ICTY, and ICTR, none requires that testimony regarding sexual violence be directly corroborated by another witness in order to be admitted.<sup>154</sup> There is no need for a COI, which has a lower standard of proof than a court, to require a higher standard of corroboration—particularly when the High Commissioner concedes that corroboration in sexual violence investigations “poses a real challenge, especially where there are no witnesses to the incident.”<sup>155</sup> It should be sufficient for a COI to substantiate witness testimony by comparing it to accounts from trusted local or international NGO or media reports. Alternatively, if survivors of sexual violence are unwilling to speak with COI investigators, but reliable local NGOs or U.N. agencies can confirm a pattern of sexual violence, the COI should consider including this information in its report.<sup>156</sup>

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151. *See supra* text accompanying note 127.

152. The Darfur COI required that, in order to be used in the report, evidence must “[tend] to show that a person may reasonably be suspected of being involved in the commission of a crime.” Darfur Report, *supra* note 28, ¶ 15. The Sri Lanka COI “determined an allegation to be credible if there was a reasonable basis to believe that the underlying act or event occurred.” Sri Lanka Report, *supra* note 31, at i. The second Libya report simply “[recalled] that its evidentiary standard is less than that required for criminal proceedings.” Libya II Report, *supra* note 32, Annex I, ¶ 805.

153. Pillay, *supra* note 45.

154. *See* ICC Rules of Procedure and Evidence, Adopted by the Assembly of States Parties, Rule 63(4), ICC-ASP/1/3 (Sept. 3–10, 2002); International Criminal Tribunal for Rwanda: Rules of Procedure and Evidence, Rule 96(i), U.N. Doc. ITR/3/Rev.1 (June 29, 1995).

155. Pillay, *supra* note 45.

156. Pillay has agreed that in certain situations, hearsay information is “valuable”—but must be corroborated with pertinent expertise. *See id.*

### 3. *Gender Mainstreaming*

Although it is important for a COI report to treat SGBV as a specific standalone theme, a COI must also consider gender as a crosscutting issue throughout the report. Gender-sensitive truth commission reports mainstream gender issues into *all* subject areas, explicitly discussing men's and women's different perspectives, experiences, and needs.<sup>157</sup> For example, the Peruvian TRC's report mainstreamed gender into its discussions about political history, individual human rights abuses, and patterns of human rights abuse as well as into its recommendations for reparations and reform. In addition to mainstreaming gender as a cross-cutting issue, the report featured two chapters focusing specifically on gender and sexual violence.<sup>158</sup> By taking a gender-mainstreaming approach in its reporting, a COI can ensure that women victims of all types of human rights violations—not just sexual and gender-based crimes—are given due attention in its final report.<sup>159</sup> Gender mainstreaming also ensures that women's voices are heard in a COI report's discussion of the context of a conflict and in its recommendations on accountability measures. Furthermore, gender mainstreaming requires that a COI's gender advisor be included in the drafting of all sections of the report, which would ensure the consistency of the report's findings on SGBV.

## V. CONCLUDING REMARKS

The U.N. COIs examined in this Note received similarly broad mandates but interpreted these mandates very differently—particularly regarding the investigation and analysis of SGBV. Some of the reports studied here devoted pages to a careful gender analysis, including violations of both interna-

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157. "Gender mainstreaming seeks to produce transformatory processes and practices that will concern, engage and benefit women and men equally by systematically integrating explicit attention to issues of sex and gender into all aspects of an organisation's work." Prudence Woodford-Berger, *Gender Mainstreaming: What Is It (About) and Should We Continue Doing It?*, 35 IDS Bull. 65, 66 (2004).

158. NESIAH, *supra* note 90, at 5.

159. See *supra* Part II.C for a discussion on how women are often ignored in COI reporting on "non-gendered" crimes such as murder, torture, and enforced disappearance.

tional human rights law and international humanitarian law; others had a few paragraphs or even only a few sentences focused on SGBV. This Note has described the challenges of investigating and prosecuting SGBV as well as the culture of silence and impunity that typically surrounds these violations. If a COI does not begin to break down these barriers by broadly interpreting its mandate to accurately portray women's experiences, it will do nothing but contribute to the difficulties that women face in transitioning societies.

This Note has shown that it is critical for a COI to adopt and maintain a gender focus at all stages in order to produce a gender-sensitive report. Most remarkably, the gender methodologies of courts and truth commissions demonstrate that attaining gender sensitivity in process and product often does not require an increase in funding or resources—it merely entails a simple shift in attitudes and focus. There is no additional cost to hiring women instead of men as investigators and interpreters or to allowing a gender advisor to participate in high-level discussions. In addition, NGOs and U.N. agencies provide trainings on gender-sensitive investigation techniques free of charge.<sup>160</sup> Finally, mainstreaming women's issues throughout a report and carefully analyzing evidence to find all possible violations against women requires only diligence and expertise, which need not be cost-intensive if the right staff are in place.

U.N. COIs are limited in their capacity to create change beyond the heavily politicized international stage on which their reports are published, but they nonetheless hold promise for transforming women's lives in conflict and post-conflict societies. If properly deployed, the broad mandate of a COI can vividly depict the scope of women's agency during a conflict and the various forms of violence and oppression they have faced, thus beginning to end impunity for these crimes. COIs have become an integral part of how the international community understands and reacts to conflicts; however, if a COI

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160. Justice Rapid Response, U.N. Women, and the Institute for International Criminal Investigations have recently partnered to host two training sessions on the investigation of SGBV as international crimes. See U.N. Women, *Training Experts to Investigate Cases of Sexual and Gender-Based Violence as International Crimes* (Jan. 29, 2013), available at <http://www.unwomen.org/2013/01/training-experts-to-investigate-cases-of-sexual-and-gender-based-violence-as-international-crimes/>.

report does not accurately portray women's experiences, there is little hope that the international response will adequately address their realities, either. U.N. COIs must get it right, and the international community must carry the conversation about their gender methodology beyond the pages of this Note.