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**Beyond the Contained Critique:
Structural Failure and the Redirection of Human Rights
in Post-Conflict Justice**

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Acknowledgments

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Abstract

This thesis addresses a critical paradox within post-conflict justice: while the human rights framework is treated as the standard pathway to peace, it systematically fails to deliver substantive justice. Moving beyond the “contained critique” of dominant peace-justice, human security, and transitional justice literatures, which conflate structural shortcomings with mere implementation failures, this study asks whether such recurring failures are contingent or structurally built into the framework’s structure.

Methodologically speaking, combining doctrinal legal analysis with theoretically informed comparative readings (Sierra Leone, Timor-Leste, Bosnia, Afghanistan, Colombia, Mozambique, Rwanda, and the Democratic Republic of Congo) while applying simultaneously decolonial, feminist and securitisation theories, the study reveals that these studies converge in the same underlying problem. Each lens reveals the recurring institutional tendencies, from market-compatible governance, the bureaucratic management of gendered vulnerability, to the prioritisation of state stability over accountability. This produces a “virtual peace” that secures the absence of direct violence while leaving oppressive material and political conditions intact.

Crucially, this thesis analyses genuine exceptions to demonstrate this systemic failure as a structural tendency rather than an immutable determinism. Colombia’s 2016 accord and Latin American domestic prosecutions demonstrate that the framework’s defaults can be displaced. Such displacement requires organised, grassroots mobilisation from below, as well as reciprocal accountability, under which actors can turn rights language against its own default biases. Ultimately, this thesis concludes that the human rights framework is structurally colonial, patriarchal, and securitised, yet it paradoxically constitutes the most viable vocabulary available to be turned against its own exclusions.

Table of Abbreviations

Abbreviation	Definition
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
DRC	Democratic Republic of Congo
ECtHR	European Court of Human Rights
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
IFIs	International Financial Institutions
NAPs	National Action Plans
NATO	North Atlantic Treaty Organisation
R2P	Responsibility to Protect
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
WPS	Women, Peace and Security

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Chapter 1: Introduction

1.1 Research Background

Since Nuremberg, post-conflict interventions have been organised around the premise that the human rights framework, understood as an architecture of individual entitlement, standing and judicially cognisable violation, supplies the appropriate vehicle for justice once conflict ends. States rebuilding after an atrocity ratify human rights treaties, hold elections, convene truth commissions or criminal tribunals and accept donor conditionality tied to international legal standards. The record of what this produces is, at best, mixed. The 1999 Lomé Peace Accord granted Foday Sankoh and the Revolutionary United Front a free pardon for crimes against humanity in order to secure Sierra Leone's transition, a bargain the UN's own envoy would not endorse for international crimes even as the settlement proceeded on its own terms¹. The Dayton Accords placed the architects of Bosnia's ethnic cleansing at the negotiating table as guarantors of the peace they had produced². UN administrator Lakhdar Brahimi resisted war crimes investigations in Afghanistan because they would undercut the Bonn process, converting accountability from an entitlement into a risk to be managed³. In each case, a framework built to protect rights was used, with the framework's own endorsement, to defer them.

This pattern is the thesis's point of departure rather than its finding. Four scholarly fields, which include the peace-justice debate, human security studies, durable peace scholarship and transitional justice literature, have each traced versions of it, and Chapter 2 outlines. What unites them, and what the thesis calls the "contained critique", is the assumption that failure lies outside the framework: in enforcement gaps, political reluctance, a narrow definition of security, or unrepresentative negotiations. Snyder and Vinjamuri ask when accountability produces harmful outcomes; Sikkink asks when it succeeds, but both converge in treating the question as one of strategy rather than adequacy⁴. Richmond and Mac Ginty come closest to interrogating the framework itself, arguing that liberal peacebuilding prioritises rights over material needs and produces what they call a "virtual peace", basically compliance

¹ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Peace Agreement) (signed 7 July 1999) art IX.

² General Framework Agreement for Peace in Bosnia and Herzegovina (initialled 21 November 1995, signed 14 December 1995) 35 ILM 75.

³ Jack Snyder and Leslie Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice' (2003–04) 28(3) *International Security* 5, 8, 36; Darren Lim, 'United Nations Governance of Failed States: Proposing the Foundations of a Comprehensive Framework' (2006) 32(2) *Monash University Law Review* 295.

⁴ Snyder and Vinjamuri (n 3); Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (WW Norton 2011).

with transformation. Yet, they still propose a hybrid alternative rather than asking whether the underlying grammar of rights can register the relevant harms at all⁵. Chapter 2, therefore, argues that each literature seeks better implementation, resourcing or targeting, and none asks whether its recurring failures are built into its own structure.

To answer that question, the analysis must move beyond the empirical literature of international relations and peace studies into a different register. If the framework's exclusions are structural, they should be traceable to the architecture of rights itself rather than only to the political conditions of their application. Chapter 3 builds that architecture across three fields. Agamben's notion of bare life and the sovereign ban, read alongside Arendt's figure of the refugee and Weil's critique of the "commercial flavour" of rights language, suggests that through dependence on political membership⁶. Mbembe's necropolitics, Fanon's account of colonial compartmentalisation, and Tzouvala's history of the "Standard of Civilisation" form the second register, showing why the consequent state of exception this produces targets consistently racialised, post-colonial populations⁷. Furthermore, Enloe's question of where the women are and Cohn's analysis of the institutional language provide the third, demonstrating how the same architecture reproduces a gendered knowledge hierarchy⁸. Booth and the Copenhagen School complete the framework by identifying the mechanism that keeps these three patterns durable despite decades of reform: securitisation, which frames stability as an existential condition and accountability as a threat to it, ensuring that justice claims cannot compete with stability claims on equal terms⁹.

Read together, these registers converge on the paradox that organises everything which follows. The human rights framework is not a neutral infrastructure that post-conflict societies deploy with varying success; it is a historical settlement, colonial in its exclusions, patriarchal in its silences and securitised in its defaults, and its recurring failures are a feature of that settlement. Yet the same evidence

⁵ Oliver P Richmond and Roger Mac Ginty, 'Where Now for the Critique of the Liberal Peace?' (2015) 50(2) *Cooperation and Conflict* 171; Oliver P Richmond, *A Post-Liberal Peace* (Routledge 2011) 115–65.

⁶ Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, Brace and Company 1951) 296–97; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen tr, Stanford University Press 1998); Simone Weil, 'Human Personality' in Siân Miles (ed), *Simone Weil: An Anthology* (Penguin Books 2005) 81.

⁷ Achille Mbembe, 'Necropolitics' (2003) 15(1) *Public Culture* 11; Frantz Fanon, *The Wretched of the Earth* (Constance Farrington tr, Penguin 2001) 211; Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press 2020).

⁸ Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (2nd edn, University of California Press 2014) 9; Carol Cohn, 'Women and Wars: Toward a Conceptual Framework' in Carol Cohn (ed), *Women and Wars* (Polity 2013) 1, 10.

⁹ Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner 1998) 21–23; Ken Booth, *Theory of World Security* (Cambridge University Press 2007) 97–100.

that reveals this inadequacy also shows that rights language remains the only vocabulary flexible enough to be turned against the order that produced it. The Madres de la Plaza de Mayo, Colombia's 2016 negotiators, and the litigants who compelled Bosnia's property restitution programme to function all mobilised the framework's own instruments to contest a settlement those instruments were meant to stabilise¹⁰.

1.2 Research Question

This thesis therefore formulates the following question:

Are the recurring failures of the human rights framework to deliver durable, substantive justice in post-conflict settings contingent, the product of weak enforcement, insufficient resourcing or institutional design that could in principle be corrected, or structural, built into the framework's own conceptual architecture in a way that no degree of better implementation could resolve? And if the inadequacy is structural, does it follow that the framework should be abandoned, or does its capture by dominant states and institutions coexist with a residual capacity to be redirected against them?

This question departs from the literature reviewed in Chapter 2 in four specific ways, each of which the later chapters are built to demonstrate.

First, it reframes the debate itself. The peace-justice, human security and transitional justice literatures all identify the framework's shortcomings and then ask how implementation could improve. This thesis treats that move, containing critique within a prior assumption that the framework is the right starting point, as the object of analysis.

Second, it applies decolonial, feminist and securitisation lenses to a shared set of cases. Chapter 4 shows that Sierra Leone's Arms for Development programme, the exclusion of sexual-violence evidence and the Lomé amnesty are not isolated failures but expressions of a single institutional test. The pattern emerges only when all three lenses are held together.

¹⁰ 'Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera' (Colombia, 24 November 2016); Kathryn Sikkink and Carrie Booth Walling, 'The Impact of Human Rights Trials in Latin America' (2007) 44(4) *Journal of Peace Research* 427.

Third, it resists equating structural critique with abolition. Colombia's 2016 accord and the Latin American prosecutions show that rights-based settlements can indeed succeed if the right conditions are in place. Chapter 5 uses these cases to specify those conditions.

Fourth, it names the pattern. "Contained critique" captures a recurring rhetorical structure: criticism that nonetheless assumes the legitimacy of the framework it criticises. Naming it is what allows the same structure to be recognised across peace-justice debates, human security scholarship, durable peace studies and transitional justice writing that otherwise would not intersect.

1.3 Structure of the Thesis

The outline of this thesis is as follows. Chapter 2 reviews four bodies of scholarship: the peace-justice debate, human security and state security literature, durable peace scholarship and transitional justice. It shows that both are aware of the limitations of the human rights framework while treating it as the appropriate starting point. The chapter concludes by locating where this thesis intervenes: where critique of implementation becomes critique of framework, a point the existing literature approaches without crossing.

Chapter 3 develops the theoretical instruments to move towards the aforementioned structural critique. Section 3.2 establishes the structural conditionality of rights through Arendt, Agamben and Weil. Section 3.3 provides the colonial structure of the exception through Mbembe, Fanon and Tzouvala, explaining why that conditionality falls on particular populations rather than randomly placed. Section 3.4 adds the gendered dimension through Enloe and Cohn. Finally, section 3.5 identifies securitisation, via Booth and the Copenhagen School, as the mechanism that keeps the first three patterns resistant to reform.

Chapter 4 examines the evidence through the three analytical lenses while following the same structure. It explores how the human rights framework obstructs the relevant form of justice, the paradox by which rights retain genuine value even as they are captured and redirected by the states that administer them, and what conditions would need to hold for substantive transformation rather than symbolic reform. The same cases, Sierra Leone, Bosnia, Afghanistan, Colombia, Mozambique, Rwanda, Timor-Leste and the Democratic Republic of Congo recur across all three sections, allowing the same cases to be read through each lens in turn.

Chapter 5 brings the lenses together, restates the paradox and specifies what would need to change, and who would need to insist on that change for the framework's default outcome to be displaced rather than managed.

1.4 Methodology

The methodology used throughout this thesis combines doctrinal legal analysis with a theoretically informed, comparative reading of a purposively selected set of post-conflict cases. Sierra Leone, Timor-Leste, Bosnia, Afghanistan, Colombia, Mozambique, Rwanda and the Democratic Republic of Congo were the cases selected, due to read together, they collectively span the range between the thesis's two poles: cases of what Richmond calls virtual peace, where formal compliance conceals unchanged material and political conditions, and the rarer cases of genuine exception, where rights language has been used against the grain of the system administering it¹¹. The comparison is structured around the grammar of cognisable harm, the accountability architecture applied to it, and the audience whose acceptance a securitisation move requires, so the cases can be compared on those terms rather than on general similarity.

Primary sources include peace agreements (Lomé, Dayton, Bonn, the 2016 Colombian accord), UN Security Council resolutions, and tribunal judgments and proceedings, principally from the ICTY, ICTR and Special Court for Sierra Leone, alongside decisions of the Inter-American Court of Human Rights and the European Court of Human Rights. Secondary sources are drawn from international law, international relations, feminist security studies and decolonial theory and are read in conversation with one another, which is why Chapter 3 treats Agamben, Mbembe and Cohn as contributing to a shared diagnosis rather than to separate debates. Citation follows OSCOLA 4th edition throughout and the use of AI platforms (Claude AI and Google Gemini) was used for brainstorming and rewording, under prompts such as: "Suggest alternative ways of phrasing this paragraph while preserving the original meaning", "Suggest a clearer structure for this introduction", "Brainstorm possible ideas/questions based on these notes".

The distinction between a structural tendency and a determinism, developed in Chapter 5, is methodological as much as substantive. A tendency indicates a default outcome unless specific counter-conditions intervene; it remains open for falsification if such conditions have no meaningful effect.

¹¹ Richmond (n 5) 115–65.

Treating Colombia and the Latin American prosecutions as tests of this prediction, rather than as anomalies to set aside, enables a structural critique that does not foreclose the possibility of reform.

Chapter 2: Literature Review

2.1 Framing the Conversation

This thesis sits at the intersection of four bodies of scholarship: the peace-versus-justice debate in international relations and international law, human security scholarship, durable peace studies, and transitional justice literature. Each field has developed largely in relative isolation, with its own assumptions, priorities and conceptual vocabulary. What they share is a problem none has yet resolved. The human rights framework is frequently presented as the primary framework through which post-conflict justice should be pursued, while at the same time being criticised for its limitations in addressing the realities of violence, exclusion, and political transition. The literature relies on the framework while questioning it at the same time.

Mostly, that tension gets treated as a problem of implementation. Scholars debate whether accountability mechanisms undermine or support peace, whether human security requires a reconfiguration of state sovereignty and whether transitional justice mechanisms deliver the outcomes they promise. Although these debates matter, they largely leave unanswered a more fundamental question: Is the human rights framework, in principle, the appropriate framework for justice in post-conflict settings? And do its structural assumptions about who counts as a victim, what justice requires, and who possesses the authority to define these terms systematically limit what it can achieve?

This chapter maps these four conversations and identifies where this thesis intervenes. Existing scholarship doesn't miss the shortcomings of human rights frameworks; on the contrary, it frequently does. Rather, the issue is that such criticisms are often contained within a prior assumption that the framework itself remains the right and only starting point, and that what is needed is better supplementation and enforcement. The possibility that the limitations identified may stem from the framework's own conceptual foundations is rarely explored directly. It is this prior assumption, and whether it remains defensible in the context of post-conflict justice, that this thesis seeks to examine.

2.2 The Peace-Justice Debate

2.2.1 The Terms of the Debate

The tension between pursuing accountability for mass atrocities and securing a negotiated end to conflict has structured international law and politics since Nuremberg. In its current form, the debate is usually framed around a trade-off: prosecuting perpetrators may deter future crimes, but it also removes

the incentive for those perpetrators to lay down arms. Amnesty or exile enables peace negotiations but entrenches impunity. Much of the literature, therefore, asks whether this dilemma exists in practice, how often it occurs, and what political and legal consequences follow when it does¹².

Jack Snyder and Leslie Vinjamuri's 2003 article "Trials and Errors" is still one of, if not the most influential example of the realist position. Drawing from an analysis of 32 civil war cases between 1989 and 2003¹³, they argue that "justice does not lead; it follows"¹⁴, meaning that a stable, norm-governed political order is a necessary precondition for accountability mechanisms to function, not a product of them. Their core concern is what they call "institutional deserts"¹⁵: contexts where judicial infrastructures are too weak to reliably enforce legal standards, and where prosecuting perpetrators risks provoking powerful actors to resume violence. The ICTY's decision to investigate rebel atrocities in Macedonia in 2001 is its clearest illustration. The investigation gave nationalist factions a pretext to resume fighting, nearly collapsing an already fragile peace settlement¹⁶. For Snyder and Vinjamuri, such outcomes are not an exceptional failure, but a predictable consequence of applying a "logic of appropriateness" – rule-following regardless of political outcome – where what is actually needed is a "logic of consequences," shaped by what will reduce atrocities in practice¹⁷.

Kathryn Sikkink's "The Justice Cascade" offers the strongest empirical counterpoint¹⁸, identifying the conventional wisdom that accountability and peace exist in tension. She draws on the Transitional Trial Dataset and the Political Terror Scale to argue that transitional countries that have pursued human rights prosecutions are generally less repressive over time than those that have not¹⁹. The experience of Latin America provides a decisive basis for her claim. Being the region with the most prosecutions, democratic stability has been higher than in comparable regions that opted for amnesty²⁰. Sikkink explicitly challenges what she calls the "received wisdom" of the trade-off, arguing that it is repeated as settled fact despite lacking systematic empirical support. The problem, in her account, is not

¹² Snyder and Vinjamuri (n 3) 5–13; Sikkink and Walling (n 10) 427–29.

¹³ Snyder and Vinjamuri (n 3) 18.

¹⁴ Snyder and Vinjamuri (n 3) 6.

¹⁵ Snyder and Vinjamuri (n 3) 18–20.

¹⁶ i Snyder and Vinjamuri (n 3) 12–13, 36.

¹⁷ i Snyder and Vinjamuri (n 3) 7–13.

¹⁸ Sikkink (n 4) 12–20; Sikkink and Walling (n 10) 427–45.

¹⁹ Hun Joon Kim and Kathryn Sikkink, 'Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries' (2010) 54(4) *International Studies Quarterly* 939, 939–63.

²⁰ Sikkink and Walling (n 10) 437–43.

that accountability undermines peace but that the assumptions underlying the trade-off have never been adequately tested²¹.

The significance of this debate, however, extends beyond its empirical conclusions. Whether accountability is understood as promoting peace, as Sikkink argues, or as a potential threat to it, Snyder and Vinjamuri argue that both sides share a more fundamental assumption: that accountability is ultimately a question of strategy. They differ on the outcomes of accountability, whilst Sikkink focuses on the possible beneficial results, Sikkink and Vinjamuri ask under what conditions accountability produces harmful outcomes. What neither of them fully interrogates is the framework through which accountability itself is conceptualised: the human rights law model of individual criminal responsibility. Is it itself an adequate vehicle for what justice in post-conflict settings actually requires?

2.2.2 Competing Definitions of Justice

Part of what makes the peace-justice debate so difficult to resolve is that its participants are often not debating the same concept. Justice is defined by authors using the same language while referring to fundamentally different objects, but the definition an author works with largely determines their conclusions.

For Sikkink, justice is a synonym for individual criminal accountability. The “justice cascade” she identifies significantly refers to the growing cascade towards trials, indictments, and convictions of state officials for torture, disappearances and genocide²². This understanding has a clear analytical advantage, as it renders justice measurable and comparable across cases. Nevertheless, it simultaneously narrows justice considerably, excluding forms of redress that victims and communities consistently identify as equally important: truth, acknowledgement, material repair, and the transformation of conditions that made atrocities possible in the first place.

Other scholars start from different premises. Nigel Biggar, for instance, argues that criminal justice should be understood primarily as the vindication of victims rather than the punishment of perpetrators. Justice begins with the public recognition of injury – an affirmation of the victim’s dignity as an equal member of the political community. Accountability remains important, but also insofar as it derives its significance from this prior objective rather than existing as an end in itself. Punishment is

²¹ Sikkink (n 4) 183–92.

²² Sikkink (n 4) 18–20, 86–92.

secondary to this and subsidiary to the restoration of what Biggar calls shalom²³: a social well-being in which relationships damaged by violence are repaired. Carrie Menkel-Meadow pushes the argument further by questioning whether adversarial legal processes are always the most appropriate mechanism through which such repair can occur. In her account, justice can be pursued through participatory and relationship-repairing processes rather than solely through adversarial adjudication²⁴ – an approach that aligns with restorative justice traditions and directly challenges the legalist assumption that prosecution is the most legitimate form of redress.

Snyder and Vinjamuri’s “logic of consequences” implies a fourth definition. Justice is treated as a mechanism that evaluates accountability according to whether they reduce future atrocities and contributes to a norm-governed political order. On this account, amnesty, deployed strategically, may constitute justice if it is what removes perpetrators from positions of power²⁵. Richard Goldstone and Adam Smith’s, by contrast, advance a conception grounded in *jus cogens* norms and the universal prohibitions against genocide, torture, and crimes against humanity. Here, accountability is not a strategic choice dependent on circumstance but a legal and moral obligation, where justice derives its authority from principles considered binding regardless of political consequences, reflecting a fundamentally different understanding of both law and responsibility.

These competing definitions produce fundamentally different assessments of what a peace agreement that includes amnesty has achieved: a peace agreement containing amnesty provisions may appear as a failure of justice from Sikkink’s perspective, as a necessary sequencing of justice from Snyder and Vinjamuri’s, or as an arrangement that never meaningfully engaged with justice in the first place according to Biggar or Menkel-Meadow. The literature rarely acknowledges the extent of this conceptual divergence. As a result, debates about whether peace and justice are compatible often proceed as if the parties share a common object of analysis when they do not, and empirical findings from one tradition are treated as disconfirmations of claims made within an entirely different definitional framework.

2.2.3 The Trade-Off: Assumed or Demonstrated?

²³ Nigel Biggar, ‘Peace and Justice: A Limited Reconciliation’ (2002) 5(2) *Ethical Theory and Moral Practice* 167, 169–73.

²⁴ Carrie Menkel-Meadow, ‘Restorative Justice: What Is It and Does It Work?’ (2007) 3 *Annual Review of Law and Social Science* 161, 162–67.

²⁵ Snyder and Vinjamuri (n 3) 7–13, 15–20.

Taken together, the evidence suggests that the empirical status of the peace-justice trade-off matters because it serves as one of the central foundations upon which realist arguments for amnesty are built. Among the various attempts to demonstrate the existence of such a trade-off, Snyder and Vinjamuri's 32-case dataset remains the most systematic attempt to demonstrate the trade-off. Yet, their methodology has attracted significant criticism. As Sikkink notes, their case selection relies on counterfactual claims that can not be verified. Their discussion that Charles Taylor's indictment complicated peace negotiations in Sierra Leone, for example, depends on assumptions about how Taylor would have behaved in a world where the indictment never occurred. Such claims may be plausible, but they remain inherently speculative because the alternative scenario cannot be observed²⁶.

More broadly, the literature on the trade-off has produced contradictory conclusions, with many of those reflecting methodological choices and not so much substantive disagreement. Snyder and Vinjamuri conclude that trials tend to work best when they are "needed least"²⁷, following a decisive military victory or in states with established legal institutions. By contrast, Sikkink argues that prosecutions themselves contribute to institutional growth and deter future atrocities across a much wider range of contexts²⁸. Johannes Langer and, separately, Katharina Merkel characterise the tension as a perceived or false dilemma rather than a structural one, noting that the relationship between peace and justice is mutually reinforcing in peacetime but becomes "ambiguous and complex" in the immediate aftermath of conflict²⁹.

Taken together, this literature suggests that the peace-justice trade-off should be regarded as contested rather than settled. The dominant assumption –that accountability risks spoilers and that amnesty enables negotiated settlements– has been challenged by Sikkink's empirical work, but the challenge has not resolved the debate, partly because the two sides are measuring different things and partly because the adequacy of the human rights framework itself as a vehicle for justice has remained outside the terms of the argument.

2.2.4 Human Rights Law as a Tool or an Obstacle

²⁶ Sikkink (n 4) 183–89.

²⁷ Snyder and Vinjamuri (n 3) 19.

²⁸ Kim and Sikkink (n 19) 939–63; Sikkink and Walling (n 10) 442–43.

²⁹ Johannes Langer, 'Peace vs Justice: The Perceived and Real Contradictions of Conflict Resolution and Human Rights' (2015) 8(1) *Crucibles: Cuadernos de Ciencias Jurídicas y Política Internacional* 165, 165–89; Katharina Merkel, 'Peace versus Justice: A False Dichotomy? Mapping Tensions and Complementarities between Conflict Resolution and Human Rights Advocacy in Afghanistan' (2014) 5(1) *Journal of Conflictology* 19, 19–23.

The literature attributes three distinct functions to human rights law in peace negotiations, and scholars' positions within the peace-justice trade-off debate often reflect which role they prioritise. The first conceives human rights law as a principled constraint. From this perspective, it sets limits on what peace agreements may permissibly include. Blanket amnesties that prevent the investigation or prosecution of genocide, crimes against humanity, war crimes and other gross human rights violations are widely regarded as incompatible with international legal obligations³⁰. Jurisprudence from the Inter-American Court of Human Rights reinforces this position by establishing a state duty to investigate and punish serious violations that, on its face, removes blanket amnesty from the negotiating table. Human rights law thus operates as a non-derogable floor below which no political settlement may fall³¹.

A second body of scholarship approaches human rights law as a strategic tool used by negotiators, states and other international actors to alter the balance of power in conflicts. Rather than limiting negotiation, legal mechanisms become tools capable of reshaping bargaining dynamics and altering the distribution of political power. The International Criminal Court's arrest warrant against Muammar Gaddafi in 2011 is frequently cited as an example. As Alana Tiemessen argues, the warrant delegitimised the Gaddafi regime and reduced the opposition's incentive to negotiate, functioning as an example of "lawfare of judicial intervention"³². The Pinochet case works similarly in the transitional justice literature, demonstrating how foreign domestic courts can be used as a backup system to force the hand of states unwilling to pursue accountability domestically – what Sikkink calls the "boomerang effect"³³.

A third perspective, often associated with mediators and realist scholars, treats human rights law as a potential obstacle to negotiated peace. The concern here is not that accountability lacks value, but that certain forms of accountability may unintentionally prolong violence by reducing the incentives for perpetrators to relinquish power. Langer's analysis of Libya and Sudan shows how ICC warrants can close off political bargaining space by giving perpetrators a concrete incentive to continue fighting³⁴. UN

³⁰ Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Amnesties (United Nations 2009) 11–24; *Barrios Altos v Peru (Merits)* Inter-American Court of Human Rights Series C No 75 (14 March 2001) paras 41–44; *Almonacid-Arellano et al v Chile (Preliminary Objections, Merits, Reparations and Costs)* Inter-American Court of Human Rights Series C No 154 (26 September 2006) paras 114–19.

³¹ Office of the United Nations High Commissioner for Human Rights (n 30) 11–24; *Barrios Altos* (n 30) paras 41–44; *Almonacid-Arellano* (n 30) paras 114–19.

³² Langer (n 29) 172–73; Alana Tiemessen, 'The International Criminal Court and the Lawfare of Judicial Intervention' (2016) 30(4) *International Relations* 409, 409–31.

³³ Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) 12–13; L Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America' (2001) 2(1) *Chicago Journal of International Law* 1, 1–34.

³⁴ Langer (n 29) 172–73.

administrator Lakhdar Brahimi's resistance to war crimes investigations in Afghanistan –because they would undercut progress toward peace and stability– illustrates how practitioners weigh these competing demands in practice³⁵. The distribution of roles matters because it reframes the debate. If human rights law functions primarily as an obstacle, the question is not whether it is well enforced but whether the framework itself creates unnecessary barriers to durable peace – a reading that has the most radical implications for the adequacy question this thesis examines.

2.3 Human Security and State Security

2.3.1 *The UNDP Framework and Its Critics*

The 1994 United Nations Development Programme (UNDP) Human Development Report introduced human security as a reorientation of international relations away from the state as the primary referent of security and towards the individual. Its seven dimensions –economic, food, health, environmental, personal, community, and political security³⁶– represented a direct challenge to the traditional Westphalian understanding of international order, in which security threats were largely defined in military terms and state sovereignty limited external concern with what occurred within national borders. The significance of this report lies not only in the introduction of a new concept, but in what it revealed about the limitations of the existing one. By expanding the scope of security, the report exposed the extent to which dominant understandings of security had systematically overlooked many of the conditions that shape human vulnerability in everyday life.

Roland Paris's influential critique, published in *International Security* in 2001, challenged the concept's analytical coherence, stating that because the UNDP definition encompasses virtually everything that constitutes a threat to life and livelihood, it is functionally useless for research or policy. Therefore, if poverty is defined as a security threat, it becomes difficult to investigate whether poverty causes security threats without introducing circular reasoning. Paris concludes that human security's breadth serves a political purpose, bringing together NGOs, states and international agencies, but does so at the cost of conceptual precision. His proposal is therefore a narrower definition focused on violent

³⁵ Snyder and Vinjamuri (n 3) 8, 36.

³⁶ United Nations Development Programme, Human Development Report 1994 (Oxford University Press 1994) 22–25.

threats to individuals, which would make the concept researchable without abandoning its human-centred core³⁷.

His critique is important because it identifies a pattern that recurs across the literature: frameworks broad enough to be politically inclusive tend to be too vague to produce clear prescriptions. The same problem Paris diagnoses in the human security concept applies, in a different form, to the human rights framework this thesis examines. Rights-based language can unite actors with very different conceptions of what justice requires, but that unity comes at the cost of specifying whose conception of justice actually shapes institutional practice. The question of definition is also a question of power – and the literature on human security has been slow to engage with that connection directly.

2.3.2 R2P and the State-Individual Tension

The Responsibility to Protect doctrine (R2P), first articulated in the 2001 International Commission on Intervention and State Sovereignty (ICISS) report and later endorsed by the UN General Assembly in 2005, represents the most ambitious attempt to institutionalise the human security norm within the existing international order. R2P reinterprets sovereignty as a responsibility where national authorities are unable or unwilling to protect their populations, and consequently, the international community accepts a collective responsibility to act through the United Nations in accordance with the Charter³⁸. Its attraction lies in its apparent reconciliation of two principles traditionally viewed as competing in international relations, namely, how to reconcile the norm of state sovereignty with the increasingly accepted view that certain acts committed by states against their own populations are an international concern.

Critical accounts argue that R2P does not escape the political hierarchies of the international order. David Chandler contends that the doctrine's liberal language can obscure the unequal authority through which powerful states define protection crises and appropriate responses. Anne Orford similarly shows how protection discourse authorises forms of international executive rule while presenting

³⁷ Roland Paris, 'Human Security: Paradigm Shift or Hot Air?' (2001) 26(2) *International Security* 87, 87–102.

³⁸ *Intervention and State Sovereignty, The Responsibility to Protect* (International Development Research Centre 2001) xi–xiii, paras 2.14–2.15.

intervention as politically neutral. On this reading, the individual is presented as a universal referent of security, but the authority to identify an exception and act upon it remains unevenly distributed³⁹.

The selective application of R2P in practice bears this out. The Security Council authorised intervention in Libya in 2011 and declined to do so in Syria, where civilian casualties were vastly higher. These decisions were shaped by the strategic interests of the P5, the perceived military tractability of the situations, and the political risks of action and inaction, not by the severity of the protection crisis alone⁴⁰. Pauline Kerr's characterisation of an "evolving dialectic" between state-centric and human-centric approaches⁴¹ captures the current condition of the field: the tension is managed case by case through political judgment, and it tends to tip toward state-centric interests when the costs of human-centric action are high. This pattern –human rights norms invoked as universal while their application is shaped by particular interests– is directly relevant to the analysis of institutional behaviour that this thesis develops.

2.3.3 Whose Insecurity? Exclusion and Definition

The human security literature identifies a structural issue that bears direct implications for this thesis's central question: the definition of security threat is never politically neutral, and the process of definition systematically excludes certain populations and certain forms of insecurity. Securitisation theory, developed by Barry Buzan, Ole Wæver, and Jaap de Wilde in "Security: A New Framework for Analysis", locates the power to define security threats in "securitising actors" – typically political leaders and other influential elites capable of persuading an audience that a given issue constitutes an existential threat⁴². The framework therefore explains both how security agendas are constructed and why certain issues struggle to enter them despite constituting genuine threats to life and livelihood.

Feminist scholars have made this exclusion precise. Serena Parekh's analysis of the public-private dichotomy in human rights frameworks argues that the systematic focus on state-sponsored harms in the public realm –such as torture, disappearances, arbitrary detention– leaves structurally invisible the forms

³⁹ David Chandler, 'The Responsibility to Protect? Imposing the "Liberal Peace"' (2004) 11(1) *International Peacekeeping* 59, 59–81; Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011) 1–24, 197–207.

⁴⁰ SC Res 1973 (17 March 2011) UN Doc S/RES/1973; Alex J Bellamy, 'Libya and the Responsibility to Protect: The Exception and the Norm' (2011) 25(3) *Ethics & International Affairs* 263, 263–69; Ramesh Thakur, 'R2P after Libya and Syria: Engaging Emerging Powers' (2013) 36(2) *The Washington Quarterly* 61, 61–76.

⁴¹ Pauline Kerr, *The Evolving Dialectic between State-Centric and Human-Centric Security* (Working Paper No 2003/2, Department of International Relations, Australian National University 2003) 3–5, 31–34.

⁴² Buzan, Wæver and de Wilde (n 9) 23–26, 31–33.

of violence most consistently inflicted on women: domestic abuse, reproductive coercion, trafficking, and the economic subordination that makes all of these harder to escape⁴³. Fiona Robinson extends this to the global political economy, showing how neoliberal restructuring feminises and racialises care work, placing migrant women of colour in structurally precarious positions that conventional security frameworks do not register as security problems at all⁴⁴.

This pattern of exclusion recurs across all four literatures this chapter surveys. In the peace-justice debate, women's experiences of conflict appear primarily as questions of sexual violence law – a genuine development, but a fraction of what conflict does to women economically, domestically, and in terms of long-term livelihood. In transitional justice, the focus on civil and political violations consistently underweights the structural and economic harms that Diana Sankey calls “subsistence harms”⁴⁵. The pattern is not accidental: it reflects design choices embedded in the human rights framework, choices that were made in particular historical and political contexts and that carry those contexts’ assumptions into the present.

2.4 Durable Peace Scholarship

2.4.1 *Measuring Durability*

Much of the literature on peace studies has focused on measuring durability in terms of the absence of renewed armed conflict – what Johan Galtung called “negative peace”⁴⁶. The empirical literature employs time measures to ask how many months or years pass before violence recurs within the same conflict dyad. Michael Doyle and Nicholas Sambanis’s widely used standard measures success at two, five, and ten-year intervals post-settlement⁴⁷. The UN Security Council and World Bank focus on

⁴³ Kathryn Libal and Serena Parekh, ‘Reframing Violence against Women as a Human Rights Violation: Evan Stark’s Coercive Control’ (2009) 15(12) *Violence Against Women* 1477, 1479–84; Serena Parekh, ‘Gender and Human Rights’ in Patrick Hayden (ed), *The Ashgate Research Companion to Ethics and International Relations* (Ashgate 2009) 233, 233–47.

⁴⁴ Fiona Robinson, ‘Beyond Labour Rights: The Ethics of Care and Women’s Work in the Global Economy’ (2006) 8(3) *International Feminist Journal of Politics* 321, 321–42; Fiona Robinson, *The Ethics of Care: A Feminist Approach to Human Security* (Temple University Press 2011) 103–31.

⁴⁵ Diana Sankey, ‘Towards Recognition of Subsistence Harms: Reassessing Approaches to Socioeconomic Forms of Violence in Transitional Justice’ (2014) 8(1) *International Journal of Transitional Justice* 121, 121–40; Diana Sankey, ‘Gendered Experiences of Subsistence Harms: A Possible Contribution to Feminist Discourse on Gendered Harm?’ (2015) 24(1) *Social & Legal Studies* 25, 25–45.

⁴⁶ Johan Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6(3) *Journal of Peace Research* 167, 183–86.

⁴⁷ Michael W Doyle and Nicholas Sambanis, ‘International Peacebuilding: A Theoretical and Quantitative Analysis’ (2000) 94(4) *American Political Science Review* 779, 779–801; Michael W Doyle and Nicholas Sambanis, *Making War and Building Peace: United Nations Peace Operations* (Princeton University Press 2006) 18–23.

a five-year window, noting that countries face roughly a 44 per cent chance of conflict relapse within that period⁴⁸.

This operationalisation is important because it treats stability as the baseline and asks how well a peace process can sustain it. It says little about what is happening in the absence of war, whether former combatants are reintegrated, whether root causes of conflict are addressed, whether formerly marginalised groups have access to political participation and economic resources, or whether the new political order is regarded as legitimate by the population it governs. These are what Galtung called “positive peace” – the absence of structural violence, not merely the absence of hot conflict⁴⁹. The Global Peace Index uses 23 indicators, including incarceration and violent-crime measures, and the related Positive Peace Index captures enabling conditions such as low levels of corruption⁵⁰. Kristine Höglund and Mimmi Söderberg Kovacs’s Peace Triangle framework measures peace across three dimensions: the resolution of underlying grievances, behaviour (the presence or absence of criminal and political violence), and attitudes (social polarisation and fear)⁵¹. Both represent a step towards qualitative and relational measures of what durability actually means.

Despite these broader conceptual developments, institutional practice continues to treat negative peace as the benchmark of success. Donor frameworks and UN Security Council mandates typically regard a peace process as successful when it achieves a five-year period without major armed violence. Understood from these terms, settlements can be classified as durable even when they grant blanket amnesties, entrench warlords in government positions and ignore the economic grievances that drove the conflict untouched. The implications go beyond methodology. By defining success through the absence of renewed conflict, prevailing metrics shape what interventions can achieve and what outcomes are treated as success.

2.4.2 Justice as Constitutive or Sequential

⁴⁸ Paul Collier and others, *Breaking the Conflict Trap: Civil War and Development Policy* (World Bank and Oxford University Press 2003) 83.

⁴⁹ Galtung (n 46) 183–86.

⁵⁰ Institute for Economics & Peace, *Global Peace Index 2026* (Institute for Economics & Peace 2026) methodology section; Institute for Economics & Peace, *Positive Peace Report 2024: Analysing the Factors that Build, Predict and Sustain Peace* (Institute for Economics & Peace 2024) 4–12.

⁵¹ Kristine Höglund and Mimmi Söderberg Kovacs, ‘Beyond the Absence of War: The Diversity of Peace in Post-Settlement Societies’ (2010) 36(2) *Review of International Studies* 367, 374–78.

Whether justice is a constitutive element of durable peace or something that can be sequenced in later –and therefore deferred indefinitely– is the central disagreement in this body of literature. Snyder and Vinjamuri’s realist position holds that initial stability depends on the cooperation of powerful elites and military leaders. Durability is produced by “politically expedient bargains among contending groups”, which often require offering spoilers deals like amnesty, exile or a continuing stake in the new political order; that leaves justice for later. In their “institutional deserts” argument, the sequencing is presented as necessary: without a stable political coalition to enforce the law coercively, justice mechanisms cannot function, and attempting them risks collapsing the settlement⁵².

Sikkink challenges this orthodoxy on both empirical and theoretical grounds. Empirically, she finds that countries using prosecutions are not more likely to relapse into conflict; in Latin America, the correlation runs the other way. Theoretically, she argues that building the rule of law and holding human rights prosecutions are “simultaneous and mutually reinforcing processes”⁵³, with each creating conditions for the other, rather than one needing to precede the other. On this account, her “needed least” claim that trials only work when they are already unnecessary– is, in Sikkink’s account, not a general finding but an artefact of Snyder and Vinjamuri’s case selection.

Jane Stromseth adopts a more intermediate position. While she acknowledges that criminal prosecution is “rarely sufficient” to address the complex legacies of past atrocities⁵⁴, confronting accountability remains essential as it signals that abuses will not be permitted to recur and helps the rule of law take root. Evidence from Afghanistan illustrates what is at stake. Merkel’s survey data found that 79.1 per cent of the Afghan population believed that bringing war criminals to justice would substantially improve security⁵⁵, directly challenging the realist claim that stability requires accommodating perpetrators. The strategic policy of incorporating warlords into government for the sake of stability ultimately failed, and Merkel argues it failed partly because the impunity it institutionalised eroded the government’s legitimacy in the eyes of the people it claimed to govern⁵⁶. The Afghan case therefore

⁵² Snyder and Vinjamuri (n 3) 15–20.

⁵³ Kathryn Sikkink, ‘Models of Accountability and the Effectiveness of Transitional Justice’ in Vesselin Popovski and Mónica Serrano (eds), *After Oppression: Transitional Justice in Latin America and Eastern Europe* (United Nations University Press 2012) 19, 34; Sikkink and Walling (n 10) 442–43.

⁵⁴ Jane E Stromseth, ‘Pursuing Accountability for Atrocities after Conflict: What Impact on Building the Rule of Law?’ (2007) 38 *Georgetown Journal of International Law* 251, 251–54.

⁵⁵ Merkel (n 29) 21.

⁵⁶ Merkel (n 29) 21–22.

suggests that justice deferred is not always justice retained for later application; it is often justice abandoned while stability remains elusive anyway.

2.4.3 Liberal Peacebuilding and Its Critics

The most comprehensive critique of the dominant peacebuilding paradigm comes from Oliver Richmond and Roger Mac Ginty. Their critique doesn't reject liberal peacebuilding for poor implementation, but contends that its shortcomings arise from the "problematic assumptions and contradictions within the model itself"⁵⁷. At the core of their critique is what they call the "rights over needs" problem: the liberal peacebuilding framework prioritises formal political rights –elections, constitutional reform, judicial independence– before material welfare: employment, housing, health care, social protection. This sequencing produces what they call a "virtual peace"⁵⁸: formal institutional compliance with human rights standards that does not translate into improved quality of life for most of the population.

This critique extends what Richmond and Mac Ginty characterise as the "audit culture" of liberal peacebuilding. International interventions, they argue, privilege measurable indicators of success: rights compliance, institutional benchmarks and administrative efficiency, over the conditions of actual people's lives. As an alternative, they proposed a "post-liberal peace" that begins with the "everyday" conditions in which people live rather than with statehood and legal institutions. This involves what they describe as an "empathetic interface" between international norms and local and customary practices, producing what they call a "liberal-local hybrid" rather than an imported template⁵⁹.

If post-conflict interventions consistently privilege institutional compliance over justice because of the embedded assumptions within liberal peacebuilding, then better implementation alone won't solve the issue. Richmond and Mac Ginty thus cast a deeper critique of the conceptual foundations of peacebuilding. This is the point at which the implementation critique becomes a framework critique, and it is the point this thesis takes as its starting position.

2.5 Transitional Justice Literature

⁵⁷ Richmond and Mac Ginty (n 5) 1–20.

⁵⁸ Richmond (n 5) 115–65.

⁵⁹ Roger Mac Ginty and Oliver P Richmond, 'The Local Turn in Peace Building: A Critical Agenda for Peace' (2013) 34(5) *Third World Quarterly* 763, 763–83; Richmond (n 5) 115–65.

2.5.1 The Adequacy Question as Central Pressure Point

The transitional justice literature is where the question this thesis examines is most directly at stake, and where the debate is most explicitly developed. Concerned with the mechanisms societies employ to address legacies of mass atrocities, authoritarian rule, and political violence, the field examines those mechanisms, how they function, and what they achieve. Ruti Teitel's foundational account periodises the field across three phases: the post-war Nuremberg model, the third-wave democratisation transitions of the 1970s to 1990s, and the globalisation of international criminal justice from the 1990s onward⁶⁰. Each phase produced different assumptions about what transitional justice should achieve and what mechanisms should serve it. The contemporary field inherits all three sets of assumptions in tension with each other.

Despite the reach literature, the transitional justice literature has not adequately resolved the adequacy question this thesis foregrounds, in other words, whether the human rights framework – specifically the model of individual criminal accountability developed through international criminal law – is the right vehicle for justice in post-conflict settings. The literature is aware of the question and critics of the legalist approach argue that the framework is inadequate because it ignores political realities, but feminist scholars go a step further and argue that it is inadequate because it was designed around a conception of harm that excludes women's experiences. Although these critiques share a diagnosis of inadequacy, they lack a unified account of what makes the framework itself problematic.

Paul Voice's discussion of the normative authority acquired by human rights in global politics is useful here precisely because it explains why the adequacy question tends to get contained⁶¹. When a framework is hegemonic, operating within it rather than questioning it is the path of least resistance, and critiques that propose alternatives risk appearing either naive or nihilistic. This helps understand better why the transitional justice literature tends to respond to the inadequacy problem with proposals for better mechanisms: more truth commissions, better-funded reparations programmes, hybrid tribunals. It is at this point that this thesis departs from the existing literature and treats the adequacy of the framework as the central analytical question.

⁶⁰ Ruti G Teitel, 'Transitional Justice Genealogy' (2003) 16 Harvard Human Rights Journal 69, 70–94.

⁶¹ Paul Voice, 'Human Rights and Democracy' in Patrick Hayden (ed), *The Ashgate Research Companion to Ethics and International Relations* (Ashgate 2009) 261, 261–74.

2.5.2 *Victims: Individual, Collective, Gendered*

The conception of the victim that operates within transitional justice mechanisms matters because it determines who has standing, what forms of harm are cognisable, and what remedies are available. In the individual criminal accountability model, the victim is primarily a discrete legal actor with specific standing to bring claims. Sikkink's characterisation of victims as "determined and empowered domestic litigants"⁶² reflects this understanding: agency is exercised through the legal system, and legal standing is the precondition for access to justice. This is a powerful conception in some respects –it individualises accountability and creates enforceable rights– but it assumes that the relevant harm is individual, that formal legal systems are accessible, and that what victims want is primarily the punishment of their perpetrators.

Other scholars question these assumptions by broadening the concept of victimhood itself. Biggar argues in his account of the "indirect victim" that when a crime is committed, the entire community suffers because every member experiences the general threat, insecurity, and anxiety the crime creates. Justice must then address collective harm as well as individual harm. Priscilla Hayner's comparative study of truth commissions shows that many survivors prioritise truth and acknowledgement over criminal conviction⁶³ – a preference that the individual criminal accountability model tends to register, if it registers it at all, as evidence of the complementarity of truth commissions rather than as a challenge to the primacy of prosecution.

The feminist literature extends this critique further by arguing that the systematic exclusion of harm characteristic of women's experiences prevails as a gendered issue. Despite the Rome Statute recognising sexual violence as a war crime and a crime against humanity is a genuine development; it still operates on a "script of sexual vulnerability" that re-victimises survivors and silences their broader political, economic, and social experiences⁶⁴, as Katherine Franke and Niamh Reilly both observe. Hence, women only become visible in international criminal proceedings as victims of sexual violence,

⁶² Sikkink (n 4) 18–19.

⁶³ Priscilla B Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011) 20–23, 145–50.

⁶⁴ Katherine M Franke, 'Gendered Subjects of Transitional Justice' (2006) 15(3) *Columbia Journal of Gender and Law* 813, 820–26; Niamh Reilly, 'Seeking Gender Justice in Post-Conflict Transitions: Towards a Transformative Women's Human Rights Approach' (2007) 3(2) *International Journal of Law in Context* 155, 155–72.

which obscures their agency as political actors, community members, and economic subjects, leaving the conception of the victim untouched.

The deeper problem, as Diana Sankey argues through her work on “subsistence harms”, is that international law focuses on extraordinary physical violence in the public sphere, while systematically excluding the destruction of livelihoods, forced displacement, and the erosion of subsistence economies that conflict produces. These harms are often the central mechanism, particularly where civilian populations are the strategic target. They fall disproportionately on women, due to structural divisions of labour in subsistence economies, and they do not fit the template of human rights violations as international law has developed it⁶⁵. Security Council Resolution 1325 articulates the aspiration to move beyond this framework⁶⁶ –ensuring women’s participation in designing post-conflict political orders rather than treating them only as victims– but the implementation record suggests that the formal commitment reliably yields to security pressures when the two are in tension.

2.5.3 Mechanisms and Their Structural Limits

The transitional justice literature has developed an extensive repertoire of mechanisms to address past atrocities, including criminal prosecutions, truth commissions, reparations programmes, lustration and vetting, and institutional reform. But no single mechanism should be privileged; instead, the scholarly consensus, where it exists, supports mixed approaches that combine retributive and restorative elements⁶⁷. Case in point, criminal prosecutions are defended primarily on deterrence, socialisation, and accountability grounds. Sikkink, Goldstone and Smith, Diane Orentlicher argue that trials cannot signal to would-be perpetrators that individual accountability is possible, embed human rights norms in institutional memory, and give victims recognition as legal subjects⁶⁸. Truth commissions are defended as offering what trials cannot: a comprehensive historical record, a public forum for survivor testimony, and a form of acknowledgement that, for many victims, matters a lot compared to conviction⁶⁹. Pablo de Greiff’s work on reparations programmes argues that material repair is essential for recreating the

⁶⁵ Sankey (n 45) 121–40; Sankey, ‘Gendered Experiences of Subsistence Harms’ (n 45) 25–45.

⁶⁶ SC Res 1325 (31 October 2000) UN Doc S/RES/1325, paras 1–5, 8.

⁶⁷ Teitel (n 60) 69–94; Hayner (n 64) 20–23; Pablo de Greiff, ‘Justice and Reparations’ in Pablo de Greiff (ed), *The Handbook of Reparations* (Oxford University Press 2006) 451, 451–77.

⁶⁸ Diane F Orentlicher, ‘Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime’ (1991) 100 *Yale Law Journal* 2537, 2542–46, 2582–95; Kim and Sikkink (n 19) 939–63.

⁶⁹ Hayner (n 64) 20–23, 145–50.

conditions of civic trust necessary for a rights-respecting political order⁷⁰, but that reparations are consistently underfunded and politically marginalised in practice.

A growing body of literature also argues about what these mechanisms are capable of achieving. Katherine Franke's analysis of the structural limits of transitional justice mechanisms is among the most incisive in the literature. She argues that redistribution –the reordering of material resources from perpetrators to victims– is rarely achieved through transitional justice, even when prosecutions succeed⁷¹. Trials cannot transfer wealth or land. Reparations programmes are frequently treated as afterthoughts. Margaret Urban Walker invokes the “tragic incompleteness of justice” to acknowledge that redress will remain partial, while insisting that incompleteness cannot justify withholding the available justice⁷². The framework is, by design, better at recognising harms than at repairing them.

Others locate these limitations in the political conditions under which they operate and less in the mechanisms themselves. Snyder and Vinjamuri observe that trials “tend to work best only when they are needed least” which does not lead to the conclusion that accountability should therefore be abandoned – but it does identify something real. Accountability mechanisms require pre-existing institutional capacity, political coalitions willing to enforce them, and a degree of post-conflict stability that removes the worst spoiler incentives. The field's tendency to treat prosecutions as a transferable technology – applicable wherever atrocities have occurred– reflects an inadequate understanding of the political conditions justice requires⁷³. Elizabeth Stanley's work on state-building and transitional justice adds a further dimension: if state-building measures leave people in poverty and insecurity, an official acknowledgement of suffering means little, and victims may regard the transition as having delivered nothing at all⁷⁴.

2.5.4 Local and Non-Western Conceptions of Justice

⁷⁰ de Greiff (n 69) 451–77.

⁷¹ Franke (n 66) 824–28.

⁷² Margaret Urban Walker, ‘Gender and Violence in Focus: A Background for Gender Justice in Reparations’ in Ruth Rubio-Marín (ed), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009) 18, 23–24.

⁷³ Snyder and Vinjamuri (n 3) 18–20.

⁷⁴ Elizabeth Stanley, ‘Transitional Justice: From the Local to the International’ in Patrick Hayden (ed), *The Ashgate Research Companion to Ethics and International Relations* (Ashgate 2009) 275, 275–91; Elizabeth Stanley, *Torture, Truth and Justice: The Case of Timor-Leste* (Routledge 2009) 1–20, 145–65.

The most consistent criticism of the international transitional justice framework is that it imports Western conceptions of justice into post-conflict settings where they may lack legitimacy or relevance. The dominant response relies on advocating for hybrid mechanisms, like the Special Court for Sierra Leone, the CAVR in East Timor or Rwanda's *gacaca* courts, that blend international legal standards with local institutions and practices⁷⁵. Yet, the hybridity literature is insufficient as it tends to treat local practices as supplements to international standards rather than as alternative frameworks with their own internal logic. The *gacaca* courts were praised for their cultural resonance and community participation but criticised by international human rights organisations for departing from formal legal standards⁷⁶. The implicit assumption is that the international framework is the baseline against which local adaptations are measured – a position that forecloses questions about whether the baseline itself is appropriate.

Makau Mutua's "savage-victim-saviour" narrative is used to understand the structural problem⁷⁷. He argues that the international human rights project is built around a narrative that includes the savage (the perpetrator state or non-state actor), the victim (the rights-bearer awaiting rescue) and the saviour (the international human rights community), all of which are defined in relation to each other. This narrative shows the normative limitations that systematically marginalise conceptions of justice –ubuntu-based frameworks, indigenous governance systems, communal reconciliation practices– that do not fit the saviour's script. The result is that local conceptions of justice are treated as inferior or supplementary rather than as legitimate alternatives that might reveal what the dominant framework cannot see.

Antony Anghie's argument in *Imperialism, Sovereignty and the Making of International Law* extends this critique historically by stating that international law did not emerge as a neutral framework subsequently applied to post-colonial states⁷⁸, but that it was shaped by colonial encounter and structured to serve the interests of colonial powers, dressing those interests in the language of universal standards. Achille Mbembe's analysis of necropolitics and Frantz Fanon's account of the colonial structure of recognition and dehumanisation provide resources for understanding why the framework's universalism

⁷⁵ Rosalind Shaw, Lars Waldorf and Pierre Hazan (eds), *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford University Press 2010) 3–26; Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge University Press 2010) 3–18.

⁷⁶ Clark (n 77) 299–331.

⁷⁷ Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42(1) *Harvard International Law Journal* 201, 201–09.

⁷⁸ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005) 3–6, 32–114.

has always been selective, and most importantly, why its selectivity follows predictable patterns⁷⁹. Together, both authors shift the focus from implementation failures towards understanding this historical structure.

2.6 Locating the Intervention

Across four bodies of scholarship, a common pattern has been consistent without being fully named. The peace-justice debate has produced extensive empirical work on accountability mechanisms and whether they produce better or worse outcomes than amnesty arrangements, but it has failed to ask whether the human rights model of individual criminal accountability is the right way to operationalise justice at all. Furthermore, the human security literature has exposed the state-centric framework's exclusions and identified whose insecurity it renders systematically invisible, but then again, without fully confronting the possibility that the human rights framework may not provide the solution without asking whether the same framework reproduces some of the same exclusions it seeks to overcome. Similarly, durable peace scholarship has developed more demanding measures of what peace actually requires but has not integrated the justice dimension into its account of durability in a way that goes beyond sequencing arguments. The transitional justice literature has identified the structural limits of its own mechanisms but tends to treat these limits as problems of design or implementation rather than symptoms of a more fundamental inadequacy in the framework itself.

The common thread between these literatures is what this thesis calls “contained critique”. Each acknowledges significant weaknesses in prevailing approaches, but each ultimately treats the human rights framework as the appropriate starting point. Critics of liberal peacebuilding argue for hybrid models, critics of prosecution-centric transitional justice argue for more truth commissions or better-funded reparations and critics of the narrow human security concept argue for a broader rights-based approach. Either way, in each case the critique is genuine but operates within parameters that preserve the framework's fundamental legitimacy.

This thesis begins its intervention where those critiques stop, and that is by asking whether the contained critique is adequate. If the problems identified across these four literatures are not problems of

⁷⁹ Mbembe (n 70) 1–62.

application, reflecting structural features of the human rights framework, then the remedies the literature recommends will not address the underlying problem.

The following chapter develops a theoretical framework drawn from Simone Weil and Giorgio Agamben on the conditionality of rights and the state of exception, Achille Mbembe Frantz Fanon and Ntina Tzouvala on the colonial structure of international law, and feminist peace studies scholarship on whose voices and whose justice get institutionalised. Securitisation scholarship will provide the connecting analytical lens on why transitional justice remains resistant to structural transformation: security-first logics absorb critique and preserve the institutional hierarchies through which colonial, racialised and gendered exclusions continue to be reproduced. Together, they provide the tools to examine what the empirical literature leaves visible but unexplained⁸⁰.

⁸⁰ Simone Weil, 'The Iliad, or the Poem of Force' in Siân Miles (ed), *Simone Weil: An Anthology* (Penguin 2005) 163, 163–95; Agamben (n 6) 71–111; Mbembe (n 70) 11–40; Fanon (n 7) 1–62.

Chapter 3: Theoretical Framework

3.1 The Diagnostic Shift

As thoroughly reviewed in the past chapter, shortcomings in human rights-centred approaches to post-conflict justice can be repeatedly identified. These deficiencies have generally been interpreted as problems of implementation, institutional design or political will. This thesis adopts a different starting point. It treats these recurring limitations as potentially structural rather than contingent – not failures of the framework’s application but features of its design. The purpose of the following section is therefore not to evaluate whether human rights are implemented effectively, but to examine whether the assumptions embedded within the framework itself systematically constrain what justice can achieve.

3.2 The Prior Problem: The Structural Conditionality of Rights

If the limitations identified in the previous chapter recur across different institutions and contexts, it becomes insufficient to attribute them to inadequate enforcement. These explanations, whatever their partial validity, share a common error: they locate the dysfunction outside the framework itself, in conditions of implementation rather than in the architecture of rights as a legal-political category.

The first indication of the rights framework’s structural limitation is already undermined by Hannah Arendt’s observation that the refugee –the figure who should embody the Rights of Man most purely, having been stripped of all other political status- is precisely the one from whom those rights are withdrawn⁸¹. Rather than functioning independently of political membership, rights become ineffective at the moment citizenship disappears. The paradox lies in the contradiction that those who should embody universal rights to their full potential are the same people least able to invoke them.

Agamben’s intervention in *Homo Sacer* furthers this insight. His argument is not that certain populations have fewer rights in practice because the system has been inconsistently applied; it is that bare life (*zoē*), “the simple fact of living common to all living beings”⁸², is not a citizen who accidentally fell out of legal protection but “the original activity of sovereign power”⁸³ itself. Sovereignty constitutes itself through the “inclusive exclusion” of bare life: life is incorporated into the juridical order precisely through its

⁸¹ Arendt (n 6) 296-297.

⁸² Agamben (n 6) 1.

⁸³ Agamben (n 6) 6.

subjection to abandonment⁸⁴. The sovereign therefore does not occasionally decide to exclude; he is defined by his capacity to decide on the exception, to suspend the law and thereby reveal that law's relation to life has always been one of capture through withdrawal.

Arendt's diagnosis of rights as collapsing at the limits of citizenship thus becomes, in Agamben's reading, something more than a diagnosis of institutional failure⁸⁵. What appears to be the breakdown of universality is, in fact, the full disclosure that rights were never independent of sovereign inclusion to begin with⁸⁶. The figure of the refugee does not expose a gap in the system; it exposes the point at which the system shows its constitutive dependence on the production of exclusion as the condition of inclusion. From this perspective, rights do not fail despite sovereignty; they function through it.

This framework argues that the notion of rights is structurally inadequate as a foundation for post-conflict justice because rights are neither universal nor autonomous, but instead, they are embedded within relations of sovereign power. Drawing on Agamben, it conceptualises victims not simply as individuals deprived of rights, but as forms of *bare life* (*zoē*) produced through the sovereign capacity to distinguish between those who are protected by law and those excluded from it⁸⁷. From this perspective, transitional justice mechanisms that seek merely to restore victims to the status of citizen do not fundamentally challenge the structures that enabled violence in the first place. The citizen is not the opposite of *homo sacer* but the form in which bare life is most fully captured within law⁸⁸. Rather, they reintegrate individuals into the same framework that continuously produces bare life. The empirical intuition that "some people have fewer rights in practice" is thus displaced by a stronger claim: the framework that produces bare life cannot redeem it through more consistent application of its own categories. Modernity intensifies this dynamic by the normalisation of the exception, where the camp emerges not as anomaly but as the paradigmatic space in which law is suspended, and life is managed through abandonment⁸⁹.

Agamben only identifies one dimension of the problem. Even if rights could be universally guaranteed, Weil's argument exposes that they would remain an inadequate foundation for justice because rights language is inherently adversarial, grounded in claims and counterclaims that evoke a spirit of contention

⁸⁴ Agamben (n 6) 7.

⁸⁵ Agamben (n 6); Arendt (n 6) 296-297.

⁸⁶ Agamben (n 6) 50-53; Arendt (n 6) 152.

⁸⁷ Agamben (n 6).

⁸⁸ Agamben (n 6) 128.

⁸⁹ Agamben (n 6) 175.

rather than justice⁹⁰. For her, justice cannot be reduced to the recognition of legal entitlements but must be rooted in obligations owed to human beings as such⁹¹. Consequently, this framework shifts the analytical focus from the allocation of rights to the fulfilment of universal obligations and the protection of the fundamental needs of the soul, including truth, honour, order, and dignity⁹².

Taken together, Arendt, Agamben and Weil shift the problem from the adequacy of implementation to the conditions of possibility of rights-based justice itself. Arendt exposes the dependency of rights on citizenship; Agamben theorises that dependency as the sovereign production of bare life through inclusive exclusion; and Weil shows how rights discourse structurally filters suffering through a grammar that privileges articulate claim-making over silent affliction. They suggest that human rights frameworks do not simply fail to reach certain subjects; they actively participate in producing these categories: citizen, victim and claimant, through which those subjects become legally and politically intelligible.

For this thesis, this implication is decisive. If the inadequacy is contingent, then the solution requires institutional strengthening. If the shortcomings are structural, then the framework itself participates in producing the very exclusions it seeks to remedy. Therefore, the question doesn't concern why the human rights frameworks persistently fail to produce durable justice in post-conflict settings, but whether there is something embedded in the mechanism of rights themselves that systematically produces the conditions for their own failure. The thesis adopts a stronger claim because only the structural claim exposes what purely legal critique cannot: that the "hidden foundation on which the entire political system rested" is not a deficiency to be corrected but a generative condition to be named⁹³.

This changes how transitional justice itself must be understood. Standard post-conflict interventions assume that justice consists in restoring victims from their condition of bare life to their legal status as citizens. On this view, Agamben reveals that the citizen is not the solution to bare life, but the primary site where bare life is captured and held. As he notes, "nation" derives etymologically from *nascere* (to be born) and declarations of rights represent "the originary figure of the inscription of natural life in the juridico-political order"⁹⁴. Rights are attributed to man only because "birth immediately becomes nation", a passage that leaves no gap between the biological and the juridical, between the body and the state's

⁹⁰ Weil (n 6) 85.

⁹¹ Simone Weil, *The Need for Roots: Prelude to a Declaration of Duties Towards Mankind* (Arthur Wills tr, Routledge 2002) 3–5.

⁹² Weil (n 93) 22.

⁹³ Agamben (n 6) 9.

⁹⁴ Agamben (n 6) 12.

claim on it⁹⁵. Hence, the citizen is not someone who has escaped the sovereign ban but the form in which the ban is most thoroughly realised: life included in the political order through subjection to a power that reserves the ultimate decision over its value. To restore a victim of mass atrocity to citizenship is not to emancipate that life; it is to reincorporate them into the same legal architecture that produced their abandonment.

Simone Weil reaches a similar critique but from a different starting point. She argues that rights language carries an intrinsic “commercial flavour”, tied to notions of sharing out, exchange and measured entitlement⁹⁶. Framed in these terms, justice is articulated as a matter of rights; evoking “a latent war and awakens the spirit of contention”⁹⁷, positioning claimants as adversaries in a legalistic struggle rather than human beings with needs that are prior, by their nature, to any juridical recognition. The framework consequently privileges those who are capable of articulating their suffering in juridical language⁹⁸. Those truly afflicted, those reduced to “a torn and bloody rag on the teeth of a cog-wheel”⁹⁹, are often precisely rendered mute by the very devastation that gives rise to the claim. A framework that requires the capacity to assert and name violations in the grammar of legality systematically silences those whose harm is most severe, which is to say those whose silencing is most damaging to the premise that rights offer universal protection.

The alternative to Weil’s critique is not a different set of rights but a different foundation for evaluating justice altogether. When she argues that obligations precede rights (that a man left alone in the universe would have no rights but would still have obligations)¹⁰⁰, she displaces the foundation of justice from the legally constituted person to what she calls “the impersonal”: that dimension of human beings existing before and independent of any social or legal qualification, “that childlike expectation in every heart that good and not evil will be done to him”¹⁰¹. Justice is, as a consequence, no longer evaluated under the premise that legal entitlement has been recognised or evaluated, but by confronting the raw, unadorned question: “Why am I being hurt?” That cry, Weil insists, is the “infallible indicator of injustice”, and it operates regardless of whether the person asking it has been recognised by any state¹⁰². This convergence

⁹⁵ Agamben (n 6) 128.

⁹⁶ Weil (n 93) 81.

⁹⁷ Weil (n 6) 83.

⁹⁸ Weil (n 6) 84.

⁹⁹ Weil (n 6) 90.

¹⁰⁰ Weil (n 93) 259.

¹⁰¹ Weil (n 6) 53.

¹⁰² Weil (n 6) 72.

of Agamben and Weil produces the analytical terrain of post-conflict justice. Any human rights framework deployed in a post-conflict zone arrives already carrying the mechanism of its own limitation. Long before the first court convenes or the first reparations are designed, the framework has already subjected the population to the conditions governing the legal architecture in which protection is premised on political membership, and political membership is the mechanism through which sovereign power captures bare life. Such interventions can succeed entirely on their own terms, achieving citizenship restoration and institutional consolidation, while producing a more “humanised” form of biopolitical control, one that administers bare life under the vocabulary of rights rather than liberating it from the structures that produce that condition. This is what Agamben identifies as the “secret solidarity” between sovereign power and humanitarian intervention, operating within the same zone of indistinction between law and life, fact and norm¹⁰³. It becomes therefore negligent to treat this as a problem of implementation, so recognising it as structural is the precondition for asking what kind of politics, what regime of obligations rather than rights, might begin to challenge it.

3.3 The Colonial Structure of the Exception

Agamben’s account of “inclusive exclusion” identifies the mechanism through which sovereign power captures life, but says nothing about who the subjects are that remain captured within it. In principle, any individual can in principle be reduced to the state of exception or bare life. But what Agamben leaves largely unexplained is why, when applying the theory, the same populations occupy the zones of abandonment. The decolonial lens, therefore, explains that in practice. It is consistently racialised, post-colonial and gendered bodies, the ones that occupy the zone of abandonment, and why this consistency is not accidental but a design feature of the international legal order.

This shift has important implications for understanding international frameworks and why they are structurally colonial. Bias implies that neutrality exists as a failure of application. Structural colonialism means that exclusion was constitutive from the framework’s inception, not accumulated through successive misapplications. Tzouvala explains this constitutive hierarchy through the “Standard of Civilisation”, arguing that international law emerged in the late nineteenth century as a mode of legal argumentation and tied a community’s standing in the international order to its conformity with the political economy of European capitalism¹⁰⁴. The 1885 Berlin Act’s requirement of “effective control”

¹⁰³ Agamben (n 6) 133.

¹⁰⁴ Tzouvala (n 7) 1–3.

to establish territorial sovereignty rendered indigenous sovereignty conceptually impossible while protecting Western property rights¹⁰⁵. He also argues that international law oscillates between two internal logics: a “logic of improvement” that offers conditional inclusion to communities that adopt the legal and political infrastructure of capitalist modernity, and a “logic of biology”, which denies inclusion through claims of immutable racial difference¹⁰⁶. The tension between them is not a contradiction; it is the mechanism by which the standard of civilisation manages the contradictions of global capital, simultaneously expanding through homogenization and maintaining zones of intensified exploitation through stratification.

Fanon goes further and demonstrates these legal distinctions as lived social realities. Colonialism is not simply a hierarchy but a compartmentalised world, “divided into species of men”¹⁰⁷. This separation is physically inscribed through the partition of settler towns and native towns, the presence of barracks and police stations rather than social institutions, the maintenance of order through “the language of pure force”¹⁰⁸. In this context, the native is presumed guilty by existence – not through any specific act but for simply occupying a racialised body in a racialised space. What Agamben calls “inclusive exclusion”, Fanon describes as the reduction of the native to landscape: Algerians under French occupation were not recognised as persons but as “the sum total of the land” – a natural background to the human presence of the coloniser¹⁰⁹. This account extends Agamben’s argument, identifying the bodies that consistently become bare life and explaining why that bare life follows constant historical patterns. In contemporary conflict, women afflicted by it are deliberately treated in post-conflict frameworks as victims and beneficiaries of protection rather than as political agents who define the terms of justice.

Fanon further argues that the post-independence state can not escape this structure. Where the national bourgeoisie takes power as a “transmission line” for capitalist exploitation, sovereignty becomes juridically independent while reproducing the colonial relationship in new institutional form¹¹⁰. International economic relations take the form of “neo-colonialist industrialisation” that serves the former metropolitan economy rather than local development. This applies directly to the post-conflict order: the liberal peacebuilding framework that Richmond and Mac Ginty critique –prioritising formal political

¹⁰⁵ Tzouvala (n 7).

¹⁰⁶ Tzouvala (n 7) 3–6.

¹⁰⁷ Fanon (n 7) 211.

¹⁰⁸ Fanon (n 7) 38.

¹⁰⁹ Fanon (n 7) 44.

¹¹⁰ Fanon (n 7) 152–153.

rights over material welfare, administering through audit cultures and compliance metrics– is the contemporary expression of the standard of civilisation, conditioning international recognition and support on the adoption of market-oriented governance that reproduces the colonial pattern of accumulation¹¹¹.

Mbembe’s concept of necropolitics specifies how this colonial mechanism operates in the present, by arguing that contemporary sovereignty is defined by the capacity to determine who lives and who dies, who matters and who is disposable¹¹². Necropower in this case operates through specific technologies, such as spatial partitioning or infrastructural warfare, and the production of “death-worlds” in which populations are subjected to conditions that confer the status of the living dead¹¹³. Racism, being the primary mechanism, divides populations into those whose lives are to be sustained and those who can be abandoned, creating the “biological caesura” that decides life and death not by murder but by management¹¹⁴.

Read alongside Tzouvala, Mbembe gives the decolonial lens a level of precision that Agamben alone can not provide. If the latter accounts for the state of exception as not randomly distributed, he does not provide the explanations for why its application consistently follows specific colonial and racial patterns of exclusion. Tzouvala’s Standard of Civilisation and Mbembe’s account of necropolitics supply that missing explanation through which global capital maintains its structure of uneven development. Crucially, Mbembe is describing an actual mechanism rather than a metaphor: the colony was the original laboratory for the biopolitical experimentation that Agamben attributes primarily to the Nazi camp, and the contemporary post-conflict order inherits that genealogy¹¹⁵. When post-conflict frameworks in Kosovo reproduce the patterns of women’s exclusion from political decision-making and render subsistence harms invisible, this is the standard of civilisation operating through its contemporary institutional forms – not a failure of 1325’s implementation.

3.4 Gendered Institutions and the Silencing of Political Agency

Knowing that exclusion is structural and that it follows colonial and racial patterns does not explain how it reproduces itself through institutions that claim to have transcended it. The UN mission in Kosovo did

¹¹¹ Tzouvala (n 7) 1-5.

¹¹² Mbembe (n 70) 1–12.

¹¹³ Mbembe (n 70) 21–27.

¹¹⁴ Mbembe (n 70) 17.

¹¹⁵ Mbembe (n 70) 24.

not describe itself as colonial. Resolution 1325 explicitly commits to women's participation¹¹⁶. The gap between formal commitment and systemic practice requires a different kind of analysis – one that explains how institutions that recognise women's agency in principle deny it through their structure, their culture, and their language. Enloe and Cohn supply this.

Shifting attention away from the simple question of how many women are present at peace negotiations towards a more analytical approach of why their absence is organised is what Cynthia Enloe brings to the table. Who benefits from the political reality in which women's voices are systematically excluded from the processes that define post-conflict justice? This analytical target becomes an inquiry into power that has consequences specifically in defining what counts as a security threat, what counts as harm, and who holds the authority to determine what justice requires. Her question –“Where are the women?”– asks how political reality is made and who made it this way¹¹⁷.

The institutions through which post-conflict justice is administered –UN peacekeeping missions, transitional parliaments, truth commissions, international courts– are not neutral containers into which women can simply be added. They were built around what Enloe and Cohn call the “modal worker”: a figure with a male body and masculinist social relations, for whom doing the job right means doing it through the priorities of hard security, adversarial legal procedure, and macro-economic stabilisation¹¹⁸. Women who enter these spaces face a structural double bind: they either adopt masculinist priorities and become credible at the cost of the agenda they carried in, or maintain that agenda and continue to be treated as unserious. The issue, therefore, is not the choice of women but the account of how institutions reproduce themselves by defining authority in their own image, filtering out the knowledge and experience that would challenge their operating assumptions.

In Cohn's account, highly abstract technical vocabulary distances decision-makers from the human effects of their choices and marks those who raise the human question as unprofessional, outside the relevant discourse¹¹⁹. The equivalent in transitional justice is the juridical and administrative vocabulary that translates the “mute cry” of the afflicted into “shrill nagging of claims and counter-claims”¹²⁰. Legal

¹¹⁶ UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325.

¹¹⁷ Enloe (n 8) 9.

¹¹⁸ Carol Cohn, *“Women and Wars: Toward a Conceptual Framework”* in Carol Cohn (ed), *Women and Wars* (Polity 2013) 1, 4-5.

¹¹⁹ Carol Cohn, *“Sex and Death in the Rational World of Defense Intellectuals”* (1987) 12(4) Signs 687, 702-704.

¹²⁰ Weil (n 81) 21.

proceedings require standing; standing requires navigating procedures; procedures are administered in the language of formal expertise. Diana Sankey's "subsistence harms" –the destruction of livelihoods, the erosion of subsistence economies– do not fit the template of cognizable human rights violations and are accordingly invisible to the mechanisms designed to address them¹²¹. This invisibility is not a gap in the framework; it is a product of the framework's design.

The Women, Peace and Security agenda illustrates that institutional recognition can be both enabling and constraining. Despite Resolution 1325 being a genuine achievement in which norm entrepreneurs successfully placed women's political agency on the Security Council's hard security agenda, such achievement meant on the other hand, narrowing what Cohn calls the "bureaucratic rabbit hole", by trying to make the WPS goals more "actionable"¹²². Demands concerning sexual and reproductive rights, for instance, are softened or even removed. "Gender" also becomes a euphemism for "women" rather than an analytical category that interrogates power relations. The norm maintains high social validity – frequently cited, referenced in national action plans– while its normative stringency, its actual demand for structural transformation, is hollowed out. An empty norm is the result: the appearance of progress without the remapping of institutional authority that justice requires. As Makau Mutua's "savage-victim-saviour" analysis suggests, the WPS framework can operate precisely within the logic it claims to challenge, positioning women as objects of international protection rather than as agents who redefine protection's terms¹²³.

Enloe's framework connects this specific analysis of WPS to the broader structural diagnosis. Women are consistently present in post-conflict settings as objects of international intervention– as victims of sexual violence, displaced populations, beneficiaries of humanitarian programming– but are systematically absent from the roles of definition: defining what caused the conflict, defining what justice means, defining what a post-conflict political order should look like. The "script of sexual vulnerability" that Katherine Franke and Niamh Reilly identify in 1325's implementation is the institutional expression of this structure: women's agency is acknowledged at the level of victimhood and denied at the level of

¹²¹ Sankey (n 45) 121-140.

¹²² Cohn (n 121) 10.

¹²³ Makau Mutua, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press 2002) 10.

political thought¹²⁴. This is not ignorance. It is, as Enloe would put it, something that has been made – by someone with a certain kind of power, for reasons that a gender-curious analysis can trace¹²⁵.

3.5 Security as Political Technology

Even if rights frameworks are structurally inadequate, colonially and racially exclusionary and institutions reproduce gendered knowledge hierarchies, why is the framework so resistant to change? Reform efforts – 1325 and its successive resolutions, hybrid tribunals, reparations programs – do not fundamentally alter the patterns¹²⁶. This is where critical security studies enter the debate and argue that securitisation is in fact the reason the security-first default is maintained.

The Copenhagen School offers a central claim in which security is not a neutral description of objective threats but a performative speech act¹²⁷. As Buzan, Wæver and de Wilde argue, when an actor labels an issue as *security*, they do more than describe a condition – they shift it into a political register that authorises extraordinary measures and suspends the ordinary rules of democratic deliberation. In making the designation, the actor claims a “special right” to use whatever means are necessary to address the threat. If the relevant audience accepts the designation, normal political constraints fall away. What succeeds, therefore, is not the objective existence of a threat but the social quality of the speech act and the receptiveness of the audience¹²⁸. This is what the Copenhagen School describes as the “staging of existential issues in politics to lift them above politics” – the process through which certain claims are lifted above politics and placed in a domain governed by urgency, exception, and what Buzan and colleagues call the politics of panic¹²⁹.

Now that stability has been established as taking precedent over justice in post-conflict governance, the issue now lies in its successful securitisation. Once posed in the domain of existential necessity, justice and stability no longer play in the same real of politics. Justice claims in this case are relayed to operate at the level of normal politics, where they can be weighed, deferred, bargained away. This asymmetry is structural: once a securitisation move has been accepted by the relevant audience, stability is self-evidently necessary in a way that no justice claim can match from within the framework’s own terms.

¹²⁴ Franke (n 66).

¹²⁵ Enloe (n 8) 9.

¹²⁶ UNSC (n 119).

¹²⁷ Buzan, Wæver and de Wilde (n 9) 24–26.

¹²⁸ Buzan, Wæver and de Wilde (n 9) 25.

¹²⁹ Buzan, Wæver and de Wilde (n 9) 46.

This understanding also sheds light on debates within the human security literature. Roland Paris's call for methodological rigour –narrowing the concept to violent threats in order to make it analytically tractable –¹³⁰ functions precisely as this kind of move, preserving security as a “technical matter” immune to political questioning, rather than exposing it as a derivative concept that encodes prior choices about whose lives matter¹³¹.

The connection to Agamben is direct. The “state of exception” is not sustained by coercion alone, but through a discursive structure that repeatedly legitimises it via securitisation¹³². Every peace settlement that postpones accountability, every amnesty designed to accommodate spoilers, every development programme that prioritises macro-economic stability over women's political participation is the outcome of a securitisation move that has succeeded. The “relevant audience”¹³³ – the P5, the IMF, the donor coalition– accepts these extraordinary measures because the threat of instability has been staged as existential, overriding justice considerations. The Rwanda case illustrates the inverse dynamic. In 1994, the Security Council chose *not* to hear the securitisation move being made about the genocide – a refusal that shaped the catastrophic consequences that followed¹³⁴. As Booth notes, the lesson is not that securitisation always works, but that the composition of the relevant audience is politically determined, and in transitional justice it is systematically constituted in a way that accepts stability claims while marginalising those advanced in the name of justice. The grammar succeeds because the audience is built to receive it.

Booth's concept of “emancipatory security” provides the critical counterpoint and theoretical vocabulary for imagining what an alternative would require. His critique of Paris's narrow definition of human security as a technical matter is a matter of political questioning¹³⁵. Security, as Booth insists, is always a derivative concept, whose content is traceable to underlying political theories about who matters and whose lives are at stake. Once recognised, securitisation moves can be exposed for what they are, as political choices understood as existential necessities. Booth's distinction between “problem-solving theory”, which accepts the status quo and asks how to make it function better, and “critical theory”, which stands outside the status quo to engage with the problem of it, maps directly onto the contained/structural

¹³⁰ Paris (n 37) 87–102.

¹³¹ Booth (n 9) 100–102.

¹³² Agamben (n 6) 142, 170.

¹³³ Buzan, Wæver and de Wilde (n 9).

¹³⁴ Booth (n 9) 317.

¹³⁵ Booth (n 9) 97–100.

critique distinction this thesis draws from the literature review¹³⁶. Durable peace, on this account, is not a legal state to be achieved through better mechanisms but an ongoing political process of freeing people from what prevents them from living the lives they would choose. Security as survival is not synonymous with security as living¹³⁷.

The securitisation framework also clarifies the empty norm dynamic. Resolution 1325 succeeded as a securitisation move because norm entrepreneurs convinced the Security Council that women's exclusion from peace processes constituted a security risk¹³⁸. Yet, once the norm gained institutional recognition, the same logic that elevated it to the agenda operated to contain it. The "relevant audience" for 1325's implementation –the states and UN agencies responsible for peace agreements– treats stability as the primary referent of security, while women's political agency remains a normal-politics concern. When the two come into tension, the securitisation logic predictably prevails. The result is what this thesis describes as an empty norm, one that enjoys widespread endorsement and no capacity to redesign institutional authority. This outcome reflects less of a failure of political will and more of the securitisation logic operating as designed.

¹³⁶ Booth (n 9) 41.

¹³⁷ Booth (n 9) 112.

¹³⁸ Carol Cohn, 'Mainstreaming Gender in UN Security Policy: A Path to Political Transformation?' in Shirin Rai and Georgina Waylen (eds), *Global Governance: Feminist Perspectives* (Palgrave Macmillan 2008) 185, 187–188; Carol Cohn and Claire Duncanson, 'Women, Peace and Security in a Changing Climate' (2020) 22(5) *International Feminist Journal of Politics* 742, 743–744.

Chapter 4: Decolonial, Feminist and Securitisation Analysis

4.1 The Decolonial Dimension: Racialised Hierarchies and Material Exclusion

The theoretical framework established in the last chapter concludes that the exclusions of post-conflict governance are constitutive rather than contingent, and decolonial theory specifies such exclusions. They consistently land on racialised, post-colonial bodies, in zones where the market logic of the international order has historically prioritised neglect over investment. This section takes that structural diagnosis and applies it to the record of post-conflict programming by addressing three interrelated questions. First, through which mechanisms do human rights frameworks actively obstruct decolonial justice, rather than simply failing to achieve it? Second, if human rights frameworks contain emancipatory potential –as the literature on durable peace suggests– why do they so often produce outcomes that reproduce colonial patterns of exclusion and marginalisation? Last but not least, what would need to change for these frameworks to operate differently, and what does the answer reveal about how deep the underlying structural problem runs?

4.1.1 Human Rights as a Structural Obstacle: Where Do Rights Frameworks Impede Decolonial Justice?

This is not simply the observation that human rights frameworks fall short on delivering decolonial justice. *Impede* is the operative term: the framework generates mechanisms that actively obstruct the articulation, adjudication and administrative recognition of the harms that decolonial justice requires. Three distinct modes of legal invisibility produce this effect, and they need to be pulled apart individually, because the strongest counter-argument –that the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹³⁹ exists, that economic rights are increasingly justiciable in domestic jurisdictions, that the Committee on Economic, Social and Cultural Rights (CESCR) has a complaints mechanism¹⁴⁰– tends to get treated as a refutation rather than as evidence that requires explanation.

Certain harms simply cannot be framed within the rights language; this is ontological. Human rights frameworks were designed to address spectacular physical violence in the public sphere, like

¹³⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

¹⁴⁰ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) 2922 UNTS 3, arts 1–2 (individual communications procedure).

torture, arbitrary detention, or extrajudicial killing¹⁴¹. What Diana Sankey terms “subsistence harms” – the destruction of agricultural infrastructure, the erosion of local economies, the forced displacement that severs communities from the land that sustains them– do not fit that template¹⁴². This is a problem of grammar, and the harms are as real as their consequences, which are documented by the same institutions that claim to address them. Hence, they are excluded because the conceptual architecture of international human rights law was created to identify and remedy a different set of injuries.

Weill critiques this mechanism, stating that the language of rights is adversarial and transactional, meaning that it requires a “monopoly of speech” – access to legal expertise, familiarity with procedural norms, the posture of the claimant asserting a violation against a responsible party¹⁴³. Those whose livelihoods have been destroyed by structural violence cannot operate within that grammar. The Standard of Civilisation, as Tzouvala analyses it, explains why this exclusion is not incidental¹⁴⁴. The two are distinct but mutually reinforcing. While Weil shows how rights claim-making renders the framework inaccessible even to those who formally possess rights, because the grammar itself privileges those capable of translating harm into legally recognisable claims, Tzouvala, in contrast, identifies a deeper structural dynamic that organises itself around the interests and institutional forms of European capitalist modernity, making that exclusion part of the design feature and not a failure of access. Together, they produce a framework that deliberately excludes those who are most in need of its protection.

Case in point, Sierra Leone illustrates how both dynamics coexist. The Arms for Development programme required hunters to surrender their shotguns in exchange for fishing nets – a substitution that had nothing to do with the hunting wires on which their subsistence actually depended¹⁴⁵. Women labelled as “bush wives” –abducted, forced into marriages and excluded from formal DDR benefits– experienced severe economic marginalisation after the conflict ended¹⁴⁶. No access to credit, land and

¹⁴¹ Christine Chinkin, *The Protection of Economic, Social and Cultural Rights Post-Conflict* (OHCHR 2008); Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis, with a New Introduction* (Manchester University Press 2022); Christine Chinkin and Hilary Charlesworth, ‘Building Women into Peace: The International Legal Framework’ (2006) 27(5) *Third World Quarterly* 937, 940.

¹⁴² Sankey (n 45).

¹⁴³ Weil (n 81) 78.

¹⁴⁴ Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press 2020) 1–3.

¹⁴⁵ Lochhead A and Greene O, *Assessing and Reviewing the Impact of Small Arms Projects on Arms Availability and Poverty: Case Study for Sierra Leone* (UNDP Arms for Development Programme, Freetown March/April 2004); Christiana Solomon and Jeremy Ginifer, *Disarmament, Demobilisation and Reintegration in Sierra Leone* (Centre for International Cooperation and Security, University of Bradford 2008); Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Vol II, TRC 2004) 243; Macartan Humphreys and Jeremy M Weinstein, ‘Demobilization and Reintegration’ (2007) 51 *Journal of Conflict Resolution* 531.

¹⁴⁶ Solomon and Ginifer (n 148).

the community standing that access to either requires. Such conditions were supposedly noted in programme evaluations, yet they generated no accountability mechanism, because what was documented was not a human rights violation in the legal sense that the framework would recognise, making it clear that despite the harm being as real as it could be, its legal invisibility remained structural.

The second form of invisibility that can be traced is adjudicative. Individual criminal responsibility can't capture collective or structural forms of injury because international criminal law attributes specific acts to specific actors and punishes accordingly. Examples like systematic poverty, the destruction of rural infrastructure and the gendered economic subordination that persists long after formal conflict's end are aggregate outcomes of structural conditions, not acts traceable to a single legal person to a criminal evidentiary standard. Katherine Franke puts this plainly: trials are not designed to achieve economic redistribution¹⁴⁷. Even successful prosecutions leave intact the conditions that enabled violence in the first place. Fanon characterises the post-independence state as a "transmission line" through which colonial patterns of capitalist exploitation are reproduced, rendering sovereignty formally independent, while reproducing colonial economic relations through new institutional forms. But these structural dynamics remain outside the reach of international criminal accountability¹⁴⁸.

The third mode of invisibility is administrative. The "audit culture" characteristic of liberal peacebuilding measures' success through bureaucratic indicators of success is incapable of reflecting the true, structurally flawed material conditions. In Sierra Leone, the World Bank called the DDR process a global best practice –72,490 combatants disarmed, 71,043 demobilised– while simultaneously noting, in the same evaluation, that tangible individual benefits were "scant"¹⁴⁹. The numbers circulated in donor reports, but the qualification appeared in a footnote. This asymmetry, thus, depicts that institutions have a structural interest in generating successful progress reports to justify continued funding, what Richmond terms "virtual peace": formal compliance with international standards documented in ways that bear little resemblance to lived conditions¹⁵⁰. Tzouvala's Standard of Civilisation provides the audit culture with its genealogy. The World Bank's "rule of law" portfolio, centred on securing property rights, contract enforcement and the predictability of the legal framework for markets, is the contemporary form

¹⁴⁷ Franke (n 66).

¹⁴⁸ Fanon (n 7).

¹⁴⁹ United Nations Mission in Sierra Leone, *The DDR Process in Sierra Leone: Lessons Learned Report* (UNAMSIL 2004) 8; Solomon and Ginifer (n 148) 2; Macartan Humphreys and Jeremy M Weinstein, 'Demobilization and Reintegration' (2007) 51 *Journal of Conflict Resolution* 531, 532.

¹⁵⁰ Oliver Richmond (Routledge 2011) (n 46) 27.

of the “effective control” requirement that the 1885 Berlin Act used to render indigenous sovereignty conceptually impossible¹⁵¹. In both cases, international legitimacy is conditioned upon adherence to the institutional architecture of capitalist modernity. While the shift from explicit racial hierarchy replaces the language of technical compliance, it does not, in fact, alter the underlying structural function.

Given all three mechanisms, the existence of ICESCR, despite not being contradicted, is explained. Economic rights are systematically underweighted compared to civil and political rights in how post-conflict reconstruction gets sequenced. Political rights are backed by Chapter VII authority and the coercive force of international criminal prosecution. Economic rights rely instead on reporting cycles, peer review and the soft law language of progressive realisation –a phrase that, in post-conflict settings, functions as permanent deferral¹⁵². Even where economic rights become domestically justiciable, the adjudicative mechanism filters them: individual standing converts collective deprivation into discrete claims, procedural requirements exclude those without institutional access, and remedies focus on minimum core entitlements rather than the structural redistribution needed to disrupt the colonial pattern of accumulation. Therefore, the existence of ICESCR’s complaints mechanism does not undermine the structural critique. Rather, it shows how the framework is able to incorporate safety valves for contestation, and not resolve structural tensions¹⁵³.

4.1.2 The Paradox of Rights: Pros, Cons, and State-Imposed Functions: What Are the Advantages/Disadvantages, and How Do States Use Rights as a Means to an End Here?

The argument that human rights frameworks impede decolonial justice should not be mistaken for a rejection of rights as such. Their emancipatory potential remains, but it is mediated through states and institutions that seek to preserve the existing order. Rights nonetheless retain important advantages as tools of post-conflict claim-making. By providing a vocabulary that states cannot dismiss entirely without jeopardising their own international standing, they simultaneously create documentation cultures— progress reports, treaty body reviews, shadow reporting mechanisms— that generate evidence of state conduct which affected communities and advocacy organisations can appropriate even when the

¹⁵¹ Tzouvala (n 77) 5–9; World Bank, World Bank, World Development Report 2011: Conflict, Security, and Development (World Bank 2011) 8, 81; World Bank, Reforming Public Institutions and Strengthening Governance: A World Bank Strategy (World Bank 2000).

¹⁵² ICESCR (n 1) art 2(1); Chinkin (n 3); Christine Chinkin, ‘Peace Agreements as a Means for Promoting Gender Equality and Ensuring the Participation of Women’ (UN DAW 2003) UN Doc EGM/PEACE/2003/BP.1, 12.

¹⁵³ UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No 3: The Nature of States Parties’ Obligations (Art 2(1))’ (14 December 1990) UN Doc E/1991/23.

frameworks themselves offer no remedy¹⁵⁴. At the same time, they also establish records of past harm that resist official attempts to foreclose accountability. And they produce sites of political struggle in which affected populations can mobilise rights claims strategically and engage institutions on it tactically. Even where the grammar of rights distorts the substance of a claim, recognising a harm as a rights violation compels institutional acknowledgement and demands a response.

The adversarial and transactional character of rights language places the burden of justice on the capacity to make a claim, not on the obligation to attend to harm¹⁵⁵. It individualises structural injury, translating collective deprivation into discrete legal claims while obscuring both the causes and scale of the harm. Simultaneously, rights-based governance enables states and institutions to perform rights compliance without actually undertaking any meaningful structural transformation. For instance, the adoption of UNSCR 1325 in national action plans may satisfy institutional indicators of implementation without the redistribution of political authority that meaningful implementation would demand¹⁵⁶. Within this audit culture, documented compliance becomes a substitute for genuine compliance, as the system is unable to distinguish between mere procedural conformity and genuine substantive transformation.

The instrumental deployment of rights by states is the mechanism through which these structural disadvantages become systemic. Rather than functioning solely as normative commitments, states deploy rights to secure international legitimacy, attract development assistance, manage spoilers by offering formal legal standing to populations that would otherwise destabilise political arrangements, and therefore signal civilisational compliance with an international order that conditions support on institutional performance¹⁵⁷. In this context, human rights become *the* means to these ends, not ends *by* themselves. This logic is evident in the World Bank's inclusion of "pro-poor" social indicators in lending conditionalities, where poverty reduction is justified as a means of safeguarding macroeconomic stability, not as a commitment to welfare as an entitlement¹⁵⁸. Social and economic rights thus operate as what the

¹⁵⁴ Chinkin (n 3); Radhika Coomaraswamy and others, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (UN Women 2015) 110; Mary Balikungeri and Immaculee Ingabire, *Security Council Resolution 1325: Civil Society Monitoring Report, Rwanda* (Global Network of Women Peacebuilders 2012).

¹⁵⁵ Weil (n 81) 86.

¹⁵⁶ UNSC Res 1325 (n 119).

¹⁵⁷ Stephen John Stedman, 'Spoiler Problems in Peace Processes' (1997) 22(2) *International Security* 5; Anne Marie Goetz and Rob Jenkins, 'Agency and Accountability: Promoting Women's Participation in Peacebuilding' (2016) 22(2) *Feminist Economics* 211, 221 (discussing the priority accorded to potential spoilers over gender-equality concerns).

¹⁵⁸ World Bank (n 154).

conditionality literature identifies as “tag-ons”¹⁵⁹: desirable insofar as they contribute to economic growth and political stability, but ultimately subordinate to the market-oriented governance objectives that constitute the framework’s actual priorities.

Fanon’s figure of the post-independence state as a “transmission line” for continued capitalist exploitation captures the logic of this instrumentalisation¹⁶⁰. In post-conflict settings, states comply with rights frameworks as a condition for external support, not because those frameworks correspond to the demands of justice in those conditions. What Richmond identifies as “phoney sovereignty” follows this dynamic, a formal transfer of authority that leaves the underlying logic of extraction intact. In this context, rights compliance function as performance through which the international arrangement is legitimised while local material conditions persist or deteriorate¹⁶¹.

This paradox is what constitutes the central claim of this thesis. The transformative potential of rights does not disappear due to them being embedded within institutional frameworks that constrain their operation; rather, rights are frequently resisted by states, by the securitisation logic examined in the sections that follow and by the International Financial Institutions (IFIs), whose conditionality frameworks incorporate them, precisely because, when deployed with full normative force, they threaten the architecture rather than reproduce it. The structural claim advanced here suggests that rights are not inherently ineffective, but depend upon political and institutional conditions that the structurally flawed framework can not generate. Where rights claims succeed in securing genuine accountability, redistribution, or the remapping of institutional authority, they usually do so despite the framework rather than because of it. And the resistance, then, is evidence of the threat they pose when they function as more than performance.

4.1.3 The Paradox of Rights: Pros, Cons, and State-Imposed Functions: What Are the Advantages/Disadvantages, and How Do States Use Rights as a Means to an End Here?

Efforts to strengthen mechanisms within the existing biopolitical architecture can’t overcome the structural dynamics they seek to address, at least by themselves. This reflects Booth’s distinction between

¹⁵⁹ Thomas G Weiss, ‘Governance, good governance and global governance: conceptual and actual challenges’ (2000) 21(5) *Third World Quarterly* 795, 801.

¹⁶⁰ Fanon (n 7) 152.

¹⁶¹ Richmond (n 46) 34; Stedman (n 19).

problem-solving theory and critical theory applied to the decolonial context¹⁶². Contained critiques –calls for more inclusive DDR, expanded ICC jurisdiction and more faithful WPS implementation– operate within the very assumptions they need to interrogate¹⁶³. The question, therefore, is not simply how existing mechanisms can become more effective, but under what theoretical and political conditions is genuine transformation possible.

The first condition for transformation is the conception of harm which is capable of recognising structural and subsistence violations. The ontological mechanism of invisibility identified throughout this thesis, as the framework's inability to hold the destruction of livelihoods as a cognizable harm, cannot be addressed through better enforcement of existing standards. It requires a broader understanding of what international law treats as actionable harm, expanding the framework to bring the destruction of subsistence economies, the erosion of agricultural infrastructure and the conditions of social reproduction within the reach of international legal accountability¹⁶⁴. Although the ICESCR formally recognises economic and social rights in principle, the gap between recognition and enforcement still remains a structural problem¹⁶⁵. Without an enforcement architecture that backs up civil and political rights, doctrinal recognition will produce no accountability. Therefore, addressing this asymmetry requires closing the gap through both the expansion of cognizable harm categories and the dismantling of the enforcement asymmetry that makes political rights judicially actionable while economic rights remain aspirational.

The second condition is an accountability architecture capable of addressing both collective and structural harm. Individual criminal responsibility cannot simply be reformed into a mechanism of redistribution, as its structure was not designed for that function, and its procedural architecture actively excludes collective claims¹⁶⁶. Transformation would therefore require institutions that are capable of addressing these dimensions directly, including redistributive reparations frameworks capable of transferring resources, land, and economic capacity; collective claim-making procedures that do not require individual standing; and accountability for institutional actors –IFIs, UN agencies, donor coalitions– whose decisions create structural harm without creating individual criminal responsibility.

¹⁶² Ken Booth, 'Security and Emancipation' (1991) 17(4) *Review of International Studies* 313; Robert W Cox, 'Social Forces, States and World Orders: Beyond International Relations Theory' (1981) 10(2) *Millennium* 126.

¹⁶³ Booth (n 9) 41.

¹⁶⁴ Sankey (n 45).

¹⁶⁵ International Covenant on Economic, Social and Cultural Rights (n 142).

¹⁶⁶ Rome Statute of the International Criminal Court (n 65).

The third condition is the recognition of the Standard of Civilisation as an enduring operative mechanism of international governance rather than a historical legacy. Tzouvala's notion of "colonial amnesia" captures how international bureaucracies reproduce colonial patterns without having to name them¹⁶⁷. Contemporary compliance metrics present themselves as neutral technical requirements, under notions like "rule of law", "good governance" and "sound development management"—while performing the same function as the Berlin Act's "effective control" standard, based on conditioning international standing on the adoption of the political economy of capitalist modernity¹⁶⁸. Rendering this transmission visible would suppose some genuine transformation, tracing how the Standard of Civilisation is reproduced through IFI conditionality frameworks, professional socialisation within international organisations and the audit culture that certifies compliance. Unless these mechanisms are explicitly named, reform is likely to reproduce the very structures it seeks to contest, because the mechanism of reproduction remains invisible to its operators.

The fourth condition is the desecuritisation of redistributive justice. Demands for economic redistribution—the kind that rights frameworks, deployed with genuine normative stringency, would generate—are systematically treated by international institutions as a stability threat rather than a justice claim. A genuinely transformative approach would require recognising material welfare and economic redistribution as constitutive elements of justice that can not be subordinated to security imperatives. This reflects what Booth understands by security as living rather than security as survival¹⁶⁹. That is precisely what the international order, constituted around the preferences of the P5 and the IFIs, structurally resists.

Taken together, these conditions do not describe a reform agenda for existing frameworks, but the contours of a different kind of framework altogether. The structural claim that rights frameworks impede decolonial justice, and the counter-claim that rights nonetheless retain emancipatory potential, are two aspects of the same diagnosis: rights constitute the terrain on which these conditions can be fought for, yet the framework as currently constituted, does not generate them.

4.2 The Feminist Dimension: Gendered Knowledge Hierarchies and Bureaucratic Silencing

¹⁶⁷ Tzouvala (n 77) 143–145.

¹⁶⁸ General Act of the *Conference of Berlin Concerning the Congo* (signed 26 February 1885) 165 CTS 485, arts 34–35.

¹⁶⁹ Booth (n 9) 112.

4.2.1 Human Rights as a Structural Obstacle: How Does Rights Language Fail Conflict-Affected Women?

Two broad explanations are commonly offered to explain the recurrent failure of rights language to deliver justice for women in post-conflict settings. The first one points to a lack of political will. States fail to enforce gender mandates and peace negotiators ignore women's organisations, amongst others. The second, which is delved into in this section, locates the issue in the grammar of the framework itself – the template through which human rights identifies cognisable harm, distributes legal standing and defines the political subject is structured in ways that systematically exclude the harms that women experience disproportionately. These diagnoses are not competing: the first is a consequence of the second. Collapsing them produces precisely the contained critique that the literature reviewed in Chapter 2 tends to offer, and which the theoretical framework assembled here seeks to move beyond.

Simone Weil's analysis of rights language provides a conceptual foundation for this argument.. Her notion of "commercial flavour" identifies that rights operate through exchange, negotiation and adversarial claim-making, placing the burden of justice on the capacity to articulate injury within a formal register that only the non-afflicted readily command¹⁷⁰. The "monopoly of speech"¹⁷¹ this structure creates notable effects: those most devastated by violence –the "torn and bloody rag on the teeth of a cog-wheel"¹⁷²– cannot translate their suffering into the language of claims and counter-claims, not because their harm is any less tangible, but because its very gravity disrupts the composure that legal articulation requires. When applying this to women in post-conflict frameworks, this analysis identifies something more precise and particular than underrepresentation. It identifies a structural asymmetry: the framework's own architecture requires suffering in a form that those most harmed cannot supply.

At the institutional level, this asymmetry is reinforced by what Katherine Franke has called the "script of sexual vulnerability"¹⁷³. For a woman's harm to be cognisable within the rights framework, she must conform to a specific form of victimhood, either sexualised, passive or in need of protection rather than capable of demanding justice. Cynthia Enloe's diagnostic question reframes this pattern by asking where the women are and who benefits from their absence, reframing this not as institutional negligence but as organised achievement coming from the institutions¹⁷⁴. Her point is not that women

¹⁷⁰ Weil (n 81) 81.

¹⁷¹ Weil (n 81) 84.

¹⁷² Weil (n 81) 90.

¹⁷³ Franke (n 66).

¹⁷⁴ Enloe (n 8) 9.

are absent from post-conflict settings, but that they are consistently displayed as victims, visible as displaced populations and beneficiaries of humanitarian programming, not being able to participate in defining and deciding what caused the conflict, what justice requires, or what the post-conflict order should look like. As Enloe remarks, this is not ignorance; rather, it is something that has been made, by actors with specific interests, for reasons that a gender-curious analysis can trace¹⁷⁵. Thus, the framework does not fail to see women; it sees them in a particular way and produces their political invisibility as a constitutive result.

Carol Cohn's analysis of technostrategic language supplies the mechanism through which this invisibility is maintained at the institutional level. This kind of highly abstract vocabulary distances decision-makers from the human consequences of their choices and marks those who raise moral concerns as unprofessional, outside the relevant discourse¹⁷⁶. The equivalent in transitional justice is the juridical and administrative vocabulary that translates the "mute cry" of the ones afflicted into the formal categories the framework can process: standing, admissibility, corroboration and cognisable violation. For Women, Peace and Security goals to be actionable within UN institutional contexts, they must be expressed in language acceptable to institutional partners. Consequently, the "bureaucratic rabbit hole" is created, as the successive narrowing of radical demands for structural transformation into quantifiable metrics of protection provided and victims assisted¹⁷⁷. The result is that "gender" becomes a euphemism for victimised women rather than an analytical category that interrogates power relations. The transformative aspiration of Resolution 1325 –that women hold the authority to define what security and justice mean– is thereby reduced to procedural indicators of implementation, giving a false idea of institutional commitment whilst the architecture of authority is preserved¹⁷⁸.

The empirical consequences of this structure are well documented. In the trial of the Civil Defence Forces in Sierra Leone, the Trial Chamber excluded evidence of sexual violence because its introduction would undermine the integrity of the proceedings, instructing women who appeared to testify not to speak about their rapes and rendering their accounts ineffective for any form of legal redress¹⁷⁹. Similar patterns

¹⁷⁵ Cynthia Enloe, *The Curious Feminist: Searching for Women in a New Age of Empire* (University of California Press 2004) 19–20.

¹⁷⁶ Cohn (n 122) 702–704.

¹⁷⁷ Cohn (n 121) 10.

¹⁷⁸ Sabrina Kylie Harris, 'Making War for Women? An Analysis of UN Resolution 1325 and the Gendering of International Intervention' (MA thesis, Virginia Polytechnic Institute and State University 2021).

¹⁷⁹ Special Court for Sierra Leone, *Prosecutor v Norman, Fofana and Kondewa*, Case No SCSL-04-14-T, Decision on Prosecution Request for Leave to Amend the Indictment (20 May 2004).

can be traced across multiple DDR programmes, where eligibility criteria centred on the ability to assemble and disassemble a weapon systematically filtered out women and girls, whose commanders had confiscated their arms or whose roles did not conform to the masculinist category of combatant¹⁸⁰. In Sierra Leone, women classified as “bush wives” were denied demobilisation benefits, with many subsequently forced into the sex trade for survival¹⁸¹. In each case, acts of exclusion reflect that extraordinary physical violence is recognised as a cognisable harm, while subsistence harms –the destruction of livelihoods, the erosion of care networks, and the economic consequences of forced labour– remain largely invisible in legal terms¹⁸².

The question the empirical record poses with particular precision is a more fundamental one: whether this protectionist framing is a product of implementation failure or design constitution. The evidence points to the latter. The line of argumentation sits in three interrelated mechanisms. First, the ontological grammar of rights privileges harms that can only be articulated when expressed as adversarial claim by a subject with legal standing. Second, the so-called “genetic code” of the Standard of Civilisation, which portrays non-Western women as perpetual victims that require external rescue rather than as political equals capable of defining their own terms¹⁸³. Third, the securitisation vocabulary through which feminist demands are turned into actions only by being translated into protection metrics that leave the underlying masculinist power structures unchallenged. The persistence of protection-oriented approaches across National Action Plans (NAPs) in the Democratic Republic of Congo, Bosnia-Herzegovina, Rwanda, and Mali reproduce this protectionist frame not because individual drafters are hostile to women’s agency, but because they are working within a framework that has already determined what women’s relationship to international institutions looks like¹⁸⁴.

4.2.2 The Paradox of Rights: Pros, Cons, and State-Imposed Functions

Any structural critique of the rights framework must account for both its limitations as well as its demonstrable achievements. The recognition of rape as a war crime, a crime against humanity and an act

¹⁸⁰ Solomon and Ginifer (n 148) 15.

¹⁸¹ Solomon and Ginifer (n 148) 15, 33, 35, 55 .

¹⁸² Sankey (n 45).

¹⁸³ Tzouvala (n 77) 4-12.

¹⁸⁴ Annika Björkdahl and Johanna Mannergren Selimovic, ‘Translating UNSCR 1325 from the global to the national: protection, representation and participation in the National Action Plans of Bosnia-Herzegovina and Rwanda’ (2015) 15(4) *Conflict, Security & Development* 311, 312, 328.

capable of amounting to genocide¹⁸⁵ –developed through the ICTY and ICTR and later codified in the Rome Statute¹⁸⁶– is a recognisable achievement that marks a substantive shift in international law. In Colombia, women’s organisations used the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Resolution 1325 to argue successfully that peace without their substantive participation could not mean peace at all, contributing to securing the most gender-sensitive peace agreement in recent Latin American history¹⁸⁷. Elsewhere, formal gender quotas in Rwanda, Burundi, and Nepal produced dramatic increases in women’s legislative representation –64 per cent in Rwanda– enabling legislation on land rights, inheritance, and gender-based violence¹⁸⁸. These examples show that rights frameworks, even when structurally constrained, offer normative tools that women’s movements have used to reshape political reality.

Yet, this is where the paradox lies precisely. The same frameworks that enable these advances are also used by states to manage and redirect women’s political agency into forms that do not disturb the underlying architecture. The DRC’s NAP, for example, largely positions women as passive recipients of rehabilitation¹⁸⁹. Rwanda’s gender agenda reinforces state ideology rather than supporting autonomous civil society organisations. Similarly, Germany’s application of Resolution 1325 in Afghanistan framed Afghan women as victims of a “civilisational” order requiring Western rescue, denying them the authority to define their own religious and cultural terms¹⁹⁰. These cases should therefore not be understood as misapplications of the rights framework, but as expressions of its structural logic – its capacity to include women as protected persons while excluding them from the authority to redefine what protection means¹⁹¹.

¹⁸⁵ *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998); *Prosecutor v Furundžija* (Judgment) IT-95-17/1-T, T Ch II (10 December 1998); *Prosecutor v Kunarac, Kovač and Vuković* (Judgment) IT-96-23-T & IT-96-23/1-T, T Ch II (22 February 2001).

¹⁸⁶ Rome Statute of the International Criminal Court (n 65).

¹⁸⁷ UN Security Council Resolution 1325 (n 119).

¹⁸⁸ Björkdahl and Selimovic (n 187) 315. Véronique Dudouet and others, ‘Post-War Security Transitions: Participatory Peacebuilding after Asymmetric Conflicts’ (Policy Paper, Berghof Foundation 2012) 8; Anne Marie Goetz and Rob Jenkins, ‘Agency and Accountability: Promoting Women’s Participation in Peacebuilding’ (2016) 22(1) *Feminist Economics* 211, 223 (citing Tripp 2015); Deepak Thapa, ‘Negotiating a “New Nepal”: Evolving relationship between inclusion and peace’ (2019) 28 *Accord* 36, 41.

¹⁸⁹ Simone Seilmaier, ‘Subject Positions and Agency in National Action Plans: A Comparative Discourse Analysis of the Democratic Republic of Congo and Mali’ (MA thesis, Ludwig-Maximilians-Universität München 2026).

¹⁹⁰ Björkdahl and Selimovic (n 187).

¹⁹¹ Makau Mutua, ‘*Savages, Victims, and Saviors: The Metaphor of Human Rights*’ (2001) 42(1) *Harvard International Law Journal* 201, 210.

For this reason, the relationship between states and rights frameworks is more complex than one of simple resistance or neglect. States frequently use rights as a means to ends that serve their interests rather than as an end in themselves. Namely, the “women and children” pairing that stabilises the “protected persons” category is not merely a linguistic habit; it is used to infantilise adult women and locate their security in the hands of the political-military actors whose authority the framework’s protection logic reproduces¹⁹². This is the structural role assigned to feminist mandates within human rights discourse: they legitimise intervention, manage populations, and signal civilisational compliance without redistributing political authority. Nevertheless, the formal inclusion is genuine whilst perpetuating exclusion simultaneously. Both operate within the same institutional logic, which is why the CEDAW Committee’s General Recommendation No. 30 notes that transitional justice mechanisms have failed to address the interdependence of all human rights categories, prioritising civil and political violations while sidelining the economic, social and cultural rights that are constitutive of women’s substantive autonomy¹⁹³.

Seen from this angle, the structural-obstacle critique developed in this chapter and the evidence of improved outcomes reinforce one another. The Colombian case demonstrates that rights-based approaches can produce better outcomes for durable peace, but only when women’s political agency is engaged rather than managed¹⁹⁴. Colombia also demonstrates why this is rare. At the same time, achieving that level of engagement required sustained mobilisation, strategic deployment of normative frameworks against elite resistance, and international conditions unusually favourable to feminist demands. What made the achievement possible was not the rights framework functioning as designed, but the framework being used to contest the institutional logic of its own structure. The fact that resistance is possible does not mean the structure is neutral. On the contrary, the rarity of such achievements is precisely what the structural critique predicts. Rights frameworks are resisted most intensely when they carry genuine emancipatory potential. The state’s strategic capture of gender mandates is the institutional response to the transformative threat those mandates pose.

4.2.3 Requirements for Substantive Transformation

¹⁹² Laura J Shepherd, *Gender, Violence and Security: Discourse as Practice* (Zed Books 2008) 97.

¹⁹³ CEDAW Committee, General Recommendation No 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, UN Doc CEDAW/C/GC/30 (1 November 2013) paras 35-40.

¹⁹⁴ UN Security Council Resolution 1325 (n 120) 62-65.

If the protectionist framing of the rights framework is structurally embedded rather than contingently produced, then reform proposals confined to its existing institutional grammar are unlikely to overcome the exclusions it reproduces. This does not pose reform as a meaningless endeavour, but it definitely requires distinguishing between reforms that remain inside the framework and mitigate its most damaging procedural effects, and a deeper reorientation of what the framework is designed to achieve.

The most tractable reforms concern the template of cognisable harm. Diana Sankey's analysis of subsistence harms documents the systematic legal invisibility of the destruction of livelihoods, subsistence economies and care networks – harms that disproportionately affect women and that the individual criminal responsibility model cannot, by design, address¹⁹⁵. Similar considerations apply to DDR programmes that define eligibility through weapons-assembly criteria, as traditional reliance on weapons-based eligibility criteria must be revised toward a broader understanding of conflict roles, encompassing the logistical, social and sexual labour women were compelled to perform¹⁹⁶. Reparations programmes also require identifying and reaching women whose experiences of conflict are unlikely to be disclosed voluntarily about stigmatised harms that trigger eligibility. The Timor-Leste discrepancy between formal allocation and actual disbursement illustrates what the absence of such mechanisms costs¹⁹⁷. International criminal proceedings also require reform: corroboration rules and credibility assumptions that historically treated women's testimony about sexual violence as inherently less reliable continue to shape outcomes, as the Sierra Leone cases demonstrate¹⁹⁸. These reforms will not resolve the structural deficiencies of the framework, but will reduce some of the procedural mechanisms through which those limitations are reproduced.

A more fundamental requirement concerns the institutional architecture that produces and reproduces gendered knowledge hierarchies. Enloe's analysis of the "modal worker" –the institutional subject whose authority is assumed because he brings a male body and masculinist social relations– captures the way international institutions privilege particular expertise and reasoning while neglecting others. Within this environment, women who enter these spaces must either adopt the masculinist priorities that determine what counts as serious (hard security, macro-economic stabilisation) or maintain

¹⁹⁵ Sankey (n 45).

¹⁹⁶ Solomon and Ginifer (n 148) 13-14.

¹⁹⁷ Thania Paffenholz and others, *Making Women Count – Not Just Counting Women: Assessing Women's Inclusion and Influence on Peace Negotiations* (Inclusive Peace and Transition Initiative (Graduate Institute of International and Development Studies) and UN Women 2016) 28.

¹⁹⁸ Franke (n 66); Charlesworth and Chinkin (n 144).

their own agenda and be dismissed as peripheral¹⁹⁹. Increasing women's representation in institutions can not and will not by itself transform the framework's epistemology. Instead, such transformations require broadening what is considered as authoritative knowledge within post-conflict governance. Accounts of livelihoods, care economics, social reproduction and more must be given the same legitimacy, institutionally speaking, as military and security expertise, as well as rendering women's organisations' demands for land rights, inheritance reform and economic redistribution as legible as their demands for protection from sexual violence.

At the level of the framework's constitutive logic, however, Weil identifies a limit that procedural reform cannot reach. A framework built on adversarial rights-claims cannot adequately attend to suffering whose gravity forecloses the composure those claims require. In her account, obligations precede rights as they come from the irreducible humanity of the human being as such and not their status as legal persons – the “childlike expectation in every heart that good and not evil will be done”²⁰⁰. This is not an argument for abandoning rights, instead, Weil argues that rights should also be understood for their limits: rights without prior obligations produce a framework that can acknowledge women as objects of international protection without granting them the authority to define what protection means. The cry that matters morally – “Why am I being hurt?” – is infallible regardless of legal standing²⁰¹. A framework that converts that cry into adversarial claim-making has already made a political choice about whose suffering counts, and no reform that accepts this vocabulary as its starting point can undo that choice.

This has important implications for the broader argument of this thesis. Incremental reforms within the current framework are not merely insufficient, but they carry a specific risk. By demonstrating institutional responsiveness to feminist critique, they produce the “empty norm”²⁰²: the appearance of progress calibrated precisely to absorb pressure without redistributing the institutional authority that justice requires²⁰³. The Women, Peace and Security agenda illustrates both possibilities simultaneously. It has produced real normative advances²⁰⁴, yet the same institutional architecture has often proved capable of deploying those advances in ways that leave the gendered architecture of post-conflict justice intact. The gap between what Resolution 1325 demanded and what it delivered cannot be explained by

¹⁹⁹ Charlesworth and Chinkin (n 144).

²⁰⁰ Weil (n 81) 53.

²⁰¹ Weil (n 82) 94.

²⁰² Björkdahl and Selimovic (n 187).

²⁰³ Shepherd (n 195); Enloe (n 8).

²⁰⁴ UNSC Res 1325 (n 119).

implementation failures alone. That gap reflects a structural tendency that reproduces itself through the very forms of compliance it accepts.

4.3 The Securitisation Dimension: The Sovereignty-Stability Paradigm

The decolonial and feminist analyses developed in the preceding sections established that post-conflict exclusions follow patterned colonial and gendered logics that are structurally embedded within the architecture of the rights framework. What remains to be specified is the mechanism through which these patterns persist despite the proliferation of human rights commitments, peace agreements and institutional reform mandates. Securitisation theory explains it. Where the decolonial and feminist lenses identify the content of exclusion –whose claims are subordinated, whose knowledge is suppressed, and whose harms are rendered legally invisible– the Copenhagen School’s framework of securitisation explains the process through which exclusion is legitimated and reproduced as an institutional default. Its central claims revolve around the idea that political issues are not only prioritised differently, but constituted in a different manner. Some issues are elevated to existential status while others are relegated to the realm of the ordinary. Once an issue is successfully framed as a matter of security, it acquires a privileged status that systematically prevents rights claims from competing with stability on equal terms. The result is a hierarchical structure that renders justice, in particular the redistributive and structural forms of justice central to decolonial and feminist approaches, secondary, conditional and perpetually deferrable.

4.3.1 Human Rights as a Structural Obstacle: Where does the security-first default weaponise rights?

A security-first approach is distinct from merely adjudicating security of greater political importance. Barry Buzan, Ole Wæver and Jaap de Wilde define security as a performative speech act through which political actors label issues as existential threats requiring exceptional measures beyond ordinary political bargaining²⁰⁵. The significance of this lies in the transformation of the issue’s institutional status. Once securitised, issues securitised in this way become isolated from contestation, due to the exceptional measures put in place being seen as necessary rather than exceptional. This is the first thing securitisation theory adds to the structural critique. Rights claims in post-conflict settings are not securitised; they are explicitly left in the domain of normal politics, where they can be deferred,

²⁰⁵ Buzan, Wæver and de Wilde (n 9) 21–23.

sequenced, bargained away, or simply ignored. The asymmetry is not an outcome to be explained; it is the mechanism itself.

Agamben's state of exception and the Copenhagen School's securitisation move are not synonymous, but they are mutually dependent. Although analytically distinct, the two theories illuminate complementary dimensions of the same process. The state of exception, as established in the previous chapter, is the structural condition of possibility for sovereign power – the architecture through which bare life is captured by its very abandonment²⁰⁶. Securitisation, on the other hand, is the discursive mechanism that continuously re-invokes and legitimates that exception across political cycles. Understood together, the two frameworks explain why post-conflict justice is a structural reproduction, in which each iteration of the stability-first logic activates the exception through the speech act, and the exception in turn generates the zone where rights-bearing is formal without being operative.

The 1999 Lomé Peace Accord in Sierra Leone, for instance, granted Foday Sankoh and the Revolutionary United Front absolute and free pardon for crimes against humanity committed since 1991²⁰⁷. The agreement treated the preservation of the peace process as an overriding security imperative. Explicitly, securing the cooperation of the principal armed actors was considered a prerequisite for ending the conflict, rendering judicial accountability secondary to political stability²⁰⁸. This is what Buzan, Wæver and de Wilde describe as a securitisation move. Stability was constructed as the existential referent, while accountability was relocated to the domain of ordinary politics. The UN Special Envoy appended a rider noting that the UN would not recognise amnesties for international crimes. The rider preserved the rights framework's social validity, but the settlement itself proceeded entirely on stability terms. Consequently, an empty norm emerged: high formal citation and zero normative stringency²⁰⁹.

A comparable pattern emerged during the negotiations leading to the Bonn Agreement of 2001, where UN administrator Lakhdar Brahimi argued that war crimes investigations would “undercut progress” towards peace, converting accountability from a rights obligation into a destabilising agent²¹⁰. Such use of language reframes justice as a threat, rather than merely deprioritising it. Therefore, this is the formal structure through which rights are weaponised against rights-holders: the very language that

²⁰⁶ Agamben (n 6) 83–86.

²⁰⁷ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (n 1).

²⁰⁸ Lomé Peace Agreement (n 1).

²⁰⁹ Björkdahl and Selimovic (n 187).

²¹⁰ Darren Lim, 'United Nations Governance of Failed States: Proposing the Foundations of a Comprehensive Framework' (2006) 32(2) *Monash University Law Review* 295.

is supposed to protect victims is deployed to justify the immunity of their perpetrators. Similar dynamics can be traced in Mozambique's 1992 General Peace Agreement: sequencing was institutionalised as formal doctrine –elections were explicitly conditioned on military demobilisation– and even that sequencing was brought down when strict enforcement threatened the peace process²¹¹. The Dayton Accords demonstrate the same institutional logic, but in a different form. Those implicated in the organisation of ethnic cleansing participated in the table as guarantors of the settlement they had authored, and property restitution was managed by international authorities who tolerated its instrumentalisation by local actors to preserve equilibrium²¹².

Taken together, these cases clearly showcase the systematic operation of the securitisation language across diverse actors, mandates and political contexts. The recurring pattern can keep afloat because the grammar remains unchanged. Snyder and Vinjamuri's "logic of consequences" provides a pragmatic assessment of how future violence can be minimised. However, their "institutional deserts" employ the securitisation rationale –that judicial infrastructure is too weak to enforce the law against powerful actors, making prosecution dangerous– by coding accountability as the risk factor and stability as the survival condition²¹³. Despite acknowledging the structural critique of the rights framework, this literature helps explain why the system defaults to stability while also providing scholarly authorisation for that default.

The same logic is operationalised through DDR frameworks. Amnesty provisions become bargaining tools to secure the cooperation of armed actors to relinquish violence capacity. In El Salvador, the threat of a military coup resulted in a general amnesty law that effectively halted human rights vetting within the armed forces to an end. In South Africa, the Truth and Reconciliation Commission's (TRC) truth-for-amnesty exchange replaced prosecution with conditional disclosure²¹⁴. Both settlements were rationalised through the language of rights, yet accountability remained contingent upon terms acceptable to the actors whose cooperation is necessary for demobilisation. Restorative justice frameworks allow this trade-off to appear principled, which is precisely what the empty norm requires: rights language

²¹¹ *General Peace Agreement of Mozambique*, 1992 (African-European Institute 1992); Cameron R Hume, *Ending Mozambique's War: The Role of Mediation and Good Offices* (United States Institute of Peace Press 1994).

²¹² General Framework Agreement for Peace in Bosnia and Herzegovina (n 2); Megan J Ballard, 'Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations' (2010) 28(2) *Berkeley Journal of International Law* 462, 476; Lim (n 213); Jennifer L Fluri, 'Capitalizing on Bare Life: Sovereignty, Exception, and Gender Politics' (2012) 44(1) *Antipode* 31.

²¹³ Snyder and Vinjamuri (n 3) 12.

²¹⁴ *Ley de Amnistía General para la Consolidación de la Paz* (Decree No. 486, El Salvador, 20 March 1993); Hayner, (n 64) 31–35.

sustaining the social validity of accountability is preserved so that accountability retains its legitimacy. Within this configuration, redress for economic and subsistence harms is systematically deferred and treated as a second-generation concern. It is addressed later through development processes that reproduce the colonial distribution of material resources rather than disrupting it²¹⁵.

The Women, Peace and Security agenda represents a structural variant of the same mechanism. Resolution 1325 specifically can be regarded as a successful securitisation move by itself, as transnational feminist advocates convinced the Security Council that women's systematic exclusion from peace processes constituted a security risk, thereby elevating the issue to binding resolution status²¹⁶. This generated considerable social validity for women's claims. However, the relevant audience, namely the Security Council, bilateral donors and UN agencies, accepted the norm's legitimacy without fully embracing its transformative implications. The original demand that women be recognised as political agents with the authority to define the terms of their own security was translated, through successive bureaucratic iterations, into protection mandates, participation benchmarks, and gender advisors attached to processes that remained structurally unchanged. Carol Cohn's analysis of institutional language helps understand the underlying mechanism: the term "gender" was stripped of its analytical power and reduced to a neutral synonym for women as vulnerable categories to be managed²¹⁷. The securitisation move that elevated women's claims simultaneously neutralised them by converting political agency into a managed protection category – the formal language of participation masking the operative logic of administration.

The analytical payoff of this subsection is therefore not that peace processes fail to respect rights, nor that the WPS agenda has failed to produce meaningful advances, but that rights deferral is a structural function of the securitisation grammar. Rights claims simply can not compete with stability claims because they do not operate on the same discursive terrain. Once stability is constituted as the main referent for security, other claims for accountability or redistribution are relegated to secondary priorities. It is clear that the consistency of this mechanism produces the same pattern across settings as different as seen in Sierra Leone, Bosnia, Afghanistan and the WPS agenda.

²¹⁵ Pablo de Greiff and Roger Duthie (eds), *Transitional Justice and Development: Making Connections* (Social Science Research Council 2009) 22, 41.

²¹⁶ UNSC Resolution 1325 (n 119).

²¹⁷ Cohn (n 141) 189–93.

4.3.2 The Paradox of Rights: Pros, Cons, and State-Imposed Functions

The paradox of rights within the securitisation dimension arises from the same condition that gives rights their political force: their dependence on state recognition. This dependence is simultaneously the source that makes rights emancipatory and limiting. They provide the language through which individuals and communities can hold states accountable, yet they also furnish states with a vocabulary of legitimacy that can be invoked without fundamentally constraining political power. The issue, therefore, is not that rights are simply instrumentalised by security politics. Rather, the same institutional conditions that enable rights to function also make them susceptible to being subordinated to the imperatives of stability and state security. Explaining why this second function so often prevails requires tracing the logic of securitisation into its institutional effects.

The affirmative record of rights in post-conflict settings is substantive and should not be obscured by the structural critique. Kathryn Sikkink's research establishes that states which have pursued transitional human rights prosecutions become measurably less repressive over time than comparable states that have not²¹⁸. Transnational advocacy networks have used international legal frameworks to document abuses, generate normative pressure and alter political outcomes, most dramatically in Latin America, where the families of the disappeared mobilised rights law institutions to bring state officials before domestic courts that had previously been complicit in their crimes²¹⁹. International criminal tribunals, despite selective jurisdiction and limited enforcement capacity, have also produced authoritative evidentiary records of mass atrocities that continue to constrain historical denial and alter the terms under which post-conflict societies negotiate their histories. The structural argument advanced here is not that rights lack emancipatory capacity, but that this capacity operates within institutional conditions that systematically constrain its transformative potential.

The principal constraint is that each of these achievements ultimately depends on states continuing to treat rights as binding rather than subordinating them to competing security imperatives. By constructing stability as an existential priority, states are able to maintain the appearance of rights compliance while suspending the normative force of rights whenever they are perceived to conflict with security objectives. The Dayton Accords illustrate this dynamic clearly. Bosnia's constitutional arrangement formally excluded minority populations –Roma and Jewish citizens were found by the

²¹⁸ Sikkink (n 4) 18–20; Kim and Sikkink (n 19).

²¹⁹ Sikkink (n 4); Sikkink and Walling (n 10) 437–43.

European Court of Human Rights (ECtHR) to be unlawfully excluded from the highest political offices—yet the agreement was widely presented as a successful model of post-conflict peacebuilding for almost two decades²²⁰.

Within this institutional environment, states use rights in three interrelated ways that are often obscured by the emancipatory language in which rights travel. First, rights function as instruments of legitimisation. Constitutional rights provisions, treaty ratification and the creation of national human rights institutions signal membership in the international order – a form of legitimacy that, as Tzouvala argues, is now mediated through the Standard of Civilisation in technocratic rather than explicitly racial terms²²¹. For post-conflict states, adopting rights frameworks is often not so much a reflection of substantive commitment as a prerequisite for international recognition, development financing and diplomatic relationships. Second, rights function as tools for managing dynamics. Rights language provides the vocabulary through which compromises made in the name of stability can be presented as principled rather than expedient. Amnesties are justified through restorative justice discourse, conditional immunity is framed as a proportionate form of accountability and DDR programmes build former combatants as right-holders entitled to rehabilitation. programmes are framed as proportionate accountability. In each case, rights language provides the vocabulary through which the trade-off between accountability and stability is presented as principled rather than expedient. Third, rights may serve to authorise international intervention. The Security Council’s authorisation of “all necessary measures” in Libya under Resolution 1973 was grounded in a protection-of-civilians argument –a rights claim– that the North Atlantic Treaty Organisation (NATO) subsequently interpreted as extending to regime change²²². Their refusal of the securitisation move in Syria was the direct institutional consequence²²³.

The Libya-Syria contrast makes the filtering mechanism clear. The P5’s decision to accept the securitisation claim in Libya while refusing it in Syria was not driven by differences in the severity of the rights violations occurring in each setting. It reflected strategic interests. For Western P5 members, Gaddafi’s removal aligned with broader geopolitical and energy considerations²²⁴. For Russia, Assad’s

²²⁰ Sejdić and Finci v Bosnia and Herzegovina App nos 27996/06 and 34836/06 (ECtHR Grand Chamber, 22 December 2009).

²²¹ Tzouvala (n 77) 37–56.

²²² UNSC Resolution 1973 (17 March 2011) UN Doc S/RES/1973, para 4.

²²³ Jure Vidmar, ‘Democracy and Regime Change in Post-Cold War International Law’ (2013) 11 New Zealand Journal of Public and International Law 349, 367; UNSC Verbatim Record (4 October 2011) UN Doc S/PV.6627; UNSC Verbatim Record (4 February 2012) UN Doc S/PV.6711.

²²⁴ Amr A Abdelhady, ‘Humanitarian Intervention: Before and After Responsibility to Protect (R2P) Assessing the Impact of R2P’ (MA thesis, American University in Cairo 2016) 49–52, 64–65.

survival protected strategic assets, including its naval presence at Tartus, while avoiding precedent concerns for externally supported regime change²²⁵. Rights discourse provided the legitimate discourse, but geopolitical calculation determined its operative logic. The problem, therefore, is not simply that rights are applied selectively. Their language provides the normative framework through which strategic decisions about intervention and non-intervention can be presented as humanitarian necessity.

The ones bearing the consequences remain in what this thesis has described as zones of abandonment. Bosnia's Internally Displaced Populations (IDPs) remained displaced a decade after Dayton; Kosovo's Serb communities continued to face exclusion from effective democratic participation despite a constitution formally aligned with international human rights standards, and communities in Afghanistan were positioned as passive recipients of aid rather than political agents capable of shaping the post-conflict order²²⁶. Across these contexts, formal legal standing coexisted with an inability to challenge the securitised priorities of states and international authorities²²⁷. The resulting configuration exemplifies the concept of virtual peace: institutional consolidation alongside the persistence of structural violence²²⁸.

4.3.3 Requirements for Substantive Transformation

If securitisation operates as a self-reproducing grammar, through which stability overrides accountability at each iteration of post-conflict governance, then specifying the requirements for substantive transformation means identifying the conditions capable of interrupting that reproduction. Booth's problem-solving theory accepts prevailing institutions and seeks to make them function more efficiently, while his critical theory asks what would need to change for the status quo to be transformed rather than merely refined²²⁹. The discussion that follows, therefore, should be understood as an examination of the conditions that would need to hold for the structural tendency to be genuinely disrupted rather than managed or reproduced.

The first requirement is the desecuritising of justice. Accountability must be brought back to the domain of normal political contestation, meaning it should be treated as a standard negotiating issue

²²⁵ Abdelhady (n 158).

²²⁶ Ballard (n 215).

²²⁷ Ballard (n 215) 464, 476.

²²⁸ Richmond (n 46); Harris (n 181) 139; Seilmaier (n 192) 71.

²²⁹ Booth (n 9) 38–42.

rather than an existential threat to settlement stability. Sikkink identifies a “simultaneous growth” mechanism: trials and institutional development reinforced one another rather than occurring sequentially, directly contradicting the stability-first sequencing argument²³⁰. What made these cases possible was not a more favourable geopolitical environment but the refusal of domestic social movements –the Madres de la Plaza de Mayo being the clearest example– to accept the victimhood script that international frameworks offered and to insist instead on using rights as instruments of political contestation rather than institutional management²³¹. The structural tendency toward justice deferral was broken not from above, through improved institutional design, but from below, by actors who refused to be securitised out of political life by the grammar of emergency.

The Colombian Peace Agreement of 2016 demonstrates the same mechanism disrupted within a negotiated context. The *Fuerzas Armadas Revolucionarias de Colombia* (FARC) acceptance of international accountability standards, including serving sentences and making reparations at a level no guerrilla organisation had previously accepted in negotiation, was possible only because the framework required the state to account for its own violence simultaneously²³². By ensuring that both parties to the conflict faced the same accountability mechanisms, the agreement disrupted the usual “winner’s justice” dynamic that typically drives demobilised actors toward remilitarisation when accountability appears selective²³³. The decisive structural condition was reciprocal accountability rather than the unilateral application of rights frameworks to non-state actors. Rather than shielding state actors behind the security functions they claim to perform, Colombia extended accountability across the conflict’s main actors. In doing so, it showed that the tension between peace and justice depends on how accountability is institutionally distributed.

The second requirement for substantive transformation requires a shift in the referent object of security, from the stability of the settlement to the security of the individual. Booth’s conception of “security as emancipation” provides the theoretical basis for this shift²³⁴. Whereas negative security defines success as the absence of armed conflict and treats the state as the primary referent, producing

²³⁰ Sikkink (n 7) 183–92; Sikkink and Walling (n 10) 440–43.

²³¹ Catherine O’Rourke, ‘International gender equality norms and the domestic political settlements: A case study of the Special Rapporteur on Transitional Justice in Northern Ireland’ (Briefing Paper, Political Settlements Research Programme 2017) 22.

²³² ‘Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera’ (n 10).

²³³ Leslie Vinjamuri and Jack Snyder, ‘Law and politics in transitional justice’ (2015) 18 Annual Review of Political Science 303.

²³⁴ Booth (n 9) 110–15; Booth (n 165).

virtual peace, emancipatory security asks whether individuals can make meaningful life choices free from life-determining threats, including poverty, structural discrimination and the systematic destruction of livelihoods²³⁵. The significance of this shift lies in the referent object being the individual instead of the state, therefore changing what counts as security and how the success of post-conflict is evaluated. Broadening the referent removes the capacity of securitised stability to function as a final institutional answer to the question of whether a rights-based framework is working.

A third condition concerns the audience for securitisation moves. The Copenhagen School's framework requires a relevant audience that accepts the speech act's claim to existential necessity²³⁶. Across the cases examined here, that audience has consistently been constituted by international financial institutions, bilateral donors and the UN Security Council. Their acceptance of stability-first reasoning is reinforced by strategic interest, institutional incentive and the Standard of Civilisation, which continues to equate market-oriented governance with civilisational membership²³⁷. Furthermore, Fanon's observation that legal and economic expertise casts affected populations as "uninitiated" identifies that those most affected by post-conflict governance are excluded from the audience whose acceptance gives securitisation its political force²³⁸. Therefore, transformation requires more than stronger international monitoring. It requires recognising affected communities themselves as the audience whose acceptance or rejection of securitisation moves carries constitutive political weight²³⁹. The Latin American cases suggest that this is possible. Where domestic actors rejected the securitised framing of stability and insisted on accountability as an ordinary political demand, they disrupted the institutional grammar through which exceptionalism had been sustained. Whether post-conflict populations may or may not possess the political capacity and organisational strength to do so will always depend on context. Identifying them as the condition of transformation, however, is analytically before any question of institutional reform.

The implication goes beyond strengthening international monitoring because substantive transformation calls for a reconstitution of the politically relevant audience in post-conflict governance. Communities affected directly by the conflict must be recognised as political actors whose acceptance or refusal of securitising claims carries substantive importance into the peacebuilding process. The Latin

²³⁵ Booth (n 9) 110–15; Booth (n 165).

²³⁶ Buzan, Ole Wæver and de Wilde (n 9) 25.

²³⁷ Tzouvala (n 77).

²³⁸ Fanon (n 7) 189.

²³⁹ Fanon (n 7) 157.

American and Colombian cases are not anomalies that refute the structural claim; they are demonstrations that confirm the theoretical framework established in the preceding chapter. Structural conditionality of rights describes a tendency, not a determinism, and it is precisely because rights-based approaches can, under certain circumstances, threaten the underlying order of inclusive exclusion, colonial accumulation and securitised sovereignty that they are fiercely resisted by the institutions charged with implementing them. Where domestic social movements successfully challenged the framing of accountability as a threat to stability and instead articulated justice as an ordinary political demand, they disrupted the institutional grammar through which exceptionalism had been reproduced. Whether comparable transformations can emerge elsewhere will necessarily depend upon historical and political context. Nevertheless, identifying affected communities as the primary audience for contesting securitisation is analytically before any programme of institutional reform, because it shifts attention from improving the operation of existing institutions to reconsidering the political relationships upon which those institutions depend.

Chapter 5: Conclusion

5.1 Returning to the Question

Chapter 2 began by noting a tension that cuts across the peace-justice, human security and transitional justice literatures. These fields treat the human rights framework as the standard pathway for post-conflict justice, yet catalogue, case after case, that framework's failures. Most of that literature resolves the tension by asking how implementation could be improved. This thesis asked a different question: whether the recurring failures are contingent, the product of weak enforcement or insufficient political will, or structural, built into what the framework was designed to do within the current international order. Chapters 3 and 4 pursued that question through three lenses, decolonial, feminist and securitisation, applied across a shared set of post-conflict cases: Sierra Leone, Timor-Leste, Bosnia, Afghanistan, Colombia, Mozambique, Rwanda and the Democratic Republic of Congo, amongst others. What follows draws the three analyses together and states what they show when read as a single argument rather than three separate ones.

5.2 What the Three Lenses Show Together

Considered separately, the three lenses answer different questions. The decolonial reading, developed through Mbembe, Fanon and Tzouvala, identifies where exclusion is directed. It is consistently targeted on populations positioned outside the Standard of Civilisation, from the Democratic Republic of Congo's designation as an immature state requiring external mastery, to the extraction of mineral and hydrocarbon wealth that continues under the language of governance reform. The feminist reading, developed through Enloe and Cohn, identifies what exclusion does to political agency: it recodes women's political claims into narratives of sexual vulnerability that institutions can process and manage, from Sierra Leone's "bush wife" category to Afghanistan's rescue script. The securitisation reading, developed through Booth and the Copenhagen School, identifies the mechanism that makes both patterns durable: a grammar in which stability is staged as an existential condition and accountability as a risk to it, so that material and gendered claims are deferred as second-generation concerns almost by procedural default.

Throughout chapter 4, the decolonial, feminist and securitisation dynamics have converged in cases like Sierra Leone, Afghanistan and the DRC at the same institutional moment rather than in sequence. Decisions to label a population high-risk, about whose land claims are negotiable and about whose testimony counts as political speech emerge from the same process. A state seeking recognition

as a legitimate member of the international order has to show market-compatible governance, gender-sensitive institutions and a stable security arrangement together, because donors and the Security Council treat the three as a single test. Weakness on one undermines credibility on the others, which is why reforms addressed to only one dimension, a quota here, a property law there, struggle to produce durable change, because they will continue to be assessed against a standard that was never intended to be changed.

What binds these dimensions together is a common logic. Rights operate as a currency of recognition rather than as a direct pathway to justice: the adoption of a National Action Plan or a property statute counts as compliance whether or not it reaches the people it names. Stability functions as what Booth calls an existential referent, allowing accountability and redistribution to be deferred whenever they are framed as threats to political order. Likewise, those most affected become malleable to the system, narrowed to categories the system can process, so that political agency becomes legible only once it has already been translated into something manageable. Together, these dynamics describe an order that treats post-conflict governance as the production of recognisable compliance rather than the redistribution of authority. The result is what Booth would characterise as negative peace: the absence of direct violence secured through institutional consolidation. At the same time, the underlying material and political conditions that produced the conflict remain. The term virtual peace names this outcome precisely: the appearance of resolution substituting for its substance.

5.3 A Tendency, Not a Determinism

This is not an argument that rights-based approaches never succeed or are incapable of creating substantive changes – the evidence assembled in Chapter 4 points in the opposite direction. Civil society participation in peace processes measurably reduces the risk that agreements collapse, and women's organised engagement with rights language increases the chances of reaching agreements in the first place. States that pursue transitional prosecutions become measurably less repressive over time than states that choose amnesty, a pattern Kathryn Sikkink traces across Latin America's prosecutions and the domestic movements, including the Madres de la Plaza de Mayo, who refused to accept a settlement negotiated over their heads. Bosnia's property restitution programme only became functional once reframed into a rule-of-law claim. Gender quotas in Rwanda, Burundi and Nepal produced the legislative majorities needed to pass land and inheritance reform that would not otherwise have reached a vote. Colombia's 2016 agreement used the Women, Peace and Security architecture built around Security

Council Resolution 1325 as a genuine tool for structural grievances rather than a symbolic add-on, and required the state to answer for its own violations alongside those of the FARC, breaking the pattern of winner's justice that has produced remilitarisation elsewhere.

The distinction the thesis needs here is between a tendency and determinism. A structural tendency describes a system predisposed towards a default outcome unless counter-pressure measures are put in place. Audit cultures, for example, default to counting disarmed combatants rather than tracking whether those combatants can support a household. Similarly, securitisation grammar defaults to treating accountability as a risk rather than a foundation. Determinism would imply that these defaults cannot be displaced, and the cases above show that they can. They also show that displacement requires organised pressure from below that refuses the role of passive recipient, bargaining conducted simultaneously through official channels and grassroots mobilisation and a specific institutional condition, reciprocal accountability, in which the parties who would otherwise be shielded by the settlement's stability are made answerable within it. Where these conditions are absent, as in Sierra, the default holds and produces the virtual peace described above.

This is why the rarity of cases like Colombia's counts as evidence for the structural claim rather than against it. If institutional design were the only obstacle, successful rights-based settlements should be common wherever institutions are competently built. Instead, they emerge under a far narrower and more demanding set of political conditions that have little to do with technical expertise and everything to do with whether affected populations can force their way into a bargaining position that the framework does not extend to them by default. A theory of implementation failure cannot explain why the same donors, the same UN agencies and often the same legal instruments produce durable peace in one case and virtual peace in another. A theory of structural conditionality can; it showcases both the persistence of failure and the spectacular conditions under which that tendency can be overcome.

5.4 The Paradox Restated

The paradox guiding this thesis can now be stated directly. The human rights framework is structurally inadequate to the justice it promises: it translates claims into currency, treats stability as inviolable, and narrows political subjects into categories it can administer. Chapters 3 and 4 have argued that this inadequacy is built into the framework's history. And yet the same body of evidence that demonstrates this inadequacy also establishes that rights language remains the most reliable available route to durable peace, because it is also the only vocabulary flexible enough to be turned against its own

defaults. Every exception examined in this thesis, from Colombia's reciprocal accountability, through Bosnia's rule-of-law reframing and the Latin American prosecutions, was produced by actors who used the framework's own instruments to contest the settlement those instruments were meant to stabilise. Rejecting the framework would remove the only available tool for such contestation; refining it without confronting its structure would leave its empty-norm dynamic untouched. The position this thesis defends sits between those two alternatives. It develops a structural critique that doesn't embrace abolition because the same structure that manages exclusion is also, under specific conditions, the resource that can be redirected against it.

This is the thesis's contribution, and it is not available from any one of the three lenses on its own. The peace-justice, human security and transitional justice literatures reviewed in Chapter 2 treat implementation failure, gendered exclusion and securitised stability largely as separate problems, addressed by separate remedies: better courts, more inclusive negotiations, broader security definitions. Chapters 3 and 4 have shown that these are three faces of one design, and that the design only becomes visible once decolonial, feminist and securitisation analyses are applied to the same cases at the same time. Seen through any one of these approaches alone, each post-conflict failure can be interpreted through isolated local shortcomings. Nonetheless, seen through all three together, the pattern is the Standard of Civilisation's own operating logic, and the rarity of durable peace consequently appears as the predictable consequence of that underlying structure.

5.5 Reform Without Illusion

This thesis has not sought to produce a policy prescription, nor has it attempted to argue that a structural critique alone cannot determine what post-conflict justice should look like in every context. Nonetheless, one is allowed to ask what follows if the diagnosis is correct. If the failures identified through this thesis are structural and not contingent, then a response limited to tackling implementation risks will most likely reproduce the same dynamics it seeks to overcome. At the same time, a structural critique that doesn't account for the conditions under which change remains possible risks collapsing into resignation. Therefore, the argument put forward here avoids both conclusions. Taking into account that the framework cannot simply be refined into delivering substantive justice, what it can do is analyse if reform does or will address the institutional mechanisms through which exclusion is reproduced.

The first mechanism concerns the referent object of security. Reorienting security away from the survival of the settlement towards the capacity of individuals to live lives they have reason to value

requires treating accountability and redistribution as stability rather than a threat to it. Colombia's reciprocal accountability demonstrates that equal legal exposure to state and non-state actors alike removes the asymmetry that makes justice look like a risk only one side has to bear. The second mechanism is a shift from procedural to substantive legitimacy, recognising land, livelihood and care as harms that transitional justice mechanisms are built to address, rather than development questions deferred until after trials and truth commissions have finished their work. The third is already embedded in peace agreements: quota provisions, references to international instruments, restitution mechanisms, included as symbolic concessions but available to actors with the political capacity to treat them as more than that. Colombia's negotiators did not have to invent CEDAW or Resolution 1325; they had to insist that provisions already on the table be honoured as binding commitments rather than boilerplate. The fourth mechanism concerns the audience. Securitisation succeeds only when a particular audience accepts it, and as long as that audience is donors and the Security Council rather than affected communities, stability will continue to outrank justice. None of these four changes requires a better theory of international law. They require the organised pressure from below that this thesis has shown, case after case, to be the actual condition under which exceptions to the default get made.

The cases examined here, Sierra Leone, Timor-Leste, Bosnia, Afghanistan, Colombia, Mozambique, Rwanda and the DRC, were chosen because together they span the range from virtual peace to genuine exception. Extending the same three-lens method to a wider set, including cases where reform attempts failed, would allow the conditions identified here to be tested more systematically whilst clarifying the necessary ones. What the thesis has established, and what that further work would test, is the claim it opened with: the human rights framework should not be understood as a neutral architecture of post-conflict justice but as a historical settlement, colonial in its exclusions, patriarchal in its silences and securitised in its defaults. Durable peace has remained comparatively rare precisely because that settlement was never designed to produce the necessary authority that substantive justice requires. Yet, it remains, even so, the settlement through which every documented exception has been achieved. That is the paradox at the heart of contemporary post-conflict governance. Human rights are structurally limited, but they remain the most powerful normative resource available for contesting the very structures that constrain them.

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