Summary Document and Analysis
A Transformative Approach to Transitional Justice:
Building a Sustainable Peace for All

Introduction

Transitional justice is a vital step in the path of out of conflict. In many cases, where a cessation of violence is prioritized at the expense of social change and rule of law reform, transitional justice mechanisms provide a necessary opening for societal transformation. These mechanisms include reparations, truth commissions, criminal tribunals, and institutional reform. Yet, despite their great potential for social reconciliation, the field continues to struggle with the unequal inclusion of women’s voices. Despite increasing use of these tools, they may speak little to the impact of transitional justice on women on the ground, who continue to experience the daily realities of exclusion, violence, and economic inequality. Though there is a growing focus on transitional justice, women and girls remain on the peripheries of international human rights law.

Understanding the needs of women and girls in post-conflict is essential to ensuring that these mechanisms lead to truly secure and peaceful communities. In this way, transitional justice mechanisms can contribute to the implementation of Security Council resolution 1325 (2000) and subsequent resolutions on women, peace and security, with respect to ensuring women’s involvement in all aspects of post-conflict recovery and peacebuilding, and providing justice and redress for conflict-related abuses of women’s rights. Mechanisms must be made more accessible and effective for women, and incorporate new and innovate strategies to ensure marginalized voices are placed at the center of the agenda. Without the full and equal participation of women at all steps of reconciliation and reconstruction, it is impossible to rebuild a stable society.

On February 24, 2015, the United Arab Emirates Mission to the United Nations, the Georgetown Institute for Women, Peace and Security, and UN Women hosted a panel on “A Transformative Approach to Transitional Justice: Building a Sustainable Peace for All. The panel brought together high-level UN officials who provided opening remarks on the topic, including Jan Eliasson, Deputy Secretary General of the United Nations, and Zainab Hawa Bangura, Special Representative of
the Secretary General on Sexual Violence in Conflict. In addition, panelists included Fionnuala D. Ní Aoláin, Dorsey and Whitney Chair in Law at the University of Minnesota Law School and Professor of Law, University of Ulster’s Transitional Justice Institute in Belfast, Northern Ireland; Ruben Carranza, Director, Reparative Justice Program, International Center for Transitional Justice; Ilwad Elman, Director of Programs and Development at the Elman Peace and Human Rights Centre; and, Mayesha Alam, Associate Director, Georgetown Institute for Women, Peace and Security.

The main objective of the panel focused on taking a transformative approach to transitional justice, in order to ensure that justice mechanisms address women’s needs and priorities post-conflict. Experts emphasized that in order to for transitional justice to be truly transformative, these mechanisms must address the structural inequalities within societies. Deputy Secretary General Jan Eliasson stressed that we all have to do more than strengthen the gender balance in transitional justice mechanisms, in addition to the root inequalities that lead to these violations. “Respect for women’s rights promotes peace and sustainable development...peace is inextricably linked to equality between men and women.” The Secretary-General’s Special Representative for Sexual Violence in Conflict, Zainab Hawa Bangura, discussed the transformative impact of reparations. “As we have seen century after century, war after war, justice is not merely about punishing perpetrators, it is about empowering victims.” The Special Representative then emphasized that “the symbolic power [of reparations] is to recognize that the victim is a holder of rights that will be enforced.”

Experts also stressed that women must be economically empowered during the transition. Professor Fionnuala Ní Aoláin spoke from her personal experience in the Northern Ireland peace process. She stressed that “ensuring transformation requires engagement with economic empowerment for women.” All experts noted the importance of women’s participation in the design, delivery, and implementation of transitional justice mechanisms. Ilwad Elman spoke about her experience in Somalia, stressing the importance of making women’s participation in transitional justice a priority, of “processes designed with them [women], not about them.”

Transitional justice has become a critical component of efforts to strengthen the rule of law and an integral element of the peacebuilding agenda. A transformative approach to transitional justice involves addressing not just the consequences of violations committed during the conflict, but the structural context of discrimination, which enabled these violations to occur both during and before the conflict. Employing this approach involves addressing the full range of rights violations women experience during conflict, and promoting women’s access and active participation in the design and implementation of transitional justice mechanisms. Further, by focusing beyond the justice needs and priorities of women beyond the lens of conflict,
this approach can help to ensure a transformation of behavior towards women in society as a whole, as well as also contribute to the realization of a peace that is truly sustainable for all.

**Economic and Social Empowerment**

Economic and social empowerment are key aspects to the transitional justice agenda. Victims and local populations often prioritize addressing socio-economic violations in these processes. Additionally, placing these issues at the top of the agenda enhances the potential of transitional justice to better address the root causes of conflict, where discrimination and socio-economic violations often create grievances that can lead to the outbreak of conflict.

Ensuring transitional justice mechanisms include socio-economic rights violations as part of their mandates acknowledges and better responds to the full range of rights violations suffered by women during conflict that stem from their systemic marginalization and exclusion. For example, because of discrimination in access to education, health care, employment, and the control of assets and resources including land, women are statistically poorer than men. In times of conflict, when a state chooses to shift its spending from social services to military, the aggravation of poverty disproportionately affects women and female-headed households.

H.E. Zainab Hawa Bangura, Special Representative of the Secretary General (SRSG) on Sexual Violence in Conflict, spoke about the important role transitional justice plays in not only prosecuting perpetrators, but also empowering victims. Prosecuting sexual violence requires not only assigning individual responsibility, but also communal redress to shift societal shame and stigma. While naming and shaming can help to deter future violence against women, women must be able to exercise their own voice and become productive, valued members of society. It is not enough to focus solely on the perpetrator – resources and attention must help empower victims and survivors. SRSG Bangura cited an example from her time as a civil society activist where women victims in post-conflict Sierra Leone were provided with small business grants. The success of this program was felt not only by the women, whose businesses thrived and who were once again respected as productive members of society, but also by the broader community. Women hired staff, including ex-combatants, furthering economic empowerment in their villages; in regions where the program was implemented, there was the highest level of women political candidates in the country.

The importance of economic empowerment in transitional societies was echoed by Professor Fionnuala Ní Aoláin, who spoke about the need to keep economic rights squarely on the transitional justice agenda. As Ní Aoláin explained, the pluralities of harm faced by women in conflict and post-conflict settings are entangled with their continued economic marginalization.
Land reform and property rights, in particular, are central to successfully implementing transitional justice mechanisms and affecting long-term change and stability. Rule of law reform must emphasize the legal rights of women to land ownership and inheritance that they are denied in many places, as a result of both law and practice. Economic and social rights go beyond mere capacity building and primary education, where transitional justice initiatives tend to focus. Ní Aoláin emphasized that the transition from war to peace is dependent on the transformational value of human capital, and goals for women’s empowerment should be more ambitious than basic literacy or small-scale loans.

Specific Recognition of Gender Equality

In order to ensure that transitional justice mechanisms have a transformative impact, we need to facilitate women’s participation and leadership in the design and implementation of these mechanisms. This includes a specific recognition that incorporating a gender perspective in these processes is key to ensuring a more inclusive outcome. References to women and gender must be explicit and consistent, rather than ad hoc, and should be recognized in all peace agreements and government structures. Similarly, gender responsive budgeting should be a minimum starting point for ensuring that women’s needs are specifically recognized and targeted by transitional justice funding.

As Mayesha Alam highlighted, there must be an expanded understanding of what we mean by “women” in the transitional justice context. Without an appreciation of the varied roles and experiences of women in conflict, it is too easy to assume that women are only victims of atrocity or sexual violence. Though transitional justice mechanisms must take into account the challenges faced by survivors of sexual violence, this narrow understanding of women’s position can marginalize women who experienced conflict in other ways. For instance, if women’s actions in combat are not considered for the purposes of disarmament, demobilization, and reintegration programs, female combatants are unlikely to receive the benefits of mechanisms targeting armed groups.

Ensuring that gender differentials are taken into account in all transitional justice mechanisms is crucial to ensuring that these processes respond to the needs and capacities of all members of the community. This also includes recognizing that women play a multitude of roles during conflict – survivors, victims, combatants – that must be addressed in transitional justice processes.
Reparations

One tool that links economic empowerment, dignity and social change is the provision of reparations. The Secretary General’s Guidance Note on Reparations for Conflict-Related Sexual Violence marked a critical step in laying out an international framework for the design and delivery or reparations to victims and recognized the need for an innovative approach to reparations. Reparations have both the symbolic power to recognize victims’ rights and grievances as well as create opportunities for agency and empowerment, if used correctly. Reparations should not only be a one-time stipend but a tool for human development and a crucial mechanism to support women’s economic empowerment and social reintegration. As Deputy Secretary-General Jan Eliasson noted, for reparations to be truly transformative, they have to go beyond monetary compensation and include land restitution, access to credit, and skills development.

The role of donors is especially important when it comes to reparations, as their allocation is often subject to budget decisions by external funders. It is necessary that these funders recognize that reparations have major implications in the lives of recipients. Reparations are a tool where gender responsive budgeting is particularly essential. Experience has shown that without explicit attention to women as beneficiaries, it is easy for certain groups of women to be left out, for instance in Guatemala, where reparations provided access to land for widowers, but not to single or married women due to cultural assumptions about family structures. How, to whom, and in what form reparations are given, shapes the futures of communities and individuals.

Ensuring that reparations recognize gender differentials and contribute to social transformation is key. Though restitution refers to restoring a victim to their original situation in this context, returning women to a context of structural inequality and discrimination is to discount the true meaning of reparative justice. Therefore, it is essential that reparations programs address the root causes of conflict – socio-economic discrimination, marginalization, gender-based violence, and structural inequalities, amongst others – in order to truly have a transformative impact.

Consultation

In the case of transitional justice tools and mechanisms, it is paramount that they be developed in active and long-term consultation with the communities they are designed to help. This process includes interventions that address the structural inequalities that prevent women from participating in the first place, and instituting specific measures to encourage women’s active and meaningful participation.
Ruben Carranza of the International Center for Transitional Justice noted that some of the most radical and transformative proposals driving transitional justice have come from grassroots women and women’s organizations. Solutions from the grassroots are more likely to be suited to the needs and aspiration of affected communities. Carranza also mentioned that donor-driven transitional justice mechanisms are not always the most valuable to local reconciliation and progress, and it is essential to examine who is making decisions about how funds are allocated.

Ilwad Elman, a civil society activist from Somalia, spoke about how transitional justice is being framed at a grassroots level in Somalia, and the need to incorporate local solutions and voices when designing justice mechanisms. Successes in Somalia are due to momentum built by activism on the ground and by indigenous political will, not by external organizations. Talking with affected communities can reconceptualize what justice means to a particular community, and broaden the scope of transitional justice to incorporate a broader understanding of the people and institutions engaged in post-conflict reconstruction. For instance, Elman detailed the difficulties of implementing transitional justice in regions where customary systems still dominate. Externally imposed transitional justice programs often overshadow smaller local initiatives. Yet, it is these small-scale interventions that have the greatest impact.

Recognizing the needs and capacities of local communities is crucial to envisioning a conception of justice that is wanted by a specific community. Integrating civil society and creating opportunities for their participation in transitional justice processes is an important aspect of creating effective processes that can lead to a sustainable peace.

Conclusions and Recommendations

Include women in the design, delivery, and implementation of transitional justice mechanisms. Transitional justice mechanisms offer women opportunities to participate in and influence peace-building processes. This can be achieved by ensuring participation of women’s rights groups and victims in shaping and monitoring transitional justice processes. New thinking about how women and girls can be incorporated into transitional justice institutions is necessary for them to be truly effective and lead to long-term, sustainable peace and justice. Including women in this process ensures that these mechanisms can better respond to the differential needs of women and men, girls and boys.

Create interventions that strategically address women’s lack of participation in transitional justice processes. Interventions are needed that do not simply “add women” into the existing processes of transitional justice bodies, but intentionally and strategically address the underlying structural inequalities that prevent women from accessing and benefiting from these processes.
This can include outreach programs, quotas, procedures for protecting the security and dignity of victims and witnesses, providing financial remuneration for childcare costs and travel, providing identity documents, and conducting processes in the local language.

**Utilize transitional justice mechanisms to address systemic discrimination.** Recommendations made by truth commissions and reparations initiatives can challenge discriminatory practices that contribute to women’s vulnerability during repression and conflict. Addressing the structural context of discrimination that allowed violations to take place both during and before conflict is necessary to hold perpetrators accountable and provide redress for victims – and to have a transformative impact.

**Address socio-economic violations in transitional justice processes.** Socio-economic discrimination and violations are often linked to the root causes of conflict. The pluralities of harm faced by women in conflict and post-conflict settings are entangled with their continued economic marginalization. Addressing these violations in transitional justice processes can help to acknowledge and better respond to the full range of violations that women experience during conflict.

**Incorporate local voices and marginalized groups into the transitional justice process.** If used holistically, transitional justice mechanisms have the opportunity to transform a post-conflict society by encouraging holistic human development and empowering marginalized groups. Solutions from local communities and grassroots organizations are more likely to be suited to the needs and aspirations of affected communities, and are key to context-specific conceptions of justice.

*This summary was prepared in partnership with the Georgetown Institute for Women, Peace and Security.*