



A Transformative Approach to Transitional Justice: Building a Sustainable Peace for All

Transitional justice, which comprises the full range of mechanisms and processes employed to achieve redress for serious crimes, has become a critical component of efforts to strengthen the rule of law and an integral element of the peacebuilding agenda. Mechanisms can include prosecutions, reparations, truth-seeking and institutional reform. Transitional justice mechanisms can contribute to the implementation of Security Council resolution 1325 (2000) and related resolutions 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013) and 2122 (2013), 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. Over the past twenty years, we have seen a proliferation of transitional justice mechanisms, primarily criminal tribunals and truth commissions, which have promised accountability for perpetrators and redress for victims. However, the impact of these mechanisms, in particular for women, has been lacking. To date, too few resources have been dedicated to securing justice for women, and too little attention paid to their priorities and needs.

For many women, the violence they face does not stop with the ending of the conflict. In fact, in many post-conflict scenarios, we see the violence and insecurity women experience continue or even increase, facilitated by large-scale impunity and the absence of effective justice systems. Yet, the signing of a peace agreement renders one kind of violence "extraordinary", and the other a routine part of day-to-day life. If transitional justice is to realize its guarantee of non-repetition, it must engage more critically with the past and its ongoing presence in shaping the present, and building the future.¹ In order to do so, we must anchor our approach to transitional justice policy and programming on a conception of justice that is not merely transitional, but transformative.

A transformative justice approach 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. While it is not a new concept, the application of transformative justice to the field of transitional justice has not been fully theorized and operationalized. Employing a transformative justice 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. A transformative approach would also involve ensuring that international support to the prosecution of perpetrators is matched with an equal focus and investment in justice for victims.

The field of transitional justice has tended to view human rights violations as narrower than the range of violations that actually occur. The prevailing assumption is that mechanisms including truth commissions, trials, and reparations programs are supposed to engage mainly, if not exclusively, with civil and political rights violations that involve either physical integrity or personal freedom.² This assumption ignores the ways in which women often do not enjoy the conditions that make the exercise of civil and political rights possible. Ensuring transitional justice mechanisms include socio-economic rights violations as part of their

¹ Paul Gready, Jelke Boesten, Gordon Crawford and Polly Wilding, *Transformative Justice – A Concept Note* (2010) available at http://www.wun.ac.uk/files/transformative_justice_-_concept_note_web_version.pdf

² See Ruben Carranza, "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?" *The International Journal of Transitional Justice* 2 (2008) 310-330.

mandates provides further opportunity to acknowledge and respond 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. Further to this, the destruction of civilian infrastructure, which affects access to health, education, food, and water, place an increased burden on those assigned a caregiving role by society. Forced displacement, in addition to being a crime in itself, increases women's vulnerability to sexual and gender based violence. These are some ways in which conflict has a gendered impact that is generally not captured or redressed through the rights that are predominantly the concern and focus of transitional justice.

Women are often not consulted in the design of transitional justice mechanisms or informed of opportunities to engage in processes, in part because of low literacy or physical distance from venues in which these processes occur. 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. Specific measures can include outreach programmes, quota provisions to ensure that women are represented in these processes at the leadership levels, procedures for protecting the security and dignity of victims and witnesses, measures to compensate for time constraints and mobility including travel and child care costs, ensuring processes take place in local languages, and, if necessary, the provision of identity documents to facilitate women's participation. 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.

International support to the field of transitional justice has focused on prosecutions as the primary mechanism for realizing post-conflict justice. While criminal trials are critical to fighting impunity and rebuilding the rule of law, prosecutions alone cannot bring about the social transformations needed to change the behaviors and attitudes that give conflict-related sexual and gender based violence its power. Nor can they eradicate the stigma and shame, or empower women to access their rights to justice, health, education, and a future without violence. Nor do they deliver the redress due to victims or the means to mitigate the consequences of these crimes for survivors and their communities.

Of all the measures designed to seek redress for past human rights violations, reparations are the most directly victim-focused of justice tools and the justice mechanism most consistently prioritized by women post-conflict. Reparations can provide acknowledgement of their rights as equal citizens, a measure of justice, crucial resources of recovery, and contribute to transforming underlying gender inequalities in post-conflict societies. Indeed, advances in international law and policy, including the Secretary General's Guidance Note on Reparations for Conflict-Related Sexual Violence, have recognized the need for reparations to be transformative in design, implementation and impact, subverting instead of reinforcing gender hierarchies and systemic marginalization.³ However, despite their importance to victims and

³ *González et al. ("Cotton Field") v Mexico* (Inter-American Court of Human Rights 16 November 2009) para 450; Special Rapporteur on Violence Against Women, *Reparations to Women Who Have Been Subjected to Violence*, 17, U.N. Doc. A/HRC/14/22 (2010) para 31.

potential transformative impact, reparations are routinely left out of peace negotiations or sidelined in funding priorities in the immediate aftermath of conflict. It is also widely acknowledged that reparations programs have not met the needs of women or adequately responded to the gender-specific harms suffered during periods of conflict.

A transformative justice approach to the field of transitional justice provides a strong conceptual basis for ensuring these mechanisms and processes not only address and respond to women's justice needs and priorities post-conflict, but also contribute to the realization of a peace that is truly sustainable for all. This meeting will further discuss the concept and how it can be translated into policy and practice.

The following questions will help guide the discussion:

- What is transformative justice and how has it been applied to the field of transitional justice?
- How can a transformative justice approach further women's access to justice and accountability through transitional justice mechanisms and processes?
- What are the challenges for applying a transformative justice approach to the field of transitional justice?
- What are good examples of transformative justice programming for women?
- How can the UN and international organizations support national stakeholders deliver transitional justice mechanisms that are transformative in impact?