



Nahla Valji, Centre for the Study of Violence and Reconciliation, Johannesburg

Gender Justice and Reconciliation

Study prepared for Workshop 8 – “Reconciliation”

WS 8 is jointly organized by Centre for the Study of Violence and Reconciliation and Friedrich-Ebert-Stiftung

International conference
Building a Future on Peace and Justice
Nuremberg, 25 – 27 June 2007

Conférence internationale
Bâtir l'avenir sur la paix et la justice
Nuremberg, 25 – 27 juin 2007

Conferencia internacional
Paz y Justicia – Elementos Conformadores del Futuro
Núremberg, 25 – 27 de junio 2007

Internationale Konferenz
Frieden und Gerechtigkeit – Bausteine der Zukunft
Nürnberg, 25. – 27. Juni 2007

Table of Contents:

1. Introduction	3
2. Gender justice	6
3. Addressing sexual violation as a war crime	7
4. Gender Balance	9
Policy Implications	9
5. Beyond Inclusion	11
6. Truth Commissions	15
Policy Implications	17
7. General Policy Recommendations	19
8. Conclusion	22

1 Introduction

Although at their most brutal in war, sexual abuses against women often stem from longstanding prejudices, a lack of equality and discrimination that had condoned such violence all along. When perpetrators go unpunished, they are emboldened to strike again, perpetuating and encouraging vicious cycles of attack and reprisal even when a country emerges from conflict. Rendering justice to the victims is, therefore, not only a moral imperative, but also a precondition for reconciliation and peace to take hold.¹

Impunity for war crimes against women – statement by Louise Arbor, International Women’s Day, 2007

Justice, truth, reconciliation and guarantees of non-repetition for victims in the wake of conflict are just some of the core goals pursued by societies through the employment of transitional justice mechanisms. None of these goals however are attainable in a context of exclusion and inequality - as inequality, an injustice in itself, is also a causal factor of conflict. Violence thrives in societies entrenched in hierarchical structures and relations;² and no inequality is more pervasive, both vertically and horizontally across the globe than gender inequality.

Violence thrives in societies entrenched in hierarchical structures and relations; and no inequality is more pervasive, both vertically and horizontally across the globe than gender inequality.

It is generally accepted that because of gendered power relations, it is women who pay the disproportionate cost of war.³ This is not to further entrench the stereotype of women’s identities in conflict as that of the ‘perpetual victim’ – powerless and acted upon - but rather to acknowledge that women’s experiences of both conflicts as well as transitions differ because of power relations, and that these experiences and accompanying needs for justice have largely been ignored.⁴

1 Whilst the thematic focus of this panel is on reconciliation, the following paper looks more widely at transitional justice as a whole as there has been inadequate focus on gender in the field and given that reconciliation is a fundamental goal of all transitional justice mechanisms, there is a need for the field as a whole to address issues of gender justice and equality in order to contribute towards substantive and sustainable reconciliation.

2 Caroline O.N. Moser and Fiona C. Clark, eds. *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence*, (London and New York: Zed Books, 2001); Susanne Schmeidl with Eugenia Piza-Lopez, *Gender and Conflict Early Warning: A Framework for Action* (International Alert and Swiss Peace Foundation, June 2002).

3 ‘...women and girls suffer predominantly or exclusively from specific types of harm during armed conflict both because they are female [and] while entire communities suffer the consequences of armed conflict, women and girls are particularly affected because of their status in society as well as their sex.’ UN Beijing Platform For Action, Para 131 in Corey Levine, *Gender and Transitional Justice – a case study of East Timor* (Canadian Consortium on Human Security, September 2004). See also, Maria Stern and Malin Nystrand, *Gender and Armed Conflict*, (SIDA, April 2006).

4 Reflecting on the tension between painting women as uniformly ‘victims’ and yet highlighting the real impact of conflict, Rehn and Johnson-Sirleaf write: ‘[I] have grappled with the dilemma of describing the atrocities experienced by women in war in a way that will not [only] ascribe to women the characteristics of passivity and helplessness. Women are everything but that. But as with all groups facing discrimination, violence and marginalization, the causes and consequences of their victimization must be addressed. If not, how will preventive measures ever focus on women? How will the resources and means to protect women be put in place? How will the UN system, governments and NGOs be mobilized to support women? [It is important to keep writing about the ways women experience conflict as marginalized because] so far, not enough has been done.’ Elisabeth Rehn and Ellen Johnson Sirleaf, *Women, War and Peace – The Independent Expert’s Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-Building* (UNIFEM, 2002), 2.

The myriad ways in which gender, power and violence intersect during both conflict and transition can be illustrated by the example of Rwanda. During the genocide, mass rape was utilized as a deliberate strategy of the Interahamwe. Beyond the trauma of the actual violation(s), the ongoing consequences for women have included high levels of HIV infection in a context of limited or no access to medical facilities and the responsibility for children born as a result.⁵ When the violence receded, most men had either been killed, fled to nearby countries, or were in prison, leaving a national population that was 70% female. Women assumed the position of head of household; daily managing the impact of their own experiences whilst also shouldering the responsibility to ensure the economic survival of those who remained and the reconstruction of communities and social relations. This situation was compounded by pre-existing gender norms; including cultural values which ascribed the stigma of sexual violence to the victim and a legal system which forced women to be dependent upon surviving – and sometimes distant – male relatives as a result of an inability to inherit.⁶

Periods of conflict and post-conflict reconstruction destabilize gender identities.

Whatever the context, causes or nature of a conflict, all have in common that they are impacted by, and in turn impact upon, gendered power relations. Periods of conflict and post-conflict reconstruction destabilize gender identities and assumptions – during conflict women often assume positions that would have been unacceptable pre-conflict, either by joining one of the fighting parties, assuming the position of head of a household, or occupying positions in the public sphere or other spaces that were previously the exclusive domain of men.⁷

As conflict is brought to an end and peace agreements negotiated, societies are faced with the task of reconstructing not only their physical, but social infrastructure.

These shifts in roles and identities can provide a double-edged sword, whereby conflict has an enormous and devastating impact on women's lives, but can also open new spaces, and challenges, for transformation. As conflict is brought to an end and peace agreements negotiated, societies are faced with the task of reconstructing not only their physical infrastructure, but social infrastructure – including relationships to each other, and between citizens and the state.

Much has been made in feminist literature of the importance of this post-war moment for transforming unequal power relations and furthering gender justice.⁸ However it has also been noted that this moment is fleeting; and few, if any, examples can be pointed to where the gains that were made during this period were successfully consolidated and manifested in sustained gender equality and a transformed society.⁹

5 Research conducted by the Rwandan women's organization AVEGA in 1999 (based on a sample of 1,125 women living in the prefectures of Kigali, Butare and Kibundo) found that 74.5% had experienced sexual violence of some form. Two-thirds of these women reported being HIV positive. Codou Bop, 'Women in Conflict, Their Gains and Their Losses,' in Sheila Meintjes, Meredith Turshen, and Anu Pillay, *Aftermath: Women in Post-conflict Transformation* (London: Zed Books, 2001), 33.

6 Heidi Rombouts, 'Women and Reparations in Rwanda: A Long Path to Travel' in *What Happened to the Women: Gender and Reparations for Human Rights Violations* ed. Ruth Rubio-Marín (Social Science Research Council, 2006).

7 Meintjes et al. supra n 5; see also, Cynthia Enloe, *The Curious Feminist: Searching for women in a new age of empire* (Berkeley and Los Angeles: University of California, 2004).

8 See in particular, Meintjes et al., supra n 5.

9 Sondra Hale notes that it does not bode well for the struggle for gender equality that 'no liberation or revolutionary war, no matter how progressive its ideology regarding the emancipation of women – from Russia and China to Algeria, Vietnam, Cuba, Nicaragua, El Salvador, Guinea-Bissau, Angola, Mozambique, South Africa and the Palestinian intifada – has empowered women and men to maintain an emancipating atmosphere for women after the military struggle and brief honeymoon are over.' Ibid, at 123.

In part this inability to harness the potentially transformative moment is a result of the demand during post-conflict situations that 'women' and 'gender' be placed on the back burner for later as priority is once more placed on other issues.¹⁰ Equally detrimental is that peace negotiations often downplay issues of justice in an effort to consolidate a peace which is defined narrowly as a silencing of the guns. Where justice issues are addressed, 'justice' is similarly narrowly defined and does not encompass transformative justice or challenge fundamentally unjust power relations within society; power relations that are often at the heart of the conflict itself.

It is during this moment of flux that transitional justice mechanisms are negotiated and established, with the express mandate to deal with past violations and contribute towards a blueprint for a new society based on principles of justice and equitable relations; and in doing so, ensure that the atrocities of the past will 'never again' occur.

These objectives of transitional justice mechanisms as well as the space they occupy during the transition pose challenges as well as opportunities for the furthering of gender justice. The following paper begins to explore how transitional justice mechanisms can capitalize on the opportunities presented in order to move beyond the reconstruction of pre-war gender relations and instead encourage fundamental transformation of relations and institutions in order to contribute towards comprehensive social justice.

This inability to harness the potentially transformative moment is a result of the demand during post-conflict situations that 'women' and 'gender' be placed on the back burner.

¹⁰ Enloe, supra n 7.

2. Gender Justice

Gender justice can be defined as ‘the protection and promotion of civil, political, economic and social rights on the basis of gender equality. It necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for both women, men, girls and boys and adopting gender-sensitive strategies for protecting and promoting them.’¹¹

Incorporation of gender justice into accountability mechanisms has thus far emphasized two key objectives: seeking justice for women’s experiences of sexual violence and securing increased

Incorporation of gender justice into accountability mechanisms has thus far emphasized two key objectives: acknowledging and seeking justice for women’s experiences of sexual violence during conflict; and securing increased representation of women in arenas of policy making and decision making on post-conflict issues as well as in the transitional justice mechanisms themselves. The following sections assess the gains made in both these fields as well as select recommendations going forward. The paper then turns to the need to move beyond increased participation of women and the redress of specific violations to an engendering of the field of transitional justice as a whole in order to progress towards sustainable peace and transformative justice.

11 Pam Spees, ‘Gender Justice and Accountability in Peace Support Operations’ (International Alert, February 2004), available at http://www.international-alert.org/pdfs/gender_justice_accountability_peace_operations.pdf. Gender as a concept has little to do with the biological categories of ‘men’ and ‘women’. Rather it is about the social roles ascribed to individuals. Incorporating a gender analysis renders visible underlying power relations in society in order to expose what is valued and what is marginalized; and how these assumptions and hierarchies, if ignored, can fundamentally distort what might otherwise be well intentioned policy prescriptions. Introducing gender into transitional justice should not further entrench an essentialization of women as victims and men as perpetrators, but instead problematize these simplifications. The aim is to highlight gendered social relations, hierarchies and assumptions in order to provide a more complex and comprehensive picture which can then inform transitional justice policy prescriptions which are able to achieve their objectives and are not thwarted by faulty premises. See, Moser and Clark, *supra* n 2; Sites of Violence: Gender and Conflict Zones, eds. Wenona Giles and Jennifer Hyndman (Berkeley and Los Angeles: University of California Press, 2004).

3. Addressing sexual violation as a war crime

Without accountability for crimes against women, the legal foundations of new governments will be weakened, the credibility of governing institutions will be undermined and women will continue to suffer discrimination.¹²

In the realm of international law there has been considerable progress in recent years towards acknowledging and addressing women's experiences of sexual violence during conflict. Where crimes of this nature were once covered in a complicit silence by both sides in a conflict, both law and the interpretation of law has shifted in recent years.

The Rome Statute which established the International Criminal Court recognizes sexual crimes as well as persecution on the grounds of gender. In cases before the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) rape has been confirmed as both a crime against humanity as well as an act of genocide. Other notable initiatives at an international level include Security Council Resolution 1325 which deals specifically with justice for women's experiences of violence during conflict and the 2004 Report of the Secretary General on 'The rule of law and transitional justice in conflict and post-conflict societies' – which confirms the need for women to be included in all initiatives which seek redress for past violations as well as assurances that these interventions will not revictimize marginalized and at risk groups, in particular women who have been victims of sexual violence.

Similarly, mechanisms for redress in the domestic sphere have increasingly become gender-sensitive and inclusive. This is particularly visible in the way in which national truth commission processes have built upon the best practices of preceding commissions. The first truth commissions in Latin America were 'gender blind' and either did not address sexual violence¹³ or omitted from their analysis the context of gender inequality. Subsequent commissions have incorporated women's hearings, dedicated gender units and international technical support as well as a broader and more gendered definition of their mandate and harms covered.

Policy Implications

- Whilst there have been important gains in the international legal arena with regards to redressing sexual violence during conflict, these have been tempered by the actual number of convictions secured which have been few and far between. Moreover, despite these early victories, subsequent cases of sexual

In the realm of international law, there has been considerable progress in recent years towards acknowledging and addressing women's experiences of sexual violence during conflict.

Mechanisms for redress in the domestic sphere have increasingly become gender-sensitive and inclusive.

¹² Rehn and Johnson Sirleaf, *supra* n 4 at 89.

¹³ As late as 1993, the El Salvador truth commission failed to report on rape during the conflict as it was not defined as a 'politically motivated' act but rather as a private crime.

Precedent setting cases make an important contribution to curbing impunity but these gains have little impact if they are not consistently applied.

International law can serve as a driving force for the reform of national law and the encouragement of domestic prosecutions of sexual violence.

International institutions and particularly peace-keeping operations are in a unique position to support the reconstruction of local police and courts.

violence have not received the same levels of attention.¹⁴ Precedent setting cases make an important contribution to curbing impunity and sending a message that these violations will be treated with the condemnation due such atrocities, but these gains have little on the ground impact if they are not consistently applied or given sustained attention.

- Beyond the individual cases, international law is in a unique position to serve as a driving force for the reform of national law and the encouragement of domestic prosecutions of sexual violence. This is important as access to justice for the vast majority of women occurs at this level. With regards to legal reform and implementation, the Rome Statute has again been a positive step in this regard. By recognizing gender persecution and requiring state parties to bring their own laws into conformity with the provisions of the Statute, the ICC can influence the adoption of domestic remedies and thus broaden access to justice for women in post-conflict states.¹⁵ Again, real impact will require follow through: As states rarely have the political will to prosecute cases of this nature, progress will entail the prioritization of these crimes at an international level with the backing of a credible threat of referral to the ICC.
- Ensuring access to justice for women post-conflict also entails the rebuilding of national justice systems, legal reform and the implementation of effective policing bodies. International institutions and particularly peacekeeping operations are in a unique position to support the reconstruction of local police and courts and address the vacuum often left by the absence of these institutions in a post-conflict period by taking over the functions whilst working to establish new ones. Violence against women in particular flourishes in a context of general insecurity, impunity and an absence of judicial mechanisms. United Nations Mission in Liberia (UNMIL) has played a positive role in addressing widespread and endemic levels of violence against women in that country as well as working with local police to rebuild and reform to meet these challenges on their own.¹⁶

14 Diane F. Orentlicher, 'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency,' *International Journal of Transitional Justice* 1(1) (2007): 10-22.

15 This assumes a functioning and effective judicial system which is often absent post-conflict and as such, international support for legal reform needs to be a coordinated effort which targets both law reform as well as the reform of institutions to serve all citizens where they previously may have been the preserve of only certain groups.

16 Action Aid, 'UNMIL: International Engagement in Addressing Violence against Women. Recommendations for Change' (2007).

4. Gender Balance

Women's participation in all spheres of decision-making and policy formulation is both a form of justice and redress and a necessary element of real democratization. No policy process or institution can be credible which fails to incorporate the participation of a majority of the population; and this holds equally true for forums which determine and implement transitional justice policies. Moreover, marginalization and exclusion are often at the heart of the conflict being addressed, and transitional justice mechanisms are intended to both address these causes as well as contribute to the creation of a new society. Creating mechanisms which incorporate the voices of women and women's experiences begins to address old patterns of exclusion and actively lays down new patterns of engagement for the state. By doing so, it contributes to democratization in valuing equal participation in the public sphere, as well as vertical reconciliation as trust is built between previously marginalized populations and state institutions. Beyond being an important end goal in itself, gender balance in all arenas of policy and implementation is a factor in sound policy formulation and implementation as it brings to the table an increased range of skills and perspectives.¹⁷

Despite a recognition of the need for gender balance¹⁸ in all policy processes concerned with dealing with the legacy of past crimes, actual progress towards this objective has been inconsistent. A United Nations Development Fund for Women (UNIFEM) study on Security Council Resolution 1325 (Women, Peace and Security) notes that rarely have women been 'consulted about the form, scope and modalities for seeking accountability. Women's stake in these processes has been minimized or denied and, in most cases, crimes against them go unrecorded.'¹⁹

Policy Implications

- Democratization and social justice necessitate that women be involved at every step of post-conflict reconstruction. Pressure should be brought to bear by international institutions and donor agencies for a minimum number of seats to be reserved for women during peace negotiations and in all forums where decisions are being made regarding justice for past crimes.

Rarely have women been 'consulted about the form, scope and modalities for seeking accountability. Women's stake in these processes has been minimized'.

¹⁷ The UN for example has found that peace operations with higher levels of gender diversity in their staffing have resulted in increased effectiveness in the overall mission, Schmeidl, supra n 2 at 19. Some also argue that the inclusion of women into decision making forums leads to the improvement of the status of women in society more generally. This is a contested view and assumes a homogeneity of women's interests which is false. Impact also depends on a range of factors such as the type of political system, institutional reform and the overall importance ascribed to values of democracy and inclusion. But whilst impact on outcomes is a factor, women's inclusion in all spheres and levels of policy is on its own a critical component of a just democratic system.

¹⁸ For an overview of 'gender balance' and its coverage in international policy documents see 'Women's Initiative for Gender Justice on "What Is Gender Balance?"' in Vasuki Nesiiah et al. *Truth Commissions and Gender: Principles, Policies, and Procedures*, International Center for Transitional Justice (July 2006), p.11.

¹⁹ Rehn and Johnson Sirleaf, supra n 4.

- A space at the table does not however guarantee that these voices will be heard. To increase effectiveness and impact, international agencies should work with local civil society, and particularly women's organizations, to build the capacity and expertise necessary to strategically represent the needs of previously marginalized constituencies during these deliberations.
- International agencies must reflect the practice they preach. Many such organizations continue to be dominated by men, particularly in those missions operating in a post-conflict context and particularly at higher levels of responsibility. To date, only 2 of the 27 UN peacekeeping missions in post-conflict countries have been headed by women.
- The full and equal participation of women is a goal in and of itself, it does not however necessarily lead to gendered policy. Equally important is the participation and involvement of gender experts – both men and women – at all stages of peace negotiations, and particularly during the foundational discussions on transitional justice policies. This incorporation of gendered expertise should extend to all planning, implementation and evaluation of programs conducted by external agencies in a post-conflict context.

5. Beyond Inclusion

While recent debate in the field of transitional justice has revealed a growing recognition of gender justice as an indivisible component of the overall post-conflict justice and peace agenda, there are huge challenges which remain to be addressed. As the previous sections demonstrate, gains thus far have been predominantly concerned with increasing women's representation in existing mechanisms and addressing experiences of sexual violence. Both of these objectives are of fundamental importance, but neither can achieve in isolation the transformative justice required for sustainable peace and reconciliation.

New laws, seen in isolation, reduce women's experiences of conflict to only that of sexual crimes. They do little to challenge the fundamental assumptions of transitional justice mechanisms; the ways in which these assumptions are gendered or the extent to which such mechanisms take cognizance of or strive to further gender equality and justice as part of a 'justice' agenda. Whilst it is essential to make visible the use of rape as a weapon of war, this alone will not address the system of unequal power relations and the use of violence against women as a means to enforce these unequal relations. Gender justice can only be furthered if there is a focus not just on the crime but its context, motivation, and location within a continuum of violence.²⁰

Gender justice can only be furthered if there is a focus not just on the crime but its context, motivation, and location within a continuum of violence.

There are two elements necessary to incorporating a gender justice agenda into the transitional justice field. The first requires acknowledging the specific needs of women in a system that has been designed to acknowledge and seek justice for crimes experienced and defined by men, as well as inclusion of women in all processes designed to deliver redress for the past. The second element moves beyond inclusion of women into existing mechanisms and instead seeks to examine the core assumptions of transitional justice from a gendered perspective, opening the field to a reassessment of these assumptions as well as the policies they inform. This second step moves beyond a limited reform agenda to addressing the root causes and consequences of conflict.

Incorporating a 'gender lens', challenging core assumptions

At its core, transitional justice is concerned with redress for victims of past violations and guarantees of non-repetition. South Africa, a country often cited as a 'model' in the field of transitional justice for its innovative Truth and Reconciliation Commission premised on public victims hearings and conditional amnesty, is also a vivid example of the failings of such a mechanism to contribute substantially to gender justice. Today, it is a country with higher levels of violence against

²⁰ Cynthia Cockburn, 'The Continuum of Violence: A gender perspective on war and peace' in Giles and Hyndman, *supra* n 11.

women than many countries currently mired in ‘political’ conflict.²¹ And it is by no means unique in this experience. Research across post-conflict societies reveals that violence does not simply cease with the signing of a peace accord, but for various reasons - including pervasive trauma, easy access to guns, militarized identities, normalization of conflict and the devastation of judicial systems – violence carries through and can even intensify during a transition period; playing out in ways which have continuity and a rooting in the causes and consequences of the conflict but which can also take on new forms.²² As one feminist writer observes, ‘[W]ars don’t simply end. And wars don’t end simply.’²³ Ongoing insecurity and violence once again intersect with gendered hierarchies and disproportionately impact on certain sectors of society, those historically in positions of less power such as women, foreigners, children, and the elderly.

High levels of violence, specifically experienced by certain sectors, challenge some of the normative foundations of transitional justice. For example, ‘non-repetition’ has been defined narrowly to cover only violent ‘political’ conflict which takes the same form as that experienced in the past. It has not been defined in a forward-looking manner which repudiates all violence, prejudice and discrimination. What can guarantees of non-repetition mean to those who continue to experience violations of their basic rights? The treatment of rape in war as exceptional, as has been the focus of international law to date, renders invisible the relationship between sexual violence in conflict and its ongoing and pervasive existence during and after the transition. These mechanisms may lend themselves to the denunciation of violence against women in a conflict setting, however their ‘exceptional’ focus does little to denounce violence in all forms, and in particular violence against women during peace.²⁴

The removal of war time rape from the continuum of violence against women in which it is inherently a part, the setting it aside as exceptional or not rooted in larger power relations, also reinforces a false dichotomy of conflict / post-conflict and detracts from the more fundamental goal of human security. Who defines what constitutes ‘the conflict’; what does it mean to be a ‘post-conflict’ society when so many women can still ask the question ‘how do we know we are at peace?’;²⁵ and of what value is a peace agreement if levels of violence experienced by women continue at conflict levels? As Copelon notes, ‘to emphasize as unparalleled the horrors of genocidal rape is factually dubious and risks rendering rape invisible once again....when the ethnic war ceases or is forced back into the bottle,

21 Rape Crisis (2006) reports that 147 women are raped daily in South Africa. It is estimated that only one in nine rape victims ever reports the crime and of these cases, only seven percent are successfully prosecuted (OneinNine.org.za, 2006). Fiona Ross, ‘An Acknowledged Failure: Women, voice, violence and the South African Truth Commission’ (unpublished paper, 2006).

22 For a critical overview of the experiences of violence during transition, its continuities and forms in the South African context, see Bronwyn Harris, ‘Between a Rock and a Hard Place: Violence, transition and democratization. A consolidated review of the Violence and Transition Project’ (Centre for the Study of Violence and Reconciliation, Violence and Transition Series, December 2005).

23 Enloe, *supra* n 7 at 193.

24 Debra L. DeLaet, ‘Gender Justice: a gendered assessment of truth-telling mechanisms’, in *Telling the Truths: Truth Telling and Peace Building in Post-conflict Societies*, ed. Tristan Ann Borer (Notre Dame, Indiana: University of Notre Dame, 2006).

25 Vanessa Farr ‘How do we know we are at peace? Reflections on the Aftermath conference,’ *Agenda* 43(2000): 23-31.

will the crimes against women, the voices of women and their struggles to survive be vindicated? Or will condemnation be limited to this seemingly exceptional case?’²⁶

Similar to the false dichotomy of conflict/ post-conflict is the assumption of a dividing line between political and criminal (or ‘private’) acts. This focus on the political in transitional justice is not informed by the experiences of victims, but rather superimposes a false structure which fails to account for the common impact of violations and insecurity; missing as it does the way in which violence transforms through the transition, the merging of the criminal and the political, and the ways in which Violence against women in particular becomes the response to transition, destabilization and the reinforcement of traditional norms. As a submission to the South African TRC highlighted, ‘A political rape has no different consequences. It has exactly the same reason behind it – a violent act against a woman... In fact the women [are] being punished as women.’²⁷

As the causes of violence against women, particularly during the post-conflict period, emanate directly from the political sphere – and gendered power relations are very much a political construct – the arena of what TJ mechanisms seek to address needs to be expanded beyond the current privileging of a patriarchal notion of what is ‘political’. Just as feminists have strived over the years to break down the false dichotomy of public/private which entrenches and renders invisible larger structures of oppression, similarly, the false distinctions of conflict/post-conflict and criminal/political implicitly entrenched in transitional justice policies must be equally addressed.

Other key assumptions that require revisiting include the very violations that transitional justice seeks to redress. International law reflects a male experience of conflict,²⁸ failing to take into account the specific impact conflict has on women’s lives – the consequences of a lack of access to basic services; ongoing insecurity; being forced to take on the roles of missing male family members but in a context of ongoing and systematic discrimination such as laws which prohibit women from inheriting land and property, force them to be married to a husband’s relative, prevent them from accessing services from the state without a male intermediary etc. For women the post-conflict period of rebuilding and restructuring their lives is very much focused on everyday survival needs. In this context, terms such as ‘justice’ and ‘peace’ take on a very different meaning. Women’s experiences of injustice during conflict are also a result of existing inequalities and as such are not necessarily the crimes that are codified in international human rights law. For example, given existing patterns of feminization of poverty, the aggravation of poverty when a state chooses to shift its spending from social services to military disproportionately affects women and women-headed households. Moreover, the gendered impact of forced displacement, of deliberate bombing and destruction of social infrastructure which places an increased burden on those assigned a care

The false distinctions of conflict/post-conflict and criminal/political must be addressed.

International law reflects a male experience of conflict, failing to take into account the specific impact conflict has on women’s lives.

²⁶ Cited in DeLaet, supra n 24 at 162.

²⁷ Gender and the Truth and Reconciliation Commission: A submission to the Truth and Reconciliation Commission, Prepared by Beth Goldblatt and Shiela Meintjes, May 1996. Available at <http://www.doj.gov.za/trc/submit/gender.htm>

²⁸ Levine, supra n 3; Vasuki Nesiiah, ‘Feminism and Transitional Justice: Towards a Critically Reflective Practice,’ Paper presented at *Conference on Women and Human Rights: Conflict, Transformation and Change* (May 19 – 20, 2005, Belfast, Northern Ireland).

giving role by society, are all ways in which conflict has a gendered impact; one which is not captured or redressed through the rights which are codified in international law, and as such, the rights which are the concern and focus of transitional justice.²⁹ A gendered analysis would require rethinking even what it is that we are seeking redress for. As noted above, the shift in thinking is beginning to occur as experiences of women are incorporated into the work of existing mechanisms, but this incorporation has been limited and has yet to secure justice for the full range of gendered harms.

A focus on gender can also begin to address some of the central questions regarding perpetrators – providing needed information for the prevention of future violence. For example, why is it that men who have never engaged in rape during peace time willingly engage in such acts during conflict? How does this transformation occur? What is the impetus? Given that rape is a crime of power, there is much theorization regarding the use of rape – against both men and women – as a means to humiliate the enemy, encourage ‘bonding’ amongst male soldiers, ‘reward’ combatants etc. But until more attention is paid to these questions little can be done to prevent these crimes. What role does militarized masculinity play in the mobilization of combatants? What does this mean when those combatants are returned to civilian life post-conflict? More attention also needs to be paid to the use of rape and sexual violence against male combatants and boys – this too is a result of gender constructions and militarized masculinities.

Reassessing key notions of truth, justice and reconciliation from a gendered perspective will undoubtedly complicate the field of transitional justice by destabilizing core assumptions.³⁰ But it will also lead to different questions being asked, different information being collected and therefore a fuller picture created which can inform policy that furthers a transformation agenda, rather than policy which reinforces unequal power relations.³¹ Incorporation of gendered analysis in research will give a more accurate picture when establishing TJ mechanisms as well as contribute to a more complete evaluation of these mechanisms and policies.

Given the limited space available it is not possible to examine each of the core areas of transitional justice and assess how incorporating gender would further the end goals of justice and reconciliation. As such, the following section engages with just one key mechanism – that of truth commissions – and outlines briefly the potential contribution they can make to gender justice, key challenges to date and select policy recommendations before making some further general recommendations for the field.

³¹ Enloe, *supra* n 7.

²⁹ Peru’s truth commission report for example documented that there were ‘important gender dimensions to the economic causes and consequences of human rights violations, such as the widespread displacement of women and children and a phenomenal rise in female-headed households in many communities affected by violence.’ Gender, Justice, and Truth Commission, World Bank (June 2006), p.28.

³⁰ Nesiah notes the dilemma for feminists in the need to ‘engage and impact a field that has such momentous consequences for women’ without being mainstreamed into the already constituted boundaries of that field. She states, ‘In sum, we may be charged with the seemingly impossible imperative to subvert the terrain that we want to impact.’ Nesiah *supra* n 28. See also DeLaet, *supra* n 24.

6 Truth Commissions

Truth commissions have over the past two decades expanded from their limited institutional origins just a step beyond commissions of inquiry, to bodies that today are expected to deliver a range of social goods not just for victims, but for post-conflict societies as a whole: documenting history, encouraging reconciliation, providing public acknowledgment for victims, social sanction for perpetrators and more. Most recently, truth commission reports have gained import as foundational documents of the new society;³² recording not just past history but providing a blueprint for legislation, policy and practice which address the root causes of the conflict and give impetus to the transition towards democracy and good governance.

As a World Bank report on gender and truth commissions notes, in this role, truth commissions have valuable potential for transforming gender relations post-conflict: 'A gender perspective in a truth commission's report can help bring about changes in existing laws and patterns of behavior that have contributed to inequality and discrimination.'³³ Moreover, '...incorporating gender-sensitive approaches into the work of the truth commission not only aids in making effective reparations, but also helps prevent future conflicts.'³⁴ This potential however has not been fully harnessed by truth commissions to date.

Early concerns with gender and truth commissions were very much focused on increasing the number of women commissioners, encouraging the employment of women statement-takers and providing a safe space for women to tell their stories of sexual violence. As noted previously, given the history of silence which shrouds women's experiences of sexual violence and the lack of accountability or justice with which these crimes have been treated, creating spaces to hear, record and acknowledge these crimes is no small contribution. This concern with 'adding women' however has not adequately examined the core assumptions of truth commissions and how these assumptions may or may not fit the needs of women, gender justice and individual context.³⁵

With regards to the focus on recording sexual violence itself, assumptions regarding truth, public acknowledgement and healing need to be questioned regarding their applicability to the specific nature of sexual violations. Are the assertions of truth as a road to reconciliation, or assumptions regarding the enactment of

³² World Bank, *supra* n 29; Nesiiah et al., *supra* n 18.

³³ World Bank, *supra* n 29 at ix.

³⁴ *Ibid.*

³⁵ There has been efforts in the most recent commissions, particularly East Timor, Sierra Leone and Peru, to move beyond the focus on recording sexual violations to including context, complexifying the role of gender relations during and after conflict as well as making key recommendations to further equality during the transition. These successes need to be consolidated and built upon further.

individual scenarios of confession and forgiveness, equally suitable to the nature and damage of sexual crimes? Are the gendered experiences of trauma adequately recognized and catered for in truth seeking mechanisms?

The focus almost exclusively on sexual violence reinforces the view of women as victims and prescribes meaning to the event externally. The focus on the one event severs it from a context of violations and oppression that women endure – as well as casts into the shadows the other roles that women have occupied. The issue of the gendered bias inherent in the selection of violations with which transitional justice concerns itself has been covered above. The truth commission is a forum where this emphasis has played out in a visible manner to silence women's complex identities. Some feminists have noted that because of what is valued by these institutions women are implicitly encouraged to assume a victim identity in order to be 'acknowledged'. The focus on 'the' incident strips it of meaning in a wider context, as well as subverts or fails to acknowledge resilience and the complexity of identities which are not frozen in a single identity of victim-hood.³⁶ It has been noted that in this regard there is actually a tension established between justice and healing.³⁷

Some have argued that truth commissions can in fact undermine gains made by women during conflict, recording and naturalizing a gender biased history through its focus on specific types of violations – ie, individual acts of violence perpetrated against largely 'politically active' figures or combatants, both of which categories have been historically defined to exclude women's roles – and marginalizing the spaces occupied and the contribution of women. As one activist notes: 'Societies focus in the aftermath on finding the truth about atrocities and on the reconciliation process; this diverts women from looking at the advances they made during war and distracts them from creating new blueprints. Because public reward goes to those who died, women's advances – the survival strategies that kept families alive and communities together – are erased from the historical record.'³⁸

The focus on the single violation also removes it from its context within a broader framework of oppression and strips it of the power to highlight the structural factors.

The focus on the single violation also removes it from its context within a broader framework of oppression and strips it of the power to highlight the structural factors.

In South Africa for example, African women's unlawful detention and the fear and intimidation they felt at the hands of white security officers was informed by a lifetime of oppression, humiliation, and abuse at the hands of a white-minority state and its officials. To unravel a single element of the overall picture and convey the story as a single event, devoid of context, does little to promote healing and acknowledgement; and may in fact do harm. The primary focus that was placed on getting women to speak of their sexual violations denied the range of other abuses women endured and shaped the stories that were heard; until 'a diversity of harms [became] a story of sexual violation'.³⁹ Whilst legal processes necessarily

³⁶ Ross, *supra* n 21.

³⁷ Katherine Franke, 'Gendered Subjects of Transitional Justice,' *Columbia Journal of Gender and Law* 15 (2006).

³⁸ Sheila Meintjes, Anu Pillay and Meredith Turshen, 'There is No Aftermath for Women,' in Meintjes et al., *supra* n 5 at 17.

³⁹ Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003).

need to focus on the actual crime, transitional justice mechanisms do not have the same limitations, and in pursuit of redress, these bodies need to acknowledge context and address consequence and pain in a more nuanced way which takes into account where women are, what their experiences are, and how their lives have been impacted by the violation.

Policy Implications

- International institutions and donor agencies should financially and technically support a research agenda during the transition. Local civil society should be given the resources necessary to carry out research, document victim's perspectives and needs and learn from the experiences of other countries through horizontal networks. Within this research agenda, specific attention should be given to documenting the cultural and political context, power relations and the specific needs of women prior to the establishment of a truth commission or decisions on their mandate or modes of operation.
- There should be no assumptions about what victims of gender based violence (GBV) need for healing and justice; this needs to be context-specific. For many victims, the difficulties of discussing one's suffering in the public sphere, particularly in a context where speaking of sexual violence will lead to a revictimization and other consequences for the victim, the assumptions of a truth commission regarding revealing and healing may not 'restore dignity' but may in fact compound harm. This has been well recognized by commissions to date and much effort has been expended on securing in camera hearings and ensuring adequate numbers of women statement takers. However the assumption does not hold true for all women in all contexts and the assumption should not be made that women don't want to speak out. As Nesiah notes, in East Timor and Sierra Leone many women wanted to speak of their experiences publicly.⁴⁰ Moreover, there has not been the same concerted focus on encouraging boys and men who have also been victims of GBV – and suffer the same consequences of shame and silence – to come forward. Gender based violence is not just about women and its use against male victims is equally about gendered power and may need to be addressed in unique ways.
- There must be adequate support given to those who do want to talk, and mechanisms of acknowledgement and redress constituted for those who cannot come forward. The linking of reparations specifically to the disclosure of the violation needs to be reassessed. Even for those that benefit from disclosure, once off unburdening of stories during a hearing is inadequate for full healing, and truth commissions should partner with and feed into a larger network of psycho-social support where available.⁴¹ Different spaces for therapeutic support

There should be no assumptions about what victims of gender based violence (GBV) need for healing and justice; this needs to be context-specific.

There must be mechanisms of acknowledgement and redress constituted for those who cannot come forward. The linking of reparations specifically to the disclosure of the violation needs to be reassessed.

⁴⁰ Nesiah et al., supra n 18. Also note that when a group of NGOs got together in 2000 to publicly convene a People's Tribunal to try the crimes committed against over 200,000 girls and women sexually enslaved by the Japanese Army during WWII – a crime that no local or international court has ever tried – 75 survivors came forward to tell their story. UNIFEM notes that what drove these women 'was the wish to tell their story before it was lost to history.' http://www.unifem.org/filesconfirmed/149/219_chapter07.pdf.

⁴¹ The therapeutic approach may itself be gendered and inappropriate to some contexts. DeLaet notes that in a cultural context 'where talking about one's vulnerabilities and problems is not seen as masculine, therapy may not be an appropriate method for fostering truth-telling by male victims of human rights abuses.' DeLaet, supra n 24 at 171.

should also be considered – ie, group hearings or the use of local or cultural traditions may not assist a truth commission to put numbers to the crimes, but they could be a more valuable space for victim-centered healing. Given that this is the first priority for commissions, and that in many countries devastation and poverty limits access to any psycho-social support beyond the commission itself, these options should be considered where appropriate. Where survivors do choose to testify in public, power over the story and exchange needs to be given to the survivor. The act of taking control over one's own story in a historical context of uneven power relations can be a form of redress itself and contribute to a sense of justice; it also allows the commission to model equal gender relations in its own dealings where the survivor is female.⁴²

- Public hearings should be harnessed for their potential value for public education. Special hearings on women that are held publicly should capture the full range of women's experiences not reflect them as passive victims or solely as victims of sexual violence. Truth commissions serve an important function in writing/ recording a new and ideally more inclusive history. The narrowing of women's stories in this forum merely perpetuates their ongoing invisibility from history and the marginalization of their roles and contributions; and further entrenches gendered notions of who is remembered and valorized and what the new society values and includes.
- Final reports can play an important role in guiding the transformation of society, however the best and most inclusive report serves little purpose if its recommendations are not implemented. It is here that multilateral and donor agencies can make an impact in holding governments to account in the implementation of recommendations, in particular those that concern gender justice where political will is often at its weakest. Tying loans, allocating dedicated program funding or incentivizing for the implementation of these recommendations can have substantial impact.⁴³ This is particularly important with those recommendations that could be easily implemented given sufficient political will, and which would have a meaningful impact. For example, in Sierra Leone, the TRC recommended that political parties and government reserve 30% of public office positions for women. However the recommendations of the TRC have yet to be implemented and this measure in particular has met with much resistance. Without external intervention it is unlikely that regulations for positive discrimination and historical redress will be adopted in the near future.

Multilateral and donor agencies can make an impact in holding governments to account in the implementation of recommendations, in particular those that concern gender justice.

⁴² See DeLaet, *supra* n 24.

⁴³ See World Bank report, *supra* n 29.

7

General Policy Recommendations

- *Reparations as a tool for gender empowerment.* Just as an exclusive focus on a specific violation or incident undermines the ability of truth commission's to contribute to a broader agenda of social justice, so too with reparations does the linking of redress to a single incident similarly weaken the potential contribution to social justice. Reparations programs have enormous potential to empower women, address social and economic inequality linked to gender and contribute to a broad social justice agenda. Using reparations policies can serve as a proactive vehicle to redress past harms which are not limited to 'the' violation, but rather serve to redress an overall context of oppression and violations of basic rights and a contribution towards furthering gender equality, empowerment and gender sensitive development.
- *Lesson learning from other fields.* Lessons learned from 'engendering' policy and practice in other fields should be assessed for their application and use in the field of transitional justice. For example, reparations policies in the past have failed to take into consideration the gendered hierarchies of individual families and the implications for how resources are provided, who benefits and what impact these programs have. In South Africa, reparations took the form of a once-off payment of approximately \$4000USD. Despite the fact that the majority of beneficiaries were African women, the policy failed to take into consideration both power differentials within families as well as the historic lack of access to bank accounts amongst this population. Local victims groups reported that the money was often deposited into male family member's accounts and women were given limited or no control over the resources.⁴⁴ In some cases, tensions over how money should be spent in households lent itself to family violence. Valuable lessons could be learned for reparations programs from the field of Gender Budgetary Analysis – that is the study of budgets and policy decisions for their gendered impact in order to inform how state spending can be used to target the causes of feminization of poverty; thereby breaking the cycle of poverty and furthering gender-sensitive development strategies that foster real equality. By only seeing half the picture, policies can in fact do more harm than good as they are unable to answer questions regarding how resources should be distributed or services delivered and what impact it will have on gender-relations or the ability of women to access these resources.
- *Integration and coordination.* An integrated approach is needed between various sectors and international and national bodies/donor agencies engaged in all aspects of transitional justice and reconstruction. For example, an integrated approach would coordinate psycho-social support for victims of sexual violence with health services and skills training to assist in reintegration and socio-economic stability in order to break the cycles of violence and poverty.

Valuable lessons could be learned for reparations programs from the field of Gender Budgetary Analysis.

⁴⁴ Research conducted for the report, Oupa Makhalemele, *Still not talking: Government's exclusive reparations policy and the impact of the 30 000 financial reparations on survivors.* (Centre for the Study of Violence and Reconciliation, 2004); see also, Beth Goldblatt, 'Evaluating the Gender Content of Reparations: Lessons from South Africa' in Rubio-Marín, supra n 6.

Also, Security Council Resolution 1325 on Women, Peace and Security should be given concerted attention and resources by all governments.

Women are not a homogenous category and creating policy that works means knowing who you're creating it for and what the context is.

Dedicated funding ensured that these issues could not be relegated to the margins or constrained by an absence of resources.

Support should be provided to women operating at a grass-roots level to bridge the divide.

- *Use of existing resources.* In planning transitional justice mechanisms, policy makers should draw upon and make use of relevant existing information which would allow them to understand the overall context with regards to gender relations. For example, *the Gender Empowerment Measure (GEM)* used by UNDP measures the relative empowerment of men and women and examines whether 'women and men are able to participate in economic and political life and take part in decision-making'.⁴⁵ Such information is vital to creating policy which is applicable to the context. Also, Security Council Resolution 1325 on Women, Peace and Security should be given concerted attention and resources by all governments and should guide all work that is done in a post-conflict setting. Beyond its implementation however, there is a need to revisit the original resolution to ensure that new developments in the field of transitional justice are adequately addressed.
- *Funding of research.* It is vital to have victim informed policies and research that is gender disaggregated and challenges cultural assumptions. For example, it is often stated that prosecution may not be a priority for women, however this is an untested assumption. Whilst the sequencing of social justice issues such as access to health, housing and education may be a first priority, it is difficult to conclude whether this is an 'either or' choice unless there is further research. TJ mechanisms must meet the needs of all victims, not only one part of this constituency. This data should similarly be disaggregated for age, location, socio-economic background etc. Women are not a homogenous category and creating policy that works means knowing who you're creating it for and what the context is.
- *Selective audit of mechanisms to date.* A multi-country audit should be commissioned to review the range of TJ policies and mechanisms to date and examine not just how women's participation can be increased but the relationship between transitional justice and gender justice; what these mechanisms have contributed to gender justice; how they should be restructured; and what additional policies or procedures would strengthen their impact to this end. There is scant research on these questions thus far.
- *Dedicated funding.* There is a need for dedicated funding to ensure that these issues are given adequate attention. For example, the dedicated funding provided by the UN's Office of the High Commissioner for Human Rights (OHCHR) in the case of the Peruvian truth commission and by UNIFEM in the form of technical support and expertise in the case of the Sierra Leone truth commission, ensured that these issues could not be relegated to the margins or constrained by an absence of resources.⁴⁶
- *Increased representation of women in all levels of international institutions operating in a post-conflict setting.* Initial evidence from Liberia in the months after the deployment of the UN's first all-women peacekeeping unit showed that not only were they making services more accessible to women who had experienced sexual violence but they were also becoming role models and challenging domestic thinking on the roles and abilities of women.
- *Support for local women's organizations.* Intervention, funding and technical support should be provided to women operating at a grass-roots level to bridge the divide post-conflict and forge reconciliation based on shared needs and concrete projects. This is not to essentialize women as being inherently peace-

⁴⁵ Schmeidl, supra n 2.

⁴⁶ World Bank, supra n 29.

ful, but rather to acknowledge that given the traditional roles and place in society occupied by many women, there is evidence across conflict zones of marginalized women seizing these roles in order to mobilize for change based on concrete projects. Examples such as the Women in Black in Yugoslavia, numerous initiatives by Hutu and Tutsi women to jointly care for children orphaned by the genocide in Rwanda, examples in Burundi, Israel/Palestine and elsewhere all demonstrate a mobilization across the divide based on concrete needs.⁴⁷ Support for these initiatives encourages community-level reconciliation whilst also supporting projects which address basic survival needs post-conflict.

- *The role of local mechanisms.* Local or traditional rituals can play a strong and positive role in community reintegration of victims and combatants as well as for healing and reconciliation as they are likely to resonate with the local population and have buy in. However some of these practices may perpetuate inequality or undermine the rights of women and girls – such as the practice of exchanging a girl of marriageable age as ‘compensation’ for a life taken or a crime committed. National governments and international institutions should aim to audit local practices in a country during the transition phase to look at what practices could contribute to reconciliation and reintegration, draw out the positive principles to be encouraged and address those that undermine justice and equality. Traditions are not static but evolve according to context. Building on the positive elements of these practices can contribute to establishing locally informed mechanisms for justice and healing and can also have a positive impact on society more generally by initiating the reform of practices that are antithetical to gender justice – and leave a legacy of evolved traditions that are more conducive to the rights of all.
- *Sustained and long term funding for a range of initiatives.* Psychosocial support for example requires long term investment and is not a one off event. Dealing with trauma is integral to halting the cycle of violence and implementing sustainable reconciliation, but victims of gender based violence in particular may not be ready to access psycho-social assistance until there has been some space and time from the actual conflict, and until immediate issues of security are addressed.
- *The need for a holistic and integrated approach.* Security is a precondition to reconciliation and given the pervasive levels of insecurity experienced almost uniformly by women in post-conflict situations, an integrated response is required which includes: rebuilding the justice and policing sector; implementing DDR programs which aim to demilitarize society and minds, not just collect weapons; removal of small arms from circulation; access to opportunities for both former combatants and marginalized populations; addressing of root causes; and rebuilding of social development networks amongst other issues. Donors and international agencies should create forums for coordination and regular feedback which involves and is driven by a national agenda. Also, there will be little impact if TJ mechanisms focus on gender equality within a context characterized by ongoing oppression and discrimination. There needs to be an integrated response with other key role players who are concerned with legal reform including the signing of all relevant human rights instruments, particularly CEDAW; establishment of quotas for all levels and spheres of government; public education to address cultural practices which disadvantage women, etc.

National governments and international institutions should aim to audit local practices to look at what practices could contribute to reconciliation and address those that undermine justice and equality.

Dealing with trauma is integral to halting the cycle of violence and implementing sustainable reconciliation.

⁴⁷ See Cockburn, supra n 14.

8 Conclusion

Continuing to sideline this perspective only contributes to an unjust and partial reconciliation premised upon pre-conflict inequitable power relations.

Engendering the field of transitional justice will entail a fundamental rethinking of the goals, structures and foundational assumptions upon which the field is built as well as the future incorporation of a gendered perspective in all levels of planning and implementation. Whilst this may destabilize accepted practices in the short term, continuing to sideline this perspective only contributes to an unjust and partial reconciliation premised upon pre-conflict inequitable power relations; laying the foundations for future violence and conflict and subverting the very goals transitional justice mechanisms are intended to secure.