

CHAPTER 05

TOWARDS AN ERA OF TRANSFORMATIVE JUSTICE

+ “We are not talking about any peace. We are talking about sustainable peace built on justice—and we call that real democratic peace.”

Syrian women's rights leader,
“The Pieces of Peace: Realizing Peace Through Gendered Conflict Prevention”¹

HIGHLIGHTS FROM THE RESOLUTIONS

+ Resolution 1325

Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes including those

relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions[...]



2000

2008

+ Resolution 1820

Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide, [...] and calls upon Member States to comply with their obligations for prosecuting persons responsible

for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice and stresses the importance of ending impunity for such acts

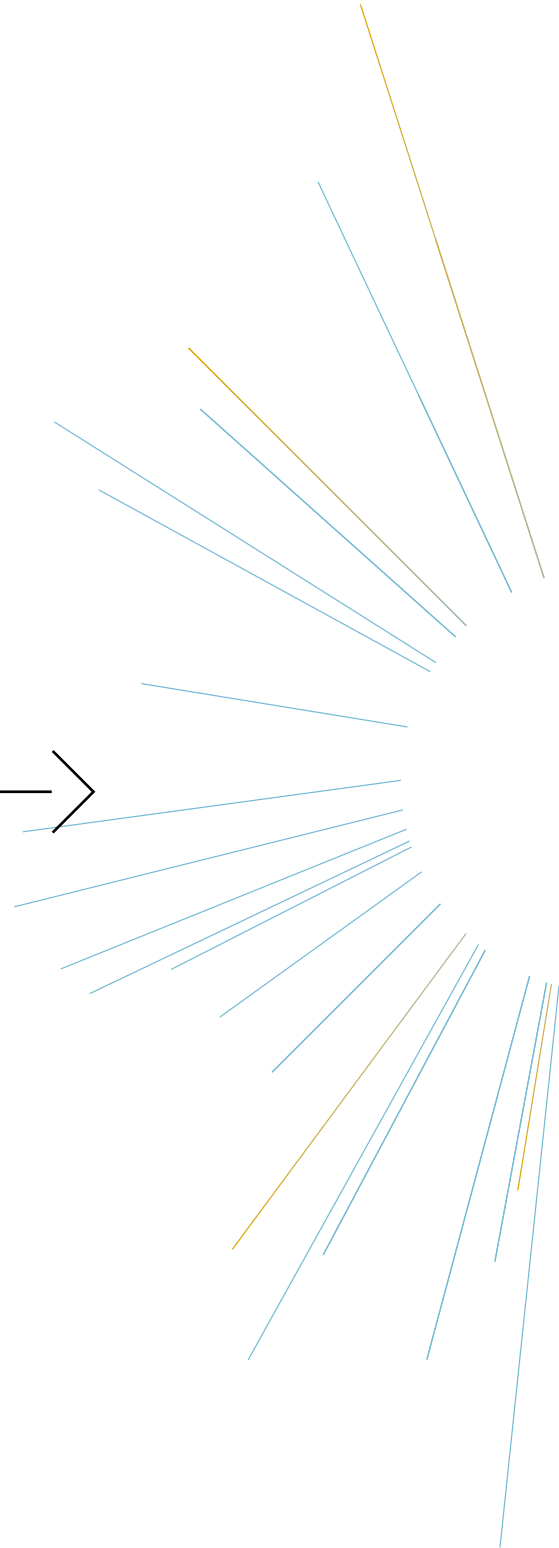
+ Resolution 2122

Recognizing in this regard that more must be done to ensure that transitional justice measures address the full range of violations and abuses of women's human rights, and the differentiated impacts on women and girls of these violations and abuses as well as forced displacement enforced disappearances, and destruction of civilian infrastructure

2013

+ Resolution 2106

Draws attention to the importance of a comprehensive approach to transitional justice in armed conflict and post-conflict situations, encompassing the full range of judicial and non-judicial measures, as appropriate



Among academic circles and women's rights practitioners, there is a debate today about the nature and quality of justice in situations of armed conflict. For some, the priority should be given to individual justice, punishing the perpetrator and creating a system of deterrence so such acts do not occur again. For others, justice must be ultimately seen from the perspective of the larger community; how mechanisms and processes of justice, while giving recourse to individuals, also help societies to heal and recover from past violations and move toward a sustainable peace.

Consultations around the world provided a clear indication that individual justice is essential for all women who have been victimized. They have a strong sense of grievance and are deeply offended by and often insecure about states of impunity that are granted to perpetrators in certain post-war situations. For example, after a Gacaca trial in Rwanda that had encounters between victims and perpetrators but allowed them to go back to living in the same communities, one woman asked angrily, "So you want me to go back and live next door to the man who raped me and killed my husband and sons?" Individual justice for women like her is very important and necessary, and must be part of any justice framework that deals with conflict situations.

At the same time, in Global Study consultations across the globe, few issues resonated more universally than women's demands that justice be treated as inseparable from broader concerns about the wellbeing of their communities. For women, whose experiences of violence are directly related to their unequal status, justice is as much about dealing with the past as it is about securing a better future that includes guarantees of non-recurrence.

INCREASING PROSECUTIONS AND CLOSING THE IMPUNITY GAP

The atrocities committed in Rwanda and the former Yugoslavia prompted the establishment of two International Criminal Tribunals in the 1990s (the ICTR and ICTY respectively), which saw significant

+ “The paucity of domestic prosecutions for crimes of sexual violence, the limited volume of international prosecutions for these crimes and the scale worldwide of crimes of sexualized violence, particularly in situations of armed conflict, continue to leave an impunity gap so distinct that it has become the focus of several Security Council resolutions.”

Ms. Jane Adong Anywar

Women's Initiatives for Gender Justice, UN Security Council Open Debate on Sexual Violence in Conflict, 2013

developments in international law on gender-based crimes. The governing statutes of these courts included the first explicit formulation of rape as a crime against humanity to be prosecuted, and the jurisprudence in these tribunals has secured

groundbreaking redress for crimes committed against women. A number of seminal cases at the ICTR and ICTY, as well as the Special Court of Sierra Leone have expanded the scope of international law on sexual violence, establishing key principles including: that rape can be an instrument of genocide;² that sexual violence can be a foreseeable consequence of other wartime violations;³ and that forced marriage can constitute a crime against humanity.⁴ Further, the jurisprudence of the courts defined the constituent elements of rape as a war crime and a crime against humanity, rape as torture and as enslavement and defined the contours of 'outrages against dignity.'

Perhaps the most momentous progress in this area in the past 15 years was the adoption of the Rome Statute, which established the International Criminal Court (ICC) and provides the most progressive and comprehensive legal framework on gender-based crimes to date. The Rome Statute codified past developments and went beyond them, explicitly recognizing rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization and other forms of sexual violence as crimes against humanity, war crimes and constituent acts of genocide. With 123 State Parties to the Rome Statute representing over 60 per cent of all nations, the ICC represents a shared resolve to look beyond national borders to a collective system of justice, with definitive priority given to seeking accountability for sexual and gender-based crimes.⁵

THE INTERNATIONAL CRIMINAL COURT – SECURING JUSTICE FOR SEXUAL AND GENDER-BASED CRIMES

Learning from the experiences of past courts, the ICC has emphasized the procedures required to ensure gender-based crimes are dealt with appropriately. The Office of The Prosecutor (OTP), one of the four organs of the Court, has specific obligations to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, to investigate crimes of sexual and gender-based violence (SGBV) and to appoint specialist advisors in the area. ⁶

One of the Rome Statute's significant innovations was the introduction of victim participation in court proceedings. This provided a concrete platform for victims to be formally recognized by the ICC, to participate in the legal process, and to express their views and interests via a legal representative. In order to ensure the protection of victims and witnesses, hearings can be conducted in camera, and the Court has the authority to order the use of pseudonyms, the expunging of names from the public record and for testimony to be presented by means other than in person including through technology enabling the alteration of pictures or voices.⁷ Other important provisions require staff in the Victims and Witnesses Unit in the Registry, responsible for witness protection and wellbeing, to have expertise in sexual violence-related trauma.⁸

The Rome Statute also provides for reparations to victims, either through direct contribution from the convicted individual or through the ICC's Trust Fund for Victims (TFV), which is the first of its kind. Since 2008, the TFV has provided support to over 110,000 victims of crimes under the jurisdiction of the Court, including tens of thousands of survivors of SGBV, through physical and psychological rehabilitation and material support.⁹

While the frameworks for securing justice for SGBV crimes are clearly in place, operationalization still has some way to go. Charges for gender-based crimes have been brought in six of the nine situations under investigation by the ICC, and in 14 out of 19 cases involving crimes of genocide, crimes against humanity



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FOCUS ON

Sexual violence: Some recent findings

International, regional and national initiatives on sexual violence, its prevention and prosecution have also led to a great deal of academic research with regard to sexual violence in situations of conflict. Though much of the research points to gaps in implementation, recent work in the social sciences has focused on the group dynamics that are central to the perpetration of sexual violence during conflict. Interviews with former combatants who engaged in acts of violence seem to suggest that the attitude and influence of leaders of armed forces and armed groups is a key aspect of

sexual violence during conflict.¹⁰ There is also similar research pointing to the fact that intra group dynamics are perceived by former combatants as one of the main causes, if not the main cause, of sexual violence in conflict and the need for combatants to perform before their peers.¹¹ As a result, even women have been involved in acts of sexual violence against other women. These research findings since 2006 highlight further the need for accountability, prosecution and deterrence as important instruments in countering the criminal behaviors of groups and their leaders.

and war crimes. However, in the three verdicts issued by the Court so far, there have been no convictions for gender-based crimes. To address this record, in 2014 the OTP released a Policy Paper on Sexual and Gender-Based Crimes in which it affirmed its commitment to the prosecution of these crimes. The Policy Paper marks an important shift in the OTP's methods, signaling the operationalization of a gender-conscious approach to prosecution which should allow it to better account for the full range of SGBV crimes committed.

REPRESENTATION OF WOMEN AT ALL LEVELS OF ICC STAFFING

Ensuring that women are represented among court staff, including in senior positions, can be an important means of making courts more accessible to women. From 1993-2004, in every case before the ICTY resulting in significant redress of sexual violence

crimes perpetrated against both women and men, women judges were on the bench.¹² The ICTR case of Akayesu, the first time that a defendant was convicted of rape as an instrument of genocide and as a crime against humanity, originally went to trial without charges or evidence of sexual violence, and with the prosecutor claiming it was impossible to document rape because women would not speak about it.¹³ It was only as a result of the advocacy of domestic and international women's civil society—and in particular, the efforts of the sole female judge on the bench¹⁴—that the charge sheet was amended to include these crimes after evidence emerged in testimony. While it cannot be presumed that women judges and staff will necessarily bring to their work a gender perspective that contributes to women's rights, in practice they are more likely to do so. This lends credence to the importance of applying the women, peace and security framework to the equal participation of women in all justice efforts.

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In October 2012, the Special Court for Sierra Leone was invited to brief the UN Security Council on progress made towards completion of its mandate.

Representing a first in the history of international courts and tribunals, all 'principals' of the Court at the time—the president, registrar, prosecutor and defender—were women, constituting one of the most significant symbols of women's advancement in leadership positions. Institutionally, the ICC pursues gender parity in its staffing—including providing for fair representation of female and male judges, OTP and registry staff and recognizing the need to include judges with legal expertise on violence against women and children. The ICC's current composition reflects these gender-responsive aspirations: women currently hold 47.9 per cent of all staff positions including the senior position of Prosecutor and women comprise 10 of the 18 judges.¹⁵ In addition, a number of women have been appointed at a senior level including the President of the ICC, Vice-President of the Court, Chief Prosecutor and Special Gender Advisor to the Prosecutor.

COMPLEMENTARITY AND NATIONAL LEVEL PROSECUTIONS

A founding principle of the ICC is its establishment as a court of last resort, focused on furthering the aim of building domestic justice capacities, and addressing

only the most exceptional criminal cases. In recent years, a number of States Parties to the Rome Statute have amended their penal codes to criminalize a broad range of gender-based violations in line with their obligations to domesticate the Statute. Research undertaken in 2014, which tracked State ratification of the Rome Statute, found that of the 122 State Parties studied, 95 had introduced subsequent domestic legislation that addressed violence against women (though not necessarily crimes related to international law). This suggests a possible cascade effect of international norms being translated and applied to the domestic sphere.¹⁶

As international law has evolved, there has been progress in the domestic prosecution of sexual violence as an international crime. During the armed conflict in Guatemala, indigenous women from the village Sepur Zarco were victims of sexual and domestic slavery for five years, held in a military detachment. In 2011, women from Sepur Zarco, with the support of two Guatemalan women's rights organizations, filed the first ever legal complaint in the Guatemalan justice system for sexual violence crimes committed during that country's conflict, in a case that highlights the army's use of rape as a weapon of war and of genocide.¹⁷ Colombian courts are also increasingly using international jurisprudence in national sexual violence cases. For example, Clodomiro and César Niño Balaguera were both former paramilitary members accused of abducting, raping and torturing a woman. In November 2014, the Criminal Chamber of the Supreme Court overturned a ruling from a lower court that had failed to find that the rape charge amounted to a war crime. In finding that the rape was closely related

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“Sexual violence is not an issue disconnected from the issue of participation [...] those affected by or living in fear of sexual violence are less able to participate in political processes and have less access to the justice system. Member States must increase the number of women in the judiciary [...] as a means of increasing women’s access to justice.”

NGO Working Group on Women, Peace and Security,
Statement of the Security Council at the Open Debate
on Women, Peace and Security, 2008

to the conflict, and thus amounted to a war crime, the Chamber relied extensively on decisions of the ICTY, among other sources. It convicted both accused for this crime and increased their sentences.¹⁸

Specialized chambers or courts have been established to handle conflict-related crimes in such countries as Croatia, the DRC, Liberia, Serbia and Uganda, and prosecution and investigatory units have been created to deal specifically with SGBV.¹⁹ Prosecutions of this nature require national jurisdictions to have the capacity to investigate and prosecute SGBV as international crimes, an effort to which increasing numbers of international actors are now contributing. For instance, the UN Organization Stabilization Mission in the DRC (MONUSCO) is supporting national military investigations and prosecutions of serious violations through Prosecution Support Cells.²⁰ MONUSCO, UNDP and OHCHR, in consultation with civil society and other partners, have collaborated with the ICC's OTP to: train Congolese officials in the investigation and prosecution of SGBV; provide support to investigation missions; reinforce judicial monitoring; conduct awareness raising and outreach activities, and put in place a witness protection system.²¹ These efforts have resulted in increasing numbers of convictions being registered.²²

Such actions are positive steps forward towards changing the culture of impunity for sexual violence crimes, as well as acknowledging the use of SGBV as a tactic of conflict. They also show the impact that international frameworks can have in catalyzing domestic accountability. Nevertheless, the actual number of domestic level prosecutions of SGBV crimes continues to be a fraction of the total crimes committed, and increased expertise, funding, capacity support and political will is sorely needed to ensure that these crimes are no longer met with silence and impunity.

Ultimately, realizing the full progress of the international justice system and its potential for victim redress will require not just the adoption of definitions of crimes at the domestic level, but the domestication of the full Rome Statute architecture. This ensures that States will have a comprehensive framework for investigating and prosecuting SGBV as international crimes, dedicated procedures for victim and witness support that are matched with adequate resources for their implementation, and provision for necessary reparations. Each of these components has a significant impact on women's access to justice, and all are part of the broader Rome Statute, but are often ignored in the narrower discussions on complementarity.

FOCUS ON

Initiatives to strengthen the capacity of national jurisdictions

Using Technology to Further Justice Efforts for Conflict-related SGBV

New technology is helping to capture conflict violations and better collect disaggregated data for evidence of sexual and gender-based crimes. For example, Physicians for Human Rights (PHR) are currently

developing MediCapt, a mobile application that health care workers can use to digitize standard medical information while conducting a medical exam on a sexual violence survivor, for use as evidence in courts of law.²³ While the main purpose of MediCapt is to aid sexual violence prosecutions at the national level, the technology also captures geospatial

metadata, allowing for real-time tracking and mapping of sexual violence cases that can expose patterns and ultimately aid in mass crimes investigations.²⁴ Mapping technology tools such as KoBo Toolbox can also assist in collecting data that describes trends in conflict-related human rights violations.²⁵

Team of Experts on the Rule of Law and Sexual Violence in Conflict

The Team of Experts on the Rule of Law and Sexual Violence in Conflict (TOE), established pursuant to Security Council resolution 1888 (2009), has focused its efforts on strengthening the capacity of national rule of law and justice actors, including in the specialized areas of criminal investigation and prosecution; collection, analysis and preservation of evidence; military justice system investigation and prosecution; criminal and procedural law reform; protection of victims, witnesses and justice officials; security sector oversight systems/bodies; and reparations.²⁶

Key examples of the TOE's work include the following:

- In the Democratic Republic of the Congo, in close collaboration with the UN system in-country, the TOE supported investigations and prosecutions by military magistrates and military mobile courts, and assisted national authorities to develop an implementation plan for the joint communiqué on the fight against sexual violence in conflict signed by the Government and the UN in March 2013.
- As a result of technical support from the TOE to the Guinean Panel of Judges, 12 military officers, including senior officers, and a gendarme have been indicted for crimes, including sexual violence, allegedly committed during the events of 28 September 2009.²⁷ A judicial expert deployed by the TOE continues to assist the Panel in investigations and case-building.

The TOE has worked with the Kampala-based International Conference on the Great Lakes Region (ICGLR) Training Facility on Sexual Violence to conduct training for police from ICGLR countries on the use of forensic evidence.

JRR-UN Women SGBV Justice Experts Roster

The unique sensitivities surrounding SGBV crimes and the extreme vulnerability of its victims has meant that specific expertise is needed, including in the methods for gathering information that will “do no more harm.” This includes special training in interviewing victims and witnesses without detriment to their safety, privacy and dignity, and skills related to appropriate documentation and storage of evidence for use in national or international justice processes. Furthermore, this expertise needs to be available rapidly, in a matter of weeks or even days, in order to have the most impact on situations.

UN Women and Justice Rapid Response (JRR), an intergovernmental roster, have developed an initiative with the Institute for International Criminal Investigations to train experts on investigating cases of SGBV as international crimes, and to place them on a dedicated SGBV Justice Experts Roster comprised of individuals who are available for deployment to international and national justice mechanisms. Thus far, UN Women, in close collaboration with OHCHR, has deployed SGBV investigators from the joint roster to all UN commissions of inquiry (COIs) established since 2009.²⁸ As knowledge and visibility of this specific facility and partnership has grown, requests for deployments have similarly risen, expanding demand for experts beyond commissions of inquiry and fact-finding missions to the International Criminal Court, regional mechanisms for accountability, national processes investigating conflict-related crimes and to support the UN's own efforts at comprehensive accountability outcomes.

MOVING BEYOND PROSECUTIONS: A TRANSFORMATIVE AGENDA FOR TRANSITIONAL JUSTICE

Support to transitional justice mechanisms and processes has become not only a critical component of efforts to strengthen the rule of law post-conflict, but a regular feature of post-conflict recovery, and integral to the peacebuilding agenda. Rooted in the premise that in the wake of mass human rights violations, the social fabric of society needs to be rebuilt, transitional justice comprises the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale human rights abuses. These may include both judicial and non-judicial mechanisms and processes including institutional reforms, prosecutions, truth telling, reparations programmes, traditional justice and the vetting of public officials.

Evidence from surveys focusing on attitudes and perceptions of transitional justice conducted by the Harvard Humanitarian Initiative with over 30,000 individuals in eight conflict-affected areas over a number of years revealed that women tend to be less informed, and report lower levels of access to both formal and traditional justice mechanisms than men.²⁹ The surveys—which are one of the largest and most comprehensive datasets covering these issues—found that gender-based differences in attitudes and opinions about justice cannot be assumed, and that the meaning of justice is context-specific. Context had a significant bearing on how women prioritized different mechanisms

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+ “Just offering justice and punishment for the perpetrators is not enough, as many women want reparations and rehabilitation. Without this, women won't come forward.”

Participant at the Nepal civil society consultation for the Global Study

of justice for instance. According to the surveys, in some countries women were more supportive than men of accountability and truth seeking, and of formal justice over traditional justice mechanisms. In other countries, the direct opposite was true. This underscores the critical importance of broad-based consultations with women and communities, including through perception surveys at the earliest stages of any transitional justice design process.³⁰

LIMITATIONS OF TRANSITIONAL JUSTICE MECHANISMS – THE EXCLUSION OF WOMEN'S EXPERIENCES

Over the past 15 years, there has been a proliferation of transitional justice mechanisms, in particular criminal tribunals and truth commissions, which have promised accountability for perpetrators and redress for victims. Many such mechanisms now emerge as a consequence of negotiations among warring factions to bring violent conflict to an end. However, waging wars and negotiating peace agreements have been, and


continue to be, predominantly male affairs. Women's exclusion at the peace table, and in peace and security decision-making more generally, adversely impacts the design of post-conflict justice mechanisms. As a result, to date, many of these mechanisms have paid limited attention to women's experiences of conflict, their priorities and needs, and the significance of pervasive gender inequalities and biases that limit women's meaningful participation at every level and stage of post-conflict transition.

The narrow scope of transitional justice mechanisms—which often fail to address the structural inequalities and vulnerabilities created by systems of war or repressive rule that affect women disproportionately compared to men—has far-reaching human rights implications. For example, the rights violations that have invariably been the focus of transitional justice mechanisms have been violations of civil and political rights, with a priority placed on either physical integrity or personal freedom.³¹ While this covers some of the harms women experience, it ignores the ways in which women and girls often do not enjoy the conditions that make the exercise of civil and political rights possible in the first place, or their disproportionate experience of socio-economic rights violations.

Moreover, this narrow focus fails to address the structural inequalities and vulnerabilities created by systems of war or repressive rule that affect women in disproportionate numbers and have far-reaching human rights implications. The mandate and scope of transitional justice measures is particularly relevant today, as we witness the direct targeting of women and girls' rights by

extremist groups—including the use of sexual violence as a tactic of terror but equally encompassing an attack on the full range of women's rights, from education to health care, family life and participation in public life. Documentation, justice and accountability for these crimes must equally place women's rights at the core of their response.

The crime of enforced disappearance is one issue that highlights the gender bias in the construction of harms prioritized by transitional justice mechanisms. While no exact figures exist, according to the UN Working Group on Enforced or Involuntary Disappearances, the overwhelming majority of reported cases of disappearances are of men.³² However, women constitute the majority of family members left behind, and in contexts of pre-existing gender inequalities, they suffer exacerbated social and economic discrimination as a result of, or aggravated by, the loss of a male family member.³³ Recent research on the impact on women of enforced disappearances that occurred during Lebanon's civil war (1975-1990) reveals extreme legal, financial and emotional hardship. Lebanon's lack of recognition of the legal status of the missing created obstacles to accessing bank accounts that were in the husband's name, obtaining identity documents for children, resolving issues of child custody, claiming inheritance, remarriage and the transferring of property from the husband to another family member.³⁴ Such experiences of systemic discrimination and marginalization are not captured or redressed through the rights violations focus of transitional justice mechanisms.

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TRUTH-SEEKING

Truth commissions have valuable potential for transforming gender relations post-conflict. They can provide an extraordinary window of opportunity to highlight neglected abuses, research the enabling conditions of gendered violations, provide a forum for victims and survivors to share their experiences of conflict, and recommend institutional reforms and the provision of reparations. While the full transformative impact of truth commissions is still to be realized, there have been notable advancements in their gender-responsiveness

since the adoption of resolution 1325. Importantly, there are emerging examples of truth commissions that are showing how the mandate and scope of transitional justice can be expanded to address the full range of violations women experience during conflict.

In the past 15 years, truth commissions in Peru (2001-2003),³⁵ Timor-Leste (2001-2006) and Sierra Leone (2002-2004) have been pioneers in integrating a gender perspective into their work. The Peruvian Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación) was the first in which sexual violence was fully acknowledged, and a commitment was made to mainstream gender into proceedings overseen by a special gender unit. Timor-Leste's Commission for Reception, Truth and Reconciliation (CAVR) is credited as being one of the best examples of incorporating gender into a truth commission thus far.³⁶ The Commission's gender unit was integrated in a wide range of areas, from statement taking to public hearings, and its victim hearings were able to examine sexual violence, as well as violations of women's socio-economic rights. This is reflected in the final report of the Commission that demonstrates how forced displacement resulted in a range of harms affecting women, from starvation and exacerbated vulnerability to sexual abuse.³⁷

The framework of Tunisia's Truth and Dignity commission (TDC) is another example of progress. The TDC, established under Tunisia's Transitional Justice Law, addresses violations of economic and social rights, including corruption and disappearances, as well as civil and political rights, and is mandated to develop a comprehensive individual and collective reparations programme for victims.³⁸ 'Victim' includes not only an individual who has suffered harm, but also groups and family members and "every region which was marginalized or which suffered systematic exclusion."³⁹ The ability of the Commission to consider group victims as well as socio-economic violations provides a framework that allows it to address the structural context that renders women vulnerable to violence, with transformative impact.

Specific measures are often required to ensure women's full participation in truth-seeking processes. These can include quotas for women's representation in leadership

roles, as well as policies and procedures for protecting the security and dignity of victims and witnesses, to encourage them to come forward. Other measures include compensation for time constraints and mobility such as travel and childcare costs; ensuring outreach and information processes take place in local languages; and if necessary, providing identity documents. Kenya's Truth, Justice and Reconciliation Commission (TJRC) for example, held 39 separate hearings for women across the country,⁴⁰ provided translation services, and covered transport and childcare costs where necessary to facilitate their attendance. The TJRC also engaged the services of counselors to offer psychosocial support before, during and after hearings.

In some circumstances where women are not comfortable coming forward to share their testimonies, alternative approaches may be necessary. In Timor-Leste, the CAVR undertook efforts to compensate for the underrepresentation of women's statements which included in-depth interviews and case histories of 200 female survivors that provided a body of oral history narrating women's experiences.⁴¹ In Liberia, rather than having to testify in person, the United Nations Development Fund for Women (UNIFEM, the predecessor of UN Women) organized peer meetings in affected communities where women could share their experiences and have them transmitted.⁴² In this context, partnerships with women's civil society groups can contribute a great deal to supporting a truth commission's capacity to address gender issues, and strengthening its legitimacy.

The final report and recommendations of a truth commission can provide an important road map for gender-sensitive societal reforms. The recommendations of Sierra Leone's TRC included gender-specific legal and institutional reforms, including the repeal of all discriminatory legislation, enactment of gender-progressive laws and ensuring that at least 30 per cent of candidates for public elections are women. As a direct result of the truth commission's recommendations, three women's rights Acts were passed by Parliament addressing key aspects of gender inequality. The best-designed truth commission will have little impact, however, if there is no political will to implement its recommendations.

FOCUS ON

Alternative truth-seeking initiatives

National-level or official truth commissions are not the only mechanisms available for truth-seeking in the aftermath of conflict. Women and women's organizations have often been at the forefront of designing and implementing informal or alternative truth-seeking initiatives, particularly when their needs and the needs of their communities for truth and justice have been ignored by official processes. For example, the Association of Women from Prijedor Izvor in Bosnia and Herzegovina spent 14 years creating a catalog of every person killed in the municipality of Prijedor from 1992-1995, including photographs and basic information about each person.⁴³

Women's Tribunals are one key example of women's organizations leading and designing truth-seeking and accountability mechanisms to secure acknowledgement of women's concerns, and advocate for official action. Although the judgments of these tribunals are not binding, they nevertheless help to end the silence that surrounds gender-based violence, and can create moral pressure for formal recognition of women's rights violations. Civil society organizations have held dozens of tribunals around the world, with themes ranging from sexual violence, to the rights of indigenous women, to the effects of neoliberal policies on gender inequality.

A few of these recent tribunals are highlighted below:

In May 2015, hundreds of women from all corners of the former Yugoslavia came together in a tribunal organized by women's groups, an initiative that in itself bridged political and ethnic divides. Its design was the result of a participatory process where survivors were consulted

and given ownership of the tribunal.⁴⁴ Women gave testimony over the course of three days, highlighting the continuity of violence before, during and after conflict, the consequences of gender-based violence on their families and communities, the climate of ongoing impunity and the importance of strong women's networks for overcoming barriers to justice and equality.⁴⁵

In December 2014, survivors of sexual violence in the armed conflict in Nepal testified before a women's tribunal hosted by the Nepalese National Human Rights Commission and convened by Nepalese women's civil society organizations.⁴⁶ The women, most of whom had not previously spoken publicly about their experiences, gave disturbing accounts of rape, torture, and subsequent abandonment by their families and communities. The Tribunal's jury, comprised of regional and international human rights experts, found violations of Nepalese law and international law, and made wide-reaching recommendations, including that the National Human Rights Commission urgently investigate the cases, take all other appropriate steps to achieve justice and include survivors in national reparations schemes.⁴⁷

In December 2011, a women's hearing was held in Cambodia, to examine experiences of sexual violence under the Khmer Rouge regime from 1975 to 1979. The panel of human rights activists who presided over the hearing found that victims had experienced violations of international human rights law and international criminal law, which required redress by the national and international community, including through criminal justice, reparations and guarantees of non-recurrence.⁴⁸

COMMISSIONS OF INQUIRY AND FACT-FINDING MISSIONS

In the last 15 years, the number of commissions of inquiry and fact-finding missions established by the UN has grown. A commission of inquiry is often the first opportunity for the UN to create a historical record of grave human rights violations. It can also pave the way for appropriate post-conflict justice and accountability measures including prosecutions. For example, the UN's International Commission of Inquiry on Darfur found that crimes committed in the region included 'widespread and systematic' rape and sexual violence on a scale that could amount to crimes against humanity. In light of this and other findings, the Darfur Commission of Inquiry led directly to a Security Council referral of the situation in Darfur to the ICC.⁴⁹ The Commission of Inquiry's report on Guinea established that at least 109 women and girls had been subjected to rape and other sexual violence, and that these crimes in themselves may have amounted to crimes against humanity. Several of those named as primary suspects by the Guinea Commission have been indicted in a Guinean domestic court—including former President Dadis Camara—demonstrating how such commissions can contribute at the domestic level to securing justice for SGBV crimes.

Given the important role that these investigatory bodies play in laying the foundation for transitional justice processes, a dedicated focus within them on SGBV can substantially contribute to more gender-sensitive truth, justice and redress measures.⁵⁰ Since 2009, every conflict-related UN commission of inquiry has included a gender advisor/SGBV investigator, seconded by UN Women to OHCHR, as part of the investigative team.⁵¹ These experts have highlighted the nature and extent of SGBV, and ensured that gender considerations are adequately addressed in investigations, and in analysis of violations of human rights and international humanitarian law. They have also tried to ensure that victims and witnesses of SGBV are interviewed without causing further harm, and that information concerning SGBV crimes is properly collected and documented.

Perhaps the strongest commission report thus far from a gender perspective has been the Commission of Inquiry on the Democratic People's Republic of Korea (DPRK).

Mandated by the Human Rights Council in 2013 to investigate the systematic, widespread and grave violations of human rights in the country, the Commission's final report includes findings in relation to specific gender-based crimes as well as the gendered impacts of all nine major areas of human rights violations investigated by the body. Specific violations against women documented include: pervasive gender-based discrimination, trafficking in women and girls, forced abortion and infanticide, sexual violence and marked gender and ethnic patterns in enforced disappearances.⁵² The report makes gender-specific recommendations to the North Korean State, including calling on the DPRK to address the "structural causes that make women vulnerable to such violations."⁵³ Following release of the report in 2014, both the General Assembly and the Security Council called for action to address the grave human rights situation in North Korea, with a number of countries citing the findings of the Commission in their statements.

The Commission of Inquiry on the Syrian Arab Republic established by the Human Rights Council in 2011 has for the past four years highlighted the prominent role SGBV has played in the conflict. The findings have been widely reported in the media and brought to the attention of the Security Council by both the Commissioners themselves, and by the SRSRG on Sexual Violence in Conflict.

The Human Rights Council has shown increasing willingness to include in the founding resolutions of these bodies, whether they be commissions of inquiry or fact-finding missions, inclusion of CEDAW as a framework for guiding investigations; explicit mention of SGBV crimes; and appropriate language from the Security Council's women, peace and security commitments to ensure greater coherence and a unified approach. The recently appointed fact-finding mission "to improve human rights, accountability and reconciliation for South Sudan"⁵⁴ notes that "persistent barriers to the implementation of Security Council resolution 1325 (2000) of 31 October 2000 will only be dismantled through dedicated commitment to women's empowerment, participation and human rights and through concerted leadership, consistent information and action and support to build women's engagement at all levels of decision-making."⁵⁵ In requesting a report by OHCHR to the Human Rights Council, the resolution specifically mentions the need to include violations of sexual violence within this briefing.

FOCUS ON

Guidance note on integrating gender in commissions of inquiry and fact-finding missions

The Office of the High Commissioner for Human Rights (OHCHR) is finalizing a guidance note on strengthening the ability of commission of inquiry and fact-finding missions to address SGBV by incorporating a gender analysis into their investigations, and integrating a gender perspective throughout their work.

Key recommendations include the following:

- Specifically include SGBV and gender discrimination in all mandates of COIs/FFMs.
- Integrate a gender perspective in all steps of the work of a COI/FFM including preparation, investigation, analysis and reporting.
- Ensure gender balance in staffing, as well as assessment of gender-sensitivity in the selection of commissioners.
- Include both a gender advisor and an SGBV investigator in the Secretariat team from the creation of a COI/FFM to the finalization of the report.
- Provide training/briefings for all investigators on gender-sensitive investigation, including the gendered dimensions of human rights violations and specific vulnerability of different categories of women.
- Adopt and adhere to standard operating procedures for investigating SGBV in accordance with international standards.
- Ensure appropriate gender-sensitive security and witness protection measures are in place.
- Integrate investigation of SGBV crimes into the overall investigation plan and strategy, together with a conflict mapping exercise that documents the range of violations experienced by women.
- Ensure coordination and collaboration with relevant UN entities, including UN Women, as well as with women's civil society organizations.
- Ensure that the final report includes specific recommendations in relation to SGBV crimes and gendered dimensions of human rights violations.

It is clear that having targeted expertise, inclusive mandates and the institutional will to investigate violations against women and girls in commissions of inquiry and fact-finding missions is profoundly affecting the effectiveness of these bodies. Follow-up action related to the findings of these bodies is not always as strong however. One possible way to ensure that findings from these bodies better impacts action is to encourage the growing informal channels of information sharing between these bodies and the Security Council, particularly in regards to informing country-specific deliberation and action for countries on the Council's agenda (see Chapter 11: *The Security Council*).

REPARATIONS

While criminal trials and truth-seeking are critical to fight impunity and reinstate the rule of law, these mechanisms alone cannot bring about the social transformation required to ensure such violations do not occur again, to deliver the redress due to victims or mitigate the consequences of these crimes for survivors and their communities. For these ends, comprehensive, sustainable and transformative reparations for victims are both a right and an integral aspect of peacebuilding.

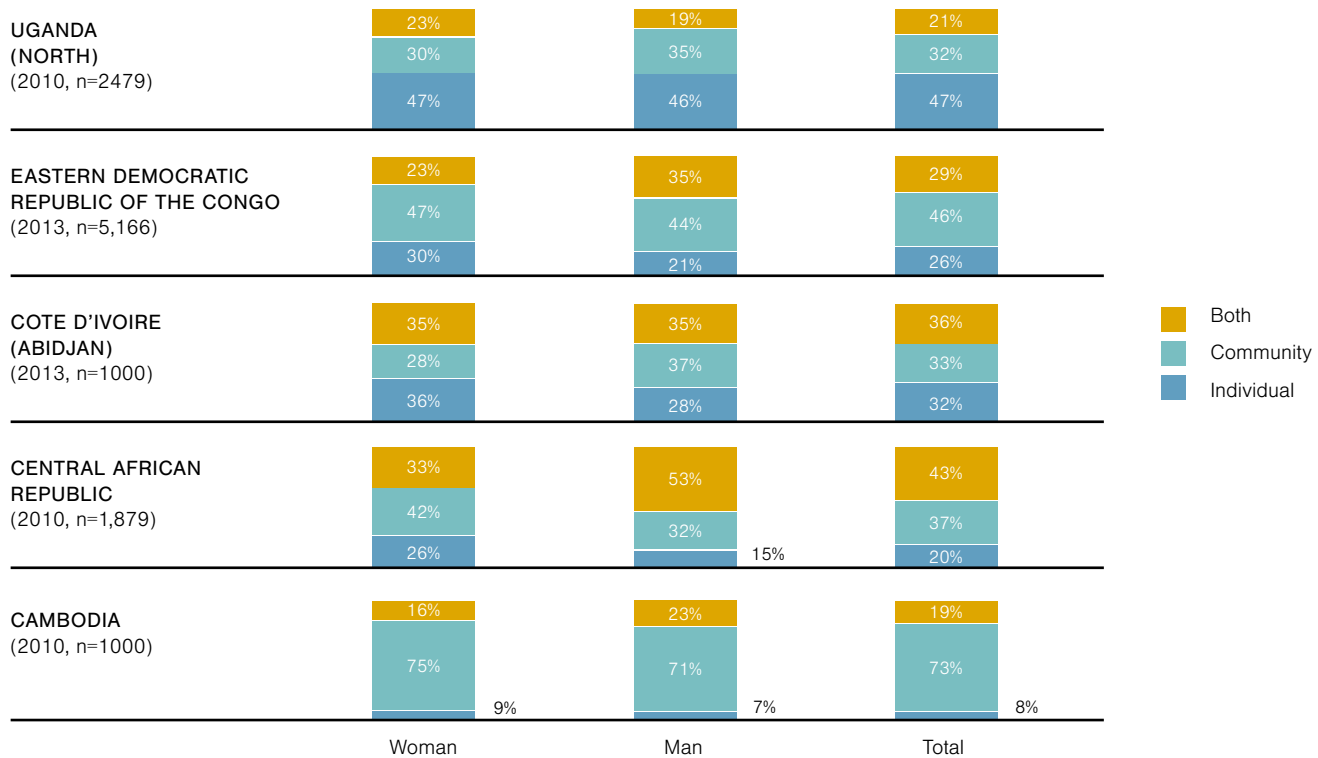
The International Criminal Court has a broad definition of reparations in its first judgment in the Lubanga case.⁵⁶ The measures suggested include financial compensation, restitution, collective reparations, legislative and administrative acts, apologies, and memorialization among others. Reparations have particular importance for women, as they 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.⁵⁷ Despite their potential however, reparations are the least implemented and funded justice mechanism post-conflict. Where programmes have been implemented, they have too often been piecemeal in nature, delayed by many years, and undertaken with little consultation—and ultimately little reparative value to victims.

+ “‘Transformative reparations’[...] means land restitution, coupled with land redistribution and access to credit, skills and means to transform that land into a source of livelihood. ‘Transformative reparations’ means providing fistula surgery to survivors of rape as well as income-generating skills.”

Phumzile Mlambo-Ngcuka
Executive Director of UN Women

The need to ensure that women are consulted and able to actively participate in reparations processes was underscored in the survey-based research study on transitional justice by the Harvard Humanitarian Initiative, not least because the study revealed differing perceptions towards reparations by women and men.⁵⁸ For example, in Côte d'Ivoire, women were almost three times more likely to mention financial compensation than men, while in the Central African

Percentage of respondents that expressed if reparations are provided they should be given individually/ to the community/both⁵⁹



Republic, this was the reverse. Women generally mentioned the need for psychosocial counselling support more frequently than men, with the exception of northern Uganda. When asked whether reparations should be provided individually, collectively, or both, respondents generally preferred collective reparations, again with the exception of northern Uganda. Importantly though, in all countries, a higher proportion of women than men favoured individual reparations.⁶⁰ This highlights the importance of ensuring that women are consulted and able to actively participate in reparations processes.

Over the past decade, policy and jurisprudence has converged on the need for reparations to be transformative in impact, particularly in relation to women and girls. The UN Special Rapporteur on Violence Against Women, its Causes and Consequences has noted that since violence perpetrated against individual women generally feeds into patterns of pre-existing

and often systemic marginalization, “measures of redress need to link individual reparation and structural transformation.”⁶¹ Still, too few reparations programmes correlate with women’s experiences of conflict, leaving out redress for reproductive violence, for instance—including forced pregnancy, forced sterilization and forced abortions—as well as the range of socio-economic violations women experience during conflict.⁶²

Progress in approaches to reparations

There has been some progress, however. For example, through Morocco’s Equity and Reconciliation Commission, a gender-responsive approach to reparations was achieved by acknowledging specific harms done to women (including relatives of direct victims), recognizing discrimination in previous approaches to reparations and defining sexual attacks as a category of violations to be compensated.⁶³

Reparations in the form of land restitution can be crucial for women, especially in countries where their lack of access to land and inheritance rights as a matter of law and practice pre-conflict can result in heightened uncertainty, insecurity and economic marginalization post-conflict. Colombia's Victims Law includes restitution of land to those who have arbitrarily lost it or have been displaced as a result of the internal armed conflict. The Law's provisions include special measures to protect women's rights, such as giving priority to female heads of households in judicial and administrative processes, providing for specialized attention for women in the processing of requests for restitution, and priority access to other benefits such as credit, education, training and subsidies.⁶⁴ The linking of the reparations processes

with land and property reform is one element of a transformative approach to reparations.⁶⁵

Perhaps the greatest progress in the area of reparations in recent years has been the increased political willingness to provide reparations for victims of conflict-related sexual violence. Bosnia's war crimes court issued a landmark ruling in June 2015 that granted the first ever compensation to a wartime rape victim.⁶⁶ A number of countries are also developing specific legislation in this area. In 2014, the Government of Libya issued a decree calling for the award of reparations to victims of sexual violence during Gaddafi's rule and the 2011 Libyan uprising.⁶⁷ The decree offers 12 measures for relief, including monetary and psychological support for victims. While the Reparations Commission remains

FOCUS ON

The Secretary-General's Guidance Note on reparations for conflict-related sexual violence

In 2014, the UN released the Secretary General's Guidance Note on Reparations for Conflict-Related Sexual Violence, which informs the UN's engagement on reparations. The note outlines eight key principles for securing effective redress:

- Adequate reparation for victims of conflict-related sexual violence entails a combination of different forms of reparations.
- Judicial and/or administrative reparations should be available to victims of conflict-related sexual violence as part of their right to obtain prompt, adequate and effective remedies.
- Individual and collective reparations should complement and reinforce each other.
- Reparations should strive to be transformative, including in design, implementation and impact.
- Development cooperation should support States' obligation to ensure access to reparations.
- Meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured.
- Urgent interim reparations to address immediate needs and avoid irreparable harm should be made available.
- Adequate procedural rules for proceedings involving sexual violence and reparations should be in place.

to be established, the decree has been heralded as an unprecedented move on the part of the Government. The Kosovo Assembly approved a law in 2014 that legally recognizes the status of civilian victims of sexual violence during the armed conflict,⁶⁸ and Croatia's Parliament has recently adopted a law that provides all sexual violence victims of the war with a once-off payment, monthly compensation for the rest of their lives, and access to legal aid, compulsory and additional health insurance, regular annual medical check-ups and accommodation in institutions providing services and assistance to war veterans and war victims.⁶⁹

As with all measures of justice for sexual violence crimes, the design of reparations programmes needs to bear in mind the specific challenges of access and stigma, and be guided by gender and cultural sensitivities including the principle of 'do no harm.' Attention should also be paid to adopting procedural rules that protect the interest of the victim and provide reasonable and appropriate measures for burden of proof, which are more difficult in relation to conflict-related sexual violence crimes. Administrative reparations programmes may be important tools for providing redress for these specific violations.⁷⁰

In Peru, a variety of mechanisms was used for registering victims, including declarations of community leaders and analysis of contextual information.⁷¹ In Chile, the payment of reparations for torture did not require victims to disclose or prove their experiences of torture. The fact that they had been detained in a center known for its extensive use of torture meant that compensation was paid without needing to meet a burden of proof.⁷² Such innovative thinking could be applied to sexual violence crimes to find ways around the need for public disclosure and burdens of evidence.⁷³

Connecting reparations to broader development policies and actors

While the right to reparations and the right to development are distinct and separate, coordinating programming, strategies and actors can assist in better realizing both rights. For reparations

programmes to be fully effective, particularly in contexts of large-scale violations and poverty, complementary linkages must be made to targeted development policies and development actors, even where reparations are limited to individual forms of redress. For example, providing some form of specialized healthcare to victims of the most serious violations requires a functioning healthcare center close to where victims live. Providing scholarships to children of those disappeared, raped, tortured or killed requires a functioning school that can provide quality education.⁷⁴ Moreover, in contexts where entire communities have been affected by conflict, linking individual reparations to community reparations and targeted development programmes can mitigate against creating new fault-lines for grievance.⁷⁵ For example, a once-off cash payment, even if significant, cannot address the poverty of marginalized communities that can be a root factor of conflict.

Related to this, while some victims prioritize individual justice—punishing the perpetrator and creating a system of deterrence so such acts do not occur again—for others, justice must ultimately be seen from the perspective of the larger community. It is important to consider thus how mechanisms and processes of justice, while giving recourse to individuals, also help societies to heal and recover from past violations, and move towards a sustainable peace. Reparations that are both individual and collective can complement prosecutorial justice, ensuring both redress and societal rebuilding. Collective reparations can also include symbolic measures, such as memorials, apologies and reburials. For women, symbolic acknowledgement of the violation of their rights can also serve as a reassertion of their equal rights as citizens.

Managing expectations

The International Criminal Court, in its first case, set out a comprehensive framework for reparations.⁷⁶ The Trust Fund for Victims at the ICC, set up by State Parties, has been left with the task of implementing these reparations with very few resources. The

Trustees are in the process of preparing an implementation plan with a great deal of difficulty. Though the call for reparations is fundamentally valid in terms of theory, in practice few of the institutions, especially in conflict societies, have the capacity to meet the needs of innovative reparations programmes. It is therefore crucial to manage expectations from the beginning, to ascertain what is realistic and possible before promising reparations to victims.

WOMEN'S ACCESS TO JUSTICE IN PLURAL LEGAL SETTINGS

International humanitarian law, resolution 1325 and the six subsequent resolutions on women, peace and security, encourage States to promote and protect women's access to justice throughout post-conflict accountability processes, and equally to undertake legal and judicial reform to ensure access to justice and rule of law for all.


Approximately 80 per cent of claims or disputes are resolved by parallel justice systems, indicating that most women in developing countries access justice in a plural legal environment.⁷⁷ Yet, in practice, legal pluralism can pose particular challenges to women, especially where State institutions are weak as they so often are in the aftermath of conflict. In particular, delivering justice for women in the midst of active conflict is inherently

difficult. Formal justice systems are either devastated or undermined, and the State may have lost the trust of its people. In these situations, informal justice institutions and the customary laws they mediate are often the only sites of justice and conflict resolution to which people, in particular women, have access, and these often do not provide positive outcomes for women and girls.

While it is a contested concept, legal pluralism refers to systems in which various laws and legal orders coexist. These may include various combinations of codified civil law, religious law, indigenous or customary legal codes, community arbitration or other dispute settlement procedures. They can be formal or informal. Some orders are recognized and sanctioned by the State, while others are not. While plural legal orders can generate uncertainty and challenges, they can also offer opportunities for women to negotiate and advance their justice aims.⁷⁸

Somalia is an example where multiple, overlapping and sometimes contradictory legal systems together with cultural norms, undermine women's rights. Under customary law, a Somali woman who has been raped can be forced to marry her attacker. Rape is seen as an issue to be resolved between two clans in an effort to keep the peace, protect the honor of the victim, eliminate social ostracism and ensure full payment of her dowry by the attacker's clan.⁷⁹ In contrast, the formal law carries a punishment of imprisonment, and Islamic Law imposes the death penalty for rape if the perpetrator is married, and 90 lashes for an unmarried accused.⁸⁰ Three systems lead to three different outcomes for the same crime based on differing concepts of rights and the rights bearer.

Since the aim of many non-State justice systems is the restoration of peace rather than the provision of redress for individuals, this can often mean discrimination against women is perpetuated and their human rights denied.⁸¹ In some contexts, 'forum shopping' can theoretically offer choice to litigants, allowing them to explore options for a favorable outcome. However, this choice is rarely meaningful for women on account of community and social

 *In practice, legal pluralism can pose particular challenges to women, especially where State institutions are weak as they so often are in the aftermath of conflict.*

FOCUS ON

Informal justice systems and the role of traditional and religious leaders

As the majority of people seek justice through informal justice systems, especially in conflict and post-conflict settings, religious and traditional leaders can play an important role in protecting and promoting women's rights.

Legal orders which apply religious, customary or indigenous laws tend to be dominated by men and perpetuate patriarchal interpretations of culture, provide differential protections to men and women and rarely punish gender-based violence in particular.⁸² However, customary law is adaptable and can change in ways that reflect evolving values in society. For example, in Afghanistan, religious leaders are among the traditional 'gatekeepers' for making

local decisions, especially with respect to women's rights. While at the national level women rights have encountered resistance, at the local level religious leaders have shown interest in protecting women's rights within an Islamic framework. Civil society organizations have been working with Islamic scholars regionally to develop a curriculum on Women's Rights in Islam. Imams who have participated in the project have referenced in their sermons women's religious and legal rights to familial inheritance, employment, education, participation in political life, and decision-making over their own bodies. While it is difficult to gauge the effect of these sermons, impact studies of various projects show that rates for resolving cases in favor of women disputants improved three-fold.⁸³

pressures.

While the challenges to securing women's access to justice in fragile and post-conflict settings are considerable, legal pluralism can be utilized in a positive way, with programming interventions based on a context-specific analysis of how women navigate and use different justice systems, why they choose one over another, what the outcomes are, and how this impacts on their lives.⁸⁴ There are a number of examples of governments, international actors and women's organizations engaging with different legal orders to bring about positive change.

Institutional reforms

Plural legal systems, including in post-conflict contexts, can be harder to reform where customary or religious law is exempted from constitutional equality provisions. Further, even where powers held by traditional and

religious leaders are constitutionally mandated to be exercised in line with constitutional principles, including gender equality, in practice the reality for women is still often one of systemic discrimination.

In Burundi, although the principle of gender equality and non-discrimination on the grounds of sex is enshrined in the 2005 Constitution,⁸⁵ important aspects of family life such as inheritance and matrimonial property schemes are still governed by customary law, which discriminates against women⁸⁶ by preventing them from inheriting land from their fathers or husbands.

As the aftermath of conflict is almost always accompanied by constitutional and legislative reforms, it is an important moment of opportunity to entrench gender equality and equal rights across all legal systems. As noted, legislative reform in itself is no guarantee of social change. However, bringing plural legal systems in line with international legal standards can play a seminal role in developing a shared

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understanding of human rights. Affirming the primacy of constitutional laws over religious, customary and indigenous laws, as well as mandating that they are consistent with constitutional norms on equality is a necessary step towards ensuring the protection and promotion of women's rights.⁸⁷

Women's participation in accessing justice

Women's participation in all sites and forms of justice can have transformative impacts in itself. In Timor-Leste, grassroots women leaders' work with the village chief (or 'succo') system has resulted in an increased commitment by succo chiefs to refer gender-based violence to the formal justice system. This has successfully reduced the incidences of domestic violence. Women who participated in such mechanisms have testified about their new-found confidence and ability to understand peace and security issues, which in turn has enabled them to take action on behalf of their entire communities.⁸⁸

Data has shown that in the formal justice sector, employing women on the frontlines of service delivery (as police, corrections officials, legal representatives and court administrators), as well as at the highest levels of policy influence (as legislators, judges and

in professional oversight bodies) can create justice systems that are more gender responsive.⁸⁹ For example, increasing the number of female police officers correlates positively with an increase in reporting of sexual violence.⁹⁰ Equally, in considering the specific needs of women prisoners, including in regard to access to justice, an appropriate gender balance among prison staff is crucial to ensure these needs are met and rights are respected. Women's participation in the judicial sector can be effectively facilitated by programmes that encourage women to pursue legal careers, and that support educational opportunities or employ quotas.

Across all of these approaches to securing justice there is a need to ensure that access is premised on an understanding of the rights bearer. This requires accounting for differentiated needs associated with factors including age, culture, ethnicity, religion, socio-economic status and locality, which must equally be considered in the design of response.


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Access to justice while conflict rages

In the midst of conflict, access to justice is at its most scarce, especially affecting marginalized and minority groups, including women and girls.⁹¹ Legal structures that should protect the population tend to be inaccessible and/or destroyed. Even traditional mechanisms to resolve disputes can be compromised, as traditional leaders themselves may have been displaced, imprisoned and sometimes tortured and killed. For example, in Darfur, while rape and other forms of SGBV are endemic to the conflict, access to justice, particularly for women and girls, is almost non-existent. Many courts have been shut down, either by the government or by the rebels, or are simply frozen by the violence and displacement.⁹² In some areas taken over by the Sudanese Liberation Army (SLA), customary courts were closed and replaced with military-like courts, which are reported to favor combatants over civilians and certain ethnic groups over others.⁹³ The conflict has also made it harder for traditional mechanisms to resolve disputes as traditional leaders themselves have been displaced, imprisoned and sometimes tortured and killed. It is clear that in situations of conflict, the operation of both formal and informal justice mechanisms are compromised, impacting in particular access to justice for marginalized and minority groups including women and girls.⁹⁴ The UN has adopted a number of initiatives to strengthen national level justice responses in the midst of conflict, including one-stop centers (such as in Somaliland and Burundi), women's desks at police stations in Iraq, mobile courts in Eastern DRC and a national police hotline for SGBV victims in Mali.

Legal empowerment Initiatives

Improving access to legal aid and service delivery for survivors of SGBV—including the provision of medical, psycho-social and economic assistance—is an important component of their overall access to comprehensive justice. In Eastern DRC, UNDP supports a large network of legal aid clinics to tackle impunity, particularly for SGBV crimes. These clinics include medical, psychosocial and legal aid, and more

 *One-stop centers that offer survivors a range of services in one location, such as medical care, psychological counseling, access to police investigators and legal assistance, are proving to be a successful model.*

recently have begun to address the social reintegration problems faced by SGBV victims through psychosocial support, literacy classes, socio-economic support and education of community leaders on attitudes towards survivors.⁹⁵ One-stop centers that offer survivors a range of services in one location, such as medical care, psychological counseling, access to police investigators and legal assistance, are proving to be a successful model that integrates legal services with survivors' broader needs, through a coordinated approach between health professionals, who are often the first point of contact, and police.


With their knowledge of plural legal systems, and understanding of local socio-political structures, community paralegals can be invaluable in supporting women in navigating the different (formal or informal) systems to their advantage.⁹⁶ They can facilitate access to formal systems as well as provide alternatives for women to turn to where their formal rights are not acknowledged by local institutions. The Turkana Women in Development Organization (TWADO) runs a paralegal program specifically focused on monitoring cases that involve violence against women and children in the remote Turkana region of Kenya. They are seconded to local customary dispute resolution processes where they provide input to cases that relate to women's rights. They also monitor the process for cases that

should be referred to the formal courts and support families to access that mechanism.⁹⁷

For female detainees and prisoners, access to legal aid is crucial to ensure a fair trial and sentence, especially considering that women prisoners frequently are victims of abuse, suffer from mental illness, and continue to be the primary caretakers for their children. In Darfur, for instance, UNAMID supported the establishment of legal aid desks in prisons, which have to date benefitted more than 550 prisoners (including men). UNMIL facilitated access to prisoner records by building national capacity on prison data management, which resulted in a 27 per cent decrease in pre-trial detention.

In order to maximize impact, legal reform and support to legal assistance must be combined with awareness-raising and dialogue among State and non-State stakeholders, and among women in both urban and rural settings. This aids in creating a space for women to challenge cultural values and procedures that perpetuate systemic discrimination, and impede their access to justice. In the eastern highlands and Simbu provinces of Papua New Guinea, there are a number of communities that have successfully resolved communal

conflict through the establishment of their own peace-restoring and dispute resolution forums. In Kup District of Simbu Province, the organization Kup Women for Peace (KWP) provides training on victim's rights and instruments, including the use of CEDAW, to village leaders and court officials. This has led to a decision to appoint 'community police officers' who act as a link between the community and the nearest police station in the district.⁹⁸

 *Legal reform and support to legal assistance must be combined with awareness-raising and dialogue among state and non-state stakeholders, and among women in both urban and rural settings.*

RECOMMENDATIONS

Moving progress beyond 2015: Proposals for action

Member States, the UN and civil society should:

- ✓ Adopt a transformative justice approach to programming for women's access to justice, including by developing interventions that support legal orders to challenge the underlying socio-cultural norms and contexts of inequality that perpetuate discrimination against women, and enable conflict-related violations to occur.
- ✓ Ensure that accountability mechanisms mandated to prevent and respond to extremist violence have the necessary gender expertise to do so, in light of the escalating rate of deliberate attacks on women's rights, including SGBV, by extremist groups.

PROSECUTIONS

Member States and the UN should:

- ✓ Invest in strengthening national justice systems to investigate and prosecute international crimes, including SGBV, in accordance with the principle of complementarity. This includes by:
 - Supporting legal frameworks that incorporate definitions and elements of SGBV crimes, procedures for victim and witness support and provisions for reparations, in line with international standards, including the Rome Statute.
 - Working together and providing expertise to ensure States have the technical capacity to investigate and prosecute conflict-related SGBV.

Civil society should:

- ✓ Advocate for State ratification and domestic implementation of the Rome Statute; and adoption of national legislation in line with international standards on women's rights, including specific legislation on SGBV crimes.

TRANSITIONAL JUSTICE

Member States and the UN should:

- ✓ Invest in the design and implementation of gender-sensitive transitional justice measures that recognize and respond to women's experiences of conflict, and their justice and accountability needs.
- ✓ Prioritize the design and implementation of gender-sensitive reparations programmes with transformative impact, including through implementing the Guidance Note of the Secretary General on Reparations for Conflict-Related Sexual Violence.
- ✓ Institute specific measures to ensure the active participation of women and civil society organizations in the design, implementation, monitoring and evaluation of transitional justice mechanisms, so as to guarantee that women's experience of the conflict is included, their particular needs and priorities are met and all violations suffered are addressed.

Members States and the UN should:

- ✓ Invest in gender-responsive capacity building of the justice sector by:
 - Providing gender-sensitive training for all justice sector actors—especially those involved in justice-related service delivery including traditional leaders, health professionals and police.
 - Supporting increasing the participation of women at all levels in justice service delivery, across both formal and informal systems, through measures that can include quotas and support to women’s legal education, including scholarships.

Members States, the UN and civil society should:

- ✓ Collaborate on the design and implementation of legal empowerment initiatives that build women’s confidence and access to legal systems, and enable women to be active participants in navigating them.
- ✓ Support grassroots women to lead and engage with traditional justice mechanisms.

Member States should:

- ✓ Ensure constitutional equality guarantees apply to all laws and justice systems, in line with international law.

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 28. Other deployments include the Panel of Experts for Sri Lanka, fact finding missions to CAR, Iraq, Libya, and on Boko Haram, and the AU Commission of Inquiry for South Sudan.
 29. The research was conducted with the support of UN Women. Countries included are Rwanda, Iraq, Northern Uganda, Eastern DRC, Central African Republic, Liberia, Cote d'Ivoire, Cambodia. Surveys took place from 2002-2013. See, Phuong N. Pham and Patrick Vinck, "Gender and Transitional Justice: Evidence from Multi-Country Surveys on Attitudes and Perceptions about Transitional Justice" (Harvard Humanitarian Initiative, UN Women, Brigham and Women's Hospital, May 2015).
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