

Militarization, Gender and Transitional Justice in Africa¹

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Addressing past injustices is a critical concern within women's struggle for human rights, especially in those societies emerging from civil war and authoritarian rule. The desire for justice in Africa's post-conflict societies is often juxtaposed against the need for reconciliation in countries emerging from conflicts. Among the evolving mechanisms to tackle histories of brutality and violence, some progress can be seen in the recognition of the need to address gender-based human rights violations as a critical facet of dealing with the societal wounds of conflict. Indeed, a number of African examples have been hailed as ground-breaking, significantly expanding the understanding of gender and the need for transitional justice over the last decade.

The upsurge in militarization in the post-Cold War era in Africa has resulted in some three million African people being killed directly through conflicts and 160 million living in states where intra-state conflict was prevalent. Since 1990, intra-state conflicts occurred in some 79 of the 82 conflicts on the continent and this has created huge implications in the realm of transitional justice and gender. Civilians have been increasingly targeted during conflicts, and in particular women and children; while 100 years ago, war affected ten percent of the civilian population, it now impacts on 90 percent, of which women and children constitute the majority (Heynes, 2003). Sexual violence has been integral to war strategies in many African contexts, but unfortunately the role of armies and non-state actors as perpetrators of gender-based violence is often simply viewed as an "unfortunate" consequence of war. For example, assessments from Sierra Leone's Truth and Reconciliation Commission (TRC) indicate that as many as 70 percent of women were victims of gender-based violence during its nine year conflict, but prosecutions have been negligible.

The development of peace-building initiatives in Africa has been mirrored by the expansion of various models of transitional justice. These encompass a range of judicial and non-judicial approaches adopted by post-conflict societies to address human rights abuses of the past. War crime tribunals

and truth and reconciliation commissions have been set up in Africa since 1974 with varying degrees of success.² Recent experiments on the continent have ranged from United Nations (UN) tribunals to “hybrid” criminal courts, domestic trials and TRCs. Within these, numerous gender concerns are at play, and these range from the need to address the impact of the high levels of gender-based violence, occurring during conflicts, to the recognition of the numerous roles played by women beyond that of “victim”.

Despite the statistics, women’s experiences of human rights violations often remain overlooked in transitional justice approaches which ostensibly seek to redress abuses. Recent examples have shown the fissures existing in addressing gender-based violence, whether through the poor conceptualisation and enforcement of truth commission mandates, the inadequate implementation of international criminal law, or ill-conceived reparations and security sector reform (SSR) ventures. Analysts such as Christine Bell and Catherine O’Rourke (2007) conclude that feminist notions of justice should not simply be slotted into existing transitional justice processes. They argue that instead, emphasis should be placed on how transitional justice can best be re-conceptualised to better address the rate of gender-based violations that occur as a result of conflict (Bell and O’Rourke, 2007).

Currently, Liberia is undergoing TRC hearings which have revealed the scale of gender-based crimes that occurred during its 14-year conflict. Yet, to date a gender advisor has not been appointed to the Commission to analyse these testimonies, and dedicated gender hearings only started in July 2008. In Burundi, popular consultations about transitional justice for the country’s protracted conflict have yet to fully incorporate strategies capable of addressing the epidemic rates of rape, and documentation of this still needs to be collated. In Uganda, the now stalled 2007 Juba peace agreements outlined clear commitments to gender-sensitivity in the transitional justice mechanisms being proposed. These need to be pursued, but women observers are expressing fears that the inbuilt reliance on traditional justice mechanisms with the same agreements may undermine these commitments. The recent electoral conflicts in Kenya and Zimbabwe create new challenges regarding the integration of measures for addressing the violent abuse of women into the envisaged human rights mechanisms.

There is evidence to suggest that in some instances, political transitions have provided a “window of opportunity” for enhancing women’s access to justice, by allowing greater representation in the public sphere, as well as

through some legal and policy reforms (UNRISD 2005). This paper uses the particular scenarios offered by post conflict situations in Africa to explore the question of whether transitional justice mechanisms provide such opportunities for improving women's rights. To what extent have transitional justice mechanisms – whose language generally encourages gender sensitivity – actually made any positive contribution to women's struggles for justice? The conceptual as well as the legal dimensions of transitional justice mechanisms need to be further scrutinised in order to ensure gender-sensitive practice in the field (Nesiah *et al.*, 2006).

A number of fundamental questions bedevil the task of assessing whether transitional justice mechanisms fully attend to gender-based human rights abuses and whether they have wholly addressed realities in Africa. These include the following: how effective have recent war crimes prosecutions in Africa been in dealing with gender-based human rights violations that occurred during conflicts?; what has been the significance of truth commissions in Africa in recording and addressing gender-based human rights concerns?; what role have reparations played in addressing gender-based violations and how can they be strengthened?; how can security sector reform help to advance gender and transitional justice?; do traditional justice mechanisms have a role to play in increasing women's access to justice or do they reinforce stereotypes; and finally have transitional justice mechanisms in reality addressed issues of women's vulnerabilities during both conflict and in the post-conflict setting? These questions will be explored in an introductory feminist analysis of the progress and prospects of transitional justice mechanisms in the recent African context.

Gender and Transitional Justice in Africa

Numerous countries emerging from conflicts in Africa in the last decade have been forced to consider gender in their transitional justice mechanisms largely as a result of the activism of women's organizations in demanding redress for the high rates of gender-based violation. As a result, mechanisms such as truth commissions have both come to incorporate attention to the gendered nature of human rights violations, as well as recognise the need to record these in their mandates. The Liberian Truth Commission provides the most recent example of this but a few years earlier the Sierra Leonean Truth Commission created an important precedent. Integrating gender concerns is also becoming standard in the appointment of Commissioners and staff. For example, the

recently formed steering committee for popular consultations in Burundi has made equal representation of women and men mandatory. Commissions have developed a variety of methods to encourage women to participate in their processes, such as ensuring more sensitive statement-taking as well as in-camera hearings.

Furthermore, reparations programs are increasingly considering how the gendered definitions of 'victim' may constrain rather than enable women's access to benefits. Traditionally, victims have been defined narrowly in terms of what constitutes violation (such as deaths and disappearances) which often excludes women's specific violations. More recently, attempts have been made to consider gendered concerns in the distribution of reparations, such as the reality of family structures which impact on women's ability to access finance as well as the gendered responsibilities of care.

The need to address security sector reform as both connected with, and inter-related to, transitional justice is becoming increasingly acknowledged, as is the need to incorporate gender within this. In February 2007, the UN Security Council released a presidential statement requesting a detailed study on SSR issues and the UN's role which included only one reference to gender. Clarke explores this aspect of transitional justice in her contribution to this issue and rightly notes that recent re-evaluations of the meaning of security have called for a more holistic approach which incorporates "the broader human security position that security consists of a range of inter-related factors rather than simply freedom from fear of violence and conflict".³

African debates around transitional justice have provoked discussion over the potential role of traditional mechanisms of peace and justice and whether they can be adapted to respond to the needs of societies which have experienced mass violations. The best known example is the *gacaca* court system in Rwanda which has been viewed by many as a positive resurrection of the use of indigenous understandings of justice and reconciliation. In Rwanda, the sheer extent of the casualties meant that retributive justice would be an inadequate and even catastrophic response to violations experienced, and that a major healing process would also be necessary if the country was ever to recover from the atrocities

Gacaca courts are based on a pre-colonial system of justice where misdemeanours were tried by male members of the community. Traditionally, elders mediated in intra- and inter-familial disputes as well as other disputes in the broader community. The controversies mediated included issues such as

land rights, inheritance rights, loans, minor attacks, and damage to property (Chakravarty, 2006). *Gacaca* courts had no jurisdiction over serious cases such as homicide or rape. This was also true of the post-genocide version of the institution, as least until June 2008. However, a recent legal amendment will now allow the 6808 alleged rapists who are still awaiting trial to have their cases heard before the *gacaca* courts. It is an amendment that has provoked great concern over the seriousness of the expressed commitment to the pursuit of gender justice in the country (Hirondelle, 2008). Such concern is not assuaged by the suggestion that only the “best” *gacaca* judges will be used, or that they will be provided with special training. The fact remains that women will be forced to provide public testimony in front of their community, in a cultural context that strongly opposes women’s public authority or voice at local levels.⁴

In nearby Uganda, the proposed 2007 Juba Agreement makes the Lord’s Resistance Army eligible for an alternative justice framework that includes traditional justice mechanisms. The reality is that the vast majority of perpetrators will in all likelihood be reintegrated into the community through the employment of local mechanisms rather than through formal justice, and here too careful attention to gender is warranted. While the relevance of indigenous justice mechanisms should not be overlooked, it is extremely important to ensure that these do not simply reinforce systems that have been inherently unjust and oppressive to women, both before and during the conflict.

Across Africa the context of heightened gender awareness favours the possibilities of gender equitable transitional justice mechanisms. There are relatively high numbers of women in decision-making and political positions in a few key post conflict countries, among which Rwanda, Uganda, South Africa and Mozambique are most often cited for having over one third women in their parliaments. Women’s activism has also generated developments in regional institutions.⁵ A number of articles within the 2005 African Union Protocol on Women specifically note the need to protect women’s rights during conflicts, as well as the need to ensure gender justice during the transition to peace. Internationally, United Nations Resolution 1820 adopted in June 2008 adds to the legal frameworks for addressing the gender abuses perpetrated during conflicts through its recognition of rape and sexual violence as weapons of war.⁶ This is a significant achievement in view of the fact that just one year previously South Africa had joined forces with China

and Russia to argue that sexual violence was an “unfortunate by-product of war” and “not a matter of international peace and security” (Farley, 2008).

However, despite the growing regional and international public acknowledgement that gender justice is critical, much of the progress in transitional justice mechanisms remains uneven and disjointed.

Key Challenges for Gender and Transitional Justice in Africa

The need to take account of sexual violence against women, and its impacts, in post-conflict contexts has been a critical platform for the emergence of “gender justice concerns”. There is, however, a growing concern over whether the emphasis on sexual violence in African contexts risks obscuring the need for a more broad-based approach to women’s rights. Another concern is that the existing women’s organisations and movements are often sidelined when it comes to establishing transitional justice mechanisms. Certainly there are grounds for noting that the wider gender consequences of conflicts can be obscured by a limited focus on women as victims, which can contribute to failures to recognise the weighty matters of internal displacement, loss of livelihood, breakdown of social infrastructure and the huge increase in the number of woman-headed households. Women are still largely excluded from formal peace negotiations and the ensuing reconstruction processes reflect this in their gender bias. Even where women are acknowledged as combatants rather than solely as victims, they are often further stigmatised rather than assisted, because as female combatants they have stepped out of traditional gender roles, and may have perpetrated violence.

Many of the challenges to fully integrating gender into transitional justice mechanisms stem from the way that “conflict” and “harms” have been interpreted, leading to numerous examples where gender has been quite simply overlooked and the male experiences of human rights violations are seen as normative. This manifests in the emphasis that transitional justice mechanisms give to economic and social reintegration, while neglecting the psychosocial or medical needs which are particularly stark for victims of sexual abuse. Rwanda, Sierra Leone and the Democratic Republic of the Congo (DRC) among other countries have shown the grave need for addressing issues of reproductive health linked to these crimes. A recent study revealed some 30 percent of women raped in the Eastern DRC to be infected by HIV. The Panzi hospital in Bukavu, capital of South Kivu has been overwhelmed by women requiring surgical treatment and management of fistulas and other

gynaecological consequences of the mass sexual violence committed in the eastern region of the Democratic Republic of Congo.

The limited understanding of the intersection of gender and conflict has been obvious in the exclusion of women from peace negotiations where transitional justice mechanisms are often crafted. However, the recent peace negotiations regarding northern Uganda did require some involvement of women's groups, albeit limited. Liberia and Burundi have seen women's organisations mobilising extensively in efforts to have their voices heard in male-only peace processes.

Once the peace agreements have been signed, flaws are also apparent in the construction of demobilisation, disarmament, and reintegration (DDR) strategies on the continent, all of which shape the transitional justice possibilities. Many contexts have simply overlooked women as ex-combatants in DDR, the multiple roles they play as cooks and porters to guards and fighters remaining unrecognised. Recent reports on DDR in Liberia has highlighted the inadequacy of the most recent process, attributing it to the continued assumption that DDR simply means disarming men, thus excluding all other aspects of military service. According to UNIFEM, in Sierra Leone women constituted as much as 20 percent of the combatants, yet only 6.5 percent of DDR participants were women and 0.6 percent girls (UNIFEM, 2005).

The reality is that women, even when abducted and coerced into joining a military force, are automatically given some degree of training in the use of weapons, and in any case, women perform a multitude of productive and reproductive roles which are integral to the survival of armed groups, ranging from food production to reproducing the army (Turshen, 2001). In northern Uganda, it has been shown that 72 percent of girls in the LRA receive weapons and military training but they are often the last to be released due to their critical role (WomenWarPeace). The lack of sensitivity and awareness about women's actual involvement in and experience of conflict is thus compounded during the post-conflict reconstruction processes that still largely fail to recognise the particular difficulty of reintegrating female ex-combatants into communities. In this respect women are being treated unfairly, and the supposed "new opportunities" do not seem to be manifesting.

Legal Mechanisms

The pervasive nature of gender-based violence in conflicts, especially sexual and reproductive violence has resulted in increased acknowledgment in

international criminal law. While sexual violence in conflicts has been recognised under international law since the Second World War, it remained largely invisible until the 1994 Rwandan genocide - during which as many as 500,000 women were raped (Human Rights Watch, 1996). This led to a more radical recognition of the need for a gender-based prosecution strategy to address sexual violence in conflicts as a war crime.

The Arusha-based International Criminal Tribunal for Rwanda (ICTR) was established by UN Security Council Resolution 955 in November 1994 to prosecute those “responsible for serious violations of international criminal law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states between 1 January 1994 and 31 December 1994” (Moghalu, 2005). The tribunal was set up on an *ad hoc* basis with the intention of trying those most responsible for crimes against humanity during Rwanda’s 100-day genocide, including former Prime Minister Jean Kambanda.

In 1998, the ICTR found former mayor, Jean-Paul Akayesu, guilty of nine counts of genocide, crimes against humanity and war crimes that included his having incited and encouraged his troops to commit acts of rape. While the initial charges against him did not include rape, the presiding judge, Navanethem Pillay, insisted this be probed. As a result of her intervention as well as mounting pressure from women’s groups, charges for rape were investigated. This was particularly significant as it was the first time an international court had ever punished sexual violence in a civil war; and it was the first time that rape was found to be an act of genocide, aimed at the destruction of a group. It was also indicative of the need to have adequate gender representation in the judiciary as well as open interaction with women’s groups. The Akayesu judgment was to affect future principles for the prosecution of sexual violence and served to influence the jurisprudence of a permanent International Criminal Court.

In Sierra Leone the nature and extent of atrocities committed during the civil war from 1991-2002 prompted the creation of the Special Court to try war criminals in 2000 (Lamin, 2003). By this time, the innovation of the International Criminal Tribunal for Rwanda, coupled with developments at the ICTY addressing events in the former Yugoslavia had created significant precedents for addressing war crimes in domestic conflicts. The subsequent creation of the International Criminal Court in 1998 made it difficult for the international community to overlook events in Sierra Leone. While the 1999

Lomé Peace Agreement granted the Revolutionary United Front (RUF) rebel leadership “absolute and free pardon” from prosecution, this immunity did not extend to prosecution for war crimes (Malan *et al.*, 2002). In 2000, in an effort to address the perceived failings of the Arusha Tribunal, as well as other transitional justice initiatives, the government of Sierra Leone urged the UN Security Council to authorise the creation of a Special Court to address these crimes. This move was supported by both the United States and Britain, resulting in the creation of a national institution which was subject to UN oversight. This Special Court was to operate under both Sierra Leonean domestic law and international humanitarian law and, while beyond the control of the UN Security Council, was supported by its major funders: Britain and the USA.

Sierra Leone’s Special Court was established in 2003, in Freetown, and mandated to prosecute those who “bear the greatest responsibility” for war crimes, crimes against humanity and other serious violations of international humanitarian law (Cruvellier, 2004). It also resulted in the development of the Court’s “mixed” composition, which included Sierra Leoneans at every level and in all organs. The intention was to make international justice locally relevant. The Sierra Leone Special Court, a hybrid transitional justice experiment, led to a number of landmark legal developments which had significant implications for international gender justice. These included recognising gender crimes in its definition of crimes against humanity and widening their interpretation to include sexual slavery and forced marriages. The Court was also groundbreaking in its provision of health facilities to perform procedures such as fistula repair in order to help those women who were to testify.

Sierra Leone’s Special Court ensured that 20 per cent of its investigative team was focused on sexual offences, a marked improvement on the Rwandan International Tribunal which never worked with more than one to two percent of investigators for the area. However, currently even the extent to which the Special Court has pursued sexual violence convictions is increasingly coming under scrutiny. In a recent study of the Special Court, Kelsal and Stepakoff have argued that by excluding evidence from women’s testimonies, their experience was effectively silenced before the Court (Kelsal and Stepakoff, 2007). Furthermore, in addition to a legal framework, other criteria need to be considered in the pursuit of gender-sensitive prosecutions such as victim support (whether psychological or physical), witness protection, and the need to address certain realities such as transport and childcare which may

affect women's access to the court. In short, the record of the international mechanisms suggests incapacity to prosecute sex crimes, and as many as 90 percent of the ICTR judgements have so far not included rape convictions.

On an international level, the Hague-based International Criminal Court (ICC), which came into existence in 2002 as the first permanent international criminal tribunal, was set up as a court of last resort to prosecute offenses where national courts failed or were unable to respond. The 1998 Rome Statute establishing the ICC expanded the definition of crimes against humanity and war crimes to recognise rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, trafficking or any other form of sexual violence after the intense lobbying by women's groups globally. As such the ICC can both prosecute these crimes and create an obligation that all investigations include gender-based crimes. To date, the Central African Republic, the DRC, Uganda and Sudan have all come under the scrutiny of the Court and in a number of the arrest warrants issued, GBV has been cited. However, various criticisms have been leveled regarding the ICC's stated aims and its ability to pursue GBV crimes.

The ICC's recent release of Thomas Lubanga, charged with the recruitment and use of child soldiers in the DRC occurred amidst outcry by gender activists that charges against Lubanga had failed to include sexual violence, despite evidence of his links to the widespread sexual enslavement of girls. ICC prosecutors had also charged two further DRC militia leaders, Germain Katanga, the former senior commander of the FPRI militia group, and Matthew Ngudjolo, the former leader of the National Integrationist Front militia group. However, in a controversial decision in May 2008, prosecutors removed counts of sexual slavery from the indictments on the grounds of their inability to ensure witness protection.⁷ Hence, despite the fact that the International Criminal Court is believed to have the opportunity to establish precedents in addressing gender-based violations, in reality this is simply not happening. It is not surprising that women's organisations in post-conflict contexts, are becoming increasingly frustrated because in spite of clear evidence of extraordinary rates of sexual violence, and the heightened awareness of this fact, the ICC is failing to prosecute these crimes.

On the domestic level, despite often depleted and fragile legislative and judicial infrastructure post-conflict, a number of countries - Liberia, Burundi and the DRC among them - have undertaken commitments to protect and enshrine gender concerns through both international and domestic

commitments (some more explicit than others). However, the reality is that while the successful prosecutions of those leading actors involved in orchestrating GBV during conflict may provide some deterrent, the majority who have perpetrated serious human rights violations against women have enjoyed almost complete impunity and never have even been prosecuted. Furthermore, while recent transitional justice mechanisms in Africa have brought greater attention to the impact of conflicts on women, they have not stemmed the widespread occurrences of violence against women, as this remains shockingly high in post conflict settings. Domestic and sexual violence statistics emerging from post conflict countries such as South Africa, Liberia and Sierra Leone are elevated and structures for the redress of violations against women are clearly inadequate.

Truth Commissions

Truth commissions have also come under increasing pressure to report the often-overlooked range of abuses suffered by women during conflicts (United Nations High Commissioner for Human Rights, 2006). Adopting a gender-sensitive approach to the work of a Commission in terms of its structure and ambit should assist in identifying the different experiences of men and women during particular conflicts (Nesiah *et al.*, 2006). Apart from helping to create a fuller historical record, it is hoped that a gender-aware process will enable the creation of gender-sensitive programmes for post conflict reconstruction.

The South African Truth and Reconciliation Commission is the best known of Africa's modern TRCs. It was set up in 1995 as a far-reaching effort to address of the human rights violations committed during the apartheid era, with the expressed intention of facilitating reparation and conflicts (Boraine, 2006; Walaza, 2000). The TRC was tasked with compiling a detailed record of the nature, extent and causes of human rights violations that happened between 1960 and 1994, and to hear and document testimonies of those who had experienced violations. The initial neglect of women's experiences provoked mobilisation by women's groups, which led the Commission to set a precedent by holding dedicated hearings organised specifically to create a platform for women to recount their experiences under apartheid. Nevertheless, a clear weakness of the process was the fact that in the accounts given, women tended to speak about the experiences of others, such as their partners or children, rather than their own experiences. The South African TRC was also perceived as failing to respond to calls for a more integrated

understanding of the gendered nature of the apartheid state whose policies particularly afflicted African women and as a result, the experience of women was relegated to 'a chapter' in the TRC report (Meintjes, 2007).

Despite South Africa's purportedly successful transition to democratic governance, major criticisms have abounded over its failure to properly address gender-based abuse that occurred under apartheid. Ten years after the publication of the TRC's final report, the legacy of apartheid is still seen to have an impact on gender relations in South Africa and the sub-region. Furthermore, to date there has been no investigation centered on the extent of gender-based abuse within the African National Congress (ANC) ranks, notably in its bases and camps. The 2006 rape trial of the current president of the ANC and Thabo Mbeki's heir apparent, Jacob Zuma, revealed a number of stories concerning the treatment of women in the ANC camps during the apartheid era. Testimonies of a number of witnesses at the trial revealed allegations of widespread rapes, which had not emerged in the TRC. The Jacob Zuma rape trial also prompted a number of former combatants to claim that the trial helped to "unblock" memories of sexual abuse within the liberation movement.

TRCs which have emerged in Africa subsequent to the South African TRC have achieved varying degrees of success. Ghana set up a National Reconciliation Commission (NRC) in 2000 to examine the detentions, arrests, killings, and torture that took place under president Jerry Rawlings' three terms of rule (June-September 1979, 1981-92 and 1992-2000) (Attafuah, 2005). Provisions in Ghana's 1992 Constitution absolved all military personnel from judicial scrutiny, which meant that a judicial route was unavailable to prosecute perpetrators of abuse (Wain, 2003). Instead, President John Kufuor established the NRC in 2002. The Commission began public hearings in 2003 and sat for twelve months. It was composed of nine members appointed by the president, just three of whom were women.

Ghana's NRC elected to "mainstream" gender throughout its operations, and did not hold separate public hearings for women. As a result, gender-based abuses were subsumed among the broader violations, and there was no separate focus on gender-based violations in its final report. The lack of focused attention on women - who submitted less than 20 percent of all testimonies - rendered gender-based violence largely invisible within the process.

Drawing from the South African experience, the Sierra Leonean Truth and Reconciliation Commission, with the assistance of the United Nations Fund

for Women (UNIFEM), set out to pay special attention to the experiences of women and children during the conflict. The TRC was an initiative agreed to by all parties during the 1999 Lomé Peace Agreement and was subsequently established through an act of Parliament. The TRC was composed of seven commissioners, four of whom were from Sierra Leone and three of whom were non-nationals. Among these three were women, including former South African TRC Commissioner, Yasmin Sooka. Sierra Leone's Commission operated in two phases. During the first phase from December 2002 until March 2003, statements were taken from 3000 victims who had suffered more than 4,000 violations - out of which 1000 related to killings and 200 to rape (Lamin, 2003). The second phase involved hearings of victims and perpetrators from April to August 2003. A unique element of Sierra Leone's TRC was that it was asked to utilise the experience of religious and traditional leaders in resolving local conflicts arising from past human rights violations. Integral to the development of the TRC was the role played by civil society during the public hearings. Nowrojee (2005) has noted that women's groups were primary actors in the gender hearings, organising marches through Freetown, which ultimately resulted in the women's hearings being the most attended.⁸

According to the UN Special Rapporteur on the Elimination of Violence against Women, Radhika Coomaraswamy, an estimated 72 percent of Sierra Leonean women and girls experienced human rights abuses during the war and over 50 percent were victims of sexual violence (Nowrojee, 2005). The public hearings brought national attention to the plight of women during the war and the Commission also focussed on the marginalisation and discrimination of women prior to the war. The Commission's mandate, which in effect allowed investigation of the experience of Sierra Leonean women both pre- and post conflict, added a new dimension to the ability of TRCs to address the past. Consequently, the final report was able to highlight cases of gender violence as well as the multiple roles women played. The Commission's recommendations have been used by civil society groups such as the Mano River Women's Network (MARWOPNET) to advocate for legal reforms to advance gender justice.

The National Transitional Legislative Assembly set up Liberia's Truth and Reconciliation Commission in June 2005 in accordance with the 2003 Accra Comprehensive Peace Agreement (CPA). Liberia's TRC began public hearings of both perpetrators and victims in February 2008 which have consistently highlighted the play of gender violence in the conflict, but how this will be

represented within the report and recommendations has yet to be seen.

Despite these important achievements that indicate the real impact of TRCs in the advancement of gender justice, truth commissions have been criticised for advancing a narrow and partial truth rather than taking a more holistic approach which integrates gender fully. The failure to look at the broader issues of the impact of conflict on women's lives holistically is still lacking. These problems are amplified by certain factors which have made many women reluctant to engage fully in "truth telling", which have yet to be fully integrated into TRC's mandate. These include social stigma or shame around discussing GBV, worry about security or retaliation from perpetrators still living in the community and the prevailing tendency of women to focus on experiences of others rather than their own.

Reparations

Reparations have increasingly been viewed as critical to ensure the acknowledgement of human rights abuses suffered by individuals in countries emerging from conflict or authoritarian rule such as in South Africa, Rwanda, Morocco and Sierra Leone. With the exception of Rwanda, reparation policies tend to emanate from recommendations by truth commissions. In the past, specific violations were legitimized as sites for discussion of reparation and this was reflective of a limited view of human rights violations which centred on deaths, disappearances, and imprisonment (Rubio-Marin, 2006). As such, reparation policies have often failed to recognise the specific abuses suffered by women during conflicts such as forced pregnancy, sexual slavery, and displacement.

Following the United Nations General Assembly adoption of *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, a number of women's organisations mobilised to examine how to better incorporate gender into reparations policies. This led to the 2007 Nairobi Declaration which redefines reparations and guides policy-making for implementing this right specifically for victims of sexual violence.

A significant development in this area has been the delivery of reparations by military tribunals in the DRC. In April 2006, a military court in Mbdandaka found seven army officers guilty of mass rape of more than 119 women (according to the UN estimate, the number was over 200) at Songo Mboyo on

21 December 2003. This was the first time rape was tried as a crime against humanity in DRC, and the first such sentence against military personnel for these crimes.⁹ The officers had rebelled against their commanders and attacked the villages of Songo Mboyo and Bongandanga. For the destruction of the villages and the mass rape, they received sentences of life imprisonment and the verdict required each victim's family to receive reparations in the amount of US \$10,000. Rape victims were to receive US \$5,000.

There are a number of lessons to be learnt from recent examples. Reparations are often last on the agenda of transitional justice mechanisms and first to be overlooked. Reparation programs often fail to recognise and address areas where women's vulnerability may be particularly heightened, including violations of human rights in relation to displacement, sexual violence, and health care, as well as the secondary impacts of conflict in relation to areas such as education. Human rights abuses often impose familial care burdens on women such as additional care for "dependents" or "secondary" victims. As principal caregivers in most societies, especially where health and other infrastructure have collapsed, women are often responsible for the reintegration of their families, many of whom may be injured and frequently traumatised. The roles of women as agents of reintegration are key, particularly in those societies that have overlooked transitional justice such as Mozambique. Furthermore, gender power dynamics in controlling financial decision-making in the household have often been overlooked, with financial reparations being given to women who did not have access to banking facilities in South Africa and Morocco.

Conclusion

So, to what extent have transitional justice mechanisms in Africa actually allowed advances in gender justice? The examples discussed here suggest that advances have been limited, even though there is some evidence of a cumulative effect as these institutions have been introduced in one context after another. Women's movements demand that women's access to justice be enhanced, and seek to claim greater public space in the context of post-conflict momentum for general legal reform. Women look to the new constitutions, to affirmative action strategies and quotas, and push for gender sensitive judicial reform.

A key potential of transitional justice lies in the possibilities for addressing extreme violations of women's rights, and seeing this transfer to broader

changes in gendered socio-political relations. Transitional justice mechanisms such as prosecutions, security sector reform and truth commissions may be just some of the measures that can provide a critical role in addressing the gendered human rights record in post conflict situations.

The 2007 Nairobi declaration noted that gender-based violence committed during conflicts “is the result of inequalities between women and men, girls and boys, that predated the conflict, and ... this violence continues to aggravate the discrimination of women and girls in post-conflict situations”. This perspective is supported by the evidence that very high levels of domestic abuse characterise post-conflict settings, and may even increase, as has been the case in Rwanda, Liberia and South Africa. The apparent rise in post-conflict domestic violence may result from a number of interrelated processes but it is increasingly acknowledged that transitional justice has a potential role in creating mechanisms to ensure that violence does not simply move from the war front into the home. The extent to which the potential of transitional justice processes are actually advancing gender justice remains compromised, but these processes have nonetheless shown their potential as an important site for the pursuit of women’s basic human rights in transitioning societies.

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Endnotes

- 1 Many thanks to Kelli Muddell from the ICTJ's gender program for her comments on this paper and general guidance in this field.
- 2 TRCs include Uganda (1974), Zimbabwe (1985), Uganda (1986), Chad (1991), Rwanda (1992), Burundi (1995), South Africa (1995), Nigeria (1999), Sierra Leone (2002), Ghana (2002) and Liberia (2006). War Crime tribunals were established for Rwanda (1994) and Sierra Leone (2002).
- 3 See also Hamber *et al* (2006).
- 4 See Gallimore's feature in this issue.
- 5 See the editorials in *Feminist Africa 3 National Politricks*, and *Feminist Africa 4 Women Mobilised*.
- 6 For details of the resolution, see "Security Council Demands Immediate and Complete Halt to Acts of Sexual Violence against Civilians in Conflict Zones, Unanimously Adopting Resolution 1820" (2008) Available at <http://www.un.org/News/Press/docs/2008/sc9364.doc.htm>.
- 7 See, for example, "Sexual Violence Charges for DRC Cases Scrapped, ICC - Africa Update" http://www.iwpr.net/?p=acrfts=fcto=344835&tapc_state=henh.
- 8 Kelli Muddell emphasised this in her comments on the paper.
- 9 UN Action Report Work in Progress.