



# **Addressing Gender in Transitional Justice Mechanisms**



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Democratic Progress Institute  
11 Guilford Street  
London WC1N 1DH  
United Kingdom

**[www.democraticprogress.org](http://www.democraticprogress.org)**  
**[info@democraticprogress.org](mailto:info@democraticprogress.org)**  
+44 (0)203 206 9939

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## Introduction

Although the field of transitional justice has increasingly explored since the 1990s, gendered experiences in this area are less documented and the long and difficult process of creating and implementing transitional justice mechanisms may result in the exclusion or negation of gender sensitivity in practice. It is important that a gendered approach is taken at every part of a conflict resolution or reconciliation process and that all routes are as inclusive as possible of the whole population. By understanding that people experience conflict in different ways, post conflict mechanisms can cater to these nuances.

A 2004 report by the UN Secretary-General refers to transitional justice as:

the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.<sup>1</sup>

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<sup>1</sup> UN Rule of Law. (n.d.). Transitional justice. Available: [http://www.unrol.org/article.aspx?article\\_id=29](http://www.unrol.org/article.aspx?article_id=29). Last accessed Feb 2014

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As well as the importance of including gender as a vital dimension of transitional justice in its own right, on a wider scale, the issues surrounding the complexities of the interplay between gender and justice could be substituted for any minority or marginalised group. Therefore, by looking beyond the dominant paradigm of those who transitional justice serves best, it could help to raise much needed discussion on how to improve transitional justice mechanisms to create a more holistic post conflict transition and in turn a more sustainable peace. Transitional justice can be seen as an ideal around which a post conflict society will be based, therefore ensuring gender justice and gender mainstreaming could contribute to equality, legitimacy and reconstruction. It undermines the legitimacy of transitional justice, and potentially of long term peace, if large segments of a population cannot participate in mechanisms which provide justice, accountability and reconciliation.

After providing some background knowledge on transitional justice and the mechanisms through which it can be achieved, this paper will consider the gendered effects of conflict which will lead on to a discussion of why a gender sensitive approach to transitional justice is necessary and by what methods this may be achieved. Looking at real life examples of transitional justice through international case studies will demonstrate the ways in which this has been put into practice. This will also highlight the ways in which gender mainstreaming in transitional justice should be improved.

## Transitional Justice

During times of conflict, repression or societal upheaval, severe and systematic human rights violations often occur. Transitional justice provides ways of dealing with these violations through mechanisms like truth commissions, criminal prosecutions, reparations and institutional reform. The International Centre for Transitional Justice<sup>2</sup> cites such reasons for transitional justice as ‘trying to achieve accountability and redressing victims, transitional justice provides recognition of the rights of victims, promotes civic trust and strengthens the democratic rule of law’.<sup>3</sup> There is no ‘one size fits all’ formula for how transitional justice will be achieved in any given country. Much of what happens is contextual and is the result of long negotiations between different sides. As a result, the specific mechanisms used are varied and may include multiple approaches to deal with the different issues faced by a society. In deciding what mechanisms of transitional justice to use, questions will include what is the definition of a victim, who are the perpetrators, should rank be taken into account, what violations are going to be addressed, will there be reparations involved and is the process going to take a judicial or non-judicial route, or both?

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2 <http://ictj.org/> The International Centre for Transitional Justice is a non-profit organisation focusing on transitional justice.

3 International Centre for Transitional Justice. (n.d.). What is transitional justice?. Available: <http://ictj.org/about/transitional-justice>. Last accessed Feb 2014

In much of the literature surrounding transitional justice one of the key debates is regarding the issue of ‘peace versus justice’ or whether these two concepts are even at loggerheads or are instead mutually reinforcing. A brief overview of the debate posits that pursuing peace will hamper the process of justice or vice versa. Examples of this can be in relation to the International Criminal Court (ICC).<sup>4</sup> The ICC has indictments against Joseph Kony<sup>5</sup> and other members of the Lord’s Resistance Army (LRA) yet a sticking point for peace negotiations in the region is that of immunity or amnesty for crimes in return for peace talks. This indicates that in the pursuit of justice, the peace process is being hampered. Conversely, it could be understood that ‘peace versus justice’ is a false dichotomy:

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4 [http://www.icc-cpi.int/en\\_menus/icc/Pages/default.aspx](http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx) ‘The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity

for the perpetrators of the most serious crimes of concern to the international community. The ICC is an independent international organisation, and is not part of the United Nations system. Its seat is at The Hague in the Netherlands. Although the Court’s expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organisations, individuals, corporations and other entities’

International Criminal Court. (n.d.). *ICC*. Available: [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx).

Last accessed Feb 2014

5 Joseph Kony is the leader of the Lord’s Resistance Army, a guerrilla group initially operating in Uganda, although reports claims he and the Lord’s Resistance Army operate in the neighbouring countries as well. In 2005, Kony was indicted by the ICC for crimes against humanity although he has never been captured.

Peace, when understood as enduring and long-term peace, goes beyond the immediate goal of ending a conflict and relies on justice and accountability to ensure sustainability. Where mass crimes are not addressed, when the root causes of conflict are not sought out and removed, when victims' calls for justice are not heard, the danger of violence recurring remains high.<sup>6</sup>

## **Different Mechanisms**

Before moving on to the substantive issues of this research paper (that of gender), it seems pertinent to briefly expand on the different types of transitional justice mechanisms; truth (and reconciliation) commissions, criminal prosecutions, reparation processes and institutional reform.

Truth and Reconciliation Commissions refer to non-judicial processes concerned with establishing facts and truths about past events, or enabling formal acknowledgements of what happened. They often are based around testimony of those in society: however, these might not always fit neatly into 'victim / perpetrator' dichotomies. Tools include public testimony, exhumations, reports and testimonials.<sup>7</sup>

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6 International Centre for Transitional Justice. (n.d.). Peace versus Justice: A False Dilemma. Available: <http://ictj.org/news/peace-versus-justice-false-dilemma>. Last accessed Feb 2014

7 International Centre for Transitional Justice. (2008). Truth Commissions . Available: <http://ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf>. Last accessed Feb 2014

One example of a country using a Truth and Reconciliation Commission is that of South Africa following apartheid. The idea of amnesty in exchange for truth was controversial; some argue that this approach denies the victims justice. However, others propose that without the possibility of amnesty, truth might be hard to find.<sup>8</sup> This specific Commission will be looked at in greater detail as a case study further on in this report in relation to how it dealt with and included gender.

Criminal prosecutions or tribunals may be at either the local, national or international level. Famous examples include the International Tribunal for the former Yugoslavia,<sup>9</sup> the International Criminal Tribunal for Rwanda (ICTR),<sup>10</sup> the Special Court for Sierra Leone<sup>11</sup> and the ICC.

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8 International Centre for Transitional Justice. (2008). Truth Commissions II. Available: <http://ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English2.pdf>. Last accessed Feb 2014

9 The International Tribunal for the former Yugoslavia is a tribunal set up by the United Nations to deal with the war crimes committed in this area. It was established in 1993. This tribunal prosecutes individuals rather than states and holds them personally to account.

10 The International Criminal Tribunal for Rwanda was set up in 1994 following a UN resolution on the subject. The remit of the tribunal was to deal with the most serious crimes committed during the Rwandan genocide.

11 The special Court for Sierra Leone was set up jointly between the government of Sierra Leone and the UN. It has the ability to deal with serious crimes committed since 1996 in Sierra Leone.

Following on from the precedent set by the Nuremburg Trials<sup>12</sup> to prosecute the most serious of international crimes, those crimes which are considered *jus cogens*<sup>13</sup> are generally prosecuted at tribunals such as these. They may also include a mix of national and international actors such as the hybrid courts of Cambodia or Iraq.<sup>14</sup>

Another transitional justice process is that of reparations. Perhaps more so than other processes, this is most directly focused on the victim of the human rights abuses.<sup>15</sup> Reparation process may include material benefits or symbolic gestures such as apologies from governments. It is often seen as an important step in post conflict reconstruction as it offers a form of acknowledgement for the wrongs endured.

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12 The Nuremburg Trials were set up following the defeat of the Nazi after World War II. Held by the Allied Forces, they tried various political and military leaders of the Nazi party although several notable figures such as Adolf Hitler, Heinrich Himmler and Joseph Goebbels all committed suicide before the Trials commenced. It is one of the first instances of transitional justice and set a new precedent by the international community to follow the rule of law when dealing with war crimes and other crimes considered *jus cogens*.

13 *Jus Cogens* refers to certain fundamental, overriding principles of international law, from which no derogation is ever permitted.

14 Hybrid courts refer to courts which contain a mix of both national and international features.

15 International Centre for Transitional Justice. (2007). Reparations in Theory and Practice. Available: <http://ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf> . Last accessed Feb 2014

In 2005, the General Assembly of the United Nations adopted a text on the *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*.<sup>16</sup> The right to a remedy can be found in many international legal documents, which have further entrenched its position in the repertoire of transitional justice mechanisms.<sup>17</sup> An example of a national reparations programme is that of Chile, in which the government paid paying over 1.6 billion U.S. Dollars to those who had suffered under the Pinochet regime.<sup>18 19</sup>

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16 UN OHCHR. (2005). *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*. Available: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> . Last accessed Feb 2014

17 Among these instruments are the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14) and the Convention on the Rights of the Child (art. 39). International humanitarian law and international criminal law are also relevant in this regard, in particular the Hague Convention respecting the Laws and Customs of War on Land (art. 3), the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (art. 91) and the Rome Statute of the International Criminal Court (arts. 68 and 75). UN OHCHR. (2005). *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*. Available: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> . Last accessed Feb 2014

18 Augusto Pinochet was a Chilean dictator who ruled from 1973 until 1990, he formed a military government which was severely repressive.

19 International Centre for Transitional Justice. (n.d.). *Reparations*. Available: <https://ictj.org/our-work/transitional-justice-issues/reparations>. Last accessed Feb 2014

Institutional reform is yet another mechanism of transitional justice. When the government and instruments of a state have been a fundamental perpetrator in widespread systematic abuses of rights, then a key part of the process in rebuilding democracy, the rule of law and trust in the state is institutional reform. Institutional reform may involve reform of some or all of the following: ‘the police, military personnel, intelligence services, customs, certain segments of the justice sector, and non-state actors with security functions’.<sup>20</sup>

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**Kerim Yildiz**  
**Chief Executive Officer**  
**Democratic Progress Institute**

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20 Villalba C. (2011). *Transitional Justice: Key Concepts, Processes and Challenges*. Available: [http://www.idcr.org.uk/wp-content/uploads/2010/09/07\\_11.pdf](http://www.idcr.org.uk/wp-content/uploads/2010/09/07_11.pdf). Last accessed Feb 2014 pp 9

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# The Gendered Experiences and Effects of Conflict

## Changes in Conflict

It is important to consider the ways in which conflict affects people differently as this provides the reason for which it is important to include gender in post conflict processes. As methods of conflict moved beyond the trench warfare of the early twentieth century, the proportion of civilians to combatants killed also increased. This means that the potential for mortality is spread across the population. But the picture is even more complex, for instance, even within the concept of mortality, there may be several causes for increased death. Some of these may be distinguished among gendered lines. For example, some deaths are the result of fighting, some of disease, others may be due to poor sanitation or lack of food in the migration away from conflict areas, and all of these may affect men and women differently. A 2009 paper by Peace Research Institute Oslo (PRIO) found that in general, there was a higher chance of men dying in conflict but a higher probability of women dying through indirect causes after conflict.<sup>21</sup>

Conflict changes the demographic make-up of society, which impacts both the public and private spheres. For example, traditional gender roles may be complicated by these changing demographics; this in turn alters the dynamics of society through changes in social, cultural or political institutions.

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21 Ormhaug C (2009). *Armed Conflict Deaths Disaggregated by Gender*. Oslo: PRIO. pp 3

The constructions of the idea of gender also play a role in how conflict can have a gendered impact. Conflict may either reinforce gender roles, or provide the opportunity for change.

## **Effect on Gender Roles**

Concepts of masculinity are often emphasised in armed forces. Women or men who are seen as less masculine are relegated to roles which are seen as inferior, such as cleaning, cooking and driving. When this gender reinforced idea is generated in a society through civil war and conflict, then some may feel pressure to emulate this hyper masculinity in order to gain social standing and respect. This creates a self-perpetuating gender division which can have many negative consequences. Furthermore, many women who take up arms have found that they often have to assume these masculine characteristics in armed groups. While this does show a slight blurring of gender identities as women take on male roles, the phenomenon is focused on the perpetuation of gendered characteristics so does little to change stereotypes of gender identities.<sup>22</sup> Unequal power relations concerning gender which may arise from this can continue even after a conflict may have officially ended.

Conflict also provides opportunities for change in gender roles. For example, gender relations may change as family dynamics change.

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22 Etchart L, Baksh R. (2007). Applying a Gender Lens to Armed Conflict, Violence and Conflict Transformation. In: Baksh R et al *Gender Mainstreaming in Conflict Transformation: Building Sustainable Peace*. 2nd ed. London: Commonwealth Secretariat. pp 15

This can lead to women having a greater role in decision making, both within a family and the wider community. For example, if many men were killed during fighting, then there will be an increase in female headed households, which can allow women more influence and control. As a result of new opportunities, brought by conflict in terms of gender, post conflict societies can be an ideal place to implement long term change; such as including gender equality in constitutions and other post conflict mechanisms to allow new identities and opportunities to take root. This exemplifies why including a gender sensitive approach to transitional justice is vital. It may provide the opportunity to change traditional gender roles to create more equality in society.

## **A Gender Sensitive Approach**

In 2000, the UN Security Council passed resolution 1325 which expressed:

concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and *recognizing* the consequent impact this has on durable peace and reconciliation.<sup>23</sup>

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23 UN OSAGI. (2000). *Landmark resolution on Women, Peace and Security*. Available: <http://www.un.org/womenwatch/osagi/wps/>. Last accessed Feb 2014.

Importantly, this resolution demonstrates recognition at the international level that experiences of war differ greatly between men and women, and that in the peacebuilding process, women should not be excluded. As transitional justice can be seen as a method of contributing to long term peace, this further stresses the need for a gender sensitive approach to transitional justice.

There are many ways in which conflict can have an impact, for example; mortality and morbidity, indirect health consequences, sexual and gender based violence (SGBV), widowhood, migration and displacement, economic changes, and changes in the political and civil structure.<sup>24</sup> Some of these will be explored below in relation to gender to give greater depth to the analysis. This in turn provides the rationale for the need to include gender sensitivity in transitional justice. Even within this, it is important not to assume that all men will experience one set of phenomenon, and women another as there are many nuances between individuals. However, the aim of a gender sensitive approach to transitional justice is to ensure that any and all processes are as inclusive as possible.

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24 Buvinic M et al. (2013). *Policy Research Working Paper 637: Violent Conflict and Gender Inequality An Overview*. Available: <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-6371>. Last accessed Feb 2014

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## **Mortality and Morbidity**

Research suggests that currently around 740,000 people die each year directly or indirectly from armed violence.<sup>25</sup> Of these deaths, around 208,300 were recorded in armed conflicts, whilst a further 200,000 die each year from non-violent causes such as disease which result from the effects of war.<sup>26</sup> A study in 2009 looking at several different data sets concluded that in general during a conflict, men are much more likely to die; however, the mortality rates for women were much higher once the conflict had officially ended.<sup>27</sup> By looking at several different data sets, the indirect impacts of conflict tend to hit women much harder than men through problems such as malnutrition, poor living conditions, sexual diseases and so on. It is clear from this, that conflict does indeed have a gendered effect.

## **Sexual and Gender Based Violence (SGBV)**

Specifically, Resolution 1325:

*emphasises* 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,

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25 Geneva Declaration Secretariat . (2008). *The Global Burden of Armed Violence* . Available: <http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-full-report.pdf>. Last accessed Feb 2014

26 Geneva Declaration Secretariat . (2008). *The Global Burden of Armed Violence* . Available: <http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-full-report.pdf>. Last accessed Feb 2014

27 Ormhaug C (2009). *Armed Conflict Deaths Disaggregated by Gender*. Oslo: PRIO. pp 3

and in this regard *stresses* the need to exclude these crimes, where feasible from amnesty provisions.<sup>28</sup>

Sexual and gender based violence is one of the many ways in which men and women's experiences of conflict can differ, and demonstrates why transitional justice should reflect this. This has been reaffirmed in both Resolution 1825 passed in 2008 and Resolution 1888 in 2009 by the Security Council. Yet even though it is being addressed increasingly in discourse at the international level, SGBV continues to be a major experience and effect of conflict at all levels.

There are countless examples of SGBV being used as a weapon of war. For example, in situations of ethnic cleansing 'gender is what is attacked during the violence' through rape or genital mutilation.<sup>29</sup> In other cases, sexual exploitation and sexual slavery are used as part of shadow economies, for instance, in Sierra Leone where conjugal slavery was not uncommon and found in many armed groups.<sup>30</sup>

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28 UN OSAGI. (2000). *Landmark resolution on Women, Peace and Security*. Available: <http://www.un.org/womenwatch/osagi/wps/>. Last accessed Feb 2014.

29 Mazurana D. (2005). Gender and the Causes and Consequences of Armed Conflict. In: Mazurana D et al *Gender, Conflict, and Peacekeeping*. Maryland: Rowmand & Littlefield Publishers Inc. pp 33

30 Oostervel V. (2012). Gender and the Charles Taylor Case at the Special Court for Sierra Leone. *William & Mary Journal of Women and the Law*. 19 (1), pp 7-33

As can be seen, the uses of SGBV can vary from specific tactics of war to destroy or demoralise the enemy, to being exploited by soldiers or civilians for their own use or gain through sexual abuse or domestic slavery.

Much of the international focus on SGBV is on the atrocities suffered by women; however SGBV is also perpetrated against men.<sup>31</sup> Yet, often this goes unreported due to fear, shame and concerns over stigmatisation and the reaction of the local community. Nevertheless, it has several negative consequences including economic, social, mental and physical.<sup>32</sup> Social and cultural norms, as well as a lack of political will to address this issue further contribute to it often being overlooked in intervention and post conflict strategies. If there is a failure to address SGBV perpetrated against males in conflict, then it is logical to assume that this aspect may not receive the necessary attention in post conflict processes like transitional justice. This will further prolong the grievances experienced by individuals in a society.

The negative consequences of SGBV relate to both men and women, although it is important to indicate the differences in the experiences of men and women. This is just one of the ways in which conflict

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31 Carpenter R. (2006). Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations. *Security Dialogue*. 37 (1), pp 83-101.

32 Christian M et al. (2011). Sexual and gender based violence against men in the Democratic Republic of Congo: effects on survivors, their families and the community.. *Medicine, Conflict and Survival* . 27 (4), pp 227-246

Oosterhoff P et al. (2004). Sexual torture of men in Croatia and other conflict situations: an open secret. *Reproductive Health Matters* . 12 (23), pp 68-77.

has a gendered impact. Whilst much of the literature covering the gendered effects of conflict focuses predominantly on SGBV, there are many other effects in both private and public spheres which will be explored in more detail in the subsequent sections. The basis of SGBV is linked to the power inequalities formed by gender roles which tie back to the construction of gender ideas in conflict.

There is a certain amount of overlap between the different gendered effects of conflict. For example a report by the International Rescue Committee<sup>33</sup> found that one of the prominent reasons listed as to why many had fled Syria since 2011 was ‘rape of women and girls’.<sup>34</sup> Migration is often linked with conflict and violence as there is often large scale migration away from areas of strife. This opens up further potential vulnerabilities to SGBV during travel or once settled in camps. Research from 2000 indicates that 50,000 to 64,000 internally displaced women may have been ‘sexually victimised’ during Sierra Leone’s conflict.<sup>35</sup>

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33 The International Rescue Committee in a non for profit organisation dealing with humanitarian crises, specifically those relating to assisting refugees and others fleeing from crises.

34 International Rescue Committee. (2013). *Syria: a regional crisis - The IRC Commission on Syrian Refugees*. Available: <http://www.rescue.org/sites/default/files/resource-file/IRCReportMidEast20130114.pdf> . Last accessed Feb 2014 pp20

35 Ward J, Marsh M. (2006). *Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses, and Required Resources*. Available: <https://unfpa.org/emergencies/symposium06/docs/finalbrusselsbriefingpaper.pdf>. Last accessed Feb 2014.

## Migration and Displacement

While men are more likely to be killed in direct fighting, those who face migration due to conflict are generally women.<sup>36</sup> This may either mean migration to another country, or internal displacement. It may seem simple enough to provide basic necessities such as food, water, shelter and sanitation to displaced people. However, to what extent these are provided, and looking beyond these basic rights, can show how migration and displacement can have gendered effects. Some of these problems may be exacerbated in certain situations. For example, internally displaced persons (IDP) are afforded fewer rights in as much as they do not have the same international protection that refugees have. A comparison of those who fled from Burundi to Tanzania and those who were in internal camps in Burundi shows that refugees were provided with health services, education and training as well as physical protection from international organisations such as the UN. None of these services were available to the IDPs still in Burundi.<sup>37</sup> Clearly, lack of access to basic services and lack of physical protection will create several gendered effects. For instance, as shown in previous section, there are higher chances of SGBV being perpetrated against those in IDP camps.

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36 Hayner P (2010). *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. Oxford: Routledge. pp 85

37 Benjamin J. (1998). *The Gender Dimensions of Internal Displacement*. Available: [http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef\\_id-gender\\_1998.pdf](http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef_id-gender_1998.pdf). Last accessed Feb 2014 pp 12

Even the basic needs and rights such as shelter can result in gendered experiences. For example, housing, which is often provided as temporary shelter, in emergency situations often becomes long term accommodation as a crisis lasts longer than expected. Women are rarely consulted in how housing is planned, so it may not cover their needs.<sup>38</sup> Women also seem to be worse off in terms of food distribution; generally receiving less, especially if they are a female headed household. Women also tend to have less access to land on which to grow food, meaning they are less likely to be able to produce agricultural products from which they could benefit.<sup>39</sup>

Another basic need is that of health care and adequate sanitation, yet in crowded camps this may be difficult to ensure. Lack of access to healthcare is particularly disconcerting given the high levels of medical care generally associated with pregnancy and children. This is amplified when taking into account the fact that medical help is also needed in relation to the high rates of SGBV. Although many of these issues are more prevalent in IDP camps, it is clear that migration as a result of conflict can have severely gendered impacts.

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38 Benjamin J. (1998). *The Gender Dimensions of Internal Displacement*.. Available: [http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef\\_idpgender\\_1998.pdf](http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef_idpgender_1998.pdf). Last accessed Feb 2014 pp 12

39 Benjamin J. (1998). *The Gender Dimensions of Internal Displacement*.. Available: [http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef\\_idpgender\\_1998.pdf](http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef_idpgender_1998.pdf). Last accessed Feb 2014 pp 12

As more women are likely to be affected by migration than men, the gendered effects of migration in response to conflict are further compounded. This demonstrates how men and women's experience of conflict can vary greatly.

## **Economic Effects**

Beyond the cost of conflict to the economy of a state such as a decline in Gross Domestic Product (GDP), individuals also face considerable economic changes in conflict - loss of livelihoods, changing family structure and lack of access to land may all have a gendered impact.

Another gendered consequence is the break-up of families; and the changing dynamics which can arise from this. As men are more likely to be killed during the fighting, there will be a higher percentage of female headed households. As well as the impact this may have on traditional gender roles, there is also a change in the economic structure of the household. Women will have to take on more financial responsibility, at the same time as any other roles such as maternal or caregiving that they previously held. Conversely, single male headed households, or all male households may also be forced to take on new roles such as cooking or cleaning in which they may have no previous experience. The changing household dynamics change the economic dynamics as well.

Lack of access to land is another way in which conflict can have a gendered effect. For example, following the genocide in Rwanda

many women found it difficult to access lands that belonged to deceased male relatives. The customary law discriminated against the right of women to hold or claim the land. As a result '(m)any women are widowed or orphaned, and because of customary law barriers, are unable to claim their father's or husband's land and property. This problem is exacerbated by the huge population displacements and wholesale grabbing of land plots and houses that followed the flight of people from their homes. Women returning from a refugee or IDP camp, often without male family members, are left without legal channels through which to reclaim their family's property'.<sup>40</sup>

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40 Hamilton H. (2000). *Rwanda's Women: The Key to Reconstruction*. Available: <http://reliefweb.int/report/rwanda/rwandas-women-key-reconstruction>. Last accessed Feb 2014

## Including Gender in Transitional Justice

As the previous chapter demonstrates, the effects of conflict can be gendered. Therefore, it is imperative that transitional justice mechanisms reflect and address these differing experiences; this is also known as gender mainstreaming.<sup>41</sup> The idea of gender mainstreaming is that what is meant by transitional justice, as well as what mechanisms are used to achieve these aims, and what violations are included within this, all need to be approached with gender sensitivity and take into account men and women at every level on which transitional justice is operationalised. This, in theory, means that legislation, policies and procedures, both formal and informal, are adhering to principals of gender mainstreaming. Firstly, it seems apt to briefly elaborate on why gender mainstreaming is important. As has already been touched upon, men and women experience and respond to conflict differently. For example, men tend to be killed in the fighting yet women tend to suffer indirectly through migration.

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41 Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality.

International Labour Organisation . (n.d.). *Definition of Gender Mainstreaming*. Available: <http://www.ilo.org/public/english/bureau/gender/newsite2002/about/defin.htm>. Last accessed Feb 2014

Secondly, gender roles can change as a result of conflict. Many women who were part of the Revolutionary Armed Forces of Colombia (FARC)<sup>42</sup> and National Liberation Army (ELN)<sup>43</sup> were treated as equals to men in a military capacity. However, once the conflict subsided, there was a push towards more traditional gender roles. This can mean reintegration and reconciliation efforts are undermined if they fail to take into account how gender roles have changed; ‘in the wake of Nepal’s 2006 ceasefire, during the cantonment of Maoists rebels and the subsequent reintegration process, girls and women were returned “to [the] very low position of women in traditional Nepalese feudal society’.<sup>44</sup> This shows the importance of gender inclusion in post conflict transitional justice process. ‘For women in transitions an emphasis on post-conflict restoration without challenging uneven gender power relations can mean giving up the perverse equality gains of war and returning to the home and perhaps other forms of abuse’.<sup>45</sup>

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42 The Revolutionary Armed Forces of Colombia – People’s Army (FARC) was created in 1964 with a Marxist-Leninist ideology. They have taken part in armed conflict since that point.

43 The National Liberation Army (ELN) is an armed group in the Colombian conflict. The group was founded in 1964

44 IRIN. (2013). *Analysis: Girl child soldiers face new battles in civilian life*. Available: <http://www.irinnews.org/report/97463/analysis-girl-child-soldiers-face-new-battles-in-civilian-life>. Last accessed Feb 2014

45 Bell C, O’Rourke. (2007). Does Feminism Need a Theory of Transitional Justice? An Introductory Essay. *The International Journal of Transitional Justice*. 1 (1), pp 41.

Transitional justice is not only about redressing individual's grievances but addressing the wider context in which these violations occurred. For instance, a participant in a Democratic Progress Institute Comparative Study Visit to South Africa noted '(w)e failed to acknowledge that apartheid was as much a gender problem as a race problem; it was not just white people, it was white men taking charge'.<sup>46</sup> This indicates that including gender as a specific point in transitional justice (and so ensuring the mainstreaming of it) is as much about addressing societal inequalities and grievances as it is about addressing individual's experiences of violation.

Moreover, because of their different experiences in conflict, men and women are likely to bring different issues to the table. As the example of South Africa shows, '(w)e had a very big blind spot because women were not fully included. When they talked, it was often to share the stories of men, so it was not really inclusive genderwise.'<sup>47</sup> This is vital to ensure that transitional justice mechanisms are as inclusive as possible, and address all and any issues which may be pertinent to post conflict reconstruction and development.

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46 Democratic Progress Institute. (2013). *Post-apartheid Reconciliation and Coexistence in South Africa: A Comparative Study Visit Report*. Available: [http://www.democraticprogress.org/wp-content/uploads/2013/11/SouthAfricaReport\\_PROOF11.pdf](http://www.democraticprogress.org/wp-content/uploads/2013/11/SouthAfricaReport_PROOF11.pdf). Last accessed Feb 2014. pp 35

47 Democratic Progress Institute. (2013). *Post-apartheid Reconciliation and Coexistence in South Africa: A Comparative Study Visit Report*. Available: [http://www.democraticprogress.org/wp-content/uploads/2013/11/SouthAfricaReport\\_PROOF11.pdf](http://www.democraticprogress.org/wp-content/uploads/2013/11/SouthAfricaReport_PROOF11.pdf). Last accessed Feb 2014 pp 27

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## **Operationalising Gender Mainstreaming and Sensitivity in Transitional Justice**

In order to achieve gender mainstreaming in relation to transitional justice, it should be clearly set out in all official documents, such as legislation, and every step of the process should include ways in which gender mainstreaming can and will be operationalised.

### **Transitional justice mechanisms**

Various international policy making bodies such as the United Nations have worked to develop gender mainstreaming and sensitivity into peacebuilding and conflict resolution activities.<sup>48</sup> Making sure that gender is intentionally addressed in transitional justice is the first step in a longer process. Transitional justice mechanisms which only indirectly or do not intentionally outline these ideas in their formal mandate, whether this is through national laws or international resolutions, tend to imply that gender is not an important part of the process. As ‘women’s as well as men’s concerns and experiences are integral to the design, implementation, monitoring and evaluation of programs and services so women and men benefit equally and inequality is not perpetuated’, it is important to have transitional justice reflect this.

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<sup>48</sup> For example UNSC resolutions 1325 and 1820 also the Beijing platform for action

<sup>49</sup> Noy S. (2012). *Report on: NGOs Baseline Study Results on Gender-Sensitivity in Transitional Justice Processes in Cambodia*. Available: [http://gbvkr.org/wp-content/uploads/2013/02/Report-on\\_NGOs-Baseline-Study-Results\\_VSS\\_May-2012\\_Sophary-Noy.pdf](http://gbvkr.org/wp-content/uploads/2013/02/Report-on_NGOs-Baseline-Study-Results_VSS_May-2012_Sophary-Noy.pdf) . Last accessed Feb 2014. pp 3

Several transitional justice mechanisms have made specific mention to trying to address gender issues. For example, the 2004 mandate for the truth and reconciliation commission in Liberia stated:

‘Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing concerns and recommending measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing’.<sup>50</sup>

By specifically acknowledging the different types of crimes and violations experienced by groups in a society, sensitivity and mainstreaming of these issues can be worked into the entire process. Furthermore, operationalising gender mainstreaming and sensitivity in transitional justice should make mention of this throughout the document so that it is a consideration in the procedural and organisational set up of the process. In this way, the legislation which creates the transitional justice processes ensures that concrete steps are outlined and that the issue are not side-lined or added on an ad hoc basis. Including gender in the institutional design is therefore an important consideration.

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50 González E. (2013). *Drafting a Truth Commission Mandate*. Available: [http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013\\_0.pdf](http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013_0.pdf). Last accessed Feb 2014

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International bodies such as the UN have helped to put this topic on the agenda of post conflict reconstruction for example with the Beijing Platform<sup>51</sup> and UNSCR1325. This has also been translated into individual transitional justice processes. The East Timor 2001 Commission for Reception, Truth and Reconciliation refers to ‘in making its recommendation, the Panel should give special consideration to the representation of a diversity of experiences and views, including attitudes towards the past political conflicts in East Timor, and regional and fair gender representation’.<sup>52</sup> The role of the Commission in East Timor has seemingly had numerous successes in including gender in transitional justice.

‘Even though the CAVR was designed to be a companion for justice, not a substitute for it, generally it was the mechanism that offered the most benefit to Timorese women, in terms of both recognition and redistribution. The CAVR Report stressed that the position of women is fluid. While in many ways East Timor remains a patriarchal and traditional society, the Report allowed public space for the suggestion that women could start to play a greater role in post-conflict reconstruction and governance’.<sup>53</sup>

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51 The Beijing Platform for Action was created in 1995 by the United Nations to help empower women and increase participation in all spheres of public and private life.

52 González E. (2013). *Drafting a Truth Commission Mandate*. Available: [http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013\\_0.pdf](http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013_0.pdf). Last accessed Feb 2014

53 Harris Rimmer S (2010). *Gender and transitional justice: The women of East Timor*. Oxford: Routledge. pp 145.

While the 2000 Sierra Leone Truth and Reconciliation Act states ‘A committee under this section shall include persons who are not members of the Commission but who are appointed, taking into account gender representation and regional participation in the work of the Commission’.<sup>54</sup>

## **Recording gendered experiences**

Moreover, in the case of Timor-Leste, the gender unit actively worked to ensure that the experiences of women were recorded. When fewer women than expected made statements to the Commission, a further 200 oral histories were commissioned to be recorded so that the collective public memory included the experiences of women.<sup>55</sup> This is a good example demonstrating how including specific reference to gender in the legislation creating the truth commission guaranteed that the institutions involved categorically addressed gender.

In order that both men and women’s differing experiences are recorded and acknowledged in public memory, specific initiatives may need to be taken to encourage participation and access to justice. For example, in East Timor, NGOs which focused on women’s issues worked with the official transitional justice programme to

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54 González E. (2013). *Drafting a Truth Commission Mandate*. Available: [http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013\\_0.pdf](http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013_0.pdf). Last accessed Feb 2014

55 Valji N. (2012). *A Window of Opportunity: Making Transitional Justice Work for Women*. Available: <http://www.unwomen.org/-/media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf>. Last accessed Feb 2014 pp 7

help in increasing the participation of women.<sup>56</sup> Furthermore, in Sierra Leone, organisations such as the Sierra Leone Market Women Groups helped in outreach to rural communities to ensure the process was more inclusive and awareness on the subject was raised for and by women.<sup>57</sup>

In conclusion, there are several core elements to include in transitional justice mechanisms. The mandate of a transitional justice mechanism includes gender mainstreaming and sensitivity; this may mean specific units equipped to deal with ensuring access to women. The institutional design is gender inclusive both in the organisational structure and in the procedures used. Trying to address gender biases in society so that inequality is not perpetuated through encouraging full participation from society and removing obstacles to access for justice is another important consideration. The list of crimes that are included is sensitive to the differing experiences of men and women; this should include physical harms, psychological harms, changing family dynamics and the socio-economic dimension of suffering as well as understanding the nuances of primary and secondary victims. Additionally, the reparation mechanism should also take these points into consideration.

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56 Ramírez-Barat C. (2011). *Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice*. Available: <http://ictj.org/sites/default/files/ICTJ-Global-Making-Impact-2011-English.pdf>. Last accessed Feb 2014 pp 25

57 Ramírez-Barat C. (2011). *Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice*. Available: <http://ictj.org/sites/default/files/ICTJ-Global-Making-Impact-2011-English.pdf>. Last accessed Feb 2014 pp 25

In the next chapter, these ideas will be applied to two case studies: Rwanda and South Africa. In order to analyse to what extent gender sensitivity and mainstreaming were included in the transitional justice processes in both cases, the ideas outlined above will be condensed into four headings:

- The mandate of the transitional justice mechanism;
- The structural set up and procedures;
- The violations and recognition of violations addressed;  
and
- Participation and access to justice.

## Case Studies

*Although the lessons of past transitional justice efforts help inform the design of future ones, the past can only serve as a guideline. Pre-packaged solutions are ill advised. Instead, experiences from other places should simply be used as a starting point for local debate and decisions<sup>58</sup>*

With this in mind, the subsequent chapter will examine how transitional justice processes in Rwanda and South Africa have dealt with including gender in the mechanisms they have used. Through highlighting different aspects of these examples, they may help provide ‘starting points’ for future processes and mechanisms.

### Rwanda

In 1994, genocide broke out in Rwanda. In the space of 100 days, an estimated 800,000 people were killed.<sup>59</sup> The genocide was fought along ethnic divisions, with some stating that three quarters of Tutsis in the country were killed by Hutus. Furthermore, many Hutus who opposed the killing and helped Tutsis were also murdered.<sup>60</sup> The ethnic tensions between Tutsi and Hutu had been exacerbated since the time of colonial rule dating back to the

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58 UN OHCHR. (2008). *RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES Reparations programmes*. Available: <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>. Last accessed Feb 2014 pp 2

59 United Human Rights Council. (n.d.). *Genocide in Rwanda*. Available: [http://www.unitedhumanrights.org/genocide/genocide\\_in\\_rwanda.htm](http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm). Last accessed Feb 2014

60 Human Rights Watch. (1999). *Introduction*. Available: [http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-01.htm#P6\\_41](http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-01.htm#P6_41). Last accessed Feb 2014

1800s. The violence had, at times, spilled over into neighbouring countries. The ethnic minority Tutsis had been provided with the most power by colonial powers as a way to maintain control over a large population. This had caused many Hutus to feel a lingering resentment towards the minority Tutsis. Rwanda required citizens to be registered by their ethnic group which exacerbated a feeling of ‘us’ and ‘them’; ‘through attacks, virulent propaganda [through mediums such as radio broadcasts], and persistent political manoeuvring, [President] Habyarimana and his group significantly widened divisions between Hutu and Tutsi by the end of 1992’.<sup>61</sup> On 6 April 1994, a plane carrying President Habyarimana was shot down. This allowed a group of his supporters with strong military ties to seize the opportunity to eradicate the political opposition and in the power vacuum left by this, the genocide began.<sup>62</sup> Over a few weeks, a systematic killing campaign took form, enabling attackers to massacre large numbers of individuals at once. Thousands more were displaced. Many participated in the killings, either through incentives and wanting to take part, or because of threats. The genocide in Rwanda is also remembered by the international community as a situation in which the international community failed to prevent many deaths. A Human Rights Watch Report in 2004 named both the UN and its staff for failures to provide sufficient information to the Security Council, the United States

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61 Human Rights Watch. (1999). *The Genocide*. Available: [http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-02.htm#P21\\_7273](http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-02.htm#P21_7273). Last accessed Feb 2014

62 Human Rights Watch. (1999). *The Genocide*. Available: [http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-02.htm#P21\\_7273](http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-02.htm#P21_7273). Last accessed Feb 2014

for placing money ahead of saving lives, France for its support of a government engaged in genocide and Belgium for having withdrawn its soldiers and encouraged a complete withdrawal of UN forces.<sup>63</sup> The genocide in Rwanda helped create the political climate for the UN initiative of Responsibility to Protect.<sup>64</sup>

## **A gendered perspective on the Gacaca in Rwanda**

### **Mandate**

As a means of dealing with the sheer number of cases created by the genocide, two forms of transitional justice mechanisms were set up – formal processes, such as national courts and the International Criminal Tribunal for Rwanda and the use of the Gacaca; a system of modified traditional community based justice. The former, created as a result of UNSC Resolution 955, had a remit to deal with genocide, crimes against humanity and violations of Article 3 of the Geneva Convention and the Additional Protocol II, while the latter dealt with many other genocide crimes at a local level. The Gacaca in relation to post genocide Rwanda can be seen as an ‘invented tradition’ that took aspects of ‘traditional’ dispute mechanisms and modified their usage and methods.<sup>65</sup> In part, this

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63 Human Rights Watch. (1999). *International Responsibility*. Available: [http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-05.htm#P121\\_49244](http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-05.htm#P121_49244). Last accessed Feb 2014.

64 UN. (n.d.). *The Responsibility to Protect*. Available: <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>. Last accessed Feb 2014

65 Ingelaere B. (2008). *The Gacaca courts in Rwanda*. Available: [http://www.idea.int/publications/traditional\\_justice/upload/Chapter\\_2\\_The\\_Gacaca\\_Courts\\_in\\_Rwanda.pdf](http://www.idea.int/publications/traditional_justice/upload/Chapter_2_The_Gacaca_Courts_in_Rwanda.pdf). Last accessed Feb 2014 pp 33

was due to much of the formal judicial structures being ineffective and overwhelmed. Moreover, the prisons in Rwanda faced large scale overcrowding. This led to the need for a new system of dealing with the aftermath of the genocide. There was some hesitation over where the Gacaca should take on such serious crimes and whether the Gacaca trials could ever be impartial or hold to the standard of justice expected by the international community.<sup>66</sup>

There was also a fear of exacerbating new and old tensions through the course of the hearings.<sup>67</sup> Interestingly, 'the Gacaca court system was initially conceptualised in an atmosphere where the objective of accountability dominated. The notion of reconciliation or restorative justice that is currently attached to the Gacaca court system only surfaced in the years that followed'.<sup>68</sup> The National Service of Gacaca Jurisdictions highlighted five objectives:

- revealing the truth;
- speeding up the genocide trials;
- eradicating the culture of impunity;
- promote reconciliation; and
- prove that Rwandan society has the capacity to settle its own problems.

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66 New Internationalist. (2012). *Rwanda's Gacaca courts: a mixed legacy*. Available: <http://newint.org/features/web-exclusive/2012/06/15/gacaca-courts-legacy/>. Last accessed Feb 2014

67 Ingelaere B. (2008). *The Gacaca courts in Rwanda*. Available: [http://www.idea.int/publications/traditional\\_justice/upload/Chapter\\_2\\_The\\_Gacaca\\_Courts\\_in\\_Rwanda.pdf](http://www.idea.int/publications/traditional_justice/upload/Chapter_2_The_Gacaca_Courts_in_Rwanda.pdf). Last accessed Feb 2014 pp 37

68 Ingelaere B. (2008). *The Gacaca courts in Rwanda*. Available: [http://www.idea.int/publications/traditional\\_justice/upload/Chapter\\_2\\_The\\_Gacaca\\_Courts\\_in\\_Rwanda.pdf](http://www.idea.int/publications/traditional_justice/upload/Chapter_2_The_Gacaca_Courts_in_Rwanda.pdf). Last accessed Feb 2014 pp 38

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Broadly, the aims of the Gacaca can be summarised in two main points: to prosecute those suspected of genocide crimes and to begin social reconstruction.<sup>69</sup>

Some indicate that ideas of gender sensitivity and inclusivity were never really a focus but were only included to appease the international community.<sup>70</sup> This is supported, to an extent, by a lack of gender related language in the original legislation.<sup>71</sup> It implies that part of gender sensitivity in transitional justice should be a deliberate goal of mainstreaming, rather than a phrase ‘added’ in to gain donor support or an accidental by product of a process. If it is an actual aim of the process, then it is more likely to be a serious consideration and therefore more effective. This links back to an earlier point on systematically operationalising gender in transitional justice.

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69 Clark P (2010). *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda*. Cambridge: Cambridge University Press. pp 3

70 Oomen B. (2005). *Donor-Driven Justice and its Discontents: The Case of Rwanda*. Available: <http://dare.uva.nl/document/17383>. Last accessed Feb 2014

71 Mibenge C. (n.d.). *ENFORCING INTERNATIONAL HUMANITARIAN LAW AT THE NATIONAL LEVEL: THE GACACA JURISDICTIONS OF RWANDA*. Available: [http://www.asser.nl/default.aspx?site\\_id=9&level1=13337&level2=13363](http://www.asser.nl/default.aspx?site_id=9&level1=13337&level2=13363). Last accessed Feb 2014

## Structural set up and procedures

The law creating the genocide Gacaca was formalised in 2001.<sup>72</sup> The structure of the Gacaca is split into cells and sectors: cells being the smallest unit active in the local community, while several cells made up the sector level. Judges were elected from the community and there was no requirement for legal training. After the information gathering phase, judges decided on which category of crime the individual would be tried for. Between 2005 and 2006, the information gathering phase took place, where after, in 2006, the trial phase began. As there was over a year between the start of the information gathering phase and the start of the trial phase, it was common that those accused were free to live in the community and continue their everyday lives.<sup>73</sup>

An overview of some of the reactions to the Gacaca in Rwanda indicates a mixed reception. In the structural set up of the Gacaca, judges preside over the hearings. In the traditional Gacaca, women were not able to speak. However, in the trials following the genocide, both men and women were able to take part: 'Initially, the *inyagamugayo* (judges) were, as tradition prescribes, 'old and wise men'.

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72 International Committee of the Red Cross. (n.d.). *Law setting up "the Gacaca Jurisdictions" and organising prosecution for offences constituting genocide or crimes against humanity, committed between 1 October 1990 and 31 December 1994, 2001*. Available: <http://www.icrc.org/ihl-nat.nsf/0/9A54271D2CE6945DC1256B26005653CE>. Last accessed Feb 2014

73 Ingelaere B. (2008). *The Gacaca courts in Rwanda*. Available: [http://www.idea.int/publications/traditional\\_justice/upload/Chapter\\_2\\_The\\_Gacaca\\_Courts\\_in\\_Rwanda.pdf](http://www.idea.int/publications/traditional_justice/upload/Chapter_2_The_Gacaca_Courts_in_Rwanda.pdf). Last accessed Feb 2014 pp 42

After several months, however, a significant number of them had to be replaced because they were accused in the Gacaca themselves. By November 2005, 26,752 or 15.7 per cent of the judges had to be replaced because they were suspected. They were replaced by women, younger people and genocide survivors'.<sup>74</sup> This shows how a traditional system was able to be adapted to ensure that in theory, gender parity was possible as all were able to be included. This is also reflected in opportunities for women to be judges.

Some have argued that there were very few women judges as they made up only a third of judges at cell level and a fifth at the provincial level.<sup>75</sup> Yet based on the same figure, Human Rights Watch (HRW) applauded the number of women instated as judges saying they made up 'a significant percentage of the judges'.<sup>76</sup> The inclusion of female judges is an important step in ensuring a gender sensitive approach to transitional justice. Yet there are questions over whether enough women were included in the structure of the system: 'Despite a high level of participation by women in the vote, statistics from the electoral Commission show that relatively few of them were elected as judges.

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74 Ingelaere B. (2008). *The Gacaca courts in Rwanda*. Available: [http://www.idea.int/publications/traditional\\_justice/upload/Chapter\\_2\\_The\\_Gacaca\\_Courts\\_in\\_Rwanda.pdf](http://www.idea.int/publications/traditional_justice/upload/Chapter_2_The_Gacaca_Courts_in_Rwanda.pdf). Last accessed Feb 2014, . pp 48

75 IDEA. (2003). *Reconciliation After Violent Conflict*. Available: <http://www.un.org/en/peacebuilding/pbso/pdf/Reconciliation-After-Violent-Conflict-A-Handbook-Full-English-PDF.pdf>. Last accessed Feb 2014.

76 Human Rights Watch. (2011). *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*. Available: <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>. Last accessed Feb 2014 pp 18

The highest proportion of female judges was at cell level, comprising just over one-third. The preponderance of male judges in part reflects the difference in literacy rates between men and women (particularly among those over 30 years of age), but also reflects the belief amongst many that the responsibility of a Gacaca judge is one reserved for men'.<sup>77</sup> This last point is interesting to see how transitional justice mechanism may be used to try and change societal attitudes which in turn may change gender relations in society. In this example, by including women as judges, gender attitudes may shift as women are given an increasing role in the peace building process.

Another consideration when analysing the successes of the Gacaca in the inclusion of a gender sensitive approach is that of formality vs. informality. The nature of the Gacaca is seen as an informal process in a community setting. Although informality may provide new opportunities for inclusion and participation, formal legal processes such as international tribunals may ensure stronger safeguards against traditional biases.<sup>78</sup> In this way, all transitional justice mechanisms should be weighed up to examine whether they can provide enough safeguards against sociological gender biases that the resulting practices are gender sensitive.

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77 Penal Reform International. (2010). *Eight Years On... A Record of Gacaca Monitoring in Rwanda*. Available: <http://www.penalreform.org/wp-content/uploads/2013/05/WEB-english-gacaca-rwanda-5.pdf>. Last accessed Feb 2014 pp 31

78 Bell C, O'Rourke. (2007). Does Feminism Need a Theory of Transitional Justice? An Introductory Essay. *The International Journal of Transitional Justice*. 1 (1), pp 41

## **Violations/Recognition of violations**

If transitional justice mechanisms are a way to create a public memory then failure to include women or women's experiences clearly undermines the idea of a public memory.<sup>79</sup> Equally, failure to acknowledge the different experiences of either gender in the transitional justice mechanisms would undermine the purpose of it.

An important aspect of the Gacaca is how it dealt with SGBV as there was a high frequency of this type of violence used during the genocide. As previously examined in the above chapter, SGBV is one way in which men and women's experiences of conflict differ and transitional justice should be sensitive to this. Initially, rape and other SGBV cases were heard through conventional court structures; however this process changed in 2008 so that those cases were transferred to the Gacaca. In several transitional justice mechanisms such as the truth commission in South Africa, SGBV was deemed not to fit the idea of a politically motivated crime and was therefore not included in the remit.<sup>80</sup> The result of this was that the experiences of many men and women were ignored and consigned as not a relevant part of what had happened. Therefore, addressing the issue of rape in the transitional justice mechanisms in Rwanda can be seen as a positive step towards gender mainstreaming.

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79 Burnett J. (2004-2005). Remembering Justice in Rwanda; Locating Gender in the Judicial Construction of Memory. *Seattle Justice Society* . 1 (1), 757

80 Hayner P (2010). *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. Oxford: Routledge pp 87

The transfer of SGBV cases from the conventional judicial system to the Gacaca has brought some benefits. Many women were dying of AIDS/HIV-related illnesses caused by SGBV before their cases were ever heard in a court. By moving to a more informal system, women were given the chance for some kind of justice and the opportunity to voice their experiences and so include them in the public memory.<sup>81</sup> This can be seen as a positive development in ensuring a gender sensitive and inclusive method of transitional justice.

Yet a report by HRW shows moving SGBV cases to the Gacaca has had several (negative) consequences.<sup>82</sup> The Gacaca is a community-based system centred on the assumption that involving the whole community will promote peace and reconciliation. Yet in sensitive cases such as rape, a community-based approach can have a negative impact on the individuals concerned and cause re-traumatisation. Even though steps were made to avoid this through the possibility of ‘closed door’ hearings, most of the community were still aware of what a ‘closed door’ hearing implied. As such, the HRW report’s findings indicate that some women felt a betrayal of trust, as well as causing risks to both the victims and accused in the cases. The move to include rape cases in the Gacaca system made some women unwilling to take part. There were several reasons cited for this in

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81 Human Rights Watch. (2011). *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*. Available: <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>. Last accessed Feb 2014 pp 12

82 Human Rights Watch. (2011). *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*. Available: <http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf>. Last accessed Feb 2014, pp 116

the HRW report including questions over whether they would be arbitrated fairly given the judges ties with the local community, some were unwilling to continue in case family or friends found out, and also concerns that the sentences were too lenient or crimes were trivialised.

Moreover, unlike when rape cases are tried by a conventional formal legal court, those rape cases brought to a Gacaca court were not entitled to the same type of reparations; ‘accordingly, many female survivors suffer primarily from a lack of financial and psychological support, suggesting that women have been impacted especially severely by the lack of reparations provided by the Gacaca system’.<sup>83</sup> Following the genocide in Rwanda, there was an imbalance in the proportion of women to men, which has been argued causes a feminisation of society as women take up places in households and employment which were previously held by men. However, the ratio slowly evened out as many refugees returned to the country. She argues that the feminisation of society caused by the lack of men may create a radical re-masculinisation in Rwandan society.<sup>84</sup> Importantly, the ‘articulation’ of *female* and *male* needs to be a concept which is considered in the post conflict period. For example, re-masculinising society through the ideological

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83 Herrmann J. (n.d.). *A critical analysis of the transitional justice measures incorporated by Rwandan gacaca and their effectiveness*. Available: [http://researchonline.jcu.edu.au/25972/1/25972\\_Herrmann\\_2012.pdf](http://researchonline.jcu.edu.au/25972/1/25972_Herrmann_2012.pdf). Last accessed Feb 2014 pp 14

84 Franke K. (2005). [http://www2.law.columbia.edu/faculty\\_franke/Franke%20\(Final%20Version\).pdf](http://www2.law.columbia.edu/faculty_franke/Franke%20(Final%20Version).pdf). Available: [http://www2.law.columbia.edu/faculty\\_franke/Franke%20\(Final%20Version\).pdf](http://www2.law.columbia.edu/faculty_franke/Franke%20(Final%20Version).pdf). Last accessed Feb 2014 pp9

assertions of a 'women's place' is damaging to gender equality. It is therefore important to ensure that the legacy of women in the Gacaca is not purely of victims of rape but to be inclusive of all their experiences in the genocide.

The reparations system incorporated in the Gacaca is important as it took into account some of the economic harms experienced as a result of the genocide.<sup>85</sup> However, there were still gaps in system as women generally suffered a changed economic role and burden which the transitional justice mechanisms in the country have found hard to correct; '[w]omen's burdens have been augmented by the fact that many adult men are in the army, and 150,000 men are in jail awaiting trial for genocide crimes, and are therefore not engaged in reconstruction and other economic development activities'.<sup>86</sup> This demonstrates how transitional justice mechanisms often look at individual acts which have been perpetrated, but the wider socio-economic context created by conflict still has gendered implications. 'As a consequence of their precarious economic situation, widows are particularly vulnerable to family and social pressure'.<sup>87</sup>

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85 Urvin P. (2003). *The Gacaca Tribunals in Rwanda*. Available: [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap07cs-rwanda.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap07cs-rwanda.pdf). Last accessed Feb 2014 pp 118

86 Hamilton H. (2000). *Rwanda's Women: The Key to Reconstruction*. Available: <http://reliefweb.int/report/rwanda/rwandas-women-key-reconstruction>. Last accessed Feb 2014

87 Urvin P. (2003). *The Gacaca Tribunals in Rwanda*. Available: [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap07cs-rwanda.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap07cs-rwanda.pdf). Last accessed Feb 2014 pp 120

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## Participation/access to justice

Even though the ICTR was also created, the Gacaca is the main form of transitional justice in the country as it reached most of the population, and required popular participation. Other forms of transitional justice in Rwanda can be seen to have a much smaller impact as the trials were not held in the country, and it involved a much smaller percentage of the population in its proceedings.

When considering the issue of SGBV in transitional justice, it is important to question how accessible the system of Gacaca was for males. In Rwanda, SGBV against men is significantly under-represented and under-prosecuted. This highlights the need to include a more diverse understanding of who the Gacaca system can help, as unreported and unprosecuted crimes not only undermine the idea of a public memory but also result in some being unable to access justice.<sup>88</sup>

It has already been mentioned that traditionally during Gacaca trials, women were not able to speak. Therefore, the Gacaca in the modern form has had to work hard to enable access to justice for women who were the main witnesses to many of the crimes committed as proportionally, more men than women had been killed during the genocide. This provided an additional onus to ensure the inclusion of women in the Gacaca; if only men took part then only a fraction of what happened would become public memory.

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88 Burnett J. (2004-2005). Remembering Justice in Rwanda; Locating Gender in the Judicial Construction of Memory. *Seattle Justice Society* . 1 (1), 757

To increase participation levels in the trials, civil society organisations such as Pro-Femmes/Twese Hamw and International Alert worked to raise awareness to the process including the importance of taking part and also helped with training women so they were able to take on a fuller role.<sup>89</sup> Although participation in the Gacaca was mandatory, programmes like the ones run by Pro-Femmes/Twese Hamw and International Alert helped build confidence so that more women were likely to speak at the trials and the processes as a whole was, therefore, more gender inclusive.

## **South Africa**

Institutionalised racism was part of a policy enforced and expanded upon by the National Party following on from similar, but less formalised and institutionalised policies, under colonialism. Racial grouping dictated much of one's life through access to jobs, housing, healthcare and education: as well as many other social interactions. Although there was significant resistance to these policies from both individuals and groups such as the African National Congress (ANC),<sup>90</sup> they were met with brutal reprisals and repression.<sup>91</sup>

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89 Profemmes. (n.d.). *Strengthening the Role of Women in the Gacaca Tribunals – International Alert and Profemmes/Twese Hamwe*. Available: <http://www.badgerdesigns.com/alert/v1/pdfs/Rwanda%20-%20Gacaca%20meeting.pdf>. Last accessed Feb 2014

90 The African National Congress are a political party in South Africa who are currently in power. They were involved with the resistance movement against apartheid.

91 BBC. (n.d.). *1976: Soweto protest turns violent*. Available: [http://news.bbc.co.uk/onthisday/hi/dates/stories/june/16/newsid\\_2514000/2514467.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/june/16/newsid_2514000/2514467.stm). Last accessed Feb 2014

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Following the abolition of apartheid in South Africa in 1994, caused by internal and international pressure such as the use of sanctions, the Promotion of National Unity and Reconciliation Act, No 34 was passed in 1995.<sup>92</sup>

Following the large scale human rights violations seen between 1960 and 1994, it was deemed that a truth and reconciliation commission was ‘a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation’.<sup>93</sup> Both the human rights violations and violence committed by the state and by liberation groups, could be discussed at the Truth and Reconciliation Commission (TRC). The Commission was set up with three main committees; the Human Rights Violation Committee, the Reparations and Rehabilitations Committee and the Amnesty Committee. The Commission enabled victims and perpetrators to express their experiences of apartheid and in some cases ask for amnesty so they were not prosecuted in criminal or civil cases. Granting amnesty was one of the three tasks of the Commission along with discovering and truth telling about the human rights violations and finding victims in order that reparation may be settled.

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92 UN. (n.d.). *The United Nations: Partner in the Struggle against apartheid*. Available: <http://www.un.org/en/events/mandeladay/apartheid.shtml>. Last accessed Feb 2014; Truth and Reconciliation Commission . (n.d.). *Legal Background to the TRC*. Available: <http://www.justice.gov.za/trc/legal/index.htm>. Last accessed Feb 2014.

93 Truth and Reconciliation Commission . (n.d.). *Welcome to the Official Truth and Reconciliation Website*. Available: <http://www.justice.gov.za/trc/>. Last accessed Feb 2014

Testimony was received from over 21,000 individuals and amnesty applications totalled over 7,000; however, cases of amnesty were denied in some instances.<sup>94</sup>

## **A gendered perspective on the truth and reconciliation commission in South Africa**

### **Mandate**

One of the common criticisms of the TRC with regard to the mandate under which it was operating was that it had too narrow a focus and was ‘gender-blind’ or ‘gender neutral’.<sup>95</sup> Moreover, the Commission looked at individual grievances, rather than addressing the system of apartheid as a whole. Yet it was the system as a whole which helped cement the structural violence that had a gendered impact.<sup>96</sup> As was already outlined in the previous chapter, addressing the wider context in which grievances occurred is vital to understanding the gender biases in the institution of apartheid as a whole. Additionally, the emphasis of the legislation to be neutral in terms of both gender and race meant that many violations were not fully or adequately included in the remit of the TRC.

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94 United States Institute of Peace. (n.d.). *Truth Commission: South Africa*. Available: <http://www.usip.org/publications/truth-commission-south-africa>. Last accessed Feb 2014

95 Manjoo R. (2009). Gender Injustice and the South African Truth and Reconciliation Commission. In: Pankhurst D *Gendered Peace: Women's Struggles for Post-War Justice and Reconciliation*. Oxford: Routledge. pp 150

96 Manjoo R. (2009). Gender Injustice and the South African Truth and Reconciliation Commission. In: Pankhurst D *Gendered Peace: Women's Struggles for Post-War Justice and Reconciliation*. Oxford: Routledge pp 143

The resulting situation was reflected on the final report of the TRC: the definition of gross violation of human rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women. In this respect, the full report of the Commission and the evidence presented to it can be compared to reports on South African poverty, which make it very clear that while women are not the only sufferers, they bear the brunt of the suffering.<sup>97</sup>

This is not to say that the issue of gender was not discussed informally, but as one lawyer and activist recalls:

many of us [women's activists and groups] had been asking each other, informally – slightly panicky – for many months, as the [TRC] process unfolded before our eyes. But nobody had the resources; and the ones who did felt they did not have a mandate; and the women's movement was silent.<sup>98</sup>

This indicates that the issue of gender was not fully brought into question when the remit of the TRC was being created. This had a detrimental effect on the official mandate, which in turn had negative consequences for the inclusion of gender.

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97 Truth and Reconciliation Commission. (1998). *Truth and Reconciliation Commission of South Africa: Volume 4*. Available: <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>. Last accessed Feb 2014 pp 318

98 Kusafuka A. (n.d.). *Truth commissions and gender: A South African case study*. Available: <http://www.ajol.info/index.php/ajcr/article/view-File/52172/40798>. Last accessed Feb 2014 pp 49

However, significantly, following the formal set up of the TRC, gender activists lobbied for a more inclusive involvement of gender in the proceedings. In 1996, a submission to the TRC by Beth Goldblatt and Sheila Meintjes resulted in the TRC enabling certain recommendations which resulted in a more gender sensitive approach. Their submission focused largely on the social constructs of gender resulting in men and women experiencing apartheid differently.

While apartheid defined blacks as secondary political and civil subjects, women were given an even further diminished social and legal status through both the customary and the common law and other social mechanisms. It is this social imbalance which has enabled men to devalue women and which can be linked to the prevalence of abusive and oppressive treatment of women and girls in our society.<sup>99</sup>

For example, while many men were killed or imprisoned during the apartheid regime, many women suffered economically due to changing family structures and dynamics. Furthermore, women often experienced physical abuse differently to men as shown by the high incidences of SGBV.<sup>100</sup>

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99 Goldblatt B, Meintjes S. (n.d.). *A submission to the Truth and Reconciliation Commission*. Available: <http://www.justice.gov.za/trc/hrvtrans/submit/gender.htm#B>. Last accessed Feb 2014

100 Goldblatt B, Meintjes S. (n.d.). *A submission to the Truth and Reconciliation Commission*. Available: <http://www.justice.gov.za/trc/hrvtrans/submit/gender.htm#B>. Last accessed Feb 2014\_

This submission proved a useful step in expanding the purview of TRC to include a more gender sensitive approach. Yet as a final report indicated, there was still, to an extent, blindness as far as gender as concerned. It should also be noted that some women involved in the process felt that the inclusion of gender into the TRC was something they had to ‘bargain’ for, and even then felt like they were being ‘humoured’ rather than seeing a genuine desire to include gender issues.<sup>101</sup> As such, there were no substantial efforts towards gender mainstreaming in the TRC’s mandate and inclusion of considering women’s experiences appears more of an afterthought than a genuine policy.

### **Structural set up and procedures**

The departure away from apartheid as a policy enforced by the state involved many negotiation stages and required many precursors for negotiations to even take place. For example, parties such as the ANC were banned, so the ban had to be reversed to allow ANC members into the negotiation process. As a major political party and opposition group it was important that they took part. Yet even though negotiations involved many different actors, including some women, it did not accurately reflect the demographics of South Africa at the time.<sup>102</sup>

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101 Goldblatt B. (2006). Evaluating the Gender Content of Reparations: Lessons from South Africa. In: Rubio-Marín R *What Happened to the Women?: Gender and Reparations for Human Rights Violations*. Chicago: Social Science Research Council. pp 56

102 Manjoo R. (2009). Gender Injustice and the South African Truth and Reconciliation Commission . In: Pankhurst D *Gendered Peace: Women’s Struggles for Post-War Justice and Reconciliation*. Oxford: Routledge. pp 142

Additionally, when the legislation was finally drawn up for the TRC, the drafting stage was dominated by men resulting in an androcentric process.<sup>103</sup> This indicates that in the structures involved in setting up the TRC, there was not adequate representation of women and therefore there was a limited sensitivity to a gender perspective.

Compared to the process which established the TRC, the actual Commission achieved a high level of gender inclusivity when considering the parity of men and women who were made commissioners—eight women and nine men.<sup>104</sup> This could be seen as a positive step in redressing the perceptions of women in the severely patriarchal South African post-apartheid society. During apartheid ‘women were given an even further diminished social and legal status through both the customary and the common law and other social mechanisms... which has enabled men to devalue women and which can be linked to the prevalence of abusive and oppressive treatment of women and girls in our society’ and that the composition of commissioners could be seen to signal a move away societal inequalities which included gender inequality.<sup>105</sup>

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103 Manjoo R. (2009). Gender Injustice and the South African Truth and Reconciliation Commission . In: Pankhurst D *Gendered Peace: Women's Struggles for Post-War Justice and Reconciliation*. Oxford: Routledge. pp 143

104 United States Institute of peace. (n.d.). *Truth Commission: South Africa*. Available: <http://www.usip.org/publications/truth-commission-south-africa>. Last accessed Feb 2014

105 <http://www.justice.gov.za/trc/hrvtrans/submit/gender.htm#B>

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Even within the selection process it can be seen that there was a gender bias; women were asked during their selection interviews whether there should be women on the Commission yet none of the men were asked about the inclusion of men on the Commission.<sup>106</sup> It is also interesting to note how women in the TRC felt about the structural set up of the Commission. Wendy Orr, who was appointed Vice-President of the Reparations and Rehabilitations Committee, indicated that women held specific positions commonly perceived as ‘touchy-feely women’s stuff’, such as reparations.<sup>107</sup>

One way in which gender sensitivity was included in the TRC followed on from the submission made by Beth Goldblatt and Sheila Meintjes. These recommendations included gender sensitivity training for commissioners, special hearings for women, ways for women to testify without being in open court (such as via camera), workshops designed to help women testifying deal with the media, encouraging women to tell the experiences of other women and through collective storytelling.<sup>108</sup>

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106 Manjoo R. (2009). Gender Injustice and the South African Truth and Reconciliation Commission . In: Pankhurst D *Gendered Peace: Women's Struggles for Post-War Justice and Reconciliation*. Oxford: Routledge. pp 145

107 Goldblatt B. (2006). Evaluating the Gender Content of Reparations: Lessons from South Africa. In: Rubio-Marín R *What Happened to the Women?: Gender and Reparations for Human Rights Violations*. Chicago: Social Science Research Council. pp 56

108 Etchart L, Baksh R. (2007). Applying a Gender Lens to Armed Conflict, Violence and Conflict Transformation. In: Baksh R et al *Gender Mainstreaming in Conflict Transformation: Building Sustainable Peace*. 2nd ed. London: Commonwealth Secretariat. pp 52

The inclusion of these provisions helped enable access to justice for women and so helped enter their experiences into the collective public memory created through the Commission.

## **Violations/Recognition of violations**

A narrow definition of violation or harm could have a detrimental and gendered effect on a transitional justice mechanism. Just as the effects of conflict can have differing impacts on men and women, the transitional justice process should also acknowledge and deal with this; '(m)any 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'.<sup>109</sup> This has also been recognised by the final report of the TRC; 'The chapter suggests further that the definition of gross violation of human rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women'.<sup>110</sup>

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109 Scanlon H. (n.d.). *Militarization, Gender and Transitional Justice in Africa*. Available: [http://agi.ac.za/sites/agi.ac.za/files/fa\\_10\\_feature\\_article\\_2.pdf](http://agi.ac.za/sites/agi.ac.za/files/fa_10_feature_article_2.pdf). Last accessed Feb 2014 pp 36

110 Truth and Reconciliation Commission. (1998). *Truth and Reconciliation Commission of South Africa: Volume 4*. Available: <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>. Last accessed Feb 2014 pp 318

Beyond the different gendered forms of physical torture, there were also differences in other harms experienced by men and women. For example, the policies of apartheid included moving people off land or forcing them to migrate for work. Men were often used as migrant labourers in industries such as mining, which involved them moving away from their families for long periods of time. Women were then left to take on new responsibilities in the household in the absence of husbands and other male family members. This could also result in migration to find work in new urban areas. In this sense, apartheid produced a very real socio-economic harm which tended to have gendered impacts.<sup>111 112</sup>

Physically, many of the harms encountered by men and women were similar in response to protesting or state violence delivered by the police. Yet there were also specific gendered forms of violence encountered during the apartheid. Beyond the possibility of women being abducted by rival groups in neighbouring townships, the types of physical harm and torture used by police and other security forces could have a distinctly gendered dimension, for example beating pregnant women, which could result in miscarriage, electric shocks to genitals/breasts, genital mutilation, rape and other forms of sexual assault.

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111 Truth and Reconciliation Commission. (1998). *Truth and Reconciliation Commission of South Africa: Volume 4*. Available: <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>. Last accessed Feb 2014 pp 290

112 Goldblatt B. (2006). Evaluating the Gender Content of Reparations: Lessons from South Africa. In: Rubio-Marín R *What Happened to the Women?: Gender and Reparations for Human Rights Violations*. Chicago: Social Science Research Council. pp 51

The Human Rights Violations hearing took place before the reparations policies had been finalised as reparations were only for those who fell into the categorisation of victims as set out in law. The term ‘Gross Human Rights Violations’ was one of the aspects which the TRC was mandated to investigate however the definition of this was narrow in regard to gender as it comprised the following;

- ‘the violation of human rights through the killing, abduction, torture or severe ill-treatment of any person’; and
- the ‘attempt, conspiracy, incitement, instigation, command or procurement to commit’ the above acts.<sup>113</sup>

Accordingly, a common criticism of the TRC is that rape or other SGBV is not included as a Gross Human Rights Violation; however, the term ‘severe ill-treatment’ was often used in relation to such crimes. Even when incidents of rape were brought before the TRC, there were complications around deciding if these cases were politically motivated and therefore as a result of apartheid.<sup>114</sup> As well as failing to adequately include the issue of SGBV, the TRC used a definition of ‘harm’ which did not fully address the socio-economic impact of apartheid. This caused many of the hardships discussed above to not be included. Even though a coalition of NGOs advocated broadening this classification, it

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113 Kusafuka A. (n.d.). *Truth commissions and gender: A South African case study*. Available: <http://www.ajol.info/index.php/ajcr/article/view-File/52172/40798>. Last accessed Feb 2014 pp 48

114 Kusafuka A. (n.d.). *Truth commissions and gender: A South African case study*. Available: <http://www.ajol.info/index.php/ajcr/article/view-File/52172/40798>. Last accessed Feb 2014 pp 52

did not happen.<sup>115</sup> However, the legislation which outlined who was considered a victim included the ‘relatives and dependants’ of those who had suffered as eligible for reparations. This had a positive effect in understanding that apartheid affected families and communities as well as individuals. This focus on the family affected was ‘very important since it locates wives, mothers and children in centre stage as having suffered ‘gross violations of human rights’. It is significant to see these women as primary, not secondary victims because they themselves suffered directly. It is indeed difficult to separate the psychological pain of a mother whose child has been tortured from the physical and psychological pain of the child itself. Both are victims in need of support and rehabilitation’.<sup>116</sup>

## **Participation/Access to justice**

Beyond looking at how gender was included in the structure, mandate and parameters of the TRC, another aspect which is useful to look at when viewing the TRC through a gendered lens is the question of access to justice and the ability or willingness to participate. As was already touched upon in the case study of Rwanda, transitional justice mechanisms help enable a public collective memory, the concept of which is undermined in marginalised groups either purposefully or accidentally.

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115 Kusafuka A. (n.d.). *Truth commissions and gender: A South African case study*. Available: <http://www.ajol.info/index.php/ajcr/article/view-File/52172/40798>. Last accessed Feb 2014 pp 49

116 Goldblatt B, Meintjes S. (n.d.). *A submission to the Truth and Reconciliation Commission*. Available: <http://www.justice.gov.za/trc/hrvtrans/submit/gender.htm#B>. Last accessed Feb 2014

In order to address the need for inclusiveness, and to encourage women to share their experiences with the TRC, following the submission to the Committee in 1996 there were several specific provisions making access to the TRC easier for women. The aim was to increase participation of women and ensure the TRC did not ignore what had happened to women. However, the geographical locations of the TRC centres were in urban areas, making it difficult for rural women to access these institutions.<sup>117</sup> Another problem appears to be that even though 54.8 per cent of the statements were given by women, only 43.9 per cent referred to their own experiences and instead were about the violations experienced by men. Moreover, the number of statements pertaining to sexual abuse and assault only comprise 2.12 per cent of the total number of statements with only 140 cases directly mentioning rape. This occurrence was also noted by the final TRC report; '(t)hey saw that, while the overwhelming majority of women spoke as relatives and dependants of those (mainly males) who had directly suffered human rights violations, most of the men spoke as direct victims'.<sup>118</sup> Also, very few women appear to have participated in the TRC as perpetrators.

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117 Goldblatt B. (2006). Evaluating the Gender Content of Reparations: Lessons from South Africa. In: Rubio-Marín R *What Happened to the Women?: Gender and Reparations for Human Rights Violations*. Chicago: Social Science Research Council. pp 57

118 Truth and Reconciliation Commission. (1998). *Truth and Reconciliation Commission of South Africa: Volume 4*. Available: <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>. Last accessed Feb 2014 pp 285

Only 56 amnesty applications were known to have come from women while over 4000 came from men.<sup>119</sup> In one of the applications, which was later denied, the applicant was applying to amnesty for her 'apathy' about the apartheid. While she did not describe specific acts in which she had caused harm, this brings up a thought provoking point about the nature of not just individual acts but the sociological context which creates repression and human rights abuses. Yet the TRC only focused on specific acts and experiences of *individuals* rather than fully addressing the *wider* context of inequalities.

In terms of gender inclusion, there were specific hearings to try to promote the access to justice for women. Yet it is both limited and limiting to use gender purely as a byword for women or women as a byword for gender. Many of the nuances of gender relations are unlikely to be fully comprehended in such a narrow view and risk the idea of women simply being remembered as victims rather than as active participants in resistance or other political activity.<sup>120</sup> The intersectionality between conceptions of gender and race affected men too.

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119 Truth and Reconciliation Commission. (1998). *Truth and Reconciliation Commission of South Africa: Volume 4*. Available: <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>. Last accessed Feb 2014 pp 314

120 Gready P (2011). *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and beyond*. Oxford: Routledge. pp 80

For example, conscription of white men and militarisation influenced a hyper-masculinity which associated military service with 'being a man'.<sup>121</sup> As black men were not able to be a part of this military service, they were seen as emasculated by the state. Moreover, it is argued by some that in South Africa sexual violence against women was also used to emasculate black men further.

The taboo on speaking out publicly about their own experiences of abuse is testimony to and a reflection of men's social power and control. Violation of women was translated as men's inability to protect their families and communities so to speak about it would be to humiliate and undermine men. One could argue that to violate women was a double blow, both to women's integrity and sense of selfhood and was an attack on the men in order to undermine their identity and authority as men, as heads of families and protectors of communities.<sup>122</sup>

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121 Conway D (2012). *Masculinities, Militarisation and the End Conscription Campaign: War Resistance in apartheid South Africa*. Manchester: Manchester University press

122 Truth and Reconciliation Commission. (1998). *Truth and Reconciliation Commission of South Africa: Volume 4*. Available: <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>. Last accessed Feb 2014 pp 297; Gunda Werner Institute . (n.d.). *South Africa's Truth and Reconciliation Commission and Gender Justice*. Available: <http://www.gwi-boell.de/en/2012/03/12/south-afrika%E2%80%99s-truth-and-reconciliation-commission-and-gender-justice>. Last accessed Feb 2014

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## Conclusion

So that transitional justice mechanisms are both inclusive and representative of the experiences of a conflict, it is important that they address gendered issues. Far too often, gender is used as a byword for women or the inclusion of women is taken to mean that *all* gendered aspects are taken into account. As the case study of the TRC in South Africa demonstrated, the gendered effects of apartheid did not just mean women had suffered in specific ways. Moreover, other examples in this paper highlight that addressing SGBV in transitional justice mechanisms is not just a 'women's issue'.

One of the key ways which has demonstrably been shown in a number of international cases is the need to formalise addressing gender in the language used in legislation which creates the different mechanisms. This helps prevent gender from being addressed in an ad hoc manner. This has started to become the norm in post conflict and transitional state situations, however, as can be seen from the case study of Rwanda, it is not always seen as a key concern. Subsequent transitional justice mechanisms which have been more successful at addressing gender, given as examples in this paper, show how important it is that gender is part of the official mandate.

One way in which this can be achieved in practice is in the structural design of the mechanisms being inclusive of gender and

representative of the population. Importantly, as the case study of Rwanda illustrates, those who are placed in positions of authority in these processes should not be perpetrators of human rights violations. This would undermine the legitimacy of the proceedings and fail in one of transitional justice's aims; that of accountability. As the Gacaca example showed, many judges had to be replaced as they were accused of genocide crimes. This did however, provide a space for more women to be included in the processes.

It can also be concluded that transitional justice mechanisms should have a wide definition of harm to include physical, psychological and socio-economic harm. These violations and harms can be gendered in many different ways as the chapter on this and the examples given throughout the paper have demonstrated. It is imperative therefore that these are taken into consideration in the transitional justice process. Many of these processes help form a type of public memory of the events which occurred during conflict. Therefore, having a narrow definition of harm prevents many experiences from being acknowledged.

Civil society participation has been another key way through which transitional justice mechanism have better addressed gendered issues. For example, in South Africa, a submission to the TRC led to more processes encouraging women to take part. Similarly, other examples within this paper have shown the benefits of civil society engagement in transitional justice processes in relation to gender. These include helping to remove barriers to participation

and building confidence of marginalised groups in the community such as women.

Significantly, transitional justice mechanisms can aid the idea of a public memory which needs to be inclusive of different experiences. By not only looking at individual violations, but rather, addressing the systems which enabled these violations and inequalities to happen, gendered issues can be improved. Whilst these systems can be exacerbated during periods of conflict or repression, there can often be existing underlying gender inequalities which are then exploited further during such periods.

Through the analysis of the two main case studies of Rwanda and South Africa, as well as numerous examples throughout the paper, the ways in which transitional justice mechanisms can address gender and gendered issues has been explored. International case studies demonstrate some of the ways in which this has and has not been successful. While there is by no means an exhaustive list of the ways in which gender has, or has not, been addressed, observing international experiences offers a starting point to highlight some of the ways in which future transitional justice processes may better integrate an understanding of gender and gendered issues.

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## DPI Board Members

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**Kerim Yildiz (Director)**, Kerim Yildiz is Director of DPI. He is an expert in International Human Rights Law and minority rights, and has written extensively on international Human Rights mechanisms and International Humanitarian Law. Kerim is the recipient of a number of awards, including from the Lawyers Committee for Human Rights for his services to protect human rights and promote the rule of law in 1996, the Sigrid Rausing Trust's Human Rights award for Leadership in Indigenous and Minority Rights in 2005, and the Gruber Prize for Justice in 2011.



**Nick Stewart QC (Chair)**, Barrister and Deputy High Court Judge (Chancery and Queen's Bench Divisions), United Kingdom. Former Chair of the Bar Human Rights Committee of England and Wales and Former President of Union Internationale des Avocats.



**Prof. Penny Green (Secretary)**, Head of Research and Director of the School of Law's Research Programme at King's College London and Director of the International State Crime Initiative (ICSI), United Kingdom (a collaborative enterprise with the Harvard Humanitarian Initiative and the University of Hull, led by King's College London).



**Priscilla Hayner:** Co-founder of the International Center for Transitional Justice, global expert and author on truth commissions and transitional justice initiatives, consultant to the Ford Foundation, the UN High Commissioner for Human Rights, and numerous other organizations.



**Arild Humlen,** Lawyer and Director of the Norwegian Bar Association's Legal Committee, Norway. Widely published within a number of jurisdictions, with emphasis on international civil law and human rights. Has lectured at law faculties of several universities in Norway. Awarded the Honor Prize of the Bar Association for Oslo for his work as Chairman of the Bar Association's Litigation Group for Asylum and Immigration law.



**Prof. David Petrasek:** Associate Professor, Graduate School of Public and International affairs, formerly Special Adviser to the Secretary-General of Amnesty International, he has worked extensively on human rights, humanitarian and conflict resolution issues, including for Amnesty International (1990-96), for the Office of the UN High Commissioner for Human Rights (1997-98), for the International Council on Human Rights Policy (1998-02), and as Director of Policy at the HD Centre (2003-07).



**Antonia Potter**, Expert in humanitarian, development, peacemaking and peacebuilding issues. Consultant on women, peace and security; and strategic issues to clients including the Centre for Humanitarian Dialogue, the European Peacebuilding Liaison Office, the Global Network of Women Peacemakers, MediatEUR, and Terre des Hommes.



**Jacki Muirhead**, Practice Director, Cleveland Law Firm. Previously Barristers' Clerk at Counsels' Chambers Limited and Marketing Manager at the Faculty of Advocates. Undertook an International Secondment at New South Wales Bar Association.

## DPI Council of Experts

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### **Dermot Ahern**

Dermot Ahern is a Former Irish Member of Parliament and Government Minister and was a key figure for more than 20 years in the Irish peace process, including in negotiations for the Good Friday Agreement and the St Andrews Agreement. He also has extensive experience at EU Council level including being a key negotiator and signatory to the Constitutional and Lisbon Treaties. In 2005, he was appointed by the then UN Secretary General Kofi Annan to be a Special Envoy on his behalf on the issue of UN Reform. Previous roles include that of Government Chief Whip, Minister for Social, Community and Family Affairs, Minister for Communications, Marine and Natural Resources, Minister for Foreign Affairs and Minister for Justice and Law Reform. Dermot Ahern also served as Co-Chairman of the British Irish Inter Parliamentary Body 1993 – 1997.



**Dr Mehmet Asutay**

Dr Mehmet Asutay is a Reader in Middle Eastern and Islamic Political Economy and Finance at School of Government and International Affairs (SGIA), Durham University, UK. Areas of focus include Turkish and Kurdish political economies, and Islamic political economy. He is the Honorary Treasurer of BRISMES (British Society for Middle East Studies) and of the International Association for Islamic Economics. His research has been published in various journals, magazines and also in book format.



**Prof. Christine Bell:** Legal expert based in Northern Ireland; expert on transitional justice, peace negotiations, constitutional law and human rights law advice. Trainer for diplomats, mediators and lawyers.



**Cengiz Çandar:** Senior Journalist and columnist specializing in areas such as The Kurdish Question, former war correspondent. Served as special adviser to Turkish president Turgut Ozal.



**Yılmaz Ensaroğlu:** SETA Politics Economic and Social Research Foundation. Member of the Executive Board of the Joint Platform for Human Rights, the Human Rights Agenda Association (İHGD) and Human Rights Research Association (İHAD), Chief Editor of the Journal of the Human Rights Dialogue.



**Prof. Mervyn Frost:** Head of the Department of War Studies, King's College London. Previously served as Chair of Politics and Head of Department at the University of Natal in Durban. Former President of the South African Political Studies Association; expert on human rights in international relations, humanitarian intervention, justice in world politics, democratising global governance, just war tradition in an Era of New Wars and ethics in a globalising world.



**Dr. Edel Hughes:** Lecturer, University of East London. Expert on international human rights and humanitarian law, with special interest in civil liberties in Ireland, emergency/anti-terrorism law, international criminal law and human rights in Turkey and Turkey's accession to European Union. Previous lecturer with Amnesty International and a founding member of Human Rights for Change.



**Dr Salomón Lerner Febres:** Former President of the Truth and Reconciliation Commission of Perú; Executive President of the Center for Democracy and Human Rights of the Pontifical Catholic University of Perú.



**Martin Griffiths:** Former Deputy Head, Kofi Annan's UN Mission to Syria. Founding member and first Executive Director of the Centre for Humanitarian Dialogue, Served in the British Diplomatic Service, and in British NGOs, Ex -Chief Executive of Action Aid. Held posts as United Nations (UN) Director of the Department of Humanitarian Affairs, Geneva and Deputy to the UN Emergency Relief Coordinator, New York. Served as UN Regional Humanitarian Coordinator for the Great Lakes, UN Regional Coordinator in the Balkans and UN Assistant Secretary-General.



**Avila Kilmurray:** A founder member of the Northern Ireland Women's Coalition and was part of the Coalition's negotiating team for the Good Friday Agreement. She has written extensively on community action, the women's movement and conflict transformation. Serves on the Board of Conciliation Resources (UK); the Global Fund for Community Foundations; Conflict Resolution Services Ireland and the Institute for British Irish Studies. Avila was the first Women's Officer for the Transport & General Workers Union for Ireland (1990-1994) and became Director of the Community Foundation for Northern Ireland in 1994. Avila was awarded the Raymond Georis Prize for Innovative Philanthropy through the European Foundation Centre.



**Prof. Ram Manikkalingam:** Visiting Professor, Department of Political Science, University of Amsterdam, served as Senior Advisor on the Peace Process to President of Sri Lanka, expert and author on conflict, multiculturalism and democracy, founding board member of the Laksham Kadirgamar Institute for Strategic Studies and International Relations.



**Bejan Matur:** Renowned Turkey based Author and Poet. She was a columnist for Zaman newspaper, focusing mainly on Kurdish politics, the Armenian issue, daily politics, minority problems, prison literature, and women's issues. Has won several literary prizes and her work has been translated into 17 languages. Former Director of the Diyarbakır Cultural Art Foundation (DKSV).



**Monica McWilliams:** Professor of Women's Studies, based in the Transitional Justice Institute at the University of Ulster. Was the Chief Commissioner of the Northern Ireland Human Rights Commission from 2005 2011 and responsible for delivering the advice on a Bill of Rights for Northern Ireland. Co-founder of the Northern Ireland Women's Coalition political party and was elected to a seat at the Multi-Party Peace Negotiations, which led to the Belfast (Good Friday) Peace Agreement in 1998. Served as a member of the Northern Ireland Legislative Assembly from 1998-2003 and the Northern Ireland Forum for Dialogue and Understanding from 1996-1998. Publications focus on domestic violence, human security and the role of women in peace processes.



**Jonathan Powell:** Jonathan Powell is founder and CEO of Inter Mediate, an NGO devoted to conflict resolution working in the Middle East, Latin America, Africa and Asia. Jonathan was Chief of Staff to Tony Blair from 1995 to 2007 and from 1997 was also Chief British Negotiator on Northern Ireland. From 1978-79 he was a broadcast journalist with the BBC and Granada TV and from 1979 to 1994 a British Diplomat.



**Sir Kieran Prendergast:** Served in the British Foreign Office, including in Cyprus, Turkey, Israel, the Netherlands, Kenya and New York; later head of the Foreign and Commonwealth Office dealing with Apartheid and Namibia; former UN Under-Secretary-General for Political Affairs. Convenor of the SG's Executive Committee on Peace and Security and engaged in peacemaking efforts in Afghanistan, Burundi, Cyprus, the DRC, East Timor, Guatemala, Iraq, the Middle East, Somalia and Sudan.



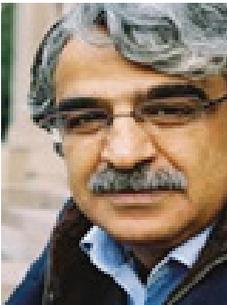
**Prof. Naomi Roht-Arriaza:** Professor at University of Berkeley, United States, expert and author on transitional justice, human rights violations, international criminal law and global environmental issues.



**Rajesh Rai:** Rajesh was called to the Bar in 1993. His areas of expertise include Human Rights Law, Immigration and Asylum Law, and Public Law. Rajesh has extensive hands-on experience in humanitarian and environmental issues in his work with NGOs, cooperatives and companies based in the UK and overseas. He is Founding Director of HIC, a Community Centred NGO based in Cameroon, and of Human Energy (Uganda) Ltd, and was previously a Director of The Joint Council for the Welfare of Immigrants (JCWI). Rajesh also lectures on a wide variety of legal issues, both for the Bar Human Rights Council and internationally, in India, Africa, Asia, and the USA.



**Prof. Dr. Mithat Sancar:** Professor of Law at the University of Ankara, expert and author on constitutional citizenship and transitional justice, columnist for Taraf newspaper.



**Prof. Dr. Sevtap Yokuş:** Professor of Law at the University of Kocaeli. She is a widely published expert in the areas of constitutional law and human rights law, and is a practitioner in the European Court of Human Rights.



**David Reddaway:** He now works as an adviser, board member and consultant in the private and university sectors. He was previously British Ambassador to Turkey and to Ireland; High Commissioner to Canada; UK Special Representative for Afghanistan; and Charge d’Affaires in Iran, where he had first worked during the Iranian Revolution. He also served in Argentina; India; and Spain. He was a Fellow at Harvard University and a volunteer teacher in Ethiopia. He read History at Cambridge, and Persian at the School of Oriental and African Studies in London.



**Mark Muller QC:** Senior advocate at Doughty Street Chambers (London) and the Scottish Faculty of Advocates (Edinburgh) specialised in public international law and human rights. He has many years’ experience of advising on conflict resolution, mediation, ceasefire and power-sharing and first-hand experience of a number of conflict zones, including Afghanistan, Libya, Iraq and Syria. Since 2005 he is Senior Advisor to the Centre for Humanitarian Dialogue, Beyond Conflict and Inter-Mediate. He is also a Harvard Law School Fellow and former Chair of the Bar Human Rights Committee and Head of Rule of Law for the Bar Council. He is the founder of Beyond Borders – a Scottish initiative dedicated to fostering peace and international understanding through cultural dialogue. He currently acts as Senior Mediation Expert for the Standby Team of Mediators of the UN Department of Political Affairs.



**Joost Lagendijk:** Columnist for the Turkish dailies ‘Zaman’ and ‘Today’s Zaman’, and a lecturer on EU Institutions and Policies at the Suleyman Shah University, Istanbul. He is also the author and editor of a number of books on European border issues, US and EU foreign policy strategies, and modern Turkey. From 1998 – 2009 Mr Lagendijk was a Dutch Green Left Party Member of European Parliament, where he focused on foreign policy and EU enlargement. He has also served as Chair of the Parliament’s Turkey Delegation and the rapporteur for the Parliament on the Balkans and Kosovo. From 2009 to 2012, Mr Lagendijk worked as a senior adviser at the Istanbul Policy Center in Istanbul.



**Prof. Dr Ahmet Insel:** A managing editor of Turkey editing house Iletisim and Head of the Department of Economics in Galatasaray University, Istanbul. Also a Professor at Paris 1 Panthéon-Sorbonne University. Author and columnist.



**Ali Bayramoğlu:** Writer and political commentator. He is a columnist for the Turkish daily newspaper Yeni Safak. Member of Turkey’s Wise Persons Commission Established by Prime Minister Erdoğan.





11 Guilford Street  
London WC1N 1DH  
United Kingdom  
+44 (0)203 206 9939

[info@democraticprogress.org](mailto:info@democraticprogress.org)

[www.democraticprogress.org](http://www.democraticprogress.org)

Twitter: @DPL\_UK