

## Essay on the role of women in transitional justice in post conflict societies

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**ABSTRACT:** This paper passed through what is transitional justice by various tentative of its meaning and highlighted the role of women in its process. As an essay, we focused on key factors underlying transitional justice components and drawn attention to the role of women. The review of literature on women participation in transitional justice is the key method of data collection followed by a content analysis. Findings show that in all process of transitional justice, women appear in various roles such as advocates, witnesses, accomplices and agitators. Also, the successful reparations have to be designed in consultation with affected communities, particularly victims and women groups which can provide concrete remedies to them, promote reconciliation, and restore public trust. Women play a role of designer and planner because they are the decision makers in their organizations. Therefore, they are in good place for advocacy and can serve like bridges to the community.

**KEYWORDS:** transitional justice; accountability; reparation; truth commissions; reconciliation and institutional reform.

### 1 INTRODUCTION

According to Teitel, the century's end, societies all over the world are throwing off the burden of authoritarian rule and other forms of terrorism including genocide as it happened in Rwanda in 1994. In those circumstances, societies are confronting the issue of punishing perpetrators or letting them in liberty. Therefore, transitional Justice takes this question to a new level with an interdisciplinary approach that challenges many aspects in the bid to promote social justice and equity in the society. The author explored how regimes should respond to evil rule, arguing against the prevailing view favoring punishment, yet challenging that the law nevertheless plays a profound role in periods of radical change. Pursuing a comparative and historical approach, she presents a convincing analysis of constitutional, legislative, and administrative responses to injustice following political disorder (Teitel, 2000). Transitional justice evocated in the post conflict period tends to address the conflict issues in restorative and retributive approaches. Also, the study on Women and Transitional Justice reveals that lived experiences with case studies from Kenya and Bangladesh highlight the importance of improving transitional justice institutions and elevating the status of women in post-conflict societies (Alam, 2014). Therefore, this paper has underlined the role of women in the process of transitional justice in post conflict societies including Rwanda.

### 2 FIELD OF TRANSITIONAL JUSTICE

Through reading, there is no adequate definition of transitional justice. However some authors and academicians have given the views on what that means. According to Anderlini transitional justice refers to the short term and often temporary judicial and non-judicial mechanisms and processes that address the legacy of human rights abuses and violence during a society's transition away from conflict or authoritarian rule (Anderlini, Conaway & Kays, 2004).

In a gendered manner, any international intervention in transitional justice decision such as the setting up of hybrid tribunals or truth commissions should at least seek to do no harm to women. International Lawyers need to move beyond the concept of trial and be more responsive to both the political reality faced by a new state and the situation of women in that state when advocating and designing particular instruments (Rimmer, 2010).

In that way Yarwood adopted a gender perspective to consider transitional justice from the perspective of women. Therefore, the attention is given to women's direct experiences and perceptions either as intended beneficiaries of transitional justice, protagonists in that process or as practitioners, in order to present a unique view in relation to the transitional justice development (Yarwood, 2013).

In this regard, transitional Justice includes restorative and retributive aspects. By restoring, the tendency is making the oppressed person feeling better; healing the pain of victim through apologies and restitution, moving from trauma to positive and hope. In the other hand, it is bearing the retributive aspect by which recognition is taken of what has been done and appropriate punishment applied. In all process we will underline the role of women in each component of transitional justice. Let introduce the methodology applied to this paper.

### 3 METHODS AND MATERIAL

Within an ample time, we reviewed available researches such as articles, books and studies on the role of women in transitional justice. Some of them are got from on line journals and others are available in their respective institutions. In exploring those documents, we pointed out the role of women in all process of transitional justice. Moreover data collected from desk review have been analyzed by a qualitative content analysis which consists in analyzing document by using a process of 5 steps, from coding up to theming. Multiple readings led to components of transitional justice and come out with a clear description of the role played by women in that component.

### 4 FINDINGS AND DISCUSSION

Findings are organized in function of components of transitional justice which are the following:

#### 4.1 ACCOUNTABILITY

International humanitarian law provides equal protection for women and men. Though, women are affected in many ways during war. Nowadays, there has been particular attention given to sex-based crimes. In practice, however, gender based crimes are underrepresented in international tribunals and in national courts. The situation is that because few women are in leadership position within these institutions. In addition, there is ample evidence to indicate that the adversarial and public nature of trials and tribunals offers limited protection for women witnesses (Anderlini, Conaway & Kays, 2004).

Constantly, efforts to consider gender in transitional justice have been most prominent with respect to the legal treatment of sexual violence in conflict. In the wave of 1990 the major focus of transnational feminist mobilization concerned the need to end impunity for violence against women. This mobilization proved a clear relevance to transitional justice, as it wanted to expose the extensive and systematic occurrence of sexual violence in situations of violent conflict.

Advocacy advanced on three changes: first of all, to secure the recognition of women's experiences of gender-based violence in armed conflict as amongst the most serious crimes of war including rape within the definitions of a 'grave breach' of the Geneva Conventions. Secondly, to bridge the gap between legal standards and their enforcement by securing prosecutions for these war crimes; and thirdly, to secure reforms as soon as possible in order to ensure that victims of sexual violence were not re-victimized by the adversarial legal process (Bell & O'Rourke, 2007) In this regard, women participate like advocates.

By accountability or prosecution initiatives, women appear in two main roles. Knowing that they are victims to many human rights violation including gender based violence, their role is the advocacy to end all kind of human rights violation. The second role "victims" is linked to the first, testifying what happened to them and their family and are seeking for restoration of the role of law.

However, some women have been perpetrators. In Rwanda, approximately 3,000 women ( out of more than 100,000 people accused nationwide) are awaiting or have been tried as perpetrators of genocide. In many cases, women participated in lesser crimes and were bystanders, witnesses, accomplices or agitators (Anderlini, Conaway, & Kays, 2004:10).

#### 4.2 TRUTH COMMISSIONS

Truth process assists post conflict and transnational societies investigate past human rights violation and are undertaken by truth commissions. This right of knowing the truth is supported by different treaty bodies, courts and tribunals.

In this way, effective implementation of the right to the truth necessitates a strong national archival system. In many societies up and coming from conflicts or oppressive rule, however, such systems are weak or non-existent. Sometimes, it become difficult to find the truth not deformed.

Besides of incomplete information, women tended to focus their testimonies on their husbands, children and other loved ones rather than on their own experiences. Disclosure of sexual assault choice was risky and could result in estrangement from their family, mistreatment of their children and social exclusion. When a crime not reported, women are not eligible for reparation or other form of legal redress.

To reduce that risk of losing the truth, the UN guide advises that transitional justice programs generate documents of their own, which should be archived, as they represent a rich source of information regarding the history of conflict or repressive rule. Effective victim and witness protection is also vital to ensuring victims' and Societies' right to the truth (United Nations, 2010).

Nowadays, truth commissions (TCs), has made significant advances. Women are important witnesses, providing information about crimes committed against them and family members wherever is needed (to courts and truth commissions). The illustration is that one investigator of the ICTY said that, "women often heard and saw things that men did not, including mass murder and rape" (Anderlini, Conaway, & Kays, 2004:10).

The 2004 United Nations Secretary General's Report on the Rule of Law and Transitional Justice identified addressing women's experiences of domestic violence and targeting violence in the public sphere as priority for 'filling the rule of law vacuum. This decision is promoting telling truth in public about violation of women rights. In the same way, UN Security Council Resolution 1325 called 'all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict (Bell & O'Rourke, 2007).

In this area, women participation is important when they are intervening like witnesses, or bridges to local communities.

#### **4.3 REPARATIONS**

Reparations seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. Reparations can include monetary compensation, medical and psychological services, health care, educational support, restoration of property and rights, guarantee of non repetition. In this way, official public apologies, building museums and memorials, and establishing days of commemoration are form of reparation. The General Assembly has reaffirmed the right of victims to reparations in 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.

According to the UN guide (2007), it is noticed that that the most successful reparations are designed in consultation with affected communities, particularly victims and women groups. Reparations process can also be effective and quick complements to truth-seeking processes and prosecution initiatives, by providing concrete remedies to victims, promoting reconciliation, and restoring public trust in the State.

In general, reparations process can be gender blind and not recognizing the different needs and concerns of men and women. When it is gender sensitive, it examines gender and reparations across a number of transitional contexts and highlights a series of limitation common to these programs. These shortcomings concern the exclusion of women from the process of designing reparations process, the definition of violence to be repaired, the criteria for defining beneficiaries, the benefits given by way of reparations and its implementation. The sample such as the International Center for Transitional Justice project abridged as ICTJ project, and the smaller scale 'gender justice' project examining reparations programs in Sri Lanka and Colombia, are being conducted with a view to identifying best practices and to strengthening reparations programs to attend to the diverse needs and experiences of women (Bell & O'Rourke, 2007: 30).

Also, the necessity of a gender dimension is mentioned as a requirement in reparation programs to improve the treatment of female victims and their families in the countries where the research has been performed such as Guatemala, Peru, Rwanda, Sierra Leone, South Africa, and Timor-Leste (Rubio-Marin, 2006).

In a practical way, the example for Rwanda demonstrates that some perpetrators have been known to build the homes of genocide survivors or have given manpower in their normal activities in order to economic reparation. This alternative is required because of lack of resources on the side of perpetrators.

In East Tumor's commission for reception, truth and reconciliation, women's group have been involved in public dialogues regarding the various options for transitional justice, in decision making and as member of steering committee that is formulating the commission. Especially, two women in the group have been in the forefront for ensuring that women's

issues are included throughout the process. In that way, women played the big role like planner and designer in the all process.

Last but not least, in the design on Rwanda's transitional justice mechanisms, women parliamentarians played a vital role in moving rape from a category four, lower level to category one, which require a trial by the ICTR or National courts "(Anderlini, Conaway, & Kays, 2004:9).

#### 4.4 RECONCILIATION

Reconciliation may be seen as the process of repairing relationships and societies at all levels and confronting dominant narratives of the past. Reconciliation is considered in the literature to be the 'ultimate goal' of transitional justice. In many divided societies, they use different forms of coexistence which leads to reconciliation. Some of them have shared initiatives and find the opportunities for collaboration and dialogue. In the case of Rwanda, we can name the women's association whose members are women with husbands in prison and widows for genocide. As example we cite the "Ukuri kuganze association"( translated as let truth prevail) located at Kagarama sector, Kicukiro district whose members are women genocide survivors; confessed genocide perpetrator and former prisoner released through Presidential Decree (Peace Direct, 2005). Generally, those associations facilitate self-help, mutual help, solidarity and cooperation. It can foster coexistence without explicitly specifying intergroup involvement as a condition for funding or support, and can help to develop civic trust and cultures of citizenship.

In the same way, Profemmes/Twese hamwe, Rwandan umbrella organization working for the advancement of women, peace, and development encompasses 58 women's NGO throughout the country, has encouraged participation for women in Gacaca jurisdiction. To enhance the rate of participation, a kind of advocacy has been for integration of gender perspective in implementation of Gacaca law and awareness rising sessions for 100,000 women leaders, local government representatives and persons in detention centers. The other proof is that a woman chaired the department of **Gacaca** Jurisdictions. In **Gacaca** implementation, women played various roles such as witnesses, judges, advocates. They have also served like bridges to local communities. By this intervention, women have adopted children orphaned during the period; regardless of ethnicity as a mechanism for reconciliation and moving society forward (Anderlini, Conaway, & Kays, 2004).

Findings are showing that participatory community forums are useful to explore and design a reconciliation trough various activities in collaboration. Many of them are gathering women. Truth process helps to unify people as part of their mandate, and can document positive as well as negative narratives. For example, truth commissions can find out the stories of those who wanted to save the lives of members of the 'other' group (Haider, 2011). By this way, women are playing the role of witnesses, advocates for coexistence and preventing any conflict.

#### 4.5 INSTITUTIONAL REFORM

Reforms of institutions are the key elements of transformation. That helps transitional justice to achieve the objective of promoting democratization and respect of human rights. Moreover, institutions reformed must sustain peace and foster a culture of respect for the rule of law. By reforming or building fair and efficient public institutions, institutional reform enables post-conflict and transitional governments to prevent the repetition of future human rights violations. Reforming the public service, particularly in the security and justice sectors, is critical to facilitating this transformation, by removing from office or refraining from recruiting those public employees personally responsible for gross violations of human rights. These reforms include the release of military, police or other security units that may have been systematically responsible for human rights violations. The removal of these persons should comply with due process of law and the principle of non-discrimination. Institutional reform should further incorporate comprehensive training programs for public officials and employees on applicable human rights and international humanitarian law standards (Bell & O'Rourke, 2007).

The role of women here is focused to witnesses, telling truth and advocacy. In this regards, women are integrated and active in different organizations reformed. In Rwanda, the examples are many such as women parliamentarian (respect of 30% of women representatives), different organizations and cooperatives for women like AVEGA, policies protecting the women rights violations, National Women Council translated in French as Conseil National des Femmes (CNF) and Gender Monitoring Office (GMO). By this intervention, women play a role of designer and planner because they are the decision makers in their respective organization. They are in good place for advocacy and can serve like bridges to the community.

## 5 CONCLUSION

In this paper, the role of women in transitional justice has been analyzed through its components. The role of women is extended to all components such as accountability, truth commission, reparations, reconciliation and institutional reform. The essential role played by women is being survivors of human rights violation especially for gender based violence in armed

conflicts. However some of women are enrolled like perpetrators. All of them are seeking the accountability. Moreover, women participated in truth commissions like witnesses talking about what happened to them, to their family. In Rwanda, they have played in big role in Gacaca jurisdictions by giving the truth on the genocide. However disclosure of sexual violence is still a big issue for them. In East Timor, the views of women has been considered in advocating and designing particular instruments in handling issues related to accountability. Because of reparation is kind of restoration of property and rights and guarantees of non repetition, women survivors are seeking for it. Some of them received the property compensation, benefited the help from perpetrators in reconstruction of their home (in Rwanda), have forgiven who have apologized. In the same way, women in reconciliation process have served as bridges to the community. They have adopted orphan children without any consideration. Through institutional reform and civil society, women played a big role in advocacy and promoting human rights implementation, democratization and reconstruction of social fabric.

## **RECOMMENDATION**

This essay has left many questions unanswered because of using only desk review as principal source of data analyzed, leaving much scope for further work. More attention to women's participation in transitional justice is recommended with a triangulation of approaches to provide a complete picture of women's diverse experiences in post conflict societies and point out women's best practices in all process.

## **REFERENCES**

- [1] Alam, M. (2014). *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes*. New York: Palgrave Macmillan.
- [2] Anderlini, S. N., Conaway, C. P., & Kays, L. (2004). *Transitional Justice and Reconciliation. Inclusive Security, Sustainable Peace: A toolkit for Advocacy and Action*, 1-15.
- [3] Bell, C., & O'Rourke, C. (2007). Does Feminism Need a Theory of Transitional Justice? An Introductory Essay. O'Rourke, C. B. (2007). Does Feminism Need a Theory of Transitional Justice? *The International Journal of Transitional Justice*, 1(1), 23-44.
- [4] Haider, H. (2011). Social Repair in Divided Societies: Integrating a Coexistence Lens into Transitional Justice. *Conflict, Security and Development*, 11(2), 175-203.
- [5] Peace Direct. (2005). Ukuri Kuganze Association. Retrieved February 15, 2016, from *Insight on conflict*: <http://www.insightonconflict.org>
- [6] Rimmer, S. H. (2010). *Gender and Transitional Justice: The Women of East Timor*. New York: Routledge Contemporary Southeast Asia Series.
- [7] Rubio-Marin, R. (2006). *What Happened to the Women?: Gender and Reparations for Human Rights Violations*. New York: SSRC.
- [8] Teitel, R. G. (2000). *Transitional Justice*. New York: Oxford University Press.
- [9] United Nations. (2010, March). *Guidance note of the Secretary-General: United Nations Approach to Transitional justice*. Retrieved March 6, 2013, from *United Nations Rule of Law: United Nations*. (2010, March). *Guidance note of the Secretary-General: United Nations Approach* <http://www.unrol.org>
- [10] Yarwood, L. (2013). *Women and Transitional Justice: The Experience of Women as Participants*. New York: Routledge.