

# Transitional justice and the Women, Peace and Security agenda

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Women, Peace and Security: Breaking down silos

## Abstract

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Transitional justice agendas are in the main, at least nominally, informed by an awareness that since conflict-related violence is experienced in gendered ways, they need to be gender-responsive. Transitional justice has also become a mainstream feature of transition processes from conflict or authoritarian rule. This is evident in how wider policy and normative frameworks relating to global peacebuilding and rule of law agendas have evolved. It remains a struggle, however, to ensure that gender-responsive transitional justice mandates and mechanisms are fully resourced, and that women's groups and gender activists have access to and influence over the decision-making spaces where transitional justice is negotiated and defined, and its implementation monitored.

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Ensuring that women have voice and influence in defining transitional justice mandates is an explicit objective of the Women, Peace and Security (WPS) agenda. WPS work has the merit of being located across key policy spaces – national and international levels – where transitions from conflict and post-conflict reforms are negotiated and defined. This creates opportunities to support gender-responsive

transitional justice in the context of wider WPS support to women's access to decision-making processes relating to transitions from conflict. Politically strategic support involves making the most of the different levels at which negotiations may be taking place and through different channels of activism. This includes support to civil society activism, such as women's and human rights organisations, feminist activists (including in public office) and supporting strategic alliances and coalitions at local, national and global levels. Where possible, ensuring that support efforts are integrated across different reform processes contributes to connecting transitional justice with the politics of wider peacebuilding work.

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## About this publication

This publication was produced as part of a study on **Women's influence and leadership: Integrating Women, Peace and Security into wider peacebuilding engagement**, which was undertaken by ODI. The research team included Clare Castillejo, Pilar Domingo, Alina Rocha-Menocal and Theo Tindall. The study examined how to integrate Women, Peace and Security (WPS) work more strategically with wider peacebuilding and conflict-related interventions to enhance women's influence and leadership across different peacebuilding processes. It developed analysis regarding how women seek to influence a range of change and reform processes related to peacebuilding that are often overlooked in the WPS agenda; how the nature of these processes and the actors involved in them hinder or enable women's access and influence; and how international actors can best support women's access and influence within these processes.

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# Acronyms

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CSO	Civil society organisation
CRSV	Conflict-related sexual violence
GEWE	Gender and women's equality
NAP	Gender National Action Plan
NGO	Non-government organisation
SGBV	Sexual and gender-based violence
UNDP	United Nations Development Programme
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UN Women	United Nations Women
WPS	Women, Peace and Security

# 1 Introduction

Transitional justice has become a feature of transition processes related to post-conflict peacebuilding efforts. It has been identified as an important objective in transitions from conflict (UN, 2004). In practice, transitional justice involves a range of pathways across diverse processes and mechanisms that seek to address the legacies and experiences of violence and human rights abuses associated with conflict, political turmoil or authoritarian rule. How it features in any given context is the outcome of political negotiation, and transitional justice options and processes never unfold in a linear fashion.

Since the passage of United Nations Security Council Resolution (UNSCR) 1325 in 2000, and through successive resolutions concerning the agenda on Women Peace and Security (WPS), the evolving normative framing of WPS has contributed to advancing awareness that violence related to conflict and authoritarian rule is a gendered experience. The WPS agenda makes explicit that transitional justice mechanisms that are supported in conflict-affected and transitional settings need to take account of women's experience of violence and conflict, and that women need to take part in defining transitional justice mandates and architecture. Despite global policy advances, and that awareness of the gendered experience of conflict-related violence is now widely accepted, knowledge of how WPS policy and programming in practice informs transitional justice remains underdeveloped. Gender-responsive approaches have become more widespread in transitional justice processes and mechanisms, although these predate UNSCR 1325. It remains unclear, however, how far international support to transitional justice and local mobilisation efforts draw strategically on the WPS agenda to address legacies of conflict-related violence.

This paper considers what we know about how transitional justice processes and the WPS agenda align in terms of their normative objectives, and in practice. This includes a summary review of the knowledge base on gender-responsive approaches to transitional justice, and how efforts to embed the objectives of transitional justice in the politics of transitions from conflict are informed by WPS policy commitments. The paper also looks at what we know about how WPS programming engages strategically with locally grounded transitional justice experiences, and with wider peacebuilding efforts.

The paper first sets out the interconnections between transitional justice objectives and processes and the WPS agenda. This includes

looking at how the two fields overlap conceptually, at the policy level, and in the politics and practice of how dealing with legacies of violence in conflict and transition is negotiated in transition processes in ways that take account of the gendered experience of violence and human rights abuses. Second, it summarises what we know about the factors that enable women's voice and agency in shaping transitional justice objectives, processes and outcomes in ways that are locally grounded, and the obstacles to implementing gender-responsive transitional justice processes and mechanisms. The paper ends with reflections and recommendations on how to ensure that WPS programming better supports transitional justice goals and mechanisms as defined by women activists.

## 2 Transitional justice and gender-responsive approaches to addressing conflict-related violence and human rights abuses

### 2.1 What is transitional justice?

Transitional justice is defined here as ‘the array of processes designed to address past human rights violations following periods of political turmoil, state repression, or armed conflict’ (Olsen et al., 2010: 11). This definition has the merit of being descriptive rather than prescriptive, thus not setting out in advance how to address the legacies of violence, nor making assumptions about the instrumental value of transitional justice in preventing future violence, achieving security and sustainable peace, or (re)establishing the prospects for rights-based rule of law. Transitional justice in a given context is, however, a normative agenda, and core common goals that policy-makers and practitioner organisations share include establishing accountability for, and recognition of, acts of violence and human rights abuses and some measure of redress. Increasingly this includes acknowledging the gendered experience of conflict-related violence.

Transitional justice mechanisms take different forms. These include retributive justice measures aimed at addressing impunity, mostly through judicial accountability for crimes through international criminal justice mechanisms or domestic trials; truth-telling processes, often in the form of truth commissions and commissions of enquiry, well as through other forms of memorialisation, aimed at giving voice to survivors of their experience of conflict, establishing a record of experiences of violence and rights violations, and potentially providing a source of data for future processes of accountability or institutional reform; reparations and restorative justice measures, including reparations and the restitution of property; and efforts at reconciliation. Transitional justice might also

contribute to recommendations on institutional reform, such as of the justice and security systems. At the heart of transitional justice agendas are often the prescriptive goals of holding the perpetrators of violence to account, giving voice to victims, correcting wrongs that result from these experiences, and prevention strategies aimed at averting future violence and human rights abuses. In practice, the politics of negotiating transitional justice is a messy affair.

The mechanisms that have come to comprise this broad and expanding set of objectives in transitional justice are very diverse. The transitional justice mechanisms that are put in place, their credibility and legitimacy, how inclusive they are in practice and the direction they take all vary significantly. They will, for instance, depend on context-specific political economy conditions of conflict, transition dynamics, and post-conflict/post-authoritarian trajectories of renegotiating the political settlement given the power balance between relevant stakeholders (Sriram, 2009). Transitional justice is inevitably deeply political in the definition of its scope, the extent to which it affects transition and post-conflict politics, noting moreover that this is never a linear experience, and often does not necessarily result in sustainable peace or even non-violence (Gloppen, 2005). Distinguishing between transitional justice as a normative field and transitional justice as a political process is useful for analytical purposes (Valji, 2007). In this respect, the role and possibilities of transitional justice processes are the outcome of politically negotiated processes that mirror the prevailing balance of power in terms of who can determine their scope and mandate. Similarly, the extent to which transitional justice measures are gender-responsive is associated with the politics of women's inclusion in peace processes, and structural histories of gender-based inequality.

In the context of wider developments relating to peacebuilding architectures and international engagement in conflict settings, transitional justice has become standard in international policy discussions of what needs to be addressed in transitions from conflict and from authoritarian rule.<sup>1</sup> It is an explicit component of the United Nations rule of law agenda in conflict settings (UN, 2004). The 2016 UN Security Council Resolution (UNSCR) 2282 on sustainable peace is explicit on the merits of a comprehensive approach to transitional justice as part of peacebuilding. The premise of these policy developments is that inclusive and comprehensive measures that integrate transitional justice into peacebuilding will contribute to the prevention of future violence, to addressing past wrongs and to enabling inclusive and sustainable peace. Finally, in alignment with the evolving WPS agenda – but not primarily because of it – explicit reference to ensuring women's participation in decision-making processes and positions relating to transitional justice has become a routine feature of UN policy documents in the last ten years. This is

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<sup>1</sup> UN Secretary General reports on rule of law, justice and conflict now include as a matter of course reference to transitional justice since 2004 (UN Doc 2004; UN Doc 2020).

also true of the explicit reference to gender-responsive approaches to transitional justice.

As the menu of transitional justice options has expanded so too has the scale of ambition regarding the transformative potential of transitional justice, going beyond addressing legacies of human rights abuses, to connecting these to more structural injustices, inequalities and to the advancement of inclusive governance and development (de Greiff and Duthie, 2009). The body of empirical studies on transitional justice continues to grow across disciplines, as do more nuanced analyses and understandings of the political and normative complexities of the field. This includes acknowledging the need to move away from simplistic binary ‘truths’ that still feature in writings on transitions from conflict, such as the assumed dilemma between justice versus peace, as noted by Sriram and Pillay (2009) and van der Weber (2021).

## 2.2 Gender-responsive transitional justice

The emergence of gender-responsive<sup>2</sup> transitional justice mechanisms began to be documented in the 1990s in the contexts of transitions in Latin America. This reflects, first, changes in the politics of transitional justice in which the gendered experience of conflict and authoritarian rule began to be acknowledged mostly since the 1990s; and second it reflects later developments in the context of the evolving WPS agenda since 2000.

Over the years, an awareness of the gendered experience of conflict-related violence has been increasingly integrated into the politics of transitional justice, as, for instance, underlined in chapters in Pankhurst (2009) and Swaine (2017), among others. This long predates the WPS agenda and UNSCR 1325, and reflects frontline developments globally, regionally and at the national level of political mobilisation by gender activists, women’s organisations, and victims’ organisations, often in alliance with wider human rights and transitional justice activists (Pankhurst, 2009; Buckley Zistel and Zolko, 2012; Valji, 2012, among others).

The body of evidence on gender-responsive transitional justice is still a young field of knowledge, notwithstanding important developments in the last decade. It features different analytical approaches. These in many respects reflect disciplinary silos, spanning across conflict studies, international law, socio-legal studies, transitional justice, political economy – and feminist approaches to each of these.

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<sup>2</sup> Gender here refers to socially constructed attributes and opportunities associated with being male and female, and to the nature of the relationships between women and men and girls and boys. The WPS agenda has been critiqued for its explicit focus on women rather than gender. The scholarship on gender-responsive transitional justice, while focusing more on women, increasingly addresses wider gender-related questions of how conflict and violence are experienced among men and boys and LGBTIQI populations.

It is already a **theoretically rich field** which considers the intersection between feminist agendas of transforming gender norms and gender equality, the evolving agenda of transitional justice, and addressing legacies of the gendered experience of conflict and rights abuses (see O'Rourke, 2012, 2013; Bell and O'Rourke, 2007; and chapters in Buckley-Zistel, 2012; Yarwood, 2013; and Swaine, 2019, among others). On the analytical front, a prominent strand in the literature includes feminist and other critiques of how transitional justice agendas have unfolded from a gender perspective. This reflects tensions between more ambitious transformative goals aimed at addressing structural harms and violence resulting from gender-based inequalities that often predate and continue into post-conflict settings, and what have been seen as narrower objectives of transitional justice agendas (Yarwood, 2012; Bell and O'Rourke, 2007). Recurrent themes here include the following.

First, there is the concern that transitional justice agendas have tended to be too narrowly focused on conflict-related sexual violence (CRSV). They may take insufficient account of the continuity of domestic violence and more structural forms of gender-based violence and violence against women and girls. The focus, moreover, on CRSV – although an extremely important and valuable development – when it is not connected to other objectives of transitional justice, risks primarily invoking the dependent, sexualised female in conflict settings, emphasising a distorted essentialism of 'women as victims', decontextualised from intersecting issues relating to class, ethnicity and culture and how these play out in conflict (Ni Aolain, 2012; Yarwood, 2012). This can result in not sufficiently taking account of women's diverse needs and the diverse experiences of conflict and violence, and may contribute to reproducing unequal gender norms.

Second, the temporal character of transitional justice processes as well as the legally bounded nature of their mandates inevitably establish restrictive boundaries that cannot take full account of the breadth and complexity of harms and forms of violence that women experience in conflict or under authoritarian rule (Swaine, 2017, 2019; Bell and O'Rourke, 2007). This further reinforces silences regarding the ongoing gendered harms and sexual and gender based-violence for which the boundaries between conflict and post-conflict settings are likely to be blurred.

Third, and relatedly, transitional justice agendas have been critiqued for not sufficiently addressing more structural gender-based inequalities and exclusions related to economic marginalisation that contribute to perpetuating gender-based violence in post-conflict settings.<sup>3</sup>

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<sup>3</sup> See among others, Bell and O'Rourke, 2007; NiAolain, 2012; chapters in Zistel and Stanley, 2012; Valji, 2007, 2012; Swaine, 2017.

Fourth, critiques also reflect the concern that transitional justice mechanisms may constitute a top-down imposition of liberal peacebuilding which may clash with locally grounded and locally defined agendas of what should constitute (transitional and gender) justice objectives in transitions from conflict (Tickner 2005). This is especially a concern when the process of agreeing transitional justice measures is led by international actors. At the same time, locally grounded processes of transition from conflict are also entangled in the power imbalances between negotiating parties in peace processes, as well as mirroring context specific gender-based and other intersecting inequalities, with consequences for how transitional justice mechanisms are agreed, and who wins or who loses from them. National remedies (as is also true of internationally led processes) may also not be adequately grounded in human rights commitments, reflecting instead the political dynamics of transition politics.

Finally, women's participation in shaping processes for dealing with legacies of violence has been limited. This is related to the fact that women have been historically excluded from negotiating peace and transition processes, which has contributed to the exclusion of gender-responsive approaches in transitional justice. This has affected transitional justice definition in terms of policy, scope and mandate, resourcing and implementation (Bell and O'Rourke, 2007; Ni Aolain, 2011, 2013).

These critiques are hugely important. As they have been articulated on the frontline by gender activists, women's and human rights organisations and civil society, they have been influential in shaping transitional justice. However, transitional justice processes are also opportunity structures which can give voice to the gendered experience of conflict-related and other violence in contexts of transitions from conflict or authoritarian rule. They may also be a mechanism by which wider gender justice goals may be advanced, contributing to addressing not only legacies of individual harms, but also wider patterns of exclusion and inequality across different intersecting inequalities. These are empirical questions that need to be assessed through further research.

In the last 20 years there has been an emerging body of analysis and empirical work on the experiences (or absences) of gender-responsive transitional justice. **Empirical research** has tended to focus on changes in international law and policy; the gendered experience of violence in conflict and authoritarian rule with a focus on women as victims, and heavily focused on shedding light on the experience of conflict-related sexual violence (CRSV), and less so (with exceptions) on documenting the connections to the continuum of structural forms of violence against women and girls that precede conflict and survive (including in altered forms) into post-conflict environments; the experience of specific transitional justice mechanisms; and (to a lesser degree) the role of women and gender

activists in the political processes in which questions of design, mandate and scope of TJ mechanisms are negotiated and agreed. It is important that gender-responsive transitional justice mechanisms have begun to be surfaced since the 1990s in the contexts of transitions in Latin America, and are now more readily documented, reflecting a growing evidence base on the gendered experience of conflict and authoritarian rule

With some important exceptions, however, there is less empirical analysis of how the political economy of peacebuilding and transitions from conflict have shaped the prospects for gender-responsive transitional justice. There has been a significant rise in the pace of knowledge production in the last decade (for instance, Basu et al., 2020 and chapters in that volume), including as a result of the fifteenth and twentieth anniversaries of the WPS agenda. But the literature on gender-responsive transitional justice remains quite disconnected from the literature on WPS. This mirrors disciplinary distinctions and experiences across regions, notwithstanding the ample recognition in the literature of the challenges that have limited women's voice in shaping transitional justice mandates, processes and outcomes (Ni Aolain, 2012).

The literature finds that factors inhibiting more gender-responsive approaches to transitional justice include the following. First, the gender-blind practices that underpin peacebuilding and transitions politics, which have remained highly male-dominated processes, are related to the male-dominated politics of war and conflict. This has limited the presence of women in peace talks, in turn constraining women's opportunities to shape transitional justice mandates and processes (Ni Aolain, 2009; Pankhurst, 2009; Buckley-Zistel, 2012; Valji, 2012). Second, the masculine accounts of conflict that prevail in transition politics has contributed to narratives of 'before and after' conflict, which fail to take sufficiently into account women's continuities of experiences of violence into post-conflict experiences (Valji, 2012; Ni Aolain et al., 2011). Third, women's experience of conflict-related violence is especially susceptible to remaining invisible. This is reinforced by the psychological difficulties of making these experiences public, including because of associated stigmatisation associated with these experiences, notably of CRSV. As the vulnerability to gender-based violence (GBV) remains in post-conflict settings, these continuities contribute to reinforcing the ongoing silences of women's experience of conflict-related violence. Wider social norms on gender roles contribute to sustaining these silences.

Finally, it is important to underline that while the focus in much of the literature on gender-responsive transitional justice has been on the experience of women and girls, there is now greater acknowledgement that gender-responsive approaches need to also engage with the experience of conflict-related violence committed and experienced by men and boys. Lemay Langloise (2018) signals

that this narrow framing is further shaped by the WPS framing itself (see also Morley, 2021). In addition, there is now growing engagement with heteronormativity and non-binary understandings of gender in transitional justice approaches (Mbwana, 2020; Bueno-Hansen, 2018).

# 3 Women, peace and security and transitional justice

Until recently, mostly the literature on gender-responsive transitional justice did not engage with the WPS agenda. In part this is due to the fact that the latter is relatively new, and that the WPS UNSC resolutions that have most explicitly engaged with transitional justice are more recent developments.

## 3.1 Policy framing

The policy framework represented in the WPS agenda provides opportunities for action on transitional justice at multiple levels. At the **global level**, it is part of a gradual convergence of different institutional, legal and policy developments that are beginning to constitute a body of global norms on some aspects of a gender-responsive approach to transitional justice. The WPS agenda is a part of this convergence, but there remain institutional and organisational siloes.

First, developments in international law in the 1990s established new norms on conflict-related gender-based violence. The special courts for Rwanda (ICTR) and Yugoslavia (ICTY), for instance, set out the first formulation in law of rape as a crime against humanity (Coomaraswamy, 2015)). The jurisprudence that was established through these special courts, mandated by the UNSC to deal with context-specific experiences of conflict, established key principles including that rape may be an instrument of genocide and is a war crime as well as a crime against humanity, and that sexual violence is a crime against humanity, as is forced marriage (Coomaraswamy, 2015). The Rome Statute by which the International Criminal Court (ICC) was set up further codified these developments, recognising rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilisation and other forms of sexual violence as crimes against humanity, war crimes and acts of genocide. The ICC has established a structure to provide for reparations, either through contribution from convicted individuals or a trust fund for victims. As Valji (2012) underlines, these developments and the related international jurisprudence establish important principles of

international law regarding the gendered experience of conflict, and with specific implications regarding accountability and impunity for gender-based violence (noting the focus on CRSV).

Implementation of these principles of international law is slow and partial. Importantly, it has been found that women's participation both in judicial proceedings (women judges included in both the ICTY and ICTR were found to be important) and civil society mobilisation have contributed to maintaining the momentum on addressing these aspects of gender-based violence. It cannot be assumed that female judges in international or domestic trials will be committed to gender equality, but emerging research has found that more equal gender representation on the bench is likely to enhance greater awareness of gender-related harms (Coomaraswamy, 2015; Valji, 2012).

Second, the **UN peacebuilding** architecture and associated consolidation of norms has over time resulted in integrating explicit language regarding the importance of addressing gender-based harms in conflict and transition settings, and explicitly in relation to transitional justice. The *Sustaining Peace* agenda (UNSCR 2282), for instance, commits the international community to ensuring that women contribute substantively to peacebuilding processes, including transitional justice. In this regard, the UN Rule of Law agendas also now explicitly enunciate the need to ensure a gender-responsive approach, and (variably so) mention of the WPS agenda, and evolving policy commitments regarding transitional justice (for instance, UN, 2004; UN, 2011; UN, 2020). Empirical research on how UN policy statements on rule of law and transitional justice have in practice contributed to gender-responsive transitional justice processes or outcomes, whether through programming or support to political transitions remains underdeveloped.

And third, in the **WPS agenda** itself, through the text of the successive UNSCRs that have been enacted, there has been a gradual if careful expansion in the references to transitional justice, mostly with a focus on conflict-related sexual violence. In addition, the wording in the UNSCRs has evolved to integrate explicit reference to the importance of women participating in decision-making processes, including on transitional justice, of working more with women in civil society; and to expand the wording on addressing gender harms beyond the conflict-related sexual violence to working more with women in civil society, and to recognising conflict-related sexual violence as part of a continuum of gender-based violence (see, for instance, Barrow, 2013; Duncanson, 2016).

Across these spaces for norm-setting, there has been a convergence in elevating the need for gender-responsive approaches to transitional justice. Some of this is reflected also in emerging guidance tools such as the 'United Nations Approach to Transitional Justice', presented by the Secretary General in 2010, the UN 'Guidance on reparations for conflict-related sexual violence' (UN,

2010a; UN, 2014); and in cross-UN initiatives, like the Seven Point Action Plan (UN, 2010b). In addition to the objective of integrating gender-responsive approaches to transitional justice, there is also more explicit reference to the need for women's participation in framing options for pursuing transitional justice, and in taking part in decision-making bodies. Regional bodies have also integrated gender-responsive approaches to transitional justice, including with reference to the WPS framework, albeit not consistently.

Over time, and especially in the last 30 years, global feminist civil society and human rights groups have mobilised to advance this normative and policy framework. This has included drawing on the mobilisation efforts of civil society at national levels across different transitional justice objectives, reflecting different country and regional experiences (Barrow, 2013; Bjorkdahl and Mannergren, 2019, among others). In turn, as these global and regional frameworks have evolved, they continue to create incremental discursive, normative and institutional platforms and opportunity structures from which to mobilise transitional justice objectives in transition contexts where there is strong resistance to accountability and truth-telling. Soft law through these policy frameworks is increasingly cross-referential between WPS and transitional justice policies.

However, while policy framing in principle provides enabling opportunities and structures for gender-responsive approaches to transitional justice, the empirical knowledge base on how this has played out is piecemeal. This is especially so with regard to the role of the WPS agenda and how it has either informed practice, or been invoked strategically by different stakeholders to advance gender-responsive transitional justice mandates and mechanisms.

At the domestic level, it appears that transitional justice features in only limited ways in the WPS National Action Plans (NAPs). Hamilton et al. (2020) note that transitional justice is to some extent mentioned in NAPs, but alongside many other themes. The UK NAP focuses on justice and security, but mentions transitional justice only once.

### **3.2 Transitional justice mechanisms**

At the national level, the literature on how the WPS agenda has informed gender-responsive transitional justice is also underdeveloped. There is a need for more research on specific ways in which international actors – both international agencies and international non-government organisations (NGOs) – have used the WPS agenda to support transitional justice, or have supported locally grounded processes in framing gender-responsive approaches to the work. There is also a knowledge gap in terms of how local women's organisations, victims' organisations, gender activists, human rights organisations, as well as transnational networks or women's

organisations, have used the WPS agenda to mobilise politically to advance transitional justice goals.

### 3.2.1 Retributive justice: international and domestic trials

As has been noted, the developments in retributive justice to hold the perpetrators of violence to account in ways that address the gendered experience of conflict have been important in terms of international jurisprudence (Rwanda and Yugoslavia), and in international law through the Rome Statute. These normative developments, it is hoped, will inform domestic justice processes in the recognition of gender harms (Valji, 2012; Clark, 2016). International judicial processes have important limitations, for instance in terms of the number of victims that can be reached, but establishing legal precedent is also important.

In practice, domestic trials to deal with legacies of systemic human rights abuses and conflict – when they do take place – focus on a limited number of individuals. Trials are centred on the perpetrators and the focus is on accountability. They may have important political and symbolic effect in terms the message that perpetrators are held to account, and that impunity does not prevail. They can also contribute to the message that rule of law may be (re)established. For instance, as documented in the Global Study on WPS (Coomaraswamy, 2015), indigenous women in Guatemala, victims of sexual and domestic slavery held in a military detachments, were able to file a legal complaint in the Guatemalan justice system for crimes of sexual violence. These were crimes committed in the context of a 36-year armed conflict, highlighting the armed forces' use of rape as a weapon of war and act of genocide. The role of women's organisations was critical in making this possible.

However, there are several problems associated with poorly conducted domestic processes of dealing with the past through criminal justice. The weight of patriarchy, and failure to secure justice for victims of gender-based harms, are likely to reinforce the silencing of women, thus perpetuating patterns of stigmatisation, and invisibility of gender harms, both related to conflict, and to the continuum of violence that persists into post-conflict conditions. In situations of weak rule of law, and fragility regarding transitions from conflict, such risks are especially heightened. Institutional continuities relating to the political capture of judicial and security institutions, including in ways that predate the conflict or violence, or remain problematic in the political settlement that emerges from a transition process, will continue to make domestic justice systems hostile for victims (Valji, 2012).

### 3.2.2 Truth-telling and restorative justice

Truth-telling processes, such as truth commissions, have evolved as an exercise in reconstructing the experience of conflict and violence, establishing a record of events that is time-bounded. Various truth

commissions have aimed to advance a number of objectives. First, they are a vehicle for establishing a collective record of past events, which may constitute the basis for finding shared narratives of the past. This can potentially help in building a shared pathway to reconciliation and healing, providing an official record of the past, and public acknowledgement of harms and rights abuses. Second, truth commissions can give voice to a broader range of individual and collective accounts of the conflict than is viable or possible in retributive justice mechanisms. Truth-telling processes have the merit of focusing on the voice of victims and giving visibility to individual and collective experiences of human rights abuses and violence. Third, truth-telling exercises can result in recommendations regarding institutional and political reform aimed at addressing the underlying political and structural wrongs that contributed to the conflict and violence. Fourth, recommendations can also include reparations, as a means to provide some form of compensation to victims. Historical truths can rarely achieve full acceptance by all parties, as the politics of transition means that neutrality is unrealistic, and power imbalances affect which truths and experiences are made more visible and confirmed as authoritative accounts of the past. Until the 2000s, truth-telling tended to exclude a gender perspective, contributing to silencing women.

The South African experience (1995–1998), while the mandate was gender-neutral, is an early example of women’s mobilisation which resulted in securing the recording of some recognition of gender harms as a component of truth-telling. Since then, subsequent truth commissions have become increasingly more gender-responsive, such as the truth commissions of Peru (2001–2002), Sierra Leone (2002–2004) and Timor Leste (2001–2006). The Peruvian commission set up a separate gender unit, and was the first to address sexual violence in its mandate. In Sierra Leone, measures were taken to create safe space for female victims to share their experiences of violence during the context. In Timor-Leste, the hearings addressed in addition to sexual violence a more multi-dimensional approach to women’s experience of the conflict, taking account of socio-economic violations and wider effects of conflict (Valji, 2012; Coomaraswamy, 2015).<sup>4</sup>

As truth commissions have increasingly explicitly incorporated the objective of documenting women’s experience of conflict and violence as well as a gender-responsive lens, and that this converges with the development of the WPS agenda, it is not clear how instrumental WPS programming has been in supporting country-level advances. In the case of South Sudan (Sekhu, 2021 and Tindall, 2022), the WPS agenda has been important in securing a truth commission that is gender-responsive, and in the support to women’s

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<sup>4</sup> Dal Secco (2009) underlines the challenges related to giving visibility to crimes of sexual violence, given issues of stigmatisation, and social norms by which families and communities might seek to dissuade women and girls from giving testimonies relating to sexual violence and other gender harms resulting from conflict.

organisations that have mobilised to advance the truth commission mandate. This is notwithstanding the ongoing conflict-related conditions in the country. In the case of Colombia, human rights organisations, and very diverse women's organisations, have used international support, including WPS programming, to reorient the truth and memory commission mandate.

### 3.2.3 Reparations

Reparations aim to repair the damage caused by conflict. Measures include restitution, compensation, and rehabilitation. Until recently there was little documentation either on the impact of reparations on women, or on the degree to which reparations were considered through a gender lens (Rubio-Marin, 2009).

Reparations are considered as an important way not only of repairing a past wrong. They can also contribute to advancing a forward-looking vision of addressing structural wrongs in the effort to move towards a new political order as part of the transition. 'While no measure can ever repair the harms caused by serious human rights violations, the goal of reparations is to acknowledge the harm, establish responsibility and adopt measures that can contribute towards redress—materially, symbolically and morally' (Valji, 2012). As gender-responsive approaches have become increasingly integrated into transitional justice processes, measures relating to reparations have included a range of issues – some with more transformative intent, others more focused on restitution relating to a specific harm. Reparation programmes can address a broad range of needs and objectives, including restitution, compensation, rehabilitation, satisfaction. They may also nominally establish formal guarantees of non-recurrence, (Valji, 2012).

Reparations, Duncanson (2021) notes, can provide material resources to individual victims (women and children) and their communities. In this respect they can help regenerate women's social capital as well as contribute to new livelihood opportunities. Collective reparations where the benefits are shared among community members can also help avoid generational divisions.

In this respect, some experiences of reparations have advanced transformative agendas, potentially contributing to women's economic empowerment, and including measures to include access to health, housing and education, as in the case of Peru (Valji, 2012). In Colombia, investing in the women's voice and agency to contribute to framing the evolving transitional justice architecture, including to take account of what Rubio-Marin (2009) usefully distinguishes between corrective and transformative reparations. They can contribute further to advancing agendas aimed at more structural change on gender equality, for instance in relation to land and property, changes in family law that alter property rights regimes from patriarchal systems of ownership and inheritance that excluded women.

Rubio-Marin (2009), while noting the merits of reparative approaches in terms of the potential to advance transformative change, also underlines that reparations are no panacea. In the main, reparations programmes have failed to address harms related to reproductive violence, including forced pregnancy, abortion or sterilisation, as noted by Valji (2012); see also Lavery and de Vos (2021). Ni Aolain et al. (2011) signal the risks of unintended bias in reparations, including through establishing hierarchies of wrongs that contribute to reaffirming patterns of exclusion and gender inequality, as some harms remain silent or invisible. Reparations and restitution should not be about reinstating pre-conflict conditions of a gender inequality and discrimination (Rubio-Marin, 2009). Other authors have also been cautious about over-ambitious aims regarding reparations (such as Walker, 2016).

In practice, reparations regimes are politically negotiated outcomes. To the extent that reparations have redistributive intent, they are especially likely to be resisted. As reparations may arise as recommendations from truth-telling processes, or commissions of inquiry, often the blockages lie with the implementation. The knowledge base remains very underdeveloped in terms of how gender-responsive elements are negotiated in defining reparation measures, and the role of different stakeholders in framing this. In addition to the normative analysis, some grey literature is beginning to document experiences of how reparations have fared (for instance, Lamoreux, 2017).

### 3.2.4 Institutional reform

Across these components of transitional justice, while some may be bounded in relation to both time and mandate, the interconnections with post-conflict, post-transitional politics and institutional reform are important. This is also true from a gender-responsive perspective, not least given the violence continuum that continues in a post-conflict setting, related to enduring gender-based inequalities, and the continuities of militarised and conflict-related masculinities into domestic and community life.

The literature on gender-responsive institutional reform which follows from the transitional justice experiences is largely normative and aspirational, setting out ideal pathways to advance transformative change following from transitional justice. These include such issues as investing in women's access to justice, including in contexts of legal pluralism. Coomaraswamy (2015) summarises some of these, which encompass making the provision of justice and security more gender-equitable in terms of women's access to positions in these organisations, including decision-making and leadership roles. This involves making institutional reform in the justice and security sectors gender-responsive, and deliberately investing in redressing gender-based inequalities. It also requires engaging with contexts of legal pluralism where formal justice will not be within the reach of most

people, and the majority of disputes are addressed in customary and informal justice mechanisms. Another area for support is to enable women's agency through forms of legal empowerment, creating the conditions for women's legal voice, and capacity to influence and shape legal and normative change.

These recommendations are important, but the knowledge base on how recommendations derived from different transitional justice mechanisms inform wider political and institutional reform is, to date, *less* about the process of change, and *more* about the aspirational direction of travel to prevent future gender harms, conflict and violence.

While it is valuable to analyse institutional reforms as following from recommendations across different elements of the transitional justice agenda, there is also a need for empirical research which situates transitional justice within the wider change processes of transition from conflict or authoritarian rule, and the interlinkages between the politics of transitional justice and the wider political economy of transition. Transitional justice measures, and the extent to which they integrate gender-responsive approaches, are themselves the outcome of political contestation and negotiation.

The interaction between transitional justice and other processes, for instance of constitutional reform or land reform, creates opportunities for voice and agency by gender activists, women's movements and human rights activists involved in multiple agendas of peacebuilding, transformative change, and addressing the legacies of conflict-related violence.

### **3.3 International support to gender-responsive transitional justice**

It appears that transitional justice has become an increasingly resourced activity in transition contexts. However, with some exceptions, we know rather little about how much funding is invested, by whom and on what. For instance, Paige and Yakinthou (2015) found that an overwhelming amount of funding for state-level initiatives as opposed to investment in civil society – although this is by no means specific to gender-responsive initiatives. More generally, there is a need for more research on how international support is organised to support gender-responsive elements of transitional justice, what has been achieved, through what strategic choices, and by which stakeholders. There is now a growing grey literature on international support to gender-responsive transitional justice (for instance through the pages of UN Women and the Office of the High Commissioner on Human Rights (OHCHR)), but there is a need to systematise this knowledge to generate analysis on how women and gender activists have shaped this, and with what impact.

Support appears to be directed in the following processes and capacity development.

First, technical expertise on different aspects of judicial process and criminal law has been important, including how the normative framework on gender harms and international criminal law is evolving at global level. The whole community of law and judicial practitioners relevant to the establishment of international tribunals following conflict has been deployed to different sites. There has been capacity development and training across different fields of practice and expertise. This has included training of judges, prosecutors, training on interviewing witnesses and victims, and with expertise on gender-sensitive approaches to this (Coomaraswamy, 2015). Building technical capacity among feminist activists and victims' associations is important, and includes in-depth legal skills and knowledge, training on support to victims in preparing for retributive justice, as well as support in testimonials for truth-telling processes.

Second, support to civil society and (international) NGOs is critical in terms of peer exchange, for transnational networking and capacity development (Myrtinnen and Popovic, 2019). Women's and victims' organisations in Colombia, for instance, underlined the importance of core funding that enables them to mobilise strategically (and logistically) across different sites of negotiation and contestation, relating to the evolving transitional justice architecture that features in the country's efforts to address the legacies of its conflict, as well as to engage with the peace process and its implementation (Domingo et al., 2015).

Third, strategically supporting feminist organisations, human rights organisations and victims' associations to gain access to the decision-making spaces where transitional justice is being negotiated is important in enabling the agency of women's voice. Supporting political and soft skills of negotiation is critical. Donors may also use their own political leverage over different change processes within the wider political economy of peacebuilding to secure gender-responsive approaches in the definition of transitional justice mandates, and in monitoring their implementation.

From the WPS side of activities, it is important that the evolution of the WPS agenda through the various UNSC resolutions is part of the wider policy and organisational developments, for instance on addressing conflict-related sexual violence. However, there is a need for more systematic review of the extent to which, and how, international support, whether framed through the WPS agenda or other gender programming in peacebuilding, supports women's access, influence and leadership in shaping transitional justice processes, and within the context of wider peacebuilding political change processes. Which strategies for doing this are more or less successful, and what factors enable or inhibit substantively

advancing gender-responsive approaches within transitional justice support?

International support needs to be mindful of the wider political economy of transitions from conflict, to take account of challenges associated with the drivers and context of conflict. This includes noting the fact of intersecting inequalities and divided loyalties associated with the wider history of conflict and its drivers means that there is a need to understand divisions across class, political preferences, ethnicity and other social cleavages, and how this affects political positioning with regard to transitional justice objectives.

While the literature on gender-responsive approaches to transitional justice has been expanding rapidly, there remains a major gap in the literature on the effectiveness of international support efforts regarding the specific ways in which supporting the different components of the transitional justice puzzle, both in general and specifically from a gender perspective. This is especially so in relation to how to engage with context specificity and the wider politics of transitions from conflict. While the analytical and theoretical claims are well advanced, there is a need for more empirical study of how gender-responsive transitional justice is negotiated politically

### **3.4 Integrated approach to gender-responsive transitional justice – emerging themes and gaps in the evidence base**

The preceding selection of transitional justice components in practice do not exist in isolation from each other, but rather are deeply interconnected. These interconnections reflect the politics of how conflict and transitions from conflict are experienced and negotiated by the different parties to the conflict or transition from authoritarian rule. The possibilities of the different components of transitional justice are shaped by the political economy of the conflict and transition dynamics, and the relative balance of power between relevant actors. In addition, the evidence shows that transitional justice processes are connected to wider reform and transition dynamics related to peace agreements, constitutional reform processes, justice sector and security reform processes and other reform processes. But in practice we know little about international actors are connecting up their efforts across these.

Emerging themes include the following.

Specific transitional justice experiences have resulted in important advances in gender-responsive approaches, making visible the gendered experience of conflict, and giving voice to women in shaping transitional justice mandates and processes. Importantly this reflects a convergence and alignment of developments at different

global and national levels regarding the intrinsic value of addressing the gendered experience of conflict through the use of transitional justice mechanisms.

First, at a global level this is reflected in normative and policy processes at the UNSCR, through the WPS agenda, and wider peacebuilding policies that explicitly articulate the need to address the legacies of conflict and violence. This includes applying a gender lens, as well as taking account of the complex intersecting inequalities that underpin any given conflict or authoritarian context.

Second, transitional justice processes are embedded in the politics of wider transitions from conflict, through diverse peace processes and regime transitions. Each context features different sequences and experiences of transition, and negotiation of wider institutional and political reform processes are interconnected in unique ways. Uncertainty about the future is often a recurrent feature in conflict and transition settings, and violence is often displaced (rather than ended) or evolves, or conflict is simply not resolved.

Third, the balance of power between different actors in the conflict affect what is possible in terms of transitional justice, and the political transition more broadly. These power dynamics will also allow or limit the extent to which justice can contribute to more ambitious transformative change that enables progress on gender equality more generally, and women's rights specifically.

While the evidence is uneven, in order to achieve disruptions in gender norms to advance gender justice, the strategic and politically effective activism of global and national civil society and social movements is at the heart of progress. Some of this activism straddles different justice and political agendas and change processes, and so require the political skills to navigate different sites of negotiation. Politically smart international support depends on a deep understanding of the complexities of civil society, including of misalignments or profound tensions across civil society, since donors' decisions about which organisations to support are not politically neutral. Technical expertise is also critical for civil society actors, and contributes to their empowerment

Fourth, the WPS agenda provides a useful policy platform and normative framing to strengthen the gender-responsive elements of transitional justice. It is sufficiently broad to support parallel but potentially mutually reinforcing processes of change (transitional justice, constitutional, political, and justice sector reform, for instance). The evidence in evaluations or grey literature suggests that strategic support through WPS to empower women not as victims but as agents of change across the pillars of protection, participation and prevention at key junctures and windows of opportunity across evolving agendas of transitional justice and other transformational change processes (Domingo et al., 2014).

Currently, the literature on gender-responsive approaches to transitional justice broadly confirms the stickiness of silos across its different components, and in relation to wider reform processes and politics of transitions from conflict. In part, this is related to their specific political and organisational dynamics and complexities. Interconnections are often the result of how recommendations, for instance from truth-telling exercises, contribute to defining actions relate to reparations or institutional reform. The evidence base is patchy and disconnected, however, in several respects.

## 4 Concluding reflections

Transitional justice agendas are in the main, at least nominally, informed by the awareness that since conflict-related violence is experienced in gendered ways, they need to be gender-responsive. Transitional justice is now also an important feature of transition processes from conflict or authoritarian rule to address the legacies of violence and conflict. This is evident in how policy and normative frameworks of global peacebuilding and rule of law agendas are evolving. It remains a struggle, however, to ensure that gender-responsive transitional justice mandates and mechanisms are fully resourced, and that women's groups and gender activists have access to the decision-making spaces where transitional justice is negotiated, and implementation monitored.

The WPS agenda provides an important policy framework by which to ensure that gender-responsive approaches to transitional justice are fully supported. Ensuring that women have voice and influence in defining transitional justice mandates is an explicit objective of the WPS agenda. WPS work has the merit of being located across key policy spaces – national and international levels – where transitions from conflict and post-conflict reforms are negotiated and defined. This creates opportunities for international actors to engage in politically strategic support at these different levels, and across different reform agendas, to advance gender-responsive approaches to transitional justice. This includes politically informed support to civil society activism, such as women's, feminist and human rights organisations, among others, at the multiple levels and sites of negotiation from conflict; and to mobilise at local, national and global levels – including the UNSC and other multilateral spaces – drawing on WPS principles and policy commitments.

In practice, however, the politics of negotiating gender-responsive transitional justice is not as yet a mainstream component of international support to ending conflict. There is a need for international actors to engage with how gender-responsive transitional justice fits with the broader context of negotiating an exit from conflict to advance inclusive peacebuilding, and to engage strategically with the resistance that is likely to be encountered. This requires a deep understanding of the legacies of conflict and its gendered experience, and for international actors to make the political choice to mobilise resources and commitment to securing support for gender-responsive transitional justice. This depends on

meaningful investment in women's influence and access to the negotiations and decision-making processes where the mandate of transitional justice is defined, and where the implementation of transitional justice is monitored. And finally, since it is never a politically neutral endeavour, it calls for understanding and engaging with resistance to gender-responsive transitional justice.

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# Appendix 1 Summary of WPS UNSCR and relevance for transitional justice

## Box 1. WPS UNSCRs and transitional justice

- 1 Resolution 1325 is landmark resolution addressing women's inclusion in peace and security matters.
- 2 [SCR 1820](#): Passed in 2008, recognised that conflict-related sexual violence is a tactic of warfare and calls for training of troops on prevention and responding to sexual violence, deployment of more women to peace operations, and enforcement of zero-tolerance policies for peacekeepers with regards to acts of sexual exploitation or abuse.
- 3 [SCR 1888](#): Passed in 2009, focuses on the implementation of Resolution 1820, calling for leadership to address conflict-related sexual violence, deployment of teams (military and gender experts) to critical conflict areas, and improved monitoring and reporting on conflict trends and perpetrators.
- 4 [SCR 1889](#): Passed in 2009, Resolution 1889 addresses obstacles to women's participation in peace processes and calls for development of global indicators to track the implementation of Resolution 1325, and improvement of international and national responses to the needs of women in conflict and post-conflict settings.
- 5 [SCR 1960](#): Passed in December 2010, Resolution 1960 calls for an end to sexual violence in armed conflict, particularly against women and girls, and provides measures aimed at ending impunity for perpetrators of sexual violence, including through sanctions and reporting measures.
- 6 [SCR 2106](#): Passed in 2013, provides operational guidance on addressing sexual violence and calls for the further deployment of Women Protection Advisers.
- 7 [SCR 2122](#): Passed in 2013, calls on all parties to peace talks to facilitate equal and full participation of women in decision-making; aims to increase women's participation in peace-making by

increasing resources for women in conflict zones; acknowledges the critical contributions of women's civil society organisations.

- 8 [SCR 2242](#): Passed in 2015, marks the 15th anniversary and reaffirms commitment to Resolution 1325; highlights the role of women in countering violent extremism and addresses the differential impact of terrorism on the human rights of women and girls.
- 9 [SCR 2467](#): Passed in 2019, it recognises that sexual violence occurs on a continuum of violence against women and girls and underlines the responsibility of addressing root causes of sexual violence, specifically structural gender inequality and discrimination.
- 10 [SCR 2493](#): Passed in 2019, it urges UN member states to commit to the implementation of the nine Women, Peace, and Security resolutions adopted previously.