



IPRPD

International Journal of Arts, Humanities & Social Science

Volume 01; Issue no 02: July 10, 2020

Gender: African women in Transitional Justice: Implications and Challenges

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Received: 04/06/2020

Accepted for Publication: 01/07/2020

Published: 10/07/2020

Abstract

The mechanisms of Transitional Justice don't focus on the single criminal trial but create and develop a set of post-conflict tools intending to restore, rehabilitate, and sustain the affected communities for a more peaceful future. Transitional Justice is a means of achieving justice. In this context, it can refer to how countries emerging from periods of conflict in large-scale or systematic human rights violations make access to justice a reality, and ensure that women and marginalized groups play an active role in the pursuit of a just society as well. It is no secret that many African countries have experienced severe conflicts. The health crisis due to the COVID-19 global pandemic has undoubtedly increased the precariousness of the populations in these States. Our contribution aims justly to highlight the path and role of African women in the implementation of transitional justice in African countries that have faced a conflict.

Keywords: Transitional Justice, Disarmament, Demobilization, Repatriation, Reintegration

Introduction

The mechanisms of Transitional Justice don't focus on the single criminal trial but create and develop a set of post-conflict tools intending to restore, rehabilitate, and sustain the affected communities for a more serene future (Kritz & Wilson, 2011). TJ is a means of achieving justice or “*a special justice [...] operating in situ*” (Mottet and Pout (Ed.), 2009, p. 6). In this context, it can refer to how countries emerging from periods of conflict in large-scale or systematic human rights violations make access to justice a reality, and ensure that women and marginalized groups play an active role in the pursuit of a just society as well. Facilitating peace processes and fostering sustainable resolution of conflicts, advancing the cause of reconciliation, establishing institutions, and restore confidence in them, are other main points.

TJ, as a concept, first appeared in the early 1990s. It is only over the last twenty-five years that TJ has emerged as a specific field of multidisciplinary study and practice (Bennett (Ed.), 2012). But at the beginning, among the issues dealt with by TJ mechanisms, violence against women has been trivialized (Habrill Stoffels, 2010) and the quasi-exclusion of women in post-conflict peace processes is a certainty, regarding some specific post-conflicts fields such as the Truth and Reconciliation Commissions (TRC) (Dosso, 2017). Some Non-governmental organizations (NGOs) (Bell & Keenan, 2004) academic and other international organizations that have studied gendered issues both during and outside times of conflict (Lacroix & Sabbah, 2005 ; Onyejekwe, 2005) have stressed the lack of attention given to women during the conflicts. At the same time, many findings have proved

that gender impact and perspective, in general, succeed in showing genuinely that the connection between TJ and women reveals not only the role they played but also the challenges they faced. By identifying progressive steps about the role played by the women, we are strongly confident that TJ has to become more inclusive of women, more than in the past (Boggs, 2017). TJ can achieve various objectives such as establishing the truth, punishing perpetrators, repairing damages, paying respect to victims, engaging in reconciliation, and preventing future abuses. Countries can fulfill these goals through a variety of mechanisms, including holding trials in domestic or international courts awarding reparations to victims, building a memorial, reforming the military, police, and judicial systems, and by creating truth commissions. It is a complex process at several levels that involves several actors of civil society, politics, military, religion, and customary law.

The link with Gender is therefore easy to find insofar the idea of “gender-specific”, “gender-linked” or “gender-based violence” appears in discussions of what happens to women during the conflicts (Walker Urban, 2009)¹. The arguments raised in this article are contextualized and introduced into the wider debate on women’s contribution to the peace, reconciliation, and security process beyond the human rights violation they endure. Gender in the legal and judicial world is in question (Grossmann, 2016)². It debates the role and place of women in the justice system as lawyer, clerk, peacekeeper, judge, etc. Women similarly play a crucial role in TJ’s mechanisms that extend and truly emphasize the meaning of restorative justice. The incorporation of the gender perspective into the analysis and exercise of human rights opened the door to a gradual transformation (Chiarotti, 1998), notably in transitional processes, and specifically in TJ mechanisms. Moreover, the adoption of the United Nations (UN) Security Council Resolution 1325 (2000) on *Women, Peace and Security* in 2000 marked a formal political and legal recognition, at the highest international institutional level, that transitions from political violence should be transformative for women. In this sense, our contribution aims to highlight and attempts an analysis of the role of African women in the implementation of TJ in African countries that have faced armed conflicts. By providing answers to questions about how women participate in the transitional justice process, this could give an overview of their contribution process in the African States and make recommendations for substantial involvement in the overall justice system.

The reflection begins with a theoretically driven discussion of the Gender issue. Its definition and its link with the TJ. The chapter then turns to the empirical analysis of the mechanisms used in a TJ context. The study further provides some examples of TJ mechanisms. The chapter focuses on what to do at both national and international levels to enhance internal political dynamics in the implementation of domestic politics for women. The study also explores and considers that social structures and institutional reform are the best way to secure positive human rights for women in TJ. Some cases in Central African, Rwandan, Sierra Leonean, and South African contexts are examined in this paper and provide contextual details that allow for the correlation, the similar, and different trends in these countries. Although some cases studied are not extremely recent, their guideposts are still relevant. Significantly, they appeared like a dynamic pattern.

The different facets of the study help to understand and explain how a TJ process can produce better outcomes for women. The chapter discusses the role of women in TJ mechanisms. Firstly, by conceptualizing the gender and TJ mechanisms (1) secondly, by analyzing the gendered impact of women in Truth and Reconciliation Commissions (2) and thirdly, by determining women’s challenges in the outcome of TJ by raising attention to their empowerment (3), and advocating why women should be more involved.

Conceptualizing Gender and Transitional Justice Mechanisms

Conceptualizing gender and TJ mechanisms is relevant because there is a strong link in both the meaning of “gender” and the great purposes of TJ. What does gender mean? Above the misunderstandings surrounding the concept of gender, this paper, in the specific case of women (Waylen, 1994 ; Dagenais, 1987), considers gender as a multi-paradigmatic view that integrate their effective incorporation, participation, rights and duties into socio- political structures. Gender

perspectives in TJ refer to holistic elements. It is not enough to deal only with the violence against women in conflicts (for example, victims of sexual abuse). It is deeper to acknowledge that sometimes they can bring full-flagged responses. Indeed, their presence in the civil organizations that confront violence, their leadership that can appear on the political scene as a reaction to the lack of protection by the authorities constitute some essential aspects. Their role as organizers of armed response to oppression in their communities, even as conflict agitators or general protagonists in promoting violence are other aspects.

This paper uses the term “gender” broadly to encompass how sexual identity is constructed in various contexts and impact men’s and women’s experiences of human rights abuse (International Center for Transitional Justice, 2006). Attitudes and ideologies regarding sexual identity and difference can motivate and shape human rights violations against both men and women. Here, we pay particular attention to women’s stakes to address the fact that women’s rights and interests in TJ mechanisms are considerable (Harris Rimmer, 2010). So, integrating a gender perspective to TJ processes can lead to enhance these processes and help the acknowledgment or recognition of the women’s rights (Wolf and Masha (Eds), 2006) in the extensive framework of human rights:

“Most political systems tend to be patriarchal, and as such, women generally are removed from the decision-making process for structural, political, or cultural reasons. In case of war and conflict, oftentimes women have little choice in whether they even are or become part of such a conflict [...]”
(Kaufman & Williams, 2013, p. 13).

Women play an essential role in encouraging a gender-sensitive approach to TJ in many fields and at varying levels, beginning with simple participation as victims or activists to a top level of the TJ mechanisms. So, it makes sense to underline women’s involvement in the field of TJ, socio-political, and during the criminal prosecutions of perpetrators as well. Achieving this goal can help to promote human rights at a national and international level. Firstly, the approach that women play or could play different roles in a conflict is advocated for in TJ in considering their role in post-conflict programs and policies integration such as DDR (Disarmament, demobilization, and reinsertion) or DDRRR (Disarmament, Demobilization, Repatriation, Reintegration, and Resettlement) (**A**). Secondly, that approach promotes their cultural sensitivity as Victims Representative (**B**) and thirdly, it reveals women’s perspectives in Truth and Reconciliation Commissions (**C**) as well.

A- Women in DDR or DDRRR

On the DDRRR and gender issues in Africa, there is no specific review or study. Studies are rare, and here we try to underline it and directly encourage the consideration of this dimension in the TJ policies. The DDR policies or DDRRR are supposed to grant a primary aspect of the protection of target groups, such as women, child soldiers, disabled people, etc. Concretely DDR or DDRRR is the name of the programs to return to civilian life of former soldiers set up by the United Nations. In many situations of armed conflict, the process of disarmament³, demobilization⁴, repatriation⁵, reintegration⁶, and resettlement⁷ is a useful tool to ensure continuity between the cessation of hostilities, peace-keeping, peace- building and sustainable state development. DDR activities have become essential features of new peacekeeping operations. The United Nations Observer Group in Central America (UNCA), deployed in 1989, was the first United Nations peacekeeping operation to carry out disarmament and demobilization operations.

The primary aspect of protecting target groups (Diagne, 2006) in DDR activities mentions women, as said above; but they are not sufficiently involved. Hence, in their filing named “DDR, Post-conflict and Development in West Africa”, the Club of the Sahel, West Africa, the Organization for Economic Cooperation and Development (OECD), and the Economic Community of West African States (ECOWAS) (2007) claimed for an inclusive approach in the implementation of DDRRR. According to the text they issued, “[...] the need to apply the principle of inclusion at the level of DDR programs including involving the diaspora, those who have been forced to leave the country as a result of the crisis, women and the private sector.”⁸ For the participants, all the groups mentioned must be taken into account, effectively, in the implementation of DDRRR programs.

The Secretary-General of the UN (Gutierrez, 2018) has even insisted that women have a role to play in disarmament. He declared: “*Women must participate as decision-makers in all disarmament processes and I am fully committed to doing everything I can to support this.*” One of the fields of experimentation of that inclusion exists in Central African Republic where a DDRR program works for gender equality and women’s empowerment, in partnership with the MINUSCA.⁹ This program tries to support, through advocacy and capacity building, the process of integrating the marginalized victims to encourage the efforts of the Central African Government to restore security. The restoration of the State’s authority throughout the territory as well as national reconciliation is expressed in the National Disarmament Strategy, Demobilization, Reintegration, and Repatriation. In this regard, UNFEMMES¹⁰ in collaboration with the DDRR section of MINUSCA and the Central African Government, organized a seminar from 6 to 10 February 2017, in Bangui. About thirty men and women, whose duties predispose them to work in the strategic planning and implementation process of the DDRR program, have been equipped about the “*the distinctive impacts of conflict on women in order to generate interest in taking into account the specific needs of women during the DDRR program*” (Mugabe, 2017). The presentations revealed how the recent security crisis is affecting Central African women. We should recall that in less than 12 months, 29,800 women have been raped, and 630 were forced into marriage in 2015. The percentage of women abandoned by their husbands is estimated at 79 %.¹¹ DDRR programs are also supposed to promote the reintegration and integration of women into society after sexual violence (Dosso, 2017, *idem*).

In sum, our society and international actors must be aware of the importance of staff training in the difficulties of getting people to understand the need for a gender perspective in these programs. This understanding becomes more fluent when women act as victim’s representative.

B- Women as Victims Representative

Many conflicts show, unfortunately, that armed groups are exploiting massive violations of the rights of children and women.¹² After the conflict, women help other women to identify and enforce the means of obtaining justice. For instance, in *Jean-Paul Akayesu case* (September 2, 1998) before the International Criminal Tribunal for Rwanda (ICTR), after the genocide, the Prosecution’s interest in the acts of rape committed in Taba appears when several associations criticized the Tribunal for its inertia in prosecuting sexual crimes committed. On 27 May, 1997, a coalition of fifteen non-governmental organizations submitted an *amicus curiae* brief to the ICTR, denouncing the lack of prosecution of sexual crimes. Among the signatories is the group of Rwandan associations Pro-Women/Twese Hamwe, which united thirty-five Rwandan non-governmental organizations, including Avega-Agahozo, the largest association of widows and orphans of the genocide (Rovetta, 2014). It is the commitment of these associations and the combination of other new elements that gave a new impetus to the prosecutor’s indictment. The judges in the Trial Chamber followed that impetus and defined rape as a genocide act in the trial against Jean-Paul Akayesu (September 2, 1998). Jean-Paul Akayesu was criminally liable for his direct and indirect involvement in the genocide committed in 1994. The main highlight of this trial is the recognition of rape as a crime of genocide in international criminal law. Since then, the offense of rape has been subject to criminal repression with a more precise definition.

As seen above, in post-conflict societies, the NGOs defending women’s rights or women’s groups can be a significant help to victims and justice. In effect, among the work of staff members in courts and commissions, women with their sensitivity can suitably deal with victims of sexual abuse. Civil society organizations from Rwanda, Sierra Leone, and else participated in the TJ process. The Coalition on Women’s Human Rights in Conflict situations submitted a report to analyze the cases of sexual violence in Sierra Leone and listing some recommendations for the truth commission. The report highlighted the importance of acknowledging the range of sexual crimes committed during the armed conflict and the need to promote public awareness of women’s rights and gender issues. The document also suggested that the truth commissions should make recommendations to promote and protect women’s human rights and reform the Sierra Leone legal system from a gender

perspective. These recommendations were accepted (The World Bank, 2006). It soon became apparent that the truth commission's personnel required training on gender matters.

C- Women's Perspectives in Truth and Reconciliation Commissions

Across the world, several Truth and Reconciliation Commissions (TRCs) investigate and report on human rights violations that have occurred during armed conflict or under dictatorial or repressive regimes. Truth, justice, reparations, and reconciliation are persistent demands from victims of human rights violations. New democratic governments and post-conflict regimes try to find acceptable answers to these demands. Each commission has specific objectives. The general purpose is to help a country to confront its past and to prevent abuses from occurring again. TRCs are some instruments of TJ, that is, short-term, temporary judicial and non-judicial mechanisms and processes. They address the legacy of human rights abuses and violence during a society's transition.

Incorporating a gender approach within a human rights investigation and, more specifically, within a TRC's work is still a new process. It appears a lack of recognition of gender as a valid aspect of human rights investigations or women's rights as human rights, and gender violence as. Including a gender perspective in TRC can therefore promote women's experiences of conflict, violence, and repression. Sometimes, this experience is typically ignored in favor of males' views. Furthermore, in a general rule, a gender perspective in a TRC's report can help bring about changes in existing laws and patterns of behavior that have contributed to inequality and discrimination. The investigations and hearings empower TRCs to make recommendations for prosecutions, reforms, and reparations. Truth commissions can be a powerful forum for catalyzing a conversation about past injustices and future redress. Their findings can inform history textbooks and collective memory. Every community that has set up a truth commission could also innovate and adapt the institution to fit its own needs and goals (International Center for Transitional Justice, 2006).

If "truth" is understood as emerging from particular contexts where some perspectives and experiences have been excluded from dominant understandings, situating it in the dynamics of gender makes space for new ones that have been marginalized in the public sphere. This view pays particular attention to see the commission as an initiative to contest dominant truth that privileges male experiences of human rights abuses. We share this criticism arguing that without a focal point and a designated staff to address related issues, gender can become invisible. This point appears to highlight women's contribution to TRC.

Women in Truth and Reconciliation Commissions: Their Gendered Impact

We are witnessing a proliferation of accountability mechanisms and processes at and across different levels-international, regional, domestic, and local (Teitel, 2010). The examples in Rwanda (**A**), Sierra-Leone (**B**), and South-Africa (**C**) show women as a targeted group during the human rights violations, and the impact of women on TJ mechanisms (Ross, 2003). They shed light on the role played by the Female commissioners who tried to incorporate a gender perspective or a women's approach. The level of integration was not the same in some respects since each case has been unique (Hayner, 1996). Each case has somehow developed a new paradigm in including a gender's perspective in its work.

A- In Rwanda

In Rwanda, between April and July 1994, the country experienced a genocide, in which Hutu extremists targeted Tutsis and moderate Hutus. As early as 1998, reflections were initiated on the possible use of traditional courts to support the ordinary judicial system and the ICTR. A commission was set up to study this possibility, and its report was the basis of the organic law of 26 January 2001, which created the *Gacaca* Courts (Burgorgue-Larsen, 2001)

Initially, the *Gacaca*, a local-dispute resolution mechanism, was postcolonial community based tribal courts. They were traditionally working with smaller crimes like thefts and simple disputes. In the wake of the 1994 genocide, the Rwandan government, precisely in 1999, decided to revive the

Gacaca system. It introduced truth-telling as a way to reconcile the society, and as a response to the slow progress of the national courts and the ICTR. The project was launched in the whole country. The *Gacaca* courts were essentially based on Rwandan tradition, Rwandan way of thinking and Rwandan way of healing (Clark, 2010 ; Harrell, 2003 ; Norh, 2011). These courts were charged with trying the

perpetrators of material acts of genocide, apart from the planners who were to be tried in ordinary courts. In Rwanda, in the space of ten years, the *Gacaca* system has judged more than 1.9 million cases, while at the ICTR had not judged more than 50 or 60, despite huge budgets in the UN system (Maupas, 2008). The trials were informal, held out in the open in the villages, and anyone could participate. For a Trial to start, at least 100 persons had to be present. *Gacaca* began with a lengthy pretrial stage, in which accusations, confessions, and information were collected and compiled by cell-level courts. Those courts eventually ranked the accused according to the severity of their crimes and sent their dossiers to the appropriate jurisdictions for trial (Waldort, 2010). The judges were elected by the villagers, and out of 200,000 judges, about 35% were women (Brouneus, 2008).

Not only did women play a key role in justice, reconciliation, forgiveness, research, and the manifestation of truth, but they also intervened as *Gacaca* judges. They have greatly facilitated the quality and peace of the *Gacaca* process. They were also aware of the impact of violence on women. Indeed, during witness protection, sexual violence records and testimony, they took part in how to protect victims during public trials to promote forgiveness. Women's *Gacaca* judges played an important role in understanding that justice must be done, that women victims must be protected equally, especially when it comes to such a sensitive subject as rape.

According to one expert, women paid the heaviest price for the 1994 genocide in Rwanda. They also played a key role in Rwanda at that time and impacted other fields. For instance, Justine Mbabazi, a Rwandan woman who lost her husband and parents during the genocide, became an internationally renowned expert on gender issues. After taking part in the revision of Rwandan laws on the protection of the family, women and children, she worked on a project to build women's capacity in Afghanistan. According to her, Rwandan women played a crucial role in the post-genocide transitional justice process, including bringing communities closer together (Crawford, 2013). She noted that women were at the forefront from the beginning when Rwanda decided to use the traditional justice system of *Gacaca*.

B- In Sierra Leone

Sierra Leone, a small country situated on the coast of West Africa, was the scene of horrific atrocities and human rights abuses on a massive scale during its civil war. The war started on 23 March 1991, when rebels attacked Bomaru, a town near the border with Liberia. The rebels identified themselves as the Revolutionary United Front (RUF), a movement supported by the former Liberian President Charles Taylor¹³. Accounts of violence throughout the country escalated in May 1997, when members of the national army overthrew the democratically elected government, invited the rebels into the capital city, Freetown, and established a junta regime that ruled the country until February 1998. Under the junta regime, Sierra Leone experienced a complete breakdown of law and order, as well as massive and widespread human rights violations.

In Sierra Leone, some TRC commissioners had previous experience with gender and TRCs that proved vital. It is reported that the Commission in Sierra Leone was made up of half women (Habrill Stoffels, 2010). One commissioner insisted that a gender perspective should be part of the TRC's investigation process and assumed an important role in this matter inside the TRC, as she was aware of the importance of staff training, the participation of international actors such as the United Nations, and the difficulties of getting people to understand the need for a gender perspective in a TRC (The World Bank, 2006). When the TRC began work, staff members and commissioners alike needed to learn sensitivity in dealing with victims of sexual abuse. In early interviews, victims were asked questions like "*What were you wearing when it happened?*" and "*What were you doing out alone at night?*"

Then, it soon became clear that TRC personnel required training on gender matters. Civil society organizations from Sierra Leone participated in the TRC process. For example, the Coalition on Women's Human Rights in Conflict Situations submitted a report to the TRC analyzing the cases of sexual violence in Sierra Leone and listing some recommendations for the Commission. The report stressed the importance of acknowledging the range of sexual crimes committed during the armed conflict and the need to promote public awareness of women's rights and gender issues. The document also suggested that the TRC should make recommendations to promote and protect women's human rights and reform the Sierra Leone legal system from a gender perspective. Those recommendations were accepted by the TRC. Some other reports of the commissions that dealt with gender issues made recommendations aimed directly at the reform of social structures because they felt that the multiple sexual assaults against women were due to the extreme women's vulnerability in society. They were considered property, not subjects of law.

C- In South Africa

The South African Truth and Reconciliation Commission (TRC) (Meintjes, 2009) operated from 1995 to 2002. The TRC's mandate was to investigate gross abuses of human rights, including abductions, killings, and torture (The United States Institute of Peace, 1995). The mandate covered violations by the State and the liberation movements. Women participated in the design of the TRC and in the selection of commissioners and eight out of the 17 commissioners were women (Goldblatt, 2006). Some of the female commissioners exhibited gender sensitivity, while others were less committed to gender issues.

Women assumed vital roles, not only as commissioners but also as witnesses and activists. In a study on women's contributions to the TRC, Gobodo-Madikizela (2005) analyzed different aspects of women's participation. According to her report, women commissioners and staff developed emotional support for witnesses in a manner different from that of men. Her interviewees noted the compassionate concern for victims shown by women at the TRC, in contrast to the focus of male workers on the letter of the TRC's implementing legislation. Former Commissioner Yasmin Sooka discussed the difficult time that women commissioners had in trying to convince male commissioners of the importance of public hearings for women. Similarly, former commissioner Mapule Ramashala argued that the male structure of the TRC did not facilitate the collection of women's stories and voices (Ross, 2003). Nevertheless, women activists played a role in encouraging a gender-sensitive approach to the TRC as evidenced by the contributions of the Gender Research Project of the Centre for Applied Legal Studies (CALS) and the Centre for the Study of Violence and Reconciliation. These organizations made a submission to the TRC following a workshop. Their presentation was intended to help the TRC understand how gender forms part of the truth and reconciliation process. As this document explained, a gendered approach requires looking at the way society locates women and men regarding all areas of their lives. Thus, women's experience cannot be understood in isolation from men's but only with reference to the intertwining of women's and men's roles and status in society. In any case, the South African experience set an important precedent in the incorporation of a gender perspective in a TRC.

It appears that a gender-inclusive commission sends the signal that the abuses against women have to be stressed. In addition to their victimization, many women are worried about their means of survival. Appointing and recruiting female commissioners can help address women's issues. TRC should be especially proactive in collaborating with outside groups and individuals. Such collaboration can provide planning tools on how to include women in all steps of the truth commission process (Hayner, 2011). Commissioners should work with NGOs, women's advocates, and scholars. That's why institutions like UNIFEM (United Nations Development Fund for Women), USAID (United States Agency for International Development), the United Nations, and special courts are integral parts of mainstreaming gender in TRC (Boggs, 2017). NGOs and outside groups that focus on gendered issues can help commissions recognize manifestations of abuse and train them on how to interact with post-conflict women. Indeed, women's groups are often

experienced in studying gender issues and can highlight gender issues.¹⁴

Each TJ system should establish a gender unit inside the commission to ensure the incorporation of a gender perspective in the daily work of the TRC. The TRC's report may include a gender study of the conflict as well as a specific chapter on sexual violence as a crime. It shall as well include gender proposals for reparations and reconciliation. Who the statement takers are, where interviews are done, and how they are conducted remain some essential aspects future commissions must consider. In each case of human abuse, women had a hard time coming forward to talk about the abuse they experienced because of embarrassment, stigma, and shame. As a result, women may be hesitant to trust statement takers (Boggs, 2017). In this sense, training is decisive during statement taking. TRC should allow female statement takers to depose women. Allowing women to speak to other women may give them a sense of camaraderie. They may find it impossible for men to understand the abuse they suffered because even though men experience sexual violence, it affects women differently. If women feel more comfortable, they are more likely to share their stories. The final reports of TRCs in South Africa, which gave prominence to women's stories and voices, became full of meaning for other organizations, for example, in Peru. That helped to gather information about human rights violations (rape, torture and disappearance) and strengthen the relations between women's organizations and international actors, such as the United Nations' Office of the High Commissioner of Human Rights, the Spanish Cooperation Agency (AECI), and the United States Agency for International Development (USAID). Gender-focused work has often provided a critical space within commissions to open up the transitional justice paradigm on several fronts and emphasized the struggle for justice (International Center for Transitional Justice, 2006). Undoubtedly, women who take part in TRC help the manifestation of truth-seeking and truth-telling and fight against impunity. Empowerment of women is an important key to focus on these purposes.

3- Women's Challenges in the Outcome of Transitional Justice: Raising Attention to their Empowerment

Examining the concrete roles women play in TJ mechanisms means interrogating the impact of transitional justice as a mechanism to overcome a post-conflict society. In this context, the empowerment of women, so that inequalities and violence they have experienced do not continue after the conflict, is another target. In that order, the place of women is significant either by negotiating and building peace (A) or by helping to create or enhance socio-political structures (B) and inclusive justice and reparations (C).

A- Negotiating and Building Peace

The end of several armed conflicts and authoritarian regimes since 1990 has brought post-conflict reconstruction and long term peace building strategies to the international agenda. The high risk of conflict recurrence within five years after the end of conflict has led to drawing attention to peace-building and sustainable peace as a separate transitional policy.¹⁵ That approach created awareness of the need to address the root causes of conflict, the aim of democracy, good governance and the rule of law, the fight against corruption and then the need to deal with legacies of abuses committed in the past by previous regimes or during an armed conflict (Corrdi & Schotsmans, 2012).

To cite an empirical situation, in the 1940s, the Afrikaner National Party invented Apartheid to gain control over the economic and social system in South Africa. It was a system of racial segregation in use in South Africa from 1948 to 1994. As a consequence, South Africans were divided according to their race and forced to live separately. A law under apartheid prohibited people of different races from marrying each other (Gandhi- Luthuli Documentation Centre). Apartheid caused intense internal resistance and violence in South Africa. The State met uprisings and protests with violence and repression. In 1990, unable to halt the opposition to Apartheid, President Frederik Willem de Klerk began negotiations to end it. In this respect, women had to campaign for seats at the negotiating table during the post-apartheid regime and to incorporate gender issues in the new

Constitution.

That case shows that the veil of invisibility of women as participants in the restoration of countries after an armed conflict had to be definitively torn. Women have been invisible in peace processes throughout the twentieth century, although they could contribute to the process of conflict prevention or peace negotiations. Women's participation can be neglected since peace negotiations have been traditionally identified as male domains, employing discourses and practices that are closer to men's reality than to women's. Women oppose war by virtue of their position (which builds on a more traditional and, hence, essentialist social role). Women become peace and activists, reconciliation's actors in promoting reconciliation and reducing tensions resulting from past violence (Pankhurst, 2012). They feel the effects of the conflict directly, and their traditional role as mothers and wives becomes the basis of commonality and opens the door to women's political empowerment (Kaufman & Williams (2013).

Women must have a direct influence on the identification of the reconstruction priorities that may be stakeholders in a peace agreement. According to Karam (2001), women should be integrated into peace negotiations from their outset. Women have a role in the prevention and resolution of conflicts and the peace-building process, and their full and equal participation in the maintenance and promotion of peace and security should be noted. It is really about empowerment. Typically, the incorporation of a gender perspective in the work of transitional mechanisms discredits the gender-blind belief that women and men are affected by the conflict in similar ways and with similar consequences.

TJ has grown over the past twenty years. It is also true that TJ embodies a liberal vision of history as progress encompassing a redemptive model in which the harms of the past may be repaired in order to produce a future characterized by the non-recurrence of violence, the rule of law, and a culture of human rights. The question it raises is intimately bound up with the idea of revitalizing the gender perspective in TJ mechanisms and leads to promote the ways it can be encouraged. Saying so means that the path of women in TJ undertakes a task of vital importance in remembering the need for women in peace processes. Moreover, the continuity of the "*historical frames used to legitimate their activity is an essential element in the success of their efforts*" (Bonner, 2007).

Albertson Fineman and Zinsstag E. (2013) tried to demonstrate that the diverse gender-sensitive conceptions of justice can contribute to an improvement in the position of women in peace-building and transition processes. Their contribution to "*Feminist Perspectives in Contexts*" covers the theoretical framework for the field of TJ and gender and brings into consideration the Feminist Theory for TJ. Their view undertakes a task of vital importance in remembering the need to add inter-sectionalism in feminist theories of transitional justice, especially those regarding the absence of women in peace processes.

By their work and implication, women can contribute to stopping a war. Given their different experiences, they may have issues of importance to bring to the negotiations regarding peace and what the post-conflict society might look like. The expectation to see their intellectual, social, or political activism in resolving the conflict and establishing peace should be encouraged (Chinkin, 2003). Historically, women have been interested in working for peace at the national and international levels. In effect, a long history of women's politicization and activism is linked to women's peace movements. The creation of the Women's International League for Peace and Freedom in 1945 was acted during World War I. It is socially vital to forge a vision in which the view of women becomes crucial in the social and political structures.

B- Helping to Create or Enhance Social and Political Structures (a Just Gender Balance)

"*Empowerment*" does not only mean empowering women to tell their stories; it is mainly about sustainable transformation within the social and political structures. The resolution 1325 of the Security Council of the United Nations allowed NGOs to give a gender-based vision in the TJ (Habrill Stoffels, 2010). Hence, women's participation in peace efforts, as advocated by the Resolution 1325, necessarily requires their representation in all decision-making bodies. *A contrario*, their exclusion from formal decision-making structures means that women's specific experiences are not taken into account in the development of reconciliation and reconstruction projects. The adoption of United

Nations Security Council Resolution 1325 on Women, Peace and Security pointed out that both political violence and its resolution are gendered. So, the advancement of women at the heart of the international agenda on peace and security is a priority (O'Rourke, 2013).

As stressed by some scholars (Nilsson, 2011), women have relevant roles to play in the post-conflict social and political process, especially in helping to create social and political structures. Some women's civil society groups contribute constructively to the resolution of conflicts. Among its recommendations and proposals of reconciliation, the South African TRC stressed the importance of being sensitive to the needs of groups that have been particularly disadvantaged in the past, notably women and children. The building of a culture of human rights and the reconciliation process are so important that they must include women in socio-economic roles (UN.Women 2000), in decision-making laws, as partakers in institutional issues, norms, country's policies as well.

War has destabilizing effects on ethnic communities, families, women and men. The aftermath is both an opportunity for women to transform political relations and a strange situation in which weakened states fail to give women the security or resources they need for reconstruction (Meintjes, Pillay and Turshen, 2001). So, empowering women is a chance for TJ mechanisms because it is potentially the opportunity to promote gender equality in the form of new laws, better resources, and more confidence in the socio-political system. On the one hand, because it helps to draw attention to the issues that affect women. And this remark applies for the current health crisis due to the COVID-19 global pandemic that has undoubtedly increased the precariousness of the women in many African States. More generally, men and the experiences of men become the yardstick by which the restoration of an affected country is rebuilt. On the other hand, when TJ's mechanisms seek out women's voices, they can take action toward establishing gendered quality to create just social and political structures. That perspective, when it is really implemented, can create an important space with significant stakes for struggles for social, political change, and justice.

C- Inclusive Justice and Reparations

Inclusive justice within TJ mechanisms, focusing on the challenges women face, means that not only justice must be done by taking into account the violence against women, but also by implementing laws favorable to women and reform unfavorable laws (Cook, 1998) or blind justice. The interests of gender justice during reparations programs are meaningful. Since the trial of Jean-Paul Akayesu (already mentioned above) the case law has been giving an increasingly place in the search for the responsibility of the perpetrators of serious crimes. An international legal evolution relating to SGBV (Sexual and Gender-Based Violence) is being generating. Within the framework of the ICC, the Prosecutor of this Court publishes the General Policy Document on Sexual and Gender Crimes (2016). The visibility is given to the issue of prosecuting SGBV as international crimes as elements constituting crimes against humanity, genocide and/or war crimes. The ongoing *Al Hassan case* (ICC- 01/12-01/18) before the ICC is an illustration. The Pre-Trial Chamber 1 unanimously issued a confidential decision confirming the charges of war crimes and crimes against humanity, including sexual violence. The office of the Prosecutor seems becoming an advocate for the prosecution of sexual and gender-based violence and made.

Relative to the reparations, some experiences concerning the cases studied will be examined. In South Africa, the chairperson of the Reparation and Rehabilitation Committee, Hlengiwe Mkhize, was a woman, as was the vice-chairperson, Wendy Orr. Four of the five members of this committee were women. Effectively, some women commissioners saw gender justice as essential and were able to redirect some of the commission's approaches and policies. The TRC handed over its report in 1998, but the president tabled it in parliament in 2003. During those years, victim support groups and NGOs became frustrated at the lack of response by the Government. An NGO working group on reparations was set up to pressure the Government. It prepared statements, held workshops and tried to lobby key actors, made submissions to parliament, and developed a media strategy. The relationship between the government and these organizations became very strained. Goldblatt reported that it was because the victims' support groups were largely women-run that the Government was able to avoid dealing with the issue for so long (Goldblatt, 2006).

Rombouts (2006) mentioned women's involvement in the articulation of reparations about the reparations in Rwanda and the lobbying of some organizations like the Association for the Support of Genocide Survivors. Although the testimonies of Rwandan women were extremely useful for the success of the Gacaca tribunals, women's perspective on issues such as the implementation of reparation and truth-telling mechanisms seemed to differ at times from that of men. The reparation process in Rwanda has not been very gender-sensitive.

The women in Sierra Leone were pioneers of the peace process and the return to democratic rule. According to King (2006), women's agency in the articulation of reparations can be divided into three stages. First, women undertook initiatives concerning the reparation before the TRC commenced operations. Second, they participated in and contributed to the design of the reparations measures recommended by the TRC. Third, women worked towards the implementation of the reparations program after the TRC's report was published. Women's participation in the discussions on reparations after the publication of the TRC's report has been somewhat limited, partly because of the government's failure to widely disseminate the report, as required under the TRC statute and in the TRC's recommendation.

The path of women (Dawuni and Kuenyehia (Ed.), 2018) in TJ provides a better understanding of social, political, economic, and security factors that interact with their need for justice. This point of view provides entry points for developing interventions and initiatives, integrating an approach to the complicated matter of the link between post-conflict reconstruction and justice. For instance, in TJ processes, the principle is to focus on judicial and legal reforms or security issues. Women have to be more engaged in the TJ Processes. In the light of this recall, Beijing Platform for Action (1996) in the framework of UN General Assembly called upon the Member States to:

“Commit themselves to gender balance, inter alia, through the creation of special mechanisms in all government-appointed committees, boards and other relevant official bodies as appropriate, as well as in all international bodies, institutions and organizations, notably by presenting and promoting more women candidates.”

Integrating a gender perspective in the resolution of conflicts aims to promote candidates for judicial and other positions in the structures set up after a conflict. Most of the time, although it is crucial to have reparations in place to restore individuals to their pre-conflict status, women were often already entrenched in unequal treatment. Collaboration with NGOs and other local groups to ensure continued access to resources is crucial in post-conflict time. So, if women participate in reparations specifically, it can first help other women to address their issues. It can also pave the road in increasing women's participation after the transition period ends. However, the engagement cannot be achieved without advocacy and forward-looking planning to generate new laws that are inclusive of women. Since it is difficult to change an entire population's mindset when it comes to gender justice, the TJ mechanisms need to be sensitive to and inclusive of women's rights, as Goldblatt said (2006).

The recommendations for a reparation scheme mean nothing if they are not implemented. In other words, international instruments and the machinery for reconstruction and conflict prevention must be made responsive and relevant to women across the continents where mass violence tears their lives apart (Vasuki, 2006). The system of reparations in TJ by taking a gender-sensitive approach can design a gender-sensitive program of reparations. The reparations mandate of the International Criminal Court is a critical component of its overall framework for giving victims a voice and allowing them to exercise their rights within the international criminal justice system. Article 75 of the Rome statute, the ICC's founding treaty, reflects the consensus in international law that reparation is essential to address the terrible consequences experienced by victims of international crimes and gross human violations (Redress, 2019).

Conclusion

Several countries (South Africa, Rwanda, Sierra Leone, Peru, Sri Lanka, Uganda, Libya, Ivory Coast, Egypt, Tunisia, Guinea, Morocco, Sudan, other Latin American and European countries, etc.) have experimented with transitional justice mechanisms when they have been through a dictatorship or war. The questions raised by the cases selected in our study go beyond the answers given to the victims or the sanctions imposed on the perpetrators (Bleeker, 2010). For the struggle against impunity to have more impact is not solely a matter of sentencing the perpetrators; it is also a matter to produce a significant bond towards women's rights (Steady, 2006). The paper leads to the awareness of the role of women and what they can bring to the various levels of the TJ process. At different levels, the role of women must be foreseen, strengthened, and promoted. The intertwining between TJ and the diverse gender-sensitive conceptions of justice can contribute to an improvement in the position of women in peace-building and transition processes (Jimenez Sanchez, 2013). Public and private actors in charge of promoting women's rights and peace and global security must work to raise awareness, with a view to gender integration in the field of TJ. They must encourage women to be involved in the overall human rights movement, notably in international policies regarding decision-making and gender balance on national and international institutions (UN General Assembly Resolution 51/96, 1996). The health crisis due to the COVID-19 global pandemic should not lead to minimizing this pattern. The discourse on human rights is in constant construction. We must do more to promote it through the pillars of the TJ that are the right to know, the right to justice, the right to reparations and guarantees of non-repetition.

Dum Spiro, Spero....

End Notes

¹“The category of gender-based violence applied to women covers every form of violence for which women might be targeted based on their physical vulnerabilities or distinct biology; their economic, sexual, and symbolic values in their own eyes and in the eyes of men and their communities.” See Walker Urban, M. (2009, 1(17)). Gender and Violence in Focus: A Background for Gender Justice in Reparations. In Rubio-Marin, R. *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (p. 48). Cambridge: Cambridge University Press.

²See for further studies on this topic (*Gender*) Grossmann, N. (2016) who draws attention to the importance and challenges of achieving sex-representative benches and goes further to argue how sex-representative benches add to the normative, sociological, and democratic legitimacy of international courts (110 *AJIL*, 82).

³“*Disarmament*” refers to the collection, control and disposal of small arms, ammunition, explosives, portable weapons and heavy weapons of combatants and, often, the civilian population. The development of programs to ensure responsible management of these weapons is considered part of disarmament.

⁴“*Demobilization*” refers to a process by which the armed forces (government, opposition and factions) reduce their numbers or disperse completely as part of the more general transition from war to peace. In general, demobilization involves the consolidation, cantonment, disarmament, administration and preparation for the return to civilian life of veterans, who should receive various forms of compensation and assistance to facilitate their reintegration into society.

⁵“*Repatriation*” refers to the process by which veterans of armed groups are repatriated to their respective countries of origin. Parties are required to create favorable conditions for the repatriation of their citizens, both military and civilian. The United Nations, non-governmental organizations and other international actors exercise control over this process as part of the broader transition from war to peace.

⁶“*Reintegration*” or “*Integration*” refers to the process by which support is provided to veterans to facilitate their economic and social reintegration and that of their families into civil society. This support may include cash or in-kind allowances as well as vocational training and income-generating activities. Through its humanitarian agencies, the United Nations formulates the modalities of support to be provided to people in the process of reintegration into society.

⁷“*Resettlement*” refers to the process of identifying the places where veterans and their families can be resettled. See, Peace Operations Research Network. Retrieved August 2, 2019, from <http://www.operationspaix.net/40-resources/details-lexique/desarmement-demobilisation-et-reinsertion-ddr-et-ddrrr-.html>

⁸*Ibidem*.

⁹The *United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic* (from its French spelling MINUSCA (*Mission multidimensionnelle intégrée des Nations unies pour la stabilisation en Centrafrique*) is the UN peacekeeping mission (10 April, 2014) to protect Central African Republic civilians under Chapter VII of the UN Charter.

¹⁰The UN entity dedicated to gender equality and women’s empowerment.

¹¹Moreover, concerning the issue: “Women, Peace and Security”, the *1820 Resolution* (2008) of the United Nations shows sexual violence as a tactic of war. This resolution strengthens the United Nations Security Council Resolution 1325 (S/RES/1325), on women, peace, and security, and stresses that sexual violence in conflict constitutes a war crime and requires parties to an armed conflict to take immediate appropriate measures to protect civilians.

¹²On 31 October, 2000, the United Nations Security Council Resolution 1325 made clear the international community’s concern and disapproval of abuses of rights, exploitation, violence against women and children in armed conflicts. Previously, the *4th World Conference on Women* held in Beijing, in 1995, resulted in the appointment of a Special Rapporteur on the situation concerning systematic rape, sexual slavery and practices similar to slavery in times of armed conflict, including internal conflict.

¹³ On 26 April 2012, the Special Court for Sierra Leone (SCSL) found Charles Taylor guilty of all 11 charges against him, including crimes against humanity and war crimes. Taylor is the first Head of State since Nuremburg to be found guilty by an international tribunal. On 30 May 2012, the SCSL sentenced him to a term of 50 years in prison.

¹⁴In Tunisia, the ongoing transitional justice process is closely linked to its political transition and has included the participation of women. *Support for the integration of the gender approach into the Transitional Justice process in Tunisia*. Retrieved January 21, 2020, from <https://maghreb.unwomen.org/-/media/field%20office%20maghreb/documents/publications/2015/fichesprojets/tunisie/fiche%20projet%20-%20justice%20transitionnelle%20en%20tunisie.pdf?la=fr&vs=5516>

¹⁵Initiated in Boutros Boutros-Ghali’s Agenda for peace (UN 1992), and further developed in the Brahimi Report, UN 2000.

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