



International Center for Policy and Conflict

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WOMEN'S ROLE IN CRIMINAL ACCOUNTABILITY AND TRUTH
Speech Presented at the 16 Days of Activism at Uhuru Park , Nairobi, KENYA

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Introduction

Ladies and Gentlemen,

I have the pleasure to speak to you in this great celebration of 16 Days of Activism. It is a touchstone of reflection and focusing to the future.

Today I intend to discuss with you the contribution transitional justice (TJ) mechanisms can contribute in enhancing gender justice particularly after a legacy of large-scale, systematic violations of human rights. I take cognizance of the fact that the participants in this meeting are drawn from a region whose track record in committing human rights atrocities is horrifying. We gather here to celebrate hard won battles against horrifying human rights violations. But the war is yet to be won from the tragic raping fields of Democratic Republic of Congo (DRC), through to Rwanda which has struggled to come to terms with 1994 genocide effect, to wobbling peace process in Burundi, to the Uganda terrifying horrors of Kony terrorism in Northern Uganda and in Kenya where justice for post-election violence crimes is being blocked, undermined and sabotaged by strong axis of impunity. It is unthinkable that someone can contemplate perpetrators of such atrocities should not be brought to justice.

Gender perspectives in transitional justice

The idea of gender in transitional justice (mechanisms, practices and institutions addressing legacy of human rights atrocities) has received very limited focus from both scholars and civil society here in Kenya. Yet its transformative agenda is enormous. When addressed women are given attention mostly as victims of sexual violations, causing stereotypes of women's experiences in times of conflict to prevail. It is therefore important to address the gender experience holistically to include women as victims of emotional trauma, economic violence, women as perpetrators, among other experiences. This should also include gender in relation to all the mechanisms of transitional justice such as truth telling, criminal accountability, reparations, memorialization, prosecutorial mechanisms, and so on.

It is agreed that transitional justice mechanisms have valuable potential for transforming gender relations in post-conflict situation. For example, the 'gender perspective in a truth commission's report can help bring about changes in existing laws and patterns of behaviour that have contributed to inequality and discrimination.'² Incorporating a gender perspective also broadens the scope of crimes to be investigated, and widens the sources of information of the types of abuses experienced as well as their consequences.

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² World Bank. (2006). Gender, Justice and Truth Commissions. Pg ix)

An effective reparation policy in addition to restitution and compensating is satisfying and rehabilitating victims which act as a vital measure of deterrence of future violations.

However, while there have been some achievements in engendering transitional justice processes, the full potential has not been grasped due to the limited ways in which gender has thus far been understood. In particular, incorporating gender into TJ processes has largely focussed on two key issues: acknowledgement and redress for sexual violence experienced by women during conflict; and increased representation of women in decision-making (including as members of Commissions).³ The Rome Statute establishing the International Criminal Court, and the recent case law of the International Criminal Tribunals of Yugoslavia and Rwanda have recognised patterns of gender specific violations as war crimes and crimes against humanity. The Liberian Truth and Reconciliation Commission Act also identified the need for special mechanisms for women. In addition, there have been efforts to increase the number of women involved in transitional justice mechanisms adopted at national level.

Women's role in transitional justice mechanisms

Women have been involved in all kinds of conflicts. However, the plight of women should not be reduced to being described as victims of sexual violence, but the scope should be widened to include other forms of violations suffered by women. According to Ross (2003)⁴, the definition of violations suffered by women can be addressed in the following ways,

- The definition of violation should be widened to include structural violations, discriminations/marginalization, among other institutional forms of violence against women.
- The definition should not only be body bound (referring to atrocities inflicted on the human body) but should also include other various forms of violation such as economic crimes.
- On top of this, according to Hamber et al (1998)⁵, the definition should not discriminate in terms of high profile victims (those who suffered most) versus low profile victims. It should therefore include ordinary victims.
- It should also be encompassing covering various unique experiences so that a victim does not feel left out.
- There are also the female and male activists, who suffered atrocities and could therefore fall under the category of victims. According to the South African TRC experience, however this category had reservations with the TRC since they wanted their experiences to be documented as martyrs/heroes of the struggle. This would therefore give another angle in the definition of victim hood.

Women should therefore participate in the process in the following ways:

Gender is a cross cutting as well as a stand alone theme. It will have different effect and affect the TJ processes in different ways, such as appointments, mandate, conduct of hearings and training procedures.

1. Appointment and recruitment

Appointment of persons to work with the commission or any transitional justice mechanism should be gender sensitive. On top of this, recruiters should not only look at the number of women, but also the applicant's attitude towards gender before appointment.

2. Mandate

³ See Valji, N. (2007). Gender Justice and Reconciliation. Dialogue on Globalization, Occasional Paper No. 35, Friedrich-Ebert-Stiftung, November 2007

⁴ Ross, F. (2003) Bearing Witness: Women and the Truth Commission in South Africa. London: Pluto Press.

⁵ Hamber et al (1998) Survivor's Perceptions of the Truth and Reconciliation Commission and Suggestions for the Final Report. Johannesburg: Centre for the Study of Violence and Reconciliation.

In mandate definition, TJ mechanism should be aware of the need to explore institutional aspects of gender based violations, for example internal displacements, losing breadwinners etc. Also, not only look at the act alone, but aspects of social attitudes and policy frameworks within which the act is embedded.

3. Hearings

Gender violations should not only be looked at from a thematic point of view that only focuses on sexual violations, and having proceedings of TJ mechanisms being done in camera. Through victim friendly public hearings, women and or both genders can be given a chance to talk about their experiences and the consequences.

4. Capacity building

Training of commissioners and staff should be comprehensive and on-going. Should be done regularly to ensure that staffs working in any transitional justice mechanisms keep the gender perspective moving and old ones are updated on upcoming issues.

Conclusion

In the light of the above experiences in past TRC from other countries, to engender Kenyan TJ mechanisms, women should participate in the following ways:

- ◆ Women should participate in these processes, not only as victims, but also as part and parcel of the transitional justice processes and their undertakings.
- ◆ They should sensitize other women especially at the grassroots level by encouraging them to participate in the TJ processes. For instance the International Criminal Court (ICC) has begun the process of seeking views of the post-election violence victims. This is a very important process. We need to get out there and get victims to air their views of what they think ICC should do and how; what concerns they have and how they would expect it done and express their views on what if no criminal accountability is taken what I their on view are their fears. We have the responsibility of conducting outreach and assisting the victims to forward their views to the Pre-Trial Chambers. In the same vein we have to look beyond the ICC and ask and sensitize wider society on the essence of criminal accountability.
- ◆ They could aid in boosting awareness on salient issues that may not be apparent at the moment, such as the repetitive nature of sexual violence at the slightest eruption of conflict, and also the continuous domestic and sexual violence experienced by women and girls even at peace time. In relation to this, women could aid in profiling the gender violations of the past that will inform investigators on what to investigate, and will be used as guidelines for interviewers.
- ◆ In working together with CSOs, women can also do workshops to sensitize the public on the TJ mechanisms and how it can engage with it. It could also produce educational documents for them and encourage policies that include women.
- ◆ A communication strategy is also important since it will encourage direct engagement with the commission and the public.

Thank you.