

Gender and Transitional Justice Programming

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Gender and Transitional Justice Programming: A Review of Peru, Sierra Leone and Rwanda

On the cover: Villagers in Kenema, Sierra Leone, await the return of family members and friends who have been living as refugees in a Liberian refugee camp, Camp David in Western Liberia for more than a decade. 05 October 2006, Kenema, Sierra Leone.

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Introduction

Background to country reviews

The United Nations Development Fund for Women (UNIFEM) has reviewed its past support to transitional justice processes in a select group of countries to assess the effectiveness of programming and draw lessons for the development of a more coordinated, coherent and systematic approach. The objective is to design and support strategies for the integration of a women's human rights perspective into various transitional justice mechanisms; including truth commissions, criminal prosecutions, traditional/local justice and reconciliation mechanisms, institutional reform and reparations.

The three country studies in this review—the Republic of Sierra Leone, the Republic of Rwanda, and the Republic of Peru—were selected because each presents a unique opportunity to extract lessons and best practice with regard to securing gender justice in the wake of armed conflict. The goal of the review exercise is to inform the institutional response by all actors engaged in justice and reconstruction efforts in these countries.

The briefs included here summarize more in-depth research reports conducted for each of the three countries. Each country study is structured to include information on: the position of women prior to the main political conflict; the situation of women in the post-conflict period, which illustrates the impact of the conflict and need for redress; the key transitional justice mechanisms employed and their effectiveness in addressing women's experiences of violations during the conflict; UNIFEM programming in the country; and recommendations for future programming.

The focus is primarily on women's experiences of sexual gender-based violence (SGBV) during armed conflict and ways women have been able to access justice for these crimes, whether through prosecutions in the formal justice system, accountability through truth commissions, or reparative justice. This review is not intended to be a complete analysis of gender justice, which would entail a much broader assessment. Nor should it be read to suggest that women are always or only victims in conflict and that their needs for redress are limited to justice for crimes of a sexual nature. The world over, however, we have seen armed actors employ sexual violence as a tactic and weapon of war—informed in no small part by the confidence that such crimes will be met with wholesale impunity at every level. While access to justice for sexual violence crimes is not the whole picture and will not deliver the transformative reforms necessary to redress the inequality, gendered norms and power differentials that lead to and exacerbate women's vulnerability in conflict, it is an important component of broader gender justice goals. Justice for sexual violence during armed conflict is also

a critical international peace and security issue, as reflected in United Nations Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009) and 1889 (2009).

Each of the country studies, as well as note entitled 'A window of opportunity? Making transitional justice work for women', included in this collection, speaks to the limits of the formal justice process and the need for prosecutorial justice to be only one part—albeit a critical part—of the overall gender justice strategy in the post-conflict period. A comprehensive gender justice approach will not simply add women to existing processes or ensure justice for those crimes committed against women during conflict. Important, and indeed central, as these elements are, they must be part of a broader gender justice strategy that includes peacebuilding, an understanding of the multiple identities of women and the gendered nature of conflict, institutional and legislative reforms, gendering of strategies for disarmament, demobilization and reintegration (DDR) and security sector reform, strategies to prevent and redress continuities of violence in the post-conflict period, access to services, human security and social justice.

The methodology used for the three country studies combined literature reviews, in-country research, site visits to ongoing transitional justice mechanisms, and interviews with civil society practitioners, UNIFEM staff, government officials and those affected by the conflict.

In all three countries, despite their varied geographic locations, unique histories, and varied conflict types, there are commonalities with regard to women's experiences. These commonalities include:

- » the unequal status of women pre-conflict;
- » the use of sexual violence as a deliberate strategy by parties to armed conflict;
- » the widespread nature of sexual violence during the conflict;

- » the intersection of gender with other identities, including race, ethnicity, geographical location and language spoken, which informs the extent and impact of the violations;
- » the generalized impunity that surrounds crimes against women in general and conflict-era sexual violence against women in particular;
- » the absence of resources available to institutions that deal with justice for conflict-era SGBV;
- » the stigma and underreporting that accompany these crimes;
- » lack of access to justice for women due not to inadequate policy, but rather to the absence of substantive measures to ensure that justice processes meet the needs of women victims; and
- » the critical role played by the international community and international agencies in reconstruction and justice processes.

A further commonality is that where women's experiences have been addressed through transitional justice measures, they have generally been 'added' to the agenda as an afterthought; nowhere has there been an a priori rethinking of existing justice mechanisms to further gender sensitivity or appropriateness, or to improve their ability to deal with the specific needs of women victims. Nor has there been an appreciation of the need to further gender justice as a central goal of these mechanisms.

A wider, more encompassing understanding of gender justice as put forward by UNIFEM is that it should go beyond courtroom justice for past crimes against women and girls to include equitable treatment and participation for women in all aspects of post-conflict reconstruction: the negotiation of peace agreements, the planning and implementation of UN peace operations, the creation and administration of new governments, the revival and growth of the economy, and the promotion of human security for citizens. The relationship between poverty, violence, sustainable

peace and justice, and the ongoing insecurity endured by women in the post-conflict period all point to the need for a holistic and integrated response to justice, peacebuilding, and post-conflict development—a response that thoroughly integrates gender sensitivity and response to the needs of women.

Peru

Background

Internal conflict broke out in Peru in 1980, initiated by a Maoist guerrilla group known as the Shining Path. The group's use of the rural areas as its base, the intersection of historical race and class identities, and the military's treatment of all indigenous peasants as potential 'terrorists' ensured that the worst violence of the war was concentrated in the Andean highlands and affected a population that was disproportionately indigenous, poor and marginalized. Described as one of the most violent conflicts in the Latin American region, more than 69,000 people are believed to have died at the hands of State security forces, local paramilitary defence groups and the main insurgent groups. Crimes committed by all sides during this period (1980–2000) included forced disappearances, torture, arbitrary executions, kidnappings, mass forced displacement and widespread sexual violence.

The gendered nature and impact of the conflict

The Peru Truth and Reconciliation Commission (PTRC) (2001–2003) found that rape had been used on a mass scale as a weapon of war and that perpetrators primarily targeted those women who were the most vulnerable in society due to their race, class and age. Also targeted were women searching for their missing relatives; women who had any kind of relationship to armed actors in the conflict (e.g., spouses, partners, relatives); women suspected of being subversives; and women who denounced human rights violations.¹ The main perpetrators of the sexual violence were agents of the State—in particular the police and the military—who were found responsible by the PTRC for 83 per cent of the acts of sexual violence perpetrated during the conflict.²

The use of rape and sexual violence during the war in Peru has been described as “magnification of existing institutionalized and normative violence against women”³ that existed prior to the conflict. For example, until 1997 Peruvian law allowed for an exemption from prosecution for rapists who married their victims. This ‘domestication of rape’ ensured that there was little access to either justice or protection for women. It was informed by a response to rape that was solely focused on “salvaging the woman’s honour.”⁴ Such assumptions and practices underlay the use of sexual violence during the conflict, which was then exacerbated by multiple other hierarchies, including race, location and language. In other words, the use of mass rape was informed not just by gendered norms and hierarchies, but also by a racial othering that portrayed indigenous women as ‘lesser’ human beings.⁵

In addition to the direct violence of the conflict, women's experience of this period was characterized by the broad impact of that violence on their daily lives: the scarcity of food; the disrupt-

tion of education for their children; the mass displacement of entire communities; the difficulties of navigating daily life without husbands who had fled to safety, been killed or become separated from their families by the conflict; and the disproportionate burden on women of searching for the dead and disappeared. As with all wars, the gendered consequences of the conflict were far-reaching because of women's social status and responsibilities.⁶

The final report of the PTRC noted that while inequality and discrimination persisted for women during the armed conflict, gender roles shifted for some during this period. Some women assumed greater or different responsibilities for their families, some took on leadership roles in the insurgency groups, and others played a key role in peace and democracy organizations.⁷

In this regard the Commission's final report is useful in that it moves beyond a focus on women solely as victims of sexual violence in conflict—a weakness in the work of past commissions—and analyzes the new roles assumed by men and women during the conflict as well as their impact on the country's economy. The ability to integrate a more holistic gendered analysis was, however, hampered by a lack of resources and the late incorporation of a gender perspective into the Commission's work.⁸

Women's justice needs post-conflict

In its key conclusion on the topic of sexual violence, the PTRC noted that sexual violence against women was a widespread practice by State agents during massacres, summary executions and other organized actions of the army and police. Additionally, the Commission concluded that rape was a systematic and persistent violation that took place in a broader context of generalized violence. This is a particularly important finding, as it has implications for victims' ability to secure justice for these crimes.

As sexual violence constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against a civilian population, the PTRC's findings open the possibility for crimes of sexual violence to be prosecuted as violations of international law.

To address and overcome the gendered social and economic impact of the conflict on women's lives, however, post-conflict justice efforts must include far-reaching legislative and institutional reforms, as well as targeted social justice programmes.

Transitional justice mechanisms employed

The Peruvian Truth and Reconciliation Commission

The key transitional justice mechanism employed in Peru was PTRC, established in 2001. The Commission was mandated to investigate and make public the facts related to the political violence that took place between 1980 and 2000, elucidate the responsibility of the various armed actors, and offer recommendations for reparations and institutional reforms.

The decree that created the PTRC did not explicitly include either a gendered approach or mention of sexual violence crimes. Once the Commission was established, and before it launched operations, Commissioners and staff took some months to discuss and plan how to interpret the mandate. Following a process of internal dialogue and external pressure by key women's rights activists, the Commission agreed on the need to include women's experiences of the conflict as a specific area of work.

The PTRC Gender Unit was created to ensure that a gender perspective would inform the Commission's work. The Gender Unit was specifically tasked to ensure that the Commission was equipped to document crimes of a sexual nature. Training documents were thus developed that addressed reaching out to sexual violence victims during investigations, communication strategies,

conducting interviews in the country's rural areas, and guidelines for interviewers. The PTRC also organized a public hearing on women's human rights, and its final report devoted individual chapters to a gendered analysis of the conflict and the use of sexual violence against women.⁹

The experiences and lessons of earlier truth commissions—in particular those in South Africa and Guatemala—were incorporated into PTRC planning. Importantly, in a reflection of evolving international norms, the PTRC employed a broad definition of sexual violence, noting that it “includes forced prostitution, forced unions, sexual slavery, forced abortions, and forced nudity.”¹⁰

Among the key challenges the PTRC faced in its efforts to promote gender justice through its processes and outcomes was the dearth of existing information regarding cases of sexual violence during the conflict. This was compounded by the fact that women did not speak of sexual violence crimes in the first person, due partly to victims' feelings of guilt and shame and partly to the erroneous belief that these are not human rights violations, but rather ‘collateral damage’ of war. The Commission's final report thus acknowledges both the statistical underrepresentation of sexual violence cases and its reliance on third-person testimony as well as qualitative and anecdotal evidence to draw conclusions regarding the use of sexual violence during the conflict.

Another, more general, challenge was the lack of an appropriate budget to support the activities of the Gender Unit, since it had not been part of the original plan for the PTRC. This was a key limitation and made the Unit reliant on the work plans of other areas of the Commission or the pursuit of limited-expense activities.

Criminal prosecutions

Ultimately, the PTRC presented only two cases on sexual violence to the national prosecutor's office. The first, the *Magdalena Monteza* case,

involved a student detainee who became pregnant after being tortured and repeatedly raped by military officials. The case was ‘temporarily’ closed by the prosecutor because the rapist could not be identified. The second, the *Manta* and *Vilca* case, deals with systematic sexual violence against women from Huancavelica, where the military was active in 1984 (Vilca) and in 1998 (Manta). The PTRC had concluded “that sexual violence against women in the districts of Manta and Vilca was persistently and repeatedly committed by military forces stationed in the counterinsurgency bases in the area.”¹¹ In October 2007, the prosecutor filed charges against nine ex-members of the army for sexual violence under the crime of torture. This was the first sexual violence case to be pursued as a crime against humanity in Peru.

The National Council of Reparations

The final report of the PTRC includes a comprehensive plan of reparations (PIR) for victims of the violence. The objective of the PIR is to “repair and compensate victims of human rights violations” and to assist with the “social, moral and material losses or damages suffered by victims as a result of the internal armed conflict.”¹²

The Commission recognized the importance of a gender perspective in the PIR as well as the need for equal participation of men and women in its implementation. Among its key recommendations were: to give appropriate recognition to women who had assumed leadership roles during the armed conflict; to identify women's needs with regard to health care as a form of reparation; and to identify the impact of violence on families and relationships and establish programmes to address this.

The report itself highlighted the abuses and crimes committed against women, an important step for ensuring that women benefit from reparations.

In 2005, the National Council for Reparations was established to create a register of victims of the armed conflict.¹³ Like the PTRC, the National Council for Reparations encountered numerous difficulties in collecting information on sexual violence crimes and identifying victims, and therefore beneficiaries. One obstacle has been the reluctance of women themselves to identify themselves as victims of human rights abuses so they can claim reparations: Some women have stayed silent due to fear of social condemnation by their community, feelings of guilt, or cultural norms that prevent them from speaking out. Others have since married, and their husbands do not know that they were raped. A further obstacle to providing redress to the full group of victims is that rape was the only act of sexual violence identified as eligible for reparations through the PIR.¹⁴ This is problematic, as “other forms of [sexual violence], such as sexual slavery, forced marriage and forced abortion...account for the majority of cases of [sexual violence] during the period covered by the Commission.”¹⁵

With regard to specific forms of redress for survivors of rape, the PTRC proposed that eligible victims receive financial and symbolic reparations as well as specific access to health, housing and education. Children born as a result of rape are considered indirect victims and are entitled to education, health, housing and symbolic reparations. Victims and their children may also be the beneficiaries of collective reparations.

Outstanding justice needs for women

While the gender-responsiveness of the PTRC and the PIR represent significant progress, impunity continues to surround conflict-era sexual violence crimes. The PTRC found no evidence of criminal prosecutions for these crimes during the conflict, and by the time of writing, not a single conviction had yet been secured in the post-conflict period. According to one analyst, investigations in the handful of sexual violence

cases currently with the prosecutor have been “exasperatingly slow and inadequate,” and it would appear that “there is a lack of interest in pursuing such cases.”¹⁶ Even in those cases that are before the courts, few victims can afford adequate legal assistance. This is in sharp contrast to the accused, in particular army officers, who are funded by the State and represented by private legal firms.

The inaccessibility of the justice system and unresponsiveness on the part of the authorities has meant that many women are reluctant even to file complaints. Their reluctance is also informed by the same conditions that prevented women from coming forward to the PTRC or being identified for reparations, and include in particular issues of stigma.

Moreover, the lack of justice for past crimes against women is compounded by impunity for present-day violence and violations. As one writer notes, men are “once again in charge of newly installed institutions of justice,”¹⁷ and violence against women is simply not a priority. Women’s access to justice thus continues to be a distant goal.

The situation of women in Peru today

As has been observed in other post-conflict societies, levels of violence against women in Peru, in particular sexual violence and domestic abuse, continue to be high. Femicide, the killing of women by an intimate partner, has also become more prevalent. During January 2009 alone, 23 women were reported murdered by their intimate partner, while an average of 15 women per month were killed in 2008 in the same manner.¹⁸

Post-conflict continuities in violence against women are fed by the norms that inform such violence, the shame and stigma that surround it, and the social acceptance of and impunity for the crimes.

In drawing parallels between the Manta and Vilca cases and current abuses, one writer observes: “One thing to note about the *Manta* and Vilca case is that community support for the victims has not been unanimous, in contrast to the reaction in other types of human rights violations like forced disappearance, extrajudicial executions, etc. The reason is linked to a series of cultural factors: on the one hand, the victims are women, and women in rural areas in Peru are less powerful than men. On the other hand, even though men deny this, what the soldiers did to women in the community twenty years ago is still being done by members of the community itself today, which makes it difficult to condemn.”¹⁹

UN support to transitional justice initiatives in Peru

International agencies and the UN have played an important support and partnership role with the PTRC in particular. This relationship was led by the United Nations Development Programme (UNDP) as the primary UN agency partner. Through an agreement with the Presidency of the Ministry Council of Peru, UNDP provided technical, financial and professional assistance to the PTRC. The agency also assumed the obligation of managing and receiving funds contributed by other international donors.²⁰

The Office of the High Commissioner for Human Rights (OHCHR) offered technical support to the Commission, in particular to strengthen the skills of the PTRC in the areas of mental health, database analysis, interviewing techniques, mainstreaming indigenous rights, forensic skills and the development of a reparations programme for victims. OHCHR also supported the Commission to incorporate a gender perspective in their work.

International cooperation and funding, while vital to the PTRC overall, were especially important in supporting the work of the Gender Unit which, as noted above, did not have a dedicated budget for its activities.

UNDP and others have continued to support government activities related to peacebuilding, collective reparations and national reconciliation. UNDP is also supporting the work of the Special Prosecutor’s Office for Forced Disappearances, Arbitrary Executions, and Exhumations.

Additionally, international agencies had a role in the creation of the Centre of Information for the Collective Memory of Human Rights, located in the Ombudsman’s Office. This Centre is part of a general process for implementing measures related to memory and truth and ensuring the dissemination of the PTRC’s final report. It also houses the files of the Commission.

UNIFEM programming, partners and impact

While UNIFEM did not directly support the PTRC, it did support the work of women’s organizations dealing with issues related to sexual violence during the conflict as well as those seeking to follow up and implement the recommendations of the Commission with regard to sexual violence crimes. In this regard, UNIFEM supported the work of *Comisión de Derechos Humanos* (COMISEDH), a Peruvian non-governmental organization (NGO) dedicated to human rights and working on issues of sexual violence against women in Ayacucho, one of the regions worst affected by the conflict. Other civil society partners include *Estudio para la Defensa de los Derechos de la Mujer* (DEMUS), a women’s NGO that received funding through a grant from the UN Trust Fund in Support of Actions to Eliminate Violence against Women. The project aimed to address the absence of legal provisions and the lack of political will to implement the recommendations of the PTRC on gender-based violence. The

activities of the project included capacity-building for judges and prosecutors and awareness-raising for women in Manta and Vilca of the gender provisions of the PTRC report and of available gender-based violence resources and services. It also initiated public debates on the link between gender-based violence and armed conflict, and its continuum to peace time.²¹

Recommendations and ways forward

Reparations: The National Council for Reparations is elaborating the list of victims eligible for reparations and establishing the methodological tools to be used to register victims of sexual violence. Although the Council is developing important efforts in this area, it would benefit enormously from international experiences and expertise.

Legal reform process: A draft law has been presented to Congress that recognizes widespread sexual violence as a crime against humanity. NGOs and academics are leading the discussions. Technical information and experiences from other countries are needed to enrich this process.

Judicial process: While few sexual violence cases have been taken forward by the justice system, training and support for judicial authorities is needed. National workshops and training sessions for judicial authorities involved in these cases on gender and women's human rights would support more effective prosecutions.

Peacebuilding: Although the political armed conflict is over, peacetime violence—characterized as social or criminal violence rather than political—remains a major issue in Peru. Support is needed to build women's capacity to participate in post-conflict public decision-making and prevention of violence in all forms.

Sierra Leone

Background

In 1991, the Revolutionary United Front (RUF), led by a former corporal in the Sierra Leone Army, invaded Sierra Leone from Liberia sparking a decade-long conflict. Hallmarks of the RUF's brutal campaign included mutilations, amputations, abduction of children into their forces and widespread sexual violence. The Sierra Leone Army, in fighting the RUF, equally became complicit in atrocities against the civilian population. Subjected to attacks from all sides, civilians in many areas organized themselves into pro-Government militias known as Civil Defence Forces (CDF). The CDFs were supported by the Government, which provided them with both resources and weapons. A peace accord was eventually concluded in Lomé in 1999, and UN peacekeepers were brought to Sierra Leone to operationalize the agreement. Sporadic violence continued, however, until the official end of the conflict in 2002.

The situation of women pre-conflict

In Sierra Leone, stark gendered inequalities existed even prior to the conflict. The country's truth commission was the first of its kind to explicitly make the link in its findings between gender inequality before the conflict and the gendered nature of the violations during the conflict.²²

Key indicators of women's pre-conflict status include:

- » Vast underrepresentation of women in the traditionally male-dominated political and socio-economic decision-making structures of the country;

- » Denial of basic rights and opportunities—this was particularly true in rural areas, where poverty, lack of access to resources and the predominance of discriminatory customary laws adversely affected women;²³
- » Legislative discrimination against women: although the 1991 Constitution prohibited discriminatory legislation, the prohibition was subject to certain exceptions related to customary law and thus did not protect women in areas such as marriage, inheritance and divorce, among others;²⁴
- » Common early and forced marriages, particularly under customary law; there was no minimum age for marriage, and girls as young as 10 were given in marriage to men old enough to be their grandfathers;²⁵
- » Greater difficulties for women than for men in the areas of marriage and divorce, arising from the coexistence of multiple legal systems: statute law, sharia and customary law; and
- » Inheritance laws favouring males, which saw women rendered homeless or forced off the land they had cultivated due to lack of inheritance rights.

Violence against women, particularly wife beating, was accepted practice and was perpetrated with near total impunity. Efforts to report abuse, in the rare instances where these were made, were dismissed, as such violence was not seen as a matter for police action. Although sexual violence was legally recognized as a crime, only the rape of a virgin was seen as a violation.²⁶ As in many other countries, rape was generally regarded as implying the woman's consent.

In the words of one woman community leader in Freetown, “women were not heard or seen—they were just things, chattels, that belonged to men. They had no authority to do anything without the permission of their husbands or fathers.”²⁷

The ended nature and impact of the conflict

Throughout the 10-year armed conflict, thousands of women and girls of all ages, ethnic groups and socio-economic classes were subjected to widespread and systematic sexual violence. As a woman civil society activist noted, “women became prey, no matter what their social standing was before the conflict. Any woman could be abducted and forced into sexual slavery.”²⁸

Women were targeted by all sides as part of the military and political strategy and in an effort to undermine cultural values and community relationships. More disturbingly, there were also reports of sexual violence, exploitation and abuse carried out by peacekeepers from both the United Nations Assistance Mission in Sierra Leone and the Economic Community of West African States Monitoring Group—the very forces sent to protect civilians.²⁹

With regard to gender-specific violations, women and girls were not only raped, by individuals and by gangs, but were also subjected to miscarriage as a result of rape; forced pregnancy; forced abortion; forced labour; abduction; and mutilation. ‘Forced marriage,’ which included but went beyond sexual slavery, was widely committed against women and girls, who were given as ‘wives’ to commanders and combatants. The rape of women and girls in front of family members was used as a form of torture and a deliberate strategy to break family and community bonds.

Some of the victims of sexual violence lost their reproductive capacity as a result of the violence itself or the medical procedures that were necessary to address the injuries. Others have faced various forms of ostracism and have been stigmatized as a result of being abducted and impregnated by the rebels.

Women were not simply victims in the conflict. There are reports of women who participated as voluntary fighters, collaborators and rebel supporters, although those interviewed in the course of this research claimed that most of the women in question did this to avoid being gang raped. They were said to have mediated the violence against themselves by displaying extreme aggression or attaching themselves to one male combatant and becoming his 'bush wife': A counselor at Gracelands Counselling center noted: "Some of the girls here came in three years ago refusing to speak. They had witnessed terrible acts of violence and torture; they cannot speak about it so they do not speak at all. They are slowly starting to say a few words now."³⁰

Women's justice needs post-conflict

At the conclusion of the civil war, huge political and moral challenges faced the country, including questions of justice for past atrocities given the complexity of a conflict in which many of the perpetrators of gross human rights violations were themselves also victims. Accounts of women's experiences during the war clearly demonstrate that while both men and women endured violence and hardship, the ensuing harms differed.

Women's experiences of sexual violence and the need for justice, acknowledgement and assistance are a crucial element of post-conflict rehabilitation, but the gendered impact of the conflict is much broader. In addition to ongoing insecurity for women, a lack of basic services, the devastation of physical and social infrastructure and the tensions related to reintegration, land access and property rights, many women have also had to deal with being forced to take on the roles of missing male family members in a context of ongoing and systematic discrimination. These inequities include laws that still prohibit women from inheriting land and property or prevent them from accessing services from the State without a male intermediary.

For many women in Sierra Leone, the post-conflict period of rebuilding and restructuring is very much focused on everyday survival. In this context, a term like 'justice' takes on a different meaning. It entails the transformation of social relations, national justice systems, legal reform, access to education and literacy, and effective policing. Another critical element is ensuring the participation of women, and attaining gender balance, in all spheres of decision-making and policy formulation. Women in Sierra Leone have traditionally been excluded from these domains and their participation is both a form of justice in its own right and a necessary element of real democratization.

The case of Sierra Leone has also highlighted the need to consider health and well-being in the context of gender justice. In a country reeling from the devastating impact of war on the physical health and psychological well-being of its women, this issue deserves much more attention. Sierra Leone has the highest rate of maternal mortality in the world; prevalence of female genital mutilation on women and girls is almost universal (estimated at 94 per cent by the World Health Organization in 2005); and statistics on HIV prevalence, though unreliable, can reasonably be estimated to be high given the high level of sexual violence, which has continued in the post-conflict period, as well as the high levels of prostitution and drug abuse. Thousands of women continue to suffer from treatable conditions that could be addressed through simple procedures and access to health care facilities.

Transitional justice mechanisms employed

In an effort to address past atrocities, Sierra Leone established two key transitional justice institutions: the Truth and Reconciliation Commission (TRC) and the Special Court for Sierra Leone. It also adopted related policies and programmes for reparations to victims, follow-up on the recommendations of the TRC and implementation

of institutional and legislative reforms. The establishment of the TRC and Special Court was a two-track process wherein truth-seeking and reconciliation coexisted with criminal accountability efforts. This was the first time that a truth commission had run simultaneously with an international or hybrid court.

Prosecutions

The Special Court for Sierra Leone was created in January 2002 through an agreement between the UN and the Government of Sierra Leone to try those most responsible for violations of international humanitarian law and Sierra Leonean law during the country's civil war.³¹ It is situated in Freetown and is a hybrid institution employing both international and domestic capacity. It is anticipated that the infrastructure and capacity built during the Court's lifetime will go some way to rebuild the devastated domestic justice system in Sierra Leone.

The Special Court has to date indicted 13 war criminals. The case against Charles Taylor, former President of Liberia—the last of these cases to be brought to trial—is currently being heard in The Hague due to security concerns regarding holding the proceedings at the Freetown court. There have been numerous critiques of the Special Court during its time of operation, not least of which include the tensions in its relationship with the TRC, the strength of its outreach initiatives, the extent to which there will be a legacy and impact left on the domestic justice system in Sierra Leone, the small number of cases it has heard, and the narrowness of its mandate. Additionally, some feel that the slow implementation of reparations has had a negative impact on how victims perceive justice secured through the Court.³²

The Court has, however, made significant strides in furthering justice for sexual and gender-based crimes. In February 2009, in a case referred to as the 'RUF case,'³³ three of the top commanders of the RUF were convicted for gender-based

crimes against humanity—rape, sexual slavery and inhumane acts (forced marriage)—as well as for the war crime of outrages upon personal dignity.³⁴ The forced marriage convictions were the first of their kind and followed an earlier ruling by the Appeals Chamber of the Special Court, which concluded that forced marriage could be considered a separate crime against humanity under the category of 'other inhumane acts.'

In responding to the conviction, the Prosecutor of the Special Court noted: "The Court today for [the] first time in world history convicted each of these individuals of 'forced marriage' as a separate "crime against humanity." In doing so, it recognizes the very deep and long lasting suffering inflicted upon women through conscription as 'bush wives' during the Sierra Leone conflict."³⁵

While the Special Court has clearly made a seminal contribution to advancing accountability for gender-based crimes through the institutions of international justice, there were also critical setbacks. In particular in relation to the Civil Defence Forces (CDF) case,³⁶ where the judges ruled to exclude all evidence related to sexual violence crimes even though this was the primary violation experienced by the group of women who took the stand as witnesses. The case involved charges against senior leaders of the Civil Defence Forces, a pro-government militia group. The accuseds were charged individually and as part of a joint criminal enterprise with murder, inhumane acts, violence, acts of terror, collective punishments, pillaging and enlisting children. Approximately four months prior to the trial, the Prosecution sought to add four new counts alleging sexual violence—including forced marriage—under the existing counts of inhumane acts and violence to life and health in violation of the Geneva Conventions. The Trial Chamber denied this motion on the basis that it would offend the rights of the accused to be prosecuted without undue delay. The Prosecution sought and was denied leave to appeal this decision.

The implications of the judgment were widespread. In several instances the Prosecution was prevented from leading evidence that may have eventually led to testimony on sexual violence, often to the point of seriously fragmenting and hindering witnesses' (and victim's) testimony. In the words of one of the women: "I feel so bad, because they raped me very brutally, and that was my main reason for going to court to testify. As soon as I got there, my lawyer told me that I should not talk about that anymore. And up until now, that still causes me pain. It makes me feel bad."³⁷

The Appeal Chamber did eventually find that the Trial Chamber erred in excluding evidence of sexual violence from going to prove other existing charges, but concluded that this ruling should simply provide "guidance" to the Trial Chamber in future.³⁸ The particularities of this case highlight the ongoing need for reforms to international law and international justice systems to make them sufficiently gender sensitive and victim-centred.

The Sierra Leone Truth and Reconciliation Commission

The creation of the TRC in Sierra Leone was provided for in the Lomé Agreement that ended the conflict in 1999. It was established by an act of Parliament in 2000, which gave the Commission a one-year mandate to create an impartial record of the violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone. Key objectives for the TRC were to address the issue of impunity, respond to the needs of victims, promote healing and reconciliation, and prevent a repetition of the violations and abuses suffered.³⁹

A distinguishing feature of the Commission's work from the outset was its intention to give special focus to the experiences of women during the conflict. In this regard, the Commission ensured that three of the seven Commissioners were women, one of whom had direct experience in tackling issues of gender-based violence

during armed conflict in the context of an earlier truth commission.⁴⁰ Based on lessons learned from gaps in the South African TRC process, the Sierra Leone TRC consulted local and international women's activists early and often and formulated special rules of procedure that were designed to address the particular needs of female witnesses.⁴¹ Special hearings were held for women, and these had considerable success in placing the issue of sexual violence front and centre on the TRC's agenda. Additionally, the Commission provided food, transport, water and medical assistance where necessary to facilitate women's participation in Commission hearings.

Within civil society, women's groups formed the Women's Task Force—a coalition of representatives of civil society groups, women's groups and international and local NGOs—to ensure a coordinated response to the work of the TRC and the Special Court, and to ensure that crimes suffered by women were adequately identified and addressed.⁴² Women's organizations also played a central role in bringing the experiences of women, particularly their experience of sexual violence, to international attention.⁴³

The final report of the TRC was released on 5 October 2004. One chapter of the report is entitled 'Women and the Armed Conflict' and details the violations suffered by women during the war, as well as the post-conflict status of women in Sierra Leone. The report offers a complex account of the ways overlapping social, legal, political and cultural forces made women more vulnerable to a range of wartime offences. The analysis went far beyond merely listing violations. The TRC concluded, moreover, that all parties to the conflict were responsible for perpetrating abuses, including abduction and sexual exploitation, against women and girls.

The TRC also made strong recommendations with respect to legal, political, educational and economic reforms that would strengthen the

status of women in Sierra Leonean society and would make them less vulnerable to future victimization. It urged the repeal or reform of all statutory and customary laws that discriminated against women; the passage of new laws requiring all political parties to ensure that at least 30 per cent of their candidates for national and local elections be women; and ratification of the Protocol to the African Charter on the Rights of Women. The TRC further recommended that the Government launch a campaign to address customary norms that compelled a victim of rape to marry her rapist. These recommendations for reform were more gender-specific than the reports of earlier truth commissions and thus provide an important rallying point for civil society advocacy on issues of gender justice worldwide.

Civil society and human rights organizations in Sierra Leone have been vocal about the serious delays in the Government's implementation of the TRC recommendations, which are still largely unfulfilled six years on. The full implementation of the recommendations is seen as a vital step towards addressing the conditions that contributed to the outbreak of war and which persist in Sierra Leonean society today. One positive step in this regard, however, has been the enactment in 2007 of three 'Gender Acts' covering domestic violence, inheritance and customary marriage.

Reparations

The Sierra Leone TRC did not consider reparations until late in its work, when it faced both resource and time limitations. As a result, consultation was limited to Government departments and Freetown-based NGOs. Nevertheless, the Commission's recommendations include progressive measures for women victims of the conflict.

In particular, the Commission recommended prioritizing reparations for amputees, women who suffered sexual abuse, children and war widows, because these individuals suffered multiple violations and were deemed to urgently require a particular type of assistance to address their current needs.

The TRC also recommended that the definitions of 'victim' and 'beneficiary' not impose limits based on who had participated in and cooperated with the Commission, as had been the practice of some earlier truth commissions. Had the TRC proceeded in that way it would have excluded a large number of victims; particularly women, many of whom did not participate for fear of the stigma attached to their experiences during the conflict.

Similarly, the TRC suggested that in determining the size of pensions (recommended to be set up for amputees, children and women affected by the conflict), the Government must take into account not just the cost of living, but also the amount given in DDR packages and ex-soldiers' pensions. This recommendation reflects the gendered roles that men and women play during armed conflict: DDR packages primarily benefit men, who are more likely to have been combatants; women, meanwhile, are disproportionately represented among victims and thus among those to whom reparations are owed. Linking DDR packages and reparations is one way to ensure more gender-sensitive distribution of post-conflict resources, and thus of creating a more equitable reintegration programme.

Despite these positive recommendations, however, the actual implementation of Sierra Leone's reparations programme has been characterized by severe delays.⁴⁴

The first steps to roll out the programme were not taken until 2008, when the UN and the Government of Sierra Leone embarked on the ‘Year 1 Project,’ which itself aimed only to build the institutional capacity needed to implement the TRC recommendations on reparations. This project received seed funding of \$3 million from the UN Peacebuilding Fund and has been implemented by the National Commission for Social Action (NaCSA), a governmental organization charged with overseeing reparations.⁴⁵

The Year 1 Project made progress in conducting victim registration, with close to 30,000 victims registered during this period. The initial registration period, however, did not yield the numbers anticipated, and time-frames for registering were extended. This happened again during the second registration period, which led to the adoption of a ‘restricted open-door policy’ whereby the time restrictions for victim registration were made more flexible.⁴⁶ This is an important reform, particularly for sexual violence cases where women may not come forward initially due to lack of information, fear, stigma, insecurity or lack of strong confidentiality measures or trust in institutions. A longer-term open-door policy makes it possible for more beneficiaries to access their rights to redress.

The TRC also recommended that a Special Fund for War Victims, intended to take care of amputees, children and women affected by the war, be established within three months of the publication of the Final Report in October 2004. This too was delayed; the Fund was launched five years later, in December 2009. It is intended to serve as a basket fund to receive national and international contributions to support victims of the conflict.

One symbolic, but nonetheless important, step that has been taken on the basis of the TRC recommendations was the apology by the President to the women of Sierra Leone. On 27 March 2010—International Women’s Day—President

Ernest Bai Koroma said clearly that the State “fell short in our obligation to adequately protect women from the brutalities of armed conflict.” He apologized for the wrongs done to Sierra Leonean women, asked for forgiveness in the name of the armed forces, and pledged to protect women’s rights going forward. He also acknowledged that traditional and cultural practices in Sierra Leone have grossly violated women’s human rights. This simple yet profound acknowledgement of the State’s responsibility for protection of women is an important step in laying the foundation for a new country based on the rule of law and a culture of respect for human rights.

Disarmament, demobilization and reintegration

The DDR programme in Sierra Leone, which took place from 2001 to 2002, has generally been described as a qualified success. It has, however, been criticized for its failure to account for the needs of women and girls in the fighting forces. Women and girls played many roles in the conflict, particularly in the CDF and rebel forces, where they were commanders, cooks, frontline fighters and spies. Yet of the more than 75,000 combatants demobilized during the official process, the UN Department of Peacekeeping Operations reports that only 6.5 per cent were women. This is partly a result of the criteria used by the DDR programme, which was initially based on a ‘cash for weapons’ exchange. This approach excluded women and girls who had their weapons taken from them by male commanders prior to reaching the exchange sites, never received weapons because they served in support roles, or were abductees who had already fled their captors—and as such received no reintegration support.⁴⁷ There has also been inadequate support for women in the communities who have played a vital role in the reintegration of ex-combatants, particularly those who were excluded from official programmes.⁴⁸

Reconciliation and social reconstruction

The TRC made an important starting contribution towards community reconciliation through its broader mandate and by hosting community events for reconciliation and healing. These efforts ceased, however, when the TRC concluded its work. Since then, some civil society groups have tried to step into the space, recognizing the ongoing and critical need for intra- and inter-community social reconstruction and reconciliation. As one leader said, “when we consulted people, the communities across the country, they said they did not think reconciliation has happened. With everything that was done, we still need reconciliation. We have no option—we have to live with the offenders.”

An example of one such civil-society-based effort is *Fambul Tok* (Krio for ‘Family Talk’). This is a process that brings together all actors of the post-war society—offenders and witnesses—to a ‘family circle’ to discuss and resolve issues. The community healing process is designed to address the roots of conflict at the local level and to restore the dignity of those who suffered from violence. The initiative is rooted in traditional practices that emphasize the need for confession, reconciliation and forgiveness.⁴⁹

The situation of women in Sierra Leone today

Women continue to experience secondary harms almost a decade after the end of the war. These include the shouldering of new responsibilities and the day-to-day struggle to rebuild lives and provide for families in a context of continuing extreme poverty. For some women, these secondary harms also include the consequences of sexual violence: unwanted pregnancies and health problems such as sexually transmitted diseases. While women play a large role in the rebuilding of communities and social relations—due in part to their provider roles, both old and new—they are still subjected to widespread gender-based violence, which is and has been endemic in Sierra

Leonean society. Domestic violence in particular has roots in both culture and religious practice, and both play a role in limiting the degree to which it is reported. Despite the attention that has been paid to gender-based violence in the aftermath of the conflict, it is still considered shameful for a woman to report her husband as a wife beater. Violence against women thus remains one of the major obstacles to women’s participation and contribution to peacebuilding. In the words of one civil society activist, “the thing about Sierra Leone is that you only call the police for your enemy. If you don’t want the relationship anymore, then you can go to the police. I experienced this myself: My husband beat me very badly. I had 11 stitches in my head. I thought, where do I go?... At the end of it, the police just say, Go back to your husband, even though they have been sensitized, trained...The law works when [you do] not want him back. It is a taboo, he will be your enemy for life.”⁵⁰

UN support to transitional justice initiatives in Sierra Leone

UN agencies have provided critical support to post-conflict justice and reconstruction efforts in Sierra Leone. Indeed, the agencies, programmes and projects through which this support has been given are too numerous to list here. But it is important to note that UN efforts have been central to all transitional justice measures in Sierra Leone, including the TRC, the Special Court, the official DDR program, security sector reform and support for judicial reform, as well as in the areas of peacebuilding and security, and broader human rights and rule of law programs.

With regard to long-term peacebuilding and reconstruction support, of particular note is the establishment of the UN Peacebuilding Commission (PBC), mandated to focus attention on reconstruction and institution-building efforts worldwide and to lay the foundation for sustainable development. Sierra Leone has been

selected as one of the first three countries to benefit from PBC support. The UN is currently scaling down its operations in the country: the UN Integrated Office in Sierra Leone (UNIOSIL) is preparing to close, while the mandate of the UN Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) is slated to end in September 2010.

Recommendations and ways forward

Many of the recommendations on women and gender justice that were made in the final report of the TRC have not been fully implemented. Some, like girl-child education, attracted government attention and special support. In other areas, however, the response has been slow. The gender bills recognizing women's rights in marriage, making domestic violence a criminal offence and recognizing women's rights to inheritance were eventually passed in 2007, but only after significant lobbying by women's groups.

In addition to the need for ongoing advocacy and post-TRC follow-up, the case of Sierra Leone offers these important lessons:

- » **Ad hoc activities are limited in their impact.** Such activities do serve to mobilize civil society and raise public awareness, but generally for a very short time. The gains are difficult to sustain if they are not linked to a broader strategic long-term programme. Indeed, they can do more harm than good by creating a false sense of having dealt with the issues, when actually very little has changed in the lived realities of people's daily lives.
- » **Gender programming must move beyond simply including women.** Without a deep understanding of feminist gender critiques, activities become 'women's programmes' but do nothing to address the underlying ideologies and politics that buttress gender inequalities, and by extension, gender-based violence.
- » **Women are not a homogenous group.**

Unequal power relations exist among and between women as well and must be considered in all programming plans. These class and ethnic issues further marginalize poorer women with less power and access. Without sensitivity to the existence of these divides, the voices from the periphery are excluded and representation is limited to that of the educated elite.

- » **The post-conflict moment is critical.** The period immediately after a war or armed conflict creates a significant opportunity to address not only the gender-based violations that occurred during the conflict, but the low status of women and gender inequalities that had existed long before and that are linked to women's wartime experiences.
- » **Women are not just victims.** Women play multiple roles during armed conflict and can be powerfully mobilized in the post-war period to campaign and speak out against all forms of discrimination against women, if trained and empowered to organize and to understand the issues.
- » **Transitional justice mechanisms are only the beginning of reconciliation.** Rebuilding and restoring relationships is a long-term process that must be part of a sustained and coordinated strategy if future violence is to be prevented. Acknowledgement and reparations will go a long way to furthering these objectives.
- » **Health is a critical justice issue.** Pervasive sexual violence leads to long-term consequences in terms of physical health and mental well-being, which require immediate attention after the end of a conflict and must be seen as integral to gender justice.

Rwanda: Securing justice for women's experience of genocide

The gendered nature of Rwanda's genocide, the complexities of delivering justice in the aftermath of mass atrocity, and the strong political will for gender equality and transformation since 1994 all contribute to making Rwanda a unique case study in gender and transitional justice. Institutionally, UNIFEM's involvement in supporting civil society and government over the past 15 years and the decisive role civil society has played in advocating for women's justice needs provide a wealth of information—both best practice and lessons learned—for other post-conflict contexts.

Background

The facts of the Rwandan genocide are well known. In April 1994, the plane of then-President Juvénal Habyarimana was shot down over Kigali, plunging the country into three months of mass violence that resulted in the immediate deaths of more than 800,000 Tutsis and moderate Hutus. The violence was perpetrated in a way that destroyed institutions, infrastructure, communities, families and social bonds among fellow citizens. In the words of the former Minister of Family, Gender, and Social Affairs, Senator Aloysea Inyumba what was particular to the Rwandan experience was that the atrocities “took place in the most intimate settings: between colleagues, teachers and students, neighbours and, most destructively, within families; they occurred over a short period of time; and they involved mass participation.”⁵¹

The situation of women pre-conflict

Rwanda can be characterized as a traditionally patriarchal society. Prior to the genocide, women's roles were confined to the domestic sphere and their status was one of inferiority, both legally and culturally. Women's access to education and employment opportunities were limited.⁵² The Family Code of 1992 officially designated husbands as heads of households, making their consent a prerequisite for wives to open a bank

account, engage in commerce or enter into any legal agreement.

Women did not have the right to inherit property, and their access to land and credit—both critical resources in an agrarian-based society—was restricted.

Lack of education, high rates of illiteracy and limited access to the public sphere and formal employment all contributed to a structure of enforced vulnerability for women. Violence against women was an accepted norm and rape was treated as a ‘family affair,’ if it was reported at all. The focus was on keeping the incident shrouded in secrecy and restoring relations between the two families, rather than punishing the perpetrator. Often the victim was forced to marry the perpetrator or the perpetrator was obliged to pay ‘compensation’ in the form of cattle to the victim's family.

Women's access to justice pre-conflict

There is little research on women's access to justice prior to 1994. A general indication can be inferred, however, from the limited access to justice that Rwandan women enjoy in the present day, despite institutional reforms and efforts to increase gender sensitivity.⁵³ One key obstacle to women's access to justice before the genocide

had been the simultaneous operation of different legal systems. Each system had its own rules, procedures and costs. All frequently neglected the needs of women attempting to obtain justice. The traditional dispute-resolution forum known as *Gacaca*, for example, was originally an institution reserved for adult men, and a woman had to be 'represented' by the head of the family—either her husband or her father. There was no sanction for sexual violence through these local forums, and within the criminal law system the aim was not the punishment of the guilty but rather the preservation of harmony within the community, once again sidelining women as individuals deserving of justice in their own right.⁵⁴

The gendered nature and impact of the genocide

A striking feature of the genocide is the stark example it presents of the creation and manipulation of gendered stereotypes to foment ethnic violence and, as a result, the sexualized and gendered nature of the violence itself.

Although the exact figures are unknown, estimates of the number of women who were victims of sexual violence generally range between 250,000 and 500,000. Some have argued that the number could be higher, and that almost every woman and adolescent girl who survived the genocide may have experienced sexual violence. The list of atrocities committed on women's bodies is horrific; they include sexual mutilation, gang rape, sexual torture and public sexual humiliation, such as forcing women to walk naked in public. The violence was carried out by members of Hutu militia groups (the *Interahamwe*), civilians and soldiers of the Rwandan Armed Forces, including the Presidential Guard. The use of rape as a deliberate tool of the genocide is evidenced in the cases that have been brought before the International Criminal Tribunal for Rwanda (ICTR).

The genocide was not just gendered in the way in which identities were manipulated to encourage

sexual violence against Tutsi women, but also in the way in which hate propaganda equally targeted and encouraged Hutu women to kill. Reports have documented how thousands of Rwandan women were directly and indirectly involved as perpetrators of atrocities.⁵⁵

Many of the challenges facing Rwanda in the wake of the genocide relate to the devastation of the social fabric of the country. Post-1994, there were more than half a million widows, many of whom had been raped and were HIV positive. There was also 300,000 to 400,000 orphans; little physical infrastructure; a combined total of 4 million refugees and former exiles who required reintegration; and widespread trauma, insecurity and mistrust among citizens.

For women, the scale and systematic nature of sexual violence during the genocide had horrific consequences. In addition to the psychological trauma, the physical illnesses resulting from the violations included fistulas, sexually transmitted diseases, scarring and a host of reproductive illnesses. It is estimated that nearly 70 per cent of rape victims were infected with HIV. This was, moreover, a deliberate strategy of the genocidaires—one which, according to local women's organizations, ensured that the genocide continued long after the actual killings stopped. Those women who became pregnant as a result of wartime rape faced the choice between an illegal, and often botched, backstreet abortion and bearing the child of rape and grappling with the shame, stigma and emotional trauma this incurred for both mother and child.

Women's justice needs post-genocide

Given the diverse and interrelated consequences of the genocide for Rwandan women, 'justice' for women survivors must be interpreted in far broader terms than traditional formal justice or prosecutions. Rwanda is a prime example of the need for transitional justice measures to encom-

pass social justice and developmental goals if they are to redress the consequences of gender-based violations.

For example, in a context of mass rape and the deliberate spread of HIV, any reparations programme must include overcoming the barriers women face in accessing health care, anti-retroviral drugs (ARVs) and psycho-social support. Taken without proper nutrition, however, these medications can be toxic. Given the existing patterns of feminization of poverty due to systemic injustice, failure to ensure both immediate as well as long-term food security through access to land, credit, and economic opportunities will only provide limited redress, and may in fact cause further harm.

While socio-economic justice may be the most immediate or pressing concern for women in light of their daily struggles, justice through the formal court system has also been an important demand of women survivors—one driven by the need for retributive justice that metes out punishment commensurate with the severity of the crimes that were perpetrated during the genocide. Prosecutions are also seen as providing an important element of acknowledgment.

Transitional justice mechanisms employed

The mass scale and involvement of the Rwandan population in the genocide has presented obvious challenges to efforts to seek retributive justice through the court system. With the legal system in ruins and only a handful of judges and lawyers remaining, it was estimated that it would take more than a century to complete the prosecution of all suspected genocidaires. Moreover, the enormous resources needed to house and try the tens of thousands of accused was diverting much-needed funding from development and reconstruction priorities.

Given the enormity of these challenges, Rwanda chose to employ different forums at differ-

ent levels of society to seek prosecutorial (and to some extent, at the local level, restorative) justice. These mechanisms include the International Criminal Tribunal for Rwanda (ICTR); domestic prosecutions; and the adaptation of a local traditional justice mechanism, *Gacaca*. The sections below provide a brief summary of these various mechanisms, in particular with regard to their handling of SGBV cases.

International Criminal Tribunal for Rwanda

The ICTR was established by the UN in 1995 and was tasked with the prosecution of crimes of genocide and crimes against humanity that were perpetrated in 1994 in Rwanda or by Rwandan citizens in neighbouring countries. The Tribunal, operating in Tanzania, began its work with a mandate to try “those most responsible”: the authors and political leaders of the genocide.

The ICTR has received much praise for its groundbreaking judgment in the *Akayesu* case (2 September 1998), which marked the first conviction for genocide by an international court; the first time an international court punished sexual violence in an internal conflict; and the first time that rape was found to be an act of genocide. Additionally, the Tribunal in this judgment established a broad legal definition of rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive,” and noted that these acts of violence need not include penetration or even physical contact.

Disappointingly, the *Akayesu* case quickly became an exception, and few sexual violence cases have been taken forward since. Institutionally, the ICTR has been accused of being insensitive to the needs of women survivors and witnesses in its processes.⁵⁶ The Tribunal has made an effort in recent years to learn from past weaknesses, and a gender adviser was brought on board in 2003; this was, however, late in the process—eight years after the ICTR was established.

Issues remain, however, regarding witness protection, outreach, treatment of the accused versus treatment of victims, as well as broader credibility issues, and there has been little trust among Rwandan women that the ICTR process will deliver justice for sexual violence: “Even as Rwandan rape survivors continue to recognize the value and potential of an international court set up to deliver justice to them, the overwhelming sentiments expressed by them are a burning anger, deep frustration, dashed hopes, indignation and even resignation. Justice moves slowly for all at the ICTR, but even more slowly for rape victims...If the current trend continues, when the doors of the ICTR close, the judgments from this court will not tell the full story of what happened during the Rwandan genocide. They will not correctly reflect responsibility for the shocking rapes, sexual slavery and sexual mutilations that tens of thousands of Rwandan women suffered.”⁵⁷

Domestic prosecutions

The 1996 Rwandan Organic Law separated crimes related to the genocide into four categories in order to fast-track prosecutions and encourage the release of prisoners.⁵⁹ The categories grouped responsibility by the seriousness of the crimes committed, with category one—which included the crimes of genocide and sexual violence—being dealt with through the formal domestic courts and the ICTR. Much effort and international community support have been directed towards reforming and rebuilding the Rwandan judicial system.

Prosecutions of sexual crimes before domestic courts have, however, been few in number. In part this is because many women were raped after everyone around them was killed, and there are therefore few witnesses. Victims themselves are reluctant to speak for fear of community members finding out, as well as being reluctant to put themselves through the trauma of testifying (even behind closed doors). These complications have all been compounded by an untrans-

formed judicial system that is not equipped to deal with the specific needs of these cases. It is therefore of little surprise that in 2004, Hagaruka, a local NGO that provides legal support to women and children in need, estimated that fewer than one hundred women had seen their genocide-period rape cases be heard by the ordinary courts.⁶⁰

Gacaca

As a result of the still vast number of outstanding genocide-related cases and the impossibility of prosecuting all suspected genocidaires through the formal court system, the Rwandan government in 1998 announced the rollout of *Gacaca*, or local community courts. These courts were mandated to handle the less serious crimes in categories two through four, cases that would try killers, accomplices of intentional homicide and individuals who had committed property crimes.

Current day *Gacaca* is a modification of a traditional restorative justice/community dispute-resolution mechanism, with the integration of elements of the Western legal system. Although punishments meted out by *Gacaca* courts in their current form can include life imprisonment, an important feature of these courts is the ‘plea bargain’ element: sentences are reduced where the accused confesses, apologizes publicly and provides details of the crime. These reduced sentences generally include some form of community service, which serves as a form of punishment while at the same time providing reparations to the community and facilitating the reintegration of the perpetrator. The courts are communally participatory: the entire community is expected to attend, to participate in identifying both perpetrators and victims, and to present evidence as witnesses. It is estimated that by the close of *Gacaca*, over 800,000 accused will have been called to appear before these community structures.

Although sexual violence cases related to the genocide were meant to be handled by the

domestic courts, *Gacaca* was still used for the hearing of confessions, identification of perpetrators and classification of cases as well as evidence gathering for all cases, including those related to sexual violence crimes, in all cases related to that period. The use of the community courts for evidence gathering raised concerns for survivors of SGBV crimes about the risks of public disclosure. Such concerns were amplified when the *Gacaca* law was altered in mid-2008 to reclassify sexual torture as a category two crime in order to speed up prosecutions by shifting of these cases to the jurisdiction of *Gacaca* courts. This in essence undid the original effort of women's organizations to ensure that SGBV cases were classified among the most serious crimes. Concerns have also been raised regarding the inadequate sensitization of judges and an absence of systems to provide women with psycho-social support before, during and after the *Gacaca* process.

In response to some of these concerns, a number of safeguards were built into the new law: trials were allowed to proceed in closed session; only the "best judges" were to be selected for SGBV cases; and these judges were to receive special training before presiding over SGBV cases. Violation of the secrecy of a closed-session hearing was also deemed punishable by a prison term of one to three years. It is unclear whether such measures have been instituted consistently or have been adequate.⁶² Nevertheless, with the shutting down of *Gacaca* scheduled to take place during 2010, some follow-up mechanism will be necessary to hold open the possibility for justice to those who come forward belatedly, as well as for those cases not dealt with before the community courts are shut.

The role of civil society in advocating for justice for SGBV crimes at the ICTR

Civil society has played a crucial role in the work of the ICTR, in particular on cases of sexual violence. The Akeyesu case provides a positive example of the influence civil society can wield in ensuring justice for women through the judicial process. This case would likely never have set a precedent for gender justice had it not been for a combination of the insightful questioning and leadership of trial judge Navi Pillay and, more importantly, the pressure exerted by a coalition of over 40 women's organizations from around the world, including a number of local Rwandan women's organizations. The Coalition for Women's Human Rights, as this umbrella group was known, had been formed in 1996 with the express mandate to "monitor the ICTR and ensure that it protected the rights and interests of women appearing before the Tribunal." Its members launched their advocacy initiatives with a letter to then-Chief Prosecutor Richard Goldstone and then filed an amicus curiae brief with the Office of the Prosecutor requesting that the original indictment against Akeyesu be amended to include charges of rape and sexual violence. A number of local Rwandan NGOs, with financial and technical support from UNIFEM, further contributed to the case by travelling to Taba (the area in which crimes had been perpetrated) and collecting testimony to feed back to the Tribunal's investigation team.⁵⁸

Disarmament, demobilization and reintegration

A dedicated government body—the Rwanda Demobilization and Reintegration Commission—was established in 1997 to demobilize and reintegrate ex-combatants from armed groups, the *Forces armées rwandaises*, and the Rwandan Defence Forces. One of the key goals of the Rwanda Demobilization and Reintegration Commission is to facilitate the reallocation of Government expenditure from military to social and economic sectors.

This goal has particular importance for gender justice as militarization of society has been linked to higher levels of violence against women in other settings, and decreased social spending places an increased burden on women who are expected to take on additional responsibilities and roles in their community and families.

Fewer than 1 per cent of demobilized ex-combatants were women and little is known about their reintegration as there has been no dedicated research. This dearth of information means that it is difficult to assess how these women have reintegrated. There has also been a concern that “women are ... being underreported by combatant groups at the front end of the process, and that more needs to be done to encourage women combatants to present themselves, and to properly identify and incorporate women into national DDR programs.”⁶³

Institutional and governance reform

Perhaps the greatest contribution to gender justice in post-conflict Rwanda has been the focus by the current Government on broad reforms to redress institutional oppression, including re-writing legislation to address gender equity and increasing the representation of women in the public sphere. The 2003 Constitution stipulates that all decision-making bodies should be comprised of at least 30 per cent women. Gender-responsive budgeting has been introduced in key Government departments, and there is a strong emphasis on gender mainstreaming throughout the policy-making process. Legislation has been overhauled, and key new bills include those that allow women to inherit and criminalize domestic violence. Also important to note is the existence of the National Unity and Reconciliation Commission, an institution that has explicitly incorporated gender justice and women’s contributions to peacebuilding into their mandate of promoting reconciliation in Rwanda.⁶⁴

Outstanding justice needs for women

Although the needs of women survivors of sexual and gender-based crimes during the genocide have not been entirely ignored, the response could be significantly stronger, particularly in the areas of legal redress, medical treatment and trauma counselling.

Reparations

The 2001 *Gacaca* law initially required *Gacaca* courts to draw up lists of victims and damages suffered and to make a determination of reparation amounts to be awarded by the state. These amounts, however, were never actually awarded. In 2004, legislators changed the law governing the mandate and function of the *Gacaca* courts. Under the 2004 law, *Gacaca* courts are meant to simply draw up a list of victims and damages, to be used solely for purposes of restitution for material damages. All other aspects of a comprehensive reparations program are to be dealt with through a separate law. This proposed separate law, or indeed any law relating to reparations, has yet to be put in place. This is contrary to Rwanda’s international legal obligations, as reparations are an integral component of the right to justice due to victims of gross violations of human rights.

Civil society interviewees noted the particular need for reparations for women survivors: “*Gacaca* just prosecutes, but [women survivors] need socio-economic support. The Government is still thinking about how to do this and what the nature of reparations will be, but victims don’t have time to wait—and in the interim *Gacaca* is running but with no reparations.”⁶⁵

Physical and mental health reparations

Sexual violence in conflict has very specific physical and psychological health consequences, and any redress for these violations needs to include access to health care for survivors as well as adequate treatment. Many, though not all, cases of

HIV in Rwanda are related to the genocide, and it is estimated that there are today between 50,000 and 100,000 people living with HIV and in need of ARV therapy. As of January 2004, only 2,000 Rwandese were being treated with these drugs.⁶⁶

Mental health facilities in the country are similarly scarce, and as a result of the extent of the atrocities suffered during the genocide and the widespread nature of the trauma, they are stretched beyond capacity.⁶⁷ Given the complexities of SGBV violations and the frequent isolation experienced by survivors as a result of shame and fear, dedicated trauma support and increased access to mental health services should form part of any future reparations programme.

Prisoner reintegration

Prisoner release programmes have a specific impact on women, who are often forced to live in the same community as their rapists once they are released. Although there are programmes reportedly being carried out to deal with the reintegration and training of prisoners, this does not appear to include ongoing monitoring, or to make specific provision for the safety of women survivors. Additionally, no work is being done with survivors in those communities where perpetrators are being released. Coexistence in these communities is difficult, as survivors bear the brunt of stress as a result of insecurity and trauma.

The situation of women in Rwanda today

During periods of conflict and unrest, traditional gender roles are often destabilized, leading to some limited gains for women in spite of the horrors of the violence taking place. It is rare, however, to be able to consolidate these gains and preserve them against a reactionary backlash that advocates a return to traditional roles. Rwanda is perhaps the first country to successfully manage a continuous progression towards gender equality in the wake of mass unrest. Not only have

The role of civil society in advocating for justice for SGBV crimes domestically

The inclusion of sexual torture among the most serious crimes (category one) was a direct consequence of the mobilization and leadership of local and international civil society and Rwandan women parliamentarians.

The original draft law had placed sexual violence crimes in category four, along with looting and property crimes. This was the result, according to one activist, of a prevailing mindset on sexual violence that regarded rape as “un crime banal.”⁶¹ Local women’s organizations, with UNIFEM support, thus launched a campaign targeting parliamentarians in an effort to change this mindset and have sexual violence recognized as a serious crime.

Activists travelled across the country to gather women’s input and testimony, which they presented to the Rwandan Women’s Parliamentary Forum. Individual victims were brought to Parliament to meet with Forum members, and together they drafted a document that was given to all Members of Parliament to raise their awareness of the ways sexual violence had actually been used during the Rwandan genocide.

The campaign was successful, and the seriousness of sexual violence crimes was recognized in law. Without the collective mobilization and initiative of these women’s organizations, however, it is doubtful that the necessary shifts in attitude and legislation would have been secured.

political and public spheres experienced no official backlash against women’s new roles, but spaces have continued to open rather than shut down. In the words of Alphonsine Mukarugema, a Member of Parliament, “everything linked to the advancement of gender can be traced back to the consequences of the genocide.”⁶⁸

In part, this success has been the result of force of circumstance. Post-genocide, 70 per cent of the population was female: most men had been killed, had fled or were in prison. In the immediate aftermath of the genocide, 50 per cent of households were headed by women; this continues to be the case for more than a third of Rwandan households. The destruction of family structures as a result of the genocide challenged traditional gender roles and threw society into flux. The tackling of new roles has given new confidence to women who, having become aware of their own strength and capabilities, are today arguing for their own rights. Post-1994 also saw the rapid evolution of women's organizations, as well as a different and more progressive attitude towards gender roles introduced by the returning exile community.

But perhaps the single largest contribution to the new focus on gender equality is political will at the highest levels of Government. The 2003 Constitution established a quota of 30 per cent women's representation in all political institutions, and in that same year women won 49 per cent of legislative seats, making Rwanda the only country in the world to reach a gender balance in its national Parliament. In the 2008 election, women won over 56 per cent of seats in the National Assembly, consolidating Rwanda's world leadership in this domain. The Ministry of Gender and the Promotion of Women (MIGEPROFE) was established in 1995 and has been a key institution advocating for women's empowerment and gender-sensitive policymaking within the Government. Family law has been reformed in the areas of inheritance, divorce, property ownership and domestic violence, and gender-responsive budgeting has been mainstreamed into Government departments.

The challenge, however, has been in translating these policy gains into real change for women on the ground, who continue to deal with barriers imposed by culture, entrenched attitudes and ongoing poverty. Women's access to justice, in

particular for SGBV cases, remains limited and prosecutions are still rare.

UN support to transitional justice initiatives in Rwanda

Over the past 15 years, UN agencies have supported transitional justice programming in Rwanda both financially and through numerous projects and collaborative initiatives. While not an exhaustive list, some of the key initiatives are outlined below:

- » The World Health Organization (WHO) funded a programme of psycho-social counselling for women victims of violence from 1999 to 2002.
- » UNDP was extensively involved in supporting police and judiciary reform. Since 2002 UNDP has provided support to the *Gacaca* courts, building capacity, training judges and providing capacity-building assistance to support documentation and collection of evidence. UNDP has also provided training and support to judges at the ICTR and the domestic courts prosecuting genocide-related cases.
- » The United Nations Children's Fund (UNICEF) has conducted trauma-alleviation programmes and training in trauma identification and assistance.
- » The United Nations Mission for the Democratic Republic of Congo was involved in demobilizing and repatriating ex-combatants from the DRC back to Rwanda.
- » The United Nations Assistance Mission for Rwanda, the United Nations High Commission for Refugees (UNHCR) and the United Nations Human Rights Field Operation in Rwanda were all heavily involved in security sector reform—particularly capacity-building, human rights training and institutional support for the police and armed forces—in the years immediately following the genocide.
- » UNHCR has worked closely with the Government and Rwandan women (in collabo-

ration with the Rwandan Women's Initiative) to ensure that gender-specific issues and needs are addressed, and to create an enabling environment for women to contribute to the country's development.

UNIFEM programming, partners and impact

A gendered programme of transitional justice in Rwanda necessitates a holistic response that spans criminal justice, restorative, economic and reparative justice, and legislative and institutional reform. Each of these elements plays a role in addressing the comprehensive causes and consequences of past violence.

UNIFEM's programming in Rwanda reflects this need for an integrated and cross-cutting approach. For example, UNIFEM partnered with AVEGA, the women victims association, to provide training for national police on how to deal with current-day victims of violence against women. AVEGA has experience in dealing with training and trauma counselling for its own members and thus was an obvious choice as the implementing partner identified to conduct similar training for the police. Working with a victim-based organization, however, has a positive impact on the organization itself, not only the targeted beneficiaries among the police: It allows AVEGA to provide new opportunities for its members and become an agent of change and empowerment.

Other UNIFEM-supported projects include:

» Empowering members of AVEGA in peace-building through income-generating activities. This project has the two-fold objective of bringing women together and building relationships across divides through development activities, as well as providing new skills, such as basket weaving, for income generation.

The role of civil society: The 'Village of Hope'

Village of Hope (VOH) is proof that an integrated model of psycho-social support can be developed in a context of limited resources. The Village of Hope Project was initiated by the Rwandan Women's Network, a UNIFEM partner, to create a space where women can come together for sharing, healing, education, awareness and peacebuilding activities. VOH has not only created a healing environment of peer support, but has also contributed to the country's justice mechanisms: Women who have come through VOH have been willing to testify at the ICTR, domestic courts and *Gacaca*. They are given support and the space to build confidence and deal with potential stigma. VOH also sends a community mobilizer with the survivor to give personal support while she testifies. In the words of a Rwanda Women's Network officer: "People do not just wake up one day and go in front of a crowd to tell how you were raped and brutalized." There is a need for spaces like VOH to prepare women for testifying and to assist in dealing with the anticipated thousands of unresolved cases after the mandates of the *Gacaca* courts, the ICTR and other mechanisms for genocide-related justice have ended. The project has won two international awards: the Red Ribbon Award at the International AIDS Conference in Toronto in 2006 and an award from the UN Habitat for Humanity. It was also singled out by UN Secretary-General Ban Ki-Moon on a recent visit to Rwanda.

- » Conducting sensitization and awareness-raising as well as training for *Gacaca* officials.
- » Providing support to Profemmes, the women's organization umbrella body, to increase the capacity of women to play a more effective role in *Gacaca*, as well as providing training for women judges to take up their new role in these courts.

- » Working with *Ndabaga* Association, the first female ex-combatant association to be formed in the Great Lakes Region, the Demobilization and Reintegration Commission and the Rwandan Defence Force to support the DDR process through a dual strategy that seeks to empower female ex-combatants and assist their reintegration while mainstreaming preventative actions on SGBV into the DDR program.
- » With these same partners, expanding the agenda of gender and DDR beyond a focus on female ex-combatants to advocate for the positive role that these women can play in regional peacekeeping missions, serving the dual purpose of increasing women's role and representation on these bodies and providing opportunities for female ex-combatants to use their skills and experiences in new roles. *Ndabaga* are now actively involved in advocacy to ensure that Rwanda's involvement in peacekeeping operations elsewhere on the continent includes women and mainstreams gender concerns.

UNIFEM's own programming, as a result of its reliance on strong partnerships with local civil society, has yielded a number of significant successes and innovative projects. These provide a wealth of information for lesson-sharing on the positive impact civil society efforts can yield.

Recommendations and ways forward

As the mandates of the formal justice mechanisms established to deal with genocide-related crimes draw to a close, new areas and programming needs present themselves, in addition to the outstanding justice issues mentioned above. These include:

- » **Community reintegration:** An identified issue of concern with broad implications for Rwandan women is reintegration, including the reintegration of men returning from prison. This is becoming more urgent as

the *Gacaca* process nears completion and many prisoners are being sent back into their communities, having had their cases heard. The implications for women are the same as that of the interim releases, and include security threats and the possibility of re-traumatization caused by living in close proximity to those who have perpetrated acts of sexual violence against them. As it is unlikely that either domestic courts or *Gacaca* will deal with more than a minority of genocide-era rape cases, most women will also live with the daily injustice of knowing that these individuals have been released without any measure of accountability. Furthermore, complications surround both family reintegration and the reintroduction of large numbers of men back into families and communities after many years. There is limited assistance for this process, and what is being provided does not adequately consider the gendered implications of reintegration. Survivors, ex-combatants and ex-prisoners are all in need of programmes that have a specifically gendered focus.

- » **Documentation and research:** There is a need for further research—in particular gender-specific research. This would include a study of women survivors' experiences over the past 15 years, their specific needs, their experiences in relation to the post-genocide justice processes, and an evaluation of past training and programming. Given the multiplicity of processes that have been undertaken in the post-genocide years—*Gacaca*, prosecutions, institutional reform -the absence of systematic research, particularly surveys to monitor impact on the ground, means that there is little information by which to assess these processes. It would be especially important to examine the impact of capacity-building and sensitization with different constituencies. For instance, are levels of SGBV among ex-combatants in Rwanda lower than in other post-conflict

countries? Has the training of *Gacaca* judges led to increased sensitivity in their handling of genocide-related rape cases?

- » **Post-*Gacaca* support:** The short time that remains in the mandate of the *Gacaca* process means that little can be done to further justice for SGBV crimes through this mechanism, although support for witnesses and processes in existing SGBV cases should continue where possible. Plans will need to be made for how to address unheard cases. Equally important will be ongoing trauma support for victims and witnesses, including the creation of centres for healing or spaces for women to gather, share their experiences and gain skills, such as that provided through the Village of Hope. In addition, advocacy and sensitization efforts around new laws should continue to target law enforcement officials, Government and community leaders, women beneficiaries and other key stakeholders. There is still strong cultural resistance to these changes, despite a positive national environment for promoting gender equality.

Conclusion

Rwanda's use of a multi-tiered institutional response to justice for genocide crimes, which has included both international and local/ traditional mechanisms for justice, as well as the strong political will which has realized unprecedented gains for women in the public sphere and furthered gender justice efforts broadly, are important and unique sites of lessons for other post-conflict contexts. Good practice in the area of gender equality and legislative and institutional reform should not, however, come at the expense of specific justice for the horrific acts of SGBV committed during the genocide. Justice for these crimes has to date been limited, and without continued advocacy and support from both local and international civil society, all genocide-related justice institutions will soon close, leaving tens of thousands of cases of sexual vio-

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ENDNOTES

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- 40 Yasmin Sooka had been a commissioner with the South African TRC.
- 41 Personal interview, Yasmin Sooka, former Sierra Leone TRC Commissioner, Johannesburg, March 2008.
- 42 King, 'Gender and Reparations.'
- 43 Nana Pratt, 'Women and Transitional Justice Process: A Case Study of the Sierra Leone Truth and Reconciliation Commission (TRC),' internal research report conducted for UNIFEM, September 2006.
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