

Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women

Wendy Lambourne¹ · Vivianna Rodriguez Carreon¹

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Abstract In this article, we examine the continuity of harms and traumas experienced by women before, during and after war and other mass violence. We focus on women because of the particular challenges they face in accessing justice due to patriarchal structures and ongoing discrimination in the political, economic and social, as well as legal spheres, and because of the gendered nature of the crimes and harms they experience. We use the four key pillars of transitional justice identified by the United Nations as a framework to analyse how these harms are addressed in the context of criminal prosecutions, truth commissions, reparations and institutional reform. We conclude that a gender-transformative approach to transitional justice that focuses on transforming psychosocial, socioeconomic and political power relations in society is needed in order to attain human rights for women and build a sustainable peace.

Keywords Gender · Women's rights · Sexual violence · Transitional justice · Peace building · Transformative justice

Introduction

The ad hoc international criminal tribunals of the early 1990s marked a significant breakthrough in terms of transitional justice for sexual and other gender-based violence (SGBV), with the recognition of rape as a war crime by the International Criminal Tribunal for the Former Yugoslavia and the first ever conviction of rape as a crime of genocide at the International Criminal Tribunal for Rwanda. The Rome Statute of the International Criminal Court has further sought to advance the rights of women by providing an expanded definition of what constitutes SGBV crimes in the context of

✉ Wendy Lambourne
wendy.lambourne@sydney.edu.au

¹ Centre for Peace and Conflict Studies, University of Sydney, Sydney, NSW 2006, Australia

international or non-international armed conflict that goes beyond rape as a war crime, crime against humanity or act of genocide.¹

This article argues that engendering transitional justice requires going far beyond these legal breakthroughs in accountability for past human rights violations if we are to envision and seek to attain peace, justice and security for women—and men. We need to understand and address the multiple harms experienced by women whose rights and needs all too often continue to be thwarted by patriarchal societal structures that impede the pursuit of peace with justice. We focus on women because they face particular challenges in reconstruction and peacebuilding due to discrimination in the political, economic and social, as well as legal spheres, and because of the gendered nature of the crimes and harms they experience (Rubio-Marín 2006; Stovel 2010).²

From a conflict transformation theory perspective, peacebuilding can be seen as both a relational and institution-building process that addresses both direct violence and the underlying structural violence of socioeconomic and political discrimination and disadvantage (Galtung 1969; Lederach 1997; Reychler 2006). Instances of direct violence, such as rape and other SGBV, are thus regarded as symptoms of an underlying conflict that has not been resolved or transformed—a conflict in the relationship between men and women that is based on power imbalances and structural inequalities. This conflict manifests at multiple levels of society—in families, local communities, organisations and governments, and in the provision of social and legal services. Because of their perceived lower status in their intersecting identities, rural women are especially vulnerable to rape and other SGBV during mass violence, and in the aftermath of war face greater challenges in accessing justice.³ Access to health, education and legal rights are frequently cited justice needs of women in transitional contexts (see, for example, Lambourne 2009), which would enable them to exercise their agency and empower them to rebuild their lives and prevent future human rights violations.

Drawing on field research⁴ and the application of a transformative model of transitional justice, we analyse the multiple justice needs and priorities of women after mass violence. These include political, socioeconomic and psychosocial needs in addition to legal justice both for past human rights violations and to enable attainment of human rights in the future. According to the transformative justice model articulated by Lambourne (2009), transitional justice involves a transformation in relationships in addition to a transformation in structures and institutions that enable the continuation of human rights violations. It is both backward and forward looking at the same time, and thus makes the connection between addressing the ‘extraordinary’ violations experienced by women during genocide, war and other mass violence and the ‘ordinary’ violations experienced by women during so-called peacetime.

¹ The Rome Statute defines rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity. Rome Statute of the International Criminal Court, 17 July 1998.

² Engendering transitional justice also requires attention to SGBV and other harms perpetrated against men, as discussed in other articles in this special journal issue.

³ For example, in relation to Peru, see Rodriguez Carreon (2014), and Sierra Leone, see Stovel (2010).

⁴ Data for this article has been drawn from field research conducted by the authors over the past 18 years in a number of countries including Rwanda, Timor Leste, Sierra Leone, Northern Uganda, Burundi and Peru.

Transitional justice has been criticised for focusing solely on physical and psychological harms caused by mass violence, and failing to take into account the long-term impact of violations of civil and political rights and economic and social rights on marginalised groups, including women (Gready and Robins 2014). Transformative justice takes a holistic perspective that links these different types of violations across time. For women in many transitional contexts, the underlying socioeconomic injustices are both a cause and effect of physical, material and psychological harms caused by lack of access to civil and political rights, an argument that will be further developed in this article.

In the first part of this article, we analyse the various types of harms and traumas experienced by women before, during and after mass violence, including both structural injustices and direct physical violence. We then explain the context of transitional justice and present a detailed analysis using the four key pillars of transitional justice identified by the United Nations (UN 2010) as a framework to examine how these harms are addressed in the context of criminal prosecutions, truth commissions, reparations and institutional reform.⁵ We go beyond this framework, however, in the final part of the paper to examine the challenges women face in attaining justice and consider additional processes conducive to a more comprehensive approach to justice and societal transformation, i.e. beyond transitional justice to transformative justice.

We conclude that a gender-sensitive, gender-responsive or even gender-inclusive approach to transitional justice is insufficient and inadequate to describe or explain the engagement of women in transforming their lives after mass violence, and the engagement required by men in that process. We argue instead for no less than a gender-transformative approach to transitional justice that focuses on transforming psychosocial, socioeconomic and political power relations in society as a means to attaining human rights for women and building a sustainable peace.

Compounding of Harms and Traumas

The recognition of rape as a war crime and international efforts to hold perpetrators accountable are important legal developments aimed at ending the culture of impunity historically surrounding rape in war, acting as a deterrent against the ongoing prevalence of rape and other SGBV in conflict situations, and potentially contributing to an improvement of women's rights in post-conflict societies more broadly (Grewal 2010). However, as discussed above, women suffer multiple harms including SGBV as a result of armed conflict and as a result of their perceived lower status in many societies before, during and after the conflict.

In Peru, for example, rural Quechan women were disproportionately affected by the violence of the civil war. They lost their husbands and their sons, were displaced from their homes and suffered from direct violence perpetrated against them. They were living in poverty prior to the war, which was exacerbated by the displacement and loss of male breadwinners in the family, and when determining to seek the truth of what

⁵ Note that the UN (2010) also identifies national consultations as a fifth key pillar of transitional justice which is not a mechanism as such, but rather a principle that applies to the design and implementation of the methods suggested by the other four pillars.

happened and to get justice, they were discriminated against because of their poverty, race and gender (Rodriguez Carreon 2014).

In patriarchal societies, women are particularly vulnerable to ongoing discrimination and exclusion from economic and political life, and when they have suffered sexual violence they are also often rejected by family and communities and thus excluded from social and cultural life due to the stigma and shame attached. For example, a woman interviewed in Timor Leste in 2004 reported how her husband had rejected her because she had been raped during the post-referendum mass violence in 1999. During fieldwork conducted in Sierra Leone in 2006, female victims were still living on the streets and in the ruins of houses due to social rejection and the inability to work and earn a living following the end of the civil war 3 years earlier. In Peru, a rural woman indicated that she had been raped during the war but she did not report this event because she considered the likely negative consequences. The social ostracism is especially chronic where women contract HIV/AIDS or bear children as a result of wartime rape, while others suffer more privately the ongoing pain and humiliation of sexually transmitted diseases, incontinence and the inability to experience pleasure from sexual intercourse (Gobodo-Madikizela 2014, p. 163).

This compounding of social, cultural and economic as well as physical harms is further deepened by the ongoing pain and shame at a deep psychological and sometimes spiritual or even existential level suffered by the victims of sexual violence which penetrates more than just the body—it penetrates the mind and soul, and undermines the identity of the individual human being (Rodriguez Carreon 2014). The question may well be asked: is it ever possible to repair such deep psycho-spiritual harm? Unfortunately, the psychological harm and trauma of being a victim of sexual violence is often reinforced rather than healed in the transitional justice context. Research has revealed evidence of retraumatisation in a number of transitional justice settings, including the South African Truth and Reconciliation Commission, international criminal tribunals and the *gacaca* community justice courts in Rwanda (van Schaak 2009; Henry 2011; Brounéus 2008, 2010). Giving testimony and participating in criminal trials can thus be a negative experience for women, as discussed in the second part of this paper, raising the question of the value of this type of transitional justice for meeting women's needs.

Transitional Justice in Theory and Practice

Transitional justice has emerged as a means of dealing with past human rights violations in societies transitioning from either war to peace or from autocratic to democratic regimes (Kritz 1995; Teitel 2000). The United Nations (2004) has defined transitional justice as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation' and as comprising both judicial and non-judicial mechanisms aiming to balance a variety of goals including 'the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy and the rule of law'.

The United Nations later identified four key pillars of transitional justice that are derived from the 1997 Joinet principles: prosecution initiatives, truth seeking processes,

reparation programmes and institutional reform, along with a fifth pillar—national consultations (United Nations 2010).⁶ Other models of transitional justice, however, illustrate the lack of consensus over what constitutes the key pillars and how they should be defined, and in particular place more emphasis on accountability rather than the narrower focus on prosecutions. Parmentier (2003), for example, proposed truth, accountability, reparations and reconciliation (TARR) as the four key components of his model of transitional justice, while Boraine (2006) proposed a model of transitional justice that also includes accountability rather than prosecutions, and reconciliation rather than national consultations as the fifth pillar. Despite maintaining that transitional justice comprises both judicial and non-judicial mechanisms, the UN, meanwhile, prioritises legal justice through prosecutions first and foremost (Lambourne 2014b), which has significant implications for meeting the multiple justice needs of women, as will be highlighted in this paper.

As discussed in the following section, a legal, prosecutorial approach in itself fails to address the multitude and complexity of harms identified in the previous section as being experienced by women in the context of mass violence. Lambourne (2009) has analysed the multiple justice needs of women and other survivors of mass violence, including psychosocial, political and socioeconomic in addition to legal justice. Based on this field research, Lambourne (2009, 2014a) developed a transformative model of transitional justice which we apply in this paper to assess the limitations of transitional justice in meeting the justice needs of women.

In the second part of this paper, we move to considering how the multiple harms and justice needs of women are addressed, or not, by each of the methods arising from the UN's four pillars of transitional justice.

Pillar One: Prosecutions

Prosecutions for mass human rights violations specifically address one aspect of the harms experienced by women—direct physical harms as legally defined: rape and other SGBV included as war crimes, crimes against humanity or genocide. Evidence therefore suggests that criminal prosecutions through international, national or community courts alone are unable to address the multiple justice needs of women affected by violence (Grewal 2010; Henry 2009; Scully 2009). Criminal justice deals with only a limited aspect of the harms suffered by women as an integral part of how sexual crimes are defined: in terms of the physical act and its physical harm which forms the basis of the legal justice claim. Other aspects of physical harm are not directly addressed, in terms of repair of the physical harm through medical intervention and care for what are often quite extreme and enduring problems of sexual and reproductive health, including the inability to bear children, as well as the potential life sentence of HIV/AIDS. Psychological harm is also not adequately addressed, and the socioeconomic implications of living with the aftereffects of SGBV are rarely considered.

As indicated above, this limitation in addressing the harms suffered by women is compounded by the sometimes profound material and social consequences of testifying

⁶ The 1997 Joint principles comprise the right to know, right to truth, right to reparation and guarantee of non-recurrence (swisspeace 2012).

in legal proceedings. For example, a report by Redress and African Rights (2008) documents the experiences of Rwandan women returning to their communities after testifying at the International Criminal Tribunal for Rwanda (ICTR) or in *gacaca* community courts and being stigmatised as a ‘raped woman’ and seen as ‘dishonoured, dirty and unmarriageable’. In societies where a woman’s marriage is central in determining her life experiences, to be unmarriageable has profound and lasting effects. The report also documents several cases where women were killed or beaten both to deter them from testifying and as punishment following such testimony.

So, the question here is justice for whom? We argue that once women go public about the sexual violence committed against them, justice will not necessarily provide a sense of fairness to them. For the courts and the lawyers, therefore, the question is how to ensure that women feel safe and are empowered to testify and support the change in society necessary to reduce SGBV in the future, without prejudicing further their everyday interactions in their daily lives. It is also about ensuring that women’s personal justice needs are addressed and not just the legal justice needs of the court. For example, a woman giving testimony at the ICTR in Arusha in 1998 reported that she was still suffering painful discharges resulting from her rape and that she was concerned about feeding her children and being able to send them to school. At that time such personal health and socioeconomic concerns of women who agreed to be witnesses for the prosecution were not considered a relevant responsibility of the international tribunal (Lambourne 2002).⁷ We argue in this paper that paying attention to the health and other socioeconomic needs and rights of such women is integral to engendering transitional justice by connecting the impact of the violation of their rights to physical integrity with women’s ability to express their agency in meeting their justice needs on an ongoing basis. At the very least, criminal prosecutions should be consistent with meeting women’s broader needs and respecting their rights, and not undermine efforts to address the other harms that women experience.

Nicola Henry (2009, 2011) explains further how prosecutions often fail to meet the expectations of women testifying as witnesses in relation to rape and other SGBV. She identifies the legal procedures and rules of evidence which prevent women from being able to tell their story, find justice and experience healing (Henry 2009). She cites transcripts of proceedings from the International Criminal Tribunal for the Former Yugoslavia (ICTY) in which women were interrupted and prevented from narrating their own experiences of rape by prosecutors intent on extracting factual evidence and securing a conviction (Henry 2011, 74). In one case, the witness was not asked anything about the rape and ‘her repeated attempts to bring up the topic of rape were disregarded’ (Henry 2011, 75). The power of the lawyer to determine what evidence is presented about rape and other SGBV is clear in this and other examples provided by Henry (2011). Grewal cites similar examples from the Special Court for Sierra Leone, including cases in which charges of rape had been dropped and the female witnesses were instructed not to speak of their rape at all during testimony and instead to focus on other crimes they had experienced during the civil war (2010, 71–72).

⁷ It should be noted that conditions and protection of witnesses at the ICTR, and especially concerns for women giving testimony, improved in subsequent years with the strengthening of the Victims and Witness Support Section and appointment of an Advisor on Gender Issues. The International Criminal Court subsequently incorporated many lessons learned from the ICTR in developing a gender-sensitive approach to investigations and prosecutions (Oosterveld 2005).

In other cases, such as the Rwandan *gacaca* courts, women appear to have chosen not to bring accusations of rape based on a combination of social and legal concerns and constraints. Women who experienced rape or other SGBV during the genocide in Rwanda and in the violence that continued in the camps of the eastern DRC (former Zaire), have been limited in their ability to seek justice through the local *gacaca* courts for a number of reasons. Firstly, there is the normal social stigma attached to being identified as a rape victim. Secondly, there were the legal constraints imposed by the *gacaca* law. The fact that only crimes associated directly with the genocide could be tried meant that Hutu victims of SGBV could not bring their case to court. Furthermore, the identification of rape as a category 1 crime meant that those accused of rape would be referred to the classical court system (at least until 2008 when rape was moved to the jurisdiction of the *gacaca* courts), which provided a significant disincentive for male perpetrators to admit to such crimes. For these and possibly other reasons, most women who spoke at *gacaca* hearings in the first four years referred to crimes committed against their husbands and families rather than to themselves, and seemed reluctant to talk specifically about sexual and other gender-based crimes.⁸ This changed markedly in the latter years of the *gacaca*, when women were able to bring the crime of rape to be judged and to provide their evidence in camera, thus avoiding to some extent the social repercussions.⁹

Paradoxically, by defining rape as a war crime and crime against humanity, women's role as carriers of national or ethnic identity is emphasised rather than the gender-based aspect of the crime. The woman's gender identity alone is insufficient, but rather her different ethnicity or nationality from the person accused of raping her is necessary for a prosecution case to be brought before the court. Rape and other SGBV committed by members of her own groups' forces, by peacekeepers or other actors are unlikely to be prosecuted. In other words, justice is being defined by the international community/international law, and not by the women themselves. By privileging some SGBV crimes and some perpetrators over others for prosecution, while other SGBV remains unaddressed, limits the opportunity for women to experience justice through such criminal courts. For example, rape of Tutsi women in Rwanda was defined as a crime of the genocide when perpetrated by Hutu men, compared with rapes experienced by Hutu women at the hands of the Tutsi rebel army, and in both cases rapes perpetrated by members of their own ethnic group, including their husbands.¹⁰

The focus on prosecutions of rape and other SGBV as a crime thus fails to address the full impact of violence against women in war and its aftermath, and sometimes may even exacerbate it (Jones 2010). The apparent success of the two ad hoc tribunals, for the former Yugoslavia and Rwanda, respectively, in defining rape as a war crime and prosecuting rape as part of genocide, has served to indirectly obscure and minimise other harms that women experience. The focus on harms that can be defined as international crimes and the extraordinary attention and resources devoted to this task limit the ability to focus on addressing the many other acute and chronic harms women experience during and after war. Whilst women may be able to seek such 'extraordinary

⁸ Field research conducted by the author in Rwanda in 2005.

⁹ Approximately 8000 cases of SGBV were tried through *gacaca*. Research about the experiences of women who testified at *gacaca* is being conducted by doctoral candidate, Judith Herrmann, at James Cook University, Queensland, Australia.

¹⁰ Although if the husband was a Hutu, then the rape of his Tutsi wife could be prosecuted.

justice' in the transitional justice context, in addition to ongoing socioeconomic and political disadvantage, they will often continue to suffer sexual violence and not be able to seek redress through the 'ordinary justice' system. In Sierra Leone, for example, there is a traditional 'culture of silence' surrounding rape and other violence against women which means that SGBV is rarely addressed in the domestic legal system in the capital, Freetown, and in the customary courts, which operate in most of the country, rape is still seen as a crime of honour against the husband and family rather than the woman herself (Stovel 2010).

International criminal law treats rape in war as 'exceptional', a device enabling certain types of rapes to come within its jurisdiction. The external and contextual characteristics of a rape, rather than a woman's experience of rape, force used or harm suffered, determine whether it is a crime against humanity. Prosecution of rape under international criminal law requires a distinction between rape in war (extraordinary or exceptional violence) and rape in 'peace' (ordinary violence) (Grewal 2010). This principle of exceptionality denies the underlying societal circumstances which link the existence of rape in war with the ordinary everyday violence that women experience in *both* peace and war, as peacetime violations are legally excluded from the international justice community's jurisdiction. As a result, while international energy and resources are invested in a small number of high profile prosecutions, thousands of women are left to deal with the ongoing 'ordinary' violence often alone or with only discriminatory traditional justice processes available to them or perhaps the support of under-resourced non-government agencies and community groups.

As discussed above, this 'ordinary violence' is not only direct in the form of rape and other SGBV; it is also structural in terms of the socioeconomic discrimination faced by women which is exaggerated and exacerbated by war and the experience of sexual violence with its accompanying physiological and psychological impacts on a woman's ability to work and take care of herself and her family. Criminal prosecutions are limited in their ability to address these additional harms. As Kent (2012 p. 87) explains in relation to the Serious Crimes Process in East Timor, the 'chronic long-term nature of suffering under the Indonesian occupation, and the Portuguese colonisation that preceded it... manifested in the everyday experiences of poverty, malnutrition and illness cannot be relegated to the past or addressed by an individualised legal response'. It requires 'sustained attention to questions of redistributive justice—to redressing the unequal distribution of economic, social and political power'. This structural violence is connected to class, race and gender inequalities and the legal, political and social rules and context that limit the possibility for women to achieve justice in patriarchal societies and under international criminal law. A transformation in attitudes is therefore needed along with alternative ways of conceiving of justice and accountability beyond legal prosecutions in order to make sure that laws are created and enforced in a way that deals with the root causes of rape and sexual violence against women in wartime, as well as in so-called peacetime.

Pillar Two: Truth Seeking

Seeking the truth is an important goal for survivors of mass violence, including for women to know the fate of loved ones and the location of bodies so they can be

identified and reburied with dignity. Rodriguez Carreon (2014) explains the significance of a mass exhumation and funeral ceremony that provided women in rural Peru with the opportunity to finally lay to rest and mourn their husbands and sons who lost their lives in the civil war during which thousands of Peruvians were disappeared, tortured and executed. She describes how women in Santo Tomas de Pata were given the coffins of their loved ones to open at a ceremony run by the government and each family member was invited to go and stand next to the coffin. At the moment when they opened the coffin, they were for the first time in more than 20 years seeing the body that they were looking for. The women stared at the remains and many of them were crying. What was going through their minds? This encounter was about finding the truth for them; finally, they knew something about the fate of their loved ones. The coffins also contained items from the victims that were found in the exhumation, and the women could see with their own eyes that their loved ones were not ‘disappeared’ any more. It was a moving moment and that is what the truth does, it moves emotions and actions in people, it causes something and makes a difference.

However, women are often more reluctant to engage in truth seeking in relation to their own suffering, and especially in relation to rape and other SGBV (Scanlon and Muddell 2009). Engendering transitional justice thus also involves making sure that truth commissions, which are the mechanisms most frequently chosen to uncover the truth of past human rights violations (Hayner 2010), encourage the participation of women in telling their stories and expressing their multiple justice needs and priorities.

The first truth commissions were ‘gender blind’, but following the example of the South African Truth and Reconciliation Commission, the truth commissions established in Peru, Sierra Leone and Timor Leste created gender units and implemented measures to encourage women’s participation (Valji 2012). Despite these gender mainstreaming efforts, the incidence of rape and other SGBV reported by women in public hearings and in statements provided individually was generally less than expected based on other evidence of the widespread nature of SGBV in all three conflicts. For example, in Timor Leste, despite 29 % of Commissioners (2 out of 7) and 32 % of regional commissioners (10 out of 29) being women, only 21 % of statements (1642 out of a total of 7669) were from women, and of all the violations reported only 853 counts of sexual violence were recorded (Lambourne 2010; Valji 2012). As in the case of criminal prosecutions, women experience shame and fear of public ostracism if they reveal that they were raped as part of truth commission proceedings.¹¹

The particular vulnerability of women during the conflict in Timor Leste was recognised by the Commission for Reception, Truth and Reconciliation (known by its Portuguese acronym, CAVR) as demonstrated by the national public hearing on ‘Women and the Conflict’ held on 28–29 April 2003 (CAVR 2003). Thirteen women gave testimony at the emotional hearing covering human rights violations perpetrated in 11 districts during a range of periods over the 25 years of Indonesian occupation. The hearing was intended to promote understanding and healing, as well as respect for women and their experiences (CAVR 2005). Women’s participation in the CAVR was described as ‘moderate’, but without the intensive efforts to ensure a gender balance and to reach out to women in rural communities, the participation would have most likely been considerably less (Wandita et al. 2006). Women were especially supported

¹¹ Field research conducted by the author in Timor Leste in 2004.

to tell their stories by one of the two female Commissioners, Isabel Amarel Guterres, and the courage of such women and sympathetic audience of both men and women were evident in the public hearing that was filmed of a young women telling of the brutal rape she suffered and introducing the child she bore as a result of that rape.¹²

Despite the continuing reluctance of women to report on rape due to shame and fear, or consideration that other crimes including their disappeared husbands and sons were more important, the Peruvian Truth and Reconciliation Commission also concluded that sexual violence was widespread during the conflict (Falcón 2013). The victims' stories portrayed a powerful message showing how women were targeted, including young girls all the way up to the elderly. Women were used as a weapon of war, either by the military forces or the *terrucos*, the latter taking women to hidden camps to perform domestic chores and provide sexual services (Rodriguez Carreon 2014). The Peruvian TRC report evidenced that 80 % of the victims of sexual violence during the armed conflict were rural women of whom a majority spoke *quechua* as their mother tongue (CVR 2004). Quechuan women suffered multiple violations by Shining Path members and the military, including forced pregnancy, forced abortion, mutilation and multiple rape situations in addition to sexual slavery (Guillerot 2006). Yet, people in the Peruvian jungle and urban outskirts also experienced rape and other SGBV. In San Martin, in the jungle region of Peru, for example, a daughter provided her story to the CVR's public hearings: her mother was raped and murdered after she went to demand answers about her father's disappearance (Rodriguez Carreon 2014).

However, even though the Peruvian Truth and Reconciliation Commission adopting a gender perspective in its investigations and a gender-sensitive approach to statement taking that increased the focus on SGBV, the final report failed to uncover the underlying 'sociopolitical and economic matrix' of gender inequalities and 'state articulation of gender relations' (Dal Secco 2008, p. 74). Domestic violence is still seen as a legacy and the 'extraordinary' sexual violence experienced during the armed conflict has not been addressed as an existing problem of patriarchal structures that reinforce the 'macho' culture of violence and discrimination against women (Rodriguez Carreon 2014). The impact of this continuing oppression was not acknowledged in the TRC report and has not been recognised in the post conflict scenario, with women continuing to face significant difficulties in accessing justice (Falcón 2013).

The Sierra Leone Truth and Reconciliation Commission, by contrast, was the first to make this connection between the 'extraordinary' violence perpetrated against women during the civil war and the 'ordinary' violence they have continued to experience before and after the period of armed conflict (Valji 2012; Scanlon and Muddell 2009). Whilst it did not make this link explicit, the Timorese Truth and Reconciliation Commission provided a more holistic picture of the experiences of women during the conflict, highlighting the violations of economic and social rights associated with the deprivation of civil and political rights and the extremes of sexual violence (CAVR 2005). Resource constraints and continuing gender blindness have limited any further gains for women's rights in truth commissions in several African countries, including in Liberia and Kenya, and the prognosis is not encouraging in relation to plans for the Truth and Reconciliation Commission being established in Burundi.

¹² Field research conducted by the author in Timor Leste in 2004. Further research is needed to follow up the impact of giving public testimony on the woman in the documentary and others who also told their stories.

Despite advances in terms of gender sensitivity in the structure of the Liberian TRC with a gender-responsive mandate, high levels of women's participation and appointment of a record 44 % of women as Commissioners, delays in implementation of the gender policy and lack of follow through on recommendations have undermined its potentially transformative impact (Valji 2012). In Kenya, meanwhile, gender justice was not incorporated in the planning of the Truth, Justice and Reconciliation Commission and in Burundi, the only two women appointed as Commissioners are both from the ruling party and are thus more likely to act as political representatives rather than bringing a gender perspective to the proceedings. The TRC Law fails to include sufficient safeguards to ensure the participation of all victims of past conflicts in Burundi, including women as well as other marginalised individuals and groups (Impunity Watch 2014).

Thus, whilst truth commissions have proven more amenable to a gender transformative approach than have criminal prosecutions, by enabling women to tell their stories and highlighting the link between past violations, root causes and continuing disadvantage, they are still vulnerable to backsliding and inadequate resource and policy provisions for women's inclusion, such that a more comprehensive approach to gender justice remains largely elusive.

Pillar Three: Reparations

Reparations are traditionally conceived in terms of redress for the direct physical violation itself (some kind of symbolic gesture to compensate for the harm caused) rather than its impact (e.g. loss of earning capacity or ability to care for a family, continuing trauma symptoms, etc.). Reflecting the generally lower status of social and economic rights in international human rights law, the material harm caused by socioeconomic disadvantage and family and community ostracism is less likely to be addressed through reparations associated with prosecutions or other transitional justice processes.

In more recent cases, with the increasing focus on gender sensitivity in truth commissions, victims of sexual crimes are being explicitly identified as potential recipients of both symbolic and material reparations. In Peru, for example, victims of rape, but not of other SGBV, were included as recipients of symbolic and economic reparations in the follow-up to the CVR report, and these victims and any children born of rape were to receive access to health, housing and education as well as being eligible for collective reparations (Falcón 2013). The truth commission reports for Sierra Leone and Timor Leste also recommended reparations for victims of SGBV (Rubio-Marín 2006). However, in situations where women receive reparations specifically because of sexual crimes, it is still likely to be inadequate in terms of being able to make a meaningful impact on redressing the multiple harms they have suffered (Valji 2012). Reparations, whether symbolic or material, individual or collective, are not designed to address the root causes of the violence nor to transform gender relations.

Borer (2009) identifies further that reparations and compensation are often tied to participation in legal proceedings so that many women who might have been eligible to receive reparations based on the harm they have experienced, do not receive it because they have been inhibited from testifying due to stigma against rape, fear for their safety or an unwillingness to undergo the trauma of testifying. This compounds existing

economic disadvantage and dependence on male dominated structures of power and privilege. For example, restricting access to reparations to those who testify in truth commissions, as happened in South Africa, Timor Leste and Kenya, undermines women's capacity to experience reparation without also subjecting themselves to the potential of social ostracism in a patriarchal society that continues to impede empowerment of their agency.

Furthermore, reparations are legally defined and traditionally understood as being about returning the victim to some pre-existing state prior to the crime being committed, which creates an inappropriate outcome when that state comprises 'gender inequalities and unjust practices' such as experienced in Kenya (Valji 2012, 16). To be transformative, reparations therefore need to directly address these pre-existing underlying inequalities, to target those most vulnerable and to be combined with meaningful guarantees of non-repetition underpinned by sustainable development programs that target the root causes of conflict (Valji 2012).

The provision of *reparations* also needs to engage with the psychological dimension of making *reparation* for the perceived wrong that entails a relationship of accountability and social responsibility. As explained by Hamber (2009, 109), 'reparations may be interpreted as being insufficient as reparation at the individual level' if they are not accompanied by truth and justice. This observation reflects what was experienced in South Africa where the promise of reparations was combined with a perceived lack of will to pursue prosecutions, and in other countries such as Brazil and Northern Ireland where 'the national process of moving forward and making amends is not coinciding with the individual process of reparation'. This approach to reparations suggests the need for a transformative process at institutional and relational levels in order to create more consistency and comprehensiveness in the implementation of the four key pillars of transitional justice as defined by the UN. In this way, reparations can rebuild (or build for the first time) trust in interpersonal and state relations as well as institutions (Rubio-Marín 2006). Such a comprehensive approach could then address the need for socioeconomic or redistributive justice for women moving forward as well as reparations for past violations.

Pillar Four: Institutional Reform

The implementation of institutional reform as a critical element of transitional justice has so far proven to be inadequate as a tool to transform societies and ensure the rights of women are respected and protected. As suggested by Valji (2012), institutional reform has been restricted by a focus on the justice and security sectors, and needs to more widely target discriminatory laws and practices that impede women's socioeconomic development and political participation.

In order to foster transformation, we argue, there must be a recognition of the embedded discriminatory structures existing in the State and the dynamics necessary to change them. For example, before the Peruvian conflict of 1980–2000, it was found by the Peruvian TRC staff that many Quechuan rural women were not registered with an identification card.¹³ Peruvians who did not know how to read and write in Spanish did not have the right to vote until 1980, when the government had to include symbols

¹³ Field research conducted by the author in Peru in 2011.

from the different parties for Quechuans and other oral languages to identify themselves.¹⁴ Therefore, the TRC members were surprised to discover that many of those whose family members had died and/or disappeared were unknown to the State. This clearly showed the lack of engagement between the State and its citizens and moreover the difficulty for them to make legal claims.

Development is not a process that changes overnight, and certainly in many cases political structures are not necessary positively constructed after conflict, and sometimes the opposite. If relationships were not built before conflict it is more likely these citizens were considered second class and were not taken into consideration after conflict. The question here is how can we build bridges, develop trust and acknowledge the responsibility of State institutions for their fellow citizens and offer them capabilities to build their agency.¹⁵

In Kenya, for example, there is a need to develop more effective laws, policies and institutions to ensure the rights of women are safeguarded and their access to justice is guaranteed (Nordström 2013). Whilst women have become increasingly active in civil society, they are still prevented from equal participation at the political level as a result of continuing patriarchal structures and attitudes. The recommendations of the TJRC report in terms of gender sensitivity and the work of the National Gender and Equity Commission will need the support of political leaders and access to resources in order to effectively implement institutional reform (Nordström 2013). In other words, gender transformative justice requires more than a commitment to institutional reform. It also requires a transformation in relationships to counter the existing patriarchal structures that prevent women from exercising their agency and transforming their lives. Reforms of the legal system to address ongoing high levels of SGBV will not be effective without also addressing the root causes embedded in patriarchal social and political relationships.

Attaining Justice for Women

Existing formal transitional justice processes seem to be doing little to recompense female victims of sexual violence for the multiple harms they have suffered or to end the impunity for sexual violence that is continuing in many communities such as Sri Lanka and the eastern DRC. Studies of post-conflict societies consistently find high levels of violence against women including domestic violence and rape in such countries as South Africa, Kenya, Timor Leste and Sierra Leone (Nordström 2013; Scanlon and Muddell 2009). A number of scholars have drawn correlations between war trauma, breakdown of interpersonal and societal relationships, elevated alcohol and other drug use, lack of physical and social infrastructure for responding to community needs and the high incidence of violence against women tolerated in post-conflict societies (Pettman 1996; Borer 2009).

¹⁴ 'El poder en el mundo formal: Entre el voto y la cuota'. www.manuela.org.pe.

¹⁵ Understanding Amartya Sen's concept of capabilities when people do what they value and have a reason to value with freedom, and agency means when they can be and do with freedom (Alkire and Deneulin 2009, p. 22; Rodriguez Carreon 2014, p. 45)

Addressing this ongoing sexual violence can make an important contribution to building a peace with justice and security for women, we argue. In Burundi, for example, a number of women interviewed in rural areas in December 2014 and April 2015 mentioned domestic violence as an ongoing core concern in their lives, compounded by the extreme poverty and the ongoing effects of trauma from the genocidal violence that they had suffered in the past. Women's lower socioeconomic status means that they are left powerless to leave abusive relationships, and to prevent the transmission of HIV/AIDS, as also experienced in other countries such as South Africa both before and after the transition from apartheid to democratic rule (Gobodo-Madikizela 2014). These examples illustrate the intersection of gender, poverty and race as three compounding disadvantages in the way poor, rural or indigenous women experience war and its aftermath.

Many of these disadvantages or harms, while central to women's lives, fall outside international criminal law and formal transitional justice mechanisms, and women face significant hurdles in trying to attain justice and pursue prevention. As discussed above, laws and prosecutions alone will not end gender discrimination and provide justice for women. In situations where women have suffered disproportionately from mass violence because of their relative vulnerability to poverty and sexual violence, a change in attitudes is required to ensure that women are able to achieve justice for these crimes. In Burundi, women are being assisted in becoming socially and economically empowered through trauma healing workshops that address the need for psychosocial transformation in personal and community relationships.¹⁶

However, while they may be able to exercise their agency in the local community context, when it comes to claiming their rights and seeking truth and justice women find themselves disempowered and struggling to find their agency in the unfamiliar world of lawyers, courts and forensics (Rodriguez Carreon 2014). For example, in Peru, the head of a mothers' association, Angelica Mendoza de Arcaza, felt despair when her son disappeared more than two decades previously.¹⁷ She spoke Quechua and not Spanish which is the language mainly spoken in the capital of Lima. As a country where its institutions are mainly centralised in the capital, people needed to travel there to follow up on any bureaucratic matters. For those people from the mountains, Lima and its institutions were not prepared to receive the citizens from small rural areas, they were not just geographically distant but contextual and cultural languages are different.¹⁸ During conflict, the institutions did not learn how to understand the people from the highlands, but Angelica whose son disappeared learnt the different dynamics necessary to be considered and attain justice (Rodriguez Carreon 2014). However, still there existed a gap in institutions and transitional justice bodies during post-conflict in Peru in order to best address the needs of these women. Transitional justice in this context could be transformative if it is used to empower women and implement institutional reform that takes into account the need to support access to those who face the triple disadvantage of being rural indigenous women living in poverty in a patriarchal society.

¹⁶ Field research conducted by the author in Burundi in December 2014 and April 2015.

¹⁷ Angelica Mendoza de Arcaza was the founder of the ANFASEP (National Association of Families of the Kidnapped, Arrested, and Disappeared in Peru).

¹⁸ Field research conducted by the author in Peru in 2011.

Despite the existence of UN Security Council Resolution 1325, that calls for the inclusion of women in all aspects of reconstruction and peacebuilding, and other measures to further the rights of women, the evidence suggests that transitional justice measures, and especially formal mechanisms such as tribunals and truth commissions, are not adequately engaging with women to address these issues (Rubli and Baumgartner 2014). Systemic barriers and deeply entrenched gender biases often undermine women's full and effective participation in transitional justice processes (Valji 2012). There is therefore a need for both improved access for women to existing transitional justice mechanisms, and the development of different approaches which better recognise and address women's justice needs in a more holistic way (Scanlon and Muddell 2009).

War impacts on women in a great many ways, including but extending well beyond sexual violence. A focus on prosecutions for sexual crimes and other GBV obscures and fails to address the many other harms women experience, including domestic violence, widowhood, limited access to health care and education, poverty and land rights discrimination. Structural violence in the form of socioeconomic discrimination where women are disproportionately affected by poverty is a type of harm which precedes the direct violence of war and is frequently exacerbated by war and its aftermath, and yet 'criminal law is inherently unable to address the effects of [such] structural violence' (Kent 2012 p. 87). For example, women as former combatants often do not enjoy the same benefits as their male counterparts in reintegration strategies and other aspects of disarmament, demobilisation and reintegration (DDR) programs. They return to their communities to resume secondary economic, social and legal status as 'women' and 'victims' rather than public rebuilding concerns as 'former combatants'. In Northern Uganda, for example, the number of women who were held in sexual slavery as 'wives' of the LRA complicated their demobilisation and reintegration.¹⁹ In Sierra Leone, meanwhile, women and girls were 'conspicuously absent' from the NCCDDR program for a number of reasons relating to discriminatory laws which saw them as dependents and victims rather than as former combatants (Stovel 2010).

In Burundi, pre-conflict patriarchal structures which tied women's economic and legal status to husbands and fathers meant that displaced single women and widows were left particularly vulnerable without access to land and unable to support their families (Hovil 2012). Similarly in northern Uganda, women's pre-existing secondary legal and social status and exclusion from land rights has had a severe impact on the post-conflict lives of widows and otherwise single women, many of whom are forced into violent relationships, sex-work or exploitative labour such as domestic servants (Kindi 2010). Women in northern Uganda have listed access to health and economic justice as higher priorities than legal justice for sexual assaults (Hovil 2012).

Transitional justice, especially when it is centred around criminal prosecutions, thus fails to recognise the complex web of legal, political, customary, cultural and social forces which combine to ensure that 'justice' remains beyond reach for women when they are constructed 'only' as women and the impact of the different harms they are experiencing is not addressed. A transformative approach would, by contrast, insist that socioeconomic aspects of justice be included in a more holistic approach to addressing the justice needs of women and other victims of mass human rights violations. In

¹⁹ Field research conducted by the author in northern Uganda in 2010.

northern Uganda, for example, this would mean efforts to change the sociolegal structures such as land and inheritance rights which continue to marginalise and disadvantage women in the economic sphere.

Legal prosecutions can provide the opportunity for reparations, which is an important development for acknowledging the impact of sexual crimes on women, but as explained above, falls well short of a meaningful approach to addressing the ongoing structural and direct violence experienced by women in many post-conflict contexts. The International Criminal Court (ICC), like most transitional justice mechanisms, is concerned with breaches of civil and political rights, and not social and economic rights. A transformative approach to justice suggests that socioeconomic justice is a critical component of the societal transformation required to address the root causes of violence against women, and to ensure that women have access to the means of redress when it does occur.

A transformative justice lens has been used to highlight the limitations of transitional justice responses to women's needs and experiences. We now move to outlining the features of a transformative approach to justice and how this can help to transform women's lives in a more sustainable way.

From Transition to Transformation

Transitional justice is designed to deal with the extraordinary crimes of the mass violence context, and not with the so-called ordinary violence against women which often precedes the conflict and continues after the guns have stopped. It is not normally concerned with socioeconomic rights and needs of women which may have been exacerbated by the armed conflict, adding structural violence to the direct violence for which women may be seeking redress. The concept of transformative justice is designed to identify strategies for promoting sustainable peace and explicitly addresses the link between dealing with the past and preventing human rights violations in the future, and between socioeconomic justice which addresses structural violence and legal justice which responds to the direct violence of crimes against humanity and war crimes.

Transformative justice implies long-term, sustainable processes embedded in society and adoption of psychosocial, political and economic, as well as legal, perspectives on justice (Lambourne 2009). The term 'socioeconomic justice' incorporates the various elements of justice that relate to financial or other material compensation, restitution or reparation for past violations or crimes (historical justice) and distributive or socioeconomic justice in the future (prospective justice). The idea is both to create an experience of justice about what occurred in the past and to ensure that structural violence in the future is minimised in order to promote a sustainable peace. Empirical evidence from field research and consideration of conflict transformation theory and principles support this argument drawing on Mani (2002) that alleviating impact and targeting causes through distributive justice are important for transitional justice to contribute to peacebuilding.²⁰

A transformative justice lens also emphasises the importance of local ownership and participation of those most affected by the violence (Lambourne 2009): what McEvoy and McGregor (2010) have called 'transitional justice from below' and Shaw et al.

²⁰ Mani's other two justice categories are legal justice and rectificatory justice, which together with distributive justice, comprise the holistic concept of reparative justice in Mani's model.

(2010) further explore in terms of the concept of 'localisation'. We argue that by empowering women's participation and developing gender transformative justice principles and processes, transitional justice is more likely to support sustainable societal transformation that challenges the patriarchal norms which underpin continuing violence against women. This approach would directly address the marginalisation and exclusion of women in legal, political, economic and social spaces which is particularly acute in poverty-affected contexts of mass violence such as Peru, Burundi and Timor Leste, as discussed in this article.

We can see evidence of the marginalisation of local populations, and especially women, in the context of the operations of the International Criminal Court and other international or internationalised criminal tribunals created to deal with past mass human rights violations including SGBV. There are challenges for the inclusion of rape and other sexual crimes at various stages of the process, from the initial indictments, to arrest and prosecution, and the issuing of the final verdict and sentencing. Political constraints may determine who is indicted, and legal assessments will determine what crimes can be prosecuted based on the rules of evidence and procedure, while economic capacity will limit not only the number of cases that can be tried, but also the extent to which any provision of reparations can materially improve the lives of women suffering from the ongoing impact of sexual and other violence. Even while endeavouring to implement a gender-sensitive or gender-responsive strategy, international and national actors alike face enormous challenges in the context of patriarchal societies where the rights and needs of women are systemically marginalised and their agency undermined in the courts and in the socioeconomic and political sectors.

In northern Uganda, for example, there was a top-down, non-consultative process in which the national government requested the ICC to initiate proceedings against the Lord's Resistance Army (LRA). The needs and priorities of the local population in northern Uganda were not taken into account, especially in terms of the failure to pursue accountability for the Ugandan government which is also accused of mass human rights violations in the north. The ICC has indicted key leaders of the LRA, and the first of these has been arrested, but trials are yet to proceed. The goals and activities of the ICC seem distant and unconnected to the daily struggles facing the vast majority of female victims of violence in northern Uganda, in much the same way that the proceedings of the ICTR were seen as playing little part in experiences of justice for women in Rwanda following the genocide (Lambourne 2002).²¹

The Ugandan Government, meanwhile, developed a draft national transitional justice policy with provisions for gender equality, participation and inclusion, and a victim-centred approach, and with a legal framework drawing on UNSC Resolution 1325 and 1820 and other gender-related regional and international instruments. The Agreement on Accountability and Reconciliation, and its 2007 Annexure to the Juba Peace Agreement, similarly included provisions for a gender-sensitive approach recognising the special needs of women, protecting the dignity and security of women, and promoting and facilitating the participation of women in transitional justice processes. However, the extent to which these provisions have been respected in the national judicial process is in question, from the lack of charges for SGBV crimes in the 2011 trial of former LRA leader, Thomas Kwoyelo, to the lack of coverage for women

²¹ Field research conducted by the author in northern Uganda in 2010 and in Rwanda in 1998 and 2005.

who were sexually abused whilst engaged in combat and the level of evidence required for proving rape and other sexual crimes (Mulli and Ederu 2013).

Potentially transformative approaches to justice have been pursued in northern Uganda in the informal sector, however, and local communities have been consulted in relation to the use of traditional justice, truth telling and national reconciliation. Local civil society initiatives such as the Northern Uganda Transitional Working Group and Ugandan Victims Foundation, and NGOs including the Justice and Reconciliation Project (JRP) and Refugee Law Project (RLP), have undertaken research to determine the needs and priorities of women and other victims of violence in the north. For example, Isis Women's International Cross Cultural Exchange (Isis-WICCE 2013) and Feinstein International Center report the results of five studies including interviews with 646 victims of serious crimes and their families, traditional leaders and community and civil society workers in four sub-regions of northern Uganda. The report identified five dimensions of violence against women: sexual or reproductive coercion, harm, torture or mutilation; targeting women's mothering; women, productive labour and property; women and social capital; and gender multipliers of violence. They concluded that 'gender-blind reintegration and restitution' is insufficient to counter these harms, and that reparations policies need to support preventative and protective medical, social and legal measures in order to transform the underlying 'sociocultural injustices and political and structural inequalities' (Isis-WICCE 2013: 4).

NGOs are pursuing alternative programs designed to better meet the justice and other needs of local affected communities in northern Uganda, with an emphasis on local ownership, participation and social transformation. For example, JRP's *Ododo wa* project provided women who were abducted by the LRA with the opportunity to meet and share their stories, as a result of which the women formed an advocacy network.²² The Women's Advocacy Network (WAN) organises dialogues and advocates for socioeconomic justice and access to land, reparations and bursaries for their children, inclusion in consultations regarding post-war reconstruction and elimination of stigmatisation. Although many challenges remain, such as poverty, trauma and cultural practices, the multiple forms of justice being sought by the WAN, including political, socioeconomic and psychosocial, and the emphasis on participation and local ownership, support a potentially transformative justice and peacebuilding agenda.

In order to foster societal transformation, we suggest that not only is it important that women participate in the *conduct* of transitional justice processes, but that they also participate in the *design* of transitional justice mechanisms and in the subsequent *follow-up* and evaluation of their impact: the 'what' as well as the 'how', and 'how well'. We argue that women need to be empowered as agents in the decision-making process about transitional justice and in the implementation of transitional justice in all its forms, and that men need to engage in this process with women as equal partners. This emphasis on design as well as conduct and follow-up underpins a transformative process that is not bounded by the concept of a transitional period in which justice is achieved for a limited subset of violations. It directly engages with the recognition that justice mechanisms need to address the structural and direct 'ordinary' violence against women which precedes and continues after the period of 'extraordinary violence' may have ended. A transformative approach which engages inclusively with those affected

²² Kasiva Mulli, Gender, Peace-building and Transitional Justice workshop, Cape Town, September 2013.

by the violence can also begin to foster the relational transformation as well as the institutional transformation which together are necessary for societal transformation.

Relational transformation requires also addressing the responsibility of men in the patriarchal structure and their responses to SGBV against women. Colleen Duggan comments in the Preface to Rubio-Marín's study of gender and reparations that there is 'a need for further research on how men deal with their own compromised masculinity in the face of adversity, since this has a direct impact upon women's long-term chances for recovery and empowerment' (Rubio-Marín 2006, 18).

A transformative approach also suggests avoiding assumptions about women's needs in transitional justice settings. The main reason is the multiple layers of needs from unequal societies with patterns of exclusion in gender, racism, and class dynamics. Engendered inequality existing within the psychosocial, socioeconomic, legal and political relationships and institutions overshadows women's exercise of agency. At the same time, research has found oppressed gender dynamics in the domestic sphere, in particular those who are a minority ethnically and suffering economic disadvantage. The hierarchical negative judgment attached to women's roles in the domestic sphere has contributed insensitively to the gender lenses of women's agency, such that the agency of women in the private sphere has not been transformed and women have been erroneously portrayed as passive agents. Consequently, interaction in this environment and in particular during conflict, becomes a negative dynamic. When it then comes to post-conflict justice, the needs of women in patriarchal societies are interdependent and multilayered and must be addressed with a feminist lens that identifies and seeks to transform the power imbalances between the genders intersecting with those associated with ethnicity, class and other identities associated with inequalities.

In this context, Nussbaum's capabilities approach to agency can be seen as fundamental to a transformative empowerment that challenges insecurities and gendered inequalities in culturally meaningful ways (Porter 2013, 2). It is this transformative approach to empowerment and the exercising of agency that we consider essential in applying to the challenges women face in achieving justice that is meaningful to them in addressing both the 'extraordinary' and ongoing 'ordinary' violence they continue to face in many post-conflict societies.

Gender-Transformative Justice

In summary then, a transformative justice approach identifies a number of ways in which justice for women goes beyond legal accountability for past human rights violations. Firstly, a transformative approach highlights the need to address the root causes of gender-based violence and sexual crimes in order to prevent their recurrence both as 'extraordinary violence' in wartime and their continuation as 'ordinary violence' following the end of armed conflict. For many women, gender-based violence is an ongoing reality that precedes the period of mass violence and continues in its aftermath (Jones 2010). To be transformative, transitional justice is called to address this continuity of justice needs for women.

Secondly, a transformative approach suggests the importance of avoiding assumptions about the needs and priorities of any particular woman or group of women in relation to transitional justice, and to broaden our understanding of what justice means

to survivors of mass violence. Transitional justice for women can mean equitable access to socioeconomic resources and political power, the opportunity to heal both physically and psychologically, and/or access to legal means of redress and justice for the gender-based violence and other crimes that have been perpetrated against them and their families before, during and after the armed conflict or genocide. Both socioeconomic and political justice are necessary to transform the structural violence that both enables and follows from the direct violence, and to address the continuing inequalities and patterns of exclusion and discrimination against women in many societies. Psychosocial transformation can empower women to exercise their agency in attaining their legal, socioeconomic and political rights and needs.

And thirdly, a transformative model of transitional justice therefore calls on us to avoid seeing women as passive victims to be protected from human rights violations, but rather focuses on the empowerment of women to exercise their agency in a transformation of themselves and the power relations which have resulted in their marginalisation and exclusion. In this way, theories of peace and conflict transformation and a gender lens can be applied to understanding the potential of a transformative justice process to foster inclusion and participation and to address the inequalities and injustices which may have contributed to the root causes of the conflict.

Women's experiences and priorities thus support the focus on a holistic, transformative model of transitional justice that addresses multiple justice needs not only for past human rights violations but also attainment of socioeconomic as well as civil and political rights now and in the future.

Conclusion

As we have discussed in this paper, women are affected by war and other mass violence in multiple ways, including rape and other sexual violence. These women may face psychological trauma, social ostracism, economic disadvantage and lasting health problems, including HIV/AIDS. They are often limited in their access to justice both legally and in political and socioeconomic terms. Social stigma, internal displacement and widowhood can increase female-headed households and isolate women from family and other kinship ties. Patriarchal systems continue to marginalise women's rights, which can be compounded by ethnic or other disadvantage such as living in a rural community, being illiterate or otherwise not part of the dominant class. As observed by Gobodo-Madikizela (2014 p. 164) in relation to Africa where so many women have been subjected to war rape: 'there is no "post-conflict" for women'.

In this article, we are arguing for a recognition that transitional justice in all its forms is limited by the potential replication of patriarchal systems which perpetuate violence against women (Scully 2009; Grewal 2010). This applies to all four pillars of transitional justice advocated by the United Nations in the form of prosecutions, truth commissions, reparations and institutional reform. At the same time, we are suggesting that transitional justice can be designed and implemented in ways that are more inclusive of women's participation, voices and experiences; more responsive to their needs, priorities and expectations; and thus more likely to deliver justice that is transformative. The programs in Northern Uganda discussed in the last part of this paper provide some examples of such a transformative approach.

We propose that a transformative justice model helps to identify the processes and principles involved in engendering transitional justice in a way that takes into account women's justice needs in a holistic view of psychosocial behaviour and relationships, and economic, political and legal structures. This model is underpinned by a critique of the hierarchies of knowledge, the ways in which women's voices are discredited, subjugated and minimised in political and legal spheres especially. Women's knowledge based on experience can be seen as anecdotal, self-interested and subjective, while the 'real' knowledge is left for the 'experts'—the judges, lawyers, diplomats and academics. A transformative approach to justice and peacebuilding values the participation of women and their contribution to understanding and implementing transitional justice which meets their needs and priorities. Women experience and understand the social world in which they live and are best placed to identify and challenge the social, political, economic and legal structures which impede their full and equal participation.

However, in order to engender the social transformation needed to undermine sexual and other direct and structural violence which women continue to experience with alarming impunity, the participation of men is also essential—to lead and support changes in discriminatory laws and attitudes in a partnership with women empowered to fully exercise their agency in relationships as well as in institutions. As Liberian women's rights and peace activist, Leymah Gbowee, told an audience at the Sydney Opera House on 7 April 2013, each woman has the power to transform her own life and to challenge the structure of patriarchy—and we also need to engage men in the struggle (Gbowee 2011).

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