



## Policy Brief

**Employing a gendered approach  
to transitional justice in the Arab region**  
potential role of national women's machineries

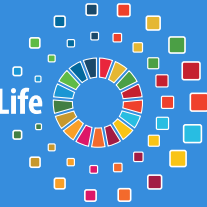


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## **Policy Brief**

# **Employing a gendered approach to transitional justice in the Arab region: potential role of national women's machineries**



**United Nations**  
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## Introduction

Transitional justice is a context-specific and inclusive set of processes, which has the power to amplify the voices of victims and affirm the equal rights and citizenship of individuals. Over the past century, countries recovering from conflict or repressive regimes have turned to transitional justice mechanisms to re-establish the rule of law and foster national reconciliation. For example, Chile, Colombia, Bosnia and Herzegovina, South Africa, Uganda and Northern Ireland successfully engaged in transitional justice processes to address past atrocities, before striving for stability and peaceful coexistence. Transitional justice has demonstrated its potential for confronting the past, and for actively working towards building a stronger and brighter future for the State and its citizens.

Given the unique impact of conflict on women and girls, transitional justice processes benefit from a fully integrated gender-responsive approach to ensure the meaningful participation of women in their design and implementation. Moreover, post-conflict and transitional processes must address pre-existing gendered structural inequalities and vulnerabilities amplified by conflict or the legacy of repressive rule – this should be foundational when engaging in such processes. Such an approach ensures justice for individual women’s human rights violations and addresses gender-based injustice that may have contributed to conflict, thus intrinsically connecting transitional justice to the women, peace, and security (WPS) agenda. Countries should view such periods of transition as an opportunity to strengthen the political and socioeconomic rights and wellbeing of women and girls, thereby developing a more equal society and ultimately a more prosperous nation. In the Arab region, this calls for greater institutional support, particularly from national women’s machineries (NWMs) since they can provide the expertise necessary for comprehensive gender mainstreaming and serve as powerful partners for the integration of women’s voices.

Numerous Arab countries are facing devastating conflicts or periods of complex political transition. Given this reality, gender-sensitive transitional justice is a highly pertinent option for many Arab countries as they endeavour to move forwards from periods of upheaval to the development of thriving societies. As demonstrated by the Arab uprisings and a rich history of societal transformation, striving for justice is not a foreign concept to the Arab region. Several Arab countries, including Egypt, Libya, Morocco, Tunisia and Yemen, have undertaken transitional justice processes with varying outcomes.

The present policy brief introduces the concept of ‘transitional justice’ and its key mechanisms that may influence post-conflict reconstruction or political transition. It also argues that gendered concerns should be incorporated into transitional justice and reconstruction endeavours in the same manner as women’s involvement. Moreover, it calls on NWMs in the Arab region to play a proactive role in ensuring that the interests of women and girls are reflected in post-conflict and transitional justice mechanisms, and that such processes are gender responsive.

## I. CORE ELEMENTS OF TRANSITIONAL JUSTICE

The United Nations defines 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, so as to ensure accountability, serve justice and achieve reconciliation.<sup>1</sup> Transitional justice mechanisms can interrupt the destructive cycles of violence that impede sustainable development.<sup>2</sup> Justice is profoundly connected to the 2030 Agenda for Sustainable Development and all 17 Sustainable Development Goals (SDGs), which call for a “just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met”.<sup>3</sup>



Transitional justice processes make institutions more legitimate and trustworthy, decrease distrust within society, reduce marginalization and corruption, and promote gender equality.<sup>4</sup> Consequently, the opportunity exists to address SDGs focused on the socioeconomic wellbeing of a State's people within transitional justice mechanisms. Transitional justice perhaps most directly works towards the achievement of SDG 16 since it aspires to reduce the ‘justice gap’, or the inability to provide justice to people and communities outside the protection of the law<sup>5</sup> by targeting rule of law, access to justice, inclusive institutions, and the reduction of violence and corruption. Transitional justice also contributes to other Goals. By taking a comprehensively gendered approach to transitional justice, countries can also advance SDG 5 on achieving gender equality and empowering all women and girls. Other relevant SDGs include SDG 3 that strives for healthy lives, accessible health care, and the promotion of physical and mental wellbeing; SDG 4 that aims to ensure inclusive and equitable quality education; and SDG 10 on reducing income inequality and increasing economic inclusion.<sup>6</sup>

The WPS agenda, through specific United Nations Security Council resolutions (box 1), makes direct reference to transitional justice mechanisms and measures, such as adopting strategies, programmes and legislation to mitigate and prevent violence, implement protection and punitive measures, ensure redress, end impunity for violations, and guarantee non-repetition of violence.

Many countries have accumulated experience in transitional justice while adopting their own unique approaches. After supporting the implementation of transitional justice programmes in more than 20 countries, United Nations publications and studies on the matter have identified the following set of mechanisms,<sup>7</sup> and

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<sup>1</sup> United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, S/2004/616. Available at <https://www.securitycouncilreport.org/atf/cf/%7B65BF99B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PCS%20S%202004%20616.pdf>.

<sup>2</sup> World Bank, *World Development Report 2011: Conflict, Security and Development*, 2011. Available at [https://siteresources.worldbank.org/INTWDRS/Resources/WDR2011\\_Full\\_Text.pdf](https://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf).

<sup>3</sup> Task Force on Justice, *Justice for All: Challenge Paper for the First Meeting of the Task Force on Justice*, 2018. Available at [https://docs.wixstatic.com/ugd/6c192f\\_12c2f80b9751498ab30ec4de0378766a.pdf](https://docs.wixstatic.com/ugd/6c192f_12c2f80b9751498ab30ec4de0378766a.pdf).

<sup>4</sup> Working Group on Transitional Justice and SDG16+, *On Solid Ground: Building Sustainable Peace and Development after Massive Human Rights Violations*, 2019. Available at: [https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_WG-TJ-SDG16+\\_2019\\_Web.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_WG-TJ-SDG16+_2019_Web.pdf).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Analytical study on human rights and transitional justice*, 6 August 2009, *A/HRC/12/18*, para. 4. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/149/18/PDF/G0914918.pdf?OpenElement>.

recommend that they are implemented through integrated and complementary approaches tailored to the context,<sup>8</sup> with gender mainstreamed in all phases.

### Box 1. WPS agenda and transitional justice

- Resolution 1325 (2000): emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes, including those relating to sexual and other violence against women and girls, and stresses the need to exclude these crimes from amnesty provisions;
- Resolution 1820 (2008): notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide; calls upon member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice; and stresses the importance of ending impunity for such acts;
- Resolution 2122 (2013): recognizes that more must be done to ensure that transitional justice measures address the full range of violations and abuses of women’s human rights, and the differentiated impacts on women and girls of these violations and abuses as well as forced displacement, enforced disappearances, and destruction of civilian infrastructure;
- Resolution 2106 (2013): draws attention to the importance of a comprehensive approach to transitional justice in armed conflict and post-conflict situations, encompassing the full range of judicial and non-judicial measures, as appropriate.

#### A. TRUTH-SEEKING

Truth-seeking processes allow countries to investigate past human rights violations through truth commissions, commissions of inquiry, or other fact-finding mechanisms. They are non-judicial investigative bodies that map patterns of past violence and uncover the causes and consequences of these destructive events. These bodies operate under narrowly defined mandates that are designed within a specific societal context, and are founded on national consultations with the inclusion of victims and civil society organizations.<sup>9</sup> Public participation reveals the needs of conflict-affected communities, allowing countries to craft an appropriate context-specific transitional justice plan. Moreover, the consultative process endows victims and other members of civil society with local ownership of the resulting strategy.<sup>10</sup>

Arab countries have witnessed positive truth-seeking experiences as part of their transitional justice processes, with varying degrees of gender processes and recommendations. In Morocco, the Equity and Reconciliation Commission (*Instance Équité et Réconciliation* or IER) was created by royal decree in January 2004 with less than a two-year mandate. The Commission’s mandate was to establish the truth about past violations committed during the ‘Years of Lead’ (1956-1999), provide reparations to victims and families, and recommend measures to prevent future violations. IER, composed of 17 commissioners (including one woman), examined more than 22,000 applications, conducted investigations, and held public hearings throughout Morocco featuring the testimony of victims.<sup>11</sup> In Tunisia, the Truth and Dignity Commission (*Instance Vérité et Dignité* or IVD) was established in 2014 to investigate gross human rights violations committed by the Government or those who acted in its name between 1955 and 2013. The Commission was

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<sup>8</sup> United Nations Security Council, The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616. Available at [https://digitallibrary.un.org/record/527647/files/S\\_2004\\_616-EN.pdf](https://digitallibrary.un.org/record/527647/files/S_2004_616-EN.pdf).

<sup>9</sup> Ibid., para. 8.

<sup>10</sup> Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Analytical study on human rights and transitional justice, 6 August 2009, A/HRC/12/18, para. 43.

<sup>11</sup> <https://www.ictj.org/our-work/regions-and-countries/morocco>.

given a four-year mandate with the possibility of a one-year extension. A female president led the Commission alongside eight commissioners (three of whom were women). Until the end of its mandate on 31 December 2018, IVD received 62,720 complaints and petitions, and held 49,654 secret hearings.<sup>12</sup>

The Truth and Reconciliation Commission (TRC) of South African established in the late 1990s is widely regarded as a success and, despite some flaws, serves as a model for transitional countries around the world. TRC took statements from approximately 20,000 victims and confessions from 7,000 perpetrators on the racial injustices and gross human rights violations committed during apartheid rule. It encouraged victims, perpetrators and the community to work together in a spirit of understanding to confront the past and bring the truth to light, which TRC viewed as imperative for reconciliation, reunification and trust. Studies reveal that three major cultural and ethnic groups in South Africa, namely the Xhosa, Afrikaners and English, all viewed TRC to be effective in bringing out the truth.<sup>13</sup> After almost 50 years of brutal racial segregation, TRC aided the State in establishing a unifying national narrative, building political stability, and fostering peace amongst the people of South Africa.

## B. PROSECUTION

Prosecution initiatives aim to ensure that those responsible for perpetrating serious violations of human rights are tried and punished. States have primary responsibility to exercise jurisdiction over these crimes.<sup>14</sup> Therefore, a sustainable transitional justice strategy seeks to develop national prosecutorial capacity. At the same time, countries emerging from years of conflict may be unable or unwilling to conduct effective investigations and prosecutions. In such situations, international or ad hoc criminal tribunals may exercise concurrent jurisdiction. Regardless of the form prosecution initiatives take, they must rest on a clear commitment to combating impunity, focus attention on the needs of victims, and comply with international standards for fair trial.<sup>15</sup>

In Tunisia, article 8 of Organic Law No. 2013-53 of 2013 on establishing and organizing transitional justice mandates the Truth and Dignity Commission to transfer serious crimes to specialized chambers with jurisdiction over widespread or systematic human rights violations, including deliberate killing, rape and sexual violence, torture, enforced disappearance and execution, without fair trial guarantees.<sup>16</sup> As at October 2018, IVD had referred 260 cases to 13 specialized criminal chambers in the Tunisian justice system that were established to try cases of human rights violations perpetrated between 1955 and 2013.<sup>17</sup>

Prosecutions can involve domestic courts, international courts, or a hybrid of both. The International Criminal Tribunal for the former Yugoslavia was a United Nations court that dealt with war crimes that occurred during the conflicts in the Balkans in the 1990s. From 1993 to 2017, the court provided a platform for victims to express the horrors they had witnessed and experienced, and held accountable those who were

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<sup>12</sup> <http://www.ivd.tn/?lang=en>.

<sup>13</sup> Jay A. Vora and Erika Vora, The effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans, *Journal of Black Studies*, vol. 34, No. 3, p. 308, 2004.

<sup>14</sup> United Nations Economic and Social Council, *The Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2005, E/CN.4/2005/102/Add.1, Principle 20. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>.

<sup>15</sup> Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Analytical study on human rights and transitional justice*, 6 August 2009, A/HRC/12/18, para. 19.

<sup>16</sup> Organic Law No. 2013-53 Establishing and Organizing Transitional Justice, 24 December 2013. Available at <https://www.ohchr.org/Documents/Countries/TN/TransitionalJusticeTunisia.pdf>.

<sup>17</sup> Amnesty International, *Gafsa uprising & transitional justice: trials must not stop at being symbolic*, 4 October 2018. Available at <https://www.amnesty.org/en/latest/news/2018/10/gafsa-uprising-transitional-justice-trials-must-not-stop-at-being-symbolic/>.



most responsible for the atrocities. Significantly, the conflict in the former Yugoslavia set an international precedent for acknowledging and investigating sexual violence and sexual enslavement in armed conflict.

Rwanda, on the other hand, took a much more localized approach to its pursuit of justice following the 1994 genocide. Complementing the ad hoc International Criminal Tribunal for Rwanda, the country turned to thousands of community-based *Gacaca* courts to assist national courts in trying the numerous genocide suspects. However, *Gacaca* courts have been criticized for miscarriages of justice, corruption and procedural irregularities. While these criticisms are founded, *Gacaca* courts also offer an important lesson in merging local conflict-resolution traditions with the modern legal order. The design and intent of the courts was an exercise in restorative justice: by removing the direct involvement of the State, *Gacaca* courts aimed to restore agency and a sense of empowerment to victims and communities.

### C. INSTITUTIONAL REFORMS

Institutional reforms are necessary to prevent the repetition of human rights violations, including sexual and gender-based violence, build sustainable peace and re-establish trust between victims and State institutions.<sup>18</sup> Public institutions that helped perpetuate conflict must be transformed into fair and just institutions, which protect human rights and foster a culture of respect for the rule of law. Reform is particularly needed in the justice and security sectors to establish a tradition of accountability and combat impunity. The momentum generated by transition represents a crucial opportunity for institutions to be part of national efforts to establish more durable and widespread peace. As integral components of a country's institutional landscape, national women's machineries can galvanize action and guarantee that women's voices are heard throughout the transition process.

In the aftermath of the Arab uprisings, Egypt, Libya, Morocco, Tunisia and Yemen pushed for constitutional reform as a necessary first step towards transitioning towards greater democracy. Within this discourse, constitutional reform movements became platforms for addressing deep-seated gender inequalities.<sup>19</sup> Many Arab countries have also made public commitments to gender equality by adopting international frameworks, which can play a central role in their transitional justice efforts.<sup>20</sup> Tunisia, for instance, having lifted all its reservations on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2011, promulgated a new constitution in 2014 that enshrines many women's rights, including protection from sexual and gender-based violence. In 2017, as part of the post-revolution legislative and reform fervour, the Tunisian parliament passed a law criminalising gender-based discrimination and violence against women. Similarly, having already withdrawn all its reservations to CEDAW in 2008, Morocco, in the aftermath of the 2011 uprisings, also introduced several legal reforms, including the adoption of a new constitution, which provides a solid basis for greater progress on gender equality and women's human rights: article 19 enshrines the principle of equality between men and women and creates a body to advance progress in these areas. Morocco also reformed its electoral code to introduce a quota to increase female political representation.

While the groundwork had been laid in previous constitutions, the new Egyptian constitution converted the enthusiasm of revolutionary change into an assertion of gender equality. For instance, article 11 of the 2014 constitution calls for appointing women to high political office, including the judiciary, without discrimination,

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<sup>18</sup> Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights: Analytical study focusing on gender-based and sexual violence in relation to transitional justice*, 30 June 2014, A/HRC/27/21, para. 57. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/068/34/PDF/G1406834.pdf?OpenElement>.

<sup>19</sup> Rangita de Silva de Alwis, Anware Mnasri and Estee Ward, Women and the making of the Tunisian constitution, *Berkeley Journal of International Law*, vol. 35, No. 1, p. 92, 2017. Available at [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2758&context=faculty\\_scholarship](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2758&context=faculty_scholarship).

<sup>20</sup> Stephanie Chaban, Addressing violence against women through legislative reform in States transitioning from the Arab Spring, *Gender in Human Rights and Transitional Justice*, Ed. John Lahai and Khanyisela Moyo, New York: Palgrave Macmillan, p.116, 2018.

and for equal representation of women in parliament. The article also requires the State to address violence against women. In Yemen, the National Dialogue Conference (NDC), which lasted from March 2013 to January 2014 as part of Yemeni crisis reconciliation efforts, was another transitional justice experience in the region. Around 30 per cent of its 565 members were women. NDC developed a document on which the new constitution was to be based. The draft constitution recognized women as equal citizens and independent persons, and provided them with a 30 per cent quota in decision-making positions; however, the draft remains in limbo.

#### D. REPARATIONS

Reparations programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims, including the commemoration and memorialization of past events. General Assembly resolution 60/147 reaffirms the right of victims to reparations,<sup>21</sup> and international law establishes different forms of reparation to redress gross violations of human rights law and humanitarian law, such as restitution, compensation, satisfaction and rehabilitation. Experience has shown that the most successful reparations programmes are designed in consultation with affected communities, particularly victims.<sup>22</sup> In addition to material assistance, the State can provide psychological assistance and symbolic measures for victims by establishing public memorials, including historic sites, monuments, sites of conscience<sup>23</sup> and museums; public art projects; and commemorative events. Such initiatives are considered critical elements of transitional justice, preserving the public memory of victims, and raising moral consciousness about past abuse to avoid its recurrence.<sup>24</sup>

In Morocco, endeavours such as public memorialization helped raise awareness about women's experience during the Years of Lead and the violations conducted by the former regime. Public memorialization took the shape of debates featured in the press, which focused on how to confront previous human rights violations through various forms of social, economic and gender justice.<sup>25</sup> Similar focus on memorialization and commemoration took place in Tunisia after 2010, particularly with regard to documenting women's experiences of abuse under the Ben Ali regime.<sup>26</sup> Chile provides an example of a comprehensive reparations programme for victims of Augusto Pinochet's military dictatorship, particularly by providing programmes beyond financial compensation. Eligible beneficiaries were entitled to a monthly pension distributed over several years, educational scholarships for children of the disappeared up to age 35, exemption from military service, and priority access to free psychological and physical State health-care services designed for victims of human rights violations. There were also memorial and symbolic initiatives, including a

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<sup>21</sup> General Assembly resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005. Available at <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>.

<sup>22</sup> Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Analytical study on human rights and transitional justice, 6 August 2009, A/HRC/12/18, para. 28.

<sup>23</sup> According to the definitions of the International Centre for Transitional Justice (ICTJ), 'public memorials' are physical representations or commemorative activities that concern past events erected in public spaces. They are designed to evoke specific reactions, including public acknowledgment of the event or people affected; personal reflection or mourning; pride, anger or sadness about a past occurrence; or learning and curiosity about the past. 'Sites of conscience' are public memorials that make a specific commitment to democratic engagement through programmes that stimulate dialogue on pressing social issues, and that provide opportunities for public involvement in those issues. See ICTJ, *Memorialization and Democracy: State Policy and Civic Action*, p.1, 2001. Available at [https://www.ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English\\_0.pdf](https://www.ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English_0.pdf).

<sup>24</sup> ICTJ, *What Is Transitional Justice?* p.1, 2009. Available at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>.

<sup>25</sup> ICTJ, *Morocco Still a Model for Justice in MENA, but Questions Remain*, 2016. Available at <https://www.ictj.org/news/morocco-still-model-justice-mena-questions-remain>.

<sup>26</sup> For more information see the website of Voices of Memory. Available at <https://voicesofmemory.tn/>.

memorial plaza and mausoleum at the General Cemetery in Santiago.<sup>27</sup> In 2015, congress expanded reparations and approved a one-time payment for political prisoners and torture victims of the dictatorship. Although, the transitional justice process in Chile has faced several challenges, its reparations programme provides an example of reparations focused on rehabilitation and sustainable services to improve victims' and their families' lives.

## E. RECONCILIATION

Reconciliation is a set of processes that involve building or repairing relationships, often in the aftermath of widespread human rights violations. It can occur at the individual, interpersonal, socio-political or institutional levels.<sup>28</sup> In addition to inclusive political arrangements, reconciliation calls for the creation of initiatives that satisfy legally binding rights to truth, justice, reparation, and guarantees of non-recurrence.<sup>29</sup> If reconciliation is to be accepted, it cannot amount to ignoring the past, denying the suffering of victims, or subordinating the demand for accountability and redress to an artificial notion of national unity.<sup>30</sup> Activities such as conflict mediation, trauma healing, community dialogue, joint development projects, historical documentation and public apologies can contribute to its achievement.<sup>31</sup>

Reconciliation varies significantly based on the context at hand. For example, in South Africa, reconciliation was centred around a religious conception of reconciliation, and the African tenet of *Ubuntu*, which is a moral framework that emphasizes a common humanity to achieve broader concepts of healing and harmony. In Chile, reconciliation was focused on overcoming societal divisions, including citizens cultivating greater trust in legal and criminal justice institutions. In Canada, following the 2008 Truth and Reconciliation Commission, Prime Minister Harper publicly apologized for the residential schools that perpetuated the cultural genocide of Canadian indigenous communities. In the Canadian context, reconciliation efforts also include learning about indigenous history and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples.

In the Arab region, there has been little evidence of State-sponsored reconciliation efforts as part of transitional justice process, although this should be the inevitable outcome when the aforementioned approaches are utilized and their outcomes are constructively applied.

## II. ADDRESSING GENDER CONCERNS IN TRANSITIONAL JUSTICE MECHANISMS

The damages of armed conflict and authoritarian systems are borne by men and women, boys and girls in specifically gendered ways. Historically, women and girls have suffered various forms of violence, particularly sexual and gender-based violence. Pre-existing gender-based discrimination plays a significant role, which is exacerbated during and after conflict. In addition to physical endangerment, women and girls' economic, social, cultural, civil and political rights may also be compromised. Given these unique experiences, it is imperative that women and girls' voices are meaningfully integrated into transitional justice processes.

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<sup>27</sup> ICTJ, *The Series of Reparations Programs in Chile*, 2008. Available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/110331ictj.pdf>.

<sup>28</sup> Paul Siels, *The place of reconciliation in transitional justice*, *ICTJ Briefing*, p. 1, 2017. Available at <https://www.ictj.org/publication/reconciliation-transitional-justice>.

<sup>29</sup> Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka, 11 April 2015. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&>.

<sup>30</sup> ICTJ, *Transitional Justice Handbook for Latin America* (Brasilia and New York: Brazilian Ministry of Justice Amnesty Commission), p.51, 2011.

<sup>31</sup> Paul Siels, *The place of reconciliation in transitional justice*, *ICTJ Briefing*, p.10, 2017. Available at <https://www.ictj.org/publication/reconciliation-transitional-justice>.

The narrow scope of transitional justice mechanisms, which often fail to address structural inequalities and vulnerabilities created by systems of war or repressive rule that affect women disproportionately compared with men, has far-reaching human rights implications.<sup>32</sup>

Post-conflict and post-authoritarian settings represent a crucial opportunity to dismantle discriminatory gender norms and practices, and lay the foundation for increased gender equality in the transition period and beyond. New chances to redesign structures and institutions emerge favouring the adoption of gender friendly rule of law reforms [unclear], including drafting a new constitution and reforming the security sector. The restructuring of such institutions offers opportunities for enhancing the inclusion of women. The empowerment of women is imperative for the socioeconomic development of the State, because countries with equal rights for women are more prosperous and more secure.

Rather than a return to the *status quo ante*, countries should strive to foster the wellbeing of all, including women. The meaningful engagement of women in transitional justice processes upholds the State's recognition of women as citizens with equal rights. Privileging and prioritizing women's voices can lead to societal transformation and facilitate a sustainable transition to stable governance and rule of law, preventing the recurrence of old practices and violations. It is important that States engage a diverse array of women to capture the multidimensional experiences and concerns of women. Such actions contribute to re-establishing trust and solidarity between victims and State institutions, an intrinsic prerequisite for comprehensive peacebuilding after the destructive repercussions of widespread conflict or authoritarian repression. Women's rights violations and gender-based inequalities perpetuated by pre-established power structures must be addressed through the adoption of a gender-responsive approach to transitional justice.

The recent Havana peace process of Columbia represents a constructive gendered approach to transitional justice post-conflict. Before the peace negotiations, ministries with transitional justice mandates integrated the work of Colombian women's civil society organizations and took on the implementation of gender policies. The establishment of the Gender Sub-Commission and a quota of victims' organizations during the peace negotiations resulted in tangible gains for women in the final accords, since they were active in the drafting of the protocols. For example, the peace agreement was the first to explicitly prohibit amnesty for crimes of sexual violence during conflict. As Colombia moves forward, these developments establish a strong foundation for gender justice.

In Morocco, the IER commissioned study on violations against women was the first official effort to recognize that violence affected men and women in different ways.<sup>33</sup> The inclusion of women's testimonies in the broadcasted hearings highlighted sexual and gender-based violence during the Years of Lead.<sup>34</sup> The negotiations process inspired public debates about the best ways to address gender justice.<sup>35</sup> Furthermore, the reparations programme progressively challenged Moroccan inheritance laws by awarding wives compensation based on their role as victims' spouses.<sup>36</sup> Consequently, IER set an important precedent for other truth commissions.

Tunisia serves as an important example of taking a gendered approach to transitional justice in the Arab region. Women were included at all levels of the transitional justice process through quotas for women's participation and representation in the IVD technical committees and national consultations. The meaningful engagement of women's civil society organizations in IVD provided support to victims, by conducting outreach

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<sup>32</sup> UN Women, A Global Study on the Implementation of United Nations Security Council resolution 1325, p.110, 2015.

<sup>33</sup> ICTJ and Foundation for the Future, Morocco: Gender and the Transition Process, p. 36, 2011. Available at <https://www.ictj.org/sites/default/files/ICTJ-Morocco-Gender-Transitional%20Justice-2011-English.pdf>.

<sup>34</sup> Ibid., p. 25.

<sup>35</sup> ICTJ, Morocco Still a Model for Justice in MENA, but Questions Remain, 2016. Available at <https://www.ictj.org/news/morocco-still-model-justice-mena-questions-remain>.

<sup>36</sup> Ibid.

and making the overall process more accessible and sensitive to their needs. The increased participation of women helped give voice to the experiences of female victims that, in turn, broadened the spectrum of harms that the country's transitional justice system sought to address. IVD recognition of socioeconomic harm helped disrupt the narrative that women suffer primarily as victims of sexual and gender-based violence, and compelled the State to tackle the structural inequities that provoked the revolution in the first place.<sup>37</sup>

### **Box 2. Gendered approach of Northern Ireland to dealing with the past**

The Northern Ireland conflict, also known as the Troubles, was a violent sectarian conflict that took place from 1968-1998. The 1998 Belfast/Good Friday peace agreement lacked a strong gendered approach: the peace agreement's reference to the enhancement of women in public life was only included after the Northern Ireland Women's Commission argued for its inclusion. Based on this experience and the continued omission of women in more recent processes dealing with the legacy of the past, in 2015 and after many consultations with victims and survivors, the Legacy Gender Integration Group developed *Gender Principles for Dealing with the Legacy of the Past* as a response to Northern Ireland's transition. These 10 principles document important best practices for transitioning communities, including the prioritization of victim-ownership over the process, crafting local bottom-up responses based on international best practice, and confronting structural obstacles to inclusion. It encourages focusing on individuals' experiences and the complexity of their narratives, while remaining attentive to the greater pattern of harms at the household, community and State levels. The principles recommend the appointment of a group comprised of members with gender expertise and relevant lived experiences, dedicated to overseeing the integration of gender in transitional processes.

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Source: Legacy Gender Integration Group, *Gender Principles for Dealing with the Legacy of the Past*, 2015. Available at [https://www.ulster.ac.uk/\\_\\_data/assets/pdf\\_file/0009/66285/Gender-Principle-Report-Sept-2015\\_Final-Version.pdf](https://www.ulster.ac.uk/__data/assets/pdf_file/0009/66285/Gender-Principle-Report-Sept-2015_Final-Version.pdf).

## **III. NATIONAL WOMEN'S MACHINERIES' INVOLVEMENT IN TRANSITIONAL JUSTICE MECHANISMS**

The Beijing Declaration and Platform for Action, as a comprehensive and universally agreed roadmap for realizing women's rights, strongly recommends that Governments establish institutional mechanisms for the advancement of women, also known as National Women's Machineries. The Platform for Action defines NWMs as "the central policy-coordinating unit inside Government" whose "main task is to support government-wide mainstreaming of a gender-equality perspective in all policy areas".<sup>38</sup> Their mission is to "design, promote the implementation of, execute, monitor, evaluate, advocate and mobilize support for policies that promote the advancement of women".<sup>39</sup>

### **Box 3. Gender mainstreaming**

"Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated."

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Source: ECOSOC agreed conclusions 1997/2.

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<sup>37</sup> Roslyn Warren and others, *Inclusive Justice: How Women Shape Transitional Justice in Tunisia and Colombia*. The Georgetown Institute for Women, Peace and Security (GIWPS), p.17, 2017. Available at <https://giwps.georgetown.edu/wp-content/uploads/2017/08/Transitional-Justice.pdf>.

<sup>38</sup> Beijing Declaration and Platform for Action, paras. 201 and 202.

<sup>39</sup> Ibid., para. 196.

In post-conflict and political transition periods, NWMs are expected to be involved in national efforts pertaining to, among others, reconstruction, reform and transitional justice. NWMs, like many State institutions, can play a vital role in the design and implementation of transitional justice processes, including the mainstreaming of gender. They can offer important expertise by influencing and participating in transitional justice mechanisms to ensure that they are developed, implemented and evaluated using a gender-sensitive perspective that challenges inequalities. NWMs may coordinate their work on transitional justice with different governmental and non-governmental stakeholders, including truth commissions and civil society. This provides female victims of human rights violations with a platform to ensure that their concerns and needs are reflected in post-conflict reconstruction and post-authoritarian transition, which is also in line with the WPS agenda.

It is imperative that women and girls are considered active participants in a transition, rather than passive recipients with no or little control or voice in the process. Their involvement should be empowering, thus helping women and girls move beyond their experience of victimization to a new way of being that they define for themselves. According to the Special Rapporteur on violence against women, its causes and consequences: without the participation of women and girls from different contexts, initiatives are more likely to reflect men's experience of violence and their concerns, priorities and needs regarding redress.

NWMs can offer an empowering entry point to facilitate such discussions, and provide access to a diversity of women and girls. In some situations, individuals have different legal status: nationals of the State, refugees, asylum-seekers or migrants. Therefore, NWMs must address the intersectional needs of female constituents while still communicating and managing expectations, so that marginalized groups are not further stigmatized or locked out of processes. Without such participation, an opportunity is missed for victims to gain a sense of agency that may be, in itself, an important form of rehabilitation, especially when victims come to perceive themselves as actors of social change.<sup>40</sup>

NWMs can also prevent future violations by engaging in a discussion with various stakeholders on the causes and consequences of civil, political, economic, social and cultural rights violations that stem from structural factors, including unequal power distribution, discrimination and inequality in law and practice. This can include proposing or advocating gender-sensitive legal and policy reform. In this way, NWMs can prevent the normalization of different types of violence in the post-conflict and transition context, and contribute to building a more inclusive and gender just political order.<sup>41</sup>

It is important that women participate in reparations discussions and are engaged in the design and implementation of reparations to ensure that they are not excluded, either by formal rules of the transitional processes, or by failures in implementation.<sup>42</sup> Therefore, they need to be consulted on what works to secure their participation, in terms of timing, venues and participation methods. NWMs need to arrange practical measures to safeguard women's participation.

#### **IV. CONCLUSION AND POLICY RECOMMENDATIONS**

Transitional justice processes and mechanisms have been implemented in the Arab region, with varying outcomes. These processes and mechanisms, with the full engagement of NWMs, can be utilized to advance gender equality and women's empowerment in the Arab region.

There is no 'one-size-fits-all model' of transitional justice. While all transitional justice processes must be tailored to the local context, extensive findings from decades of research have led to the establishment of a set of international standards, norms and good practices that may guide national efforts

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<sup>40</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, 23 April 2010, [A/HRC/14/22](#), paras. 29 and 31.

<sup>41</sup> Ibid.

<sup>42</sup> Human Rights Council, *Report of the Special Rapporteur on truth and justice*, 14 October 2014, [A/69/518](#), paras. 70-71.

to address transition and the legacy of the past. These standards, norms and practices inherently involve the active participation of women and girls, as gender-responsive approaches can positively influence long-term transformation in society.

ESCWA calls for State endorsement of gender-responsiveness in post-conflict, reconstruction and transition processes to address the root causes of violence and to respond to women's experiences of conflict, and their justice and accountability needs. Furthermore, ESCWA calls for the promotion of a more proactive role by NWMs to ensure gender mainstreaming and the amplification of women's voices during and within transitional justice process and mechanisms. ESCWA therefore recommends the following policy actions to Arab countries to allow for the meaningful engagement of NWMs in a gendered approach to transitional justice:

- Support the active participation of NWMs in peacebuilding and transitional justice processes, namely truth-seeking commissions, prosecutions, reparations, institutional reforms and reconciliation, to ensure that gender is mainstreamed and women and girls' concerns and needs are reflected. This must include the establishment of specific tools for NWMs to ensure the examination of the gendered impacts of various outcomes of peace and transitional justice processes;
- Ensure that NWMs are empowered and well situated to influence gender policy at the government level, as outlined in Strategic Objective H of the Beijing Platform for Action. This can be done by developing a strong mandate, securing sufficient financial resources and personnel, developing strong links with civil society, and developing accountability mechanisms. A strong presence on the ground and in Government will enable NWMs to build trust to work with women and girls on issues relating to transitional processes;<sup>43</sup>
- Empower NWMs to advocate to all stakeholders, both governmental and non-governmental, as well as women and girls, to build links between international standards and local solutions. To achieve this, they need to be flexible and creative in creating these links through group and individual meetings with women and girls, and with community leaders and civil society. In doing so, NWMs can ensure that the needs of women and girls are fully mainstreamed into all transitional justice processes and mechanisms;
- Strengthen national justice systems to facilitate the investigation and prosecution of sexual and gender-based violence during conflict, in line with international standards and in compliance with the principles of non-discrimination. Ensure that a broad definition of sexual and gender-based violence, in accordance with international human rights law, is utilized when engaging in transitional justice processes and mechanisms. If national systems do not exist or do not have the capacity to address sexual and gender-based violence, ensure that States engage with international courts and tribunals;
- Prioritize the accession to and adoption of international human rights instruments, namely CEDAW, the Beijing Platform for Action, the WPS agenda and the 2030 Agenda, and promote the gender-sensitive reform of national laws and policies in line with the international standards and norms. This must include a legal framework, policies and programmes that ensure the human rights of women in conflict prevention, conflict and post-conflict situations. Such legislation and policies must institute prevention and protection measures that guarantee the fundamental rights of all, without discrimination.

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<sup>43</sup> For a more detailed discussion of the resilience of NWMs in the Arab region during conflict and transition, see ESCWA, *Cultivating Resilient Institutions in the Arab Region: National Women's Machineries in Challenging Times*, [E/ESCWA/ECW/2019/4](#).





