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POLICY BRIEF: ADDRESSING DIVERSITY AND INCLUSION THROUGH TRANSITIONAL JUSTICE

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Centre for the Study of Violence and Reconciliation

The Centre for the Study of Violence and Reconciliation (CSVR) is an independent nongovernmental organisation established in South Africa in 1989. We are a multi-disciplinary institute that seeks to understand and prevent violence, heal its effects and build sustainable peace at community, national and regional levels. We do this through collaborating with, and learning from, the lived and diverse experiences of communities affected by violence and conflict. Through our research, interventions and advocacy we seek to enhance state accountability, promote gender equality and build social cohesion, integration and active citizenship. While primarily based in South Africa, we work across the African continent through collaborations with community, civil society, state and international partners.

Comparative Study of Transitional Justice in Africa

This publication is one of the outputs of the Comparative Study of Transitional Justice in Africa. The study presents a comparative analysis of 12 African countries where transitional justice mechanisms have been implemented. Mapping the range of processes in this field, the study pays particular attention to transitional justice mechanisms employed between 1990 and 2011 to deepen understandings of how these processes were developed, and the role of their respective contributions to the prevention or recurrence of war and repression. Specifically, the study examines the factors that shaped state policy decisions in framing the diverse set of responses to dealing with legacies of dictatorship, civil war, and mass human rights abuses, and assesses the consequences of these decisions for achieving sustainable peace and preventing future human rights abuses. <https://www.csvr.org.za/african-transitional-justice-comparative-study>

Acknowledgements

Special thanks to Thokozani Mbwana for her inputs on previous versions of this policy brief and to Jasmina Brankovic for the final edit.

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Published January 2020

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Introduction

Transitional justice is generally promoted on the basis that it ensures that the diverse sectors of society affected by conflict are included in the process of rebuilding societies after conflict and authoritarian rule. Inclusion, diversity, victim-centeredness, broad consultations, community voices, and participatory engagement have become key phrases that characterize the normative frameworks that guide national policy developments. The United Nations guidelines, the European Union policy framework, the International Criminal Court’s Trust Fund for Victims, and now the African Union Transitional Justice Policy all seek to give more substance to these concepts.

This principled commitment is an important step in consolidating the foundational values of transitional justice. The danger is however that these can become empty phrases and superficial rituals of engagement if they are not subjected to ongoing review and critical engagement by those who are supposed to be included.

The field of transitional justice has evolved considerably over the last 30 years. Key to these developments have been the increasingly strong voices of different sectors of society who have demanded that their experiences be acknowledged, that their particular and diverse needs be recognized, and that they be accepted as essential stakeholders in transitional justice processes. This call for greater inclusiveness has not just sought to adjust the boundaries of who is at the table, it has also challenged the way we understand political conflict, the meaning of transition, and the ways that society rebuilds and envisions its future.

This policy brief outlines policy and practice on diversity and inclusion in transitional justice on the African continent, and explores how these principles can be given more substance.

Inclusion and Diversity as African Transitional Justice Norms

Over the past three decades, there has been a significant normative shift towards support for inclusivity and diversity in transitional justice processes in Africa. In public declarations and policy statements, there is now broad support for both. Translating this into practice has however proven a lot more challenging.

The norm of victim-centeredness has become a key principle driving contemporary conceptions of transitional justice. This norm affirms the vital significance of addressing victims’ rights, including them in consultations regarding transitional justice policy, and ensuring that interventions are effective in addressing their needs.

Victims of human rights violations in settings of war and mass atrocity include a broad range of people targeted or made vulnerable for various reasons. They experience different forms of violations and present with different needs in relation to accessing redress and rebuilding their lives. In recognizing the full diversity of victims’ experiences and needs, the importance of approaching them as key constituents who need to be consulted and understood becomes clear. Taking victims seriously thus translates into taking the diversity of victimized groups seriously, rather than treating them as a uniform mass.

A second critical normative shift in transitional justice in Africa has been acceptance of the need for consultation and participation. The recognition that transitional justice processes will not succeed without effective input and participation from those directly affected by repression or conflict has led to policy frameworks and mainstream practice increasingly acknowledging the centrality of inclusion in all aspects of the processes. The African Union Transitional Justice Policy goes as far as to include inclusivity in its definition of transitional justice:

Transitional justice refers to the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an **inclusive consultative process**, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.¹

This understanding of inclusion extends not only to direct victims but also to all those affected by conflict and who are expected to benefit from transitional justice processes. It potentially speaks to the perspectives of those who are vulnerable to ongoing violence and whose exclusion creates the conditions for future conflict. It thus opens the door for processes that go beyond narrowly targeted consultations with select beneficiary groups.

Transitional justice practice however is often marked by empty rituals rather than a substantive commitment to principles of inclusivity.² While those involved in high-level political negotiations cannot ignore these obligations, they have not always translated them into effective processes of consultation and participation. Many transitional justice measures are still heavily criticized for their failure to recognize the diversity of experiences and to include key sectors in policy development and implementation. The inclusion of marginalized groups is often an afterthought rather than a central element of policy development and transitional justice implementation. Policy makers rarely assess victims' needs, and while many processes claim to be victim-centered, victims are not given the opportunity to engage with them on their own terms. As a result victims have little agency and often participate merely as instruments of transitional justice measures.

The Meaning of Inclusion

The term 'inclusivity' lacks conceptual clarity in the transitional justice field. Inclusivity means different things to different stakeholders and, even if it is accepted in principle, implementation in an inclusive manner proves contentious. Inclusion can be broadly understood as incorporating groups who might otherwise be excluded or marginalized from decision-making processes, such as women, youth, people with disabilities, and members of minority groups.

The meaning of inclusion in transitional justice can be framed in relation to key aspects of the process, namely: 1) the nature and scope of human rights violations addressed by transitional justice processes, 2) consultation and participation in policy development, 3) representation in transitional justice mechanisms, and 4) participation in transitional justice implementation and monitoring. The question of inclusion thus goes beyond setting up processes of participation in predetermined and

¹ African Union Transitional Justice Policy, 2019, p. 4, <https://au.int/en/documents/20190425/transitional-justice-policy> (emphasis added).

² Impunity Watch, 2014, "Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?" https://static.wixstatic.com/ugd/f3f989_053a6f3aa4f-845fe9e8bae444bc2d755.pdf.

prescribed frameworks where transitional justice simply gets synchronized to particular unique needs. Inclusion can present challenges to existing power dynamics that may require a reconceptualization of key assumptions regarding the pillars of transitional justice.

There are some forms of transitional justice that have proven quite malleable and innovative in how they respond to issues of diversity and inclusion. Others, such as courts, which are subject to stricter conventions, have been much slower to adapt.

Redefining the scope of human rights violations addressed by transitional justice

The scope of human rights violations addressed by transitional justice processes continues to expand. Initially the focus was on physical violence in the form of killings, torture, cruel, inhumane, and degrading treatment, and enforced disappearances. In more recent times there has been growing acknowledgment of other human rights violations, such as psychological trauma, economic, social, and cultural rights abuses, sexual and gender-based violence, sexual torture, and structural and systemic violence.

This expansion has at times been driven by particular groups who have sought to shape transitional justice as an avenue for addressing their concerns. Feminists, for example, entered the transitional justice arena with the overt intention of shifting its parameters to speak to broader injustices than those conventionally contained in its mandate.

The expanding agenda has raised fundamental questions about what we mean by transitional justice. Explicitly recognizing sexual and gender-based violence or violence targeting LGBTI+³ individuals and communities in transitional justice mandates has required a rethink of the meaning of political transitions, the term ‘reconciliation,’ and the methodologies of pursuing these outcomes.⁴

Early truth commissions and war crimes trials adopted ‘gender-neutral’ conceptions of human rights violations. Years of awareness raising and lobbying resulted in recognition of sexual violence as a strategy in war and rape as a tool of genocide, which shifted how these mechanisms define the range of violations they address and the tools required for engaging victim populations.⁵

In addition, popular debates around transitional justice have seen youth mobilizing for a focus on political and economic exclusion in transitional justice mandates. This has been particularly foregrounded in countries like Tunisia where youth are marginalized in the formal economy. Rather than just focusing on physical abuses, transitional justice mechanisms in Sierra Leone, Kenya, and Tunisia have exposed the corrupt practices of economic elites that excluded the bulk of their populations from access to economic and political opportunities.

Despite these shifts, the explicit inclusion of violations of the rights of LGBTI+ individuals is so far only visible in the mandate of the Colombian transitional justice process.⁶ Moreover, more radical agenda shifts regarding gender-based violence and violence targeting LGBTI+ individuals have been reversed in cases where more conservative forces reasserted themselves.

³ LGBTI+ refers to lesbian, gay, bisexual, transgender, intersex, and other gender non-conforming identities and sexualities.

⁴ Thokozani Mbwana, 2019, “Transitional Justice and the Inclusion of LGBTQIA+ Rights,” Centre for the Study of Violence and Reconciliation Policy Brief. <https://www.csvr.org.za/publications/2851-transitional-justice-and-the-inclusion-of-lgbtqia-rights>

⁵ Sherrie L. Russell-Brown, 2003, “Rape as an Act of Genocide,” *Berkeley Journal of International Law* 21, p. 350.

⁶ Pascha Bueno-Hansen, 2018, “The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America,” *International Journal of Transitional Justice* 12, no. 1, pp. 126–45.

Nonetheless, these shifts have raised new questions. What new society is envisioned by these processes? What is the meaning of citizenship and how are its boundaries defined in a peaceful and democratic society? Who is recognized and what does this mean for their participation in political processes?

Participation in policy development

State-driven transitional justice mechanisms are often developed through peace negotiations or within the formal frameworks of governmental processes. Traditionally these were exclusive forums driven by polarized political agendas. As a result, public debate and consultation were not key elements of the design process. As civil society has mobilized around transitional justice agendas, these policy spaces have been contested and opened up to new voices. Where international donors have supported transitional processes, they have also usually funded national consultations where a range of constituencies have been brought into debates.

In contexts of ongoing political tension and with little history of broad democratic participation, such consultations may be quite limited. In some countries consultations have amounted to little more than a national survey of opinions. In others, such as Burundi, those being consulted are just given a menu of options to choose from. Where women and youth have been more actively engaged in policy design (such as in Tunisia)⁷, transitional justice processes have been more effectively tailored to engage with their priorities.⁸

Participation in mechanisms

Transitional justice processes have seen a shift from mainly state-led mechanisms towards a more diverse range of processes that include semi-state and non-state measures, many of which include representation from different sectors of society and often explicitly include gender quotas. Non-legal mechanisms have been particularly innovative in pursuing inclusivity (rather than just technical expertise and reputation) as a key resource for ensuring their legitimacy and reach, and thus their ability to deliver on their goals.

The need for gender balance in the composition of truth commissions has become commonly recognized. Some early truth commissions had very few women commissioners, for example South Africa in 1995 with 7 women out of 17 commissioners, Peru in 2001 with 2 out of 12, and Morocco in 2014 with 1 out of 17. More recent truth commissions have a higher proportion of women commissioners, such as Kenya in 2009 with 3 women out of 7 commissioners and the Gambia in 2018 with 5 out of 11. As noted by the World Bank:

Gender equality should ... be a criterion for selecting commissioners. Although equal representation of men and women as commissioners will not guarantee a gender-sensitive approach, it does demonstrate the importance of recognizing different understandings of reality and the differential impacts of human rights violations on different types of people. The appointment of women as commissioners also facilitates the investigation of cases of sexual violence, where victims are mostly women. The selection of staff, interviewers,

⁷ International Centre for Transitional Justice, 2017, "Women's Participation in the Tunisian Transitional Justice Process" Workshop Notice, <https://www.ictj.org/event/womens-participation-tunisian-transitional-justice-process>

and researchers responsible for the TC's daily work should also follow this gender balance requirement—to send a positive message to the TC's staff and the general population.⁹

Finally, many transitional justice processes now recognize the need for continued consultations with communities affected by conflict. Maintaining a relationship with particular sectors and collaborating with civil society organizations with specific expertise in these areas has occurred in some countries.¹⁰ Such 'outreach' or 'popularization' processes are however often just one-way channels of communication. The communities they are intended to serve have criticized them for not providing avenues for effective engagement and accountability. This has led to the critique that many transitional justice mechanisms are responsive to national and international political elites rather than to local communities most affected by conflict.¹¹

Participation in monitoring and advocacy for implementation

Many transitional justice processes are designed as short-term interventions that present findings and recommendations to guide future state action. While they often succeed admirably in achieving their goals, it is then up to the state to implement the recommendations and facilitate a longer-term process of justice, transformation, and reconciliation. This aspect of transitional justice has been the most severely criticized, as states have consistently failed to fulfill their obligations. It has undone much of the good will and trust built by transitional justice mechanisms.

After the South African truth commission's robust engagement with victims, for example, the government's marginalization of victims in developing and implementing reparations and prosecutions led to protests and court challenges. After the Sierra Leonean truth commission's recommendations regarding reparations for people with war-related disabilities¹² and the Kenyan truth commission's recommendations regarding reparations and accountability for sexual and gender-based violence,¹³ there has been little in the form of delivery by the state. Efforts to seek redress by these affected communities and sectors continue. A 2014 report by the Amputee and War-Wounded Association in Sierra Leone called on

the government and international community to ensure that the recommendations of the TRC (2004) are respected and are implemented. ... People who gain severe injuries during a conflict have long term health, rehabilitative and social care needs that must be prioritised in a sustainable way. The fact that victims' rights have not been respected will have ramifications. It has also caused mistrust towards the government and international community about getting involved in peace and justice processes.¹⁴

Civil society has increasingly lobbied for more responsive transitional justice processes. It has monitored and engaged with mechanisms to ensure they deliver on their mandates, and pressured states to follow through on the mechanisms' recommendations. Ongoing engagement of this sort requires significant resources and investment in collaboration and networks, which is difficult to maintain

⁸ Abigail Gyimah, 2009, "Gender and Transitional Justice in West Africa: The Cases of Ghana and Sierra Leone," African Leadership Centre Research Report No. 4.

⁹ World Bank, 2006, "Gender, Justice, and Truth Commissions," <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/GJTClayoutrevised.pdf>.

¹⁰ Sheila Meintjes, 2009, "'Gendered Truth'? Legacies of the South African Truth and Reconciliation Commission: Views from the Field," African Journal on Conflict Resolution 9, no. 2, pp. 101–12.

¹¹ Simon Robins, 2012, "Challenging the Therapeutic Ethic: A Victim-Centred Evaluation of Transitional Justice Process in Timor-Leste," International Journal of Transitional Justice, 6, no. 1, pp 83–105.

¹² Edward Conteh and Maria Berghs, 2014, "'Mi At Don Poil': A Report on Reparations in Sierra Leone for Amputee and War-Wounded People," Sierra Leone Amputee and War-Wounded Association, <https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/AWWA%20Report%20on%20Reparations.pdf>.

¹³ Agatha Ndonga, 2018, "Kenya: Still Grappling with a Stalled Transitional Justice Mandate," International Center for Transitional Justice, <https://www.ictj.org/news/kenya-still-grappling-stalled-transitional-justice-mandate>.

¹⁴ Conteh and Berghs, 2014.

indefinitely. Funders often treat transitional justice as a short-term process and see the closure of a truth commission or a big trial as the end of the story, instead of just the foundation on which effective justice for marginalized groups can be pursued.

Benefits and Dangers of Inclusion

Inclusive transitional justice that encourages diversity in participation holds a number of potential benefits. Firstly, there is significant knowledge gained through inclusivity. Knowledge of the dynamics of conflict in a particular context is enriched by diverse voices, for there is a greater understanding of the causes of conflict, the conditions that produced a conducive environment for the conflict or repression to emerge, and the nature and extent of the human rights abuses committed.

This knowledge is enriched by diverse voices because conflict and repression impact on individuals in society differently depending on their identity. For example, women, LGBTI+ individuals, youth, and other marginalized groups all have different experiences of conflict. Therefore any attempt to address the wrongs of the past needs to begin with an understanding of the varied lived experiences of diverse groups of people to enable a more complete and nuanced picture of the conflict or authoritarian period and the ensuing human rights violations.

Secondly, transitional justice gains legitimacy from inclusion. Transitional justice needs to be framed in a way that is responsive to the experiences of conflict, the values, and the perspectives of the full range of stakeholders in the global South. Transitional justice is often a technocratic and elitist process that is alien to the communities it is supposed to benefit. Where transitional justice has failed to address inclusion and build local ownership, this challenge to its legitimacy is impossible to refute.

Those activists who have sought to indigenize transitional justice have developed processes that are more attuned to local needs and realities. This can only be done through a process that is inclusive in its design and implementation. Therefore, bringing transitional justice to ‘the people’ and ‘the people’ to transitional justice is an important element in ensuring that the process is deemed legitimate, locally owned, and reflective of the ideals of all in society, including victims’ groups and other marginalized groups.

The conditions that necessitate the establishment of transitional justice processes— injustice, inequality, exclusion, dehumanization— need to be overcome and not reproduced. All too often, exclusionary politics are replicated in transitional justice mechanisms and certain sections of society are left out of meaningful spaces of participation and control. In as much as transitional justice seeks to prevent future conflict through addressing its root causes, inclusion and legitimacy are interdependent and necessary conditions.

There is also a dark side to inclusivity, in the form of short-sighted participative processes that expose vulnerable groups to re-traumatization or raise unrealistic expectations. Using victims and other vulnerable groups to legitimize a transitional justice process without including them effectively in its design and oversight can do more harm than good.

Who is Included in Transitional Justice?

The scope of diversity and extent of inclusivity in transitional justice has constantly been expanding. The United Nations approach to transitional justice (2010),¹⁵ the European Union’s Policy Framework on Support to Transitional Justice (2015),¹⁶ and the recently adopted African Union Transitional Justice Policy (2019)¹⁷ all emphasize inclusion as a key principle and focus on particular dimensions of diversity, including but not limited to women, youth, and members of other historically marginalized groups.

These policies provide strong affirmations of the centrality of inclusion of certain voices in transitional justice processes. The United Nations document focuses in particular on the inclusion of women and children:

National consultations are a critical element of the human rights-based approach to transitional justice, founded on the principle that successful transitional justice programmes necessitate meaningful public participation, including the different voices of men and women.¹⁸

The UN should facilitate the process of national consultations by organizing forums for discussions, providing legal and technical advice, promoting the participation of traditionally excluded groups, such as victims, minorities, women, and children, supporting capacity building, and mobilizing financial and material resources.¹⁹

[The UN should in strengthen transitional justice processes through] Encouraging women and children to actively participate in the peace process, by sharing their gender-specific experiences of the conflict, and their priorities for achieving sustainable peace and accountability through appropriate transitional justice mechanisms.²⁰

The European Union spells out its commitment to inclusion more clearly and concretely, recognizing children particularly as key stakeholders with a right to be included.²¹

The African Union takes this commitment to diversity and inclusion a few steps further. Its policy explicitly includes a focus on youth and people with disabilities as key constituencies for inclusion. It also includes within its nine foundational principles “inclusiveness, equity and non-discrimination” and “due regard to the gender and generational dimensions of violations and transitional processes.”²² The policy has a section on “cross-cutting issues” with subsections on women and girls, children and youth, persons with disabilities, internally displaced persons, refugees and stateless persons, and older persons.²³

Another section of the African Union policy is dedicated to “diversity management,” which addresses the group dimension of conflicts and violations where violence was organized

¹⁵ United Nations, 2010, “Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice,” https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.

¹⁶ European Union, 2015, “The EU’s Policy Framework on Support to Transitional Justice,” http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf.

¹⁷ African Union Transitional Justice Policy, 2019.

¹⁸ United Nations, 2010, p. 9.

¹⁹ Ibid., p. 9.

²⁰ Ibid., p. 11.

²¹ See EU, *supra* n 16, Section IV, para. 8.

²² African Union Transitional Justice Policy, 2019, pp. 6, 7.

²³ Ibid., pp. 21–24.

and perpetrated on the bases of race, ethnicity, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.²⁴

Women and transitional justice

A key problem for transitional justice is that it has been narrowly conceptualized as addressing specific political conflicts, which blinds it to various underlying and ongoing ‘non-political’ divisions and forms of violence, such as gender-based violence. Violence against women is thus often ignored by mechanisms that focus on politically motivated abuses. Excluding such crimes as ‘ordinary’ or ‘apolitical’ ignores the fact that gender-based violence is embedded in a sociopolitical system of gender inequality.

While there has been increased recognition of sexual violence as a weapon of political conflict, policy makers have been reluctant to deal with the deeply embedded gender roles and inequalities which create vulnerabilities that are exacerbated during conflict. Violence against women cannot be framed outside the context of gender inequality.²⁵ It is no wonder that violence against women does not end with the signing of peace agreements and transitions to democracy. It should be understood as taking place along a continuum—before, during, and after conflict or repression.²⁶

A case in point is South Sudan. While a revitalized peace deal was signed in September 2018, sexual violence against women continues to rise and remains endemic in the country. Structural challenges that limit women’s access to opportunities and resources, coupled with unequal gender dynamics, create an environment that is conducive to women’s insecurity in places such as refugee and internally displaced persons camps in South Sudan. Similarly, in countries as diverse as Guatemala, Liberia, and South Africa levels of violence against women are similar and at times higher than those experienced during times of armed conflict.²⁷

Transitional justice processes have historically failed to address the multifaceted issue of gender justice, particularly where women’s voices have been absent in policy development or the implementation of these processes. The South African truth commission failed to engage in a gender analysis of the abuses it documented, provide appropriate avenues for women to engage with the commission, or make significant recommendations for how entrenched gender-based violence could be prevented. This was strongly critiqued and provided the basis for future truth commissions to improve their strategies. The Sierra Leone truth commission, for example, attempted to highlight the gendered impact of conflict by paying special attention to sexual violence perpetrated against women.

The Tunisian truth commission demonstrated the political will and innovation to go beyond women’s experiences of sexual violence under authoritarianism by also examining violations of socioeconomic and cultural rights. The commission established a Women’s Committee as a way of showing commitment to women’s full and meaningful participation in the process. This opened points of access through which women in civil society and women victims of human rights violations could participate.²⁸ The

²⁴ Ibid., p. 15.

²⁵ Maxine Rubin, 2018, “Transitioning Toward Gender Justice: A Trend Analysis of 13 African Cases,” Centre for the Study of Violence and Reconciliation Policy Brief, <https://www.csvr.org.za/project-reports/The-need-for-transitional-justice-to-embrace-gender-justice-cover.pdf>

²⁶ Romi Sigsworth and Nahla Valji, 2012, “Continuities of Violence against Women and the Limitations of Transitional Justice: The Case of South Africa,” in S. Buckley-Zistel and R. Stanley, eds., *Gender in Transitional Justice*, Palgrave Macmillan, London; Helen Scanlon and Kelli Muddell, 2009, “Gender and Transitional Justice in Africa: Progress and Prospects,” *African Journal on Conflict Resolution* 9, no. 2.

²⁷ Lotta Teale, 2009, “Addressing Gender-Based Violence in the Sierra Leone Conflict: Notes from the Field,” *African Journal on Conflict Resolution* 9, no. 2, pp. 69–90.

²⁸ Roslyn Warren, Anna Applebaum, Briana Mawby, Holly Fuhrman, Rebecca Turkington, and Mayesha Alam, 2017, “Inclusive Justice: How Women Shape Transitional Justice in Tunisia and Colombia,” Georgetown Institute for Women, Peace and Security Report.

Women's Committee has however been critiqued for using its powers to shine a light on certain types of harms and victims—generally along partisan lines—thereby creating victim hierarchies.²⁹

With the lessons learned from previous processes, transitional justice policy and practice can play an important role in demonstrating a state's commitment to addressing sexual and gender-based violence, providing acknowledgment for these wrongs, and setting out recommendations that bolster other social programs for preventing future violence.³⁰

LGBTI+ and transitional justice

While gender justice and the need to address sexual and gender-based violence is increasingly recognized as a key aspect of justice in the transitional justice field, it has seldom been viewed as inclusive of repression and violence against sexual and gender minorities. In addition, “there is a tendency in the transitional justice field to equate gender with women, thereby ‘exclusive gender’. If transitional justice is to be more inclusive, it is critical that everyone's gendered experiences and gendered harms are appreciated and addressed—men, women, boys, girls, and gender non-conforming persons.

Global policy frameworks are slow to recognize LGBTI+ individuals and communities as disproportionately or uniquely affected by conflict. There have been some significant developments, especially in Latin American transitional justice processes, that push this boundary through inclusion of cases of violence against gender and sexual minorities in their mandates. The transitional justice process in Colombia, for example, has established precedents for providing redress to LGBTI+ populations. Its 2011 Victims and Land Restitution Law takes into account the particular needs relating to sexual orientation and gender identity. The National Center for Historical Memory established by this law conducted extensive research on the repression of LGBTI+ populations.³¹ These developments came on the back of decades of documentation and mobilization by local LGBTI+ activists and their direct involvement in the Colombian peace negotiations.

Despite increased recognition of the gender diversity of precolonial societies and the role of colonial rule in framing gender and sexual orientation as narrow inflexible categories, transitional justice processes in Africa have been slow to broaden inclusion to this community.³² Where transitional justice mechanisms have been open to looking at their mandates expansively, repression of LGBTI+ communities has been investigated and condemned. The South African truth commission did not have an explicit mandate in this regard, but it held hearings to expose abuses committed by the South African Defence Force against homosexuals, including forced gender reassignment surgery and coerced conversion therapy.

Youth and transitional justice

While young people are key stakeholders in transitional justice processes and have much to contribute and gain, they are often given little space to engage in such processes or are completely marginalized.³³ Rhetoric about the need for youth inclusion has increased, but this has seldom translated into serious efforts at inclusion through participation or a focus on youth experiences of repression and conflict.

²⁹ Elise Ketelaars, 2018, “Gendering Tunisia's Transition: Transformative Gender Justice Outcomes in Times of Transitional Justice Turmoil?” *International Journal of Transitional Justice* 12, no. 3, p. 407.

³⁰ Maxine Rubin, 2018, “State Responsiveness to Conflict-Related Violence against Women: Transitional Justice Trends from 13 African Cases,” Centre for the Study of Violence and Reconciliation Policy Brief, <https://www.csvr.org.za/pdf/SGBV%20and%20TJ%20Policy%20Brief.pdf>.

³¹ Bueno-Hansen, 2018.

³² Mbwana, 2019.

³³ Olivier Kambala wa Kambala, 2017, “Benchmarking the Role of African Youth in Transitional Justice Processes,” Centre for the Study of Violence and Reconciliation Report, <https://www.csvr.org.za/pdf/TJ-Youth-Report-Electronic.pdf>

While children have become a focus for transitional justice processes, these engagements have treated them as victims or passive recipients of attention, rather than actively sought their input or mobilized them as a sector that is expected to shape policy and implementation.

Given the role of youth in driving or supporting political change and their often direct participation in violent conflict as combatants, this is a serious oversight. Many political conflicts have at their root a society's inability to address problems that disproportionately affect the youth, namely unemployment, poverty, inequality, and public exclusion from political power. Youth activism, particularly of students driving political campaigns relating to democracy, anti-corruption, and social justice, has flourished in the last decade.

In addition, the way young people have used new technologies in these settings has shown their ability to drive new forms of mobilization and protest. This rise in influence is yet to be fully comprehended by transitional justice mechanisms, which have been slow to adopt technological innovations or to view youth as a critical constituency and a partner in driving reform. Transitional justice processes have followed conventional forms of public outreach and media engagement that have not effectively tapped into social media for collecting information or publicizing stories of abuse. While youth and social media may serve as key drivers of social protest, they still appear as marginal actors in the social change strategies promoted by many transitional justice mechanisms.

There are however some innovative examples of transitional justice processes that have sought to engage youth as key actors with unique perspectives and needs. Sierra Leone provides one example:

Sierra Leone blazed the trail with its explicit focus on children and youth in the truth commission process, and with the “Accountability Now” clubs set up by the Special Court for Sierra Leone to involve youth in educating their peers and communities about human rights.³⁴

Conclusion

Transitional justice built its credibility largely on claims of inclusion and of being victim-centered. While such claims were often more rhetoric than reality, many groups who have traditionally been marginalized in peacebuilding processes have used transitional justice as a lens and a set of mechanisms through which to claim a voice and their rights. As transitional justice became part of the mainstream and its principles were captured in international and regional treaties and norms, it was pushed to broaden its inclusivity.

In taking the needs of victimized groups more seriously, transitional justice policy makers and practitioners have had to recognize various experiences of violence, different forms of vulnerability, and diverse demands for truth, justice, and reparative interventions from a range of communities and social sectors. The fight for recognition for and by women, youth, and LGBTI+ individuals illustrates the possibilities, but also the challenges, of using this avenue for social change.

³⁴ Virginie Ladisch, 2018, *A Catalyst for Change: Engaging Youth in Transitional Justice*, International Center for Transitional Justice Briefing, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Youth-TJ-2018.pdf>

Recommendations: Advancing inclusion and diversity through transitional justice

Transitional justice is a contested terrain that provides some tools in the struggle for diversity and inclusion. It is also a terrain that requires active engagement and mobilization to ensure progress for any context. This policy brief provides a few suggestions that are critical in advancing this agenda:

- 1) Inclusion is an ongoing battle that requires sustained efforts. Early victories during consultation processes (when things are in transition) are often reversed when the state reverts to business as usual. Therefore state commitments should be monitored and the state should be held accountable for the implementation of inclusive policies and initiatives.
- 2) To address diversity in transitional justice contexts, the boundaries and definitions of ‘transition’ and ‘justice’ need to be challenged to promote transformative changes that address broader social injustices embedded in cultural norms that perpetuate these exclusions.
- 3) Addressing diversity and inclusion of marginalized groups requires the empowerment of these groups. Sustained inclusion requires support for local capacity to organize and mobilize.
- 4) Intersectional approaches, which recognize the complex overlaps between different forms of identity, should be undertaken when considering the different identities of marginalized groups to allow for greater inclusion in transitional justice processes.
- 5) Victims are portrayed as helpless and voiceless, particularly women, LGBTI+ communities, and people with disabilities. This often leads to these groups becoming invisible during transitional justice processes. By challenging this image of the helpless victim and allowing marginalized groups to participate in all transitional justice processes, there can be more room for inclusion and diversity.
- 6) Diversity and inclusivity efforts need to be responsive to what these concepts mean and look like in local contexts. International approaches and norms can undermine local experiences and capacities if they impose simple templates regarding whom to include or what inclusion looks like.
- 7) Where official state-led transitional justice initiatives exclude some who have been affected by conflict and violence, alternative non-state transitional justice approaches can play a key role in providing acknowledgment and facilitating reconciliation and justice.
- 8) International and regional transitional justice policy frameworks provide a strong basis for arguing for a broadened and deepened approach to diversity and inclusion, but still provide many loopholes for leaving out certain groups. Further advocacy is needed to ensure more explicit, formal acknowledgment of the experiences and rights of various excluded groups.
- 9) Gender justice in the transitional justice field has advanced significantly through critical evaluation of various mechanisms over the last 20 years. New benchmarks have been set as the field advances. This same critical analysis of each new policy and mechanism should become standard practice in advancing the rights of marginalized groups such as youth and LGBTI+ communities.



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