

## Exploring new spaces for women in transitional justice in Eritrea and Zimbabwe

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FACULTY OF HUMANITIES

# Exploring New Spaces for Women in Transitional Justice in Eritrea and Zimbabwe

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# Exploring New Spaces for Women in Transitional Justice in Eritrea and Zimbabwe<sup>\*</sup>

Mirjam van Reisen and Daniel R Mekonnen

## 1. Introduction

This paper looks at ‘space’ for women in the context of transitional justice in post-conflict countries. It connects lack of ‘symbolic’ spaces for dealing with violence against women in transitional justice mechanisms with the subsequent failure to deliver ‘physical’ spaces for women’s reintegration into communities. It also considers how women could benefit more from transitional justice.

In times of conflict, violence can flare up – and women and children are usually disproportionately affected. Often, their only option is to flee, leaving behind their homes and communities; they lose the ‘space’ in which they belong, their livelihoods, and a safe place to raise their children. Men and boys are typically recruited by either side to the conflict and women are left in charge of households. In cases where women and girls are also recruited by the military, as in Eritrea, they are often used as comfort girls and required to ‘service’ the hierarchy, including providing sexual favours. Violence against women can result in shame, responsibility for offspring born out of wedlock, and rejection by their family and community. Women who fall pregnant in the military can find themselves released from service, but unable to return home. Isolated from their families and communities, women and girls who are victims of conflict-related sexual violence (either in the military or as civilians) are often destitute, with place to go. This can force them to take the dangerous journey to leave their place of origin, becoming internally displaced persons (IDPs) or refugees. As refugees, women and girls are vulnerable to further abuse and exploitation, completing the cycle of violence and destitution.

The criminal justice system does not always provide a satisfactory process for dealing with past violence against women. This paper argues that the principle aim of transitional justice should be to ensure that women, men and children can re-enter and repossess their original space, or, if this is not possible, at least find a secure space where they can recreate a life of belonging. For this to be achieved it is imperative that transitional justice works closely with traditional justice, as it is traditional justice systems for truth-finding, resolving conflict, reparation, reconciliation and healing that can lead to forgiveness. Accordingly, new gender roles are a necessary part of the transitional justice process, and negative perceptions (self-perceptions or the perceptions of others) of women who are victims of conflict-related sexual violence need to be replaced by images of women as empowered and respected leaders in their communities.

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This paper discusses how transitional justice could incorporate elements of traditional justice to enable women to reclaim their rightful and respected space in their communities, or in an alternative places if returning to their original community is no longer an option. Healing must be a central component of this process, both at an individual level and at the community level, as well as for the society as a whole – an obvious observation, but one that is often ignored or does not materialise in transitional processes.

The task of transitional justice is mainly ‘truth seeking’ for historical interpretation to allow nations to deal with the aftermath of disintegration and violence; it, therefore, focuses on compensation to enable the society and nation to leave history behind. The task of traditional justice, on the other hand, is to bring ‘healing’ to communities through a process of interrogation and the reorientation of memories to enable reintegration into the community. It is important here to understand the difference between ‘history’ and ‘memory’: “Memory attaches itself to sites, whereas history attaches itself to events” [Nora, 1989, 22]. Traditional justice focuses on ‘memory’, making the site of the violence or crime the subject of its interrogation. In comparison, transitional justice focuses on ‘events’, and seeks to deal with violence or crimes by sequencing and interpreting them in an historical context that serves communities and society (and the nation) at large by dealing with victims and perpetrators, with a stronger focus on ‘justice’ than on ‘healing’. The hypothesis examined in this paper is that, by looking at the interface between transitional and traditional justice, the potential for healing people (and particularly women) affected by specific violence or crimes is enhanced. This paper specifically looks at the concept of ‘space’ and at the possibility of returning the justice process to concrete localities of injustice to involve affected communities.

The importance of healing as an element of transition is specifically addressed in the United Nations Security Council Resolution (UNSCR) 1860 (Article 13) on violence against women, adopted in 2008. UN Security Council Resolution 1325 (adopted in 2000) highlights the obligation of parties to a conflict to ensure the participation of women in peace negotiations and in post-conflict reconstruction, and to support local women’s peace initiatives as well as indigenous processes for conflict resolution. UN Security Council Resolution 1325 specifically emphasises the notion that women should be enabled to resettle and reintegrate into their spaces of origin, or that reasonable alternative arrangements should be made. Article 8 of UN Security Council Resolution 1325:

8. *Calls on* all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:
  - (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;
  - (b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;
  - (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.

This paper looks at Eritrea and Zimbabwe, two examples of post-conflict countries that have reverted to situations of further conflict several years after independence. Both countries have

seen egregious violations of human rights (although of different degrees), including gender-based violence, such as rape and sexual assault, affecting women and girls in rural communities and women and girl refugees. Both in Zimbabwe and Eritrea the consequence of violence against women has resulted in them losing their place in their traditional communities. Both in Zimbabwe and Eritrea traditional systems of dealing with justice and healing are still very much in operation in rural areas. The similarity of the experiences between the two countries makes them a good combination for an exploratory study of the interrelationship between gender and transitional justice.

## 2. Conceptual framework

Healing the wounds of a violent past and embarking on a smooth process of transformation are the primary concerns of all post-conflict societies. These are also the central elements of transitional justice, a concept defined as “the study of the choices made and the quality of justice rendered” when states transit from conflict or repression to democracy [Siegel, 1998, 433]. In its broader sense, the International Centre for Transitional Justice (ICTJ), one of the leading policy and research institutions on transitional justice, defines the concept as follows:

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades [ICTJ, 2010].

What is generally accepted about transitional justice is that it is all about dilemmas [Mekonnen, 2010]. The commonest dilemma, what Diane Orentlicher calls Hobson’s choice, is best represented in “the tension between a desire for calm after [violent conflict or repression] and the importance of putting human rights violators on trial” [Orentlicher, 1991, 2539; Eisikovits, 2009; Helgesen, 2008, iii]. One of the main objectives of transitional justice in radical political transitions is to create a reliable historical record of past abuses, while recognising the promise and limitations of international criminal law and the coherence of forgiveness in politics [Eisikovits, 2009].

While transitional justice is extremely necessary in both countries, concern emanates from the following fact: immediately after independence, both countries embarked on their own transitional processes, but have both reverted to a conflict situation in recent years. However, it is likely that both countries will eventually embark on a full transitional justice process. Therefore, advance planning around future transitional justice options should commence immediately, even though such plans can only be implemented when a favourable political environment allows. This is particularly true about Eritrea, which is lagging behind in terms of negotiations for a peaceful political transition. In the case of Zimbabwe, the transitional justice process has already started, but with a number of shortcomings, and is expected to move forward. Whatever the particular situation in a given country, it is not necessary to wait for the actual ‘transitional’ moment before relevant studies on these issues can take place [Mekonnen, 2010].

Relevant for the purposes of this discourse is the relationship between gender and transitional justice, particularly in the context of these two countries with their history of gender-based violence. There is growing concern among scholars and policymakers about the fact that “the current discourse on gender and transitional justice needs to be broadened to better address women’s experiences of conflict” [Scanlon and Muddell, 2009, 9]. In Timor Leste, where women were systematically raped during the armed conflict, recognition of this need led to special measures being taken to ensure the participation of women in the process of transitional justice, including ensuring that 50 per cent of the staff of transitional justice mechanisms and institutions were women. However, the discussion on how women participate in the process of transitional justice and enjoy its fruits requires a more profound approach in order to understand how women become victims of war-related sexual violence in the first place.

For the purpose of this paper, ‘gender-based violence’ is defined as “violence that is targeted at women or men because of their sex and/or their socially constructed gender roles” [Women’s Caucus for Gender cited in Carpenter, 2006, 83], and the terms ‘gender-based violence’ and ‘violence against women’ are used interchangeably. Ward [2002] describes gender-based violence as:

[...] an umbrella term for any harm that is perpetrated against a person's will; that has a negative impact on the physical or psychological health, development, and identity of the person; and that is the result of gendered power inequities that exploit distinctions between males and females, among males, and among females. Although not exclusive to women and girls, GBV [gender-based violence] principally affects them across all cultures.

This paper considers how transitional justice could incorporate traditional ways of reintegrating women into their original communities. The authors recognise that this debate must be extended to address notions of masculinity and femininity carried in the conflict – and that men are equally victims of armed conflicts. Boys and men can be forced to participate in the conflict against their will, and violations can include sexual violence against boys and men, gender-based massacres and forced recruitment, an understanding of which could contribute to the understanding of the issues that transitional justice needs to address, and which will benefit understanding between men and women of the gender-specific aspects of the conflict they have experienced [Carpenter, 2006, 83].

The stationing of all-women battalions in the Liberia UN Peacekeeping Forces was significant in turning around images of masculinity and femininity in the provision of security, and in the association of qualities such as ‘strong’ and ‘weak’ with men and women respectively. Liberia is a significant example in having elected the first female president in Africa, and so breaking the symbolic association between power and masculinity. The Liberian Minister of Gender, H.E. Vabah Gayflor, tells the story of a little boy who said that when he grows up he wants to be the second-in-charge to the President. When asked why he did not want to be the President, he replied that the President is a woman [pers. Comm. with H.E. Vabah Gayflor].

The election of Ellen Johnson Sirleaf as President of Liberia was the result of an election campaign that empowered women at the grassroots to take control of their communities and

to stake their interest in ending the civil war. This underscores the relevance of empowering women in a discussion of women in conflict. Crossing the line from being a powerless victim to taking control is a key part of what women collectively can do in conflict-ridden areas to fundamentally change the situation.

In another recent example, women in Nepal took part in rallies that were significant in the process that led to the end of the monarchic dictatorship in the country in 2006. Immediately after the monarchy was toppled, the reinstated House of Representative passed a women's rights resolution requiring, among other things, 33 per cent participation by women in each and every organ of the state. Despite this, initially, there was a complete lack of woman in the drafting committee for the Interim Constitution of 2007. After protests by women activists, four women were included in the drafting committee. Women now hold 33 per cent of seats in the Constituent Assembly elected to draft Nepal's new constitution, and have formed a Women's Caucus to ensure that women's issues are addressed in the new constitution.

These are examples of situations where women collectively crossed the line from being a victim to assuming moral authority in society and playing a leading role in ending violent conflict, setting in motion the transition to peace. In such vital moments of transition, women have legitimised themselves as politically active stakeholders, helping to end violent dynamics. The problem is that such redefined roles are not usually sustained.

Evidence is emerging that links poor political representation of women at different levels and poor participation in economic returns with limited gender equality at the household level – which is also correlated with high gender-based violence (and even HIV/AIDS) [Dunkle et al., 2009, pp. 1415–1421]. In other words a limited 'abstract' space for women in political and economic spheres correlates with limited 'real' space for women in the public and domestic physical environment. This lack of abstract and real space limits women's ability to defend themselves in conflict and explains the connection between gender inequality and gender-based violence in society. Transitional justice, therefore, cannot ignore the question of how it deals with the need to sustain greater spaces for women in their societies as part of the transitional process.

Comprehensive population research in Sierra Leone by Physicians for Human Rights [2002] points to the relationship between traditional beliefs about violence against women and the treatment of war-related sexual violence:

Despite 80% of women expressing that there should be legal protection for the rights of women, more than half of women reported that their husbands had the right to beat them and that it was a wife's duty to have sex with her husband even if she did not want to. The apparent disparity between such beliefs and international principles of human rights suggests a need for public discourse and education on local, regional and international levels.

A recent paper by Grace Kwinjeh [2010] links the failure of the Zimbabwe liberation after 1980 to bring women into society as full and equal participants with the subsequent violence of the regime, of which women especially have been victims. In various reports by witnesses



on the fate of refugees from Eritrea, it is equally clear that gender-based violence is the product of women no longer being able to find a safe place to live, and no longer having control over their sexuality, offspring and livelihoods. In both Zimbabwe and Eritrea, women living in fragile circumstances have lost belonging in the communities in which they were born. These women have no place to return to once the conflict is over. The problems and injustice that marginalised women face as a result of loss of space in their traditional communities after a conflict raises the pertinent question of how these women can benefit from the process of transitional justice.

If women are to enjoy the right to be reintegrated into their traditional communities then transitional justice may need to embrace traditional and local cultural-based understandings of justice, reconciliation, reparation and forgiveness. This idea may lead to conflicting proposals and tension may arise between a modern conceptualisation of transitional justice rooted in the emancipated and individualistic notion of the universality of human rights and traditional and culturally diverse notions of justice, which provide social structure in the context of specific communities.

Interviews by Physicians for Human Rights in Sierra Leone revealed the fears of women of being rejected and stigmatised, their difficulty in discussing what had happened to them during the conflict, and their desire for ‘healing’ with the help of traditional healers [Physicians for Human Rights 2002]:

The most common reasons for not reporting these incidents were feelings of shame or social stigma, fear of being stigmatized/rejected, and not having trust in anyone. Only 53% of women reported seeking help after the attack, although 80% of these women reported that they informed a health care provider of the specifics of the attack. Women reported that what helped most after the attack was trying to forget [and] medicine/traditional healer.

While creating physical spaces for women’s reintegration into communities, it is important to supplement formal transitional justice mechanisms with informal justice mechanisms, such as traditional methods of conflict resolution, which are deeply rooted in most African (and other traditional) societies. The question is how can this be done in such a way that it strengthens and emphasises traditional and modern gender roles and that empowers both sexes to interact on equal terms, increasing human security for all? To answer this question, this paper analyses gender-based violence in Zimbabwe and Eritrea, discusses the need in most formal transitional justice processes to deliver physical space for women’s reintegration into communities, and looks at how this can be done.

### **3. Analysis of gender-based violence**

As noted earlier, Eritrea and Zimbabwe have similar political histories in the sense that, since independence, they have been governed by governments that came to power as a result of a liberation struggle. Another striking similarity is that, in recent years, these countries have seen exceedingly high levels of gender-based violence, although the type and magnitude of such violations vary between the two countries. For a full understanding of the human rights

situation in Zimbabwe and Eritrea it is necessary to analyse their colonisation history and liberation struggles, and the human rights violations committed during these times. However, this is beyond the scope of this paper. The following paragraphs take a brief look at the current situation of gender-based violence in both countries in relation to international law standards.

## **Zimbabwe**

Zimbabwe gained independence from white colonial rule in 1980. The Zimbabwe African National Union-Patriotic Front (ZANU-PF) took power promising to transform the country politically and economically. Unfortunately, this transition has not been smooth and women, who fought alongside men in the independence struggle, have found their political and economic space narrowing. Violence against women in Zimbabwe has continued, a result, argues Kwinjeh [2010], of the continuation of the patriarchal “culture and practices emanating from the prevailing patriarchal order in Zimbabwe [...] undermining ideals of a society based on equality, equity, justice and sustainable development”. This section looks at gender-based violence in Zimbabwe in recent times (over the last five years).

In 2005, the Government conducted a campaign called Operation Restore Order, targeting “illegal vending, illegal structures, illegal cultivation” in slum areas. A wave of violence and internal displacement was the result. According to the United Nations Special Envoy, Anna Tibaijuka, this campaign directly affected at least 700,000 people through loss of homes and livelihoods, and it was estimated that the campaign indirectly affected around 2.4 million people [Tibaijuka 2005]. Tibaijuka recorded the following testimony on how the operation affected women and children:

An estimated 40,800 families directly affected by the operation were headed by women. The mission heard testimony from many female-headed households severely affected by the demolitions. For example, a widow with a 6-year old disabled son and a 5-month old baby explained how her home had been demolished and her informal business destroyed during the Operation. She had previously been selling tomatoes in the market, but was now unemployed. A friend had provided temporary shelter, but the loss of livelihood had made the small family destitute. Other single mothers explained how family and friends in many cases had proffered shelter at first, but later been obliged to give priority to close family members as the scale of the crisis grew.

Due to the combined crisis of HIV/AIDS in Zimbabwe, which took the lives of younger women and men, many older women had to assume the responsibility of looking after 10 to 20 (and sometimes even more) children. These women were not spared by Operation Restore Order, or by the subsequent crisis, and lost their homes and small businesses as the political crackdown intensified. The situation escalated in 2007 when opposition leader Morgan Tsvangirai was arrested alongside other prominent leaders of the new opposition movement.

In 2007, the economy of Zimbabwe went into deep recession and hyperinflation was experienced. In rural areas the most basic food items were unavailable. As a result, a quarter of the population (3.4 million Zimbabweans) left Zimbabwe by mid-2007 to take refuge in

neighbouring countries. The fragility of livelihoods is reflected in the decline in life expectancy, which decreased from 60 in 1990 to 44 years for men and 43 years for women by 2004. The infant mortality rate increased from 53 to 81 deaths per 1,000 live births during the same time period. The occupation and ‘redistribution’ of farms owned by white people caused severe food shortages, leaving Zimbabweans without work or livelihoods, and leading to serious health issues, including a cholera outbreak in 2008 that affected an estimated 100,000 people and led to many deaths. Hospitals were no longer functioning, and drugs and medicines were unavailable.

In 2008, a Government of National Unity (GNU) was formed under the Global Political Agreement (GPA) signed by the three main political parties – the Zimbabwe African National Union-Patriotic Front (ZANU-PF), Movement for Democratic Change (MDC) and the MDC-T, led by Tsvangerai. Prior to the 2008 elections, there was a further increase in violence and the number of Zimbabwean refugees increased. Teachers and nurses (mostly women) were no longer receiving their salaries and fled to neighbouring countries. According to the Ministry of Education, 20,000 teachers have left Zimbabwe since 2007. The vulnerability of women who had lost their homes and livelihoods and were looking after many children led to ‘transaction’ sex, i.e., women often had to exchange sex for basic necessities or to cross the border to foreign countries.

Although several human rights groups and research institutions have compiled a variety of reports and findings on gender-based violence in Zimbabwe, a 2009 report by AIDS-Free World can be cited as providing some of the most reliable data on the scale of the sexual violence perpetrated in the wake of the 2008 elections. Based on data collected from 70 victims of rape and 2 witnesses, AIDS-Free World concludes that a coordinated campaign of rape and sexual violence was waged to ensure success in the run-up to the June 2008 presidential election [AIDS-Free World, 2009].

Apart from the people who fled to neighbouring countries, there are up to 1 million internally displaced persons in Zimbabwe and 1 million former farm workers who are either refugees or internally displaced persons. The number of refugees (which can be attributed directly due to political violence) is also significant; in 2009, the United Nations High Commissioner from Refugees (UNHCR) reported that there were 23,872 refugees originating from Zimbabwe [UNHCR, 2010]. At present 1.2 million Zimbabweans live with HIV, and it is further estimated that Zimbabwe has 1 million torture survivors. These statistics beg the question of how national reconciliation and healing might be successfully achieved.

Grace Kwinjeh, an activist and political leader of a new generation of Zimbabwean women, contends that women’s voices are vital for the reorganisation of Zimbabwean society on a non-violent basis [Kwinjeh, 2010]:

The repression of Zimbabwean women before, during and after colonial rule has resulted in them suffering the double yoke of oppression and marginalisation. The intensified contest for political power over the past decade has impacted greatly on women, who have not only endured brutality, but lost their voice, while being further marginalised from the country’s

governance discourse and economic development. Women's voices are also muted in international diplomacy, despite recognition of their sacrifices during the intensified political violence and awareness of their oppression.

Referring to the Global Political Agreement (GPA) under which the government of National Unity (GNU) was formed, Kwinjeh proposes the inclusion of women at all levels and in all processes as a precondition for inclusive peace. The GPA sets out a clear mandate to address the issue of healing; Article 7 of the GPA on 'Equality, National Healing, Cohesion and Unity' states that the new government:

[...] shall give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of victims of pre and post-independence political conflicts [...] and will strive to create an environment of tolerance and respect among Zimbabweans and that all citizens are treated with dignity and decency irrespective of age, gender, race, ethnicity, place of origin or political affiliation. (Article 7, GPA)

To demonstrate its commitment to the implementation of this aspect of the GPA, the inclusive government, led by President Mugabe and Prime Minister Tsvangerai, set up an Organ for National Healing, Reconciliation and Integration. The Organ is headed by three Ministers representing the top leadership of the main three parties. The Government has also identified the importance of implementing the UN Security Council Resolution 1325 on Women in Post Conflict and the Ministry of Women has accepted the mandate for its implementation.

Sensitive to the particular way in which women have been affected by the conflict, the Organ, in close cooperation with the Ministry of Gender, established an initiative to involve women in reconciliation and healing. Minister Holland, one of the principals of the Organ, emphasised during a recent hearing in the European Parliament the need to accept setbacks as normal during transitional processes and "that peace does not necessarily bring an immediate cessation of violence, but there are now mechanisms in place through the inclusive government to bring those who violate the law to justice" [van Reisen, 2010].

A colloquium in follow up of the International Colloquium on UN Security Council Resolution 1325, initiated by President Ellen Johnson Sirleaf in Liberia in 2008, will be held in 2011 in Zimbabwe. It will bring together grassroots women, grassroots leaders, civil society organisations, trade unions, and members of cooperatives with African leaders to discuss the needs of women in the transition process.

## **Eritrea**

Compared to Zimbabwe, data collection on human rights violations in Eritrea is extremely difficult. However, there are a number of reports and compilations by credible sources indicating a very alarming level of human rights violations in the country. This is also reflected in the number of refugees from Eritrea. UNHCR reports that there were 67 000 new asylum seekers originating from Eritrea in 2008, a significant proportion of its small population of approximately 4 million [UNHCR, 2009]. It is also significant that, according to

UNHCR, Eritrea, was the third largest provider of spontaneous asylum-seekers in 2009 and Eritreans constituted the largest group asking for asylum in Ethiopia in the same year.

The most important features that distinguish Eritrea from Zimbabwe are that Eritrea is ruled by a government whose legitimacy has never been confirmed in an election. It is the only country in the world without a working constitution and a functioning parliament. It is the only country in Africa without a free press and has the largest number of journalists in detention in Africa. The 2010 Press Freedom Index by Reporters Without Borders ranks Eritrea last in the world (178th) in terms of media freedom, preceded by repressive regimes such as North Korea (177th), Turkmenistan (176th), Iran (175th) and Burma (174<sup>th</sup>). As a result of the deep political and human rights crisis in Eritrea, the International Crisis Group [2010, ii] warns that Eritrea is on the brink of becoming another failed state in the Horn of Africa, a region that has already produced one such failed state, Somalia. The current political situation in Eritrea is replete with factors that give rise to a culture of impunity, which is fertile ground for gender-based violence.

The major source of victimisation in Eritrea is excessive militarisation and prolonged military conscription, which affects women disproportionately. In 1991, the Eritrean Government adopted a national service programme, which was fully implemented in 1994, under which every man and woman between 18 and 40 years of age is required to complete an 18-month national service programme. The programme consists of a six-month military training and a one-year voluntary service, rendered mostly in the army. Since the 1998–2000 border conflict with Ethiopia, the Government has disregarded this 18-month limit and kept hundreds of thousands of conscripts in the army indefinitely, and for nominal remuneration. Hundreds of thousands of Eritrean youth are trapped in this quagmire, some for up to 15 years, and there is no end in sight. Military discipline is extremely harsh and witnesses have report army commanders employing excessive punishments including torture and extra-judicial killing. Women are routinely raped and sexually abused by army commanders, or punished harshly for minor infractions or for not fulfilling the personal demands of their superiors. The following testimony by a former Eritrean conscript corroborates these claims:

I was conscripted to the army in May 2000. After taking my military training in the Gahtelay Training Centre, I was assigned to the 32nd Division, which by then was stationed in a place called Keske. When I arrived in this place, I met some people who have been in the army since 1994 and whose most productive age was being wasted in a gruesome military life. I immediately began to think about my future, contemplating that I may also have to stay in the army for the same number of years as those colleagues or even more. That was unbearable. I could not really see a bright future of my life. I was then to witness a dreadful experience which involved a brutal punishment of some female members of the army. The ladies were punished for returning a week after their official leave but the punishment was brutal. As I saw them, their hands were tied up from behind, their heads shaved, and milk spilt over their body.<sup>1</sup> This sounded quite ‘normal’ to those who were in the army longer than myself but for me it was dreadful. I saw several other brutal methods of punishment at other times and I finally decided to leave the army, to go anywhere before it was too late, and search for a better life, rights and dignity. Accordingly, I left

<sup>1</sup> This type of punishment is very common in the army. Milk is spilt over the body of a tied up prisoner to attract flea on the body of the victim and make the punishment degrading.

Eritrea in October 2000 and arrived in the Netherlands at the end of 2002. [Authors' interview with Eritrean refugee (name withheld) in the Netherlands, 2 August 2010]

Frustrated by such abusive practices, tens of thousands of Eritreans are fleeing the country in an unprecedented manner. While crossing the border to neighbouring countries, mainly Ethiopia and Sudan, women are routinely raped by smugglers and members of border surveillance units. The challenge is that the state of gender-based violence in Eritrea is little known, compared to that of Zimbabwe, because of the extremely closed political situation in Eritrea, which does not allow for independent research and analysis. There are, however, a number of reports portraying sexual violations committed against female conscripts in the army. One pertinent source is a contribution by Cecilia M. Bailliet [2007], which examines sexual violence in the military within the context of Eritrean asylum claims presented in Norway.

#### **4. Gender and transitional justice**

Eritrea and Zimbabwe will need to develop a comprehensive transitional justice agenda that gives due consideration to gender justice by creating physical space for women's reintegration into communities. Comparative studies on the role of men and women in political violence and in negotiating peace processes reveal that women usually remain under represented in peace building and transitional justice processes [Bell, 2004, 321; Valji, 2007, 5]. These processes are usually a result of negotiations among protagonists to a violent conflict and mediators, roles historically dominated by men [Bell and O'Rourke, 2007, 25]. Global legal standards that establish transitional justice mechanisms were not (until recently) fully developed in a gender-sensitive manner. This has been characterised by experts as a "deprioritisation of dimensions of women's lives and struggles from the human rights radar screen" [Nesiah, 2006]. Forthcoming transitional justice models, such as those being developed in Eritrea and Zimbabwe, are expected to evolve a strategy to address these challenges, ultimately resolving the exigent needs of women in post-conflict situations according to the specific needs of women.

In developing proactive strategies and normative guidelines for a gender-sensitive transitional justice agenda, UN Security Council Resolution 1325, which calls, among other things, for the increased "participation of women at decision-making levels in conflict resolution and peace processes", is regarded as a very important source document. Together with UN Security Council Resolution 1820, and other regional and international consensus documents, it serves as the main reference and framework for the formulation of a gender-sensitive transitional justice approach. One of the primary steps in this regard is that gender-based violence should not be overlooked during the design and implementation stages of transitional justice mechanisms. Critical reflections are needed in order to examine how gender inequalities underpin much of the violence. Concrete steps in this regard include the staffing of transitional justice mechanisms and institutions, such as truth and reconciliation commissions, with adequate numbers of women, as well as the provision of exclusively gender-sensitive panels and public hearings. In public hearings, women should be encouraged to primarily speak of their own experiences, rather than narrating the experiences of others,

often their husbands, siblings, family members or relatives. Politically motivated rape and other forms of sexual violence should be recognised as grave violations of international law, as is already established by the case law of the International Criminal Tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Experiences from other African countries show that subsuming gender into the broader definition of human rights violations has the effect of reducing it to triviality [Scanlon and Muddell, 2009, 12].

One of the common challenges with some transitional justice mechanisms, such as truth and reconciliation commissions (TRCs), has been the inhibiting role of cultural norms and stigma on women who may want to come forward and share their experiences in public hearings. This can be minimised by inventing creative ways to ensure the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses. As the experience of Sierra Leone demonstrates, the role of women's groups and organisations in this regard is instrumental. In relation to this, the role of indigenous legal traditions and customs, to the extent that they promote gender justice, is also valuable.

## **5. Bringing transitional justice to the community level**

The accountability issue after massive political violence has at least three main dimensions: legal, moral and political [Méndez, 1997, 256; Mekonnen, 2009, 167–168]. Legal dimensions are commonly discussed in terms of prosecution, also known as retributive justice. Moral and political dimensions focus on the limitations of retributive justice and reiterate the necessity for non-prosecutorial options, also called alternative accountability measures. It is generally agreed that an all-encompassing prosecutorial strategy is not always possible in the aftermath of massive political violence, simply because there are too many victims, too many perpetrators and not enough witnesses. Apart from the most responsible perpetrators, mid- and low-level perpetrators may reach into the thousands, making it practically impossible to prosecute each and every of them. Pragmatically, whatever prosecutorial option is adopted, only a handful of perpetrators may be successfully prosecuted. Prosecution requires properly functioning national, regional or international courts with virtually no limits placed on their power to prosecute wrongdoers. Even if this is possible, the complex issues of justice and accountability may not be fully addressed by prosecutorial options.

The challenge is much more critical in terms of achieving the four essential objectives of transitional justice. In his innovative TAAR model, Stephan Parmentier [2003, 207–208] captures the essential elements of transitional justice as truth, accountability, reparation and reconciliation (TAAR). Likewise, Luc Huyse [2008, 11] recognises these elements as the four instrumental objectives of all transitional justice processes. The achievement of these objectives may in some cases involve bringing transitional justice to the community level with the objective of making it responsive to the needs of local communities, which are most of the time the primary victims of mass political violence. Recognising such concerns, Diane Orentlicher [2007, 18] advises that “there cannot be a one-size fits-all approach to transitional justice”. Simply put, in the face of the “extraordinary range of national experiences and cultures” it is difficult to imagine the adoption of a universally relevant transitional justice

formula. This resonates with the call to make transitional justice responsive to contextual specificities. One way in which this can be achieved is by bringing transitional justice to the community level, namely, by supplementing transitional justice processes with indigenous legal tradition (ILT) [Mekonnen, 2010, 101].

In this context, ‘indigenous legal tradition’ is understood as a legal tradition based on the indigenous knowledge and belief systems of communities. The term may at times be interchangeably used with customary law, and it forms part of the indigenous knowledge system (IKS), which is defined as “a systemic reference to the knowledge and practices of indigenous communities constitutive of their meaning and belief systems, as well as the substantive dimension of their practices and customs” [Nel, 2005, 7]. Indigenous legal traditions are a major component of indigenous knowledge systems. The four essential elements of transitional justice – truth, accountability, reparation and reconciliation – form the epicentre of most African indigenous legal traditions. For example, in the Eritrean customary law of Adkeme Mlgha’e, a case of murder is traditionally resolved by asking the wrongdoer to “stand and submit himself in front of the family of the deceased”; to an extent, the wrongdoer is even required to metaphorically plead for the family of the victim to “finish him off” [Mekonnen, 2010, 114]. Embedded in this aspect of customary law are truth telling and accountability, two of the essential elements of transitional justice, supplemented by an official request for forgiveness submitted, not by the wrongdoer, but rather by his/her representatives, seven elders and priests. This represents a deeply-rooted practice and symbolic ritual of reconciliation, which is the third important element of transitional justice. The fourth key element of transitional justice, reparation, is made in the form of the payment of blood money, but it can also be implemented by intermarriage between the families of the victim and the wrongdoer. In this way, the Eritrean example of indigenous legal tradition satisfies the four essential elements of transitional justice in Parmentier’s TAAR model [2003, 207–208] – truth, accountability, reparation and reconciliation.

In the case of Zimbabwe, a very important concept representing indigenous legal tradition is *ubuntu*. As a fundamental African philosophy, *ubuntu* denotes the idea that “individual rights cannot be meaningfully exercised in isolation of broader community rights” [Cornell and van Marle, 2005, 220]. As noted by James Cobbah [1987, 320], the concept of *ubuntu* can be summed up as: “I am because we are, and because we are therefore I am”. It is a value system common to most African cultures that places emphasis on communality and on the interdependence of the members of a community. The principle of *ubuntu*, which also includes mechanisms for acknowledgement, truth telling, accountability, healing and reparation, assumes a prominent role in several African societies. According to Cornell and van Marle, the underlying assumption of *ubuntu* is an interactive ethic by which humanity is essentially defined by the interaction of community members towards each other. This represents an “understanding that our humanness is shaped in our interactions with one another and within a force field created and sustained by those interactions” [Cornell and van Marle, 2005, 322]. Thus, the pursuit of human dignity in the African philosophy is more concerned with vindication of the communal wellbeing and restoration of broken relationships, rather than with the right of any individual against the world [Cobbah, 1987, 322]. The humanistic and collective emphasis in *ubuntu*, argue Cornell and van Marle [2005,



220], has striking similarities with the theory of restorative justice, the focus of which is on restoring the balances that have been knocked askew by violations, instead of merely punishing a wrongdoer [Minow, 1998, 81].

The above considerations are very important for a transitional justice agenda that aspires to be responsive to the contextual specificities of a given society. However, it must be noted that indigenous legal tradition may not be taken as a complete replacement of formal transitional justice approaches such as truth and reconciliation commissions, prosecution and other accountability mechanisms. The role of indigenous legal tradition is recognised mainly as a complementary one, which also requires some degree of reform in the context of a country's particular needs.

## **6. Conclusion**

Since independence Eritrea and Zimbabwe have been governed by governments that came to power as a result of a liberation struggle. In recent years, the two countries have seen exceedingly high levels of political violence, including gender-based violence, although the type and magnitude of such violations vary between the two countries. In times of conflict, women and children are usually disproportionately affected. The two countries need to develop a comprehensive transitional justice agenda that gives due consideration to gender justice by creating physical space for women's reintegration into communities. In developing proactive strategies and normative guidelines for a gender-sensitive transitional justice agenda, there are a number of international benchmarks that are regarded as important. These include UN Security Council Resolution 1325, which calls, among other things, for the increased "participation of women at decision-making levels in conflict resolution and peace processes", and UN Security Council Resolution 1820, as well as other regional and international consensus documents. These resolutions assign a specific space for healing in the process of transitional justice.

The design and implementation of transitional justice mechanisms should give due regard to gender-based violence based on the critical reflections of women in order to examine how gender inequalities underpin much of the violence. Some of the concrete steps in this regard include the staffing of transitional justice mechanisms and institutions, such as truth and reconciliation commissions, with adequate numbers of women, as well as the provision of exclusively gender-sensitive panels and public hearings. In most African countries, such as Eritrea and Zimbabwe, indigenous knowledge and belief systems of communities assume a central role in the social and political life of communities, assisting in the healing of victims, perpetrators, affected families and the community at large. These include deeply-rooted practices and symbolic rituals of reconciliation, which are important for the purposes of truth telling and healing. Although such mechanisms cannot be taken as a complete replacement of formal transitional justice approaches, such as truth and reconciliation commissions and other accountability mechanisms, their indispensable role in post-conflict transformation is increasingly being recognised. With some degree of adjustment to a country's particular needs, indigenous knowledge and belief systems, including indigenous legal traditions, have a

role to play in post-conflict transformation and in delivering ‘physical’ spaces for women’s reintegration into communities.

## Abstract

Eritrea and Zimbabwe are African countries that have suffered from perilous cycles of violence. Albeit of varying degrees, the two countries have seen egregious violations of international law, including the perpetration of gender-based violence. As a result, girls and women constitute one of the major groups of victims of human rights violations in these countries. Taking Zimbabwe and Eritrea as emerging models of transitional justice in African, this paper explores the need to advance a gender-sensitive approach in the transitional justice agendas of these two countries. The discussion in this regard is based on national, regional and international commitments with regard to the promotion of women’s rights including UN Security Council Resolutions 1325 and 1820, which call for the meaningful involvement of women in all such processes. The paper analyses the lack of ‘symbolic’ spaces for dealing with violence against women in transitional justice mechanisms and the subsequent failure to deliver ‘physical’ spaces for women’s reintegration into communities. Alternative models, such as traditional justice systems, that specifically aim at restoring physical space for women at the community level are identified and analysed in terms of their ability to provide symbolic space for women’s healing from violence, truth telling, reparation, reconciliation and forgiveness as part of the transitional justice process, with the ultimate objective of regaining physical space for victims and perpetrators of gender-based violence.

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