

Policy Brief

Women's Meaningful Participation in Transitional Justice

Advancing Gender Equality and Building Sustainable Peace



Introduction

Purposes of the brief *

The purposes of the brief are twofold. Firstly, it is intended to trigger UN rethinks on the subject of women's participation in transitional justice at both the policy and programme levels. The paper is intended as a strategic start to examine a complex, challenging and urgent subject; therefore, it is reflective and propositional rather than definitive or exhaustive. Secondly, it will be used as a substantive contribution towards the larger UN process to review and update the 2010 Guidance Note of the Secretary-General on the United Nations Approach to Transitional Justice.

Subject of the brief

This paper explores what women's meaningful participation in transitional justice means and 'looks like', in policy and practice. It does this by:

- Section 1** **Reviewing the current policy framework and assertions for women's meaningful participation in transitional justice, but also gaps between this and practice;**
- Section 2** **Elaborating a definition for women's meaningful participation in transitional justice, as well as elaborating typologies of key women stakeholders and key roles women take;**
- Section 3** **Suggesting a series of key lessons for advancing women's meaningful participation in transitional justice;**
- Section 4** **Suggesting deeper considerations for transitional justice programming, including re-imagining 'change models', 'outcome domains' and 'benchmarks'; and**
- Section 5** **Recommending adjustments for UN policy and programming to better promote women's meaningful participation in transitional justice.**

The paper focuses specifically on women and addressing the unique barriers women face as a result of gender-based discrimination. Importantly, this is not a 'gender analysis' of transitional justice and does not specifically focus on other important gender issues.

Methodology

Research and analysis to produce this paper were undertaken by an external and independent research consultant from February-May 2021. Mixed methods were employed, including literature review and interviews with 79 'subject matter experts' (71 percent women and 29 percent men) from the UN, civil society and academia (including those located in / focused on Africa, Asia, Europe and Latin America).

* This policy brief is a short overview of the 'Women's Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace' report. Please use the full version of the report for citation, reproduction, and adaptation purposes. A PDF version of the full report is available at undp.org/publications.

International framework for women's meaningful participation in transitional justice

Women's meaningful participation in transitional justice has been an established requirement of international peace and security responses for over 20 years. The principle of women's meaningful participation in all aspects of transitional justice is particularly reinforced in:

- **UNSCR 1325: women, peace and security (2000)**—first requires women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making; and
- **UN Secretary General's Guidance Note on Transitional Justice (2010)**—Principle 4: Strive to ensure women's rights through transitional justice processes and mechanisms.

Embedded within the international Women, Peace and Security (WPS) policy framework are key assertions for why women's meaningful participation in transitional justice matters. These include:

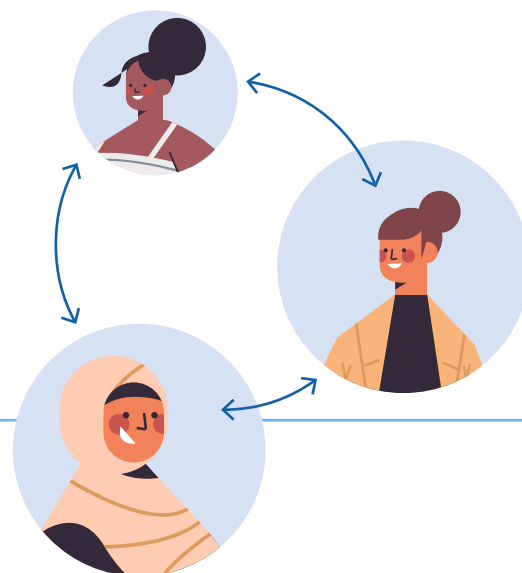
Assertion 1 **Women's equal participation is a basic normative right**

Assertion 2 **Women's meaningful participation challenges discriminatory power structures**

Assertion 3 **Women are an agent rather than an object in transitional justice**

Assertion 4 **Women's meaningful participation leads to inclusion writ large**

Assertion 5 **Women's meaningful participation improves 'operational effectiveness'**



Defining women's meaningful participation in transitional justice

The 'quantity' of women at all levels and in all elements of transitional justice is a necessary part of meaningful participation—clearly, women must be present. However, women's meaningful participation is not simply about the *quantity* of women, but about the *quality* and *effectiveness* of their role *to influence* transitional justice processes and outcomes.

Women's meaningful participation, therefore, needs a definition beyond the number game. How this is achieved in any given context will depend greatly on that context; however, this paper proposes some basic conceptual anchors to ensure that the concept is not mistreated:

Definition for women's meaningful participation in transitional justice:

Meaningful women's participation involves the convergence of several elements and manifests when women from diverse backgrounds:

- > Have the ability to enter settings, mechanisms and positions of power freely and unhindered and without fear for their safety;
- > Are present in settings, mechanisms and positions of power so that they can directly seize opportunities to inform, influence and make decisions;
- > Possess self-efficacy, knowledge and confidence to effectively represent their whole and diverse intersectional range of 'gendered' interests, values and experiences;
- > Deploy their agency by gathering evidence, substantively setting agendas, building coalitions and collaboratively mobilising strategies to impel change; and
- > Exert influence that alters decision-making outcomes to better reflect diverse women's interests, values and experiences and, therefore, also those of the wider society.

Increasing the numbers (i.e. numeric or descriptive participation) of a diverse cross-section of women and enabling the conditions by which the quality and impact of their roles (i.e. the substantive representation of their gendered interests in decision-making) can be deepened are vital twin-tracks of meaningful inclusion.

Women’s participation in transitional justice takes many forms

The table below constructs a practical framework for thinking through typologies of women stakeholders and the roles they take in transitional justice. These are not exclusive and can be complex/hybridized (e.g. female perpetrators coerced into committing violations or is also a survivor-victim of violations).

Stakeholder Typologies	<ul style="list-style-type: none"> → Survivor-victims of large-scale past abuses – who experience legacies of harm, traumas, threats to their safety and marginalization both during and after the abuses suffered → Relatives of survivor-victims – who experience different legacies of loss, trauma, threats to their safety and marginalization both during and after the abuses suffered → Witnesses – who experience their own legacies of trauma and insecurity → Women’s survivor-victims organizations, associations and networks, as well as allied women’s organizations (local, national and international) → Women leaders of allied local, national and international organizations/movements (e.g. for survivor-victims, human rights, women’s rights, etc.) → Catalytic and emblematic ‘advocates’—from political, legal, human rights, peacebuilding cultural, scientific, trades, professional, business, religious, traditional and other realms → Women from wider society—allied stakeholders who did not experience the direct effects of large-scale past abuses, but ultimately live the indirect social, economic and political consequences of the past (including the risks of recurrence) → Women bystanders and perpetrators—potentially including former female combatants and/or members of the security sector (whether state or non-state) 				
Role Typologies	<table border="0"> <tbody> <tr> <td data-bbox="331 913 539 1525"> As agents of accountability – women holding duty-bearers to account: </td> <td data-bbox="555 913 1477 1525"> <ul style="list-style-type: none"> → Demanding and using transitional justice rights and ‘benefits’, such as reparations → Participating in and influencing public consultations, such as in the design of transitional justice processes and mechanisms → Seeking truth, filing criminal cases and testifying (including, for example, women journalists reporting on past human rights abuses as a form of truth-telling) → Monitoring transitional justice processes and mechanisms, as well as working as women’s rights and human rights defenders → Initiating legal challenges and reforms → Mobilizing and representing the collective demands of communities and social organizations → Standing for elected positions and other direct political action → Facilitating survivor-victim outreach and advocating with government → Mobilizing public feedback, information, education, advocacy and ‘mass action’ campaigns → Researching and analysing case studies, thematics and practices, building and sharing expert knowledge bases → Documenting, evidence gathering and local truth seeking of violations </td> </tr> <tr> <td data-bbox="331 1547 539 1973"> As agents of social change – women actively transforming the social discourse: </td> <td data-bbox="555 1547 1477 1973"> <ul style="list-style-type: none"> → Providing networking, relief, legal aid, health, psychosocial, protection and monitoring services and spaces for survivor-victims → Memorialising, especially through appropriate local, gendered and traditional practices → Healing, peacebuilding and reconciliation, at the personal, family, community and social levels → Inspiring other women to participate in public life, including in justice-related professions → Educating the public and raising public awareness → Leading and catalysing women’s networking/mobilization and ‘mass action’ public mobilization to demand change → Taking over as household heads and income earners → Acting as unacknowledged private/domestic social agents, as mothers, spouses, carers, memory-keepers, faith leaders, etc. in the family and in the community </td> </tr> </tbody> </table>	As agents of accountability – women holding duty-bearers to account:	<ul style="list-style-type: none"> → Demanding and using transitional justice rights and ‘benefits’, such as reparations → Participating in and influencing public consultations, such as in the design of transitional justice processes and mechanisms → Seeking truth, filing criminal cases and testifying (including, for example, women journalists reporting on past human rights abuses as a form of truth-telling) → Monitoring transitional justice processes and mechanisms, as well as working as women’s rights and human rights defenders → Initiating legal challenges and reforms → Mobilizing and representing the collective demands of communities and social organizations → Standing for elected positions and other direct political action → Facilitating survivor-victim outreach and advocating with government → Mobilizing public feedback, information, education, advocacy and ‘mass action’ campaigns → Researching and analysing case studies, thematics and practices, building and sharing expert knowledge bases → Documenting, evidence gathering and local truth seeking of violations 	As agents of social change – women actively transforming the social discourse:	<ul style="list-style-type: none"> → Providing networking, relief, legal aid, health, psychosocial, protection and monitoring services and spaces for survivor-victims → Memorialising, especially through appropriate local, gendered and traditional practices → Healing, peacebuilding and reconciliation, at the personal, family, community and social levels → Inspiring other women to participate in public life, including in justice-related professions → Educating the public and raising public awareness → Leading and catalysing women’s networking/mobilization and ‘mass action’ public mobilization to demand change → Taking over as household heads and income earners → Acting as unacknowledged private/domestic social agents, as mothers, spouses, carers, memory-keepers, faith leaders, etc. in the family and in the community
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Role Typologies

As duty-bearers
– women shaping
structures and
systems:

- Determining the political, legal, institutional, administrative and financial framework for transition justice processes and mechanisms—such as duty-bearers in the legislative, executive and judicial branches of state, negotiators of peace/political transition agreements, political leaders, etc.
- Managing implementation of specific transitional justice processes and mechanisms—such as women justice professionals, including female prosecutors, judges, investigators, interpreters, members of truth commissions, etc.
- Providing technical expertise to the design, implementation and oversight of transitional justice processes and mechanisms—such as gender, legal, psychosocial, witness protection, reparations, evidence gathering and other experts
- Providing formal transitional justice services and support to survivors-victims, descendants/family and witnesses—such as the delivery of relief, reparations, health and other services



Key lessons for women's meaningful participation in transitional justice

The brief highlights eleven key lessons for putting into practice women's meaningful participation in transitional justice:

Lesson 1

Accommodating intersectionality is essential

Women are not a monolithic group. Meaningful women's participation must inherently include representation of the full diversity of women in any given context by recognising that gender is only one axis that intersects with many other forms of identity and experience.

Inclusive transitional justice processes and mechanisms recognise that different axes of identity intersect to amplify women's vulnerability and exclusion through multiple and overlapping oppressions.

Lesson 2

Transparent and inclusive selection is key

Involving greater complexity, resources, time and thoughtfulness, inclusive selection processes should be:

- **Transparent and objective**
- **Include specific diversity criteria**
- **Carried out in collaboration with or even by constituent stakeholders**

Procedures could include public invitations, nominations, elections and advertisement for positions, but also 'open-access' participation measures and the use of gender equality quotas, 'sampling' or other temporary special measures.

Specific requirements could ensure certain leadership and representation positions are reserved for (local) women.

More expansive and non-hierarchical violation/harm categories will accommodate and promote the interest of women to participate.

Place more emphasis on lived experience and 'representative' criteria/competencies.

Lesson 3

Women's meaningful participation must grapple with male power structures

It is impossible to consider women's meaningful participation without considering men and male power as essential parts of the equation.

Unmasking, acknowledging and analysing male dominated power structures and the resulting barriers against women's participation is essential from the outset.

Lesson 4

Women's meaningful participation takes place 'before' and 'after' implementation

It is vital that women participate in preparatory/design and follow-up aspects, not just in the 'conduct' of transitional justice processes.

- **Design phase** participation, such as: pre-design consultations and analysis; peace agreement / political negotiations that determine the shape and priorities of transitional justice processes; political, policy and technical design of transitional justice implementation; the drafting and passage of related legislation; etc.
- **Monitoring, evaluation and accountability phases**, such as: designing and setting indicators/milestones; implementation tracking and accountability mechanisms; post-implementation tracking and evaluation; collection and analysis of monitoring data; etc.

Lesson 5

The 'timing' of transitional justice processes impacts women's meaningful participation

Delay diminishes potential for significant gender transformative outcomes—erasure becomes easier and violence against women continues even if conflict has ended.

Expect and plan for the reality that discussions and efforts to deal with the past often take place over several decades.

In the meantime, support efforts to preserve a record of the past and mitigate against evidence or witness testimony being lost or eroded.

Time may be necessary for progressively enabling greater women's participation—'meaningful' sometimes means taking the time necessary to do women's inclusion well.

Over time, women leaders, survivor-victims and organizations are compelled to develop capacities, build coalitions and expand pockets of vested interest.



Lesson 6

Women should have opportunities to participate across all stakeholders typologies

Some critique that acknowledgement of sexual and gender-based violence (SGBV) as grave violations has reduced women solely to ‘victims of sexual violence’, working against the larger project of equality.

It also distracts attention from the wide range of complex and intersecting harms that women face during and after conflict—i.e. sexual violence may not be the worst abuse.

An SGBV / conflict related sexual violence (CRSV) approach can often become preoccupied with ‘response’ rather than prevention or addressing the underlying root causes.

It is essential for women survivor-victims themselves to directly examine and highlight all possible violations, harm and survival experiences.

Lesson 7

Understanding the gendered social context is imperative

Transitional justice cannot pursue or achieve gender equality in isolation from the context—context is everything.

Women’s meaningful participation within any transitional justice process will have increased success when complemented by parallel social, political and development strategies or frameworks for women’s meaningful participation and gender equality.

Women’s meaningful participation in transitional justice is political—so be political.

Locally grounded gender, political and context analysis is necessary.

Lesson 8

Ground transitional justice in local women and their needs and priorities

Transitional justice should be grounded in and serve the needs and priorities of local women, rather than local women having to serve the needs and priorities of transitional justice.

Locally define concepts, agendas and methods for transitional justice and women’s meaningful participation. Listen to women—meet them where and how they live.

Engage local women as experts, particularly on the basis of their lived experience.



Lesson 9

Integrate continuous women-inclusive participatory dialogue across all aspects and phases

Replace one-off or time-limited consultation exercises with ongoing women-inclusive participatory dialogue systems—women’s participation should not be an ‘add-on’ but part of the very DNA and foundation of transitional justice processes.

Structure women-inclusive participatory dialogue as an ongoing ‘pillar’ underlying all other pillars and phases of transitional justice.

A combination of formal and non-formal participatory approaches would improve women’s meaningful participation and their ability to seek redress and change.

→ ***Caution: Do not reify locally grounded and participatory dialogue approaches.**

Lesson 10

Cultivate public buy-in and plan for ‘pushback’

Proponents of women’s meaningful participation face significant risks of ‘pushback’, harassment, threats and acts of violence.

Expansion of women’s roles/rights is frequently resisted or rolled-back in ‘peace time’.

Public buy-in to gender equality cannot be taken for granted, especially in contexts of enduring gender discrimination and deeply embedded patriarchy.

All transitional justice stakeholders and duty-bearers are responsible for ongoing public communication and mobilizing wider constituencies to support inclusion.

Lesson 11

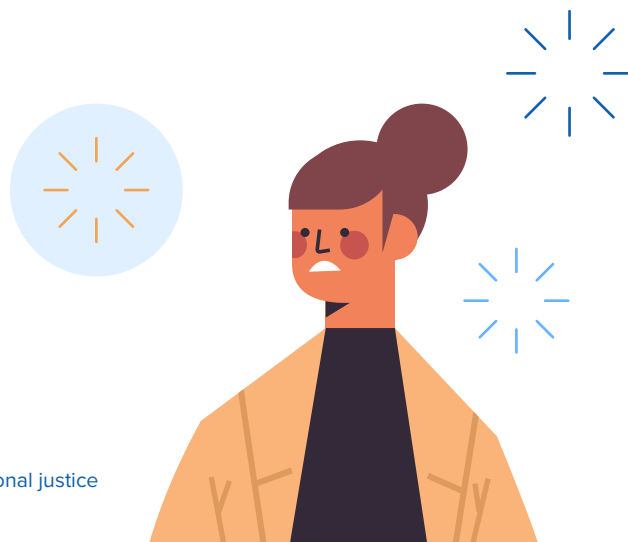
Be mindful not to increase deficits of trust

Unmet expectations of victims from previous failed processes to deal with the past are powerful structural obstacles to inclusion.

Deficits of trust are accentuated in contexts where there is fundamental mistrust between certain parts of the population and the State.

When transitional justice efforts have ignored/excluded or under-delivered for women, trust is unlikely to be regained through ‘more of the same’.

Carelessness and working with women as an ‘afterthought’ can result in mistakes that cripple women’s trust in the process.



Smarter programming for women's participation in transitional justice

This paper suggests deeper considerations for transitional justice programming are required, including:

Re-imagine change models for women's meaningful participation in transitional justice

Significant critiques suggest that current transitional justice models cannot resolve women's participation and gender equality. Instead, women's meaningful participation better intersects with a 'transformational justice' perspective: women experience gendered violations because of their systemic exclusion, inequality and discrimination—therefore, it is insufficient for transitional justice to acknowledge, compensate, repair and then 'return' women to situations where they do not effectively enjoy their rights. It must contribute to transforming the pre-existing systemic conditions of inequality that endangered women in the first place, endanger them in the present and will continue to endanger them into the future.

From this perspective, women's participation and 'transformative' approaches are better served by process-based change models that acknowledge the complexity of social systems (which behave more like complex, adaptive and dynamic ecosystems) and that these systems cannot be 'controlled' through the linear and causal-determinist change models that dominate transitional justice programming.

Instead, change models should shift towards a reflective and flexible understanding of how change takes place in a given context and community and adopt process-based change models that are:

- > **Survivor-victim and stakeholder centred;**
- > **Participatory, elicitive and endogenous; and**
- > **Agile and adaptive.**

More broadly, a renewed vision is encouraged where transitional justice "is bottom-up, locally owned, victim-centered, contextually tailored, politically and culturally grounded in ways that foreground an array of options, oriented towards root causes and a broad array of structures of power and domination, and better coordinated with development and peacebuilding work." Part of this is a return to thinking of transitional justice pillars as tools rather than prescriptions or blueprints.

Re-imagine gender transformation outcomes for women's meaningful participation in transitional justice

While certain gender parity and equality targets are necessary, 'counting' does not tell us much about outcomes and impacts. Instead, this paper suggests richer conceptualisations of what could be considered valid 'gender transformation' outcomes for women's participation in transitional justice:

Additional outcome domains should be seen as relevant—such as:

- **Processes outcomes** focused on establishing, promoting, monitoring and adapting key characteristics of transitional justice, such as being sufficiently inclusive and gender sensitive;
- **Participation itself as an outcome** because participation is, in itself, an act of recognition and sends a social meaning of women's ability to rule;
- **Individual outcomes** focused on the internal and external changes in the lived experience of individual women;
- **Household and community outcomes** including changes in the relationships, behaviour, attitudes, understandings and lived experience at the social level; and
- **Social discourse and history outcomes** focusing on changes in social values, expectations, behaviours and imagination about gender equality, but also ways in which society remembers.



Proposed benchmarks for women's meaningful participation in transitional justice

This paper suggests 'benchmarks' for what women's meaningful participation in transitional justice would ideally 'look like' if they are to contribute in some way towards gender transformative outcomes:

Benchmarks: Meaningful women's participation is more likely to be achieved when transitional justice processes...

- 1** Acknowledge and obligate efforts towards transforming the structural causes and impacts resulting from legacies of past abuse (including systemic gender discrimination, embedded patriarchy, sexist masculinities and women's political, social and economic rights violations/disadvantages);
- 2** Obligate women's equal participation and a gender perspective in precursor processes;
- 3** Obligate women's equal participation and a gender perspective at all levels and throughout design, implementation and monitoring;
- 4** Prioritise contextualisation as a means to deliver value to women in that context;
- 5** Integrate continuous women-inclusive participatory dialogue throughout design, implementation and monitoring;
- 6** Integrate substantive representational roles for women's survivor-victim groups and their allies throughout design, implementation and monitoring;
- 7** Adopt process-based change models emphasizing agile approaches; and
- 8** Benefit from consistent, informed, and long-term international attention and support.



Recommendations

Recommendations to UN management, policy and programming

While the UN should take note of lessons and recommendations already highlighted, it is also recommended that UN policy and programming for transitional justice should also more specifically:

- 1** Model and fulfil internal commitments for women's participation and gender equality as equally important as promoting them externally;
- 2** Develop a clear UN strategy and coordinated monitoring, evaluation and accountability framework for women's meaningful participation in transitional justice;
- 3** Embrace a more encompassing role beyond guardian of international standards and norms;
- 4** Start with women—a fundamental starting point for any UN transitional justice support should be women and their participation;
- 5** Embrace a wider and more agile spectrum of outcomes and measures of 'success' for women's meaningful participation in transitional justice;
- 6** Build strategy, programme, funding and partnership systems that allow for long-term commitments to formal and non-formal processes that are necessary when supporting women's meaningful participation in transitional justice.;
- 7** Establish mandatory funding allocations for monitoring and evaluation (M&E) of women's meaningful participation and gender transformative outcomes in transitional justice programming;
- 8** Establish mandatory funding allocations for dedicated gender expertise capacities in UN mission/programme contexts where the UN is engaged in supporting transitional justice;
- 9** Deploy more diverse competencies, not just lawyers, human rights and governance specialists;
- 10** Maintain routine mechanisms for meaningfully consulting, supporting and partnering with diverse women's movement, survivor-victim and human rights actors in fragile / conflict settings;
- 11** Conduct and support more research, especially locally grounded and women directed research; and
- 12** Develop more training, practical guidance and global capacities for exchange.



Recommendations for updating the 2010 Secretary-General's Guidance Note on United Nations Approach to Transitional Justice

It is recommended that the updated Guidance Note:

- 1 **Elaborates a definition for 'meaningful women's participation and leadership' in transitional justice;**
- 2 **Advocates for process-based, participatory and agile change models for how transitional justice and women's meaningful participation contribute to gender transformative change;**
- 3 **Explicitly acknowledges patriarchal structures and sexist masculinities as both root causes of large-scale past abuses and the principal barriers to meaningful participation of women and the achievement of gender transformative outcomes in transitional justice;**
- 4 **Embeds women's meaningful participation and gender equality within all pillars/components of transitional justice, not only as a stand-alone principle;**
- 5 **Further elaborates and elevates 'Component 5. National Consultation' into a 'sixth' and foundational pillar for 'Continuous and Gender-Inclusive Participatory Dialogue'; and**
- 6 **Elaborates principles into practical and operational guidance.**

