Committee: Special Conference on o-PRESS-ion

Issue: Increasing women's access to justice in post-conflict societies

Student Officer: Ines Saltiel

Position: Deputy President

INTRODUCTION

Even during the 21st century, women are still suffering in many countries around the world. Of course, the situation in Afghanistan brings the issue of women's rights to the front line of discussion. This study guide focuses on the status of women's access to justice in post-war societies, but we will also be examining how access to justice is directly related to their involvement and equal representation in post-war societies. We know that in many countries women suffer disproportionally in comparison to men from gender-based violence, sexual assault, and forced displacement, while they are the ones that have the least representation and access to justice. Sexual violence and other crimes against women such as home imprisonment, torture and death can still be witnessed in many countries. Gender-based crimes, today, go against everything humanity stands for, everything that we have built throughout the years, our democratic values which are the basis of western societies and of course the international justice system. The justice system is an important component and one of the key powers of democracy to ensure equal representation, accountability and access to justice for all people independent of race, gender or sexual orientation. The flaws of the international and local legal systems may prevent women from fully enjoying their rights, something that is exacerbated in post-conflict societies; women's access to justice is limited when they need it the most. In this document, we will show how assaults on women, unfair treatment and lack of justice have a direct link with their marginalization and non-involvement in society.

The 2011 World Development Report of the World Bank made vital discoveries concerning the connections among justice, security, and development in conflict-affected societies. The report established that, where the rule of law is not secured, insecurity and

¹ "World Bank. 2011. World Development Report 2011: Conflict, Security, and Development. World Bank. © World Bank. https://openknowledge.worldbank.org/handle/10986/4389 License: CC BY 3.0 IGO."

violence will continue. Restoring fundamental social functions including education and security is paramount in the restoration of a post-conflict society.

Since post-conflict societies are in the process of reformation, capacity building and reconstruction provide a significant opportunity to eliminate or at least mitigate the inequalities and discrimination faced by women. According to the United Nations Women's report *Progress of the World's Women: "In Pursuit of Justice,"* ² it is important that all measures related to justice prioritize women's needs, placing further justice to women at their core, as seen in Figure 1. The legal framework and access to justice should be at the center of any development plan or efforts for equal representation. Even though justice and security sector policies have become more gender-sensitive over time, there is no evidence of their success in increasing women's access to justice. This is predominantly because judicial sector planning is a relatively new activity, and there is little understanding of how gender-specific sector planning works.



Figure 1: Placing women's access to justice at the center of relevant national planning processes³

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² "Progress of the World's Women: In Pursuit of Justice." *UN Women*, www.unwomen.org/en/digital-library/publications/2011/7/progress-of-the-world-s-women-in-pursuit-of-justice.

³ "A Practitioner's Toolkit on Women's Access to Justice Programming." UN, UN WOMEN, UNDP, OHCHR.

DEFINITION OF KEY TERMS

Justice

The UN views justice as "an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs." Beyond that, justice is the ethical idea that the law and arbiters of the law should treat people equally and fairly, and people should receive reasonable consequences deserved by their actions. Formally this is brought about by our legal system.

Post-conflict

"Conflict situation in which open warfare has come to an end. Such situations remain tense for years or decades and can easily relapse into large-scale violence".

No open warfare does not mean that the area is peaceful; however, there is an opportunity to work towards a peaceful community. ⁴ A post-conflict state is when a war fragments a community or a country for a long period and they are still suffering from the consequences.

Rule of Law

"At its most basic level, the rule of law is the concept that both the government and citizens know the law and obey it. However, the rule of law is also much larger than this. The relevance of the rule of law, and an understanding of its concepts, has its origins in the Magna Carta. There is a core definition that has near-universal acceptance." Since at least the 4th century BCE, when Aristotle differentiated "the rule of law" from "that of any individual", ideas concerning the rule of law have been fundamental to political and legal thinking. In general, the rule of law indicates that the making of laws, their enforcement, and the links between legal norms are all governed by the law and that no one is above the law, including the highest-ranking official. The UN was developed on three pillars: international peace and security, human rights, and development. The United Nations defines the rule of law as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are

⁴ Junne, G. & Verokren, W. (Ed). Post-conflict development: meeting new challenges. 2005, Boulder,

⁵ "What Is the Rule of Law?" *Rule of Law Education Centre*, www.ruleoflaw.org.au/what-is-the-rule-of-law/.

publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards"



Figure 2: The wheel of law explains fundamentals of the law

Social Equality

Regardless of individual differences in color, ethnicity, gender, age, socioeconomic status, sexual orientation, or other qualities or circumstances, individuals of diverse groups within society receive equal treatment and opportunities. Given its scope, social equality remains an unattainable global goal. Different groups of people are still separated by hierarchies throughout the world. Even today, people are being treated differently, which is why we need to act as a society.

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⁶ "What Is the Rule of Law - United Nations and the Rule of Law." United Nations, United Nations, www.un.org/ruleoflaw/what-is-the-rule-of-law/.

Justice Gap

"The justice gap is the number of people who have justice needs and who are not able to obtain justice." The gap between those who can afford paid legal assistance and those who can receive free legal representation is rising. This inability to finance justice restricts a person's access to justice, contributing to what some refer to as the justice gap. Many persons caught in the middle have little choice but to deal with legal issues and use the courts on their own. According to recent research, nearly 80% of low-income people cannot afford legal representation.

BACKGROUND INFORMATION

Individuals' capacity to get justice in correlation to human rights. When residents fear the system, when the judicial system is financially unaffordable, when individuals lack legal counsel, and when they are unaware of their rights, access to justice ceases to exist. 8 In societies that experience wars, it is common that traditional justice systems are destroyed or cease to operate. That creates an unstable environment that may lead to chaos. Access to justice especially for vulnerable parts of the community is limited or even non-existent. One of the first priorities in post-conflict societies is the restoration of the traditional justice systems supported with the informal ones to ensure that people, and especially the weakest part of society, has access to justice and legal support.

Factors that hinder women's access to justice

Socioeconomic barriers

The lack of awareness of one's legal rights and legal procedures or of how to access legal aid is one of the reasons that create barriers to justice for women in post-conflict societies. This originates from the socio-economic backgrounds of women in those areas. Women's low income, unemployment, restricted entrepreneurial activities, and inadequate

⁷ "Measuring the Justice Gap." World Justice Project, 6 Feb. 2019, worldjusticeproject.org/sites/default/files/documents/Measuring%20the%20Justice%20Gap WJP%2 OUpdate_Feb2019_Final-updated_0.pdf.

⁸ "Necessary Condition: Access to Justice." United States Institute of Peace, 4 Jan. 2010, www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/accessjustice#:~:text=283%20Access%20to%20justice%20is,compliance%20with%20human%20rights%20sta ndards.

engagement in the process of social and economic development, both in rural and urban communities, are all socio-economic obstacles that obstruct women's empowerment. Poverty, the lack of transportation in many cases, no access to property or money can be significant obstacles for someone to find their way and a legal representative or justice system.

Cultural Factors

Religions, traditions, stereotypes, and social constructs influence society and women's rights; women in many societies are frequently considered of less importance, with no rights but are under the obligation to serve their men. Even in countries where tradition's role in society has been diminished, often women are portrayed as weak, promoting only their physical and not intellectual characteristics (e.g. advertisements, television series, etc.) Religion and the misinterpretation of some 'dogmas' is one of the main reasons for women's oppression and lack of rights, including access to justice.

Limited access to education

In Less Economically Developed Countries (LEDCs), a significant percentage of girls do not attend school, rather work, usually with the other female family members. This does not only deprive girls of the opportunity to learn and broaden their horizons, but of learning and becoming aware of their rights, specifically their right to justice. Hence, they alienate themselves from justice, and what it offers. Furthermore, women who have grown up without education are less likely to demand their rights including access to justice either because they are not aware of them or because they do not believe they are worthy or entitled to those privileges.9

Prejudice and lack of equal representation within the system.

The limited justice systems that exist in post-war societies do not ensure equal treatment or representation. The bad experience of women within this system can be a reason for avoidance for others. Important members of the legal system are frequently insensitive to or unaware of women's needs and experiences; for example, the police have been accused of oversimplifying domestic violence or sharing the viewpoint of male perpetrators of domestic violence, whereas lawyers and courts have been accused of failing

 $^{^{9}}$ "MISSED OPPORTUNITIES: THE HIGH COST OF NOT EDUCATING GIRLS." CHIEF, GLOBAL PARTNERSHIP FOR EDUCATION, MALALA FUND, WORLD BANK GROUP. July 2018, pp. 1-64., doi:https://www.refworld.org/docid/3ae6b3712c.html.

to understand women's concerns about their allegedly abusive male partners being their children's legal guardians.

Consequences of women's limited access to justice

Economic Effects

Women and girls that have suffered during war or conflicts and did not manage to get justice against the crime committed against them will most probably, due to trauma, not become involved in social and economic activities. Women that live their lives in fear, fear to go to work, fear to go to school, fear to walk in the streets will most certainly be unable to participate actively in the economy. This is a significant drawback for the economy as they represent a large proportion of the population. Women's participation is critical for a quick recovery in post-conflict societies. Another significant issue is property rights. In many cases when the husband or father was killed during the war, women are deprived of their property rights to their land or even housing. This is a serious issue as the land is taken by other members of the family and women will be placed under their control and deprived of the possibility of an independent life and equal contribution to society. Therefore, in other words, a part of society's population is not able to contribute to the development and the re-establishment of their society without justice and security.

Marginalization

Women, who seek justice and want their voices to be heard, especially in post-conflict societies, have endured violence and injustices. However, due to the weak legal system, they are likely to be denied. Women that have endured violence during wars or conflicts and have been traumatized continue to feel the same way in post-war societies when there is no justice and crime is not punished. When women have no access to a fair and organized legal system, they are likely to feel like social outcasts, which will lead them to isolation and or despair.

The significance of women's access to justice

Access to justice is necessary for everyone, and it is a fundamental human right. However, this right is constantly violated. Access to justice is paramount and ensures a voice for people to defend themselves and what they believe is right. Justice is an idea that people are born with; what is "fair" is an ideal to strive for. Justice is what prevents crime, motivates society, and has trust and faith in governments. Only when people - and especially deprived

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groups, minorities and, of course, women- feel that they have access to equal rights, a society is balanced and fulfills its role. However, women's access to justice is ripped away from them during wars and in post-conflict societies- and even in peace. In particular, in intrastate conflicts, when violence disproportionately affects the civilian population, the most vulnerable parts of those societies are the ones that suffer the most.

Access to justice is vital for the progression and implementation of the Sustainable Development Goals (SDGs), which, especially in post-conflict societies, are a key objective. In post-conflict societies, women are forced to redefine their role in the community. They have to perform several roles and assume responsibilities. That could be seen as a "positive development", but still, a post-conflict situation correlates with increased stress and emotional duress, which might lead to domestic violence and high divorce rates among traditional -and other- families. The UN 2030 agenda has as its main objective "no one will be left behind." Women's access to justice is a critical issue to solve since justice provides safety and, without safety, no one can develop in society.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

Liberia

In Liberia, UN Women has encouraged women to participate and have an increased role in peace-building after conflict. The fruits of these efforts are the resolutions for the establishment of Peace Huts, based on traditional justice systems. Peace Huts is a significant initiative providing a voice to rural women to participate and discuss issues of inequality and make decisions on matters of peace and justice.

Haiti

Haiti, the most vulnerable and impoverished country in the Americas, is wracked by political strife and a vicious cycle of insecurity and murder. The democratic process in Haiti remains unstable after 30 years of transitioning from dictatorship to a more transparent and inclusive administration. ¹¹In Haiti, female survivors of gender-based violence receive medical and legal care in rural areas, supported by UN women. Campaigns to raise

 $^{^{10}}$ "What Does It Mean to Leave No One behind?" United Nations Development Programme, August 9, 2018

Paczynska, Agnieszka. "In Post-Conflict Haiti, Brazil Consolidates Its Status as REGIONAL Actor • Stimson Center." Stimson Center, 25 Sept. 2017, www.stimson.org/2017/post-conflict-haiti-brazil-consolidates-its-status-regional-actor/.

awareness among residents and collaboration with security forces resulted in a reduction in violence against women in the community, sending a strong message to anyone who would jeopardize those rights. Education, but mainly the establishment of laws to prevent women's oppression proactively that stem from physical abuse cases, has already had a great effect.

Kenya

Kenya, like many other African countries, has had a number of crises, the most recent of which being election-related violence. Kenya's internal strife has made maintaining peace difficult. The nation has seen election reversals and conflicts since obtaining independence in 1963. As a result, peace has all but disappeared, or if it does exist, it is a 'bad' peace. In Kenya, the UN supports the governments' efforts to establish a group of female police officers to promote their role in law enforcement, empower women, and increase access to the legal system. Policewomen can develop leadership skills, support each other, and promote gender-sensitive policies through their positions. This initiative will empower women fighting for change.

India

Some areas in India are greatly undeveloped; therefore, women's rights are often neglected. In 2013, India amended its criminal law, hence providing accommodation aiming at encouraging women with disabilities to access the criminal justice system, including the right to record their statement from a safe environment. Expanding this to all women and applying this amendment to other post-conflict societies would allow for more women to access justice from a safe environment.

Ethiopia

Ethiopia is having a crisis in the Tigray region, conflict is rising and refugees are being displaced, all affecting women's rights. U.N. Women "Leave No Women Behind" program is an illustration of an effort that had a positive impact in 2009 on Ethiopian women, focusing on the Amhara and Tigray zones. The program centered on numerous measurements of women's poverty. Its target was to increase women's rights at a grassroots level through expanded government association. Moreover, the program aimed

¹² "The Ethnification of Electoral Conflicts in Kenya." ACCORD, 3 July 2020, www.accord.org.za/ajcrissues/ethnification-electoral-conflicts-kenya/.

¹³ Tran, Thuy and Borgen Project. "Women's Rights in Ethiopia." borgenproject.org

to "address gender disparities in literacy and educational attainment, sexual and reproductive health services, and gender-based violence (GBV)."¹⁴ As of February 2009, the program reached more than 100,000 women.¹⁵ Its achievements include reduced child marriage, reduced Female Genital Mutilation (FGM,) increased access to maternal health, and increased access to justice.

TIMELINE OF EVENTS

Date	Description of Event
18 December 1979	The women's convention on the elimination of women's discrimination was adopted by the UN General Assembly. The treaty is important as it takes a stand on increasing women's rights, including access to justice.
1993	The declaration of the elimination of violence against women, being the first international instrument explicitly addressing international and national violence against women, providing a framework for national and international action.
1995	The declaration of the 4 th conference on Women was held in Beijing, organized by The Commission on the Status of Women.
2000	United Nations security council resolution on Women peace and security (1325), passed in 2000, in the field of gender justice.
19-21 st of March 2007	Nairobi declaration on women and girls' rights on remedy and reparation, issued by women's rights advocates and campaigners from Africa, Asia, Europe, Central, North, and South America, as well as survivors of sexual abuse in war circumstances. The Declaration aims to bring resolutions to the failed national initiatives for truth and reconciliation.
2010	The UN Secretary General's report on women's participation in peace-building, is a 7-point action plan, including conflict resolution, post-conflict planning, post-conflict financing, gender-responsive civilian capacity, women's representation in post-conflict governance, rule of law and finally economic recovery.
1 st of November 2011	"Rule of Law and Transitional Justice in Conflict and Post-Conflict" report of the Secretary-General to the Security Council, addressing social and economic concerns that led to systemic inequalities.
2011	Istanbul Convention 2011, including clauses aiming to allow access to justice for victims of gender-based violence.
24 th of September 2012	UN GA High-Level Meeting on the Rule of Law, their meeting, amongst others,

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 $^{^{14}}$ "Addressing Gender-Based Violence." $\it UNFPA$.

 $^{^{15}\,}$ Tran, Thuy and Borgen Project. "Women's Rights in Ethiopia." borgenproject.org

included their commitment to ensuring equality before the law
everywhere (including post-conflict societies)

UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS

Rule of Law and Transitional Justice in Conflict and Post-Conflict (2011) 16

The report "Rule of Law and Transitional Justice in Conflict and Post-Conflict" addressed social and economic concerns that led to systemic inequalities. The UN Security Council requested the report to examine the changes and adaptations after the recommendations in the Secretary General's 2004 report on the rule of law and transitional justice in war and post-conflict countries. Initiatives by the United Nations to enhance the rule of law are important for international peace and security; by ensuring accountability and enforcing standards, creating trust in justice and security institutions, and by promoting gender equality, the United Nations assists countries in strengthening the rule of law in war and post-conflict situations.

UN General Assembly (UN GA) High-Level Meeting on the Rule of Law (2012)

On 24th September 2012, the United Nations General Assembly held a High-Level Meeting on the Rule of Law¹⁷, during which the Member States reaffirmed their commitment to the rule of law as a foundation for peace, security, prosperity, and respect for human rights. States also committed to legislative frameworks to ensure equality before the law, stop violence against women, and secure full access to justice.

The Rule of Law at the National and International Levels

At the request of Liechtenstein and Mexico, the item "The Rule of Law at the National and International Levels" was added to the agenda of the General Assembly's sixty-

 $^{^{16}\,}$ The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General to the Security Council (S/2011/634) - United Nations and the Rule of Law." United Nations, United Nations,

www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-

ict-societies-report-of-the-secretary-general-to-the-security-council-s2011634/.

 $^{^{}m 17}$ "High-Level Meeting on the Rule of Law, 24 September 2012 - United Nations and the Rule of Law." United Nations, United Nations, www.un.org/ruleoflaw/high-level-meeting-on-the-rule-of-law-2012/.

first session. The session focused on the topic of "sharing best practices and ideas to promote the respect of States for international law" (resolution <u>73/207</u>). However, the session once again does not take action, it only stresses and recommends; as a result, enforcement once again was not possible. This is the case with most resolutions as nations have conflicting views on the issue and are not willing to commit to binding declarations.

The Commission on the Status of Women.

The declaration was drafted at the 4th conference on Women held in Beijing, organized by The Commission on the Status of Women. The commission reviewed progress in 12 areas of concern, such as women and poverty, women and armed conflict, human rights for women and more. The objectives for women and armed conflict were: increasing the participation of women in conflict resolution, limiting excessive military expenditures, promoting unarmed forms of conflict resolution and ensuring the protection of refugee women.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

The Istanbul Convention (2011)

The Istanbul Convention includes multiple clauses aimed at allowing access to justice for victims of gender-based violence, by requiring states to take measures such as protecting the rights of victims of violence, advance changes in social and cultural patterns to end gender stereotypes, reinforce proper training and legal awareness, protect victims during judicial proceedings, and provide those victims with legal assistance and free legal aid. The standards of the Istanbul Convention are a fundamental element of ensuring women's access to justice. Turkey withdrew from the Istanbul Convention recently, meaning that they are no longer bound to follow those measures. This creates the fear that more countries might withdraw their signatures and that this might result in a huge setback for women's rights. Although it does not specifically address the post-conflict aspect of the topic, tackling women's rights in general obviously helps women in post conflict states.

Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All, Organization for Economic Co-operation and Development (OECD)

By highlighting the importance of access to justice as a facilitator of inclusive growth and sustainable development, the event intended to emphasize a key contribution to the OECD Inclusive Growth Agenda and the Sustainable Development Agenda. Furthermore,

high-ranking officials from a variety of nations emphasized each country's initiatives to promote access to justice.

POSSIBLE SOLUTIONS

Although previous attempts by the UN member States and NGOs have facilitated, to some extent, an increase in women's access to justice in post-conflict societies, most measures are broad and only highlight the issue at hand. However, for change to occur, there is a need for proactive and practical solutions to solve inequalities before the law. The key concern about the solution is whether it is worth amending a system that has deeprooted inequalities.

Prioritizing women's access to justice by increasing female representation

Empowering women who have had their voices and rights taken away in post-conflict societies, who have endured violence, harassment and sexual abuse; it is a fundamental part of increasing women's access to justice. Seeing that it is possible for women to not only be allowed to be served justice, but are ensured it, allows for women who are denied justice, who have lived in times of conflict, and who are dismissed, to fight for what is fair. The involvement of more women in the reformed legal system of post-conflict countries will allow for women's access to justice to become a top priority. This can be done by introducing quotas; a percentage of women that have to be involved in the justice sector in post-conflict nations. Policy reform and the restoration of the legal system in an equal way, as well as enforcement, will not happen if there is not enough pressure.

Creating pressure to ensure the recognition of women's suffering and ways to prevent it in post-conflict countries.

Pressure can be created through social media all the way to parliament members advocating for women's rights. Information on women's rights and the cases of disrespect of them will lead to even more people standing up for what is right. Apart from activists creating pressure, journalists, influencers, celebrities and government members play a significant role in reporting breaches in women's rights and tragedies in post-conflict societies. People across the world spreading the stories of these women will create pressure on decision-makers to further include women and ensure their access to justice and human rights. Stories do not create pressure and change until they are heard.

Legislative measures for the protection of women

Ideally, a new system could be formed, one without discrimination and prejudice. However, that is not likely to happen when people view the existing system as "functional" or "a bit flawed". Thus, establishing legislative measures and laws is the next best option.

After years of conflict, violence, and abuse, there is trauma. Women and girls who have had their voices taken away from them, need to feel protected. They need to feel supported, and they need to feel heard; for them to have justice. Countries should provide protection to them, refugees, and internally displaced women. Above all action must be taken.

Although these solutions have been expressed, they have not yet been enforced everywhere. Government laws to prevent violence against women, especially domestic abuse, should be enforced. The government should construct temporary houses for female victims of violence in post-conflict countries, with appropriately-trained staff. Accordingly, the government should train staff to respect women, as well as justice personnel to not ask inappropriate and disrespectful questions, which may lead to women not wishing to go to court. Post-conflict countries have an opportunity to reform the system, after it has been destroyed, to include women and to support and respect the tragedies they have been through. All these solutions are in the hands of member-states to enforce.

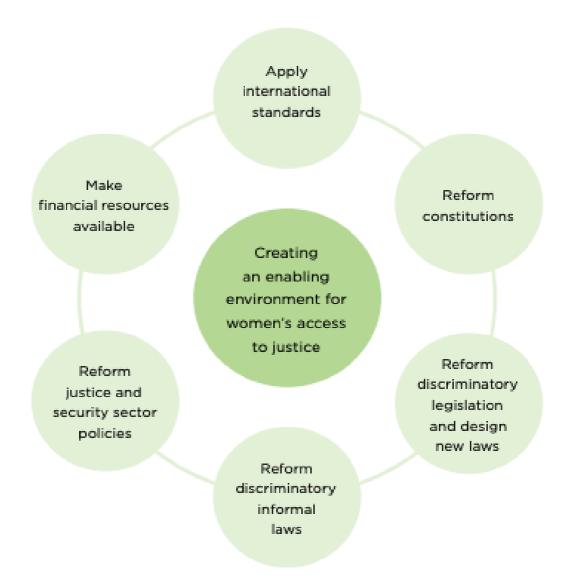


Figure 3: Elements to create an enabling environment for women's access to justice "A Practitioner's Toolkit on Women's Access to Justice Programming." UN, UN WOMEN, UNDP, OHCHR. 18

 18 "A Practitioner's Toolkit on Women's Access to Justice Programming." UN, UN WOMEN, UNDP,

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