

## **Towards Sustainable Peace: The Protection of Economic, Social, and Cultural Rights of Victims of Gender-Based Violence in Post-Conflict Settings**

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# **Towards Sustainable Peace: The Protection of Economic, Social, and Cultural Rights of Victims of Gender-Based Violence in Post-Conflict Settings**

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**Abstract.** This paper addresses the urgent need to protect the economic, social, and cultural rights (ESCR) of gender-based violence (GBV) victims in post-conflict environments, highlighting a critical gap in transitional justice (TJ) practices. Prevailing TJ frameworks largely emphasise civil and political rights, often neglecting victim-centred, gender-sensitive approaches. This neglect leads to the underrepresentation of varied GBV forms, extending beyond sexual and reproductive harm, and fails to tackle the root causes of violence and exploitation. This research advocates for an expanded, inclusive TJ model that fundamentally incorporates ESCR protection in post-conflict settlements. It underscores the necessity of acknowledging the wide spectrum of GBV, including less-recognised forms that significantly impact victims' health, education, and economic well-being. Moreover, the paper critically examines the disconnection between the recognised developmental role of TJ and the actual external support provided for empowering local communities. This discrepancy impedes the successful execution of initiatives aimed at upholding and promoting ESCR for GBV survivors. By proposing a more holistic TJ framework that encompasses ESCR, this paper contributes to the discourse on achieving sustainable peace. It stresses the importance of integrating gender-sensitive methodologies into larger societal rebuilding efforts, placing the needs and rights of GBV survivors at the forefront of post-conflict reconstruction. Such an approach not only addresses immediate injustices but also lays the groundwork for enduring peace and sustainable development, rooted in a comprehensive respect for and realisation of all human rights.

**Keywords:** *transitional justice, gender-based violence, socio-economic rights, sustainable peace*

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## Introduction

In the wake of conflicts that have shattered societies across the globe, the field of transitional justice (TJ) has emerged as a pivotal tool in navigating the complex journey from turmoil to peace. TJ, a response to systematic or widespread human rights violations, seeks to address the legacy of atrocities by combining judicial and non-judicial measures. These measures include criminal prosecutions, truth commissions, reparations programmes, and various kinds of institutional reforms. While TJ is fundamentally concerned with ensuring accountability, fostering peace, and rebuilding war-torn societies, its effectiveness is often marred by an imbalance in addressing the spectrum of human rights violations (Polizzi 2022). This paper delves into a critical dimension of TJ that has been largely sidelined in post-conflict settings: the protection of economic, social, and cultural rights (ESCR) of victims of gender-based violence (GBV). GBV, a manifestation of deeply ingrained gender inequalities, persists as a tool of war and continues to affect communities long after the cessation of hostilities (Davies and True 2015). Although TJ procedures have historically concentrated on civil and political rights, lasting peace and social change are severely hampered by the inadequate treatment of GBV within the larger framework of ESCR.

In post-conflict scenarios, the ramifications of GBV are profound and multifaceted, extending beyond immediate physical and psychological trauma. Survivors often face long-term challenges that include limited access to healthcare, education, and economic opportunities. These challenges are not just individual concerns but are deeply interwoven with the social fabric, impacting families and communities at large (Okyere 2018). The neglect of ESCR in TJ processes thus not only perpetuates the suffering of GBV survivors but also impedes the holistic recovery of societies from the scars of conflict (Dauer and Gomez 2006).

Moreover, this paper critically examines the gap between the recognised role of TJ in fostering development and the actual external assistance provided. There is a clear discrepancy between the way policies are formulated, which highlights the significance of including ESCR into TJ procedures, and the actual situation, which often disregards these rights (Mani 2008). This discrepancy not only undermines the efforts to empower local stakeholders, particularly women and marginalised groups, but also raises questions about the commitment of the international community to truly comprehensive post-conflict rebuilding.

The research methodology is grounded in a comprehensive review of literature, legal articles, and case studies, drawing on a wide array of documents and scholarly works. The study examines international and

regional human rights treaties such as the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESC), and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention), and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). These treaties provide legal framework for understanding and advocating for ESCR in the context of TJ. The study integrates insights from United Nations Security Council Resolutions, particularly Resolution 1325 on Women, Peace, and Security, and reports from the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence. These reports highlight the international community's stance on the integration of gender-sensitive approaches and ESCR in TJ processes. Moreover, the paper draws on critical analyses from legal scholars in TJ, gender studies, and human rights law. These works provide theoretical foundations and practical insights into the intersection of TJ, GBV, and ESCR. Additionally, examinations of the situation in Afghanistan post-Taliban takeover, and the ongoing conflict in the Democratic Republic of Congo (DRC) demonstrate the practical applications and challenges of integrating ESCR into TJ frameworks. The methodology aims to bridge the gap between theory and practice by advocating for an inclusive TJ model that fundamentally incorporates ESCR protection. It argues for the necessity of embedding ESCR within TJ frameworks, thereby ensuring that the rights and needs of GBV survivors are not just acknowledged but actively addressed. Such an approach necessitates a shift from a narrow focus on retribution and justice to a more expansive view that encompasses social reconstruction and reconciliation. It requires a TJ framework that accommodates gender nuances in conflict and post-conflict situations and recognises the interdependence of all human rights, including civil, political, economic, social and cultural.

The structure of the paper is organised as follows: Following this introduction, the second section provides a detailed analysis of the existing TJ frameworks, highlighting their limitations in addressing the full spectrum of human rights. The third section delves into the specific challenges faced by GBV survivors in post-conflict contexts, with a particular focus on the importance of protecting their ESCR. The fourth section proposes transformative justice as an expanded model of TJ that integrates these rights. The fifth section examines the role of external assistance and its impact on the effective implementation of ESCR-focused TJ frameworks. Finally, the

paper concludes by synthesising the findings and suggesting directions for future research.

In this way, this paper contributes to the evolution of the debate on TJ and provides insights for policy makers, practitioners, and academics. It underscores the imperative of placing GBV survivors' rights at the forefront of post-conflict reconstruction efforts, not merely as a matter of justice but as a cornerstone for sustainable peace and development. This paper, thus, stands as a call to action – to re-envision TJ mechanisms in a way that truly reflects the complexities and nuances of post-conflict societies, paving the way for a future where peace is not just the absence of war, but a state of justice and equity for all.

## 1. Challenges in Integrating ESCR in Transitional Justice

The indivisibility and interconnectedness of all human rights are well-recognised in international legal instruments such as the 1948 UDHR, the 1966 ICESCR and the 1966 International Covenant on Civil and Political Rights (ICCPR). Moreover, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence has been emphasising the equal importance of economic, social, cultural, civil, and political rights in TJ, highlighting the need for a victim-centred, women-empowering, and sustainably funded approach in their reports (De Greiff 2014, para 5-7). However, economic and social aspects have often been overlooked, both theoretically and practically. This neglect is increasingly questioned by scholars and practitioners, leading to a growing debate on incorporating socioeconomic factors into TJ (Ioana 2014, Evans 2018, 35-37).

ESCR encompass a range of legal obligations derived from various sources, including international and regional human rights treaties and domestic laws. The key international treaties are the 1948 UDHR and the 1966 ICESCR, which enshrines rights to education, food, health, an adequate standard of living, and work. These obligations are maintained even during armed conflicts (ICJ 2004, para 106; Schmid 2013). The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comments General Comment No. 9, has emphasised the importance of judicial remedies for Covenant violations, asserting that all Covenant rights have justiciable aspects and that courts play a crucial role in making these rights effective (CESCR 1998).

Regarding judicial enforceability of ESCR, for instance, in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ recognised the applicability of the ICESCR and stated that Israel must not impede these rights, including work, family, living

standards, health, and education, in areas under Palestinian authority (ICJ 2004). Furthermore, in the 2018 *Cuscul Pivaral v. Guatemala* case, the Inter-American Court of Human Rights (IACtHR) enforced the duty of progressive realisation of health rights for HIV+ individuals (IACtHR 2018). The case involved 49 victims, highlighting vulnerabilities due to their HIV status and socioeconomic conditions. Despite Guatemala's efforts, the Court found measures insufficient, breaching rights to health, life, integrity, judicial process, and non-discrimination (IACtHR 2018, para 97). Additionally, in the *Women Against Violence and Exploitation in Society (WAVES) v. Sierra Leone* case in the Economic Community of West African States Community (ECOWAS) Court of Justice, WAVES challenged Sierra Leone's policy excluding pregnant girls from mainstream schools as a human rights violation (ECOWAS Court of Justice 2019). The policy worsened during the Ebola outbreak, leading to separate, limited schooling for pregnant girls, increasing their stigma and economic burdens and hindering their return to education. The ECOWAS Court found the policy discriminatory under Article 17(1) of the African Charter on Human and Peoples' Rights, ordering its immediate revocation. The Court emphasised the state's duty to ensure equal educational opportunities for all (ECOWAS Court of Justice 2019, para 30).

While there is increasing recognition of the significance of incorporating ESCR in legal contexts, TJ's focus has predominantly been on a limited range of mechanisms, particularly truth commissions and trials, which address violations of "bodily integrity" and direct, personal violence (Gready 2010); therefore, issues such as social justice, poverty, and land inequalities have often been neglected or deemed beyond the scope of TJ (Mani 2008: 254; De Greiff 2006: 205). Yet, several approaches have been proposed to integrate TJ with addressing ESCR-related violence. These include providing more opportunities for socioeconomic grievances to be voiced in truth commissions and addressing collective societal injustices, like land inequalities, through reparations (Pasipanodya 2008: 392–395). However, these proposals generally rely on adapting existing TJ mechanisms, which limits their effectiveness in addressing ESCR-related violence comprehensively. There's another tendency to discuss ESCR as an outcome of other abuses or everyday life issues. Often, ESR abuses are analysed not in their own right but as secondary effects of civil and political rights violations or as merely addressing victims' daily needs (Ioana 2014). This suggests that without a focus on addressing issues of access to justice, including its economic and gender-related aspects, legal proceedings may be hindered, and the broader goal of delivering justice to victims may not be fully realised. For example, the South African Truth and Reconciliation Commission's approach relegated everyday experiences of

apartheid to the background instead of recognising them as crimes, and the Peruvian Truth and Reconciliation Commission emphasised socioeconomic factors as causes of conflict rather than as rights violations (Laplante 2008; Nagy 2008, 284).

The interpretation of data on survivors' TJ preferences often relegates ESCR issues to the background rather than viewing them as integral to the abuses addressed in TJ. Surveys in northern Uganda and Cambodia revealed that, following conflicts, victims prioritised concerns such as food, security, education, and livelihood restoration over justice. (Pham et al. 2005; Pham et al. 2009). This has led to a conclusion that immediate needs surpass justice desires, separating 'justice' from socioeconomic concerns like healthcare and education, and thus treating ESCR more as background needs than rights in TJ discussions. Nonetheless, the inherent political fragility and the typically brief duration of truth commissions often lead to the victims' voices being disregarded (Waldorf 2012: 176-177). For instance, while the South African Truth and Reconciliation Commission became highly regarded globally, the disparity between the ideal of a 'rights paradise' and the harsh socio-economic and political conditions faced by most South Africans has grown since the end of apartheid (Robins 2008: 2). Moreover, identifying potential beneficiaries for inclusion or exclusion in reparation schemes is challenging due to limited resources, time constraints, and lack of straightforward methods, making it difficult to adequately address ESCR-related violations through reparations (Waldorf 2012: 177-179). Additionally, the use of reparations to address ESCR-related violations is hampered by the lack of political will and the fact that reparations are rarely implemented in TJ programmes (Waldorf 2012: 177).

Furthermore, national legislative and judicial systems may lack the capacity to enforce economic and social rights, often not covered in treaties or peace agreements. Typically, more resources and expertise have been devoted to sectors like physical security and electoral systems, leaving social and economic security less developed. Even when economic and social rights are acknowledged, mechanisms for their realisation might not be adequately developed. For instance, the observation of the International Court of Justice (ICJ) in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* highlighted Israel's obligations under the ICESCR but didn't specify the required legal mechanisms for fulfilling these obligations (ICJ 2004, para 130-134). The UN Human Rights treaty bodies have provided more guidance in this area through their General and Concluding Comments. While international human rights law places the onus on States to ensure rights are upheld, in practice, the central authority might have limited legal or actual power over sub-state entities in fulfilling these responsibilities.

Consequently, it can be argued that TJ is “inherently short-term, legalistic, and corrective” (Waldorf 2012, 179). The recognition of the indivisibility and interconnectedness of all human rights, as outlined in international legal instruments such as the 1948 UDHR and the 1966 ICESCR, underscores the importance of integrating ESCR into TJ frameworks (Ioana 2014; Evans 2018). However, the typical TJ mechanisms may be inadequate for tackling ESCR-related violations. It was pointed out that TJ often overpromises on delivering reconciliation, fails to address socioeconomic inequalities important to victims, and regularly does not follow through on reparations or institutional reforms (Waldorf 2012, 175-179). This limited success raises concerns about how to address ESCR-related violations in post-conflict settings and post-authoritarian societies, even if prosecutions for civil and political rights violations are successful.

## **2. Gender-Based Violence and ESCR**

Gender-based violence (GBV) remains a pervasive issue in post-conflict settings, exacerbating the already severe impacts on survivors’ health, education, and economic well-being (Davies and True 2015). Especially, certain demographics such as children, the elderly, refugees, ethnic, religious, and racial minorities, and those facing discrimination, are particularly vulnerable. They are often marginalised, suffering poverty and other detriments. Moreover, women and girls in these environments encounter distinct challenges and vulnerabilities (Bencomo *et al.* 2022). This section examines how international and regional human rights instruments and the United Nations (UN) Security Council Resolutions, including the 1979 CEDAW, the Belém do Pará Convention, and the Istanbul Convention, address the vulnerabilities of certain groups in post-conflict environments. It emphasises the need for targeted measures to ensure their protection and empowerment. Additionally, the section will explore the intersection of GBV with ESCR violations, highlighting the essential need for comprehensive legal and social responses.

### **2.1. Vulnerabilities and Gendered Issues**

The concepts of vulnerability and intersectionality are crucial for understanding the multifaceted impacts of conflicts on different population groups. Scholars such as Breslin (2019) and Fordham (2004) emphasise that certain demographics, including women, children, the elderly, and minorities, face compounded vulnerabilities due to intersecting factors such as gender, race, and socio-economic status. This necessitates a nuanced approach in TJ



that addresses these intersecting vulnerabilities and ensures inclusive and equitable post-conflict recovery efforts. Not recognising these vulnerabilities can lead to their exclusion from political and governance roles, which can destabilise post-conflict regimes and hinder sustainable development reliant on the realisation of ESCR for all (Fordham 2004). The CESCR emphasises the importance of protecting vulnerable groups, especially during resource constraints, and asserts that international entities have obligations to assist these groups during economic sanctions (CESCR 1997, para 14; CESCR 1990, para 12).

The concept of vulnerability in certain groups is not rigid, as individuals can belong to multiple vulnerable categories. This necessitates examining the intersection of various vulnerabilities. Women, in particular, may face unique and additional challenges due to legal, social, cultural, and practical reasons (Breslin 2019). This includes specific vulnerabilities of pregnant women, mothers with young children, and female heads of households, who may face distinct hardships beyond their membership in other vulnerable groups. Human rights treaty bodies support this method, recognising specific vulnerabilities and highlighting the necessity of implementing precise measures to effectively address them.

General Recommendation No. 30, issued by the Committee on the Elimination of Discrimination against Women (CEDAW-Com) on October 18, 2013, highlights the severe impact of conflicts on women and girls. It states that violence against women and girls, a form of discrimination prohibited by the 1979 CEDAW, is exacerbated during conflicts, placing them at heightened risk of various forms of GBV by both state and non-state actors. The recommendation acknowledges that while all civilians are adversely affected by armed conflict, women and girls are primarily and increasingly targeted by sexual violence, used as a tactic of war to humiliate, dominate, instill fear, disperse, and forcibly relocate civilian members of communities or ethnic groups (CEDAW-Com 2013, para 34). It asserts that violence against women and girls is not just a crime, but a form of discrimination prohibited by the 1979 CEDAW. This framing is crucial as it elevates the issue from individual acts of violence to systemic discrimination. It underscores the need for states to recognise and address violence against women as a structural problem rooted in gender inequality. Furthermore, the recommendation outlines that various forms of GBV often persist and escalate in post-conflict settings, highlighting that conflicts intensify existing gender inequalities (CEDAW-Com 2013, para 35). This observation is critical because it points to the intersectionality of violence—how war exacerbates vulnerabilities already present due to societal gender norms and inequalities. Additionally, it states that specific groups of women and

girls, including internally displaced and refugee women, women's human rights defenders, women from minority identities, widows, women with disabilities, female combatants, and women in the military, face particular risks of violence during and after conflicts. These groups are especially vulnerable to sexual assault and harassment by both state and non-state armed groups and resistance movements (CEDAW-Com 2013, para 36). This recognition is vital as it calls for targeted interventions to protect these groups, acknowledging their unique vulnerabilities and the different forms of violence they may face. In addition, the Belém do Pará Convention, adopted by the Inter-American Commission of Women of the Organisation of American States at a conference held in Belém do Pará, Brazil, in 1994, recognises that certain groups of women are more vulnerable to violence due to intersecting factors such as race, ethnicity, migration status, and displacement in Article 9. It mandates states to provide specific protections and support for these women, ensuring that their particular needs are met and that they are not further marginalised or victimised (Bettinger-López, 2018). Moreover, the Istanbul Convention, which was the first European instrument aiming legally to prevent GBV, protect victims of violence, and punish perpetrators, and opened for signature in 2011, acknowledges that women who have experienced violence are often in vulnerable positions due to societal, economic, and psychological factors in Article 3 and 4. It stresses the importance of comprehensive and coordinated policies that integrate support services, legal protections, and preventive measures to address these vulnerabilities effectively. This includes recognising the compounded vulnerabilities of women in conflict situations and those facing multiple forms of discrimination (Niemi and Verdu Sanmartin, 2020).

Furthermore, the UN Security Council Resolution 1325 on Women, Peace, and Security adopted in 2000 recognises the effects of armed conflicts on women and girls. It significantly addresses the vulnerability of women in conflict situations by recognising their increased risk, promoting their participation in peace processes, mandating protective measures, ensuring accountability, and enhancing support and training. These provisions aim to integrate a gender perspective into all aspects of conflict resolution and peace-building, thereby acknowledging and addressing the unique challenges faced by women in conflict and post-conflict settings (Fitzpatrick, 2016). This comprehensive approach seeks to protect women, ensure their rights, and empower them to contribute effectively to peace and security efforts (UNSC 2000).

These frameworks underscore the importance of recognising and addressing the compounded vulnerabilities faced by women, particularly in post-conflict settings, where intersecting factors such as displacement,

economic hardship, and societal exclusion further exacerbate their risks and marginalisation. Despite formal commitments to a structural problem rooted in gender inequality and certain vulnerabilities stemming from socioeconomic factors in international and regional frameworks, integrating ESCR in post-conflict settings remains challenging.

## 2.2. Intersection of GBV with Violations of ESCR

GBV refers to harmful acts directed at an individual based on their gender or those acts that affect persons of a particular gender disproportionately, though this is not exhaustive (European Commission n.d.; UNHCR n.d.). It encompasses a range of physical, sexual, psychological, and economic abuses. It constitutes a violation of human rights and disproportionately affects women, girls, and gender-diverse individuals, leading to significant detrimental impacts (Bencomo *et al.* 2022). The intersectionality of GBV with ESCR violations highlights the need for comprehensive legal and social responses that address the root causes of gender inequality and socio-economic marginalization. The interdependence of civil, political, economic, social, and cultural rights means that violations in one area can exacerbate vulnerabilities in another (CEDAW-Com 1999; Cusack and Pusey 2013). Addressing these interconnected issues requires a transformative justice approach that goes beyond traditional TJ mechanisms to include broader societal reforms aimed at achieving substantive equality and justice for all survivors of conflict-related GBV.

The right of women to be free from GBV is recognised in international and regional legal instruments, including the 1979 CEDAW, Istanbul Convention, and Belém do Pará Convention, as fundamental to health and as prohibitive of torture and discrimination. These legal frameworks reinforce state responsibilities and international agreements stressing integrated approaches to preventing GBV. States and international entities are tasked with ensuring these rights, including through international assistance, while avoiding actions that exacerbate barriers or take retrogressive steps. The right to participate in health care planning and implementation is emphasised as both a right and a duty. The General Recommendation 35 by the CEDAW-Com refers to *opinio juris* and state practices as indicators that the prohibition of GBV against women has developed into a customary international law principle (CEDAW-Com 2017, para 2). In addition, based on the Inter-American Court of Human Rights (IACtHR)'s Advisory Opinion n. 18 regarding the Juridical Condition and Rights of Undocumented Migrants issued on 17 September 2003, it is suggested that the core principle of

equality and non-discrimination has risen to the level of *jus cogens* within international law (IACtHR 2003, para. 101).

The ICESCR explicitly states in Article 2(2) the necessity of non-discrimination in upholding economic and social rights, as follows: ‘The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ This principle is vital for achieving true, substantive equality among all individuals, beyond just formal equality. It encompasses equitable distribution and allocation of rights as outlined in the Covenant. GBV and violations of ESCR are deeply interconnected. GBV often leads to or exacerbates violations of ESCR. For instance, survivors of GBV may face challenges in accessing education, healthcare, and employment, impacting their right to an adequate standard of living. Furthermore, societal norms that underpin GBV often also contribute to the denial of economic and social rights, particularly for women and marginalised groups.

Ensuring non-discrimination in the economic and social spheres, particularly in the distribution of resources, is essential for women’s rights. This is because inequality in these areas significantly affects their ability to enjoy various human rights, such as employment opportunities, political involvement, and legal equality (Cusack and Pusey 2013). Article 3 of CEDAW requires States to adopt comprehensive measures, including legislation, to ensure women’s full development and advancement in all sectors, particularly political, social, economic, and cultural fields. The aim is to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on an equal basis with men. Other articles of CEDAW specify equality in education (Article 10), employment (Article 11), healthcare (Article 12), and access to family benefits and credit (Article 13). Discrimination in these rights hampers personal development and undermines broader equality goals. Ensuring basic social protections like housing, food, and education is key to reinforcing equality guarantees, especially for the most vulnerable.

CEDAW-Com’s General Recommendation No. 25 states that to prohibit discrimination, States must actively improve women’s actual situation with effective policies (CEDAW-Com 2004). This includes the obligation to prevent, investigate, prosecute, and penalise post-conflict GBV, as such violence is a form of discrimination and exacerbates other discrimination forms. (CEDAW-Com 1992). In addition, States must establish a legal framework against discrimination (CEDAW, Article 2) and work to eliminate gender-based stereotypes in post-conflict employment and public life for women

(CEDAW, Article 5(1)). Additionally, they must identify and address specific healthcare needs of vulnerable groups, including gender-specific health issues, as per CEDAW General Recommendation No. 24, para. 6 (CEDAW-Com 1999).

In Afghanistan, gender-based structural violence is a prevalent issue. The Taliban's rise to power in Afghanistan in August 2021, coupled with the abrupt withdrawal of international forces, has profoundly impacted life, particularly for women. This shift has reinforced militaristic masculine norms focused on dominance, resulting in increased GBV and discrimination (Basu, 2023). The Taliban's deep-rooted patriarchal practices, aligned with Pashtun honour codes, have severely curtailed the freedoms of Afghan women and girls, barring them from public life, including employment and education, and leading to widespread human rights violations (Basu 2023). GBV has been a long-standing issue for women and girls in Afghanistan, with high rates of such violence prevalent even before Kabul's fall. Despite Afghanistan's ratification of CEDAW and constitutional commitments to gender equality in 2004, as well as the former Afghan government's draft in 2016 on the country's first-ever National Action Plan on the Elimination of Violence against Women to ensure women's access to justice, the Taliban's takeover has led to the abolition of protective laws and increased barriers to justice (Basu 2023). The situation has been exacerbated by the closure of women's shelters and increased restrictions on movement, resulting in heightened vulnerability to violence and exploitation, severely impacting women's health and safety (Jalali 2023).

As a signatory to the CEDAW, Afghanistan is obliged to pursue gender equality and combat gender discrimination. Furthermore, case law and international instruments place positive obligations on States to uphold human rights. The CESCR has detailed these obligations as the duties to respect, protect, and fulfil rights, as explained in its General Comments, including the 2005 General Comment No. 16 (CESCR 2005). These include ensuring non-discrimination in economic, social, and cultural rights and are further elaborated in comments addressing specific rights like work, water, health, education, and food. This model is also adopted by other bodies such as CEDAW in their recommendations, for example, General Recommendation No. 24 on Women and Health (CEDAW 1999). This approach applies to diverse vulnerable groups post-conflict, ensuring tailored support for each group's specific needs across different rights.

Furthermore, it should be noted that food insecurity exacerbates patterns of GBV. For instance, the armed conflicts between the Mouvement du 23 mars (M23) and the Armed Forces of the Democratic Republic of the Congo in the eastern part of the country resulted in mass displacement and a substantial rise

in GBV in and around the displacement areas. According to the 2024 report of the UN Security Council, the ongoing conflict and economic difficulties have led to displaced women and girls turning to survival prostitution, highlighting the link between food insecurity and sexual violence (UNSC 2024, para 34). Moreover, in Ethiopia, although the Agreement for Lasting Peace through a Permanent Cessation of Hostilities, signed by the Government of Ethiopia and the Tigray People's Liberation Front in 2022, brought an end to the conflict in the Tigray region, incidents of sexual violence have continued to be reported. In this context, the International Commission of Human Rights Experts on Ethiopia received reports of sexual exploitation in exchange for food, as well as ongoing sexual slavery and child labour in Tigray, especially near military compounds of the Eritrean Defence Forces (UNSC 2024, para 11). These cases clearly demonstrate that food insecurity increases the risk of GBV, leading to socioeconomic marginalisation, which in turn raises the likelihood of poverty and further food insecurity.

### **3. Transformative Justice with a Gendered Approach**

Transformative justice strives to go beyond TJ by tackling the socioeconomic systems and disparities that lead to GBV. TJ often involves high-level discussions that result in changes at the top levels, whereas transformative justice strives for extensive, society-wide change. Transformative justice has been broadly defined and differentiated from TJ in recent years, including socioeconomic, political, psychosocial, symbolic, and ecological elements (Lambourne and Rodriguez Carreon 2016). While TJ potentially can bring about significant changes by improving legal institutions and advocating for constitutional reforms based on rights, thereby bolstering democratic frameworks, these impacts are frequently inadvertent and constrained. To achieve comprehensive justice, it is essential to develop innovative approaches to directly confront structural issues, as reparations in TJ, which generally concentrate on restitution, are insufficient in tackling systemic inequalities (Evans 2018). Addressing broader economic measures beyond individual reparations is imperative to realise enduring justice.

In this context, transformative reparations can be provided. This may include legal and institutional reforms, the establishment of the prohibition of discrimination and the subversion of sexist or patriarchal norms, and constitutional amendments affecting the status of women (Rubio-Martin 2019). In societies dominated by men, these changes in structure can help women regain their ability to recover from harm (Rubio-Martin 2019). The concept of transformative reparations, aimed at bringing about structural changes, was first proposed in the 2007 Nairobi Declaration on Women's and

Girls' Right to a Remedy and Reparation. This declaration highlighted the importance of providing reparations that address the political and structural inequalities that have a detrimental impact on the lives of women and girls. Furthermore, as per the UN Special Rapporteur, Pablo de Greiff, reparations with a transformative perspective aim to address and, as much as feasible, challenge existing inequalities and biases, and the initiative should not perpetuate these elements (De Greiff 2014, para 81). It was also highlighted that the objective of these reparative actions should be to 'provide a tangible advantage directly to the victims themselves (De Greiff 2014, para 81).'

On the other hand, there is a growing concern that collective or structural actions fail to provide individual reparations, which is an essential aspect of the reparation idea (Duggan and Ruth 2009). Transformative reparation measures, in fact, cannot serve as substitutes for reparative measures that specifically and predominantly focus on individual victims (De Greiff 2006). Reparative measures are essential for transformative reparations and should prioritise the needs of individual victims in reparations programmes.

In addition, it is important to highlight that providing women with reparations in line with the harm caused to restore their pre-violence condition may be the least extensive form of reparations (Rubio-Marín, 2007). In some societies, women are not granted equal legal status and opportunities as men, leading to inequality. Furthermore, it can be argued that the opportunities accessible to women are often underestimated. Besides, if women had used different methods or opportunities before experiencing harm, the reparation programme, which offers compensation for lost earning potential and provides benefits in terms of education and employment for generating income, might not be effective. Additionally, the reparations, which offer compensation and restitution for land or property loss, would lack effectiveness if there were no equal ownership rights between men and women in society (Rubio-Marín, 2007). If the reparations programme is tailored to address the specific needs of women, it can serve as a future-oriented form of reparation, offering resources and societal advantages such as education, healthcare, and skills development.

Consequently, while TJ mechanisms may tackle structural violence, transformative justice requires its own distinct definition, with an emphasis on wider structural, social, and economic concerns. Transformative justice expands on the perspective of TJ and deals with matters that are not central to TJ. Transformative justice involves more than just broadening TJ; it necessitates unique methods and strategies to accomplish its objectives.

To make transformative justice effective, it is important to go beyond the legalistic and elite-driven aspects of TJ and actively engage affected communities in shaping post-conflict and post-authoritarian outcomes.

Participatory methods enable these communities to express their issues, which in turn improves the credibility and significance of the results in contrast to those enforced by external authorities (Evrard *et al* 2021). Importantly, the participation of women in the establishment of reparations may not only provide practical insights for designing the reparations program effectively but also have a healing effect, considering the obstacles that many societies impose on women's involvement (De Greiff 2015). Lack of such active involvement poses a considerable threat of establishing detrimental procedures like corruption and social marginalisation, which can erode lasting beneficial results (Evrard *et al* 2021). Furthermore, involving affected communities in decision-making provides them the power to address the injustices they experience and allows them to take action (Robins 2008). The participation of affected communities in restorative justice procedures confirms the validity of their experiences and priorities while promoting a feeling of empowerment and agency, which is essential for tackling enduring structural and socioeconomic challenges.

In conclusion, it is crucial to understand that transformative justice, although unique, stems from the same basis as TJ, which seeks to redress injustices resulting from conflicts. TJ primarily deals with civil and political rights, but it is not fully equipped to tackle all socioeconomic injustices. The concept of transformative justice considers how to tackle these extra injustices in post-conflict settings. Transformative justice has the potential to utilise current resources aimed at fighting poverty and inequality. However, their impact should be assessed based on their capacity to tackle socioeconomic inequalities stemming from previous conflict or authoritarianism. This analytical approach aids in determining whether efforts truly support transformative justice by addressing past injustices and can inform both advocacy and policy development.

#### **4. Role of External Assistance in the Implementation of ESCR-Focused Post-conflict Scenarios**

The role of external assistance in the implementation of ESCR-focused post-conflict scenarios is critical. External assistance, often provided by international organisations, NGOs, and donor states, contributes significantly to the development and enforcement of ESCR in post-conflict settings. This includes offering financial support, technical expertise, policy guidance, capacity building, and advocacy for ESCR integration. However, aligning these efforts with local needs and contexts is essential for ensuring effective and sustainable implementation (Firchow and Selim 2022). External



support must prioritise empowering local stakeholders and fostering long-term development and justice based on ESCR.

In academic discussions, the emphasis on institutions and top-down state interventions has led to an association of civil society mainly with NGOs, particularly human rights NGOs, and the role of these NGOs in supporting official TJ mechanisms. (Gready and Robins, 2017). NGO work is often perceived as being specialised and confined to specific sectors, involving tasks like providing expert advice in legal drafting or offering psychological aid to victims. However, this perspective overlooks a broader and more nuanced understanding of civil society's role in post-conflict settings, often missing local community groups' unique insights and potential impacts. This is evidenced in practice by the prioritisation of multilateral and bilateral donors in funding UN agencies, international NGOs, and themselves (Bencomo *et al.*, 2022). This approach diverts funds away from groups that have first-hand knowledge of their communities and have the potential to affect change. Many agencies and international NGOs outsource parts of their work to local groups, but this often leads to short-term, disjointed projects and reduces meaningful local involvement in programme planning (Bencomo *et al.*, 2022). This approach misses out on the valuable insights of local groups active in various sectors, particularly in preventive measures like awareness raising and capacity building.

Domestic groups often have a substantial influence on the development of TJ processes. For example, in Guatemala, the Alliance Against Impunity actively worked to ensure that the National Reconciliation Law would not provide amnesty for severe human rights offenses, including genocide (McSherry 2023). Additionally, civil society often contributes to the establishment of truth commissions. A truth commission is a temporary, official body established to investigate and report on human rights violations, abuses, and atrocities that occurred during a specific period, often during conflict or authoritarian regimes (Zvobgo 2020). It is a critical mechanism within the field of TJ, which seeks to address past injustices and facilitate a transition from conflict or repression to peace, democracy, and reconciliation (Zvobgo 2020). It is formed based on various legal instruments and frameworks, including the 2005 UN Principles to Combat Impunity Basic Principles and the Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which enshrine the right to truth. In the case of Guatemala, the Assembly of Civil Society was instrumental in persuading the government and rebels to include a truth commission as part of the UN-mediated peace deal. Finally, in the realm of designing compensation strategies, civil society plays a vital role in ensuring that the

proposed measures meet the needs of the affected and that the compensation is distributed as the government intends (Gready 2022).

For instance, a civil society group, Peru's *Estudio para la Defensa de los Derechos de la Mujer* (DEMUS), played a vital role in highlighting discrimination and violations of ESCR in TJ in 2007 (Hibbett, 2021). DEMUS is a group dedicated to advocating for equal rights and justice for women. DEMUS' innovative approach included mock tribunals to raise public awareness about gender-based ESCR denials, featuring symbolic cases and human rights experts as jurors (ESCR-Net, 2008, 4). These tribunals, which also drew state representatives, issued recommendations, showcasing ESCR as legal entitlements and exposing structural discrimination against women. While its impact requires further evaluation, this method serves as a creative means to spotlight women's ESCR issues.

The possibility of implementing TJ for previous human rights violations is significantly impacted by the involvement of international activist networks. Beyond urging governments to take action, international human rights advocates are increasingly playing a crucial role in aiding the initiation of human rights trials in alternative forums, especially when domestic legal actions are improbable (Smith and Hamel 2023). Challenges like amnesties, legal impediments, or military resistance often leave limited options for victims in unstable post-conflict situations.

Nonetheless, civil society has played significant roles in TJ through various mechanisms, including the *amicus curiae* process. For instance, in *Prosecutor v. Furundžija* in the International Criminal Tribunal for the former Yugoslavia (ICTY), Anto Furundžija, a local commander accused of participating in the rape and torture of a woman during the Bosnian War (*Prosecutor v. Furundžija* 1998). Civil society organisations, including feminist groups, submitted *amicus curiae* briefs that provided crucial insights into the nature of sexual violence as a war crime and crime against humanity (*Prosecutor v. Furundžija* 1998). Their contributions helped the tribunal establish important legal precedents regarding the prosecution of sexual violence in conflict. In the case, *Prosecutor v. Akayesu* at the International Criminal Tribunal for Rwanda (ICTR), women's rights organisations, such as Human Rights Watch and the Coalition for Women's Human Rights in Conflict Situations, submitted *amicus curiae* briefs that significantly influenced the tribunal's interpretation of sexual violence as a form of genocide (*Prosecutor v. Akayesu* 1998). Moreover, civil society organisations, with their capacity to mobilise, are in a strong position to enhance women's involvement in shaping TJ (Henry 2020). While simply increasing female participation does not guarantee gender-sensitive outcomes, meaningful inclusion tends to bring new perspectives and priorities to the forefront. For example, people's

tribunals deliver civil society justice in response to the failure or insufficiency of international institutions (Chinkin 2006). They aim to increase public awareness of moral, legal, and philosophical issues where both international and national mechanisms have failed communities (Chinkin 2006). Their recommendations are based on ethical values and perceptions of justice, and they play a role in shaping international law. People's tribunals lack legal authority because they are not connected to any official judicial system of a state or group of states (Chinkin 2006). Each people's tribunal aims to uncover new ways to challenge official silence; therefore, each people's tribunal takes on a unique form and process. Earlier examples of a people's tribunal include the Vietnam War crimes trial established by Bertrand Russell in the late 1960s and the Permanent People's Tribunal instituted in Italy in the 1970s by a group of private citizens of high moral authority (Falk 1988, 17-38). In addition, the 2000 Women's International Tribunal on Japan's Military Sexual Slavery was established by the Violence Against Women in War Network, Japan (VAWW-NET, Japan), an organisation that aims at combating violence against women in armed conflicts, including the 'comfort women.'

The objectives of the 2000 Women's International Tribunal were to assess the criminal liability of Japanese military officials and political officers for the crimes against the 'comfort women' and address the state responsibility of Japan (Chinkin 2001). In this regard, the Japanese government not only ignored the invitation to the Tribunal but also did not respond to the recommendations of the Tribunal involving material and symbolic reparations, in addition to monetary compensation (Matsui 2001). However, The tribunal received widespread coverage from media outlets around the world. Furthermore, the decision of the Tribunal has impacted some legislative campaigns in national legislatures outside Japan. In 2007, the US House Resolution 121 was adopted after tireless lobbying efforts to assist the 'comfort women' before the US House of Representatives. The Resolution called on the Japanese government to, for example, formally acknowledge, apologise and accept historical responsibility, educate future generations regarding the crimes, and follow the recommendations of the international community. In addition, the European Parliament passed a resolution urging the Japanese government to acknowledge legal responsibility and provide an apology for the 'comfort women' in a clear and unequivocal manner (European Parliament, 2007). It also stated that Japan should set up efficient administrative mechanisms to compensate the victims and their families (European Parliament, 2007).

Civil society organisations are important political actors in post-conflict settings. The participation of civil society, victims, persons belonging to

minority groups, women and youth in post-conflict processes plays an important role. Active, free, and meaningful participation empowers all rights-holders to articulate their needs and expectations. Through such involvements, civil society can engage in capacity-building activities to empower victims and local communities, including training on legal rights, how to document violations, and how to engage with post-conflict process effectively. Empowered communities are better equipped to advocate for their ESCR and seek justice. In Colombia, for instance, organisations like *Dejusticia* have conducted workshops and training sessions for victims' groups on their rights and the mechanisms available to them, enhancing their ability to participate in the TJ process. Civil society organisations also provide holistic support services to victims, including psychosocial support, medical care, and economic assistance. In Sierra Leone, the Forum for African Women Educationalists provided educational support and vocational training to women and girls affected by the civil war, addressing both their immediate needs and long-term economic empowerment.

Civil society organisations can serve as bridges between grassroots activism and formal political spheres at both national and international levels, facilitated by funding channels and access to transnational networks (Evans 2018). These groups, frequently working with social movements, employ local rights-focused strategies and interconnected global methods of collective mobilisation within marginalised communities. (Robins 2008). Examining how these connections and tactics can be used to promote transformative justice is essential. Evaluating the effectiveness of these tactics can be achieved by placing a critical emphasis on fulfilling socioeconomic rights, dealing with violence associated with ESCR, and working towards transformative justice.

## 5. Conclusion

This paper underscored the urgent necessity of protecting the ESCR of GBV victims in post-conflict settings, highlighting a significant gap in traditional TJ frameworks. These frameworks predominantly emphasise civil and political rights, often neglecting the vital inclusion of victim-centred, gender-sensitive approaches. This oversight not only marginalises various forms of GBV but also fails to address the systemic causes of violence and exploitation that persist beyond immediate conflict resolution.

This research stressed the importance of acknowledging the wide spectrum of GBV, including less recognised forms that severely impact victims' health, education, and economic well-being. Furthermore, it highlighted

the disconnection between the theoretical developmental role of TJ and the practical support provided for empowering local communities. This gap hinders the successful implementation of initiatives aimed at upholding and promoting ESCR for GBV survivors.

The proposed holistic TJ framework, which encompasses ESCR, seeks to foster a more comprehensive approach to post-conflict reconstruction. It placed the needs and rights of GBV survivors at the forefront, addressing immediate injustices while laying the groundwork for enduring peace and sustainable development rooted in respect for all human rights.

Moreover, the concept of transformative justice is explored as a means to address the socioeconomic systems and disparities that underlie GBV. Unlike traditional TJ mechanisms, which often focus on high-level legalistic changes, transformative justice aims for extensive societal change. It includes legal and institutional reforms, subversion of patriarchal norms, and constitutional amendments that affect women's status. Transformative justice recognises the necessity of addressing broader economic measures beyond individual reparations to achieve enduring justice.

Several major themes consistently emerge in debates over socioeconomic rights and transformative justice. One key theme is that socioeconomic inequalities significantly impact post-conflict societies, both as sources of tension that can lead to unrest and conflict and as social justice issues that must be addressed to facilitate development. Another recurring theme is the concern that socioeconomic issues are not being widely or effectively addressed by existing TJ mechanisms, which often fail to tackle these problems comprehensively.

In light of these themes, the paper concludes that existing models of TJ are insufficient for addressing structural violence and ensuring the realisation of socioeconomic rights. Civil society organisations can bridge between grassroots activism and formal political spheres at both national and international levels; therefore, it proposes that further research is necessary to explore the strategies and relationships between social movements and civil society organisations in promoting transformative justice.

In conclusion, transformative justice, although distinct from traditional TJ, shares the foundational goal of addressing injustices arising from conflicts. However, it expands the scope to include broader socioeconomic and structural issues, necessitating innovative approaches and strategies. This paper highlights the potential of transformative justice to utilise existing resources aimed at combating poverty and inequality, thereby addressing past GBV injustices comprehensively.

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