KOFF Factsheets on Gender & Peacebuilding

Factsheet 6/6: Gender and a Holistic Approach to Dealing with the Past
List of Abbreviations

CEDAW  Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
CSW    Commission on the Status of Women
DwP    Dealing with the Past
HSD    Human Security Division
NAP    National Action Plan
SEF    Swiss Expert Pool
SDC    Swiss Development Cooperation
SGBV   Sexual and Gender Based Violence
UNSCR United Nations Security Council Resolution
WPS    Women, Peace and Security

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This toolkit has been designed by the Center for Peacebuilding (KOFF) at swisspeace for the Human Security Division of the Swiss Federal Department of Foreign Affairs.
Introduction

Objectives

At the core of these factsheets is the knowledge that gender is a necessary analytical tool to recognize the dynamics, drivers and consequences of armed conflict and war, to critically analyze national and international interventions into these violent situations, and to move effectively from war to reconciliation and reconstruction.

Women and girls experience conflict in a very different way from men and boys, due to often very distinct roles that women and man perform in their communities in times of peace and conflict. Experience has shown that every conflict has a profound impact on gender relations and every effective and sustainable peacebuilding endeavor must take this into account.

The Human Security Division (HSD) of the Swiss Federal Department of Foreign Affairs is committed to promote gender equality and strengthen women’s participation in peace processes, following Switzerland’s national action plan on women, peace and security and international commitments (inter alia, to the UN Security Council Resolutions on Women, Peace and Security 1325 and its follow-up resolutions including 1889, 1829, 1888, 1960 and 2106), and to the Convention on the Elimination of all Forms of Discrimination Against Women - CEDAW). Gender was integrated into HSD’s activities as a cross-cutting issue in 2003 and in 2007 the Federal Council has adopted the first National Action on Women, Peace and Security which has since then been revised for the third time.

To facilitate the implementation of its policy on gender and peacebuilding, the Gender desk of the Human Security Division together with the Center for peacebuilding (KOFF) at swisspeace has produced this series on Gender and Peacebuilding both for its staff at the headquarter as well as those deployed to fragile and conflict affected-countries by the Swiss Expert Pool (SEF).

The factsheet series provide an overview of the key elements of gender in violent conflict and peacebuilding in order to enhance the understanding of the importance of taking gender aspects into account. It summarizes key concepts of different gender dimensions in violent conflict and peacebuilding and provides clarity over main concepts, shows the importance of integrating gender aspects into project/program management and presents some basic analytical tools to integrate gender in peacebuilding practitioners’ daily work with the help of various illustrative examples and by asking the right questions. It lies in the nature of such short factsheets that they cannot provide an in-depth analysis of all presented topics. With a list of references and links to further information, however, we provide the reader the possibility to investigate specific topics further. In addition the presentation in form of separated factsheets allows for an easy adaptation or the production of new sheets on request.

Covered Topics

The presented Gender factsheet series contains several sheets, as well as a reference list and links to further resources. It provides an overview over the different gender dimensions in violent conflict, it outlines national and international frameworks and their implementation fields and presents instruments for practitioners to integrate gender in their daily peacebuilding.
Gender and a Holistic Approach to Dealing with the Past

By addressing the legacy of human rights violations Dealing with the Past (DwP) aims at transforming the root causes of violence and at establishing guarantees that violent history does not repeat itself. Based on the set principles against impunity recommended by the UN Special Rapporteur Louis Joinet in 1997 and the up-dated principles by Diane Orentlicher, swisspeace and the Swiss Federal Department of Foreign Affairs developed the Conceptual Framework on Dealing with the Past. The Framework emphasizes four pillars - truth, justice, reparation and the guarantee of non-recurrence – taking a holistic approach. Its central focus is on victims and perpetrators and their transformation into citizens with equal rights. A variety of mechanisms are at disposition to address these four themes, such as commissions of inquiry, missing person commissions, truth commissions, international, hybrid and domestic tribunals, reparation programs, vetting measures, institutional reforms etc. The reference “DwP mechanisms and measures” in this factsheet refers to such institutions in general.

Gender is of key importance when it comes to dealing with past atrocities including those that have occurred in armed conflicts and during authoritarianism or occupation. Although the above framework does not explicitly mention women and men or gender, its central focus on victims, perpetrators and citizenship allows the inclusion of gender issues of all ages. Therefore transitional justice or dealing with the past in the holistic and transformative understanding addresses gender issues particularly by challenging and questioning past power relations, structural injustices, discriminatory systems and both social and individual experiences of violence. Dealing with the past cannot be gender blind and gender issues must be taken into consideration when designing, planning and implementing of truth commissions, tribunals, reparation programs, vetting and institutional reform.

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Taking Gender Issues into consideration throughout DwP Processes

In transitional justice and DwP practice and scholarship the term gender has often been used almost exclusively as synonymous with the social category of women while the gendered dimensions of its concept remained largely unrecognized. However, in recent years, considerable efforts have been made with regard to set-up, procedure and to ensure that DwP measures and mechanisms are gender-responsive at a substantive level. Some general gender related issues are to be taken into consideration with regard to any DwP mechanism.

When deciding, planning and designing DwP mechanisms special attention has to be paid to gender issues and inclusion of gender expertise from the beginning on and with regard to central determinations. This includes the choice of the actual mechanisms itself (commission of inquiry, truth commission, mixed or domestic tribunal, reparation commission, vetting boards etc.), its mandate (time frame, crimes to be included, right based or need based approach etc.), its statute and rules of procedure (e.g. set-up of sessions, hearings, witness protection etc.), the nomination of commissioners, judges and prosecutors (equal representation of both sexes), the staffing, funding, control mechanisms, competences, scope of the reporting and recommendations and its implementation. Therefore, simply increasing the number of female staff, such as women commissioners, judges, prosecutors and lawyers alone does not necessarily result in gender-responsive procedures and decisions. Patterns of exclusion, discrimination and gender imbalance that existed before and during the armed conflict or the authoritarian regime must be taken into consideration and should not be repeated (e.g. lack of access to justice and other state structures). Formal and informal barriers which may affect women in a disproportional

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manner, including cost, language, the need to travel, lack of education, cultural or religious rules or a limited awareness of rights must be addressed when designing and setting up DwP mechanisms.\(^6\)

Once DwP mechanisms are set up, attention must be paid to **gender responsive procedures and methodologies** both in preliminary investigation and when testimonies are rendered. For instance, equal participation of both women and men as witnesses must be guaranteed. The design of hearings and sessions must allow for special needs (for instance with regard to child soldiers and victims of sexual violence). A witness and victim protection program must take into consideration gender specific needs and prevailing gender relations in local societies (e.g. balanced staff, specialists on sexual violence, the possibility of *in camera* hearings, the exclusion of the public, specific and adapted psycho-social support, possibilities of individual statements, exclusive male or female group hearings on gender relevant topics, or the recourse on female or male staff for statement-taking, translation services, outreach).

Special incentives and measures are often necessary in order to make it conducive, in particular for **victims of sexual violence** of both sexes, to come forward and testify (e.g. longer investigation periods, special out-reach programs which include psycho-social services, hospitals, women organizations etc.). Venues where testimonies are taken and the process of testimony taking should be designed in a particularly respectful and dignifying manner which does not entail the risk of re-traumatization.

On a **substantive level**, gender issues need to be taken into account in all DwP initiatives, activities and outputs, including, the representation of men and women’s voices and their different experiences. Standards of proof and the assessment of testimonies should be conceptualized in a gender responsive way, for instance by taking into consideration pre-existing in-equalities with regard to access to documentation, state services, justice institutions (e.g. by using lower standards where certain patterns of abuses are proven; use other evidence, where women are systematically deprived of official identification documents).

As regards the **outputs of DwP mechanisms**, be it truth commission reports, judgments, reparation decisions, memorials, museums, exhibitions, history books, gender aspects need not only to be included formally but in a genuine manner, aiming at addressing underlying causes of gendered crimes and misuses. Where the mandate of DwP mechanisms entails recommendations they should address gender issues in a transformative manner.

Generally speaking, DwP measures should **mainstream gender broadly on all levels** and must be **gender responsive**, taking into account particular experiences and needs of women and men in armament, mobilization and integration and structural causes for gender imbalance, discrimination and exclusion. **Gender advisors or special gender units** within DwP mechanisms can help to ensure gender mainstreaming on the procedural as well as substantive level.\(^7\)

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Key gender aspects with regard to the Right to Truth, Justice, Reparations and the Guarantee of Non-Recurrence

The gender dimension of a holistic DwP approach goes beyond the recognition and mainstreaming of gender on the procedural and substantive level of specific measures and mechanisms. When addressing root causes of violence, unequal power and gender relations and injustices, the four pillars of DwP contain a transformative potential to create a more inclusive society with citizens enjoying equal rights. However, if such mechanisms remain gender blind, they may perpetuate existing imbalances and inequality and contribute to further exclusion.

Right to Know

The right to know refers to the importance of individual and collective knowledge regarding the causes, experiences and legacies of human rights violations and entails the responsibility of states to investigate past violations in order to prevent the recurrence of human rights abuse in the future. While investigation or missing person commission can address gender issues in their work, truth commissions, as the most popular institutions to foster the right to know, provide an extraordinary window of opportunity to highlight prior abuses and previous unequal gender relations and assess enabling conditions of gendered violations. They may be better positioned than any other DwP mechanism to frame individual statements, public hearings and testimonies to ‘fit’ a particular meta-narrative of justice and reconciliation. Thereby they can emphasis gender issues and gendered causes of violence. Attention must be paid to the unconscious exclusion of experiences which do not fit with the intended meta-narrative, thereby denying their legitimacy and authenticity, and reinforce prevailing unjust constructions of masculinity and femininity. For instance, practice has shown that women’s testimonies of violence often focus on family members and husbands rather than on their own experiences or are silent around issues which are considered as stigma or taboo, such as sexual violence against both men and women or experiences of women as bush wives or combatants.

Truth commission reports and outreach programs to promote such reports can contribute to gender justice and equality and address structural injustice, power relations and patriarchal patterns perpetuated during conflict or authoritarian regimes. While some final reports of truth commissions remain completely silent on gender issues, others have mainstreamed a gender analysis, including gendered causes of violence, or have dedicated chapters exclusively to women’s experiences and specific gender recommendations.

Right to Justice

The right to justice entails the duty of states to hold accountable those who are responsible for human rights. For many victims justice is an important remedy for their suffering. The right to justice can be met by domestic, international, and so-called “hybrid” courts and tribunals. A gender responsive view in

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13 For instance, the report of the Peruvian Truth and Reconciliation Commission, dedicated specific chapters to sexual violence against women (Volume VI, Chapter 1.5. La violencia sexual contra la mujer) and to violence and gender imbalance as root causes (Volume VIII, Chapter 2.1. Violencia y desigualdad de género). The report is available at: http://www.usip.org/publications/truth-commission-peru-01.
14 UN Women Sourcebook on Women, Peace and Security (2012); e.g. the Report of the Peruvian Truth and Reconciliation Commission contained recommendations on gender issues, CVR Report, p. 158.
defining what constitutes international crimes can play a crucial role for post-conflict societies, for instance when it comes to re-drafting domestic legislation. This is exemplified by the continuous development of the categories of crimes accounting for gender specificities as well as the legal framework to prosecute gender based violence. Due to sustained advocacy of human rights and women’s NGOs as well as scholars, gender based violence has become enshrined and mainstreamed in criminal law both at international and domestic level, equally at the procedural and substantial level. However, international criminal law has still a far way to go to become truly gender responsive, starting from procedural strategies which ignore widespread gender violence, to gender sensitive investigation methods, procedural issues linked to the adversarial nature of international tribunals which make it difficult for victims to talk about gendered crimes.

However, the strong focus on sexual violence and female victims might reduce women and their multiple and complex experiences to victims deprived of their agency and tend to exclude instances of sexual violence against men. Moreover, the definition of gender based crimes as international crimes, such as rape as a form of genocide, thus linking gendered violence to ethnicity or other identity markers, might obfuscate or ignore other power relations and patriarchal structures which informed gender violence. The use of relatively rigid legal categories of crimes risks excluding violations and harm which do not fit the definitions and makes them invisible. Further, traditional jurisprudence tends to ignore context-specific structural causes of gender based violence.

Right to Reparations

The right to reparations refers to restitution, compensation or rehabilitation provided for violations of humanitarian law and human rights collectively or individually to victims and their families. They may take the form of restitution, compensation or rehabilitation and they aim at acknowledging the harm suffered, promoting dignity and empowering victims. Gender responsive reparations should go beyond addressing the immediate consequences of violence, and have the potential to challenge and transform structural and socio-economic gender inequalities, such as distribution of land and property and access to education.

However, in order to avoid that reparations perpetuate pre-existing gender inequalities they must be carefully designed to be in line with an analysis of family and community power relations and broader contextual factors, such as unequal access to bank accounts or necessary documentation. This might be particularly true for restitution which seeks to restore the original situation of the victims; hence leaving unaddressed previously existing gender injustices and insecurity.

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17 The Rome Statute of the International Criminal Court, ICC, which can be seen as the largely accepted codification of international criminal law, defines gender crimes, such as sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity both as crimes against humanity and as war crimes (Art. 7 para. 1 g and Art. 8 para. 2 b (xxii) and e (vi) Rome Statute); Rhonda, C. (2000). Gender Crimes as War Crimes: Integrating crimes against women into international criminal law. In: McGill Law Journal, V 217.
programs can be based on a mapping of men’s and women’s position in society, their roles and experiences before and during a conflict or an authoritarian regime.25

Women participation must already be ensured when the program is designed and violations triggering reparations benefits are defined. Further, complex programs, for instance programs that envision a variety of benefits (e.g. educational, medical and psycho-social support, symbolic measures) together with material compensation may be better suited to address specific gender needs.26 The way in which financial compensation is distributed can have an important gender impact, e.g. individual financial reparations empower beneficiaries only if they take into consideration existing rules regarding access and use of resources.27 Moreover, compensation efforts, for example for sexual violence, should not further stigmatize women or men who suffered from these crimes.

Symbolic reparations, such as memorials and museums, present an opportunity to challenge dominant images of masculinity and femininity, which existed before or have been produced during an armed conflict or authoritarian regime.

The guarantee of non-recurrence

The guarantee of non-recurrence aims at transforming underlying, structural causes for armed conflict and authoritarian regimes. It includes measures such as the demobilization, disarmament and reintegration (DDR) of former combatants, vetting and lustration, as well as institutional reforms consisting among others of structural reorganization, the creation of new legal frameworks and systems of democratic control as well as educational measures for the staff.28 DDR programs increasingly address different needs of female and male ex-combatants, in particular with regards to child combatants, sexually transmitted diseases, and specific skills to allow reintegration, as well as security issues and economic dependence.29

Gender-sensitive DDR programs require taking into account the broader socio-economic situation of the reintegrating society (e.g. the families of the former combatants or the integrating villages)30. DDR might be seen as a sort of reward for having taken up arms, or can reinforce existing inequalities and even lead to new tensions, in particular when the wider population does not benefit from reconstruction efforts. Considering the fact that in some contexts the majority of victims are women and the majority of combatants are men, DDR activities without or with insufficient reparations run the risk to widening existing gender inequalities.

Efforts to guarantee non-recurrence present an opportunity to rebuild the state and to reform its institutions in a way that it works for, and is trusted by both women and men31. This is of key importance, especially when public institutions such as the police, the military and the judiciary have been instruments of repression or were involved in systematic human rights violations. As public institutions generally contribute to the social construction and maintenance of masculinity and femininity and gender differences are deeply entrenched within public and private institutions, security sector and judicial institutions might have also served to create and maintain unequal gender relations. The reform of these public institutions in the course of DwP present therefore an opportunity to redress more general gender injustices, for example by advancing previously neglected women’s rights32 or to address law-, policy- and context-related barriers which existed for men or women to the services of the state.

30 Gender Perspectives on DISARMAMENT, DEMOBILIZATION AND REINTEGRATION (DDR), Briefing Note 4 from UN Department for Disarmament Affairs in collaboration with the Office of the Special Adviser on Gender Issues and the Advancement of Women United Nations.
List of References

Resources

Further Information
≥ Gender Perspectives on Disarmament, Demobilization and Reintegration (DDR), Briefing Note 4 from UN Department for Disarmament Affairs in collaboration with the Office of the Special Adviser on Gender Issues and the Advancement of Women United Nations.
Links to useful websites

www.womenpeacesecurity.org NGO Working Group on Women Peace and Security

http://kvinnatilkvinna.se/en/ Kvinna till Kvinna, Sweden

www.wilpf.org Women’s International League for Peace and Freedom

http://www.peacewomen.org/ Peace Women, WILPF

www.inclusivesecurity.org Institute for Inclusive Security, Hunt Foundation

http://www.womenwarpeace.org online Portal on Women, Peace and Security

www.unwomen.org UN WOMEN

www.womenpeacemakersprogram.org WWP – Women Peacemakers Program

www.1000peacewomen.org Peace Women Across the Globe - PWAG

www.gnwp.org Global Network of Women Peacemakers

www.ican.org International Civil Society Action Network

http://theathenaconsortium.webs.com/ Athena Consortium

www.promundo.org Promundo - Engaging men to end violence against women and girls

International Programmes on Women, Peace and Security

International Alert's Gender and Peacebuilding Programme

Centre for Peacebuilding at swisspeace

UNIFEM: Governance, Peace & Security

United Nations: Women and Armed Conflict (Platform E of Beijing Platform for Action)

Women Building Peace (International Alert Campaign)

UNESCO's Women and a Culture of Peace Program

ICRC's Women and War website

Femmes Africa Solidarité website