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Recommendations to the Presidency, the Council of Ministers and the Ministry of Transitional Justice and National Reconciliation Concerning the Integration of Gender Issues and Perspective within Transitional Justice Mechanisms

Masses of the Egyptian people took to the streets within and outside of the capital on 30 June 2013 expressing the demand of deposing the President, Muhammad Morsi. This was a new wave of the revolt by Egyptians against a power ruling them, since the January 25 Revolution of 2011. On 3 July, Colonel General Abdul Fattah el-Sissi, the Commander-in-Chief of the Egyptian Armed Forces and the Minister of Defense, ousted President Morsi and presented a roadmap for the upcoming transitional period. The roadmap comprised of 10 items, including "forming a High Committee for National Reconciliation with a membership that is credible and acceptable to all national elites and representative from all backgrounds." The President issued a Presidential Decree no.4834/2013 forming a government headed by Dr. Hazem Al-Beblawy. The Decree also provides for the appointment of Judge Muhammad Amin al-Mahdi as Minister of Transitional Justice and National Reconciliation. The creation of a Ministry of Transitional Justice and National Reconciliation (MoTJNR) is indeed a very important step and a positive indicator regarding the concern of the government with regards to this issue. However, up to now, the mechanisms to be adopted by the Ministry are not clear.

This paper presents recommendations concerning the mechanisms that could be developed by the MoTJNR that could have a key role during the transitional stages and during the process of building a democratic state:

1. Establishing Truth Commissions (TC) which largely have social goals, namely raising the awareness of the people concerning the violations of the past to avoid future infringements, acknowledging that there is an absent "truth" sought by society. TCs seek to hear survivors, both women and men, about the different violations, as a means for recognizing and appreciating their experiences.
2. Establishing Fact-finding Committees (FFC): to deal with incidents where women, in particular, were compromised. These committees have specific mandates and focus on pre-identified events, presenting their conclusions before official judicial authorities.
3. Changing the definition and meanings of the terms "torture" and "rape", as one of the key legal problems is that the types and forms of violations that have taken place extend beyond the limits and restrictions of definitions in the Egyptian law.
4. Creating a reparation system based on a gender perspective to provide remedy to women for the direct and indirect damage; this includes material and symbolic forms of remedies.
5. Holding investigations on the grave violations of human rights generally, and those committed against women specifically, since the January Revolution.
6. Starting the process of restructuring the police system.

*** Appended to this paper is a brief description of the mechanisms, justification, and means of implementation.**

About the Mechanisms and their Implementation

This paper briefly presents recommendations about the mechanisms that could be established by the MoTJNR and the means of their implementation. To ensure the promotion of truth, justice, and accountability for gender-based human rights violations committed within the context of widespread violations during the rule of the deposed President Muhammad Hosni Mubarak, the rule of SCAF (11 Feb 2011 until 30 June 2012), and the rule of deposed President Muhammad Morsi, we believe in the importance of establishing a transitional justice program that is gender sensitive.

Transitional justice mechanisms are deemed among the effective mechanisms for the achievement of justice with respect to human rights violations and for the provision of guarantees against recurrence of violations. This springs from the belief that human rights violations not only affect the direct victims of violations, but society at large, which necessitates ensuring the non-recurrence of violations.

Gender-based violations are quite complex, which explains the absence of a gender perspective from many of the mechanisms of transitional justice programs. Transitional justice mechanisms, if comprising a gender perspective, could mark a detachment from the eras characterized by gender-based violations, by dealing with the structural causes for gender inequalities. This would be done through identifying and acknowledging the factors that contributed to the commission of such violations, and managing the discriminatory practices that contribute to weakening and targeting women during periods of oppression and conflict.

It is very important that the officials in charge of establishing transitional justice mechanisms are aware of the nature of the violations committed against women since the inception of the January 25 Revolution, without limiting these solely to crimes of sexual nature. In fact, human rights and feminist organizations, including Nazra for Feminist Studies, have documented violations against women similar to those sustained by men, such as beating, unlawful detention, sexual intimidation, and, at times, even rape.

Due to the social conditions already existing prior to the violations, the consequences of the violation for women are usually different. It is very important, also, to realize that the experience by women is different and is influenced by their social, economic, and educational backgrounds.

First: Truth Commission

1. Establish TCs, a key mechanism due to its ability to investigate the circumstances that facilitated the commission of the violations and to identify the actual circumstances of the violation. For instance, TCs could help indicate whether the violation was gender-based or not. This is also an important mechanism due to the impossibility of trying every person responsible for violations before a court of law due to the limited resources, which cannot cover thousands of suspects with the full guarantees of a fair and just trial. Criminal trials are commonly held for top officials such as Ministers of Interior or Presidents, leaving many individuals in various positions of power, who are implicated in the violations who are not held accountable. Mechanisms of criminal accountability fail to explain the mechanisms used by authoritarian regimes to secure the sustainability of their rule, which are the explanations and information that the people could otherwise get access to via other justice mechanisms, including TCs. TCs should have the mandate to make recommendations of initiation of lawsuits, on reforms and restructuring plans, and payment of reparations. TC reports shall be used in mobilizing institutional reforms to prevent the repetition of similar violations in the future. There needs to be an institutional commitment to give priority to violations committed against marginalized groups, including women. TCs must collaborate with civil society organizations that have staff capable of supporting the work of the Commission with respect to violations against women.
2. Various local experiences proved that giving TCs mandates of summoning specific individuals and granting amnesty to some, is indeed better than taking a top-down decision by the Presidency, for example, to grant amnesty to a large number of people without making the reasons leading to the

amnesty clear to the public. In fact, the amnesties that could be granted by TCs to the perpetrators of “non-grave” human rights violations (whose definition needs to be established by the TC before they start working) might aid the governments during the periods of transition, which are usually short of resources, including at the level of the judiciary. The work of TCs could reduce the halo of mystery that surrounds the work of the security apparatus and the type of crimes it commits.

- a. It is important to be very careful, however, when giving TCs the mandate of granting amnesties, which needs to be associated with strong investigative powers, usually not available to TCs, a commitment to the rights of the survivors, both men and women, with respect to amnesty proceedings and objection to amnesty requests. TCs and their mandates could take various forms. For example, East Timor presented a different model for the power of granting amnesty in return for truth, as the TC had the mandate of closing the criminal and civil liability for non-serious crimes (that do not include murder or rape) pending a full confession, apology, and performing community service or offering an agreed-upon nominal amount of money to the survivor or society. The procedures for payment of the remedy or the performance of the community service are executed under court supervision.
3. Establish a steering committee to consult with human rights and feminist organizations concerning the formation of TCs and their method of operation. The TCs need to be gender balanced, to encourage female survivors to approach the commission about the violations they have been subjected to. In addition, gender balance needs to be taken into consideration with respect to other positions in the TC, including staff responsible for communicating with local communities, and the staff that provides legal and psychological aid. Moreover, due to the fact that the assumption cannot be made that the gender of committee members can determine their ability to analyze gender-based violence, the selection of committee members should be based on additional criteria as well, such as knowledge of gender issues. TCs should also have the mandate of holding women-only hearing sessions headed by women members for female survivors.
 4. Hold trainings on the nature of gender-based violations for TC staff, even for those with experience in gender issues. The help of feminist organizations capable of conducting these training should be sought. The training program should include at least the following items:
 - a. History of the patterns of gender-based human rights violations;
 - b. Methodologies for gathering testimonies and data;
 - c. The means of protecting witnesses and women survivors who approach the TC to talk about their experience. TCs need to create a safe environment for survivors (men and women), which could require the provision of psychological support, physical safety, legal aid, and social services. The support network needs to give special attention for children and women surviving violations;
 - d. Investigations that are sensitive to the particular complexities of gender-based violations;
 - e. Public hearing sessions, in which the witnesses are women; and
 - f. Writing final reports.
 5. Commitment to a specific quota of testimonies from women. In the experience of TCs in East Timor, for example, the provision for a 30% quota of testimonies from women helped in the sincere efforts of the Commission to reach the largest possible number of women. The TC had identified 6 thousand cases of killing and enforced disappearance, the majority of whom were men, leading them to deduce that thousands of widows must also exist.

Second: Fact-finding Committees (FFCs)

1. Fact-finding committees (FFCs) are entities with specific mandates that usually work on pre-identified events, which makes them different from TCs, whose main purpose is to raise the awareness of the violations of the past to avoid their repetition in the future. FFCs investigate specific crimes and present their findings before official judicial authorities. TCs, as the name indicates, acknowledge a missing "truth" that society is seeking to disclose, whereas the nomenclature of 'FFCs' is impartial, as they acknowledge the existence of a specific event that requires investigation. TCs seek to hear survivors, both men and women, not with the purpose of indicting or acquitting individuals, but to hear them as a means to recognize and appreciate their experience.
2. Form FFCs concerning specific events where women were specifically affected. These events include the Maspero events (October 2011); Muhammad Mahmud events (November 2011); Council of Ministers events (December 2011); mass sexual assaults (November 2012); sexual assaults that took place during the second anniversary of the January 25 Revolution (January 2013); and the mass sexual assaults that took place on 30 June 2013 (covering the period of 30 June until 7 July 2013).
3. Organize training courses for the FFC staff to ensure the inclusion of a gender-perspective in the work of all committees. Training needs to be conducted periodically to ensure that any newcomers to the committee receive it.

Third: Trials and Investigations

1. Hold investigations on grave human rights violations in general and those committed against women in particular, since the beginning of the January 25 Revolution. Indeed, many human rights and feminist organizations, including Nazra, documented scores of testimonies of violations committed against women, which have not been officially investigated. The work of the Fact Finding Commission, established by a presidential decree in July 2012 to gather information and evidence on the period from 25 January 2011 until 30 June 2012 (the date of the handing of power by the Supreme council of the Armed Forces(SCAF) to the deposed President Morsi) was overlooked. At the time, President Morsi decided to keep the report confidential and precluded the publishing of the report by the media, overlooking the right of citizens to know the truth about the violations they suffered. This situation needs to be taken into consideration by transitional justice mechanisms, while keeping in mind the various criteria for balancing the right to know with the protecting of the privacy of the defendants to avoid impunity.
2. Change the definition of the terms "torture" and "rape". One of the key problems of the system of justice is the lack of laws that provide protection for women. Nazra documented testimonies of violations against women that qualify as torture by virtue of the international definition of torture, but not according to Egyptian legislation. Torture in national legislation stipulates that the victim must be a suspect and that the purpose of torture is the extraction of a confession. Thus, there is an urgent need to modify the meaning of torture so that it would not be limited to the aforementioned conditions. Moreover, the definition of "rape" needs to be modified. According to Egyptian legislation, penetration is the material element of the crime of rape. Without penetration, the sexual attack (including rape using fingers or tools) is only deemed a form of indecent assault. This definition is very limited and does not cover the various cases that would qualify as rape according to the international definition of the crime, as documented by Nazra. The authorities need to consult with human rights and feminist organizations concerning the legal amendments that need to be made prior to the implementation of the mechanisms of transitional justice.

Fourth: Reparation

1. Reparations have a role in the process of building a democratic state. Reparations are considered a political issue not only limited to legal questions regarding amount of adequate reparation or the groups entitled thereto. However, due to the fact that reparations are part of the mechanisms of transitional justice, which primarily seeks to support communities torn apart due to widespread human rights violations or violations taking place due to the failure or absence of the state during civil upheavals, such reparations need to be seen as a means to confirm rights and to the creation of a political regime that respects these rights. Reparations act as a substitute to attempting to remedy all the outcomes of violations that women were subjected to or to trying to "restore" women to their pre-violation condition, which could be difficult to achieve due to the large number of survivors compared to the limited resources, the situation that usually arises in the case of transitional societies. Reparations are considered a means to boost trust in the institutions and the legitimacy of the "new state". In turn, they are an acknowledgment of the survivors, the mistakes of the past, and future responsibility for certain types of behavior and mistakes. Reparations could be material and/or symbolic and do not entail a revocation of accountability for the violations. They are not a means to "buy" the support of survivors, but are rather a recognition by the authorities of the violations they sustained while confirming, in a tangible manner, that such violations will not be repeated.
2. The philosophy behind reparations can help deal with the structural weaknesses and problems in the system that led to and supported gender inequalities. In order for reparations to tackle these structural causes, a gender perspective must be included in defining the damage, the crime, or the violation, for whose remedy reparation programs are designed:
 - a. Damage to women is not only direct, as in murder or rape; it could also be the damage arising from the violations that the relatives of women sustained and which caused economic damage. For instance, the definition of damage needs to include the loss of the household provider, such as the father or the brother, whether due to a violation that resulted in a disability or due to enforced disappearance, or any other violation. In this case, damage shall be defined based on researching the impact of the loss of one of the providers on the economic condition of the family, regardless of the presence of another male figure in the household who is assumed to be next in line to provide for the family. Reparation for women in rural areas need to be larger sums than those offered to their counterparts in urban areas, due to the limited services in rural areas in general. The definition of damages need not cover solely economic damage, but the psychological as well, as in the case of mothers whose sons and daughters were subjected to torture or the mothers of martyrs. Consequently, human rights and feminist organizations need to be consulted upon developing the definition of "damage". In the experience of South Africa, for instance, human rights and feminist organizations prepared a list of acts that qualify as torture including beating pregnant women, misinformation about the death of a relative, sexual torture (including rape), threatening rape, stripping women, and sexual abuse, among other crimes.
 - b. Streets and squares need to be named after women who participated in the events of the Revolution and specific days need to be identified to commemorate them. Such symbolic reparations are key to remind the society and future generations that women were part of the struggle for democracy.
 - c. The condition of women who were subjected to sexual violations needs to be taken into regard during TCs hearings. Most women refrain from talking about their experience with sexual violations in public. Thus, an environment of privacy and safety needs to be provided for recording their testimonies.

- d. A predetermined percentage needs to be appropriated in the budget for the reparation of women. Usually, women who communicate with TCs are less than men for many reasons including the inability to disclose the violations of sexual nature, the number of women who were subjected to violations is less than that of men due to the challenges facing the participation of women in politics, or for economic reasons such as the loss of the household provider and the inability of the female heads of households to take time off to attend to the prolonged procedures required by the TCs. Thus, the groups entitled to reparations must include widows, female heads of households, and children who suffered violations who are usually under the care of women.

Fifth: Procedures to Ensure the Non-Recurrence of Violations in the Future

1. Respond to and implement the recommendations to be issued by the TCs and FFCs in their final reports to ensure that such violations would not be repeated.
2. Start the process of restructuring the police force, which has for long relied on excessive use of force in dealing with citizens, and the use of systematic violence, which was one of the main causes for the eruption of the January 25 Revolution.
3. Organize training sessions for police officers and other law-enforcement officials to raise their awareness concerning the vital role played by women human rights defenders in defending human rights and overcoming the stereotype of women in society, which is one of the key reasons for the persecution of women human rights defenders and women in the public space by law-enforcement officials.
4. Train law-enforcement officials on the international human rights standards, especially those related to dealing with the masses, demonstrations, and public upheavals. These standards need to include the UN Declaration on Human Rights Defenders, and the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and awareness raising on the role played by targeted women and the fact that they fall under the category of "women human rights defenders".
5. Take practical steps to protect women in gatherings (such as demonstrations and sit-ins) due to the fact that these are situations where women are especially prone to grave violations. This includes the formation of protection programs, early warning systems with immediate measures to protect women, and training and rehabilitating law enforcement officials on how to deal with women – all of which are part of the steps to restructure the police sector.