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# GENDER AND TRANSITIONAL JUSTICE

A TRAINING MODULE SERIES

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## Module 1 Overview

## Acknowledgments

These training modules were prepared by Kelli Muddell, Senior Expert and head of ICTJ's gender justice initiatives, and Sibley Hawkins, program expert at ICTJ, with support from program expert Elena Naughton. The modules also benefitted from content and design support from intern Madeline Wood and consultant Anjali Manivannan. The "Women's Voices and Participation" film and several slide presentations were prepared by Marta Martínez, consultant for ICTJ. Emily Kenney and Megan Manion from UN Women provided valuable technical input.

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## About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit [www.ictj.org](http://www.ictj.org).

Cover image: In West Papua, Indonesia, indigenous women documented violence and human rights violations occurring between 1963 and 2009, during the period of integration of their region in Indonesia. (ICTJ/Anne Cecile Esteve).

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**CONTENT WARNING:** This training seminar contains descriptions of crimes against humanity and other grave violations, including sexual violence, that some readers and trainees will find difficult.

## How to Use the Modules

### a. Objectives and Goals

With the support of UN Women, ICTJ developed a set of multimedia training materials with in-depth information on different phases and dimensions of a gender-sensitive transitional justice process. The intended audience for this project is broad, and thus the materials are designed to be accessible for diverse state and civil society actors. This includes those seeking to increase their knowledge so that they can better train or work with others, such as staff of intergovernmental institutions or national human rights groups. It also includes those who plan to apply the materials more directly, such as people working with or within transitional justice measures.

There are six modules in total, covering the following topics: (1) a conceptual overview of gender and transitional justice, (2) truth seeking, (3) reparative justice, (4) criminal justice, (5) memorialization, and (6) women’s voices and participation in justice processes. While ICTJ recognizes that all transitional justice processes are intertwined and best served by a holistic approach, we also understand that in practice, often only one or two processes have strong momentum at any given time. ICTJ also notes that the universe of what can be considered a transitional justice process extends well beyond the topics included here. Thus, rather than serving as a comprehensive and exhaustive tool kit—which could not possibly be created—these modules and the proposed categorizations are intended to allow users to personalize their own training programs in a way that is as relevant as possible to their context.

The first five modules each consist of an interactive PowerPoint presentation and accompanying speaker notes to assist users in preparing their own training or presentation.

The final module, “Women’s Voices and Participation in Transitional Justice,” takes the form of a short video that tells the story of how women have participated in the transitional justice process and explores how they can participate now. This module is intended to broaden the reach of the training materials, as it is accessible to any audience. It can be used directly with women victims in sensitization workshops or other, similar contexts.

### b. Using the Modules

The modules are designed to allow users to personalize and adjust their own trajectory through the materials based on their needs, experiences, and expertise. The concepts mentioned in each slide correspond to a section in the accompanying speaker notes. At the beginning of each section, the main points are summarized in bullet form and then explained in detail. The speaker notes also contain user-friendly additions such as links to key supplementary information and primary resources, as well as country-specific examples. Throughout each module, discussion questions and suggested exercises are contained in blue bordered boxes, to be explored at the user’s discretion.

Users can design the training to fit the needs of the intended audience by skipping certain information, focusing more on supplementary materials, or engaging in dialogue via questions and activities.

It is recommended that the presenter familiarize him- or herself with the slides and the speaker notes in advance to anticipate where the slide breaks occur. Within a section of the speaker notes, there may be multiple corresponding slides.

Accompanying these modules is a document entitled “Additional Resources.” This document can be consulted should the user wish to learn more about a particular topic.





Photo: Carolina Oyague paying tribute to her sister, who was disappeared by Fujimori's forces during the armed conflict in Peru. (ICTJ/Marta Martinez)

## Module 1: Overview

# *Gender and Transitional Justice: A Training Module Series*

## 1. Introduction

- Introducing the demand and need for incorporating women and gender into transitional justice
- Briefly establishing the current state of the field of transitional justice
- Stating the purpose and goals of the “Overview” module

In many ways, the past few decades have seen considerable progress when it comes to bringing discussions about gender inequality, discrimination, and gender-based violence into the public eye. Within the field of transitional justice, the inclusion and meaningful participation of women has become a relative norm. Too often, however, good intentions and policy commitments do not translate into effective implementation.

Historically, the experiences of women and victims of gender-based violations have not been adequately addressed by transitional justice processes, nor have women had sufficient representation or opportunities for participation within accountability, acknowledgment, and reform measures. This has led to serious flaws in even those transitional justice efforts that can otherwise be considered relative successes. These shortcomings include underreporting of certain violations; policies and procedures that make it difficult for women to participate in transitional justice processes or access benefits; findings that reflect only a partial understanding of the full impact of violations; and underrepresentation of sexual and gender-based crimes within criminal proceedings.

These failures often come from a lack of sufficient knowledge and understanding to implement processes in ways that encourage women’s participation and adequately address both gender-based violations and the gendered consequences of human rights violations. Without the strong engagement of women and a solid understanding of how and when violations have affected men and women differently, transitional justice processes cannot successfully contribute to a more just society for all. This training module, and the others that accompany it, seek to provide comprehensive and actionable guidance and information on how to more meaningfully address women’s involvement in transitional justice processes. The modules seek to augment practitioners’ understanding of the nexus between gender, violence, repression, and diverse efforts to provide truth, justice, acknowledgment, and reform to victims.



## Activity

Show [this clip](#) and have participants follow the instructions in the video.

Afterward, discuss how this sentiment is relevant for gender: If you do not know what to look for, you may miss its impacts entirely. How aware are we all of the ways women and men experience violence and repression differently? How aware are we of the discrepancies and inequalities in their access to truth, justice, and other measures redressing the harms they have experienced?

## Discussion Questions

- What does meaningfully engaging with gender in transitional justice processes look like? What does that entail?
- What does meaningful engagement with gender entail, in practice and theoretically?
- How can we see and incorporate transitional justice into our strategies and approaches while also making sure that we focus on gender?
- Perhaps ask where people are. What do they already know about transitional justice? What do they know about gender work?

## 2. What Are the Goals of Transitional Justice?

- Understanding that transitional justice is a means, not an end or final goal
- Recognizing that the goals of transitional justice depend on the unique context in which you are working

At its core, transitional justice is a means to an end—a set of initiatives put in motion in the aftermath of dictatorship, violent conflict, and other periods of massive violations of human rights that aim to provide recognition to victims while also ensuring that cycles of violence and human rights violations are broken, instead paving the way for justice, peace, and inclusion.

It is important to remember that the goal in any context is never to “establish transitional justice.” Rather, it is to take steps and implement initiatives that affirm the dignity of victims in the immediate term, and to “catalyze longer-term processes of social and political change that challenge impunity and advance acknowledgement, dignity, and respect for rights.”<sup>1</sup>

Transitional justice can thus be best understood through the lens of the goals it pursues: accountability for harms, dignity for victims, truth, acknowledgment, and reform.

It can be useful to look to comparative experiences and established guidelines to inform the development of what are often called transitional justice measures. However, the most successful pursuits are those that are inclusive of and responsive to the real experiences, needs, and demands of a particular society.

Some of the most common means used in past and current contexts to pursue the goals of transitional justice include truth commissions and other truth-telling initiatives, reparations programs, criminal trials, institutional reforms, memorials, and other forms of official acknowledgment. Societies have also looked to art, theater, storytelling, education, and a range of other creative means to seek recognition of past violations and demand a break from cycles of violence for the future.

The goals of transitional justice are complex, and the societies in which it works are often divided, devastated by long periods of massive violence and repression. Because of this, the trajectory of a transitional justice process can be long, and the fight for justice in its various forms can often span decades. The work to promote dignity for victims, combat impunity, and repair broken trust in the state often requires long-term dedication, strategic advocacy, and ideally, sustained political will.

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<sup>1</sup> Virginie Ladisch, “A Catalyst for Change: Engaging Youth in Transitional Justice,” International Center for Transitional Justice (April 2018).

## Discussion Questions

- Conduct a general discussion of the way the goals of transitional justice are different from the goals in participants' fields of expertise. How can transitional justice contribute to that work?
- What kinds of assumptions have you made about transitional justice and what it can achieve?

### 3. Evolution of Transitional Justice

- Outlining the evolution of transitional justice in relation to addressing the gender dimension of violence

The field of transitional justice evolved out of efforts in the late 1980s to address human rights violations committed under the dictatorships in Latin America. In contexts such as Argentina and Chile, governments denied that violations were taking place, and the lack of information on who was being targeted and how was used to sow fear among the population. Recognizing the societal need to understand the structures that facilitated states' grip on power, several truth commissions began to be established throughout the continent. These early commissions focused on a narrow set of violations and operated with limited time frames.

These early efforts to address massive and systematic human rights violations were largely gender blind. The truth commissions did not specifically address sexual violence, nor did they examine how women had been distinctly impacted by authoritarianism. There was a pervasive silence regarding violence against, harm to, and the degradation of women up until the mid-1990s. This enabled a climate of acquiescence to gender-based harm, both during a conflict and after the restoration of peace. For a long time, conflict-related sexual violence was largely viewed as an unfortunate side effect of war.

This view began to change when the ad hoc tribunals for Rwanda and the former Yugoslavia criminalized sexual and reproductive harm against women as a violation of the various rules of international human rights and humanitarian law. Both conflicts were marked by high levels of sexual violence that was reported on widely through the media. This combination of magnitude and visibility, further strengthened by the demands of women's groups that these violations be treated as seriously as other violations such as torture, killings, and arbitrary detention, resulted in groundbreaking indictments and judgments.

**Example:** In 1998, the International Criminal Tribunal for Rwanda (ICTR) revolutionized international jurisprudence on sexual violence by finding in its judgment in the case of Jean-Paul Akayesu that rape was a form of torture.

**Example:** In the case of *Prosecutor v. Delalić et al.*, otherwise known as the infamous Celebici case, the International Criminal Tribunal for the former Yugoslavia (ICTY) held that:

- the rape of any person is a despicable act which strikes at the very core of human dignity and physical integrity;
- the condemnation and punishment of rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official;
- rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting;

- it is difficult to envisage circumstances in which rape, by, or at the instigation of a public official, or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination or intimidation.

At the same time as these advances in international criminal justice were taking place, other elements of the transitional justice field were growing. When South Africa transitioned to a democracy in the mid-1990s, a Truth and Reconciliation Commission (TRC) was established to deal with the human rights legacy of the apartheid system. The TRC addressed a broader set of violations than the earlier Latin American models and was the first truth commission to hold public hearings, which were widely televised. At the urging of women activists, it also became the first to adopt gender-sensitive strategies, such as holding special women’s hearings, creating gender-sensitive statement-taking protocols, conducting research on gender, and including a chapter on women in the final report.<sup>2</sup>

A proliferation of truth commissions and other transitional justice mechanisms took hold in the early 2000s. Soon after, the Office of the High Commissioner for Human Rights (OHCHR) issued a series of [Rule of Law Tools for Post-conflict States](#), which covered such topics as truth commissions, vetting, the legacy of hybrid courts, amnesties, reparations, and national consultations. In 2010, the [“Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice”](#) was issued. While the tools were largely gender blind in their content, the Guidance Note lists ensuring women’s rights as a guiding principle.

As the field of transitional justice grew, lessons learned from early experiences began to be incorporated into the design and implementation of newer ones. For example, there was a growing acceptance of the imperative for a specific and active approach to gender. Gender-based violations needed to be dealt with as part of the host of violations addressed. Further, special measures were needed to ensure that women not only had access but felt safe enough to participate in measures being established.

**Example:** In Peru, the Truth and Reconciliation Commission (CVR) established a specific gender unit with responsibilities such as researching gendered patterns of violence, training staff, and overseeing the incorporation of gender as a cross-cutting focus in all areas of the CVR’s work. As part of its gender approach, the CVR pursued such policies as:

- establishing gender liaisons in each of the regional offices to maintain consistency in the CVR’s gender approach;
- conducting specific outreach via radio and posters to encourage women to provide statements;
- requiring fieldwork teams to consist of a man and a woman;
- developing a statement-taking manual that included provisions on how to create an environment in which women feel comfortable speaking about their experiences of the conflict;

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<sup>2</sup> Following a meeting called to discuss the lack of a gender approach by the TRC, a small group of activists formulated recommendations that were then submitted to the commission by the University of Witwatersrand’s Centre for Applied Legal Studies.

- highlighting women’s voices and the violations women were subject to in public hearings and all written products, including press releases, periodic bulletins, and the final report.

While the gains in the recognition of sexual violence as a serious human rights violation were groundbreaking, one consequence during this phase of transitional justice’s evolution was that women’s experiences of human rights violations started to become singularly equated with sexual violence. Efforts to incorporate women’s experiences and encourage women’s participation in different initiatives were thus limited in scope. This reduction of women’s experiences had two unintended outcomes.

First, sexual violence was often assumed to be a weapon of war used against women only. Men’s experiences of sexual violence therefore either went undocumented or were not seen through a gendered lens. For example, in the ICTY case against Duško Tadić, evidence was presented of a male detainee being forced to perform oral sex on another male detainee and then bite off one of his testicles. The judgment found Tadić guilty of inhumane acts as a crime against humanity and cruel treatment as a war crime for this violation; however, it failed to recognize the sexual nature of the offenses.<sup>3</sup> The oversight obscured a full understanding of the harms of the violation and the motivations behind using this specific act, such as the humiliation and degradation intended from the acts because the detainees were men.<sup>4</sup>

Second, the equating of sexual violence with women’s experiences meant there was little exploration of how women may be impacted differently than men by human rights violations that do not constitute sexual violence. The focus remained on the violation itself, rather than the ways in which the resulting harms may affect women differently because of their gender. Such a gender-blind approach to the consequences of human rights violations ignores the challenges women victims may face in the aftermath of violence.

For example, women whose husbands are disappeared often face many structural inequalities that keep them from being able to conduct basic financial and logistical tasks for their families, such as accessing family bank accounts, selling their homes, and registering their children for school. Men whose wives have been disappeared do not face the same obstacles to providing for their families. The lack of a broader gendered approach narrows the ability of transitional justice processes to document and assess the harms suffered. Often, the result is processes that reinforce gender inequalities and fail to adequately respond to victims’ experiences.

Feminists and gender activists have been arguing for decades that violence against women does not happen in a vacuum and that an exclusive focus on “extraordinary” violence ignores the violence that women often face during peacetime. Social, economic, and political inequalities all influence the ways women experience human rights violations. They also contribute to women’s vulnerability to certain

<sup>3</sup> See *Prosecutor v. Tadić*, Case No. IT-94-1-T, International Criminal Tribunal for the Former Yugoslavia, Opinion Judgment, para. 206 (May 7, 1997).

<sup>4</sup> Amrita Kapur and Kelli Muddell, “When No One Calls It Rape,” International Center for Transitional Justice (December 2016).



forms of violence during conflict. In turn, this violence then exacerbates women’s vulnerabilities in the post-conflict period.

**Example:** During the conflict in Sierra Leone, sexual violence was widespread. A TRC was established when the conflict ended and it was mandated to give special attention to victims of such violence. The TRC interpreted this mandate in a way that allowed it to also capture women’s “complete gendered experiences at a political, legal, health and social welfare level.”<sup>5</sup> The commission documented how women were considered property to be inherited under customary law. It argued that the status of women before the conflict contributed to the targeting of women by armed groups for sexual slavery, forced marriage, and forced labor during it. After the war was over, sexual violence victims were often ostracized by their communities, and this stigmatization reduced their economic security. Women were also extremely physically vulnerable in the post-conflict period, as demonstrated by high rates of domestic and sexual violence.<sup>6</sup>

In 2007, women’s activists gathered in Nairobi to discuss how reparations could be more responsive to victims of [sexual and gender-based violence](#). One of the purported aims of reparations is to restore victims to their status before the violations took place. While this is a particularly complicated objective for any group of victims, the Nairobi participants argued that in their context, returning women to their status before the violations took place was likely to return to them to situations of discrimination and violence. It called on reparations programs to be transformative and to challenge the structural inequalities that women faced before the violations. The resulting “[Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation](#)” states, “Reparations must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women’s and girls’ lives.”

Following up on this idea, Ruth Rubio Marin argued in *The Gender of Reparations: Unsettling Sexual Hierarchies While Addressing Human Rights Violations* that “a new space [must be] created that allows for endorsing transformative reparations, which is to say forms of reparations that also aim to unsettle preexisting gender hierarchies that were at the root of women’s subordination and account for many of the reasons, forms, and effects of such violence.”<sup>7</sup>

The idea of the transformative potential of transitional justice has been explored across academic and policymaker circles. In its [policy document](#) outlining how transitional justice can be used to further gender justice, UN Women argued that “redress measures must incorporate ‘transformative justice’ as a goal. Transformative justice seeks to address not just the consequences of violations committed during conflict but the social relationships that enabled these violations in the first place, and this includes the correction of unequal gendered power relations in society.”<sup>8</sup>

<sup>5</sup> Sierra Leone Truth and Reconciliation Commission, “Women and the Armed Conflict in Sierra Leone,” in *Witness to Truth: Final Report of the Sierra Leone Truth and Reconciliation Commission*, Vol. 3B (2004), 87.

<sup>6</sup> Kelli Muddell, “Capturing Women’s Experiences of Conflict: Transitional Justice in Sierra Leone,” *Michigan State Journal of International Law* 85 (2007): 85–100.

<sup>7</sup> Ruth Rubio-Marín, *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge: Cambridge University Press, 2009), 70.

<sup>8</sup> UN Women, “A Window of Opportunity: Making Transitional Justice Work for Women” (September 2010), 3.

The European Union’s [Policy Framework on Support to Transitional Justice](#) also recognizes that men and women experience conflict and authoritarianism differently due to gender inequalities. In calling for transitional justice to integrate a gender dimension, the policy states, “It is critical for transitional justice mechanisms to acknowledge and respond to the full range of violations women and girls experience during conflict, as well as men and women’s differentiated needs with respect to accessing and benefiting from transitional justice processes.”<sup>9</sup> It also notes that “the EU therefore supports transitional justice processes that are forward-looking, with the aim to transform society by identifying and dealing with root causes of conflict and violence that may reside in discrimination, marginalization or violation of social, economic and cultural rights.”<sup>10</sup>

However, there is a debate within the field over whether or not processes can actually contribute to transformation. Much of this tension is fueled by a lack of clarity about what exactly *transformation* means in a concrete sense. Sierra Leone and Morocco are often cited as cases that support the idea that transitional justice has transformative potential, though little research has been done to measure the long-term impact of the countries’ interventions.

**Example:** The Sierra Leone TRC recommended legal reforms that would ensure that customary law was no longer used to discriminate against women in a range of areas. This recommendation added to the ongoing efforts of women’s rights activists and helped pave the way for passing a set of gender bylaws.

**Example:** In Morocco, the reparations program proposed by the Equity and Reconciliation Commission (IER) broke with previous compensation schemes that had followed Sharia law and therefore did not recognize wives as heads of household. The IER based the reparations program on a more equitable metric that allowed women to receive the greatest amount of compensation when acting as the head of household.

While these two examples contributed to subverting gender inequalities in each of these contexts, questions are often raised about the impact on the lives of individual women. Many are concerned that using the term *transformative* will raise the expectations of individual victims to unrealistic levels. The reality is that while women may feel empowered by acts such as giving a statement to a truth commission or receiving a reparations benefit, and their lives may improve, these measures alone do not have the ability to completely change the circumstances of a woman’s life. To continue the example of Sierra Leone, although the legal reforms may have subverted certain gender inequalities and had some positive results, women living far outside the capital where there are few formal courts may have yet to experience tangible changes.<sup>11</sup>

A similar debate exists about the scope of truth commission mandates. To most effectively contribute to peaceful, just, and inclusive societies, these institutions must examine economic and social rights violations that fuel inequality and violence. However, doing so is not without its challenges, as

<sup>9</sup> European Union, *The EU’s Policy Framework on Support to Transitional Justice*, 11.

<sup>10</sup> European Union, *The EU’s Policy Framework on Support to Transitional Justice*, 12.

<sup>11</sup> Kelli Muddell, “Current Challenges in Gender and Transitional Justice” (lecture, Duke University Law School, Durham, NC, February 28, 2018).

commissions are often operating within limited time frames and with scarce financial resources. There is a tension between addressing the full range of human rights violations and managing outsized expectations for institutions with extensive mandates.<sup>12</sup>

This tension is a delicate one because victims are often in dire need of assistance and have waited a long time for justice. To promise transformation without clear communication of what exactly is meant by that will only fuel unrealistic hopes and deepen potential disappointment. It is thus crucial to continue to develop a clear understanding of what types of transformative influence are possible. In the meantime, international stakeholders, transitional justice practitioners, and local civil society actors must actively manage victims' expectations about what processes can be expected to deliver.<sup>13</sup>

### Discussion Questions

- Discuss how the changes in the field of transitional justice have occurred.
- Where do we go from here?
- Are there any questions about the future of gender in transitional justice?

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<sup>12</sup> For a fuller contemplation of this tension, see Paige Arthur, "Introduction: Identities in Transition," in *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, ed. Paige Arthur (Cambridge: Cambridge University Press, 2010).

<sup>13</sup> Muddell, "Current Challenges in Gender and Transitional Justice."

## 4. What Responses Can Transitional Justice Include?

- Recognizing that transitional justice can include a variety of strategies and methods, all of which complement each other and none of which are complete on their own. Effective transitional justice measures will incorporate multiple methods in pursuit of various aims.
  - Truth seeking
  - Reparations
  - Criminal justice
  - Memorials
  - Institutional reform
  - Local or traditional approaches to justice
- Identifying the limitations of a mechanism-driven approach

The measures traditionally associated with transitional justice include truth commissions, reparations programs, criminal trials, and institutional reform. Many places have also taken more grassroots approaches, using means as wide ranging as theater programs, art exhibits, or traditional forms of community dispute resolution. Elsewhere, the only viable route to achieving acknowledgment or redress for victims has been linking transitional justice goals with development plans and initiatives.

### a. Criminal Justice

The investigation and prosecution of international crimes is a fundamental component of transitional justice. Investigations and trials of powerful leaders (whether political or military) help strengthen the rule of law and send a clear signal that such crimes will not be tolerated in a rights-respecting society.

Accountability for international crimes has roots that can be traced back to the Nuremberg trials that followed World War II and the legal obligations created by the jurisprudence of the ICTY and ICTR in the mid-1990s.

In 2002, the Rome Statute established the [International Criminal Court](#) (ICC). The ICC investigates and prosecutes individuals responsible for genocide, war crimes, and crimes against humanity committed since July 1, 2002. However, it only pursues cases where governing states are unwilling or unable to do so domestically.

There are three general ways in which a case may be taken on by the ICC. First, the crime in question must have been committed on or after July 1, 2002. In addition, the crime must have been:

- committed by a state party national;
- committed on the territory of a state party, or in a state that has accepted the jurisdiction of the court;
- referred to the ICC prosecutor by the UN Security Council “pursuant to a resolution adopted under chapter VII of the UN charter.”<sup>14</sup>

<sup>14</sup> The International Criminal Court, “About: How the Court Works,” <https://www.icc-cpi.int/about/how-the-court-works>

Under the Rome Statute’s “complementarity” principle, domestic courts continue to have the duty to deliver justice—so the ICC remains a court of last resort. In recent years, domestic courts have increasingly taken up this role.

**Example:** Colombia presents an example of how pressure from the ICC can result in incremental changes at the national level. The country has been under what is called “preliminary examination” by the ICC’s Office of the Prosecutor (OTP) since 2004. In its [2012 report on the situation in the country](#), the ICC noted with concern the low number of national proceedings concerning rape and other forms of sexual violence despite the fact that these acts were known to have occurred on a grand scale. The report recommended that Colombian authorities prioritize the investigation and prosecution of these crimes. Subsequent years’ reports have shown a moderate increase in the number of steps the Colombian government is taking to address sexual violence crimes, such as through the prioritization of 16 “macro-investigations” against paramilitary and FARC leaders participating in the Justice and Peace Law process, [which led in 2013 to charges against 15 individuals for counts of sexual violence crimes, among others; changes in legislation relating to sexual violence; and the establishment of a working group to analyze 442 cases submitted by Colombia’s Constitutional Court involving sexual violence crimes.](#)

Prosecutions for international crimes have more potential for impact when they are held domestically, within the society where the crimes occurred. However, societies emerging from conflict or in transition may lack the political will to prosecute these crimes, and legal systems may be in disarray.

**Example:** Several Pinochet-era officials have been convicted within domestic courts in Chile. One such individual is former Chilean general Manuel Contreras, who headed the infamous National Intelligence Service (DINA) during the reign of dictator Augusto Pinochet. Contreras was since convicted in numerous trials domestically (and abroad in both the United States and Italy). At the time of his death in 2015, Contreras had accumulated a prison sentence of over 500 years, with several other sentences still pending.<sup>15</sup> [Between 2004 and 2015, Contreras was convicted by Chilean courts of murder, enforced disappearance, torture, and kidnapping, among other crimes, amounting to crimes against humanity.](#)

Even sophisticated legal systems—which mainly deal with ordinary crimes—may lack the capacity to effectively address such crimes. These problems may thus require international assistance that draws on best practices from elsewhere—for instance, through “hybrid” courts or tribunals, composed of international and domestic justice actors. Such courts have been created in [Timor-Leste](#),<sup>16</sup> [Sierra Leone](#),<sup>17</sup> [Kosovo](#),<sup>18</sup> [Central African Republic](#),<sup>19</sup> [Cambodia](#),<sup>20</sup> and [Bosnia](#).<sup>21</sup>

<sup>15</sup> Centro de Derechos Humanos, “Informe anual sobre derechos humanos en Chile 2015: Silencio e Irrupciones: Verdad, Justicia, y Reparaciones en la Postdictadura Chilena,” Universidad Diego Portales, Capítulo 1, 64.

<sup>16</sup> Ad Hoc Human Rights Court on East Timor.

<sup>17</sup> The Special Court for Sierra Leone.

<sup>18</sup> Kosovo War and Ethnic Crimes Court.

<sup>19</sup> The Special Criminal Court in the Central African Republic.

<sup>20</sup> Extraordinary Chambers in the Courts of Cambodia.

<sup>21</sup> War Crimes Chamber of the Court of Bosnia and Herzegovina.

Trials remain a key demand of victims. When conducted in ways that reflect victims' needs and expectations, they can play a vital role in restoring victims' dignity and delivering justice.

Still, prosecutions cannot achieve justice in isolation. The large-scale nature of such crimes means that they often cannot be processed through the ordinary criminal justice system—generating an “impunity gap” because there are too many perpetrators for any system to be able to prosecute them all. Effective prosecution strategies for large-scale crimes often focus on the planners and organizers of crimes, rather than those of lower rank or responsibility.

Implementing prosecution strategies with other initiatives—such as reparations programs, institutional reform, and truth seeking—can help fill the impunity gap by addressing crimes with large numbers of victims and perpetrators.

## b. Truth Seeking

In the aftermath of conflict or a repressive regime, knowing the truth about the past is more than just a crucial step toward justice; it is a recognized human right to which all victims and survivors of human rights violations are entitled. International law clearly recognizes the [right to know about the circumstances of serious violations of victims' human rights and about who was responsible](#).<sup>22</sup>

It is especially important to uphold this right given that repressive regimes often deliberately rewrite history and deny atrocities in order to legitimize themselves, fuel mistrust, and even instigate new cycles of violence. Truth seeking contributes to the creation of a historical record that prevents this kind of manipulation.

Truth can help victims to find closure by revealing the details of the events they suffered, such as the fate of forcibly disappeared loved ones or the reasons certain people were targeted for abuse. Moreover, knowing the truth about past events enables proper mourning practices, which is essential to most cultures and helps to achieve personal and communal healing.

Truth seeking most often takes the form of truth commissions. The major functions of a truth commission, which are mostly state-led but have also been replicated by civil society, include taking victim statements and hosting public hearings as well as issuing a final report that analyzes the causes, patterns, and consequences of violence and issues recommendations for addressing the harms suffered by victims and guaranteeing nonrepetition. According to the [ICTJ](#), a truth commission should pursue three fundamental objectives:

1. Truth commissions should establish the facts about violent events that remain disputed or denied. Some commissions have limited their work to clarifying the factual circumstances of abuses, but most have also analyzed the facts to determine the

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<sup>22</sup> UN General Assembly, 60th Session. *Basic Principles and 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*, 2006 (New York: Official Record A/RES/60/147).



historical and social contexts that gave rise to abuses, and to decide whether further or criminal investigation is appropriate.

2. Truth commissions should protect, acknowledge, and empower victims and survivors. Commissions establish a relationship with victims and survivors not only as informers but also as rights holders, as partners, and as people whose experiences deserve recognition.
3. Truth commissions should inform policy and encourage change in groups' and institutions' behaviors, thus contributing to social and political transformation. The final recommendations of a truth commission try to identify and address the causes of abuse and violations in order to prevent their recurrence.<sup>23</sup>

Other forms of truth seeking include commissions of inquiry, unofficial tribunals, and community-based truth-telling initiatives. Informal tribunals established outside the formal structure of international or domestic law are symbolic structures with no formal, legal effect, so they are considered primarily truth-seeking entities.

**Example:** An example of a civil society or “unofficial” truth-seeking initiative is the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery. This tribunal allowed victims to tell their story through a simulated trial procedure. The verdict was delivered by a mock judiciary and was by no means a legal decision or binding in any way. But, it provided a public forum in which victims could testify and bring to light a previously obscured piece of history.

### c. Reparations

Reparations can serve multiple purposes. They are meant to acknowledge victims, repair specific harms they have suffered, and affirm victims as rights bearers. Ideally, reparations should challenge the factors that enabled violations to occur in the first place. For women and other groups who may have been particularly marginalized prior to periods of massive human rights abuses, reparations may also contribute to changing preexisting structural inequalities.

The right to a remedy for serious crimes under international law falls under human rights and humanitarian law treaties. For example, the [\*Basic Principles and 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\*](#) states, “The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, *inter alia*, the duty to:

- (a) take appropriate legislative and administrative and other appropriate measures to prevent violations;

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<sup>23</sup> Eduardo González and Howard Varney, eds., “Truth Seeking: Elements of Creating an Effective Truth Commission,” International Center for Transitional Justice (2013), 9.

- (b) investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and
- (d) provide effective remedies to victims, including reparation.”<sup>24</sup>

Different terms are used to describe the range of measures undertaken to provide relief to victims of human rights violations: *reparations*, *redress*, *compensation*, *restitution*, and *remedy*. Individuals may understand these concepts in different ways, and the terms may take on different meanings in different languages and cultures.

**Example:** In Argentina, the Mothers of the Plaza De Mayo were divided on the issue of reparations, with some of the founding members rejecting them. Though the reparations were intended as a form of reconciliation, the opponents saw them as a substitute—and an inadequate one—for information on and prosecutions related to the whereabouts of their children. Justice for many was equated with accountability.

There are two primary ways reparations programs typically come about: they may be ordered by a court (judicial reparations) or established by government decree or pursuant to legislation (administrative reparations). Administrative reparations are most often employed in contexts of massive human rights violations because such programs tend to have a much broader reach than judicial reparations. Moreover, they are often more comprehensive and holistic than judicial reparations.

In some cases, similar reparations measures are offered to all victims without distinction. In other circumstances, benefits may vary by type of violation (e.g., enforced disappearance or killing); category of victim (e.g., former political prisoners, widows or children of victims, youth until a certain age, or elderly victims); or by specific harm (e.g., rehabilitation for war wounds).

Reparations may address both the tangible and intangible losses suffered by victims, as well as both urgent harms and those experienced over the course of years and sometimes even across generations. Reparations can provide acknowledgment in material or symbolic forms and may be directed at individuals or collectives, such as communities, groups, or regions.<sup>25</sup>

Often, an important part of a truth commission’s mandate is to issue a comprehensive set of recommendations for reparations. In cases where there is no truth commission, or where this is not part of a commission’s mandate, programs may still develop through the advocacy of civil society organizations or government policy. Whatever the case, reparations programs constitute a long-term commitment that must be able to extend beyond the administration of any one government, coalition, or political party.

<sup>24</sup> UN General Assembly, *Basic Principles and 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*.

<sup>25</sup> Lisa Magarrell, “Reparations in Theory and Practice,” International Center for Transitional Justice (2006), 5.

Unfortunately, reparations programs have not always paid adequate attention to gender, either in terms of women’s access to reparations or the ways in which the reparations measures are designed or implemented. Reparations measures need to consider multiple aspects affecting both women and men: the differentiated consequences of human rights violations; the particular impacts of gender-based violations; and each group’s distinct harms, needs, and priorities.<sup>26</sup>

**Example:** In Kosovo in 2017, the government [established a reparations program aimed specifically at survivors of conflict-related sexual violence](#). Following a verification process, survivors are entitled to receive a monthly pension of 230 euro [to compensate for the physical, psychological, economic, and social traumas they endured](#).<sup>27</sup>

A helpful reference for considering how to implement reparations in a meaningful way comes from the [Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence](#) (2014). Some of the dictates are relevant for all victims, not only victims of conflict-related sexual violence, and should be considered as general best practice. A few of the key principles are that reparations should entail a combination of “different forms of reparation”; that individual and collective reparations should “complement and reinforce each other”; that reparations should strive to be “transformative, including in design, implementation, and impact”; and that reparations must be mapped, designed, and implemented with the “meaningful participation and consultation of victims.”<sup>28</sup>

Relatedly, reparations policy and implementation mechanisms must recognize that human rights violations affect victims in different ways and that not all victims share the same needs and perspectives. Differences exist by gender and by class, caste, religion, age, ethnicity, location, and other factors.

#### d. Memorials

In transitional justice contexts, memorials can serve as a site of remembrance and acknowledgment and a place where societies can come together to mourn, reflect, remember, and honor those affected by violence, both living and dead. They can provoke discussion, educate, and provide redress for the wrongs that were committed. They can also act as safeguards against denial of the past and recurrence of violence in the future.

Memorials can be built amid conflict, immediately after, or many years later. Most memorials are inspired by a common purpose: to pay tribute to people or events from the past and to urge the living to remember. Yet each memorial is distinct, defined by the people who create it and the events and individuals it seeks to commemorate.

<sup>26</sup> Fionnuala Ni Aolain, Catherine O’Rourke, and Aisling Swaine, “Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice,” *Harvard Human Rights Journal* 28 (June 2015): 95–144.

<sup>27</sup> UN Women, “The Conflict Did Not Bring Us Flowers: The Need for Comprehensive Reparations for Survivors of Conflict-related Sexual Violence in Kosovo” (2016).

<sup>28</sup> United Nations, “Guidance Note of the Secretary General: Reparations for Conflict-related Sexual Violence” (June 2014), 1. Another key resource can be found [here](#).

**Example:** In the United States, the [Equal Justice Initiative](#) is working with local communities to recognize both individual incidents of lynching and the larger trend of racial violence. Their [Community Remembrance Project](#) allows cities, towns, and counties to remember, acknowledge, and commemorate the people who were killed by lynching and the injustice they faced in death because of their murderers' impunity. The victims' lives are commemorated with a plaque. This helps reframe the narrative of their deaths and break the silence about what truly occurred. Additionally, jars of dirt from various lynching sites have been collected and placed in the Equal Justice Initiative's headquarters, drawing attention to the scope and magnitude of the brutal trend.

As a focal point for memory, memorials can be participatory and reciprocal: drawing visitors in, captivating them, eliciting a response, and at times, inviting collaboration.

**Example:** In South Africa, a former women's jail was restored and converted into the headquarters of the Commission for Gender. This is a unique form of honoring and memorializing past harm in a very living way.

There are many effective ways to memorialize the past. Memorialization efforts can be events, services, annual occurrences, dramatic reenactments, and other dynamic and interactive social gatherings designed to remember victims. They can occur formally, with official sanction (e.g., national remembrance days), or can be observed by individuals or communities as acts of communal devotion or solidarity. They can be spontaneous, one-time, occasional, or annual events.

Commemoration activities are opportunities for civil society to heal, to create social change, and to hold states accountable. Some of the most successful memorials combine the sacred and the secular, research and education, protest and critique, and mourning and reflection.

Memorialization projects need not be monumental, nor do they necessarily need to be solemn, although they can be both those things. What they should do is commemorate victims and reflect the complexity of the problems that follow from widespread violence and the totality of consequences that victims suffer.

Though there are many examples of memorials dedicated to conflict victims and peace activists, there is a dearth of memorialization efforts that properly reflect and honor women's diverse and complex experiences of periods of violence and repression and their related activism.

When women have been represented, it has often been as passive, disengaged victims despite their having been active players who led or helped shape events. In other situations, they have been portrayed only in traditional domestic roles—as mothers, wives, or homemakers. Memorials should acknowledge and appreciate women's broader contributions to war and peace efforts. This could include more diverse depictions of women, sites named for women, or the preservation of locations that affected women.

**Example:** A uniquely well-rounded monument to women can be found in Nicaragua, where there is a statue depicting a Sandinista woman toting a gun while breastfeeding her baby. This acknowledges the multiple roles that women played in the conflict.

Past memorials have also not sufficiently honored the suffering caused by certain violations that predominantly affect women, such as sexual violence crimes. Memorials specifically for victims of conflict-related sexual violence should not identify victims' names to protect the privacy and safety of women but should act as a form of collective memorialization. Collective measures that honor survivors of sexual violence may diminish stigmatization within a community and encourage victims to speak openly about their experiences.

### e. Institutional Reform

Repression and systematic violations of human rights do not occur by chance or accident—most often, public institutions such as government agencies, police, military, and the judiciary are instrumental in perpetuating cycles of violence and an authoritarian grip on power. When a transition to a more peaceful, democratic structure of government begins, it is therefore vital to reform such institutions to promote accountability and help prevent the recurrence of violations.

Institutional reform is the process of reviewing and restructuring state institutions so that they respect human rights, preserve the rule of law, and are accountable to their constituents. By incorporating a transitional justice element, reform efforts can both provide accountability for individual perpetrators and disable the structures that allowed abuses to occur.

Institutional reform can take many forms, including:

#### Vetting

- Examining personnel backgrounds during restructuring or recruitment to sanction or remove abusive and corrupt officials from service.

#### Structural Reform

- Restructuring institutions to promote integrity and legitimacy by providing accountability, maintaining independence, ensuring representation, and increasing responsiveness.

#### Oversight

- Creating publicly visible oversight bodies within state institutions to ensure accountability to civilian governance.

#### Transforming Legal Frameworks

- Reforming or creating new legal frameworks, such as adopting constitutional amendments or international human rights treaties to ensure protection and promotion of human rights.

#### Disarmament, Demobilization, and Reintegration

- Disbanding armed actors—such as paramilitary groups—and providing avenues and means by which ex-combatants can rejoin civil society in ways still sensitive to the rule of law and the need for accountability.

#### Education

- Providing training programs for public officials and employees on applicable human rights and international humanitarian law standards. Broader education programs can also be the key to dismantling patriarchy as an abusive paradigm.

Institutional reform in the context of transitional justice also [“aims to acknowledge victims as citizens and rights holders and to build trust between all citizens and their public institutions.”](#) For this, states may need to engage in efforts to promote freedom of information, sponsor public information campaigns on citizens’ rights, and implement verbal or symbolic reform measures such as public apologies and national memorials.

Promoting gender awareness and associated good practices within institutions is a long-term process, requiring not only changes to policies and behavior but also shifts in attitudes.

Women, men, girls, and boys experience insecurity differently in any given context and interact with institutions and state processes in different ways. Institutional reform must therefore be gender sensitive throughout its planning, design, implementation, monitoring, and evaluation phases in order to adequately identify barriers for women to access state services. It must adopt and implement relevant gender policies, incorporate regular gender-sensitivity trainings, and ensure equality in staffing. It must also include adequate oversight and monitoring mechanisms to ensure institutional actors do not again fall complicit to patterns of violence and abuse.

## f. Local or Traditional Approaches to Justice

In some contexts, cultural norms and practices for seeking justice and redress already exist. There can be great value in integrating such practices into a transitional justice framework, both because of the



cultural legitimacy they may already have and because they may offer a chance to address cases that may otherwise not be investigated by formal institutions because of capacity issues already discussed.

For women, however, this may be both empowering and debilitating. Traditional practices and hierarchies may impede the involvement of women (and other marginalized groups) and the articulation of the violence they have experienced. This is especially true because in many societies, women are perceived as inferior, and violence against women is deemed to be the fault of the victim, irrespective of externalities such as force, violence, or fear.

**Example:** In Uganda, peace talks in Juba led to an agreement that the transitional justice process in the country would include both local and international methods of seeking accountability. Specifically, the Acholi tradition of Mato Oput was integrated into the process. This ceremony centers on truth seeking, forgiveness, community accountability, and reconciliation. And while the practice allowed for the participation of many women and men, some argue that the nature of the ceremony excludes women from essential planning and decision-making roles. Additionally, some women's rights activists questioned whether this practice could adequately deal with crimes of sexual violence, since it was not traditionally set up to do so.

## g. Limitations of a Mechanism-driven Approach

It is important to remember that while the approaches described above are common responses to periods of massive violence, they are certainly not ends in themselves—rather, they are means to achieving wider goals of truth, dignity, justice, and nonrecurrence. Transitional justice as such is not something to be achieved; it is a long-term series of actions—both state- and community-led—that can help move societies to a place where past cycles of violence, exclusion, and impunity are broken and the dignity and rights of all citizens, especially victims, are affirmed and upheld.

These initiatives have very often taken the form of those listed above, but they are by no means the only possible routes societies may take. As the field of transitional justice expands and grows, the shape it takes must not be dictated by entrenched ideas of what transitional justice should be or what it has been in the past.

Societies must come together to decide in consultative, representative, and participatory ways what approaches will best respond to local and national needs. Traditional measures may provide useful templates in some places, while they may not resonate at all in others. Activists, civil society organizations, and especially victims and victims' associations will always be best placed to help shape the most effective avenues for pursuing acknowledgment, accountability, and reform in a given context.

## Activities

1. Collectively brainstorm examples of the above strategies (e.g., memorials, reparations, truth seeking) that the trainees have already heard of and talk about what was effective in those attempts and what did not work. What do we typically think of as transitional justice? How does that contrast with the ideology and goals presented above?
2. (Optional) Conduct an activity modeled on [“Best Practices in Gender-Responsive Police Reform—Exercise 3.”](#) This short exercise can serve as a sort of assessment of trainees’ knowledge of gender-inclusive approaches. It also gives trainees the chance to apply what they have learned so far.

## 5. Defining Gender

- Understanding the very complex differences between sex and gender
- Considering how one’s gender identity can impact experiences of violence
- Recognizing that the roles women can play vary greatly

### a. Defining Gender and Sex

Two important but distinct concepts to understand are *sex* and *gender*:

**Sex** refers to biological characteristics that define individuals as male, female, or intersex at birth.

**Gender**, in contrast, is a rich and complex notion with a multitude of meanings and contextual relevance. In general, *gender* refers to the way men and women are perceived in society and the “roles, behaviors, activities, and attributes that a given society considers appropriate” based on one’s sex.<sup>29</sup> Gender considers the social definition of women and men among different communities, cultures, classes, and age groups and during different periods of history.

For example, the stereotype that women are better caregivers than men is based on a particular understanding of femininity and women’s role in society, and therefore falls under the category of *gender*.

Another definition that is essential to note is that of *sexual orientation*. [According to the Human Rights Campaign, sexual orientation refers to one’s “inherent or immutable enduring emotional, romantic or sexual attraction to other people.”](#) Those with a sexual orientation considered to be outside societal norms, such as those in the lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) community, are often persecuted on the basis of their sexual orientation. This is considered a form of gender-based targeting.

### b. Gender Identity

Understanding gender and how gender influences one’s identity and daily experiences means more than paying attention to women and girls. It also entails assessing and understanding the different ways both women and men, girls and boys, experience human rights violations and the obstacles they face in accessing justice. These are shaped by the roles women and men are expected to play in society, the values attached to those roles, and perceptions of masculinity or femininity.

Many societies operate on the basis of a gender hierarchy. Often, this hierarchy prioritizes male over female and masculinity over femininity, particularly in the public sphere. This results in different status, treatment, entitlements, and roles for women and men.

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<sup>29</sup> World Health Organization, “Overview of Activities 2004–2005: Gender, Women and Health in Headquarters and Regional Offices” (2006).

## Discussion Questions

Gender is something that affects our everyday lives, but everyone has slightly different social expectations of gender.

- How do you practice gender in your house?
- Which tasks are seen as feminine and which are considered masculine?
- What happens when you break those expectations? What kind of pushback do you get? How do you feel?
- How does this translate on a larger scale? How does this complicate transitional justice practices?

Inequalities based on gender identity and a gender hierarchy can manifest themselves in many ways, such as unequal access to political power, limited economic opportunity, legal exclusions, unequal justice mechanisms, and lack of power and rights in the home, among many other areas.

Harmful gender norms, ideologies, practices, and institutional arrangements apply in peace as well as in contexts of war and conflict. This often contributes to the root causes of women’s vulnerability in times of conflict and state repression.

**Example:** In a 2014 study of conflict victims’ short- and long-term needs in Nepal, ICTJ found that torture victims were treated differently in the post-conflict period depending upon their gender. Even when women suffered the same abuses as men, the resulting harms had additional social dimensions that exacerbated economic hardship, detrimentally affected family and community relationships, and damaged women’s psychological health. These victims spoke of the need for medical care and recognition from their families and communities of their victimization, rather than ostracization.

Because the pursuit of truth, justice, acknowledgment, and reform in the aftermath of human rights violations often takes place in the public sphere, this also means that women tend to be the first to be left out of transitional justice processes.

Women are also not the only ones to be targeted because of their gender identity. For example, men who may look, speak, or present themselves differently—that is, outside traditional norms of masculinity—may be deemed effeminate, homosexual, or deviant in some other way and targeted for these reasons. Those in the LGBTIQ community also tend to be extremely vulnerable to violence and completely excluded from justice processes in the aftermath of violence and repression because of deeply entrenched stigma around their gender identity and sexuality.

**Example:** CUNY School of Law, MADRE, and the Organization of Women’s Freedom in Iraq have found that both women and men are being targeted by ISIS precisely because of their “gender and gender expression.” This includes, for example, targeting of both groups for

perceived violations of “dress and appearance requirements” and “real or perceived sexual orientation,” among many other factors fueling gender-based targeting and violence.<sup>30</sup>

In any given context, it is necessary to develop a relevant definition of who is a victim—assessing who is most vulnerable based on gender, but also based on the severity of present economic, social, and physical challenges, and taking into account the violations suffered and the impact of those violations on a victim’s daily life. Gender is often just a starting point for assessing inequality in a society.

**Example:** In Uganda, women who were abducted during the conflict and had children as a result of rape are now treated very differently than other women who are rape victims but did not bear children as a result. They also have different needs because of their children.

### c. Roles Women Can Play

The perpetuation of gender stereotypes tends to cast men as combatants and heroes and women as passive secondary victims.

This is an overly binary and categorically false perception of men’s and women’s roles in conflict. A gender lens requires moving beyond seeing women’s experiences of conflict as exclusively ones of victimhood and recognizing the multitude of roles they can inhabit, such as activists, perpetrators, and combatants. Some of the myriad roles women can play include the following.<sup>31</sup>

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<sup>30</sup> The City University of New York School of Law, MADRE, and The Organization of Women’s Freedom in Iraq, “Communication to the ICC Prosecutor Pursuant to Article 15 of the Rome Statute Requesting a Preliminary Examination into the Situation of: Gender-based Persecution and Torture as Crimes Against Humanity and War Crimes Committed by the Islamic State of Iraq and the Levant (ISIL) in Iraq” (November 8, 2017).

<sup>31</sup> Images (from left to right): Cover of [“More Than Words: Apologies as a Form of Reparations.”](#) cover of [“Victims Fighting Impunity: Transitional Justice in the African Great Lakes Region.”](#) cover of [“Not Without Dignity: Views of Syrian Refugees in Lebanon on Displacement, Conditions of Return, and Coexistence.”](#) page 17 of [“More Than Words: Apologies as a Form of Reparations.”](#) cover of [“Victims Fighting Impunity: Transitional Justice in the African Great Lakes Region.”](#)



### **Victims and Survivors:**

- Traditionally, women are perceived as secondary victims of war. This can be true, but women also suffer as primary victims of conflict and repression in huge numbers. Moreover, in some cases, what may be thought of as “secondary,” or indirect, victimization is actually a direct violation.
  - A prime example of this is the crime of enforced disappearance. For a time, family members of the disappeared were considered indirect victims. However, given the many dire and direct impacts enforced disappearance has on families, the 2006 [International Convention for the Protection of All Persons from Enforced Disappearance](#) took a significant step by recognizing both the disappeared and their family members as primary victims.
- Women’s victimization extends well beyond sexual and gender-based violence, and it is essential that these narratives and experiences are captured by transitional justice processes as well.
  - For example, the truth commission in Tunisia become one of the first to recognize the socioeconomic violations experienced by women under the country’s two dictators.

### **Combatants:**

- Women are also combatants, soldiers, police personnel, prison guards, and intelligence operatives.

- Just like male combatants, women may be recruited by force or they may join the conflict for ideological reasons, including revenge or to seek autonomy and power that they may otherwise be denied.

**Perpetrators:**

- Women may be responsible for violations of human rights. For example, this could occur when women are part of state security forces complicit in human rights abuses, or when women take up arms as combatants in nonstate armed groups.

**Activists:**

- Women may be activists during periods of unrest and during the process of transitional justice.
  - In Argentina, the Mothers of the Plaza De Mayo compelled the state and the international community to turn their attention to the problem of enforced disappearances.
  - In Tunisia, several women victims' groups and associations, many of them newly formed, came together after the revolution to demand women's voices, needs, and experiences be considered during the transitional justice process there. They become known as the Transitional Justice Is Also for Women Network.

**Transitional Justice Actors:**

- Women may be part of the political or judicial institutions established in a transitioning society.

These roles are often not mutually exclusive, and the dividing lines between victim, fighter, and perpetrator, for example, can quickly become blurred. Addressing the intricacies of overlapping experiences and roles requires first the recognition that women are far more than victims and are in fact active agents of change.



## Discussion Questions

Often, work on gender issues and women's empowerment is directed specifically at women. However, it is important to include men in the conversations and to discuss with both men and women what masculinity means to them as individuals and to societies at large. A few questions to discuss:

- What do men gain by being involved in gender-sensitive work?
- What obstacles exist for men's involvement in this work?
- Why wouldn't or don't men participate?
- What role should men play in implementing gender-sensitive work or applying a gender-sensitive approach?
- How do you know if men are playing the appropriate role for the context they are working in?

## 6. The Gender of Violence

- Acknowledging that gender affects the way victims experience violence and the harms that endure after a violation has been committed

At its most fundamental level, taking a gender-sensitive approach comes down to having an active understanding of how different victims may be impacted differently because of their gender before, during, and after periods of violence and repression.

That means asking, for example, how women and men are affected differently by violations, policies, transitional justice measures, storytelling or other truth initiatives, justice systems, reparations programs, memorials, reforms, and so on.

**Example:** When looking at an approach to truth telling, it is important to ask: What do women need to feel comfortable telling their stories and participating actively? This could be holding women-only sessions or preparatory sessions with women, making female staff available, or establishing special measures to ensure anonymity if desired. However, it should also not be assumed that women require anonymity, since many women victims want their stories to be known.

When thinking about the relationship between gender and violence specifically, there are often two major areas that must be considered:

- the type of violation committed
- the impact of the violation

The first refers to violations committed against a victim *because of* the victim's gender.

The second relates to the effect that any violation may have on a victim because of his or her gender. For example, while torture may not be a gender-based violation per se, its effects on the lives of women and men may differ greatly.

## 7. Sexual and Gender-based Violence

### ➤ Understanding the key differences between sexual and gender-based violence

In any transitional justice process, it is important to consider how intersecting and contrasting roles, ideas, and practices regarding femininity and masculinity can be part of the enabling backdrop to human rights violations. After decades of struggle by activists, sexual violence and gender-based violence have come to be recognized as weapons of war and as serious crimes that can and should be prosecuted as such. Though they are sometimes conflated, there is a subtle distinction between the two.

Sexual Violence	Gender-based Violence
<ul style="list-style-type: none"> <li>• Sexual violence refers to the <i>type</i> of violation.</li> <li>• It includes oral, vaginal, and anal rape; forced circumcision and female genital mutilation; sexual slavery; genital torture; forced nudity; forced sexual acts; and forced pregnancy and sterilization.</li> </ul>	<ul style="list-style-type: none"> <li>• Gender-based violence refers to the <i>motivation for or intended impact</i> of the violation. If a woman or man is targeted specifically because of gender, this is a form of gender-based violence.</li> <li>• Sexual violence is always a form of gender-based violence, but not all gender-based violations are sexual violence.</li> </ul>

**Sexual violence** refers to the *type* of violation. It is defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or act to traffic, or otherwise directed at a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.”<sup>32</sup> Forms of sexual violence include oral, vaginal, and anal rape; forced circumcision; sexual slavery; genital torture; forced nudity; forced sexual acts with others; and forced pregnancy or sterilization. These acts “may be intended to intimidate, humiliate, obtain information, kill, punish, coerce, or prevent procreation or sexual pleasure.”<sup>33</sup>

**Example:** In the case of Akayesu, the ICTR held: “Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Often, with sexual violence, there exists a major fear that the stigma associated with the crime may result in social ostracization for both men and women. Whereas victims of torture, detention, and other crimes are often considered to be deserving of honor after conflict, rape victims meet a different reaction. Shunned, silenced, or blamed, their status is deflated rather than elevated because of the violation they experienced.

<sup>32</sup> Etienne G. Krug et al., “World Report on Violence and Health,” World Health Organization (2002), 154.

<sup>33</sup> Kapur and Muddell, “When No One Calls It Rape,” 5.

**Gender-based violence** refers to the *motivation for* or *intended impact of* the violation. If a woman or man is targeted specifically because of gender, this is a form of gender-based violence. Sexual violence is always a form of gender-based violence, but not all gender-based violations are sexual violence. Examples of gender-based violations that are not forms of sexual violence include forced marriage, domestic violence, using children to inflict psychological trauma, threats of rape, and forced domestic work.

**Example:** In South Africa, women’s relationships with their children were exploited to compel women to cooperate with the security police. Women who were breastfeeding were forced to stop feeding their children, and security forces threatened to harm or kill women’s children.

Gender-based violence against women can also occur through the exploitation of physical vulnerabilities or visible characteristics in an attempt to dehumanize both the individual and the community she represents.

**Example:** Veiled women in Tunisia were subject to harassment, discrimination, physical violence, and other forms of violence. Many veiled women were not allowed to continue with schooling, take necessary exams to graduate, or obtain or remain in employment. This lasted for decades and has had an inordinate impact on individual women’s lives, as well as the lives of their children and other family members.

However, sexual and gender-based violence affects women, girls, men, and boys. Anyone targeted because of his or her gender identity or sexual orientation is a victim. Gender does not equal women, and women’s experiences cannot be reduced to sexual violence.

**Example:** In Peru, the CVR’s final report documented that armed groups targeted gay men and transgender<sup>34</sup> individuals as part of their social cleansing campaigns during the conflict. The final report states that the groups justified the killings by publicly declaring that the Peruvian government’s lack of control over these individuals’ sexuality could have resulted in a negative impact on youth in the communities the armed groups were seeking to control.

Gender affects everyone, and anyone can be targeted in efforts to disrupt traditional notions of masculinity and femininity and bring harm and shame to victims, families, and societies. Discussions of gender often focus more on women and girls because of the structural gender inequalities that affect how they are perceived and treated. But, when it comes to sexual and gender-based violence, men will likely encounter the same challenges as women, in addition to their own unique challenges. Therefore, a truly gender-sensitive approach must fully address both gender-based violations and the gendered nature of the impacts of all human rights violations.

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<sup>34</sup> The Human Rights Campaign [defines transgender](#) as “an umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.”

## 8. Gendered Impact of Human Rights Violations

- Broadening our understanding of violence against women and fully integrating gender into our understanding of human rights violations

The evolution of transitional justice shows a very positive trend toward more fully addressing certain forms of violence. However, an exclusive focus on sexual crimes rather than a broader understanding of how human rights violations impact women and men differently has also been limiting. It is certainly necessary to fully address sexual violence, but this should not come at the expense of addressing the many long-term consequences that affect women victims of all violations.

This oversight relates to the way that conflict and harms have typically been interpreted, leading to numerous examples of gender being overlooked entirely where it actually plays a significant role. There is often a failure to connect the harm caused to women during conflict—namely, killings, disappearances, torture, bodily injury, sexual violence, forced recruitment, and displacement—with the harm women may experience in the aftermath of conflict.

The focus tends to be singularly placed on the individual and finite instance of a violation. In reality, women may experience a host of long-term physical, emotional, mental health, economic, social, or other harms well after a violation is committed or a conflict has ended. This could include curtailment of reproductive freedom, loss of land, physical and economic insecurity, enhanced burden of care, political exclusion, and economic hardship, among many other lasting consequences.

Understanding the gendered effects of human rights violations means looking at how women—as the more traditionally marginalized gender—may be affected by a violation differently than men in the short-, medium-, and long-term. In other words, how are women distinctly affected by a violation *because of* their gender and all the norms, assumptions, and implications that go along with it?

One highly prevalent example of a violation that often has very different implications for male and female victims is enforced disappearance. Men tend to be affected primarily as direct victims, or those who themselves are forcibly disappeared. However, female family members are also considered direct victims of this violation because of the long-term trauma, harassment, economic and social marginalization, poverty, and other ill effects they experience because of the disappearance. In Lebanon, for example, [women whose husbands have disappeared often face obstacles to raising their children, such as lack of access to family bank accounts kept in their husband’s name or needing the permission of a male relative to travel with their children.](#)

Similarly, in [Colombia](#) and elsewhere, the violation of forced displacement affects women disproportionately and differently than men; women are more likely to be displaced and often have to take on the role of head of household as a result of displacement. As a result, displaced women tend to face similar consequences such as poverty and exploitation.<sup>35</sup>

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<sup>35</sup> Donny Meertens, “Forced Displacement and Gender Justice in Colombia,” International Center for Transitional Justice (2012).

A third example could be taken from the Moroccan context. There, women who were detained faced double victimization, first as political prisoners and again when released. While male prisoners were considered heroes upon their release, communities ostracized and stigmatized women for having breached their traditional gender roles by actively participating in political activism and opposition.<sup>36</sup>

The gendered impacts of violations are most often uniformly negative but can, at times, take surprising forms. In some places, women have gained new skills and greater autonomy as a result of having to fill the economic and social voids left in men's absence. For example, a [recent ICTJ study](#) has shown that some Syrian refugees living in Lebanon are gaining new skills in the civil society sector and a newfound sense of freedom.

Still, more often than not, the consequences felt by women are overwhelmingly negative, and noting the relatively positive gains is not meant to minimize the terrible experiences felt by women and all victims of violence and conflict. Moreover, in some cases where women experienced a degree of liberation and autonomy during conflict by taking up jobs or even arms, they were later expected to resume their more traditional roles in the home as soon as violence ended.

The most valuable takeaway is that without asking questions and seeking the right information from those who best know women's and other victims' situations, it is unlikely that the full truth will emerge. Transitional justice measures and those activities that go along with them must take active steps to consult with a wide range of victims in order to start to understand not only which violations may have affected women and other victims of sexual and gender-based violence, but also the toll those violations have taken on victims' lives since. Looking at the social, economic, political, legal, health, family, and other layers of what may seem like a discrete incident will show that often, experiences of violence are anything but isolated.

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<sup>36</sup> Rubio-Marin, *The Gender of Reparations*, 97.

## 9. What Is at Risk with a Gender-neutral Approach?

- Failing to consider gender obstructs the goals of transitional justice
- Women's participation is both a right and an imperative

### a. Failure to Consider Gender Means Goals of Transitional Justice Cannot Be Achieved

In many ways, the past few decades have seen considerable progress in bringing discussions about gender inequality, gender discrimination, and gender-based violence into the public eye. Within the field of transitional justice, the importance of including women has become a relative norm.

Too often, however, expressions of goodwill or even commitments on paper do not translate into effective implementation. Indeed, historically, the experiences of women and other victims of gender-based violations have not been adequately addressed, nor have women been sufficiently represented within accountability, acknowledgment, and reform measures.

If one of the primary aims of transitional justice is acknowledgment, it is doomed to fail if not all experiences are in fact adequately acknowledged. Rule of law, protection of human rights, and nonrecurrence of violence will not be complete if these principles fail to adequately protect all victims and address all types of violations and consequences.

Moreover, the exclusion of women has led to a variety of shortcomings in even those transitional justice efforts that can otherwise be considered relative successes. These failings include underreporting of certain violations, policies and procedures that make it difficult for women to participate in transitional justice processes or access benefits, findings that reflect only a partial understanding of the full impact of violations, and underrepresentation of sexual and gender-based crimes within criminal proceedings.

Women are also often excluded from decision-making processes. For example, men are typically more highly represented than women (if women are at all) in peace processes and other decisions being made when conflict is coming to an end.

The agenda for redress is also not usually fully reflective of the needs of women. Many times, women's rights are not adequately defined or separately considered from the rights that pertain to the society as a generic whole, which tends to mean that men and those with greater power and privilege benefit most in practice.

For the above reasons, many long-term consequences of conflict for women remain unattended. They are dissociated from the conflict, and as a result, women continue to suffer the effects of conflict long after it has ended, without assistance, redress, or improvement.



Much of this failure often comes from a lack of understanding and knowledge about how to implement transitional justice measures in ways that encourage women’s participation and adequately address gender-based violations and the gendered consequences of human rights violations.

Without the strong engagement of women and a solid understanding of how and when violations have impacted men and women differently, transitional justice processes cannot successfully contribute to a more just society for all.

It is therefore essential to take advantage of the window of opportunity transitional justice mechanisms can provide to establish the full picture of women’s diverse suffering and marginalization, and to incorporate gender-specific needs into new structures for development, political participation, and redress for past abuses.

## b. Women’s Participation as a Right and an Imperative

The obligation to practice a gender-inclusive approach to transitional justice extends beyond a purely ethical one; there is an international legal foundation to support calls for women’s equal and meaningful participation.

The most substantial legal document is the Convention on the Elimination of All Forms of Discrimination Against Women ([CEDAW](#)). CEDAW is a legally binding international treaty that urges member states to establish legal protections for the equal and distinct rights of women and to combat all forms of discrimination against them.

The treaty also certifies and enumerates women’s rights, such as the right to “vote in all elections and public referenda,”<sup>37</sup> the right to “represent their Governments at the international level and to participate in the work of international organizations,”<sup>38</sup> and the right “to have access to agricultural credit and loans...and equal treatment in land and agrarian reform as well as in land resettlement schemes.”<sup>39</sup> These rights are important starting points to consider when developing transitional justice programs.

CEDAW obliges its state signatories to evaluate their country’s progress toward women’s equal rights through the specific benchmarks recorded in the treaty. Furthermore, according to the United Nations Development Fund for Women (UNIFEM; now UN Women), “countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice and to move beyond ‘de jure’ equality and to ensure an equality of results—equality which is felt by the average woman and man.”<sup>40</sup>

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<sup>37</sup> CEDAW, Part 2, Article 7, section (a).

<sup>38</sup> CEDAW, Part 2, Article 8.

<sup>39</sup> CEDAW, Part 3, Article 14, section (g).

<sup>40</sup> UNIFEM Regional Project Women for Conflict Prevention and Peace-Building in the Southern Caucasus, “Advancing Gender Equality Using CEDAW and UN Security Council Resolution 1325: Training Module for Gender Equality Advocates,” 3.

The rights enumerated in CEDAW create legal grounds for including women in transitional justice work and considering women’s needs in transitional justice measures such as reparations, memorialization, and institutional reform.

**Example:** Article 14 (1) of CEDAW urges member state parties to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life by considering the particular problems faced by rural women and the significant roles rural women play in the economic survival of their families, including their work in the nonmonetized sectors of the economy. This can be done by eliminating discrimination against women in rural areas in order to ensure that they may be able to participate in and benefit from rural development, as specified by the text in Article 14 (2). Increasingly, transitional justice–related bodies are taking on issues such as regional marginalization and are looking to development policies to incorporate a reparative aspect for victims, so such provisions can be crucial tools when advocating for women victims’ meaningful inclusion in such initiatives.

The set of UN security resolutions includes 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2011), 2106 (2013), 2122 (2013, and 2242 (2015).

**Example:** Article 15 (2) of CEDAW urges member state parties to “accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and administer property and shall treat them equally in all stages of procedure in courts and tribunals.” When thinking about reparations after a conflict, it could be useful to draw from this article of CEDAW to foster a legal obligation to support women’s claims for equal access to property.

Other documents, like the UN Security Council’s Resolution on Women, Peace, and Security ([WPS](#)), explicitly call for women’s inclusion in transitional justice initiatives. Unlike CEDAW, these documents are not legally binding, but they are strong recommendations for UN member states. This set of eight documents “[reaffirms] [the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.](#)” It also recognizes gendered violence in conflict and post-conflict situations.

Together, the Security Council’s resolutions and CEDAW call on all parties involved in conflict and all member states to take special measures to consider the specific needs of women and girls and to incorporate women’s rights and voices into post-conflict peacemaking processes.

## **Discussion Questions**

At this point, ask if any participants have any general questions about content up until now.

## 10. Operationalizing a Gender Approach to Transitional Justice: Guiding Questions

- Understanding that there is no formula for operationalizing a gender-sensitive approach to transitional justice. Instead, approaches should evolve over time and practitioners should be open to constant questioning.
  - How will gender be relevant to the objectives or goals being pursued, and how can program design reflect those considerations?
  - What is the interplay of gender identity with other identities?
  - What are the possible barriers to the inclusion of women and victims of gender-based violations?

Taking a gender-sensitive approach in practice means incorporating gender concerns from beginning to end in any intervention or initiative. Gender must be considered from the design and planning phase, to implementation, to the creation of a final product, report, or event. A “gender lens” should be applied from the start, because this is where both design and methodology are shaped. It is important to be open and thorough in considering the ways in which specific programmatic objectives may affect the lives of women differently than men. At the broadest level, that often starts with identifying the problems transitional justice is seeking to address in a given context, and then assessing how those problems may be exacerbated or influenced by gender differences and inequalities.

It may not be clear from the outset how gender concerns to a project or initiative. However, asking the right questions and maintaining an openness to gender considerations helps the answers become clearer as the project design develops and initial research or other preparatory steps begin.

One key principle of a gendered approach is questioning. There is no recipe for gender sensitivity, and a prescriptive approach will never yield relevant, meaningful results. So, instead of offering dictates, we will discuss next some key questions and considerations to consider at all phases of a project to help guide the use of a gender lens in planning and executing transitional justice programming.

### a. How Is Gender Relevant to the Objectives or Goals Being Pursued, and How Can Program Design Reflect Those Considerations?

This question helps shape the understanding of the nature of violations committed and the gender-specific impacts in a particular context so that programs and initiatives can be designed to take full account of gender and include women and all victims of gender-based violations. Answering this question may involve talking to local partners, consulting with victims, or undertaking different forms of research.

In the design phase of a project or initiative, multiple aspects should be taken into consideration: references to gender-based violations, an explicit requirement for the participation of women victims, quotas for women in leadership and staff positions, and the inclusion of nondiscrimination and equality principles. Other elements to consider in the design process are gender expertise among staff,

the safety and confidentiality of victims and witnesses, and how to ensure active consultation with women’s groups.

Some additional questions include the following.

- Are there specific types of sexual and gender-based violations that took place at high rates and need to be accounted for?

**Example:** Sierra Leone’s civil war, which ended in 2002, was marked by extensive sexual violence, including sexual slavery, forced marriage, and rape. Recognizing the rampant nature of these violations, a statute of the Special Court of Sierra Leone listed forms of sexual violence that could be prosecuted by the court as crimes against humanity and violations of humanitarian law. The mandate also called for consideration to be given to the hiring of prosecutors and investigators with expertise in gender-related crimes.<sup>41</sup>

**Example:** In Kenya, there are many indications that sexual violence against men and women was prevalent during the 2007 postelection unrest. While many male victims testified on camera before the Truth, Justice and Reconciliation Commission, none did so openly. Women had the opportunity to testify in women-only hearings, which were designed to provide safety and comfort. There were not similar hearings for male victims of sexual violence, and not enough is known about what conditions would be most conducive to facilitate male victims’ testimony.<sup>42</sup>

- Are there specific ways that human rights violations affect women or men differently because of their gender?

**Example:** In Tunisia, women who wore the veil were systematically targeted due to a law known as Circular 108, which effectively prohibited those wearing “sectarian dress”—an implicit reference to the veil, or *hijab*—from accessing government services. Veiled women became the primary targets for this law under both the Bourguiba and Ben Ali regimes because they were deemed political opponents of the secularist government; they were treated like second-class citizens because of their dress. Banning these women from school, employment, and other areas had a significant and lifelong impact on their livelihood. Women activists came together to submit a collective file to the country’s Truth and Dignity Commission to illustrate the widespread, systematic nature of this unique form of violating women’s rights.

- Do women’s justice priorities and interests differ from those of men, and if so, how? Understanding that these differences exist and may be significant will help when later trying to support transitional justice processes to be victim-centered, to understand women’s specific interests, and to address women’s concerns in appropriate ways.

<sup>41</sup> Binaifer Nowrojee, “Making the Invisible War Crime Visible,” *Harvard Human Rights Journal* 18 (2005): 85–105.

<sup>42</sup> Kapur and Muddell, “When No One Calls It Rape,” 16.

**Example:** During focus group discussions held by the ICTJ on the reparative priorities of victims in Kenya, many women participants focused on different needs than men. For example, many women requested benefits that would focus on the welfare of their children, such as the building of community playgrounds at sites where violence had occurred.

## b. What Is the Interplay of Gender Identity with Other Identities (Class, Ethnicity, Race, Religion, Geography)?

Not all women (or all men) share the same needs and perspectives; rather, these are deeply shaped by class, religion, age, ethnicity, and other factors. Each of these factors will play a role in shaping an individual's identity, experiences, and perspective. As such, it is important not to generalize across diverse populations, but rather to consider the ways that a range of factors, including gender, influence individual and group perspectives.

Different identities may not only impact victims' experiences of violence; they can also intersect to compound the obstacles victims may face in seeking truth, justice, and redress. It is therefore critical to confront how different factors affect victims' access to various processes (reparations, legal bodies, consultation processes, etc.).

**Example:** In Côte d'Ivoire, the only women's rights activists initially engaging with the Dialogue, Truth, and Reconciliation Commission (CDVR) were capital-based groups who had no connections to women victims living in economically disenfranchised areas outside Abidjan, even though these women were particularly affected by the conflict. The capital-based groups therefore did not know or represent the justice priorities or perspectives of these victims, and there was little contact between the latter and the CDVR. Eventually, a wave of civil society mobilization around reparations led to greater engagement with women outside the capital, and representatives from these areas were able to engage state authorities directly to present their unique demands.

## c. What Are the Possible Barriers to the Inclusion of Women and Victims of Gender-based Violations?

In line with the UN Security Council resolutions on women, peace, and security, it is critical to identify any barriers to the participation of women and victims of gender-based violations in both state- and civil society-led transitional justice initiatives.

Each transitional justice context will have its own set of challenges to conducting work on gender issues. Potential barriers could stem from discriminatory laws, both formal and customary, or from societal norms that shape how people are expected to behave and the roles they are expected to occupy based on gender.

Barriers to participation may also take the form of logistical impediments that are created by structural inequalities. To ensure participation of women and other victims of gender-based violations, it is critical to assess early on the challenges that, unaddressed, may prevent it.

The following points and additional questions are useful when thinking through the different types of barriers that could exist.

### Societal Norms

Are there beliefs in a given society about the ways in which men and women should behave that restrict or inhibit their ability to speak about violations they have suffered or to participate in public activities? For example, a woman may not feel comfortable speaking with a man about the violations she suffered, so those planning direct interactions with victims should account for the need to have female staff.

Is gender-based violence against women so normalized that victims may not identify themselves as victims of any particular harm?

**Example:** Women in Colombia did not recognize the sexual violence they suffered during conflict as something that constituted a violation of their rights and entitled them to reparations because it is such an entrenched part of daily life.

### Legal Challenges

Do laws restrict the definition of gender-based violence so that certain violations are not illegal?

**Example:** In Chile at the time of the dictatorship, the penal code criminalized rape against women specifically, meaning that rape against men in detention during the Pinochet regime could not be prosecuted as such.

Do laws restrict a victim's right to obtain justice for a gender-based violation?

**Example:** When the The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act came into force in 2014, Nepal's criminal code had a 35-day statute of limitations on reporting sexual violence. In 2015, this statute was extended to 180 days, but the new statute was still a de facto amnesty for sexual violence that occurred during the decade-long conflict that ended in 2006.<sup>43</sup>

Are there customary laws that discriminate against women, and if so, what is their relationship to formal law and practice?

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<sup>43</sup> The Truth and Reconciliation Commission has sought an amendment in the Act to scrap the statute of limitation for rape. As of March 2017, the government had yet to amend the law.



**Example:** In Sierra Leone, a gender equity clause in the constitution prohibited discrimination based upon gender except in the application of customary law. The Truth and Reconciliation Commission reported in its findings that women’s access to economic resources and justice measures was restricted by many customary laws. Based on its recommendations, a set of gender bylaws was passed prohibiting customary law from discriminating against women. While this was a major step forward in addressing the barriers women faced, in practice, there remains little formal infrastructure to enforce women’s rights.

### Logistical Impediments

Are there logistical issues that may impede women’s access to justice measures or civil society activities, particularly considering the need to ensure representation of women from different backgrounds, socioeconomic groups, and geographic areas?

Many women cannot or are not allowed to take time out from their responsibilities in the home to participate in activities. This is a key factor that should be considered, and remedies to mitigate potential challenges should be taken.

**Example:** Women in Liberia who attended workshops on the Truth and Reconciliation Commission’s recommendations brought their children because there was no one to take care of them at home. The organizers of the workshop—UNIFEM (now UN Women) and various civil society organizations—provided child care so the women were able to join and speak openly about their experiences of the conflict.<sup>44</sup>

Are there security concerns for women speaking about sensitive issues, such as gender-based violence? If so, measures can be taken to protect their identity and keep their information confidential.

Are there differences in women’s and men’s literacy levels or access to technology that need to be accounted for? A range of scenarios should be considered in order to be prepared to deal with them appropriately.

### Identity Barriers

Specific barriers may exist for particularly marginalized groups, such as male victims of sexual violence and LGBTIQ victims, in accessing measures of truth, justice, and redress.

**Example:** In a context like Uganda, where same-sex acts are criminalized without distinction between consensual versus nonconsensual acts, reporting sexual violence could put male victims at risk for facing criminal charges themselves.<sup>45</sup>

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<sup>44</sup> Anu Pillay and Lizzie Goodfriend, “Evaluating Women’s Participation in Transitional Justice and Governance: A Community Dialogue Process in Liberia,” The African Centre for the Constructive Resolution of Disputes, *Conflict Trends* 2 (2009).

<sup>45</sup> Chris Dolan, “Into the Mainstream: Addressing Sexual Violence Against Men and Boys in Conflict” (May 2014), 5.

## 11. What Is Needed to Ensure a Gender-sensitive Approach Is Sustainable?

- Using inclusive language in documents and mandates
- Providing funding and resources that prioritize gender-sensitive needs
- Training staff to understand and integrate gender-sensitive actions in their everyday operations and interactions
- Emphasizing expertise in context-specific gender issues
- Performing outreach to all parties affected, regardless of physical location, economic background, religion, or other factors

### a. Inclusive Language

Often, transitional justice measures are guided by the mandates or documents that create them (e.g., rules and regulations, bylaws, legislation). If these foundational documents do not include adequate language calling for particular attention to be paid to sexual and gender-based violence and the inclusion and participation of particularly marginalized victims, it will not happen. It is therefore imperative that these documents include such language. Doing so achieves two goals by providing (1) guidance for institutional actors on how to take a gender-sensitive approach and (2) leverage for civil society actors engaged in advocacy and oversight or monitoring on these issues.

Additionally, gender-inclusive language in mandates, guidelines, laws, and policies avoids assumptions about who experienced certain violations. For example, a mandate should refer to “victims of sexual and gender-based violence” rather than limiting possible victims of such crimes to women.

### b. Funding and Resources

One of the greatest challenges for any transitional justice institution or program is funding. Often, mandates are large and resources are limited. A key way to ensure that gender programming happens, and a gender-sensitive approach is not sacrificed, is to allocate resources exclusively for gender work from the start. This includes adequate resources to hire female staff and staff with gender expertise; specific outreach measures for marginalized women victims; gender training for staff; and if relevant, specialized units within an institution.<sup>46</sup>

### c. Training

Staff and others interacting directly with victims should be trained on a gender-sensitive approach and how to avoid allowing personal gender biases and misconceptions to affect their work. This includes sensitivity training on working with victims of sexual and gender-based violence and other specific trainings relevant to the work being conducted, such as gender-sensitive documentation, investigative procedures, and receiving statements and oral testimonies. Trainings could be conducted by external

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<sup>46</sup> For more, see <http://gender-financing.unwomen.org/en>

experts and institutions such as [UN Women](#) or national and international civil society organizations with expertise on the issue.

Another component to consider here is whether staff or experts will be working with children and young people because different expertise and training may be needed when working with girl victims.

Trainings should also not be one-off events. Often, institutions see frequent staff turnover, and even staff who have received initial trainings could benefit from additional and ongoing capacity building on gender. Gender training relevant to the work they will be conducting is imperative for all staff, though it is also not a substitute for hiring staff with clear expertise on gender (explored next).

**Example:** In Timor-Leste, the Commission for Reception, Truth and Reconciliation (CAVR) trained all staff—not only statement takers—on gender. And, it continued to have regular training sessions throughout its mandate. The can be considered the gold standard in terms of training staff.

#### d. Expertise

It is necessary but not sufficient to have gender training for staff. It is also imperative to have leadership and staff with gender expertise and experience. This includes, for example, experience working with victims of sexual and gender-based violence, understanding of different women’s experiences in a country, and connections and relationships with diverse and representative women’s rights and women victims’ networks. Quotas for female staff members and leadership are an excellent way to ensure gender parity and act in accordance with [UN Security Council Resolution 1325, which stresses the importance of women’s participation in post-conflict settings](#).

However, not all women—and not only women—can be considered gender experts. An institution, body, committee, or other entity working on transitional justice must have both female staff (including within its leadership) and dedicated experts with appropriate experience, expertise, connections, and sensitivity to gender issues.

Without a strong advocate with gender expertise within an institution, gender policies often fail to be implemented, or to be implemented well.

For activists and civil society actors working to hold institutions accountable on gender issues, one critical element is seeking out and fostering relationships with existing “gender champions” within policy circles or transitional justice bodies. Particularly helpful is to identify a gender champion at the highest level who has the political capital to influence and enforce gender work.

#### e. Outreach

As referenced earlier, institutions must develop clear strategies for outreach and communication that will stretch far beyond well-informed, elite civil society groups in urban capitals. Without the

involvement of those most affected by human rights violations and periods of repression, there will not be sufficient buy-in for transitional justice initiatives to fulfill the aims of providing acknowledgment and creating social change that prevents future cycles of violence.

A communications strategy should be considered part and parcel of the operations of an institution. Building relationships with women's groups who have established relationships with victims is a productive way to reach wider networks of victims and affected communities.

Relatedly, an institution's ability to articulate its findings to the general public is vital and can contribute to slow shifts in norms and societal narratives. For example, in contexts where sexual violence has been denied or is stigmatized, a truth commission report that denounces the behavior and illustrates the widespread nature and impact of sexual violence may contribute to countering narratives that victims are alone and should feel ashamed about what happened to them.

**Example:** In Peru, groups working on indigenous women's issues maintain that the commission did not do sufficient work to show how women's gender *and* indigenous identity played roles in their experiences of violations such as displacement or the loss of their household's primary wage earners—despite indigenous women making up the largest percentage of victims by far. There were complaints against the commission's gender program for not being more inclusive, and many in the feminist community stated that the shortcomings in the gender work could have been corrected if there were greater collaboration with indigenous women's groups.

### Discussion Questions

- What kinds of challenges have you faced in incorporating a gender lens in your work in the past?
- What challenges are there for creating long-standing commitments on gender?
- How have you operationalized some of the strategies discussed in this section in your work?
  - What challenges did you face?
  - What success did you find?

## 12. Role of Civil Society

- Documenting and providing information on past human rights abuses
- Promoting advocacy at the international and domestic levels
- Supporting operations for continued transitional justice work
- Monitoring the progress of the government and holding it accountable

Civil society organizations, particularly women's groups, have a central role to play in helping ensure that a transitional justice process is gender sensitive.

It may not be immediately clear where the work intersects between women's groups that are involved in transitional justice issues and those that are not. Proactive outreach to the former groups can help clarify these connections, however, and assuage the common concern that engaging with transitional justice will mean that all attention is diverted from the groups' original missions. Women's groups interested in working on transitional justice can also initiate these discussions with government institutions directly and with other civil society groups.

### a. Documenting and Providing Information

Women's groups often already know which violations against women were most prevalent, how women were affected, and what obstacles women face in accessing justice. These groups can help transitional justice entities plan their work by providing strong analysis of the gendered pattern of human rights abuse. In some cases, information held by women's groups can actually supplement the data gathered by entities such as truth commissions or bodies tasked with implementing reparations.

**Example:** In South Africa, the TRC developed a more systematic approach to gender issues after receiving a briefing paper submitted by activists Beth Goldblatt and Sheila Meintjes of the Center for Applied Legal Studies (CALs). Commissioners already interested in gender were able to use the paper and its recommendations as leverage to push for an actual policy on women victims.

### b. Advocacy

Women's groups can play a major role in advocating for how an institution treats women victims and addresses sexual and gender-based violations. For example, from 1997 until March 2003, the Women's Caucus for Gender Justice brought women's human rights advocates from around the world to the negotiations that would eventually draft the Rome Statute and create the ICC. The aim was to ensure that principles of gender justice and accountability for sexual and gender-based violence crimes made it into the statute.

This work paid off, and the activists gathered by the caucus successfully advocated for a broad definition of sexual and gender-based violence, as well as innovative gender-sensitive guidelines for

operations.<sup>47</sup> The Rome Statute continues to be one of the most progressive legal instruments when it comes to accountability for sexual and gender-based violence crimes.

### c. Supporting Operations

While state institutions are often resistant to seeking broad support from civil society organizations, these groups—particularly human rights organizations and victims’ groups—have proven to be helpful assets more than they have caused extra work or burdens.

Organizations have provided volunteers, assisted with trainings, submitted briefing papers on issues where they have expertise, and brought in international experts for assistance. In some cases, they have gone as far as lobbying for increased resources and aid or leading public campaigns for the implementation of commission recommendations.

**Example:** The Commission for Reception, Truth and Reconciliation (CAVR) in Timor-Leste was particularly open and proactive in establishing civil society partnerships. Women’s groups conducted joint research projects with the commission that informed a range of the commission’s other activities, including its final report. Women’s groups also worked with CAVR on its gender hearings and broader victim-support needs. Links with women’s organizations were critical in helping an overstretched commission produce an impressive body of work on the gendered patterns of human rights abuses.<sup>48</sup>

### d. Monitoring

In addition to offering support, civil society groups must also act as a watchdog to monitor state institutions and hold them accountable to their mandates.

One common approach has been to develop platforms that bring together various organizations that can issue strong collective statements, rally their networks around particular issues, and monitor engagement with victims. The power of this platform approach is that it allows for broad representation, which in turn lends greater credibility to the group’s collective voice and creates strong pressure.

**Example:** In Nepal, the Conflict Victims’ Common Platform (CVCP) brought together loosely organized networks of families of the disappeared from both sides of the conflict. When the Commission of Investigation on Enforced Disappeared Persons (CIEDP) began taking statements, the CVCP monitored the process and produced an analysis raising numerous concerns and issuing recommendations to improve operations.

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<sup>47</sup> Rhonda Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” *McGill Law Journal* 46 (November 2000): 217–240.

<sup>48</sup> Vasuki Nesiah et al., “Truth Commissions and Gender: Principles, Policies, and Procedures,” International Center for Transitional Justice (2006).

**Activity**

To conclude, show either [\*The Silent Scream of Women\*](#) (from Colombia—in Spanish with subtitles) OR [\*The Role of Civil Society in Truth Commissions: Women's Participation\*](#) (from Tunisia—in Arabic with subtitles).

After the video, discuss how civil society was involved and what kinds of groups were consulted.



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