

Making Transitional Justice Work for Women

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A Window of Opportunity? Making Transitional Justice Work for Women

On the cover: Port-au-Prince, HAITI, 2006: The shadow of a woman waiting to casts her vote during the Presidential election in Port-au-Prince, Haiti.

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Introduction

Transitional justice, the range of mechanisms employed to achieve redress for past human rights violations, has become a critical component of United Nations (UN) efforts to strengthen the rule of law post-conflict, as well as an integral element of the peacebuilding agenda in countries recovering from conflict. Given the UN's growing role in providing technical support and funding to transitional justice processes, establishing guidance for gender-sensitive programming can have a significant impact on women's access to justice through these mechanisms. This is consistent with efforts to further the implementation of Security Council resolution 1325 (2000) and related resolutions 1820 (2008), 1888 (2009) and 1889 (2009) with respect to ensuring women's involvement in all aspects of post-conflict recovery and peacebuilding, and providing justice and redress for conflict-related abuses of women's rights.

In line with the recommendations of the Secretary-General in his 2004 report on rule of law and transitional justice,¹ this policy brief makes practical suggestions to incorporate gender equality more systematically in prosecutions, truth seeking, reparations, national consultations and institutional reforms — the components addressed by the Secretary-General in his 2010 guidance note on the UN approach to transitional justice.² As defined in the Secretary-General's report, transitional justice “comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations,

truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”³ Among the guiding principles of UN engagement in transitional justice activities is the need to “strive to ensure women's rights,”⁴ recognizing that justice for women's conflict-related violations sends a strong message about equal access to justice and application of the rule of law.

Transitions provide opportunities to further gender justice, in particular through the implementation of a gender-sensitive transitional justice agenda. Transitional justice processes can be leveraged not simply to secure justice for individual human rights violations, but also to address the context of inequality and injustice that gives rise to conflict, transforming the structures of inequality that underpin this violence.

“The world is... starting to grasp that there is no policy for progress [in promoting development, health, and education] more effective than the empowerment of women and girls... And I would also venture that no policy is more important in preventing conflict, or in achieving reconciliation after a conflict has ended.”

—UN Secretary-General Kofi Annan (2006)⁵

Broadening the Terrain of Transitional Justice

Efforts to integrate a gender perspective into transitional justice have come about over the last 15 years in response to the relative neglect of women’s experiences during and after conflict; biases in the law and in the constructs of human rights themselves that have been carried through into the working of transitional justice mechanisms; and biases in processes such as peace negotiations, where deals are reached without women’s representation.

Different experiences and impacts of conflict

Rethinking the design of transitional justice measures must start from the core assumptions upon which these are premised, including such elements as the violations for which redress is sought. Pre-existing unequal power relations between men and women render women particularly vulnerable in conflict settings: this means that women’s experiences of conflict are fundamentally different from men’s, including the impact of conflict itself.

In many recent conflicts women have suffered sexual and sex-specific forms of violence, including systematic rape, sexual slavery, forced marriage, forced pregnancy, and forced sterilization or abortion. Sexual violence during conflict is often a deliberate strategy of warring parties, perpetrated for reasons that include ethnic cleansing, to destroy the fabric of family and community, to forcibly displace communities and sow terror, as a means to humiliate the male relations of the victim in patriarchal societies, and as a form of punishment for those on the ‘wrong’ side of the conflict.

Other forms of violations experienced by women during conflict include:

- » Heightened domestic violence;
- » Lack of access to basic services and means of survival due to destroyed or non-existent infrastructure;
- » Forced displacement leading to homelessness or the seeking of shelter in camps, which can facilitate conditions for increased levels of violence and insecurity; and
- » Lack of access to justice as a result of the deterioration of an already weakened criminal justice system.

Given women's position and role in traditional societies, the most frequent violations experienced by women during conflict are those of a socio-economic nature.⁶ Yet socio-economic violations have historically fallen outside the mandate of transitional justice mechanisms.

These are some of the ways in which conflict has a gendered impact. A gendered analysis of justice would thus require rethinking the very violations for which redress is sought.

Different forms and forums of transitional justice

Securing justice for women entails engaging with the processes that shape future justice mechanisms, including constitution-making and peace processes, both of which, in the words of UN High Commissioner for Human Rights Navanetham Pillay, constitute "epoch making" opportunities for furthering the goals of post-conflict justice.⁷

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.

Guiding questions for designing gender-sensitive transitional justice mechanisms include:

- » What does justice mean for women affected by the conflict?
- » What were women's experiences of conflict?
- » What were the pre-existing gendered power relations?
- » What has been the impact of violations experienced?
- » For which violations do we seek redress?

Given the diverse and interrelated consequences of conflict for women, justice needs for women survivors have encompassed far more than the need for formal justice or prosecutions. The relationship between gender, development and transitional justice is still an underexplored area of policy development that contains the possibility of furthering comprehensive justice goals and redressing both the causes and consequences of gender-based violations. Women in many societies are subjected to varying forms of gender-based violence in their everyday lives. They are under-represented in the traditionally male-dominated political and socio-economic decision-making structures of their countries, have few or no inheritance rights in practice and may have limited educational or employment opportunities. Each of these factors shapes the impact that conflict has on women. Redress thus cannot be limited to specific violations alone, but must encompass measures to address the underlying inequalities that have shaped both the context of the violations and their impact. In other words, redress measures must incorporate 'transformative justice' as a goal.⁸ 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.

Core principles of gender justice in the post-conflict period:

- » Proceeding upon the recognition that **development and peace require gender equity**;
- » Recognizing **women's rights to participate** in all aspects of the transition;
- » Developing **laws that respect and foster gender equity**; and
- » Implementing a **justice** component that does not allow for impunity and **ensures accountability for crimes committed during the conflict against women and girls.**

Core elements of gender-sensitive transitional justice

As with any other process of institutional change, at least three core aspects of transitional justice institutions require reform from a gender perspective. The 2008/2009 *Progress of the World's Women* report by the United Nations Development Fund for Women (UNIFEM) outlines a framework for understanding key elements of institutional reform from a gender perspective and recommends simultaneous interventions in the following areas:

- Normative:* Does the formal remit or mandate of the institution include crimes against women as a matter of core concern?
- Procedural:*
 - *Incentives:* Do the staff of transitional justice institutions have adequate incentives to respond to new mandates on gender issues? Incentives can come in the positive form of formal or informal recognition for efforts or more punitive measures to impose sanctions for failures to address abuses of women's rights.
 - *Performance measures and review:* Are new expectations that transitional justice mechanisms will address crimes against women backed up with changes in the ways individual and institutional performance are reviewed and assessed?
 - *Removing barriers and improving access:* Are adequate steps taken to remove practical obstacles that women may face in accessing transitional justice? These obstacles can include an operating language different from the vernacular that women speak, the loca-

tion of hearings too far away for women to participate, or legal costs too high for women to pay. They include the opportunity cost of women's time—women have to make up one way or another for the loss of their labour at home in childcare and family maintenance. Costs to women also include the risk of stigmatization of women and girls who testify about gender-based and sexual violence, and the serious security risks women face when they identify perpetrators of crimes against women. To remove these access barriers, transitional justice institutions and processes must compensate for the costs women bear (in other words, they must use local languages, pay women to travel, provide child care), and they must provide protection from backlash and stigmatization (e.g., in-camera hearings, investment in attitudinal change in order to prevent ostracism).

- c. *Culture and attitudes*: Are efforts made to address gendered bias in the institution itself? This can be achieved in part by recruiting women at all levels and ensuring that they are not simply a token minority. This, however, is just a first step and more needs to be done in order to foster long-term attitudinal change about women's rights, often involving training and exposure to women's experiences of discrimination.⁹

The following review of important transitional justice mechanisms pinpoints the normative, procedural and cultural elements of these institutions that have in the past blocked adequate attention to women's rights. It also reviews promising recent innovations in transitional justice mechanisms and discusses UNIFEM support for interventions that have addressed bias and put in place alternatives that can be replicated in future efforts to promote gender-sensitive transitional justice.



A female former child soldier takes part in a traditional cleansing ceremony so that she may rejoin her community in Sierra Leone. Photo: Lindsay Stark

Gender and Transitional Justice Mechanisms

Transitional justice mechanisms to deal with past human rights abuses have traditionally included prosecutions, truth and reconciliation commissions, reparations and institutional reforms. Incorporating a gendered perspective in the design and implementation of these mechanisms remains an ongoing challenge.

Prosecutions

International prosecutions

Significant advances have been made in international law and jurisprudence with regard to securing justice for conflict-related sexual gender-based violence (SGBV) over the past decade and a half. The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 marked the first time an international tribunal explicitly listed rape as a crime against humanity in its founding statute. This was followed by a similar

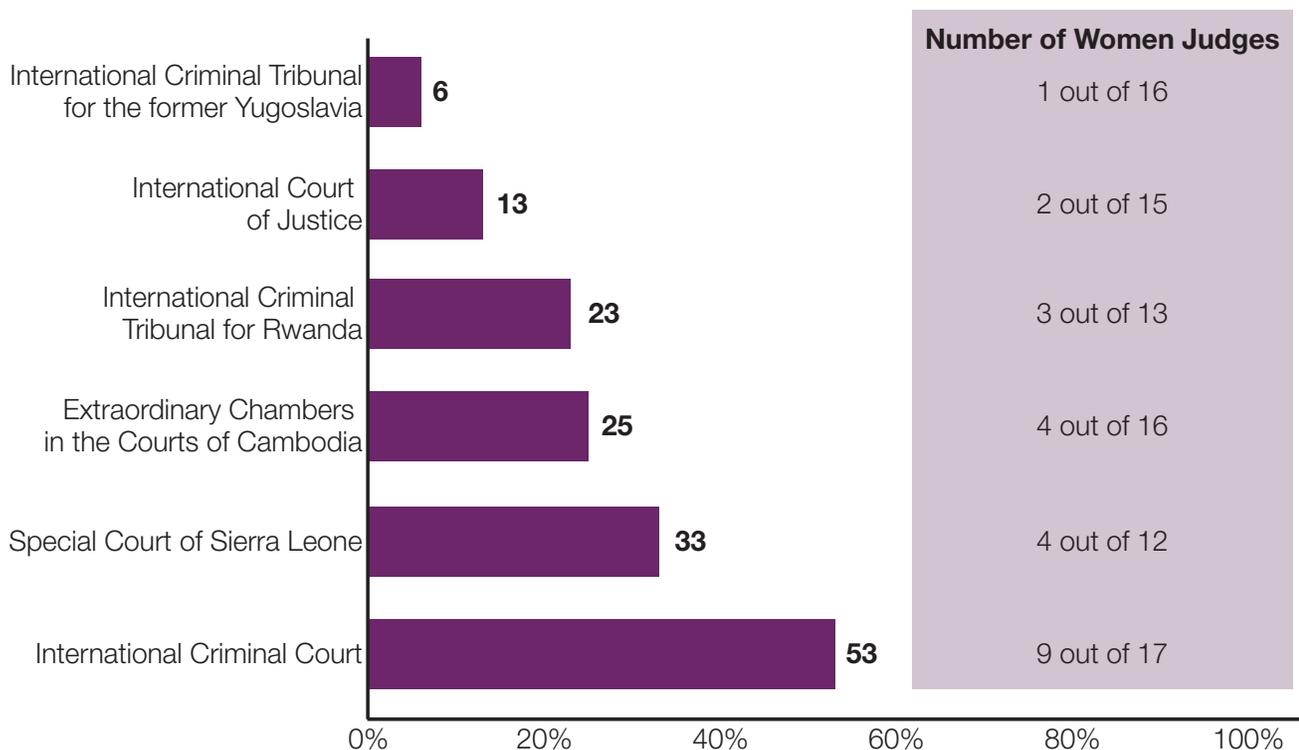
provision in the 1994 statute of the International Criminal Tribunal for Rwanda (ICTR). With the establishment of the International Criminal Court (ICC) in The Hague in July 2002, there is now a permanent court with jurisdiction over the most serious international crimes: war crimes, crimes against humanity, genocide and crimes of aggression. The Rome Statute, the ICC's governing document, contains specific reference to gender-based violence as a possible war crime and crime against humanity. Included in this definition are rape, sexual slavery, enforced prostitution, forced

pregnancy, enforced sterilization and “any other form of sexual violence of comparable gravity.”¹⁰ The ICC also sets out the components of each of these offences in its Elements of Crimes text.¹¹ The Statute therefore establishes an important model for defining sexual and gender-based crimes in international law.

International jurisprudence regarding sexual violence in conflict has also developed substantially. The groundbreaking judgement of the ICTR in the Akayesu case (1998) marked the first conviction for genocide by an international court, the first time an international court punished sexual violence in an internal conflict, and the first time that rape was found to be an act of genocide.¹² Moreover, in the judgement, the Tribunal established a broad legal definition of rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”;¹³ and noted that these acts of violence need not include penetration or even physical contact.

The initial case before the court did not include charges of sexual violence, and it was only as a result of the advocacy of domestic and international women’s civil society, and in particular the efforts of the sole female judge on the bench, that the charge sheet was amended to include these crimes after evidence emerged in testimony. While it cannot be presumed that women judges and staff will necessarily bring to their work a gender perspective that contributes to women’s rights, in practice they are more likely to do so. They are also more likely to be accessible to women’s organizations, as evidenced in the Akayesu case, making the inclusion of equal representation in all aspects of a court’s work a critical element for securing justice for gender-based crimes.¹⁴ Graph 1 shows variations in the proportion of women judges in international tribunals and demonstrates that, on average, they are still in a minority.

Women Judges on International Courts (% of total number of judges)¹⁵



Other key jurisprudence on SGBV crimes in international/hybrid courts

ICTR

In the case against Sylvestre Gacumbitsi, a teacher and local government official, the ICTR in 2004 found him guilty of a crime against humanity for instigating eight rapes. He was also found guilty of genocide by virtue of ordering, instigating, permitting, or failing to prevent or punish his subordinates and others for committing these acts.¹⁶

ICTY

Two months after the *Akayesu* decision in the ICTR in 1998, the ICTY handed down judgement in the *Čelebići* case, which involved four employees prosecuted for the brutal sexual abuse of prisoners held at a prison camp in the Čelebići municipality.¹⁷ Two of the accused were convicted of having superior responsibility for causing great suffering, torture and inhumane acts for sexual violence perpetrated against female detainees.

Shortly thereafter, the ICTY released the 1998 *Furundžija* decision.¹⁸ The Chamber in *Furundžija* did not rely on the *Akayesu* definition of rape. It offered a far more comprehensive definition, advancing legal responses to sexual violence in conflict by expanding the definition of rape to include oral and anal penetration. The ICTY additionally acknowledged that although rape is covered under the ICTY Statute, other less grave forms of serious sexual assault are implicitly covered under the term 'other inhumane acts.'

The 2001 *Foca* case was the first indictment issued against individuals by an international court purely for crimes of sexual violence. This decision also marked the first time that rape was charged as a crime against humanity by the ICTY and the first conviction for rape in conjunction with enslavement.¹⁹

Special Court for Sierra Leone

In the *Revolutionary United Front (RUF)* case, forced marriage was charged as an inhuman act and crime against humanity under the Court's 2000 statute.²⁰ The Trial Chamber specified that rape and forced marriage are distinct acts, as are forced marriage and sexual slavery, and as such, it is possible to be convicted of them all.²¹ This was the first conviction of the charge of forced marriage under international law.

There have also been positive examples of sexual violence convictions before the East Timor Serious Crimes Investigation Unit and the Iraqi High Tribunal, both hybrid courts. This increasing body of jurisprudence signifies an important evolution in international law and establishes precedents for future cases.

As critically important as the *Akayesu* case and other similar watershed cases have been, successful prosecutions for sexual violence in conflict have been few and far between. Though the *Akayesu* decision is celebrated for expanding international criminal law with regard to rape, legal theorists see this judgement as an exception in the decisions of the ICTR. One observer of the court noted that on the tenth anniversary of the 1994 genocide, "the ICTR had handed down 21 sentences: 18 convictions and 3 acquittals. An overwhelming 90 per cent of those judgments contained no rape convictions. More disturbingly, there were double the number of acquittals for rape than there were rape convictions. No rape charges were even brought by the Prosecutor's Office in 70 per cent of those adjudicated cases."²² The handful of prosecutions seems in stark contrast to the 250,000–500,000 incidents of sexual violence estimated to have taken place during the Rwandan genocide.

Protection of victims and witnesses

Women's participation as witnesses before international and hybrid courts has been hampered by a range of difficulties, including the adversarial nature of the court process, which is ill-suited in particular to crimes of a sexual nature; the stigma attached to testifying as a victim of sexual violation; the insensitivity with which victims are often treated; the unevenness of protection measures for testifying witnesses; and the general neglect with which crimes of a sexual nature are treated.

Making prosecutions gender sensitive requires the inclusion of women and dedicated gender expertise in all areas of court staffing, from investigators to statement takers to outreach personnel.²³ The Special Court for Sierra Leone dedicated 20 per cent of its investigators to SGBV cases, recognizing the widespread nature of the crime and the expertise needed to effectively investigate and prosecute. This marked a significant shift from the 1–2 per cent of investigators dedicated to SGBV in the earlier ICTR.²⁴ Those

responsible for the prosecution process must also ensure that suitable and sensitive evidence-gathering mechanisms are in place, that witnesses are sufficiently protected, that long-term, contextually relevant and sustainable trauma support is provided for victims and, in the case of international prosecutions, that advance preparations are made for those witnesses who must travel (including cultural acclimatisation).

Domestic prosecutions

International prosecutions are expensive and lengthy processes that can generally only prosecute those deemed ‘most responsible,’ leaving the vast majority of perpetrators untouched. Domestic prosecutions are important in addressing this impunity gap and establishing the rule of law in the long term. Because domestic justice systems have often been undermined or destroyed by past conflict, rebuilding these institutions and ensuring an end to impunity for all crimes, including gender-based violence, must be a priority for the establishment of the rule of law, which is critical to long-term peace and stability.

Domestic prosecutions should be undertaken in line with international laws and good practice. For example, the domestication of the Rome Statute of the ICC should not simply mean recognizing the jurisdiction of the Court and integrating the Statute itself into national law, but should also include the domestication of its operating procedures and policies. These include the Rules of Procedure and Evidence, which provide specific measures for the protection of sexual violence witnesses, allow for the possibility of in-camera hearings, do not require corroboration for sexual violence crimes, and compel the registrar to take “gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.”²⁵ The Statute also requires the prosecutor to appoint advisers with legal expertise on SGBV and the establishment of a Victims and Witnesses Unit with staff who have experience in trauma related to sex crimes.

Traditional or informal justice processes

Studies show that informal systems of justice are the principal legal recourse for the majority of citizens in post-conflict countries.²⁶ For most women, and more generally for most citizens of post-conflict societies, these are the only accessible sites of justice, mediation and conflict resolution. Important as these avenues for justice may be, traditional justice processes are often inherently gender biased, and the prevailing cultural or traditional norms serve to reinforce inequalities. For example, in some countries the rape of a woman is traditionally dealt with ‘informally’ either by ‘compensating’ the family or forcing the woman to marry her rapist in order to preserve her (and by implication her family’s) honour.²⁷ Such practices may be implicitly encouraged or tolerated by informal justice systems, or they may in fact be actively implemented by these institutions. After conflict, these bodies may be used by those with power not to protect women’s rights but as a vehicle to ‘retraditionalize’ society and restore previous unequal relations and norms.

‘Tradition’ and ‘custom’ are not static but evolve to meet new challenges and needs.

Transforming informal justice systems is a priority post-conflict, given that the majority of cases will continue to be dealt with in these forums. ‘Tradition’ and ‘custom’ are not static but evolve to meet new challenges and needs. Active and constructive engagement with these institutions may in fact transform them into gender-sensitive and rights-respecting bodies so that citizens have accessible, relevant and participatory avenues for seeking access to justice. In the Republic of South Africa for example, the constitution permits certain powers to be held by traditional leaders, but these must be exercised in line with constitutional principles, including gender equality. Additionally, the South African Law Commission has reviewed all customary law in order to

make recommendations on its harmonization with the South African Constitution. In the Republic of Uganda, Local Council Courts are required to have a minimum of one-third women on their panel.²⁸

UNIFEM support to informal justice processes

In the Republic of Burundi, UNIFEM supported the sensitization of the Bashingantahe, the traditional conflict-resolution institution. As a result, the Bashingantahe amended its charter to allow for the effective involvement of women, reflect women's rights and clarify its role in addressing violence against women. For the first time, women are admitted to participate in judicial decisions and now constitute 40 per cent of the judges in each session. A direct outcome has been an increase in cases of sexual violence heard by these forums as a result of increased levels of trust among women in reporting crimes to these institutions.

The focus on transforming informal justice in line with international human rights norms should not, however, detract from the imperative to reform formal justice systems. Efforts should be made to ensure that informal justice systems do not become the only justice venue accessible to women, and equally—in particular in cases of SGBV—that the formal court system is available to victims to deliver the punishment and sanction due to such serious crimes.²⁹

Truth-seeking

Truth commissions

Truth commissions can be defined as “bodies set up to investigate a past history of violations of human rights in a particular country.”³⁰ They are “officially sanctioned, temporary, non-judicial investigative bodies ... granted a relatively short period for statement-taking, investigations, research and public hearings, before completing their work with a final public report.”³¹

These bodies have their origins in the transitions from authoritarian regimes to democratic states in Latin America in the early 1980s, where efforts at prosecution were stymied by the continuing power held by former military regimes and the threat they posed to nascent democracies. Since the initial or ‘first generation’ truth commissions, they have become increasingly important in post-conflict or post-authoritarian transitions across numerous and varied contexts. The most known, researched and written-about truth commission to date remains the South African Truth and Reconciliation Commission (SATRC), established in 1995 to address the gross violations of human rights that occurred during apartheid. Today, largely in emulation of the SATRC, truth commissions generally employ public hearings for victims as well as institutional and thematic hearings that explore the role and impact of the conflict on key social groups and institutions in society. Truth commissions can serve as a platform for recording an inclusive history and denouncing past violence. They are also increasingly being adapted to meet the needs of their local context, incorporating local justice and reconciliation processes—as was the case in the Republic of Sierra Leone and the Democratic Republic of Timor-Leste—to deepen their impact and relevance among the local populations.

There have been approximately 40 truth commissions to date. Their common objectives include accountability, official acknowledgement for crimes of the past and for victims’ experiences of these crimes, establishing an inclusive history and citizenship, identifying victims for reparations, making a moral/symbolic break with the past, contributing to the development of a culture of respect for the rule of law and human rights, making recommendations for institutional reforms, and serving as a platform for nation-building and reconciliation.

National truth commissions post-2000: Number and percentage of women³²

Country	Start date	Name of truth commission	Number of women commissioners as per total	Percentage of women commissioners
Uruguay	2000	Peace Commission	0 of 6	0%
South Korea	2000	Presidential Truth Commission on Suspicious Death of the Republic of Korea	1 of 9	11%
Panama	2001	Panama Truth Commission	2 of 7	28%
Peru	2001	Truth and Reconciliation Commission	2 of 12	17%
Serbia and Montenegro	2002	Truth and Reconciliation Commission for Serbia and Montenegro (also called the Yugoslav Truth and Reconciliation Commission)	3 of 15	20%
Ghana	2002	National Reconciliation Commission	3 of 9	33%
Timor-Leste	2002	Commission for Reception, Truth and Reconciliation	2 of 7	29%
Sierra Leone	2002	Truth and Reconciliation Commission	3 of 7	43%
Chile	2003	National Commission on Political Imprisonment and Torture (Valech Commission)	2 of 8	25%
Democratic Republic of the Congo	2003	Truth and Reconciliation Commission	2 of 8	25%
Paraguay	2004	Truth and Justice Commission	1 of 9	11%
Morocco	2004	Equity and Reconciliation Commission	1 of 16	6%
Liberia	2006	Truth and Reconciliation Commission	4 of 9	44%
Ecuador	2007	Truth Commission	1 of 4	25%
Mauritius	2009	Truth and Justice Commission	1 of 5	20%
Solomon Islands	2009	Truth and Reconciliation Commission	2 of 5	40%
Togo	2009	Truth, Justice and Reconciliation Commission	4 of 11	36%
Kenya	2009	Truth, Justice and Reconciliation Commission	4 of 9	44%
Canada	2009	Truth and Reconciliation Canada	1 of 3	33%
Honduras	2010	Truth and Reconciliation Commission	2 of 6	33%

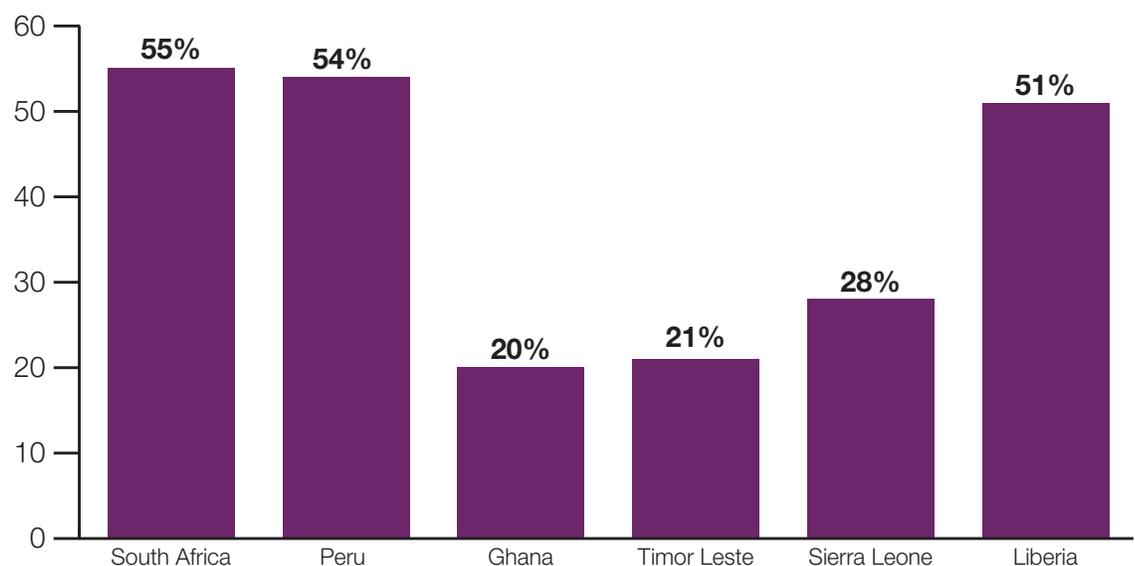
Mainstreaming gender in truth commissions

Over the years, progress has been made in mainstreaming gender into the work of truth commissions. The first commissions in Latin America were gender-blind: truth commissions in the Argentine Republic (1983–1984) and the Republic of Chile (1990–1991) did not see the importance of including gender in their national truth-seeking, and mandates made no reference to it. The SATRC (1995–2000) was the first to incorporate hearings at which women were encouraged to tell their stories and express their demands for justice and reconciliation. The truth commissions in the Republic of Peru and Sierra Leone built on and learned from the South African example. The Peruvian Commission set an important precedent by both mainstreaming gender into the proceedings and having a separate gender unit to ensure the inclusion of gender considerations in the daily work of the Commission.

In the Sierra Leone Truth and Reconciliation Commission (2002–2003), special support was given to women victims, which enabled many of them to break the silence about their violations. The report of these proceedings was the first to make the links between pre-conflict gender inequalities and the gendered nature of violations

during conflict.³³ In particular, the commission noted in its final report that “A culture of exclusion and marginalisation in the management of economic and political affairs in Sierra Leone existed before and during the civil conflict ... This persists today ... Women are largely absent from the structures of government and traditional forums that are critical in formulating policies. They are excluded in the processes involving security sector reform and other post-conflict and peace building measures undertaken by the State.”³⁴ It further noted that the impact of the conflict had been exacerbated by this exclusion and inequality, and that the ability of women to recover from past violence had been hampered by a “lack (of) adequate access to productive assets including land, credit, training and technology”.³⁵ As such, in its recommendations for redress, the TRC noted that addressing structural inequality would entail measures which “encompass law reform, access to justice, the abolition of discriminatory customary law and practices, the building of institutional capacity and the establishment of educational programmes to counter attitudes and norms which lead to the oppression of women. The Commission views education, health, economic empowerment and political participation as priority areas for the progressive development of women in Sierra Leone.”³⁶

Percentage of Statements Provided to Truth Commission by Women



While women have given testimony in strong numbers before some truth commissions, much of the testimony has tended to be in relation to violations experienced by male family members. Growing experience in this area has led to some positive practices in recent commissions. In the Republic of Liberia, owing to the preparation and pre-hearing support that had been provided by the Commission's gender committee and gender experts, women's representation as witnesses was equal to men's and they spoke of their own experiences. In Timor-Leste, where the number of women who came forward as witnesses was much lower than expected, the gender unit commissioned 200 in-depth oral histories by women in order to supplement their understanding of women's experiences.

Women's reporting of sexual violence crimes, however, remains extremely limited. In Timor-Leste, for example, only 853 cases of sexual violence were recorded by the commission. This is in contrast to local estimates of large-scale rape during the conflict, as well as the findings of the UN's International Commission of Inquiry on East Timor, which established "a pattern of serious violations in East Timor after January 1999, including sexual abuse, rape, stripping and sexual slavery of women."³⁷ In Liberia, whilst women came forward to testify to the truth commission in equal numbers as men, less than 4 per cent of reported violations were for sexual violence and related crimes. A World Health Organization study conducted in 2005 found that in the four counties surveyed, over 80 per cent of women had experienced some form of SGBV during the conflict.³⁸ Similar contrasts between the scale of sexual violence in conflict and the numbers reported to transitional justice mechanisms are evidenced in all truth commissions to date.

Possibly the best practice in incorporating gender into a truth commission thus far has been in Timor-Leste (2002–2003), where the Commission's women's hearings concentrated not

Truth commission reports that have included specific chapters on SGBV crimes or women's experiences of conflict:

- » South Africa
- » Peru
- » Timor-Leste
- » Sierra Leone
- » Liberia
- » Morocco
- » Guatemala
- » Haiti

only on sexual violence, but on other aspects of women's experiences of conflict, including the violations of women's socio-economic rights and the more wide-ranging consequences of conflict. For instance, the report of the Commission for Reception, Truth and Reconciliation in East Timor "demonstrates how forced displacement resulted in a range of harms for women, from starvation to exacerbated vulnerability, to sexual abuse; from forced labour to denial of fundamental freedoms; the deprivation of women's civil and political rights were intricately tied here to the denial of their social and economic rights."³⁹

However, this learning process is not linear. The Act which established Kenya's Truth, Justice and Reconciliation Commission (2008) mentions gender, but does not provide for women commissioners specifically, include a gender mainstreaming strategy, or link to plans for furthering gender justice more generally. While the Commission did embark on a process in 2009 to develop a gender policy to guide its work, gender-sensitive measures are best contained in the legal Act establishing the Commission and its mandate to ensure that they are integrated early on as a guiding principle.

In Sierra Leone, UNIFEM was involved in strengthening the work of the Truth and Reconciliation Commission (TRC) through a number of initiatives, including:

- » Working with the Women's Task Force, a coalition of local and international civil society organizations that mobilized around women's involvement in the TRC and the Special Court to ensure that crimes affecting women were addressed;
- » Providing funding to women's groups for activities that gave support to women coming before the Commission (e.g., for transport), to non-governmental organizations to compile documentation on the experience of women in their regions, and to address some of the immediate medical needs of rape survivors;
- » Providing information technology support to the Commission itself to ensure the gender disaggregation of the data collected; and
- » Conducting training for commissioners and senior TRC staff to help them respond to the needs and concerns of women. The commissioners subsequently made special provisions to encourage the collection of testimonies on sexual violence, including a witness protection programme and trauma counselling services.

Securing justice for women's experiences of conflict through truth commissions entails mainstreaming a gender perspective through the work of the truth commission early on, and through to the implementation of its recommendations.

With regard to the establishing mandate of a truth commission, core elements to ensure a gender-sensitive institution should include: the inclusion of women's groups on the commissioner-selection panel; a minimum quota for women in all staffing positions; identification of sexual violence as a specific crime to be investigated; the establishment of a gender unit; and gender-sensitive witness protection and psycho-social support policies.

More truth commissions are ensuring gender quotas for commissioners. The mandate of the Timor-Leste truth commission, for instance, provided that no less than 30 per cent of national and regional commissioners must be women and that in hiring staff, gender expertise be sought. In Liberia the founding Act mandated that no fewer than four of the nine commissioners should be women.

Examples of gender-responsive mandate language: The Liberian Truth and Reconciliation Act

The Liberian Truth and Reconciliation Act:

- » Reaffirmed the commitment of the Liberian people to “international conventions and protocols relating to the rights and protections of women and children” (Preamble, paragraph 12);
- » Required the TRC to adopt “specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender-based violations” (Article IV, section 4e);
- » Established that no fewer than four of the nine commissioners would be women (Article V, section 7);
- » Established that the TRC “consider and be sensitive to issues of human rights violations, gender and gender-based violence thus ensuring that no one with a known record of such violations are employed by the TRC and that gender mainstreaming characterizes its work, operations and functions, thus ensuring that women are fully represented and staffed at all levels of the TRC and that special mechanisms are employed to handle women and children victims and perpetrators, not only to protect their dignity and safety but also to avoid retraumatization” (Article VI, section 24);
- » Mandated the TRC to create a space for providing testimony that gives “special attention to the issues of sexual and gender-based violence, and particularly to the experiences of children and women during armed conflicts in Liberia” (Article VII, Section 26f);
- » Required the Commission to employ specialists in children’s and women’s rights and ensure that “special measures or mechanisms are employed that will enable women and children to provide testimony to the TRC, while at the same time protecting their safety and not endangering or delaying their social reintegration or psychological recovery.” (Article VII, Section 26o); and
- » Called for special measures for witness protection on a case-by-case basis for women and children who may experience trauma, stigmatization or threats as a result of providing testimony (Article VII, Section 26n).

The Act also provided for hearings to be held *in camera* and required the commission to take sufficient measures to allow victims to give testimony in the language of their choice

Funding has been identified as a key constraint to the establishment of gender-specific measures in truth commission processes: in South Africa, researchers noted that proper gender research was limited due to resource constraints; in Peru, lack of funding for the gender unit left it reliant on other units, limiting its activities and impact considerably; in Liberia, both the establishment of the Gender Committee and the finalization and implementation of the gender policy were delayed until late in the TRC process because of resource issues; and in Kenya, although the mandate of the Truth, Justice and Reconciliation Commission provided for the possibility of a separate gender unit, due to resource constraints it was decided that gender would instead be dealt with alongside victims and minorities by a broad 'Special Services Unit.' While adequate funding is critical to a truth commission's success, and to gender-specific activities, this is not simply an issue of limited funding; rather it is about the prioritization and use of existing funds. Incorporating a gendered analysis into all aspects of a truth commission's work is crucial and can be undertaken regardless of budget size.

The final reports of truth commissions represent another avenue for ensuring that women's experiences of conflict are documented and recommendations are made for suitable redress. These reports should have both dedicated chapters on women's experiences in conflict, as well as a mainstreamed gender analysis throughout.

The Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR) included a dedicated chapter on sexual violence in its final report, where it noted that "rape, sexual slavery and sexual violence were tools used as part of the campaign designed to inflict a deep experience of terror, powerlessness and hopelessness upon pro-independence supporters. Sexual violation of East Timorese women ... was intentionally carried out to destroy the self-esteem and spirit, not only of the victims, but of all who supported

the movement for independence, with the aim of forcing them to accept the political goal of integration with Indonesia."⁴⁰ The Commission further found that "members of the Indonesian security forces and their auxiliaries were involved in widespread and systematic rape, sexual torture and acts of sexual violence (other than sexual slavery) directed mainly towards vulnerable East Timorese women ... Institutional practices and formal or informal policy of the Indonesian security forces tolerated and encouraged the rape, sexual torture and sexual humiliation of East Timorese women by members of the Indonesian armed forces and the auxiliary groups under their command and control."⁴¹

The Peruvian TRC noted in its final report that there were "important gender dimensions to the economic causes and consequences of human rights violations, such as the widespread displacement of women and children and a phenomenal rise in female-headed households in many communities affected by violence."⁴²

Topics to be covered in gender chapters of commission reports

- » Gendered patterns of human rights violations;
- » Gender-differentiated impact of human rights violations and the broader conflict;
- » National and international law addressing crimes against women;
- » Enabling conditions for women's vulnerability to human rights violations;
- » Ideologies of femininity and masculinity that permeated the conflict in relation to nationalism and violence;
- » Gender dynamics of racial oppression and other kinds of social exclusion/marginalization that characterized the conflict;
- » Role of women activists, both as individuals and through women's organizations;
- » Gender dimensions of psychosocial trauma in the affected community;
- » Issues that emerged in individual and thematic public hearings;
- » Recommendations for reparations and reform that address women's specific needs and goals;
- » Gender-differentiated statistical analyses of commission findings;
- » Challenges commissions faced in investigating crimes suffered by women; and
- » Gender-specific limitations of the commission's work and findings.

Reproduced from Vasuki Nesiiah et al., "Truth Commissions and Gender: Principles, Policies, and Procedures," International Center for Transitional Justice (ICTJ), 2006.

A truth commission's final report also has an important role to play with regard to recommending gender-sensitive reparations, in terms of both individual redress and broader reforms to address gender inequality. In the Kingdom of Morocco, the Equity and Reconciliation Commission recommended that communal reparations integrate a gender approach and that they target specific groups, specifically citing women. With regard to legislative reform, the Moroccan Commission called for "developing a clear and precise definition of violence against women, in conformity with international norms."⁴³ Timor-Leste's CAVR recommended prioritizing for reparations those most in need, including widows, single mothers and survivors of sexual violence. It also recommended that reparations include skills training and income-generating activities and that 50 per cent of any reparations fund be earmarked for women beneficiaries.⁴⁴ The recommendations of the Sierra Leone TRC included legislative reforms and the creation of a 30 per cent quota for women's representation in politics.

Commissions of inquiry

Commissions of inquiry can serve as important precursors to transitional justice mechanisms. In the Republic of Kenya, for example, the Commission of Inquiry into Post-Election Violence, known widely as the Waki Commission after its chairperson, was created in 2008 and charged with investigating the violence that followed the 2007 general elections. In its report, the Commission recommended that a special tribunal be created to "seek accountability against persons bearing the greatest responsibility for crimes, particularly crimes against humanity, relating to the 2007 General Elections in Kenya." The Waki Commission laid the groundwork for the Truth, Justice and Reconciliation Commission currently operating in Kenya and its findings form the basis for ongoing investigations by the ICC.

In Darfur, the UN's International Commission of Inquiry on Darfur, established in 2004 to investigate reports of violations of international humanitarian and human rights law, found that wide-scale violations had in fact occurred. In a dedicated section on rape and other sexual violence, the Commission found that crimes committed in the region included "widespread and systematic" rape and sexual violence on a scale that could amount to crimes against humanity.⁴⁵ In light of the findings, the Commission recommended that the Security Council refer the matter to the International Criminal Court for investigation and possible prosecution. This was subsequently carried out.

UNIFEM support to Commissions of inquiry

In both Guinea and Kenya UNIFEM has played an important role in supporting the work of the commissions of inquiry as well as in assisting civil society to document the use of sexual violence and transmit this information to these commissions. In Kenya, UNIFEM seconded a gender adviser to the Commission of Inquiry into Post-Election Violence to promote gender-sensitive processes, inclusion of SGBV in the investigations, and inclusion of women's concerns in final recommendations to the President and Panel of Eminent African Personalities. UNIFEM also worked with partners to collect testimony from 300 women, which was presented to the Commission to ensure that women's experiences of the violence were documented and thus increase the likelihood that they would be addressed. In Guinea, UNIFEM provided an international legal expert to advise on SGBV investigations and prosecutions.

Similarly, in 2009 in the Republic of Guinea an international commission of inquiry was set up to investigate the violent crackdown that occurred in September of that year. This commission was the

Given the role these bodies play in laying the foundation for future prosecutions, ensuring the full investigation of all SGBV crimes during the work of commissions of inquiry can significantly increase the likelihood of securing future justice for these crimes.

strongest thus far from a gender perspective. It named the head of state, as well as several of his associates, as potentially liable for crimes against humanity perpetrated against Guinean civilians, and established that at least 109 women had been subjected to rape and other sexual violence and that these crimes in themselves may have amounted to crimes against humanity.

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Unofficial truth-seeking measures

Unofficial civil society initiatives have played an important role in furthering truth-seeking and accountability for violations against women. In 2000, international and local civil society groups organized the International Women’s Tribunal in Tokyo to seek accountability for the experiences of thousands of Asian ‘comfort women’ during World War II. In the Republic of Guatemala a decade later, in March 2010, the Tribunal of Conscience was established by local civil society to hear the testimony of women who had suffered sexual violence during that country’s long internal armed conflict. While they are often a symbolic measure, such tribunals nevertheless provide a platform for witnesses to tell their stories and for judges to issue judgements, findings and recommendations for future advocacy; they also add to documentation for possible future prosecutions. In the case of the Guatemala Tribunal, outreach specifically targeted indigenous women, who were worst affected by the conflict but who continue to be marginalized and have limited avenues for justice.⁴⁶

Reparations

“Reparation 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.”

—Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation (2007)⁴⁷

In the broadest sense reparations are measures that are intended to ‘repair’—to redress past harms, in particular the systematic violation of human rights that are commonly associated with periods of conflict or repression. Of all the measures designed to seek redress for past human rights violations, reparations are the most directly victim-focused and as such hold much potential not just for delivering compensation narrowly de-

finied, but also for contributing to the transformation of the underlying gender inequalities in post-conflict societies.

The concept of reparations—the idea of a moral duty to compensate victims—is enshrined in numerous international treaties and is a principle common to many traditional justice systems. While no measure can ever repair the harms caused by serious human rights violations, the goal of reparations is to acknowledge the harm, establish responsibility and adopt measures that can contribute towards redress—materially, symbolically and morally.

The UN’s “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”⁴⁸ provides guidelines regarding the fulfillment of the right to reparations. It defines the constituent elements of a reparations programme as including: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Each of these elements must be examined from a gendered perspective in order to ensure that reparations programmes do not simply reproduce gender inequalities and unjust practices. For example, the definition of restitution is traditionally understood to mean to restore a victim to their original situation. This is the legal foundation of reparations. For women this would often entail returning them to a context of inequality and injustice, fulfilling the letter but not the spirit of restitution. Equally, guarantees of non-repetition have little meaning for women who continue to experience high levels of violence even after the cessation of formal conflict. Reparations programmes must therefore address the root causes of conflict and further women’s security from violence if they are to deliver on their core objectives.

Provision of reparation needs to have as a starting point an accurate mapping of women's position in society as well as their roles and experiences before and during conflict. Violations covered should correspond with women's experiences. Most programmes have implicitly discriminated against women by leaving out reparations for reproductive violence, including forced pregnancy, forced sterilization and forced abortions. They have also neglected the range of socio-economic violations women disproportionately experience during conflict.

Data on reparations payments to women

There is limited sex-disaggregated information available on the distribution of reparations cash payments.⁵¹ Some of the limited data we have comes from the Timor-Leste truth commission, which by the end of its operations had provided urgent interim reparations in the form of cash grants to 516 men (73 per cent) and 196 women (23 per cent).⁵²

In Sierra Leone, the Year 1 project, financed by the UN Peacebuilding Fund, paid out \$100 each to 2,918 victims of sexual violence and 4,745 war widows. In addition, 235 women received fistula surgery or medical treatment for health issues arising from sexual violence. There is, however, no sex disaggregation of data for the other categories of victims who received compensation, such as amputees.⁵³

The ICC Trust Fund for Victims is the first reparations fund to be connected to an international tribunal. It is currently assisting 13,700 victims of specific crimes in northern Uganda and the Democratic Republic of the Congo.⁵⁴ Of these, 3,100 are female victims of SGBV. Sex-disaggregated statistics are not available for the other categories of beneficiaries, including other war-wounded, children and youth associated with fighting forces, and victims of torture, mutilation and other attacks in need of medical assistance.

Administrative reparations

Administrative reparations programmes⁴⁹ can take many forms: individual grants or compensation payments; community reparations, which are intended to acknowledge areas worst affected by past violence; the provision of preferential access to services for victims; or symbolic measures, which include memorialization efforts and official apologies. A comprehensive and effective reparations programme will include all of these elements.

Individual payments or grants can be very beneficial to women, providing resources that can be used to mitigate the impacts of past harms and also to further economic empowerment. In line with this, material reparations should be conceived in a way that can advance these goals for women, and should be informed in their delivery by an analysis of family and community power relations, as well as broader contextual factors. For example, compensation to sexual violence survivors should ensure confidentiality so that women are not exposed to further stigma. Dissemination of payments should take into consideration women's access to necessary documentation as well as bank accounts. In South Africa, for example, due to the legacy of apartheid many African women who were intended beneficiaries of the reparations programme did not have their own bank accounts. Reparation payments, both the urgent interim payments that were made in 1999 and the full individual compensation awarded in 2003, were therefore often deposited into the accounts of male family members, leaving women with limited or no control over the resources. In some cases, tension over how the money should be spent in households contributed to domestic violence.⁵⁰

Progress in securing gender-sensitive reparations continues to be accompanied by serious gaps and challenges: reparations are rarely paid out in a full and comprehensive manner; problems of access (including for women residing

in remote locations, lack of transport, language barriers, illiteracy and a lack of knowledge about their rights and what is due to them) limit women's claims to reparations. In many cases, efforts to make reparations systems gender-sensitive have been limited to simply adding the crime of sexual violence to the list of violations that trigger reparations (and thereby reducing women's experiences of conflict and the categories to be redressed to simply being victims of sexual violence), or alternatively 'adding women' to existing reparations programmes without considering the gendered power relations in society and how this will affect the goal of repair.

Access to services can supplement individual grants and assist in dealing with some of the consequences of specific harms. Sexual violence, for example, has serious physical and mental health consequences, and as such redress measures should include access to psychosocial care and medical services. In Sierra Leone, for example, fistula surgery was offered among the reparations owed to victims of sexual violence. Other services for victims of sexual violence should include support for children born of rape, access to abortions or adoption processes, provision of anti-retroviral drugs or other needed medications. Inclusion of access to services should be specifically directed at mitigating the actual harms of the violation.

Collective reparations

Collective reparations are receiving increased attention in the design of comprehensive reparations programmes. The advantage of providing benefits collectively is that it allows for a broader universe of beneficiaries, particularly in contexts where the violations were numerous, geographically focused or identity-based, or where regions of a country were deliberately underdeveloped or marginalized with regard to State benefits as a cause or consequence of the conflict. Additionally, collective reparations can begin to address the wider impacts of individual violations. For

example, sexual violence in conflict is often employed to break the bonds of families and communities and to instill terror, an intended harm that reaches beyond the individual. In Morocco, reparations were provided to communities where secret detention centers had been located in order to take into account the impact of the facility not just on individual detainees, but on the community itself: these communities were collectively excluded from the economic and social benefits of the State in an effort to marginalize and isolate them and thereby preserve the secrecy surrounding the detention centers.⁵⁵

Consultations are of particular importance when designing collective reparations programmes. Research shows that exposure to violence has differential impacts on men and women and informs their views on what measures are needed for redress. Equally, collective programmes within communities must be cognizant of and address past marginalization and power relations. A recent study by the ICC's Trust Fund for Victims found that women in northern Uganda prioritized individual over community reparations, more so than men in the survey: When asked whether victims should be assisted as "individuals," "communities" or "both," the majority of women (59 per cent) chose "individuals," while the majority of men (55 per cent) chose either "communities" or "both." The study concludes on the basis of extensive research in these communities that these preferences are likely a reflection of a mistrust women have towards their communities, a recognition of existing power relations, and the likelihood that they will be marginalized from any decision-making regarding the form reparations would take.⁵⁶ The research re-emphasizes the need for women to participate in representative numbers in all post-conflict decision-making forums to ensure that their views are equally reflected and that outcomes benefit all intended.⁵⁷

Symbolic reparations

These measures can include public apologies, memorials, reburials and the renaming of streets and public buildings. By ensuring that these programmes are gender-sensitive and include the diverse roles played by women in a nation's history—not simply portraying women as caregivers or victims—symbolic reparations can “be used to challenge dominant femininities and masculinities that are produced in times of armed conflict and in its aftermath.”⁵⁸ An example of such a symbolic measure was the apology made by the President of Sierra Leone to the women of the country. On 27 March 2010—International Women's Day—President Ernest Bai Koroma publicly stated that the State “fell short in our obligation to adequately protect women from the brutalities of armed conflict.”⁵⁹ He apologized for the wrongs done to Sierra Leonean women, asked for forgiveness in the name of the armed forces, and pledged to protect women's rights going forward. He also acknowledged that traditional and cultural practices in Sierra Leone have grossly violated women's human rights.

Examples of furthering gender equality through reparations

Peru made important gains in addressing reparations from a gendered perspective by reframing programmes to include access to health, housing and education, as well as symbolic reparations.

In Morocco, a gender-based approach to reparations was achieved by acknowledging specific harms done to women (including relatives of direct victims), recognizing discrimination in previous approaches to reparations, and defining sexual attacks as a category of violations to be compensated. Moreover, the truth commission report recommended a process whereby female heads of household could receive compensation directly and on an equal basis, rather than through the eldest male relative as per Sharia inheritance law.

Reparations for social transformation

In order to achieve their maximum potential for advancing gender justice, reparations programmes must be both targeted and transformative: targeted in that priority should be given to specific vulnerable or in-need groups, and transformative in that they should aim to redress underlying inequalities. Land restitution is a key example of the transformative potential of reparations programmes. Reparations encompass the restitution of land and property; in many contexts, however, women's access to land titles and property was either legally denied or denied in practice. Restitution in these cases must include providing equal land title and inheritance rights to women, rather than reinstating an unjust system.

Transformative goals can also be furthered by harmonizing reparations with broader development initiatives to ensure impact and sustainability. In the context of land restitution, for example, access to land must go hand in hand with land reform and redistribution policies more generally, including land tenure reform; it should also be linked to rural development programmes so that skills, technology and access to credit, as well as roads to markets, all support women's livelihood capabilities and transform skewed gendered patterns of land ownership and financial control.⁶⁰

Recognition of the need for reparations to play a transformative role is gaining ground in international policy and jurisprudence. The 2010 thematic report of the Special Rapporteur on Violence against Women was dedicated to reparations for women, and speaks of the need for reparations to fulfill a transformative role. This was preceded by a landmark judgement handed down by the Inter-American Court of Human Rights in *Cotton Field v. Mexico* (2009). The case involved the abduction, sexual assault and killing of three females, two of whom were minors. The Court found that there had been a failure to properly investigate or seek prosecutions for these crimes, and in its judgement, it demanded not just that the State pay

compensation to the families, but that the principle guiding these reparations must be that they have a transformative impact.⁶¹ In addition to advocating a gender-sensitive and transformative approach to reparations, the judgement also underlined the need to address the systemic nature of discrimination which informed both the violations and the impunity enjoyed by the perpetrators.

National consultations

National consultations on the design of transitional justice measures are regarded as an important tool for increasing local ownership, impact and relevance. In particular, the Secretary-General notes in his 2004 report on Rule of Law and Transitional Justice that “the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out.”⁶² In both this report and the subsequent OHCHR Rule of Law Tool on national consultations,⁶³ the need for specific consultations with women is emphasized.⁶⁴ Moreover, in his 2010 guidance note, “United Nations Approaches to Transitional Justice,” the Secretary-General notes that:

Gender inequality is one of the most pervasive forms of societal inequality and is often exacerbated by conflict and situations of gross human rights violations ... The social stigma and trauma associated with reporting [sexual violence] crimes and women’s exclusion from public decision making processes make it particularly challenging for women to engage with transitional justice mechanisms.”⁶⁵

The need to include women in all aspects of post-conflict reconstruction and peacebuilding is a fundamental pillar of Security Council resolution 1325. In addition to fulfilling the democratic principles of inclusion and representation, involving women in the design of transitional justice programmes is simply good practice: it is not possible to design effective mechanisms for ben-

eficiaries without their input. Consultations can also serve as a tool of redress and empowerment in themselves: victimized populations are frequently those that were marginalized by past regimes, and inclusion can signal a new rights-based regime based on equal citizenship and rule of law. With regard to gender inequalities, specific consultations with women send a strong signal regarding the equal rights of all.

...inclusion can signal a new rights-based regime based on equal citizenship and rule of law.

Methods of consultation can include surveys, community meetings and focus groups. Ethical and security issues must, however, be taken into consideration, particularly where public consultations occur in the immediate aftermath of conflict. Measures to protect the confidentiality and security of participants should thus be put in place. Consultations should be held with women’s groups from all parts of the country and be representative of the different identities women hold, including socio-economic status, geographic location, ethnicity, religious affiliation and age. Efforts should also be made to reach out to those in remote locations where the impact of the conflict may have been most severely felt, for example in camps for the internally displaced.

Lastly, consultations should not just be isolated events; they must include follow-up processes when further decisions or policies are being considered. In Rwanda, for example, thousands of prisoners were released into communities ahead of the start of the Gacaca process⁶⁶ due to prison overcrowding and the need to respect due process. This decision did not, however, take into consideration the perspectives of women in the communities into which the primarily male prisoners were being released and reintegrated. Some women found themselves suddenly living in communities with men who had raped or killed loved ones, and who had yet to be held account-

able for their actions. Similarly, ongoing talks in the Islamic Republic of Afghanistan regarding a reintegration and reconciliation plan that will pay Taliban forces to return to their communities of origin risks perpetuating injustices for women on numerous levels; women's inclusion in any decisions related to reintegration and accountability is thus critical.

Institutional reform

Institutions responsible for rights violations during periods of conflict or repression need to be reformed in order to rebuild trust between the state and its citizens and lay the foundations for sustainable peace. Institutional reforms have traditionally referred to the practice of ridding state institutions—in the justice and security sectors in particular—of past perpetrators of human rights violations, as well as enacting wider reforms, capacity-building and human rights training to ensure non-repetition.

Justice sector reform is particularly important in the immediate post-conflict period, when heightened insecurity and ongoing social and criminal violence continue to have a disproportionate impact on women, hampering their participation in governance and reconstruction efforts. Gender-sensitive reforms must address barriers to access, whether they be law- or policy-related (e.g., the absence of laws to criminalize domestic violence or rape in marriage) or context-related (e.g., lack of police sensitivity and awareness of their duties regarding violence against women, absence of legal aid, or courts based only in urban areas). Reforms should also include adopting quotas for increasing the number of women in the justice and security sectors. In Liberia, for example, there have been numerous attempts to include women in security sector reforms, including through the establishment of quotas for recruiting women and specialized education initiatives for female recruits. In numerous countries, dedicated units for women and children have been established in police stations to

strengthen access to justice.

Equally important are reforms in perspectives on security and the role of the security sector in the protection of all civilians. Partnering with UNIFEM, the Rwandan Defence Forces (RDF) embarked on a campaign to train several thousand military officers to understand, help prevent and respond to SGBV. In an example of innovative practice, the partnership furthered gender-sensitive security sector reform by assisting the RDF to rethink their conceptualization of security to include human security—more specifically to identify SGBV as a security threat and within this context address the RDF's role in preventing it.

Institutional reform must, however, move beyond the traditional focus on justice and security sectors to include reforms to redress past gender injustices more generally. This should include legislative audits, the repeal of gender-discriminatory legislation, and the adoption of legislation which advances women's rights and enacts special measures in the form of quotas and/or other measures to reverse past discrimination and marginalization. After the transition to democracy in South Africa, for example, the post-apartheid Government repealed all previously discriminatory legislation, adopted quotas for women's representation in Government and uses gender-responsive budgeting in key Government departments to ensure policies have a positive impact on redressing past imbalances.

Conclusion: Delivering gender-sensitive transitional justice⁶⁷

In his 2010 report, “Women’s Participation in Peacebuilding,” the Secretary-General “calls on all actors to ensure that minimum standards of gender-responsiveness are established for truth commissions, reparations programs and related bodies.”⁶⁸ This section of the present policy brief offers initial recommendations for ways to promote gender-responsiveness in two of the currently most common areas of transitional justice: truth-seeking and reparations. The recommendations address the three key areas of institutional reform identified earlier: normative, procedural and cultural.

Truth commissions:⁶⁹

Normative:

- » Ensure that a commission’s mandate specifically identifies an imperative to address gender-specific crimes and is informed by a conflict-mapping exercise that documents the range of violations experienced by women. This should include the impacts of violations, the time periods in which they occurred, and the actors involved to ensure that the remit of the truth commission matches women’s need for justice;
- » Ensure that the design and mandate of the commission are informed by widespread national consultations, including specific consultations with women’s organizations;
- » Ensure that the communication and outreach process makes it widely known that women’s experiences of conflict are within the ambit of the truth-seeking body and should be reported.

Procedural:

- » Establish a specific gender unit from the start of the commission's mandate. It should be well staffed and resourced, have a mandate to conduct regular training and sensitization of all commission staff, and be empowered to ensure the mainstreaming of gender into all aspects of the commission's work, the conduct of specific gender activities (e.g., separate hearings for women) and the inclusion of a gender perspective in the final report (both dedicated chapters about women's experiences and mainstreamed throughout);
- » Address access barriers experienced by women by providing:
 - childcare facilities at truth commission hearings;
 - safe transportation;
 - language translation facilities;
 - adequate food and drink;
 - psychosocial support for women testifying—before, during, and after bearing witness—including dedicated accompanying support persons;
 - broader referral systems to ensure medical and social services for some witnesses—including mechanisms to deal with social backlash and family ostracism; and
 - provision of security to witnesses—including follow-up monitoring and response to protect those who testified from threats of violence or other retribution;
- » Offer support to women's organizations to work closely with the commission, ensure liaison between the commission and local women, encourage women's full participation, and manage expectations;
- » Make specific provisions, including separate facilities, to ensure confidentiality (through *in camera* hearings where needed), and to prevent stigmatization of witnesses;

- » Hold dedicated women's hearings; additionally, create alternative spaces should for women who do not wish to come forward to speak (e.g., community-level hearings that bring together women in peer groups to share their stories, and where desired, document these for the commission);
- » Conduct institutional hearings that address questions of gender inequalities and marginalization (e.g., legal hearings analyzing the lack of legal protection for female victims);
- » Establish timelines and benchmarks for follow-up processes so that the recommendations of the truth commission are effectively addressed: final report recommendations often provide a blueprint for a more equal and just society, including measures to advance gender equality, yet diminishing political will after a commission shuts its doors has prevented many recommendations from being implemented.

Culture and attitudes:

- » Ensure women are appointed as commissioners and at expert levels in the commission secretariat;
- » Ensure gender training for all truth commission staff, with regular follow-up to address challenges as they arise and to monitor gender mainstreaming; and
- » Integrate counseling support for staff and commissioners so that desensitization does not occur: this is damaging not only to the staff, but also to those they work with, and can affect staff members' ability to feel empathy and compassion.

Reparations programmes:

Normative:

- » Ensure that the formal mandate or remit of the reparations commission includes the imperative of providing redress for women's experience of conflict;
 - » Conduct research on the conditions of women prior to conflict as well as the range of women's experiences during conflict to ensure adequate knowledge of the types of violations experienced, and how this has affected women's current status and social position;
 - » Address specific violations with confidentiality and allow a flexible evidentiary standard (e.g., sexual violence); and
 - » Ensure that reparations are in proportion to the benefits provided to ex-combatants so that there is no impression that those involved in the violence benefit more than those who bore the brunt of it (in Bosnia and Herzegovina for example, the veterans' pension was revised in 2006 to provide a monthly pension for rape survivors of conflict; in Sierra Leone, the TRC recommended that in establishing pensions—recommended for amputees, children and women affected by the conflict—the size of the pensions be determined in relation to ex-combatant pensions and demobilization packages).
- » Consult women victims and women's support and advocacy networks when developing reparations measures; those consulted should reflect the full range of women's identities in society, particularly those most affected by the conflict: the Nairobi Declaration identifies the participation of women in the design of these programmes to be a form of reparation in itself, in that it establishes new power relations and acknowledges equal citizenship and rights;
 - » Take steps not to replicate gender-biased hierarchies, but rather to unseat them (Morocco's experience of providing new criteria for equal distribution of benefits within families is one positive example in this regard);
 - » Include measures to address the consequences of the harm (e.g., in Sierra Leone, victims of sexual violence were given access to fistula surgery as a component of the reparations programme);
 - » Supplement individual reparations with collective measures that can address the more systemic forms of inequality in society (Morocco and Peru are just two countries setting a positive example with the use of collective reparations);
 - » Make provisions for open lists to allow victims who did not come forward initially to have more time to submit statements and qualify as beneficiaries; this is particularly important in the case of sexual violence where victims may not feel comfortable coming forward to identify themselves as victims; and
 - » Make specific provision for symbolic reparations and memorial initiatives that address women's role in history.

Procedural:

- » Minimize the factors that might affect women's access to reparations, including, inter alia: access to bank accounts, ability to travel to register as a beneficiary, access to formal documents (e.g., marriage certificates, death certificates), the challenges of burden of proof in cases of sexual violence (especially in a context of stigma), personal security, and language barriers;

Endnotes

- 1 United Nations Security Council, "Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies," S/2004/616, 23 August 2004. This report includes in its recommendations that transitional justice measures "recognize the differential impact of conflict and rule of law deficits on women and children and the need to ensure gender sensitivity in restoration of rule of law and transitional justice, as well as the need to ensure the full participation of women."
- 2 United Nations, "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice," March 2010, http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf. The United Nations Development Fund for Women (UNIFEM; part of UN Women) will be developing guidance notes on specific aspects of transitional justice, in particular truth-seeking and reparations, that will further develop the overview provided here.
- 3 UN Security Council, "Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies," S/2004/616. Disarmament, demobilization and reintegration (DDR) programmes overlap and are sometimes considered to fall within the ambit of transitional justice. While these programmes hold importance both for female combatants, who have historically been excluded from the design of DDR programmes, and for women in the families and communities in which the former combatants are reintegrated, DDR is not covered in this brief.
- 4 United Nations, "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice." (March 2010).
- 5 Kofi Annan, Secretary-General's remarks on International Women's Day, New York, 8 March 2006, available online: <http://www.un.org/apps/sg/sgstats.asp?nid=1946>.
- 6 Christine Chinkin, "The Protection of Economic, Social and Cultural Rights Post-Conflict," Report commissioned by the Office of the High Commissioner for Human Rights (OHCHR), available at: http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf.
- 7 Navanethem Pillay, United Nations High Commissioner for Human Rights, address delivered at the expert dialogue on the United Nations Approach to Transitional Justice, New York, 2 December 2009.
- 8 Transformative justice includes within its ambit root causes, and necessitates that the context which gave rise to the incident is "included in the search for understanding, healing and a better future," seeking "to effect change on a structural level while helping those whose lives were affected by interpersonal harm." Dennis Sullivan and Larry Tift, *Handbook of Restorative Justice: A Global Perspective*, New York: Routledge, 2006.
- 9 UNIFEM, *Progress of the World's Women 2008/2009: Who Answers to Women? Gender and Accountability*, New York: UNIFEM, 2009, available online: http://www.unifem.org/progress/2008/media/POWW08_Report_Full_Text.pdf.

- 10 Rome Statute of the International Criminal Court, art. 7(1), 17 July 1998, A/CONF.183/9.
- 11 Preparatory Commission for the International Criminal Court, "Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized draft text of the Elements of Crimes," PCNICC/2000/1/Add.2, 2 November 2000.
- 12 Binaifer Nowrojee, "'Your Justice is Too Slow' Will the ICTR Fail Rwanda's Rape Victims?" United Nations Research Institute for Social Development (UNRISD), Occasional Paper 10, November 2005. Akayesu, a former mayor, was convicted by a unanimous verdict on nine counts: genocide, direct and public incitement to commit genocide, and crimes against humanity, including extermination, murder, torture and rape (Prosecutor v. Jean-Paul Akayesu, Judgement, ICTR-96-4-T, 2 September 1998). Most importantly, the Trial Chamber found that the systematic rape of Tutsi women encouraged by Akayesu constituted genocide. For further details see, UNIFEM, "Gender and Transitional Justice Programming: A Review of Experiences from Peru, Sierra Leone and Rwanda," 2010 (included in this collection).
- 13 Prosecutor v. Jean-Paul Akayesu, ¶ 598.
- 14 UNIFEM, "Gender and Transitional Justice Programming."
- 15 Sourced from the websites of the courts.
- 16 Prosecutor v. Sylvestre Gacumbitsi, Trial Judgement, ICTR-2001-64, 17 June 2004.
- 17 Prosecutor v. Hazim Delic, Esad Landžo, Zdravko Mucic & Zejnil Delalic, Trial Judgement, IT-96-21-T, 16 November 1998).
- 18 Prosecutor v. Anto Furundžija, Trial Judgement, IT-95-17/1-T, 10 December 1998.
- 19 Prosecutor v. Dragoljub Kunarac, Radomir Kovac & Zoran Vuković, IT-96-23-PT & IT-96-23/1-PT, Trial Judgement, 22 February 2001.
- 20 The Special Court was also groundbreaking in that it arranged and paid for critical health procedures such as fistula repair for women survivors in order to assist them to give testimony.
- 21 Prosecutor v. Sesay, Kallon and Gbao (RUF Case), Trial Chamber Judgement, 25 February 2009, ¶¶ 2306 and 2307.
- 22 Nowrojee, "'Your Justice is Too Slow.'"
- 23 The Women's Initiatives for Gender Justice annual 'Gender Report Card' on the ICC is one example of an innovative measure to monitor and encourage increased women's representation in all spheres of the Court's work. See <http://www.iccwomen.org/>
- 24 Helen Scanlon and Kelli Muddell, "Gender and transitional justice in Africa: Progress and prospects," *African Journal on Conflict Resolution* 9, No. 2 (2009): 9–28.
- 25 Preparatory Commission for the International Criminal Court, "Report of the Preparatory Commission for the International Criminal Court, Addendum, Part I, Finalized draft text of the Rules of Procedure and Evidence," PCNICC/2000/1/Add.1, 2 November 2000, Rule 16(1)(d).
- 26 Informal justice institutions comprise a wide range of forums with varying degrees of formality and relationship to the State. They include, at one end of the continuum, community-based justice structures with no relationship to the State. At the formalized end of the continuum are quasi-State bodies that are mandated to apply customary or traditional justice norms. According to the United Kingdom's Department for International Development (DFID), "[i]n many developing countries, traditional or customary legal systems account for 80% of total cases." Department for International Development, "DFID Policy Statement on Safety, Security and Accessible Justice 7," 2000, <http://www.dfid.gov.uk/Pubs/files/policy-safety.pdf>.
- 27 See UNIFEM, "Gender and Transitional Justice Programming."
- 28 Celestine Nyamu-Musembi, "For or Against Gender Equality? Evaluating the Post-Cold War 'Rule of Law' Reforms in Sub-Saharan Africa," Occasional Paper 7, UNRISD, 2005.
- 29 According to the Human Rights Committee General Comment 32 on Fair Trials, these forums should not be used to deal with serious crimes. A joint study by the United Nations Development Programme (UNDP), the United Nations Development Fund for Children (UNICEF) and UNIFEM on informal justice systems is currently analyzing the characteristics of these mechanisms across all regions to inform a coherent approach that would strengthen their ability to deliver justice in line with international law and human rights.
- 30 Priscilla B. Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16, No. 4 (1994): 597–655.
- 31 Office of the United Nations High Commissioner for Human Rights, "Rule-of-Law Tools for Post-Conflict States: Truth commissions," New York: United Nations, 2006.
- 32 Data compiled from the United States Institute of Peace Truth Commissions Digital Collection; Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed., New York: Routledge, 2010; media sources and personal communications. The numbers reflect original appointments; some, such as Kenya and Serbia and Montenegro, were affected by resignations; others were expanded during their mandate period.
- 33 World Bank, *Gender, Justice and Truth Commissions*, June 2006, available online: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/GJTClayoutrevised.pdf>.
- 34 Sierra Leone TRC, "Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission," (2004) ch 2: 105
- 35 "Witness to Truth" ch. 2: 100
- 36 "Witness to Truth" ch. 2: 169

- 37 The International Commission of Inquiry was appointed by the Secretary-General pursuant to Commission resolution S-4/1, adopted at its special session on the East Timor section of the “Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/45: Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997–2000),” E/CN.4/2001/73, ¶ 79–81. In Guatemala 1,465 sexual violence crimes were reported to the truth commission; in South Africa there were 158 cases reported by women.
- 38 World Health Organization, *Sexual Gender-Based Violence and Health Facility Needs Assessment (Lofa, Nimba, Grand Gedeh and Grand Bassa) Liberia*, September 2005, available online http://www.who.int/hac/crises/lbr/Liberia_RESULTS_AND_DISCUSSION13.pdf
- 39 Vasuki Nesiah, “Gender and Truth Commission Mandates,” presentation given at Open Society Institute Forum—Gender and Transitional Justice: Pursuing Justice and Accountability in Post-Conflict Situations, New York, 7 February 2006, available online: <http://www.ictj.org/static/Gender/0602.GenderTRC.eng.pdf>.
- 40 CAVR, “Chega! The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste,” 2005, ch. 7.7: 108.
- 41 “Chega!” ch. 7.7: 104
- 42 World Bank, *Gender, Justice, and Truth Commissions*, 28.
- 43 Kingdom of Morocco, *The Moroccan Equity and Reconciliation Commission Three-part Summary of the Final Report* (2005), available online at <http://www.ictj.org/static/MENA/Morocco/IERreport.findingssummary.eng.pdf>
- 44 Kelli Muddell, “Limitations and Opportunities of Reparations for Women’s Empowerment,” Briefing Note, ICTJ, 2009.
- 45 International Commission of Inquiry on Darfur, “Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004,” Geneva, 25 January 2005, ¶ 360.
- 46 UNIFEM provided funding to support the Tribunal de Conciencia, including for simultaneous translation in seven languages—Spanish, English and five local, indigenous languages—to ensure the participation of women from all backgrounds. Issues of language can pose serious obstacles to the participation of women from marginalized groups.
- 47 Available at http://www.womensrightscoalition.org/site/reparation/signature_en.php.
- 48 United Nations General Assembly resolution 60/147, “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,” A/RES/60/147, 16 December 2005.
- 49 Reparations can be provided through a court order or a State-administered programme, often linked to the recommendations of a truth commission. This section deals only with administrative programmes, which are more common in transitioning societies and which, because of their scope and larger numbers, hold more potential for a greater universe of beneficiaries.
- 50 Nahla Valji, “Gender Justice and Reconciliation,” in *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development; The Nuremberg Declaration on Peace and Justice*, eds. Kai Ambos, Judith Large, and Marieke Wierda, 217–216, Berlin: Springer Publications, 2009. Similar situations have arisen with the disbursement of court-mandated reparations payments for sexual violence cases in the Democratic Republic of the Congo and the Republic of Afghanistan.
- 51 The scarcity of sex-disaggregated data on reparations programmes will no longer be an issue in future. The Secretary-General’s Annual Report on Security Council resolution 1325 (2000) for 2010 establishes 26 indicators for member states and the UN to monitor the implementation of key elements of the resolution at a global level. One indicator is dedicated to tracking the percentage of resources distributed through reparations programmes that benefit women.
- 52 Galuh Wandita, Karen Campbell-Nelson and Manuela Leong Pereira, “Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims,” in *What happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín, New York: Social Science Research Council, 2006.
- 53 Mohamad Suma and Cristián Correa, “Report and Proposals for the Implementation of Reparations in Sierra Leone,” ICTJ, 2009.
- 54 Of a total of 42,300 direct beneficiaries. The Trust Fund for Victims, “Recognizing Victims & Building Capacity in Transitional Societies: Spring 2010 Programme Progress Report,” 2010.
- 55 For a detailed exploration of the concept of collective reparations and their use in a number of contexts, see International Centre for Transitional Justice, “The Rabat Report: The Concept and Challenges of Collective Reparations,” ICTJ, 2010.
- 56 The Trust Fund for Victims “Recognizing Victims.”
- 57 Because of the overlaps with development and humanitarian aid, collective reparations measures must incorporate acknowledgement and redress of identified violations if they are to have reparative value.
- 58 Brandon Hamber and Ingrid Palmay, “Gender, Memorialization, and Symbolic Reparations,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín, New York: Cambridge University Press, 2009. A cultural or localized approach should also be adopted so that women themselves are able to inform what symbolic measures would carry significance and meaning for them.

- 59 Dr. Ernest Bai Koroma, Statement made on International Women's Day, 27 March 2010, http://www.statehouse.gov.sl/index.php?option=com_content&view=article&id=110%3Astatement-by-his-excellency-dr-ernest-bai-koroma-on-international-womens-d-ay-27-march-2010-courtesies&catid=34%3Ademo-category&Itemid=92.
- 60 UNIFEM will be hosting an international conference in 2010 to explore the positive relationship between reparations, gender justice and development. The conference will inform a policy brief to be developed in 2011 to provide additional guidance on policy development in this area.
- 61 United Nations Office of the High Commissioner for Human Rights, "Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo," A/HRC/14/22, 19 April 2010.
- 62 United Nations Security Council, "Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies."
- 63 United Nations Office of the High Commissioner for Human Rights, "Rule-of-law Tools for Post-conflict States: National Consultations on Transitional Justice," HR/PUB/09/2 (2009).
- 64 The 2004 report notes that one of the key added values that the United Nations can bring to national transitional justice processes is to promote the participation of women and traditionally excluded groups.
- 65 United Nations, "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice," 5.
- 66 Traditional dispute resolution forums that were revised into community-based courts which tried the vast majority of genocide-related cases. See UNIFEM, "Gender and Transitional Justice Programming," (included in this collection).
- 67 The UNIFEM Governance, Peace and Security section, in partnership with the UNDP Bureau for Crisis Prevention and Recovery, has piloted a global programme to support gender equality in transitional justice processes and to develop strategies for the integration of a women's human rights perspective into various transitional justice mechanisms, including truth commissions, criminal prosecutions, traditional justice and/or reconciliation mechanisms, institutional reform and reparations. The programme supports country offices in formulating effective strategies to support women's engagement with transitional justice processes that link to longer-term rule of law recovery and justice sector reform programmes, as well as consultations with the wider UN system to ensure complementarity of efforts.
- 68 A/65/354-S/2010/466
- 69 The recommendations provided here are selective and are intended to provide examples of good practice. For more comprehensive guidance, see Nesiah, "Gender and Truth Commission Mandates."

