



# Transitional Justice Handbook

December 2021  
Asia Justice and Rights

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ISBN: 978-989-20-4980-9

First published in Sydney in 2021.

Printed at R&W Publishing, Jakarta, Indonesia.

With the support of:



**Foundation for Human Rights**

[fhr.org.za](http://fhr.org.za)

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# Foreword

## Transitional Justice in Retrospect

One of the great challenges facing societies transitioning from histories of mass human rights violations, is to develop strategies to address those violations. Almost always, that painful history includes not just a single period of atrocities, but cycles of violence that repeat over and over again. The key question is how to break those cycles and rebuild society on a solid base of truth, justice, and rule of law. That is a major challenge, as violations leave a legacy of physical, psychological, social, and cultural damage, accompanied by deep scars of anger and hatred. These challenges are further complicated by the fact that those most responsible for these crimes and violations, often remain in positions of power long after the transition to a more democratic society has taken place.

The essential elements of building a new society are reflected in the transitional justice framework: revealing and sharing the truth; ending impunity and establishing systems of accountability; helping heal the pain that victims have suffered; and taking effective steps to ensure that violations do not recur. However, after the transition those responsible are, more often than not, only interested in distorting the truth and providing blanket amnesties, denying the experiences of victims, while carrying on with 'business as usual'.

Transitional justice is not a 'magic bullet' that solves all problems. However, it does provide a useful framework for society to use in developing strategies for how to deal with the past, and how to create a peaceful, fair, and prosperous future. While working in transitional societies over the past 30 years, I have been constantly asked for relatively simple and clear materials to help those struggling to develop appropriate strategies to deal with past violations. This handbook provides a practical guide to all those victims, civil society organizations, and government actors, who want to learn from the experiences of societies in other transitions, and about international standards and lessons learned from transitional justice initiatives. It is presented in a clear, straightforward, and user-friendly style, and designed to be easily accessible to a broad range of counterparts that need to deepen their understanding of transitional justice.

The handbook is dedicated to the great integrity and courage of survivors of serious human rights violations, who inspire us all.

**Patrick Burgess**



# 1 | Introduction

## 1.1 | Why “transitional justice”?

In the late 1980s and early 1990s many countries in Latin America and Eastern Europe experienced the collapse of military dictatorships and other authoritarian regimes that had looted national resources and maintained power through ruthless crushing of opposition voices, protected by blanket impunity. The old regimes had been responsible for many thousands of serious crimes. This created significant challenges to already overloaded justice systems and national laws not designed to deal with mass crimes, nor command responsibility. The traditional criminal justice responses also held very limited potential to answer key questions such as why the mass crimes had been committed, what were the root causes, and how thousands of victims could be assisted. In response to the challenges, human rights activists and others began working on more comprehensive solutions involving holistic models of punishment, deterrence, healing, and reconciliation. A new term—“transitional justice”—began to be used to refer to the broader approach of dealing with past violations.

The new approach recognised that experiences of mass violations are rarely isolated. They occur over and over again in the same places, in cycles of violence. A transition to democratic rule does not by itself remove the root causes and enabling factors of mass crimes that, if not recognised, will re-emerge in similar or different forms. In order to break the cycles of violence it is necessary to courageously investigate and share the truth about why and how the violations occurred, identify and appropriately deal with the individuals and groups that were responsible, reveal and try to repair the devastating effect on victims lives, and undertake reforms that will help prevent recurrence.

## 1.2 | What is transitional justice?

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<sup>1</sup> United Nations Secretary-General (UNSG), *Guidance Note of the Secretary General: United Nations Approach to Transitional Justice*, March 2010.

There are many definitions of transitional justice. In this resource manual, we use the term to describe an evolving set of responses to systematic or widespread violations of human rights that aim to bring recognition to victims and survivors, and promote the rule of law, peace, reconciliation, and democracy.

*[T]ransitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice processes and mechanisms are a critical component...for strengthening the rule of law.*

United Nations Approach to Transitional Justice<sup>1</sup>

It is important to be clear that transitional justice is not a lesser form of justice. The word “transitional” in the term does not mean a weakening or altering of the need for justice. It refers to the transitional context of countries moving from a history of mass crimes to democracy and the rule of law. In this sense transitional justice is in no way “justice minus” but in fact “justice plus.” It includes a focus on criminal prosecutions but also recognises the need to investigate and share the broader truth about what has taken place, acknowledge and assist victims, and take effective steps to avoid recurrence. Each situation is unique, and transitional justice strategies will differ depending on the context. In some cases, countries are able to transform relatively quickly and include a simultaneous focus on a range of transitional justice mechanisms. In others the space may be more limited, the changes must be carefully sequenced, and positive change may require decades of struggle.

## 1.3 | What are the elements of transitional justice?

Although a broad range of approaches have been employed to deal with a history of mass violations, four elements of transitional justice have emerged from initiatives adopted by activists and governments. These elements make the framework for transitional justice;

**Truth-seeking.** These are official and unofficial efforts aimed at understanding and memorialising the truth about what occurred. Official efforts take the form of truth commissions or inquiries, which are state bodies that investigate and report on key periods of past abuse. They often make recommendations to remedy such abuse and to prevent its recurrence. Unofficial truth-seeking initiatives are generally pursued by civil society and survivors, and include documentation programmes, oral history projects, reports, and films.

**Reparations.** These are state-sponsored initiatives that seek to repair the material and moral damages of past abuse. They typically distribute a mix of material and symbolic benefits to victims, such as financial compensation and official apologies. In countries where governments are reluctant to create reparations programmes, some civil society groups have advocated for victims to gain access to social assistance as an interim measure. Often, a key component of reparations is to preserve the memory of what occurred to ensure that it does not happen again. These memorialisation efforts may include the creation of museums, monuments, and special days dedicated to preserving public memory of the victims. These measures also increase the level of moral consciousness about past abuse in order to build a movement to prevent recurrence.

**Prosecutions.** These are judicial investigations and trials of individuals allegedly responsible for human rights violations. Prosecutors frequently emphasise investigations of the “big fish”; those suspects who are considered most responsible for massive or systematic crimes. Crimes to be prosecuted in transitional settings often differ greatly in terms of scale and nature from everyday crimes, thus creating legal and practical challenges. In many transitions, perpetrators may still have power and influence and create impediments to a fair trial.

**Reforms designed to prevent repetition.** These efforts seek to use the truth about the causative factors of mass violations to transform society so that they are less likely to recur. The reforms include a focus on the institutions most directly involved in the violations. These may include the military, police, and judiciary, so that they transform from instruments of repression and corruption into instruments of public service and integrity. These may include media, educational, and agrarian reforms as well as efforts to prevent corruption.

#### 1.4 What does a holistic approach to transitional justice mean?

Learning from their mistakes, institutions may need to adopt new policies and procedures, and may need to provide for these violations is no longer employed, and transform the culture within these institutions that tolerated discrimination and hate. Dealing with widespread human rights violations raises practical difficulties. A country's political balance may be delicate; its resources may be limited; or its government may be unwilling to pursue wide-ranging initiatives, or unable to do so without putting its own stability at risk.

The problems that flow from mass violations are often too complex to be solved by a single approach. For example, impunity is a major contributing factor to cycles of recurrent mass violations. If perpetrators are confident that they will not be held to account for their actions they will be much more likely to commit further crimes. Prosecution of those responsible for serious crimes is of fundamental importance. However, those processes are often politically difficult, take a long time to achieve, and in practice will not be able to deal with a significant proportion of mass crimes, particularly in transitional contexts where legal institutions are often weak and corrupt.

Even if courts were capable of prosecuting every person responsible, other initiatives would still be required in order to reconstruct a damaged social fabric. Prosecutions can only focus on a narrow area of the facts relevant to a particular case. To understand how to establish a future based on the rule of law, it is necessary for a society to seek the truth about the whole cycle of crimes and violations, including the root causes, effects, and contributing factors. It is also necessary to help repair the lives of victims and to reform those institutions and social issues that may contribute to recurrence. All of these approaches are necessary, especially when pursued in a holistic sequenced strategy focused on justice, healing, rights, and reform.

A holistic sequenced strategy also means that the different elements of the transitional justice framework do not operate separately. Each contributes to others in a complementary manner. For example, prosecution can also help to uncover a portion of the truth of what has happened. Truth seeking can establish a base of facts that can help to identify who should be prosecuted and who are the victims that need to be assisted as well as the reforms that are undertaken. Reparations for victims can provide a major contribution to ensuring that there is no recurrence of the violations by reducing anger, division and discontent. Reparations should include a truth telling element so that victims can tell their stories to an official body and be suitably acknowledged. Reform will include strengthening institutions so that prosecution, transparency and sharing the truth and assisting victims become part of ongoing future policies and practices.

A transitional justice strategy should include the goal of strengthening a resilient, rights-based democracy, and sustainable peace. These goals are more likely to be reached with active consultation and participation by victims' groups and the public. Finally, a holistic approach implies taking into account the full range of factors that may have contributed to abuse. Sensitivity to gender issues in personal, family, and social relationships should be a central element of all transitional justice measures and will help in reconstructing a society where everyone is free and equal.

## 1.5 | What is the basis for transitional justice in international law?

As the transitional justice field has expanded and diversified, it has gained an important and growing foundation in international law. International human rights law is particularly important to transitional justice efforts, in addition to the law of armed conflict (often called international humanitarian law), and international criminal law.

Experts increasingly recognise that states have a duty under international law to provide effective remedies for the human rights violations suffered by their citizens.

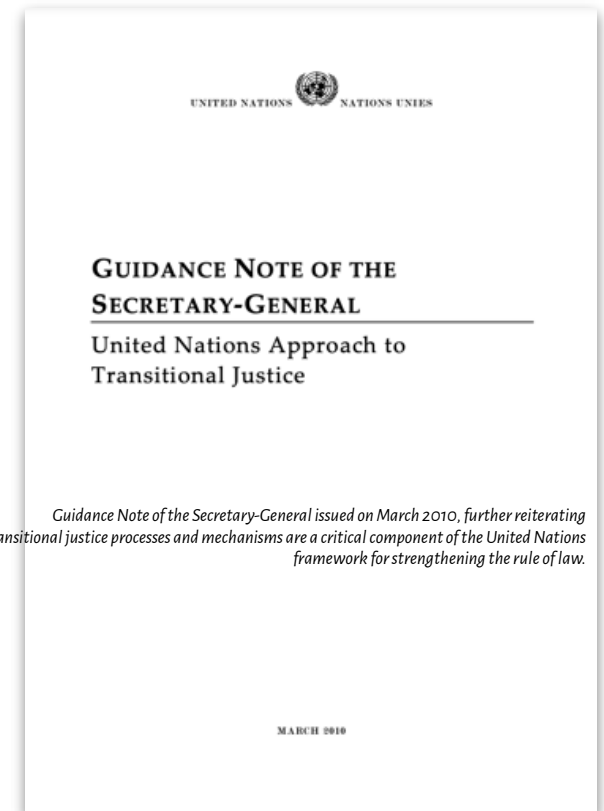
The decisions of regional and UN bodies have also contributed greatly to transitional justice efforts. The 1988 decision of the Inter-American Commission on Human Rights (IACHR) in the case of *Velásquez Rodríguez v. Honduras* is a particularly important legal landmark. In its decision, the IACHR found that State Parties to the American Convention on Human Rights have four fundamental obligations in the area of human rights. These are:

- to take reasonable steps to prevent human rights violations;
- to conduct a serious investigation of violations when they occur;
- to impose suitable sanctions on those responsible for the violations; and
- to ensure reparations for the victims of the violations.

Those obligations have been explicitly affirmed in later decisions by the Court and subsequently endorsed in decisions by the European Court of Human Rights and decisions by UN treaty bodies, such as the Human Rights Committee. The UN has produced the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1), 2005, and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHL and Serious Violations of IHL (A/Res/60/147), 2005. In 2009, the UN Human Rights Council issued a resolution on *Human Rights and Transitional Justice*, reaffirming “the importance and urgency of national and international efforts to end human rights violations, restore justice and the rule of law in conflict and post-conflict situations and, where relevant, in the context of transitional processes.” A year later, the UN Secretary-General issued a note on the United Nations approach to transitional justice in March 2010, comprising 10 Guiding Principles “as a critical component of the United Nations framework for strengthening the rule of law.”

The 1998 creation of the ICC was also significant in establishing transitional justice in international law, as the ICC’s statute enshrines state obligations that are of vital importance to the fight against impunity and for respect of victims’ rights.

The human rights obligations of states provide an important frame of reference for pursuing and assessing holistic transitional justice initiatives and raise important questions regarding the duty of states to implement those initiatives.



## 1.6 | What are some challenges in transitional justice?

Practical challenges have forced the field of transitional justice to innovate as settings have shifted. From an initial focus on Latin American contexts such as Argentina and Chile- where authoritarianism ended- to societies such as Bosnia and Herzegovina, Liberia, and the Democratic Republic of the Congo, where the key issue is ensuring peace. Some transitions, like Myanmar, are only partial and highly complex with conflicts

involving over 15 different ethnic armies. Ethnic cleansing and displacement, the reintegration of ex-combatants, reconciliation among communities, and the role of justice in peacebuilding have become important issues.

Transitional justice practitioners have also engaged with local or “traditional” justice measures. In some countries, such as Timor-Leste, Sierra Leone, and Uganda, communities have used traditional rituals to foster reconciliation between parties to a conflict, or to reintegrate ex-combatants. In such cases, the role of transitional justice is to ensure that a holistic approach is taken. The inclusion of traditional rituals can be mixed with more formal legal mechanisms and do not exclude the possibility of using other transitional justice measures

Ultimately, there is no single formula for dealing with large-scale human rights abuse. All transitional justice approaches are based on a fundamental belief in the primacy of universal human rights. In the end, each society must choose its own path.

## 1.7 | Transitional justice in the Asia-Pacific region

A history of mass crimes accompanied by impunity and weak accountability mechanisms are features of many Asian states. This provides a basis for ongoing instability, failure of the rule of law, and continuing cycles of violence. Transitional justice mechanisms are

A large map of the world is displayed in the entrance hall of Museo de la Memoria y los Derechos Humanos in Chile. The map shows the geographical locations of human rights violations that occurred in Chile and their correlation to other parts of the world.

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widely misunderstood and resisted in the region where perpetrators often remain in powerful positions in post-transition landscapes. In these settings, those who are implicated in mass human rights violations often actively promote a lack of accountability, cloaking self-serving protective strategies under the umbrella of “Asian values”. Regional human rights mechanisms remain weak, particularly around accountability for mass crimes.

However, there have been important initiatives, ranging from truth-seeking mechanisms in Timor-Leste, the Solomon Islands, Sri Lanka, Nepal, and Aceh (Indonesia); to hybrid tribunals and domestic trials in Timor-Leste, Cambodia, Indonesia, and Bangladesh; as well as reparations programmes in many post-conflict settings. Civil society groups and survivors’ movements play a key role in pushing reluctant governments to rebuild society based on acknowledgement of mass violations.



*Women survivors reveal the violence they experienced on CAVR public hearing of the theme women and conflicts in Timor-Leste, 29 April 2003 © National Commission on the Elimination of Violence against Women (KOMNAS Perempuan)*



## 2 | Timeline





## 2 | Important transitional justice development

Transitional justice initiatives need to be considered in a broad context that includes the evolution and trajectory of efforts to push for or hinder accountability. This timeline is not comprehensive, but rather provides an overview of important incidents and developments, both positive and negative, relating to core transitional justice concerns. It highlights key events and issues since 1945 relating to international human rights laws and initiatives, truth commissions and other truth recovery initiatives, trials, judicial commissions, reparations and memorialisation initiatives, and significant transitional justice developments related to women and children.

### 1945: Charter of the UN

50 nations sign the UN Charter in San Francisco. As of July 2018, the UN has 193 members.

### 1945-1946: International Military Tribunal at Nuremberg

A tribunal is established by the USA, Britain, France, and the USSR to prosecute major war criminals of the European Axis. 19 of 22 defendants are found guilty.



*Adolf Hitler's personal physician, Karl Brandt, is sentenced to death by hanging in Nuremberg, Germany, 1945-46. Licensed under public domain.*

### 1946-1948: International Military Tribunal for the Far East

Twenty-five of twenty-eight defendants, all of whom were Japanese military and political leaders, are found guilty during the so-called Tokyo Trials.



*Assistant US Attorney, John Fihelly, submits documents as evidence during the trials of accused Japanese war criminals, 1945. By Dargis, licensed under public domain.*

### 1946-1949: Control Council Law No. 10 Trials

Trials are conducted in Nuremberg by Allied powers (mainly the USA and UK) to prosecute numerous military and civilian personnel for crimes against peace, war crimes, and crimes against humanity during the Second World War.

### 1946-1949: Netherlands East Indies – Temporary Military Trials

The Dutch colonial government establishes temporary courts-martial in several locations in what is now Indonesia, such as in Batavia (Jakarta), Makassar (South Sulawesi), and Ambon, to prosecute war crimes committed by Japanese military officials and civilians during the Second World War. These courts-martial saw, among other things, the successful conviction for the “war crime of enforced prostitution” of Dutch women.

### 1948: Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)

The UN General Assembly adopts the Genocide Convention on 9 December 1948, and it enters into force in 1951.



*Dr. Alex Bebier, Yugoslavia's Deputy Minister for Foreign Affairs, signs the Convention on the Prevention and Punishment of the Crime of Genocide, 1948. UN Photo by MB, licensed under CC BY-NC-ND 2.0.*

### 1948: Universal Declaration of Human Rights

The UN General Assembly adopts the declaration on 10 December 1948.

### 1949: Geneva Conventions I-IV

These conventions pertain to the protection of prisoners of war, civilians, and wounded and sick combatants in times of war. The Conventions (and the two Additional Protocols subsequently adopted) condemn rape and other forms of sexual violence in both international and internal conflicts as serious violations of humanitarian law.

### 1950: European Convention for the Protection of Human Rights and Fundamental Freedoms

Among other things, this convention establishes the European Court of Human Rights.

### 1952: Germany - Luxembourg Agreement

The (now former) West German State assumes responsibility for reparations payments to holocaust survivors. According to the German Finance Ministry, as of 2005 this programme, which is still ongoing, had paid over 63 billion euro to survivors.



*Signing of the agreement on reparation between the FRG and Israel in the town hall in Luxembourg; on the left the Israeli delegation from the front G. Ainer, L. Goldmann, Moshe Sharatt, Josephstal, F.E. Shinnar, D.A. Amir; on the right the delegation of the FRG from the front Dr. Frohwein, Dr. Böhm, Konrad Adenauer, Walter Hallstein and Peter Altmeier, licensed under Getty Images.*

### 1959: Inter-American Commission on Human Rights

The Commission gathers regularly to discuss allegations of violations of human rights by state parties, based on three instruments: the Organisation of American States (OAS) Charter (1948), the American Declaration of the Rights and Duties of Man (1948), and the American Convention on Human Rights (1969).

### 1966: International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)

The UN adopts both covenants on 16 December 1966. The ICESCR enters into force on 3 January 1976, while the ICCPR enters into force on 23 March 1976.

### 1966-1967: Vietnam – Russell Tribunal

This unofficial war crimes tribunal conducts two sessions—one in Stockholm, Sweden and one in Roskilde, Denmark—to investigate US military intervention in Vietnam.



*Nine-year-old Do Van Ngoc exhibits injuries from napalm in the Vietnam War, at the Russell Tribunal, Stockholm, 1967. By unknown, licensed under public domain.*

### 1969: American Convention on Human Rights

Numerous countries in the Western Hemisphere adopt this convention on 22 November 1969, and it enters into force on 18 July 1978. Compliance with this convention is overseen by the Inter-American Commission on Human Rights (established in 1959) and the Inter-American Court of Human Rights (established in 1979).

### 1973: International Convention on the Suppression and Punishment of the Crime of Apartheid

The UN General Assembly adopts this convention on 30 November 1973, and it enters into force in 1976.

### 1975: Greece - Greek Junta Trials

Domestic prosecutions begin against ex-junta leaders, members of the military police, and state officials for human rights abuse and torture.

### 1977: Additional Protocols to the Geneva Conventions of 1949

Protocol I – relating to the Protection of Victims of International Armed Conflicts  
Protocol II – relating to the Protection of Victims of Non- international Armed Conflicts

### 1978: Chile - Decree Law No. 2191

General Pinochet grants amnesty to himself and his officials for crimes committed from 1973-78, following the coup d'etat against the government of President Salvador Allende.

### 1979: Inter-American Court of Human Rights

The Organisation of American States (OAS) establishes this court in accordance with and following entry into force of the American Convention on Human Rights. The court adjudicates cases of human rights violations and advises when solicited by OAS bodies or member states.

### 1979: Cambodia - People's Revolutionary Tribunal (PRT)

The PRT is established, receiving significant support from Vietnam and East Germany. The tribunal prosecutes in absentia two senior leaders of the Khmer Rouge—Pol Pot, Prime Minister and Secretary of the Communist Party, and his brother-in-law Ieng Sary, Deputy Prime Minister for genocide.



*The People's Revolutionary Tribunal in Phnom Penh in 1979*  
© Documentation Center of Cambodia

### 1979: Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

CEDAW defines discrimination against women and provides an agenda for action to end such discrimination. The UN General Assembly adopts it on 19 December 1979, and it enters into force in 1981.



*Lucille Mair, Secretary-General of the World Conference for UN Decade for Women, meets correspondents at UN Headquarters, New York, 1979. UN Photo by Milton Grant, licensed under CC BY-NC-ND 2.0.*

### 1980: US - *Filartiga v. Peña-Irala*

This landmark case gives jurisdiction to US federal courts under the Alien Tort Claims Act 28 U.S.C. § 1350 (1792) over acts of torture committed outside the US in violation of treaties to which the US is a party. (Later decisions by the US Supreme Court, however, limited use of the Alien Tort Claims Act.)

### 1981: African Charter on Human and Peoples' Rights

The Organisation of African Unity adopts this charter in June 1981, and it enters into force on 21 October 1986.

### 1983: Zimbabwe - Chihambakwe Commission of Inquiry

President Mugabe establishes this commission to investigate atrocities committed in the Matabeleland region. The commission's report is never made public.

### 1983: Argentina - CONADEP

CONADEP investigates forced disappearances that occurred during the military dictatorship (1976-1983).

### 1984: Argentina - *Nunca Mas* (Never Again) CONADEP publishes its findings in this report.



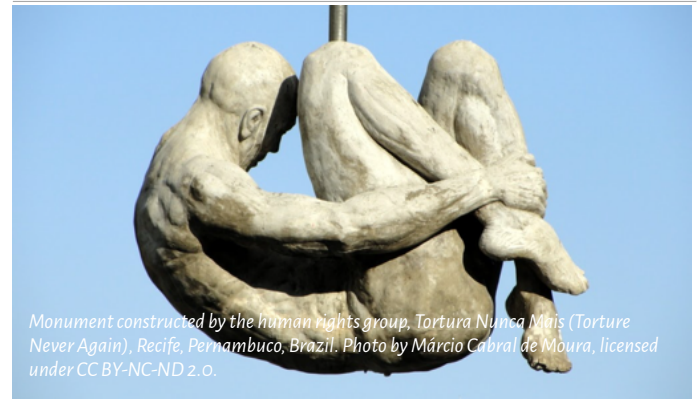
*Argentina President Raúl Alfonsín with CONADEP president, Ernesto Sábedo delivers the report 'Nunca Mas' (Never Again), Argentina, 1983. Photo courtesy of Telam, licensed under public domain.*

### 1984: CAT

The UN General Assembly adopts CAT on 10 December 1984, and it enters into force on 26 June 1987.

### 1985: Brazil – Human Rights Report

Non-state actors publish a report, entitled *Nunca Mais*, detailing human rights violations by the military junta that ruled Brazil from 1964-85.



*Monument constructed by the human rights group, Tortura Nunca Mais (Torture Never Again), Recife, Pernambuco, Brazil. Photo by Márcio Cabral de Moura, licensed under CC BY-NC-ND 2.0.*

### 1985: Argentina - Junta Trials

Nine former leaders of the military junta that ruled Argentina from 1976 to 1983 are tried. Four receive prison terms while two receive life imprisonment.



*Heads of the National Reorganization Process attend the Trial of the Juntas, Argentina, 1985. Photo by Telam, licensed under public domain.*

### 1985: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The UN General Assembly adopts this declaration on 29 November 1985.

### 1986: Bolivia - Trial of Military Leaders

Trials begin for former military dictator, Luis García Meza, and his collaborators, but they drag on for years. In 1993, García Meza was convicted in absentia and sentenced to 30 years in prison. He was extradited from Brazil in 1995. He died in April 2018 while serving his prison term.

### 1986: Philippines - Presidential Commission on Good Government

President Corason Aquino creates a Presidential Commission on Good Government as the first official act of the post- Marcos government with the task of recovering all ill-gotten wealth accumulated by Marcos, his family, and associates.

### 1986: Argentina - Law 23.466

This law provides for reparations to spouses and children of persons disappeared during military rule (1976-83).

### 1986: Argentina – Law 23.492 (Full Stop Law)

This law provides for the end of investigations and prosecutions against people accused of political violence between 1976 and 1983.



An announcement of a demonstration against the Ley de Punto Final (Full Stop Law), passed in Argentina after the last military dictatorship in order to stop the multiple crime investigations against military, police and others. The poster is located in a memorial site, formerly an illegal detention center, in Rosario. Photo by Pablo de Flores licensed under CC-BY-SA 2.5.

### 1987: Philippines - Commission on Human Rights

The Commission on Human Rights is formed to investigate human rights violations committed since the beginning of martial law, 1972.



Seal of the Commission on Human Rights of the Republic of the Philippines. Photo courtesy of the Commission on Human Rights, licensed under public domain.

### 1987: Argentina - Law 23.521 (Due Obedience Law)

The Due Obedience Law protects all personnel of the armed forces, the police, the penitentiary service, and other security agencies from prosecution for crimes committed during military rule, because they were acting out of "due obedience" (i.e. obeying orders from their superiors).

### 1988: United States - Civil Liberties Act of 1988

This act provides for a presidential apology, monetary awards, and a Public Education Fund Board to make reparations to Japanese-American citizens for internment without charge during the Second World War.



U.S. President Reagan signs the Civil Liberties Act of 1988, Washington DC. Photo courtesy of Ronald Reagan Presidential Library, licensed under public domain.

### 1988: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador)

This additional protocol expands the American Convention on Human Rights (1978) by including protection of economic, social, and cultural rights.

### 1988-89: Velásquez Rodríguez v. Honduras and Godínez Cruz v. Honduras

Judgments confirm that states have a duty to prevent, investigate, and punish any violation of rights recognised by the American Convention on Human Rights.

### 1988: Philippines - Aberca v. Fabian Ver et al.

Trial proceedings begin in this multimillion-peso damage suit that was filed in 1982 by former political prisoners against high-ranking military officers for torture and other human rights violations. Six years later the officers were found guilty, but upon appeal the sentence was not implemented.

### 1989: Argentina - Pardons

Presidential pardons are granted to 39 military officers facing trial in connection with the arrests, disappearances, and presumed killings of nearly 9,000 people during the military dictatorship from 1976 to 1983.

### 1989: Uruguay - Nunca Mas

Servicio Paz y Justicia (SERPAJ) publishes this report that exposes state-sanctioned human rights offences committed by the military junta that ruled from 1973 to 1985.



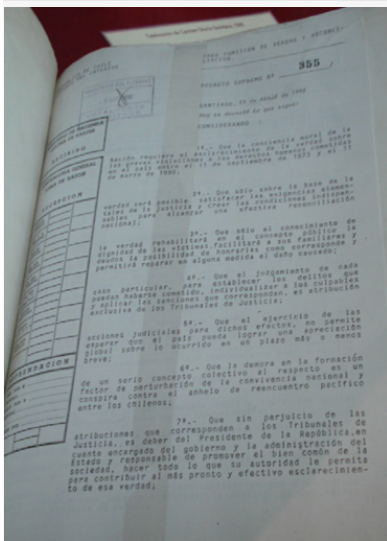
## 1990: UN Convention on the Rights of the Child



As the General Assembly adopts a Convention on the Rights of the Child, a group of children from the United Nations International School meet with Secretary-General Javier Perez De Cuellar. UN Photo by Milton Grant, licensed under CC BY-SA 2.0.

## 1990: Chile - National Commission on Truth and Reconciliation (TRC)

The commission investigates human rights abuses committed during General Pinochet's rule (1973-1990).



Chilean government promulgates Supreme Decree No. 355, establishing the nation's Truth and Reconciliation Commission, 1990. Photo by Ricardo Hevia Kaluf, licensed under public domain.

## 1990: Nepal – Truth Commission

The commission investigates alleged human rights violations committed under the Panchayat political system in Nepal (1960-1990).

## 1991: Argentina - Compensation

Compensation is awarded to victims of unjust imprisonment during military rule, to families of those who died in detention, and to those who suffered grave injuries.

## 1991: South Africa - Skweyiya Commission of Inquiry

The African National Congress (ANC) establishes the Skweyiya Commission of Inquiry to look into allegations of gross violations of human rights committed in ANC detention camps.

## 1991: Czechoslovakia - Lustration Law

This law is adopted to exclude Communist collaborators from positions of state office.

## 1991: El Salvador - Peace Accords

The Chapultepec Peace Accords, negotiated in Mexico City, among representatives from the government, political parties, and rebel groups, results in the establishment of a truth commission in 1992.



Chapultepec Castle, the site of the signing of the final agreement between the El Salvadoran government and FMLN, Mexico City, 1992. Photo by Juan Pablo González Barragán, licensed under CC BY-NC 2.0.

## 1991: Germany - Stasi Records Act

The Stasi Records Act provides access to security service files.

## 1991: Russia - Law on Rehabilitation of Victims of Political Repression

The law provides for rehabilitation of victims of political repression on Soviet territory from 1917 to 1991.

## 1991: Chile - National Corporation for Reparations and Reconciliation (NCRR)

The NCRR facilitates reparations for victims of state-sponsored human rights abuses as identified by the National Commission for Truth and Reconciliation.

## 1992: USA - Torture Victim Protection Act of 1991

Enacted by the US Congress in 1992, this act allows civil suits to be filed in the US against individuals acting in an official capacity for any foreign nation who committed torture or extrajudicial killing.

## 1992: Chad - Commission of Inquiry

This commission investigates crimes committed from 1982 to 1990 by former President Hissène Habré. The commission concluded that Habré's government was responsible for an estimated 40,000 deaths, and recommended the establishment of an independent judiciary and the creation of a national human rights commission.

## 1992: Paraguay - Archive of Secret Police

Three Paraguayans—a lawyer, a judge, and a human rights activist—uncover an abandoned archive of the secret police operating under the Stroessner dictatorship (1954-1989). These "Archives of Terror" shed light on the fate of dissidents and cooperation among Latin American dictatorships (1970s and 1980s) to capture and execute opponents in the cross-border Operation Condor.

### 1993: South Africa - Motsuenyane Commission

The African National Congress (ANC) conducts an internal inquiry into allegations of human rights abuses against prisoners and detainees in its camps.

### 1993: UN Security Council Resolution 808

This resolution establishes the International Criminal Tribunal for the former Yugoslavia (ICTY).



The first session of the ICTY following the passing of the UN Security Council resolution 827, The Hague, 1993. Photo courtesy of the UN International Criminal Tribunal for the former Yugoslavia, licensed under CC BY 2.0.

### 1993: South Africa - Interim Constitution

Preamble of the Constitution includes provisions for an undefined amnesty process to deal with past violations.

### 1994: Argentina - Law 24.411

This law extends the scope of the national reparations programme and authorises reparations for the heirs of victims of forced disappearance and extrajudicial killing.

### 1994: International Criminal Tribunal for Rwanda (ICTR)

The statutes of the ICTR explicitly incorporate rape as a crime against humanity.



An office of the International Criminal Tribunal for Rwanda, Arusha, Tanzania, 2003. Photo by Tomsudani, licensed under public domain.

### 1994: Sri Lanka - Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons

Three commissions investigate disappearances that occurred from 1988 to 1994.

### 1995: Guatemala - Recovery of Historical Memory Project (Recuperación de la Memoria Histórica, REMHI)

The Catholic Church establishes the largest unofficial truth-seeking project to date that includes collecting about 6,500 testimonies.



REMHI's final report, Guatemala, 2009. Photo by Surizar, licensed under CC BY-SA 2.0.

### 1995: South Africa - TRC

The TRC investigates government and opposition human rights offenses committed during the apartheid era.

### 1996: Bangladesh - The Liberation War Museum

The museum was established by civil society to document the atrocities committed during the liberation war. This museum was finally expanded with government funds and inaugurated in 2017.



The Liberation War Museum, Bangladesh, 2017. Photo by Ahm Masum, licensed under CC BY-SA 4.0.

### 1996: Guatemala - Oslo Accords

These accords create the UN Commission for Historical Clarification to investigate acts, causes, and contributing factors of Guatemala's 36-year civil war that involved the government and insurgent groups.



### 1997: International Criminal Tribunal for the former Yugoslavia (ICTY)

Duško Tadić, the first individual accused before the ICTY, is found guilty of crimes against humanity, including crimes of sexual violence.



ICTY's first trial against Duško Tadić, who was later convicted of crimes and sentenced to 20 years' imprisonment, The Hague, 1996. Photo courtesy of the International Criminal Tribunal for the former Yugoslavia, licensed under CC BY 2.0.

### 1997: Poland - Lustration Law

This law requires state officials to declare any previous collaboration with Communist security services.

### 1998: Rome Statute and the International Criminal Court (ICC)

The Rome Statute provides for the establishment of the first permanent International Criminal Court (ICC).



Civil society members applaud the establishment of a permanent international criminal court (ICC) through the Rome Statute, 1998. Photo courtesy of the Coalition for the International Criminal Court, licensed under CC BY-NC-SA 4.0.

### 1998: Rwanda - Prosecutor v. Jean-Paul Akayesu

Akayesu is found guilty by the ICTR of nine counts of genocide for his role in the Rwandan massacre in the first trial for genocide before an international court. He is also found guilty of encouraging and acquiescing to rape.

### 1998: Yugoslavia - Prosecutor v. Furundzija

The prosecution focuses on crimes of a sexual nature as well as torture. The accused is found guilty, and his conviction and sentence is upheld on appeal.

### 1998: Chile/UK – Pinochet's Arrest

General Augusto Pinochet is arrested in London on a warrant from Spain requesting his extradition on charges relating primarily to torture.

### July 1998: Indonesia – Joint Investigation of May Riots

A joint ministerial team is created to investigate and uncover the facts, perpetrators, and background of riots in May 1998. Findings include sources that indicate more than 1000 people were killed and tens of others were disappeared or victims of sexual violence, including gang rape.

### 1998: Indonesia – National Commission on Violence Against Women

In response to women activists' demands that the government acknowledge and apologize for the rapes that took place during the May riots, President Habibie agrees to establish an independent National Commission on Violence Against Women with the mandate to stop all forms of violence against women, including a mandate to conduct inquiries on past gender violations.



Women activists meet with Indonesian President Habibie, resulting in the president's issue of a formal apology for the sexual violations experienced by ethnic Chinese women in the May riots, Jakarta, 1998. Photo courtesy of the National Commission on Violence Against Women.

### 1999: Indonesia – Aceh Investigations

After the resignation of President Soeharto, the new President Habibie forms the Independent Commission for the Investigation of Violence in Aceh to investigate and document human rights violations during the armed conflict, including disappearances and extrajudicial killings. The team's findings included 781 extrajudicial killings, 163 enforced disappearances, 368 cases of torture, and 102 cases of rape cases.

### 1999: Chile/UK - House of Lords Finding

The UK House of Lords finds that General Pinochet and, by extension, former heads of state are not immune from criminal proceedings for crimes against international law, including torture.

### 1999: Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

This international treaty provides complaint and inquiry mechanisms for CEDAW.

### 1999: Nigeria - Human Rights Violations Investigation Commission (the Oputa Panel)

Established by the federal government, the Oputa Panel investigates human rights abuses committed from 1966 to 1999. The commission's report is never officially made public.

### 1999: Sierra Leone - The Lomé Peace Agreement

The Agreement provides for the establishment of a TRC to investigate atrocities committed in Sierra Leone's civil war from 1991 to 1999

### 1999: UN Independent Special Commission of Inquiry for Timor-Leste

In response to the atrocities committed during the UN-sponsored referendum in East Timor, the UN High Commissioner for Human Rights, at the request of the Secretary-General, establishes a commission of inquiry to determine the extent of crimes and provide recommendations to the Secretary General.



Finn Reske-Nielsen (right), Acting Special Representative of the Secretary-General for Timor-Leste, and Longuinhos Monteiro (left), Prosecutor-General of the Republic of Timor-Leste, shake hands after signing a Memorandum of Understanding on serious crimes committed in Timor-Leste, Dili, 1999. UN Photo by Martine Perret, licensed under CC BY-NC-ND 2.0.

### 1999: Guatemala - Commission for Historical Clarification Report

The Commission's final report, Guatemala: *Memory of Silence*, is released.

### 2000: Africa - The African Union (AU)

Replacing the Organisation of African Unity (OAU), African leaders establish the AU "to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."



50<sup>th</sup> anniversary of the African Union Summit, Addis Ababa, Ethiopia, 2013. Photo courtesy of the U.S. Department of State, licensed under public domain.

### 2000: Kosovo – UN Regulation 64 Panels

This regulation provides for international judges, along with Kosovo's domestic judges, to preside over cases involving war crimes.

### 2000: Sierra Leone - Truth and Reconciliation Act

The Truth and Reconciliation Act establishes the Sierra Leone TRC, in line with the Lomé Peace Agreement. The TRC has a mandate to produce a report on human rights violations beginning in 1991, provide a forum for both victims and perpetrators, and recommend policies to facilitate reconciliation and prevent future violations. The TRC expresses its intention to discover the reasons for the high rate of violence against women.



Closing ceremony at Sierra Leone's Truth and Reconciliation Commission's Moyamba district hearings, June 13, 2003. Photograph courtesy of Rosalind Shaw.

### 2000: UN Security Council Resolution (UNSCR) 1325

UNSCR 1325 addresses the impact of war on women, and women's contributions to conflict resolution and sustainable peace.



UN Security Council unanimously adopts resolution calling for the participation of women in the prevention, management, and resolution of conflict, New York, 2000. UN Photo by Milton Grant, licensed under CC BY-NC-ND 2.0.

### 2000: Indonesia – Human Rights Commission's Investigation on East Timor (KPPHAM)

Indonesia's Human Rights Commission establishes a committee to investigate the 1999 crimes committed in East Timor. A new law provides the Commission with jurisdiction over crimes against humanity and genocide, and the power to refer the case to Indonesia's attorney general. KPPHAM makes a finding of crimes against humanity and refers 29 military, police, and civilian leaders to the Attorney General.

### 2000: Republic of Korea (South Korea) – Presidential Truth Commission on Suspicious Deaths and National Committee for Investigation of the Truth about the Jeju 4.3 Events

A South Korean truth commission is created to investigate the deaths of citizens in South Korea from 1975 to 1987. Another committee is created to investigate events that occurred on Jeju Island from 1948 to 1954 and resulted in the death of approximately 15,000 people.



## 2000: Japan - Tokyo Tribunal 2000

The Women's International War Crimes Tribunal, a People's Tribunal, seeks to determine the criminal liability of high-ranking Japanese military and political officials, and of the State of Japan for the crimes against humanity of rape and sexual slavery committed against "comfort women" during Japanese military activity in the Asia Pacific region in the 1930s and 1940s.



Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, Tokyo, 2000. Photo by the Asia Pacific Forum on Women, Land, and Development (APWLD).

## 2000-2005: Timor-Leste - Serious Crimes Investigations and Trials

The UN Security Council establishes an interim government in East Timor, with a broad mandate to govern, including on judicial matters. A special panel with international and Timorese judges is established. The Serious Crimes Unit (SCU) investigates and prosecutes serious crimes that occurred before and after the independence referendum in 1999. By mid-2005, a total of 84 persons are convicted for serious crimes, but all are low-level Timorese militia members. In 2008, all of them are released after receiving a pardon from the President.

## 2001: Peru - Truth and Reconciliation Commission (La Comisión de la Verdad y Reconciliación, CVR)

The CVR examines atrocities committed from 1980 to 2000. Its report (2003) establishes that around 69,000 Peruvians were killed and recommends the prosecution of hundreds of perpetrators, including former President Alberto Fujimori.

## 2001: Indonesia - Lawsuit against Exxon Mobil in U.S. Courts

Eleven victims of human rights abuses in Aceh brought a civil case in Washington D.C. against Exxon Mobil, claimed that Exxon is responsible for murder, rape, and torture by members of the Indonesian military forces. In August 2008, a U.S. district court judge rejected the appeal submitted by Exxon Mobil and the U.S. State Department, and decided that the victims' claims that Exxon Mobil's actions have violated applicable tort laws had sufficient merit to be decided in a trial. The case is currently ongoing.

## 2001: Americas - Barrios-Altos v Peru

The Inter-American Court of Human Rights finds the Peruvian amnesty for state-sponsored human rights abuses to be in violation of the American Convention on Human Rights and orders compensation for the victims.

## 2001: Former Yugoslavia - ICTY Arrest of former President Milošević

Former Yugoslav President Slobodan Milošević is transferred into ICTY custody in June.



The ICTY indicts Yugoslav President Slobodan Milošević, the first indictment against a sitting head of state by an international court. Photo courtesy of ICTY, licensed under CC BY 2.0.

## 2001: Timor-Leste - Reception, Truth, and Reconciliation Commission (Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste, CAVR)

The CAVR is established to address human rights violations committed from 1974 to 1999, covering the period of the civil war and of Indonesia's subsequent occupation.

## 2002: Indonesia - Ad Hoc Human Rights Court

Based on the findings of the Human Rights Commission's investigation of crimes committed during East Timor's 1999 referendum, an Indonesian ad hoc court is established to try 18 high-ranking military, police, and civilian leaders charged with crimes against humanity. Six of the 18 are eventually convicted, but all are acquitted on appeal.



A witness takes an oath at an ad hoc human rights court, Jakarta, March 2002. Photo by Bernd Häusler.

## 2002: The Hague - The International Criminal Court

The Court is established in the Netherlands after 60 countries ratify the Rome Statute. It has jurisdiction to prosecute individuals responsible for genocide, crimes against humanity, and war crimes.



Signing Ceremony of the Rome Statute at the UN, New York, 2002. UN Photo by Evan Schneider, licensed under CC BY-NC-ND 2.0.

## 2002: Ghana - National Reconciliation Commission (NRC)

The NRC seeks to address post-independence authoritarianism in Ghana.

**2002: Mexico - Office of the Special Prosecutor for Social and Political Movements of Mexico's Past**

This office investigates crimes committed directly or indirectly by public servants against persons involved with political or social movements.

**2002: Sierra Leone - Special Court for Sierra Leone (SCSL)**

The SCSL prosecutes the most egregious violations perpetrated in Sierra Leone since 30 November 1996, giving specific attention to sexual and gender-based violence. It sets an international legal precedent in finding forced marriage to be a crime against humanity as an "other inhumane act".



Logo of the Special Court for Sierra Leone. Photo courtesy of SCSL, licensed under CC BY-SA 3.0

**2003: Sierra Leone - TRC**

The TRC commences its work. It issues its final report in 2004. It finds that the central cause of the war was rampant corruption and nepotism, which reduced the majority into a state of abject poverty and precipitated a violent backlash, particularly amongst the youth. Its main recommendations aim at creating a new culture of rights and tolerance; addressing corruption and gender inequalities in society.



The Special Court for Sierra Leone in Freetown. Photo courtesy of SCSL (Special Court for Sierra Leone).

**2003: Algeria – Ad Hoc Investigation of Disappearances**

A presidentially-appointed ad hoc mechanism is created to investigate disappearances since 1993. Its results are not publicly disseminated.

**2003: Cambodia - Extraordinary Chambers in the Courts of Cambodia (ECCC)**

The UN and the Cambodian Government reach agreement on an international war crimes tribunal to prosecute former leaders of the Khmer Rouge.

**2003: Chile - National Commission on Political Imprisonment and Torture (Valech Commission)**

The Valech Commission investigates abuses committed in Chile by Pinochet's regime from 1973 to 1990. It identifies 28,459 victims of torture, including about 3,400 cases of sexual abuse of women.

**2003: Uganda – Path to ICC Investigations**

Following almost two decades of fighting between the Lord's Resistance Army (LRA) and government forces, President Museveni refers the situation to the ICC. The Office of the Prosecutor clarifies that ICC investigations should look at responsibilities of those on all sides of the conflict.

**2003: Morocco - Equity and Reconciliation Commission (Instance Equité et Réconciliation, IER)**

The IER addresses cases of disappearance, death, and other human rights violations from 1956 to 1999. It is the first truth commission with the power to assess claims and grant reparations directly.

**2003: Democratic Republic of the Congo (DRC) – TRC**

Resolutions in DRC peace negotiations and provisions in the transitional constitution lead to the establishment of a TRC to investigate atrocities during conflicts beginning with the DRC's independence in 1960.

**2004: Democratic Republic of the Congo (DRC) – ICC Investigation**

The ICC launches an investigation into allegations of crimes committed during conflicts in the DRC.

**2004: Iraq - Special Tribunal**

Saddam Hussein and other alleged perpetrators are tried for crimes against humanity, war crimes, and genocide during the Ba'athist rule (1968-2003).



Former Iraqi leader Saddam Hussein sits before an Iraqi judge at a courthouse, Baghdad, Iraq, 2004. U.S. Air Force photo by SSGT D. Myles Cullen, USAF.

**2004: Paraguay – Truth and Justice Commission**

The Truth and Justice Commission investigates human rights violations committed from 1954-2003. The Paraguayan government begins a reparations programme to compensate former political prisoners and other victims of the Stroessner dictatorship.

**2004: US – Greensboro, North Carolina, unofficial TRC**

The TRC examines the 3 November 1979 murder of five anti-racist community activists who were shot and killed by neo-Nazis and members of the Ku Klux Klan.



Civil society drove the creation of an unofficial truth commission in Greensboro, North Carolina, USA to investigate the killing of union activists by the Ku Klux Klan and Neo-Nazis. Photo courtesy of The Greensboro TRC/ Beloved Community Center

#### 2004: Thailand - Commission of Inquiry

The government sets up an independent commission of inquiry to investigate the killing of 32 suspected gunmen inside a mosque in April 2004.

#### 2005: UN Security Council Resolution (UNSCR) 1593/2005

The resolution refers the situation in Darfur, Sudan to the International Criminal Court.

#### 2005: Thailand - National Reconciliation Commission

The government forms a National Reconciliation Commission to oversee reconciliation and restoration of peace in Thailand's southern border provinces. The Commission submits its recommendations to the government on June 2006.

#### 2005: Liberia – TRC

The TRC investigates gross human rights violations, gross violations of international humanitarian law, and economic crimes. The act establishing the Commission makes specific provisions for women, including a mandate for investigators to pay particular attention to gender-based crimes.



Opening ceremonies for the Liberia Truth and Reconciliation Commission Diaspora Public Hearings, 2008. Photo by Lukewilcox10, licensed under CC BY 3.0.

#### 2005: UN 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 (Van Boven/Bassiouni Principles).

#### 2005: UN Commission on Human Rights - Resolution 2005/66 on the Right to the Truth

The UN Commission on Human Rights adopts a resolution on the right to truth for victims of serious human rights violations. A similar resolution is adopted by the Organisation of American States (OAS) in 2007

#### 2005: UK/Northern Ireland - Historical Enquiries Team

The police service of Northern Ireland establishes this team to investigate 3,269 unsolved homicides relating to The Troubles (1968-1998).

#### 2005: Chile – Pinochet Trial

Chilean court strips General Augusto Pinochet of his immunity from prosecution for his involvement in the abduction and killing of political prisoners during Operation Colombo.

#### 2005: Argentina – Amnesty Laws Voided

Congress declares void two amnesty laws (Full Stop and Due Obedience laws) that provided pardons for human rights abusers in the 1980s. In 2007, Argentina's Supreme Court declares the pardons unconstitutional.

#### 2005: Uganda – ICC Issues Arrest Warrants

The ICC issues arrest warrants for Joseph Kony, Deputy Vincent Otti, and three other leaders of the Lord's Resistance Army (LRA).

#### 2005: Chad/Senegal – International Arrest Warrant

A Belgian judge issues an international arrest warrant charging former Chad President, Hissène Habré, with crimes against humanity, war crimes, and torture committed during his 1982-1990 rule. Subsequent EU demands for Habré to be turned over by the authorities in Senegal where he resides in exile have been rebuffed.

#### 2005: Burundi – UN Security Council Resolution (UNSCR) 1606

The UN Security Council approves recommendations for the establishment of a truth commission and special chamber in Burundi for genocide, war crimes, and crimes against humanity.

#### 2005: Democratic Republic of Congo (DRC) – International Court of Justice

International Court of Justice rules that Uganda must compensate DRC for invading Congolese territory, plundering its natural resources, and massacring its civilians.

#### 2005: Colombia - Truth Commission to Examine Violence at the Palace of Justice

Three former Supreme Court presidents investigate the 1985 kidnapping, rescue attempt, and assassination of all members of the Colombian Supreme Court and around a hundred civilians during a confrontation between left-wing guerrillas and the Colombian military. Subsequent prosecutions convicted a retired military colonel for his role in related forced disappearances after the siege. A report on the inquiry was released in 2009.

#### 2005: Indonesia – Aceh Peace Accord

In the aftermath of a devastating tsunami, a peace deal between the Free Aceh Movement and the Indonesian Government marks the end of the armed conflict in Aceh. Known as the Helsinki Memorandum of Understanding, the agreement grants special autonomy and includes the establishment of a TRC and a human rights court.

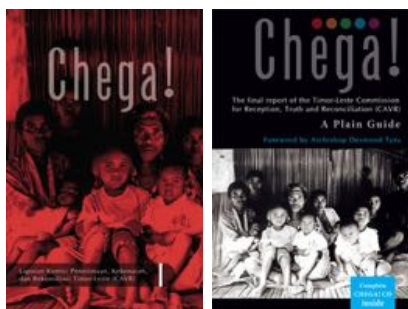




A billboard explaining the 2005 Aceh Peace Accord in Helsinki, Finland, located in Lhokseumawe, Aceh, Indonesia, 2006. Photo by Global Exchange, permission granted.

### 2005: Timor-Leste – Truth Commission Report

The Timor-Leste truth commission (CAVR) submits its report, *Chega!*, to Timor-Leste's President, who passes it on to the UN Secretary General. The report establishes responsibility of the Indonesian Government for crimes against humanity and war crimes.



The cover of the *Chega!*, a report about truth and reconciliation in Timor-Leste. Courtesy of CAVR, permission granted.

### 2005: Indonesia/Timor-Leste – Commission on Truth and Friendship (CTF)

This bilateral commission investigates political violence during and following the UN-sponsored referendum in East Timor in 1999. The Indonesian President endorses the Commission's report (2008) that refers to human rights violations committed by the Indonesian security forces.

### 2005: Republic of Korea (South Korea) – Truth and Reconciliation Commission

A South Korean commission was established to investigate human rights abuses, violence, and massacres occurring since the period of Japanese rule (beginning in 1910) through the end of authoritarian rule in 1993. The Commission activities closed on 31 December 2010.

### 2005: Algeria - Reconciliation Referendum

Algerians approve the Charter for Peace and National Reconciliation that becomes the base for a Presidential Decree granting amnesty to security force members involved in violence that started in 1992.

### 2006: Sierra Leone/Liberia/Nigeria – Charles Taylor Trial

Former Liberian President Charles Taylor is caught in Nigeria by UN security officials, then arrested and transferred to Sierra Leone. He was subsequently flown to The Hague, where a special chamber of the Special Court for Sierra Leone was established to hear the case beginning in 2008.



UN security officials arrest former Liberian President Charles Taylor (second from left in handcuffs) at Monrovia's Roberts International Airport on his arrival from Nigeria, Monrovia, Liberia, 2006. UN Photo by Mathew Elavalthoduka, licensed under CC BY-NC-ND 2.0.

### 2006: Chile – General Pinochet Sentence

General Pinochet is placed under house arrest in connection with kidnapping, homicide, and torture at the Villa Grimaldi detention centre in Santiago.

### 2006: Argentina – Junta Trials

Trials of security force members from the 1970s junta begin. By mid-2010, 1,464 people had been indicted for committing crimes against humanity during the dictatorship and 74 had been convicted.

### 2006: Sri Lanka - Presidential Commission of Inquiry to Investigate and Inquire into Serious Violations of Human Rights

The Commission is mandated to investigate 16 cases involving massacres, assassinations, and disappearances related to the political conflict however, only seven are investigated with reports on five get finalised. The Commission is unable to complete its mandate as no extensions are granted. None results in prosecutions.

### 2006: Thailand - Apology

The Prime Minister apologises on television to ethnic Malay Muslims in Pattani, saying that the violence that happened in the deep south in the past was mostly the fault of the state.

### 2006: Nepal – Comprehensive Peace Agreement

This agreement ends more than ten years of fighting between government forces and Maoists, and includes a commitment to create a TRC to investigate violations perpetrated during the conflict.

### 2006: UN Independent Special Commission of Inquiry for Timor-Leste

The UN creates a Special Commission of Inquiry to investigate incidents that occurred in April and May 2006.

### 2006: Central Africa – Pact on Security, Stability and Development in the Great Lakes Region

This pact, adopted by 11 countries from central Africa, provides a framework to end impunity and insecurity, and to promote human rights in the sub-region.

### 2007: *Uganda* - Agreement on Accountability and Reconciliation

The Ugandan government and the Lord's Resistance Army (LRA) agree to establish a special division of Uganda's High Court to try perpetrators accused of grave crimes, and agree that traditional justice mechanisms and lower courts will deal with lesser crimes

### 2007: *Sierra Leone* – Trial of Military Leaders

The Special Court for Sierra Leone finds three former leaders of the Armed Forces Revolution Council (AFRC) guilty of "rape as a crime against humanity and outrages on personal dignity as a crime of war".

### 2007: *Central African Republic* – ICC Investigates War Crimes and Crimes Against Humanity

The ICC opens investigations into alleged war crimes and crimes against humanity committed by the Democratic Republic of the Congo militias and other forces defending former Central African President Ange-Félix Patassé in a failed coup attempt in 2002.

### 2007: *Sudan, Darfur* – ICC Issues Arrest Warrants

The ICC issues arrest warrants for Sudan's Minister of State for the Interior, Ahmed Mohammed Harun, and also for a prominent leader of the state-sponsored militia.

### 2007: *Cambodia* – Extraordinary Chambers in the Courts of Cambodia (ECCC)

The ECCC starts hearings of Khmer Rouge members suspected to have taken part in genocide. As of June 2018, three leaders of the former Cambodian Communist Party had been sentenced to life imprisonment.



*Duch, the head of a notorious prison under the Khmer Rouge where thousands of prisoners were killed, during trial proceedings at ECCC, Phnom Penh, Cambodia, 2009. Photo courtesy of Extraordinary Chambers in the Courts of Cambodia, licensed under CC BY-2.0.*

### 2007: *Indonesia* – 1965 Gender-based Violence Investigation

Using data collected by civil society groups, the National Women's Commission Against Violence releases a report on gender-based violations related to anti-Communist violence that began in 1965. The commission considered testimonies from 122 women and found that gender-based crimes against humanity occurred.

### 2008: *Kenya* – Commission of Inquiry on Post Election Violence (CIPEV, or Waki Commission)

The Waki Report calls for the establishment of a special tribunal to try "those bearing the greatest responsibility", particularly for crimes against humanity, during post-election violence.

### 2008: *Africa* – African Court of Justice and Human Rights (ACJHR)

The African Court on Human and Peoples' Rights and the separate Court of Justice of the African Union merge to form the ACJHR. Although it has two chambers—one ruling on general legal matters and one ruling on human rights treaties—the Court lacks criminal jurisdiction.

### 2008: *Yugoslavia* – War Crimes Trial

Former Bosnian Serb leader, Radovan Karadzic, and Bosnian Serb police chief, Stojan Zupljanin, are captured to face trial for war crimes.

### 2008: UN Security Council Resolution (UNSCR) 1820

This resolution recognises that sexual violence in conflict zones is a threat to international peace and security.

### 2008: *Central African Republic (CAR)* – ICC Arrest Warrant

Former Democratic Republic of the Congo Vice-President, Jean- Pierre Bemba, is arrested in Brussels on an ICC arrest warrant for crimes against humanity allegedly committed by Bemba in the CAR.

### 2008: *Senegal/Chad* – Trial of Former President

Senegal's National Assembly amends the constitution to allow Chad's former President, Hissène Habré, to be prosecuted in Senegal. A Chadian court later sentences Habré to death during a trial *in absentia* for war crimes and crimes against humanity.

### 2008: *The Hague* - Special Court for Sierra Leone (SCSL) The SCSL begins the trial of former Liberian President Charles Taylor.

### 2008: *Bangladesh* – War Crimes Fact Finding Committee (WCFFC)

The WCFFC releases the names of 1,597 individuals accused of committing war crimes during the 1971 Liberation War.

### 2008: *Myanmar* – Democracy Referendum

A constitutional referendum is passed for the creation of a "discipline-flourishing democracy".

### 2008: *Indonesia* - 1965 Violence Investigation

The National Human Rights Commission establishes a team to investigate gross violations of human rights in 1965-1966.

### 2009: *Canada* - Residential Schools TRC

The Truth and Reconciliation Commission of Canada begins a multi-year process to listen to Survivors, communities and others affected by the Indian Residential School systems over a 150 year period. These schools were used as a tool of assimilation by the Canadian state and churches and many thousands of students suffered physical and sexual abuse.

### 2009: *Congo* – ICC Trials of Congolese Militia Leaders

The first ICC trial against Congolese militia leader, Thomas Lubango Dyilo, begins in January, while a second trial of militia leaders, Germain Katanga and Mathieu Ngudjolo Chui, begins in November.



*Trial Chamber II of the International Criminal Court (ICC) holds a public hearing in the case The Prosecutor v. Thomas Lubanga Dyilo, The Hague, Netherlands, 2017. Photo courtesy of ICC-CPI.*

**2009: Sudan, Darfur – ICC Arrest Warrant for President Omar al-Bashir**

Bashir is the first head of state to have an arrest warrant issued against him for crimes against humanity. A second arrest warrant, issued in July 2010, charges Bashir with the crime of genocide.



*The Judges of ICC Pre-Trial Chamber II, Judge Cuno Tarfusser (center), Presiding, Judge Chang-ho Chung (right), and Judge Marc Perrin de Brichambaut (left), during the hearing for the Omar al-Bashir's case held on 6 July 2017 in The Hague, Netherlands © ICC-CPI*

**2009: Kenya – Path to ICC Investigation**

The Constitutional Amendment Bill that would have allowed the establishment of a special tribunal in Kenya is defeated, paving the way for an ICC investigation into the 2008 post- election violence in Kenya.

**2009: Indonesia - Dutch War Crimes Court**

The Dutch court ruled that the Netherlands is responsible for the massacre in Rawagede on 9 December 1947. It stated that the crime, due to its extraordinary nature, is not subject to a statute of limitations, and thus held the Dutch state fully accountable for the damages caused. On 9 December 2011, the Dutch ambassador to Indonesia made a public apology and delivered compensation in the amount of 20,000 EUR for each of 9 widows of victims who are still alive.

**2009: Lebanon - Special Tribunal for Lebanon**

The Special Tribunal for Lebanon (STL), whose establishment was authorised by the United Nations Security Council through the adoption of Resolution 1757 in 2009, officially opens. The STL has jurisdiction to try those responsible for the 14 February 2005 attack resulting in the death of former Lebanese Prime Minister Hariri, and the death and injury of several others. It also has jurisdiction over those responsible for certain other attacks connected to the 14 February 2005 attack.

**2009: Bangladesh - International Crimes Tribunal (ICT) Bangladesh**

The ICT is a domestic war crimes tribunal in Bangladesh with a mandate to investigate and prosecute suspects for the genocide committed in 1971 by Pakistan's army and their local collaborators during the Bangladesh Liberation War.



*Bangladeshi activists shout slogans in celebration outside the International Crimes Tribunal court in Dhaka on July 17, 2013, after hearing the International Crimes Tribunal's guilty verdict on Ali Ahsan Mohammad Mujahid, licensed under Munir Uzzaman/AFP via Getty Images.*

**2009: Peru – Trial of Former President**

Former President Alberto Fujimori is convicted and sentenced to 25 years in prison for ordering a military death squad to carry out two massacres that killed 25 people in the 1990s.

**2009: Guinea - International Commission of Inquiry**

The Commission investigates the September 2009 massacre in Conakry that involved members of the military junta. It recommends that the case be referred to the ICC where the alleged perpetrators would be tried for crimes against humanity.

**2009: Solomon Islands – Truth and Reconciliation Commission (TRC)**

The TRC is established by the government to come to terms with the legacy of the 1998-2003 conflict.



*Vigil at a public hearing of the Solomon Islands Truth and Reconciliation Commission, Auki, Solomon Islands, 2010. Photo by Patrick Burgess, permission granted.*

**2009: Togo - Truth, Justice, and Reconciliation Commission (TJRC)**

The TJRC is formed to investigate violations perpetrated from 1958 to 2005.

**2009: Sierra Leone - National Commission for Social Action (NaCSA)**

The NaCSA implements a pilot reparations programme that recognises female victims of sexual assault who may not have testified before the TRC.

**2009: Yugoslavia - Arrest for War Crimes**

Former Bosnian Serb leader, Radovan Karadzic, and Bosnian Serb police chief, Stojan Zupljanin, are captured to face a trial for war crimes.



## 2009: UN Security Council Resolution (UNSCR) 1888 on Sexual Violence in War

UNSCR 1888 establishes a system of added protection and support to prevent sexual violence in war.



*UN Security Council Adopts Resolution Against Sexual Violence in Armed Conflict, New York, 2009. UN Photo by Mark Garten, licensed under CC BY-NC-ND 2.0.*

## 2009: Rwanda - Prosecutor v. Tharcisse Renzaho

The former Governor of Kigali, Renzaho, is sentenced to life imprisonment by the International Criminal Tribunal for Rwanda for crimes against humanity and war crimes that included encouraging the rape of Tutsi women during the 1994 genocide.

## 2009: USA/Spain - Torture Investigation

A Spanish judge opens a probe into the Bush administration (USA) over alleged torture of terror suspects at Guantanamo Bay.

## 2009: Kenya – Truth, Justice, and Reconciliation Commission (TJRC)

Commissioners are appointed and the TJRC begins its work with the mandate to investigate, but not prosecute, gross violations of human rights that occurred from 1963 to 2008.

## 2009: Liberia – TRC Report

The TRC report recommends a list of individuals to be barred from holding public office for thirty years. The report, however, is criticised for having a small impact and achieving mediocre results.

## 2009-2010: South Africa – Vindicating Victim Rights in the Courts

In 2009, an amendment to the prosecution policy, which provided for a back-door amnesty for apartheid-era perpetrators, is declared unconstitutional by the High Court. In 2010, the South African Constitutional Court halts a presidential pardon process aimed at immunising those perpetrators who failed to apply for amnesty before the TRC, because it excluded victims and public participation.

## 2010: Sri Lanka – Lessons Learnt and Reconciliation Commission (LLRC)

Appointed by the Sri Lankan President, the LLRC would later be widely criticised for its narrow mandate.

## 2010: Peru – Supreme Court Decision on Former President

The Supreme Court rejects Fujimori's attempt to appeal his 25-year prison sentence.

## 2010: Argentina – Trial of Military Officers

Former General Reinaldo Benito and five other military officers are convicted and sentenced to 25 years for kidnappings and torture committed from 1976 to 1978. Former head of the military junta, Jorge Videla, is put on trial with over 20 other junta members for killing more than 30 political prisoners in 1976.

## 2010: Bangladesh – International Crimes Tribunal

This domestic court is established to prosecute war crimes committed by those allied with the Pakistani Army during the 1971 Liberation War. Indictment and prosecution lead to the condemnation and execution of former pro-Pakistani leaders.



*Old high court building that is the place of the International Crimes Tribunal, Dhaka, Bangladesh, 2010. Photo courtesy of International Crimes Tribunal-1, Bangladesh.*

## 2010: Sudan/Kenya – Arrest Warrant Refused

Kenya, a state party to the Rome Statute, refuses to enforce the arrest warrant on Sudanese President Omar al-Bashir during his visit to Kenya.

## 2010: Myanmar – General Elections

The UN and pro-democracy activists consider the victory of the military-backed party in general elections to be fraudulent. Activist Aung San Suu Kyi is released from house arrest and the government begins a series of reforms to move towards democracy.

## 2010: Thailand – Truth for Reconciliation Commission of Thailand (TRCT)

The TRCT investigates political violence of 2010. Its report of the events, released in 2012, is acclaimed as objective and critical. Conducted in collaboration with the African Union and the Chadian state and is supported by the international community. In July 2011, Senegal announces it will extradite Habré to Chad, but Chad subsequently requests that he be sent, instead, to Belgium.

## 2011: Chad/Senegal - Ad Hoc Tribunal

Senegal finally agrees to the creation of an ad hoc tribunal to be conducted in collaboration with the African Union and the Chadian state and is supported by the international community. In July 2011, Senegal announces it will extradite Habré to Chad, but Chad subsequently requests that he be sent, instead, to Belgium.



*Relatives of the victims attend trial of former Chadian ousted leader Hissene Habre is taking place in Dakar, Senegal, July 2015. Senegal representing a historic step for African justice as it is the first time ever that a court of one country in Africa has prosecuted a former ruler of another country. This is also the first universal jurisdiction case to proceed to trial in Africa. Photo by Cemil Oksuz/Anadolu Agency/Getty Images*

## 2011: Côte d'Ivoire – Truth, Reconciliation, and Dialogue Commission

This Commission is established to investigate 2010 post-election violence.

### January 2011: Tunisia – Arab Spring

Country-wide protests over unemployment lead to President Ben Ali's fall from power that marks the beginning of the Arab Spring (Arab Revolution).



A protestor on Avenue Habib Bourguiba holds a sign that says "Ben Ali Out" in French, Tunis, 2011. Photo by Skotch 79, licensed under public domain.

### 2011: Liberia – TRC

The Liberian Supreme Court strikes down clauses in the TRC law that provided for the mandatory implementation of recommendations as inconsistent with the separation of powers doctrine, and invalidates recommendations seeking action against perpetrators for failing to respect their right to be heard.

### 2011: UN Panel of Experts (PoE) on Sri Lanka

The UN Secretary-General appoints a PoE to advise him on allegations against the government regarding violations of International Human Rights Law (IHRL) and International Humanitarian Law (IHL).

### 2011: Egypt – Protests

Following the Tunisian Revolution in January 2011, Egyptians start protests that lead to President Mubarak leaving power to the army council and being prosecuted for ordering the killing of protestors.



Celebrations in Tahrir Square after Omar Soliman's statement that concerns Mubarak's resignation, Cairo, 2011. Photo by Jonathan Rashad, licensed under CC BY 2.0.

## 2012: Sierra Leone – Special Court for Sierra Leone (SCSL) Conviction

The SCSL ends its mission and convicts former Liberian leader Charles Taylor for aiding and abetting war crimes and crimes against humanity during the civil war.

### 2012: Argentina – Junta Convictions

Former military leaders Jorge Videla and Reynaldo Bignone are convicted to 50 and 15 years in prison respectively for overseeing kidnappings of babies from 1976 to 1983.

### 2013: Kenya – Truth Justice and Reconciliation Commission (TJRC)

The TJRC issues its final report which held many public officials responsible for human rights violations. A dissenting report by the 3 foreign commissioners is issued distancing themselves from the doctoring of the final report, following political pressure from government officials, which resulted in the deletion of certain findings implicating the President's family in the land chapter.

### 2013: Guatemala – Attempt to Convict Military Leader

Former military leader Efraín Ríos Montt is convicted of genocide and crimes against humanity. Ten days later, however, the Constitutional Court overturns the conviction and orders a retrial.

### 2013: Egypt – Trial of President

The army ousts Islamist-backed President Morsi, who is later sentenced to death over detention and torture of prisoners.

### 2013: Indonesia – Aceh Investigations

The Indonesian National Commission on Human Rights establishes an ad hoc team to investigate past violations in Aceh. Five cases are investigated: Rumoh Geudong, Pidie; mass killings at Simpang KKA, Aceh Utara; Bumi Flora, Aceh Timur; enforced disappearances and mass graves in Bener Meriah; and a massacre in Jambo Keupok.

### 2013: Indonesia – Year of Truth

Indonesia's Coalition for Justice and Truth (KKPK) organizes a civil society campaign called "Year of Truth" to amplify the voices of the victims of Soeharto's New Order regime and of violations during the post-Soeharto era (1965-2005). Victims testify during public hearings before a citizen's council, and a final report is produced.

## 2013: Democratic Republic of Korea (North Korea) – Commission of Inquiry on Human Rights

The UN Human Rights Council establishes the Commission of Inquiry on Human Rights in the Democratic Republic of Korea.



The United Nations Commission of Inquiry on North Korea formally presented its report to the Human Rights Council, Geneva, 2014. Photo by Eric Bridiers, licensed under public domain.

### 2014: Democratic Republic of Congo (DRC) – ICC Conviction

The ICC convicts former leader Katanga of war crimes for a 2003 massacre in Ituri.

### 2014: Kenya – ICC Drops Charges

The ICC drops charges against President U. Kenyatta regarding post-election violence in 2007 due to insufficient evidence.

### 2014: Brazil – National Truth Commission Report

The National Truth Commission, inaugurated in May 2013, issues a report on violations committed from 1946 to 1988 that finds 337 officials linked to human rights violations.





President Dilma Rousseff gave a speech at the official release of the National Truth Commission's final report on human rights violations committed by Brazil's past military dictator regime, Brazil, 2014. Photo by PNUD Brasil/Júlia Lima, licensed under CC BY 2.0.

**2014: Tunisia – Truth and Dignity Commission**

The Truth and Dignity Commission is launched with the aim to investigate human rights violations committed by the Tunisian State since 1955.

**2014: Burundi – Truth and Reconciliation Commission**

Act No. 1/18 of 15 May 2014 establishes a commission to investigate serious human rights violations, including killings, torture, and enforced disappearances committed from 1962 to 2008.



Sihem Bensedrine, President of the Truth and Dignity Commission, speaking at a conference, Tunisia, 2012. Photo by fhimt.com, licensed under CC BY 2.0.

**2015: Uganda – ICC Trial**

Dominic Ongwen, former commander of the Lord's Resistance Army (LRA), is transferred to The Hague and makes his initial appearance before the ICC on charges of war crimes and crimes against humanity.



Dominic Ongwen – Photo caption: Dominic Ongwen, alleged Brigade Commander of the Sinia Brigade of the Lord's Resistance Army (LRA), at the time of his indictment, 2005. Photo by ICC-CPI.

**2015: Myanmar – New Government**

Aung San Suu Kyi's party wins the general election with enough seats to form a government. Because she is constitutionally barred from becoming president, she is appointed in 2016 to a new role, State Counsellor of Myanmar.



The National League for Democracy (NLD) party member holding a pamphlet during the voting campaign, Yangon, 2015. Photo by Hong Sar, licensed under CC BY-NC-ND 2.0.

**2015: Guatemala – Retrial of Military Leader**

A Guatemalan court rules that former military leader Efraín Ríos Montt, whose conviction for genocide and crimes against humanity was overturned on a technicality, can stand retrial, but given his health condition, he need not be present and will not receive a sentence. Ríos Montt died in April 2018 while his retrial was still ongoing.

**2015: Nepal - Commission of Investigation on Enforced Disappeared Persons (CIEDP) and Truth and Reconciliation Commission (TRC)**

The TRC and the CIEDP are established in accordance with the 2014 Investigation on Enforced Disappeared Persons, Truth and Reconciliation Commission Act.



Families of the disappeared and civil society members light candles in memory of those disappeared, Kathmandu, Nepal, 2011. Photo by NEFAD, permission granted.

**2015: Philippines – Transitional Justice and Reconciliation Commission (TJRC)**

The TJRC is established to study and make recommendations to promote healing and reconciliation among communities affected by the conflict that began in Mindanao in 1969 involving the Bangsamoro people.

**2015–2019: South Africa - Post Conflict Justice**

Court proceedings brought by victims expose political interference from the ministerial level that resulted in the suppression of several hundred cases referred by the TRC to prosecutors. Victims and the former TRC Commissioners call on the President to apologise and appoint a commission of inquiry to investigate the massive denial of justice to victims and families. Lack of trust in the police and prosecutors results in families pursuing judicial inquests, rather than prosecutions.

**2015: Sri Lanka - UN High Commissioner for Human Rights Report**

In September, the UN High Commissioner for Human Rights issues a report on promoting reconciliation, accountability, and human rights in Sri Lanka.

## 2015: Indonesia – International People's Tribunal on 1965 Violence

The International People's Tribunal 1965, a civil society-led initiative, held hearings in The Hague regarding the 1965 mass killings in Indonesia. The tribunal subsequently issued a report finding the Indonesian state guilty of crimes against humanity.



*A tribunal hearing on the 1965 violence in Indonesia, The Hague, 2015. Photo by the International People's Tribunal on 1965 Violence, permission granted.*

## 2016: Colombia – Peace Agreement and Renegotiations

The Colombian government and the guerilla movement called the Revolutionary Armed Forces of Colombia (FARC) sign a peace deal in June. In October, voters reject the peace deal between the government and FARC, leading the two parties to renegotiate a deal that was not submitted to a second referendum, but sent to the Congress for ratification. Both houses of Congress ratify the deal, thus ending a conflict that began in 1964.



*Crowds gather to witness the signing of historic peace agreement between Colombian President Juan Manuel Santos and the head of FARC, Timoleon Jimenez, Cartagena, Colombia, 2016. Photo by Agencia Prensa Rural, licensed under CC BY-NC-ND 2.0.*

## 2016: Indonesia – Aceh TRC

Seven commissioners-elect are appointed with a view to implementing the Aceh TRC, more than ten years after the signing of the peace accord between the Indonesian government and the Free Aceh Movement.

## 2016: Philippines – Transitional Justice and Reconciliation Commission (TJRC) Report

The TJRC issues its report, which acknowledges the grievances of the Bangsamoro people regarding historical injustice and human rights violations. As of early 2019, its recommendations were still to be considered by the Philippine government.



*Screenshot of the TJRC report cover, 2016. Photo courtesy of the TJRC, permission granted.*

## 2016: Colombia – Peace Agreement Renegotiated and Ratified

After voters reject the peace deal between the government and FARC, the two parties renegotiate a deal that is sent to Congress for ratification rather than to the voters for a second referendum. Both houses of Congress ratify the deal in November, thus ending a conflict that began in 1964.

## 2016: Syria - Mechanism to Investigate Serious Crimes in Syria

The United Nations General Assembly passes Resolution 71/248, establishing the International, Impartial and Independent Mechanism (IIIM) to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.



*The UN General Assembly adopted a draft resolution establishing the Mechanism to Investigate Serious Crimes in Syria, New York, 2016. UN Photo by Evan Schneider, licensed under CC BY-NC-ND 2.0.*

## 2017: The Gambia - ICC Withdrawal Revoked

The newly elected president reaffirms the Gambia's commitment to the principles enshrined in the Rome Statute and revokes the notice of withdrawal from the ICC issued by the former government.

## 2016–2017: Sri Lanka - Consultation Task Force on Reconciliation Mechanisms (CTF)

A Secretariat to Coordinate Reconciliation Mechanisms (SCRM) in the Prime Minister's office, along with a Consultation Task Force of Reconciliation Mechanisms (CTF) completes nationwide consultations on the design of transitional justice mechanisms to advance truth, justice, reparations, and non-recurrence. A report is submitted in 2017 that proposes a set of mechanisms, including the establishment of an Office of Missing Persons, and a Reparations Commission. The SCRM is also meant to oversee the establishment of a truth commission and special court as per the 2015 UNHRC resolution.



### 2017: South Africa - ICC Withdrawal Overturned

The High Court overturns the government's notice of withdrawal from the Rome Statute, which did not have prior parliamentary approval, declaring it unconstitutional and invalid.

### 2017: Myanmar – International Fact-Finding Mission (FFM)

On 24 March 2017, UN Human Rights Council decides to create an Independent International Fact-finding Mission (FFM) with a mandate to investigate reports of abuses by security forces since 2011 with a focus on the Rakhine, Shan, and Kachin states. However, as of April 2018, the government of Myanmar was not cooperating, and this team was barred from entering Myanmar.



The Kutupalong refugee camp hosts Rohingya refugees fleeing mass atrocities from Myanmar, Cox's Bazaar, Bangladesh, 2017. VOA Photo by John Owens, licensed under public domain.

### 2017: Burundi - Position on the Rome Statute

Burundi officially withdraws from the Rome Statute and leaves the ICC.

### 2017: Taiwan – Act on Promoting Transitional Justice

In December 2017, the Yuan legislature passes an act in an effort to uncover truth, foster reconciliation, and address injustices perpetrated during Taiwan's authoritarian past.

### 2017: Timor-Leste – Centro Nacional Chega (CNC)

The government inaugurates the Centro Nacional Chega in July 2017 to promote the implementation of recommendations of the Timor-Leste's truth commission (CAVR), and the Commission for Truth and Friendship Indonesia–Timor-Leste.



Prime Minister Rui M. Araujo established the Centro Nacional Chega!, Dili, Timor-Leste. Photo by Centro Nacional Chega!, permission granted.

### 2017: Australia - Uluru Statement

The First Nations National Convention of over 250 Aboriginal and Torres Strait Islander leaders resolved 'The Uluru Statement from the Heart' to call for structural reform by establishment of a 'First Nations Voice' in the Australian Constitution and a 'Makarrata Commission' to supervise a process of agreement-making and truth-telling between governments and Aboriginal and Torres Strait Islander peoples.

### 2018: Philippines – ICC Preliminary Examination

On 8 February, the ICC Office of the Prosecutor opens a preliminary examination to analyse crimes allegedly committed in the Philippines since at least 1 July 2016, in the context for the Philippines' "war on drugs."

### 2018: Philippines – Notice of Rome Statute Withdrawal

On 17 March, the Philippines government provides written notice of its intent to withdraw from the Rome Statute and thus, the ICC.

### 2018: Tunisia – Truth and Dignity Commission

On 26 March, the Tunisian Parliament votes against extending the mandate of the Truth and Dignity Commission, giving it until the end of the year to finish its work.

### 2018: ICC activation of the Crime of Aggression

On 17 July, the ICC's jurisdiction over the crime of aggression comes into effect.

### 2018: Myanmar – ICC Decision

On 6 September, a Pre-Trial Chamber decides that the court has jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh and other related crimes.

### 2018: Myanmar – International Fact-Finding Mission

On 18 September, the FFM issues its full report of massive violations by the military in Rakhine, Kachin, and Shan States.

### 2018: Myanmar – Ongoing Independent Mechanism

On 28 September, the Human Rights Council adopts Resolution A/HRC/39/L.22, in which it decides to establish an "ongoing independent mechanism to collect, consolidate, preserve, and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011."

### 2018: Burundi – Truth and Reconciliation Commission (TRC)

In October, Burundi's parliament expands the mandate of the TRC to cover from the colonial period starting in February 1885.

### 2018: Indonesia – Aceh TRC Public Hearing

In November, the Aceh TRC holds its first public hearing.

**2018: *The Gambia* - Truth Reconciliation and Reparations Commission (TRRC)**

The TRRC is established to investigate violations of human rights committed under the previous regime and devise and roll out a reparations program. Hearings focusing on torture, disappearances, and corruption commence in 2019 which are broadcast live on radio and TV and widely followed by Gambians. A Constitutional Review Commission tasked with drawing up a new Constitution is established, and a committee is created to oversee the reform of the security sector.

**2018: *Myanmar* - UN Independent Investigative Mechanism for Myanmar (IIMM)**

The UN Human Rights Commission establishes an ongoing Independent Mechanism to collect, consolidate, preserve, and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011. The evidence will be made available to future credible, rights-based prosecution mechanisms.

**2018: *Myanmar* - ICC Jurisdiction on Rohingya Deportation**

The ICC ruled that the Court may exercise jurisdiction over the situation in Myanmar – who is not a state party to the Rome Statute of the ICC - over alleged deportations of the Rohingya people since an element of this crime took place in a State that is party to the Statute (Bangladesh).

**2018–2019: *The Philippines* - Withdrawal from the Rome Statute of the ICC**

President Rodrigo Duterte announces the withdrawal of the Philippines from the Rome Statute in March 2018. A Senate minority asked the Supreme Court to invalidate Duterte's decision to withdraw as it is unconstitutional without consent from two-thirds of the chamber. The Philippines officially withdraws from the Rome Statute and leaves the ICC in 2019, a year after the withdrawal declaration.

**2019: *Tunisia* - Truth and Dignity Commission (TDC)**

The President refuses to accept the final report of the TDC which releases it nonetheless to civil society and the media. The report finds the President and prominent politicians with human rights violations. The TDC has recorded some 60 000 victim statements but was unable to complete its investigations and only held 7 public hearings, all in the capital city. Cases are handed over to the Specialised Chambers for prosecution. Various victim groups protest that the TDC excluded them from its proceedings.

**2019: African Union Transitional Justice Policy**

The African Union Transitional Justice Policy is adopted by the Heads of State and Governments at the 32nd Ordinary Session of the Assembly of the Union on 12 February 2019 in Addis Ababa, Ethiopia. It is formally launched by the African Union Commission at the 64th Ordinary Session of the African Commission on Human and Peoples' Rights on 3 May 2019 in Sharm El Sheikh, Egypt.

**2019: *The Gambia v. Myanmar***

In November 2019, the Gambia applies to ICJ for provisional measures to be taken against Myanmar for violating the 1948 Genocide Convention, in which both States are party to. In January 2020, the ICJ finds that provisional measures requested by the Gambia are justified by the findings from the 2017 International Fact Finding Mission (FFM) and the Independent Investigative Mechanism for Myanmar (IIMM).

**2020: *Solomon Islands*: National Policy on Reparations**

Following the recommendations of a Truth and Reconciliation Commission (2014), the Cabinet approved a policy paper on reparations, establishing a commission for peace and victims' rights designed "to try to repair victims' lives." The commission is tasked to ensure assistance to victims of killings, disappearances and sexual violence, and others. The policy includes the provision of "health clinics for affected communities, free schooling for the children of victims, pensions, and symbolic reparations such as a letter of recognition from the government to victims, monument and a national day of peace to be celebrated across the country." A separate policy for ex-combatants is being drafted.

**2020: *Aceh, Indonesia*: Urgent Reparations for Victims recommended by Aceh TRC**

Based on recommendations by the Aceh TRC, 245 names have been approved for urgent assistance in a decree signed by the Governor of Aceh. The decree provides 5 forms of urgent reparations: medical care, psychological support, small business funds, social security, and assistance for completing identity documents.

**2021: *Timor-Leste*: Centro Nacional Chega (CNC) progress on implementation of CAVR Recommendations**

Working together with the Ministry of Social Solidarity, CNC has provided financial support to 90 victims; and are in the process of helping vulnerable victims access public housing, while continuing to register victims working with local civil society and victims' groups. CNC has done a mapping of sites of torture, and organized public exhibitions to preserve the memory of the past.

*From January 2011 to April 2012, the Truth and Reconciliation Commission of Canada held hearings for Arctic survivors of the Indian Residential Schools. Survivors were able to share, some for the first time, what they experienced as children in the schools. This meeting was 1 July 2011. © Michael Swan, used under Creative Commons 2.0)*

### 3 | Truth



*Three things cannot be long hidden: the sun, the moon, and the truth.*

**Buddha**

*The very essence of the Commission's work is to assist transformation. The fabric of our social relationships has been destroyed — our work is to transform our experience of the dark of yesterday into a positive tomorrow.*

**Aniceto Guterres Lopes, Chair of Timor-Leste's CAVR<sup>1</sup>**

*I feel that what has brought my eyesight back is to come here and tell this story. I feel what has been making me sick is the fact that I couldn't tell my story. But now it feels like I have got my sight back by coming here and telling you this story.*

**Lucas Baba Sikwapere, blind torture survivor testifying to the South African TRC<sup>2</sup>**



### 3.1 | Why truth seeking?

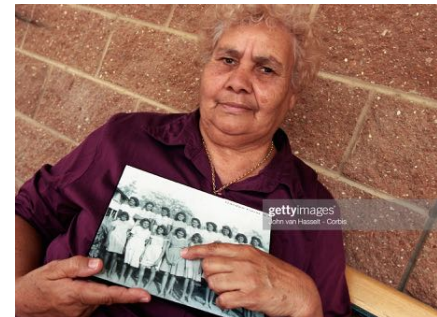
During transitions from periods of mass violations, perpetrators and their supporters often oppose efforts to investigate and share the truth about what has happened. They may say that the past is past and cannot do any further harm, that looking at what has happened will cause further conflict, or that 'we all know what happened anyway.' In fact, after massive and widespread violations nobody really knows what has happened, what were the causes and the impact. Some may be aware of what took place at one time or in some places, but the picture of the entirety remains hidden. How can we know who is responsible and should be prosecuted if we do not know what has happened? How can we know who is a victim, what were the root causes, and what reforms are needed to avoid repetition? Societies that avoid a courageous analysis of the truth condemn themselves to repeat the violations. Seeking the truth and sharing it broadly is a foundation for building democracy and the rule of law.

The right of victims and relatives to know the circumstances and impact of violations is protected in international human rights law. These laws also include the right to an effective remedy and explain various state duties, including the obligation to investigate cases of killings or torture, and to fulfil the right of victims to receive and provide information.

Truth seeking binds together the other pillars of a holistic transitional justice strategy. Unless the truth is revealed how do we know who to prosecute, who should receive reparations and what institutions and social changes are needed? Criminal justice processes are essential but provide only part of what is required. Prosecutions allow only limited participation of victims and can be lengthy and expensive processes. The purpose of a criminal trial is to determine one individual's responsibility for a specific crime. It can reveal only limited information about what has happened across the country, the contributing factors, root causes and impact on victims, the environment, systems of government and society. Broader truth-seeking mechanisms can help identify thousands of victims and the impacts of abuse on them. This, in turn, can be the foundation for designing reparation programmes or targeted post-conflict reconstruction and development schemes. Post-conflict reforms require a deep and broad investigation and analysis of the truth relating to issues that may include corruption, theft of national resources, impunity and a lack of accountability, civilian oversight of security forces, the need for programs to promote tolerance, and legal reform.



*Muslim women in the village of Svay Khleang read a book about the Khmer Rouge war crimes court prepared by the Documentation Center of Cambodia. © Brendan Brady/IRIN*



*Marita Ah Chee was taken away in 1947. She went to Garden Point Mission in Melvin Island and after 13 years came back as a nanny to work to Alice Springs. Her aboriginal mother, having heard through the nuns that she was somewhere in Alice Springs went 'door knocking' and they were finally reunited after 15 years: "I'm one of the lucky ones".*

*Truth never damages a just cause.*

**Mahatma Gandhi**

*We believe that to build peace and democracy in our country, we have to establish the truth first. Not only the immediate cause of the conflict but also the root causes of the conflict.*

**Somchai Homlaor, Commissioner of TRC, Thailand**

### 3,2 | What is the right to truth?

International recognition of the right to truth emerged from the long struggle of Latin American families seeking knowledge of the fate of their husbands, wives, sons, and daughters who were disappeared during the decades of military rule. It is now regarded as an emerging principle of international law that obliges states to reveal information relating to human rights violations including whether perpetrators have been investigated or prosecuted, to victims' families and to society.<sup>5</sup>

The right also requires states to preserve accurate information so that it forms part of the publicly accessible record. The right to truth has a foundation in existing human rights treaties and laws. Although its boundaries are still being determined it is clear that the right is non-derogable and is not subject to limits imposed by amnesties or other legal mechanisms. In some countries, the right to information is recognised in the constitution and laws.

The right to truth includes an obligation on the state to provide available information relating to:

- the identity of perpetrators;
- the circumstances and facts of the violations;
- progress and results of investigations;
- the fate and whereabouts of victims; and
- the causes of the violation.



Queqchí people carrying their loved one's remains after an exhumation in Cambayal in Alta Verapaz department, Guatemala. Since 1997, the Centre of Forensic Anthropology and Applied Sciences (CAFCA) has been helping to heal the deep wounds caused by Guatemala's internal conflict. The impact of CAFCA's forensic work is twofold: It helps families to find their loved ones and come to terms with their loss and it gathers the evidence needed to bring their murderers to justice. Photo: CAFCA archive.



A ceremony held around the memorial fire pit at Chief Jim Koe Park, 28 June 2011, when the Truth and Reconciliation Commission held its second National Event. Over 1,000 survivors came to Inuvik. The Town of Inuvik in Canada officially adopted the recommendations of the Truth and Reconciliation Commission on 24 February 2021. Photo courtesy Michael Swan/Creative Commons



### 3.3 | What are the different types of truth-seeking mechanisms?

The process of seeking truth about mass violations may involve official or unofficial mechanisms, or a combination of both. Official mechanisms are generally run by or with the backing of the state such as historical or human rights commissions, commissions of inquiry, or truth commissions. Official mechanisms also include United Nations Commissions of Inquiries, Fact Finding Missions, and other independent mechanisms established by the UN.

Unofficial truth-seeking and truth-sharing mechanisms, on the other hand, are often created when no official mechanisms are available, usually due to a lack of political will.

They can include documentation programmes under which civil society organisations record the accounts of victims, written or oral history projects, church reports, films, documentaries, and songs. Unofficial truth-seeking mechanisms can also play an important role in promoting the need for official truth-seeking mechanisms and, if designed properly, can feed into official truth-seeking mechanisms once they are established.

It is not sufficient to uncover the truth. The objective information and analysis must be shared widely and considered in developing national and international policies and reform processes.

Historical or Human Rights Commissions	Commissions of Inquiry (Col)	Truth Commissions (TCs) or Truth and Reconciliation Commissions (TRCs)	Unofficial Truth Projects
<p>Historical commissions are not usually established as part of a political transition. Instead, they clarify historical events and pay respect to previously unrecognised victims, or their descendants, for incidents that happened years or even decades ago.</p> <p>In general, historical commissions have not investigated instances of widespread political repression but have instead focused on practices that affected specific ethnic, racial, indigenous or other groups.</p>	<p>A Col determines the facts about specific matters or instances of human rights violations. It also considers the most appropriate solution to address its factual findings.</p> <p>Sometimes Cols can exercise select judicial powers that are used by courts such as summoning witnesses and issuing subpoenas. Unlike courts, however, they do not have the power to prosecute or penalise perpetrators.</p> <p>In certain cases, a Col may operate as a specialised truth commission, e.g. the Commission on the Disappeared of Argentina.</p>	<p>A TC or TRC is an independent official investigative body, often created at a point of political transition or peace agreement to investigate and report on key periods of past abuse and make recommendations to remedy such abuse and to prevent its recurrence. It generally has a broader mandate than a Col or a judicial inquiry.</p> <p>TCs generally make recommendations regarding further criminal investigations and prosecutions. They are not limited by the same rules as judicial prosecutions and they do not issue judgments. The South African TRC has been one of the only one with power to grant amnesty to perpetrators. TCs can provide a forum for victims to be heard and to address their abusers as well as a forum for the abusers to apologise to victims.</p>	<p>These initiatives emerge from and remain located in civil society. Often, they are hosted and driven by human rights civil society organisations, victim groups, and other social groups rather than the state.</p> <p>Like truth commissions, they intend to confront the legacy of past human rights abuse in order for societies to build more just, stable, and democratic futures. They may focus on a single event or a series of events that relate to a particular community or time period.</p> <p>Truth projects led by civil society can have three types of relationships with official truth commissions: as a replacement, as a complementary process, or as a precursor to an official process.</p>

Historical or Human Rights Commissions	Commissions of Inquiry (CoI)	Truth Commissions (TCs) or Truth and Reconciliation Commissions (TRCs)	Unofficial Truth Projects
<ul style="list-style-type: none"> <li>● USA—Commission on Wartime Relocation and Internment of Civilians (1980–83)</li> <li>● Canada—Royal Commission on Aboriginal Peoples (1991–96)</li> <li>● Guatemala—Commission for Historical Clarification (1997–99)</li> </ul>	<ul style="list-style-type: none"> <li>● Ukraine—International Commission of Inquiry into the 1932–33 Famine in Ukraine (1988–89)</li> <li>● Northern Ireland—Commission for Victims and Survivors (since 2005)</li> <li>● Australia—National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995–97)</li> <li>● Sri Lanka—Commission of Inquiry into the Involuntary Removal or Disappearance of Persons (1995–97)</li> <li>● Honduras—Independently initiated inquiry by the National Commissioner for the Protection of Human Rights regarding disappearances in Honduras (1993–94)</li> <li>● South Africa—Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation (1991–94)</li> <li>● Kenya—The Waki Commission was established to look into post-2008 election violence (2009)</li> <li>● Zimbabwe—The Chihambakwe Commission of Inquiry studied violence in Matabeleland and the Midlands during the 1980s (1984)</li> <li>● UN Commission of Inquiry to investigate the 1999 post-referendum violence in Timor-Leste (2000)</li> <li>● Syria—Independent International Commission of Inquiry on the Syrian Arab Republic (since 2011)</li> </ul>	<ul style="list-style-type: none"> <li>● Argentina—National Commission on the Disappearance of Persons (1983–84)</li> <li>● Chile—National Commission for Truth and Reconciliation (1990–91)</li> <li>● El Salvador—Commission on the Truth for El Salvador (1992–93)</li> <li>● Haiti—National Commission for Truth and Justice (1995–96)</li> <li>● Guatemala—Historical Clarification Commission (1998–99)</li> <li>● South Africa—Truth and Reconciliation Commission (1995–2003)</li> <li>● South Korea—Jeju 4.3 Committee (2000–09)</li> <li>● Peru—Truth and Reconciliation Commission (2001–03)</li> <li>● Timor-Leste—Commission for Reception, Truth and Reconciliation (CAVR, 2002–05)</li> <li>● Sierra Leone—Truth and Reconciliation Commission (2002–04)</li> <li>● Ghana—National Reconciliation Commission (2003–04)</li> <li>● Morocco—Equality and Reconciliation Commission (2004–05)</li> <li>● Tunisia—Truth and Dignity Commission (2014–19)</li> <li>● Liberia—Truth and Reconciliation Commission (2006–09)</li> <li>● Canada—Truth and Reconciliation Commission (2008–15)</li> <li>● Kenya—Truth, Justice, and Reconciliation Commission (since 2009)</li> <li>● Sri Lanka—Lessons Learned and Reconciliation Commission (2010–11)</li> <li>● Thailand—Truth for Reconciliation Commission (2012)</li> <li>● Nepal—Truth and Reconciliation Commission (since 2014)</li> <li>● Sri Lanka—Commission Task Force on Reconciliation Mechanisms (2016–17)</li> <li>● Indonesia—Aceh Truth and Reconciliation Commission (established as a permanent commission in 2016)</li> </ul>	<ul style="list-style-type: none"> <li>● Uruguay—Service for Peace and Justice in Latin America (SERPA), 1985)</li> <li>● Northern Ireland—Ardoyne community project (1998)</li> <li>● Guatemala—Recovery of Historical Memory Project (REMHI Project, 1998)</li> <li>● Cambodia—The Documentation Center (DC-Cam)</li> <li>● Zimbabwe—Breaking the Silence (Joint initiative of the Catholic Commission for Justice and Peace and the Legal Resources Foundation, 1997)</li> <li>● USA—Greensboro Truth Commission (2004–06)</li> <li>● USA—Truth Commission on Conscience in War (2010)</li> <li>● Bahrain—Truth Commission as a joint initiative of human rights and political groups (2011)</li> <li>● Indonesia—Year of Truth, joint initiative of 50 organisations on human rights violations from 1965–2005 (2013)</li> </ul>

## Unofficial Truth-Seeking Case Study: Indonesia's "Year of Truth"

The "Year of Truth" was an unofficial truth mechanism conducted in Indonesia in 2013 by the Coalition for Justice and Truth (KKPK), a civil society initiative involving 50 NGOs across the country. This process gave victims a platform from which to speak out about their experiences and share their demands. The focus was on violations in Indonesia from 1965 to 2005, beginning with the anti-communist purges in the early stages of the New Order regime, and culminating with the case of the assassinated human rights activist, Munir Said Thalib, and the peace agreement between Indonesia and the Aceh Independence Movement. The KKPK recorded a total of 930 cases of violence with more than 3300 victims and identified ten themes that illustrate the patterns of violations. KKPK also held ten public hearings in six cities (Solo, Palu, Kupang, Aceh, Papua, and Jakarta) to provide a safe platform for victims and survivors to tell their stories. The hearings were conducted before the 2014 Indonesian national election in order to promote values of justice, human rights, and substantive democracy for the new government. A total of 72 victims and survivors from Indonesia and Timor-Leste, an area once occupied by Indonesia, testified about their experiences during the hearings. In 2014, KKPK launched *Menemukan Kembali Indonesia (Reclaiming Indonesia)*, a comprehensive report on key findings and recommendations.



### 3.4 | What are the characteristics of truth commissions?

*Truth commissions are non-judicial or quasi-judicial investigative bodies, which map patterns of past violence, and unearth the causes and consequences of these destructive events. Each truth commission is a unique institution, but their core activities usually include collecting statements from victims and witnesses, conducting thematic research, including gender and children analysis of violations including their causes and consequences, organizing public hearings and other awareness programs, and publishing a final report outlining findings and recommendations.*

Guidance Note of the Secretary-General, UN Approach to Transitional Justice<sup>6</sup>

Truth commissions have evolved considerably over the last 30 years. However, they generally share the following characteristics:

- temporary bodies, with a period of operation that varies depending on a range of factors (often 2–3 years);
- sanctioned, authorised, or empowered by the state and, in some cases, by opposition groups as well;
- non-judicial bodies that should enjoy a full independence;
- created at a point of political transition, either from war to peace or from authoritarian rule to democracy;
- focus on the past, and usually have a specific temporal mandate;
- investigate patterns of abuse and specific violations committed over a period of time, rather than a single specific event;
- place a priority on victims' needs and injuries;
- complete their work with the submission of a final report that contains conclusions, findings and concrete recommendations;
- focus on violations of human rights (often the worst, especially in contexts of widespread violations), and sometimes on violations of humanitarian norms; and
- primarily deal with providing an opportunity for victims to speak, and perpetrators play a much lesser role.

*We know that Indonesia has not resolved many of the human rights abuses of the past. But every effort made in that direction keeps failing because they are weighed down by too much baggage. The Aceh Truth and Reconciliation Commission can be a model for the resolution of human rights abuses in Indonesia.*

Afridal Darmi, Chair of Aceh TRC<sup>8</sup>



The South Africa TRC's first hearings in 1996. Left to right: Nomonde Calata, a TRC counsellor, and Nyameka Goniwe. Jon Hrusa/Sunday Times



The TRC's first hearings in 1996. Left to right: Nomonde Calata, a TRC counsellor, and Nyameka Goniwe. Jon Hrusa/Sunday Times



### 3.5 | What are the core truth commission tools?

#### Statement Taking

Statement taking refers to the process in which trained interviewers will record the stories, or statements of victims and witnesses. It is the primary means for a truth commission to gather information about what happened. A TRC should take statements from all geographical areas affected by the mass violations. The statements show the number of people who were affected by the conflict and what was the nature of the impact. This data can be used as a basis for other truth commission activities like research, (including interviews with experts and leaders, consideration of other documents and studies) investigations of particularly serious violations, and public hearings. The information gained from the statement taking, research, and other programs will inform the analysis, findings, and recommendations contained in the final report. As a TRC is not a court and its commissioners are usually not judges, they do not have the power to make judgements of law, such whether an individual has committed a crime. However they may make findings as to whether a person was “responsible” for violations and whether international crimes have been committed. They may also recommend formal investigations and prosecutions.

It is vitally important that a TRC's staff reach out to the communities where the violations have occurred. In South Africa, the TRC initially waited for victims and survivors to come to one of their four offices. It quickly realised that to adequately secure participation, the statement taking process needed to be based on a planned proactive outreach programme in affected communities.

In Timor-Leste, the truth commission's regional offices oversaw a statement-taking process that involved commission staff moving from village to village in each of the country's sub-districts.

#### Hearings

Truth commission hearings may be public or closed, formal or informal, and may be held nationally, regionally, or locally. Hearings provide a platform for victims of atrocities to tell their stories and for the commission to seek answers from perpetrators, witnesses, and bystanders. Sometimes, hearings can also provide victims the opportunity to confront their abusers, and for perpetrators to apologise to those who were affected by their actions.

Public hearings may be particularly beneficial for several reasons. They provide opportunities for victims to share their experiences, thereby building empathy and understanding of the public, including allowing expert testimony to educate the public about what happened, and raise public consciousness and debate around critical issues. In some specific cases, they can encourage perpetrators to testify and make a public apology. In addition, they can create a structure of accountability for past abuses and encourage national debate by mobilising civil society and policymakers. However, in contexts where perpetrators remain powerful, it may be too risky for victims to testify publicly - revealing their identities and putting themselves at risk. Truth commissions can hold closed hearings to protect the identities of victims and witnesses.

South Africa's TRC was the first to convene public hearings not only for victims and survivors, but also for various sectors—some specific to the conflict (armed forces and political parties) and others that were involved and affected (media, health, legal and business sectors). Some public hearings had a thematic focus (e.g. women and children). This approach underscored a commitment to an inclusive, transparent, and public process that has been adopted by a number of other commissions, and now, many years later, these are normative standards for truth commissions.

Rebah Dachraoui of Kasserine addresses the first public hearing of Tunisia's Truth and Dignity Commission on 17 November 2016, about how police fatally shot her son Slah during protests in January 2011. © 2016 Eric Goldstein/Human Rights Watch



## Investigations and Research

Having an investigation and research capacity is essential to satisfy the right to truth. Victims want answers in their individual cases. In relation to key or well-known cases, the nation wants to know what happened and who was behind the atrocities. This is particularly important since criminal prosecutions are far and even most cases never being prosecuted. If possible, a truth-seeking mandate should include some investigative and research capacity. Some truth commissions have conducted investigations and exhumations or created units to help gather evidence that may not be available through statement taking and hearings. Exhumations, often coordinated with official judicial mechanisms, can play an integral role in establishing the fate of victims whose whereabouts have been unknown. Because of the legal implications, exhumations should always be conducted in conjunction with officially authorized mechanism. Meanwhile, a research capacity is necessary to answer the underlying factors around causes, to identify and explain patterns and provide strong recommendations for change.

*When massive violations take place and no steps are taken to investigate what has happened, and no steps are taken to pinpoint who is behind that violence, that breeds resentment. If those powerful individuals are not exposed, if they're not held to account, then they will continue to engage in various activities, continue to engage in grand corruption, they will continue to use mass violence against those who wish to stop them.*

Howard Varney, human rights lawyer, South Africa

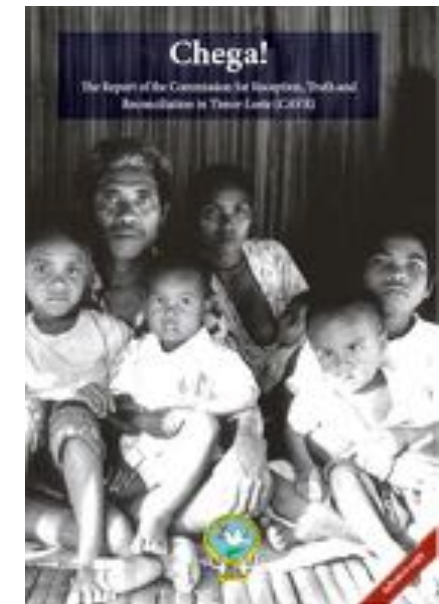
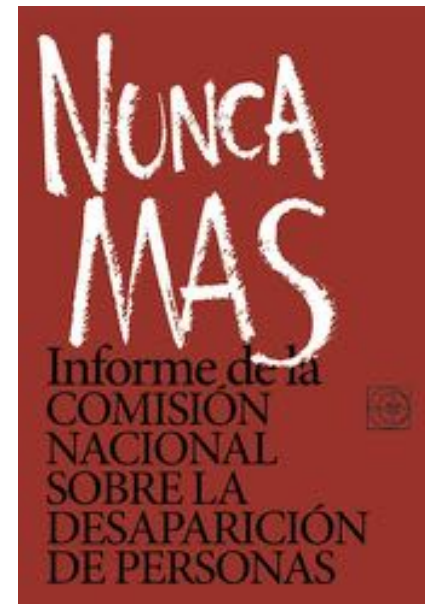


A woman wears a mask reading "Never Again" while marching to Plaza de Mayo square in Buenos Aires on September 3, 2020 to demand justice for the death of Facundo Astudillo, 22, who was last seen at a police checkpoint where he was arrested for circulating amid a compulsory lockdown to fight the COVID-19 coronavirus pandemic.

## Final Reports

Truth commissions generally issue a comprehensive final report that accounts for the work of the commission; provides a summary of the relevant historical background; and presents the commission's findings regarding particularly significant issues or cases, patterns of violations, institutional and individual responsibility, and the identity of and impact on victims. These findings give policymakers and researchers insight into key events and activities and help present a compelling moral narrative. The final report includes the commission's recommendations for future action that may or may not be binding on the government.

Truth commission reports are generally voluminous and inaccessible to most citizens. The production of shorter popular versions is now generally regarded as best practice. Some commissions, however, have unfortunately been unable to ensure the development and publication of popular versions.



Chega! is the final report of the Timor-Leste Commission for Reception, Truth, and Reconciliation generally known as CAVR, its Portuguese acronym. The title of the report, means 'stop, no more' in Portuguese

### 3.6 | What can truth commission hope to achieve?

*We have looked the beast in the eye. Your past will no longer keep us hostage. We who are the rainbow people of God will hold hands and say, 'Never again! Nooit weer! Ngeke futhiu! Ga reno tloa!*

Archbishop Desmond Tutu, Chair of the South African TRC<sup>9</sup>

*It is important to look at truth as not static, but [as] part and parcel of the process in nation-building. The right to truth is indispensable, especially in transitional justice, which is the foundation for peace.*

Cecilia Jimenez, Commissioner of Transitional Justice and Reconciliation Commission for the Bangsamoro, Mindanao<sup>10</sup>

**Truth about the Past:** Truth commissions can establish an official record about a previously hidden past that results in a more accurate, detailed, and impartial history. This record can serve to counter the denials or exaggerated accounts of the past, and bring forward the true scale, scope, and impact of past violence. For example, a truth commission can conduct specific enquiries and help establish the location of missing victims who may have been forcibly disappeared or buried clandestinely.

**Promote Accountability of Perpetrators:** By establishing a record of who did what to whom, how, when, where and why, truth commissions can promote criminal and civil accountability for perpetrators of human rights violations. They can complement the work of prosecutors by gathering, organising, and preserving evidence that can be used in criminal prosecutions. They can also recommend alternative forms of accountability such as civil liability, removal from office, and restitution or community service schemes.

**Public Platform for Victims:** Truth commissions can help to place survivors and victims at the centre of the transition process. This promotes healing and provides a sense of personal and communal vindication. In addition, by providing a public platform for survivors and victims to speak in their own voices, truth commissions can educate the public about the impact of past violations and build support for victim-centred transitional justice initiatives, such as reparations programmes.

*As a doting mother and a wife I welcomed the opportunity after waiting patiently for nearly 20 years to stand before the Commission and ask for the truth. The TRC healed me from my political hardness; it opened up a whole new perspective on the searching for truth without a vengeance mentality. But the sad part is that the TRC failed me in my search for the truth. . . I never received any feedback about the TRC's investigation into Mapetla's death.*

Nohle Mohapi, wife of apartheid murder victim, South Africa<sup>11</sup>



Desmond Tutu is the recipient of the Nobel Peace Prize in 1984, retired as Archbishop of Cape Town, South Africa, 1996. He then served as chairman of South Africa's Truth and Reconciliation Commission.



Three generations of the Moro Islamic Liberation Front. One of the founders, Grand Mufti Sheik Omar Pasigan with Haji Usman and a much younger battalion commander of the Bangsamoro Islamic Armed Forces, who all have seen both the war and peace process.. Photos by International Coalition of Sites of Conscience



**Public Debate:** Truth commissions can stimulate public debate about a wide variety of moral, political, and legal issues that must be addressed during a transition process. This can be achieved through encouraging public participation in commission activities and outreach; encouraging media coverage of all commission activities; and encouraging a culture of non-violent and deliberative engagement around issues that evoke disagreements. As the truth of what has taken place unfolds many people will be shocked, but this can contribute to a national feeling of 'never again.'

**Contribute to Victim Reparations:** Truth Commissions gather thousands of stories of victims and are therefore well placed to contribute to reparations steps taken to help repair the lives of victims. The lists of victims recorded by a TRC can form the base of a future reparations program. The future programs may involve various forms of compensation, restitution of rights and property, and repair for individuals, groups or communities that have suffered the impact of violations. Truth commissions can also make creative and appropriate suggestions about symbolic forms of reparation for victims such as memorials, reburials, and commemorative ceremonies.

**Recommend Institutional Reforms:** Through their investigations, truth commissions can provide evidence of how particular institutions failed to respect or protect human rights in the past. Those institutions may include the security forces, judiciary, media, government agencies, and religious organisations. Commissions recommend specific institutional reforms such as strengthened civilian oversight of security institutions; tenure and disciplinary rules for the judiciary; depoliticisation of the civil service; redesign of the electoral and political system; land reform; and new human rights training programmes for the police and armed forces.

**Reconciliation:** Truth commissions promote tolerance and understanding by allowing conflicting parties to hear each other's grievances and suffering. They may also incorporate special reconciliation measures or procedures such as practical and fair measures for the reintegration of certain categories of offenders and disaffected groups back into society. A Commission may also recommend future interventions to address factors that contributed to the past violations, such as a lack of tolerance and discrimination.

**Democratic Transition:** Truth commissions can signal a formal break with a violent past and help to promote a more open and peaceful democracy based on a culture of rights and accountability. In contexts where perpetrators maintain positions of power, they may attack a TRC because they wish to continue to pursue their goals outside the democratic process, relying on corruption and violence.



The Minister of Defense Nilda Garré led the act of handing over the facilities of the former ESMA to the bipartite commission that from that moment coordinates its operation, made up of the National Secretariat for Human Rights and the Under-Secretary for Human Rights of the Government of the Buenos Aires city. — Monica Hasenberg



### 3.7 | Why is it important to have public engagement and trust?

The appointment of commissioners is one of the most important steps in establishing a Commission, alongside providing it with a strong legal mandate and funding. It is fundamentally important that a truth commission is led by commissioners that are persons respected by a broad section of the population and have a reputation for integrity and independence. Appointing commissioners that represent and defend particular political factions will mean that they are not trusted by the general population, who will be unlikely to participate in the Commission's activities and will not believe that the TRC's findings and recommendations are valid and unbiased.

The general public should be involved with the commission from the earliest stages, through consultations on the mandate, time frame, and subject matter. In some contexts such as Timor-Leste and South Africa, public nominations for Commissioners led to early involvement and support of a broad section of the population. Victims and their organisations are probably the most important stakeholders for a truth commission. They should be involved at every stage and a special unit of the TRC established to ensure that they are adequately supported through the activities of the commission. Civil society, human rights organisations should also be involved and contribute to the work of the TRC if possible, as well as providing the valuable role of monitoring. In some circumstances, almost all of the human rights organisations have decided to restrict their participation to monitor a TRC. This is, in general, a mistake, as without the assistance of experienced human rights defenders as Commissioners, staff, and experts; the commission will have little hope of success.



People hold banners with the pictures of war victims during a protest called by human rights groups and families of victims against a newly approved law to prosecute civil war crimes on February 27, 2020 in San Salvador, El Salvador.

A truth commission cannot hope to succeed unless the government at the time is interested in seeking the truth and can provide a secure environment for the commission to operate in. There should be funding from the national budget for the commission and government agencies should cooperate with a truth commission but not be directly involved. It is important that government officials are legally compellable to provide documents or appear before a commission as required.

Women victims and women's rights organisations are an essential counterpart of a truth commission. Almost all situations of mass violations include significant numbers of gender-based violations and women also suffer in a variety of ways, directly and indirectly, in those situations. Women should be involved at every stage of the transitional justice process. Women's organisations should be requested to lend their expertise and experience to the commission's work, particularly in relation to gender-based violations but not limited to those roles. A truth commission also needs to reach out to experts and organisations representing children, disabled persons, and a variety of other affected groups. It is particularly important that representatives of ethnic, religious, or other minorities that have been particularly affected are closely involved in the commission's work.



"A visitor in a museum located in the former Comarca Balide prison building in Timor-Leste. The building is currently becoming the office of Centro Nacional Chega! (CNC), a follow up institution from Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste (CAVR) as part of institutional reform in Timor-Leste" — AJAR/Anne-Cecile Esteve

### 3.8 | What are the main limitations of truth commissions?

Truth commissions may help victims who seek forms of closure for the abuse they experienced, but they cannot guarantee satisfactory resolution for all victims. For example because truth commissions cannot impose criminal sanctions, they are unable to impose punishments on those who committed crimes. Time and resource constraints mean that truth commissions will not be able to comprehensively examine all the violations that have taken place. In addition, the TRC will be unlikely to be able to provide material assistance to victims. The Commission will be more likely to recommend a program of reparations to be carried out by other institutions in the future. In some cases, such as in the Timor-Leste TRC, a program or urgent reparations for victims was established to address medical, psychological, and other urgent needs.

#### ***Relationships to judicial accountability mechanisms***

Truth commissions are non-judicial mechanisms that will often operate before, during, or after judicial mechanisms, yet address related issues or violations. How truth commissions, prosecution services, and courts will share information or how the provision of information to one may affect its availability to the other often creates tensions. Before a truth commission begins to function, it is important that all the relevant stakeholders come to an agreement about how they will work together and how any potential conflicts will be handled, or at least which body will have the power to resolve disputes between the truth commission and judicial mechanisms. Some truth commissions, like the Commission of Reception, Truth and Reconciliation (CAVR) in Timor-Leste, established successful forms of cooperation with prosecutorial services to facilitate processes for the reintegration of low-level perpetrators.

Truth commissions can have powers of subpoena, but this is usually limited to attendance at their processes. To ensure the full participation of perpetrators is often difficult. Some commissions allow for subpoenas to be issued compelling witnesses to produce documents, some also allow for inspections of premises and archives, and even to seize documents, such as South Africa TRC. With respect to reconciliation, truth commissions may provide an opportunity for victim-perpetrator engagement, but there are no guarantees in terms of outcomes. Truth commissions are part of a long-term reconciliation process, not an end unto themselves. Truth commissions can, at most, initiate, facilitate, and, in some situations, consolidate foundational work to achieve reconciliation.

Not all victims will tell their stories to a truth commission and, of those who do provide statements, only some will have an opportunity or be willing to testify in public. Truth commissions do not provide comprehensive reparations but can only make recommendations regarding them. They can profile imbalances between benefactors and those exploited by the former regime and recommend actions to correct such imbalances. However, governments, not truth commissions, are responsible for the design and implementation of reparation programmes.

*A TRC can contribute to tolerance, reconciliation and nation building. It can also polarise, embitter and do little more than suspend the confrontation it seeks to avoid. This is why the structure of each new commission needs to be considered carefully . . . A TRC is not something to be rushed into. It is not the Holy Grail.*

Charles Villa-Vicencio, former National Director of Research in the South African TRC<sup>12</sup>



Paramount Chief Adv. Vekuui Rukoro (L, red uniform), other high-ranked chiefs and other members of the Herero and Nama communities take part on the Reparation Walk 2019, organized by the Ovaherero Genocide Foundation (OGF) and respectfully gather around a monument in honor of the Ovaherero and Nama people that were victims of the genocide by German colonial forces on the beginning of the 20th century, at the Swakopmund Concentration Camp Memorial, in Swakopmund, Namibia, on March 30, 2019.

### 3.9 | What are the main practical challenges of setting up a truth commission?

The practical implementation of truth commissions creates challenges that must be considered when designing their operations. This table lists the most important challenges and presents some of the ways that they have been overcome in different parts of the world.

Challenges	Lessons Learnt	Case Studies
Selection of Commissioners		
<ul style="list-style-type: none"> <li>● The selection of commissioners plays a critical role in establishing the commission's credibility and legitimacy.</li> <li>● A partisan commissioner selection process will compromise the legitimacy and independence of a commission.</li> </ul>	<ul style="list-style-type: none"> <li>● The process for selecting commissioners should be transparent and participatory so that credible and effective persons can be selected, and the victims and other citizens feel that the commission is legitimate. Public involvement is needed in the selection process.</li> <li>● The selected commissioners should widely be regarded as impartial and represent diverse perspectives or backgrounds to eliminate the appearance of bias. It has to also consider gender parity and regional representation.</li> <li>● Depending on the nature of abuses and the prevailing political situation, international participation may be preferable. Typically, the circumstances that justify the 'hybrid' approach are where the society is politically charged, deeply divided, and little or no trust exists in local institutions.</li> </ul>	<ul style="list-style-type: none"> <li>● All staff members of the UN-sponsored truth commission for El Salvador were non-nationals, which was unusual. It has been more common for all commissioners to be nationals (as in Argentina, South Africa and Peru) or a mix of the two (as in Sierra Leone, Guatemala, Kenya and Solomon Islands).</li> <li>● In Timor-Leste, names of potential commissioners were collected from the public and then selected for their integrity and to represent a range of political views.</li> <li>● In South Africa, civil society organisations and individuals were invited to nominate commissioners. This resulted in a list of 299 nominees. A selection committee produced a shortlist of applicants, who were interviewed in a public forum. From a further shortlist of 25 potential commissioners, President Mandela selected 15 individuals, adding two commissioners from outside the consultative selection process. The final selection was gender and race-conscious.</li> <li>● In Kenya, the law provided for an independent and fairly represented selection committee. However, both the selection committee and civil society failed to do basic due diligence on the candidates, resulting in the appointment of a wholly inappropriate commissioner who was made the Chairperson. The Commission's final report made adverse findings against the Chairperson himself and yet attempts to remove him failed because the law only provided for removal on the basis of misconduct committed during the operational life of the Commission.</li> <li>● In Tunisia, the selection process was entirely political. Once appointed, some commissioners took uncompromising positions and appeared to pursue the interests of political factions rather than the national interest. As a result, the Commission became mired in internal division and conflict to the detriment of the work of the Commission.</li> </ul>

Challenges	Lessons Learnt	Case Studies
Financial Independence		
<ul style="list-style-type: none"> <li>● Total budgets of past truth commissions have generally ranged from \$4 million to \$14 million for up to two years. Truth commissions that do not have political and financial independence risk being condemned as partisan or biased. This is a critical issue in many poorer countries that are dependent on external support to run their commissions (e.g. Timor-Leste and Solomon Islands).</li> </ul>	<ul style="list-style-type: none"> <li>● Commission work plans must be matched to realistic budget and fundraising prospects.</li> <li>● Commissions should play a role in the formulating of their annual budgets.</li> <li>● Where national support falls short, commissions should be able to raise funds internationally, so long as this does not compromise their independence and autonomy.</li> <li>● While complying with financial regulation, commissions should have full control over their budgets.</li> </ul>	<ul style="list-style-type: none"> <li>● In Sierra Leone, the TRC was unable to secure necessary financial support, and was forced to cut its initial budget of \$10 million by more than 50% to \$4.5 million.</li> <li>● In Peru, the government committed itself to fund the majority of the TRC budget, but not all. However, it authorised the TRC to carry out its own fundraising. Eventually, the commission almost matched the government's contribution resulting in a total budget of \$13.7 million</li> </ul>

Challenges	Lessons Learnt	Case Studies
The Mandate		
<ul style="list-style-type: none"> <li>● Ensuring that a truth commission's mandate is realistic is critical, as it sets the parameters for what is being investigated as well as the time period under investigation. The mandate stipulates a comprehensive or restrictive investigation. Some commissions also face the lack of powers or insufficient powers.</li> </ul>	<ul style="list-style-type: none"> <li>● A truth commission should be given broad discretionary powers to interpret its mandate. It should be allowed to investigate not only individual abuses, but also to establish patterns of human rights violations and seek historical explanations. If it focuses too narrowly on a particular violation or time frame, it may exclude relevant issues that would help people understand what happened and why. A truth commission should, therefore, have appropriate investigative powers to address a variety of crimes recognised by international law and a mandate to make recommendations to the government regarding reparations, prosecutions, institutional reforms, and facilitating reconciliation for less serious crimes.</li> <li>● The naming of perpetrators may be desirable, although some truth commissions have opted not to do this.</li> <li>● Truth commissions should not be implementing agencies.</li> </ul>	<ul style="list-style-type: none"> <li>● The 1974 Ugandan Commission of Inquiry examined disappearances during a period of three years (1971–74).</li> <li>● The Guatemalan Commission was mandated to investigate human rights violations committed from 1962–96.</li> <li>● The South African TRC was mandated to investigate gross violations of human rights from 1960–94.</li> <li>● Timor-Leste's Commission for Reception, Truth and Reconciliation (CAVR) was mandated to address politically-motivated human rights violations committed from 25 April 1974 to 25 October 1999.</li> <li>● The Truth for Reconciliation Commission of Thailand was tasked essentially with investigating the role of the military in shooting down protestors. However, they were given no powers to compel the military to allow them access relevant documents or to compel testimony at hearings or interviews. They simply had to rely on the military's goodwill and cooperation.</li> <li>● The Gambia Truth, Reconciliation, and Reparations Commission was expected to not only make recommendations for reparations and redress but also to implement such programs.</li> </ul>



Challenges	Lessons Learnt	Case Studies
Gender Issues		
<ul style="list-style-type: none"> <li>● In past truth commissions, women have tended to testify about the suffering of others, rather than relate their own stories. This may be because women have been taught to prioritise others, or that they feel culturally or psychologically inhibited from talking about their own experiences, particularly of sexual and other gender-based violations.</li> </ul>	<ul style="list-style-type: none"> <li>● Proactive measures such as the hiring and training of female staff must be implemented to encourage a more representative process that results from greater trust and participation by female victims and encourage.</li> <li>● The scope of gendered victimisation in conflict is much broader than sexual violence; a truth commission can explore broader systemic and institutionalised discrimination against women.</li> <li>● Effectively incorporating gender considerations into the work of a truth commission remains a pressing priority.</li> <li>● Need for a specific unit or focal point with access to decision making within a commission to drive gender mainstreaming.</li> </ul>	<ul style="list-style-type: none"> <li>● Although women comprised 54.8% of those giving statements to the South African TRC, 79% of those women recounted abuses suffered by their husbands and sons.</li> <li>● The Sierra Leone TRC allowed women who had been sexually assaulted to testify privately in courtrooms that barred public citizens and were run by an all-female staff. These victims were provided with counsellors before and after their testimony, food while at the hearings, transportation to and from the commission, as well as overnight housing if needed. Following counselling, some adult women victims of serious gender-based violations, decided to testify publicly, in order to bring home the horrors of their suffering to their community and the nation. It revealed the use of children and women as combatants, labourers, and sex slaves, and mainstreamed gender issues.</li> <li>● In cooperation with local women's groups, Timor-Leste CAVR conducted gendered research and analysis into sexual violence and other thematic areas, including violations of socio-economic rights.</li> </ul>

Challenges	Lessons Learnt	Case Studies
Victim-Centred		
<ul style="list-style-type: none"> <li>● Most truth commissions specify that their processes should be victim-centred. This presents particular challenges in contexts of mass violations, limited resources, and other contextual challenges.</li> </ul>	<ul style="list-style-type: none"> <li>● Intensive consultation with victims, survivors, and other stakeholders is important before forming a commission.</li> <li>● Special attention should be given to victims' and survivors' needs in the various processes employed to address a truth commission's mandate, with specific consideration of psychosocial and material support to facilitate these processes.</li> <li>● Specific attention must be given to communication with victim and survivor communities regarding processes, access to the truth commission, various areas of concern, and expectations.</li> <li>● Need to adopt binding principles and standards for the handling of victim.</li> </ul>	<ul style="list-style-type: none"> <li>● The South African TRC provided "urgent interim reparation" for medical and material needs. However, the enactment of this support was considerably delayed. Timor-Leste's CAVR also provided urgent reparations to vulnerable victims in cooperation with the World Bank.</li> <li>● Since the South African TRC process, truth commissions have given increased attention to consultation with victims and survivors during the drafting of truth commission legislation, the appointment of commissioners, etc.</li> <li>● The Liberian TRC created a dedicated psychosocial unit responsible for support to victims and survivors participating in the TRC processes. Child protection agencies were involved to engage with child participants.</li> </ul>

Challenges	Lessons Learnt	Case Studies
Dissemination of Report and Public Outreach		
<ul style="list-style-type: none"> <li>● Many transitional countries have low literacy rates. If a truth commission's final report is not widely publicised and disseminated in a way that can be accessed by the majority of the population, the process loses much of its value.</li> </ul>	<ul style="list-style-type: none"> <li>● Even before publication of a truth commission's findings, print, radio and television media can encourage public engagement with a commission process.</li> <li>● A commission's findings and recommendations should be available in all major national languages and publicised on radio and television for those who are illiterate.</li> <li>● Strong media and communication strategies should include efforts to disseminate the commission's findings and recommendations, help keep public and victim expectations in check, and enhance the credibility and transparency of the commission.</li> </ul>	<ul style="list-style-type: none"> <li>● In South Africa, a weekly television programme on the work of the TRC regularly attracted more than one million viewers. It is the first truth commission to hold public hearings, many of which were broadcast live on radio and TV. Ironically, South Africa has been one of the least successful examples in terms of disseminating its final report.</li> <li>● In Sierra Leone, a children's version of the report has been produced titled Truth and Reconciliation Commission Report for the Children of Sierra Leone. In addition to, a youth comic book version and video version of the final report '<i>Witness to Truth</i>' were produced.</li> <li>● In Peru, excerpts of all TRC hearings were broadcast nationally on TV and radio, and the final report was disseminated in summary as a leaflet that was included in 600,000 copies of newspapers with national circulation.</li> <li>● In Timor-Leste, the truth commission produced a shortened version (A Plain Guide) of its multi-volume final report, <i>Chega!</i>, as well as a popular version of the report with cartoon illustrations.</li> <li>● In the Gambia, the hearings were broadcast live on radio and TV in 2019. The high-profile hearings on political murders and grand corruption gripped the nation's attention.</li> </ul>

Challenges	Lessons Learnt	Case Studies
Implementation of Recommendations and Truth Commission Legacy		
<ul style="list-style-type: none"> <li>● .After a truth commission has finished its work, many issues may remain unresolved, such as what happens to commission archives and resources? Who will take responsibility for ensuring implementation of commission recommendations?</li> <li>● In many instances, after a truth commission has submitted its final report, governments have been reluctant to implement its recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>● A detailed follow-up strategy after the final report is issued will help ensure that the recommendations are implemented.</li> <li>● The mandate of the truth commission should be clear about the fate of the commission's archives, including the possibility of their use to facilitate prosecution of perpetrators.</li> <li>● Recommendations should be implemented by responsible state organs not a standalone body outside government.<sup>11</sup> Monitoring or oversight can potentially be done by an independent body, and/or by civil society. Several commission laws (Sierra Leone, Liberia, and Kenya) have made it compulsory for the state to implement recommendations. However, such provisions are offensive to the separation of powers principle which features in most constitutions.</li> <li>● Recently, truth commissions have become increasingly aware of the need to prepare in advance for follow-up on their work. Widespread civil society and government support must be cultivated to ensure implementation of the recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>● Sierra Leone's TRC legislation included a provision making it the responsibility of the executive to report on the implementation of recommendations. The law actually compelled the government to implement all the recommendations. Although coming off a low base, Sierra Leone has probably seen more of its recommendations implemented than any other truth commission.</li> <li>● El Salvador and Guatemala transferred the archives of their commissions to the UN for safekeeping. However, lengthy periods of time were required to classify them. This denied victims and justice institutions the capacity to use findings from these commissions to fight impunity.</li> <li>● The Liberian government is legislatively obliged to periodically report on progress made on implementation of the TRC's recommendations.</li> <li>● Former staff members from the Peruvian commission have established an Institute for Human Rights and Democracy at the Pontifical Catholic University to help ensure continued engagement with commission lessons and monitor follow-up of TRC recommendations.</li> <li>● A critical problem with the South African process has been the failure to implement and follow-up on many issues recommended by the TRC.</li> <li>● In Timor-Leste, a victim's association and an NGO were established to push for the implementation of the commission's recommendations. The Prime Minister established the Centro Nacional Chega! (CNC) in 2017, as a permanent follow-up institution to implement recommendations of the truth commission (CAVR), more than 10 years after Chega!, the CAVR's final report was released.</li> <li>● In Morocco, the Advisory Council on Human Rights was tasked with follow-up on the implementation of recommendations included in the Implementation of Equity and Reconciliation Commission's final report of 2006. The CCDH set up various multi-disciplinary committees to implement its action plan.</li> </ul>

### 3.10 | What are the main procedural challenges of setting up a truth commission?

*However, the truth commissions face various challenges which can lead to the non-implementation of recommendations; among them are overly broad mandates, flawed choices of commissioners, and insufficient and unreliable funding streams.*

Pablo de Greiff, UN Special Rapporteur on Transitional Justice<sup>14</sup>

*The biggest challenge faced by the [Timor-Leste truth] commission was to make people aware and understand why the past needs to be talked about again. It's like a wound that must be cleansed so it's good to go forward. In addition, there were seven public hearings. The last hearing was from perpetrators from 1975. It took...a year to convince the perpetrators to talk. The more you delay, the more you will miss the train.*

Hugo Fernandez, Chair of Centro Nacional Chega!, Timor-Leste<sup>15</sup>

Although truth commissions must accept a number of limitations, they also face and often successfully overcome some key challenges.

**Security and confidentiality:** Truth commissions operate in transitional contexts of actual or potential instability. Where the security situation is weak, and there is a threat to the safety of victims, witnesses, or perpetrators, statement taking, and hearings can be held in private, and concrete protection programmes may be introduced. Best practice suggests that truth commissions are post conflict tools. Nonetheless, whether operating in stable times or not, all truth commissions should have policies or protocols dealing with physical and information security and confidentiality.

**Re-traumatisation:** People who have been trying to forget their painful past are at serious risk of re-experiencing emotions from the original experience when they are asked to recall this for the purpose of truth seeking. To minimise such risks, statement taking, hearings, and other investigation processes need to be carried out or supervised by trained counsellors.

**Analysing masses of information:** Throughout the statement taking, hearing, and investigation processes, truth commissions collect and generate massive amounts of data. The commission must then find a way to understand and analyse all this information in order to make appropriate recommendations. To help achieve this, many commissions put all the information into databases. If properly designed, databases can generate aggregated information that can help clarify patterns, the most common abuses, and those most responsible for various types of abuses.

**Integration with other transitional justice mechanisms:** Integrating a truth commission with other transitional justice mechanisms and initiatives can raise complex operational difficulties, particularly in regard to sharing information and the protection of confidentiality. For example, the relationship between a truth commission and the formal criminal justice system can be both complementary and competitive and requires clear operational mandates and processes. Truth commissions have yet to routinely engage with how challenges related to constitutional reform, and social and economic transition (such as land issues and the impact of forced dislocation) relate to core focus areas of truth commissions.

**Contextual challenges:** The experience of previous truth commissions illustrates the many external factors that might limit or frustrate their potential, some of which have already been mentioned above. These include:

- political disinterest and/or opposition;
- a weak civil society;
- socio-economic distress;
- political instability and informal repression;
- the distraction of ongoing violations;
- victim and witness fears about testifying;
- a weak or corrupt administration of justice;
- insufficient time and capacity to carry out the mandate;
- lack of funds;
- an excessive caseload;
- limited perpetrator cooperation;
- weak investigative powers; and
- the inability to provide witness protection.



## Case Study: Argentina



The National Commission on the Disappeared (CONADEP) identified almost 9,000 individuals who had disappeared, but the prosecutor selected only 709 cases to pursue in court. In South Africa, only a handful of the 800 cases referred by the TRC to the National Prosecuting Authority were subject to further investigation. The bulk of those who did not apply for amnesty or were refused amnesty were not subjected to further investigation and prosecution, despite recommendations from the TRC and a constitutional obligation. Some cases are pursued, and others are not for many reasons such as resources, political sensitivities and the quality of the available evidence.

### 3.11 | What are the potential risks of conducting a truth commission?

Besides limitations and challenges, there are also risks involved in establishing a truth commission.

**Improper motives:** Even when a state establishes a truth commission, there is no certainty the state established it with the proper motives. Some may believe that a state established a truth commission in order to pursue political vendettas or particular political objectives; delegate responsibility to others for tasks that it is unwilling to carry out itself; avoid, deflect, or contain difficult issues, especially those relating to justice and accountability; or insulate itself against criticism from victims that not enough has been done to redress the human rights abuses of the past while at the same time having no intention of implementing any of the truth commission's recommendations. Perceptions may develop that the government deliberately weakened the commission through limited resources and poor cooperation. Those perceptions make it easier to challenge or reject the results later. Such allegations have been made, for example, against the joint Truth and Friendship Commission established by the governments of Indonesia and Timor-Leste. Ultimately, each process must be assessed on its own merits.

**Bias:** A truth commission may approach its work with a bias that prevents it from providing an objective and complete account of the past. Allegations of bias, however, are often made by particular interest groups with the intention of de-legitimising truth commissions.

**Unrealistic expectations:** Truth commissions must also be careful not to foster unrealistic expectations on the part of victims and the general public. If expectations are not properly managed, renewed frustration and compound distress for victims may result.

**Failure to respond to truth commission recommendations:** Selective or no response to recommendations can create frustrations and discord. If a government ignores the recommendations of a truth commission, victims and survivors may see their efforts as wasted, and society may lose respect for a government that ignores victims' pleas for justice. Laws should require governments and legislative assemblies to respond to truth commission findings and recommendations within specified time frames.

**Isolation from criminal justice mechanisms:** A truth commission created without a clear link to criminal justice can be seen as a consolation prize by victims and survivors, unable to challenge the impunity of perpetrators.

If a country has a strong civil society along with a vocal and independent media, public pressure can be exerted to mitigate many of these risks. However, often in transitional contexts, civil society and the media are not strong. Thus, the risks must be understood in advance by those who would, in good faith, advocate for the establishment of a truth commission.

All of these concerns can be reasons why societies in transition forgo official truth-seeking for some time, and why it may be preferable or necessary in certain situations to focus instead on non-governmental, unofficial truth-seeking mechanisms.

At the end of the day, truth commissions are evolving bodies that continue to draw from best practices around the world. They are not a panacea for resolving all aspects of the legacies of past violations of human rights. They do, however, provide an unprecedented opportunity for a nation to learn the details of its darker past and, most importantly, for victims and survivors to be acknowledged and, in public, to reclaim their dignity. Truth commissions are an important stepping-stone in the quest to learn from the past and to ensure that violations of the same nature will never be allowed to happen again.



Peruvian indigenous women hold pictures of disappeared children during a protest in Lima on July 15, 2010, demanding the government for reparations for the families of the victims of political violence during the internal conflict years (1980-2000).

<sup>1</sup> This statement was made at the opening of the CAVR office that was a former prison and torture centre in Dili, 17 February 2003.

<sup>2</sup> See Lucas Sikwepere, testimonies at the South African TRC, 25 April 1996, (<http://www.justice.gov.za/trc/hrvtrans%5Cheide/cto0508.htm>)

<sup>3</sup> This statement was made at the opening of the CAVR office that was a former prison and torture centre in Dili, 17 February 2003.

<sup>4</sup> See Lucas Sikwepere, testimonies at the South African TRC, 25 April 1996, (<http://www.justice.gov.za/trc/hrvtrans%5Cheide/cto0508.htm>)

<sup>5</sup> The sources of international law that provide a basis for recognition of the right to truth include the United Nations (UN) *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 2005; and the UN Human Rights Council (UNHRC), *General Assembly Resolution on the Right to Truth and the International Convention for the Protection of all Persons from Enforced Disappearances*, A/RES/61/177, January 2007.

<sup>6</sup> UNSG, *Guidance Note of the Secretary General: United Nations Approach to Transitional Justice*, March 2010.

<sup>7</sup> The Aceh TRC (2017) has been established as a permanent body which will focus on its truth-seeking function in the first three years, then shifting to reparations and reconciliation afterwards.

<sup>8</sup> Karina M. Tehusjarana, "We can be model for rights-abuse resolutions, says commission," *The Jakarta Post* (Jakarta), 19 April 2018.

<sup>9</sup> This statement was made while handing the final report of the South African TRC to President Nelson Mandela, October 1998.

<sup>10</sup> This statement was made during a public seminar on "The Role of Truth in Strengthening Peace in Asia", October 2017.

<sup>11</sup> Charles Villa-Vicencio and Fanie Du Toit, *Truth and Reconciliation Commission: 10 Years On* (South Africa: New Africa Books, 2006).

<sup>12</sup> Villa-Vicencio, C., "What a truth commission can and cannot achieve," in *Truth and Reconciliation Commission: 10 Years On*, p. 7.

<sup>13</sup> Alexander Mayer-Rieckh and Howard Varney, *Recommending Change: Truth Commission Recommendations on Institutional Reform*, Geneva Centre for Security Sector Governance (DCAF), p. 54.

<sup>14</sup> Pablo de Greiff speaking during the presentation of his report to the Geneva-Based Human Rights Council, September 2013. See UNHRC, *Report of Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his global study on transitional justice*, A/HRC/36/50/Add.1, August 2017.

<sup>15</sup> This statement was made during a public seminar on "The Role of Truth in Strengthening Peace in Asia", October 2017.



A man peers behind portraits of victims of forced disappearance in the Plaza de Mayo square in Buenos Aires, Argentina, on April 30, 2017, during events held to commemorate the 40th anniversary of the first protest around Plaza de Mayo square by the Argentine human rights group "Madres de Plaza de Mayo".



## 4 | Prosecutions





*[I]t's very important that society takes steps and commits itself to hold to account those who are most responsible for mass violations. If human beings are allowed to do the worst things imaginable to each other, if people who were in positions of leadership are allowed to participate and lead mass programs of killing, rape, and torture, what kind of a foundation does that lay for a future of democracy, human rights and the rule of law?*

Patrick Burgess, human rights lawyer, AJAR

#### 4.1 | Why prosecutions?

The pursuit of criminal justice through prosecutions fulfils obligations to protect human rights mandated by law, aids restoration of the dignity of victims, and assists with the reconstruction of trust between citizens and the institutions of the state necessary for a healthy and functioning democracy. Prosecutions, by their very nature, help delineate the line between just, acceptable conduct and unjust, prohibited acts by the government and non-state actors. This task has both symbolic and practical benefits, and promotes criminal justice as a central tenet of accountability in a society.

Criminal justice is an essential part of an integrated response to massive human rights violations, and should be pursued whenever possible, particularly at the national level. However, in contexts where repression or war has taken root for decades, the judicial systems are often weak or corrupt. In such instances, international or hybrid courts may provide an avenue for justice and accountability. Where conflict and violations remain ongoing, prosecutions, particularly at the international level, may also help secure and restore peace. If steps cannot be taken to investigate or prosecute those responsible in the short term, action should be taken to preserve the option of prosecution in the long term.

Investigation and prosecution of those responsible for mass crimes can play an important role in peace negotiations. In some cases, peace agreements include promises to establish special courts to punish those most responsible for mass crimes as well as truth commissions and reparations programs for victims. Discussions around alternatives to criminal prosecutions, including amnesty provisions may also be part of peace negotiations.

*When trials take place before impartial courts, with ample opportunity for the accused to be heard, thorough consideration of defences, and adherence to the procedures governing evidence and the imposition of punishment, the benefits of the rule of law are showcased. In a trial setting, the value of the rule of law is further highlighted when the meticulous procedures of the court are juxtaposed—as prosecutors repeatedly did in Argentina—with the lawless conduct of the defendants.*

Carlos Nino, Argentine scholar



Protesters called for the immediate arrest and surrender of Mr. al-Bashir and his collaborators to the ICC, which has jurisdiction pursuant to United Nations Security Council Resolution 1593 (2005) — Parliamentarians for Global Action



Congolese warlord Thomas Lubanga sits in the courtroom of the International Criminal Court in the Hague, on August 25, 2011. (Getty Images)

#### 4.2 | What are the sources of the duty to prosecute?

The legal duty to prosecute is derived from several sources, such as international treaties, regional human rights treaties, and customary international law. Some examples of these sources are found in the table below.

International Treaties	Regional Human Rights Treaties	Customary International Law
<ul style="list-style-type: none"> <li>● 1907 Hague Regulations</li> <li>● Convention on the Prevention and Punishment of the Crime of Genocide</li> <li>● Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</li> <li>● Rome Statute</li> <li>● Geneva Conventions</li> <li>● International Covenant on Civil and Political Rights</li> <li>● International Convention for the Protection of All Persons from Enforced Disappearance</li> </ul>	<ul style="list-style-type: none"> <li>● African Charter for Human and Peoples Rights</li> <li>● European Convention for the Protection of Human Rights and Fundamental Freedoms</li> <li>● American Convention on Human Rights</li> </ul>	<ul style="list-style-type: none"> <li>● UN General Assembly's 1973 Principles of Co-operation</li> <li>● UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity: States have an obligation to "investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished."</li> <li>● 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</li> </ul>

Although there have been significant gains in ratification of the international treaties that support such obligations, prosecutions of serious crimes remain elusive in some regions, particularly Asia. The major challenges are the involvement of elites in programs of mass violence and a lack of political will to account for those actions. There are also issues relating to how states with limited resources can meet obligations to prosecute thousands of serious crimes committed during periods of authoritarianism and conflict.

### ***Customary International Law Defined***

Customary international law refers to those parts of the law that derive from custom (i.e. “a general practice accepted as law”), rather than codification in a treaty or convention. While the existence of customary international law is generally accepted in principle, there are many differing opinions as to what rules are contained in it. Customary international law does recognise a duty to prosecute on the part of the state in which a crime under international law is committed. A state will only be able to prosecute a crime if it was considered a crime at the time the offence was committed. Customary international law is particularly relevant in contexts where domestic law did not criminalise serious human rights violations, such as torture and enforced disappearances, at the time of committal. Where such crimes have passed into customary international law at the time they were committed, prosecutors can invoke the law to prosecute such conduct even if they are not criminalised under domestic law.



International War Crimes Tribunal (ICTY) Chief Prosecutor Carla del Ponte informs the press about the death of Slobodan Milosevic at the War Crimes Tribunal on March 12, 2006 in The Hague, the Netherlands — Getty Images



### 4.3 | What is the value of focusing on individuals?

Until relatively recently, international law has focused on the rights and obligations of states. However, the Nuremberg Tribunal (IMT), established after the Second World War, focused on individual perpetrators. The IMT stated, “crimes against international law are committed by men, not abstract entities, and only by punishing individuals that commit such crimes can the provisions of international law be enforced.” The relevant acts are crimes and no country can be imprisoned for those crimes. Individuals must be held responsible for the actions that they have taken and, if those acts fulfil the elements of established international crimes, they should be punished. In addition to punishment of perpetrators and deterrence of potential future crimes, prosecutions that focus on individuals can contribute significantly to our understanding of how large-scale crimes are committed and can help restore victims’ dignity and public confidence in the rule of law. Unfortunately, in most instances resource limitations and competing priorities will allow for prosecution of only some of the individuals responsible for violations. In those situations, the focus should be on those persons bearing the greatest responsibility for the most grievous crimes.



Former Iraqi leader Saddam Hussein sits before an Iraqi judge at a courthouse, Baghdad, Iraq, 2004. U.S. Air Force photo by SSGT D. Myles Cullen, USAF, licensed under public domain.

#### 4.4 | What are the primary crimes charged for mass human rights violations?

Major crimes amounting to “gross human rights violations” under international criminal law include the following crimes recognised by the Rome Statute of the International Criminal Court (ICC):

- *Genocide*: Certain acts **intended to destroy, in whole or in part, a national, ethnic, racial, or religious group**. These acts include, but are not limited to, killing, causing serious bodily or mental harm, forcibly transferring children, and imposing measures intended to prevent birth among a national, ethnic, racial, or religious group.
- *Crimes Against Humanity*: Acts that are committed **as part of a widespread or systematic attack against a civilian population**. These acts include, but are not limited to, murder, imprisonment, torture, rape, sexual slavery, and enforced disappearance.
- *War Crimes*: Acts that are committed **during an armed conflict** that violate the laws and customs of war. These acts include, but are not limited to, murder, mutilation, inhuman treatment, torture, rape, and slavery.
- *Crime of Aggression*: Planning, preparing, initiating, or executing the use of armed force by one state against the sovereignty, territorial integrity, or political independence of another state or in a way inconsistent with the United Nations Charter. An individual who commits this crime, which can include heads of state, must have had effective control over the political or military action of the state.

Enforced disappearances are considered in many jurisdictions to be ‘continuing crimes.’ The crime continues to be committed so long as the fate of the disappeared remains unresolved. So, when an enforced disappearance commences before the entry into force of a statutory prohibition and the fate of the missing remains unknown, such a crime continues because it has not ended. This overcomes any objection to a subsequent prosecution based on the legality principle.



A graffiti demanding that the national government of Argentina find Julio López alive. López was a witness on the trial of Dirty War criminal Miguel Etchecolatz. This was stenciled on the delegation of the government of Santa Fe Province in Rosario on 20 December 2006 by demonstrators of leftist organizations — Pablo D. Flores

#### 4.5 | Where do prosecutions for mass atrocities take place?

Prosecution for mass violation can take place in three different types of courts: international, hybrid (mixed international and national,) or national courts. The terms “courts” and “tribunals” refer to the same mechanisms and are often used interchangeably.

##### *International Courts*

International criminal tribunals were unknown before World War II and since then several different models have been established. Some have been created by treaty, such as the London Agreement and Charter (establishing the IMT) and the Rome Statute (establishing the ICC). In addition, the UN Security Council can create an international tribunal under its power to “maintain and restore international peace and security” in Chapter VII of the United Nations Charter. Historically, international courts have taken one of two forms—ad hoc and permanent. The UN Security Council created two ad hoc international criminal tribunals prior to the establishment of the permanent ICC: the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).



First Session of International Tribunal on War Crimes in Former Yugoslavia Opens in the Hague.

##### *Ad Hoc International Criminal Tribunals*

The modern-day path for international prosecutions was pioneered by the temporary military tribunals established in Nuremberg (1945) and Tokyo (1946) following the Second World War. These courts charged individuals with war crimes, crimes against peace, and crimes against humanity. Although not without criticism, these criminal trials helped to consolidate a human rights agenda, particularly relation to how states treat their own citizens.

Years later following the end of the Cold War and in response to reports of mass human rights violations, the UN Security Council established two ad hoc international criminal tribunals. In 1993, it established the ICTY to address violations accompanying the break-up of Yugoslavia. In 1994, the UN Security Council established the ICTR to prosecute those most responsible for Rwanda’s 1994 genocide.

Both the ICTY and ICTR have been commended for a number of notable contributions to international law. These include issuing significant convictions for international criminal law violations including for rape as a crime against humanity, criminalising serious violations of the laws of war committed in internal armed conflict, and recognising that crimes against humanity can be committed in times of peace. They have also been responsible for establishing and clarifying international legal standards relating to how trials are conducted, including procedural fairness and the rights of the accused. These rights of those accused include the right to remain silent, to an impartial bench of judges, to adequate pre-trial detention, to be informed of charges, to obtain translated documents, to an expeditious trial, and to examine witnesses. The tribunals have also addressed gender considerations in relation to procedural protections for victims and witnesses, and to staff training and recruitment.



Judges are pictured in the courtroom during the trial of Bosco Ntaganda. Bas Czerwinski/Reuters

## **The International Criminal Court (ICC)**

*It is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.*

Rome Statute Preamble

*...the adoption of the Rome Statute was a gift of hope to future generations and a giant step forward in the march towards universal human rights and the rule of law.*

Koffi Anan, Secretary General of the UN

The successes and challenges of the temporary ad hoc tribunals (the ICTY and the ICTR) laid the groundwork for the development of a more permanent solution: the ICC. In 1998, 120 countries signed the Rome Statute, the Court's founding treaty but the commencement of the Court's mandate needed to wait until a minimum of 60 states had ratified the Statute. By 2002, a sufficient number of states had ratified, thereby bringing the Rome Statute into force and make the ICC a reality. As of March 2020, 123 states are state parties to the Rome Statute with 13 of those states located in Asia.

**Mandate:** The ICC has a mandate to investigate and bring to justice individuals who commit the most serious crimes, namely: genocide; crimes against humanity; war crimes; and the crime of aggression.

**Complementarity:** Under Article I of the Rome Statute, the ICC "shall be complementary to national criminal jurisdictions." In practice, this means that the ICC will only pursue a case concerning crimes under its mandate if a state party is genuinely "unwilling or unable" to carry out the investigation or prosecution of those crimes. This system of "complementarity" means that the ICC is not intended to exercise primacy over domestic courts. The Rome Statute contains a set of criteria that guides the ICC in determining if domestic jurisdictions are unable or unwilling to prosecute.

The Judges of the International Criminal Court and eminent guests at the opening of the ICC judicial year 2020 on 23 January 2020 at the seat of the Court in The Hague ©ICC-CPI

## **UN Security Council powers of referral, and the five Permanent Members' power to veto**

Article 27 (3) of the UN Charter requires that all substantive decisions of the Council must be made with "the concurring votes of the permanent members". Those five members, selected when the UN was established after the Second World War are Russia, China, the United States, France, and the United Kingdom. Following the establishment of the ICC, the UN Security Council can use its Chapter VII powers to either establish a new ad hoc criminal tribunal (as it did earlier for the ICTY and ICTR) or refer a situation to the ICC.

If the Security Council refers a case of international crimes to the ICC, it is not necessary that the relevant state is a member of the ICC. Commencement of proceedings in the Court, other than by UN Security Council referral do require that the relevant state is a member. However, if one of the Permanent Members votes against a proposed Resolution to refer a case to the ICC then it will fail, effectively providing each of the Permanent Members a veto power.

The veto power has been repeatedly used by one or more of the five Permanent Members to avoid the investigation into mass crimes committed in a state that is a political ally of the permanent member(s). For this reason, the establishment of new criminal tribunals and referral of new cases by the Security Council to the ICC have been extremely problematic.





**Jurisdiction:** The ICC may only address crimes committed after the Rome Statute's entry into force on 1 July 2002. For a state that became a State Party after the Rome Statute's entry into force, the court's jurisdiction is generally limited to crimes committed after that state ratified the Rome Statute (non-retroactivity).

The ICC can obtain jurisdiction over a "situation" (i.e. the events that may ultimately give rise to a formal case) in the following three ways:

- a State Party may refer a situation to the court;
- the UN Security Council may refer a situation to the court, including a situation involving a state that is not party to the Rome Statute but is a member of the UN; or
- the ICC Prosecutor may initiate an investigation of crimes alleged to have occurred in the territory of a State Party or to have been committed by nationals of a State Party.

The ICC faces several perception challenges. It has a poor ratification record in the Middle East and Asia, and lacks the support of some major nations, such as the United States. The ICC has faced criticism from some African leaders who feel that Africa has improperly and disproportionately been the target of the ICC's work. Notably, however, most of the ICC's Africa-related work has arisen from referrals by African State Parties. This means that the majority of those cases have commenced not by the ICC targeting the states but through the African states voluntarily requesting the ICC to open a case into crimes committed within their jurisdiction or involving their citizens. Those states are unwilling or unable to try those cases themselves, perhaps due to weaknesses in the national legal systems or political strength of suspects. In recent years, some State Parties have withdrawn from the ICC (i.e. Burundi, the Philippines), threatened to withdraw (Kenya), or issued withdrawal notice (i.e. South Africa, the Gambia).

The establishment of international criminal tribunals is a relatively new historic phenomenon and although providing a significant contribution to the goals of justice for mass crimes, are also facing many challenges. The ICC has the power to indict heads of state, generals, and other powerful national leaders, and is not affected by amnesties, diplomatic immunities, and other blockages. Among the common criticisms of the international tribunals is that they are very expensive, meaning that they have only handed down a few convictions. In addition, the ICC is located far from the countries where the alleged violations occurred. This reduces access to victims and the general population, reducing the potential impact.



The Extraordinary Chambers in the Courts of Cambodia, court officers of the U.N.-backed war crimes tribunal are seen through windows during a hearing of former Khmer Rouge top leaders in Phnom Penh.



Map showing states that are party to the Geneva Conventions and their additional protocols.

## The Philippines and the ICC

In 2011, the Philippines ratified the Rome Statute, playing a pioneering role in Southeast Asia as one of only four states in the region to join the ICC. However, shortly after the ICC Prosecutor initiated a preliminary examination into crimes committed in the Philippines as part of the government's "war on drugs," the Philippines government provided formal notice in March 2018 of its withdrawal from the ICC. The withdrawal took effect one year later, on 17 March 2019. However a withdrawal from the ICC does not affect a case that has already been opened during a time when the State was a Party.

The ICC stated, "Pursuant to article 127.2 of the Statute and based on prior ICC ruling in the situation in Burundi, the Court retains its jurisdiction over crimes committed during the time in which the State was party to the Statute and may exercise this jurisdiction even after the withdrawal became effective . . . The preliminary examination of the situation in the Philippines was announced on 8 February 2018 and is on-going. It is analysing crimes allegedly committed since at least 1 July 2016, in the context of the "war on drugs" campaign launched by the Government of the Philippines."

## The Rohingya case & the ICC

In 2019, the Pre-Trial Chamber of the ICC found that the alleged acts of forced deportation and persecution leading to between 600,000 and one million Rohingya being forced across a state border between Myanmar and Bangladesh may constitute crimes against humanity within the jurisdiction of the Court. At the relevant times of the acts committed against the Rohingya, Myanmar was not a state party to the ICC, whereas Bangladesh was.

The following is an excerpt of the ICC's published statement:

"On 14 November 2019, Pre-Trial Chamber of the ICC authorised the Prosecutor to proceed with an investigation for the alleged crimes within the ICC's jurisdiction in the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar . . . The Chamber concluded that the Court may exercise jurisdiction over crimes when part of the criminal conduct takes place on the territory of a State Party. While Myanmar is not a State Party, Bangladesh ratified the ICC Rome statute in 2010. Upon review of the available information, the Chamber accepted that there exists a reasonable basis to believe widespread and/or systematic acts of violence may have been committed that could qualify as the crimes against humanity of deportation across the Myanmar-Bangladesh border and persecution on grounds of ethnicity and/or religion against the Rohingya population . . . Next steps: The Office of the Prosecutor will start collecting the necessary evidence from a variety of reliable sources, independently, impartially, and objectively."

## Hybrid Courts

Hybrid courts are usually situated in national contexts where the crimes have been committed, and have both international and national judges and prosecutors. These 'mixed courts' seek to combine the benefits of international involvement (such as independence, resources, personnel, and provisions for security) with the merits of national prosecutions (such as geographic proximity to victims and positive impact on domestic state institutions). They usually have jurisdiction to try both international and domestic crimes. The international personnel will bring a level of experience in the complex international crimes that national judges and prosecutors often lack, and the population affected is likely to be more confident that political factors do not dictate the actions of the court if there are personnel involved who are not connected in any way with the political and other important actors in the national setting. One of the goals of hybrid courts is that the large investment of resources and personnel from the international community will also serve to leave behind a 'legacy' of better national laws and procedure, improved operation of the legal system and capacity building for lawyers and judges. Hybrid courts have been criticized for being expensive (compared to local justice budgets), trying relatively few suspects, and leaving little or no impact on the domestic criminal justice system. As a lesson learned, they should be required to build legacy by way of training, mentoring, infrastructure, and creation of special investigative, prosecutorial, adjudication capacities.

*Legacy [of Hybrid courts] seeks to narrow the gap between investments in prosecuting a limited number of serious crimes in the immediate aftermath of conflict through a hybrid court and the frequent lack of investment in the local justice system in the post-conflict context.*

Office of the United Nations High Commissioner for Human Rights

## Special Court for Sierra Leone (SCSL)

The SCSL was established through an agreement between the United Nations and the Government of Sierra Leone in 2002 to prosecute those most responsible for crimes committed after the Abidjan Peace Accord failed on 30 November 1996. It was the first "hybrid" international criminal tribunal and the first modern international criminal tribunal to be located in the country where the crimes to be tried were committed. The SCSL's hybrid character was intended to address some of the flaws of past international tribunals, such as their remoteness from the victim population and extremely high cost. At the same time, it was hoped the SCSL would strengthen the country's domestic legal system and encourage public faith in Sierra Leone's ability to administer justice.

### *Key achievements and gaps of the SCSL:*

- Eight of those most responsible for the suffering of the people of Sierra Leone were convicted, with sentences ranging from 15 to 52 years.
- On 26 April 2012, Liberian President Charles Taylor was found guilty on 11 counts of war crimes and crimes against humanity and sentenced to 50 years in jail.
- The court established the legal precedent that the reasons for fighting are immaterial in determining where crimes against humanity have been committed. It ruled that members of the Civil Defence Forces—considered as heroes by many—could not use the claim that they were fighting for a "just cause" as a factor to mitigate sentences.
- The court was the first international tribunal to convict people for crimes relating to the conscription and recruitment of children younger than 15 into hostile forces, as well as for attacks against peacekeepers and for forced marriage as a crime against humanity.
- The SCSL conducted an innovative and effective outreach programme, which focused on improving domestic understanding of the court's activities. Its outreach programme served as a model for future tribunals.
- The SCSL lasted three times longer and cost significantly more than originally anticipated.
- There was a significant imbalance between the cost of the SCSL, which was financed by voluntary contributions of UN member states, and the financing of local courts in Sierra Leone. A judge at the SCSL was making several times the salary of the President of Sierra Leone, and the prosecutor's annual budget was over \$4 million more than the budget of the Sierra Leone Supreme Court.

### **Extraordinary Chambers in the Courts of Cambodia (ECCC)**

In 2003, an agreement between Cambodia and the United Nations was reached to establish a court to try senior leaders of the Khmer Rouge and those most responsible for crimes committed between 17 April 1975 and 6 January 1979. Physical premises for the court were acquired in 2006, and the first trial began in 2009. As per Cambodia's wish, the court is part of the domestic system and applies municipal law. The ECCC's structure includes international and national investigators, prosecutors and judges working together (Co-Investigating Judges and Co-Prosecutors.) The offences tried include crimes against humanity, war crimes, and genocide.

#### *Key achievements and gaps of the ECCC:*

- Three leaders of the Khmer Rouge were convicted and sentenced to life imprisonment in Cambodia.
- Trials have included prosecuting forced marriage as a crime against humanity.
- As part of the domestic legal system, the ECCC has been praised for having a significant impact on strengthening the rule of law in Cambodia. At the same time, the court has been plagued by disagreements and tensions between its international and domestic staff. In addition, many have questioned the independence and impartiality of some of the domestic judges and staff.
- While some question the ECCC's procedural safeguards and are concerned by its limited jurisdiction, the ECCC has shed significant light on fair trial issues, which could have a lasting effect on the Cambodian judicial system.
- The ECCC was the first among the hybrid and international courts to allow victims an active role in the criminal proceedings as civil parties. They are capable of participating in all aspects of the trials.
- The ECCC has struggled with inconsistent funding because it must annually secure voluntary contributions to support its operations. Many view this financing strategy as inefficient and damaging to the work of the court.
- As with the SCSL, there is a significant disparity between the financing of the ECCC and of Cambodia's other courts.

### **The Special Panels of the Dili District Court**

In 1999 East Timorese voted for independence from Indonesia in a UN run ballot marred by mass killing and other violations. In 2000, the United Nations assumed temporary sovereignty over the territory with authority that included the administration of justice and to prepare for independence which took place when the nation of Timor-Leste was created two years later in May 2002. The UN mission UNTAET drew on the mandate provided to it by the UN Security Council to establish the Special Panels of the Dili District Court to try cases of "serious criminal offences," - genocide, crimes against humanity, and war crimes, as well as some domestic crimes including murder, sexual offences, and torture- committed during the period from 1 January to 25 October 1999. The Special Panels sat from 2000 to 2006 and were assisted by the Serious Crimes Unit, which was in charge of investigating the crimes and preparing indictments.

#### *Key achievements and gaps of the Special Panels:*

- .Sitting with international experts and judges, domestic judges were able to develop their experience and gain new skills.
- The Serious Crimes Unit trained Timorese police investigators and prosecutors, strengthening their ability to investigate and litigate cases alleging crimes during the conflict in East Timor.
- The Special Panels convicted 84 individuals for crimes against humanity, but they were all Timorese low- level militia members. Many of those who were most responsible for crimes during the conflict remained in Indonesia, which refused to cooperate with the Special Panels.
- The Special Panels lacked sufficient funding and political support. What political support existed when the Special Panels were established waned over time.
- The trials were heavily criticized for falling short of international standards.
- What momentum for prosecution the Special Panels did generate led to the establishment of subsequent mechanisms, including the Special Crimes Investigation Team, to continue the investigation and prosecution of serious crimes. International judges and advisors assisted the Timorese judiciary. However, in 2014, the Timorese Parliament passed a resolution dismissing all international officials and advisors from the judicial sector.
- By 2008, most of those convicted by the Special Panels received full or partial pardons by the Timorese government.



## National Courts

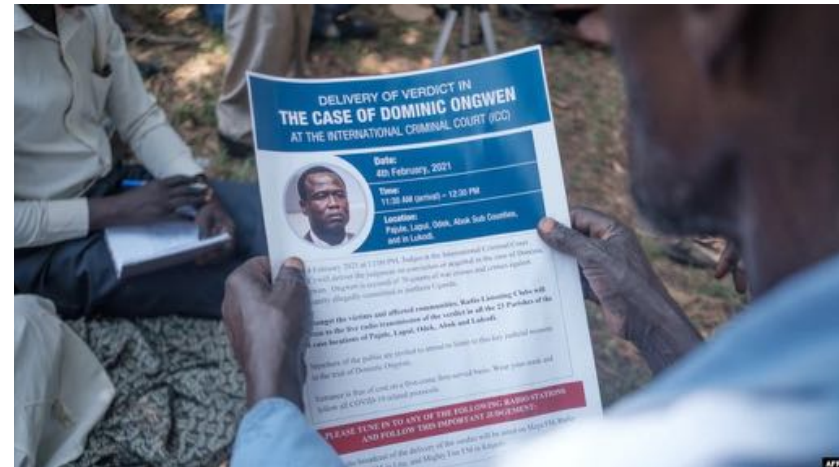
When considering national prosecutions in relation to transitional justice, we are not referring to the prosecution of the many crimes that are dealt with as part of the ordinary operation of the nation's criminal courts. We are only considering the situations in which legislation has been passed to criminalise international crimes such as crimes against humanity, genocide, or war crimes, in a domestic jurisdiction and those crimes are tried in the national courts.

There are many advantages of proceeding with prosecutions of past mass crimes in national courts and this approach demonstrates the willingness of the nation to deal with those crimes within its own judicial and cultural context. Prosecutions in these courts are also much cheaper than in international or hybrid courts. National courts, like hybrid courts, have greater access to witnesses, evidence, and victims, and the proceedings are often more accessible to the general public. Prosecutions in national courts also can contribute to domestic judicial reform.

At the same time, the prosecution of past violations in national courts may face significant challenges if there is a lack of political will to apply the laws equally to all, including the rich and powerful. National prosecutions can easily become manipulated if there is a history of a lack of judicial and prosecutorial independence, and judges may be pressured or bribed or both. In some cases, the national prosecutions can become 'show trials' whose purpose is to avoid international court processes whilst not really bringing those most responsible to justice. For example, some mid-level military personnel may be tried and convicted, and later may secretly be released. Such a process averts the scrutiny of the international community and shields those most responsible. Weaknesses of national prosecutions may include inadequate laws; endemic corruption; incompetence; poor conditions of service and pay; lack of access to justice, including inadequate legal representation; and little, if any, experience reporting legal cases involving violations of both national and international law. For these reasons, it may often be more advisable to establish a hybrid model of tribunal, to make the process more independent, less likely to be corrupted or manipulated, and more able to draw on expert knowledge and experience.

*The problem with the Jakarta trials (of 1999 crimes in East Timor) is that the process has been fundamentally flawed... These failures have occurred, moreover, despite some judges' strenuous efforts to ensure that the trials were fair and serious in their evaluation of the responsibility of the defendants. These efforts resulted in a number of significant convictions, but these convictions are not enough to redeem the failures of the process as a whole.*

David Cohen, human rights expert



A man holds a flyer printed by the International Criminal Court (ICC) explaining the trial of LRA commander Dominic Ongwen, in Lukodi, Uganda, Feb. 4, 2021.

Time Period	Country	Description
1946–1949	Dutch East Indies (as part of The Netherlands)	A lesser-known tribunal, the Batavia Military Tribunal (aka The Netherlands Temporary Court-Martial at Batavia), was established to prosecute war crimes related to crimes committed by the Japanese Army against the European and local populations in the Dutch East Indies (modern-day Indonesia). In one case (i.e. Trial of Washio Awochi), a Japanese hotel-keeper was convicted of enforced prostitution as a war crime.
1985 (conviction of military junta members, who were later pardoned); 2006–present	Argentina	President Raúl Alfonsín argued forcibly in favour of prosecuting the most senior members of the military junta responsible for the deaths, disappearances, and mistreatment of thousands of civilians during the Dirty War (1976–83), in spite of the considerable threats the prosecutions posed for Argentina's peace and stability. Five of the top leaders were convicted in 1985, but were subsequently pardoned in a political deal. Ten years later the pardons were ruled unconstitutional. Since 2006, over 1,400 prosecutions have been instituted, including prosecutions of some senior junta leaders.
1994–1996	South Africa	Colonel Eugene de Kock, the operational commander of South Africa's main police death squad, was arrested in 1994 and charged with 121 counts. He was found guilty of 89 of the counts, including murder and manslaughter, and convicted for crimes against humanity in August 1996. He was sentenced to two life terms and 212 years in prison. His request for amnesty was denied by the Truth and Reconciliation Commission. In 2015, Justice Minister Michael Masutha announced that de Kock had been granted parole, "in the interest of peace-building".
2002–2004	Indonesia	Two ad hoc human rights courts with jurisdiction for crimes against humanity tried officials involved in systematic crimes in East Timor (crimes committed in 1999; trial conducted in 2002) and the Tanjung Priok massacre in North Jakarta (crimes committed in 1984; trial conducted in 2003). In both instances, some perpetrators were convicted by the court, but all were acquitted on appeal. A permanent human rights court was also established, and a trial was held before that court concerning the attacks against civilians in Abepura, Papua (crimes committed in 2000; trial conducted in 2004). Although some of the perpetrators were convicted, all of the convictions were eventually overturned on appeal.
2002–2012	Rwanda	In Rwanda, the sheer number of individuals accused of crimes related to the 1994 genocide rendered the national courts unable to conduct full criminal trials. As a result, authorities revived a system of traditional village courts, known as Gacaca courts. Between 2002 and 2012, more than 1.9 million cases were tried through the Gacaca system. However serious concerns were raised in relation to shortcomings in procedural safeguards for accused persons.
2003–2006	Iraq	Following the US and UK invasion of Iraq, the Iraqi Government enacted an order issued by the Coalition Provisional Authority establishing a national court, the Iraqi High Tribunal (IHT), to investigate the gravest crimes committed by the government from 1968 to 2003. It investigated the Dujail massacre, leading to the conviction of former President Saddam Hussein as well as three others. The IHT also investigated the Anfal military campaign of 1988 that resulted in the murder of 50,000 to 100,000 Kurds. Five of the six defendants were sentenced to death or life in prison.
2006–2007	Democratic Republic of the Congo (DRC)	A military tribunal in the Ituri District in north-eastern DRC sentenced five former militiamen to life imprisonment for killing two UN military observers in 2003.
2009 (conviction)	Peru	A Peruvian prosecutor opened a case against President Fujimoro for murder and enforced disappearance, and a Peruvian judge published and transmitted it to Interpol, which issued an international warrant for his arrest. In 2007, Chile then extradited former President Fujimoro to Peru. Fujimoro was tried by a three-judge panel of Peru's Supreme Court. In April 2009, he was found guilty of human rights abuses, murder, and kidnapping, and was sentenced to 25 years in prison. Upon appeal, the Supreme Court upheld the sentence.
2008–present	Uganda	As part of the Juba Peace Agreement, the Ugandan government and the Lord's Resistance Army (LRA) agreed in 2008 to set up a Special Division of the High Court, known as the International Crimes Division, to try LRA officials for alleged war crimes committed during the insurgency. The Ugandans wanted to render redundant arrest warrants that had been issued by the International Criminal Court (ICC) in 2005 for the leadership of the LRA by demonstrating the willingness of national courts to tackle these issues. The first trial of LRA Commander Colonel Thomas Kwoyelo began in July 2011 and trials remain ongoing. (Notably, despite this effort, the ICC began its trial of LRA commander Dominic Ongwen in December 2016.)
2010–present	Bangladesh	In 1973, the Bangladesh parliament enacted a law providing for the establishment of a war crimes tribunal to prosecute those responsible for genocide, crimes against humanity, war crimes, and other crimes under international law. In March 2010, the International Crimes Tribunal, Bangladesh, was formally established. The tribunal has issued more than 20 convictions of collaborators of the Pakistan Army for crimes committed during the 1971 Bangladesh Liberation War. The tribunal has sentenced more than ten people, mostly former leaders of the Islamist party Jamaat-e-Islami, who are part of the current political opposition coalition, to death. Although a number of victims groups within Bangladesh welcomed the fact that the past violations were finally being addressed through prosecutions many international human rights groups have criticised the trials as not fulfilling basic international fair trial standards, pointing to a lack of due process and the failure of the court to ensure respect for the rights of the accused.

#### 4.6 | What is needed for a prosecution to take place?

For an effective prosecution of human rights violations to occur, there must be the political will to hold perpetrators accountable. This is the major factor on which prosecutions are dependent and it may take many years to build that political will. Time may also be required to undertake political changes until the power of alleged perpetrators diminishes. One essential reflection of political will be adequate funding for the court and its cases. Other reflections of political will include a commitment to apprehend the accused no matter what position or institution they are affiliated with, and to voice support for the prosecution of cases in the face of opposition. In addition, basic practical components must be met. There must be judges, prosecutors, defence counsel, and support staff with the requisite expertise to try the cases. There must be support for the victims, witnesses, and/or experts who are willing and able to testify, including practical mechanisms to protect them. Typically, the accused must be able to be arrested and taken into custody, though some trials do take place in absentia or without the accused present. Political will is also required to produce documents and other evidence required for the trial and to ensure that public officials attend as witnesses if they are required.

In addition to the political and practical components, there must be a legal basis for the cases to proceed; the court must have jurisdiction to hear the case. In other words, it must have the authority to hear the particular claims and arguments being raised. That authority is generally provided by the treaty or statute creating the court (for international or hybrid courts) or by the laws of the country where the court sits (for national courts).



A group of Amnesty International activists wear paper masks stage a protest in Kathmandu 12 April against violation of human rights in Nepal. They placed a 12-point demand before the government which included the need for denunciation by public offices of such violance of human rights and of secret confinments as well as for provision of compensation to victims of human rights violence and torture.

#### 4.7 | What is universal jurisdiction?

Universal jurisdiction is based on the principle that certain crimes are so serious that they amount to crimes against the whole international community. Under international law, those acts amount to crimes no matter where or when they are committed, regardless of whether a state may or may not criminalise those acts or wish to protect the perpetrators. International law prohibits those crimes, including for example crimes against humanity, genocide, and war crimes, applies across the entire globe. However, there are practical challenges in applying this law as suspected perpetrators must be investigated, arrested, and tried somewhere. An increasing number of countries have passed domestic legislation that enables them to investigate and prosecute suspects of those international crimes even though the individuals are not citizens of their country and the offences did not take place within their borders. Often these laws are triggered when a suspect arrives within the border of the country, but in some countries such as Argentina, the physical presence of the perpetrator is not necessary for the investigation to commence.

Several European countries have opened universal jurisdiction cases against foreign nationals alleged to be responsible for international crimes committed in the nationals' home countries. In most instances, prosecutors or investigative magistrates have brought these cases forward with the assistance and/or pressure of human rights NGOs and victims' groups from the countries where the alleged violations took place. Countries such as Belgium, Germany, the United Kingdom, Spain, Argentina, and Australia have pursued prosecutions through universal jurisdiction.

Some legal analysts note that trials pursuant to universal jurisdiction suffer the same weaknesses as purely international trials, including a lack of connectedness to victim populations, and thus have a limited impact on restoring trust in the rule of law. They also tend to be politically controversial. However, the fact that individuals suspected of committing international crimes may be arrested and prosecuted if they arrive in a country with universal jurisdiction laws is another factor that can contribute to justice and deterrence.



Located in Buenos Aires, the imposing Palace of Justice symbolizes the rule of law in the country of Argentina. Argentina incorporates universal jurisdiction into its law as customary international law, through article 118 of the Constitution, as well as through the primacy of international human rights treaties in Argentine law.



### **UK Case against Kumar Lama**

Kumar Lama, a Nepalese Colonel accused of committing torture in 2005 during the Nepalese civil war, was arrested at his home in the United Kingdom in January 2016. He was arrested under Section 134 of the UK's Criminal Justice Act 1988, which criminalises torture committed by a person acting in an official capacity "in the United Kingdom or elsewhere." A trial was held, and ultimately, the jury acquitted him of some charges and hung as to the remaining charges (i.e. could not reach resolution of those charges). In September 2016, Kumar Lama was formally acquitted of all charges, after the UK government decided not to retry him. Though the case did not result in conviction, it stands out as one of the few instances where the UK exercised universal jurisdiction over an alleged perpetrator of crimes in a war outside the UK.

### **Australia Case against Aung San Suu Kyi**

In March 2018, lawyers in Australia filed a private prosecution application on the basis of universal jurisdiction against Aung San Suu Kyi, the State Counsellor of Myanmar and the country's de facto leader. The application alleged that Aung San Suu Kyi, who was visiting Australia at the time, had committed crimes against humanity by permitting security forces in Myanmar to deport and forcibly remove thousands of Rohingya from Myanmar. To proceed, the case required the consent of the Attorney General. However, the Attorney General did not decide on the merits of the case as he concluded that Aung San Suu Kyi, was actively serving as the de-facto Foreign Minister of a State, and therefore immune from prosecution under customary law protecting serving senior diplomats. It is notable that the ICC is not affected by such customary international laws providing diplomatic immunity.

### **Swedish Case against Mohammad Abdullah**

Mohammad Abdullah, a Syrian low-level soldier, now a refugee in Sweden, has been convicted of a war crime by a Swedish court. The crime was violating human dignity by posing with his boot on a corpse. He got sentenced by eight months in a Swedish prison. It is the first conviction in any court of anyone from the Syrian government's side for crimes committed in the multisided war. Some argue the case constitutes a landmark and brings hope that at least some of the war criminals from Syria war will be held accountable in courts outside Syria.

### **Switzerland Case against Ousman Sonko**

Ousman Sonko is the former Minister of Interior, the former commander of the Presidential Guard (elite corps), and the former Inspector General of Police under the Gambian dictator Yahya Jammeh from 2006 to 2016. He was arrested and subsequently detained in Switzerland under the charges of crimes against humanity. During his period in office, he is suspected of taking part in acts of torture, including in detention centres.

#### **4.8 | How else may courts be utilised to promote accountability?**

In some instances, it may not be possible to seek criminal liability for human rights violations either in the country where the violations occurred or in another country, but it may be possible to use civil proceedings to obtain some acknowledgement of the violations. Immigration laws may be used to preclude a known perpetrator from settling in or traveling to a new country. It may also be possible to use tort laws or laws that allow for civil remedies (such as the payment of money) for rights violations to obtain a form of relief. In the United States, for example, victims have relied on an old law known as the Alien Tort Statute to bring civil cases seeking monetary damages against individuals, such as Indonesian Major-General Sintong Panjaitan and Indonesian General Johnny Lumintang for rights violations in Timor-Leste, and corporations, such as Exxon Mobile and Unocal for rights violations in Aceh (Indonesia) and Timor-Leste.

## 4.9 | What is the role of civil society in prosecutions?

Civil society can play a variety of roles in the pursuit of justice through prosecutions, from advocating for the creation of courts, documentation and the initiation of cases to leading outreach and education efforts during and after proceedings, as well as monitoring trials. In recent years, civil society has played a particularly critical role in the advancement of victim-sensitive prosecutions. In addition, in countries where formal prosecutions are not (yet) viable, civil society has engaged in creative means of promoting accountability.

### **Securing Victim-Sensitive Prosecutions**

For prosecutions to serve as an effective mechanism for achieving justice and promoting peace, they must protect the dignity of victims and be responsive to their needs; they must be “victim-sensitive.” Domestic and international initiatives have often failed to appreciate the importance of victim-sensitive prosecutions. However, through the active engagement of civil society, a movement has developed toward prosecutions that are more sensitive to victims. The Rome Statute, for example, not only provides protections for testifying victims, but also permits victims to participate in proceedings before the ICC through their own legal representative.

In common law countries victims generally do not play a role in prosecutions, unless they are witnesses. However, in civil law countries victims play a greater role and sometimes can participate as ‘civil parties’ in prosecutions. This may involve the rights to initiate a prosecution, participate and be heard as a party in criminal proceedings, and pursue claims for damages in the prosecutions. Internationally, similar rights are provided to victims in the ECCC, and to a lesser degree in other international and hybrid courts.

Ensuring that sensitivity towards victims is integrated into prosecutorial policy and practice is an ongoing process. It requires that those involved in criminal prosecutions and criminal justice processes be continually conscious and considerate of victims’ needs.

### **The Role of Prosecutors in Victim-Sensitive Prosecutions**

Prosecutors can help ensure prosecutions are victim-sensitive in several ways, including through the following acts:

- *Managing expectations:* Prosecutors can be honest with victims about what is demanded of a trial, what is needed to litigate the case, and what most likely can be achieved.
- *Communicating regularly:* Communication is central to a respectful relationship with victims. Policies should reflect and respect local customs and dynamics. They also should ensure an open channel of communication before, during, and after litigation.
- *Educating:* Some victims have no real knowledge of what a legal process involves, so an education programme is essential.
- *Training staff:* Training for staff should deal with respectful treatment of sensitive issues related to gender, race, culture, and trauma.
- *Ensuring victims are prepared for court:* Prosecutors should make sure that testifying victims understand what a session in court will involve.
- *Protecting witnesses:* An effective protocol is required to protect victims from re-victimisation.
- *Referring victims to needed services:* If victims are in need of medical, psychological, educational, or social services, prosecutors should be ready and willing to connect them to reputable providers.

### ***Utilising Alternative Mechanisms to Advance Accountability***

In many countries, national courts lack the strength and independence to prosecute perpetrators of mass violations. In those countries, relying on international or hybrid courts often is not a viable option either due political or practical constraints. In the face of impunity, civil society can advance accountability through the creation of alternative mechanisms, such as unofficial tribunals or “people’s tribunals.” These unofficial mechanisms do not result in convictions with sentences that can be implemented, but they can effectively highlight the need for prosecutions, produce legal arguments on the merits of a case, while also generating a record of the truth.

Where it is not possible or appropriate to prosecute certain gross human rights violations, there is a consideration of setting up “truth trials” as initiated in Argentina. These “were an innovation in [the country’s] justice, and possibly in the rest of the Americas. They were unlike ordinary criminal trials in that judicial action was expressly limited to investigation and documentation, without there being a possibility of prosecution or punishment. They were based on the right (both of the relatives and society as a whole) to know the truth.”

#### *Examples of Alternative Mechanisms*

##### ***Russell Tribunal (1967)***

The Russell Tribunal, also known as the International War Crimes Tribunal, was an initiative organised by British philosopher Bertrand Russell, together with French philosopher Jean-Paul Sartre, to investigate and assess the United States’ military intervention and acts in Vietnam. The tribunal was constituted in 1966, and it held two sessions, one in Stockholm, Sweden and one in Roskilde, Denmark, in 1967. A panel of academics, activists, politicians, and others listened to the testimony of experts, victims, and eyewitnesses. The tribunal did not evaluate individual perpetrators’ culpability, but rather the culpability of states. It concluded, among other things, that the United States engaged in acts of aggression, that other nations were complicit in those acts, that the United States used weapons prohibited by the laws of war, that the United States subjected civilians to inhumane treatment, and that the United States committed genocide. Since 1967, civil society leaders have applied same model to create Russell Tribunals to evaluate atrocities committed in other contexts, such as in Argentina, Brazil, Iraq, and Palestine.



### ***International People's Tribunal 1965 (2015)***

International People's Tribunal 1965 was a civil society-led initiative seeking to address the mass violence committed in Indonesia in 1965. The tribunal, which was registered formally as a foundation, held hearings in The Hague, Netherlands on 10-13 November 2015. The tribunal's seven international judges listened to the testimony of factual and expert witnesses, and considered the charges brought by the prosecution, based on an extensive research report produced by over 40 researchers from Indonesia and elsewhere. In July 2016, the judges issued their ruling, declaring that crimes against humanity were committed by the State of Indonesia after the murder of six generals on 1 October 1965 and that the United States, the United Kingdom, and Australia were complicit in these crimes. The judges also concluded that the mass killings were intended to annihilate members of the Communist Party and supporters of President Sukarno. The judges recommended that the Indonesian government apologize to the victims, survivors, and their families; investigate the crimes found by the tribunal; and comply with recommendations made by the National Commission of Human Rights and the National Commission on Violence Against Women in their report.

### ***Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (2000)***

The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, another civil society initiative, was held in Tokyo in 2000 to examine allegations of sexual slavery during World War II by Japanese soldiers against young women (commonly referred to as comfort women or *jugun ianfu*) in Asia, particularly Southeast Asia. The tribunal involved hundreds of practitioners, academics, and victims. From 8-12 December 2000, the tribunal heard testimony and demands from each victim's home country. The tribunal's verdict stated that the state and the Japanese government, represented by Emperor Hirohito, were guilty of serious crimes against thousands of women in Asia who were forced into sexual slavery. The tribunal recommended an apology from Caesar and reparations to victims. The Japanese government subsequently issued an apology through its prime minister but the apology was later withdrawn, as was the reparations scheme that had provided compensation to the governments of several victims.

#### 4.10 | What are potential challenges to effective prosecution?

*In terms of justice through a legal court system in Sri Lanka, the impunity is so strong, even for normal justice processes to work, it's a real struggle and challenge.*

Sarala Emmanuel, Director of Suriya Women's Development Centre, Sri Lanka

Pursuing prosecutions comes with a unique set of challenges. These challenges are heightened in contexts of transition where a country may be emerging from a period of instability and the political balance of power does not support restoring the rule of law and accountability as integral parts of rebuilding the country. Some challenges include:

**Lack of political will:** In contexts of transition, those in power do not always support accountability as an integral part of rebuilding the country. Political will is the primary determinant as to whether or not prosecutions will be pursued. In addition to lack of political will, prosecutors in many post conflict countries have to contend with actual political interference with their work. In South Africa, virtually all the 400 cases referred by the TRC for prosecution were suppressed as a result of political interference from cabinet level.

**The judicial system itself:** A corrupted court system can deny meaningful prosecution. Fair trials demand that procedural safeguards are strongly intact, and impartiality of judgment is preserved. Judges, prosecutors, and investigators may lack experience in pursuing serious crimes, including mass rapes. In some cases, there are not sufficient resources provided for the defence of those accused.

**Financial difficulties:** Human resource limitations and competing budgetary obligations act as major hurdles to adequate prosecutions. High expenditures for investigations and trials can place heavy financial strains on a government emerging from a time of conflict and struggling to reach stability. In cases of mass human rights violations, there could be hundreds of witnesses, victims, and/or perpetrators. In-depth investigations, the gathering of evidence, and witness protection can be expensive. However, these costs need to be considered in light of the intended objectives and related benefits of tackling impunity head on. Allocation of resources, whether from domestic or international sources, must be balanced in terms of overall transitional priorities and the need to develop sustainable solutions.

**Legal obstacles:** Legal limitations, such as amnesty, statutes of limitations regarding particular crimes, and governmental/ diplomatic immunities, can all frustrate the quest for individual accountability at trial. Other obstacles include the absence of legal precedent and judicial conservatism.

**Concerns about stability and security:** Many countries in transition remain fragile and struggle to satisfy their obligations in the context of a tentative peace. In such situations, the threat of renewed conflict remains a worry. Former security force members or commanders are often the primary perpetrators of human rights violations and logical targets for potential prosecution in post-conflict periods. However, prosecuting them may be difficult because they may retain power and influence, as well as the propensity to destabilise fragile peace agreements. They may also be in a position to intimidate and tamper with crucial witnesses and evidence in order to sabotage and derail investigation and prosecution processes.



The Suriya people of Sri Lanka planting a tree.

*Inside Tuol Sleng Genocide Museum cells. The rooms are mostly empty now, but posters on the wall tell the stories of those who suffered and perished here. © Bjørn Christian Tjørrissen, used under Creative Commons 4.0)*

## 5 | Reparations



*More than 20 families of the disappeared got paid quite a fair amount . . . However, it has not really been . . . [seen as] justice because it's only in the form of cash compensation. There was nothing about truth being revealed. The investigation report was not opened to the public. People [reacted] against this policy.*

Pornpen Khongkachonkiet, Director, Cross Cultural Foundation, Thailand



## 5.1 | Why reparations?

The state's most fundamental duty to its citizens is to protect them from serious harm. When mass violations are committed by agents of the state, or with their acquiescence, or if the government has not undertaken effective steps to prevent those violations, then the state owes a duty to its citizens to repair the harm that has been done because of its failure to protect them.

Public international law includes the general principle that a violation of an obligation under international law gives rise to a duty to provide reparations (i.e. repairing the victim's life) to create a situation as if that violation had not been committed.

Following periods during which the state was unable or unwilling to protect its citizens, when security forces, courts, government officials, and others may have been involved in violations, or unable or unwilling to protect citizens, there is often a significant lack of respect and support for state representatives and institutions. In these contexts the state is a source of threat and fear, not of assistance and protection. It is vitally important that at the earliest stage possible in a transition the government provides a clear indication that things have dramatically changed. For this reason, reparations are sometimes referred to as a "message of care," an indication that the new government will produce a different future and that it cares deeply about its citizens. One of the most powerful ways to send this message is to provide reparations to victims who have suffered horrific fates because the state did not protect them.

The manner of suffering, the needs of victims, and the national contexts will vary considerably, as will the nature and form of the reparations. An important principle to bear in mind is that whatever level of assistance provided—whether to individuals, collectives, or communities—care should be taken to acknowledge the different experiences of each victim. Material assistance alone is not sufficient to heal victims. It must be combined with the opportunity for victims to tell what happened to them, and to be acknowledged and respected for that. It is also fundamentally important that the perpetrators of the crimes against them be held to account and reforms undertaken so that they and others will not be subjected to further violations. For this reason, reparations should be provided not as a separate mechanism but within a holistic transitional justice framework.



A memorial that documents victims who were detained, faced human rights violations, and who were disappeared under the Pinochet regime in Chile from 1973-1990.

## 5.2 | What are reparations?

Reparations are measures that acknowledge the experiences of victims of human rights violations, and that seek to repair the damage and harm done by those violations. Reparations may consist of material benefits as well as symbolic acts and programmes. Reparations should be designed to help restore the dignity and physical integrity of victims, compensate them for their losses, and recognise the irreparable harms they have suffered. Reparations should also contribute to changing the social and economic conditions that may have led to their victimisation.

Truth commissions have mandates to inquire into the root causes and nature of mass violations and make recommendations to address those violations and prevent recurrence. Such commissions often recommend reparations be provided to victims. In some cases, a court that has decided a person is guilty of gross human rights violations will order that perpetrator to provide reparations to the victims. This can assist, but the perpetrator may have few accessible assets and only the victims of that person's crimes will be included. More often the role of providing reparations falls to the state which may fulfil this duty through a range of programmes.

However, in many contexts in Asia, the concept of reparations remains mainly theoretical, an unfulfilled fundamental right of victims. Governments in countries where mass violations have been committed are often closely connected with perpetrators who deny the truth of what has taken place. Those governments often have a poor understanding of their obligations relating to reparations and the potential ways in which they could deliver the assistance and forms of repair. They are also often reluctant to discuss the possibility of reparations as their limited understanding extends only to paying lump sum cash payments to thousands of victims, which they can ill afford. This reluctance is often linked to the influence and powerful interests of perpetrators who seek to deny and hide what they have been responsible for, rather than accept the truth and try to repair the damage they have caused.

The right to reparations is enshrined in human rights treaties such as the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention for the Protection of All Persons from Enforced Disappearance. In addition, the International Criminal Court (ICC) has formulated principles on reparations for victims of crimes falling within its jurisdiction.

In December 2005, the UN General Assembly adopted *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* ("Basic Principles and Guidelines on the Right to a Remedy and Reparation"). The guidelines state "adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law."



President Barack Obama joined by Members of Congress and Agriculture Secretary Tom Vilsack, Interior Secretary Ken Salazar, and Attorney General Eric H. Holder, Jr., signs the Claims Resolution Act Bill of 2010 in the South Court Auditorium of the White House Dec. 8, 2010. (Official White House Photo by Chuck Kennedy)

### 5.3 | What are different forms of reparations?

The UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation* identify five forms of reparation:

- **Restitution** - Measures that seek to restore the victim to the condition or circumstances lost due to gross violations of human rights. Examples: restoration of liberty, citizenship, employment, and property.
- **Compensation** - Monetary or non-monetary damages paid to the victim for the losses experienced.
- **Rehabilitation** - Measures that seek to repair the lasting damage of human rights violations. Examples: the provision of medical, psychological, legal, and social services.
- **Satisfaction** - A broad category of measures that includes cessation of continuing violations; disclosure of the truth; a search for the disappeared or the remains of those killed; an official declaration and apology by the state to restore the dignity, reputation, and rights of the victim; judicial and administrative sanctions against perpetrators; and commemorations and tributes to the victims.
- **Guarantees of non-repetition** - Measures that seek to ensure that such gross violations of human rights do not occur again. Examples: civilian control of security forces; the independence of the judiciary; human rights education; mechanisms for preventing and monitoring conflicts; and the review and reform of laws and policies that contributed to the gross violations of human rights.



The Santa Cruz Massacre Memorial Monument in Dili, Timor-Leste. — David Stanley

## 5.4 | How are reparations delivered?

Reparations can be provided to individual victims, to groups of victims, or to communities. They may take the form of *individual* material benefits or *community* development programmes. Sometimes reparations will be allocated *collectively* to particular ethnic, political, or other groups that were targets of violations. They can be in the form of material assistance or they can provide some symbolic meaning to the victims. Reparations programmes may include a combination of these various elements. In all legal systems, courts can order compensation in cash as a remedy for damage caused by crimes or non-criminal harmful acts. However, when there are thousands of victims, or tens of thousands, and few perpetrators are convicted, the perpetrators may not have enough resources to pay everyone entitled to compensation. Powerful perpetrators may also have hidden their assets to avoid such accountability. Moreover, some human rights violations, such as rape or killing, are so serious that no amount of compensation can correspond to the harm or loss. Nevertheless, states should provide compensation to repair the lives of the victims as far as possible. Symbolic reparations to acknowledge and honour victims are also very important, but they should not be considered a substitute for material reparations.

### **Material and Symbolic Reparations**

Material reparations attempt to address victims' needs that arise from the physical, psychological, and moral harms suffered or from the economic loss caused by human rights violations. In many reparations programmes, modest cash payments are provided alongside access to medical care, education, housing, skills training, and employment and other economic opportunities. Other examples of reparations include compensation, whether as a lump sum or as pensions paid over time, and access to land or capital, such as small loans.

*While no amount of money will make up for the loss of a loved one, even a relatively modest payment can be critical to those living in poverty and can serve an important psychological role of acknowledging wrongs and providing an official, symbolic apology.*

Priscilla B. Hayner, truth commission and transitional justice expert

*Some reparations may be perceived as “blood money” paid in exchange for silence and impunity if they are not accompanied by other restorative and retributive measures.*

Jemima Garcia-Godos, transitional justice expert

While symbolic reparations may take a material form, they are intended to convey public acknowledgment (official or unofficial) of what victims and survivors experienced. In pairing material reparations with acknowledgment and memory, governments and societies can build civic trust, extend help and solidarity, and instil a “never again” ideal. Some examples are:

- formal letters of apology from the government;
- locating the remains of dead victims;
- issuing legal documents, such as death certificates; and
- conducting the (re)burials of victims.

*Symbolic measures usually turn out to be so significant because, by making the memory of victims a public matter, they disburden their families from their sense of obligation to keep the memory alive and allow them to move on. This is essential if reparations are to provide recognition to victims not only as victims but also as citizens and as rights holders more generally.*

Office of the United Nations High Commissioner for Human Rights

*Symbolic reparations such as museums and monuments need to be linked to processes that seek to improve the daily socio-economic conditions of victims and their communities.*

Ereshnee Naidu, memorialization and reparations expert



### ***Advantages and Disadvantages of Material and Symbolic Reparations***

In the short term, material reparations help to deal with immediate needs. In the longer term, they should ensure a sustainable and dignified life for victims and support for their dependents through, for example, scholarships, microfinance loans, and affirmative action.

On the other hand, material reparations can too easily overpromise and underdeliver. If payments for reparations are too low, they will not significantly affect the quality of life of the victims. Small payments may seem insulting, as the response is so minimal in relation to the massive loss and suffering experienced. At the same time, victims are usually poor and need any amount of assistance available. Government-sponsored compensation programmes with massive coverage may face enormous technical and political challenges that include the need to prevent fraud and ensure fairness. Very often, years of mass violations have destroyed the rule of law, and systems of transparency and accountability so the reparations programmes may easily become prey to corrupt officials. This adds to, rather than alleviates, the anger and suffering of victims. For this reason it is essential that clear lists of criteria and verification of victims are compiled, and that payment methods are transparent and closely monitored. Creating material reparations programmes such as health and educational services although cost-effective may appear to be ordinary development programmes that do not recognize the reason victims are being assisted nor acknowledge and honour their individual experiences. Acknowledgement of victims and designing programmes to fit the context are, therefore, very important.

Providing symbolic reparations can reinforce guarantees of non-repetition, instil a sense of dignity among victims and survivors, and offer them recognition by their fellow citizens. In some situations, a sincere apology by national or local leaders can be very significant for victims. Memorials serve as continuous symbols that honour those who suffered, and days of remembrance help to focus a country's attention on the lessons of the past. Symbolic reparations are relatively affordable and, by reaching large audiences, can promote collective memory and social solidarity.

At the same time, symbolic reparations offer little material benefit to victims. In the absence of other tangible reparative measures, and without an effective communication strategy, symbolic reparations may create the harmful impression of being offered as full reparation for harm suffered.

### ***Individual and Collective Reparations***

Individual reparations acknowledge the harm done to individual victims and provide concrete social and economic benefits to them. Although they play an important role in valuing each victim, they are inevitably selective, often prioritizing the most vulnerable victims. A major challenge is that limited resources are able to assist only some victims when there may be tens of thousands of victims, each of whom feels that he or she is entitled to reparations. Decisions to include or exclude victims can therefore be extremely difficult. Systems and criteria for making those decisions need to be clearly communicated to the public.

Collective reparations are benefits provided to a group of people that suffered from human rights violations as a group such as child soldiers, people in the same location or who belong to the same community, or those who experienced the same form of violation (e.g. survivors of a massacre).

Morocco and Peru offer examples of collective reparations. In Morocco, the government chose to prioritise the provision of economic opportunities and social services in regions that were deliberately neglected in the past under authoritarian rule because the people in those areas opposed the ruling regime. In Peru, collective reparations that include social services and funding for community projects are targeting provinces that, according to the truth commission, bore the brunt of violations during the conflict with Sendero Luminoso (Shining Path), the Communist Party of Peru.

Other examples of collective reparations include:

- affirmative action to restore the rights of groups, such as the right to vote, recognition of indigenous language, and other citizenship rights;
- investigating cases that involved particular groups of victims to bring to trial;
- providing a specialised medical facility for victims facing the same trauma (e.g., torture victims);
- rebuilding public facilities destroyed in the conflict that serve particular groups;
- protecting ancestral domains or communal cultural property.

## 5.5 | Where have reparations been implemented?

Reparations programmes have been carried out in various forms in many countries. For example, significant programmes have been implemented in Germany, Japan, and Italy after the Second World War, as well as in the US for the internment of Japanese Americans during the war. In Latin America, reparations were provided for victims in post-dictatorship Chile and Argentina. These programmes consisted of compensation, and varying degrees of restitution and rehabilitation. It is important to note that these countries could afford the cost of reparations and had the administrative and technical capacity to implement and maintain these programmes.

The need for reparations programmes to reckon not only with the consequences of human rights violations for victims, but also with the causes that led to those violations is a challenge for many countries.

In contrast to Chile and Argentina that were able to identify significant resources for reparations programmes, some countries that have emerged from a conflict or dictatorship, such as Timor-Leste, Nepal, Liberia, and Sierra Leone, are among the poorest in the world.

They face the common challenge of delivering basic social services and providing economic opportunities to all their citizens, most of whom are impoverished. During the transition from a period of mass violations there are few resources for those basic needs and reparations can easily be low priority on a national agenda. Although in some ways understandable, this fails to address the crucial need to repair relationships, provide material assistance to victims, and help them to recover a sense of respect and dignity. Those steps are not only important for the individuals and groups concerned, but for the whole country's efforts to break the cycle of violence and demonstrate that the future will be different.

### **Peru**

A high-level commission was established in early 2004 to follow-up on the recommendations of the Truth and Reconciliation Commission (CVR) that prioritised collective reparations but also included a few individual reparations programmes. The Congress then passed specific reparations legislation in July 2005. The Comprehensive Reparations Plan describes the categories of all victims eligible to receive reparations, including individuals and communities, and the type of reparations to which they are entitled. The government was not enthusiastic about committing to individual material reparations and sought to first implement collective programmes in the poorest provinces most affected by the conflict with Sendero Luminoso rebels. Notably, the reparations law excluded "members of subversive organisations." This effectively prohibited members of Sendero Luminoso from receiving reparations if they had been convicted of criminal offenses. Although many victims suffered more than one violation, the plan allows them to ask for compensation only once.

## **South Africa**

In South Africa, the process to award individual reparations limited potential beneficiaries to those who gave a statement to the Truth and Reconciliation Commission (TRC) and whose names appeared on the TRC's list of victims. In the TRC's 1998 report, reparations were recommended to include physical and mental health care, pensions, provision of education until senior secondary school level, skills training, as well as micro-credit and micro-projects for special categories of vulnerable victims. The South African government did not adopt the TRC's recommendations but did provide a single payment to recognised victims. In 2011, the government announced its intention to proceed with community reparations, and educational and health benefits policies although these were not developed with wide public participation. Only some 16,000 victims received the once off pro rata payment of USD 4000. There was some public participation in relation to the community reparations program, but it was woefully inadequate. The same applies to attempts to develop educational and health benefits which have all proven to be ineffective. As far as government is concerned, only those on the TRC's so-called closed list of victims qualify for reparations. Post-TRC, government declined to reopen the registration of victims who were unable to access the truth commission process, leaving tens of thousands without access to reparations. At the same time, victims groups continue to press for reparations.

## **Germany**

The most ambitious material reparations programme ever implemented to date has been the German government's programme for survivors of the Holocaust. The number and geographical dispersion of beneficiaries dwarf all other programmes combined. Implementation of the programme began in 1953 and continues to this day, growing in numbers and complexity. The programme is the most expensive undertaken; by 1993 the German government had paid out more than USD50 billion in the form of reparations to the State of Israel and indemnification to Holocaust survivors. The German Finance Ministry estimates that it will pay out almost USD20 billion more by the year 2030 when, according to its calculations, the last survivor will have died. In October 2010, Germany also paid USD94 million in its twentieth and final reparation payment arising from obligations imposed at the Treaty of Versailles at the end of World War I.

German Finance Minister Wolfgang Schaeuble (R) and Julius Berman, Chairman of the Conference on Jewish Material Claims Against Germany sign a revised version of the Article 2 (Claims Conference) during a ceremony to commemorate the 60th anniversary of the Luxembourg Agreement on November 15, 2012 in Berlin. With the Luxembourg Agreement West Germany assumed responsibility for the Holocaust and paid reparations to Jewish survivors. The new treaty widens the group of people eligible for payments and tailoring assistance to elderly recipients' needs. AFP PHOTO / JOHANNES EISELE via Getty Images



## **Chile**

In 1991, the National Truth and Reconciliation Commission recommended various reparations measures for the victims identified in its report and also the creation of the National Corporation for Reparations and Reconciliation (NCRR) to follow-up the Commission's recommendations and continue the process of identifying victims. For four years the corporation examined cases to determine who qualified for victim status. The least successful aspect of the corporation's activities was its investigations into the location or fate of disappeared detainees. The NCRR also operated a social and legal assistance programme that helped to expedite proceedings so that victims could enjoy the benefits to which they were entitled. These included monthly pensions for dependents of victims, pensions for peasants excluded from agrarian reform, health care through a Programme of Reparation and Integral Health Care (PRAIS), reparations for victims of torture and returning exiles, and assistance for reintegration of political prisoners. The NCRR also established an education and cultural programme, a legal studies and research programme, and an archive and documentation centre. After the NCRR's expiration, a permanent human rights programme was created within the Ministry of the Interior. Criticism regarding the exclusion of victims who survived detention or torture led to the creation of the National Commission on Political Imprisonment and Torture in 2003. This commission identified 28,459 victims of torture, including about 3,400 women who were sexually abused. A subsequent law provided for annual pensions (USD2,300–USD2,600) for the torture victims identified by this commission. Children born in prison or detained with their parents would receive a lump-sum payment of approximately USD6,800. Other reparations for survivors of torture included access to the Comprehensive Reparations Programme in Health Care, scholarships to attend university, and exemption from military service for their children. According to the government, the state paid out more than USD1.6 billion in various reparations packages from 2000–08.

## **Tunisia**

In Tunisia, the 2011 revolution revealed the extent of abuse committed by Ben Ali's government. Several *ad hoc* reparations initiatives were designed in the years following the fall of Ben Ali's dictatorship that included monetary compensation, and access to health care and public transportation, but the new government has yet to design a coherent reparations policy. In 2014, the Organic Budget Law had previewed in its Article 93 the creation of "a special account called the 'Fund of Dignity and Rehabilitation of Victims of Tyranny' which contributes to compensation for victims of tyranny under transitional justice." In May 2018, the Truth and Dignity Commission issued a Framework Decision determining the Criteria for Reparation and Rehabilitation, methods of calculation of material and moral reparations, methods of payment, integration and professional reintegration, rehabilitation, recovery of civil and political rights, and States apologies. However, activation of the Dignity Fund remains problematic, especially when it comes to securing the requested resources, which are derived from a percentage of funds including the public funds and resources resulting from the implementation of arbitral awards.

## **Phillippines**

In 2013, the Philippine Parliament passed the Human Rights Victims Reparation and Recognition Act, accompanied by the creation of a Human Rights Victims' Claims Board to provide reparations to victims of gross human rights violations, including disappearances and rapes, committed during the regime of former President Ferdinand E. Marcos from 1972 to 1986. In September and October 2017, the Board published a list of the first 4,000 of 75,730 applicants to receive monetary reparations.



## 5.6 | How should reparations address gender issues?

*A program that fails to provide redress or justice to women in effect weakens the link between the goals of reparations and their contribution to the establishment of a democratic state.*

Ruth Rubio-Marin, Professor of Constitutional and Public Comparative Law

Reparations can be an important opportunity to transform structural and cultural inequalities between men and women. In the last decade, women have pushed for a more transformative approach to reparations. At an international conference held in Nairobi in March 2007 on women's rights to remedy and reparations, women activists questioned the definition of "restitution" as restoring a victim to the condition before the violations took place and cautioned against restoring women to a situation of injustice and oppression. The conference developed a declaration that advocated a transformative approach to reparations.

Some key aspects of the declaration stated that "reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls." Highlighting the full participation of women and girl victims in all phases of designing and implementing a reparations process, the declaration also warned against governments substituting development assistance for reparations. They also highlighted the need to recognize gender-based violence:

*Truth-telling requires the identification of gross and systematic crimes and human rights violations committed against women and girls. It is critical that such abuses are named and recognized in order to raise awareness about these crimes and violations, to positively influence a more holistic strategy for reparation and measures that support reparation, and to help build a shared memory and history.*

Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation

The transformative potential of reparations was reiterated in a report by the UN Special Rapporteur on Violence Against Women, Rashida Manjoo: "Adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence, but instead should strive to have a transformative potential. Reparations should aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence the women experience before, during and after the conflict."

The reparations programme in Sierra Leone exemplifies a gender-sensitive approach to reparations that gives particular attention to the needs of women who were victimised during the conflict. The programme embraces a harms-based approach that focuses on vulnerability and not just violations when prioritising reparations for victims. It therefore recognises the harm done to more marginalised groups, including women and children. Moreover, the inclusion of victims of sexual violence as a priority is a positive development. The list of potential victims is kept open to ensure the widest possible access to the reparations programme. This is particularly important for victims of sexual violence who may not have come before the truth commission because of the stigma surrounding these violations.

## 5.7 | Who is responsible for providing reparations?

States as well as individual perpetrators and corporations that committed violations may all be responsible for providing reparations. States involved in the commission of human rights violations or that fail to take reasonable steps to prevent them are obliged to provide reparations to victims of those violations. In cases where violations were committed by a foreign country that is reluctant to provide reparations or committed by regimes that are no longer in power, states inherit the obligation to provide reparations or assistance to their citizens who are victims.

According to the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, “[S]tates should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.” Such parties may include individual perpetrators or groups of perpetrators. It has been argued that the parties liable also may include corporations complicit in the commission of human rights violations. Given the UN’s guidance on reparations, states may be responsible for providing reparations:

- to victims of violations committed by non-state actors (e.g., Peru’s programme for victims of the Shining Path rebel group);
- for conflicts in which foreign states or entities are involved (e.g., the conflict in the former Yugoslavia, Bangladesh, and Timor-Leste); and
- and for abuses involving resource extraction committed by state agents or even by non-state actors, such as corporations (e.g., in the Democratic Republic of the Congo/DRC; Aceh, Indonesia; and Myanmar).

In some cases, the assets of individual perpetrators can be applied to reparations. In the Philippines, victims of the Ferdinand Marcos dictatorship submitted their demands to a Claims Board that was established by law in 2013. In May 2017, the government began to use USD200 million of the Marcos family’s recovered Swiss bank deposits for reparations. In Colombia, the Constitutional Court has ruled that assets confiscated from leaders of paramilitary groups can form part of a reparations fund under the country’s Peace and Justice Law. Under the Rome Statute, the ICC can order assets of convicted perpetrators to be forfeited and placed in the Trust Fund for Victims. The execution of reparations orders, however, is contingent on the capacity and commitment to execute them.



A map on the ground floor of the District Six Museum in Cape Town; visitors who are former residents of District Six are invited to draw place markers on the map to remember their homes and other important localities. Picture re-posted via Wikimedia Commons and is in the public domain.

## 5.8 | What is the international community's role in ensuring reparations?

The international community has contributed resources for reparations in some situations as a gesture of support for victims. The European Union, for example, contributed significant funding to Morocco's community reparations programme for victims of repression under King Hassan II. The World Bank, without characterising its support as a human rights-oriented measure, contributed funds to the urgent reparations programme administered by Timor-Leste's Commission for Reception, Truth, and Reconciliation (CAVR). The World Bank also contributed funds to assistance measures for conflict victims in Aceh (Indonesia) and Nepal.

The UN Peacebuilding Commission gave USD3 million to Sierra Leone for its reparations programme, but this must be viewed in context as USD36.5 million was provided through a multi-donor fund administered by the World Bank for a disarmament, demobilisation, and reintegration programme. Supporting reparations can be seen as a way to reach the most vulnerable, as many victims are also the poorest and most marginalized in their communities. However, truth commissions like the CAVR have also pointed to the complicity and silence of the international community during the period when mass violations were taking place. Thus, international assistance for reparations can be part of a shared responsibility for the commission of mass violations.

### ***Examples of Innovative reparations***

#### ***Timor-Leste***

Timor-Leste's truth commission, CAVR, released its final report entitled *Chega!* in 2005. CAVR uncovered a broad range of violations of civil and political as well as economic and social rights. CAVR found there were 102,800 conflict-related deaths during the 25 years of Indonesian occupation. Of those, an estimated 18,600 Timorese were killed or disappeared due to armed violence, whereas the majority of casualties (i.e., 84,200 adults and children) were due to conflict-related famine that resulted in illness and deaths.

With funding from the World Bank, CAVR implemented an interim reparations programme that provided small amounts of cash to victims who needed assistance immediately, rather than waiting for years for Parliament to accept the Commission's recommendations so they could be implemented. The CAVR's victim support unit distributed approximately USD200 each to about 700 victims, facilitated healing workshops, and supported local groups to conduct home visits to those most in need. In its final report, however, the CAVR recommended that only the "most vulnerable victims" should receive reparations; namely, victims of torture, those disabled because of armed violence, the widows of men who disappeared or were killed, victims of sexual violence, and children born of rape. Even with this narrow set of victim categories, the government of Timor-Leste has been reluctant to implement a reparations programme.

The CAVR argued that Timor-Leste's responsibility for reparations was rooted in Timorese values and the new nation's commitment to uphold, respect, and enforce human rights and standards of humanitarian law. At the same time, the Commission found that "the highest proportion of institutional responsibility for human rights violations falls on the shoulders of [the] State of Indonesia . . . Indonesia has the moral and legal responsibility to repair the damage caused by its policies and state agents." Pragmatically, CAVR pointed out: "Learning from the experience of repairing past violations in other nations, the struggle to gain reparations from an invading nation is one that may take time. In the meantime, many of the victims can no longer wait. Timor-Leste must step into the void." It further stated: "The international community, who looked the other way when atrocities were committed, also bears a portion of this responsibility."

In October 2016, a decade after CAVR issued its report and after continuous campaigning by civil society and victims' groups, the Prime Minister signed a Decree-Law to establish the Centro Nacional Chega (CNC), citing it as "a place of research and learning about the history of Timor-Leste and preservation of memory, promoting solidarity towards the most vulnerable survivors of human rights violations in the past." This is one of few examples globally where a permanent national institution has been created to implement the recommendations of a TRC. One of the major weaknesses of truth commissions in other contexts is that the deep inquiry and recommendations, including for reparations, are often not implemented due to the lack of a specific institutional home and funding.

## Sierra Leone

Sierra Leone's Truth and Reconciliation Act of 2000 did not specifically provide for the creation of a reparations programme. The Act, however, did charge the truth commission with "responding to the needs of victims" and allowed it to make recommendations regarding a separate fund, the Special Fund for War Victims. Consequently, the commissioners decided to devise a reparations programme and advised the government to implement their recommendations as one way of providing redress to the victims of human rights violations. The lack of financial resources has stalled the implementation of the reparations programme.

In 2008, the UN Peacebuilding Fund (PBF) provided USD3 million to implement a victim registration process and provide victims with some support, such as fistula surgeries for women victims of sexual violence and symbolic rituals to acknowledge victims. The interest of the international community and donors in supporting reparations for victims has appeared lukewarm, especially when compared with the international funding provided for disarmament, demobilisation, and reintegration of combatants. After the initial round of reparations funded by the PBF in December 2009, the Sierra Leone government launched the War Victims Fund (WVF) whose programmatic activities were implemented by the National Commission for Social Action. The WVF served five categories of war victims, namely amputees, war wounded, war widows, child victims, and victims of sexual assault.

Given the scale of victims' needs, further programmatic endeavours are necessary, and it remains important for civil society and victims to continue demanding that the government implement the truth commission's recommendations to mobilise resources for reparations. This includes allocating a proportion of tax revenue for the WVF and exploring options with the Residual Special Court of Sierra Leone to trace, recover, and partially allocate the assets of convicted perpetrators for reparations.



Freetown, SIERRA LEONE: Kadiatu Fofanah, who lost her legs during a civil war in Sierra Leone, leaves a mass 02 April 2006 at the amputees camp near Freetown. Liberia's warlord turned president Charles Taylor is due make his first court appearance in Sierra Leone 03 April, on charges of crimes against humanity in Sierra Leone, murder, sexual violence and unlawful use of child soldiers.— Getty Images



### ***Assisting Women Victims in Nepal and Aceh, Indonesia without Acknowledgement***

In **Nepal**, women played an important role during the people's movement in 2006, leading demonstrations that resulted in peace talks among Maoist rebels, a seven-party coalition, and the Nepali government where a 33% quota ensured the presence, if not always the empowered participation, of women parliamentarians. Prior to the peace talks, many women in the rural areas had also joined the Maoist rebels as combatants (about 20% of the combatants were female). The peace agreement (CPA) acknowledged the rights of women and committed both parties to take action to stop violence against women and adhere to existing international obligations to eradicate discrimination against women and discrimination based on caste, class, and ethnicity. The CPA also included the establishment of a truth commission and a disappearance commission, major reform measures regarding elections, and a new constitution. However, the establishment of these commissions took more than a decade. In the meantime, the Ministry of Peace and Reconstruction administered cash grant payments of about USD1400 to almost 14,000 victims or their family members under an interim relief programme. The programme also provided scholarships, medical treatment, and skills training to some victims. A task force established by the Ministry to collect information about the violations and worked with local peace committees to conduct a verification process. However, the scheme prioritized victims of killings, disappearances, and lost property, and excluded victims of torture, rape, and other serious violations.

In **Aceh, Indonesia**, after more than three decades of conflict, a tsunami ravaged the coastal villages and towns in Aceh killing some 200,000 persons. This shocked the Indonesian government and the Acehese rebel group (GAM) into agreeing to re-enter peace negotiations. The Helsinki Memorandum of Understanding, signed in 2005, included the promise to provide land, employment, and social security to former combatants, political prisoners, and all civilians who suffered a demonstrable loss. Under the local agency for reintegration (BRA), the government provided 20,000 widows with a payment of USD300 each. However, problems with transparency and lack of acknowledgment of the violations for which compensation was received left victims dissatisfied. One victim complained, "I feel sick in the heart. Information is more important, and the truth; this money is not enough." Under a separate scheme, conflict-affected communities were prioritised for development assistance. But again, without any special process to listen to victims living in these communities, this assistance had little reparative impact for victims. Following more than a decade since the peace agreement was signed, a local truth and reconciliation commission was finally established in 2017. The commission is mandated to implement a programme to meet victims' urgent needs as well as recommend a holistic reparations programme.

## 5.9 | What is the role of victims in designing and implementing reparations?

... [V]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

### United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation

Reparations are intended to acknowledge the experiences of victims and address their needs. The design, implementation, and monitoring of reparations programmes should ensure the meaningful involvement and participation of victims from the outset. In some countries this is done by including leaders of civil society organisations in the state’s reparations policy-making bodies. However, representation may not be sufficient. In Sierra Leone, for example, only two civil society representatives sat on the reparations steering committee, while in Peru, only one human rights organisation that works with victims was part of a state reparations council. Consultations with victims and survivors should be undertaken at a community level during all phases of designing and delivery of a reparations programme. Needs and priorities of victims and survivors are not uniform. Within victims’ groups, women, children, and members of socially marginalised ethnic groups or classes are often overlooked.

A major mistake has been made in some contexts where appointees to bodies responsible for designing and implementing reparations do not have significant experience in dealing with victims and defending human rights but are placed in those positions for political reasons or as some kind of reward for other, unrelated services. Civil society leaders who have a long history working with victims are far more likely to understand the relevant issues than government officials and political appointees who have no relevant experience. Therefore, those who are appointed to serve on reparations committees and commissions should be required to have direct experience working on behalf of victims.

*In the beginning, the government promised to give us reparation, but at the end, the government is now trying to play hide and seek. They don't give us a [sic] opportunity to express our views. They don't call us into their commissions, to present our ideas or our feelings about the whole thing—they just sum up and go and take decisions on their own. So therefore I am saying, there can't be reconciliation without taking those people who were victims into their board.*

Xolile Dyabboi, torture survivor testifying to the South African TRC

Reparations policies should clearly state the categories of violations whose victims will receive reparations and the nature of the reparations they will receive. There must be clear criteria to help determine whether an individual is eligible for reparations. The classification of victims should be based on clear principles such as those in the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation*. For example, a reparations programme needs to have a clear definition of the elements of torture to determine who are victims of torture and, therefore, eligible for reparations. Someone who has been beaten as part of a family dispute, or who was injured while a thief was carrying out a robbery, needs to understand that he or she is not a victim of torture, why this is so, and that he or she will not be eligible to receive reparations. Such distinctions can be difficult to determine, but those administering reparations must be prepared to address such challenges that inevitably arise. There must also be ways to verify that an individual’s story or claim is reliable. For example, sometimes representatives of local religious organisations or village leaders who know the claimant can verify a victim’s claim.



Rumoh Geudong maquette presented during the tragedy commemoration in Aceh, Indonesia. — AJAR

Reparations programmes should focus on those with the greatest need and those facing the greatest challenges in repairing the damage and harm they have suffered. Conflicts often involve different political, ethnic, religious, or other groups. Therefore, great care should be taken to ensure that reparations are not affected by factors that favour one or more groups or individuals. If reparations programmes are unfair, they can deepen feelings of anger and unfairness rather than lessen them, particularly if the mechanisms become corrupted and funds allocated for needy victims find their way into the pockets of others who do not deserve them. The management of expectations is a critical challenge. As soon as there is information that a reparations programme will be implemented, many people will expect to be included.

However, those whose houses were destroyed, for example, may not be included if funds are insufficient for restitution of property. Others who were combatants—members of militia or government troops who were wounded during fighting—may also feel they are eligible to receive reparations. It is important to clearly explain at the outset of any reparations programme who will be included, the criteria that will be used to make those decisions, what victims will receive, and which categories of victims will not be included. It is also important that everyone understood the government's obligation to provide assistance to victims, especially when many other poor people require social assistance.

### **ICC Trust Fund for Victims**

The ICC's Trust Fund for Victims (TFV) has a two-fold mandate: a) to implement Court-ordered reparations and b) to provide physical, psychological, and material assistance to victims and their families. Under its assistance mandate, as of December 2017 the Trust Fund had provided support to over 400,000 victims of crimes under the jurisdiction of the Court through physical and psychological rehabilitation and material support at both the individual and community levels. The Trust Fund has also provided development assistance to victims in some communities affected by violations as a way to acknowledge that there are more victims than the ones whose cases have come before the ICC. Since its founding in 2004, the Trust Fund has supported programmes under its assistance mandate in four countries, namely Uganda, the Democratic Republic of the Congo (DRC), Central African Republic (CAR), and, beginning in 2018, Côte d'Ivoire. Activities the Trust Fund has supported or currently supports include:

- provision of medical treatment for victims with disfiguring injuries to reduce the stigma they face and to facilitate their reintegration;
- rehabilitation and reintegration of child soldiers, including girl combatants and abductees, through education, family reunification, foster placement, and vocational training;
- improving access to reproductive health services, counselling, and psychosocial support for survivors of rape;
- provision of opportunities to improve household livelihoods through agricultural and micro-credit initiatives;
- promotion of radio for justice, a community-based radio approach that focuses on transitional and restorative justice to heal memories; and
- acknowledgment of atrocities and promotion of reconciliation through projects that bring community members together to express their trauma and build solutions.

Although the Trust Fund faces many challenges and criticisms in its effort to implement a difficult mandate, its parallel focus to provide assistance to communities affected by mass violations provides an important example for countries dealing with thousands of victims.



Project beneficiaries of the previous cycle of the Trust Fund for Victims assistance programme in the Democratic Republic of the Congo — Trust Fund for Victims

## 5.10 | Can reparations programmes address land issues?

*For us reparations would mean recognition of our land rights, of our identity and the needs for basic social services that should have been given to us anyway . . . We are happy to see that in the [Truth, Justice, and Reconciliation Commission] report . . . indigenous peoples' identity must be recognised and mustn't be subsumed under a monolithic concept of identity.*

Jennifer Corpuz, indigenous peoples' advocate, Philippines

Possession and control over land and natural resources has been a central cause of many armed conflicts but is often left unresolved by transitional justice mechanisms. Only a few reparations programmes have dealt directly with the distribution of land as well as the equitable allocation of profit from natural resources. In some cases, such as in Sierra Leone, Timor-Leste, and Peru, truth commissions looked at violation-related issues involving land and resources, but the corresponding reparations programmes either were silent about addressing inequities connected to land or failed to implement components designed to correct those imbalances.

In Nepal, the inequitable distribution of arable land has been a long-festering issue, but neither a proposed truth commission nor an ongoing assistance programme for conflict victims address this concern. While Ghana's national reconciliation commission recommended steps dealing with land and property, these were mostly intended to provide restitution rather than to redistribute assets.

Conflict over access to land and resources is common in many settings and addressing these legacies presents profound challenges. Efforts, such as the dedicated land restitution process in South Africa, have been tested by a number of adverse contextual factors that include weak administrative and support systems. Furthermore, in many post-conflict societies, women continue to be denied access to land ownership, a pressing issue to be addressed. It would be a mistake to leave this issue for reparations measures alone to address. If a reparations mechanism must be responsible for resolving complex land issues, the depth of those challenges could paralyze the process and prevent other forms of reparations from being provided. Rather than simply a reparative justice measure, addressing issues of land and resources should be part of a comprehensive transitional justice agenda. Specifically designed mechanisms for land reform must recognize the need to rebalance rights, such as the rights of women, and the importance of addressing how land issues are linked to conflict and historical injustices. In transitional contexts, the potential for unresolved land issues to reignite conflict and destroy hopes for recovery and development should be recognized so that they receive appropriate priority and resources in relation to other policy imperatives.



Block of Women Memorial at the site of Old Synagogue in Berlin, Germany.



***Lullabies are shared,  
Mothers are alone.  
The journey at its end,  
Moves towards the beginning.***

*Lullabies, 2017*

Jansila Majeed, Women's Action Network, Sri Lanka  
(beginning stanzas of a poem about mothers looking for their disappeared children)

## 5.11 | How does memorialisation contribute to reparations?

Memorialisation is the act of collectively recognising and remembering past human rights abuses in order to honour victims and help build a more democratic, peaceful, and just future. A memorial is any process, event, or structure that provides a mechanism for remembering. It is a form of reparation for victims but can contribute to all the pillars of transitional justice.

In societies where past human rights abuses remain hidden or partially concealed, memorials can serve as powerful reminders of what has taken place. They provide a lasting reminder of the experiences of victims and the recognition and honour due to them. Memorials can also stimulate dialogue and debate around the lessons of the past for the future. They remind societies of the need to uncover and share the truth, bring those responsible for mass atrocities to account, and undertake the reforms necessary to avoid recurrence.

Unfortunately, memorials can also be misused to promote versions of history that are not true, support a victor's false account of an event, or present an interpretation of history that denies the experiences of victims. Memorials that are not based on historical truth will promote further division and hatred rather than unification and healing. If memorials are based on a distortion of history, they may conceal the truth from coming generations, denying them the lessons of the past and making it more likely that the violations will be repeated.

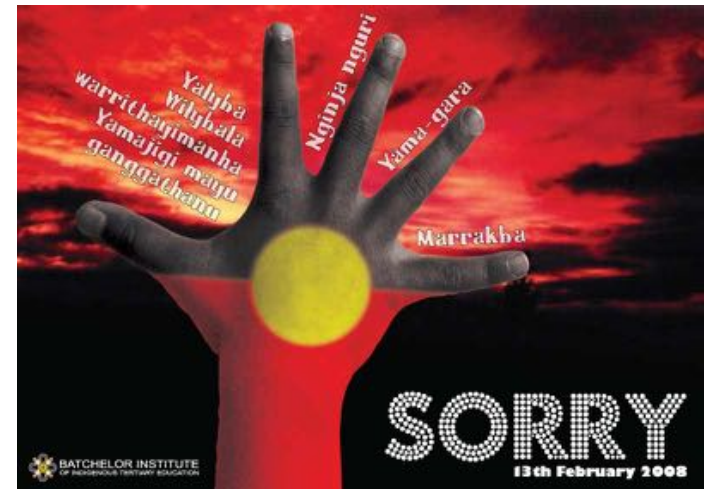
*The Indonesian National Women's Commission greatly values the effort by civil society to commemorate the 1998 May Tragedy. This entire effort is intended to ensure the fulfilment of victims' rights, break impunity, and prevent the repetition of similar incidents.*

Indonesian Women's Commission Press Release, 13 May 2014  
remembering May 1998 riots and mass rapes against Chinese-Indonesian women

## 5.12 | What forms do memorials take?

Memorials can take a variety of forms and can vary in scale from small local initiatives to grander projects that seek to transform sites of mass atrocity. The form and nature of the memorial should be carefully decided on so that it will stimulate contemplation and learning. Memorials can provoke a range of responses from public acknowledgement and national recognition to personal reflection, mourning, pride, anger, sadness, or curiosity about what happened in the past. A well-designed memorial can stimulate support for peace and reconciliation. Memorials are often silent in relation to the various ways in which women are involved and the impact of violations and conflict on them. Special care should be taken to ensure that these issues are included in the design of memorials.

For ease of reference, memorials can be loosely categorised into four forms: constructed memorials, sites of conscience, anniversary dates and commemorations, and other activities.



One of three posters produced by Batchelor Press/Batchelor Institute to commemorate the day Australian Prime Minister Kevin Rudd apologized to the stolen generation (13th February 2008) — Batchelor Press



Front side of Liberation War Museum —  
Mohammad Fazla Rabbe

The Liberation War Museum was established in Bangladesh in 1996 to commemorate martyrs and memories of the 1971 war. It seeks to show how popular struggle and human sacrifice contributed to the fundamental principles of democracy, secularism, and nationalism that are embodied in the Bangladesh constitution.

## Constructed Memorials

Constructed memorials are structures or institutions built at the international, regional, national, or local level to memorialise individuals or an event.

They may include the following:

- museums and commemorative libraries;
- monuments, including walls listing the names of victims; and
- virtual memorials or museums on the internet.

<b>Examples of constructed memorials</b>
<b>USA</b> The United States Holocaust Memorial Museum was built in Washington DC in 1993 to honour victims of the Holocaust and to “inspire citizens and leaders worldwide to confront hatred, prevent genocide, and promote human dignity.”
<b>Bangladesh</b> The Liberation War Museum was established in 1996 by civil society to collect and disseminate information about the Liberation War of 1971 against Pakistan. A multimillion-dollar museum and research centre to house the collection, built with funds from the government and civil society, was inaugurated in April 2017.
<b>South Africa</b> The Thokoza Memorial was unveiled in 1999 to honour hundreds of people from Thokoza Township who were killed during the internecine violence that accompanied the negotiation process for democracy from 1990 to 1994.
<b>Chile</b> In Santiago, the Museum of Memory and Human Rights, inaugurated in 2010 by then President Michelle Bachelet, commemorates the victims of human rights violations during Pinochet’s regime from 1973 to 1990.
<b>Philippines</b> On 13 July 1994, in Baclaran, Manila, families of the Victims of Involuntary Disappearances (FIND) unveiled the Flame of Courage Monument dedicated to the memory of the lives lost fighting for people’s rights. The date also commemorates the ninth anniversary of the disappearance of Redemptorist priest, Fr. Rudy Romano. This monument bears the figure of a woman holding a torch. Beside her is a child carrying a picture of his father. The mother and child symbolise the hope of many families to be reunited with their disappeared loved ones.  In 2007, a civil society initiative, the <i>Bantayog ng mga Bayani</i> or Monument to the Heroes, was opened to the public in Quezon City, Manila. Dedicated to heroes of resistance to martial law, this memorial centre includes two previously-constructed monuments—the Wall of Remembrance and the Inang Bayan monument that shows a fallen man held by the hand of a woman symbolizing the Motherland—and a new museum holding memorabilia of the resistance movement.  The Martial Law Museum is an online museum launched in 2017 by Ateneo de Manila University to educate others about Martial Law in the Philippines, particularly from 1972 to 1986, and memorialise its victims.
<b>Indonesia</b> In 2015, the May Needle (Jarum Mei) was inaugurated. This monument, initiated by a local community with support from Komnas Perempuan and the city government of Jakarta, is a memorial for members of the community, mostly young people, who died during the riots of May 1998.



## Sites of Conscience

Sites of conscience, also referred to as found memorials, are spaces or structures that hold commemorative meaning due to their former role or use.

Many of these sites, which include graves, former torture centres, concentration camps, buildings used by a previous regime, and locations of mass killings or genocide, have been transformed into museums or memorials.

<b>Examples of sites of conscience</b>
<b>Cambodia</b> The former prison and torture centre, Tuol Sleng, was made into a museum designed to show the violence committed by the Khmer Rouge and to compensate for the lack of a state-sponsored memory project.
<b>Senegal</b> Built by a Dutch merchant in 1776 and situated on Goree Island off the West African coastline, the Maison des Esclaves (Slave House) has come to symbolise the Atlantic slave trade more than any other building in the world.
<b>Northern Ireland</b> A section of the Long Kesh prison, also known as “The Maze”, is being turned into a conflict transformation centre. The project has generated considerable controversy between and within Republican and Loyalist communities, with concerns raised about the site being used to eulogise their respective causes.
<b>Argentina</b> A museum has been made at a former naval school that was used as a clandestine detention and torture centre during the dictatorship.
<b>Timor-Leste</b> The former Comarca Balide prison, built during the 1960s by Portuguese colonisers and used as a site of interrogation, torture, and repression during Indonesia’s occupation, has become a heritage site. From 2002–05 it served as headquarters for the CAVR. It now houses a permanent exhibition commemorating Timor-Leste’s struggle for independence and is the office of the CNC tasked to oversee implementation of the CAVR’s recommendations.
<b>Chile</b> The <i>Memorial del Detenido Desaparecido y del Ejecutado Político</i> , located in the Santiago general cemetery, is a memorial to those detained, disappeared, or killed during military rule. It has become an important meeting site and a well-known component of the Santiago landscape.
<b>Russia</b> The Gulag Museum is housed in a former Stalinist labour camp that served as a principal place of confinement for political prisoners from the 1930s until the late 1980s. It is the only Stalinist labour camp to be opened as a museum.
<b>South Africa</b> Constitution Hill is the site of South Africa’s Constitutional Court and is built on the grounds of Johannesburg’s oldest prison that has been converted into a heritage site. The prison held many of South Africa’s political prisoners, including Mahatma Gandhi and Nelson Mandela.
<b>Aceh, Indonesia</b> Rumah Geudong is an abandoned detention and torture centre in Aceh. Through healing and memory work conducted by a local NGO in connection with Aceh’s TRC, some community members and survivors have begun speaking out about the atrocities that took place there. In 2018 the community erected a small monument to remember the past.

### ***Anniversary Dates and Commemorations***

Certain days, such as anniversaries of coups, battles, or other activities relevant to conflict or peace-making, serve as important opportunities to memorialise events from the past. Governments often observe these days as national holidays, encouraging citizens to pay homage to the past.

#### ***Examples of anniversary dates and commemorations***

##### **Timor-Leste**

12 November is National Youth Day, a public holiday that commemorates the 1991 Santa Cruz massacre during which 250 East Timorese were killed. The day is marked by processions where participants carry portraits of the victims and mark victims' graves with flowers.

##### **Sri Lanka**

Maaveerar Naal is observed on 27 November by Tamil people to remember the death of militants who fought for the Liberation Tigers of Tamil Eelam (LTTE). The first Maaveerar Naal was held in secret in 1989. The commemoration, which is still highly restricted by the government, involves meetings, marches, and religious celebrations.

##### **South Africa**

16 June has been declared National Youth Day in honour of the 1976 Soweto student uprising when hundreds of black school children took to the streets in protest against inferior education and for being taught in Afrikaans. 9 August is National Women's Day and commemorates the 1956 march of 20,000 women in protest of the country's pass laws that reinforced apartheid by requiring non-European South Africans to carry government-issued passes to travel to certain areas of the country.

##### **Australia**

Since 1999, 26 May has been labelled "Sorry Day" to recognise the historic mistreatment of Aboriginal peoples in Australia.

### Other Types of Remembering

Activities focused on framing or reframing memories are an imaginative form of memorialisation. In some instances they can serve as a powerful means to encourage empathy with the experiences of others. Examples of other memorialisation activities include:

- heritage trails or marches;
- demonstrations or vigils;
- walking tours or parades;
- public apologies; and
- performance art.



A Cantata for Voice, Tape & Testimony draws from testimonies collected by South Africa's Truth and Reconciliation Commission (TRC) after the end of apartheid. Set to music and illuminated by projected text and images, the work captures the communal and individual experiences of both transgressors and victims of the atrocities of apartheid.

#### Examples

##### Indonesia

Since 2007, families of victims, activists, and sympathisers, holding black umbrellas, have gathered every Thursday to stand in silence in front of the Indonesian Presidential Palace to call on the government to resolve cases of past human rights abuses.

##### Argentina

In the Plaza de Mayo in Buenos Aires, mothers and grandmothers participate in a weekly march wearing signature kerchiefs and carrying placards to protest the disappearance of their children and grandchildren.

##### South Africa

"Rewind: A Cantata for Voice, Tape, and Testimony", a performance piece conceived to mark the tenth anniversary of South Africa's Truth and Reconciliation Commission, uses voice, song, and image to commemorate those who suffered under apartheid.

##### Timor-Leste

On International Day for the Elimination of Violence against Women Day, 25 November 2017, women survivors walked with young people across the city speaking about the atrocities they experienced in various detention sites in Dili.

### 5.13 | How can participation be ensured in order to strengthen ownership of memorials?

Memorials can bring people together, but they can also divide. They can create spaces for peace and the validation of people's experiences, or they can breed contestation, hostility, and exclusion. Imagine, for example, the feeling of victims who, on their daily trip to the local market, must pass a statue dedicated to a military leader responsible for the mass killing, rape, and torture of members of their community.

Designing a memorial can be far more complicated than might be expected. The most important principle to keep in mind is that victims must take a central role in the design and implementation of the memorial. The process can bolster or undermine the credibility and legitimacy of the memorial, and therefore determine the success or failure of the project. A key principle to uphold is that memorials should never speak on behalf of victims and survivors, or in memory of them, without thorough consultation and collaboration with important stakeholders. The process, the products, and the methods of delivery must take into account local needs, priorities, and interests. Important guidelines relating to memorial design include the following:

- Consider *who will create the memorial*. Will it be victims themselves, men, women, or representatives of particular communities?
- *Define the objectives*: Communicate with community members to help define and focus the objectives of a memorial.
- *Define the community*: Who are the different stakeholders and how do their views differ?
- *Promote transparency*: Create a process that makes information about the memorial project available through public meetings and other means.
- *Research options*: Conduct focus groups and interviews with experts, local politicians, and other key stakeholders.
- *Tour the prospective sites*: Conduct tours to stimulate debate about community needs and desires in relation to any site considered for memorialisation.
- *Create an archive*: Collect stories and memories associated with a site of conscience.
- *Present findings*: Hold discussions and receive feedback from the relevant communities.
- *Create publicity campaigns*: Raise awareness about the project as widely as possible.

#### ***Additional Tips for Creating Memorials***

- Focus on *presenting the facts* rather than a single, official narrative.
- Be sensitive to gender, political, racial, and ethnic bias, and avoid subjectivity.
- Seek to *avoid the shortcomings of "dark tourism"* or tours of mass atrocity sites such as exploitation of victims or oversimplification of conflicts.
- *Consider the economic circumstances* of affected communities so that memorialization does not disadvantage them.
- Link the past with the present.
- *Consider the timing* of the memorial's creation and opening.
- Consider the needs and interests of the participants/visitors.
- Strive for a "*living memorial*" or a memorial that can incorporate new information and grow from the experiences of others.



Rumah Geudong, one of the most well-known torture sites in Aceh.



## 6 | Institutional Reform



*A UN peacekeeper in the Democratic Republic of the Congo (DRC) examines AK-47 magazines stored in a warehouse in Beni after they have been collected in the demobilization process in Matembo, North Kivu. © UN Photo/Martine Perret*



Young boys, children soldiers sit on February 10, 2015 with their rifles at a ceremony of the child soldiers disarmament, demobilisation and reintegration in Pibor overseen by UNICEF and partners. UNICEF and its partners have overseen the release of another 300 children from the Cobra Faction armed group of former rebels of David Yau Yau.



A Rohingya woman with her handmade quilt at Cox's Bazar, Bangladesh, depicting her experience of escaping Myanmar during the Rohingya genocide of 2017.

*The reason that Sri Lanka has had a long history of conflict is because it has not really looked back and learnt from its history of conflict, and therefore it continues to function with inherent mechanisms and structures and attitudes that keep the conflict alive.*

Ermiza Tegal, human rights lawyer, Sri Lanka

*.It's important to reform institutions that are the root causes of the conflict in the country... If we listen to everyone and think about the institutions that are part of the conflict, and then we can reform [them to ensure] sustainable peace.*

Poom Moolsilpa, Truth and Reconciliation Commission, Thailand



## 6.1 | Why institutional reform?

After a period of authoritarian rule or mass human rights violations, a society may face a myriad of challenges. The existing systems for governance may be shaped to serve the regime and its cronies. The judicial system may be biased to protect the interests of the elites, and security forces may be accustomed to quelling dissent with violent force. Natural resources and the economy may be decimated from grand theft intended to benefit a few.

There may be a need to establish free and fair elections, strengthen parliament and other parts of the government, and ensure that all citizens can enjoy the benefits of development. The education system may need to be restructured to provide equal opportunities for children of marginalised groups and to teach a version of history that includes a truthful description of the mass violations that took place. There may also be a need to reflect on the role of media or religious institutions in spreading hate against minority groups.

Institutional reform is this process of examining and reshaping state and social structures, and it seeks to provide a post-conflict society with functioning, non-partisan institutions. Its mandate is broad and may include changes to the constitution, the military, the police, the judiciary, the parliament, the educational system, and the media.



Students stand on the roof of the parliament building waving the Indonesian flag as they demand the resignation of president Suharto May 20, 1998 in Jakarta, Indonesia. (Photo by Paula Bronstein/Liaison)

## 6.2 | What is the “guarantee of non-repetition”?

Enshrined in several international instruments and decisions is the “guarantee of non-repetition” or the requirement that states, following the commitment of mass human rights violations, take steps to ensure such atrocities never occur again. In practice, this guarantee is satisfied by the reform of those institutions that committed violations, contributed or allowed them to take place. Other reforms such as social and cultural changes to promote tolerance are also necessary to guarantee non-repetition.

Truth commissions have increasingly taken a deeper view on the “root causes” of a conflict, including looking at deeply ingrained discrimination and inequality. For example, truth commissions in Timor-Leste and Thailand have looked at violations of social-economic rights and made strong recommendations in this area. In this sense, the guarantee that human rights violations will not take place again rely not only on the reform of institutions but also the social reforms necessary to reduce discrimination, increase tolerance, and create cultures of non-violence.

*If you want to build a democratic society, a society that respects human rights, which are fundamental for a peaceful society, constitutional change or structural change in terms of economy, politics, and society is necessary. For example in Thailand, according to the truth and reconciliation commission, we found that one root of the conflict is the gap between the rich and the poor... If you want to reduce the conflict, I think you have to change the structure of our economy by reducing the gap between the rich and the poor.*

Somchai Hamlor, Commissioner, Truth and Reconciliation Commission, Thailand

### Legal Sources of the Guarantee of Non-Repetition

- Article 2 of the International Covenant on Civil and Political Rights (ICCPR) requires state parties to take legislative and constitutional steps and other measures to give effect to the rights recognised in the Covenant and to ensure that any person whose rights are violated has an effective remedy.
- The International Convention for the Protection of All Persons from Enforced Disappearance contains an explicit provision regarding “guarantees of non-repetition”. The Inter-American Court of Human Rights in the case of *Velásquez Rodríguez v. Honduras* held that States are obliged “to organise the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights”.

The legal mandates of truth commissions often require such commissions to make recommendations to ensure the non-repetition of violations.

### 6.3 | What are the preconditions for effective institutional reform?

In his 2015 report on the promotion of truth, justice, reparation and guarantees of non-recurrence (hereinafter 'non-repetition'), United Nations Special Rapporteur Pablo de Greiff set out basic preconditions for effective institutional interventions. These include:

- provision of effective security for the population;
- issuance of legal identity materials (e.g. birth certificates, ID cards) for the exercise of rights and for gaining access to state services; and
- human rights treaty ratification and incorporation into domestic law to signify intent and allow for enforcement and monitoring.



Mural depicting Colonel Mohamed Ali Seineldin in Buenos Aires, Argentina — Custodes Flamma/Arte es Combate



## 6.4 | What are some examples of institutional reform?

### **Constitutional Reform**

Constitutional reform seeks to revise the law governing the foundational structures of a transitioning society to ensure stability, democracy, accountability, and adherence to the rule of law. In his seminal report, former Special Rapporteur Pablo de Greiff explained that constitutional reforms may include the following:

- removing discriminatory provisions and introducing mechanisms of inclusion;
- incorporating a bill of rights;
- reforming provisions governing the security sector to support new values that require compliance;
- securing the separation of powers;
- limiting the scope of military courts; and
- adopting a whole new constitution.

Constitutional reform should be the product of comprehensive public participation to generate ownership and a culture of rights and constitutionalism. Through constitutional building, a process of addressing structural inequalities and socio-economic rights can begin.

### **Criminal Law Reform**

Reforming criminal law entails the incorporation of serious international crimes into domestic law and the certainty that such crimes are not subject to a statute of limitations. These crimes constitute an “affront to humanity” and a lapse in time should not provide perpetrators an escape from responsibility.

Securing the rule of law requires that emergency, anti-terrorism, or other security-related laws are fully compatible with human rights standards in order to prevent violations of rights by state officials. This can be achieved by:

- removing laws that prevent detention from statute books;
- guaranteeing access of detainees to lawyers and private doctors;
- stopping the use of evidence or confessions obtained through coercion or torture; and
- providing legal aid to indigents accused of serious crimes.

### **Judicial Reform**

This aspect of institutional reform usually involves a range of measures, including the vetting of judicial personnel, strengthening of judicial independence, building of judicial capacity, and establishment of ongoing judicial training. Structural changes to strengthen judicial independence are often necessary in transitioning societies. Some reforms may need to focus on the role and treatment of judicial personnel and may include:

- recruiting on the basis of merit and objective criteria;
- providing the security of tenure;
- offering adequate terms of service (e.g. proper remuneration and predictable conditions of retirement);
- subjecting personnel to transparent, reliable disciplinary processes that include fair
- procedures and proportionate sanctions, promotions, dismissals and transfers; and
- providing guarantees of physical safety.

Other reforms may need to target the strengthening of the judiciary as an independent organ of the government. The reforms may include:

- enshrining the separation of powers in constitutions;
- appointing judges and magistrates on the basis of competence and independence, not political affiliation;
- providing the judiciary with sufficient resources, and budgetary and administrative autonomy;
- ensuring that cases are assigned on the basis of objective criteria; and
- respecting and enforcing the decisions of courts, even when they are contrary to the interests of the government.

*During the time of president Arroyo, human rights offices were set up in the police and military organisations and we have worked with HR organisations of the police and military. And for several years we would like to believe that there had been changes, there had been reforms instituted within the two establishments to improve the situation, the human rights awareness, and compliance of the military and police officers.*

Marlon J Manuel, human rights lawyer, Philippines

## Security Sector Reform (SSR)

The security sector (i.e. police, military, and intelligence agencies) is fundamental in any democracy to the protection of citizens' rights. Yet under authoritarian rule or in a conflict situation, security agencies and their proxies, as well as non-state security actors such as armed rebel groups, are often responsible for serious and systemic human rights violations. Therefore, the reform of abusive security systems to prevent recurrence of abuse, and to provide effective and accountable security to communities is of central concern to transitional justice advocates.

Security sector reform aims to create an effective, law abiding, and accountable security sector that contributes positively to the fundamental components of human security, namely to sustainable peace and development. The conditions in which security sector reform occurs may vary extensively, from situations where there is no functioning statutory force and a vacuum of security arrangements, such as in Timor-Leste, to situations where it is necessary to unite statutory and non-statutory forces that have been fighting each other. Each context must be carefully considered. In post authoritarian societies it may be possible to reform abusive institutions, whereas in societies that have sustained intense conflict it may be necessary to rebuild institutions from the beginning.

The following are some key elements of effective security sector reform:

- *lustration* or the removal of personnel who supported a prior oppressive or authoritarian regime;
- thorough vetting of future personnel;
- *disarmament, demobilisation, and reintegration* (DDR) of former combatants;
- revising policies (e.g. codes of conduct, policies regarding the treatment of detained individuals) that allowed security agents to engage in abusive practices;
- ensuring effective civilian oversight of security forces; and
- providing for the inclusion of marginalised groups in security forces.

Security sector reform in transitional contexts can present logistical, political, and financial challenges. When engaging in security sector reform, a transitioning society must be particularly aware of tensions that may arise with efforts to achieve justice for past violations. For example, a threat to prosecute senior security officers may undermine support for reform amongst the army or police and may actually mobilise the security establishment against the reform process. Similarly, the DDR of former combatants may draw resources away from reparations programmes for victims. In almost all examples priority and funding are provided for the DDR process whilst the reparations programmes to assist victims lag far behind. This creates tension between groups, resentment, and blockages to reconciliation. It is encouraged if DDR and reparations programmes are conducted in parallel.



Mongolian soldiers in the United Nations Mission in Liberia (UNMIL) perform a tactical exercise (2016). With thousands of UN peacekeepers leaving Liberia after 13 years, the country is facing the most important transition in its history. Credit: UN Photo/Christopher Herwig.

## Examples

### Security Sector and Political Reform in Aceh

In the aftermath of a devastating earthquake and tsunami that led to 200,000 deaths in Aceh, the Indonesian government and the Free Aceh Movement (GAM) signed a peace agreement, known as the Helsinki Memorandum of Understanding in August 2005. Both parties agreed to a comprehensive plan for disarmament and decommissioning, demobilization of GAM, and reintegration of former combatants. Between September to December 2005, GAM surrendered 840 weapons, and the Indonesian government relocated tens of thousands of “non-organic” military and police personnel and released

### Creative Demobilisation, Disarmament, and Reintegration (DDR) Strategy in Nepal

A 2006 peace agreement between the Nepalese royal government and the Maoist rebel group provided important steps for institutional reform. This included a new constitution, the integration of Maoist fighters into the Nepalese army, and the establishment of a truth and reconciliation commission, as well as a mechanism for the disappeared. One of the major challenges was finding a meaningful place for the estimated 20,000 Maoist fighters in the new peaceful nation.

The Nepal transition included a Disarmament Accord managed by the UN. Under this agreement the Maoists were grouped into 28 camps or ‘Cantonments’ whilst the government troops were largely confined to their barracks. A major challenge of trust was for the rebels to surrender their weapons which would make it impossible to respond if the conflict resumed. The solution was for a number of weapons to be retained by the Maoists but placed into locked containers- 30 weapons in each of the seven main Cantonments and 15 weapons in the 21 smaller ‘satellite’ Cantonments. The government troops locked a similar number of weapons in guarded containers and remained in their barracks. The UN Mission in Nepal, UNMIN, guarded the arms containers and held the keys, with 90 arms monitors from 22 countries undertaking the task to ensure neutrality. In the meantime, the process of registration of the combatants took place. Eventually a proportion of the Maoist fighters were accepted into the Nepalese army, others receiving assistance to transform into civilian roles. Although the process was criticised, particularly for the delays and failure to adequately assist all of the ex-combatants, the Cantonments, and locking equal numbers of weapons in containers was a creative solution that helped to maintain peace during the critical time for negotiating transition to the new democracy.

### The DDR process in Sierra Leone

Following the attack of the rebel forces (RUF/AFRC) on Freetown, Sierra Leone, in 1999 a political solution to the conflict led to the signing of the Lome Peace Agreement and included senior government positions for representatives of the rebels, and “free pardon and reprieve to all combatants and collaborators.” The Agreement also included DDR provisions for the rebels and reform of the government security forces. However, the provisions of the peace agreement largely failed because the parties did not disarm. There had been no decisive military victory and there was insufficient incentive for all of the rebel forces to lay down their weapons.

After the RUF kidnapped a number of UN Peacekeepers the government in effect set aside the peace agreement. British troops reinforced the remnants of the national army and with the assistance of US and World Bank programmes the Abuja II accord was signed in May 2001, providing for disarmament of the RUF and pro-government militias (CDF). This time there was more incentive for the RUF to adhere to the DDR agreement, which included conditions that reintegration benefits would only be provided to ex combatants if they remained peaceful and surrendered their weapons. The National Commission for Disarmament, Demobilization and Reintegration (NCDDR) was established to implement the DDR programme, funded by a multi-donor trust fund, and the strong UN Mission in Sierra Leone (UNAMSIL) peacekeeping forces were deployed across the country to manage the arms handover. Local committees were established to address local challenges and by the end of 2001 the government announced that 45,000 combatants had been disarmed, with the war officially declared over in January 2002. The government took over the programme of disarmament, destroying a further approximately 10,000 weapons. A programme for ex-combatants to be reintegrated through providing them with a way to earn a living as civilians was implemented for several years. Although there were some significant problems with the programmes overall, they are considered to be a reasonable success, resulting in over 70,000 fighters being disarmed and demobilized, with more than 60,000, including over 6,000 child soldiers, taking part in the rehabilitation programmes. However, the rehabilitation programmes were hampered by the larger socio-economic context and thousands of former child soldiers were later found to be engaged in heavy labour roles in the diamond mines.

## **Educational Reform**

*We also have many recommendations to the Department of Education because we believe that institutional reform is important to pave the way to ensure that the history is not only recorded but passed on to future generations. The revision of modules on the history of the Philippines is essential, including what happened during martial law but also concerning the heroic exploits of the Bangsamoro people. Fighting against colonisation of the Spanish and of the American occupiers. This has not really been part of our history books. There has not been a recognition that in the long revolutionary history of the Philippines, the Bangsamoro were very prestigious and courageous in trying to assert the right to self-determination.*

Cecilia Jimenez-Damary, Transitional Justice and Reconciliation Commission, Mindanao, Philippines

Reform of a state's education systems is an important part of creating a base for an accountable, transparent, and just future. The students of today will be the leaders of tomorrow and need to be equipped with the skills to independently analyse facts, determine the truth, and form into groups and alliances that work for positive change. Those kinds of goals are a threat to the agenda for authoritarian regimes who often rely on ignorance, blind obedience, and fear in order to maintain power and steal the state's resources. For those reasons schools and universities are often forced to implement curricula that discourage students to inquire into the truth and are instead filled with propaganda and the manipulation of historical truths. Though often overlooked, educational reform can play a key role in guaranteeing non-repetition of past abuses. The reforms must focus on:

- stimulating inquiry-based learning;
- breaking the cycles of reliance on propaganda and misinformation;
- proactively seek the truth, such as through drawing on the reports of Truth and Reconciliation Commissions; and
- ensure that the lessons of the past and the cycles of violations are learned by students and future leaders.

The work of truth commissions such as those in South Africa and Timor-Leste have become part of the national school and university curricula. The Timor-Leste report was also translated into Indonesian and made available to Indonesian universities, further contributing to future change and encouraging inter-regional truth sharing.

Another aspect of the reform of educational institutions is to systematically address factors that have contributed to the mass violations and which are necessary for a fair and open society. For example, in many contexts a lack of understanding of the historical experience of ethno-religious minorities has been manipulated to increase hatred of these groups, for the political gain of certain other groups. It is necessary to promote understanding and acceptance of the value of different ethnic, cultural, and religious traditions in order to address the divisions and hatred that leads to violence. Education around the importance of tolerance and a culture of "equal rights for all," is a powerful and essential tool to ensure future peace. Learning from past experiences also informs the necessity of promoting the understanding that certain groups, such as women, children, and vulnerable minorities have suffered deeply as a result of the conflict or violations by the regime. The educational reform must incorporate materials and methodologies to increase this understanding and build a culture of gender equality, tolerance, and the protection and promotion of the rights of all. The requirements of non-repetition are not limited to institutional reform, however educational reform can help stimulate social and cultural reform to occur.



A woman survivor of gender-based violence in Kupang, Indonesia.



### **Examples of Civil Society's Role in Education During Transition**

#### **Cambodia**

Between 1969 and 1970 US forces at war in Vietnam secretly diverted attacks over the border into Cambodia and extended this to Laos. Although the US was not officially at war with Cambodia, under 'Operation Menu' President Nixon secretly authorized more than 3,000 flights that dropped over 100,000 tons of bombs on Cambodia during a 14 month period in 1969-70, killing an estimated hundreds of thousands of civilians. In 1975 the Khmer Rouge, who opposed the US-supported government, took control of the country and emptied the cities and towns, seeking to replace any remnant that symbolized the capitalist-system influences. They enforced a communist agrarian system and killed those suspected of being linked to the former government, as well as many opponents and members of minority groups. Between April 1975 to January 1979 the Khmer Rouge almost destroyed the country's entire infrastructure, economy, public, and private properties. The regime oversaw programmes that led to the death of an estimated one and a half to two million people- around 20% of the population- through execution, starvation, forced labor, overwork, torture, malnutrition, and poor medical treatment.

When the forces led by the Vietnamese ousted the Khmer Rouge in 1979 there remained very little base for a future education system. Almost all teachers had been killed so the government began to recruit new teachers, many of whom had little formal education, to develop rudimentary teaching materials. However, political interests that included residual support for the Khmer Rouge was reflected in the fact that there was little attempt to educate the population about the mass human rights violations that had occurred. In 2007 a civil society organization, the Documentation Centre of Cambodia (DC-Cam), produced the first accessible educational tool that objectively dealt with the painful history: *A History of Democratic Kampuchea (1975-1979)*. The book was accompanied by teachers' materials and student workbooks. In collaboration with the Department of Education and donors, DC-Cam produced 500,000 copies of the book and 3,000 teachers received training on how to use the materials. Despite this work there has yet to be a comprehensive official mechanism such as a truth commission that focuses on the root causes, background, violations, and lessons learned from the mass violations in Cambodia. The Extraordinary Chambers of the Courts of Cambodia (ECCC), a hybrid court, established through an agreement between the government and the UN has proceeded with trials, resulting in the conviction of three of the most senior leaders.

#### **Bangladesh**

Following World War II, the breakup of the British empire included the separation of India from East and West Pakistan-two halves of the same country separated by the entire land mass of India. The inhabitants of both East and West Pakistan were predominantly Muslim but were culturally very different and spoke different languages. The victory of a pro-independence faction in East Pakistan (now Bangladesh) in the elections of 1971 was not accepted by West Pakistan. Pakistani soldiers and local collaborators began a campaign that included mass atrocities, the rape of many thousands of women, and led to the outbreak of large scale hostilities and a large portion of the population fleeing in terror to India. The estimates of the death toll surrounding this "liberation war" in Bangladesh are estimated up to three million victims. After the intervention of India peace was restored, and the nation of Bangladesh was born. A Bangladeshi civil society organization, The Liberation War Museum (LWM), began a programme that included educating the population around what had taken place, the root causes, and the effect on victims. In addition to establishing a world-class walk-through museum dedicated to sharing the history of 1971, the LWM ran a series of education programmes. This included a project in which school children were asked to sit with their grandparents and write down the story of their experiences during the conflict and mass violations. Those stories were then collected and bound into a book for each school, producing a tangible and educational product from their efforts. Over 60,000 children collected the stories, making a valuable contribution to the history of the mass violations.

## Media Reform

A hallmark of many authoritarian regimes is the control or suppression of the media. The concept that “information is power,” has proven to be true for many authoritarian regimes. Mass torture, rape, and other violations only occur in darkness, where the majority of the population cannot see what is taking place. The media’s role as a safeguard against the abuses of government is often severely compromised under dictators and authoritarian leaders. Journalists who report the truth are threatened, arrested, and disappeared. Newspapers and online forums that report on the truth are closed down. The truth is replaced by propaganda that conceals what is taking place and portrays the leaders in a false, positive light. Following a transition it is imperative to rebuild a strong, independent range of media services. The representatives of the media require training and effective processes to ensure that they comply with professional standards. In many developed countries those mechanisms are controlled by senior members of the profession, such as a National Press Council whose mandate includes ensuring a high standard of honest independent journalism. Government control of the media has proven to be a highly contentious issue. Governments naturally feel uneasy when criticized by journalists. However such criticism, when founded on objective truth and reliable sources, is an essential element of a democracy. Autocrats and dictators very often target journalists from the early days of their rule and use terror as a tool to diminish honest and informed debate concerning their performance and actions. These tendencies need to be well understood, and their contribution to the mass violations investigated and made public. A key element of a transition to democracy is to protect and promote high quality journalism, investigative reporting, and other forms of establishing and sharing the truth.

A major challenge has emerged with the rapid growth of social media, allowing any person to take on a role of sharing information with a large number of others through electronic tools. Previously the potential to influence on a mass scale rested mostly with limited media services such as newspapers, television, and radio stations. Until now the question of whether and how to control false information passed to millions of people through the internet has not been resolved. In some situations, such as Myanmar, it has been clear that social media campaigns of hatred against minority groups such as the Rohingya have contributed significantly to mass violations. A significant challenge for countries transitioning to responsible democracy is to balance the need to rigorously defend freedom of speech, particularly in contexts where this has been systematically denied, with the opportunity of spreading hatred, incitement to violence and demonization of vulnerable minority groups and individuals.



A tunisian demonstrator holds a placard reading "Game Over" during a rally in front of the country's Interior ministry in Tunis on January 14, 2011, to demand President Zine El Abidine Ben Ali's resignation.



People read newspapers reporting on Nepalese government and Maoist rebels signing peace agreement in Kathmandu, 22 November 2006. Nepal's Maoist rebels and the central government declared the impoverished nation was entering a "new era" 22 November after signing a landmark peace deal that ends more than a decade of civil war. AFP PHOTO/ DEVENDRA M SINGH via Getty Images

## **Examples of Media Reform in Transitional Contexts**

### **Recommendations on media reform from the Sierra Leone TRC Report:**

75. Freedom of expression is the lifeblood of a democracy. A culture of public debate and tolerance for dissenting ideas is the sign of a vibrant and healthy democracy. Restrictions on the freedom of expression represent a fearful State; it reflects a State that has no confidence in its ability to promote and disseminate its doctrines in the marketplace of ideas.

76. A free press ranks alongside an independent judiciary as one of the most important counter forces to the excesses of both the public and private sectors. The media should be free of political patronage. The degree to which the media is independent is the degree to which it can perform an effective public watchdog function on the conduct of public officials and powerful individuals in society. Laws establishing "freedom of expression" require support and enforcement from the courts. Without an independent judiciary, press freedom cannot be maintained.

81. The Commission calls on the Sierra Leone Association of Journalists and the Media Commission to be more proactive in monitoring standards of journalism practiced in Sierra Leone and to establish mechanisms for effective self-regulation. These organisations can do much to advance a culture of human rights in Sierra Leone.

### **Extract of the TRC Report addressing the media in elections:**

235. No political party should be favoured over another by any organ of state. This particularly applies to the state-controlled broadcast media. All political parties should be given an equal amount of time, including primetime, on state-controlled television and radio.

## **Georgia**

In 2013, a process commenced to depoliticise the Board of Public Broadcasting, which involved the introduction of a law that created a new mechanism for electing its members. The President and Prime Minister are no longer part of the nomination process. The process is much more democratic, and decisions are made by Parliament. The changes have apparently resulted in greater transparency and better programming for the public.

## **Freedom of Expression**

In a "friend of the court" brief submitted on 6 May 2004, the Open Society Justice Initiative urged the Inter-American Court of Human Rights to seize an historic opportunity to advance freedom of expression by outlawing criminal defamation. The brief notes a growing consensus worldwide that criminal defamation statutes hinder free expression. "A society cannot be free if its citizens must avoid criticism of public officials out of fear of criminal prosecution," the brief argues. The case involved two Costa Rican publishers who had been found guilty of criminal defamation. The Inter-American Commission has already found that Costa Rican law violates the American Convention on Human Rights by criminalising publications on matters of public interest, such as the conduct of public officials.

## 6.5 | How can a justice-sensitive approach be integrated into institutional reform?

Justice-sensitive reform seeks to reshape institutions by addressing past operational practices that contributed to human rights violations, including cultures of systematic use of torture in police investigations, and holding individual perpetrators to account. A justice-oriented paradigm is needed to ensure that institutions are responsive to the needs of all citizens, including women, children, and other vulnerable groups, and not just to selective and partisan interests. This responsiveness is a critical component for rebuilding trust and lies at the heart of the social contract between the state and its citizens. Well-functioning institutions, such as independent courts and an accountable and well-functioning security sector, contribute to the transformation of victims and survivors into rights-bearing citizens who are able to participate in society rather than suffer as victims of state oppression.

A justice-sensitive approach to reform focuses on the following four mutually reinforcing objectives, which are also principles that guide how reforms are pursued:

- *building the institutional integrity* of the society's institutions to discourage abuses and increase responsiveness and accountability to citizens;
- *promoting the legitimacy* of the society's institutions to overcome the population's fear and lack of trust arising from a legacy of serious abuse;
- *representing and empowering* all citizens, especially victims of oppression and violence and other marginalised groups so that they can understand and demand the fulfilment of their rights; and
- *enhancing coherence* with the other transitional justice pillars (i.e. truth-seeking, prosecutions, and reparations) to enhance the effectiveness of each component.

### Ensuring the Integrity & Legitimacy of Institutions

The integrity of an institution is the extent to which it adheres to the rule of law. Integrity suggests the need to move beyond simply building the capacities of society's institutions. It requires the following:

- the establishment of multiple, overlapping mechanisms for accountability based on international best practices;
- the establishment of professional standards and codes of conduct, accompanied by disciplinary measures and effective (often civilian) oversight to ensure compliance;
- the building of organisational and operational capacities, through skills training, supplying resources, and increasing organisational efficiency; and
- addressing the fundamental issues of culture and practice that affect accountability structures, either positively (by discouraging and preventing abuses) or negatively (by sanctioning abuses), not only for present and future abuses, but also for the most serious past abuses.

The legitimacy of an institution depends on the level of civic trust it enjoys. A legacy of serious abuse fundamentally undermines the legitimacy of a security sector. To overcome the fundamental crisis of trust, it is essential to build the integrity of the security sector. Furthermore, the government must demonstrate even-handedness as well as take verbal or symbolic measures (such as building memorials; providing public apologies; and if appropriate consider symbolic steps such as changing uniforms, insignia, and rank structure associated with the past violations) that reaffirm a commitment to overcoming the history of abuse, and that endorse democratic norms and values.



## 6.6 | What is lustration and vetting?

During periods when mass atrocities are being committed under authoritarian regimes it is common for individuals in government bodies, police, military, and other security agencies to be involved as perpetrators of serious violations. These actions destroy the public trust in those essential institutions that must be rebuilt during a transition. Agents of the state who are suspected, according to reliable evidence, of being involved in serious human rights violations should be removed from office and prohibited from future positions as representatives of the state. Lustration and vetting are important means of transforming institutions that have been involved in serious abuses into public bodies that enjoy civic trust and protect human rights.

**Lustration** refers to a policy put in place to remove from public office individuals who have committed acts that seriously diminish the professionalism and integrity of the institution, such as involvement in human rights violations or crimes.

**Vetting** refers to the process under which the lustration is achieved. For example the vetting process may involve gathering information about those who may have been involved in serious violations, checking the validity of the evidence, establishing criteria for removal from office and producing policies and procedures that protect against recruitment of those with a history of involvement in violations.

Such exclusions aim to:

- dismantle abusive structures that were established during the period of conflict or authoritarian rule;
- build trust in the society's institutions by reaffirming that staff and personnel are not above the rule of law; and
- complement efforts to address the impunity gap by ensuring that those responsible for past abuses do not continue to enjoy the rewards and privileges of public office.

Lustration and vetting are not an alternative to criminal sanction, and punishment should not be seen as their main rationale. Rather, they are about the clear establishment of minimum standards that enable a society's institutions to comply with domestic and international legal obligations. Both processes must respect the rights of those who are excluded. An emphasis on the personal record of each individual is important and due process must be maintained. For example clear criteria against which to judge conduct must be created and decisions must be based on reliable evidence. However the sanctions of removal from office are not those of the criminal justice system, such as imprisonment, the standards of proof are not the criminal standard and it is not necessary to wait until criminal liability is established through the courts to undertake the removal from office.

A wide range of issues must be considered when designing lustration and vetting programmes. These include:

- the institutions and positions that require these programmes (taking into account questions of feasibility);
- criteria for screening misconduct;
- the sanctions (or compensation) for those who are positively vetted;
- the structures and procedures utilised;
- the scope of the process;
- the timing and duration of the process;
- justification for a lustration or vetting programme; and
- a programmes coherence with other measures of transitional justice.

## 6.7 | How can justice-sensitive reform empower citizens?

Justice-sensitive reform stresses the need to include the local population generally, and victims of widespread abuses and other marginalised groups in particular, in the design and implementation of reform processes. This can be done through broad-based population surveys, by linking reform processes with truth-seeking efforts, or by designing reform assessments in a way that ensures consultation with victims and other marginalised groups.



A Beijing demonstrator blocks the path of a tank convoy along the Avenue of Eternal Peace near Tiananmen Square. For weeks, people have been protesting for freedom of speech and of press from the Chinese government.



A UN peacekeeper in the Democratic Republic of the Congo (DRC) examines AK-47 magazines stored in a warehouse in Beni after they have been collected in the demobilization process in Matembo, North Kivu.

## 6.8 | What is a multi-stakeholder approach to reform?

To be justice-sensitive, reform should aim at advancing the participation of victims and members of marginalised groups, including women, in all of a society's institutions. Adequate representation of marginalised groups, particularly as staff, offers important benefits to a transitioning society, including the following:

- providing for internal checks and balances within a society's institutions;
- helping to overcome gender violence and the pursuit of single group interests;
- improving the overall distribution of power and resources; and
- helping to give voice to the concerns of all population groups.

Particular attention should be paid to the relationship between a society's institutions and its women in order to strengthen the capacity of women's organisations and networks and ensure women's participation at the highest levels of society. Where possible, reform programmes should also ensure the equitable representation of different ethnic groups as well as the active involvement of victims and other marginalised groups.

A multi-stakeholder approach to reform incorporates an array of actors in the design and implementation of reform measures, recognizing the important and unique contribution of each actor to the process.

- **Governments and political leaders** must decide which police, military, and judicial systems they want to build, and what the underlying philosophy and capabilities of each should be. They may need international assistance and resources, but the choices should be made locally.
- The participation of **civil society organisations (CSOs)** and actors, along with an active and independent media, help to ensure transparency and public awareness and are, therefore, critical to sustainable reform. To enhance a sense of local ownership, SSR programmes should also be designed and evaluated with CSOs.
- **Donors** should ensure that important principles, such as the need for accountability, are included in the programmes they support and not surrendered or ignored for the sake of political expediency.



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## 6.9 | What are the challenges to institutional reform?

The reform of institutions that have been involved in mass violations for years or decades can be difficult, as unprofessional and illegal behavior is deeply ingrained in institutional cultures. One of the major challenges is the continuing of roles in powerful positions of those who led and participated in mass atrocities. The goals of establishing accountable institutions are often not truly supported by those who have benefited personally from the lack of accountability and transparency. They may be forced to participate in a different path during a transition but have not changed their willingness to compromise the integrity of institutions for the sake of gains for themselves, their families, and cronies. As a result it is quite common to witness significant institutional reforms immediately following a transition, but after some years the positive reforms stall or go backward.

Indonesia provides a powerful example of this phenomenon. The “reformasi” period included democratization following the 30 year New Order military dictatorship, significant reform of the military, the establishment of the Anti-Corruption Commission and Court that have been responsible for trial and imprisonment of over 400 senior government officials, acceptance of a free media and other dramatic reforms. However, ten years after reformasi the support for reform began to significantly diminish. A number of those who had been deeply implicated in mass atrocities whilst in military uniform had discarded the uniform for civilian dress and been appointed to senior government positions. The progress on corruption stalled, with the Anti-Corruption Commission’s role attacked by entities such as the police service and national parliament. Some groups and individuals that were deeply involved in the illegal patterns of behavior during the New Order military dictatorship regrouped, using old methods to undermine the gains of the reform period.

Many other transitional contexts experience similar patterns of energetic and committed reform immediately following the transition, but a gradual return of the old forces and individuals who do not wish to see a society based on transparency, accountability, and the rule of law applied equally to all. For this reason, it is essential to achieve as much as possible during the initial period following a transition. Importance is placed on anticipating and producing mechanisms to neutralize the inevitable push back of the forces that oppose a base for human rights, and justice for all. Transitional justice mechanisms can assist significantly in this regard. In particular, the mechanism of implementing a truth and reconciliation commission to undertake a deep inquiry into periods of mass violations, so that the objective truth can be used as a strong tool to resist recurrence of past atrocities. However, while technical reforms are crucial to a successful transition the general framework builds on the understanding that prevention in the aftermath of gross human rights violations and serious violations of international humanitarian law cannot be achieved through reform and development initiatives in the sphere of state institutions alone, but also requires transformations:

- in the societal sphere, particularly with participation and leadership from civil society;
- in the cultural sphere; and
- in the sphere of individual dispositions.



A woman survivor of political conflict in Myanmar.



## 7 | Gender Justice



*Bussaina Adam Mohammad, 10, took refuge in Abu Shouk camp for Internally Displaced People (IDP) due to conflict in her region. She has three younger sisters that she helps look after when her mother goes out to work as maid in El Fasher City, about half an hour away. Her father went to Khartoum three years ago, initially to look for a job, but has not returned. © UNICEF/Noorani*

*.Women who are former political prisoners, they themselves had experiences. [Now] they speak out about what they want as a transitional justice process when we listen to women talk. They demand justice and truth be acknowledged about what they suffered.*

Mi Mi Khine, torture survivor, Myanmar

*During conflict, men and boys are recruited into armies and militia. A powerful man means being violent . . . For male victims of torture, learning to deal with their trauma and anger is important. So they can overcome the impact of the violence they experienced.*

Jose Luis de Oliveira, human rights defender, Timor-Leste

## 7.1 | Why is it important to use a gender-sensitive approach in transitional justice initiatives?

To understand how human rights violations affect men and women differently, we need to look at their particular experiences and long-term impact. Early transitional justice processes that had a narrow focus on human rights violations, such as torture and arbitrary detention, prioritised the experiences of men. Many violations committed against women were overlooked. As a result, women's experiences of human rights violations were not as well documented or understood. Because this bias generally persists today, it is important to give focused attention to the experiences of women to ensure a holistic understanding of mass violations that, in turn, can inform a more comprehensive approach to transitional justice.

While the impact of armed conflict on women varies in different contexts, there are certain common characteristics that define women's specific experiences:

- Women are at risk of double victimisation. They are as likely as men to be victims during conflict, but they also suffer discrimination because they are women.
- Women suffer direct violations of their physical integrity, for example through sexual violence, reproductive violations, and forced pregnancy.
- Women live with the consequences of what happened to their family members who were subject to enforced disappearances, imprisonment, torture, and killings.
- Women must learn to sustain their families in new ways due to displacement and loss of sources of livelihood, as they assume new roles; e.g. as head of the household or primary breadwinner.
- Women continue to suffer poverty and marginalisation due to inequalities and discrimination prior to a conflict. Conflict often exacerbates these conditions.

Men and boys may also experience specific forms of violations. Because the male gender is seen as the enemy or combatant, men and boys are targets for killings and disappearances, detention, and torture. They can experience sexualised torture and may face social barriers to speak-out about these experiences. Men who become wounded or disabled in conflict may experience a deep feeling of self-doubt if they feel they cannot fulfil their role as breadwinner.



FEMALE FIGHTERS. North Vietnam: In a small village near the Ben-Hai river, which separates North Vietnam from the South, one of the coastal batteries is operated entirely by Vietnamese girls 10/31/1969. The original village was completely demolished by napalm bombs, rockets and shells fired from United States Naval forces. Thirty-seven girls pledged to take revenge and now man four 85mm guns which so far have already hit four U.S. destroyers and set one on fire. (Photo from Soviet source) (UPI Photo)



## 7.2 | What is gender justice?

To understand gender justice, we begin with a definition of gender.

*Gender refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. While most people are born either male or female, they are taught appropriate norms and behaviours – including how they should interact with others of the same or opposite sex within households, communities and workplaces.*

In situations of conflict or widespread repression, identities are used to exaggerate differences. Those who spread conflict or order attacks make use of gender stereotypes to further incite violence. Because of gender norms and stereotypes, men and women experience conflict in different ways. Men and boys become targets of forced recruitment into armies. Often, there are more male victims of killings, torture and disappearances. Women and girls may experience the same violations as men, but they are also more vulnerable to sexual abuse. In many conflicts, men who bear arms enslave women and girls to carry out domestic chores and take them as “wives” whom they rape. Thus, a gender perspective is an important tool in understanding conflict and violence, and to find solutions for peace and democracy.

Some groups advocate for gender justice. This is a framework that seeks social and political transformation by building on principles of equity between men and women, and empowerment of women. It seeks to develop strategies to stop discrimination and violence based on gender so that all people are treated as fully human with the same opportunities, access to resources, and expressions of power. In this chapter, we will focus on efforts to better engage women in transitional justice processes.

## Gender and Transitional Justice

In recent years, there has been an increase in the recognition of gender issues in transitional justice. This includes the recognition that truth commissions need to acknowledge sexual and gender-based violations, and that reparations programmes should address women’s unique needs. At the same time, legal developments have been reflected in criminal cases brought before international tribunals such as the ICTY, ICTR, SCSL, ICC, and other international and hybrid courts that have included explicit charges for sexual violence. The Rome Statute adopts gender-sensitive legal standards as seen in the explicit criminalisation of sexual violence that includes rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilisation. Despite these advancements, impunity for gender-based crimes remains the norm.

While the road towards transitional justice for women remains long, the long silence about the suffering of women in armed conflict has been broken. Addressing the gendered patterns of abuse is essential to end impunity, enhance the historical record, and support the legitimacy of transitional justice initiatives.



Members of women's association Asmum, part of La Ruta Pacífica de las Mujeres, hug each other after a demonstration to claim for women's right to truth and justice in the Putumayo region, Colombia. (Camilo Aldana/ICTJ)



### 7.3 | What are some examples of gender-based violence?

Women, men, girls, and boys have different experiences, needs, priorities and actions depending on their gender and sex. There are certain forms of violence which are based on the socially ascribed differences between males and females, what is known as 'gender-based violence' (GBV). GBV is not only violence against women; men and boys can also be victims. For instance, men, boys, women and girls can all be victims of rape. As rape is linked to issues of power and gender identity, it is a crime that is classified as GBV.

Violence against gay, lesbian and bisexual people on the basis of their sexual orientation, and against transgender people on the basis of their gender identity, is also understood to be a form of GBV, as it is based on perceived nonconformity with gender roles. Some forms of gender-based violence affect men and boys more than women and girls... [see Table 7.3]. However, in many cases women and girls constitute the majority of victims. In the case of childhood sexual victimisation, for instance, international studies give a rate of 20% among girls and 5 to 10% among boys.

<i>Examples of Gender-based Violence</i>	
<b>Women and Girls</b>	<b>Men and Boys</b>
<p><b>Domestic violence</b> A 2005 multi-country study by the World Health Organization (WHO) found that in most countries, 29% to 62% of women had experienced physical or sexual violence by an intimate partner.</p>	<p><b>Gun violence</b> Globally, it is estimated that every year over 1,000,000 people are injured by guns, over 200,000 are gun homicide victims, and 50,000 are gun suicide victims. According to WHO, 90% of firearm casualties are male.</p>
<p><b>Human trafficking</b> Annually, 500,000 to 700,000 women and girls are trafficked across international borders.</p>	<p><b>Child abuse</b> WHO cites international studies that document sexual abuse of boys at a rate of 5-10%.</p>
<p><b>Sexual violence</b> Increases in sexual violence have been documented before, during, and after armed conflicts, for instance in Rwanda where estimates of the number of women and girls raped range from 15,700–500,000.</p>	<p><b>Rape</b> A 2000 survey of inmates in seven US men's prison facilities showed that 21% of the inmates had experienced at least one episode of pressured or forced sexual contact and at least 7% had been raped.</p>
<p><b>Genital mutilation</b> According to the United Nations Population Fund (UNFPA), 130 million girls and women have undergone female genital mutilation, and 2 million girls are at risk every year.</p>	<p><b>Sex-selective massacres</b> The Srebrenica massacre of July 1995 involved the killing of an estimated 8,000 Bosnian Muslim males.</p>
<p><b>Anti-gay violence</b> A study by the Russian Lesbian, Gay, Bisexual or Transgender Network of over 3,500 gay and lesbian participants revealed that 26.5% of respondents had been victims of physical violence motivated by hatred based on sexual orientation.</p>	

### **Other examples of human rights violations and their impact on women**

Women may experience the same violations as men—killings, torture, arbitrary detention, displacement, and disappearances—but often are more vulnerable than men to the long-term impact resulting from them.

- **Displacement:** Conflicts place women at risk of displacement. Eighty percent of the world's refugees and internally displaced persons are women and children. Losing their land has severe consequences for survival.
- **Long-term economic hardship and discrimination:** Women may be widowed, injured, or stigmatized due to prevailing social norms. They may be denied opportunities to earn an income as a result of economic instability. Loss of land and earning capacity can lead to economic hardship such as destitution, a lack of education, homelessness, and enforced prostitution and trafficking.
- **Health impairment:** Limited or no access to health care, especially gynaecological care, affects women disproportionately, both during and after a conflict. The impact of this disparity is especially felt in the context of food shortages, sexual violence, and the spread of HIV.



Children in conflict-affected countries are the most vulnerable to sexual violence.

### **Women's multiple roles in conflicts**

*In the main, women and girls experienced conflict as victims. However, many women and girls were compelled to become perpetrators in order to survive. Many others chose to be willing collaborators and perpetrators. The Commission's analysis of how women made choices is that, in the main, they rose to the challenge of staying alive, looking after loved ones, protecting and assisting others, often at great risk to themselves, and still display the courage to tell of their experiences.*

The Sierra Leone Truth and Reconciliation Commission

It is important to recognise that not all women experience conflict in the same way and that their experiences may vary according to their race, ethnicity, class, and sexual identity. In addition, women are not just passive victims; they are also actors who can choose to support and actively participate or oppose a conflict while trying to survive its effects.

Beyond being victims during conflicts, women carry out a variety of roles. They can be:

- combatants
- collaborators
- perpetrators of violence and rights violations
- supporting participants such as cooks, wives, and porters
- government officials
- workers for peace in the NGO sector or government.

Transitional justice initiatives should recognise the multiple roles of women in a conflict, as well as the paradoxical nature of some of these roles.

*Many of the community groups we met, including women, were affected mentally and physically. In the South military war widows have many problems. Even though the men were seen as war heroes their wives and families are not treated in the same way, not treated as equals.*

Sumika, community leader, Sri Lanka

## 7.4 | How can truth commissions promote gender justice?

*I cannot forget. Maybe I will always remember.*

Juariah, survivor of the 1965 atrocities,  
Buru Island, Indonesia

Truth commissions can provide women a way to share publicly the human rights abuses they experienced and, in this way, reclaim their voices in the public sphere. The experience of past truth commissions indicates that truth seeking can be gendered. Only by analysing gender-based human rights violations can a fuller historical record be achieved. If there is no information regarding gender-based violations, the truth about the conflict and the outcome of the truth-seeking process will remain incomplete.

### Truth Commissions and Gender Justice

#### ***Examples of Gender-sensitive Actions by Truth Commissions***

##### ***South Africa***

Seven of the 17 commissioners were women. Practical methods were employed to enable women's participation, including the hiring of female statement takers and additional training on gender issues for commission staff. Three separate hearings were specifically designed for women's testimonies. Following the intervention of women's groups, the TRC redefined the category of "severe ill-treatment" to include sexual violence. However, by investigating only a limited range of harms, the commission neglected the experiences of many women under apartheid, such as their experiences related to pass laws. Although women made up 54.8% of those giving statements to the TRC, women represented only 43.9% of these who reported their own experiences of direct human rights violations. Among the 22,000 statements taken, only 158 women reported cases of sexual violence. This was significantly less than the number of cases that actually occurred during the period. South Africa has been described as a society where political violence against women committed in the past has direct and indirect links to current levels of sexual violence that are the highest in the world.

### ***Sierra Leone***

Women who were sexually assaulted were allowed to testify on camera in courtrooms run by an all-female staff and that barred public citizens. Additionally, these victims were provided with counsellors before and after their testimony, food at the hearings, transportation to and from the commission, and overnight housing if needed. The commission's public thematic hearing dedicated to women's experiences was the best attended hearing of the TRC. However, while the recognition of sexual assault was important, there was no recognition of children who were born as a result of rape. In the chapter of the final report about the experiences of women, the commission stated that the existing culture of subordination, violence, and impunity, in which women can rarely own land or obtain a divorce, exacerbated how women were treated during the conflict. The commission recognised that societal perceptions of women as property to be inherited contributed to the perpetration of violations against them, as armed combatants felt a sense of ownership over women's lives and bodies. The final report included recommendations that called on customary laws that support these perceptions to be changed.

### ***Liberia***

Four of the nine commissioners were women. Liberian women did testify about their own experiences and not just the violations committed against their loved ones, with 51% of statements from women. The commission developed a survey that teams used all over the country to get women's opinions on what they wanted from the commission. This initiative included the voices of women who are normally disenfranchised from justice-seeking processes. On the other hand, the commission did not look at the multiple roles that women and men played during the conflict, including the sexual violence perpetrated against men and boys. Even though 22,000 women went through the DDR process, none of them came forward to testify. As a result, the TRC failed to capture the experiences of female perpetrators.



### ***Timor-Leste***

The truth commission, CAVR, proactively engaged with women's groups in defining and implementing its mandate. This strong, reciprocal relationship played a critical role in incorporating gender into the CAVR's framework and in foregrounding gender issues in the commission's daily work. A deliberate effort was made to hire a balanced proportion of women as statement takers and as victim support staff to ensure equal opportunity for female victims in the process to redress violations. Responding to a low percentage of women giving statements, the CAVR used innovative and flexible provisions to encourage individuals to tell their own stories. Community-based workshops were used to better include women and capture gendered dimensions of the past conflict. The CAVR also dedicated one public hearing to the subject of women and conflict and used gender as a criterion for choosing participants at the other hearings. Despite these efforts, only 21% of the people making claims of human rights violations were women and many of them spoke predominantly of the experiences of their male relatives. In its final report, the commission ascribes this low percentage partly to cultural and economic barriers that prevented women from fully participating. However, on a positive note, many men who gave statements did speak about the experiences of their female family members. The final report represents women primarily as victims, particularly of rape and other sexual violence. The commission acknowledged the lack of resources and time to focus on women's diverse roles during the conflict.

### ***Tunisia***

In Tunisia, the mandate of the Truth and Dignity Commission includes an investigation of violations of social and economic rights suffered by women under former President Ben Ali's regime. The commission itself created a Women's Committee to ensure a gender-sensitive approach to its work. According to a 2015 research study on victims' participation in transitional justice processes in Tunisia, only 5% of the "submissions" (testimonies) made to the Truth and Dignity Commission were from women. A heavy taboo in society surrounding abuses suffered by women made it difficult for women to testify about their experiences to the commission. As of August 2018, the commission had not completed its final report.

## 7.5 | How have criminal justice mechanisms addressed gender-based human rights violations?

Different criminal justice mechanisms have been used to prosecute massive human rights abuses, including gender-based violations:

- International courts, including the International Criminal Court
- Hybrid courts, such as the Special Court for Sierra Leone
- National courts instead of, or in addition to, international courts.

After the Second World War, neither the Nuremberg nor Tokyo tribunals specifically prosecuted the crime of rape, despite well-recorded violations against women, such as the rape of 20,000 women by Japanese soldiers at Nanking and sexual violence in the Nazi concentration camps. Evidence of systematic rape was included in some of the trials, but no judgment stated the crime of rape, except for the Batavia Trials. While the 1949 Geneva Conventions and the two additional protocols contained provisions relating to women, prosecutions at the international level for rape did not take place until the mid-1990s. The first prosecutions took place when the *ad hoc* tribunals for Rwanda and the former Yugoslavia recognised sexual violence against women as a violation of the various rules of international criminal and humanitarian law. As a result, sexual and gender-based violations are now recognised as among the most serious offences during conflict and are often charged and prosecuted as such.



(Minta caption sama kak manda)



Kosovo born artist Alketa Xhafa Mripa hang dresses on clotheslines set-up at the Pristina Stadium on June 12, 2015 as part of her installation "Thinking of You" dedicated to the 20,000 woman victims of Sexual Violence during the 1998-1999 Kosovo War.

## International Tribunals

*You abused and ravaged Muslim women because of their ethnicity and, from among their number, you picked whomsoever you fancied on a given occasion. This behaviour calls for a severe penalty commensurate with the gravity of your crimes. The Trial Chamber therefore sentences you, Dragoljub Kunarac, to a single sentence of 28 years imprisonment.*

Judge Florence Mumba, presiding judge in the Foča Rape Trial, ICTY

### International Criminal Tribunals (ICTY and ICTR)

The Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) explicitly incorporate rape as a crime against humanity. The *ad hoc* tribunals have established that acts of sexual violence may amount to crimes against humanity, war crimes (that include violations of the laws and customs of war), and genocide.

The ICTY and the ICTR have found sexual violence to be war crimes, crimes against humanity, and genocide. The *Akayesu* (ICTR) and the *Kunarac* (ICTY) cases, in particular, remain remarkable cases still widely cited when it comes to the qualification of rape as a crime against humanity.

### The International Criminal Court (ICC)

When the Rome Statute entered into force on 1 July 2002, it specified that war crimes and crimes against humanity included:

- rape
- sexual slavery (including trafficking of women)
- enforced prostitution
- forced pregnancy
- enforced sterilisation
- other forms of grave sexual violence.

The Rome Statute also acknowledges the imposition of measures intended to prevent births within a group as genocide.

Some questions have emerged regarding the capacity and competency of the ICC to prosecute these crimes. Gender activists have raised concerns about certain cases.

- The prosecutor failed to charge Congolese Thomas Lubanga with crimes of sexual violence despite strong evidence of his links to the widespread sexual enslavement and rape of girls. Lubanga was charged with the recruitment and use of child soldiers in the Democratic Republic of Congo (DRC). He was convicted of those crimes in 2012 and sentenced to 14 years imprisonment.
- In May 2008, counts of sexual slavery were removed from the indictments of two DRC militia leaders, Germain Katanga, former senior commander of the *Forces de Resistance Patriotiques en Ituri* (FRPI) militia group, and Matthew Ngudjolo, former leader of the National Integrationist Front militia group. The counts were removed due to the inability of the ICC to ensure victim protection. Although the situation was rectified in June 2008 when the witnesses were admitted to the ICC's witness protection programme, these developments raised concerns about the Court's capacity to deal with these issues.
- The Pre-Trial Chamber (PTC) that considered charges against Jean-Pierre Bemba Gombo, former Vice President of the DRC, that included charges for gender crimes perpetrated in the Central African Republic in 2009, declined to confirm all the charges, including some relating to sexual violence.

Despite these setbacks, in 2016, the ICC rendered a landmark verdict. For the first time it recognised sexual and gender-based violence, and sentenced Bemba, a military commander of the *Mouvement de Libération du Congo*, to 18 years of imprisonment for crimes against humanity and war crimes including rape.

## Hybrid Courts

Some hybrid courts, that involve both domestic and international judges, have also prosecuted individuals for gender-based violations.

- The Special Court for Sierra Leone (SCSL), a hybrid tribunal, was mandated to prosecute those bearing the greatest responsibility for the country's civil war. Sexual and gender-based violence were given specific attention in its statute because of the large number of these crimes. The SCSL specifically looked for prosecutors and investigators with experience in gender-based crimes and in 2008 found forced marriage to be a separate crime against humanity, distinct from sexual slavery. Despite these advances, the SCSL has been criticised by gender activists and victims for the small number of perpetrators who were tried and for the fact that evidence of sexual violence was not heard in the cases against the Civil Defense Forces (CDF), a pro-government militia group.
- On 5 April 2003, the Special Panel for Serious Crimes at Dili District Court sentenced a former militia commander to 12 years imprisonment. José Cardoso Ferreira (alias Mouzinho) was found guilty of crimes against humanity including murder and rape committed during 1999 in Lolotoe Sub-district. This was the first- and only-time rape was tried and convicted as a crime against humanity by the Special Panel. Cardoso was convicted of one count of rape as a crime against humanity that included the rapes of three victims. An Indonesian sub-district military commander and another militia member were also charged with rape as a crime against humanity among other crimes. Both remain at large in Indonesia.
- After a long wait, the Extraordinary Chambers in the Courts of Cambodia (ECCC) finally addressed the sexual and gender-based violence committed by the Khmer Rouge regime in 2014. The ECCC decided to include forced marriage and rape in the case against Khieu Samphan and Nuon Chea. As of January 2018, only one condition for rape had been pronounced, as torture qualifying as a crime against humanity.

*At one Special Court outreach session in 2004, a woman asked the then Prosecutor whether the man down the road who raped her, who still laughs at her every time he sees her, would be prosecuted. The response she received was merely that he would if he bore the greatest responsibility.*

Lotta Teale, Gender-Based Violence Legal Programme Officer  
with the International Rescue Committee, Sierra Leone

## Domestic Courts

In many contexts, depleted judicial systems, combined with discriminatory attitudes and practices, have resulted in few convictions for rape and other forms of sexual violence at the national level. Since the end of the Second World War, domestic courts or military tribunals have undertaken very few prosecutions for gender-based violations committed during conflicts. Some examples include:



Amal Adwan, 47, asylum seeker from Damascus, Syria in the Moria hotspot on Lesbos island. Hotspots on the Greek islands were originally designed for short-term stays, but since the EU-Turkey deal have become places of indefinite containment. September 30, 2017. © 2017 ZALMAI for Human Rights Watch

- In 1946, the Temporary Court Martial in Batavia, using a mix of national and international law, considered the abuses suffered by the “comfort women” during the Second World War, when thousands of women from what was then the Dutch East Indies, Taiwan, Korea, and the Philippines were abducted and forced into prostitution by the Japanese army. Awochi, a civilian tenant of a hotel where the Japanese military forced women and girls to serve Japanese civilian men as prostitutes, was convicted of the war crime of enforced prostitution and sentenced to ten years of imprisonment. The Tribunals, established by the Dutch East Indies in Batavia (today Jakarta, Indonesia), for the first time prosecuted enforced prostitution as a war crime. Today, the Batavia trials remain the only instance in which enforced prostitution in a context of a conflict has been prosecuted. Such abuses would now fall under the accusation of sexual slavery.
- In April 2006, a military court in Mbandaka, DRC found seven army officers guilty of mass rape of more than 119 women at Songo Mboyo on 21 December 2003. This was the first time rape was tried as a crime against humanity in the DRC, and the first sentence against personnel from the *Forces Armées de la République Démocratique du Congo* (FARDC) for crimes against humanity. The officers had rebelled against their commanders whom they accused of withholding their salaries and attacked two villages. For the destruction of the villages and the mass rape, the accused received sentences of life imprisonment. The Court claimed the Congolese government was jointly responsible and ordered it to provide \$10,000 reparations to the family of a rape victim who died following the attack and \$5,000 to rape survivors. In October 2006, the convicted soldiers escaped from the military prison in Mbandaka and by 2011 the Government had still not disbursed reparations to victims.
- In 2014, a group of eight survivors of sexual and gender-based violence and four Kenyan civil society organisations filed a petition at the Constitutional and Human Rights Division of the High Court of Kenya against various institutions, including Kenya’s Attorney General and the Independent Police Oversight Authority, claiming the State failed to protect the civilian population from sexual violence perpetrated by state and non-state actors during the 2007-2008 post-election violence in Kenya. As of January 2018, the case is still pending.
- In February 2016, in a verdict that commentators qualified as historic, a Guatemalan court convicted two former military officers of crimes against humanity against 11 indigenous Q’eqchi’ women who were subjected to sexual violence, sexual and domestic slavery, the forced disappearance of their husbands, as well as the murder and cruel treatment of a woman and her two small daughters. The defendants were convicted to 140 and 280 years in prison respectively.



### **Benefits of Criminal Justice for Gender Justice**

Prosecutions potentially provide a window of opportunity with regard to gender-based violations. They can:

- provide a long-term legal framework that is responsive to gender-based violations;
- deliver a message regarding the criminality and therefore, unacceptability of rape and other forms of sexual violence;
- offer a forum for victims and survivors to obtain justice for gender-based violations;
- highlight previously neglected gender-based acts of harm and systemic abuses; and
- clarify criminal definitions and uncover the conditions that permit gender-based violence to occur.



The signing of the north-south peace agreement in Sudan, in 2005, paved the way for the return of IDPs. However, renewed hostilities in Abyei region forced thousand of people to flee in May 2008 — Tim McKulka/UNMIS

### **Challenges Faced in Prosecuting Gender-based Violations**

The prosecution of gender-based violations can be difficult for several reasons.

- Prosecutors often fail to treat sexual violence with the same degree of seriousness and importance as other crimes, and sexual violence charges are often dropped in plea bargains.
- Some women are unwilling to speak about crimes committed against them due to feelings of humiliation and/or fear of public reprisal, stigmatisation, and being ostracised by their families.
- Some victims may become alienated from the prosecution process due to repeated demands for accounts of their experiences from media, NGOs, medical and support agencies, as well as official investigators.
- Some women may be discouraged from pursuing prosecutions because they take place so long after the violations occurred and there is a desire not to relive such atrocities.
- Some victims feel that rape and sexual assault were not as devastating as the loss of community, home and possessions, and the violent deaths or disappearances of family members.



Minta caption sama DY

## 7.6 | How can reparations be gender-sensitive?

*Reparations must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women's and girls' lives.*

Nairobi Declaration on the Right of Women's and Girls' Right to Remedy and Reparation

Historically, few reparations programmes have paid adequate attention to gender, either with regard to women's access to reparations, or the ways in which reparations packages need to be tailored to the harms women suffered, and to their distinct needs and priorities. In 2007, a number of women's rights organisations mobilised to examine how to better incorporate gender into reparations policies. These civil society groups adopted the Nairobi Declaration that highlights the importance of addressing gender-based violations by way of reparations and urges policymakers to devise programmes that transform socio-cultural injustices and structural inequalities that predate conflicts. Since women often do not hold the same rights as men during peacetime, reparations, therefore, can be used not only to restore victims' rights, but also transform those rights so that both women and men victims become holders of equal rights. Thus it is important that reparations programmes seek to address the enabling and exacerbating conditions of gendered patterns of human rights violations. Supplementing individual reparations with collective measures is important for recognising the systemic, collective patterns of abuse against women.

There is also an increasing call for reparations initiatives to address the harm women experience as a result of the men in their lives being targeted, especially men who are killed or disappeared. Although some initiatives reflect gender sensitivity, reparations programmes still need to improve in order to address the specific trauma caused by sexual and gender-based violence.



## **Examples of Gender-Sensitive Reparations**

### **Guatemala**

In 2004, in the reparations judgment, *Plan de Sánchez Massacre v. Guatemala*, the Inter-American Commission on Human Rights (IACHR) decided that the state should perform a public ceremony acknowledging its responsibility in the Plan de Sanchez massacre. However, some criticized this public event for not taking into account the stigma surrounding victims of sexual violence.

### **Mexico**

In 2010, in the *Rosendo Cantú et al. v. Mexico* case that addressed the rape of an indigenous woman by Mexican soldiers, the IACHR awarded the victim and her daughter compensation in the form of education scholarships.

### **South Africa**

The Reparation and Rehabilitation Committee made a distinction between victims and their relatives/dependents based on the notion that relatives/dependents suffered less. Cash reparations allowed victims to decide how to allocate their funds, whether for funeral or educational expenses. Some symbolic reparations acknowledged women's role in the struggle; e.g., the restoration of the women's jail in Johannesburg to house the Commission for Gender Equality.

### **Sierra Leona**

The truth commission proposed that not only victims who had made statements or testified before the commission were eligible for reparations, recognizing many more in need of assistance. The commission acknowledged that ostracising victims of sexual violence would result in poverty. The National Commission for Social Action (NaCSA) implemented the reparations programme in accordance with this guideline. By 2012 about 30,750 civilian war victims had received benefits from the reparations programme, including more than 200 women who received surgery for vaginal fistulas. Some victims became disillusioned because ex-combatants received monetary payments and skills trainings immediately, while programmes for women victims faced uncertainty of funding.

### **Morocco**

The Moroccan truth commission (IER) influenced changes in awards of reparations to women, shifting the criteria away from traditional inheritance law to their equality as human beings, and the nature and degree of the wrongs they had suffered. In an attempt to account for how the same harm can have different and more severe impacts on women, the commission recommended that reparations for female victims be larger than for male victims who suffered the same type of violation. The commission recognised only surviving victims, but not their family members, as beneficiaries of reparations. Women who had spent years raising their families while their husbands were imprisoned were not acknowledged. Women divorced by their husbands who were political detainees also were not acknowledged.

### **Timor-Leste**

The CAVR implemented an urgent reparations fund during its operation. In choosing victims who qualified, the commission prioritised harms, but also used criteria regarding a victim's degree of vulnerability and the severity of her or his continued suffering. The CAVR recommended the list of reparations beneficiaries be kept open for two years after closing its operations to ensure that more women, especially vulnerable women, could engage in the process. However, there was a ten-year gap between the completion of the CAVR report and the government's establishment of a mechanism to ensure implementation of the truth commission's recommendations. In this vacuum, an NGO was established with the specific mandate to support women survivors and advocate for their rights.

### **Kosovo**

In March 2014, the Kosovo Assembly passed a law giving legal recognition and redress to women victims of sexual violence during Kosovo's armed conflict. Three years later, the government allocated a budget to recognise and give victims of wartime sexual violence the status of civilian victims of war, giving them rights to reparations. International donors have provided micro-grants and psychological support to conflict-related sexual violence survivors



## Challenges to Gender-sensitive Reparations

Several obstacles still make it difficult to grant effective reparations for violations suffered by women.

- In many contexts, women face obstacles in accessing reparations programmes, including illiteracy, lack of transportation, absence of a bank account, and family responsibilities.
- Providing cash payments could cause further violence against women or be unsustainable since women often do not have control of family finances.
- If reparations programmes fail to take into account the *structural inequalities that enabled gender-based violence during the conflict*, they run the risk of *reinforcing these practices in the post-conflict setting*. Thus, for instance, women often do not have title to land, so formal restitution processes may deny women their due and replicate gender biases in property ownership.
- Due to the *stigma surrounding certain violations*, such as rape, survivors often do not want their communities, and sometimes even their families, to know about their experiences. Registering victims in a way that protects their privacy and makes them feel comfortable is a serious challenge.
- Since men hold most decision-making power, *women's unique needs may be overlooked* if communities are given the opportunity to decide on the form of their collective reparations. Reparations programmes should seek to empower women victims not only through benefits, but also through their autonomy and participation in making decisions.
- Material reparations are usually at least partially calculated on the basis of economic loss and *ignore much of the informal work sector*. Material reparations can be damaging for female survivors of war since overlooking their reproductive and care-giving roles can exclude them from much-needed reparations.



The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) offers training to Internally Displaced Persons (IDPs) living at a Protection of Civilian site (PoC 3) run by the UN Mission in South Sudan (UNMISS) in Juba. The training includes computer skills, handicrafts, literacy and other livelihood skills.



Personal items of a woman survivor of the 1965 tragedy in Indonesia.— Anne-Cecile Esteve

## 7.7 | How can institutional reform promote gender justice?

*We're looking at a reform in a very fundamental way from the constitution upwards because that's the basic legal document that we have. It has been interesting to note that as a result of the public consultations around constitutional reform, voices that have not been otherwise heard have found space...For example, we're seeing Muslim women—who have had many issues of discrimination, gender-based, within those communities—raising [their] voices...saying: “We too are marginalised and have access to the fundamental rights chapters of the constitution.”*

Ermiza Tegal, human rights lawyer, Sri Lanka

During a period of transition after years of mass human rights violations, the root causes of violations are still present, but may be hidden. Unless those root causes are understood and dealt with there is a high likelihood of a recurrence of violence. Deep-rooted discrimination and inequality can provoke violence that escalates out of control. Discrimination and inequality reflect both a manipulation and a weakening of state institutions whose job it is to protect the rights of citizens. The military and police become agents of the elite who are often directly involved in violations committed with total impunity. Unfair laws are passed, and the courts are corrupted and lose independence. The media, religious bodies, and educational institutions all become tools not for spreading the truth, but rather distort and manipulate it.

In order to prevent the recurrence of human rights violations, transitional justice processes include efforts to reform many institutions that were complicit in the commission of them. This may include a wide array of reforms, that include:

- constitutional;
- criminal law;
- the judiciary;
- the security sector;
- educational institutions; and
- the media.

Understanding how women experienced discrimination and human rights violations must inform the institutional reform agenda and process. Civilian oversight and mechanisms for check and balance must be established to ensure that state institutions become transparent and accountable. Ensuring that women are involved in designing and implementing reforms is key to a long-term evolutionary process to strengthen democracy and freedom.

*When we talk about institutional reforms maybe we should put more women in governments so one of the ways to do that is to train women, to teach them that they do own half the world, and they should take more active roles in making sure that we carry half the weight of the world as well.*

Francesca Sarenas, Coordinator of the Mindanao office of Alternative Legal Assistance Center (SALIGAN), Philippines



### **Gender Strategies for Security Sector Reform (SSR)**

Two complementary strategies can be used to integrate gender issues—the particular needs and roles of men, women, boys, and girls—into SSR and security institutions: gender mainstreaming and promoting the equal participation of men and women. These strategies can be applied both to the SSR process itself (e.g., by ensuring gender training for personnel responsible for SSR policy and planning) and to the institutions undergoing SSR (e.g., by including gender training for new recruits as part of a police reform process).

**Gender mainstreaming** is “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all spheres so that women and men benefit equally, and inequality is not perpetuated.”

Gender mainstreaming means that the impact of all SSR policies and programmes on women, men, boys, and girls should be considered at every stage of the programme cycle, including assessment, planning, implementation, monitoring, and evaluation. For example, mainstreaming gender into an SSR assessment involves including questions to identify the different insecurities faced by men, women, girls, and boys. The results of the assessment might, in turn, highlight the need to include gender initiatives that address the particular security needs of women, men, boys, and girls within the SSR process. Examples of gender initiatives in SSR include:

- the integration of gender issues into the core training for justice sector personnel including lawyers, judges and administration staff;
- a gender budget analysis of government public security spending to ensure that funds are being equitably allocated;
- employing a gender expert as part of the SSR assessment team; and
- a code of conduct for the armed forces that explicitly prohibits and sanctions GBV.

Initiatives designed to deal with the particular security needs of women, men, girls, and boys include:

- the establishment of women’s police units or stations;
- training for prison staff to prevent the rape of male prisoners;
- collaboration with women’s organisations to improve services to trafficked women and girls;
- an assessment of measures to prevent and respond to male youth violence.



Human right victims attend an open forum organised by the Truth and Dignity Commission in Tunisia  
[Getty]

Measures to promote the equal participation of men and women (also known as gender balance) seek to uphold men's and women's right to participate in decisions about security in general and SSR in particular. As men are highly over-represented in SSR processes and security sector institutions, a gender balance strategy usually focuses on increasing the recruitment, retention, and advancement of women, and ensuring the participation of civil society organisations, including women's organisations in SSR. There are several ways to promote gender justice in SSR.

- Review SSR terms of reference, policies, and programmes to ensure they are not discriminatory.
- Facilitate separate focus group discussions for women and girls in SSR assessments.
- Develop gender-responsive and family-friendly human resource policies within security agencies such as equal pay, benefits, and pensions; flexible work hours; and adequate maternity and paternity leave.
- Support the creation of female staff associations or women's networks in security and justice institutions, such as associations of women judges and a parliamentary women's caucus.
- Fund local citizen security councils that include representatives from women's organisations.



Ibtihel Abdellatif, President of the Women's Committee of the Truth Commission