

Gender and Transitional Justice

It is important to understand how human rights violations affect men and women differently in order to develop transitional justice mechanisms and initiatives that can adequately address their different experiences, and the gendered and long-term impact of armed conflict. Although the scale of violations often increases significantly in a conflict situation, massive human rights violations that have a particular impact on women may occur before or after a conflict.

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 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.

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, and their experiences of human rights violations were not well documented or understood. Because this bias often continues today, it is important to give particular attention to the experiences of women to ensure a holistic understanding of mass violations. Similarly, transitional justice mechanisms need to be sensitive to the gendered impact of armed conflict and ensure both men’s and women’s access to and participation in transitional justice processes so that solutions for peace and democracy not only embody principles of gender justice, but themselves become examples of it.

How can truth commissions promote gender justice?

Truth commissions can provide women a way to share about the human rights abuses they experienced and reclaim their voices in the public sphere. The experience of past truth commissions indicates that truth seeking can be gendered. 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. Only by documenting and analysing gender-based human rights violations can a fuller historical record be achieved.

How have criminal justice mechanisms addressed gender-based human rights violations?

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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; and 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. However, the Batavia Trials conducted in 1946 in Indonesia by the colonial Dutch East Indies government at a domestic level, did prosecute enforced prostitution as a war crime. The 1949 Geneva Conventions and the two additional protocols contain provisions relating to women, yet 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.

How can reparations be gender-sensitive?

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's rights are often not protected during peacetime, reparations, therefore, can be used not only to restore victims' rights, but also transform the fulfillment and protections of rights so that both women and men victims become holders of equal rights. Thus it is important that reparations programmes seek to address conditions that enable 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.

How can institutional reform promote gender justice?

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 the root causes are understood and dealt with there is a high likelihood of a recurrence of violence. 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 corrupted courts lose independence. The media, religious bodies, and educational institutions all become tools not for spreading the truth, but rather distort and manipulate it.

Understanding how women experience discrimination and human rights violations, before and during armed conflict, must inform the institutional reform agenda and process. Civilian oversight and mechanisms for check and balance must be established to ensure that state institutions are 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.

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