

Sexual and gender-based violence in the context of transitional justice

How do we define sexual and gender-based violence?

Sexual violence is a form of gender-based violence and encompasses any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration and forced nudity.

Gender-based violence is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. It may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices.

An understanding of how gender intersects, for instance, with race, religion, economic situation, political affiliation and geography is also critical to addressing patterns and forms of gender-based violence. Although men and boys are also targets of gender-based and sexual violence in conflict situations, the victims of such violence continue to be disproportionately women and girls.

What is the relevant normative framework?

Human rights law, notably, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), provide protection against sexual and gender-based violence, including by establishing safeguards against sexual violence as a result of gender-based discrimination. Ad hoc tribunals, the Special Court for Sierra Leone, and the International Criminal Court have contributed substantially to developing the legal and normative framework for such crimes, including through innovative jurisprudence. It is now well recognized that sexual violence can constitute a war crime, a crime against humanity, or an act of genocide.

How can a gender perspective be integrated in transitional justice?

Addressing sexual and gender-based violence in post-conflict situations is vital to promoting accountability and achieving sustainable peace. Transitional justice must thus ensure victims' participation in all relevant stages of the process, so that their rights and perspectives are adequately reflected therein and they can receive appropriate forms of redress, including reparations.

National consultations

National consultations with victims and affected groups, especially women and girls, are a critical element of a human rights-based approach to transitional justice. They are key for ensuring victims' meaningful participation and may serve as a tool of empowerment, recognition and redress.

Truth-seeking processes

Truth commissions can play an important role in addressing sexual and gender-based violence. They are often well placed to reflect the systematic nature of sexual violence, particularly when used as a method of warfare. They can also help to break down the stigma and change societal attitudes regarding sexual violence. Sensitizing the population to the work of truth commissions through an outreach programme is an important element in this regard. Examples of truth commissions that have integrated attention to sexual and gender-based violence in their work include Guatemala, South Africa, Peru, Kenya, Liberia, Morocco, Sierra Leone, and Timor-Leste. This has resulted, for instance, in the appointment of women as commission's members, staff and experts; the establishment of specialized gender units within the commission's secretariat; the incorporation of gender-based and sexual violence into operational structures and rules of procedures; and the formulation of relevant findings and recommendations in final reports.

International Commissions of Inquiry also contribute to the right to the truth. Efforts are being made to include sexual and gender-based violence in the work of such Commissions. The International Commissions on the Syrian Arab Republic, Libya and Guinea devoted attention to sexual violence in their reports. The commission on the Democratic People's Republic of Korea paid specific attention to gender-based crimes and their impact on women and children.

Criminal justice proceedings

States have primary responsibility to exercise jurisdiction over serious crimes under international law. National legislation should conform to international standards, including when criminalizing sexual and gender-based violence and by using gender-neutral definitions. Transitional justice strategies increasingly focus on strengthening domestic investigative and prosecution capacities. Specialized chambers or

courts, for instance, have been established in Bosnia and Herzegovina, Croatia, Democratic Republic of the Congo (DRC), Liberia, Serbia and Uganda. Focus is also placed on the training of public officials, particularly from the medical services, the police and the judicial systems. There is increasing awareness of the need to address victims' obstacles in accessing criminal accountability processes, due to absence of medico-social and legal support, for instance, geographic remoteness of police stations and courts, financial and security issues. Measures to address these barriers may include free legal assistance, mobile courts, or specific courtroom protection protocols. The goal is to ensure victims' participation, protecting dignity, safety, confidentiality and privacy.

Reparations

Adequate reparation for victims of sexual and gender-based violence entails different forms, such as restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. Comprehensive programmes which combine individual, collective, material and symbolic benefits can maximize the possibilities of redress for large number of victims. Victims' participation is crucial for ensuring that benefits are accessible, equitable and effective. The criteria and procedures for accessing reparations must be gender-sensitive. Reparations proceedings should adopt adequate procedural and evidentiary rules for sexual violence. Reparations should take into account the gender-specific nature of the harm suffered by victims, including consequences of stigma. They should strive to be transformative and where possible, assist in overcoming structures of inequality and discrimination. Creating linkages with development actors and programmes could be beneficial for delivering sustainable and transformative reparations.

Institutional reform

Institutional reforms are necessary to prevent the

repetition of sexual and gender-based violence, re-establish trust and build sustainable peace. There has been increasing awareness of the need to address sexual and gender-based violence as part of the justice and security sector reform. Security-sector vetting, in particular, must disqualify perpetrators of such violence. Failure to do so expose women and children at risk of further violence, is a barrier to seeking justice, erodes public faith and confidence, humiliates victims, and sends the message that sexual and gender-based violence is socially acceptable. Developing standards of conduct, complaint and disciplinary procedures will often be necessary. Gender-sensitive training and capacity building for security sector and law enforcement institutions is critical.

The work of OHCHR

OHCHR provides conceptual and policy support, legal advice, technical assistance and capacity-building for the establishment of gender sensitive and participatory transitional justice processes. For instance, OHCHR assisted in holding consultations with survivors of sexual and gender-based violence in the DRC, Nepal, Uganda and Kosovo. In the DRC, OHCHR implemented projects to strengthen victims' access to justice, including through mobile courts, legal clinics and pilot initiatives to inform broader reparations efforts. In Uganda, OHCHR provides technical advice to the International Crimes Division of the High Court to facilitate compliance with good practices in handling cases of sexual and gender-based violence. In 2014, OHCHR prepared the analytical study on gender-based and sexual violence in relation to transitional justice (A/HRC/27/21), and in cooperation with UN Women, the *Guidance Note of the Secretary General on Reparations for Conflict-Related Sexual Violence*. Both documents outline guiding principles, operational good practices and lessons learned to better address challenges in the area of sexual and gender-based violence.

Further reading

- [Analytical study focusing on gender-based and sexual violence in relation to transitional justice, A/HRC/27/21 \(2014\)](#)
- [Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence \(2014\)](#)
- [UNSC Resolutions S/Res/1325/2000; S/Res/1820/2008; S/Res/1888/2009; S/Res/1960/2010; S/Res/2106/2013; S/Res/2122/2013](#)
- [CEDAW General Recommendations No. 30 \(2013\), and No. 19 \(1992\)](#)
- [Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/14/22 \(2010\)](#)
- [Reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo De Greiff, A/HRC/21/46 \(2012\), A/HRC/24/42 \(2013\), A/HRC/27/56 \(2014\)](#)
- [Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence, A/HRC/RES/23/25 \(2013\)](#)
- [Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice \(2010\)](#)
- [UN 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 \(2005\)](#)
- [Updated Set of principles for the protection and promotion of human rights through action to combat impunity \(2005\)](#)
- [OHCHR Rule-of-Law Tools for Post-Conflict States: national consultations, truth commissions, reparations, prosecution initiatives, hybrid courts, vetting, mapping the justice sector, and monitoring legal systems](#)