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PROMOTING TRANSITIONAL JUSTICE APPROACH TO END HARMFUL PRACTICES IN THE ARAB REGION

Abdul Aziz M. Farah (Ph.D.)

Former UNFPA Regional Adviser for Population and Development

Luay Shabaneh (Ph.D.)

Regional Director
UNFPA Arab States Regional Office

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ACRONYMS

CSW	United Nations Commission on the Status of Women
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CM	Child Marriage
CFM	Child Forced Marriage
CRC	Convention on the rights of the child
FGM	Female Genital Mutilation
FWCW	Fourth World Conference on Women
HP	Harmful Practices
HRBA	Human Rights-based Approach
ICPD	International Conference on Population and Development
SDG	Sustainable Development Goals
SGBV	Sexual and Gender-based Violence
TJ	Transitional Justice

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This paper is part of UNFPA Arab States Office policy paper series to explore and research new ways and modes of engagement to break the curve and accelerate ending harmful practices in countries to achieve zero sexual and gender-based violence (SGBV).

Abdul Aziz M. Farah (Ph.D.) suggested to explore applicability of transitional justice and did the core research effort as a lead author. Luay Shabaneh (Ph.D.) contributed to all stages of the research and took part of the discussions and jointly prepared this policy paper with the lead author to explore new potential modes of engagement to end harmful practices with specific focus on child and forced marriage and FGM.

Many experts have contributed to the discussion of the main idea at different stages of preparing the paper. UNFPA would like to acknowledge the efforts of the experts took part of the expert group meeting (EGM) convened by ASRO in Cairo 29-30 November 2021[1]. The discussion in the EGM enriched the understanding and shed important lights on different experiences in using transitional justice approach.

1 Francois Farah, Maha Alrabat, Mohamed Muhiddien, Martine Najem, Anna Myriam, Swati Mehta, Mudar Qassis, Boshra Belhag, Salwa Najjab, Hanan Rabani, Elke Mayfhro, Afaf Mohamed, Ilham Hammadi, , Ali Nour, Hania Sholkamy

PREFACE

Harmful practices against women and girls are global prevalent pandemics; women and girls are targeted in a prolonged cycle. Women and girls who are inflicted by harmful practices including female genital mutilation and forced and child marriage experience lifelong devastating impact.

At both familial and societal levels, the perpetration of such crimes, is more than likely to generate dreadful impacts on the physical, emotional, social, and psychological wellbeing of women and girls, and thereby, to inhibit the propensity to promote reconciliation and to build a society of equity, justice, and freedom.

Human right organizations, political leaders and civil society have widely condemned violence through various platforms. Several modes of engagement to end harmful practices including advocacy, awareness raising, legal and social norms transformation, and knowledge production were implemented. They engaged governments, faith-based organizations, women networks, and civil society organizations, but all these efforts did not make a breakthrough because it is only forward looking and relatively soft to make the required change and handle pushback provoked by rooted social norms.

UNFPA initiated in 2018 a transformative result of its strategic plan to achieve zero GBV prevalence by 2030 through policies, programmes, legislation, and advocacy campaigns with focus on changing social norms, but progress is not satisfactory.

A more vocal, systematic, and enforced approach that views harmful practices as human rights violation legacy that society needs to sort out, identify perpetrator and enforce punishment, identify, and honor victims, and establish a structural and institutional process of reform to prevent the perpetration of such crimes. It is important to plead for accountability, truth-seeking, justice and reconciliation and to place them at the center of post-conflict recovery and development.

United Nations defined and adopted a transitional justice mechanism relevant to countries and societies who attempt to sort out past human rights violations. For the UN system, transitional justice "comprises 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, to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriate combination". Furthermore, comprehensive national consultations, particularly with those affected by human rights violations, have been recognized as critical element of transitional justice.

This paper examines the applicability of transitional justice approach, which is used to address legacy of human rights violations, to end harmful practices with specific focus on FGM and child/forced marriage. The paper argues that the current mode of engagement to end FGM and child marriage will not lead to zero tolerance by 2030 or even 2050. It suggests the need for a vocal and enforced approach to break the curve of progress on FGM and child marriage.

The paper provides some insights on the broader linkages between TJ and achieving SDGs, argues that the narrow approach that is so far implemented in approaching TJ to reach justice is not enough, a more sustainable approach that links ending harmful practices to the overall development of women and girls in the context of a broader development agenda is needed.

It provides evidence from the literature that transitional justice is a viable mode of engagement and likely to accelerate progress if applied properly in specific situations, but more research is needed to grasp the insights and shape out a more concrete guiding implementation platform.

The paper suggests a policy framework for applying transitional justice principles and processes to harmful practices and suggests a practical guiding insight to accommodate some programmatic insights during the implementation stage.

We hope that the discussion in this paper will open the horizon on further research on new modalities to accelerate ending harmful practice and end this pandemic that affects women and girls and destroy their lives.

Luay Shabaneh (Ph.D.)

luay shabaneh

Regional Director
UNFPA Arab States Regional Office

1. INTRODUCTION

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Supporting countries and societies in dealing with a legacy of atrocities and massive human rights violations is very challenging. Throughout the world, it is increasingly recognized that legacies of massive violence and human rights violations can, if left unaddressed, fuel future conflicts. Women and girls who are inflicted by harmful practices, including FGM and CFM are likely to be exposed to heightened risks of violations of their human rights and higher levels of violence, including sexual violence.

SGBV is a global phenomenon which cuts across geographical, cultural, religious, and political boundaries and varies only in its manifestation and severity.[60] It has existed from immemorial and continues to present day. It takes covert and overt forms, including physical and mental abuse. SGBV, including FGM, CFM and other practices is a human rights violation and not only a moral issue. It has serious negative implications on the economic and social development of women and society and is an expression of gender subordination of women.

Despite serious national and international efforts, the most insidious harms driven by FGM/CFM and other forms of SGBV still remain outrageously unabated. Development practitioners have admitted that most of the ongoing strategies and programmes, no matter how much efforts invested in them, remain incapable of accelerating steps toward ending the harms and eliminating significant forms of violence against women and girls, including SGBV.

The objective of this policy paper is to enhance public understanding and suggest of a more vocal, systematic, comprehensive victim-centered, gender-perspective and human rights-based transitional justice approach that seeks to address FGM/CFM and other harmful practices impinging on SGBV as human rights violation legacy that society needs to sort out, identify perpetrators and enforce punishment, identify and honor victims, and establish a structural and institutional process of reform to prevent the perpetration of such crimes.

2. ZERO GENDER-BASED VIOLENCE BY 2030

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Harmful practices against women and girls are global prevalent pandemics; women and girls are targeted in a prolonged cycle. Human right organizations, political leaders and civil society condemn violence through various platforms. UNFPA initiated in 2018 a transformative result of its strategic plan to achieve zero GBV prevalence by 2030 through policies, programmes, legislation, and advocacy campaigns with focus on changing social norms, but empirical evidence show that progress is slow and not likely to achieve the zero prevalence by 2030.

2.1 Global efforts to end harmful practices

Many women and girls nowadays in the Arab Region and elsewhere are still not aware of their basic human rights. It is this state of mind which contributes to the perpetuation of harmful practices affecting their wellbeing and that of their families and communities. Even if their awareness is distinctly alleviated, they often remain powerless to bring about the change necessary to challenge harmful practices. From the start then, the concept of empowering women was viewed as vital to any process of change and to the elimination of harmful traditional practices.

Sine the adoption of the Universal Declaration of Human Rights in 1948, which prohibits all forms of discrimination based on sex and ensures the right to life, liberty and security of person, many international legal instruments on human rights espoused to further reinforce individual rights, and protect and prohibit discrimination against specific groups, in particular women. For instance, the 1993 Vienna World Conference on human Rights reiterated that states should recognize and accept the universality and indivisibility of human right of women and to adopt the slogan of "Women's Rights are Human Rights", thus capturing the reality of the status accorded to women and girls (ibid).

Both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, art. 2,5, and 16) and the Convention on Rights of the Child (CRC: art. 24 "C"), explicitly address harmful practices and elaborated the obligations states have towards ending HP. These two conventions constitute the normative framework aiming to protect the women' and girls' rights against HP, which distinctly perpetuate dreadful impacts on the physical, emotional, social and psychological well-being of them.

Another important source of human rights norms comes out of various political agreements and declarations. In 1994, at the International Conference on Population and Development (ICPD), world governments called for universal sexual and reproductive health and decisively demanded an end to HP impacting on the rights of women and girls. One year later, at the 1995 Fourth World Conference on Women (FWCW), governments strongly declared that HP must stop.

In 2015, the United Nations 2030 Agenda for Sustainable Development (SDG) which envisaged a world in which every woman and girl enjoys full gender equality and all legal, social, and economic barriers to their empowerment have removed, including, elimination of all harmful practices, including FGM and CFM (SDG5.3).[62] The 2019 Nairobi Summit on the ICPD25, a global conference in which the participants reiterated their commitment to strive for zero GBV including HP by 2030. The commitment of the conferees to achieve this objective requires rapid changes in the mindsets that still sanction violence against women and girls and deny their rights and bodily autonomy.

The above brief account depicts that the international community has come together over the years and decades to agree that some HP cannot be tolerated and that all relevant stakeholders have a collective duty to end them. This implies that these practices have still high propensity to spill over around the world, even in places where national laws forbid them and, by definition, the women' human rights violations persistently perpetuate.[60]

The scope of HP is vast; some operate on national or regional scale or across nations tracing migratory patterns, while some others are hidden in isolated communities. Viewed in a different angle, HP are carried out by family members, religious communities, health care providers, commercial enterprises, or State institutions. While HP may vary widely, they are all violations of the rights of women and girls.[63]

To look at each form of harmful practices from the perspective of human rights will help identify that though ample programme interventions were made, yet these practices continued to persist. For instance, despite steady improvement in laws and initiatives to curb violence and harmful practices, many forms are still not visible, not understood and not accepted as a problem. A probable viable interpretation relates to high sensitivity of the victims to existing human rights violations (ibid).

One general remark emanating from wide discussions in this field denotes that all harmful practices come down to the assumption that the rights and wellbeing of a woman or girl are less than those of men and boys. Women and girls have fewer choices as a result and are more likely to have choices made for them that put them under the sexual, legal, and economic control of men.

From a human rights perspective, the violations accrue on multiple fronts, denying rights to equality and non-discrimination, security, and autonomy in decision-making. Also, denial can be rights to sexual and reproductive health and education, and opportunities to work and thrive in life.

Further, the harm caused can be immediate and long term, physical and psychological. A girl subjected to female genital mutilation at first faces sever pain and the risk of infection, haemorrhage and even death. Throughout her life, she may struggle with reproductive tract infections, chronic back pain, painful intercourse and a loss of pleasure and difficulties in childbirth, among many other possibilities. She will be more likely than a girl who has not been harmed this way to experience psychological illnesses, including post-traumatic stress disorder.

A girl who is forced to undergo a child marriage is more likely to drop out of school, dashing prospects for decent work, low earnings, and autonomy. She is likely to encounter a high-risk pregnancy and probably unwanted birth followed up by maternal and childhood health complications, and high propensity to depression and trauma.

Harmful practices are part of a continuum of violence against women and girls that remains widespread and are a "silent and endemic crisis". According to CSW (2020), one third of women will experience physical or sexual abuse at some point in their lives.[64] Despite steady improvement of laws and initiatives to curb violence and harmful practices, many forms are still not viable, and not accepted as a problem/violation. Trends such as the medicalization of FGM, where trained medical personnel perform the practice; cases of "selling" child brides on social media; and use of reproductive health technology to enable discriminatory preferences for sons, are worrisome signs of how harmful practices, despite often ancient origin, are translating into the modern world. At this point, we must ask again if the global objective of "getting to zero harmful practices by 2030" is realizable.

Available evidence indicates that despite some progress, not nearly enough has been done to end harmful practices in either developing or developed countries. Without substantial progress on Gender Equality (SDG5) the realization of the Nairobi ICPD25 Objective of Getting to Zero HP by 2030 will remain far behind the stated goal, with millions of women and girls at risk.

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2.2 Outcome of efforts to end FGM and CFM

As stated above, regardless of serious national and international efforts, HP still on, and widely spreading within or across many countries. During the last 40 years, they harmed more than 140 million women and girls worldwide.

Efforts to end FGM/CFM ranged from advocacy to counselling, services, legal reform, and working on social norms transformations. Other engagements addressed the surrounding socioeconomic environment, including poverty and invested in human capital through improving health and educational services and utilized faith-based organizations and other community networks to end harmful practices. All these efforts and interventions were helpful and are still needed even though they did not end HP; we realize that social change takes a lot of time.

Some progress was achieved in many countries but ending such practices by 2030 as per UNFPA transformative result on GBV is not feasible using the current mode of engagement. Evidence presented in figures 1 and 2 show that the trend of prevalence rate of HP in selected countries assume slow progress over time and achieving zero prevalence rate is not likely to happen in 2030 or even 2050. Table 1 shows, in fact, that in some countries we need more than 200 years to achieve the zero prevalence, and in few cases, decreasing trend of prevalence did not start yet using the current modes of engagement.

Figure 1: Average prevalence rate for child marriage in selected countries 2019-1985

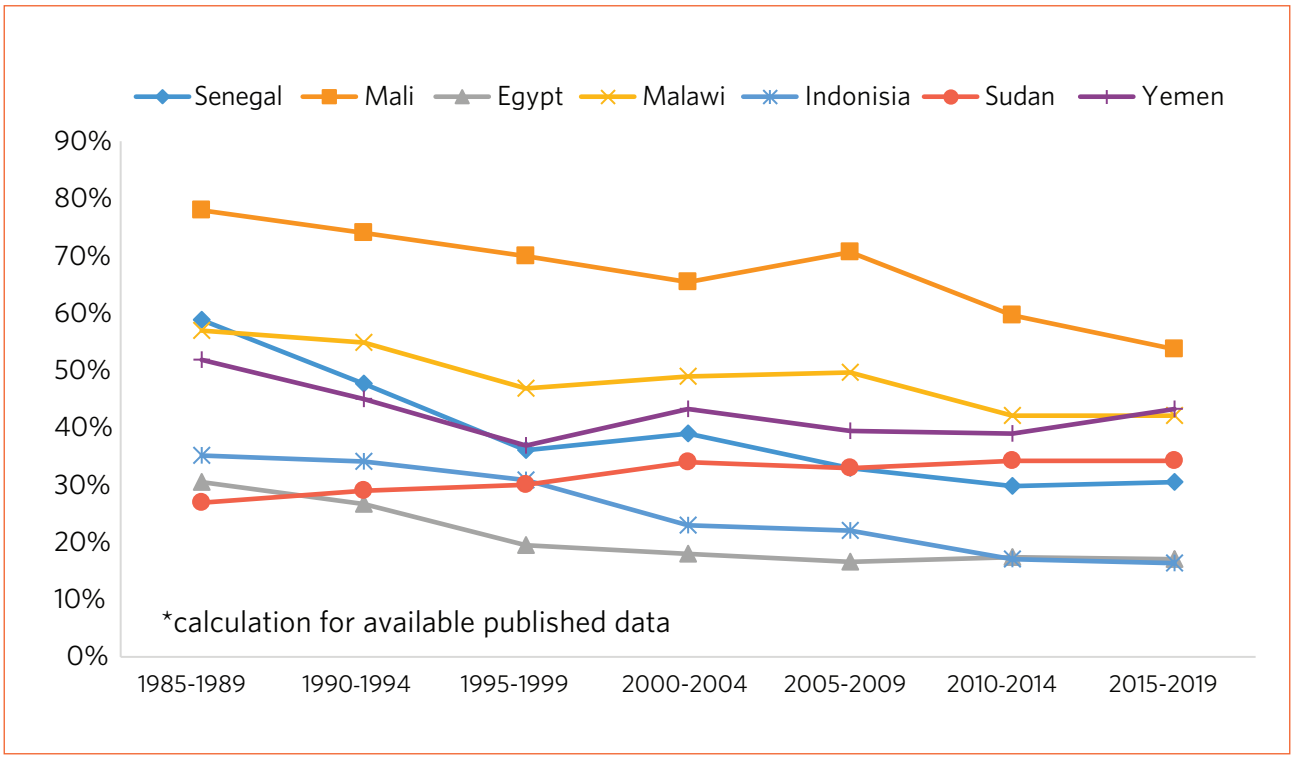

Figure 2: Average prevalence rate for FGM in selected countries 2019-1985

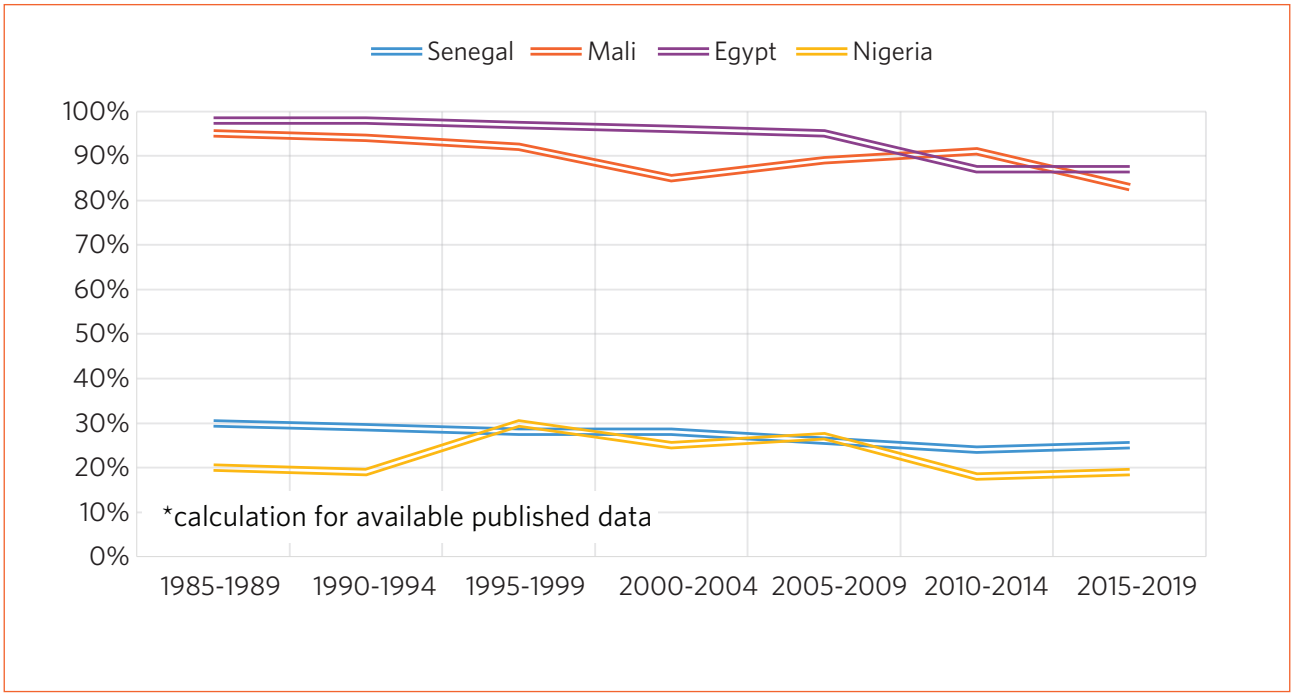

Table 1: Estimated years to achieve zero prevalence of harmful practices in selected countries

Country	Proportion of girls and women aged 15-49 years who have undergone (%) female genital mutilation/cutting		Proportion of women aged 20-24 years who were married or in a union (%) before age 18	
	Expected Year	*Remaining Years	Expected Year	Remaining Years
Djibouti	2252	233	Stable	-
Egypt	2134	113	2130	109
Iraq	2092	71	increasing	-
Sudan	increasing	-	increasing	-
Mauritania	2135	114	increasing	-
Somalia	stable	-	2063	42
Yemen	2074	53	2076	55
Gambia	Stable	-	2037	16
Mali	stable	-	2107	86
Sierra Leone	2147	126	2030	9

***Assuming same and linear pattern of decrease where data were available**

FGM and CFM are illegal in many countries no matter what the people's cultural and religious background, it is evident that both practices are not religious rites. There is consensus across development practitioners and governments that these practices are

criminal acts of violent child abuse causing extreme and severe physical and emotional pain, leaving a victim with lifelong health consequences, such as infertility, complications during pregnancy and childbirth, menstrual problems, and can even cause death.

These practices are persistent because of lack of awareness**,** but most importantly due to lack of enforcement against these practices including prosecution, punishment of perpetuators who commit this criminal walk free. Therefore, is an urgent need to think in different approaches to break the trend and achieve accelerated results to eliminate harmful practices.

The problem perpetuates because there is zero deterrent effect. In fact, there is a major flaw in the governments' agenda to date, there absence of driving forces at community level to hold governments accountable.

To address the challenge and break the curve of HP prevalence, there is a need to implement a multi-agency, multistakeholder, victim-centered, bottom-up and comprehensive, long-term approach. Until we can make substantial change in the attitudes and positions against the harmful practices**,** that consider them as crimes inherited from the past that require justice progress will be slow or nonexistent.

A comprehensive and transformative human rights-based approach needs to be adopted, monitored, and assessed with a view to protecting the rights of women and girls and to engage them in averting violations of human rights, upgrading transitional justice's mechanism and process and to reach out to inclusive society, reconciliation, and development.

Enforcement and vocality against harmful practices in a coherent way over time and stakeholders including criminalization of inherited practices, and considering prosecutions against perpetrators, compensation of victims and reconciliation at later stages, such practices will remain and grow.

Therefore, transitional justice (TJ) approach might be a viable mindset to address this matter. To validate this approach, we suggest dealing with the FGM and CFM as a harmful practice exclusively directed towards women and girls that violates their fundamental rights, and what actions have done to reduce the harm and what alternative approaches could be adopted for accelerating the progress to reach the destiny.

3. TRANSITIONAL JUSTICE FOR ACCELERATING THE ELIMINATION OF SGBV, INCLUDING FGM AND CFM

3.1 Definitions and normative framework

HP including FGM and CFM are discriminatory practices committed regularly over life-long periods. They place women's and girls' SRH at serious risk. Human rights bodies have repeatedly, called on states to protect women and children, particularly the girl child, from HP, particularly FGM and CFM, and other forms of SGBV.

HP constitute a form of SGBV against women and girls and may amount to torture or cruel, inhumane, or degrading treatment[1]. The likelihood of occurrence of such practices is influenced by sex, gender, age, and disability, among others[2]. CEDAW and CRC have expressed concerns about the use of these practices "to justify gender-based violence as a form of 'protection' or control of women and children"[3].

The Human Rights Council has expressed concern about the "impact of deep-rooted gender inequality, norms and stereotypes and of harmful practices, perceptions and customs that are among the primary causes of child, early and forced marriage and also, that poverty and lack of education are among the drivers of harmful practices".

HP violate the human right to the "enjoyment of the highest attainable standard of health"[4] and can carry a high risk of death and disability[5]. FGM can "lead to various immediate and long-term health consequences, including severe pain, shock infectious and complications during childbirth (affecting both the mother and child), long-term gynecological problems such as fistula, psychological effects and death[6]. CFM is "often accompanied by early and frequent pregnancies and childbirth, resulting in higher-than-average maternal morbidity and mortality"[7]. Preventing and eliminating HP entail "the establishment of a well-defined, rights-based and locally-relevant holistic strategy"[8]

a) States as duty barriers

CEDAW and CRC have called on states "to explicitly prohibit by law and adequately sanction or criminalize harmful practices[10]". The Committees have also recognized that states must "provide for the means of prevention, protection, recovery, reintegration and redress for victims and combat impunity".

b) Transformation of societal norms and cultural factors

Customs, traditions, and religious laws may hinder the enforcement of laws prohibiting harmful practices. Thus, states must take additional measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles of men and women"[11]. Both committees have recommended that states "develop and adopt comprehensive awareness-raising programmes to challenge and change cultural and social attitudes, traditions and customs that underlie behavior that prolongs harmful practices"[12].

States have obligations to respect, protect and fulfil the rights of women and girls in eliminating harmful acts, including, but not limited to FGM and CFM. In this context, states are obliged to respect, protect, and fulfil as follows:

States must respect the rights of women and girls through enacting legislative measures to prohibit the practice of FGM. For example, states should not accept the medicalization of FGM that allow medical personnel to perform this practice.

States must protect women and girls by preventing violations committed by private individuals and organizations. To this end, states must provide protection to girls running away from their families to avoid forced marriage or being subjected to FGM. Appropriate measures could include the establishment of temporary shelters and relocation of victims outside of their immediate community[13], however should not result in the arbitrary detention of girls.

States must fulfil its obligations though taking appropriate legislative, administrative, budgetary, judicial, and other actions and establish "a well-defined, rights-based and locally-relevant holistic strategy which includes supportive legal and policy measures, including social measures that are combined with a commensurate political commitment and accountability at all levels"[14]. This requires deliberate measures to address root causes of harmful practices, which include harmful gender stereotypes, poverty, and lack of education.

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3.2 Engendering transitional justice in relation to SGBV

Efforts to integrate a gender perspective into TJ have come about the last two decades in response to the relative neglect of women's involvement in developing TJ mechanisms and processes during and after conflict, where deals were reached without women's representation.

In many recent conflicts women have suffered sexual and sex-specific forms of violence, including systemic rape, sexual slavery, CFM, FGM, forced pregnancy, and forced sterilization and abortion[16]. Other forms of violations experienced by women during conflict include heightening domestic violence, lack of access to basic services and means of survival due to destroyed and non-existent infrastructure, forced displacement, lack of access to justice, etc.

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

For the UN system, transitional justice "comprises 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, to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriate combination"[17]. Furthermore, comprehensive national consultations, particularly with those affected by human rights violations, have been recognized as critical element of transitional justice[18], raising the number of TJ elements from four to five.

These elements are enshrined in the existing international instruments relating to TJ which provide guidance with a view to achieving its strategic aims, namely, fighting impunity, providing recognition and redress to victims, fostering trust, strengthening the rule of law, and contributing to reconciliation.

Among the guidance principles of UN engagement in transitional justice activities is the need to "strive to ensure women's rights,"[17] recognizing that justice for women' conflict-related violations send strong messages on equal access to justice and application of the rule of law.

Addressing SGBV in societies transitioning from conflict or repressive rule is vital to ensuring accountability and sustainable peace. TJ processes can help to realize the rights of victims of such violence and can be instrumental in identifying and dismantling the underlying structural discrimination that enabled it to occur. As such, it is important to ensure that victims of SGBV including FGM and CFM, are consulted effectively, that they receive adequate redress for violations, that women can fully participate in transitional justice processes and that their rights and perspectives are adequately reflected therein.

There has been an increased focus on the effective participation of victims in TJ processes to address the different needs and opportunities for women, men, girls, and boys. This includes the design, implementation, and evaluation of TJ mechanisms and processes. But, as indicated by many national experiences, incorporating a gender perspective in the design and implementation of the TJ mechanisms remains an ongoing challenge.

The implementation of TJ is transformational, comprehensive and entails reform and consensus, therefore, it is a long-term process that requires a number of well-established stages.

A. National consultations

National consultations are a critical element of the human rights-based approach to TJ and is founded on the principle that successful strategies require meaningful public participation. Consultations around the design, implementation and evaluation of transitional justice mechanisms are key to ensuring that those mechanisms are relevant and empowering to those affected by them. Consultations are necessary to create transitional justice processes that are sensitive to women's and girl's particular needs, their priorities, and their social context.

Representation of a cross section of women and girls in all their diversity must be ensured during consultations. Consultations with women should not solely focus on their experience of victimization but should take account of the evolution of gender roles during and after conflict and the multiple roles women play in such situations. By highlighting women's roles as vital contributors to the economy, household heads, guardians, and agents of change in their communities, consultations can maximize their potential to empower women and challenge prejudices.

There is often a need to address the practical obstacles faced by women, men, girls, and boys who are victims of SGBV in participating in consultation processes. For instance, to express free and frank opinions, women should be consulted separately from men and, as appropriate, by other women and without haste. Protections from backlash and stigmatization, including strict safeguards of confidentiality and anonymity, are essential. To avoid re-traumatizing victims, consultations must be held in safe, neutral spaces by people trained in working with victims of SGBV, including the harmful FGM and CFM+ acts. This is particularly critical when consulting children, which should generally only be done by especially trained personnel[19].

Attention must also be paid to obstacles that women and girls may face in participation. Those include low literacy levels, discussions being conducted in a language different to their common vernacular or too far from their homes, the cost of attending consultation, including in lost labour and childcare time, and a lack of identity documents. Measures such as using local dialects and providing childcare assistance can help address those issues[20]. Conducting decentralized consultations, including in remote locations, is a particularly important element in supporting women's participation and in ensuring that a diversity of women is consulted.

As women and children make up most persons displaced by conflict, efforts should also be made to consult IDPs and refugees. Some initiatives in this area include the consultation of Sierra Leonean refugees in Guinea in 1999, of Timorese refugees in Indonesia in 2000,[21] and of internally displaced persons in Darfur of Sudan in 2010 in relation to the Doha peace process. However, more efforts are needed in this regard.

Women's groups and other local networks can play an invaluable role in reaching and engaging victims. However, care must be taken in ensuring that civil society intermediaries truly represent victims' views, not their own agenda or that of a narrow subgroup of victims,[22] (e.g. urban or well-educated women). While consultations with children should make use of schools, clubs, child protection agencies and other networks for outreach and engagement, experience suggests that for children to speak frankly, they should be consulted in the absence of adult intermediaries.

B. Truth-seeking processes

B.1 Truth commissions

Truth commissions play an important role in addressing not only sexual violence, but also other forms of gender violence. Truth commissions are often well placed to reflect the systematic nature of sexual violence, particularly where it is used as a method of warfare. In situations where there is social stigma attached to sexual violence, incorporating a gender perspective into the work of a truth commission will also help to break down that stigma and change societal attitudes regarding sexual violence. There may not be sufficient understanding of the long-term impact of FGM and CFM and sexual violence violations, including as suffered by girls and boys. Sensitizing the population to the work of truth commissions through an outreach programme is an important element in that regard.

A specific gender perspective, including attention to SGBV was absent from the work of some early truth commissions.[23] Some of the more recent commissions have successfully integrated closer attention to SGBV in their work and supported the participation of women and girls.[24] That included creating a specialized gender unit within a commission; incorporating the issue of SGBV into their operational structure and rules of procedure, even where that was not specified in the formal mandate of the commission; ensuring the representation of women as commissioners, at expert levels and as staff; supporting a communication and outreach process that emphasizes that SGBV is within the context or ambit of the commission and should be reported; and conducting analysis and elaborating specific findings and recommendations regarding SGBV in their final reports.[25]

Incorporating issues of SGBV into the work of a truth commission, including research, outreach, statement taking and report writing, requires a considerable commitment in the context of a truth-seeking mandate that is already challenging.[26] This may also include consideration of the economic, social, and cultural dimensions of violations that disproportionately affect women, children, and other specific groups.[27]

Several factors may support a commission's capacity to undertake a gender-sensitive analysis and the likelihood that it will do so. While it is certainly possible for a commission to give sustained attention to issues of SGBV even without a specific mandate to that effect, there are many advantages to identifying such issues specifically in its legal framework.[28] Those drafting a legal framework for a truth commission should consider the importance of SGBV in the history of the conflict. In most cases, it is recommended that this issue be identified specifically in a commission's mandate.[29] Additionally, it is important to ensure that a commission's design and mandate are informed by national consultations, including with women's organizations, and to conduct a conflict-mapping exercise that documents the range of violations experiences by women.

Partnerships with women's groups can strengthen a truth commission's legitimacy, as well as its capacity to address SGBV. Past commissions have benefited from the involvement of women's groups, which have made formal submissions, undertaken outreach, provided support to victims who provide testimony, drawn attention to overlooked issues, assisted with statement taking and gender training, and provided analysis on patterns of abuse. In Tunisia, women's organizations documented stories and provided preliminary lists and databases of women victims, to be used in the initial mapping undertaken by the Truth and Dignity Commission.[30] It is also important for a commission to reach out to organizations that work closely with child victims, including victims of sexual violence.

A commission's composition should reflect its priorities in SGBV. Experience shows that appointing commissioners and staff who understand and are committed to addressing the gender dimensions of conflict is vital to maintaining a proactive focus on SGBV. Some commissions have used quotas to ensure the representation of women as commissioners, at expert levels and as staff. Commissioners and staff who bring understanding and experience in dealing with this type of violence may also be better placed to create a supportive and enabling environment that allows victims to speak about their experiences. Female victims of sexual abuse may also prefer to speak with female statement takers, and male victims of such abuses may prefer to speak to men. This should be considered in staffing the teams of statement takers and in setting up hearings.

Internal training is also important; many truth commissions incorporated gender training for their staff. Training has covered, among other areas, international norms pertaining to SGBV , the history of gendered patterns of abuse in situations of conflict and repression; gender-sensitive approaches to statement taking, data collection and hearings, including support for and protection of women participants, conducting investigations that are responsive to the complex causes and manifestations of SGBV; and mainstreaming gender in report writing.[31] The United Nations has often assisted with expertise during such training.

Creating an enabling environment in the context of public hearings is also important. The Sierra Leonean commission held dedicated women's hearings, and funded women's groups to support those women who came before the commission. Women were given the options of testifying in camera, speaking in public from behind a screen or speaking openly to the audience.[32]

Addressing causes and consequences of SGBV within a truth commission can also lay the foundation for recommendations regarding institutional and legislative reform to address an entrenched culture of discrimination.

C. Criminal justice proceedings

C.1 National criminal prosecutions

Domestic prosecutions are important in addressing the impunity gap and establishing the rule of law in the long term. Because domestic justice systems have often been undermined or destroyed by past conflict, rebuilding these institutions, and ensuring an end to impunity for crimes, including SGBV, must be a priority for establishment of the rule of law, which is critical to long-term peace and stability.[33]

Along this line, TJ strategies continued to increasingly focus on strengthening national capacity to prosecute crimes of SGBV including FGM and CFM. Specialized chambers or courts have been established in several countries, and prosecution and investigatory units have been created to deal specifically with SGBV. Such efforts have resulted in increasing numbers of convictions being registered[34].

National capacity has also been strengthened through the creation of mixed chambers, located in the national judiciary but combining both national and international expertise. For example, in Bosnia and Herzegovina the War Crime Chamber, with mixed national and international staff, has prosecuted sexual violence as the crimes against humanity of rape, torture, sexual slavery, enslavement and persecution[35].

An important focus of national capacity-building has been training investigators, prosecutors, judges, security officials, lawyers, medical staff, social workers, and other rule-of-law actors. Capacity-building trainings have been conducted, with UN assistance, including Sudan (Darfur), Guinea, Kosovo, Democratic Republic of Congo.[36] Furthermore, UN-Women has partnered with Justice Rapid Response to train and roster experts on SGBV and deploy them to international and national justice mechanisms[37].

There is increasing awareness of the need to address the obstacles faced by victims of the SGBV, including FGM and CFM, in accessing criminal accountability processes. These include the often-prohibitive cost of filing complaints, and geographic inaccessibility of police stations, medical services needed to obtain forensic evidence, and courts, particularly for women victims living in remote areas without transportation and with childcare responsibilities. Victims also need free assistance to pursue cases, medical care and support to manage the health impact of SGBV, and education about the criminal justice system so that cases are not abandoned or withdrawn due to mistaken assumptions.

C.2 International criminal prosecutions

Significant advances have been made, over the past decade and a half, in international law and jurisprudence regarding conflict related to SGBV, including the harmful practices of FGM and CFM. Serious efforts across the world have led to a wide recognition that sexual violence can constitute a war crime, a crime against humanity or an act of genocide[38].

The establishment of the International Criminal Court has been particularly significant, with the Rome Statute recognizing the international crimes of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other form of sexual violence of comparable gravity.[39] Specific forms of SGBV directed at children, particularly girl child soldiers, have been highlighted. Gender-sensitive evidentiary principles have been adopted.

Prosecutions before international and hybrid tribunals have greatly furthered the visibility of SGBV, in acknowledging and condemning the harms suffered by women in conflict, and in establishing and increasingly credible avenue for securing accountability for such violence[40].

C.3 Hybrid courts and tribunals

These courts consist of both international and domestic justice actors. They attempt to deliver justice that domestic justice system cannot provide due to lack of capacity or political will. As a matter of fact, these courts have attempted to further catalyse the enactment of national legislation criminalizing SGBV and have established legal precedents and international standards for domestic prosecutions and legislative reforms.[41]

Important lessons have also been learned about the processes necessary to conduct gender-sensitive prosecutions and support victims' effective participation. Achieving accountability for SGBV require sustained political will, targeted prosecution strategies and timely collection of all types of relevant evidence, including forensic evidence. As in other transitional justice processes, training of investigation, prosecution and judicial staff is crucial. Recruiting more qualified female investigators has led victims to feeling more comfortable in recounting their experiences to women.

Justice is a process, not merely an outcome, and there is an increasing awareness of the need for courtroom procedures that ensure the dignity and protection of victims should never be, or feel they should have been, manipulated, used, or endangered by justice processes. Courtroom protection protocols can play important role in this context. Witnesses' protection programmes should apply before and during the trial, but also after its conclusion, and there should be follow-up mechanisms in place to track witnesses post-trial[42].

Victims and witnesses must also be protected from further traumatization. They should be provided with medical and psychological support, and children should receive specialist care and be called witnesses only when their evidence is truthfully essential[43].

Criminal justice processes should not only protect, but also aim to empower victims and witnesses. At minimum, victims and witnesses have the right to be regularly informed about the progress and ultimate outcome of the cases. Efforts should also be made to improve victim's participation in prosecution[44].

D. Reparations

International law establishes different forms of reparation to redress gross violations of human rights law and serious violations of humanitarian law, such as restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition.[45]

Reparation efforts have historically overlooked women' and girls' needs and concerns. However, there has been an increasing recognition in recent years of the need for, and potential of, gender-sensitive reparations. Progress has taken place at the conceptual level, with the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007) and the Special Rapporteur on violence against women, its causes, and consequences, and advocating for gender-sensitive reparations.[46] Also, in 2014, the Secretary-General issued a guidance note on reparations for conflict-related sexual violence, to provide further policy and operational guidance for United Nations engagement in this area.

Reparations occupy a special place among redress measures in view of their potential direct impact on victims of SGBV.[47] As such, it is particularly critical that victims of SGBV be involves in the design and implementation of reparations. Victims know their needs and priorities best and are uniquely placed to address concerns about the modalities and distribution of reparations, including regarding ensuring that benefits are accessible, equitable and effective. Accordingly, victim consultations have been a priority in several States.

Supporting the effective participation of victims of harmful acts, FGM and CFM, as well as SGBV in reparation efforts first requires outreach and awareness-raising activities. Outreach efforts should begin long before the reparations programme is fully designed and must be cognizant of the obstacles to victims' effective participation in transitional justice. Supportive spaces, confidentiality protection and the involvement of staff trained in SGBV are essential. During outreach, codes in local languages have been used to refer to body parts and SGBV, allowing victims to circumvent the taboo of speaking about sexual invoice.[48]

The criteria and procedures for accessing reparations must also be gender sensitive. The imposition of strict application deadlines or closed-list systems, whether linked to participation in truth commissions or otherwise, is likely to exclude some victims. In Sierra Leone and Timor-Leste, the truth commissions decided that the potential list of victims should be kept open to ensure the widest possible access. Similarly, due to stigma, forcing survivors to "come out" as victims of SGBV to gain access to reparations may deter many.

Reparation's proceedings should adopt adequate procedural and evidentiary rules for sexual violence. Burdensome legislation or validation burdens and requirements that victims provide legal and medical evidence are likely to make proof impossible for many victims, particularly those who have become internally displaced persons. In Morocco, the Equity and Reconciliation Commission applied a presumption that women who had been in detention had also suffered gender-specific violations and awarded additional compensation to women claimants on that basis, without victims needing to make a specific claim.[49] In the case of children born of rape, as many are not told the circumstances of their birth, consideration should be given to allowing cares to claim reparations on behalf of the child, without disclosing the claim to the child.

One particularly important insight of recent years is that gender-sensitive reparations should strive to be transformative.[50] Reparations processes and benefits should focus, where possible, not on restoring victims to pre-existing positions of inequality, but on subverting the structural discrimination that enables SGBV and contributing to a more gender-equal society.

Reparations programmes for SGBV should be comprehensive. Combining individual, collective, material, and symbolic benefits can maximize the possibilities of redress for a larger number of victims.[51] In Sierra Leone, the truth commission recommended a comprehensive reparations programme, covering free healthcare, educational support, skills training, microcredit and microprojects, community reparations, symbolic

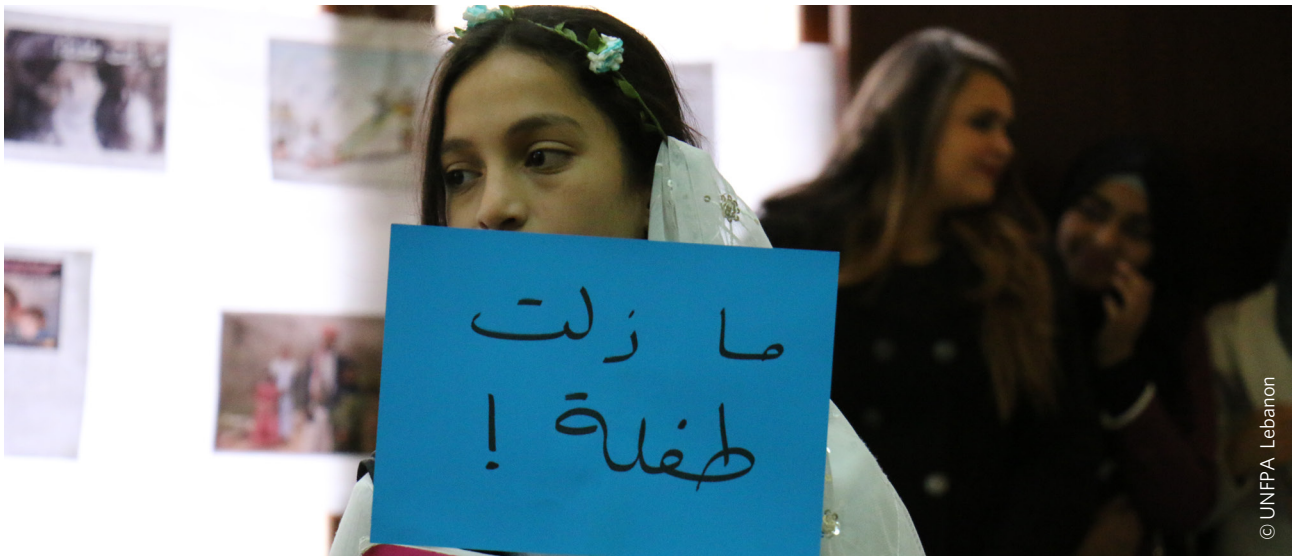
reparations, provision of housing and pensions and several gender-specific institutional reforms.

Collective reparations may have potential for victims of SGBV. They can reach a wide group of beneficiaries, prevent stigma by avoiding the identification of individual victims, and recognize the harm to families and communities intended and caused by such violence, and most importantly affects the community perception and mindset regarding SGBV.

Individual victims should, however, directly benefit from collective reparations and not feel excluded or marginalized, or even further stigmatized. In crafting collective reparations, adequate consultations with victims of SGBV should take place and aim to address their needs, for instance for specialized reproductive health care or fistula repair.[52] Collective reparations should complement rather than replace individual reparations.

While reparations and development constitute two distinct and separate rights, creating linkages with development actors and programmes could be beneficial for delivering sustainable and transformative reparations, particularly in countries affected by mass violence and poverty. International cooperation and assistance should not be a substitute for the role that states must play in reparations, including acknowledgment of responsibility for violations and using their financial and institutional capacity diligently to repair the harm suffered by victims.[53]

Regarding the different forms of benefits distributed, experience shows that women victims often prioritize service-based benefits, such as educational opportunities and access to health and psychological rehabilitation services. Care must again be taken not to blur the distinction between reparations and social rights, services, and development measures to which the general population is entitled.[54] In relation to economic compensation, the obstacles faced by women in accessing and controlling money, including not holding a bank account, and pressure from family should be considered. Material benefits that can help women pursue what they perceive to be autonomy-enhancing projects and that, therefore, can be more transformative should be also considered.



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E. Institutional reforms

Institutional reforms are necessary to prevent the repetition of SGBV, including Harms related to FGM and CFM, build sustainable peace, and re-establish trust between victims and State institutions, which may have perpetrated gender-based violence. Institutional reforms also have important transformative potential. By focusing on the prevention of future violations, they can trigger discussion about the causes of SGBV, prevent the normalization of such violence in the post-conflict context and contribute to building a more inclusive and gender-just political order.

In the recent years, there has been increasing awareness of the need to address SGBV as part of justice and security sector reform. Security-sector vetting must disqualify individuals who have perpetrated SGBV.[55] Failure to do so puts women and children at risk of further violence from those actors, constitutes a significant barrier to seeking justice assistance from the State, erodes public faith and confidence in rule of law institutions, humiliates victims, and sends the message that SGBV is socially acceptable.[56] Conversely, the disqualification of perpetrators from security roles can itself constitute a measure of satisfaction to victims.[57]

Furthermore, structural reforms to enhance institutional accountability will often be necessary. This may include developing professional standards of conduct, complaint and disciplinary procedures and oversight mechanisms. For instance, initiatives in Liberia, Sierra Leone and Kosovo have harnessed the opportunity that institutional reform presents to increase the participation of women in security and law-enforcement forces, recognizing the links between improved gender parity, higher rates of reporting of SGBV, and improvements in institutional gender-sensitivity. [58]

The criminalization of all forms of SGBV, including rape in marriage and domestic violence, has been recognized as necessary to break the silence around and create a mandate to prevent and punish such violence. National laws should be harmonized to ensure consistency and clarity. Policy and contextual obstacles, such as requirements for medical certificates in rape cases, should similarly be reformed.[59]

Gender-sensitive training and capacity for security sector and law enforcement institutions to respond to SGBV is critical. In Rwanda, standard operating procedures for child, domestic and SGBV have been developed, along with a training curriculum. An important development has been the establishment of women's police or specialist SGBV units in the police and military in Liberia, Rwanda, Sierra Leone, Timor-Leste, and Kosovo. The units are often staffed exclusively by female officers, or especially trained staff, and both directly support victims' access to justice and contribute to raising awareness about SGBV in the community and the institutions.

Notwithstanding the importance of justice and security sector reforms, institutional reforms must also focus on ending gender, discrimination more broadly, including through constitutional guarantees of gender equality, repealing, discriminatory legislation, and adopting laws and policies which advance women's rights. For example, reforms that strengthen women's rights in relation to marriage, divorce, land, and inheritance can contribute to addressing the economic insecurity and dependence that leaves women vulnerable to SGBV.

4. CONCLUSION AND RECOMMENDATIONS

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Engendering TJ makes it more attentive to the fact the entrenched forms of sexual and gender-based violence, including FGM and CFM harmful practices, make women and girls particularly vulnerable to conflict-related human rights abuses, encompassing sexual violence which often continues unabated even after conflict ends.[18]

The social stigma and trauma associated with reporting such crimes and women's exclusion from public decision-making process makes it particularly challenging for women and girls to engage with justice mechanisms. TJ must thus provide for special measures to ensure that women and girls receive adequate redress for conflict-related violations, that women can fully participate in the processes and their rights and perspectives are adequately addressed. TJ mechanisms that incorporate a gender and women' and girls' human rights perspectives can help ensure accountability for their human rights abuses and that oppression or maltreatment of women and girls is not perpetrated into the future.

For such strategic mechanisms to materialize, this policy paper offers initial recommendations for ways to promote gender responsiveness in most common TJ mechanisms, with a noteworthy emphasis on truth-seeking and reparations.[61]

4.1 Truth commission-related broad recommendations

1. Ensure that the commission's mandate specifically identifies an imperative to address gender-specific crimes and is informed by conflict mapping exercise that documents the range of violations experienced by women. As well, ensure that the design and mandate of the commission are informed by widespread national consultations, including specific consultations with women' organizations.

2. Establish a gender unit from the start of the commission's mandate to conduct training and sensitization of all commission staff and be empowered to ensure the mainstreaming of gender into all aspects of the commission's work, and inclusion of gender perspective in the final report.

3. Address access barriers experienced by women by providing childcare facilities at truth commission hearings; safe transportation; language translation facilities; adequate food and drink; psychosocial support for women testifying-before, during, and

after bearing witness-including dedicated accompanying support persons; broader referral systems to ensure medical and social services for some witnesses-including mechanisms to deal with social backlash and family ostracism; and provision of security to witnesses- including follow-up monitoring and response to protect those who testified from threats of violence or other retribution.

4. Offer support to women's organizations to work closely with the commission to ensure liaison between the commission and local women, encourage women's full participation, and manage expectations, and make specific provisions to dedicated women's hearings and ensure confidentiality.

5. Establish timelines and benchmarks for follow-up processes so that the recommendations of the truth commission are effectively addressed. Final report recommendations often provide a blueprint for a more equal and just society, including measures to advance gender equality and monitor gender mainstreaming, ensure empowerment of women.

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4.2 Reparations programmes-related broad recommendations

1. Ensure that the formal mandate or remit of the reparations commission includes the imperative of conflict, conduct research on the conditions of women prior to conflict as well as the range of women's experiences during conflict to ensure adequate knowledge of the types of violations experienced, and how this has affected women's status and social position.

2. Address specific violations with confidentiality and allow a flexible evidentiary standard (e.g., sexual violence); and ensure that reparations are in proportion to the benefits provided to ex-combatants.

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

4. Consult women victims and women's support and advocacy networks when developing reparations measures; those consulted should reflect the full range of women's identities in society, particularly those most affected by the conflict: the Nairobi Declaration identities the participation of women in the design of these programmes to be a form of reparation, in that it establishes new power relations and acknowledges equal citizenship and rights.

5. Take steps not to replicate gender-biased hierarchies, but rather to unseat them (Morocco's experience of providing new criteria for equal distribution of benefits within families is one positive example in this regard); Include measures to address the consequences of the harm (e.g., in Sierra Leone, victims of sexual violence were given access to fistula surgery as a component of the reparations programme); Supplement individual reparations with collective measures that can address the more systemic forms of inequality in society.

6. Make provisions for open lists to allow victims who did not come forward initially to have more time to submit statements and quality as beneficiaries*;* this is particularly important in the case of sexual violence where victims may not feel comfortable coming forward to identify themselves as victims.

7. Make specific provision for symbolic reparations and memorial initiatives that address women's role in history.

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