

## 10 Steps to Ensure Gender Responsive Transitional Justice Processes

Transitional justice (TJ) refers to a temporary process that attempts to redress the legacy of abuses committed in a country during periods of conflict, dictatorship and repression. It seeks to heal societal divisions resulting from human rights abuses and is rooted in accountability and redress for victims and survivors. A key goal of TJ processes is to move a society towards a peaceful and inclusive future. TJ processes should strive to address the general context of inequality and injustice that led to the conflict in the first place.

While a TJ process will vary depending on the context, it encompasses the following: recognition of the dignity of individuals, the acknowledgment of violations, reparations for harms done, and a goal to prevent them from happening again. It can include criminal and restorative justice to build public trust in the rule of law, the reforming of institutions to prevent future violence, community-based justice mechanisms, truth-telling, forgiveness, reconciliation and memory-building to ensure experiences of victims and survivors are never forgotten and never repeated.

A gender-responsive TJ process would consider the different experiences and needs of women and men throughout the process. It would ensure that their knowledge of and perspectives on past events and abuses endured are accounted for, without doing further harm. It is also a means of ensuring that women's and men's perspectives, definitions and demands from a justice system are acknowledged, and measures and mechanisms established respond to these differences. Here are 10 steps to do so:

### **1. From the outset, articulate the goals and limitations of the TJ process.**

TJ processes are critical to enabling a society to heal. To be effective, people from all walks of life and communities, especially marginalized ones, must feel included and heard. However, it is also essential to manage expectations, as the devastation of war or decades of dictatorship cannot be healed through a single time-bound process. Explaining the purpose and time frame of the process is essential for building public trust. It is also critical to explain whether there will be a component of reconciliation and forgiveness, and if/why some crimes or historic injustices are not addressed. Where there is public demand, provide other means of addressing such concerns. The sooner there is reference to inclusion of and sensitivity to the actual and potential differential experiences of men and women, the greater the chance of embedding gender responsiveness into the process.

- 2. Ensure that mandates of truth, reconciliation commissions and tribunals are gender-responsive and provide relevant gender training to the personnel** (including case examples from other contexts).
  - Ensure a balance of men and women with gender expertise in the range of potential abuses/ crimes among the judges, commissioners, investigators, issue experts and witnesses.
  - Witnesses and survivors should be respected and given opportunities to share their experiences with commissioners without being subject to hostile interrogation, as in a courtroom. TJ commissions should enable witnesses to deliver their narrative and experience in a secure environment. This also reduces the chance of secondary trauma.
- 3. Ensure that commissions and tribunals consult with women and men to determine the range and nature of abuses that should be addressed, including sexual- and gender-based violence (SGBV).**
  - Consultations should emphasize victim/survivor-centered notions of justice, so that their specific needs and aspirations for life beyond victimhood are addressed. This may include a balance between legal justice that punishes perpetrators and social justice such as access to health care, psychosocial support, education, livelihoods, and stigma-free rehabilitation that survivors and their children may need.
- 4. Make the process accessible and open to the public.**
  - Ensure that consultations and public information sessions are held during hours most of the population (particularly women) can attend and in accessible locations.
  - Ensure all citizens, especially women, have access to information at all stages of the TJ process, and put in place plans to reach rural and remote areas.
  - Ensure all witnesses have safe and dignified access to and use of the tribunals including with regard to avoiding perpetrators in public spaces, having access to bathrooms and privacy.
- 5. Offer a range of options including special hearings to enable survivors and witnesses to participate and talk about their experiences and needs, and that minimize the risk of re-traumatization.** These might bring national attention to the plight of women during war (or dictatorship) as well as discriminations and hardships that women may subsequently experience.
  - Allow survivors to testify anonymously and in their local language.
  - Provide onsite trauma care and childcare to allow women to attend hearings.
  - Allow survivors' stories/testimonies to be used for different purposes (with the explicit permission of the survivor) so that the survivor does not have to re-testify to each body, thus decreasing the possibility of re-traumatization.
- 6. Partner with national and local women's organizations** that have local expertise and can advise, help shape, inform and monitor the processes throughout. Women's organizations are often able to build trust and encourage survivors to come forward, and are essential in the healing process.

## **7. Shift the stigma and fear of sexual violence away from survivors to perpetrators.**

- Consider media campaigns, storytelling (radio/television dramas), and engaging cultural leaders (religious leaders, popular figures, etc.) to shed light on SGBV perpetrated (including forced sterilization, mutilation, and sexual slavery), encourage compassion for survivors, and dissipate the fear, shame and social stigma that many may endure.
- Engage family and community leaders to ensure protection and care for survivors, including children born of rape.
- Explicitly include the investigation of SGBV in the mandate of commissions and tribunals to ensure that such crimes are fully addressed.

## **8. Ensure that financial or material reparations are suited to the needs of women and men and do not perpetuate pre-existing gender inequalities.**

- Reparations should be determined following consultations with survivors and their advocates/representatives to ensure that they do not result in new vulnerabilities (e.g., threats from family or community) and can address the needs of women equitably.
- Where land or property disputes are redressed, continuous support to recipients should be considered, so that women are not given poor-quality land or locations and are provided the requisite agricultural support to enable self-sufficiency. Women should have equal rights to titling property and assets, including as joint sibling and single female titling.
- In each situation, carefully assess which combination of collective and individual reparations best suits the victims'/survivors'/community's needs.
- Symbolic reparations (memorials) are a unique way of highlighting gender inequalities and abuses that might have existed before the conflict and prevent future tolerance of them.
- Ensure that national history curricula reflect the diverse experiences of the entire population, with attention to women's and men's differential experiences.

## **9. Ensure financial resources:**

- To support programs and trauma counseling for survivors and ensure that these are integrated into national health services, and for community and individual reparations. Often such funds are pledged but donors do not deliver them.
- To women's organizations so they can continue to support the process.

## **10. Reform institutions and laws that discriminate or limit human rights.**

- Guarantee that abusers of human rights are not reinstated to power, and transfer authority from federal government to local areas.
- Initiate security sector reforms to ensure that all security actors serve the public, are representative of the society's diversity, and have the expertise and resources needed to address the protection needs of different communities, men and women.
- Reform all laws that discriminate based on sex, including property and inheritance laws.



## Truth and Reconciliation Commission (TRC) mandates

While few TRC mandates to date have included specific language on gender-responsiveness, several commissions have expressed commitment to a gender perspective in the process and interpreted their mandates to include violations such as sexual violence.<sup>1</sup>

### Colombia, Commission for the Clarification of the Truth, Coexistence and Non-Repetition (2018) Decree 588, 2017<sup>2</sup>

#### Article 2. Objectives. The Commission for Truth, Coexistence, and Non-Repetition aims to:

(1) Contribute to clarifying the events of the conflict under the scope of Commission's mandate and offer a broad explanation of the conflict in order to promote a common understanding within society, particularly with regard to aspects that are less well-known, such as the impact of the conflict on children and adolescents, and on gender-based violence.

**Article 8. A differentiated focus, including on gender.** As it develops its mandate and functions, the Commission will take into account the varied experiences of the conflict (and its differential impact) by people, populations or sectors subject to discrimination, vulnerability or who have been particularly affected by the conflict. Special attention will be paid to violations experienced by women.

#### Article 13. Functions. The functions of the Commission are to:

(1) Investigate all aspects of the conflict that fall under the scope the Commission's mandate through the use of relevant methodologies and mechanisms. These may include **methodologies** generally used within the social sciences and those **that are gender-responsive**. In addition, mechanisms implemented should build on previous efforts to build truth (including those by the Historic Commission for Conflict and Victims).

(10) **Ensure that gender is mainstreamed across all of the commission's work** through the **creation of a gender working group** tasked to, inter alia, contribute to research, technical advice, and the planning of **gender hearings**. While this working group should not be considered the only group responsible for implementing gender, it will be responsible for the revision of methodologies to **ensure that gender is mainstreamed across all of the Commission's work and mechanisms**. The group will also be responsible for coordinating with women's organizations and LGBTI organizations, while maintaining the autonomy of the Commission in defining its structure and work methodology.

### Sierra Leone, Truth and Reconciliation Commission (2000)

The Truth and Reconciliation Commission Act 2000<sup>3</sup>

**Section 6(2)b:** The Commission is established to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving **special attention to the subject of sexual abuses** and to the experiences of children within the armed conflict [...].

**Section 7(4):** The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the **security and other concerns** of those who may wish to recount their stories in public and...may also implement special procedures to **address the needs** of such particular victims as children or **those who have suffered sexual abuse** as well as in working with child perpetrators of abuses or violations.

<sup>1</sup>World Bank (2006). Gender, Justice and Truth Commissions

<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/GJTClayoutrevised.pdf>

<sup>2</sup>See: <https://comisiondelaverdad.co/images/decreto-588-de-2017-comision-verdad-mandato-funciones.pdf>

<sup>3</sup>See: <http://www.sierra-leone.org/Laws/2000-4.pdf>