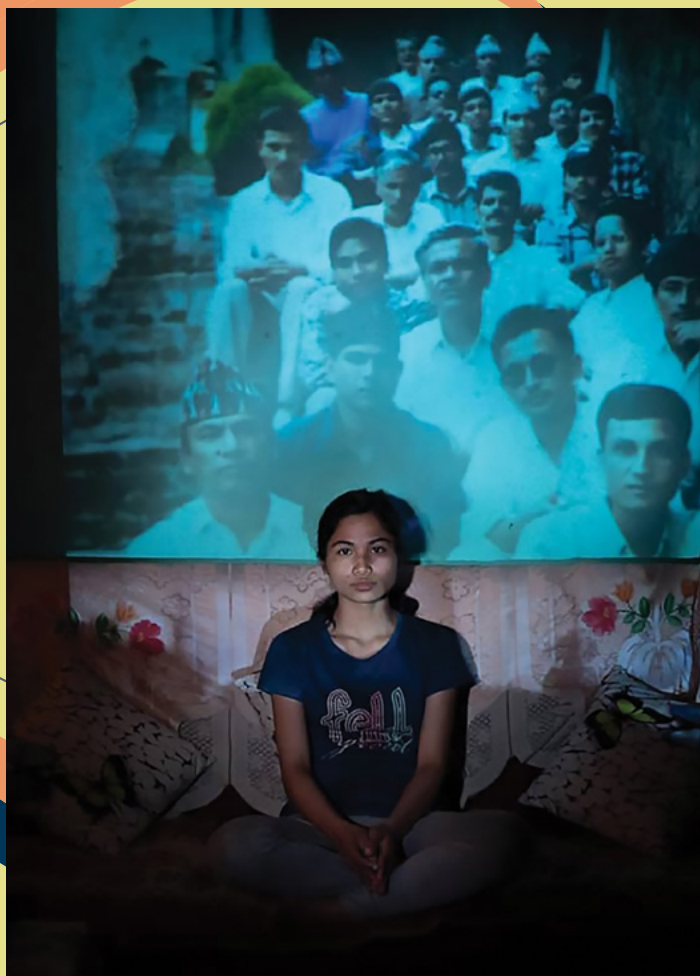


GUIDEBOOK ON A VICTIM-CENTERED APPROACH TO TRANSITIONAL JUSTICE



GIJTR

Global Initiative for Justice
Truth & Reconciliation



International Coalition of
SITES of CONSCIENCE

The **International Coalition of Sites of Conscience** (ICSC or the Coalition) is a global network of museums, historic sites and grassroots initiatives dedicated to building a more just and peaceful future through engaging communities in remembering struggles for human rights and addressing their modern repercussions. Founded in 1999, the Coalition now includes more than 300 Sites of Conscience members in 65 countries. The Coalition supports these members through seven regional networks that encourage collaboration and international exchange of knowledge and best practices. The Global Initiative for Justice, Truth and Reconciliation is a flagship program of the Coalition.
www.sitesofconscience.org



The **Humanitarian Law Center** (HLC) has been documenting war crimes and human rights violations committed during the former Yugoslavia conflicts since 1992, and today, is the largest documentation center of crimes committed during these wars. HLC's War Crimes and Past Human Rights Violations Database preserves over 100,000 digitalized sources, documentation that has been used by the International Criminal Tribunal for the former Yugoslavia and courts in the region in numerous cases.
www.hlc-rdc.org



The **Public International Law & Policy Group** (PILPG), a 2005 Nobel Peace Prize nominee, is a global pro bono law firm providing legal assistance to governments, sub-state entities, and civil society groups worldwide on peace negotiations, post-conflict constitution drafting, and transitional justice. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.
www.publicinternationalallawandpolicygroup.org



Founded in 1989, the **Centre for the Study of Violence and Reconciliation** (CSVR) aims to understand and prevent root causes of violence in all its forms and address its consequences in order to build sustainable peace and reconciliation in South Africa and across the African continent. CSVR's work addresses a wide range of forms of violence and conflict – past and present – including criminal, political, collective, and domestic and gender violence, as well as violence against children.
www.csvr.org.za



Asia Justice and Rights (AJAR) works to strengthen accountability and human rights in the Asia-Pacific region. Focusing on countries involved in transition from a context of mass human rights violations to democracy, AJAR strives to build cultures based on accountability, justice and a willingness to learn from the root causes of mass human rights violations.
www.asia-ajar.org

ABOUT THE GUIDEBOOK

This guidebook is a product of the Victim-Centered Approach to Transitional Justice project implemented by the Global Initiative for Justice, Truth and Reconciliation (GIJTR). The project was designed to aid civil society actors who work directly with victims in transitional justice contexts by providing training to further their current skills and an exchange to learn and connect with civil society organizations (CSOs) working in different contexts. In May 2022, GIJTR partners Foundation Humanitarian Law Centre (HLC), International Coalition of Sites of Conscience (ICSC), Asia Justice and Rights (AJAR), Public International Law and Policy Group (PILPG), and the Centre for the Study of Violence and Reconciliation (CSVR) selected eight CSO activists from Albania, Egypt, Indonesia, Iraq, Nepal, The Gambia, and Yemen to participate in a four-day virtual workshop exchange and training on supporting victims' participation in all transitional justice processes and mechanisms, as well as trauma-informed transitional justice processes.

The ultimate objective of the project is the production of a comprehensive guidebook that highlights practical examples and best practices collected from victims' associations, CSOs, and the GIJTR's vast expertise. In this sense, this guidebook seeks to address the role of victims in transitional justice and how victims can participate, with a special focus on the psychosocial components of victim involvement, as well as benefits and challenges.

The experiences and contexts of each victim vary, requiring flexible, responsive, and trauma-informed support on the part of CSOs and government-led initiatives focused on victims. With this understanding, the guidebook does not provide a single methodology; rather, it offers a range of practical strategies and recommendations for working with victims. The guidebook is intended for CSOs, relevant government entities, and practitioners in related fields that provide assistance to victims. The guidebook will be especially helpful for those who are in the early stages of developing interventions in and outreach to communities in transitional justice contexts.

Following protracted conflicts and decades of authoritarian rule, state organs and civil society are often left with limited capacity to intervene and/or address violations. Tasked with the implementation of transitional justice processes, governments and civil society are required to rebuild their connections with affected communities while addressing a range of violations and the more immediate needs of victims. Within this overwhelming environment, governments often rely on international experts to provide assistance in truth commissions, investigations, and reparations programs.

While this guidebook cannot begin to replace the need for external assistance, it can ensure that governments begin to build the capacity of state organs to design and implement mechanisms that are relevant to the realities of victims, and continue victim-centered processes long after initial truth commissions and investigations are completed.

The guidebook covers multiple focus areas, beginning with defining transitional justice-specific terms, to the initial contacting of victims and participation in different transitional justice processes, and longer-term strategies for supporting victims. It also focuses on the importance of integrating mental health and psychosocial support within transitional justice processes.

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To learn more visit our website
www.gijtr.org

ABOUT THE GLOBAL INITIATIVE FOR JUSTICE, TRUTH AND RECONCILIATION (GIJTR)

Around the world, there are increasing calls for justice, truth, and reconciliation in countries where legacies of gross human rights violations cast a shadow on transitions from repressive regimes to participatory and democratic forms of governance. To meet this need, the International Coalition of Sites of Conscience (ICSC or the Coalition) launched the Global Initiative for Justice, Truth and Reconciliation (GIJTR) in August 2014. The GIJTR seeks to address new challenges in countries in conflict or transition that are struggling with legacies of or ongoing gross human rights abuses.



A plaque at a killing site in Bangladesh sponsored by the Liberation War Museum.

The Coalition leads the GIJTR, which includes eight other organizational partners: American Bar Association Rule of Law Initiative, United States; Asia Justice and Rights (AJAR), Indonesia; The Centre for the Study of Violence and Reconciliation (CSV), South Africa; Documentation Center of Cambodia, Cambodia; Due Process of Law Foundation, United States; Fundación de Antropología Forense de Guatemala, Guatemala; Humanitarian Law Center (HLC), Serbia; and Public International Law & Policy Group (PILPG), United States. In addition to leveraging the expertise of GIJTR members, the Coalition taps into the knowledge and longstanding community connections of its 300-plus members in 65 countries to strengthen and broaden the GIJTR's work. GIJTR partners, along with members of the Coalition, develop and implement a range of rapid-response and high-impact program activities, using both restorative and retributive approaches to justice and accountability for gross human rights violations. The expertise of the organizations under the GIJTR includes:

- Truth telling, reconciliation, memorialization, and other forms of historical memory;
- Documenting human rights abuses for transitional justice purposes;

- Forensic analysis and other efforts related to missing and disappeared persons;
- Victims' advocacy such as improving access to justice, psychosocial support, and trauma mitigation activities;
- Providing technical assistance to and building the capacity of civil society activists and organizations to promote and engage in transitional justice processes;
- Reparative justice initiatives; and
- Ensuring gender justice in all these processes.

To date, the GIJTR has led civil society actors in multiple countries in the development and implementation of documentation and truth-telling projects; undertaken assessments of the memorialization, documentation, and psychosocial support capacities of local organizations; and provided survivors in Asia, Africa, and the Middle East and North Africa regions with training, support, and opportunities to participate in the design and implementation of community-driven transitional justice approaches. Given the diversity of experience and skills among GIJTR partners and Coalition network members, the program offers postconflict countries and countries emerging from repressive regimes a unique opportunity to address transitional justice needs in a timely manner, while promoting local participation and building the capacity of community partners. Since its founding, the GIJTR has engaged with people from 73 countries, worked with 738 CSOs, and has supported 428 community-driven projects and the collection of more than 6,600 testimonies of human rights violations.



A 2018 GIJTR exhibition of body-maps in Conakry, Guinea.

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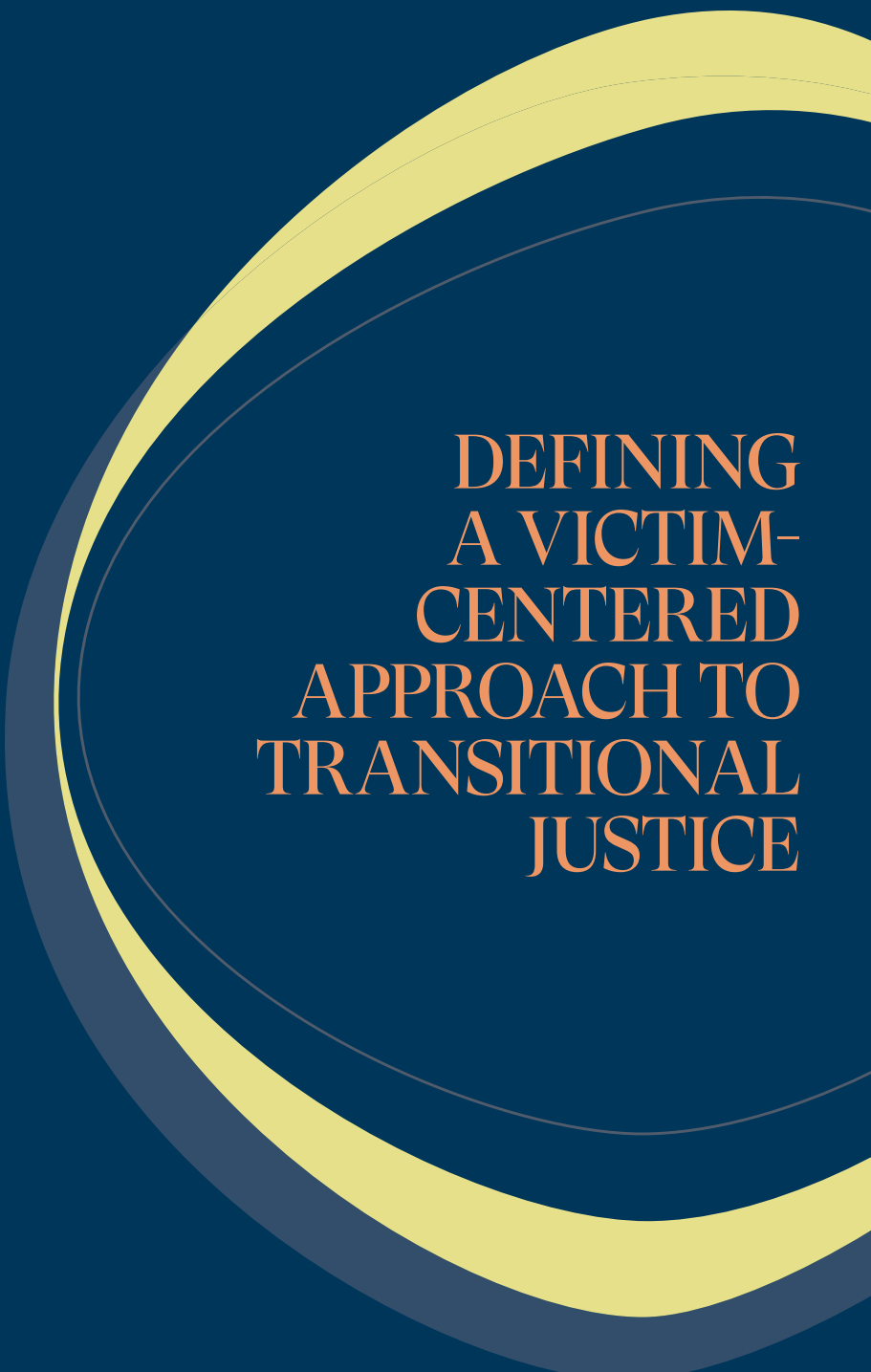
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DEFINING A VICTIM- CENTERED APPROACH TO TRANSITIONAL JUSTICE

Transitional justice comprises a range of processes and mechanisms associated with a society's attempts to address a legacy of mass atrocity crimes and large-scale human rights abuses to ensure accountability and justice and achieve reconciliation.¹ As stated in a report by the UN Secretary-General on the rule of law and transitional justice in conflict and postconflict societies, one of the guiding principles of transitional justice is ensuring the centrality of victims in the design and implementation of transitional justice processes and mechanisms.² Transitional justice consists of both judicial and nonjudicial processes and mechanisms, including criminal justice, truth-seeking initiatives, reparations programs, institutional reforms, or a combination thereof. The implementation of these processes and mechanisms must be grounded in responding to the diverse needs of victims, with the understanding that ownership and inclusive participation by victims is critical to the aims of societal recognition of harms and the guarantee of nonrecurrence of violations. Following periods of violence and authoritarian rule, centering victims and their psychosocial needs in transitional justice processes has the potential to begin a longer-term renewal or building of a robust civic contract between citizens and the structures of government.

Transitional justice initiatives should be context-specific, nationally owned, inclusive, victim-centered, gender-sensitive, participative and empowering, and transformative for all of society

(Office of the United Nations High Commissioner for Human Rights, about transitional justice and human rights).

Within international law standards, domestic courts, as well as international tribunals, and codes of criminal procedure, there is allowance for victim participation in investigations, prosecution, and trial of international crimes. Similarly, victim participation is made central to nonjudicial processes such as truth-telling initiatives, reparation programs, and commemorating victims through various memory practices. Indeed, the legitimacy of these processes depends to a large extent on the degree to which victim communities have a say in the creation of programs. In short, transitional justice processes that are focused on the needs and informed by choices of victims can connect, empower, and transform societies and thereby contribute to lasting and just peace.

Despite this wide recognition on the importance of victim-centered approaches, the translation of this tenet into practical steps has often fallen short for a variety of reasons. On a primary level, state-led transitional justice processes may claim to be victim centered but are inaccessible mechanisms that victims may have little knowledge of or means to participate in. On a secondary level, the identifying or naming of victims often falls within narrow confines, predetermined by formal transitional justice mechanisms that recognize



Act for the Disappeared, Lebanon

certain violations committed within only a certain period. This narrowing of victimhood is often seen as a practical step to create an operational mandate for a mechanism but in many cases ignores large groups of communities and individuals and denies any form of immediate redress or long-term recognition. On both levels, the call to center victims is inadequate and there is a clear oversight, as explained by Robins: “Victims demand a diversity of responses and understand justice differently, but find themselves confronted with an inflexible transnational discourse that seeks ‘objective’ definitions of both victims and the appropriate responses to their experience.”³

Although past practice can be a useful guide for identifying the transitional justice initiatives that could have the greatest chance of success, such initiatives ideally should be tailored to the specific circumstances of each jurisdiction. The Office of the UN High Commissioner for Human Rights therefore recommends that transitional justice initiatives should be context specific, nationally owned, inclusive, victim centered, gender sensitive, participative and empowering, and transformative for all of society.⁴ This guidebook contributes to improving transitional justice initiatives by addressing the need for a holistic representation of victims in various transitional justice processes.

In recognizing the limited and static idea of victims and their needs, it is evident that the very concept and practice of centering victims cannot be understood as a singular methodology or one-dimensional principle. In many ways, interventions and processes that attempt to frame victims as a single unit run counter to the very core of being victim centered. Moreover, inconsistencies between where and when victims can participate highlight the tokenization of communities and individuals. For instance, victims could be included in public-facing initiatives but excluded from peace agreements and not considered during the drafting of national constitutions. In extreme cases, the static framing of victims can be wielded for political gain where hierarchies of victimhood are created and victims are exploited in policy discourse and implementation processes. The mere participation of an individual or group in a designated process cannot be equated to inclusion or meaningful engagement, especially when victims’ statements are misused or censored or victims face threats and retraumatization.⁵ Understanding the wider political and socioeconomic context in which transitional justice processes take place highlights the existing pathways and limitations placed on victims’ participation and the processes that claim to center victims.



Casa Memoria José Domingo Cañas, Chile

The failures of formal processes to translate the rhetoric of victim centeredness into adequate and inclusive participation and representation of victims represent a void that civil society actors and victims' associations have often worked to address. By engaging directly with victims and recognizing the inherent agency of individuals and communities, CSOs are critically situated to play an important role in attending to immediate and emerging needs of victims as they relate to both state-led and grassroots transitional justice efforts. At its core, a victim-centered approach goes beyond looking to victims as witnesses of violations or recipients of reparations. CSOs and victims' associations have pioneered practices that challenge narratives of passive, helpless, or vulnerable victims and instead highlight victims as active architects of the very processes they deem critical to their redress and recognition. These practices continue to evolve and yield important lessons that need to be documented and shared across the field.⁶ Transitional justice, as an ever-evolving field, must work to understand and recognize the varied conceptions and practices of what is meant by victim-centered approaches. Simultaneously, there is a need for analysis and reflection on the building blocks of what is deemed best practices and lessons learned when centering victims. In identifying these building blocks, CSOs, victims' associations, and practitioners have the opportunity to holistically accompany victims in addressing their needs.



OVERVIEW OF TRANSITIONAL JUSTICE

1. Overview of Transitional Justice

1.1 Overview of Transitional Justice Mechanisms

Transitional justice refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression toward peace, democracy, the rule of law, and respect for individual and collective rights. In making such a transition, societies must confront the past to achieve a holistic sense of justice for all citizens, establish or renew civic trust, facilitate collective healing and reconcile people and communities, and prevent future abuses.⁷

A variety of transitional justice mechanisms can help wounded societies start anew. These mechanisms refer to a range of judicial and nonjudicial approaches that societies undertake to address the legacy of widespread human rights abuses, as they move from a period of conflict and violence toward peace, democracy, and the rule of law.⁸ The main objectives of transitional justice are (1) to introduce processes of accountability and acknowledgment that can reconcile all parties to the conflict and the affected populations and (2) to prevent and dissuade reoccurrence of conflict in an effort to create an atmosphere of sustainable peace.⁹

For postconflict settings, a transitional justice policy may contain many interrelated elements, such as:

Criminal prosecutions, particularly those that address perpetrators considered to be the most responsible. However, these cases are rarely prosecuted nationally. As a result, international and internationalized mechanisms driven by external agencies, including the UN and international humanitarian and human rights actors, may be created.

Transitional justice refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression toward peace, democracy, the rule of law, and respect for individual and collective rights.

Reparations, through which governments recognize and take steps to address the harms suffered. Such initiatives often have material elements (such as cash payments or health services) as well as symbolic aspects (such as public apologies or days of remembrance).

Institutional reform of abusive state institutions such as armed forces, police, and courts to dismantle – by appropriate means – the structural machinery of abuses and prevent the recurrence of serious human rights abuses and impunity.

Truth commissions or other means to investigate and report on systematic patterns of abuse, recommend changes, and help understand the underlying causes of serious human rights violations.

Transitional justice can be practiced through a combination of temporary, specifically created bodies and a state's permanent justice mechanisms. Some transitional justice systems can have broad jurisdiction, while others are much smaller and targeted. Experience has shown that beyond offering redress, transitional justice mechanisms have the opportunity to bring about transformative change in the lives of survivors.

1.2 Defining Criminal Justice in the Context of Transitional Justice

It is essential for societies that have suffered from mass atrocities to obtain criminal justice. Criminal justice can play a crucial role in ensuring the accountability of offenders, restoring peace, and rebuilding trust in state institutions.¹⁰

In the transitional justice context, criminal justice initiatives have three key purposes: retribution, deterrence, and denunciation.

Retribution: One aim of criminal justice initiatives is to punish offenders for the criminal nature of their acts. It is also a way to recognize the harm caused to the victims.

In the transitional justice context, criminal justice initiatives have three key purposes: retribution, deterrence, and denunciation.

Deterrence: Another aim of criminal justice initiatives is to dissuade the commission of similar atrocities in the future.

Denunciation: A final aim of criminal justice initiatives is to denounce the wrongdoer, by communicating the gravity of the crime and the condemnation of wider society.

1.2.2 Prosecution of Grave Violations of International Human Rights Law, International Humanitarian Law, and International Criminal Law

Prosecutions involve investigations and judicial proceedings against alleged perpetrators of grave violations of international human rights law, international humanitarian law, and international criminal law. The international community has recognized three major types of international crime: war crimes, crimes against humanity, and genocide. Prosecution mechanisms include domestic criminal procedures, hybrid tribunals, the International Criminal Court (ICC), and nonstate justice mechanisms.

The primary responsibility to prosecute individuals who have committed human rights abuses rests on the states. Domestic accountability mechanisms can address both international and domestic crimes, such as murder or seizure of property. They can also make use of the existing judicial system to improve efficiency. This approach often requires reform of domestic procedural and substantive law to ensure that trials comply with international standards. Independent domestic tribunals can be established through domestic legislation, bilateral treaties, or treaties with the United Nations. They can include international personnel as judges and/or members of the prosecution and defense teams.

On the other hand, hybrid tribunals are temporary courts that may be useful where the local community is willing to prosecute mass atrocity crimes but needs international assistance to effectively prosecute these crimes. This allows states to distribute the cost of prosecutions between the postconflict state and the international community. While hybrid tribunals have no mandatory requirements, certain factors are common to all hybrid tribunals. They involve the application of both domestic and international law. There is a combination

of international and domestic personnel and judges. The tribunals employ both domestic and international lawyers. There is also formal international participation.

There is no uniform pattern characterizing the establishment of hybrid tribunals. In most instances, the UN and other states contribute financially to hybrid tribunals, while the affected state assumes a large amount of financial responsibility for daily maintenance and functions. Tribunals may be created through various methods depending on the circumstances of the conflict, including:

- Through the authority of a UN Security Council Resolution in a territory under the administration of the UN,
- Through a bilateral agreement,
- Through a domestic court incorporating international elements, or
- Through a UN Security Council Resolution.

The permanent international institution empowered to initiate prosecutions, conduct investigations, and hold trials for international crimes is the ICC. It is an international court seated in The Hague.

The ICC is also known as a court of last resort: It will investigate and prosecute cases only when national judicial systems are unwilling or unable to do so. Under the system of complementarity, the ICC will step in to try a case only if the relevant state is unwilling or unable to genuinely do so or if the case is of sufficient gravity to justify the exercise of ICC jurisdiction. The ICC may try only cases relating to certain crimes, namely genocide, crimes against humanity, war crimes, and the crime of aggression. When dealing with any of the aforementioned crimes, a case may be brought before the ICC as a last resort in one of three ways: by the referral of a situation by a member state, by a referral by the UN Security Council, or through an investigation initiated by the prosecutor *proprio motu*.



Devoir de Memoire, Haiti

1.2.3 Nonstate Justice Mechanisms

Nonstate justice mechanisms, sometimes referred to as traditional justice, incorporate indigenous and customary practices into the transitional justice process. Traditional justice mechanisms focus on achieving accountability at a grassroots level through local customs and traditions. Traditional accountability mechanisms aim to facilitate the healing and reconciliation process by making the justice process more accessible. Victims and perpetrators may be more familiar with traditional processes. Thus, the impact of judicial proceedings on individuals may be greater when they take place within local communities. States have also turned to traditional justice mechanisms to overcome problems with judicial efficiency.

1.3 Defining Reparations in the Context of Transitional Justice

In transitional justice contexts, the term **reparations** refers to measures intended to redress human rights violations by providing a range of material and symbolic benefits to victims or their families, as well as to affected communities.

Reparations are generally viewed as the most victim-centric facet of transitional justice. Reparations can recognize the rights of victims, as well as empower and enable them to exercise those rights. This serves to underline the principle of equality before the law and can create a sense of inclusion.¹¹

According to the UN, reparation measures should be adequate, effective, prompt, and proportional to the gravity of the violations and the harm suffered. States should provide reparations to victims for relevant acts or omissions that can be attributed to the state, but also in those cases in which the perpetrators are neglecting their own obligations to the victims.¹² Governments should also recognize reparations as the fulfillment of an obligation owed to victims, rather than view them as a policy choice.

Reparations programs generally attempt to establish a remedy proportional to the gravity of the violation that a victim suffered. Reparations are more likely to serve justice when combined with other processes involving truth telling and accountability. Constitution building, as a corollary to transitional justice processes, can strengthen access to reparations for victims.

Under the *Universal Declaration of Human Rights*, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law.¹³ States should therefore also arrange effective mechanisms for the enforcement of international and domestic reparations in domestic law.

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Museo de la Memoria y los Derechos Humanos, Chile

Reparation measures include, but are not limited to, the following¹⁴:

Compensation is provided for victims who have suffered economically assessable damages, such as loss of earnings, loss of property, and moral damages.

Restitution restores victims to their original situation before the violation occurred. This can include the restoration of liberty, the return of property, the reinstatement of employment, or other similar measures.

Rehabilitation is aimed at the provision of medical and psychological care, as well as legal and social services.

Satisfaction includes the cessation of continuing violations, truth seeking, recovery, public apologies, and memorials.

Guarantees of nonrepetition can be achieved by reforms that prevent future abuses, such as the promotion of human rights, improvements in the rule of law, and an increased civilian control of the armed forces.

Memorialization honors victims of past human rights abuse through the creation of monuments, museums, memorials, and/or the adoption of days of remembrance to promote social recovery, transform national identity, preserve history, and educate the public.

1.3.1 Consultation With Victims Related to Reparations

Victims should be included in the design, implementation, and monitoring of reparation schemes. Consultations with victims can help bring about the sort of respectful dialogue that is fundamental to successful transitional justice programs.¹⁵ Consultations ensure that reparations are victim centered and well targeted, and they also represent a recognition of the voices of affected individuals and communities, which in itself can be a powerful symbol of transitional justice.

The work of the Equity and Reconciliation Commission in Morocco illustrates how consultation with victims can be implemented. The commission carried out consultations with victims, development agencies, and civil society groups throughout the country. The 2005 National Forum on Reparation alone saw the participation of more than 200 CSOs.¹⁶ As a result, Morocco's pioneering



African Network against Extrajudicial Killings and Enforced Disappearances (ANEKED),
The Gambia

approach to reparations is often viewed as a commendable example that other states are trying to emulate.¹⁷

Conversely, consultations sometimes take place without all relevant victims being included. In the wake of Sierra Leone's civil war, for example, survivors of sexual violence were often further stigmatized and marginalized. They were thus unable to engage in shaping the domestic reparation program.¹⁸

1.3.2 Collective Reparations

In recent decades, there has been an increased focus on collective reparations. This concept is focused on benefiting groups of victims bounded by common identities, experiences, or forms of violation. Such groups may, for instance, consist of women, marginalized communities, or survivors of mass atrocities.

The concept of collective reparations can help to avoid some of the more divisive effects that more targeted reparations may engender. Individual payments can give rise to practical challenges regarding inclusion criteria and may foster grievances that can serve to undermine the goals of transitional justice.

However, collective reparations may also present challenges. They could, for example, benefit perpetrators or become intermingled with and mistaken for development assistance or humanitarian aid. The latter issue arose in Colombia, which has been plagued by a decades-long conflict among paramilitary forces, guerilla groups, and the state security apparatus. A 2008 presidential decree established a reparations program but simultaneously stated that humanitarian relief already received by victims should be deducted from the amount of financial compensation to which they were entitled.¹⁹

1.3.3 Domestic Legal Frameworks

Domestic reparation programs are often built on fragile foundations and highly dependent on political will and expediency. Victims are frequently viewed as weak and marginalized agents, with the result that their suffering may go unnoticed and their voices unheard. This means that, absent an appropriate institutional framework, domestic reparations programs can easily falter in the

face of political fluctuations. It is therefore important that such programs are placed on a sound legal footing, through legislation that clearly delineates who is responsible for their implementation, allocation, and monitoring.

For instance, the 2005 Iraqi constitution guarantees compensation to those injured in terrorist acts.²⁰ At least in theory, this should ensure that such claims are protected from the vagaries of a rapidly changing and unstable political landscape. There is also domestic legislation that provides a framework through which reparations can be requested and provided.²¹

1.4 Defining Truth Telling in the Context of Transitional Justice

Truth-seeking initiatives aim to recognize the truth about prior conflict, repression, and mass human rights violations, to protect and empower victims and to ultimately seek accountability and political and social reform. Truth-seeking mechanisms can help create a historical record to prevent denial of past events and help victims and communities come to terms with the past. They tend to focus less on punishment than other transitional justice processes.

The right to truth entitles victims, relatives, and communities to know all relevant factual information concerning the commission of gross human rights violations, including the identity of the perpetrators, the causes that led to the abuses, and the ultimate fate and whereabouts of the victims.²² A number of international instruments, and national and international court decisions, acknowledge this right. The right to truth imposes a corresponding obligation on states to investigate and publicize the truth about past abuses.²³

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1.4.1 Truth Commissions

Truth commissions, including truth and reconciliation commissions (TRCs), are either nonjudicial or quasi-judicial bodies that investigate past abuses to establish the truth of the violations. Their primary activities include:

- Researching and investigating alleged abuses,
- Reporting on documented findings,
- Making recommendations to promote reconciliation and prevent similar abuses from occurring in the future, and
- Producing a final report with concrete and manageable recommendations.

The core function of a truth commission is to establish the facts. As a practical matter, a truth commission will obtain information by taking evidence from hundreds, if not thousands, of victims, the perpetrators, and other witnesses to the violations. They will do this both privately and at public hearings, as well as by obtaining and examining relevant documents and visiting places that may contain evidence.²⁴ Upon the conclusion of its investigation, a truth commission will formally submit its findings in the form of a report.

Truth commissions have a number of additional objectives, however, above and beyond serving as a fact-finding mission. First, truth commissions have the aim of protecting, recognizing, and restoring the rights of victims. While the judicial system focuses primarily on suspected perpetrators and facts relevant to crimes that they are accused of, truth commissions focus primarily on victims. Truth commissions consider extensive evidence of the experiences of victims, provide a voice to victims, and aim to provide public acknowledgment of their experiences. Commissions may also offer nonbinding recommendations for reparations and design reparations.

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Second, truth commissions are concerned not solely with past violations but also with achieving political and social change. Many truth commissions, namely TRCs, have an explicit goal of achieving reconciliation among perpetrators, victims, and communities. This should not be understood as requiring a truth commission to achieve reconciliation but rather to foster conditions under which reconciliation may be achieved in the long term. Further, truth commissions often make recommendations in their final report. These recommendations may aim to achieve political and institutional reform, strengthen democracy and the rule of law, and prevent the recurrence of human rights violations.

Third, while truth commissions are not a substitute for justice, they may play a complementary role to that of judicial processes. Commissions generate extensive evidence that may be used in legal proceedings to secure convictions against perpetrators.²⁵ Truth commissions may also make recommendations in relation to specific perpetrators; for example, they might recommend their removal from positions of authority or public office.

CSOs and victims' associations have pioneered practices that challenge narratives of passive, helpless, or vulnerable victims and instead highlight victims as active architects of the very processes they deem critical to their redress and recognition.

1.4.2 Amnesties

A key decision in the truth and reconciliation process is whether to grant amnesty to human rights violators in exchange for truthful reports. Parties to a conflict may not agree to peace negotiations unless the truth commission grants some form of amnesty. Truth commission legislation can provide for three types of amnesty:

Blanket amnesty, which absolves all perpetrators of liability for all crimes, usually as an encouragement to cease hostilities and enter into negotiations.

Limited amnesty, which may apply to only certain persons, certain crimes, or certain time periods.

Conditional amnesty, which requires a successful application and support through testimony before the commission.

1.4.3 Victim Involvement

To increase the likelihood of victims giving testimony to the commission, and of the public supporting the commission's eventual findings, the public must perceive that the commission has legitimacy. This objective is more likely to be achieved when the public has been consulted and involved in defining the commission's mandate.²⁶ The public is also more likely to have sufficient trust to participate in the commission's activities where the commission has undertaken outreach activities through the media and other community organizations. By contrast, where there is a lack of public awareness about the commission, victims are more likely to distrust and misunderstand the commission's activities.²⁷

Depending on the circumstances, it also may be necessary for the commission to put into place a witness protection program.²⁸ Alternatively, the commission may consider taking evidence in secret and on a confidential basis. In addition, as part of a holistic approach to protecting and restoring the rights of victims, effective truth commissions offer mental health, medical, and financial support to victims.²⁹ These efforts have paid specific attention to the needs of women, children, indigenous peoples, and other vulnerable groups.

1.5 Memorialization in the Context of Transitional Justice

In the most basic sense, memory refers to how people “construct a sense of meaning of the past, and how they relate that past to their present in the act of remembering.”³⁰ Individuals and societies have vastly different relationships to the past, particularly during and after periods of conflict and violence. The act or process of remembering – memorialization – takes many different forms, each of which brings different challenges and opportunities.

Forms of memorialization include, but are not limited to, physical monuments; museums and information centers; the naming/renaming of places, institutions,

In the most basic sense, memory refers to how people “construct a sense of meaning of the past, and how they relate that past to their present in the act of remembering”.

or legislation in honor of victims and survivors; reburials and other funerary rituals; commemoration ceremonies; virtual memorial spaces, like online lists of victims; public art or installations; interactive creative projects such as body mapping; and actions or vandalism in response to existing memorials (sometimes known as counter-memorials). Memorials may be standalone and unique, or they can speak to or replicate other memorials in a network of meaning.

Increasingly, memorialization is considered to be a key element of the transitional justice process. Memorialization is highlighted as a state responsibility by the United Nations Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of nonrecurrence,³¹ and it

has also been recommended in various truth commissions, although this has not always been implemented or implemented successfully.³² It is often framed as a form of symbolic reparation, where the state is mandated to provide victims and survivors with compensation in the form of public recognition of the past and to set the historical record straight.

The creation of national monuments or museums at certain sites of violence can preserve proof of crimes committed for years to come and promote long-term truth telling.³³ Less frequently, this can also contribute to formal justice processes by preserving material evidence of crimes committed.³⁴ In some societies, the label of *national monument* or *national museum* carries

a significant level of authority and importance, so it can be meaningful and reparative for victims and survivors to be recognized on this level. State-supported memorials may also indicate how education systems will – or will not – address different aspects of the past.

It is worth noting, however, that memorialization can be weaponized by the state to promote a narrative of triumphalism or exclude certain groups. Without deep community involvement in the memorialization process, such memorials can create tensions and resentment and impede reconciliation.³⁵ Equally, if a memorial is set up to promote the state's version of events as absolute truth to promote their own political interests, other truth-telling efforts may be set back decades.

Memorialization does not have to be state led or formally mandated to contribute to transitional justice goals. Memorial projects that are implemented on a grassroots level, by CSOs or community members who are not necessarily organized, often provide more opportunities for the inclusive participation and ownership for victims and survivors and thus can better meet their needs. For example, memorials that are created and run by the communities they serve can act as a safe(r) space for reflection and the processing of psychological trauma.

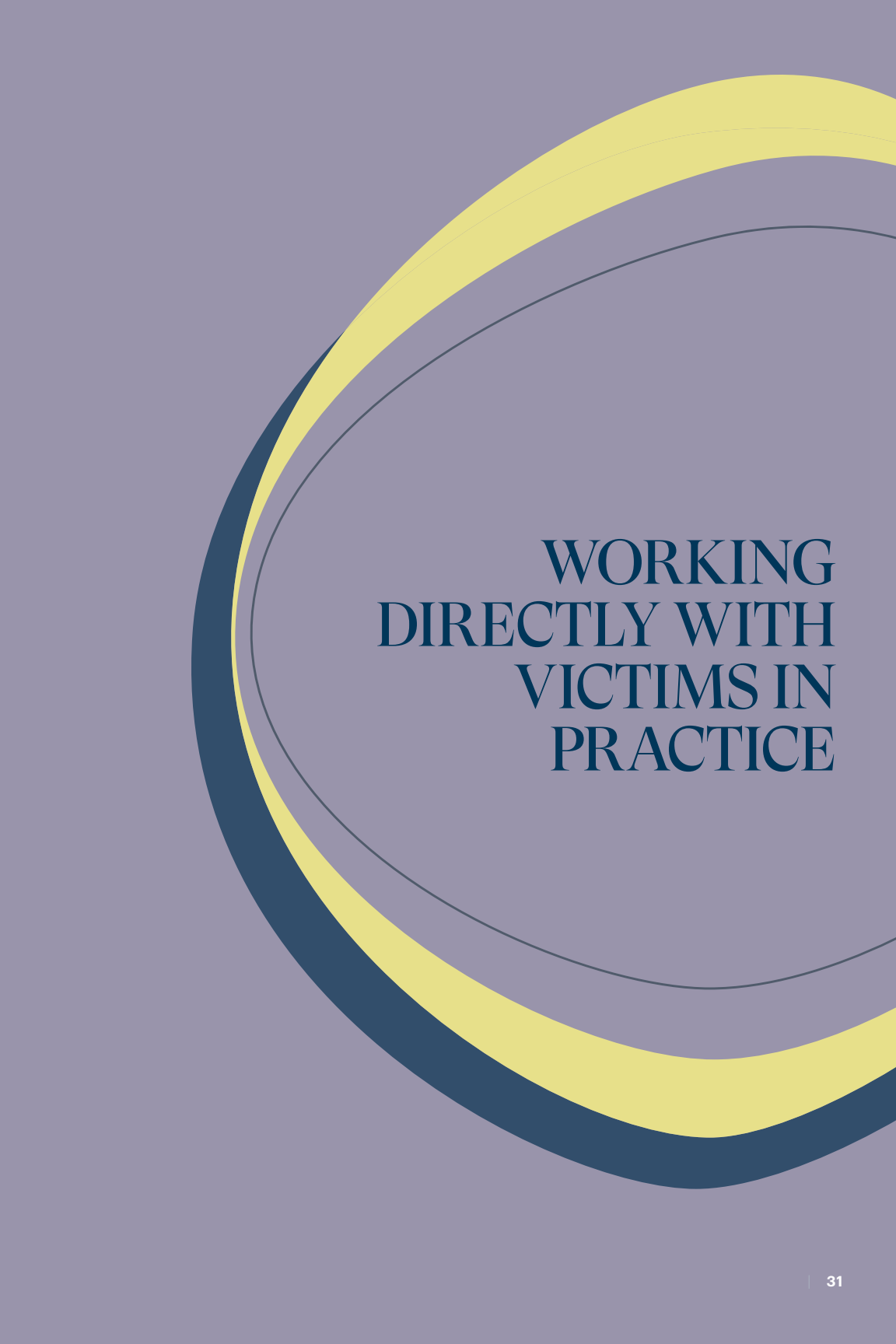
Importantly, community-led memorialization can contribute to transitional justice goals through its process as well as its product. Practices of digital memorialization have grown more popular in recent years, a trend accelerated by the COVID-19 pandemic that saw physical memorialization become inaccessible for many. Digital memorials can hold space for victims that may not be memorialized elsewhere, often using crowdsourcing to gather names and photographs. Such projects offer a direct line for victims and survivors to participate and direct truth telling themselves and have the potential to reach a greater number of people, although only those with internet have access to such memorialization initiatives. In-person memorials can also be interactive in nature. Creative memory projects like body mapping allow participants to produce a tangible, visible record of their own experience, a personal experience of truth telling that can be shared with a wider public if they so choose.³⁶

While preferable to a monolithic, state-led process of memorialization, community-led memorials frequently face the challenge of multiple stakeholders and donors to compensate for a lack of state funding. Stakeholders may have different relationships to the past and different ideas about how it should be

remembered. Victims and survivors themselves are not a homogeneous group and often have hugely diverse experiences and competing priorities. While such disagreements can exacerbate tensions, the opportunity for communities to engage in constructive dialogue and debate to reach consensus might be considered an exercise in reconciliation itself.³⁷ Nevertheless, community-led memorialization efforts are not immune to exclusionary practices. Even inadvertently, memorials can be unwelcoming spaces for some people; they cannot be understood separately from the gendered and racialized power dynamics of public spaces.

Like all transitional justice mechanisms, memorialization is a long-term process rather than a fixed goal. It often takes place over multiple generations and thus must be dynamic and responsive to the evolving needs of the community and the evolving state of justice. The creation of memorials should not end the responsibility to remember, nor should it close debates about the past.³⁸

Those who lead memorial projects must make difficult decisions to manage tensions across different transitional justice goals, like balancing the need for an incontrovertible truth about what happened and the need to reconcile various groups within a community who may disagree about what that truth is.³⁹ In this sense, memorialization faces many of the same challenges as other mechanisms, as well as its own unique considerations. Much remains to be done in terms of integrating memorialization into the balancing act of transitional justice and holding it to the same structures of accountability,⁴⁰ but best practice examples from community-led projects indicate a wealth of opportunities to center victims and survivors in memorial processes and products.



WORKING DIRECTLY WITH VICTIMS IN PRACTICE

2. Working Directly With Victims in Practice

2.1 Key Principles While Working Directly With Victims

Key principles while working with victims include a survivor-centered and informed approach.

A survivor-centered approach is applied through four principles: confidentiality, safety, respect, non-discrimination.

A survivor-centered and trauma-informed approach are two key principles while working with victims. They aim to put the rights of each survivor at the forefront of all actions and ensure that each survivor is treated with dignity and respect. By putting the survivor at the center of the process, such an approach promotes their recovery, reduces the risk of further harm, and reinforces their agency and self-determination. At the same time, the guiding principle in working with victims that must always be in the center of attention is to do no harm. This includes doing no harm to victims, witnesses, intermediaries, local communities, other unofficial investigators, colleagues, any other person involved in the collection of information on serious human rights violations, or oneself. The principle “do no harm” entails avoiding exposing people to additional risks through our action and taking a step back from an

intervention to look at the broader context.⁴¹

Practicing a survivor-centered approach means establishing a relationship with the survivor that promotes their psychosocial and physical safety, builds trust, and helps them to restore some control over their life. A survivor-centered approach is applied through four principles: confidentiality, safety, respect, and nondiscrimination.

The principle “Do no harm” entails avoiding exposing people to additional risks through our action and taking a step back from an intervention to look at the broader context.

Confidentiality: Confidentiality promotes safety, trust, dignity, and empowerment. Confidentiality means not disclosing any information at any time to any party without the informed consent of the person concerned.

Safety: Survivors may be at high risk of further violence – sexual, exploitative, and otherwise – from perpetrators, people protecting perpetrators, and/or members of their community. Every person has the right to be protected from further violence and threat. The concept of safety includes physical safety and security as well as psychological and emotional safety.

Respect: Every survivor has the right to be treated with respect and dignity and to make choices about what happens, allowing them to be in control of the helping process by deciding whom to tell and what actions to take. Failing to respect dignity and self-determination can increase feelings of helplessness and shame, reduce the effectiveness of interventions, cause revictimization and further harm, and perpetuate harmful norms.

Nondiscrimination: All people have an equal right to the best possible assistance without unfair discrimination on the basis of gender, disability, race, ethnicity or tribe, color, language, religious or political beliefs, status or social class, and so on.

Recommendations:

- Confidential collection of information during interviews;
- Sharing information only on a need-to-know basis or in line with laws and policies;
- Storing any information about the survivor securely;
- Obtaining informed consent from the survivor before sharing any information, including in the context of a referral;
- Having a validating, nonblaming and nonjudgmental approach;
- Valuing the survivor and caring about their experience, history, and future; and
- The survivor making decisions about care, with this is valued and upheld.

2.2 First Meeting – Initial Contacting of Victims: Safety Precautions

2.2.1 Informed Consent

As part of the introductory process at the outset of the interview, the interviewer should obtain informed consent from the interview subject (or the interviewee). Observing the principle of informed consent is critical when conducting interviews. All interviewees must give their consent prior to being interviewed, photographed, having their information recorded, being referred to any support services, or having their information and contact details shared with third parties.

Proper and informed consent entails that all persons providing information explicitly confirm, verbally or in writing, their understanding and consent, that they have been informed about and understand:

- The purpose of the information;
- Information that is provided will not be directly attributed to the interviewee with identifying information to third parties outside the interviewer's organization without the interviewee's consent;
- The information will be stored securely and will be accessible only to a limited number of persons within the interviewer's organization;
- The interview is completely voluntary;
- There is no compensation;
- The interviewee may terminate the interview at any time during the interview or withdraw consent later;
- The meaning of confidentiality and how it applies, or not, to the information they provide;
- The risks and benefits of participating;
- That many sources of information will be consulted in the production of the report; and
- The identity of the interviewer and the groups s/he represents, as well as the means of contacting the interviewer at a later stage.

To ensure informed consent, the interviewer should:

- Take time to explain all relevant factors to the interviewee, by covering the points above, and:
 - › Describing any possible uses of the information provided;
 - › Describing the types of questions that may be asked; and
 - › Presenting the information in a way that is clear and ensuring the information has been understood at every stage of the interaction.
- Ensure the consent given is based on free will and the psychological capacity to understand the risks and benefits, and consequently provide the consent.
- Obtain explicit consent for specific activities:
 - › Ensure consent is given for using devices such as a tape recorder during an interview. The interviewee must be aware that an audio is being recorded.
 - › Video recordings are discouraged for their security implications. If they are undertaken, they need specific written consent.
 - › Obtain express agreement to the transfer of any identifying, contact, or substantive information to third parties, in particular to national or international investigators or organizations, courts, or local authorities such as the police.



El Ojo que Lloro, Peru

- The interviewer should reiterate these points at each subsequent interview (if applicable).
- Should the interviewee be unable or unwilling to provide proper and informed consent, information cannot be collected from them.⁴²

2.2.2 General Safety Precautions

When conducting outreach to communities in transitional justice contexts, it is important to keep general safety precautions in mind, both for the CSOs and the individuals or communities. In particular, information sharing and communication, communication platforms, and interviews can carry particular risks, but it is also helpful to keep general personal security in mind as well. A few general tips follow, keeping in mind that different contexts may require more robust security considerations and that local actors can have helpful insights into operating in their unique context.



African Network against Extrajudicial Killings and Enforced Disappearances (ANEKED),
The Gambia

2.2.2.1 Personal Security

It is important to always be observant and aware of the surroundings at all times when traveling to events and interviews and in between different locations. Making sure to retain physical control of your personal electronic devices at all times – including phones, laptops, tablets, and accessories such as charging devices – can ensure the information stored is kept safe. If individuals feel unsafe in any way, they should take steps to immediately secure their safety and notify their colleagues of the issue. Based on that, they can determine whether they need to notify other partners and shift the planned course of action.

2.2.2.2 Information Sharing and Communication

Information sharing and communication can pose a significant security risk, including throughout the communication process surrounding the lifetime of a project. However, there are several steps to mitigate those risks and protect those they are working with. Before undertaking sensitive work, make sure to update all software and phone applications, backup all important data, and delete any sensitive information. Enable security features on electronics such as PINs, biometrics, and timeouts. Leave all nonessential devices behind for meetings. When working, do not connect to unknown devices, such as charging stations, or public and external networks.

All work should be done on secure platforms – ensure that software for personal computers and telephones are up to date. Use a secure Wi-Fi network, and whenever possible, do not use a public Wi-Fi network. Personal hotspots and password-secured networks are preferred. If you need to use a public Wi-Fi connection, terminate the connection immediately after use, and do not click on any suspicious or unknown links or download any application. It is important to keep computers virus-free. Pirating music or movies, for example, for download on a computer increases the risks of malware.

It is also important to browse the internet securely. Most websites have a secure version of their site. To access this, type an s after the http in the address. Use: <https://www.google.com/> instead of <http://www.google.com/>. When accessing the secure version of a website, a small lock will appear to the left of the browser address in either green or gray, depending on the browser. Using the “s” version is much more secure, and it should be the default method of browsing the internet, especially when using Gmail, Facebook, and Dropbox.



Memoria Circular de Morelia, Mexico

2.2.2.3 Secure Communication Platforms

When possible, be familiar with and use the most secure communication platform. Information can be shared through email, voice call, or direct messaging applications, and sharing should be done through an email with robust security or a personal email account protected by two-factor authentication. Turn on two-factor authentication whenever possible. When handling sensitive information, consider using one of the following programs or applications, all of which encrypt text messages, calls, and emails: Proton Mail, Jitsi, Silent Circle, Signal, or Telegram.

Jitsi is the preferred method for video calls, and Signal is the preferred method for voice calls. Viber, iMessage, Google Chat, WhatsApp, and Facebook Messenger are appropriate for basic personal communication but not for sensitive communication. When using these platforms, familiarize yourself with the software and adjust privacy settings. For example, Facebook has two levels of privacy settings to implement, through two-factor authentication, which should be turned on whenever possible.

It is important to be cautious with written communication. When working somewhere with security concerns or when working with individuals with significant security issues, do not reveal personal identifying information. Use initials instead of full names, and do not reveal locations or send detailed schedules. Depending on the sensitive nature of the work, consider setting up an email account with an address that does not have any identifying information, such as *greysquirrel@gmail.com* or something similar. Consider using a proxy, circumvention tool or a virtual private network (VPN). Proton Mail offers a VPN with its email service, and others are available as well. When possible, disable all unused wireless features like Wi-Fi, Bluetooth, and GPS when not in use.

2.2.2.4 Interviews

It is important to understand that interviews carry risks for both the interviewer and the interviewee, but with forethought and caution those risks can be mitigated. As mentioned above, a key principle when collecting information or interviews is to do no harm. As part of the introductory process at the outset of the interview, the documenter should obtain informed consent from the interview subject.

Selecting a Location for Interviews: If it is anticipated that interviews or any meetings will be in person, it is recommended that the selected location takes into account relevant security considerations, both for the interviewee and the interviewer – for example, being cautious about who frequents the location, being mindful of how easy it would be for others to overhear the scope of the discussion, and observing relevant SARS-CoV2-related precautions.

Physical Location: Being conscious of an interviewee's physical location, as well as the interviewer's location, allows for increased information security. For example, consider whether entities apart from the broadband or cellular service providers have access to phone calls, text messages, and call records. If possible, consider whether the information should be relayed in person instead of electronically.

Handling Sensitive Information: Protecting identities is an important part of working with local partners in the transitional justice context. Confidentiality and anonymization are the best ways to protect identities and can help support the safety and security of those who are interviewed and contributing to this work. Documenters should share the

identities of interview subjects only with that individual's express verbal or written consent, retaining the principle of do no harm.

Electronic Information Security: Any electronic documents with sensitive interview information should be password protected and/or encrypted. If possible, whatever platform they are stored on, such as a personal computer, a work computer, or cloud storage, should be accessible by only the smallest number of people possible. In addition, to secure electronic information, consider using external storage devices, such as external hard drives or USB drives, to store information off a regularly used device. Also ensure regular backup of data and information. Equip computers with a boot-up password and reliable antivirus, antispyware, and firewall software.

Secure Hard Information: Essentially, this applies to any information that is not electronic. Keep information stored apart in a secure location that is access limited. Within that, install a lockable filing cabinet or similar structure, with limits on who can access it. Regularly destroy documents that are no longer needed; that is, if statements are taken in the field on paper and then transferred to electronic form, destroy the remaining paper copies once the transfer is complete. Code and distort information when recording it, along an agreed-upon system to anonymize it in case it is compromised. Make copies of all important documents, and keep them in a separate, secure place.



War Childhood Museum, Bosnia and Herzegovina

2.3 Psychological Indicators of Victims in the Context of Transitional Justice

Human rights violations have a long life span, and post violent enactments, violence continues to live through the impact left on the people affected – this is what we call trauma. When working with victims and survivors of violence, a key point of departure is providing awareness of trauma and its impacts so people are able to understand the extent of what has happened to them and how the violence has changed them. Through the awareness of trauma and the impacts of trauma, people and communities become able to reflect and seek support and work toward reshaping and healing.

A trauma event is a harmful, life-threatening event in which a person may feel fear, distress, and an inability to help themselves. It is an event that overwhelms a person's ability to cope. People may experience trauma from a single event, more than one event, or ongoing events. When war and political conflict persist, people experience the physiological, social, psychological, and economic impacts of trauma over extended periods. As a result, people may experience collective trauma because of events that have happened in the past, the current sociopolitical situation, injustices and human rights disparities, economic difficulties, and other ongoing challenges.

When people experience trauma events or live in traumatized contexts, they may discover that they are having posttraumatic responses, which are changes in themselves since the onset of the event or series of events. Some of the responses may dissipate with time, and others may persist, affecting the way that people live their daily lives. Sometimes a victim or the people in their immediate communities (families and friends) will recognize the changes that the trauma has caused, and sometimes they do not. It often happens that a person is responding through the experience of trauma for a long period before anyone notices that the person has “changed.” They are no longer the same because the event changed the way they understood the world as safe and predictable. Therefore, understanding how trauma affects people is an important starting point to knowing how to manage the changes and starting the journey of trauma recovery.

When people are traumatized, they may become more afraid of themselves, the people around them, and the world at large. Victims of violence may begin to view the world as an unsafe place, a place that they cannot predict. As a result,

they may begin to exhibit symptoms of hypervigilance, anxiety, and paranoia even when there is no threat. Their bodies may continue to respond to the threat long after it has ended. In everyday situations, victims may experience heart palpitations, excessive sweating, dizziness and nausea, and an impending feeling that something bad or harmful is going to happen.

Because of the exposure to traumatic events and a new learning of the world as unsafe, victims often think of other people as unsafe. As a result, trauma affects relationships with other people and fosters a sense of distrust in others. This is another way in which the victim's body is trying to protect them. Because of the betrayal and violation of safety that come with violence, victims may learn the importance of protecting themselves at all times – that people and spaces are not trustworthy, that pain can happen at any time, and that there is no predictable end to suffering.

Within the transitional justice process, victims often struggle to cope with the memories of the events that have traumatized them. Sometimes these memories are triggered by a type of sound, smell, taste, or person, reminding the victim of where they have come from. When people have not processed their traumatic experiences, triggers are often unpredictable. A person may not even understand that they have been triggered and just feel very sad, anxious, or angry. This is difficult because victims may feel like they are no longer able to manage their emotions; sometimes the memories emerge as flashbacks that can cause victims to panic, feel helpless again, and go into distress. Physiologically, the victim's body may respond the same way it did during the traumatic event. This is particularly important to understand because of how it may leave the victim feeling and also how this is viewed or experienced by people who are close to them.

In the same manner as triggers, victims may also experience intrusive thoughts that are related to the trauma event. The intrusive thoughts may come and go from the victims' mind, even when they are not consciously thinking about them. Intrusive memories may also happen when people are sleeping and are experienced as nightmares.

Victims of violence and other human rights violations may experience difficulty with being present in their thoughts and emotions. Sometimes they experience loss of concentration and some memory difficulties. This may be due to how much the mind is focused on other thoughts and experiences related to the trauma and is difficult to “switch off.” Because of how invasive this feels, as a method of coping,

victims may try to avoid people or places that remind them of the trauma. However, this can be difficult because while they may avoid triggers, the memories of the experience persist. In significantly extreme situations, the avoidance is experienced as numbing of emotions, where a victim doesn't feel anything at all.

It is important to know, when working with victims, that trauma changes form and that sometimes trauma is carried in the body through various body pains. Psychosomatic pain is characterized as physical pain that may not be sourced under a physiological stressor.

Psychosomatic pain is a type of bodily experience that medically cannot be understood. People may experience headaches, stomachaches, or back pain. In such situations, victims often get medication, which can be helpful but may not provide long-term pain relief.

Managing oneself when there have been such drastic changes requires a significant amount of mental resources. This may cause them to develop maladaptive coping strategies such as alcohol use or other drug substances, giving rise to other social and mental health problems.

It is important for mental health and psychosocial support (MHPSS) to be integrated into transitional justice processes because of the manner in which trauma can affect victims, families, and their communities. Trauma recovery is a process that is often more effective soon after the traumatic event because victims can share the trauma with someone they trust and begin to piece together their experiences in a healthy way.

Human rights violations have a long life span, and post violent enactments, violence continues to live through the impact it has left on the people affected – this is what we call trauma.

2.3.1 Integrating Mental Health and Psychosocial Support

Victims and survivors of atrocities and gross human rights violations are typically not compensated or provided with adequate support to process and overcome the trauma that often develops as a result of the violence that they have experienced. Considering how society has developed across history with a broad spread of conflict zones and postconflict zones, it is imperative that

there is an integration of trauma-informed processes in which mental health and psychosocial support are mainstreamed into the transitional justice processes.

Furthermore, it is important to acknowledge that trauma doesn't reside solely within the individual who has experienced a traumatic event; trauma transitions to other parts of the systems. A traumatic experience is a shared experience, and when this transitions over time and groups or communities, it starts to be identified as a collective trauma, and the context is understood as a wounded context.

Collective trauma and wounded contexts persist when there are no mental health interventions and communities continue to operate through the lens of

Trauma resides in the experiences of the people who have been affected. It further translates into the way that people interact with themselves, others, and their communities.

trauma. When used as an example, the history of violence across Africa gives rise to the understanding that violence transcends beyond the individual experiences and becomes what a group of people experience as ways of navigating life.

One of the major roles of transitional justice is to ensure that the restorative process is complete. The process may sometimes be facilitated by the mainstream justice systems; however, it has also been identified that religious and cultural organs are adopting ways in which aspects of justice are considered and implemented. This provides insight into the various aspects of individuals

and communities that are incorporated into the justice and healing process. While there is a need to hold people accountable, it is important that this is done in a manner that promotes the healing and mental well-being of victims, perpetrators, and their families.

When someone experiences an event or series of events that destabilizes them, it can be described as traumatic. Violence is a significant contributor to trauma and posttraumatic responses globally. So, while the transitional justice process has its function, it is imperative that the trauma that is experienced at individual, family, and community levels is carefully considered and systems are developed that facilitate healing from the trauma. At the beginning of the process, victims must have access to counseling support, which will help them understand what

has happened and begin to envision how the trauma has affected their lives.

The integration of MHPSS will always have different processes based on the context. Trauma resides in the experiences of the people who have been affected. It further translates into the way that people interact with themselves, others, and their communities.

2.4 Risk Factors While Working With Victims in the Context of Transitional Justice

An important consideration while working with victims in the context of transitional justice is that individuals experience trauma differently and require different strategies and different approaches in processing the trauma. While working with victims, one needs to be sensitive to the unique needs and history of each victim. Every individual must be adequately screened for preexisting mental health challenges and any indication of trauma-related symptoms or responses.

Victims need to be at the center of transitional justice proceedings to ensure ownership of the process and to ensure nonrepetition.

2.4.1 Posttraumatic Stress Disorder

Many victims in transitional justice settings are likely to experience posttraumatic stress responses. Some victims might not even recognize the mental health impacts of the violence they have experienced, as they have learned that it is more acceptable to present a physical symptom rather than a psychological one. In some situations, victims who are anxious or have depressive symptoms may acknowledge that they are feeling sad, not sleeping well, or have headaches, joint aches, or heart palpitations but might not recognize that these could be symptoms and indications of traumatization or posttraumatic stress disorder (PTSD). Working with PTSD requires more complex mental health interventions.

2.4.2 Competing Priorities

Although accessing psychosocial services is important in assisting victims to function adequately in the aftermath of conflict, it is often not recognized as a priority. Many victims' main concern involves seeking material and legal assistance over psychosocial support. Because of the manner in which their lives have been destabilized, some victims find themselves economically strained and require tangible assistance rather than psychosocial assistance.

Awareness and education campaigns should be initiated to make the survivors, in particular, and society, in general, aware of the importance of psychosocial support for contexts embarking on the process of transitional justice.

2.4.3 Gender Considerations

Failure to recognize that men and women experience conflict differently might hinder transitional justice processes. An understanding of how men and women are affected by conflict can assist in investigations of invisible crimes like sexual violence, forced sterilization, and sexual slavery, among others. Women and children usually are the most marginalized and vulnerable during conflict; some men and women may have experienced sexual violence during conflict and might require that extra caution and sensitivity. The gender of the person attending to the victims must be carefully considered and medical attention might also be a requirement in gathering evidence of violations for transitional justice processes. While working with victims in the context of transitional justice, one needs to ensure that victims have an equal gendered representation.

Training of commissioners, health workers in particular, and legal advisers, and networking with other organizations on trauma-informed systems and processes needs to become integrated into the services provided in such settings.

2.4.4 Language

Victims must be provided the opportunity to express themselves in a language that is comfortable and familiar to them. Not being sensitive to language needs (verbal and nonverbal) can compromise evidence and subsequently the progression of transitional justice processes.

In conclusion, victims need to be at the center of transitional justice proceedings to ensure ownership of the process and to ensure nonrepetition of some of the atrocities. Victims must be given an opportunity to express their needs and to indicate what attaining justice practically and holistically looks like to them.



Casa Memoria José Domingo Cañas, Chile



Devoir de Memoire, Haiti

2.5 Representing Victims in Different Transitional Justice Stages

2.5.1 Representing Victims in Reparation Seeking

Reparations are meant to acknowledge and repair the causes and consequences of human rights violations and inequality in countries emerging from dictatorship, armed conflict, and political violence, as well as in societies dealing with racial injustice and legacies of colonization.

All victims of human rights violations have a right to reparation. Different victims have different needs, and those needs can change over time. The type

of reparation required can also vary according to the victim's economic class, gender, age, and social identity. Women, for example, experience violations in significantly different ways from men, and their experiences should not be limited to sexual or gender-based violence and its consequences. Landless communities will have reparative needs different from those of displaced urban families.

States that commit or fail to prevent violations, as well as nonstate entities, including individuals, institutions, corporations, and armed groups that perpetrate or are complicit in those violations, have a legal obligation to provide reparations.

It is important to remember that compensation – or the payment of money – is only one of many types of material reparations. Other types include the restitution of civil and political rights; physical rehabilitation; and granting access to land, housing, health care, or education. Reparations can also take the form of revealing the truth about the violations themselves and providing guarantees that they will not be repeated. Symbolic reparations – such as apologies, memorials, and commemorations – are other important reparative measures that can be more meaningful when conferred alongside material reparations.

Reparations can be implemented through administrative programs or enforced as the result of litigation. In many countries, transitional justice processes have provided reparations to groups, communities, and even regions. The design and delivery of collective reparations may intersect with development programs, while urgent forms of individual reparations might intersect with humanitarian relief programs. These overlaps are inevitable because those who are the most vulnerable to human rights violations also suffer most from social and economic inequality. Reparations should be designed and implemented in ways that can transform these unequal and unjust conditions. Most victims see reparations as the most direct and meaningful way to obtain justice. Yet reparations are rarely prioritized and are often the least funded measure of transitional justice.

The main goals of representing victims in reparation processes are providing assistance and support as equality of access to justice, avoiding additional trauma and the feeling of being abandoned, as well as empowering victims and witnesses to seek rehabilitation and rebuild violated rights.

The main goals of representing victims in reparation processes are providing assistance and support as equality of access to justice, avoiding additional trauma and the feeling of being abandoned, as well as empowering victims and witnesses to seek rehabilitation and rebuild violated rights.

Each victim has their own specific needs that must be addressed by all actors who come into contact with them. Victim-centered and tailored support are the key elements of successful representation and recognition of victims during the reparation processes. A necessary requirement for ensuring practical exercise of rights guaranteed to victims in reparation processes is to provide them with timely and correct information about their rights and status. This information should be made available to victims by means of informational brochures produced using simple and accessible language. Victims who do not understand or speak the language of the reparations process should have interpretation and translations of information during the process in a language understood, free of charge.

States that commit or fail to prevent violations, as well as nonstate entities, including individuals, institutions, corporations, and armed groups that perpetrate or are complicit in those violations, have a legal obligation to provide reparations.

The access to free legal aid for victims of human rights violations during the reparations processes should be foreseen in national laws. Free legal aid should be provided only by attorneys who are trained and sensitized to legally represent these categories of victims.

During the process, victims and their family members should be protected from secondary and repeated victimization, intimidation, and retaliation, including against the risk of emotional or psychological harm, as well as against physical injury.

2.5.2 Representing Victims in Criminal Proceedings

The role of the victim in the criminal trial process has evolved considerably in recent decades. Several decades ago, victims had no role other than reporting the crime and acting as a witness in the criminal courts. The trial was about convicting the accused; the victim was to sit in the audience. Internationally, the first steps toward victims' rights were taken in 1985 by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁴³ In the UN Declaration, it was stated that victims should get access to justice, fair treatment, restitution, compensation, and assistance.

Today, the involvement of victims in criminal proceedings and the rights afforded to them vary from state to state. While in some legal systems the role of victims is limited to testifying in court as a witness and making a victim impact statement, in others victims play a very active role in proceedings.

The traditional role of victims in a trial is often perceived to be that of a witness of the prosecution.⁴⁴ Some countries, including the United States and Canada, offer victims the opportunity to make their voices heard by allowing so-called



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victim impact statements.⁴⁵ This implies that victims can submit to the court a written statement in a prescribed format that will then be read out in trial. This way, victims can address the court during the decision-making process with a view to personalizing the crime and elevating the status of the victim.⁴⁶

Opposite to this, victims may be allowed to be actively involved in a criminal proceeding – to be represented by a lawyer, to pose questions to witnesses and the accused, to make initial and closing remarks, and to have access to information contained in the case file.⁴⁷ In some cases, even nongovernmental organizations, victim associations, or other third parties may also be represented as a “civil party,” in particular in cases of mass victimization or structural victimization.⁴⁸

Particularly vulnerable victim groups, such as children or victims of sexual violence, should have special protection guarantees – for example, an audio-visual recording of interviews with the child and admissibility of such recording as evidence, appointing a temporary representative for the child, where necessary.

Persons may become particularly vulnerable through numerous factors, such as age, health, disability, gender, sexual orientation, and membership of a specific social group. The state of multiple vulnerability arises as a result of two or more reasons based on which a person is identified as belonging to a particularly vulnerable group. Persons belonging to vulnerable groups are as a rule more susceptible to victimization, which is easily perceived in cases of victims of human trafficking and discrimination. At the same time, it should be recalled that vulnerable groups more often become victims of discrimination or unjustified unequal and prejudicial treatment. Victims of crime belonging to the groups of persons with multiple vulnerabilities require special protection and additional, continuous and long-term psychosocial support in the process of their resocialization and reintegration. Belonging to a vulnerable group on its own often means that victims are not capable of realizing the negative impacts of their situation or taking steps to improve it without outside support.

In most contemporary legal systems, victims have the following rights:

Right to be informed: The right to be informed involves victims having the right to receive general information about their rights and specific (case-related) information about the date, location, time, progress, and outcome of the case. The police and the Public Prosecution Service are responsible for providing information to the victim in their first contact.

Right to be legally represented: Victims have the right to have their rights and interests represented by an attorney. The attorney should have experience in representing this category of victims in criminal proceedings, as well as having knowledge in the field of protection of international humanitarian law and human rights.

Right to access the case file: The right to access the case file states that victims are entitled to access all documents that are relevant to them; that is, the complete case file or parts of it. Victims have to ask the Public Prosecution Service to gain access to their file. The Public Prosecutor could provide access to the file electronically or in person, with an option of providing access under supervision. Victim lawyers can play an important role in asking the Public Prosecutor for the file. The lawyer can also explain the content of the file to the victim, and if access is denied, the lawyer can ask again, file a complaint, or appeal.

Right to add documents: The right to add documents to the file allows victims to add documents that they consider relevant. In this way, they are considered to be able to contribute to the content of the file. Documents that they can add are, for example, documents to substantiate the damage, such as medical files or reports from an employment expert, the results of a private investigation, or documents regarding culpability.

Right to speak: The right to speak in court allows the victim (or next of kin) to make a statement at the trial – for instance, about the consequences of the crime, the evidence, the culpability of the suspect, and the sentencing. The right to speak primarily allows victims to state their views in court, but judges may take the victim impact statement into account in their sentencing. The right to speak can be exercised verbally, but victims are also allowed to submit a written impact statement. The lawyer can assist in drawing up the statement.

Right to claim compensation: The right to claim compensation allows victims to claim material and immaterial costs related to the crime, such as the costs of damaged goods, medical costs, travel costs, loss of income, and pain and suffering. The role and added value of the lawyer is that the lawyer is better able to substantiate claims, if necessary with the help of experts (reports).

2.5.2.1 Victims in the Context of International Criminal Justice

After the adoption of the Rome Statute in 1998, the first permanent international criminal tribunal was established – the ICC.⁴⁹ As described in Section 1.2.2, the ICC is known as a court of last resort. Under the system of complementarity, the ICC will step in to try a case only if the relevant state is unwilling or unable genuinely to do so, or the case is of sufficient gravity to justify the exercise of ICC jurisdiction.

The establishment of this court is very significant from the perspective of the victims. Not only is the ICC a step toward preventing impunity for the most serious international crimes, it also affirmed a new set of victim rights in the criminal proceedings. Primarily, the ICC grants victims the right to participation in trial and the right to reparations. Victims' legal representatives ensure that at all stages of the proceedings, their views and concerns are heard on matters where their personal interests are affected. Victims have legal representations, but they may also attend hearings and, subject to rulings by the Court, make oral and written submissions, or even be allowed to question witnesses.⁵⁰

The interactions with the court are coordinated by the Victims Participation and Reparation Section, while the legal representations of victims are provided and supported by the Office of the Public Counsel for Victims.⁵¹ The Rome Statute was also a basis for the establishment of the Trust Fund for Victims, which implements reparations ordered by the court but also provides additional support to victims, such as physical and psychosocial rehabilitation or material support.⁵²



DOCUMENTING EXPERIENCES

3. Documenting Experiences

An Example of a Participatory Action Research in Documenting Stories

STONE AND FLOWER: Victim Participation in Pursuing Truth in the Context of Impunity

Having worked in postconflict contexts in Asia and the Pacific with various stages of transitional justice processes, AJAR has learned and reflected on how victims and survivors developed their strength in promoting initiatives as measures to seek justice. Survivors and civil society groups have echoed their resilience in seeking truth and justice after being silenced and excluded for decades. These initiatives present an important contribution to assisting and empowering victims of mass human rights violations, providing some form of “repair” when all other measures for justice are blocked or unavailable, thus settling in for the long-term work of rebuilding society alongside survivors.

Community-Based Initiatives for Truth and Justice

Since 2013, AJAR has developed an approach recognizing that most victims, especially women, of mass human rights violations live in a context with discrimination and total impunity. It is an approach that acknowledges the deep cultural, political, and socioeconomic roots of the poor who are alienated from access to justice; these barriers are not merely due to legal practice. This approach also looks at the link between poverty and victimization: Many of the impoverished become victims of human rights violations because they are struggling to protect their basic rights, and many victims become impoverished because of the continuing socioeconomic impact of the violation they experienced.

Community-based initiatives for truth and justice can lay the foundation for breaking the cycle of impunity. In many postconflict settings, addressing the reparations of victims and their communities can boost development and strengthen the rule of law.

Community-based initiatives for truth and justice can lay the foundation for breaking the cycle of impunity.

Yet governments fail to provide the resources needed to establish and sustain these initiatives. Victims become invisible, indistinguishable from the poor and other vulnerable groups. Despite this, victims and civil society groups continue to work for change.

The approach, adopted from participatory action research and women's reproductive movement methodology, proposes that victims and survivors can unlearn impunity by empowering themselves to understand their rights and strengthen their capacity to participate in advocacy for their change.⁵³ It was created with survivors' groups called community learning centers and includes integrated healing, documentation, solidarity building, and critical analysis so the survivors can participate, be empowered, and benefit from this process. Through the participatory approach, AJAR and partners developed seven methods as tools that open a space for exploring and sharing survivors' experiences to gain a broader perspective.

The tools open a space to combine a discussion of personal and communal understanding of violence and its impact on victims' physical and physiological aspects, identifying the root causes and building a collective history. Victims are invited to discuss a *timeline* to understand the violence they experienced before, during, and after the conflict, as well as build a collective history with broader perspectives than the individual alone can achieve. *Community mapping* is used to draw a map showing their homes and the places where violations took place and other important locations from their stories. *Resource mapping* is used to bring an engaging discussion among participants about their sources of livelihood before, during, and after the conflict to deepen victims' knowledge of the cycle of poverty they experienced in postconflict situations. Body mapping is an opportunity for victims, especially women, to speak about how the violations they experience affect their bodies. Apart from pain, they also marked the sites of happiness on their body map.

The tools also invited victims to *take photos and tell stories* by visiting other victims' homes to create a photo story about their life, including portraits of locations and objects with particular meanings. Memory boxes asked the victims to fill a box with objects that hold sweet or bitter memories. They were also asked to write a story about their life experience on postcards. Participants then will be invited to a group session to share their boxes contents. *Stone and Flower* invites victims to choose a stone or a flower to describe whether the rights to

truth, justice, healing, and a life free from violence existed in their personal, family, and community lives. Their reasons for choosing a stone (if negative) or a flower (if positive) were discussed in the group.

Finding alternative initiatives could be a way to shift from more rigid mechanisms, as victims felt that they could no longer rely only on official mechanisms in order to address the impact of mass violations or support victims in amplifying their voices. An approach that integrates trauma-healing sensitive methods in a way which empowers victims' agency to seek justice could lessen their burden to survive. Victims need to be assured that victims and their communities have adequate space for learning and dealing with the root causes of conflict. This requires a long-term approach and intergenerational dialogue that can bring about knowledge and an attitude of "never again" or a culture of nonrecurrence.



ANNEX

4. Annex

Sample informed consent form⁵⁴

Collection of statements from victims and witnesses

INFORMED CONSENT

I have met with [_____].
He/she has explained why he/she is here. He/she has also discussed with me the potential benefits and risks of participating in an interview with him/her for this project. I understand what the interview process involves and that I have the right not to participate. I also understand that participating in this interview will not guarantee any benefits for me or my family. It does not mean that I will be able to testify at trials or bring specific charges against anyone. I understand that I can terminate the interview at any time or refuse to answer any portion of any questions.

Date: _____

Signature: _____

STATEMENT COVER PAGE

Code No. of Person Being Interviewed ⁵⁴	
Name of Documenter	
Organization	
Date of Interview	

ENDNOTES

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- 14 United Nations. 2005. *Resolution on 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*.
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- 18 Muddell, Kelli. 2009. *Limitations and Opportunities of Reparations for Women's Empowerment*.
- 19 Presidential Decree 1290/2008.
- 20 Iraq Constitution 2005.
- 21 Al-janaby, Mohamed Gazi and Kahtan, Adnan Aziz. 2019. "Iraq's application of international standards relating to victims of terrorism", *Journal of University of Babylon for Humanities*.
- 22 See, e.g., United Nations Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights: Study on the right to the truth*, 8 February 2006, E/CN.4/2006/91; UN Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 28 August 2013, A/HRC/24/42, paragraphs 18-20.
- 23 González, Eduardo and Varney, Howard (eds.). 2013. *Truth Seeking: Elements of Creating an Effective Truth Commission*, pp. 3-6.
- 24 González, Eduardo and Varney, Howard (eds.). 2013. *Truth Seeking: Elements of Creating an Effective Truth Commission*, p. 2; see also Hayner, Priscilla B. 2010. *Unspeakable Truths: Facing the Challenge of Truth Commissions*, p. 28 (discussing the Truth and Reconciliation Commission of South Africa (1996-2003), which took testimony from over 21,000 victims and witnesses, of whom 2,000 appeared in public hearings).
- 25 See Hayner, Priscilla B. 2010. *Unspeakable Truths: Facing the Challenge of Truth Commissions*, p. 35 (discussing the example of the Truth and Reconciliation Commission of Peru (2001-2003); following its report, the former President Alberto Fujimori, who was implicated in corruption, was eventually sentenced to 25 years in prison).
- 26 See Hayner, Priscilla B. 2010. *Unspeakable Truths: Facing the Challenge of Truth Commissions*, p. 27 (observing that the South African Parliament passed an Act to establish the powers and

- mandate of the South Africa TRC after extensive public consultation and debate) and p. 39 (observing that the Timor-Leste Truth Commission (2002-2005) was also established after extensive consultation with civil society groups).
- 27 See Hayner, Priscilla B. 2010. *Unspeakable Truths: Facing the Challenge of Truth Commissions*, p. 33 (citing the example of Guatemala, where persons unaware of the commission believed the investigation staff to be “guerrillas”).
 - 28 See Hayner, Priscilla B. 2010. *Unspeakable Truths: Facing the Challenge of Truth Commissions*, pp. 231-232 (noting that South Africa implemented a full witness protection program, and by contrast, no witness protection program was in place in Uganda, where witnesses returned to the commission to retract their evidence).
 - 29 See Hayner, Priscilla B. 2010. *Unspeakable Truths: Facing the Challenge of Truth Commissions*, p. 41 (discussing the example of the Timor Leste commission, which established an urgent reparations scheme, providing a payment of USD 200 to approximately 10% of those who gave testimony, and also provided mental health support to victims).
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Practices”, p. 9, 2018, available online: https://www.alnap.org/system/files/content/resource/files/main/donoharm_pe07_synthesis.pdf, accessed 23 December 2022.

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- 51 See *Representing Victims before the International Criminal Court*, available online: <https://www.icc-cpi.int/sites/default/files/manual-victims-legal-representatives-fifth-edition-rev1.pdf>, accessed 23 December 2022.
- 52 See *The Trust Fund for Victims*, online: <https://www.trustfundforvictims.org/en/about/vision>, accessed 23 December 2022.
- 53 In many societies in transition, there is a false distinction in providing services for victims of domestic violence but not for victims of conflict. AJAR's research has shown that many countries often adopt this ahistorical approach to working on gender-based violence. Gender-based violence by state actors shares the same root causes as domestic violence. AJAR also found that some women survivors of human rights violations

become victims of domestic violence later on. In this case, AJAR used body mapping, a method originally developed by the women's health and reproduction movement, to identify violence to their bodies and transform it into state-based violence.

- 54 As part of the introductory process at the outset of the interview, the interviewer should obtain informed consent from the interview subject (or the interviewee). Observing the principle of informed consent is critical when conducting interviews. All interviewees must give their consent prior to being interviewed, photographed, having their information recorded, being referred to any support services or having their information and contact details shared with third parties. Proper and informed consent entails that all persons providing information explicitly confirm, by verbally or in writing, repeating their understanding and consent.



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