

# CHALLENGES FOR THE INCLUSION OF INDIGENOUS COMMUNITIES IN TRANSITIONAL JUSTICE

Synthesis report on  
Africa, Asia-Pacific  
and Latin America



**GIJTR**

Global Initiative for Justice  
Truth & Reconciliation



International Coalition of  
**SITES of CONSCIENCE**

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**Cover:** Participant in the Aty Guasu Assembly, meeting of Guarani-Kaiowá Women, Brazil.

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# ABOUT THIS REPORT

The concept of transitional justice refers to a set of institutional mechanisms that document human rights violations suffered in relatively recent periods of violence, with the dual objective of providing an effective remedy to victims and reducing the potential for new cycles of violence by reforming institutions and social processes. This model understanding of transitional justice has proved to be insufficient to reflect the experience of Indigenous peoples. The various transitional justice mechanisms, due to their historical contexts and doctrinal roots, have not properly recorded the experiences considered relevant by Indigenous peoples. And because they have failed to incorporate the range of Indigenous encounters with violence and oppression, they have not adequately linked the violations of the past with the ongoing marginalization of the present. However, transitional justice is dynamic and has been gradually incorporating more effective practices to reflect Indigenous experiences. At times, it has been transformed in response to interventions and adaptations by Indigenous communities and thanks to the growing international recognition of Indigenous peoples' rights.

This report summarizes findings, learned lessons and recommendations regarding the participation of indigenous peoples in transitional justice processes based on case studies and field research conducted in Australia, Brazil, Chile, Colombia, Democratic Republic of Congo, Guatemala, Indonesia, Kenya, Morocco, Nepal, Nigeria, Peru, Philippines, Rwanda, Sierra Leone and South Sudan.

The cases examined call for a decisive integration of the framework of Indigenous peoples' rights and Indigenous leadership within transitional justice, decolonizing its approaches, broadening its historical perspective, and enhancing its capacity to shape profound political transformations in modern states. This report summarizes the main themes of a project undertaken between 2021 and 2023 by four GITJR member organizations: Asia Justice and Rights (AJAR) Due Process of Law Foundation (DPLF) the Centre for the Study of Violence and Reconciliation (CSVr), and the International Coalition of Sites of Conscience (ICSC).

## ACKNOWLEDGEMENTS

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# ABOUT THE GLOBAL INITIATIVE FOR JUSTICE, TRUTH AND RECONCILIATION CONSORTIUM

Around the world, there is an increasing call for justice, truth and reconciliation in countries where legacies of grave human rights violations cast a shadow on transitions. To meet this need, the International Coalition of Sites of Conscience (ICSC) launched the Global Initiative for Justice, Truth and Reconciliation (GIJTR) in August 2014. The goal of GIJTR is to address new challenges in countries in conflict or transition that are struggling with their legacies of past or ongoing grave human rights violations.

The GIJTR Consortium (“the Consortium”) comprises the following nine partner organizations:

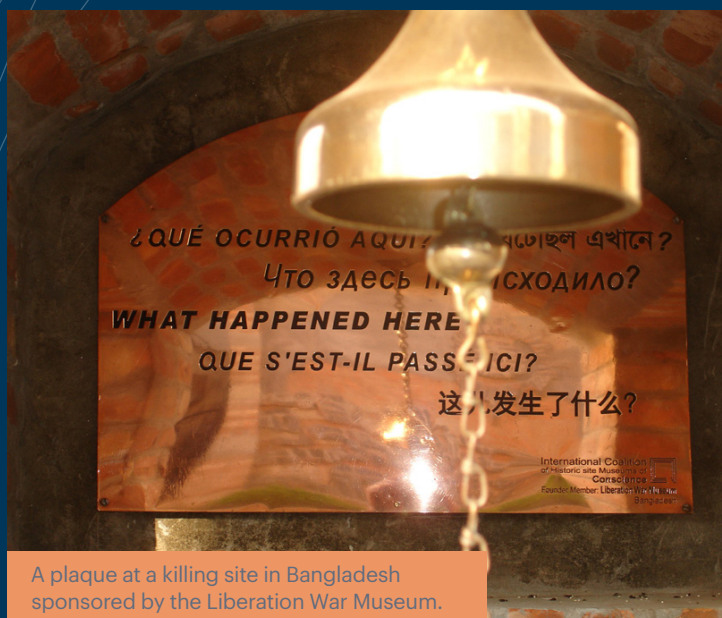
- International Coalition of Sites of Conscience, in the United States (lead partner);
- American Bar Association Rule of Law Initiative (ABA ROLI), in the United States;
- Asia Justice and Rights (AJAR), in Indonesia;
- Centre for the Study of Violence and Reconciliation (CSVR), in South Africa;
- Documentation Center of Cambodia (DC-Cam), in Cambodia;
- Due Process of Law Foundation (DPLF), in the United States;
- Forensic Anthropology Foundation of Guatemala (Fundación de Antropología Forense de Guatemala – FAFG), in Guatemala;
- Humanitarian Law Center (HLC), in Serbia; and
- Public International Law & Policy Group (PILPG), in the United States

In addition to leveraging the different areas of expertise of the Consortium partners, the ICSC draws on the knowledge and longstanding community connections of its 275-plus members in 65 countries to strengthen and broaden the Consortium’s work.

The Consortium partners, along with the ICSC's network members, develop and implement a range of rapid response and high-impact programs, using both restorative and retributive approaches to criminal justice and accountability for grave human rights violations. The Consortium takes an interdisciplinary approach to justice, truth and accountability. On the whole, the Consortium partners possess expertise in the following areas:

- Truth telling, memorialization and other forms of historical memory and reconciliation;
- Documenting human rights violations for transitional justice purposes;
- Forensic analysis and other efforts related to missing or disappeared persons;
- Advocating for victims, including for their right to access 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 with transitional justice processes;
- Reparative justice initiatives; and
- Ensuring and integrating gender justice into these and all other transitional justice processes.

Given the diversity of experiences, knowledge and skills within the Consortium and the ICSC's network members, the Consortium's programming offers post-conflict countries and countries emerging from repressive regimes a unique opportunity to address transitional justice needs in a timely manner while simultaneously promoting local participation and building the capacity of community partners.



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



Tharu woman wearing traditional clothing to go fishing at Bardia, Nepal.  
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# I. INTRODUCTION

## 1. Research problem, scope, and methodology:

The project “Engaging Indigenous Communities in Transitional Justice” aims to examine the approaches and challenges in the inclusion of indigenous communities in transitional justice processes in Africa, Asia-Pacific and Latin America. It reviews their current participation and the effectiveness of addressing the needs of the communities, as well as the demands for truth, justice, and reconciliation.

The project has focused on areas that correspond to countries of the Global South, in the Asia-Pacific region, Africa and Latin America. The selection of these areas cannot ignore the existence of important examples of transitional justice implementation with a leading role of indigenous peoples and communities in countries such as Canada or the Scandinavian countries.

This investigation was carried out in the years 2021 and 2022, and included 16 countries from three large geographical areas (Africa, Latin America, Asia-Pacific): Morocco, Kenya, Sierra Leone, Nigeria, Rwanda, South Sudan, the Democratic Republic of Congo, Guatemala, Peru, Colombia, Chile, Brazil, Australia, the Philippines, Indonesia, and Nepal.

The research project had two phases:

- In a first phase, studies were carried out in the African countries of Morocco, Rwanda, Kenya, Nigeria, and Sierra Leone. In Latin America, studies were carried out in Peru, Guatemala, and Colombia.
- In the second phase, studies in the Asia-Pacific area were incorporated, with analysis of the situation in countries such as Australia, Nepal, Indonesia, or the Philippines. The cases of the Democratic Republic of the Congo and South Sudan were added to the research in Africa. In Latin America, the cases of Brazil and Chile were included.

Finally, an international seminar was held in November 2022, where researchers shared their various experiences and conclusions on lessons learned, as well as challenges and prospects for transitional justice with regard to indigenous peoples.

All targeted countries present important consequences of serious violence against indigenous peoples and their members, either as part of a genocide, or situations where forms of ethnocide or cultural genocide arise.

The targeted countries experience different realities in terms of the conflicts they went through, although in the disastrous consequences of said conflicts for indigenous peoples, they show many common elements.

Many countries experienced armed conflicts (Guatemala, Colombia, Peru, Rwanda, Sierra Leone, Nepal, the Philippines), while other countries have lived through periods of constant or prolonged ethno-political tensions and violence in the post-independence periods (Nigeria, Kenya, South Sudan), which have profoundly affected indigenous communities; and finally, some countries face the long-lasting violent effects of colonization of indigenous peoples who inhabit their territories (Australia, Brazil, Chile).

Methodologically, three types of research documents were developed within the framework of the project:

- I. A first type of documents comprises case studies: documentary and bibliographic research on transitional justice initiatives in the targeted countries.**
- II. A second group of documents, field reports, included the indigenous peoples' own perspective regarding the challenges, advances, obstacles and lessons learned in indigenous communities in the targeted countries.** To this end, individual, group, and focus group interviews were conducted with informants who belong to indigenous peoples. Said field research activities included communities of the following indigenous peoples:
  - Amazigh in Morocco.
  - Batwa and Bambuti in the Democratic Republic of the Congo.
  - Batwa in Rwanda.

- Ogiek and Endorois, Nubian, Maasai and Kibra, Luio and Kiyuku in Kenya.
- Ogoni, Zaki Biam, Tiv, Southern Kaduna in Nigeria.
- Kono, Mende and Kissi in Sierra Leone.
- Shilluk and Equotorians in South Sudan.
- Krenak, Guarani-Kayowá and Kayapó in Brazil.
- Mapuche, Aymara, Quechua, Rapa Nui, Diaguita, in Chile.
- Mayan indigenous communities of Guatemala,
- Bangsamoro and Non-moro in the Philippines.
- Western Papua communities in Indonesia.
- Indigenous communities of Victoria in Australia.

**III. A third type of research consisted of comparative studies that referred to the bibliographic and field reports of the cases for each of the large geographical areas of the investigation: Africa, Asia-Pacific, Latin America 1 (Guatemala, Colombia, and Peru) and Latin America 2 (Brazil and Chile).** To these comparative studies, a study on the involvement of indigenous women in transitional justice processes was added. The comparative studies were supported by documents that summarized the discussion and conclusions at the international seminar at the end of 2022.

## **2. Indigenous peoples' participation in transitional justice processes (Summary comparative table)**

In the following comparative table, key features of transitional justice and truth processes are shown, with the focus on indigenous communities in the countries studied in this project.

TYPE OF CONFLICT	CONSEQUENCES FOR INDIGENOUS PEOPLES
<b>COLOMBIA</b>	
Internal armed conflict	Forced displacement, death threats, homicides, forced disappearances, sexual violence
<b>GUATEMALA</b>	
Internal armed conflict	<ul style="list-style-type: none"> <li>• Genocide against Mayan people</li> <li>• Mass and selective massacres, torture, sexual violence and forced disappearances,</li> <li>• Occupation and destruction of sacred places.</li> <li>• Majority of victims were indigenous</li> </ul>
<b>PERU</b>	
Internal armed conflict 1980-2000	<ul style="list-style-type: none"> <li>• Systematic violations of human rights</li> <li>• Forced disappearance and extrajudicial executions, torture, rape, collective and selective murders.</li> <li>• Displacements to urban centers</li> <li>• Enslavement of the Asháninka people, in the Amazon region</li> </ul>

TRANSITIONAL JUSTICE MECHANISM	NORMS	DIFFERENTIATED MEASURES FOR INDIGENOUS PEOPLES
<b>COLOMBIA</b>		
<ul style="list-style-type: none"> <li>• Ethnic chapter in the peace agreement between the government and the FARC-EP in 2016.</li> <li>• Truth Clarification Commission</li> <li>• Missing Persons Search Unit</li> <li>• Special Jurisdiction for Peace</li> <li>• Constitutional court</li> </ul>	<ul style="list-style-type: none"> <li>• Law 418 of 1997</li> <li>• Justice and Peace Law of 2005.</li> <li>• Victims and Land Restitution Law of 2011.</li> <li>• Executive Order 4633 of 2011</li> </ul>	<p>Yes, differentiated reparations for indigenous peoples, for the territories.</p>
<b>GUATEMALA</b>		
<ul style="list-style-type: none"> <li>• 1996 peace Agreements</li> <li>• Commission for Historical Clarification -Guatemala Memory of Silence</li> <li>• Commission for the Definition of Sacred Places (1997)</li> <li>• National Women’s Forum (1998)</li> <li>• National Compensation Program -PNR- (2003)</li> <li>• National Council for the Compliance with the Peace Agreements (2004)</li> </ul>	<ul style="list-style-type: none"> <li>• National Reconciliation Law -Decree 145-1996</li> <li>• Framework Law of the Peace Agreements - Decree 53-2005</li> </ul>	<p>Community repairs failure of constitutional change</p>
<b>PERU</b>		
<p>Truth and Reconciliation Commission 2001</p>	<ul style="list-style-type: none"> <li>• D.S. No. 065-2001-PCM.</li> <li>• Law No. 30470 on the Search for Persons that disappeared during the period of violence 1980-2000</li> <li>• Law No. 28592 that creates the Comprehensive Reparations Plan</li> <li>• Law 28223 deals with Internal Displacement</li> </ul>	<p>Collective reparations program for communities</p>

TYPE OF CONFLICT	CONSEQUENCES FOR INDIGENOUS PEOPLES
<b>BRAZIL</b>	
Colonization & intensification during the dictatorship since 1964	<ul style="list-style-type: none"> <li>• Occupations of indigenous lands</li> <li>• Murders and ethnic extermination</li> <li>• Discriminatory processes, forced displacements, including Imprisonment of children, torture, humiliation, executions.</li> <li>• Sexual violence (gender coloniality).</li> <li>• Deterritorializations through large construction projects carried out without economic or mobility control.</li> <li>• Forced prostitution, non-voluntary work (on construction projects)</li> <li>• Neglect of child malnutrition</li> <li>• Cultural assimilation</li> <li>• Extermination by disease</li> </ul>
<b>CHILE</b>	
Colonization	<ul style="list-style-type: none"> <li>• Dispossession of land</li> <li>• Discrimination and stigmatization police violence</li> <li>• Criminalization of protest</li> <li>• social marginalization</li> </ul>

TRANSITIONAL JUSTICE MECHANISM	NORMS	DIFFERENTIATED MEASURES FOR INDIGENOUS PEOPLES
<b>BRAZIL</b>		
<ul style="list-style-type: none"> <li>• Special Commission on Deaths and Political Disappearances 1995</li> <li>• Commission of Amnesty 2002</li> <li>• National Truth Commission 2014</li> </ul>	<ul style="list-style-type: none"> <li>• Law of Amnesty (Law no. 6,683, of August 28, 1979)</li> <li>• Law No. 9.140/1995</li> <li>• Law No. 10.559/2002</li> <li>• Law no. 12,528/2011</li> </ul>	<p>Reparations to communities with low implementation (eg comissão nacional indígena da verdade)</p>
<b>CHILE</b>		
<ul style="list-style-type: none"> <li>• Special Commission on Indigenous Peoples 1990</li> <li>• National Truth and Reconciliation Commission, 1993</li> <li>• Communal dialogues 1998-1999</li> <li>• Historical Truth and New Deal Commission 2004</li> <li>• National Agreement for Development and Peace in Araucanía 2018</li> <li>• Commission on Human Rights, Historical Truth and Bases for Justice, Reparation and Guarantees of Non-Recurrence 2021</li> </ul>	<p>Indigenous Law 1993 (Law No 19.253)</p>	<p>Special commission for indigenous peoples, but its recommendations were not implemented</p>

TYPE OF CONFLICT	CONSEQUENCES FOR INDIGENOUS PEOPLES
<b>NIGERIA</b>	
<p>Post-independence violence due to extractivism and ethnic-religious conflicts</p>	<ul style="list-style-type: none"> <li>• Contamination of Ogoni lands with residues from the oil industry</li> <li>• Execution of leaders and forced displacement.</li> <li>• Zaki Biam and Tviv massacres,</li> <li>• criminalization of protest,</li> <li>• Ethnic violence in South Kaduna, massacres</li> </ul>
<b>KENYA</b>	
<p>Post-independence (1963) Institutional, ethnic-political violence and authoritarianism</p>	<ul style="list-style-type: none"> <li>• Arbitrary detention, torture, forced disappearances, extrajudicial executions, major corruption.</li> <li>• Widespread land grabbing</li> <li>• Forced displacement,</li> <li>• dispossession of indigenous community lands.</li> <li>• Discrimination and denial of socioeconomic rights</li> </ul>



TRANSITIONAL JUSTICE MECHANISM	NORMS	DIFFERENTIATED MEASURES FOR INDIGENOUS PEOPLES
<b>NIGERIA</b>		
<ul style="list-style-type: none"> <li>• Human Rights Violation Investigation Commission of Nigeria (Oputa Panel) 1999</li> <li>• Federal Amnesty Program 2009</li> <li>• Justice</li> <li>• Okechukwu Opene Judicial Commission in of inquiry into inter-communal conflict in Benue, Nassarawa, Plateau and Taraba States</li> <li>• United Nations Environment Programme</li> </ul>		No
<b>KENYA</b>		
<ul style="list-style-type: none"> <li>• National Land Commission 1993</li> <li>• Ndungu Commission 2003</li> <li>• Mau Forest Task Force 2008</li> <li>• Truth Justice and Reconciliation Commission, 2008</li> <li>• African Commission on Human and Peoples' Rights</li> <li>• African Court on Human and Peoples'</li> </ul>	<ul style="list-style-type: none"> <li>• Forrest Act 2005</li> <li>• Wildlife (Conservation and Management) Act 2013</li> <li>• Constitution of 2010 that recognizes indigenous peoples.</li> <li>• Community Land Rights 2016</li> </ul>	<ul style="list-style-type: none"> <li>• Land demarcation and registration measures</li> <li>• Prosecution of incitement to ethnic violence Compensation for historical injustices such as land grabbing, Abolition of land fees, and</li> <li>• Restoration of occupied land.</li> <li>• Recommendations have not been implemented.</li> </ul>

TYPE OF CONFLICT	CONSEQUENCES FOR INDIGENOUS PEOPLES
<b>RWANDA</b>	
Genocide 1994	<ul style="list-style-type: none"> <li>• Structural exclusion, marginalization, greater poverty</li> <li>• Discrimination, forced displacements, land dispossession.</li> <li>• Deprivation of social services</li> <li>• Sexual violence against women during the conflict</li> </ul>
<b>SIERRA LEONE</b>	
Civil conflict 1991-2002	<ul style="list-style-type: none"> <li>• Murders and forced displacements.</li> <li>• Mutilations, murder and looting of property, sexual violence, massive loss of infrastructure, destruction of sources of livelihood and destruction of social cohesion in communities.</li> </ul>
<b>MORROCO</b>	
“Years of Lead” post-independence period 1956-1999	<ul style="list-style-type: none"> <li>• Discrimination.</li> <li>• Economic deprivation and political isolation based on the denial of cultural identity.</li> <li>• Collective punishment (forced disappearances, arbitrary detentions, torture, sexual abuse, and deprivation of the right to life as a result of the unrestrained and improper use of state force and forced exile).</li> <li>• Systematic marginalization, plundering of lands and natural resources</li> </ul>

TRANSITIONAL JUSTICE MECHANISM	NORMS	DIFFERENTIATED MEASURES FOR INDIGENOUS PEOPLES
<b>RWANDA</b>		
<ul style="list-style-type: none"> <li>• National Unity and Reconciliation Commission 1999</li> <li>• ACWGIP Mission to the Republic of Rwanda 2008</li> <li>• International Criminal Tribunal for Rwanda</li> <li>• Gacaca courts</li> </ul>	<ul style="list-style-type: none"> <li>• Law no. 47/2001 on Prevention, Suppression, and Punishment of Crime of Discrimination and Sectarianism, which criminalizes sectarianism and discrimination on basis of ethnicity.</li> <li>• Organic Land Law 2005</li> </ul>	No, Non-ethnic identification policies
<b>SIERRA LEONE</b>		
<ul style="list-style-type: none"> <li>• Truth and Reconciliation Commission</li> <li>• Special UN Court for Sierra Leone</li> <li>• Residual Court for Sierra Leone</li> </ul>	<ul style="list-style-type: none"> <li>• Peace Agreement in 1991 in Lome, Republic of Togo</li> <li>• Truth and Reconciliation Commission Act, 2000.</li> <li>• The Residual Court for Sierra Leone Agreement (Ratification) Act, 2011</li> </ul>	No
<b>MORROCO</b>		
<ul style="list-style-type: none"> <li>• Human Rights Advisory Council (Conseil consultatif des droits de l'homme) 1991</li> <li>• Equity and Reconciliation Commission (Instance Équité et Réconciliation) 2004</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of the Royal Institute of Amazigh Culture by Dahir (Royal Decree) No. 1-01-299 in October 2001.</li> <li>• Constitution of 2011: Tamazight language as an official language</li> <li>• IER was established by Dahir (Royal Decree) No. 1.04.42 in January 2004.</li> </ul>	No, but with cultural recognition and community compensation for local associations

TYPE OF CONFLICT	CONSEQUENCES FOR INDIGENOUS PEOPLES
<b>DRC</b>	
Ethnic-political violence post-independence 1960	<ul style="list-style-type: none"> <li>• Genocide, sexual violence, and deliberate attacks on settlements.</li> <li>• Looting, torture, and executions. Limited access to land and public services.</li> <li>• Continued exclusion from participation in decision making</li> </ul>
<b>SOUTH SUDAN</b>	
Ethnic-political violence	<ul style="list-style-type: none"> <li>• Land dispossession.</li> <li>• Attacks on villages, looting and burning of houses.</li> <li>• Sexual violence, kidnapping of women as slaves for sexual exploitation. There is also sexual violence against men and boys.</li> </ul>

TRANSITIONAL JUSTICE MECHANISM	NORMS	DIFFERENTIATED MEASURES FOR INDIGENOUS PEOPLES
<b>DRC</b>		
<ul style="list-style-type: none"> <li>• Sovereign National Conference 1991</li> <li>• Commission on ill-Gotten Property 1991.</li> <li>• Barza Inter-Communautaire 1998-2004.</li> <li>• Inter-Congolese Dialogue 2002.</li> <li>• Truth and Reconciliation Commission in 2003-2007.</li> <li>• Submission to the jurisdiction of the International Criminal Court (ICC) 2002.</li> <li>• Project Mapping Report 2010.</li> </ul>	<ul style="list-style-type: none"> <li>• Constitutional Act No. 91-097 of 11 April 1991</li> <li>• Ordinance No. 91-010, March 6, 1991</li> <li>• European Parliament adopted a resolution on September 16, 2020, to create an ad hoc international criminal court and/or mixed prosecution and trial mechanisms</li> </ul>	<p>No, lack of recognition of indigenous peoples</p>
<b>SOUTH SUDAN</b>		
<ul style="list-style-type: none"> <li>• National Dialogue of South Sudan 2016.</li> <li>• Revitalized Peace Agreement for the Resolution of the Conflict in South Sudan in 2018.</li> <li>• Commission for Truth, Reconciliation and Healing.</li> <li>• Not yet: Hybrid Court</li> <li>• Compensation y Reparation Authority.</li> </ul>	<p>Constitution of 2011 (cultural recognition)</p>	<p>No, lack of far-reaching recognition of indigenous peoples</p>

TYPE OF CONFLICT	CONSEQUENCES FOR INDIGENOUS PEOPLES
<b>AUSTRALIA</b>	
Colonization	Systematic and individual racism, forced assimilation and denial of culture, dispossession, forced child removal, discrimination, and injustice in the criminal justice system.
<b>NEPAL</b>	
Internal armed conflict 1996 -2006	<ul style="list-style-type: none"> <li>• Exclusion, poverty, injustices, and structural violence by the State.</li> <li>• Physical harm, forced displacement, murder, torture, disappearance, sexual abuse, psychological violence.</li> </ul>

TRANSITIONAL JUSTICE MECHANISM	NORMS	DIFFERENTIATED MEASURES FOR INDIGENOUS PEOPLES
<b>AUSTRALIA</b>		
<ul style="list-style-type: none"> <li>• Uluru Statement from the Heart 2017</li> <li>• Myall Creek Memorial Committee 1998.</li> <li>• National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1995-1997): Bringing Them Home Report.</li> <li>• Royal Commission into Aboriginal Deaths in Custody (1987-1991).</li> <li>• Yoo-rrook Justice Commission 2021 (Victoria).</li> <li>• Council for Aboriginal Reconciliation 1991.</li> <li>• 'Reconciliation Australia' 2021.</li> </ul>		<p>Yes, indigenous self-determination in the operation of transitional justice mechanisms</p>
<b>NEPAL</b>		
<ul style="list-style-type: none"> <li>• Comprehensive Peace Agreement 2006</li> <li>• Truth and Reconciliation Commission 2013</li> <li>• Commission of Investigation on Enforced Disappeared Persons 2013</li> </ul>	<p>Commission of Inquiry on Enforced Disappeared, Truth and Reconciliation Commission Act 2014</p>	<p>No, ineffectiveness due to ignoring the victims and being a process implemented by elites</p>

TYPE OF CONFLICT	CONSEQUENCES FOR INDIGENOUS PEOPLES
<b>INDONESIA</b>	
Ethnic-political violence	<ul style="list-style-type: none"> <li>• Marginalization of indigenous Papuan communities and discriminatory impacts on them because of economic development, political conflicts, and mass migrations to Papua since the 1970s.</li> <li>• The failure of development, particularly in the areas of education, health, or economic empowerment.</li> <li>• Indigenous Papua are tortured, arbitrarily arrested, killed, and displaced by the military.</li> <li>• Indigenous Papuan women often become victims of rape, murder, displacement, and torture.</li> <li>• Exploitation of natural resources.</li> </ul>
<b>PHILIPPINES</b>	
Colonization, intensified in internal conflict	<p>Mass dispossession of land and social marginalization, land occupation</p> <p>Forced displacements.</p>

Source: own elaboration



TRANSITIONAL JUSTICE MECHANISM	NORMS	DIFFERENTIATED MEASURES FOR INDIGENOUS PEOPLES
<b>INDONESIA</b>		
<ul style="list-style-type: none"> <li>• Permanent human rights Court for the massive human rights violation in Papua</li> <li>• National Commission on Human Rights</li> </ul>	<ul style="list-style-type: none"> <li>• Law No. 5/1960 on Basic Agrarian Law</li> <li>• Act of Free Choice</li> <li>• the Law No. 21/2001 on Special Autonomy for the Province of Papua</li> <li>• Law No. 2/2021 on the Second Revision on the Law on Special Autonomy for the Province of Papua</li> <li>• Local law in 2011 establishes a provincial-level commission to provide assistance to female victims in response to civil society initiatives and reports.</li> <li>• Special Autonomy Law No. 1/2011 on Female Victims of Human Rights Reparation</li> </ul>	<p>No, the second autonomy law removed indigenous rights</p>
<b>PHILIPPINES</b>		
<ul style="list-style-type: none"> <li>• Final Peace Agreement (FPA) in 1996</li> <li>• Memorandum of Agreement on Ancestral Domain (MOA-AD) 2008</li> <li>• Comprehensive Agreement on the Bangsamoro in 2014.</li> <li>• Ministry of Indigenous Peoples Affairs 2014</li> <li>• Bangsamoro Autonomous Region in Muslim Mindanao 2019</li> <li>• Transitional Justice and Reconciliation Commission 2016</li> </ul>	<ul style="list-style-type: none"> <li>• Indigenous Peoples Rights Act 1997</li> <li>• Bangsamoro Organic Law</li> <li>• Administrative Order 003, “Guideline on the Delineation of Ancestral domains and lands”</li> </ul>	<p>Yes, indigenous self-determination in the operation of transitional justice mechanisms</p>

### 3. Models for the incorporation of indigenous communities in transitional justice

The 16 cases reveal different levels of commitment of communities to transitional justice processes.

A basic, common factor in this context is that conflicts which result in political violence (such as internal armed conflicts), have specific, and often disproportionately severe, effects on indigenous peoples, such as attacks, suffering, deprivation, and marginalization. This is due to their vulnerability, rooted in their historical and still persistent subordination within the power structures in each country. Disputes with other actors over lands still occupied by indigenous communities and natural resources present in their territories, increase this violent potential.

On the other hand, the very situation of indigenous peoples is formed by a history of colonial violence and its long-term consequences – coloniality -, that themselves constitute violations of collective and individual rights, and thus a debt that must be repaid.



Protesters with Chilean and Mapuche flags in Puerto Montt, Chile.  
Alex Maldonado Mancilla/Shutterstock.com

When the analyzed transitional justice processes addressed conflicts of political violence, these as a rule did not initially incorporate the perspective of indigenous peoples (one important exception is Colombia), although it does gradually emerge in the course of implementation of transitional justice mechanisms, due to the specific (sometimes disproportionately severe) impacts on indigenous peoples. In part, this stems from the classic approach to transitional justice, which focuses on individual human rights and goals that seek to overcome temporally limited conflict situations, rather than addressing longstanding and structural problems. Elsewhere, it is also related to the lower relative weight of indigenous communities in the power balance that sets the transitional justice agenda.

On the other hand, when the conflict at the heart of transitional justice is a situation of subordination of the indigenous peoples in itself, the vision of the peoples is incorporated more intensely from the beginning, although this does not necessarily guarantee the adequacy of the results of the transitional justice processes and the effectiveness of the proposed recommendations (See the problems in the case of Chile).

Indeed, there are processes where indigenous peoples constitute an organic element in their structure, which is expressed in the composition of transitional justice organizations, in the methodology of their work, in the expression of indigenous peoples' perspectives and their incorporation into the processes' narratives and recommendations. This would be the case of Colombia, Australia, the Philippines, and Chile – however, there are major differences in the effectiveness of their recommendations.

Other processes also have incorporated indigenous perspectives, especially at the level of recommendations, but also in the integration of bodies and methodologies. In this category are the cases of Peru, Brazil, Guatemala, and Kenya. In these cases – as in the previous group – the key dilemma is found in the effectiveness of the community recommendations formulated by the transitional justice bodies.

Finally, there are cases where the transitional justice processes address violations of the rights of indigenous peoples and their members, but this aspect is not an organic part of the functioning of the mechanisms, thus generating an absence of specific proposals for reparations for Indigenous peoples. These would be the cases of Nigeria, Morocco, Rwanda, Sierra Leone, the Democratic Republic of the Congo (DRC), South Sudan, Indonesia, and Nepal.

# II. PRINCIPAL FINDINGS

## 1. Conflicts of Transitional Justice and Indigenous Peoples:

- A. Violations of indigenous peoples' and other ethnic communities' rights can occur on a massive scale in the context of political crises, but they usually extend over time, because they are rooted in historical issues and have long-term effects (as in the case of the Amazigh people in Morocco), so that violence against these communities is not limited to the processes of political crisis that transitional justice tends to focus on.
- B. Internal armed conflicts have a specific impact on indigenous peoples, insofar as the communities are affected by pre-existing structural conditions of extreme poverty and abandonment by state institutions, so that their consequences are different, disproportionate, and acute (Guatemala, Peru, Colombia, Sierra Leone, Rwanda).
- C. During violent conflicts, political repression or internal crises, indigenous peoples are often the most affected and suffer continued social and economic marginalization or remain among the most vulnerable members of society (Comparative Study Africa).
- D. On the other hand, post-conflict transitional justice processes usually encounter a reality that has ties to the recent conflict situation they seek to overcome, but also carries a much greater historical and causal burden, rooted in coloniality, so that the emergency of transitional justice mechanisms opens up an opportunity to address historical conflicts (Brazil, Peru, Colombia, Nepal).
- E. There are internal conflicts, where most of the victims are indigenous, such as in the case of the Mayan people in Guatemala (field research, Guatemala). In these cases, the indigenous peoples were identified as an internal enemy, whose genocide was also favored by the installment of investment projects in their territories.

- F. The consequences of colonization persist as cycles of violence that continue to this day – especially when the remaining lands and natural resources linked to the communities are coveted. As a consequence, different forms of violence and exclusion against indigenous communities accumulate. These are situations of conflict that by themselves can and should be addressed through transitional justice mechanisms.



Batwa men perform traditional Intore dance in Musanze, Rwanda.  
Ryan M. Bolton/Shutterstock.com

## 2. Rights of Indigenous Peoples Affected by Violent Conflicts:

- A. The (ongoing) struggle of indigenous peoples for their ancestral land rights, with special emphasis on their governance and territorial self-determination, faces various forms of violence that seek to dominate traditional territories and populations, through stigmatization, criminalization, and devaluation of their struggles (field research, Colombia).
- B. Important components of the indigenous peoples' agenda, that determine their expectations, are the political rights of self-determination and autonomy, as well as cultural and linguistic rights (field research, Chile).
- C. The exclusion of indigenous peoples from political participation is a common feature in many of the studied cases.
- D. The lack or limitation of legal recognition of indigenous peoples' rights at a national level favors the invisibility of massive violations of their human rights and their marginalization in transitional justice processes.
- E. Violations of indigenous rights, according to the classification of the Permanent Roundtable for Indigenous Coordination in Colombia (field research, Colombia), can be divided into aggrievements of a collective nature and those of an individual nature. Regarding the former, they "stir the imbalances caused in the Vital Network that sustains life in the territories according to their own conceptions"; this includes alterations to culture, territory, autonomy, and organizational political integrity. The latter, meanwhile, involves "individual damage with collective effects" related to violations of individuals "who, due to the role they play in the communities, end up becoming a risk to social, cultural, organizational, political stability, or their ability to survive as Indigenous Peoples".

### **3. Specific Features of the Transgressions Against Indigenous Peoples that Have Been Highlighted in the Reports:**

- A. A relevant consequence of internal conflicts is forced displacement, land dispossession, occupation of indigenous territories by other actors, and consequent deterritorialization of ethnic communities, as well as social and cultural disintegration of communities.
- B. There is a need for an express recognition of the specific dimensions of damage caused to indigenous peoples such as: risk of physical and cultural disappearance, recognition of territory and land as victims, an understanding of transgressions from the perspective of an ancestral and historical memory of the peoples, classification of aggrivement in a context of ethnic-racial discrimination (field research, Colombia).
- C. Indigenous peoples have become part of processes of genocide or are at risk of genocide in internal armed conflicts in the countries in question.
- D. Frequently, there is an overlap or continuity of attacks on indigenous peoples and territorial conflicts derived from extractivism (mining), especially in the continuity of criminalization of indigenous protest and in the violence against defenders of indigenous rights.
- E. Indigenous boys and girls have suffered the consequences of colonization in certain countries, such as being removed from their families and subjected to processes of assimilation and institutional violence (case study, Australia).
- F. People in state custody have suffered ill-treatment and are at increased risk of death (case study, Australia).
- G. Sexual violence, in various dimensions, against indigenous women and girls is present in almost all violent conflicts that affect indigenous communities.

#### 4. Determination of Indigeneity:

- A. Despite the advances in determining the concept of *indigenous peoples* in the ILO Convention Nr 169, based on the criteria of the working group on indigenous populations of the United Nations (Martínez-Cobo Report), many difficulties remain for the application of that definition (field research, Morocco).
- B. The criteria of pre-existence in the territory, cultural continuity, differentiation and persistence of their own institutions, and self-perception of an identity require greater precision to avoid non-recognition of indigenous peoples in contexts where their indigenous identity has been systematically and persistently denied.
- C. One of the remaining problems is the intersection and the necessary differentiation of the concept of indigenous peoples with the concepts of ethnic, linguistic, or religious minorities.



Indigenous woman voting the constitution, Rwanda.

Paul Kagame



## 5. The Reformulation of the Transitional Justice Paradigm:

- A. Transitional justice processes, according to their initial concepts, have avoided addressing both the impacts of past infringements on indigenous peoples and the specific configuration peculiar to political processes of massive violence against indigenous peoples and ethnic communities in general. This is due to the adherence to transitional justice' definitions and methods to the classical approach, with its individualistic determinations. Therefore, they have been questioned by indigenous peoples, because of the unilateral nature of the mechanisms and measures of reparation that function within the classic paradigm of transitional justice.
- B. The classic transitional justice approach avoids issues that have long-term and structural features, concentrating on violations in the immediate past, as in the case of Rwanda.
- C. There is a need to reformulate the conceptions of transitional justice where indigenous peoples are concerned, via the inclusion of their institutions, practices, and conceptions of justice, in order to seek the decolonization of their theory and praxis (case studies, Guatemala, Peru, and Colombia). This requires a reconfiguration of the vision of change, from a punctual regime transition towards structural and social transformations in power relations with indigenous peoples, whose current situation is rooted in coloniality. In the context of historical injustices, punctual political transitions reveal themselves to be a non-transition for indigenous peoples, because such injustices persist after punctual changes, as does recurring violence against communities.
- D. Indigenous peoples see transitional justice as a space for the transformation of victimizing circumstances, by recognizing their structural causes – such as racism, ethnic-racial discrimination, accumulation of lands and resources by dispossession, and the imposition of colonial development models – through the reaffirmation of spaces for social harmonization and intercultural agreement (field research, Colombia).
- E. The neglect of indigenous peoples and ethnic communities is reflected in the truth-finding process itself, insofar as special procedures meant

to hear the testimonies and collect the records of the indigenous communities are not made available (case study, Morocco).

- F. The documents 'Guidance Note of the Secretary General: The United Nations Approach to Transitional Justice' and the 'African Union Transitional Justice Policy' encourage both due consideration of indigenous traditions in the administration of justice and settlement of dispute in the coordination of transitional justice programs, as well as the use of indigenous values and empowerment of traditional and religious leaders as part of the reference points necessary to achieve institutional and political reforms.
- G. In the case of the mechanisms of truth-finding after internal armed conflicts, the classical transitional justice approach assumes mainly a traditional perspective of massive and serious violations of human rights, but advances have been made, allowing to recognize the reality of the specific consequences for indigenous communities. This includes, for example, reflections on genocide of indigenous peoples.
- H. A common hope of indigenous peoples is that implementation of transitional justice can restore, rehabilitate, and rebuild communities and their way of life (field research, Sierra Leone). For this objective, the classic paradigm of transitional justice has to be reformulated.
- I. In Colombia, the ethnic-racial approach was made mandatory in the implementation of Transitional Justice, thanks to the influence of the Ethnic Commission created by African-Colombian and Indigenous organizations with the objective of "safeguarding the territorial and collective rights of ethnic populations in the process of negotiation and implementation of the peace agreements" (field research, Colombia).
- J. Without a reformulation of transitional justice in a decolonial key, there is a risk that reconciliation policies that promote these processes avoid differentiated approaches and be used to reinforce the processes of assimilation towards a single national identity, thus maintaining the vulnerability of indigenous communities.

## 6. Participation of Indigenous Peoples in Transitional Justice Mechanisms:

- A. It is important to highlight mechanisms that arise at the initiative of indigenous peoples and/or focus exclusively on their experiences. Therefore, spaces for the participation of indigenous peoples in the design and implementation of transitional justice policies must be created.
- B. The incorporation of indigenous peoples into transitional justice mechanisms requires respect for the right to consultation and prior consent. Those must be properly implemented and included in the design of such mechanisms. In Colombia, the indigenous inclusion implemented in the ethnic chapter implied the use of prior consultation, respect for ethnic peoples' forms of self-government, and adequate guarantees to achieve their greater participation.
- C. The integration of indigenous experts or leaders in mechanisms such as truth commissions, whether they are persons who belong to indigenous peoples (Guatemala) or representatives of these peoples (Colombia in the case of the FEV), can be decisive in making violations of indigenous rights explicitly visible.
- D. The inclusion of indigenous peoples requires concrete measures in the operating procedures of transitional justice mechanisms. In the case of Colombia, this included the guarantee of intercultural bilingual interpreters and translators, legal assistance, and ethnically relevant defense, differentiated treatment for victims of sexual violence who belong to ethnic peoples, and holding judicial hearings in ancestral territories or those inhabited by indigenous peoples, if there is interest (field research, Colombia).
- E. The inclusion of indigenous peoples in transitional justice mechanisms cannot be discretionary but must be regulated by appropriate protocols. In the case of Colombia, a "protocol for coordination, interjurisdictional articulation and intercultural dialogue" was adopted, which included rules for (i) intercultural and interjurisdictional communication between JEP (Special Peace Justice) and JEI (Special Indigenous Justice) for the concertation of actions that require activities in collective territories, (ii)

notification and accompaniment of respective indigenous authority, (iii) coordination with indigenous authorities for the collection of evidence in their territories, (iv) application of sanctions in indigenous territories and integration centers with the prior consent of their ethnic authorities, (v) integration of reinstated former indigenous combatants and (vi) dialogue of knowledge with schools of customary indigenous law.

- F. When executions or massacres, selective or massive, have taken place, indigenous peoples demand active participation in their investigation and the possibility of practicing the necessary community rituals for the unearthing of bones and subsequent burial, in accordance with their beliefs.
- G. The inclusion of the indigenous perspective must be multidimensional in its contents, in the reparations, in the conception of reparations (*Kem*, the Mayan concept that everything is interwoven, as in a fabric, in the case of Guatemala; or the territories as collective wounded bodies in the case of Colombia), and in its operational dimension, including the implementation of collective or community reparations.
- H. Truth-telling and justice procedures must guarantee data conservation and care, and especially the data sovereignty for indigenous peoples.
- I. The role of indigenous victims in transitional justice procedures must be safeguarded, both individually and collectively, in their design, implementation and evaluation. In particular, a friendly environment for children, women and vulnerable people (the elderly and victims of sexual violence) must be created.

## 7. The Role of Customary Law of Indigenous Peoples in Transitional Justice:

- A. The customary indigenous law plays a key role, both in the proper functioning of transitional justice mechanisms, in determining truth and memory, and in reparations and their implementation.
- B. Traditional conflict resolution mechanisms such as the *Barza* in the DRC support transitional justice efforts. In some cases, traditional mechanisms have operated in parallel, as in the case of the Shilluk in South Sudan.
- C. Legal pluralism must constitute a context of transitional justice, especially when an indigenous jurisdiction has been recognized (field research, Colombia).



Mapuche woman.  
Phil Brown



Island Leader gives a speech in the reception of the historic boat that arrives to Anakena after sailing from the continent emulating an antique trip, Rapa Nui, Chile.

FCG/Shutterstock.com

## 8. The Gender Perspective and Participation of Indigenous Women in Transitional Justice:

- A. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has highlighted “the creation of specific strategies to address the rights and participation of women and to integrate a gender perspective in transitional justice measures”. Likewise, the Inter-American Commission has highlighted and recognized the implementation of differentiated and gender approaches by transitional justice mechanisms in Latin American countries, such as truth commissions (OEA/Ser.L/V/II.Doc 121 of 2021).
- B. Intersectional violence – based on gender and directed against collective indigenous ways of life – against indigenous women increases critically in the context of internal armed conflicts or ethno-political violence.
- C. In addition to threats to their lives and integrity and the massive sexual violence in conflicts, violence against women has a disproportionate impact. It results in the loss of their livelihoods, threatens their culture – due to the role of cultural guardian that they play within their communities – and the intrinsic connection with their environment, food and water security and health.
- D. According to the Inter-American Commission on Human Rights, indigenous women are specifically and disproportionately affected by development, investment, and extraction projects; militarization of indigenous lands; intrafamily violence; the exercise of economic, social and cultural rights; aggression, threats, harassment and attacks on indigenous leaders and defenders of indigenous peoples’ human rights; migration and displacement processes (OEA/Ser.L/V/II. Doc. 44/17, 2017, para. 88-130).
- E. According to the UN Security Council, the gender perspective in peace agreements indicates that they must include a) The special needs of women and girls during repatriation and resettlement, and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all mechanisms of the peace agreement implementation; c) Measures that guarantee the protection and respect for the human rights of women

and girls, in particular with regard to the constitution, the electoral system, the police and the judiciary. (S/RES/1325 (2000), 2000, para. 8).

- F. The design, implementation, and measures to promote truth, justice, memory, non-recurrence and reparation measures of transitional justice must include a holistic and comprehensive approach that includes: “(i) empowered actors, (ii) intersectionality, (iii) self-determination, (iv) active participation, (v) incorporation of their perspectives, (vi) indivisibility, and (vii) collective dimension” (OEA/Ser.L/V/II. Doc. 44/17, 2017, para. 52).
- G. There must be an effective and multidimensional participation of indigenous women in transitional justice mechanisms.
- H. The participation of indigenous peoples must consider special guarantees concerning gender, to make sure that indigenous women are heard, that the violations that affect them principally or specifically are visualized and remembered, that the corresponding security measures are adopted, and that concrete and specific reparation measures are adequately designed and implemented.
- I. Situations of sexual violence require special measures for truth-telling, such as protection from publicity that revictimizes and stigmatizes the victims. The same applies to measures of access to justice and reparation.
- J. Transitional justice reparation measures aimed at situations that affect indigenous women must have a transforming nature, with regard to structural discrimination they face.



## 9. Specific Reparations for Indigenous Peoples in Transitional Justice:

- A. The reparations measures in transitional justice processes must attend to the integrality of damages in all stages of the conflict, adequately include the indigenous or ethnic component, implement a differentiation, but avoid segmentation according to the quality of victims or perpetrators, when the damages extend beyond a certain ethnic community.
- B. Reparations that address indigenous issues must include remembrance, protection of the culture and languages of ethnic groups, community reparations, and cultural and economic development projects.
- C. From the perspective of indigenous peoples, in consideration of the common features of their world vision, reparations must contemplate the restoration of social and natural balances, through a process of healing and restoration of the symmetry “of the natural and spiritual forces for the prevention of disharmonies and imbalances in the *Vital Network*” (field research, Colombia).



Meeting between state authorities and indigenous communities, Chile

- D. It is crucial to elaborate and materialize collective reparation plans “according to the worldview of each people” (field research, Colombia).
- E. The indigenous peoples of Colombia demanded from the transitional justice system (i) the material reversal of territorial dispossession, (ii) the resolution of the failure to recognize their territorial rights, (iii) compliance with the standards of prior, free and informed indigenous consultation and (iv) the materialization of collective reparation (field research, Colombia).
- F. The issue of land and natural resources is one of the key issues concerning the violations of and reparations to indigenous peoples. The comprehensive recognition of rights to ancestral lands and the effective implementation of that right are basic demands. Specific land mechanisms play a fundamental role in determining violations of indigenous rights and proposing reparations to ethnic communities.



Aerial view, South Sudan.  
Frontpage/Shutterstock.com

- G. One of the fundamental elements of reparation for indigenous peoples is the recognition and restoration, both legally and operationally, of the self-determination of indigenous peoples and of the collective rights derived from it.
- H. Indigenous communities usually expect that truth, memory, justice, and reparation measures create bonds of solidarity among the victims.
- I. For reparations to indigenous peoples, an approach focused on transversality and intersectionality is required.
- J. There must be a dimension of social and economic justice – access to health, education, development – in reparation measures for indigenous communities.
- K. It is necessary to address the concerns of minority communities about redistributive/socioeconomic justice during transitional justice processes, in order to rectify structural inequalities (Comparative Study Africa).
- L. One of the objectives and principal expectations of transitional justice is the reconstruction of cohesion within the diversity of society.
- M. The recognition of languages and identities is a promoter of justice and memory processes with regard to violence against indigenous peoples.
- N. Memorial sites dedicated specifically to indigenous peoples are essential, as are educational measures that uproot stereotypes and misrepresentations about indigenous cultures.

## **10. Role of International Organizations:**

- A. International criminal law institutions, such as the International Criminal Court, the International Criminal Court for Rwanda, the Special Court for Sierra Leone, or human rights protection systems, such as the Inter-American Court and Commission of Human Rights have played decisive roles in the process of reorienting the efforts of transitional justice, annulling amnesty laws, annulling convictions of indigenous leaders, condemning war crimes and crimes against humanity, among others.

- B. The interventions of international organizations, such as the UN missions in Guatemala, Nigeria and South Sudan have created opportunities for the advancement of transitional justice in conditions riddled with obstacles, whether immersed in strong internal conflicts or just emerging from them. But this is not enough to render transitional justice effective in general, or, particularly, for indigenous peoples affected by violence. The capacities of international organizations to act as intermediaries between indigenous peoples and states should be highlighted in order to build and guide transitional justice policies, enabling adequate community participation at all stages and levels of these policies.

## **11. Obstacles to Transitional Justice Efforts:**

- A. There is a need to develop legal and policy frameworks for the recognition of indigenous communities within each country, based on respective historical background and collective experiences of the communities in question, in order to generate community empowerment. Part of the identified impediments for the strengthening of indigenous rights is the lack of constitutional or legal recognition (Chile and Indonesia) or a more far-reaching recognition of rights (Morocco).
- B. Often, the lack of legal recognition of indigenous rights can be attributed to the renewal of assimilationist ideas which maintain that such recognition could promote ethnic discord and violence – the clearest case being Rwanda, where, after the genocide, an explicit policy of non-ethnic identification was adopted (field research, Rwanda).
- C. Uncertainty or a limited vision regarding the conception of indigeneity in a country can be decisive in excluding the participation of indigenous peoples and their perspectives from transitional justice processes (Morocco, South Sudan).
- D. One of the most frequently recurring obstacles in the cases studied consists of the non-implementation of the recommendations of the transitional justice mechanisms, especially reparations (field research, Nigeria, Kenya, Nepal, Chile, Brazil).

- E. Furthermore, it is necessary to add the lack of advancement of processes of constitutional change necessary to materialize and/or ensure in the Magna Carta the measures proposed in transitional justice mechanisms. Here, the cases of Guatemala in 1999 and Chile in 2022 stand out.
- F. The measures and guarantees of non-repetition with respect to indigenous peoples have a special difficulty of materialization and continuity, due to the historical and long-term roots that originate or accompany the violations of their human rights.
- G. Sometimes, the measures that are yet to be implemented are at the center of transitional justice policies. In Indonesia, a truth commission established in the first and second autonomy law of 2021, regarding violations in the Papua commissions, has not yet been formed. In Brazil, the creation of the Comissão Nacional Indígena da Verdade was recommended, but it was never established.
- H. One of the problems is the dissolution or loss of effective force of the institutions dedicated to the implementation of truth and reparation measures (field research, Guatemala), which threatens a roll back of transitional justice processes. In Guatemala, the peace institutions were closed, and the cooptation of state powers has meant that there is no political will to implement truth and reparations measures.



Monument to indigenous people in Plaza de Armas, Chile.

Diego Grandi/Shutterstock.com

- I. One of the consequences of institutional weakening of transitional justice policies may be the emergence of a tendency to generate conditions to roll back cases, achieve dismissal of cases and/or not expedite new cases (field research, Guatemala),
- J. Conflicts within ethnic groups or between different groups are major obstacles to the advancement of transitional justice. Therefore, mechanisms must be created to deal with such tensions, as in the case of the DRC.
- K. Likewise, cases of corruption of government officials can also form obstacles to the progress and achievements of transitional justice (field research, Guatemala).
- L. Lack of independence of the judiciary can be a difficult obstacle to overcome, especially when no independent truth commissions have been set up to investigate the history of violations of the human rights of indigenous peoples.
- M. When the mechanisms do not exist, or their scope is insufficient for tasks such as the locating of the remains of the executed or the search for the disappeared, civil society can establish its own truth mechanisms.
- N. Limitations or lack of policies to promote truth-telling and the determination of anonymity of perpetrators constitute obstacles for the advancement of transitional justice in dimensions such as: justice, memory, reparation, non-recurrence, and reconciliation (field research, Morocco).
- O. The lack of organizations dedicated to the follow-up or monitoring of transitional justice measures with regard to indigenous peoples does not allow to evaluate their materialization and allows many measures to remain at a purely symbolic level.
- P. Public apologies by State leaders constitute a relevant reparation measure for indigenous peoples (Australia and Kenya), but they must be inserted in a context where they are accompanied by effective implementation of other reparation measures.
- Q. The universal system and regional systems of human rights protection alone are not effective enough to protect indigenous rights, as has been

the cases of the African Human Rights Commission and Human Rights Court on with respect to Kenya.

- R. The work of the mechanisms must occur with real victims and avoid the takeover of transitional justice processes by country elites (Field research, Nepal).



UN Women Event on Indigenous Communities in Bangsamoro, Philippines.  
Joser Dumbrique.

# III. RECOMMENDATIONS

1. Recognition of violations of individual and collective human rights of indigenous peoples must be encouraged, whether in the context of recent violent conflicts or recurring situations of ethnic-based discrimination and exclusion. This is because we assume that recent events are both intensified and made invisible by long-standing asymmetrical power structures where indigenous peoples are especially vulnerable, and which have their roots in the prolonged consequences of the colonization processes.
2. Within this framework, the intersectionality of the situations of violence suffered by indigenous women must be recognized, as well as the need for specific and adequate forms of investigation, which should incorporate a gender approach in a transversal manner, and which must be reflected in the reparations and proposed guarantees of non-recurrence. The events of sexual violence must be dealt with adequately and specifically by transitional justice mechanisms. The effective participation of indigenous women and their perspectives in transitional justice mechanisms must be ensured.
3. A special effort must be made by states and international organizations to give visibility to the violent conflicts that affect indigenous communities and the specific harmful impacts that derive from them. This is particularly important given the various forms of denial that persist in various countries of the world, even after several transitional justice processes have brought to light part of the cases of violence suffered by indigenous peoples.
4. Efforts to publicize violations of indigenous human rights must be constant and use all available communication channels, due to the persistence of denial and the ease with which various countries try to evade recognition of such violence.





Indigenous Activist protesting in Philippines.  
Fred Dabu



Meeting between state authorities and indigenous communities at Chile's Undersecretariat of National Assets

5. Situations of violence suffered by indigenous peoples should not be treated in the same way as other forms of individualized violence, since they always have a double dimension of victimhood, one personal and the other collective and cultural. This difference must be translated into a specific formulation and implementation of transitional justice mechanisms with respect to indigenous peoples and communities.
6. The international community and particularly international organizations must make an effort to further specify the defining criteria of indigeneity, so that they can be applied more clearly in situations where the status of indigenous people has been denied to certain ethnic-cultural groups.
7. Virtually all indigenous peoples have suffered various forms of violence, both historically in the colonization processes as well as recently, by virtue of the situation of vulnerability built from historical injustices. This is reinforced with new forms of violence and makes it possible for new violent acts against indigenous peoples to take place and go unpunished. This has always translated into a persistent situation of subordination, discrimination, marginalization, and exclusion of indigenous peoples. Therefore, it is a recommendation for all countries that have a history of colonization to begin a process of recognition of historical and recent violence, that uses the alternatives and resources

offered by transitional justice and goes beyond specific conflicts that they want to address and overcome.

8. In order for transitional justice to meet its objectives of restoring the rule of law, supporting the democratic legitimacy of states, and promoting trust and cohesion in society, it needs to be reformulated, changing its basic assumptions based on individualistic visions of citizenship – a liberal construction of the democratic way of life which neglects of the role of diverse collective identities in coexistence.
9. The above reasons also demand a deeper incorporation of an intercultural vision of human rights into transitional justice processes. This intercultural vision requires the inclusion of indigenous knowledge in a dialogue with international human rights frameworks.
10. In transitional justice processes, a differentiated model of adaptation for indigenous peoples must be constructed, adjusted to the circumstances of each reality. This would allow them to decide to use the conceptual frameworks and instruments of transitional justice on their own terms and in exercise of their right to self-determination. This model must manifest itself in the various dimensions of transitional justice:
  - a. Respect for the rights of self-determination and consultation of indigenous peoples for formulation and implementation of transitional justice.
  - b. Design of the mechanisms that ensure the representativeness of indigenous experts and leaders in them.
  - c. Joint determination of the itinerary and strategies to promote truth and access to justice.
  - d. Joint construction with indigenous peoples of participatory procedures designed to listen to victims and collect background information.
  - e. Regarding fatal victims, as in cases of disappearances and executions, the search must be coordinated with the communities, bearing in mind the spiritual elements and the rituals necessary for the identification and burial of the remains.

- f. The forms of deliberation and conflict resolution in indigenous peoples' customary law must be incorporated into transitional justice processes, as well as their own forms of assessment of violence suffered and its results.
  - g. Memory processes must take note of both the forms of intercultural communication and the cultural expressions of indigenous peoples used to remember the violence they have suffered.
  - h. The reparations must consider the collective dimension of indigenous peoples and be determined together with the indigenous communities.
11. The guarantees of non-recurrence must start with the improvement of human rights situation of indigenous peoples, its consecration and assurance of protection, including constitutional recognition. Recognition of a cultural identity of indigenous peoples and symbolic measures should also be part of reparations.



People from the Moro community protesting, Philippines

12. There must always be a reinforced follow-up or monitoring of recommendations formulated by transitional justice mechanisms, since in the case of indigenous peoples, those are often blocked, delayed, or not implemented. It is necessary to include indigenous peoples in monitoring instances of transitional justice and in the design of institutional adaptation policies, as well as in their evaluation.
13. Reparations and subsequent measures proposed by the transitional justice mechanisms must have monitoring organizations that have a clear and stable institutional anchor, with the capacity to report to international organizations and to national institutions and citizens.
14. Reparations must address the spiritual relationship of indigenous peoples with their lands and territories, the dispossession, and the need to rebuild indigenous territories, and propose instruments that make it viable and effective.
15. Dimensions of distributive social justice and well-being, formulated according to the terms and perspectives of indigenous peoples (for example, the *buen vivir*), must be part of transitional justice measures.
16. A special effort must be made to build instances of memory about violations of indigenous people's rights, and to make those memories known in the communities. This can take place within the school system, the media and cultural life of the countries, so it can counter the stigmas and negative stereotypes that accompany the historical discrimination against indigenous peoples. The memory systems for human rights violations in the respective countries must have a differentiated component for indigenous peoples, built in agreement with them.
17. It is necessary to eliminate the gaps in the implementation of the national, constitutional, and legal norms that recognize indigenous rights, as well as the norms and decisions of international organizations on said rights. Countries must make available the necessary institutions that are effective in enforcing indigenous rights in the future.

18. Access to justice for indigenous communities must be ensured and made viable.
19. Information on both the functioning of transitional justice mechanisms with their scope and results and on reparation policies must be made accessible in indigenous languages.
20. Transitional justice measures must be incorporated into a holistic and comprehensive package.
21. International organizations are requested to support and disseminate a differentiated, intercultural, and intersectional approach to transitional justice to address situations of violations of indigenous rights. For this end, it is necessary to open spaces of permanent dialogue with the global movement of indigenous peoples, expressed in instances such as the UN Permanent Forum of Indigenous Peoples, among others.
22. The courts and all instances of justice in the international system for the protection of human rights and international criminal justice must incorporate an intercultural, gender and intersectional approach in their adjudication procedures.
23. The international community should support transitional justice efforts by the civil society that affect indigenous peoples, especially those initiated by the peoples themselves, particularly where governments did not allow the establishment of truth commissions, those have not been implemented, or the mechanism is too limited to achieve the goals of transitional justice.



Indigenous man protesting in Brazil.  
PARALAXIS/Shutterstock.com

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# ANNEX

## Case Studies and Ground Research

Description	Year	Author
Morocco Case Study	2021	Usani Odum, Centre for the Study of Violence and Reconciliation (CSV), South Africa
Rwanda Case Study	2021	Hari Tesfaye, Centre for the Study of Violence and Reconciliation (CSV), South Africa
Kenya Case Study	2021	Hari Tesfaye, Centre for the Study of Violence and Reconciliation (CSV), South Africa
Nigeria Case Study And Field Report	2021	Usani Odum, Centre for the Study of Violence and Reconciliation (CSV), South Africa
Guatemala, Perú, Colombia Case Study	2021	Eduardo González Cueva, Due Process of Law Foundation – DPLF
Field Report Morocco	2021	Mohamed El Kamichi, Human Rights Center and Archives, Morocco
Field Report Rwanda	2021	Godefroid Sindayigaya, Forum Pour La Memoire Vigilante (FMV), Rwanda
Field Report Kenya	2021	Denis Ngala, Manene Cultural Trust, Kenya
Field Report Guatemala	2021	Vivian Salazar Monzón, Instituto Internacional de Aprendizaje para la Reconciliación Social, Guatemala (IIARS), Guatemala
Field Report Perú	2021	Asociación Nacional de Familiares de Secuestrados, Detenidos y Desaparecidos del Perú (ANFASEP), Peru
Case Study and Field Report Colombia	2021	Fernando Vargas Valencia, ICSC consultant, Colombia
Field Report Sierra Leone	2021	Bernadette French, Campaign for Good Governance, Sierra Leone

Case Study Democratic Republic of Congo	2022	Usani Odum, Centre for the Study of Violence and Reconciliation (CSV), South Africa
Case Study South Sudan	2022	Usani Odum, Centre for the Study of Violence and Reconciliation (CSV), South Africa
Case Study Brazil	2022	Flávio de Leão Bastos, Constitutional Law Professor, Brazil
Case Study Chile	2022	José Aylwin, Citizen Observatory, Chile
Case Study Australia	2022	Asia Justice and Rights (AJAR)
Case Study Indonesia	2022	Asia Justice and Rights and ELSHAM Papua, Indonesia
Case Study Philippines	2022	Rodelio N. Ambangan and Timuay Letecio Datuwata Tebtebba, Philippines
Field Report DRC	2022	Remy Ngabo, Solidarité Échange pour le Développement Integral (SEDI), DRC
Field Report South Sudan	2022	Centre for the Study of Violence and Reconciliation (CSV), South Africa
Field Report Brazil	2022	Flávio de Leão Bastos, Constitutional Law Professor, Brazil
Field Report Chile	2022	Salvador Millaleo, Mapuche Lawyer, Chile
Field Report Nepal	2022	Prabal Thapa, Network of the Families of the Disappeared (NEFAD), Nepal
Field Report Indonesia	2022	Asia Justice and Rights and ELSHAM Papua, Indonesia
Field Report Philippines	2022	Rodelio N. Ambangan and Timuay Letecio Datuwata Tebtebba, Philippines



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