



CSV
Centre for the Study of
Violence and Reconciliation

POLICY BRIEF **STATE RESPONSIVENESS** **TO CONFLICT-RELATED** **VIOLENCE AGAINST WOMEN**

TRANSITIONAL JUSTICE TRENDS FROM 13 AFRICAN CASES



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Introduction

“The greatest external threat to women (and by extension humanity) is the growth and acceptance of a misogynistic, authoritarian and violent culture of militarism.” - Amina Mama

The African Union Transitional Justice Framework defines transitional justice as the post-conflict processes that aim to promote reconciliation, peace, justice, and accountability.¹ It is often the most immediate response to conflict-related human rights violations and typically operates for a short, fixed period.² Transitional justice processes inevitably confront difficult choices: which forms of violence, conflict, and oppression should be prioritised given the limited time and resources? Far too often, gender justice has been neglected by these processes, begging the question: can this be called justice if half the country’s population’s experiences of conflict are not fully understood and addressed?

Normatively, gender justice seeks equal power relations, privilege, dignity, and freedom for people of different genders as a necessary component for a just society. The substantive freedom for all genders to have genuine choices about their lives is a critical objective of a gender justice approach.

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Transitional justice – as well as the peace and security sector generally – has increasingly recognised that gendered³ patterns of human rights violations must be understood as such and given particular attention. This is evidenced by the significant growth in international and regional normative frameworks.⁴ Gender-based human rights violations have typically been understood narrowly as sexual- and gender-based violence against women (SGBVAW).⁵ While this interpretation needs to be broadened, there is value in exploring the impact that transitional justice has had on the narrow area of gender that it has sought to address:

SGBVAW. Are there certain characteristics (or “dimensions”) of transitional justice that are more likely to positively impact upon state measures in response to SGBVAW?

This policy brief draws on evidence from 13 African cases⁶ that had state-led transitional justice processes between 1990 and 2011. The focus on the African continent is not because the transitional justice issues explored are unique to this region. Rather, African transitional justice cases have contributed significantly toward expanding how gender is understood in conflict and in terms of transitional justice.⁷

The evidence suggested that in pursuing greater state commitment to addressing SGBVAW, certain aspects of transitional justice can help facilitate this goal. Our study suggests that three characteristics of transitional justice might be particularly significant: (1) they had **women or gender included** in their mandates; (2) they were able to execute their mandate **autonomously** i.e. without state interference; and (3) they included a **reparative approach** to justice.

What are the patterns emerging from the cases?

The following results show the case distributions of the above three dimensions of transitional justice and the outcomes for SGBVAW measures undertaken by the state.

Table 1: Cross tabulation of gender inclusive versus gender exclusive transitional justice mandates with SGBVAW outcomes

	States committed to addressing SGBVAW	States not committed to addressing SGBVAW
Gender Inclusive	Kenya Liberia Rwanda Tunisia	
Gender Exclusive	South Africa Mozambique	Algeria DRC 1 DRC 2 Ethiopia Morocco Nigeria 1 Nigeria 2

What does this mean?

Cases with transitional justice processes that explicitly included women or gender in their mandates (Kenya, Liberia, Rwanda,⁸ and Tunisia) had a positive relationship with improved state measures regarding SGBVAW. The cases that did not have women or gender included in their transitional justice mechanisms' mandates (Algeria, DRC 1, DRC 2, Ethiopia, Morocco, Nigeria 1, and Nigeria 2) did not have states that showed commitment to addressing SGBVAW.

The explicit incorporation of “women” or “gender” in the mandates of the transitional justice processes could have causal connections with SGBVAW outcomes years later as a result of the findings about SGBVAW recorded by the transitional justice mechanism/s. This could help raise public awareness and advocacy for measures to address SGBVAW. Minimally, the transitional justice processes could “...narrow the range of permissible lies”⁹ about past SGBVAW patterns through setting an historical record of these violations. The Kenya National Dialogue and Reconciliation set the agenda for various, parallel transitional justice processes to address the immediate and underlying causes of political violence dating to 1963. The transitional justice processes cumulatively highlighted the complexity of human rights violations that women experienced over the broad period. They showed that physical violations experienced by women were only part of a bigger picture of how socioeconomic and political rights deprivation had entrenched gender inequality since Kenyan independence. In other words, the transitional justice processes revealed the interlocking nature of gendered socioeconomic, political, cultural, and physical human rights violations. The mechanisms also recommended and required reforms as redress for these rights, which has produced some positive results for women in Kenya, such as improved representation in government and Constitutional rights.

There are two exceptions to this expected pattern: South Africa and Mozambique. Both countries are governed by former liberation movements that historically pledged to ensure an egalitarian society, including along gender lines.¹⁰ This suggests that there is a history of mobilised women who are well-versed in liberation and human rights politics that could lobby the post-conflict state to uphold their previous pledges toward gender equality. Additionally, they would likely have the appropriate networks and contacts within the ruling political parties to advance their campaigns due to their direct membership in these political parties when they were liberation movements.

Table 2: Cross tabulation of initial autonomy/state dependence of transitional justice with SGBVAW outcomes

	States committed to addressing SGBVAW	States not committed to addressing SGBVAW
Autonomous	Kenya Liberia South Africa Tunisia	
State Dependent	Mozambique Rwanda	Algeria DRC 1 DRC 2 Ethiopia Morocco Nigeria 1 Nigeria 2

What does this mean?

Transitional justice processes that were initially autonomous experienced improved SGBVAW measures – seen by the cases of Kenya, Liberia, South Africa, and Tunisia. State dependent transitional justice processes experienced weak SGBVAW measures

Autonomous mechanisms seem more likely to be able to conduct unencumbered investigations into the past, which would be more likely to elicit SGBVAW findings. Consequently, the mechanisms themselves as well as civil society would likely pressure the state to respond to these findings. For example, the South African Truth and Reconciliation Commission had the independence to hold women's hearings in response to civil society advocacy despite its mandate not explicitly including a gendered perspective. The state could not interfere with this adjustment despite the possibility that its supporters and members could be implicated.

Two cases do not follow this expected pattern: Mozambique and Rwanda. Both cases have states with strong central authority to implement policies that they identified as political priorities and had electively identified SGBVAW, and women's empowerment, as a priority area.¹¹ In other words, these cases were not as dependent on non-state actors to take on the fight for SGBVAW.

Table 3: Cross tabulation of initial normative approach to transitional justice with SGBVAW outcome

	States committed to addressing SGBVAW	States not committed to addressing SGBVAW
Reparative	Kenya Liberia South Africa Tunisia	Morocco
Punitive	Rwanda	DRC 1 DRC 2 Ethiopia Nigeria 1
Amnesia	Mozambique	Algeria Nigeria 2

What does this mean?

Almost all cases that had a reparative approach (Kenya, Liberia, South Africa, and Tunisia) also showed commitment to addressing SGBVAW (with the exception of Morocco). Cases that embraced a punitive approach to transitional justice (DRC 1, DRC 2, Ethiopia, and Nigeria 1) did not demonstrate a consequent commitment to addressing SGBVAW (with the exception of Rwanda).

Cases that embrace a predominantly reparative approach to transitional justice are, arguably, more likely to have positive SGBVAW outcomes because of the emphasis placed upon healing, reconciliation, and reparation by this approach. This approach places a positive obligation upon states to respond in some way – even if through acknowledgement – to the SGBVAW harms of the past. Reparative approaches also tend to be more participatory, wherein victims tend to be the focus of the processes. This could also suggest a reason for states being responsive to SGBVAW. For example, women activists were central to instigating the peace process in Liberia in 2003.¹² Women had secured a prominent position within civil society during and following the conflict, and used previous transitional justice processes to inform their campaigns about their wartime experiences.¹³ The Liberian Truth and Reconciliation Commission (LTRC) was designed to ensure that women's experiences of the conflict would be captured and that women were be represented in its decision-making and implementation structures. The LTRC successfully mobilised women to submit their testimonies to the Commission, resulting in 48 percent of the statements coming from women.¹⁴

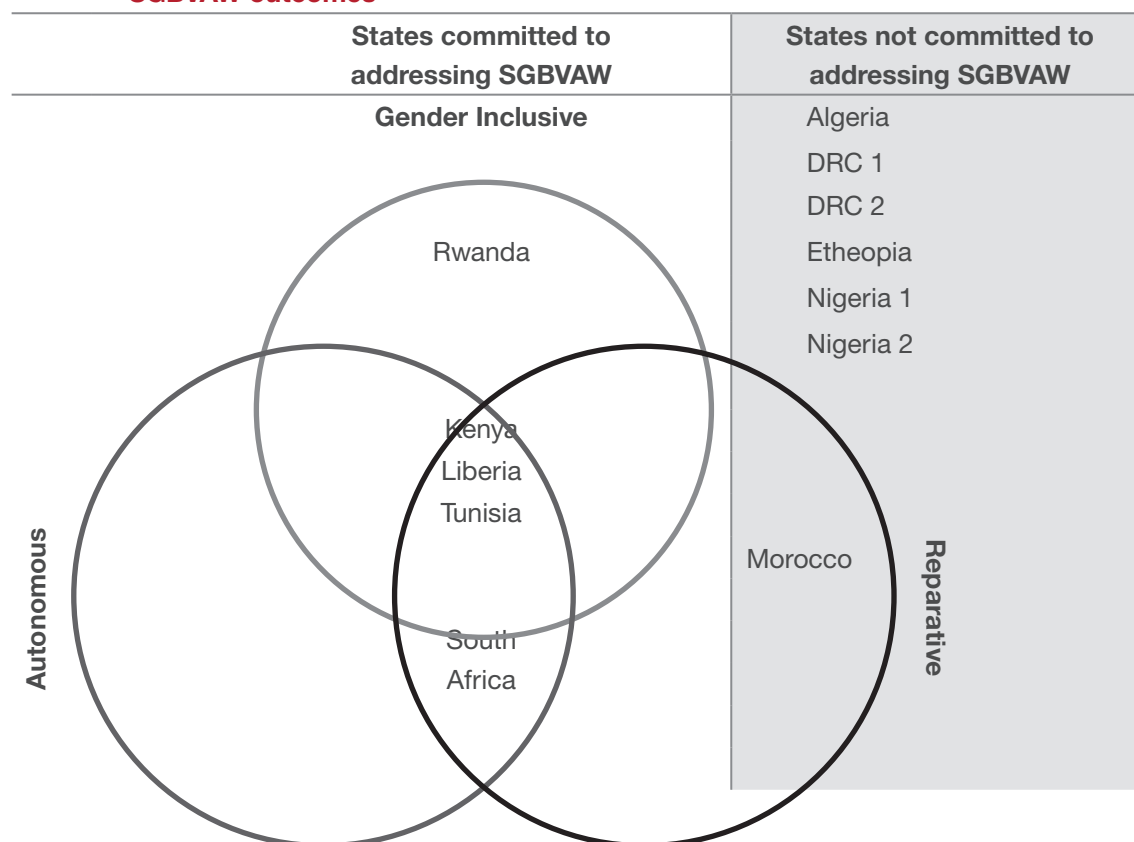
Punitive approaches focus upon punishing past crimes within the confines of the law. If the transitional justice process does not overtly seek to punish SGBVAW then it is unlikely that it will be targeted under a punitive approach. This is because a gendered perspective is often excluded from formal criminal definitions of human rights violations. Furthermore, SGBVAW might not be recognised as a crime unless the state overtly seeks to establish legislation that criminalises its various forms. Ethiopia's Red Terror Trials illustrates how significant the legal definitions of the crimes prosecuted may be under a punitive approach. The Red Terror Trials spanned twelve years, making it the world's longest genocide trials.¹⁵ The trials relied upon charges that used the existing legal framework within Ethiopia that outlawed

genocide and crimes against humanity.¹⁶ These laws did not include a gender perspective. Thus, the legal framework at the time seems to have shaped the types of crimes prosecuted. Since a gender perspective was absent from these frameworks, it was also absent from the proceedings.

The exceptions pointed out above might also be instructive. Rwanda stands out as a country where prosecution highlighted accountability for SGBVAW and such violations became part of the official narrative of the genocide. State prosecutions for gender violence in the other contexts was much less prominent and thus did not serve to similarly consolidate gender norms in the legal sphere. Morocco's approach to its transitional justice process was reparative. Yet, unlike the other cases in this category, Morocco's state did not demonstrate a commitment to addressing SGBVAW in later years. One reason may be the fact that the main transitional justice mechanism, the Moroccan Equity and Reconciliation Commission, was authorised to investigate institutional – not individual – human rights violations. This approach precludes individual accountability for SGBVAW and investigations into individuals' experiences of such crimes. The state's careful management of the transitional justice process in Morocco suggests that it was not a genuinely participatory or survivor-centred process, which could explain why SGBVAW outcomes were not later realised. The reparative nature of the Moroccan case appears to be rhetorical rather than substantial.

The diagram in Figure 1 below summarises the above findings about the relationship between the dimensions of transitional justice and SGBVAW outcomes.

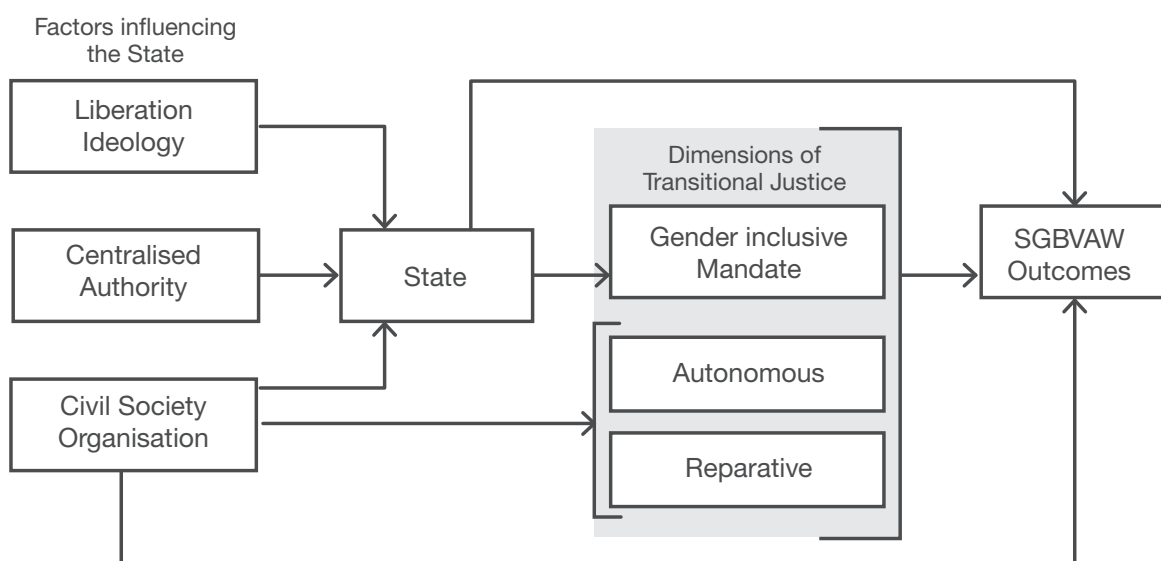
Figure 1: Summary of the relationship between the dimensions of transitional justice and SGBVAW outcomes



How Does Transitional Justice's Impact on SGBVAW?

The results above suggest that there are three dimensions of transitional justice that may lend themselves to supporting positive measures taken by states to respond to SGBVAW. Transitional justice processes that have gender inclusive mandates, are autonomous, and/or include a reparative approach are positively correlated with state SGBVAW measures being undertaken in the post-transition context. Figure 2 below summarises the tentative findings about the impact pathways between the dimensions of transitional justice and positive SGBVAW outcomes.

Figure 2: Dimensions of transitional justice and their impact pathways to SGBVAW



Transitional justice processes with gender inclusive mandates seem to be the most direct pathway to positively impacting upon SGBVAW outcomes. Such processes indicate that these states have prioritised SGBVAW from the onset, since they incorporated a gendered perspective within the design of their transitional justice process. The SGBVAW findings from the transitional justice process ensure that a public record about the crimes is established. Consequently, these findings could shape state's SGBVAW policies and responses.

The data suggested that there are other indirect impact pathways toward SGBVAW outcomes. These pathways are ones used as a means of influence primarily (although not exclusively) by civil society organisations to secure positive SGBVAW outcomes despite gender exclusive transitional justice processes. Transitional justice processes that are autonomous have the freedom to explore human rights violations in a somewhat open-ended way (so far as their mandates allow). This means that a gender exclusive transitional justice process could still surface SGBVAW findings when they are allowed sufficient freedom from external control. It also suggests the transitional justice processes' activities could be adapted in response to the needs of survivors and advocacy groups (e.g. South Africa's women's hearings).

Reparative transitional justice processes also emerged as an indirect pathway toward positively impacting upon SGBVAW outcomes. Reparative approaches emphasise healing and restorative justice. Thus, transitional justice processes that uncovered SGBVAW findings could potentially recommend that the state take reparative measures in response to these findings. Particularly, the approach's emphasis upon participatory and survivor-oriented processes seemed to be significant attributes toward this end (as suggested counterfactually by the Moroccan case).

The exceptional cases indicate that transitional justice processes serve as one pathway among others that can be utilised to impact positively upon SGBVAW outcomes. Transitional justice may have an important role to play to facilitate – possibly even accelerate – these outcomes. Even where transitional justice is not framed ideally (i.e. lacking the three elements identified here), other pathways for promoting SGBVAW may still be available. The study suggests a ruling party's liberation ideology as well as its monopoly over centralised authority could shape the state's general commitment to SGBVAW. Additionally, civil society organisations could pressure the state to prioritise SGBVAW outcomes within and beyond the transitional justice process (e.g. Liberia). Furthermore, civil society organisations could also fill a void in delivering some SGBVAW outcomes if a state does not.

Policy Recommendations for Maximising Transitional Justice's Positive Contribution toward addressing SGBVAW

While addressing SGBVAW is just one component of a broader holistic agenda of building gender justice,¹⁷ it deserves to be highlighted as a critical goal of transitional justice. Based on these findings, and drawing on the literature on best practice in transitional justice for SGBVAW, we recommend the following:

1. Transitional justice should be explicitly framed as avenues for promoting gender justice in a society. Reconciliation, justice and truth need to be explicitly framed to include past injustices committed against women, and should seek gender justice and the reduction of SGBVAW as a key goal.
2. Transitional justice should be designed to work with significant independence from the state, particularly in contexts where state justice agendas are not sufficiently responsive to the full range of gender justice goals.
3. Transitional justice mechanisms should allow spaces for women to articulate their stories and not be confined to narrowly prescribed violations captured in criminal codes. Justice interventions need to respond to victim of SGBVAW survivors' agendas for what justice looks like (criminal sanctions, reparations, etc.)
4. Transitional justice mechanisms need to establish structures to ensure the confidentiality and safety of survivors of SGBVAW that wish to participate in their processes. This includes in-camera sessions at trials and truth commissions alike, statement takers from all gender groups so that survivors can choose to speak with whom they are most comfortable, and witness protection. The measures taken to promote a safe environment for survivors should be well communicated.
5. All staff in the transitional justice processes should participate in mandatory gender training. This will equip everyone with basic skills on how to infuse a gender just approach to their responsibilities. SGBVAW training should be a component of this. For example, careful consideration about how to cross-examine survivors without re-traumatising or blaming them is a critical challenge to prosecutorial approaches that applies to all staff involved from intake to defence attorneys to the presiding judge.
6. Specialised psychosocial support should be made available throughout the transitional justice process to SGBVAW survivors. Information about support groups and networks should be circulated to help ensure that survivors have access to ongoing support once the transitional justice processes have concluded.
7. A portion of transitional justice mechanisms' budgets should be dedicated toward establishing appropriate SGBVAW mechanisms and redress measures from the onset. Often, budgets do not include specific allocations for gendered processes, but these come at an additional expense that should be planned. Neglecting this results in under-resourced SGBVAW interventions.

8. Transitional justice processes should be consultative. Gender or women rights civil society organisations and networks should be called upon for support, expertise, and implementation. Civil society groups often existed during the conflict period and SGBVAW survivors may be more comfortable participating in transitional justice processes via familiar non-governmental organisations.
9. Campaigns should be created that engage with and address the effects of militarisation and violence on gender relations. Often a hyper-militarised masculinity is emphasised during conflict, which remains undisrupted after the conflict has formally concluded. These ideas about “manhood” and “womanhood” are internalised by many in society and often are informed by patriarchal beliefs, which can contribute toward continued patterns of SGBVAW. Interventions with all genders are needed to tackle toxic masculinities and to promote gender equality in culturally-sensitive ways.
10. A full picture of the causal and sustaining factors of SGBVAW should be sought under the transitional justice process. SGBVAW usually is not restricted to the conflict period. Rather, it occurs before as well as after conflict. Understanding how socioeconomic inequality, gender stereotyping, patriarchal and misogynist beliefs, and cultural factors enable SGBVAW should be pursued by the transitional justice mechanisms to inform transformative redress measures.
11. Transitional justice’s investigations into sexual- and gender-based violence (SGBV) need to include the experiences of all genders i.e. men and gender non-conforming people.¹⁸ “Gender” is not synonymous with “women” but the current trend is to treat it as such. All genders’ experiences should be examined for a fuller and more meaningful understanding of conflict-related SGBV patterns and to inform gender just redress measures.
12. All types of human rights violations should be considered from a gendered perspective rather than presuming from the onset that only sexual violence can be gendered. The tendency has been to examine women’s experiences of wartime SGBV, which neglects how they experience other human rights violations, such as disappearances, displacement, political oppression, and discrimination.
13. Peacebuilding and development efforts should be informed by both the strengths and weaknesses of the transitional justice process in order to support the causal pathways that transitional justice might initiate, or to address the shortcomings of the transitional justice process. Building synergy across transitional justice, peacebuilding, and development efforts in the post-conflict context is important for building upon the initial justice agenda set under transitional justice processes. But these processes cannot be exhaustive especially because of the delicate period in which they occur. Ideally, the transitional justice processes would flag areas for further work under broader peacebuilding and development processes to facilitate moving toward a gender just society.

About the Centre for the Study of Violence and Reconciliation

CSVSR is an independent non-governmental organisation established in South Africa in 1989. We are a multi-disciplinary institute that seeks to understand and prevent violence, heal its effects and build sustainable peace at community, national, and regional levels. We do this through collaborating with, and learning from, the lived and diverse experiences of communities affected by violence and conflict. Through our research, interventions, and advocacy we seek to enhance State accountability, promote gender equality, and build social cohesion, integration, and active citizenship. While primarily based in South Africa, we work across the African continent through collaborations with community, civil society, State, and international partners.

<http://www.csvr.org.za/>

Additional Resources: Comparative Transitional Justice Study in Africa

CSVSR has published a policy brief investigating the themes of gender justice and transitional justice entitled “Transitioning toward Gender Justice a Trend Analysis of 13 African Cases”. This policy brief engages with a wider set of gender justice variables and can be found at <https://www.csvr.org.za/project-reports/The-need-for-transitional-justice-to-embrace-gender-justice-cover.pdf>.

This publication is one of the outputs of the Comparative Study of Transitional Justice in Africa. The study presents a comparative analysis of 12 African countries where transitional justice mechanisms have been implemented. Mapping the range of processes in this field, the study pays particular attention to transitional justice mechanisms employed between 1990 and 2011 to deepen understandings of how these processes were developed, and the role of their respective contributions to the prevention or recurrence of war and repression. Specifically, the study examines the factors that shaped state policy decisions in framing the diverse set of responses to dealing with legacies of dictatorship, civil war, and mass human rights abuses, and assesses the consequences of these decisions for achieving sustainable peace and preventing future human rights abuses.

<https://www.csvr.org.za/project-reports/The-need-for-transitional-justice-to-embrace-gender-justice-cover.pdf>

1. African Union, 'African Union Transitional Justice Framework (ATJF)' (African Union), accessed 23 October 2018, <https://www.legal-tools.org/doc/bcdc97/pdf/>.
2. Vasuki Nesiah, 'Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice Essays on Transitional Justice', *Columbia Journal of Gender and Law* 15 (2006): 799–812.
3. Gender intersects with other factors, such as ethnicity, class and religion, to further affect how human rights violations are differentially experienced.
4. United Nations Security Council Resolutions (UNSCRs) 1325, 1820, 1888, and 1889; the African Union's Maputo Protocol provides for the participation of women in the peace and security sector (Article 10) and commits to protect women in armed conflict situations (Article 11).
5. This is considered narrow because (1) other gender identities' (men, and transgender, gender non-conforming, and homosexual people) experiences of conflict has been omitted from a gendered analysis; and (2) the full range of human rights violations that are experienced on a gendered basis by women are not explored.
6. Algeria, Democratic Republic of Congo (DRC) 1, DRC 2, Ethiopia, Kenya, Liberia, Morocco, Mozambique, Nigeria 1, Nigeria 2, Rwanda, South Africa, and Tunisia. Two countries, Nigeria and DRC, both experienced two TJ interventions during the time period under review, which were treated as discrete cases and labelled accordingly. The evidence used in this policy brief has been gathered through qualitative questionnaires from case experts and complemented with additional data from secondary databases.
7. Helen Scanlon, ' Militarization, Gender and Transitional Justice in Africa', *Feminist Africa*, no. 14 (2010): 31–48.
8. Rwanda's domestic prosecutions included crimes of gender-based violence and genocidal rape. Survivors of these crimes can approach the State for reparations under Rwandan law. See: 'Rwanda: Civil Society Report on the Implementation of CEDAW: Replies to the List of Issues CEDAW/C/RWA/Q/7-9. Submitted for the Review of the Report on Rwanda at the 66th Session of the CEDAW Committee', Civil Society Report on the implementation of CEDAW (Geneva, 13 March 2017), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RWA/INT_CEDAW_CSS_RWA_26604_E.pdf.
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10. Signe Arnfred, 'Women in Mozambique: Gender Struggle and Gender Politics', *Review of African Political Economy*, no. 41 (1988): 5–16; Cheryl Walker, *Women and Resistance in South Africa* (New Africa Books, 1991).
11. Rwanda: Frances B. Henderson, 'Luísa Dias Diogo: Gender and Political Leadership in Mozambique', in *Women Presidents and Prime Ministers in Post-Transition Democracies*, ed. Verónica Montecinos, Palgrave Studies in Political Leadership (London: Palgrave Macmillan UK, 2017), 165–81, https://doi.org/10.1057/978-1-137-48240-2_8; Azad Essa, 'The Mixed Tale of Women's Empowerment in Rwanda', *Al Jazeera*, 20 September 2018, <https://www.aljazeera.com/indepth/features/mixed-tale-women-empowerment-rwanda-180918131311419.html>.
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12. Erica Lawson, 'How Women Bring about Peace and Change in Liberia', The Conversation, accessed 16 October 2018, <http://theconversation.com/how-women-bring-about-peace-and-change-in-liberia-86670>.
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 14. Human Rights Data Analysis Group, 'Liberia', HRDAG, accessed 11 October 2018, <http://hrdag.org/liberia/>.
 15. Firew Tiba, 'The Mengistu Genocide Trial in Ethiopia', *Journal of International Criminal Justice* 5, no. 2 (2007).
 16. "The charges filed against Mengistu and his co-accused concentrated on genocide in violation of Article 281 of the 1957 Ethiopian Penal Code, or alternatively on aggravated homicide in violation of Article 522 of the Penal Code. The filing of alternative charges is permitted by Article 113 of the 1961 Ethiopian Criminal Procedure Code.¹¹ According to Article 28 of the Ethiopian Constitution, the criminal responsibility of persons who commit crimes against humanity, as defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture, are not affected by the statute of limitations." (Tiba, 2007: 5-6).
 17. See CSVr's related policy brief "Transitioning toward Gender Justice: A Trend Analysis of 13 African Cases" available at <https://www.csvr.org.za/project-reports/The-need-for-transitional-justice-to-embrace-gender-justice-cover.pdf>.
 18. "Gender non-conforming people" is used to encompass lesbian, gay, bisexual, transgender, intersex, queer, asexual, and gender non-binary people.



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