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## **Gender and Transitional Justice: Explaining Global Trends**

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### **Abstract**

In this article, we use evidence from a new global dataset of gender-attentive truth commissions, prosecutions, and reparations policies to present global trends in gender and TJ and explore various arguments in the gender literature. We find that gender was absent from TJ in the period from 1970-1990, but that more attention to gender began in the 1990s and has been sustained since that time. Initial attention to gender focused primarily on violence against women, but more recently, some limited attention to broader understandings of gender that include men and boys as well as LGBTQI+ individuals have started to appear. We argue that the early efforts of feminist activists in countries both in the Global North and the Global South to frame and set the global agenda on violence against women subsequently shaped both when transitional justice policies became gender-attentive and how these policies have diffused across countries.

**Keywords:** Gender; Transitional Justice; Trials; Reparations; Truth Commissions.

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## 1. Introduction

Gender, the socially constructed roles, status, and identities of girls, women, boys, men, and gender-diverse people in society,<sup>1</sup> has been a central focus of the *International Journal of Transitional Justice* since its inception. IJTJ's first issue featured an essay on Feminism and Transitional Justice (TJ),<sup>2</sup> and the journal's first special issue was devoted to Gender and TJ.<sup>3</sup> The journal has published outstanding articles on a range of gender issues and TJ mechanisms across a diversity of countries and contexts.

These publications, as well as important research published elsewhere, have advanced theoretical arguments and critiques of the relationship between gender and the practice of TJ. For example, authors have argued that women's experiences of harm have been "ignored and/or sidelined," and gender has been given "only limited attention" in transitional justice policies.<sup>4</sup> Others contend that when gender has been included in transitional justice, it has focused on an "overly narrow understanding of harms," in particular sexual violence, especially rape.<sup>5</sup> Scholars argue that transitional justice practices define gender as sex and pay little attention to the suffering of other groups, including men, boys, and sexual minorities.<sup>6</sup> Much of this literature explicitly or implicitly assumes that there is a hierarchy of harms

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<sup>1</sup> See, e.g. Candace West and Don H. Zimmerman, "Doing Gender," *Gender & Society* 1, no. 2 (1987): 125–51; and Government of Canada, Department of Justice, Definitions at <https://www.justice.gc.ca/socjs-esjp/en/dash-tab/definitions>

<sup>2</sup> Christine Bell and Catherine O'Rourke, "Does Feminism Need a Theory of Transitional Justice? An Introductory Essay," *International Journal of Transitional Justice* 1, no. 1 (March 2007): 23–44.

<sup>3</sup> Navanethem Pillay, ed., "Special Issue: Gender and Transitional Justice," *International Journal of Transitional Justice* 1, no. 3 (December 1, 2007): 315–317.

<sup>4</sup> See, Fionnuala Ní Aoláin, "Women, Security, and the Patriarchy of Internationalized Transitional Justice," *Human Rights Quarterly* 31, no. 4 (2009): 1059. Fionnuala Ní Aoláin, "The Inner and Outer Limits of Gendered Transitional Justice," *Éire-Ireland (St. Paul)* 55, no. 1 (2020): 280; Catherine O'Rourke, "Transitional Justice and Gender," in *Research Handbook on Transitional Justice* (Edward Elgar Publishing, 2017), 2.

<sup>5</sup> For example, Vasuki Nesiah, "Missionary Zeal for a Secular Mission: Bringing Gender to Transitional Justice and Redemption to Feminism," in *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?*, ed. Sari Kouvo and Zoe Pearson (Hart Publishing, 2014), 137–157; O'Rourke, "Transitional Justice and Gender."

<sup>6</sup> Brandon Hamber, "Masculinity and Transitional Justice: An Exploratory Essay," *The International Journal of Transitional Justice* 1, no. 3 (2007): 375–390. Pascha Bueno-Hansen, "The Emerging LGBTI

where attention to one kind of gender-related violence, such as rape, crowds out attention to other gender issues or comes at the expense of transformative justice or addressing the root causes of violence.<sup>7</sup>

While these critiques are instructive, they are limited in their ability to place the practice of TJ in broad historical and comparative perspective. Many are based on single-country case studies, multiple-country cases,<sup>8</sup> structured comparative country studies,<sup>9</sup> or a qualitative overview of the field at a particular moment in time.<sup>10</sup> Other critiques have focused exclusively on attention to gender-based violence during conflict at international criminal tribunals, especially the ICC.<sup>11</sup> In this article, we present

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Rights Challenge to Transitional Justice in Latin America,” *International Journal of Transitional Justice* 12, no. 1 (March 2018): 126–45; Olivera Simic, “Engendering Transitional Justice: Silence, Absence and Repair,” *Human Rights Review* 17, no. 1 (March 2016): 1–8. Meredith Loken and Jamie J. Hagen, “Queering Gender-Based Violence Scholarship: An Integrated Research Agenda,” *International Studies Review* 24, no. 4 (2022). O’Rourke, “Transitional Justice and Gender,” 18; Philipp Schulz, *Male Survivors of Wartime Sexual Violence: Perspectives from Northern Uganda* (University of California Press, 2021). Schulz acknowledges that while early definitions of sexual violence did not include men and boys as victims, “more recent definitions have tended to employ gender-neutral language, thereby also recognizing men and boys alongside women and girls as potential victims of sexual violence” (32). However, gender-nonconforming identities are still largely not recognized as victims of sexual violence by scholars and practitioners.

<sup>7</sup> See, for example, Paul Kirby, “Ending Sexual Violence in Conflict: The Preventing Sexual Violence Initiative and Its Critics,” *International Affairs (London)* 91, no. 3 (2015): 457–72; Kevin Hearty, “‘Victims of’ Human Rights Abuses in Transitional Justice: Hierarchies, Perpetrators and the Struggle for Peace,” *The International Journal of Human Rights* 22, no. 7 (August 2018): 888–909.

<sup>8</sup> See, for example, Alex Vandermaas-Peeler, Jelena Subotic, and Michael Barnett, “Constructing Victims: Suffering and Status in Modern World Order,” *Review of International Studies* (December 2022: 1–19); See also Duggan, Colleen, Claudia Paz y Paz Bailey, and Julie Guillerot, “Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru,” *International Journal of Transitional Justice* 2, no. 2 (July 1, 2008): 192–213.

<sup>9</sup> See, for example, Katie Zoglin, “What Happened to the Women? Gender and Reparations for Human Rights Violations, ed. Ruth Rubio-Marín,” *International Journal of Transitional Justice* 1, no. 3 (December 2007): 454–455.

<sup>10</sup> Anette Bringedal Houge and Kjersti Lohne, “End Impunity! Reducing Conflict-Related Sexual Violence to a Problem of Law,” *Law & Society Review* 51, no. 4 (2017): 755–89. See also O’Rourke, “Transitional Justice and Gender.” See also Margaret Urban Walker, “Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations,” *International Journal of Transitional Justice* 10, no. 1 (March 2016): 108–125.

<sup>11</sup> Louise Chappell, “The Politics of Gender Justice at the International Criminal Court,” in *The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy*, ed. Louise Chappell (Oxford University Press, 2016); Kate Cronin-Furman, “Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity,” *International Journal of Transitional Justice* 7, no. 3 (November 2013): 434–454; M. P. Broache and Juhi Kore, “Can the International Criminal Court Prevent Sexual Violence in Armed Conflict?,” *Journal of Human Rights* 22, no. 1 (January 2023): 78–93; Liana Georgieva Minkova, “(In)Compatible Visions of Justice? Personal Culpability and Gender Justice at the ICC,” *Politics & Gender* 18, no. 1 (March 2022): 62–94.

a broad survey of transitional justice mechanisms' attention to gender in all transitional countries, the one type of article on gender and the practice of TJ that IJTJ has not previously published. Our survey allows us to assess how attention to gender in TJ has developed over time and to explore the arguments made in the wider TJ literature.

We argue that more gender-attentive TJ policies emerged from efforts by the feminist movement to frame and set the global agenda on violence against women in the 1980s and 1990s. Early global feminist activism focused on advancing gender equality in the political, economic, and social spheres of life, such as in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW, however, does *not* mention rape or other forms of sexual and gender-based violence (SGBV), so in the 1980s, activists strove to draw attention to violence against women. This activism was successful in generating attention to gender violence in domestic contexts, especially in Latin America and Africa, and in placing violence against women on the global agenda in the early 1990s. This historical context is important because it suggests how gender-attentive TJ practices grew from bottom-up activism rather than being solely the product of Western states or emerging from the aftermath of atrocities in Rwanda or the former Yugoslavia.

To map the emergence of gender-attentive TJ practices, we present data on all gender-attentive prosecutions, truth commissions, and reparations policies in our database occurring in or addressing countries that transitioned from conflict and/or authoritarianism from 1970 through 2020. By “gender-attentive” we mean TJ mechanisms that explicitly address gender injustices and gender-based violations. A gender-attentive mechanism can include, but is not limited to, sexual and gender-based violence.

Three core findings emerge from our analysis. First, although gender was largely absent from global TJ practices from 1970 through 1990, attention to gender has increased significantly in all three mechanisms, beginning as early as the early 1990s. The timing, location, and type of gender-attentive TJ aligns closely with patterns of feminist activism at that time. Second, consistent with existing critiques of TJ, gender-attentive TJ policies have focused predominately on physical harms and, especially, rape. Third, however, early accountability for gender violence of any kind is more likely to be associated with a

“positive spillover,” leading to broader attention to gender issues rather than “crowding out” attention to other gender harms.<sup>12</sup> In other words, rather than see gender-attentive TJ as part of a zero-sum game, where attention to one injustice precludes attention to others, a phenomenon sometimes called “crowding out” or “spillover,”<sup>13</sup> we find that gender-attentive TJ is often a positive-sum game where once actors work for accountability for gender violence, they are more likely to address a wider range of gender issues. Our findings align with those of Catherine O’Rourke, for example, who argues that “transitional justice has been a success story for feminist engagement and gender analysis”<sup>14</sup> because transitional justice practices today are more attentive to women and gender-related concerns.<sup>15</sup> TJ practices have rendered visible gender harms and established some accountability for them.

Beyond these empirical insights, we make two broader contributions to the literature on gender and TJ. First, by highlighting the importance of the feminist movement in framing and setting the global agenda, our argument helps explain why we observe the emergence of gender-attentive TJ when we do and underscores possibilities for future change. Second, the data we present here is part of a broader research initiative that has compiled the most complete database of diverse accountability policies, including truth commissions, reparations policies, amnesty laws, vetting and lustration policies, and domestic, foreign, and international human rights trials. These data not only can help scholars and

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<sup>12</sup> On crowding out, see Ryan Goodman and Derek Jinks, “Social Mechanisms to Promote International Human Rights: Complementary or Contradictory?,” in *The Persistent Power of Human Rights* (Cambridge University Press, 2013), 103-122. On spillover, see Irma Rybnikova, “Spillover Effect of Workplace Democracy: A Conceptual Revision,” *Frontiers in Psychology* 13 (2022), <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.933263>.

<sup>13</sup> Jennifer Hadden and Sidney Tarrow, “Spillover or Spillout? The Global Justice Movement in the United States After 9/11,” *Mobilization: An International Quarterly* 12, no. 4 (January 11, 2008): 359–76.

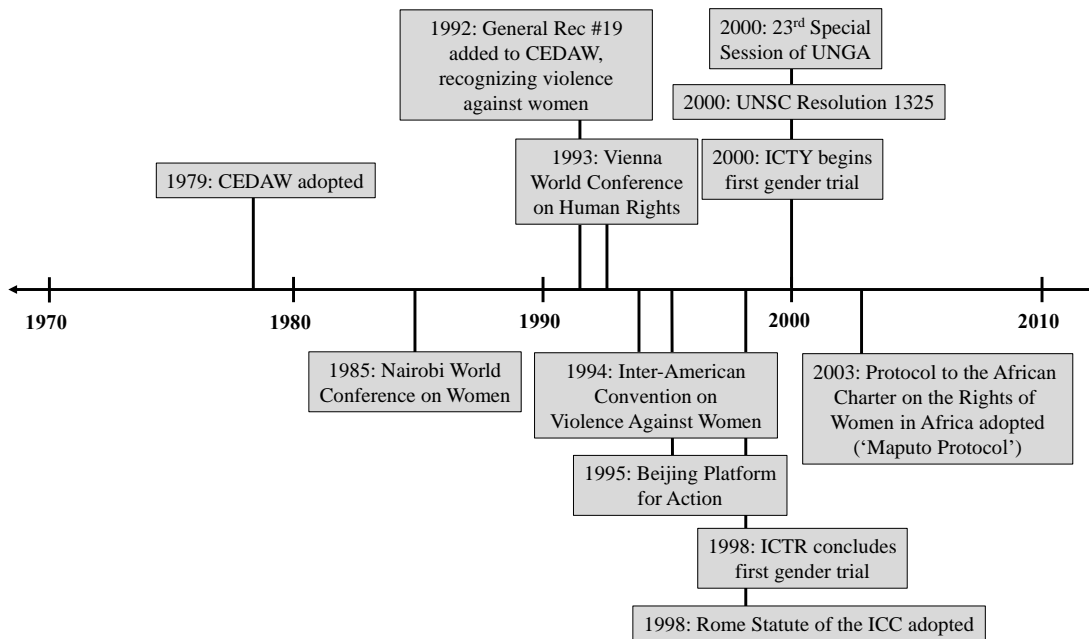
<sup>14</sup> O’Rourke, “Transitional Justice and Gender.”

<sup>15</sup> Sometimes the literature mentions positive change mainly to underscore a new critique. In 2007, Brandon Hamber recognized “a growing focus on including women in transitional justice processes,” to highlight how attention to masculinity was missing. “Masculinity and Transitional Justice: An Exploratory Essay,” *The International Journal of Transitional Justice* 1, no. 3 (2007): 375-390.

practitioners better understand when, where, and why TJ practices are attentive to gender, they also open new avenues of inquiry for the broader transitional justice research community.<sup>16</sup>

## 2. Activism and the Emergence of Gender-Attentive Transitional Justice

What explains the emergence of gender-attentive transitional justice policies? We first advance an argument about variation in the *presence* of gender in TJ policies. We argue that the emergence of more gender-attentive TJ policies corresponds with the framing and agenda-setting strategies of the global feminist movement. After developing our argument, we introduce three explanations for the relative *absence* of gender in TJ policies that have gained prominence in the broader academic literature.



**Figure 1.** *Timeline of major legal developments on gender and justice supported by the global women's movement, 1970-2010.*

<sup>16</sup> Our dataset can be found at <https://transitionaljusticedata.org/en/> in English, or <https://transitionaljusticedata.org/fr/> in French.

The history of the global women's movement is marked by several watershed legal and political developments which we depict in Figure 1. Despite the ten years from 1975 to 1985 being known as the "UN Decade on Women," there was virtually no attention to sexual violence as a global issue at that time. Sexual and gender-based violence was not on the minds of the diplomats, many of them women, who drafted CEDAW, the preeminent women's rights treaty of the 1970s. CEDAW has long sections on measures to eliminate discrimination against women in political, economic, and social life, with a special section, for example, just on the economic needs of rural women. It does not mention rape or gender violence at all.

Over the next decade, activists helped put Violence Against Women (VAW) on the global agenda, alongside the established issues of discrimination and women and development that had dominated the debate in the 1970s and early 1980s. VAW became an object of UN activity starting in 1985, at a meeting on women's rights in Nairobi and continued in Beijing in 1995.<sup>17</sup> The Vienna Conference on Human Rights (1993) was a focal point for women organizing on this topic, whose slogan was "Women's Rights are Human Rights." In 1998, feminist activists and diplomats from around the world worked to include two fundamental legal innovations in the Rome Statute of the International Criminal Court (ICC): the treaty included "Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" both as a grave breach of the Geneva Conventions, and a serious violation of common Article 3 governing non-international armed conflict, as well as a crime against human humanity "when committed as part of a widespread or systematic attack directed against any civilian population."<sup>18</sup> UNSC Resolution 1325 on Women, Peace and Security (WPS) in 2000 echoed these provisions of the Rome Statute by calling on States to "put an end to impunity" and to prosecute those responsible crimes including those relating to sexual and other violence against women and girls." WPS resolutions 2106 and 2122 which stress the importance of

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<sup>17</sup> Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 166.

<sup>18</sup> Tuba Inal, *Looting and Rape in Wartime: Law and Change in International Relations*, 1st ed., Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2013).

addressing sexual violence in transitional justice mechanisms came late in the timeline -- in 2013 -- that they are less relevant to help explain the transitional justice trends we describe here.<sup>19</sup>

This chronology is important because it allows us to situate ourselves in world ideational time and understand how and when new ideas, frames, norms, law, and critiques emerge. For instance, many scholars mark global attention to the problem of sexual violence as emerging in the wake of mass sexual violence occurring in the war in the former Yugoslavia in 1992-1995 and in Rwanda during the 1994 genocide, and the work of the international tribunals that later addressed this violence, the ICTY and the ICTR, or even after UNSC WPS resolutions.<sup>20</sup> While these events certainly amplified global attention to the use of rape as a weapon of war, or created new jurisprudence on gender crimes, the campaign to get this issue onto the global agenda predates these events and involves many more countries; for instance, the Global Campaign for Women's Human Rights organized a Tribunal for Women's Human Rights at the Vienna Conference in 1993 that included testimony on violence against women by 33 panelists from 25 countries.<sup>21</sup>

We argue that gendered violence in both Yugoslavia and Rwanda was not so much responsible for the rise of gender concerns, but rather was part of a longer and larger story of women's activism to incorporate gender into human rights. We agree with Nordås and Cohen, who argue that increasing attention to gender is "intimately tied" to the activism of the feminist movement;<sup>22</sup> however, we claim that this attention emerges earlier than the wars in Yugoslavia and genocide in Rwanda, and their subsequent international tribunals, which suggests different processes by which gender-attentive TJ spread globally than those that are emphasized in the broader literature. Gender-attentive TJ was not just

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<sup>19</sup> On the role of the UNSC Women, Peace and Security Resolutions, see also Sanne Weber, "Gender and Transitional Justice," in *Transitional Justice: Theories, Mechanisms, and Debates*, ed. Hakeem O. Yusuf and Hugo van der Merwe (London: Routledge, 2021); Maria Martin de Almagro, and Philipp Schulz, "Gender and Transitional Justice," in *Oxford Research Encyclopedia of International Studies*, 2022.

<sup>20</sup> Nordås and Cohen, "Conflict-Related Sexual Violence," 196. Loken, Lake, and Cronin-Furman, "Deploying Justice." O'Rourke, "Transitional Justice and Gender," 124.

<sup>21</sup> Keck and Sikkink, *Activists Beyond Borders*, 187.

<sup>22</sup> Nordås and Cohen, "Conflict-Related Sexual Violence," 196. (check page number to be sure, since we use a direct quote)

advanced by international tribunals and actors, it was also driven by local activism, politics, and policy processes.

### 3. Gender and Transitional Justice: Three Critical Perspectives

A substantial body of scholarship has critiqued how TJ policies have engaged gender in practice. We identify three important claims in this literature. We first describe each argument, then present descriptive statistics from our data on truth commissions, reparations, and prosecutions to explore how these arguments align with changing TJ practices over time.

First, many scholars contend that TJ policies ignore gender-based harms. Writing in 2009, Ní Aoláin argues that women's experiences of harm have been "ignored and/or sidelined" from transitional justice, and follows up a decade later that "despite scholarly, policy, and political attention, gender justice has been given only limited attention in what might be regarded as traditional transitional-justice contexts, with little consistency in application or outcomes."<sup>23</sup> This concern has been echoed and expanded on by other researchers.<sup>24</sup>

Second, scholars have argued that when TJ policies pay attention to gender-based harms, they adopt a narrow definition of *gender*, limited to the experiences of women while excluding those of men,

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<sup>23</sup> Fionnuala Ní Aoláin, "Women, Security, and the Patriarchy of Internationalized Transitional Justice," *Human Rights Quarterly* 31 (2009): 1059; Fionnuala Ní Aoláin, "The Inner and Outer Limits of Gendered Transitional Justice," *Éire-Ireland (St. Paul)* 55, no. 1 (2020): 280,

<sup>24</sup> O'Rourke, "Transitional Justice and Gender;" Ramona Vijeyarasa, "Women at the Margins of International Law: Reconceptualizing Dominant Discourses on Gender and Transitional Justice," *International Journal of Transitional Justice* 7, no. 2 (July 2013): 358-369.

boys, and LGBTQI+ individuals.<sup>25</sup> Despite recent signs of change,<sup>26</sup> this body of research suggests that defining gender-based violence narrowly has resulted in TJ policies that systematically ignore gender-based harms suffered by men, boys, and LGBTQI+ individuals.

Third, scholars have claimed that when TJ policies pay attention to gender-based harms, they adopt a narrow definition of *harms* focusing on physical harm and, especially, rape.<sup>27</sup> Both the second and third arguments implicitly endorse what we call the crowding out thesis, or the argument that attention to one kind of gender harm precludes attention to other kinds of gender harm. For example, critics argue that the narrow focus on wartime rape crowds out attention to other types of gender-based violence, like the role gender inequalities, such as a lack of property and inheritance rights, play in enabling sexual violence.<sup>28</sup> The narrow understanding of harms as physical violations is contrasted with a

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<sup>25</sup> Ragnhild Nordås and Dara Kay Cohen, “Conflict-Related Sexual Violence,” *Annual Review of Political Science* 24 (2011): 196; Léa Lemay Langlois, “Gender Perspective in UN Framework for Peace Processes and Transitional Justice: The Need for a Clearer and More Inclusive Notion of Gender,” *International Journal of Transitional Justice* 12, no. 1 (March 2018): 146–67; O’Rourke, “Transitional Justice and Gender,” 18, 20; Hamber, “Masculinity and Transitional Justice,” 375–90; Brandon Hamber, “There Is a Crack in Everything: Problematising Masculinities, Peacebuilding and Transitional Justice,” *Human Rights Review* 17, no. 1 (March 2016): 9–34; Charli Carpenter, “Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations,” *Security Dialogue* 37, no. 1 (2006): 83–103; Charli Carpenter, “‘Women and Children First’: Gender, Norms, and Humanitarian Evacuation in the Balkans 1991–95,” *International Organization* 57, no. 4 (2003): 661–94; Meredith Loken and Jamie J Hagen, “Queering Gender-Based Violence Scholarship: An Integrated Research Agenda,” *International Studies Review* 24, no. 4 (November 2022): 1.

<sup>26</sup> Pascha Bueno-Hansen, “The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America,” *International Journal of Transitional Justice* 12, no. 1 (March 2018): 126–45; Fidelma Ashe, “Sexuality and Gender Identity in Transitional Societies: Peacebuilding and Counterhegemonic Politics,” *International Journal of Transitional Justice* 13, no. 3 (November 2019): 435–57.

<sup>27</sup> Ní Aoláin, “The Inner and Outer Limits of Gendered Transitional Justice”; Vijayarasa, “Women at the Margins of International Law,” 358–69; Nesiha, “Missionary Zeal for a Secular Mission,” 143. See also, Nicola Henry, “The Fixation on Wartime Rape: Feminist Critique and International Criminal Law,” *Social & Legal Studies* 23, no. 1 (March 2014): 93–111. O’Rourke, “Transitional Justice and Gender.”

<sup>28</sup> Sahla Aroussi, “Women, Peace, and Security and the DRC: Time to Rethink Wartime Sexual Violence as Gender-Based Violence?,” *Politics and Gender* 13(3): 488-515 ; Maria Eriksson Baaz and Maria Stern, “Understanding and Addressing Conflict-Related Sexual Violence,” *The Nordic Africa Institute*, Policy Notes (2010); Johanna Bond, “Victimization, Mainstreaming, and the Complexity of Gender in Armed Conflict,” *Santa Clara Journal of International Law* 11, no. 1 (December 2012): 225.

broader and more “transformative” view of harms that might foster autonomy and economic rights by providing, for example, land restitution for women.<sup>29</sup>

#### **4. Transitional Justice Data: Trials, Truth Commissions, and Reparations**

In our broader research, we collected data on all international and domestic human rights trials, truth commissions, and reparations for human rights violations from 1970 through 2020. Here, we focus on the subset of these policies that qualify as transitional justice policies, defined as those that address violations that occurred during conflict or authoritarian rule.<sup>30</sup> We first describe our data collection and coding methodology. We then use these data to explore how the various arguments advanced in the literature correspond with the empirical record.

There are important limitations to what we can learn from these data. In particular, the data reveals variation in the adoption of TJ policies over time but does not directly measure changes in gender crimes. Therefore, we focus our analysis and discussion on explaining variation in states’ policy choices rather than, for example, the effectiveness of TJ policies.

#### **5. Analysis: Exploring the Arguments with Evidence from a New Global Database**

##### ***5.1 Emergence***

We begin our analysis by exploring the emergence of gender-attentive transitional justice policies over time. One critical perspective concerning emergence is that TJ policies mainly ignore gender-based harms, suggesting we should not observe a systematic change in gender-attentive TJ policies over time. A

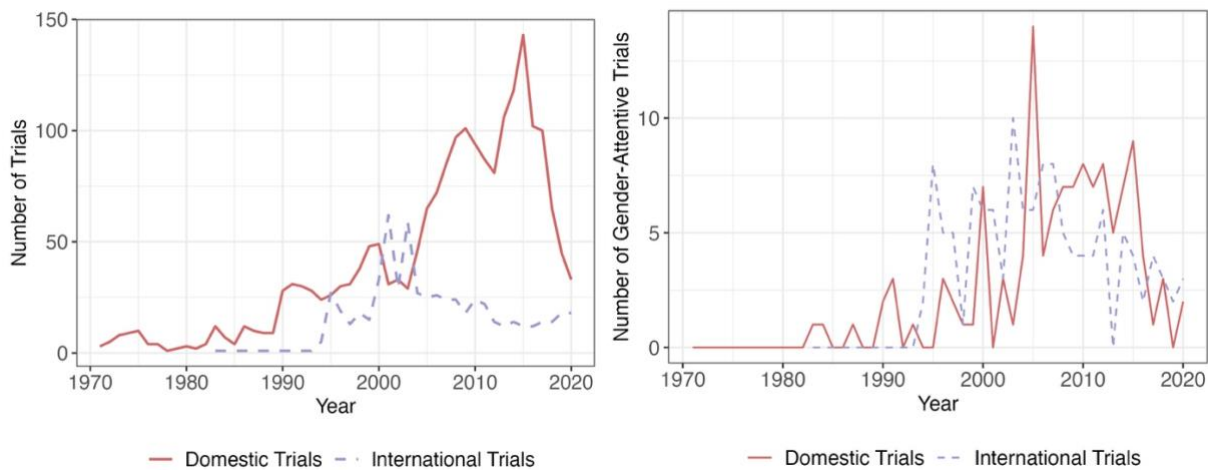
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<sup>29</sup> Isabel Inguanzo and Angelica Rodriguez, “Analysis of the Colombian Constitutional Court’s Transformative Approach to Conflict-Related Sexual Violence,” *Social & Legal Studies*, 2023; Elise Ketelaars, “Gendering Tunisia’s Transition: Transformative Gender Justice Outcomes in Times of Transitional Justice Turmoil?” *International Journal of Transitional Justice* 12, no. 3 (November 2018): 407–26; Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003), 11, 16.

<sup>30</sup> See Appendix A for the list of transitional contexts included in our study.

second argument we explore is that gender-attentive TJ emerged following atrocities in Rwanda and the former Yugoslavia due to demands in Europe and North America for accountability for these crimes.<sup>31</sup> This theory suggests that gender-attentive TJ should first appear in international tribunals in the mid-1990s. Our argument – that gender-attentive TJ grew from the global women’s movement – suggests that attention to gender should have emerged earlier and in local contexts connected to the women’s movement.

Figure 2 presents data on the number of transitional justice trials from 1970 through 2020. The left pane depicts the total number of TJ trials occurring in either domestic or international courts. The right pane shows the total number of gender-attentive TJ trials appearing in the same setting during the same period. Figure 2 reveals that TJ trials in domestic courts appear earlier and more often than trials in international courts. Critically, it also shows that the first gender-attentive trials occurred in domestic courts in the early 1980s, nearly one decade before the ICTY and ICTR were established.



**Figure 2.** *Emergence of Gender-Attentive Transitional Justice Trials, 1970-2020.* Left: Total number of domestic versus international transitional justice trials begun each year. Right: Number of gender-attentive domestic versus international trials begun each year.

<sup>31</sup> See for example, Sanne Weber, “Gender and Transitional Justice,” in *Transitional Justice: Theories, Mechanisms, and Debates*, ed. Hakeem O. Yusuf and Hugo van der Merwe (London: Routledge, 2021); Maria Martin de Almagro, and Philipp Schulz, “Gender and Transitional Justice,” in *Oxford Research Encyclopedia of International Studies*, 2022.

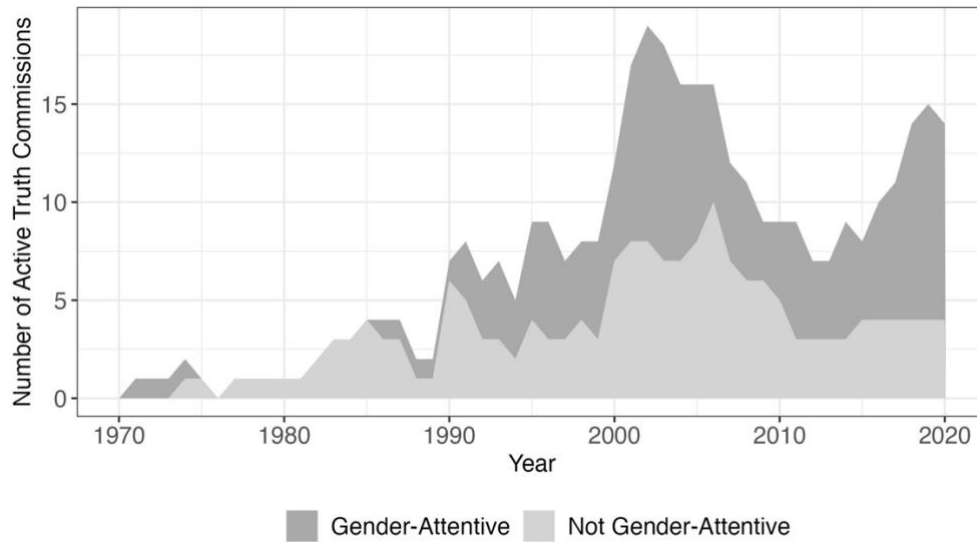
These patterns are important for disentangling competing explanations for the emergence of gender-attentive TJ. The first gender-attentive international trials occurred in 1994 and concerned crimes committed in Bosnia; however, nine gender-attentive trials occurred in domestic courts before 1994, seven in Latin America and two in India. This timing and geographic distribution correspond with the legal efforts of the global feminist movement. Latin America developed the first treaty addressing violence against women: the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.<sup>32</sup> The Inter-American Convention was drafted in the early 1990s and adopted in 1994 at the same time as the violence began in the Balkans and Rwanda and well before the first gender decisions of the ICTY and the ICTR. The substantial increase in gender-attentive trials in both domestic and international courts in the late 1990s is consistent, however, with the view that crimes in Rwanda and the former Yugoslavia expedited the global adoption of such trials. Nevertheless, the timing and location of the first trials is more consistent with an account emphasizing the role of the global feminist movement.

Similar patterns are reflected in the emergence of gender-attentive truth commissions. The first time a TC addressed gender issues was in 1974 in Pakistan; however, this TC was so controversial that it was not published and only leaked years later. Other early gender-attentive TCs were set up in Uganda (1986), El Salvador (1991), and South Africa (1991), all before the atrocities of Rwanda and the former Yugoslavia and all occurring outside Europe. Nevertheless, as shown in Figure 3, the proportion of gender-attentive TCs increases dramatically in the 1990s, and by the late 2010s, the majority of TCs are attentive to gender. This trend parallels the surge in TCs as a mechanism for transitional justice, suggesting that as the number of TCs grew so too did their incorporation of gender issues.<sup>33</sup>

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<sup>32</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol) was adopted in 2003 and the European Convention on Preventing and Combatting Violence against Women and Domestic Violence (the Istanbul Convention) was adopted in 2011. Other regions do not yet have regional treaties on the topic, but there is an ASEAN Declaration on Violence against Women adopted in 2004.

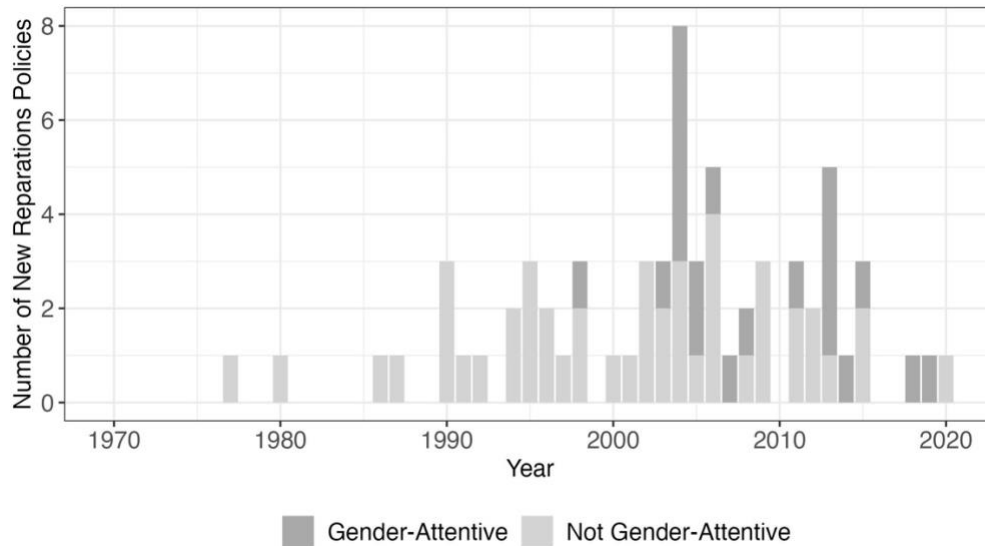
<sup>33</sup> Marcos Ancelovici and Jane Jenson, "Standardization for Transnational Diffusion: The Case of Truth Commissions and Conditional Cash Transfers," *International Political Sociology* 7(3): 294–312.



**Figure 3.** *Emergence of Gender-Attentive Truth Commissions, 1970-2020.* Dark grey area is total number of gender-attentive truth commissions active each year. Light gray area is total number of truth commissions without attention to gender active each year. Areas are stacked such that the uppermost line each year represents the total number of active truth commissions.

As shown in Figure 4, reparations policies became gender-attentive much later than either trials or truth commissions. Although the first transitional reparations policy was adopted by Portugal in 1977, the first gender-attentive reparations policy did not occur until 1998, when South Africa’s Truth and Reconciliation Commission created a policy to compensate victims of rape and sexual assault.<sup>34</sup> At first glance, this belated attention to gender appears consistent with both the critical perspective that gender is typically absent from TJ policies and the view that gender-attentive policies only emerged in the aftermath of atrocities in Rwanda and the former Yugoslavia. However, the way gender-attentive reparations have diffused suggests bottom-up processes more consistent with advocacy and policy learning.

<sup>34</sup> South Africa’s reparations policy outlined in the TRC was not passed into law until 2003. Filipa Raimundo and Antonio Costa Pinto, “From Ruptured Transition to Politics of Silence: the Case of Portugal,” in *Transitional Justice and Memory in Europe (1945-2013)*, ed. Nico Wouters, 173-198 (Cambridge, UK: Intersentia Publishing Ltd., 2014): 191; Christopher J. Colvin, “Overview of the Reparations Program in South Africa,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 176-214.



**Figure 4.** *Emergence of Gender-Attentive Reparations Policies, 1970-2020.* Dark grey bars are total number of gender-attentive reparations policies begun each year. Light gray bars are total number of gender-inattentive reparations policies begun each year. Bars are stacked such that the uppermost line each year represents the total number of new reparations policies per year.

The genesis of attention to gender in South Africa’s TRC policy illustrates these processes. A chapter in the TRC final report entitled “Special Hearing: Women” discussed how the TRC’s focus on gender came about. It credits a workshop held in March 1996 by the Centre for Applied Legal Studies (CALs) at the University of the Witwatersrand called “Gender and the Truth and Reconciliation Commission.” The workshop led to a detailed submission to the TRC by two of its participants, Dr Beth Goldblatt and Dr Sheila Meintjes, which argued for the TRC to take a gendered approach.<sup>35</sup> In their references for this submission, Goldblatt and Meintjes cite a Beijing Conference Report submission, the “1994 Country Report on the Status of South African Women.” This citation shows that the authors were influenced by the increasing global attention to gender in the first half of the 1990s, with the 1995 Beijing Platform for Action serving as an important focal point of global activism on women’s and gender issues. The influence the authors in turn had on the approach of the South African TRC and its reparations policy

<sup>35</sup> Beth Goldblatt and Sheila Meintjes, “Gender and the Truth and Reconciliation Commission,” May 1996, <https://www.justice.gov.za/trc/hrvtrans/submit/gender.htm>.

supports our argument that the push for attention to gender in transitional justice came from the bottom up, not just the top down.<sup>36</sup>

South Africa's TRC policy also marked a broader shift in global practices. Nineteen other states had created reparations policies before South Africa, and none paid attention to gender; however, 20 (42.6%) of 47 reparations policies adopted between 1999 and 2020 did pay attention to gender. South Africa's policy served as a model for other African states. Ghana, Morocco, and Sierra Leone all published TC final reports containing reparations policies in 2004, the year after South Africa passed its reparations policy into law. Like South Africa, these states adopted gender-attentive reparations policies. Kenya, Cote d'Ivoire, Tunisia, The Gambia, and Mali followed a similar model of a TC-based reparations policy over the next 18 years; all but Cote d'Ivoire's were gender-attentive. Several TC reports cite other TCs as comparative examples and inspiration, suggesting a process of regional diffusion.<sup>37</sup> This bottom-up process of regional diffusion is at odds with the perspective that gender-attentive policies are disseminated from other parts of the world.

## **5.2 Content**

The second component of our analysis explores how the focus of gender-attentive transitional justice policies has evolved over time. In particular, we assess how well two critiques of TJ policies align with the historical record. The first argues that TJ policies use a narrow understanding of gendered *harms*, privileging bodily harms and rape over other manifestations of gender-based harm. The second argues that TJ policies apply a narrow definition of gendered *victims*, typically focusing on the experiences of women and excluding those of men, boys, and LGBTQI+ individuals.

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<sup>36</sup> Fiona Ross argued that the decision of the South African TRC to frame their work in terms of individual human rights and body harm, "elided questions of agency and resistance" for many women active in the struggle against apartheid. This far-reaching critique of human rights as a frame and vocabulary for TJ is beyond the purview of this article, whose purpose is to explore increased attention to gender in TJ. Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003). P. 1, p. 162.

<sup>37</sup> For example, Kenya cites South Africa, Tunisia cites Morocco, Gambia cites South Africa and Morocco.

These claims are not entirely inconsistent with our argument that gender-attentive policies diffused from the global feminist movement. Early global efforts, such as CEDAW, focused entirely on women but on discrimination, not violence. The next wave of mobilization in the 1980s and early 1990s focused on *violence against women*, not on broader gender violence or gender harms. Attention to gender, broadly defined, was not initially present in feminist activism, nor in the policies it inspired.

As anticipated by these arguments, most gender-attentive TJ trials concern allegations of sexual and gender-based violence (SGBV) with female victims. Charges in 245 (96.8%) of the 253 gender-attentive trials involve SGBV; 198 (78.3%) involve rape; and only 47 (18.6%) involve non-rape SGBV crimes. This evidence suggests that when TJ trials are gender-attentive, they predominately focus on physical harm.

The trials data also provides strong support for the claim that gender-attentive trials disproportionately focus on harms suffered by women. Charges and/or context in 190 (75.1%) of the 253 gender-attentive trials involve adult female victims, 57 (22.5%) involve children, 12 (4.7%) involve adult male victims, and only 1 involves LGBTQI+ victims.<sup>38</sup> The data is thus consistent with the claim that there has been little attention or acknowledgment of the experiences of men or LGBTQI+ individuals with gender-based violence.

These findings are also consistent with our argument about the importance of feminist activism for the emergence of gender-attentive TJ. Since feminist activism in early decades was focused on drawing attention to and getting accountability for violence against women, we would expect that the trends in transitional justice should reflect these concerns. Even the term SGBV (as opposed to violence against women) was not in common usage until the 1990s and didn't grow dramatically until the 2000s.<sup>39</sup>

While most of the gender-attentive trials have a narrow construction of gender as sex and of crimes as bodily harm, two insights indicate a more complex picture. First, transitional justice involving

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<sup>38</sup> These categories are not mutually exclusive, because individual cases can have multiple victims.

<sup>39</sup> For example, a Google Ngram for SGBV shows dramatic growth in the use of the term SGBV in 2000s.

violence against male or LGBTQI+ victims have emerged more recently, suggesting changing practices over time. Second, over 22% of all gender-attentive trials involve crimes against children. Writing in 2009, Mazurana and Carlson claim that “the majority of national and international tribunals and truth commissions have an uneven and overall poor record of recognizing or addressing the range of grave violations suffered by children.”<sup>40</sup> Our data reflects an attention to the suffering of children not widely appreciated in the literature.

Data is also consistent with the criticism that truth commissions pay more attention to bodily harms and rape than other gender issues.<sup>41</sup> Of the 45 gender-attentive TCs, 42 investigated gender crimes perpetrated by state officials or armed opposition groups. Beginning with the adoption of El Salvador’s TC in 1991, 15 gender-attentive TCs have issued policy recommendations addressing either sexual violence, gender-based discrimination, or protection of the LGBTQI+ population. Two commissions (Haiti and Liberia) offer recommendations exclusively on sexual violence, while 12 others (Nigeria, Cote d’Ivoire, Ecuador, Kenya, Sierra Leone, Solomon Islands, Sri Lanka, Timor-Leste, Tunisia, and Zimbabwe) adopt a broader definition of gender-based harms that includes discrimination.

This evidence suggests that TCs pay more attention to non-physical gender injustices than either trials or reparations. We argue this is because TCs often serve several functions: to learn from victims and record their experiences, to investigate patterns of abuse, and to make recommendations to the government about how victims can be “made whole” and future harms prevented. The design of TCs allows them to involve victims – including female and LGBTQI+ victims – in many ways. The long-form report format of TCs gives them the space to examine many types of abuses, and, unlike trials and reparations, they are not constrained by having to mount a prosecution or compensate victims for specific harms.

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<sup>40</sup> Dyan Mazurana and Khristopher Carlson, “Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations against Girls and Boys during Situations of Armed Conflict and under Authoritarian and Dictatorial Regimes,” in *The Gender of Reparations*, ed. Ruth Rubio-Marin (Cambridge: Cambridge University Press, 2009).

<sup>41</sup> Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003).

Nevertheless, evidence suggests that TCs often use a narrow interpretation of gendered victims. Through 2020, only Colombia's 2017 TC issued policy recommendations concerning the protection of LGBTQI+ individuals. Attention to gender-based violations against men and boys in TCs is almost entirely absent. Two TCs documented instances of sexual violence committed against men by state security forces in their detention facilities. The 2013 Kenyan TRC found that local government officials were responsible for a gender-based crime against men, noting that "all Somali male adults were rounded and detained at Garissa Primary School where they were screened, tortured, and brutally beaten."<sup>42</sup> During the Wagalla Massacre, also recorded by the Kenyan TRC, male members of the Degodia tribe were detained, tortured, and killed. We have not found any recommendations advanced by these TCs to prevent such egregious practices from recurring.

Six TCs examined the phenomenon of violence against sexual minorities (Brazil, Colombia, Ecuador, Paraguay, Peru, and South Africa). Four of those (Brazil, Colombia, Ecuador, and Peru) had a dedicated gender-focused team to investigate gender related issues. Even having a gender-focused team did not necessarily lead to coverage of violence against the LGBTQI+ population. The Brazilian and Colombian TCs' final reports include chapters on violence against LGBTQI+ individuals and issue policy recommendations redressing these crimes. In contrast, the Ecuadorean and Peruvian TCs limited their examination to a few representative cases, with narratives that were disconnected from the overall analysis of gender. Verhelst concluded that "while there might be well-intentioned approaches and efforts to tell the stories of LGBTQI+ individuals, the reality is that for the most part, the final reports of truth commissions provide limited space for their experiences to be told to the public."<sup>43</sup> This claim is borne out in the data.

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<sup>42</sup> Kenya Truth and Reconciliation Commission Final Report, 2013, 18.  
[https://reparations.qub.ac.uk/assets/uploads/TJRC\\_report\\_Volume\\_4.pdf](https://reparations.qub.ac.uk/assets/uploads/TJRC_report_Volume_4.pdf).

<sup>43</sup> Juan José Verhelst, "Voices from the Margins: An Analysis of the Emerging LGBTIQ-subject of Truth Commissions," Lund University, 2018.  
<https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8945719&fileId=8945720>  
(accessed April 24, 2023).

Like the trials and truth commissions mechanisms, there is consistent evidence that gender-attentive reparations focus overwhelmingly on providing reparations for bodily harms suffered by women. 20 (93.2%) of 21 gender-attentive policies give reparations for sexual violence. All of these policies provide reparations for rape, while half of them also provide reparations for other types of sexual violence, such as sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization, suggesting more attention is paid to rape than to any other form of gender harm.

Few policies deal with gender-based crimes against other populations. Among the set of reparations policies implemented in transitional contexts, only three explicitly refer to men and boys as potential recipients of reparations for sexual and gender-based crimes: Sierra Leone (2004), Ghana (2004), and Kenya (2013). In addition, six policies gave reparations for forced child recruitment (Colombia's two policies, Guatemala, Peru, Sierra Leone, and Sri Lanka), a harm that disproportionately affects boys.<sup>44</sup> Only Spain's 2004 policy explicitly gives reparations for crimes against LGBTQI+ victims.

Some reparations policies pay attention to children as victims of sexual violence. Sierra Leone's 2004 policy recognizes children born out of an act of sexual violence (and whose mother is single) as victims eligible for reparations in their own right.<sup>45</sup> Rwanda's 2008 law provides reparations to children with incurable diseases or any disabilities inflicted during the genocide.<sup>46</sup> Most recently, Mali's 2022

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<sup>44</sup> Guatemala (2003), Sierra Leone (2004), Colombia (2005, 2011), Peru (2005), and Sri Lanka (2018). United Nations Office of the Special Representative of the Secretary General for Children and Armed Conflict, "The Gender Dimensions of Grave Violations Against Children In Armed Conflict," May 2022, [https://childrenandarmedconflict.un.org/wp-content/uploads/2022/05/UN\\_Gender-Dimensions-Grave-Violations-Against-Children-WEB-2.pdf](https://childrenandarmedconflict.un.org/wp-content/uploads/2022/05/UN_Gender-Dimensions-Grave-Violations-Against-Children-WEB-2.pdf); Zorzeta Bakaki and Roos Haer, "The Impact of Climate Variability on Children: The Recruitment of Boys and Girls by Rebel Groups," *Journal of Peace Research* (August 2022), <https://journals.sagepub.com/doi/full/10.1177/00223433221082120>.

<sup>45</sup> Sierra Leone, "Truth and Reconciliation Commission, Vol. 2, Chapter 4: Reparations," October 5, 2004, <https://reparations.qub.ac.uk/assets/uploads/Volume2Chapter4-2.pdf>.

<sup>46</sup> Rwanda, Law N° 69/2008, Article 26, <https://reparations.qub.ac.uk/assets/uploads/Official-Gazette-n%C2%B0-Special-of-15.04.2009-FARG.pdf>

reparations policy pays special attention to vulnerable victims, providing children born of conflict-related rapes and their mothers administrative, legal, and social support services.<sup>47</sup>

Morocco's 2004 reparations policy deserves special notice for its early attention to gender, and its innovative method of recognizing the gendered impact of violations on women. In recognition of the fact that "women bear both the direct and the indirect consequences of violations" and experience specific gender-based violations, the Commission increased the upper and lower limits for the amount of compensation for various crimes if the victim was a woman.<sup>48</sup> Like Morocco, Colombia's Ley 1448 of 2011 policy took a more comprehensive view of gender-based harms. It mandated "a special program to guarantee women's access to the procedures envisaged for [land] restitution, through preferential service windows, personnel trained in gender issues, measures to facilitate access by women's organizations or networks to reparation processes, as well as areas of care for children and adolescents and the disabled that make up their family group."<sup>49</sup> It also required that the unit responsible for land restitution process applications for women heads of household first.

Targeting educational opportunities and land restitution signals an awareness of how TJ mechanisms can address broader inequities created in the aftermath of repression and conflict. While critics of TJ policies are correct to note that these policies are not widespread, their existence reflects early understandings in the global feminist movement about the importance of eradicating discrimination and other more "transformational" manifestations of gender-based inequality.

## **6. Case Evidence: Colombia and Tunisia**

While this evidence illustrates variation in TJ practices over time, it obscures a more complex story about the inclusion of gender concerns in TJ mechanisms. We now turn to two case studies --

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<sup>47</sup> Mali, Decree N°2022-0730, Article 15, Accessed through Scribd April 6, 2023, <https://fr.scribd.com/document/629969376/mali-jo-2022-38>.

<sup>48</sup> Instance Équité et Réconciliation (IER), Vol. 3.

<sup>49</sup> Colombia, "Ley 1448 De 2011: Ley de Víctimas y Restitución de Tierras," Article 114.

Tunisia and Colombia -- to validate our central claims. These cases show that gender-attentive TJ policies often emerge from domestic cultural and political processes and can be influenced by TJ practices elsewhere within the region. Furthermore, the cases demonstrate that attention to physical harms like rape and sexual violence does not preclude attention to other types of gendered harms and can, instead, produce a positive spillover.

### ***6.1 Tunisia***

The Tunisian transitional justice experience following the 2010-2011 Jasmine Revolution illustrates how gender emerged in the content of TJ policies. Although Tunisia later reverted to authoritarian rule, its TJ policies were initiated during its transition to democracy. Most importantly, In December 2013, the Tunisian National Constituent Assembly created the Truth and Dignity Commission, or Instance Vérité et Dignité (IVD) as it is known in French.

We use this case study to explore causal mechanisms for two of our arguments. First, the case of Tunisia demonstrates that attention to gender in the transitional justice process grew out of domestic movements and regional diffusion rather than being imposed by donors in the Global North. Second, while Tunisia's Truth Commission and the accompanying reparations policy did adopt a limited understanding of gender that excluded men and boys and LGBTQI+ individuals, IVD's understanding of harms expanded beyond physical violations. At least in its understanding of harms, IVD is an example of positive spillover rather than crowding out: attention to physical violations did not preclude attention to other types of gendered harms, albeit only against women.

Attention to gender in Tunisia's TJ process was not imposed by foreign donors; instead, it grew out of longstanding attention to gender in domestic society and politics. The first women's organization, the Muslim Women's Union of Tunisia, was founded in 1936. Women's organizations proliferated in the

1940s.<sup>50</sup> Although many were not explicitly feminist in their aims, they were vehicles for women's participation in politics.<sup>51</sup>

On August 13, 1956, less than five months after Tunisia gained independence from France, the country's new president, Habib Bourguiba, implemented a progressive law that advanced women's equality in the social and economic spheres.<sup>52</sup> However, this top-down promotion of gender equality, known as state feminism, promoted secular Tunisian women and presented Islamist women as a threat to the modernizing project.<sup>53</sup> Women were thus participants and subjects of Tunisia's national political conversation well before the 2011 revolution. Attention to gender in Tunisia's TJ process followed naturally from attention to gender in national politics since before Tunisia's independence.

International influences were important for TJ in Tunisia, but they came from within Africa. Tunisia's IVD was informed by first the South African TRC, and later by Morocco's 2004 Truth and Dignity Commission, two of the first TCs in the world to adopt a gender approach.<sup>54</sup> Tunisian IVD commissioners and staff met with former Moroccan commissioners and were inspired to create a special committee for women within IVD.<sup>55</sup> Tunisia's TC thus followed in the footsteps of Morocco's, adopting a cross-cutting approach to gender, and devoting a chapter to abuses against women that investigated repression and violations during the Bourguiba and Ben Ali periods. IVD was mandated to pay special attention to women from the start, "in particular women and children's rights as well as the rights of those with special needs and vulnerable groups,"<sup>56</sup> mainly through a comprehensive individual and collective

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<sup>50</sup> Boutheina Ben Hassine, "Women in Tunisia," in *Oxford Research Encyclopedia of African History*, 2020.

<sup>51</sup> *Ibid.*

<sup>52</sup> George N. Sfeir, "The Tunisian Code of Personal Status (Majallat Al-Ahw Al Al-Shakhsiy Ah)," *Middle East Journal* 11, no. 3 (1957): 309–18. Amel Grami, "Women, Feminism and Politics in Post-Revolution Tunisia: Framings, Accountability and Agency on Shifting Grounds," *Feminist Dissent* 3 (2018): 23–56.

<sup>53</sup> Imen Yacoubi, "Sovereignty from Below: State Feminism and Politics of Women Against Women in Tunisia," *Arab Studies Journal* 24, no. 1 (Spring 2016): 259.

<sup>54</sup> Interview with President Moncef Marzouki, November 18, 2022.

<sup>55</sup> Interview with an anonymous researcher affiliated with IVD.

<sup>56</sup> Tunisia, Organic Law No. 2013-53 Establishing and Organizing Transitional Justice, 2013 (Unofficial English Translation by the International Center for Transitional Justice), <https://www.ohchr.org/sites/default/files/Documents/Countries/TN/TransitionalJusticeTunisia.pdf>

program for reparations, which was written but payments were not dispersed.<sup>57</sup> Tunisia's reparations policy did not recognize women to the same extent as Morocco's, but it did propose to compensate female spouses of deceased victims 5% more than male spouses of deceased victims. It also proposed to compensate mothers of deceased victims 5% more than fathers.<sup>58</sup> This evidence of regional diffusion and learning is at odds with an account of gender-attentive TJ originating primarily from Europe and North America.

IVD is an example of positive spillover: its attention to physical violations did not preclude attention to other types of gendered harms. In its chapter "Abuses Against Women," IVD notes that it "adopted a gender approach for equal access to civil, political, economic and social rights and for the promotion of equity between genders, particularly for women who have suffered violations with reference to Article 8 of the Organic Law on Transitional Justice." Article 8 mandates Specialized Chambers to adjudicate cases of gross violations of human rights, including killing, rape and sexual violence, torture, and enforced disappearance. In the outline of its comprehensive individual reparations program, IVD provided for monetary compensation to victims of rape and sexual violence.<sup>59</sup> Later in its chapter on reparations, IVD also recognized that women are subject to economic, educational, and healthcare inequality and discrimination, and that women working in rural areas face the most severe disadvantages. IVD made thirty-five recommendations for combatting discrimination against women, including providing literacy programs, launching awareness campaigns about girls' education, and establishing reproductive health centers.

## **6.2 Colombia**

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<sup>57</sup> Interview with Youssef Chahed, former Prime Minister of Tunisia, Cambridge, MA (add date and get permission from Chahed to cite him on this specific issue). Add also footnote to the source Helen read that also reports few payments.

<sup>58</sup> Tunisia Truth & Dignity Commission, *The Final Comprehensive Report: Executive Summary, Part 6: Reparation and Rehabilitation* (Translated into English by Avocats Sans Frontieres, May 2019), [http://www.ivd.tn/rapport/doc/TDC\\_executive\\_summary\\_report.pdf](http://www.ivd.tn/rapport/doc/TDC_executive_summary_report.pdf).

<sup>59</sup> Ibid.

The emergence of gender-attentive TJ in Colombia can be traced over 20 years.<sup>60</sup> Early judicial decisions by Colombian courts recognized the disproportionate impact of violence on women and called on the state to prevent and redress them.<sup>61</sup> These developments draw on a longer history of feminist activism and legal reform. Colombia's feminist movement dates to the 1930s when women first organized to get the vote, which was eventually granted in 1954. Colombia was an early ratifier of CEDAW in 1982. Colombia ratified The Inter-American Convention on Violence against Women in 1995, but it took until 2008 to pass a comprehensive law against violence against women.

Feminist groups demanded as early as 2011 to include gender issues in then-President Juan Manuel Santos' peace process, which eventually led to the 2016 peace agreement. In the context of the peace negotiations, a broader Gender sub-commission participated in the conversations in 2014-2015 during the peace negotiations between the government and the FARC guerrillas in Havana.

In 2011, before the peace negotiations advanced, Colombia adopted a gender attentive reparations program, which is still ongoing. The 2011 policy mandated "a special program to guarantee women's access to the procedures envisaged for [land] restitution, through preferential service windows, personnel trained in gender issues, measures to facilitate access by women's organizations or networks to reparation processes, as well as areas of care for children and adolescents and the disabled that make up their family group." It also mandated that the unit responsible for land restitution process applications from female heads of household first. Since

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<sup>60</sup> César Rodríguez-Garavito and Diana Rodríguez-Franco, *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South* (Cambridge: Cambridge University Press, 2015).

<sup>61</sup> Inguanzo, Isabel, and Angelica Rodriguez. 2023. 'Analysis of the Colombian Constitutional Court's Transformative Approach to Conflict-Related Sexual Violence'. *Social & Legal Studies*.

2011, domestic trials have also investigated paramilitary commanders for gender crimes. In 2014, these investigations were extended to the threats, persecution, torture, enforced disappearances, displacement, and killings that have targeted the LGBTQI+ population.<sup>62</sup> Colombia's TC was one of the most gender-attentive; it consulted with women and gender minority victims to understand their perspectives and needs prior to issuing its report. Furthermore, it was the only TC that addressed sexual violence, gender discrimination, and protection of the LGBTQI+ population in its recommendations.

In the 2010s, rulings in cases against paramilitary groups and reparation programs further advanced the investigation and redress of gender harms.<sup>63</sup> Recently, the TC and the Special Jurisdiction for Peace (JEP), the extrajudicial court system established in 2017 to try ex-combatants, have taken actions to address gender crimes and highlight the degree of violence that occurred against women and gender minorities during the armed conflict in the country.

The Colombian experience suggests positive spillover, not a crowding out effect, in the allocation of gender justice. In 2011, gender crimes largely focusing on the experiences of women were investigated in the trials against paramilitary commanders. In 2014, this investigation was extended to the LGBTQI+ population, including threats, persecution, torture, enforced disappearances, displacement, and killings based on their identity and sexual orientation.<sup>64</sup> Colombia's initial focus on sexual violence against girls and women did not crowd out attention to other groups and other forms of gender violence, but appeared to contribute to later attention to gender crimes against LGBTQI+ communities.

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<sup>62</sup> Garcés-Amaya, Diana Paola. 2023. 'Of silences and openings: recognition of the victimizations of LGBTQI social sectors in recent models of Transitional Justice in Colombia'. *Journal of Social Studies* (83): 23–40.

<sup>63</sup> Liliana Chaparro Moreno, Cecilia Barraza Morelle, Marcela Rodríguez Cuéllar, and Laura Carolina Velásquez Gil, "Sexual violence and transitional justice in Colombia. Analysis of sexual violence as part of the macrocriminality pattern of gender-based violence in Justice and Peace sentences (2010 - 2021)," *Criminal Law and Criminology* 43 no. 114 (2022): 115–77.

<sup>64</sup> Diana Paola Garcés-Amaya, "Of silences and openings: recognition of the victimizations of LGBTI social sectors in recent models of Transitional Justice in Colombia," *Journal of Social Studies* 83 (2023): 23–40.

Domestic politics and activism played a critical role in shaping the nature and adoption of these TJ policies. The establishment of the Colombian Truth Commission was a critical element of the TJ process designed to fulfill the Peace Agreement between the Colombian Government and the former guerrilla group, The Revolutionary Armed Forces of Colombia – People's Army (FARC-EP), reached in 2016. The Peace Agreement incorporated inclusive gender language, in part because of the extensive involvement of women and LGBTQI+ activists in the peace and TJ processes in Colombia.

The gender language, in turn, led to resistance and pushback from conservative anti-LGBTQI+ movements. In a national plebiscite on the Peace Agreement, it was narrowly defeated, in part by actors demanding greater accountability for atrocities, and in part by conservative and religious groups who opposed what they called the “gender ideology” in the agreement.<sup>65</sup> President Santos renegotiated some of the language of the agreement, including language on gender, and secured passage of the Peace Agreement from the national Congress.

This pushback did not deter the TC’s engagement with gender. Its Final Report included a chapter titled “My Body is the Truth,” providing a comprehensive analysis of violence against women and the LGBTQI+ population, one of the most extensive reviews of its kind to be conducted by a TC. The report’s power is not only in its recognition of sexual violence as a weapon of war employed by state and non-state actors, but also in its acknowledgment of the instrumental use of other human rights violations, such as forced displacement and torture, to gain political and territorial control. Sexual violence, the report highlights, is a systemic and widespread violation specifically targeting individuals based on their gender identity. The Commission further recognized that the patriarchal nature of violence in Colombia was one of the underlying causes of the armed conflict.

The cases of Tunisia and Colombia highlight the importance of domestic activism and regional diffusion processes in explaining the emergence and content of gender-attentive TJ policies. In the case of Tunisia, we see that the Moroccan precedent was very important. Colombia was also attentive to other TC

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<sup>65</sup> <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/cfi-report-ga77/others/2022-11-10/GRN-Submission.pdf>

experiences in Latin America, especially the most recent case in Peru. Finally, the Colombia case illustrates positive spillover: attention to violence against women did not crowd out attention to violence against LGBTQI+ individuals, rather, attention to the latter issue arguably grew out of attention to the former.

## 7. Conclusion

The literature on gender and transitional justice is very diverse. While initially it focused on the absence of women from TJ, as soon as women appeared as subjects of human rights accountability, some authors failed to attribute such a change to the agency of advocates, and instead concluded that it was the result of state policies or cooptation of the international system aimed at “securitizing” the “ideal victim status,” discourse for Western intervention.<sup>66</sup> These arguments, we believe, are the result of an excessive focus in the literature on a smaller set of conflict-related TJ policies where foreign intervention occurred and/or where donors were setting the agenda, such as in the Balkans and the DRC. But when we focus on the entire universe of TJ trials, truth commissions, and reparations, we find that gender-attentive TJ policies emerged earlier and especially in Africa and Latin America, than many approaches to the field would lead us to expect.

These policies initially emerged as a result of early feminist activism demanding attention to violence against women. Instead of recognizing the agency and success of women’s organizations and feminist writers in drawing attention to the problems of rape in wartime and in domestic TJ policies, we hear that the world has constructed the rape victim as the ideal victim and given her “status.”<sup>67</sup> The critical transitional justice literature stresses “hierarchies that favour certain victims and harms above others,” and suggests that this crowds out or silences other forms of attention to gender.<sup>68</sup> This “crowding

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<sup>66</sup> Vandermaas-Peeler, Subotic, and Barnett, “Constructing Victims.”

<sup>67</sup> Vandermaas-Peeler, Subotic, and Barnett, “Constructing Victims.”

<sup>68</sup> Hearty, ““Victims of” Human Rights Abuses in Transitional Justice.” Also see Weber, “Gender and Transitional Justice.”

out” hypothesis of a zero sum game, where attention to one issue undercuts attention to others, may be true for certain cases when international funding is at stake.<sup>69</sup> But it is less accurate in explaining changing TJ practices over time observed in historical data.

Our research suggests a different pattern. Early attention to violence against women, for example, in Latin American countries, led them to be more attentive to other types of victims and harms when later confronted with new demands for gender equality, especially calls from LGBTQI+ victims. This evidence is consistent with the argument that there is positive spillover from early gender attentiveness, rather than crowding out or making other harms and victims invisible. Furthermore, the case of Tunisia demonstrates that at least some attention to gender results from regional diffusion of new TJ focuses and practices.

Well-intentioned critics keep raising the bar of what constitutes adequate attention to gender. We applaud their efforts. But in doing so, they engage in what Fariss has called a “changing standard of accountability.”<sup>70</sup> Raising the bar of what we expect for gender justice should not also mask real improvements in the number of trials, TCs and reparations that provide gender-attentive human rights accountability that we have documented in this article. To address this, we need what Dancy and Fariss have called a “constitutive approach,” to human rights, a subset of constructivist theorizing.<sup>71</sup> The feminist activism and the critique we summarize here both reflected and contributed to new and important demands for human rights accountability. We believe these demands changed the global norm context that led to the appearance of gender-attentive policies in the 1990s that we document here, and to the expansion of human rights accountability to new harms and victims in the 21<sup>st</sup> century.

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<sup>69</sup> For a discussion of “crowding-out effects,” see Ryan Goodman and Derek Jinks, “Social Mechanisms to Promote International Human Rights: Complementary or Contradictory,” in *The Persistent Power of Human Rights*, ed. Thomas Risse et al. (Cambridge University Press, 2013): 105-116.

<sup>70</sup> Christopher J. Fariss, “Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability,” *American Political Science Review* 108(2):297-318.

<sup>71</sup> Christopher J. Fariss and Geoff Dancy, “Measuring the Impact of Human Rights: Conceptual and Methodological Debates,” *Annual Review of Law and Social Science* 13 (2017): 273-294.

## Appendix A: Methodology

We followed a consistent methodology to locate and classify transitional justice policies implemented from 1970 through 2020.<sup>72</sup> For each policy, we began with existing datasets to identify a set of known policies. We then assigned a team of researchers to use Factiva and Nexis Uni to search for policies implemented in other countries or after the existing dataset was compiled. When researchers found reporting on an unknown policy, we noted it as a “lead” and added it to the set of known policies. After compiling a list of known policies and leads covering all countries in the 1970-2020 period, researchers collected additional information on each policy – such as from government and non-governmental organization reports, news articles, or secondary academic sources – to corroborate that the policy existed and to classify it according to attributes defined in standardized coding manuals.

For transitional justice trials, for illustration, researchers began by reading over 5,000 annual US State Department country reports on human rights practices. When reading, we identified all human rights trials defined as the use of domestic, foreign, or international courts of law to bring criminal procedures against state agents or non-state armed groups for the violation of human rights or the laws of war. Critically, this definition is limited to charges brought against state officials or non-state armed groups and thus excludes crimes occurring in the private sphere, such as cases of domestic violence. Our dataset includes 5,321 human rights trials in all seven regions around the world from 1970 through 2020. We classify 2,256 of these trials as occurring in transitional contexts. To determine whether a trial is gender-attentive, researchers coded whether the charges in the case include either a crime that is sexual in nature, including rape and other types of sexual violence, or if the context of the crime indicated that it was committed against a victim because of their sex, sexual orientation, gender, or gender identity.<sup>73</sup> We identify 253 gender-attentive trials, or 11.2% of all TJ trials in the database.

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<sup>72</sup> Further details of our methodology and coding procedures are available at <https://transitionaljusticedata.org/en/faq.html>

<sup>73</sup> This definition draws upon but slightly modifies the definition of gender-based violence given by the ICC. See, International Criminal Court, “Policy Paper on Sexual and Gender-Based Crimes,” June 2014, 3.

For truth commissions (TCs), we began with the list of TCs compiled by Dancy, Kim, and Wiebelhaus-Brahm and then searched for leads to extend the dataset's coverage through 2020.<sup>74</sup> When identifying TCs, researchers search for TCs defined as a formal, state-sanctioned, temporary body that investigates a pattern of past human rights abuses and aims to include a final report of its findings. Altogether, our research team identified 113 TCs, 84 of which occur in transitional contexts. To classify if a TC was gender-attentive, researchers assessed whether the TC examined patterns of gender-based violations or gender injustices perpetrated by the state or armed opposition actors. Furthermore, we examined TCs' attention to gender in both their operations and outputs: we coded whether a TC consulted women or LGBTQI+ victim and advocacy groups during the design phase and whether the TC made recommendations for gender-attentive reforms, including those addressing sexual violence or gender discrimination, or providing measures for LGBTQI+ protection. We classified 45 of the 84 Truth Commissions as gender-attentive.

When locating reparations policies, we began with the reparations policies documented by the Reparations, Responsibility, and Victimhood in Transitional Societies database and then searched for leads to extend that database through 2020.<sup>75</sup> We defined reparations policies as all policies administered by a state to provide compensation, rehabilitation, or restitution for human rights violations committed by state actors or armed opposition actors.<sup>76</sup> We identify 78 human rights reparations policies created between 1970 and 2020, 66 of which occur in transitional contexts. We classified these policies as gender-attentive if they either (a) provided reparations for sexual- or gender-based harms or (b) used recipient eligibility criteria that considered victims' sexual- or gender-based identities. Of the 66 transitional reparations policies in the database, we identify 21 gender-attentive TJ reparations policies.

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<sup>74</sup> Geoff Dancy, Hunjoon Kim, and Eric Wiebelhaus-Brahm, "The Turn to Truth: Trends in Truth Commission Experimentation," *Journal of Human Rights* 9, no. 1, (2010): 45-64.

<sup>75</sup> Moffett, Luke. "Reparations Database." Reparations, Responsibility, and Victimhood in Transitional Societies. Queen's University Belfast. <https://reparations.qub.ac.uk/reparations-database/>

<sup>76</sup> We only coded administrative reparations policies for compensation, rehabilitation, and restitution, not reparations that are awarded as the result of a civil or criminal trial.

*List of Post-Conflict and Post-Authoritarian Transition Contexts*

<b>Post-Authoritarian and Conflict Transitional Contexts, 1970-2020</b>					
Afghanistan (1978 - 2020)	Cote d'Ivoire (2002 - 2020)	India (1970 - 2020)	Namibia (1990 - 2020)	South Korea (1987 - 2020)	
Albania (1990 - 2020)	Croatia (1992 - 2020)	Indonesia (1975 - 2020)	Nepal (1990 - 2020)	South Sudan (2011 - 2020)	
Algeria (1991 - 2020)	Cyprus (1974 - 2020)	Iran (1979 - 2020)	Nicaragua (1977 - 2020)	South Yemen (1986 - 1990)	
Angola (1975 - 2020)	Czechia (1990 - 2020)	Iraq (1970 - 2020)	Niger (1991 - 2020)	Spain (1976 - 2020)	
Antigua and Barbuda (2004 - 2020)	DRC (1977 - 2020)	Israel (1970 - 2020)	Nigeria (1970 - 2020)	Sri Lanka (1971 - 2020)	
Argentina (1973 - 2020)	Djibouti (1991 - 2020)	Jordan (2016 - 2020)	North Macedonia (1991 - 2020)	Sudan (1970 - 2020)	
Armenia (1991 - 2020)	Dominican Republic (1978 - 2020)	Kenya (1982 - 2020)	Oman (1970 - 2020)	Suriname (1987 - 2020)	
Azerbaijan (1991 - 2020)	East Germany (1990 - 1990)	Kosovo (2012 - 2020)	Pakistan (1971 - 2020)	Syria (1979 - 2020)	
Bangladesh (1972 - 2020)	Ecuador (1979 - 2020)	Laos (1970 - 2020)	Panama (1989 - 2020)	Taiwan (1992 - 2020)	
Belarus (1991 - 2020)	Egypt (1993 - 2020)	Latvia (1991 - 2020)	Papua New Guinea (1975 - 2020)	Tajikistan (1992 - 2020)	
Benin (1990 - 2020)	El Salvador (1972 - 2020)	Lebanon (1975 - 2020)	Paraguay (1989 - 2020)	Tanzania (2020)	
Bhutan (2008 - 2020)	Eritrea (1997 - 2020)	Lesotho (1993 - 2020)	Peru (1978 - 2020)	Thailand (1973 - 2020)	
Bolivia (1982 - 2020)	Estonia (1991 - 2020)	Liberia (1980 - 2020)	Philippines (1970 - 2020)	Timor-Leste (2002 - 2020)	
Bosnia and Herzegovina (1992 - 2020)	Ethiopia (1970 - 2020)	Libya (2011 - 2020)	Poland (1989 - 2020)	Togo (1986 - 2020)	
Brazil (1985 - 2020)	Fiji (1970 - 2020)	Lithuania (1991 - 2020)	Portugal (1974 - 2020)	Trinidad and Tobago (1990 - 2020)	
Bulgaria (1990 - 2020)	Gambia (1981 - 2020)	Madagascar (1971 - 2020)	Romania (1989 - 2020)	Tunisia (1980 - 2020)	
Burkina Faso (1978 - 2020)	Georgia (1991 - 2020)	Malawi (1994 - 2020)	Russia (1990 - 2020)	Turkey (1983 - 2020)	
Burundi (1991 - 2020)	Germany (1990 - 2020)	Malaysia (1972 - 2020)	Rwanda (1990 - 2020)	Uganda (1971 - 2020)	
Cabo Verde (1991 - 2020)	Ghana (1970 - 2020)	Maldives (2009 - 2020)	Sao Tome and Principe (1991 - 2020)	Ukraine (1991 - 2020)	
Cambodia (1970 - 2020)	Greece (1974 - 2020)	Mali (1990 - 2020)	Saudi Arabia (1979 - 2020)	United Kingdom (1971 - 2020)	
Cameroon (1984 - 2020)	Grenada (1984 - 2020)	Mauritania (1975 - 2020)	Senegal (1990 - 2020)	USA (2001 - 2020)	
Central African Republic (1993 - 2020)	Guatemala (1970 - 2020)	Mexico (1994 - 2020)	Serbia (1991 - 2020)	Uruguay (1972 - 2020)	
Chad (1970 - 2020)	Guinea (2000 - 2020)	Moldova (1991 - 2020)	Seychelles (2016 - 2020)	Uzbekistan (1999 - 2020)	
Chile (1973 - 2020)	Guinea-Bissau (1994 - 2020)	Mongolia (1990 - 2020)	Sierra Leone (1991 - 2020)	Vanuatu (1980 - 2020)	
China (2008 - 2020)	Guyana (1992 - 2020)	Montenegro (2006 - 2020)	Slovakia (1993 - 2020)	Venezuela (1982 - 2020)	
Colombia (1970 - 2020)	Haiti (1989 - 2020)	Morocco (1971 - 2020)	Solomon Islands (1978 - 2020)	Yemen (1970 - 2020)	
Comoros (1989 - 2020)	Honduras (1971 - 2020)	Mozambique (1977 - 2020)	Somalia (1982 - 2020)	Zambia (1991 - 2020)	
Congo (1991 - 2020)	Hungary (1989 - 2020)	Myanmar (1970 - 2020)	South Africa (1970 - 2020)	Zimbabwe (1973 - 2020)	