



Global Initiative for
JUSTICE, TRUTH +
RECONCILIATION

UNDERSTANDING AND ADDRESSING VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN TRANSITIONAL JUSTICE: An Assessment Tool

December 2019



International Coalition of
SITES of CONSCIENCE

About The International Coalition of Sites of Conscience

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ABOUT THIS ASSESSMENT TOOL

Founded by the International Coalition of Sites of Conscience, the Global Initiative for Justice, Truth and Reconciliation (GIJTR) is a Consortium of nine organizations around the globe dedicated to multi-disciplinary, integrated and holistic approaches to transitional justice. Grounded in a spirit of collaboration, each GIJTR project is managed by a specific Consortium member with support from other members.

This guide, *Understanding and Addressing Violations of Economic, Social and Cultural Rights in Transitional Justice: An Assessment Tool* was managed by the American Bar Association Rule of Law Initiative (ABA ROLI) with support from the International Coalition of Sites of Conscience (ICSC), Asia Justice and Rights (AJAR), and the Centre for the Study of Violence and Reconciliation (CSVr). Published in [December] 2019, the guide was produced as part of a year-long GIJTR project titled *Understanding and Addressing Violations of Economic, Social and Cultural Rights in Transitional Justice*, which aimed to promote the inclusion and integration of violations of economic, social and cultural rights in transitional justice processes.



ACKNOWLEDGEMENTS

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ABOUT THE GLOBAL INITIATIVE FOR JUSTICE, TRUTH AND RECONCILIATION CONSORTIUM

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

The GIJTR Consortium comprises the following nine partner organizations:

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

In addition to leveraging the different areas of expertise of the Consortium partners, the ICSC draws on the knowledge and longstanding community connections of its 230-plus members in 55 countries in order to strengthen and broaden the Consortium's work. The Consortium partners, along with the ICSC's network members, develop and implement a range of rapid response and high-impact programs, utilizing both restorative and retributive approaches to criminal justice and accountability for grave human rights violations. The Consortium takes an interdisciplinary approach to justice, truth, and accountability. On the whole, the Consortium partners possess expertise in the following areas:

- Truth-telling, memorialization and other forms of historical memory, and reconciliation;
- Documenting human rights violations for transitional justice purposes;
- Forensic analysis and other efforts related to missing or disappeared persons;
- Advocating for victims, including for their right to access to justice and their need for psychosocial support, and trauma mitigation activities;



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

- Providing technical assistance to and building the capacity of civil society activists and organizations to promote and engage with transitional justice processes;
- Reparative justice initiatives; and
- Ensuring and integrating gender justice into these and all other transitional justice processes.

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

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A youth project participant explains the oral history she collected to other students from a Sites of Conscience Member, Kdei Karuna in Cambodia.

PART 1: GETTING STARTED

Introduction

WHO IS THIS ASSESSMENT TOOL FOR?

This assessment tool is designed for civil society organizations (CSOs) and activists who are working to address the root causes and socio-economic of conflict in post-conflict transitional justice processes at the local and national levels. It provides users with the tools they need to conduct reliable and comprehensive research into the economic, social and cultural rights (ESCR) violations that contributed to and occurred during conflict and help them to work alongside and between local communities and national governments to make informed decisions about what transitional justice mechanisms might provide the most appropriate redress for those violations.

WHY IS THIS ASSESSMENT TOOL IMPORTANT?

Transitional justice processes are often designed to address human rights abuses that occur during conflict and their consequences. Thus, they often overlook root socio-economic inequities and systematic rights abuses that precede and contribute to conflict.¹ Historically, such mechanisms and processes have also focused their attention on civil and political rights (CPR) violations; to the extent that they consider ESCR abuses at all, these have been perceived as merely “contextual” in nature.²

This sidelining of ESCR abuses in the transitional justice arena may be attributed to traditional conceptions of international human rights law that frame ESCRs as “less justiciable” than CPRs, conceptions of transitional justice as being “inherently short-term, legalistic and corrective,”³ and the genealogy of transitional justice itself, which was originally conceived of as a set of strictly judicial and formalistic proceedings in which ESCRs had little place.⁴ These views give rise in turn to sentiments that because long-term and structural socio-economic and cultural inequities can only be remedied through distributive justice and broad development planning, transitional justice as a practice—by design and because of resource allocation issues—is ill-suited to remedying these wrongs.⁵

Such beliefs significantly limit the ability of transitional justice processes to adequately address the harms caused by conflict or accurately reflect the voices and needs of victims. Failing to consider ESCR abuses in the transitional justice context has negative consequences for women, for example, who are more likely to suffer socio-economic rights violations—including the right to health and decent work.⁶ Members of indigenous communities, too, may be adversely impacted if violations of cultural rights or natural resource rights occur.

Too single-minded a focus on CPR abuses can also have an adverse impact on community participation in transitional justice. Particularly when viewed as an “inherently short-term, legalistic and corrective” strategy that “should focus on accountability for gross violations of civil and political rights,”⁷ transitional justice runs the risk of becoming distant from the needs of victims and societies.⁸ Consultative processes seem to reveal that present socio-economic concerns and the inequities that caused them are of key importance to conflict survivors.⁹ Indeed, permitting communities to define what harm was done to them, and what caused that harm—independent of a technical analysis of whether those harms constitute CPRs or ESCRs—can help to understand how victims, in the broadest sense, actually perceive human rights.

Overlooking ESCR abuses—regardless of whether they constitute root causes of conflict or occur during it—can undermine the overall goals of a transitional justice project. ESCR violations often form central components of abusive state policies; where such violations go unacknowledged in a transitional justice process, they go unpunished, which reduces overall accountability for such crimes.¹⁰ Additionally, ignoring ESCR violations makes it harder for transitional justice to meaningfully reflect the full scope of victims' lived experiences.¹¹ Where such violations constitute root causes of a conflict, viewing them as merely 'contextual' does not provide recognition, redress, or reparations to victims.¹² Finally, "social fragmentation and isolation are common after mass violence . . . [b]ecause poverty and victimhood share the same effects, development and [transitional justice] should go hand in hand."¹³ Transitional justice processes that help to investigate and acknowledge deeper structural abuses that pre-exist, cause, and/or contribute to conflict can thus help to shed light on and address "the deeper and continuing cycles of violence and exclusion that characterize post-conflict societies."¹⁴

For these reasons, transitional justice agendas have not systematically or uniformly integrated mechanisms to evaluate, understand, or address the ESCR abuses that underpin histories of social exclusion and contribute to the outbreak of violence. Transitional justice processes that do integrate such analyses can aid communities who want such processes to ensure non-repetition and sustainable peace.

Nonetheless, care must be taken not to over-extend the mandate of transitional justice processes and mechanisms by addressing ESCR violations simply for the sake of doing so. Such violations can be challenging to track, document, and redress, which could have practical implications for the practicability of the process. Furthermore, over-ambitious transitional justice processes run the risk of raising expectations too high, and resulting in perceptions of failure because not all parts of their mandates were adequately fulfilled. Finally, because the entirety of a post-conflict society is necessarily victimized by post-conflict situations, special care must be taken to protect the status of particularized victims when discussing ESCR violations.

WHAT IS THIS ASSESSMENT TOOL INTENDED TO ACHIEVE?

This Assessment Tool is designed to lay out a way for CSOs to work systematically with local communities to identify long-term ESCR causes of armed conflict as well as ESCR violations that occurred during armed conflict. It helps to identify state- and non-state institutions involved in addressing the rights identified, and makes suggestions as to what mechanisms could be used to address these rights in local- and national-level transitional justice processes (see "Defining Transitional Justice", below). The ultimate goal of the assessment tool is to facilitate recognition of the fact that violations of ESCR do constitute gross human rights violations, facilitate redress for victims of such violations, and ensure future robust protections for those rights.

This Tool is not intended to create a cookie-cutter approach to identifying rights or violations of rights; its lists of questions to ask, and ideas for how violations might be addressed, are suggestive and not intended to be prescriptive. The working definitions used in this Tool are intended to be broad, to ensure that its contents and methodology can be meaningfully adapted to local contexts, needs, and resources. This Assessment Tool is designed to address ESCR violations and transitional justice mechanisms and measures that address the consequences of conflict and authoritarian rule. However, the questions posed in each section will require significant adaptation to local contexts to ensure that they are most responsive to the realities on the ground.

For reasons of scope, this Assessment Tool touches only briefly on the question of ESCR violations enabled or committed by private entities. Unfortunately, such violations are routine and

massive in scale, and more mechanisms should exist to challenge violations committed by such actors and provide reparations for them. However, an entirely separate Assessment Tool would be required to define and map the scope of the problem in a meaningful way.

DEFINING TRANSITIONAL JUSTICE

For the purposes of this Assessment Tool, transitional justice is described as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”¹⁵ While transitional justice strategies traditionally focus on national mechanisms, including criminal prosecutions of rights violators, reparations and truth commissions, this Assessment Tool takes a broader view derived from the notion of “transformative” justice.¹⁶ Specifically, it is designed with an understanding that transitional justice can provide a useful platform for transformative change when it “emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level.”¹⁷ Thus, its successful implementation relies on the use of processes like community truth-seeking projects, local-level documentation of human rights violations, litigation strategies beyond criminal prosecution that seek accountability and justice for ESCR violations, the establishment of survivor support groups, and other self-help remedies—including direct action—that victims and communities may take in direct response to ESCR violations.

This Assessment Tool provides suggestions for transitional justice processes that might be implemented at both national and local levels. National-level transitional justice processes are understood to be state-mandated and state-driven processes, that may be overseen by either the state or international organizations (such as United Nations-supervised tribunals in Rwanda and the Former Yugoslavia). State-run transitional justice mechanisms such as reparations programs may take the form of state policy or the involvement of government departments. It also provides suggestions for local-level transitional justice engagement. While local processes may also utilize state resources, this Assessment Tool conceives local-level processes as those led by grassroots civil society and social movement initiatives; those that incorporate traditional justice processes independent of highly formalized state judicial institutions; and those which are driven by communities and individual victims to represent a flexible and relevant response to the impact of histories of violence, and which can be tailored to address local needs and demands.

DEFINING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

This Assessment Tool draws primarily on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its General Comments to describe the core components of each right addressed. Other international and regional legal standards aimed at advancing ESCR inform the analysis of these rights where relevant, including conventions adopted under the auspices of the International Labor Organization (ILO), the United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Rights of the Child (CRC) and its Optional Protocols (CRC-OPs), and the UN Convention on the Rights of Persons with Disabilities (CRPD).

While this Assessment Tool discusses rights violations in the context of obligations to respect, protect, and fulfil the rights enumerated in the ICESCR and other international and regional instruments, its analysis can—and should, where relevant—be equally applied to ESCR violations committed by non-state parties to conflict.

DEFINING “VICTIMS”

International law defines “victims” as persons whom, “as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms [. . .] individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of the persons’ fundamental legal rights. A “victim” may also be a dependent or a member of the immediate family or household of the direct victims as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.”¹⁸ However, peace agreements and transitional justice agreements are often “conceptually unclear” in their definitions of victimhood, and may not always define victimhood in an expansive way, focusing instead on those who suffered physical and material injury.¹⁹ As such, definitions of “victim” within official transitional justice mechanisms may run the risk of being overly political, insufficiently inclusive of those who suffer less visible forms of victimhood, or of inadvertently reproducing the same harmful norms that formed root causes of conflict in the first place.²⁰ Additionally, these definitions often “project[] victims as an apolitical homogenous group,” and do not necessarily take into account victims’ own experiences of victimization.²¹

This Assessment Tool advocates for the usage of a more inclusive definition of “victim” when identifying individuals and groups that have suffered harm during conflict or periods of authoritarian rule. Such a definition should include those who have suffered structural oppression, and not just physical abuse; identify how gender and gender identity have contributed to victimhood in the specific context, rather than simply assuming that women are generically hapless and vulnerable and thus require assistance for that reason alone; and reflect an awareness and account for the politics of how victimhood is defined in the specific context. To the extent that this Assessment Tool is used in contexts where victims of conflict have already been identified by an existing transitional justice process, practitioners are strongly encouraged to try and ensure that interventions take into account the political climate in which the process is occurring and the cultural norms surrounding participation and inclusion, and try to avoid reproducing the same structural inequalities that caused the conflict in the first place.

METHODOLOGY

The analytical framework of this Assessment Tool is based on extensive research and learning drawn from case studies which addressed: (1) how ESCR violations contributed to and manifested during armed conflict; and (2) whether and how transitional justice processes in those systems addressed those violations.

Based on these case studies and the international legal framework governing ESCRs, GITJR has identified the following rights that are frequently implicated in conflict situations:

- Section I: The Right to Food
- Section II: The Right to Water and Sanitation
- Section III: The Right to Land and Natural Resources
- Section IV: The Right to Housing
- Section V: The Right to Labor and Employment
- Section VI: The Right to Health
- Section VII: The Right to Education
- Section VIII: The Right to Take Part in Cultural Life

Each Section begins with a brief description of the components of the right as defined in international and regional human rights instruments; where relevant, discussions of the right in international humanitarian law have also been included. Each Section also contains legal, contextual and institutional areas of inquiry into the relationship between conflict and ESCR violations in a given region or country:

- Legal questions to consider help researchers identify whether there were or continue to be any pertinent national laws, policies, and/or jurisprudence that caused or contributed to ESCR violations that in turn formed a root cause of violence, or pose risks to the security of lasting peace. In short, legal areas of inquiry help researchers to identify if the national legal system contributed to conflict, and if it is sufficiently robust to prevent further outbreaks of violence.

These questions are designed to be answered using desk research or, where appropriate, key informant interviews with individuals who have knowledge of relevant legal and/or historical background information and can speak to how legal structures contributed to ESCR violations. Legal areas of inquiry can help to identify risks to proliferation of ESCR rights that are present within the law, and to identify whether advocating for legal change could be an avenue to pursue as part of the transitional justice process.

- Contextual questions to consider help researchers to identify relevant norms and/or practices that constituted or contributed to massive ESCR violations, and whether those violations contributed to or occurred during conflict.

These questions are designed to be answered using key informant interviews, focus groups, or surveys administered to relevant stakeholders. Stakeholders could range from local communities and individuals that suffered ESCR-related harms, or high-level officials involved in the transitional justice process. These contextual areas of inquiry are merely suggested questions to consider asking to gain a better understanding of what has actually been happening on the ground. These questions could also conceivably be answered through desk research of secondary sources, for instance, human rights reports.

- Institutions Involved in Addressing the Right help researchers to identify state- and non-state bodies or actors that have or may play significant roles with respect to the right in question. This institution mapping is intended to help determine bodies that may have been instrumental in rights deprivations as well as those that could be instrumental for long-term reform. Institutional areas of inquiry could be answered using desk research or key informant interviews.

Where relevant, the Sections contain case studies that articulate examples of how the relevant right has been violated (such examples may not always derive from conflict and post-conflict scenarios), or how it has been addressed by transitional justice. The case studies are intended to highlight for users of this Assessment Tool examples of what an ESCR violation might look like, how it might contribute to conflict, and/or steps that have been taken to address the violation in the transitional justice context—even if such steps have had limited success.

Finally, each Section contains suggestions for what local or national transitional justice mechanisms or processes may be useful in helping to address or provide a degree of redress for the rights violations that occurred. This portion of this Assessment Tool is designed to be read together with GITJR's "Strengthening Participation in Local-Level and National Transitional Justice Processes: A Guide for Practitioners" to facilitate comprehensive and inclusive transitional justice programming.

Because laws, institutions, rights violations, and forms of violence will vary so much from country to country, these areas of inquiry and suggestions are not intended to be comprehensive or

prescriptive. The areas of inquiry should be modified to better reflect situations that arise in each national or local context. To this end, this Assessment Tool also provides suggestions for how to develop a Country Background that adequately informs the analytical framework.

At the end of the Assessment, practitioners should be able to understand and explain the broader political, social, and economic context that contributed to conflict, identify the root ESCR causes of conflict, and what ESCR violations occurred during conflict or authoritarian rule. Practitioners should further be able to identify what actors, whether governmental or non-governmental, have had a role to play in denying ESCR, or could play in assuring the delivery of rights and services in the post-conflict era. Finally, practitioners will be able to identify local or national transitional justice mechanisms or processes that could be integrated to ensure that ESCR are properly protected and assured in the future.

How to Use this Assessment Tool

INTRODUCTORY NOTES

This Section identifies the steps that should be taken to conduct assessments of ESCR violations in a transitional justice context using this Assessment Tool. Ideally, prior to an assessment being implemented in the field, implementers will go through each stage of this assessment process; these introductory steps will provide the context and definition necessary to identify participant communities, influential actors, and tailor the assessment questions to the specific working context. Importantly, this Assessment Tool is not intended to be conducted wholesale in every conflict situation; indeed, it would be highly inappropriate, without an understanding of specific history and context, to assume that all ten rights identified in this Assessment Tool were violated and that those violations had equal impacts on the outbreak of conflict.

Additionally, it is not intended that these assessment questions be taken wholesale into the field; the areas of inquiry identified in Part II are suggestive introduction points. Background research may reveal additional specific issues that need to be addressed, and informant interviews, focus groups, or surveys may introduce new questions that have not been identified in this guide. It is very important to take a flexible approach to the questions posed by this Assessment Tool. From a practical perspective, it is suggested that implementers only bring into the field a smaller working document that includes the relevant pieces from this section ("How to Use This Assessment Tool"), and a short field interview guide that includes the relevant Assessment Questions from Part II.

If it is not possible to go through each and every one of the Steps suggested below before implementing an assessment in the field, please note that any pre-assessment work should at minimum include:

- Some degree of knowledge or understanding of the context of the conflict;
- Identification of which assessment sections should be utilized;
- Identification of research participants;
- Identification of researchers;
- Identifications of strategies to mitigate risk and/or harm to research participants; and
- Tailoring of assessment questions.

STEP 1: DEVELOP A COUNTRY BACKGROUND

Before embarking on an assessment of how root causes of conflict might be best integrated into a local or national transitional justice process, it is important to understand the context in which an intervention will occur. The purpose of a country background is to collect information about the social, political, economic, and legal context of your country or region. This background information will help you to understand the landscape in which your assessment will occur, direct the focus of your assessment, and help to plan and design your project. A country background should address the following questions:

| | |
|-------------------------|--|
| Geopolitical Context | <p>Introduces the geography of the country, which may include—if relevant—a broad description of available natural resources. May also include a broad discussion of regional geography and its impact on the country and its history.</p> <p>Also introduces the demographics of the country and trends over time, with specific reference to relevant religious and/or ethnic breakdowns, age, sex, geography, and migration patterns.</p> |
| Socio-political context | <p>Discusses the broad cultural and social structures that have existed over time, as well as the norms that shape power relations between groups. Provides an overview of conflict, including historical legacies of violence, political upheaval, periods and/or events that shape current attitudes and ongoing grievances.</p> <p>This section should describe any other events that are relevant to the transitional justice setting, including peace processes.</p> |
| Economic context | <p>Provides an overview of economic performance and growth, national economic and poverty statistics, and information regarding distribution of poverty by region and disaggregated (where possible) by demographic group. This section may also address the economic causes of conflict, and any major issues associated with resource availability and allocation.</p> |
| Legal Landscape | <p>Introduces the governance systems and legal structures of the country, including the relevant international and regional legal instruments to which the country is signatory; where relevant, it should address the structure of non-state and customary institutions.</p> <p>This section should also describe any transitional justice mechanisms that are already in place, as well as any significant post-conflict reforms.</p> |
| Vulnerable Populations | <p>This section should identify any groups that have specific vulnerabilities in the ESCR context, including women, indigenous groups, persons with disabilities, etc. Where relevant, this section should address questions (if any) about how to define the ‘victims’ of ESCR violations and violent conflict.</p> |

The information above could be found through **desk research, local participatory research, literature reviews**, or any combination of those.

STEP 2: IDENTIFY PARTICIPANT COMMUNITIES

While “participation” does not have a single meaning, in the transitional justice context, it describes the idea that communities affected by and victims of gross human rights violations should be involved at each stage of a transitional justice process to ensure that the process of examining violent pasts encourages the engagement of affected populations, and to create greater opportunity for those who have been most affected by rights violations to help define the goals of the process.²²

Specifically, this Assessment Tool envisions that communities will participate in the transitional justice process from the research and design phase through implementation and evaluation. It draws heavily on the tested and well-respected approach of various assessment methodologies created and implemented by ABA ROLI and its GITJR partners, such as ABA ROLI’s “Access to Justice Assessment Tool”, “Community Participation in Transitional Justice: A Role for Participatory Research,” and GITJR’s “Strengthening Participation in Local-Level and National Transitional Justice Processes: A Guide for Practitioners”.

An integral part of program research thus involves not only identifying partner communities, but working with partner communities to determine how best they can support assessment efforts. This is described as the **identification stage** of the community participation process. Some of the following questions could be useful starting points to identify the target community:

- Step 1 questions in the table below could be answered using **desk research**, though if you already have links with the community, you may be able to answer these using your own experiences;
- Step 2 and 3 questions in the table below may require conducting **key informant interviews** with community members.

SAMPLE QUESTIONS FOR CONDUCTING SECTOR-LEVEL POLITICAL ECONOMY ANALYSIS

| Stage | Step | Suggested Areas of Inquiry for Community Participation |
|----------------|---------------------------------------|--|
| Identification | 1. Identify Target Community | <ol style="list-style-type: none"> 1. How is the target 'community' defined? Who participates in defining the 'community'? Does using that definition of 'community' itself cause harm? 2. Does your organization have the capacity to work within the community? 3. Is the community ready to engage in dialogue about past human rights violations and how to address them? E.g., has the community expressed a need or desire to create or participate in a transitional justice process? 4. Is the target community likely to be motivated and able to research, implement or advocate for their chosen transitional justice interventions? 5. Is the target community committed to creating equal opportunities for participation? |
| | 2. Identify Community Implementers | <ol style="list-style-type: none"> 1. What is the relationship between local community implementers and the community's existing decision-making structures? 2. Does the selection process for implementers provide all community members, including marginalized groups, with an equal say in their selection? 3. Do the selected implementers represent a fair cross-section of their community? |
| | 3. Identifying Capacity and Resources | <ol style="list-style-type: none"> 1. What resources and capacities already exist within the community? (E.g., pre-existent customary dispute resolution practices) 2. What knowledge do community implementers already possess about transitional justice? 3. Are there pre-existing transitional justice processes within the community that the project can build on? 4. Will any external assistance be required to develop local capacity? |

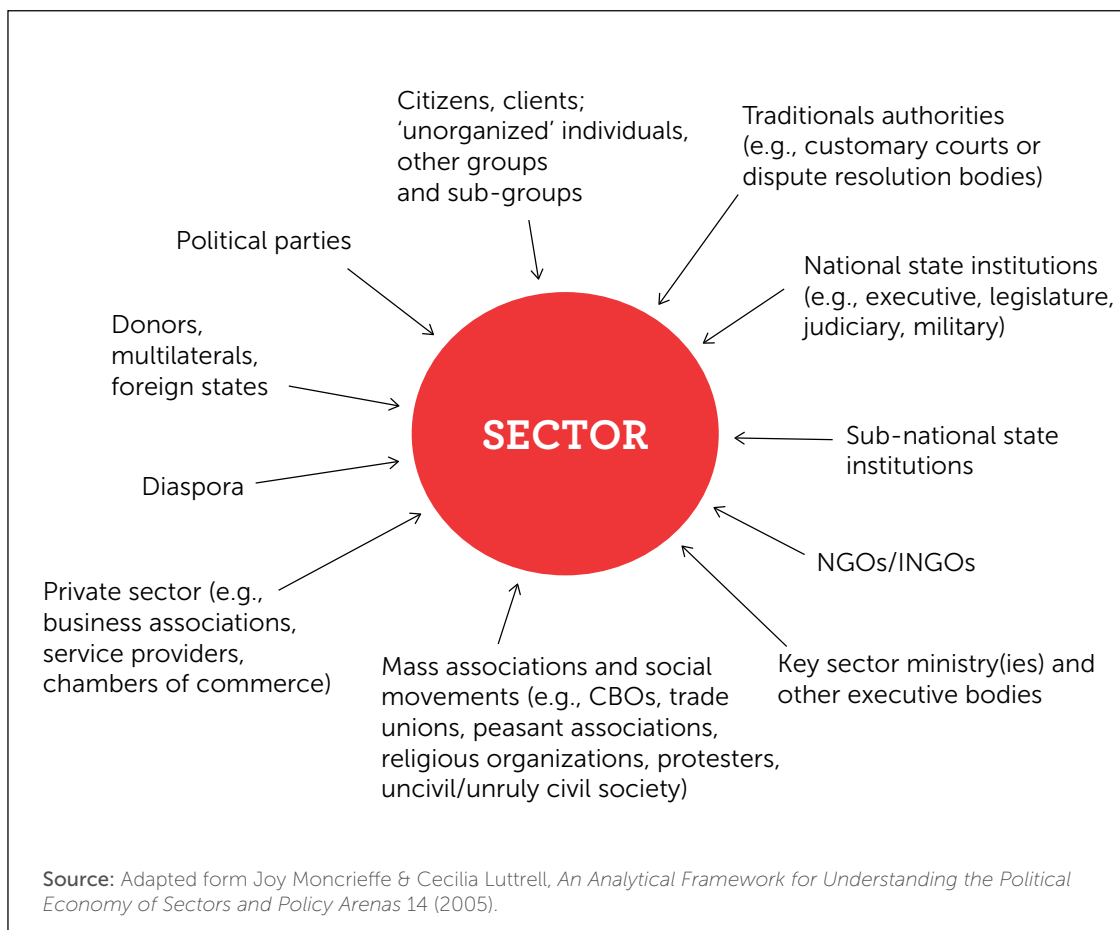
STEP 3: IDENTIFY INFLUENTIAL ACTORS

Once assessors and communities (if relevant) have collected data and identified local needs, it is important to map other actors in both the country/locality's transitional justice sector as well as any specific sectors implicated by previous research. E.g., a project addressing violations of property rights prior to and during armed conflict should consider actors working both in the transitional justice and in the land rights spheres.

This Assessment Tool provides non-comprehensive lists of key institutions that may be involved in guaranteeing or realizing each right, under Section D ("Institutions Involved in Addressing . . ."). This list is intended to provide a starting point for researchers:

- To identify if there are any implementational gaps in either the transitional justice framework, or the national framework governing the right;
- To identify possible sites of intervention, possible project partners, and/or possible obstacles to implementation; and
- To identify likely sources of information for further data collection.

BASIC MAP OF LIKELY PLAYERS IN A SECTOR²³



However, it is not enough to merely identify relevant institutions: implementers should also try to understand their mandates, their power to effect change, and what motivates actors within those institutions to act in certain ways. Addressing these kinds of questions during the institution mapping stage can help to design projects that account for how things get done in each context and gain a better understanding of the actual mechanisms that can be used to bring about change.

SAMPLE QUESTIONS FOR CONDUCTING SECTOR-LEVEL POLITICAL ECONOMY ANALYSIS²⁴

Roles and Responsibilities

- Who are the key stakeholders in this sector?
- What are their formal and informal mandates?
- What are the formal and informal roles that they play?
- What is the balance between central and local authorities in terms of service provision?
- Who are the key players within the relevant agencies?

Structure and Financing

- What influence do private actors have on public services in the sector, if any?
- How is the sector financed? (e.g., public/private partnerships; user fees; taxes; donor support?)

Power Relations

- To what extent is power within the institutional framework vested in the hands of specific groups or even specific individuals?
- How do different interest groups outside government (e.g., private sector, NGOs, the media) seek to influence policy?
- How are decisions made within the sector, or within the agencies?
- Who is involved in decision-making processes?
- What is the scope of a particular institution or individual's decision-making authority?

Ideologies and Values

- What are the dominant ideologies and values which shape views around and within the sector?
- To what extent do these views and values constrain change?

Adapted From: Department For International Development, Political Economy Analysis How-To Note: A DFID Practice Paper 12 (July 2009).

STEP 4: DETERMINE THE SCOPE AND FOCUS OF THE ASSESSMENT

This Assessment Tool addresses many ESCRs; however, not every ESCR addressed here may be implicated as a core part of the conflict addressed by a project. In some cases, donors may have made decisions regarding the scope of a project; e.g., this assessment might be implemented in relation to a specific issue. Even if it would be appropriate in the context of a transitional justice intervention to address multiple rights violations, there may not be enough time and resources available to address every matter.

In any case, an assessment should have a defined focus and scope. An assessment and intervention focused on a small number of well-defined issues is narrow in scope; e.g., an assessment focusing on “reinstating personal cultural property to indigenous victims of internal displacement in Colombia” is **narrow** in scope. On the other hand, a project focusing on a wide range of issues has a **broad** scope: e.g., “mapping and integrating health rights violations in Nigeria”.

Working with the local community to determine the focus and scope of an assessment and intervention may provide the most accurate picture of what is appropriate in the local context. This is described as the **needs assessment** stage of using a participatory research process. Some of the following questions could be useful to ask when working with communities to identify local need:

| Stage | Step | Suggested Areas of Inquiry for Community Participation |
|-------------------|-----------------|--|
| Project Execution | Data Collection | <ol style="list-style-type: none"> 1. What is the community’s “culture of participation”—i.e., are there particular circumstances under which community members feel more comfortable discussing challenging topics? 2. What data collection methods will do the least harm within the community? Are there any that are culturally inappropriate? 3. What methods should be used to obtain input from marginalized groups that is specific to their needs and concerns? 4. How should community members be invited to participate? 5. To what extent will data collection methods be confidential and anonymous? 6. What systems will be used to securely store data? |
| | Analysis | <ol style="list-style-type: none"> 1. Does the collected data reflect any themes or categories? 2. Does the data reflect any emerging conclusions or topics that may require further investigation? 3. How will the data and initial findings be reflected back to the broader community? |

| Task | Description | Do | Don't |
|--------------------------|---|---|--|
| Think Strategically | Map interview questions with interview sources | <p>Do ask the right questions of the right people. A government official is unlikely to speak as candidly about ongoing rights abuses as a member of a civil society organization.</p> <p>Do ask for referrals if an interview poses additional questions that you would like to ask and you think the interviewee can provide additional contacts.</p> | <p>Don't ask questions of a participant that the participant may not be in a good position to answer. E.g., a lawyer may not be able to discuss the intricacies of violations of the right to health. E.g., if it poses risks to a research participant to discuss ongoing violations and confidentiality mechanisms cannot sufficiently protect them, consider finding somebody else to seek that information.</p> |
| Maintain Confidentiality | Make sure that research participants feel comfortable sharing sensitive information | <p>Do ask before using a recording device.</p> <p>Do ensure that notes and/or recordings cannot be accessed by anybody other than the research team.</p> <p>Do ensure that data is disseminated in a way that does not link specific individuals to specific responses.</p> | <p>Don't use personally identifying information in your notes.</p> <p>Don't disseminate information obtained from one participant to other participants, even without sharing personal identifying information.</p> |
| Do No Harm | Guard against unwittingly aggravating existing or potential conflicts. | <p>Do be aware of the fact that your intervention already affects the context of the situation.</p> <p>Do make choices in participant selection, interview locations, interviewer selection, and focus group composition that are mindful of existing divisions within a society.</p> | <p>Don't overlook factors in a country context that could be exacerbated by the questions you ask and how you ask them.</p> <p>Don't set up focus groups that may risk exacerbating problematic local norms, e.g., having mixed-gender focus groups when the local context encourages women to remain silent when men are speaking.</p> |
| Avoid Revictimization | Be aware when revisiting traumatic topics in participants' past and present. | <p>Do conduct interviews at the pace of the participants.</p> <p>Do maintain awareness of the power dynamic between the interviewer and the research participant; e.g., victims of sexual violence may be reticent to speak with interviewers that might match the profiles of their assailants.</p> | <p>Don't push participants to answer questions if it is difficult to do so.</p> |

| Task | Description | Do | Don't |
|--------------------|--|---|--|
| Be Honest | Be honest with colleagues, donors, research participants, and the public. | Do honestly report on data, results, methods, and procedures. | Don't fabricate, falsify, or misrepresent your data. |
| Act with Integrity | Understand that the relationship between the researcher and the research participant is one of power and trust | Do maintain neutrality when conducting interviews and focus groups, in the sense that you should avoid voicing political opinions (for example). Do act with sincerity, and honor agreements with participants. Do be aware of your own feelings about difficult subject matter, and find safe ways of processing possible interviewer trauma. | Don't take sides. Don't allow your personal feelings about a matter to influence your attitude towards participants or the broader project. |

STEP 5: CONDUCT THE ASSESSMENT

This Assessment Tool envisions the use of desk research, interviews, and focus groups to conduct an assessment.

- **Desk research** not only supplements the country background, but helps to map the national legal and policy frameworks surrounding a right. It may also help to pinpoint more national and local-level institutions involved in addressing rights violations. At minimum, desk research should try to address the questions listed under "B: National Legal Framework: Areas of Inquiry". Additional research through interviews and focus groups can help to provide more clarity about the implementation of these laws and policies.
- **Interviews** and **focus groups** should be used to answer the questions listed under "C: The Right . . . in National Context: Areas of Inquiry," though **key informant interviews** could be used to help understand legal and policy frameworks. In any case, interviews and focus groups should be used to collect information about local practices and customs surrounding the right that:
 - **Contributed** to the conflict;
 - **Manifested** during the conflict; and
 - **Inhibit** or **promote** realization of the right today.

They should also be used to solicit **opinions, perceptions, and attitudes** from participants that might impact future interventions.

BEST PRACTICES IN CONDUCTING INTERVIEWS AND FOCUS GROUPS

| Task | Description | Do | Don't |
|---------------------------------|---|---|--|
| Approaching Information Sources | Organizing key informant interviews and/or focus groups | <p>Do send out a one pager alongside your participation request that explains the parameters of your project, including its objective and the anticipated outcomes.</p> <p>Do inform the potential participant of why you want to speak with them specifically, and what information you hope they will be able to provide.</p> <p>Do be aware of security risks when communicating information. E.g., if broadcasting the identity of your donor could impact the security of researchers or participants, reach out to the donor to ask for branding waivers.</p> <p>Do approach participants at their level. Participants may not know about ESCRs or have a definition of transitional justice. Where necessary, provide these working definitions before information collection begins so that people have a better understanding of what they are participating in and why.</p> <p>Do obtain informed consent before initiating an interview or focus group (see "Informed Consent Criteria", below).</p> | <p>Don't spend most of your time in the interview informing the participant of what the project is about.</p> |

INFORMED CONSENT CRITERIA

Before initiating any interview, focus group, or survey, please ensure that you have informed participants fully—either orally or in writing, but preferably both—of the following:

- Accurately inform participants of the purpose of the research and the methods you will use.
 - Inform participants of specific risks associated with participating in the research.
 - Inform participants that their information will be kept strictly confidential.
- Ensure that participants understand the information about informed consent that you are providing, including the information about risks. Seek to ensure that they can articulate how that information relates to their own situation.
- Advise participants that they can withdraw their consent to participate in the research at any time, and that they do not need to provide a reason why. Remind participants that if they withdraw their consent, you will not put any pressure on them to continue participating.
- Make sure that you keep participants informed of new information that might emerge over the course of the project. Allow them the opportunity to reconsider whether they want to continue participating.
- Ensure that participants have made their own decision about whether they want to participate or continue participating in the research. Remind them that just because other people tell them to participate does not mean they have to.

STEP 6: DESIGNING A POST-ASSESSMENT INTERVENTION

Ideally, once the assessment is conducted and the data is analyzed, implementers will have an idea of what transitional justice interventions are most appropriate for addressing the root ESCR causes of the conflict. Communities themselves may have ideas about what measures best address identified needs and problems that are not envisioned in this guide. All the background legal and policy research, community identification and actor identification that constitute the assessment should be brought to bear at the project design and implementation stage.

Some questions to ask when working with communities to design and execute interventions may include:

| Stage | Step | Suggested Areas of Inquiry for Community Participation |
|-------------------|---------------------------|---|
| Project Execution | Design | <ol style="list-style-type: none"> 1. Who will be involved in using the data as a basis for action? 2. Is there community consensus surrounding the main needs? 3. Is there community consensus surrounding long-term goals? 4. Are there community members who are most affected by the problems, or least impacted by proposed solutions? 5. Do community members have equal opportunity to participate in program design? 6. Are discussions about problems and solutions dominated by traditional power holders within the community? |
| | Monitoring and Evaluation | <ol style="list-style-type: none"> 1. Are there any information gathering tools that already exist within the community that could be useful? 2. Are there any community members who already have a skill set that might lend itself to monitoring? 3. Is there consensus regarding monitoring and evaluation questions? 4. Who will analyze the data? 5. What are the best ways of conveying information to the community? |
| | Implementation | <ol style="list-style-type: none"> 1. Are there national institutions whose consent or support is necessary or desirable for successful implementation? 2. How many beneficiaries or participants will be involved in the process? 3. Will non-selection result in further marginalization of any community group? |

Please note that this Assessment Tool envisions possibilities for engagement both in state-run, national-level transitional justice processes, as well as local-level engagement. In both cases, this Assessment Tool envisions that the implementer will take a role in facilitating local engagement, whatever the approach. This Assessment Tool provides some suggestions as to what kinds of interventions might be appropriate for addressing certain kinds of rights violations in Sections “E: The Right . . . in Transitional Justice Processes”. However, these are not comprehensive lists and should be adapted to the local context.

Local-level processes may include, in a non-exhaustive list:

| Process | Description | Benefits |
|---|--|---|
| Documentation of Human Rights Abuses | Collection and reporting of information regarding where and when abuses have occurred, how, and in what forms | <ul style="list-style-type: none"> • May help to combat a sense of impunity by perpetrators • May help to create a sense of social inclusion for victims • Allows community members an opportunity to tell a narrative • Information can be collated and used to support national-level transitional justice mechanisms • Training and support to communities may have longer-term benefits |
| Involvement of Local Communities in Forensic Investigations | Reaching out to local communities to help identify locations where abuses occurred, and involving civil society in exhumation processes | <ul style="list-style-type: none"> • More accurate information may be obtained to support national-level processes by involving local communities • Brings truth about violations to light and may help local families to identify their relatives and achieve closure • Involvement of civil society in DNA profiling processes (e.g.) can also create avenues to provide psychosocial support to victims’ families • Opens opportunities to engage in local ritual practices that help individual and community healing |
| Truth-Telling and Memorialization Projects | Could take many forms including truth commissions, but also culturally-appropriate types of memorial services, creation of community works in memoriam | <ul style="list-style-type: none"> • Truth-telling can help to change understandings of the past in a manner that helps to challenge structural inequalities • Helps to increase opportunities for victim recognition • Memorialization activities may help to bridge barriers between parts of a community and improve cross-community understanding • Creation of physical memorials serve an important acknowledgement role |

| Process | Description | Benefits |
|--|---|---|
| Local Victim Support Mechanisms | These may include community reparations programs, psychosocial assistance, and the securing of community investment grants for affected communities | <ul style="list-style-type: none"> • Help to demonstrate respect for survivors • Reparations may be physical or symbolic • Provision of external resources, whether those are financial, material, or technical, that is done in a highly consultative and participatory manner, can empower communities as a whole and serve broader development goals |
| Mobilization Strategies | Facilitating the creation of support groups for victims with a view towards empowering them to engage in collective action | <ul style="list-style-type: none"> • Providing victims with tools necessary to influence policy and national mechanisms has an important empowerment role • Mobilized support groups can advocate for better responses to human rights violations by local and national government • Mobilized groups can improve communities' access to broader resources by forming links with national- and even international-level CSOs |
| Traditional Dispute Resolution Processes | Usage of local-level and traditional dispute resolution mechanisms to address specific ESCR violations within a community | <ul style="list-style-type: none"> • Usage of traditional restorative approaches that do not mandate retribution can create a holistic understanding of justice rooted in the idea that disputes breach community harmony, and encourage reconciliation rather than retribution |
| Truth-Telling and Memorialization Projects | Constitute any number of local normative traditions that can provide culturally relevant routes to address legacies of violence | <ul style="list-style-type: none"> • Traditional rituals prioritize and privilege local understandings of dispute resolution in a manner that formalized justice-sector interventions do not • Spiritual and religious practices can form a part of psychosocially therapeutic approaches to trauma in a manner that personally resonates with recipients |

National-level transitional justice processes may include, in a non-exhaustive list:

| Process | Description | Benefits |
|-----------------------|--|---|
| Criminal Prosecutions | State (or international) actors finding perpetrators and bringing them to justice within the context of a formalized justice system | <ul style="list-style-type: none"> • State-led prosecutions can foster greater public confidence and trust in the state • Can signal a state breaking with the past while still acknowledging serious human rights abuses that took place • Victims who participate in criminal prosecutions may feel acknowledged and validated |
| Truth Commissions | Official, temporary body that is established to investigate, discover, or reveal human rights violations with a view towards resolving and reconciling past abuses | <ul style="list-style-type: none"> • Evinces a state duty to uncover and expose truths about committed crimes • Helps to expose structural violence • Counters revisionism and denial of abuses by creating a public narrative of the history of conflict • Institutionalizing victims' claims as truth can reconnect victims within society |
| Reparations Processes | State-run reparations schemes which compensate victims for loss, including restitution, financial payment for quantifiable loss, rehabilitation and care, public apologies, and guarantees of non-repetition | <ul style="list-style-type: none"> • Important form of official acknowledgement that harm was done • May serve to alter the power relationship between state and victim |
| Institutional Reform | May include security sector reform, disarmament, demobilization, drafting of new legal frameworks, and engaging in educational reform, with a view towards improving institutions that have historically violated human rights | <ul style="list-style-type: none"> • Institutional reform efforts conducted in light of and with full knowledge of past wrongs can help to address longer-term structural problems • Public participation in institutional reform efforts can help to improve state claims to legitimacy • Participation in institutional reform can have symbolic impact for victims that have been historically excluded from civic engagement |

Neither national- nor local-level transitional justice interventions should be used in isolation; engagement at both levels can help to fill important gaps between encouraging public confidence in the state, and ensuring that transitional justice mechanisms reach a broad group of affected communities. However, the limitations of both approaches need to be understood to understand how they can be used complementarily. National level transitional justice mechanisms may lack reach at best, and at worst can be actively exploitative of victims who participate in highly-publicized and highly formalized prosecutions and truth-seeking commissions. Local processes, too—especially local level dispute resolution mechanisms—can run the risk of inadvertently recreating traditional discriminatory understandings of caste, community membership, and gender roles. Additionally, local transitional justice engagement must be designed carefully, with a deep understanding of what efforts are already being taken nationally and internationally, to ensure that interventions do not duplicate or even undermine other efforts.



Radhika Hettiarachchi, center, who created the Herstories Archive of Sri Lanka documenting women's oral histories post-conflict, sharing with other Sites of Conscience Coalition members.

PART 2: ASSESSMENT QUESTIONS

Section I: The Right to Food

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING THE RIGHT TO FOOD

The ICESCR establishes a right to adequate standard of living, including a right to adequate food and a right to be free from hunger.²⁵ The right to food is encompassed in a number of other international treaties, including CEDAW, the CRC, and the CRPD.²⁶ The right to food is explicitly recognized in regional instruments including the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol).²⁷

The right to food is read into other international and regional human rights instruments. For instance, the Committee against Torture has suggested that a lack of adequate food may amount to inhuman and degrading treatment.²⁸ In the African human rights system, the right to food is inferred through the rights to life, health, and economic, social and cultural development.²⁹

CASE STUDY: FOOD DEPRIVATION IN CAMBODIAN SECURITY PRISONS³⁰

Living conditions in Cambodia's security prisons during the regime of the Khmer Rouge (1975-1979) were extremely poor. "Food rations were extremely scarce and usually consisted of rice gruel, rice soup or banana stalk served twice a day . . . [d]ue to the scarcity of food, detainees resorted to eating insects that fell on the floor, for which they could be beaten if a guard saw them . . . Consequently, detainees suffered severe weight loss and became extremely weak." This was part of a deliberate strategy to debilitate prisoners to maintain control over them and generate confessions. The Chamber found that the conditions of detention imposed upon detainees, including the deprivation of food, constituted an unlawful omission "known to be likely to lead to . . . death", and held that this amounted to both murder and extermination. Such violations of the right to food—i.e., those that can be shown to be intentional and/or systematic—can be integrated into and acknowledged by high-level criminal trials within transitional justice contexts.

International humanitarian law protects the right to food in various ways. For instance, civilians and prisoners of war are guaranteed access to food and water.³¹ Using starvation of civilians as a method of warfare not only constitutes a violation of the laws of war, it may also amount to a war crime, crime against humanity, or genocide under international criminal law.³²

The right to adequate food is construed broadly by the Committee on Economic, Social and Cultural Rights (CESCR) as a right to "physical and economic access at all times to adequate food or means for its procurement."³³ "Adequacy" is not defined solely in terms of nutrient-based adequacy, but rather in terms of the **availability** of "in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture", and accessibility of such food "in ways that are sustainable and that do not interfere with the enjoyment of other human rights."³⁴

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

1. **Do the constitution and/or laws guarantee the right to adequate food and nutrition as articulated in the international/regional frameworks?**
 - Has the country ratified or acceded to any of the key conventions or protocols?
 - Do these laws have guarantees of non-discrimination?
 - Do they guarantee access to social protection schemes?
2. **Are there laws and/or policies related to land use?**
 - Are there requirements relating to the use and alienation of agricultural land? For example, are there restrictions on how much land can be used for cash crops?
3. **Are there environmental protection laws?**
 - Do they address pollution of air, water, and/or soil?
 - Are there zoning requirements that prohibit the establishment of industries near water and/or arable land?
 - Are there regulations concerning deforestation?
4. **Are there laws that provide special protection for particular social or economic groups? For example, are there laws that ensure smallholder farmers' access to credit and/or other resources?**
5. **Has the state entered into any international or regional trade agreements that might impact the right to adequate food? For example:**
 - Do trade agreements have adverse impacts on food pricing or food production?
 - Are there any other laws or regulations that affect the function of food markets?
6. **Are there any other laws or national policies concerning:**
 - Agrarian reform;
 - Emergency management; and/or
 - Social protection?
 - If so, do any of these laws and/or policies address food provision?
 - How do they do so?

C: THE RIGHT TO FOOD IN NATIONAL CONTEXT: QUESTIONS TO CONSIDER

1. **Has the state entered into land use agreements that adversely impact the availability, sustainability, or environmental health of agricultural resources?**
 - Has the state entered into land use agreements that result in forced eviction from agricultural land?
 - Have economic policies caused the prioritization of cash crop production over nutritional food production?
2. **Are there geographic factors inherent to the country that have adverse impacts on the state's ability to guarantee a right to adequate food?**
 - Is there a history of famine and/or flooding that adversely impacts agricultural resources?
 - Are there any particular social groups who are adversely impacted by these environmental conditions?
 - Does climate change pose special risks given the country's geographic and environmental context?
3. **Are there practices of food deprivation in any state institutions? For example:**
 - Are incarcerated people sufficiently fed?
 - Are sufficient food resources available in emergency shelters?
4. **What actors were involved in the deprivation of the right to food? Who was victimized by this deprivation?**
5. **What other local practices, if any, contributed to deprivations of the right to food before and during the conflict?**
 - What actors were involved in this deprivation?
 - Who was victimized by it?
 - What other institutions, if any, were involved in trying to resolve these issues?

D: INSTITUTIONS INVOLVED IN ADDRESSING THE RIGHT TO FOOD

- Government agencies dealing with agriculture and land use
- Government agencies dealing with trade and market regulation
- Social welfare institutions—e.g., ministries of welfare, direct service providers
- Departments of health
- Civil society organizations and activist groups, e.g., farmers' rights activists
- Organizations involved in emergency management

E: THE RIGHT TO FOOD IN TRANSITIONAL JUSTICE PROCESSES

| Possible Local Mechanisms | Possible National Mechanisms |
|---|--|
| Documentation of human rights abuses | Establishment of a criminal tribunal empowered to address long-term violations of the right to food; explicit recognition of violations of the right to food as grounds for criminal prosecution |
| Memorialization and commemoration projects to remember the victims of famine or forced starvation | Institution of judicial proceedings against third parties whose behavior exacerbated food insecurity |
| Community reconciliation programs to address violations of the right to food committed within the community | Truth commissions explicitly empowered to address long-term causes of conflict |
| Reconciliation programs designed to address victimization of marginalized regions | |

CASE STUDY: COLLECTIVE REPARATIONS FOR VIOLATIONS OF THE RIGHT TO FOOD IN TUNISIA³⁵

Tunisia's Transitional Justice Law of 2013 empowered a Truth and Dignity Commission to investigate massive gross and systematic human rights violations which occurred between 1955 and 2013. Notably, the Truth and Dignity Commission used a broad definition of 'victim' which encompassed individual, collective, and regional victimhood, which allowed it to capture human rights violations that were committed not only against individuals and groups, but also regions that demonstrated resistance to the Ben Ali regime. In doing so, the Truth and Dignity Commission began a process of attempting to address various forms of structural and economic violence, including social inequities surrounding food insecurity, rural land ownership, and agricultural development. By instituting regional reparations programs that addressed economic hardships that formed the center of community grievances, the Truth and Dignity Commission was able to tie together longer-term development goals with the reparative power of a transitional justice process.

Section II: The Right to Water and Sanitation

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING THE RIGHT TO WATER AND SANITATION

International human rights law recognizes the rights to water and sanitation. Although these rights are not explicitly mentioned in the ICESCR, they are guaranteed as implicit components of the right to an adequate standard of living.³⁶ These rights are also intrinsically related to the right to the highest attainable standard of health, as well as the rights to food and housing.³⁷ The right to water and sanitation are guaranteed in some international instruments, specifically CEDAW and the CRC,³⁸ though the right to sanitation is inferred through health and standard of living provisions in these instruments.

In terms of regional human rights instruments, the Council of African Charter on the Rights and Welfare of the Child, like the CRC, makes reference to rights to safe drinking water and environmental sanitation in the framework of children's health.³⁹ The Maputo Protocol calls on states to provide women with access to clean drinking water in the context of the right to food.⁴⁰ Additionally, the African Convention on the Conservation of Nature and Natural Resources (revised) calls on state parties to "guarantee for their populations a sufficient and continuous supply of suitable water."⁴¹ The American Declaration of the Rights and Duties of Man establishes people's rights to the preservation of health "through sanitary and social measures,"⁴² San Salvador Protocol guarantees the right to access basic public services, which—read together with the right to live in a healthy environment—likely encompasses a right to sanitation.⁴³ The European human rights system generally protects the rights to health, social security, and social assistance, all of which have relevance to the right to water and sanitation;⁴⁴ additionally, the 1999 Protocol to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (London Protocol) was specifically designed to promote "the protection of human health and well-being . . . through improving water management."⁴⁵ To that end, it calls on states parties to take all appropriate measures to ensure adequate supplies of clean drinking water and adequate sanitation which sufficiently protects human health and the environment.⁴⁶ The Arab Charter on Human Rights specifically mandates that the right to the highest attainable standard of health includes access to proper sanitation systems.⁴⁷

The ICESCR defines the right to water in terms of the right to adequate, sufficient, safe, acceptable, physically accessible, and affordable water for both personal and domestic use.⁴⁸ It reads into the right to water an additional right to a system of water management "that provides equality of opportunity of people to enjoy the right to water."⁴⁹ Additionally, it notes that water is more than a simple economic resource, and should be seen also as a social and cultural good.⁵⁰

CASE STUDY: WOMEN'S VULNERABILITY TO GENDER-BASED VIOLENCE IN ACCESS TO WATER AND SANITATION⁵¹

In many countries, women and girls are traditionally involved in water management—particularly water collection. However, when water is not readily accessible in local communities, women are obliged to travel long distances to acquire drinking water, and often have inadequate access to sanitation services. Water collection and personal hygiene activities—which frequently occur early in the morning—put women at increased risk of violence and harassment. These concerns are exacerbated in emergency contexts, which put further pressure on already-limited water and sanitation services. Where such risks arise, the rights to water and sanitation are significantly undermined.

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

1. **Do the constitution and/or laws guarantee the rights to water and sanitation as articulated in the international legal frameworks?**
 - Has the country acceded to or ratified the key international/regional instruments in this area?
 - Do these laws apply in non-discriminatory fashion?
 - Do they address the rights to water of specific social groups, including indigenous people?
 - Do these laws lay out the right to a remedy for violations of these rights, or other human rights?
2. **Do regulations related to housing and construction create standards for water and sanitation facilities? For example:**
 - Do they provide for the construction of toilets in public facilities?
 - Do laws and/or regulations specify that separate facilities for women and girls be made available in public institutions?
 - In the context of residential facilities, are there requirements for landlords to provide functional sanitation facilities?
 - Do zoning laws address access to municipal water and sanitation facilities?
 - Are there inspection requirements for water and sanitation facilities, including waste water treatment plants and factories that emit waste?
3. **Are there laws or regulations governing the cost of municipal resources?**
 - Does it include rules about how profits from water and sanitation services can be used?
 - Do laws establishing municipal service tariffs take into consideration the capacity of users to pay?
4. **Are there laws and/or regulations that protect the quality of water resources? Specifically:**
 - Are there regulations regarding water quality and waste water treatment?
 - Are there environmental regulations concerning pollution of waterways?
 - Are there environmental impact assessment requirements that specifically address impacts on water supplies? Do these assessments mandate community participation in such assessments?
5. **Are there any national comprehensive water and/or sanitation policies?**
 - Do these address the vulnerabilities of particular social groups?
 - Do these policies encompass awareness raising programming regarding water, sanitation, and personal hygiene?
6. **Are there dispute resolution mechanisms available to address conflicts relating to water and sanitation?**
 - Are there human rights ombudsmans who can accept complaints related to these violations?
 - Can complaints be filed against private as well as public entities?
 - Are there special water courts?
 - Can claims related to water rights be adjudicated in traditional courts?

C: THE RIGHT TO WATER AND SANITATION IN NATIONAL CONTEXT: QUESTIONS TO CONSIDER

1. **Do local customs or practices limit access to water and sanitation resources for particular social groups? For example:**
 - Are there restrictions on usage of local water resources based on caste or clan?
 - Are women and girls required to use separate sanitation facilities when menstruating?
2. **Is there a history of conflict or tension in the country or region over access to water resources?**
 - Who exercises control over water sources? How?
 - Has the state turned a blind eye to violations of access to water and sanitation rights committed by private entities?
 - Has privatization of water jeopardized or made access to water inaccessible through high costs or discrimination based on income and wealth?
 - Do environmental factors that impact access to water, e.g. droughts, have specific impacts on certain groups?
3. **Have abuses related to water and sanitation occurred in the context of conflict or tension? For example:**
 - Have combatants engaged in pollution of water sources?
 - Have combatants deliberately cut off civilian centers' access to municipal services?

CASE STUDY: USING TRANSITIONAL JUSTICE TO CHALLENGE MASS VIOLATIONS OF THE RIGHT TO WATER⁵²

Attempts have been made, with varying degrees of success, to define pollution of water sources as a gross violation of human rights. For instance, initial submissions against Omar Al-Bashir at the International Criminal Court referenced deliberate and "repeated destruction, pollution, and poisoning of communal wells by the Janjaweed and the Armed Forces 'so as to deprive the villagers of water needed for survival,'" which constituted an act of genocide as defined under the Rome Statute. Although the majority of the Pre-Trial Chamber dismissed the genocide charge (even as it issued an arrest warrant for Al-Bashir), Judge Usacka, dissenting, highlighted that the destruction of essential means of survival—including the destruction of water sources—could constitute an act underlying the crime of genocide.

Conversely, the Commission for Reception, Truth and Reconciliation in Timor-Leste collected and acknowledged in its Report (CAVR) that human rights abuses committed by Indonesian security personnel included contamination of natural water sources through the use of toxic bombs, and negligence in the provision of clean water on the island of Atauro.

D: INSTITUTIONS INVOLVED IN ADDRESSING THE RIGHT TO WATER AND SANITATION

- Municipal service providers, both public and private
- Ministries of finance or central planning
- Environmental agencies, including inspection units
- Water commissions
- Judicial agencies, including the formal justice system, special tribunals governing water disputes, and customary institutions
- National human rights institutions, including rights ombudsmans
- International and national NGOs operating in the water, sanitation and hygiene (WaSH) sector
- Civil society groups

E: THE RIGHT TO WATER AND SANITATION IN TRANSITIONAL JUSTICE PROCESSES

| Possible Local Mechanisms | Possible National Mechanisms |
|--|--|
| Documentation of abuses relating to the right to water, including specific documentation of abuses committed against women and girls | Prosecutions of combatants who infringed the right to water and sanitation in armed conflict |
| If relevant, establishment of local tribunals to address water resource disputes | Specific mandates in criminal tribunals to address violations of ESCRs, including the right to water |
| Truth-telling activities addressing discrimination in access to natural resources, including water | Truth commissions explicitly empowered to address long-term causes of conflict |
| Reconciliation programs addressing discrimination in access to water and sanitation resources, and other violations of the right to water and sanitation | Individual and community reparations for violations of the right to water and sanitation |
| Direct reparations programs, such as the construction of water wells or pumps in affected communities | |

Section III: The Right to Property and Natural Resources

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING THE RIGHT TO PROPERTY AND NATURAL RESOURCES

The international human rights framework does not explicitly recognize land rights or rights to occupy, own, use, or control natural resources. However, most international and regional human rights instruments and mechanisms recognize rights that are closely related to these matters and impose state obligations concerning access to and use of these resources.

The ICESCR and the International Covenant on Civil and Political Rights (ICCPR) both provide that all peoples have the right to “freely dispose of their natural wealth and resources,” and that states parties must guarantee that all rights may be exercised without discrimination.⁵³ The principles of self-determination and natural resource sovereignty are inherently linked, particularly in the economic development context.⁵⁴ The elements of cultural adequacy of housing and security of tenure that are included in the CESCRR’s formulation of the right to adequate housing apply equally to land rights,⁵⁵ and the right to take part in cultural life encompasses a right to access cultural goods, including traditional lands, territories, and resources.⁵⁶ CEDAW specifically contains provisions regarding women’s rights to benefit from rural development schemes, including the rights to access agricultural credit and loans, and equal treatment in land resettlement schemes and agrarian reform projects.⁵⁷ It also mandates equal rights for men and women with respect to the “ownership, acquisition, management, administration, enjoyment and disposition of property.”⁵⁸ The CEDAW Committee, in its General Recommendation No. 34, explicitly recognizes rural women’s “rights to land [and] natural resources, including water, seeds, forestry, as well as fisheries, as a fundamental human right.”⁵⁹ The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), though not legally binding, also contains explicit provisions related to access to land and natural resources. Specifically, it provides that states must refrain from actions that are intended to or result in dispossession of lands and resources, and that indigenous peoples may not be forcibly removed from traditional lands or territories.⁶⁰

In the context of natural resource rights, discrimination occurs when women’s rights to own, use, or control land are curtailed through laws and customary practices limit their ability to enter into contracts or obtain credit.⁶¹ Indigenous communities also suffer prejudice in the natural resources context, especially where land laws fail to recognize customary ownership or use practices.⁶² To the extent that displacement from land has negative impacts on people’s access to food and livelihoods, disputes over land and natural resources can constitute significant flashpoints for conflict,⁶³ and even fuel conflict where extraction and trade in natural resources contributes to, benefits from, or results in the occurrence of major human rights violations. States have obligations to prevent third parties, including private third parties, from abrogating land and natural resources rights: for example, violations of the rights to adequate living standards and to take part in cultural life have been found where extractive industries cause environmental harm.⁶⁴

International humanitarian law addresses land and property rights. Attacking civilian objectives, including by attacking agricultural resources to denying civilians “sustenance value”, is prohibited;⁶⁵ so too is the destruction of property, unless absolutely necessary for military operations (including by pollution of natural resources).⁶⁶ Unjustifiable attacks of this nature may also constitute violations of international criminal law.⁶⁷

CASE STUDY: PRIVATE ENCROACHMENT ON INDIGENOUS LAND IN ECUADOR⁶⁸

An oil company (Arco Oriente) signed a hydrocarbon development agreement with the government of Ecuador. Even though the development agreement envisioned the use of an area of land that constituted 70% of the Federacion Independiente del Pueblo Shar del Ecuador (FIPSE), an indigenous group, no members were advised about the agreement or its environmental impact. Furthermore, FIPSE members had agreed not to negotiate with Arco Oriente, which was communicated to both the company and the government. Despite this, Arco Oriente entered FIPSE land and worked with several people to conduct environmental impact assessments. The Constitutional Court of Ecuador found violations of the ILO's Convention No. 169 concerning Indigenous and Tribal Peoples and the Constitution of Ecuador, because proper consultation processes had not been followed, and because the project and surveys violated their rights to cultural identity, property, and possession of ancestral land. As a consequence of this decision, the Constitutional Court of Ecuador ordered Arco Oriente to refrain from seeking meetings with individuals without proper authorization by FIPSE. When development rights were subsequently transferred to an American company that attempted again to approach indigenous leaders, FIPSE and other indigenous community federations felt empowered to disrupt new negotiation processes by exercising rights that had been upheld by the Constitutional Court.

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

Rights in Property

1. Is there a formal land registration process?

- How does one prove land ownership?
- Are there special provisions in the land registration law concerning customary ownership? What about community land ownership schemes?
- What are the requirements for land ownership?

2. Are there any discriminatory restrictions on property ownership?

- Are women and minorities legally permitted to own and/or inherit property?
- Are citizens legally permitted to own and/or inherit property?

3. What is the property transfer process?

- Is it possible to gain ownership of land through adverse possession?

4. Are property records publicly available?

5. Does the law envision protections against arbitrary deprivation of property? In particular:

- Are there provisions regarding eminent domain?
- What are the requirements for the government to be able to take land? E.g., must the government need to show public benefits associated with a taking?
- Must the government be required to inform individuals prior to a taking?
- Must affected individuals be given an opportunity to be heard?

- Are property owners entitled to just compensation for takings?
- How many, if any, of these regulations apply to individuals who illegally occupy land?
- Are there any laws and/or policies regarding slum clearances?
- Are there any legal mechanisms whereby those who do not legally occupy land may acquire lawful title?

6. How are property disputes settled?

- Are there specialized property dispute courts?
- Are there specialized probate courts?
- Are customary justice systems empowered to resolve property disputes?
- Are there any alternative dispute resolution mechanisms?
- Are there special provisions governing property disputes that arise out of displacement scenarios?

Right to Land

1. Do the constitution and/or laws establish a right to land ownership?

- If so, is the law to be applied in a non-discriminatory manner?

2. Are there any provisions regarding land alienation? For example:

- Are non-citizens permitted to acquire title to agricultural land?
- Are there protections for indigenous access to and title over traditional lands?

3. Are there laws or policies concerning land-based investment or development projects?

- Are there community consultation or impact assessment requirements?
- Are there sanctions for violations of those requirements?
- Does the law encompass remedies for people who may be harmed because of the project?

4. Are there any provisions regarding land use? For example:

- Are there zoning regulations?
- Are easements permitted? How are they granted?

Right to Natural Resources

1. Do the constitution and/or laws recognize ownership interests in natural resources?

- Are customary rights in natural resources recognized?
- Are there any restrictions on natural resource use, extraction, or alienation?

2. Does the law recognize private rights over:

- Waterways and drinking water;
- Minerals;
- Forestry; and/or
- Fisheries

3. **Are there any laws or policies governing natural resource extraction?**
 - How are extraction rights allocated?
 - Must firms obtain permits before engaging in extraction?
 - Are there requirements to engage in impact assessments or community consultation initiatives before extraction projects begin?
 - Are there site inspection standards?
 - If so, are there any non-compliance sanctions?
4. **Are there environmental regulations related to extractive industry? Specifically, are there regulations regarding:**
 - Air quality and emissions?
 - Land degradation?
 - Waste management, including hazardous waste management?
 - Water management?
 - Deforestation?

Conflict Resources

1. **Does the law contain restrictions on the import and/or export of any natural resources?**
 - What are the terms of such restrictions?
 - Are there categories of people who are not permitted to engage in trade of certain natural resources?
2. **Are there any categories of persons ineligible to obtain mining and/or logging concessions?**
3. **Does the law require companies or firms to participate in any certification schemes (e.g., the Kimberley Process Certification Schemes)?**
4. **Are companies required to report the use of conflict resources?**

C: THE RIGHT TO PROPERTY AND NATURAL RESOURCES IN NATIONAL CONTEXT: QUESTIONS TO CONSIDER

Rights in Property and Land

1. **Are there local norms or customs that limit the ability of certain groups to acquire, use, or enjoy property?**
2. **Has the state engaged in unlawful or unjustifiable expropriations?**
 - Have such takings or expropriations been targeted at any particular social group?
 - Have non-state actors or combatants engaged in property theft or plunder?

CASE STUDY: PLUNDER IN YUGOSLAVIA⁶⁹

Organized and systemic property seizures were common during the conflict in Yugoslavia. Acts of looting were common, and money, jewelry, and other valuables were often stolen from detainees upon their arrival in camps. The International Criminal Tribunal for Yugoslavia (ICTY) held that these constituted acts of plunder. The ICTY also found that the “wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, business, and civilian personal property and livestock” may have amounted to persecution as a crime against humanity.

3. **Is there a history of the state failing to consult with local communities before engaging in land contracts?**
4. **Is there a history of discriminatory property destruction by either state- or non-state parties?**
 - Is there or has there been a culture of impunity surrounding theft and property destruction targeted against any particular social group?
5. **Has the government ever followed a forced eviction or forced resettlement policy?**
 - If such a policy has existed, was it targeted at any particular social group? Was any particular social group particularly impacted by it?
 - Did the eviction or resettlement policy occur as part of a national development strategy? (E.g., forced resettlement for large-scale construction projects)
 - Did the eviction or resettlement policy occur as part of armed conflict? If so, who were the actors in that conflict?
 - Was any compensation offered to victims of forced eviction or resettlement? Was that compensation received?
 - Were victims relocated to areas that were culturally, socially, or economically appropriate to their needs?

Right to Natural Resources

1. **Have any local communities been deprived of access to natural resources?**
2. **Is there a history of the state engaging in destruction or expropriation of natural resources without consulting local communities, particularly indigenous communities?**
3. **Are local communities aware of rights that they may have in natural resources? Did any state or non-state actors willfully misinform or fail to inform local communities of those rights?**
4. **Is there a history of non-state actors committing gross human rights violations in extractive industries?**
 - Has the state done anything to address these wrongs? Is there a culture of impunity surrounding health and labor rights in extractive industries?
5. **Are there any social groups that are involved in particularly dangerous natural resource extraction work?**

Conflict Resources

1. Have conflict resources formed a basis for the financing of ongoing conflict?
2. Has the state benefitted from conflict resource extraction?

D: INSTITUTIONS INVOLVED IN ADDRESSING THE RIGHT TO NATURAL RESOURCES

Rights in Property and Land

- Agencies dealing with property transfer and registration, including land registries, administration offices, land commissioners, deed registry offices
- Government ministries involved in land use, including: ministries of land and natural resources; agriculture ministries; housing and urban development ministries
- Tribunals addressing land conflicts, including:
 - Formal courts
 - Informal justice systems with land dispute mandates
 - Special courts for small claims, property disputes, or probate matters
- Social welfare agencies
- Indigenous advocacy groups

Right to Natural Resources

- Government agencies related to environmental protection
- Industry and manufacturing agencies, including:
 - Trade ministries
 - Influential trade practice groups
 - Labor inspection bodies
 - Trade unions

Conflict Resources

- Customs agencies
- Security forces
- Labor inspectorates

E: THE RIGHT TO NATURAL RESOURCES IN TRANSITIONAL JUSTICE

| Possible Local Mechanisms | Possible National Mechanisms |
|---|---|
| Documentation and memorialization of local rights abuses, including the destruction of natural resources | Establishment of reparations system to provide compensation for destroyed/looted property |
| Usage of local dispute resolution mechanisms to resolve land disputes | Criminal prosecutions for property destruction |
| Mobilization of victims' groups to advocate for land-related matters, including unlawful state expropriations | Establishment of land/housing courts to resolve conflict-related disputes |
| Reconciliation mechanisms between perpetrators and victims of property destruction | Empowering transitional justice commissions to request and review land records |
| Collection of land title documents | Voluntary repatriation programs |
| Community consultations to address land occupancy and re-occupancy after displacement | |
| Reconciliation programs which address violations of the right to natural resources | |

Section IV: The Right to Housing

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING THE RIGHT TO HOUSING

The ICESCR establishes the right to an adequate standard of living, which encompasses a right to adequate housing.⁷⁰ This right is recognized in a number of international treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), the Refugee Convention, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁷¹ Regionally, the right to adequate housing is explicitly recognized in the African Charter on the Rights and Welfare of the Child, the European Convention on the Legal Status of Migrant Workers, and the revised European Social Charter.⁷² It is implicitly recognized in jurisprudence regarding the African Charter on Human and Peoples' Rights (Banjul Charter)⁷³ and the American Convention on Human Rights (San Jose Pact).⁷⁴ The San Salvador Protocol recognizes the "right to live in a healthy environment and to have access to basic public services."⁷⁵

CASE STUDY: PLUNDER IN YUGOSLAVIA

Organized and systemic property seizures were common during the conflict in Yugoslavia. Acts of looting were common, and money, jewelry, and other valuables were often stolen from detainees upon their arrival in camps. The International Criminal Tribunal for Yugoslavia (ICTY) held that these constituted acts of plunder. The ICTY also found that the "wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, business, and civilian personal property and livestock" may have amounted to persecution as a crime against humanity.

International humanitarian law recognizes a right to adequate housing during international and non-international armed conflict. Specifically, the Geneva Conventions prohibit the destruction of civilians' real or personal property, mandate the provision of "means of shelter [and] other supplies essential to the survival of the civilian population" to victims of international armed conflicts, and require that civilian victims of non-international armed conflict be provided "satisfactory conditions of shelter" in the case of forced displacement.⁷⁶

CASE STUDY: INTERNAL DISPLACEMENT AND STATE OBLIGATIONS IN COLOMBIA⁷⁷

The Colombian Constitutional Court addressed a tutela action (constitutional claim) that had been brought by 1,150 families of internally displaced persons (IDPs) comprised of women, elderly persons, minors, and indigenous persons. The emergency humanitarian aid that had been rendered did not adequately address these families' housing needs. The Constitutional Court found violations of the right to housing because "persons in conditions of displacement have to abandon their own homes . . . and undergo inappropriate lodging conditions at the places where they are displaced to." More significantly, it ruled that the Colombian State was obliged to: (a) prevent the massacre and displacement; (b) investigate the violent acts, and prosecute and punish those responsible; (c) protect the displaced from additional violations; (d) provide the displaced with humanitarian assistance as regards nutrition, housing, health care, education and clothing, and (e) ensure their safe and voluntary return home and local reintegration, or resettlement in another part of the country."

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

Please note that many of the inquiries that may be relevant to the right to adequate housing—particularly those that relate more broadly to land ownership and property transfer—may be found in “Section IV: Right to Natural Resources.”

1. **Have the constitution and/or national legislation ever imposed restrictions on freedom of movement?**
 - Did such restrictions (if any) apply to particular social groups?
2. **Have the constitution and/or national legislation ever guaranteed the right to housing? Does the right to adequate housing apply in a non-discriminatory manner?**
3. **Does the law envision protections against arbitrary deprivation of property? In particular:**
 - Are there provisions regarding eminent domain?
 - What are the requirements for the government to be able to take land? E.g., must the government need to show public benefits associated with a taking?
 - Must the government be required to inform individuals prior to a taking?
 - Must affected individuals be given an opportunity to be heard?
 - Are property owners entitled to just compensation for takings?
 - How many, if any, of these regulations apply to individuals who illegally occupy land?
 - Are there any laws and/or policies regarding slum clearances?
 - Are there any legal mechanisms whereby those who do not legally occupy land may acquire lawful title?
4. **Are there laws or regulations that govern landlord-tenant relationships? In particular:**
 - Are there anti-discrimination provisions in the law?
 - What sanctions may be imposed on landlords who discriminate?
 - Are there regulations regarding rent increases?
 - Are there any regulations that impose responsibilities on landlords to provide habitable housing?
 - Must landlords provide accommodations for persons with disabilities?
5. **What laws or regulations govern access to housing loans?**
 - Are there anti-discrimination provisions in the law? How are these enforced?
6. **Are there any laws or regulations (national or municipal) that have zoning or housing codes?**
 - Do these laws provide that housing must be located within proximity to other municipal resources?
 - Are there building codes that regulate the construction of residential housing? Do they regulate the use of hazardous substances in building materials or equipment? Do they have minimum standard construction requirements (e.g., earthquake compliance standards)?
 - Are there enforcement mechanisms for these provisions that contain sanctions for non-compliance?
 - Are there mechanisms by which local community members can participate in decision-making regarding zoning and housing laws?

7. Does the country have a national housing policy?

- What does the policy encompass?

8. Does the country have any emergency management laws or policies?

- Do these encompass issues related to emergency housing?
- Do these address issues related to repatriation of the displaced? E.g., are there any policies or procedures that allow displaced people to reclaim their homes or their land if they choose to return?

C: THE RIGHT TO HOUSING IN NATIONAL CONTEXT: QUESTIONS TO CONSIDER

1. Has the government ever followed a forced eviction or forced resettlement policy?

- If such a policy has existed, was it targeted at any particular social group? Was any particular social group particularly impacted by it?
- Did the eviction or resettlement policy occur as part of a national development strategy? (E.g., forced resettlement for large-scale construction projects)
- Did the eviction or resettlement policy occur as part of armed conflict? If so, who were the actors in that conflict?
- Was any compensation offered to victims of forced eviction or resettlement? Was that compensation received?
- Were victims relocated to areas that were culturally, socially, or economically appropriate to their needs?

2. Have any other groups been involved in forced eviction or forced resettlement?

- If so, were they or did they become combatants in armed conflict?
- Who was victimized by their actions?

3. Is there a history of unequal access to adequate housing in the country?

- How does this manifest? (E.g., discrimination in leasing or housing lending; local culture preventing certain groups from living in certain areas)
- Who are the social groups involved in the discrimination, as perpetrators or as victims?

4. Are there any notable issues that have arisen in the context of the conflict?

- Do refugee camps (if relevant) provide minimum requirements for adequate housing, including security?
- What provisions, if any, have been made for displaced people who wish to return to their homes?
- Are there any resettlement policies or programs in place?

D: INSTITUTIONS INVOLVED IN ADDRESSING THE RIGHT TO HOUSING

- Government agencies related to social welfare
- Government agencies related to building or zoning regulations
- Agencies related to security, including: military and paramilitary groups; border agents; law enforcement
- Agencies involved in banking and finance, including: lenders; government regulators in the sector
- Public health bodies
- Landlord-tenant courts

E: THE RIGHT TO HOUSING IN TRANSITIONAL JUSTICE PROCESSES

| Possible Local Mechanisms | Possible National Mechanisms |
|--|--|
| Documentation and memorialization of local rights abuses, including cases of displacement and housing discrimination | Establishment of compensation or reparations systems to provide compensation for destroyed/looted property |
| Collection of land title documents | Institutional reform: establishment of laws or policies addressing housing segregation and tenure security |
| Community consultations to address land occupancy and re-occupancy after displacement | Establishment of land/housing courts to resolve conflict-related disputes |
| Empowerment and mobilization of communities to address unlawful state expropriations | Establishment of comprehensive rebuilding programs as part of state-run restitution systems |
| Reconciliation programs which address housing discrimination | Voluntary repatriation programs |

Section V: The Right to Labor and Employment

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING LABOR AND EMPLOYMENT

The ICESCR recognizes a general right to work and a right to just and favorable conditions of work.⁷⁸ Together with the ILO's body of conventions addressing international labor standards, international law broadly recognizes every person's equal right to work under just conditions, to freely form and join trade unions, and ultimately attain social justice.⁷⁹ Other legally-binding international instruments also protect the right to work and just conditions of work. ICERD prohibits discrimination with respect to work, just and favorable conditions of work and remuneration, unemployment protection, and equal pay for equal work.⁸⁰ CEDAW notes that the right to work is "an inalienable right of all human beings," and mandates that governments take step to eliminate gender-based discrimination by persons and enterprises.⁸¹ The CRC and its two optional protocols discuss in depth the rights of children to be free from economic exploitation in various forms of employment,⁸² and the CRPD obligates states to ensure that working environments are "open, inclusive and accessible to persons with disabilities."⁸³ Finally, the ICMW prohibits slavery, servitude and forced labor, discrimination with respect to remuneration and working conditions.⁸⁴

The right to work is additionally protected in several regional human rights instruments. The Banjul Charter does not explicitly recognize a right to work, but does establish a right to satisfactory working conditions.⁸⁵ The San Salvador Protocol establishes the rights to work, just, equitable and satisfactory working conditions, and trade union rights.⁸⁶ The European for the Promotion of Human Rights and Fundamental Freedoms (ECHR) prohibits slavery and forced labor and establishes the right to freedom of assembly and association.⁸⁷ Finally, the European Social Charter contains a number of detailed provisions concerning the right to work and the conditions under which work is obtained and performed.⁸⁸

International humanitarian law addresses the right to work through the lens of slavery and forced labor. Additional Protocol II to the Geneva Conventions provides that slavery and the slave trade are prohibited in all their forms,⁸⁹ and may constitute genocide, war crimes, and crimes against humanity in both international and non-international armed conflict under the Rome Statute of the International Criminal Court (Rome Statute).⁹⁰ Prisoners of war may be compelled to work as long as they are physically fit, "taking into account their age, sex, rank and physical attitude, and with a view particularly to maintaining them in a good state of physical and mental health."⁹¹ Prisoners of war may not prisoners work that is directly connected with war, or work that is unhealthy or dangerous. Civilians, too, may be compelled to work under the Fourth Geneva Convention; however, they may not be compelled to engage in work that directly relates to or involves them in military operations, and must be given a wage for any work that they perform.⁹²

The CESCR construes the right to work as an integral part of the broader right to human dignity.⁹³ It "assures individuals [of] their right to freely chosen or accepted work, including the right not to be deprived of work unfairly."⁹⁴ The right to work encompasses a right to decent work which respects fundamental personal rights as well as the right to safe working conditions and remuneration.⁹⁵

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

1. **Do the constitution and/or laws protect the right to freedom of association and/or peaceful assembly? Specifically, do these provisions address:**
 - The right to form, join, or leave professional associations, including trade and labor unions?
 - Are there any restrictions on who can participate in professional associations, including trade and labor unions?
2. **Do the constitution and/or laws protect the right to work, including just and favorable conditions of work? Specifically, do these provisions address:**
 - Remuneration and wages, including the right to equal pay for equal work?
 - Conditions under which employment can be terminated?
 - Hours of work and paid leave policies, including sick leave?
 - Occupational health and safety?
 - Maternity provisions?
 - Sexual harassment and workplace harassment?
 - Are there any restrictions on who can benefit from employment protections?
3. **Are there provisions in the labor laws that provide special protections or impose restrictions for:**
 - Workers in the informal sector?
 - Women?
 - Children?
 - Persons with disabilities?
 - Persons living with HIV?
 - Indigenous and tribal peoples?
 - Domestic workers?
 - Migrant workers?
 - Workers in dangerous industries?
 - Does the law provide for special measures and/or reasonable accommodations in employment for vulnerable and disadvantaged people?
4. **Are there any provisions in the law concerning:**
 - Labor inspection?
 - Labor administration?
5. **Are forced labor, child labor, and human trafficking banned?**
 - What are the penalties for individuals or private entities who use forced labor or child labor in their businesses?
6. **Are there any legal remedies and/or grievance mechanisms available to individuals whose labor rights have been violated?**
 - What sanctions are available for employers who violate workers' rights?
 - Do sanctions vary based on whether the employer is a legal or natural person?

7. Has the state adopted any policies or programs relating to:

- Unemployment reduction?
- Vocational training and education?

C: LABOR AND EMPLOYMENT IN NATIONAL CONTEXT: QUESTIONS TO CONSIDER

- 1. What percentage of the national GDP is generated in the informal economy?**
- 2. Are there any discriminatory customs or practices that limit certain groups' access to employment?**

CASE STUDY: MANUAL SCAVENGING IN INDIA⁹⁶

"Manual scavenging" refers to the practice of cleaning excrement from public and private toilets, and is a common practice across India. Manual scavengers usually come from groups at the bottom of caste hierarchies; because of their low social status, they are generally only permitted to perform work deemed too menial or 'dirty' for members of higher caste groups. This caste-designated occupation reinforces long-standing social stigmas regarding 'cleanliness', and perpetuates the cycle of widespread discrimination. People who seek to leave manual scavenging may be denied the opportunity to do other kinds of work, and may even be denied access to community resources or threatened with eviction.

- 3. Does the country have a history of forced labor?**
 - If so, are members of particular social groups more vulnerable to involvement in forced labor?
- 4. Was forced labor or child labor (especially the use of child soldiers) a notable feature of armed conflict in the country? Was forced sex work a feature of armed conflict? If so, who were the victims and perpetrators?**
- 5. Has the state entered into any trade agreements that have adversely impacted access to employment?**
- 6. What is the relationship between labor unions and repressive government regimes? What about labor unions and organized crime?**

D: INSTITUTIONS INVOLVED IN ADDRESSING LABOR AND EMPLOYMENT

- National labor relations boards
- Trade unions
- Labor inspectorates
- Municipal offices providing unemployment services
- Labor courts
- Labor brokerage companies and other manpower agencies
- Civil society organizations

E: LABOR AND EMPLOYMENT IN TRANSITIONAL JUSTICE

| Possible Local Mechanisms | Possible National Mechanisms |
|--|---|
| Local truth-telling and documentation activities to collect evidence of labor rights violations | Prosecutions for perpetrators of labor-related violence in armed conflict, including the use of child soldiers, sexual slavery, and other forms of forced labor |
| Mobilization by civil society groups, including labor unions, on issues concerning violations of the right to work | Collective reparations programs to address the economic marginalization of communities and provide communities with access to employment resources |
| Data collection regarding state- and non-state actors involved in labor abuses | Rehabilitation (rather than prosecution) of child soldiers |
| Reconciliation programs which address labor rights violations | |

Section VI: The Right to Health

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING THE RIGHT TO HEALTH

International human rights law recognizes a right to the highest attainable standard of physical and mental health,⁹⁷ and gives both physical and mental health equal weight and consideration. The Constitution of the World Health Organization defines health as “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”⁹⁸ The ICESCR specifically obliges states to take steps to reduce infant mortality rates, improve environmental and industrial hygiene, prevent, treat and control diseases, and establish conditions assuring access to medical care and attention.⁹⁹ Other international human rights instruments also guarantee the right to health, including ICERD, CEDAW, the CRC, the ICMW, and the CRPD.¹⁰⁰ These human rights instruments prohibit discrimination in access to health services and call for special protections for certain categories of people, including pregnant women and lactating mothers, children and adolescents who have suffered neglect, exploitation or abuse, migrant workers, persons living with HIV, persons with disabilities, and indigenous and tribal peoples.

The right to health is recognized in several regional human rights instruments, including the Banjul Charter, the African Charter on the Rights and Welfare of the Child, the Maputo Protocol, and the Additional Protocol to the Banjul Charter in the Area of Economic, Social and Cultural Rights.¹⁰¹ The African human rights system specifically addresses the rights of women to self-protection and to be protected from HIV infection, and recognizes a broader right to health care.¹⁰² The San Salvador Protocol recognizes a right to the enjoyment of the highest level of physical, mental and social well-being, as well as the right to a healthy environment.¹⁰³ The European Social Charter recognizes the right to the protection of health in addition to the right to “benefit from any measures enabling [enjoyment of] the highest possible standard of health attainable.”¹⁰⁴ Finally, the ICCPR, the American Convention on Human Rights, and the ECHR all contain provisions relating to health, including the right to health and the prohibition of torture and other cruel, inhuman and degrading treatment.

International humanitarian law addresses the right to health in various ways, including by imposing restrictions on the treatment of combatants and prisoners of war, the use of torture and other cruel, inhuman and degrading treatment, and the kinds of weapons that can be used in warfare. It imposes requirements upon combatant parties to seek out, take care of, and prevent wounded and sick combatants against pillage and ill treatment.¹⁰⁵ Additionally, it prohibits combatants from denying civilians access to humanitarian relief, and restricting relief personnel from carrying out their missions.¹⁰⁶

CASE STUDY: PRIVATE OIL EXPLOITATION AND STATE VIOLENCE IN NIGERIA¹⁰⁷

The Nigerian National Petroleum Company, in consortium with Shell Petroleum Development Corporation (SPDC), engaged in oil reserve exploitation in Ogoniland. The government withheld information about the environmental dangers of oil activities from local communities, did not require private companies or its own agencies to conduct environmental impact studies, and barred scientists from entering Ogoniland to undertake those studies. Finally, the government responded to protests with massive violence, including by destroying villages and killing community leaders. The African Commission on Human and Peoples' Rights found that art. 16 of the Banjul Charter, and art. 12 of ICESCR, required the government of Nigeria to "not carry[] out, sponsor[] or tolerate[] any practice, policy or legal measures violating the integrity of the individual," including by turning a blind eye to behavior amounting to violations of the right to health.

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

1. **Do the constitution and/or laws protect or guarantee the right to the highest attainable standard of physical and mental health?**
 - Do these laws and policies apply in a non-discriminatory way to all, including based on health status and/or occupation?
2. **What provisions in the law, if any, provide for free and/or low-cost primary and secondary health care?**
 - Do these measures provide financial treatment for both physical and mental health conditions?
3. **Does the law address occupational health and safety?**
4. **Does the state have national law and/or policy frameworks governing:**
 - HIV/AIDS strategies?
 - Disability rights policies?
 - Maternity?
 - Child and adolescent health?
 - Violence against women?
 - *Is violence against women understood as a women's health risk in the legal and policy framework?*
 - Do these laws and policies address stigma and discrimination based on health status?
 - Do they require reasonable accommodations in educational, workplace, justice, and/or health care settings for PLHIV and people with disabilities?
5. **Are there environmental impact assessment requirements for development projects?**
 - Is there a requirement that these impact assessments address public health and safety concerns?
6. **Are there laws and/or policies relating to the training and placement of medical facilities and/or personnel?**
 - Are there any policies or guidelines concerning cultural sensitivity and language barriers for medical personnel?

7. Are there any laws or policies concerning emergency management? If so, do these measures contain provisions regarding the provision of acute and chronic healthcare in emergency contexts?
8. What accountability mechanisms are there, if any, for violations of the right to health?

C: THE RIGHT TO HEALTH IN NATIONAL CONTEXT: QUESTIONS TO CONSIDER

Please note that because many other rights are integral to and encompassed by the right to health, inquiries into these other rights (e.g., the right to food and sanitation) will also have health dimensions. These inquiries are omitted from this section.

1. **Are there any local customs or practices that result in discrimination in health care? For example:**
 - Is there a history of discrimination against persons with disabilities or PLHIV? If so, what impact does this have on their access to health care?
 - Are there social restrictions on women's access to care, including their access to health care information?
2. **Are there local customs or practices that amount to violations of the right to health? For example:**
 - Are there traditional forms of treatment that cause worse health outcomes?
 - If so, has the state's response to these traditional treatments undermined other community sovereignty rights?
3. **Have national development projects caused adverse health impacts in local communities?**
 - What role did state actors have in contributing to these health impacts?
 - Were members of particular communities victimized by these impacts?
4. **What medical services are provided in detention facilities?**
 - Are particular communities over-represented in national jail or prison populations?
 - Are their medical needs being met in accordance with best practices?
 - Is torture common in detention facilities?
5. **Are there populations who have suffered long-term exposure to conditions of deprivation, either deliberately or through the operation of economic policies that exacerbate conditions of poverty and famine?**
6. **In conflict, have combatants prevented or attempted to prevent relief personnel from reaching areas affected by violence or health emergencies?**
7. **Did armed conflict feature abuses impacting reproductive health, including:**
 - Sexual slavery;
 - Forced pregnancy;
 - Forced sterilization?
8. **Have combatant parties ever engaged in medical experimentation or torture?**

D: INSTITUTIONS INVOLVED IN ADDRESSING THE RIGHT TO HEALTH

- Ministries of health
- Agencies involved in occupational health and safety
- Agencies involved in agriculture and food distribution
- State, municipal, and private agencies involved in the provision of sanitation services
- National women's and children's institutes
- National health institutions, including organizing bodies for HIV/AIDS policies
- International institutions involved in health funding and standard setting
- Local civil society organizations
- Other providers of social protections, e.g., homeless, youth, and women's shelters

E: THE RIGHT TO HEALTH IN TRANSITIONAL JUSTICE

| Possible Local Mechanisms | Possible National Mechanisms |
|--|--|
| Documentation of human rights abuses regarding health rights, including long-term and chronic health issues | Amnesty programs for children involved in conflict, which include the provision of physical and mental health services |
| Local truth-telling commissions to address systemic violations of health rights | Legal claims against private entities involved in abuses of the right to health |
| Reconciliation programs which address discrimination in access to health care and underlying health determinants | Criminal prosecutions for individuals involved in torture, sexual slavery, and/or medical experimentation |
| Recognition of victimization and provision of mental health in addition to physical health care resources | Collective reparations schemes for communities affected by lack of access to health care resources |

Section VII: The Right to Education

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING THE RIGHT TO EDUCATION

The right to education is central in the international human rights framework; not only does it encompass economic, social and cultural rights, it is also necessary to the “full and effective” realization of civil and political rights.¹⁰⁸ The ICESCR recognizes a right to education that is “directed to the full development of the human personality and the sense of its dignity, and . . . shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.”¹⁰⁹ To that end, the ICESCR obligates states to guarantee compulsory and free primary education, progressively guarantee free secondary and higher education, and provide continuously improved material conditions for teaching staff.¹¹⁰ It further guarantees parents’ rights to choose schools that ensure that their children’s religious and moral education is conducted in conformity with their own convictions.¹¹¹ The UN Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education obliges states to prevent “distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.”¹¹² To that end, states may not deprive any people access to education of any type, limit people to inferior education, or maintain separate educational systems for particular groups.¹¹³

The right to education is articulated in CEDAW and the CRC. In addition to its non-discrimination provisions, CEDAW calls on states to use education to eliminate stereotypes about the roles of men and women in society and provide access to information “to ensure the health and well-being of families.”¹¹⁴ The CRC recognizes the right of the child to education, in particular education directed towards “[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential.”¹¹⁵ It also specifically recognizes that children with disabilities have a right to education.¹¹⁶ The CRPD obligates states to provide reasonable accommodation for persons with disabilities in the educational context, including effective individualized support measures.¹¹⁷

The Banjul Charter recognizes a right to education.¹¹⁸ The African Charter on the Rights and Welfare of the Child specifically protects the right of girls who become pregnant to complete their education,¹¹⁹ and the Maputo Protocol calls for the elimination of gender stereotypes and the integration of gender sensitization in school curricula.¹²⁰ The Charter of the Organization of American States (OAS Charter) obligates states parties to ensure that people can effectively exercise the right to education, and calls for special attention to be paid to the eradication of illiteracy.¹²¹ The San Salvador Protocol recognizes the right to free primary education and requires the establishment of special educational programs for persons with disabilities.¹²² The Revised European Social Charter mandates the provision of free primary and secondary education, and requires that persons still subject to compulsory educational requirements not be eligible for employment.¹²³ The European Charter for Regional or Minority Languages recognizes the right to use a regional or minority language in education, and the Framework Convention for the Protection of National Minorities provides that, as far as possible, persons belonging to national minorities have a right to be taught or receive instruction in their language.¹²⁴

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

1. **Do the constitution and/or laws create a right to education?**
 - Do they provide for universal, free, and compulsory primary education?
 - Until what age is education mandatory?
 - Do they provide for universal and free or low-cost secondary education?
 - Do they provide for universal and free or low-cost higher education?
 - Do provisions regarding the right to education apply in a non-discriminatory manner, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, economic condition, birth, or health status?
2. **Does the state have any programs or policies designed to:**
 - Promote adult education, vocational training, and/or skills acquisition?
 - Reduce illiteracy and dropout rates?
 - Address violence against women and/or children that specifically address the impact on access to education?
3. **Does the law require reasonable accommodations for persons with disabilities?**
 - Does it mandate minimum construction requirements for schools which include the provision of water and sanitation facilities, and separate bathroom facilities for the sexes?
4. **Do states or municipalities establish educational curricula?**
 - Do these curricula meet the requirements laid out in the ICESCR and/or any relevant regional instruments?
 - If the state is in transition, are school curricula obliged to include discussions of the conflict and/or strategies for reconciliation?

C: THE RIGHT TO EDUCATION IN NATIONAL CONTEXT: QUESTIONS TO CONSIDER

1. **Are there local customs or practices that result in limited access to educational facilities or materials for vulnerable groups? For example:**
 - Are girls of a certain age no longer permitted to attend school?
 - Does group-based discrimination impact the rights of minorities to fully enjoy the right to education?
 - Is there significant violence in the country—whether targeted at certain groups, or general conditions of violence—that negatively impact access to education?
 - Have historical legacies caused unequal access to educational opportunities?

CASE STUDY: COLONIAL LEGACIES AND ACCESS TO EDUCATION IN SIERRA LEONE¹²⁵

Sierra Leone's Truth and Reconciliation Commission (TRC) has noted that violations of the right to education can echo through generations. In its reporting on the status of children before the conflict, the TRC noted that because the British colonial government had focused on educating the sons of the elite, an educational system developed which was heavily reliant on the education of an urban middle class. Thus, because an independent Sierra Leone inherited an educational system that did not cater to the needs of the country—and did not address long-term inequalities in access to education—literacy rates remained extremely low in the years prior to the conflict. The TRC found that because of the government's inability to provide free education for all Sierra Leonean children, the Revolutionary United Front (RUF) was able to gain a foothold in particularly disaffected communities.

2. Are there any notable issues in school curricula and educational materials? For example:

- Do curricula and educational materials reinforce negative group stereotypes?
- Do educational institutions advance political agendas that are harmful to the promotion of understanding between groups? For example, do they address histories and identities in fair and unbiased ways?

3. What educational services are provided in detention facilities?

- Are particular communities over-represented in national jail or prison populations?
- Are their educational needs being met in accordance with best practices?

4. Has the country engaged in economic policies that have notably impacted their ability to guarantee the right to free primary education for all?

5. Have there been any attempts to provide schooling in displacement camps, if they exist?

- Have inadequate educational facilities in displacement camps had a notable impact on any social group?

D: INSTITUTIONS INVOLVED IN ADDRESSING THE RIGHT TO EDUCATION

- Institutions and agencies responsible for education, including educational ministries
- Municipal educational authorities, including school boards
- Private educational institutions
- Civil society organizations

E: THE RIGHT TO EDUCATION IN TRANSITIONAL JUSTICE

| Possible Local Mechanisms | Possible National Mechanisms |
|--|--|
| Truth-telling activities designed to address the multi-faceted causes of conflict | National truth and reconciliation commissions empowered to address root causes of conflict |
| Translation of documents and reports from transitional justice mechanisms into local languages | Development of national curricula designed to address the causes of conflict |
| Use of oral histories, art, and memorialization to teach students about diverse perspectives on conflict | Teaching in local languages |
| | Specific development programs in marginalized regions as a form of collective reparations |

CASE STUDY: EDUCATION AND PEACE-BUILDING IN NORTHERN IRELAND¹²⁶

Education is important not only as a right that can be violated, but also as a tool that can be used to facilitate post-conflict reconciliation. The ICESCR requires education to “promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.” To that end, education has taken on a critical peace-building role in Northern Ireland since The Troubles. Although schools have an explicit curriculum for education for mutual understanding (EMU) to address peace-building and community relations, it may have had limited impact: although there are common history curricula, it is not clear that children in the immediate aftermath of the Good Friday Agreement were provided with the necessary analytical tools to reconcile what they were being taught about mutual understanding, and what they viewed in practice. Nonetheless, the development of national curricula designed to promote mutual understanding and address the root causes of conflict could be useful not only for the purposes of reconciliation, but also for defining and furthering understandings of structural inequities that led to conflict in the first place.

Section VIII: The Right to Take Part in Cultural Life

A: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK GOVERNING THE RIGHT TO TAKE PART IN CULTURAL LIFE

The right to education is central in the international human rights framework; not only does it The right to take part in cultural life is enshrined in the Universal Declaration of Human Rights, the ICESCR, and the UNESCO Universal Declaration on Cultural Diversity.¹²⁷ It encompasses a number of other rights, including the right to enjoy the benefits of scientific progress, to benefit from the interests resulting from scientific, literary, and cultural production, and the right to freedom indispensable for scientific research and creative activity.¹²⁸ It is intrinsically linked to the right to self-determination, the right to an adequate standard of living, and the right to education.¹²⁹ The right to take part in cultural life plays an important role in the formulation of community rights and the rights of indigenous and tribal peoples.¹³⁰ the right to take part in cultural life has both economic and social dimensions, but also stands alone as an independent “component of human development.”¹³¹ The ability to freely take part in cultural activities—i.e., to decide one’s cultural identity for oneself or collectively for one’s group free of coercion, is a core component of the right.¹³² For instance, the UN Declaration on the Rights of Indigenous Peoples recognizes that “indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”¹³³

The right to take part in cultural life is recognized both as an individual and a collective right in regional human rights instruments. The Banjul Charter recognizes both an individual right to freely take part in the cultural life of one’s country and the right of all peoples to economic, social and cultural development.¹³⁴ The African Charter on the Rights and Welfare of the Child guarantees the right to cultural activities and a right to protection against harmful social and cultural practices, reflecting the importance of free choice to the formulation of the right.¹³⁵ The San Salvador Protocol recognizes the same rights as the ICESCR,¹³⁶ and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention) explicitly recognizes that violence against women “prevents and nullifies” the exercise of cultural rights.¹³⁷ The Framework Convention for the Protection of National Minorities specifically calls on states to promote the conditions necessary to maintain and develop the culture of, and to preserve the essential elements of, the identity of national minorities.¹³⁸ It further articulates linguistic freedoms as well as the rights to manifest beliefs and establish religious institutions.¹³⁹ It prohibits forced assimilation of national minorities to the extent that state measures “alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms from the principles enshrined in [this] Convention.”¹⁴⁰ Thus, similarly to the Banjul Charter, the Framework Convention for the Protection of National Minorities encompasses collective cultural rights.

CASE STUDY: ARMED CONFLICT AND DESTRUCTION OF CULTURAL OBJECTS IN GUATEMALA¹⁴¹

In response to insurgent movements in Guatemala between 1962 and 1996, the Guatemalan government applied a 'National Security and Development Plan' which called for national security forces to deny subversive societal elements access to their social and political bases. The Guatemalan Army had singled out indigenous Mayan communities as part of the guerrilla movement's support base; in response, it "destroyed ceremonial centers, sacred places and cultural symbols. Language and dress, as well as other elements of cultural identification, were targets of repression . . . the exercise of Mayan spirituality and the Catholic religion was obstructed, prevented or repressed; the maintenance and development of the indigenous peoples' way of life . . . was upset. Displacement and refuge exacerbated the difficulties of practicing their own culture." Against this backdrop of cultural violence, the Commission for Historical Clarification (CEH) found that violations of the right to take part in cultural life had occurred.

B: NATIONAL LEGAL FRAMEWORK: QUESTIONS TO CONSIDER

1. **Do the constitution and/or laws explicitly guarantee equal rights for minority groups, including indigenous and/or tribal peoples?**
2. **Do the constitution and/or laws establish a national language?**
 - Is it mandatory for individuals to learn the national language?
 - Do these provisions permit discrimination against individuals who do not speak the national language with respect to access to government goods and services?
3. **Do the constitution and/or laws protect community rights to make informed decisions regarding issues impacting traditional livelihood, culture, and environment?**
4. **Are there legal provisions recognizing customary and group practices, including:**
 - Traditional legal mechanisms;
 - Customary law; and
 - Customary resource ownership practices?
 - What is the relationship between customary practices and the formal legal system in the country?
5. **How is state citizenship acquired? Are members of minority groups entitled to state citizenship?**
 - Does the right of citizenship carry any obligations to participate in national cultural life?
 - Are individuals permitted to decline participation in national requirements on the grounds of religious or cultural belief? (E.g., is it permitted to be a conscientious objector?)
6. **Does the state have laws or policies governing the export or trade of archeological or cultural goods?**
7. **Do the constitution and/or laws recognize the right to free exercise of religion, peaceful assembly, freedom of expression, and freedom of association?**
 - What limitations are there, if any, on these rights?

8. Does the state have laws prohibiting harmful traditional practices?

- If so, how are these practices defined? Do they target the practices of certain minority groups without justification?

9. Do penal codes explicitly criminalize hate crimes based on race, religion, or cultural identity?

- What constitutes a hate crime in national law? Would the destruction of cultural or religious property count?

**C: THE RIGHT TO TAKE PART IN CULTURAL LIFE IN NATIONAL CONTEXT:
QUESTIONS TO CONSIDER**

1. Does the state have a history of systemic inequality that is rooted in ethnicity or group identity?

- Has the state sanctioned discrimination based on ethnicity and/or group identity?
- Are there local customs and/or practices that permit discrimination against people based on group identity? If so, what—if anything—has the state done to limit that?

2. Are religious or cultural goods and services freely available?

- Do cultural institutions, e.g. museums and libraries, reflect the state's cultural diversity? Are there groups who are excluded from representation in these institutions?
- Does the state preserve certain historical sites and artifacts over others?
- Do state educational resources reflect the country's cultural history in a manner that reflects the contributions of all cultural groups, without discrimination?

3. Is there a history of the state failing to consult with local communities regarding economic development works? If so, has the failure to engage in consultative processes resulted in the destruction of natural cultural resources?

4. If the state has prohibited harmful traditional practices, have they administered these laws in a non-discriminatory manner?

5. Was the destruction of cultural goods or property, including archeological artifacts and intangible cultural heritage, a feature of conflict?

- Were specific ethnic and social groups targets of this type of destruction?
- Was the destruction intended to destroy the culture or the people, in whole or in part?
- Has there been a culture of impunity for acts of violence committed against particular social groups?

CASE STUDY: DESTRUCTION OF CULTURAL HERITAGE SITES IN TIMBUKTU¹⁴²

After the military was driven from northern Mali and the Islamist group Ansar Dine (alongside other groups) took control, they occupied and administered the city of Timbuktu for some nine months. Ahmad al-Mahdi was asked to lead Hesbah, the city's morality brigade; during his tenure as the leader of Hesbah, al-Mahdi organized and facilitated the destruction of ten of the city's mausoleums, many of which were UNESCO World Heritage Sites, and all of which constituted sites of prayer and pilgrimage for many of the city's residents. The International Criminal Court characterized the intentional direction of attacks against non-military buildings "dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected" as war crimes, to which al-Mahdi pled guilty.

6. In times of emergency, has the state taken steps to make cultural goods or resources available?

D: INSTITUTIONS INVOLVED IN ADDRESSING THE RIGHT TO TAKE PART IN CULTURAL LIFE

- Institutions responsible for indigenous and tribal matters, including state ministries and local self-governance bodies
- Institutions responsible for cultural management, including archeological oversight bodies
- Institutions responsible for sustainable development, including environmental protection groups, land administration bodies
- Informal justice institutions, including traditional leaders
- Public and private educational institutions
- Charitable organizations dealing with artistic and cultural matters
- Civil society organizations

E: THE RIGHT TO TAKE PART IN CULTURAL LIFE IN TRANSITIONAL JUSTICE

| Possible Local Mechanisms | Possible National Mechanisms |
|--|--|
| Local conferences to discuss and address discrimination based on cultural identity | Reparations mechanisms that address property destruction, especially cultural property destruction |
| Documentation of human rights abuses related to the destruction of cultural goods and artifacts, prohibitions on exercising cultural practices | Prosecutions for international crimes for intentional damage and destruction of cultural property |
| Community consultations to address issues related to land occupancy and re-occupancy after displacement | Development of national curricula designed to address the causes of conflict |



In 2018, the Memory Committee of El Castillo, in Colombia, worked with victims and families of disappeared persons to record their stories and create personalized dolls memorializing those that are disappeared.



Two participants at a 2019 GIJTR Workshop in Guatemala.

CONCLUSION:

FROM TRANSITION TO TRANSFORMATION

This Assessment Tool is designed with a view towards ensuring that transitional justice processes not only reflect the full panoply of human rights abuses that may occur during armed conflict, but also to ensure that such processes can be used to challenge the structures of violence and exclusion, and the power dynamics that caused them, in a manner that is inclusive, creates a sense of agency, and contributes to long-term positive change. It operates on the assumption that integrating ESCR analyses deliberately and expressly into national and local-level transitional justice processes can help to achieve these goals, because the analysis of ESCR violations can—when targeted towards understanding the root causes of conflict—help to shed light on those deep-seated inequities. Necessarily, however, the structure of an ‘Assessment Tool’ designed to provide ways to analyze and integrate ESCR violations into transitional justice runs the risk of treating this subject as a mechanical solution to a technical problem, when it is a concern that goes to the very heart of what transitional justice is for, and what it can achieve.

As such, implementers are encouraged to bear in mind that the strategies advanced in this Assessment Tool serve a broader purpose of challenging the myriad assumptions that the field of transitional justice rests on today, including questions of whether it should constitute a short-term and corrective practice, how to define victimhood, how to achieve accountability, and ultimately, what it means to achieve justice in a post-conflict society.



Students listening to narratives of survivors as part of a history curriculum at the Liberation War Museum in Bangladesh in 2019.

APPENDICES

Appendix I: List of Pertinent International and Regional Human Rights Instruments

| International Treaties |
|--|
| International Human Rights Treaties |
| International Covenant on Civil and Political Rights, Dec. 16, 1966, entered into force Mar. 23, 1976, 999 U.N.T.S. 171 |
| International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, entered into force Jan. 3, 1976, 993 U.N.T.S. 3 |
| International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, entered into force Jan. 4, 1969, 660 U.N.T.S. 195 |
| Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, entered into force Sep. 3, 1981, 1249 U.N.T.S. 13 |
| Convention on the Rights of the Child, Nov. 20, 1989, entered into force Sep. 2, 1990, 1577 U.N.T.S. 3 |
| Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, entered into force Feb. 12, 2002, 2173 U.N.T.S. 222 |
| Convention against Discrimination in Education, Dec. 15, 1960, entered into force May 22, 1962, 429 U.N.T.S. 93 |
| Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, entered into force May 3, 2008, 2515 U.N.T.S. 3 |
| Convention concerning Indigenous and Tribal Peoples in Independent Countries (no. 169), June 27, 1989, entered into force Sep. 5, 1991, 28 I.L.M. 1382 |
| Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, entered into force June 26, 1987 1465 U.N.T.S. 85 |
| International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, entered into force Dec. 23, 2010, 2716 U.N.T.S. 3 |
| International Treaties Concerning Refugees, Migrants, and Stateless Persons |
| Convention Relating to the Status of Refugees, July 28, 1951, entered into force Apr. 22, 1954, 189 U.N.T.S. 137 |
| Convention relating to the Status of Stateless Persons, Sep. 28, 1954, entered into force June 6, 1960, 360 U.N.T.S. 117 |
| Convention on the Reduction of Statelessness, Aug. 30, 1961, entered into force Dec. 13, 1975, 989 U.N.T.S. 175 |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, entered into force July 1, 2003, 2220 U.N.T.S. 3 |

| International Treaties Concerning International Criminal and Humanitarian Law |
|--|
| Rome Statute of the International Criminal Court, July 17, 1998, entered into force July 1, 2002, 2187 U.N.T.S. 3 |
| Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 |
| Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3 |
| Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609 |
| International Treaties Concerning Health, Trade and Development |
| Constitution of the World Health Organization, July 22, 1946, 14 U.N.T.S. 185 |
| Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994, 1867 U.N.T.S. 154 |
| TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 |
| Agreement on Agriculture, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 410 |
| International Treaties Concerning Labor Rights |
| Forced Labor Convention (no. 29), June 28, 1930, 39 U.N.T.S. 55 |
| Abolition of Forced Labour Convention (no. 105), July 4, 1957, 320 U.N.T.S. 291 |
| Discrimination (Employment and Occupation) Convention (no. 111), June 25, 1958, 362 U.N.T.S. 31 |
| Convention Concerning Minimum Age for Admission to Employment (No. 138), June 26, 1973, 1015 U.N.T.S. 297 |
| Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (no. 182), June 17, 1999, 2133 U.N.T.S. 161 |
| Migration for Employment Convention (Revised) (no. 97), Jan. 22, 1952, 20 U.N.T.S. 79 |

Regional Treaties

American Convention on Human Rights, Nov. 21, 1969, entered into force July 18, 1978, 1144 U.N.T.S. 123

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Nov. 17, 1988, entered into force Nov. 16, 1999, 28 I.L.M. 156

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, entered into force March 5, 1995, 33 I.L.M. 1534

Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, June 8, 1999, entered into force Sep. 14, 2001, AG/RES. 1608 (XXIX-0/99)

African Charter on Human and Peoples' Rights, June 27, 1981, entered into force Oct. 21, 1986, 1520 U.N.T.S. 217

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, entered into force Nov. 25, 2005, CAB/LEG/66.6 (Sep. 13, 2000)

African Charter on the Rights and Welfare of the Child, July 11, 1990, entered into force Nov. 29, 1999, OAU Doc. CAB/LEG/24.9/49 (1990)

Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, entered into force Sep. 3, 1953, 213 U.N.T.S. 221

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ASEAN Human Rights Declaration, Nov. 18, 2012

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ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Jan. 13, 2007

Appendix II: Selected Acronyms

| | |
|-----------------|---|
| ABA | American Bar Association |
| ABA ROLI | American Bar Association Rule of Law Initiative |
| AJAR | Asia Justice And Rights |
| CAVR | Commission for Reception, Truth and Reconciliation in Timor-Leste |
| CEDAW | Convention for the Elimination of All Forms of Discrimination Against Women |
| CPR | Civil and political rights |
| CPR | Civil and Political Rights |
| CRC | Committee on the Rights of the Child |
| CRPD | Convention on the Rights of Persons with Disabilities |
| CSO | Civil Society Organization |
| CSV | Centre for the Study of Violence and Reconciliation |
| DRL | U.S. Department of State, Bureau of Democracy, Human Rights, and Labor |
| ESCR | Economic, social and cultural rights |
| GITJR | Global Initiative for Justice, Truth and Reconciliation |
| ICCPR | International Covenant on Civil and Political Rights |
| ICERD | International Convention on the Rights of Persons with Disabilities |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICMW | International Convention on the Rights of Migrant Workers and Members of their Families |
| ICSC | International Coalition of Sites of Conscience |
| IDP | Internally Displaced Persons |
| ILO | International Labour Organization |
| UN | United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |

Appendix III: Further Reading and Resources

INTRODUCTION: FURTHER RESOURCES

U.N. Office of the High Commissioner for Human Rights, Transitional Justice and Economic, Social and Cultural Rights (2014), available at <https://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf> (last visited Dec. 6, 2019).

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Laura Van De Lande, *Eliminating Discrimination and Inequalities In Access to Water and Sanitation*, available at <https://www.ohchr.org/Documents/Issues/Water/DiscriminationPolicy.pdf> (last visited Dec. 6, 2019).

RIGHT TO PROPERTY AND NATURAL RESOURCES: FURTHER RESOURCES

U.N. Office of the High Commissioner for Human Rights, *Land and Human Rights: Standards and Applications* (2015), available at https://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf (last visited Dec. 6, 2019).

Lorenzo Cotula Ed., *The Right to Food and Access to Natural Resources: Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor* (2008), available at <http://www.fao.org/3/a-k8093e.pdf> (last visited Dec. 6, 2019).

Nicolaas Schrijver, *Self-Determination of Peoples and Sovereignty Over Natural Wealth and Resources*, In U.N. Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays In Commemoration of 25 Years of the United Nations Declaration on the Right to Development* 97 (2013), available at <https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIIChapter5.pdf> (last visited Dec. 6, 2019).

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World Health Organization, *Health Principles of Housing*, available at <https://apps.who.int/iris/handle/10665/39847> (last visited Dec. 6, 2019).

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- ⁵ See Waldorf, *supra* note 2, at 179; Evelyne Schmid & Aoife Nolan, 8 INT'L J. TRANSITIONAL JUST. 362, 371-74 (2014), available at <https://academic.oup.com/ijtj/article/8/3/362/2912086> (last visited Dec. 6, 2019).
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- ²⁶ See Convention on the Elimination of All Forms of Discrimination Against Women, art. 12(2), Dec. 18, 1979,

entered into force Sep. 3, 1981, 1249 U.N.T.S. 13 [hereinafter CEDAW], Convention on the Rights of the Child, art. 24(2)(c) and 27(e), Nov. 20, 1989, entered into force Sep. 2, 1990, 1577 U.N.T.S. 3 [hereinafter CRC]; Convention on the Rights of Persons with Disabilities, arts. 25(f) and 28(1) Dec. 13, 2006, entered into force May 3, 2008, 2515 U.N.T.S. 3 [hereinafter CRPD]. Concerningly, CEDAW only guarantees women a right to adequate food in the context of pregnancy.

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- ³³ CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), ¶ 6, U.N. Doc E/C.12/1999/5 (May 12, 1999), available at <https://www.refworld.org/pdfid/4538838c11.pdf> (last visited Dec. 6, 2019).
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- ⁵³ ICESCR, *supra* note 25, at art. 1(2); International Covenant on Civil and Political Rights, art. 2(1), Dec. 16, 1966, entered into force Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR].
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- ⁶⁶ Geneva Convention no. 4, *supra* note 31, at art. 53.
- ⁶⁷ Rome Statute, *supra* note 31, at arts. 6, 7(1), 8.
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⁷⁰ ICESCR, *supra* note 25, at art. 11(1).

⁷¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 43(1)(d), Dec. 18, 1990, entered into force July 1, 2003, 2220 U.N.T.S. 3 [hereinafter ICMW]; Convention Relating to the Status of Refugees, art. 21, July 28, 1951, entered into force Apr. 22, 1954, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; Refugee Convention, art. 21; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iii), Mar. 7, 1966, entered into force Jan. 4, 1969, 660 U.N.T.S. 195 [hereinafter ICERD].

⁷² Child Rights Charter, *supra* note 27, at art. 20(2); European Convention on the Legal Status of Migrant Workers, art. 13(4), Nov. 24, 1977, E.T.S. 93; European Migrant Workers Convention, art. 13(4); European Social Charter, *supra* note 44, at art. 16.

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⁷⁶ Geneva Convention no. 4, *supra* note 31, at art. 53; Additional Protocol I to Geneva Conventions, *supra* note 32, at art. 69; Additional Protocol II to Geneva Conventions, *supra* note 32, at art. 17.

⁷⁷ Colombian Constitutional Court, Decision T-025 of 2004, available at https://www.brookings.edu/wp-content/uploads/2016/07/Colombia_T-025_2004.pdf (last visited Dec. 6, 2019).

⁷⁸ ICESCR, *supra* note 25, at arts. 6-7.

⁷⁹ See generally ILO Declaration on Fundamental Principles and Rights at Work, June 18, 1998.

⁸⁰ ICERD, *supra* note 71, at art. 5(e)(i).

⁸¹ CEDAW, *supra* note 26, at arts. 11(1)(a), 2(e).

⁸² CRC, *supra* note 26, at art. 32(1)-(2).

⁸³ CRPD, *supra* note 26, at art. 27(1).

⁸⁴ ICMW, *supra* note 71, at arts. 11, 25.

⁸⁵ African Charter on Human and Peoples' Rights (Banjul Charter), art. 15, June 27, 1981, entered into force Oct. 21, 1986, 1520 U.N.T.S. 217 [hereinafter Banjul Charter].

⁸⁶ San Salvador Protocol, *supra* note 27, at arts. 6-7.

⁸⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 4, 11, Nov. 4, 1950, entered into force Sep. 3, 1953, 213 U.N.T.S. 221.

⁸⁸ European Social Charter, *supra* note 44, at arts. 1-10, 15, 18-20, 22, 24-29.

⁸⁹ Additional Protocol II to Geneva Conventions, *supra* note 32, at art. 4(2)(f).

⁹⁰ Rome Statute, *supra* note 31, at arts. 7(1)(c), 8(2)(b)(xxii), (e)(vi).

⁹¹ Geneva Convention no. 3, *supra* note 31, at art. 49.

⁹² Geneva Convention no. 4, *supra* note 31, at arts. 40, 95.

⁹³ CESCR, General Comment 18, The Right to Work (Art. 6 of the Covenant), ¶ 4, U.N. Doc E/C.12/GC/18 (Feb. 6, 2006).

⁹⁴ *Id.*

⁹⁵ *Id.* at ¶ 7.

⁹⁶ Human Rights Watch, Cleaning Human Waste: "Manual Scavenging", Caste, and Discrimination in India (Aug. 25, 2014), <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india> (last visited Dec. 6, 2019).

⁹⁷ ICESCR, *supra* note 25, at art. 12(1).

- ⁹⁸ Constitution of the World Health Organization, Preamble, July 22, 1946, 14 U.N.T.S. 185.
- ⁹⁹ ICESCR, supra note 25, at art. 12(2).
- ¹⁰⁰ ICERD, supra note 71, at art. 5(e)(iv); CEDAW, supra note 26, at arts. 11, 12, 14; CRC, supra note 26, at art. 24, 39; ICMW, supra note 71, at arts. 28, 43, 45; CRPD, supra note 26, at art. 25.
- ¹⁰¹ Banjul Charter, supra note 85, at art. 16; Child Rights Charter, supra note 27, at art. 14; Maputo Protocol, supra note 27, at art. 14.
- ¹⁰² AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, HIV, THE LAW AND HUMAN RIGHTS IN THE AFRICAN HUMAN RIGHTS SYSTEM: KEY CHALLENGES AND OPPORTUNITIES FOR RIGHTS-BASED RESPONSES: REPORT ON THE STUDY OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS 32, available at https://www.unaids.org/sites/default/files/media_asset/HIV_Law_AfricanHumanRightsSystem_en.pdf (last visited Dec. 6, 2019).
- ¹⁰³ San Salvador Protocol, supra note 27, at art. 10(1).
- ¹⁰⁴ European Social Charter, supra note 44, at arts.1(11), 11.
- ¹⁰⁵ See, e.g., Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, art. 15(1) Aug. 12, 1949, entered into force Oct. 21, 1950, 75 U.N.T.S. 31.
- ¹⁰⁶ Additional Protocol I to Geneva Conventions, supra note 32, at arts. 70(2)-(3), 71(3)-(4).
- ¹⁰⁷ Center for Constitutional Rights, Factsheet: The Case Against Shell (Mar. 24, 2009), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/factsheet-case-against-shell> (last visited Dec. 6, 2009).
- ¹⁰⁸ CESCR, General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), ¶ 2, U.N. Doc E/1992/23 (May 10, 1999).
- ¹⁰⁹ ICESCR, supra note 25, at art. 13(1).
- ¹¹⁰ Id. at art. 13(2).
- ¹¹¹ Id. at art. 13(3).
- ¹¹² Convention against Discrimination in Education, art. 1(1), Dec. 15, 1960, entered into force May 22, 1962, 429 U.N.T.S. 93.
- ¹¹³ Id. at arts. 1(1)(a)-(c). Please note that art. 1(1)(c) does not constitute discrimination when educational systems separate groups on the basis of sex, or religious or linguistic reasons, provided that such institutions provide teaching staff, premises, and equipment of the same quality, and provide opportunities to undertake the same or equivalent courses of study. Id. at art. 2.
- ¹¹⁴ CEDAW, supra note 26, at art. 10(c), (h).
- ¹¹⁵ CRC, supra note 26, at art. 29(1)(a).
- ¹¹⁶ Id. at art. 23(3).
- ¹¹⁷ CRPD, supra note 26, at art. 24(2).
- ¹¹⁸ Banjul Charter, supra note 85, at art. 17.
- ¹¹⁹ Child Rights Charter, supra note 27, at art. 11(6).
- ¹²⁰ Maputo Protocol, supra note 27, at art. 12.
- ¹²¹ Charter of the Organization of American States, arts. 49-50, Apr. 30, 1948, entered into force Dec. 13, 1951, 119 U.N.T.S. 3.
- ¹²² San Salvador Protocol, supra note 27, at art. 13(3)(a) and (c).
- ¹²³ European Social Charter, supra note 44, at arts. 17, 7.
- ¹²⁴ European Charter for Regional or Minority Languages, art. 8, Nov. 5, 1992, entered into force Mar. 1, 1998, E.T.S. 148; Framework Convention for the Protection of National Minorities, art. 14, Feb. 1, 1995, entered into force Feb. 1, 1998, E.T.S. 157.
- ¹²⁵ Sierra Leone Truth and Reconciliation Commission, Chapter Four, Children and the Armed Conflict in Sierra Leone, <http://www.sierraleonetrcc.org/index.php/view-report-text-vol-3b/item/volume-three-b-chapter-four> (last visited Dec. 6, 2019).
- ¹²⁶ See Katarina Tomaševski, The Right to Education: Mission to the United Kingdom (Northern Ireland) (24 November-1 December 2002), ¶ 45, U.N. Doc E/CN.4/2003/9/Add.2 (Feb. 5, 2003), available at <https://www.refworld.org/pdfid/3f4a064e4.pdf> (last visited Dec. 6, 2019).
- ¹²⁷ Universal Declaration of Human Rights, art. 27, U.N. Doc A/RES/217(III) (Dec. 10, 1948); ICESCR, supra note 25, at art. 15; UNESCO Declaration on Cultural Diversity, arts. 5-6 (Nov. 2, 2001).
- ¹²⁸ ICESCR, supra note 25, at art. 15.

¹²⁹ CESCR, General Comment no. 21, para. 2.

¹³⁰ See, e.g., <https://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/May2008/EphraimNimni.pdf>, and http://phrg.padovauniversitypress.it/system/files/papers/2017_2_2.pdf at 181.

¹³¹ http://phrg.padovauniversitypress.it/system/files/papers/2017_2_2.pdf at 170.

¹³² CESCR, General Comment no. 21, Right of Everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), ¶ 15(a), U.N. Doc E/C.12/GC/21 (Dec. 21, 2009).

¹³³ UNDRI, supra note 60, at art. 8.

¹³⁴ Banjul Charter, supra note 85, at arts. 17, 21.

¹³⁵ Child Rights Charter, supra note 27, at arts. 12, 21.

¹³⁶ San Salvador Protocol, supra note 27, at art. 14.

¹³⁷ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, arts. 4-5, June 9, 1994, entered into force March 5, 1995, 33 I.L.M. 1534

¹³⁸ Framework Convention for the Protection of National Minorities, supra note 124, at art. 5.

¹³⁹ Id. at arts. 7-8.

¹⁴⁰ Id. at arts. art. 16.

¹⁴¹ Report No. 6/14. Case No. 12,788, Residents of the Village of Chichupac and Neighboring Communities, available at <https://www.oas.org/en/iachr/decisions/court/12788FondoEn.doc>, (last visited Dec. 6, 2019).

¹⁴² Prosecutor v. Ahmad al Faqi al Mahdi, Case No. ICC-01/12-01/15, Judgment and Sentence, available at https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF (last visited Dec. 6, 2019).



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