

Impunity Watch is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts periodic and sustained research into the root causes of impunity and obstacles to its reduction that includes the voices of affected communities to encourage truth, justice, reparations and the non-recurrence of violence. We work closely with civil society organisations to increase their influence on the creation and implementation of related policies.

“Our biggest problem is the gap between principles and reality”ⁱ

Recurring Obstacles to Gender Sensitivity within Transitional Justice

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Summary

This Paper is based on a comparative review of three country studies in Guatemala, Bosnia and Herzegovina, and Burundi into the obstacles facing current truth, justice, reparations and non-recurrence (TJRNR) efforts with respect to their level of gender sensitivity. The Paper identifies a number of recurring obstacles that were found in each of the three countries, despite their differing contexts and differences in the nature of the conflicts that they experienced. With the intention of stimulating discussion on the obstacles to gender sensitivity that are still experienced even after numerous positive initiatives seeking to encourage gender sensitivity, the Paper raises two key factors that animate the identified obstacles: the **influence of societal norms, perceptions and attitudes on gender**, and **imposition from the outside**. These key areas are at the very heart of TJRNR and development debates. The aim of this paper is to provide a basis for further examination of these key issues and to provide some feasible recommendations with a view to stimulating greater progress towards meeting the basic requirements needed for gender sensitive processes dealing with gross human rights abuses.

Overview of the Three Research Countries

| | Root Causes of Violent Conflict | Main Conflict Period(s) | Major Crimes and Human Rights Violations | Estimated Number of persons killed | Ending of Violence and Type of Transition | Transitional Justice Mechanisms and Instruments promoting gender sensitivity | Present-day Aftermaths of the Violence |
|---------------------------|---|--|--|--|--|---|---|
| Bosnia-Herzegovina | Ethnic tensions, economic and structural instability and the breakup of Yugoslavia, including declaration of independence by the Socialist Republic of Bosnia and Herzegovina | 1992-1995 | War crimes, crimes against humanity and genocide | 100,000 | Peace agreement; creation of two political entities within BiH (Federation of Bosnia and Herzegovina and the Republika Srpska) | Criminal prosecutions: International Criminal Prosecutions at the ICTY based in The Hague; domestic prosecutions and hybrid proceedings in BiH Gender Action Plan (2006) NAP UNSCR1325 (2010-2013) Constitutional gender equality Several laws for preventing and combating domestic violence | Weak central state and state institutions, ethnic divisions, political manipulation, high unemployment, youth violence, corruption and lack of truth, justice and reparations. Peace Agreement judged to have failed to address the root socio-political causes of the conflict and effectively entrenched ethnic divisions within BiH's political and institutional structures, VaW, GBV, obstructing cultural attitudes towards gender sensitivity and equality, large number of IDPs and former camp inmates |
| Burundi | Colonial legacy of violence and division, regional, clan and ethnic struggles for economic and political power, social and political inequalities, radicalisation of ethnic divisions, including violent suppression of the civilian population | Cyclic violence since independence in 1962, including major episodes of violence in 1972, 1988, 1993, and civil war from 1993-2005 | Crimes against humanity and genocide | N/A (estimated in the hundreds of thousands) | Peace agreement, ethnic power-sharing arrangements, new constitution and several ceasefire agreements, including UN-monitored demobilisation of rebels | None (a Truth and Reconciliation Commission is slated for 2013) NAP UNSCR1325 (2011) National Gender Policy (2003) Kampala Declaration 2011 CEDAW (1992) African Charter (1989) Constitutional gender equality Maputo protocol (signed, not ratified, 2003) Protocol on prevention SVaW and children (2008) | Culture of silence and impunity, an increasingly repressive government, shrinking space for opposition, rampant corruption, extra-judicial killings, weak state institutions, VaW, GBV, pressing land issues, obstructing cultural attitudes towards gender sensitivity and equality, large number of returning refugees and IDPs, shattered economy |
| Guatemala | Armed insurrection against government repression, emergence of guerrilla movements, political intolerance, racism, social inequalities | 1960-1996 | State-sponsored violence, persecution and disappearances, crimes against humanity and genocide | 200,000 | Transition of power from military to civilian authority, followed by Peace Accords | Recovery of Historical Memory project (REMHI), Commission for Historical Clarification (CEH), exhumations and national reparations programme Ratification CEDWA, UNSCR1325, no NAP Several domestic laws on promoting gender equality. and preventing and combating domestic and sexual violence, femicide, VaW, exploitation and trafficking | Organised crime, impunity, extreme socio-economic inequalities, weak state institutions including judicial system, corruption, extra-judicial killings, continuum of persons in power who were former perpetrators, VaW, GBV, pressing land issues, obstructing cultural attitudes towards gender sensitivity and equality. |

Transitional Justice:

Impunity Watch understands Transitional Justice to include processes of Truth, Justice, Reparations and Non-Recurrence (TJRNR). TJRNR processes thus need to be inclusive of all groups in society and adhere to a rights based approach, therefore taking into account the gendered differences in experiences, needs and rights of male and female victims of grave human rights abuses. Moreover, TJRNR processes need to address pre conflict inequalities within a society to make use of the transformative power of these processes and transform society in a society where the Rule of Law prevails.

Impunity:

Impunity Watch understands impunity as the impossibility de jure or de facto of bringing the perpetrators of violations to account whether in criminal, civil, administrative or disciplinary proceedings since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims. IW sees impunity not as a problem confined purely to legal systems or to the administration of justice but as a symptom of weaknesses in all three branches of state and so includes these within the scope of its inquiry. The research also extends beyond State institutions to enquire whether the influence of non-state actors and societal factors can be crucial to the success or failure of transitional justice initiatives.

Introduction

After years of sustained efforts and attention to its importance, gender sensitivity is increasingly becoming a key principle in international policymaking. Important strides have been made towards achieving gender sensitivity, with a long list of vital international instruments, action plans, policies, and NGO/CSO programmes. New ground has been broken in the manner in which gender is now conceived in transitional justice (TJ) programming at the international level. More than a decade since the UN Security Council adopted Resolution 1325 (2000), gender is on the agenda like never before. ‘Working on gender’ is being taken up by a wide variety of actors.

Nonetheless, taking stock of progress to date, critical questions still remain about the extent to which the principle has fully become a reality. Despite the wealth of instruments and policies seeking to encourage and implement gender sensitivity, frustrations exist that the principle has not yet fully taken root and that the spirit with which the various instruments were adopted still remains to be matched by implementing authorities. Whilst these frustrations may partly be linked to the slow progress of change – the time-lag between commitment, implementation and impact will logically take a number of years – they may equally indicate more profound obstacles to the realisation of genuinely gender sensitive practices. Critical questions therefore arise.

Why, despite numerous international agreements, is addressing the lack of a gender sensitive approach in impunity reduction and transitional justice still such an enormous challenge? Why is the gap between policy and practice difficult to bridge? What makes the implementation of a gender sensitive approach in TJRNR processes difficult, and where do the main obstacles lie? Is it a lack of political will, a lack of financial resources, or mere prioritisation of resources that are the biggest obstacles? Do culture and inherent gender roles and perceptions play a role? Is a lack of gender awareness the problem, or are there more practical challenges to implementing policy? And to what extent is gender a priority in countries that must deal with other immediate challenges after violence?

To begin finding answers to these questions, Impunity Watch (IW) conducted research in Guatemala, Burundi and Bosnia and Herzegovina (hereafter, BiH), to map current gender sensitive initiatives in the respective countries, to measure the level of gender sensitivity of transitional justice measures and actors, and to highlight overarching obstacles to implementation. The research equally sought to draw attention to our concern that women remain in a vulnerable position in the aftermath of conflict, experience greater difficulties in accessing justice and continue to have little influence on policy, and the lack of a true gender perspective in efforts, paying equal attention to men’s experiences.

The overall objective of the research programme is to formulate targeted policy recommendations to improve TJRNR efforts in the respective countries, whilst at the same time formulating comparative insight to inform policymaking in meeting the very basic requirements for a meaningful and legitimate process for victims of violence. Through this insight, we also aim to contribute to the realisation of states’ obligations to implement their international commitments (including better operationalisation of CEDAW and UNSCR 1325), the reduction of impunity, and – crucially – the realisation of gender sensitivity in TJRNR efforts. Acknowledging the progress made to date, as well as the frustrations and critical questions that still exist, challenges us to search for what ‘works’ and where the solutions may lie to identifiable problems. Any transformative process will necessarily take time, with no emancipation process having ever taking place overnight. But it is crucial to distinguish the ordinary development of an emancipatory *process* (time) from the structural (and other) factors that otherwise impede that process.

Complementarity:

Transformative justice measures should include complementary mechanisms for guaranteeing truth, justice, reparations and the non-recurrence of violence. Attention should be given to the diverse ways that TJ can contribute to the goals of political and institutional reform, addressing socio-economic inequalities, demands for human rights, as well as the range of individual and community needs after violence.

Transformative Justice:

Transformative justice seeks to address not just the consequences of violations committed during conflict but the social relationships that enabled these violations in the first place, and this includes the correction of unequal gendered power relations in society.

UN Women, *A window of opportunity: Making transitional justice work for women* (New York: United Nations, 2010)

Gender:

IW understands the term “gender” to refer to the *socially constructed* roles of, relationships between, and responsibilities of men and women. These determine men and women’s access to power and resources – be they public or private, material or immaterial. Characteristics of masculinity and femininity differ per time and place and depend on culture, class, nationality, and ethnicity – hence gender experts often talk about masculinities and femininities.

This Discussion Paper raises a number of recurring obstacles to gender sensitivity that were found across the three contexts. Whilst the respective country reports contain context-specific recommendations and a wealth of information for each particular context, we aim here to provide a comparative perspective to the issue at hand. The Paper will be used as the basis for a number of discussion forums that will aim to develop concrete, feasible recommendations to aid policymaking. After briefly outlining the principal components of a gender sensitive approach as we conceive it, the Paper summaries recurring obstacles from the three research countries before proposing two key factors that appear to lie at the heart of these obstacles: **the influence of societal norms, perceptions and attitudes towards gender, and imposition from the outside.**

Defining Gender Sensitivity

Gender sensitivity cannot be guaranteed by a solely box-ticking exercise. Whilst a number of indicators and guidelines can be outlined, a simple mechanical adherence to them will alone be insufficient for ensuring genuine gender sensitivity. Embracing the spirit and essence of those indicators and/or guidelines is just as important, if not more, for the long-term sustainability of transformative practices.

That being said, our research uncovered many striking examples of non-compliance by states to even the minimum requirements of gender sensitivity. In the framework of states’ obligations to guarantee victims’ rights to TJRNR, the case of female victims of human rights abuses still stands out as an enduring affront to the many years of progress made towards gender sensitivity. Female victims continue to be largely side-lined within current TJRNR processes, with existing TJ mechanisms still insufficiently meeting the gendered needs and rights of victims.

“TJ processes can also address the context of inequality and injustice that gives rise to conflict, transforming the structures of inequality that underpin this violence”.

But still we must applaud the progress that has taken place. It has, for example, now been generally acknowledged by a wide range of actors that women’s and men’s experiences differ during and after armed conflict. This includes the acknowledgement that women often continue to suffer disproportionately in the post-conflict period, facing different challenges in the aftermath of conflict.

Nevertheless, growing attention to gendered issues in impunity reduction and TJ has frequently concentrated on sexual or gender-based violence. While this is certainly a valid point of attention, it risks downplaying attention for the other human rights violations women and men experience during conflict and perpetuates a common perception of women as weak and powerless. It is therefore vital to take into account the stories and experiences of both male and female victims, as well as voices from other marginalised and vulnerable groups in society. Awareness among victims of human rights abuses is furthermore vital to ensure that they can move beyond ‘passive victimhood’ to become more *aware* of their rights as active rights-holders, and both enabled and empowered to hold the state accountable to its international obligations. This includes claiming rights that were violated during a conflict period, but also rights that continue to be violated thereafter. Conflict can exacerbate risk factors for certain groups in society, making these groups even more vulnerable to human rights violations in the post conflict era.

In this respect transitional justice processes can be an essential element in the combat of impunity for wartime human rights violations and for meeting victims’ right to know, right to justice and right to reparations under international law, as well as states’ obligations to take measures to guarantee the non-recurrence of abuses. Where the

Victims' Rights

Victims' rights have been laid down in the UN 'Principles for the Protection and Promotion of Human Rights through Action to combat Impunity' and 'Basic principles and guidelines on the Right to Remedy and Reparations for Victims of Gross Violations of Human Rights Law and Serious violations of International Humanitarian Law'. State institutions have to respond to victims of crimes committed by non-state groups or individuals

present approach to transitional justice falls short, however, is in its current preoccupation solely on violations. **According to IW, the violation-oriented approach – whilst necessary – must not overshadow the need to address the effects of conflict for groups at risk (be it by ethnicity, gender, religion, social status) in the aftermath of conflict.** TJ mechanisms have the opportunity and power to transform unequal power relations in a society, as is reflected in the concept of Transformative Justice. In the same respect, the recently-appointed Special Rapporteur (SR) on TJRNR has stressed the importance of context to the implementation of transitional justice mechanisms, including factors that would otherwise affect the implementation and effectiveness of TJRNR processes. In an encouraging move towards finally realising gender sensitivity, the SR furthermore reiterates the importance of a victim-centred, inclusive and gender sensitive approach for any TJRNR process to capture the full range of experiences and needs after violence and for compliance with international standards.

In light of the above, it can be seen that the absence of a gender perspective in transitional justice processes will fail to make use of the transformative potential of these processes, but will also limited the effectiveness of its mechanisms. Gender-sensitive TJRNR processes should be responsive to how similar violations affect men and women differently and disproportionately, and should attend to the broader impact of armed conflict on men and women. They should reflect and respond to social inequalities and power relations, as these affect victims' socio-economic situation during the conflict and in the post-conflict period, including victims' access to and benefit from transitional justice efforts.

“TJRNR measures contribute to two mediate goals, i.e. providing recognition to victims and fostering trust and two final goals: contributing to reconciliation and strengthening the rule of law”¹

IW therefore understands gender-sensitivity as paying attention to these roles and relationships, alongside the inequalities and differences between and among women and men in a particular context. **More precisely, according to IW a gender sensitive approach to TJRNR processes is applied through:**

- Integrating the specific concerns, needs and experiences of men and women in the design and implementation of TJRNR-related actions;
- Ensuring equal and meaningful participation of men and women in TJRNR processes;
- Treating men and women as heterogeneous groups (thus paying attention to other aspects of identity, including ethnic, socio-economic or religious backgrounds, age, and sexuality); and
- Analysing (the construction of) gender roles and patterns in a specific context to allow for transformation, including tackling the root causes of gender-based violence.

Comparative Review of Burundi, Bosnia and Herzegovina, and Guatemala: Broad Findings ‘Within the Boxes’

Preconditions for Successful Transitional Justice Processes

*“Crucial preconditions for the successful implementation and impact of transitional justice in countries are **peace**, a certain measure of (economic) **stability**, control of the State over its own **territory** and the **political will** to face the past. Nowadays, transitional justice is primarily used in fragile states, mostly coming out of armed conflict. These states lack the mentioned preconditions for transitional justice. In these particular circumstance, and integral approach to TJ is essential. The different components of TJ, that is truth, justice, reparations and non-recurrence measures, should be complementary to each other”.*²

UNSCR 1325 (2000)

UNSCR 1325 (2000) calls on all actors involved to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict, to fight impunity and prosecute those who perpetrated crimes of genocide, crimes against humanity and war crimes including war rape and other forms of sexual violence, as well as to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.

With the above-mentioned definition and understanding of gender sensitivity in mind, we can briefly look at broad findings from the three country studies that indicate levels of gender sensitivity of TJRNR processes in the respective countries. The findings from the three countries have been analysed and compared, with the most relevant comparative findings highlighted below. The individual country reports provide context-specific recommendations on how to address shortcomings in gender sensitivity per country, but here it is our intention to demonstrate a number of common findings across the three contexts.

Despite greater attention to gender sensitivity, a lack of trickle-down can be observed, including policies failing to permeate into practice.

As noted, over a number of years increased attention by states and the international community on the need for a gender sensitive approach to TJRNR can be seen. However, the implementation of international resolutions and policies in many respects lack a trickle-down effect towards different levels within a state, i.e. not only the national/state level where the policies are written and or agreed. With respect to the local community level in particular, policies appear to get stuck at either the national-local level or on an institutional level within the TJRNR mechanisms themselves.

Looking first to the findings ‘within the boxes’ of truth, justice, reparations and non-recurrence, our research confirmed many obstacles within the boxes as already described in other research. However, of significance was that common shortcomings were evident despite the different societal, state and conflict characteristics of the three countries under study. These can be dealt with in turn. Under each heading broad findings are presented alongside a brief explanation of their principal surrounding dynamics in the three countries.

Truth

- *Truth-telling efforts in the three research countries have so far shown inadequate sensitivity to gendered issues.*

Inadequacy has in this respect resulted in an underreporting of and underreporting by female victims and witnesses, as well as a lack of gender aggregated data. This obstacle was identified in all three research countries, despite the differences in the gender sensitivity of truth telling mechanisms over time. Truth-telling efforts that *did* pay attention to gendered aspects of various violations and gender roles during the conflict period predominantly focussed on sexual violence against women, thereby ignoring other aspects of human rights abuses inflicted upon women during and after conflict.

- *Women continue to face practical obstacles to accessing truth commissions or other truth mechanisms.*

These practical obstacles can be related to a number of underlying causes. Principally, we can note: language barriers (many women speak only the local dialect); the sensitive nature of the abuses suffered and for which no adequate accompaniment is in place to assist victims (e.g. sexual violence requires psychological accompaniment and female personnel to assist women in providing testimonies, but is presently hardly ever provided); societal perceptions about gender roles, which prevent women from seeking public attention for violations; fear of stigmatisation or retaliation from their community or perpetrators; the tendency to blame the victim of SGBV instead of the perpetrator; inadequate witness protection; and a heavy taboo on the phenomena of SGBV in all three

Gender Responsiveness
 Creating an environment through site selection, staff selection, program development, content, and material that reflect an understanding of the realities of women’s lives and address the issues of the participants. Gender-responsive approaches are multidimensional and are based on theoretical perspectives that acknowledge women’s pathways into the criminal justice system. These approaches address social (e.g., poverty, race, class, and gender) and cultural factors, as well as therapeutic interventions. These interventions address issues such as abuse, violence, family relationships, substance abuse, and co-occurring disorders. They provide a strengths-based approach to treatment and skills-building while emphasizing self-efficacy. (Bloom et al. (2005).

countries, making public testimony and breaking the silence on SGBV extremely challenging.

“After you testify, you are supposed to go back home and continue living with the people you testified against. You have every right not to feel comfortable”
 (Male respondent, BiH Report)

“Men victims of war sexual violence face massive difficulty to give testimony on rape. Given the shy public debate in BiH that has just recently started on the issue of war sexual violence against women, in a society that only difficultly copes with the concept of a weak man, the men are much less prepared to admit they have been raped”
 (BiH report)

Justice

- *Access to justice appears to be especially difficult for women.*

Related to the findings with respect to accessing truth commissions and other avenues for truth-telling, an observed lack of gender sensitivity of actors within the justice sector at least partly explains this common finding. This lack of sensitivity ranges from using male interrogators to interview female victims, the absence of legal or psychological assistance, or inadequate witness protection, to out-and-out discrimination, in particular of victims of sexual violence. Many victims report fearing stigmatisation and re-victimisation by the justice sector. Victims also appeared not to have adequate information about legal processes and proceedings, partly related to the higher illiteracy rate among women and language issues faced within the courtroom.

- *Actors within justice systems have shown little consideration for the plight of both female and particularly male victims of sexual violence.*

The enduring heavy taboo surrounding sexual violence in the societies studied (and beyond) and the tendency to stigmatise the victims, leads to a situation whereby the victim instead of the perpetrator is blamed for the abuse.

“Declarations of survivors of sexual violence are often responded to in a rude way - for example insinuating that women were promiscuous and therefore provoked sexual violence, or that they rather enjoyed it, trivialising the crime of sexual violence”
 (Guatemala Report)

This has resulted in underrepresented testimonies from victims, an underreporting of the different violations experienced by male and female victims of conflict, and a failure to meet the subsequent differing needs of men and women. According to one interviewee in Guatemala, “The justice system is made for a certain profile of victim, and if victims do not fit in then that’s their problem, but not the justice system’s”.³

- *Victims have little trust in the security and justice sectors.*

In the respective countries studied, a lack of lustration and vetting procedures has in particular led to this distrust. A situation exists whereby in the aftermath of conflict human rights abusers now hold powerful positions. Combined with corruption and a lack of attention to the specific practical needs of women by justice actors, this contributes to victims’ reluctance to seek justice.

- *A lack of (allocation of) resources (human and financial) and practical tools hinders the implementation of a gender sensitive approach.*
- *A gap exists between gender sensitive policies and actual practice.*

Responding to questions about slow progress in implementing gender sensitive responses and mechanisms, justice actors frequently referred to the lack of resources and practical tools. Equally, we found that in all three countries there was a concerning

gap between gender sensitive policies and the actual practice of gender sensitivity. Each of these findings indicates that being aware of gender sensitive issues will not automatically lead to gender responsiveness. Whilst resources and tools can partially redress this deficit, the gap between policy and practice often has deeper roots (see the subsequent section on 'Recurring Obstacles').

- *National laws often do not comply with international legal standards, indicating an urgent need for harmonisation.*

Related to the gap between policies and practice, it was a common finding that national laws do not comply with international standards that are directly and/or indirectly applicable. For example, Guatemala's criminal code is not in compliance with the Rome Statute despite ratification in 2012, particularly with respect to the adequacy of descriptions of gender-based crimes, the inclusion of different types of sexual violence against men and women, as well as other crimes such as forced displacement and its particular effects on women. Recognition that gender-based crimes can constitute international crimes such as genocide, war crimes and crimes against humanity is also needed, without which impunity for these crimes is facilitated.

Reparations

- *Unequal access to reparations and compensation schemes for female victims increases their economic burden and vulnerability in the aftermath of conflict.*

Gathering the required evidence to be able to access reparations is problematic for both male and female victims since, as a result of conflict, much evidence is either lost or destroyed. But for women in particular this will often have more damaging consequences since they already suffered from less documentation before the conflict, especially with regard to proof of land, IDs, etc. Moreover, they have often less access to economic resources needed to undertake the different steps to obtain their documentation.

- *When female victims were able to claim reparations or compensation with the required evidence, they still faced a generalised lack of sensitivity.*

Like their counterparts in the truth and justice sectors, actors within institutions or bodies responsible for reparations and compensation schemes frequently lack the necessary sensitivity to deal with cases involving female victims. In many instances, women's testimonies on their right to reparations – often involving female-headed households – are questioned by authorities. Particularly for returning female refugees or IDPs the lack of access to land is a pressing issue in post-conflict states.

"If you go and say you want your house back, they look at you as if you were some kind of a prostitute," a woman admits. "But I can't send my husband to go instead of me, for he's been missing for years now (respondent, Bosnia and Herzegovina)"

- *Actors have shown little consideration for the extremely vulnerable position of female victims.*

This lack of consideration is especially found in the case of widows or female-headed households. As our Burundi study best indicates,

"As a result, the loss or the non-restitution of land affects widows to a greater extent than other returnees. The loss of access to land, among women, actually extends beyond the case of widows belonging to a landless returnee family. Indeed, widows in general can be shunned by their in-law family, especially when they were displaced for decades or when they have no heir. As previously mentioned, a woman's return to the land of her family of origin is unwelcome in Burundi. Because tradition excludes women from inheriting from their husband and their father, widows are deprived of a dignified status from their family and the one of their husband, all the more so in cases when land was lost. Unless

The 'Trickle-Down' of Gender Sensitivity in BiH

In BiH, despite the level of awareness on gender issues and where e.g. reform of the judiciary, SSR, lustration and vetting have taken place, current mechanisms still lack adequate gender responsiveness. For instance, there are no gender disaggregated databases within the current TJRNR mechanisms, nor are there any women in high-level decision-making posts within the judiciary. This is all the more surprising given that BiH in comparison to Guatemala and Burundi enjoyed great international attention (media, NGOs, donor funding) for gender issues in the conflict and post-conflict phase over a period of 18 years since the signing of the peace agreements in 2005.

Implementing UNSCR 1325 at the National Level

Although ratified, Guatemala has no National Action Plan (NAP) for the implementation of UNSCR1325 yet in place and Burundi and Bosnia are struggling for the successful implementation of their NAPs.

they get married to a brother of their deceased husband, these women find themselves in total destitution.”
(Burundi report p63)

- *Lack of awareness of reparations and compensation schemes is common among women.*

In all three countries, (female) victims were commonly not sufficiently aware of reparations/compensation schemes, due to either the lack of information from the state or due to the above-mentioned lack of access to information. In general, a lack of adequate information from the state on victims’ rights to reparations and/or compensation schemes that are in place is common. Accordingly, there is a limited voicing of claims by victims themselves, which seems linked to not being aware of the fact that they have a right to reparations, or, as is the case in BiH, reparations are not in accordance with international law. Eligibility to war-related payments in BiH is currently not based on a right being violated, but on disability level and/or income.

- *There is a worrying lack of state resources to meet victims’ claims for reparations.*
- *Reparations or compensation awarded to women for harm inflicted upon them is often claimed by male relatives upon reception.*

Each of these shortcomings in the award of reparations means that many claimants never receive reparations or compensation. Where male relatives misappropriate awards granted to women, the lack of women’s control over resources available to them and their families will be magnified, increasing their precarious socio-economic status.

Non-recurrence

- *The focus of the international community lies heavily on sexual violence, which risks shifting the focus away from other human rights violations.*

Female victims during and after conflict are not only the victims of sexual violence. Whilst sexual violence must be robustly dealt with - and efforts to do so should be applauded and supported – other human rights violations suffered by women should not be ignored. There are a vast number of violations that require urgent attention, including land issues and inheritance rights.

- *Land is a pressing issue for women and for non-recurrence generally.*

The pressing land issue, which is a cause of inequality and can be a trigger for conflict was of concern in all three countries. Especially in the case of returning refugees, the issue becomes even more of a liability to the stability and socio-economic survival of victims, especially female victims.

“Behind each man involved in the fighting, a family was left without physical and socio-economic protection. The father and husband’s absence increased women and children’s vulnerability. They were the main indirect victims of the conflict”.
(Burundi Report)

- *Perceptions about gender and gender roles within society seem to pose a huge obstacle to the successful implementation of international agreements like UNSCR 1325.*

Challenging societal norms and values that pose an obstacle to the successful implementation of international policies, norms which by their very nature penetrate state institutions, will be one of the biggest challenges to improving the gender sensitivity of TJRNR processes and impunity reduction measures.

- *A lack of resources is frequently put forward as an impediment to promoting gender sensitivity.*

As with the other ‘boxes’ of transitional justice, resources (staff, capacities, funding) to promote gender sensitive TJRNR were mentioned by state actors as hindering their work. This appears to be linked to the fact that ‘working on gender’ is seen as additional work, or something that needs to be done ‘on the side’, which has identifiable effects on resource allocation or prioritisation, and often results in one person being responsible for all gender issues in an organisation, which is insufficient to achieve a structural and systematic gender sensitivity or responsiveness in the institutions.

Having identified a number of transcending obstacles within the various processes of TJRNR, in the following section we seek to offer an analysis based on the findings from Burundi, Guatemala and BiH on which recurring obstacles underlie the identified shortcomings that may indicate certain common factors that produce flaws in gender sensitive TJRNR. It is these factors that transcend borders, time and state characteristics and where concerted action is needed.

Recurring Obstacles to Gender Sensitivity

Processes that seek truth, justice, reparations and the non-recurrence of violence are necessarily complex, which, combined with their (ideal) aim for a transformative impact, must shape our expectations with regard to their timing, duration and outcomes. There is no one-size-fits-all approach. TJRNR measures are now more and more applied in fragile or (post-) conflict settings, often characterised by weak institutions and economic scarcity. This differs considerably from the original birth ground of TJRNR mechanisms, designed for post-authoritarian settings where still some measure of responsibility and functioning institutions and available resources could be found. We should therefore take account of what can be **reasonably expected** from fragile states and post-conflict countries in a transitional phase. This recognition should inform our understanding that there is no predetermined duration for transitional justice. It may take decades and generations for the ‘truth’ to be revealed or for people to get to grips with past atrocities.

“Maybe our expectations with regards to TJRNR processes also need to be adjusted to what can be reasonably expected from a country coming out of armed conflict. Transitional Justice requires a complex and long social transformation, and it is difficult to measure its direct impact (AIV/CAVV)”.

Notwithstanding the significant strides that have been taken towards gender sensitivity and the caveat about reasonable expectations in relation to the time that such emancipatory processes take, we can also point to other shortcomings in the practice of gender sensitivity. Indeed in spite of the very different stages of transition in the three countries studied the patterns and obstacles experienced on progress towards gender sensitivity shows common lines of comparison. By the admission of state actors in Burundi, women’s rights and gender are relatively ‘new’ issues in the country; and yet Burundi experiences similar difficulties as Guatemala and Bosnia and Herzegovina in realising gender sensitivity, which points to more profound obstacles than those simply related to the stage of the country’s transition from violence or the embryonic nature of its transitional justice landscape.

As our research indicates, **the direct aftermath of a conflict can likely be the period during which most gain can be made from TJRNR processes** and their transformative potential. This is partly because of shifts that take place in established gender roles and perceptions during conflict, but also because of the significant social upheaval that conflict brings, often creating new foundational moments in the construction of new post-conflict orders. Nonetheless, the findings indicate that many victims and state actors

Public attitudes towards the crimes, violations, perpetrators and policies, are subject to societal norms and values and play an important role in TJ processes

prioritise immediate survival and in some cases reconciliation efforts, rather than giving significant priority to gender issues.

There are a number of indications that **gender issues are therefore simply regarded as less of a priority and are sometimes even considered irrelevant.**

“Gender is just not a priority at the moment”
(Guatemala Policy Consultation, May 2012)

“We first have to tackle present day problems, and then think of the future”
(Burundi Policy Consultation, May 2012)

This tendency to view working on gender as somehow an additional burden, combined with the related view that working on gender is a **‘luxury’**, negatively affects the realisation of gender sensitive processes in practice.

To be sure, whether claiming reparations in Guatemala, the differential treatment of property claims by IDPs in BiH, or the lack of inheritance rights in Burundi, **women continue to experience clear obstacles to gender sensitive TJNR.** Attempts in each country towards gender sensitivity – e.g. procedural changes in Guatemala intended to enable better prosecutions, the gender provisions in the Transitional Justice Strategy (TJS) in BiH, or the 2005 Constitution and UNSCR 1325 NAP in Burundi – have yet to produce identifiable changes in gender sensitivity. This points to positive efforts to implement and encourage sensitivity, but at the same time indicates certain obstacles to impact. Again, whilst the time-lag between implementation and impact should not be entirely discounted, more worrying societal and other obstacles appear more relevant. These obstacles cannot be tackled by the current approach to **trying to legislate gender sensitivity.**

A number of other shortcomings can be seen from the broad findings introduced above and which were found from the analysis of the research to have parallels across the research countries. For one assigning power or trust in weak post-conflict institutions to bring about gender sensitivity has inherent problems, not least the fact that these **institutions lack legitimacy among the population and groups they are intended to serve.** Reluctance to engage with such institutions is one predictable consequence. Moreover, in the design and implementation of many TJNR processes and mechanisms we find **a lack of genuine participation of victims** or commitment to facilitating such participation.

Where gender sensitive policies have been implemented, we find evidence of **deficiencies in know-how on how to translate gender sensitivity into gender responsiveness.** This moreover relates to the difficulties that actors experience in moving beyond simply counting numbers or filling quotas, to facilitate meaningful participation judged by quality rather than quantity. In many respects, **prevailing societal norms and perceptions, dominant gender roles and power divisions** will hinder the impact of essentially strong initiatives. **It seems that those gender sensitive initiatives that touch upon the status quo and power relations, fail or are blocked, and do not trickle down to lower levels of society.**

With these parallels in mind, we find the following acting as **recurring obstacles** to gender sensitivity:

- Operationalising gender-sensitivity in practice is still lacking. Evidence suggests that despite significant advancements with respect to levels of attention and the number of national and international policies/agreements progress in practice has not matched the initiative on paper. Concrete implementation is thus yet to mirror commitments on paper, with substantive gender sensitivity sometimes giving way to a more procedural sensitivity or the appearance of progress. Gender sensitivity must become inherent to the design and implementation of transitional justice, and second nature to practitioners, rather than an after-thought or a box to be ticked for specific mechanisms. Therefore, a clear understanding of gender and the need for gender-sensitivity must be at the basis of each activity. In Guatemala, especially among state actors, It is still often considered that ‘men and women suffered equally’ so why would different measures be needed? If a difference is indicated, it is often sexual violence. Formulaic adherence to gender sensitivity or the tendency to regard gender as a way to gain legitimacy must be challenged.
- Gender sensitivity cannot be legislated. Related to the previous point – and while again reiterating the importance of agreements, policy and conventions – gender sensitivity cannot be achieved through mere legislation. Integrated approaches are needed. For example, changes to legal frameworks should be accompanied by sensitivity trainings, whereas by the same token trainings without accompanying societal and institutional changes will have little effect. Empowering women needs to be accompanied by challenging the societal norms, perceptions and status quo of gender roles in the wider society.
- Playing ‘catch-up’. Since gender sensitivity has often come later rather than in the design and implementation of TJRNR processes, gender is too often an after-thought. As the first point indicates, gender sensitivity needs to become second nature to transitional justice practice and inherent to its operation.

Key Factors Animating Obstacles to Gender Sensitivity

The recurring obstacles to gender sensitivity and the effects that they produce on TJRNR processes should be tackled. This is particularly the case for existing mechanisms and processes for addressing past violence that are currently in operation. At the same time, if we seek to ensure that the same obstacles are avoided then we must understand the factors animating those obstacles.

Moving beyond the comparative findings therefore, **we have identified two key factors that appear to lie behind the recurring obstacles to gender sensitivity and are actually two sides of the same coin.** It is these two factors that we suggest currently act to prevent the trickle-down effect of gender sensitivity to different levels of a state emerging from violence. It is moreover these two factors that appear to maintain the status quo in states with respect to levels of gender sensitivity and associated power relations, consequently being instrumental in keeping in place a state of affairs that is not fully transformative.

The Shaping Role Played by Wider Societal Norms, Attitudes and Perceptions on Gender that Influence the Gender Sensitivity and Gender Responsiveness of TJRNR

The first factor is the **influence of wider societal norms, attitudes and perceptions, linked to cultural factors, towards gender issues.** This factor influences both gender sensitivity and gender responsiveness in TJRNR processes, which can be seen from the recurring obstacles with (for example) respect to gender not yet being second nature.

Building on the concept of 'transformative justice' which seeks to address the social relationships that enabled human rights violations, not simply the consequences of those violations, we should therefore look to the mechanisms of TJRNR. Transformative justice suggests that there are three key elements for *institutional reform* that needs to be addressed in order to improve TJRNR efforts: the normative framework; procedures (incentives, improving access); and culture and attitudinal reform *within* institutions. The last point in particular is significant. From our research findings we suggest that in addition to institutional reform there is a need to examine the shaping role played by **wider societal norms, attitudes and cultural factors** on the design and implementation of TJRNR processes. As noted, it is these factors that contribute to a particular status quo that reproduces unequal power relations and that was observed across the three countries despite their differing contexts and stages of transition.

Many of the identified obstacles to gender sensitivity are therefore not only confined to the particular 'boxes' of TJRNR, that is in the areas of truth, justice, reparations, and non-recurrence, but moreover also outside of these boxes, within transcending societal factors. As suggested, even *once the boxes have been ticked* these factors are still in place. They play a role in obstructing transitional justice processes and influence state efforts to respond to past atrocities, impunity, and achieving an inclusive and legitimate process. These underlying factors not only determine the **(political) willingness** to address gender issues or the perceived need for implementation of a gender sensitive approach to TJRNR mechanisms (and therefore compliance with international human rights standards), but will also **determine the validity and ownership of the processes amongst the victims themselves, who should be the main beneficiaries of these processes.**

Public attitudes towards human rights violations, perpetrators and policies are equally subject to societal norms and values, which influences the manner through which transitional justice processes proceed. For example, the alarming fact that SGBV is used as a war strategy and tends to increase in the aftermath of conflict emphasises the need to urgently address societal norms and values with regards to this violation. If such abuses are not made **socially unacceptable** then the manner in which it is treated in TJRNR processes will fall short of what is necessary to address the crime, being only as effective as the prevailing societal norm permits.

Identifying and addressing the underlying cultural and societal factors during the design and implementation of TJRNR processes is thus vital to making these processes meaningful, inclusive and legitimate, as well as responsive to the needs of victims.

What our research findings demonstrate, is that the basic requirements for gender sensitivity are not currently being met in TJRNR, at least in the countries studied. Related to this, the failure to observe a number of vital criteria also leaves these processes and their accompanying mechanisms **lacking meaning and legitimacy** among many affected communities. One such criterion is facilitating the (genuine) inclusive participation of victims – female and male alike. However, women **continue to experience exclusion from these important processes** in a variety of ways. This can range from the effects of stigma upon participation levels, to their socio-economic position inhibiting them from awareness about claiming their rights.

Each of these cultural and attitudinal factors contribute to gender sensitivity being either ignored, adhered to in a formulaic, box-ticking manner, and/or not being fully embraced in the design and practice of TJRNR processes. Since members of the particular society where these attitudes and norms exist fill the ranks of many TJRNR mechanisms, then it is unsurprising that the same attitudes and norms are reproduced. This will necessarily effect the true operationalisation of gender sensitive TJRNR mechanisms.

A final related set of factors can be considered. As is often the case in fragile states where many of the current TJRNR mechanisms are implemented nowadays, **a lack of trust in state institutions often due to corruption, implication of the state in human rights abuses, or the presence of former perpetrators in senior positions, inhibits people from seeking justice through official channels.** Traditional institutions consequently become avenues for people to re-claim their rights, not least because the social distance from these institutions is much less than formal institutions. Traditional dispute resolution mechanisms have been used after violence in several post conflict countries, with at least a certain level of effectiveness. These systems often exist in parallel or in addition to the official justice institutions in a country, and seem to lend themselves to local processes of TJRNR perhaps less suited to the state/national level. Our research indicated a number of dynamics around these institutions or mechanisms that can be noted here.

First a word of caution. An evident problem that can arise in traditional dispute resolution mechanisms is that they can reproduce certain attitudes, perceptions and norms with respect to gender, especially because traditional communities often have a very strict understanding of gender roles that may be to the detriment of women and girls. Our research found that local truth-telling processes in Burundi and BiH are often focussed on appeasing the conflicting parties, as stability of the community has priority over individual needs and rights. For instance, there are cases in Burundi of victims of rape being forced to marry their abuser or compelling women to testify on their experience in public with her community being present. It is not difficult to imagine that many victims keep silent for fear of rejection or stigmatisation by their community. These traditional methods therefore might not be the most suitable for cases of e.g. SGBV

because of this reproduction of societal norms and values surrounding gender and justice at the local community level.

But in spite of these negative aspects, traditional mechanisms can offer some interesting opportunities to address societal perceptions attached to sexual violence and gender roles can be addressed. **Harnessing the potential of traditional mechanisms, in particular their proximity and reduced social distance from the people they serve may enable such institutions to promote changes in culture and attitudes towards gender sensitivity.** This approach merits more attention by the international community and national state actors.

Finally, although not a topic under research the influence of religion on societal norms and perceptions on gender should not be ignored. The influence of religion and of religious institutions in (post-) conflict countries in tackling impunity and addressing issues surrounding gender should be considered in TJRNR efforts. Religious institutions are often the only formalised structures still in place in a devastated country, which can offer a way of reaching victims but will necessarily influence the manner of dealing with violence.

The Imposition from Outside (Top-Down) of TJRNR Processes

The second key factor animating the obstacles to gender sensitivity **is the imposition from outside of TJRNR processes, often in a top-down manner.** The most distinguishable indications of this from the research were the dynamics that surround the tendency to try to ‘legislate’ gender sensitivity into practice. Equally, this imposition from outside fuels the tendency at a state level to adhere to gender sensitivity in a formulaic manner in order to benefit from the legitimacy that goes together with it, consequently resulting in gender sensitivity in procedures but not in substance.

In all three countries, gender issues accordingly appear to be high on the political agenda at the national level. However, despite this attention, **the observed lack of commitment and know-how from national transitional justice actors to implement a gender sensitive approach and the lack of a trickle-down effect to the lower levels of society, seem to indicate a top-down exercise, an imposition of policies through outside pressure or attraction, with little resonance within society itself.** The lure and potential benefits of the appearance of an adherence to gender sensitivity, perhaps even as a ‘safe’ subject to be working on in a post-conflict context, seems to disguise actual levels of commitment to the principle in practice. An example may be the process of elaborating a NAP on UNSCR1325 in Guatemala. The need for a NAP has been recognized on international level, so a commission is working on its development, but at the same time the people working on it have no decision-making power and are already overloaded gender advisors. So the challenge is how to develop a NAP that will actually be implemented, and will not turn out to be just a piece of paper?

But this problem is not confined to the state level. As our researcher in Burundi succinctly noted, it can reflect an attraction that such a well-funded topic area can have on CSOs and the government. Continuing, she noted that “given their general lack of resources, some organisations may decide to get involved in ‘gender issues’ for resource-driven reasons, without necessarily having the conviction and abilities to have a positive impact with their activities”. In this respect, the international shift towards TJRNR (related to notions of a ‘justice cascade’ in recent years) may introduce unintended dynamics around gender sensitivity **whereby the principle is embraced, but not adhered to. Whilst this may represent duplicitous motivations, it may equally represent a certain friction between top-down ideas and local contexts.**

State actors who were supposed to implement gender sensitive policies often became stuck at the level of practical implementation of these policies or showed a lack of

willingness to actually implement them. As suggested, this lack of willingness might be both due to and result in a lack of prioritisation of gender issues, or not viewing gender issues as a priority, despite the signing of international donor contracts and agreements. Research suggests that **'working on gender issues' remains an activity that is being done apart from other TJRNR and development processes, or engaged in simply because the topic is well-funded by the international community.** As in many countries, gender is seen as a 'women's thing', or only concerning women's issues, therefore it is not given priority, leaving gender relations hard to transform.

Whilst top-down processes can be successful and are in certain situations desirable, they must be accompanied by the requisite ownership and a parallel process emanating from within a society itself in order to 'stick'. Here we can again point to the friction noted earlier between ideas and local contexts, which may ultimately impede progress. As well as the need for **policies to be sensitive to and respond to realities on the ground,** better integration of processes that can be transformative to entrenched values and attitudes is required.

"The West wants to change the world, but refuses to gain insight in local circumstances. That's why it failed in Afghanistan and Iraq. There are many smart idealistic people filled with abstract ideals on democracy and human rights. However, they knew nothing on the language, culture and history of the country they were supposed to transform. Our biggest problem is the gap between principles and reality."⁴

Moreover awareness and knowledge amongst victims on their rights and ways to claim these rights will be key if the state is to be held accountable to its commitments. Attention should therefore be brought to the dynamics of 'gender' and how it not only affects women, but affects dynamics in society as a whole including opportunities and rights of men.

Further evidence of the current friction between top-down ideas and local realities that prevents genuine gender sensitivity from taking root can be raised with respect to the extent to which gender sensitive TJRNR efforts reach the local level. An example is the political participation of women. Although they may be represented at a national level, their participation at a local level remains low in each of the three countries. Burundi is again illustrative, since while it may have come 27th out of 150 countries on the representation of women in Parliament, representation at the local political level is poor. Quotas for female participation (counting numbers, quantitative, numerical progress) should be commended for their effects, but we should nonetheless question the real substantive effects (qualitative progress), particularly when we consider that at lower levels in society, women are often not allowed into the political arena.

"Politics lie at the heart of the gender debate, as it touches upon the issues of power and authority of men over women" (from Equal Power, lasting peace- Kvinna till Kvinna 2012).

Often, no quotas are set for female participation at the lower political level. Moreover, **because of the proximity of gender and gender roles at the lower political level to societal norms and perceptions, women are not expected to be politically active, or are simply excluded or sabotaged by male political leaders.** Put simply, to claim 'gender sensitivity' by setting quotas for women's participation in TJRNR processes says nothing about the actual qualitative participation of women. **If women are empowered without societal acceptance and acknowledgement, then the gap between principles and reality on the issue of gender sensitivity will remain.** And this process will touch upon the status quo and power relations in a given society.

To conclude this section, we reiterate the identifiable tendency to embrace gender sensitivity without adhering to it and **the gap between societal norms, values and attitudes and the legal frameworks of gender sensitivity.** The slow progress (or

sometimes failure) in the implementation of international agreements is just one consequence. As **gender issues touch upon the heart of accepted societal norms and values, their link to TJRNR processes (which themselves must address norms and values if they are to be effective) should be further explored.** Indeed if the framework guiding the supposedly transformative process of TJRNR does not match societal norms and values surrounding truth, justice, reparations and non-recurrence – and therefore with gender roles – this can pose a substantial problem in the implementation of these processes, processes that should link between the needs on the ground and state mechanisms and policies. **Understanding of the motivation behind the often-mentioned ‘lack of political will’ is thus necessary.** For more effective policies that will have an effect on all levels of society and can contribute to genuine transformative processes, these important factors should be identified and addressed.

Towards Gender Sensitivity: Policy and Practice Debates

The aim of this paper has been to provide a basis for further examination of the issues raised. Highlighting some crucial research findings, determining a number of recurring obstacles and proposing two key animating factors have each been done in order to begin a process of discussion. Through a number of discussion meetings held in the spring of 2013, the abovementioned issues were endorsed by participants with respect to achieving greater progress towards the gender sensitivity of transitional justice mechanisms.

In addition to institutional reform(s) there is a need to examine the shaping role played by wider societal norms, attitudes and cultural factors on the design and implementation of TJRNR processes, since it is these factors that contribute to a particular status quo, reproducing unequal power relations and that can block progress in the actual implementation of gender sensitive TJRNR. Achieving true gender sensitivity encroaches upon the status quo and power relations between men and women in a particular society, and mechanisms thus become blocked at the point at which they encounter this status quo and power issues.

Imposing TJRNR from the outside can lead to obstacles to gender sensitivity and can facilitate processes such as the tendency to try to ‘legislate’ gender sensitivity into practice.

Gender sensitivity should look beyond the ticking of boxes towards transcending societal factors that obstruct TJRNR processes, affect levels of political will, and determine the validity and ownership of those processes amongst victims. TJRNR will only be as effective as the prevailing societal norms permit. Moreover, state institutions and TJRNR mechanisms are made up of members of the wider society who bring with them the norms, values and prejudices of that society, which can lead to gender sensitivity being implemented in a formulaic manner, rather than with a genuine commitment to its principles.

In this context, we propose the following points for further follow up by TJRNR actors. Several initiatives that promote gender sensitivity can and should be done parallel to each other:

- I. Enable and improve participation of all victims, especially women, in TJRNR processes by at least providing gender specific assistance (e.g. psychological support, female translators) within the ‘boxes’ of TJRNR;
- II. Raise national and international awareness that a gender sensitive approach to TJRNR must go beyond addressing sexual violence committed against *women* only. The recent adoption of UNSCR 2016 on 24 June 2013 is an essential

- step in that direction, as it includes crimes committed against both women and men, boys and girls. Raise national and international awareness that a gender sensitive approach to TJRNR must also go beyond 'only' addressing sexual violence against women as being *the* crime suffered by female victims of wartime violence, as this will ignore other experiences and hence needs of victims of wartime crimes;
- III. Increase outreach and awareness-raising activities amongst victims on their rights, to increase empowerment and rights claims amongst victims. This can be taken up by state and non-state actors and supported by donors by allocating sufficient means for these processes;
 - IV. Support and develop local community initiatives on truth, justice, reparations and non-recurrence, in order to explore their transformative potential upon detrimental gender norms and perceptions, their truth and fact finding potential and for justice provisions that find resonance in affected communities. A lack of trust in state institutions often due to corruption, implication of the state in human rights abuses, or the presence of former perpetrators in senior positions, inhibits people from seeking justice through official channels, opening the door for the possible use of traditional institutions in TJRNR processes;
 - V. Offer opportunities for the empowerment of female victims, simultaneously also addressing norms and identities related to men and masculinity and the promotion of nonviolence (collaboration between men themselves with women's organisations);
 - VI. Support the development of positive gender norms and perceptions, roles and identities of men and women through supporting the media, CSOs and other actors working in this domain and behavioural change methods;
 - VII. Raise awareness amongst TJ actors, donors and national governments on *how* gender norms and perceptions in wider society influence TJRNR processes and issues related to impunity;
 - VIII. Raise awareness amongst TJ actors, donors and national governments on the gendered dynamics around TJRNR and how these dynamics affect long-term development, peace and stability in a country;
 - IX. Continue to gather evidence on why improving the gender sensitivity of TJRNR mechanisms, will not only be beneficial for women, but the community and state as a whole, especially with respect to reparations and socio-economic opportunities for both men and women. Making the link visible between dealing with the past and present-day problems is crucial for generating the absent 'political will', improving the gender sensitivity of TJRNR processes, and ending impunity for human rights violations committed during conflict;
 - X. Lack of genuine participation in TJRNR processes, combined with the exclusion of certain victims as a result of accepted gender roles and societal norms, contributes to a lack of meaning and legitimacy of even well-intentioned processes and mechanisms. Whilst traditional institutions can reproduce values that are to the detriment of women, harnessing the potential of traditional mechanisms, in particular their proximity, reduced social distance from the people they serve and established legitimacy, may enable such institutions to promote changes in perceptions and attitudes towards gender roles;
 - XI. Lack of commitment from national transitional justice actors to implement a gender sensitive approach, as is visible in the lack of a trickle-down effect to the lower levels of society, indicates a top-down exercise and an imposition of policies through outside pressure with little resonance within a society itself. The (financial) benefits of conveying the appearance of an adherence to gender sensitivity can lead to a disguising of actual levels of commitment to the principle in practice. This should be carefully reviewed by the donor

- community before and during engagement;
- XII. Top-down measures must be accompanied by specific societally-led efforts to bring about transformation of perceptions on gender roles and entrenched values, and that will find resonance in wider society, being sensitive to and responding to realities on the ground. Otherwise the gap between principles and reality on the issue of gender sensitivity will remain in place. Therefore, input from organised victims groups, qualitative data collection on the ground, and investing in context analyses and mapping, is necessary to bring the voices of affected communities and victims into the debates and practice of current TJRNR efforts, in order to improve their effectiveness and value on the ground;
- XIII. Funding TJRNR processes should be a long-term exercise, with policies on implementing a gender sensitive approach accompanied by (e.g.) practical tools for implementation for the benefit of state actors. International actors can play a vital driving role in this process by (e.g.) including certain non-negotiable requirements in donor contracts that allow women and NGOs to participate in negotiations with state actors or in advisory functions to the state. Since international actors are often the driving force behind advances in gender sensitivity, it is here where a shift must be made to approach the issue of gender sensitivity as not only one within TJRNR and state *institutions*, but also within *society* itself. Understanding how processes block the empowerment of victims is just as important as understanding how they contribute to such empowerment.

However challenging, transitional justice actors must improve current TJRNR processes and mechanisms, and encourage and empower others to do so, in order for TJRNR processes to be successful. Transitional Justice only has a chance to succeed if there is room for the different experiences of victims, perceptions on justice, and meeting the differing needs of both male and female victims. For genuine gender sensitivity and hence inclusiveness and meaningful participation of victims in TJRNR mechanisms, **it is imperative to address the gap between policy and practice**. Failing to realise a truly gender sensitive and inclusive process will affect **state legitimacy and consequently long-term peace and stability, since this legitimacy rests on the trust of the population** in the proper functioning and adequacy of state responsiveness to their needs and rights.

Endnotes

i De Volkskrant, page 6, December 2012, interview with Rory Stewart, member of House of Commons and former assistant governor Iraq

¹ Human rights council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff 9 August 2012 A/HRC/21/46 page 7.

² AIV TJ

³ María Martín Quintana, interview 12 December 2011, cited in *Guatemala report* p.35.

⁴ De Volkskrant, page 6, 1 December 2012, interview with Rory Stewart, member of House of Commons and former Assistant Governor Iraq.

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