



Perspectives Series: Background Paper

Transforming conflict-affected countries: a gender-sensitive approach

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Annick Pijnenburg

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countries: a gender-sensitive
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Acknowledgements

This report was researched and written by Annick Pijnenburg under the guidance of Impunity Watch. A final edit of the report was overseen by Impunity Watch Gender Coordinator Karlijn Leentvaar and Gender Project Officer Karen Hammink and contributions were made by Sanne Tielemans.

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1. INTRODUCTION

Impunity Watch (IW) is an international non-profit organisation seeking to promote accountability for past atrocities in countries emerging from a violent past. IW produces research-based policy advice concerning processes intended to enforce victims' rights to truth, justice, reparation and non-recurrence (TJRNR). IW works closely with civil society organisations in countries emerging from armed conflict and repression to increase their influence on the creation and implementation of related policies. Its Perspectives Programme connects efforts to deal with different aspects of impunity throughout the world by pursuing comparative research and international policy and advocacy work. It does so in close cooperation with local civil society and with the concerns of survivors centre-stage, with the aim to promote greater innovation in transitional justice policy-making.

In 2008 IW released its report *'Recognising the Past: Challenges to Combating Impunity in Guatemala'*, which summarised the findings of a two-year baseline research into impunity, conducted in partnership with three local organisations. In the course of this research, IW partners raised concerns regarding the lack of attention for sexual violence against women in armed conflict, including in IW's own work. This echoed concerns raised in other contexts that the rights, needs and ideas of women were poorly reflected in processes aimed at dealing with the past. Rather than recognising and supporting women's active roles in and contributions to rebuilding societies after violent conflict, the predominant approach seems to perpetuate their vulnerable position. Building on these findings, IW developed a comparative research-for-policy project under its Perspectives Programme aiming to identify key obstacles for gender-sensitive processes of TJRNR, and focused recommendations how to tackle these, in Guatemala, Bosnia and Herzegovina (hereafter referred to as Bosnia) and Burundi.

Following the preliminary research findings, the project's focus shifted from redress for sexual violence against women in armed conflicts to attention for direct and indirect conflict-related violence against women in TJRNR processes, and eventually to an analysis of the relationship between gender, peace and conflict and the gender-sensitivity of key TJRNR processes. This broader focus is meant to fill the gaps found in the preliminary desk studies, including the scarce attention in current research and practice for the other ways in which conflict affects women besides sexual violence, and the interrelatedness of conflicts' impacts, such as displacement and widowhood.

This project situates itself in the context of increased attention for gender in the field of conflict, peacebuilding and transitional justice. Despite new political and legal commitments to gender-sensitivity at the international level, a glance at the reality in many conflict and post-conflict settings worldwide reveals that implementation of these commitments is problematic. Through in-depth research and concrete policy recommendations based on this research on the gender-sensitivity of TJRNR processes, IW's gender project aims to contribute to the further implementation of international commitments in the field of gender, peace and conflict, such as UNSCR 1325.

This background paper provides a general introduction to gender-sensitive processes which contribute to realising victims' rights to truth, justice, and reparation, and guarantees of non-recurrence (TJRNR processes). The first section presents the main issues that deserve attention in the field of gender, peace and conflict. It gives a brief overview of the main international commitments to gender-sensitivity and their implementation. This serves as basis for the second section which discusses the gender-sensitivity of TJRNR processes. The second section first examines the specific international political and legal commitments made as regards gender-sensitivity in TJRNR processes. It then analyses, in turn, the rights to truth, justice, reparations, and guarantees of non-recurrence. In each case, it identifies good practice examples and lessons learnt from various post-conflict settings.¹

Given its limited scope, this background paper aims to present a short overview of what has been achieved to date in the field of gender, peace and conflict, and to what extent TJRNR processes which have been designed or implemented in various post-conflict settings are gender-sensitive. This paper thus serves to complement the in-country reports and policy paper which are part of Impunity Watch's gender project. It is based primarily on existing literature rather than field research; accordingly and in connection with its short length it necessarily presents a global overview rather than in-depth analysis of individual instruments and processes.²

¹ Although this paper and Impunity Watch's gender project focus primarily on conflict-affected countries, it is acknowledged that TJRNR processes also apply to other contexts, such as periods following the end of political repression.

² The fact that this paper repeatedly refers to women and sexual violence rather than gender and the needs and experiences of women and men in conflict and post-conflict settings, as required by a gender-sensitive approach, reflects the state of the field, where research and policy focus primarily on women and sexual violence rather than gender more broadly.

I. GENDER, PEACE AND CONFLICT

This section provides a general overview of the most important issues in the field of gender, peace and conflict. It looks at key gender issues in conflict and peacebuilding as well as international legal and political commitments to gender-sensitivity and their implementation. It ends with some concluding thoughts on what it means to adopt a gender-sensitive approach.

1) *Gender in conflict and peacebuilding*

In recent conflicts the distinction between battlefield and home front tends to be blurred, and civilians are increasingly targeted by violence.³ “Where it was once the purview of male soldiers who fought enemy forces on battlefields quite separate from people’s homes, contemporary conflict blurs such distinctions, rendering civilian women, men and children its main casualties.”⁴ The intentional use of armed force against civilians by a government or formally organised groups remains a significant feature of conflict worldwide.⁵ Consequently, civilians, especially women, children, and the elderly, are affected both directly and indirectly by conflict.

In particular, much attention to gender in the field of peace and conflict has focused on **sexual violence against women**. Sexual violence during conflict is widespread and often used as a strategy of war: it can be committed on grounds of ethnic cleansing, to destroy the social fabric, to force communities into displacement, to punish those on the other side, and to humiliate men for failing to protect ‘their’ women.⁶

In **Rwanda** between 250,000 and 500,000 women and girls were raped during the 1994 Genocide; in **Sierra Leone** between 50,000 and 64,000 internally displaced women were sexually attacked by combatants; in South Kivu, **Democratic Republic of the Congo (DRC)**, 40 women and girls are being raped every day on average.⁷

Little attention is paid to **sexual violence against men**, although it occurs in nearly every armed conflict in which sexual violence is perpetrated.⁸ While female victims of sexual violence often suffer from feelings of guilt, shame, stigma, and social ostracism, gender stereotypes also compound the effects of sexual violence for male victims, since rape and other forms of sexual violence tend to be seen as ‘something that happens to women’.⁹

In **Uganda**, homosexuality is criminalised, reflecting conservative cultural and societal values with strong stigmas and taboos connected to the issue of homosexuality. The perceived link between sexual violence against men and homosexuality may make it difficult for male victims to report their experiences. “When men are raped, they may face tremendous personal and social insecurity and fear being judged as homosexual. In these cases, many opt to remain silent in order to avoid being labelled as homosexual.”¹⁰

The **consequences of sexual violence** can be dramatic for its victims. Its physical implications may include chronic pain, infection, infertility, gynaecologic fistula, abortion, HIV/AIDS and other sexually transmitted diseases. The psychological sequels are also severe: victims may

³ UN Women, 2011, p. 83.

⁴ Giles and Hyndman, 2004, p. 3.

⁵ *Stockholm International Peace Research Institute, 2009, pp. 39-68.*

⁶ UNIFEM, 2010, p. 2.

⁷ http://www.unifem.org/gender_issues/women_war_peace/facts_figures.php (last accessed 28 May 2012).

⁸ Sivakumaran, 2007, p. 255.

⁹ Theidon, Phenicie and Murray, 2011, pp. 23-24.

¹⁰ McMahon, 2012, p. 8.



experience trauma and depression, sometimes including suicidal tendencies. The social implications of sexual violence, in turn, often include stigmatisation, marginalisation, and exclusion. Last, sexual violence has an impact on victims' socioeconomic position, as they may be rejected by their partner and unable to (re)marry, or unable to work or care for their children because of their physical injuries.¹¹

Furthermore, sexual violence is part of a **continuum of violence** which spans both the public and private sphere, although the harms for which accountability is sought tend to be public acts of violence, while private acts are not addressed.¹² Rape may not only be committed by combatants and prison guards against the civilian population and prisoners, but also by these same actors against their wives in the privacy of the home.

Research across post-conflict societies reveals that violence does not simply cease with the signing of a peace accord, but for various reasons - including pervasive trauma, easy access to guns, militarized identities, normalization of conflict and the devastation of judicial systems – violence carries through and can even intensify during a transition period.¹³

If sexual violence perpetrated by combatants during conflict is left unpunished, it may also lead to increased levels of sexual violence among the civilian population.

In the **Eastern DRC**, between 2004 and 2008, whereas the number of rapes by armed combatants decreased by 77%, the number of civilian rapes increased 17-fold, which suggests a normalisation of rape among the civilian population as a result of widespread rape during the conflict. Many years of conflict have thus eroded the social and economic mechanisms which protect civilians from sexual violence and changed social norms and values, whereby civilian rape is increasingly becoming a common feature of daily life: rape has become a norm for young males who grew up during the conflict in Eastern DRC¹⁴

Likewise, it is generally assumed that sexual violence is only a criminal offence when it occurs during war or repression,¹⁵ and that “with the arrival of a politically-determined end to conflict, so too comes an improvement in the lives of those affected by conflict.”¹⁶ However, demobilisation may lead to a sense of emasculation and men's desire to reassert their power through violence.¹⁷ Men may feel threatened by women's ability to survive without support from their male relatives and partners, and try to reassert their manhood in intimate relationships.¹⁸ The physical, psychological and social consequences of sexual violence may moreover leave victims in an even more vulnerable position, as they are often rejected by their family and community.¹⁹

It should also be emphasised that a narrow focus on sexual violence does not address **other forms of gender-based violence**, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict

¹¹ DCAF, 2007, p. 15.

¹² Ní Aoláin, 2006, p. 844.

¹³ Valji, 2007, p. 12.

¹⁴ Harvard Humanitarian Initiative and Oxfam International, 2010.

¹⁵ Buckley-Zistel and Zolkos, 2011, p. 12.

¹⁶ Tabak, 2011, p. 115.

¹⁷ Hamber, 2007, p. 383.

¹⁸ Hamber, 2007, p. 385.

¹⁹ Saris and Lofts, 2009, p. 87.



physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”²⁰ The root causes of gender-based violence and sexual violence more specifically, lie in gender relations and systems of subordination and inequality between men and women.²¹ More generally, gender roles have an impact on the types of violations suffered by men and women: “some forms of violence and harm are in many contexts gender skewed and attached to gender-normative masculine roles and activities, like military service and political leadership”.²² The majority of victims of torture, killings and disappearances are male.

In **Bosnia and Kosovo**, respectively, 92% and 90% of persons missing in relation to conflict were men.²³ During the Srebrenica massacre, men were targeted on basis of their gender: they were separated from the women, children and elderly and killed.²⁴

Sexual violence and gender-based violence does not reflect the whole of victims’ lives during conflict: they are also marked by acts of resistance and endurance to cope with the violence and hardship of everyday life.²⁵ **Gender relations mean that conflict has a different impact on women’s and men’s lives.** Widowhood in particular often changes women’s social and economic roles; it can affect women’s physical safety, identity and mobility, as well as their access to basic goods and services, and their rights to inheritance, land and property.²⁶ Moreover, in many conflicts civilian populations are forced to flee. Women and children make up around 80% of the world’s refugees and IDPs.²⁷ The experience of displacement may also be different for male and female victims: “Women and girls are vulnerable to molestation and rape from male police, local men, and even other refugees. Young men and boys risk being recruited into criminal gangs and paramilitary forces.”²⁸ In fact, even where men and women suffer the same violations, the resulting harm may be different, depending on the particular conditions in which victims found themselves before the conflict, including relations of subordination and social, economic and cultural structures. Unequal gender relations mean that conflict impacts differently on the lives of men and women and certain forms of violence have a disproportionate effect on women’s lives.²⁹

In particular, victims’ pre-conflict **weak socioeconomic position** is often exacerbated by conflict: following human rights violations such as arbitrary killings and disappearances, which mainly affect men, women frequently become the head of the household and breadwinner, often in patriarchal societies which do are reluctant to recognise women who exercise this traditionally male role. These difficulties are compounded by forced displacement, which deprives refugees and internally displaced persons from income-generating or food-securing resources such as land, family and social networks, infrastructure, material possessions, and livelihood opportunities. Thus, conflict tends to shift the economic burden of caring for and supporting the family even more onto women, while their plight is exacerbated by a lack of financial resources and more people to feed.³⁰

In **Colombia**, women and children represent 73% of the displaced population. It is estimated that between 25% (in rural areas) and 49% (in the cities) of displaced women are widows or single

²⁰ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19*, para. 6.

²¹ Olonisakin, 2005, p. 5.

²² Urban Walker, 2009, p. 57.

²³ Lindsey, 2005, p. 181.

²⁴ ICTY, *Prosecutor v. Radislav Krstić*.

²⁵ Crosby and Lykes, 2011, p. 476.

²⁶ Lindsey, 2005, p. 182.

²⁷ Johal and McKenna, 2005, p. 169.

²⁸ Cockburn, 2004, p. 40.

²⁹ Guzmán and Uprimny, 2010, pp. 16-17.

³⁰ Duggan and Abusharaf, 2006, p. 628.



mothers. As they have to provide for their families, many women work as maids and servants, positions in which they are often exploited and victims of sexual and economic abuse, while others enter prostitution. Internally displaced women are more likely to suffer sexual violence and face difficulties accessing reproductive health care.³¹

Feminist human rights scholars have long argued that the dichotomy between – and primacy given to – civil and political rights, which are seen as operating primarily in the public sphere of the state, and economic rights, which are seen as pertaining primarily to the private sphere, obscures and downplays the violations from which women most suffer.³²

However, women and men are not only victims but also **actors of peace and conflict**. They occupy multiple roles: they can be combatants, perpetrators, negotiators, victims, family members, advocates, etc., and the same person can be both victim and perpetrator. Women in particular contribute significantly to civil society initiatives which contribute to sustain communities during conflict and to end conflict.³³ Civil society organisations and non-governmental organisations (NGOs) can help create the conditions for peace talks, build confidence between the parties, shape the conduct and content of negotiations and influence the sustainability of peace agreements.³⁴

In **Liberia**, women’s organisations acted to bring armed groups to the negotiating table. The Women in Peacebuilding Network (WIPNET) staged public marches in 1991 to advocate for peace and security, and by 1993, started to attend peace talks. The women also arranged meetings between Taylor and the rebel leaders and earned a reputation as objective intermediaries. “In 2003, because of the brutality of the war, WIPNET spearheaded the Women of Liberia Mass Action for Peace Campaign to confront and engage the rebels directly, traveling all over the country and region. WIPNET’s involvement with the rebel leaders was instrumental in moving the disarmament process forward.”³⁵

Likewise, women and men are **heterogeneous groups**: as noted above, while the tendency is to equate women with victims and men with perpetrators, the reality of conflict is that violence is also perpetrated by women and that men can also be victims of violence. This includes sexual violence, which is often wrongly conceived as exclusively male-on-female violence, but also other forms of ill-treatment such as torture and killings.

In Butare in **Rwanda**, Hutu nuns joined in the massacre of Tutsis who had sought refuge in their convent. The Mother Superior, who was a Hutu, informed the military that the Tutsis were taking refuge in the convent, as a result of which the Interahamwe came to kill them. One nun gave paraffin to the Interahamwe who used it to burn some of the remaining Tutsis alive.³⁶

This heterogeneity results in a conflict having a different impact on different groups of women and men, due to factors such as age, ethnicity, disability, socio-economic background, and indigeneity.

In **Colombia**, indigenous and Afro-Colombian women have been disproportionately affected by the conflict because of the multiple discrimination they suffer based on their gender, ethnicity, and

³¹ Vega, 2005, p. 178.

³² Borer, 2009, p. 1174.

³³ Bell and O’Rourke, 2007, p. 25.

³⁴ Mckee, 2005.

1. ³⁵ Bekoe and Parajon, 2007.

³⁶ UN Special Rapporteur on violence against women, 1998, paras 25-27.



weak socio-economic condition. Forced displacement affects them disproportionately, as they are dispossessed of their ancestral lands and separated from their communities.³⁷

Women struggle to convert their activism into rights and effective **participation** when the fighting is done.³⁸ Women's participation in peace negotiations remains ad hoc: less than 3% of signatories of peace agreements are women.³⁹ Although fighting and killing stop when a peace agreement is signed, if it does not address gender-based violence, such violations of women's rights often continue after the official end of the conflict.⁴⁰ The **representation of vulnerable groups** during peace negotiations, for instance through civil society organisations, means that different issues are discussed during negotiations, including gender-related issues as well as different approaches to power sharing, addressing security concerns, and promoting human rights.⁴¹ Although the inclusion and participation of women does not in itself guarantee that peace processes are gender-sensitive and that issues predominantly affecting women are discussed, including a critical mass of women can enable the emergence of divergent women's voices.⁴²

In **Bosnia**, both the negotiations and the outcome document of the Dayton Peace Accords were gender-blind. This may be explained in part by the fact that the competence and knowledge of civil society were not involved in the drafting process. However, partly in response to demands from NGOs, the international community's gender awareness increased. This eventually led to the setting-up of gender-sensitive bodies and to the acknowledgement of and support for gender-oriented NGOs.⁴³

Consultations can also serve as a tool for redress and empowerment in them: victimized populations are frequently those that were marginalized by past regimes, and inclusion can signal a new rights-based regime based on equal citizenship and rule of law. With regard to gender inequalities, specific consultations with women send a strong signal regarding the equal rights of all.⁴⁴

Notwithstanding, the presence of vulnerable groups during peace negotiations does not guarantee that their needs and experiences will be adequately taken into account: enabling conditions must be in place for civil society organisations to strategically represent the needs of previously marginalised constituencies in order for their participation to be effective and make a difference.⁴⁵

Finally, as conflict disrupts traditional social patterns and gender roles, a gender-sensitive approach to peace and conflict may contribute to realising the **transformative potential of post-conflict settings**.

It is increasingly acknowledged that post-conflict justice mechanisms have the potential not only to redress the specific crimes that women have suffered, but can also bring about transformative change in their lives [...]The period following conflict is characterized not just by enormous challenges, but also by significant opportunities. It is

³⁷ Inter-American Commission on Human Rights, 2009, paras 38-43.

³⁸ Borer, 2009, p. 1171.

³⁹ http://www.unifem.org/gender_issues/women_war_peace/facts_figures.php (last accessed 28 May 2012).

⁴⁰ UN Women, 2011, p. 84.

⁴¹ World Bank, 2011, p. 188.

⁴² Ní Aoláin, 2009, p. 1081.

⁴³ Kvinna Till Kvinna, 2000, pp. 51-52.

⁴⁴ UNIFEM, 2010, p. 23.

⁴⁵ Valji, 2007, p. 10.



a time of profound political transformation in which important groundwork for achieving women's rights can be laid.⁴⁶

Post-conflict situations thus offer a unique opportunity to redefine gender roles and address the root causes of gender-based violence. Social norms and expectations of what it means to 'be a man' and to 'be a woman' have an impact on the dynamics of gender in conflict and post-conflict settings. Tackling such stereotypes and expectations may prevent the repetition of similar crimes in the future. Moreover, both during and after conflict women take on new roles which often challenge and redefine the cultural and social perception of women and their former boundaries in society.⁴⁷ However, the end of conflict often implies a return to traditional gender roles and even retribution for individuals who defied these roles.⁴⁸ Therefore, transformative justice aims to address not only the consequences of violations committed during conflict but also the social relationships that enabled these violations in the first place, including the correction of unequal gendered power relations in society.⁴⁹

2) *International gender commitments and their implementation*

Women in so-called Western countries gained the right to vote only in the 20th century, and **legislation has traditionally been gender blind**, failing to recognise women's rights as human rights.⁵⁰ As the international feminist movement began to gain momentum during the 1970s, the UN General Assembly declared 1975 as the International Women's Year and organised the first World Conference on Women in Mexico City. The years 1976-1985 were declared the UN Decade for Women.⁵¹ Notwithstanding the adoption by the UN of the Convention on the Political Rights of Women in 1952, the main legal instrument on gender equality is the 1979 **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, which entered into force in 1981. Often described as an international bill of rights for women, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. States parties commit themselves to end discrimination against women in all its forms, including by incorporating the principle of equality of men and women in their legal system, establishing tribunals and other public institutions to ensure the effective protection of women against discrimination, and ensuring the elimination of all acts of discrimination against women by persons, organisations or enterprises. The Convention also affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.⁵² Although 187 parties have ratified CEDAW,⁵³ the great number of reservations prevents its effective implementation.⁵⁴

⁴⁶ UN Women, 2011, pp. 94-95.

⁴⁷ Lindsey, 2005, p. 110.

⁴⁸ Tabak, 2011, p. 115.

⁴⁹ UNIFEM, 2010, p. 3.

⁵⁰ Bunch, 1990.

⁵¹ <http://www.un.org/en/globalissues/women/> (last accessed 28 May 2012).

⁵² See <http://www.un.org/womenwatch/daw/cedaw/> (last accessed 28 May 2012).

⁵³ For a full list of all signatories and states parties see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last accessed 28 May 2012).

⁵⁴ For a list of all reservations see <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last accessed 28 May 2012).



Developments in the 1990s led to **new international commitments** to gender equality and gender-sensitivity through instruments such as General Recommendation 19 (1992) on violence against women of the Committee on the Elimination of Discrimination against Women, which establishes that violence against women is a form of discrimination against women, and the 1995 Beijing Declaration and Platform for Action. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1999, gives the Committee on the Elimination of Discrimination against Women the competence to receive and consider complaints from individuals or groups and to initiate inquiries into situations of grave or systematic violations of women’s rights.⁵⁵

In the field of armed conflict more specifically, similar trends have been observed. International humanitarian law both before and after the Second World War perpetuated the invisibility of crimes against women, as rape was considered an attack on a woman’s honour and a matter of morality rather than a crime and a violation of women’s human rights. Likewise, the Nuremberg and Tokyo tribunals which were set up by the Allied forces to prosecute German and Japanese war criminals did not address the issue of sexual violence.⁵⁶ However, in the 1990s, feminists mobilised to end impunity for violence against women.⁵⁷ Hence, international legal and political commitments tend to focus on – mainly sexual – violence against women. Major advances in this respect have been made in **international criminal law**, especially through the jurisprudence of the International Criminal Tribunals for Rwanda (ICTR) and the Former Yugoslavia (ICTY) and the Rome Statute and Rules of Procedure and Evidence of the International Criminal Court (ICC). Sexual violence is now recognised as a crime under international law and standards of proof and witness protection mechanisms take into account the difficulties of prosecuting sexual violence. These developments are discussed in more depth in the second section of this paper.

In the past, the impact of conflict on women has barely been acknowledged in international law and as a result, women’s experiences have been largely denied, kept private and written out of history. However, in the past two decades, significant advances have been made in the recognition and prosecution of gender-based crimes committed during conflicts.⁵⁸

A key commitment to gender-sensitivity during and after conflict is **Resolution 1325** (UNSCR 1325) adopted by the UN Security Council in 2000. It emphasises the importance of women’s equal participation in peace and security initiatives, also at decision-making levels, including in peace negotiations, peacekeeping and post-conflict peacebuilding and reconstruction efforts, and calls for gender-sensitive efforts in the same areas, stressing the need to pay attention to women’s specific interests, needs and rights during conflict and thereafter.⁵⁹ UNSCR 1325 is the cornerstone of international political commitments in the field of gender and conflict: its provisions have been developed and strengthened by subsequent Security Council resolutions. These include **UNSCR 1820** (2008), **UNSCR 1888** (2009), and **UNSCR 1960** (2010) which focus on sexual violence against women and girls, as well as **UNSCR 1889** (2009) which calls for increased women’s representation. The commitments to gender-sensitivity enshrined in these resolutions are discussed in the next section.

⁵⁵ Articles 1, 8.

⁵⁶ UN Women, 2011, pp. 85-86.

⁵⁷ Bell and O’Rourke, 2007, p. 26.

⁵⁸ UN Women, 2011, p. 85.

⁵⁹ Tielemans, 2011.



However, a glance at the reality of many conflict and post-conflict settings worldwide reveals that **implementation of these commitments to gender-sensitivity in peace and security initiatives is lacking**: there remains a gap between commitments to equality and gender-sensitivity during and after conflict and the implementation of that vision in practice, both at the national and international levels.⁶⁰ More than 10 years after its adoption, implementation of UNSCR 1325 remains uneven.⁶¹ Steps have been taken by the UN, regional organisations, and states to implement the resolution at the international, regional and national levels, but they remain insufficient to implement the resolution in practice. UNSCR 1325 has been primarily driven and owned by civil society organisations.⁶²

While some positive changes have been made in terms of making token references to gender mainstreaming in peacekeeping mission mandates and setting up gender offices on the ground, much remains to be done. It is not clear that any real changes have occurred beneath the surface, or that gender issues have been brought into the mainstream of the international community's security and development agendas.⁶³

Likewise, notwithstanding the considerable advances in international criminal law, it fails to consistently and adequately adopt a gender perspective.⁶⁴ Thus, despite significant developments in terms of international legal and political commitments, their implementation has been slow and uneven.

This can be partly explained by **confusion over, and the complexity of, the concepts of 'gender' and 'gender-sensitivity'**. Indeed, the commitments described above have led to various approaches to gender-sensitivity, including critical attempts at identifying and addressing women's exclusion, and a focus on discourses of femininity and masculinity.⁶⁵ **Gender mainstreaming** in conflict and peacebuilding has been adopted as the preferred approach by most large and influential international agencies working in the field of conflict and peacebuilding.⁶⁶

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.⁶⁷

However, as gender mainstreaming remains an abstract concept, it is "interpreted differently both across and within governmental and nongovernmental organizations, humanitarian agencies, and

⁶⁰ Ni Aoláin, 2011.

⁶¹ UN Security Council, 2011, pp. 22-23.

⁶² Barnes, 2010, p. 21.

⁶³ Barnes and Olonisakin, 2010, p. 3.

⁶⁴ Valji, 2007, p. 9; see also Viseur Sellers, 2007.

⁶⁵ Buckley-Zistel and Zolkos, 2011, pp. 6-7.

⁶⁶ Theidon, Phenicie and Murray, 2011, p. 10.

⁶⁷ UN Economic and Social Council, 1997, Chapter IV, para 4.



international institutions”.⁶⁸ These differences are due in part to the differing ideologies and focus of various institutions, while the multiplicity of meanings and goals that the concept ‘gender’ encapsulates, as well as the lack of clarity and precision in the use of gender terminology, is often compounded by a simultaneous tacit assumption of commonality.⁶⁹ Difficulties arise concerning the translation of abstract commitments to gender mainstreaming in practice: there is a lack of clarity among key actors in the field on how to translate theoretical concepts such as gender mainstreaming and gender sensitivity into practice.

Last, there is a tendency among many actors to **equate gender with women** and to focus exclusively on women and girls. However, conflating ‘gender’ and ‘women’ leaves men as the default category used as reference point.⁷⁰ Moreover, this approach does not do justice to the complexities of post-conflict situations and the complex reality of the needs and experiences of men and women. Sexual violence can serve as example: whereas much attention is paid to sexual violence against women, international commitments and key actors tend to ignore that men can also be victims of sexual violence. Thus, many international human rights instruments on sexual violence exclude men on their face,⁷¹ and most aid agencies silence sexual violence against men.⁷²

3) Concluding thoughts

Adopting a gender-sensitive approach means:

- *Moving beyond an exclusive focus on sexual violence against women to address the full range of women’s and men’s experiences during conflict; a (nearly) exclusive emphasis on sexual violence risks downplaying or ignoring other harms suffered by victims, such as those resulting from the death of relatives and forced displacement; it also risks portraying survivors merely as victims, whereas they may fulfil other roles and perceive themselves as actors rather than merely victims of sexual violence.*
- *Addressing all forms of gender-based violence against women and men rather than adopting a narrow understanding of sexual violence only targeted at women.*
- *Acknowledging that violence against women during conflict is part of a continuum of gender inequality that extends to the pre- and post-conflict periods and to the private sphere; this implies recognising the existence and severity of violence against women in the pre- and post-conflict periods as well as in the private sphere, and tackling the root causes of violence against women.*
- *Recognising the heterogeneity of the categories ‘men’ and ‘women’; this implies acknowledging that both women and men can be actors as well as victims and that they can take on a multiplicity of roles; it also means taking into account factors such as age, ethnicity, disability, socio-economic background, and indigeneity, and recognising the multi-faceted impact of conflict on men and women.*
- *Looking at pre-conflict social expectations and gender roles and stereotypes; this helps explain patterns of behaviour in conflict and post-conflict situations and enables the continuities between past and present to be addressed.*
- *Acknowledging that conflict can impact differently on the lives of men and women.*
- *Ensuring the full and equal participation of women and men, including from vulnerable groups, in peace negotiations and taking their needs and experiences into account in peace*

⁶⁸ Theidon, Phenicie and Murray, 2011, p. 10.

⁶⁹ Warren, 2007, p. 189.

⁷⁰ Theidon, Phenicie and Murray, 2011, p. 12.

⁷¹ Stemple, 2009, p. 619.

⁷² Storr, 2011.



agreements and their implementation; this enables peace agreements to reflect the diversity of experiences and needs of different population groups.

- *Acknowledging and supporting the work of civil society organisations at grassroots level and including their voices in high-level decision-making*, through political and financial support to ensure their participation in peace negotiations.
- *Maximising the transformative potential of post-conflict settings* through a possible redefinition of gender roles and by addressing the root causes of gender-based violence rather than returning to the pre-conflict situation; and by paying attention to the different aspects of women’s identity such as their age, ethnicity, disability, socio-economic background, and indigeneity; this can be achieved through measures such as legislative changes, security and justice sector reform, and quotas.
- *Being sensitive to local contexts* and recognising that a measure which is gender-sensitive in one context may not be in a different situation, depending on the particularities of the context in terms of social expectations and gender roles and stereotypes.

Key reading

- Bell, Christine and O’Rourke, Catherine, “Does Feminism need a theory of transitional justice? An introductory essay”, (2007) 1 *International Journal of Transitional Justice*, pp. 23-44
- Buckley-Zistel, Susanne and Stanley, Ruth (eds.) *Gender in Transitional Justice* (Palgrave Macmillan, 2011)
- Olonisakin, ’Funmi, Barnes, Karen and Ikpe, Eka (eds.), *Women, Peace and Security: Translating Policy into Practice* (Routledge, 2010)
- Rehn, Elisabeth and Johnson Sirleaf, Ellen *Women, War and Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-building* (UNIFEM, 2002)
- Tabak, Shana, “False Dichotomies of Transitional Justice: Gender, Conflict and Combatants in Colombia” (2011) 44 *New York University Journal of International Law and Politics*, pp. 103-163
- Theidon, Kimberly and Phenicie, Kelly with Murray, Elizabeth, *Gender, Conflict and Peacebuilding: State of the Field and Lessons Learned from USIP Grantmaking* (USIP/Peaceworks, 2011)
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II. THE GENDER-SENSITIVITY OF TJRNR PROCESSES

Processes of truth, justice, reparation and non-recurrence (TJRNR) can be implemented after conflict has ended with the aim to come to terms with past abuses and contribute to accountability and reconciliation in order for post-conflict societies to move forward and prevent the recurrence of past violence. TJRNR processes are thus closely linked to peacebuilding efforts and play a crucial role in the field of peace and conflict and of transitional justice.⁷³ They can also offer an opportunity to address structural inequalities in society and thus have a great transformative potential. The considerations from the previous section are therefore directly relevant for the design and implementation of gender-sensitive TJRNR measures. The first part of this section aims to analyse the gender-sensitivity of international political and legal commitments relevant to TJRNR processes. The second part examines good practice examples and lessons learnt from conflict-affected countries trying to deal with their past around the world, including state efforts as well as civil society initiatives and the contribution of international actors. Although TJRNR processes can draw inspiration from successful initiatives in other countries and take into account lessons learnt elsewhere, the specific context in which TJRNR processes are to be implemented remains crucial and must be taken into account.⁷⁴

1) *International commitments to gender-sensitive TJRNR processes*

In the past gender considerations have been markedly absent from the field of transitional justice.⁷⁵ Men were taken as default category and reference point. However, in recent years increasing attention has been paid to the different needs and experiences of women and men in (post-) conflict settings and the gender-sensitivity of TJRNR processes.

Efforts to integrate a gender perspective into transitional justice have come about over the last 15 years in response to the relative neglect of women’s experiences during and after conflict; biases in the law and in the constructs of human rights themselves that have been carried through into the working of transitional justice mechanisms; and biases in processes such as peace negotiations, where deals are reached without women’s representation.⁷⁶

Efforts to ‘add gender’ to transitional justice have focused above all on legal responses to sexual violence during conflict, as in the 1990s feminists concentrated their attention on ending impunity for violence against women.⁷⁷ This is reflected in international legal developments in the last decade of the 20th century, which include the appointment of the first Special Rapporteur on

⁷³ Victims’ rights to truth, justice, reparation and non-recurrence also lie at the heart of transitional justice initiatives, research and discourses. In this paper the term ‘TJRNR processes’ also refers to transitional justice measures. Impunity Watch understands transitional justice 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.” (UN, 2010, p. 2.)

⁷⁴ UN, 2010, p. 5.

⁷⁵ Ní Aoláin, 2009.

⁷⁶ UNIFEM, 2010, p. 2.

⁷⁷ Bell and O’Rourke, 2007, p. 26.



Violence against Women, the creation of the ICTY and ICTR, and the Beijing Declaration and Platform for Action.

With respect to bridging the gap between legal standards and their enforcement, reforms have occurred in the investigation of war crimes to improve the detection of gender-based human rights violations and provision has been made for the prosecutors to have access to expertise in the prosecution of gender-based crimes.⁷⁸

A positive trend can also be distinguished among other TJNR processes, such as truth commissions: whereas ‘first generation’ commissions in countries such as Chile and Argentina were largely gender-blind, the mandates of more recent bodies such as the truth commissions in Sierra Leone and Timor-Leste have mainstreamed a gender perspective.⁷⁹ The same holds true for reparations, as more recent reparations programmes tend to be more gender-sensitive than older ones.⁸⁰ In terms of guarantees of non-recurrence, measures such as campaigns to combat the stigmatisation of victims of sexual violence suggest that there is an increasing awareness of the need to address discrimination and violence against women more broadly. These issues are analysed in more detail in the second half of this section.

These positive trends in TJNR processes reflect the gradual development of legal and political commitments to gender-sensitivity concerning victims’ rights to truth, justice, reparations, and guarantees of non-recurrence. While international political commitments are reflected above all in UNSCR 1325 and later UN Security Council resolutions on women, peace and security, international legal commitments to gender-sensitive TJNR processes are embodied primarily in:

- *International criminal law*, including the statutes and jurisprudence of the ICTY, ICTR and ICC;
- *Binding international human rights standards* on discrimination and violence against women, including CEDAW and other human rights treaties, as well as the jurisprudence of international human rights bodies;
- *Soft law standards* embodied in UN guidelines and principles, especially the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*.

Political commitments to gender-sensitive TJNR processes

With regard to the gender-sensitivity of political commitments to TJNR processes, **UNSCR 1325**, adopted in 2000, is not binding under Chapter VII of the Charter of the United Nations but reinforces and connects prior commitments relevant to women, peace and security and establishes a series of new principles. It requires the increased representation and participation of women at decision-making levels in institutions and mechanisms for the prevention, management and resolution of conflict and peace processes.⁸¹ This is relevant for TJNR processes as peace agreements may provide for the setting up of a truth commission or a reparations programme, while guarantees of non-recurrence aim to prevent the repetition of conflict. UNSCR 1325 emphasises “the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to

⁷⁸ Bell and O’Rourke, 2007, p. 27.

⁷⁹ See UNIFEM, 2010.

⁸⁰ See Rubio-Marin, 2006.

⁸¹ Paras 1 and 2.



sexual and other violence against women and girls”.⁸² It also calls on all actors to adopt a gender perspective as regards guarantees of non-recurrence, including the protection of and respect for the human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary; and to take into account the different needs of female and male ex-combatants and their dependents.⁸³ Nevertheless, as noted in the previous section, despite progress at the international, regional and national levels, the implementation of UNSCR 1325 has been inadequate so far.⁸⁴ Indeed, the fact that follow-up resolutions have been adopted to reinforce the commitments of UNSCR 1325 suggests that it is not adequately implemented.

The follow-up resolutions which further specify the commitments enshrined in UNSCR 1325 also require that a gender perspective be included in TJRNR processes. Thus, **UNSCR 1820** (2008) calls for concrete action to prevent sexual violence and combat its impunity, particularly for women and girls, while **UNSCR 1888** (2009) requests the appointment of a Special Representative of the Secretary-General on Sexual Violence in Conflict. Margot Wallström was Special Representative on Sexual Violence in Conflict from April 2010 to May 2012.⁸⁵ More particularly, both resolutions include prevention measures such as training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, and vetting armed and security forces by taking into account past acts of sexual violence.⁸⁶ They also address victims’ right to justice, as they require States to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice. UNSCR 1820 thus stresses “the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation”⁸⁷, while UNSCR 1888 urges States to “undertake comprehensive legal and judicial reforms, as appropriate, in conformity with international law” and to ensure “that survivors have access to justice, are treated with dignity throughout the justice process and are protected and receive redress for their suffering”.⁸⁸ UNSCR 1888 also recognises victims’ needs which can be addressed by reparations, including access to health care, psychosocial support, legal assistance and socio-economic reintegration services for victims of sexual violence, in particular in rural areas.⁸⁹ This resolution further encourages measures to prevent repetition such as sensitising communities on sexual violence to avoid the marginalisation and stigmatisation of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes.⁹⁰ **UNSCR 1889** (2009), in turn, calls for a strategy to increase women’s representation in post-conflict decision-making and recognises that women’s needs and priorities, which can be addressed through reparations programmes, include: support for greater physical security and better socio-economic conditions through education, income generating activities, access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health, gender-responsive law enforcement and access to justice, as well as enhancing capacity to engage in public decision-making at all levels.⁹¹ Last,

⁸² Para 11.

⁸³ Paras. 8(c) and 13.

⁸⁴ Barnes, 2010, p. 21.

⁸⁵

[http://www.stoprapeinconflict.org/special_representative_for_sexual_violence_in_conflict_margot_wallstrom_ends_t erm](http://www.stoprapeinconflict.org/special_representative_for_sexual_violence_in_conflict_margot_wallstrom_ends_term) (last accessed 18 June 2012).

⁸⁶ UNSCR 1820, para 3; UNSCR 1888, para 3.

⁸⁷ UNSCR 1820, para 4.

⁸⁸ UNSCR 1888, para 6.

⁸⁹ UNSCR 1888, para 13.

⁹⁰ UNSCR 1888, para 15.

⁹¹ UNSCR 1889, para 10.



UNSCR 1960 reinforces the commitments enshrined in the previous resolutions, especially as regards preventing and combating impunity for sexual violence.⁹²

Legal commitments to gender-sensitive TJNR processes

With regard to the gender-sensitivity of legal commitments to TJNR processes, important advances have been made in the prosecution of sexual violence against women through **international criminal law**. Developments in this field are closely linked to advances in international humanitarian law. Indeed, the codification of sexual violence in the international law of armed conflict made modest advances in the late 19th and early 20th centuries, as illustrated by several military codes and treaties dating from this period, such as the fourth Hague Convention of 1907 and the 1929 Geneva Convention, which prohibited rape. At the end of the Second World War, the Tokyo and Nuremberg Tribunals were confronted with evidence of rape but overall they did not pay attention to gender-based crimes.⁹³ The 1949 Geneva Conventions refer to the treatment of women “with all consideration due to their sex”⁹⁴ and prohibit “outrages upon personal dignity”⁹⁵ but sexual violence is not explicitly prohibited under the grave breaches provisions of the Geneva Conventions. The 1977 Additional Protocols to the Geneva Conventions, however, explicitly prohibit sexual and gender-based violence, including outrages against personal dignity, rape, enforced prostitution and any form of indecent assault.⁹⁶ Additional Protocol I is part of customary international law and therefore binding on all States, and although Additional Protocol II has not been accepted as customary international law by all States, the provisions that cover gender-based violence in Article 3 common to the Geneva Conventions can be said to have attained the status of customary law.⁹⁷ Thus, the prohibition of sexual violence has become enshrined in international humanitarian law.

Parallel to these developments, in the second half of the 20th century it was gradually recognised that rape can constitute a crime against humanity.

The evolution of crimes against humanity, and the enumeration of the crime rape, was organic. Rape was accepted as an express form of crimes against humanity *via* the incorporation of international crimes into national military codes and national legislation. More recently, the recognition of rape as an international crime was anchored by its listing in the statutes of international courts and tribunals and their modern judicial interpretation.⁹⁸

Indeed, since the 1990s international criminal law “has come a long way in acknowledging the gendered components of violence during war”.⁹⁹ International criminal tribunals have played a crucial role in this paradigm shift. The jurisprudence of the ICTR and ICTY has set new precedents in the prosecution of sexual violence in armed conflict in cases such as *Akayesu*¹⁰⁰, which found that

⁹² See UNSCR 1960, paras 1, 2 and 5.

⁹³ Viseur Sellers, 2007, pp. 7-8.

⁹⁴ Article 12 of the First Geneva Convention, Article 12 of the Second Geneva Convention, and Articles 13 and 14 of the Third Geneva Convention.

⁹⁵ Article 3, common to the First, Second, Third and Fourth Geneva Conventions.

⁹⁶ Articles 75(2)(b), 76(1) and 77 (1) of Additional Protocol I; Article 4 of Additional Protocol II.

⁹⁷ Viseur Sellers, 2007, pp. 8-10.

⁹⁸ Viseur Sellers, 2007, pp. 10-11.

⁹⁹ Franke, 2006, pp. 816-817.

¹⁰⁰ ICTR, *Prosecutor v. Akayesu*.



sexual violence could constitute genocide, and *Furundžija*¹⁰¹, which concentrated entirely on charges of sexual violence.¹⁰² However, the ICTY and ICTR have also been criticised for lacking gender-sensitivity on certain issues, including victims' re-victimisation and re-traumatisation, the lack of witness protection, and the downplaying of gender in the tribunals' closing strategies.¹⁰³ As is discussed below, the ICC confirms and further expands developments in the prosecution of sexual and gender-based violence achieved by the ICTY and ICTR. The jurisprudence of the Special Court for Sierra Leone illustrates the advances made in the prosecution of other forms of gender-based violence, such as forced marriage.¹⁰⁴

There has been an extraordinary shift from a time when rape was rendered invisible, a mere 'by-product' of war, or conceived as a crime against family honour, to the recognition from the courts and the international community that sexual violence cannot be consented to, is a war crime, a crime against humanity, may be a constituent part of genocide and is a threat to international peace and security.¹⁰⁵

As regards **binding international human rights law**, the most relevant instruments for the field of gender, peace and conflict include CEDAW, which, as was discussed in the previous section, requires states parties to end discrimination against women in all its forms, as well as regional instruments such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Furthermore, other human rights treaties also prohibit discrimination on the ground of sex, and provide for victims' right to a remedy.¹⁰⁶

The recent jurisprudence of the Inter-American Court of Human Rights (IACtHR) also contributes to the development of international standards on gender-sensitivity in post-conflict settings, as many cases before it concern violations committed during periods of conflict.¹⁰⁷ For instance, in the case of *Plan de Sánchez Massacre v Guatemala* the IACtHR recognised that the rape of women was a State practice "designed to destroy the dignity of women at the cultural, social, family and individual levels".¹⁰⁸ Crucially, the IACtHR developed international standards by explicitly adopting a gender perspective in the so-called *Cotton Field* case, where it established that reparations must "restore the victims to their situation prior to the violation insofar as possible, to the extent that this does not interfere with the obligation not to discriminate" and "[be] designed to identify and eliminate the factors that cause discrimination"¹⁰⁹. It thus ordered comprehensive reparations measures, including ordering the state to implement education and training programmes focusing on gender and discrimination against women which specifically mention

¹⁰¹ ICTY, *Prosecutor v. Anto Furundžija*.

¹⁰² See <http://www.icty.org/sid/10314> for the ICTY's jurisprudence on sexual violence (last accessed 28 May 2012).

¹⁰³ Franke, 2006, pp. 818-819; see also Viseur Sellers, 2009.

¹⁰⁴ See Valerie Oosterveld, 2011.

¹⁰⁵ UN Women, 2011, p. 87.

¹⁰⁶ See for instance Articles 2 and 3 of the International Covenant on Civil and Political Rights.

¹⁰⁷ For a discussion of the IACtHR's jurisprudence on gender see: Rubio-Marín and Sandoval, 2011; Palacios-Zuloaga, 2008.

¹⁰⁸ *Plan de Sánchez Massacre v Guatemala*, paras 49(12) and 85.

¹⁰⁹ *González et al (Cotton Field) v Mexico*, para 451.



international human rights instruments concerning gender-based violence,¹¹⁰ and to harmonise the parameters for investigations, forensic analyses and prosecution with international standards based on a gender perspective.¹¹¹

As regards **soft-law standards**, a key instrument is the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (Impunity Principles), which recognises victims' rights to truth, justice, reparations, and guarantees of non-recurrence. The Impunity Principles refer repeatedly to the need to ensure women's participation and representation and to incorporate their needs and experiences¹¹². However, they do not provide guidance on how to design and implement gender-sensitive TJRNR processes. Another crucial document are the *Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law* (Reparation Principles). These Principles are gender-neutral, as they do not include any reference to gender or women, and hence do not address the different needs and experiences nor the specific obstacles faced by women and men. Overall, then, although both instruments enshrine broad commitments to non-discrimination,¹¹³ they do not articulate a gender-sensitive approach.

International legal commitments to gender-sensitivity are further reflected in the *Chicago Principles on Post-Conflict Justice* (Chicago Principles), drafted by a group of international experts following an initiative by Cherif Bassiouni. The Chicago Principles acknowledge the gendered nature of violence and women's special needs, as well as the need for the adequate representation of women in TJRNR processes.¹¹⁴ However, like the Impunity and Reparation Principles, they do not offer guidance on how to design and implement gender-sensitive TJRNR processes. Last, the *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation* (Nairobi Declaration), issued by women's rights advocates and activists and survivors of sexual violence, is a useful tool for the design and implementation of gender-sensitive reparations. Although, like the Chicago Principles, the Nairobi Declaration has not been endorsed by the UN and does not benefit from the same authority as the Impunity and Reparation Principles, it provides useful guidance regarding gender-sensitive reparations. In particular, it emphasises the need for transformative reparations.¹¹⁵

The overview presented here suggests that most attention to gender has been paid in the field of criminal justice and reparations and that legal standards are less developed as regards truth and non-recurrence in particular. This reflects to a great extent the development of international standards in general, which are more detailed for the right to justice and reparations.¹¹⁶ Last, the appointment in September 2011 of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, who is required to "integrate a gender perspective throughout the work of the mandate",¹¹⁷ may contribute to increasing the gender-sensitivity of international commitments to TJRNR processes.

¹¹⁰ *González et al (Cotton Field) v Mexico*, paras 541-3.

¹¹¹ *González et al (Cotton Field) v Mexico*, para 502.

¹¹² Principle 12.

¹¹³ Impunity Principles 6, 36; Reparation Principles I, VII, VIII, XI.

¹¹⁴ Introduction, Principles 2, 7.

¹¹⁵ Principles 2(B), 2(E), 3(H).

¹¹⁶ For a detailed overview of international commitments to gender-sensitive TJRNR processes see Weber, 2011.

¹¹⁷ UN Human Rights Council, 2011, para 1(j).



2) Gender-sensitive TJRNR processes: good practices and lessons learnt

The second part of this section analyses TJRNR processes in various post-conflict settings worldwide. It examines, in turn, the rights to truth, justice, reparations, and guarantees of non-recurrence. It addresses the main issues concerning gender-sensitivity and presents good practice examples and lessons learnt from various settings. It is based predominantly on existing literature on gender and TJRNR processes.

The right to truth

Every people have the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.¹¹⁸

There are several ways to realise victims' right to truth, the most common being by setting up a **truth commission**. Truth commissions can be defined as officially sanctioned, temporary, non-judicial investigative bodies which during a relatively short period undertake statement-taking, investigations, research and public hearings, and publish their work in a final public report.¹¹⁹ What follows is an examination of how various truth-seeking and truth-telling mechanisms have attempted to adopt a gender perspective in their work.

Truth commissions' **mandates** are often drafted in peace negotiations which do not include women and other marginalised groups. Whereas the mandates of the early truth commissions are largely gender-blind, latter commissions include references to gender which suggest that they are more gender-sensitive. Thus, Decree No. 187/83 which established the **Argentinean** National Commission on the Disappeared does not refer to gender and its mandate was limited to investigating the disappearances of people between 1976 and 1983 and uncovering the facts involved in those cases.¹²⁰ In **Timor-Leste**, on the other hand, UNTAET Regulation 2001/10, which established the Commission for Reception, Truth and Reconciliation (CAVR), mandated that a gender perspective be integrated into all aspects of its work, for instance by giving special consideration to gender representation and employing staff with gender expertise.¹²¹ Nevertheless, how a truth commission interprets its mandate also influences its gender-sensitivity: although the mandate of the Truth and Reconciliation Commission (CVR) in **Peru** was formally gender-neutral, it paid particular attention to gender.¹²²

The definition of a commission's mandate may also affect **which human rights violations it addresses**. Indeed, some truth commissions have focused on violations of civil and political rights such as torture, enforced disappearance and rape, to the detriment of other types of harm which predominantly affect women, such as other forms of gender-based violence and discrimination against women, forced displacement, the loss of male family members, and economic hardship. In **Chile** for instance, the mandate of the National Commission for Truth and Reconciliation was limited to the most serious human rights violations, defined as "situations of those persons who

¹¹⁸ Impunity Principles, Principle 2.

¹¹⁹ Office of the High Commissioner for Human Rights, 2006a, pp. 17-18.

¹²⁰ Decree No. 187/83, pp. 137-138.

¹²¹ Articles 3.4(c), 4.1, 4.3(g), 11.1, 11.4, 12.1(d)(g), 16.4, 26.1, and 36.1.

¹²² Nesiya et al., 2006, pp. 7-8.



disappeared after arrest, who were executed, or who were tortured to death, in which the moral responsibility of the state is compromised as a result of actions by its agents or persons in its service, as well as kidnappings and attempts on the life of persons committed by private citizens for political purposes".¹²³ Likewise, the **South African** Truth and Reconciliation Commission's (TRC) focus on civil and political rights – killing, abduction, torture and severe ill-treatment - meant it was blind to the types of abuse predominantly experienced by women.¹²⁴

Increasingly, truth commissions pay attention to the **participation of women** in the implementation of their mandate. This includes, first, the participation of women as members of staff: there has been a gradual increase in the proportion of women commissioners in truth commissions in the last decade.¹²⁵ In **Timor-Leste** for instance, gender balance was taken into account in the composition of the CAVR's staff at district, regional and national levels: each district team consisted of a team coordinator, two male and two female statement takers, one male and one female victim support staff, one male and one female community reconciliation staff, and a logistics officer.¹²⁶ Secondly, women can also participate in a truth commission's work by testifying as victims and witnesses. Their participation may vary: while in **Sierra Leone** and **Timor-Leste** women represented approximately 30% and 20% of deponents respectively, in **South Africa** they made up more than half.¹²⁷ In **Timor-Leste**, a training unit was set up to provide periodical trainings for staff and commissioners, which regularly included training on how to identify obstacles to women's participation and sharing ideas for addressing them.¹²⁸

The low rates of women's participation in some countries are related to **obstacles which impede victims' access to the truth commission**. Often vulnerable groups, such as minorities who do not speak the official language of the commission and those who live in remote areas or rural communities, do not come to truth commissions or equivalent bodies in sufficient numbers.¹²⁹ Women may face additional barriers, such as absence of childcare and lack of money or means of transport to travel to a truth commission. In **Morocco**, language was an obstacle to women's participation in and following of the hearings of the Equity and Reconciliation Commission (IER), as simultaneous interpretation was not always adequately provided. Illiteracy being particularly high in the rural areas and among women, this particularly affected women.¹³⁰ An outreach policy targeting vulnerable groups, which includes translation facilities and mobile units which travel into areas affected by conflict, may help overcome such obstacles. The **South African** TRC operated on a decentralised basis, and took statements in three different ways: at its offices, in communities, and through the designated statement taker programme. The latter increased the number of statements by nearly half and focused on victims in rural communities or which had experienced a high incidence of human rights abuses.¹³¹ Likewise, a truth commission's report and recommendations can be made accessible to the whole population, including women, through specific outreach strategies. For instance the Truth and Reconciliation Commission (TRC) in **Sierra Leone**, where many victims of sexual violence were teenage girls, issued a child-friendly final report.¹³²

¹²³ Supreme Decree No. 355, Article 1.

¹²⁴ South African Truth and Reconciliation Commission, 1998, Volume 4, Chapter 10, p. 316.

¹²⁵ UNIFEM, 2010, p. 11.

¹²⁶ Wandita, Campbell-Nelson and Leong Pereira, 2006, p. 294.

¹²⁷ Nesiah et al., 2006, p. 18.

¹²⁸ Wandita, Campbell-Nelson and Leong Pereira, 2006, pp. 294-295.

¹²⁹ Nesiah et al., 2006, p. 39.

¹³⁰ International Center for Transitional Justice, 2011, p. 25.

¹³¹ South African Truth and Reconciliation Commission, 1998, Volume 1, pp. 137 and 140-141.

¹³² Nesiah et al., 2006, p. 33.



Gender relations and stereotypes may also influence how victims experience the violations they suffered and their consequences, which in turn may impact on **victims' experiences of testifying** before a truth commission, in addition to affecting their access to truth mechanisms, as discussed above. In particular, victims of sexual violence may be reluctant to tell their stories and feel re-victimised and re-traumatised because of the shame and stigmatisation that often accompanies such violations. In **Timor-Leste**, the CAVR paid special attention to women in an integrated community outreach programme across the country, including taking statements from victims and perpetrators, and facilitating community discussions.¹³³ Furthermore, testifying may put victims at risk, for instance in cases where the victims' family and community do not know that they have been raped, and they risk stigmatisation and rejection. Some truth commissions have adopted measures to protect them, such as in camera hearings and ensuring that victims remain anonymous.¹³⁴ The **Sierra Leonean** TRC held special closed hearings on women, and interviews of witnesses whose testimonies related to sexual violence were to be conducted by female commissioners.¹³⁵ In the Port Harcourt hearings in **Nigeria**, women were allowed to cover their faces when testifying, while in **Peru** the nation learnt about violations of women's rights by using distorted facial imagery when broadcasting hearings in order to preserve victims' privacy.¹³⁶

A related aspect concerns truth commissions' **consultation with civil society**. Interaction with civil society actors representing vulnerable groups, including women, can also have an impact on a truth commission's gender-sensitivity. Civil society organisations can also make a valuable contribution to the work of truth commissions as they often have a better understanding of the local context, have access to victims; in some cases they may already have documented abuses, or they can accompany victims and witnesses who come to testify before a truth commission for instance. Thus, women's groups may engage with the work of truth commissions in various ways, including sharing of analyses, training, outreach to constituencies, and support to female victims and witnesses.¹³⁷

Consultation and dialogue with the broader community of women's groups, feminist academics, and activists in defining and implementing a commission's mandate can often be a key factor in developing a commission's operational philosophy and practice. It can also help ensure that a commission's long-term legacy includes attention to the gender map of human rights abuse.¹³⁸

In **South Africa**, women's and human rights groups presented a submission to the TRC which proposed a set of recommendations to increase women's participation, including holding women-only hearings, asking women to speak about themselves, and developing a gender analysis in the TRC's final report. The TRC also organised two workshops with representatives of women's organisations and the media to discuss ways to further women's involvement with the TRC.¹³⁹

Whether truth commissions are gender-sensitive or not has a direct impact on their **recommendations for reparations** and other measures which may guarantee the non-repetition of past crimes, including violence against women. In **South Africa**, the absence of a gendered lens

¹³³ Wandita, Campbell-Nelson and Leong Pereira, 2006, p. 295.

¹³⁴ See Nesiah et al., 2006, pp. 30-31.

¹³⁵ King, 2006, pp.256-258.

¹³⁶ Nesiah et al., 2006, p. 30.

¹³⁷ Nesiah et al., 2006, p. 14.

¹³⁸ Nesiah et al., 2006, p. 13.

¹³⁹ Goldblatt and Meintjes, 1997, p. 8.



meant that the 45-page chapter on recommendations compiled by the TRC was silent on the issue of women: none of the more than 100 recommendations was explicitly aimed at improving the human rights of women.¹⁴⁰ The discussion on reparations below also provides examples of gender-sensitive reparations proposals made by truth commissions.

By including a gender perspective, truth commissions may contribute to fulfilling the **transformative potential** of TJRNR processes, for instance by changing social perceptions of sexual violence and shifting the blame from victims to perpetrators. Thus, the report of the TRC in **Sierra Leone** included recommendations to address structural inequality, which encompassed “law reform, access to justice, the abolition of discriminatory customary law and practices, the building of institutional capacity and the establishment of educational programmes to counter attitudes and norms which lead to the oppression of women.” It viewed “education, health, economic empowerment and political participation as priority areas for the progressive development of women in Sierra Leone.” It also called on communities to “make special efforts to encourage acceptance of the survivors of rape and sexual violence as they reintegrate into society”.¹⁴¹ On the other hand, the **Liberian** TRC interpreted gender in its mandate merely as promoting women’s participation and thus failed to contribute to any significant change in social thinking, attitudes or behaviour.¹⁴² In **Morocco**, the IER collected women’s testimonies, providing a forum for listening and publicly rebroadcasting the testimonies on radio and television. It thus made visible specific violations suffered by women, and contributed to their rehabilitation and recognition by the state and society as a whole.¹⁴³

Last, other measures may also contribute to realising victims’ right to truth. These include court proceedings (discussed below), forensic investigations, archives, commissions of inquiry, the media and civil society initiatives. **Commissions of inquiry** can play an important role in laying the groundwork for future prosecutions: if they fully investigate all forms of sexual and gender-based violence, they may contribute to prosecuting these crimes and hence enabling victims to access justice. **Civil society initiatives** may likewise contribute to truth-seeking and accountability for violations against women.¹⁴⁴

In contexts where official processes have not addressed women’s justice demands, civil society organizations have held their own tribunals to highlight women’s experiences. Although the judgments of these tribunals are not binding, they help to end the silence that surrounds sexual violence crimes and can create moral pressure for formal recognition of women’s rights violations.¹⁴⁵

An example of such an initiative is the Tribunal of Conscience for Women Survivors of Sexual Violence during the Armed Conflict in **Guatemala**, organised by various civil society organisations in March 2010, which aimed to create a public space for victims to tell their stories and be heard by their fellow citizens and the authorities, and to lay the foundations for a landmark case of sexual violence to be brought to court.¹⁴⁶

¹⁴⁰ Borer, 2009, p. 1183.

¹⁴¹ Sierra Leonean Truth and Reconciliation Commission, 2004, Volume 2, p. 169.

¹⁴² Pillay, 2009, p. 99.

¹⁴³ International Center for Transitional Justice, 2011, p. 25.

¹⁴⁴ UNIFEM, 2010, pp. 18-19.

¹⁴⁵ UN Women, 2011, p. 96.

¹⁴⁶ Crosby and Lykes, 2011, p. 457.



The right to justice

States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.¹⁴⁷

Like the right to truth, victims' right to justice can be realised in several ways. In addition to domestic judicial processes, these include international criminal tribunals, both ad hoc (ICTY and ICTR) and permanent (ICC), but also hybrid courts, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, where international judges sit alongside national judges and apply domestic law that has been reformed to accord with international standards. Additional international avenues include universal jurisdiction and other transnational accountability efforts, as illustrated by Spain's attempt to extradite Pinochet to stand trial for committed in Chile.¹⁴⁸ Nevertheless, in the majority of cases the only official avenue open to victims is that of domestic procedures, including criminal but also civil and military judicial systems. Although the analysis focuses on criminal justice, the issues related to gender-sensitivity discussed here apply to all justice mechanisms which can fulfil victims' right to justice.

As is the case for truth commissions, the **mandate** of a judicial body may have implications from a gender perspective. In **Argentina**, rape was not covered by the amnesty laws (Ley de Obediencia Debida and Ley de Punto Final) although it is only recently that acts of sexual violence have been prosecuted.¹⁴⁹ The Rome Statute gives the **ICC** jurisdiction over crimes of sexual and gender-based violence. In particular, its definition of crimes against humanity and war crimes includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity¹⁵⁰. Under the Rome Statute, crimes against humanity also include persecution against any identifiable group or collectivity based on gender.¹⁵¹ Furthermore, Article 21(3) specifies that the ICC must apply and interpret the Statute and other relevant documents without any adverse distinction founded on grounds such as gender. Nevertheless, the definition in Article 7(3) of the Rome Statute, according to which 'gender' refers to the two sexes within the context of society, has been criticised on several grounds, including the perceived conflation of 'gender' and 'sex', the limitations of the reference to 'context of society', the potential exclusion of sexual orientation, and the side-lining of gender issues by including a definition.¹⁵² The Rome Statute is also directly relevant for domestic judicial procedures where it is incorporated into national legislation: in **South Africa** for instance the International Criminal Court Act 27 of 2002 implements the provisions of the Rome Statute in domestic legislation, including the provisions concerning crimes of sexual and gender-based violence.¹⁵³

As regards women's participation as members of staff, the proportion of female judges in international tribunals remains low, as the **ICC** is the only body among international and hybrid courts which achieved gender parity with nine out of 17 female judges, while the proportion varies

¹⁴⁷ Impunity Principles, Principle 19.

¹⁴⁸ Dickinson, 2003, p. 295.

¹⁴⁹ Corporación Humanas, 2008, pp. 60-61 and 64.

¹⁵⁰ Article 7(1)(g), Article 8(2)(b)(xxii) and 8(e)(vi).

¹⁵¹ Article 7(1)(h).

¹⁵² Oosterveld, 2005.

¹⁵³ See D^u Plessis, 2007.



between 6% and 33% among the other bodies.¹⁵⁴ In the case of *The Prosecutor v Jean-Pierre Bemba Gombo*¹⁵⁵ currently before the ICC, the three judges, senior trial lawyer prosecuting and nearly half the victims making representations are women.¹⁵⁶ As regards their participation as victims and witnesses, women may face similar barriers to access justice as for accessing truth commissions, including financial and linguistic barriers, and lack of transport and childcare facilities for rural victims who must travel to the cities. Outreach programmes and other measures, often implemented by civil society organisations, may help victims overcome these obstacles. For instance in the Eastern **DRC**, international NGOs work with local police, lawyers, judges and psychologists to provide mobile courts in order to bring justice to remote areas still affected by insecurity and conflict, including for victims of rape.¹⁵⁷ Likewise, victims in the cities benefit from financial assistance in paying their lawyers' fees, although this is not the case in other areas.¹⁵⁸ In **Rwanda**, paralegals from the NGO Ibuka assisted victims and directed them to the authorities for the necessary documents. A government ruling also stated that all documents had to be provided for free, in order to solve the issue of cost of the certificates, although the problems arising from transportation and access to formal authorities remained challenging for a number of victims, especially illiterate women living in remote areas.¹⁵⁹

An inherent limitation of criminal procedures - in particular compared to other TJNR processes such as truth commissions and reparations programmes - is that they aim to establish the guilt or innocence of a given suspect rather than ensure the well-being of victims and witnesses, which may lead to their re-traumatisation and re-victimisation.¹⁶⁰ Nevertheless, **victim protection mechanisms and psycho-social support** can ensure victims' physical and psychological well-being both in the courtroom and in their home communities. The **Special Court for Sierra Leone** provided women who testified with free access to health facilities and procedures such as fistula repair.¹⁶¹ In **Colombia**, on the other hand, the absence of safeguards for reporting sexual violence, of effective protection measures, and of physical and mental health care with a psychosocial perspective, continue to be obstacles to women's access to justice.¹⁶² The Rome Statute, in turn, requires the Prosecutor to respect the interests and personal circumstances of victims and witnesses, including gender, and the **ICC** to take appropriate measures to protect their safety, physical and psychological well-being, dignity and privacy, taking into account the nature of the crime, in particular where it involves sexual and gender-based violence.¹⁶³

Awareness of gender issues among the judiciary can also be improved by gender-awareness training and appointing members of staff with **gender expertise**. The **Special Court for Sierra Leone** for instance dedicated 20% of its investigators to cases of sexual violence.¹⁶⁴ This may have contributed to the fact that the Prosecutor charged forced marriage as a crime against humanity under the category of 'other inhumane acts' and to the court's gender-sensitive jurisprudence, in

¹⁵⁴ UNIFEM, 2010, p. 7.

¹⁵⁵ See <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0105/Related+Cases/ICC+0105+0108/Case+The+Prosecutor+v+Jean-Pierre+Bemba+Gombo.htm> (last accessed 28 May 2012).

¹⁵⁶ UN Women, 2011, p. 89.

¹⁵⁷ UN Women, 2011, p. 93.

¹⁵⁸ Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo, 2011, p. 33.

¹⁵⁹ Rombouts, 2006, p. 230.

¹⁶⁰ See Franke, 2006.

¹⁶¹ Scanlon and Muddell, 2009, p. 15.

¹⁶² Working Group to monitor compliance with Auto 092 of 2008 of the Colombian Constitutional Court, 2011.

¹⁶³ Articles 54(1)(b) and Article 68(1).

¹⁶⁴ Scanlon and Muddell, 2009, p. 16.



particular its interpretation of sexual slavery, forced marriage, and the seemingly gender-neutral war crime of committing acts of terrorism.¹⁶⁵ Likewise, the **ICC** Prosecutor appointed a Special Gender Adviser to provide strategic advice on sexual and gender violence.¹⁶⁶

Adapting **evidentiary standards** to address specific issues in the prosecution of sexual violence can also reflect an awareness of the gendered impact of conflict.¹⁶⁷ The **ICTR**'s definition of rape in the *Akayesu* case does not require that the victim physically or verbally communicated their non-consent to the perpetrator.¹⁶⁸ Likewise, the **ICTY**'s definition of rape in the *Kunarac* case requires that sexual penetration occurs without the consent of the victim, where consent "must be given voluntarily, as a result of the victims' free will, assessed in the context of the surrounding circumstances."¹⁶⁹ The **ICTY** further established that detention centres amounted to "circumstances that were so coercive as to negate any possibility of consent".¹⁷⁰ The **ICC**'s Rules of Procedure and Evidence also provide appropriate standards for the prosecution of cases of sexual violence as regards restrictions on inferring consent and the inadmissibility of evidence of the prior or subsequent sexual conduct of a victim or witness.¹⁷¹

As for the right to truth, **non-state actors** may contribute to realising victims' right to justice. As noted above, NGOs in **Rwanda** and the **DRC** have helped victims' access justice mechanisms. The NGO Women's Initiatives for Gender Justice, in turn, provided gender training to **ICC** staff.¹⁷² Moreover, civil society initiatives such as the Tribunal of Conscience for Women Survivors of Sexual Violence during the Armed Conflict in **Guatemala** may help end the silence around sexual violence and provide incentives for officially recognising the human rights violations suffered by women.

Last, **traditional or informal justice processes** are the principal legal recourse for most victims of conflict, as in many post-conflict societies they are the only form of justice accessible to them.¹⁷³ Such mechanisms present a number of challenges in terms of gender, including the lack of female involvement with these mechanisms: they tend to tell the community truth from a male perspective while the stigma of sexual violence may prevent rape victims from testifying in front of their community.¹⁷⁴ There is also a risk that powerful members of the community use traditional justice mechanisms to restore pre-existing gender roles and inequalities.¹⁷⁵ There is however the potential to change such mechanisms to increase their gender-sensitivity. In **Liberia** for example, women have co-opted and reinvented the concept of the *palava* hut, where chiefs and elders traditionally resolved disputes and settled conflicts: they built peace huts where women could meet, discuss problems, provide mutual support, and build peace in their communities.¹⁷⁶

¹⁶⁵ Oosterveld, 2011.

¹⁶⁶ http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/press%20releases%20%282008%29/icc%20prosecutor%20appoints%20prof_%20catharine%20a.%20mackinnon%20as%20special%20adviser%20on%20gender%20crimes (last accessed 28 May 2012).

¹⁶⁷ See Viseur Sellers, 2007, p. 20.

¹⁶⁸ *Prosecutor v. Akayesu*, para 598.

¹⁶⁹ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, 2001, para 460.

¹⁷⁰ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, 2002, para 132.

¹⁷¹ ICC, *Rules of Procedure and Evidence*, Principles 70 and 71.

¹⁷² <http://www.iccwomen.org/whatwedo/training/index.php> (last accessed 28 May 2012).

¹⁷³ UNIFEM, 2010, p. 9.

¹⁷⁴ Scanlon and Muddell, 2009, pp. 24-25.

¹⁷⁵ UNIFEM, 2010, p. 9.

¹⁷⁶ UN Women, 2011, p. 80.



The right to reparation

Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.¹⁷⁷

The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law.¹⁷⁸

Victims' right to reparation can be realised through a variety of measures, including:

- *Restitution* or restoring victims to the original situation before the violation occurred;
- *Compensation* for any economically assessable damage, including physical and mental harm, lost opportunities, material damages and loss of earnings, moral damage, and costs incurred;
- *Rehabilitation*, including medical and psychological care and legal and social services;
- *Satisfaction* measures such as recognition of state involvement in crimes, public apologies, judicial and administrative sanctions, commemorations and memorials.¹⁷⁹

Reparation programmes are arguably better suited to situations of widespread violence than reparations ordered by courts in judicial procedures because they offer redress to a large universe of victims rather than on a case-by-case basis, and because they address the violation of rights rather than compensation for economic loss.¹⁸⁰ Since in situations of conflict there is a large universe of victims, this report focuses on administrative reparations programmes rather than court-ordered reparations. Nevertheless, it is acknowledged that the latter can also contribute to realising victims' right to reparations, as illustrated by the jurisprudence of the IACtHR discussed above. Likewise, following a court ruling that the Dutch state was liable for the damages suffered by surviving relatives of war crimes committed in the **Indonesian** village of Rawagede, it agreed to pay compensation to the widows and offered its apologies.¹⁸¹ In the **DRC** province of Equateur, on the other hand, although some victims of rape obtained a court judgment convicting their perpetrators for crimes against humanity, the individual indemnity awards of \$5,000 were not paid to them.¹⁸²

Several issues are relevant when assessing the gender-sensitivity of reparations. Some measures address the **direct as well as the indirect harms** caused by conflict, including human rights violations which predominantly harm women, such as sexual and gender-based violence, but also the loss of male family members, forced displacement, discrimination, and violations of their economic, social and cultural rights. In particular, as violations of economic, social and cultural rights affect women disproportionately, reparations measures which address these violations are well-suited to address the harms suffered by both women and men. The reparations proposed by the **Peruvian** CVR included a Health Reparations Programme to help restoring the physical and mental health of the population affected by the conflict, rebuild social networks, and strengthen

¹⁷⁷ Impunity Principles, Principle 31

¹⁷⁸ Impunity Principles, Principle 34.

¹⁷⁹ See Reparation Principles, Principles 18-23.

¹⁸⁰ Rubio-Marín and De Greiff, 2007, p. 321.

¹⁸¹ Böhler Advocaten, 2011.

¹⁸² Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo, 2011, p. 31.



personal and social development capacities; an Economic Reparations Programme to contribute to the ability of victims and their families to plan their lives and secure their well-being and a dignified future; and a Collective Reparations Programme to promote the reconstruction and consolidation of the social and physical infrastructure which communities lost because of the conflict. A combination of individual and collective reparations, such as the construction of hospitals and schools, may be particularly well-suited to address violations of economic, social and cultural rights. However, there is a risk that governments adopt reparations measures instead of implementing development programmes, thereby failing to recognise victims' status as victims, since development programmes benefit whole population groups as citizens, regardless of their victim status.¹⁸³ There is also a risk, especially in patriarchal societies that collective reparations repeat and reinforce past gender roles and inequalities, especially where decisions are taken by the male leaders of the community. Thus, in **Uganda** women favoured individual over collective reparations, reflecting their awareness of community power relations and their exclusion from decision-making forums.¹⁸⁴

Satisfaction measures can play an important role in recognising and addressing the different harms suffered by women and men during conflict and ensure that their plight does not remain invisible. Thus the President of **Sierra Leone** apologised for the wrongs done to Sierra Leonean women: on behalf of the armed forces he asked for forgiveness, acknowledged that women's human rights had been violated by traditional practices, and promised to protect their rights in the future.¹⁸⁵ In Shabunda in the **DRC**, a monument was built by a local priest in the centre of the village as a memorial to women victims of war. According to local women, the monument symbolised all the problems women have and served to avoid people forgetting what happened to them.¹⁸⁶ However, it can be challenging to design symbolic reparations which do not reproduce gender stereotypes, for instance by portraying women as victims. In **South Africa**, memorialisation efforts are primarily concerned with representing liberation heroes and male-dominated resistance episodes, in which women are not included because they do not meet the requirements of the dominant discourse. However, a private-sector initiative created seven public memorials in honour of women, breaking with the conventions of the historically male-dominated public monument genre.¹⁸⁷ Most reparations programmes have also failed to address sexual violence, which is often highly stigmatised, in the public domain, through symbolic reparations for instance.¹⁸⁸

Another issue concerns the fact that a reparations programme may **exclude victims from marginalised groups**, including women, if they define beneficiaries in such a way that it disadvantages members of this group. This may be the case for victims of sexual violence if reparations are restricted to those who testified before a truth commission, as such requirements do not take into account that victims of sexual violence may need more time before they can testify about what happened to them, or may be altogether unwilling to speak out of shame and fear of stigmatisation and rejection. In order to address this issue, in **Timor-Leste** the CAVR recommended a two-year period to identify potential beneficiaries who had not come before the CAVR.¹⁸⁹ Moreover, reparations programmes may exclude certain categories of victims altogether from benefits or prioritise some groups over others. Lessons can thus be learnt from the **Brazilian**

¹⁸³ See Roht-Arriaza and Orlovsky, 2009.

¹⁸⁴ UNIFEM, 2010, p. 21.

¹⁸⁵ UNIFEM, 2010, p. 22.

¹⁸⁶ Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo, 2011, pp. 15-16.

¹⁸⁷ See Marschall, 2010.

¹⁸⁸ Hamber and Palmay, 2009, pp. 343-344.

¹⁸⁹ Wandita, Campbell-Nelson and Leong Pereira, 2006, p. 309.



reparations programme, where common-law partners were not given the same priority as spouses, thereby failing to recognise the harms suffered by unmarried women who lost their partner.¹⁹⁰

Furthermore, because of the gendered nature of post-conflict societies, not all reparations measures are equally accessible to all victims. **Barriers** which particularly affect women include their lack of control over financial resources and social expectations which prevent women from claiming benefits for themselves rather than their families. In **South Africa** beneficiaries needed to have a bank account, whereas many women did not have such bank accounts, and until 1998 women married under customary law were considered minors for the purpose of certain commercial transactions. Thus, in some cases the money was put into the bank account of male family members, which risked preventing women from exercising effective control over it.¹⁹¹ In **Timor-Leste**, on the other hand, the CAVR recommendations for reparations included linking benefits for single mothers to a scholarship for their children. Women would thus travel to an organisation every month to receive the scholarship, where they would also have access to services such as counselling, peer support, livelihood skills training, health care, and access to microcredit for livelihood activities.¹⁹² Victims of sexual violence face specific barriers when accessing reparations, such as shame, stigmatisation and rejection by their family and community. The design of reparations programmes can take this into account and include specific measures to overcome such obstacles. Thus, in **Timor-Leste** the CAVR prioritised the category of ‘single mothers’, an umbrella term which included women who bore children out of rape, in order to avoid stigmatising them by identifying them as victims of sexual violence.¹⁹³

Last, reparations can contribute to realising the **transformative potential** of post-conflict settings by addressing discrimination against women in peace as well as in conflict. The **Colombian** Victims and Land Restitution Law for instance requires that in cases of restitution, the land title must be given to both spouses or permanent companions, which reinforces women’s access to land titles, as women become landowners together with their husband or partner, even where this was not the case before.¹⁹⁴ Likewise, in **Morocco** the IER accorded equal treatment to men and women as regards distribution of compensation: it ignored the Sharia-based concept of heirs in Moroccan succession law and instead adopted that of successors, resulting in the same distribution of percentages among the successors for men and women.¹⁹⁵ In particular, transformative reparations can play a crucial role in addressing the stigmatisation and rejection of victims of sexual violence. The proposed reparations programme in **Timor-Leste** includes a public education programme on sexual violence which aims to combat the stigmatisation of victims by shifting the blame from victims onto perpetrators.¹⁹⁶

Husbands, families, and communities, as well as religious and community leaders, and government authorities up to the highest level should speak out clearly and strongly in support of victims of sexual violence and against their stigmatization.... Breaking the silence and mobilizing public support for these victims could be the single-most important form of reparation.¹⁹⁷

¹⁹⁰ Rubio-Marín, Sandoval and Díaz, 2009, p. 279.

¹⁹¹ Goldblatt, 2006, p. 73.

¹⁹² Wandita, Campbell-Nelson and Leong Pereira, 2006, p. 310.

¹⁹³ Wandita, Campbell-Nelson and Leong Pereira, 2006, p. 309.

¹⁹⁴ Victims and Land Restitution Law, Articles 91(4) and 118.

¹⁹⁵ International Center for Transitional Justice, 2011, p. 28.

¹⁹⁶ Wandita, Campbell-Nelson and Leong Pereira, 2006, p. 312.

¹⁹⁷ Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo, 2011, p. 55.



Guarantees of non-recurrence

States shall ensure that victims do not again have to endure violations of their rights. To this end, States must undertake institutional reforms and other measures necessary to ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions. Adequate representation of women and minority groups in public institutions is essential to the achievement of these aims.¹⁹⁸

Guarantees of non-recurrence can take a variety of forms. In particular, mechanisms to realise victims' right to justice, truth and reparation may contribute to the non-recurrence of past crimes: establishing the truth of what happened during conflict can encourage feelings of 'never again!', combating impunity for violations against women in court proceedings can have a deterrent effect, and transformative reparations can help tackle gender roles and stereotypes. However, guarantees of non-recurrence can also be achieved through other measures. These include:

- *Structural reforms of the security and justice sectors;*
- *Legislative reforms*, including adopting international standards in criminal and human rights law;
- *Disarmament, demobilisation, and reintegration* of unofficial armed groups and paramilitaries;
- *Lustration and vetting* of persons alleged to have committed serious crimes or violations, as well as broader structural institutional reforms;
- *Training* of public officials on human rights and *education* of the population as a whole about the conflict.

Security sector reform (SSR) seeks to ensure the future integrity of the security sector to prevent abuses, promote the security sector's legitimacy by vetting perpetrators, and empower civil society through their involvement in the process.¹⁹⁹ SSR programmes focus primarily on male combatants members of the army and major rebel militia groups and often neglect other security-related bodies such as the police, border control guards, or smaller rebel groups, as well as more marginal combatants such as women and children. However, female participation in SSR leads to enhanced access to services by women, fewer incidents of sexual misconduct, and greater trust of the civilian population in the security sector.²⁰⁰ Whereas many police forces in post-conflict settings had few women in their ranks, gender has more recently become a crucial aspect of police reform.²⁰¹ Other measures, such as setting up special gender units among police forces and providing gender training to police and military officers, can also increase the gender-sensitivity of SSR efforts.²⁰² Gender-sensitive security sector reform can also take place through security sector assessment, awareness-raising and participation, community policing, gender-sensitive reform of laws, directives and service regulations in the security sector, training and upgrading, and reforming recruitment mechanisms.²⁰³ In **Liberia**, attempts have been made to include women from different

¹⁹⁸ Impunity Principles, Principle 35.

¹⁹⁹ Scanlon and Muddell, 2009, p. 21.

²⁰⁰ World Bank, 2011, p. 151.

²⁰¹ Office of the High Commissioner for Human Rights, 2006b, p. 17.

²⁰² See Bastick, 2011

²⁰³ Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, 2007.



sectors in the different stages of the SSR process: quotas have been established for recruiting women to different security branches and specialised education initiatives for female recruits have been set up. The police also set up a Women and Children Unit, and anti-sexual and gender-based violence legislation has been enacted.²⁰⁴ In **Rwanda**, in partnership with the UN Development Fund for Women (UNIFEM), military officers have received training on sexual and gender-based violence, and the Rwandan Defence Forces reconceptualised their notion of security to include human security, and to identify sexual and gender-based violence as a threat to security, as well as their role in preventing such violence.²⁰⁵

Justice sector reform plays an important role in post-conflict settings when insecurity and on-going social and criminal violence can have a disproportionate impact on vulnerable groups, including women. Moreover, women face several barriers to access justice, which can be addressed by justice sector reform, including law- or policy-related obstacles, such as the lack of legislation criminalising domestic violence, as well as obstacles which are context-related, which may encompass the lack of training on gender awareness and the absence of judicial institutions in rural areas.²⁰⁶ Many post-conflict settings witnessed an increase in trafficking in women and girls for sexual exploitation. This has been the case in **Bosnia**, the **DRC** and **Sierra Leone**. Lack of gender awareness has led to inadequate treatment of victims of trafficking which re-traumatised and re-victimised them: legal officers, including police, treated the trafficked women like criminals instead of showing compassion and offering them assistance, as happened in **Bosnia** and the **Former Yugoslav Republic of Macedonia**.²⁰⁷

Legislative measures, such as the ratification of CEDAW and enshrining international standards on non-discrimination in the constitution, can contribute to tackling gender inequalities and gender-based violence in all spheres of public and private life. CEDAW requires states parties to combat discrimination against women in all its forms, including in political and public life, education, employment, health care, rural areas, civil matters, and marriage and family relations. This includes temporary special measures aimed at accelerating de facto equality between women and men.²⁰⁸ However, while such legislative changes reflect a political commitment to gender equality, it is their implementation which will ensure that gender equality is also achieved in practice. In **South Africa**, the new government abolished the Apartheid regime's discriminatory laws, adopted quotas for women's participation in government, and adopted gender-sensitive budgeting policies in order to address past inequalities.²⁰⁹ More generally, in sub-Saharan Africa:

Of the countries that have passed legislation on women's land rights in recent years, five out of seven did so as part of post-conflict reform: **Mozambique, Namibia, Rwanda, South Africa** and **Uganda**. Similarly, many of the countries with more than 30% women's representation in parliament in sub-Saharan Africa have come out of conflicts, including **Angola, Burundi, Mozambique, Rwanda, South Africa** and **Uganda**. In all cases, as mandated by CEDAW, temporary special measures including quotas have been used to boost women's representation.²¹⁰ [Emphasis added]

²⁰⁴ Scanlon and Muddell, 2009, pp. 22-23.

²⁰⁵ UNIFEM, 2010, p. 24.

²⁰⁶ UNIFEM, 2010, p. 24.

²⁰⁷ Office of the High Commissioner for Human Rights, 2006b, p. 8.

²⁰⁸ CEDAW, articles 2-16.

²⁰⁹ UNIFEM, 2010, p. 24.

²¹⁰ UN Women, 2011, p. 100.



Disarmament, demobilisation and reintegration (DDR) marks the beginning of long-term transformation processes, demilitarising economies, communities and lives, since “prevention of new violence depends on the willingness of armed groups to lay down their arms, disband military structures and return to civilian life”.²¹¹ Gender-sensitive DDR programmes take into account the fact that women may face specific issues in the demobilisation and reintegration process, including, among others: the need for reproductive health facilities, family planning, and pregnancy services for female ex-combatants; female ex-combatants’ lack of opportunities to generate income because of their lack of education, skills and credit, as well as the absence of childcare facilities; and women’s loss of employment when combatants are reintegrated in the host communities.²¹²

In the worst cases, female ex-combatants, abducted girls, ex-combatants’ families, and women in the host community are neglected when demobilization comes. In the better cases, women, men, boys, and girls have equal access to benefits; but, the majority of [Demobilisation and Reintegration Programs] treat them as a homogeneous group, and the standard approach attracts only a small percentage of women and girls and does not address their special needs.²¹³

In this regard, lessons can be learnt from DDR programmes in **Colombia** which unintentionally serve to perpetuate gender stereotypes, as they are based on the assumption that combatants are men, and reinforce patriarchal family structures and provide disincentives for women who are economically dependent on former combatants to report domestic violence.²¹⁴

Guarantees of non-recurrence can contribute to realising the transformative potential of post-conflict settings by **changing gender roles and patterns of discrimination against women**. The 2011 **Colombian** Victims and Land Restitution Law provides for special prevention measures aimed to overcome stereotypes which favour discrimination, especially discrimination and violence against women; training in (international) human rights which includes a differential approach and a zero-tolerance policy for state institutions as regards sexual violence; the design of strategies for the legal empowerment of victims; and a national campaign to prevent and condemn violence against women.²¹⁵ The Women’s Economic Empowerment Programme in **Nepal** provided cost-effective training and support to 6,500 groups of 130,000 women. It led to increased literacy rates among participants and gave them an independent source of income by starting a business.²¹⁶ As noted above in the context of transformative reparations, guarantees of non-recurrence can also play a crucial role in changing social perceptions of sexual violence from an honour offence for which the victim must be blamed to recognition that it is a punishable crime.

Last, **civil society organisations** play an important role in implementing guarantees of non-recurrence. “No reform—justice, police, prison service, and military, administrative— will take root and lead to real change without the support and understanding of civil society.”²¹⁷ In **Liberia**, women combatants often felt more comfortable handing in weapons to women’s NGOs than to military or peacekeeping personnel. Thus, using the capacities and reach of women’s NGOs can improve access and services to women combatants, supporters and dependents.²¹⁸ **Traditional**

²¹¹ UNIFEM, 2004, p. 2.

²¹² See De Watteville, 2002.

²¹³ De Watteville, 2002, p. 1.

²¹⁴ Theidon, 2009, pp. 29-31.

²¹⁵ Victims and Land Restitution Law, Article 149(d)(h)(q)(s).

²¹⁶ World Bank, 2011, p. 163.

²¹⁷ Office of the High Commissioner for Human Rights, 2006b, p. 28.

²¹⁸ UNIFEM, 2004, p. 19.



conflict mitigation mechanisms also have a great potential in terms of preventing new violence. In the African Great Lakes region, a partnership between women NGOs and local grassroots organisations created the Bangwe project, which draws on a local tradition that ascribes the role of conflict arbitrators in families and communities to women. It aims to set up a network of women from **Burundi**, the **DRC** and **Rwanda** to exchange their experience in peace negotiation and mediation. The project has organised, among other things, regional meetings for training and exchanging experiences between women.²¹⁹

3) *Concluding thoughts*

- Since the Second World War and especially since the 1990s the plight of women in conflict has been brought into the spotlight; more recently there has been increased attention for the needs and experiences of women in post-conflict settings and in TJNR processes, as well as gender-sensitive initiatives on the ground.
- Key actors, including UN organs and international judicial bodies, increasingly pay attention to the needs and experiences of women and adopt a gender-sensitive approach, as reflected in the development of international legal and political commitments to gender-sensitivity such as UNSCR 1325 and its follow-up resolutions.
- Although trends among TJNR processes in various post-conflict settings point towards increasing gender awareness, there remains a gap between legal and political commitments to gender-sensitivity in TJNR processes and their implementation at the international, national and local level. This may be due to the fact that there are many actors in the field of conflict and transitional justice who have different priorities and understandings of gender-sensitivity and how to translate it into practice; the predominance of men in the field and the lack of training and gender-awareness among actors; resource constraints, as most post-conflict countries have limited financial, staff, infrastructure, and other resources; the fact that gender-sensitivity implies addressing wider issues such as gender roles and patriarchal structures, which are inherently complex, lengthy processes; a lack of political will in patriarchal societies where traditional gender roles and stereotypes remain strong.
- Gender-sensitivity often focuses on women rather than the relations between women and men more broadly, and on sexual violence, although there has been increased attention for the participation of female victims in TJNR processes and awareness of the need to take their needs and experiences into account. This may be a response to the fact that TJNR processes are often gender-blind and take men as the default category, requiring a specific focus on women in order to compensate the lack of attention for women's needs and experiences.
- Civil society initiatives can contribute to the implementation of political and legal commitments and to designing and implementing gender-sensitive TJNR processes.
- Increasing attention is paid to the need to exploit the transformative potential of post-conflict settings through TJNR processes in order to improve gender equality and combat discrimination and violence against women.

²¹⁹ Samoya, 2005, p. 211.



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II. [ANNEX : KEY CONCEPTS]

Gender and sex

The terms ‘gender’ and ‘sex’ are hotly debated concepts. Generally, ‘sex’ refers to the *biological* characteristics that define men and women, such as hormones and reproductive organs. The term ‘gender’ refers to *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.²²⁰

Gender-sensitive TJRNR processes

A gender-sensitive approach to truth, justice, reparation and non-recurrence (TJRNR) processes pays attention to the roles of, and relationships, inequalities and differences between women and men as well as among women and men (taking into account different age categories, socio-economic background, and other axes of identity) in a particular context, including through integrating their specific concerns and experiences in the design and implementation of TJRNR-related actions; ensuring more equal participation of men and women in these processes, both at the quantitative and qualitative level; treating men and women as heterogeneous groups; and analysing (the construction of) gender identities (including their evolution during and after conflict) in a specific context to transform gender roles and tackle root causes of GBV. The ultimate goal is to ensure that women and men benefit equally from TJRNR processes and to build a more inclusive society.²²¹

Conflict-related sexual violence

“Conflict-related sexual violence refers to incidents or patterns of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity against women, men or children. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g. political strife). They also have a direct or indirect nexus with the conflict or political strife itself, that is, a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (which can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of genocide or other gross violations of human rights), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/State collapse, cross-border dimensions and/or the fact that they violate the terms of a ceasefire agreement.”²²²

²²⁰ See Research Framework

²²¹ See Research Framework

²²² UN Security Council, *Conflict-related sexual violence: Report of the Secretary-General*, UN Doc. A/66/657*-S/2012/33*, 13 January 2012, p. 2.



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Impunity Watch (IW) is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts systematic research into the root causes of impunity that includes the voices of affected communities to produce research-based policy advice on processes intended to enforce their rights to truth, justice, reparations and non-recurrence. IW works closely with civil society organisations to increase their influence on the creation and implementation of related policies. IW runs 'Country Programmes' in Guatemala and Burundi and a 'Perspectives Programme' involving comparative research in multiple post-conflict countries on specific thematic aspects of impunity. The present Report is published as part of IW's Gender Project, within the wider Perspectives Programme.

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