

Gender perspective in the South African and East-Timorese Truth and Reconciliation Commissions

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Abstract: This thesis carried out a study about gender perspectives in the South African Truth and Reconciliation Commission (TRC) and the East Timorese Commission for Reception, Truth and Reconciliation (CAVR). Each of these commissions was individually studied and compared in the conclusion, bringing out both the good practices and the failed points, and how the evolution of gender mainstreaming in the international instruments have influenced both commissions. An armed conflict affects men and women in different ways. The numbers show that more men than women suffer severe human rights violations. Nevertheless, women are more vulnerable to become victims of sexual violence, which causes great trauma. Because of the inevitable harm, females have to deal not just with the trauma cause by the violence, but also with the discrimination and ostracism in their own communities. Debates on an international level directed to an examination about the role of women in countries in transition and in the processes of transitional justice. Later, it developed to discussions on gender issues in truth commissions, such as the particular suffering faced by women and girls and their special needs. South Africa had the first Truth and Reconciliation Commission to have a concern for women's issues. Despite great efforts to uncover the truth and to promote the reconciliation of the population, the TRC turned a blind eye to the issue of sexual violence as a human rights violation against women and the consequences of the conflict in their lives. The gender-neutral position adopted by the TRC resulted in the absence of gender mainstreaming. The consequence was reflected in a lack of sensitivity towards the different ways that women and men experienced the conflict. The result was that the special female needs were not taken into account. On the other hand, the CAVR in East Timor evolved this concept and effectively implemented gender mainstreaming. Sexual crimes were investigated and the special needs of women and girls had been met. Moreover, the violation of economic, social and cultural rights of women was analysed. Fifty per cent of the reparations were destined for women, because the commission recognized a bigger vulnerability of women. However, one flawed point was the non-investigation of forced maternity, which was understood not as a crime *per se*, but as a mere consequence of rape.

Keywords: Transitional Justice. Truth and Reconciliation Commission. Gender. Gender mainstreaming. South Africa. East Timor.

I. INTRODUCTION

A war is traumatic in any society. The destruction, fear, violence, loss of life and sexual assaults hit both male and female, but armed conflict are still being seen as things that need to be dealt with by men. However, many women participate actively during war, not just as combatants – the number of female combatants is relatively small – but also as political activists, informants, nurses, cooks or simply as providers of support for their male loved ones who go to the frontline. In fact, it is not necessary to be in the frontline to experience war.

An armed conflict affects men and women in different ways. Statistics show that more men than women suffer severe human rights violations as torture, enforced disappearance, unlawful imprisonment, and summary execution. Nevertheless, women are more vulnerable to become victim of sexual violence which causes great traumas. Because of the inevitable harm, females have to deal not just with the trauma of sexual abuse, but also with the discrimination for the simple fact of being victim of sexual assault and to find a way to provide subsistence to the children born after rape.

The international community started to have concerns about the security and rights of women during armed conflict right after World War II. Since then international documents were created seeking the recognition of women's rights. It was a long and slow progression. The first instruments were focused on equality and combat of the oppression of women. Prolonged discussions during women's events and congresses reached a new posi-

tive step regarding the rights of women in all areas of life. Those debates included the role of women in countries in transition and in the processes of transitional justice. Later, an overview on gender issues in truth commissions to properly work on the suffering faced by women and girls and their special needs.

Regarding this problem, this thesis aims to study the evolution in the women's rights in societies in conflict and answer the question "How was the development of a gender perspective to protect women in South African and East Timorese truth commissions?"

Two main truth commissions were selected: of South Africa and East Timor. The reason for these choices is their importance on the international scene of transitional justice, as well as their concern for a gender perspective during the process of creation and their functioning. The gendered dimension adopted by these truth commissions is going to be analysed, as well as the important role played by women in said transitional justice mechanisms.

The analysis starts with a study on the historical background on women's rights and gender condition, from the situation of women in post-colonialism to the creation of transitional justice processes. The analysis of the post-colonialism period is due to the fact that the main objects of this research are two former colonies that suffered periods of armed conflicts. Moreover, colonization was also a form to spread discrimination and inequality.

The concept of *gender* and *gender mainstreaming* will be briefly explained, so as to give a previous understand of this theoretical matter and how it influenced the gender bias in truth commissions. Chapter three analyses the international instruments promulgated to protect women during armed conflict. It is shown how the concept of sexual crime committed during armed conflict developed, from merely a crime against honour to the recognition as a crime against humanity, war crime and genocide. The needs of women and girls in times of conflict and post-conflict became an international concern. The gendered limits of traditional approaches to transitional justice will be explored.

Considering the problematic situation of women and girls in conflict and post-conflict countries, the United Nations (UN) called States to promote gender equality and to ensure gender mainstreaming in all processes and sectors of peacebuilding. It included the participation of women in truth commissions and the creation of mechanisms to ensure accountability. Before the thesis enters into the analyses of the chosen case studies, the text will approach the concept of truth commission as a transitional justice mechanism and how the idea of a truth commission was created. It will explain how a gender perspective in the truth and reconciliation commissions was developed and implemented.

The fourth and fifth chapters will analyse the South African Truth and Reconciliation Commission (henceforth TRC) and the East Timorese Commission for Reception, Truth and Reconciliation (hereinafter CAVR), respectively. Each of those chapters starts with a brief history of the conflict in the country, in order to understand the context in which the country was before the transition and the situation and the role of women in the society. Thenceforth the dissertation explores the truth commissions, examining its creation in the country, the struggle to implement this mechanism and the gender perspective adopted by the commissioners.

The mandate of each of these commissions is going to be explored in order to understand the limitation of the commissions' works. The mandate has direct influence on how the commission interprets human rights violations and its extensions. Taking that into account, the text will address how the investigation and documentation of gendered human rights violations were in each of these truth commissions. In these sub-chapters several testimonies will be transcribed, with a view to give the reader a broader dimension of women's suffering. Lastly, chapters four and five will analyse the reconciliation and reparation processes in the South African and East Timorese truth commissions with a focus on women.

In the conclusion the studied truth commissions will be examined together and compared, bringing out both the good practices and the failed points. Furthermore, the main empirical findings will be explored; the development presented from the experience of the South African commission to the East Timorese commission, and how the evolution of gender mainstreaming in the international instruments have influenced both commissions.

II. METHODOLOGY

The methodology adopted for the purpose of this research was an analysis of sources. Principal sources were the reports published by the South African TRC¹ and the East Timorese CAVR (in Portuguese Comissão de Acolhimento, Verdade e Reconciliação).² In addition, treaties and jurisprudence were used as legal sources, while UN resolutions and reports, and literature were used as secondary sources. The literature included both theoretical research as well as on research made in the field through interviews of victims and perpetrators.

First, a theoretical analysis of the historical background on women's rights and the international instruments was made that gives substance to this discussion. Moreover, the analysis of the literature covered the history of the investigated countries. The qualitative method was chosen to analyze the descriptive material, such as the reports and the interviews promoted by the commissioners and the testimonies during the hearings, as well as the interviews made by important researchers in the transitional justice areas. Within the qualitative method an empirical study was chosen with a focus of particular attention on the suffering of women and girls during conflict and post conflict, and how the truth commissions faced the situation of special needs based on gender.

All the information was evaluated through the structure of the experiences, having in mind how the South African and East Timorese truth commissions mainstreamed gender, with a focus on women and girls. Finally, a comparison was made between the findings of the South African TRC and the East Timorese CAVR in the respective final reports.

III. HISTORICAL BACKGROUND ON WOMEN'S RIGHTS AND GENDER IN TRANSITIONAL JUSTICE PROCESSES

1. Historical development of Women's Rights as Human rights

This chapter aims to give a summary overview of the international documents directing the recognition of women's rights. It is important to notice how long and slow was the progression of the debates to promote rules regarding women's needs. The first instruments aimed solely for a raise of equality and to combat the oppression, later developing into feminist social movements advocating for rights of women in all areas of life. The feminism ascended international scene, being embedded in meetings of the United Nations, resulting in various international actions being observed by member States. After years of evolution in the discussions on female issues, including matters involving armed conflicts, the debates culminated in the importance of the role of women in countries in transition and in the processes of transitional justice. Amongst the mechanisms of transitional justice are the truth commissions, which also required an overview on gender issues and which kept a careful eye on the distress and problems faced by women and girls.

The idea of *gender agenda* started in the international scene resulting in conferences to discuss gender equality and to look for the special needs of women. The concept of gender mainstreaming³ was thought as a tool that should be adopted by States. Those discussions raised the need to combat any kind of discrimination and abuse, including the ones perpetrated in wartime.

Some years later the international community started to become preoccupied with the women's conditions during warfare and particularly in the matter of rape. The 1949 Geneva Convention on Treatment of Prisoners of War was the first international instrument establishing protection against rape, at the time defined as a mor-

¹ The final report of the South African TRC is found at <http://www.justice.gov.za/trc/report/>.

² The final report of the East Timorese CAVR is found at <http://www.cavrtimorleste.org/en/chegaReport.htm>.

³ The idea and the concept of gender mainstreaming will have an important aspect during the works of the truth commissions, as it will be studied in the next chs.

al crime⁴ rather than a violent crime. Scholars defended that associating the sexual assault with the morality of the woman would bring even more shame for the victims, preventing women to report this type of crime.⁵

Thus this vocabulary was updated in 1977, by the additional protocol II and later by the ICC statute, which excluded the term *honour* when was mentioned the necessity of protection of girls and women against sexual assault. International criminal law studied violence against women during conflicts, resulting in the creation of many principles and doctrines. However, the main focus remained on the sexual violence and how to avoid such sort of crimes as well as a way of accountability.

After a long work of the Commission on the Status of Women (CSW), which since 1946 was making recommendations to the Economic and Social Council of the United Nations, in 1979 the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This is the first international treaty that largely adopts provisions concerning the human rights of women. It had two main proposals: to promote women's rights in the pursuit of gender equality and to suppress all forms of discrimination against women in the member States. Then, in 1981 the Convention entered into force, after its twentieth ratification by a member state. CEDAW is considered the most important document for the defence of women's rights⁶ and was the starting point for many others international actions, representing one of the biggest successes of the feminist cause.

Along the four Conferences on Women in 1975, 1980, 1985 and 1995, there were great debates on equality matters. Since then gender issues left the internal affairs of national jurisdictions and took an international level, occupying the sphere of global concerns. The First World Conference on Women in 1975 was an important milestone, as it covered equality issues and the importance of women in the development and peace processes. The conference, in its final document, highlighted the defence of the inviolability of the body.⁷ It emphasized the importance for the respect of the body as an essential element of human dignity and freedom.

During these debates, the concept of gender mainstreaming was developed, being first proposed in 1985, at the Third World Conference on Women in Nairobi. It also reinforced topics related to women's involvement in issues related to development and peace. The conference produced a document asserting the importance of advancing in the legal measures to achieve equal participation in social, political, and in decision-making positions. The document was formally presented in 1995, during the Fourth World Conference on Women in Beijing. The goal was to offer a gender-based analysis to measure the different implications of policy actions and participation of women in all areas and on all levels. As a result, the international community acknowledged that rape and systematic sexual assaults are used for the purpose of genocide and ethnic cleansing. Rape and other sexual crimes were also recognized as weapons of war, and as such, strongly condemned. Due to the support of several governments, the UN implemented measures to mainstream gender and they began a study on how to eliminate sexual crimes as type of warfare.

In 1994, the Commission on Human rights appointed Radhika Coomaraswamy as the first special rapporteur on violence against women. Amongst other issues analysed, she emphasized the need for the International Criminal Court (ICC) to adopt provisions relating to gender. The necessity to create mechanisms to end the impunity for sexual crimes in times of armed conflict was underscored, as well as to ensure compensation for the victims of sexual violence.

⁴ Article 27 '(...) Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. (...)'

⁵ The first UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, has observed: 'Until recently, violence against women in armed conflict has been couched in terms of 'protection' and 'honour'. Article 27 of the 1949 Geneva Convention relative to the protection of Civilian persons in Time of War treats violence against women as a crime of honour rather than as a crime of violence. By using the honour paradigm, linked as it is to concepts of chastity, purity and virginity, stereotypical concepts of femininity have been formally enshrined in humanitarian law. Thus, criminal sexual assault, in both national and international law, is linked to the morality of the victim. When rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who is often viewed by the community as 'dirty' or 'spoiled'. Consequently, many women will neither report nor discuss the violence that has been perpetrated against them. The nature of rape and the silence that tends to surround it makes it a particularly difficult human rights violation to investigate.' OHCHR 'Report of the Special Rapporteur on Violence Against Women' (1998) UN Doc E/CN.4/1998/54, para 11.

⁶ Frossard, Heloisa, *Instrumentos Internacionais de Direitos das Mulheres*. (Brasília: Secretaria Especial de Políticas para as Mulheres, 2006) 14 <http://www.compromissoeatitude.org.br/wp-content/uploads/2012/08/SPM_instrumentosinternacionaisdireitosdasmulheres.pdf> accessed 4 May 2015.

⁷ UN 'Report of the World Conference of the International Women's Year' (1975) UN Doc E/CONF.66/34.

Then, in 1998 the ICC Statute started to be written, taking into consideration all those backgrounds and previous jurisprudence of the ICTY and the ICTR. When it entered into force in 2002, it expanded the list of human rights violations to include the crimes of sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence. According to the text of Article 7(1)(g) of the ICC Statute, such crimes are defined as crimes against humanity when meeting the other criteria.⁸ Moreover, Article 8(2)(b)(xxii) defines offenses or any other form of sexual violence as a war crime.⁹ In addition, Article 8(e)(vi) includes these crimes as constituting a serious violation of Article 3 common to the four Geneva Conventions. This evolution is the result of direct influences of both the international law doctrine and progress resulting from the ad hoc tribunals of Yugoslavia and Rwanda.¹⁰

Since then the jurisprudence¹¹ started to hold that even the sexual assaults not listed in Articles 7 and 8 of the ICC Statute,¹² but as serious as those ones, can be judged as sexual crimes.¹³ Moreover, the international jurisprudence already held that the crimes of a sexual nature can also be deemed as genocide, torture, persecution, inhumane acts, cruel treatment, inhuman treatment, outrages upon personal dignity, and slavery.

In 2000, to complement the humanitarian law provisions, the UN Security Council adopted Resolution 1325 calling on all member States to introduce a gender perspective during the implementation of peace agreements. This resolution brought special measures to protect women and girls against sexual crimes and gender-based violence, due to the impact of war on women. The resolution reaffirmed the importance of women in conflict prevention and conflict resolution as well as peacebuilding and peacekeeping. Thus, the UN Security Council convoked States to listen to the needs of women and girls in times of conflict and post-conflict and to struggle in favour of the respect for women's human rights.¹⁴ Furthermore, States should increase women's participation in decision-making at all levels and sectors of government, and in particular to ensure that women are involved in the mechanisms of peace agreements.¹⁵

This Resolution brought, indirectly, a range of conditions to be established in countries in transition. Its paragraph 11 emphasizes the need for States to end impunity and prosecute those responsible for genocide, crimes against humanity and war crimes, including sexual and other violence against women and girls. It means that the UN encourages the participation of women in truth commissions and the creation of mechanisms to ensure accountability. Moreover, it upholds the rule of law and represents the idea that sexual crimes and violence against women should not be included in amnesty stipulations of peace treaties.¹⁶

In 2008, the UN Security Council recognized with Resolution 1820 that rape is used as a weapon of war and constitutes a threat to international security. It recognized that sexual violence is used as 'a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group'.¹⁷ This resolution is important in ending impunity and ensuring accountability and punishment for perpetrators of sexual crimes. Furthermore, sexual violence was internationally recognized as transgression of fundamental human rights and international humanitarian law, upholding the ICC trials.¹⁸

⁸ It must be 'part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.

⁹ Such as that the conduct took place in the context of and was associated with armed conflict, see the Elements of Crime <<https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>> accessed 22 January 2016.

¹⁰ Fernanda Ribeiro de Azevedo, *A Violência Sexual Contra a Mulher e o Direito Internacional* (Belo Horizonte: CEDIN, 2014) 14 <<http://www.cedin.com.br/wp-content/uploads/2014/05/A-Violência-Sexual-Contra-a-Mulher-e-o-Direito-Internacional.pdf>> 15 May 2015.

¹¹ ICC, ICTY, ICTR.

¹² The Statute also innovated establishing practical issues in the trial involving crimes of this nature. There is a fair representation of female and male judges (art 36 (8)(a)(ii)), with judges with legal expertise on topics such as violence against women and children (art 36(8)(b)). The prosecutor is advised by expert in matters of sexual violence and gender-based violence (art 42(9)) and shall take into account, on inquiry, 'the personal interest and the situation of victims and witnesses,' particularly in cases of sexual violence, or violence related to gender (art 54(1)(b)). The Pre-Trial Chamber shall provide the protection the privacy of victims and witnesses (art 57(3)(b)), including the adoption of measures to ensure the 'physical and psychological well-being, dignity and privacy of victims and witnesses' (art 68(1)).

¹³ Azevedo (n 10) 24.

¹⁴ UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325, para 8(c).

¹⁵ Ibid, para 8(b).

¹⁶ UNIFEM annotated that '[i]n the context of the 1999 Lome peace agreement that brought an end to the war in Sierra Leone, the United Nations did not recognize the blanket amnesty negotiated because it contradicted the internationally recognized imperative to prosecute crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law'. UNIFEM 'Security Council Resolution 1325 Annotated And Explained'.

¹⁷ UNSC Res 1820 (19 June 2008) UN Doc S/RES/1820.

¹⁸ Azevedo (n 10) 16.

Resolution 1888, adopted by the UN General Assembly in 2009, bolstered the need to protect women and girls, to end impunity and to prosecute the perpetrators of sexual violence, already understood as crimes against humanity, war crimes and genocide. Few days later the UN General Assembly approved Resolution 1889,¹⁹ aiming to implement strategies to increase the participation of women as peacebuilders, peacekeepers and decision-makers. This resolution calls for protection of women and girls during armed conflict and for attention to their needs in post-conflict situations. States are encouraged to promote female access to education, socio-economic conditions, and gender equality, as well as to ensure gender mainstreaming in all processes and sectors of peacebuilding. That includes calling for the participation of women in truth commissions. In this resolution, the UN Security Council requested the Secretary-General 'to improve the participation of women in political and economic decision-making from the earliest stages of the peacebuilding process.'²⁰

On 16 December 2010, reinforcing all these previous resolutions, the UN Security Council passed Resolution 1960, urging countries to prevent sexual violence, to combat impunity, and to enforce accountability for the victims of those crimes. In 2013, the UN Security Council unanimously approved Resolution 2106, which extended a number of themes on sexual violence against women in wartime. This resolution brought again to light the need for justice and sanctions against perpetrators of sexual crimes, including commanders. It urged the need to include sexual violence in ceasefire prohibitions, and stated that amnesty shall not be granted to perpetrators of sexual crimes. It emphasized the importance of female roles in civil society, women's organizations, and formal and informal community leadership regarding the prevention and policies on sexual violence.

The atrocities committed against women and girls took an important place on the international agenda, the punishment and repression of crimes against women and sexual violence had a massive evolution, not only normative but also substantial, particularly from the 1990's. The creation of the ICC as a permanent international judicial system to prosecute individuals perpetrators of genocide, war crimes and crimes against humanity, and the inclusion of gender based crimes under these headers, brought the certitude that they will not be private issues anymore. The current concern of the international community is that '[t]he gap between legislation and enforcement, however, continues and warrants further research into ensuring more effective implementation and evaluation of efforts'.²¹

2. The situation of women in post-colonialism

Going slightly back in the chronology of the struggle for women's rights, and due to the fact that the main object of this research are two former colonies that suffered periods of armed conflicts, it is important to have an overview of the similarities of post-colonialist and feminist movements. Many feminist theories and studies were also relevant for post-colonialism, as those theories and studies fight for equal rights of excluded groups and the participation of those groups in decision-making. The study of post-colonialism seeks to understand the effects of colonization, and the combat of oppression, injustice, and inequality. Although post-colonial studies have no specific focus on gender issues, they indeed served as inspiration for feminist studies.²² This is because post-colonialism looked for strategies of resistance to imperial impositions and has as principle the reintegration of marginalized individuals in society.²³

In Africa, colonizers considered the native population an inferior race and culture. The colonizers defended not only imperialism but also sexist ideals. It meant that the native women were in an even worse situation, since they were seen as inferior on account of both colour and sex; a subordinate without a voice. The perception was that native women should have maternal and homecare functions; their roles should be limited to

¹⁹ Adopted unanimously on 5 October 2009.

²⁰ UNSC Res 1889 (5 October 2009) UN Doc S/RES/1889, para 15.

²¹ Kimberly Theidon and others, *Gender, Conflict, and Peacebuilding - state of the field and lessons learned from USIP grantmaking* (United States Institute of Peace n 76 2011) 9 <<http://www.usip.org/sites/default/files/Gender%20conflict%20and%20peacebuilding.pdf>> accessed 15 May 2015.

²² Ato Quayson, *Postcolonialism: theory, practice or process?* (Oxford Polity Press 2000) 9.

²³ *Ibid.*

domestic life. Women were also sexual toys for the landlords, since coloured women were seen as highly sexualized beings. Under both dominations they had in common the obligation to remain silent.²⁴

The conviction of women's intellectual inferiority excluded women from policies and decision-making in all spheres of society, and subjected them to all kinds of exploitation and domination.²⁵ It was believed that women were unable to issue opinions and should be fully subordinated to male domination.²⁶ In colonial societies, however, the woman was subdued twice, since they were the object of colonial and domestic patriarchal oppression and imperial power. Women were submissive to men under the local culture, as well as to the colonizer.

All those facts together have generated even more difficulties for women to impose their ideas and needs in periods of transition. In South Africa, where the population has suffered from white domination, oppression, inequality and humiliation, black women were in a worse situation than white women were. The apartheid regime, a regime introduced by the colonizers, excluded the black man from social and political life, but the black woman had her rights more restricted, due to the aforementioned double colonization. Women were at the bottom base of the pyramid of power and faced all kinds of prejudice because of their colour, their social status, and expressly because of their gender.²⁷

A new scenario emerged in South Africa with the end of apartheid in the 1990's. Experiencing the first steps to freedom, many women joined the feminist cause and broke with the paradigm of women as an inferior being. New movements in defence of women popped up and started to counteract the effects of social and economic inequality. The new government had initiated programs aiming to build a new role for women in the society and for the protection of their integrity.²⁸

At the same time, right after Nelson Mandela was elected president of South Africa, a Truth and Reconciliation Commission²⁹ was established aiming to analyse the events that occurred during the time of apartheid and investigate serious violations of human rights. The new government tried to address both human rights violations and gender issues. The idea was to give a voice to women, investigate gender-based crimes during the apartheid regime and listen to their needs.

3. The concept of gender in human rights law

Before entering the discussion on the importance of a gender perspective in countries in transition, as well as the matter of gender equality as a human right, it is important to understand the concept of *gender* and what *gender mainstreaming* means.

The term *gender* relates to the social understanding of the role played by men and women. It observes the characteristics associated with being male and female. Gender contextualizes and indicates the social acceptance of female or male behaviour and attitudes, as well as what is expected of and by these groups. UNWOMEN states that '[t]hese attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and changeable'.³⁰ Gender must be seen within a socio-cultural context. It can be understood as:

the relations between men and women, both perceptual and material. Gender is not determined biologically, as a result of sexual characteristics of either women or men, but is constructed socially. It is a central organizing principle of societies, and often governs the processes of production and reproduction, consumption and distribution.³¹

²⁴ Angela Aparecida Gonçalves Oliveira, *O processo de subjetificação das personagens femininas em Disgrace (1999), de J. M. Coetzee* (2008) 41 <<http://www.ple.uem.br/defesas/pdf/aagoliveira.pdf>> accessed on 3 May 2015.

²⁵ Ibid, 46.

²⁶ Ibid, 54.

²⁷ Ibid, 49.

²⁸ Ibid, 58.

²⁹ More specific details about the South African TRC will be analysed in the next chapter.

³⁰ UNWOMEN, *Concepts and definitions* <<http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>> accessed 14 January 2016.

³¹ FAO 2004.

In a guidance document on the needs of women in armed conflict, the International Committee of the Red Cross (ICRC) defined the term gender as '[t]he culturally expected behaviour of men and women based on roles, attitudes and values ascribed to them on the basis of their sex, whereas the term 'sex' refers to biological and physical characteristics'.³²

The term gender is often used erroneously as synonymous to women or their needs, particularly in terms of humanitarian provisions.³³ It is common to see instruments confuse the term to distinguish people based on their biological sex,³⁴ or use it as social assumption of how male and female behaviour should be.³⁵ Gender theory developed the concept from a biological construction to a more comprehensive one, which takes the social dimension into account. Gender is now understood as the roles and behaviour socially expected from men and women.

As seen above, the ICC underwent big pressure from non-governmental organizations (NGO's) for the protection of women, to include the issue of gender in its Statute. Answering to the call of the international community it codified a series of sexual crimes. Article 7(3) of the ICC Statute thus defines gender as a term that 'refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above'.³⁶ The Vatican and the group of Arab League countries³⁷ lobbied for the allusion to the male and female as different sexes, to exclude the issue of sexual orientation. Notwithstanding the fact that it is the most developed articulation of sexual crimes, providing a great basis for investigation and prosecution of sexual violence,³⁸ the definition of *gender* in the Rome Statute is still very narrow, problematic and conservative.³⁹

The con- and reception of Article 7 of the ICC statute showed disagreements on the meaning of the term gender. This makes it difficult to institutionalize research and implement policies in this field. Theidon and Pheniece hold that a standard for gender policies and practices must be created, which internalizes norms of gender sensitivity for people involved in strategies for conflict and post-conflict periods, in order to optimize gender equality. Such a standard requires a clear and unanimous definition of gender with a broad approach.⁴⁰

To clarify the difference between the terms sex and gender, the CEDAW committee defined sex as the 'biological differences between men and women',⁴¹ and *gender* as:

socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.⁴²

³² Called the 'Unholy Alliance'. Charlotte Lindsey-Curtet, Florence Tercier Holst-Roness and Letitia Anderson, *Addressing the Needs of Women Affected by Armed Conflict* (ICRC Guidance Document Geneva 2004) 7, <https://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf> accessed 21 May 2015.

³³ Helen Durham and Katie O'Byrne 'The dialogue of difference: gender perspectives on international humanitarian law' (2012) 92 *IRRC* 32.

³⁴ For instance, 1949 Geneva Conventions and Rome Statute.

³⁵ UNSC Res 1325.

³⁶ For Christine Chinkin 'this has the effect of excluding issues of sexuality from the definition.' Christine Chinkin, 'Gender- Related Violence and International Criminal Law and Justice' in Antonio Cassese (ed) *The Oxford Companion to International Criminal Justice* (OUP 2009).

³⁷ Rhonda Copelon, 'Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law' (2000-2001) 46 *McGill L J* 217.

³⁸ Art 42(9) of the ICC Statute states that '[t]he Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children'. Art 54(1)(b) states that the prosecutor must to prioritise the investigation and prosecution of sexual and gender-based crimes. Art 68 holds that the Court shall protect the victims and witnesses and their participation in the proceedings, especially 'where the crime involves sexual or gender violence'.

³⁹ This definition is highly criticized by scholars because it implies a regression of the law, and introduced ambiguity into the Statute. See Dienneke de Vos, 'Schizophrenia in the Rome Statute? The concept of gender in the work of the International Criminal Court' (unpublished paper 2014); Valerie Oosterveld, 'The definition of 'Gender' in the Rome Statute in the International Criminal Court: A step forward or back for international criminal justice?' (2005) *Harvard Human rights J* 55.

⁴⁰ Theidon and Pheniece (n 21) 10.

⁴¹ UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 28' (16 December 2010) UN Doc CEDAW/C/GC/28, para 5.

⁴² *Ibid.*

4. The idea of Gender Mainstreaming

Besides an agreed definition of gender, it is necessary to understand the idea of gender mainstreaming. The Beijing platform called States to promote women's empowerment. The idea of gender mainstreaming gained force with the *Gender and Development movement*, which advocated the participation of women in all levels of decision-making processes.⁴³ It gained momentum and ECOSOC highlighted the importance of mainstreaming gender perspective to achieve gender equality in 1997, defining it as:

[t]he 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.⁴⁴

5. The gendered limits of traditional approaches to transitional justice

In wartime, women have opportunities to take on roles involving power and decision-making. The roles of female and male have a different dynamic than during peacetime. However, studies have shown that in transition time men take back those roles and marginalize women from power relations and peace agreements.⁴⁵ When this happens, it forms a barrier for women to reach equal participation or to assume some important position in the power relations. Moreover, it excludes women from future inclusion in roles that would help them in the development of economic independence and political decision-making, in order to be able to struggle for female needs and for families that are provided by mothers as head of the house.

The peace agreement is only one of many instruments that should have women's participation. Countries in transition have a big range of issues to deal with. Studies have shown many cases of sexual violence committed by peacekeepers, and an increase of domestic violence after the conflict.⁴⁶ This is because 'the disarmament of weapons is not disarmament of minds.'⁴⁷ Apart from the violence, there are many peacekeepers using their power to engage in sexual relations with local women in exchange for protection or food. In this context a woman's body becomes a commodity,⁴⁸ through which women try to have some protection or a way to survive. Here the struggle for gender equality has an even more important role. Promoting the special needs of girls and women, initiating projects towards economic and political resources, and negotiating political boundaries to improve the status of women became essential for a successful transition.

It is important to notice that sexual violence and gender-based violence are not the same things. Gender-based violence is a broader concept and refers to violence against both men and women regarding their roles in the society, but can also refer to sexual violence. Sexual violence is always gender-based violence, but the opposite is not always true.

Both the rape of women and girls and the murder of men and boys is gender-based violence. Likewise, in communities where women are unable to hold property, the murder of men has severely gendered consequences. Even though women are disproportionately affected by sexual violence in situations of armed conflict and political repression, sexual violence is not the only type

⁴³ Theidon and Phenicie (n 21) 10.

⁴⁴ ECOSOC 'Report of ECOSOC for 1997' (18 September 1997) UN Doc A/52/3, 27.

⁴⁵ Theidon and Pheniece (n 21) 25.

⁴⁶ Not only in the country in war, Theidon and Phenicie teach that domestic violence increased even among western combatants, once they were back home. Ibid, 15.

⁴⁷ Fionnuala Ni Aolain, 'Women, security, and the patriarchy of internationalized transitional justice' (2009) 31 Human rights Quarterly <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1279622> accessed 24 January 2016.

⁴⁸ Theidon and Phenicie (n 21) 20.

of violence committed against women in conflict; neither is gender-based violence, the same as violence against women.⁴⁹

Gender issues and gender-based violence related to transition were not a concern for a long time, and actually neglected for many years. It recently started to be part of transitional mechanisms, even though there are only a few records of commissions that have indeed addressed gender and the impact of human rights violations on women's life.⁵⁰

After analysing the previous experience of the first truth commissions, such as the Argentinean and Chilean, and the research of experts, the most recent truth and reconciliation commissions started to include three broad approaches. As mentioned above, the idea of gender mainstreaming was first implemented in this transitional mechanism, and then some commissions started to create a special unit to investigate exclusively gender-based crimes.⁵¹

However, a problem faced by women related to transitional mechanisms is that they usually focus exclusively, or for the major part of their work, on sexual violence without gender-sensitive strategies. Although sexual violence received extensive coverage in the final reports, 'representing women's violations as only sexual abuse perpetuates more widespread prejudices that reduce women to sexual beings alone'.⁵² Economic dimensions of the conflict and how it affected women and their families, women that became sole breadwinners, hunger, long walks to get water, ethnic violence, women who became displaced or refugees, are all examples of topics normally left out of transitional justice instruments. This is why experts started to call for a multidimensional way to investigate the abuses suffered by women.⁵³ Women need not just physical protection but also 'social, economic and sexual security'.⁵⁴

Preventing conflict and seeking truth and reconciliation are extremely important, but promoting policies on development, health and economic independence for women is no less essential. In this regard, the theories and the practical policies on empowerment of women (in both political and economic senses) must be observed in countries in transition. In order to be able to grow this empowerment, the concept of equality and equal opportunities must configure in the first activities of the transitional justice processes. In this sense, as will be analysed, East Timor introduced a good example, since the CAVR took into account both sexual violence and violation of socioeconomic rights.

6. Truth and Reconciliation Commissions

According to a UN Secretary-General report:

[t]ransitional justice initiatives promote accountability, reinforce respect for human rights and are critical to fostering the strong levels of civic trust required to bolster rule of law reform, economic development and democratic governance. Transitional justice initiatives may encompass both judicial and non-judicial mechanisms, including individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals.⁵⁵

Truth seeking as accomplished by truth commissions is one of the successful models of transitional justice.⁵⁶ This measure is strongly encouraged by the United Nations due to empirical researches proving the positive im-

⁴⁹ Vos (n 36) 3.

⁵⁰ Nesiha, Vasuki et al. 'Truth Commissions And Gender: Principles, Policies, And Procedures' (2006) International Center for Transitional Justice <https://www.ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf> accessed 21 May 2015.

⁵¹ Ibid, 4.

⁵² Ibid, 10.

⁵³ Ibid.

⁵⁴ Theidon and Phenicie (n 21) 16.

⁵⁵ UN Report of the Secretary General, The rule of law and transitional justice in conflict and post-conflict societies. UN Doc S/2011/634 para 17.

⁵⁶ The other transitional Justice measures are: prosecutions (domestic and mixed tribunals); trial commissions; vetting, lustration and amnesty practices; reparation programs; efforts to promote reconciliation and memorialization; symbolic measures like apologies.

pacts of truth commissions in countries in transition since the 1980's.⁵⁷ The literature on transitional justice has developed since the first truth commissions were established in Latin America, as well as the guidelines of international organizations defending human rights and the jurisprudence of international courts. Corroborating this idea, the UN Secretary-General stated that 'truth commissions can play a significant role in enhancing accountability for Human rights abuses'.⁵⁸

In this sense it is important to understand what a truth commission is. A truth commission is an official and temporary body, established or authorized by a State to investigate and turn public human rights violations that occurred in a certain historical period. The creation of a truth commission during the occurrence of a conflict is possible yet not common in practice. Usually those bodies are established in post-conflict situations by the new administration.

Many scholars have written about what a truth commission is, amassing an expansive assortment of definitions.⁵⁹ Before entering into the definition *per se*, Hayner, one of the most respected scholars on this subject, explains that 'the intention of the truth commissions is part of what defines them'.⁶⁰ When analysing the literature in this matter, it is possible to identify several aspects of truth commissions. They are extrajudicial bodies of investigation and inquiry, purposed to uncover facts that happened under a previous regime or group. These facts are then laid bare to the relatives of victims and to the larger world, with the objective to rectify misinformation about a past of human rights violations, to keep the memory of the victims alive, and to make recommendations to the new government.

One of the goals of a truth commission is to promote a new understanding of the past for countries in transition.⁶¹ The work of this body contemplates listening to the victims, opening confidential or secret files, and showing the veracity of facts. The main reason is to promote the dignity of the victims and keep the memory of the atrocities for future generations. This may avoid future denials of the real stories of abuses committed and it aims to prevent a repetition of history in the country. Besides, it often helps in the healing process of the victims as an emotional and psychological therapy.⁶²

A *judicial truth* is not the goal of the truth commission. This is because it is simply not a judicial body, but also because it usually has just a short time to conclude its work. Such commissions do not therefore have to comply with the principles of due process and contradiction, which would require recognizing a whole series of appeals and defence bodies. Instead, a truth commission seeks to reach the *historical truth*. The role of the extrajudicial commission is, according to the UN:

[e]stablishing the facts so that the truth can be found, and of preventing evidence from disappearing. In order to restore the dignity of the victims, families and human rights defenders, these investigations shall be conducted with the object of securing recognition of such parts of the truth as were formerly constantly denied.⁶³

⁵⁷ Human rights Council, Resolution 9/11: '3. Encourages the States concerned to disseminate, implement and monitor implementation of the recommendations of non-judicial mechanisms such as truth and reconciliation commissions, and provide information regarding compliance with the decisions of judicial mechanisms; 4. Encourages other States to consider establishing specific judicial mechanisms and, where appropriate, truth and reconciliation commissions to complement the justice system, to investigate and address gross violations of human rights and serious violations of international humanitarian law;'

⁵⁸ In the UN Report of the Secretary General on rule of law and transitional justice in conflict and post-conflict societies, it is explained: '23. Such non-judicial mechanisms as truth commissions can play a significant role in enhancing accountability for human rights abuses. They can signal a break with the past and assist in engendering trust and confidence in newly reconstituted justice and security institutions. Since 2004, truth commissions have been established in such places as Kenya (2008), Liberia (2005), Timor-Leste (2005) and the Solomon Islands (2008), with new efforts under way in Burundi, Côte d'Ivoire, Nepal and Uganda.' S/2011/634.

⁵⁹ Brahm., 2009.

⁶⁰ The author defines truth commission as a team work that '(1) is focus on past, rather than ongoing, events; (2) investigates a pattern of events that took place over of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review'. Priscilla B Hayner, *Unspeakable truth. Transitional Justice and the Challenge of Truth Commissions*, (2nded, Routledge, 2011).

⁶¹ *Ibid.*, 26.

⁶² See film by Sopheak Sao, 'Women's Hearing 2012', <http://www.youtube.com/watch?v=urURTF-S2qY>

⁶³ E/CN.4/Sub.2/1997/20, 16.

The government shall name independent and impartial commissioners to conduct the work, with help of staff. If the population sees the commissioners as incompetent or partial, with a tendency to favour certain groups or political parties, the final report could be rejected due to its lack of credibility.⁶⁴ The main work of the commissioners will be to listen to the testimonies of the victims and their relatives, to collect information with the affected population and the perpetrators, to research official documents and then submit a final report.

In the final report, the commissioners expose past human rights violations. After telling the truth about the facts and circumstances involving human rights violations, the final report brings recommendations on proper remedies to victims as well as on new policies for the government. However, in general, the commission's powers are quite restricted.⁶⁵

6.1. How the idea of truth commissions was created

In 1983, Argentina promoted the first truth commission widely known, the CONADEP (Comisión Nacional sobre la Desaparición de Personas), established by President Raul Alfonsín. This commission, however, was limited to investigate enforced disappearances in order to guarantee the right to know⁶⁶ of the relatives of the missing ones. It did not investigate other crimes such as torture and illegal detention. Following the Argentinean example, Latin American countries such as Bolivia, Peru, Uruguay, El Salvador, Ecuador and Chile also established commissions to seek the truth. However, Chile was the pioneer country to utilize the expression *truth commission*, when it implemented the National Commission on Truth and Reconciliation in 1990.⁶⁷

Also based on these experiences of successful transitional justice measures, South Africa introduced the Truth and Reconciliation Commission (TRC) after the apartheid regime in 1995. Reconciliation was the key element in the South African TRC. It was also widely discussed by the public and had complete media coverage. Since then, not only seeking the truth but also reconciliation triggered the goals of many truth commissions. East Timor (2002), Sierra Leone (2002) and Kenya (2009), following the South African example, linked the truth events with reconciliation proceedings.⁶⁸

Moreover, women's participation and the importance of giving them voices and observing their needs was one of the concerns of the South African TRC.⁶⁹ Eight out of seventeen commissioners were women. This experience inspired commissions worldwide to consider specific needs of gender issues, and was even improved in East Timor. The East Timorese CAVR comprised gender base crimes, including sexual offenses, among the violations investigated.⁷⁰

6.2. Gender perspective in the Truth and Reconciliation Commissions

Truth commissions have often been criticized for not taking a gendered perspective on its works and recommendations⁷¹ Crimes like torture, execution and disappearance are investigated, but normally rape and sexual abuses are not part of the commission's mandate. Moreover, the economic effect of the conflict and the trauma suffered by the population, in special women and children, as well as the impact on the families, which were destroyed, are rarely examined.⁷²

⁶⁴ Nokukhanya Mncwabe, 'Truth Commissions' in Lavinia Stan & Nadya Nedelsky, *Encyclopedia of Transitional Justice* (Vol I, CUP 2013) 98.

⁶⁵ Hayner explains that "they cannot put anyone in jail, they cannot independently enforce their recommendations, and most have not had the power even to compel anyone to appear for questioning." Hayner (n 57) 13.

⁶⁶ The right to know is one of the principles recognized by the UN Commission on Human rights during its forty-ninth session: 'PRINCIPLE 3. THE VICTIMS' RIGHT TO KNOW. Irrespective of any legal proceedings, victims, their families and dear ones have the right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim's fate'. OHCHR, 'Final report on the Question of the impunity of perpetrators of human rights violations (civil and political)' (26 June 1997) UN Doc E/CN.4/Sub.2/1997/20, 16.

⁶⁷ Hayner (n 60) 10.

⁶⁸ Mncwabe (n 64) 101.

⁶⁹ *Ibid.*, 102.

⁷⁰ CAVR, Final Report, Part 2, item 16 (22).

⁷¹ Nesiiah concludes her studies in truth commissions and gender noting that "Many truth commissions have failed women—the crimes they have suffered are underreported, their voices are rendered inaudible, their depiction in commission reports is one-dimensional, and their needs and goals are deprioritized in recommendations for reparations, reform, and prosecutions." Nesiiah et al (n 50) 41.

⁷² Hayner (n 60) 86.

It was until recently common that the truth commissions did not investigate sexual violence or saw it as secondary, unimportant for the investigations of human rights violations.⁷³ In many cases women were not encouraged to report sexual violence or it was simply mentioned as *dignity dishonour*. In some testimonies, like the ones collected by the Peruvian commission, women reported about other women raped, but did not say explicitly that they themselves were victims of rape beyond reported attempt or threats.⁷⁴

Shame, social stigma and humiliation are some of the main reasons for the victims to feel uncomfortable in denouncing this kind of crime and the perpetrators. The problem usually was the fact that they would have to expose themselves by testifying in public. Even if the hearings were private, their testimonies would be published. For many women that would cause embarrassment, since sometimes not even their own families knew what had happened. Reporting rape is challenging enough for the victim even in peaceful places, but in the chaos of a war zone rarely someone would make a report.

In Guatemala, for instance, the commission that had negotiated the peace and the civil society were not aware of the enormous number of gang rapes and that widespread cases of sexual violence existed. This information emerged and was then investigated and reported only after the works of the truth commission. El Salvador, on the other hand, decided not to include such crimes in its report, because the commissioners understood that sexual crimes were not politically motivated.⁷⁵

In South Africa, even with a feminist group's struggle for the recognition of rape as politically motivated, the commissioners settled a decision neither to investigate nor to give amnesty for sexual crimes. The South African commissioners understood that rape or any kind of sexual violence was not covered by the TRC's mandate, since its aim was to investigate politically motivated crimes.⁷⁶ Hayner illustrates this situation quoting what she heard from one of the commissioners: 'How can someone claim that they raped someone just because she was from another political party? That makes no sense'.⁷⁷

Even after many panels and workshops by women advocating the need of listening to women's experiences and to give the female victims voices, the work of the South African TRC and its final report did not contemplate this situation.

It is true that in South Africa women had an important role in the TRC to reach the truth. In addition, their participation was important to break out with the legacies of colonialism and apartheid that promoted a special kind of discrimination against black women.⁷⁸ They were nevertheless considered as second level victims, because they were mostly witnesses of violations and usually experienced "just" rape. Theidon and Pheniece explain:

In other words, the picture is that they were on the periphery of what was happening politically, observing the violence, and suffering modest unrelated violations, as opposed to those to which male activists were frequently subjected (arbitrary arrest and imprisonment, torture, beatings, abductions, attempted murder, assassination).⁷⁹

Some truth commissions make a hierarchy of crimes, resulting in abuses against women and sexual assaults invariably on the bottom of these scales, as had happened with the Peruvian commission. Furthermore, even when crimes of sexual nature are investigated, gender sensitive strategies are rarely involved. The South African TRC faced the problem of lack of privacy and confidentiality of testimonies since victims were indistinctly exposed to the public during their testimonies. There was nevertheless an improvement compared to the Peru-

⁷³ Nesiiah et al (n 50) 2.

⁷⁴ Hayner (n 60) 87.

⁷⁵ Ibid, 87.

⁷⁶ Nesiiah et al (n 50) 24.

⁷⁷ Hayner (n 60) 88.

⁷⁸ Theidon and Pheniece (n 21) 26.

⁷⁹ Ibid, 29.

vian commission, where unprepared interviewers caused harm and embarrassment to female victims by confronting them with awkward detailed questions on the act of the sexual violence.⁸⁰

During the years, there was an evolution of the perspectives on sexual violence, and consequently the international community started to see how it was being used as a method of warfare. With the adoption of the Rome Statute in 1998, a substantial evolution occurred regarding the view of the ways in which war crimes are committed. Sexual crimes such as rape, sexual slavery, enforced prostitution, forced pregnancy,⁸¹ and forced sterilization, as well as a broad understanding of sexual violence (*'any other form of sexual violence of comparable gravity'*) were codified as war crimes and crimes against humanity.⁸² Corroborating this knowledge, the UN Security Council passed Resolutions 1888, 1889 and 1894 for more protection for women against sexual violence during armed conflict.

It started to be recognized that rape could be used as a strategic weapon. Sexual violence was recognized as being used in a military logic and for political purposes. It could be used as a reward to the soldiers or to motivate the troops. Rape can be a means of torture, since it is aggressive and humiliating for both women and men in a community. In addition, sexual violence can be used as a biological weapon in order to deliberately transmit HIV/AIDS.⁸³

Following this trend, and learning from the South African experience, East Timor included in CAVR's mandate the investigation of gender-specific crimes. The CAVR listened to dozens of testimonies of women. There was a committee only to organize and promote women hearings and research on what happened to women and their needs. It resulted in a detailed sub-chapter in the final report, of hundred-twenty pages, describing the sexual violence and sexual slavery by the Indonesian army and its impact on the Timorese women.

The truth commissions created since then are including chapters to investigate gender-based crimes and give special attention to the experience of women. Hayner explains that experts wrote outlines for future commissions, which should include:

a senior gender expert on staff, but also mainstream these issues throughout the commission. Look carefully at special procedures for public hearings. Offer specific skills training, such as for statement-takers to handle reports of sexual abuse. All deponents who approach the commission should have a choice of a male or female statement-taker. Work closely with women's organizations, which bring useful expertise and contacts. Consider proactively undertaking intensive interviews with a select number of women.⁸⁴

These are the main points criticized by the doctrine,⁸⁵ which advocates that people must feel welcome, free and safe to speak. In that sense, the truth commissions must observe criteria of privacy and confidentiality of the testimonies, and avoid prioritizing different forms of violations. For this reason, the United States Institute of Peace made the following recommendations in the matter of gender and post conflict transitions:

1. Comprehend the entire range and diversity of the experiences of conflict across the genders;
2. Appreciate and alleviate the gender-based constraints to people talking about abuses they suffered and other harms due to conflict;
3. Design and implement means of redress that more fully reflect the true nature of harms, including gender-based disparities and after conflict.⁸⁶

⁸⁰ Ibid, 28.

⁸¹ In spite of the opposition of the Vatican and Arab countries.

⁸² Durham, O'Byrne (n 31) 47.

⁸³ Subi Shah, 'The brave and the blameless: women survivors of war-time rape', *New Internationalist Magazine* (10 June 2014) <<http://newint.org/features/web-exclusive/2014/06/10/rape-war-crime/#sthash.46UCCIdU.dpuf>> accessed 10 May 2015.

⁸⁴ Hayner (n 60) 89-90.

⁸⁵ Theidon and Pheniece (n 21) 32.

⁸⁶ Ibid, 32.

Those recommendations have a great importance, as well pointed out by Nesiah.⁸⁷ As advocated by UN Security Council Resolution 1325, a best solution would be the adoption of a holistic gender-conscious approach. East Timor showed success in combining the initiatives of gender mainstreaming and a specialized unit. The focus was not only on sexual violence, but on all aspects of violations suffered by women. In order not to “ghetto-ing” women issues, it is necessary ‘to treat gender as a crosscutting theme as well as a specific-focus area’.⁸⁸

Another criticism by experts from the International Center for Transitional Justice is that truth commissions still portray women as passive victims only. It is neglected that, just like men, women are more and more playing multiple roles in warfare, ‘including those of survivors, soldiers, police personnel, prison guards, intelligence operatives, witnesses, peace-builders, and human rights activists monitoring and resisting human rights violations’.⁸⁹

The following chapters study the history of human rights violations in South Africa and in East Timor, and how these two countries developed their truth commissions, analysing the differences of how gender issues were approached.

IV. SOUTH AFRICA

After forty-five years apartheid and thirty years of armed liberation movements, South Africa held its first democratic elections in 1994.⁹⁰ The country adopted transitional justice measures, having as its main body the Truth and Reconciliation Commission (TRC) to address gross violation of human rights.⁹¹

The South African TRC gave a new direction to transitional justice measures created in Latin America. Unlike the Argentinean and Chilean models, South Africa considered that a blanket amnesty was not the appropriated measure, since the population was demanding justice. The focus of the South African TRC was to reveal the violations of human rights and bring to light the whole truth about what happened during the period of struggle and repression, between 1960 and 1994.

The transitional justice in South Africa was negotiated, but other than what occurred in Brazil, it did not result in a general amnesty to perpetrators nor in a policy of total forgetfulness of the past. The amnesty was conditioned on the public acknowledgement by the perpetrator about what he or she had done and full disclosure of the truth.⁹² The Argentinean and Chilean models, regarding the emphasis on seeking for the truth, inspired the South African process, but the South African TRC included reconciliation and accountability in its mandate.

The central focus was the social restoration of society in order to establish a ‘social cohesion and coexistence between former enemies’.⁹³ The South African TRC had as objective, as many previous commissions, to create a collective memory of the past in order to preserve the honour of the martyrs and to avoid future human rights violations, giving support to a human rights culture.⁹⁴ It sought a form of collective response to abuses perpetrated through restorative justice.⁹⁵

The transition was not easy, given that the society still resented the colonization and apartheid periods and resisted reconciliation. It was required to affect and change the mentality of an entire nation. It was necessary to overthrow strong social and cultural barriers. Still some people were critical and sceptical about the implementation of a truth commission, saying that it was not a manner to reconcile a divided nation.⁹⁶ The fear was that the coming out of barbarian stories would generate or continue political violence. However, the reality

⁸⁷ Nesiah *et al* (n 50) 5.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, 44.

⁹⁰ Hayner (n 60) 27.

⁹¹ Charles Villa-Vicencio and Ilan Cooper, ‘South Africa’ in Lavinia Stan and Nadya Nedelsky (eds), *Encyclopedia of Transitional Justice* (Vol 2, CUP 2013) 446.

⁹² *Ibid.*, 449.

⁹³ *Ibid.*, 445.

⁹⁴ James L Gibson, ‘The contributions of Truth to Reconciliation, lessons from South Africa’ (2006) 50 *J of Conflict Resolution* 409.

⁹⁵ Simone Martins Rodrigues Pinto, ‘Justiça Transicional na África do Sul: Restaurando o Passado, Construindo o Futuro’ (2007) 29 *Contexto Internacional* 393 <<http://www.scielo.br/pdf/cint/v29n2/v29n2a05.pdf>> accessed on 29 April 2015.

⁹⁶ See James L Gibson, ‘Overcoming Apartheid: Can Truth Reconcile a divided Nation?’ (2006) 203 *The ANNALS of the American Academy of Political and Social Science* 82.

proved that the sceptical were mistaken and the truth commission indeed created reconciliation in South Africa.⁹⁷ It also improved, in relation to the previous truth commissions, the gendered perspective, as shown below.

1. A Brief History of South Africa

South Africa was colonized first by the Dutch and then the British, which had a policy of slavery⁹⁸ and genocide in the country.⁹⁹ With the strengthening of the power of England in Europe, the Dutch colonial empire weakened. The British, then, gained power in Cape Town, promoting a more liberal administration. In 1828, equal rights among the inhabitants of the colony were decreed while slavery was later abolished.¹⁰⁰ Women and men did not have the same rights. The patriarchal system implied to married women, whether white or black, legal civil incapacity, not being allowed to own properties. Women rarely worked, and when they had jobs, their salaries were lower than of men.¹⁰¹

Fearing the black up rise, the colonizers institutionalized the policy of apartheid in South Africa in 1948. Apartheid raised a totalitarian system of segregation, racial discrimination, including issues of land, legal and political systems, which brought economic, social and cultural problems. Black people were forced to live in segregated residential areas, and were unable to land ownership or to participate in the country's politics. Basic human rights were denied to the black population.¹⁰²

In the 1960's the apartheid opposition party grew and the political party African National Congress (ANC) launched a campaign of civil disobedience in response to the discriminatory laws. The claims of the protests were ignored and the government violently repressed the agitators.¹⁰³ The following decades were marked by segregation, discrimination and violence against black people.¹⁰⁴

Women were particularly vulnerable during the apartheid and had a quite painful and arduous experience.¹⁰⁵ The struggle against the apartheid had the participation of female activists, although in a smaller number than men. Consequently, the general oppression also befell them. Women were victims of arbitrary arrests, torture, execution, imprisonment, rape and sexual harassment, and many other forms of abuses. There are several reports of soldiers that raped and sexually harassed girls and women, including in ANC camps. Women were affected both directly and indirectly. Many of them lost their husbands and fathers, the only breadwinners of the family, leading women and children to poverty and misery.¹⁰⁶

After many years of repression and human rights violations, the United Nations reacted by imposing sanctions on South Africa. On 2 February 1990, the government relented to international pressure and announced the legalization of the ANC, the Communist Party, the Pan-African Congress Party and other oppositional groups. Some political prisoners, including Nelson Mandela, were released. In 1992, a referendum only held for white people confirmed the wish for the end of the apartheid regime. Thus, the first multiracial elections for a

⁹⁷ Gibson (n 94) 414.

⁹⁸ In the nineteenth century, the Company of India banned the enslavement of khoikhois and integrated them into the society through a *clienteles system*.

⁹⁹ Especially against the San people. See Klaas de Jonge. *África do Sul, apartheid e resistência*. (1991 Editora Cortez) <<http://saperecaude10.blogspot.nl/2013/02/africa-do-sul-apartheid-e-resistencia.html>> accessed 29 April 2015.

¹⁰⁰ However, because of concerns about black workforce many measures were adopted in the nineteenth century. Lands of native people were appropriated, the government established high taxes that forced black people to seek sources of income to pay them. The law of the pass was created, which gave black people a six-day period from their arrival in a work area to get jobs, under penalty of fine, imprisonment or expulsion. Black people could circulate outside of tribal areas only when considered essential workforce for the white economy. De Jonge, *ibid*.

¹⁰¹ Beth Goldblatt, 'Evaluating the gender content of reparations: lessons from south Africa' in Ruth Rubio-Marín (ed) *What Happened to the Women? Gender and Reparations for Human rights Violations* (Social Science Research Council 2006) 50.

¹⁰² Goldblatt (n 101) 49.

¹⁰³ Pinto (n 95) 397.

¹⁰⁴ In 1962, the political party ANC was banned and its leader Nelson Mandela arrested and sentenced to life imprisonment.

¹⁰⁵ Goldblatt exemplifies the women situation: "The system of migrant labor, for example, involved transporting working-age men to mines and industrial areas; women and other family members were left in rural areas to survive without the men and to support these men during their annual visits home. Women were thus faced with a greater burden of responsibility for the maintenance of the home and family, or were forced into urban areas to support themselves and their children. In these areas, they had to seek employment as domestic workers and live in white people's homes, usually without their husbands and children." Goldblatt (n 101) 51.

¹⁰⁶ *Ibid*, 52.

transitional government were called in 1994. Nelson Mandela was elected the first black president of South Africa and two years later the parliament promulgated a new constitution.¹⁰⁷

The transition period led to the construction of a new history. Political speeches magnified the heroes and heroines of the country and the necessity to seek the truth.

2. South African Truth and Reconciliation Commission

The South African Parliament passed the "Act Promotion of National Unity and Reconciliation" in 1995, implementing the Truth and Reconciliation Commission.¹⁰⁸ The commission was created after eighteen months of intense debate and preparation, including two conferences held in 1994,¹⁰⁹ with the participation of representatives from Eastern Europe and Latin America. The aim was to learn from the experiences on transitional justice mechanisms used by other countries and then build the appropriate model for the South African reality.¹¹⁰

Equity and diversity were the main concerns. Hence, among the members there were eleven black and six white persons; representatives of political parties from the conservative right to the libertarian left; Christians, Muslims, Hindus and agnostics. Seventeen people were appointed as commissioners – nine men and eight women – aided by a staff of three hundred people and a budget of \$ 18 million per year.¹¹¹ The South African Commission was the biggest truth commission in terms of staff and budget seen up to then.¹¹²

There was an innovative concern for gender balance and gendered perspectives. They created a remarkable situation: eight women out of seventeen commissioners were appointed to lead the TRC. Indeed, it was a victory in gender equality and in decision-making positions. However, later on it was showed that in fact it was just a partial triumph. Even though almost fifty percent of the commissioners were women, very few female staff occupied high positions. Gender-based crimes were not among the crimes investigated.¹¹³ The commissioners held that crimes of a sexual nature did not have a political connotation, causing frustration with many of the victims. Sexual crimes were defined as "severe ill-treatment".¹¹⁴

The work was exercised full-time and it was divided into three different committees: the Human rights Violation Committee, which conducted the public hearings of the victims and survivors and collected the testimonies; the Reparation and Rehabilitation Committee, focusing on redress and assistance; and the Amnesty Committee, which analysed and assessed the amnesty applications.¹¹⁵ The hearings were divided in themes, and among them there was how women and youth were affected by the violence.¹¹⁶

2.1. Composition of the TRC

Even though the primary idea was to create a gender and race balanced commission, the South African TRC had some critics.¹¹⁷ In reality, despite the good will of the founders, it was possible to observe stereotyping and marginalisation of women in the composition of the committees and administration of the TRC.

Notwithstanding eight out of seventeen commissioners were women, not all of them had been involved in women's organization and did not understand gender sensitivity. As Goldblatt noted, 'Some demonstrated gender sensitivity in early statements on the issue of gender and the TRC. Others were less aware of and less committed to gender issues during their work with the commission.'¹¹⁸

¹⁰⁷ Pinto (n 95) 399-402.

¹⁰⁸ Hayner (n 60) 28.

¹⁰⁹ Ibid, 27.

¹¹⁰ Pinto (n 95) 404.

¹¹¹ Hayner (n 60) 28.

¹¹² South African TRC, final report, vol I, 55.

¹¹³ Oliveira (n 22) 132.

¹¹⁴ South African TRC, final report, vol I, 81.

¹¹⁵ Pinto (n 95) 407.

¹¹⁶ Hayner (n 60) 28.

¹¹⁷ Rashida Manjoo, 'The South African Truth and Reconciliation Commission - a Model for Gender Justice?' (2004 United Nations Research Institute for Social Development) 15.

¹¹⁸ Goldblatt (n 101) 56.

Furthermore, both the chairperson and the vice-chair were male, Archbishop Desmond Tutu and Dr. Alex Boraine respectively. The only committee headed by a woman was the Reparation and Rehabilitation Committee, creating 'a perception that this was done as women were seen as the soft, caring and healing types'.¹¹⁹ Moreover, the positions of power and authority in the staff were mostly occupied by men. In the administrative structure, only the Human Resources Unit was headed by a woman, whereas other important divisions such as the Investigation Unit, Chief Executive Officer, Legal Unit, Research Unit and Finance Unit were all directed by men.¹²⁰

As mentioned above, even after the conflict women were still subjugated in this patriarchal society. Not only the colonization but also the patriarchal tradition oppressed and marginalized women. Women that had struggled for liberation and equal rights of the population were suffering this discrimination precisely in a committee that had been serving to investigate and combat violations of human rights, acts based in discrimination.

2.2. Mandate of the Truth and Reconciliation Commission

The Committee of Justice of the Parliament decided that the investigation should start from March 1960. This is the year characterized by the intensification of oppression against resistance to apartheid and the Sharpeville massacre as well as the banishment of political organizations.¹²¹

Act 34, the National Unity and Reconciliation Act of 1995 established the mandate. According to this Act, the objective of the South African TRC was to promote national unity and reconciliation. In order to fulfil its objectives, the commission had as its major tasks to investigate and describe 'causes, nature and extent of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994'.¹²² The commissioners should identify the perpetrators and could grant amnesty to the ones who revealed full histories and relevant facts relating to acts committed with a political purpose. Moreover, the commission had to make recommendations to the Government on actions to prevent violations of human rights from happening once again in the future. Finally, the other objective was 'the restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims'.¹²³

The South African TRC is criticized because of the narrow interpretation of human rights gross violations and a non-flexible reading of its mandate thus not achieving justice for women.¹²⁴ In fact it contributed to a gender marginalization. The commission adopted a *gender-neutral* position, which resulted in 'the 'male norm' was the 'unacknowledged standard''.¹²⁵ The different ways that women and men experienced the conflict and the special female needs were not taken into account.¹²⁶

Manjoo points out that the main reason for the lack of gender sensitive work and a gender neutral law to create the South African truth commission, which delimited its mandate, was the fact that women did not participate in the discussions and drafting processes of the creation of the TRC.¹²⁷ Previously to the creation of the TRC, in 1992, an NGO called Institute for a Democratic Alternative for South Africa (IDASA) organized a group to study some alternatives and means to manage negotiations and the transition from apartheid to democracy. When they decided to implement a truth and reconciliation commission as a model of restorative justice, IDASA organized a visit to countries that had experienced transition, in Eastern Europe and Latin America. In a group of eleven researchers, only three were women.

After such researches, future vice-chair Alex Boraine founded a new NGO which the ANC Minister of Justice supported, and organized conferences and civil society seminars to debate issues about truth commissions. In the sequence, a committee composed only by men, mostly lawyers, was set up to draft the legislation for the creation of the TRC. After being criticized because of the male only composition, this committee accepted assis-

¹¹⁹ Manjoo (n 117) 15.

¹²⁰ Ibid, 15.

¹²¹ Pinto (n 90) 407.

¹²² South African TRC, final report vol I, 57.

¹²³ Ibid.

¹²⁴ Manjoo (n 117) 5.

¹²⁵ Goldblatt (n 101) 53.

¹²⁶ Ibid.

¹²⁷ Manjoo (n 117) 12.

tance by both local and international female experts and the government encouraged the civil society to participate. However, the participation of the civil society was only by 'a small selected group which did not reflect demographics or the view of millions of black South Africans in general, but black women in particular'.¹²⁸

This process, largely driven only by Alex Boraine, resulted in a TRC in which women had a small or no role and where 'gender was not raised as an important issue for consideration through-out the process'.¹²⁹ The consequence was the creation of a bill establishing the TRC's mandate as a gender and race neutral work. This resulted in the commissioners, in order not to cross the limits of the mandate, not dealing with gender-based violations.

The aim of the South African TRC was to investigate human rights violations, giving both victims and perpetrators the opportunity to share their stories and pursue reconciliation. The idea of a gender-neutral commission resulted in a false treatment of equality and in a false premise that the harms suffered by women and men were the same. In fact, while persecuting this gender neutrality the commission ignored the unequal power relations in this patriarchal society.

2.3. Investigating and Documenting Gendered Human rights Violations

The committee on human rights violations was composed of seven men (one of them head of the committee) and two women. The duty of this committee was to investigate gross violations of human rights and to document it. Even though the committee had made an extensive and detailed work examining crimes of assassination, extrajudicial execution, torture and ill-treatment, the situation of women was not among the priority. Since the 'TRC statistics show that women were less often victims of murder, abduction and torture by the state',¹³⁰ the female condition was seen as a secondary concern. This fact reflects a patriarchal tradition where women are not seen as a big threat to, in this case, the apartheid as men were.

When the TRC began its work there were more women than men testifying to the crimes. However, they used to speak about the harm of losing the men in their life, or about the men's experiences, instead of their own. The TRC found that not many women were engaged with the political struggle in South Africa due to the local tradition that politics is for men. Many women said during the hearings that women were supposed to stay at home, should not participate in political debates and could not ask their husband about politics. Ms Ncediwe Euphemia Mfeti remarked:

'We are not allowed to ask our husbands about politics in my culture.'¹³¹

This, according to the TRC's report, is the main reason why women were less often the victims of murder, abduction and torture as well as why women were more likely to talk about their men's harms. The statistics of the TRC showed that in the beginning of the works sixty percent of deponents were women, 'but that over three-quarters of the women's testimonies and eighty-eight percent of the men's testimonies were about abuses to men.'¹³² The reported abuses against women represented only seventeen percent of the women's testimonies and five percent of the men's.¹³³

Women's rights activists concluded that it was due to a lack of sensitivity to gender issues.¹³⁴ After two workshops with representatives of women's organization, women were encouraged to speak of their experiences as victims in a special hearing on women.¹³⁵ The following hearings revealed that women suffered 'sexual,

¹²⁸ Ibid, 11.

¹²⁹ Ibid.

¹³⁰ Ibid, 16.

¹³¹ South African TRC, final report vol IV, 291.

¹³² Ibid, 291.

¹³³ Ibid, 292.

¹³⁴ Ibid, 284.

¹³⁵ These special hearings will be studied below.

physical economical and psychological violence',¹³⁶ but just a small number of female witnesses were prepared to testify about the sexual crimes perpetrated against them.¹³⁷

Talking about the experience of being a victim of sexual crime was hard for most females. In some cases deponents could talk about these experiences only after having consulted a counsellor.¹³⁸ Many women, especially the ones who were assuming important positions in their communities in the new and free country, felt ashamed to talk about sex and sexual experiences.¹³⁹ Besides shame, victims felt that they were somehow guilty for the assault. During the testifying there were women taking responsibility for becoming victim of assault, as if they had deserved to be raped or have their identity destroyed, because they were engaged in "masculine roles in the struggle." During her testifying '[Ms Thandi Shezi] said that one of the reasons she had remained silent was because, as so often happens with rape victims, she had felt that she was in some way to blame: "I thought I'd done something that I deserved to be treated like that"'.¹⁴⁰ The TRC report also mentioned an unidentified woman before the Durban hearings who testified that she was gang raped in front of her husband and who needed a hysterectomy afterwards. She was one more example of a woman feeling responsible for what the rapists had done: 'Sometimes I feel like I invited the trouble myself. I feel very degraded and dirty. And especially because I am a Christian'.¹⁴¹

a. Definition of gross violations of human rights

The Commission investigated solely *gross violation of human rights*, which was defined as:

the violation of human rights through – (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a) which emanated from conflicts of the past and which was committed during the period 1 March 1960 to 10 May 1994 within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive.¹⁴²

However, this concept of human rights violations is narrow. It does not take into account the psychological aspects of anxiety and fear of mothers, daughters and wives waiting for their family members when in power of the police or taking care of them after being severely wounded and tortured. These women were not covered by the definition of victims. Moreover, despite the inclusion of sexual violence as severe ill treatment, the TRC did not consider 'other forms of violence related to the gendered family structure'.¹⁴³ Goldblatt exemplifies what was such gender-related violence: 'loss of fertility, pregnancy following rape, widowhood, mutilation, loss of livelihood'.¹⁴⁴ All those offenses had grave cultural repercussions for South African women. Since none of these abuses were treated as human rights violations the victims were not redressed.¹⁴⁵

b. Rape qualified as severe ill-treatment

One of the main criticisms in the literature concerns the qualification of rape as *severe ill treatment*.¹⁴⁶ There was no proper investigation into rape or sexual abuse as a human rights violation *per se*, because that was not part of the TRC's mandate.¹⁴⁷ The women's organizations demanded the recognition of rape as a crime and amongst the list of gross violations of human rights. However, after debates, the commission agreed solely

¹³⁶ Manjoo (n 117) 17.

¹³⁷ South African TRC, final report vol IV, 296.

¹³⁸ Ibid, 298.

¹³⁹ Goldblatt (n 101) 55.

¹⁴⁰ South African TRC, final report vol IV, 297-298.

¹⁴¹ Ibid, 300.

¹⁴² South African TRC, final report, vol I, 60.

¹⁴³ Goldblatt (n 101) 61.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ South African TRC, final report vol I, 81.

¹⁴⁷ Manjoo (n 117) 18.

to include sexual crimes as a sub-category of severe ill-treatment, side-by-side to crimes like 'detention without charge or trial' and 'destruction of a person's house'.¹⁴⁸

That means that sexual violence was of secondary concern.¹⁴⁹ If the TRC had agreed to place sexual violence in a central position, just like torture or killing, the definition of human rights violations would have been broader and would 'encompass women's experiences more than they were in the South African case'.¹⁵⁰

c. Women's participation

In the final report, the TRC brought some interesting statistics on the participation of women: 55,5 percent of the deponents were women, however only 43,9 percent of the deponents reported violations of which they themselves were victims of human rights violations. It shows that 'men were more likely than women to talk about their own experiences as direct victims'.¹⁵¹ On the other hand, women were more likely than men to talk about their psychological torture and the psychosomatic and psychological problems faced subsequently to the violence, and about carrying on their day-by-day life.¹⁵²

Thus, after the workshops mentioned above, the committee decided to host segmented hearings, the so-called 'special hearings on women'.¹⁵³ Among them was a unit only for women to speak on their own behalf, for female only commissioners, in front of female only audience, about the particular violations experienced by women.

The commission identified women as primary and secondary victims and the different ways that women and men experienced human rights violations. After the adoption of the special hearings, followed by the workshops, women started to feel more confident to express their own traumas and sufferings as direct victims.¹⁵⁴ From the hearings, the TRC could identify different types of experiences, pain and suffering. The situation of women as both victims and perpetrators was analysed.

d. Special hearings

The special hearings also brought to light the humiliation that women suffered inside and outside prison by the police and by the rival political party, and the psychological and physical abuses. The threat of rape was a constant; brutal violence, sexual abuse other than rape, and humiliation were common. The police used the women's kids or other family members to cause psychological stress. The TRC final report mentions Ms Yvonne Khutwane's case, who 'was first humiliated by repeated questions about her sex life. She broke down and cried

¹⁴⁸ The TRC defined severe ill treatment as: "Acts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim, taking into account the context and nature of the act or omission and the nature of the victim".

The following acts were regarded as constituting severe ill treatment:

a rape and punitive solitary confinement;

b sexual assault, abuse or harassment;

c physical beating resulting in serious injuries;

d people shot and injured during demonstrations;

e burnings (including those caused by fire, petrol, chemicals, and hot liquid);

f injury by poison, drugs or other chemicals;

g mutilation (including amputation of body parts, breaking of bones, pulling out of nails, hair, or teeth or scalping);

h detention without charge or trial;

i banning or banishment (a punishment inflicted without due process, consisting (a) of the restriction of a person by house arrest, prohibition from being in a group, prohibition from speaking in public or being quoted, or (b) of the enforced transfer of a person from one area to another without the right to leave it);

j deliberate withholding of food and water to someone in custody with deliberate disregard to the victim's health or well-being;

k deliberate failure to provide medical attention to ill or injured persons in custody;

l the destruction of a person's house through arson or other attacks which made it impossible for the person to live there again." South African TRC, final report vol I, 80.

¹⁴⁹ Goldblatt (n 101) 80.

¹⁵⁰ Ibid.

¹⁵¹ South African TRC, final report vol IV, 287.

¹⁵² Ibid, 305.

¹⁵³ The hearings were divided on institutional hearings and especial hearings. The institutional hearings took into account "the role of some of the influential sectors of the apartheid society" and were divided in 'business and labour'; 'the faith community'; the legal community'; the health sector'; 'the media' and 'prisons'. They also focused on three areas that, the Commission felt, warranted individual attention: 'compulsory military service'; 'children and youth' and 'women'. Ibid, 2-3.

¹⁵⁴ Ibid, 286.

when one of the young soldiers who had arrested her put his hand inside her vagina: "I was afraid [because] we have heard that the soldiers are very notorious of raping people".¹⁵⁵

There are many reported stories of degradation, narrating women who were refused menstrual pads. In prison they were tortured while forced to have their menstrual blood running down their legs. Ms Phyllis Naidoo narrated that she was forced to use newspapers instead of pads: 'It was horrible, and terribly demeaning'.¹⁵⁶ Ms Joyce Sikhakhane Ranken told that 'the feel and smell of the sticky blood [was] a reminder of imminent slaughter at the hands of your torturers'.¹⁵⁷ Ms Mohamed reported an episode of a fellow-prisoner being attacked by rats, which tried to push into her vagina. She herself also experienced rats coming into her own cell to eat her dirty pads. She said: 'I'd just pick up the bits of my pads, but that experience was terror for me. I always felt that the rats were gnawing at me'.¹⁵⁸

Psychological torture was used either by taking kids away from the mothers or by bringing them to the prisons, to make the mothers feel ashamed.

Ms Sylvia Nomhle Dlamini described how her child was taken away from her when it wanted to suck. In the end, she stopped breast-feeding and the child became very sickly. This and subsequent events left Ms Dlamini insecure about her ability as a mother: "I don't know whether I acted in the proper manner; I doubt myself as a mother."¹⁵⁹

In many cases the degradation was related to psychological abuse, trying to degrade the victim in her female's roles and relationship. Ms Lydia Kompe told that she was humiliated by a police officer, who asked her: 'What do you think your husband thinks about you? This is the reason why all the men are getting divorced'.¹⁶⁰

The same happened to Ms Jenny Schreiner, who had to hear: 'You're thirty and you're single, therefore there's something wrong with you as a woman, and that's why you get involved with politics'.¹⁶¹

The final report narrates Ms Ntombenkulu Ngubane's history, who delivered a baby in jail. She had no medical assistance and a fellow-prisoner helped the delivery. Her baby was sick and she begged for help:

'The next day I found my child yellow ... they took my child, they told me they are taking him to another cell in hospital. When I asked them how can they take my child when he is sick and leave me behind, I am supposed to breast-feed my child, they told me, 'You are a prisoner' and then the next day they came back and they told me that, "Your child is dead"... they told me that, "this child will be buried by the government". I don't know up until today if my child is still alive or really my child died.'¹⁶²

When she was finally released, her husband beat her up alleging that she was crazy and the marriage ended in divorce.

¹⁵⁵ South African TRC, final report vol IV, 300.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid, 307.

¹⁶⁰ Ibid, 306.

¹⁶¹ Ibid.

¹⁶² Ibid, 312.

2.4. Amnesty

One of the most studied and criticized innovation of the South African TRC was its power to grant amnesty to political crimes.¹⁶³ It was a concept initiated by South Africa. No truth commission had this power in its mandate before.¹⁶⁴ The condition was amnesty in exchange for the full truth. Besides, in cases of serious violations the perpetrator had to participate in public hearings to be questioned by the commission and, in some cases, by the victims or their relatives.¹⁶⁵ Despite of the criticisms the South African government believed that this was the only manner to have a successful transition and that the violations could become publicly known.¹⁶⁶ The commissioners could reveal many cases of death, torture and kidnappings from the confessions of the perpetrators, which in return were given the amnesty.¹⁶⁷

However, the commission decided not to grant amnesty to the perpetrators of rapes, even after their confessions and telling the whole truth. The commissioners decided that rape could not be considered as a politically motivated crime, thus it was not under the commission's mandate. The perpetrator of sexual crimes did not have amnesties conceded for this crime in specific.¹⁶⁸ The main criticism against this view is because in reality rape was used as a way to punish women whom were politically active. According to Manjoo, 'There was a lack of synergy between the Human rights Committee, which had heard testimony of rape, and the Amnesty Committee,¹⁶⁹ which had denied amnesty for sexual crimes under the explanation that it is not a politically motivated crime.

Women played a role not only as primary and secondary victims of the conflict, but also as perpetrators, even though the numbers were significantly lower in comparison to male perpetrators. The Amnesty Committee received 7,112 applications for amnesty. Amongst those applications, 4,721 had the sex of the applicant identified, being able to find that only fifty-six, or one percent of the applicants, were women.¹⁷⁰ The result was that thirty-eight of the female applicants for amnesty had their requirement refused.

2.5. Types of Truth – a creation of the South African TRC

According to Pinto, the idea of establishing a truth commission is based on the fact that memory is the identity of a society. It has been argued that South Africa needed a new identity, a new moral order. Therefore, no one could deny the past or distort the facts in the interests of some groups. At the apartheid time, the South African government used the media to build the myth of the wild and dangerous black people and to strengthen the oppressive regime. Thereby it spread the belief that it was not oppression, but a manner to discipline the wild black population. For a long time misinformation and dissimulation were nationally promoted by the apartheid regime.¹⁷¹

During the hearings, the experience taught the commissioners that the truth might not be the only one, due to the different understanding, culture and point of view of each person. In this sense, the South African TRC labelled four types of truth equally important.¹⁷²

¹⁶³ Although controversial, it was defended that the amnesty helped in the process of recognition of the crimes by the perpetrators and, consequently, reaching the truth. It was argued that under the psychological point of view it is vital to the families of the victims to know what happened to their loved ones. Also, if the perpetrator wished to obtain amnesty he or she had to confess him or herself guilt and describe all acts performed.

¹⁶⁴ South African TRC, final report vol I, 54.

¹⁶⁵ Pinto (n 95) 410.

¹⁶⁶ South African TRC, final report vol I, 53.

¹⁶⁷ Hayner (n 60) 29.

¹⁶⁸ Manjoo (n 117) 19.

¹⁶⁹ Ibid.

¹⁷⁰ South African TRC, final report vol IV, 314.

¹⁷¹ Pinto (n 95) 408.

¹⁷² These different kinds of truth became known worldwide and very studied on the field of Transitional Justice. They are defined as:

a) *Factual or forensic truth* based on a broad report of the activities and findings based on factual information and evidences. The report to find this truth was obtained through reliable, impartial and objective documents by government agencies or private organizations as well as prison records, police investigations and official documents.

b) *Narrative truth* is based on the testimony of the survivors, stories narrated by victims and perpetrators, their memories and their version of what effectively happened, giving meaning to their personal experiences. It is seen as important because it allows the restoration of the dignity of victims, giving them the opportunity to report the abuse suffered and share their own version of events. Daly explains that "a

During the process of analysing the theory behind the meaning of *truth*, the South African commission also discussed if truth had a gender. Marginalization and underrepresentation of women became concerns of the commissioners, who worked to avoid any situation that could conduct to it. The Centre for Applied Legal Studies organized workshops on gender-sensitivity and made some suggestions for the TRC. Many of their recommendations were followed by the commissioners, namely in the women's hearings.¹⁷³

In previous truth commissions, there were two ways to describe the truth in a gendered perspective.¹⁷⁴ The first is the notion that truth cannot take gender in consideration, since facts speak for themselves and truth is blind. The second one sees truth as emerging from a specific context, considering that the dominant historical knowledge should give place to a new truth, which was being ignored and/or suppressed.

However, it is important to remark that in the truth context, gender neutrality is a mistake, because it privileges the male's point of view on human rights violations. Cheryl de la Rey, addressing the special hearings in the South African TRC, remarked that '[t]oo often when we do not undertake specific actions to draw attention to the issues that affect women, what happens is that men and the experiences of men become the yardstick by which judgements are made.'¹⁷⁵ For this reason, even if the mandate had a conception of gender-neutral work, the TRC paid particular attention to the matter of women's truth.

2.6. Reconciliation and Reparation

Restorative justice is based on the assumption that the victims and their families need attention and respect. The South African commission had also as its goal the restoration of the human and civil dignity of the victims. Therefore, the victims were given the opportunity to report their grief and abuses suffered.¹⁷⁶ Many survivors reported the healing power of testifying and being respectfully heard before an official of the Truth Commission, after a lifetime being ignored, abused and oppressed by state agents.

Women and women's organizations participated in the discussions of the Reparation and Rehabilitation committee. However, even though there was a position on gender sensitivity, most of the recommendations did not centre specifically on gender issues.¹⁷⁷ A member in the commission on gender equality criticised the fact that many women who agreed to testify were listened but did not receive the proper support after the hearing. They shared their traumatic experiences, many of them for the first time, they had their wound opened but did not get a professional help to deal with it. She stated:

I know, Chairperson, that the Truth Commission has got a programme of therapy, but I hope it can be sustained, because my own experience in the few months has been that some of the women whose wounds you opened – we did not pay enough time or give them enough opportunity to heal once they left these halls.¹⁷⁸

This emotional support ended being supplied mostly by women's savings clubs, the local community and the church.¹⁷⁹ The TRC had good intention, since it started from the premise that speaking was part of the healing process, but failed on this point. Indeed the struggle for healing was present. Despite the terrible stories told by victims, the Commission found willingness to forgive. Several victims emphasized the importance to

person's memory (particularly in the midst of trauma) may be inaccurate or distorted", but on the same time "it reflects the real experience of those involved". For this reason Daly states that this is the less reliable, but also the most important of the dimensions of truth.

c) *Social truth* is established through interaction, discussion and debate. It is exposed the political ideas in the country about the past as well as how the population sees its interaction in the new regime.

d) *Healing and restorative truth* is focused on the recognition of the abuses and the moral disapproval of the past with a view to building a new collective memory. Erin Daly, 'Truth (truth seeking and truth telling)', in Lavinia Stan and Nadya Nedelsky (eds), *Encyclopedia of Transitional Justice* (Vol I, CUP 2013) 261.

¹⁷³ Goldblatt (n 101) 53.

¹⁷⁴ Nesiah *et al* (n 47) 7.

¹⁷⁵ South African TRC, final report, vol IV, 284

¹⁷⁶ Pinto (n 95) 413.

¹⁷⁷ Goldblatt (n 101) 57.

¹⁷⁸ South African TRC, final report vol V, 356

¹⁷⁹ Goldblatt (n 101) 57.

acknowledge the truth and the perpetrator, meaning that they would like to know whom to forgive.¹⁸⁰ Ms J Msweli testified about the killing of her son and how she dealt with the forgiveness process:

I want the people who killed my sons to come forward because this is a time for reconciliation. I want to forgive them, and I also have a bit of my mind to tell them. I would be happy if they could come before me because I don't have sons today. Their father died at an early age, and I put them through school. Now, they've never been criminals. They've never had any problems, even with the neighbours. They were Christians. I also want to speak to [my sons' killers] because I want to speak to them before I forgive them. I want them to tell me who sent them to come and kill my sons. Maybe they are my enemies, maybe they are not. So, I want to establish as to who they are and why they did what they did.¹⁸¹

The testimonies of the victims were received as a personal truth, which reveals a single idea of the pain that South Africa endured. The hearings were designed also to understand the motives and perspectives of perpetrators. Thus, the process was based on dialogue and sought to restore the dignity of both sides. Restorative justice requires faith in the possibility of moral transformation of people and institutions, for such reason favoured reconciliation and reparation despite the punishment.¹⁸²

The apologies and the dialogue between victims and perpetrators had great success in the reconciliation process. But the TRC observed 'the vital importance of restitution as part of the reconciliation process.'¹⁸³ Some gender-specific interventions were proposed by the NGO Centre for the Study of Violence and Reconciliation (CSVVR). This NGO asked the parliament to include women in all symbolic reparations projects as well as to rename public spaces with an honour to the women part of the resistance.¹⁸⁴ CSVVR made recommendations on gender to the TRC regarding the way that the reparations should be proceeded. They urged a gendered understanding of the crimes and how it impacted each person, highlighting the necessity to ask female about their needs. The idea was the involvement of NGOs and women's organizations during the development and preparation of reparations policy. It was proposed a gender bias when the payment of the reparations. Moreover, there was a recommendation to build a memorial in honour to the women killed during the conflict, naming each of the victims and the circumstances of their deaths.¹⁸⁵

The parliament and the TRC followed just a limited part of the recommendations. The TRC made recommendations about symbolic reparations such as renaming public facilities and the construction of memorials, however, it was just a general remark as it did not mention any kind of specific act for female victims.¹⁸⁶ An important recommendation was that the TRC asked the victims how they would like to be assisted. 'Many women asked for psychological support and for information about their loved ones who had disappeared.'¹⁸⁷ The need for financial support was essentially due to the fact that they had lost a breadwinner (son or husband) and still had to provide their dependents. However there is no official statistics on the percentage of female victims that requested financial aid. In the final report, the TRC made just a general statement about the types of reparations.¹⁸⁸

¹⁸⁰ South African TRC, final report vol V, 371.

¹⁸¹ South African TRC, final report vol V, 378.

¹⁸² Pinto (n 95) 414.

¹⁸³ South African TRC, final report vol V, 401.

¹⁸⁴ Goldblatt (n 101) 58.

¹⁸⁵ Ibid.

¹⁸⁶ The TRC report provides:

“Renaming of public facilities

91. It is recommended that, after careful consideration and consultation, public facilities should be renamed in honour of individuals or past events. The necessary mechanisms should be put in place by the appropriate ministries.

Monuments and memorials

92. In response to the requests of many victims and the broader community, the erection of appropriate monuments/memorials should be considered. The appropriate ministries should put the necessary mechanisms in place to plan and implement this.” South African TRC, final report vol V, 190.

¹⁸⁷ Goldblatt (n 101) 59.

¹⁸⁸ Goldblatt notes that “38% of victims requested financial assistance to improve the quality of their lives and 90% asked for services such as education, medical care, and housing.” Ibid.

During the process of investigation the victims that had urgent needs received *Urgent Interim Reparation*.¹⁸⁹ It included financial aid (a sum from US\$ 250 to US\$ 713, considering the number of dependents¹⁹⁰), social assistance, counselling and health care. Unless the person was deceased, the aid was always provided directly to the victim.

All the victims that testified were redressed, however they had to wait four years to receive their indenisation and the sum paid by the government was below the recommended for individual reparations by the TRC.¹⁹¹ A large percentage of the fund was for women, but these reparations were fundamentally to repair the lost of their husbands and sons, not specifically the crimes that women themselves had experienced.¹⁹² Everybody considered a victim received the same amount of reparation, regardless the kind of crime they were subjected for.

There were two main problems with this system. First, 'the grants were provided on a gender-neutral basis,¹⁹³ meaning that the special needs of women, namely the ones whom lost their breadwinner and have to provide for their kids, were not considered. Moreover, women who were unable to participate on the hearings and, thus, did not talk about their experiences of sexual violence ended unassisted. They did not receive financial reparation and the other forms of reparations, was not helpful to them, since 'they do not specifically address the needs of victims of gender-based violence.'¹⁹⁴

3. Preliminary Conclusion

South Africa presented large innovations to the truth commission, especially in its moral, legal and social contingency. The idea was that the TRC should prevent recurrence of the past atrocities and expunge the harmful effect of grief and revenge. Its mandate was very broad and ambitious and for the first time sought to have a gendered view and inclusivity for women. The experience of the TRC had both positive and negative lessons.

In the context of gender sensitivity the good aspects were the participation of women both as commissioners and TRC staff and witnesses. Despite the fact that the composition of the TRC had a big number of women, it did not represent a gender awareness of the consequences of the conflict on women and girls neither of their special needs. Women's organizations struggled to raise a broader gendered view and fortunately, the commissioners heeded many of their proposals, such as on the creation of workshops, women-only hearings and reparation policies.

In the beginning women were more likely to testify about human rights violations suffered by male family members, not their own experiences. However, after workshops and campaigns promoted by the TRC with the help of women's organizations, women started to share their own grieves. Nonetheless, not everyone could take advantage of these healing processes. Due to the lack of psychological help, women did not speak because they were not ready to talk about their traumas. The commission failed to provide adequate medical and psychological support. Furthermore, the lack of resources to connect remote areas to the place of the hearings also prevented women to participate and, as consequence, to benefit from reparations.

The main failed point in the commission's work was the limited definition of gross violations of human rights. According to Goldblatt, 'This created a hierarchy of suffering that was also gendered, since more men than women were directly affected in the conflict'.¹⁹⁵ Sexual violence was seen as a secondary kind of crime, included as a sub-category of severe ill-treatment. This is one of the most criticized points of the South African TRC and indeed something that should not be followed by other truth commissions. Nevertheless, it is im-

¹⁸⁹ The TRC final Report defines it: "Urgent interim reparation is assistance for people in urgent need, to provide them with access to appropriate services and facilities. It is recommended that limited financial resources be made available to facilitate this access." South African TRC, final report vol V, 175.

¹⁹⁰ Goldblatt (n 101) 59.

¹⁹¹ "The TRC proposed that a sum of approximately US\$2,713 per year be paid to victims for six years (in installments every six months)." However, the government decided to a one-time payment of US\$3,750 to each victim. Goldblatt (n 101) 66.

¹⁹² Manjoo (n 117) 20.

¹⁹³ Goldblatt (n 101) 65.

¹⁹⁴ Ibid, 69.

¹⁹⁵ Ibid, 80.

portant to notice that the works of the TRC and its mandate were established by UN Security Council Resolution 1325, before the inclusion of sexual crimes as crimes against humanity and war crimes by the Rome Statute.

Lastly, the TRC did not investigate the violation of social-economic rights and its implications on women's life.

V. EAST TIMOR

1. A Brief History of East Timor

East Timor was a Portuguese colony until 1974, when, after the decline of the Salazarian regime in Portugal,¹⁹⁶ was declared independent. After only nine days of independence, the Indonesian troops invaded the country and annexed East Timor¹⁹⁷ in a violent and bloody intervention.¹⁹⁸ Only in the first year anywhere from 60,000 to 100,000 Timorese were killed, nearly ten percent of the population. The UN never accepted the Indonesian claim of annexation and the only state to unilaterally accept the annexation was Australia.¹⁹⁹ Portugal broke off relations with Indonesia and formally protested to the United Nations. On the 12 December 1975 UN General Assembly adopted the Resolution 3485, recognizing the inalienable right of the Timorese people to self-determination and independence. In UN Security Council member States condemned the invasion of East Timor and urged Indonesia to withdraw from the territory.

In 1999 the Amnesty International estimated that during the 25 years of the occupation 200,000 people died.²⁰⁰ The final report of the Timorese truth commission found that 102,800 people died in conflict and 18,600 non-combatants were executed or disappeared and at least 84,000 people died as a direct result of the Indonesian occupation.²⁰¹ Women were systematically raped and suffered forced pregnancy by Indonesian soldiers.

During the Indonesian occupation the population was severely repressed, including in their cultural traditions, religion and language. There was a systematic gender persecution, such as forced deportation of women to West Timor, forced marriage, rape and forced maternity and force sterilization, especially against women helping the Timorese forces and the wives of the guerrilla leaders. Portuguese language was forbidden; the Indonesian-Bahasa was implemented and everyone forced to speak this language. There were losses of homes and properties, thousands were exiled; the population did not have access to basic needs; the Timorese who resisted were executed, tortured and suffered all sorts of inhuman treatment.

In 1997 Asia suffered a great financial crises, weakening particularly the Indonesian economy. In this context, Indonesia needed international financial aid. However, the situation of East Timor was an obstacle for the Indonesian government getting help. The international community was conditioning the aid to a solution to the conflict, in the light of international law. Pressured by the international community and due to the economic crises faced by Indonesia, General Suharto decided to promote a referendum to the population vote to choose between be part of Indonesia or an independent country.²⁰² In fact Indonesia believed that the Timorese people, after twenty-five years of Indonesia rule, were sufficiently "integrated" or "intimidated" and strongly believed in the annexation.²⁰³

¹⁹⁶ Kwon as the Carnation Revolution (in Portuguese *Revolução dos Cravos*), the population demanded the end of the authoritarian dictatorship initiated by Antonio de Oliveira Salazar and an end to the Portuguese colonialism.

¹⁹⁷ Note a specific historical event: the island was colonized by the Dutch to the west and by the Portuguese to the east. Prior to the independence declaration by Portugal, the Indonesians denied interest in the eastern portion of the island of Timor, in spite of the archipelago being occupied by Indonesia in its west portion. Indonesia believed itself as a natural heir of the former Dutch colonies, which did not include the eastern part of the island of Timor. Luciano da Silva Colares, *As Missões de Paz da ONU e a Questão de Timor Leste: Ponto de Inflexão?* (UFRGS 2006) 20 <<https://www.lume.ufrgs.br/bitstream/handle/10183/11109/000603586.pdf?sequence=1>> accessed 13 June 2015.

¹⁹⁸ Galuh Wandita, Karen Campbell-Nelson, Manuela Leong Pereira, 'Learning to Engender Reparations in Timor-leste: Reaching out to Female Victims', in Rubio-Marín, Ruth (ed), *What Happened to the Women? Gender and Reparations for Human rights Violations* (Social Science Research Council 2006) 285.

¹⁹⁹ Susan Harris Rimmer, *Gender and transitional justice : the women of East Timor* (Routledge 2010) 36.

²⁰⁰ See Amnesty International, '200,000 Dead. Enough is Enough.' *New York Times* (advertisement), 23 September 1999, *apud* Rimmer (n 199) 36.

²⁰¹ Rimmer (n 199) 36.

²⁰² Wandita (n 198) 286.

²⁰³ Colares (n 197) 36.

One agreement between Portugal and Indonesia established the terms of the popular consultation and the establishment of a UN mission in East Timor, to carry out the referendum.²⁰⁴ In order to organize the popular consultation and to supervise the transitional period, UN Security Council authorized the establishment of United Nations Mission in East Timor (UNAMET), through the Resolution 1246.²⁰⁵

On the 30 August 1999 the referendum was held, counting with the participation of 98% of the population,²⁰⁶ and five days later the result pointed out that 78.5% of the population voted for independence. The result was retaliated by Indonesian forces with a massive wave of violence, forced deportation to West Timor (Indonesian territory) and a massive²⁰⁷ evacuation of the population.²⁰⁸ The villages and towns were burned; destroying 80% of the whole infrastructure of the country and 1,400 people were killed. Indonesian forces promoted a policy of systematic rape and forced pregnancy of Timorese women, in special in the ones forcedly deported to camps in West Timor.

The Secretary General and the Security Council have undertaken strenuous diplomatic efforts to end the violence pressuring Indonesia to stop the aggression and retake the security and order in the territory. Due to the inactivity of Indonesia, on the 15 September 1999 the Security Council met up to establish an UN military intervention in East Timor (INTERFET).²⁰⁹

The situation was chaotic, all facilities were burned, the state institutions collapsed and the violence took over the country. Facing this scenario, UN established the United Nations Transitional Administration in East Timor (UNTAET),²¹⁰ to administrate the country through a transitional government. Sergio Vieira de Mello was appointed by the UN Secretary General as the transitional administrator.

An International Commission of Inquiry of East Timor, which made a series of recommendation in their report, was established. On the 31 January 2000, the UN Secretary General authorized three main transitional justice mechanisms: the creation of a Serious Crime Unit, Special Panels of the Dili District Court (a hybrid tribunal) and the Commission for Reception, Truth and Reconciliation (CAVR - the Portuguese acronym).²¹¹

Recalling these recommendations made by the International Commission of Inquiry of East Timor, Sergio Vieira de Mello promulgated a regulation on the establishment of a Truth Commission in East Timor.²¹² This regulation established how it should be created and specified what should be taken into consideration during the commission's work.

2. The Situation and the Role of the Women during the Conflict

Prior to the conflict, while East Timor was still a Portuguese colony, East-Timorese society had patriarchal and sexist aspects, restricting women due to the culture and custom.²¹³ The Catholic Church and Portuguese traditions had a great influence in the gender relations. Most of the women were illiterate and worked basically as substance farmers and to domestic tasks ("gathering firewood and water, cooking, caring for children, the elderly and the ill"²¹⁴); men were considered superior to women.²¹⁵ Women suffered the burden not only of the sexist society but also the colonialism, as mentioned above.

In this context a war outbreak led women into an even worst situation. Women saw themselves forced to redefine their role, once the men of the house were either killed or fighting in the conflict.²¹⁶ During the Indonesian occupation there was widespread gender-based violence. 'Women were particularly vulnerable to gender-

²⁰⁴ UN General Assembly S/1999/513.

²⁰⁵ UN Security Council S/RES/1246.

²⁰⁶ In 1999 East Timor had 800,000 citizens.

²⁰⁷ According to the UN special rapporteur 'More than 400,000 people were forced to leave their homes and flee to the hills, or were forcibly displaced by TNI and militia units to areas outside East Timor, mostly in West Timor and other neighbouring islands in Indonesia.' UN General Assembly A/54/660 para. 20.

²⁰⁸ Wandita (n 193) 287.

²⁰⁹ UN Security Council, S/RES/1264.

²¹⁰ UN Security Council, S/RES/1272.

²¹¹ Rimmer (n 199) 40.

²¹² UNTAET/REG/2001/10

²¹³ Rimmer (n 199) 37.

²¹⁴ Wandita (n 193). 289.

²¹⁵ Rimmer (n 199) 37.

²¹⁶ Wandita (n 193) 289.

specific human rights violations, including rape and sexual harassment²¹⁷ as well as forced pregnancy by the Indonesian soldiers and, once captive, lived under slave-like conditions.²¹⁸

A war is traumatic in any society. The destruction, fear, violence, loss of life and sexual assaults hit both male and female, but still it is seen that armed conflict are things to be dealt with by men. However, many East-Timorese women participated actively in war showing that 'to experience the war is not necessary to go to war.'²¹⁹ A group of women, members of the Popular Organization of Timorese Women (OPMT, Portuguese acronym for *Organização Popular das Mulheres de Timor*) started to work with the guerrilla, providing food, clothing and medicine to whoever fought the Indonesians. Moreover, some female went to the battlefield whenever the confrontation was inevitable. 'Some women bore arms and joined the armed resistance, whereas others took on the risky task of communicating messages between the guerrillas in the forest and the clandestine movement in the urban areas.'²²⁰ However, even if there are stories narrating the participation of women, sadly most of the documented facts are based on male's stories.

Women also suffer the burden of the economic instability. Cunha explains that there are primary distinctions amongst the participants during the war. They are called the participants of the *liberation* or the *destabilization*. The *liberation* ones are the heroes and ex-combatants and the *destabilization* ones demobilized of war.²²¹ Demobilized of war means that they do not have the status of former combatants, thus the merit and the recognition of political value in building and nation consolidation do not apply for them. Many women are included into this concept, thus do not have the reparation paid for the combatants.

Interviewing women in Mozambique and in East Timor, Cunha noticed that contrarily to the women in the African country, many women in East Timor accept to speak openly about what happened in war. In her studies, Cunha concluded that this is the turning point for the real process of healing and a social and political way to preserve the memory of the nation.²²² It is needed not only courage to share their traumatic experiences, but also a vision for justice and a will to struggle for a better and peaceful society. Maria de Fátima, in an interview for Cunha, talked about her experiences in combat:

Around 2P.M., we were assaulted, there was an open crossfire and we tried to run away as quickly as possible. We were surrounded by two rings, we pierced the first one, but there was another ring out. Then, as the men continued to flee, my husband decided fire back and were behind. We had agreed that the last two bullets would be for us, but at that moment he had no courage to do so. We said goodbye and we waited for our fate. He continued to fight until suddenly he fell dragging me with him. At that moment I thought it was to crawl and escape the bullets but when I looked back I saw that he had been hit. I called him and he answered me yet, but I realized he was dying there. Facing that, I took the gun to kill myself but I gave up on time and lay down on the floor. I began to see enclosure right next to me, watching the bullets go in crossfire.²²³

She also shared her experiences as prisoner:

We knew we had to uphold the law of rape and, every day, every female prisoner married, widowed or single, received mandatorily five to six military to fulfill their carnal desires, to the point that cease to feel the body as ours.

Suddenly they opened the helicopter door and pushed Soe Mali out. We returned to rise and she lay there while flying over the area. After a few laps, we returned to the site, the helicopter low-

²¹⁷ UN General Assembly, A/54/666, para. 46.

²¹⁸ Rimmer (n 199) 37.

²¹⁹ Teresa Cunha, 'As memórias das guerras e as guerras de memórias. Mulheres, Moçambique e Timor Leste' (2012) 96 *Revista Crítica de Ciências Sociais*, <<http://rccs.revues.org/4825>> accessed 4 May 2015.

²²⁰ Wandita (n 193) 290.

²²¹ Cunha (n 219) 73.

²²² *Ibid.*, 74.

²²³ Free translation of the writer. Cunha (n 219) 75-76.

ered again, and I saw my companion of struggle, lifeless, lying on the floor, being raped by the military tormentors. That scene marked me in a traumatic way and it seemed almost unreal.²²⁴

Indeed sexual violence was the most widespread form of gender-based violence, perpetrated by pro-Jakarta militias and Indonesian soldiers. Thousands of women were forcibly sent to camps, suffering seriously impact on their psychological and physical health. UN special rapporteur on violence against women noted that rape was used as war weapon and revanchist against the political opponents.²²⁵ While men were fighting in the mountains, the Indonesian military took advantage of the vulnerable situation of female Timorese to use them as sexual slaves.²²⁶ Although rapes and sexual harassment were common, they hardly were reported due to fear of retaliation. UN Special Rapporteur asserted that during the Indonesian invasion 'rape was used as an instrument of torture and intimidation by certain elements of the Indonesian army in East Timor. Relatives of political opponents were raped by the military as a form of revenge or to force their relatives out of hiding.'²²⁷

3. Truth Commission in East Timor (CAVR)

The UNTAET regulation 2001/10 created the Commission for Reception, Truth and Reconciliation (CAVR) in East Timor to ascertain the facts occurred between April 1974 and October 1999. To establish the terms of the creation of this truth commission, representatives of human rights defenders, specialists on women's rights and other civil society groups, as well as by political parties and religious leaders, attended UNTAET. Assisted and advised for experienced experts, the CAVR incorporated 'a number of unique elements.'²²⁸

This Truth Commission had as core programs truth seeking, the promotion of community reconciliation, reception and support to the victims and reintegration of the victims and perpetrators of minor crimes. Traditionally persuaded by truth commissions, the CAVR aimed to prevent future repetition of human rights violations, honour the memory of the martyrs as well as to assist the restoration of dignity of the victims.

In the reconciliation process, the commission approached in a holistic way, involving representatives of all segments of the society. The CAVR had as a north line the idea of engagement of "individuals, families and community groups from all sides of the conflict"²²⁹ in order to reach the reconciliation. One innovative aspect is the fact that the CAVR incorporated indigenous judicial system (*Adat*)²³⁰ making efforts to include it to a formal system, in order to give legitimacy for the reconciliation process adopted by traditional communities.²³¹²³² However, the Reconciliation process did not deal with cases involving the most serious crimes, such as murder, rape or torture.²³³

²²⁴ Free translation of the writer. Ibid, 76.

²²⁵ UN General Assembly, A/54/666.

²²⁶ In the Letter from the International Commission of Inquiry on East Timor addressed to the United Nations High Commissioner for Human rights, it is reported that "126. Because the men fled to the mountains, the women were targeted for sexual assault in a cruel and systematic way. 127. There is evidence of actual sexual abuse and rape of women. While in general, the militia refrained from killing women, they were subjected to humiliation and different forms of harassment that includes, stripping and sexual slavery. Women and children were also victims of force displacement into exile." UN A/54/726.

²²⁷ UN General Assembly A/54/666, para 46.

²²⁸ Hayner (n 60) 39.

²²⁹ East Timor CAVR, final report ch 9, 2.

²³⁰ Rimmer (n 199) 115.

²³¹ "Traditional beliefs continue to play an important role in the life of most East Timorese. Communities rely on traditional conflict resolution practices that allow an aggrieved person to seek resolution of a dispute through the intervention of elders known as *lia nain*. These practices bring together the parties, their families and often other members of the community to participate in a ceremony to resolve a dispute." East Timor CAVR, final report ch 9, 5.

²³² In fact, the use of traditional forms of dispute resolution has suffered harsh criticism from NGOs, on the grounds that this indigenous judicial system prevented the exercise of human rights, especially women's rights. Many NGOs have developed research on the *Adat*, its degree of penetration in the population and the problems caused by its principles in the effectiveness of standards of justice based on human rights. Women do not participate as judge members and the decisions are sexist and do not consider the gender bias. Aisling Swaine, *Traditional Justice and Gender Based Violence - Research Report* (International Rescue Committee 2003) <<http://www.laohamutuk.org/Oil/LNG/Refs/099SwaineIRCTransJustice.pdf>> accessed 15 June 2015.

²³³ East Timor CAVR, final report ch 9, 31.

From a gendered perspective, one of the criticism lies on the fact that 'reconciliation was seen as apolitical issue to be dealt with by men.'²³⁴ And when some women participated in this process, their fathers, husbands or some male relative determined their role.

The CAVR formally started its works in January 2002. The hearings of the CAVR were broadcast in radio and published, turning public the atrocities committed in East Timor. The commission took special attention on women, recognizing the crime of rape and sexual abuse, correspondingly to the international law provisions.

It is important to note that this truth commission was set up in 2001, thus, after the development of the understanding of rape as crime against humanity and war crime. Hence, one positive aspect is that the commissioners started their works having rape and sexual violence expressly listed and qualified accordingly to the ICC statute

3.1. The Composition of the CAVR

The transitional administrator appointed in the regulation 2001/10 that the truth commission should be composed by five to seven National Commissioners, and at least thirty percent of them should be women.²³⁵ The same percentage should be applied for internal staff and regional commissioners.

The CAVR finally was formed by seven commissioners, two of them were women. Moreover, ten out of twenty-nine Regional Commissioners were female. However due to cultural barriers the Commission did not succeed to implement thirty per cent of female in the staff of over 300 people.²³⁶ The highest positions did not reach the goal either. In fact 'only two of the eight members of the Senior Management Team were women. Just one of the six Regional Coordinators was a woman and all thirteen District Team Coordinators were men.'²³⁷

The policy of gender balance aimed to be closer to female and to facilitate women's participation, especially during the hearings.²³⁸ The aim was to catch women's experiences during the conflict, hence the importance of female staff. It is known that women are more comfortable to talk about sexual violence amongst other women, in the presence of female-only staff.²³⁹ The primary idea was to have twenty per cent of the discussions in women-only meetings. Nevertheless, at district level solely twenty-four out of 297 community discussions ended up being women-only group.²⁴⁰

Moreover, this policy had the goal to encourage work of women and to 'maximise the opportunities for women to contribute as staff members.'²⁴¹ It was sought to involve female in the reconciliation process and in the victims' hearings.²⁴² But this work would require women to travel from Sulco to Sulco²⁴³ for field activities and, consequently, to be absent of their daily chores for over than three months. The Commission found that '[c]ultural objections to them spending such an extended time away from their homes added to these difficulties.'²⁴⁴

3.2. Mandate of the CAVR

According to its mandate, the CAVR had to work having in mind three fronts: truth-seeking about the human rights violations in the period from 1974 to 1999; community reconciliation and reception and victim support, with a view to restore their dignity.²⁴⁵ It was given two years to complete its duty, with the possibility to

²³⁴ Ibid, 17.

²³⁵ UNTAET/REG/2001/10, Section 4 para 4.1.

²³⁶ Hayner (n 60) 40.

²³⁷ East Timor CAVR, final report, ch 1, 40.

²³⁸ Galuh Wandita, *Stone and Flower: Truth as a Foundation for Community Learning and Reconciliation*. (The Neelan Tiruchelvam Trust 2014) 16 <http://www.neelan.org/pdf/Final_Lecture_Ebook.pdf> accessed 15 April 2015.

²³⁹ Rimmer (n 199) 112.

²⁴⁰ Wandita (n 198) 295.

²⁴¹ East Timor CAVR, final report ch 1, 40.

²⁴² Wandita (n 198) 295.

²⁴³ Sulco is a little village, in East Timor.

²⁴⁴ East Timor CAVR, final report ch 1, 41.

²⁴⁵ Galuh Wandita, *Stone and Flower: Truth as a Foundation for Community Learning and Reconciliation*. (The Neelan Tiruchelvam Trust 2014) 16 <http://www.neelan.org/pdf/Final_Lecture_Ebook.pdf> accessed 15 April 2015.

be extended for another six months. Later the Timorese Parliament made amendments, fixing 39 months and finally the last extension constituting 42 months to finalize the works of the Commission.

The CAVR had as task to uncover and report the truth regarding human rights violations. This report had as base real and objective information and evidence obtained by testifying of the victims and official documents. The mandate also included the duty to assist the victims to restore their dignity, to implement Community Reconciliation Procedures, to promote reconciliation, and to make recommendations regarding prosecutions. At the end of its mandate, the CAVR was required to make general recommendations for the new government with finality to promote human rights.²⁴⁶

The mandate included investigation of acts committed within the context of the political conflicts, and involved not just the human rights violations perpetrated by Indonesian military forces but also those by individuals, members of a group or institutions. The commission had a very gender-based perspective while investigating the human rights violations and one of the concerns was to examine the crimes against women. Hence, amongst the human rights abuses investigated by the commission were the crimes committed against reproductive rights, rape and other forms of sexual assault/harassment, practice of sexual slavery (including the prohibition on torture, the right to enter marriage through full and free consent, and the prohibition on slavery).

The competence to promote reconciliation had the goal to 'restore the dignity of the victims and promote human rights.'²⁴⁷ It was addressed solely to the *less serious* act or crime that harmed the society, thus it did not comprehend torture, murder nor any kind of sexual violence²⁴⁸. Moreover, contrarily to the South African TRC, the CAVR did not include the competence to offer amnesty.

3.3. Investigating and documenting gendered human rights violations

The CAVR took 7,668 statements from the victims, 853 of which reported sexual violence – most of them (92,7 per cent) committed by Indonesian forces.²⁴⁹ Only 21,4 per cent of the total testimonials was from women. Additionally, local NGOs on women's issues submitted 260 statements regarding human rights violations committed against women.²⁵⁰ Even with a low number of testimonies from women, the commission noticed the same issue faced by the South African TRC: most of the women talked about the atrocities, tortures and executions committed against the men in their lives, but not about their own experiences.²⁵¹ With a lot of efforts, the commission could break into the culture of silence and conducted more than 200 interviews with female victims of human rights violations in 22 villages.

a. Sexual Violence

During the occupation women and girls suffered all sorts of violence, but mostly sexual crimes. Wandita divided the female victims in three categories.²⁵² The first group was women directly involved with the guerrilla, playing roles like establishing logistical solutions for the provision of food and.²⁵³ The second category comprises the spouses and relatives of the guerrilla men or simply women and girls part of the communities that collaborated with the resistance. 'Women and girls from these two groups were often detained, tortured, and sexually abused.'²⁵⁴ The third group refers to civilians with no direct or indirect link to the resistance, but who were victims of large-scale military sexual violence too. In fact the reason for this wide-ranging of sexual violations had

²⁴⁶ East Timor CAVR, final report ch 2, 2.

²⁴⁷ Ibid, 4.

²⁴⁸ The Commission has employed a working definition of sexual violence as "any violence, physical or psychological, carried out through sexual means or by targeting sexuality." This definition of sexual violence includes rape, sexual slavery and other forms of sexual violence such as sexual torture, public sexual humiliation and sexual harassment. East Timor CAVR, final report Ch 7.7, 4.

²⁴⁹ Wandita (n 198) 291.

²⁵⁰ East Timor CAVR, final report ch 7.7, 4.

²⁵¹ Wandita illustrates that "[t]he three violations most reported by men were detention at 24.6% (20,582 out of 70,641), displacement at 23% (9,810 out of 70,641) and torture at 13.7% (9,670 out of 70,641). Similarly, the three violations most reported by women were detention at 24.6% (4,130 out of 16,769), displacement at 23.4% (3,922 out of 16,769), and killings at 21.5% (1,715 out of 16,769)." Wandita (n 198) 327.

²⁵² Wandita (n 198) 290.

²⁵³ Ibid.

²⁵⁴ Ibid.

as intention the humiliation of the ones seen as enemies, the collapse of the community morale, and served to intensify a reign of terror with the finality to prevent or discourage people to resist.

The commission found out that it was extremely hard for Timorese women to reveal their experience as victims of violence, especially sexual violence, due to the culture of silence prevalent in the Timorese society. Even though many women accepted to talk about it, others did not want to share the traumatic experiences. 'It is a secret between me and God; There is no need to dig any deeper' was the answer of one of the deponents when questioned if she was victim of rape.²⁵⁵

The CAVR divided the national public hearings in thematic sections, including the one on women and the conflict, in which 13 selected women spoke. During these hearings was the first time that women shared at a national level their painful and traumatic experiences of rape and sexual slavery during the conflict.²⁵⁶

Their speech were not just about the experiences as victims of the violence committed by Indonesian, but also about how they were discriminated and socially excluded by their own communities. One survivor of sexual slavery made an emotional statement. When she took the stage, a group of men started to laugh at her and her first words where:

Yes, you in the back there, who are laughing and judging me. You who call me 'whore' behind my back. Today I will speak about what happened to me and maybe you will stop judging me.²⁵⁷

Sexual violence was well investigated and documented. The final report brought detailed consequences of the gender-based violence during the occupation. Nevertheless, the commission has been criticized due to the fact that forced maternity was seen as a mere consequence of rape, not as a violation in their own right, with genocide aspects.²⁵⁸ Wives of the guerrilla combatants were raped and forced to conceive a baby as revanchist or a way to force the men to surrender. Displaced women in the camps in West Timor (Indonesia territory) were raped and forced to conceive a mixed race child.²⁵⁹ In one of interviews carried out by the commission, A.G. told about her suffering:

Because of the war I was used like a horse by the Indonesian soldiers who took me in turns and made me bear many children. But now I no longer have the strength to push my children towards a better future.²⁶⁰

These women suffered rejection and stigmatization in their own families and communities. The married ones were abandoned by their husbands.²⁶¹ In fact, these women 'have suffered three times - first from the initial violation of rape, second from the forced pregnancy, and third from their ostracism or discrimination by their communities, which leaves them vulnerable to further abuse.'²⁶² Notwithstanding, researchers found that the "war babies" were usually kept and raised by their mothers, despite the traumatic events for the conception.²⁶³ The consequences of this sort of crime are physical, psychological and economic for both mother and child. Due to the social discrimination, they had to live in poverty and marginalization from their own communities.

Rape was also used during interrogation, while the women were in detention, as a form to force them to talk about what they knew or even just to satisfy the lust of the soldiers.²⁶⁴ Q.A. told, in the public hearing, that she was raped after a military attack:

²⁵⁵ East Timor CAVR, final report ch 7.7, 5.

²⁵⁶ Wandita (n 238) 25.

²⁵⁷ Ibid. Wandita complements saying that after those words "[t]he men fell silent and were clearly embarrassed. This incident was related to one of the authors by a national commissioner who witnessed it". Wandita (n 62).

²⁵⁸ Rimmer (n 199) 120.

²⁵⁹ Ibid, 122.

²⁶⁰ East Timor CAVR, final report ch 11, 35.

²⁶¹ Rimmer (n 199) 123.

²⁶² Ibid, 121.

²⁶³ Ibid, 120.

²⁶⁴ East Timor CAVR, final report, ch 7.7, 10-11.

In 1978 two Hansip named PS24 and PS25 and soldiers from Yonif 732 captured me and 11 other women in a place called Bubulita. They took us to the military post where they interrogated us. While the interrogation was underway, PS24 and PS25 ordered me to enter the 732 commander's place. They said I was to be interrogated, but that was a lie. They took me there to rape me. The commander raped me for 24 hours. They took turns raping me, all 15 of them. I had to endure this to make sure that they did not kill the 11 women who were captured with me.²⁶⁵

A significant number of cases of sexual slavery, including forced marriage, were reported. Women were kept in Indonesian military installations to be used as sexual slaves both in an individual or collective condition, sometimes for years.²⁶⁶ Some women were called by the euphemism "kept wife", meaning that they were exclusive to some officials. These women, kept as sexual slaves, sometimes were offered by their own families or communities in exchange of local security. Once in freedom and back home, they had to face the discrimination, ridicule and ostracisms.²⁶⁷

The Commission concluded that the impact on the victims were physical, psychological and social. Even being victims, 'they were often socially marginalised or mistreated by their own families, community members and the Catholic Church because of their experiences.'²⁶⁸

Additionally, it was common to use sexual torture and public sexual humiliation in detention in order to instill fear amongst the population. The methods reported to the commission included 'stripping detainees naked during interrogation; burning and electrocuting breasts and genitalia; forcing detainees to perform sexual acts on each other; and photographing detainees in humiliating poses, including while naked.'²⁶⁹

Hence, the final report recognized that sexual violations were used as a tool of terror and degradation utilized against female members or relatives of the members, of the rebel organizations, such as Fretilin and Falintil. The commission stated that '[r]ape, sexual slavery and sexual violence were tools used as part of the campaign designed to inflict a deep experience of terror, powerlessness and hopelessness upon pro-independence supporters.'²⁷⁰

b. Violation on Reproductive Rights

The commission found violation on reproductive rights of women. Fearing the growing number of children, especially the kids of guerrilla combatants, in 1980 Indonesia established a birth control program in East Timor. The conclusion was that it was part of a genocide plan implemented to the indigenous population, which were also being displaced to West Timor.²⁷¹

'Everybody, but especially the wives of civil servants and people living in transmigration sites, had to join the programme.'²⁷² Civil servants had specified in their labour contracts that they could have no more than three kids. If the wives of the civil servants or the military servants working for Indonesian forces refused to join the birth control program, their husbands would not have a promotion in their careers. Even women who suffered severe side effects of the treatment could not quit it. Maria Raimunda da Conceição, a wife of a servant, for six years refused to be part of the program. For this period her husband 'remained a private first class during that time, while his colleagues, whose wives had accepted birth control, were being promoted.'²⁷³ Felling pressured she finally accepted the conditions. Her husband won a promotion immediately after that. Besides, there was a system of "reward and punishments" to persuade civil servants' families to join the program. The

²⁶⁵ Ibid, 12.

²⁶⁶ Ibid, 45.

²⁶⁷ Ibid, 47.

²⁶⁸ Ibid, 109.

²⁶⁹ Ibid, 77.

²⁷⁰ Ibid, 108.

²⁷¹ East Timor CAVR, final report ch 7.9, 37.

²⁷² Ibid, 35.

²⁷³ Ibid, 36.

benefits such as rice ration and scholarships to the children would depend on the number of the kids that the couple had.²⁷⁴

There were also complains of forced sterilization in the early 1980s against young East-Timorese girls. Cases were registered where girls were forcibly given three injections over a period of one year, without any justification or just under the explanation that it was a vaccine against tetanus. Isabel Galhos, one of the victims, testified about her experience when she was in the fourth year of primary school:

[My younger sister and older brother and I] went to Tuana Laran primary school in Vila Verde (Dili). One day, around lunchtime, we were about to go home. The boys were already outside; it was just the girls inside. There was no announcement made but the teachers, mainly male teachers, came in with the headmistress. Suddenly the doors and the windows were shut...We all screamed because the doors were shut so suddenly. We jumped up, and ran here and there. We were caught and held and then given the injection. I am someone who is really afraid of injections. I was held by two male teachers, who said to me: 'If you don't want it, then you'll get the injection your thigh.' All of the girls were injected.²⁷⁵

As a consequence, some parents took their daughters out of the school and it discouraged the population to seek preventive health advice or treatment with Indonesian medical staff.²⁷⁶

Despite the fact that those vaccines were extremely suspicious, the Commission understood that there were no evidence that there was a real intention of sterilization against the women's will, due to the small number of reports.²⁷⁷ However Wandita believes that either this reveals that 'relatively few Timorese women were successfully forced to accept birth control'²⁷⁸ or that the 'deponents were unaware that reproductive violations are human rights violations.'²⁷⁹

c. Economic Rights

One of the innovations of the CAVR was the recognition of the violation of economic rights during the Indonesian occupation.²⁸⁰ The social and economic rights of Timorese people were violated during the Indonesian occupation at all levels. 'Basic needs, such as food, shelter, essential medicines and basic education'²⁸¹ were denied to the population. Families suffered forced removals and mass destruction of houses.

Women were directly affected by this situation, causing physical and psychological harms due to the malnutrition, the exposure to diseases and child mortality. The militaries used the needy situation of the population, making psychological blackmail to mothers offering food and medical aid in exchange of information about the resistance or sexual favours. There are reports that the Indonesian simply denied help because of a belief 'that the aid would end up in the hands of the resistance.'²⁸²

Abuse of power and discrimination were present. 'The military and local government officials also reportedly used aid in a discriminatory fashion to entice refugees to convert to Islam or Protestantism, or to lure desperate women into sexual slavery.'²⁸³

This exposed women to extreme conditions, and forced them to accept all forms of violence, reflected even after the end of the occupation. The International Rescue Committee found that cases of domestic violence increased after the restoration of peace.²⁸⁴ This wave of high domestic violence has two main roots. The population, especially men, became used to violent environment. 'Some male survivors of detention and torture told

²⁷⁴ Ibid, 36.

²⁷⁵ Ibid, 37.

²⁷⁶ Ibid, 38.

²⁷⁷ East Timor CAVR, final report ch 7.9, 38.

²⁷⁸ Wandita (n 193) 292.

²⁷⁹ Ibid.

²⁸⁰ Rimmer (n 199) 110.

²⁸¹ East Timor CAVR, final report ch 7.9, 4.

²⁸² Ibid, 22.

²⁸³ Ibid.

²⁸⁴ Rimmer (n 199) 128.

the Commission that they had fallen into a pattern of violent behavior'.²⁸⁵ Second, women were economically dependent of their spouses or the men of their families. They had no education, no shelter and no way to subsist or to provide for their kids, putting them in a vulnerable and submissive condition.

Women were in a situation of economic dependence from their violent husbands, being forced not to report this violence to the police, in order to maintain conditions of survival for themselves and their kids. The International Rescue Committee interviewed a woman beaten by her husband and injured badly, and reported that even needing help the wife refused to take the case to the Court. She 'wanted to resolve the situation in a traditional way. She told us that this was because there would be no one to take care of the children or provide support for the family if the man went to jail.'²⁸⁶

In conclusion, the final report successfully presented gender-dimensions of the violence occurred in the country and recognized sexual violence as war crimes.²⁸⁷ It also included domestic violence, 'linking the conflict in post-conflict Timor to gender persecution during the occupation.'²⁸⁸ Another positive aspect, in which the CAVR innovated, was bringing the issues on economical, social and cultural rights and the suffering of women, especially the breadwinner ones, regarding economic aspects. However, forced pregnancy was reported as a mere consequence of sexual crimes and not a crime *per se*; a fact criticized by some scholars.²⁸⁹

3.4. Support and Reparation for Women

One of the CAVR's unit was the "Acolhimento and Victim Support Division,"²⁹⁰ with the task to carry out specific programs, such as, Public Hearings at both the national and sub-district level; Healing Workshops; Urgent Reparations scheme for victims with urgent needs; Village-level participatory workshops, called Community Profile workshops, to discuss and record the impact of the conflict on communities.²⁹¹

In the Public hearings the commission listened to the statements from the victims 'and honoured their stories, acknowledged their suffering, and helped them to feel that they were cared for and that their burden was shared.'²⁹² The commission made general national hearings and also thematic ones. In April 2003, it was held the thematic hearing in *women and conflict*.

Those public hearings were a new experience for the victims and the society. In fact, most of them had never shared their suffering and traumatic events or feelings. The victims had the opportunity to send their messages to the nation and the national leaders. 'The hearings therefore placed ordinary people at the centre of the national debate on healing, reconciliation and justice.'²⁹³ Many women spoke openly of the sexual violence committed against them, sharing for the first time the agony gnawing their soul. A fact that broke paradigms in the Timorese society, which was used to the silence of the women. Lourença da Cunha Moniz said that it was worth and she was grateful for the opportunity. According to the deponent, her family was initially surprised, as they had not previously heard her story:

I am not keeping the bad things that were done to me hidden in my heart. I will tell them so that they can be recorded in history for our children and grandchildren.

(...)

²⁸⁵ Ibid, 127.

²⁸⁶ Ibid, 130.

²⁸⁷ Ibid, 110.

²⁸⁸ Ibid.

²⁸⁹ See Rimmer, 2010. The author defends that forced pregnancy in a crime in its own and differently then the international law, that sees it as a component of genocide, she holds that "it is important to treat forced maternity as *sui generis*, different to genocide". Ibid, 110.

²⁹⁰ The translation of the term "acolhimento" from Portuguese to English actually loses its deep concept. The term in Portuguese "acolhimento" was used in the final report, according to the commission, because "[w]hile in English the Commission was called the Commission for Reception, Truth and Reconciliation, it is the view of the Commission that the word "reception" does not adequately reflect all that we mean by 'acolhimento'." The commission explained that "Acolhimento involved people embracing each other as East Timorese, of coming back to our selves, living under one roof, after many years of division and violence." (para. 9) And "Acolhimento represented something of the spirit of respectful acceptance of each other and ourselves as human beings, as people responsible to ourselves and to each other. Acolhimento is a precondition for both having the courage to speak, and for hearing the truth and seeking reconciliation." (para. 10). East Timor CAVR, final report ch 10, 3.

²⁹¹ Ibid.

²⁹² Ibid, 18.

²⁹³ Ibid, 25.

When I testified at the hearing, my family was surprised because until then I had kept my story a secret from them. Only when the Commission came, did I share my pain and suffering in public and in front of the local authorities...When I testified at the public hearing my family members and friends were also sad and wept because of the suffering I experienced...²⁹⁴

It was part of the process of healing, complemented by Healing Workshops. In these workshops, some selected victims received psychological and emotional support. Furthermore, the commissioners could have a better knowledge of the facts and the needs of the survivors and particularly of urgent needs. These workshops were dedicated to the most vulnerable victims, comprehending a total of 156 people, eighty-two women (fifty-two per cent) and seventy-four men (forty-seven per cent).²⁹⁵ It counted on the participation and professional help of the NGO Fokupers, which provided qualified psychologists and mental health workers in its staff.²⁹⁶ They aimed to work in restoring dignity of women victims of sexual violence. The work was divided in six workshops, five of them in mixed groups of men and women, and one was women-only.

In one of the workshops, a young woman shared her harmful experience of being raped by Indonesian combatants. When she started to describe the sexual violence, a young man interrupted her. He expressed his opinion that 'in East Timorese culture it was not appropriate for women to talk about these sorts of experiences.'²⁹⁷ Asked by the facilitator the opinion of the group, another woman expressed her opinion telling that:

Women had been abused in the past and if now they felt they wanted to talk about it, then there was nothing in East Timorese culture to say that they should not do so. She said that now was the right time for women to talk.²⁹⁸

These workshops helped not just women but also men to understand the necessity of women to talk about their maltreatments, including the sexual violence subject – a taboo in the Timorese society – for the process of healing. Another female participant explained that the experience was difficult but valuable. For a long period she was daily raped for a total of about 40 men and had four children. She said: '[w]hen I remember and tell this story I feel embarrassed and my heart aches, but I must speak out so that I can lessen my suffering.'²⁹⁹

The *Urgent Reparations* was a program to identify victims needing special and urgent assistance because of the "severity and the longevity"³⁰⁰ of the impact of the human rights violations in their lives. The urgent needs were medical, psychological and sometimes economic. The direct victims of human rights violations such as rape, imprisonment and torture were priority to receive assistance. 'The need had to be severe, immediate and related directly to a human rights violation'³⁰¹ for a proven vulnerable person. Normally those most vulnerable people were widows of men killed in combat, that had no way to provide for their children, single mothers who bore children due to rape, parents of disabled kids, disabled people and women suffering severe trauma and living in misery.³⁰²

The CAVR provided this urgent reparation financially for 516 men (seventy-three per cent) and 196 women (twenty-seven per cent), offering an emergency grant of US\$ 200 per victim.³⁰³ Moreover, CAVR provided counselling, medicines and medical support (including home visits) for 417 survivors - 322 men (seventy-seven per cent) and 95 women (twenty-three per cent).³⁰⁴ Most of the women that were benefited with this urgent

²⁹⁴ Ibid, 28-29.

²⁹⁵ East Timor CAVR, final report ch 10, 32.

²⁹⁶ Wandita (n 198) 296.

²⁹⁷ Ibid, 35.

²⁹⁸ Ibid, 35.

²⁹⁹ Ibid, 37.

³⁰⁰ Rimmer (n 199) 113.

³⁰¹ East Timor CAVR, final report ch 10, 40.

³⁰² Wandita (n 198) 299.

³⁰³ Wandita elucidates the significance of this amount: "To put this amount in perspective, the entry-level salary for civil servants and members of the police force in Timor-Leste is [was] approximately US\$80 per month". Wandita (n 80).

³⁰⁴ East Timor CAVR, final report ch 10, 41-42.

reparation were victims of rape.³⁰⁵ The amount for urgent reparation was approximately US\$160,000, corresponding to three per cent of the CAVR's budget.³⁰⁶

These funds were used to build shelters and for the urgent needs of food. One of the beneficiary victims gave her follow up on how she managed the money:

As a widow, I have nothing. I lost my house, my animals, all my possessions. Until now I have nothing. When I received the 200 dollars I bought some zinc roofing to make this simple house. The rest I used to pay someone to build the house, because as a widow I have nobody to help me. I also used the money to buy a few chairs and some food. Now I feel content because I have my own house. Before this I stayed at people's houses, I used to think of drinking Baygon [insecticide]. I hope that the Government will continue to look after me. Because of what I suffered, my child does not want to stay with me in this broken house. She stays with some other people who have a nicer house where she eats a bowl of rice with tears in her eyes. I have found no work, my mind is full of [negative] thoughts. I ask my leaders to open their eyes and see my suffering.³⁰⁷

Following basic principles of international law, the CAVR also recommended, in their final report, a national reparation program for all survivors of human rights violations, not just for the ones who participated in the resistance. The reparation program should observe five guiding principles: 'feasibility, accessibility, empowerment, gender, and prioritization based on need'³⁰⁸ and 50% of the funds reserved for redress should be destined for women.

4. Preliminary Conclusion

In its recommendations, the CAVR had a very sensitive gendered approach. It stressed that the conflict affected men and women in different ways. The CAVR also highlighted the bigger vulnerability of women to become victims of sexual violence, causing great trauma. Although it recognized that more men than women suffered severe human rights violations (such as torture, enforced disappearance and extrajudicial execution), women faced the horror in the form of sexual violence. Because of the inevitable harm they had to deal not just with the trauma, but also with the discrimination for the simple fact of being victims of sexual assault, and find a way to provide subsistence for the children born from the rapes.³⁰⁹ For all those reasons it was recommended that at least fifty percent of the resources for reparations should be addressed to female victims.

Moreover, the final report succeeded to have a gender-dimension of the violence in East Timor. The recognition of sexual violence as war crimes was also a great achievement and met the development of the international instruments in this field. The innovative analysis of the violation of economical, social and cultural rights and how it affected women is an advance to be highly praised and followed by future truth commissions. However, the commission failed in not recognizing forced maternity as a human rights violation, but as a mere consequence of rape.

VI. CONCLUSION

The conclusion presents an overview of the thesis and compares the two truth and reconciliation commissions studied above, exploring the failed points and the good practices of each. The objects of comparison will be the implementation or lack of it of gender mainstreaming by the commission through the understanding of

³⁰⁵ Rimmer (n 199) 114.

³⁰⁶ Wandita (n 198) 304.

³⁰⁷ Wandita (n 198) 304.

³⁰⁸ Ibid, 308.

³⁰⁹ The commission emphasized that "[w]omen also suffered when their husbands, sons, fathers, and other members of their families experienced human rights violations. They became the primary carer in their family, taking responsibility for the sick and wounded, and working to feed their children and other dependents when other providers in the family were detained, disappeared, killed or maimed." East Timor CAVR, final report ch 11, 39.

rape and sexual crimes, the understanding of violence against women and the gender composition of the commission and its staff. It will also compare on 'special hearing on women', attention for women's special needs, amnesty, inclusion of the violation of economical, social and cultural rights in the investigation, and the final report.

The study was set up to explore the international instruments to protect women during armed conflict, and to see how truth commissions developed a gender perspective to protect women and to meet their needs in post-conflict countries. Two important truth commissions were chosen as case studies: the South African and East Timorese truth commissions. The study also showed the development of women's role on truth commissions, both as witnesses and as professionals. It had as objective also to show how the commissioners faced the situation of women during conflict and how they dealt with the different needs of men and women in a country in transition. The study sought to answer the question "How was the development of a gender perspective to protect women in South African and Timorese truth commissions?". It showed the innovation created by the South African TRC in the field of gender. It also showed the lessons learned, developed and improved by CAVR, which effectively mainstreamed gender in its work.

Galuh Wandita, Deputy Director of CAVR, compares these two truth commissions by saying that 'if South African commission is the "rolls-royce" model, ours was the tuk-tuk truth commission. In comparison, our budget, our human resources, and our capacities reflected the realities of a territory gutted by twenty-four years or war.'³¹⁰ Indeed, in terms of numbers, budget, and staff members, the South African TRC was superior, but the results delivered by the CAVR in terms of gender bias and gender mainstreaming had bigger positive impacts.

The South African TRC was the first truth commission to have a gender bias with this type of transitional justice mechanism. However, as any first experience, it had failed in many points. The main default was the lack of understanding of rape and sexual violence as mechanism of terror used to repress. Moreover, there was no evaluation of violations of economic rights of women. The CAVR was installed seven years later and presented a great evolution. The CAVR had learned from the criticisms on the weak points of the work of the South African TRC, and followed the international law trend and the new international conventions about the understanding of sexual crimes as a crime against humanity. Hence, the CAVR included investigations into gender-based crimes, sexual crimes and violations of economic rights as human rights violations.

The empirical findings were through the study of work and the innovative ideas of the South African TRC and CAVR. However, it is important to note that the historical background on the development of the international documents directing the recognition of women's rights influenced the truth commissions. Even when facing criticism for the lack or minimum of gender mainstreaming, South Africa was already in vanguard when it decided to establish a balance in the number of men and women occupying the position of commissioners.

The progression of the debates to promote rules regarding women's needs was long and slow, as seen in chapter three. The very first international covenants about women and war associated to the sexual assaults understood as violation of the honour of the female victims. After many years of criticism of experts this vocabulary was updated, thus excluding the term honour when was mentioned the necessity of protection of girls and women against sexual assault. The international criminal law studied violence against women during conflicts, helping in the creation of many principles and doctrines, which reflected directly on how the truth commissions started to work on these issues.

In South Africa the TRC was created in 1995. Despite great efforts to uncover the truth and promote reconciliation of the population, the TRC turned a blind eye to the issue of sexual violence as human rights violation against women and the consequences of the conflict in their lives. The gender-neutral position adopted by the TRC resulted in a *male norm*. The consequence was reflected in a lack of sensitivity on different ways that women and men experienced the conflict. Moreover, the special female needs were not taken into account.

The South African commission failed in the fact that they did not have a special understanding on rape and sexual abuses as *sui generis* human rights violation, since they classified those types of crimes as a sub-class of severe ill-treatment. But one positive aspect is that the commission had a conception of psychological abuse as

³¹⁰ Wandita (n 233) 13.

torture. This benefited especially mothers in prison that had their kids taken from them, or who were humiliated in front of their kids. The narrow interpretation of gross violations of human rights and a non-flexible reading of its mandate was the main problem presented in the TRC regarding gender issues. This resulted in a lack of justice for women.

The CAVR, on the other hand, took special attention of women, recognizing the crime of rape and sexual violence as human rights violation, corresponding to the international law provisions. It is important to note that the East Timorese truth commission was set up in 2001, thus after the development of understanding rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence, as a crime against humanity or war crime. Hence, one positive aspect is that the commissioners started their works having those kind of crimes expressly listed and qualified according to the ICC Statute. It recognized that rape and other sorts of sexual crimes were used as an instrument of terror and degradation, used against female members of armed opposition groups or female relatives. In this sense, sexual violence was well investigated and documented by the CAVR.

However, what could have been different in order to improve the gendered view, was the recognition of the crime of forced maternity. To force a woman to get pregnant and have a babe from the rapist is by itself a violation of the woman's rights, and not a mere consequence of rape. This aspect demonstrated a certain limitation in the categorization of the crime, and was not in line with international law.

Regarding women's participation, the South African TRC showed a better result than the CAVR. In the African country 55,5% of the deponents were women, against 21,4% in the Asian State. A common finding was that women regularly reported on human rights violations against the men of the family and how that impacted their lives. Moreover, women felt ashamed to talk about their sexual assault experiences. Both truth commissions promoted workshops to help and encourage women to speak of their experiences as victims in a 'special hearing on women'. Furthermore, the CAVR tried to overcome this barrier by promoting women-only sessions. Those workshops and especially the women-only sessions were fundamental for the great results. It helped and stimulated women to talk about their own suffering as direct victims. For those women that felt ashamed and guilty for what happened to them, the women-only sessions proved to be the most adequate solution.

It is important to note that both the South African and East Timorese societies were sexist and patriarchal, and a place where women were doubly subjugated (by the colonizer and by men). Talking about anything related to sex, even sex against the woman's will, was hence a taboo. Even after all efforts, East Timor managed to have discussions in women-only groups merely in 24 out of 297 communities at district level. Nevertheless, on these meetings women could not just share their experiences as victims of the violence committed by Indonesia, but also about the discrimination and stigmatizations suffered in their own communities, by their own peers.

The CAVR delved deeper in this problem and also provided psychological support for the women who had their wounds reopened by testimony. Differently, even if the South African TRC had the idea of gender sensitivity, it failed in this regard. There was no support from the South African commission for the women who relived the horror suffered, after sharing their experiences in public hearings. Many South African women could talk about these experiences only after seeing a counsellor. However, what happened was that the counsellors helped them to have the courage to speak, to fight the shame and embarrassment, but there was no emotional support afterwards. These women had to count on support supplied mostly by African women's savings clubs, the local community and the church. Both hearings of the CAVR and the TRC were broadcast in radio and published, turning public the atrocities committed in the country. This very public process adopted by both truth commissions distinguished them from other commissions, that either had only hearing in private or held very few public victim hearings.

The participation of women in leading positions was low in both commissions. The East Timorese commission had bigger problems to fulfil the staff positions with women workers. Even amongst the commissioners the CAVR was in disadvantage, comparing to the TRC. East Timor had two women out of seven commissioners (less than 30%) and South Africa had eight women out of seventeen commissioners (almost 50%). In Resolution 1325, paragraph 11, the UN Security Council encouraged the participation of women in truth commissions and

the creation of mechanisms to ensure accountability. In this sense South Africa, as mentioned above, was a precursor, because it had implemented this policy even before it became an international preoccupation.

Both in East Timor and South Africa, widowed women that tried to enter public life and become politically active were met with suspicion and prejudice. These women were subjected to people's judgment on their morals. "They think they are only looking for a man", explained the coordinator of the East Timorese NGO *Uma Feto*. This situation reflects in their reputation in their community, because they were expected to follow a code of behaviour, which includes keeping an aura of sadness, dressing up modestly and preserving their moral and sexual reputation.

One of the biggest differences of the South African TRC was the power to grant amnesty to individual perpetrators. As its final report noted, no other state had combined this quasi-judicial power with the investigative tasks of a truth-seeking body. Rapists were not granted amnesty. It was not due to the fact that the commission considered rape an outrageous crime, however, but because it was seen as a non-politically motivated crime and thus not part of the TRC's mandate. On the other hand, perpetrators of crimes as assassination and torture could be candidates for amnesty. Different from the South African TRC, the CAVR did not had the competence to offer amnesty. Besides, murders and rapists could not participate in the reconciliation process in East Timor. Once more, the new international conventions prevented the truth commission to act upon a gendered injustice. UN Security Council Resolution 1325 (2000) states that sexual crimes and violence against women should not be included in amnesty stipulations of peace treaties.

CAVR had a multidimensional manner to investigate the abuses suffered by women, something that did not happen in South Africa. CAVR's final report successfully presented gender-dimensions of the violence that occurred in the country. Not just sexual violence was recognized as human rights violations committed by the Indonesians, it also included domestic violence, linking this sort of violence to gender persecution during the occupation. The CAVR was original, dealing with economical, social and cultural rights violation and the suffering of women, especially the breadwinners, regarding those aspects. The commissioners have indeed addressed gender and the impact of human rights violations on women's lives. They were sensitive to the notion that women need not just physical protection, but also social, economic and sexual security.

In the context of economic rights, the East Timorese commission once more demonstrated a wider and more adequate understanding. The TRC admitted that women, in particular black women, suffered more in economic terms and were in more disadvantaged conditions. However, it did not condemn that as a human rights violation. In contrast, CAVR's final report brought a detailed report on the consequences of gender-based violence during the occupation and recognized that Indonesia violated socioeconomic human rights, affecting in particular women, during the conflict. As a consequence of this violation, women were subjected to sexual exploitation in order to provide the minimum necessary for their survival.

With regard to reconciliation and reparation, the South African TRC showed good intention but failed in a gendered perspective and the particular and diverse attention required by men and women. Once again the so-called gender-neutral basis ended up being prejudicial towards women. The special needs of women were not taken into account, namely women who had lost the male breadwinner and had to start providing for their kids, even if they had no previous working experience. Moreover, women who were unable to participate in public hearings – both due to physical impossibility, for those living in remote rural areas, and because they were not psychologically ready to talk about their suffering – ended unassisted, because they did not receive financial reparation.

The CAVR improved this model and promoted a very gender-sensitive approach. It stressed that women and men were affected in different ways during the conflict. Not only that, the commission recognized that the mitigation of human rights violations could be more prejudicial to women than towards men. In its final report, the CAVR highlighted that even if in terms of numbers there were more male victims of detentions and executions, when women were sent to prison their suffering was disproportionately higher. Once in prison women suffered more and were victims of sexual violence. Yet the suffering did not stop there, because whenever they would go back home they were object of ostracism and discrimination in their own communities. The CAVR also recognized that the agony of losing a male member of their family did not stop after mourning. The death of a

husband or father could also represent a bigger vulnerability to sexual violence, because other men would see this as the absence of a protector. Therefore, in the final report the East Timorese commissioners recommended that at least 50% of the resources for reparations should be addressed to female victims. The CAVR also drew attention to the bigger vulnerability of women to become victim of sexual violence, causing lifetime trauma.

In reality, despite the fact that the South African TRC managed a gender balance amongst the commissioners, it did not have a gendered dimension of human rights violations nor did it mainstream gender. This is one of the main pitfalls when the organizers of truth commission are merely worried about balancing the number of female and male workers. Including more women commissioners does not automatically mean better gender mainstreaming, nor that they will be effective in raising the issue. Naturally, the idea of having a balanced number of women amongst the commissioners demonstrated good intentions and good will, but it did not prevent a tangential engagement with gender mainstreaming. Therefore, the South African TRC had never truly incorporated gendered work in a substantive way.

The difficulty to integrate gendered perspectives in truth commissions and transitional justice is broader. The premise that women are automatically gender sensitive is wrong, particularly when they do not have a theoretical background on gender equality. Moreover, many women from these societies are deeply influenced by the patriarchal culture that has man as the centrepiece of all decisions and the head of the household. There needs to be more than just an increase in women's participation in the process, because it demonstrates only a superficial concern with biological differences. A wider view is necessary of the role played by men and women, associated with the perceived characteristics of being male and female. A gendered point of view should respect the relations between women in their own circles and the relations of men in their own groups.

The UN Special Advisor on Gender Issues and Advancement of Women in 2001 clarified this issue as follows:

[m]ainstreaming can reveal a need for changes in goals, strategies and actions to ensure that both women and men can influence, participate in and benefit from development processes. It can require changes in organizations – structures, procedures and cultures – to create organizational environments which are conducive to the promotion of gender equality.

The experiences of the truth commissions therefore need to be revisited in order to further understand the strengths and weaknesses. This understanding should help to improve the implementation of gender mainstreaming in future transitional justice mechanisms.

Furthermore, analysis of victim statements brought to light the difficulty of female victims talking about sexual crimes in societies that judge and discriminate women considered "impure". Shame, social stigma and humiliation are some of the main reasons for this. From both South African and East Timorese experiences it is possible to conclude that talking with a counsellor before testifying, an implementation of women-only meeting and professional psychological help are, combined, the best options to deal with this sensitive topic. Likewise, a gender-dimension of the crimes and gender mainstreaming must be amongst the preoccupations of the commission. However, this will not be reached simply by increasing the number of women working at the truth commission. It is necessary to call for the protection of women's rights and take into account the women's roles in the conflict; to combat prejudices against women victims of sexual violence and work in a policy of inclusion. Peace agreements must incorporate provisions in order to eliminate violence against women and to promote gender equality in all state institutions.

The scale of this debate is therefore extensive and multifaceted in all transitional justice mechanisms. To generate achievable policy strategies and development targets with regards to gender mainstreaming, there is a need to include more gender experts directly working in each transitional justice mechanisms, particularly in truth commissions. The participation of women activists and gender militants in the truth commission's work certainly brings great results into the process of seeking the truth and in special in the reparation policy. Moreover, the local governments should follow and implement the recommendations presented in the final report.

Even if there are histories narrating the participation of women, sadly most of the documented facts are based on male's histories. Nevertheless, the fact that some women are brave enough to break down the prejudices and fight the stigmatization is very positive. The inclusion of gender based crimes and sexual violence against women as direct human rights violation and the importance to understand the women's special needs (including economic rights), means that the gendered impact of the conflict on women is now well understood and can be better fought.

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