

<u>Responding to Sexual and Gender-Based Violence (SGBV) in conflict and early post-</u> <u>conflict situations from the framework of Transitional Justice (TJ)</u>

POLICY PAPER¹

I. Introduction to Stand with Humans

Stand with Humans is an international non-governmental organization focused on the attention of sexual and gender-based violence (SGBV) in conflict and early post-conflict situations.

The **vision** of Stand with Humans is a world with equality, where social structures that allow sexual gender-based violence to occur in conflict situations cease to exist.

The **mission** of Stand with Humans is to advocate for the protection, reparation and long-lasting empowerment of SGBV victims² in the context of armed conflict and reinforce justice as recognition.³

Stand with Humans has the following key objectives:

- Seek that both, a gender and an intersectional approach are included in Transitional Justice (TJ) mechanisms;
- Increase the participation of victims in all stages of TJ processes;
- Avoid re-victimization while implementing TJ mechanisms;
- Overcome common misconceptions and stigma regarding SGBV;
- Raise public awareness about gender discrimination.

At the international level, Stand with Humans influence the actors that work in TJ processes by means of recommendations and guidelines.

At the local level, we support and assist local civil society groups and local gender advocates and promote local networks in initiatives that contribute to achieving our key objectives.

¹ The present Policy Paper has been elaborated by Agustina Becerra, Zoe Fiscus-Doss, Yasamin Kashfi, and Valeria Reyes.

 $^{^{2}}$ Those affected may choose to be called victims, survivors, witnesses, or use any other terms by which they choose to define themselves. Throughout, the terms 'victim' and 'survivor' will be used interchangeably throughout for simplicity and due to their broad usage, but understand this term to also include any of the aforementioned.

³ We understand justice as recognition as developed by Frank Haldemann in 'Another Kind of Justice: Transitional Justice as Recognition', *Cornell International Law Journal* (2008), 675-737.



II. Policy Introduction

The context of conflict and early post-conflict transitions can pose many specific challenges for the fulfillment of human rights. Typically, actors working for the protection of human rights and their restoration in case of violation, have to face several obstacles such as security concerns, absence or weakness of State institutions and strong civil society throughout the country, commission of mass atrocities involving a wide range of actors, involvement of a wide range of external actors, as well as an extreme poverty and development needs.⁴

Stand with Humans believes that the described scenario involves particular challenges for each of the topics that our organization addresses in this paper, including gender, documentation, security and protection, victims' participation, and reparations, specifically with reference to SGBV issues.

In the first place, Stand with Humans realizes that **gender** inequality is a structural problem that exists around the world, in times of peace, transition, and war. SGBV is a way that gender inequality manifests itself during times of conflict and peace, however, conflicts may exacerbate structural gender inequalities, such that SGBV increases and is used as a weapon of war. In our view, there is a tendency among several actors to equate SGBV with rape, even when is evident that rape is not the only possible gender-based violation in the context of an armed conflict. Such a cursory glance, additionally, omits an understanding that SGBV is not only perpetrated by men, and is not always suffered by women, and that people who identify as lesbian, gay, bisexual, transgender, queer, and/or intersex (LGBTQI) may also have particular experiences of SGBV.

In terms of **documentation**, a lack of a strong civil society and high level of insecurity for human rights activists can be an obstacle to the local development of documentation of human rights abuses during the conflict. Similarly, the lack of infrastructure can make difficult the preservation of the information gathered.

Security and protection of SGBV victims can also be challenging in these situations. Stand with Humans is particularly concerned with the psychosocial wellbeing of victims, who often see

⁴ These conditions are enumerated in the UN Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Recurrence, Report to the Human Rights Council on transitional justice in weakly institutionalized post-conflict settings, A/HRC/36/50



their rights to privacy and dignity affected under the excuse of ensuring a successful transition. We strongly believe that in any case the agency of each victim to choose whether or not to participate in any particular mechanism should be respected. Stand with Humans hopes that its commitment to strive for non-recurrence of SGBV and changing the gender structures in society that allow this violence to occur is the ultimate measure of security and peace of mind for victims and vulnerable groups.

Regardless of those security concerns, Stand with Humans sees victims' participation as essential not just for the legitimacy of TJ measures, but for the aim of empowering the survivors and giving them the ownership of the TJ mechanisms. However, we understand that in the complex context are work is focused, victims of SGBV can face particular barriers to effectively participate (for instance, social stigma, lack of financial resources, language difficulties, etc.), at a personal, community, or societal level. Since we recognize victims themselves as the best source of knowledge as to what will improve their lives, we believe that victims must be equipped to ensure their meaningful participation in the transition process.

Concerning **reparations**, we believe that comprehensive, full and transformative reparation could be impossible to achieve because of lack of financial and human resources as well as infrastructure during context of transitions. Additionally, we understand that in a post-conflict society with widespread poverty and lack of development, there may exist a tension between the needs of victims and the rest of the population.

Within this document, Stand with Humans proposes a number of general recommendations applicable for a wide range of actors in ongoing and post-conflict TJ situations, as well as enumerates some specific policies, practices, and projects that Stand with Humans itself will undertake. We hope that this document, in view of the above-mentioned challenges, provides some guidance on making TJ measures in post-conflict situations more effective, especially where SGBV violations are concerned.



III. General approaches of Stand with Humans

The following general approaches permeate all of Stand with Humans' work:

Gender-sensitive approach: Gender has an impact on all aspects of daily life and transition. This approach requires understanding that structural inequalities between women and men – and among them – might have a differentiated impact in the way they experience the consequences of a conflict. As such, we insist on the mainstreaming of gender in all TJ mechanisms. When taking gendered issues into consideration, one should never consider all people of one gender identity or to be a homogenous group.

Intersectional approach: We recognize that different facets of identity, such as gender, race, ethnicity, indigenous status, religion, socioeconomic standing, disability, among others, interact in context and can contribute to creating a new and special category of vulnerability and marginalization. We push for these considerations to be part of all TJ mechanisms.

Comprehensive approach: All the mechanisms of TJ should be designed and implemented in a holistic and coordinated fashion.

Victim-centred approach: We believe TJ processes should be constructed and implemented around victims' rights and needs, and should seek broad victim participation in all stages of the transition.

Bottom-up approach/community centred: We support not only top-down and institutional approaches that many may focus on in transition, but also bottom-up or grassroots and community-driven initiatives.

Psychosocial approach: This entails promoting the wellbeing of individuals in relation to their environment. A major goal here is to avoid re-victimization of survivors in all TJ mechanisms, with the major tenant being "do no harm."

Long-term and short-term approaches: We believe in the importance of addressing short-term needs as a way to ensure the achievement of long-term objectives. Long-term goals, focusing on real societal change, are the only way that the transformative potential of transitions can truly be fulfilled.

Contextual approach: We reject one-fits-all approaches and believe that TJ must always be dependent on the particular society and conflict situation.



IV. Gender

Introduction

Believing that no field can be truly gender-neutral, but can only turn a blind eye to gendered issues,

Lamenting that women and individuals who do not conform to hegemonic gender norms can often be considered as less valuable, excluded, and silenced,

Affirming that women, men, and people of other gender identities are not homogeneous or monolithic groups,

Acknowledging that ensuring a gender-sensitive approach is challenging because of the lack of gender sensitization among actors working with (and for) SGBV victims,

Realizing that in context of conflict or early post-conflict, humanitarian issues could be seen as priorities, which can impede gender challenges to be addressed urgently.

Stand with Humans stands as follow:

Recommendations/Goals

- 1. **Prioritize gender mainstreaming and gender approaches:** We promote the mainstreaming of gender in all TJ interventions, in all stages including planning, implementation, and monitoring. While acknowledging the challenges of conflict and early post-conflict situations, Stand with Humans promotes the adoption of a gender sensitive and intersectional approach as a primary concern of States in order to ensure a lasting change (transformative potential) in the social structures that allow gender-violence to happen in the first place. These issues are to be prioritized, the same as other measures for violence reduction, and not something for governments and societies to deal with later or after transition.
- 2. **Staff training:** Education, training, and sensitization of people working within TJ mechanisms is key. We recommend that all actors intervening in TJ processes, including donors, NGOs and our own staff be trained and sensitized on gender. This initiative should not be exhausted in a one-time meeting. On the contrary, it should be implemented through a permanent training and sensitization programme.
- 3. Gender-sensitive research: Before engaging with a particular TJ project, we recommend starting gender-sensitive research in order to gather information about how



gender structures work in the specific society, and how these gender structures have been impacted by the conflict. *Understanding the nature and extent of disempowerment is necessary to empower*.⁵ It is necessary to learn about the specific situation of sexual violence survivors in each society, their needs and expectations, prior to supporting and developing strategies/measures in a specific situation.

- 4. **Donors:** We suggest that donors overcome administrative or budgetary obstacles that would impede their commitment to long-term projects. We recommend that donors support projects in which gender impacts have been analysed. We recommend that donors influence governments to mainstream gender in transitional justice processes. We recommend that donors ensure that effect is given to the gender aspects of their projects, for instance through monitoring with specific indicators and provisions to adjust the project when obstacles are met in practice.
- 5. Give effect to gender provisions and combat underenforcement: We believe that the formal inclusion of women is not enough to ensure a gender perspective.⁶ We encourage measures that give effect to gender policies and combat underenforcement, such that these provisions do not exist merely on paper, but in fact, in practice. A source of control here would be gender advocates in the field and civil society networks.

Strategies/Concrete Activities

- 1. **Staff training:** We will ensure gender sensitization training inside our organization, and will also offer it to local NGOs and state actors involved in the design and implementation of TJ measures. In order to achieve greater results, it is our intention to **network** with gender advocates in the society (for example, grassroots organizations, community leaders, political representatives, etc.) and train those persons, who would be encouraged to share the experiences learned with other members of their communities.
- 2. **Public awareness campaigns:** We would support grassroots efforts to raise public awareness through campaigns about gender disparity in societies affected by the conflict. One of these initiatives could be, for instance, an awareness-raising campaign on female genital mutilation as a practice of gender-based violence which lies at the intersection of

⁵ Becker, D., Weyermann, B., Toolkit: Gender, Conflict Transformation & the Psychosocial Approach, (Swiss Agency for Development and Cooperation: 2006), Sheet 2 <<u>https://www.eda.admin.ch/dam/deza/en/documents/themen/gender/91135-arbeitshilfe-gender-konflikttrans-psychosoz-ansatz EN.pdf</u>> Accessed 8 December 2018.

⁶ Please refer to our Policy on **Participation of victims** (Point VII of this document) to have more information about our recommendations and activities to contribute to a meaningful participation of victims.



patriarchy and gender roles, and often takes place in fragile and conflict-affected states. With a view to managing any security concerns that may arise, program could encourage dialogue between male and female participants to reach to a common understanding of the harmful consequences of the practice. We would sponsor and co-organize workshops, debates and conferences on that topic.

3. **Advocacy:** We would closely work with donors, advising them to support projects with long-lasting effects. We seek to help donors identify initiatives that, while not able to provide quick results, can promote structural changes.⁷

V. Documentation of sexual and gender-based violence in conflict settings

Introduction

Emphasizing that SGBV is a reflection of a structural problem, namely gender inequality, which could be understood only taking into account the specific cases together and not in isolation, *Recognizing* that documentation has a transformative potential and should serve not only to inform criminal prosecutions,

Acknowledging that a gap of knowledge exists at the international level concerning patterns of SGBV worldwide and that this can constitute an obstacle to accurate policy development. In many cases, this gap is filled by a number of conceptions and assumptions that may not reflect the reality of every specific situation,

Considering that uncoordinated efforts to document by several actors could generate at the same time gaps and overlaps in documentation, which entails an inefficient use of limited resources and can cause prejudice to victims,⁸

Recognizing that information gathering in ongoing conflict situations is a particular concern and that technology tools are an opportunity to tackle that issue,

Stand with Humans stands as follow:

Recommendations / Goals

1. General purposes: We recommend that documentation initiatives are undertaken with the aim of empowering victims, giving them a voice, and hearing their stories;

⁷ Please refer to our concrete activities on **Reparations for victims of sexual and gender-based violence** (Point VIII of this document) for more information about our work with donors.

⁸ Please refer to our policy on Security and protection of victims of sexual and gender-based violence participating in transitional justice mechanisms (Point VI of this document) for more information about our considerations, approaches and recommendation on victims' protection.



identifying not only individual violations but also large-scale patterns of SGBV and discrimination in the specific context; identifying basic needs of victims as a consequence of the SGBV; fulfilling victims' and societies' right to truth; influencing national discourse; and contributing to historical memory.

- 2. **Common nomenclature of violations:** We propose that NGOs and State institutions document violations taking into account the Rome Statute nomenclature⁹, regardless of the sex, gender or status of the victim and the perpetrator and regardless of the context of peace, war or transition.
- 3. **Broad cooperation**: We recommend broad cooperation among civil society organizations contributing to documentation to ensure that all types of SGBV perpetrated by all types of actors are documented. Organizations should be aware of what others are focusing on.
- 4. **Technology:** We encourage the use of online resources¹⁰ and mobile applications¹¹ which can assist individuals and civil society organizations in the technical challenges of data collection and can help them to deal with security concerns.

Strategies / Concrete activities

5. Advocacy and cooperation: We would analyze and process the information collected by our local partners with the objective of submitting this information to the judicial or quasi-judicial bodies that eventually could be in charge of accountability processes. This could be achieved through means of *amicus curiae*, reports, briefings, etc. This information could be shared with governments as well, for purposes such as informing reparations programs for SGBV victims or designing SGBV prevention measures.

⁹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), arts. 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi).

¹⁰ Such as DATNAV <<u>https://www.theengineroom.org/datnav-digital-data-in-human-rights-research/</u>> Accessed 8 December 2018; and WITNESS <<u>https://witness.org/</u>> Accessed 8 December 2018.

¹¹ For instance, we recommend use of the International Evidence Locker App, a mobile application for capturing images of violations, encrypting them, and sending to secure remote dropboxes at human rights organizations.



VI. Security and protection of victims of sexual and gender-based violence participating in transitional justice mechanisms

Introduction

Acknowledging that victims of SGBV may face particular risks through participation in certain TJ mechanisms, for instance by providing testimony to judicial mechanisms or truth commissions,

Considering the importance of adopting an approach to security that takes into account the physical and psychosocial protection of victim participation in TJ mechanisms,

Emphasizing that TJ mechanisms should seek to protect the dignity of victims, and, where appropriate, their privacy. In the same vein, those mechanisms should seek to adhere to a "do no harm" principle as a way to avoid re-victimization,

Recognizing the agency of each victim to choose whether or not to participate in any particular TJ mechanism or private initiative, despite any perceived risks or benefits,

Condemning any policy or practice in TJ processes that compromise the confidentiality of information and privacy of survivors,

Stand with Humans stands as follow:

Recommendations / Goals

- 1. **Psychosocial professionals:** We recommend that organizations working with victims make standard the inclusion of at least one psychosocial professional. This professional can address issues that may arise as the organization's staff are repeatedly exposed to secondary trauma, and can insure that staff do not harm victims in the course of their work.
- 2. Gender-Balanced Staff: We recommend a gender-balanced staff in TJ mechanisms dealing with victims of SGBV, and promote offering the victim the option to choose the staff member to which they provide testimony, in terms of how the victim feels most comfortable to interact.
- 3. **Psychosocial attention for victims:** We suggest access to psychosocial services for victims before, during, and after providing any sort of testimony. We recognize the challenges of access to psychological services in ongoing or post-conflict societies, and as such recommend that (1) States in transition invest in such healthcare structures where feasible and (2) donors take this salient need of post-conflict societies into consideration.



- 4. **Physical protection:** Where measures of physical protection are concerned, such as accompaniment by security personnel, we recommend that they be the least intrusive possible to achieve adequate security, as to facilitate psychosocial recovery and resumption of daily life for affected victims. Anonymity to protect the victim's physical security is advised where sufficient risk exists.
- 5. **First-contact assessment:** We recommend a first-contact assessment with victims, in order to determine their physical, economic, and psychosocial needs, and make referrals for appropriate services where they exist.

Strategies / Concrete activities

- 6. **Guidelines for interviews with victims:** Stand with Humans will design and disseminate a document called "Guidelines on interviewing survivors of sexual and gender-based violence." The objective of this document will be to diminish and if possible, eliminate the harm that can be caused to victims who are willing to share their experiences while participating in TJ mechanisms. This may include, *inter alia*, avoiding of overly intrusive, repetitive, or complicated lines of questioning. The document would be distributed among state and non-state actors that could be involved in working closely with victims and would be accompanied by a training on how to best use this tool.
- 7. NGO Coalitions: Acknowledging the challenges, we seek to build coalitions of local NGOs that have psychosocial wellbeing within their mandate, in order to facilitate appropriate referral of services. For this purpose, Stand with Humans will elaborate a map of local civil society organizations to work with and as a way to facilitate referring services.
- 8. Hotline for psychological and legal advice: After assessment of the particular society, and determining that access to telecommunications is possible, Stand with Humans will design and implement a hotline that would be available to address the concerns that victims may have related to their participation in TJ mechanisms, before, during and after that participation takes place. This hotline would be available as well to provide psychological and legal advice to victims, when requested. The service will be guided by principles such as confidentiality and 'do no harm'. Stand with Humans seeks to work closely with local civil society organizations to expand the coverage of this project.



VII. Participation of victims of sexual and gender-based violence in transitional justice mechanisms

Introduction

Believing that victims' participation is essential not just for the legitimacy of TJ measures, but for the aim of empowering the survivors and giving them the ownership of the TJ mechanisms,

Recognizing the need of a change from nominal participation to transformative participation which recognizes victim's power to change,

Believing that victims' participation programs cannot be "one size fits all", but rather should adapt to the context and incorporate the wishes, traditions, and customs of the local victim communities.

Stand with Humans stands as follows:

Recommendations/Goals

- 1. **Meaningful Participation:** We recommend victims' participation to be implemented since the earliest possible stage of TJ processes. Victims' participation in all stages covers the design, implementation, and monitoring of TJ mechanisms. We believe that the formal inclusion of victims is not enough to ensure a victim-centered approach. As such, victims' participation should be dynamic and continuous, and not a one-time consultation.
- 2. **Community Mapping**: We recommend community mapping as a tool for collecting information from SGBV survivors concerning their needs, desires, and also possibilities and constraints of implementing TJ mechanisms (such as available resources and infrastructure). This tool aims to provide donors a comprehensive understanding of the context in goal setting phase of designing TJ mechanisms.

Strategies/Concrete Activities

3. Awareness Raising Campaign: We will design and launch public awareness campaign,¹² in order to inform victims of the different TJ mechanisms that may be

¹² Please refer to our recommendations on **Gender** (Point IV of this document) and on **Documentation of sexual and gender-based violence in conflict settings** (Point V of this document) to have more information on this public awareness campaign.



operating in their country, and possible risks and benefits associated with participation in each mechanism. This should also include management of expectations, as to what can be realistically achieved through the mechanism. This campaign also seeks to combat social stigma and structural discrimination that limit victims' participation to develop a broader cultural understanding within the community.

- 4. **Survivors' Hearings:** With a view to reinforcing justice as recognition, we endeavor to create "Survivors' Hearings". These will be a safe environment for SGBV survivors to share their experiences, rather than merely providing evidence for a court to ascertain perpetrators' guilt. Survivors' Hearings provide SGBV survivors a place for empowerment and a network of support, through interaction with other survivors.
- 5. Victims' Network: Stand with Humans seeks to work with local civil society organizations in creating victims' networks. These networks can serve the purposes of victim empowerment, peer-to-peer psychosocial support, and exchange of advice on particular benefits and challenges of participation in TJ mechanisms. In the same vein, Stand with Humans will promote the use of that network to assess whether the TJ mechanism are working in line with the victim's needs and expectations.

VIII. Reparations for victims of sexual and gender-based violence

Introduction

Emphasizing that the State is the one who has the main obligation to repair the harm that was caused to the victims by human rights violations,¹³

Highlighting that reparations should be meaningful for victims, respond to their expectations and reflect the acknowledgement of responsibility for the facts they suffered,

Considering that reparations should be comprehensive and include: restitution, compensation, rehabilitation, satisfaction measures, and guarantees of non-repetition¹⁴,

Recognizing that restitution of the victims of SGBV to their situation before the offense occurred is not possible and could not be desirable taking into consideration that the victims existed within a society with gender structures that allowed those violations to happen,

¹³ Basic principles and guidelines on the right to a remedy and preparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, UN-General Assembly 2007.

¹⁴ Ibídem.



Further affirming that reparations should be inherently prospective and seek to transform the status of victims and empower them to move from their vulnerable and subjugated former situation;

Considering that a tension could exist between the development needs of the society at large and reparations to victims and that development or assistance policies can overlap with reparations to some extent,

Recommendations/Goals

- 1. **Rehabilitation and satisfactory measures:** We recommend reparations programs that include multiple forms of reparation to increase their legitimacy and impact for victims. Monetary compensation may be considered along with other measures. We recommend as early as possible to focus on rehabilitation (including medical and psychosocial measures as needed) and empowerment of victims.
- 2. Victims' participation: Considering that SGBV victims are not a homogenous group, reparations should adopt a participatory approach that seeks to include victims, and their different views and specific requests, in all stages.
- 3. **Prioritization:** View the context of resource shortages, we recommend prioritization strategies be explicitly addressed in the design of reparation programs. We suggest SGBV victims to be included within the prioritized groups since (i) the attention of their needs is urgent in a society that has entrenched discriminatory gender structures and (ii) their inclusion could represent an opportunity to take care of other vulnerable groups as well. We believe that SGBV is the most serious expression of gender inequality and should be addressed by the State, accordingly.
- 4. **Community reparations and development:** Reparations for human rights violations should not be confused with development or assistance measures. However, we encourage development projects that at the same time could have the power to repair victims or that can make future reparations feasible in the long-term. This may include projects or programmes in the health, education or institution building sectors. For instance, we recommend that donors invest in projects to equip hospitals to perform fistula operations for rape survivors and to provide psychological treatment.
- **5. Strategic litigation:** Where justice can be considered as a form of reparation, we recommend organizations working with victims to embark themselves in strategic litigation. Occasionally, human rights tribunals represent an ideal forum to ensure



integral reparations for victims. However, bearing in mind that litigation requires availability of human and financial resources, we consider that only the most emblematic cases should be presented to the international justice, since they provide as well an opportunity to obtain reparations that could have a greater impact, benefiting, for instance, the whole community where the victims belong.

6. Needs assessment: Due to the stigma and shame that SGBV survivors may face, they may not denounce the violations suffered, nor actively demand reparations to be provided, on the contrary, they have to be reached out to proactively. To reach this goal, Stand with Humans recommends a thorough need assessment in communities to determine the outcome survivors seek from the reparation program.

Strategies/Concrete Activities

- 1. **Cooperation, network/coalition, referral building:** Stand with Humans works as a link between the government bodies and grassroots organizations in order to transfer information of victims already identified¹⁵ that could benefit from reparation programs being implemented by the State. Stand with Humans works with local leaders and civil society organizations to develop focal points in the community to (1) identify SGBV survivors and (2) make a referral network to provide medical and psychosocial support for them.¹⁶
- 2. Advocacy: Stand with Humans encourages donors to invest in psychosocial practices and projects that address immediate needs, but also long-term change. Stand with Humans will work closely with governments and donors to inform them about NGO programs or projects with a repairing potential that they could collaborate with and support. For instance, among those initiatives we can refer to NGOs working to provide rehabilitation for victims or to ensure their political participation as a mean of empowerment. Stand with Humans, after consultation with its local partners, will create a list of programs or projects of such nature, for its dissemination.
- 3. **Strategic litigation:** Stand with Humans would seek to collaborate with local organizations working on the litigation field. The scope of this collaboration would imply the elaboration of legal reports about international standards on reparations for human

¹⁵ Please refer to our Policy on **Documentation of sexual and gender-based violence in conflict settings** (Point V of this document) to have more information about our approaches and concrete activities on documentation.

¹⁶ Please refer to our Policy on **Security and protection of victims** (Point VI of this document) to have more information about our approaches to the protection of victims.



rights violations, as a way to strengthen the victims request of reparations within judicial procedures.