

GENDER
JUSTICE
SERIES

Truth Commissions and Gender: Principles, Policies, and Procedures

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About the ICTJ

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and nonjudicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through non-judicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so. By working in the field through local languages, the ICTJ provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments and others.

The ICTJ's Gender Program

Women's experience of political violence is often neglected in transitional justice approaches. Far too often, truth commission mandates, judicial opinions, and policy proposals for reparations and reform have been written, interpreted, and implemented with little regard for the distinct and complex injuries women have suffered. Political transitions can provide an extraordinary window of opportunity for enhancing women's access to justice, reclaiming public space, and building momentum for fundamental reform. Through its Gender Program, ICTJ seeks to take advantage of this opportunity for social transformation by contributing to women's struggles for justice, voice, and historical memory.

The ICTJ Gender Program works in conjunction with the Center's country programs to integrate gender into the technical assistance provided in diverse contexts. The gender program also recognizes that there are no universal approaches to understanding and addressing gender justice issues; it works with local women's groups in diverse contexts, sharing lessons learned, pooling expertise, and creatively imagining new institutional strategies to address old wrongs. Alongside technical assistance missions, the ICTJ works with partners to identify gaps in the field and conduct research and analysis to develop a base from which to better understand issues concerning women's access to justice. This work is complemented by initiatives to develop resource materials for use by ICTJ partner organizations. Through these efforts, the Gender Program seeks to critically revisit the operational, conceptual, policy and legal dimensions of transitional justice institutions in order to enable a more reflective, gender-conscious practice in the field at large and in our in-country programs in particular.

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TRUTH COMMISSIONS AND GENDER: PRINCIPLES, POLICIES, AND PROCEDURES¹

I. OVERVIEW

A. Introduction

This is the first in a series of thematic, operational handbooks on gender and transitional justice. The goal of this series is to assist those working with transitional justice mechanisms and inform the broader processes to which they are contributing. Focusing on how transitional justice processes can better engage with women survivors seeking justice and acknowledgment, these handbooks are designed to help create institutions and processes that are responsive to the gendered dynamics of human rights abuse and cognizant of how we address these violations. This report focuses on truth commissions, and the International Center for Transitional Justice (ICTJ) Gender Program will also publish parallel reports on other transitional justice mechanisms, including legal accountability processes and reparations programs.

Truth commission processes are an increasingly popular institutional mechanism for addressing past injustice. They can document human rights violations and identify the individuals and institutions responsible for abuse while also acknowledging survivors' experiences and giving them a forum to testify about their experiences. Moreover, truth commissions are not confined to addressing a series of individual cases; they can, and usually do, investigate the enabling conditions of abuse and identify patterns of human rights violations, gendered or otherwise. On the basis of their investigations and hearings, truth commissions are often empowered to make recommendations for prosecutions, reform, and reparations. Truth commissions can be a powerful forum for catalyzing a conversation about past injustices and future redress; their findings can inform history textbooks and collective memory. Every community that has set up a truth commission has also innovated and adapted the institution to fit its own needs and goals.

From countries emerging from war to peaceful nations that carry long-term legacies of injustice and repression, truth commissions can address a broad range of contexts. Yet, in all these instances, gender roles, hierarchies, and injustices can enable and exacerbate human rights abuse in complex and varied ways. The ICTJ is particularly concerned with how gender shapes the ways in which individuals and groups experience human rights abuse, as well as paths for accountability in

“Before the 1990s, sexual violence in war was, with rare exception, largely invisible. If not invisible, it was trivialized; if not trivialized, it was considered a private matter or justified as an inevitable by-product of war, the necessary reward for the fighting men.”

—Rhonda Copelon, “Gender Crimes As War Crimes: Integrating Crimes Against Women Into International Criminal Law,” *McGill Law Journal*, November 2000

¹ Vasuki Nesiah served as lead author and researcher, but this was very much a collective effort. The report would not have the range and scope it has if not for invaluable research assistance from Mark Massoud, Elizabeth Webber, Jennifer McHugh, Bonita Meyersfield, and the Rights Link research team at Columbia Law School. Mark Massoud also played a significant role in organizing the material and conducting interviews. Thanks to Ayumi Kusafuka, Kelli Muddell, Francesca Varda, and Johanna Herman for their detailed case studies on Gender and Truth Commission in Timor-Leste, South Africa, Sierra Leone, Peru, and Haiti, soon to be published by ICTJ. Many experts in various parts of the world shared their time and insight, including Maruja Barrig, Erika Bocanegra, Karen Campbell-Nelson, Narda Enriquez, Beth Goldblatt, Sofia Macher, Julissa Mantilla, Sheila Meintjes, Gloria Ofori-Boadu, Genevieve Painter, Ana Maria Rebaza, Fiona Ross, Pancho Soberon, Yasmin Sooka, Roxana Vasquez, Rocio Villanueva, Nwanneakolam Vwede-Obahor, Galuh Wandita, and several others. This paper benefited greatly from discussion with colleagues at the ICTJ; particular thanks to Lisa Magarrell and Kelli Muddell for detailed comments and assistance on many fronts. Eduardo Gonzalez provided insights on how gender issues fared in the Peruvian process and was extremely generous in facilitating contacts with the Peruvian CVR and feminist community. Sarah Rutledge and Blaz Gutierrez provided editorial and technical assistance.

addressing those legacies. Patterns of abuse reach forward to shape future paths for justice and human rights; thus, addressing past injustices is critical to shaping the terrain for current and future struggles for justice.

However, gender is often neglected in commission processes. Few truth commissions have fully addressed gender, particularly the impact of human rights abuse on women and sexual minorities. In fact, women's groups have often criticized truth commissions for failing to appreciate the significant and specifically gendered effects of political violence. Historically, truth commission processes have failed many women. Yet women's groups have also recognized that truth commissions can provide an extraordinary window of opportunity to highlight neglected abuses, research the enabling conditions of gendered violations, provide a forum for victims and survivors, recommend reparations that redress injustices, and leave a long-term legacy that is responsive to women's history and quest for reform. This report seeks to highlight the potential stakes for many women in a truth commission's day-to-day engagement with past abuses and examines alternative strategies for addressing this history in a commission's mandate. However, being cognizant of the gendered nature of political violence is not a straightforward process of simply adding women into the equation, not least because women's identities and interests are contested and internally varied. This report is not a compendium of woman-friendly practices applicable to all women everywhere, but an analysis of the complex and diverse gendered implications of alternative practices.

B. Goals

This report is aimed at those involved in the process of setting up and administering a truth commission. This includes recruiting staff, drafting mandates, interpreting terms of reference, developing institutional structures, setting up operating procedures, planning public hearings, and writing final reports.

This handbook draws on lessons learned from those with analogous responsibilities in truth commissions around the world, as well as from the critical analysis of victim groups, feminist scholars and activists, and members of the broader human rights community who have examined how truth commissions defined and addressed gender.

This handbook does not presume that those who use it will have a background in gender activism or feminist scholarship, but it should be emphasized that this report is no substitute for including those with such backgrounds in staff positions and consulting closely with these individuals and civil society groups. This is a preliminary overview and, it is hoped, a useful starting point. However, individuals and groups in the local community will be much better positioned to deepen and expand plans for how a truth commission addresses gender issues. Thus, rather than provide an institutional blueprint for how gender should be incorporated, this handbook seeks to support those who will be grappling with the concrete operational issues that may arise. It seeks to highlight the potential advantages and disadvantages of the various approaches that have been used or considered in past commissions. This report aims to enable those involved with truth commission processes to make informed decisions regarding different operational directions in ways that are relevant to their context.

Addressing gender work in truth commissions would be much easier with a "how-to" handbook that provides a checklist with defined tasks, such as ensuring a specific number of female commissioners and staff; providing in-camera hearing options, including a gender-sensitivity module in the training sessions; and convening a gender hearing. However, the issues are complex. Dealing with gendered human rights abuse calls for context-specific analysis and strategies.

Working effectively with gendered human rights abuse requires that commission staff in different departments be fully engaged with this process, which is possible only when commissioners make an

institutional commitment to prioritize the concerns and interests of marginalized groups, including women, in the Commission’s mandate. It also requires that civil society groups be involved as supportive collaborators who can lend their expertise and commitment and constructive watchdogs that monitor the commission, work closely with survivors, build a broader support base in the community for addressing women’s experience of human rights abuse, and strategize about how to best use the opportunity the commission provides. The latter will include sustained consultation and dialogue with diverse groups of survivors, women’s organizations, and feminist scholars and activists to ensure that the process is continuously alert to exclusions and marginalization, both within the commission and in the broader history of human rights abuse.

C. Incorporating Gender in the Organizational Structure

In the early commissions, such as Chile and Argentina, gender was seldom explicitly invoked as a lens into human rights abuse or an organizing principle for the commission’s work.² More recent commissions have taken three broad approaches.

Women’s Initiative for Gender Justice
on “What Is Gender?”

“Gender refers to the socially constructed differences between men and women and the unequal power relationships that result. Gender indicates that the differences between men and women are not essential or inevitable products of biological sex differences. For more than two decades, the term ‘gender’ has been used in UN documents in this sense.”

—See
www.ytech.nl/iccwomen/wigjdraft1/Archives/oldWC/GJ/resources/gender.htm

First, some truth commissions have adopted the idea of gender mainstreaming—having gender as a crosscutting theme in all operations, from the recruitment and training of staff onward. The Ghana National Reconciliation Commission (NRC)³ stated that gender was seamlessly incorporated into the Commission’s work through its hiring practices. Advocates of gender mainstreaming may argue that this approach seeks to have gender become a relevant organizing principle throughout the commission’s life cycle in its daily work, hearings, and final report-writing process. Critics argue that without a focal point and a designated staff to address related issues,

gender can become invisible. In fact, observers may suggest that this was precisely the case in Ghana; over the subsequent two years gender was not an analytical and organizational tool in operationalizing the NRC’s work, notwithstanding some efforts at the appointment and training stage. Some Ghanaian women’s groups have argued that gender has not been a dominant feature of the Commission’s work and that the NRC has made few efforts to liaise with women’s groups and strategize around gender policy on procedures to encourage women witnesses to come forward, create wider awareness about a safe space for reporting sexual violence, ensure ongoing training for statement takers and other staff, and so on.⁴

² The Chilean National Commission on Truth and Reconciliation was established in 1990. The commission’s work stemmed from human rights abuses and disappearances during the period of military rule from September 11, 1973, to March 11, 1990. Its report was issued in February 1991. The Argentinean National Commission on the Disappeared was created December 16, 1983, to deal with disappearances during the 1976–1983 military rule. The commission’s report, issued September 20, 1984, was commercially published under the title *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas*.

³ Comments of NRC Executive Secretary Dr. Ken Attafuah at Roundtable Meeting on Gender, Truth and Reconciliation Commissions, and Human Rights, Accra, Dec. 2, 2003. The NRC was legally established on January 11, 2002, to investigate alleged human rights abuses during times of national instability and the reign of unconstitutional governments from March 6, 1957, to January 6, 1993.

⁴ Comments of Gloria Ofori-Boadu at Roundtable Meeting on Gender, Truth and Reconciliation Commissions, and Human Rights, Accra, Dec. 2, 2003.

Thus, even in many well-intentioned commissions, gender can be largely invisible in operationalizing work; at best, we may end up with ad hoc approaches—such as attention to gender in early appointments, a training session, a reference to gender, or more likely, sexual abuse, in the final report—but little systematic and sustained focus.

Second, commissions have sought to address this problem by establishing a special unit that is tasked exclusively with a focus on gender. The Peruvian commission adopted this approach.⁵ In Peru, the final report had two chapters focused on gender, one of which was largely a product of the gender unit.⁶ During the course of the Commission's work, the gender unit handled most of the operational responsibilities of gender-related work. This included convening trainings, conducting other capacity-development programs for commission officers, and doing background research on gendered patterns of human rights abuse that would eventually feed into the final report's gender-focused chapters. The public hearings on gender were convened in consultation with other women's rights groups and some contributions from the gender unit. However, apart from those hearings, the gender unit was the only arm of the commission paying attention to gender issues on a day-to-day basis.⁷ While many individual commissioners and staff members were committed to gender justice and had a history of work in the feminist movement, there appears to be wide consensus that a gender-conscious approach did not permeate the other units' everyday functioning. The rationale behind creating a gender unit was to ensure that it would serve something of a watchdog function for the commission and ensure that gender did not become invisible. However, it inadvertently worked to make gender invisible in other units.

One of the benefits of the gender unit was that some issues, particularly sexual violence, received in-depth treatment in the final report. However, it soon became apparent that much of the report was silent about gender. Toward the end of the commission's term, there was a *post facto* process of looking through the material with a gender-conscious lens and weaving in gender analysis where relevant. This was, within the parameters of what could be done at that stage, a successful process. However, looking through that material with a gender-conscious lens also highlighted the critical gaps and omissions in areas such as statement taking, investigation, and research. While there is more attention to gender in the CVR's report than in most of those that preceded it, many Peruvian feminists saw the truth commission process as a lost opportunity for a more systematic and thorough engagement with these issues. In particular, they had hoped the gender unit would help bring to light the gendered patterns of human rights abuse, comprehend the diverse ways in which Peruvian women figured in the nation's human rights history, open a national conversation about the enabling conditions of abuse against women, and use such work to mobilize institutional reform and broader political support for enhancing women's access to justice in preventing and redressing human rights abuse.

Despite context-specific pulls toward either gender mainstreaming or gender cabineting, there is value in pursuing a third approach; namely, treating gender as a crosscutting theme as well as a specific-focus area. It is a difficult approach to maintain in the everyday functioning of a commission and requires broad political support among commissioners and staff, as well as focused expertise on gender issues that will allow the application of this philosophy in the various operational areas of a commission's mandate. Additionally, close links with the feminist community can be helpful by providing critical external

⁵ The Peruvian Truth and Reconciliation Commission (CVR) was inaugurated on July 13, 2001, to investigate human rights abuses perpetrated between 1980 and 1990 by the Shining Path, the Movimiento Revolucionario Tupac Amaru (MRTA), and the military.

⁶ See Final Report, Vol. III, Ch. 2.2, on Women's Organizations; Vol. VI, Ch. 1.5, on Sexual Violence; and Vol. VIII, Ch. 2.1, on Gender Inequality.

⁷ Even when commission staff faced issues of sexual harassment or gender discrimination, they often went to the gender unit, so the establishment of the unit may have also helped to underscore a particular kind of ethos in the commission's office that there was some institutional intolerance of sexism in the workplace.

pressure to sustain that institutional commitment and feeding in expertise developed through long-term experience in the field of women's rights. Some observers urge that the Commission's gender work would have had greater depth and wider reach if it had established and sustained these links with the Peruvian feminist community.⁸

While the CVR may have slid into a cabineting approach in many areas, the dual-track philosophy that it originally aspired to informed the final report in the concluding phases of the commission's term. Thus, in addition to getting focused attention, gender weaves in and out of all the volumes as a crosscutting theme. Gender is a running thread in discussions about political history, institutional hearings, individual human rights abuse, and patterns of human rights abuse, as well as in recommendations for reparations and reform; all this is in addition to the two chapters that focus specifically on gender and sexual violence. Thus, the final report offers an important glimpse of how gendered structures and ideologies shaped the human rights history of Peru. A similar "combination approach" has been followed—perhaps in even more interesting ways—in Timor-Leste.⁹ There, the focus has been not only on sexual violence, but also on a multifaceted understanding of women's experience of human rights abuse. To some extent, the Timorese CAVR was able to use a gender unit housed in research to stretch across the Commission and feed into a wide range of areas, from statement taking to public hearings; this crosscutting input was enabled because it had a committed and creative gender team, close collaboration with strong women's groups outside the Commission, and support from the UN in hiring policy and other key areas.

Relying solely on a gender-mainstreaming strategy may mean that gender gets lost in the shuffle because no one bears responsibility for addressing these issues. As with the Ghana NRC, even a well-meaning commission may end up fundamentally neglecting gender issues. On the other hand, an approach that treats gender issues only as a specific-focus area may end up ghettoizing gender and channeling all energies into the gender hearings or gender chapters of the report, and insulating the rest of the commission's work from any responsibility regarding a holistic, gender-conscious approach. In contrast, the combination approach has much to support it. However, it can be costly and time intensive, and a commission with limited resources may not have this luxury. In fact, in contexts with no active feminist or gender-rights community, this approach may not even be an option. Moreover, we cannot *a priori* assume that gender has to be addressed in this way in all commissions. As noted in discussing the Greensboro Truth and Reconciliation Commission (TRC),¹⁰ in each context the focus and structure of a commission's work on thematic issues should be defined through a multidimensional analysis of the community's fault lines and political struggles. This intersectional analysis will always involve difficult decisions regarding resource allocation that must look not only at gender, but also at issues such as political position and/or affiliation, ethnic group, regional location, sexuality, religion, or socioeconomic class.¹¹

⁸ One of the reasons why these links were difficult to establish and sustain is that historically, the human rights movement and the women's movement have traveled different paths. Julissa Mantilla, head of the gender unit, says, "There has always been a clear separation between the human rights community and the feminist community. This could be noticed if we review the reports and the agendas of human rights NGOs and feminist organizations, during the time of the armed conflict." Many others in Peru echoed this analysis.

⁹ Commission for Reception, Truth and Reconciliation (CAVR) was established July 13, 2001, by the UN Transitional Authority in East Timor to investigate human rights abuses committed between April 1974 and October 1999 to facilitate reconciliation and reintegration and recommend actions to prevent further abuses and address the needs of victims.

¹⁰ The Greensboro Truth and Reconciliation Commission was established to examine the events of November 3, 1979, when members of the Ku Klux Klan and American Nazi Party opened fire on a racially mixed gathering of political activists and labor organizers, killing five and wounding 10 others. The commission was seated and its commissioners were sworn in on June 12, 2004.

¹¹ Appendix 1 addresses key methodological issues that underlie the approach taken in this report. This section addresses central issues such as how the report defines what constitutes "gender analysis."

II. ADDRESSING GENDER IN A TRUTH COMMISSION'S WORK

This section provides a more operationally focused discussion to assist those who want to address gender in a truth commission's work. The following topics are addressed:

- Mandate definition and interpretation of human rights violations
- Appointment and recruitment of commissioners and staff
- Training
- Relationships and consultations with non-state actors, including women's groups and the media
- Statement taking
- Investigations in establishing crimes and their enabling conditions
- Research
- Hearings—public, in-camera, individual, and thematic
- Final report writing
- Recommendations for reparations and reforms

These topics do not provide a comprehensive overview of the various elements of truth commission work that warrant attention to gender-related issues. Rather, they are key issues about which we have developed some lessons from past truth commissions. Moreover, there is much more to understand regarding these topics, and undoubtedly many contexts will raise other, equally key issues that have yet to be addressed.

A. Mandate Definition, Interpretation, and Implementation

1. Does Truth Have a Gender?

“Too 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 judgments are made.”

—Cheryl de la Rey
South African TRC women's
hearings, Final Report,
Vol. IV, Ch. 10

Early in the life of the South Africa Truth and Reconciliation Commission (TRC),¹² the Legal Resources Center organized a workshop on the topic, “Does truth have a gender?” The process of defining the terms of a commission's mandate, the “truth” that it is aiming toward, is a high-stakes political terrain. Unfortunately, drafting decisions are often made in a forum where women and other marginalized groups are underrepresented and their rights and interests are neglected. In many contexts, women's issues are marginalized in legislative assemblies, the media, and the public sphere at large; even the human rights community has a mixed record.

Ideally, truth commission mandates should be determined through open, consultative processes that pay particular attention to marginalized communities. Wide input from survivor/victim groups, activists, and scholars working on women's issues can be critical in determining how human rights are defined and how a commission establishes goals and priorities. In many contexts, such groups have monitored periods of conflict and authoritarianism for their impact on women, and their insight into this process can be critical in determining priorities and approaches.

¹² The South Africa Truth and Reconciliation Commission was established in 1995 to investigate apartheid-era abuses between 1960 and 1994. The Commission's Final Report was presented to former President Mandela in October 1998.

A broader debate runs through many commissions between legalistic understandings of truth as a verifiable, forensic fact regarding an act that constitutes a gross violation of human rights, and the structural, intersubjective, and dialogical understandings of truths as, invariably, plural, partial, and contested. This may be central to the aspirations that women's groups have for a commission's work. On the one hand, there may be a push toward an authoritative verification of the gendered history of human rights abuse; on the other hand, there may be an interest in exposing and criticizing dominant claims to authoritative truth to underscore how truth is often partial, contested, and a matter of historical struggle, rather than scientific proof.

In many contexts, the process of demystifying established truths is accompanied by an effort to build more inclusive histories that better address women's experiences and priorities. Some mandates have been criticized for advancing a narrow and partial truth that focuses on bodily injuries by state actors or militants aspiring to state power. For example, in South Africa women were denied active citizenship under apartheid, and the human rights violations they suffered were often located in the private sphere or domesticated into the "ordinary" violence that forced removals and group-area legislation deployed to segregate living and working conditions, rather than the "extraordinary" violence of torture and disappearances. Thus, the truth commission's focus on the latter has been said to fundamentally misrepresent women's experience of apartheid and skew the truth.

Regardless of whether a commission's mandate explicitly calls for an examination of the gendered history of human rights (as noted, many mandates have gender-neutral language), this question highlights a debate that has been central to mandate implementation in a range of truth commissions. On the one hand, if truth is understood as facts that speak for themselves without reference to context, some argue that "engendering" may bias and compromise the truth. Truth by definition must be gender blind; objectivity is precisely its value. On the other hand, if "truth" is understood as emerging from particular contexts where some perspectives and experiences have been excluded from dominant understandings of the historical record, then situating it in the dynamics of gender may be an effort to demystify received truths and make space for new ones that have been marginalized in the public sphere. This approach pays particular attention to seeing the commission as an initiative to contest dominant truth and highlight previously suppressed truths. In fact, in this interpretation, ostensible gender neutrality is invariably a default position that privileges male experiences of human rights abuse.

"International instruments and the machinery for reconstruction and conflict prevention must be made responsive and relevant to women across those continents where armed conflict tears their lives apart. As with all institutions, international law and standards are only as good as their implementation and application."

—Jane Barry, "Rising Up In Response: Women's Rights Activism in Conflict"
Women's Action Fund, 2005

The early Latin American commissions were largely in the first gender-neutral school; commissions in Argentina and Chile did not see gender as a critical dimension of truth seeking. By the time the Guatemalan commission produced its final report, we begin to see a shift to the latter school.¹³ Commissions in countries such as

¹³ The Guatemalan Historical Clarification Commission (CEH) was established June 23, 1994, to investigate human rights abuses occurring during the country's 36-year armed conflict. The commission's final report, "Guatemala: Memory of Silence," was publicly presented on February 25, 1999. The Argentinean and Chilean reports were issued in 1984 and 1991, respectively.

Guatemala, South Africa, and Peru paid particular attention to gender, even though their mandates were formally gender neutral. In countries like Haiti,¹⁴ Sierra Leone,¹⁵ and Timor-Leste, gender or sexual violence was explicitly incorporated into the mandate, and these topics were identified as critical avenues of investigation.

Increasingly, regardless of whether the mandate explicitly calls for it, commissions are examining the structural gender biases through which some facts emerge as critical to the historical account and others fade into the backdrop of the private or domestic arena, and where some actors' agency is recognized and privileged and others fade into the anonymity of spouses, mothers, and sisters. After it was appointed and before it launched operations, the Peruvian CVR took several months to focus on how it would interpret its mandate. It acknowledged that the mandate was not a self-evident piece of black-letter law, but one where contested interpretations were possible. International law can be a useful instrument in aiding a gender-inclusive interpretation and was invoked toward that end in Peru. After a dual process of internal dialogue and outside pressure from feminists through position papers and other input, the Commission interpreted its mandate to include women's experience of the conflict. Thus, a gender unit was established, and one of the authors of an influential position paper arguing against gender neutrality was recruited to head it.

Attention to gender issues in mandate interpretation highlights the links between truth as a product of truth commissions and truth-seeking as a process that takes place through public hearings, statement taking, translations, coding, and other operational initiatives. The latter are not apolitical institutional tasks, but contribute to a technology of truth—organizing, classifying, and filtering information to deliver what the commission process recognizes as truth. Thus, there are high political stakes in the operational decisions that determine statement-taking forms, investigative practices, and public-hearing procedures. In recognition, women's groups have focused attention not only on what the mandate says, but how it is interpreted and operationalized in day-to-day institutional practices. For example, there have been efforts to enhance access to the technology of truth to empower women as truth tellers—in submitting statements as witnesses, narrating experiences in public hearings, making contributions to thematic hearings on the subject, feeding research and commentary into the final report, and so on. In addition to enhancing the truths that emerge in the final report, there is a sense that this focus on process has value in enhancing women's access to justice.

“There can be no question that acts of rape may constitute torture under customary law.”

—*Celibici case*
Judgment of the Trial Chamber
The Hague, Nov. 16, 1998,

2. Defining Human Rights Violations

Most truth and reconciliation initiatives have focused on killings, disappearances, custodial torture, and abductions or illegal imprisonment—bodily injury crimes that are customarily referred to as gross human rights violations. These are important issues for any truth commission. Indeed, investigating egregious crimes may help to expose the reality of gender-based torture, including rape, genital mutilations of men or women, or forced sexual violence against prisoners of both genders. Defining human rights victims in terms of harsh bodily injuries, the Sierra Leone TRC found that approximately 35 percent of adult victims and 45 percent of child victims were female. But

¹⁴ The Haiti National Truth and Justice Commission was established December 1994 to investigate human rights abuses in the period after the coup in September 1991 until Aristide's return to power in September 1994. It delivered its final report and recommendations in February 1996.

¹⁵ The Sierra Leone Truth and Reconciliation Commission was enacted by Parliament in 2000 to investigate human rights abuses and “address impunity” arising during the armed conflict beginning in 1990. The final report was transmitted to the president of Sierra Leone on October 5, 2004, and to the UN Security Council on October 27, 2004.

harsh bodily injury alone may not address the principal dimensions of women's experiences of human rights abuses. In fact, as noted above, a focus on gross violations and harsh bodily injuries may even distort the stories that commissions tell. The South African case history of privatized and structural abuses against women is not isolated. In many contexts, bodily injury provides too narrow a lens into women's experiences of authoritarian regimes; other aspects of human rights-abusive contexts, such as the extreme vulnerabilities and structural inequalities created by systems of war or repressive rule, affect women in disproportionate numbers and in ways that have far-reaching human rights implications. Yet, developing this multifaceted focus has been a challenge.

Moreover, when bodily injury is the focus, women's experience of human rights abuse is often reduced to sexual violence. The reasons for excluding or marginalizing other dimensions of women's experiences may range from the dynamics of media sensationalism to a commission's inadequate capacity for multidimensional gender analysis. This broad bias toward equating human rights abuse against women with sexual violations may be a problem even with relatively well-resourced commissions. For example, the Peruvian CVR has been extraordinary in many respects, and feminists have recognized and appreciated that. However, for much of its tenure the Commission's research and investigation of women's experiences of political violence focused primarily on sexual abuse and rape, and one of only two gender-focused chapters of the final report dealt exclusively with sexual violence. The focus on sexual abuse is an important achievement and using the context of extraordinary violence to draw attention to an endemic problem also helped Peruvian feminists draw the "links" and break the silence on "the daily sexual abuse women are suffering in their homes and in the streets," and, moreover, open a window into examining a "church-dominated discourse on sexuality."¹⁶ While appreciating the enormous reach of this intervention and welcoming the work on sexual violence, feminists have pointed out that sexual abuse alone may not adequately capture the complexity of women's experience of political violence in Peru and women's priorities for justice. In particular, they have worried that neglecting other issues has led to the deprioritization of several important dimensions of women's lives and struggles from the human rights radar screen, such as the experience of internally displaced women, women who became sole breadwinners as a result of human rights abuse against spouses, women refugees who fled to other countries, or women prisoners. As noted above, when the final report went through its internal revisions to *post facto* mainstream gender analysis, the primary task was to also address the gender dimensions of internal displacement, prison conditions, and other related issues. Thus, even if gender was not well integrated into all of its operations in the course of the commission's work, the final report, while still

During armed conflicts, women are susceptible to marginalisation, poverty and suffering, with existing inequalities and patterns of discrimination tending to be exacerbated. Whilst the impact of armed conflict on women differs considerably between contexts and between individual women, it is possible to identify common characteristics: widespread sexual violence, the extreme burden which war places on women to ensure their own survival and the care of children and the elderly, and the challenges that war brings to women who decide to take up arms.

Armed conflict may be accompanied by increased trafficking of women for use as combatants, for forced prostitution and for slavery. Girls are vulnerable to recruitment as child soldiers and to being abducted by armed groups to act as sexual and domestic slaves. Girl soldiers and other female combatants tend to be excluded from demobilization programmes, and to face greater stigma within their communities after hostilities.

—Geneva Center for the Democratic
Control of Armed Forces,
"Women in an Insecure World," 2005

¹⁶ Comments of Maruja Barig, Sept. 14, 2005.

giving relatively more weight to sexual violence, does a more commendable job of including it in the multiple dimensions of political violence in Peru. Thus far, the most wide-ranging attempt is the Timor-Leste CAVR, where gendered research and analysis have been conducted in regard to sexual violence and to other thematic areas, including violations of socioeconomic rights.

While sexual violence is critical, it does not capture the complex and multidimensional ways in which women experience abuse. Moreover, representing women's violations as only sexual abuse perpetuates more widespread prejudices that reduce women to sexual beings alone.

B. Appointment and Recruitment

Appointment and recruitment policy for commissioners and staff combine a search for professional expertise in a range of disciplines, with longstanding experience in the human rights community. In addition, some degree of gender balance is usually a criterion. In most situations it is important to incorporate gender-based criteria with factors such as class, political affiliation, ethnicity, and region. Among other advantages, having more women on staff may make a commission less alienating for female victims. This starts with statement takers, who are often the first point of contact. Gender may be equally relevant for other staff positions,

<u>Number of Women Commissioners: Comparative Figures</u>	
Ghana:	4 of 9 commissioners
Liberia:	4 of 9 commissioners
Morocco:	1 of 17 commissioners
Peru:	2 of 12 commissioners
Sierra Leone:	3 of 7 commissioners
South Africa:	7 of 17 commissioners
Timor-Leste:	2 of 7 national commissioners 10 of 29 regional commissioners

including those who have responsibilities for community liaisons, investigations, legal and psychosocial support, and, perhaps most important, the commissioners themselves. While there have been no systematic studies, in a range of commissions, female commissioners have taken the lead in offering a supportive and affirming environment for female victims.¹⁷ This has been said of the dynamics of public hearings in the Ghana NRC, where three of the nine commissioners were women, despite the fact that female commissioners were from a radically different social stratum than most petitioners. Having strong female commissioners with legitimacy in the women's community was also critical in South Africa. There, the TRC responded to calls from women's groups by instituting women-only hearings chaired by the female commissioners to hear from women who wanted an all-female forum. In fact, female commissioners had to struggle to persuade their male colleagues of the critical importance of modifying their established approach to public hearings and creating special provisions for women's hearings.

Gender balance alone is an insufficient indicator of whether a commission will adequately address the human rights abuses women have suffered. Internal power dynamics among commissioners can be critical in determining which issues get prioritized. It is equally true that one cannot assume a homology between the gender of commissioners or staff members and their ability to empathize with women victims, or their sensitivity to a gendered analysis of political violence. Thus, in addition to the other qualifications, it also is important to probe how potential candidates (male and female) approach gender issues.

¹⁷ Comments of Dr. Ken Attafuah, supra note 3.

Women’s Initiative for Gender Justice on “What Is Gender Balance?”

The Beijing Platform for Action calls for equality in decision-making and gender balance on international institutions. Gender balance is not quotas. Rather, it refers to a balanced composition of women and men in order to bring equality to the current male-dominated international institutions.

Governments have committed themselves to:

“establishing the goal of **gender balance** in governmental bodies and committees, as well as in public administrative entities, and in the **judiciary...**” (para. 190(a))

“aim at **gender balance** in the lists of national candidates nominated for election or appointment to United Nations bodies, specialized agencies and other autonomous organizations of the United Nations system, particularly for posts at the senior level.” (para. 190(j))

“integrate a gender perspective in the resolution of armed or other conflicts and foreign occupation and aim for gender balance when nominating or promoting candidates for **judicial and other positions in all relevant international bodies**, such as the United Nations International Tribunals for the former Yugoslavia and for Rwanda and the International Court of Justice, as well as in other bodies related to the peaceful settlement of disputes” (para. 142(b))

—Beijing Platform for Action

The UN General Assembly called upon Member States to “commit themselves to **gender balance**, inter alia, through the creation of special mechanisms in all government-appointed committees, boards and other relevant official bodies as appropriate, as well as in all **international bodies, institutions and organizations**, notably by presenting and promoting more women candidates.”

—UN General Assembly Resolution 51/96, Dec. 12, 1996

This process may take into consideration not only whether candidates express entrenched bias, but also how they perceive the gendered impact of human rights abuses, the role they consider appropriate for women’s groups (and more broadly, civil society) in the commission’s work, and so on. In many contexts, candidates’ perspectives on these issues may be more critical than gender composition alone. Moreover, this may underscore the accepted wisdom about the appointment of commissioners through a transparent and consultative process with wide input from different sectors of society, with particular attention to marginalized groups. In Timor-Leste, the appointment process included the formal involvement of women’s groups, and a local women’s group, FOKUPERS (Communication Forum for Women in Timor-Leste), had a significant impact.

C. Training, Internal Discussions, and Gender Consciousness

Not all staff members have experience addressing gendered human rights abuse, and particular issues in truth commission processes make training advisable for everyone. In some contexts, such training is catalyzed by outside groups, while in others the commission may take the initiative. In Sierra Leone, the

“Perhaps someday the integration of and respect for gender expertise will become routine, dispensing with the need for continued monitoring by feminist attorneys and activists. That day is still far off.”

—Rhonda Copelon,
“Gender Crimes As War Crimes: Integrating
Crimes Against Women Into International
Criminal Law”
McGill Law Journal, November 2000

UN Development Fund for Women (UNIFEM) and the Urgent Action Fund for Women’s Human Rights facilitated training for the TRC. In Ghana, the executive secretary arranged training.¹⁸ In Timor-Leste, initial orientation was complemented by periodic training sessions that included participatory discussion forums.¹⁹ Trainings should cover at least the following five areas: (1) the history of gendered patterns of human rights abuse; (2) approaches to statement taking and data collection; (3) investigations sensitive to the particular complexities of gender abuse; (4) public hearings with women witnesses and hearings with men or women reporting on gendered or human rights abuses, including thematic hearings on the subject; and (5) final

report writing. Such training would be directed not only at apprising staff of issues, strategies, and approaches that may help address women, but also on differences in terms of race, sexuality, and socioeconomic status, and how best to appreciate and respond to this diversity. These proactive efforts may be necessary for women to feel comfortable coming to the commission and giving statements about the human rights abuse they suffered, witnessed, or perpetrated, and for the commission itself to better reflect on and respond to the gendered pattern of human rights abuse in its ongoing work.

Gender sensitivity may be on the checklist of training topics that the commission runs through in its early days of operation, but might fade into the background as operational pressures take over. This can be problematic for many reasons. First, many commissions have to recruit new staff during the course of their work, and because of their late recruitment these staff members will not benefit from early training. Second, gender highlights the need for ongoing training to ensure that issues remain on the commission’s radar screen. In many commissions, the majority of commissioners and staff have not had extensive and rigorous exposure to the history of women’s human rights abuse or even to a critical and vigilant approach to gender bias. Thus, a one-time session may not be sufficient to raise consciousness; systematic training is critical. Similarly, there could be an ongoing program of internal discussions on the different thematic areas addressed by the commission that have particular relevance to the history of women’s human rights abuse. These initiatives can also help establish an institutional culture that is cognizant and supportive of women’s issues and self-reflective about how it addresses these issues in its operations.

¹⁸ Id.

¹⁹ See Ayumi Kusafuka, “Locating Lost Voices: The Emerging Truth of Gender Violence in Timor-Leste,” Aug. 2006, available at www.ictj.org.

D. Relationships and Consultations

1. Women's Groups and the Feminist Community

Consultation and dialogue with the broader community of women's groups, feminist academics, and activists in defining and implementing a commission's mandate can often be a key factor in developing a commission's operational philosophy and practice. It can also help ensure that a commission's long-term legacy includes attention to the gender map of human rights abuse. Commissions can create more institutional openness by having ongoing consultations with the feminist community, and relying on women's groups for assistance in soliciting statements, training statement takers, preparing gender hearings, and developing proactive outreach to female victims of sexual violence. The feminist community can also play a critical role in developing analysis of the gendered pattern of human rights abuse in ways that can help the commission plan its work and prepare its analysis for the final report. In a range of commissions, women's groups have made formal submissions to truth commissions, while others have worked behind the scenes and even assisted in analyzing the results of the commission's research, hearings, and statements to read and comment on relevant aspects of the final report.

In contexts where the traditional human rights community and activists and scholars who work on gender issues have little overlap, it may not be immediately apparent that the commission process is relevant to gender issues. In countries as diverse as Morocco, Peru, and Ghana, early workshops on the truth commission process brought in civil society groups such as victim organizations, human rights advocates, religious bodies, and NGOs working on democratization and rule of law, but few—if any—that identified themselves as feminist or as working on women's issues. Such contexts may require proactive outreach to dialogue with women's groups regarding mandate interpretation and related issues; in turn, women's groups could also initiate that discussion. Some commissioners and staff are particularly receptive to these issues; they may welcome, and perhaps even rely on, the work of women's groups in bringing gender issues to the foreground.

Experience indicates that forging and maintaining relationships with civil society can be an uphill battle for a truth commission. Commissions are generally limited in resources and also under heavy deadlines or expansive mandates. In that context, liaising with civil society may be perceived as yet another burden. However, many truth commissions have found that civil society groups—particularly human rights organizations, victim-support groups, and research institutions—have actually eased their burden. These groups have provided volunteers, assisted with training, submitted briefing papers on issues where they have particular expertise, and brought in international experts through transnational civil society networks. In some cases, they have lobbied for government and aid agencies to provide more resources and led public campaigns for governments to implement commission recommendations.

Ways That Women's Groups Have Engaged in Commission Processes

- Advocacy, including appointing commissioners with expertise in gender issues, foregrounding gendered patterns of human rights abuse in mandate interpretation, and making provisions for gender parity in recruitment
- Training for commissioners and staff that conveys information on women's rights, provides guidelines on gender sensitivity in different aspects of a commission's work, counters gender bias among staff, and generally develops greater gender consciousness
- Developing staff manuals in areas such as investigation of gender crimes and gender-sensitive statement-taking procedures
- Support to women victims/witnesses in preparing statements and providing testimony
- Strategizing with feminist activists and scholars about how to engage with the commission's work and maximize the opportunities created in the transitional justice processes
- Outreach to constituencies encouraging women to submit statements and participate in the commission's work
- Sharing analyses of gendered patterns of abuse, as well as their enabling conditions and impacts
- Sharing analyses of national and international legal framework relevant to different dimensions of human rights abuse that women have suffered
- Sharing analyses of lessons learned/comparative information on how other commissions have incorporated gender into their work
- Sharing oral history archives and case files of women's testimony on human rights abuse
- Providing input into the structure of statement-taking forms, the development of the database, the planning of public hearings, and media outreach to women
- Seconding staff for statement taking, investigations, research, and other commission functions
- Participating in public hearings through mobilizing women and providing expert testimony
- Contributing expertise to research and final report writing, including collaboration on writing sections of the report
- Ongoing monitoring and evaluation of commission's attention to gender issues in all aspects of its work
- Sharing recommendations for reparations and reform that pay specific attention to gender issues
- Analyzing the commission's caseload to identify cases and develop strategies for the prosecutions for gender crimes
- Helping disseminate the commission's report among women, including excerpted sections that focus specifically on women's testimony
- Critically analyzing the commission's work, including the final report's analyses of gender issues, treatment of women's testimony, or recommendations for reparations and reform; disseminating analyses
- Developing supplemental reports to address areas where the commission's work failed to address women's experiences of the conflict and rights to voice and redress

This range of support activities has been particularly significant in the area of gender, where commission staff may not have sufficient expertise, or in cases where expert staff are overstretched and need external assistance. The Timor-Leste CAVR was particularly open and proactive in establishing these civil society partnerships. Women's groups conducted joint research projects that fed into a range of commission activities, including the final report. Women's groups also worked with the CAVR on gender hearings and broader victim-support needs. Groups that have longstanding relationships with certain communities

of women affected by human rights abuse may have established relationships of solidarity and commitment that they can build on in drawing these women into a truth commission process. This could range from helping to prepare statements to facilitating support and advocacy networks around issues such as reparations. In Timor-Leste, links with women's organizations were critical in helping an overstretched commission produce an impressive body of work on the gendered pattern of human rights abuse.

Civil society can also be critical in highlighting neglected issues. In South Africa, the TRC developed a more systematic approach to gender issues through a briefing paper submitted by women's rights activists and scholars.²⁰ This paper also helped some commissioners to campaign for the development of policy on women victims and influenced the direction of that policy, which found its way into the final report. In Peru, issues regarding sexual minorities were incorporated into the commission process when a few staff members stumbled on some evidence of targeted homophobic violence and sought out the input of gay and lesbian advocacy groups, which had been addressing this issue for several years.

Yet, as noted above, direct input of gender issues was more limited in Peru than expected in a country with such a vibrant, sophisticated feminist community. In fact, some voices in the feminist community believe that this had adverse consequences for the CVR's work. Some groups working on the issues of indigenous women²¹ maintain that the Commission did not do sufficient work on the gendered dimension of displacement, loss of primary wage earners, and other issues for women in these communities, even though indigenous groups were by far the largest percentage of victims in the conflict. In fact, there were complaints against the gender program for being too exclusive; many in the feminist community have urged that the shortcomings could have been corrected if there was more collaboration with women's groups.

Instituting cooperative agreements or guidelines and holding regular meetings with civil society representatives (including women's groups) may help to keep the process transparent and ease tension or disagreements between nongovernmental groups and the truth commission. Also, because competition among civil society actors for access and influence with truth commissions will be particularly keen in countries where repression has muffled voices and stifled access to justice, the commission must ensure fair representation and equitable roles. Some may want to develop information-sharing protocols between various actors and between the truth commission and civil society. These actions, conducted as soon as possible after the mandate is adopted and prior to hearings, will provide a truth commission access to civil society groups affected by human rights abuse or help in working on advocacy and support. These relationships will also help truth commissions anticipate problems or provide a framework to deal with issues quickly.

Institutional openness to input and collaboration can be key to proactively establishing a commission's responsiveness to those issues and to voices that address the gendered patterns of human rights abuse. This ensures ongoing advice and collaboration that can shape a commission's work and helps a commission build legitimacy with victims. As independent civil society voices, such groups may be allies *and* critics, but this is an opportunity, not a threat: every commission that has been receptive to interventions by women's groups has addressed gender issues in complex, compelling, and relevant ways.

²⁰ Beth Goldblatt and Sheila Meintjes, "Dealing with the aftermath: sexual violence and the Truth and Reconciliation Commission," *Agenda* 36: 7-18, 1997.

²¹ We use the term "indigenous" for ease of reference; these were primarily (although not exclusively) Quechua-speaking communities.

2. Media

The media often helps define the tenor and content of truth commission processes in the public sphere. While commissions may have their own public relations departments or public-education strategies, media institutions often influence how the commission's work is perceived in the broader community. This may be accomplished through coverage of public hearings via live transmission, editorials, feature articles, interviews, or special programs that highlight various aspects of a commission's work. In particular, media coverage can be critical regarding how petitioners and commissioners are represented.

Truth commissions may work with the media on the quality of the information disseminated, the target audience, and the best format for dissemination and related issues. The Peruvian CVR, for example, worked with NGOs and the media to produce materials in a variety of formats to maximize the impact of information dissemination. Similarly, the Timorese CAVR undertook a range of outreach efforts, such as disseminating videos on the Commission's work in rural communities, publishing materials to raise awareness, and convening discussion forums on the commission's work. The Commission also targeted women by liaising with women's groups in different parts of the country and publishing articles stressing the importance of women's histories being part of the CAVR process.²²

Truth commissions may want to work with media to ensure that their message is transmitted to marginalized groups through newspapers publishing in local dialects, women's radio programs, and advertisements in popular television shows. The content of a media strategy is also important. In some cases, the media may speak solely of sexual violence in reporting on the human rights abuses suffered by women. In the former Yugoslavia, it was well established that "the story" of the war was rape, and there was little media interest in the other kinds of abuse women had suffered as ethnic minorities, refugees, and political dissidents. Thus, truth commissions may have to disseminate information about the multiple ways in which women have suffered and, concomitantly, in conveying the multiple roles women have played in contexts of mass human rights abuse. On the other hand, in many commissions women do not readily come forward to submit statements regarding the abuse they have suffered. Some victims of sexual violence may be particularly reticent about going public with their experiences. A proactive media strategy establishing the commission as a safe space, including information regarding its specific protocols (such as women-only and in-camera hearings), will be critical. There also may be a need to work with the media in reporting on sensitive issues. In Ghana, soon after the establishment of the NRC the media agreed to a public contract about responsible reporting; this included a commitment to democratic principles, balanced analysis, sensitivity

"Women in news appear in a narrow range of roles—often as victims or to provide expression of emotion."

—UN Commission on the Status of Women, March 2003
Forty Seventh Session, Panel I:
Participation and Access of Women
to the Media, available at
[www.un.org/womenwatch/daw/csw/
csw47/Panel-Gill.pdf](http://www.un.org/womenwatch/daw/csw/csw47/Panel-Gill.pdf)

"Journalists and TV crews would come, always with the same question: "Are there any women here, who were raped?" I mean, as if one could divide women between / those who were raped and those who weren't! As if they were in some sort of display!"

—Nusreta Sivic on the Omarska Concentration Camp,
Calling the Ghosts
Mandy Jacobson and Karmen Jelincic
Women Make Movies, 1996

²² See Kusafuka, *supra* note 19.

to victims, and avoidance of sensationalism.²³ Some victims of sexual violence do not come forward because they see their injury as private, rather than political. A truth commission might consider launching a media campaign to clarify its mandate, including its classification of crimes such as sexual violence as political issues within its purview, and emphasizing its commitment to including the experiences of women and other marginalized groups in its record.

E. Statement Taking

“In Sierra Leone, for example, one activist explained that some women and girls were afraid to inform the Truth and Reconciliation Commission (TRC) about their experiences for a number of reasons. ‘[T]hey’re also afraid that the perpetrator will hurt them. Because we have all talked about peace, let’s live again and have peace ... and I know that that’s no peace. The guns going silent is not peace. You cannot force reconciliation...it is something that has to come from in here. So the women were afraid...we have a culture of silence, you are brought up not to talk, to keep quiet, you have to only talk when you are asked to, so if you go on talking then you are only going to create more problems.’”

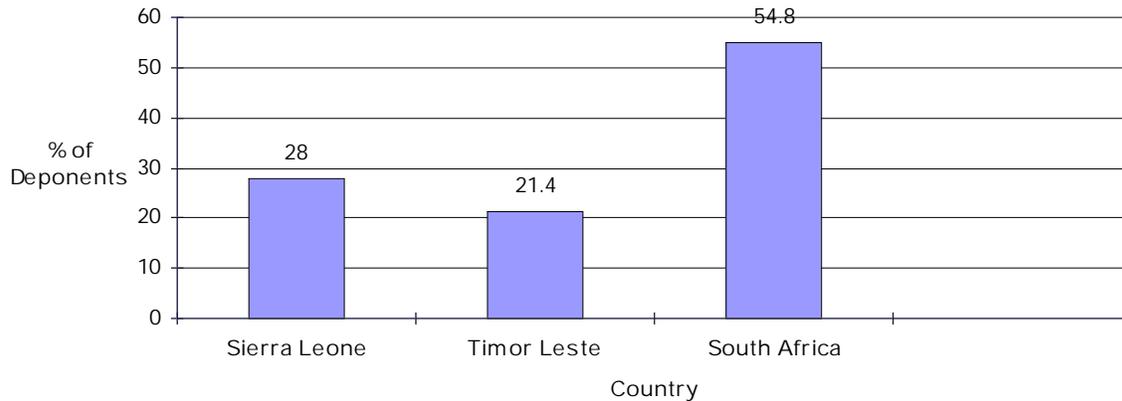
—Jane Barry, “Rising Up In Response: Women’s Rights Activism in Conflict,”
Women’s Action Fund, 2005

A truth commission usually begins its operations by taking statements from individuals. The vast majority of work lies in recording the actual stories; generally, only 10 percent or fewer actually proceed to public hearings. Statement taking occurs either at commission offices or through commission staff—including internationals—that go into the field. It is particularly important that truth commissions are sensitive to patterns that might emerge from these statements, especially gendered hierarchies or patterns of abuse against women. In Timor-Leste, South Africa, Peru, Guatemala, and a range of other countries, although many women submitted statements, the majority testified about abuses committed against a male family member—typically a son or a husband—rather than harm they had suffered directly. There are several possible explanations for this choice: these women didn’t feel comfortable reporting on their own injuries; they negated the political significance of their own sacrifices, given entrenched social norms denying female agency and recognition; perhaps, rightly or wrongly, they felt it was the sacrifices of the male political actor

who would be privileged by the commission, the broader society, or the movements they were involved in. Whatever the reasons, subsequent research has suggested that this has resulted in significant underreporting of the crimes against women and a fundamentally distorted historical record.

²³ These principles are known as the Spirit of Akosombo Guidelines.

Gender Composition of Statements Submitted to Commissions



Thus, from the onset of a commission’s work it may be useful to track statements according to the respondent’s gender and the nature of the crimes being reported. For example, in Timor-Leste such tracking indicated that women were not coming forward in significant numbers, even though they had suffered widespread violations. The CAVR made proactive efforts to reach out to women and encourage them to submit statements and take advantage of the opportunity for some measure of redress. The Commission also undertook other efforts to compensate for the underrepresentation of women’s statements.²⁴ These include in-depth interviews and case histories of 200 female survivors that provided a body of oral history narrating women’s experiences—or, in the words of the research team coordinator, “women’s oral autobiography of violence.”²⁵

²⁴ See Kusafuka, *supra* note 19.

²⁵ *Id.*, quoting Karen Campbell-Nelson.

Outreach Measures Undertaken to Enhance
Women's Voices in the Timor-Leste CAVR

- Proactive outreach work addressing the relevance of the commission's work for women and encouraging women to participate and shape the commission's work
- Liaising with grassroots women's NGO networks to reach out to their constituencies
- National thematic hearings focused on women, including female victims and experts on the patterns of gendered human rights violations
- Inclusion of women witnesses and gender perspectives in other thematic hearings
- Devoting almost 10 percent of Community Profile Workshops in subdistricts specifically to women, with participation only by women; e.g., grassroots community dialogues/discussion forums on gender dynamics of the conflict
- Inclusion of women in all other Community Profile Workshops
- Providing women with the option of in-camera testimony (although all women chose public testimony)
- Provision for women witnesses to be accompanied by others to provide support during hearings
- Inclusion of women in statement-taking teams
- Training statement takers on gender issues
- Proactive efforts to solicit testimony of adult women through inclusion of gender-specific investigators in all house-to-house mortality survey teams
- Development of an oral history archive of 200 women's testimony

To the extent that the quantitative record of statement submissions distorted and underrepresented women survivors, these qualitatively focused research methodologies highlight women's experiences and ensure that the gendered human rights record is not rendered invisible. Finally, the CAVR also included basic statement-taking functions in its other research efforts. In organizing its household-mortality survey, the Commission included at least one woman in each research team who conducted a separate interview with at least one adult woman in every household.²⁶ These innovative efforts helped the Commission triangulate its findings on sexual violence and ensure that a range of sources enriched its coverage of gender issues.

Media strategy and community-outreach measures can be critical in projecting a victim-friendly and gender-sensitive public face. As noted above, liaising with women's groups can also be critical in earning the trust of female victims. In Haiti, the work of the Commission Nationale de Verite et Justice in areas outside of Port-au-Prince would have been impossible without the assistance of local civil society.²⁷

Encouraging underrepresented voices and issues also requires special training for statement takers so that they are sensitized to these concerns. Such training was undertaken in Peru, Ghana, and Timor-Leste. It is important that those who take testimonies are properly trained in a range of interview techniques and the breadth of women's human rights experience so that they can look for cues to patterns of abuse. Witnesses and survivors can be particularly sensitive to the gender identity of statement takers, and some women may feel more comfortable speaking to another woman, whereas others may be less invested in the identity of the statement taker and more sensitive to the commission's attitudes and priorities. For

²⁶ See Kusafuka, *supra* note 19.

²⁷ See Johanna Hermann, "The Silent Truth: Acknowledgement of Gender in the Commission Nationale de Verite et Justice in Haiti," Aug. 2006, available at www.ictj.org.

example, some may resent the fragility or disempowerment associated with the notion of victimization, and if the statement-taking unit projects a particularly protective approach to witnesses, this may be perceived as patronizing and depoliticizing the context of struggle against an unjust order. Those giving testimony may want the struggle to be dignified without reducing their identity to the injury itself. In South Africa, many prominent African National Congress activists did not come forward because dominant constructions of victim identity did not comport with their own self-perception as activists in the liberation's struggle. The complexities of victims' sense of empowerment and vulnerability—and, in fact, the misleading nature of the term "victim" itself—are important to address.

Yvonne Khutwane and the South Africa Truth Commission

Fiona Ross tells a story about the testimony of Yvonne Khutwane in the South Africa TRC that demonstrates the real challenges these issues can pose for how commissions keep faith with 'victims'/survivors in a truth commission processes. Khutwane decided "to speak out at the truth commission" because she wanted to assert that apartheid was about fundamental rights violations and she wanted her grandchildren to know her contribution to the struggle. Yvonne Khutwane gave testimony about the human rights abuses she had suffered: she had been arrested, kept in solitary confinement, interrogated, tortured, and beaten. Her house was burned and she was raped by a police officer. She also spoke of her history of political activism through these years. She told the Commission how she had been involved with the ANC since she was a young girl, and then spoke about how she had taken on a lot of political responsibilities working for the ANC underground.

In the Commission's account of Khutwane's testimony, this history of activism fades into the background even though it was clearly important to her own identity and self-presentation, as well as the legacy she wanted to leave behind. Moreover, while rape was just one of many injustices she described, the commission highlighted it in the final report; for Khutwane, the arrests, imprisonments, solitary confinement, and interrogations were all part of a difficult path to liberation, but perhaps the rape was most critical to the TRC's own sympathetic but simplistic "expectation" of a traumatized female victim—this was what was "presumed to be *the* traumatic violation." As one commentator notes, in the TRC's retelling this "diversity of harms becomes a story of sexual violation."

Perhaps this was partly because the commissioners were committed to a gender justice agenda and wanted to draw attention to rape. However, many rape victims did not come forward, so Khutwane became a prized rape story. Her treatment by the Commission is also a story about the competing tensions between "truth as a product" and "truth as a process" for the women's movement. In Antjie Krog's *Country of My Skull*, an imaginary interlocutor of the Commission says, "One has no right to appropriate a story paid for with a lifetime of pain and destruction."

The challenge is to assist future commissions to enable women's voices in the public sphere and represent women's experience of human rights abuse in more complex ways by recognizing that they are not just points on a graph that will help us buttress statistics about sexual abuse, but activists with complex responses to human rights abuse. Khutwane's story was one of resilience, survival, and continued political commitment to the struggle against apartheid. It would be tragic if this inspiring and courageous truth-telling is reduced to the "truth" about her rape.

—Fiona Ross, *Bearing Witness* and Antjie Krog, *Country of My Skull*

This is not to say that the term "victim," or the issues it connotes, should be discarded. Some victims may feel quite fragile—victimized, as it were. Many are emotionally devastated by the violations they suffered and there are reports of feeling retraumatized in providing statements. This is particularly true where

victims have already told their stories to human rights investigators, reporters, police, and academic researchers. Thus, it is important to train statement takers in how to deal empathetically with the psychological stress of submitting testimony. This includes structuring the statement-taking form so that victim testimony is not overdetermined by rigid categories of standardized legal boxes. The statement-taking process is fundamentally mediated by the forms and questions that structure the interaction, so it is critical that the statement taker and victim shape these questions dialogically in a dignified space. This is not only a concern about trauma and the ethical violence of an interrogative approach, but also important regarding truth, ownership, and the role of victims. Past commissions have shown that the process of truth-telling impacts the truths that emerge.

Commissions should also make efforts to acquire contact information that will allow them to report back the results of their investigations. In South Africa, there was a huge effort to elicit statements but little effort in following up with victims;²⁸ now that the TRC has closed its doors, victims find it difficult to access their records. This is a high priority for families of the disappeared.²⁹ In fact, disappearances highlight the importance of incorporating strategies that enable victims' access to truth. It is valuable to think of truth-telling and truth-seeking as a dialectical process where a commission is a forum for victims to talk about the violations they suffered, as well as a mechanism through which they can get more information about the human rights abuses that impacted them. The right to truth involves both truth-telling and access to truth. Future commissions should be designed to incorporate truth-extraction and -dissemination functions in their operations.

Finally, commissions often have to grapple with whether they should recommend an open or closed list for statement taking—in other words, whether statements can be submitted and victims can register after a commission closes its doors. Typically such responsibilities may be delegated to local government, human rights commissions, the office of the ombudsman, or other departments. As discussed below, provision for statement submission after the commission's closing may be critical for determining eligibility for reparations and for clarification of the record. In many cases, an open list—even for a limited period—may allow more women to be included, as marginalized communities are often the slowest to report on violations they have suffered. In this context, an open list may be valuable in ensuring a mapping of sectors that have been underrepresented in the commission's records, as well as a proactive measure of redress.

F. Investigations

Investigations are often a challenging area in documenting human rights abuses suffered by women and developing a map of gendered patterns of abuse. Many transitional justice mechanisms (such as truth commissions, prosecutions, and reparations programs) adopt an operational methodology premised on case-by-case identification of individual violations and the harm inflicted on individual victims. This is best described as a forensic approach to tracking legal responsibility and injury. While some truth commissions attend to the institutional contexts of the violations, most energy is directed toward individualized victims and perpetrators. Forensic investigations of individual cases may be critical to ensuring that there is as a well-documented record of as many cases as possible for the period under investigation. Moreover, this approach may be critical to ensuring important due-process safeguards for both victims and perpetrators. However, this approach cannot capture the structural and systemic character of background gender relations. This is particularly problematic with human rights violations against women because the hierarchies and inequalities of background gender relations are often the critical enabling conditions of the character and extent of gendered human rights abuse. Artificially

²⁸ Conversation with Yasmin Sooka, Dec. 2004.

²⁹ See International Center for the Red Cross, "Recommendations on the Missing: Mechanisms to Solve Issues on People Unaccounted For," 2002.

abstracting an individual gender-based crime from these background structures distorts the analysis of accountability and hampers efforts at prevention and redress.

The most abusive aspect of a human rights injury may not be the act alone, but the range of social attitudes and policy frameworks within which it is embedded. In Peru, periods of civil conflict were characterized by widespread rape and forced pregnancy (abortion is illegal), and investigators will need to develop greater trust within the community to properly assess the number of forced pregnancies that resulted from rape. Moreover, given that the Peruvian state criminalizes and the Catholic Church condemns the exercise of abortion rights, the injury of rape was compounded by the social attitudes and legal and policy frameworks that constrained victims' choices. While a traditional criminal investigative process would focus on identifying the rapist as the perpetrator, truth commission investigators need to look at the injury more broadly and inquire into the range of factors that impacted the crime, including the legal and ideological landscape. In this context, some functions of investigators and researchers can blur.

Some transitional justice institutions have made important strides toward recognizing the enabling conditions of violations and holding accountable those responsible. In Rwanda, the International Criminal Tribunal of Rwanda (ICTR) indicted three media moguls for helping to create a climate of hate and making it easier to target members of the Tutsi ethnic group. This was a critical step in linking crimes with their enabling conditions. However, there are particular challenges in addressing enabling conditions in the context of gender bias because it is so pervasive and structurally embedded. The investigations departments of truth commissions often reduce truth to what can be verified; however, gendered abuse can be too ingrained for these criteria. For example, an investigation is unlikely to uncover a military memo commandeering that a culture of machismo be developed to use in convicting those responsible for creating a climate conducive to the abuse of women.

There are also specific evidentiary problems associated with crimes such as rape. Corroboration of witness testimony is difficult in intimate crimes. Moreover, as time passes, it becomes increasingly difficult to gather definitive evidence; securing physical evidence is particularly time-sensitive even if complaints are made. Moreover, police statement-taking practices are not always friendly to women victims or sympathetic to complaints of sexual abuse. Traditionally men have heavily dominated investigative teams in criminal justice processes, and feminist researchers have long argued that this could hinder the complaints mechanisms functioning effectively for all women.³⁰ Moreover, this problem can be compounded when, as was the case with commissions in Ghana and South Africa, many investigators have a background in the police force and/or intelligence services because there may be divergences between the established practices and approaches of these forces and the victim-oriented ethos of truth commissions. These difficulties may be compounded for minority women, indigent women, gays and lesbians, political dissidents, prostitutes, and others who fall outside the privileged norm of femininity. In a range of transitional justice mechanisms, evidentiary issues are among the most challenging barriers to a full accounting of human rights abuses against women. Women's groups have long called for fundamental reform in this area, which would have significant implications for the focus of investigations. For example, during negotiations over the terms of the Rome Statute, the Women's Caucus for Gender Justice called for dropping the requirement (still prevalent in most jurisdictions) that a rape charge prove that there was no consent. The Caucus argued that coercive circumstances are inconsistent with the possibility of consent; when there is duress, acquiescence does not constitute consent, and a woman's prior sexual history is not relevant.³¹ On issues like this, recent advances in international criminal law have ensured that institutions such as the International Criminal Court now

³⁰ In an attempt to address this problem, countries such as Brazil and India have instituted women-only police stations in some regions.

³¹ This was key to the advocacy platform advanced (successfully) vis-à-vis the Rome Statute (see www.iccwomen.org/archive/icc/iccpc/111999pc/rpe.htm).

operate with more progressive rules of evidence, at least in relation to sexual violence.

Sexual Violence Documented in Official Commission Findings

Ghana NRC: Women comprised 42.9 percent of victims of sexual violence

Timor-Leste CAVR: Women comprised 90 percent of the victims of sexual violence

Sierra Leone TRC: Women comprised 100 percent of cases of sexual slavery and rape, and 38.5% of cases of reported sexual abuse

South Africa TRC: Women comprised 40 percent of testimonies involving victimization by sexual violence

In some contexts, truth commissions may be able to establish proof by referring to patterns of allegations and lines of command responsibility. For example, when there is a large number of complaints in particular refugee camps or prisons, the commission may want to inquire into whether those with material authority were aware that rape was widespread and if they allowed these abuses to take place when they could have taken preventive action. In less institutionalized settings (such as with decentralized militias with no clear leadership or control) these lines of proof and command responsibility become more difficult. These practical challenges, together with structurally embedded abuse, point to the need to broaden the focus of investigations to include scrutiny and reform of abusive institutions (complementing the focus on identifying individual perpetrators). In fact, a prosecutor involved in post-commission prosecutions in Guatemala notes that *who* you prosecute may be as important as *how many* you prosecute.³² This is even more apropos for truth commission investigations, which are much less equipped than criminal justice processes for traditional criminal investigative work, yet much better positioned to tell the larger story regarding the criminal justice record. Truth commissions usually operate with a balance of probabilities test, rather than the harsher proof-beyond-doubt criteria required for most criminal prosecutions; thus, the evidentiary requirements are more victim friendly. Nevertheless, sensitivity to the embedded gender biases in rules of evidence and procedure is important when truth commissions make findings and establish the official record.

G. Research

The research department's work is often crucial to the story that emerges in the final report. This is not merely a statistical report of the number of women victims, although the patterns that can be drawn from such quantitative data can be crucial to a broader narrative. Rather, it involves a more fundamentally qualitative and multidisciplinary research project of interpreting and analyzing the politics of violence. Thus, structuring research priorities and shaping research methodologies provide a critical opportunity to focus on the enabling and contributing conditions to the gendered dimensions of human rights accountability.

Two analytical frames have provided windows into these background conditions within pertinent traditions of feminist research: the public/private distinction and the continuities between ordinary and extraordinary violence. In Ghana, analysts studying the patterns of harm against women have urged that much of this record can be understood in terms of an effort to police the boundaries between the public

³² Paul F. Seils, "Reconciliation in Guatemala: Intelligent Justice, Race and Class," 2002, available at <http://rac.sagepub.com/content/vol44/issue1>.

and private spheres. For example, market women and their economic livelihoods were targeted through the bombing of markets, the destruction or confiscation of goods, the humiliation of being forced to strip and remain nude, beatings, sexual harassment and other brutalities, and incarceration. Some have argued that key to this persecution was an ideology that sought to keep women in the home and resented women's financial independence.³³

The public/private distinction has been relevant in a different way in Northern Ireland. In that context, recent research³⁴ on house-to-house searches in Belfast reveals how the operation of the public-private distinctions obscures violations experienced by women victims from the domain of the political. While these searches mostly targeted men, tracing the impact on women searches suggests that the gendered dimensions of these intrusions are significant on multiple levels. The military boundary crossing transformed "private" spaces into a "public" ones; the searches were a microcosm representing the British army's domination of Catholic territory; the practice was a route to a nationalist "feminization" of dissident men in front of women and children; searches produced women as heads of households, protecting children and spouses in that moment of intrusion and interrogation, while simultaneously accentuating women's vulnerability in that supposedly "safe" space of the "private" sphere. This context underscores the importance of looking at multiple sources and conducting research in ways that are sensitive to the conditions of women's lives. Research that focuses on acts of human rights abuse alone may not capture important gendered dimensions of the spaces where such acts take place or the political and personal meanings of those spaces in the daily lives of women.

Most transitional justice initiatives have focused on political conflicts within the state, or aspirants to state power, as the primary protagonists. They have also focused on issues of state policy and ideology. While the state is an inescapable reference point, the distinction between the public and private spheres (and its close relative, the distinction between state and nonstate conflicts) has highlighted how oppression of women has worked in many contexts. For example, commission reports suggest a heightened incidence of domestic violence, rape, and sexual abuse within the family during periods of war or repressive rule. Although these

"A political rape has no different consequences. It has exactly the same reason behind it—a violent act against a woman....In fact the woman was being punished as a woman."

—Beth Goldblatt and Sheila Meintjes, quoting Jessie Duarte, "South African Women Demand the Truth," in Meredith Turshen and Clotilde Twagiramariya, eds., *What Women Do in Wartime: Gender and Conflict in Africa*, 1998

patterns carry complex continuities with public violence, these abuses are coded as private, not political. In South Africa, these issues were brought to a head because the TRC's mandate provided a partial and conditional amnesty for politically motivated violence, so the Commission had to grapple with whether rape was a political act. In addition to fraught discussions among TRC staff, this issue was also challenging for the broader feminist community. Eventually, the Commission determined that rape was not political in terms of mandate interpretation. While this conclusion was motivated by an interest in heightened accountability for rape, it offers a rather ambivalent and problematic message regarding South African feminist struggles to gain greater recognition of the politics of sexual violence, its role in women's oppression, and its interplay with distinct but related political struggles around race relations

³³ "Cross Dynamics of a Society in Transition," report of a workshop convened by the Ghana Center for Democratic Development (CDD-Ghana), Oct. 2004.

³⁴ Note the work of Com Campbell et. al. presented and discussed in University of Ulster conference, "Women and Human Rights: Conflict, Transformation and Change," Belfast, May 2005.

and apartheid. In other forums—notably, the International Criminal Tribunal for Yugoslavia and the ICTR—rape has been recognized as a critical weapon of war, ethnic cleansing, and genocide.

The distinction between extraordinary and ordinary violence may be the touchstone of another widely shared bias in the researching and writing of human rights records in ways that obscure the conditions of women's lives. While extraordinary violence usually catalyzes transitional justice initiatives, attention to the structural and ideological enabling conditions of violence against women often reveals that the roots can be traced to the preceding period, just as the impact can stretch forward into its aftermath. For example, the Peruvian CVR's Final Report included a chapter on women and armed conflict that explored how ideologies of nationalism (which may have preceded the civil conflict) enabled conditions for human rights violations against women. For example, the Commission looked at how notions of masculinity and femininity and broader structural aspects of social organization impacted on the human rights record.³⁵ Many commissions may want to use the energies and resources of the research unit to develop an analysis of the connections between ordinary and extraordinary violence and to situate specific acts of human rights violations within broader patterns and structures. In a similar recognition of the role of ideology, the ICTR has ruled that racist rhetoric against Tutsi women constituted criminal incitement; in a sense, this background ideology made Tutsi women "available" to rape. Accordingly, the Tribunal has held accountable those involved in propagating such rhetoric.

The study of how periods of militarism and extraordinary violence impact the aftermath of conflict may be just as critical. For example, in South Africa, aspects of political violence in the context of apartheid have been seen as key to understanding the high incidence of violence against women in the aftermath of apartheid. The ambivalence about whether rape was political and about how it was linked to the liberation struggle (particularly the contrast between the condemnation of political abuse and the tolerance of private abuse) and the "demasculinization" of black men as a strategy of apartheid and other footmarks from years of extraordinary violence all contributed to (in albeit in complex and sometimes contradictory ways) the enabling conditions of sexual violence today. Some have argued that the TRC lost an opportunity to research the links between the dynamics of the liberation struggle and the extraordinarily high rates of sexual violence that were a part of the social context in which the Commission was working.³⁶

Researchers in various contexts have opened windows into women's experience of political violence. The analytical frames relevant to researching the gendered contexts of a nation's human rights record is a matter of historical specificity, and falling back on universalized analytical frames such as the public/private distinction can undermine, rather than contribute to, that historical project. If anything, these experiences underscore the fact that a truth commission's understanding of what is "political" is contextual, and that the research unit may be an important institutional space within the commission that can advance and develop analysis of the complexities of how we understand the politics of human rights violations.

³⁵ See CVR Final Report, *supra* note 6.

³⁶ Interview with Beth Goldblatt, July 22, 2004.

H. Public Hearings

1. Thematic Hearings

Thematic hearings have become an increasingly important part of truth commission processes. By highlighting critical issues in a country's history of human rights abuse, thematic hearings enable a broader public discussion on the structural conditions of conflict (e.g., the role of international actors), key dimensions of the conflict (e.g., issues such as ethnicity), and various actors (e.g., multinational corporations). The specific issues will vary, but thematic hearings often catalyze a dialogue about social structure and broaden understanding of accountability and victimization. They also personalize histories and widen the reach of individual narratives, as well as emphasize the background of the conflict.

Thematic hearings can be a particularly promising institutional avenue for addressing gender issues. Some commissions convene women's hearings in ways that highlight broader patterns of abuse and resistance, enabling conditions, and social impact. In some contexts, grouping hearings so that a number of women testify about what they have suffered can be valuable in highlighting the gendered pattern of abuse. In Peru, the women's hearings called on feminist scholars and activists to provide expert testimony on the structural conditions that enabled and exacerbated human rights violations against women and the histories of women's resistance to these abuses. This approach, sometimes referred to as "thematic hearings," can respect each individual's experience of loss and survival while also recognizing the larger collective significance. Thus, it provides an opportunity for the commission, and the nation as a whole, to recognize the gendered patterns of conflict and address the links between abuses suffered in times of conflict and in times of peace. As noted earlier, there are important continuities and discontinuities between extraordinary and ordinary violence, but if they are not explicitly addressed in thematic hearings, those links can become obscured and the social impact muted.

The CAVR on the Women and Conflict National Public Hearing Report
from National Headquarters, May 5, 2003

“Timorese women recently completed two days exposing the realities of human rights violations against women in East Timor over the 25 years of political conflict and war between 1974-1999. In a national public hearing conducted by the Commission on Reception Truth and Reconciliation (CAVR), for the first time in Timor Leste’s history women were given centre-stage to tell of their experiences.

The result was two days of compelling first-hand testimony from women, often deeply emotional and disturbing, mixed with a more studied analysis of the key institutions, policies and practices behind these violations. Across Dili, in homes, market places and workplaces, people followed the hearing on television, and across the nation people were tuned into the national radio live broadcast. As one international journalist traveling in the border district of Maliana on the second day of the hearings said, “It seemed like all of Maliana was tuned into the radio broadcast.”

The most lasting impression of the two days is the dignity and inner strength of the women who gave testimony. Again and again, as they relived the most terrible moments of their lives, women had to pause amidst tears to regain composure. Again and again they insisted that they wanted to continue speaking, that to tell their story was important to them, that the time of silence about this was over.

From this national hearing on *Women and Conflict*, the CAVR hopes that other women across the country will feel encouraged to come forward and record their stories. Understanding how difficult this is for many women, the CAVR has strict confidentiality measures and teams of women statement-takers trained in each district. As the voices of Timorese women are heard, they will bring a new understanding of Timor Leste’s history and with it a stronger commitment to prevent such violations occurring ever again.”

Thematic hearings can also enhance participation and encourage broader engagement with gender issues. In Sierra Leone, the women’s hearings were preceded by a women’s march in Freetown that brought a lot of energy and solidarity to the proceedings. In Timor-Leste, the Commission convened a series of community-based discussions on the human rights record and the CAVR’s work, and almost 10 percent of these talks had exclusively female participation.³⁷ This complemented national gender hearings that highlighted key aspects of women’s experiences.

Moreover, thematic hearings can allow outside voices to broaden the scope of a commission’s work. In Peru, expert testimony highlighted the impact of rape and forced pregnancy in contexts where abortion was prohibited—issues that were too controversial for the CVR’s Final Report. Similarly, it was an opportunity to address the war’s huge socioeconomic impact on internally displaced women, which got scant attention in the Commission’s gender unit and the women’s chapters of the Final Report.

Finally, thematic hearings provide an opportunity for addressing women’s experience in more complex ways, such as their complicities and resistance with political abuse and violence. Typically, individual hearings are structured around the abuses suffered in accordance with the commission’s mandate to

³⁷ See Kusafuka, *supra* note 19.

investigate; in many contexts, individual hearings are referred to as victim hearings. Thematic hearings allow a more complex understanding of women's roles, including that of militants and soldiers, policymakers, and human rights activists. Moreover, while individual hearings can also be testimonies to extraordinary examples of survival and resistance, their focus on victimization means that they are usually tales of loss. Thematic hearings can provide a more nuanced story.

Objectives of Popular Tribunal/Hearings

by Niamh Reilly and Linda Posluszny,

Center for Women's Global Leadership, Rutgers State University of New Jersey, 2005

As women testify, they not only make visible the abuse to which all too many females are regularly subjected. They also move from being victims to becoming survivors engaged as political actors in changing their own lives and creating the conditions necessary to end such abuse in the lives of millions of women around the world.

—Charlotte Bunch, "Without Reservation: The Beijing Tribunal on Accountability for Women's Human Rights"

Perhaps the most important overarching objective of a popular tribunal/hearing is to provide women with a supportive public space in which to articulate and make visible their human rights concerns. In most cases, tribunal/hearings include personal, and at times emotional, accounts of abuse and highlight inaction by particular actors in preventing or ending these human rights violations. But tribunal/hearings can also aim to celebrate innovative organizing being carried out around certain themes and issues. ... The goals and objectives of a tribunal/hearing, therefore, might include one or more of the following:

INCREASE VISIBILITY, EDUCATION AND AWARENESS

A popular tribunal/hearing can serve as a media event to bring women's human rights concerns to a wider national or international audience. Additionally, a tribunal/hearing can be used to:

- Highlight concrete action-strategies that women are using to secure their human rights and achieve accountability.
- Facilitate education and awareness of women's rights as human rights among target audiences—the local community, schools, government departments, policymakers, service providers, etc.
- Educate and sensitize public representatives, decision makers, and opinion shapers about women's human rights concerns at local, national, regional and/or international levels.
- Help inform mainstream human rights organizations about the issues surrounding women's human rights.

RECORD WOMEN'S HUMAN RIGHTS VIOLATIONS

A popular tribunal/hearing can provide an opportunity to document violations of women's human rights through written transcripts, photographs and audio and video footage. The tribunal/hearing can:

- Create a historical record of human rights violations during specific periods in time such as war and armed conflict situations.
- Highlight the failure of existing human rights mechanisms to promote and protect the human rights of women.

PROMOTE GREATER ACCOUNTABILITY AND RESPECT FOR HUMAN RIGHTS

The tribunal/hearing can act as a forum for public accountability around gender-based human rights violations and challenge public representatives and decision makers to account for their role in perpetrating violations, or allowing the violations to occur and/or go unpunished.

STRENGTHEN AND PROVIDE TOOLS FOR LOBBYING EFFORTS

A popular tribunal/hearing can serve as a powerful central event for a particular lobbying effort or wider campaign for women's human rights. Additionally, it can provide the basis for developing specific demands and recommendations with respect to legislation, policy, and/or remedial action and redress for violations.

MOBILIZE AND BUILD CAMPAIGNS

Tribunals/hearings empower women who testify as well as those who listen or hear about the event. They also:

- Situate particular or local struggles by women within a broader global movement.
- Demonstrate the growing determination of women worldwide to demand accountability for gender-based violations and the avenues available to seek redress.
- Serve as a focal event around which to extend and strengthen activism for women's human rights.

EMPOWER WOMEN AND SHOWCASE THEIR STRENGTH

Finally, a popular tribunal/hearing provides an opportunity for women to showcase their strength and highlight successful women's human rights organizing strategies.

2. Individual Hearings

Thematic hearings should not displace women's participation in individual hearings. Where women's voices have been systematically excluded from a nation's history, it can be critical for female survivors to address the nation and narrate their perspective. Where women's experiences of abuse are all too often zoned outside the public sphere, dismissed, and not recognized, individual hearings can publicly affirm the value of each individual life, and allowing women to testify in a privileged, officially sanctioned space

"This (statistical) type of knowledge is supplemented by the oral testimony of victim-survivors and perpetrators. The statistical, on its own, tends to detract from the personal suffering it documents, whereas oral testimony, on its own, is often devalued from being anecdotal, rather than comprising 'hard facts.'"

—Rosemary Jolly

"TRC: Engendering Violence: An Analysis of Masculinity in TRC and Related Narratives," Commissioning the Past Conference

carries symbolic significance in marking state responsibility for women's experience of abuse. Finally, women giving testimony outside of thematic gender hearings also helps to emphasize that gender is not the only lens through which a woman's experience of abuse can be understood. Women may be targeted because they are part of resistance movements, members of marginalized communities, and so on. Their experience must be situated in an intersectional understanding of human rights abuse. Moreover, the difficult decisions about which cases should go to public hearings should address this cross-section of contexts and reflect gendered, generational, regional, ethnic, economic, and political diversity.

Ensuring this diversity requires that the commission is proactive in mobilizing outreach efforts and creating an institutional environment that encourages public testimony. The public discussion of women's experience of political conflict will not only give women an important platform from which to address the nation, but also help society learn about and grapple with human rights abuses that have affected women. In some cases, individual hearings can be structured to ensure witness privacy while still allowing public hearings. For example, in the Port Harcourt hearings in Nigeria, women were allowed to provide testimony with their faces covered.³⁸ In Peru, public broadcast of hearings used distorted facial imagery to allow the nation to hear about violations without sacrificing victims' privacy. In any context, commissions can benefit from consultation with victims and victim-support and advocacy groups to ensure that individual hearings are a victim-friendly and dignified space.

As noted above, many women do not speak freely of the human rights abuse they have suffered before institutions such as truth commissions. They may come forward in great numbers, but the majority discuss only violations committed against male relatives, as was the case in South Africa and Peru. In other contexts, women may be reluctant to testify because they perceive (or they believe the commission would perceive) the abuse they suffered as private, rather than political. These concerns are accentuated in the context of public hearings, where testimony is given under the wide scrutiny of commissioners, the media, and friends and family. Women may be deterred from having their case go to public hearings because they want to resist categorization as victims (in South Africa, many activists—both male and female—did not make submissions to the TRC because of this concern). Women may also be influenced by more pernicious factors, such as concerns about retaliation and stigmatization.

³⁸ The Nigerian Truth Commission (often called the Oputa Commission) was appointed on June 4, 1999, to investigate human rights abuses committed between January 1, 1994, and May 29, 1999, and to provide recommendations to prevent similar abuses in the future.

Nusreta: Most women are silent about what happened to them. It is very difficult to make them speak. One woman told me that her husband divorced her . . . He couldn't get past it. . . She is scared that her son will find out everything about her experience.

Jadranka: In the beginning the need to tell the truth was strong and I hoped we would all speak out. Other women arrived from Omarska. I organized them and told them that we had to tell the truth, no matter how painful it was.

Nusreta: I always say, it's a new shock every time you talk about it. . . But I feel some kind of obligation toward all those women, friends of mine who are now gone, who were killed in the camp, toward all those people who were dear to me. . . and who are now gone. . . If the story is not told, then no one will know about it, right?

—Jadranka Cigelj and Nusreta Sivac on the Omarska Concentration Camp,
Calling the Ghosts,
Mandy Jacobson and Karmen Jelincic
Women Make Movies. 1996

Recognizing victims' rights to due process and treatment with dignity and respect, it is incumbent on all commissions to consult with victims and secure consent for forwarding their cases to public hearings. In most cases, commissions will (and should) also provide victims the option of in-camera hearings according to guidelines that address witnesses' legitimate concerns for confidentiality. Moreover, when commissions issue subpoenas for witnesses to provide testimony, or when they refuse applications for in-camera hearings, this discretion should be applied with consideration to those factors in each particular case. Witness-protection programs facilitate the public sharing of information and victims' stories while protecting people from further abuse. However, experience suggests that in-camera hearings may also create a safe atmosphere for women who want to testify, despite a strong witness-protection program or in the absence of one. In South Africa, a number of women and women's groups requested in-camera (or private) women-only hearings with female commissioners. The advantage of this approach was that, because women often underwent a separate set of experiences under apartheid, their voices were not lost. They had their own forum to express openly what happened to them, giving weight to their experiences, without being too afraid to speak out. As one report noted, "A woman who gave evidence at the Johannesburg hearing had earlier decided not to speak before the truth commission about the sexual abuse she suffered but then changed her mind when the special women's hearing was arranged."³⁹

However, sexual violence does not automatically require in-camera testimony. In Sierra Leone, the TRC, had anticipated that sexual violence testimony would be given in-camera and had made arrangements accordingly; however, many women asked to narrate their experience in public and the Commission had to then channel their testimony for public hearings. In Timor-Leste, background assumptions that culture and religion would deter women from reporting sexual violence were shattered when women spoke openly about their experiences and asked for redress. For many, public denunciation is important to fighting the stigma associated with sexual crimes; privatizing it calls on the victim to bear the full burden of the crime, once again coding it in shame and secrecy. While many may have guessed to the widespread nature of sexual abuse in Sierra Leone and Timor-Leste in the course of the conflicts in these countries, public testimony most powerfully and evocatively evidenced these widespread and systemic patterns and the enormity of their impact on women's lives.

³⁹ See Goldblatt, *supra* note 20.

Organizational Process: Key Steps Relevant to Planning Women's Hearings

1. Forming hearings committee and appointing a coordinator.
2. Consulting closely with women's, victim-support, and advocacy groups throughout the planning process on substantive issues to be addressed by the hearings, and the mobilization of women's participation at the hearings.
3. Identifying objectives and deciding on the specific issues and themes to be addressed by the hearing.
4. Planning agenda and attendant logistics.
5. Selecting cases on the basis of diversity of witnesses, key themes, and other relevant factors.
6. Getting witnesses consent.
7. Ensuring proper psychosocial support for witnesses.
8. Assisting witnesses with development of statements, anticipating questions, and other general preparation.
9. Making provision for witness protection, in-camera hearings, and other security and privacy measures where relevant.
10. Identifying those who can provide expert testimony.
11. Gathering background information and supporting materials.
12. Helping inform commissioners and staff about the issues in preparation for the hearings.
13. Developing a media and public relations strategy.
14. Determining follow-up measures to be taken after the hearings within the commission, with witnesses, and with the media.

—Edited excerpts from Niamh Reilly and Linda Posluszny, "Women Testify: A Planning Guide for Popular Tribunals and Hearings," Center for Women's Global Leadership, Rutgers State University of New Jersey, 2005

I. Report Writing

The final report distills the commission's work and extends its reach into the future. It reports on the various elements of its operational mandate and analyzes the history of the human rights violations it has investigated, the enabling conditions of abuse, and recommendations for reparations, justice, and reform. Thus, the way in which women enter this narrative can be critical to how their multiple roles are recorded in national history and how their losses are redressed.

As with public hearings, final reports may be best positioned to address the gendered history of human rights violations if they combine individual case narratives with a systemic focus. Individual case

narratives may allow witnesses' stories to reach into the future and, in a sense, exert some ownership about how their story is told. First-person narrative may also give future generations a richer sense of how women experienced the political conflicts of that period, as well as the multiple roles they played. At the same time, most commissions receive thousands of statements, and it is unlikely that the final report can provide a narrative space for all of them. Most commissions have only a summary record and include fuller narratives of just a few cases, or what the Peruvian CVR describes as "paradigmatic cases."

Given the limitations of incorporating all testimonies, commissions typically accompany excerpts from some first-person narratives with a more comprehensive report of the gendered pattern of abuse to ensure a richer representation of the entire range of statements submitted. Moreover, this thematic focus also allows the commission to provide a more complex analysis by addressing issues such as the role women played in the history of the conflict, the enabling conditions of abuses against women, and the complex situation of female perpetrators. In some cases, such as the South African TRC's chapter on gender, this allows the report to reflect on its own methodology. Thus, this section is remarkably self-critical about the commission's limitations in addressing gender issues and highlights the gaps and underreporting that may have resulted. This is extremely valuable in opening the space for further research, analysis, and discussion and ensuring that the commission process is understood as opening the space for future work, rather than ending the conversation on gendered human rights abuse. Final reports may want to consider devoting a section to thematic focus on gender, but also use gender as a crosscutting theme through all sections. This was the approach in Peru and Timor-Leste.

Topics Covered in Gender Chapters of Commission Reports

- Gendered patterns of human rights violations
- Gender-differentiated impact of human rights violations and the broader conflict
- National and international law addressing crimes against women
- Enabling conditions for women's vulnerability to human rights violations
- Ideologies of femininity and masculinity that permeated the conflict in relation to nationalism and violence
- Gender dynamics of racial oppression and other kinds of social exclusion/marginalization that characterized the conflict
- Role of women activists, both individuals and women's organizations
- Gender dimensions of psychosocial trauma in the affected community
- Issues that emerged in individual and thematic public hearings
- Recommendations for reparations and reform that address women's specific needs and goals
- Gender-differentiated statistical analyses of commission findings
- Challenges commissions faced in investigating crimes suffered by women
- Gender-specific limitations of the commission's work and findings

In addition to its substantive content, final report planning must include the issue of dissemination. Final reports are usually lengthy and comprise multiple volumes. Style, structure, and content are just as important as coverage. Reports must be written clearly and in an accessible fashion. This is especially true in contexts where literacy rates are low (globally, women's literacy rates tend to be lower than men's) and where linguistic minorities, rural communities, and others have less access to national media sources and official records. In Sierra Leone, where many victims of sexual violence were teenage girls, the commission provided a child-friendly final report. (Because the authoritative full-length final report was delayed for several months, the children's report was the only official version that was available for

public circulation.) As noted above, the commission's truth-extraction responsibilities should be complemented by prioritizing dissemination of information and making the final report accessible.

Report writing is a key area where commissions may want to involve women's groups and other civil society actors to conduct research, provide critical feedback, and make written submissions. For example, in South Africa a report on gender that was submitted early in the life of the TRC was incorporated in its final report.⁴⁰ Proactive efforts to incorporate women's history are critical to addressing an important dimension of a nation's history, even if they serve only to highlight the gaps and distortions of the official narrative.

J. Recommendations

1. Reparations

Reparations measures are a critically important avenue for redress and acknowledgement, and commissions in countries such as Timor-Leste, Peru, and Morocco have incorporated specific policy directives regarding gender considerations that should be undertaken in developing and implementing reparations policy. Reparations can help a nation recognize the injuries survivors have suffered and make concrete efforts to alleviate the pain and contribute in a meaningful way to the path forward. In most cases of civil war and widespread human rights abuse, the society is victimized in different ways. While symbolic reparations may be able to recognize this complex and multifaceted map of victimization, few countries will have the financial and administrative resources to develop monetary reparations policies that reflect this broader map of victims. Invariably, criteria must be developed for prioritizing a smaller group of beneficiaries for reparations—typically those who have suffered the most egregious crimes and have the greatest need for some measure of monetary redress.

Reparations policies following from truth commission processes are often premised on eligibility criteria the commission has established. These criteria are critically linked to the specific human rights violations that inform definitions of "victims" and "beneficiaries." Historically, the violations highlighted for reparations (such as deaths, disappearances, and imprisonment) have not always recognized the patterns of abuse suffered by women (such as forced pregnancy, coerced sterilization, and displacement). The issues regarding mandate interpretation are operative here; the core human rights violations that will be the focus of the commission's work should be defined in relation to the specific human rights landscape in each country, rather than operating with an a priori hierarchy of violations. Moreover, particular attention needs to be paid to the patterns of violations among vulnerable or disenfranchised communities, such as women, because these factors can—and should—impact the eligibility criteria established for defining beneficiaries of reparations.

"The definition of victims in the South African Truth and Reconciliation Commission includes relatives and dependents of victims. This is very important because it locates wives, mothers and children in center stage as having suffered 'gross violations of human rights.'"

—Beth Goldblatt and Sheila Meintjes,
"South African Women Demand the Truth,"
in Meredith Turshen and Clotilde
Twagiramariya, eds.,
What Women Do in Wartime: Gender and
Conflict in Africa, 1998

Invariably, these eligibility criteria emerge from a complex overlap of legal and political precedents for comparable violations in the country concerned, international treaty obligations the state has incurred, and negotiations between legislators, state bureaucrats, and other influential players. These may carry the impact of gender inequities in different ways, so it is important to take proactive efforts to enable an

⁴⁰ See Greenblatt, *supra* note 20.

inclusive process. For example, the players who have a stake in reparations policy could include political parties in current and past regimes, the security sector, militant groups, and other parties implicated in human rights abuse, victim representatives, human rights organizations, and others. It is imperative to ensure that women and other marginalized groups are involved in that process and represented in establishing inclusive criteria for reparations eligibility.

Victim communities are seldom organized and wield little power on the national stage, even in areas such as reparations policy; in many contexts, they may have little input or influence over policymaking processes carried out in their name. However, as noted earlier, victim communities are not homogenous, and women, ethnic minorities, and other segments of society may be more vulnerable than others, and are more likely to be overlooked and marginalized in reparations policymaking. In many contexts that address a legacy of repression, high-profile victims and well-organized victim groups invariably draw much of the moral capital and public attention expended by processes of justice and reconciliation. However, differently situated victims may have different priorities, and different measures will yield different reparative value. For some, the primary value of reparations may be symbolic; for others, reparations may have real material value in improving the conditions of their lives. Recognizing that these differences may exist, truth commission recommendations must take specific account of those who are particularly vulnerable and have the least influence over policymaking processes. Vulnerable communities may be defined by gender, ethnicity, poverty, regional location, religion, tribe, political affiliation, or a host of other factors. There is no universal class of vulnerable communities, so widespread consultations are needed among different victim communities, contextually focused research into patterns of human rights violations, and multidisciplinary analysis of long-term impact. This three-pronged process can then feed into proactive measures that ensure that considerations related to the needs, interests, and goals of vulnerable communities shape the design of reparations policy.

Assessing the appropriate quantum of reparations on the basis of injury can be challenging. It is estimated that 70 percent of rape survivors of the Rwandan genocide are infected with HIV/AIDS.⁴¹ Should all those who suffered rape receive the same quantum of reparations or should there be additional measures to address the needs of those who suffered HIV/AIDS as a result of the rape? In Peru, there is specific provision for adult education and employment support to take into account the complex socioeconomic impact of the armed conflict. The recommendations of the Timor-Leste CAVR provide for specific measures addressing access to health care. Many commissions have recommended education-related support for children of human rights victims, and some have recommended psychosocial services for victims of rape and sexual violence. In some contexts, periodic monetary payments are more gender friendly than one-time cash handouts because women are more likely to have greater control over smaller sums of money that can get incorporated into the routine household budget. More research is required, but it is clear that monetary payments to households or communities should take into account gendered power relations in regard to control of financial resources and seek reparations measures that will enhance more equitable resource sharing.

Discriminatory legal rights or inequitable background social norms can adversely impact women's access to reparations. For example, in countries such as Sri Lanka, initiatives for property restitution and reparations for internally displaced resettlement often have not reached female beneficiaries because customary practices of holding property in men's names meant that women had few legal protections to buttress their reparations claims. Similarly, in countries such as Rwanda, where few women held formal title, war widows are in particular need of assistance. In many contexts, *de jure* inheritance rights have excluded women, making it significantly more difficult for wives and daughters of victims to receive reparations. In some cases (including Guatemala and Rwanda), reparations recommendations have proposed giving title to women.

⁴¹ Geneva Center for the Democratic Control of Armed Forces, "Women in an Insecure World," 2005, 14–15.

Gender-differentiated income patterns (including unpaid housework) have also had an adverse impact on women in cases where reparations have been pegged to lost income. For example, some proposals for reparations for victims of martial law in the Philippines calculate lost earnings in determining reparation payments; this will distort reparation payments in ways that are unfair to women and other low-income groups. The use of the average civil servant's salary in Chile has provided a much more equitable approach. It has also underscores the principle that redress is proportionate to the crime rather than the individual's pecuniary loss—a particularly important measure when there are entrenched gender disparities in real wages. In a proactive effort to address any gender inequities that may arise in the formulation and implementation of reparations policies, the Timorese CAVR recommended that at least 50 percent of all reparations should go to women; this recognizes that women were underrepresented in the statement-taking process and partly compensates for the distortions that may result in defining beneficiaries.

Ways That Commissions Have Addressed Gender Equity
in the Design and Implementation of Reparations Programs

- Mandate interpretation with attention to how definitions of victims can have gender-differentiated impacts in eligibility for reparations
- Consultation with female victims and women's support and advocacy networks in developing reparations measures
- Taking steps not to replicate gender-biased hierarchies regarding the gravity of different human rights abuses in establishing eligibility criterion, or the quantum of reparations accorded to victims of different violations
- Designing reparation programs to recognize and address areas where women's vulnerability may be particularly heightened, including violations of human rights in relation to displacement, sexual violence, and health care, as well as the secondary impacts of conflict in relation to areas such as education
- Designing reparation measures to allow wider reach to women victimized by the conflict, even if not technically qualified in terms of the narrow legal definition of victim (in some cases, this may in effect be an effort to correct for deficiencies in the mandate's definition of "victim")
- Consideration for reparation programs to incorporate need-based criteria in establishing the reparations scale
- Establishing inclusive definitions of rape and guidelines for requisite evidence in accordance with recent advances in international law
- Supplementing individual reparations with collective measures that recognize the systemic, collective patterns of abuse against women
- Recognizing that human rights abuses often impose familial care burdens on women and that reparations programs should seek to provide some measure of redress for those burdens; in some cases this has meant that "dependents" or so-called "secondary" victims are defined as equally eligible
- Making provisions for open lists to allow victims who did not go to the commission to have more time to submit statements and qualify as beneficiaries
- Defining "dependents" in ways that include same-sex partners and customary marriages
- Considering background issues regarding legal rights to title and property ownership in determining restitution and property grants
- Designing reparations measures to be sensitive to gender power dynamics in controlling financial decision-making in the household; e.g., in some cases consideration has been paid to the option of weighing reparations toward access to health, education, and other services that women may prioritize if men will control financial grants to the household
- Making specific provision for symbolic reparations in recognizing that violations against women are often hidden and women's voices often silenced; thus, there is particular significance in public recognition of private abuse
- Taking steps to ensure that reparations also address the long-term impact of conflict, addressing the continuities between human rights abuses in times of peace and war
- Disseminating information about the reparations programs and how women and those in socially marginalized communities can access them
- Establishing gender equity as an overarching principle in implementation (including provision for gender parity in reparation dollars spent)

These kinds of innovations must be explored to address the range of factors that inhibit women's access to reparations. That access has also been inhibited by a more fundamental hierarchy of victims. Traditionally, the human rights community has developed a nomenclature that distinguishes between primary and secondary victims. Many women are primary victims, but in contexts where combatants are primarily male, the distinction maps onto male and female victims. Women who have lost breadwinners or have been caring for critically injured family members are classified in the second category, and their reparations claims are deprioritized. This hierarchy is exemplified by symbolic reparations—there are few memorials to secondary victims—however, it also impairs claims to material reparations. In Morocco, this was an issue for many wives of political prisoners who bore the brunt of support for the imprisoned and children during the term of imprisonment. Only the imprisoned were considered victims and, therefore, beneficiaries of reparations—even if they walked away from their wives upon release.⁴² In some contexts, symbolic reparations for the primary victim may substitute for material reparations for the secondary victim. In informal discussions at a reparations workshop in Ghana,⁴³ some proposed that if a man is killed, it is better to acknowledge that violation by adding his name to a memorial plaque, rather than paying reparations to his surviving spouse or family. While symbolic reparations may be sufficient for some, for others it is not. A purely symbolic recognition does not acknowledge that the spouse and children left behind are also victims suffering ongoing emotional, psychological, and financial impact. As with other areas, reparations can never replace the deceased victim, but it may modestly alleviate some of the continued suffering.

Practical issues regarding implementation also must be taken into account. In South Africa, it was soon discovered that many victims, particularly women, did not have bank accounts, and alternative methods of payment had to be developed. Other background issues impact the ease with which women claimants can access benefits. In some contexts, the problem may not be gendered discrimination, but gendered impacts of background laws. For example, in countries ranging from Argentina to India, prohibitions against issuing life insurance claims in the absence of death certificates has made it particularly difficult for spouses of the disappeared to collect reparations; again, this impacts a group that is overwhelmingly female. Commissions sensitive to this issue have recommended issuance of a “forcibly disappeared” certificate that could operate as a *de facto* death certificate for purposes of reparations and insurance. The background conditions that impact the dynamic of reparations implementation could also include the realm of sociopolitical perceptions regarding different violations. In some contexts, reparations for rape may have connotations of prostitution; this may complicate and deter some women from collecting payment. It is important to establish procedures for claimants in ways that recognize and address these difficulties. For example, rape could also be categorized as an instance of torture or inhuman treatment in reparations policy and attendant application forms if a desexualized nomenclature will contest connotations of reparations as payment for sexual services and underscore reparations as a legitimate measure of redress for a rights violation. This may also be important to many male victims of sexual violence; in many contexts, men underreport the crime in even greater number because of the stigma attached to sexual victimization. On the other hand, for some women it may be very important for rape to be named explicitly and for acknowledgment of sexual violation to be the basis of reparations. Policymakers may want to consider designing reparations programs (including practical details, such as claim forms) in ways that allow victims the option of making claims under either rubric. This way, the claimants themselves will name the violation. Focus-group consultations with test versions of reparations claim forms may help with getting more information on these kinds of factors.

Finally, one key issue is whether commissions recommend open or closed lists for reparations; namely, whether they will make provision for victims who did not come forward when the commission was in

⁴² Comments of Moroccan IER Commissioner, Latifa Jbabdi, at an ICTJ workshop on gender and reparations, New York, July 2005.

⁴³ CDD-Ghana/ICTJ reparations workshop, Nov. 2003.

operation to apply for eligibility for acknowledgement and reparations as victims or survivors. Past commissions suggest that an open list is the more fair and inclusive approach, and particularly significant to women. As already noted, female victims are vastly underrepresented in truth commission processes and may require specific outreach measures to come forward. Effective outreach could take time and effort and may not bear fruit before the truth commission's term ends. In Ghana, a civil society meeting proposed that the Ghanaian NRC address this problem by keeping the victim list open for two years after the Commission closed its doors. They also advocated that implementing authorities make proactive efforts to reach out to women and other groups who did not come forward in significant numbers, even though they had faced human rights abuse in significant numbers. In many cases, disempowered groups—such as those whose *lingua franca* is not included in the official languages of the commission, those who live in remote areas or rural communities, and those with minimal media access and minimal political organization—do not come to commissions and equivalent bodies in sufficient numbers. This can be attributed to many factors, including social marginalization, poverty, lack of sufficient information, and alienation from state structures. Given that reconciliation is a key objective of many truth-commission processes, it is appropriate to take proactive measures to ensure an inclusive reparations program. If an open list is advocated, recommendations should incorporate mechanisms and clear guidelines about procedures that need to be followed for previously unidentified victims to make their claims. To ensure consistency, such guidelines would have to be consistent with the criteria used in the course of the commission's work.

2. Reform, Justice, and Public Education

Recommendations should be formulated in terms of sustainable, long-term impact—with adequate consideration of how women's needs are addressed even when the truth commission closes its doors. In addition to reparations, there are several other areas where commissions are empowered to make recommendations that advance such goals, ranging from prosecutions to institutional reform in the administration of justice and the security sector to archiving official records and making them accessible to the public. These recommendations can be significant for women because they provide a window of opportunity to press for critical reforms that foreground the gendered history of human rights violations. In fact, the mandate for making institutional reform recommendations provides commissions with an opening to extend their reach into a long-term impact on women's lives. In some contexts, the commission's achievements may be forever tainted by failure of imagination and courage. In Peru, against the backdrop of harsh laws restricting reproductive freedom, the high incidence of rape during the conflict translated into the high incidence of forced pregnancy, yet the CVR (which was otherwise prolific in its institutional reform recommendations) did not recommend reforms that would impact the legal and policy context regarding reproductive freedom that compounds the injury of rape. Some have speculated that the commissioners (many of whom may have favored greater reproductive freedom) shied away from this recommendation because of fear of angering the Catholic Church. On the other hand, recommendations for prosecutions have led to two landmark cases on sexual violence. Victories in these cases will have enormous reach in highlighting issues such as sexual violence in custody (the focus of the Magdalena Monteza case) and the military's widespread and systemic sexual violence against marginalized communities (the focus of the Manta and Vilca case). Similarly, the Sierra Leone TRC took on many politically contentious issues and made recommendations for sweeping changes in the background laws and policies affecting women's status and legal rights, which could provide an independent base of support for many legal reform initiatives by local women's groups.⁴⁴

Recommendations may also address areas such as public education to raise the consciousness of the broader public regarding the gendered history of human rights abuse and the roles that women have played. The Timor-Leste CAVR calls for awareness raising on gender issues—not only women as

⁴⁴ Conversations with Kelli Muddell regarding post-TRC law reform in Sierra Leone.

victims, but also women's history in the Timorese resistance.⁴⁵ This recognition may be particularly significant given that most official histories have elided women's history and their contributions to national political developments. Accessing their own records is equally important, and it is critical to include recommendations addressing archiving processes and procedures to ensure that the commission's records are accessible. These recommendations may also address socioeconomic issues that make women particularly vulnerable to certain human rights violations. For example, in South Africa apartheid regulations hugely impacted the work life of black household help on a day-to-day basis, and addressing this vulnerability may be key to future reform. Similarly, recommendations may deal with training of policy, judiciary, prison officials, and others who impact women's access to justice.

Institutional recommendations can include constitutional reform relating to the status of women and their fundamental rights as citizens to justice and equal protection. For example, in international jurisprudence there have been successful efforts to interpret legal categories, such as crimes against humanity, to include crimes such as rape. There also have been developments in the jurisprudence of command responsibility that hold commanding officers liable for crimes performed by subordinates in cases where those who had knowledge of human rights abuses and the means to intervene and prevent these violations. For example, the ICTY has found the head of a prison camp liable for widespread sexual abuse even if he did not personally engage in those abusive acts.⁴⁶ Legal reform should always be tailored to context, but these international developments may provide some guidance about possible reforms that may be relevant for a commission to consider in formulating recommendations. If implemented, these reforms may allow the commission to make a long-term impact in shaping police-investigation practices and prosecutorial priorities.

Moreover, there may also be more immediate steps toward addressing impunity for crimes against women. Most commissions will be empowered to make recommendations for prosecutions. In addition to specific cases that it could advance for post-commission justice initiatives, the commission could argue for prioritizing cases that may have significance in redressing human rights crimes against women. At this point it is not clear if there is much political will for prosecutions in Timor-Leste, but the transitional justice framework makes a provision for the special prosecutor to prioritize rape cases. In Sierra Leone, prosecutions have already been initiated for a range of crimes with special significance for women and young girls, including child recruitment, rape, and sexual slavery. In cases of mass human rights crimes, constraints of resources, time, and legal capacity mean that only a handful of crimes are prosecuted, so the establishment of prosecutorial priorities will be critical. Thus, to the extent that patterns of gendered human rights crimes have been a significant dimension in a country's human rights history, the commission may want to recommend that these crimes be prioritized, not only to provide redress for the women affected, but because of the long-term impact such prosecutions will have in providing official recognition of the significance of enhancing women's access to justice and addressing future impunity for crimes against women.

Because they address the key enabling conditions of human rights violations, in most contexts institutional reform recommendations are the most challenging. In Sri Lanka, the largely female Tamil workforce of the tea plantations has been greatly impacted by the country's human rights violations record over the past several decades. These women have suffered killings, rape, forced sterilization, forced displacement, police beatings, mob violence, and work conditions akin to indentured labor. The enabling and contributing conditions have included large-scale state sponsorship of anti-Tamil political

⁴⁵ Final Report, Section 4.1, part II.

⁴⁶ In the Celebici judgment, the ICTY found Zdravko Mucic guilty for crimes that included rape on the basis of command responsibility, arguing, "The crimes committed in the Celebici prison camp were so frequent and notorious that there is no way that Mr. Mucic could not have known or heard about them." *Prosecutor v. Zejnir Delalic*, Case No. IT-96-21-I, Nov. 16, 1998.

violence, exploitative socioeconomic structures in the plantations, sociopolitical norms and structures producing gender and caste hierarchies, and prejudices and the denial of citizenship rights to Tamils of recent Indian origin. The complex interplay of all these factors fundamentally shaped the patterns of human rights violations. Institutional reform recommendations addressing these violations would have to recognize all these complex enabling conditions if they were to advance relevant analysis. At the same time, taking on all these enabling and contributing conditions is a daunting agenda for social change; the sheer magnitude of recommended reforms can cause paralysis that ensures that none of the recommendations are implemented. In this context, commissions may want to highlight all the areas of reform that are needed, then prioritize concrete steps for immediate action while suggesting a roadmap that moves toward progressive realization in the long term.

III. CONCLUSION

This report does not intend to codify a specific set of guidelines for all commissions to follow. Rather, the goal is to highlight some of the issues that may be worth considering during the life of a commission and the various implications that may follow. If anything, the experience of past transitional justice efforts indicates that commissions address questions of gender in diverse and complex ways that resist easy generalization and belie efforts at developing any universally valid set of best practices. Rather than looking to this report as a TRC “to-do” list, this report is intended as a catalyst for discussion and reflection. The particular issues may vary, depending on the specific political history of the community, the patterns of human rights abuse and gender relations, and the priorities of the feminist and human rights communities and their level of social mobilization.

The other value of this handbook is highlighting strategies that have been used to address the gendered nature of human rights abuse. 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. Yet, commissions also have many positive stories of determined staff and women’s groups collaborating on innovative efforts to reach out to women and ensure that truth commission processes respond to their priorities for truth-seeking and truth-telling. The Guatemalan commission’s focus on gender issues, despite a gender-neutral mandate, opened the door to a larger truth that contested the erasure of women’s experiences. In South Africa, the role of women’s groups in advancing the TRC’s gender analyses underscored the enormous reach and importance of close collaboration with civil society. In Nigeria, the commission devised special methods for in-camera hearings that encouraged many women to come forward with their experiences and underscored the importance of commissions providing a safe space for women to tell their stories. The Peruvian CVR’s work on sexual violence has led to two important cases prosecuting sexual violence in the Peruvian courts and demonstrated the impact commissions can have on the gender impunity gap. The Ghanaian NRC’s acceptance of a group petition from market women highlighted the collective nature of gender crimes. The Sierra Leonean TRC’s wide-ranging recommendations will support and strengthen important reform efforts regarding women’s status and legal rights. In Morocco, innovative measures regarding gender balance in reparations policies will have far-reaching impact. In Timor-Leste, complementing statement taking with gender hearings, participatory discussion forums, oral-history case studies, multipronged household surveys, and other measures helped to develop a rich canvas of the diversity of women’s experiences. At the time of this writing, the Liberian truth commission had been inaugurated in February 2006 and held a gender-training session within its first week. Its mandate makes specific provision for addressing gender issues, and Liberian groups and their international partners are already making plans to move that mandate forward. Undoubtedly the Liberian commission will also devise its own strategies and break new ground on Liberian gender justice struggles—as will the commissions that are being considered in places as diverse as Aceh, the former Yugoslavia, and the Democratic Republic of the Congo.

Gender-focused work has often provided a critical space within commissions to open up the transitional justice paradigm on a number of fronts—it has exposed the limits of official histories, the hierarchies embedded within the human rights field, the complexities of “victim” identity, the challenge of reparations and reform, and the continuities and discontinuities between ordinary and extraordinary violence that belie linear models of transition and underscore the long struggle for justice. Truth commissions are not silver bullets. They deliver less than they promise, and even less than what we expect of them. Yet gender-focused work has also shown that truth commissions provide a critically important space with significant stakes for struggles for social change and justice. Their reach and significance can and should extend even after they close their doors. In engaging with truth commissions we should ensure that these processes open as much space as possible to engage with fraught histories of human rights abuse and strengthen struggles seeking to address that difficult history.

APPENDIX 1: Methodological Starting Points

I. DEFINING GENDER ANALYSIS

Gender analysis is a vast and complex field, and addressing that conceptual terrain in all its richness is beyond the scope of this report.⁴⁷ However, we can draw from that broader terrain to develop a more modest entry point into gender analysis in ways that may be relevant for this handbook's objectives.

This report uses the term "gender" broadly to encompass the ways in which sexual identity and difference are constructed (and contested) in various contexts and impact men's and women's experiences of human rights abuse. Attitudes and ideologies regarding sexual identity and difference can motivate and shape human rights violations against both men and women. In Nazi Germany, nationalist discourse regarding the 'model man' or 'model woman' informed violations against men and women who were perceived to deviate from the official sanctioned norms for sexual identity and difference because of ethnicity, sexual orientation, or other factors. Moreover, abusive attitudes and ideologies of sexual identity can often go hand in hand with institutional arrangements and practices that make some men and women more structurally vulnerable to abuse. The South Africa TRC had to confront the vulnerability to human rights abuse engendered by legally codified racial oppression and prejudice in looking at how apartheid impacted Black men in a section titled "For neither am I man in the eyes of the law, nor am I a man in the eyes of my fellow man."⁴⁸ The state's "dominant narrative of masculinity" impacted the experiences of both men and women under apartheid.⁴⁹ Thus, gendered patterns of abuse are patterns of human rights violations that can be at least partly explained by particular ideologies of sexual identity and difference, and the institutional arrangements that sustain and reproduce them. It is important for truth commissions to appreciate how ideas and practices regarding femininity and masculinity can be part of the enabling backdrop to human rights violations.

This handbook pays particular attention to women's stakes in the analysis of the gendered nature of political violence to address the fact that, historically, truth commissions have neglected women's rights and interests. However, all truth commissions should keep in mind that gender analysis also pertains to men. Gender roles and ideologies regarding masculinity and femininity are two sides of the same coin; they have been equally critical aspects of histories of nationalism, political violence, and human rights abuse. Moreover, just as women are not only victims, men do not play only the role of perpetrator. This is true even of offenses such as rape and other forms of sexual violence. In fact, sexual abuse against men is a common form of torture, and it is important for truth commissions to recognize that men are victimized by gendered patterns of human rights abuse. While this report focuses on how truth commissions can empower women's access to justice in contexts where gender roles, hierarchies, and injustices have enabled and shaped human rights abuse, the analyses advanced here may have important implications for the analyses of gendered abuse against men, as well.

Why is it so critical to think about gender when planning a truth commission? Dominant hierarchies of human rights violations often marginalize women's priorities, interests, and participation in addressing

⁴⁷ As noted already, this handbook is directed at the reflective practitioner with a commitment to addressing gender issues in the truth commission process. However, it does not presume any extensive background knowledge of feminist theory. Thus, with an interest in making this report accessible to all potential users, we do not include a discussion of the debates in feminist theory that informs this report; instead, we incorporate that theory into our discussion of the operational issues that arise in a commission process.

⁴⁸ See the discussion of commission narratives regarding masculinity in Rosemary Jolly, "TRC: Engendering Violence: An Analysis of Masculinity in TRC and Related Narratives," presented at *Commissioning the Past* conference, [1999].

⁴⁹ *Id.*

war, authoritarianism, and other contexts; in fact, they render invisible the gendered patterns and structures of human rights abuse. In many cases, this invisibility is shaped and enabled by background social structures and ideologies, including discrimination embedded in the legal system, the dearth of women in the political sphere, barriers to women's access to the media, and even the institutional practices of truth commissions and other human rights institutions. These social norms, ideologies, practices, and institutional arrangements characterize contexts of war, but also peace—in fact, they contribute to the root causes of women's vulnerability in times of conflict. While the dominant methodologies of transitional justice work focus on contexts of extraordinary violence and define violations in terms of acts that constitute human rights crimes, few pay attention to the continuities between contexts of “ordinary” and “extraordinary” violence, or between the everyday practices and prejudices that are normalized, domesticated, and privatized and the extreme violations that make news. In most contexts of large-scale human rights abuse, addressing the invisibility of women's experiences (as varied as they may be) and engendering access to justice and redress requires focusing on gender from the conception of the truth commission to the follow-up of final report recommendations.

Because we understand gender as constructed and contested in diverse ways in different communities and historical contexts, we do not ascribe a universal content to the term “gender” or the identities of women and men. In many truth commissions, women have been portrayed, often singularly, as victims. Yet women, like men, have taken on multiple roles, including those of survivors, soldiers, police personnel, prison guards, intelligence operatives, witnesses, peace-builders, and human rights activists monitoring and resisting human rights violations. Often post-conflict remedies are generated by simplistic assumptions regarding women's roles in wars as that of passive victims.⁵⁰

Moreover, we also need to develop a more complex understanding of gender in relation to other social dynamics. While human rights crimes during times of war or repressive rule may often take on gendered patterns, gender intersects with other social fault lines, such as ethnicity, race, political affiliation, ideology, class, marital status, sexual orientation, nationality, religion, and disability. Attention to this complex intersectionality is critical. In fact, in some cases gender may not be among the most politically significant windows into the patterns of abuse. For example, it appears that race, class, and political ideology are the most pertinent entry points to understanding the incidents studied by the Greensboro TRC. Rather than assuming that every truth commission should emphasize gender, only a historically grounded study of each situation can determine how to understand contexts of human rights abuse and their impact.

⁵⁰ Contesting this assumption, a woman from Ardoyne, who was a former member of a militant group in Northern Ireland, said that she never felt like a victim during the course of the conflict. Rather, she felt empowered because she had taken up arms to defend her children; moreover, the camaraderie and solidarity of the struggle itself were empowering. However, with the return to civilian life after demobilization, she now feels vulnerable in routine contexts, such as returning home after work when she is “just a woman” on the street after nightfall. “Women and Human Rights: Conflict, Transformation and Change,” University of Ulster conference, May 2005; subgroup discussion on “Particularly Vulnerable Women.”

“International actors engaging with conflict-affected populations often perceive women and girls primarily as passive victims of war, particularly when conflicts are at their height.

...While women are disproportionately affected by armed conflict, they are also actors: supporting communities and families, engaging in resistance to oppression and war, taking a lead in reconstruction, and holding the information necessary for post-conflict peace and nation-building.

Women’s human rights activists work on the frontline of conflicts throughout the world. They mobilise, individually and collectively, to address the urgent needs of conflict-affected populations – before, during and after the fighting.

In the midst of acute crises, they can be found addressing immediate healthcare issues, establishing informal education systems, working with survivors of violence, offering advice and providing services and support. Some stay behind when many have risked their lives to speak out about human rights abuses and to help people trapped by hostilities. Others cross borders with their communities, negotiate access with armed actors and work in refugee camps to trace the missing and to alleviate the physical and psychological effects of the violence.

After the cessation of open armed conflict, they turn to re-establishing critical services, aiding return and reconstruction processes, ensuring access to justice through legal reform, and supporting political and economic development.”

—Excerpted from Jane Barry, “Rising Up In Response: Women’s Rights Activism in Conflict,”
Women’s Action Fund, 2005

Finally, we must address the issue of *when* gender enters the picture. This report deals specifically with issues confronted when a gendered framework is introduced during the truth commission’s life, from the defining of its mandate to the publication of its final report, but it is mindful of issues that precede and follow the life of truth commissions. The landmark Security Council Resolution 1325 on Women, Peace and Security advocates for a holistic approach to prioritizing gender in different phases of transition (broadly defined).⁵¹ Truth commissions that look narrowly at the periods of acute human rights abuse highlighted in most mandates may give us an easier template for action. However, this practice may fail to address adequately the complex nature of gendered human rights abuse, which may require that a truth commission take into account the enabling conditions and long-term legacies of abuse. In this context, it may be useful to note that gender is an important organizing framework in preparatory work prior to truth commissions, as well as in the post-commission period. In the preparatory phase attention to gender can assist with the process of understanding the enabling conditions of abuse, assessing how women were impacted in contexts of mass human rights abuse in order to determine mandate priorities and approaches, and building a constituency to support and advocate for women impacted by human rights abuse. In the post-commission phase, attention to gender can help with assessing and enriching the commission’s impact on gender justice struggles and better strategize, coordinate and mobilize for post-commission follow-up. Thus, while this report focuses on the period of a commission’s operation, we also want to emphasize the need to situate the commission’s operational responsibilities in relation to the complex and long-term nature of the transitional process.

⁵¹ Security Council Resolution on Women and Peace and Security, S/RES/1325, Oct. 31, 2000.

II. ADDRESSING SEXUAL MINORITIES

Gendered patterns of human rights abuse also include violations against women and men who are, or are perceived to be, lesbians, gays, and others who may contest—or not comply with—dominant sexual norms. For lack of a better vocabulary, this report uses the rather inadequate term “sexual minorities” to refer to those targeted in ways that reference sexual orientation. The term “minorities” is not used as a numerical description, but as a reference to political marginalization.

Contexts of militarization have often mobilized ideas of hetero-normativity to define military strength or depict enemy vulnerability. There has been considerable work on gays and lesbians in the American military and the official and unofficial processes for enforcing dominant norms and defining and penalizing “deviance.”⁵² The South TRC’s hearings on the military revealed that gay conscripts faced extraordinary repression within the ranks. The Gay and Lesbian Archives and a range of other organizations sponsored a special report on homophobic violence against gays and lesbians in the South African defense forces during the apartheid years.⁵³ The report underscored that it shared the same “premise upon which the work of the TRC is based, that reconciliation and healing cannot occur in the absence of knowledge and understanding.”⁵⁴ In many contexts, the persecution of sexual pluralism also impacts transvestites, sex workers, women who assert sexual agency, and others. Such situations have often seen attempts to enforce compliance with dominant stereotypes of masculinity and femininity and targeted those who cannot or will not be assimilated. There is widespread recognition in feminist and queer activism and scholarship that sexual persecution is deployed as a political weapon in many contexts of mass human rights abuse.

Similarly, as with the rape of women by men, same-sex rape has also been used in many military outfits as an expression of internal hierarchy, as well as in the torture of political prisoners, occupied populations, and so on. Some of these practices were highlighted in recent scandals regarding the U.S. military in Abu Ghraib prison in Iraq. In some contexts there may be an effort to police particular notions of national identity that persecute those who deviate from privileged norms regarding gender roles and sexual orientation. Nazi Germany’s policy on homosexuality may be among the most extreme, but best documented, instances of a systematic implementation of such a policy.

This does not mean that all truth commissions should be organized to address the role of hetero-normativity in the history of human rights abuse or that the persecution of sexual minorities is a feature of every context that a truth commission may address. However, in contexts where there are systematic patterns of targeting sexual minorities, it is important to address this issue in its specificity—as related to, but also distinct from, other kinds of gendered abuse. Rather than starting with an a priori template for addressing gender, this more complex lens enables a truth commission to assess the context in which it works to identify entrenched patterns of abuse, understand the enabling conditions for the systematic vulnerabilities of different communities, and determine its political priorities accordingly. In other words, this may advance the truth that the commission is supposed to highlight and engage with. Thus, to the extent that the commission’s analysis of sex crimes is focused narrowly on male-female relations, without also looking at issues regarding dominant norms of sexual orientation and sex roles and the specific implications for repression around sexuality, it may fundamentally misunderstand the nature and extent of abuse.

⁵² Janet Halley, *Don’t: A Reader’s Guide to the Military’s Anti-Gay Policy*, Duke University Press: Public Planet Books, 1999.

⁵³ See Mikki van Zyl et al., *aVersion Project*, available at www.mrc.ac.za/healthsystems/aversion.pdf.

⁵⁴ *Id.* at 11.

Proactive investigation of abuse against sexual minorities is particularly important because transitional justice institutions seldom address these issues, even though they may be important aspects of the repressive apparatus as a whole. In many contexts, a shroud of secrecy may continue to operate around issues of sexual orientation, and there may be little reporting or monitoring of such abuse. Thus far, the CVR's final report is the only one that draws attention to the targeting of sexual minorities as a distinct subject. The Commission found that the militant group MRTA used homophobic violence as a strategy of terror and declared that this was a war crime. This is a landmark intervention in the history of final reports. Yet it is equally significant that even in the Peruvian report, the issue gets only marginal attention; namely, two pages of a 12-volume report. Among other issues, the acute neglect of this issue is partly explained by the normalization of violations against sexual minorities in many contexts. Even some branches of the human rights community may perceive sexuality as a personal matter of lesser political import than persecution on account of issues such as ethnicity or ideology. Political space may continue to be identified with the actions of the state; entrenched ideologies and substate social structures may not be recognized as political. In some contexts, there may be no shared political vocabulary to address crimes faced by sexual minorities; thus, these may be "crimes without a name" or "crimes that will not be named." Given the stigma and persecution that continues to be attached to open discussion of sexual orientation, some survivors may feel that the enhanced vulnerability they experience when coming forward publicly is just as heinous and lasting as the crime itself. If a commission is sensitive to these political dynamics, it can take proactive measures to ensure a safe context for hearing testimony and conducting investigations to surface hidden histories of justice struggles and produce a report that better addresses the multiple truths regarding human rights abuse, its legacies and potential remedies.

It should also be noted that there is not one particular way to describe or address the abuse suffered by sexual minorities. Truth commissions should consult with a range of civil society organizations to better appreciate the varied issues of political principle and strategy that inform the multiple ways in which they frame their struggles. Groups may organize around sexual orientation, gender roles, intersections of sexuality and race, sexual pluralism, and human rights in general, without even mentioning sex or sexuality. Similarly, some see coming out and naming the abuse as itself a critical corrective, others may caution against assuming that speaking out, classifying abuse and revealing stories is in itself liberating. These differences not only reflect different political vocabularies and their meanings in different communities, but also the myriad ideological approaches to identity politics and rights discourse that inform the work of NGOs who seek to record and remedy the crimes and injustices of the past; they also reflect the myriad intersecting axes along which oppressive structures have been mobilized and injustice sustained and reproduced.

This report focuses on the impact of women's access to justice in the context of issues regarding gender identity and gender roles and hierarchies in a truth commission process. It is rather sparse in its analyses of the closely overlapping and intersecting issues concerning sexual minorities and access to justice on the basis of related issues regarding sexual identities, roles, and hierarchies. However, as we expand our knowledge of the dynamics of this intersection in contexts addressed by past truth commissions, and as we ourselves help to open up the conversation in various arenas for future truth commissions, we hope that subsequent editions will better address the issues faced by sexual minorities that are not touched on at this point.⁵⁵ Our understanding of gender recognizes that diversity exists within the categories of women and men and the nature of gendered abuse they perpetrate and suffer. Each context is distinct.

⁵⁵ The ICTJ has initiated a research project on sexual minorities and transitional justice, which aims to: explore how sexual minorities are targeted during conflicts; examine how and why transitional justice has failed to adequately address these human rights violations; and analyze possible methods future mechanisms could employ to ensure that the needs of this category of victims are properly met.

Beijing Declaration and Platform of Action (1995)
Cairo Declaration on Human Rights in Islam (1990)
Convention Against Torture (1975)
Convention Against Torture (1975)
Convention on Rights of the Child (1989)
Convention on Rights of the Child (1989)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) and
Optional Protocol (2000)
Convention on the Political Rights of Women (1954)
Council of Europe—Declaration on the Equality of Women and Men (1988)
Council of Europe—Declaration on the Rape of Women and Children in the Territory of the Former
Yugoslavia (1993)
Declaration on the Elimination of Violence Against Women (1993)
Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)
Geneva Conventions (1949/1950)
Geneva Conventions (1949/1950)
Genocide Convention (1948/1951)
Genocide Convention (1948/1951)
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women
(1995)
International Covenant on Civil and Political Rights (ICCPR) (1966) and Optional
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2001)
Protocol to the African Charter on the Rights of Women in Africa (2003)
Refugee Convention (1951)
Rome Statute (2002)
The Casablanca Declaration of the Arab Human Rights Movement (1999)
UN Security Council Resolution 1325 (2000)
United Nations High Commissioner For Human Rights Principles and Guidelines on Human Rights and
Trafficking (2002)

Substantive Jurisdiction (Crimes of Sexual & Gender Violence)	Procedures	Structure
<ul style="list-style-type: none"> • <u>Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization and other Sexual Violence.</u> The ICC Statute explicitly recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other grave forms of sexual violence as war crimes in international and non-international armed conflict as well as crimes against humanity. (Articles 8(2)(b)(xxii), 8(2)(e)(vi) and 7(1)(g)) • <u>Persecution and Trafficking.</u> In addition to the crimes of sexual and gender violence discussed above, persecution is included in the ICC Statute as a crime against humanity and specifically includes for the first time the recognition of gender as a basis for persecution. The ICC Statute also includes trafficking as a crime against humanity as among the crimes of enslavement. (Articles 7(1)(h), 7(1)(c) and 7(2)(c)) • <u>Genocide.</u> The ICC Statute adopts the definition of genocide accepted in the Genocide Convention. (Article 6) • <u>Non-discrimination.</u> The Statute specifically states that the application and interpretation of law must be without adverse distinction on the basis of enumerated grounds, including gender. (Article 21(3)) 	<ul style="list-style-type: none"> • <u>Witness Participation and Protection.</u> The Court has an over-arching responsibility to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, taking into account all relevant factors, including age, gender, health and the nature of the crime. The Court may take appropriate protective measures in the course of a trial, including in camera proceedings and allowing the presentation of evidence by electronic means. In addition, the Prosecutor is required to take these concerns into account in both the investigative and the trial stage. (Article 68) • <u>Victim Witness Unit.</u> The statute provides for the creation of a Victims and Witnesses Unit (VWU) within the Court’s registry (in recognition that protection of witnesses should be independent of prosecutorial imperatives). The VWU will provide protective measures, security arrangements, counseling and other appropriate assistance for victims and witnesses who appear before the Court, and others at risk on account of their testimony. (Article 43) • <u>Participation.</u> The statute explicitly recognizes the right of victims/survivors to participate in the justice process, directly or through legal representatives, by presenting their views and concerns at all stages which affect their personal interests. (Article 68(3)) • <u>Reparations.</u> The statute includes a provision enabling the Court to establish principles and, in certain cases, to award reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. (Article 75) 	<ul style="list-style-type: none"> • <u>Women on the Court.</u> The statute requires that the need for a “fair representation of female and male judges” be taken into account in the selection process. The same provision applies to the selection of staff in the Office of the Prosecutor and in the Registry. (Article 36(8)(a)(iii); Article 44(2)) • <u>Expertise in Trauma</u> The Registrar is required to appoint staff with expertise in trauma, including trauma related to crimes of sexual violence. (Article 43(6)) • <u>Legal Expertise on Violence Against Women.</u> The statute requires that, in the selection of judges, prosecutors and other staff, the need for legal expertise on violence against women or children must be taken into account. This provision is in recognition of the significance of crimes against women, and the need for expertise at every level to ensure these crimes are effectively investigated and prosecuted. To achieve this it is imperative that individuals with expertise in the investigations and prosecutions of gender crimes are recruited by the Court. (Articles 44(2) and 36(8)) • <u>Legal Advisors on Sexual and Gender Violence.</u> The Prosecutor is required to appoint advisers with legal expertise on specific issues, including sexual and gender violence. This is an important mechanism for ensuring both that gender crimes are properly investigated and prosecuted and victims properly respected and protected. (Article 42(9)) • <u>Trust Fund for Victims</u> The Statute requires the establishment of a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and for their families. (Article 79)

⁵⁶ By the Women’s Initiative for Gender Justice. See www.iccwomen.org/publications/resources/docs/Gender_Integration_in_the_Rome_Statute.doc.

Definition of Crimes of Sexual Violence in the ICC⁵⁷

Rape

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

[The concept of “invasion” is intended to be broad enough to be gender-neutral.]

[It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 7(1)(g) - 3, 5 and 6.]

Sexual Slavery

The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

[Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.]

[It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.]

Enforced Prostitution

The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.

The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

Forced Pregnancy

The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

⁵⁷ As contained in the Elements of Crimes Annex and the Rome Statute. See www.ytech.nl/iccwomen/wigjdraft1/Archives/old WCGJ/resources/crimesofdefinition.htm.

Enforced Sterilization

The perpetrator deprived one or more persons of biological reproductive capacity.

The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.

[The deprivation is not intended to include birth-control measures that have a nonpermanent effect in practice.]

[It is understood that “genuine consent” does not include consent obtained through deception.]

Sexual Violence

The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.

Persecution

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, *gender* as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.

Article 7(2)(g)

“Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.

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