

# AFRICAN JOURNAL ON CONFLICT RESOLUTION

*Volume 9, Number 2, 2009*



**Special issue on  
Gender and transitional  
justice in Africa**



*In partnership with the  
International Centre for Transitional Justice (ICTJ)*



# African Journal on Conflict Resolution

*Volume 9, Number 2, 2009*



*in partnership with*



The *African Journal on Conflict Resolution* is a biannual peer-reviewed journal published by the African Centre for the Constructive Resolution of Disputes (ACCORD) for the multidisciplinary subject field of conflict resolution. It appears on the list of journals accredited by the South African Department of Education. ACCORD is a non-governmental, non-aligned conflict resolution organisation based in Durban, South Africa. ACCORD is constituted as an education trust.

The journal seeks to publish articles and book reviews on subjects relating to conflict, its management and resolution, as well as peacemaking, peacekeeping and peacebuilding in Africa. It aims to be a conduit between theory and practice.

Views expressed in this journal are not necessarily those of ACCORD. While every attempt is made to ensure that the information published here is accurate, no responsibility is accepted for any loss or damage that may arise out of the reliance of any person upon any of the information this journal contains.

Copyright © 2009 ACCORD ISSN 1562-6997

All rights reserved. Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Articles and book reviews may be submitted by e-mail, as Microsoft Word attachments, to the Managing Editor of the journal at [malanj@accord.org.za](mailto:malanj@accord.org.za), with a copy to [ajcr@accord.org.za](mailto:ajcr@accord.org.za).

Articles should be of good academic quality, and should be between 6 000 and 8 000 words in length. An abstract of between 100 and 200 words and a few lines about the author should be included. Book reviews should be between 1 000 and 1 500 words.

All references, according to the Harvard method, should be included. As far as possible, in-text references should include the page numbers of the sections of sources referred to. In the case of a direct quotation, the exact page number is absolutely necessary. For the purpose of adding extra details, comments or references which may distract attention from the argument in the text, footnotes may be used sparingly. For more information about the referencing system, please see the excerpt from ACCORD's Style Guide, which is available at <http://www.accord.org.za>.

# Contents

<b>Foreword</b>	5
<i>Helen Scanlon</i>	
<b>Gender and transitional justice in Africa: Progress and prospects</b>	9
<i>Helen Scanlon and Kelli Muddell</i>	
<b>Should we give up on the State? Feminist theory, African gender history and transitional justice</b>	29
<i>Pamela Scully</i>	
<b>Truth commissions and gender: A South African case study</b>	45
<i>Ayumi Kusafuka</i>	
<b>Addressing gender-based violence in the Sierra Leone conflict: Notes from the field</b>	69
<i>Lotta Teale</i>	
<b>Views from the field</b>	
<b>Truth seeking and gender: The Liberian experience</b>	91
<i>Anu Pillay</i>	
<b>'Gendered truth'? Legacies of the South African Truth and Reconciliation Commission</b>	101
<i>Sheila Meintjes</i>	
<b>What transitional justice in Zimbabwe? Women of Zimbabwe Arise (WOZA) prepares for popular participation</b>	113
<i>Mary Ndlovu</i>	
<b>Transitional justice and gender in Uganda: Making peace, failing women during the peace negotiation process</b>	121
<i>Harriet Nabukeera-Musoke</i>	

## **Editorial Board**

**Editor-in-chief**

**Mr Vasu Gounden**

Founding and Executive Director, ACCORD

**Managing editor**

**Prof Jannie Malan**

Senior Researcher, ACCORD

**Co-editors**

**Dr Shauna Mottiar**

Senior Researcher, ACCORD

**Ms Angela Ndinga-Muvumba**

Manager, Knowledge Production Department, ACCORD

## **Advisory Panel**

**Mr Nicolas Bwakira**

Special Representative of the African Union Chairperson to Somalia

**Prof Fantu Cheru**

Research Director, The Nordic Africa Institute

**Ms Phyllis Johnson**

Executive Director,

Southern African Research and Documentation Centre, Harare

**Prof Thomas Ohlson**

Department of Peace and Conflict Research, Uppsala University, Uppsala

**Dr Alioune Sall**

Executive Director of African Futures Institute, Pretoria

**Dr Helen Scanlon**

Africa Coordinator, Gender Programme,

International Centre for Transitional Justice, Cape Town

**Mr Tor Sellström**

Senior Advisor, ACCORD

**Dr Meena Singh**

Research Associate of the Common Security Forum



# Foreword

*Helen Scanlon*

Dr Helen Scanlon is Director of the Gender Justice Programme at the International Centre for Transitional Justice in Cape Town, South Africa.

This special edition of the *African Journal on Conflict Resolution* provides a unique medium to outline some of the gender concerns and priorities that have emerged in recent transitional justice initiatives in Africa. The articles largely stem from a meeting on the theme of ‘Gender and Transitional Justice in Africa: Progress and Prospects’ hosted by the International Centre for Transitional Justice (ICTJ) in Cape Town in September 2008. The meeting brought together African practitioners who have worked in the field of gender and transitional justice to allow the exchange of experiences from the field. During recent years, women’s organisations and practitioners have made critical advances in drawing attention to gender considerations in transitional justice processes, but there is a paucity of documentation and analysis of their initiatives. Recording the experiences of gender activists on the continent is critical for future interventions and this journal hopes to contribute to this process in some way. To facilitate a wide spectrum of voices, the journal has created a section for views from the field to give practitioners an opportunity to reflect on their own experiences.

The opening article by Helen Scanlon and Kelli Muddell provides a brief overview of significant developments in the field of gender and transitional justice. They argue that the current discourse on transitional justice in Africa needs to be expanded if we are to promote more inclusive gender-oriented

notions of justice. Scanlon and Muddell note how recent transitional justice initiatives have tended to reduce gender concerns to those of women's 'victimhood' during conflicts which not only perpetuates perceptions of women's passive role but also silences other aspects of their experiences. By identifying some of the gaps in transitional justice mechanisms they argue that practitioners need to adopt a more holistic approach to gender justice that will ultimately promote healing and a more gender sensitive transition.

Pamela Scully's article provides a feminist analysis of transitional justice processes and questions perceptions that it is possible to secure women's rights through the law. She goes on to critique notions that the state is capable of providing solutions to injustices experienced by women during conflicts. She also argues that the concept of women's rights need to be re-examined in the context of African history during which the state has long been illegitimate due to its colonial history of looting and extraction. As such, transitional justice practitioners need to interrogate a framework of law and the state that may intrinsically lack the legitimacy to promote gender justice.

Ayumi Kusafuka adopts a slightly different approach to previous critiques of the South African Truth and Reconciliation Commission (TRC) by taking a gender lens to each stage of its process, from its mandate to its hearings. She argues that the South African example is one of a missed opportunity to outline the links between apartheid's structural and gendered violence that continue to plague the country. She notes that a variety of factors such as the failure to adopt a clear gender strategy, limited time and resources, and the lack of sustained involvement by women's organisations resulted in an *ad hoc* approach to gender by the Commission which ultimately impeded a full disclosure of South Africa's past.

Lotta Teale analyses the impact of transitional justice mechanisms set up to address gender-based violence in the Sierra Leone conflict. The country's transition resulted in the establishment of both a truth commission and a Special Court to offer accountability for the atrocities committed during the 11-year conflict. However, while both processes did go some way to promote gender justice, she argues that they failed to address the country's

endemic gender-based human rights violations. Teale queries the real impact of prosecutions through the Special Court as well as the ability of the truth commission to promote gender justice in the long term.

The Views from the Field section is led by South African gender activist Sheila Meintjes who reflects on her own experiences as part of civil society during the South African TRC process. She details a series of consultations between women's organisations and the TRC Commissioners which set out to highlight the gendered nature of truth and the need to use a gender lens in all stages of the Commission's process. Despite these interventions, the TRC's limited interpretation and understanding of gender meant it failed to adopt gender as a tool to identify how women and men experienced apartheid differently.

Anu Pillay, former advisor to the Liberian TRC in 2009, argues that despite a broad commitment to address gender by Liberia's recent truth commission, commissioners did little to reach beyond a women and children's affairs' portfolio and failed to recognise gender equality as its overarching goal. She expresses concern that gender was interpreted to mean work with women or for women and that this meant the Commission focused primarily on women as victims, particularly of sexual violence. While it was critical that the Commission recognised the violence against women in the 14-year conflict, she argues that neglecting gender as an analytical tool meant the Commission has left much of Liberia's gendered history hidden.

Mary Ndlovu, from Women of Zimbabwe Arise, a grassroots women's organisation which received the Robert F. Kennedy Human Rights Award from United State's President Barack Obama in November 2009, provides insight into some of the transitional justice concerns currently being discussed in Zimbabwe. She notes the need for accountability in the country and argues that there are calls for the truth about the country's past as well as for punishment of the perpetrators of massive human rights violations. She questions whether Zimbabwe would have evolved differently if some form of transitional justice had been adopted at independence and argues that the next transition must be accompanied by some form of gender justice.



In the final article, Harriet Nabukeera-Musoke from the Ugandan women's non-governmental organisation Women's International Cross-Cultural Exchange (Isis-WICCE), details the mobilisation of women in Uganda during the 2006 peace process. She observes the absence of women during the negotiations despite the endemic rate of gender-based human rights violations committed during the 18-year old rebellion by the Lord's Resistance Army (LRA) in the north of Uganda. Nabukeera-Musoke documents how women groups and activists joined forces to create the Uganda Women's Coalition for Peace (UWCP) to ensure that women's needs were articulated at the negotiation table. Critical to this mobilisation was their need to voice their priorities for the transitional justice initiatives being outlined during the peace process.

Read individually, each of the articles in this special edition provides a snapshot of the challenges practitioners have faced when trying to infuse gender concerns in recent transitional justice processes. When read together, these articles highlight how activism by African civil society organisations has advanced gender justice, but also how those devising future transitional justice processes need to listen to civil society in order to promote a more inclusive approach to addressing human rights violations. What is apparent is that African gender activists need to be given more opportunities to both detail their experiences and outline their concerns regarding transitional justice if we are going to genuinely advance gender justice on the continent.

# Gender and transitional justice in Africa: Progress and prospects\*

*Helen Scanlon and Kelli Muddell\*\**

## **Abstract**

During the past few decades, different models of transitional justice (TJ) have developed throughout Africa to try to address the mass human rights abuses that have occurred during conflicts. These mechanisms, both judicial and non-judicial, have often failed to adequately tackle the extensive gender-based violence that has been prevalent on the continent. This article examines the ways truth commissions, legal mechanisms, reparations, security sector reform efforts, and traditional mechanisms in Africa have dealt with gender-based human rights violations. While recent African TJ mechanisms have been innovative in developing means to address crimes against women, these mechanisms continue to fail victims. This is in large part because the current discourse on gender and transitional justice needs to be broadened to better address women's experiences of conflict. Future TJ initiatives need to re-examine the types of violations prioritised, and recognise the continuum of violence that exists in pre-conflict and post-conflict societies. It is also important to challenge the transitional justice field to stop reducing sexual-based violence to 'women's problems', and explore how men are affected by the gendered dynamics of conflict.

---

\* This article is based on a report of the Gender and Transitional Justice in Africa conference, held on 4–5 September 2008 at the Vineyard Hotel, Cape Town, South Africa. The authors express their special thanks to the rapporteurs, Saida Ali and Cynthia Mugo, and to the participants, who contributed to the thinking reflected here.

\*\* Dr Helen Scanlon is Director of the Gender Justice Programme at the International Centre of Transitional Justice (ICTJ). Kelli Muddell is Gender Specialist at the ICTJ and is based in New York.

The need to address gender-based violations as a critical facet of women's struggles for human rights, especially in those societies emerging from civil war and militarised environments, remains a slowly developing field. While the emergence of peace-building initiatives in Africa in the last three decades has been mirrored by the development of numerous models of transitional justice, the inclusion of gender issues has been weak. Transitional justice models range from a number of judicial and non-judicial approaches that have been adopted by post-conflict societies to address human rights abuses of the past. War crime tribunals and truth and reconciliation commissions (TRCs) have been set up throughout Africa since 1974 with varying degrees of success.<sup>1</sup> Recent experiments on the continent have ranged from United Nations (UN) tribunals and 'hybrid' criminal courts, to domestic trials and truth-seeking initiatives. Within these, numerous gender concerns have been revealed, from addressing the high levels of gender-based violence that occur during conflicts, to recognising the wide variety of roles women play beyond that of victim.

Neglecting gendered patterns of abuse entrenches impunity, distorts the historical record, and undermines the legitimacy of transitional justice initiatives, and thus ultimately affects both women's and men's access to justice. The high rate of gender-based human rights violations during recent conflicts in Africa attests to the need to challenge a culture of impunity. However to date the achievements of transitional justice initiatives in addressing these violations have been inconsistent and uneven. Gender-related concerns are frequently overlooked during the devising and implementation of transitional justice mechanisms, leading to a lack of justice for gender-based violence and a failure to examine how gender inequalities underpin much of the violence taking place.

Nevertheless, current and future transitional justice initiatives in Africa offer an opportunity to consider and implement the lessons learned from other countries' experiences. Despite the many challenges facing women during conflicts,

---

1 TRCs include Uganda (1974), Zimbabwe (1985), Uganda (1986), Chad (1991), Rwanda (1992), Burundi (1995), South Africa (1995), Nigeria (1999), Sierra Leone (2002), Ghana (2002) and Liberia (2007). War Crime tribunals were established for Rwanda (1994) and Sierra Leone (2002).

post-conflict settings have at times revealed that there is an opportunity to promote women's leadership, enhance access to justice, and build momentum for fundamental women's rights reform. While women's organisations are generally not present and women are severely underrepresented at the tables where peace agreements are negotiated, transitional justice mechanisms offer women other opportunities to participate in and influence the peace-building process.

The interrogation of various initiatives on the continent allows the opportunity to analyse some of the progress made in getting gender onto the agenda of transitional justice processes. It also provides the chance to interrogate from a gender perspective the prospects of enhancing women's rights through these processes as a number of countries embark on transitional justice initiatives.

### **Truth seeking**

Truth Commissions and Commissions of Inquiries have been the most visible transitional justice mechanism on the continent in recent years. Since 1995, commissions have been created in Burundi (1995), South Africa (1995), Nigeria (1999), Sierra Leone (2002), Ghana (2002) and Liberia (2007) and recent peace agreements have included commitment to commissions in Burundi, Togo and Kenya among others.

Historically, truth commission mandates have most often been written, interpreted, and implemented with little regard for the distinct and complex gender-based violations of human rights suffered; but gender-sensitive mandates are vitally important in the creation of future truth commissions (Nesiah et al. 2006). Truth commissions present a medium to document patterns of gender-based violence, to suggest gender-sensitive reparations, to create a more accurate historical record of the conflict and to enable the creation of more effective gender-sensitive programmes for post-conflict reconstruction. For example, in Sierra Leone, the TRC used findings from the hearings to recommend changes in discriminatory laws that made women vulnerable to the violence.

In South Africa, after the TRC opened its doors in 1995, a number of feminist activists engaged the TRC in discussions on the gendered nature of truth, arguing

that the systemic impact of apartheid needed to be addressed by the Commission. In some regards, the South African TRC was seen to have successfully included women. Women were well represented in its staff, constituted more than half of those who testified, and three separate hearings that focused exclusively on women were held. However, many gender activists criticised the TRC both for the fact that women tended to speak of others' experiences rather than their own (only 158 women gave evidence regarding sexual abuse) and more specifically for overlooking the structural impact of apartheid on women's lives. The TRC was also critiqued for categorising rape as 'severe ill-treatment' instead of recognising it as a form of torture and persecution as it is currently recognised in international law. Thus, despite one chapter being dedicated to women in the final TRC report, the gendered nature of the country's past was only superficially recorded.

TRCs that have emerged in Africa subsequent to the South African TRC have achieved varying degrees of success in pursuing gender justice. Ghana's National Reconciliation Commission, established in 2002, elected to 'mainstream' gender throughout its operations, and did not hold separate public hearings for women. As a result, gender-based abuses were subsumed among the broader violations of human rights, and there was no separate focus on gender-based violations in its final report. The lack of focused attention on women – who submitted less than 20 percent of all testimonies – rendered gender-based violence largely invisible within the process.

Drawing lessons from the South African experience, the Sierra Leonean Truth and Reconciliation Commission, with the assistance of the United Nations Development Fund for Women (UNIFEM), set out to pay special attention to the experiences of women and children during the conflict. Integral to the development of the TRC was the role played by civil society during the public hearings. Binaifer Nowrojee has noted that women's groups were primary actors in the gender hearings, organising marches through Freetown, which ultimately resulted in the women's hearings being the best attended. The public hearings brought national attention to the plight of women during the war as well as to the marginalisation of and discrimination against women prior to the conflict. The Commissioners' interpretation of the mandate, which in effect allowed investigation of the experience of Sierra Leonean women both pre- and

post-conflict, added a new dimension to the ability of TRCs to address the past. Consequently, the final report was able to highlight cases of gender violence as well as the multiple roles women played. The Commission's recommendations have been used by civil society groups such as the Mano River Women's Network to advocate for legal reforms to advance gender justice.

Despite these important achievements that indicate the real impact of TRCs in the advancement of gender justice, truth commissions have been criticised for advancing a narrow and partial truth. Gender-sensitivity is of vital importance during the 'truth-seeking' process. For example, cultural norms and stigma may prevent women from testifying publicly, and this needs to be addressed in creative ways to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. Further sensitivity is needed regarding language. During initial interviews by the Sierra Leone truth commission, for example, the nature of questions was widely criticised. Women were being asked questions such as: 'What were you wearing when it happened?' and 'Who was there when it happened?'. However, gender training was subsequently provided for all Commission staff regarding interview techniques and how to support and protect female witnesses. Further, victims may use language that does not immediately indicate sexual violence due to the stigma attached. For example, in Sierra Leone, women would sometimes say 'I lay with him' when they had been victims of sexual abuse. It was also noted that greater efforts are needed to document women's experiences throughout the conflict, rather than simply when transitional justice processes commence.

The crimes that truth commissions are mandated to investigate will also impact on the version of 'truth' that commissions are able to record. For example, in the South African case, perpetrators could apply for amnesty 'in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past' (Promotion of National Unity and Reconciliation Act 1995: Preamble). In one case an application for amnesty for rape was rejected as one Commissioner argued rape could not be considered a political crime (Hayner 2001). Ultimately the South African TRC report conceded that the manner in which human rights violations had been defined in the Commission's mandate

‘resulted in blindness to the types of abuse predominantly experienced by women’ (Truth and Reconciliation Commission of South Africa Report 1998:4.10.316).

Also, varying interpretations of what constitutes sexual violence may exclude some victims from truth-seeking processes. For example, in many contexts women may have agreed to sexual acts because they have been told their lives would be spared, or for survival issues such as the offer of food or shelter. In the Democratic Republic of the Congo (DRC) and other contexts numerous cases have been exposed of exploitation by military and civilian peacekeepers who have exchanged food or small sums of money for sex. In such circumstances women often do not recognise the coercive nature of these relationships as being a form of sexual abuse.

It is important that those developing transitional justice mechanisms tailor these initiatives to the local context, rather than simply trying to ‘cut and paste’ models from other countries. For example, when looking at the South African TRC which has often been exported as a model, the unique circumstances of the country must be considered. Despite the mass atrocities that were committed in the name of apartheid there was very little large-scale conflict that took place on South African soil. Thus, South Africa’s infrastructure was still largely intact at the start of their transitional phase, and this created enabling circumstances for transitional justice processes such as the TRC. In many other African countries, internal conflict has devastated infrastructure meaning that the first step in any transitional justice phase will need to focus on re-building the foundations necessary for implementation. Therefore, attempting to recreate South Africa’s ‘model’ in a country whose infrastructure has largely been destroyed is unlikely to succeed.

## **Legal mechanisms**

Since the end of the Second World War, there have been numerous developments in international law which provide for the prosecution of sexual crimes or gender-based violence during conflicts. However, such violations remained removed from widespread prosecution until the 1994 Rwandan genocide – during which as many as 500 000 women were raped. This led to a more radical recognition of the need

for a gender-based prosecution strategy to address sexual violence in conflicts as a war crime. The Arusha-based International Criminal Tribunal for Rwanda (ICTR), an ad hoc court established in 1994 to prosecute those 'responsible for serious violations of international criminal law' during the country's genocide, was a turning point in how international courts addressed sexual violence.

Under the 1998 Rome Statute creating the International Criminal Court (ICC), rape has been defined as a crime against humanity, a form of genocide, a form of torture or enslavement, and a crime of war. As such, rape is now included under *jus cogens* – 'higher law' that may not be violated by any country – and can therefore be tried in the courts of any country, even those not party to the conflict. Further, the need to ensure the protection of women during conflicts has been included under a number of international legal bodies, such as through UN Resolutions 1325<sup>2</sup> and 1820 on sexual violence as a tactic of war, as well as the African Union Protocol on Women.

In Sierra Leone, the nature and extent of atrocities committed during the civil war prompted the creation in 2000 of the Special Court which was mandated to prosecute those who 'bear the greatest responsibility' (*Agreement on the Special Court for Sierra Leone* 2002) for war crimes, crimes against humanity and other serious violations of international humanitarian law. The Sierra Leone Special Court, a hybrid transitional justice experiment, led to a number of landmark legal developments which had significant implications for international gender justice. These included recognising gender crimes in its definition of crimes against humanity and widening their interpretation to include sexual slavery and forced marriages. The Court was also groundbreaking in its paying and arranging for access to health facilities to perform procedures such as fistula repair in order to help those women who were to testify.

---

2 This resolution emphasises 'the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard, *stresses* the need to exclude these crimes, where feasible from amnesty provisions'. Gender activists have stressed that the wording regarding amnesty be amended to exclude 'where feasible' to ensure that the international community make a stance that sexual violence can never be awarded amnesty.



Increasing women's visibility in the judicial and legal systems is also critical in the quest to realise prosecutions for gender-based violence. Sierra Leone's Special Court ensured that 20 percent of its investigative team was focused on sexual offences, a marked improvement on the Rwandan International Tribunal which never worked with more than one to two percent of investigators for the area (Nowrojee 2005). However, currently the extent to which the Special Court has pursued sexual violence convictions is increasingly coming under scrutiny. A recent study of the Special Court argued that its judgments have shown that gender-based crimes have been 'misunderstood, misinterpreted, mischaracterized or excluded during trials and in judgments' (Oosterveld 2009).

On an international level, the Hague-based ICC, which came into existence in 2002 as the first permanent international criminal tribunal, was set up as a court of last resort to prosecute offences where national courts failed or were unable to respond. As previously mentioned, the 1998 Rome Statute establishing the ICC expanded the definition of crimes against humanity and war crimes to recognise rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, trafficking or any other form of sexual violence after the intense lobbying by women's groups globally. As such the ICC can both prosecute these crimes and create an obligation that all investigations include gender-based crimes. To date, the Central African Republic, the DRC, Uganda and Sudan have all come under the scrutiny of the Court and in a number of the arrest warrants issued, including that of Sudanese president al-Bashir, gender-based violence has been cited. However, various criticisms have been levelled regarding the ICC's stated aims and its ability and willingness to pursue gender-based crimes.

The ICC's decision to charge Congolese Thomas Lubanga with the recruitment and use of child soldiers in the DRC occurred amidst outcries by gender activists that charges against Lubanga had failed to include sexual violence, despite evidence of his links to the widespread sexual enslavement of girls. A request to include sexual slavery and cruel and inhumane treatment to Lubanga's indictment came from victims' lawyers in June 2009 and relates to the numerous witnesses who have testified about the rape and severe abuse of children in the Union of Congolese Patriots (UPC). The victims' lawyers contended that sexual slavery

was part of being a female child soldier and this needed to be recognised in the prosecution.

ICC prosecutors had also charged two further DRC militia leaders, Germain Katanga and Matthew Ngudjolo. But in a controversial decision in May 2008, the prosecutors removed counts of sexual slavery from the indictments on the grounds of their inability to ensure witness protection. New charges of rape and sexual slavery were subsequently filed in June 2008 after the witnesses were admitted to the court's witness protection programme, but the case highlights the challenges faced by the court. Hence, despite the fact that the ICC is believed to have the opportunity to establish precedents in addressing gender-based violations, in reality this is simply not happening. It is not surprising that women's organisations in post-conflict contexts are becoming increasingly frustrated because in spite of clear evidence of extraordinary rates of sexual violence, and the heightened media attention around this, the ICC is failing to prosecute these crimes.

Further, the reality is that while the successful prosecutions of those leading actors involved in orchestrating gender-based violence during the conflict may provide some deterrent, the majority who have perpetrated serious human rights violations against women have enjoyed almost complete impunity and have never been prosecuted. Furthermore, while recent developments in jurisprudence in Africa have brought greater attention to the impact of conflicts on women, they have not stemmed the widespread occurrences of violence against women, as this remains shockingly high in post-conflict settings.

In addition to a legal framework, other criteria need to be considered in the pursuit of gender-sensitive prosecutions – such as victim support (psychological and physical), witness protection, and the need to address certain realities such as transport and childcare which may affect women's access to the court. In short, the record of the international mechanisms suggests incapacity to prosecute sex crimes, and as many as 90 percent of the ICTR judgments have so far not included rape convictions.

A further challenge is the creation of a sustainable domestic judicial system to challenge impunity for gender-based crimes in the post-conflict era.

On the domestic level, despite often depleted and fragile legislative and judicial infrastructure after a conflict, a number of countries – Liberia, Burundi and the DRC among them – have undertaken commitments to protect and enshrine gender concerns through both international and domestic instruments. Recent examples have shown, however, that enacting gender laws is only the beginning. A study from Liberia, which passed a sophisticated rape law in 2006, has revealed that challenges with prosecuting sexual-based crimes are due both to the inadequate judicial system and the lack of knowledge among victims of the stages and procedures for prosecuting offenders.

Increasing the visibility of women and, more particularly, gender-sensitive personnel in judicial and legal systems is also critical in the quest to realise prosecutions for gender-based violence. This was revealed starkly during the 1998 trial of former mayor, Jean-Paul Akayesu, by the ICTR. When the initial charges against him did not include rape, the presiding judge, Navanethem Pillay, insisted this be probed due to its frequent mention in witness testimonies. As a result of her intervention, as well as mounting pressure from women's groups, charges for rape were investigated. This was particularly significant as it was the first time an international court had ever punished sexual violence in a civil war; and it was the first time that rape was found to be an act of genocide, aimed at the destruction of a group. It was also indicative of the need to have adequate gender-responsive representation in the judiciary, as well as open interaction with women's groups.

## **Reparations**

Increasingly transitional justice initiatives have sought to provide redress for victims, both monetary and symbolic, instead of focusing solely on the punishment of perpetrators. Through restitution, compensation and memorialisation reparations fulfil a number of practical and symbolic purposes of acknowledging the harm inflicted upon victims. According to gender activists reparations have the potential to facilitate the rebuilding of women's lives: 'reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls; that reintegration and restitution by themselves are not sufficient goals of reparation, since the

origins of violations of women's and girls' human rights predate the conflict situation' (Nairobi Declaration on the right of women and girls to a remedy and reparation 2007). In countries where truth commissions have provided some form of amnesty for perpetrators reparations may be the only form of justice that victims receive. Reparations can also be a mechanism to provide redress for women who may not want to become involved in prosecution or truth-seeking due to the stigma associated with gender-based violations of human rights.

Following the United Nations General Assembly adoption of *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, a number of women's organisations mobilised to examine how to better incorporate gender into reparations policies. This led to the 2007 Nairobi Declaration which redefines reparations and guides policy-making for implementing this right specifically for victims of sexual violence (Nairobi Declaration on the right of women and girls to a remedy and reparation 2007). The declaration notes that: 'Reparation must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women's and girls' lives' (Nairobi Declaration on the right of women and girls to a remedy and reparation 2007).

While reparations are critical in the pursuit of gender justice they are often an under-funded afterthought in transitional justice processes. Further reparations programmes to date have often failed to recognise and address structural issues which have given rise to gender-based violations of human rights. Issues of implementation have also been of concern. These range from an absence of accessible information about these processes to the inability of women to have control over family finances.

In the majority of cases reparations policies emanate from recommendations made by truth commissions. Limitations arise from this since policies tend to mirror a commission's shortcomings, for example, by generalising human rights violations across genders or failing to recognise the specific abuses suffered by women. As noted earlier in the case of South Africa, the definition

of victim did include the 'relatives or dependents of victims' of whom the vast majority were women. However, there was a hierarchy in this definition in the reparations process, which meant relatives and dependents were only entitled to grants if the 'primary' victim was deceased. While important to recognise the deceased, it failed the South African context where recognition was needed of the impact of detention on family members and the effect of post-traumatic stress disorder. Another related challenge was that only those who were victims of crimes identified by the truth commission as human rights violations received reparations. As socio-economic crimes have generally been beyond the reach of commission's mandates this impedes the scope of reparations.

A further problem stems from the fact that truth commission recommendations are not binding and are dependent on the will of the government for their implementation. Thus, if the government lacks the political will to implement reparations, or decides to pay a smaller amount than the truth commission recommended (as was the case in South Africa), there is little recourse for victims. Further, often the available resources do not correspond to recommendations that have been made. For example, in April 2009, Sierra Leone had only twenty five percent of the funding needed to compensate victims and as such the government had to decide who will receive what. As a result, some war widows have been registered to receive reparations, but they will not receive benefits until at least 2010.

Even when women can access reparations, further difficulties have been identified. Reparations programmes have also repeatedly overlooked the problem of children born of sexual violence or circumstances linked to conflict. Due to the widespread sexual and gender-based crimes recorded by the Sierra Leone truth commission, creative measures were suggested for reparations to the victims of gender-based violence. These included service packages and symbolic measures, such as access to healthcare and rehabilitation services, counselling and psychological support. Men and boys who had been victims of gender-based violence were also eligible for assistance. However, gender activists claim that while the provisions were far-reaching, many constituencies were overlooked, such as children born of rape. This was compounded by the lack of political will by government to enforce

recommendations such as the call for a public apology by the president over the suffering of women and girls.

A significant development in the field of reparations has been the delivery of reparations by military tribunals in the DRC. In April 2006, a military court in Mbdandaka found seven army officers guilty of mass rape of more than 119 women (according to the UN estimate, the number was over 200) at Songo Mboyo in 2003 and sentenced them under the Rome Statute which the DRC ratified in 1998. This was the first time rape was tried as a crime against humanity in DRC, and the first such sentence against military personnel for these crimes. The officers had rebelled against their commanders and attacked the villages of Songo Mboyo and Bongandanga. For the destruction of the villages and the mass rape, they received sentences of life imprisonment and the verdict required each victim's family to receive reparations in the amount of US \$10 000. Rape victims were to receive US \$5 000.<sup>3</sup>

### **Security sector reform**

Security sector reform (SSR) has increasingly been deemed as integral to transitional justice initiatives since the police, military, and other security agencies, as well as non-state security actors such as armed rebel groups, are often the most serious perpetrators of human rights violations. In some societies such as Zimbabwe, it is clear that until the security forces are reformed, attempts at truth seeking and accountability will be untenable. An effective SSR policy can potentially ensure the future integrity of the security sector to prevent abuses; promote the security sector's legitimacy by vetting perpetrators, and empower society through their involvement in the process. In countries transitioning from conflict, reforming the security system must also confront the shortages of resources, personnel, skills, and infrastructure. Lack of training and poor remuneration compromise the efficiency of security structures and exacerbate concerns regarding legitimacy and corruption.

---

3 The soldiers escaped shortly after their conviction, which calls into question the extent that victims received justice.

One of the main criticisms of SSR programmes to date has been their focus on the army and major rebel militia groups in which primarily male combatants associated with these groups have been targeted in reform strategies. Thus, other security-related bodies such as the police, border control guards, or smaller rebel groups, as well as more marginal combatants such as women and children have been neglected. Although women's involvement is often overlooked, they have played a key role in conflicts as combatants. Recent surveys have shown women may constitute as much as 30 to 40 percent of armed forces and they are also sometimes involved in leadership roles. For example, the Lord's Resistance Army in northern Uganda was initially begun by Alice Lakwena. Nonetheless SSR programmes have at best implemented a quota of ten to twenty percent for the involvement of women.

A major challenge in implementing SSR often stems from the variety of local and international actors involved in the devising and implementation of programmes. This was evident in Liberia where SSR was outlined through provisions in the Liberian Constitution, the Comprehensive Peace Agreement, and a UN Security Council Resolution. Local ownership has also been noted as critical to successful SSR but this is often not realised because of the deployment of international personnel and the exclusion of local experts, or due to the lack of local expertise. This often leads to perceptions that SSR is as an externally-led process with little local relevance. The focus of international donors results in emphasis on and funding of specific aspects of the process which are often interest-orientated. Recently, the focus of a number of major donors has been on training security structures in counter-terrorism skills, rather than human rights or gender equality which has undermined the efforts of women's groups in pursuing their agendas.

Engendering SSR requires the involvement of women's groups to better develop gender-sensitive strategies. SSR remains a male-dominated field and many gender activists question the extent to which a security sector can be reformed, and point out the need to challenge the very notion of security structures (Hamber et al. 2006:487). Women need to be part of the debate in order to effectively engage with security structures. In Liberia, there have been a number of attempts to include women from different sectors in the different stages of the SSR process. Quotas have been established for recruiting women to different security branches,

and specialised education initiatives for female recruits have been set up. A Women and Children Unit has been set up by the police, and anti-sexual and gender-based violence legislation has been enacted. While these are exemplary efforts, shortcomings have already been noted. It was stated that the training for the army is now actually less gender-sensitive than in the past and that gender remains widely considered as unimportant in security sector governance. There are therefore a number of lessons to be learnt from the Liberian experience for those countries planning SSR processes in the future.

### **Traditional mechanisms**

Traditional mechanisms are often implemented in countries where there is an absence of, or lack of access to, formal justice mechanisms. They are generally quicker to implement than formal mechanisms, and are more accessible to the local population – both culturally and physically. Traditional and informal justice mechanisms also provide the possibility for reparative (rather than retributive) sentences against perpetrators. Thus, instead of serving a prison sentence, perpetrators may assist the community through rebuilding houses, schools or other structures in an area affected by violence or help their victims in farming their land.

In Rwanda, an estimated 120 000 perpetrators were arrested at the end of the genocide in 1994 and projections were that it would take over a 110 years to try all the detainees in the national courts. Thus, the *gacaca* courts were established in 2001 as a means to speed up the process. These were intended to be community courts, presided over by village elders in the presence of the whole community, where any person could request to give testimony. Sentences were generally restorative and involved the perpetrator being required to engage in community-oriented work. Women were specifically included at a number of levels, and there have also been widespread education campaigns to encourage women's involvement in the courts. Unfortunately, while women of all ethnic groups had suffered gender-based crimes, Hutu victim-survivors are not eligible for compensatory assistance (Lambourne 2006:18).



Since Mozambique's 1992 peace agreement, traditional justice mechanisms were widely used in the absence of a 'national' programme and proved an integral measure to enable healing and reintegration. After a civil war spanning over two decades, peace was the priority and there was no political will to censure either the government or the defeated opposition RENAMO (Mozambican National Resistance) forces. While many have been fascinated by the country's perceived successful transition, gender activists have voiced some concerns about the short- and longer-term implications of these strategies, and questioned how much justice has been achieved for women.

Thus, the use of traditional mechanisms as a form of transitional justice does pose a number of challenges. For example, cultural specificity has been raised as a concern in national projects – as in many contexts there are large numbers of different tribes and ethnic groups, with very different traditional practices. Rwanda was quite unusual since both Hutus and Tutsis had traditionally used *gacaca* and were unified by one language, but elsewhere on the continent it is rare to find different ethnic groups using the same cultural practices. For example, in Northern Uganda *Mato Oput* is traditionally an Acholi ritual which many other ethnic groups do not use. This creates the risk that using traditional mechanisms may be viewed by some communities as an external imposition in much the same way as an internationally-imposed tribunal or court.

Another potential problem is that many traditional justice mechanisms do not involve women and if quotas are implemented this then changes the nature of the mechanisms. A recent UNIFEM study on the implementation of resolution 1325 in Africa found that many traditional mechanisms focus on a community truth told from a male perspective, while women's truth is not a priority. Also of concern is the fact that sexual and gender-based crimes carry significant social stigma, which may create obstacles to women testifying in front of their own village or tribe. Concern has been expressed over the reality of having to testify against someone within their community. In Rwanda, however, in camera hearings have become widespread.

There is also the concern about whether these processes are effective when addressing crimes of the magnitude experienced in a number of recent conflicts.

Many traditional mechanisms (including *gacaca* courts and *Mato Oput*) were intended to be used in situations of disputes between individuals, families or villages or when one person had committed a crime against another within his/her tribe. Traditional mechanisms may therefore be inadequate when it comes to dealing with mass human rights violations and specifically with widespread rape.

### **Emerging transitional justice concerns**

A priority for the international community to ensure that transitional justice processes are more gender-sensitive is to promote the greater participation of women in peace negotiations, where transitional justice mechanisms are often first outlined. In October 2000, the United Nations Security Council passed the historic Resolution 1325, which provided the first official endorsement of the inclusion of women in peace processes and the implementation of peace agreements by the UN Security Council. Unfortunately, the nature of conflict often results in the exclusion of women's voices from peace negotiations resulting in their concerns not being addressed in any meaningful way in the peace-building process.

The character of peace processes, which traditionally involve only the main protagonists of human rights violations, must be challenged. Security Council resolution 1820's explicit call for sexual violence to be addressed in peace negotiations responds to the fact that this has seldom been the reality. According to a recent study conducted by UNIFEM of 300 peace agreements in 45 conflicts, only ten countries explicitly mentioned sexual violence and only five of these have been in Africa. Further, in their review of 22 peace processes which have taken place since 1992, UNIFEM revealed that women made up a mere 7.5 percent of negotiators and fewer than two percent of mediators. Thus greater action is required to ensure that peace negotiations address sexual violence, that women are involved in these processes and that these crimes are treated on an equal basis with other international crimes.

The relevance of women in informal peacekeeping initiatives on the continent has been increasingly apparent in recent years but need wider recognition at the international level. Grassroots women's groups have used a range of strategies to demand the inclusion of their concerns during the peace processes in Sudan,

Uganda and Liberia, among others. For example, in 2003 Liberian women organised themselves under the auspices of the Women in Peacebuilding Network (WIPNET) to demand an unconditional ceasefire, a negotiated settlement and international community presence in Liberia. During the 2003 peace negotiation process in Ghana, at which no women were present, a group of women held a parallel meeting resulting in 'The Golden Tulip Declaration'. They subsequently physically barricaded the stalled peace talks using their bodies as human shields and demanded that an agreement be reached (Isis-WICCE 2005).

Despite these opportunities, a serious concern remains over the apparent continuum of violence facing women in societies emerging from conflict. For many women, sexual and gender-based violence is as prevalent during peace as during times of conflict but attention to these violations dissipates. Countries emerging from conflicts often face high levels of violent crime, which is exacerbated by weak and under-resourced justice sectors. Women who have been victims of gender-based violence also face considerable stigma, and there is often pressure to simply remain silent.

There are also other new challenges on the continent which may impact on transitional justice processes, such as the impact of the forcible transmission of HIV/AIDS in a number of recent conflicts, and the issue of how to better include male victims of sexual-based violence in processes. These topics have yet to be investigated to any great degree, but may well become important factors in gender and transitional justice in the future.

## **Challenges for gender and transitional justice**

The current discourse on transitional justice in Africa needs to be broadened in order to promote more inclusive gender-oriented notions of justice. Transitional justice initiatives are often devised in a way that reduces gender concerns to those of 'victimhood'. The focus on women as victims not only perpetuates perceptions of women's passive role during conflicts, but also silences other aspects of their experiences. Women's multiple roles during a variety of recent conflicts were stressed – as they have been visible as cooks and porters, guards and perpetrators, as well as community leaders.

Furthermore, the conversation on gender issues within the transitional justice field must be more inclusive of men beyond assumptions of their roles as perpetrators. The reduction of sexual violence to 'women's problems' not only silences the experiences of men and boys who have suffered from sexual-based violence, but also creates an environment that allows many to overlook or deny the structural issues that cause this violence. Transitional justice needs to be re-imagined from a restorative justice perspective that is not about reverting to the pre-conflict status quo, but that thinks of how to heal and rehabilitate within a developmental framework.

Appreciation is needed during the devising of transitional justice mechanisms of the continuum of violence in pre-conflict and post-conflict societies. As Sierra Leone's TRC report indicated, gender-based violence including rape was also widespread prior to the conflict, and so contextualisation is needed to better understand high rates of sexual violence during conflicts. Rape has commonly been used as a weapon of war precisely because it helps to destroy communities through fracturing social relationships due to society's interpretations and stigmatisation of these acts. However, the fact that violence does not abate for many women during 'peace' times is often overlooked and as a result sexual violence during conflicts is deemed to be 'extraordinary'.

The apparent rise in post-conflict domestic violence may result from a number of interrelated processes, but it is increasingly acknowledged that transitional justice has a potential role in creating mechanisms to ensure that violence does not simply move to the home, and that a more holistic approach to justice can be achieved. One of the key challenges facing societies undergoing transition is to devise a sustainable judicial system that will prevent impunity for gender-based crimes in the post-conflict era. Emphasis is needed on strengthening legal and judicial mechanisms in order to transform the reality of gender-sensitive jurisprudence into tangible benefits. This requires ensuring domestic courts and judicial mechanisms are fully capacitated in the area of prosecuting gender-based crimes.

When seeking to address gender-based violence in transitional justice initiatives, not only physical violations must be considered, but also economic and social

violations. Currently, over 80 percent of all those forcibly displaced by war and conflict are women and children. Beyond the hardship of displacement, women and girls are also made more vulnerable due to the risk of further violence and sexual exploitation. In Sierra Leone, for example, in a survey of displaced households it was revealed that 94 percent experienced sexual assaults, including rape, torture and sexual slavery. Further, women still constitute the vast majority of the poor, but they are often the last to benefit from reparation programmes or development policies. Even when they do, they are frequently met with social challenges that prevent them from realising their rights and entitlements. Future initiatives in transitional justice thus have to recognise these broader concerns and radically challenge the current configuration of processes to enable a more gender-aware and inclusive approach to post-conflict reconstruction.

## **Sources**

- Agreement on the Special Court for Sierra Leone 2002*. Freetown: Government of Sierra Leone and United Nations.
- Hayner, P. 2001. *Unspeakable truths: Confronting state terror and atrocity*. New York, Routledge.
- Hamber, B., P. Hillyard, A. Maguire, M. McWilliams, D. Russell and M. Wood 2006. Discourses in transition: Re-imagining women's security. *International Relations*, 20 (4).
- Isis, Women's International Cross-Cultural Exchange 2005. *Nurturers of Peace, Sustainers of Africa: Selected Women's Peace Initiatives*. Kampala, Isis-WICCE.
- Lambourne, W. 2006. Justice after genocide: The Rwandan experiment with gacaca community justice. Paper presented at conference on Social justice and human rights in the era of globalisation: Between rhetoric and reality, Leuven, Belgium.
- Nairobi Declaration on the right of women and girls to a remedy and reparation 2007. Available from: <<http://www.womensrightscoalition.org>>.
- Nesiah, V. et al. 2006. *Truth Commissions and gender: Principles, policies and procedures*. New York, International Center for Transitional Justice.
- Nowrojee, B. 2005. Making the invisible war crime visible: Post-conflict justice for Sierra Leone's rape victims. *Harvard Human Rights Journal*, 85.
- Oosterveld, V. 2009. The Special Court for Sierra Leone's consideration of gender-based violence: Contributing to transitional justice? *Human Rights Review*, 10 (1).
- Promotion of National Unity and Reconciliation Act No. 34 1995*. Johannesburg, National Assembly.
- Truth and Reconciliation Commission of South Africa Report 1998*. Kenwyn, Juta.



# Should we give up on the State? Feminist theory, African gender history and transitional justice\*

*Pamela Scully\*\**

## **Abstract**

In some excellent articles in the first issue of *The International Journal of Transitional Justice*, scholars have examined in very thoughtful ways the relationship of feminism and feminist theory to the field of transitional justice and post-conflict. This article examines some of this work and suggests ways that we might build on these insights by working more with feminist theories of the state, feminist critiques of international human rights law, and with a gendered historical consciousness of colonialism and the post-colonial state in Africa.

---

\* The author would like to thank Helen Scanlon for her interest in her work, Tom Crick of The Carter Center who first introduced her to Liberia, Cerue Garlo and Anu Pillay who have shared their work and time most generously, and the Institute for Developing Nations at Emory University, which has funded her work on Liberia.

\*\* Pamela Scully is associate professor of women's studies and African studies at Emory University. She is on the executive board of The Institute for Developing Nations, an action-oriented research institute of Emory University and The Carter Center.

Transitional justice work mostly assumes that efforts can make the law work, that the state can be forced to do the right thing by women. Feminist critiques of international human rights law make one much more suspicious of the state. As we shall see, feminist theory in the past twenty years has criticised international law's use of the state as the site of solutions to injustices experienced by women. International law has made states accountable for lack of enforcement as much as for making appropriate laws to help women. While this is a welcome move, one result can be that prescriptions for redress of the violence and inequalities women have to bear become a problem only of implementation.

This article argues that in fact, there is a fundamental conceptual misfit in terms of trying to secure women's rights in transitional justice in terms of the state and the law only. Particularly in the context of African history from colonial times to the present, we have much to worry about in terms of relying on either the state or the law. This is particularly important in Sub-Saharan Africa where the state has so long been illegitimate. The state in Africa since colonial times has been rooted in patterns of looting and extraction very far from a nurturing welfare state that underpins many of the proposed solutions in transitional justice deliberations. While increasingly transitional justice advocates are recognising the importance of embedding justice within local structures, a truly historical gendered consciousness continues to be absent even in that literature. This article brings these criticisms of the state and law to bear on transitional justice practice in Africa.

## **Introduction**

Christine Bell and Catherine O'Rourke (2007:23) advocate that the best intervention that feminism can make to transitional justice is by holding all participants and framers to the larger dream of 'securing substantial material gains for women in transition'. As they suggest, feminist theorising has reshaped many aspects central to periods of transition. It has helped expand the notion of conflict to include domestic violence; has helped question the emphasis on political structures, and feminist interventions have secured women's involvement in all aspects of the peace process. Bell and O'Rourke envisage a

pragmatic role for feminism. They see it as a kind of praxis, which helps those involved in transitional justice work for the betterment of women's lives in the complicated transitions to something that looks like peace (Bell and O'Rourke 2007:23–34).

I agree with much of the article, which highlights the ways in which feminism has transformed the field of transitional justice. However, feminism and feminist theory have more to offer than solely pragmatic interventions and approaches. Since the pioneering work of Carole Pateman and Catherine MacKinnon, feminist theorists have been sceptical about the degree to which the state can easily deliver justice for women. Indeed as Lori Handrahan (2004) has suggested, an examination of the gendered assumptions within the human rights tradition itself would be a good place to start.

The notion of politics and society operating through contracts and agreements is now the dominant theory in international law. What does this mean for women, when authors charge that the very foundations of this law, both theoretical and practical, exclude women? Contract theorists sought to replace unfettered monarchical power with a politics of consent. In *The Sexual Contract*, Pateman (1988) argues that the people empowered in this theory of political contract, were men bonded together through shared masculinity, conjugal right, and opposition to the role of a political patriarch. She argues that men became the new political subjects through a kind of patricide. They took power from the king and forged a new form of political alliance based on fraternity, but one with a more extensive reach; fictive brothers bonded in a public and well as a private sphere.

Pateman further argues that paradoxically, men nonetheless became agents in the political sphere precisely by virtue of their role as husbands and fathers. Men's role as heads of patriarchal families composed of women and children under their protection gave them the authority to then contract in the public sphere. Politics thus depended on an implicit story of the family and of heterosexuality, although the latter point is implicit in Pateman's analysis rather than explicitly examined.



In her *Towards a feminist theory of the state* of much the same era, MacKinnon (1991) turned her attention more explicitly to the law within a framework that has been termed radical feminism. Most crucially, MacKinnon argues that the law is itself a vehicle for gender discrimination in that law and legal structures actually create and maintain male dominance. In subsequent work, she turned her attention to domestic violence and pornography. MacKinnon argued that the very perspective of the law relating to rape reproduced forms of sexual violence in that it adjudicated rape from the male point of view. Using the law to address problems of inequality, or sexual violence against women, or to help create a new gendered social and political order is thus a fraught endeavour.

In subsequent years, feminist theorists developed the body of feminist legal theory, which now embraces many different strands including critical race and feminist theory (Lacey 2004; Bonthuys and Albertyn 2007).<sup>1</sup> One of the central arguments to emerge in the literature in the mid 1990s was scepticism of the centrality of the state to international law and the implications for women's interaction with international human rights, and their ability to make it work for their interests. Karen Knop suggested that the emphasis on the state in international law creates a bias in favour of state sovereignty, which harms women. The founders of the United Nations (UN), for example, accepted the notion that autonomous states come together to make agreements and are then responsible for implementation. The sovereignty of states creates real challenges for women, especially when women are poorly represented in governance structures.

We see this problem of women's exclusion when international law makes the state the primary vehicle of reform particularly with regard to agreements that seek to secure women's rights. The United Nations, for example, while securing resolutions on women's rights, such as The Convention to Eliminate All Forms of Discrimination against Women (CEDAW), also allows states to opt out of key

---

<sup>1</sup> For a short history of feminist legal theory, see Lacey 2004:13–56. A helpful compendium and discussion of feminist jurisprudence with a particular focus on South Africa, is Bonthuys and Albertyn 2007.

provisions which an individual state feels are violating its own national rights (often elided with maintenance of male power) (United Nations 1979).<sup>2</sup>

In an important and searing critique of existing international human rights law, Celina Romany (1994) argued that a feminist genealogy of human rights law makes explicit the original sexual contract that the liberal state successfully masks. That is, international human rights law also depends upon private/public female/male dichotomies, which ensure that the public sphere represents the interests of men. Romany (1994:85) suggests that we understand international human rights law as a kind of 'blown up liberal state' with all its patriarchal biases. The notion of the sovereign state, which has to be left alone to pursue justice within international legal resolutions and conventions (such as CEDAW), she argues, is in fact a recipe to allow men to continue to abuse women. She asserts that international law has to hold states accountable for violence to women whether in the household or in public, because such violence is not random: the risk factor is being female. Romany thus concludes with a call for the feminist stance of 'embodied objectivity' which recognises explicitly, indeed through the frame of intersectionality, how knowledge is produced through particular political gender/race/class structures, and seeks to both reveal those structures and to combat them.

More recently, Ni Aolain and Rooney (2007) suggest that a frame of intersectionality can help redress the gender bias in transitional justice mechanisms. Intersectionality puts class, race, and gender together as a way of revealing the special discrimination faced by women and also recognises the multiple and overlapping sites of subjection (Hill Collins 1990; Crenshaw 1991). Using an intersectional lens, Ni Aolain and Rooney show that transitional justice for women requires a very large and long field of vision, which extends beyond the realm of truth commissions, into the complexity of enforcement of laws and decisions, awareness of silences about masculinity, and the need to avoid stereotypes of women as natural peacekeepers. This approach has much to recommend it. I am wary, however, of invoking one theoretical feminist or

---

2 CEDAW, adopted by the General Assembly resolution 34/180 of 18 December 1979, came into force on 3 September 1981. See Article 28, which deals with reservations. For criticism of CEDAW, see Sullivan 1995 and Mayer 1995.

indeed any other model as a fix for the challenges in securing women's equality and full participation in building post-conflict societies. For instance, Puar (2007), while sympathetic to the innovations that intersectional theory allowed for, has also sought to move beyond intersectionality which she sees as relying upon static and rigid conceptions of class, race and gender rather than seeing them in a more unstable and historic tension.<sup>3</sup> In this article, I seek to bring the messy worlds of history together with the clarity offered by theory.

As Ni Aolain and Rooney point out, transitional justice mechanisms have tended to focus on the law and government to implement justice and to secure gains for women. The authors call for a wider field of vision for transitional justice, which moves from the merely legal to one that also focuses on implementation of the law. This focus is important, as it is precisely the details of how to carry decisions forward, or the lack of attention to such details, that can lead to the sidelining of women in the final stages of transitional justice processes, even if they have been more involved in earlier stages. Certainly we need to make sure that reparations given to women are actually implemented, and that the gains secured through some Truth and Reconciliation Commission (TRC) processes are realised. We also need, I think, to move beyond focusing on the state or government as the sole site for redress for women.

Groups are beginning to argue that traditional authorities need to be involved in transitional justice processes. For example, the United Nations Peacebuilding Commission argued in a recent paper that a broad conception of justice and one that involves so-called traditional authorities is necessary to ensure the success of transitional justice (United Nations Peacebuilding Commission – Working Group on Lessons Learned 2008). The Liberian Truth Commission, among other such bodies, has also advocated the use of indigenous models of conflict resolution as a way to encourage reconciliation (Transitional Justice Forum 2009).<sup>4</sup> However, as Sally Engle Merry's (2006) work shows, human rights

---

3 See Puar 2007. While Puar is sympathetic to intersectionality, and particularly to the way it has pushed feminist scholarship to think in more complex ways, she uses the term assemblages to invoke a more unstable, messier relationship of the usual race/class/gender triad.

4 See Huyse 2008.

advocates tend to see traditional authorities and communities as innately hostile to women's rights. Engle Merry suggests that part of the problem lies in the transnational human rights community's misunderstanding of culture as rooted in unchanging cultural norms. Transitional Justice advocates have thus tended not to regard traditional forms of conflict resolution as sites to advance women's human rights. They tend to see the state as the place where women's rights can be articulated in law and practice.

This is where an historical consciousness of African gender histories is germane (Oyewumi 2003). Below, I discuss the way that the early imperial era as well as that of colonialism caused women's rights to decline. This all points to a much less sanguine picture of how rights might be elaborated, and it certainly disrupts one's confidence that the state and the law are the place to secure women's rights.

## **Colonial Gender Histories**

Albert Memmi (1991) among others long ago pointed out that the colonial state was an illegitimate state created to serve colonial interests and to sap colonised people of their wealth, their self-respect, and their identities. As the now somewhat unfashionable school of under-development theory also showed, the economies of what was then called the Third World were constructed precisely to serve the benefits of Europe: Europe's rise was premised on Africa's demise. From as early as the move to legitimate trade in the nineteenth century, societies found their fortunes linked to European demands for goods, and to Europe's ability to enforce unequal taxation on African goods (Rodney 1972; Wright 1997). Moreover, as a number of scholars have shown, the colonial eras reworked gender relations in African societies largely to the detriment of women.

It is not the purpose of this article to chart women's many roles in politics and society in the pre-colonial order; other scholars have done that very well (Amadiume 1987; Okonjo 1976; Boserup 1970; Ifeka-Moller 1975; Van Allen 1976). However, I do want to stress, in the context of transitional justice work, how important it is to know that women had various forms of status as farmers, traders, mothers, elders, members of secret societies, and religious figures in the pre-colonial era, and indeed often in the present, although such

roles seem sometimes unintelligible to human rights frames (Hodgson 2003; Englund 2006). Colonists and agents of the colonial state largely misunderstood the complexity of gender relations in the societies they encountered. Yet, those colonial interpretations, or misinterpretations, ultimately rendered the position of African women 'legible' to the rest of the world. The legibility that emerged was of the African woman as a 'beast of burden' rendered so through her farming responsibilities, the presence of polygamy, and of bride price, or lobola, in the Southern African context (Oyewumi 2003). I would argue that the remnant of this perspective forms the hidden sediment of much of the international work on gender-based violence in Africa.

The early colonial era reshaped women's role in agriculture, their political power, and even their access to the colonial state to their disadvantage. Men took over the growing and marketing of crops which were formerly understood as women's crops, but then became lucrative on the market (Martin 1984). In the early twentieth century, in regions where the slave trade had dominated the export economy for so long, but was then outlawed, increasing numbers of women were put to work in agricultural labour as slaves, although often also married to their owners.

As a number of authors have documented, women fought to free themselves and to return to their natal families, but found it hard going to make the case to colonial courts, which tended to send them back to their owners (Klein and Roberts 2005). To some extent then one could see the colonial state, be it in French West Africa, in present day Mali and Niger, or in Eastern and Southern Africa, as one which upheld certain forms of patriarchal control over women. The colonial state and African male elders cooperated to control the movement and independence of women, with the state passing laws to hamper women's movements to towns, to mines, and helping to create customary laws which bolstered the power of male elders (Chanock 1998; White 1990; Byfield 2002; Lovett 1989).<sup>5</sup>

---

5 The formative work on this is Chanock 1998. On Kenya see White 1990. For work which suggests more agency for women, see Byfield 2002. See also Lovett 1989.

In *Wretched of the Earth*, Frantz Fanon (1967) cast a jaundiced eye at the coming of independence to Africa. He predicted that the new post-colonial state would be independent in name only, ruled by individuals who had been tutored in European schools to cleave to the ideologies of Europe and to reject the solutions offered by indigenous African models of social and political organisation. Indeed as Basil Davidson (1992) lamented, the notion that the Asante Kingdom might be a legitimate model for governing Ghana on independence had become, by the 1950s, a virtually unthinkable idea. The state that colonialism bequeathed to independent Africa, was thus one which was premised upon pillage and, in the case of the settler colonies of South Africa, Kenya, and Rhodesia, for example, was organised precisely to make Africans serve the economic and psychic needs of the white minority. The post-colonial state was also, for all the reasons outlined above, one that continued to uphold many of the discriminatory practices against women that colonialism had helped institute, despite the promises of the independence movements.

Indeed as Mojubaolu Olufunke Okome (2003:82) argues, 'In both its colonial and post-colonial forms, the African State has discriminated consistently against women'. In the late 1980s, Parpart and Staudt (1989:5) pointed out that 'everywhere the political elite is male' and stated that women generally had marginal access to the state. The 1990s witnessed the entrance of women in Africa into formal politics in dramatic ways. Transitions ranging from the ending of apartheid in South Africa in 1990, to the genocide in Rwanda in 1994, led to a realignment of formal politics. Countries emerging from conflict witnessed some of the most dramatic entrances of women to politics. As Aili Tripp has noted '[T]hirteen of fourteen post-conflict countries have banned discrimination based on sex' (Tripp et al. 2009:6). Women claimed some one-third of parliamentary seats in a host of countries such as South Africa, Rwanda, and Tanzania. It is unclear, however, whether the presence of women alone is sufficient to transform the gender ideologies of a state to one in which men and women can be equal citizens. In the 2000s, women's activism continued to reshape politics. During the stalled Liberian peace process, women organised across religious and ethnic lines in an attempt to force men to make peace.

Moreover, Liberians subsequently elected Ellen Johnson-Sirleaf in 2005 as the first democratically elected woman as head of state in Africa.

President Sirleaf has made securing women's rights one of the pillars of her administration, passing laws against rape and domestic violence, and a law allowing women to inherit property. Yet, the ability of the state, especially a post-conflict one, which is after all where transitional justice works, to implement reforms remains very challenging. Policy documents rely on the state as the imagined goal for addressing ills, but point to the inadequacy of state and legal structures to implement laws and to transform society (Vann 2002).<sup>6</sup> In addition, given the history of the state in the last century in Africa, one wonders at the wisdom of using the state as the major vehicle for transformation. Recent work in African Studies suggests that people see the state (both the colonial state, as well as many of its contemporary forms) as malevolent and capricious, with a vampire-like quality of extraction (Crais 2002; Geschiere 1997). Women's collective action and extra-state political organising has proved to be a much more effective setting for addressing women's rights than the state. I propose that advocates of transitional justice look to new sites for the transformation of societies; women after all are already doing things for themselves.

### **Conclusion: Models that take women's rights seriously, but which work outside of the state**

Initiatives for peace and post-conflict rebuilding are being forged in partnerships between different religious traditions, and in projects rooted both in ongoing work by women, and in new partnerships between non-governmental organisations (NGOs) and local women's groups (Miller 1993:19). In Liberia, UNIFEM's (United Nations Development Fund for Women) former gender liaison to the Liberian TRC, Anu Pillay, and Cerue Garlo of Liberia's WONGOSOL (the Women's NGO Secretariat of Liberia), have collaborated in an ambitious and meaningful project to create fora in which women can discuss their agendas

---

6 The general report on gender-based violence world-wide, Vann 2002, is a very good example of this. See particularly the case study reports, which document the fragility of the state.

for society and for the future. In Monrovia, at Mother Patern College of Health Sciences, faculty emphasise empowering women through education, coming up with their own diagnoses and definitions of what needs to be done, and generally working to move beyond prescriptions as to how to accomplish change.

The women of West Point settlement in Monrovia have formed the West Point Women's Action Group to try to combat rape and other violence that plague the settlement. The organs of the state are absent in West Point; no police visit, rapists go unpunished, no formal legal structures protect West Point (International Rescue Committee 2008; Dunning 2008).<sup>7</sup> If women are to rely on the state for aid, it will be a very long time coming. Moreover, Liberia is not alone. Even with great commitment by a president who does take women's rights seriously, the challenges inherited by post-conflict nations overwhelm the law and the state. Fixing these mechanisms will take time. In the meantime, advocates of transitional justice need to help women and men where they are currently located: without access to law, judiciary or medical care – all the potential wonders of the state. This is a burgeoning field, and one in which different transitional justice groups are beginning to work.

The International Centre for Transitional Justice (ICTJ) and The Carter Center, among other groups, are beginning to work beyond formal legal structures, even as they also seek to strengthen the law. The Carter Center organises their rule-of-law project in Liberia around support for legal reforms initiated by President Ellen Johnson-Sirleaf. The Carter Center works with lawyers, the government, and the judiciary to try to make the law work better. However, the Carter Center also works with local youth groups to try to raise consciousness in rural areas around issues of legal rights and gender violence. The Bong Youth Association, for example, holds drama performances in Bong County as a way of engaging elders and youth in discussions around violence, gender, and community. The realm of education, both in formal schooling and, as importantly, in popular culture is, I think, a very fruitful realm of work, and one to which those of us writing on transitional justice need to begin paying more attention.

---

7 For reporting on the women of West Point, see International Rescue Committee 2008 and Dunning 2008.



Perhaps because the more recent transitional justice approaches began with truth commissions, and are part of a wider field of international law, the state has remained the key field for bringing societies through conflict and beyond. The perspective that the state is the main site of transformation is so dominant, and ingrained in political theory and international law, that it seems perhaps peculiar to even venture the opinion that the state might not be the best agent for post-conflict transformation. However, this reliance on the state might in fact be a bad thing for women in much of Sub-Saharan Africa at the present time. African history of the last century or so, points to ways in which Africans saw the colonial and post-colonial state as rapacious and illegitimate. What good work can transitional justice do when it works within a framework of law and the state that intrinsically does not have much legitimacy? I think we need to rethink how we do much post-conflict work, particularly around the issues of combating sexual violence and trying to bolster women's rights.

As we come to recognise the long-term processes that comprise traditional justice, we need thus to be cognisant of history. We need to know the history of the particular country, of the ravages of colonialism and the disappointments and violence of the post-colonial period even prior to the conflict that preceded the recent moves to peace. Such recognition and understanding, if always partial, will help us build peace and security in the places which work, the religious institutions, the village councils, women's groups, in the actual structures of the everyday.

## **Sources**

- Amadiume, Ifi 1987. *Male daughters, female husbands: Gender and sex in an African society*. London, Zed Books.
- Bell, Christine and Catherine O'Rourke 2007. Does feminism need a theory of transitional justice? An introductory essay. *International Journal of Transitional Justice*, 1, pp.23–44.
- Boserup, Ester 1970. *Women's role in economic development*. London, Earthscan.
- Bonthuys, Elsje and Catherine Albertyn eds. 2007. *Gender, law and justice*. Cape Town, Juta.
- Byfield, Judith 2002. *The bluest hands: A social and economic history of women dyers in Abeokuta (Nigeria), 1890–1940*. Portsmouth, NH, Heinemann.

- Chanock, Martin 1998. *Law, custom and social order: The colonial experience in Malawi and Zambia*. Portsmouth, NH, Heinemann.
- Crais, C. 2002. *The politics of evil: Magic, state power and the political imagination in South Africa*. Cambridge, Cambridge University Press.
- Crenshaw, Kimberlé 1991. Mapping the margins: Intersectionality, identity politics and violence against women of color. *Stanford Law Review*, 43 (6), pp. 1241–1299.
- Davidson, Basil 1992. *The black man's burden: Africa and the curse of the nation state*. New York, Times Books.
- Dunning, Casey 2008. *Women at the front lines of Liberian Justice*. Emory Report 3, November 2008. Institute for Developing Nations at Emory University. Available from: <[http://www.emory.edu/EMORY\\_REPORT/erarchive/2008/November/Nov3/FirstPersonCaseyDunning.htm](http://www.emory.edu/EMORY_REPORT/erarchive/2008/November/Nov3/FirstPersonCaseyDunning.htm)> [Accessed 11 June 2009].
- Engle Merry, Sally 2006. *Human rights and gender violence: Translating international law into local justice*. Chicago, University of Chicago Press.
- Englund, Harri 2006. *Prisoners of freedom: Human rights and the African poor*. Berkeley, University of California Press.
- Fanon, Frantz 1967. *The wretched of the earth*. New York, Grove Press.
- Geschiere, P. 1997. *The modernity of witchcraft: Politics and the occult in post-colonial Africa*. Charlottesville, University of Virginia Press.
- Handrahan, Lori 2004. Conflict, gender, ethnicity and post-conflict reconstruction. *Security Dialogue*, 35, pp. 429–445.
- Hill Collins, Patricia 1990. *Black feminist thought: knowledge, consciousness, and the politics of empowerment*. Boston, Unwin Hyman.
- Hodgson, Dorothy. 2003. Women's rights as human rights: Women in law and development in Africa. *Africa Today*, 49 (2), pp. 1–2.
- Huysse, Luc 2008. Introduction: Tradition-based approaches in peacemaking, transitional justice, and reconciliation policies. In: Huysse, L. and M. Salter eds. *Traditional justice and reconciliation after violent conflict: Learning from African experiences*. Stockholm, IDEA. pp. 1–22.
- Ifeka-Moller, Caroline 1975. Female militancy and colonial revolt: The women's war of 1929, Eastern Nigeria. In: Ardner, S. ed. *Perceiving women*. London, Malaby. pp. 127–157.
- International Rescue Committee 2008. *Voices from the field*. Available from: <<http://blog.theirc.org/2008/01/17/west-point-ann-jones-in-liberia/>>.
- Klein, Martin and Richard Roberts 2005. Gender and emancipation in French West Africa. In: Scully, P. and D. Paton eds. *Gender and slave emancipation in the Atlantic world*. Durham, Duke University Press.
- Lacey, Nicola 2004. Feminist legal theory and the rights of women. In: Knop, Karen ed. *Gender and human rights*. Oxford, Oxford University Press. pp. 13–56.

- Lovett, Margot 1989. Gender relations, class formation, and the colonial state in Africa. In: Parpart, J. and K. Staudt eds. *Women and the state in Africa*. Boulder, CO, Lynne Rienner Publishers. pp. 23–46.
- MacKinnon, Catherine 1991. *Towards a feminist theory of the state*. Cambridge, Harvard University Press.
- Martin, S. 1984. Gender and innovation: Farming, cooking, and palm processing in Ngwa region, south-eastern Nigeria 1900–1930. *Journal of African History*, 25, pp. 411–427.
- Mayer, Ann Elizabeth 1995. Cultural particularism as a bar to women's rights. In: Peters, J. and A. Wolper eds. *Women's rights, human rights: International feminist perspectives*. New York, Routledge.
- Memmi, Albert 1991. *The Colonizer and the Colonized*. Boston, Beacon Press, 1991. First published 1957.
- Miller, Harold 1993. *Ecumenicity in Africa*. Occasional Paper on Peace and Reconciliation of the Mennonite Central Committee. No. 19. Available at: <<http://mcc.org/respub/occasional/19ecumenicity-in-africa.html>> [Accessed 11 June 2009].
- Ni Aolain, Fionnuala and Eilish Rooney 2007. Under-enforcement and intersectionality: Gendered aspects of transition for women. *International Journal of Transitional Justice*, 1, pp. 338–354.
- Okonjo, Kamene 1976. The dual-sex political system in operation: Igbo women and community politics in midwestern Nigeria. In: Hafkin, N.J. and E.G. Bay eds. *Women in Africa: Studies in social and economic change*. Stanford, Stanford University Press.
- Olufunke Okome, Mojubaolu 2003. What women, whose development? A critical analysis of reformist evangelism. In: Oyewumi, Oyeronke ed. *African women & feminism: Reflecting on the politics of sisterhood*. Trenton, Africa World Press. pp. 66–98.
- Oyewumi, Oyeronke 2003. The white woman's burden: African women in Western discourse. In: Oyewumi, Oyeronke ed. *African women & feminism: Reflecting on the politics of sisterhood*. Trenton, Africa World Press.
- Parpart, Jane and Kathleen Staudt 1988. Women and the state in Africa. In: Parpart, Jane and Kathleen Staudt eds. *Women and the state in Africa*. Boulder, CO: Lynne Rienner Publishers. pp. 1–19.
- Pateman, Carole 1988. *The sexual contract*. Stanford, Stanford University Press.
- Puar, Jasbir 2007. *Terrorist assemblages: Homo-nationalism in queer times*. Durham, Duke University Press.
- Rodney, Walter 1972. *How Europe underdeveloped Africa*. Washington, D.C., Howard University.
- Romany, Celina 1994. State responsibility goes private: A feminist critique of the public/private distinction in international human rights law. In: Cook, R. ed. *Human rights of women*. Philadelphia, University of Philadelphia Press. pp. 85–115.

- Sullivan, Donna 1995. The private/public distinction in international human rights law. In: Peters, J. and A. Wolper eds. *Women's rights, human rights: International feminist perspectives*. New York, Routledge.
- Transitional Justice Forum 2009. Liberia Truth and Reconciliation Commission releases volume 1 of its final report, 19 February 2009. Available from: <<http://tj-forum.org/archives/003394.html>> [Accessed 11 June 2009].
- Tripp, Aili M., I. Casimiro, J. Kwesiga and A. Mungwa 2009. *African women's movements: Transforming political landscapes*. Cambridge, Cambridge University Press.
- United Nations 1979. The convention to eliminate all forms of discrimination against women (CEDAW). General Assembly Resolution 34/180. New York, United Nations 34<sup>th</sup> General Assembly.
- United Nations Peacebuilding Commission – Working Group on Lessons Learned 2008. Justice in times of transition. Chair's Summary, 29 February 2008. Available from: <[http://www.un.org/peace/peacebuilding/Working%20Group%20on%20Lessons%20Learned/Justice%20in%20Times%20of%20Transition%20\(26.02.2008\)/26.02.2008%20Chair%20Summary.pdf](http://www.un.org/peace/peacebuilding/Working%20Group%20on%20Lessons%20Learned/Justice%20in%20Times%20of%20Transition%20(26.02.2008)/26.02.2008%20Chair%20Summary.pdf)> [Accessed 11 June 2009].
- Van Allen, Judith 1976. 'Aba riots' or Igbo women's war: Ideology, stratification and the invisibility of women. In: Hafkin, N. and E. Bay eds. *Women in Africa: Studies in social and economic change*. Stanford, Stanford University Press. pp. 59–85.
- Vann, Beth 2002. *Gender-based violence: Emerging issues in programmes serving displaced populations*. Virginia: JSI Research and Training Institute.
- White, Luise 1990. *The comforts of home: Prostitution in colonial Nairobi*. Chicago, University of Chicago Press.
- Wright, Donald 1997. *The world and a very small place in Africa*. New York, M.E. Sharpe.



# Truth commissions and gender: A South African case study

Ayumi Kusafuka\*

## Abstract

South Africa's gendered past was never substantially addressed by the South African Truth and Reconciliation Commission (TRC) despite attempts by women's groups to ensure its inclusion.. The TRC's treatment of gender was in part constrained by its 'gender-blind' mandate, which ignored the different experiences and interests of men and women. Its shortfalls were further reinforced by the combination of limited time and resources, the lack of a systematic proactive gender strategy, and the lack of sustained involvement and interventions by the feminist community. While interventions by women's groups and activists led the Commission to take up gender in ad hoc ways, such as through the Special Hearings on Women, the engagement of the TRC with gender remained at best tangential and as such the opportunity to capture a more complete picture of the apartheid era was lost

---

\* Ayumi Kusafuka has worked for human rights non-governmental organisations on gender and prosecutions issues. For the International Centre for Transitional Justice, she has worked on truth commissions and gender with a focus on East Timor and South Africa. Most recently, with the International Women's Human Rights Law Clinic of the City University of New York Law School, she has drafted an *amicus curiae* submission to the Inter-American Commission on Human Rights and helped draft submissions to the United Nations Committee against Torture.

The author gratefully acknowledges the comments and suggestions made by Beth Goldblatt and Kelli Muddell in working on this case study, which also benefits from her conversations (in alphabetical order) with Vanessa Barlosky, Brandon Hamber, Antjie Krog, Piers Pigou, Nicolene Rousseau, Graeme Simpson, and Christelle Terreblanche.

South Africa's Truth and Reconciliation Commission (TRC) provides an interesting case study for analysts of transitional justice as it proved a missed opportunity for revealing the gendered nature of South Africa's past. By evaluating the Commission, it is possible to see how its ad hoc approach to gender meant that the different experiences of men and women were fundamentally overlooked during the South African process.

In 1995, the first democratically elected South African government established the Truth and Reconciliation Commission through the Promotion of National Unity and Reconciliation Act No 34. The Commission was set up to investigate 'the nature, causes and extent of gross violations of human rights' committed 'within or outside' the country during the period from March 1960 to May 1994 – between the launching of the African National Congress's (ANC) armed resistance movement and the inauguration of Nelson Mandela as the country's first democratically elected president (Fullard 2004). It was founded on the premise that truth-telling about past gross human rights violations would help facilitate 'the process of understanding our divided pasts' and that 'the public acknowledgement of 'untold suffering and injustice' helps to restore the dignity of victims and afford perpetrators the opportunity to come to terms with their own past' (TRC of SA 1998:1.4.3). The Commission placed particular emphasis on 'hearing the experiences of victims of gross violations from the people themselves' (TRC of SA 1998:5.1.6).

Controversially, as part of a political compromise reached between the apartheid government and the ANC, the TRC could grant conditional amnesty to perpetrators in return for their full disclosure of the truth (Hamber and Mofokeng 2000). For many, the functioning of the Commission was an important process in reconciling a deeply divided nation and avoiding a retributive process. The TRC was composed of three committees: the Human Rights Violations Committee (HRVC), the Amnesty Committee (AC), and the Reparation and Rehabilitation Committee (RRC). It had strong quasi-judicial investigative powers, including those of subpoena and search and seizure and

these powers were enhanced by various measures to ensure the protection of witnesses.

While the TRC was committed to the transparency of the process, it also had powers to limit cross-examination, hold hearings in camera, close the proceedings to the public, keep the identity of witnesses from the public and from records, and provide formal protection to witnesses. The TRC's commitment to a transparent process allowed non-governmental organisations (NGOs) to monitor the Commission's work closely and participate in the TRC process from involvement in the recruitment of staff to taking statements and making recommendations for the final report (Burton 2000). The TRC hearings were open to the public and received extensive media coverage in the print and electronic media, as well as live coverage on television and radio (Hayner 2001).

Ultimately, the Commission's seven-volume report, released in October 1998 (first five volumes) and March 2003 (the last two volumes), declared apartheid a crime against humanity. In the report, a separate chapter focused on the experiences of women and reflected the fact that instead of mainstreaming gender in its entire process or having a special unit tasked exclusively to focus on gender, the South African TRC had only undertaken *ad hoc* measures to address gender in some aspects of its process and products.

In total, during the two years of its operation the TRC received over 21 000 statements concerning nearly 38 000 violations of human rights.<sup>1</sup> The majority of these statements pertained to violations committed against men – primarily murder, attempted killing, or severe ill-treatment – and few centred on women's own experiences, particularly of sexual violence. While women accounted for 54.8 percent statements taken, women represented only 43.9 percent of those who reported their own experience of direct human rights violations (TRC of SA 1998:4.10.13). Eighty five percent of these women reported severe ill-treatment they had experienced as direct victims. Of a total of 446 statements coded as sexual abuse, 40 per cent of those in which the sex of the victim was specified reported the abuse of women. Rape was mentioned in only 140 cases,

---

1 The Commission heard a total of 21 298 statements concerning 37 672 allegations of human rights violations (TRC of SA 1998:1.6.Appendix 2.para.6).



but it is estimated that the number represents only a very small fraction of the incidents of rape that occurred in the period of the TRC's mandate (Goldblatt 2006).

The TRC held three 'special hearings' on women in Cape Town, Johannesburg and Durban in order to provide an arena for women to talk about the specific violations they had suffered (Madlala-Routledge 1997). The hearings created the opinion that the majority of the women who testified at the TRC spoke, as secondary victims, about others. Addressing the growing concern over women's tendency not to testify about their own experiences of violations, the Commission changed its statement-taking protocol to encourage women deponents to talk about themselves.

While there have been some interrogation of the gendered nature of the South African Truth Commission this article will interrogate the various stages of its work from the development of its mandate to the final report in order to map how and why gender issues were overlooked during its processes. While previous studies have tried to question the South African TRC's inadequate attempts to incorporate gender, this study will focus on how each stage of its process contributed to this shortfall in order to inform those devising future initiatives.

## **Defining a human rights violation**

The TRC mandate's limited definition of what constituted a human rights violation ultimately contributed to gender being marginalised in the Truth Commission's process. The Act called on the TRC to investigate 'gross violations of human rights', which were defined as 'the violation of human rights through the killing, abduction, torture or severe ill-treatment of any person,' or the 'attempt, conspiracy, incitement, instigation, command or procurement to commit' such acts (Promotion of National Unity and Reconciliation Act No 34 of 1995: art. 1(1)(ix)). The TRC mandate made no specific reference to rape and other gender-based crimes but civil society lobbying resulted in the term 'severe ill-treatment' being interpreted to include a wide range of abuses, including rape and other forms of gender-based violence (Goldblatt and Meintjes 1996).

Nonetheless, this still constituted a narrow interpretation of human rights violations, which largely excluded the wider gendered experiences of apartheid violence. Submissions by NGOs urged the TRC to investigate as ‘severe ill-treatment’ violations of economic, social and cultural rights (Coalition of NGOs 1997). While ultimately the TRC report acknowledged that ‘the policy of apartheid was itself a human rights violation’, the TRC’s mandate focused on ‘bodily integrity rights’ that had ‘resulted in physical or mental harm or death and were incurred in the course of the political conflicts’ of the past (TRC of SA 1998:1.4.56).

The Act did include in its definition of ‘victims’ the ‘relatives or dependants’ of those who experienced ‘harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights’ due to ‘gross violation of human rights’ or ‘an act associated with a political objective for which amnesty has been granted, or those who assisted such victims or relatives or deponents of such victims’ (TRC Act Chap.1 (1) (xix)(c)). Women activists cited the definition as ‘very important’ because it ‘locates wives, mothers, and children at the centre of “gross violation of human rights”’ as ‘primary, not secondary’ victims (Goldblatt and Meintjes 1998b:34).

### **Addressing gender in the Truth Commission’s work**

The failings of the TRC to fully incorporate gender issues can in part be explained by the ambiguous relationship between the TRC and women’s groups since neither side engaged with the other in a consistent and proactive manner. During the early days of South Africa’s new democracy, women’s organisations were focused on pressing gender concerns such as legal and constitutional reform, women’s representation in the parliament and domestic violence. As a result, they were largely absent during the drafting process of the TRC legislation thereby excluding themselves from defining the Commission’s framework. This can in part be explained by the fact that initially women’s groups were divided and unsure as to how to engage with the TRC. Gender activist and lawyer Ilse Olckers recalled the dilemma that:

many of us [women's activists and groups] had been asking each other, informally – slightly panicky – for many months, as the [TRC] process unfolded before our eyes. But nobody had the resources; and the ones who did felt they did not have a mandate; and the women's movement was silent (Olckers 1996:61).

Only after the legal framework was finalised and the TRC began its work did a small group of feminist activists begin to start lobbying to address the gender-blind legislation. In March 1996, a range of representatives from women's organisations, some TRC staff, psychologists and lawyers discussed concerns over the lack of gender perspectives in the TRC's mandate and subsequently presented a submission by the University of Witwatersrand's Centre for Applied Legal Studies (CALS) to the Commission (Goldblatt and Meintjes 1996). The co-authors of the submission, Beth Goldblatt and Sheila Meintjes, analysed how men and women experienced apartheid's political violence differently due to their prescribed roles in the society. They argued that while men were usually the primary actors in the political struggle, women as wives and mothers suffered economic loss when the men in their households were detained, imprisoned or killed. The forms of physical and psychological torture used against women also differed from those tactics used against men, targeting women's femininity and sexuality. Alerting the TRC that women would likely be hesitant to speak of their own experiences of abuse, they made a set of recommendations on how the TRC could take a gender-sensitive approach.

The CALS submission did persuade the TRC to adopt more gender-sensitive strategies such as holding special women's hearings, creating gender-sensitive statement-taking protocols, conducting research on gender, and having a chapter on women in the final report. The interventions by the feminist community also succeeded in ensuring rape and other sexual violence were included in the definitions of torture and 'severe ill-treatment' (Van der Merwe et al. 1999). Further, a small 'Gender and the Truth and Reconciliation Commission' working group of individuals such as trauma counselors and psychologists from the Gender Research Project of CALS and the Centre for the Study of Violence and Reconciliation (CSVSR) was formed and met every six to eight weeks during

1996 and 1997 to discuss gender issues at the TRC and to strategise on how NGOs could intervene further, particularly in relation to a reparations policy. However, the initiative to impact the TRC to take a gender-sensitive approach lost momentum in the later stage of the TRC's life as women's groups focused on what were deemed the more burning gender concerns facing South Africa at that juncture.

### **Does truth have a gender?**

Although the TRC was largely receptive to the recommendations of women's groups and other NGOs, it unfortunately overlooked gender concerns in its analytical frames, which created a hierarchy of human rights violence of which political violence was the primary interest. As analyst Graeme Simpson (2004:16) notes:

'[P]rivileging' certain acts of political violence, and seeing race, class and gender as subsidiary to party-specific political motivations, had the ironic effect of shrouding rather than illuminating them as intrinsically political and self-explanatory characteristics essential to any understanding of the dominant patterns and experiences of violence under apartheid.

Further, the TRC's focus on 'political' offences resulted in it neglecting the link between what was considered 'extraordinary' and 'ordinary' violence, and produced a missed opportunity to examine the structural, ideological and systemic background of gender relations, especially apartheid's structural abuses against women. Madeleine Fullard, former researcher for the TRC, laments that '[t]he absence of focus on apartheid's systemic rather than repressive character had grievous consequences for women' (Fullard 2004).

The TRC report itself acknowledges the implications of the Commission's restricted focus. It notes that 'The Commission's relative neglect of the effects of the "ordinary" workings of apartheid has a gender bias, as well as a racial one' and concedes that 'the definition of gross violation of human rights adopted by

the Commission resulted in a blindness to the types of abuse predominantly experienced by women' (TRC of SA:4.10.144).

In practice, both the Amnesty Committee and the Human Rights Violations Committee (HRVC) often struggled to draw a line between political and personal motives behind sexual violence, although there was evidence that rape may have been sanctioned by the security forces or at least used with the effect of terrorising, intimidating and punishing women and their communities (Goldblatt and Meintjes 1996). The following excerpts from the interaction between the HRVC and Nozibonelo Maria Mxathule, a victim of rape, at the Special Women's Hearing in Johannesburg on 29 July 1997, demonstrates the challenge of identifying motives for the sexual abuse of women (emphasis added):

CHAIRPERSON: I will try to ask you a few questions really aimed at making sure that we get a clear picture of what you have said. Did you say you were a member of any political position [/party]? If so, did you hold any position?

MS MXATHULE: I was a member of the Youth Congress.

CHAIRPERSON: When you started off you told about an experience where a man was trying to enter the door. Can you just give a clear context of that, because the way it came *it was not clear enough as to what was the reason behind that*.

MS MXATHULE: This person attempted to rape me, because he had lust for me.

CHAIRPERSON: But *he was not doing that in a political context, he was just doing it as a man who wanted to do that to you as a person? I am trying to get that clarity*.

MS MXATHULE: Yes, because when I explained this to his father, he

explained to my father that your child is, they are use [sic] to each other.

CHAIRPERSON: Again, *I would like us to be clear on this. So, this man wanted to rape you not because it was a, there was no political context. He was just doing it, because he is use [sic] to doing that.*

MS MXATHULE: The riots were not yet over in Jubatine at that time. We were still involved in the political struggle.

MS SEROKE: [a debriefer]: Maria, *we want you to assist us to have the political context of the first story you told us about. You heard that Sheila Meintjies during her submission here, she said that at some of the days, there is a very thin line between domestic violence and political violence. ... did he do this [rape] because he knew you were a Comrade or he just did it because he wanted to have sex with you?*

MS MXATHULE: He did this because he knew I was a Comrade. (SOURCE: Special Hearing on Women in Johannesburg, July 29, 1997, Nozibonelo Maria Mxathule)

## **Statement-taking**

From the outset concern was expressed that the South African TRC may not be able to solicit women's statements of their own experiences of abuses, especially sexual violations. As already noted, some women's organisations had called for changes to the method of statement-taking including requests that only women statement-takers interview female victims. By April 1997, the Commission had modified its statement-taking protocol to be more sensitive to female deponents and had also trained statement-takers to ask more 'probing questions' in order to reveal more about women's own experiences.

In general, however, the statement-taking procedure did not prove to be successful in soliciting women's statements about themselves. One criticism

leveled is that due to time constraints statement-taking became a checklist with little space for a deponent to share her own narrative (Lars Buur 2002:78). On many occasions victims expressed disappointment at their statement-takers, who were considered as not adequately sensitised about gender-based violence to deal with victims of sexual abuses (CSVr and Khulumani Support Group 1998). Furthermore, the importance of ensuring statements from women on their own experiences was not tackled during the Commission's outreach programme (CSVr and Khulumani Support Group 1998). The Commission failed to conduct any separate outreach campaigns which specifically targeted women and instead expected them to come forward as part of the general outreach efforts (Interview with Christelle Terreblance 2005). In addition, the South African TRC did not allow for statements to be submitted after the closing of the Commission's doors in December 1997 (TRC of SA 1998:6.6.37).

As outlined above, the TRC failed to secure representative statements of women's own experiences of violence under apartheid (Motsemme 2004). On the one hand, the lack of statements on women's experiences muted women's voices, stereotyped women as secondary witnesses, and marginalised women in the TRC's discourse on the past. However, a study by South African psychologist Pumla Gobodo-Madikizela has revealed that a significant number of the women who spoke of others' experiences before the TRC, typically those of their sons, fathers and husbands, did so to commemorate those loved ones lost during the violence (Gobodo-Madikizela 2005:15). As such, she argues that these women were not undermining their own experiences, but instead viewed the Commission as a cathartic event.

## **The Hearings**

The South African TRC held a number of thematic and sectoral hearings, including the special women's hearings, and these provided the most visible space where gender-based human rights violations were discussed. Madeleine Fullard (2004) has noted that these hearings 'constituted the TRC's only organised engagement with broader sites of apartheid abuse'.

The women's hearings in Cape Town (August 1996), Durban (October 1996) and Johannesburg (July 1997) were arranged specifically to gather information on women's experiences of apartheid. To some degree, the hearings shifted the way in which women were seen during the TRC process and also changed the discourse on women's experiences (Krog 2005). At these hearings, women were allowed to testify in camera before a women-only panel of commissioners and a largely female audience. These special arrangements did encourage women to speak about their own abuse, which would not have been told at regular hearings. These hearings unveiled the specific gendered nature of the suffering women had experienced. The women who came forward to give testimony at these hearings revealed how they had been hiding and, according to Debrah Matshoba, 'how shattered [they] were inside' (TRC of SA 1997c). At the hearings, women spoke about their own experiences, relating to harassment, detention, imprisonment, abduction, torture, murder and rape, as well as the psychological, emotional, and financial pain of losing their loved ones. Goldblatt and Meintjes noted that 'these hearings clearly indicated that women were afraid and ashamed to speak about their experiences but when provided with an opportunity to do so in a safe environment, were more willing to come forward' (Goldblatt and Meintjes 1996:9).

The women's hearings also raised awareness of the particular difficulties women faced in publicly disclosing their experiences. According to Thenjiwe Mtintso, former chairperson of South Africa's Commission on Gender Equality, many women were 'not ready' to open their 'wounds' and make public their 'signs of the pain' (TRC of SA 1997c). At the Johannesburg hearing, Sheila Meintjes noted the importance of breaking the silence on women's experiences and encouraged women to speak out to address the problem of domestic violence. In addition to women's individual experience of violence, expert testimonies at the women's hearings highlighted broader patterns of abuse and resistance, enabling conditions, and social impact. Meintjes, among others, explained how the position of women in South African society had facilitated human rights violations against women, particularly sexual abuses (Special Hearing on Women 1997).



In addition to the special hearings on women, some of the other sector and thematic hearings unmasked a wide range of abuse women had experienced under apartheid. The health sector hearings suggested that the rights of black women, both as doctors and as patients, were violated, especially also with regard to access to obstetrics and gynaecological care. The media hearings exposed discrimination against women, black women writers in particular, in the field of journalism (TRC of SA:4.6.53). The business sector hearings highlighted that all the discriminatory legislation and many practices of the apartheid system had severely undermined the opportunities for women, particularly black women, with regard to both employment in the business sector and financial activities, such as obtaining loans (Business Sector Hearing 1997). Bonini Jack acknowledged at the hearing that ‘the Land Bank ... acknowledges a history of gender discrimination, both in terms of our treatment of women farmers and with regard to the difficulties faced by women staff’ (TRC of SA 1997e). At the same hearing, Andre Jansen noted that ‘the bank [Land Bank] wishes to apologise’ for the ‘injustices’ it had committed, including having ‘participated in denying equal opportunities for women and non-white people’ (TRC of SA 1997e). The legal hearings addressed the lack of legal protection for victims, including victims of rape (TRC of SA 1997d) and underlined the need to transform the legal system of the country into one based on ‘representivity in terms of race and gender’ that would empower victims (TRC of SA 1997b).

Women also talked about their experiences at some of the sector and thematic hearings. At the prison hearings, women made testimony not only as witnesses but also as victims – detainees and prisoners. Statements revealed how women had been subject to physical and mental torture and how women’s prisons did not cater for the specific needs of women, such as gynaecological services. The special hearing on children and youth showed that the mental strain caused by the political struggle had often destroyed women’s family life. At the Durban special hearing on children and youth, women from KwaZulu-Natal confessed that they were too depressed and distraught by the violence to take care of their children (TRC of SA 1997a). As a result, their neglected children often chose to run away from home.

The TRC hearings did include some testimonies on the discrimination against gays and lesbians in South Africa, and particularly the special hearings on conscription revealed the trauma suffered by many gay conscripts. The submissions to the institutional hearings on the health sector suggested that gay conscripts were subjected to 'aversion therapy' or 'electric shocks' intended to 'convert' their sexual orientation without their consent (Health and Human Rights Projects (HHRP) 1997; Van Zyl et al. 1999). However, the Commission reduced these allegations to one sentence on the aversion therapy practised on gay conscripts in its final report (TRC of SA 1998:4.5.41).

The unique environment of the special women's hearings was distinct from the individual public hearings where women's firsthand experiences were largely subsumed among wider human rights violations. Beth Goldblatt has lamented the TRC's failure to hold more localised hearings on gender, particularly in rural areas where the most harsh experiences of women's abuses could be exposed (Goldblatt 2004). The fear of public humiliation and social stigma, particularly in cases of sexual abuse, was a major deterrent for women to reveal human rights violations they had suffered. During one public hearing, Zanele Zingxondo testified about being subjected to sexual torture during interrogation, but she avoided using the word rape or making any direct reference to having electric shocks administered on her genitals (Zingxondo 1996).

Very few female perpetrators appeared before the TRC. Of the amnesty applications in which the sex of the applicant was known (4 721 applications out of a total of 7 128 applications), merely fifty-six applications for amnesty (just over one percent) were known to have come from women. At the time when the first five volumes of the TRC Report were written, the AC had heard hearings of forty of the amnesty applications made by women, and made decisions in only twenty-six of the cases. Two women had been granted amnesty for having been involved in bomb planting and theft, and the others for possession and distribution of weapons (TRC of SA 1998:4.10.128).

The TRC's engagement with women ultimately suggests that the official and public processes of statement-taking and public hearings were not necessarily successful in recording and addressing a gendered history of human rights

violations. The TRC's lack of statements on women's experiences and the fact that the most active participation of female deponents was during the Special Women's Hearings illustrates that women were much more willing to talk in public about themselves, even about the most sensitive experiences, when they were in a specific environment.

## **The Amnesty Committee**

Section 20 of the TRC Act (Promotion of National Unity and Reconciliation Act No 34 of 1995) allowed for the granting of amnesty where an act is 'associated with a political objective committed in the course of the conflicts of the past' in return for 'a full disclosure of all the relevant facts relating to such act'. The Act thus disqualified an act committed 'for personal gain' or 'out of personal malice, ill-will or spite, directed against the victim of the acts committed'. Women's rights advocates and scholars objected to granting impunity for the perpetrators of crimes against women, particularly rape (Krog 2001), while expressing concern that rape and sexual violence would not be able to fall within the criteria of a political act as defined by the Act due to the ambiguity surrounding rape and sexual violence (Goldblatt and Meintjes 1996).

As already mentioned, the TRC's focus on physical and political violence meant the hearings of the HRVC and the AC left little room for gendered human rights abuses to be explored. Fullard (2004) observes that statements on human rights violations were 'accepted by the TRC only if they fell within the narrow interpretation of its mandate'. Filtered through the narrow lens of the Commission, as mentioned already, gendered human rights violations were at the periphery. Similarly, the AC hearings tried to curtail information on violations that were not included in amnesty applications, thereby excluding the possibility of exploring the detail of other violations, including rape. For example, at the Amnesty Committee hearing for Jabu Jacob Nyethe, when details of rapes were revealed, the Chairperson reminded those present that the hearing should limit collecting testimonial evidence on rape as there was no application for amnesty against rape (TRC of SA 1998).

Many commissioners experienced difficulties in locating gender in the prism through which human rights violations were articulated. Ultimately, the Amnesty Committee received very few applications for amnesty for sexual violence. Those it did receive came mainly from the self-defence or special security forces (Sooka 1999).

## **The TRC Report**

The CALS submission suggested that a gender approach was crucial for addressing the on-going suffering of women, implying a link between the past political violence and continuing violations, including domestic violence, which had already been documented by national and international human rights NGOs and CSV. Human Rights Watch (1995) argued that a 'legacy of violence' associated with the apartheid policies has led to 'extremely high levels of violence throughout society,' including domestic violence. By the time the TRC wrote its report, scholars had pointed out that in South Africa black men's experience of racism and social and economic deprivation often led to a sense of frustration and inferiority, which sometime manifested in violence against women (Mokwena 1991).

In response to these requests, the TRC's research department assigned Vanessa Barlosky, a researcher, to focus on gender. She drafted a report on 'gender and gross human rights violations,' which discussed and analysed a range of gender issues such as feminist theories on women and human rights, women's political struggle in South Africa and various gendered aspects of the past violence including not only physical abuses of rape and sexual torture but also social and economic discriminatory practices of apartheid. The draft report also examined the role of women in society and its effect on women's experience of human rights violations, explaining how the patriarchal structure of the society had relegated women to the 'private' or domestic sphere as opposed to the public sphere. It further provided an analysis showing that during a political and social crisis the public-private boundaries were often challenged and occasionally transformed. In such contexts, sexual violence can be used by those in power to destroy the new identity of women who became actively involved in politics and

re-assert their inferiority and subordinate position (Barolsky 1997). The report further noted that the stigma and 'privatisation' of rape and sexual abuse, or dismissing such abuse as a 'private' issue, had led to 'unwillingness' to effectively prosecute gender-based violence (Barolsky 1997). Since it was written before April 1997, the draft report did not make much reference to the empirical findings of the TRC.

However, this apparently extensive gender research did not develop further from the draft stage and was very sparingly and fragmentally incorporated in the TRC's final report. Gender research was compromised due to constraints of time and resources on top of the limited scope of the Commission's mandate. Consequently, as has already been mentioned, gendered experiences were filtered through a narrow lens, which excluded a comprehensive analysis of gendered human rights abuse under apartheid and highlighted only certain incidents of gender-based violence. In addition, although some of the testimonies at the special women's hearings suggested the link between the political context and domestic violence (Special Women's Hearing 1997), the TRC never analysed the links between the political struggle of the past and the ongoing high rates of sexual and domestic violence. As such, the TRC final report considers gender 'in the narrowest possible terms' (Meintjes and Goldblatt 1999:1). Its chapter on women notes that:

The inclusion of a separate chapter on gender will be understood by some readers as sidelining, rather than mainstreaming, the issue. Women will again be seen as having been portrayed as a 'special interest group', rather than as 'normal' members of the society (TRC of SA 1998: 4.10.16).

The chapter provides a selection of women's testimonies from the special hearings and statistics based on the statements submitted to the TRC. It only makes brief references to the relationship between gender and political violence, for example, the economic discrimination faced by black women under apartheid (TRC of SA 1998: 4.10.19). Nonetheless, the report does critique the Commission's limitations in addressing gender issues and acknowledges that it would have to 'amend its understanding of its mandate and how it defined gross

human rights violations' to 'integrate gender fully' in the TRC process. It notes that 'the Commission's relative neglect of the effects of the "ordinary" workings of apartheid has a gender bias' (TRC of SA 1998:10.17.19).

Ultimately the chapter on women, as well as the other chapters in Volume 4 which focus on the institutional and special hearings, is 'quite disconnected from the rest of the report with few points of intersection' (Fullard 2004). The wider TRC report also contains references to women's experiences but these are largely descriptive narratives rather than analysis (Goldblatt and Meintjes 1999). In Volume 5 it is noted that 'women too suffered direct gross violations of human rights, many of which were gender specific in their exploitative and humiliating nature' and a number of conclusions are made. These included that the state was responsible for 'the severe ill treatment of women in custody', that women 'were abused by the security forces in ways which specifically exploited their vulnerabilities as women' and that 'women in exile, particularly those in camps, were subjected to various forms of sexual abuse and harassment, including rape' (TRC of SA 1998:5.6.161).

In Volume 7 it is noted that '[d]espite the fact that rape formed part of the fabric of political conflict ... it was infrequently reported in HRV statements to the Commission' (TRC of SA 2003:7, p. 8). On the difference of experiences across gender, the report concludes that 'men were the most common victims of violations' (TRC of SA 2003:1.6. Appendix 2.23). They base this conclusion on the fact that 'six times as many men died as women and twice as many survivors of violations were men. Hence, although most people who told the Commission about violations were women, most of the testimonies were about men' (TRC of SA 1998:1.6. 23–24). However, it should be added that the report was meant to provide a reflection of the Commission's process and as such its confines were reflective of the wider limitations of the mandate and proceedings (Goldblatt and Meintjes 1999).

## **Reparations**

Part of the Commission's mandate was to recommend reparation measures for victims of gross human rights violations identified by the Commission. The Act

defines reparation as ‘any form of compensation, *ex gratia* payment, restitution, rehabilitation or recognition’ (Promotion of National Unity and Reconciliation Act No 34 of 1995: art.1(1)(xix)). The TRC adopted the following principles for reparation measures: redress, restitution, rehabilitation, restoration of dignity and reassurance of non-repetition. In line with these principles, the TRC made a number of recommendations to the South African government including: a) urgent interim reparations; b) individual reparation grants; c) symbolic reparations, including the establishment of community-based services and activities such as assistance in exhumations and burials; d) community rehabilitation, such as the provision of health and social services; and e) institutional reforms (TRC of SA 2003:5.5 ).

The input of women’s groups to the design of the TRC’s reparations recommendations was limited. In the early stage of the TRC, women activists were involved in making suggestions on reparations policy, for example through the CALS submission which recommended the TRC to take into account the unpaid labour of women in calculating financial compensation. The small working group of NGOs that met regularly from 1996 to 1997 to develop strategic responses to integrate gender issues into the TRC came up with a set of recommendations on a reparations policy, which was based on the assumption that women survivors may take years to feel ready to speak about their experiences and that mechanisms should be provided for taking statements long after the TRC had finished its work (Goldblatt and Meintjes 1997). At the consultative workshops the TRC held in 1997 to initially discuss formulating its reparations policy, women’s groups and more sympathetic commissioners, including the Chairperson of the RRC, Commissioner Mkize, reiterated the importance of including women’s experiences and perspectives in a reparations policy. This was evident in Commissioner Mkize’s statement at the reparations policy workshop in Pietersburg in May 1997 as well as in the Oudtshoorn’s Women Organisation’s statement at a workshop in February 1997.

However, women’s groups became less involved in forming the reparations policy by the time it was being prepared. As already noted, the women’s movement was largely preoccupied with building a national gender policy and representation in the government as well as the pressing issue of contemporary

issues of violence against women (Goldblatt 2006). While the RRC did consult through a number of workshops and meetings, attempts to integrate issues of gender in the reparations policies were largely left to victim support groups such as Khulumani and human rights NGOs, such as the CSVR (Goldblatt 2006).

Although women made up the majority of the RRC with four out of the five commissioners including the chairperson, women's special needs and interests were given limited consideration. Positively, the criteria for reparations eligibility adopted by the TRC allowed for both direct victims and their 'relatives and dependants – parents, spouses, children, and other dependants under the customary or legal duty of the victims' to receive reparations, including urgent interim reparation and individual reparation grants (TRC of SA 2003:5.5.33). In cases where the victim was deceased, the TRC applied the definition of relatives and dependants to the situation at the time of the victim's death (TRC of SA 2003:5.5.35). This inclusive approach enabled women relatives and dependants to claim reparations, as many women had participated in the TRC as 'secondary victims' (Goldblatt and Meintjes 1998b). It further extended the criteria to those relatives and dependants married under customary law, which was of great significance to many women (Goldblatt 2005).

Yet despite these specific criteria, the reparations recommendations were largely gender-blind and the eligibility criteria could not redress the underreporting of women's own experience of violence. The Commission adopted a closed list for reparations instead of an open one, which potentially could have allowed greater scope for victims to come forward and make claims for reparations. Both urgent interim and final reparation grants were available only to those who had been identified as 'victims' by the TRC, excluding those who had not made applications before the 'closed' deadline (Buford and Van der Merwe 2004). Moreover, the recommendations of the Commission did not specifically include any reparations and rehabilitation measures to address either the harms suffered by women as a category or specific gendered aspects of the past violence (Goldblatt 2005). As such, the reparations recommendations mirror the absence of centrality of gender in the TRC, combined with the lack of consciousness, expertise, and mobilisation around gender.



## **Reform, justice and public education**

The TRC's recommendations included institutional reforms in the judiciary, security forces, correctional services, and education, as well as public awareness-raising for 'the consolidation of democracy and the building of a culture of human rights' (TRC of SA 2003:5.8.1). In general, the recommendations were a set of very general and broad ideas that were put together without regard for both existing processes of transformation already initiated by the new government (Rauch 2004). References to gender were scattered and were made mostly with regard to measures intended to promote human rights in general. Those recommendations on gender or women's rights were minor adjustments or additions to the existing structures, instead of critical reforms addressing the gendered history of human rights violations. For example, recommendations included: the use of human rights curricula in 'formal education, specialised education and the training of law enforcement personnel', which 'must address issues of, amongst others, racism, gender discrimination, conflict resolution and the rights of children' (TRC of SA 2003:5.8.21para.21) and the 'fair' gender and racial representation in the judiciary, the 'Statutory Council', and the media.

Furthermore, the recommendations did not tackle the enabling and contributing causes of gendered human rights violations. The socio-economic vulnerability of women, particularly black women, remained unaddressed. Further, the TRC made no recommendation to end the impunity for violence against women as has occurred in subsequent commissions such as in Sierra Leone. Although the TRC called for the establishment of 'specialist prosecutorial task teams' to 'address serious endemic crimes', it did not include gender-based violence in the list of crimes (TRC of SA 2003:5.8.54). Similarly, the TRC did not specifically refer to rape or other gender-based violence, when it emphasised the importance of accountability for crimes 'where amnesty has not been sought or has been denied' and affirmed its willingness to cooperate with the prosecution through sharing information (Olckers 1996).

## Conclusion

The example of the South African TRC provides invaluable lessons for those developing future truth commissions as to how to better incorporate gender issues into the body's work. The South African case illustrates both the need for gender-friendly legislation when establishing a truth commission and, more critically, the necessity for a sustained and proactive relationship between a commission and the broad community of women's activists in order to place gender in the foreground of a commission's work. Failing to do this results in a missed opportunity to examine the structural, ideological, and systemic background of gender-based abuses. As a result, South Africa's Commission failed to unmask and address the links between structural and gendered violence that continue to plague the country.

Since gender and gendered experiences were filtered through a narrow prism due to the TRC's mandate, good intentions could not prevent the Commission's engagement being tangential. While the Commission's treatment of gender was initially shaped by confines of its legislation, its shortfalls were reinforced by the combination of constraints of time and resources, the non-existence of any systematic proactive gender strategy, and the lack of sustained involvement and interventions by the women's groups. As a consequence, gender was never incorporated in the TRC's work in a substantive way and the true history of South Africa's gendered past has yet to be recorded.


## Sources

- Barolsky, Vanessa 1997. Gender and gross human rights violations. Unpublished paper. Copy on file with author.
- Buford, B. and H. van der Merwe 2004. Reparations in Southern Africa. *Cahiers d'études africaines*, 44.
- Buur, Lars 2002. Monumental historical memory: Managing truth in the everyday work of the South African Truth and Reconciliation Commission. In: Posel, D. and G. Simpson eds. *Commissioning the past: Understanding South Africa's Truth and Reconciliation Commission*. Johannesburg, Witwatersrand University Press.
- Burton, M. 2000. Making Moral Judgments. In: Villa-Vicencio C. and W. Verwoerd eds. *Looking back reaching forward: Reflections on the Truth and Reconciliation Commission of South Africa*. Cape Town, University of Cape Town Press.

- Centre for the Study of Violence and Reconciliation (CSVR) and Khulumani Support Group 1998. Submission to the Truth and Reconciliation Commission: Survivors' perceptions of the Truth and Reconciliation Commission and suggestions for the Final Report. Report based on eleven reconciliation and rehabilitation workshops undertaken by the Centre for the Study of Violence and Reconciliation between 7 August 1997 and 1 February 1998. Available from: <<http://www.csvr.org.za/papers/papkhul.htm>>.
- Coalition of NGOs 1997. Submission to the Truth and Reconciliation Commission concerning the relevance of economic, social and cultural rights to the Commission's mandate.
- Fullard, Madeleine 2004. Dis-placing race: The South African Truth and Reconciliation Commission (TRC) and interpretations of violence. Race and Citizenship in Transition Series (on-line version). Available from: <<http://www.csvr.org.za/papers/paprctp3.htm>>.
- Goldblatt, Beth 2006. Evaluating the gender content of reparations: Lessons from South Africa. In: Rubio-Marin, R. ed. *What happened to the women? Gender and reparations for human rights violations*. New York, Social Science Research Council.
- Goldblatt, Beth and Sheila Meintjes 1996. Gender and the Truth and Reconciliation Commission: A submission to the Truth and Reconciliation Commission.
- Goldblatt, Beth and Sheila Meintjes 1997. Dealing with the aftermath – Sexual violence and the Truth and Reconciliation Commission. *Agenda*, 36.
- Goldblatt, Beth and Sheila Meintjes 1998a. A gender perspective of violence during the struggle against apartheid. In: Bornman, E., R. van Eeden and M. Wentzel eds. *Violence in South Africa: A variety of perspectives*. Pretoria, Human Sciences Research Council.
- Goldblatt, Beth and Sheila Meintjes 1998b. South African women demand the truth. In: Turshen, Meredith and Clotilde Twagiramariya eds. *What women do in wartime: Gender and conflict in Africa*. London, Zed Books.
- Goldblatt, Beth and Sheila Meintjes 1999. Women: A small part of one chapter in the history of South Africa. Paper presented to the Commissioning the Past Conference, University of the Witwatersrand, Johannesburg.
- Hamber, Brandon and T. Mofokeng eds. 2001. *From rhetoric to responsibility: Making reparations to the survivors of past political violence in South Africa*. Johannesburg, Centre for the Study of Violence and Reconciliation.
- Hayner, P. 2001. *Unspeakable truth: Confronting state terror and atrocity*. New York, Routledge.
- Health and Human Rights Projects (HHRP) 1997. Professional accountability in South Africa. Final submission to the Truth and Reconciliation Commission.
- Human Rights Watch 1995. Violence against women in South Africa: The State response to domestic violence and rape. Available from: <<http://www.hrw.org/en/reports/1995/11/01/violence-against-women-south-africa>>.
- Interviews with Brandon Hamber, Nicky Rousseau, Graeme Simpson and Christelle Terreblance conducted by Ayumi Kusafuka on behalf of the ICTJ in August 2005.

- Krog, A. 2001. Locked into loss and silence: Testimonies of gender and violence at the South African Truth Commission. In: Moser, C. and F. Clark eds. *Victims, perpetrators or actors?: Gender, armed conflict and political violence*. London, Zed Books.
- Madlala-Routledge, N. 1997. What price freedom? Women's testimony and the Natal Organisation of Women. *Agenda*, 34.
- Mokwena, S. 1991. The era of the jackrollers: Contextualising the rise of youth gangs in Soweto. Paper presented at the Centre for the Study of Violence and Reconciliation, Seminar No. 5.
- Motsemme, N. 2004. The mute always speak: On women's silences at the Truth and Reconciliation. *Current Sociology*, 52 (5), pp. 909–932.
- Oickers, Ilse 1996. Gender-neutral truth – A reality shamefully distorted. *Agenda*, 31.
- Promotion of National Unity and Reconciliation Act No 34 of 1995. 26 July 1995.
- Rauch, J. 2004. Police transformation and the South African TRC. In: Centre for the Study of Violence and Reconciliation, *Race and citizenship in transition Series*, 2004.
- Simpson, Graeme 1992. Jack-asses and jackrollers: Rediscovering gender in understanding violence. Research report written for the Centre for the Study of Violence and Reconciliation, 1992.
- Sooka, Y. 1999. Statement at the conference on The Aftermath: Women in post-war reconstruction, 20–22 July 1999, Johannesburg, South Africa. Available in Africa: Women in post-war reconstruction, *The Africa Policy E-Journal*, 30 September 1999.
- TRC of SA (Truth and Reconciliation Commission of South Africa) 1997a. Special Hearing on Children and Youth held in Durban on 18 June 1997.
- TRC of SA 1997b. Legal Hearing held in Johannesburg on 27 July 1997. Statement by Nadel Member.
- TRC of SA 1997c. Special Women's Hearings held in Johannesburg on 29 July 1997.
- TRC of SA 1997d. Legal Hearing held in Johannesburg on 27 October 1997. Statement by the then South African Minister of Justice, Dullah Omar.
- TRC of SA 1997e. Business Sector Hearing held in Johannesburg on 12 November 1997.
- TRC of SA 1998. Amnesty Hearing held in Johannesburg on 1 December 1998 for the cases of Machitje, Nkosi, Xaba and others.
- TRC of SA 2003. Truth and Reconciliation Commission of South Africa Report. Kenwyn, Juta.
- Zingxondo, Z. 1996. Woman tells of torture by police. Testimony in Beaufort West on 12 August 1996. South African Press Association (SAPA).
- Van Zyl, M., J. de Gruchy, S. Lapinsky, S. Lewin and G. Reid 1999. The Aversion Project: Human rights abuses of gays and lesbians in the South African Defence Force by health workers during the apartheid era. Medical Research Council, Cape Town, October 1999. Available from: <<http://www.mrc.ac.za/healthsystems/aversion.pdf>>.





# Addressing gender-based violence in the Sierra Leone conflict: Notes from the field

*Lotta Teale\**

## **Abstract**

Sierra Leone's transition has witnessed a number of landmark procedural and legal innovations which have had widespread implications for international gender justice. The 11-year conflict had shattered the country, leaving more than a million people displaced and thousands of women coping with the aftermath of sexual violence. Then, in 1999, the Lomé Peace Accord in 1999 traded amnesty for peace and made provision for the establishment of the Sierra Leone Truth Commission. The United Nations Security Council subsequently established a Special Court to prosecute those who bore 'the greatest responsibility' for atrocities committed during the conflict.

---

\* Lotta Teale is Gender Based Violence Legal Programme Officer with the International Rescue Committee, Sierra Leone. Her main focus, currently, is working on implementation of recently passed national legislation on family law, commonly known as the 'Gender Justice Acts'. She was previously closely involved in the passage of the legislation, while working with the Sierra Leone Court Monitoring Programme and as a consultant with the International Centre for Transitional Justice. She has also worked with the Special Court for Sierra Leone as Special Assistant to the Registrar, focusing on the Special Court's legacy.

However, while both the Truth Commission and the Special Court made some unique strides in promoting gender justice, the perception among gender activists is that both initiatives fell short in addressing the country's gender-based human rights violations. Questions abound over the real impact of the Special Court, not least because there are issues over how much justice victims achieve through the prosecution of only those with command responsibility. Although the Truth Commission had a more far-reaching ambit and did confront some aspects of the country's gendered past, its long-term impact has yet to be realised and its gender-sensitive recommendations have yet to be implemented. This article will assess Sierra Leone's transition through an analysis of its successes and failures in addressing gender-based violations committed during the conflict and will examine how far gender justice has been achieved.

### **Confronting Sierra Leone's gendered past**

I have not married again because of my experience. I was raped by 20 people. Previously I was someone who was very vibrant and I could stand on my own. Now when I think about the rape I pee on myself. This is frustrating. I cannot get married and I am rejected by men. No-one who knows my condition would ever want to touch me. I feel really stigmatised and I am rejected by my community. People take me in, but as soon as I have any argument, they tell me to leave and I haven't got any relatives and no place to live. I cannot continue with Ramadan properly and so I have to abandon it because no-one will care for me. I get pain in my back and I have no medication, but I can sleep... I haven't heard what the TRC report said... If I saw the perpetrators again I would not know them, but I cannot forgive them... I am not glad the ring leaders are being punished (Female survivor, Masiaka, 27 September 2007).

The civil war in Sierra Leone, from 1991 to 2002, gained certain notoriety internationally – evoking amputations, child soldiers, unethical diamond mining, and the Liberian 'warlord' Charles Taylor. Since the signing of the Lomé Peace Accord events of the conflict have been brought to popular attention again

through films such as the Hollywood blockbuster *Blood Diamonds* starring Leonardo DiCaprio and Ishmael Beah's autobiography, *A Long Way Gone*, which reached top of the best selling list when it was sold on Starbucks counters across the world. The experience of Sierra Leonean women during the war has received less publicity. Yet there is widespread evidence that women and girls were targeted systematically during the conflict, singled out for some of the worst atrocities ever recorded (Sierra Leone Truth and Reconciliation Commission 2004:3,3,200).

While women suffered in the same ways as men, for example through being victims of killing, torture and looting, they were also targeted for their gender for example through rape, sexual slavery or forced marriage, and many non-sexual crimes were committed in a gendered way (Sierra Leone Truth and Reconciliation Commission 2004:3,3,200). All military factions, including the three main groups, the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC) and the Civil Defence Force (CDF), were responsible for committing these atrocities. However, while the particular types of violence may have been extraordinary, the way they were treated built on pre-existing patterns of gender-based violence, and the marginalised position of women in society (Sierra Leone Truth and Reconciliation Commission 2004:3,3). The Special Court for Sierra Leone (the Court) and the Truth and Reconciliation Commission (the TRC), operating alongside, were established to seek justice and stability in the post-conflict period. Both have made specific efforts to address the particular forms of suffering experienced by Sierra Leonean women, to an extent unseen in transitional justice mechanisms elsewhere.

This article will reflect on the views expressed by women in the capital city, Freetown, and beyond the capital 'up country', about the work of both mechanisms, how adequately they have addressed gender-based violence committed during the conflict, and to what extent these initiatives have otherwise addressed their justice needs. This article is based on discussions and interviews with female activists working with civil society organisations (CSOs) and non-governmental organisations (NGOs), female victims, civil servants, politicians, and staff who have worked with the TRC and Special Court, as well as pre-existing documentation on the subject. It does not purport to give



a statistical analysis of the views of victims, and the experience of women is obviously diverse, but this article brings together some of the issues identified during discussions. Whereas many observations are general in nature, others are specific to the position of women. While some views may be based on misperceptions about the institutions, they nevertheless suggest some of the discourses that have occurred on the ground.

## **The Special Court for Sierra Leone**

### **Successes and failures from the perspective of the international community**

From the outset, gender-based violence was prioritised at the highest level at the Special Court (Secretary-General 2000). As a 'hybrid tribunal' established by an agreement between the Government of Sierra Leone and the United Nations, the Court sought to make international justice locally relevant, locating it in the country in which the atrocities took place, and using a mixture of national and international laws and personnel. Sexual and gender-based violence was given specific attention in its statutes and the Office of the Prosecutor has been praised for the emphasis placed on investigating and prosecuting gender crimes and handling them sensitively (Interview with Special Court employee 2008). Significantly, the Court has set an international legal precedent in finding forced marriage to be a crime against humanity as 'another inhumane act'. This arguably goes towards recognising the entirety of a woman's experience in a forced marriage, rather than reducing it to one focused on sexual identity. Other areas of the Court's work have been characterised by less success. Most notable has been the refusal of Trial Chamber Judges to allow any evidence of sexual violence to be heard in the case against members of the CDF, a pro-government militia group who were generally believed not to have engaged in sexual violence because touching women would nullify the special protections endowed on them by medical men. These decisions, which arguably show a lack of sensitivity among the majority of the Judges towards sexual offences, form the basis of an insightful analysis by Shanee Kendall and Michelle Staggs Kelsall (Kendall and Staggs Kelsall 2005). As such, its legacy to date in terms of creating a precedent

in trying gender-based violence before international criminal tribunals has been mixed.

### **Perspectives of female victims testifying before the Court**

In the cases before the Special Court, the Prosecution sought to prove charges of sexual and gender-based violence through the testimony of the victims themselves. An analysis of the experience of these witnesses seems to indicate that most found the experience of testifying less traumatising than many feared it would be. A pioneering witness experience study undertaken by the Court's Witness and Victim Section (WVS) suggests that while such witnesses found testifying particularly hard, their overall experience was not markedly different from other types of witnesses, and they were more likely to report satisfaction with WVS services.<sup>1</sup> This seems to have been largely due to the comprehensive range of support provided by the WVS section, which included counselling and medical treatment (Charters, Horn and Vahidy 2008). Further research by Staggs and Stepakoff, however, suggests that some of those witnesses who were not allowed to testify about their experiences of sexual violence in the case of the CDF found the experience of being denied the opportunity psychologically distressing (Staggs Kelsall and Stepakoff 2007). Staggs and Stepakoff argue that this potentially undermines the integrity of the Court's intention to deliver justice to the victims of the conflict (Staggs Kelsall and Stepakoff 2007). While this may be true, there is also little concrete evidence that testifying before a court has therapeutic benefits (Stover 2005). The extent to which those witnesses who did testify to sexual violence in the RUF and AFRC cases found it brought them justice has not been ascertained. However, only a limited number appeared as witnesses, with twenty-six women testifying to sexual violence, and ten being denied the opportunity (Staggs Kelsall and Stepakoff 2007). Accordingly, the impact on those witnesses, while important, needs to be distinguished from the wider picture of the extent to which the Court has brought justice for gender-based violence and for women in Sierra Leone as a whole.

---

1 The report also found that those witnesses who saw a female nurse were significantly more comfortable than those who saw a male nurse. See Charters, Horn and Vahidy 2008:14–15, 17.

## **Views of the Court from the field**

Throughout Sierra Leone there is broad support for prosecutions for those crimes perpetrated during the conflict. Although some survivors assert that God will deal with the perpetrators in the after-life, others suggest that this is said out of resignation and that most individuals would like to see some form of punishment for the person who committed atrocities against them (Interviews with staff at Centre for Victims of Torture and with female victims 2007). A survey of 1 717 men and women across Sierra Leone conducted in 2007 found that 65 percent of female respondents thought that the Special Court's performance had been positive, although 71 percent felt there are things it could have done better (BBC World Service Trust, International Centre for Transitional Justice and Search for Common Ground 2008). Despite this, women's understanding of the Court is weak, with another study suggesting that only 10 percent of women had a 'good understanding' of the work of the Special Court (compared with 19 percent of men), while 72 percent had a 'poor understanding' of the Court (compared with 35 percent of men) (Sawyer and Kelsall 2007:45). Poor understanding then does not seem to be a bar to feeling that the Court is performing well, although the link between understanding the Court well and feeling a sense of justice is far from clear (Kerr and Lincoln 2008). The practical impact of the Special Court's convictions on survivors of sexual violence remains questionable. Interviewees flagged a number of obstacles facing attempts to bring a tangible sense of justice for survivors. These include issues surrounding command responsibility and the small number of indictees, the cost and duration of trials, punishments available to the court, and the ongoing prevalence of gender-based violence today.

## **Command responsibility and number of indictees**

The fact that very few people were indicted by the Special Court presents a critical challenge. A number of interviewees observed that rape is such a personal crime that there can be no justice if the individual is not punished and that 'to punish the person who sent him is no response' (Interviews with staff at the International Rescue Committee 2007). Yet the Court is only mandated to prosecute those persons bearing the 'greatest responsibility', and as a result the Prosecutor has only issued 13 indictments, the numbers being kept down in part

by the tight budget and limited time-frame. Judgment will likely be reached in the cases of nine people, who include individuals from each of the three main military factions and Charles Taylor. At one Special Court outreach session in 2004, a woman asked the then Prosecutor whether the man down the road who raped her, who still laughs at her every time he sees her, would be prosecuted. The response she received was merely that he would if he bore the greatest responsibility (Outreach session in Makeni 2004).

Some gender activists suggest that if the trials had been accompanied by an equivalent of the Rwandese *gacaca* courts which have sought to try those involved for the genocide through local courts, this could have been addressed (Interviews with staff at the International Rescue Committee 2007). However, no national prosecutions were possible because the Lomé Peace Accord provided amnesty for all offences committed before July 1999,<sup>2</sup> and even without the amnesty provision there may have been other constraints including domestic political considerations and capacity. Although some members of the RUF have been tried in the national courts, for offences taking place in the period after the amnesty, none of these cases were related to sexual or gender-based violence. Blame for sexual violence committed during the war is still often cast on the victim, including for those rapes committed by the RUF and AFRC militia. Many women are still afraid to admit to having been bush wives or raped for fear of suffering the ‘double victimisation’ of rejection by husbands and community. As a result, many women live in constant fear of their past being exposed. Some gender activists suggest that an increase in prosecutions at community level could potentially shift the stigma in sexual violence cases from the victim to the perpetrator, by demonstrating that sexual offences are now being taken as a serious criminal matter. The fact that the Prosecutor could not indict more people than, together with the fact that alternative prosecutorial mechanisms were barred, has limited the extent to which justice for gender-based violence can be achieved through prosecutions. More research into what kind of justice

---

2 In response to motions by defence teams with regard to the amnesty granted by the Lomé Accord, the Special Court decided that amnesty could not apply to war crimes, crimes against humanity and other violations of international humanitarian law, and as such cases of this type brought by the Prosecutor at the Special Court were not bound by the amnesty (Appeals Chamber 2004).

people wanted, even before the Court was established, may have made it better able to cater for women's needs.

### **Cost and duration**

The high price attached to the prosecution of a few individuals has proved a major source of discontent and, for some, an injustice in itself. By mid 2008 the Court had already cost more than US\$150 million, in a country where 75% of the population lives on less than US\$2 a day. Many Sierra Leoneans view the money spent on the Special Court as if it were a pot of money that could otherwise have been spent on the victims, a premise that the Court has striven to overcome but which nevertheless persists (Interview with the Director of SLANGO, the Sierra Leone Association of NGOs, Shellac Davies, 2007). Some go so far as to suggest that expatriate staff are working at the Court to prosper from the country's predicament (Interview with the Director of SLANGO 2007). This resentment is exacerbated by disillusion over the comparatively lengthy duration of proceedings. As in other jurisdictions, domestic criminal trials are considerably shorter than international trials, but many in Sierra Leone see even faster justice day to day in the informal justice sector. Here, traditional leaders hear a case, and if there is no obvious suspect, often use the services of truth-diviners to identify the perpetrator, and normally come to a decision at once. Referring to this, some argue that determining guilt is a simple thing and prosecutions are a waste of resources (Interview with female victim 2007). One survivor of sexual violence commented 'all things being equal I don't mind prosecutions, but we have other priorities' (Interview with female victim 2007). Given that civil actions against convicted persons will never be a realistic prospect for victims, several gender activists argue that the Court should have developed a trust fund for victims like that in existence at the International Criminal Court as a way of counteracting these financial concerns (Interviews with women activists at SLANGO, the International Rescue Committee and the Human Rights Commission 2007).

## **Sentencing and punishment**

A further issue surrounds the type of sentences that the Court can deliver. Since the Court is supported by the United Nations, it is not able to impose the death penalty. However, although Sierra Leone still allows capital punishment domestically, the fact that the Court cannot order such punishments is not contentious among female victims, as they say they don't want the accused persons to be executed because there has been enough suffering (Focus Group Discussion with female victims 2007). More controversial are the conditions of imprisonment. At the time of writing, the sentences delivered in the AFRC case range from 45 to 50 years, in the CDF case from 15 to 20 years and in the RUF case, from 25 to 52 years, to be served in various countries. Judgment has yet to be delivered in the Charles Taylor case being heard in The Hague. However, custodial sentences in prisons of international standards are often greeted with incredulity: as one survivor remonstrated, 'who cares about that? What kind of punishment is that?' (Focus Group Discussion with female victims 2007). As one gender activist observed, 'when the victims are suffering every day for their injuries without compensation, people lack respect for a system that treats those found guilty to three meals a day and free medical care to keep them into old age' (Interview with the Director of SLANGO 2007). However, the Court is required to abide by these standards and is unable to make agreements for sentences to be served in prisons in countries with conditions similar to those found in Pademba Road, Freetown's central prison.

In light of this, some gender activists have proposed alternative ways the Court could make justice more comprehensible and tangible for women at community level. For example, one activist noted that 'the prisoners should be brought forth and publicly denounced for everything they did. They should be taken to the places where the atrocities were committed and see the graves. If they are remorseful we should know about it, and their punishment could be reduced' (Interview with Bondu Manyeh, Graceland Counselling, 2007). This suggests the need to involve the community in decisions over punishments, as a means of restoring dignity to survivors by returning control to their hands. Another activist has noted that individuals at community level tend to be more interested

in specific incidents in their area, rather than the wider picture of the conflict. Accordingly, she suggests, the Court should inform communities about the specific atrocities that were found to have been committed in each area and what specific punishment has been given (Interview with the Director of SLANGO 2007). Both of these may be difficult for the Court in practice, but imaginative solutions need to be found as a matter of urgency to bring about a sense of accessible, locally relevant justice for women at community level.

### **Non-recurrence: The impact on gender-based violence in the present**

Beyond its core mandate, the Court set its sights high in aiming to contribute to the restoration of the rule of law in Sierra Leone (President of the Special Court for Sierra Leone 2006). While this perhaps over-estimated the potential impact of the Court, survivors do need assurance that impunity for sexual and gender-based violence is a thing of the past. Intimate violence continues to threaten women's security on a daily basis and indeed may have increased in the context of a militarised culture and reduced community protection (Valji 2007). As political analyst Nahla Valji has observed, 'research across post-conflict societies reveals that violence does not simply cease with the signing of a peace accord, but for various reasons – including pervasive trauma, easy access to guns, militarized identities, normalization of conflict and the devastation of judicial systems – violence carries through and can even intensify during a transition period; playing out in ways which have continuity and a rooting in the causes and consequences of the conflict but which can also take on new forms' (Valji 2007:4). Given the uncertain relationship between extraordinary and ordinary violence, transitional justice mechanisms need to look beyond violence committed within a specific time-period, into the private sphere, and to open up concepts of 'peace' and 'conflict'.

The post-conflict period represents an opportunity to reflect on and renegotiate value systems that may have protected community members in the past but fall short in an increasingly urbanised market economy. For example, customary laws allowing husbands to beat their wives so long as it is 'reasonable' may have been countered in the past by strong peer pressure in a small community and

the ability of chiefs to impose punishments. In an increasingly urbanised society that community protection has been dramatically reduced. Similarly, systems of inheritance which transferred property to male relatives may have protected women in an environment where it was accepted practice for a wife to marry her deceased husband's relatives, but given the development of increasingly nuclear families, it now commonly leaves women and children destitute. Indeed, many gender activists have seized this opportunity to enhance justice for ordinary violence, working to support the formal legal system as well as feed into community level dispute resolution mechanisms in order to shift the boundaries of accepted practice. Across the country, CSOs and NGOs have sought to take advantage of the potentially fluid nature of customary law, using various forms of public education sessions, and feeding into individual cases, to exert pressure on community leaders discriminating against women, and to bring out the positive protections offered by customary law.<sup>3</sup>

In prosecuting cases of sexual violence and forced marriage, which had hitherto often been dismissed domestically as private family matters, the Special Court has been well-placed to contribute to these path-breaking discussions. Yet the Court has struggled to feed into public debates about gender justice and gender-based violence taking place in what is currently a vibrant women's movement. Indeed it has attracted increasing criticism for being 'high profile' and 'out of touch with common people' (Interviews with staff at Graceland Counselling 2007). One concern may be that until the development of legacy programmes in 2008, the Outreach Section was the main unit connecting the Court to the rest of the country. The Outreach Section has held over 7000 sessions with community members in diverse settings, including sessions specifically targeting women and girls (Special Court Outreach Section 2007), and has gained an excellent reputation for engaging the public when compared with the other international tribunals.<sup>4</sup> However, the discussions are often general in focus, 'sensitising' the

---

3 For further discussion of such work see the website of Timap for Justice, a community-based paralegal programme with offices across the country, at <[www.timapforjustice.org](http://www.timapforjustice.org)>.

4 See however, a more critical appraisal of the Outreach section's work in Kerr and Lincoln 2008.



public about the Court. Women activists in Freetown regularly receive invitations to attend such programmes, but rarely go, saying they cannot see the practical application of the Court's work (Interviews with women activists 2007).

In theory, gender activists and the Special Court should share similar goals in promoting access to justice for gender-based violence. A critical challenge facing both is that the attitudes which allowed gender-based violence to be committed with impunity during the conflict are still prevalent today. As identified earlier, there is still a widespread belief that women and girls are in some ways responsible for being raped. For example, in June 2007 the Minister responsible for Gender pledged to introduce a law prohibiting women from wearing certain 'provocative' clothing as a means of reducing the number of incidents of rape (Sierra Leone Parliament 2007). Indeed, there are still widespread reports of mothers beating their pre-teenager daughters for having sex with adult men (Interview with the mother of a survivor of sexual violence 2008), and young girls are often forced to marry their rapists to escape stigma (Interviews with staff at the International Rescue Committee 2008). Rape of a non-virgin woman is considered by many a contradiction in terms (Interviews with traditional leaders 2008) and a 2007 survey showed that 63.3 percent of women thought that a husband is justified in beating them if a woman refuses sex (Statistics Sierra Leone and UNICEF-Sierra Leone 2007:T67). These attitudes to marital rape cause women who were victims of sexual violence during the war to relive their suffering in the most intimate of settings on a daily basis, continually reopening old wounds (Interviews with female victims 2007).

Another shared challenge stems from the weak enforcement of laws against sexual violence, despite the example set by the Special Court. This in part stems from the fact that procedures in sexual violence prosecutions have not changed, with victims still intimidated in open court (Interviews with officers with the Family Support Unit of the Sierra Leone Police 2008). Cases rarely reach judgment – indeed there were no convictions for any form of sexual violence in Freetown in 2007. When convictions are found, only light sentences are given,<sup>5</sup>

---

5 The average sentence for all offences involving clients going to the International Rescue Committee's Rainbo Centres in 2007 was four years, ranging between six months to sixteen years (Rainbo Centre statistics 2008).

and girls sometimes find themselves castigated in judgments.<sup>6</sup> The juxtaposition between how cases are handled before the national versus international courts was highlighted in an incident involving an eleven year old girl who was dragged into a tailor's stall within a few metres of the Special Court main gate and raped in March 2008. Despite attempts by the family to have the offender prosecuted, the local Family Support Unit of the Sierra Leone police failed to investigate properly and the case never made it to court (Presentation by a civil society representative at the launch of Sixteen days of Activism on Violence against Women 2008). It is perhaps because of stark disparities such as this, that activists, who are encountering impunity on a daily basis, find it difficult to see the Court as relevant or providing justice for women.

Since the Court has not worked closely with domestic partners, domestic legal developments on gender-based violence in the post-conflict era – such as the new Domestic Violence Act 2007 which made marital rape an offence, and the Child Rights Act 2007, which criminalised forced marriage – cannot be linked in any direct sense to the Court. Indeed, the historic development in international jurisprudence by the Court which deemed forced marriage a crime against humanity was made just weeks after the practice was outlawed domestically. More equal and action-oriented interaction with other professionals in the domestic system from the start may have helped identify how the Court and activists could have been more mutually supportive. The Court has now hired staff members to work on the Court's legacy, but this should have been done from the start, and legacy activities should also have been mainstreamed and prioritised far sooner. There is still scope for engagement however, for example in using the Court's outreach network to educate the public about the new laws protecting women.

Accordingly, while the Special Court has set some good precedents on gender justice internationally, and was successful in supporting victims of sexual violence who testified before the Court, there are a number of areas in which

---

6 In one case in November 2006, involving a gang rape of a school girl causing severe injuries, the Judge reportedly gave the defendant a one year sentence on the basis that the victim was 'a wayward girl, I stress, a wayward girl' (Interview with the Chairperson of the Human Rights Commission, Jamesina King, January 2007).

things should have been done differently to provide a sense of tangible, locally felt justice. These include finding ways to prosecute more people, providing some form of reparation for victims, seeking out imaginative solutions to make women at community level feel more involved, and finding more concrete ways to feed into domestic campaigns addressing gender-based violence so that domestic mechanisms are capacitated to prosecute gender-based crimes.

## **The Truth and Reconciliation Commission**

The Truth and Reconciliation Commission was provided for in the Lomé Peace Agreement of 1999 and was later established by the TRC Act of 2000. The TRC gathered statements and undertook hearings from December 2002 to September 2003, completing its report in October 2004. It sought to bring about different types of justice from the Court, in some ways supplementing prosecutions, and was more victim-focused and forward-looking than the Court. The Commission's intention was to provide an impartial historical record, address impunity, respond to the needs of victims, promote healing and reconciliation, and prevent repetition (Sierra Leone TRC Act 2000).

### **Efforts made to address gender-based violence and incorporate women's experiences**

From the outset, the TRC also prioritised addressing violations committed against women and girls and its mandate required that special attention be given to their particular types of suffering (Sierra Leone TRC Act 2000:6,2,b). A series of measures was adopted to try to capture women's full experience of the conflict and to minimise any retraumatisation caused by testifying. The Commission included the option of closed sessions for testimony on sexual violence, organised themed hearings on women, counselling, and the use of female statement-takers in all districts. The final report contained a special chapter focusing on women and girls, while their experience was also mainstreamed throughout. The recommendations focusing on women and girls go beyond the confines of the conflict to address some of the causal factors of the violence, the background conditions enabling and exacerbating violations. Indeed, the report is generally viewed as providing an impartial historical record and a

comprehensive framework on what needs to be done to improve the conditions of women today (Interviews with the Director of Gender, Fatu Kargbo, and the Deputy Minister of Social Welfare, Gender and Children's Affairs, Memunatu Koroma, 2007). While some activists claim the report says nothing new, and that in fact they themselves were using the opportunity presented by the TRC as a platform to express pre-existing frustrations (Interview with UNIFEM Programme Officer, Jebbe Forster, 2007), the fact that women were able to use the process to validate some of their grievances is generally seen as a positive development.

### **The impact of the report since publication**

Since the report was published in 2004, however, the Government of Sierra Leone has not abided by its legal obligation to implement the recommendations (Sierra Leone TRC Act 2000). There was little structural follow-through to ensure the recommendations were carried out, in part because of lack of funding to put an independent monitoring institution in place (Interview with former TRC staff member 2007). Attempts by civil society to lobby for a 'TRC Omnibus Bill' have so far been unsuccessful, not least because of a change in political priorities. President Koroma, elected in 2007, promised in his first major speech as President to establish a follow-up committee to ensure implementation of the TRC recommendations (Speech by President Ernest Koroma 2007), yet by January 2009 no such body has materialised.

Moreover, distribution of the 1 830-page document has been limited. Key professional staff at the Ministry of Social Welfare, Gender and Children's Affairs, the Ministry responsible for implementing many of the recommendations on women, report having no access to copies of the report (Interviews with the Director of Gender and the Deputy Minister of Social Welfare, Gender and Children's Affairs 2007).<sup>7</sup> Reading is not generally considered a priority in Sierra Leone, and easily accessible guides to the sections on women have not

---

<sup>7</sup> Several copies were given to the Ministry at the time of publication, and the fact that these copies are not available is not least because of poor communication within the Ministry (Interviews with the Director of Gender and the Deputy Minister of Social Welfare, Gender and Children's Affairs 2007).

been developed. Despite the production of a video version of the report by the NGO Witness, knowledge of the recommendations remains very limited, even among policy-makers and lobbyists. The Deputy Minister for Gender commented that the report may be useful in recording women's history for future generations, but that it is not being used to inform the present to develop policy (Interview with the Deputy Minister of Social Welfare, Gender and Children's Affairs 2007). As one activist noted, 'these documents are just piled up in our cupboards – people are not acting on them' (Interviews with the Director of Graceland Counselling 2007). Some in Government argue that the TRC (or 'the international community' in general), having made its report, should be responsible for implementing its recommendations (Interviews with the Director of Gender and the Deputy Minister of Social Welfare, Gender and Children's Affairs 2007) – which was never the Commission's intention. With this in mind, people criticise the TRC for having been 'little more than a research mission' (Interview with the Director of SLANGO 2007).

Despite these obstacles, some of the recommendations on women are being implemented. The main achievement is the passage in June 2007 of three 'Gender Bills', the Domestic Violence Act, the Devolution of Estates Act and the Registration of Customary Marriage and Divorce Act. These Acts have assisted in bringing justice for women by, for example, enabling women, in theory, to inherit from their husbands and own property in their own right in customary marriages, such that widows or women who are left by their husbands can support themselves independently of male relatives. The new Acts also represent progress in implementation of the TRC recommendations requiring the enactment of specific legislation to address domestic violence, and the repeal of statutory and customary laws discriminating against women. Yet the fact that the TRC recommended these changes was not a strategy made by women lobbying for the laws and their passage is not generally linked back to the TRC.

### **Impact of testifying**

In addition to the impact of the TRC hearings at the national level, many women hoped some catharsis would come from acting as witnesses. However, while some reported feeling an initial relief at testifying, many women returned to

the difficult realities of their new lives, and are still living with sleepless nights, nightmares, flashbacks, and stress-related pains across their bodies (Interviews with female victims 2007). Priscilla Hayner suggests that truth commissions should not be seen as a vehicle for psychological healing (Hayner 2001:139) and that despite the initial relief felt by some, witnesses may feel much worse later, 'especially if they had high hopes that their cases would be investigated and come to realize they might hear nothing more from the commission' (Hayner 2001:139).

Moreover, the TRC provided little follow-up support for those who testified before it (Interview with staff at Centre for Victims of Torture 2007, and with former TRC staff member 2007). Indeed, one former counsellor with the TRC reported feeling guilty that she persuaded people to discuss such difficult personal events, promising support. But she has been unable to deliver and feels that she has let them down (Interview with former TRC staff member 2007). Disappointment is frequently expressed that little came out of the process for the victims. 'Once you have truth, then what do you do with it?' one survivor complained (Focus Group Discussion with female victims 2007).

While TRC staff made efforts to prevent expectations of compensation for testifying, some women were reportedly promised that funding would only be received if people in the wider world knew what their experience had been, leading them to hope (Focus Group Discussion with female victims 2007). One counsellor cited an example of a woman who spoke about witnessing her living son's heart being cut out. Testifying had been a traumatic experience for her, and the counsellor described her subsequent desperation to come to Freetown, but there was no support available to her, and she had subsequently gone delirious with no one to help her (Focus Group Discussion with female victims 2007). The counsellor felt that testifying had 'opened up her healing wounds and failed to close them.' (Focus Group Discussion with female victims 2007).

The Commissioners anticipated this, observing that 'truth-telling without reparation could conceivably be perceived by the victims as an incomplete process in which they have revealed their pain and suffering without any mechanism being put in place to deal with the consequences of that pain' (Sierra

Leone Truth and Reconciliation Commission 2004:3,33). However, they had no mandate or resources to implement such a mechanism. Material compensation is a particularly important form of justice for female victims whose injuries have deprived them of male relatives in a country where women's access to resources and status is highly dependent on men. Material need acts as a constant reminder of their suffering (Focus Group Discussion with female victims 2007). Indeed those with families to help them report having fewer worries and being happier, and not in need of reparations (Focus Group Discussion with female victims 2007). A government reparations programme was formally launched on 30 January 2009 within the National Commission for Social Action (NaCSA), funded by the United Nations Peacebuilding Fund, and considerable efforts have gone into researching how such a programme can best cater for female victims.<sup>8</sup> It remains to be seen how this programme will be implemented and received.

Some gender activists suggest the TRC could have had a more cathartic impact independently of reparations if it had been more locally focused. Although hearings were held in all of the country's twelve districts and the Western area, they were only held in main towns, for five days each. Some women suggest they could have been more therapeutic if there had been a more continuous presence. Disappointment has also been expressed that hearings focused on national-level goals rather than local-level reconciliation, which, it is argued, would have been of more interest to most women at community level (Interview with the Director of SLANGO 2007). Indeed, 88 percent of victims said they would be willing to meet with perpetrators if it were facilitated by the TRC (Sierra Leone Truth and Reconciliation Commission 2004). Moreover, many say they would like to have seen more use of traditional systems such as purification ceremonies, as a means of restoring individual dignity and community harmony. The TRC made efforts to integrate traditional approaches and to be more locally focused but was constrained by logistical and funding problems and time pressures. Other opportunities for reconciliation of gender-based crimes through traditional dispute resolution have not presented themselves, and women activists have

---

<sup>8</sup> See for example King 2006; Redress 2007; and Amnesty International 2007. The International Centre for Transitional Justice has also provided technical support to NaCSA in designing the programme.

described this as a lost opportunity (Interviews with women activists 2007; Alie 2008:143).<sup>9</sup>

## **Conclusion**

While many Sierra Leonean women feel that both the Special Court and the TRC were positive processes, expectations were high and there is consensus that both institutions could have made greater headway in bringing justice for gender-based violence. The Special Court will complete trials for only nine people and the practical impact of its convictions on victims is questionable, not least because of difficulties over the concept of command responsibility for very intimate crimes such as sexual violence. There are also concerns that those who are convicted will not be effectively punished. While outside the Court's core mandate, the TRC has struggled so far to play a role in developing the domestic justice sector or to engage in public debates about gender-based violence and gender justice. Despite considerable efforts now to develop its legacy, its reputation for operating in isolation remains. While the TRC was more focused on problems of ongoing concern to the population, providing a road map for the future based on an impartial record of the past, there is no adequate structure to ensure implementation, and progress that is being made towards preventing repetition is not being driven by or linked to the recommendations. Moreover, the process itself did not make significant headway into promoting healing and reconciliation, or addressing impunity for gender-based violence committed during the conflict.

A prevailing concern among women in Sierra Leone is that justice should have been focused at a more local, individual level, not least because other avenues have not presented themselves to address injustices at this level. More significant steps could have been taken to research what types of justice would have the greatest impact and to prioritise that type of justice when it came to

---

9 The NGO Fambul Tok has recently been doing work with communities using traditional methods to address impunity at community level, but very few women have come forward to discuss sexual violence committed against them, and the issue has so far mostly not been addressed (Interview with a staff member of Fambul Tok 2009).



allocating resources. The Special Court could still make progress on this. As it is, there are some who argue somewhat pessimistically that the presence of the two institutions has created a barrier to recovery from the conflict by raising expectations of justice and failing to provide either compensation for victims or punishment for perpetrators. In important ways, the final evaluation of both institutions, from the perspective of women in Sierra Leone, may be dependent on the performance of other initiatives such as the recently established victims' fund and programmes focusing on justice sector development. As such the level of gender justice achieved has yet to be seen and the final impact of Sierra Leone's transitional justice processes may not be clear for years to come.

## **Sources**

- Alie, J. 2008. Reconciliation and traditional justice: Tradition-based practices of the Kpaa Mende in Sierra Leone. In: Huysse, L. and M. Salter eds. *Traditional justice and reconciliation after violent conflict: Learning from African experiences*. Stockholm, International Institute for Democracy and Electoral Assistance (IDEA). pp. 123–146.
- Amnesty International 2007. Sierra Leone: Getting reparations right for survivors of sexual violence. 1 November 2007. Available from: <<http://www.amnesty.org/en/library/asset/AFR51/005/2007/en/4cda5d8e-d370-11dd-a329-2f46302a8cc6/af510052007en.pdf>>.
- Appeals Chamber 2004. Decision of the Appeals Chamber on lack of jurisdiction / abuse of process: Amnesty provided by the Lomé Accord, 25 May 2004.
- BBC World Service Trust, International Centre for Transitional Justice and Search for Common Ground 2008. *Peace, justice and reconciliation in Sierra Leone: A survey of knowledge and attitudes towards transitional institutions in post-conflict Sierra Leone*. Available from: <[http://www.communicatingjustice.org/en/research/sierra\\_leone](http://www.communicatingjustice.org/en/research/sierra_leone)>.
- Charters, S., R. Horn and S. Vahidy 2008. *Best-practice recommendations for the protection and support of witnesses: An evaluation of the Witness and Victims section of the Special Court for Sierra Leone*. Available from: <<http://www.sc-sl.org/LinkClick.aspx?fileticket=0LBKqqzcrMc%3D&tabid=176>>.
- Hayner, Priscilla 2001. *Unspeakable truths: Confronting state terror and atrocities*. New York, Routledge.
- Kendall, Sara and Michelle Staggs, 2005. *Silencing sexual violence: Recent developments in the CDF case at the Special Court for Sierra Leone*. Berkeley, War Crimes Studies Center, University of California.
- Kerr, Rachel and Jessica Lincoln 2008. *The Special Court for Sierra Leone: Outreach, legacy and impact*, War Crimes Research Group, Department of War Studies, King's College London,

## Addressing gender-based violence in the Sierra Leone conflict

- Final Report. Available from: <<http://www.kcl.ac.uk/schools/sspp/ws/groupresearch/int/wcrg/scsl.html>>.
- King, Jamesina, 2006. Gender and reparations in Sierra Leone: The wounds of war remain open. In: Rubio-Marín, Ruth ed. 2006. *What happened to the women? Gender and reparations for human rights violations*. New York, Social Science Research Council.
- President of the Special Court for Sierra Leone 2006. *Third Annual Report of the President of the Special Court for Sierra Leone, Jan 2005–Jan 2006*. Freetown, Special Court for Sierra Leone.
- Redress 2007. *Implementation of the Sierra Leone Truth and Reconciliation Commission (TRC) recommendations on reparations: Preliminary options Report*, 30 January 2007. London, The Redress Trust.
- Special Court Outreach Section 2007. *Report of the Special Court Outreach Section 2007*. Freetown, Special Court for Sierra Leone.
- Sawyer, Edward and Tim Kelsall, 2007. Truth vs. Justice? Popular views on the Truth and Reconciliation Commission and the Special Court for Sierra Leone. *The Online Journal of Peace and Conflict Resolution*, 7 (1), pp. 36–68.
- Secretary-General 2000. Report of the Secretary-General on the establishment of a Special Court for Sierra Leone. UN Document S/2000/915, 4 October 2000.
- Sierra Leone Truth and Reconciliation Commission 2004. Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission. Freetown, Sierra Leone Truth and Reconciliation Commission.
- Staggs Kelsall, Michelle and Shanee Stepakoff 2007. ‘When we wanted to talk about rape’: Silencing sexual violence at the Special Court for Sierra Leone. *International Journal of Transitional Justice*, 1 (3), pp. 355–374.
- Statistics Sierra Leone and UNICEF-Sierra Leone 2007. *Sierra Leone Multiple Indicator Cluster Survey 2005, Final Report*. Freetown, Statistics Sierra Leone and UNICEF-Sierra Leone.
- Stover, Eric 2005. *The witnesses: War crimes and the promise of justice in The Hague*. Philadelphia, PA., University of Pennsylvania Press.
- Valji, Nahla 2007. Gender justice and reconciliation: Building a future on peace and justice. Unpublished paper, presented at international conference on Building a Future on Peace and Justice, Nuremburg, 25–27 June 2007.

## Interviews

- Interview with Bondu Manyeh of the Graceland Counselling Centre, formerly counsellor with the TRC, 20 Sept 2007.
- Interview with the Chairperson of the Human Rights Commission, Jamesina King, January 2007.
- Interview with the Deputy Minister of Social Welfare, Gender and Children’s Affairs, Memunatu Koroma, Freetown, Sept 2007.

Interviews with the Director of Gender, Fatu Kargbo, and the Deputy Minister of Social Welfare, Gender and Children's Affairs, Memunatu Koroma, Freetown, Sept 2007.

Interviews with the Director of Graceland Counselling, Freetown, 20 Sept 2007.

Interview with the Director of SLANGO (the Sierra Leone Association of NGOs), Shellac Davies, Freetown, 18 Sept 2007.

Interview with female victims, Masiaka, 27 Sept 2007.

Interview with former TRC Staff member, Freetown, 20 Sept 2007.

Interview with the mother of a survivor of sexual violence, Freetown, March 2008.

Interviews with officers with the Family Support Unit of the Sierra Leone Police, Freetown, March 2008.

Interview with Special Court employee in Chambers, May 2008.

Interviews with staff at Centre for Victims of Torture, Freetown, Sept 2007.

Interviews with staff at Graceland Counselling, Freetown, Sept 2007.

Interviews with staff at the International Rescue Committee, Freetown, Sept 2007.

Interviews with staff at the International Rescue Committee, Freetown, Nov 2008.

Interview with a staff member of Fambul Tok (an NGO), Freetown, June 2009.

Interviews with traditional leaders, Kenema, March 2008.

Interview with UNIFEM (United Nations Development Fund for Women) Programme Officer, Jebbe Forster, 11 Sept 2007.

Interviews with women activists, Freetown, Sept 2007.

Interviews with women activists, at SLANGO and the Human Rights Commission, Freetown, Sept 2007.

## **Other sources of information**

Focus Group Discussion with female victims, Masiaka, 27 Sept 2007.

Outreach session in Makeni, Feb 2004.

Presentation by a civil society representative at the launch of Sixteen days of Activism on Violence against Women, 2008.

Rainbo Centre statistics, International Rescue Committee Sierra Leone, 2008.

Sierra Leone Parliament 2007. Pre-legislative session in Parliament on the Gender Bills, June 2007, Freetown, Sierra Leone.

Sierra Leone Truth and Reconciliation Commission Act 2000.

Speech by President Ernest Koroma setting out new government's agenda, Oct 2007, para 39.

# Views from the field

## Truth seeking and gender: The Liberian experience

*Anu Pillay*

Anu Pillay is an international gender and transitional justice specialist. She worked most recently as gender advisor to the Liberian Truth and Reconciliation Commission.

Conflict is highly gendered, that much we know. That men and women experience conflict differently and that women's experience of the conflict is shaped by the status of women in the country prior to the conflict, we also know. However, the question remains: how is truth gendered and how does attention to gender influence truth-seeking in a post-conflict situation?

Following Liberia's intensely violent conflict that ravaged the country for 14 years, the Comprehensive Peace Agreement (CPA) signed in Accra, Ghana, in 2003 made provision for the establishment of a Truth and Reconciliation Commission (TRC). This was an attempt by the negotiators to include an accountability mechanism acceptable to all warring factions. The peace talks had already witnessed thirteen stalled attempts to end the conflict. It is important to note here that Liberian women played a critical role in bringing the warring factions to the negotiation table, as well as in applying pressure during the process for the agreement to be signed. But despite their activism women were nonetheless excluded from the formal peace talks and only a select few participated as observers.

Against this background, the National Transitional Government of Liberia (NTGL) was appointed in 2003 and it in turn created a Commission to begin the process of truth seeking. However, this first Commission did not stand up to public scrutiny for a variety of reasons, not least because there had been no guiding Act or policy to steer its development. The TRC was therefore reconstituted through an official Act passed in June 2005 and was tasked with investigating ‘gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes’ perpetrated between 1979 and 2003 (TRC Act, 2005).<sup>1</sup> The newly constituted TRC was mandated to investigate the causes, nature, patterns and impact of human rights violations, as well as identify the key antecedents to the crisis by examining Liberia’s history prior to the conflict. The Liberian Commission finally began its operations in 2006 and was composed of nine national Commissioners under the chair of Jerome Verdier, a former human rights and civil society activist.

The transitional government, the TRC and finally the new administration under Ellen Johnson-Sirleaf, elected the first female African president in November 2005, were ushered in through a tense and troubled process with real fears of the conflict being re-ignited. This placed a heavy burden on the truth-telling process and the TRC came under intense scrutiny from all stakeholders and interested parties. Understandably, the most war-affected people were fearful of further conflict and consequently were enthusiastic advocates for peace at all costs. However, many perceived the Commission to be a creation for the international community to pretend that something was being done while perpetrators walked free. As a result, many suggested the TRC was in effect a blanket amnesty for the perpetrators of the violence. Conversely, some viewed impunity as such a strong feature of Liberian history, extending back to the arrival of the settlers, that prosecution for war crimes could be the only way to end the cycles of violence. Reflecting these divisions, Liberian civil society debated on the radio, television and in other public fora what was the most necessary transitional justice initiatives to ensure peace and stability.

---

1 The TRC’s full mandate and report can be accessed at the official website <<https://www.trcofliberia.org>>.

## **Views from the field: The Liberian Experience**

Against this backdrop, the TRC's Commissioners tried to find ways to implement their mandate and satisfy expectations.

From the outset, the Commission adopted a fiercely independent position and decried international 'interference' in its operations. Nonetheless, an international technical advisory committee (ITAC) was established as a forum to consult with international 'experts'. The Commissioners' struggle with interpreting the Commission's very broad mandate was compounded by a number of internal divisions that resulted in the formation of uneasy alliances within the body. The media capitalised on these splits and repeatedly reported the internal squabbles and sometimes public confrontations. This, in turn, led some Commissioners to publicly distance themselves from positions taken by other TRC Commissioners in the media. So, even though the TRC was committed to fulfilling its mandate, issues were often overshadowed by other more melodramatic events.

Liberia's most recent 14-year brutal conflict embroiled the entire West African sub-region and all factions including those employed as peacekeepers were involved in violating and exploiting women. Many women also chose to become combatants or to provide auxiliary support but were still subject to sexual abuse from male combatants, becoming their 'bush wives' or performing sexual favours to ensure their survival. As noted earlier, women also became involved in peace work and were instrumental in bringing the warring factions to the peace table in 2003. However, despite Liberian women's significant involvement during the conflict, they were marginalised during the negotiation process, and their concerns over the terms of the transition remained on the fringes. This view from the field is based on my own personal experience as the gender advisor to the Liberian TRC in 2008 and 2009. I will look at how the Commission dealt with Liberia's gendered past and how their interpretation of gender impacted on attempts at truth seeking.

### **Interpreting Gender**

When the Liberian TRC launched its operations in June 2006, each of the nine Commissioners was allotted a variety of thematic, programmatic and county-specific oversight roles. Drawing from the dictates of their mandate and the

particular context of the conflict, Commissioners identified several thematic areas of focus – including children, economic crimes and gender. The gender focus area was formed in response to provisions in the TRC Act which were seen as ‘gender-sensitive’. Not only did the Act make clear provision for the inclusion of women as Commissioners, it also made nine provisions for dealing with gender issues. However, in every articulation the concept of gender was linked explicitly to women and children. For example:

Article IV Section 4(e): *The objectives/purpose of the Commission shall be to promote national peace, security, unity and reconciliation by...Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender-based violations, as well as to the issue of child soldiers<sup>2</sup>*

Article VI Section 24: *The TRC shall consider and be sensitive to issues of human rights violations, gender and gender-based violence... [so] that gender mainstreaming characterizes its work, operations and functions, thus ensuring that women are fully represented and staffed at all levels of the TRC and that special mechanisms are employed to handle women and children victims and perpetrators...*

Article VII Section 26 (f): *Its functions and powers shall include...Helping restore the human dignity..., giving special attention to the issues of sexual and gender-based violence and particularly to the experiences of children and women during armed conflicts in Liberia...*

This articulation of gender in the TRC Act identified a broad term which inferred a commitment and sensitivity to women’s rights and needs, along with the rights and needs of children. While the mandate did provide a strong impetus to the TRC to reach out to women and encourage their participation, it was not initially interpreted to go beyond a women and children’s affairs portfolio and was not linked to gender equality as the overarching goal. Gender thus developed into work with women or for women: a gender committee was established to design and undertake projects that focused exclusively on engaging women in the TRC

---

2 The full mandate is available at <https://www.trcofliberia.org/about/trc-mandate>.

## **Views from the field: The Liberian Experience**

process; and the mainstreaming of women, women's experiences, and women's roles in other core functions of the TRC focused primarily on women as victims, particularly of sexual violence. But neglecting gender as an analytical tool meant overlooking the reasons why women were targeted for particular violations and how notions of masculinity and femininity had shaped the way that the women and men had behaved during the conflict. As such the Commission failed to provide deeper understanding as to why the violations against women and girls spanned age groups from babies to grandmothers over 80 years old, and what underpinned the waiver of cultural checks that made such and other behaviours taboo in peacetime.

### **The Gender Committee and Gender Policy**

The TRC's Gender Committee was first established in late 2006, as the TRC was preparing to undertake an outreach programme targeted at Liberian women. Prior to the constitution of the Committee, work on gender had been led principally by individual Commissioners, particularly former journalist, Massa Washington. In part, because funding had not been secured for the TRC's full operations during its preparatory period, the TRC began without a fully staffed or functional Secretariat. Without the oversight of an Executive Secretary or Programme Director, early programmes advanced independently of one another. This initial autonomy of programming, coupled with the fierce independence of personalities involved created the dynamics through which gender programming was carried out in the TRC. Gender programmes were implemented with exclusive focus on the 'women' issue and efforts centred on women's involvement in the statement-taking and public hearing processes.

The Gender Committee was only understood to be advising and assisting the TRC in its work specifically targeting women. The Committee was therefore constituted by organisations that had a specific mandate or expertise in working with women and female survivors of sexual violence. These included UNIFEM, the Women's NGO Secretariat, the Liberian Women Media Action Committee, Voice of the Voiceless and the International Centre for Transitional Justice's (ICTJ) gender focal person amongst others. The Committee did not engage with



the TRC's other core operations and made no attempt to mainstream gender into the Commission's operations. Instead, it was convened on an *ad hoc* basis to support outreach efforts directed at women, including workshops to encourage traditional women leaders and male relatives to support female participation in the TRC. Once the Commission was underway, thematic public hearings on the role of women during the conflict were held and a national consultation with women on the TRC recommendations was organised. These projects largely had independent funding, separate from the TRC's principal budget lines, and were not coordinated with other TRC units. In addition to these women-focused projects, the Gender Committee helped the TRC to craft a gender policy.

The gender policy emphasised the references made to gender in the TRC Act, stressing that a common understanding of gender equality and equity was critical to a thorough investigation into the truth about Liberia's past. It also encouraged working towards transforming traditional gender biases and roles and laid out a detailed plan with clear recommendations. It strongly recommended that a gender expert be employed immediately to implement the plan. It was also suggested the plan should be reviewed periodically by the Gender Committee. Unfortunately, this comprehensive policy and plan, which would have gone a long way to ensuring that the women-specific activities were tied to an overall gender equality strategy, were delayed. The gender policy itself took months to be finalised and my position of gender advisor was not put in place until the final year of the TRC's operations. This was a result of delays over funding and difficulties with finding someone with the necessary expertise who was available for the required length of time. By the time of my recruitment in early 2008, most of the women-centred activities had been rolled out with the assistance of a local gender officer.

During my time as gender advisor, the Gender Committee was revitalised and efforts were made to bring in a gender-equality component to the work of the Commission. I lobbied the Commissioners to integrate gender into the TRC final report and persuaded them that there was more to the women question than just women. The Commissioners were quick to understand the need to shift towards this incorporation so that when the report writing team was being constituted, they included me in the process.

### **Liberian Women in Core TRC Programming**

As the Commission undertook its work and the Gender Committee focused on enabling women's participation in the process, women were also being engaged in the TRC's core operations: statement-taking, public hearings, and research and investigation. Although the TRC's activities suffered from a variety of challenges, and have received widespread criticism both locally and internationally, they succeeded in encouraging more female participation than many truth commissions in the past. Overall, the figures for women's participation in statement-taking are relatively high. Of the total 18 000 statements collected by September 2008, 51 percent came from women. Women also widely participated in the TRC's public hearings. Elsewhere in the world, women giving testimony before truth commissions were often reluctant to speak about their own experiences and came forward only to recount experiences of family members, particularly male family members. Women in Liberia, however, seemed more willing to talk about themselves, perhaps due to better preparation and pre-hearing support. Meanwhile, the Inquiry Unit established 'the role of women and children' as one of its main thematic areas for investigation and research. Some research was carried out by staff members and a concerted effort was made by the unit to follow up on gross human rights violations involving women and children.

The interpretation of 'gender' as participation and inclusion of women and children imposed a tendency to focus on victimhood, especially sexual and physical violations. Although there was recognition of women as combatants and supporters of the war, these identities were seldom explored and the full spectrum of women's involvement and their multiple identities did not fully emerge from the hearings. It also did not bring into focus any underlying androcentric cultural norms or patriarchal ideologies that may have worked together to create the gender dynamics that viciously played themselves out in the conflict. Had the TRC a wider interpretation of gender, they might have included many more 'why' questions in the hearings and tried to dig deeper into understanding exactly what men and women believed about their societal roles

and positions which led them to behave in particular ways. For example, eight percent of rapes reported were committed on men but this was not explored.

The late appointment of a gender advisor, coupled with the many logistical and operational challenges of the TRC and its perceived need to retain ownership and control of the process made it extremely difficult for external support and advice to be harnessed. Time and funding constraints resulted in the Gender Committee often rubber-stamping activities rather than interrogating them, and any input that may have helped shift the approach to include an overall gender equality goal diminished over time.

## **Truth and Gender**

After a difficult start, which was compounded by logistical and operational challenges, the Liberian TRC must be commended for their achievements in ensuring the participation and inclusion of women at every level of operation and execution of its mandate. This was a profound shift towards confronting the gender disparities that plague Liberian society. However, the first report issued by the TRC in December 2008 was largely gender-blind and adopted a strong legalistic approach in its description of its work. Gender featured ineffectively and women were portrayed primarily as victims of sexual violence. This report essentially reflected the TRC process, during which most accounts of the conflict perpetuated this stereotype.

The TRC Commissioner tasked with the gender oversight and I later realised that this needed to change and we encouraged civil society groups to conduct dialogues with women throughout the country – around participating in transitional justice and peace building processes, beginning the move away from the focus on sexual violence. A series of regional dialogues were convened around the country to engage over 600 women in dialogues about the TRC process, reparations and other transitional justice processes. Careful analysis and deeper discussions with women revealed that women were less concerned with redress and reparations for sexual violence, but were rather concerned with the loss of their livelihoods and the day to day struggle they were currently facing including lack of safe water, housing, health care and education. A significant outcome

## **Views from the field: The Liberian Experience**

of this outreach was a comprehensive set of recommendations to address the specific needs of women and to advance gender equality in Liberia. These and other recommendations elicited throughout the gender programming of the TRC were collated and included in the TRC final report released in July 2009.

### **Conclusion**

Conceptual confusions around gender and the conflation of gender with women can ultimately result in a perpetuation of stereotypical notions of women, leaving harmful practices against both women and men unchallenged by transitional justice mechanisms. This in turn, impedes the ability of these initiatives to promote substantive gender equality. The interpretation of gender in Liberia's Truth Commission's mandate as solely promoting women's participation was done at a cost. At the practical level, even though space was created for women to participate, there has not been a significant change in social thinking, attitudes or behaviour. In the Liberian context, the best one can hope for now is that the recommendations that women made through the truth-seeking process will work towards significant reform in the months and years to come.

# ‘Gendered truth’? Legacies of the South African Truth and Reconciliation Commission

*Sheila Meintjes*

Professor Sheila Meintjes lectures in Political Studies at the University of the Witwatersrand, South Africa. She teaches African politics, political theory and feminist theory and politics. She was a full-time Commissioner in the Commission on Gender Equality between May 2001 and March 2004.

## **Introduction**

This article reflects on the influence and legacy for gender justice of the ways in which gender-based human rights violations are raised in truth commissions in Africa, with specific reference to the impact of the South African Truth and Reconciliation Commission (TRC). It provides a brief background to how the issues were placed on the agenda of the TRC, and tackles the practical outcomes of these interventions. I interrogate the gender approach and analysis that became a model for the form and practice of transitional situations elsewhere and its implications for gender justice.

A gender analysis of recent transitional justice initiatives is critically important as it shows how the context, history and nature of gender and other intersecting relations of power in society influence and shape the justice and reconciliation outcomes. It is not so much a matter of attributing the failure to achieve gender justice to truth-seeking processes as such, but rather one of understanding the politics of how these processes unfolded. In the South African case, the way in which the issues of gender were addressed during its transition became a limiting factor in how the gendered nature of the past came to be understood and how gender crimes were dealt with. That gender crimes did not find their way into the

amnesty process was because neither victims nor perpetrators identified their experiences as such. This does not mean that we should not apply our minds to how gender justice might be better served in TRC processes. In this regard, I refer to some of the improvements made in the TRC processes influenced by the shortcomings of the South African model.

## **Gender and South Africa's truth and reconciliation process**

When South Africa's TRC was set up in the aftermath of the constitutional settlement that was the outcome of the negotiations that brought the apartheid regime to an end, women activists, academics and lawyers challenged its terms of reference. The first discussions were initiated at a meeting organised by a feminist lawyer, Ilse Olckers, in an organisation called Lawyers for Human Rights in Cape Town in December 1995. The question at the centre of debate was 'Does Truth have a Gender?' The discussion argued that an approach that simply took gender relations for granted and was gender neutral, would miss the specificity of how apartheid structured identities not simply along the fault lines of race, but also along those of gender.<sup>1</sup> Further discussions ensued in Johannesburg the following year, which engaged at the same time with the newly appointed TRC Commissioners. There followed what seemed to be a very constructive interaction between the TRC and civil society around both the gendering of apartheid and the gendered aspects of the experience of human rights abuse during the apartheid period.

However, in the debate, the protagonists tended to speak past one another in how they understood gender. While the gender activists spoke about 'gender' as a relational construction, the TRC tended to construct gender as the experience of women, rather than understanding it as a term that would enable a more careful understanding of how differently women and men experienced life under the apartheid system, including how gross human rights abuses impacted differently as well. It was this critical gender approach that would address the significant 'gendered' experiences of both men and women that the feminist lobby tried to insert into the TRC's work.

---

1 See Olckers 1996.

## Views from the field: 'Gendered truth'?

The answer to the question 'Does Truth have a Gender' is contentious in that in situations of oppression, whole communities of the oppressed, men, women and children, suffer – so why should one try to disaggregate this experience? Can oppression be disaggregated? All indigenous people were oppressed in colonial societies in the nineteenth and twentieth centuries, all Jews under Nazi rule in the Second World War in Europe and all black people (African, Coloured and Indian) under apartheid. The objective of the apartheid system was to establish and maintain a cheap labour system, to limit the conditions of possibility for self-actualisation of black people and, above all, to ensure the hegemony and power of Afrikaner nationalism by means of an exclusive system of white privilege and white rule that implicated all people who were defined as white under the system. But if we do not analyse the differentiated impact of the highly controlled pecking order of access to jobs, land, housing, health and education which limited opportunities for all black people, albeit in different ways, then we will not understand the way the system operated to divide people at the same time. The racial ordering of Indian, Coloured and African people gave limited privileges to some and not to others. But the system was also gendered.

The economic imperatives of ensuring the continuous reproduction of a black working class and a reserve army of labour put control over biological reproduction at the centre of the system. Labour streams were treated differently: a large pool of African migrant labourers whose families and homesteads in the countryside maintained and reproduced their households, were housed in ethnically segregated mining compounds, while migrant women were housed in hostels on the edge of townships and mines. Racially segregated townships and suburbs developed during the 1960s after extensive forced removals and racial reordering among the four groups classified by race. White, Indian, Coloured and African were the labels given to different race groups, and all were segregated in their own urban and rural spaces. African people were differentiated not only by race but also by ethnicity and by geography. Rural birth limited the rights of some, and excluded them from permanent urban settlement. Migrant families were split up, and women remained with old men and children in the rural areas, the 'homelands', where they were visited annually by their husbands. Migrant families were legally forbidden to live in the townships, which were reserved for

the settled population of secondary citizens permitted to live there. Urban rights provided a broader spectrum of opportunities in education, health, municipal services and commerce for so-called permanent urban dwellers under Section 10 of the Urban Areas Act. Migrants, both men and women by the 1960s, were confined to less skilled jobs in factories, mines and domestic labour. Urban controls were rigidly imposed to separate racial groups from one another.

After the 1950s, rural homelands were unable to reproduce themselves from farming, so homesteads relied largely for subsistence on remittances from migrant labour with the addition of some subsistence agriculture. The purpose of the apartheid system, while corralling people into ghetto-like townships and suburbs, was to enhance the particularity of racial, ethnic and cultural identity. The strategy was, then, to create institutional and political mechanisms to 'divide and rule.' For the apartheid regime, the townships on the edge of every town were potentially dangerous melting pots which could foster inter-racial solidarity and new identities. Thus the regime deployed a sophisticated version of the imperial/colonial divide and rule strategy – where the ideas of separate identity and separate development, the promotion of a plethora of ethno-nationalisms and cultural and religious differences, were deployed in order to try and suppress a unitary national identity among the oppressed from emerging. It was the latter that was ruthlessly suppressed. The institutions of control, euphemistically called the state security apparatus, were constituted of a huge network of informers and police control.

The apartheid system, while clearly advantaging all whites, sustained a hierarchy of privilege among the oppressed as well, which meant that benefits accrued to many across the racial divide. Protection of whites and control of blacks were the hallmarks of the system. Despite the efforts of the state, however, it was impossible to prevent the emergence of a different kind of vision for South Africa, one that would allow everyone in society to benefit from the opportunities that the mines, industry and commerce would have to offer to all. In 1955, Kliptown, an old African freehold township outside Johannesburg, was host to the Congress of the People, comprised of organisations across the racial divide opposed to apartheid. The Congress Movement drew up the Freedom Charter to enunciate a great vision for a non-racial future, in which 'the people' would



govern. In its efforts to limit this national vision from succeeding, the apartheid state banned all opposition movements that suggested such a future. A rigid edifice of legislation, which banned opposition political organisations wedded to the Freedom Charter and permitted extended detention and repressive policing, emerged in the 1960s. The repressive apartheid regime tortured, killed and exiled opponents. Both women and men were its object and its victims.

### **How was apartheid's repression and subordination gendered?**

In order to answer this question, the group of anti-apartheid gender activists, scholars and lawyers who came together in late 1995, sought ways to 'engender' both the understanding of apartheid as a gender system and the methodologies used by the TRC. The TRC itself was the outcome of a negotiated settlement to end apartheid. Negotiations for a peaceful transition to democracy embraced the question of amnesty for those who had violated human rights during the thirty years prior to 1990, a period that can be characterised as a 'thirty years war'. In order to begin negotiations in South Africa, some amnesty agreements had to be entered into to enable the different liberation movements to deploy their cadres to return from 'underground' or from exile. In order to begin negotiations, the ANC and other organisations had been granted temporary indemnity on the basis of full disclosure by their negotiating team of any 'unlawful' acts committed in the past. This was expressed in the 1990 Indemnity Act, and covered both ANC and state operatives. In 1992, negotiations in fact broke down over an attack on people in the township of Boipatong in the Vaal Triangle and the perpetuation of violence by a 'third force'. A further issue was the fact that a number of key ANC leaders remained in prison. Amnesty almost became a sticking point when it came to finalising the interim constitution. The National Party sought a blanket amnesty, but the ANC refused to countenance amnesty without full disclosure of human rights abuses by perpetrators. The resolution of this deadlock was an agreement in the interim constitution that amnesty would be granted to perpetrators, with the details of the mechanisms to be worked out later (Van der Merwe, Dewhirst and Hamber 1999:56).

It took some time for the new structure to reach legislative form. The elections occurred in April 1994. The new Government of National Unity introduced the Promotion of National Unity and Reconciliation Bill in November 1994, which was only passed into law in 1995. The Bill reached Parliament after the Department of Justice, under the ANC Minister Justice Dullah Omar had consulted very broadly with organisations in civil society. Amongst these were two organisations which had considerable influence on the process. The first, Justice in Transition, was set up in order specifically to pursue a process of reconciliation with justice under the direction of Dr Alex Boraine, a former opposition Member of Parliament and subsequently director of the Institute for a Democratic South Africa (IDASA). The other was the Centre for the Study of Violence and Reconciliation (CSV), initially attached to the University of the Witwatersrand, which had earlier been set up to do research and begin to explain the violence that that erupted in South Africa at the end of the 1980s.

The drafters of the Act were a group of experts contracted by Justice in Transition to do so, with funds raised overseas. But the process was a broadly consultative one, in which key individuals with human rights, political and legal backgrounds participated, along with a range of non-governmental organisations (NGOs) working in the arena of peace, counselling and human rights (Van der Merwe, Dewhirst and Hamber 1999:57). It was a new experience for organisations involved in the peace movement and human rights arena to be involved in the legislative process and for many it was the first time they had engaged the state in a cooperative manner. The experience created an awareness of the need to develop new skills and capacity, and to professionalise their activities. It also generated considerable tensions.

While it is clear that the new Government of National Unity (GNU), essentially led by the ANC, attempted to create a space for civil society to engage in shaping the scope of the TRC legislation, the GNU was at the same time part of a strategy to ensure that all political parties, especially the National Party, would be part of the outcome. The process needed to be seen as driven by the needs of civil society to deal with the past. Submissions to the parliamentary Committee on Justice focused on the importance of education, trauma counselling services for staff and deponents alike, training in statement-taking, issues of mediation

## Views from the field: 'Gendered truth'?

between victims and perpetrators, issues of amnesty, punishment and victim's rights to reparations. The Justice Portfolio Committee held public hearings, and dealt with public submissions on the draft bill. The Bill probably caused more debate and time spent on it than any other bill presented to the Committee. To say it was bitterly contested is to minimise the importance attached to it. In particular, attempts by the National Party to ensure in camera hearings were hotly debated. Debate also occurred around how the Commissioners should be chosen. Although nominations were allowed by civil society organisations and individuals, the State President was given the right to appoint Commissioners. While civil society may have contributed to the initial scope of the legislation and to some of the issues, the multi-party Justice Committee shaped the detail. The process of making the law was intensely political.

Gender activists were particularly concerned that the process should take account of the gendered nature of the experience of human rights abuses under apartheid. For a workshop hosted by the Centre for Applied Legal Studies (CALS) Gender Research Group at the University of the Witwatersrand after the law was passed, Beth Goldblatt and Sheila Meintjes<sup>2</sup> drew up a briefing document that laid out some of the key questions and issues that might frame 'a gendered truth' (Goldblatt and Meintjes 1996). We were concerned to open discussion about the periodisation of the forms of gender-based human rights violations during the apartheid period, the sites of violence and what these signified in understanding the gendered experience of apartheid and in particular what a gendered experience of human rights violations comprised. Our subsequent research for a submission to the TRC (the CALS submission) drew on the published accounts of political incarceration of men and women as well as on the individual experience of selected respondents. Our findings showed how sexual torture was used to undermine and attack the identity of men and women.

---

2 Beth Goldblatt was a researcher in the Centre for Applied Legal Studies Gender Research Project and co-hosted the Gender and the TRC Workshop in March 1996 with Sheila Meintjes who lectured in Political Studies, both at the University of the Witwatersrand in Johannesburg.

While our focus in the formal submission was on women rather than men, our argument was that in order for the TRC to fully understand the effects of apartheid on different groups, it would be imperative to explore that experience using a gender lens. We argued that it was also necessary to move away from the idea that under apartheid all black people were victims. We argued that even oppressed people, including slaves, have agency. So in South Africa, people acted – some opposed the system; others simply lived their lives as best they could; others were complicit in the system, finding ways of co-operating with the system. The important point was to explore how and why opposition, complicity and complacency operate in conditions of subordination and oppression. These were controversial issues to raise and our research did not go far enough in exploring them. In gender terms, we focused on the experiences of women at the hands of men – including comrades in arms. Our view was that there is continuity in the experience of patriarchal subordination and the oppression of women under the conditions of apartheid, which after 1960 could be defined as a civil war situation. In our view, the more important issue was the systemic aspect of the gendered and gender-ordering nature of apartheid as a system. This meant that apartheid itself could be defined as a crime against humanity. Then there were the actual acts of human rights abuse perpetrated by individual agents of the system, who in the service of apartheid could have made a different kind of choice. The kind of abuse needed to be understood as well. Thus the gendered form of the violence, the sites and the gender of both victim and perpetrator were significant. The gender of victims, survivors and perpetrators mattered, and how this intersected with race, ethnicity, class and religion was critical to understanding South Africa's past.

One key problem with the TRC was that the terms of reference in the Act that brought it into being made it difficult to contextualise these fundamental issues. The Act was framed in terms of individual acts of human rights abuse and individual effects so that individual perpetrators could be identified in the amnesty process and individual victims who would be eligible for reparations could be identified. The submission we made on behalf of CALS on the other hand, pointed to the systemic and gendered nature of apartheid. Its purpose was to provide a set of concepts and practices that would enable the TRC to draw out

## **Views from the field: ‘Gendered truth’?**

the specificity of the differential experience of men and women under apartheid. Although much of our empirical focus was on women, the theoretical issues we raised offered a methodological approach to develop a set of gender tools with which to understand the gendered nature of the systematic oppression of apartheid.

Indeed, the TRC took very serious account of our submission – we met all the Commissioners for an extended presentation of our arguments. The TRC then held a national consultative workshop which included a wide range of NGOs working on different aspects of gender oppression and women’s issues. The CALS submission became the basis for a formal submission to the TRC which substantively influenced the way the TRC dealt with the ‘gendered nature of apartheid’. More widely, the submission was used in other transitional situations as a framework for thinking about gender – as in East Timor and in the Sierra Leonean and Liberian Truth and Reconciliation processes.

In South Africa, this intervention was a key factor in influencing the TRC to hold separate hearings for women which allowed them to present evidence in a ‘safe space’ and which would in theory focus on women-specific human rights abuses. Indeed, we also presented expert evidence at the separate women’s hearings. Our submission also led the TRC to change some of the questions in the depositions used to identify the nature and experience of human rights abuse under apartheid. Specific questions about sexual abuse were then included. One of our key recommendations was that the issue of gender should not simply be a question of women’s experience under apartheid. The point of identifying the differential experience of men and women was to show that apartheid created specific kinds of subjects. The system operated to limit the opportunities for all those oppressed by racial classification and subjected to discrimination – but it did so in different ways for women and men. However, the TRC did not deploy the concept of gender in this way, and was thus unable to provide an appropriate analysis of apartheid. In part this was because the researchers and investigators employed by the TRC were not drawn into the discussions that were held at the various workshops on the gender submission. The CALS researchers were not invited to present their research to the TRC researchers, nor to assist in training the researchers and statement-takers and others involved in framing the final

report on what a gender lens would mean. Although the CALS submission carefully and forcefully argued for the integration of gender instruments and gender analysis in every aspect of the TRC's analysis, the final report instead devoted a single chapter to women. For the activists involved in the process, this was a great disappointment and we considered the outcome a failure.

The implication of the failure to address gender systematically in the TRC's approach was to ignore gender as a constitutive element of human agency that creates 'men' and 'women', the roles that they play, the power and authority that they wield and how they interrelate in society. How gender constitutes social life, how it frames power in society, who does what and how, and how this shapes experience and life itself is fundamental. Gender relations are of course intersected by race, class, culture, ethnicity, religion and other aspects of social life – but leaving it out is to skew the kind of history that is written and to blind us to a reading of history that is inclusive of women's active agency in relation to men's. Without a gender lens, women's power, authority and role in history is erased. Thus gender has to be systematically and methodologically part of how we address the past.

So the profundity of that failure is reflected in the way the report dealt with gender – in a chapter on women. In some ways, the CALS submission may have had something to do with this – because our focus was primarily on the experience of women. In the submission, the focus of the discussion was on women, in order to show that both the agency and the victimisation experienced by women was different from that experienced by men. The nature and effect of sexualised violence was different for men and women. Men traditionally saw their role in society as protectors of the family, and women as a reflection of their honour, the progenitors of their family. The body became an important signifier of this difference – and attacks upon the bodies of men and women thus had different effects on each of them. The rape of a man by another man 'feminised' the victim, and undermined his masculinity – though not necessarily his honour. It might have long-term psychological effects, however. The rape of a woman, while an attack on her person, did not necessarily undermine her 'femininity' in the same way. But for men, the rape of their wives and daughters was a deep disgrace, a dishonour. The term 'defilement', a term used in other

## **Views from the field: ‘Gendered truth’?**

contexts such as Uganda and Kenya, captures the humiliation experienced by the family of a raped woman. To fully understand the way that men and women experienced torture at the hands of the apartheid regime – especially sexual torture – would thus also enable a fuller understanding of the status and roles accorded to men and women. And it would also help us to understand why women often keep silent about the kind of violation that they experience. In the testimony of women survivors, very few spoke about their own experience. Rather, they spoke about what happened to their loved ones, and of the pain of their loss. Seldom did they speak of the abuse that they themselves experienced at the hands of the police or other agents of the apartheid state.

The CALS submission to the TRC rejected the idea of ‘triple oppression’ to explain women’s experience, particularly that of black women. Instead, it argued for an overlapping, intersecting construction of racialised and gendered subjects in South Africa. But this view did not find a place in the TRC’s final report. Interestingly, the Sierra Leone TRC faced similar pressures.

## **Conclusion**

Despite the pressure put on TRCs from gender activists and gender consultants in every case, a single chapter has been devoted to delineating the experience of gender. Gender thus continues to be used as a synonym for women. The single chapter on women reproduces a flawed view that gender is simply the experience of women. So the most important recommendation of the CALS submission to the TRC – that the final report should not end up with a chapter on women as a gesture towards some kind of gendered understanding of the systemic nature of the way gender power in society constructs women as secondary subjects, as ‘by nature’ the carers and ‘mothers of the nation’ – was ignored. The consequence of this outcome was that the real nature of ‘truth’, the gendered truth, was elided and collapsed into women’s experience alone. So – in truth – we miss the way life under apartheid, or under any other kind of patriarchal regime, was systematically gendered.

**Sources referred to**

- Goldblatt, Beth and Sheila Meintjes 1996. Gender and the Truth and Reconciliation Commission: a submission to the Truth and Reconciliation Commission. Department of Political Studies and the Gender Research Project, Centre for Applied Legal Studies, University of the Witwatersrand. Johannesburg.
- Olckers, Ilse 1996. Gender-neutral truth – A reality shamefully distorted. *Agenda*, 31, pp. 61–67.
- Van der Merwe, Hugo, Polly Dewhirst and Brandon Hamber 1999. Non-governmental organisations and the Truth and Reconciliation Commission: An impact assessment. *Politikon*, 26 (1), pp. 55–79.



# What transitional justice in Zimbabwe? Women of Zimbabwe Arise (WOZA) prepares for popular participation

*Mary Ndlovu*

Mary Ndlovu is a social justice and human rights activist with a background in education. Originally from Canada, she married a Zimbabwean nationalist in exile in Zambia and since returning with him to Bulawayo in 1980 has lived there, working in teacher education and the legal and human rights NGO sector.

Zimbabwe has been a nation on the brink, but its current inclusive government provides a potential for the 'situation' to be resolved without open conflict. Whatever the future, there remain millions of Zimbabweans who are crying for justice, for the truth and for punishment of perpetrators of massive human rights violations. The causes of Zimbabwe's current catastrophe are quite clear: the abuse of power and raw unadulterated greed, fuelled by the complete absence of accountability. Perhaps it would have been different if concepts of transitional justice had been more developed when Zimbabwe gained independence almost thirty years ago. If that is the case, then we must ensure that the inevitable next transition is accompanied by some form of justice.

It is important that people affected by the violence in Zimbabwe become knowledgeable about the possibilities of transitional justice – its strengths and weaknesses – before they formulate their views. One group which is embarking on this process is the Women of Zimbabwe Arise (WOZA). WOZA is a social justice movement which has been in existence since 2003 and currently has

over 70 000 members. The organisation encourages women to stand up for their rights, and to exercise their severely circumscribed freedom of expression to demand accountability from the government. As a result of their practice of civil disobedience, embracing a policy of strategic non-violence, they have been frequently subject to abuse by the police, including being beaten, arrested, incarcerated, tortured and insulted. As women of the grassroots, they are also victims of the economic effects of misrule, the destruction of homes and livelihoods, the collapsed economy, and the lack of food and social services. Most members of the organisation are struggling to survive, and as women, they bear the brunt of the daily search for food to feed children, for medicines, for school fees.

WOZA members are already engaged in a process to discuss what type of transitional justice they would want to see. Meeting in small groups, many have been inspired to think about what can be done in Zimbabwe to deal with the atrocities, while preparing for the future. It opens a window to begin serious debate. But if victims of the vicious and partisan mismanagement of Zimbabwe's economy, as well as victims of organised violence and torture, are to be in a position to contribute to a public debate on a transitional justice programme, they must gain more knowledge and understanding of its purposes and the possible mechanisms which can be used.

## **Context**

Zimbabwe's brutal colonial rule has been well documented as has the path to independence. After a brutal race war between Ian Smith's intransigent 'settler' government and two liberation movements – the Zimbabwe African People's Union (ZAPU), and the Zimbabwe African National Union (ZANU) – the British government in 1979 brokered the terms of independence. During the independence struggle all sides were responsible for atrocities including torture, war crimes, mass rape and crimes against humanity. However, this was overlooked during the negotiation of the agreement in the interest of achieving 'peace' and 'reconciliation' in the new Zimbabwe. Some liberation army fighters submitted themselves to traditional 'cleansing' rituals to appease the ancestors

for the spilling of blood but that seemed to be the extent of healing initiatives at the time. The 1979 Lancaster House settlement, which ushered in independence, ensured the privileged maintained their positions and amnesties were granted to all. Opposing armies were integrated and many fighters were demobilised on two-year stipends and returned to civilian life. Some non-governmental organisations operated programmes of reintegration, but they catered for a minority. Justice, both retributive and restorative, was sacrificed in order to obtain the peace which everyone so badly desired.

Thus, a culture of impunity was entrenched and has been maintained during three decades of state-sponsored violence. After each episode of state-sponsored violence, perpetrators have been given legal amnesties for all but the most serious crimes such as murder and rape, and *de facto* amnesties for everything, as no perpetrators have been successfully pursued by the prosecuting authorities. Other countries emerging from conflicts have devised processes of accountability but Zimbabwe's government relentlessly insisted that 'old wounds' must not be 're-opened'. Over time, known perpetrators of the most horrendous abuses were granted promotions, political appointments, and economic favours and benefits.

### **Transitional Justice Options**

It is little wonder, then, that in the current situation, albeit an uncertain transition, attention is turned to the need for accountability. There are many examples to learn from: truth commissions, criminal tribunals, the International Criminal Court, and the various mechanisms to achieve reconciliation, compensate victims and punish criminals, while ensuring that new institutions return broken nations to the rule of law and accountability. Many attempts at transitional justice provide examples of what not to do, of good plans gone sour, and disappointment following heightened expectations. Others offer the stark choice of peace versus justice, accepting the surrender of abusers in exchange for a promise of no prosecutions.

Generally, such compromises have been agreed by negotiators from the warring parties, taking critical decisions about the fate of their nations themselves, ignoring the desires of the people they claim to represent and fight for. However

it has increasingly been recognised that it is critical for the general population, as well as targeted victims, not only to participate in any truth-seeking processes, but to be consulted before decisions over what shape these processes should take. This is especially necessary to ensure that both women and men help to determine the processes to be used.

While every nation's situation is unique, Zimbabwe is distinct due to its lack of defined 'warring parties'. With the exception of some disturbances over the integration of armies in the early 1980s, there has not been armed resistance to the government since independence. We have experienced an on-going situation in which an all-powerful government has repeatedly quelled unarmed political opposition, or even non-political protest, with campaigns of violence and gross human rights violations. It happened in Matabeleland and Midlands provinces between 1983 and 1985, when an estimated 20 000 people died, many others were tortured, abducted, and assaulted, and had their property destroyed. Violence has surrounded virtually every election since then, reaching a crescendo in June 2008. The police, army and other state actors have also been used to commit atrocities, during food riots in 1998, during large scale farm invasions from 2000 onwards, and during the destruction of homes and livelihoods of the urban poor in 2005. State-sponsored violence which erupted in the wake of the elections in March 2008 is ongoing.

The violations are almost all on the side of the government, and each time, except for 2008, violators have been legally amnestied, exposing the fact that atrocities were not the aberrations of individuals but had the sanction of government.

Thus, in Zimbabwe we have violations consisting of attacks on individuals and communities resulting in death, maiming, and destruction of property. These are commonly described as 'organised violence and torture' or OVT. But we also have another category of mass human rights abuse which is not as easy to pinpoint. We have government policy which deliberately mismanages the banking system, agricultural production, industry and mining, and even retailing, in order to please beneficiaries from the political and military elite. The resulting distortion and inflation in effect steals the incomes and savings of all Zimbabweans who have no access to patronage. They cannot pay school fees

for their children, and cannot access money to pay medical costs, buy drugs and food, or bury their dead. The civil service cannot function as their salaries are worthless, and necessary services are becoming unavailable.

This approach by government must also be classified as a crime against humanity, as tens if not hundreds of thousands have died as a result, and millions have been forced to flee the country to look for food. When food is denied to starving people for political gain, or is purchased by politicians at give-away prices and sold by the same individuals to make massive fortunes, we have a crime the nature and scale of which cannot easily be described.

Already there are signs of revenge being taken, in hundreds of rural communities, as the victimised turn on the local ZANU PF supporters wherever they find they can do so with impunity. This may be what the majority of victims want to do, but it is hardly the best way to carry ourselves into a democratic future which respects the rule of law. In order to avoid this turning into an uncontrolled spiral of revenge, programmes of transitional justice need to be planned as quickly as possible, to show Zimbabweans that something more constructive than personal revenge is required – something that can take us forward to establish the rule of law even as we try to deal with the past. Something can be done even as the transition is stalled, and even while the perpetrators retain their power.

But what form of justice can correct this catastrophe? Punishment is on everyone's lips, and that is surely what the perpetrators fear the most and what most victims want. They would like to see those in the decision-making and implementation roles tried, imprisoned, or hanged, or at the very least stripped of their positions and their wealth. But the examples from other nations who have embarked on prosecutions are not very encouraging – it is an expensive and slow process, and often does not produce the desired results, whether conducted locally or internationally. Would it not be better to embark on a Truth-telling process, as did the South Africans? This would at least enable people to find out what had happened to the disappeared, and to locate and bury their bodies; it could identify the guilty, especially those giving the commands, and pressure them to confess and apologise. Maybe they could trade disclosure and confession for amnesty or lighter sentences, as has occurred in Colombia

and Rwanda. Would this help to heal the wounds? Would it satisfy the demand for justice? What about the livelihoods destroyed, the life opportunities missed, the scale of impoverishment that has resulted from the abuses? Victims would certainly need to receive some financial compensation to help them rebuild their lives. But how is that possible when whole communities, even the whole nation, are affected – how does one compensate for the destruction of the economy resulting from the patronage and corruption of the ZANU PF government? Does prosecuting criminals assist the millions of Zimbabweans whose families have been broken apart, whose breadwinners have died of AIDS due to neglect of the health system, whose children have been denied education? Will there be any true justice if there is no connection between the punishment of individuals and improved lives for their millions of victims?

We must devise a form of transitional justice which will not only look backward – punishing, remembering, discovering the truth, telling the stories – but will also look forward, restoring the rule of law, and creating new institutions and new attitudes which can protect us from such abuses of power and impunity in the future. And this must be connected with social and economic restoration, with rebuilding the basis of decent lives.

These are the issues that many Zimbabweans are mulling over. The decisions surrounding transitional justice must not be made only by politicians, legal experts, and psychologists in their offices and their meeting rooms. The decisions must involve the population as a whole, those who have been victims of political violence and those who are victims of an economy hijacked for the personal benefit of rulers.

Thus WOZA is embarking on a programme to educate its members about transitional justice. They need to be aware of the possible means of punishment – to know that the process of mass prosecutions is inevitably slow, and expensive, and often does not produce the desired outcome. They need to be clear as to what can and cannot be achieved by truth recovery mechanisms such as truth commissions, on what types of truth they need to recover, and for what purpose. They need to be challenged to think about what can be done

## **Views from the field: What transitional justice in Zimbabwe?**

within communities to deal with atrocities committed by some members against others. Is punishment sufficient, or do we not need a healing process as well?

Zimbabweans also need to consider what can be done with those who have not committed crimes of violence, but who have just as effectively killed and maimed people by their greed to twist the economy in order to enrich themselves. We need to consider the future – how to prevent recurrences of the kinds of abuse we have suffered. We must begin to prioritise for ourselves which form of justice is more urgent – retributive or restorative – and imagine how we could achieve either or both.

WOZA's programme will begin with systematic education of members. Materials will be developed to explain the concepts and possible mechanisms of transitional justice, and leaders will be trained to discuss these with members in their community groups. Members will be asked to debate the issues on their own, based on their understanding of transitional justice possibilities, so that they can formulate educated views on what should be done. We believe that simply holding these discussions will begin a healing process, but we will also record the views of the members and contribute them to the public debate which must eventually be held. Through these discussions among members we hope that some community-based approaches to transitional justice may emerge, which members themselves can implement even before any national programme is devised.

WOZA's programme hopes to contribute to the development of a transitional justice programme which is owned by the people in their communities, as well as taking place at a national level. We believe that the process of educating ourselves about transitional justice possibilities and contributing to a national debate is itself a means of developing the tools, skills and attitudes necessary to build a peaceful democratic future based on the rule of law. We must start to build the future now.

# Transitional justice and gender in Uganda: Making peace, failing women during the peace negotiation process

*Harriet Nabukeera-Musoke*

Harriet Nabukeera-Musoke has been working with Isis Women's International Cross Cultural Exchange (Isis-WICCE) for ten years, where she now presides as the Exchange Programme Coordinator. She has taken part in research missions to document women's experiences of the armed conflict in Uganda and women's peace initiatives in Burundi, Liberia and Mozambique.

## **Background to the conflict in Northern Uganda**

Uganda's long history of militarism and extra-judicial killings has been marred by widespread impunity for the gross human rights violations committed in the country, particularly those committed against women. A range of transitional justice mechanisms has been discussed in the region but it is important to consider if and how these will confront the gender-based human rights violations that have been endemic to Uganda's history. The complexities of the conflict must also be considered: for instance, the large number of children as well as adults who were forced to commit atrocities such as killing family members or raping their female relatives. These situations have created questions over criminal responsibility and concerns over how best to achieve reconciliation.

Northern Uganda's rebellion by the Lord's Resistance Army (LRA) against the National Resistance Movement (NRM) government has witnessed multiple deaths as well as the abduction of at least 25 000 children to serve as soldiers, porters or sex slaves. Uganda's conflict has become notorious for the widespread



perpetration of sexual and gender-based violence in forms ranging from gang rape, sexual slavery and reproductive violence to less obvious gender-based crimes such as the exposure of women to anti-personnel mines during the execution of their daily economic roles. The long-term impact in the region has been the systematisation of sexual violence and the stigmatisation of abused women. Fear of repercussions from perpetrators has also undermined access to justice for women by breeding a culture of impunity.

Following a violent past of colonialism, the post-independence era has been replete with regimes acquiring power through aggressive means. Cycles of violence have been perpetrated by a series of military coups including the ousting of Milton Obote in 1971, Idi Amin Dada's overthrow in 1979, Milton Obote's second deposition in 1985 and Tito Okello's fall in 1986. Zachery Lomo and Lucy Hovil (2004:15) have detailed how the militarisation of Uganda's politics lies at the root of why the LRA's protracted conflict has been accepted as part of normal political business.

## **The peace process in Uganda**

The formal peace negotiation process to address Northern Uganda's conflict began in 2006 after nearly twenty wasted years of armed rebellion. The process between the Government of Uganda and LRA took place in Juba, Southern Sudan with the support of the Government of South Sudan under the observation of the United Nations. Responding to the absence of women in the peace process, non-governmental and community-based organisations collaborated to form the Uganda Women's Coalition for Peace (UWCP) in late 2006. The coalition was created with the expressed purpose of engendering a process to ensure that women's needs, concerns and priorities were reflected in the peace agreement and subsequent budget process. The groups included the Uganda Women's Network (UWONET) who led the coalition activities, the Centre for Conflict Resolution (CECORE), the Federation of Women's Lawyers (FIDA) who provided legal analysis and perspective to the process and the Isis Women's International Cross Cultural Exchange (Isis-WICCE) who collected information on women's priorities for peace. Due to the existing networks of

Isis-WICCE at the grassroots level, the organisation also took responsibility for mobilising women activists from the affected areas for consultation.

The UWCP undertook a wide range of activities to influence and engender the peace process that included:

*Creating voice, space and resources for grassroots participation:* Through Consultative meetings, with an average of 750 people at each gathering, the coalition consulted and solicited views of grassroots women on their experiences, needs and priorities. Each item on the agenda of the Juba peace talks was discussed at the same time as they were being tabled and debated at the more formal peace process. The coalition also informed rural communities of the progress of the peace negotiations and this provided the grassroots with critical information on what was taking place.

The Coalition also mobilised resources for the participation of selected women representatives to lobby and observe the peace talks in Juba, and to participate in events such as the women's peace caravan which was an advocacy tool to promote women's participation in all aspects of the peace process.

*A permanent record of women's contribution to peace negotiations:* The UWCP documented women's mobilisation, engagement and advocacy around topical issues of the peace process. This was critical in expanding the database of her story on women's initiatives in peace building processes in Africa, challenges met and lessons learnt. Video clips and documentaries on women's concerns and the Juba peace process and booklets were produced and disseminated at the negotiations and other strategic fora.

*Mobilising Ugandans to rally behind the peaceful resolution of the conflict:* With the support of UNIFEM, the coalition created a peace caravan and peace torch which were both strategic tools to mobilise Ugandans to be involved and interested in the peace process in November 2006. The caravan started in the Democratic Republic of the Congo (DRC), travelled to Kenya and finally into Uganda as a gesture of women's support for the peace process. In Uganda, the peace torch traversed through the districts of Kampala, Luwero, Masindi (Bweyale), Lira, Gulu and Kitgum. The caravan sensitised Ugandans about the extent of the

conflict in Northern Uganda and mobilised support for engendering the peace process. Along the way, signatures in support of the peace processes were collected as endorsement. The peace torch was handed over to the Chief Mediator along with representatives of the negotiating parties in December 2006.

*Lobbying and advocacy to address structural inequalities and gendered exclusions:* The coalition used documented responses from the consultative meetings with grassroots communities, to inform both the government of Uganda and the LRA of the community's demands, needs and priorities on each of the agenda items of the peace negotiation process.

In January 2007, the coalition also approached the United Nations Envoy over women's concerns in the peace process. Press statements were placed in strategic newspapers. The Coalition further met the President of Uganda in May 2007 to lobby for the inclusion of women's concerns in the negotiation process, the engendering of the Peace, Recovery and Development Plan for Northern Uganda (PRDP), and the allowance of a quasi legal status for the Coalition in the peace process. As a result of the coalition's lobbying activities, one extra woman was nominated on the government negotiation team.

*Building skills of women:* The coalition built the knowledge and skills of identified women on issues of peace building and transitional justice, to enable them to participate effectively. This activity was crucial for women to make informed decisions and contribute effectively to the process.

*Stalled peace negotiation process: women engaged with the PRDP:* Despite the current stalled peace process, the government had already designed the Peace, Recovery and Development Plan for Northern Uganda (PRDP) for 2007–2010, which in many ways sought to address the conflict in Northern Uganda. Isis-WICCE analysed the PRDP from a gender and women's human rights perspective and noted the extent to which it was gender blind. This included an absence of sex disaggregated data to facilitate response mechanisms and the lack of gender indicators which would have brought a gender perspective to the strategy document. Rather, gender was narrowly referred to a mainstreaming issue which overlooked the unique needs of women who had disproportionately suffered during the conflict. Isis-WICCE used these findings to mobilise the

UWCP members and other actors, to highlight the gaps and to strategise on engendering implementation mechanisms and influencing budget allocations of PRDP.

### **Transitional justice**

The peace process was paralleled by a number of (sometimes conflicting) mechanisms to address the conflict, including the 2000 Amnesty Law, indictments by the International Criminal Court (ICC) and the Acholi traditional reconciliation process of *Mato Oput*. It is important to mention that each mechanism affects the progress of the other. Against a background of serious offences, the government of Uganda established the Amnesty Act in 2000. The Act applied to any Ugandan that had engaged in rebellion against the government by actual participation in combat; collaborating with the perpetrators of the war or armed rebellion; committing any other crime in the furtherance of the war or armed rebellion since 1986. As a result, many ex-combatants were able to secure amnesty despite having committed atrocities against their communities. As a transitional justice mechanism, questions remain over whether the Amnesty Act has prevented the recognition of female survivors' needs such as compensation, protection and resettlement.

In 2004 the International Criminal Court issued five indictments for LRA commanders, following a submission of a case by the government of Uganda. The international court indicted Joseph Kony, Vincent Otti, Dominic Ongwen, Okot Odhiambo and Raska Lukwiya on charges of war crimes and crimes against humanity. Isis-WICCE worked with the international women's advocacy group, the Women's Initiative for Gender Justice (WIGJ), to request the ICC to investigate issues related to sexual violence in the armed conflict. Although female survivors we visited as part of the mission were willing to bear witness, they were apprehensive of the ICC process. For instance, they asked about issues of victim-witness protection, compensation and reparation. Although the ICC is a longer-term mechanism to protect against impunity for crime globally, it does not serve the practical / immediate needs of a wounded community. Women are wondering why the perpetrators they live with on a daily basis should not be

tried, instead of just the five indictees (two of whom are already reported dead), and how giving their own testimonies will bring them personal justice. Given the minimal resources available for reparations at the ICC to cater for all cases they receive, women are wary that the ICC will not attend to their individual needs. The issue of legal justice is complicated by the unfolding of events in the area. Some of the female survivors whose experiences Isis-WICCE documented gave testimony of their own children committing atrocities against them. No matter how strong the call for justice, how can you prosecute your own child who committed a crime against their own will? When we interacted with survivors during our Consultative Meetings in 2007, the women at grassroots level with whom we interacted referred to their violators and captors as ‘husbands’ and not rapists. In such cases, other non-judicial mechanisms may be deemed more appropriate than expecting these women to become embroiled in a court case.

Another crucial pillar of peace is reconciliation, and the use of African traditional mechanisms such as *Mato Oput* was tabled at Juba. The communities the Women’s Coalition for Peace talked to during the Consultative Meetings in 2007 indicated that although this was a welcome initiative, *Mato Oput* is a cultural practice of the Acholi and does not totally embrace the practices of the Langi who were equally affected by the conflict. The women in the Langi area therefore wondered how perpetrators were to be reintegrated, and how the system would apply in their locality. As feminists, we were also concerned that many African traditional reconciliation processes use women’s bodies in resolving conflict, for example by marrying off girls to compensate for losses on the side of opponents. Women expressed concern over how the *Mato Oput* would be implemented without ‘peace’ being realised at the expense of women’s dignity. Furthermore, women on the ground were asking us as a Coalition how the method would address women’s grievances since it was never used to resolve issues of sexual violence.

It is important to acknowledge the fact that many women-focused non-governmental organisations and groups had been making efforts to address the consequences of the protracted conflict even before the peace process. In particular, Isis-WICCE undertook the documentation of women’s experiences of armed conflict and carried out medical interventions to address emergencies

in parts of northern Uganda. Studies conducted by Isis-WICCE in Luwero in 1997, Gulu in 2001 and Teso in 2002 revealed how women had been exposed to sexual violence that resulted in unwanted pregnancies, HIV/AIDS, the responsibility of raising unwanted children (commonly referred to as infidels), as well as a number of medical conditions. Isis-WICCE also undertook the task of building local capacities for conflict resolution through training women leaders from various districts in understanding and analysing conflicts, as well as learning how to manage and resolve conflicts. This led to the creation of a number of community-based organisations that have undertaken activities such as psycho-social work (counselling and trauma management), engaging mothers of captive children to encourage them to come out of armed combat, and working with formerly abducted child mothers.

### **Making peace, failing women**

As with most development processes globally, women have been excluded as participants and as beneficiaries of peace negotiation processes. There are critical areas over which peace is being forged at the expense of women in Uganda. These include:

- I. While women were making their contributions to the peace negotiation process, many trivialised and de-legitimised their participation. For instance, women activists in Kitgum district were rebuked and told that the peace torch had brought bad luck to the peace process when it stalled. Yet stalling of peace negotiation process is normal in any processes that we have witnessed in Africa.
- II. Issues of patriarchy and sexuality were used to deter women from public participation. For instance, one key woman activist who contributed a lot to the process and was an observer at the peace talks was intimidated on local radio stations after it was suggested she was having sexual relationships with negotiators.
- III. Given the meagre resources available to women individuals and groups, it became difficult for women to sustain their presence at these deliberations.

More often, peace talks were convened / resumed at short notice or postponed indefinitely at will. There were breakdowns in the talks and it became difficult for the women's coalition to predict when talks would resume – so they could be adequately prepared. When talks resumed, some discussions would go on for months and the coalition could not afford to have representation through the whole time.

- IV. Women at the grassroots level have reservations on some agreements that are being reached in the name of rebuilding the region. For instance, women survivors who the coalition consulted were concerned over the International Criminal Court indictment of the LRA leaders. To the survivors, the ICC process could result in their continued suffering as the rebels would go back to armed hostilities.
- V. Tensions in the UWCP led women at the grassroots level to mobilise to form their own organisation, which meant women lacked a united front when it came to advocacy with the negotiating parties. This was exacerbated by the fact some women in the coalition became involved in partisan politics despite the agreed independence of the coalition. This unfortunately made room for judgment, suspicion and misinterpretation by the negotiating parties over the genuine, legitimate and independent nature of the coalition.

## **Conclusion**

There is hope that survivors of post-conflict Uganda will benefit from the dividends of the transitional justice mechanisms as fostered by the initiatives of women activists, if the women's movement remains vigilant, active and resilient. Women must continue to document their activities, successes, challenges and lessons learnt. They must continue to mobilise a critical mass that is committed to advocating for peace and social transformation in Uganda.

## **Sources consulted**

- Government of Uganda 2007. Peace, recovery and development plan for Northern Uganda 2007–2010, Kampala, Government of Uganda.
- Isis-WICCE 2001a. Medical interventional study of war affected Gulu district. Kampala, Isis-WICCE
- Isis-WICCE 2001b. Women's experiences of armed conflict in Uganda, Gulu district 1986–1999. Kampala, Isis-WICCE.
- Isis-WICCE 2002. Documentation of Teso women's experiences of armed conflict 1987–2001. Kampala, Isis-WICCE.
- Lomo, Zachery and Lucy Hovil 2004. *Behind the violence: The war in Northern Uganda*. Monograph Series no. 99. Pretoria, Institute for Security Studies.
- Uganda Women's Coalition for Peace (UWCP) 2006. Peace at all costs. Video clip. Kampala, UWCP.
- Uganda Women's Coalition for Peace 2007a. Justice (accountability, reconciliation, comprehensive solutions): Women's concerns and the Juba peace process. Video documentaries. Kampala, UWCP.
- Uganda Women's Coalition for Peace 2007b. Women's position on DDDR and permanent ceasefire on implementation mechanisms and protocols to the Juba peace talks. Kampala, UWCP.
- Uganda Women's Coalition for Peace 2007c. Engendering the implementation protocols on Agenda three: Accountability and reconciliation of the Juba peace initiative. Kampala, UWCP.
- Uganda Women's Coalition for Peace 2007d. Women's priority issues in the five point agenda at the Juba peace talks. Kampala, UWCP.





ACCORD House • 2 Golf Course Drive • Mount Edgecombe 4300 • RSA  
Private Bag X018 • Umhlanga Rocks 4320 • South Africa

Tel +27 (0)31 502 3908 Fax +27 (0)31 502 4160  
email [info@accord.org.za](mailto:info@accord.org.za) Website <http://www.accord.org.za>