

HAVE TRUTH AND RECONCILIATION
COMMISSIONS HELPED REMEDIATE HUMAN
RIGHTS VIOLATIONS AGAINST WOMEN? A
FEMINIST ANALYSIS OF THE PAST AND
FORMULA FOR THE FUTURE

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I. INTRODUCTION

Truth and Reconciliation Commissions (TRCs) have investigated human rights violations and abuses in a wide range of countries and communities over the last thirty-five years.¹ Created

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by people who believe finding truth through an examination of the past is necessary to build social and political trust,² the goal of these processes has been to make findings and recommendations in order to strengthen or aid the transition to democracy, reduce conflict and create a basis for long term reconciliation, facilitate some form of transitional or restorative justice, and begin the process of change needed to avoid similar human rights violations in the future.³ Each of the approximately forty commissions provides different lessons on how investigating and testifying about past abuse can lead to healing and change.

I have participated in two of the more remarkable truth and reconciliation processes. First, from 1996 to 1998, I observed what is probably the most well-known TRC process: an examination of the apartheid era in South Africa. Then, from 2004 to 2006, I was an advisor for the first TRC process in the United States that took place in Greensboro, North Carolina. It was a much narrower and less publicized process that looked at one incident in Greensboro's past in order to help bridge the city's existing class and racial divides. In both instances, I had the opportunity to interview key staff members and witnesses in addition to making my own observations.

As a result of these experiences, I have been able to analyze several of the key problems facing TRCs, such as how they should be constructed, what needs to be included in their mandates, what is the best way to engage in fact finding, and how they can maximize the impact of their final reports including the implementation of their recommendations. I intend to present a more general discussion of TRCs in developed countries in a companion Article. My focus here is on the narrower question of whether these processes can effectively remediate human rights violations suffered particularly by women.

form in the book *FEMINIST PERSPECTIVES ON TRANSITIONAL JUSTICE*, Intersentia Press (forthcoming 2012).

¹ Compare GREENSBORO TRUTH AND RECONCILIATION COMMISSION REPORT (2006) [hereinafter GREENSBORO TRC REPORT], available at <http://www.greensborotrc.org>, with Carrie J. Niebur Eisnagle, *An International "Truth Commission": Utilizing Restorative Justice as an Alternative to Retribution*, 36 VAND. J. TRANSNAT'L L. 209, 224 (2003) (noting in the twenty years following the Argentinean TRC, there have been over twenty TRCs around the world). See also INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, <http://ictj.org/our-work/regions-and-countries> (last visited June 1, 2011).

² Fionnuala Ní Aoláin & Catherine Turner, *Gender, Truth & Transition*, 16 UCLA WOMEN'S L.J. 229, 229-30 (2007).

³ GREENSBORO TRC REPORT, *supra* note 1, at 9-11.

In order to create a framework for this analysis, it is important to note the somewhat obvious point that truth commissions impact people to varying degrees depending on how closely they are connected to the events in question. Thus, the persons most affected are the actual participants in the events—i.e., the targets and perpetrators of the human rights violations or abuse that is being investigated. Next in terms of impact are the secondary survivors, who include the family members of those who were hurt and others who knew or witnessed people involved in the abuse. Then there is the larger community of people who were either alive at the time of the events and were living where they took place, or people who now live in the city, town, or country where the violations occurred and who have to deal with their ongoing impact. These community members may have been impacted directly by aspects of the abuse, like the victims of apartheid in South Africa or the victims of racial discrimination in Greensboro, but at a minimum, they are impacted by the silence or the lack of understanding about what occurred. Finally, there are people not directly involved in any way who nevertheless learn about the process and engage with it. Such engagement may come from attending public hearings or seeing them unfold on television, talking to those involved, watching a movie, or reading about the process in the media or in the final report. The impact on this group becomes significant when, after learning about what transpired elsewhere, including the abuses that occurred, the motives behind them, and the pain of the survivors, these observers are able to relate those events to ones locally in a way that helps promote reconciliation in their community. An analysis of the impact that TRCs have had on human rights violations committed against women needs to include how women have been affected at each of these levels of contact.

Because almost all TRCs have ultimately omitted the abuses suffered by women from their findings or, more importantly, their recommendations, feminist scholars have become some of the most visible critics of their efforts. Part II begins with a review of those critiques, which makes it possible to identify the factors that lead to the disregard of human rights violations against women. It also demonstrates how the failure to focus on women turns what were supposed to be gender-neutral processes into male-centered ones. Part III describes particular truth commission efforts with a primary focus on South Africa and its failure with regard to remediating the harms to women. Part IV discusses the Sierra

Leone process, which best addressed women's concerns, and three others, including Greensboro, which fall somewhere in the middle. Part V addresses how these problems can be remedied in the future, including a plan for how to establish a TRC designed to specifically investigate violence against women.

II. THE FEMINIST CRITIQUE OF TRC PROCESSES

Many feminists argue that legal systems are not gender-neutral and in fact establish principles and processes that primarily reflect the male experience. The criticism is that the legal system seeks "the abstract resolution of competing rights."⁴ The law adopts an intensely patriarchal model that is "hierarchical, adversarial, [and] exclusionary,"⁵ and therefore "unlikely to respect the claims made by women."⁶ In addition, feminists believe the system's bias in favor of males is evidenced by its reliance on the characteristics of "rationality, objectivity, and abstraction, characteristics traditionally associated with men, [which are] defined in contrast to emotion, subjectivity, and contextualized thinking, the province of women."⁷ The reason the system has developed this way is that women's perspectives have been almost completely excluded in the development of legal doctrine.⁸ Instead, the system makes implicit assumptions about women, which interpret and enforce laws in ways that tend to discriminate against them⁹ and make it difficult for their issues to be taken seriously.¹⁰

Feminists extend the above argument to the realm of transitional justice. Even though transitional justice processes

⁴ Hilary Charlesworth, *What are "Women's International Human Rights"?*, in *THE HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 58, 65 (Rebecca J. Cook ed., 1994) [hereinafter Charlesworth, *Women's International Human Rights*].

⁵ Gayle Binion, *Human Rights: A Feminist Perspective*, 17 *HUM. RTS. Q.* 509, 513 (1995).

⁶ *Id.* As another author argued, the very methods employed by law "are gendered to the disadvantage of women" especially the competitive adversarial processes where the competitors are assumed to be equal. Nicola Lacey, *Feminist Legal Theory and the Rights of Women*, at 14, available at <http://www.yale.edu/wff/cbg/pdf/Lacey.pdf> (presented at the Citizenship, Borders and Gender Mobility Conference, May 8-12, 2003).

⁷ Charlesworth, *Women's International Human Rights*, *supra* note 4, at 65.

⁸ *Id.* It may be argued that these different voices are heard in our courts today as the difference between a court of law and a court of equity.

⁹ Thus, even women's rights that are instituted may not be implemented.

¹⁰ Lacey, *supra* note 6, at 14-15.

developed from international human rights standards, they rely on standards that fail to consider the importance of gender, take into account harms suffered primarily by women,¹¹ and borrow from gender-biased legal principles.¹² One important premise of international law, which works to ingrain gender bias into legal systems, is the distinction between private and public spheres of action. The public sphere—the civil, legal, and political arena—is regarded as one of “rationality, order, and political authority,” the primary sphere of governmental action, and the “province of men.”¹³ The private sphere—the familial and the domestic—is regarded as “subjective,” inappropriate for regulation and generally relegated to women.¹⁴ It is also considered the sphere of individual autonomy and the forum where negative freedoms are enjoyed—i.e., the freedom to be left alone. These distinctions continue to play a critical role in the transitional justice context because, as stated earlier, truth commissions are generally guided by standards established by international human rights organizations. Since these standards emphasize the civil and political rights of individuals harmed in the public sphere, transitional justice emphasizes the public violations experienced mostly by men, while ignoring private violations experienced mostly by women.¹⁵ The result is a focus on “what men fear will happen to them” while ignoring “the harms from which women most need protection.”¹⁶

Some feminists frame their argument slightly differently, insisting that the current “circle of *inclusion* in the realm of human rights law is entirely too narrow” and that it should include a much broader range of life experiences that include those of women.¹⁷ They note that traditional human rights have been divided

¹¹ See Aoláin & Turner, *supra* note 2 (examining the role of international law in excluding the harms experienced by women from consideration in the Chilean National Commission on Truth and Reconciliation and Commission on the Truth for El Salvador).

¹² *Id.* at 233.

¹³ Charlesworth, *Women's International Human Rights*, *supra* note 4, at 69.

¹⁴ *Id.* Lacey, *supra* note 6, at 8-9. Some feminists, such as Gayle Binion, point out that this is indeed a false dichotomy because there are many areas of supposedly “private” family and domestic life that are the subject of regulations. For example, there are rules as to who may marry, at what age, and the rights and duties of those in marriage; rules governing divorce, child custody, and inheritance also intrude into the “private” family domain. Binion, *supra* note 5, at 519.

¹⁵ Aoláin & Turner, *supra* note 2, at 234-37.

¹⁶ Charlesworth, *Women's International Human Rights*, *supra* note 4, at 71.

¹⁷ Binion, *supra* note 5, at 512 (emphasis in original).

between three so-called “generations.” The “first” recognizes political and civil rights—those in the public sphere.¹⁸ More recently, there has been acknowledgement of both a “second” tier that includes economic, social and cultural rights, and a “third” tier, which includes rights held by groups such as women, people of color, and gays and lesbians.¹⁹ Despite this acknowledgement of multiple generations of rights, these feminists argue that the focus of international human rights advocates and of international instruments that concern themselves with human rights has remained only on first-generation civil and political rights.²⁰ Since calling something a human right “vest[s] it emotionally and morally with an especially high order of legitimacy,”²¹ the result is that the abuses suffered by women in the private sphere are delegitimized and ignored.²²

Looking at the development of human rights issues from an historical perspective, although the United Nations created the Commission on the Status of Women in 1946, the significance of women’s issues did not begin to emerge until the 1970s.²³ Before then, “women [were] almost entirely excluded from the important human rights forums where standards [were] defined, monitored, and implemented”²⁴ and their concerns rarely, if ever, made it into the mainstream human rights law-making arena.²⁵ Yet, even after

¹⁸ Some go so far as to assert that these are the only types of rights that can be termed international human rights. Binion, *supra* note 5, at 518.

¹⁹ Charlesworth, *Women’s International Human Rights*, *supra* note 4, at 58, 75.

²⁰ Amrita Basu, *Who Secures Women’s Capabilities in Martha Nussbaum’s Quest for Social Justice?*, 19 COLUM. J. GENDER & L. 201, 202 (2010).

²¹ Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in THE HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 85 (Rebecca J. Cook ed., 1994) (citing Richard Bilder, *Rethinking International Law: Some Basic Questions*, 1 WIS. L. REV. 171 (1969)).

²² Some feminists argue that maintaining a focus on the acquisition of rights may actually not be beneficial for women. They argue that the language of rights is narrow and individualistic and over-simplifies intricate power relations, poorly reflecting the experiences and concerns of women. The power of women is further reduced when decision-making bodies balance competing rights; in fact, some rights such as those of freedom of religion actually sanction the oppression of women. Even those rights that do exist supposedly to benefit women are interpreted by courts in a typically male-centered manner. Charlesworth, *Women’s International Human Rights*, *supra* note 4, at 61.

²³ Elizabeth M. Bruch, *Lessons About Autonomy and Integration from International Human Rights, Law Journals, and the World of Golf*, 12 COLUM. J. GENDER & L. 565, 568-69 (2003).

²⁴ Charlesworth, *Women’s International Human Rights*, *supra* note 4, at 63.

²⁵ *Id.*

laws required equal treatment and non-discrimination of women, the fallacy remained that this alone would address all of the disadvantages suffered by women. The latter has not occurred, according to many feminists, because current international human rights law, as embodied in international instruments and the standard of nondiscrimination in the Human Rights Covenants, limits itself to placing women “in the same position as men in the public sphere.”²⁶ Even the U.N. Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) is based on this approach since it prohibits only discrimination that is “confined to accepted human rights and fundamental freedoms,”²⁷ which restrict its application to those rights that are in the public sphere. Such documents and laws therefore provide only limited recognition, if any, to women’s private domestic and family lives, and also contribute to gender inequality.²⁸

The above analysis is relevant to the subject of truth commissions because the marginalization of women’s rights by

²⁶ *Id.* at 64. Examples of international instruments that follow this approach include: Conventions on the Political Rights of Women, March 31, 1953, 193 U.N.T.S. 135; U.N. Convention on the Nationality of Married Women, Feb. 20, 1957, 309 U.N.T.S. 65; UNESCO Convention on Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93. The U.N. Commission on the Status of Women has also followed the same approach, being “exclusively to gender equality and advancement of women.” *Commission on the Status of Women, Overview*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/csw/index.html#terms> (last visited April 28, 2011).

²⁷ Charlesworth, *Women’s International Human Rights*, *supra* note 4, at 64.

²⁸ *Id.* A further argument is made that making the family a distinct and private sphere “also ignores its powerful influence in socializing members, especially the next generation.” Binion, *supra* note 5, at 520. Despite this failure to recognize all the human rights violations suffered by women, many feminists resist attempts to remedy this deficiency by creating a separate category of “women’s human rights,” i.e., a body of laws for the special cases of women. Jessica Neuwirth, founder of Equality Now, asserts that human rights have always implied a universal application to all *humans*, women included, and therefore they do not constitute a “new wave or a new generation.” MARGUERITE GUZMAN BOUVARD, *WOMEN RESHAPING HUMAN RIGHTS* 239, 246-47 (1996). For example, Article 3 of the Universal Declaration of Human Rights states that “[e]veryone has the right to life, liberty and security of person,” which applies directly to the security of women to be free from rape. Universal Declaration of Human Rights, G.A. Res. 217 (III)A, U.N. Doc. A/RES/217(III), art. 3 (Dec. 10, 1948). Another general provision is in Article 7, which states that “all are equal before the law and entitled without discrimination to equal protection of the law” providing for the protection of women *through the law* from acts of domestic violence. *Id.* art. 7. The Declaration also contains provisions that apply specifically to women, such as Article 16, which gives everyone the right to choose their own marriage partner. *Id.* art. 16. Having noted this approach it should be stated that not all feminists embrace the “universalism” upon which it is based; rather they are wary of the concept, especially if it is prescribed. Basu, *supra* note 20, at 206.

“mainstream” human rights organizations²⁹ has led to the introduction of gender biases into truth and reconciliation processes. While claiming to be gender-neutral and to take into account the abuses suffered by the whole of society, TRCs have generally narrowed their mandates and their definitions of rights to those in the civil and political arena—i.e., to those rights that mainly affect men. Indeed, women have often been silent or even absent figures at truth commission hearings. As a result, human rights violations suffered mainly by women in the private sphere are usually ignored or else viewed “solely through a lens of sexual violence and related experiences.”³⁰ As Beth Goldblatt, researcher at the Gender Research Project, Centre for Applied Legal Studies at the University of the Witwatersrand, South Africa wrote about the process in her country:

[W]omen need to challenge the meaning given to human rights by the TRC. The need to expand the meaning of rights is important not just to ensure a proper understanding of our past. It is also important because the TRC is seen as laying the basis for the human rights future. It becomes particularly important for women to show how traditional approaches to rights often render women invisible. The norm of the rights-holder is male and the context of women’s experiences needs to be brought to the fore in any rights enquiry. In addition, the public/private divide of liberal theory keeps certain “private” acts such as domestic violence out of the public sphere and thus excludes them from the language of rights. Poverty, illiteracy and very high levels of rape and domestic violence are extremely prevalent Any efforts to build a human rights culture must acknowledge this context and the gender dimensions of human rights.³¹

By interpreting human rights abuses as violations of first-generation rights, truth commissions also tend to focus on harms to individuals, rather than the “systematic destruction of communities through the denial of socio-economic rights and

²⁹ Charlesworth, *Women’s International Human Rights*, *supra* note 4, at 59. “[T]he price of the creation of separate international mechanisms and special measures dealing with women within the United Nations system has typically been the creation of a ‘women’s ghetto’” with ‘less power, fewer resources, and lower priority.’” *Id.* at 66.

³⁰ Aoláin & Turner, *supra* note 2, at 234.

³¹ Beth Goldblatt, *Violence, Gender and Human Rights – An Examination of South Africa’s Truth and Reconciliation Commission*, TRACES OF TRUTH (1997), available at http://truth.wwl.wits.ac.za/doc_page.php?did=1272&li=coll. See also Aoláin & Turner, *supra* note 2, at 234.

poverty.”³² The result is that “[t]oo often when we do not undertake specific actions to draw attention to the issues that affect women . . . , men and the experiences of men become the yardstick by which judgements [sic] are made.”³³ Gender bias is therefore introduced into the process on questions such as how to allocate power and territory and by consistent exclusion of the socio-economic harms that affect women disproportionately.³⁴ The ultimate result is that by failing to address the consequences of human rights abuses on society at large, truth commissions are unable to achieve their primary purpose of promoting true reconciliation in society.

The latter seems to be true even when the focus is on second-generation rights. This is so because little is offered to women unless society provides the resources necessary to allow individuals to make meaningful choices,³⁵ and so far that rarely, if ever, occurs. Similarly, up to now, even a focus on third-generation rights has not proved useful to improve the conditions of women, because both the right to development and to self-determination support male economic dominance.³⁶

In the end, the best approach may not be to address legal rights at all, but instead to focus on the facts and “on the girls and women who are being bought and sold, beaten, raped, mutilated, [and] killed . . . [because] anybody with a conscience and a sense of decency will agree that this is wrong.”³⁷ If TRCs are to be more

³² Goldblatt, *supra* note 31.

³³ 4 TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT 284 para. 3 (1998) [hereinafter SOUTH AFRICA TRC REPORT], available at <http://www.justice.gov.za/trc/report> (citing Cheryl de la Rey as she addressed the South Africa’s Truth and Reconciliation Commission at its Cape Town special hearings on women).

³⁴ Aoláin & Turner, *supra* note 2, at 238-39. This is also troubling because these socio-economic harms can cause direct physical harm to individuals and may be produced by the very types of violations which are considered as part of the mandate of the truth commissions.

³⁵ See Basu, *supra* note 20, at 202.

³⁶ Economic development has largely focused on men and excluded women because women are viewed as “non-producers” since the labor performed by women in child care, domestic work, and subsistence farming is not considered productive work. See Hilary Charlesworth, *The Public/Private Distinction and the Right to Development in International Law*, 12 AUSTL. Y.B. INT’L L. 190, 194-203 (1992) (discussing how current international legal norms privilege men in the area of economic development and fail to consider the reality of women). Self-determination takes place only in the public context of male political life; women are usually forced to conform to what are usually male-defined values. Charlesworth, *Women’s International Human Rights*, *supra* note 4, at 75.

³⁷ BOUVARD, *supra* note 28, at 248.

effective in “community-building,” they must address the wrongs committed against all the members of society, including women and girls, both in the public and the private spheres.

III. THE SOUTH AFRICAN TRC

Truth and reconciliation processes, on the surface, would appear to present an alternative to the more masculine model of retributive justice normally found in traditional legal systems, since they seek to promote healing and reconciliation in a community instead of merely punishing the perpetrators of abuse. The less adversarial nature of truth commissions is also critical since, as feminists have long pointed out, it is the means or process, not just the outcomes, that determines whether real change will occur.³⁸ Unfortunately, as already detailed, truth commissions have almost universally failed to recommend ways to remediate the violations perpetrated against women outside the public political sphere, even though their mandates purport to be all-inclusive and gender-neutral.

The South African TRC process, while not perfect by any means, did facilitate a peaceful transition from apartheid rule to democracy, revealing many of the gross human rights violations under apartheid, and promoted at least some degree of reconciliation between victims and perpetrators.³⁹ However, it is also a prime example of a truth commission that did not specifically address the violence and other forms of oppression experienced by women and its supposedly gender-neutral approach was in fact patriarchal or based on a male norm. This resulted from a narrow interpretation of both its mandate and what acts constituted gross violations of human rights.

³⁸ See Erin Daly, *Transformative Justice: Charting a Path to Reconciliation*, 12 INT'L LEGAL PERSPECTIVE 73, 150-51 (2001-2002) (suggesting that the dialogue by victims in a TRC is an important part of the transformation process as only a TRC or court can outline the objectives and initiate the transformation process); Vasuki Nesiah, *Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice*, 15 COLUM. J. GENDER & L. 799, 803-04 (2006) (noting the discussion of the ICTJ Bellagio workshop participants regarding the testimony process of Truth Commissions and comparing the less accommodating nature of victims testimony in courts); Anne Orford, *Commissioning the Truth*, 15 COLUM. J. GENDER & L. 851, 853 (2006) (exploring language and testimony of truth commissions as performances which achieve the reconstruction of a united nation).

³⁹ See Penelope Andrews, *Learning to Love After Learning to Harm: Post-Conflict Reconstruction, Gender Equality and Cultural Values*, 15 MICH. ST. J. INT'L L. 41, 49 (2006) [hereinafter Andrews, *Learning*].

The South African TRC has rightly been praised for enhancing the peaceful transition to democracy in that country. Its remarkable accomplishments under the leadership of Archbishop Desmond Tutu have been detailed elsewhere;⁴⁰ and my own personal experiences in attending hearings, following accounts in the media, and discussing the TRC's effect with participants, staff, and law school colleagues, confirms that opinion. Nevertheless, like all institutions, there are places where its performance was lacking. Chief among these, according to critics, is that while the Act creating it was supposed to be "gender-blind," the resulting process did not grant gender the necessary importance.⁴¹ This was evidenced by the minor role women played in its creation,⁴² the

⁴⁰ See e.g., James L. Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?*, 31 ANNALS AM. ACAD. POL. & SOC. SCI. 603 (2006); Paul Lansing & Julie C. King, *South Africa's Truth And Reconciliation Commission: The Conflict Between Individual Justice And National Healing In The Post-Apartheid Age*, 15 ARIZ. J. INT'L & COMP. L. 753 (1998); Lorna McGregor, *Individual Accountability in South Africa: Cultural Optimum or Political Facade?*, 95 AM. J. INT'L. L. 32 (2001); Kader Asmal, *Truth, Reconciliation and Justice: The South African Experience in Perspective*, 63 MOD. L. REV. 1 (2000); Bronwyn Leebaw, *Legitimation or Judgment? South Africa's Restorative Approach to Transitional Justice*, 36 POLITY 1 (2003).

⁴¹ Rashida Manjoo, *The South African Truth and Reconciliation Commission – A Model for Gender Justice?*, 1 (2004), available at <http://www.unrisd.org/unrisd/website/document.nsf/0/F2177FF8C83E0BB4C125723400591907?OpenDocument>.

⁴² The origins of the South African TRC can be traced to 1986 when Frederick van Zyl Slabbert and Alex Boraine, a corporate executive and a Christian Minister, respectively, resigned from Parliament and established the Institute for a Democratic Alternative for South Africa ("IDASA"), a non-governmental organization dedicated to finding "an alternative to the politics of repression" and to "explore the means and methods to manage negotiation and the transition from apartheid to democracy." See *How Did Idasa Start?*, IDASA, www.idasa.org.za (last visited Sept. 16, 2010); Manjoo, *supra* note 41, at 4. To fulfill this purpose, IDASA organized a conference in 1987 to examine the effect of democracy on South African society. Although the discussion covered a broad range of issues, it did not include those pertaining specifically to women. Also in 1987, IDASA organized a meeting in Dakar, Senegal between white South Africans and representatives of the African National Congress ("ANC") at which no women were present, according to unconfirmed reports. The ANC was at that time a banned liberation organization whose members were in exile. *Id.* at 8. A similar conference was held in 1989. *Id.*

Political organizations were unbanned by the apartheid government in 1990, which led to negotiations with twenty-six different political parties and organizations to create a non-violent transition to democracy. Some women did participate but not in proportion to the gender and race demographics of South Africa. The end result of this process was the creation in 1993 of an interim constitution, which, although committing the nation to reconciliation and understanding, left it up to the soon-to-be-elected democratic Parliament to decide what process would be used to obtain the truth about human rights violations that had taken place during apartheid and under what circumstances amnesty would be granted to perpetrators of abuse. In 1994, IDASA and Justice in Transition, a new organization established by Alex Boraine, sponsored a series of conferences that

fact that the types of abuses experienced primarily or solely by women were “largely defined out by the terms of the bill,”⁴³ and by the treatment of female witnesses.

The way Commissioners were appointed to serve on the TRC provides the first example of how the process failed to be gender-neutral. Appointments were made by the President mostly from recommendations made by a Committee comprised of three women and six men. During the selection process, although the Committee asked female interviewees whether they thought that women should be appointed to the TRC, it did not make the same inquiry of male interviewees and did not ask any candidates if they thought men should be appointed to the Commission.⁴⁴ Not surprisingly, appointments to the TRC and hiring of staff resulted in both a “gender imbalance [] [and] the preferential placement, and hiring of men, in positions of authority.”⁴⁵ Even though women constituted fifty-two percent (52%) of the South African population, only seven of the seventeen appointees to the TRC were female (41%), reflecting a clear gender-based inequity.⁴⁶

Even greater bias was demonstrated in the way Commissioners were assigned. Only two women were among the nine members of the Human Rights Violation Committee and the chair was male. This was the branch of the TRC that began the process, received by far the most publicity, and was therefore the only face of the Commission for several years. Similarly, the Amnesty Committee, also headed by a man, included one woman and two men. In contrast, the Reparation and Rehabilitation Committee⁴⁷ housed four women, including its head, and only one man. This committee began its work near the end of the TRC’s term, never received the resources it needed to provide even

discussed and debated the creation of a TRC. A committee composed of men only was appointed to draft the legislation that would create the Commission with the advice of local and international experts, most of whom were also male. The final product was the Promotion of Truth and Reconciliation Act whose goal, according to the final report, was to develop a bridge-building process “designed to help lead the nation away from a deeply divided past to a future founded on the recognition of human rights and democracy.” 1 SOUTH AFRICA TRC REPORT, *supra* note 33, at 48 para. 2.

⁴³ Manjoo, *supra* note 41, at 11 (citing Ilze Olckers, *Gender-Neutral Truth—A Reality Shamefully Distorted*, 31 *AGENDA* 61, 61 (1996)).

⁴⁴ *Id.* at 14.

⁴⁵ *Id.* at 15. There was also a racial imbalance; however, this will not be discussed because the focus of this Article is gender.

⁴⁶ *Id.*

⁴⁷ *Id.*

meager reparations to victims, and was generally perceived as including “the soft, caring and healing types,” an obvious stereotyping of women.⁴⁸

The second example of built-in bias against women appeared when victims were defined by the Act in general terms as “persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury . . . pecuniary loss or substantial impairment of human rights”⁴⁹ In its report, the Commissioners felt they were charged with investigating “gross violations of human rights” defined as “the killing, abduction, torture or severe ill-treatment of any person.”⁵⁰ Although the term “severe ill-treatment” could be interpreted to encompass all the violations of the rights of South Africans that had occurred during apartheid, the Commissioners decided that they had “neither the lifespan nor the resources to implement a broadly constituted interpretation.”⁵¹ They therefore interpreted their mandate narrowly to include only violations to individuals “that resulted in physical or mental harm or death and were incurred *in the course of the political conflicts*.”⁵² By interpreting the Act as applying to individuals rather than communities,⁵³ and by refusing to include in the definition of “severe ill treatment” the daily human rights violations instigated through apartheid, the TRC excluded millions of people of color, including women, who suffered, not as individuals, but collectively as daily “victims” of apartheid.⁵⁴ Perhaps even more harmful to women was the fact

⁴⁸ *Id.*

⁴⁹ Promotion of National Unity and Reconciliation Act 34 of 1995, § 1(1) para. 19 (S. Afr.), available at <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

⁵⁰ See 1 SOUTH AFRICA TRC REPORT, *supra* note 33, at 63 para. 53, 65 para. 59. See also BETH GOLDBLATT & SHIELA MEINTJES, GENDER AND THE TRUTH AND RECONCILIATION COMMISSION: A SUBMISSION TO THE TRUTH AND RECONCILIATION COMMISSION (May 1996) (S. Afr.), available at <http://www.justice.gov.za/trc/hrvtrans/submit/gender.htm>.

⁵¹ 1 SOUTH AFRICA TRC REPORT, *supra* note 33, at 60 para. 43.

⁵² *Id.* at 28 para. 19 (emphasis added).

⁵³ Goldblatt, *supra* note 31.

⁵⁴ It is difficult to illustrate the suffering that black women endured under apartheid. South African black women suffered two types of discrimination: one for being black, the other for being female. They lived in a patriarchal society in which they were legally considered perpetual minors incapable of owning property, entering contracts, controlling their own earnings, being guardians of their children, or inheriting from their husbands. Upon marriage, which a woman could not enter without permission of a guardian, all of her assets became the sole property of the husband. If she was widowed, a woman could not inherit her husband's estate, even the property that she brought with her to the

that this interpretation excluded virtually all harm that resulted from sexism and gender inequality. In effect, domestic violence and sexual abuse were not to be considered unless they were perpetrated for some political purpose.⁵⁵

The third instance of discrimination against women appeared when they were sometimes excluded or negatively represented as witnesses by the Commission.⁵⁶ This occurred even though its members recognized that they were “obliged” by the Act to treat all victims even-handedly and “without discrimination of any kind.”⁵⁷ For example, in the first five weeks of the TRC’s public

marriage; the estate passed to the eldest son who then became his mother’s guardian. This type of patriarchy was compounded by the racial restrictions of apartheid, which forced them to live in specific areas of the country, where they were expected, with their children, to subsist off the land—not arable land—while their husbands were migrant workers in the city, subject to such low wages that they often could not send money home to their families. The apartheid system forced families to live apart for months, sometimes years, at a time, creating strain on the women as they tried to raise and feed their children on their own, never knowing if their husbands would come back home or find another woman. Although white women were also victims of discrimination, the effects of this discrimination were much less severe. For more information of the effect of apartheid on black women in South Africa see Adrien Katherine Wing & Eunice P. de Carvalho, *Black South African Women: Toward Equal Rights*, 8 HARV. HUM. RTS. J. 57 (1995); *Effects of Apartheid on the Status of Women in South Africa*, AFRICAN NATIONAL CONGRESS (Jul. 15, 1984), <http://www.anc.org.za/show.php?id=4668> (extracts from paper prepared by the Secretariat for the World Conference of the United Nations Decade for Women, Copenhagen); Elizabeth S. Schmidt, *Now You Have Touched The Women, African Women’s Resistance to the Pass Laws in South Africa 1950-1960*, AFRICA NATIONAL CONGRESS, <http://www.anc.org.za/show.php?id=8851> (last visited Sept. 11, 2011).

⁵⁵ Goldblatt, *supra* note 31. During negotiations leading up to the dismantling of apartheid, the working group that was charged with deciding what acts would be considered political offenses used Norgaard principles to decide that rape could never constitute a political offense. 1 SOUTH AFRICA TRC REPORT, *supra* note 33, at 27 para. 11. Professor Carl Aage Norgaard, former President of the European Commission on Human Rights, developed criteria to be used in Namibia to define politically-motivated offences. These became known as the Norgaard Principles. *Id.* at 26 n.2. The TRC, however, included rape, sexual assault, abuse, and harassment in the list of acts that would be considered “severe ill treatment” under the mandate. *Id.* at 81 para. 119. Rape was considered severe ill treatment regardless of the circumstances in which it occurred. 4 *id.* at 298 para. 53. Nonetheless, until special hearings only for women were instituted, women did not testify about being raped. See discussion *infra* notes 84-88 and accompanying text.

⁵⁶ Goldblatt, *supra* note 31.

⁵⁷ 1 SOUTH AFRICA TRC REPORT, *supra* note 33, at 65 para. 60 (citing the Promotion of National Unity and Reconciliation Act, 1995, § 11(b)). The TRC was somewhat hypocritical in refusing to apply a broader definition so that it included the experiences of women. Although the decision was controversial, the TRC held a special hearing for, and dedicated a special section of its report for, those who were subject to compulsory military service—all of whom were white males. The TRC realized that “conscripts could not as a rule be described as victims of gross violations of human rights as defined in the Act.” 4

hearings, while fifty-eight percent of witnesses were female, only thirteen percent of human rights violations reported concerned women.⁵⁸ Indeed, despite the reality that many of these women were themselves victims of gross violations,⁵⁹ less than five percent of their testimony was about their own experiences; the remainder described violations perpetrated against their sons, husbands, and brothers.⁶⁰ In effect, despite the fact that women's groups repeatedly stressed that there were many reasons, cultural, social, and individual, that prevented these women from speaking out about their own experiences,⁶¹ women were perceived as "secondary witnesses" by both the Commissioners and the media.⁶² For example, some South African cultures discourage

id. at 3 para. 11. Nonetheless, it felt that there was a need to "know as much as possible about the truth from all perspectives so that [the TRC] can suggest ways in which a divided and traumatized nation may be healed and make recommendations on how to ensure that the mistakes of the past (made on all sides) are never repeated." 4 *id.* at 222 para. 1. The TRC could easily have used this same rationale to include in its interpretation of the Act the experiences of women, so that it could fully assist in the healing of the nation, especially since these *could* be described as gross violations of human rights. That it failed to see this is a clear indication that it was not, in fact, gender neutral but rather male-centered.

⁵⁸ Fiona Ross, *Existing in Secret Places: Women's Testimony in the First Five Weeks of Public Hearings of the TRC*, http://truth.wvl.wits.ac.za/doc_page.php?did=1376&li=coll (last visited Sept. 11, 2011). Women acknowledged that this percentage was in proportion to the number of women held in detention during apartheid, which ranged between twelve and fourteen percent. See GOLDBLATT & MEINTJES, *supra* note 50.

⁵⁹ Goldblatt, *supra* note 31. The testimony of Dr. Elizabeth Floyd serves as one example of this. Dr. Floyd spoke of the experience of Neil Aggett, her partner, who was killed in detention; she did not specify during her testimony, however, that she herself was a political activist who was detained, and her only reference to her own experience was occasionally prefacing her statements with comments such as "when I was released from detention." Ross, *supra* note 58. Similarly, Sindisiwe Mkhonto, Nomonde Calata, Nombwyselo Mhlawuli, and Nyameka Goniwe, widows of the men known as the "Cradock Four," testified only about the murders of their husbands who were assaulted and brutally killed in 1985, after which their bodies and the vehicle in which they were travelling were burned. In so doing they only briefly mentioned their own experience of being harassed and arrested. Goldblatt, *supra* note 31. The Commissioners themselves also failed to further probe the women's own experiences, which were treated as "incidental." GOLDBLATT & MEINTJES, *supra* note 50, at 15.

⁶⁰ GOLDBLATT & MEINTJES, *supra* note 50, at 15. Men, on the other hand, spoke mainly about themselves. Of all the testimonies presented before the TRC during this period, only two and a half percent were testimonies of men about violations endured by women. Ross, *supra* note 58. Six percent of the testimony comprised women's testimony about women. *Id.*

⁶¹ *Id.*; Goldblatt, *supra* note 31. Even some Commissioners were concerned that "women were not presenting their experiences of pain." Ross, *supra* note 58.

⁶² Ross, *supra* note 58.

women from participating in public discourse over sexual issues,⁶³ and hold that “sexual abuse is shameful and cannot be divulged.”⁶⁴ Women’s silence is considered “representative of femininity, dignity, and respect for traditional African family values,” and many men view women who bring a public accusation of rape as having “lost their culture and traditions.”⁶⁵ Further, the stigma of having been sexually abused is strong even when the rape was committed by a member of the state defense forces or an opposition party. To speak of it publicly would diminish a witness’s status in the community, bring public humiliation upon her,⁶⁶ recreate the trauma and loss of pride she experienced, force her to relive the pain, and perhaps subject her to cross-examination.⁶⁷

Even with respect to non-sexual violence against women, because South African society as a whole “diminishes women’s role and women themselves then see their experiences as unimportant,”⁶⁸ women often decide not to speak out about their experiences because they see these experiences as either less severe than those of many other people,⁶⁹ or too horrifying to describe.⁷⁰ Instead, they choose to move on with their lives to protect their families, their dignity, or themselves; and/or they just want to forget.⁷¹ Nonetheless, even when telling stories of the

⁶³ Lal Zimman, *Speaking Out: The Female Voice in Public Contexts*, 1 GENDER & LANGUAGE 327, 331 (2007) (reviewing SPEAKING OUT: THE FEMALE VOICE IN PUBLIC CONTEXTS (Judith Baxter, ed., 1996) and summarizing the chapter in the book by Puleng Hanong, *Sexuality, Discourse and the Public Sphere: Investigating Women’s Voices on Sexuality in Black South African Communities*).

⁶⁴ GOLDBLATT & MEINTJES, *supra* note 50, at 10.

⁶⁵ *Id.*

⁶⁶ *Id.* at 11.

⁶⁷ And for what purpose? To “add to the historical understandings of levels of repression”—at the cost of their emotional trauma, at the cost of losing the respect of others due to the “gender bias that people have about sexually abused women and the concept that women always ask for it anyway.” *Id.* at 30. Even other women have viewed rape as a sign of weakness. *Id.*

⁶⁸ *Id.* at 15.

⁶⁹ 4 SOUTH AFRICA TRC REPORT, *supra* note 33, at 295 para. 38.

⁷⁰ GOLDBLATT & MEINTJES, *supra* note 50, at 11. For example, Elaine Mohammed spoke of the psychological terror she felt in detention when rats would come into her cell and eat her soiled sanitary pads; her mind linked this with a friend’s experience of having rats pushed into her vagina as a form of torture. She found this far more terrifying than being threatened or hit, was unable to talk about these terrors for a long time, and, stated, “some of them I still can’t talk about.” 4 SOUTH AFRICA TRC REPORT, *supra* note 33, at 300 para. 63.

⁷¹ *Id.* at 295 para. 39. Even when they choose to speak, women speak with a different

violations suffered by the men in their lives, women were in reality speaking of their experience, their loss. But for the most part, no one sought to draw out the details of these women's stories to reveal the horrors they experienced. Instead of asking sensitive and well-placed questions, the interviews failed to recognize the women's pain and perpetuated the violence that created it.

To be fair, primarily as a result of the pressure from women's groups, the TRC did make a belated attempt to remedy its failure to recognize the importance of gender differences. The latter began when, after it held a workshop to discuss the issue of gender, the Center for Applied Legal Studies at the University of the Witwatersrand presented a report designed to increase the participation of women.⁷² The report's primary recommendation, which encompassed all the others, was that the TRC "actively reject its gender-neutral approach" and instead incorporate gender into its policy framework, "for without this framework gender issues, and women's voices in particular, w[ould] not be heard and accurately recorded."⁷³

The initial response to the report was favorable. Indeed after attending their own workshop,⁷⁴ the Commissioners agreed to hold special women's hearings based upon a realization that they individually needed to be trained to be more sensitive to cultural norms on gender issues.⁷⁵ Hearings on women's concerns were

voice. They are speaking their own experiences voiced in the narratives of what happened to their loved ones, their families, their homes, and their communities. Ross, *supra* note 58.

⁷² See GOLDBLATT & MEINTJES, *supra* note 50. At this workshop a number of interested people, including psychologists, lawyers, members of NGOs, representatives of the TRC, and members of the Gauteng Legislature, discussed the issues and prepared a lengthy report, which they submitted to the TRC. Gauteng is a province that was created in 1994 after South Africa's first democratic elections from part of the Transvaal. It is the smallest province in South Africa, comprising only 1.4% of the land, but is the most populous, containing both Johannesburg and Pretoria. The report detailed many of the abuses that had been experienced by women during apartheid and contained verbatim accounts from many women who were interviewed at length for the report. What it made obvious was that "the differing constructions of gender shape their experience and treatment." *Id.* at 16.

⁷³ *Id.* at 33. The more specific recommendations were for women to give their initial statements to women and then to appear at closed hearings specifically for women, with possibly only female commissioners and spectators. It also recommended that group hearings be held where women could testify about their collective experiences. *Id.*

⁷⁴ Among those attending the workshop included women's organizations and the media. Goldblatt, *supra* note 31.

⁷⁵ Press Release, Truth and Reconciliation Commission, *Special Hearings for Women* (Aug. 15, 1996), http://truth.wvl.wits.ac.za/doc_page.php?did=1244&li=coll. The TRC

eventually held in three different regions of South Africa.⁷⁶ Because witnesses at these hearings were able to speak from behind screens to all-women panels and a mostly female audience, a few who had declined to testify before the TRC came forward. Many still stayed away, however, because they were still afraid and ashamed to speak out about their experiences,⁷⁷ a shame and fear that some women could not overcome even in this safe environment. While some improvement was thereby achieved, criticism of the TRC's overall approach to gender issues continued because it did not reject its gender-neutral approach. Rather, the TRC treated women as a special group similar to children and youth, which meant they received separate treatment and were not an integrated part of the nation.

The final chapter in the story of the South African TRC's treatment of gender issues concerns its Final Report, which was released in October 1998. The Report was controversial and almost all key political actors took issue with some aspect of it.⁷⁸ In some ways this can be seen as evidence that it had been impartial and unbiased in its work, at least with regard to the political actors involved. Focusing just on the issue of gender, however, beyond creating an environment where (some) women

also agreed to encourage women to speak out, including allowing women to tell the stories of others, permitting groups of women to tell their stories collectively, and holding some hearings in camera or in the absence of men. *Id.*

⁷⁶ Four had been proposed, but the hearing in the Eastern Cape was never held. Goldblatt, *supra* note 31.

⁷⁷ *Id.*

⁷⁸ The Commission's goal was to promote national unity and reconciliation and "[t]he TRC argued that reconciliation was only possible on a foundation of truth and acknowledgment." Some critics felt that not much "truth" was uncovered, thereby making the TRC an "acknowledgment commission," which validated the stories of the victims rather than uncovering new truth. The critics continue that victims were put under tremendous pressure to "forgive" since reconciliation was equated with forgiveness. This resulted in the invalidation of displays of "negative" emotions such as anger, anguish, and resentment at the public hearings, which were dismissed potentially causing more harm to the victims "by denying them the process of natural grieving and healing." Perpetrators, on the other hand, were given amnesty without a requirement of community service or of contributing to reparations. *TRC Category-5, Aftermath*, TRACES OF TRUTH, http://truth.wvl.wits.ac.za/cat_descr.php?cat=5 (last visited Nov. 9, 2010). The major expectation for the Commission was that it play a role in nation-building and unity, a very heavy burden that competed sharply with the need to deliver restorative justice to victims. What is clear is that eventually the need to nation-build overcame all others and shaped the work of the TRC. For example, the TRC focused on the harm caused by political perpetrators on individual victims, thereby removing attention from the harms caused by the structure of apartheid itself, focusing on individual violent acts rather than on the causes of the act and the less extreme daily manifestations of harm that were the result of apartheid. *Id.*

felt safe to speak about their abuses, feminists criticized the TRC for refusing to redefine its mandate to include the wider violations that affected women and communities and refusing to change its “liberal, patriarchal, first generation conception” of rights.⁷⁹ They therefore concluded that it failed to give proper attention to the approximately twenty million women who were victims of apartheid,⁸⁰ because it did not recommend changes to the laws and practices that keep South African women from gaining economic and social equality.⁸¹ As evidence of this failure, these critics note that post-TRC rape and domestic violence against women has continued to rise, making South African society one of the most dangerous for women in the world.⁸²

IV. COMPARISON TO OTHER TRC PROCESSES

Because the mandate that establishes a TRC defines the goals of the inquiry, it generally determines whether the experiences of women will be focused upon, or even considered, in the process. What occurred in South Africa is similar to what has happened elsewhere, although, having learned from past mistakes, more recent TRC processes have improved. This section will describe some examples from the full spectrum of TRC processes with respect to their treatment of women’s issues. The examples include: El Salvador, where a truth commission operating prior to South Africa’s virtually ignored the human rights violations suffered by women; Sierra Leone, which has gone the furthest in recognizing and attempting to remediate harms to women; and three other commissions that fall somewhere in between Sierra

⁷⁹ Goldblatt, *supra* note 31.

⁸⁰ Compare Andrews, *Learning*, *supra* note 39, at 52 (discussing failure of the South African TRC’s final report to mention the system of violence and oppression against women in South Africa) and GOLDBLATT & MEINTJIES, *supra* note 50, with 6 SOUTH AFRICA TRC REPORT, *supra* note 33, at 726-32 paras. 1-37 (there is no mention of women anywhere in the eight pages of the TRC’s final recommendations).

⁸¹ See Andrews, *Learning*, *supra* note 39, at 50-51 (discussing the ways in which the South African TRC overlooked female victims of apartheid).

⁸² See Penelope E. Andrews, *Violence Against Women in South Africa: The Role of Culture and the Limitations of the Law*, 8 TEMPLE POL. & CIV. RTS. L. REV. 425, 430-33 (1999) (suggesting that all women in post-apartheid South Africa are at risk of suffering both public and private violence); Erika George, *Instructions in Inequality: Development, Human Rights*, 26 MICH. J. INT’L L. 1139, 1145-46 (2005) (noting post-apartheid government inherited an economically and socially unequal society which has led to a violent society overall in which females suffer in greater amounts than males because of their gender).

Leone and South Africa, including the first one in the United States on which I served as part of its National Advisory Committee.

A. El Salvador

The TRC in El Salvador, which conducted its probe shortly before the TRC in South Africa, is just one example of the norm. The El Salvador Truth Commission, which operated between July 1992 and March 1993, was created at the very outset of negotiations to end a twelve-year civil war between the government and leftist guerrillas. Negotiators of the peace agreement that created the Commission relied heavily on norms of international human rights law and on reports of human rights violations created by international organizations. Not surprisingly, this resulted in a predominant focus on violations that occurred between the government forces and the rebels during military battles and at other times,⁸³ and not on the consequences of those actions.⁸⁴ For example, negotiators paid special attention to the 1986 Report of the U.N. Special Rapporteur, who, despite having met with a cross-section of society—including Church leaders and the Committee of Mothers of Persons Who Disappeared, Were Detained or Were Killed for Political Reasons in El Salvador—chose not to include the stories of women who had witnessed or experienced violations. As a result, these women were seen only as witnesses and not as victims who had suffered harm themselves.⁸⁵

This reliance on prior international human rights law and reports also influenced the Commissioners' interpretation of their mandate, which required that they investigate "serious acts of violence" which took place in El Salvador between 1980 and 1991, "and whose impact on society urgently require[d] that the public should know the truth."⁸⁶ While the mandate was couched in

⁸³ See Aoláin & Turner, *supra* note 2, at 240-41.

⁸⁴ *Id.* (asserting that the narrow interpretation of the mandate commission resulted in harms suffered by women being excluded from the truth commission process). See also Thomas Buergenthal, *The United Nations Truth Commission for El Salvador*, 27 *VAND. J. TRANSNAT'L L.* 497, 500 (1994) (noting the main focus of the El Salvador TC per its mandate was to investigate only acts which had a broad impact on society as whole, not necessarily those acts which were considered to be seriously violent).

⁸⁵ Aoláin & Turner, *supra* note 2, at 241 n.44.

⁸⁶ The Mexico Agreements ch. V, U.N. Doc. A/46/553-S/23130 (April 27, 1991). This was the first of several U.N. brokered peace agreements that ended the conflict.

gender-neutral terms and the Commissioners understood that their “focus was to be on acts that had a special or broader impact on society in general,”⁸⁷ they nevertheless interpreted this language as charging them with examining only first-generation rights enjoyed in the public sphere.⁸⁸ That meant they could disregard violations of second- and third-level rights⁸⁹ experienced by broad sections of society,⁹⁰ including sexual and sex-based violence experienced by women.⁹¹ The final report does reference much broader harms—such as violations of the home and the community occurring in the private, and predominantly female, sphere—but these were not fully investigated and no attempt was made to remediate them. It is possible that, had the Commission interpreted “impact on society” to require that it consider the *whole* of society, the experiences of women would not have remained invisible to the Commission and the outside world.

B. Sierra Leone

A major exception to this pattern occurred in Sierra Leone, where the organizers of that country’s TRC learned from the failures and criticisms of the one in South Africa.⁹² The Sierra Leone process began in 1999 when the peace agreement that terminated a civil war, during which unimaginable atrocities were

⁸⁷ Buergenthal, *supra* note 84, at 500.

⁸⁸ Representative of the Secretary General, El Salvador Agreement on Human Rights § II, ¶ 11, The United Nations and El Salvador 1990-1995, U.N. Doc. A/44/971-S/21541 (July 26, 1990), *available at* http://www.usip.org/files/file/resources/collections/peace_agreements/pa_es_07261990_hr.pdf. The specific “cases or events” they chose to investigate were those that affected “the rights to life, to the integrity and security of the person, to due process of law, to personal liberty, to freedom of expression and to freedom of association.” *Id.*

⁸⁹ *See supra* definitions of these rights at note 19 and accompanying text.

⁹⁰ Aoláin & Turner, *supra* note 2, at 252.

⁹¹ *See id.* at 240-41 (asserting that the narrow interpretation of the mandate commission resulted in harms suffered by women being excluded from the truth commission process).

⁹² *See* Katherine M. Franke, *Gendered Subjects of Transitional Justice*, 15 COLUM. J. GENDER & L. 813, 827 (2006) (discussing South African TRC as model for Sierra Leone). Sierra Leone’s TRC was established in 1999 as part of a peace agreement following an eleven-year civil war. Amy Palmer, *An Evolutionary Analysis of Gender-Based War Crimes and the Continued Tolerance of “Forced Marriage,”* 7 NW. U. J. INT’L HUM. RTS. 133, 133, 134 (2009). It operated from November 2002 to October 2004. Unites States Institute of Peace, Truth Commission: Sierra Leone, <http://www.usip.org/publications/truth-commission-sierra-leone> (last visited Oct. 13, 2011).

perpetrated against civilians by all sides in the conflict,⁹³ called for the creation of a truth and reconciliation commission.⁹⁴ As in

⁹³ The war in Sierra Leone was self-destructive for the nation and resulted in the devastation of towns and villages, the destruction of economic installations, and the displacement, brutalization, and traumatization of an entire generation. 3B WITNESS TO TRUTH: REPORT OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION 85 para. 5 (2004), available at <http://www.sierra-leone.org/TRCDocuments.html> [hereinafter SIERRA LEONE TRC REPORT]. The war caused the displacement of more than one million civilians. Nsongurua J. Udombana, *Globalization of Justice and the Special Court for Sierra Leone's War Crimes*, 17 EMORY INT'L L. REV. 55, 74 (2003). Some fled the country, with most of the 450,000 refugees fleeing to Guinea and Liberia. *A Suffering that Knows No End*, BBC NEWS, July 8, 1999, available at http://news.bbc.co.uk/2/hi/special_report/1999/01/99/sierra_leone/251286.stm. The war became internationally known for the mass amputations of the limbs of women, children, and infants and the forceful recruitment of civilians, including women and children, as a fighting force. Amanda Bryant Banat, *Solving the Problem of Conflict Diamonds in Sierra Leone: Proposed Market Theories and International Legal Requirements for Certification of Origin*, 19 ARIZ. J. INT'L & COMP. L. 939, 941 (2002). Due to their vulnerability, women were targeted for violence and were abducted and exploited. SIERRA LEONE TRC REPORT, *supra*, at 86 para. 6. According to Physicians for Human Rights, between 215,000 and 275,000 women and girls were subjected to sexual violence. Udombana, *supra* note 93, at 144. Even in the refugee camps the women were not safe, where humanitarian workers revictimized these women and girls as young as twelve by requiring them to barter their bodies to receive food and aid. SIERRA LEONE TRC REPORT, *supra*, at 86 para. 6. For further discussion on the abuses endured by civilians in Sierra Leone during the civil war see CHEN REIS ET AL., WAR-RELATED SEXUAL VIOLENCE IN SIERRA LEONE (2002) (Physicians for Human Rights 2002), available at <http://physiciansforhumanrights.org/library/report-sierraleone-2000.html>; Corinne Dufka, *Sierra Leone: Getting Away with Murder, Mutilation and Rape*, 11 HUM. RTS. WATCH (AFRICA DIVISION) 3(A) (June 1999), available at www.hrw.org/legacy/reports/1999/sierra/; Scott Campbell & Jane Lowicki, *Sowing Terror: Atrocities against Civilians in Sierra Leone*, 10 HUM. RTS. WATCH (AFRICA DIVISION) 3(A) (July 1998), available at www.hrw.org/reports98/sierra/index.htm; Louise Taylor, "We'll Kill You if You Cry": *Sexual Violence in the Sierra Leone Conflict*, 15 HUM. RTS. WATCH (AFRICA DIVISION) 1(A) (Jan. 2003), available at www.hrw.org/en/reports/2003/01/16/well-kill-you-if-you-cry.

⁹⁴ The operable language stated the TRC was "to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation" since the beginning of the conflict in 1991. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXVI, §1, Gov't of the Republic of Sierra Leone – The Revolutionary United Front of Sierra Leone, July 7, 1999, (The Lomé Peace Accord), available at <http://www.sierra-leone.org/lomeaccord.html>. The Lomé Peace Accord granted "absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives." *Id.* at art. IX, 2. Unfortunately, the signing of the Lomé Peace Accord did not create a lasting peace, which delayed the creation of the truth commission. It was not until January 2002 that an official end to the war was declared. U.S. DEP'T OF STATE, BUREAU OF AFRICAN AFFAIRS, *Background Note: Sierra Leone*, <http://www.state.gov/r/pa/ei/bgn/5475.htm> (last visited May 23, 2011). 31.9% of adult victims and 44.9% of child victims of the conflict indentified by the Sierra Leone TRC were female. 2 SIERRA LEONE TRC REPORT, *supra* note 93, at 34 para. 81.

other conflicts, the experiences of women and girls had been “invisible” to the majority of journalists and international observers who paid little attention to the rampant and ongoing abuses they suffered.⁹⁵ Nonetheless, women were instrumental in getting the warring parties to the negotiating table,⁹⁶ and were important participants in the National Consultative Conference convened to collect societal views on the how the peace talks should proceed.⁹⁷

It is surprising that, given women’s early involvement, the Truth and Reconciliation Act 2000, enacted by the Parliament of Sierra Leone in accordance with the Lomé Peace Accord, did not specifically mention women.⁹⁸ However, for several reasons, this omission was not as damaging to women’s concerns in Sierra Leone as it was in South Africa.

First, the Act required that gender be a consideration in the selection of Commissioners to serve on the TRC and in the appointment of Commission committees.⁹⁹ Unlike in South Africa, where such guidelines were not present in the selection of Commissioners and where it was even questioned whether women should participate as Commissioners,¹⁰⁰ Sierra Leone assumed the

⁹⁵ Binaifer Nowrojee, *Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims*, 18 HARV. HUM. RTS. J. 85, 87 (2005).

⁹⁶ Thus, a number of women’s organizations joined forces in what became known as the Women’s Forum and organized massive protest marches and peace rallies in various parts of the country. 3B SIERRA LEONE TRC REPORT, *supra* note 93, at 193, paras. 415-16. Women also put together seminars and conferences to discuss the possibility of peace and are credited with creating an environment in which “a negotiated peace settlement became a respectable option that offered [both sides of the conflict] the opportunity to climb down from entrenched positions without loss of face.” Yasmin Jusu-Sheriff, *Sierra Leonean Women and the Peace Process*, 9 ACCORD 46, 48 (2000), available at <http://www.c-r.org/our-work/accord/sierra-leone/contents.php>.

⁹⁷ 3B SIERRA LEONE TRC REPORT, *supra* note 93, at 193, para. 419. Dr. Kadie Sesay, a college professor and feminist, chaired the National Commission for Democracy and Human Rights (NCDHR), the organization that convened the conference. Women were notably absent in the negotiations for peace—only two women attended the negotiations and only one (a representative from the Organization for African Unity from Ghana) was a signatory to the Peace Agreement. *Id.* at 194, para. 424. Dr. Kadie Sesay was one of the negotiators of the Lomé Peace Accord but did not sign the document. Women were also excluded from the organizations set up to monitor or build upon the agreement. *Id.* Despite these two omissions, the overall attention paid to the violation of women’s rights was vastly different in Sierra Leone as is described *infra*.

⁹⁸ See The Truth and Reconciliation Commission Act 2000 [hereinafter TRC Act], available at <http://www.sierra-leone.org/laws.html>.

⁹⁹ TRC Act Schedule (a)(v), § 10.(2).

¹⁰⁰ See *supra* notes 44-48 and accompanying text.

inclusion of women in the work of the TRC from the start. As a result, three of seven Commissioners appointed by the President, including the Deputy Chairperson, were women.¹⁰¹

Second, the Act required the Commission to give “some attention to the subject of sexual abuses and to the experiences of children within the armed conflict,” and the Commission had the freedom to implement special provisions for those who had “suffered sexual abuses.”¹⁰² This language was interpreted by the TRC to establish an obligation to pay special attention to the issues of women because, although sexual abuse could be experienced by both genders, women and girls had been the “overwhelming victims of sexual abuse” during the conflict.¹⁰³

Third, and most importantly, the Commissioners interpreted their mandate as requiring them to capture women’s “gendered experiences at a political, legal, health and social welfare level.”¹⁰⁴ This interpretation rose from three sources. Initially, the Commissioners decided that “human rights violations” included those committed by individuals not necessarily acting as an agent of or in fulfillment of a policy of States or governments.¹⁰⁵ This meant that, in contrast to South Africa, abuses committed by purely “private” actors were subject to examination. Sierra Leone’s TRC’s definition of “victim”¹⁰⁶ also included dependents, immediate family, household members of direct victims, and those who suffered harm in assisting or protecting a victim.¹⁰⁷ As a

¹⁰¹ The Act required four Commissioners to be citizens of Sierra Leone and the rest to be non-citizens. The Commissioners were Sierra Leone nationals: Dr. Rev. Joseph Humper, Chairperson; Justice Laura Marcus-Jones, Deputy Chairperson; Professor John Kamara; Sylvanus Tortos. International Commissioners: Ms. Yasmin Sooka, former Commissioner of the South African TRC; Madam Ajaaratou Satang Jow, and Professor William Schabas.

¹⁰² TRC Act §§ 6.(2)(b), 7.(4).

¹⁰³ 3B SIERRA LEONE TRC REPORT, *supra* note 93, at 86 para. 10.

¹⁰⁴ *Id.* at 87 para. 11.

¹⁰⁵ 1 *id.* at 11 para. 46.

¹⁰⁶ The interpretation differed even though the precise language was similar to the one in South Africa. Thus, in the latter country, the TRC defined victims as “persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury . . . pecuniary loss or substantial impairment of human rights.” Promotion of National Unity and Reconciliation Act, 1995, ch. 1(1)(xix). In Sierra Leone, victims were defined as persons who “individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights.” 1 SIERRA LEONE TRC FINAL REPORT, *supra* note 93, at 87 para. 42.

¹⁰⁷ 1 SIERRA LEONE TRC FINAL REPORT, *supra* note 93, at 87 para. 42.

result, unlike South Africa, it did not overlook those abuses suffered by women in the private sphere. Finally, in contrast to South Africa, the Sierra Leone TRC chose not to confine itself to legal obligations imposed on the State by international or national laws. Instead, it included in its mandate consideration of second and third generation rights. Thus it reviewed “[v]iolations of economic, social and cultural rights . . . civil and political rights . . . [and] other categories of rights such as the right to development and the right to peace.”¹⁰⁸

Another mistake made in South Africa that the Sierra Leone TRC corrected was that it realized from the beginning that it lacked necessary information regarding the unique abuses suffered by women. They had especially “little knowledge or experience of eliciting testimony from women or conducting interviews with a gender perspective in mind.”¹⁰⁹ As a result, the Sierra Leone TRC turned to international and national women’s organizations for assistance in training, advice, and support.¹¹⁰ Training was provided for those commissioners and staff members who were not properly prepared to approach the issues of women. Beyond that, extensive effort was expended to educate the community and reach as many women and girls as possible to make sure that they felt comfortable relating their experiences to the TRC. The goal was to “protect the victims . . . engender an atmosphere of trust in the Commission . . . observe issues of confidentiality . . . create a safe environment for women; and . . . ensure that women and girls would not be ‘retraumatised’ or ‘revictimised’ [sic] in the

¹⁰⁸ *Id.*

¹⁰⁹ Nirit Ben Ari & Ernest Harsch, *Sexual Violence, an “Invisible War Crime,”* 18 AFRICAN RENEWAL 1 (2005), available at [http://www.un.org/ecosocdev/geninfo/afrec/vol18no4/184sierra leone.htm](http://www.un.org/ecosocdev/geninfo/afrec/vol18no4/184sierra%20leone.htm). In fact, in their early efforts, statement takers had difficulty gathering information about sexual violence. As in South Africa, this subject was very difficult for women to speak of publicly because of the stigma they experience in their communities. *Id.*

¹¹⁰ Most important was the partnership of the TRC with the UN Development Fund for Women (UNIFEM), although other organizations also provided assistance to the TRC. 3B SIERRA LEONE TRC REPORT, *supra* note 93, at 90 para. 31. A two-day workshop was held by UNIFEM and the Urgent Action Fund for Women’s Human Rights (based in Nairobi) which focused on international law related to sexual violence, the impact of war on women and children, training in how to handle witness female victims’ testimony in a gender sensitive manner, and how to support female witnesses and victims. See Ben Ari & Harsch, *supra* note 109; Nowrojee, *supra* note 95, at 93. Additionally, two training workshops were conducted for statement takers where these learned how to interview women and victims of sexual violence. 1 SIERRA LEONE TRC FINAL REPORT, *supra* note 93, at 166 para. 118.

process.”¹¹¹

To achieve these goals, the Commission held public meetings equivalent to town halls where they reached out to women, women’s groups, and agencies working with women to educate them on the purpose of the Commission’s work.¹¹² In these meetings, women were informed of the process that the TRC intended to use to address issues of gender, including the “mainstreaming” of women’s issues, the utilization of women as statement takers for victims of sexual assault, and the recruitment of women to senior staff positions.¹¹³ A workshop was also held, in conjunction with UNIFEM, where women from the provinces and women’s and other civil society organizations provided the TRC with suggestions for recommendations regarding women that should be included in the final report.¹¹⁴

The TRC also held three days of hearings especially dedicated to women, which were not only the most highly attended but were also preceded by a march through the streets accompanied by school marching bands.¹¹⁵ Its prior efforts were so successful that, to the surprise of the Commissioners, most women chose to speak at open hearings because they wanted the community to know what happened to them.¹¹⁶ Despite being open, and that the male Commissioners were present, the women did testify behind screens and only women Commissioners asked questions.¹¹⁷ A private space was provided for women before and after they testified to ensure that their identity remained confidential.¹¹⁸

What is most noteworthy about the Sierra Leone experience is that its TRC included a gendered focus in every section of its Final Report. For example, unlike South Africa, the Sierra Leone

¹¹¹ 3B SIERRA LEONE TRC FINAL REPORT, *supra* note 93, at 88 para. 16.

¹¹² *Id.* at 88 para. 19.

¹¹³ *Id.* The Commission established a policy that female victims of sexual assault would give their statements to female statement takers, unless they expressed a different preference. Additionally, victims of sexual assault were asked if they wished to testify at one of the TRC hearings and, if so, if they preferred to do so at a closed hearing. *Id.* at 89 para. 21.

¹¹⁴ 1 SIERRA LEONE TRC FINAL REPORT, *supra* note 93, at 163 para. 102.

¹¹⁵ Nowrojee, *supra* note 95, at 86.

¹¹⁶ 3B SIERRA LEONE TRC FINAL REPORT, *supra* note 93, at 90 para. 27. Closed hearings were attended only by female Commissioners and staff and counselors were available before, during, and after the women’s testimony. *Id.* at 89 paras. 23-25.

¹¹⁷ *Id.* at 90 para. 30. The TRC also received submissions and testimony from women’s organizations also at these hearings.

¹¹⁸ Nowrojee, *supra* note 95, at 94.

Report addresses the political, economic, educational, and societal disadvantages experienced by women,¹¹⁹ including such topics as the role of women in Sierra Leone's society and history, the effect of conflict on women, and the reasons why women were victims of abuse and sexual violence.¹²⁰ Even more significantly, the TRC Report makes highly specific recommendations about ways to protect women from future violence and abuse while providing greater educational and economic opportunities.¹²¹

The TRC Act also required the State to timely implement the TRC recommendations directed at the government and to facilitate the implementation of recommendations directed at others.¹²² This is quite a contrast to South Africa, or any other TRC, where such a legislative requirement was not created. This obligation has proved to be effective—to some degree—since Parliament passed the following Acts: in 2007, the Domestic Violence Act (broadening the definition of domestic violence and allowing for criminal and civil sanctions) and the Devolution of

¹¹⁹ 3B SIERRA LEONE TRC FINAL REPORT, *supra* note 93, at 83-229. The Report details how women were generally excluded from political life, *id.* at 94-97 paras. 43-60; how educational levels for women were so low that 91.5% of females over the age of five were illiterate in 1985, *id.* at 92 paras. 35-37; how women have generally engaged in low-income economic activity, which has created the feminization of poverty and an economic dependence on men, *id.* at 100 paras. 67-70; and details the socio-cultural status of women, which, for example, permitted men to beat their wives as a method of discipline, *id.* at 102-108 paras. 77-104. The Report also details the legal discrimination against women such that rape went unpunished, *id.* at 98 para. 63; there was no legislation to prosecute domestic violence, *id.* at 117 paras. 136-39; women experienced discriminatory treatment in divorce proceedings, *id.* at 116-117 paras. 133-35; women were considered as “chattel” to be inherited and regarded as perpetual minors in need of male guardianship, *id.* at 98 para. 64; and women were discriminated against in inheritance laws, *id.* at 113-115 paras. 121-28.

¹²⁰ See 3B *id.* at 83-229.

¹²¹ See 2 *id.* at 117-225. For example, the Commission recommended that the Parliament enact domestic violence legislation and that police, prosecutors, and judges be trained to address gender-based crimes, *id.* at 75 para. 328; that Parliament repeal laws that link prosecution of sex offenders to the moral character of the victim, *id.* at 76 para. 333; that the government assist in eliminating the practices in customary law of compelling a rape victim to marry the perpetrator or of requiring monetary compensation from the rapist in lieu of criminal prosecution, *id.* at 77 paras. 337-38; that Parliament repeal laws that discriminate against women in relation to marriage, the administration of estates, inheritance, divorce, and property ownership, *id.* at 77 para. 342; that political parties be required to have women comprise thirty percent of the candidates for elected office, *id.* at 78 para. 349; that women be provided with skills training and micro-lending schemes, *id.* at 79 paras. 354, 356; that school enrollment of girls in school be promoted, ending the practice of expelling girls who become pregnant; and that adult literacy training for women be provided. *Id.* at 79 paras. 356-60.

¹²² TRC Act § 17.

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Estates Act (entitling a widow to inherit her husband's property);¹²³ and, in 2009, the Registration of Customary Marriages and Divorce Act.¹²⁴ These laws, which have had a strong remedial effect on the condition of women in Sierra Leone, would likely never have been enacted, or would have been enacted much later, were it not for the recommendations made by the TRC.

C. Three TRC's with Mixed Results Regarding Harm to Women

Even after the experience with South Africa's truth process and the example provided by the Sierra Leone TRC, other truth commissions have generally continued using traditional approaches to the investigation of human rights violations. This has largely caused them to ignore the experiences of women in the private sphere, except for some instances where they include those related to sexual violence. Although TRCs have learned from the failings in South Africa and have therefore placed some of their focus on women's experiences, few have interpreted their mandates like Sierra Leone, to go beyond international rights norms to look at the entire experience of women.

1. Peru

The Truth and Reconciliation Commission in Peru, which operated between July 2001 and August 2003, had as its mandate "to clarify the process, the actions, and the causes and responsibilities of terrorist violence and human rights violations produced from May 1980 to November 2000, attributable both to terrorist organizations and to State agents, as well as to propose initiatives aimed at affirming peace and harmony among Peruvians."¹²⁵

The effort in Peru regarding women's rights improved greatly upon the one in South Africa. First, the Commissioners' definition of victims permitted them to consider not only physical harms to women, such as torture, killing, and sexual abuse, but also the

¹²³ Palmer, *supra* note 92, at 155.

¹²⁴ The Registration of Customary Marriages and Divorce Act, 2009, available at <http://www.sierra-leone.org/laws.html> (last visited May 25, 2011).

¹²⁵ Resolución Suprema No. 065-2001-PCM, art.1 (June 4, 2001), available at <http://www.cverdad.org.pe/lacomision/cnormas/normas01.php>. Unfortunately, this mandate was further restricted to a focus on harms of a military nature. *Id.* at art. 3.

effect on women of the death or disappearance of a loved one and the consequences of having to uproot their families and relocate to an unknown large metropolitan city where they were ostracized and discriminated against for their race as well as their gender.¹²⁶ Second, the TRC in Peru understood from the start that women hold a “gendered memory” of events and narrate these memories with a gendered voice, an understanding that allowed them to view the testimony of women with the proper perspective.¹²⁷ Third, the Commission thoroughly analyzed the experience of women during the conflict and dedicated two and a half chapters of its Report to women’s issues.¹²⁸

Nevertheless, unlike the Sierra Leone TRC and more similar to the one in South Africa, while a variety of harms against women were acknowledged, the focus remained mainly on the physical ones that came about as a result of the violence. Additionally, the Commission excluded the State’s forced sterilization of over 200,000 women—all of whom were poor and most of whom were indigenous, illiterate, and non-Spanish speaking—from its investigation.¹²⁹ As a result of these sterilizations, eighteen women

¹²⁶ 8 INFORME FINAL DE COMISIÓN DE LA VERDAD Y RECONCILIACIÓN [PERU TRUTH AND RECONCILIATION COMMISSION FINAL REPORT] § 2.1, at 46 (2003) [hereinafter PERU TRC REPORT], available at <http://www.cverdad.org.pe/ifinal/index.php>. Commissioners defined as victims not only women who had suffered direct violations and abuses, but also those whose family members had experienced “disappearance, death and other offenses” and those who lived in communities affected by the violence. *Id.* at 46. The TRC also noted the great contribution of women, many whom paid with their lives, in bringing an end to the violence by demanding peace and the end to impunity as well as establishing programs to help the poor. *Id.* at 51-54; 3 PERU TRC REPORT, § 3.2, at 367-82.

¹²⁷ 8 *id.* § 2.1, at 48, 50.

¹²⁸ See 3 *id.* § 3.2; 6 *id.* § 1.5; 8 *id.* § 2.1.

¹²⁹ See Jocelyn E. Getgen, *Untold Truths: The Exclusion of Enforced Sterilizations from the Peruvian’s Truth Commission Final Report*, 29 B.C. THIRD WORLD L.J. 1, 3 (2009); DR. JUAN SUCCAR RAHME ET AL., INFORME FINAL DE LA COMISIÓN ESPECIAL SOBRE ACTIVIDADES DE ANTICONCEPCIÓN QUIRURGICA VOLUNTARIA, 27, 80 (2002) [hereinafter INFORME FINAL AQV], available at www.mamfundacional.org/ef/Informe-Final.pdf. These occurred from 1995 to 2000 as part of the government-instituted national Family Planning Program, which emphasized “Voluntary Surgical Sterilization” (tubal ligation of women and male vasectomy) over other forms of contraception. The free Program was promoted mostly in the poorest areas of the country, with emphasis placed in the Andean and Amazon region inhabited by various indigenous peoples, most of whom are non-Spanish speaking and either illiterate or functionally illiterate. *Id.*; Maria Elena Reyes, *Intentando Redefinir la Justicia: El Caso de las Esterilizaciones Forzadas en el Perú*, in CUERPOS NUESTROS: REDIFINIENDO LA JUSTICIA 19, 24 (Viviana Waisman ed., 2004), available at www.womenslinkworldwide.org/pdf_pubs/es_pub_cuerpos1.pdf. Although men were also encouraged and sometimes forced to undergo vasectomies, women were

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died and thousands have suffered long-term pain and disability.¹³⁰ By ignoring these violations of women's human rights and failing to assign responsibility to the State, the TRC missed the opportunity to recognize the suffering of these women and made it very unlikely that they will receive any form of justice in Peru.¹³¹

overwhelmingly targeted for sterilization. *See id.* at 30. Sterilization turned out to be far from voluntary, as women were coerced, threatened, lied to, and bribed to fulfill government quotas which required medical centers and staff to perform a certain number of surgical sterilizations or lose their jobs or their funding. *Id.* at 65; DENUNCIA CONSTITUCIONAL NO. 269, Aug. 13, 2003, at 34, 44, *available at* http://genocidioayacucho.com/admin/files/articulos/661_digitalizacion.pdf. It is not clear how many women were forced to undergo tubal ligations against their will. According to government records, 298,707 women underwent the procedure during this time period. *See* INFORME FINAL AQV, *supra*, at 30. It is estimated that in some regions over ninety percent of women undergoing tubal ligation were coerced in some manner. *Id.* at 38. On the other hand, only 2,074 cases were presented by human rights organizations for prosecutorial investigation. TeleSUR TV, *Víctimas de Esterilización Forzada Piden Justicia en Perú* (June 20, 2011), *available at* <http://multimedia.telesurtv.net/20/6/2011/38911/victimas-de-esterilizacion-forzada-piden-justicia-en-peru> [hereinafter TeleSUR Broadcast].

¹³⁰ Although statistics provided by the Ministry of Health indicate the death of eighteen women as a result of tubal ligations, it is assumed that the number is higher. DENUNCIA CONSTITUCIONAL NO. 269, *supra* note 129, at 44. It is believed that these deaths and long-term pain were the result of carelessness during the surgical procedures. *Id.* at 31. Women have reported high levels of pain during and after the procedure, and long-term complications such as infections, inflammations, hemorrhage, numbing and chronic pain that have made them unable to perform their normal work in the fields or at home. *Id.* at 31, 36. Most of the tubal ligations were performed without prior physical examination or determination of risk factors and there was rarely any follow-up care. *Id.* at 17, 27, 31. Surgeries were performed in large part by general practitioners and not by surgeons or doctors trained in obstetrics and gynecology. *Id.* at 36; INFORME FINAL AQV, *supra* note 129, at 61. This resulted in surgical accidents that perforated vital organs leading to septicemia, peritonitis, and death of some patients. *Id.* at 44. These surgeries were also performed, not in sterile operating rooms, but in aseptic conditions either in tents or clinical offices as part of "Ligation Festivals," where doctors sometimes performed surgery on fifty to sixty patients over one or two days. *Id.* at 21, 28, 44. Anesthesia was not usually administered by an anesthesiologist but by the medical doctor performing the surgery or the nursing staff. *Id.* at 21, 44. This resulted in women not being anesthetized properly, some not at all, many of them feeling pain during the entire procedure. *Id.* at 21, 31, 44. In fact, a doctor testified that general anesthesia was only provided to women who "put up resistance" to the medical staff. *Id.* at 28. Even now, these women are suffering abuses at the hands of the medical staff, receiving poor medical treatment if they are deemed to have made public accusations about the fact that they were sterilized against their will. Camila Gianella, *¿Vamos a Seguir Hablando de las AQVs después de la Campaña?*, NOTICIASER.PE (June 29, 2011), <http://www.noticiasser.pe/15/06/2011/informe/%C2%BFvamos-seguir-hablando-de-las-aqvs-despues-de-la-campana>.

¹³¹ All legal recourses have been exhausted within Peru. Reyes, *supra* note 129, at 25. The first case was brought before a Peruvian tribunal in 1998 to prosecute the death of a woman who was forced to undergo tubal ligation, but the case was dismissed at all levels of the Peruvian justice system. *Id.* In 1999, various human rights organizations brought the case before the Inter-American Commission on Human Rights (IACHR), leading to a

To its credit, the Commission acknowledged that the experience of women during the violence was not just a “women’s problem” but the result of a society where power is exercised in a “domineering manner and with impunity”¹³² and where “relationships between men and women . . . are not democratic . . . just . . . [f]or equitable.”¹³³ These findings did not translate into action, however, as the TRC failed to make any recommendations that addressed in any detail the entire range of social, economic, and cultural disadvantages experienced by women in Peru.¹³⁴ As a

settlement by the Peruvian State in 2003. *Id.* at 25-26, 28. As part of the settlement, the State accepted responsibility for violations of human rights and committed to “make a thorough investigation of the facts and apply legal punishments to any person determined to have participated in them,” including “administrative and criminal investigations” of medical staff and prosecutors “who failed to take action.” María Mamérita Mestanza Chávez v. Peru, Petition 12.191, Inter-Am. Comm’n H.R., Report No. 71/03, OEA/Ser.L/V/II.118, para. 14 (Oct. 22, 2003), available at www.cidh.oas.org/annualrep/2003eng/Peru.12191.htm. However, even though there have been two congressional investigations as well as one performed by the Ministry of Health, there have been no prosecutions. See DENUNCIA CONSTITUCIONAL NO. 269, *supra* note 129, at 47. Instead, after nine years of investigation, the Special Prosecutor closed the cases in May 2009. See Alerta: El Ministerio Público Ante las Esterilizaciones Forzadas, DEMUS (Sept. 3, 2009), http://www.demus.org.pe/Menu/Alertas/aler_Esterilizaciones_forzadas_MP.html; TeleSUR Broadcast, *supra* note 129. Nonetheless, Peruvian women and human rights organizations have not given up on receiving justice. For example, the Association of Women of Anta Affected by the Forced Sterilizations, representing about one hundred women, have devised a new strategy: suing each individual they deem responsible for crimes against humanity and torture as well as for war crimes, reasoning that these forced sterilizations took place during an internal war and with the assistance of the Armed Forces. Ángel Paéz, *Esterilizadas Forzadas Intentan Justicia en Perú*, ARTEMISA NOTICIAS (Oct. 18, 2010), available at <http://www.artemisanoicias.com.ar/site/notas.asp?id=2&idnota=7227>. On November 5, 2010, the IACHR issued a statement requiring the Peruvian State to comply with the settlement. César Romero C., Posting to *Caso de las esterilizaciones forzadas no está cerrado*, SIN PATRONES (June 1, 2011, 7:33 EST), <http://sinpatronesperu.blogspot.com/2011/06/caso-de-las-esterilizaciones-forzadas.html>. It is also hoped that the new government which took office in July 2011 will make these cases part of its agenda, especially as related to reparations for the victims. TeleSUR Broadcast, *supra* note 129.

¹³² 8 PERU TRC REPORT, § 2.1, at 47.

¹³³ *Id.* at 47, 46.

¹³⁴ Women affected during the violence were mostly indigenous mountain people, who are the object of great racial discrimination in Peru. As a result, these women suffered not the disadvantages of being female but also that experienced by indigenous people who are “objects of mockery, cruelty and humiliation” because of their race. *Id.* at 47. On the other hand, it should be noted that women in Peru experienced disadvantages as females to a much lesser degree than those in Sierra Leone. For example, there is free universal education in which girls fully participate. The Constitution of Peru also establishes that regional and municipal governments must have gender quotas. CONSTITUCIÓN POLÍTICA DE PERU (1993) art. 191, available at <http://www.tc.gob.pe/legconperu/constitucion.html>.

result, its efforts fell far short of those one in Sierra Leone.¹³⁵

2. Greensboro, North Carolina

The first Truth and Reconciliation Commission in the United States was established in Greensboro, North Carolina in 2004¹³⁶ to

¹³⁵ A truth commission with a different framework but with an outcome similar to the one in Peru exists in Rwanda. Unlike other truth commissions, the National Unity and Reconciliation Commission in that country (NURC) is a permanent body that is an independent government agency. See NATIONAL UNITY AND RECONCILIATION COMMISSION, <http://www.nurc.gov.rw> (last visited May 29, 2011). It was established in 1999 to conform to the requirement in the peace agreements of 1992 for the establishment of a National Commission on Human Rights and a Commission of Inquiry to investigate violations of human rights. See PROTOCOL OF AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF RWANDA AND THE RWANDESE PATRIOTIC FRONT ON THE RULE OF LAW, arts. 15, 16, available at <http://www.usip.org/publications/truth-commission-rwanda-99>. The creation of the Commission was delayed for seven years because violence broke out again after the signing of the peace agreement resulting in the genocide that brought international attention to Rwanda. See Law No. 03/99 of 12/03/1999, Establishing the National Unity and Reconciliation Commission (March 12, 1999), available at <http://www.unhcr.org/refworld/docid/3ae6b59a18.html>. The new Constitution of 2003 established the Commission as “an independent national institution.” CONSTITUTION OF THE REPUBLIC OF RWANDA (June 4, 2003) art. 178, available at <http://www.mod.gov.rw/?Constitution-of-the-Republic-of>. The NURC is responsible for promoting unity and reconciliation between citizens of Rwanda. To do so, it is charged with: sensitizing the country and creating programs on national unity and reconciliation; carrying out research and disseminating information on peace, unity, and reconciliation; and denouncing those which promote divisionism. Law No. 35/2008, Determining the Organization and Functioning of the National Unity and Reconciliation Commission, art. 4 (Aug. 8, 2008), available at <http://www.unhcr.org/refworld/docid/4a3f87922.html>. The Commission conducted a study on the role of women in achieving reconciliation and unity ten years following the end of the conflict and concluded that women have provided “considerable” and even “unprecedented” contribution to peace and reconciliation in Rwanda. Much of this has been done at the grassroots level, where women have been working to rebuild trust and reconcile former families. Unfortunately, women have been hampered by the gendered perceptions that still exist in the nation as well as by poverty, gender based violence, and lack of support for their initiatives. JOHN MUTAMBA & JEANNE IZABILIZA, THE ROLE OF WOMEN IN RECONCILIATION AND PEACE BUILDING IN RWANDA: TEN YEARS AFTER GENOCIDE 1994-2004: CONTRIBUTIONS, CHALLENGES AND WAY FORWARD (2005), available at <http://www.nurc.gov.rw/researches/the-role-of-women-in-reconciliation-and-peace-building-in-rwanda.html>. Thus, like in Peru, the particular contributions made and human rights abuses suffered by women have been recognized, but the problems they face still go unaddressed.

¹³⁶ There have been other truth recovery processes in the United States, such as the Tulsa Race Riot Commission, the Rosewood Florida Commission, and the Wilmington Race Riot Commission. For detail on these processes, see Northeastern University School of Law's Civil Rights and Restorative Justice Project at http://nuweb9.neu.edu/civilrights/?page_id=367 (last visited Oct. 13, 2011). These were state-sponsored historical inquiries that inspired the Greensboro TRC process. GREENSBORO TRC REPORT, *supra* note 1, at 13. The GTRC identified itself as the first truth-recovery effort in the United States informed by international experience and self-identified as a Truth and Reconciliation

examine the “context, causes, sequence and consequences”¹³⁷ and to make recommendations for community healing concerning the tragic events that took place there almost twenty-five years earlier. On November 3, 1979, at the beginning of a march against the Ku Klux Klan in the City’s Morningside Homes, a predominantly African-American public housing community, five Communist Worker’s Party demonstrators were shot and killed and ten others wounded.¹³⁸ The shooting was captured on videotape but there were no convictions after two criminal trials in front of all-white juries.¹³⁹

Although modeled after the Commission in South Africa, the Greensboro TRC (GTRC) differed significantly from it. First, the GTRC’s primary focus was on the ramifications of one particularly horrific incident rather than a broad era of widespread repression.¹⁴⁰ Second, the GTRC differed in its involvement of women. From its inception, women played a leadership role, first in creating and then in running the process as commissioners and as staff.

The GTRC’s mandate did not explicitly include a directive to consider how the event had specifically impacted women’s lives in the community. There is no way to know exactly why this occurred but some speculation is possible. First, race and economic justice were the focus of the Communist Worker’s Party and the local groups who organized both the November 3rd march

Commission modeled after, although quite different from, the government sponsored commission in South Africa. GREENSBORO TRUTH AND RECONCILIATION COMMISSION, <http://www.greensborotrc.org> (last visited Oct. 13, 2011).

¹³⁷ MANDATE FOR THE GREENSBORO TRUTH AND RECONCILIATION COMMISSION, GREENSBORO TRUTH AND COMMUNITY RECONCILIATION PROJECT, *available at* www.gtrcp.org/mandate.php (last visited Sept. 2, 2011).

¹³⁸ See generally *Executive Summary* of GREENSBORO TRC REPORT, *supra* note 1, at 2.

¹³⁹ A civil case for wrongful death against the Greensboro Police Department and the KKK, however, did result in civil damages for one of the survivors. As stated earlier, a much more complete description of the Greensboro process is contained in a companion article describing the development of TRC processes in the United States and of how to generally improve their outcomes in the future.

¹⁴⁰ Nonetheless, the Greensboro process did move from the incident itself to examine broader issues of race and class in the local community, before and after the deaths in 1979, as a means to try to promote healing and reconciliation for the conflicts that still exist today. See GREENSBORO TRC REPORT, *supra* note 1, at 312. In its final report, the GTRC found a pattern of resisting change and suppressing the efforts of those who seek it that continues in Greensboro. For example, revelations involving high-level misconduct including institutionalized racial profiling and admissions of police wire surveillance of private citizens including the GTRC’s executive director, prompted the Greensboro Police Chief to resign early in 2006. See *id.* at 25.

and, later, the GTRC process. It makes sense that these issues would dominate the process from the beginning, especially in writing the mandate. The 1970s were also a time when concern about gender inequality was just beginning to take root in this country so there may not have been women's groups and a strong feminist consciousness at the time of the event. Even in the 1990s, when consciousness of women's issues had been significantly raised, they would only feature in the truth commission process if they were highlighted during the planning stages and the delivery of gender training to staff and prospective commissioners.¹⁴¹

What is clear is that if the mandate had explicitly focused attention on how women in Greensboro, particularly those living in poor communities such as Morningside Homes, were treated by various institutions, both public and private, it would have resulted in a more realistic picture of the community in which this tragedy occurred and, more importantly, a more complete delineation of what it needed to remedy. The mandate for the GTRC ultimately did not focus on harms caused to particular groups, like women, in the community.

In its defense, the GTRC did include a focus on second-level rights, that is, the "systematic destruction of [the] communit[y] through the denial of socio-economic rights and poverty."¹⁴² This focus created the possibility that the process would address some issues affecting women. In fact, although none of the final recommendations focused specifically on women, they did address some of the economic inequalities that often impact women more than men. Most notably, they included a call for the institution of a living wage for all city and county employees; an advance that would almost certainly provide a greater benefit to women because, on average, they earn less than men and single mothers are more likely to be exploited as cheap labor.¹⁴³ In terms of its benefits for women, the outcome therefore appears to fall somewhere between the South Africa experience and the one in Sierra Leone. The GTRC's failure to address concerns like

¹⁴¹ A comparison between the experiences in South Africa and Sierra Leone demonstrates this point clearly. See discussion *supra* notes 38-82, 92-124 and accompanying text.

¹⁴² Goldblatt, *supra* note 31.

¹⁴³ The section of the report where this recommendation is made is entitled "Citizen Transformation/Engagement Section." It makes reference to issues of poverty, oppression, labor, race capital, privilege, and justice. GREENSBORO TRC Report, *supra* note 1, at 206. It is both significant and revealing that gender was not added to this list.

violence against women, reproductive rights, sexual harassment, and wage inequality in the workplace nonetheless represents a lost opportunity to bring attention to and make specific recommendations designed to alleviate gender inequalities in Greensboro, particularly those experienced by Black women.

3. *East Timor*

The Commission for Reception, Truth, and Reconciliation (CRTR), which operated in East Timor from 2002 to 2005, was charged with investigating abuses that occurred during the Indonesian occupation between 1974 and 1999, and its mandate required it to examine human rights violations. While the CRTR understood that this could limit its examination to state actor violations of first generation rights,¹⁴⁴ it nevertheless decided to include in its investigation criminal acts, violations of international humanitarian law, and violations of international human rights *standards* (as opposed to law, which would have limited it to state actors).¹⁴⁵

As a result of this decision, the CRTR addressed issues that the South African TRC considered to be outside the scope of its mandate. For example, an entire section of its Final Report described the impact of the Indonesian occupation on the economic and social rights of the people of East Timor.¹⁴⁶ While this section did not single women out as the primary targets of these violations, they were the people most affected. In addition, the Final Report included gender analysis in some areas such as documenting the percentage of women who suffered each type of physical violation described in the report.¹⁴⁷ It also included a section detailing the sexual violence experienced by women¹⁴⁸ and how women were coerced to use contraceptives against their religious beliefs.¹⁴⁹

¹⁴⁴ CHEGA!: THE FINAL REPORT OF THE COMMISSION FOR RECEPTION, TRUTH, AND RECONCILIATION IN EAST TIMOR pt. 2, ¶¶ 7-10 (2005), available at <http://www.etan.org/news/2006/cavr.htm>. Chega means “no more, stop, enough.”

¹⁴⁵ *Id.* ¶¶ 11-14.

¹⁴⁶ *Id.*, pt. 7.9 (entitled Economic and Social Rights).

¹⁴⁷ *Id.*, pt. 6, ¶¶ 18, 99, 102, 136-40, 145-51, 186-88, 201-203, and accompanying charts. These physical violations were divided into non-fatal violations (arbitrary detentions, torture, ill-treatment, displacement, and sexually based abuses) and fatal violations (killings and death due to illness and hunger).

¹⁴⁸ *Id.*, pt. 7.7 (entitled Sexual Violence).

¹⁴⁹ *Id.*, pt. 7.9, ¶¶ 92-108. The section on Violations of Economic and Social Rights

Ultimately, however, the impact of the CRTR was more like the one in Peru than Sierra Leone. Thus, while it differed from South Africa by including women's issues in its mandate and its work, in the end it focused primarily on the experience of women during conflict and war rather than on the broader societal circumstances that permitted these violations to occur. This is especially regrettable in East Timor, where the Commission's mandate asked that it identify "practices and policies, whether of State or non-State actors which need to be addressed to prevent future recurrences of human rights violations."¹⁵⁰ While this objective would seem to require both a discussion of the cultural and societal norms that hold women in a disadvantaged condition and of appropriate recommendations to remedy them, neither was forthcoming.

V. SUMMARY AND RECOMMENDATIONS

While truth commissions have generally been established in transitional societies or communities where there has been serious abuse or injustice, Greensboro presents an example of how they may also have utility in developed countries. Nevertheless, the above examples demonstrate how such commissions will fail to improve the lives of women unless issues of gender are taken into account from the beginning of the process. Using the process in Sierra Leone as a model, this means that women should be in positions of leadership at least equal to those of men during the organizing and planning stages. While this is not to say that men can never protect women's interests, they are much more likely to do so if women occupy leadership positions. In addition, placing women in these posts will likely signify to other women that their gender's particular concerns are being taken seriously and they too should get involved.

As soon as the planning has begun, differences in gender then need to be explicitly considered in all phases of the process. This means that the mandate should be framed, the Commissioners and staff trained, the research, interviews and hearings conducted, and

includes an analysis of the right to an adequate standard of living (Part 7.9.2), the right to health (Part 7.9.3), and the right to education (Part 7.9.4).

¹⁵⁰ United Nations Transitional Administration in East Timor (UNTAET), *On the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor*, Reg. No. 2001/10 § 3.1(d), available at <http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg10e.pdf> (emphasis removed).

the recommendations written in a manner that takes into account the special concerns of women. The example of South Africa, where women were reluctant to testify about being sexually abused in a public setting, or in any setting, because of cultural inhibitions, shows how difficult this task may be. Sierra Leone demonstrates, however, that these challenges can be overcome.

In some instances, there will clearly need to be a lot of groundwork completed in order to guarantee that the process uncovers the complete nature of the human rights violations. What this means from a practical standpoint is that adequate financial resources will need to be provided in both the operations stage and, even more importantly, during implementation of the recommendations. Funding for operations and reparations is key to ensuring that truth commissions meet their four goals: (1) strengthening democracy; (2) reducing conflict; (3) facilitating restorative justice; and (4) avoiding similar human rights violations in the future. It is therefore recommended that there be a dedicated budget or special investigators to look at the impact of the human rights abuses on women.¹⁵¹ Only then is there likely to be true reconciliation for all victims of human rights abuses.

In an effort to highlight what may be necessary to establish a truth commission that truly addresses one of the most common types of abuse suffered by women, I propose the following plan.

A. Truth Commission Concerned with Violence against Women

Because truth commissions are seen as “useful models” and are “heartily recommended” for the purpose of reconciling communities to the “tragic, unjust events in their own histories,”¹⁵² they are useful not only in dealing with the challenge of large scale conflict or human rights abuses, but also in healing communities that have experienced human rights abuses on a smaller scale. In that context, they can effectively assist a community in moving “toward a deeper understanding of past injustice and long term

¹⁵¹ Moreover, including an explicit gender perspective may increase the likelihood of funding. THE WORLD BANK, GENDER, JUSTICE, AND TRUTH COMMISSION 28 (June 2006), available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/GJTClayoutrevised.pdf> (stating that the World Bank could help in the TC process by aiding in a TRC’s proposed implementations to promote socioeconomic growth and the rule of law without exceeding its mandate or purpose).

¹⁵² LISA MAGARELL & JOYA WESLEY, LEARNING FROM GREENSBORO 241 (2008) (citing GREENSBORO TRC REPORT, *supra* note 1, at 390).

social change”¹⁵³ concerning what have otherwise been seen as intractable societal problems. A truth commission could therefore be useful in addressing the harms from which women most need protection and moving society closer to the place where such violence no longer exists.

Unlike other forms of human rights violations that take place in the public sphere and as such are generally visible to the community, violations against women, particularly domestic violence, often take place in the privacy of the home. Establishing a truth commission that addresses this kind of violence will therefore require a comparatively high level of support from both the community and its political leadership, many members of which may first need to be educated about the extent of the problem. Such information is readily available and indicates that intimate partner violence is a serious problem worldwide and disproportionately involves men attacking women.¹⁵⁴ It is so widespread that, for example, one in four women in the U.S. has or will experience domestic violence in her lifetime¹⁵⁵ and thirty-three percent of women who were murdered suffered this fate at the hands of an intimate.¹⁵⁶

The leadership and community will also need to understand the nature of the problem: that domestic violence is in fact a violation of a woman’s human rights. Although it is generally accepted that domestic violence is “a serious social evil,”¹⁵⁷ most mainstream human rights organizations refuse to consider it a human rights issue because it is composed of “isolated incidents of

¹⁵³ *Id.* at 229.

¹⁵⁴ Indeed, “violence against women is predominantly intimate partner violence.” Jean Ferguson, *Professional Discretion and the Use of Restorative Justice Programs in Appropriate Domestic Violence Cases: An Effective Innovation*, 4 CRIM. L. BRIEF 3, 3 (2009). In the United States, for example, there are an estimated 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend every year, approximately eighty-five percent of which are directed towards women. CALLIE MARIE RENNISON, U.S. DEP’T OF JUST., NCJ 197838, BUREAU OF JUSTICE STATISTICS CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001, at 1 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv01.pdf>.

¹⁵⁵ Rennison, *supra* note 154.

¹⁵⁶ *Id.* The majority of those murdered had experienced violence at the hand of their partners during the course of the year prior to their death. Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 293 (2005).

¹⁵⁷ Bonita C. Meyersfield, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 383 (2003) (citing Domestic Violence Act 116 of 1998, pmb. (S. Afr.)).

harm by individuals against individuals, with no state or structural component.”¹⁵⁸ This conclusion is based on two misconceptions. The first is that domestic violence is simply “conduct between intimates”¹⁵⁹ and/or a “lover’s quarrel.”¹⁶⁰ Such beliefs must be countered with thorough education on how such violence actually “assaults life, dignity, and personal integrity . . . [and] transgresses basic norms of peaceful coexistence.”¹⁶¹ In effect, a woman’s inherent right to be seen as human is violated through the “inhumanity of [] pain, humiliation, and fear”¹⁶² If someone still cannot accept that being free of domestic violence falls within the legal definition of a basic human right, then perhaps they can be convinced by an appeal to their conscience and sense of decency that domestic violence is a wrong of the highest magnitude.¹⁶³

The second misconception of many human rights organizations is that no state actors are implicated in an act of domestic violence. This view stems from a lack of awareness of how the state, even if it does not directly commit the harm, often acquiesces to and ratifies such acts when its agents—police, prosecutors, and judges—fail to adequately respond. Such inaction means that the state is an accomplice in the causing of harm and is therefore implicated in its commission.¹⁶⁴ Examples

¹⁵⁸ Meyersfield, *supra* note 157, at 398.

¹⁵⁹ *Id.* at 384. The irony of the reluctance of international human rights organizations to raise domestic violence to the level of a human rights violation is that at least the most severe forms of domestic violence conform to the definitions of official torture in international conventions, being composed of the same physical and psychological elements. One such definition of torture is: “[t]he intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.” Rome Statute of the Int’l Crim. Ct., art. 7(2)(e), Jul. 17, 1998, 37 I.L.M. 999, available at <http://www.icc-cpi.int/Menu/ICC/Legal+Texts+and+Tools/Official+Journal/Rome+Statute.htm>. The parallel with domestic violence is readily apparent and, were it not confined to the “private” sphere of the familial and the domestic, the sphere relegated to women, there would be a great outcry for human rights organizations everywhere to fight these violations.

¹⁶⁰ Meyersfield, *supra* note 157, at 382-83.

¹⁶¹ Romany, *supra* note 21, at 85.

¹⁶² Meyersfield, *supra* note 157, at 393 (internal quotations omitted). As another author has said, it ravages “the inherent dignity and worth of all members of the human family, the inalienable right to freedom from fear and want, and the equal rights of men and women.” Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 58 ALB. L. REV. 1119, 1120 (1995).

¹⁶³ BOUVARD, *supra* note 28, at 248.

¹⁶⁴ Romany, *supra* note 21, at 100.

include failing to take action to prevent the violence of one partner against the other and engaging in disparate responses to domestic violence as compared to other assault cases.¹⁶⁵ Indeed, it has been effectively argued that at least part of the reason violence against women is so prevalent is that the state has responded discriminatorily to violent crimes based on the gender of the victim.¹⁶⁶

By making the effort to correct these misconceptions about the real nature of domestic violence, the necessary political will can be achieved within the larger community to understand and support a process designed to reveal the truth about violations of basic human rights and develop a means to remediate them.¹⁶⁷ Such a concerted educational effort will also help persuade the victims of domestic violence to cooperate with the process.

¹⁶⁵ *Id.* at 100-01. This rationale was utilized in some U.S. cases to find municipalities liable for their inaction. *See, e.g.*, *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978); *Watson v. City of Kansas*, 857 F.2d 690 (10th Cir. 1998). There is also international precedent holding a state responsible for acts not carried out explicitly by agents of the government if by its actions or inactions it fails to prevent the violation and to punish those responsible. A state has a duty to make a good faith effort to investigate and prosecute violators of rights and to compensate victims for their injuries. This requires that states perform due diligence by establishing “reasonable measures of prevention that a well administered government could be expected to exercise under similar circumstances.” *See Romany, supra* note 21, at 101-03 (discussing *Velásquez Rodríguez v. Honduras*, 28 I.L.M. 294 (1989), decided by the Inter-American Court of Human Rights). Liability ensues when a state fails to “take reasonable steps to prevent or respond to an abuse” due to a “failure to exercise due diligence and to provide equal protection in preventing and punishing such abuses by private individuals.” AMNESTY INT’L, *BROKEN BODIES, SHATTERED MINDS: TORTURE AND ILL-TREATMENT OF WOMEN* (2001), available at <http://web.amnesty.org/library/index/engact400012001>. In the case of domestic violence, such a standard would find states responsible for the acts of individuals when they fail to “protect their female citizens’ rights to physical integrity and, in extreme cases, to life” and thereby sends the message to abusers that their attacks “are justified and will not be punished”; to avoid being complicit, states must take “active measures to protect, prosecute and punish private actors who commit abuses.” *Meyersfield, supra* note 157, at 410 (citing Special Rapporteur on violence against women, its causes and consequences, *Rep. on Violence against women in the family*, Comm’n on Human Rights, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (by Radhika Coomaraswamy)).

¹⁶⁶ *See, e.g.*, Charlesworth, *Women’s International Human Rights, supra* note 4, at 72 (describing Women’s Rights Project of Americas Watch documentation of three types of violence against women in Brazil—wife-murder, battery, and rape—that are subject to discriminatory non-prosecution and even overtly accepted in some cases). *See also Romany, supra* note 21, at 103-04 (discussing how law enforcement in Brazil rarely investigate wife murders fully, how police and prosecutors charge wife-murderers with lesser crimes, and how the criminal justice system sanctions defenses that reduce the punishment or absolve the perpetrator).

¹⁶⁷ *Romany, supra* note 21, at 98.

Without it, as was demonstrated in South Africa, many domestic violence targets and survivors who have removed themselves from violent relationships may be too afraid and/or ashamed to testify about their experiences, especially without any assurance of safety or that their words will be useful to putting an end to the problem.

There is also a third group to consider: those bystanders whose inaction or inadequate action may have allowed the violence to occur or continue. These witnesses include not only the previously mentioned public authorities, such as the police, prosecutors, and judges, but also doctors, social workers, the media, religious leaders, neighbors, and the members of the immediate family of both the woman and her batterer. Individuals in this group may feel guilt for their failure to assist women who have experienced violence at the hands of their partners or for turning a blind eye to the overall problem. For them to participate, they will need to be made confident that exposing their inaction will not be used to bring them into disrepute, but rather to help eradicate this problem and bring about meaningful community building.

One other potential obstacle to the efficacy of a truth commission for violence against women is that they are designed to examine past conflicts and domestic violence is ongoing. This objection can be overcome, however, by focusing the inquiry on a specific time period or perhaps, as in Greensboro, on an individual horrendous event, possibly involving multiple incidents, such as a notorious series of domestic-violence related deaths. The key is to focus on a period or an event that would allow a truth commission to investigate the roles played by various actors in the community, including family and friends and those in both public and private sectors. Assuming that happens, the recommendations of the truth commission would be applicable to virtually all cases of domestic violence, and their implementation would help remediate both current and future crises.

Once the needed community and staff education effort has been made, the process in Sierra Leone and the belated effort to address women's issues in South Africa can serve as models for actually carrying out the process. The key is to make women feel physically safe, provide sufficient anonymity to protect their privacy, and, perhaps most importantly, convince them that real change will occur if they cooperate. Once prospective witnesses are convinced that these factors are present, anonymous interviews, testimony from behind screens, all-women panels and

mostly female audiences should enable the commission to gather all the information it needs to effect remediation.

VI. CONCLUSION

When truth commissions do not make a specific effort to bring women's issues to the fore, it is the experience of men that becomes the norm against which all human rights violations are measured. Even when violations experienced by women are examined, they are usually viewed only through the lens of sexual violence and similar experiences. The myriad of abuses experienced by women in the private sphere of the home and family, which are often the consequence of the violence at issue in the commission's investigation, remain largely invisible. Human rights violations experienced by women during conflict are also the result of discriminatory practices and attitudes already present in society that must be addressed if truth commissions are to be effective at their ultimate goal: the prevention of all such future violations and the reconciliation of all groups and individuals in society. However, as the experience of Sierra Leone demonstrates, there is reason to hope. Its TRC demonstrated that it is possible for communities to establish truth commissions to investigate human rights violations experienced by particular groups, like women, and to find ways to reconcile, respond to, and end the violence against them.