

# UNDERSTANDING THE EXTENT TO WHICH TRUTH COMMISSIONS ARE GENDER SENSITIVE AND PROMOTE WOMEN'S ISSUES: COMPARING AND CONTRASTING THESE TRUTH COMMISSION ROLES IN SOUTH AFRICA, GUATEMALA, PERU, SIERRA LEONE AND LIBERIA

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## ABSTRACT

*This Article aims to identify the role gender and specifically women's issues play within truth commissions, and how this influences truth-seeking processes within transitional justice frameworks. It seeks to understand how truth commissions can be gender-sensitive in their work and how outcomes for women can be enhanced. The Article further seeks to understand how these processes can play a part in dealing with both the specific effects of violence against women, but also on issues that affect discrimination against women, to ensure that these affect the society less moving forward. Focusing on the experience of truth commissions in five countries, South Africa, Guatemala, Peru, Sierra Leone, and Liberia, the analysis seeks to determine the extent to which truth commissions have included women's needs and interests in their work. Apart from women's direct participation as witnesses or commissioners within truth commissions, the research also seeks to understand the possibilities and implications of including gender-sensitivity within truth commission design, implementation, processes and outcomes. Pointing out how women's needs and concerns have been included in truth commissions' processes and activities is aimed at providing conclusions on their effects and what could possibly be done to increase positive outcomes for women in future processes.*

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I. INTRODUCTION

Transitional justice has become the paradigmatic approach for states and scholars alike to deal with a violent past and promote peace and nation building.<sup>1</sup> It can be described as judicial and non-judicial approaches to dealing with the legacy of human rights violations in societies emerging from conflict or authoritarian rule.<sup>2</sup> The concept of transitional justice includes the normative, legal, and political concerns of post-conflict countries in dealing with atrocities, providing accountability, and finding ways to move towards peaceful and democratic societies.<sup>3</sup> Beside the vast scholarly field of transitional justice as a research discipline, stakeholders and actors involved in processes of transitional justice have become more diverse and are driven by a variety of different interests.<sup>4</sup>

As different needs and interests of actors and stakeholders of transitional justice become more visible and acknowledged, the lack of attention to women's needs continues to draw interest from the transitional justice community. Women and girls are affected by every kind of political violence, violent conflict, and consequently the transitional justice procedures that follow them. During armed conflict, women generally

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1. PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 8 (2010); Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 85 (2003); CATHERINE O'ROURKE, GENDER POLITICS IN TRANSITIONAL JUSTICE 101 (2014); KIERAN McEVoy & LORNA MCGREGOR, TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 1 (2008); KIERAN McEVoy, LETTING GO OF LEGALISM: DEVELOPING A 'THICKER' VERSION OF TRANSITIONAL JUSTICE 15 (2008); LORNA MCGREGOR, INTERNATIONAL LAW AS A 'TIERED PROCESS': TRANSITIONAL JUSTICE AT THE LOCAL, NATIONAL AND INTERNATIONAL LEVEL, 48, 55 (2008).

2. See Jeremy Sarkin, *Redesigning the Definition a Truth Commission, but Also Designing a Forward-Looking Non-Prescriptive Definition to Make Them Potentially More Successful*, 19 HUM. RTS. REV. 349 (2018).

3. O'ROURKE, *supra* note 1, at 17.

4. Jeremy Sarkin & Tetevi Davi, *Examining the Criticisms Levelled Against Transitional Justice: Towards an Understanding of the State of the Field*, 11 HUM. RTS. & INT'L LEGAL DISCOURSE 1, 7-22 (2017).

constitute most of the civilian population and are often particularly targeted and disproportionately affected by war and its consequences, irrespective of their roles in conflict.<sup>5</sup> Women and men experience conflict in different ways.<sup>6</sup> They often have different needs and interests in transitional and post-conflict societies that should be considered and be included in such processes.

However, women are not only victims or survivors of conflict: they are also involved as combatants and perpetrators, stakeholders, politicians, or as peace and human rights activists. In spite of being involved in all these ways, women often become marginalized or completely excluded from peace negotiations. They are often largely excluded from the processes that lead up to the establishment of transitional justice mechanisms.<sup>7</sup> In practice, gender-sensitivity within transitional justice mechanisms and instruments has not received a great deal of attention.<sup>9</sup> Women's concerns are frequently only considered as an afterthought in the design, processes, activities, and outcomes of such institutions.<sup>10</sup>

Truth commissions (TCs) are one of the mechanisms most often agreed on in the aftermath of violence.<sup>11</sup> They are so frequently relied on because of their multifunctional role together with other instruments of transitional justice.<sup>12</sup> Essentially investigatory bodies, truth

5. S.C. Res. 1325, ¶ 4 (Oct. 31, 2000); Fionnuala Ní Aoláin & Eilish Rooney, *Underenforcement and Intersectionality: Gendered Aspects of Transition for Women*, 1 INT'L J. TRANSITIONAL JUST. 338, 343 (2007); ABIGAIL GYIMAH, GENDER AND TRANSITIONAL JUSTICE IN WEST AFRICA: THE CASES OF GHANA AND SIERRA LEONE 3 (2009).

6. Christine Bell & Catherine O'Rourke, *Does Feminism need a Theory of Transitional Justice? An Introductory Essay*, 1 INT'L J. TRANSITIONAL JUST. 30 (2007).

7. However, the mere presence (i.e. descriptive representation) of women does not automatically provide for an inclusion of women's interests. Catherine O'Rourke, *Feminist Scholarship in Transitional Justice: A De-Politicising Impulse?*, 51 WOMEN'S STUD. INT'L. F. 118, 124 (2014); EILISH ROONEY, INTERSECTIONALITY: A FEMINIST THEORY FOR TRANSITIONAL JUSTICE 13 (2015).

8. Bell & O'Rourke, *supra* note 6, at 25.

9. See generally Wendy Lambourne & Viviana Rodriguez Carreon, *Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women*, 17 HUM. RTS. REV. 71, 87-89 (2016).

10. Jocelyn Viterna & Kathleen M. Fallon, *Democratization, Women's Movements, and Gender-Equitable States: A Framework for Comparison*, 73 AM. SOC. REV. 678 (2012); ROONEY, *supra* note 7, at 96, 101.

11. See Eric Wiebelhaus-Brahm, *Transitional Justice, Civil Society and the Development of the Rule of Law in Post-Conflict Societies*, 9 INT'L J. NOT-FOR-PROFIT L. 69 (2007); RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: TRUTH COMMISSIONS, OFFICE OF THE HIGH COMM'R FOR HUM. RTS. 1, HR/PUB/06/1 (2006).

12. See Helen Scanlon & Kelli Muddell, *Gender and Transitional Justice in Africa: Progress and Prospects*, 9 AFR. J. CONFLICT RESOL. 11 (2009).

commissions primarily address the past<sup>13</sup> but are at the same time forward-looking in their identification of continuing structural causes of conflict and violence and how to remedy them.<sup>14</sup> Their assessment and appraisal of the past is meant to prevent the recurrence of conflict. TCs can also serve to (re)build a sustainably peaceful, structurally transformed society. As victim-centric bodies, TCs encourage the participation of those affected by violence and are potentially more receptive towards including civil society groups' cooperation,<sup>15</sup> and accommodation of their interests.<sup>16</sup> Often, this encouragement is the only way for women's interests to become points of consideration within TCs if they have not been included from the outset on. TC hearings, in fact, allow for the direct and unfiltered input from witnesses affected by the conflict. Being directed at the commissioners and drafters of recommendations to be included within their final report, not only allows for victims and witnesses to tell their stories and make them part of the official record, but allows people affected by conflict to voice their issues, grievances and expectations. For example, it allows them to express their wishes about receiving reparations and their vision for a more just society.<sup>17</sup>

This Article aims to identify the role gender and specifically women's issues play within TCs, and how this influences truth-seeking processes within transitional justice frameworks. It seeks to understand how TCs can be gender-sensitive in their work and how outcomes for women can be enhanced. Thus, gender-sensitivity and women's needs are focused on. These terms are used conceptually interchangeably with the purpose of determining what TCs have done, and can do, to impact the

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13. They should also address the present as violence sometimes to continue to exist in societies where Transitional Justice is embarked on. See generally Jeremy Sarkin, *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, 7 J. INT'L HUM. LEGAL STUD. 294 (2016).

14. See generally Jeremy Sarkin, *The Interrelationship of Nation Building, Reconciliation and Guarantees of Non-Recurrence (or Non-Repetition) of Human Rights Violations Using the South African Transition as an Illustration: How Victim Rights and Needs Can Be Better Achieved.*, 5 J. VICTIMOLOGY 9 (2017).

15. David Backer, *Civil Society and Transitional Justice: Possibilities, Patterns and Prospects*. 2 J. HUM. RTS. 297, 301 (2003).

16. HAYNER, *supra* note 1, at 13.

17. See *id.* at 145; Kimberly Theidon, *Gender in Transition: Common Sense, Women, and War*, 6 J. HUM. RTS. 453, 474 (2007); NAHLA VALJI (2012), A WINDOW OF OPPORTUNITY: MAKING TRANSITIONAL JUSTICE WORK FOR WOMEN 2 (2012). Criteria prioritized for recommendations and reforms by affected populations often focus on socioeconomic and redistributive justice mechanisms. Paul Gready & Simon Robins, *From Transitional to Transformative Justice: A New Agenda for Practice*, 8 INT'L J. TRANSITIONAL JUST. 339, 346-47 (2014).

position of women in a society where human rights violations have occurred. The Article further seeks to understand how these processes can play a part in dealing with both the specific effects of violence against women, as well as on issues that affect discrimination against women to ensure that these affect the society less moving forward. The analysis therefore seeks to determine the extent to which TCs have included women's needs and interests in their work. Apart from women's direct participation as witnesses or commissioners within TCs, the research also seeks to understand the possibilities and implications of including gender-sensitivity within TC design, implementation, processes and outcomes. Pointing out how women's needs and concerns have been included into TCs' processes and activities is aimed at providing conclusions on their effects and what could possibly be done to increase positive outcomes for women in future processes.

The study focuses on five countries and deals with them in chronological order of the time span of the work of their TCs: South Africa (1995 – 2002), Guatemala (1997 – 1999), Peru (2001 – 2003), Sierra Leone (2002 – 2004), and Liberia (2006 – 2009).<sup>18</sup> Relatively speaking, few TCs have taken up gender issues as a core component of their work. There are a number of other TCs, besides some of the models examined in this Article, that have been identified as being somewhat gender-sensitive,<sup>19</sup> including Haiti, Timor-Leste, and Morocco. However, the five chosen in the study help to examine a range of different matters taken up by these institutions. The five models show the different ways that gender issues can become part of the work of these institutions. The focus on these countries also gives a birds-eye view into the issues concerning gender and women in a range of commissions over different time periods. Thus, to some extent progression can be seen. Importantly these five case studies cover different regions, with three case studies being African and two being Latin American. The various models also reflect specific matters that indicate how the institution dealt with gender issues, such as Peru being the first to include a gender unit. South Africa is generally described as a more successful

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18. Not included in this analysis but also commonly mentioned are the commissions of Haiti (1995 – 1996), Timor-Leste (2002 – 2005), and Morocco (2004 – 2005).

19. Anu Pillay, *Views from the Field: Truth Seeking and Gender: The Liberian Experience*, 9 AFR. J. CONFLICT RES. 91, 94 (2009); VALJI, *supra* note 17, at 9–12; Julissa Mantilla Falcón, *The Peruvian Case: Gender and Transitional Justice*, in WOMEN AND TRANSITIONAL JUSTICE: THE EXPERIENCE OF WOMEN AS PARTICIPANTS 184, 191 (Lisa Yarwood, ed., 2013); Sheila Meintjes, *Gendered Truth? Legacies of the South African Truth and Reconciliation Commission*, 9 AFR. J. CONFLICT RES. Vol. 101, 109 (2009); VASUKI NESIAH, TRUTH COMMISSIONS AND GENDER: PRINCIPLES, POLICIES AND PROCEDURES 5 (2006).

commission,<sup>20</sup> with more resources and acting as a role model for later commissions. It was responsive to the inclusion of women's concerns because of the political opportunity structure and framing within the narrative of equal rights and non-discrimination of the transition from Apartheid in general. It dealt with gender much more than others for a variety of reasons. By contrast, Guatemala is an example of a commission without legal powers and with little space for civil society participation and inclusion. It indicates how civil society can promote the inclusion of matters that were not really incorporated initially by the commission. Sierra Leone and Liberia are examined, as they are both examples of TCs that were mandated to be gender-sensitive and to take up women's issues.

The Article in the first section examines the general global context of women's rights and sexual violence, and the increasing role of international law in dealing with these matters. It seeks to determine why it is imperative for TCs to incorporate gender issues and to have a gender focus in their work. The next section deals theoretically with how gender-sensitivity can be included in the design, implementation, processes, and outcomes of TCs as a means to later assess the extent to which gender concerns have been incorporated in TC practice in a range of countries. The following section then analyzes the extent to which the TCs of South Africa, Guatemala, Peru, Sierra Leone, and Liberia have included such concerns in their efforts. Each country is examined separately using the same issues to determine what they did as far as these issues are concerned. Firstly, the context of each country is examined. Then the Article analyzes the extent to which commissioners and staff were women, the extent to which the TC gender mainstreamed its work, whether they had special or thematic gender hearings, and the extent to which there was gender-sensitivity in the TC's final reports. The ensuing section of the Article determines what lessons can be learnt overall from the design, implementation, processes, and outcomes of the various processes as far as gender issues are concerned. Overall conclusions are then made as to what can be learnt for future processes.

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20. JEREMY SARKIN, *CARROTS AND STICKS: THE TRC AND THE SOUTH AFRICAN AMNESTY PROCESS* 7 (2004).

II. WOMEN'S RIGHTS AND SEXUAL VIOLENCE AS NECESSARY PRECONDITIONS FOR GENDER-SENSITIVITY IN TRUTH COMMISSIONS

A. *Sexual and Gender-based Violence During Conflict*

On account of their sex, women are often targeted for sexual violence and torture.<sup>21</sup> They may be subjected to abductions, slavery, and forced labor due to their gender.<sup>22</sup> These reasons often overlap and can target women's sexuality and gender roles at the same time.<sup>23</sup> But not all gender-based violence is also sexual in nature. Therefore, sexual violence can be motivated by gender-based structural violence, regardless of whether it is carried out against men or women, but it does not have to be. Additionally, sexual violence is often intrinsically based in gender inequality and the hierarchization of sexualized roles, meanings, stereotypes, and scripts socially assigned to women, thus violating women's human and civil rights as a form of sex and gender discrimination.<sup>24</sup> Even though sexual violence happens most commonly on an individual level, sexual violence against women is also collective and group-based because of the perceived membership (most commonly) in the social group of women.<sup>25</sup>

As a tool in conflict, sexual violence is at times carried out as retaliation for prior attacks, for resources, or for political power.<sup>26</sup> Regarding the most common and most discussed form of sexual violence, the rape of women, this tool is often used to dominate;<sup>27</sup> to instill terror;<sup>28</sup> for political control and subjugation;<sup>29</sup> to "correct" or punish the behavior

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21. Jeremy Sarkin, *A Methodology to Ensure that States Adequately Apply Due Diligence Standards and Processes to Significantly Impact Levels of Violence Against Women Around the World*, 40 HUM. RTS. Q. 1, 1–36 (2018) (discussing some data on the violations women suffer during conflict, and generally in their daily lives).

22. TRUTH AND RECONCILIATION COMMISSION OF LIBERIA, WOMEN AND THE CONFLICT, FINAL REPORT VOLUME III: APPENDICES 30 (2009).

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

24. Catherine MacKinnon, *Creating International Law: Gender as Leading Edge*, 36 HARV. J. L. & GENDER 105 (2013).

25. *Id.* at 106; MAYESHA ALAM, WOMEN AND TRANSITIONAL JUSTICE: PROGRESS AND PERSISTENT CHALLENGES IN RETRIBUTIVE AND RESTORATIVE PROCESSES 45 (2014).

26. MacKinnon, *supra* note 24, at 111.

27. Nowrojee, *supra* note 23, at 87.

28. Michele Leiby, *Wartime Sexual Violence in Guatemala and Peru*, 53 INT'L STUD. Q. 449 (2009).

29. JELKE BOESTEN & MELISSA FISHER, SPECIAL REPORT 310, SEXUAL VIOLENCE AND JUSTICE IN POSTCONFLICT PERU 2 (2012).



of women not conforming to the dominant gender ideology;<sup>30</sup> to collect intelligence, often in combination with other forms of torture and/or under conditions of detention;<sup>31</sup> to shatter community support and cohesion;<sup>32</sup> to forcibly displace populations;<sup>33</sup> or to eliminate support for the enemy.<sup>34</sup> It is also meant to affect the men in close relationship to a female victim by inflicting “disgrace” or “dishonor”, and thus humiliation on them.<sup>35</sup> When used against men, rape is often meant to destroy authority and capacity to lead by humiliation and feminization,<sup>36</sup> thereby also serving to reinforce female submission and male domination as social norms by stripping male survivors of the latter.<sup>37</sup> Communal relationships are also targeted, as sexual violence can serve to undermine social bonds, order, and customs, thus destroying internal relationships and leading to ostracism and psychological harm for groups. In its extreme form, according to Michele Leiby,<sup>38</sup> this targeting may even become an aspect of genocidal rape if serious mental harm is inflicted to members of the targeted group.<sup>39</sup>

Domestic violence is a form of gender-based and structural violence, as well as discrimination, against women. As another issue often relegated to the margins of violent conflict, domestic abuse and intimate violence experienced by women are often excluded from gendered harms within post-conflict societies, even though they frequently increase after conflict.<sup>40</sup> This exclusion occurs because domestic violence is often wrongly perceived as belonging to the realm of the private or even “ordinary” violence unrelated to public events and, as such, as something for which the state cannot be liable or connected

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30. AMNESTY INT'L, PERU: THE TRUTH AND RECONCILIATION COMMISSION - A FIRST STEP TOWARDS A COUNTRY WITHOUT INJUSTICE 4 (2004); Julieta Lemaitre & Kristin Bergtora Sandvik, *Beyond Sexual Violence in Transitional Justice: Political Insecurity as a Gendered Harm*, 22 FEMINIST L. STUD. 253 (2014).

31. Leiby, *supra* note 28, at 450; JULISSA MANTILLA FALCÓN, THE PERUVIAN TRUTH AND RECONCILIATION COMMISSION'S TREATMENT OF SEXUAL VIOLENCE AGAINST WOMEN 4 (2d ed. 2005).

32. Leiby, *supra* note 28, at 449.

33. O'ROURKE, *supra* note 1, at 186.

34. Leiby, *supra* note 28, at 449.

35. Meintjes, *supra* note 19, at 110; ALAM, *supra* note 25, at 23; Leiby, *supra* note 28, at 449.

36. MacKinnon, *supra* note 24, at 106, 111.

37. ANNIKA BJÖRKDAHL & JOHANNA MANNEGREN SELIMOVIC, GENDER AND TRANSITIONAL JUSTICE 78 (2017).

38. Leiby, *supra* note 28, at 450.

39. G.A. Res. ICC-ASP/2/Res.3, Rome Statute of the International Criminal Court, at 3 (Jan 16, 2002).

40. Sarkin, *supra* note 21.

to.<sup>41</sup> Sexual violence in general becomes more likely in conflict, simply because of the breakdown of law and order and the mere opportunity and likely impunity to follow.<sup>42</sup> It is therefore explicitly linked to the failure of the state to uphold law and order as well as to provide protection and believable deterrence factors. Domestic violence in and after conflict can, however, often be linked to the return of male combatants, for example, because of the normalization of violence as such and the breakdown of societal and personal relationships.<sup>43</sup>

Sexual violence is additionally closely linked to militarization of the social life and of gender roles.<sup>44</sup> Where military, militia, guerrilla or rebel groups establish camps and bases, violence against local populations often becomes sexualized and based on notions and performances of masculinity and femininity within a binary concept. The hyper-masculinity of the warrior (who is associated with virtue and heroism) is constructed by scorning, denying, and actively erasing characteristics socialized as and thus considered to be feminine.<sup>45</sup> In contrast, women in conflict but often also post-conflict become essentialized as the passive, the suffering, and the victim. Here, transitional justice may be prone to not ironically questioning those biases because its attention to sexual and gender-based violence targeted at women has increased.<sup>46</sup> The focus on these crimes is necessary to end impunity that – in spite of international law’s efforts to outlaw and deter from such crimes – still prevails and continues to escape accountability and justice.<sup>47</sup> Women in conflict and the harms they suffer therefore still often are only considered in narrow ways that allegedly lack agency. The heroism that many of these women show in surviving, in (efforts of) protecting their loved ones, in minimizing harms, and in bringing together and organizing

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41. Rosemary Nagy, *Transitional Justice as Global Project: Critical Reflections*, 29 3RD WORLD Q. 280 (2008).

42. CAROLINE FOURNET, *THE ADJUDICATION OF SEX CRIMES UNDER INTERNATIONAL CRIMINAL LAW: WHAT DOES GENDER HAVE TO DO WITH IT?* 108 (2014); SIERRA LEONE TRUTH AND RECONCILIATION COMM., *WITNESS TO TRUTH: FINAL REPORT OF THE TRC - WOMEN AND THE ARMED CONFLICT IN SIERRA LEONE* (vol. 3, 2004).

43. Lambourne & Rodriguez Carreon, *supra* note 9, at 83; O’ROURKE, *supra* note 1, at 94.

44. UN WOMEN, *GENDER AND TRANSITIONAL JUSTICE PROGRAMMING: A REVIEW OF PERU, SIERRA LEONE AND RWANDA* 22 (2010).

45. Theidon, *supra* note 17, at 472.

46. Lemaitre & Sandvik, *supra* note 30, at 244; Nagy, *supra* note 41 at 286; Fionnuala Ní Aoláin & Catherine Turner, *Gender, Truth and Transition*, 16 UCLA WOMEN’S L.J. 26 (2007); Theidon, *supra* note 17, at 454.

47. VALJI, *supra* note 17, at 6.

communities hence continues to escape the narratives of the new truths established after transition.<sup>48</sup>

B. *Women's Rights and the Growing Recognition of Sexual and Gender-based Violence in International Law*

Despite the fact that there has been official and global affirmation that women's rights indeed are human rights and therefore need to be protected and enforced as such from the 1990s onwards,<sup>49</sup> women as a social group have been and are extensively discriminated against and endure high levels of violence all over the world. Adopted in 2000, the United Nations Security Council Resolution (UNSCR) 1325 on Women, Peace, and Security resulted from women's own efforts to highlight their needs and concerns in conflict. It was primarily due to collaborations among the United Nations Development Fund for Women (UNIFEM), gender experts, and transnational feminist networks and organizations rather than mainstreamed agendas for women's inclusion.<sup>50</sup>

Pressing for accountability and criminal responsibility has been a focus of feminist work on international criminal law,<sup>51</sup> as well as in demands for transitions and transitional justice itself. Since the end of the Second World War, the recognition and punishment of sexual and gender-based violence has increased significantly.<sup>52</sup> This is largely due to the international ad-hoc criminal tribunals for the former Yugoslavia and Rwanda, created by the United Nations Security Council that not only applied but also developed further international law regarding sexual violence.<sup>53</sup> The uncovering of widespread and systematic sexualized violence during the Yugoslavian ethnic cleansing and Rwandan genocide in the 1990s further catalyzed women's groups', women activists', and female legal scholars' and lawyers' actions. Most significantly, these women laid important foundations and achieved significant milestones regarding the recognition and prosecution of as well as convictions for sexual violence against women<sup>54</sup> and women's equal

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48. Theidon, *supra* note 17, at 468.

49. BELL & O'ROURKE, *supra* note 6, at 31; ALAM, *supra* note 25, at 19; O'ROURKE, *supra* note 1, at 17.

50. AMY BARROW, WOMEN, PEACE AND SECURITY: MAINSTREAMING GENDER IN TRANSITIONAL JUSTICE PROCESSES 38–44 (2014).

51. O'ROURKE, *supra* note 1, at 18.

52. Scanlon & Muddell, *supra* note 12, at 15; NICOLAS LAMP, DER BEITRAG DER VEREINTEN NATIONEN ZUR ENTWICKLUNG DES VÖLKERSTRAFRECHTS ZU SEXUELLER GEWALT 369 (2007).

53. LAMP, *supra* note 52, at 369.

54. FOURNET, *supra* note 42, at 108.

protection under the law.<sup>55</sup> The International Criminal Tribunal for Rwanda (ICTR) first established rape as an act possibly constituting genocide,<sup>56</sup> while the International Criminal Tribunal for Yugoslavia (ICTY) even introduced the criminalization of rape and violence against women into its statute. Moreover, wartime rape in the *Foca* trial was successfully included in the charges.<sup>57</sup> The hybrid Special Court for Sierra Leone further contributed significantly to widening the scope of sexual violence to include crimes against humanity by including sexual slavery and forced marriages.<sup>58</sup> Such crimes have also been included into the Rome Statute creating the International Criminal Court (ICC).<sup>59</sup> The recognition of rape and some other forms of sexual violence against women as war crimes,<sup>60</sup> crimes against humanity,<sup>61</sup> and genocide<sup>62</sup> by the international community, requires states to conduct investigations and provide accountability as well as criminal liability for those crimes. As universal jurisdiction applies for some of these crimes and violations, states are called upon to integrate such obligations deriving from treaties adhered to and, increasingly, international customary law into domestic systems thus enabling jurisdiction and abiding by the principle of *aut dedere aut judicare*, that is, to extradite or try suspects of these crimes.<sup>63</sup>

Legal attention to sexual and gender-based violence since the 1990s has thus not only brought such crimes onto the agenda of transitional justice but also shifted the discourse from considering sexual violence as a consequence or “collateral damage” of war towards recognizing it as a political and calculated strategy of power, conquest, and possibly genocide.<sup>64</sup> Some scholars even argue that rape is now included under

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55. See DUBRAVKA ZARKOV, ONTOLOGIES OF INTERNATIONAL HUMANITARIAN AND CRIMINAL LAW: ‘LOCALS’ AND ‘INTERNATIONALS’ IN DISCOURSES AND PRACTICES OF JUSTICE 8 (2014); BELL & O’ROURKE, *supra* note 6, at 27.

56. Scanlon & Muddell, *supra* note 12, at 18.

57. IAVOR RANGELOV & RUTI TEITEL, GLOBAL CIVIL SOCIETY AND TRANSITIONAL JUSTICE 167 (2010).

58. Scanlon & Muddell, *supra* note 12, at 15.

59. G.A. Res. ICC-ASP/2/Res.3, Rome Statute of the International Criminal Court, at 3 (Jan. 16, 2002).

60. *Id.*

61. *Id.*

62. *Id.*

63. DIANE ORENTLICHER, UPDATED SET OF PRINCIPLES FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS THROUGH ACTION TO COMBAT IMPUNITY, Principles 21, 26 (2005); CHILE EBOE-OSUJI, INTERNATIONAL LAW AND SEXUAL VIOLENCE IN ARMED CONFLICTS 206 (2012).

64. Rebecca Patterson-Markowitz et al., “*Subjects of Change*”: *Feminist Geopolitics and Gendered Truth-Telling in Guatemala*, 13 J. INT’L WOMEN’S STUD. 85 (2012).

*jus cogens*,<sup>65</sup> constituting a higher order crime, thus allowing it to be considered for universal jurisdiction, meaning that such crimes can be tried in any country wherever they occurred.<sup>66</sup> Within the last decade, however, critical or rather disillusioned voices commenting on the gains made for women in international criminal law have highlighted that the number of prosecutions and convictions for sexual violence continue to remain low.<sup>67</sup> Evidential obstacles in trials furthermore persist<sup>68</sup> and influence the low number of convictions. This is because often newly democratized states or states in transition neither have the expertise nor resources to mount many or complex trials. Trials anyway are not the panacea to the problems that exist in post-conflict societies in dealing with past human rights violations. However, together with a range of tools, including TCs, trials can benefit those societies under the right circumstances and with adequate support from a range of actors. Sometimes, however, TCs are used as replacements for prosecutions. That can give rise to notions of impunity that can have long-term negative effects.

### III. GENDER-SENSITIVITY IN TRUTH COMMISSIONS

#### A. *Assessing Gender Sensitivity in Truth Commissions*

In the following section, the ways and areas in which gender-sensitivity may occur within TCs will be examined. First, a theoretical outline of how gender-sensitivity can be included in the design, processes, and outcomes of TCs will be set out for the purpose of assessing the inclusion of gender concerns into TC practice. The next section then sets out to analyze to what extent the TCs of South Africa, Guatemala, Peru, Sierra Leone, and Liberia have included such concerns at the levels of design, processes and outcomes.

#### 1. Commissioners and Staff

As the public face of a commission, individual commissioners play an important role in promoting the credibility of the institution and the legitimacy of the process.<sup>69</sup> Commissioners should be diverse and reflect

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65. See generally Jeremy Sarkin, *Why the Prohibition of Enforced Disappearance Has Attained Jus Cogens Status in International Law*, 81 NORDIC J. INT'L L. 537 (2012).

66. Scanlon & Muddell, *supra* note 12, at 15; Patterson-Markowitz et al., *supra* note 64, at 83.

67. O'ROURKE, *supra* note 1, at 134.

68. *Id.*

69. INT'L CTR. FOR TRANSITIONAL JUSTICE, TRUTH COMMISSIONS AND NGOs: THE ESSENTIAL RELATIONSHIP 15 (2004).

society's make-up adequately.<sup>70</sup> They need to be perceived as impartial and seen to be independent from the state.<sup>71</sup> In many cases, civic leaders serve as commissioners as they may be seen as credible and are often widely respected for the roles they have played in the past. Religious leaders, lawyers, and human rights activists are the most frequent sectors from which commissioners are chosen.<sup>72</sup> However, the composition of TCs is often predominantly male. In fact, a representation of women's interests is generally assumed based on reaching a critical mass<sup>73</sup> of women commissioners of about thirty percent.<sup>74</sup> At this point, it is believed that women commissioners will bring about substantive and meaningful change. Besides the selection procedure and the composition of the commissioners, training commissioners on gender and women's issues, for instance on sexual violence or women's rights, can be an element for determining and enhancing gender-sensitivity.

## 2. Gender Mainstreaming or Gender Balancing

Gender mainstreaming is often described as the panacea to incorporating women's concerns and needs as it reveals the different opportunities, experiences, and benefits of actions for women and men.<sup>75</sup> It refers to embedding gender in the conceptualization of all policies and processes in order to achieve gender equality within outcomes.<sup>76</sup> To do so, the implications of any planned action at all levels have to be

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70. Jeremy Sarkin & Ram Kumar Bandari, *Why Political Appointments to Truth Commissions Cause Difficulties for These Institutions: Using the Crisis in the Transitional Justice Process in Nepal to Understand How Matters of Legitimacy and Credibility Undermine Such Commissions*, J. HUM. RTS. PRAC. (forthcoming 2019).

71. Comm. on Human Rights, Subcomm. on Prevention of Discrimination and Protection of Minorities on Its Forty-Ninth Session, U.N. Doc. E/CN.4/Sub.2, at 6 (1997); ORENTLICHER, *supra* note 63, Principle 7; INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 15. Alam highlights what difference a diversity of expertise, including their genders, can make with regard to more inclusive and holistic decision-making and acting. She refers to the ICTR's inclusion of sexual violence in the *Akayesu* case in which the only female judge, Navi Pillay, played a crucial role. ALAM, *supra* note 25, at 40.

72. Wiebelhaus-Brahm, *supra* note 11, at 65.

73. Shirin M. Rai, *Institutional Mechanisms for the Advancement of Women*, in MAINSTREAMING GENDER, DEMOCRATIZING THE STATE? 38 (Shirin M. Rai ed., 2003); GEORGINA WAYLEN, ENGENDERING TRANSITIONS: WOMEN'S MOBILIZATION, INSTITUTIONS, AND GENDER OUTCOMES 132 (2007).

74. WAYLEN, *supra* note 73, at 128, 130.

75. Kathleen Staudt, *Gender Mainstreaming: Conceptual Links to Institutional Machineries*, in MAINSTREAMING GENDER, DEMOCRATIZING THE STATE?, *supra* note 73, at 56; Rai, *supra* note 73, at 16; WAYLEN, *supra* note 73, at 151.

76. Staudt, *supra* note 75, at 40, 59.

assessed for men and women, in order to reveal where impact is unequal or even discriminatory.<sup>77</sup> Essentially challenging the legitimacy of even unintentional discrimination against women, the concept calls for taking the potential effects into account prior to carrying out a specific action.<sup>78</sup> Gender mainstreaming thus eventually aims at the structural transformation of underlying inequalities that manifest differently with regard to the social category of gender.

The two main approaches to achieving systematic gender-sensitivity within TCs can generally be clustered into mainstreaming and balancing (also called cabinetting) approaches. Gender mainstreaming seeks to introduce gender as a crosscutting theme<sup>79</sup> throughout the entire operation of a commission, from designing the mandate and recruiting staff to the public sessions, report writing, and recommendations sections, while gender balancing or cabinetting refers to establishing special gender units within a commission. The purpose of these gender units is to focus on particular processes that will then integrate gender in the corresponding actions, for instance through conducting research on gender for chapters of the final report or to inform, train, and monitor the commission and its staff on gender issues. In practice, gender as a category and topic almost always gets confused, conflated with, or reduced to women. Not addressing men's gendered roles, however, singles women out as a special interest group<sup>80</sup> and makes gender inequality a problem that only affects them, does not confer any responsibility on men,<sup>81</sup> and leaves stereotypical, relational, hierarchical, and binary constructions of the roles of both men and women intact. Additionally, a focus on women's experiences of conflict, for example, most often is reduced to sexual violence and portrays women one-sidedly as victims.<sup>82</sup>

### 3. Special/Thematic Gender Hearings in Truth Commissions

Special hearings at TCs are meant to provide insight on how the conflict affected specific sectors, issue areas, interest groups, or institutions

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77. Rai, *supra* note 73, at 16.

78. Staudt, *supra* note 75, at 54.

79. In practice, however, gender mainstreaming often is understood as simply adding so-called women's issues without linking their causes and effects to structural conditions and sustainable transformation, thus only superficially addressing gender within transitional justice mechanisms. Emily Rosser, *The Messy Practice of Building Women's Human Rights: Truth-telling and Sexual Violence in Guatemala*, 6 *LATIN AM. POL'Y* 71 (2015).

80. 4 TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, INSTITUTIONAL AND SPECIAL HEARINGS 289 (1998); Rai, *supra* note 73, at 24.

81. GYMAH, *supra* note 5, at 14.

82. ALAM, *supra* note 25, at 23.

of society at large. They thus serve to uncover structural, historic, and systemic patterns of violence and its causes and effects. Ideally, thematic or institutional hearings contribute to localizing where and how reforms need to take place.<sup>83</sup> Special gender or women's hearings alone, however, are neither likely to sufficiently include a gendered perspective into the investigation of human rights abuses nor benefit women's position within society. They may tend to appear rather isolated than systematic or crosscutting. Therefore, they may also fail to connect the experiences of victims with the causes of sexual violence because the usual primary focus on sexual violence may disappoint hopes for a portrayal of women's diverse and multiple roles within society and conflict.

Public hearings are meant to provide a forum and space for victims and their families to recount their stories and connect to other victims and survivors, or sometimes even to potentially forgive and reconcile with perpetrators. Thus, their main intention is not to help discover new information or evidence for the commissioners.<sup>84</sup> Rather, their purpose includes putting a face to the plethora of violence and often countless victims by highlighting exemplary stories and fates. Broadcasting and reporting of these hearings, particularly on topics that have not been brought up previously, can ultimately be more impactful on the general population than the final report, which will only be read by a small number of people.<sup>85</sup> Ultimately, public hearings also serve to initiate broader public dialogue and discourses around the structural, institutional, or thematic issues highlighted.<sup>86</sup> A special hearing on women therefore also serves to validate the importance of women's experiences as valued stakeholders and equal citizens, as they are included in the catalogue of issues relevant for national debate and future change. Lastly, but nevertheless, they are able to impact the final report and its recommendations, for instance, through exposing and comprehensively addressing structural and gender-based violence<sup>87</sup> and the conditions that make violence against women possible before and in post-conflict settings, in order to offer adequate remedies and prevent recurrence.

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83. TRUTH & RECONCILIATION COMM'N OF LIBER., CONSOLIDATED FINAL REPORT 47 (2009).

84. Joanna R. Quinn & Mark Freeman, *Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa*, 25 HUM. RTS. Q. 1140 (2003).

85. *Id.* at 1141.

86. NESIAH, *supra* note 19, at 26.

87. PUB. INT'L LAW & POLICY GRP., CORE ELEMENTS OF FACILITATING WOMEN'S PARTICIPATION IN TRUTH AND RECONCILIATION COMMISSIONS: A LEGAL MEMORANDUM 12 (2003).



In order to provide a safe space for women to recount their experiences, gender-thematic or women-only hearings may need to consider some changes to their usual procedures.<sup>88</sup> Women may feel more comfortable with female commissioners only or with only women commissioners addressing them as regards sexual and gender-based violence.<sup>89</sup> Confidential or private testimonies may also contribute to gender-sensitivity in responding to victims' potential fear of (re)victimization or even retaliation.<sup>90</sup>

#### 4. Gender Sensitivity in Final Truth Commission Reports

TCs are usually tasked with producing a final report as a major outcome of their work. These reports can include gender-sensitivity in many ways and different sections. If reports have sections on recommendations, such as on reforms or reparations, these bear the greatest potential to inform transformative change for women, provided that they are implemented.<sup>91</sup> Tracing the implementation of recommendations for each of the countries is beyond the scope of this analysis. All that is commented on is whether there were gender-sensitive recommendations in the report. Another area looked at to identify gender-sensitivity in the immediate outcomes of a TC's work is the inclusion of women's issues in the final report through special sections or chapters. Oftentimes, women's groups actively lobby for the inclusion of such a chapter or provide commissioners with research assistance and documentation, as will be seen in the African case studies. In this context, it can be helpful to distinguish between primarily, or even exclusively, focusing on sexual violence as opposed to non-sexual gendered harms and abuses, and possibly even structural or socio-historical analyses informing the findings. This could then potentially influence the way that women will be seen in the post-conflict society, so that stereotyping of gender roles or the inclusion of women's agency – in contrast to exclusively portraying victimhood – will also be considered. Lastly, an identification and connection of systematic and structural forms of marginalization and violence against women prior to the conflict or afterwards and during conflict would bear potential for reacting in a

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88. Meintjes, *supra* note 19, at 109.

89. PUB. INT'L LAW & POLICY GRP., *supra* note 87, at 13.

90. Andrea Durbach & Lucy Geddes, *To Shape Our Own Lives and Our Own World: Exploring Women's Hearings as Reparative Mechanisms for Victims of Sexual Violence Post-Conflict*, 21 INT'L J. HUM. RTS. 1265 (2017).

91. Lambourne & Rodriguez Carreon, *supra* note 9, at 82; Gready & Robins, *supra* note 17, at 346; O'ROURKE, *supra* note 1, at 182.

gender-just transformative manner that could be used as a base for advocating for and eventually achieving more gender equality.

#### IV. THE GENDER ROLES OF SPECIFIC TCs

This section of the Article examines TCs in five countries to understand how diverse institutions have taken up women's issues. The design and conceptualization of TCs will briefly be outlined after the introduction of each country's conflict to set out the context leading up to the establishment of a truth-seeking mechanism. Then, gender mainstreaming or balancing processes as well as thematic or special gender-based or women-only hearings will be looked at. Lastly, as the most immediate outcome of a commission, their final reports will be looked at to determine the extent to which women's issues are included.

##### A. *South Africa*

###### 1. Country Context and the Gender-Sensitivity of the Mandate

The South African Truth and Reconciliation Commission (TRC) was enacted by parliament through the Promotion of National Unity and Reconciliation Act, No. 34 of 1995. It operated from 1995 to 2002 (although mainly completing its work in 1998), ending with the publication of its seven-volume final report.<sup>92</sup> It found that all major political organizations involved committed gross human rights abuses, even though the apartheid state is assigned most responsibility and culpability by the final report.<sup>93</sup>

The South African TRC was mandated to investigate and document gross human rights violations in South Africa that occurred between 1960 and 1994.<sup>94</sup> These gross human rights violations investigated were restricted to killings, abductions, torture, or ill-treatment, the latter allowing for some discretion. Attention to women's gendered experiences of the conflict and apartheid or to sexual and gender-based violence amounting to or used in conjunction with the aforementioned categories had not been referenced or considered initially. However, sexual violence was eventually included under the commissioners' interpretation of ill-treatment after civil society organizations pressed

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92. HAYNER, *supra* note 1, at 27.

93. 5 TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA 209-12 (1998).

94. 1 TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA 24 (1998).

for it.<sup>95</sup> The TRC could have also included rape and other forms of sexual violence under the category of torture,<sup>96</sup> a human rights violation that is considered to be absolute and non-derogable even in internal conflict or state of emergency.<sup>97</sup> However, it is important to note that the TC divided its work in different ways: victims went to one committee and perpetrators to another. Each of those committees dealt with the issues differently. As far as perpetrators were concerned, they were able to go to the Amnesty Committee should they choose to do so. That committee did not really deal with gender violence much, as some commissioners made comments, rightly or wrongly before the process started, that sexual violence was not something for which amnesty could be obtained.

Although women's groups in South Africa did not organize and mobilize around the TRC and the public and political demand for including gender as a focus did not occur until well into the implementation period of the commission,<sup>98</sup> they did manage to later influence truth-seeking. The TRC has been generally described as largely receptive towards women's groups' and civil society's recommendations.<sup>99</sup> The government seemed to show willingness to incorporate women's practical but also strategic demands at the time. Additionally, women's organizations' demands were successfully framed within the national discourse of liberation, rights, and equal citizenship,<sup>100</sup> which enhanced the legitimacy of their claims. Furthermore, women's organizations were formed and

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95. Ayumi Kusafuka, *Truth Commissions and Gender: A South African Case Study*, 9 AFR. J. CONFLICT RESOL. 45, 48 (2009).

96. Scanlon & Muddell, *supra* note 12, at 12.

97. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 174, *entered into force* Mar. 23, 1976; SIERRA LEONE TRUTH AND RECONCILIATION COMM'N., *supra* note 42, at 133.

98. Ilze Olckers, *Gender-Neutral Truth: A Reality Shamefully Distorted*, 12 AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY 31, 62 (1996). The same is true for most other NGO sectors. Hugo Van Der Merwe et al., *Non-Governmental Organisations and the Truth and Reconciliation Commission: An Impact Assessment*, 26 POLITIKON 58 (1999). Overall, this should have decreased their chances of having gender-sensitive considerations included into the process. INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 25.

99. Kusafuka, *supra* note 95, at 51; PUMLA GOBODO-MADIKIZELA, WOMEN'S CONTRIBUTIONS TO SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION viii (2005); INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 13. Even though the role of civil society is seen as comparatively influential on the entire TRC process, it was neither seen as extensive nor as inclusive as it could have been with greater political commitment to the role and rights of victims within the process. Van Der Merwe et al., *supra* note 98, at 60, 63.

100. Georgina Waylen, *Women's Mobilization and Gender Outcomes in Transitions to Democracy*, 40 COMP. POL. STUD. 527 (2007); WAYLEN, *supra* note 73, at 52.

were active prior to the transition<sup>101</sup> so that they already had acquired experience in organizing and strategizing as well as in establishing networks.<sup>102</sup> However, the relationship between the TRC and women's activists and groups that mobilized around the process has been described as ambiguous and even strained.<sup>103</sup> On the one hand, the commission was accused of not actively seeking out such groups. On the other hand, the women's movements' initial preoccupation with and focus on women's representation in the newly established state structures as well as lobbying for measures against violence against women, saw the movement's self-exclusion from the design stage of the TRC.<sup>104</sup>

## 2. Commissioners and Staff

The South African commissioners were selected in a consultative process. The process of nominating and interviewing candidates was quite transparent. Human rights and victim-survivors groups debated the nominees and what had been included in the draft legislation of the TRC Act.<sup>105</sup> The TRC eventually had seven women commissioners out of seventeen members, which amounted to about forty-one per cent.<sup>106</sup>

Representatives from women's NGOs and groups as well as other actors with an interest in this area, such as legislative representatives and scholars,<sup>107</sup> managed to collectively expand and influence the commission's willingness to incorporate a gendered perspective. The Gender Project of the University of the Witwatersrand's Centre for Applied Legal Studies (CALS)<sup>108</sup> and Beth Goldblatt and Sheila Meintjes<sup>109</sup> in particular submitted a short-term research report derived from a workshop on gender and the TRC. It markedly influenced the TRC's procedures and conceptions regarding gender,<sup>110</sup> and contributed to incorporating women's experiences of apartheid and political

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101. WAYLEN, *supra* note 73, at 49.

102. Viterna & Fallon, *supra* note 10, at 674.

103. Kusafuka, *supra* note 95, at 49.

104. *Id.* at 62, 65; Olckers, *supra* note 98, at 61.

105. Wiebelhaus-Brahm, *supra* note 11, at 64.

106. GOBODO-MADIKIZELA, *supra* note 99, at v; Olckers, *supra* note 98, at 61.

107. TRUTH AND RECONCILIATION COMM'N OF SOUTH AFRICA, *supra* note 80, at 284.

108. The submission came about as the product of the CALS' Gender Project, which conducted a workshop on the matter. Women's NGOs, politicians, as well as scholars, and others with an interest in gender and/or women and their relationship to the TRC attended the workshop.

109. Kusafuka, *supra* note 95, at 50.

110. Van Der Merwe et al., *supra* note 98, at 72.

violence into the historical record created by the final report. The submission, for example, raised concern about the practice of not asking women for their own experience as they initially mostly testified on behalf of other, usually male, victims of the conflict. Because of this perception but also self-portrayal<sup>111</sup> of women as secondary victims only,<sup>112</sup> it then served to draw the commissioners' attention to asking women for their own stories and experiences. By encouraging commissioners to ask witnesses about what had happened to them, or how they might have suffered because of human rights violations directly targeted at others,<sup>113</sup> the submission raised awareness and provided education about how to interact with women witnesses and victims of sexual violence.

### 3. Gender Mainstreaming and Gender Balancing

The South African TRC did not have a gender unit nor did it specifically mainstream gender throughout its processes. Neither did it do so in its outcomes, such as the final report including its recommendations.<sup>114</sup> As women's groups only mobilized to lobby the South African TRC after the implementation phase had begun,<sup>115</sup> it is not surprising that this was not a concern to the commissioners in operationalizing and carrying out the mandate. Nevertheless, the CALS' submission did call for a rejection of gender-neutrality, by not taking gender and the differential impacts of such conceptions into account<sup>116</sup> in the TRC's policy-framework and all other matters.<sup>117</sup> This could be interpreted as calling for a gender-sensitive approach. Additionally, the CALS' proposal called for considering gender within the historical account of the final report.<sup>118</sup> Thus, it encouraged gender mainstreaming, as it did not

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111. This is most likely because of stigma attached to sexual violence and the commission's focus on only certain, and hence limited, civil and political human rights violations which are more often experienced by men.

112. Secondary victims are victims through their relationship to a first degree or direct victim such as (most frequently male) spouses, children, or other relatives. HAYNER, *supra* note 1, at 86; ABBEY BOGGS, SILENT NO MORE: INCLUSION OF POST-CONFLICT WOMEN IN TRUTH COMMISSIONS 8 (2017).

113. BETH GOLDBLATT & SHIELA MEINTJES, GENDER AND THE TRUTH AND RECONCILIATION COMMISSION: A SUBMISSION TO THE TRUTH AND RECONCILIATION COMMISSION 33 (1996).

114. Kusafuka, *supra* note 95, at 47.

115. Olckers, *supra* note 98, at 62.

116. However, the submission also makes clear that it only intends to highlight women's gendered experiences instead of looking at men, too. GOLDBLATT & MEINTJES, *supra* note 113, at 1.

117. *Id.* at 33.

118. *Id.* at 36.

suggest a separate chapter on women. The demand for gender mainstreaming by at least one civil society submission mostly by and specifically about women hence seems to have contributed to more gender-sensitivity in other parts of the TRC's work.

#### 4. Special/Thematic Gender Hearings

Women's groups increasingly began to interact with the South African TRC in 1996 and demanded to address gender-specific issues through public hearings with a thematic focus on women.<sup>119</sup> Pressure from women's organizations in general,<sup>120</sup> and the CALS' academic submission produced after a workshop that included several women's groups, again influenced the commission's approach towards the roles and lived experiences of women within and during apartheid.<sup>121</sup>

The women's hearings were broadcast but did not receive extensive coverage in the media compared to other institutional and thematic hearings.<sup>122</sup> Nevertheless, women's participation was described as having been particularly encouraged and consequently high.<sup>123</sup> Changing the composition of the commissioners was partly included: CALS had asked for considering women commissioners only.<sup>124</sup> The TRC then decided to change the commissioner panel according to the individual witnesses' preferences,<sup>125</sup> thus making it possible to testify before an all-women panel.<sup>126</sup> Therefore, gender-sensitivity was further achieved by lobbying, rather than through gender-sensitive conceptualization by the TRC.

However, women's inclusive participation was hampered by the fact that the three thematic hearings on women were all held in urban centers. This severely constricted rural (and thus during and after apartheid often highly marginalized) women's access to participation in the

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119. BOGGS, *supra* note 112, at 7.

120. Lyn Graybill, *The Contribution of the Truth and Reconciliation Commission Toward the Promotion of Women's Rights in South Africa*, 24 *WOMEN'S STUD. INT'L.* 1, 5 (2001); Van Der Merwe et al., *supra* note 98, at 72; GOBODO-MADIKIZELA, *supra* note 99, at 17; Penelope Andrews, *Justice, Reconciliation, and the Masculinist Way: What Role for Women in Truth and Reconciliation Commissions?*, 60 *N.Y.L. SCH. L. REV.* 199, 218 (2016).

121. TRUTH & RECONCILIATION COMM'N OF SOUTH AFRICA, *supra* note 80, at 284.

122. Graybill, *supra* note 120, at 5.

123. Kusafuka, *supra* note 95, at 55.

124. GOLDBLATT & MEINTJES, *supra* note 113, at 34.

125. TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, TRUTH AND RECONCILIATION COMMISSION STATEMENT, SOUTH AFRICA: TRC AND GENDER, JOHANNESBURG (1996).

126. Durbach & Geddes, *supra* note 90, at 1265.

TRC.<sup>127</sup> This limits the initial demand for encompassing women from all levels of society, as the submission clearly pointed to inequalities entrenched in apartheid's racial, socioeconomic, and geographic stratification of women but also customary law applied in rural areas and the former so-called "homelands" after transition.<sup>128</sup> As such, the extent and possible impact of inclusive and intersectional gender-sensitivity for the women's hearings was quite limited.

### 5. Gender Sensitivity in the Final Report

NGOs, including women's organizations, provided considerable input with research assistance and documentation in all stages of the TRC. The CALS' submission serves as yet another example of this assistance and its inclusion into methodological and procedural concerns as well as the outcome the final report embodies.<sup>129</sup> In addition, it also led to the TRC conducting and including its own research on gender issues into the final report.<sup>130</sup> Gender, however, was interpreted as women-only instead of as a relative category.<sup>131</sup> The impact of this submission,<sup>132</sup> furthermore led to having a gender researcher hired, but her comprehensive report, which specifically included the link of conflict-related to continuing high rates of violence against women in peacetime South Africa, was only incorporated in fragments within the TRC's final report.<sup>133</sup> The CALS' submission thus had considerable effect on the activities and the final report as the outcome.

Therefore, it does seem likely<sup>134</sup> that the South African TRC would have not considered women's experiences and interests in the post-conflict society without women's groups lobbying for it. Even though demands might have increased, the implementation was cause for criticism as it left out many considerations raised by women's organizations, such as the only partial inclusion of the comprehensive research by the consultant hired for that purpose. Ilze Olckers furthermore opines that

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127. *Id.*

128. GOLDBLATT & MEINTJES, *supra* note 113, at 3.

129. Van Der Merwe et al., *supra* note 98, at 65, 71, 72.

130. *Id.*

131. Meintjes, *supra* note 19, at 110.

132. The CSVR, even though this is not a women's organization, also encouraged the hiring and work of the gender researcher. Kusafuka, *supra* note 95, at 59.

133. *Id.*

134. This view is supported by the fact that even the CALS's submission was compiled and introduced into the TRC after it had already started its work. Thus, commissioners, staff, the women's wing of the ANC, or other civil society and human rights organizations theoretically could have had some time to introduce gender or women's concerns into the realm of the TRC.

women were only portrayed as passive suffering victims, mostly as grieving mothers or wives, which additionally reduced them to their naturalized social position as caretakers instead of agents.<sup>135</sup> The final report does, however, recognize that most women who testified publicly in the TRC's special hearings on gender were leaders and political activists in their own right,<sup>136</sup> thus partially breaking up the conceptualization of women as (secondary) victims only.<sup>137</sup> Lastly, the final report fails to recommend changes to the laws and practices that enforce women's economic and social inequality,<sup>138</sup> which diminishes its impact and possible effect on women's lived realities.

## B. Guatemala

### 1. Country Context and the Gender-Sensitivity of the Mandate

The Guatemalan Commission for Historical Clarification (*La Comisión para el Esclarecimiento Histórico*, known by its Spanish acronym CEH) operated from 1997 to 1999 and investigated the human rights violations committed during the thirty-six year<sup>139</sup> civil war. In contrast to most other TCs, the CEH did not have any legal powers.<sup>140</sup> It was furthermore prohibited from naming individual perpetrators,<sup>141</sup> and could not hold public hearings.<sup>142</sup> This was decided due to fear of reprisals and possible actions by the military.<sup>143</sup> As far as its mandate was concerned, it was broadly defined.<sup>144</sup> It tasked the commission with clarifying human rights violations, abuses, and acts of violence related to the armed conflict. Nonetheless, the commission chose to interpret

135. Olckers, *supra* note 98, at 65.

136. TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, *supra* note 80, at 311.

137. GOLDBLATT & MEINTJES, *supra* note 113, at 34.

138. Margaret Maisel, *Have Truth and Reconciliation Commissions Helped Remediate Human Rights Violations against Women - A Feminist Analysis of the Past and Formula for the Future*, 20 CARDOZO J. INT'L & COMP. L. 143, 161 (2011).

139. Even though the *ratione temporis* of the mandate spanned from 1960 to 1996, the CEH only considered events from 1962 on. Comisión para el Esclarecimiento Histórico [CEH], *Guatemala, memoria del silencio*, Tomo I, Prológo, at 47 (June 1999).

140. Such as, for instance, the powers of search and seizure or to subpoena in order to obtain evidence or coerce testimonies. Rosser, *supra* note 79, at 78.

141. MARK FREEMAN, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 274 (2006); Joanna Crandall, *Truth Commissions in Guatemala and Peru: Perpetual Impunity and Transitional Justice Compared*, 4 J. PEACE, CONFLICT, & DEV. 1, 7 (Apr. 2004).

142. Crandall, *supra* note 141, at 15; Quinn & Freeman, *supra* note 84, at 1124.

143. FREEMAN, *supra* note 141, at 274.

144. Christian Tomuschat, *Clarification Commission in Guatemala*, 23 HUMAN RIGHTS Q. 233, 239 (2001).



its *ratione materiae* as attacks on life and personal integrity, particularly focusing on extrajudicial killings, disappearances, and sexual violence.<sup>145</sup> Regardless, the integration of sexual violence was not conceptually included from the outset, but rather emerged as women victim-survivors and witnesses raised the issues during statement taking.<sup>146</sup> The CEH's staff was surprised by the revelations of gendered and sexualized violence. They then adjusted their processes and methodologies accordingly.<sup>147</sup> Thus, the change can be attributed to human rights workers in the field and feminist individuals involved,<sup>148</sup> rather than the commissioners or the TC as a whole.

Since the commission was mainly intended to investigate and present a comprehensive and objective history of the events and causes of and leading up to the conflict,<sup>149</sup> it was not designed to hold public hearings or to directly involve itself within local reconciliation efforts. Consequently, space for women's groups' inclusion and participation within the preparation phase was limited. At the design stage, the CEH was perceived as not working well with social movements and organizations in general. It only met collectively once with representatives of Guatemala's major social movements and this was when the commission was already halfway through its tenure.<sup>150</sup>

## 2. Gender Sensitivity in the Final Report

The CEH's final report includes a chapter that deals with the investigations and findings of sexual violence against women.<sup>151</sup> Women were also considered in other sections of the report, for instance on genocide, torture, or military strategies.<sup>152</sup> However, gender was not mainstreamed in the report or activities of the CEH. While the report provides structural findings on racism, chronic structural injustice, and undemocratic institutions as having supported the human rights

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145. *Id.* at 239-40.

146. Rosser, *supra* note 79, at 69.

147. *Id.* at 76.

148. *Id.* at 75.

149. Tomuschat, *supra* note 144, at 239.

150. Patterson-Markowitz et al., *supra* note 64, at 89.

151. The chapter's title is *Violencia sexual contra la mujer* (Sexual Violence Against Women). Comisión para el Esclarecimiento Histórico [CEH], *Guatemala: memoria del silencio*, Tomo II, Capítulo Segundo, at 13 (June 1999).

152. Emily Rosser, *Depoliticised Speech and Sexed Visibility: Women, Gender and Sexual Violence in the 1999 Guatemalan Comisión para el Esclarecimiento Histórico Report*, 1 INT'L J. OF TRANSITIONAL JUST. 403 (2007).

violations considered,<sup>153</sup> no findings on broader gender inequality are included. A brief overview on women's share of the human rights violations otherwise looked at by the commission left out non-sexual gendered abuses such as forced displacement,<sup>154</sup> loss of livelihood, income, or expropriation,<sup>155</sup> and psychological torture targeting their socially and culturally dominant role as mothers or caretakers.<sup>156</sup> The lack of attention to non-sexual gendered harms is primarily attributed to the commissioners' interpretation of the *ratione materiae* as attacks on life and personal integrity.<sup>157</sup> This served to exclude specific ways in which women were affected by the conflict. Moreover, the exclusive focus on sexual violence is especially pronounced with regard to indigenous women who became hyper-victimized<sup>158</sup> although they were also agents as perpetrators, peace activists, community organizers, and leaders of human rights associations.<sup>159</sup>

One of the main points of disappointment and criticism concerning the CEH's gender-sensitivity is the fact that the final report does not contain any recommendations on gender, including reparations for victims of sexual violence.<sup>160</sup> Furthermore, an analysis linking violence against women during war to predating and following structural oppression and gendered violence is missing.<sup>161</sup> Such an analysis may have helped in clarifying the systemic dimension of violence against women and might have offered solutions on how to remedy them within recommendations sensitive towards gender concerns and women's issues. Both of these shortcomings cause debate and dissatisfaction when an assessment is made of the commission's work,<sup>162</sup> as it is seen to have failed to contribute to improving women's day-to-day experiences in the country.

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153. HAYNER, *supra* note 1, at 35.

154. Scanlon & Muddell, *supra* note 12, at 28.

155. BOGGS, *supra* note 112, at 2.

156. Kusafuka, *supra* note 95, at 50; EBOE-OSUJI, *supra* note 63, at 266; Comisión para el Esclarecimiento Histórico [CEH], *Guatemala: memoria del silencio*, Tomo III (Las violaciones de los derechos humanos y los hechos de violencia), Guatemala City (Guatemala), 19, 22 (1999).

157. Tomuschat, *supra* note 144, at 240.

158. Rosser, *supra* note 79, at 72.

159. Patterson-Markowitz et al., *supra* note 64, at 92; PATTY CHANG ET AL., *WOMEN LEADING PEACE: A CLOSE EXAMINATION OF WOMEN'S POLITICAL PARTICIPATION IN PEACE PROCESSES IN NORTHERN IRELAND, GUATEMALA, KENYA, AND THE PHILIPPINES* 61–62 (2015).

160. Rosser, *supra* note 79, at 72; Patterson-Markowitz et al., *supra* note 64, at 90; Durbach & Geddes, *supra* note 90, at 1270.

161. Patterson-Markowitz et al., *supra* note 64, at 90.

162. *Id.*

## C. Peru

## 1. Country Context and the Gender-Sensitivity of the Mandate

The Peruvian Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*) (CVR) was created in 2001 by presidential decree.<sup>163</sup> It operated between 2001 and 2003 and was tasked with the investigation of human rights violations that occurred during the armed conflict between 1980 and 2000. The CVR established that the *Partido Comunista del Perú-Sendero Luminoso* (PCP-SL) clearly was responsible for the majority of the abuses and human rights violations,<sup>164</sup> while the Tupac Amaru Revolutionary Movement (*Movimiento Revolucionario Túpac Amaru*) (MRTA)<sup>165</sup> was responsible for only about 1.8% of all human rights violations.<sup>166</sup> State officials, government forces, and militia were also found to have committed a significant amount of abuses,<sup>167</sup> particularly with regard to disappearances, torture, and sexual violence.<sup>168</sup>

The Peruvian commission's mandate did not include sexual violence or abuses in its investigations, findings, or recommendations. Like in the South African case, its *ratione materiae* was predefined and encompassed murders, kidnappings, forced disappearances, torture and other gross bodily harm, other gross human rights violations,<sup>169</sup> as well as violations of the collective rights of Peru's indigenous population.<sup>170</sup> Nevertheless, this Commission integrated gender issues largely because of NGO advocacy<sup>171</sup> and international

163. Supreme Decree No. 065/2001-PCM. Gloria Cano & Karim Ninaquispe, *The Role of Civil Society in Demanding and Promoting Justice*, in *THE LEGACY OF TRUTH: CRIMINAL JUSTICE IN THE PERUVIAN TRANSITION* 39, 42 (Lisa Magarrell & Leonardo Filippini eds., Catherine Jagoe trans., 2006).

164. Comisión de la Verdad y Reconciliación, *Informe Final*, Tomo II, at 127 (2003).

165. Mijke de Waardt & Annelou Ypeij, *Peruvian Grassroots Organizations in Times of Violence and Peace: Between Economic Solidarity, Participatory Democracy, and Feminism*, 28 *VOLUNTAS: INT'L J. VOLUNTARY & NONPROFIT ORGS.* 1251, 1256–57 (2016).

166. Comisión de la Verdad y Reconciliación, *supra* note 164, at 430. Together, guerrilla groups were responsible for 54% of the human rights violations. HAYNER, *supra* note 1, at 37.

167. HAYNER, *supra* note 1, at 37.

168. Comisión de la Verdad y Reconciliación, *supra* note 164, at 233–37; MANTILLA FALCÓN, *supra* note 31, at 3.

169. The CVR's final report points out that the mandate gives some discretion regarding the interpretation of this and the aforementioned category. Comisión de la Verdad y Reconciliación, *Informe Final*, Tomo I, at 23 (2003).

170. *Id.*; Crandall, *supra* note 141, at 14.

171. INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 13; Durbach & Geddes, *supra* note 90, at 1265.

legal developments.<sup>172</sup> It subsequently treated sexual violence<sup>173</sup> as grave violations of international human rights law, under the category of torture and degrading or inhumane treatment.<sup>174</sup> That sexual violence was incorporated in the work of the Commission at all is ascribed to the pressure asserted by key women's rights activists.<sup>175</sup>

The Peruvian CVR lacked many common powers such bodies have, for instance the power to subpoena or that of search and seizure.<sup>176</sup> The CVR could however publish names of perpetrators.<sup>177</sup> The CVR was tasked with preparing, within its Juridical Unit, certain cases for criminal prosecution and specifically to recommend cases for trial after the conclusion of its work. The *Manta y Vilca* case was included as emblematic (and the only one out of forty-seven cases chosen for investigation) regarding sexual violence.<sup>178</sup> The Commission was allowed to hold public hearings, which were, for the first time in Latin America, televised,<sup>179</sup> and included a thematic hearing on women.<sup>180</sup>

Human rights organizations and other civil society groups were allowed to participate in the process because they had criticized and opposed the past government<sup>181</sup> as well as insurgent groups during the

172. Such as, for example, the recognition of sexual and gender-based violence in the ICTY, ICTR, and the ICC's Rome Statute, women's rights violations as human rights violations, the UNSCR 1325 on Women, Peace, and Security, and the Guatemalan CEH's inclusion of sexual violence into its investigations. PASCHA BUENO-HANSEN, *FEMINIST AND HUMAN RIGHTS STRUGGLES IN PERU: DECOLONIZING TRANSITIONAL JUSTICE* 53, 111 (2015).

173. The full catalogue of crimes the CVR investigated in interpreting its mandate is: 1) murders and massacres; 2) forced disappearances; 3) arbitrary executions; 4) torture and cruel, inhuman or degrading treatment; 5) sexual violence against women; 6) violations of due process; 7) kidnapping and hostage-taking; 8) violence against children; and 9) violation of collective rights. Javier Ciurlizza & Eduardo González, *Truth and Justice from the Perspective of the Truth and Reconciliation Commission*, in *THE LEGACY OF TRUTH: CRIMINAL JUSTICE IN THE PERUVIAN TRANSITION* 5, 7 (Lisa Magarrell & Leonardo Filippini eds., Catherine Jagoe trans., 2006).

174. PASCHA BUENO-HANSEN, *DECOLONIAL FEMINISM, GENDER, AND TRANSITIONAL JUSTICE IN LATIN AMERICA* 457 (2018); BUENO-HANSEN, *supra* note 172, at 105.

175. UN WOMEN, *supra* note 44, at 4.

176. Ciurlizza & González, *supra* note 173, at 11; FREEMAN, *supra* note 141, at 189; Crandall, *supra* note 141, at 17.

177. FREEMAN, *supra* note 141, at 274.

178. BUENO-HANSEN, *supra* note 172, at 57, 105.

179. Crandall, *supra* note 141, at 15.

180. BUENO-HANSEN, *supra* note 172, at 85.

181. This is, however, not accurate for most of the mothers' clubs that accepted state support and fell prey to governmental manipulations from 1985 onwards, while many community kitchens remained autonomous. Waardt & Ypeij, *supra* note 165, at 1254–55; Rosa Alayza Mujica & Mercedes Crisóstomo Meza, *Women's Rights in Peru: Insights From Two Organizations*, 9 *GLOB. NETWORKS* 485, 501, 505 (2009).

conflict. Their participation thus enhanced the credibility and legitimacy of the process.<sup>182</sup> Women's groups, however, were not included in the process, a fact that Pascha Bueno Hansen ascribes to prevailing racial, cultural, and misogynist stereotyping, which marginalized often rural, indigenous, non-Spanish speaking women active in these groups.<sup>183</sup>

Patricia Ruiz Bravo and Tesania Velázquez, two gender consultants from the Pontifical Catholic University of Peru (*Pontificia Universidad Católica del Perú*) (PUCP), argued for including women particularly in an academic proposal to the CVR. Since the gender-neutral mandate favoured men's experiences, the proposal suggested methodological changes.<sup>184</sup> The CVR eventually adopted this approach and adapted its activities as well as its outcomes.<sup>185</sup> Thus, civil society was able to exert some influence over the process.

## 2. Gender Mainstreaming and Balancing

A specific gender program within the CVR, *La Línea de Género*, highlighted and pointed out gender issues throughout the commission's work.<sup>186</sup> According to Andrea Durbach & Lucy Geddes, it was launched largely because women's groups and feminist NGOs advocated for its establishment.<sup>187</sup> The gender program was integrated into a gender unit, making the CVR the first TC to ever have such an entity.<sup>188</sup> However, further involvement of feminist NGOs in the development of the gender unit did not occur.<sup>189</sup>

The CVR's previous gender consultant, Julissa Mantilla Falcón, is credited by Pascha Bueno-Hansen as having initiated and influenced processes within the commission to become more focused on women's socio-historical position and gendered power dynamics in society rather than revolving around sexual violence. The commissioners who favored a legalistic violations-oriented approach did not support these efforts.<sup>190</sup> Mantilla, who went on to head the gender unit, notes that:

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182. BUENO-HANSEN, *supra* note 172, at 50.

183. *Id.*

184. *Id.* at 68.

185. For example, it added in a thematic women's hearing and chapters on sexual violence against women in the final report.

186. INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 19; UN WOMEN, *supra* note 44, at 4.

187. Durbach & Geddes, *supra* note 90, at 1265.

188. BOGGS, *supra* note 112, at 4.

189. BUENO-HANSEN, *supra* note 172, at 59.

190. *Id.* at 54-55.

In practice, the gender mainstreaming approach didn't work – it ended up making the issue of gender invisible because it got lost among everything else. Therefore, it was critical to have a chapter on gender [in the Final Report] for the sake of recognition. In the future, people will notice the chapter, and it sets a precedent.<sup>191</sup>

Accordingly, her views were not implemented but marginalized within the CVR's approach and operations.

### 3. Special/Thematic Gender Hearings

Like in South Africa, special women's hearings were largely the result of activism and lobbying by women's groups and NGOs.<sup>192</sup> They were designed in consultation with feminist groups and victim support organizations,<sup>193</sup> suggesting that women's groups' proactivity triggered more gender-sensitivity. The hearings were largely focused on women's human rights and sexual violence against women. They also considered women's systematic exclusion from decision-making and the sexual division of labor that informed this.<sup>194</sup> Rural women were focused on particularly,<sup>195</sup> as the majority of victims of sexual violence came from those areas<sup>196</sup> and were Quechua-speaking people.<sup>197</sup> However, this focus was not included in the final report. This was an unfortunate decision that affected other topics discussed at the hearings such as reproductive rights and socioeconomic impacts on women. They were not included because they were seen to be too controversial.<sup>198</sup> While the hearings were public, women could disguise their appearance while giving testimony to avoid stigmatization or retaliation.<sup>199</sup>

According to Vasuki Nesiha, feminist scholars and activists contributed to the women's hearing through providing expert testimony. This was meant to link the individual stories to the broader structural conditions that made extensive sexual violence possible. They also portrayed

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191. *Id.* at 75.

192. Durbach & Geddes, *supra* note 90, at 1265.

193. *Id.*

194. UN WOMEN, *supra* note 44, at 5; BUENO-HANSEN, *supra* note 172, at 85.

195. Durbach & Geddes, *supra* note 90, at 1265; NESIAH, *supra* note 19, at 27.

196. About 80 percent of all victims of sexual violence. COMISIÓN DE LA VERDAD Y RECONCILIACIÓN, *Informe Final*, Tomo VIII, at 48–49 (2003).

197. About 73 percent of all victims of sexual violence. *Id.* at 48.

198. NESIAH, *supra* note 19, at 27.

199. Durbach & Geddes, *supra* note 90, at 1265.

women's agency during conflict in order to enable the public to not only see women as passive victims.<sup>200</sup>

The day after the national public hearing on Political Violence and Political Crimes against Women, as it was officially called, civil society organizations came together by invitation of the Commission to discuss what had been brought up during the hearing and to formulate recommendations to the CVR.<sup>201</sup> These recommendations were in fact included in the final report.<sup>202</sup> The Peruvian case accordingly is an example of how women's groups can manage to contribute to the formulation of gender-sensitive recommendations through inclusion and consultation in a TC's activities and processes.

#### 4. Final Report

The final report discussed gender throughout its entirety by interweaving the issues into the general findings.<sup>203</sup> Compared with other commissions' approaches to integrating gender, this was quite remarkable as most commissions only included gender issues in one chapter, or in a section on sexual violence against women. Women's testimonies on sexual violence, however, were the predominant issues included in this report, too. Indigenous women's non-sexual experiences such as displacement or poverty were marginalised and generally excluded.<sup>204</sup> The report features two chapters on gender as well as a subsection. One chapter was the "Differentiated Impact of Violence"<sup>205</sup> according to gender but was essentially focused on women. The other chapter looked at "Sexual Violence Against Women"<sup>206</sup> while the subsection was on "Women's Grassroots Organizations"<sup>207</sup> during the conflict. Women's diverse and multidimensional roles as well as their activity and participation in public life and during conflict are highlighted.<sup>208</sup> The chapter on the "Differentiated Impact of Violence" indicates how women's organizations and movements for the people who disappeared, mainly

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200. NESIAH, *supra* note 19, at 26.

201. BUENO-HANSEN, *supra* note 172, at 86.

202. COMISIÓN DE LA VERDAD Y RECONCILIACIÓN, *supra* note 196.

203. INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 19.

204. NESIAH, *supra* note 19, at 15.

205. "El impacto diferenciado de la violencia." COMISIÓN DE LA VERDAD Y RECONCILIACIÓN, *supra* note 196, at 45.

206. "La violencia sexual contra la mujer." COMISIÓN DE LA VERDAD Y RECONCILIACIÓN, *Informe Final*, Tomo VI (2003).

207. "Las organizaciones de base de mujeres." COMISIÓN DE LA VERDAD Y RECONCILIACIÓN, *Informe Final*, Tomo III (2003).

208. COMISIÓN DE LA VERDAD Y RECONCILIACIÓN, *supra* note 196, at 51, 81.

consisting of women, contributed to the transitional process.<sup>209</sup> It highlights agency as well as complex profiles and motivations of victims and perpetrators<sup>210</sup> alike. Additionally, the report affirms sexual violence against women as a gender-based human rights violation in contrast to widespread societal perceptions of it as collateral damage of armed conflict.<sup>211</sup>

Attention to women's needs and interests in the post-conflict society is to be found in the reparations' and reforms' sections.<sup>212</sup> However, the effects of rape in particular were insufficiently recognized.<sup>213</sup> Moreover, the exclusion of reproductive violence,<sup>214</sup> considered at the gender hearings, as well as a limited consideration of social, economic, and cultural disadvantages within the recommendations' section have been criticized.<sup>215</sup>

Amnesty International and Human Rights Watch are credited with having provided extensive research assistance to the Commission through their provision of documentation and reports specifically on sexual and gender-based violations against women. This information was included into the TRC's database and informed the knowledge on the extent and occurrence of these violations.<sup>216</sup> Consequently, advocacy for attention to gender and possibly gender-sensitivity can also come from civil society groups that do not predominantly consist of or focus on a shared gender-identity and corresponding experiences.

#### D. *Sierra Leone*

##### 1. Country Context and the Gender-Sensitivity of the Mandate

The conflict in Sierra Leone ended when the Lomé Peace Agreement was signed in Togo in 1999.<sup>217</sup> This provided for a power-sharing government, a Disarmament, Demobilization and Reintegration (DDR) program and the establishment of a Truth and Reconciliation Commission.

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209. *Id.* at 51–54; BUENO-HANSEN, *supra* note 172, at 77.

210. Women made up about 40 percent of the members of guerrilla organizations. Theidon, *supra* note 17, at 463.

211. MANTILLA FALCÓN, *supra* note 31, at 1.

212. INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 19; UN WOMEN, *supra* note 44, at 5.

213. BOGGS, *supra* note 112, at 6.

214. Especially the issue of forced sterilization of about 200,000 indigenous women who were additionally stereotyped in being targeted is criticized by Margaret (Peggy) Maisel. Maisel, *supra* note 138.

215. Maisel, *supra* note 138, at 171.

216. MANTILLA FALCÓN, *supra* note 31, at 2.

217. The civil war was officially declared over in 2002.



The mandate of the TRC was laid out in the TRC Act (SL TRC Act)<sup>218</sup> adopted in 2000 by the Sierra Leonean Parliament.<sup>219</sup> It tasked the commission with creating an impartial historical record of human rights abuses associated with the armed conflict in the country. Like the South African TRC, it had powers of search and seizure and subpoena.<sup>220</sup> It could, furthermore, hold public hearings and publish names of suspected perpetrators.<sup>221</sup>

The commission operated from 2002 to 2004. Its *ratione temporis* spanned from 1991 to the signing of the Lomé Peace Agreement in 1999.<sup>222</sup> The mandate did not set out specific restrictions on what it could focus on, thus human rights violations and abuses were interpreted in a rather broad manner.<sup>223</sup> However, the fact that the final report focused on the need for the abuses that occurred to be related to the armed conflict has been seen as limiting with regard to women's human rights.<sup>224</sup> Nonetheless, section 6(2)(b) specifically calls for special attention to be given to "the subject of sexual abuses and to the experiences of children."<sup>225</sup> This was interpreted mostly as giving attention to the experiences of women and girls as they formed the majority of the victims of sexual abuses.<sup>226</sup> Women's social status and experiences were also considered in the political, legal, health, and social welfare spheres to obtain a comprehensive picture of the causes and effects of women's marginalization and reasons for being targeted for sexualized forms of violence.<sup>227</sup>

Women in Sierra Leone had played a crucial role in the 1996 elections and the peace negotiation process in 1999 by bringing the leading warring parties to the negotiating table.<sup>228</sup> Even though subsequently

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218. Officially called simply The Truth and Reconciliation Commission Act 2000.

219. SIERRA LEONE TRUTH & RECONCILIATION COMM'N, WITNESS TO TRUTH: FINAL REPORT OF THE TRC 3 (2004).

220. FREEMAN, *supra* note 141, at 189.

221. *Id.* at 274.

222. Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, § 6(1) (2000) (Liber.) [hereinafter TRC Act].

223. SIERRA LEONE TRUTH & RECONCILIATION COMM'N, *supra* note 219, at 38.

224. *Id.* at 42.

225. TRC Act, § 6(2)(b), 17; William A. Schabas, *The Sierra Leone Truth and Reconciliation Commission*, in TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE 21, 31 (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006).

226. SIERRA LEONE TRUTH & RECONCILIATION COMM'N, *supra* note 42, at 86.

227. *Id.* at 87.

228. JANE BARRY, RISING UP IN RESPONSE: WOMEN'S RIGHTS ACTIVISM IN CONFLICT 36 (2005); Ariel M. Ladum & Janice Haaken, *Women's Perspectives on War and Peace in Sierra Leone*, 23 PEACE &

they were largely left out of the process,<sup>229</sup> women's role in conflict and the effects and harms of sexual abuse against women, as well as in the war in general, were still included in the TRC's focus.<sup>230</sup> Civil society at large was included in the conceptualization and setting-up of the Sierra Leonean TRC. It also conducted some of its activities later on, such as statement taking. There were also national consultative meetings with civil society organizations<sup>231</sup> to discuss the draft bill. This saw the incorporation of changes because the concerns about composition and the selection process of commissioners, as well as the operational period into the final SL TRC Act.<sup>232</sup> In contrast to the earlier TRCs in South Africa, Guatemala, and Peru, women's inclusion and sensitivity to their needs had been included in the Lomé Peace Agreement's reference to the future TRC. It was thus considered from the outset, rather than an afterthought or concession to women's (rights) groups and activists at a later stage.<sup>233</sup>

## 2. Commissioners and Staff

The TRC Act required gender to be considered in the selection of commissioners.<sup>234</sup> This ultimately led to three women commissioners, including a female deputy chair, out of seven members in total (forty-three percent).<sup>235</sup> The Women's Task Force, an umbrella organization for women's groups and other local and international NGOs and civil society organizations focusing on women's rights, operated as a forum on the role of women in the TRC as well as in the Sierra Leone Special Court.<sup>236</sup> This taskforce had lobbied successfully for the inclusion of

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CONFLICT: J. PEACE PSYCHOL. 353, 354 (2017); Yasmin Jusu-Sheriff, *Sierra Leonean Women and the Peace Process*, 9 ACCORD 46, 47 (2000).

229. Jusu-Sheriff, *supra* note 228, at 49.

230. Maisel, *supra* note 138, at 166.

231. Sofia Goinhas et al., *Transitional Justice in Sierra Leone*, in GLOBAL CIVIL SOCIETY 2011: GLOBALITY AND THE ABSENCE OF JUSTICE 152, 153 (Helmut Anheier et al. eds., 2011).

232. INT'L CTR. FOR TRANSITIONAL JUSTICE, *supra* note 69, at 11.

233. LYN S. GRAYBILL, RELIGION, TRADITION, AND RESTORATIVE JUSTICE IN SIERRA LEONE 58 (2017).

234. TRC Act, § 3(1)(a)(v).

235. Maisel, *supra* note 138, at 165; REBEKKA FRIEDMAN, COMPETING MEMORIES: TRUTH AND RECONCILIATION IN SIERRA LEONE AND PERU 85 (2017); PUB. INT'L LAW & POLICY GRP., *supra* note 87, at 10.

236. Hayli Millar, *Facilitating Women's Voices in Truth Recovery: An Assessment of Women's Participation and the Integration of a Gender Perspective in Truth Commissions*, in LISTENING TO THE SILENCES: WOMEN AND WAR 171, 210 (Jasmina Brandkovic & Hugo van der Merwe eds. 2005); GRAYBILL, *supra* note 233, at 54; UN WOMEN, *supra* note 44, at 12.

female staff and an overall gender balance within the TRC.<sup>237</sup> It was also influential in making sure that two commissioners had extensive previous experience in dealing with gender and sexual crimes.<sup>238</sup> The international women commissioners, one of whom had already been a commissioner in the South African TRC, and one of whom was from The Gambia, brought expertise and dedication regarding the inclusion of gender into the commission's work.<sup>239</sup> Substantive female representation might have been the key factor in achieving gender-sensitivity at this TRC, as the other male commissioners have been described as conservative and frequently expressing divergent views on women's inclusion.<sup>240</sup>

All commissioners and some staff members were trained on women's issues by international, transnational, and national women's organizations,<sup>241</sup> such as UNIFEM, the United Nations Development Fund for Women, and Urgent Action Fund for Women's Human Rights (UAF).<sup>242</sup> UNIFEM and the UAF conducted a two-day training workshop on international law pertaining to sexual violence including how to engage with women victims and witnesses, and how to react sensitively and adequately to sexual and gender-based violence.<sup>243</sup> The workshop targeted the commissioners, general staff, and NGO partners and their collaborating staff with regard to the gender dimensions of the commission's truth, peace, and reconciliation objectives as part of that joint training and technical support initiative from April 2003 onwards. Specific attention was paid to assessing the impact of the conflict on women, as well as to promoting gender-sensitivity, especially regarding testimonies from female witnesses and victims.<sup>244</sup> Thus, the Sierra Leonean TRC's training was not only thematically focused on women's needs and rights, but also included methodological aspects through sensitization efforts on sexual violence and the reception of testimonies. Workshops were also provided to local women's NGOs and civil society groups to foster capacity and skills building, as well as to provide

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237. GRAYBILL, *supra* note 233, at 54, 57.

238. *Id.* at 59.

239. GYMAH, *supra* note 5, at 49; Nowrojee, *supra* note 23, at 93.

240. Nowrojee, *supra* note 23, at 93.

241. Maisel, *supra* note 138, at 167.

242. The UAF specifically aims at effecting strategic and systemic change for the advancement of women's human rights and gender equality. See *Our Mandate*, URGENT ACTION FUND AFRICA, <https://www.uaf-africa.org/about-us/mandate/> (last visited Feb. 26, 2009).

243. PUB. INT'L LAW & POLICY GRP., *supra* note 87, at 5; Nowrojee, *supra* note 23, at 93.

244. Press Release, UNIFEM & Urgent Action Fund, U.N. Dev. Fund for Women, UNIFEM and Urgent Action Fund Support Peace-Building Process in Sierra Leone (Apr. 17, 2003).

materials on how to adequately deal with victims, witnesses, and perpetrators.<sup>245</sup>

### 3. Special/Thematic Gender Hearings

A three-day thematic hearing in Freetown was conducted exclusively for women, with public and closed hearings. Mostly women attended the closed hearings.<sup>246</sup> Prior to the national hearing, a two-day training on international law, crimes of a sexual nature, and adequate interviewing techniques for the commissioners and relevant staff was conducted by UNIFEM and the UAF.<sup>247</sup> Furthermore, in each of the districts in which the TRC operated, one day was reserved for women's testimonies about sexual violence. Even though male commissioners were present, only women commissioners were supposed to directly address female victims and witnesses.<sup>248</sup> These regional hearings were closed to the public.<sup>249</sup> Women witnesses were always given the choice of testifying publicly, behind a screen, or in private to support their needs and ease their fears about the process and possible consequences of testifying.<sup>250</sup>

UNIFEM was particularly involved in different aspects of the hearings through a partnership with the TRC. Together with other women's groups, this partnership contributed to gender-sensitivity in the women's hearings.<sup>251</sup> UNIFEM additionally contributed to the women's hearings by providing counselling support to witnesses and victim-survivors. Counsellors went to the homes of witnesses to make sure that they received support and conducted debriefing sessions.<sup>252</sup> Women's groups generally spoke positively about the special hearing in Freetown,<sup>253</sup> suggesting that concerns they might have had were addressed prior to or during the hearing, thus pointing to an atmosphere responsive towards gender-sensitivity.

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245. *Id.*; Nowrojee, *supra* note 23, at 94.

246. Durbach & Geddes, *supra* note 90, at 1267.

247. Nowrojee, *supra* note 23, at 93.

248. Maisel, *supra* note 138, at 168; Schabas, *supra* note 225, at 31; Durbach & Geddes, *supra* note 90, at 1267; Nowrojee, *supra* note 23, at 94; Holly L. Guthrey, Women's Participation in Transitional Justice Mechanisms: Comparing Transitional Processes in Timor Leste and Sierra Leone 95–113 (June 1, 2010) (unpublished M.A. thesis, University of Denver), <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1254&context=etd>.

249. Durbach & Geddes, *supra* note 90, at 1267.

250. Nowrojee, *supra* note 23, at 94.

251. GYMAH, *supra* note 5, at 33–34; SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION, *supra* note 42, at 90.

252. Durbach & Geddes, *supra* note 90, at 1267.

253. GRAYBILL, *supra* note 233, at 58.

## 4. Final Report

The Sierra Leonean TRC report includes specific recommendations to remedy and protect women from violence and abuse against them in political, legal, social, economic, and cultural spheres of life.<sup>254</sup> To achieve such recommendations, women as well as civil society groups could make suggestions for the recommendations' section of the report in workshops held and organized by the TRC and UNIFEM.<sup>255</sup> Victims of sexual violence were included in the category of victims prioritized to receive urgent assistance. An urgent reparations scheme focused on medical assistance and free health care, particularly for fistula surgery and medical treatment for HIV/AIDS.<sup>256</sup>

It is apparent that the TRC considered a submission by the Coalition for Women's Human Rights in Conflict Situations (Coalition), comprised of various lawyers, legal scholars, women's rights activists and NGOs<sup>257</sup> that worked with crimes against women.<sup>258</sup> Even though the Coalition's submission is largely focused on ensuring adequate legal classification, identification, and treatment of sexual violence and gender-based discrimination and abuses by the TRC according to international developments and standards,<sup>259</sup> it also reflects on the societal status of women. This includes economic, political, legal, and other structural effects that in turn have contributed to the widespread violence against women during the Sierra Leonean war.<sup>260</sup> The Coalition, for example, successfully advocated for including certain acts of mutilation such as cutting foetuses out of pregnant women's bellies, as constituting enforced sterilization even though this is not listed as such by the Sierra Leone Special Court Statute.<sup>261</sup> Moreover, the Coalition's view on gendered forms of enslavement, including sexual slavery, has been incorporated in the work of the TRC.<sup>262</sup> UNIFEM also assisted the

254. Maisel, *supra* note 138, at 169.

255. *Id.*

256. Durbach & Geddes, *supra* note 90, at 1268.

257. For example the International Women's Human Rights Law Clinic (IWHR), Human Rights Watch, and Physicians for Human Rights. COALITION FOR WOMEN'S HUM. RTS. IN CONFLICT SITUATIONS, *Submission to the Truth and Reconciliation Commission Sierra Leone*, App. 2, 273-74 (May 2003), <http://www.sierraleonetr.org/index.php/view-the-final-report/download-table-of-contents/appendices> [hereinafter COALITION].

258. *Id.* at 273.

259. *See generally id.* at 28-293.

260. *Id.* at 277, 281.

261. *Id.* at 290; SIERRA LEONE TRUTH & RECONCILIATION COMM'N, *supra* note 42, at 135.

262. COALITION *supra* note 257, at 194; SIERRA LEONE TRUTH & RECONCILIATION COMM'N, *supra* note 42, at 134.

process by providing two international gender consultants to assist the TRC in the writing of the final report. This made it more possible for women's groups to formulate recommendations to be included into the report.<sup>263</sup> The submissions of local NGOs and UNIFEM also served to inform the final report and its findings. They provided substantial contributions to fact-finding, research, and the recommendations.<sup>264</sup> Feminist and other women's (rights) groups, as well as academic research institutions such as the Gender Research and Documentation Centre (GRADOC), submitted oral and written proposals, analyses, and findings that informed much of the information on women's experiences that were included in the final report.<sup>265</sup> These were included in the report's appendix, thus making it possible for readers and researchers to consult the various views and perspectives as well as to obtain background information.

However, the extent of women's contributions seems rather downplayed by the TRC. The final report mentions having established partnerships with unspecified women's organizations and describes their contributions as follows: "[a] number of consultations took place where issues affecting women were discussed, providing valuable input for the Commission's work. Women's organisations also made an important contribution to the work of the Commission by calling upon the women of Sierra Leone to support its work."<sup>266</sup>

It can be assumed that because of women's extensive research assistance, the Sierra Leonean report is one of the most comprehensive in addressing women's perspectives. It also attempted to link the extraordinary violence of the war to ordinary normalized practices of violence against women in peacetime.<sup>267</sup>

## E. Liberia

### 1. Country Context and the Gender-Sensitivity of the Mandate

The conflict in Liberia ended with a ceasefire agreement that was followed by the signing of the Comprehensive Peace Agreement (CPA) in Accra, Ghana in 2003.<sup>268</sup> This agreement established the TRC in

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263. SIERRA LEONE TRUTH & RECONCILIATION COMM'N, *supra* note 42, at 90.

264. Durbach & Geddes, *supra* note 90, at 1267.

265. GRAYBILL, *supra* note 233, at 58; Durbach & Geddes, *supra* note 90, at 1267.

266. SIERRA LEONE TRUTH & RECONCILIATION COMM'N, *supra* note 42, at 92.

267. GYMAH, *supra* note 5, at 43; SIERRA LEONE TRUTH & RECONCILIATION COMM'N, *supra* note 42, at 105.

268. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 22, at 6.

Art. XIII.<sup>269</sup> The TRC then operated from 2006 to 2009. It found that all factions of the conflict committed serious human rights violations and violations of international humanitarian, as well as criminal law. It found that in some cases these amounted to crimes against humanity and war crimes.<sup>270</sup> The time span for investigation established in the TRC Act mandate was set from 1979 to 2003. The TRC was endowed with the power to subpoena, however the final report states that this power was never invoked because of an internal policy against coercion to effect and encourage reconciliation.<sup>271</sup> The TRC also had powers of search and seizure,<sup>272</sup> and the power to conduct public hearings.<sup>273</sup> It had some limited power to recommend amnesty for certain crimes.<sup>274</sup> Regarding the TRC's *ratione materiae*, the TRC Act mentions specifically the investigation of "gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes."<sup>275</sup> Moreover, the commission was mandated to give "special attention to the issue of sexual and gender-based violence and most especially to the experiences of children and women during armed conflicts in Liberia."<sup>276</sup>

The mandate not only specifically mentions sexual violence, but also considers sensitivity towards gender and gender-based human rights violations. What is more, it even calls for gender mainstreaming in the commission's composition, work, operations, and functions. Regarding the composition, this also includes an adequate gender representation reflected in the commissioners and its staff at all levels.<sup>277</sup> The mandate of this institution is the most specific and comprehensive mandate concerning sexual and gender-based violence and the inclusion of women and their experiences, compared to the other four commissions examined in this Article. This commission is lauded as the "flagship for

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269. Comprehensive Peace Agreement art. XIII, Aug. 18, 2003, S/2003/850/Annex, <https://undocs.org/fr/S/2003/850>.

270. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 83, at 17, 19.

271. *Id.* at 190.

272. FREEMAN, *supra* note 141, at 206.

273. *Id.* at 26, 136.

274. JEREMY SARKIN, AMNESTY IN THE GLOBAL IMPACT AND LEGACY OF TRUTH COMMISSIONS (forthcoming 2019).

275. TRC Act, art. IV § 4(a).

276. *Id.* art. VII § 26(f).

277. *Id.* art. VI § 24; TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 83, at 70.

women's empowerment."<sup>278</sup> Usefully, the mandate does not conflate women and gender,<sup>279</sup> even though this was the practice of the commission when it published a thematic women's chapter and the subsections on women in other chapters of the final report.

Based on the role women played during the peace talks, and the election of Ellen Johnson-Sirleaf as the first democratically elected female president of an African state, as well as her outspokenness on women's rights, the political opportunity structure can be viewed as favorable<sup>280</sup> for women's advocacy and inclusion into formal political processes, such as truth-seeking. During the country's fourteen-year civil war, female politicians and women's organizations such as the non-partisan Liberian Women's Initiative (LWI) and the feminist Association of Female Lawyers of Liberia (AFELL),<sup>281</sup> advocated for peace. AFELL was even present as an observing party at the peace negotiations and had particularly lobbied for the creation of a TC for Liberia.<sup>282</sup> They successfully advocated against amnesty for crimes against humanity and war crimes, as well as amnesty for rape.<sup>283</sup> At the TRC design stage, the LWI and particularly AFELL<sup>284</sup> managed to put women's issues on the agenda of the Transitional Justice Working Group (TJWG),<sup>285</sup> which

278. Morgan L. Eubank, *Significance is Bliss: A Global Feminist Analysis of the Liberian Truth and Reconciliation Commission and its Privileging of Americo-Liberian over Indigenous Liberian Women's Voices*, 8 (Jan. 2013) (unpublished M.A. thesis, University of South Florida), <https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=5677&context=etd>.

279. The number of female commissioners is, however, set out specifically. TRC Act, art. V § 7–8.

280. Peace A. Medie, *Fighting Gender-Based Violence: The Women's Movement and the Enforcement of Rape Law in Liberia*, 112 AFR. AFFAIRS 377, 387–388 (2013); LENI WILD & CAROLINE B. BROWN, UN WOMEN, *EVALUATION OF UN WOMEN'S CONTRIBUTION TO INCREASING WOMEN'S LEADERSHIP AND PARTICIPATION IN PEACE AND SECURITY AND HUMANITARIAN RESPONSE: LIBERIA CASE STUDY 187*, 203 (Sept. 2013).

281. AFELL is a national women's rights and feminist NGO aiming at advancing, protecting, and promoting women's rights as well as combatting sexual and gender-based violence. *Association of Female Lawyers of Liberia (AFELL)*, NAMATI, <https://namati.org/about/ourmission/> (last visited Feb. 26, 2019).

282. William N. Massaquoi, *Women and Post-Conflict Development: A Case Study on Liberia*, 86 (June 2007, unpublished MCP thesis, Massachusetts Institute of Technology), <https://dspace.mit.edu/bitstream/handle/1721.1/42108/226315252-MIT.pdf?sequence=2&isAllowed=y>.

283. James Dhizaala, *Transitional Justice in Liberia: The Interface Between Civil Society Organisations and the Liberian Truth and Reconciliation Commission*, in *ADVOCATING TRANSITIONAL JUSTICE IN AFR.* 43, 48 (Jasmina Brandkovic & Hugo van der Merwe eds. 2018).

284. *Id.* at 48, 52.

285. The TJWG was a coalition that ultimately included representatives of 20 civil society groups. *Id.* at 5–52.



was involved in the drafting process of the Liberian TRC Act.<sup>286</sup>

## 2. Commissioners and Staff

Four out of the nine Liberian TRC's commissioners were women.<sup>287</sup> Three of them were experienced in women's issues.<sup>288</sup> Women thus made up 44.4% of the commissioners. The selection process initially lacked transparency and members were appointed rather quickly. However, seven of the original nine members that were selected were vetted and were withdrawn. Seven new members were then chosen after extensive civil society consultation, and inclusion in the vetting process.<sup>289</sup> The selection was based on a shortlist of fifteen candidates<sup>290</sup> compiled by the Economic Community of West African States (ECOWAS).<sup>291</sup> The inclusion of a nearly an equal number of women commissioners was due to the advocacy of the LWI and other women's groups.<sup>292</sup>

## 3. Gender Mainstreaming or Gender Balancing

Gender balancing through a special gender unit and a related committee was the Liberian TRC's main mechanism to mainstream gender in its operations. A separate entity called the Gender Committee, composed of women's groups, as well as state officials, was created.<sup>293</sup> The Gender Committee, which was tasked with support and research, included members of a quite diverse spectrum of women's organizations on national and local levels. Additionally, the Ministry of Gender and Development as well as Commissioner Massa Washington, who was also a member of the LWI peace initiative and representative of women during peace talks,<sup>294</sup> were part of this unit.

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286. *Id.*

287. TRC Act art. V §7.

288. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 83, at 27.

289. HAYNER, *supra* note 1, at 66; Dhizaala, *supra* note 283, at 54.

290. Then including representatives of three civil society organizations, two from political parties, and two candidates selected by the UN and ECOWAS each having chosen one, respectively. Silke Pietsch, Women's Participation and Benefit of the Liberian Truth and Reconciliation Commission: Voices from the Field, at 40 (2010) (unpublished M.A. thesis, Philipp University of Marburg).

291. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 83, at 174; Paul James-Allen et al., *Beyond the Truth and Reconciliation Commission: Transnational Justice Options in Liberia*, INT'L CENT. FOR TRANSITIONAL JUST. 7, (May 2010).

292. Dhizaala, *supra* note 283, at 43–54.

293. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 83, at 70.

294. *Board of Advisors*, TRUTH & RECONCILIATION COMM'N OF LIBER., <http://coalitionforjusticeinliberia.org/board.html> (last visited Feb. 27, 2019).

Commissioner Washington was also assigned thematic oversight for gender within the TRC. She formed a gender unit with her staff prior to the establishment of the Gender Committee.<sup>295</sup> The Gender Committee served to design and carry out projects that sought to engage and encourage women's participation as well as monitoring how women were included and portrayed.<sup>296</sup> It also helped in drafting a gender policy that was meant to inform the entire TRC's operations.<sup>297</sup> This was unfortunately only partly carried out in the TRC's last year.<sup>298</sup>

A liaison officer to coordinate with women's groups was recruited to facilitate cooperation.<sup>299</sup> The TRC's Gender Committee, despite meeting its mandate's requirements and apparently extensively cooperating with the liaison officer, did not focus on many issues but instead focused most of what it did on outreach. It did not convene regularly and its integration into the TRC as well as with women's groups was described as lacklustre.<sup>300</sup> It was seen to have underutilized its potential.<sup>301</sup> Many women's NGOs considered the process tightly controlled rather than led by the TRC and felt left out or marginalized.<sup>302</sup> The TRC apparently side-lined more vocal women's groups that engaged in criticizing its work. This affected the LWI and the feminist Women in Peacebuilding Network (WIPNET).<sup>303</sup> The TRC's attitude towards women's and civil society groups as well as the failure to apply and implement guidelines set up with the input of women's rights organizations is disappointing evidence of a lack of serious commitment towards comprehensively including women's voices. It was really one commissioner, Massa Washington, who asserted considerable influence over the establishment and composition of the gender unit, the related Gender Committee and the gender policy that was produced with women's groups' inclusion.<sup>304</sup>

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295. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 22, at 12, 35.

296. *Id.* at 11.

297. *Id.* at 13.

298. Pillay, *supra* note 20, at 96.

299. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 22, at 15.

300. *Id.*

301. Pillay, *supra* note 20, at 96; Pietsch, *supra* note 290, at 59; Dhizaala, *supra* note 283, at 45.

302. KAREN CAMPBELL-NELSON, INT'L CTR. FOR TRANSITIONAL JUST., LIBERIA IS NOT JUST A MAN THING: TRANSITIONAL JUSTICE LESSONS FOR WOMEN, PEACE AND SECURITY 10 (2008).

303. Dhizaala, *supra* note 283, at 55.

304. *See generally* Pillay, *supra* note 20, at 96; *see* CAMPBELL-NELSON, *supra* note 302, at 8–10.

#### 4. Special/Thematic Gender Hearings

The Liberian TRC did have a gender hearing. It was a two-day hearing in the capital called "Liberian Women and Conflict – Impact and Role in Peace Building and National Development." It was broadcast live on radio and television. Witnesses could, however, request to testify in camera, confidentially, or only with the attendance of selected commissioners.<sup>305</sup> Six women's groups were able to have their own experiences acknowledged as part of the conflict's history.<sup>306</sup> Thus, they were able to add their voices and agency to the country's record of the past. At the thematic hearings, experts managed to connect structural, historical, and systemic patterns of violence with causes and impacts.<sup>307</sup> This provided the commissioners with information that likely would have otherwise remained unconsidered.

To facilitate women's participation, Women's Campaign International contributed financially for women to travel to Monrovia.<sup>308</sup> This assisted women with few resources, particularly those from rural areas, to attend. If this had not occurred, these women would have been most likely marginalized from the process. Regional hearings took place in each of the fifteen county capitals of Liberia, where the TRC convened for five days in each. The fifth day was reserved for civil society organizations' input on specific thematic areas, including on women.<sup>309</sup> Local women's groups submitted testimonies and presented their findings concerning women's needs. To provide for the mental well-being of witnesses after public testimony, psychosocial trauma counsellors were trained in communities.<sup>310</sup> At the women's hearing in particular, but also generally, women seemed to be more willing to talk about their own experiences rather than presenting themselves primarily as secondary victims.<sup>311</sup>

Domestic women's groups provided testimonies statements and research assistance to inform the final report. At the national and regional hearings, they were able to use the platform to present their interests.<sup>312</sup> This contributed to the inclusion of women's group's views and concerns into the process of truth seeking in Liberia.

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305. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 83, at 189.

306. Pietsch, *supra* note 290, at 50.

307. TRUTH & RECONCILIATION COMM'N OF LIBERIA.

308. Pietsch, *supra* note 290, at 51.

309. Eubank, *supra* note 278, at 20.

310. TRUTH & RECONCILIATION COMM'N OF LIBERIA, *supra* note 22, at 16.

311. Pillay, *supra* note 20, at 97.

312. Pietsch, *supra* note 290, at 50.

## 5. Final Report

The Liberian TRC focused their gender-related work exclusively on women.<sup>313</sup> Nevertheless, the report also calls attention to addressing the needs of male victims of sexual violence, not only but also because of the impact on family life, domestic violence, trauma, and recovery.<sup>314</sup> In writing the report, the TRC was assisted by an international gender expert from UNIFEM tasked with preparing the thematic chapter on women called “Women and the Conflict.”<sup>315</sup> The LWI was involved in documenting sexual abuse and especially the systematic rape of women and girls as a weapon of war, as well as sexual slavery and the recruiting of child soldiers.<sup>316</sup> In this regard, the LWI’s research assistance and documentation contributed to informing the commission’s understanding of these human rights and international humanitarian law violations.

The Gender Committee held a national consultative conference with women on recommendations and follow-up programs, to be put forward in the TRC’s final report.<sup>317</sup> The Women’s NGO Secretariat of Liberia (WONGOSOL), UNIFEM, and the Gender Unit organized community dialogue meetings with women meant to elicit information and recommendations to be incorporated into the final report. This was arranged consciously to make a point about including women and civil society groups as well as their needs, demands, and input into the process just as the commission was about to enter the report-writing phase.<sup>318</sup> Recommendations were provided especially in the areas of reparations, memorialization, and reconciliation.<sup>319</sup> Unfortunately, no information on what was included and on how responsive the commission was to these inputs is available.

### F. *Lessons Learnt*

#### 1. How the Design of Truth Commissions Influences Gender-Sensitivity

The TCs of South Africa and Peru were initially set up gender-neutrally but did then consider sexual and gender-based violence as a

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313. TRC Act, art. IV § (4) (e).

314. TRUTH & RECONCILIATION COMM’N OF LIBERIA, *supra* note 22, at 52.

315. James-Allen, *supra* note 291, at 7.

316. Dhizaala, *supra* note 283, at 46.

317. TRUTH & RECONCILIATION COMM’N OF LIBERIA, *supra* note 22, at 12.

318. Anu Pillay & Lizzie Goodfriend, *Evaluating Women’s Participation in Transitional Justice and Governance: A Community Dialogue Process in Liberia*, 2 CONFLICT TRENDS 10, 11 (2009).

319. *Id.* at 14.

category within torture and ill-treatment rather than separately.<sup>320</sup> The Guatemalan commission likewise was not mandated to look at sexual violence in particular but did choose to add this to its otherwise quite narrow interpretation of human rights violations.<sup>321</sup> In the cases of the Peruvian CVR and the South African TRC, academic submissions on gender<sup>322</sup> as well as civil society's consultations<sup>323</sup> seem to have contributed very well to the inclusion of gender issues within the work of these institutions. Individuals in key positions<sup>324</sup> as well as civil society organizations, not specifically focused on women,<sup>325</sup> were involved in shaping the mandate's interpretation in Peru. Including gender-sensitivity into the design of the commission in South Africa might have been strengthened through women's groups' advocacy, as civil society was included in setting up these bodies and selecting commissioners.<sup>326</sup> Sierra Leone and Liberia, in contrast, had gender, or attention to sexual violence,<sup>327</sup> explicitly included in their mandate's scope.<sup>328</sup> They were thus required to perform their work in a gender-sensitive way.

Therefore it can be concluded that commissions with gender as a mandate are usually more successful at bringing about gains for women. This does however depend on the way the mandate is executed. It is also dependent on the resources available to take up gender issues by having specific hearings and launching investigations on gender matters. The will to take these issues up is crucial. TCs therefore should be designed and created to focus on gender issues and their

320. Kusafuka, *supra* note 95, at 48; Pasha Bueno-Hansen, *Decolonial Feminism, Gender, and Transitional Justice*, in *THE OXFORD HANDBOOK OF GENDER & CONFLICT*, 455, 457 (Fionnuala Ni Aolain et al., eds., 2018); PASCHA BUENO-HANSEN, *supra* note 174, at 457 (2018); BUENO-HANSEN, *supra* note 172, at 105; INT'L CTR. FOR TRANSNATIONAL JUSTICE, *supra* note 69, at 13; Durbach & Geddes, *To Shape Our Own Lives and Our Own World: Exploring Women's Hearings as Reparative Mechanisms for Victims of Sexual Violence*, 21 INT'L J. HUM. RTS. 1261 (2017).

321. Tomuschat, *supra* note 144, at 240.

322. BUENO-HANSEN, *supra* note 172, at 59, 68; Van Der Merwe et al., *supra* note 98, at 72.

323. BUENO-HANSEN, *supra* note 172, at 59.

324. *Id.* at 59, 67–69.

325. MANTILLA FALCÓN, *supra* note 19, at 2.

326. Jeremy Sarkin, *The Development of a Human Rights Culture in South Africa*, 20 HUM. RTS. Q. 628, 648 (1998).

327. Mentioning either gender or sexual violence seem like different points of focus and attention, but as they are frequently conflated in truth commissions' practices they can actually be stated as criteria alluding to the same considerations. Gender and women are often equated instead of assessing differing experiences among all genders. Women's experiences or gendered harms they may experience more than men are furthermore often reduced to sexual violence and rape in particular or at least most focused on in praxis due to most commissions' focus on bodily integrity and civil and political human rights.

328. BOGGS, *supra* note 112, at 12.

mandates ought to be explicit on that. However, ongoing pressure by civil society and others actors needs to be sustained to ensure that this is a reality and that lip service is not given to this mandate.

Looking at the selection procedures and the composition of the commissioners in particular, women's groups in Guatemala and Peru had virtually no reported influence on those processes. While the share of female commissioners in Guatemala (slightly surpassing thirty per cent as one out of the three commissioners was a woman)<sup>329</sup> was comparable to the Sierra Leonean and Liberian processes, the Peruvian CVR remained far below the threshold, as only two out of the twelve commissioners were women (16.6%).<sup>330</sup> All three African TRCs, however, had a relatively high proportion of women commissioners, achieving more than forty per cent women commissioners.<sup>331</sup> These institutions were also influenced in their composition, preparation and training by women's groups. The South African TRC with the transitional emphasis on non-racialism and non-sexism ought to have had more female commissioners to indicate its commitment to gender issues,<sup>332</sup> but its composition was still a lot more gender-balanced than that of many others.

In the African case studies, women's groups were included in commissioner selection in all cases, albeit mostly as part of general consultations with civil society. In Liberia, however, contributions by the LWI and apparently some other women's groups pushing for gender balance can be identified.<sup>333</sup> In Sierra Leone, the inclusion of female commissioners with specific experience was achieved through advocacy by the Women's Task Force,<sup>334</sup> thus contributing to the expertise and perspectives commissioners brought into the process as well as to gender balance. The case of Sierra Leone hence illustrates that women's groups were even exclusively credited with pushing for the integration of a high number of female commissioners.<sup>335</sup> Nevertheless, gender balance was also achieved in the Liberian and Guatemalan cases: In Liberia, this was specifically mandated by the TRC Act<sup>336</sup>, while it was

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329. HAYNER, *supra* note 1, at 33.

330. BUENO-HANSEN, *supra* note 172, at 59.

331. Rai, *supra* note 73, at 38; *see* WAYLEN, *supra* note 73, at 132.

332. In contrast to the lower number of women commissioners compared to men, regional managers as part of the staff on a lower level, however, were overwhelmingly female (75%). GOBODO-MADIKIZELA, *supra* note 99, at v. Therefore, selecting more male commissioners is not because of a lack of qualified women.

333. Dhizaala, *supra* note 283, at 53.

334. Millar, *supra* note 236, at 210.

335. *See* Viterna & Fallon, *supra* note 10, at 670.

336. TRC Act, art. V § 7–8.

also realized in Guatemala,<sup>337</sup> even though there was no evidence for conscious efforts for gender balance. Therefore, the case of Guatemala exemplifies that gender-sensitivity in the commissioner selection does not necessarily have to be mandated or advocated for by women's groups, in order to become a consideration. It seems as though an active push for the inclusion of women commissioners with relevant experience in women's issues, rights, and gendered human rights violations is one strategy to effectively bring about more gender-sensitivity in the design stage of TRCs.

Coalition building among women's groups in particular, and civil society in general, might increase the chances of having their demands and needs included. In South Africa and Liberia, women's groups' participation was achieved through working together with other civil society organizations.<sup>338</sup> Alliances with other social movements, or with institutions, if they are credible advocates of gender equality, thus seem necessary for women's groups to get better results.<sup>339</sup> Accordingly, alliances and networks may be beneficial, or even necessary factors to consider in advocacy for more gender-sensitivity. Particularly, international alliances, as occurred in the Sierra Leonean Women's Task Force, could be beneficial. They seem to enhance credibility and legitimacy, while they can, on the other hand, also appear to be removed from the needs and interests on the ground.<sup>340</sup> A balance of local interests and international expertise and resources should thus be kept in mind.

Lastly, the training of commissioners and staff were related to women's groups' efforts in South Africa and Sierra Leone. In Sierra Leone, international women's rights organizations (UNIFEM and the UAF) provided technical and financial assistance that may be needed<sup>341</sup> in order to carry out such endeavours. In our view, a range of civil society interventions in South Africa including the CALS submission served to raise awareness among the South African commissioners.

## 2. Processes of Truth Commissions that Affect the Extent to Which Gender is Taken Up

Across all other categories, the Commissions differ quite considerably from each other, but it is unclear whether this is due to a lack of

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337. See above the section on the Guatemala truth commission process.

338. WAYLEN, *supra* note 73, at 18, 49; Waylen, *supra* note 100, at 523; Viterna & Fallon, *supra* note 10, at 674; Dhizaala, *supra* note 283, at 51.

339. O'ROURKE, *supra* note 1, at 209.

340. Viterna & Fallon, *supra* note 10, at 672.

341. *Id.*

information, on many of the categories used to operationalize gender-sensitive statement-taking, or whether the approaches and women's groups' attention towards these issues actually varied extensively.

The most common activity of TCs where gender-sensitivity may be considered is in statement-taking, such as through interviewing techniques, training for statement-takers, and employing more women interviewers, in order to increase sensitivity towards gender-based but mostly sexual violence. Women's otherwise gendered experiences during armed conflict, such as forced displacement or loss of livelihood might have been recorded where commissions decided to pay attention to these harms too. This occurred in Liberia and Sierra Leone but remained less incorporated into the data bases of South Africa, Guatemala, and Peru. The three latter commissions were more restricted in their mandates and could thus only pay attention to human rights violations falling within these categories largely informed by bodily integrity and civil and political human rights. For painting a comprehensive picture of women's experiences during conflict, however, feminist scholarship ascribes less comprehensive and thus possibly lower transformative potential to what is generally being investigated during this phase.

Regarding gender mainstreaming, the Guatemalan CEH did not integrate gender mainstreaming or balancing into its work very much. In Sierra Leone, mainstreaming led to quite positive results: the TC is credited with having created the first extensive gender-sensitive record of a country's violent past that also connects gendered violence with its root causes.<sup>342</sup> As the mandate already encouraged attention to sexual abuse, interpreted as sexual violence against women and girls, gender was already somewhat included in the methodology that affected the operationalization of the crimes looked at and the process of collecting statements. Liberia and Sierra Leone used different approaches to integrating gender systematically: while the former made use of a gender balancing model, the Sierra Leone TRC relied on crosscutting mainstreaming, but without a concrete gender policy. South Africa and Guatemala neither applied gender mainstreaming nor balancing.

Looking at the effects of gender mainstreaming versus balancing approaches, Abigail Gyimah notes the objective of addressing gender comprehensively and with regard to lasting transformative impacts on society, which is rarely achieved by choosing only one of these options. She advocates, therefore, for a combination approach that could potentially remove gender bias and provide meaningful insights as well as

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342. Maisel, *supra* note 138, at 168; VALJI, *supra* note 17, at 9; GYIMAH, *supra* note 5, at 42.



starting points for restructuring a society after truth seeking.<sup>343</sup> Such a combination approach of gender units with comprehensive mainstreaming throughout its work, however, seems to have only been used in the Peruvian case, seemingly without significantly better outcomes compared to other practices. The extent to which gender-sensitivity seems to have been achieved there is apparently linked to the gender unit's leadership. Without such a special unit, however, there might not have been space or willingness for gender-sensitivity at all. Similarly, individual commissioners (and sometimes key staff) seem to have played a significant role in achieving or influencing gender-sensitivity on a crosscutting level in Sierra Leone and Liberia.

### 3. Outcomes of Truth Commissions

Across all case studies, the public's conception of women and the conflict as well as the findings in the final report and in special or thematic gender hearings were shaped through the successful inclusion of women's perspectives into the official record of the countries' past. In Peru, the establishment of thematic hearings and women's (groups') inclusion as experts and consultants demonstrates the commission's openness for at least supportive considerations of gender-sensitive interests and demands. Moreover, the Peruvian women's hearings were largely established due to women's groups' advocacy. This highlights the importance of organized civil society's involvement to achieve such outcomes. Likewise, the CALS submission and women's organizations successfully pressured the South African TRC to make women-focused hearings available and increase the TRC's gender-sensitivity. The CALS' submission additionally directly informed the make-up of the commissioner panel.

Supportive roles in increasing gender-sensitivity can also be played by international and transnational women's organizations, which carried out or facilitated the Sierra Leonean and Liberian commissions' endeavours in this regard. The UAF and UNIFEM provided financial assistance in Sierra Leone, while Women's Campaign International (WCI) did this in Liberia. UNIFEM furthermore was involved in training and making counselling available to enhance the Sierra Leonean commission's gender-sensitivity.

Where mandates already called for attention to gender or sexual violence, specific women's chapters in the final reports were not the results of advocacy. Gender-neutral mandates, like in South Africa,

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343. GYIMAH, *supra* note 5, at 18.

Guatemala, and Peru, however, followed different paths. Specific advocacy was needed in South Africa, while the interpretation of the Guatemalan mandate apparently brought its inclusion with it. In Peru, efforts of commissioners, domestic and international organizations as well as influential staff seem to have been responsible for the inclusion and mainstreaming of women's interests. As all factors seem to have played key roles in the different contexts, it is difficult to ascribe a specific reason for the results that was achieved. Thus, all are relevant in different circumstances and the context is always important as to what occurs and for what reason. However, the more that all these role players played their part the more likely it is the outcome will be to achieve the best results.

The final reports of all these commissions alluded to social stigmatization and heightened victimization for victim-survivors of sexual and gender-based crimes. In South Africa, Guatemala, and Peru, the final reports called attention to the fact that underreporting regarding violence was assumed to be severe.<sup>344</sup> Silencing, blame, and the gendered power relations contributing to underreporting were also questioned.<sup>345</sup>

In Sierra Leone and Liberia, women's groups were included in the formulation of recommendations, as they could contribute and lobby for their interests in workshops and consultations the commissions offered for that purpose. Efforts to include gender into reparations have been made in Guatemala, Peru, and Sierra Leone, where sexual violence, particularly rape, was included as an eligible victim category. In the Latin American cases, however, the formulation of recommendations does not seem to have been consultative or participatory.

Lastly, the case studies provide for various examples of women's groups' increased and pronounced advocacy for women's rights deriving from or directly based on the outcomes of TCs. The lack of legal consequences emanating from the findings on sexual violence in the Guatemalan final report led to several women's and feminist civil society organizations<sup>346</sup> organizing a popular Tribunal of Conscience in March 2010 to lay the groundwork for bringing legal cases. This unofficial tribunal, structured as a mock trial, was meant to provide space for

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344. PUB. INT'L LAW & POLICY GRP., *supra* note 87, at 18.

345. Graybill, *supra* note 120, at 6–7; *Report of the Commission for Historical Clarification Conclusions and Recommendations*, GUATEMALA MEMORY OF SILENCE, at 27 (1999); *Final Report*, COMISION DE LA VERDAD Y RECONCILIACION, <http://www.cverdad.org.pe/ingles/ifinal/conclusiones.php#up> (last visited Feb. 28, 2009).

346. UNAMG, ECAP, MTM, CONAVIGUA, and the feminist newspaper *La Cuerda*. Alison Crosby & M. Brinton Lykes, *Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala*, 5 INT'L J. OF TRANSITIONAL JUST. 456, 463 (2011).

sexual violence survivors to talk about their personal experiences and be heard and acknowledged. It therefore provided them with an opportunity they had not been given in the official process.<sup>347</sup> Similarly, in the case of the Peruvian CVR, NGOs, including women's rights groups, focused on prosecutions and accountability, reparations, and reforms of the national criminal code.<sup>348</sup>

The results of the work of TCs on these issues can be seen in various matters. In Liberia, amendments to the statutory rape and inheritance laws were implemented because of problems of discrimination against women in these laws that were identified by the TRC.<sup>349</sup> Likewise, in Sierra Leone, recommendations<sup>350</sup> were made to reform the law on domestic violence, inheritance, as well as marriage and divorce laws in customary law.<sup>351</sup> According to Lyn Graybill, these reforms are attributable to women's organizations that mobilized around these issues after the TRC final report was published.<sup>352</sup>

## VI. CONCLUSION

There are numerous ways that TCs can be more gender-sensitive and more attuned to the needs of women as this Article has indicated. There may be many other ways to discuss the responsiveness of transitional justice instruments towards women's, or more broadly, gender concerns and the findings of this analysis indicate that there is no formula that will guarantee gender-sensitivity within a commission's direct outcomes and effects on women. Most studies focusing on the outcome of transitional justice processes supposedly measure its impact and success. This may, however, always remain frustrating or incomplete, since the concept might be better conceived as a process in which the undertaking itself already is beneficial and valuable.<sup>353</sup> Just like democracy is an incomplete process in which shortcomings and improvements are sought, a transition from a violent past might not be concluded within

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347. *Id.*; Durbach & Geddes, *supra* note 90, at 1271.

348. MANTILLA FALCÓN, *supra* note 19, at 195.

349. CAMPBELL-NELSON, *supra* note 302, at 12.

350. Recommendations directed at the government were mandatory, however, they were still not necessarily implemented for various reasons. See Scanlon & Muddell, *supra* note 12, at 20. In fact, many follow-up, monitoring, and implementation mechanisms were declared as suspended and thus remained unfulfilled in Sierra Leone. HAYNER, *supra* note 1, at 60; GYMAH, *supra* note 5, at 34.

351. MAISEL, *supra* note 138, at 169; see HAYNER, *supra* note 1, at 60.

352. GRAYBILL, *supra* note 233, at 63.

353. Andrew G. Reiter, *Measuring the Success (or Failure) of Transitional Justice*, in AN INTRODUCTION TO TRANSITIONAL JUSTICE, 269, 283 (Olivera Simic ed., 2017); O'ROURKE, *supra* note 1, at 126.

just a couple of years. There is always a need to look back in order to move forward and create a more equal and just future.

It is difficult to draw conclusive findings across the case studies to achieve general conclusions. Individual case studies are hard to compare and generalize because they are about one particular country with its unique context. Overgeneralization may lead to biased results that then continue to become generalized and can therefore have negative consequences for the design and development of TCs in general.<sup>354</sup>

One of the main takeaways of analyzing gender-sensitivity in transitional justice mechanisms is that these institutions are often decided on and even outlined during peace negotiations. This means that the advocacy for gender-sensitivity needs to start as early as possible.<sup>355</sup> As the South African case has shown, a lack of attention to the details of transitional instruments matters and focusing instead only on post-transitional change can result in missing important chances to achieve gender-sensitive truth seeking. As South Africa had a comparatively well organized and resourced national women's movement,<sup>356</sup> a favorable political opportunity structure with support from the new government, and momentum within the framing of women's rights as a realm of emancipation and equal citizenship,<sup>357</sup> comparatively little was made of these opportunities. Nevertheless, the fact that the CALS' submission managed to change quite a few processes for the better points to the possibilities of successful lobbying also at later stages. Nevertheless, it is likely that even more could have been gained if that institutional openness would have been addressed earlier and more systematically. On the other hand, feminist or human rights activists, for instance, often change their own focus area and strategies of engagement to react to the different and changed needs and circumstances during conflict, thus exemplifying more practical than strategic engagement with transitional justice mechanisms. They may become involved in providing humanitarian aid or basic services to affected populations in need, often primarily women and girls, or organize in resistance movements.<sup>358</sup> When peace is achieved, and this increasingly has happened with the involvement of women's movements, as seen in the more recent African cases, their attention often becomes forward rather than

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354. Tara J. Melish, *Truth Commission Impact: A Participation-Based Implementation Agenda*, 19 *BUFF. HUM. RTS. L. REV.* 273, 286 (2012).

355. Scanlon & Muddell, *supra* note 12, at 25.

356. Viterna & Fallon, *supra* note 10, at 675, 682, 686.

357. *Id.* at 675, 683.

358. BARRY, *supra* note 228, at 28.

backward looking. The organizations often focus on judicial and political reforms and women's representation and participation at the decision-making level, especially within government and the legislature.<sup>359</sup> Findings about the crimes of the past and uncovering the truth behind the abuses against women might not always get the attention they deserve. Scarce resources are then directed at assisting women in dire conditions<sup>360</sup> and pushing for women's involvement in building a different and better future.<sup>361</sup>

As far as personnel is concerned, there is a need to obtain sufficient women commissioners and staff, but there is also a critical need to carefully select commissioners and key staff, such as for example, personnel for gender units, statement-takers, or researchers on women and gender.

Certainly having more women involved particularly at leadership role is important in bringing a gender focus to such processes. It is not enough however simply to have women. There needs to be an emphasis on gender issues and a focus on gender-based violence and the impact of the conflict and violence on women. Recommendations on dealing with that violence also need to be made so as to meaningfully impact on the legacy of that violence. Critically, the outcomes of TCs' recommendations, that is, reforms and reparations, have the most transformative potential for changing women's situations in post-conflict societies. They can affect women's rights in general, as well as have a highly normalized, direct impact on a range of issues including structural violence against women. While women's civil and political rights are often strengthened in transitions (at least on paper), economic, social and cultural structures and realities still frequently remain untouched and unresolved.<sup>362</sup> They do however, considerably determine and affect the translation of such policies into reality. In fact, social and economic rights considerably determine access to and meaningful assertion and exertion of civil and political rights.<sup>363</sup> Access and gendered inequalities continue to play a key role in determining the effect that such policies and improvements have and how responsive they are to women's interests. Therefore, gender-sensitive final reports should include these considerations within their recommendations. They should specifically suggest how to remedy structural inequalities in laws and policies. They

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359. *Id.* at 56–58, 59–61.

360. *Id.* at 28, 63, 81–84.

361. *Id.* at 59–61, 69, 125.

362. WAYLEN, *supra* note 73, at 178.

363. *Id.* at 5.

should indicate the ways in which measures appearing to be gender-neutral may in fact have detrimental effects on women. Comprehensive recommendations should aim to achieve gender justice. They should target gendered and socially hierarchical power relations to address structural and systematic inequality. Thus, education, capacity building, equal access to opportunities and resources, and redistributive measures should be given more attention.<sup>364</sup>

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364. See generally GYIMAH, *supra* note 5, at 44–48.