Gendered War and Gendered Peace: Truth Commissions and Postconflict Gender Violence: Lessons From South Africa

Tristan Anne Borer

Abstract
That war is profoundly gendered has long been recognized by feminist international relations scholars. What is less recognized is that the postwar period is equally gendered. Currently undertheorized is how truth-seeking exercises in the aftermath of conflict should respond to this fact. What happens to women victims of war violence? The difficulties of foregrounding gendered wartime violence in truth telling are illustrated by the South African Truth and Reconciliation Commission. The article explores some consequences of the failure to uncover gendered truth, including its impact on the government’s reparations policy, and continued “peacetime” violence perpetrated against women in South Africa.

Keywords
gender, reparations, sexual violence, South Africa, truth commissions

That war is profoundly gendered has long been recognized by feminist international relations scholars (Enloe, 2000; Jacobs, Jacobson, & Marchbank, 2000; Turshen & Twagiramariya, 1998). In World War I, 80% of war casualties were soldiers, which meant men. In World War II, only 50% of casualties were soldiers; by the Vietnam War, this number had fallen to 20%. By the 1990s, a full 90% of casualties were civilians, mainly women and children (Pettman, 1996). For those who survive, many are forcibly displaced, becoming refugees and internally displaced persons, 80% of whom are again women and children. Civil conflicts—the type which most often fuels calls for truth telling after transitions to democracy—have specific forms of violence, including state terror enacted by agents or by...
vigilante groups or paramilitaries with state complicity directed primarily against innocent civilians; much of this violence is again gender specific, with women being targeted through gender-based humiliation and torture. In general, most feminist scholars argue that sexual violence against women specifically is a constitutive aspect of war.¹ Although it is clear that war is gendered, less recognized are the ways in which the postwar period is equally gendered. What happens to women victims of war violence? What role does righting gender inequities play in postwar reconstruction? Although the gendered dimension of violent conflict has received much theoretical attention, what has not been adequately theorized is how truth-seeking exercises in the aftermath of conflict should respond to this fact. The difficulties of foregrounding gender in truth telling are illustrated by examining the South African Truth and Reconciliation Commission (TRC). In this article, I argue that the TRC was not terribly successful at uncovering the truth about women’s experiences, specifically of sexual violence, under apartheid. I offer several explanations for this, including the definition of human rights violations that governed the work of the commission, the primacy given to civil and political over economic and social rights violations, the adoption of a gender-neutral approach to truth gathering, and the criteria used for qualifying for amnesty. The article then explores some consequences of the failure to uncover the truth about sexual violence, including its impact on the government’s reparations policy, and continued “peacetime” violence perpetrated against women in South Africa.

War Is Gendered. So Is Peace

Richard Rayner (1997) argued that military training involves socialization into an extreme kind of masculinity, in which a young soldier must prove he is a good soldier—that is, that he is neither a “girl” nor gay. This militarized masculinity, which results from breaking men down and reconstructing them as soldiers, Pettman (1996) argued, “regularly includes the vilification of women and consciously plays on young men’s sexual insecurities and identities” (p. 93). Rayner (1997) argued that in this warrior culture militarism, masculinity and sexualized violence are connected: “There is a set of attitudes, including hypermasculinity, adversarial sexual beliefs, sexual promiscuity, acceptance of violence against women, hostility toward women and sex-role stereotyping, that is correlated with rape and a proclivity for it” (p. 29). And while Rayner questions whether rape is a necessary corollary to the bottom line of an army’s function—killing—others believe that sexual harassment and violence are not only inevitable but indeed a necessary part of the military. He quotes Reagan Administration Undersecretary of Defense for Policy Fred C. Iklé, for example, who argues that “military life may correctly foster the attitudes that tend toward rape, such as aggression and single-minded self-assertion” (Rayner, 1997, p. 29).

In light of Rayner’s “warrior culture,” it is not surprising that in all types of violent conflicts, women are targeted specifically as women by sexual violence. As a result, rape as a tool of war has become endemic. Diken and Lausten (2005) argued that rape can, in fact, be viewed as a prime strategy of asymmetric warfare, as soldiers attack civilian women rather than male combatants, and have only the indirect aim of taking a territory. The Women’s Rights Project of Human Rights Watch has detailed the variety of ways in
which rape has been used as a war weapon and as a tool of political repression; it is clear that sexual violence is a worldwide and pan-cultural phenomenon (Human Rights Watch, 1995a, pp. 1-3). Although it has become increasingly evident that women are vulnerable to rape by soldiers from the “other” side as a way of getting at “their” men, demonstrating the failure of their men as protectors, recent events have revealed that rape is not a tool reserved only for emasculating and humiliating the enemy. Women, it is now clear, face the prospect of being raped both by soldiers from their own countries and by peacekeepers; in both cases, women are being raped by soldiers who are supposedly their protectors.

While overwhelmingly the case, women are not only victims in war. Despite widespread assumptions and popular images associating men with violence and war and women with peace, many women also join war efforts, in a variety of roles. They join voluntary state militaries and take up arms as combatants in liberation wars. What happens to these women—both victims/survivors and warriors—after war? Can truth telling bring gender relations to the fore as a concern for long-term sustainable peace? Pettman (1996, p. 126) argued that whatever women’s participation in armed struggles, they are routinely pushed back into the private sphere when the fighting is over, their contributions erased. She is particularly interested in what happens to women and to gender relations after liberation movements have prevailed and the state has been captured, as was the case in many countries that subsequently instituted truth commissions, from El Salvador to South Africa. Repeatedly, she argues, after liberation women are relegated to roles of being protected and are made invisible in debates about how to build new, representative, and legitimate state institutions, including the military. Moreover, she notes a widespread pattern of regression in terms of women’s claims and participation after the state is won, arguing that there is a near universal tendency for women to lose out in state consolidation politics. It appears to be difficult for women to translate their activism in wars and nationalist struggles into rights and effective participation when the fighting is done. Even in cases where large numbers of women bore arms, “‘peace’ seems to see enormous pressure on those women to return ‘home,’ to give up both jobs and political representation in favour of men” (Pettman, 1996, p. 137). Why might the trends prevail, and how might postwar truth telling prevent or ameliorate these problems?

Pettman offers several hypotheses for why traditional gender roles are so often strongly reasserted, even within those states where women played important roles in antistate militaries and where gender interests were incorporated into revolutionary rhetoric.

One possible reason is that the transfer of state power is not always accompanied by effective control over territory and population. This was true during the cold war, when new governments almost immediately faced foreign-backed counterrevolutionary forces, such as South African–funded antistate forces in both Angola and Mozambique. More recently, power transfers in areas such as Afghanistan and Iraq support the notion that state capture and state consolidation are not necessarily synonymous. Faced with immediate legitimacy crises, Pettman argues, states tend to quickly prioritize state survival and defense, which often translates into intensified militarization. When this occurs, gender transformation policies are either postponed or abandoned altogether. Gender issues are also quickly set aside as well when the state immediately faces an economic crisis, such as reconstruction. When the state becomes the main source of rewards, competition for positions within it is
fierce, with men being rewarded more handsomely than women. Moreover, it serves the
state’s interests to revert to traditional notions of “women’s work,” so women’s labor is
exploited cheaply. Third, new governments frequently need to absorb a large number of
demobilized soldiers. And even though many women fought as soldiers, “soldier” comes to
mean male, and “governments seek to ‘disarm’ soldier men as a potential threat to state
power, and might reward them with ‘returned’ power over women, rather than risk further
discontent through social policies that undermine men’s roles and ‘the’ (patriarchal) family”
(Pettman, 1996, p. 140). Underlying Pettman’s three hypotheses of state consolidation,
political economy, and male elite power interests is the reality that during wars, gender roles
are often suspended; however, demobilization into a postwar context often means a return
to prewar gender relations, a return to “normalcy.”

In terms of sexual violence, similar dynamics appear to be at play. Because violence
was considered a legitimate means for waging and ending conflict, men use violence
against women in the aftermath of conflict to reestablish and retain control over family
resources and over women’s productive and reproductive rights. Across contexts, domestic
violence incidents increase as women are revictimized by returning husbands and sons
(Duggan & Abusharaf, 2006). Whatever the combination of reasons for a reversion to old
gendered dynamics accompanied by continuing (and sometimes increased) violence against
women, the implications for long-term sustainable peace are clear: failure to address gen-
dered power relations both before and during conflicts means that they are unlikely to be
addressed, much less transformed, in its aftermath (Pettman, 1996). It is precisely during
this aftermath that the potential for truth telling to grapple with both the history and the
future of gender power relations is at its highest.

**Truth Telling and Gendered Peace**

If women are specifically targeted with violence during war, will those responsible for
such violence be held accountable at war’s end? If not, what does this say about the gov-
ernment’s commitment to the rule of law and human rights? Moreover, can truth-telling
mechanisms help avert the problem of women’s contributions to overthrowing authoritar-
ian governments subsequently being erased? If not, then Pettman’s (1996) statement that
“even in postrevolutionary situations where women are declared legally equal, profound
inattention to or defence of unequal gender relations ensures that national liberation will
not mean women’s liberation” (p. 140) is disturbing indeed in terms of prospects for lasting
peace. Christine Bell and Catherine O’Rourke (2007), however, provide insight into just
how difficult a postwar gendered focus might prove to be, pointing to the visible exclusion
of women in all aspects of transitional justice processes, beginning with their near absence
from the fora that decide which type of transitional justice mechanisms, if any, will be
adopted. Because transitional justice mechanisms, including truth commissions, are
generally products of peace negotiations, and because negotiation processes themselves
are deeply gendered (with negotiators from both state and nonstate parties to the conflict
as well as international negotiators being overwhelmingly men), conceptualizations of
how accountability, justice, and human rights will be approached cannot help but be
gendered.4 Echoing Pettman’s concerns, they conclude that “for women in transitions an emphasis on postconflict restoration without challenging uneven gender power relations can mean giving up the perverse equality gains of war and returning to the home and perhaps other forms of abuse” (Bell & O’Rourke, 2007, p. 41). And indeed, this proved to be generally true in the South African case.

The South African TRC and Gendered Violence

In any truth commission, “the process of defining the terms of a commission’s mandate, the ‘truth’ that it is aiming toward, is a high-stakes political terrain” (Nesiah, 2006, p. 6). In South Africa, the commissioners—seven of whom were women—had to determine how they would fulfill their given mandate, in terms of granting amnesties (deciding who the perpetrators were) and certifying those eligible for reparations (deciding who the victims were). The commissioners were guided by the Promotion of National Unity and Reconciliation Act of 1995, which stated that persons would be eligible for amnesty if they made “full disclosure of all the relevant facts relating to acts associated with a political objective” (ch. 2, sec. 3[1][b]). “Victims” were defined as those who had suffered physical or mental injury, emotional suffering, pecuniary loss, or a substantial impairment of human rights as a result of a gross violation of human rights (GVHR), along with (sometimes) their relatives and dependents (ch. 1, sec. 1[xix]). In determining whether a person had suffered a GVHR, the TRC again looked to the Act for guidance. Four things constituted gross violations of human rights: killing, abduction, torture, or severe ill-treatment (ch. 1, sec. 1[ix]), although severe ill-treatment was not clearly defined in the Act. While undoubtedly unintentional, these definitions (of victims, violations, and those eligible for amnesty) had profound implications for the TRC’s ability to address both gendered violence of the past and gender justice in the future.

The Human Rights Violations Committee of the TRC collected more than 21,000 victim statements describing 37,672 human rights violations. An interesting gendered phenomenon emerged almost immediately during the period of statement giving: more African women—most middle aged or elderly—came to the Commission than any other category of people. Even more striking, however, was the fact that although most people who told the Commission about violations were women, they overwhelmingly testified about violations against men (South African Truth and Reconciliation Commission, 1998a, pp. 165-171). Women, it appeared, were unwilling to talk about their own experiences of human rights violations under apartheid. This held true especially in terms of reporting sexual violence that they had experienced. Indeed, of the over 21,000 testimonies given, only 140 explicitly mentioned rape (South African Truth and Reconciliation Commission, 1998b, p. 296), although given the prevalence of rape during wartime, the number was very likely much higher. In terms of the first charge in the TRC’s mandate, “establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed” (South African Truth and Reconciliation Commission, 1998a, p. 55), the TRC thus faced a rather large obstacle: the “truth” about women’s experiences as women (as opposed to as wives and mothers) never fully emerged. Why did women
refuse to discuss their own histories of apartheid-era violations, finding it more comfortable to tell the stories of their male relatives? At least two explanations are possible, both of which hold policy implications for future truth-telling exercises.

The first explanation is that the definition of GVHR that governed the work of the TRC—that is, that only killing, abduction, torture, or severe ill-treatment would count as a violation—affected women’s testimonies. Fiona Ross (2003) argued that the Act’s definitions of violence and violation were excessively narrow. With its focus on what are known as bodily integrity rights (South African Truth and Reconciliation Commission, 1998b, p. 64), other types of violence were not the focus of the Commission. Women, however, are more likely than men to suffer from structural violence, which arises from social, economic, and political structures that increase the vulnerability of particular groups—for example, poor women who experience higher infant mortality rates due to limited access to health care systems (Peterson & Runyon, 1999). Indeed, socioeconomic vulnerability may well increase during violence with the economic burden of caring for and supporting the family being further shifted onto women who often find themselves as single heads of households due to high mortality and/or disappearance rates of men (Duggan & Abusharaf, 2006).

Heightened vulnerability was especially the case for women under the apartheid system, which was more than just a system of racism; it was also a highly developed system of economic segregation. The economic consequences of apartheid policies were profound indeed, and African women were the population group that suffered the most. The integrated systems of migrant labor, forced removals, inadequate or no education, neglect of traditional agriculture, and lack of basic health care combined to create a system of extreme poverty, with tremendously high unemployment rates, severely skewed income distributions, and tragic health differentials. Rural homeland areas were especially poverty-stricken, and this affected women more than men as men migrated to urban areas in search of employment, leaving women, children, elderly, and infirm behind. Beth Goldblatt and Sheila Meintjes (1998), in a submission on gender to the TRC, argued that the history of apartheid was not only one of racial domination. Less emphasized was “the way in which patriarchal power relations were integrated and used to bolster the power of the oppressors within indigenous communities” (p. 29). These power relations, while long predating apartheid, were exacerbated by it.5

Thus the primacy given to violations of civil and political rights by the Act creating the TRC had implications for how much truth the Commission would eventually be able to uncover. Feminist human rights scholars have long argued that the dichotomy between—and primacy given to—civil and political rights, which are seen as operating primarily in the public sphere of the state, and economic rights, which are seen as pertaining primarily to the private sphere, obscures and downplays the violations from which women most suffer (Charlesworth, 1995). To be clear: it is not that women do not suffer direct violence perpetrated by the state; they do. However, they are much more likely than men to suffer from violations of indirect or structural violence. It is precisely these social and economic rights which fell outside of the purview of the TRC. The consequences for women, Ross (2003) argued, were profound:
Permitting the expression of pain of a particular kind, [the Commission] emphasised bodily violation at the expense of a broader understanding of apartheid and its consequences. Foregrounding certain forms of violence in the public record, it rendered some kinds of pain more visible while displacing other forms of experience and its expression. Its work points to the ease with which women’s experiences are homogenised and the range of expressions to give voice to experience restricted. (p. 162)

The TRC was not unaware of the narrow interpretation of its mandate. It addressed, somewhat defensively, the issue of types of violations it investigated twice in its report: once, in a general overview of the difficulty of defining gross violations of human rights, and once specifically in relation to the gendered implications of this difficulty. In its general comment on interpreting the Act’s definition of GVHR, the Commission reported:

This definition limited the attention of the Commission to events which emanated from the conflicts of the past, rather than from the policies of apartheid. There had been an expectation that the Commission would investigate many of the human rights violations which were caused, for example, by the denial of freedom of movement through the pass laws, by forced removals of people from their land, by the denial of franchise to citizens, by the treatment of farm workers and other labour disputes, and by discrimination in such areas as education and work opportunities. Many organizations lobbied the Commission to insist that these issues should form part of its investigations. Commission members, too, felt that these were important areas that could not be ignored. Nevertheless, they could not be interpreted as falling directly within the Commission’s mandate. (South African Truth and Reconciliation Commission, 1998c, p. 12)

The Commission reiterated its stance that its hands were tied by its enabling Act, in its defense of not having adopted a wider interpretation of violations in terms of gender:

The Commission’s relative neglect of the effects of the “ordinary” workings of apartheid has a gender bias. . . . A large number of statistics can be produced to substantiate the fact that women were subject to more restrictions and suffered more in economic terms than did men during the apartheid years. The most direct measure of disadvantage is poverty, and there is a clear link between the distribution of poverty and apartheid policies. Black women, in particular, are disadvantaged, and black women living in former homeland areas remain the most disadvantaged of all. . . . To integrate gender fully, however, would have required the Commission to amend its understanding of its mandate and how it defined gross human rights violations. (South African Truth and Reconciliation Commission, 1998b, pp. 287-288)

Despite this defensiveness, however, the Commission honestly acknowledged its shortcomings in this area in its final report, noting that “the definition of gross violation of human
rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women” (South African Truth and Reconciliation Commission, 1998b, p. 316).

South African women did not tell their stories for a second reason: Women, in general, find it difficult to discuss their experiences of rape and other forms of sexual violence; this is true in private, if not more so in public. And indeed, as the statistic above of only 140 reported rapes testifies, women were reluctant to discuss this part of their personal history during apartheid; many refused outright to do so. There are undoubtedly many reasons why this was the case, some of which are generalizable across cultures, others of which are South Africa–specific. Some women chose not to testify out of a sense of shame, or fear of rejection by family members. Still others felt that bringing up old memories of sexual assault was too painful, certainly in terms of answering questions in a public forum about it. Some felt that they simply did not have the language to express what they had endured. Some women were aware that their rape was a symbolic act meant to humiliate men for not being able to protect them, and for that reason felt that testifying would only further humiliate men. Some women feared that they would no longer be marriageable, while others feared retaliation. Some were loath to make statements that their children might one day read (Ross, 2003).

Some reasons given for their silence were South Africa–specific. Especially in relation to having been raped by men in the liberation movement, some women did not want their testimony to be used to equate individual human rights violations by some ANC members with the systematic violations of apartheid (Goldblatt & Meintjes, 1998). Some women feared that recounting their rapes would be seen as selling out or outing their comrades. Others were afraid of jeopardizing their own careers, as noted by South African clinical psychologist Numfundo Walaza: “Another deterrent is that some of the rapists hold high political positions today—so if you spoke out you would not only undermine the new government you fought for, but destroy your own possibilities of a future” (quoted in Krog, 1998, p. 240). Other, already-prominent women feared a future loss of status. Goldblatt and Meintjes (1998) quoted one woman who said, “Some of these women are now in high-powered positions—in government or as executives. How will it impact on them now in the positions that they hold, given the gender bias that people have about sexually abused women and the concept that women always ask for it anyway?” (p. 53). Walaza testified that these women’s fears were not unfounded: “If you knew that a particular Minister had been raped—what would go through your mind when you saw her on television?” (quoted in Krog, 1998, pp. 239-240). In addition to some of the rape victims being public figures, another reason for not testifying was the fact that some of the rapists were also public figures. In a game of “he said/she said,” women were undoubtedly aware of whose story was likely to be believed and were unwilling to be publicly discredited. Antjie Krog (1998) relates the story of Rita Mazibuko, who recounted to the Commission that she had been raped by members of the ANC in exile and had received aid from other ANC members, including Mathews Phosa and Jacob Zuma (South Africa’s deputy president from June 1999 through June 2005). However, she reported to the Commission, she was warned by Phosa, who was by then a provincial premier in the new government, not to testify because he would be obliged to defend ANC members against her claim. Krog
concluded that Mazibuko left the witness table a defeated woman, “as if she knows no one will stand up for her.” Not even the truth commission: “The Truth Commission does not utter a single word in Mazibuko’s defense. Not one of the commissioners, not one of the feminists agitating for women’s rights, stands up and says: ‘we respect the right of Rita Mazibuko to tell the truth as she sees it, just as we respect the right of Mathews Phosa to tell the truth as he sees it. But we expect him to do the same’” (Krog, 1998, p. 242). However, whereas Mazibuko opened herself to public criticism, ridicule, and charges of lying, Phosa didn’t even bother to testify. In such an atmosphere, it was simply not in their interest for women to testify about sexual violence suffered at the hands of “allies.”

For a variety of reasons, therefore, women were unwilling or unable to speak publicly about their experiences of sexual violence. Ross (2003) warned, however, against an over-emphasis on the lack of testimony about sexual violence, and pointed out that women were not only unwilling to testify about their experiences as victims and survivors of this type of violence but also unwilling to testify about their experiences in other ways as well. She noted that little was revealed about women in roles other than victim. Moreover, because women’s testimony was dominated by their accounting of what had happened to others, mostly their husbands and sons, the commission added little knowledge about women as activists and resisters. Women were also perpetrators, and very little is known about the circumstances surrounding their entry into these roles. Indeed, the one-dimensional focus on women solely as passive recipients of action translated into the unfortunate reference, by both the commission and the media, to women as secondary victims, as opposed to primary victims.6

Almost immediately after it began its public hearings in April 1996, the TRC became aware that women were not testifying about their own experiences and tried to rectify the situation. In doing so, it tried to follow the advice given to it in a submission by Goldblatt and Meintjes, both South African feminist academics.7 They argued that the hearing format already in place was not conducive to women testifying, in that the context of public hearings made it difficult for women to overcome the stigma attached to sexual violence. To rectify this, they made a series of recommendations regarding how women’s testimony should be handled by both statement takers and in public hearings.8 These included, among others, a provision that statements could be made confidentially, assuring that women need not testify publicly, allowing women deponents to request that their statements be taken by women, and that women be allowed to testify in closed hearings before only women commissioners. Another recommendation was for the Commission to organize a series of women’s hearings, arranged in conjunction with women’s organizations, attended by women commissioners only, and assisted by psychologists and social workers (Goldblatt & Meintjes, 1998). The TRC, for the most part, adopted these suggestions for making the Commission more gender sensitive and held three all-women public hearings in August and October of 1996 and July of 1997. In the course of these hearings, some women were willing to discuss their experiences as victims and activists under apartheid.9 Through the several dozen women who testified, most of whom were political leaders or leaders in the activism movement, the TRC was able to ascertain that women did indeed suffer gross violations of human rights themselves including rape, other forms of sexual violence, physical
and psychological abuse and torture in and out of detention, and even death. What the TRC did manage to uncover therefore confirms patterns of violence against women seen worldwide: South African women were subjected to rape and other sexual violence by parties from all sides of the political conflict, including the South African Defence Force and opposition groups including the African National Congress, the Inkatha Freedom Party (IFP), and the United Democratic Front (UDF) as well as by men in refugee centers. Despite service as soldiers on the battlefield and activists in civil society, women could not count on not being raped by their fellow liberationists.

In its final report, the Commission concluded that “women too suffered direct gross violations of human rights, many of which were gender specific in their exploitative and humiliating nature” (South African Truth and Reconciliation Commission, 1998c, p. 256). More specifically, it found that the state was responsible for the severe ill-treatment of women in custody; that women were abused in ways which specifically exploited their vulnerabilities as women; and that women in exile were also subjected to various forms of sexual abuse, including rape. It is worth noting, perhaps, that these findings on women, which amounted to little more than a few sentences, were the penultimate findings in a 62-page chapter devoted to findings and that no mention was made of women’s suffering from socioeconomic violations under apartheid.

Despite its attempts to break out of the gender-neutral approach to truth gathering, the TRC was not terribly successful at doing so—at least not in a way that elicited a full understanding of the myriad ways in which women suffered under apartheid, in terms of civil/political and socioeconomic rights violations, in terms of sexual and nonsexual violence, and in terms of women in their full repertoire of roles, not simply as victims.10 The TRC itself acknowledged this, noting that the pattern of women refusing to speak of themselves “persisted over the full period of the hearings” (South African Truth and Reconciliation Commission, 1998b, p. 283).

If one reason the TRC was unable to establish more truth about human rights violations under apartheid was because women were unwilling to tell their stories, men were also unwilling to come forward and tell the truth about their involvement in these abuses—specifically in terms of rape and other forms of sexual violence. And again, one reason for this relates to the legal mandate handed to the Commission by its enabling act, in this case the criteria for qualifying for amnesty. To qualify, the Act stated that the “act, omission or offence” for which an applicant was seeking amnesty had to be “associated with a political objective” (Promotion of National Unity and Reconciliation Act of 1995, ch. 4, sec. 18). Whether an objective was political or not was determined by a long set of criteria enumerated in the act, two of which were that it had to be proportional to the objective pursued and that it could not have been committed out of malice (ch. 4, sec. 20[3][f][ii]). The Commission determined that rape could be categorized as either torture or severe ill-treatment and that a person could therefore be granted amnesty, if all criteria were met (B. Goldblatt, personal communication, June 4, 2007). The Amnesty Committee, however, never had the opportunity to wrestle with the questions of whether rape could ever be justified as being politically motivated, or could ever be committed without malice, or whether the means of rape could ever be deemed to be proportional to any ends, because no person applied for amnesty for
the crime of rape or for any other sexual violations. The reasons for this are not clear, but one could surmise that several explanations were likely in play. One is that any potential amnesty applicants likely knew that proving the presence of the above criteria (political motivation, proportionality, absence of malice) would be extremely difficult. Another is that raping women was simply not deemed a serious enough crime to warrant opening oneself up to public exposure. Finally, some potential applicants may have wagered on the fact that so few women would publicly testify about their rapes, and would likely not be willing to name names, for all of the reasons already noted.

That men did not apply for amnesty is unfortunate for several reasons, all of which have serious consequences for the human rights of women in the postapartheid and posttruth commission period. First, as Goldblatt and Meintjes (1998) noted, the process of examining the act of rape, even though very few perpetrators would have likely been granted amnesty for its perpetration in their opinion, would have allowed the Commission to highlight the deeply political function of rape during wartime. That sexual violence is a tool of all conflicts, apartheid included, could have been confirmed by the TRC. As it is, however, the TRC’s final report is almost silent on the issue. Although it does note that women were victims of sexual violence, no analysis is provided of how such violence functioned politically. Second, because no men applied for amnesty for rape, no one was held accountable for these crimes; if granted amnesty, which would likely have been rare, then amnesty would have served as a form of accountability, as the very fact of having been granted amnesty certified a person as a perpetrator. If denied amnesty, perpetrators would have at least been publicly unveiled as such, which one could argue was a form of accountability, more so than the silence that prevailed as a result of the absence of amnesty applications. The ability to apportion blame and hold perpetrators accountable is deemed a hallmark of a society based on the rule of law. The lack of accountability may well contribute to a climate of impunity—which is the antithesis of a human-rights-respecting culture based on respect for the rule of law. Third, applications for amnesty for rape and other forms of sexual violence would have helped to expose just how widespread the use of rape was during the period under TRC investigation. Only 140 women testified about rape before the commission; no men admitted to it. One could surmise from this that rape was not a serious problem for South African women; in doing so, one would be wrong. Rather, what existed in South Africa was a profound silence about women’s violent experiences during apartheid—neither victims nor perpetrators were willing to reveal the truth about these experiences. What former TRC Commissioner Yasmin Sooka (2004) called a “conspiracy of silence” between victims and perpetrators (n.p.), Antjie Krog (1998) called a “bizarre collusion”:

Then again, few women have testified about rape, and fewer, if any, have named the rapists. So why would a rapist apply for amnesty at all? There seems to be a bizarre collusion between the rapist and the raped. Although rumors abound about rape, all these mutterings are trapped behind closed doors. Apparently high-profile women, among them Cabinet ministers, parliamentarians, and businesswomen, were raped and sexually abused under the previous dispensation—and not only by the regime, but by their own comrades in the townships and liberation camps, but no one will utter an audible word about it (p. 239).
The South African case, then, offers a cautionary tale about the difficulties associated with the ability of truth-telling mechanisms to serve the cause of fostering a truly gendered human rights culture. Its overemphasis on bodily integrity rights at the expense of second-generation social and economic rights had the effect, Ross (2003) argues, of sanitizing apartheid and limiting the ability to recognize the duration of its effects. Indeed, although the TRC was able to uncover some part of the picture of women’s experiences—revealing that women did indeed suffer gross violations of human rights under apartheid—this picture remained incomplete. What was not recorded by the Commission, and thus not open to the sort of analysis that the rest of the report invited, was the history of patriarchy that accompanied and supported the race-based discrimination of the apartheid system. This limitation has consequences for South African women in the postapartheid era, where patriarchy remains largely intact, despite the legal elimination of race-based discrimination. Although a full overview of the status of women in postapartheid South Africa is not possible here, it is clear that there continues to be widespread economic, social, and legal discrimination against women, along with high levels of violence, including sexual violence against them. In 2003, there were 52,425 officially reported rapes, a third of the estimated actual number. Forty percent of the victims were 18 years old or younger. At the moment, one might argue that rather than a culture of rights, there is a culture of sexual violence in South Africa. One study concluded that women in South Africa view violence and sexual coercion as a “normal” part of everyday life (Human Rights Watch, 2004, pp. 10-11).

Lessons Learned? Policy Implications

In its final report, the TRC, in a section akin to a self-evaluation (although no such evaluation was mandated by its enabling act), listed several of the Commission’s shortcomings (South African Truth and Reconciliation Commission, 1998c, pp. 206-208). Its ability to uncover more truth about women’s experiences or to hold perpetrators of gross violations of women’s human rights accountable for their actions was not among them. The above analysis of the TRC’s inability to provide more dignity to apartheid’s women victims, to deliver a measure of gender justice in terms of at least apportioning blame for those responsible for gender-based crimes, and the reality of a postapartheid human rights culture in which women are still victimized because of their gender and still suffer as second-class citizens, indicate that a deeper evaluation was perhaps warranted. Although the TRC was not willing to offer some lessons learned for future truth-telling undertakings, some policy implications can nevertheless be derived from the South African experience.

One set of policy recommendations revolves around getting more truth, both from victims and perpetrators. In terms of getting more women to be forthcoming about their own experiences—as opposed to their experiences as women who lost sons, daughters, husbands, and fathers—the TRC did heed advice and hold women-only hearings. Other truth commissions have already adopted (and are likely to continue doing so) similar approaches to enabling gender-sensitive testimony to emerge, including allowing women to testify only before women commissioners, allowing them to testify in camera, and allowing them to
remain anonymous. Other attempts to increase gender sensitivities could be added. Sooka (2004) suggested that at least half of all commissioners should be women and that databases, constructed to collect and analyze specific acts of violence to issue findings and recommendations, should be designed to allow for the specific collection of data appropriate to the experiences of women and girls and to allow for the disaggregation of data along gendered lines.\(^{14}\) Although these policies may help elicit more information from women, they are not without controversy. Disagreement always arises when women are treated separately from men, and the TRC was no exception. Although the TRC did adopt recommendations provided by them in terms of separate women’s hearings, Beth Goldblatt and Sheila Meintjes (1999) were nevertheless unimpressed, accusing the TRC of failing to adopt a gendered analytical framework to guide its work, noting that women were treated separately in the final chapter of Volume 4 of the report, which only served to create “a ghettoised female subjectivity,” in which women were relegated to a category of essentialized difference, at the same time as differences between women were homogenized.

Even if truth-telling mechanisms come to include more effective ways of getting women to discuss their own histories of violations, the second half of the equation—getting men to talk about their histories as perpetrators of these violations—remains unchanged. And if eliciting more truth from victims is difficult, doing so from perpetrators is undoubtedly even more so, if the TRC is an indication of the unwillingness of men to admit to rape as a tactic of conflict. Getting women to talk without simultaneously getting men to do the same does little more than maintain the culture of impunity, with little to no accountability, a situation hardly conducive to strengthening the rule of law. One recommendation is to hold the threat of prosecution over those who refused to testify and then to actually prosecute where evidence of wrongdoing exists. However, this recommendation is also not unproblematic. First, such a step would require other changes, such as reforms of national legal systems. Sooka (2004) argued that in most national legal systems, it is almost impossible to prosecute rape and crimes of sexual violence given the legal requirements, the evidentiary burden, and the culture and attitude of those who serve in the criminal justice systems. A second problem is that the recommendation presupposes the political will to prosecute violent sexual crimes. In South Africa there appears to be little will to carry out post-TRC prosecutions of any sort, let alone of rape and other forms of sexual violence (Amnesty International and Human Rights Watch, 2003). Moreover, in South Africa, only a small fraction of rapes are reported to police, only about a third of those reported are prosecuted, and only about half of those prosecuted result in convictions (Human Rights Watch, 1995b, p. 90). It thus appears that both problems with the legal system and a lack of political will may indeed be unfortunate realities in the South African context. A third, and perhaps the most significant, problem is in gaining the cooperation of women in trials. If it is difficult for women to testify in the relatively friendly atmosphere of women-only hearings, it is significantly more difficult for them to do so in the hostile environment of a trial.\(^{15}\) All in all, in terms of the ability of truth-telling mechanisms to elicit the full truth about gendered violations from either victims or perpetrators, there is little reason to express much optimism. Sadly, in this instance, some skepticism may be justified.
Other policy implications for future truth-telling exercises emerge from the South African experience. It is clear, for example, that the ability of a truth-telling mechanism to adopt a truly gendered approach is determined early on, embedded in the enabling legislation and the mandate handed to it. Sooka (2004) noted, for example, that the South African TRC’s enabling act made no reference to gender-based violations and did not mention women as a special target group. In contrast, the Sierra Leone TRC’s enabling act stated that the Commission should pay special attention to the “subject of sexual abuses and to the experiences of children within armed conflict.” In addition to the mandate itself, the way in which concepts are interpreted also affects the ability of truth-telling mechanisms to address gender issues. In South Africa, for example, the definition of gross violations of human rights did not specifically address gendered violence, specifically sexual violence. According to Sooka (2004), it was left to the “gender lobby,” including women commissioners, to make the argument that torture and severe ill-treatment should be utilized to address sexual violence (p. 7). This had implications for the types of reparations recommended by the TRC. Sexual violence in South Africa was only included as a subcategory in a long list of harms considered as torture or severe ill-treatment rather than being categorized as a separate violation. According to Goldblatt (2006), “sexual violence would have been more centrally placed on the national agenda had it been mentioned in the founding legislation of the TRC” (p. 80). In contrast, in Sierra Leone, the TRC was mandated to record “violations and abuses of human rights and international humanitarian law related to armed conflict.” Sooka (2004) argues that, when read together with the mandate to pay attention to sexual abuse, the TRC was able to apply a much wider, more comprehensive, definition of gross violations of human rights there, one which specifically included gender-based violations. As a result, Sooka notes that, unlike in South Africa, women and girls came out in large numbers to speak to the Sierra Leone commission.

In sum, if gender-based violence is to be taken seriously in truth telling, the enabling legislation for truth-telling mechanisms should include those forms of violence in definitions of concepts like victims and violations.

Gendered Peace? Reparations

If any lesson emerges from the South African case, it is that silence has consequences. It would be unfair to say that the TRC discovered no truth at all about gendered violence. Some truth did indeed emerge about gross violations of human rights suffered by women. However, three major elements were absent in the final work of the TRC. What did not emerge from the TRC’s work, or in its final report, is an overarching picture of patriarchy resulting in the second-class citizenship of women. Nor did the reality that women suffered immeasurably more from violations of socioeconomic rights rather than civil and political ones. Finally, the TRC failed to apportion blame for those responsible for the violations suffered by women, leaving perpetrators unaccountable for their actions. Why are these absences consequential? Perhaps the most lasting impact a truth commission can have is the implementation of its recommendations. A truth commission cannot in and of itself bring about reforms needed to improve the status of women. It can, however, make
recommendations to the state and to civil society groups regarding actions that could be taken, for example, to ensure accountability of perpetrators of such violence, or for improving the economic status of women, or for making it easier for women to escape violent relationships, or to receive medical treatment for HIV/AIDS. Of course, if recommendations do not exist, they can hardly be implemented. Perhaps the most serious consequence of the lack of a gendered lens was that the 45-page chapter on recommendations compiled by the TRC was silent on the issue of women. Despite a promising sentence in the chapter’s introduction that states, “It is important to state explicitly that there is a need for sensitivity to the particular issues pertaining to women and children” (South African Truth and Reconciliation Commission, 1998c, p. 305), not one of the over 100 recommendations is explicitly aimed at improving the human rights of women. The lack of a gendered lens resulted in another absence, notably the absence of a gendered reparations policy.

It would seem obvious that if women and a concern for gender are primarily absent in the input stage of designing transitional justice mechanisms, the outputs of these mechanisms—such as reparations policies—will reflect this. And indeed, a comparative study conducted by International Center for Transitional Justice (ICTJ) on gender and reparations found that across contexts reparations programs have shared a number of features: they exclude women from policy design, they show a lack of deep knowledge of gender-based violence in defining violations to be repaired (although rape is generally included), the criteria used for defining beneficiaries tends to adversely affect women, the benefits given are not as women-friendly as could be, and the implementation of reparations programs can hurt women (by requiring a bank account, for example—something many women do not have; Bell & O’Rourke, 2007). In addition, Duggan and Abusharaf (2006) detailed various obstacles impeding women’s abilities to exercise their right to reparation, including a lack of legal autonomy (women are often not treated as equal citizens), legal pluralism (in many societies gender-based social and legal practices such as requiring a wife to obtain her husband’s consent before approaching the legal system impede women’s access to justice), and social and cultural attitudes and mores (the stigma attached to rape or social norms limiting women’s ability to travel to collect reparations). Beyond this, gender biases can often be inadvertently reproduced or incorporated into a reparations policy whose designers believed was gender appropriate. Rubio-Marín (2006) noted, for example, that employment disability insurance schemes that are sometimes relied on to assess loss of income generation may be ill suited to assess the material destitution of women victims of sexual abuse who are abandoned by their partners, rendered unmarriageable, and then ostracized by their communities.

It is especially important, Duggan and Abusharaf (2006) argued, that reparations programs are designed with a commitment to repairing sexual violence. Not only is sexual violence perhaps the most egregious form of gender-based violence, its socioeconomic impact on women can undermine their chances for recovery and for reintegration into the family, the community, and the state. At the same time, judicial recourse through the courts is often unlikely for women victims of sexual violence, as laws for criminal and civil prosecution and redress of sexual crimes are often weak, discriminatory, or nonexistent, often most ill equipped to deal with complex crimes during times of transition.
Transformation of norms and institutions is generally a slow process; reparations in the interim can not only lay the social and political groundwork for this transformation but also help temporarily offset some of the consequences of gendered violence (Duggan & Abusharaf, 2006). For all these reasons, then, it is important for governments to get their reparations programs right vis-à-vis women. Unfortunately, most evidence suggests that this has yet to be the norm.\(^{21}\)

Not surprisingly, given the lack of attention paid to women in the TRC final report’s chapter on recommendations, the chapter on reparations fails to mention women at all. This neglect, according to Goldblatt (2006), was not from a lack of effort on the part of civil society organizations, several of whom tried to make gender-sensitive suggestions throughout the TRC process.\(^{22}\) In the end, however, the efforts of NGOs and activists amounted to little, with few of their suggested recommendations being adopted by the TRC. The result is that the reparations program recommended by the Commission, and the eventual program adopted by the government, remained in Goldblatt’s (2006) words, “largely ‘ungendered’” (p. 58). The gender neutrality of the reparations program was evident in the financial payout given to victims.\(^{23}\) Although the TRC proposed a sum of approximately US$2,713 per victim per year for 6 years, with the amount varying according to location (urban or rural) and according to the number of dependents, the government agreed only to a onetime payment of US$3,750 (R30,000) to each victim with no variance for location or number of dependents. Both the TRC and the state were silent on the issue of harms suffered by women as a category. So, for example, women who lost breadwinners and thus faced a lifetime of impoverishment were given no more compensation than a person who suffered no material disadvantage at all (Goldblatt, 2006).\(^{24}\)

However, while the reparations program may have been gender neutral in terms of input (i.e., the policy recommendations), it certainly was not so in terms of outcomes (i.e., its impact on women). To receive reparations, applicants had to have a bank account. Around the world, South Africa being no exception, many poor people do not have such accounts. As women are the poorest members of society, this requirement disproportionately affected them. In several cases, women with no bank accounts had to sign the money over to their husband’s accounts, where they undoubtedly had less control over it (Goldblatt, 2006). Moreover, until 1998, women married under customary law were considered minors for the purpose of some commercial transactions and thus lost control over their grants to their husbands in that way (Goldblatt, 2006). Another gendered implication of the program was that reparation was tied to truth telling; in other words, one could only be considered a victim—and thus eligible for reparations—if one came forward to tell one’s story to the commission.\(^{25}\) Many women victims of sexual violence undoubtedly felt unable to approach the TRC for reasons already noted. Women’s resistance to being forthcoming about their own experiences meant they faced an excruciating choice: to risk estrangement from their families and social exclusion on one hand, and making themselves ineligible for reparations on the other (Anderlini, Conaway, & Kays, 2004). Rubio-Marín (2006) concluded that “forcing women to ‘come out’ as victims to qualify for reparations may have a largely inhibiting effect, especially for victims of sexual violence who hold back because of shame or fear” (p. 34). For this reason, Goldblatt (2006) recommended that future truth commissions delink the granting of reparations from truth telling.
Conclusion

The ICTJ concludes its report by stating that “many truth commissions have failed women—the crimes they have suffered are underreported, their voices are rendered inaudible, their depiction in commission reports is one-dimensional, and their needs and goals are deprioritized in recommendations for reparations, reform and prosecutions” (Nesiah, 2006, p. 41). This article, too, has provided a somewhat pessimistic overview of gender and truth telling in the South African context. Two final points are worth mentioning. First, it is of course not fair to blame the TRC for the realities that many South African women face daily: lives of poverty, violent relationships, and an overwhelming vulnerability to HIV/AIDS. The TRC was but one postapartheid institution, and societal changes—either positive or negative—are always multivariate. In addition, the TRC existed for a short period of time—less than half a decade. The work of undoing generations of patriarchal attitudes and their consequent effects on women will surely take much longer. Moreover, what happens after a truth commission has shut down is not the responsibility of that commission. Although a commission can lay the foundation for a culture based on human rights, it is the responsibility of the state, civil society, and individuals to build on the foundation. Still, the fact that the TRC did not employ a gender-sensitive approach to the past could not have helped South African women overcome the reality that Pettman (1996) noted: that women’s lives rarely improve much, if at all, in all too many postconflict societies.

Second, whatever contributions the TRC and South Africa as a whole have made toward improving the lives of women, one thing remains clear: the legal provision of rights means little if they are not translated into a culture of rights. The TRC, throughout its work, highlighted the concept of human rights repeatedly over a period of time. Its commitment has been backed up by government policies. In terms of gender, South Africa has done rather well in the public sphere. By 1998, it ranked seventh in the world in governmental representation, with women constituting 25% of national-level representatives, and third in the world when ranked with other developing countries. The government also established a national Commission on Gender Equality. Furthermore, South Africa’s active and independent Constitutional Court has handed down several judgments in support of women’s rights, and parliament has passed several pieces of legislation prohibiting discrimination on the basis of race and gender. Such institutions and policies are clearly important; government actions send messages to its citizens about what is acceptable and what is valued. However, good institutions and processes are necessary but not sufficient underpinnings of a human rights culture. The question becomes how and whether the positive, human rights culture-promoting elements of the South African TRC and government are being translated into culture, in terms of attitudes, beliefs, and South Africans’ shared understanding about being a people who embrace human rights. Although the TRC itself attempted to foster a human rights-respecting culture, it could not ensure that this culture would become firmly entrenched. As Sooka (2004) stated, “We do not suffer from a lack of law and policy but we suffer from a deficit of implementation” (p. 4). Formal commitments to gender equality must result in policies that mean real changes in women’s lives. The possibility of these
changes being wrought is immeasurably more difficult when one key institution devoted to raising awareness about the culture of human rights—such as a truth commission—turns a blind eye, no matter how unintentional, to the plight of women.

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Notes

1. Feminist scholars are not alone in their analysis of the gendered dimension of war. In 2000, the UN Security Council unanimously passed Resolution 1325, which expresses “concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements” (UN Security Council, 2000).

2. Although the ubiquity of rape during war has long been known, the issue received added scholarly attention with the revelation of the widespread use of rape in the various wars resulting in the breakup of the former Yugoslavia in the 1990s. Indeed, Diken and Lausten (2005) viewed rape as “a crucial signifier” in the Bosnian war (p. 114). The United Nations General Assembly concurred in GA Resolution 49/205 of 2005, which asserted that the “heinous practice [rape and abuse of women] constitutes a deliberate weapon of war in fulfilling the policy of ethnic cleansing carried out by Serbian forces in Bosnia and Herzegovina” (Diken & Lausen, 2005, p. 113). The breakup of Yugoslavia proved to be an illustrative, albeit tragic—one rough estimate is that between 20,000 and 50,000 Bosnian war rape survivors exist—case study for advancing an understanding of various aspects of war rape including how rape fosters nationalism, rape as a tool of ethnic cleansing, rape as a tool of community punishment, and the relationship between wartime rape and “peace” time domestic violence. The literature of wartime rape in Yugoslavia is vast; see, for example, Bracewell (2000), Diken and Lausten (2005), Jones (1994), Nikolic-Ristanovic (1996), Salzman (1998), and Stigelmayer (1994). Although there seems to be little disagreement that mass rape and war are correlated, less agreement exists on why this correlation exists. For an overview of various explanations for the root cause of rape during war, see Gottschall (2004).

3. In the first instance, recent scandals have highlighted both the scope and severity of sexual crimes against U.S. female soldiers by U.S. male soldiers. Over the past decade, for example,
over 140 female cadets have reported rapes or assaults at the U.S. Air Force Academy in Colorado Springs. Moreover, since August 2002, at least 273 sexual assaults against U.S. female soldiers by their fellow soldiers have been reported in Afghanistan, Kuwait, and Iraq (National Public Radio, 2005). In terms of the second instance—which some might argue falls more in line with sexual exploitation than with rape and sexual assault—a March 2005 UN report revealed that in 2004 UN peacekeeping soldiers were faced with 1,221 allegations of sexual exploitation and abuse of women under their protection in missions around the world, including Bosnia, Kosovo, Cambodia, Timor-Leste, West Africa, and the Democratic Republic of the Congo (DRC). This issue received widespread attention in early 2005 with the revelation that peacekeepers in DRC had sex with Congolese women and girls in exchange for food or small sums of money (Al-Hussein, 2005).

4. Given this gendered nature of peace negotiations, it should come as no surprise that other postconflict peacebuilding initiatives enshrined in peace agreements (besides transitional justice) are equally gendered. For example, attention is increasingly being drawn to the fact that the design of postconflict disarmament, demobilization, and reintegration (DDR) programs have paid insufficient attention to gender. Disarmament involves the collection and disposal of both heavy and light arms of ex-combatants on all sides of conflict; demobilization is a short-term process of downsizing or disbanding armed forces and reintegration is a complex long-term process in which ex-combatants are assisted in resettling in communities. Reintegration initiatives can vary and can include the provision of civilian clothing, cash payments, housing, land, job training, school fees, credit counseling, and psychological and health support (Dzinesa, 2007). Women combatants, of course, face special reintegration challenges, especially in terms of rape-related posttraumatic stress symptoms, access to land, and the legal ability to gain control over monetary resources and credit. Any DDR programs that do not take these special needs into account will necessarily have adverse effects on female ex-combatants. Such was the situation in Namibia, for example, where “bereft of gender-specific reintegration assistance, women former fighters, including single mothers encountered significant difficulties” (Dzinesa, 2007 p. 86). For this reason, the World Bank recommends the provision of female-friendly demobilization centers, equal assistance packages with male compatriots, and gender-focused health, medical, and developmental training (cited in Dzinesa, 2007, p. 75). Likewise, noting that DDR is not only a part of a broader postconflict reconstruction and development framework, but indeed—in the words of Kofi Annan—“the single most important factor determining the success of peace operations,” a United Nations-sponsored conference on DDR and stability in Africa offered as one of its core recommendations that “reintegration programmes must be more gender-sensitive than in the past” (United Nations, 2005, pp. 2-5). In the case of South Africa, one can undoubtedly safely assume that DDR initiatives inadequately met the needs of female ex-combatants as most scholars agree that DDR in general was “poorly planned, badly executed, and wholly inadequate in meeting the needs of ex-combatants,” both men and women (Dzinesa, 2007, p. 81).

5. Goldblatt and Meintjes (1998) traced the consequences of these unequal power relations for African women in all spheres of life. For example, although intended to determine the movement of African men, the pass laws regulating migrant labor were even harsher in their effects on women. At the same time that women were left to care for children and the
elderly, they were disadvantaged by custom in their access to land and to the labor market. As Marjorie Jobson, the Chairperson of the Board of the Khulumani Support Group—a victims’ rights NGO—noted, “it was women who carried a significant proportion of the suffering caused by the uprooting and dumping of three million South Africans in inhospitable environments without adequate infrastructure” (Jobson, 2005).

6. The Promotion of National Unity and Reconciliation Act of 1995, the TRC’s enabling legislation, defined victims not only as those who had directly suffered gross violations of human rights, but in certain circumstances as their relatives and dependents, as well. Hence when women testified about the harms suffered by their husbands and sons, they were deemed to be victims in the second sense noted in the legislation. As relatives of victims, the Commission and media took to referring to them as secondary victims, a term that does not appear anywhere in the Act or in the TRC’s mandate. However, although the Act did not distinguish between primary and secondary victims, the Reparations and Rehabilitation Committee did make this distinction, defining secondary victims as relatives or dependents of primary victims who were only entitled to monetary reparations when the primary victim died (Goldblatt, 2006).

7. Their submission emerged from a workshop titled, “Gender and the Truth and Reconciliation Commission,” hosted by the Centre for Applied Legal Studies at the University of Witwatersrand in Johannesburg in March 1996. Goldblatt and Meintjes were two of several women’s activists lobbying the TRC, especially its women commissioners, to put gender issues on the agenda. Goldblatt (2006) stated that women had to “bargain” for gender issues and felt that they were “humored” (p. 56).

8. Before individuals gave testimony at public hearings, they first gave statements to statement takers. Individuals were then chosen from among the many statements given to present their stories publicly in hearings organized by the Human Rights Violations Committee, one of three Committees of the Commission (the other two being the Amnesty Committee and the Reparations and Rehabilitation Committee). About 10% of those who gave statements subsequently testified at these victims hearings. In total, 76 public hearings were held across the country between April 1996 and June 1997. For a detailed overview of the process of selecting testifiers as well as the rituals surrounding public hearings, see Ross (2003).

9. The TRC adopted other measures as well to encourage women to tell their own stories. By April 1997, the protocol preparing women deponents was modified to include a note which read: “IMPORTANT: Some women testify about violations of human rights that happened to family members or friends, but they have also suffered abuses. Don’t forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse” (Ross, 2003, p. 23).

10. Not all analysts take such a negative view of the TRC in terms of gender. Pumla Gobodo-Madikizela (2005), a former member of the TRC’s Human Rights Violations Committee, has argued that the TRC was “progressive and gender-sensitive” in terms of its approach to women. Her claim is that women’s unwillingness to testify about their own experiences was a deliberate strategy on the part of women to generate empathy for those who had suffered and that women were thereby taking on a special responsibility for the collective sense of national healing (pp. v-vii; see also World Bank, 2006).
11. Could any applicant have proved that her rape was motivated by politics? Although the answer will always remain unknown, and although Goldblatt and Meintjes (1998) predicted that the Commission would have had a difficult time separating political from personal motives, some evidence did surface before the TRC that hinted at the political nature of at least some rapes. Krog (1998) reported on a study about the use of rape in townships during the 1980s, the period of highest political violence. In one township, Sebokeng, a group of youth formed the South African Rapist Association (SARA), whose goal was to provide senior comrades with women to rape, as a way to keep them busy. Had these youths applied for amnesty, the TRC would have had to establish whether the raping of nonpolitical women to keep the comrades busy could qualify as a political act.

12. That rape serves a political function during times of conflict is clear. However, it sometimes also serves an almost economic function, as was revealed in a chilling testimony before the TRC by a former ANC general, Andrew Masondo. The ANC made two separate submissions to the TRC, which were accompanied by testimonies. During one such submission, the ANC acknowledged the sexual abuse of women, which it euphemistically called “gender-specific offences.” As explanation, Masondo revealed that women soldiers in the ANC army Umkhonto we Sizwe (MK) were viewed almost as economic commodities in MK camps in exile in Zambia, Angola, and Tanzania. He testified to the TRC that the ratio of female-to-male MK soldiers in these camps was roughly 22 to 1,000, and that the law of supply and demand simply took over (South African Truth and Reconciliation Commission, 1998b, p. 307; see also Graybill, 2001, pp. 263-264). The ANC submission omitted the names of perpetrators, none of whom subsequently applied for amnesty.

13. A particularly low point for women in South Africa was the rape trial of Jacob Zuma, the former Deputy President of South Africa, who was charged with raping a woman in December 2005 and acquitted in May 2006. Women’s rights advocates were disheartened by the trial, where the judge allowed the accuser’s sexual history to be brought up in cross-examination (which revealed, among other things, that she had been raped during exile while an antiapartheid activist). The trial, women’s organizations assert, proved the continuing obstacles facing rape survivors in the postapartheid era.

14. These suggestions are consistent with those outlined in the International Center for Transitional Justice (ICTJ) report, *Truth Commissions and Gender: Principles, Policies, and Procedures*, highlighting the notion of “a technology of truth,” which includes the organizing, classifying, and filtering of information. For example, those who take testimonies can be properly trained in a range of interview techniques and the breadth of human rights experiences to recognize cues to patterns of abuse, thereby cutting down on the underreporting of women’s experiences. In addition, the statement-taking form can be structured so that victim testimony is not overdetermined by rigid categories of standardized legal boxes (Nesiah, 2006, pp. 8, 19-22).

15. Some feminist scholars have questioned the ability of a courtroom approach to deliver justice for gender-based violence, noting a disillusionment of survivors of sexual violence with adversarial processes. Bell and O’Rourke (2007) cited Mertus who contends that “adversarial legal forums subject witnesses to repeated attempts to undermine their credibility, prevent the complete expression of their individual accounts and reify their position as women victims lacking agency” (p. 33).
An even earlier necessary step, of course, although not the focus of this article, is the inclusion of women in all stages of the peace processes, including negotiations, so that women can influence the identification of reconstruction priorities. Many feminists, however, note that simply including women is not sufficient if no opportunities are provided for them to reshape end goals, where women are asked to operate along already set (gendered) assumptions about conflict, peace, and security. As Bell and O’Rourke (2007) noted, “The increased participation of women does not equate in any simple way with a feminist reshaping of either peace processes or transitional justice mechanisms” (p. 34).

She notes that one reason for a lack of gendered input into the enabling legislation is that women’s organizations themselves showed little interest in the TRC at first. The commission was not seen as a priority for women activists, who focused their energies on more forward-looking tasks and on the immediate challenges facing women, giving the “backward-looking project” of transitional justice a lower priority (p. 53).

Bell and O’Rourke (2007) cite other advances in this regard, noting that “analysis of more general developments in the mandates of TCs indicates a positive trend, whereby the ‘gender-neutral’ stance of the early Latin American commissions of Argentina and Chile can be contrasted with the comprehensive understanding of harms demonstrated by the recent East Timor/Timor Leste commission” (p. 28). For a more in-depth overview of the Sierra Leone commission, as well as an overview of the gendered advances of the Peruvian commission, see World Bank (2006) and Nesiah (2006). Indeed, the World Bank (2006) credits the South African TRC’s decision to hold gender hearings specifically for beginning slow but steady incremental improvement in attempts to secure accountability for gender-based violence through truth commissions. For a discussion of the gendered approach of the Ghana National Reconciliation Commission (NCR), see Nesiah (2006).

Under a section titled, “Prevention of Gross Human Rights Violations in the Future,” the TRC does state that “the recognition and protection of socio-economic rights are crucial to the development and sustaining of a culture of respect for human rights” (South African Truth and Reconciliation Commission, 1998c, p. 308). However, this sentence is never fleshed out, nor are the economic rights of women in particular mentioned.

Christopher Colvin (2006) argued that an even earlier problem existed: Not only were women and gender absent from a discussion of reparations from the beginning but also was the entire issue of reparations itself neglected, both during the negotiations phase to end apartheid and the interim constitution and subsequent permanent constitution that these negotiations produced.

They do state, however, that incremental improvement has occurred. They note that progression toward a more gender-sensitive approach to justice can be tracked by comparing the processes of truth telling and reparation in the decade from 1993 (the El Salvador truth commission) to 2003 (the Peruvian truth commission). They conclude that “reparations for sexual violence may be moving away from being an afterthought by policymakers, often tacked onto State programs in the wake of political pressure and lobbying especially from external groups, to becoming a more fundamental issue which appears more centrally on the agenda of transitional governments” (Duggan & Abusharaf, 2006, p. 636).
22. Examples of these interventions include a request to parliament by the Center for the Study of Violence and Reconciliation (CSVR) that women be recognized in all symbolic reparations projects, the suggestion by a group of academics and NGOs to provide some mechanism for women to make statements (thus making them potentially eligible for reparations) after the official close of the commission in recognition of the difficulty some women feel in speaking about their experiences, and a series of additional recommendations by the CSVR. These included, among others, that research be conducted into gender biases inherent in quantifying reparations according to the approach used in civil damages claims.

23. In addition to recommending individual financial reparations, the TRC also made recommendations for symbolic reparations, community rehabilitation, and institutional reform.

24. An even more fundamental question besides whether women’s harms were more egregious than those suffered by men is that of quantifying harm. Whether any amount of monetary compensation can ever suffice for human rights violations is a question much debated, with many maintaining that monetary measures can never remedy nonmonetary harms. Martha Minow, for example, argues that “no market measure exists for the value of living an ordinary life, without nightmares or survivor guilt” (quoted in Duggan & Abusharaf, 2006, p. 640). In relation to women and sexual violence, however, the question of quantifying harm is arguably even more complicated, when such intangible assets as purity and social standing have been taken and where in some cultures accepting money for sexual abuse makes matters worse (Duggan & Abusharaf, 2006).

25. In addition, one could be certified as a victim as a result of truth uncovered during an amnesty hearing. In either case, eligibility for reparations in South Africa was predicated on individual truth telling.

References


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