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The South African Truth and Reconciliation Commission— a Model for Gender Justice?

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1) Introduction

“All too often, conflict happens in societies that can least afford it, takes its toll on those who least deserve it, and hits hardest those least equipped to defend themselves. Civilians have become the main targets of warfare. From rape and displacement to the denial of the right to food and medicines, women bear more than their fair share of the burden” (Secretary-General Kofi Annan 2000).

The everyday reality of many women worldwide includes violence in its myriad forms ranging from domestic violence to rape to honor killings. In situations of armed conflict, research reveals an overall increase in the toleration of violence and an escalation of violence committed specifically against women. Although women are violated physically, psychologically and economically during such periods, the use of sexual violence is also prevalent. The prohibition of acts of violence against women, under both international human rights and humanitarian law, are in most instances ignored, and historically, impunity for such acts, has been the norm.

Women’s roles as mothers and bearers of children, or as bearers of a collective identity, often render women as targets of specific policies and practices. For many years, feminist scholars and advocates have highlighted how women’s identities and status as “wife/ mother/ daughter/ chattel” and so on - which are entrenched in patriarchal societies - inform beliefs and expectations in society in general, and in legal and political systems in particular. Women are defined in terms of their reproductive and sexual roles and hence are not seen as individual human beings with rights of dignity and bodily integrity. Through the designated gender roles, they are reduced to embodiments or beholders of another’s identity and this makes women vulnerable targets, both in times of peace and during armed conflict, and results in an invisibility and marginalization of harms suffered by women. A universal struggle for women has been the de-linking of attacks against them and their bodies, from the notion that these attacks are against the family or the community. The consequence of such designated gender roles to date has been a general lack

of accountability for crimes against women. The abovementioned scenario in respect of both violence and the use of identity to violate women's human rights was a reality in South Africa, under both colonization and apartheid.

It has been argued that justice, accountability, and healing for women, whose human rights are violated, are not necessarily achieved only through the justice system. With appropriate and just standards and tools in place, healing through quasi-judicial and non-judicial systems can also be achieved through public acknowledgement of the violation, by allowing the victim to testify and break the silence surrounding violence, and other attempts to restore the person's sense of control over herself and her life. The institutions and forums that are utilized to achieve these goals could include judicial, quasi-judicial and non-judicial models. The United Nations International Criminal Tribunal for Rwanda, the NGO Tokyo Tribunal and the South African Truth and Reconciliation Commission are examples of such forums. Justice, accountability, healing, reconstruction and peace-building are, and continue to remain, contested issues and processes that post-conflict South Africa is struggling to deal with (Manjoo & Spees 2002).

It has also been argued that truth commissions can successfully make visible and legitimize women's experiences, if the mandate is gender sensitive and explicitly reflects the nature of violence and human rights violations against women. In addition, it is crucial for women to have access to information on the mandate, structure, functioning and safety measures available (Elisabeth Rehn & Ellen Johnson Sirleaf 2003). Hayner argues that "Even with a flexible mandate and the intention of fairly gathering information about all patterns of abuse, a commission may well fail to document certain widely experienced abuses. Perhaps the most commonly underreported abuses are those suffered by women, especially sexual abuse and rape" (Hayner 2001:77). This was the reality in South Africa where there was knowledge of the practice of rape by the security forces, by opposition political groups and also in the camps of the liberation movements, yet this did not fully emerge either prior to or during the TRC hearings.

The need to place women and their experiences of violence at the core of the crime is a constant struggle both at national and international level. The articulation of women's experiences, albeit to a limited extent, through the Truth and Reconciliation Commission (hereinafter referred to as the TRC), reflected this reality. The TRC has been criticized for its failure to achieve gender justice because of a narrow interpretation of its mandate (which was narrowly prescribed by legislation to start with) and also a narrow interpretation of gross violations of human rights.

This paper will attempt to provide a brief picture of the extent to which the TRC took women into account in its conceptualization, in the legislative mandate, in its composition, and also in its functioning.

2) Background

South Africa's past from 1652 onward is characterized by conflict, injustice, oppression and exploitation (TRC Report Vol.1 1998:5). Colonization, firstly by the Dutch, and then the British, was followed by White minority rule from 1910 until the entrenchment of a more formal legalized apartheid regime in 1948. The importation of slaves, systematic hunting and killing of indigenous nomadic people and the dispossession of land from indigenous people, amongst other atrocities, resulted in the enactment of laws, beginning in 1948, which legalized racial discrimination (TRC Report Vol.1 1998:25). The Nationalist Party government came into power in 1948 and ruled from 1948 to 1993. White supremacy was the principle on which the apartheid laws and policies were based and implemented. Most of the injustices and atrocities perpetrated by the state were committed in the name of national laws or under state orders, despite many of these acts being in violation of international human rights norms and laws. To maintain a system of rigid segregation of the four official race groups at all levels, including political, social and economic, oppressing civilians, as well as using force against its opponents, was the norm. The white minority, exercising control through the political and

economic instruments of the state, were resisted by the black majority population.

The impact of both colonialism and apartheid policies and laws on African women raised and sharpened their awareness of their oppression as blacks and as women, and led to militant protests against such laws and policies (Walker 1991). As Helen Joseph states, "The fundamental struggle of the people is for National Liberation and any women's movement that stands outside this struggle must stand apart from the mass of women" (Walker 1991:xxxi). This statement succinctly reflects the intersectionality between race and gender struggles that have characterized the development of a women's movement in South Africa. In the 1950s, the struggle for liberation from white minority rule by the Black majority population was led largely by an alliance of nationalists, trade unionists, and grassroots political organizations that included women (Walker 1991). Black women's political activism in challenging the structures of oppression predates the 1950s and includes the 1913 campaign on land, the 1928/9 resistance to the introduction of municipal beer-halls, "pass law" opposition campaigns and defiance campaigns.

The lives, the risks and the impact of political activism of women are reflected by numerous authors. Amongst others, Jacklyn Cock and Diana Russell (Cock 1991; Russell 1989) interviewed women who were involved in the liberation struggle and both of their books reflect the realities and the differential impact of detention, torture and other kinds of oppression. Russell states that approximately 12% of detainees held during the 1986-87 state of emergency were women and there were several reports of miscarriages in detention, torture using electric shock on pregnant women, allegations of rape by soldiers and other forms of abuse (Russell 1989:15, 25). The personal costs borne by women are revealed in the stories told during interviews. Some of the stories include: the trauma of being arrested in the presence of their children; giving birth in prison and not being allowed to breast-feed their babies; having their choices to be involved in social and political activism, trivialized or undermined; having to make choices between their families and their political commitments; the raping of women political activists by South

African soldiers which took place both within the country and also in neighboring countries (Russell 1989; Cock 1991).

It has also been asserted that despite their political activism, “historically, black women’s political involvements have been essentially conservative as far as gender relations are concerned, as evidenced in their perceived defense of ‘the family’ and endorsement of ‘motherhood’ (Walker 1991:x). This can be partly understood as a result of apartheid – where the system, through amongst others, the migrant labor laws and policies, the pass laws, the separate development and amenities laws and policies, the banishment of black people to ‘homelands’ (which had a more adverse impact on women) etc, forced families apart. Ironically, Walker’s statement was reflected at the early hearings of the TRC where women spoke about harms suffered by male members of their families, including husbands, siblings and sons, rather than of their experiences of violations of their human rights. The lives of women under apartheid are reflected in many books and journals, and yet women remained largely silent about personal harms suffered, during the commencement of the TRC process. The reality that black women suffered more from apartheid than anyone else, largely due to the laws and policies of apartheid, was not a factor that was in the largely male dominated discussions around what constituted human rights violations. This was invisible to the TRC until it was brought to their attention by civil society (Manjoo 2002).

3) Conceptualisation of the Truth and Reconciliation Commission (TRC)

As early as 1986, within South African civil society, there were discussions about an alternative for the country and the mechanisms that would be necessary, for the change from apartheid to democracy. There were two key role players who took the initiative to quit Parliament and set up an NGO called the Institute for a Democratic Alternative for South Africa (hereinafter called IDASA). Alex Boraine (a Christian Minister and also a corporate executive) and Frederik van Zyl Slabbert were members of the Progressive Federal Party, a white opposition political party in the apartheid government.

The objective of IDASA was to explore the means and methods to manage negotiation and the transition from apartheid to democracy. To this end, consultations took place with people within the country, research was undertaken and a conference was held in 1987 which looked at the implications of democracy in seven major areas of society i.e. governance, labor, business, education, law, media and the church. As is apparent, the question of women was not on the agenda. In the same year, IDASA also organized a visit to Dakar, West Africa for a group of South Africans to meet with representatives of the African National Congress (the banned liberation movement whose numerous members were in exile all over the world). It appears, from unconfirmed reports, that there were no women in this group. Another conference was subsequently held in 1989 by IDASA which looked at options for the future and it is acknowledged by Boraine that “our major focus was on how to confront the present and transform it rather than to look back to the past” (Boraine 2000:14).

When tentative negotiations to end apartheid started in the 1980s between the apartheid government of South Africa and the African National Congress (ANC), a fundamental question facing both sides was how to recognize, accept and deal with the gross violations of human rights of the past. South Africa’s quest for a democratic, non-racial, non-sexist country, involving a non-violent transition from oppression to democracy meant that the question of justice had to be addressed without jeopardizing a future where all its communities could live together in peace. The late 1980’s saw a change in the global geopolitical sphere including the imposition of sanctions against South Africa, which led to the South African apartheid state adopting a much more serious stance of negotiation with the liberation movement. This resulted in the unbanning of political organizations including the African National Congress (hereinafter referred to as the ANC) in 1990.

With the return to South Africa, of some of the members of the ANC, it became apparent that the liberation movement was in favor of setting up a truth commission to deal with the past, both in terms of disclosure of the truth and also accountability for human rights violations. This was confirmed at a

public lecture in 1992, and also the subsequent setting up of three internal inquiries by the ANC in 1993, to look into allegations of human rights violations in ANC camps outside the country. The inquiries confirmed that violations had taken place and this was accepted by the ANC. The National Executive Committee of the ANC announced its proposal for a truth commission “be set up to investigate all abuses that have flowed from the policy of apartheid. Instead of self-indemnity, we need the whole truth, so that all the victims of disappearances, murder, torture and dirty tricks or their families know what happened” (Kader Asmal 1993:14). It called on the apartheid government to agree to the setting up of either a Commission of Inquiry or a Truth Commission, into all violations of human rights since 1948. The option of a judicial process similar to the Nuremberg trials was discussed and rejected. There was also an awareness of the need to avoid a system of blanket amnesties. The third way that was discussed was a truth and reconciliation process which aimed for a model of restorative justice as opposed to a retributive/punitive model of justice.

The process of transition to a post-apartheid society was a difficult one on many levels. The decision to negotiate and take a conciliatory approach to deal with past atrocities was not an easy one for either the ruling party or the liberation movements. South Africa’s quest for a non-violent transition from oppression to democracy required that the political negotiation design and process be one that included compromises on all sides. Twenty six major political groupings participated in the negotiation process. Although the process included women participants, such representivity was not reflective of either the race or gender demographics of the country. The final clause of the Interim Constitution (hereinafter called the postamble) states that the pursuit of national unity, the well being of all citizens, peace, reconciliation between people and the personal and political reconstruction of society all led to the determination “that amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past” (Interim Constitution 1993). This clause also mandates the establishment of mechanisms, criteria and procedures, including tribunals, if any, through which amnesty should be dealt with. The postamble commits post-apartheid South Africa to a policy of reconciliation and understanding, as

opposed to vengeance, a need for reparation but not retaliation, a need for *ubuntu* (an African concept roughly translated to mean ‘the recognition of the humanity of the other’) but not for victimization, was agreed to by the then ruling party and the future ruling party. The negotiation process and the post-ambale left the door open for the new democratic Parliament to decide on precisely how the truth would be obtained and under what circumstances limited amnesty would be granted.

In 1992 IDASA organized a visit to several countries in Eastern Europe for a group of eleven South African civil society members, which included three women. The goal was to look at how emerging democracies deal with past violations of human rights and how they handle the issue of accountability for such violations. The groups views ranged from there must be trials and prosecutions, to there should be a focus on building a new South Africa and forgetting the past, to there should be safeguarding and availability of existing files—to establish the truth about the past. Alex Boraine as Executive Director of IDASA continued to engage internationally on these issues and began looking more broadly at other societies in transition especially countries in Latin America. Early in 1994 a conference was held in South Africa which included numerous international experts on emerging democracies and transitional justice, from both Eastern Europe and Latin America. Boraine subsequently set up a new NGO (funded by the Soros Open Society Institute, New York) and organized a subsequent conference later in the year for a larger group of mainly South African participants to discuss and debate the issue of a truth commission. At this conference, the ANC Minister of Justice, supported Boraine’s vision of a truth and reconciliation commission and argued that such a structure would not result in a witch-hunt, but would rather have the objective of reconciliation. Hence, it would have a limited mandate and would not investigate the crime of apartheid per se. Nevertheless, the Minister was also clear that the proposed commission “must be located within the context of social, political, economic and moral reform” (Boraine & Levy 1995:132). Boraine also offered to provide the government with advice on legislation for the establishment of such a commission. During 1994 he provided the new democratic government with proposals and opinions both on

legislation and also on the administrative structure of such a commission. His NGO also held over thirty civil society seminars, put together a history workshop to consider the challenges that could arise in the commission in recording history and conducted a project dealing with the documentation of human rights violations (Boraine 2000:50).

An all male committee (which included Boraine), and consisting mostly of lawyers, was initially set up to draft the legislation. Subsequently, both local and international experts (again mostly males) were drawn in to assist. The draft legislation was circulated for comment and the ANC government encouraged civil society input and participation as "...human rights are not the preserve of the few, but the birthright of every citizen" (Boraine & Levy 1995:3). The legislation was passed by Parliament and came into effect in December 1995.

The detailed explanation above on the conceptualization process, is an attempt to demonstrate that the conceptualization process was largely personality driven; that the liberation movement had simultaneous and competing demands in terms of developing a future constitution and also finding a mechanism to deal with the past, and hence relied to a large extent on proposals submitted by one sector of civil society; that women had a very minimal or no role at all in the TRC conceptualization process; and that gender was not raised as an important issue for consideration through-out the process. There has been acknowledgement by the ANC of the benefits of the civil society contributions to the TRC process, during a very difficult period. Unfortunately, this sector of civil society was a small select group which did not reflect the demographics or the views of millions of black South Africans in general, but black women in particular. As discussed above, it was black women and men who bore the brunt of apartheid atrocities. Criticism has also been voiced about the drafting process of the TRC legislation and the passing of a gender-blind law. Ilze Olckers argues that "Women had not participated in their own voices in the period leading up to the drafting of the TRC bill, or in the drafting of the bill itself. Some would argue women's experiences had largely been defined out by the terms of the bill" (Olckers 1996:61). The lack

of participation of women, the lack of consultation of women, the discussions and drafting process which was led by men who were not necessarily gender-sensitive, all gave rise to concerns such as those articulated by Olckers. The consequence of such a flawed process was the development of a gender and race neutral piece of legislation, which then resulted in the TRC not dealing with the violations that really affected black women the most.

4) Objectives and Functions of the TRC

The Promotion of National Unity and Reconciliation Act 34 of 1995 (hereinafter called the TRC Act) is the enabling legislation which spells out the functions and powers of the TRC. The TRC was legally established in 1995 as a quasi-judicial body. It had as its principal objectives the promotion of national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by facilitating the following:

- The establishment of as complete a picture as possible of the causes, nature and extent of gross violations of human rights committed during the period 1960 –1993. This picture must be obtained through the conducting of investigations and also the holding of hearings, and must reflect the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for committing such violations. This task of investigating and documenting human rights violations by the TRC was premised on a dual responsibility i.e. to victims, who were given the opportunity to share their stories with the nation, and the perpetrators, who were guaranteed due legal process to protect their rights. The inquiries also needed to establish accountability, political or otherwise, for any such violation.
- The granting of conditional amnesty. The pursuit of national unity, the well being of all citizens, peace, reconciliation between people, and the personal and political reconstruction of society all required “that

amnesty would be granted to perpetrators in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past” (TRC Act 1995). The amnesty clause provided indemnity from both civil and criminal prosecution, in exchange for full disclosure of all the relevant facts relating to unlawful acts committed in the pursuit of a political objective, within the stipulated time frame. The TRC Act provided for the publication of successful amnesty decisions.

The establishment and making known the fate, or whereabouts of victims, and restoring the human and civil dignity of such victims. This would be achieved by granting them an opportunity to relate their own accounts of the violations of which they are the victims. The making of recommendations to the President of South Africa, with regard to the policy which should be followed and the measures to be taken, in respect of reparations to individual victims as well as those relating to societal and institutional structures.

- The compilation of a report providing as comprehensive an account as possible of the activities and findings of the TRC, as well as recommendations of measures which should be taken or introduced to prevent human rights violations in the future.
- The determination of the nature and extent of destruction of articles, in the pursuit of concealing violations of human rights.

The TRC Act appears to be “gender-neutral” with no specific reference to women, gender or to gender-based violence. It is in fact, gender-biased, because of the way that gross human violations etc were defined so as NOT to include ordinary suffering inflicted by apartheid. It had to be individually targeted suffering rather than systemic. The individual focus also reflects the Christian/religious underpinnings of the TRC process. There is a focus on

victims generally in the context of giving them the opportunity to be heard (oral and written) and also to obtain reparations. The TRC process was underpinned by the recognition of the dehumanizing effect of apartheid on both the victim and the perpetrator. Archbishop Desmond Tutu (Chairperson of the TRC) states “The humanity of the perpetrator of apartheid’s atrocities was caught up and bound up in that of his [sic] victim whether he liked it or not. In the process of dehumanizing another, in inflicting untold harm and suffering, the perpetrator was inexorably being dehumanized as well” (Tutu 1999:35). This kind of false even-handed treatment/thinking was visible in many aspects of the TRC process. This treatment/thinking encourages the corollary that the kinds, the impact and the effects of harms suffered by women are the same as those suffered by male victims or perpetrators. Furthermore, it negates, minimizes and devalues the experiences of women. It also ignored the reality of unequal power relations in South African society, in terms of race, gender and also the intersections between race and gender.

5) Composition of the TRC

The composition of the Commission, as appointed by the President, reflected the diversity of the country across racial lines, religious systems, and political affiliations ranging from the left to the conservative right. The process of appointment commenced with a call to the general public for nominations and the setting up of a multi-party selection committee which included four members of Parliament, four NGO representatives and a Chairperson. Three of the nine members were women. Out of a total of 299 people who were nominated, 45 were interviewed and 25 were short-listed. Antjie Krog refers to the fact that all women who were interviewed for the TRC were asked if they felt that there should be women on the TRC. No questions were asked about whether there should be men on the TRC and the men were not questioned on whether there should be women on the TRC (Krog 1998:17).

The State President then appointed 15 from the list and included the names of 2 men who had not gone through the selection process. The majority of the

appointees had a human rights track record and included 7 women (41% -- despite constituting 52% of the population) and 10 men (59%). The racial breakdown was also interesting i.e. 6 Whites (35%--despite constituting 17% of the population) and 11 Blacks (65%--despite constituting 83% of the population). Despite this not reflecting the gender and race demographics of the country, it has been described as “a fairly representative group” (Boraine 2000:75).

Eight of the seventeen Commissioners were lawyers, four were ordained ministers and others were from academia and other professions. The Chairperson and the Deputy-Chairperson, two men appointed by the President, were also ordained [Christian] ministers. The Human Rights Violations Committee was allocated 7 men and 2 women Commissioners and was headed by a man; the Reparation and Rehabilitation Committee was allocated 4 women and 1 man Commissioner and was headed by a woman; and the Amnesty Committee was allocated 2 men and 1 woman Commissioner and was headed by a male judge appointed by the President. The TRC had the power to appoint additional committee members, whom it did, and it also hired a staff complement of approximately 350 people. Except for one woman who headed the Human Resource Unit, the top positions in the different sections of the TRC administration structure were occupied by men i.e. Investigation Unit, Chief Executive Officer, Executive Secretary, Head of Research Unit, Head of Finance Unit and Head of Legal Unit. In terms of the racial breakdown, the staff was largely White and this led to polarization with numerous accusations of racism, incompetence and corruption allegations against Blacks etc.

The statistics above show a racial and a gender imbalance, as well as the preferential placement, and hiring of men, in positions of power and authority. At the same time, it has also been acknowledged that when it was first set up, the Reparation and Rehabilitation Committee comprised 4 women and 1 man. There was a perception that this was done as women were seen as the soft, caring and healing types. The literature seems to indicate that the choice on the compositions of Committees was made by the Chairperson and then

brought to the entire Commission. The presumption that then arises is that the women Commissioners did not object to their placement, or that if they did do so, such objections were dismissed. Hence, the problems associated with a gender-neutral law and approach was further compounded by the composition of the Committees and the administration, based on the stereotyping and marginalisation of women. This is a reflection of the patriarchy that exists even in post –conflict societies, despite the role played by women in the struggle for liberation from oppression.

6) Functioning of the TRC

The TRC Act mandated the creation of three statutory committees i.e. The Human Rights Violations Committee, The Amnesty Committee and The Reparation and Rehabilitation Committee.

The Committee on Human Rights Violations was tasked with investigating and documenting gross violations of human rights including killings; abduction; torture or severe ill-treatment, committed by individuals, the state or the liberation movements (TRC Report Vol. 1 1998:29). The Committee gathered a total of 21,296 statements of complaints for investigation (TRC Report Vol. 3 1998:3). Victims' facts were established using a balance of probabilities test as opposed to the criminal test of beyond a reasonable doubt. Where possible, attempts were made to corroborate these stories. Due to the patriarchal nature of South African society and the entrenched public/private divide, women were seen as less of a threat to the apartheid state. Hence, TRC statistics show that women were less often the victims of murder, abduction and torture by the state.

In addition to individual testimonies, special investigations and hearings on sectors of society complicit in maintaining apartheid also occurred. The sectors included business, legal, health, faith, prisons, women, trade unions, media, etc. Hence, the political, economic and social environment that gave

rise to or allowed for gross violations of human rights, was also publicly on trial to a limited degree.

When the TRC began its work in 1996, the silence of women in relation to the different violations perpetrated against them, during apartheid, was made visible by women's rights activists. Statistics revealed that more women than men approached the TRC and most of the women spoke of the harms to and deaths of men in their life. Alex Boraine, the Deputy Chairperson of the TRC, explains it thus "the violence of the past had clearly resulted in more deaths amongst men than women" (Boraine 2000: 115). Hence, more survivors who came to tell their stories were women and he acknowledges that they downplayed their own suffering during testimony. The TRC subsequently organized two workshops with representatives of women's organizations and the media to address the issue.

In response to the civil society input on the dangers of a gender-insensitive approach, the TRC convened three special hearings for women. Procedural changes were also made, to encourage women to come forward and speak of their experiences as victims of gross violations of human rights. The hearings revealed women's experiences, both direct and indirect, of sexual, physical, economical and psychological violence. The hearings created an enabling environment for women to talk about their experiences and the impact thereof, to expose crimes committed against them, to name the perpetrators in some instances, to ask for financial and therapeutic assistance in some cases, and to assert and celebrate their roles in the national struggle for liberation.

Unfortunately, very few women came forward to testify and only a minority of these women was prepared to speak publicly about sexual violence perpetrated against them. The TRC received 446 statements in respect of sexual abuse and of the 398 statements considered; women brought 158 of these complaints of sexual abuse (TRC Report Vol.4). The TRC has acknowledged that the relatively few women whose experiences are recorded, must represent many more that did not want to present their own stories, or were not able to do so for some reason (TRC Report Vol.4). It has

also been acknowledged by a member of the Human Rights Violation Committee member that these hearings only scratched the surface when it came to disclosure of sexual torture and violence (Joyce Seroke 1999:28).

The categorization of the crime of rape by the TRC as severe ill treatment was also criticized during and after the TRC process. This undermines the current international law findings of rape as an instrument of genocide, a crime against humanity, a war crime and a form of torture and persecution.

A submission by the Centre for Applied Legal Studies also criticized the narrow definition of gross human rights violations, which excluded women's experiences and the gendered abuses inflicted by the apartheid system. The race and gender impact of apartheid laws was a gross violation of human rights, and black women bore a disproportionate share of the suffering in this regard. The TRC was urged to interpret the definition of "severe ill-treatment" to include the effects of apartheid policies and laws (e.g. forced removals; influx control and pass laws; dispossession of land; break-up of families through the migrant labor system; the denial of rights to employment housing/education, etc.) Unfortunately, the enabling legislation was not interpreted by the TRC in the manner recommended.

The TRC report on the women's hearings concludes that "the definition of gross violations of human rights adopted by the Commission resulted in blindness to the types of abuse predominantly experienced by women. In this respect, the full report of the Commission and the evidence presented to it make it very clear that while women are not the only sufferers, they bear the brunt of the suffering" (TRC Report Vol. 4). A Commissioner has acknowledged that despite gender representation on the TRC, this was not translated into gender sensitivity in the work of the Commission itself. Furthermore, the woman question did not come up, partly because they did not steer the process in that direction, and also during the early hearings the focus was on the facts, and not on where women were (Agenda 1996:67).

The Committee on Amnesty's role was to consider the approximately 7000 applications for amnesty that were received. Their role allowed an investigative component, if needed, in its consideration of applications. The amnesty clause provided indemnity from both civil and criminal prosecution in exchange for full disclosure of unlawful acts associated with a political objective, committed in the course of the conflicts of the past. The amnesty provision was applicable for acts committed within a stipulated time period, and applications had to be made in a stipulated time period also. A refusal of amnesty resulted in a referral to the Director of Public Prosecutions for possible prosecution. Referrals of victims to the Reparation Committee were made on granting of amnesty, or on a finding of gross violations of human rights (in cases of refusal of amnesty).

Hayner refers to an application for amnesty for rape, which was thrown out by the Amnesty Committee before full consideration thereof. The view of one Commissioner was that rape was not a political crime and that the applicant's basis was far fetched (for example, he raped her because she was from another political party). The reality was that this was not a far-fetched notion at all and women in particular were punished in different ways for being politically active—as opposed to subscribing to notions of societal gender roles). There was a lack of synergy between the Human Rights Violation Committee, which had heard testimony of rape, and the Amnesty Committee, which had received an application in respect of the crime of rape. Hence no linkages were drawn between the two processes (Hayner 2001:79).

The Reparation and Rehabilitation Committee received cases from both the Human Rights Violation and Amnesty Committees, and also directly from individuals “who are of the opinion that they have suffered harm as a result of gross violations of human rights” (TRC Report Vol1 1998:285). The committee's role included both identifying victims who qualified for reparation and also making recommendations to the President as to appropriate measures of reparation (including urgent interim measures). Victims included direct victims, intervening victims as well as relatives and dependants. The Committee drew up a reparation and rehabilitation policy, which includes the

following recommendations: individual reparation grants in the form of monetary payment; symbolic reparation (e.g. memorials, proper burials); community rehabilitation programs (e.g. counseling services, housing); institutional reform (proposals on measures to prevent the recurrence of human rights abuses).

Between 1998 and 2003, urgent interim relief was granted to 19,000 victims by the government, but no individual reparation payments were made until April 2003. On April 15, 2003 (after a four year wait), an announcement was made in Parliament that the government decided to pay a once-off sum of R30, 000 (approximately US\$3,000) to the 22,000 victims officially identified by the TRC. This sum is well below the amount recommended for individual reparations, by the TRC in the 1998 report. An amendment to the TRC Act is also being prepared to 'legalize' community reparations for victims who were not part of the TRC process. The President's Fund will also help finance the rehabilitation of communities harmed by apartheid. The TRC recommendation of a compulsory once-off wealth tax on big business to be used for reparations has been rejected by the government, in favor of setting up a Voluntary Business Trust Fund. A trust has also been established to deal with the issues of monuments, museums and renaming places. The granting of reparations to people who had testified does result in a larger percentage of that fund going to women as it would go to those whose husbands, sons, etc killed. But this does not translate into a real benefit for all women, particularly black women, whose lives were so fundamentally affected on a daily basis by gross violations of their human rights.

The delay and the final reparation decisions by the Executive, has resulted in widespread criticism and also litigation by a few victims and victims groups. There is a perception that the reparation process has failed in meeting the needs of victims and in building a visible human rights culture. The TRC Act has, as one aim, to rehabilitate and give back the human and civil dignity of people who suffered human rights violations. The reparation policy is dependant on political will and the financial capacity of government for implementation, which has had implications for social and economic justice.

7) Conclusion

The Truth and Reconciliation Commission revealed the invisibility and silences that accompany crimes committed against women. The silence occurs at many levels viz. the silence of women who are violated, silence by the world community, silence by perpetrators and also silence by the societies and communities that these women live in. Justice and healing require certain pre-conditions which include but are not limited to: an enabling environment for both disclosure and testimony by victims, appropriate support services, public acknowledgement of the crime, and accountability of perpetrators. The TRC made an attempt to make visible and also to break the silence surrounding the violations of human rights of women. Unfortunately, this was of limited value and impact, and some of the blame for this is due to the narrow mandate and also the gender-neutral/gender-blind approaches adopted. The marginalization and devaluing of the role of women in peace-building, post-conflict, is also to blame for silences and invisibility.

South Africa has been described as a society living in an aftermath where “the political violence against women committed in the past has direct and indirect links to current levels of sexual violence” (Goldblatt & Meintjies 1997:13). In any evaluation process, the work of the TRC has to be viewed as a part of a process and not an event. The TRC is but one small component of a transformation strategy in the reconciliation and reconstruction of society. The continuing challenges that face South Africa include reconstruction and development- both economic and social, the deepening of democracy and a culture of human rights, the challenging of patriarchal laws and practices, dealing with the high levels of violence against women, the entrenchment of substantive equality to enable women’s full participation in the political, economic and social life of society and so on.

Hayner argues that knowing the truth is never enough. “In the end finding and knowing the truth should be seen as just one step towards a long term goal of learning from history and keeping memory alive”(Hayner 2001:41). For the

women of South Africa some of the truth has been revealed, and it is time to unearth more of this and also to start the healing process.

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ACRONYM LIST

TRC	Truth and Reconciliation Commission
NGO	Non Governmental Organisation
IDASA	Institute for a Democratic Alternative
ANC	African National Congress