

## Gender and Truth Commission Mandates

*Vasuki Nesiah*

My focus today is going to be on truth commissions— I am going to start by talking about what women have at stake in how truth commission mandates are drafted and interpreted, what do we have at stake in regard to the “truth” that is to be investigated. I am then going to transition into a discussion of truth as process – because truth commissions are also an opportunity for women to have a platform, to narrate their experiences of human rights abuse, address the nation – and reclaim the public sphere. That opportunity to speak in the public sphere is an enormously significant opportunity for a group that has traditionally been consigned to the private and domestic.

Early in the life of the South African TRC, the Legal Resources Center in Johannesburg organized a workshop called “Does truth have a gender?” A survey of truth commissions and the ‘truth’ they tell about legacies of human rights abuse suggests that truth *is* gendered in different ways. In terms of the truth that it describes, the truth telling process it sets up, the truth tellers who come forward. To some extent it is attention to gender issues more than any thing else that press the point that truth commissions are about multiple truths, not a single unified truth; in fact, their most critical function may not be to produce a consolidated truth but to expose ‘untruths’ –expose the myths that sustain and legitimize the abuse of power.

Moreover, for many truth commissions the process of demystifying established truths is accompanied by an effort to build more inclusive histories. Most truth commissions share the phenomenon that the vast majority of people who come forward and provide testimony are women; however the majority of those women do not speak of the violations they suffered but the harm that befell their husbands, sons, brothers and fathers – the men in their lives. One would expect that truth commissions would also take proactive steps to address women’s experiences and priorities. However, historically pro-active gender conscious work was a contested arena for commissions who saw their project as focused on a “neutral truth”. Many have argued that “engendering” truth would bias and compromise it. On this view truth by definition has to be gender blind; objectivity is precisely its value.

The early Latin American commissions were largely in the gender-neutral school; commissions in Argentina and Chile did not see gender as a critical dimension of truth seeking. By the time the Guatemalan commission produced its final report, we can begin to see a shift to a different view. “Truth” is understood as emerging from particular contexts where some perspectives and experiences have been excluded from dominant understandings of the historical record, then situating truth in the dynamics of gender may be an effort to demystify received truths and make space for new truths that have been marginalized in the public sphere. This approach pays particular attention to the ways in which truth has been produced thus far, to see the commission as an initiative to contest dominant truth and highlight hitherto suppressed truths. In fact, in this interpretation, ostensible gender neutrality is invariably a default position that privileges male experiences of human rights abuse.

Increasingly, commissions seem to take the view that regardless of whether the mandate explicitly calls for it, it would be incumbent upon a commission to examine the structural gender

biases through which some facts emerge as critical to the historical account and others fade into the backdrop of the private or domestic arena, and where some actors' agency is recognized and privileged and others fade into the anonymity of spouses, mothers, and sisters. Commissions in Guatemala, South Africa, and Peru paid particular attention to gender even though their mandates were formally gender neutral. They interpreted mandate language regarding torture and ill treatment as the legal channels to address sexual violence. Moreover, since commissions operate under a lesser burden of proof than criminal trials – i.e., a balance of probabilities test rather than proof beyond doubt – they were also able to buttress charges of rape through attention to patterns of crime, circumstantial evidence and such.

In countries like Haiti<sup>1</sup>, Sierra Leone, and Timor-Leste gender or sexual violence was explicitly incorporated into the mandate and, from the beginning, these topics were identified as critical avenues of investigation. For these commissions, investigating egregious bodily injury crimes helped expose the reality of gender-based torture, including rape, genital mutilations of men or women, or forced sexual violence against prisoners of both genders. For instance, defining human rights victims in terms of harsh bodily injuries, the Sierra Leone TRC found that approximately 35 percent of adult victims and 45 percent of child victims were female. The Sierra Leone commission's work on gender violence has contributed to law reform efforts that seek to enhance gender justice on a number of fronts.

That said, most gender sensitive commissions have worked with a narrow concept of gendered harm that equated it to sexual violence alone. For example, the Peruvian commission's research and investigation of women's experiences of political violence focused heavily on sexual abuse and rape, and one of only two gender-focused chapters of the final report focused exclusively on sexual violence. The focus on sexual abuse is an important achievement and the context of extraordinary violence can be used to draw attention to ordinary violence that was an endemic problem. In the words of Peruvian feminist Marruja Barrig, this helped draw the "linkages" and break the silence on "the daily sexual abuse women are suffering in their homes and in the streets," and to open a window into examining a "church dominated discourse on sexuality."

While appreciating the enormous reach of this intervention and welcoming the work of the commission on sexual violence, feminists have worried that the neglect of other issues has led to the deprioritization of several important dimensions of women's lives and struggles from the human rights radar screen, such as the experience of internally displaced women, women who became sole breadwinners as a result of human rights abuse against spouses, women refugees who fled to other countries, or women prisoners.

While sexual violence is critical, it does not capture the complex and multidimensional ways in which women experience abuse. Moreover, reducing women's violations to sexual abuse reproduces more widespread prejudices that reduce women to sexual beings alone. A narrow focus on harsh bodily injuries may even distort the story that commissions tell and may advance a narrow and partial truth. For example, in South Africa, women were denied active citizenship under apartheid, and the human rights violations they suffered were often located in the private

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<sup>1</sup> National Truth and Justice Commission, established December 1994 to investigate human rights abuses in the period after the coup in September 1991 until Aristide's return to power in September 1994. It delivered its final report and recommendations in February 1996.

sphere or domesticated into the “ordinary” violence that forced removals and group-area legislation deployed to segregate living and working conditions, rather than the “extraordinary” violence of torture, killings, and disappearances. Thus, the truth commission’s focus on the latter may be said to fundamentally misrepresent women’s experience of apartheid and skew the truth that the commission narrated.

The South African case history of structural and private abuses against women is not isolated. In many contexts, bodily injury provides too narrow a lens into women’s experiences of authoritarian regimes; other aspects of human rights–abusive contexts, such as the extreme vulnerabilities and structural inequalities created by systems of war or repressive rule, affect women in disproportionate numbers and, moreover, affect them in ways that have far-reaching human rights implications. For instance, in Quechua speaking communities in Peru, women faced a range of issues from coerced or unethical sterilization practices to forced pregnancies even under rape. It is an area that pointedly demonstrates the linkages between the ‘extraordinary violence’ of the civil war, and ‘ordinary’ violence that curtails women’s reproductive freedom. Yet the whole area of reproductive rights, be it forced sterilization or forced pregnancy, was not touched by the Peruvian commission, even though it was such a critical dimension of women’s experiences of the conflict years. Yet, developing this more holistic understanding of the rights that were impacted, and a more multi-dimensional understanding of the harms suffered, has been a challenge for truth commissions.

Thus far, the most wide-ranging attempt in this regard has been in the Timor-Leste commission, where gendered research and analysis have been conducted not only in regard to sexual violence—and significant attention was paid to sexual violence—but also in relation to the other thematic areas, including violations of socioeconomic rights. The recently released Timor truth commission report demonstrates how forced displacement resulted in a range of harms for women, from starvation to exacerbated vulnerability, to sexual abuse; from forced labor to denial of fundamental freedoms; the deprivation of women’s civil and political rights were intricately tied here to the denial of their social and economic rights.

To some extent these issues are determined by the terms of the mandate. The process of defining the terms of a commission’s mandate, the “truth” that it is aiming toward, is a high-stakes political terrain. Unfortunately, drafting decisions are often made in a forum where women and other marginalized groups are underrepresented and their rights and interests are fundamentally neglected. In many contexts, women’s issues are marginalized in legislative assemblies, the media, and the public sphere at large; even the human rights community has a mixed record.

Ideally, truth commission mandates should be determined through open, consultative processes that pay particular attention to marginalized communities. Wide input from survivor/victim groups, activists, and scholars working on women’s issues can be critical in determining how human rights are defined and the goals and priorities of a truth commission process are established. In many contexts, these groups have monitored periods of conflict and authoritarianism for their impact on women, and insight into this process can be critical in determining priorities for a truth commission process.

Once terms of a commission are determined, the struggle, as it were, moves to questions of mandate interpretation. After it was appointed and before it launched operations, the Peruvian commission took some months to focus solely on how it would interpret its mandate. It acknowledged that the mandate was not a self-evident piece of black-letter law, but one where contested interpretations were possible. After a dual process of internal dialogue and outside pressure from feminists through position papers and other input, the commission interpreted its mandate to include women's experience of the conflict. Thus, a gender unit was established, and Julissa Mantilla, one of the authors of an influential position paper arguing against gender neutrality, was recruited to head that unit. The Peruvian case demonstrates that once a commission's mandate is passed into law we cannot assume that our work is done; Women's groups, and civil society more generally, needs to be alert and engaged through out a commission's life to address how that mandate will be interpreted and implemented.

A broad debate runs through many commissions between legalistic understandings of truth as a verifiable, forensic fact regarding an act that constitutes a gross violation of human rights, and the structural, inter-subjective, and dialogical understandings of truths as, invariably, plural, partial, and contested. This debate may go to the diverse, and sometimes conflicting, aspirations that women's groups themselves may have for a commission's work. On the one hand, there may be an interest in an authoritative verification of the gendered history of human rights abuse; on the other hand, there may be an interest in exposing and criticizing dominant claims to authoritative truth to underscore how truth is often partial, contested, and a matter of historical struggle, rather than scientific proof.

Attention to gender issues in mandate interpretation highlights the links between truth as a product of truth commissions and truth seeking as a process that takes place through public hearings, statement taking, translations, coding, and other operational initiatives. The latter are not apolitical institutional tasks, but together contribute to a technology of truth; i.e., organizing, classifying, and filtering information to deliver what the commission process recognizes as the truth. In recognition of this, women's groups have focused attention not only on what the mandate says, but how it is interpreted and operationalized in day-to-day institutional practices. It is important to enhance women's access to the truth telling process—in submitting statements as witnesses, narrating experiences in public hearings, feeding research and commentary into the final report, and so on. In addition to enhancing the truths that emerge in the final report, there is a sense that this focus on process has value in enhancing women's access to justice

I want to close with a story about the testimony of a woman in the South African truth commission that demonstrates some of these issues and the real difficulties it poses to a feminist agenda for truth commission processes. It is a story about Yvonne Khutwane. Khutwane decided "to speak out at the truth commission" because she wanted to assert that apartheid was about fundamental rights violations and she wanted her grandchildren to know her contribution to the struggle<sup>2</sup>. After she gave testimony to the commission Yvonne was interviewed by Fiona Ross, and it is from Ross's book, *Bearing Witness* that I learned the fuller story I am about to tell you – although a piece of Yvonne's story also appears in the final report of the truth commission. Yvonne Khutwane gave testimony to the South African truth commission about the human rights abuses she had suffered under apartheid. She had been arrested, kept in solitary confinement,

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<sup>2</sup> See Fiona Ross , *Bearing Witness*

interrogated, tortured and beaten. Her house was burned and she was raped by a policeman. She testified to all this, while also speaking of her history of political activism through these years. She told the commission how she had been involved with the ANC since she was a young girl, and then spoke about how she had gone on to take on a lot of political responsibilities working for the ANC underground.

Yet, ironically in the Commission's account of Khutwane's testimony this history of activism fades into the background even though it was clearly important to her own identity and self-presentation and the legacy she wanted to leave behind. Moreover, while rape was just one of many injustices she described, this was what the commission highlighted in its report; for Khutwane, the arrests, imprisonments, the solitary confinement, the interrogations were all part of a difficult path to liberation, but perhaps it is the rape that was most critical to the TRC's own sympathetic but simplistic 'expectation' of a traumatized female victim – this was what was "presumed to be *the* traumatic violation." As one commentator says, in the TRC's retelling, this "diversity of harms becomes a story of sexual violation."<sup>3</sup>

This was partly because the commissioners were committed to a gender justice agenda and wanted to draw attention to rape. However, many rape victims didn't forward—thus, when Yvonne came forward she became that prized rape story. Ironically, the commissioner who did the questioning here was a woman psychologist committed to women's rights. Yvonne's treatment in the commission is also a story then about the competing tensions between 'truth as a product' and 'truth as a process' for the women's movement. In Antje Krog's *Country of My Skull* an imaginary interlocutor of the commission says "one has no right to appropriate a story paid for with a lifetime of pain and destruction."

The challenge for us is to assist future commissions to enable women's voices in the public sphere and represent women's experience of human rights abuse in more complex ways – recognize that they are not just points on a graph that will help us buttress statistics about sexual abuse, they are also activists with complex responses to human rights abuse. Khutwane's story to the commission was one of resilience, survival and continued political commitment to the struggle against apartheid –it would be tragic if this inspiring and courageous "*truth telling*" regarding her experience of human rights abuse is reduced to the 'truth' about her rape.

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<sup>3</sup> See Fiona Ross , Bearing Witness