

## **Sexual Minorities Study: LGBT Issues and Transitional Justice**

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I would like to present today on some new research in the field that I am hoping to start this spring. I am currently in the process of putting together a proposal and crafting the overall framework for the project. I should add that so far the focus of the research is mostly on the area of truth-seeking and the documentation of abuses. In some ways this seems to be the best way to start this type of research, as there have already been a few truth commissions that have dealt with abuses against LGBT people, offering lessons that can be drawn from these involvements. There have also been unofficial processes that have examined the issue in the absence of formal mechanisms, so the concept of truth-seeking more readily lends itself to this new type of research with the field of transitional justice. I would like to spend the few minutes I have with you today providing an overall sketch of how I am imagining the project taking shape.

### ***Why is it important to Transitional Justice?***

Because little work has been done on LGBT issues within this field, there may be some initial skepticism as to its relevance. So, I would like to explore the patterns of abuse that might be present in countries where transitional justice mechanisms might be employed.

There has been documentation of the systematic targeting of gays, lesbians, bisexuals, and transgender individuals in some of the countries in which the ICTJ has worked, and such abuses are being documented in countries we may work in, in the future. This research has shown that authoritative states often target homosexuals as scapegoats for social problems. Such attacks are used by those in power as a tool to manage political instability and consolidate their hold on society. Countries in Southern Africa, Zimbabwe in particular, provide a good example of this trend. Some of these Governments have used state-sponsored homophobia to distract from the social dissatisfaction felt by their populations and insulated themselves from critique of their regimes. This has been well-documented by the International Gay and Lesbian Human Rights Commission (IGLHRC) and Human Rights Watch (HRW), as well as being discussed thoroughly in several papers by Katherine Franke of Columbia University Law School.

### ***Zimbabwe – A Case Study:***

I would like to discuss the situation in Zimbabwe to give you an example of this phenomenon, but also because I think Zimbabwe is an interesting forward-looking case study. Many hope that it will transition to a stable democracy in the near future. As part of this research is geared towards impacting transitional justice processes that have yet to take place, and given the existing documentation of the targeting of sexual minorities in Zimbabwe, it is an important context to keep in mind when exploring those lessons learned and their future application.

Beginning in 1995, when President Mugabe began to come under pressure both internally, as civil society and viable political opposition began to grow, and externally, with the growing criticism of his land seizure policy, he began to make public statements

denigrating homosexuals. He declared that homosexuality was “un-African” and that Zimbabweans who were homosexuals should not be accorded the same rights as their fellow citizens. He also called on the public to carry out the arrest of gays and lesbians and hand them over to the police.

Official homophobia had already been taking place in the form of targeted arrest and raid on the apartments of activists. However, as these types of statements became more frequent and intense, the infringement on the rights of sexual minorities also began to increase. In fact, this type of rhetoric also began to emerge among other politicians in Mugabe’s Administration and from other countries in the region facing their own internal strife (Namibia, Zambia, and Botswana).

These verbal attacks served to deflect attention from Mugabe’s policies and the state of affairs in Zimbabwe. This rhetoric and abuse also served the purpose of creating unified indigenous national identity. Homosexuality became a tool to discredit Zimbabwe’s white population. The rhetoric became filled with theories of homosexuality being an import from Europe and part of neo-colonialist efforts to destroy Zimbabwe. President Mugabe also used the issue to directly attack Prime Minister Blair’s administration, a vocal opponent of the land seizure policies. Mugabe made public statements questioning the British government’s credibility in criticizing his government when there were homosexuals who populated the British Parliament.

The issue of sexual minorities served its purpose. It galvanized press and public, distracting them from other issues. The state-run media began to publish editorials and articles on the issue. The articles often harassed nongovernmental organizations accusing them of running brothels, making death threats against reports, and engaging in public indecency.

Human rights groups have documented how an official language of homophobia often translates into violence. Such public claims are often followed by persecution. This was the case in Zimbabwe. These public comments by Mugabe and those in his administration were followed by police harassment, official crack downs, and the detention and torture of activists and people suspected of being homosexual or transgender. Civil society organizations working on LGBT issues have been denied legal status or threatened with closure, as well as experienced limits on their freedoms of assembly, expression, and association.

The air of official impunity within Zimbabwe around this issue opened the door for violence within communities against sexual minorities. Sexual minorities have been assaulted and exiled from their communities.

These types of systematic attacks, which have taken place in numerous other countries, are often not in isolation but part of a larger structure of abuses. In the case of Zimbabwe, it was the beginning of a much larger campaign against groups that posed a risk to those in power. Similar attacks were soon launched against independent social movements and organized opposition.

*Why it is important:*

A vital part of this study is to note that these patterns of violence exist and can be an integral piece of a larger legacy of abuse within a country's history. In some countries, such abuses emerge as a part of larger social cleansing campaigns aimed at rooting out opposition among fringe elements of society. As transitional justice is aimed at addressing such a legacy, these violations must be remembered in efforts to account for the past and address the interests of victims.

Many transitional justice initiatives seek to unearth hidden histories or injustices that have been repressed in the public sphere. Systematic abuses against sexual minorities are not only part of these repressed histories but, in many countries, are also not represented in the mainstream human rights dialogue. The risk of this in countries that are undertaking transitional justice mechanisms is that abuses against sexual minorities will not even make it into the newly formed discussions on human rights and accountability.

In many countries, those groups and organizations pushing for human rights are silent about these issues. This has largely been the case in Zimbabwe, where they do not see the rights of sexual minorities as being relevant to their work or, in some cases, are afraid of the larger repercussions. The fear of the implications of association was grounded in reality in Zimbabwe after the Government began targeting NGOs who allowed a gay and lesbian group to be part of a coalition on the rights of women. The consequence of this dynamic is that groups working explicitly on LGBT rights end up all alone. Such alienation could very well have implications for truth-seeking processes and the building of a coalition of support behind it.

Thus, not only is this issue important because abuses against sexual minorities are often part of a larger legacy of abuse addressed by transitional justice mechanisms, but also because—without proactive planning and efforts to push a discussion of these issues in the transitional justice field—there is a greater risk that they will fall to the way-side as accountability is pursued.

***How have TJ mechanisms dealt with this so far?***

As the research is envisioned so far, the focus of this part of the study will include an exploration of how truth commissions have addressed abuses against sexual minorities. There are two such cases to choose from: Peru and South Africa. Today, I would like to spend a few minutes giving you a flavor for the type of case study and analysis that the research will entail.

The study will seek to ask such questions as:

- How did these violations surface in the commission's work?
- Did such violations receive the attention in commission's final report that it deserved?
- What were the consequences, if any, of the truth commission's attention to these issues (was public consciousness raised, did it have an impact on groups dealing with the rights of sexual minorities)?

### *Peru*

The Peruvian Truth and Reconciliation Commission's (TRC) efforts to address violence against sexual minorities could be characterized as accidental. While the targeting of sexual minorities during the Peruvian conflict was not state-sponsored but was carried about by rebel movements, the motivations were similar in terms of building political support by targeting a socially excluded group.

The TRC briefly discusses this issue in its final report, in a largely narrative form and absent of a broader contextualization of the events discussed. The report discusses how the rebel group the MRTA detained and assassinated eight transvestites on charges of vandalism and collaborating with the Armed Forces and Police. These abuses were documented in a newspaper published by the MRTA, along with their killing of a well-known gay man. The TRC final report points out that the MRTA argued that a lack of control over these individuals' sexuality was a failure on the part of the Government and could very well have resulted in a negative impact on youth.

The Commission addressed these incidents only because a staff member somewhat randomly discovered them after attending a rally commemorating the fall of Fujimori, at which an LGBT group had a memorial to victims who had died during the conflict, and had the diligence to follow-up on their documentation. This discovery was rather serendipitous, despite there being a sense among many in the TRC that this was a common pattern among the MRTA and Shining Path. It was known by the people within the Commission and the human rights community at large that these rebel groups marked the presence in an area by wiping out those deemed to be "anti-socials" (drug dealers, prostitutes, petty thieves, and sexual minorities). The targeting of sexual minorities for torture and assassination was a normal mechanism employed to gain social legitimacy. Discussions had been held by people within the Commission on these issues, but nothing came of them.

When the staff member attended the rally and saw the memorial, he approached the LGBT group and encouraged them to make a submission to the TRC. Needing to confirm the information they provided about individuals who were killed, he approached the Commission investigators researching the MRTA, but they showed no interest in the subject. They directed him to a pile of newspapers that had been put out by the rebel group during the conflict. He and another staff member went through the papers until they found where the MRTA had publicly admitted to the abuses above.

Unfortunately, the TRC failed to look at the general pattern of abuses committed by the MRTA and Shining Path against sexual minorities. If the Commission had people dedicated to this issue or pushing for it to be included, it would have likely been able to identify these greater patterns of abuse. This proved to be a lost opportunity for the TRC.

### *South Africa*

I would like to just briefly comment on the South African TRC's cursory treatment of violence against sexual minorities. There were several submissions to the Commission on violence against sexual minorities during the Apartheid era. Testimony was delivered

during the special hearing on compulsory military service about the discrimination and repression faced by gay and lesbians in the army. Submissions were also made during the institutional hearings on the health sector that detailed the aversion therapy given to gays and lesbians to change their sexual orientation without their consent. The TRC has been criticized for under-scrutinizing the abuse of gays and lesbians in the military. In its final report, the Commission confined its treatment of these abuses to one sentence mentioning the aversion therapy. The South African experience provides an excellent window into examining why these issues were not included to the full extent that these abuses warranted and the possible implications of such neglect.

### **Lessons to be drawn – policy considerations**

The third element of this research is to draw out lessons and policy considerations for future transitional justice mechanisms. Such questions that might be asked are:

- Why did Peru and South Africa only make cursory reference to abuses? Was it an issue of politics or a consequence of how the commissions were structured? Did the Commission's mandate play a role?
- Was there a division between the mainstream human rights community and LGBT groups? Were LGBT groups part of the "regular" constituency that might be consulted or reached out to during such truth-seeking processes?

Through our research on gender and truth commissions, we have discovered that the alienation of women's groups during these processes has contributed to a lack of participation of women in these commissions. By not engaging these groups or adequately consulting the existing documentation of abuses against this specific constituency, commissions have had a lack of understanding about the types of abuses that have taken place during conflict resulting in such abuses not being recorded and those victims not being represented. Given the divide that often exists between the mainstream human rights community and LGBT groups, this is one of the issues that our research will examine.

We hope that this research will push the boundaries of transitional justice as the field is currently conceptualized, and further the field's ability to meet the needs of victims and establish accountability for serious human rights violations. In countries where sexual minorities have been targeted during times of conflict, it is vital that transitional justice mechanisms are able to address these abuses. Without such acknowledgement and proactive strategies to address this constituency of victims, transitional justice will have failed in helping societies account for and deal with past crimes.