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

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November, 2004

Prepared for the UNRISD report
Gender Equality: Striving for Justice in an Unequal World

DRAFT WORKING DOCUMENT

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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

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