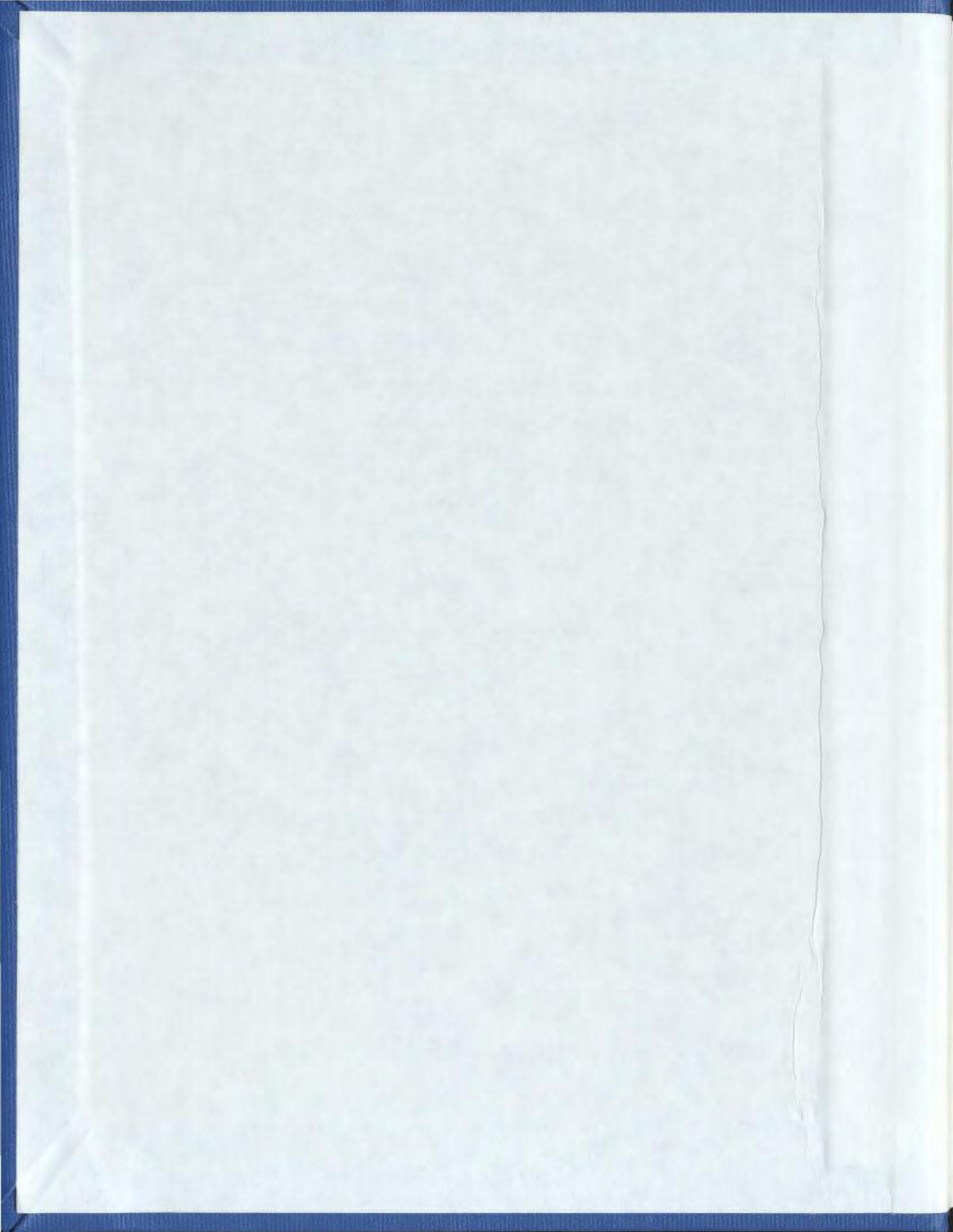


TRUTH COMMISSIONS AS A TOOL FOR THE  
POLITICAL AND LEGAL RECOGNITION OF WOMEN'S  
RIGHTS IN THE POSTCONFLICT STATE

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**Truth Commissions as a Tool for the Political and Legal Recognition of  
Women's Rights in the Postconflict State**

by

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## **ABSTRACT**

Truth commissions may serve as a model for the introduction or strengthening of women's rights in states where recognition has not historically been a priority. As evidence for the argument that truth commissions can play an important role in reinforcing women's rights in post-conflict states, I examine the case studies of Liberia and South Africa, and include a chapter advancing a normative argument for transitional justice in general, and truth commissions in particular, as a means of strengthening human rights practice. This paper adds to the existing transitional justice literature by examining the impact of truth commissions on the development of women's rights in the postconflict state.

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## **List of Abbreviations**

ANC- African National Congress

CCPR- International Covenant on Social and Political Rights

CEDAW- Convention to Eliminate all Forms of Discrimination Against Women

CESCR- Committee on Economic, Social, and Cultural Rights

CPA- Comprehensive Peace Agreement (Liberia)

CSMO- Civil Society Monitoring Observatory

ECOWAS- Economic Community of West African States

EPAG- Economic Empowerment of Adolescent Girls and Young Women Project

GBV- Gender-Based Violence

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

IFP- Inkatha Freedom Party

LNAP- Liberia National Action Plan

MOHSW- Ministry of Health and Social Welfare (Liberia)

MRC- Medical Research Council (South Africa)

NPFL- National Patriotic Front of Liberia

TRC- Truth and Reconciliation Commission

TTC- Thuthuzela Care Centre[s] (South Africa)

UDHR- Universal Declaration of Human Rights

UNSCR 1325- United Nations Security Council Resolution 1325

WIPNET- Women in Peacebuilding Network

## **Introduction**

Following the cessation of conflict, states often introduce transitional justice mechanisms, including truth commissions. Truth commissions are a relatively recent and increasingly common method of addressing justice-related issues in transitioning states, where they are used primarily to signal a break with a legacy of government human rights abuses; to bring about national reconciliation; and/or to achieve legitimacy (Hayner, 2004: 604). As officially-sanctioned bodies, truth commissions also have the potential to model human rights practice within transitioning states by treating political atrocities as human rights violations, and improving social relations through reparations for victims of these violations (Hayner, 1996: 22; Thomson and Nagy, 2011: 13). (Re)Introducing a human rights culture is often recognized as an important goal of truth commissions and this thesis seeks to examine whether in fact this goal is achieved (Hayner, 2007: 27).

Recommendations are made following the end of hearings, and are devised as a result of testimony gathered. Recommendations cover a number of areas and serve an important purpose in the truth commission process by outlining political changes to ensure that human rights offences occurring in the past do not recur. The concern of this paper is to examine those recommendations that outline specific structural changes to strengthen women's rights in order to determine whether truth commissions help to create meaningful human rights reform.

Recommendations draw on testimony gathered during truth commission proceedings and are therefore designed specifically to address the needs of survivors. While recommendations may respond to, for example, the urgent health or economic

needs of survivors, recommendations may also recognize the need to bring local human rights practice in line with international standards. The entrenchment of human rights may also help the government of the emerging state gain international legitimacy (Hayner, 1996: 19).

However, as non-judicial temporary bodies of the state, truth commissions do not have the power to enforce the implementation of recommendations. When governments appear reluctant to implement them, recommendations may direct the attention of civil society and international organizations to changes that must be made in order for the state to improve human rights practices (Hayner, 1996: 22).

Gender justice has been increasingly incorporated into the mandates of many truth commissions as a means of recognizing the different ways that conflict affects women and remedying violations that specifically impact women. The South African TRC is noteworthy in regards to gender justice because, while the TRC itself is often considered a model (Scanlon and Muddell, 2008: 9), its consideration of women's experiences under apartheid was extremely limited (Goldblatt and Meintjes, 1997: 59). The TRC's *Mandate* focused on physical violations committed during apartheid and the liberation struggle; a focus which largely disregarded the vast socio-economic violations that women experienced. This focus also impacted the recommendations that were made by the TRC in its *Final Report*, where adequate attention was not given to gender (Goldblatt and Meintjes, 1997: 65; Maisel, 2011: 5).

Despite the shortcomings of the South African TRC in terms of its treatment of women, it is regarded as a model truth commission because of the integral role it played

in facilitating the peaceful transition from apartheid to democracy (Maisel, 2011: 5). The South African TRC was chosen for this case study because certain aspects of the commission, its public hearings, the strong focus on reconciliation, its extensive legal powers, and the international coverage it received, have led it to be considered a model for the truth commissions in, for example, Liberia, Sierra Leone and Timor Leste-Indonesia (Hayner, 2000: 33). Because of the high regard in which it is held, it is useful to examine recommendations made by the South African TRC in regards to women's rights to determine precisely how and why these have had little impact in democratic South Africa, so that similar deficiencies can be avoided by future commissions.

To further highlight the issues around gender justice in the South African TRC, this thesis presents the case study of the Liberian TRC as a counterpoint. Gender justice was included within the Liberian TRC's *Mandate*, and gender mainstreaming ensured the equal participation of women (TRC *Mandate*, V: 24). This attention to gender justice resulted in the devotion of an entire chapter of the *Final Report* to recommendations for recognizing and actualizing women's rights. The comparative case study method is suitable for examining how two different truth commissions treated women's rights, and the impact that this treatment has had on the [re]introduction of these rights in the postconflict state.

### **Methodology**

The objective of this thesis is to provide a comparative assessment of the recommendations of the South African and Liberian TRCs. Employing a comparative case study methodology that draws on primary and secondary sources for support, and is

underpinned by the argument that human rights are normatively desirable, this thesis will answer the question, “Do the recommendations of a truth commission have a substantive impact on women’s human rights in the postconflict state?” The goals of this thesis are therefore twofold: 1) to test whether truth commission recommendations in regards to women’s rights are implemented, as this examination provides an empirical measure of a normatively desirable phenomenon—women’s rights, and 2) to employ this empirical evidence as support for the normative argument that women’s rights, as a subset of human rights, must be strengthened.

There are many challenges to assessing the impact of truth commission recommendations. Without the government making explicit linkages, and/or independent monitoring and oversight, it is difficult to trace a direct causal link between a recommendation and its subsequent implementation, or to assess a government’s motivation for introducing policy to strengthen human rights. However, the study of South African and Liberian government and non-governmental organization’s publications, documentation, and reports shows that few recommendations made by the South African TRC that specifically pertain to women’s rights have been implemented, while many of the recommendations made by Liberia’s TRC have been implemented. Because tracing the myriad factors that lead to a strengthening of women’s rights is beyond the scope of this paper, it must be stated from the outset that this thesis does not claim to find a direct correlation, or a strong causal link between the effective implementation of recommendations and an improvement in women’s rights. The conclusion of this thesis is much more modest: it is that the efficacy of a truth

commission in strengthening women's rights appears to signal an overall attentiveness to the importance of these rights, therefore, recommendations may have a substantive impact on women's human rights in the postconflict state. Even in states that do not implement recommendations to strengthen women's rights, the recommendations may be used as leverage by civil society (Brahm, 2007: 29). Therefore, it does appear to be the case that truth commissions can help to bring about, or at least encourage and influence, a substantive change in women's rights in the postconflict state. Drawing this empirical conclusion makes the normative case for women's rights even more urgent—if truth commissions can help to strengthen women's rights in the postconflict state, then future truth commissions would do well to follow the example of Liberia and provide ample recommendations for improving these rights, rather than taking a cue from the “gender blindness” of the South African TRC.

With a few notable exceptions, there has thus far been a lack of assessment of the substantive impact of truth commissions on human rights practice in the postconflict state (See, for example, Bakiner, 2011: 5; Brahm, 2007: 24; Hayner, 2011: 25). In the literature, measuring the impact of truth commissions has proven to be challenging for a number of reasons. For example, different criteria for success are often employed by researchers and the number of commissions is still relatively small for quantitative data sets. Quantitative research involving large N studies do not account for the different mandates, forms, and recommendations of truth commissions, while it is difficult to generalize from the case studies offered in qualitative studies (Brahm, 2007: 24; Hayner, 2011: 26). Because of the value of understanding the context in which a truth commission

is held, Hayner points to the continuing need for qualitative, context-specific studies of truth commissions (2011: 26). This thesis will contribute to the transitional justice literature by assessing the extent to which the South African and Liberian TRCs' recommendations in regards to women's rights have been implemented, specifically in regards to legal protection against sexual violence, and socio-economic rights such as credit, education and health care.

### **Outline**

This thesis will answer the question, "Do the recommendations of a truth commission have a substantive impact on women's rights in the postconflict state?"

Following a literature review, the first substantive chapter of the thesis will explicate the philosophical foundation for the argument on which this research is predicated: that, given the moral and political urgency of human rights, they should be [re]introduced in the postconflict state, and that transitional justice mechanisms, particularly truth commissions, are an effective means of achieving this end.

Chapters three and four present the case studies of South Africa and Liberia. In each case study, the TRC's recommendations for human rights reform specifically pertaining to women's rights are listed, followed by a discussion of findings as to whether or not, and how, these have been implemented. The comparative case study method is best suited to this research because it allows for an intensive, in-depth inquiry into the TRC's recommendations and whether or not, and how, these impacted women's rights in South Africa and Liberia. The research question at hand requires a holistic, big picture

approach to research which is best served by small-N qualitative research, in this case, the comparative case study.

The South African and Liberian TRCs present interesting cases for comparison. South Africa's TRC began by treating human rights violations as "gender blind", and only included gender-based hearings after protest that women's were not being encouraged to share their experiences of apartheid. In contrast, Liberia's TRC was gender inclusive from the outset. As well, South Africa was transitioning from four decades of racial oppression under the apartheid regime, while Liberia was recovering from a two decade civil war. The contrasting contexts reveal the necessity of narrowing the scope of a TRC in order to effectively manage the process, while also showing that, in South Africa, this protracted treatment of history has effectively ignored grave and widespread violations of human rights.

The comparative nature of the research, therefore, draws out the strengths, weaknesses, and nuances of both cases. South Africa's TRC made very few recommendations to improve women's rights, and even fewer were actualized. This thesis argues that this lack of regard is indicative of the importance that the state places on women's rights. By making few recommendations, and not implementing those that were made, South Africa's TRC along with subsequent post-apartheid governments have demonstrated that women's rights are not a priority. In contrast, Liberia's TRC devoted an entire chapter of the *Final Report* to recommendations to improve women's rights. Although the TRC's recommendations may not have had a strong direct impact on the official enshrinement of women's rights in the state, they may have had a strong indirect



impact as leverage for civil society lobbying. Through the comparison of these two cases, it is evident that post-conflict, the disposition of the state toward women's rights is the most important factor determining whether recommendations will be implemented.

The final chapter will summarize the findings of the thesis and highlight limitations, as well as future questions for study, arising from the findings contained herein.

## **Chapter One**

### **Literature Review**

As official bodies designed to aid the transition of a state from conflict to peace, the mandate of each truth commission is unique to the context. Despite contextual differences, many truth commissions have a similar structure and the overriding goals of facilitating a peaceful transition from conflict and introducing human rights-based governance.

This literature review will provide an overview of the bodies of literature that have informed the current study: human rights; and truth commissions, reparations, and gender justice. Examining these bodies of literature will highlight existing research into the research question, “In regards to women’s rights in the postconflict state, what is the substantive impact of a truth commissions’ recommendations?” and provide justification for further contribution to this research as gaps in the literature are identified. This chapter will conclude with an explanation of the methodology used to carry out this research.

### **Human Rights**

This thesis employs empirical evidence, truth commission recommendations, in order to measure whether these bodies influence women’s rights in the postconflict state.

Women’s rights, as a subset of human rights, are both a normative and a political concern.

Although most transitional justice literature assumes a normative justification for transitional justice in that it serves a desirable end, such as peacebuilding, statebuilding, or democratization (see, for example, Clark (2008); Hayner (1996), (2004), (2011);

Menocal (2011); Rubio-Marin (2009)), this thesis differs from this literature in that it looks specifically at truth commissions and their impact on the realization of human rights through an examination of the philosophical literature. Explicating these philosophical underpinnings strengthens the case for transitional justice as normatively desirable, as it may help to introduce human rights practice into the postconflict state.

Human rights are of critical importance in any state, but take on urgent importance in the postconflict state with a history of widespread violations. Human rights are of urgent concern because all humans, by virtue of being human, are morally entitled to be treated a certain way (Orend, 2002: 15). Because all humans are undoubtedly and inarguably human, rights asserted on the basis of this fact are unassailable provided they are justified. Thus, human rights, as a moral concept, are universal (Orend, 2002: 16). Despite their universality, human rights have often not been observed in the postconflict state. Because human rights entitle a person to be treated fairly, politics and law play a crucial role in their actualization, for there must a political and legal apparatus in place to provide remedy for their violation (Orend, 2002: 20; Tomuschat, 2008: 5). While a right may be moral or legal, or both, this thesis understands “human rights” as rights to which all humans have a moral claim, and which are also codified into law (Orend, 2002: 26).

What counts as a human rights may sometimes be debatable, however, certain rights, such as the right not to be tortured, or the right not to discriminated against or persecuted because of race, ethnicity, religion or gender, are considered sacrosanct and are recognized as such by their legal enshrinement within the International Bill of Rights. The International Bill of Rights is comprised of three key international human rights

documents drafted in the twentieth century: the Universal Declaration of Human Rights (UDHR, 1948), and two treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (both in 1966). The rights contained within the International Bill of Rights include those which are universally agreed to be fundamental, including those mentioned above, the right to self-determination, the right to equal treatment and the right not to be arbitrarily arrested (OHCHR: 4). As of January 2013, 167 countries had ratified the ICCPR, and 160 had ratified the ICESCR. Again, it must be recognized that human rights are both moral and legal; although the right to self-determination, to freedom from torture and to equal treatment appear to have intuitive moral force, their pressing importance has not been legally recognized by all states. I contend that the failure on the part of certain states to ratify these two treaties, often due to political dissent, does not lessen the universal validity of the rights contained within the International Bill of Rights. While there are certain rights, for example, the right to form a union (ICESCR) which may not be universally applicable, the Bill acts as both a legal instrument and an ideal toward which states may strive to improve the rights of their citizens. The ability to claim certain fundamental rights cannot and must not be weakened simply because a person happens to have been born in, or resides in, a state that does not prioritize human rights (Donnelly, 2003: 12). Indeed, Tomuschat (2008: 4) asserts that the number of signatories to the ICCPR and the ICESCR indicates a degree of international acceptance such that their substantive content is binding even on states that are not signatories.

As an official human rights-based body of the state, a truth commission may serve as a model for human rights practice. Because the political and legal infrastructure in the postconflict state is often in a state of flux, there is opportunity for the enshrinement of human rights to prevent violations from recurring (Hayner, 2011: 23). The need for an empirical examination of the potential for truth commissions to bring about human rights reform, underpinned by the normative argument for the universal validity of human rights outlined above and discussed in the following chapter, motivates this study.

### **Truth Commissions, Gender Justice and Reparations**

The literature has grown as truth commissions become increasingly popular as a means of moving the postconflict state forward peacefully by officially recognizing human rights; reconciling past harms; and reforming state institutions (Hayner, 2006: 19). While Hayner (2011) acknowledges that truth commissions are adaptable and versatile tools to serve a range of peace- and statebuilding ends in the transitioning state, Brahms (2005) and Bakiner (2011) study the impact of truth commissions in bringing about substantive change through policy, judicial reform and social norms, offering nuanced discussions of the outcome of truth commissions.

Truth commissions are primarily tasked with gathering testimony from victims of human rights abuses in order to establish an account of violations committed during conflict (Hayner, 1996: 20). Truth commissions are a temporary body of the state, held separately from criminal proceedings (Hayner, 1996: 13). Truth commissions focus on strengthening social relations in the postconflict state by gathering testimony from a greater number and variety of sources than a criminal proceeding. The final report issued

at the conclusion of a truth commission will provide an account of the conflict and make recommendations for reparations based on testimony that directly reflects the experience of victims.

A truth commission is an alternative both to a state account of conflict, and an account constructed by an international court focused on the conviction of warlords. The mandate of the majority of truth commissions is primarily to address the systematic human rights violations that occur during conflict, and to consider the widespread and profound impact of conflict on the state and its citizens (Hayner, 1996: 3). Because truth commissions are human rights-based institutions (Waldorf, 2012: 212), scholars such as Bakiner (2011) and Brahm (2007), recognize the need for an assessment of the impact of truth commissions on human rights practice in the postconflict state.

In his study of 15 truth commissions, Onur Bakiner (2011) assesses their impact in a number of key areas, including immediate political impact and delayed political impact. “Immediate impact” is defined as the acceptance and implementation of recommendations within a year of the release of a final report (2011: 13), while Bakiner defines “delayed impact” as the result of ongoing civil society lobbying for policy change based on truth commission recommendations (2011: 14). Immediate impact will occur when the government is committed to implementing recommendations. In contrast, delayed impact usually comes about as a result of ongoing civil society lobbying (2011: 6). Bakiner concludes that civil society mobilization is essential to holding governments accountable for the long-term implementation of recommendations, as well as for judicial and normative reform (2011: 28).

Eric Brahm (2007) notes the dearth of empirical evidence to support both positive and negative claims about the outcome of truth commissions, particularly the long-term society-wide impact. In line with Bakiner, Brahm notes that the willingness of a government to implement recommendations is the key to immediate change in human rights practice within the transitional state (27). In order to identify the factors that drive the government to strengthen rights, it is crucial to examine cases where recommendations have been implemented and human rights successfully enshrined, in order to trace the trajectory of the change influenced by the truth commission (27). Brahm explains the need for case study research that outlines truth commission recommendations and examines the extent to which the government has implemented them (17). Building on this, it is then possible to make a broader evaluative claim about the value of truth commissions in bringing about human rights reform (2007: 24).

This thesis, therefore, takes its cue from Bakiner and Brahm's use of recommendations as an empirical measure of human rights change to examine the impact of truth commissions on women's rights, an important and still underactualized subset of human rights in many postconflict states. Gender justice often plays a key role in integrating women's rights violations into the broader human rights mandate of a truth commission. The current discussion will focus on gender justice in regards to discrimination against women, though it can also apply to discrimination against men and children. For the purpose of this thesis, gender justice is defined as occurring when norms, practices and institutions no longer reinforce hierarchical gender relations, resulting in the equal treatment of women, equal regard for human rights violations

committed against women, and equal consideration of the way that conflict impacts women (Campbell, 2007: 411; McKay, 2000: 561).

Within the context of a truth commission, gender justice for women entails foregrounding violations of women's rights and structural injustice with the aim of transforming norms, practices and institutions (Molyneux and Razavi, 2003: iv). In its proceedings, a truth commission may achieve gender justice by recommending appropriate reparations, and holding violators of women's rights accountable (Rubio-Marin, 2006: 17). Truth commissions may enhance the possibility for gender justice in the postconflict state by creating an official record of the impact of the range of human rights violations that women suffer during conflict to prevent them from recurring, and recommending measures that enable women to fully and equitably participate in the public sphere (ICTJ).

Violence during conflict may be directed at women for gender-specific reasons during conflict (European Institute for Gender Equality). Such violence constitutes a gender-based violation of human rights, or gender-based violence (GBV), which is the term employed throughout this thesis. Examples of GBV against women include rape; sexual slavery; enforced prostitution; forced pregnancy and enforced sterilization (Rome Statute: 7. 1 (g)). In certain contexts, some of these examples of GBV could also apply to men, but for the purpose of this thesis, the discussion of GBV will be limited to women.

Reparations are closely linked with the recommendations of a truth commission (Hayner, 2011: 163). Recommendations to the state are made by a truth commission within a final report, and are designed using evidence from victim testimony. Reparations



are contained within, and are a component of, these recommendations. Employing information gathered from testimony at a truth commission, commissioners are able to recognize patterns of human rights abuse and use this information to design reparations that are reflective of the experience of victims, and which appropriately address harm. Recommendations for reparations are, therefore, carefully and specifically designed to meaningfully address human rights violations, and are sometimes prepared in consultation with victim groups (Hayner, 2011: 163). Reparations can be considered an act of gender justice when they are designed to redress women's rights violations and to actualize women's rights in the postconflict state. Reparations may take many forms, though the classic form of reparations is direct financial compensation to victims or relatives of victims (Hayner, 2010: 165).

While financial compensation is still a common form of reparation, many postconflict states have limited financial resources with which to implement large-scale financial reparations. When this is the case, the testimony of victims must be examined to determine meaningful non-financial ways of compensating victims. Aside from financial compensation, reparations may involve healthcare and social services, policies of inclusion, official apologies, and memorialization (ICTJ). Given the context-specific design, it is difficult to speak of a general form of reparation, but the lack of specificity allows reparations to serve many ends, including promoting gender justice. In this thesis, reparations will be spoken of in reference to recommendations made by a truth commission, as the recommendations are the primary focus. It is necessary to define reparations as they are a subset of recommendations.

While the success and shortcomings of various aspects of the South African and Liberian TRCs have been assessed within the literature, there are few examinations of the long-term impact of these truth commissions on women's rights. Borer (2009) analyzes the South African TRC's "gender neutrality" and its impact on women post-transition. Focusing specifically on sexual violations, Borer notes many shortcomings in women's treatment by the TRC, as well as social norms that kept women from testifying about this particular type of GBV. While sexual violations are one component of the South African case study, the socio-economic impact on women is recognized within this thesis, and by the literature, as a common experience of apartheid that was nevertheless neglected by the TRC (2009: 1180).

In the context of dialogues about the TRC's recommendations, Anu Pillay, Marpue Speare and Pamela Scully (2010) discuss the changes identified by Liberian women as critical for the development and strengthening of their rights. Building roads, the provision of building material, decentralization of government services, access to credit, and compensation for losses suffered during the conflict are prioritized (2010: 92). With its focus on peacebuilding and women's dialogues, the article does not assess whether or not these recommendations were actually implemented.

Taking a cue from Brahm's call for further qualitative research into the longer-term effect of truth commission, this thesis will draw on previous research into the South African and Liberian truth commissions in order to assess their impact. It is evident in the work of Borer and of Pillay, Speare and Scully that strengthening women's rights is a critical component of the transitional process. The period following conflict or the

toppling of a repressive regime provides the opportunity for rebuilding the state in line with international human rights standards. The pressing nature of this opportunity makes it crucial to begin to fill gaps in the literature regarding women's rights.

### **Gender Justice in South Africa**

There is a vast body of literature about the lack of gender justice in the South African TRC. Scholars (see, for example, Borer (2009), Pillay (2002), Maisel (2012), Meintjes (2009), Russell (2008)), cite the limited understanding of gender justice as the experiences of women rather than the norms, practices and institutions that oppressed them; and the narrow focus on "gross violations of human rights" as killing, abduction, torture or severe ill-treatment, as factors that prevented the TRC from compiling a comprehensive account of life for women under apartheid. In line with the *Mandate*, the majority of what were considered gross human rights violations were physical, and for women, often severe sexual violations (Russell, 2008: 66). The foregrounding of sexual violence directed attention away from the structural violations of women during apartheid (Pillay, 2002: 39; Russell, 2008: 65). Furthermore, Borer (2009: 1174) and Russell (2008: 65) claim that the focus on sexual violence created a hierarchy of violations that minimized the devastating impact of less immediately traumatic violations.

The most widespread violation of human rights that women experienced during apartheid was socio-economic oppression. With 42.5% (1980) of the black female population employed in the informal economy as domestic workers, black women had very low wages and little leverage for improving their situation (Nolde, 1991: 204). Women lived with few financial resources; little access to education or health care;

husbands working away from home and living in single-sex hostels, with passes required for visits; high rates of sexual and domestic violence; sole responsibility for raising children; among other challenges (Borer, 2009: 1174). While many women were active in the struggle against apartheid; as a group, they were extremely physically, socially and economically vulnerable.

By focusing on sexual violations and excluding socio-economic harms, the TRC did not live up to its potential as a model for human rights practice. Indeed, Ross (2003) describes the consequences of the TRC's approach to women's testimony:

*Foregrounding certain forms of violence in the public record, it [the TRC] 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. (Cited in Borer, 2009: 1175).*

By including certain violations within its operational definition of "gross violations of human rights" and excluding others, the TRC treated physical violations as representative of women's experiences and failed to consider the systematic violation of women's socioeconomic rights as a gross human rights violation.

It was stated earlier that gender justice is necessarily a fluid practice, adopting its mandate from within the cultural context in which it is enacted. As demonstrated by the South African TRC, balancing attentiveness to the cultural context with the acontextual demands of human rights practice and international law is challenging. Scanlon and

Muddell (2008: 10) assert that neglecting to address gendered abuse during conflict entrenches impunity, undermines the search for “truth” in a TRC by distorting the historical record and impacts access to justice in the postconflict state.

### **Gender Justice in Liberia**

While the academic literature on transitional justice and the post-TRC state of women’s rights in Liberia is small, primary documents such as the Truth and Reconciliation Act, the *Final Report*, and various government and non-governmental organization’s documents are available. These documents highlight the contrast between the Liberian TRC’s commitment to gender justice and the absence of gender justice from the South African TRC’s *Mandate*.

The TRC *Act* explicitly calls for gender justice. The preamble to the Act recognizes the TRC as a forum to address the problems of impunity and accountability, and for victims and perpetrators of human rights abuses to speak about their experiences with the hope of moving toward healing and reconciliation (TRC Act: 2005 2). Article IV of the Act lays out the *Mandate* of the Commission, including Section 4.e. which states:

*Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing concerns and recommending measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing (TRC Act: 2005 4).*

As well, Article V states, “The TRC shall comprise nine (9) commissioners, with not less than four (4) women making up its entire composition.” (TRC Act: 2005 4). The Act has an explicit mandate to address gender justice, and to include almost 50% participation of women on the Commission; a goal that was fulfilled with the inclusion of four women on the Commission.

An important measure of the legitimacy of Liberia’s transitional justice process is the *Final Report* of the TRC, issued in 2009. The *Final Report* states that over 50% of statements gathered were from women and 63% of the reports of rape made to the TRC were from women (TRC *Final Report*, 2009: 223). The rate of reported rape by girls in the 15-19 age bracket was five times (TRC *Final Report*, 2009: 223). Section 11.7 of the *Final Report* recognizes the impact of violations on Liberian women (TRC *Final Report*, 2009: 266), while Section 11.8 recognizes that reconciliation is necessary for Liberians to bring closure to the civil war period and to open up the opportunity for Liberia to establish itself as a state founded on international standards of human rights (TRC *Final Report*, 2009: 267).

Section 18.5 of the *Final Report* is devoted entirely to reparations for women. The first recommendation in this section is that all forms of discrimination and violence against women be addressed and eliminated (TRC *Final Report*: 2009 279). From there, the TRC proceeds to lay out recommendations for comprehensive support for victims of sexual violence, including assistance with child care to pursue these supports, addressing health needs of particularly vulnerable populations of women and access to money from

the reparation trust fund for rehabilitation. In recommending medical, psycho-social and economic support, the TRC addresses the need for reparations in the form of restitution and rehabilitation.

While primary documents are invaluable as documentary evidence of the results of the transitional justice process, there has been little critical assessment of the government's implementation of recommendations regarding women's rights in Liberia within the scholarly literature. This thesis intends to begin to remedy that gap.

In a paper written soon after the release of the *Final Report*, Aning and Jaye (2011) stress the need for dialogue and reform following its release, expressing concern that President Sirleaf will not act on the recommendations made by the TRC. As will be discussed in greater detail within the chapter on Liberia, the majority of the *Final Report*, including recommendations for strengthening of women's rights, was overshadowed by the Report's publication of a list of people recommended for censure or barred from political office. The list included many Americo-Liberians, who comprise the elite of Liberian society, alongside prominent warlords, and even recommended President Ellen Johnson Sirleaf for censure (Steinberg, 2009). While the list of people to be censured or barred from office may have served as a great distraction from the business of moving forward, Bakiner does note that ongoing pressure from civil society has resulted in the implementation of truth commission recommendations (2011, 21).

The chapter on Liberia will provide a detailed outline of the TRC's recommendations and determine whether or not these have been implemented.

**Conclusion**

This chapter has presented an overview of the literature on human rights, truth commissions, recommendations and gender justice, as well as providing an overview of the case studies of South Africa and Liberia. Building on human rights as a moral and political imperative, and in line with the work of Bakiner and Brahm, it is important to attempt to gauge the lasting impact of a truth commission on human rights in postconflict states in order to strengthen support for truth commissions as a tool for the improvement of human rights. The next chapter presents an argument for transitional justice, and truth commissions in particular, as a means of [re]introducing human rights practice in the postconflict state, the argument which will underpin the work in the subsequent empirical chapters by providing a normative framework for understanding the urgency of human rights.



## **Chapter Two**

### **Human Rights and Transitional Justice in the Postconflict State**

#### **Introduction**

Encompassing both judicial and non-judicial approaches to redressing state-level human rights violations, transitional justice is a key element of postconflict peacebuilding. While transitional justice is often recognized as a critical tool for addressing human rights violations in the postconflict state (see, for example, McKay, 2000: 562; Rubio-Marin, 2006: 27), the moral justifications for transitional justice as a human rights-based institutions are often not elucidated within the literature. This thesis is predicated on a normative framework that understands human rights to be both moral and political. Because of the universality of human rights and their use in postconflict states where human rights have been widely violated and the state infrastructure for protecting rights destroyed, truth commissions, as human rights-based mechanisms that make recommendations to the government, are a singular means of [re]introducing rights.

My aim in this chapter is to present a case for universal human rights as the theoretical foundation supporting transitional justice, including truth commissions. Following an outline of definitions and scope, this chapter is divided into two substantive sections which contain detailed discussions of the concepts of moral and political human rights, and their application to transitional justice. The first section is a detailed outline of the understanding of human rights as moral precepts that will be employed in this thesis. This thesis will argue that human rights are moral norms, or rights to which people are entitled by virtue of their humanity alone, yet which require political protection in order

to be enforced on a practical level. Although human rights apply to each person individually, they are a phenomenon of social ethics. Because a majority of people intuitively agree that certain duties and obligations, called human rights, are vital to the collective good, human rights exist outside of the legal and political realm. However, when individuals or states do violate these duties and obligations, there must be a legal or political remedy for these violations, therefore, human rights have been codified into law. In accord with Shue, this thesis regards the most basic human rights as the right to security, to minimal subsistence and to protection from standard threats (Kiper, 2011: 506).

I then turn to the issue of human rights as represented within law and politics. In the postconflict state, where rampant human rights violations have occurred and human rights have not been observed, transitional justice provides a framework for the official recognition of human rights atrocities and signals the intention to reform the state in line with international human rights practices (Hayner, 1996: 19). In building this argument, I begin by tracing the history of the codification of human rights in the 1948 *Universal Declaration of Human Rights* (henceforth UDHR) in response to the atrocities committed by the Nazis during the Second World War. Ratification of the UDHR signaled the global recognition of human rights as a political imperative. While human rights are grounded in a universal moral concept, universal human rights require a political and legal framework through which they can be brought into practice.

The transitional justice literature is largely focused on the examination of transitional justice in practice and the normative assessment of particular examples of

transitional justice. While the link between transitional justice and human rights is clear in the sense that transitional justice aims at redressing human rights violations, I aim to fill a gap in the literature concerning the potential for transitional justice as a mechanism of [re]introducing human rights into the state.

### **The Moral Conception of Human Rights**

The present discussion builds on that of the previous chapter by presenting in detail the understanding of human rights to be employed in this thesis, and by situating the current discussion within the human rights literature while explaining the relevance of this understanding to transitional justice and truth commissions. The literature on the philosophy of human rights is vast, thus the current discussion will focus on delineating those aspects of the philosophy of human rights that will inform the subsequent discussion.

The argument for human rights as both a moral and political phenomenon that is employed in this thesis requires a twofold explication of the literature: first, the argument for human rights as moral precept will be presented, followed by an elucidation of the argument for human rights as requiring a political and legal framework for recognition and protection. Human rights are most often conceived of as a political and legal phenomenon (Sen, 2012, 91). While the definition of human rights employed here recognizes the fundamental necessity of a political and legal framework to guarantee protection; in accord with Sen (2012) this work treats the political and legal recognition of human rights as separate from, and the consequence of, a moral entitlement to human rights.

The previous chapter introduced the basic features of human rights. A human right is a moral claim to a certain standard of treatment to which one is entitled by virtue of their humanity alone (Jones, 2013: 272). Shue asserts that the most basic human rights include the right to security, to minimal subsistence and to protection from standard threats (Kiper, 2011: 506). While many people will agree that this is a very minimal threshold for human rights, in states such as Liberia and South Africa, with a history of conflict and widespread oppression, citizens have often not been afforded even these most basic protections. Because of this, a meaningful theory of human rights must recognize that, even when people are not legally or politically protected, or when the state is responsible for widespread abuses, the violation of human rights cannot be justified. All humans have an equal claim to human rights as they are universal in scope and have normative force across cultures (Orend, 2002: 16). This thesis therefore understands “human rights” as rights, the most basic of which are security, minimal subsistence and protection from standard threats, to which all humans at all times and in all places, have a moral claim.

The intuitive validity of human rights as a standard of behaviour is arguably sufficient justification for consent and compliance. Indeed, as William Talbott writes:

*“With no special equipment other than what is acquired through biological evolution and no special training other than the moral training most people receive in their culture, human beings have the ability to discern universal moral truths. We do this by being able*

*to make reliable judgments about the rightness or wrongness of particular cases that are true universally—that is, true from any point of view" (2005: 187).*

As Talbott demonstrates, the thought of violating human rights that are considered sacrosanct, the right to liberty, to freedom from torture, to freedom from slavery, is, for the majority of people, intuitively abhorrent. Once it is accepted that universal human rights are predicated on an inherent and inviolable entitlement to certain freedoms and protections, it logically follows that all people, by virtue of their humanity, can rightly claim to possess these rights (Donnelly, 2003: 14).

Sen (2012, 92) argues that human rights are “social ethics”—an understanding of our collective duties and obligations to maintain a standard of behaviour which is good for all people. Although Sen’s concept of human rights as social ethics differs from Orend’s in that the locus is social rather than individual, both make crucial points about human rights as a primarily moral phenomenon: by virtue of our humanity, we are, individually, entitled to a certain standard of treatment, and in order for any given individual to enjoy this standard they must respect their own obligation to maintain this standard for others. Indeed, the only justification for depriving individuals of certain human rights, for example by confinement to a prison cell, is when they have unjustly deprived others of their rights. An understanding of human rights as social ethics therefore implies a shared, rather than individual, understanding of the good. This conception of human rights as individual yet social and reciprocal, is particularly salient in the context of the postconflict state where citizens have often violated the rights of

fellow citizens. Truth commissions, in part, function to raise collective awareness of politically motivated human rights violations committed against individuals in order to strengthen state recognition of human rights (Hayner, 2011: 183).

Sen's concept of human rights as social ethics introduces another component of the concept that is useful in understanding the importance of rights for the postconflict state: public reasoning (2012, 98). Open discussion should generate ideas about the normative desirability of certain human rights, as well as force those who would wish to deny the importance of human rights, or the extension of these rights to particular populations, to publicly justify their position. Thus, public reasoning in, for example, the South African case, would force the government to explain why women are not given equal access to credit and why barriers to land ownership exist (for discussion of these two points see Chapter Three in this work). The fact that discussions about normative desirability or disagreement occur prior to the codification of a human right in law supports the argument for human rights as existing outside of legislative or political codification, as well as pointing to the important role of civil society in formulating human rights to agitate for codification (For a discussion of the role of civil society in bringing about political change see Bakiner (2011) and Brahm (2007)) (Sen, 2012: 97).

While theoretical justification is necessary for a robust theory of universal human rights, the concept is ultimately empty in contexts where individuals lack the capacity to exercise their rights. Human rights are therefore substantive norms that require political enforcement at the state level in order to have practical force (Donnelly, 2003: 17).

In practice, human rights are not inviolable and states may be unwilling or unable to protect the human rights of their citizens, or may themselves be responsible for their violation (Wellman, 2012: 119). Donnelly observes that there is a “possession paradox” to human rights. The possession paradox pertains to the situation where, although a person possesses a right, s/he does not always have the capacity to exercise that right (Donnelly, 2003: 9). It is often the case that it is only when a person’s rights are threatened or violated that that individual becomes intuitively conscious of him/herself as the bearer of human rights (Donnelly, 2003: 9). Donnelly’s observation is also a summarization of the reason that human rights are not just a moral, but also a political, imperative. As a result of rampant human rights violations, transitional justice should attempt to redress these violations as well as introduce awareness of and respect for human rights. Thus, the concept of human rights does not seek to merely describe those rights that exist for all humans, prior to and regardless of, state citizenship, it also gives the victims of human rights violations the potential for political empowerment on the basis of these rights (Donnelly, 2003: 8).

### **The Political Dimension of Human Rights**

This section of the chapter elaborates on the argument for universal rights as a political imperative. I begin by examining the international codification of human rights within the UDHR and subsequent treaties, in particular the ICCPR (Tomuschat, 2008: 75). I then argue that the re-introduction of human rights in the postconflict state serves two critical ends: to re-establish the capacity for citizens to realize their human rights and to establish a threshold for measuring the legitimacy of the state.

Human rights have been codified into international, national and constitutional law, adding political and legal force to their normative desirability (Orend, 2002: 26). It has been argued that human rights are not arbitrary and do not rely on cultural context for definition, yet, because legal and political recognition is necessary for them to be exercised, cultural context is a salient issue for human rights practice, particularly when states which do not make protection a priority.

Various levels of political and legal enforcement of human rights exist. This thesis is primarily concerned with protection at the state level, however, national protection, particularly in states with a history of political instability, is usually undergirded by participation in international treaty regimes. These treaties unite states that agree to hold human rights norms to a high standard in contrast with past standards of protection that held only for the privileged few, or indeed, the Hobbesian expectation that people must fend for themselves against others using brute force (Donnelly, 1998: 14).

The drafting of the *Universal Declaration of Human Rights* in 1948 marked the first international codification of the rights considered essential to a life of dignity. The choice of human rights codified within the UDHR implies an acceptance of those particular rights as constitutive of a universal concept of what it is to live a "good life." The UDHR is of inestimable importance to the international human rights regime as it can currently claim universal applicability by virtue of it having been signed by every state in the world (Tomuschat, 2008: 74). Although it is not legally binding, the principles outlined within the UDHR were used to draft the two major international human rights treaties: the ICCPR and the ICESCR (Tomuschat, 2008: 74). Together, these two treaties



enshrine the full spectrum of human rights outlined as a result of negotiations between all United Nations member countries (Tomuschat, 2008: 75) and provide the legal and political framework for international human rights practice.

Drawing heavily on eighteenth-century ideals of liberal democracy, the UDHR describes the acts of the Nazis as an “outrage to the conscience of mankind” (Hunt, 2008: 205). The global horror at the actions of the Nazis brought an acute awareness to the need for the international protection of human rights (Hunt, 2008: 205) to protect citizens from atrocities committed against them by the state.

Drawing on the experience of Jews at the end of the Second World War, Hannah Arendt (1973) describes the situation of the stateless who reside outside of a political framework in which to realize their rights. Arendt writes of the stateless that they “are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion” (1973: 296). Although Arendt describes the situation of the stateless, her statement could equally apply to the citizens of postconflict states that lack the political infrastructure to support them in exercising their rights. The situation for both the stateless and the citizen of the postconflict state is comparable due to the lack of political capacity to exercise their rights. While their actions and thoughts are not proscribed by law, they are not free to act or think in a meaningful sense—their actions and thoughts exist outside of the political realm. Their needs are not of concern to the state, and their actions must be directed toward survival. They are without political protection.

When people are living in a state ravaged by a conflict that has destroyed the political infrastructure, there is a dire need for protection from human rights abuses. It is at this point that the possession paradox is most evident. Although citizens of postconflict states have a moral claim to human rights, the state, or lack thereof, threatens the capacity for realization of these rights.

As we have seen, human rights apply across borders and cultures. However, as we have also seen, borders become particularly salient in respect to the human rights citizens are able to exercise. Typically, the state is regarded as having a legitimate claim to jurisdiction over residents within its borders (Tomuschat, 2008: 99). Engagement in conflict may compromise the legitimacy of this claim. People who reside in states where human rights are flouted cannot justly be subject to human rights violations because of the location of their birth.

### **Human Rights and Transitional Justice**

Transitional justice is designed to address human rights violations at the state level, with the hope of promoting reconciliation between the state and its citizens, and preventing further abuses.

For the citizens of postconflict states where there is a history of widespread human rights violations there is a need to offer remedy and redress for human rights abuses committed by the state or on a state-wide scale, and to [re]establish the observation of human rights by the state.

The political situation of a state ravaged by conflict is fragile and unstable. Political fragility is marked by the lack of institutional processes to align state capacity with social

expectations (Menocal, 2011: 1716). Fragility therefore signifies a fundamental gap in which the state lacks the political capacity to function effectively on behalf of its citizens. An important facet of postconflict peacebuilding is the attempt to repair this gap by addressing the grievances of its citizens and seeking to prevent the recurrence of conflict by reestablishing human rights at the state level (Menocal, 2011: 1717). Transitional justice is the singular means of addressing human rights violations in postconflict states.

Following mass atrocity or widespread human rights violations, transitional justice mechanisms are often introduced to aid the state in addressing these abuses and to prevent their recurrence (Rubio-Martin, 2006: xv). The transitional justice mechanism employed is often determined within the local context and in consideration of the nature of the violations or atrocity to be addressed. Mechanisms include criminal prosecution, truth commissions, apologies, reparations, amnesties, memorials and barring human rights violators from holding public office (Forsythe, 2006: 1). On a formal level, these mechanisms have a mandate to redress grave and systematic human rights violations committed by the state. In carrying out this mandate, transitional justice mechanisms also serve an integral role in postconflict peacebuilding.

Transitional justice addresses human rights violations that have occurred on a scale that renders individual punishment difficult. The human rights atrocities that transitional justice has a mandate to address often involve abuses that violate international human rights treaties, such as the ICCPR. Torture, mass murder, disappearances, and abduction all fall within the purview of transitional justice (Hayner, 2011: 24). Human rights are integrated into a truth commission in many ways, including recommendations for

institutional human rights reform, and reparations designed to institute human rights. By framing the experience of atrocities as human rights violations, transitional justice processes serve to [re]introduce human rights into the postconflict state.

The implementation of transitional justice by the state cannot alone establish durable peace and improve political capacity, but by addressing human rights violations and reintroducing observation of human rights at the state level, it aims at reconciliation between the state and its citizens. The move toward reconciliation signals the state's intention to [re]establish itself in accordance with normative standards for legitimate political institutions, which are by definition aligned with the interests of its citizens (Clark, 2008: 345).

Following conflict at the state level, there may be doubt about the legitimacy of the state's right to rule. The need for transitional justice as a mechanism to bring about reconciliation for human rights violations implies a chasm in the relationship between the state and its citizens. Human rights are increasingly used as a measure by which to judge the legitimacy of a state (Donnelly, 2003: 38). When there have been widespread human rights violations committed by the state, there is cause to question the legitimacy of the state's power in relation to its citizens. Simmons outlines three requirements for state legitimacy: holding exclusive power over legal proceedings within the state; the right not to have state sovereignty compromised by interference by external persons or groups; and the right over geographic territory (Simmons, 2008: 134).

In the postconflict state the first two of these three requirements for legitimacy may not be fulfilled. The state may not hold exclusive legal jurisdiction over citizens and

sovereignty may be compromised due to intervention by international organizations in an effort to promote peacebuilding or statebuilding (Menocal, 2011: 1717).

Once the post-conflict state has established a political infrastructure that over time shows itself to promote rather than violate the human rights of its citizens, direct involvement in the state by the international community may prove to be unnecessary. Ultimately, transitional justice is a process of reestablishing the state on just principles such as human rights.

### **Conclusion**

Universal human rights are both morally and politically imperative. This chapter has shown that universal human rights are an intuitively valid of moral concept that is applicable regardless of cultural context. All persons, by virtue of their humanity are entitled to certain rights. The universal acceptance of these rights as human rights means that their application transcends borders and is invulnerable to the accusation of cultural relativism.

Human rights apply to all individuals, and are reciprocal in nature—we have a reasonable expectation of protection from their violation when we do not violate the rights of others. Human rights are therefore social ethics.

On a political and legal level, certain human rights, particularly those in the International Bill of Rights, are considered fundamental and are entrenched in international human rights under the law. Such rights include the right to self-determination, the right to life, and freedom from torture. To be deprived of these rights is

to be deprived of the capability to live a good life (Donnelly, 2003: 14). They are also fundamental in that they are recognized as having universal normative force.

Indeed, as this chapter has shown, the human rights enshrined within the ICCPR carry almost universal legal force at the international level. The normative strength of the human rights enshrined within the ICCPR lends credence to the argument that universal human rights must be exercised within a political context in order to become meaningful in practice. As has been discussed, this human need to exercise human rights is practiced within the context of the state.

When states are emerging from conflict with a legacy of widespread human rights violations, transitional justice is often introduced as a mechanism with which the state attempts to redress human rights violations. In South Africa, the TRC was established with a mandate to redress physical human rights violations committed during the liberation struggle, while the Liberian TRC's *Mandate* was to broadly address human rights violations committed during the decades-long civil conflict. The following chapters will examine the degree to which the TRCs in South Africa and Liberia have contributed to the entrenchment of women's rights, as a subset of human rights, in both states. Ideally, the introduction of transitional justice mechanisms in the postconflict state facilitates the entrenchment of human rights. It is important to examine the recommendations made by each states' TRC, and whether or not these have been successfully implemented, in order to better understand the role of truth commissions in improving human rights practice in the postconflict state.

### **Chapter Three**

## **The Truth Commission as a Tool for the Political and Legal Recognition of Women's Rights in South Africa**

### **Introduction**

This chapter takes up Eric Brahm's challenge to researchers to contribute to the empirical evidence on the impact of truth commissions by determining the extent to which truth commission recommendations are implemented (Brahm, 2007: 29). In line with the findings with regards to the implementation of the TRC's recommendations, the central claim of this chapter is that the TRC has had little impact on women's rights in democratic South Africa. The veracity of this claim is tested by presenting the recommendations that would have impacted women's rights and then determining the extent, if any, of their implementation by the government. Because there were few recommendations made by the TRC to strengthen women's rights, and even fewer of these were implemented, it is found that the TRC has had little impact on women's rights.

In discussing the lack of impact of the TRC on women's rights, this chapter functions within the thesis as a whole to support the argument that, while a truth commission may have an impact on rights in the postconflict state, the degree of impact, and whether or not it has any impact at all in terms of substantive change, depends on the will of the state. As an example of a TRC that had little impact on women's rights, the case study of South Africa demonstrates that it is normatively desirable for a truth commission to aim to [re]introduce women's rights in the post-conflict state.

I begin this chapter with background information about women living under apartheid, and a discussion of how this issue was treated by the TRC before outlining the recommendations regarding women's rights that were made and examining the extent to which they have been implemented. The chapter concludes with a discussion of the findings.

Broadly employed, gender justice entails foregrounding gendered human rights violations (as defined in chapter 1), bringing attention to violations with the aim of [re]forming norms, practices and institutions of the state and increasing their accessibility to women. Ideally, truth commissions enhance the possibility for gender justice in the postconflict state by creating an official record of the impact of the range of human rights violations that women suffer during conflict to prevent them from recurring (ICTJ).

The South African TRC employed a definition of "gross violations of human rights" as violations of bodily integrity, reportedly taking a "gender-neutral" approach of the TRC. However, the majority of those participating in the liberation struggle were men, and so the focus on bodily harm as a human rights violation by the apartheid government directed the focus away from the socio-economic impact of apartheid on women. The ad hoc inclusion of gender issues resulted in the criticism levelled by scholars such as Goldblatt and Meintjes (1996), Borer (2009), Maisel (2011), that the violations that most widely affected women during apartheid were not addressed by the TRC. When women did testify about their participation in the liberation struggle, scholars (for example Graybill (2001); Maisel (2011); Meintjes (2009); Russell (2008)) have observed the ways in which commissioners equated sexual violence with gender issues



and neglected the pervasive socioeconomic impact of the policies of apartheid on women's lives.

Despite the attention paid to sexual violence during the TRC hearings, the *Final Report* does not devote much space to recommendations designed to strengthen the state's response to the high levels of gender-based violence in South Africa.

### **An Overview of the Treatment of Women in the South African TRC**

For forty-five years, racial oppression pervaded every aspect of the lives of non-white South Africans. Beginning in the 1960s, armed resistance against the Apartheid government led by groups such as the African National Congress (ANC) and the Inkatha Freedom Party (IFP) resulted in politically motivated violence, such as murder, torture, kidnapping and imprisonment of activists, as well as social, economic and political discrimination (Hayner, 2011: 27).

Non-white men and women living under the apartheid regime in South Africa were deeply affected in every aspect of their lives. The intention of this thesis is not to claim that only women were vulnerable to physical, sexual and socioeconomic human rights violations during apartheid or in democratic South Africa; it is well known that men suffered and continue to suffer violations of their fundamental rights as well (Jewkes, 2009: 1). However, women did suffer differently than men during apartheid. While women may have suffered sexual and physical violence, widespread economic and structural violations committed by the apartheid government profoundly affected the lives of the majority of non-white women (Borer, 2009: 1174). Migration and displacement left women solely responsible for the household, which often included the children of family

members who were unable to care for their children (Bop, 2001: 27; Borer, 2009: 1174). Women had their property rights taken away when they were widowed, which threatened their ability to feed their family through subsistence farming. Additionally, women had little to no access to education or basic health care (Bop, 2001: 29; Borer, 2009: 1174).

Despite the widespread oppression of non-white women during apartheid, the South African TRC's *Mandate* did not include the investigation of socio-economic violations against women. It will, therefore, be argued that the TRC might have integrated concern for women's rights into its proceedings, thereby setting an example for governments to follow, and providing leverage for civil society lobbying to strengthen women's rights.

Margaret Maisel (2011, 5) identifies two factors that contributed to the South African TRC's lack of gender justice: the interpretation of its *Mandate*, and the definition of "gross violations of human rights" that framed the Commission's operations and findings. The main objective of the TRC, according to the *Mandate*, was the investigation of politically motivated gross violations of human rights occurring between March 1, 1960, the beginning of the liberation movement and the period immediately preceding the Sharpeville Massacre, and May, 1994 when Nelson Mandela was sworn in as the first president of the newly democratic South Africa. The TRC's *Mandate* was also to recommend amnesty to admitted human rights offenders; record accounts of gross human rights violations; investigate claims for reparation; and release a final report detailing its findings (Promotion of National Unity and Reconciliation Act No 34 of 1995: art. 1(1)(ix)).

In its *Mandate*, the TRC defined “gross violations of human rights” as killing, abduction, torture or severe ill-treatment, or the conspiracy to commit such acts. The TRC claimed that it would treat all gross violations of human rights equally, regardless of gender, race, and other variables, and thus it claimed to be taking a “gender neutral” approach to addressing these violations.

Taken at face value, a gender neutral approach sounds inclusive. In practice though, this neutrality resulted in the exclusion of women's experiences from the TRC (Goldblatt and Meintjes, 1996; Russell, 2008: 49). The majority of people that testified during the hearings of the human rights violations committee were women, but it was observed that they often testified about the experiences of male relatives, and did not relate their own violations (Goldblatt and Meintjes, 1996; Russell, 2008: 49). Men, on the other hand, focused on personal violations (Russell, 2008: 49). Therefore, while the gender neutral approach did not explicitly exclude women from testifying about their experiences, women were, nevertheless, not sharing these experiences (Goldblatt and Meintjes, 1996; Russell, 2008: 49).

Realizing that women were not encouraged to relate their personal accounts of human rights violations, civil society lobbied until the TRC agreed to hold a series of women's hearings in urban centres across South Africa (Russell, 2008: 49). Goldblatt and Meintjes (1996) drafted the guiding document for these hearings, calling for attention to be paid to the different ways in which men and women were impacted by apartheid. However, Meintjes (2009) argues that the TRC was unable to grasp the complexity of what women hoped would be addressed in the women's hearings:

*While the gender activists spoke about 'gender' as a relational construction, the TRC tended to construct gender as the experience of women, rather than understanding it as a term that would enable a more careful understanding of how differently women and men experienced life under the apartheid system, including how gross human rights abuses impacted differently as well (102).*

Thus, the concern was not to represent gender solely by considering women's experiences; rather incorporating "gender" should have allowed for an examination of the power dynamics that created the conditions for carrying out the systematic physical, sexual and socioeconomic violations that women experienced during apartheid.

The limited understanding of gender justice as the experiences of women, and the narrow focus on "gross violations of human rights" as killing, abduction, torture or severe ill-treatment, prevented the TRC from compiling a comprehensive account of life for women under apartheid. In line with the *Mandate*, the majority of what was considered gross human rights violations were physical, and for women, they were often severe sexual violations (Russell, 2008: 66). The foregrounding of sexual violence undermined the complexity of women's involvement with the liberation struggle; and directed attention away from the structural violations of women during apartheid (Pillay, 2002: 39; Russell, 2008: 65). Furthermore, Borer (2009: 1174) and Russell (2008: 65) claim that the focus on sexual violence created a hierarchy of violations that minimized the devastating impact of less immediate traumatic violations.

In its *Final Report*, the TRC does, at one point, claim to recognize the need for attention to issues that particularly impact women and children (Vol. 5, 305). However, in carrying out the *Mandate* of the TRC, the recommendations made by commissioners did not provide much in the way of remedy for the widespread socio-economic violations to which women were subject, and women are rarely treated as a separate category of victim in the *Final Report*. In order to demonstrate this claim, I look at the recommendations made by the TRC. Following each recommendation, I give evidence to support whether or not the recommendation has been implemented.

Before beginning it is important to note that, because the South African TRC did not address women's concerns specifically within the *Final Report*, there are few recommendations specifically addressed toward reparations for women. Women's rights are treated as an indistinct subset of human rights and are not differentiated throughout most of the recommendations. Nevertheless, I will examine the recommendations where gender is explicitly mentioned or that pertain to women directly, and attempt to identify whether or not the recommendation has been implemented. The majority of recommendations related to women's rights specifically have not been put into practice, as far as this research has determined.

### **Recommendations Related to the Economic Impact of Apartheid**

1) *Recommendation*: It is recommended that an appropriate form of restitution for...gender discrimination by the apartheid government, be investigated (5. 8. 39).

*Implementation:* There is no evidence that a specific form of restitution has been provided to people as a result of their experience of gender discrimination during apartheid.

2) *Recommendation:* The TRC's *Final Report* recommended that an audit be undertaken to redistribute unused and underused land among the landless, and that this audit also include land that was expropriated by apartheid officials (Vol. 5, Ch. 8, Section 40).

*Implementation:* The Land Distribution program was created as a result of the Restitution Act, which was passed separately from the Truth and Reconciliation Act to address issues of discriminatory land-related practices by the apartheid government (Roux, 2009: 13). The Land Distribution for Agricultural Development program, implemented to redistribute land among the aboriginal population, requires a minimum R 5000 contribution in order to receive grant funding to help with the cost of start-up (Western Cape Government). Because South African women experience substantial barriers to accessing credit, it is impossible for many of the 69% of rural women in South Africa to benefit from this program (Weideman, 2004: 364).

### **Recommendations Regarding Women's Rights**

3) *Recommendation:* The TRC's *Final Report* recognizes the many shortcomings of the domestic legal system in handling the needs of victims of sexual violence, specifically pointing to the absence of a professional, motivated and accountable police force; the inability of the prosecutorial system to challenge impunity for certain crimes; and the inability of Correctional Services to imprison those awaiting trial or following conviction

(5, 8, Section 49). The *Final Report* makes recommendations to remedy these shortcomings, including (a) the establishment of a compensation fund for victims; (b) the enactment of a code of conduct for prosecutors which ensures that the needs of victims are met and ends impunity for alleged offenders; and (c) the implementation of a witness protection program (5, 8, Section 49).

*Implementation of (a):* Although originally produced in 2004 (reasons for the delay in release are unclear), a report released in 2011 by the South African Law Commission finds that the creation of a victim's compensation fund is not financially feasible, due to the high rate of violent crime in the country, and the difficulty of establishing criteria for eligibility (South African Law Reform, 2011: 2).

Given the challenges to administering a victim's compensation fund, the South African Law Commission instead recommends strengthening the current victim empowerment programme, operating since 1999, to simplify access to resources and supports, and provide limited financial compensation to victims in exceptional circumstances (2011: 2). The Commission also recommends legislation to introduce a centralized victim services office, with branches throughout the country, to streamline access to services and to oversee the limited financial compensation that it recommends. Currently, the victim empowerment program operates at a policy level, rather than a legislative level, therefore the government does not have a legal obligation to administer the program (Dey et al., 2010: 10).

*Implementation of (b):* In October 2010, a code of conduct for members of the National Prosecuting Authority was introduced. The code of conduct includes sections

outlining expectations related to prosecutorial discretion; the administration of justice, including unbiased representation, withdrawing or declining a case due to conflict of interest or insufficient evidence; impartiality, including respect for the needs of victims; and enforcement of the code (SA Department of Justice, Dec. 29, 2010, No. R. 1257).

*Implementation of (C):* In 2000, the Witness Protection Act was passed to govern the administration of a witness protection program. Passage of the Act led to the creation of a central Office for Witness Protection, with offices located throughout the provinces. Safeguards for accountability exist in the governing structure, and punishments are defined for defiance of a protection order (UNODC, 2008: 14).

### **Recommendations Regarding Human Rights**

4) *Recommendation:* It is recommended that the government integrate human rights curricula into formal and specialized education, as well as training of law enforcement. The recommended curricula would pay special attention to a number of areas, including gender discrimination (Vol. 5. Ch. 8. (21)).

*Implementation:* In 2002, a Human Rights Education (HRE) curriculum, with sexism identified as a focus area, was introduced into the general education and further education curricula (Keet and Carrim, 2006: 93). Keet and Carrim (2006) report that this curriculum has been successfully integrated into the South African formal education system. The authors cite the decades-long struggle for education reform that takes an anti-apartheid stance, as well as the need to conform to international norms as motivation for human rights curriculum development (Keet and Carrim, 2006: 87).



It also appears that a human rights training manual was in the process of being developed for use by the South African Police Service (SAPS) (African Charter on Human's and People's Rights, 4.4). However, research was unable to cover whether the material contained within the manual had been distributed and adopted throughout SAPS.

### **Discussion**

The evidence gathered shows that recommendations made by the TRC have had little impact on women's rights in South Africa. Few improvements have been made to improve the most basic human rights (see Chapter 2): the right to security, to minimal subsistence and to protection from standard threats (Kiper, 2011: 506). The Land Distribution program, which would give women the opportunity to independently own land, is beyond the financial reach of most women; a victim's compensation fund, which might provide compensation for lost income or financial aid in escaping an abusive home, is not financially feasible; the victim empowerment program operates at a policy level, and the government does not have a legal obligation to administer the program. While there have been a few positive changes in line with recommendations—the creation of the Office for Witness Protection; the introduction of the Prosecutor's Code of Conduct and the Human Rights Curriculum—at even the most basic level of rights, to security, subsistence and protection from standard threats, the evidence demonstrates that the TRC has had little impact.

It is difficult to discern the government's reasons for implementing any of the above recommendations, and to therefore attribute their introduction directly to the TRC. This, as well as the sheer lack of recommendations that directly address women's socio-

economic rights or gender-based violence, present challenges when attempting to judge the efficacy of the South African TRC based on the implementation of recommendations. Criteria to measure the impact of recommendations, such as Bakiner's direct and indirect impact, are difficult to apply when there is no evidence that reforms were initiated because of the TRC.

However, it is clear from the preceding discussion that there were few recommendations made by the TRC to strengthen women's rights in post-apartheid South Africa. This chapter presents the argument that the South African TRC's *Mandate* was narrowly focused on physical violations which resulted in an emphasis throughout proceedings on sexual violence against women involved with the liberation struggle, rather than the socioeconomic violations that devastated the majority of women during apartheid. This narrow focus follows through to the *Final Report*, which neglects to make a single recommendation specifically designed to improve women's socioeconomic status. There are though, a few, though very few, recommendations to improve women's access to justice following physical or sexual violence, such as the Witness Protection Program and the Prosecutor's Code of Conduct. It should be noted that the vital importance of the latter type of recommendation is not in question, but that women's socioeconomic violations should have also been prioritized.

The following example demonstrates the inadequacy of the outcome of recommendations which might have improved women's economic status: although policy related to *Recommendation* (2) for land redistribution has been implemented, the required 5000 rand minimum investment makes land ownership impossible for the majority of

women, who are unable to access credit. According to the *South Africa Country Report* compiled by the US Department of State (2011), women experience substantial barriers to accessing credit and land ownership. Indeed, rural women have few rights in South Africa. In the homelands (land reserved for the black population by colonial and apartheid governments), women most often only have access and use rights to land through male relatives, who hold the primary right to the land (Cross and Hornby, 2002: 41).

Citizenship rights flow from access and use rights, therefore men have the benefits of full citizenship in rural communities. Because women do not have ownership rights, they are unable to access credit, invest in land or otherwise obtain financial resources (United Nations Economic Commission for Africa, 2007: 4). Although the *Final Report* contains a recommendation ostensibly designed to improve land ownership among the non-white population, the TRC failed to consider other factors that prevent women from accessing the resources that would facilitate this opportunity.

Scholars (see, for example, Waldorf, 2010) have sometimes opposed addressing socioeconomic violations in truth commissions, reasoning that there is difficulty in identifying violations, perpetrators and appropriate remedy. However, in regards to South Africa under apartheid, many of the perpetrators and violations are well-known, and at least one appropriate remedy would have been to guarantee and promote human rights and social justice for all victims of apartheid, including recognition of the socio-economic impact that decades of oppression has had on women.

As it is, recommendations to specifically remedy socioeconomic violations against women are non-existent in the *Final Report*. Although there was more attention paid to

sexual and physical violence against women throughout the TRC's proceedings, and the issue is given some attention in the *Final Report*, these recommendations have also had little impact on post-apartheid policy. *Recommendation (3)* is designed specifically to address physical and sexual violations, advising on (a) the establishment of a compensation fund for victims; (b) the enactment of a code of conduct for prosecutors which ensures that the needs of victims are met and ends impunity for alleged offenders; and (c) the implementation of a witness protection program (5, 8, Section 49). Thus far, only the prosecutor's code of conduct has been introduced, indicating that, despite the emphasis on sexual violence during the TRC hearings, remedying this type of violation is also not a priority in post-apartheid South Africa.

Thus, the proceedings of the TRC, as well as the contents of the *Final Report*, tend more toward physical and sexual violations against women than socioeconomic, but neither issue is systematically addressed. The sheer lack of recommendations related to either the sexual or socioeconomic violation of women's rights highlight the weaknesses that occur in a truth commission when the mandate is not sufficient to encompass the range of violations committed during conflict.

From 1948 to 1994, South Africa was ruled by the National Party, which enforced apartheid through legislation that imposed severe limitations on every aspect of the lives of non-white citizens and violated their fundamental right to life, liberty and security. The case of the South African TRC demonstrates the shortcomings of a truth commission that has adopted a mandate that is inadequate to respond to nearly fifty years of government-enforced human rights abuses. Because legislation legitimized apartheid policies and

systematic human rights violations, it would have perhaps been advisable for the TRC to adopt a broader mandate to examine the effect of discrimination which would have been race and gender inclusive in its terminology. The TRC might also have addressed social attitudes that perpetuate discriminatory practices by including discussions of how to deal with being a tyrannized people now trying to live free. Susan McKay (2000: 566) argues that, if change for women does not occur as a consequence of the TRC, the implication is that reconciliation for women who survived apartheid is predicated upon accepting enduring inequality.

### **Conclusion**

This chapter argues that the narrow *Mandate* of the TRC, with its focus on physical violations, resulted in the South African TRC's lack of attention to socioeconomic violations, which most broadly affected women during apartheid. The narrow focus of the *Mandate* followed through to the *Final Report*, where no recommendations were made to specifically address the socioeconomic violation of women's rights. An examination of the recommendations and the investigation into whether or not they have been implemented, demonstrates that the TRC has had little substantive impact on women's rights in South Africa.

Because South Africa's TRC is considered a model truth commission (Scanlon and Muddell, 2008: 14), it is important to bring awareness to its shortcomings in addressing gender issues, which are of core importance to the development of a human rights-based state.

## **Chapter Four**

### **The Truth and Reconciliation Commission as a Tool for the Recognition of Women's Rights in Liberia**

#### **Introduction**

As this chapter will show, the case study of Liberia is a useful counterpoint to the South African case, as gender justice was integrated throughout the TRC process. The TRC demonstrated a firm commitment to including women and recognizing their needs through the implementation of a gender justice mandate and the facilitation of outreach efforts to accommodate women across the country to inform them about the recommendations made in the *Final Report* (Pillay and Goodfriend, 2009).

The central claim of this chapter is that the TRC had a positive, but possibly indirect, impact on women's rights in Liberia. This claim is tested by presenting recommendations to strengthen women's rights and determining in turn, the extent of their implementation by the government. In the case of Liberia, the TRC made many recommendations to improve women's rights. It is often difficult, if not impossible from a distance, to trace a direct line from the recommendation to its implementation, nevertheless, many of the recommendations have been implemented, and whether the impact was direct or indirect, it is possible to conclude that the TRC has had a positive impact on women's rights.

This chapter functions within the thesis to support the argument that a truth commission may have an impact on women's rights in the postconflict state, but that whether it does depends on the will of the government to strengthen these rights. It

achieves this by providing empirical evidence (the implementation of recommendations) to demonstrate that a TRC had a positive impact on the postconflict status of women's rights, while recognizing that this impact may have largely been indirect.

In order to test whether there is a positive correlation between the TRC's recommendations and the enshrinement of women's rights in Liberia, I choose two policy-related recommendations from each of the following areas identified as crucial to women's development by UN-INSTRAW: economic and political empowerment; promoting human rights and preventing gender-based violence; and health and education (2009: 16).

In laying out the evidence, I begin by stating the recommendation before tracing the extent of implementation to assess whether there is a positive relationship between a truth commission and the substantive reform of women's rights in the first four years following the release of the *Final Report*. The conclusion reached is that, in the case of Liberia, the TRC did have a positive impact, even if recommendations served as leverage for policy that had already been proposed. It must also be noted from the outset that a truth commission may have greater success achieving delayed political impact with ongoing civil society mobilization, therefore, given the relatively short period of time between the release of the *Final Report* and the writing of this thesis, the TRC's recommendations may continue to influence the status of women's rights in Liberia.

### **A Brief Overview of the Conflict and TRC in Liberia**

Class resentment runs deep in Liberia. The settler population of escaped slaves from the United States, the Americo-Liberians, comprise the American-educated elite;

while the indigenous populations remains at the bottom of the class structure (Steinberg: 2009 143). In 1980, the enduring resentment between settlers and the indigenous population led to a coup d'etat by Samuel Doe's People's Redemption Council (Mutwol: 2009 50). Prior to Doe's presidency, membership in a particular indigenous group made little difference to one's prospects because all indigenous groups experienced oppression (TRC: 2009 7). Doe, the first indigenous person to serve as President, vowed to reverse the power structure that favoured the elite, but soon after gaining power he abandoned these ideals (TRC: 2009 7). As a member of the Krahn tribe, Doe gave important government positions to fellow Krahns (Mutwol: 2009 51), therefore establishing a new hierarchical order in which civilians were attacked by armed factions because of their presumed ethnic heritage (Mutwol: 2009 51). The 1980s were marked by ethnic conflict in Liberia, as Doe continued to hold the Presidency.

In 1989, Charles Taylor, a Liberian who attended university in the United States and received military training in Libya (The Economist: 2007) overthrew Samuel Doe's presidency, initiating Liberia's first civil war (Mutwol: 2009 52). Taylor's party, the National Patriotic Front of Liberia (NPFL) devastated the country; committing grievous atrocities against citizens, killing hundreds of thousands of people and displacing millions (Advocates for Human Rights: 2009 169). The Economic Community of West African States (ECOWAS) negotiated a peace agreement to end the first civil war in 1993, but the agreement was upset by renewed fighting (UNMIL). A new peace agreement was reached in 1997, and the UN observed the democratic election of Charles Taylor to the presidency in the same year (UNMIL).



Charles Taylor's presidency did not end the conflict in Liberia. The conflict between Taylor's government and opposition factions resumed while human rights violations, the lack of security sector reform and the exclusion of political opponents led to renewed civil war (UNMIL). This second period of civil war ended in August of 2003, with the signing of the Comprehensive Peace Agreement (CPA) in Accra, Ghana (UNMIL). The plan for a truth commission to address human rights violations committed during the period between 1979, when Doe began his uprising, and 2003, when the second civil war officially ended, was agreed to in the CPA (Hayner, 2011: 210).

Gender-based violence, in the form of sexual violence, was rampant during the civil conflict in Liberia. Statistics bear this out, but the numbers vary. There are reports that as many as 90% of women in Liberia are victims of sexual violence (Advocates for Human Rights: 2010 236). The lowest number reported is 49% (Swiss et al: 1998 1), with median figures ranging between 60 and 75% of women (Campbell-Nelson: 2008 4, 10). Although exact figures are difficult to determine, the range of statistics available demonstrates that sexual violence was widespread during the conflict in Liberia.

Women also experienced gender-based violence as socioeconomic harm during the conflict, including single parenting; unwanted pregnancies; sexually transmitted diseases; increasing poverty; prostitution; discrimination and increased responsibility due to the loss of breadwinners; and caring for orphans of family members and friends (TRC *Final Report*: Women: 81).

In 2005, Liberia's TRC was created with the enactment of the Truth and Reconciliation Commission *Mandate*. From the outset, the TRC established a

commitment to gender justice and addressing impunity for violations of women's rights (TRC *Mandate*, 2005: 2). The TRC *Mandate* declares the intention to adopt mechanisms to address the experiences of women and recommend measures for rehabilitation. As well, appointing four female commissioners to the TRC established an almost equal gender balance and ensured that women's interests would be addressed (TRC *Mandate*, 2005: 5).

Drawing on the expertise and experience of partner organizations, a variety of outreach efforts were undertaken to reach women, particularly in rural counties. These efforts included statement taking; engaging male partners, relatives and traditional female leaders as support for participants; and public hearings to address the involvement of women in the conflict. As of July 2008, it had been reported that nearly 40% of participants in the TRC had been women (Campbell-Nelson: 2008 9). Following the completion of the TRC hearings, a conference to consult women on the TRC's recommendations was held (TRC: 2009 12). Widespread engagement with women is essential to ensuring that recommendations accurately reflect violations that women experienced, as well as their concerns going forward (Young and Park: 2009 355).

The Liberian TRC presents a counterpoint to the South African TRC as the Liberian TRC had a gender justice mandate, which it worked to fulfill from the outset. The *Final Report*, issued in 2009, summarizes the success of outreach programs designed to involve women in the TRC, and states that over 50% of statements gathered were from women. Indeed, as will be shown, many of the recommendations aimed at improving women's rights in Liberia have been implemented, though it must be stated from the

outset that it is difficult to assess the extent of influence of TRC recommendations on human rights reform in Liberia. This empirical challenge points to the overall conclusion of this thesis that recommendations for measures to strengthen women's rights are most likely to be implemented when the government of the post-conflict state is already so inclined.

The first set of recommendations to be considered are those relating to economic and political empowerment for women.

### **Recommendations for Economic and Political Empowerment**

1) *Recommendation:* The TRC recommends the development of decentralized and accessible skills training programs, with special attention to implementation in rural areas. These training programs will develop marketable skills, and be coordinated and certified by the Ministries of Gender and Development, and Labour, to standardize quality.

It is also recommended that the government impose a levy on employers which can later be used to pay for employee training.

*Implementation:* In 2010, the Ministry of Gender and Development, in partnership with the government of Liberia, the World Bank, and the Nike Foundation, organized the first year of a pilot program entitled Economic Empowerment of Adolescent Girls and Young Women Project (EPAG). EPAG is a one-year skills training program with an integrated life skills component, offering job placement assistance, business development services, and access to microcredit which targets women outside of Monrovia (Liberian Ministry of Gender and Development). Financial incentives are granted to training

providers that successfully place trainees in paid positions following graduation from the program. Quality monitoring and impact evaluation are also key components of EPAG. According to the World Bank's website, the project is currently active. Funding for EPAG from the World Bank was approved in May, 2008, which predates the release of the TRC's *Final Report* (World Bank).

2) *Recommendation:* 90% of women in Liberia are employed in the informal economy, making microcredit and banking services difficult to access (UN, 11). The TRC recommends that microcredit schemes should particularly target women ex-combatants; internally displaced women; single mothers and caregivers; and war widows. Business management skills should be built into the microcredit lending scheme as well, especially for semi-literate or illiterate women.

Increased access to financial and banking services is recommended, along with financial literacy training prior to loan approval.

*Implementation:* A 2009 assessment of Liberia's National Rural Women's program, implemented in 2008, found that access to microcredit and finance was a major barrier to women's economic empowerment and that training in basic financial management and literacy was a pressing issue (Percy, C. & Shepherd-Banigan, M, 2009: 36). In 2012, Liberia's Minister for Gender and Development reported to the UN that the Joint Program on Gender Equity and Women Empowerment granted microcredit loans to approximately 4700 rural women to expand their businesses. 15 local branches of the Village Savings Loan Association were established in 5 of Liberia's 15 counties by 355 women, 975 women received basic literacy training, and 983 market women received business skills

training (Duncan-Cassell, 2012: 2). There is no mention of target groups for the Rural Women's program. It is clear that the government has made progress on women's, in particular rural women's, economic empowerment, although this change may originate with the 2008 National Rural Women's policy.

### **Recommendations to Promote Human Rights and Prevent Gender-Based Violence**

3) *Recommendation:* The TRC recommends that a mechanism be established to monitor and report on the implementation of the CEDAW committee's recommendations.

*Implementation:* Liberia agreed to be bound by the Committee on the Elimination of Discrimination Against Women (CEDAW) by accession in 1984 (UN, Division for the Advancement of Women). Once a country has acceded to CEDAW, it must submit reports indicating compliance every four years (CEDAW). Although Liberia has been a party since 1984, it was not until 2009 that the country submitted its first series of reports, presumably signaling its commitment to enacting policy in line with CEDAW. In March 2009, the Liberian government released the Liberian National Action Plan (LNAP) for implementation of UN Security Council 1325 which states that the policies laid out in the LNAP are influenced by CEDAW (Government of Liberia, 2009: 8). To clarify, UNSCR 1325 calls for women's participation in peacebuilding, while CEDAW requires the integration of women's rights into national law; UNSCR 1325 therefore broadens the scope of CEDAW (Global Network of Women Peacebuilders (GNWP): 1).

While there is no evidence for the existence of a singular mechanism to monitor and report on the implementation of CEDAW recommendations in Liberia, the LNAP calls for the creation of a Civil Society Monitoring Observatory (CSMO) to monitor its

progress in the implementation of UNSCR 1325 (GNWP: 9). Evidence indicates that there is not yet an effective monitoring group overseeing the LNAP (peacewomen.org, 2012) and there is not an official mechanism dedicated to overseeing the implementation of CEDAW recommendations.

4) *Recommendation:* The TRC recommends the rigorous implementation of all laws, including the rape law, as well as effective monitoring systems to oversee implementation.

*Implementation:* In 2006, the government of Liberia passed a new law treating rape as a first-degree felony punishable by 30 years to life in prison, and, in 2009, a court dedicated exclusively to trying cases of sexual violence was established (AFELL, 2007; BBC, 2006; Reilly-Diakun, 2012). Although these progressive measures are undoubtedly an improvement, barriers to enforcing the law remain. Prior to the new law, rape was treated as a bailable offence, creating a culture of impunity which is difficult to undo. For example, families of impoverished victims willingly accept cash bribes in exchange for dropping or not pressing charges (UN News, April 2008). In 2006, the government created the National Gender Based Violence Task Force, chaired by the Ministry of Gender and Development, establishing a plan of action to address sexual violence which includes increasing access to legal remedy for survivors (UNICEF, 2008). The extent to which this plan has itself been implemented is not clear.

In 2011, the Women in Peacebuilding Program (WIPNET) partnered with the Norwegian Refugee Council to begin monitoring the implementation of the rape law in five counties, which would be expanded once the program was off the ground

(peacewomen, 2011: 8). However, intergovernmental human rights monitoring groups continue to note the lack of enforcement of the rape law (OECD, 2012; United States Country Reports, 2011). The presiding judge for the sexual violence court admitted that 280 cases had been dismissed since the creation of the court, which, as of February 2013, had convicted 18 people, and found 15 not guilty (New Dawn, February 2013). To give an idea of the scale of the issue, between January and July of 2011, 900 rape-related offences were reported to Liberia's Ministry of Gender (WHO, 2012).

Strictly speaking, the action recommended by the TRC in regards to the rape law had been taken prior to the release of the *Final Report*, although there is no evidence of the work of the National Gender Based Violence task force since 2008. The Ministry of Gender and Development currently identifies implementation of the law and access to the justice system as barriers to addressing gender-based violence (Emory University Institute for Developing Nations, 2009; Liberian Ministry of Gender and Development), thus indicating a less than rigorous implementation of the rape law.

### **Recommendations for Health and Education**

5) *Recommendation:* The TRC recommends the establishment of decentralized health clinics, particularly in rural communities. These should target survivors of sexual violence, ex-combatants and women and girls who were associated with the fighting forces (82).

*Implementation:* A basic health care package guaranteeing all Liberians access to communicable disease control, emergency care, maternal and newborn health and mental health has been in place since 2008, and it does not appear that special provisions have

been made for the recommended populations. In 2011, these services were reportedly available at 82% of government facilities (CSIS, 2011: 5). Liberia's 2007-2011 National Health Policy states that decentralization of health care is a priority, and outlines the mandate of county health teams who would be primarily responsible for health service delivery (Liberia National Health Policy, 2007: 6). While county health teams have been established, much of the power over local health care remains concentrated in the Ministry of Health and Social Welfare. County health teams report that they have little control over local health services due to government policy rather than financial constraints (MoHSW) (Downie, 2012: 14; USAID, 2009: 14, 17).

There does not appear to have been special measures taken to target survivors of sexual violence, ex-combatants or women and girls associated with the fighting forces, and the progress in health care appears to have begun prior to the release of the TRC's *Final Report*. It must be noted though that the advancement in health care provision is laudable given the capacity and financial issues facing post-conflict Liberia (CSIS, 2011: 12 ).

6) *Recommendation:* It is recommended that the bias against women receiving formal education be addressed socially, economically and politically. The National Girl Child Education Policy must be implemented and the following issues addressed: Free and compulsory education for girls up to senior secondary level. Girls who become pregnant should not be expelled. Counselling services should be available, as well as sex education and awareness as preventative measures. If girls do become pregnant, services



must be available for the girl to complete her education. Teachers who impregnate girls must be dealt with, and codes of conduct must be provided for teachers and students.

*Implementation:* The Girls' Education National Policy was introduced by President Sirleaf in 2006 (UNICEF, April 18, 2006) and called for free and compulsory primary education; the reduction of secondary school fees by 50% for girls; providing counselling and life training for girls in schools; and ending impunity for teachers who sexually abuse and assault students (UNICEF, 2006). While the Policy appears to have been implemented, it faces severe capacity and funding challenges. Compulsory primary education is now the norm, but there are no safeguards for retention, and the curriculum lacks an empowerment element to increase girls' self-esteem and confidence (Newstime Africa, July 6, 2012). Funding remains a major challenge for secondary school students, and it is reported that girls must sometimes resort to paid sex in order to raise the money for fees, as the risk of being expelled for being pregnant remains (Newstime Africa, July 6, 2012). There is no evidence of the implementation of a teacher or student code of conduct.

## **Discussion**

In terms of the understanding of human rights put forward in this thesis, the evidence shows that the TRC did have a substantive impact on the improvement of women's rights in Liberia. The evidence shows that improvements have been made in the areas considered by Shue to be the most basic (see Chapter 2): the right to security, to minimal subsistence and to protection from standard threats (Kiper, 2011: 506). The implementation of Liberia's first rape law, the success of the Economic Empowerment of

Adolescent Girls and Young Women Project, the expansion of microcredit lending, increased involvement with formal banking institutions, the creation of County health teams and universal basic health care provision and compulsory primary education for girls, all positively point to a strengthening of physical and economic security and legal protections. Challenges certainly remain, including problems raising fees for high school, barriers to educational retention, teen pregnancy, a lack of health care services specifically designed for survivors of sexual violence, however overall, the evidence is positive.

The evidence from Liberia, therefore, suggests that a truth commission may have a substantive impact women's rights in the post-conflict state. As has been shown, in many areas, women's rights have been strengthened in the years since the release of the *Final Report*, and despite the lack of evidence to suggest a positive and direct correlation, many of the recommendations have nevertheless been implemented.

There are empirical challenges to establishing a direct line from a recommendation to its implementation. When change did occur in line with recommendations, it was often initiated prior to the release of the *Final Report*, which could point either to the irrelevance of the *Final Report*, or to the indirect impact of the truth commission. It may also be the case that there was an increased impetus to implement these reforms due to additional pressure from civil society or that the TRC was one direct factor among many that led to implementation. However, the evidence shows, regardless of what motivated the improvement in women's rights, measures were taken to do so that were in line with the TRC's recommendations.

Although a National Human Rights Commission was created to oversee the implementation of the TRC's recommendations, there was confusion about whether or not the state was legally bound to comply (Hayner, 2011: 192). When gauging the immediate impact on Liberia, Bakiner notes that recommendations were not immediately implemented nor officially endorsed by President Ellen Johnson Sirleaf, although the *Final Report* was published without delay. In terms of delayed impact, Bakiner finds that civil society has continuously advocated for the implementation of recommendations (21). This appraisal points to the central role of civil society in advocating for substantive change in Liberia; as well as a potential lack of government initiative in carrying out the TRC's recommendations.

As of 2012, Freedom House reports that little effort has been made to enforce compliance with recommendations by the National Human Rights Commission due to budget shortfalls, capacity issues and lack of initiative to change the culture of impunity (2012 Liberia Country Report). However, in 2012, President Sirleaf was awarded the Nobel Peace Prize for advancing the rights of women, indicating that women's rights were a priority for her government. It is, therefore, worthwhile to consider the extent to which the TRC's recommendations to advance women's rights have been actualized four years after the release of the *Final Report*, with the caveat that change is an ongoing process in Liberia.

Liberia confronted particular obstacles to strengthening women's rights. Although the TRC *Mandate* explicitly states that all recommendations must be implemented, and that an explanation must be provided if there is failure to do so, President Sirleaf has been

slow to act (Aning and Jaye, 2011: 7; Hayner, 2011: 192; TRC *Mandate*, 1995: Art. 10, Section 48). Complications were caused by the TRC's recommendation that amnesty be granted to well-known warlords, and that members of the Liberian elite, including President Sirleaf, be prosecuted or politically sanctioned for their involvement in the conflict. This controversy eclipsed the substantive recommendations for state- and peacebuilding, and even led some civil society groups, ex-warlords and supporters of President Sirleaf to pressure the government not to implement the recommendations lest they negatively impact peace and stability (Aning and Jaye, 2011: 10, 13).

Despite the pressure, Sirleaf did establish the Independent National Human Rights Commission to monitor the status of recommendations, in accordance with the TRC *Mandate*. The *Mandate* also requires that the President provide a quarterly progress report regarding the implementation of recommendations to the Legislature (TRC *Mandate*, X: 48). It does appear however that neither the legislature nor the National Human Rights Commission has taken action to hold Sirleaf and the government to their obligations, although there were reports in 2012 that the Human Rights Commission would begin to oversee the implementation of recommendations (Africa Radio1, Feb. 22, 2012; Freedom House, 2011).

### **Conclusion**

Employing empirical evidence based on the implementation of TRC recommendations, the preceding chapter shows that, in terms of the research question, "Do truth commissions have a substantive impact on women's rights in the postconflict state?" the answer is potentially yes. In contrast with the case of South Africa, Liberia integrated

gender justice into its proceedings, guaranteeing the participation of women, and resulting in the meaningful formulation of recommendations. Many of the TRC's recommendations to improve the rights of women in Liberia have been successfully implemented. While Liberia has experienced governance and capacity challenges in the implementation of certain recommendations, the evidence in this chapter demonstrates that the government of President Johnson Sirleaf has made improvements to women's rights in line with many of the TRC's recommendations.

## Conclusion

In this thesis, I set out to answer the question, “In regards to women’s rights in the postconflict state, what is the substantive impact of a truth commissions’ recommendations?” The thesis addresses the correlation between truth commission recommendations and the subsequent entrenchment of women’s rights. This is an understudied area to which I have contributed through the employment of the comparative case studies of South Africa and Liberia.

I began by presenting a normative argument in support of the use of truth commissions as a means of establishing human rights practice in the postconflict state. The moral component of this argument states that every human, by virtue of their humanity, has an inviolable claim to fundamental rights. The practical component of this argument asserts that human rights, as a moral conception, are inert; they require a political framework to guarantee protection from violations. Based on the moral and political cases for human rights, I assert that truth commissions are a singular mechanism for achieving the normatively and politically desirable aim of [re]introducing human rights practice in the postconflict state, an argument not found in extant sources. I presented the case studies of South Africa and Liberia in order to examine the extent to which TRC recommendations influence postconflict human rights reform. These case studies demonstrate that truth commissions may have a positive impact on women’s rights, as in Liberia, but that, as in the case of South Africa, this is not necessarily the case.

### **Analysis of Truth Commission Impact in South Africa and Liberia**

This thesis began by introducing the research question, “In regards to women’s rights in the postconflict state, what is the substantive impact of a truth commissions’

recommendations?” and the literature that would be used to examine this question.

Following this introduction, I argued that human rights are moral norms, or rights to which people are entitled by virtue of their humanity alone, yet which require political protection in order to be enforced on a practical level. The purpose of this argument is to show that all humans have duties and obligations to one another, by virtue of our common humanity. Women cannot be excluded from having a valid claim to these duties and obligations simply because they lived in states that did not recognize human rights. The same logic demands that the human rights of women be respected in the postconflict state. In order to guarantee protection from violation, there must be legal or political recourse available to victims. Shue (Kiper, 2011: 506) argues that the most basic human rights are the right to security, to minimal subsistence and to protection from standard threats, and this thesis takes these as the starting point from which to examine the effect of recommendations on rights in the South Africa and Liberia. Acceptance of the normative argument for human rights implies a duty to protect the rights of women both implicitly and politically.

Because both South Africa and Liberia have a history of violating women’s rights in the name of the state, it is imperative that, in the postconflict context, measures are taken to protect and enshrine these rights. Indeed, Liberia has signed and ratified both the ICESCR and ICCPR; while South Africa has signed and ratified the ICCPR and is a

signatory of the ICESR (OHCHR.org). Under these international treaties both countries are obligated to uphold certain human rights standards, which would certainly entail more than the bare minimum as described by Shue, yet the evidence presented in this thesis shows that in South Africa, legislation that would increase or provide basic physical and economic security to women has not been introduced.

Indeed, the case of South Africa presents challenges to an analysis of the impact of recommendations because there are few recommendation to assess. The following section summarizes the recommendations and outcomes of the South African and Liberian TRCs from the areas used in the individual case studies: economic and political empowerment; promoting human rights and preventing gender-based violence; and health and education (2009: 16). For ease of reference, recommendations will be referred to as they are in the individual chapters on South Africa and Liberia. The summary will be followed by an analysis of the two cases.

### **Economic and Political Empowerment**

A comparison of the recommendations for economic and political empowerment in South Africa and Liberia demonstrates that South Africa has done little to strengthen women's economic status in line with the sole recommendation related to economic empowerment, while Liberia has successfully run a year-long skills training program for women since 2008 and increased women's financial literacy and access to microcredit.

The evidence shows that the South African Land Distribution program discussed in recommendation (1) of chapter three, which gives non-white South Africans the opportunity to purchase land at a subsidized price, is still out of the financial reach of



most women who do not have access to credit. Therefore, although this recommendation has been implemented, the majority of women are excluded from participating due to financial barriers (US Department of State).

In contrast, the outcomes of the recommendations made by the Liberian TRC are more positive. EPAG, the skills training program developed in line with the TRC's recommendation to strengthen skills training for rural women, offers job placement assistance, business development services, and access to microcredit (Liberian Ministry of Gender and Development). EPAG was introduced in 2008, and continues to operate (World Bank).

According to recommendation (2) discussed in chapter four, major barriers to women's economic empowerment exist in Liberia. The TRC recommends increasing access to microcredit and finance and training in basic financial management and literacy for women (Peercy, C. & Shepherd-Banigan, M, 2009: 36). In 2012, three years after the release of the Final Report in 2009, the Joint Program on Gender Equity and Women Empowerment had granted microcredit loans to help rural women expand their businesses (Duncan-Cassell, 2012: 2). 15 local branches of the Village Savings Loan Association were established in 5 of Liberia's 15 counties, basic literacy training was provided, and a substantial number of market women received business skills training (Duncan-Cassell, 2012: 2). Although this change is the result of the 2008 National Rural Women's policy, its implementation may have been helped, either directly or indirectly, by the recommendation made in the Final Report.

### **Promoting Human Rights and Preventing Gender-Based Violence**

Both South Africa and Liberia made some progress in protecting women from gender-based violence. The South African TRC did not make any recommendations designed to promote women's rights, and although the Liberian TRC did make one recommendation in this area, and it was not implemented.

The South African TRC's *Final Report* recognizes the many shortcomings of the domestic legal system in handling the needs of victims of sexual violence, specifically pointing to the absence of a professional, motivated and accountable police force; the inability of the prosecutorial system to challenge impunity for certain crimes; and the inability of Correctional Services to imprison those awaiting trial or following conviction (5, 8, Section 49). The *Final Report* outlines three recommendations to remedy the shortcomings of South Africa's domestic legal system in handling the needs of victims of sexual violence. In line with recommendation 3 (b) in chapter three, a code of conduct for prosecutors has been enacted to ensure that they are familiar with cases that they are trying (5, 8, Section 49). Recommendation 3 (c) is the introduction of an office for witness protection. Policy in line with this recommendation has been implemented, and the Office for Witness Protection has been run effectively since 1998 (Canada, 2010). Despite these recommendations, many shortcomings identified during the drafting of the Final Report in 1997 persist in the handling of gender-based violence by the criminal justice system.

Recommendation (a), however, was not implemented. The government declared that a victim's compensation fund is not financially feasible due to the high rate of

violence in South Africa (South African Law Reform Commission). Indeed, the annual rate of reported sexual violence in South Africa has averaged approximately 67,000 incidents since 2003 according to the South African Police Service (US Department of State). Perpetrators are often a relative or friend of the victim, which contributes to the financial barriers preventing women from reporting crime. Additionally, even when cases of sexual violence are brought before the court, only 4.1% end in a conviction (US Department of State).

The recommendation that a victim empowerment program be created has also been fruitless. The government does not have a legal obligation to administer such a program, which, it was hoped, would provide integrated and holistic care across government agencies and non-governmental organizations (South Africa National Guidelines on Victim Empowerment).

In regards to Liberia, recommendation (3) in chapter four states that an office should be created to oversee the implementation of CEDAW's recommendations to strengthen women's rights in Liberia. Although there is evidence that a Civil Society Observatory would be introduced, thus far, this has not occurred (Global Network of Women Peacebuilders: 9).

Recommendation (4), chapter four, outlines the TRC's recommendation for the effective implementation of Liberia's first rape law, introduced in 2006. In line with this recommendation, a dedicated rape court was introduced in 2009 ((AFELL, 2007; BBC, 2006; Reilly-Diakun, 2012). Intergovernmental human rights monitoring groups continue to note the lack of enforcement of the rape law (OECD, 2012; United States Country

Reports, 2011). Medie (2013: 396) argues that the lack of legal enforcement of the rape law must be addressed, while the improvements that have been made to the legal remedy for rape in Liberia must be recognized, particularly the role that civil society has played in ensuring the effectiveness of the law.

### **Health and Education**

Both South African and Liberia have made education-related changes based on TRC recommendations. The South African TRC did not make any recommendations regarding health care, while Liberia has made a marked improvement in health care provision for all citizens, though the changes are not quite in line with the TRC's recommendations.

There is a single education-related recommendation made by the South African TRC (see recommendation (4) in chapter three): the introduction of a human rights curriculum in public schools. This recommendation was implemented in 2005.

In accordance with recommendation (6) discussed in chapter four, the Girls' Education National Policy was introduced by President Sirleaf in Liberia (UNICEF, April 18, 2006). This was three years prior to the release of the Final Report in 2009. The Policy calls for free and compulsory primary education; the reduction of secondary school fees by 50% for girls; providing counselling and life training for girls in schools; and ending impunity for teachers who sexually abuse and assault students (UNICEF, 2006). Many concerns raised by the TRC, including teen pregnancy, retention and the sexual abuse of students remain unaddressed. (Newstime Africa, July 6, 2012).

Although the implementation of recommendation (5) as outlined in chapter four, has not addressed the specific health needs of female ex-combatants, survivors of sexual

violence or women and girls involved with the fighting forces, the introduction of universal health care ensures at least a minimum of care for these populations. County health teams have also been introduced as a step toward the decentralization of services.

### **Summary of Analysis**

The following discussion frames the evidence presented above in terms of the research question that this thesis seeks to answer, “In regards to women’s rights in the postconflict state, what is the substantive impact of a truth commissions’ recommendations?”. The evidence from the case studies is examined and assessed according to the definition of human rights employed in this thesis. It is concluded that a comparison of the two cases shows that the impact of a truth commission on women’s rights the postconflict state is dependent upon numerous contextual factors.

The case of South Africa demonstrates the possible shortcomings of a truth commission when its mandate is too narrow to address the range of violations committed during conflict; indeed, the TRC’s *Mandate* to focus on physical violations committed during the liberation struggle excluded the experiences of the majority of non-white South African women who experienced apartheid as widespread socio-economic oppression and devastation. Although the TRC signaled South Africa’s intent to move forward with respect for human rights, the chapter examines the extent to which the TRC failed to incorporate this principles into its proceedings.

In reference to the research question, “In regards to women’s rights in the postconflict state, what is the substantive impact of a truth commissions’ recommendations”, the case of South Africa demonstrates that a truth commission may

have little substantive impact on women's rights in the postconflict state. The examination of TRC recommendations and their implementation, which forms the empirical analysis of this thesis, shows that the South African TRC made four recommendations (one with three sub-recommendations) that, if acted upon, might have had a substantive impact on women's rights, yet only four of the seven have been implemented.

As shown, there have been a few positive changes in line with recommendations, however, in respect to the most basic rights as outlined by Shue, to security, minimal subsistence and protection from standard threats, South African women have gained little protection through recommendations made by the TRC. For example, although the Office for Witness Protection is a step in the right direction, civil society groups continue to protest the challenges that arise from South Africa's low conviction rate for rape; the high attrition rate; victim's lack of faith in the justice system; and the lack of financial support both for support services and training programs that would improve the treatment of victims by the justice system (Hodes, 2007: 19). Without attendant services such as a victim empowerment program and the victim's compensation fund substantial barriers remain for women who are victims of violent crime.

In contrast with the South African TRC, the Liberian TRC integrated gender justice throughout the process and devoted an entire chapter of its *Final Report* to recommendations for improving women's political, economic, and social rights. Liberia therefore fares better than South Africa in response to the question, "In regards to women's rights in the postconflict state, what is the substantive impact of a truth

commissions' recommendations". Though it is not possible to determine whether the impact has been direct or indirect, the case study of Liberia supports the conclusion that truth commissions can have a positive impact on women's rights, with the caveat that political context is the ultimate determinant and arbiter of this change.

The evidence shows that many of these recommendations have been implemented. In line with Shue's basic rights, it is evident that Liberia has made a marked improvement in physical and economic security and legal protections for women. Although Liberia faces challenges to further strengthening women's rights, including financial and social barriers to secondary school education for girls and health care services specifically designed for survivors of sexual violence, the evidence shows that a truth commission may have a positive impact on women's rights.

Based on the evidence presented, the cases of South Africa and Liberia show that further research must be done to understand fully the relationship between women's rights in the postconflict state and the substantive impact of a truth commissions' recommendations. South Africa demonstrates that a truth commission may have very little impact on women's rights in the postconflict state, while the case of Liberia shows that there may be reason to be more optimistic about the potential for a strengthening of women's rights. The different conclusions drawn from each case demonstrate the viability of the assertion made from the outset of this paper: that the impact of a truth commission on the state of postconflict rights depends on the context. As Hayner (2011: 182) points out, many outside actors and factors influence the outcome of a truth commission.

including social and political will, and the prerogative of individual legislators and politicians. These factors will vary on a case by case basis.

Thus, the case study method has inherent limitations for the generalizability of research findings, as the context in which recommendations were made and implemented is specific to the cases of South Africa and Liberia. However, there is no reason to believe that the use of different case studies would result in greater generalizability because each case study presents unique circumstances and outcomes.

One key generalizable finding of this research is that the integration of gender justice into a truth commission should be of primary concern at the time that a mandate is being drafted. Indeed, the most apparent difference in the structure of the South African and the Liberian TRCs is that the Liberian TRC included a gender justice mandate from the outset, while the South African TRC did not. A gender justice mandate recognizes that women suffer differently than men during conflict. During conflict, women experience widespread rape; forced marriage; forced labour; and forced pregnancy; increased poverty; prostitution; and sexually transmitted diseases (Bop, 2001: 26; Liberia TRC *Final Report: Women*: 81). Migration, displacement, lack of property rights and the high mortality rate of men often leave women responsible for the household, which may also include the children of family members (Bop, 2001: 27). Women may be socioeconomically disadvantaged because of lack of education and property rights and barriers to accessing resources (Bop, 2001: 29). These are just a few of the ways that women are differently impacted by conflict, and it is this range of violations that gender justice seeks to recognize and redress. Recognition of the different ways that women are



impacted by conflict can help to inform a truth commission about areas that might be strengthened through future recommendations. The inclusion of the gender justice mandate in Liberia's TRC may have led to the formation of more relevant and informed recommendations for strengthening women's rights. Further research could examine this correlation.

It may also be useful to examine the efficacy of policy created because of TRC recommendations. Field work in particular would garner more conclusive evidence, as it is challenging to prepare case studies from a distance. Further research could also help to develop a more explicit link between truth commissions and human rights practice in the postconflict state. This research, and further research into the substantive impact of truth commissions, is crucial if truth commissions are to be recognized in practice as a useful tool for [re]introducing human rights.

It must be noted though that, without the legal obligation or political will to enforce them, recommendations can have little effect on state- or peacebuilding. The strengthening of rights is just one goal of a truth commission; the possibility that neither the South African TRC nor the Liberian TRC may not have directly impacted the implementation of recommendations does not undermine the value of truth commissions as a truth-telling exercise or a tool for reconciliation. A normative case may be made to support the argument that a truth commission is nevertheless a valuable mechanism for post-conflict statebuilding.

Overall, the evidence from South Africa and Liberia suggests that a truth commission does not necessarily correlate with a substantive change in women's rights,

but it does have the potential to have a positive impact. There is a lack of evidence to suggest that the actualization of women's rights came about as a direct result of recommendations made by either the South African or Liberian Truth and Reconciliation Commission. Further research is needed to produce more nuanced findings. In Liberia, reforms in line with the TRC's recommendations did occur prior to the release of the *Final Report*, however, it may be the case that the TRC's recommendations simply mirrored changes that were already occurring. It would also be helpful to further investigate the role of civil society lobbying in strengthening women's rights years after the release of the final reports in both South Africa and Liberia. When reforms related to women's rights were initiated prior to the release of the *Final Report* in Liberia, there may have been increased pressure to implement these from civil society.

This thesis demonstrates that truth commissions have the potential to play a vital role in actualizing women's rights in postconflict states. Although there is no definitive answer to the research question at hand, "In regards to women's rights in the postconflict state, what is the substantive impact of a truth commissions' recommendations", it is clear that truth commission recommendations, even if not implemented as a direct result of a final report, can at least leverage a case for women's rights. This thesis also highlights the crucial role of context and political will in the success of a truth commission. Because recommendations are not legally binding, they are only effective when the government is willing to act on them, whether from will or civil society lobbying. Further research is needed to determine the factors that lead to the successful implementation of TRC recommendations.

This research is of significant importance to the transitional justice literature, as well as literature on peacebuilding, statebuilding and gender. While it is widely acknowledged that transitional justice broadly, and truth commissions in particular, serve important functions for peace- and statebuilding, there is a dearth of evidence suggesting that they have a long-term impact on the peacefulness or stability of the state. The findings of this thesis may not overwhelmingly support a case for the long-term importance of a truth commission, but they do show that, in Liberia, women's rights were strengthened at least in tandem with the recommendations of the TRC. Although the evidence does not support a direct correlation between women's rights and the effective implementation of recommendations, the findings of this thesis demonstrate that the efficacy of a truth commission in strengthening women's rights is ultimately reflective of the state's interest in change. A truth commission is one mechanism which has the potential to bring about the actualization of women's rights.

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