



Gender and Transitional Justice in West Africa: The Cases of Ghana and Sierra Leone

Abigail Gyimah



Abigail Gyimah is a CSDG/ECOWAS Peace and Security Fellow in the Conflict, Security & Development Group (2008/09)

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Jacaranda Avenue
PO Box 25742
Nairobi

+254 (0) 20387022500603
info@africanleadershipcentre.org

www.africanleadershipcentre.org

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by Abigail Gyimah

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TABLE OF CONTENTS

Acronyms.....	1
Chapter 1: Introduction.....	2
Background	
West Africa in perspective	
Research problem	
Research methodology	
Outline of chapter	
Chapter 2: Gender and transnational justice: a survey of the literature.....	12
Introduction	
Gender and truth commissions	
Filling the caps	
Chapter 3: Truth commissions and gender in Ghana and Sierra Leone.....	23
Introduction	
Status of women in Ghana and Sierra Leone	
Ghana: an overview	
The Ghana National Reconciliation process	
Sierra Leone: an overview	
The Sierra Leone Truth and Reconciliation process	
Chapter 4: Analysis of truth commissions and gender (in)justice.....	35
Introduction	
Women as victims under authoritarianism and war	
Truth commissions and Gender (in)justice	
What possible role for ECOWAS?	
Chapter 5: Summary, conclusions and recommendations.....	47
Summary and conclusions	
Towards a regional approach to transitional justice	
Bibliography.....	52

ACRONYMS

AFRC	Armed Forces Revolutionary Council
CDF	Civil Defence Forces
ECOWAS	Economic Community of West African States
ECPF	ECOWAS Conflict Prevention Framework
IDP	internally displaced people
NRC	National Reconciliation Commission
OHCHR	United Nations Office of the High Commissioner for Human Rights
RUF	Revolutionary United Front
SLTRC	Sierra Leone Truth and Reconciliation Commission
TC	Truth Commission
TRC	Truth and Reconciliation Commission
UN	United Nations
UNIFEM	United Nations Development Fund for Women

CHAPTER 1

INTRODUCTION

Background

Africa in the post-Cold War period has featured predominantly in the peace and security discourse due to the many conflicts that plagued the continent, but West Africa has been particularly popular for its profound history of political instability. Notably, the post-independence history of Ghana, Nigeria, Guinea, Benin, Sierra Leone and Burkina Faso is replete with multifarious coups and resultant authoritarian systems. This, coupled with the spate of conflicts that engulfed Liberia, Sierra Leone and Guinea Bissau at the beginning of the 1990's, saw West Africa emerge from being an erstwhile stable sub-region, to become the most politically unstable and insecure sub-region in the 1990's.¹ Additionally, the porosity of West Africa's borders has also meant that the violence and the instability that conflicts occasion has had wide ranging regional ramifications affecting almost all states in one way or another. Underneath such volatility are deep-seated and fundamental structural challenges of poverty, gender inequality, marginalisation, underdevelopment and wide ranging governance deficits, rendering the sub-region highly prone to further instability.

A notable feature of the authoritarian regimes and conflicts in West Africa is the gross injustices and human rights violations that they occasion which are mostly targeted at civilian populations. West Africa's history is sated with cases of populations suffering all forms of abuses under military dictatorships and in conflict areas, with little or no attention paid to the rule of law, human rights and international humanitarian law. The range of abuses span killings, torture, rape, sexual assault,

¹ Adebajo (2004a), p.2

detentions, seizure of properties and other forms of ill-treatments. Women in Africa, like the rest of the world, constitute half of the population, and also form the majority of the victims of these injustices and violations. While there is an increasing realisation of women as active participants in political struggles and conflicts, women are still targeted by the use of rape, sexual assault and slavery as well as forced pregnancies as a deliberate tactic of repression and warfare.²

West Africa in Perspective

The political landscape and fortunes of the West African sub-region have witnessed dramatic successes and quite significant transformations in the last decade. First, democracy is seemingly taking root with remarkable and rapid political changes taking place in many countries, resulting in the increase in responsible governments following multi-party elections across the sub-region. The onset of the third wave of democratisation in the early 1990s in particular, saw autocratic regimes topple in places like Nigeria, Benin, Niger, Mali and Sierra Leone. Additionally, after decades of one-party rule and military autocracy, more open political systems have emerged in Ghana, Senegal, Cote d'Ivoire and Mali, so that save for the military putsch in Guinea in 2008 and the recent power crisis in Guinea Bissau, almost all sitting heads of states have either been elected or had their positions confirmed through the ballot box.³ Countries like Sierra Leone and Liberia, while still weak, are also experiencing increasing developments in democracy and good governance.

Further increasing prospects for peace and stability is the apparent demise of the virulent and large-scale civil wars that have affected virtually every state across the sub-region. Though the sub-region remains vulnerable to conflicts at national levels, the remaining visible signs of instability are a handful of inactive, internecine and low intensity disputes in places like the Niger Delta in Nigeria, Casamance in Senegal, the

² Africa Women's Forum (2001), p.15

³ Musah (2009), p.5

northern parts of Ghana as well as western Cote d'Ivoire (this is not to say that these are not important challenges to security in the sub-region).⁴ This, coupled with the demise of warlords like Foday Sankoh and Sam Bockarie of Sierra Leone's Revolutionary United Front (RUF) rebel movement in 2003 and the indictment and subsequent trial of Liberia's Charles Taylor at The Hague⁵, offers great expectations for peace and security in West Africa.

Indeed, the Economic Community of West African States' (ECOWAS) interventions in Liberia, Sierra Leone and Guinea Bissau in the early 1990s, its role in restoring constitutional order to Cote d'Ivoire, Togo, and recently Guinea (Conakry) and Guinea Bissau, as well as the organisation's instrumental role in preventing, resolving and managing conflicts and its increasing role in post conflict and post authoritarian reconstruction and peace building efforts cannot be overemphasised.⁶ Furthermore, in recognition of the fact that assuring peace and security is not limited to dealing with conflicts within affected states only, a number of mechanisms and frameworks have been adopted by ECOWAS as part of its efforts at conflict prevention and management at the sub-regional level, including the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution and Security (1999), the Supplementary Protocol on Democracy and Good Governance (2001), and the most recent ECOWAS Conflict Prevention Framework (ECPF, 2008), which is a significant attempt by the sub-region to adopt a prevention framework that comprehensively addresses the structural causes of conflicts and instability and enhance the safety of life and property to ensure sustainable peace, security and development in the sub-region.

The seeming reduction in violent conflicts and return to democratic rule does not however suggest an assurance of peace and stability and an end to the sufferings of the

⁴ Olonisakin (2008), p.8

⁵ CCR, (2006), p.3

⁶ See Ero, (2000); Adebajo, (2004b, 2005); Adebajo and Keen, (2007)

almost two hundred and forty-five million⁷ citizens of the sub-region. In fact, in spite of the positive progress in peace and security in West Africa, the potential of the peace and security gains made being undermined is high as the pre-conditions for insecurity that necessitated the upsurge in coups and conflicts have not been systematically addressed. This is especially important for women who have also found it difficult due to gendered nature of these underlying social inequalities to assert, retain and consolidate the socio-economic and political rights both in peacetime and during war.⁸ Women tend to face discrimination and neglect in post-conflict situations, especially when traditional gender roles are induced. These challenges make the issues of justice, human rights and gender inequality salient features of post-conflict and post authoritarian peace-building. It is therefore crucial that all attempts at conflict prevention and sustainable peace building, especially such justice initiatives as truth commissions, be gendered in order to deliver justice especially for women.

The positive developments in the sub-region therefore present important opportunities not only for conflict prevention, but also for transitional justice in West Africa and provide valuable prospects for delivering justice to women in West Africa. The political climate in West Africa for the first time, not only provides an opportunity to deal with and ensure accountability for past injustices, but also provides important points of entry for addressing the root causes of instability as well as the particular gendered nature of the social injustices that lie at the root of the violence in order to secure an enabling environment for the pursuit of sustainable peace.

Research Problem

There is an increasing awareness at the international level about the need to project women's experiences of authoritarianism and violence and their claims to justice and social transformation. UN Security Council Resolutions 1325 (2000) and 1820 (2008)

⁷ World Bank, (2009), ' West Africa : Facts and Figures', at <http://go.worldbank.org/4SL72754K0>, June 30, 2009

⁸ Bop, (2002), pp.19-34, Manchanda, (2002), pp.99-120

acknowledges the impact of conflicts on women and girls, the gender dimension of peace processes and conflict resolution and their subsequent role in peace building. These have been accompanied by discussions on how transitional justice mechanisms can be rendered gender sensitive and further deliver justice to women in these societies.⁹ Following the return to constitutional rule and peace in societies however, transitional justice mechanisms employed to deal with crimes committed during conflict and undemocratic regimes have often neglected the complex dynamics and consequences of political and social violence on gender¹⁰ and in particular on the lives of women. Thus opportunities for social justice and in particular *gender justice*¹¹ in these contexts remain underutilized. Available evidence suggests that while women are marginalised in general, they face a double marginalisation especially under authoritarian regimes and in wartime, yet their particular needs and claims to justice are mostly overlooked when these mechanisms are established.¹²

Transitional justice mechanisms and truth commissions (TCs) in particular have been implemented extensively and with some success in West Africa in Ghana, Nigeria, Sierra Leone and Liberia. However integrating and addressing issues of social justice generally and gender justice specifically into these processes remain a major deficiency. In order to deliver justice to all and ensure sustainable peace, while it is politically essential to address the grievances of both victims and parties to the conflicts, the structural issues that underlie conflict and repression, particularly their gendered

⁹ Rubio-Marin and de Greiff, (2007), p.319; See also DeLaet, (2006); The World Bank (2006)

¹⁰By '*Gender*' it is meant the social roles ascribed and assigned to individuals in society – boys and girls, men and women. This includes the power relations, hierarchies as well as values of society as these relates to the different sexes. And for the purposes of this paper, gender is used to refer to women in particular and therefore the two terms are used interchangeably.

¹¹'*Gender justice*' is defined in this paper as 'the protection and promotion of civil, political, economic and social rights on the basis of gender equality. It necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for both women, men, girls and boys and adopting gender-sensitive strategies for protecting and promoting them.' See Spees, (2004), p.5

¹² See Tickner, (1992); Goldblatt and Meintjes, (1998); Meintjes, et al., (2002)

impact on especially women, make it a social imperative for their justice claims to be addressed.¹³

A plethora of literature exists on transitional justice and gender and these have mainly been procedural in their approach to gender (in)justice by arguing for the conceptualisation and implementation of truth commissions to be gender sensitive.¹⁴ But the rhetoric of human rights, accountability and restorative justice in moments of transition to peace and democracy often tends to mask the fact that, outcomes of most TCs tend to establish the status quo ante politically, economically and socially. This invariably reinforces the reconstruction of patriarchy and the attendant power dynamics that underlie societal relations¹⁵ and which in themselves are injurious to women's claims to social justice.

This study takes off from the preceding point. It challenges the adequacy of the assumption that by merely rendering the processes of establishment, mandate, composition and subsequent operationalisation of TCs gender sensitive, gender justice will necessarily be assured. It argues that while it is necessary to make truth seeking processes gender sensitive, what is important is for TCs to take advantage of their unique place in the transitional process, to address issues of gender and women's rights within the larger context of social injustices that are intrinsically gendered and which militate against the development and consolidation of women's agency. The continued call for gendered justice in post-authoritarian and post-conflict societies underscores this argument and points to women's aspiration to use the opportunities presented in times of transition, especially those offered by such transitional institutions, to address the gendered patterns of social injustices and thereby help remove traditional gender boundaries permanently.¹⁶

¹³ Mani, (2002), pp.3-4

¹⁴ See Nesiah, et al., (2006)

¹⁵ Meintjes, Pillay and Turshen, (2002), p.4

¹⁶ Becker, (2002), pp.225-40

The point of departure is the dissatisfaction of women with the primarily rights-based approach to justice employed by TCs. This approach, while not inappropriate in the contexts within which it is utilised, prioritises civil and political liberties thereby neglecting not only social and economic liberties, the lack of which underlie instability in the first place¹⁷ but also the gendered nature of societal relations and the (social) injustices they occasion, which allows women to experience repression and conflict in particularly violent ways. This emphasis also means that transitional justice mechanisms fail to adequately recognise the real need for social transformation, which is an essential part of justice for women in most of these societies.

It seeks therefore to make problematic transitional justice mechanisms, especially truth commissions, as viable tools for seeking justice for women in post conflict and post authoritarian societies. It will do so by examining the nexus between gender and social justice in context of transitions after conflict and authoritarian rule. Conflicts and authoritarian rule are essentially forms of gendered violence and social injustice and hence the delivery of social justice especially in their aftermath must necessarily emphasise gender. Social justice here entails addressing past injustices within the larger context of the structural injustices of patriarchy that underlie societal relations with the aim of ensuring equitable opportunities for both men and women and guaranteeing equal access for women to valued resources in post-conflict and post authoritarian settings.

The study argues that while it is not untrue that justice must be restored after conflict or other forms of repression, it must be done in an integrated and comprehensive manner covering and addressing the distinct and complex interconnections between the incidence of coups and conflicts and the gendered social injustices and structural patterns of violence that underlie them. This work contends that so far, by failing to address the root causes of instability and their particular

¹⁷ Meintjes, Pillay and Turshen, (2002), p.4

gendered nature in the countries examined and in West Africa generally, truth seeking processes have not delivered justice and reconciliation in these societies, especially for women. In fact, despite the obvious improvement both in security and the numerous transitional justice processes that have been established across the sub-region, structural challenges to women's access to opportunities and resources remain. Examining Ghana and Sierra Leone's truth seeking processes helps illustrate this and also demonstrate the salience of an in-depth appreciation of the gender dynamics of structural challenges which inadvertently give rise to coups and conflicts.

Research Methodology

This study is primarily qualitative and based on secondary sources of data. Literature to be used will include, inter alia, books, scholarly journals, policy documents, reports, conference and briefing papers, articles, newspapers. Further analysis will be made of official reports of both the Ghanaian and Sierra Leonean Truth Commissions for the purposes of the study. The qualitative method among others allows for an effective identification and investigation of the not so apparent role of intangible factors as social norms, gender roles and socio-economic status of women in the processes of truth seeking and transitional justice in general.

The scope of the study, while broadly analysing the issue of gender and transitional justice in West Africa, is limited to two case studies: Ghana and Sierra Leone. First, the history of political instability, coupled with its current terrain of peace and stability, and efforts at democratic consolidation and accountability, makes the sub-region a fertile ground for such a study. Second, limitations of time and length prevent the researcher from covering all the examples of truth-seeking processes that have been established in the sub-region. However, the two cases are important in that the countries and the respective truth-seeking mechanisms they employed to deal with past human rights abuses, each represent one side of West Africa's political history – Ghana

on the one hand, with its long history of military and authoritarian dictatorships and Sierra Leone on the other, coming out of eleven years of protracted civil war.

Consequently, this will help bring a balance to the study in so far as capturing the injustices that mitigate against women in West Africa as well as their experiences of human rights violations under these different circumstances, is concerned. The case study approach allows the study to also specifically cover the contextual conditions pertinent to the issues of gender and transitions being studied.¹⁸

Outline of Chapters

Chapter 1 has served to introduce the study by giving a broad overview of the political history of West Africa and its current place in the process of peace-building and democratic development. The main focus of the study, however, is to examine the truth and reconciliation commissions (TRCs) of Ghana and Sierra Leone to investigate why transitional justice has not delivered justice for women in post authoritarian and post conflict societies in West Africa.

Chapter 2 surveys and reviews relevant literature dealing with gender and transitional justice and specifically truth commissions with the aim of identifying the gaps and thereby to place the study in perspective and locating the significance of the study in responding to the gaps. It also identifies the lack of involvement of ECOWAS in transitional justice in the region.

Chapter 3 will present the overview and background of the transitional justice and truth commission processes in Ghana and Sierra Leone. It will describe women's experiences of abuse and violence, setting these within the broader socio-political context of inequality, discrimination and marginalisation during the periods of conflict and authoritarian rule. It will further describe the reconciliation and truth commission processes in the two countries.

¹⁸ Yin, (2003), p.13

Chapter 4 is a discussion of whether transitional justice has delivered justice for women in West Africa. It will examine the work of Ghana's national reconciliation commissions (NRC) and Sierra Leone's TRC and how they sought to address themselves to the particular justice claims and needs of women. Here the singular focus on restorative justice promoted by most truth commissions and its applicability and capacity to assure especially gender justice in the particular context of West Africa, will be examined and critiqued. It concludes that in order to achieve the aim of peace building, particularly delivering justice for women, justice should be secured through distributive justice.

Chapter 5 recaps the findings of the study and concludes by restating the argument that transitional justice has so far not delivered justice for women. It also examines the potential for truth commissions and transitional justice mechanisms to also address themselves to the regional dimensions of the problem and explore what possible role and contribution that regional bodies like ECOWAS can play in making transitional justice more effective and in seizing the opportunities presented in times of transition to enhance women's access to justice and for social transformation.

CHAPTER 2

GENDER AND TRANSITIONAL JUSTICE: A SURVEY OF THE LITERATURE

Introduction

As societies move from long periods of dictatorships and authoritarian regimes to democracy and from prolonged civil wars to peace, a question that begs asking in dealing with the issue is, how should these societies deal with the horrors of their past? But more importantly, as per the particular circumstances of each country's history and transition, what mechanisms have transformative significance to bring justice to citizens, more specifically to women and to set the stage for sustainable peace and development?

Existing literature points to the need for investigating and addressing gender concerns in times of transitions and the vital role transitional justice mechanisms can play in assuring and delivering gender justice in post-conflict and post-authoritarian societies.¹⁹ This is especially so in Africa, where authoritarianism and conflict have been important features of the political landscape, with the majority of victims being women and where such mechanisms have been adopted in their many forms. However, these general discussions about the forms of accountability that should be adopted have often been silent on the gender dimensions of the violence in these societies. While an equally substantial literature has been generated by an early lack of criminal accountability for acts of sexual violation perpetrated during recent civil conflicts²⁰, integrating a gender approach within the work of such transitional mechanisms is still largely a novel process. To place the study in perspective, therefore, available and relevant literature on truth commissions and gender will be reviewed.

¹⁹ See e.g., Cesare, Nollkaemper & Kleffner (2004); Schabas, William, (2006a)

²⁰ See, e.g., Gardam (1992), Chinkin (1994)

The original focus of transitional justice on criminal justice with an emphasis on human rights promotion, led to it being defined as the “conception of justice associated with periods of political change, characterised by legal responses to confront the wrong doings of repressive predecessor regimes.”²¹ Implicit in this definition is the assumption that ‘transitional periods’ are definite periods of instability within which a transitional system sets in is problematic since in reality transitions may not only last many years but also last longer for certain issues than some.²² The definition also undervalues other non-legal and traditional responses to past injustices and hence places legal justice over other forms and conceptions of justice like distributional justice. Accordingly, the scope has been broadened and now covers the whole gamut of responses to systematic violations of human rights and seeks recognition for victims and the promotion of peace, reconciliation and democracy.²³ These include several measures that complement each other: prosecutions, truth commissions, reparations, institutional reform, memorialisation and other reconciliation initiatives.²⁴

Gender and Truth Commissions

In the past years, a number of feminist interventions have emerged to confront and engage the field in ways that has sought not only to re-examine the basic assumptions that underlie transitional justice and the employment of associated mechanisms, but also their role in advancing the struggle for gender justice and women’s rights in post-conflict and post-authoritarian societies. One of the first priorities identified in the struggles to achieve gender justice in times of transition is the need for women’s participation in peace negotiations where transitional justice mechanisms are often adopted and its mandates outlined. Chinkin notes the importance of women’s involvement at the negotiation table and argues that not only is the presence of women

²¹ Teitel, (2003), p.69

²² Roht-Arriaza, (2006), p.1

²³ ICTJ, (2009), p.1

²⁴ For background see Zalaquett (1992), Kritz (1995), Teitel (2000)

necessary to ensure balance, but also that their representation will be essential for ensuring that their particular security and developmental aspirations are featured in the outcomes of the negotiations.²⁵ The absence of women and silence in peace processes of women's needs perpetuates and institutionalises their marginalisation in the post-conflict political system²⁶ and including them in peace processes underscores their relevance to the restructuring of social order and in making such processes effective, and accordingly influences the identification of reconstruction priorities in the transition phase.²⁷

On the other hand, Anderlini posits that misunderstandings surrounding the concept of gender impede the effective incorporation of gender perspectives in truth commissions' work, as in many cases, because "gender" is often understood as a synonym for "women," adding women to the commissions' staff or creating a "women office" within the commission is considered as a "gender measure." Similarly, the "gender dimension" is often interpreted to mean the "women's dimension", the consequence being that, only women are appointed to deal with those issues. This has important implications, for example, in the analysis of the causes of armed conflict; because women are not seen as agitators or general protagonists in promoting violence, gender as a variable for analysis is ignored or considered a secondary matter.²⁸

As bodies that seek to investigate and unpack prevailing myths about a nation's history, TCs embody the institutional lenses for viewing the past as a contested terrain of differing experiences and thus will do well to ensure gender justice by serving to give space and voice to marginalized groups, especially women.²⁹ Krog speaks of the gendered politics of 'voice' and notes that while the underlying assumptions of truth commissions are to empower and heal victims of severe violence by granting them

²⁵ Chinkin, (2004), pp.4, 12-14

²⁶ See Sorenson, (1998), Bloomfield, et al., (2003), p.13

²⁷ Anderlini, (2000), p.10

²⁸ Anderlini, (2006), p.3

²⁹ Nesiah, et al., (2006), p.801

space to tell their experiences, the case of women testifying at the South African Truth and Reconciliation Commissions is a clear example of instances where due to personal, social and political implications, women victims do not feel they can or want to use this medium for their healing process.³⁰ There were also instances where victims chose not to come forward due to concerns that their testimonies will be appropriated and reproduced by the commission and the media in ways that robbed them of their ownership of their experiences.³¹

Indeed, this is an important first step towards the goals of gender and social justice, but there is a danger in assuming an automatic link between 'mere presence' and the attainment of gender justice in the end.³² To this end, Jennings has argued that transitional mechanisms continue to be devised and justified according to assumptions that are default male, causing women to be treated as mere add-ons to the process and thereby denying women the full benefits that are to be accrued.³³ By so doing, such programs tend not only to emphasise specific gendered assumptions in post-conflict situations, but also sometimes even buttress them.

Becker notes that the context of war makes the erstwhile 'privatised' issue of sexual violence and in particular rape, become more obvious. According to her, when women and society in general recognise rape as a weapon of social control and cultural destruction, there is a high potential to avoid its privatisation and the consequent damage such privatisation has on women.³⁴ Thus to record the direct experiences of violence and the impact of conflict and repression on women, TCs should give special attention to rape and other issues of sexual torture and slavery and the many ways war and political repression distort women's lives.³⁵ Similarly, Copelon vehemently makes a case for the treatment of rape of women as war crimes under international

³⁰ Krog (2001), pp.203-216

³¹ Nesiya et al., (2006), p.804

³² Ni Aolain and Rooney (2007), p. 350

³³ Jennings (2008), p 1-2

³⁴ Becker (1998), p.81

³⁵ See Turshen and Twagiramariya, (1998)

humanitarian law and in extension by the transitional mechanisms adopted by states emerging out of conflict and repression.³⁶

As with armed conflict and repression, sexual violence is only one category within the broad continuum of violence that is perpetrated against women. When TCs and trials exclusively focus attention on sexual violence, it becomes equated with all the rights abuses that women suffer and ignores the complete gendered experiences of women at the political, social and economic levels. Muddell for instance notes that by examining gender violence through the lens of rape, the Peruvian TRC was not able to report on other gender priorities as internal displacement, healthcare and food security.³⁷ Again and as with the dilemmas of testifying before truth commissions,³⁸ while in fundamental ways there has been advances made for gender justice through the prosecution of sexual violence and rape, issues of rules of relevance, due process rights of defendants and the nature of cross examinations that are associated with trials have been criticised for leaving the victims more silenced than heard.³⁹ In the main, no matter how successful addressing sexual violence in these fora is, an exclusive focus on a single category of violence out of the myriad that women experience, is unlikely to deliver justice in the sense of assuring equity of access to opportunities and resources as well as transforming the societal relations patriarchy.

Turshen agrees with Kaldor on the nature of *new wars* and argues that in modern civil wars the binary stereotype of active men and passive females no longer persists as increasingly civilians are drawn into war. The result being that “the conventional separation of male belligerents and female inhabitants no longer prevails.”⁴⁰ Citing the cases of civil wars in Uganda, South Africa, Mozambique and Namibia, she notes that women are combatants and that both men and women perpetuate violence in war -

³⁶ Copelon (1995), p.65

³⁷ Muddell (2007), p.88

³⁸ Ross (2003), pp.162-5

³⁹ Dembour and Haslam (2004), pp.158-60

⁴⁰ Turshen citing Nordstrom (1998), p.1

rape, torture, killings.⁴¹ In this regard Moser argues that in the aftermath due to these different roles and identities, men and women may have different interests that only an inclusive and gender sensitive truth commissions can address, not only in identifying these differentials, but also meeting their practical needs.⁴²

DeLaet and Tickner agree that gender a gendered analysis not only assures the eliciting of a more complete and accurate understanding of the “truth” but is also necessary if TCs is to contribute to sustainable peace in post-conflict settings. To this end, TCs will have to encourage an honest accounting of the ways in which damaging gender norms and sexual inequality have contributed to the destruction and violence in war-torn societies. She argues also that TCs seeking to create a full account of the truth and foster sustainable peace in transitional societies must of necessity emphasise rape and other sexual violence during war but this should be done within a conception of truth and justice rooted in equality, requiring attention to widespread sexual violence that predates and follows civil war.⁴³ Copelon also notes that emphasising genocidal rape as unparalleled risks distorting the fact about the pervasiveness of sexual violence in society and has the potential of rendering rape invincible again as condemnation will be limited to the seemingly exceptional case while at the same time reinforcing its normalisation in peacetime.⁴⁴

Nesiah, *et al.*, discuss gender and truth commissions and notes that the experiences of women as the majority of society’s marginalised groups and the violence they experience under repressive systems and in wartime, makes them have important stakes in how TC mandates are drafted and interpreted, and what role women should play in how and what “truth” is to be investigated. To them, gendering the truth telling process constitutes an opportunity for women to have a platform, to narrate their experiences of human rights abuse, address the nation – and reclaim the public sphere,

⁴¹ Bop, (2001), pp.19-34

⁴² Moser, (2001), pp.30-51

⁴³ DeLaet, (2006), p.160-4

⁴⁴ Copelon, (1998), p.64

arguing that the opportunity to speak in public that such processes offer, is enormously significant for a group that has traditionally been consigned to the private and domestic.⁴⁵

Valji opines that women's participation in decision-making and policy formulation is both a form of justice and redress and a necessary element of democratic development and for policy processes or institutions to be credible, it needs to incorporate the participation of a majority of the population. According to her, since marginalization and exclusion are often at the heart of the conflict being addressed, and transitional justice mechanisms are intended to both address these causes as well as contribute to the creation of a new society, creating mechanisms which incorporate the voices of women and women's experiences begins to address old patterns of exclusion and actively lays down new patterns of engagement for the state.⁴⁶

It is evident across the literature on truth commissions and gender that there are basically two broad approaches adopted by recent truth commissions in their bid to ensure gender justice: *gender mainstreaming* on the one hand and *gender balance* on the other.⁴⁷ Mainstreaming here refers to having gender as a crosscutting theme and a relevant organising principle throughout the commission's lifespan - from recruitment of staff, its daily work, hearings and report writing process, which approach has been adopted by many commissions including Ghana's NRC. Gender balance, or what Nesiiah refers to as gender "cabineting" on the other hand, was employed by the Peruvian Commission and involved the creation of special gender units within commissions with the exclusive task of addressing gender-related issues, training and research which will then feed into the final report.⁴⁸ However, the authors note that while these approaches have been used extensively by various truth commissions, the results have been that gender has largely been invisible even in the operationalisation of

⁴⁵ Nesiiah et al., (2006)

⁴⁶ Valji, (2007), p.9

⁴⁷ Nesiiah, et al., (2006), p. 3

⁴⁸ Nesiiah, et al., (2006)

the work of commissions and at best ends up with little of systematic and sustained attention to gender. In particular, the gendered patterns of the human rights abuses investigated, the place of women in a country's human rights history, as well as how the gendered structures and ideologies of society shaped how women experienced violence, has been absent from their work. Accordingly, they advocate a third 'combination approach' – that of treating gender both as a cross cutting theme and a specific focal area in the truth seeking process.⁴⁹ Similarly, scholars like Meintjes, Pillay and Turshen, have all begun to call for a more critical, systematic and comprehensive way of engendering TCs in order to not only deliver justice for women, but also to provide the platform for transforming fundamental gender biases in transitional societies that ultimately hinder women from consolidating their socio-economic and political gains made in wartime.⁵⁰

Bell, Campbell and Ni Aolain reveal that there is a tangible link between the experience of women during conflict and repression and the exclusions they face in the transitional context. They argue that a gendered understanding of peace processes is required to address how women can practically assert a presence at peace negotiations, while at the same time re-framing the questions these processes revolve around. Addressing gender is not only about dealing with women's needs, but also that the experience of how women work can be vital to peace-making and peace-building. According to them, women are often well positioned to "further connections between civic society (where women often predominate) and political institutions (where men often predominate)" and by so doing reshape the notion of what is politics, and what is democratic participation.⁵¹

Ni Aolain and Turner are also of the opinion that by overlooking or excluding the myriad harms experienced by women in repressive and conflicted societies, TCs

⁴⁹ Ibid., pp.4-5

⁵⁰ See e.g., Meintjes, Pillay and Turshen (2002)

⁵¹ Bell, Campbell, Ni Aolain, (2004)

risk allowing such harm to continue unacknowledged and unaddressed. Again because TCs reports have considerable influence on the shape and consensus that underpins new political dispensations in many societies, the exclusion of gender has important implications for the exclusion and marginalization of gendered harms and gender equality in the new political reality that emerges. To them, it is such influence that warns us to pay particular attention to truth commissions, not only as a forum for dealing with the past, but as a forum which shapes and defines societal futures.⁵²

While mainstreaming, balancing or cabineteting is critical to ensuring that women are guaranteed space and attention in times of transition and, it is all the more crucial to engender transitional justice – where gender is made a *leitmotif* that crosscuts the range of issues that transitional justice mechanisms are established to deal with. In particular, engendering truth seeking and truth telling processes must go beyond mainstreaming and cabineteting and attempt to construct alternative approaches aimed in the long term to re-socialise policy making situations to incorporate a qualitatively nuanced and gendered understanding of justice in post-authoritarian and post-conflict. Here, priorities must of necessity shift from the rhetoric of ‘investigating past abuses’, ‘compiling an accurate account of history’, and ‘reconciliation’ to a language and practice that takes cognisance of the structural challenges and enabling spaces that are intrinsically gendered and that hinder women’s agency in these societies.⁵³

Filling the Gaps

In this work, we seek to employ a gender justice approach to evaluate the impact of transitional justice on women in West Africa. We seek by this to contribute to engendering transitional justice. Building on the ‘gendered security’ approach⁵⁴, gendered justice may be characterised by centralising gender in the analysis of the

⁵² Ni Aolain and Turner, (2007)

⁵³ Gopinath and DasGupta, (2006)

⁵⁴ For general discussions on Gender and Security, See Woroniuk, (1999), Tickner, (2001), Karamé and Bertinussen (2001), Hamber, et al, (2006)

traditional concerns of transitional justice mechanisms and truth commissions in particular. It calls for TCs to re-imagine justice in ways which can inform bottom-up contextualised transformation, especially in ensuring social justice in the sense of equal access to opportunities and resources for both men and women in post-authoritarian and post-conflict societies. By drawing on the precedents set by the human and gendered security discourses, while ensuring that all aspects of truth commissions' work are evaluated in gender terms, a particularised gendered justice approach is required by truth commissions in periods of transition to serve as transformative agents in ensuring fundamental change in traditional gender relations and most importantly to empower women and enhance their agency and freedom.⁵⁵

Recent examples in countries like Sierra Leone, Ghana and Liberia have shown the fissures existing in addressing gender violence and subsequently delivering justice for women. In order to consider women's demands for justice in transitional societies and particularly in West Africa, the study is concerned to explore how such a gendered justice approach might empower women and policy makers alike to re-imagine justice transformatively and advocates the changing of the gendered societal relations within the broader context of West Africa today and the place of truth commissions in aiding such a process.

In conceiving of justice this way, the study challenges the perception of justice limited to assuring civil and political liberties that invariably neglects social and economic rights which are essential to women's claims to justice in these emerging societies, and further opens the concept up to interpretations that are better placed and capable of delivering social justice, especially for women. Many women in West Africa are demanding a reconceptualisation of the basic canons of transitional justice and especially the re-imagining of justice away from legal and rectificatory justice to fundamentally, (re)distributive justice, which Rama Mani notes is of essence if we are to

⁵⁵ Sen, (1999), pp.189-203

address the structural and systemic injustices and discrimination that underlie conflict and the incidence of coups.⁵⁶ It is the contention here that a key way of addressing the justice claims of women and achieving such social transformation is through the empowerment of truth commissions to re-imagine and interpret justice in transformative ways.

Evidently absent from the literature on transitional justice in West Africa is the apparent lack of involvement of the regional organisation ECOWAS in the setting up of transitional mechanisms. This might be because the consultations leading to their adoption tend to be national in nature and therefore limit the opportunities for such external involvement. But in the particular context of West Africa, the lack of regional involvement is very puzzling for a couple of reasons. First, while it cannot be said that the sub-regional body ECOWAS has been an important player in bringing an end to the numerous authoritarian systems in the sub-region, it was a major agent in the brokering of peace in the conflicts in Sierra Leone and Liberia. Second, due to its porous borders, almost all states in the region have been affected in one way or another by the violent conflicts and instability experienced in West Africa. Thus while primarily focussing on gender and truth commissions, the study will also seek to fill this lacuna by examining the potential for such processes to also address themselves to the regional dimensions of the problem and explore the possible role and contribution that regional bodies like ECOWAS can play in making transitional justice more effective.

⁵⁶ For detailed discussion, see Mani, (2002)

CHAPTER 3

TRUTH COMMISSIONS AND GENDER IN GHANA AND SIERRA LEONE

"[It is] prudent to re-visit the past, not necessarily for revenge or vengeance, but to draw critical public attention to societal wrongs committed in the name of the State, and to face the future with a renewed national purpose, national commitment and national unity"⁵⁷

Introduction

Though set up for various reasons relative to the political context of each country, TCs are generally established to "help establish the truth about the past; promote accountability among perpetrators of human rights violations; provide a public platform for victims; inform and catalyse public debate; recommend victim reparation; recommend necessary legal and institutional reforms; promote social reconciliation; and help to consolidate a democratic transition."⁵⁸ At the end of their work, TCs report their findings, with recommendations for reparations and prevention of future abuses. Truth commissions in all their myriad forms have increasingly become the most adopted transitional justice mechanism in most West African countries emerging from conflict and authoritarianism as the cases of Nigeria, Ghana, Sierra Leone and Liberia have shown.

⁵⁷Boafo-Arthur, (2005), p.105

⁵⁸Freeman and Hayner, (2003), p.125

The section gives an overview and background of the transitional justice process in Ghana and Sierra Leone. It will describe women's experiences of abuse and violence, setting these within the broader socio-political context of inequality, discrimination and marginalisation during the periods of conflict and authoritarian rule. It will further describe the reconciliation and truth commission processes in the two countries. The two country experiences were selected as informative examples of how truth commissions have responded to gender issues specifically the justice claims of women.

Status of Women in Ghana and Sierra Leone

Ghana and Sierra Leone, like other West African states, are patriarchal and paternalistic societies. The socio-economic as well as political systems and structures of these societies show grave cases of gender inequality and social injustices that are themselves deeply rooted in paternalistic socio-cultural and structural systems and practices.⁵⁹ These patriarchal values ensure male domination in all societal relations effectively subjugating women's rights and undermining their real and potential agency. Gender inequalities are prevalent throughout these societies: the majority of women are illiterate and extremely poor with little access to and control over valuable resources like land, education and basic health services.

Discriminatory customs and laws, especially as regards marriage, property rights and sexual offenses, all exacerbate these institutionalised gender inequalities and makes gender-based violations possible and prevalent in Sierra Leone. Domestic and sexual violence is rife in Sierra Leone and is on the increase even today. The constitution provides for gender equality but gives priority to customary law in matters of marriage, divorce, inheritance and property. Unfortunately, these are the very sites of gender inequalities and violence and these customary laws are essentially paternalistic and do

⁵⁹ Apusigah (forthcoming 2009), p.1; Barnes, Albrecht and Olson, (2007), pp.2,6

not protect women in such cases.⁶⁰ Women are economically insecure, as poverty is marked among women in Sierra Leone, even though they constitute the majority of rural labour – as farm workers and petty traders.⁶¹ This, coupled with low literacy levels among women has also meant that women’s issues are also under-represented if not absent from public life and decision-making. This increases their vulnerability to violence, deepens poverty and compromises women’s economic sufficiency and their marginalisation and under-representation in local and national decision-making limits to redress such entrenched inequalities.

Women’s low status in Ghana, like Sierra Leone, is also underpinned by societal structures such as religion, marriage and cultural norms. In most cultures and traditions, women are often considered inferior to men and are therefore prevented from participating in public life and decision-making activities. The constitution of Ghana accords women and men equal rights in all spheres of life and prohibits discrimination on the grounds of sex or any other basis and affords equal access to education, employment and health and equal opportunity to participate in political and social activities of the country.⁶² The reality on the ground is however different, especially in rural areas. Despite Ghana’s relative prosperity, poverty remains pervasive in the country, especially in the three northern regions, which now account for half of Ghana’s population living under the poverty line.⁶³ Thus although gaps between boys and girls at primary levels is relatively small, the gap increases by the time they reach the tertiary level as families find it easier to withdraw girls than boys in most of these places. Women form the majority of the informal sector since the lack of higher education and marketable skills among majority of women has meant that they are unable to obtain good and high income jobs in the formal sector. This undermines

⁶⁰ AHSI, (2009), pp.77-79

⁶¹ Barnes, Albrecht and Olson, (2007), p.17

⁶² Republic of Ghana, 1992 Constitution

⁶³ Northern Ghana includes Upper East, Upper West and Northern regions. See UNICEF, (2009), *Ghana: Country Information* at <http://www.unicef.org/infobycountry/ghana.html> August 20, 2009

their economic independence, which dependency reinforces their low status in the society and therefore makes them susceptible to control by the men, violence and other forms of maltreatment and discrimination.

Myriad interventions toward gender equality have been undertaken by both state and non-state actors in both countries. Yet wide gender gaps still exist in matters of women's access to, control over and ownership of productive and valuable cultural resources. Prior gender injustices thus set the stage for further victimisation of women under authoritarian rule and during war.

Ghana: An Overview

In spite of its reputation as a 'success story' and an oasis of peace in the troubled West African sub-region, Ghana has had a turbulent political history. In its post-independence history, Ghana has experienced four Republics – the Nkrumah administration (1957-1966), Busia (1969-1972), Limann (from September 1979-December 1981) and under Rawlings (from 1992); and four major unconstitutional regimes – 1966-1969, 1972-79, from June to September 1979, and 1981-1992. The era of the 'men in tanks' began in 1966 with the overthrow of Dr. Kwame Nkrumah and since then Ghana's post-independence history is sated with constitutional but especially unconstitutional regimes that paid little or no attention to the rule of law. These occasioned and supervised large scale infractions of the fundamental human rights of the people and the cycle of bitterness created by these abuses has been a major driver of the subtle political strife and insecurity in contemporary Ghana.⁶⁴ A careful review of the literature which considers Ghana's chequered human rights history and those received and reviewed by the NRC confirms that Ghanaians have suffered from extensive human rights abuses including killings, abductions, disappearances, torture, rape, detentions, seizure and confiscation of properties and other forms of ill-treatments

⁶⁴ Gyimah, Kane and Oduro, (2009), p.2

committed largely by the state, public institutions, and public office holders, or persons claiming to be acting under the authority of the state.⁶⁵

Women were no exception and were victimised extensively under these regimes, mainly due to their politico-economic and more specifically the gendered social spaces they occupied. Under constitutional rule, where state responsibility for rights abuses has been and is seemingly currently minimal, women continue to suffer from domestic abuse, lack of access to property and justice and female genital mutilation among other atrocious violations.⁶⁶ The long-term effects of these violations on victims and especially women have been economic hardship, bankruptcy, family disintegration, lack of education for children, health problems as well as psychological trauma.⁶⁷

The Ghana National Reconciliation Process

In fulfilment of its election promise of moving the country forward through accountability and reconciliation, the Kufuor administration on assumption of office and in consultation with the Council of State established and inaugurated a nine-member National Reconciliation Commission by an Act of Parliament.⁶⁸ Ghana's reconciliation process coming almost a decade after the end of authoritarianism makes it unique from other commissions, which generally form part a transition to peace and/or democracy.⁶⁹ The 2002 reconciliation process was thus the first official state effort to provide Ghanaians the opportunity to publicly share their experiences of abuse, uncover the truth about the past and seek redress, even though various inquiries had been made at one point or another in the country's history by successive regimes to look into past abuses.

⁶⁵ See Bofo-Arthur, (2005), pp.105-126; Ameh, (2006a), pp.345-368; Ameh, (2006b), pp. 85-109. For background see Hansen, and Ninsin, (1989), *The State, Development and Politics in Ghana*, (Dakar: CODESRIA), NRC Report (2004), Oquaye, (1980), *Politics in Ghana:1972-1979*, (Accra: Tornado Publications); Ibid, (2004), *Politics in Ghana, 1982-1992: Rawlings, Revolution and Populist Democracy*, (Accra: Tornado Publication)

⁶⁶ Valji, (2006), p.1; See also Sam and Amua-Sakyi, (2006), p.2,7

⁶⁷ NRC Report, (2004), p.158

⁶⁸ NRC Act 2002 (611)

⁶⁹ Attafuah, (2004), p.126

The NRC was mandated to investigate human rights violations and abuses suffered at the hands of a public institution, public office-holder or someone claiming to act on behalf of the state from 6th March 1957 to 6th January 1993, and to make appropriate recommendation for redress.⁷⁰ It was to:

“seek and promote national reconciliation among the people of this country by recommending appropriate redress for persons who have suffered any injury, hurt, damage, grievance or who have in any other manner been adversely affected by violations and abuses of their human rights arising from activities or inactivities of public institutions and persons holding public office during periods of unconstitutional government and to provide for related matters”⁷¹

It was also to investigate the causes and context of the violations, conduct investigations relevant to its work and ‘investigate any other matters’ necessary for achieving national reconciliation.⁷² Though not a court, in order to enable it realise its goals, the Commission was equipped with the judicial powers of a High Court in its hearings to compel people to testify if the need arose and the traditional powers of the police in its investigations.⁷³ Notably, the non-retributive mandate of the NRC was informed by an entrenched indemnity provisions in the 1992 constitution which made it impossible for Ghana to have gone the path of a criminal justice approach to transitional justice.⁷⁴ Achieving such an objective thus required the establishment of structures, the design of systems and the development of rules that set the victims on the path of healing the

⁷⁰ NRC Act (611)

⁷¹ Ibid., s.3

⁷² Ibid., s.4(f)

⁷³ NRC Report, (2004), *Executive Summary*, pp.6-7

⁷⁴ Section 34 (3) of the Transitional Provisions of the 1992 Constitution gave self amnesties to all the leaders and persons connected to the AFRC and PNDC military and all previous military regimes in the country’s political history.

hurts sustained and endured over the years. This involved a number of things - operationalising the mandate, public education, statement collection, public hearings and report writing.

The Commission began its operations in May 2002 with the establishment of a Secretariat headed by the Executive Secretary. The Secretariat had five Directorates at the headquarters: Finance and Administration, Investigations and Research, Legal, Public Affairs and Community Liaison, and Counseling and Support Services. To ensure access and coverage of the entire country, there were also five zonal offices located in five regional capitals headed by zonal managers.⁷⁵ Statement takers were recruited across the country and began to take and receive statements from September 2002 to January 2004, by which time the Commission had received and investigated 4,240 petitions covering all the regimes. Residents outside the country were also allowed to mail their petitions to the Commission. Across the country, the Commission heard 1,866 victims' testimonies and 79 respondents between 14 January 2003 and 13 July 2004.⁷⁶

Although the Commission was required to hold public hearings, they also exercised their discretionary power of offering private hearings for "good cause."⁷⁷ Counseling was provided during the statement-taking period as well as the public and private hearings for both petitioners and respondents alike. In some cases this was followed with family counseling. Commission staff were also provided with counseling to help them deal with the secondary trauma that is often associated with working with traumatized people.⁷⁸

⁷⁵ See details in NRC Report, vol.2, Chapter 1

⁷⁶ Attafuah, (2009), p.190

⁷⁷ Private hearings were held under three circumstances: where state security may be jeopardised; where personal safety of witnesses may be compromised; and where the nature of the testimony may be offensive to public decency and morality. Victims were offered this choice also to assure them of privacy as well confidentiality of the information and of their identity.

⁷⁸ NRC Report, (2004), vol.1, c.2, p.17

In its investigations, the Commission sought to identify the victims, perpetrators, and various human rights violations and abuses within its target period, as well as the factors and conditions that underpinned, enabled, and accounted for those violations and abuses.⁷⁹ It also set up six special committees to examine the role of several key state institutions and civil society organisations in human rights violations and their potential role in preventing their future recurrence. These thematic committees covered the activities of security services; the legal profession; student, youth and labour movements; the media; religious bodies; the chieftaincy institution and the other professional bodies.⁸⁰

Civil society collaboration was crucial to the work of the Commission. To this end the CDD/NRC Civil Society Coalition⁸¹ actively consulted and engaged the commission by providing it with technical support and expertise. The Coalition also assisted the Commission in its “mopping-up exercise,” where special public outreach, statement-taking and counseling exercises in many rural areas of the country and enabled otherwise disadvantaged persons to file their petitions.⁸² The reconciliation process was given very wide media coverage but in spite of the media committing to *the Spirit of Akosombo*⁸³, the process was characterised by high politicisation and sensationalism in the media and in some cases rendered the victim-centred process rather perpetrator-focused.

The NRC completed its work with the submission of a five-volume report to the President in October 2004. The report was very detailed in chronicling and capturing all facets of its activities. It also made important recommendations for reparations and

⁷⁹ CDD, (2005), p.2

⁸⁰ NRC Report, (2004), vol. 1, c.2, p.14

⁸¹The Coalition led by the Ghana Center for Democratic Development (CDD-Ghana) comprised of about twenty-eight from civil society religious bodies, the media, Trade Union, Youth groups, Chiefs, lawyers, other independent governmental institutions and other senior citizens and individuals.

⁸² NRC Report, (2004), vol.1, Chapter 2, p.10

⁸³ *The Spirit of Akosombo* is a commitment by the media in 2002, to democratic principles, balanced analysis sensitivity to victims and avoidance of sensationalism during the reconciliation process.

institutional reform. Accordingly, the government issued a white paper accepting the findings and recommendations contained in the report.⁸⁴

Sierra Leone: An Overview

In March 1991, the Revolutionary United Front (RUF) invaded the country with the aim of overthrowing the corrupt and tyrannical government of Joseph Saidu Momoh and set the tone for what was to be one of West Africa's longest and most vicious civil wars. The descent into war is rooted in several decades of bad and exploitative governance characterised by corruption, nepotism, exclusion of certain social groups, poverty and inequalities, and the mismanagement of state institutions and resources.⁸⁵ Like all wars, the ten-year war profiled several factions: the RUF and the Armed Forces Revolutionary Council (AFRC) as well the Civil Defence Forces (CDF), which assisted the AFRC in fighting the rebels. Several attempts at ending the war including the 1996 Abidjan Peace Accord and the 1997 Conakry Peace Plan, all failed as parties to the conflict reneged on them.⁸⁶ The injuring, maiming and rape of an estimated 6,000 people in one day was the watershed moment that brought all parties to the peace table leading to the signing of the *Lome Peace Agreement* in 1999.⁸⁷ Pillage, destruction of property, indiscriminate killings, sexual abuse, systematic mutilation and amputation of civilians' limbs and recruitment of children into militias were the major trademarks of the Sierra Leone's decade-old civil war.⁸⁸ The war also had regional ramifications as millions of people were displaced and huge refugee flows began to manifest in neighbouring Guinea, Liberia and Cote d'Ivoire. To this end, the important role of ECOWAS and ECOMOG in intervening and eventually helping to bring an end to the conflict cannot be overemphasised.

⁸⁴ "Govt Issues White Paper On NRC Report", April 23, 2005,

<http://www.ghanaweb.com/GhanaHomePage/economy/artikel.php?ID=79926&comment=0> August 22, 2009

⁸⁵ Schabas, (2006), p.22

⁸⁶ *The Abidjan Accord* was signed on 30 November 1996 and the *Conakry Peace Plan* was signed on 23 October 1997

⁸⁷ The RUF attacked Freetown on 6 January 1999 and the Agreement was signed on 7 July, 1999

⁸⁸ Olonisakin, (2004), pp.250-6

The most common violations were forced displacements, abductions, arbitrary detentions, and killings and these were specifically targeted at civilians, majority of who were women. The return to peace and democracy has not brought much difference to women in post-conflict Sierra Leone. The breakdown of families and socio-economic infrastructure has meant that women continue to live with their trauma amidst myriad health and gynaecological problems.

The Sierra Leone Truth and Reconciliation Process

While the Lome Peace Agreement did not end the war, it provided an important avenue for addressing the past and setting the country on the journey towards peace and eventually development. Among other things, the Agreement provided for the establishment of a TRC⁸⁹ and in February 2000, the TRC Act was passed by Parliament. After a long process of consultation between government, international community and the people of Sierra Leone, the seven-member Commission was inaugurated in July 2002. It was set up to;

“create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lome Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.”⁹⁰

Thus it had the mandate, among other things, to investigate the root causes of the conflict, identify parties responsible and make recommendations aimed at preventing

⁸⁹ Lome Peace Agreement, (1999), Article XXVI <http://www.sierra-leone.org/lomeaccord.html> August 14, 2009

⁹⁰ TRC Act, (2000), s.6(1)

future recurrences of violence.⁹¹ It was also to restore the dignity of victims by affording “special attention to the subject of sexual abuse.”⁹² These objectives were achieved through public education, statement taking, public hearings, and producing a final report on its findings. Prior to the commencement of its work, the Commission in collaboration with the United Nations Office of the High Commissioner for Human Rights (OHCHR) and Sierra Leonean civil society groups embarked on a massive nationwide campaign to educate the public about the TRC’s aims and objectives.⁹³ A preliminary investigation was undertaken to map out the human rights violation and abuses that occurred during the conflict to enable the Commission understand the trends and patterns in the conflict and in the violations that occurred.

The statement taking exercise took place between December 2002 and March 2003.⁹⁴ About seventy statement takers, a significant number of which were women, mostly drawn from civil society and religious institutions and comprised of people who were fluent in local languages, were enlisted throughout the country. Many victims were also allowed to make written statements only to the Commission. The Commission compiled about 7,706 statements from victims and perpetrators, 36% of which were taken from women.⁹⁵

The TRC’s investigations and public hearings commenced in April 2003 and ended in August 2003 and brought together victims and perpetrators alike from all over the country to tell their experiences.⁹⁶ Also, thematic hearings were organised, focussing on the media, the legal profession, governance and corruption and women. The TRC also partnered with civil society groups and other international agencies in the course of its work. Most notably, its partnership with the United Nations Development Fund for Women (UNIFEM) and other women’s groups provided valuable input on issues

⁹¹ Ibid., s.6(2)a; 7(1)a

⁹² Ibid., s.7(4)

⁹³ This was known as the *Barray (Town Hall) Phase*

⁹⁴ Schabas, (2006), p.25

⁹⁵ TRC Report, (2005), vol.1, c.5, p.170

⁹⁶ TRC Report, (2005), vol.1, c.4, p.91

affecting women. Sensitivity to victims' needs was central to the hearings; hence in each district, a day of closed sessions was organised for victims of sexual violence, children, ex-combatants and perpetrators who did not want a public hearing.⁹⁷

After a year's delay, the Commission presented a three-volume report to the government in 2004 and to the public in 2005. The report contains key recommendations among which are: reparations for victims in the forms of pension, education, micro-credit and skills training, free healthcare for amputees, the war-wounded and victims of sexual violence. The government is required by law to implement these recommendations. However, the government in its white paper ignored the majority of the recommendations and provided token commitments to others, not least those concerning women.⁹⁸

⁹⁷ Ekiyor, (2009), p.158

⁹⁸ 'White Paper on the Truth and Reconciliation Report',
http://witness.typepad.com/gillian_in_salone/files/whitepaper2.pdf August 15, 2009

CHAPTER 4

ANALYSIS OF TRUTH COMMISSIONS AND GENDER [IN]JUSTICE

Introduction

Whole societies suffer generally under repressive regimes and in conflict situations, but women suffer specifically and most severely under such conditions. In patriarchal societies like Ghana and Sierra Leone, women suffer exclusively and directly from specific types of harm, both because they are female and due to their socio-economic status in society. As noted earlier, the particular privileging of patriarchal values of male domination and female subservience in socioeconomic, cultural and political relations in these societies underlies the gender inequalities and social injustices perpetrated against women in peacetime and their intensification in times of repression and war. Apart from suffering from the general effects of the unrest occasioned by the numerous democratic disruptions in Ghana and by the war in Sierra Leone, women were also targeted and victimized for being women and performing the very socio-economic roles society had determined for them.

This Chapter discusses the work of Ghana's NRC and Sierra Leone's TRC and how they sought to address themselves to the particular justice claims of women and examines whether transitional justice has delivered justice for women in Ghana and Sierra Leone. To this end the concept of 'restorative justice' promoted by these truth commissions and its capacity to assure especially gender justice in the particular context of West Africa will be examined and critiqued. It concludes that in order to achieve the aim of peace-building, particularly delivering justice for women, justice should be secured through distributive justice.

Women as Victims of Authoritarianism and War

Both in wartime and under repressive systems, violence is a gendered phenomenon. In Ghana, the abuses were not only multifarious but also had multifaceted motivations and were mainly political and economic, but for women they were also physical and sexual in nature. Accounts of politically motivated abuses committed by state and parastatals were widespread and affected men far more than women where the latter were more indirect victims.⁹⁹ Preventive detention and protective custody laws under Nkrumah's government and the National Liberation Council's regime respectively and the many disappearances, torture and extra-judicial killings, are just a handful of the numerous politically motivated abuses.¹⁰⁰ When husbands or sons are arrested, abducted or killed for being on the wrong side of the political and economic spectrum, social and economic wellbeing of whole families fell on women. Especially under the two Rawlings regimes of 1979 and between 1981 and 1992, women were direct victims, often targeted on account of their public roles such as market women, and were made to suffer many public and private rights violations, from sexual abuse to illegal detention. The destruction of stores, stock and the burning of the *Makola No.1* and *Tamale Central* Markets brought untold suffering, not only to those women who lost their means of sustenance, but also to their dependants.¹⁰¹

Sexual abuse was common and pervasive. It included the rape and attempted rape of women by their military captors, as well as forced simulation of sexual acts in public. Sexual assault such as forced examination of women's genitals or exposing their genitalia publicly, genital mutilation and the forcible insertion of noxious substances such as gunpowder in female genitalia was not uncommon. Wives, consorts and even female family members of wanted men were flogged, physically and emotionally humiliated, stripped naked in public and raped. Women were often kept in cells or

⁹⁹ NRC Report (2004), p.164

¹⁰⁰ Gyimah-Boadi (2006), p.181ff

¹⁰¹ NRC Report (2004), pp.92,129-30

other places of confinement together with men, with little access to facilities for personal hygiene.¹⁰²

The decade-long war in Sierra Leone occasioned massive atrocities, especially against women. It is widely estimated that up to about 275,000 women and girls were victims of gender-based violence.¹⁰³ Particularly, the vulnerable position of women in Sierra Leone made them deliberate targets of the malice of various factions but most especially the RUF.¹⁰⁴ The TRC found that “all of the armed forces in particular the RUF and the AFRC, embarked on a systematic and deliberate strategy to rape women and girls, especially those between 10-18 years of age, with the intention of sowing terror amongst the population, violating women and girls and breaking down every norm and custom of traditional society.”¹⁰⁵ Tens of thousands of women were abducted and forced to join factions as ‘bush wives’ and child soldiers, whilst others were killed, mutilated and had their limbs amputated¹⁰⁶. Many more were also subjected to rape, forced marriages, detention, torture, enforced sterilisation and sexual slavery and many more became internally displaced people (IDP) and others went into exile. In fact even in the displacement camps, humanitarian workers violated many more women as they were “...compelled to barter their bodies in order to survive and access aid to which they were rightfully entitled.”¹⁰⁷ Economic violations such as looting, theft, extortion and property destruction against women were also rampant. The war left the country devastated and left victims, especially women, with no recourse as social structures had disintegrated, and judicial and other infrastructure were badly damaged, particularly in the provinces outside the capital.

There was limited protection for women against gender-based violence before the war and an intrinsic paternalistic culture of subordination, violence and impunity

¹⁰² Ibid.

¹⁰³ TRC Report (2005), vol.3b, c.3, p.86

¹⁰⁴ TRC Report (2005), vol.2, c.2, p.100

¹⁰⁵ TRC Report (2005), v.3b, p.162

¹⁰⁶ Ekiyor (2009), p.153

¹⁰⁷ TRC Report (2005), vol. 3B, c.3, p.86

even in the post-war period has meant that women continue to endure similar violations under a culture of silence.¹⁰⁸ Their recovery is in fact hampered by the lack of access to productive assets including land, credit and education and most importantly their exclusion from participation in meaningful decision-making in the political arena.¹⁰⁹ Against this backdrop and as part of the struggle for gender equality and women's rights, the reconciliation processes such as Ghana and Sierra Leone had were expected to acknowledge and address not only the past but also the gendered nature of the abuses suffered by citizens. Especially due to women's vulnerabilities to social injustices and exclusion, the truth-telling process was necessarily to be sensitive to their particular justice claims by incorporating women's rights considerations into its work. But, as will be seen, while issues of gender and women's rights in particular remained peripheral to the Ghanaian process, it was to a larger extent integral to the Sierra Leonean process.

Truth Commission and Gender (In)justice

By their very nature truth, commissions can provide opportunities for highlighting neglected abuses, identifying the enabling conditions for gender abuse and leave a long term legacy that is responsive to women's needs, especially in mitigating the challenges to women's agency in the aftermath.¹¹⁰ I argue here that while the SLTRC in the main took advantage of this opportunity and in very important ways considered and addressed the nuanced and gendered nature of abuses in the society as whole, the NRC was not able to do so. This is not also to say that the SLTRC process has delivered justice for women in the aftermath, since women in post-war Sierra Leone still continue to face myriad challenges in relation to equitable access to and control over valuable resources and opportunities.

¹⁰⁸ Ibid.

¹⁰⁹ TRC Report (2005), vol.2, c.2, p.100

¹¹⁰ Muddell (2007), p.88

First, in interpreting their mandate and developing a strategy to facilitate the process, the Commissions sought to mainstream gender in all their activities.¹¹¹ The NRC sought to uphold the principle of equality before the law and made a conscious effort to institute a system that levelled the playing field for victims and perpetrators, as well as making it people-friendly and accessible to all.¹¹² It sought to develop rules and modus operandi which were respectful of the special needs and social disadvantages of women, as well as men of the non-powerful status.¹¹³ Gender equality, gender equity and employment equity were therefore the NRC's guiding principles and this enabled the Commission to mainstream gender in all spheres of its work – from recruitment and training through to the end of the process.¹¹⁴ Statement takers were both men and women and were also required to be fluent speakers of the local language so that they could provide the necessary translation and transcription support to all petitioners, irrespective of their educational background. The SLTRC also used a similar strategy and made sure that more than 40% of the statement-takers were women and trained them on issues of rape and sexual violence as well as coping with trauma.¹¹⁵ However it is obvious that by merely adding women to the workforce and providing a one time training on gender-sensitive approaches was not sufficient enough to ensure that gender did not become invisible in the course of their work, especially in Ghana. Though in the case of Sierra Leone, this worked somewhat well and enabled the TRC to engage women in dynamic ways.

Unlike the SLTRC, which had two women of its seven-member Commission, three of the nine-member Ghanaian Commission, were women and known women's rights advocates at that. While this is less than the national convention of 40% female representation in all public office appointments, it was still an important step as far as

¹¹¹ Attafuah (2009), p.196; TRC Report, (2005), p.87

¹¹² Ibid.

¹¹³ Mensa-Bonsu (2007), p.9

¹¹⁴ Attafuah (2009), p.196

¹¹⁵ TRC Report (2005), vol. 3b, ch.3, p.87

gender mainstreaming is concerned. As noted by Ni Aolain and Rooney, however, the mere presence of women is not an automatic assurance that women's needs will be addressed systematically, though it is an important step. In both cases, the presence of women and particularly ones with gender advocacy backgrounds was suggestive of the Commissions' potential for a nuanced appreciation and incorporation of gender and especially women's rights issues in their work. In Ghana, unlike Sierra Leone, in spite of this and efforts by Commissioners to create a favourable atmosphere for women, gender turned out to be very minimal and peripheral at best throughout the process.¹¹⁶

Both commissions worked in collaboration with media houses, local authorities and civil society to embark on mass education on their aims, objectives and procedures. These were done in English and the major local languages across the countries. By so doing, the largely illiterate populace, especially women, were able to access information about the process and how to engage the commissions. Particularly in northern Ghana, the commission made extra efforts to extend education and counselling to whole families since the area had many illiterate women who would not testify for fear of exposure to harm by especially male family members. And in the largely rural countryside of Sierra Leone, this was of immense benefit to women who might otherwise not have been able to access Freetown easily.

More importantly, the public hearings offered opportunities for petitioners to tell their stories and seek redress, witnesses to corroborate claims, defend accusations and/or seek forgiveness. Almost all cases were heard in public in each country, but cases of sexual harassment and physical examinations were conducted in-camera by commissioners or experts of the same sex, enabling people whose most private selves were violated to obtain separate hearing in dignity.

Commissions can create more institutional openness by having ongoing consultations with the feminist community, and relying on women's groups for

¹¹⁶ Apusigah (forthcoming 2009), p.14

assistance in soliciting statements, training statement takers, preparing gender hearings, and developing proactive outreach to female victims of sexual violence.¹¹⁷ The NRC report notes that the Commission defined and interpreted their mandate without input from persons other than petitioners and witnesses implying that input from women groups and gender advocates would have been denied, which might then explain the peripheral place of gender in the process in the end. This did not preclude the Ghanaian women's lobby from proactively engaging the commission on their own merit. Indeed, some commissioners, in their response to criticisms about the lack of an engendered process lamented this fact noting that not even one women's organisation approached or petitioned the commission on behalf of women or even a female victim.¹¹⁸ The SLTRC on the other hand, deliberately solicited suggestions and support from women's agencies and other gender advocacy groups which went a long way in enabling the Commission appreciate and nuance their historical analysis with a gender-sensitive lens. Again, unlike in Ghana, where no thematic hearing was convened on women's issues, the SLTRC held a special thematic session on women and received submissions from a cross-section of the society who had knowledge on the issue. By not convening special hearings for women, Ghana lost the opportunity during the process for broader public discourse, understanding and education on the structural conditions, key dimensions and the broader gendered underpinnings of the abuses and in the end was unable to address the linkages between the violations and their enabling conditions.

Final reports are the tangible legacies of truth commissions and like public hearings are probably best positioned to deal with the gendered history of human rights violations if they combine individual case narratives with a systemic focus. It contains various elements of its operational mandate and analyzes the history of the human rights violations it has investigated, the enabling conditions of abuse, and recommendations for reparations, justice, and reform. Thus, the way in which gender

¹¹⁷ Nesiah, Vasuki et al. (2006), pp.6,13

¹¹⁸ See Mensa-Bonsu (2006), p.20

and especially women's concerns enter this narrative can be critical to how their multiple roles are recorded in national history and how their losses are redressed, and gains consolidated in the aftermath.¹¹⁹ The NRC report, while making broad recommendations for institutional reform as well as individual and collective reparations for victims, had little to say on gender let alone women's rights beyond mere representation, devotion of a section on sexual abuse, and in some places, the incorporation of sex disaggregated data, with a section on sexual abuse, identification of gender categories of petitioners and the crossing tabulation of violations by sex.¹²⁰ This is in spite of the fact that female petitioners formed the relative bulk of petitioners to the commission and comprised 42.9% of victims of sexual violence.¹²¹ In addition to representing women's suffering during the war, the SLTRC in its chapter on women also captured women's multiple roles as combatants, peacemakers and collaborators. Making these gendered connections from peacetime through post-conflict periods enabled the Commission contribute to justice and impact women's lives in the aftermath.¹²² This also enabled the commission to make important recommendations including the repeal of laws that prohibit women's control of land - aimed at improving women's access to economic and political resources and hence consolidating women's post-war agency. Many of the legal reforms as regards women's rights in the country today have all emanated from such recommendations.¹²³

From the discussion above, it would seem that at the onset each country had different forms of social organisation and intervention, yet the common element as noted above is the gender inequity that existed within these societies and their manifestation in decision-making processes leading up to the establishment of the transitional mechanisms. While the Ghanaian process emerged almost a decade after

¹¹⁹ Nesiiah, et al. (2006), p. 32

¹²⁰ Apusigah (forthcoming 2009), p.17

¹²¹ NRC Report (2004), vol.1, ch.6, p.164

¹²² Muddell (2007), p.91

¹²³ In particular the passage of the 'Gender Justice Laws' in 2007 including the Domestic Violence Act No.20; the Devolution of Estate Act No.21 and the Registration of Customary Marriage and Divorce Act No. 22.

the return to democracy, the Sierra Leonean process came in the wake of conflict as part of the peace process. The very social and infrastructural fabric of Sierra Leone was destroyed.¹²⁴ In Ghana, years of dictatorship and human rights abuses had caused deep seated social divisions along ethnic and mainly political lines, thus undermining efforts at sustainable development and national unity.¹²⁵ These distinctive circumstances impacted the conceptualisation and hence establishment of the respective truth commissions in different ways. As a result, in Ghana, patriarchal interests and other political and developmental ambitions defined, overtook and shaped the national aspiration for social justice while the nature of the conflict in Sierra Leone, meant that greater measures were taken to include and address sexual violence. The processes in general might have been similar in both countries and enabled witnesses share their experiences, forgive and even move towards a semblance of reconciliation, but to what extent has the reconciliation processes in Ghana and Sierra Leone delivered justice for women particularly in helping transform the essentially negative gendered social binds in the aftermath?

The SLTRC Act, like the NRC Act, did not mention women explicitly but instead charged the commission to pay attention to sexual abuse; but given that women form the majority of such victims, the commission interpreted this mandate widely to also capture “their complete gendered experiences at a political, legal, health and social welfare level”¹²⁶. Notably, the SLTRC is one of the very few commissions that has tried to link the extraordinary violence of killings, extensive rape and mass murder that occur during war with the ordinary normalised practices and prejudices that discriminate against women in peacetime and post-war settings.¹²⁷ Thus, in seeking to uncover why women were targeted in particularly brutal ways, the SLTRC also explored how

¹²⁴ Meintjes (2009), p.98

¹²⁵ Bofo-Arthur (2005), p.105

¹²⁶ TRC Report (2005), vol.3b, ch.3, p.87

¹²⁷ Muddell (2007), p.89

women's socioeconomic position during peacetime exposes them to such violations.¹²⁸ In the Ghanaian case, the absence of an explicit mandate to investigate gender issues and gender-motivated abuses meant that the commission did not isolate but rather subsumed gender-related abuses under the broader categories of torture or grave violations. Indeed, gender critics of the process argue that gender was not an analytical and organisational tool in operationalising the work of the commission, the efforts at gender mainstreaming through recruitment and training notwithstanding.¹²⁹ Rather, the NRC it would seem, adopted an operational case-by-case methodology of investigating violations inflicted on individual victims. Though this approach may have been essential in ensuring due process for both victim and perpetrator, it cannot and did not capture the structural and systemic character of the violations and for that matter did not effectively track the gendered milieu of the violations in Ghana's history.

Truth commissions have had mixed records of dealing with gender and women's rights issues and have inadequately dealt with gender-based violence due primarily to the lack of political will and therefore resources to do so.¹³⁰ The terms of reference of both the NRC and SLTRC were to hear the stories of victims and perpetrators in order to create an impartial and accurate record of the past by essentially examining the causes and context and extent of abuses committed under authoritarianism and during the conflict respectively, to prevent future recurrences. The accumulation of public testimonies was to among other things to create the platform for national healing and reconciliation and to set the stage for national development. Here, the aim as with most truth commissions, is to promote restorative justice. I argue that this particular approach to justice is unable to secure justice for women, especially given women's history of vulnerability to fundamental injustices. This is not to deny the importance of combating impunity, deterring future abuses, stability and the strengthening of

¹²⁸ Ibid

¹²⁹ Nesiya et al. (2006), pg. 3

¹³⁰ Muddell (2007), p.87

democracy and rule of law which are among the myriad rationales for securing restorative justice.¹³¹ However, such a limited purview also means that these commissions are unable to address themselves to the intersections of gender and structural inequalities that militate against women in these societies. I contend therefore that since inequality and especially gender inequality underlies most conflicts and the reasons for coups, claims to justice and those made by women can only be secured through the redistribution of assets and equality between the sexes in the access to and control over valuable societal resources and opportunities – essentially distributive justice.

What Possible Role for ECOWAS?

ECOWAS is the pan-sub-regional organization that has been heavily involved in conflict management and preventive diplomacy in West Africa. Originally an economic body, the spate of violence and their sub-regional repercussions compelled ECOWAS to expand its mandate to include not only economic reintegration but also political matters as well as peace and security. By this expanded mandate, ECOWAS now seeks to also ensure democracy, good governance, the rule of law and respect for human rights. As noted earlier, while ECOWAS' intervention in Sierra Leone and Liberia was important in restoring peace to the troubled region, an analysis of the transitional justice instruments that have been established in these societies evinces a lack of involvement of the regional organisation.

The need for a sub- regional transitional justice framework which also has gender at its very core cannot be overemphasized. Surprisingly, ECOWAS instruments including the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security (1999), the Supplementary Protocol on Democracy and Good Governance (2001) and the ECOWAS Conflict

¹³¹ Mani (2002), pp.7-8

Prevention Framework (ECPF, 2008) have not taken transitional justice issues on board. A critical analysis of the EPCF shows how gender and women's issues continue to be treated as secondary to the main objective of conflict prevention and peace-building. This dearth in conceptualization, especially in the EPCF which is at the core of ECOWAS' renewed peace and security mandate, is worrying but also its implementation portends important opportunities for ECOWAS to begin to engage and make effective transitional justice mechanisms in West Africa, most importantly in emphasising the conditions and roles of women.

CHAPTER 5

CONCLUSIONS

“Political transitions can provide an extraordinary window of opportunity for enhancing women’s access to justice, reclaiming public space, and building momentum for fundamental reform”¹³²

Summary and Conclusions

Gender and women’s rights advocates have for decades argued that it is important to apply a gender-sensitive lens in the study of all global issues since as a concept gender provides for and enriches understanding of complex global issues even where women’s rights are not necessarily at stake.¹³³ Fundamentally, gender shapes almost all aspects of life in constitutive ways and as such the burgeoning transitional justice field will must of necessity also employ gender tools in implementing their objectives of healing, reconciliation and ultimately to ensure sustainable peace.

The study contends that transitional justice has not delivered justice for women in West Africa. It has tried to employ a gender justice approach to evaluate the impact of transitional justice on women and to contribute to engendering transitional justice in West Africa. A gendered justice approach is characterised by centralising gender in the analysis of the traditional concerns of transitional justice mechanisms and truth commissions in particular. It calls for truth commissions to re-imagine justice in ways which can inform bottom-up contextualised transformation especially in ensuring social

¹³² Nesiah, et al., (2006)

¹³³ DeLaet (2006), p.152

justice in the sense of equal access to opportunities and resources for both men and women in post-authoritarian and post-conflict societies. By drawing on the examples of the truth telling processes of Ghana and Sierra Leone, the study has shown that while mainstreaming gender is important, a particularised gendered justice approach is required by truth commissions in periods of transition to serve as transformative agents in ensuring fundamental change in traditional gender relations and most importantly, to empower women and enhance their agency and freedom in post transitional societies.

As the case studies have shown, the myriad interventions and important inroads made so far by transitional mechanisms in addressing gender concerns notwithstanding, women's claims to justice, especially distributive justice, have often not been met. They show the gaps still existing in addressing gender violence and subsequently in delivering justice for women in these societies even after the respective truth commissions have folded up. Theoretically, due to their non non-adversarial nature, the spaces created by truth commissions are believed to be important to talk about and address gender and sex-based violence, but this has not happened in practice. This results from mandates that prioritise civil and political liberties and an interpretation of these mandates that then treats gender-based violence as non-political and hence less important to the overall goal of peace and development. The limitations of the Ghanaian reconciliation process in this regard are illustrative. In terms of delivering equitable gender justice, the NRC was inadequate on two counts. First it failed to prioritise the sex and gender-based crimes that had taken place in the past and secondly it did not seek and therefore failed to challenge the gender norms that underlie Ghana's socioeconomic and political structures which make women experience violence in particular ways and which made them unable in the main to engage the commission thoroughly. This failure is not only problematic in terms of equal justice for

women in the aftermath but also because it renders the truth produced by the NRC incomplete.¹³⁴

The Sierra Leonean case on the other hand offer us a bird's eye view of what truth commissions as instruments of transitional justice can bring to the table in trying to address gender justice in post-conflict societies. It also provides important lessons for the potential for truth commissions and transitional justice mechanisms generally to address the wider scope of structural violence that underlies repression and conflicts in these societies particularly those that militate against women's agency and freedom. As regards future transitional justice instruments ensuring gender justice, the SLTRC example is important in many ways. First, that there is the need to ensure that truth commission mandates are broadened and made to explicitly address not only sexual violence but also the gendered milieu of the violence.¹³⁵ Second, that people appointed and recruited to truth commissions should have the expertise and dedication to ensure the incorporation of gender in its operations. More important, that truth commissions should adopt a variety of practices and procedures that will improve their ability to promote equal justice for women in the aftermath.

While both cases serves to highlight the potential of truth commissions in securing justice for women, they also serve to highlight the fact that as mere instruments of states, truth commissions can only achieve as much as they are enabled to. Thus, the long term legacy particularly as it relates to its ability to represent and impact women's lives lies in the effective implementation of truth commission recommendations. Here, the political will of governments to implement wholly the recommendations of truth commissions is very essential to the realisation of gender equality and equity in the wake of these processes.¹³⁶

¹³⁴ Ibid p.168

¹³⁵ Hayner (2002), pp.77-79

¹³⁶ Muddell, (2007), p.99

Towards a Regional Approach to Transitional Justice

In spite of the popularity and proliferation of truth commissions across West Africa and in the face of ECOWAS' important conflict prevention and management role in the sub-region, the latter continues to be uninvolved in transitional justice. As evidenced in the analysis above, different processes are yielding different outcomes in various countries and the authenticity of each one in ensuring reconciliation and especially justice for women is still uncertain. Particularly in a sub-region with high levels of interconnectedness among its members, there is the need for policy makers, both nationally and at the sub-regional level, to re-imagine justice transformatively and in gendered terms. This will serve to empower truth commissions and similar transitional mechanisms to systematically address issues of gender and women's needs and therefore to serve as agents of change in helping transform gendered societal relations in the aftermath. This is necessary if women and men are to have equitable access to and control over resources and opportunities in society and if sustainable peace and development is to be assured.

The actual and potential risks to regional peace and security if underlying structural causes of instability and their particularly gendered nature which remains same for all member-states, demands that a regional approach be developed to deal with the myriad issues that transitional justice is concerned with. It is the contention here that the inadequacy of transitional mechanisms to address structural issues, let alone its gendered milieu, and to secure (re)distributive justice provides important entry points for ECOWAS, in moving the sub-region from a community of states to a community of peoples where equitable and gendered social justice is assured. And with Cote d'Ivoire and Guinea thinking about transitional justice, the demand for such an output from the regional body can only increase.

Transitional justice has become an integral part of transitional discourse and policy-making in the sub-region and can offer an excellent platform for addressing

gender, conflict and security in post conflict and post authoritarian societies. ECOWAS' norm setting role in the sub-region places it at an advantageous position not only to influence transitional justice implementation with member states but also to ensure the outcomes and legacies of such mechanisms produce important peace dividend for the region. To this end, the sub-regional body can be a harmonizing platform for the future of transitional justice in West Africa.

Against this backdrop, and in order for ECOWAS to formalize its participation in and engagement with transitional justice, the following recommendations are suggested:

- The need for ECOWAS to develop at least guidelines for truth commissions which can then be utilized by other countries hoping to set up similar bodies
- The importance of integrating transitional justice into its conflict management mechanism by adopting an additional protocol on transitional justice
- Most importantly, it is imperative that ECOWAS updates existing instruments, including the ECPF and build into their implementation, a transitional justice perspective that addresses the roots of gender injustice in West African societies.

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