



HUMAN RIGHTS VIOLATIONS AGAINST WOMEN & TRUTH COMMISSIONS.

**Report prepared by Fungisai Maisva,
Research and Advocacy Unit [RAU]**

July 2009

Introduction

Gender-based violence, be it in the home or in the public arena, impacts powerfully on the livelihoods of women. When violence becomes embedded in society as a culture, it makes women vulnerable, especially during periods of political tension. Violence is at its worst during times of war and civil strife, and constitutes a major obstacle to development, peace and security.

Women in Zimbabwe have been victims of political violence since pre-colonial times. There has never been a specific examination of the impact of this violence on women. With the development of the concept of transitional justice over the years, Zimbabwean civil society has strongly advocated victims' rights, demanding redress for past violations¹. The formation of an inclusive government in Zimbabwe through the "Global Political Agreement" (GPA) of September 2008 has resulted in these demands becoming more pronounced as discussions concerning national healing, reconciliation, rehabilitation, and the cessation of politically motivated violence are taking place across political divides in Zimbabwe. These discussions, however, appear not to explicitly address the treatment of women survivors of politically motivated violence. This is an oversight that is not peculiar to Zimbabwe, but is evident in most post conflict approaches to transitional justice. Most transitional processes are not gender sensitive and, more often than not, leave women out without awarding them redress or protective measures to avoid future recurrence of abuses².

Women suffer during times of conflict both as primary and secondary victims. They are primary victims when they themselves are attacked and secondary victims when people they are close to are attacked and they have to witness the abuse and nurse injuries emanating from the violence. Women's domestic roles make them vulnerable - hence their need for protection different from that which men require in times of conflict.

Sexual assault is the most common violation against women during war and times of civil disturbance in which they are primary victims. There is a causal link between sexual violence and armed conflict and there is evidence that suggests that sexual violence is increasingly becoming a phenomenon of armed conflict. There are many casualties in an armed conflict and amongst the wounded are women and children who have been sexually violated, yet their suffering and trauma are rarely recognized or addressed'.³ Rape in conflict or under repressive regimes is not incidental nor is it private. It is routinely used and has a strategic function - which is to achieve specific military or political objectives by inducing

¹ See Themba Lesizwe (2004), *Civil Society and Justice in Zimbabwe*, Proceedings of a symposium held in Johannesburg, 11-13 August 2003, PRETORIA: THEMBA LESIZWE.

² It was specifically included in the recommendations of the 2003 Symposium. See again Themba Lesizwe (2004), *Civil Society and Justice in Zimbabwe*, Proceedings of a symposium held in Johannesburg, 11-13 August 2003, PRETORIA: THEMBA LESIZWE.

fear in the populace. It can also be used as a method of cultural adulteration, violation and control, as was seen in the ethnic conflicts in Rwanda in 1994. Violence also serves as a tool of political repression, where activists, women and men alike, members of the opposition and their family members, are targeted in such attacks. It is used as a form of punishment for women suspected of being sympathetic to the opposition.⁴

The rape of women civilians is used as a tactical weapon to terrorize civilian communities, to achieve "ethnic cleansing," to enforce hostile occupations, to conquer or seek revenge against the enemy and to pay off mercenary soldiers.⁵ The most documented atrocities that were committed against women during armed conflict are those that occurred in Rwanda⁶ and in the former Yugoslavia⁷ in the 1990s. The most notorious previous occurrence of sexual violence on a large scale took place during the Japanese invasion of China, with the so-called "Rape of Nanking", and was reported on a similar scale during the last days of the Nazi Reich.

It is imperative during transition that women's voices are heard, as women's experiences of conflict and hardships are different from men and their experiences should be handled in a gender sensitive manner.

A report by the Research and Advocacy Unit [RAU] in March 2009, entitled "*Putting it Right: Addressing Violations against Zimbabwean Women*"⁸, detailed how issues relating to women should be addressed during a transitional period. This report recommended that the Zimbabwean inclusive government adhere to the GPA, particularly by returning to the rule of law, bringing all perpetrators of political violence to book, ensuring that there is no gender based discrimination and ensuring community integration and national healing.

This report is a follow up to that report and its purpose is to look at how other countries particularly African countries have dealt with violations against women in post-conflict situations. Particular attention

³ N.Dyani. 'Sexual violence, Armed Conflict and International law in Africa (2007) 15 (2) African journal of International and Comparative Law 230.

⁴ This was the case according to the human rights investigations of rape in Haiti and Peru under their former military regimes where rape was used as a tool of political repression. The Human Rights Watch Global Report on Women Human Rights. Human Rights Watch Women's Rights Project, August, 1995, p. 2, 3.

⁵ This is a statement found in a report by Human Rights Watch in its investigations in the former Yugoslavia, Peru, Kashmir and Somalia. See The Human Rights Watch Global Report on Women Human Rights. Human Rights Watch Women's Rights Project, August, 1995, p.1, 2.

⁶ Women were gang raped, pregnant women had their stomachs ripped open and had the fetuses removed amongst a host of other atrocities leading to the United Nations Security Council to establish a tribunal by its resolution 955 of November in 1994. It was established for the Prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States between 1 January and 31 December 1994. *Prosecutor v Akayesu Case No. ICTR-96-4-T*.

⁷ This was first time rape was acknowledged as an international crime. The ICTY was established for the Prosecution of Persons responsible for Genocide and other serious Violations of international Humanitarian Law committed in the territory of the Former Yugoslavia since 1991. Security Council Resolution. 827 (25 May 1993)

⁸ http://www.kubatana.net/html/archive/demgg/090319rau.asp?sector=WOMEN&year=0&range_start=1

will be paid to the processes in South Africa, Kenya and Sierra Leone in terms of the modalities of attempting to address women victims' rights to reparations and redress. The recommendations from these countries' truth and reconciliation commissions are detailed here. The question that arises is whether Zimbabwe should set up a commission to address violations and the period that should be covered. The most important aspect should be that the victims themselves must be consulted, after being appraised of the meaning of transitional justice through information dissemination.

South Africa

The South African Truth and Reconciliation Commission (TRC) was set up in 1996 and was tasked to investigate and report on the horrific acts that were committed during the apartheid era. This involved establishing in as complete a picture as possible, the nature and extent of the gross human rights violations committed during the period from March 1960 to December 1993.⁹ Women appeared before the TRC to testify at the hearings, but they spoke about men and said very little about the violations that they themselves suffered during the apartheid years. This created the impression that violence in apartheid South Africa was perpetrated against men with women sitting on the side as secondary victims¹⁰. Yet women did resist apartheid and were active in both traditional "masculine" and "feminised" forms of resistance.¹¹

Many scholars have criticized the way the TRC handled gender based violations. Goldblatt¹² argues that the TRC's rights framework was constrained by a restricted definition of human rights violations. This meant that much of the suffering of black people generally, and women in particular under apartheid, were not examined. The result was that most women were left out of the TRC process as a whole. This occurred in two ways: firstly, because women spoke about their husbands, fathers, and sons, they were perceived as fulfilling a "secondary role". A statistical breakdown that was conducted at the proceedings and at the hearings revealed that 58% of the people that testified before the commission were women yet only 13% of the violations that formed the subject of the hearings had been committed against women. In other words both men and women that appeared before the commission did so in order to report about violations against men.¹³ This exclusion of women from participating in the TRC as primary agents is linked with a restricted discourse of rights in society which in turn affects the way that women see themselves and the way the TRC responded to them.

⁹ Special hearing for women, TRC, 15 August 1996, page 1. www.truth.wvl.wits.ac.za/doc_page.php?did=1244&li=cat.

¹⁰ Goldblatt, B. Violence, gender and Human rights: An investigation of South Africa's TRC, circa 1997, Beth Goldblatt and Sheila Collection, page 1-2. www.truth.wvl.wits.ac.za/doc.

¹¹ Supra, p.7.

¹² Together with Dr Sheila Meintjes conducted some research for submission to the TRC in South Africa in May 1996 entitled "Gender and the Truth Commission".

¹³ Ross, F. "Existing in Secret Places: Women's Testimony in the First five Weeks of Public Hearings of the Truth and Reconciliation Commission", 1996, p.4-5.

Secondly, very few women spoke about themselves as primary victims especially in relation to sexual violence committed during the political violence of the past, although such violations did occur. Women were afraid and ashamed to speak of these violations openly.¹⁴ This is due to society's perception that private violations are excluded from the rights arena, and in particular, sexual violence against women. These women's silence of their personal brutal treatment should not be taken to suggest that they were not physically abused. Many testimonies both implied and stated that rape, torture and beatings were committed against women. *'As one young person testified that girls could not run as fast as boys, so when the police shot teargas and rubber bullets at protesting students, it was the girls who were the worst affected. Another person testified pointing to scars on her body from bird shot and hinted of rape by the police.'*¹⁵

The elision of personal violations against women prompted women's organisations and activists to lobby for a new, appropriate and facilitatory process that would enable women to come forward and tell their personal stories before the commission. A proposal¹⁶ was thus made to the TRC that special hearings dedicated to women's testimony should be arranged in different parts of South Africa. This proposal was accepted by the TRC and a full meeting held in Johannesburg, resolved that "women needed to be encouraged to speak out" about the violations that they had suffered.¹⁷ The Commission noted and highlighted that the presence of male commissioners on TRC hearing panels might be an inhibiting factor for women in their testimonies, and suggested that the composition of the panel be negotiated with the witnesses.

The following recommendations emerged [which were accepted by the Commission pursuant to a workshop around these issues]:

- *'Women will need a special hearing. Each region should hold at least one hearing dedicated to women;*
- *The TRC should be sensitive to the cultural norms in specific communities relating to gender issues;*
- *Women need to be encouraged to speak out; there is a need to break the silence. There is a lot of evidence of abuse of women in a political context, but this is in the private domain;*

¹⁴ Goldblatt, B. Violence, gender and Human rights: An investigation of South Africa's TRC, circa 1997, Beth Goldblatt and Sheila Collection, page 2. www.truth.wvl.wits.ac.za/doc.

¹⁵ Ross, F. "Existing in Secret Places: Women's Testimony in the First five Weeks of Public Hearings of the Truth and Reconciliation Commission", 1996, p.5.

¹⁶ In response to the submission by Beth Goldblatt and Dr Sheila Meintjies called the "TRC and Gender", the commission tasked Yasmin Sooka and Glenda Wildschut to advise the commission on how to respond to the submissions. Issued by the Truth and Reconciliation Commission, 'Special Hearing for Women' 15 August 1996, Beth Goldblatt and Sheila Meintjies Collection, p.1

¹⁷ Issued by the Truth and Reconciliation Commission, 'Special Hearing for Women' 15 August 1996, Beth Goldblatt and Sheila Meintjies Collection, p.1

- *The TRC needs to act as a facilitator to empower women to tell their stories. Some useful suggestions are:*

Some women can tell stories on behalf of others;

Groups of women can come together and tell their stories as a collective (hearings can be held in camera)

- *The presence of men on the panels may paralyze some women, therefore the composition of the panel should be negotiated with the testifiers;*
- *Commissioners should receive training on gender-related issues;*
- *Preparatory workshops, especially for rural women, should be held especially about how to deal with the media;*
- *Church women's groups should be engaged to assist women to tell their stories;*
- *Women as perpetrators also need attention;*
- *Reparations policy should not be gender blind.¹⁸*

Following these recommendations, the Commission agreed that women's hearings be held and the first of these hearings was convened shortly before National Women's Day on the 9th of August 1996 in Cape Town. Further hearings were held in Durban and Johannesburg. However, the hearing in Eastern Cape failed to take off. These hearings gave women an opportunity to speak out about themselves and their experiences which they would otherwise not have done had they not been given this opportunity. There was considerable media attention and this opened the door for public awareness about the gendered nature of apartheid violence.¹⁹

Sierra Leone

After almost a decade of civil conflict in Sierra Leone, peace finally came with the signing of the Lome agreement. The Commission in Sierra Leone was mandated under Article XXIX of the Lome Peace Agreement²⁰ to establish a Special Fund for War Victims for the rehabilitation of war victims. Section 7(6) of the TRC Act²¹ called upon the commission to make recommendations for the Special War Fund for Victims, and to restore the dignity of the victims. The Act did not make any specific reference to women, but the commission interpreted the provision to mean that special attention was needed for women and girls in light of the sexual violence that had been perpetrated against them.²² One of the terms of the agreement was for the establishment of a Truth and Reconciliation Commission to investigate and report

¹⁸ Issued by the Truth and Reconciliation Commission, 'Special hearing for women', TRC, 15 August 1996, page 2-3, http://truth.www.wits.ac.za/doc_page.php?did=1244&li=cat.

¹⁹ Goldblatt, B. Violence, Gender and Human rights. An investigation of South Africa's TRC, circa 1997, Beth Goldblatt and Sheila Collection, p 10.

²⁰ Of 7 July 1999.

²¹ Of 22 February 2000.

²² Sierra Leone Truth and Reconciliation Commission Report, Vol 2, Women and the Conflict, Chapter 3, para.10-12.

on the suffering that the people of Sierra Leone had endured during the civil war. A provision for the Commission was made by the Sierra Leone Parliament in early 2000 and a Truth and Reconciliation Act of 2000 was enacted.²³ The mandate of the Commission was to create an impartial historical record of violations and abuses of human rights and international humanitarian law as a result of the armed conflict. Principles and concepts that guided the work of the Commission such as truth and truth telling, 'just war', and who constituted a 'victim' and 'perpetrator', were defined.²⁴

There were many factors that contributed to the civil war, but the Commission came to the conclusion that years of bad governance, endemic corruption, the denial of basic human rights, the continued neglect of the wishes and needs of the majority by successive regimes and the deplorable conditions in which that many people were living made the conflict inevitable. Various themes were identified by the Commission for research and investigation, and the experience of women in the armed conflict was one of the themes focused upon.²⁵ Women and girls during the Sierra Leone armed conflict were targets and were subjected to numerous violations. The violations that they suffered included abductions and different forms of exploitation at the hands of their abductors, including rape, sexual abuse, sexual slavery, trafficking, enslavement, mutilations, forced pregnancies, amputations, torture, forced labor and detention, and a host of other cruel and inhumane acts.²⁶ A total of 250,000 women and girls were reported by Human Rights Watch to have been sexually assaulted during the civil war.²⁷ Domestic violence was rife during the conflict and was noted by the commission to be still present after the conflict. Women and girls in Sierra Leone continue to be victims of sexual violence and this is attributed to the inadequacy of the national laws of Sierra Leone to deal with the prosecutions of crimes of sexual violence, such as rape, sexual harassment and other forms of sexual abuse.²⁸

Reparations

The Commission proposed a reparations programme that would largely focus on rehabilitation of the victims through the distribution of service packages and symbolic measures to acknowledge the past and the harm done to the victims so as to give the victims the opportunity to move on. The Sierra Leone Commission adopted its reparations programme as a means of redress for victims of human rights abuses because legal recourse through civil courts and prosecutions would not have been feasible given the countrywide destruction of juridical infrastructure as a result of the civil war.²⁹

²³ Sierra Leone Truth and Reconciliation Commission Report Vol 1, Introduction to the TRC report, p.1. <http://trcsierraleone.org>.

²⁴ Supra, p.3.

²⁵ Sierra Leone Truth and Reconciliation Commission Report Vol 1, Introduction to the TRC report, p.3-4. <http://trcsierraleone.org>.

²⁶ Supra, p.6, and see Sierra Leone Truth and Reconciliation Commission, The executive summary. para. 323-325.

²⁷ Human Rights Watch report on Sierra Leone, 2003.

²⁸ See Executive Summary. Para. 328, 329.

²⁹ Sierra Leone Truth and Reconciliation Commission Report, Vol 2, Reparations, Chapter 4, p.4. <http://trcsierraleone.org>.

In determining the beneficiaries of the programme, the Commission prioritised victims who were particularly vulnerable, specifically focusing on the human rights violations suffered and the harm that they continued to live with.³⁰ The Sierra Leone Commission did not limit beneficiaries of the reparations programme to only those that cooperated with it, like the South African Truth Commission. Instead the Commission went to the extent that, in order for the victim to be eligible for the programme, the victim need not have been Sierra Leonean to qualify for the programme, since citizens and non-citizens of Sierra Leone suffered during the conflict. Amputees, war wounded, women who suffered sexual abuse, children and war widows, were all acknowledged as victims and they fell into the special category of victims who were in need of urgent care and assistance to address their current needs.³¹ One element that was highlighted by the victims and acknowledged by the Commission, was that government participation had to be part and parcel of the reparations programme for the programme to have a reparative effect on victims. This responsibility was stated by the Commission as one which could not be ceded or delegated to others such as the international community.³²

Women and girls who had been subjected to 'rape, sexual slavery, mutilation of genitals or breasts and forced marriage, were considered to be victims of sexual violence. Men and boys subjected to sexual violence were also considered to be eligible beneficiaries of the programme.' There was a "reduction in earning capacity" test that had been used as a measure for the benefit of other victims. This was not applied to victims of sexual violence since many of the victims in this category were considered to suffer as a result of tremendous stigma within their communities rather than from loss of earnings and many victims continue to find it difficult to fend for themselves irrespective of the injury they had sustained as a result of the violations suffered.³³

Specific Recommendations by the Commission on Sexual violence.

The Commission through consultation with the victims, women groups and organisations working on women's issues, came up with a number of policy and methodological considerations in dealing with women victims of sexual violence during the investigation stage.

Women, particularly those that suffered sexual violence, were to make their statements to women statement-takers, who were trained to deal with sexual violence matters. Women were to be given the option to decide for themselves whether their statements would be made confidential according to the provisions of the act.

³⁰ Supra, p.2.

³¹ The commission further recommended this group as beneficiaries of the specific measures of the reparations, due to the fact that most of these victims were vulnerable and had suffered multiple human rights violations. Sierra Leone Truth and Reconciliation Commission Report, Vol. 2, Reparations, Chapter 4 p.9. <http://trcsierraleone.org>

³² Sierra Leone Truth and Reconciliation Commission Report, Vol. 2, Reparations, Chapter 4, p.6, 12. <http://trcsierraleone.org>.

³³ Sierra Leone Truth and Reconciliation Commission Report, Vol .2, Reparations, Chapter 4, p.13-14. <http://trcsierraleone.org>.

The statement takers were trained on how to deal with matters of rape, sexual violence, how to help women deal with the trauma, explain to women who victims of sexual violence were; and ask the women if they were willing to appear before the TRC. The Commission did indicate that the women could chose/decide to testify in a closed hearing if they preferred.

It was then decided by the Commission that special hearings for women and girls would be held, and they were held in closed sessions which meant that members of the public were not allowed in the hearing venue.³⁴

Physical health care for victims of sexual violence:

Victims of sexual violence and the provision of free physical health care.

- *The commission acknowledged the following: 'Victims of sexual violence suffer from various medical conditions. These conditions include prolapsed uterus, scarring, sexually transmitted diseases, amenorrhoea, vaginal destruction, foot drop, difficulty conceiving or carrying a child to full term, as well as experiencing complications during birth.' The Commission recommended free primary, secondary and tertiary health care for adults and children victims of sexual violence, on a needs basis, depending on the degree of injury. Child victims of sexual violence were recommended to have access to free health care until the age of 18, except if the injury sustained required care past the age of 18.*
- *Child victims of sexual violence who were under 18 and the wives of eligible male victims of sexual violence would also be eligible for the provision of free physical health care as long as the direct beneficiary of the programme continued to benefit from the provision of free health care. The beneficiary has to be assessed by a government doctor to determine eligibility.*
- *The Commission also recommended that the health care be made available at primary health units, district hospitals and tertiary health care units.*

Victims of Sexual violence and the Provision of Free Fistula surgery

- *The commission stated that the provision of free health care included surgeries such as vesico vaginal fistula (or VVF, a rupture between the bladder and the vagina) and recto vaginal fistula (RVF, a rupture between the rectum and the vagina) to victims who suffered from such conditions.*
- *The government was commissioned to assist the efforts being made by other organizations and bodies in equipping hospitals in Sierra Leone to perform those surgeries, and to offer incentives to surgeons and other trained professionals in order to retain them in the country.*

³⁴ Sierra Leone Truth and Reconciliation Commission Report, Vol. 3B, Women and the Conflict, para. 17-23.
<http://trcsierraleone.org>

Victims of sexual violence and the Provision of HIV/AIDS and Sexually Transmitted Infections (STI) Testing and Treatment.

- *The Commission considered other measures that the government had put in place regarding HIV/AIDS and STI testing and treatments.*
- *In light of the above initiatives it was recommended that for the long term, in order to increase the number of medical facilities that provide HIV/AIDS testing, a provision for free testing at primary health units across the country was required.*
- *Trained counselors in all facilities that provided HIV/AIDS testing were needed. Those who wished to be tested for HIV/AIDS needed to receive counseling before, during and after the testing. The government was recommended to assist organizations and bodies that were currently providing training for HIV/AIDS counsellors.*
- *Free medical treatment for victims of sexual violence who tested positive for the HIV/AIDS virus or any other STI was essential. This included in the free treatment, medication for those in need; in particular drugs to treat sexually transmitted viruses and anti retro viral medication. This service was recommended to be made available also to family members of the victim.*
- *The Commission, recognizing the limited facilities that provided medical care for victims of sexual violence infected with sexually transmitted diseases, recommended the government of Sierra Leone assist medical health centers that provided care for those affected by a sexually transmitted disease; train national physicians in treating HIV/AIDS and other sexually transmitted diseases; and offer them incentives to remain in the country.⁶⁵*

Mental health care (Counseling and Psycho-social support)

The commission recommended the government assist programmes providing trauma counselling services specifically for women. A provision for free counselling and psycho-social support for all victims as beneficiaries of the programme was also recommended. A mental health care facility in the long term needed to be established in each of the districts, staffed with additional trained counselors and eventually a psychiatrist per district.

Pension for individual beneficiaries

Adult victims of sexual violence³⁶ were recommended by the commission to receive a monthly pension in recognition of the fact that most of them were disabled to a point where they could not sustain themselves and their families.

³⁵ Sierra Leone Truth and Reconciliation Commission Report, Vol. 2, Reparations, p.17-18. <http://trcsierraleone.org>.

³⁶ Together with adult amputees and other war wounded who experienced 50% or more reduction in earning capacity as a result of violations committed against them. Sierra Leone Truth and Reconciliation Commission Report, 2002, Vol. 2, Reparations, p.19. <http://trcsierraleone.org>.

Education

The Commission recommended the government of Sierra Leone prioritize the education of all permanently disabled victims and all victims of sexual violence, adults as well as children.³⁷ The government was also advised to assist organisations and bodies that provided skills training by expanding such efforts to all victims of sexual violence. This was in light of the fact that large numbers of women had experienced sexual violence during the conflict and providing skills and pensions would help equip these women to fend for their families. Symbolic reparations in the form of memorials, commemorations ceremonies in the communities, the identification of mass graves and reburials were included as part of the reparations programme.³⁸

The Special Court for Sierra Leone

The Special Court for Sierra Leone was established after members of the Revolutionary United Front [RUF] violated their obligations under the Lome agreement.³⁹ The President of Sierra Leone made a request to the United Nations Security Council for the establishment of the court to prosecute persons responsible for serious violations of international humanitarian law in the territory of Sierra Leone.⁴⁰ The jurisdiction of the Court is found in Article 6(1) of the Statute for the Special Court, 16 January 2002 it states the court's territorial jurisdiction, while Article 1 stipulates its personal jurisdiction. The court has jurisdiction over crimes against humanity and certain specified violations of the law of Sierra Leone. This latter category encompasses specific crimes of sexual abuse of girls and destruction of property which are normally classified as serious violations under international humanitarian law.⁴¹ The Special Court was established alongside the Commission and the two were to complement each other as their mandates were different but both essential in bringing about national healing and justice to the people of Sierra Leone.⁴²

³⁷ Sierra Leone Truth and Reconciliation Commission Report, 2002, Vol. 2, Reparations, p.21. <http://trcsierraleone.org>.

³⁸ Jamesina, King. Gender and Reparations in Sierra Leone, International Center for Transitional Justice and International Development Research Center, P.2, 3.

³⁹ The RUF took hostage 500 UN peacekeepers and violence broke out in May 2000, this prompted the amnesty that had been granted to perpetrators of atrocities committed in Sierra Leone to be revoked and hence the plea by the President to set up a Special Court. Sierra Leone Truth and Reconciliation Commission Report, 2002, Vol. 3b, chapter 6: The TRC and the Special Court of Sierra Leone, para 5, 13.

⁴⁰ Since 30 November 1996, Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone, Resolution 1315(2000) of 14 August 2000, Article 1.

⁴¹ Sierra Leone Truth and Reconciliation Commission Report, 2002, Vol. 3b, chapter 6: The TRC and the Special Court of Sierra Leone, para 36-39.

⁴² This is one of the principles that was highlighted at the Experts meeting on the relationship between the Commission and the Special Court, in New York on the 20-21 December 2001, Sierra Leone Truth and Reconciliation Commission Report, 2002, Vol 3b, chapter 6: The TRC and the Special Court of Sierra Leone, para 43-44.

The first judgment of the Court was delivered on the 20th of June 2007 and three suspects, Alex Tamba Brima, Santigie Borbor Kanu and Brima Kamara of the Armed Force Revolutionary Council (AFRC) were each convicted of eleven of fourteen counts. They were convicted of the following acts; terrorism, collective punishments, extermination, murder (a crime against humanity), murder (a war crime), rape (outrages upon human dignity), physical violence (a war crime) and conscripting or enlisting children under the age of 15 into armed forces or groups or using them to actively participate in hostilities, enslavement and pillage.⁴³ Three other members of the Revolutionary United Front (RUF),⁴⁴ Issa Sesay, Morris Callon and Augustine Gbao were convicted on the 25th of February 2009 of murder, enlistment of child soldiers, amputation, sexual slavery and forced marriage of women. This was the first time ever a court had convicted anyone on charges of forced marriage of women.

Current Status on the Implementation

Despite the government of Sierra Leone's commitment to a full and timely implementation of the recommendations of the reparations programme, subject to the state's availability of resources and assistance of the international community, the government has not implemented them. There is apparently lack of political will and lack of financial resources on the part of the Sierra Leone government. The international and donor community is said to be lukewarm towards the reparations programme. To ensure that women benefit from this programme, various organisations, agencies and commissions on human rights in Sierra Leone monitoring the implementation of the programme need to engage the international community and see that the implementing body for the programme is comprised of women and gender sensitive personnel. Another challenge facing the implementation of this reparations programme is that the number of beneficiaries to the programme is unknown. Much care is needed in the registration of beneficiaries in order to avoid missing out potential victims who are entitled to the benefits and to avoid the abuse of the programme. Though the programme has not kicked off, there are positive lessons to be learnt from the Sierra Leone reparations programme. The proposed reparations scheme took into account both gender issues and the specific needs of women. The harm based approach that was adopted by the Commission, focusing on the vulnerability of women and children and prioritising marginalised groups as victims for the reparations, was one positive aspect of transitional processes in Sierra Leone, from which Zimbabwe can derive examples.⁴⁵

Kenya

⁴³ On 19 July 2007 Alex Tamba Brima and Santigie Borbor Kanu were sentenced to 50 years in jail while Brima Kamara was sentenced to 45 years of imprisonment. http://en.wikipedia.org/wiki/Special_Court_for_Sierra_leone#judgments. (accessed 22 March 2009), see also www.sc-sl.org/cases.

⁴⁴ Was a rebel army that fought a failed ten year war in Sierra Leone from 1991 until 2002? See also <http://allafrica.com/peaceafrica/resources/00011750.html>

⁴⁵ King, J Gender and Reparations in Sierra Leone, International Center for Transitional Justice, International Development Research Centre, p.4-5.

Violence erupted in Kenya shortly after the announcement of the presidential election results in December 2007. It spread across the country and many human rights violations were perpetrated against members of the public during this period. The 2007-2008 post election violence was more widespread than in the past and was felt in two provinces in both the rural and urban parts of the country. Previously violence was concentrated in a number of the smaller districts mainly in the Rift Valley, Western and Coast Provinces. The violence left an estimated 350 000 Kenyans internally displaced and over 1000 dead.⁴⁶ Security state agents failed to contain the violence and some were implicated in the perpetration of gross human rights violations against the populace.⁴⁷

A commission of enquiry was set up to investigate the post election violence on the 23rd of May 2008⁴⁸ The commission recruited staff both locally and internationally and specialized investigators to investigate sexual violence. It was the first commission in Kenya that embarked on an investigation into sexual violence as previous enquiries conducted earlier in Kenya had not addressed this issue.⁴⁹

It concluded in its report that the violence that was witnessed after the Kenya general election in 2007-2008 transcended opportunistic citizen-to-citizen assaults and constituted systematic attacks on Kenyans based on ethnicity and political affiliation. What started off as a reaction to allegations of rigging later manifested itself as a well organised and coordinated attack on members affiliated to the Presidency or Party of National Unity [PNU].⁵⁰

The investigators and the full time psychologist counsellor recruited by the Commission to deal with sexual violence were all female.⁵¹ The Commission found that by allowing different interest groups to participate in the proceedings, this greatly improved the quality of the proceedings. Legal standing was therefore extended to women's groups and which were allowed to represent the interests of women in light of the post election violence.⁵² The hearings were held in public, but special provisions were made for witnesses that preferred to testify in private due to fear, with the hope of instilling confidence in the witnesses.⁵³

Sexual violence was also regrettably a prominent feature of the 2007 general election violence in Kenya. The Commission heard anecdotally and from the media that acts of sexual violence were perpetrated

⁴⁶ Muthoni Wanyeki L. Lessons from Kenya: Women and the Post-Election Violence, *Feminist Africa*, p.95.

⁴⁷ Waki Report, on the Kenyan General election violence 2007-2008. Executive Summary, p.VII, p.22, 29

⁴⁸ An announced published in the Kenyan Gazette Notice No.4473 vol.cx-no4.

⁴⁹ The Kiliku and Akiumi commissions held in previously in Kenya on election violence. Waki Report, Part III, Extent and impact of the violence, p.242

⁵⁰ Waki Report on the Kenyan General election Violence 2007-2008, Executive Summary p.VIII. p.23

⁵¹ One was from New Zealand, the other two were Kenyans. See also P.240 .

⁵² Federation of Women Lawyers [FIDA] and Centre for the advancement of women and children were such groups that were given legal standing for this purpose. See Waki report on the Kenyan general election violence 2007-2008, p.7,240-241.

⁵³ Paragraph 2(f) of the Commission's terms and reference made special provision for private hearings were necessary. *Supra*, p.8. see also p. 242.

against women and men⁵⁴ during this period. These acts included, rape, gang rape, sexual mutilations, loss of body parts and various forms of genital violence against innocent victims. There were reports that family members were forced to watch other members of their families being raped, maimed, killed, and many suffered multiple violations including sexual violence.⁵⁵ As a result of these informal reports the Commission set out to investigate the causes and extent of the sexual violence that had allegedly taken place and felt that it would be appropriate to expose these acts so that this would not become endemic in the ordinary lives of the Kenyan people.⁵⁶ With the help of experts, local organizations and international organizations working in the country, evidence was gathered in Nairobi and testimonies compiled countrywide.⁵⁷ Unfortunately, only 31 victims came forward to testify or provide statements before the Commission. This low turnout is attributed to the persistent culture of impunity in Kenya where perpetrators have previously gone unpunished and eventually become powerful political figures causing victims to fear being targeted if they spoke out.⁵⁸

The Commission, from the testimonies of victims and experts at public hearings, heard horrific accounts of how women were raped and the direct consequences of this violation. Some women victims were abandoned by their husbands as a result of the rapes while others were ostracised in their communities. The Commission also heard reports of how many women failed to report matters to the police because of police involvement in the perpetration of rapes. Many of the sexual violence victims were unable to access medical treatment in time and as a result were unable to lower their chances of contracting the HIV/AIDS virus, and are now living with the disease.⁵⁹ There were reports of women in internally displaced people's camps who were subjected to sexual exploitation by members who managed these camps. Desperate women were forced into prostitution in order to get access to basic commodities such as bedding, food, medicines and tents.⁶⁰

Two medical doctors gave testimonies at the hearings and they presented some statistical analysis of the number of patients that passed through their hospitals who were treated for sexual violence. Dr. Thenya⁶¹ testified that from the data collected 524 [80%] suffered from rape and defilement, 65 [10%] from domestic violence and the other 10% suffered from other types of physical and sexual assault. The

⁵⁴ Men had been subjected to sodomy, forced circumcision and even mutilation of their penises. See chapter III of the Waki report, Extent and Impact of the Violence, p.239.

⁵⁵ Waki report on the Kenyan general election violence 2007-2008, Part III, Extent and Impact of Election Violence, p. 237.

⁵⁶ Supra, p.238.

⁵⁷ During the crisis 40 organisations had come together in Kenya to respond to victims of sexual violence, they came together as the Inter-Agency Gender Based Violence Sub cluster co-chaired by the United Nations Fund for Population Services [UNFPA] and the National Commission on Gender and Development. Waki report, p.240.

⁵⁸ Waki Report, p.243.

⁵⁹ Waki report, p.244, 246,245 respectively.

⁶⁰ Waki report, p.260-261. See also, Muthoni Wanyeki, M. Lessons from Kenya : Women and the Post Election Violence, Feminist Africa, p.96. www.feministafrica.org.

⁶¹ CEO of the Nairobi Women's hospital. Of the patients that came to Nairobi women's hospital, 58% were from Nairobi and the rest were from other parts of the country. Waki report, p.248.

majority of patients were women with a small number being males who were treated for sodomy. Half of the total figures were adults and the remaining 207 were children. A consultant psychiatrist⁶² testified that 184 cases of sexual violence were attended to by the Mental Health services and the Gender Based Violence Recovery Centre from December 2007 to June 2008 and 80% of the cases were a result of the post election violence. However, the Commissioner of Police⁶³ told the Commission that they neither had information nor statistics relating to the crime of rape.⁶⁴

Recommendations by the Commission

- *Although hospitals had centres dealing with sexual violence, the victims of sexual violence were not aware of their existence and hence there was a need for citizens to be informed of them in awareness campaigns, and there was also an urgent need to establish these Gender Recovery Violence Centers as departments in every government hospital.*
- *Gender unit/sections needed to be established in all police stations where victims of sexual violence could be treated with sensitivity, and have their cases recorded and investigated properly, with female officers handling the cases.*
- *The training of police officers to handle cases of sexual violence (it was noted by the Commission) would only be effective if accountability mechanisms are put in place within the security forces. This would include police and security personnel being punished severely for perpetrating crimes of sexual violence and the dismissal of all who mishandled victims of sexual violence.*
- *Non governmental organizations and medical institutions were commended to partner in sharing information to ensure a swift and improved response to sexual violence.*
- *Because of the lack of pressure on law enforcement agencies to do the right thing when dealing with sexual violence matters, the Commission recommended the establishment of a Rapporteur under Kenyan law for sexual violence. The Rapporteur's duties would involve, on an ongoing basis, highlighting sexual violence as a serious crime which needed an equally serious response by the law enforcement authorities. Staff would be required to assist in discharge of the functions of the office. The Rapporteur would be required and empowered to work with other government institutions that worked on sexual violence such as courts, the police and the Nation Commission on Gender.⁶⁵*

The Commission recommended the establishment of the Special Tribunal for Kenya to prosecute those who bore the greatest responsibility for the heinous atrocities that were committed during the post election violence period, in particular, crimes against humanity. A tribunal was said to be the best option

⁶² Dr Margaret Makanyengo, Head of the department of the Mental Health Services and the Gender Based Violence Recovery Centre [GBVRC]. Waki report, p.248-249.

⁶³ Major General Hassan Ali, See p.249. This caused major concern to the commission since members of the police had been identified as perpetrators of sexual violence. See p.253-257 of victim testimonies regarding security agents as perpetrators.

⁶⁴ See also the findings by the commission on sexual violence, p.348-350.

⁶⁵ Waki report, p.268-270.

in order to ensure an objective and apolitical justice process. The Commission went on further to state that if the government failed to set up the tribunal and implement prosecutions for those responsible then the International Criminal Court would have to handle the matters of the individuals listed.

It remains to be seen whether this suggestion by the Commission will be implemented, as the report has sparked controversy within government as ministers who are part of the unity government are mentioned as being responsible for organizing and perpetrating the violence. The stability of the government of national unity and the well being of Kenyan citizens hangs in the balance.⁶⁶

Conclusion

The commissions for Sierra Leone and Kenya recommended commendable strategies for dealing with violations against women, especially sexual violence. These strategies were developed from the statutes of the ad hoc International Criminal Tribunals for Rwanda and Yugoslavia⁶⁷ that were set up after the conflicts in those countries in the 1990s. In a case heard at ICTR, rape and sexual violence were described as

*'... a physical invasion of a sexual nature, committed on a person under circumstances which are coercive'... and 'violence...which included rape...not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact', respectively.*⁶⁸

Women particularly in Africa have been used as objects and because women have traditionally been told to keep quiet about their suffering, violence against them remains rampant. Although international instruments prohibit sexual violence during conflict, these have had limited effect in addressing women's plight. To date sexual violence continues to be used systematically and mercilessly against women as a political tool. This is partly due to the failure to prevent and prosecute routine and widespread discrimination and violence against women during peace as well as time of conflict.

*"Rape in conflict is a weapon to terrorise and degrade a particular community often to achieve a specific political end. The rape of one person is translated into an assault upon the community as a whole through the emphasis placed in every culture on women's sexual 'virtue'. The shame of rape humiliates the family and all those associated with the survivor."*⁶⁹

⁶⁶ Musila, G. Institute for Security Studies, 27 October 2008, Kenyan Commission recommends and International Crimes Tribunal. www.iss.co.za/static/templates

⁶⁷ Statute of the International Criminal for the Former Yugoslavia, S.C. U.N. Doc. S/RES/837 (1993), Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. Doc. S/RES/955 (1994)

⁶⁸ *Prosecutor v Akayesu Case No. ICTR-96-4-T.*

⁶⁹ "Women War Peace' Human Rights Watch World Report 2004.

The nature of gender violence in conflict and non-conflict situations needs to be addressed so that laws and government policies effectively prohibit violence against women. Educational programmes to address causes and consequences are urgently required. The Zimbabwean government should take into consideration what has been done elsewhere and address politically motivated violence against women, especially sexual violence in a way that is acceptable to Zimbabweans. If cases of politically motivated violence are left unresolved the ramifications will be felt not only by the affected women but also by society in general. The recognition of women must be evident at every stage of the transitional process so that women can rebuild their lives with confidence that their human rights abuses have been addressed with the necessary respect and appropriate protection.