

LLM/MA IN: INTERNATIONAL HUMAN RIGHTS LAW

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DISSERTATION TITLE

The participation of women in truth commission's and the promotion of gendered guarantees of non-recurrence

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UNIVERSITY OF ESSEX

SCHOOL OF LAW

LLM in International Human Rights Law

2018-2019

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DISSERTATION

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Registration Number (optional): 1802793

Number of Words: 18655

Date Submitted: September 11th, 2019.

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Introduction

Over the years, truth commissions have widened their mandates moving beyond the clarification of cases and the abuses committed to the identification of the structural causes of the violence and the recommendation of reforms to avoid the recurrence of the conflict or the repression. The connection between the truth objective and the non-recurrence goal has open a window of opportunity to address the root causes of violence and promote change in the transitional society. For women, whose experiences with violence normally precede the period of repression or conflict, the identification and targeting of the structural causes of the violations and the promotion of guarantees of non-recurrence becomes crucial to stopping the continuation of gendered violence and discrimination.

Experience shows, however, that in most cases women's experiences have been excluded or misrepresented in the narratives and outcomes built by truth commissions. As a result, the recommendations made by truth commissions have not address the root causes of the gendered violence experienced by women.

What we argue in this research is that the absence of recommendations directed towards the gendered experiences of women in conflict is in direct relation to the lack of participation of women in truth commissions. In other words, without women's meaningful participation in truth commissions these bodies will undoubtedly produce guarantees of non-recurrence that are gender-blind.

Accordingly, the start point of our research was to identify how has the participation of women in Truth Commissions impacted the recommendations made by these bodies in the form of guarantees of non-recurrence to address the root causes of violations they suffered? Our purpose in answering this main question was to y identify and propose some minimum guidelines for the participation of women in truth commissions with a special focus on producing gendered guarantees of non-recurrence. In order to accomplish this objective, we divided the research in three main sections. In Chapter I we unpacked the conceptual foundations of our research by explaining the role and basis of truth commissions as a transitional mechanism; analyzing the way in which truth commissions have engage with women's experiences in the past and; exploring the notion of participation within truth commissions. In Chapter II we reviewed and analyzed how women's participation occurred in five past truth commissions, identifying experiences with high, moderate and low levels of participation. Finally, in Chapter III we

elaborated a proposal of minimum guidelines for the participation of women, focusing on key stakeholders, stages and modalities and enabling factors for the meaningful participation.

Before heading into the analysis, some methodological starting points are in order. First, gender is a variable that determines the way men, women, and non-conforming persons experience human rights abuses in the context of repressive regimes or conflicts. Given that our research focuses on women's particular experiences, our use of the concepts 'gender' or 'gendered' point to their experiences only. With this wording we do not suggest that the incorporation of a gender analysis and the production of gendered guarantees of non-recurrence should end at the analysis of the gendered experiences of women. The adoption of a gender perspective in truth commissions should, indeed, signify the use of gender as a variable of analysis for the experiences of all persons subjected to the violence resulting of the repression or conflict.

Secondly, a big part of our analysis came from the study of experiences of women's participation in past truth commissions. The criterion for the selection of countries to study was two-fold. On one hand, we looked for truth commissions known for having address women's experiences in conflict and for attempting to incorporate a gender perspective in their work. On the other hand, we aimed at revising "old" truth commissions in order to review, when possible, whether the recommended guarantees of non-recurrence had been implemented after the TRCs ended their work. In addition to those criteria, we tried to incorporate countries from different geographical regions of the world. In the end, and given the word constrain of the present research, we limited our study to five case studies: South Africa, Guatemala, Peru, Sierra Leone and Timor-Leste.

By looking into the theories of victims' participation in transitional justice, on one hand, and the theories on gender and truth commissions, on the other, we identified parameters that should be considered to ensure the meaningful participation of women in the truth process and to ideally produce gendered guarantees of non-recurrence.

Chapter I. Truth and Reconciliation Commissions, Women and Participation

This research revolves around three main concepts, namely Truth and Reconciliation Commissions (hereinafter “TRCs” or “truth commissions”), women and participation. Particularly, we are interested in how their intersection can promote guarantees of non-recurrence that address the root causes of the violations experienced by women in conflict. In the present chapter we will unpack these key concepts first, by reviewing the general role and goals of TRCs in transitional processes; second, by introducing the context and ways in which TRCs have engage with women and their gendered experiences in conflict and; finally, by defining the content of the term participation and the purpose behind it, within TRCs.

I. The role of Truth and Reconciliation Commissions in transitional societies

Truth and Reconciliation Commissions are one of the main mechanisms utilized by societies in transition to reckon with their history of human rights abuses. In technical terms, they are “officially sanctioned, temporary, non-judicial investigative bodies [...] granted a relatively short period for statement-taking, investigations, research and public hearings, before completing their work with a final public report”¹.

As stated by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (hereinafter “the Special Rapporteur”), from a normative point of view, TRCs aim to realise the right to truth². This right is understood as the right of societies to “know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future”³.

Beyond this purpose, TRCs have been created with a myriad of aims ranging from the inquiry on the patterns of violence and abuse in conflict, to the recommendation of forms of reparations for victims of

¹Office of the United Nations High Commissioner for Human Rights, *Rule of-Law Tools for Post-Conflict States: Truth commissions* (United Nations 2006), 1.

²Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/24/42* (United Nations 2013), 18.

³Inter-American Commission on Human Rights, *Annual Report, 1985-86, AS Doc. No. OEA/Ser.L/V/II.68, Doc. 8 rev. 1* (OAS 1986), 193.

such violations. Hayner identifies as some of the general goals of the commissions “to discover, clarify, and formally acknowledge past abuses; to address the needs of victims; to “counter impunity” and advance individual accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past”⁴.

Through the conduction of hearings and the collation of testimonies, truth commissions interact with victims and witnesses in search for facts and patterns about the violations that occurred. In so doing, they open a space for victims to be heard and provide a window for their suffering to be acknowledged. This undertaking, as explained by the Special Rapporteur, “is important, because it constitutes a form of recognizing the significance and value of persons as individuals, as victims and as holders of rights”⁵. For historically disenfranchised and marginalized communities, such as are women in many contexts of repression and conflict, the participation in the sharing spaces open by TRCs is highly important for the recognition of their status as holders of equal rights and equal value in society.

Along with the individual interactions, through the conduction of interviews and thematic hearings, truth commissions can investigate the enabling conditions and reasons behind the abuses and violations that took place during the conflict and repression time⁶. The information gathered, in turn, can provide for the identification of the actions required to promote the prevention of future violations. Indeed, a key function of current TRCs, and precisely the focus of our research, is the elaboration of recommendations of guarantees of non-recurrence. According to the Special Rapporteur “the objective [of truth commissions] has shifted from clarification of cases to comprehensive analysis of whole contexts and underlying causes, motivating, in turn, the call for comprehensive reform proposals”⁷. The Peruvian Truth and Reconciliation Commission, for example, found that indigenous peoples and the afro-Peruvian communities suffered especially the action of subversive groups and the abandonment of the

⁴Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011), 20.

⁵ Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46* (United Nations, 2012), 30.

⁶ Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice 2006), 1. See also, *Office of the United Nations High Commissioner for Human Rights, Rule of-Law Tools for Post-Conflict States: Truth commissions*, (United Nations, 2006), 1.

⁷ Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/24/42* (United Nations 2013), 41.

State. Thus, it recommended the creation of a state institution in charge of indigenous and ethnic matters⁸.

These backward- and forward-looking powers of truth commissions position it as a key mechanism for the construction of the basis for the new social and political setting in the transition context. In this respect, Ni Aoilan and Turner have correctly point out that if truth processes narratives “facilitate the realignment of political power and reshape the previous history of a society [...] the kind of narrative that emerges from these processes is critically important to the way women will experience change in such societies”⁹. Moreover, the recommended guarantees of non-recurrence, if directed towards the suffering of women in conflict, can be a critical window of opportunity to restructure gender hierarchies in society and promote substantive gender equality.

These vital opportunities, as we will see in the following section, have been missed due to a lack of underrepresentation and meaningful participation of women and their experiences within the processes developed by truth commissions.

II. Truth and Reconciliation Commission´s and the exclusion of women and their experiences

Writing about the relationship between gender and transitional justice, Catherine O’Rourke properly points out that “the important entry-point for gender analysis in transitional justice is the visible exclusion of women and experiences disproportionately associated with women”¹⁰. To comprehend this staggering exclusion, one has to begin with the fact that women’s experiences in conflict locate within a continuum of violence and discrimination that although exacerbated during these periods, precedes and surpasses them¹¹. Rape existed before and continues after conflicts. The phenomenon of the feminization of poverty is too in place before and after conflicts. The same can be said about physical violence, and many other forms of discrimination. In Guatemala, for example, gender inequality is so

⁸ Comisión de la Verdad y Reconciliación, *Informe Final*, (CVR, 2013), Tomo IX, Cuarta Parte: Recomendaciones de la CVR, hacia un compromiso nacional por la reconciliación, Capítulo II: Recomendaciones, A.5 y A.11

⁹ Fionnuala Ni Aoilan and Catherine Turner, 'Gender, Truth and Transition' *UCLA Women's Law Journal* 16(2) (2007), 235.

¹⁰ Catherine O'Rourke, "Gender and Transitional Justice" in Cheryl Lawther, Luke Moffet and Dovi Jacobs, *Research Handbook on Transitional Justice* (Edward Elgar Publishing 2017), 118.

¹¹ Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, CEDAW/C/GC/30, (1 November 2013), 29-35. See also, Wendy Lambourne and Viviana Rodríguez Carreón, "Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women", *Hum Rights Rev* 17:71–93 (2016), 83.

pervasive that in 1954, a few years before the conflict, most women were still not allowed to vote¹². And in 2017, several years after its conclusion, mechanisms like the United Nations Committee on the Elimination of Discrimination against Women (hereinafter “CEDAW Committee”) report that “deeply entrenched racism and discrimination against women [...] contribute to the perpetuation of violence” against them¹³. These pre-existing inequalities “contribute to the root causes of women’s vulnerability in times of conflict”¹⁴ and undoubtedly influence the ways women engage with TRCs.

The prevalence of violence against women has resulted in its normalization, prompting the division of what feminist scholars define as “ordinary” versus “extraordinary” violence within transitional processes¹⁵. Truth commissions have concentrated in the “extraordinary” forms violence resulting from the conflict or repression context. Consequently, the relevant harms for the truth process have been defined only in terms of serious violations of human rights such as killings, torture and enforced disappearances¹⁶, which have been reported to affect men in higher numbers than women¹⁷. On the other hand, as explained by Ni Aolian and Turner, forms of violence that women do not see compartmentalized into “conflict” and “non-conflict” related, but rather as part of a continuum, such as socioeconomic exclusions, are left untouched¹⁸. Hence, the characterisation of O’Rourke of the relationship between TRCs and women as a process of exclusion of women’s gendered experiences in conflict.

The exclusionist narrative created in many TRCs does not imply, however, that women have not participated in the processes developed by the commissions. On the contrary, it has been found that women have taken part in truth commissions through testimonies in large numbers, but “much of the testimony has tended to be in relation to violations experienced by male family members”¹⁹. Owing to

¹² Jorge Mario García Laguardia and Edmundo Vásquez Martínez, *Constitución y orden democrático* (Universidad de San Carlos, 1984), 93.

¹³ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Guatemala**, CEDAW/C/GTM/CO/8-9 (UN, 2017).

¹⁴ Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice, 2006), 43.

¹⁵ See for example Fionnuala Ni Aolain and Catherine Turner, ‘Gender, Truth and Transition’ *UCLA Women’s Law Journal* 16(2) (2007).

¹⁶ Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice, 2006), 43.

¹⁷ Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46 (United Nations, 2012), 58. Priscilla, Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011), 85.

¹⁸ Fionnuala Ni Aolain and Catherine Turner, ‘Gender, Truth and Transition’ *UCLA Women’s Law Journal* 16(2) (2007), 238

¹⁹ Nahla Valji, *A Window of Opportunity: Making Transitional Justice Work for Women*, (UN Women 2012), 11.

the TRCs focus on male-prevailing type of harms, their own suffering is seen as a side-story within the grand narrative.

A second tendency within TRCs has been to include sexual violence within the harms on focus, therefore, seeking the testimony of women whom experienced this form of violence. Although addressing sexual violence against women in conflict is extremely important, it has often come at the expense of other equally important experiences in conflict. The description of a victim's testimony made by Fiona Ross in her book about women and the TRC in South Africa is particularly telling in this regard. According to Ross, Ms Khutwane referred to the sexual violation as one harmful incident among many others, "but the questions posed [...] return her on several occasions to the event of sexual harm [...] it seemed this violation was presumed to be the traumatic event and the primary violation"²⁰. As exemplified by Ross, the participation of women in testimonies has often been constrained by a series of pre-determined priorities of the TRCs and not by the needs and perspectives of women.

Furthermore, in the process of analysing sexual violence only as part of the extraordinary forms of violence committed during conflict (a weapon of war) the connection with the roots causes of sexual violence in the everyday life of many women has been lost by truth commissions. This is highly problematic considering the need to promote measures that address all sexual violence against women, and not only that that is a reflection of exacerbated levels of violence during conflict, in the post-conflict scenario.

From an operational point of view, there has also been a lack of participation of women in the formal structures of truth commissions. A report conducted by UN Women, for example, points out that only four out of twenty-two commissions have had over 40% of women commissioners in their structures. Furthermore, none of those twenty-two commissions has had 50% or more women commissioners²¹. A similar situation can be seen in other mechanisms used in post-conflict processes, such as international criminal tribunals, were only the International Criminal Court has seen a 50% of women judges, while the remaining courts have had 35% or less²².

²⁰ Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (Pluto Press, 2003), 89.

²¹ Nahla Valji, *A Window of Opportunity: Making Transitional Justice Work for Women*, (UN Women 2012), 10.

²² Ibid.

The limited representation and inclusion of women's experiences comes at the cost of missing the necessary information to promote guarantees of non-recurrence that address the root causes of the violations experienced by them during the conflict or repression times. In the words of Ni Aolain and Turner, "overlooking or excluding myriad harms, such as those experienced by women in repressive and conflicted societies, risks allowing such harms to continue unacknowledged and unaddressed"²³.

As we will explore further in the second chapter, however, there is a wave of TRCs that have open the door for a more meaningful participation of women. This participatory approach has been pivotal in allowing the patterns of violations unknown or invisibilized to emerged. Furthermore, it has contributed to the promotion of gendered guarantees of non-recurrence.

III. Women's meaningful participation: conceptual background and content

Up to this moment, we have identified two key issues that premise our research. First, truth commissions are a vital space for the creation of new societal agreements and the definition of guarantees of non-recurrence to prevent the repetition of human rights violations. Second, the experiences of women in the repressive or conflict setting have been excluded from the narratives constructed by TRCs and consequently, the recommendations enacted by TRCs have not addressed the root causes of the violations against women. What we suggest in this research is that participation that is built from a gender perspective is a strategic instrument to bridging the gap between this scenario (truth commissions) and this problem (the exclusion of women's experiences and needs). In the present section, we will unpack the term participation by exploring some of its normative and theoretical foundations within transitional mechanisms; and define the content of participation for the purposes of our analysis.

The participation of women in transitional contexts can be supported from two broad perspectives. On the one hand, it can be seen from the standpoint of the rights of victims and the victimized society to take part in the transitional process. On the other hand, the participation of women in truth commissions can be argued from the lens of gender equality. In practice, these two perspectives can, and do, overlap.

²³ Fionnuala Ni Aolain and Catherine Turner, 'Gender, Truth and Transition' Transition', UCLA Women's Law Journal 16(2) (2007), 279.

When it comes to the first perspective, the Special Rapporteur has repeatedly stated that “[t]hat persons directly affected by a State’s decision-making have the right to participate and to be consulted is recognized in several international human rights treaties”²⁴. Indeed, this right is supported by human rights such as the right to take part in the conduct of public affairs²⁵ and the right to equal participation in cultural life²⁶ in addition to the international norms concerning the participation of particular groups such as people with disabilities²⁷, indigenous communities²⁸, and women and girls²⁹. In terms of the reasons behind it, the Special Rapporteur has argued that “participation provides a measure of recognition to victims not only as victims but as rights holders [...] in addition, it opens a space for victims in the public sphere, a space that has often been denied to them”³⁰. Moreover, he has affirmed that participation “can take place at any or all of the design, implementation and monitoring stages of a transitional justice process”³¹.

From the broader perspective of the right of the victimized society to be consulted, the OHCHR has found that “the strongest truth commissions are founded through a process of consultation”³². Therefore, it has called for consultations that “explicitly include victim’s communities and civil society organizations [allowing] for a period of significant input into the fundamental mandate of the commission”³³.

These perspectives shed a light on the content of the term participation. They argue for the *consultation* of both victims and civil society, allowing for *significant input* at any or *all stages* of transitional justice. In this sense, they identify a *who*, victims and civil society, a *when*, potentially all stages of transitional justice and a *what*, consultation that results in significant input. Missing, however, is clarity on precisely what will be the expected outcome of such participation. In other words, what is the level of influence

²⁴ Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, A/HRC/34/62 , (United Nations 2016) 31.

²⁵ Universal Declaration of Human Rights (art. 21); International Covenant on Civil and Political Rights (art. 25); International Convention on the Rights of All Migrant Workers and Members of Their Families (arts. 41 and 4 (2)); African Charter on Human and Peoples’ Rights (art.13 (1)); American Convention on Human Rights (art. 23 (1) (a)); Inter-American Democratic Charter (art. 2); Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3).

²⁶ Universal Declaration of Human Rights (art. 27); International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e) (vi)).

²⁷ Convention on the Rights of Persons with Disabilities (arts. 3 (c), 4 (3), 9, 29 and 30).

²⁸ Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization

²⁹ Convention on the Elimination of All Forms of Discrimination against Women (arts. 7, 8, 13 (c) and 14 (2)); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (art. 9).

³⁰ Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, A/HRC/34/62 , (United Nations 2016), 81.

³¹ Ibid, 28.

³² Office of the United Nations High Commissioner for Human Rights, *Rule of law tools for post conflict states: national consultations on transitional justice*, (United Nations 2009), 7.

³³ Ibid.

that victims and civil society will have on the processes developed by truth commissions, beyond the provision of significant input.

For authors such as Sprenkels, “victim participation relates directly to the space that TJ processes allow for victims to make their mark in this broader political process”³⁴. In this sense, it must be understood as “to the modalities in which victims, both individually and collectively, play a role in the shaping of TJ processes, either directly or through legitimate representation”³⁵. Similarly, Saffon and Tacha have identified three goals of the participation of victims and civil society, namely the the expression of points of view, the influence to the transitional process and transformation of power relations³⁶. Building up from these two perspectives, participation would have a formal goal, shaping or influencing the processes and, perhaps, a substantive goal, allowing for the expression of points of view and the promotion of transformation of power relations. Arguably, an important contribution of these authors is to move beyond a conceptualization of participation in which victims and civil society are consulted, into a space of active roles within the TRCs. This is particularly important in order to avoid the tokenisation of the participation of women in truth commissions.

Concerning the arguments that support women’s participation from a gender perspective, the United Nations Security Council (hereinafter “UNSC”) adopted the resolution 1325 on women and peace and security in October 2000, calling for the “increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict”³⁷. Since then, numerous appeals for participation have been included in following resolutions building up what is known as the Women, Peace and Security agenda (hereinafter “WPS agenda”). Resolution 2106, for example, stresses “women’s participation as essential to any prevention and protection response”³⁸ and emphasises “the important role that can be played by women, civil society, including women’s organizations, and formal and informal community leaders in exerting influence over parties to armed conflict with respect to addressing sexual

³⁴ Ralph Sprenkels, *‘Restricted Access’ Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms, A Comparative Perspective*, (Impunity Watch 2017), 13.

³⁵ Ibid. 14

³⁶ María Paula Saffon Sanín, Viviana Tacha Gutiérrez, *La participación en las medidas de justicia transicional. Un estudio comparado*, (Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2018), 17.

³⁷ UN Security Council, *Security Council resolution 1325 (2000) [on women and peace and security]*, S/RES/1325 (United Nations Security Council, 2000), 7.

³⁸ UN Security Council, *Security Council resolution 2106 (2013) [on sexual violence in armed conflict]*, S/RES/2106 (United Nations Security Council 2013), 1.

violence”³⁹. Likewise, Resolution 2467, adopted just in April 2019, recognizes “that women’s leadership and participation will increase the likelihood that transitional justice outcomes will constitute effective redress as defined by victims and will respond to important contextual factors”⁴⁰. In this sense, the WPS agenda calls for the general participation of women and women’s organizations, at all levels of conflict and post-conflict programming.

In a similar tone, the CEDAW Committee has recommended States parties to “[e]nsure that women are involved in the design, operation and monitoring of transitional justice mechanisms at all levels so as to guarantee that their experience of the conflict is included, their particular needs and priorities are met and all violations suffered are addressed”⁴¹. By the same token, the Special Rapporteur has pointed out that “[b]eyond guaranteeing a voice to men, women, and children, processes should be designed to comply with the basic requirements of equality and fairness and lead to equitably differentiated outcomes”⁴². These definitions are particularly important as they move beyond the inclusion or consultation of women to their involvement in all levels of transitional justice programming. Moreover, they are built upon requirements of equality, precisely the goal that should be supported and promoted by TRCs.

In analysing what is meant by participation within the WPS agenda, O’Rourke has point out to two types of representation: substantive and descriptive representation. Descriptive representation refers to “the physical presence of women in decision-making fora”⁴³, while substantive representation denotes “the representation of ideas and interests that disproportionately concern women in decision-making”⁴⁴. According to her, the WPS resolutions have promoted forms of participation closer to substantive representation, advocating for a presumed set of “women’s interests” (sexual violence, for example) which have been essentialised as the interests of women within the peace and security fora⁴⁵. This

³⁹ Ibid 11. See also, UN Security Council, *Security Council resolution 2122 [on women and peace and security]*, S/RES/2122 (United Nations Security Council 2013), 7.

⁴⁰ UN Security Council, *Security Council resolution 2467*, S/RES/2467 (United Nations Security Council 2019), d.

⁴¹ Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, CEDAW/C/GC/30, (1 November 2013), 81.e

⁴² Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46 (United Nations, 2012), 59.

⁴³ Catherine O’Rourke, “Walk[ing] the Halls of Power”? Understanding Women’s Participation in International Peace and Security’ 15 *Melbourne Journal of International Law* 128-54 (2014), 136.

⁴⁴ Ibid.

⁴⁵ Ibid, 144-147.

tendency has been reflected in truth commissions, which have prioritized one set of harms over others, despite all of them been equally significant in the experiences endured by women.

The Expert Group Meeting hosted by UN Women on women's meaningful participation in negotiating peace and the implementation of peace agreements correctly affirmed that "[i]ncreasing the numbers of women (numeric or descriptive participation) and deepening the quality and impact of their roles (representation of interests) remain vital twin-tracks"⁴⁶. Indeed, both the physical inclusion of women and the broadening of their powers as decision makers are vital to promote truth commissions reflective of the pursue for substantive gender equality and the implementation of guarantees of non-recurrence that address the root causes of the harms suffered by women on conflict.

For Lambourne and Rodríguez the valuable participation is one that fosters societal transformation. For them, women should participate in the conduct, design and follow up of transitional justice mechanisms, becoming agents in the decision-making process of the "the 'what' as well as the 'how', and 'how well'" of transitional justice⁴⁷. This perspective is in line with calls of participation in which women are given real influencing powers on the definitions and outcomes of TRCs.

Building up on these perspectives, for the purposes of this research, we understand women's participation as the set of processes through which women are given spaces and powers to express the ways in which they experienced harms during the conflict or repression. It is a process that seeks to guarantee the consideration of women's diverse experiences, needs and desires in the analysis and outcomes of the truth building process. It's a form of participation that moves beyond consultation into spaces where women are given influencing powers. Moreover, is a form of participation where women are recognized as active stakeholders, and not just 'beneficiaries' or a predetermine process.

As we will propose in more detail in the following chapters, this form of participation will require not only the participation of women victims of the conflictive or repressive in testimonies, but also the inclusion of women as members of the formal structures of the TRCs. Moreover, it will require the inclusion of women's organizations and gender experts as key stakeholders in the process of clarifying the history

⁴⁶ UN Women, *Women's meaningful participation in negotiating peace and the implementation of peace agreements: Report of the Expert Group Meeting* (UN Women, 2018) ,1.

⁴⁷ Wendy Lambourne and Vивиanna Rodríguez Carreon, "Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women", *Hum Rights Rev* 17:71–93 (2016), 88.

of abuses and proposing guarantees of non-recurrence that address the root causes of the violations experienced by women.

In sum, truth commissions have become a key space for the definition of new social rules in transitional societies and the prevention of further violations. For women, the inclusion of their diverse experiences in conflict and the identification of the root causes of the gendered violence they endured is essential for promoting a future where equality is the norm. Their participation in the truth process is the best way to ensure this opportunity is taken. This participation should be reflected in spaces and powers to share their diverse experiences, needs and desires in a non-tokenistic manner. As we will see in the following chapter, when meaningful participation has occurred in all stages of the process, truth commissions have produced guarantees of non-recurrence more cognisant of the way gender impacted the experiences of women during the repression or in the conflict period.

Chapter II. Women's participation in truth commissions and gendered guarantees of non-recurrence: past experiences

The objective of the present chapter is to understand if and under what conditions women's participation can enhance the development of guarantees of non-recurrence that address the root causes of the violations suffered by women during conflictive or repressive times. By studying past experiences of TRCs we intended to identify which stakeholders have participated in TRCs, in what moments and formats have they done so and what enabling factors contributed to it being more effective. Additionally, we sought to understand what were the challenges for the participation of women and to identify the guarantees of non-recurrence that were proposed in the end by the commissions.

Before heading into the revision of each country, a clarification must be made in terms of the guarantees of non-recurrence of interest for our analysis. Many general guarantees of non-recurrence, such as the promotion of a culture of respect for human rights can have a beneficial impact in the prevention of violations committed against women. Even more so, as women face intersectional risks in conflict due to their identities as members of indigenous, ethnic or religious communities (among others), guarantees of non-recurrence directed towards the prevention of violations against such groups will also benefit women. Nonetheless, since many of the root causes of violence against women in conflict and repressive regimes are directly linked with their status in society given their gender, we are interested in the proposed measures that were tailored and directed specifically to their unique gendered experiences.

For the purposes of our analysis, we classified the TRCs experiences into three categories, high levels of women's participation, moderate levels of women's participation, and low levels of women's participation. In categorizing the countries, we analysed the different stages of the TRC process in which the participation took place and the levels of input women had in the functioning of its procedures and outcomes.

I. *High levels of women's participation: the case of Sierra Leone*

The Sierra Leone Truth and Reconciliation Commission, created by the Lomé Peace Agreement, was inaugurated in 2002. The mandate of the TRC require it to investigate, among others, the causes, nature and extent of the violations and abuses, and to prevent a repetition of the violations and abuses suffered⁴⁸. From the outset, the TRC set to develop its work from a participatory approach. According to its final report, *Witness to Truth*, the commission organised its public interactions according to several principles, “[t]he most important of which was the need for public ownership and participation in the Commission’s activities and processes”⁴⁹. As we will see, the willingness to actively promote the participation of victims and civil society permeated the entire process and its outcomes, rendering the commission a transitional mechanism with high levels of women participation.

Throughout the truth process, the TRC turned to international and national women’s organizations for assistance to fill the informational and technical gap concerning women’s gendered experiences in conflict and the application of a gender analysis to its findings⁵⁰. This signified that women were included from the design and set-up of the commission. Working in alliance with institutions like UNIFEM (now UN Women), the commission conducted workshops where a space was open for “women’s groups to discuss the TRC and identify ways to assist it”⁵¹. In this sense, input of organizations familiarised with the local context for women before and during conflict was included in the work of the TRC.

Women also engaged with the commission as members of its official structures: three out of the seven commissioners were women. It must be noted, however, that this inclusion came after strong lobby from women’s groups. The Women’s Task Force, a coalition of NGOs working on women’s rights, noted that “despite their contribution in the peace process, the selection panel defined by the Truth and Reconciliation Commission Act did not include women”⁵². Hence, they lobbied the government urging

⁴⁸ Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the TRC* (2004), Volume 1. Chapter 1: The mandate, 6.

⁴⁹ Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the TRC* (2004), Volume 1. Chapter 5: Methodology and Process, 13.

⁵⁰ Peggy Maisel, 'Have Truth and Reconciliation Commissions Helped Remediate Human Rights Violations Against Women? An Analysis of the Past and Formula for the Future' (2011) 20(1) *Cardozo Journal of International and Comparative Law* (JICL) 143, 167.

⁵¹ World Bank, *Gender, Justice and Truth Commissions* (Washington DC 2006), 20.

⁵² Jamesina King, “Gender and Reparations in Sierra Leone: The wounds of war remain open”, in *What happened to the women?: gender and reparations for human rights violations*, Ruth Rubio-Marín (ed.) (Social Science Research Council 2006), 256.

for gender parity in the structures of the TRC⁵³. In addition to securing the inclusion of the three women commissioners, the pressure made by women's groups also led to the inclusion of two female statement takers in each of the districts where the TRC worked⁵⁴.

In terms of the provision of statements, the final balance showed that "women testified in large numbers and in great detail about their experiences"⁵⁵. This success can partly be attributed to several steps taken by the TRC to ensure the participation of women in testimonies. For example, the commission provided "food, transport, water and medical assistance where necessary"⁵⁶. In impoverished communities, as is the case of many communities affected by conflict, the cost of moving to the locations where the hearings are taking place and all other costs related to the time taken out to participate can become a huge barrier for the access of victims. In this sense, the measures adopted by the commission were highly important to ensuring an open access to the truth process.

In addition to the actions taken to secure the physical presence of women in the hearings, the TRC also adopted policies to ensure that women could provide their statements in safe and enabling spaces. Workshops were imparted for statement-takers regarding how to encourage people to make statements and techniques for interviewing women and girls⁵⁷. Moreover, only female commissioners and staff members attended hearings for victims of sexual violence. These technical decisions can contribute immensely to ensuring that the participation of women through testimonies provides a broad and detailed picture of the violence they personally endured, hence avoiding a form of participation that is only tokenistic or reflective of a narrative constrained by the pre-existing gender patterns or social expectations.

In addition to the participation of women victims of the conflict, the TRC also promoted the participation of other stakeholders in thematic hearings. The commission reports having received submissions "from

⁵³ Lyn Graybill, 'Partial Justice and Reconciliation for Sierra Leone Women but Reparations and Reform Remain Elusive' (2011) 32(32) *Research in Social Movements, Conflicts and Change* 101-120, 106

⁵⁴ *Ibid.* See also: Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the TRC (2004)*, Volume 1. Chapter 5: Methodology and Process, 115.

⁵⁵ Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the TRC (2004)*, Volume 1. Chapter 5: Methodology and Process, 102.

⁵⁶ Nahla Valji, *Gender and Transitional Justice Programming: A Review of Peru, Sierra Leone and Rwanda* (UN Women 2012), 12.

⁵⁷ Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the TRC (2004)*, Volume 1. Chapter 5: Methodology and Process, 115-117.

Government ministers, political parties, UN agencies, local and international NGOs, civil society institutions and other experts”⁵⁸. In this sense, the commission strived for the inclusion of women victims who narrated their own stories, as well as, experts who provided context on women’s status in Sierra Leone and the root causes of the discrimination and violence directed at them.

One of the spaces open by the commission was precisely a workshop organized with UNIFEM, with the participation of women and civil society organizations, which had as purpose “to garner input from them on the recommendations that the Commission should make on women”⁵⁹. Thus, a link between women’s voices and experiences and the proposition of guarantees of non-recurrence was actively promoted by the commission using participatory mechanisms. As documented by King, the submissions and statements received by the TRC, were oriented, among others, to the strengthening, improvement and advancement of the cause and status of women in Sierra Leone more generally⁶⁰. This was a very important step for moving beyond the specific violations suffered by women during the conflict, to the broader root causes that enable them to occur in the first place.

In the end, the TRC recognised the link between the “ordinary” and “extraordinary” violence endured by women during the conflict, thus recommending dozens of guarantees of non-recurrence aimed at addressing the structural causes of violence and discrimination against women in Sierra Leone. It recommended, for example, the enactment of legislation to address domestic violence and the promotion of 50/50 gender parity in representative politics. Likewise, it recommended the repealing of laws linking the prosecution of sexual offences to the moral character of a complainant, as well as the abolition of any customary laws and practices which discriminate against women in the realm of inheritance, land ownership, marriage, divorce and the administration of estates⁶¹.

More than ten years after the TRC final report, some progress has been made in the implementation of the guarantees, particularly in the field of legislative reform. The Domestic Violence Act, the Devolution of Estates Act and the Registration of Customary Marriage and Diver Act were approved on 2007⁶².

⁵⁸ Ibid, 198.

⁵⁹ Ibid, 102.

⁶⁰ Jamesina King, “Gender and Reparations in Sierra Leone: The wounds of war remain open”, in *What happened to the women?: gender and reparations for human rights violations*, Ruth Rubio-Marín (ed.) (Social Science Research Council 2006), 256.

⁶¹ Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the TRC (2004)*, Volume 2 Chapter 3 Recommendations.

⁶² Sierra Leone Truth and Reconciliation Commission, *Recommendations Matrix*, available at: [http://www.sierraleonetrsc.org/images/recommendations_matrix/matrix/matrix/matrix/matrix/finalmatrix.html](http://www.sierraleonetrsc.org/images/recommendations_matrix/matrix/matrix/matrix/finalmatrix.html) (accessed on 17/08/19).

Although it has been pointed out that more efforts are needed to sensitize the rights holders and enforced these laws in order to ensure their purpose⁶³. Moreover, it must be noted that implementation has come in hand with demands and pressure from women's groups. Particularly the adoption of these three laws came after a march organized by women's groups on International Women's Day⁶⁴.

In sum, women participated throughout the different stages of work of the commission, meaning the design and set-up, the gathering of information and the design of recommendations for the non-repetition of violations. Likewise, they participated in varied capacities. Some as providers of testimonies, others as members of staff, experts on gender issues and advocates for the improvement of the capacity of the TRC to include gendered analysis in its work. Moreover, their participation seems to have moved beyond a tokenistic inclusion to an active and meaningful participation where their opinions and points of view were taken up in the process and outcomes of the TRC. Due to these efforts, the Sierra Leone TRC is an example of how high levels of participation of women can influence the enactment of guarantees of non-recurrence that address the root causes of the violence women endured during conflict.

II. Moderate levels of women's participation: Timor-Leste, South Africa and Peru

Timor-Leste, South African and Peru are three examples of TRCs with moderate levels of women's participation. It must be kept in mind that many of the different experiences of these countries are related to the fact they occurred in different moments in terms of the development of the transitional justice field, as well as, in very different contexts. Notwithstanding their differences, Timor-Leste, South Africa and Peru are examples of commissions that strived to reflect women's experiences in conflict in their final reports and sought to include women in the process to achieve this end. Despite the willingness to reflect a more nuanced version of the facts in terms of gender analysis, the three commissions had some shortcomings from the point of view of the participation of women, hence our characterisation as experiences with moderate levels of women's participation. In some cases, it was an issue of a lack of commitment to include women from the outset, which resulted in a limited

⁶³ Ibid.

⁶⁴ Lyn Graybill, 'Partial Justice and Reconciliation for Sierra Leone Women but Reparations and Reform Remain Elusive', *Research in Social Movements, Conflicts and Change* 32(32) 101-120 (2011), 112.

representation in further stages of the process. In other cases, the problems of participation were related to a lack of expertise to promote and enhance meaningful women's participation.

i. Timor-Leste's Commission for the Reception, Truth and Reconciliation

The Timor-Leste Commission for Reception, Truth and Reconciliation (Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste - CAVR) was in operation from 2002 to 2005. Its mandate included "determining the factors such as the context, causes, antecedents, motives and perspectives which led to the violence"⁶⁵. In its final report, the commission included large numbers of recommendations to prevent the recurrence of violence in Timor-Leste.

In general terms, the CAVR attempted to include high levels of participation of women from the outset of its activities. Women played important roles in the process through which the commission was created, for example, two women sat on the steering committee that consulted with individuals to obtain input into the design of the TRC⁶⁶. The consultations itself revealed that "women survivors of rape supported the idea of a commission with a truth-seeking function"⁶⁷. In this sense, the involvement of women was established as an important policy in the commission that was to be created.

From its mandate, the Commission established guidelines and requirements to "maximise the opportunities of women to contribute as staff members of the organisation and as participants in its programmes"⁶⁸. A requirement was incorporated to assure that a minimum of 30% of national and regional commissioners, as well as a 30% of internal staffing position, were filled by women⁶⁹. According to the final report of the CAVR, "[t]he recruitment of a higher than normal proportion of female programme workers as aimed at ensuring that nationally women had equal access to all aspects of the Commission's work"⁷⁰. Despite the willingness to ensure gender balance in the commission, the

⁶⁵ Timor-Leste Commission for Reception, Truth and Reconciliation, *Chega! The final report of the Timor-Leste Commission for Reception, Truth and Reconciliation*, (CAVR, 2013), Introduction, 33.

⁶⁶ Galuh Wandita, Karen Campbell-Nelson and Manuela Leong Pereira, "Learning to Engender Reparations in Timor-Leste: Reaching out to Female Victims", in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations* (Social Science Research Council 2006), 295.

⁶⁷ Susan Harris Rimmer, *Gender and Transitional Justice: The women of East Timor* (Routledge 2010), 112.

⁶⁸ Timor-Leste Commission for Reception, Truth and Reconciliation, *Chega! The final report of the Timor-Leste Commission for Reception, Truth and Reconciliation*, (CAVR, 2013), Gender and staffing, 166.

⁶⁹ Ibid.

⁷⁰ Ibid. 167.

recruitment targets were not met. The CAVR found that cultural norms, particularly those prevalent in regional and rural Timor-Leste, acted as a barrier for the recruitment process:

The need for staff members to live away from home during the three-month period of field activities [...] posed particular difficulties for women who had family responsibilities. Cultural objections to them spending such an extended time away from their homes added to these difficulties⁷¹.

The described situation serves as an example of the challenges that can rise for women's participation even in cases where political will is present. It highlights the need to pursue context-based enabling conditions that allow women to take part in the process. In this case, for example, paying attention to the cultural context when designing its operations could have allowed the CAVR to decentralize its offices throughout the territory from the start in order to encourage the inclusion of women in the staff.

When it comes to the composition of the commission, only two out of seven national commissioners and ten of the twenty-nine regional commissioners were women. Noticeably, the two women national commissioners were strong advocates for women's rights in Timor-Leste⁷².

Throughout the development of its work, the commission took both statements from victims and from qualified stakeholders who were able to provide valuable input for future recommendations. In the case of the participation of women victims in public hearings, the commission noticed that cultural barriers and the stigmatization of sexual violence in East-Timorese culture prevented women from actively engaging in depositions. Thus, the commission, in cooperation with national women's NGOs, conducted a special research project on women and the conflict to interview more victims⁷³. Moreover, as we mentioned, the commission engaged with other stakeholders who could provide an understanding of women's gendered experiences in the conflict. These included "a former governor of

⁷¹ Ibid. 168.

⁷² Galuh Wandita, Karen Campbell-Nelson and Manuela Leong Pereira, "Learning to Engender Reparations in Timor-Leste: Reaching out to Female Victims", in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations* (Social Science Research Council 2006), 294.

⁷³ Ibid. 295.

Timor-Leste, a health worker with knowledge and experience in Indonesia's coercive birth control program, and representative of three women's groups"⁷⁴.

As it occurred in the Sierra Leone TRC, the approach taken by the CAVR was important in obtaining a full picture of the structural causes of the gendered violence suffered by women during conflict times. This approach shows that, although victims should be the main participants in the truth process, other stakeholders can also provide highly important contributions for the promotion of the non-recurrence of the violence against women.

Despite its shortcomings in promoting gender parity in its structures and overcoming cultural barriers for women's participation, the CAVR encouraged victims to make recommendations in order to gain input for the formulation of reparations and guarantees of non-recurrence. The final report included a long list of guarantees of non-recurrence that address the root causes of violence against women in conflict. It recommended, among others, the creation of programmes to eradicate the illiteracy of women in rural areas, the introduction of legislation on domestic violence, the training of law enforcement officers on how to respond to domestic violence calls, access to information and services on reproductive healthcare, family planning and parenting and the acknowledgement to the contribution of women to the prevention and resolution of conflicts⁷⁵.

In analysing the strengths and weaknesses of the CAVR approach to women's participation, Wandita, Campbell-Nelson and Leong Pereira argue that the overall women's participation in the CAVR was moderate, proving to be stronger in activities that had strict quotas of participation⁷⁶. Certainly, the CAVR experience is as a good experience in terms of women's participation. The explicit goal to have quotas of participation for staffing and the active attempt to interview women when their participation fell short are good practices for the programming of women's participation. Nonetheless, the gender disparity in the commissioner's seats and the staffing numbers and the challenges encountered when

⁷⁴ Ibid.

⁷⁵ Timor-Leste Commission for Reception, Truth and Reconciliation, *Chega! The final report of the Timor-Leste Commission for Reception, Truth and Reconciliation*, (CAVR 2013) Recommendations, 2558-2586.

⁷⁶ Galuh Wandita, Karen Campbell-Nelson and Manuela Leong Pereira, "Learning to Engender Reparations in Timor-Leste: Reaching out to Female Victims", in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations* (Social Science Research Council 2006),296.

seeking the participation of women in testimonies indeed rendered the final experience of the TRC moderate in terms of the final levels of participation. Perhaps, the main relevance of this experience is to highlight that there are underlying factors that could enhance or weaken the ability of women to meaningfully participate in the TRCs, beyond the willingness of the institution itself, which need to be taken into account in the set up.

ii. South Africa's Truth and Reconciliation Commission

The South Africa's Truth and Reconciliation commission functioned from 1995 to 2002, although its final report was presented to the president in 1998. Its mandate included the establishment of a full picture of the human rights violations that were committed during the repression, including as much as possible, the causes, nature and extent of the violations, as well as "the perspectives of the victims"⁷⁷. Likewise, the commission was mandated to provide "recommendations of measures to prevent the future violations of human rights"⁷⁸.

The TRC is one of the first commissions to dedicate a specific section of its analysis to the experiences of women during the apartheid. Notwithstanding these efforts, the meaningful participation of women and the final outcomes of the truth process in terms of developing gendered guarantees of non-recurrence were rather deficient. As reported by Golblatt, women's organizations were not central in the creation of the commission and its mandate, and as a consequence, the drafting of its governing legislation paid no attention to the relationship between gender and the repression period⁷⁹. Resulting from this exclusion, women's NGOs and activists lobbied for the inclusion of a gender-sensitive approach to the TRC. Representatives of several organizations made a submission to the commission with recommendations for the incorporation of a gender perspective⁸⁰, some of which were taken by the TRC, notably the holding of a hearing about women and the apartheid.

⁷⁷ South Africa Truth and Reconciliation Commission, *Final Report*, (South Africa Truth and Reconciliation Commission 1998) Volume 1, 31.

⁷⁸ Ibid.

⁷⁹ Beth Goldblatt, "Evaluating the Gender Content of Reparations: Lessons from South Africa", in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations* (Social Science Research Council 2006), 53.

⁸⁰ World Bank, *Gender, Justice and Truth Commissions* (Washington DC 2006), 12.

The formal structures of the TRC reflected a better picture for the inclusion of women in the truth process. In terms of staffing, 41 per cent of the commissioners and 75 per cent of regional managers were women⁸¹. In addition, “Committee seats were divided equally between men and women”⁸². Authors like Pumla have argued that the inclusion of women positively contributed to the experience of women who participated through testimonies⁸³.

In the development of the TRC process, women provided statements in large numbers. According to the final report, more than half of the deponents were women⁸⁴, however, they followed the pattern of testifying about the violations endured by the men in their lives and not themselves. As explained by Andrews, “[t]hey did not testify in their own right as primary victims but provided testimony to the Committee as mothers, wives, and sisters, focusing largely on the suffering of their male relatives”⁸⁵.

The lobby of women’s organizations for a special hearing was precisely an attempt to overcome this tendency. Although the commission took the special hearing proposal, some authors point out that for women advocates the “three days of hearings for interrogation of the gender-based crimes of apartheid were ultimately insufficient to comprehensively confront the historic legacy and current reality of violence against women”⁸⁶. What is clear is that participation spaces that are an add-on to the process are not the best practice to enable women to actively engage and share their stories. Having women participate in all spaces including normal hearings and thematic hearings, would be a best practice.

The resulting recommendations of the TRC reflect, among others, the deficiency of the meaningful participation of women across the development of the commission’s process, starting with its design. The final report of the TRC contains a general reference to the attention to women’s needs by inviting “fellow South Africans to strive constantly, in the process of transformation, to be sensitive to the needs

⁸¹ Pumla Godobo-Madikizela, *Women's Contributions to South Africa's Truth and Reconciliation Commission* (Women Waging Peace Policy Commission, 2005), 9.

⁸² Ibid.

⁸³ Pumla Godobo-Madikizela, *Women's Contributions to South Africa's Truth and Reconciliation Commission* (Women Waging Peace Policy Commission, 2005), 8.

⁸⁴ South Africa Truth and Reconciliation Commission, *Final Report*, (South Africa Truth and Reconciliation Commission 1998) Volume 1, 169.

⁸⁵ Penelope Andrews, “Justice, Reconciliation, and the Masculinist Way: What Role for Women in Truth and Reconciliation Commissions” 60 N.Y. L. SCH. L. REV. 199, (2015), 218.

⁸⁶ Ibid. 219

of those groups which have been particularly disadvantaged in the past, specifically women and children”⁸⁷. In addition to this broad statement, only one recommendation refers to women in a differentiated manner, “that: media employers intensify programmes of affirmative action and the empowerment of women and black media workers within the media with the objective of [...] a proper gender balance at all levels, managerial and professional”⁸⁸.

There is a clear disconnect between the findings of the TRC about to the experiences of women in the repression period and the resulting recommendations. According to Goldblatt, the link between the culture of violence and the high levels of gender-based violence against women in the post-conflict period was indeed highlighted by women’s organizations and others⁸⁹. In this sense, one can draw a connection between the lack of decision-making and influencing powers of women’s organizations in the commission and the resulting recommendations for guarantees of non-recurrence.

iii. Peru’s Truth and Reconciliation Commission

The Commission for Truth and Reconciliation (Comisión para la Verdad y el Reconciliamiento) was in operation between 2001 and 2003. Its mandate included the analysis of the political, social and cultural conditions that contributed to the violence in Peru and the recommendation of institutional, legal and educative reforms and guarantees for the prevention of future violations⁹⁰. Similarly to the South African TRC, the truth commission in Peru focused some of its work on the situation of women during the conflict. Two chapters of the final report were dedicated to the topics of violence and gender inequality and sexual violence against women. The overall process, however, had moderate levels of women’s participation.

The Commission was established without the input of members of civil society. It was only while interpreting its mandate that the commission undertook a process of both internal dialogue as well as external pressure from women’s rights activists that resulted in the decision to include women’s

⁸⁷ South Africa Truth and Reconciliation Commission, *Final Report*, (South Africa Truth and Reconciliation Commission 1998) , 304.

⁸⁸ Ibid, 98.

⁸⁹ Beth Goldblatt, “Evaluating the Gender Content of Reparations: Lessons from South Africa”, in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations* (Social Science Research Council 2006), 81.

⁹⁰ Comisión de la Verdad y Reconciliación, *Informe Final*, (CVR, 2013).

gendered experiences in conflict as a specific area of work⁹¹. Before this process, civil society organizations were mainly focused on issues of torture and disappearance, thus, the specific violations suffered by women were greatly unknown by the Peruvian society⁹².

The structure of the TRC included only two female commissioners, out of a total of twelve commission members⁹³. In this sense, the participation in the official structures of the TRC also reflected a weak vision of the inclusion and representation of women in the truth process. Against this background, and due to the decision of the commission to address women's experiences as a specific area of work a team of consultants "largely made up of women from academic and feminist organizations"⁹⁴ was hired. Thus, experts on the local context of women's rights had a space to participate in the truth process.

In the development of its work, the TRC gathered testimonies of women in large numbers. According to the final report of the commission, of the total of 18,123 persons who testified before the commission, 54 per cent were women⁹⁵. Notwithstanding this percentage, the commission found a large underrepresentation of women's experiences, particularly in the cases related to sexual violence. This was explained by the three factors. First, the stigmatization and feelings of guilt and shame that accompanies the victims of sexual violence in the Peruvian culture, which makes it difficult for them to narrate their experiences. Second, the fact that the sexual violence occurred in the context of other violations (torture, arbitrary executions, massacres) that were deemed more relevant in the narration of the events. Finally, the fact that sexual violence was, for a long time, seen as a collateral damage of the armed conflict⁹⁶. These findings support the idea that the local social and cultural context are determinants in the participation of women in truth process and as such, should be considered in designing the mechanisms of women's participation.

⁹¹ Nahla Valji, *Gender and Transitional Justice Programming: A Review of Peru, Sierra Leone and Rwanda* (UN Women 2012), 4.

⁹² World Bank, *Gender, Justice and Truth Commissions* (Washington DC 2006), 14.

⁹³ Sofía Macher, "Quechua Women: Agency in the Testimonies of the CVR-Peru Public Hearings", in Rita Schakel and Lucy Fisher (ed.), *Rethinking Transitional Gender Justice: Transformative Approaches in Post-Conflict Settings* (Palgrave Macmillan 2019).

⁹⁴ Julie Guillerot, "Linking Gender and Reparations in Peru: A failed opportunity", in Ruth Rubio-Marín (ed.), *What happened to the women?: gender and reparations for human rights violations* (Social Science Research Council 2006), 166.

⁹⁵ Comisión de la Verdad y Reconciliación, *Informe final*, (CVR 2013) Volume III, Chapter 2, 49.

⁹⁶ Comisión de la Verdad y Reconciliación, *Informe final*, (CVR 2013) Volume VI, La violencia sexual contra las mujeres, 274-275.

According to Mantilla, the truth commission undertook several actions to combat the lack of awareness of the gender dimension of the conflict, including “setting up training sessions on gender and sexual violence for the PRTC’s personnel [...] using a flyers, posters and radio programs to explain that sexual violence is a human rights violation and should be denounced; and creating a support group for women, including representatives of human rights groups, academics and women’s NGOs⁹⁷. These are good examples of measures that can be taken to enable the participation of women through testimonies. They can help women gain awareness of the relevance of their own individual experiences, and not only of those that occurred in relation to men, in contexts where social norms have told otherwise. Therefore, contributing to gain a fuller picture in the narration process. Moreover, in the case of victims of sexual violence, they can contribute to reduce the impacts of the stigmatization surrounding the women who decided to come forward with their experiences.

It is important to highlight that the gender unit also undertook efforts to develop relationships with women’s organizations that could enhance its ability to conduct a gender analysis and promote the representation of women’s gendered experiences in conflict⁹⁸.

In the same line of the South African commission, the final report of the commission developed an extensive list of recommendations, out of which only two refer specifically to women. First, the commission recommends improving the access to basic services for the population in prisons, and request to pay specific attention to women’s access to health services in prison. Secondly, the commission recommends the promotion of a literacy plan for adolescent and adult women in rural areas⁹⁹. In this sense, it could be argued that in cases where women’s participation becomes an addition in later stages of the process rather than a priority from the outset of the commission, there is a tendency for the disconnection between the findings on their experiences and the promotion of gendered guarantees of non-recurrence.

III. Low levels of women’s participation: Guatemala

⁹⁷ Julissa Mantilla Falcón, “The Peruvian case: Gender and transitional justice”, in Lisa Yarwood (ed.) *Women and Transitional Justice, The experience of women as participants* (Routledge 2013),192.

⁹⁸ World Bank, *Gender, Justice and Truth Commissions* (Washington DC 2006),14.

⁹⁹ Comisión de la Verdad y Reconciliación, *Informe final*, (CVR 2013), Recommendations C18 and D7.

Our final case study is the Guatemala's Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico). Created in 1994, the commission was mandated to clarify the violations of human rights and the acts of violence linked to the armed conflict and to formulate specific recommendations aimed at promoting peace and national harmony in Guatemala¹⁰⁰. Its experience, when it comes to the evaluation of women's participation, can be catalogued as very deficient. Authors as Destrooper and Parmentier have even argued that women were "ignored" by the TRC. As a consequence, they point out, "indigenous women increasingly sought to carve out niches for their own voices to be heard on their own terms"¹⁰¹, undertaking activities such as the Forum on Women's Consciousness (Primer Tribunal de Conciencia de las Mujeres), a civil society forum that sought to make the issue of violence against women more visible¹⁰².

In the designing and setting-up of the commission, civil society victims groups lobbied to influence the terms of the commission, but many of their points of views were dismissed in the final terms of reference of the institution¹⁰³, which prompted a sense of disapproval and lack of legitimacy towards the commission. As part of this study, no reference was found, however, on the active participation of organizations lobbying specifically for women's experiences and rights.

One out of the three commission members was a woman and a Mayan scholar, Otilia Lux de Cotí. Her background was highly important given the disproportionate effects of the conflict on indigenous people and indigenous women, in particular. An analysis of the final recommendations shows that an intersectional lens was missed. The non-recurrence of violations against indigenous communities was rightfully so pursued, but the non-recurrence of the specific forms of violence against indigenous women was completely excluded. Misunderstanding the compounding forms of discrimination and violence indigenous women suffered came at the expense of proposing recommendations to only one side of the root causes of the violations they experienced in conflict.

¹⁰⁰ Comisión para el Esclarecimiento Histórico, *Informe final: Guatemala Memoria del Silencio* (CEH, 1999), 42-43.

¹⁰¹ Tine Destrooper and Stephan Parmentier, "Gender-Aware and Place-Based Transitional Justice in Guatemala: Altering the Opportunity Structures for Post-Conflict Women's Mobilization", *Social & Legal Studies*, Vol. 27(3) 323-344 (2018), 332.

¹⁰² *Ibid.*

¹⁰³ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011), 32.

The final report of the commission states that “[a]lthough 48% of the testimonies received by the CEH belong to women who were direct victims of the repression, most focus their testimonies not as victims of victims of their rights, but as witnesses of what happened to others, because living in other people's function is part of their reality”¹⁰⁴. This pattern of participation, also identified in the other case studies, reinforces the importance of adopting measures to ensure that the participation of women in testimonies leads to a more nuanced version of the facts and serves as a source of information for the promotion of gendered guarantees of non-recurrence.

The final report of the commission correctly found that oppression, exploitation, discrimination and inequality were the root causes of women's vulnerability in conflict. Despite this finding, none of the recommendations for guarantees of non-recurrence addressed the structural causes of the violence against women. The disconnection between the findings and the outcomes in terms of recommendations, as we argued before, can be partially explained by the lack of meaningful participation of women from the design of the commission onwards. Furthermore, Guatemala's experience shows that if women and women's organizations are not included in the work of the commission, and if the testimonies given by women are constrained by cultural norms that subordinate women's experiences, the likelihood of developing gendered guarantees of non-recurrence significantly decreases.

In sum, although more studies are required to thoroughly assess the role of women's participation in truth commissions, the cases studied allow to identify a pattern of correlation between the increase in women's participation and the development of guarantees of non-repetition aimed at attacking the structural causes of violence they suffer in the conflict.

In general terms, the success of participation seems to be related to various factors that interact with each other, such as the political will of the commission to include and engage with women, the access to information and technical expertise on gender issues, the influencing capacity of civil

¹⁰⁴ Comisión para el Esclarecimiento Histórico, *Informe final: Guatemala Memoria del Silencio* (CEH, 1999), 2377.

society organizations on the truth process and the ability to counteract social and cultural barriers that constrain the participation of women.

It appears that the quality of participation and its impacts on the final outcomes of the commission are enhanced when participation is actively sought from the outset of the work of the TRC and complemented with the participation of other stakeholder such as gender experts.

Chapter III. Women's participation for the engendering of truth commissions' recommendations

Having explored some past experiences of women's participation, in the present chapter we seek to understand how participation should happen in the TRCs so that they are able to engender their recommendations. We argue that three questions need to be addressed to answer this main question. First, who should be the stakeholders whom should participate in truth commissions? Second, what are the different stages or moments in which participation should occur and what should be modalities of participation for such moments? And third, what are the enabling factors that allow women to come forward and share their views in a way that promotes the recommendation of gendered guarantees of non-recurrence? By answering these questions our aim is to propose minimum guidelines for TRCs to enhance the participation of women and the resulting recommendations for the non-recurrence of the violations against them.

I. Stakeholders

In unravelling how should participation happen in TRCs so that they are able to engender their recommendations, the first question to answer is *who* participates in the process. We argue that if the goal is to promote recommendations that address the root causes of the violations suffered by women, then the spectrum of participants widens to include a full range of actors capable of influencing the design of gendered guarantees of non-recurrence. In this sense, we propose that the actors involved in the process of women's participation should be categorised in a series levels of involvement. Women who endured the violations are placed at the main level, participating in all stages of the process, voicing their experiences in the conflict and their needs and priorities for the outcomes of the truth process. In the following levels, other actors such as civil society organizations and gender experts will be allocated, engaging with the process at different stages. Their participation would be oriented at facilitating and promoting the participation of the women-victims or providing technical expertise on the context of the root causes the violations they suffered and possible solutions to address them.

i. Victims

The idea that women who suffered violations should participate in truth commission given their status as victims of the conflict or repression context is widely acknowledge at this stage. The Special Rapporteur has strongly stated that goal of transitional justice measures of providing recognition to

victims, fostering trust and strengthening the democratic rule of law cannot occur without the meaningful participation of the victims¹⁰⁵. Likewise, the UN Security Council has advocated for the full and meaningful participation “of survivors of sexual and gender-based violence at all stages of transitional justice processes” as it will “increase the likelihood that transitional justice outcomes will constitute effective redress as defined by victims and will respond to important contextual factors”¹⁰⁶. In this sense, not only are women entitled to participate in the truth process, but their engagement should be actively sought in order to guarantee outcomes that effectively address their needs.

Indeed, as direct recipients of the violence, women who endured and survive the violations are the best placed individuals to create a narrative that reflects their own rights, their own needs and their own perspective. Furthermore, a narrative that contributes to the non-recurrence of the particular violations they suffered.

In societies where women's experiences have been pushed to the side-lines, their voices can expose the gendered nature of many of the violations they experienced. In Guatemala, for example, before the truth process, the extent of sexual abuse against women had not been previously known and the “negotiating parties were unaware that sexual violence had been a major element in the civil war’s abuses”¹⁰⁷. Once the truth commission began to collect testimonies from women “these significant patterns emerged”¹⁰⁸, prompting the recognition that “[w]omen were victims of all forms of human rights violations committed during the armed conflict, but also suffered specific forms of gender violence”¹⁰⁹. Similarly, it has been reported that in Timor-Leste, “it was only when women were consulted that prosecutors began to pay attention to sexual-violence crimes”¹¹⁰. In sum, from the optics of promoting the non-recurrence of violations against women, the testimonies of women themselves are the most important piece of information, as is through them that the patterns of abuse can be identified.

Moreover, as we have already mentioned, the inclusion of women in the process, if conducted in a non-tokenistic manner, serves as a form of recognition of their suffering and endurance. In the words of

¹⁰⁵ Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46 (United Nations, 2012), 54.

¹⁰⁶ UN Security Council, Security Council resolution 2467, S/RES/2467 (United Nations Security Council 2019).

¹⁰⁷ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011), 87.

¹⁰⁸ *Ibid.*

¹⁰⁹ Comisión para el Esclarecimiento Histórico, *Informe final: Guatemala Memoria del Silencio* (CEH 1999), 2350.

¹¹⁰ Office of the United Nations High Commissioner for Human Rights, Analytical study focusing on gender-based and sexual violence in relation to transitional justice, A/HRC/27/21 (United Nations, 2014), 9.

Nesiah, “[w]here women’s experiences of abuse are all too often zoned outside the public sphere, dismissed, and not recognized, individual hearings can publicly affirm the value of each individual life”¹¹¹. Furthermore, we argue that the inclusion of women as active stakeholders with the capacity of influence the process and outcomes of the TRCs can contribute to the recognition of their agency and value in society. Thus, the process itself can work as a channel for the empowerment of women which, in turn, can contribute to the non-recurrence of the pre-existing violence and discrimination against them.

Although women victims can represent one category of stakeholders in the participatory process within TRCs, is important to keep in mind that women are not a monolithic group. As part of the conflict, they might have taken on very different roles and as victims of the violence, their experiences are affected by other compounding factors such as their socioeconomic status or their ethnicity. Accordingly, “[r]epresentation of a cross section of women and girls in all their diversity must be ensured during consultations”¹¹². Moreover, the consultations should not “solely focus on their experience of victimization, but should take account of the evolution of gender roles during and after conflict and the multiple roles women play in such situations”¹¹³. In this sense, TRCs should make sure that not only are women as a specific category of victims participating, but that they are doing so in a manner that reflects the variety of experiences they could have had during the violence period. Otherwise, the commissions might end up masking victims’ agency and “peoples own connections, concerns and agendas”¹¹⁴.

ii. Civil society organizations and gender experts

On a second level, civil society organizations will act as an important stakeholder in the truth process. These organizations might be composed of victims themselves who organized in collectives to advocate for their rights, but it could also be organizations working independently to promote topics of relevance for the victims. In any case, we see their potential role in the process of participation as twofold. On one hand, civil society organizations can promote and facilitate the engagement between the TRCs and

¹¹¹ Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice 2006), 28.

¹¹² Office of the United Nations High Commissioner for Human Rights, Analytical study focusing on gender-based and sexual violence in relation to transitional justice, *A/HRC/27/21* (United Nations, 2014)

¹¹³ *Ibid.*

¹¹⁴ Yvette Selim, “The opportunities and challenges of participation in transitional justice: examples from Nepal”, *Journal of International Development*, *J. Int. Dev.* 29, 1123–1148 (2017), 19.

women victims of the conflict or the repressive regime. On the other hand, civil society organizations can participate as experts on women's rights and the local context of discrimination and violence against women, providing valuable information for the design of recommendations.

As shown by the South African's TRC experience, women's groups have successfully lobbied for the opening of spaces specifically design to hear women's experiences in conflict, influencing the mandate and composition of the commissions. Likewise, as it happened in cases such as the Timor-Leste's commission, they have also provided training for truth commissions' staff, enhancing their abilities to take and read women's testimonies with a gendered lens. In this role, civil society organizations function as an instrument to secure that women have a space to share their views and needs and that such space is welcoming and safe for them.

On the other hand, civil society organizations can provide the commission with the technical input necessary to create gendered recommendations. As actors who have documented the situation of women before and during the conflict, they can make available important information concerning the root causes of the violations against women and the patterns of abuse that need to be address. Furthermore, as explained by Saffon and Tacha, in the truth process, victims will express their needs and preferences but not necessarily will have the knowledge to propose the most appropriate solutions. In those scenarios, the recommendations, given their technical nature, could require the intervention of specialized organs for their design¹¹⁵. For example, the Peruvian TRC called on feminist scholars and activist to the women's hearings in order to gain information about the broad context of structural conditions that allowed for the violations against women¹¹⁶. This type of interventions can allow the TRC to locate women's experiences and demands within the technical requirements for the non-recurrence of such violations.

An important consideration is that, for the purposes of women's participation, the civil society organizations that can function as key stakeholders are those specialized on women's issues. As showed by many past experiences, there might be occasions where human rights organizations or victims' organizations focus their work on issues such as indigenous rights or the fight for the search of

¹¹⁵ María Paula Saffon Sanín and Viviana Tacha Gutiérrez, *La participación en las medidas de justicia transicional. Un estudio comparado*. (Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2018) 19-20.

¹¹⁶ Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice 2006), 26.

disappeared persons that, although very important, have less to do with the gendered forms of violence and discrimination against women in conflict. In those cases, the value of civil society for the facilitation of women's engagement with the TRC and the provision of technical knowledge on gender issues is defeated. In this sense, the needed participation of civil society is that of women's groups and feminist activists that can provide the commission with the necessary local context and knowledge on women's specific experiences.

iii. TRC staff members and commissioners

Finally, we argue that a third level of participation is that of women who take part on the truth process as members of the commission, be it by being commissioners themselves or by working as members of the staff.

Though women will not necessarily have a better understanding of gender issues or the innate ability to conduct gender analysis, several reports have found that having female staff in the commission can enhance the adoption of a gender perspective in the work of the institution and facilitate the interactions with the women providing testimonies¹¹⁷.

As we saw in chapter two, in many opportunities women have preferred to share their testimonies and be interviewed by all female panels. As explained by Nesiiah, "having more women on staff may make a commission less alienating for female victims themselves"¹¹⁸. In this sense, women who participate as members of the formal structures of the commission can become an enabling factor for the participation of women in testimonies and hearings.

II. *Stages and modalities*

The second big consideration for promoting women's participation in truth commissions is what are the stages or moments in which the participation should occur and what type of participatory modalities would be developed in such given moments. In terms of the first question, several authors and UN

¹¹⁷ See for example Office of the United Nations High Commissioner for Human Rights, Analytical study focusing on gender-based and sexual violence in relation to transitional justice, A/HRC/27/21 (United Nations, 2014), 24. Vasuki Nesiiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice 2006), 10.

¹¹⁸ Vasuki Nesiiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice 2006), 10.

agencies seem to agree that there are three key moments where participation can take place¹¹⁹. First, the design and set-up of the mechanism. Second, the period of implementation of the mechanism of measure. Finally, the follow up or implementation and monitoring period. The modalities in each stage would vary according to the needs.

Two clarifications are in order. First, our classification in stages seeks to help understand how participation can occur in different moments along the process to make the systematization of experiences easier. Nonetheless, the participation of women should be a continuous and sustained process along all spaces and moments of the truth-seeking endeavour. Second, in terms of the modalities of participation, what is essential is that such participation come with real influencing powers. What is required is what is termed by Lundy and McGovern as ‘cogenerative dialogue’, meaning, a process “where local people not only ‘advise’ on the shape and direction of the process but must also have the opportunity to be collaborative involved in decision-making”¹²⁰. In sum, participation should happen along the process in all modalities that would allow women to be actively involved in the truth-building development and its outcomes.

i. Design and set-up of the TRC

The design of the truth commission is a key space to define the goals of the commission, its working methods and the composition of its formal structures. As we have seen, these considerations are essential for determining how the commission will deal with women’s experiences, their participation in the truth building process, and the final recommendations promoted.

As a first key modality of participation in this stage, women should be one of the actors present in the negotiation tables or committees in charge of the design of the TRC. The experience of Timor-Leste is a good example of the inclusion of women in this decision-making stage. The steering committee, a

¹¹⁹ See for example, Ralph Sprenkels, ‘*Restricted Access*’ *Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms, A Comparative Perspective*, (Impunity Watch 2017), 40. Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/34/62, (United Nations 2016), 27. María Paula Saffon Sanín and Viviana Tacha Gutiérrez, *La participación en las medidas de justicia transicional. Un estudio comparado*. (Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2018) 12-13.

¹²⁰ Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up”, *Journal of Law and Society*, 35(2) (2008), 280.

body created to consult with the population about the design of the commission, included two prominent East Timorese women¹²¹.

As a second modality of participation in this stage of the process, the commissions should hold workshops, community meetings or any other similar activities with women to map out their concerns, needs and priorities. According to the OHCHR this process would typically include “workshops, seminars, and opportunities to debate and suggest specific components of mandate and design and should generally take place over several months, at least, and should incorporate views from all parts of the country and all major sectors”¹²². In Timor-Leste, for example, the steering committee conducted consultations all districts of the country to assess the public ‘s views on what such a body should look like¹²³.

As we have seen in the cases of South Africa and Peru, the closeness and receptiveness of the commissions to the recommendations of civil society in the design stage can enhance the participation spaces on the implementation phase. In both examples, the input of organizations in the design stage resulted in the adoption of special hearings for the experiences of women in the conflict. Moreover, the lobby of women’s groups in the case of Sierra Leone prompted the incorporation of women to the commissioner’s seats. Thus, a second form of participation would be the consultation with women’s organizations to identify needs, priorities and expectations to be included in the mandate and operation of the commission.

Analysing the participation of victims in the design phase, Sprenkles found that “the lack of participation in the design phase already puts victim participation at a disadvantage in subsequent phases. It leads to a lack of sensitivity for victims’ needs, and it makes TJ measures even more vulnerable to political pressure”¹²⁴. Similarly, Saffon and Tacha found that the absence of participation in this space can

¹²¹ Galuh Wandita, Karen Campbell-Nelson and Manuela Leong Pereira, “Learning to Engender Reparations in Timor-Leste: Reaching out to Female Victims”, in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations*, (Social Science Research Council 2006), 294.

¹²² 25. Office of the United Nations High Commissioner for Human Rights, *Rule of-Law Tools for Post-Conflict States: Truth commissions* (United Nations 2006), 7.

¹²³ Anna Triponel and Stephen Pearson, “What Do You Think Should Happen – Public Participation in Transitional Justice”, *Peace International Law Review*, 22(1) (2010), 126.

¹²⁴ Ralph Sprenkels, *‘Restricted Access’ Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms, A Comparative Perspective*, (Impunity Watch 2017), 41.

produce negative effects in terms of the legitimacy of the created institutions¹²⁵. Moreover, building on the example of the work done by civil society in Argentina, they concluded that the levels of participation, organization and mobilization prior to the adoption of transitional justice measures can be considered as *ex ante* conditions for the success of participation in the adoption and implementation of such measures¹²⁶. In this sense, it is clear that the participation of women with real influencing powers in the design and set-up of the commission is the first step in ensuring that women will have spaces to share their experiences in the development stage; and that their input will contribute to the promotion of gendered guarantees of non-recurrence.

ii. Implementation of the TRC

Once the commission has been put into place, a second moment for the participation of women would be the development of the truth process itself. The participatory space by excellence in truth commissions is the statement-taking process. In these spaces, women participate as active subjects of the process, narrating their own truth and actively contributing to the final narrative produced by the TRC. As we have already stated, it is a participatory moment of great relevance as it can contribute to recognizing and acknowledging women and their experiences during the repression or conflict and shed light on a version of the history that might have been silence or ignore by society.

The statement-taking process can take place in close meetings or submissions of information and can also occur through the process of public hearings. It can also happen in general public hearings or thematic hearings. This last space for participation has as an advantage or benefit that it can help counteract the exclusion of women in public and official discourse. In this sense, Nesiiah argues that public thematic hearings “often catalyse a dialogue about social structure and broaden understanding of accountability and victimization”¹²⁷. Moreover, thematic hearings can “provide an opportunity for addressing women’s experience in more complex ways, such as their complicities and resistance with

¹²⁵ María Paula Saffon Sanín, Viviana Tacha Gutiérrez, *La participación en las medidas de justicia transicional. Un estudio comparado*, (Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2018), 45.

¹²⁶ *Ibid*, 29.

¹²⁷ Vasuki Nesiiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, (International Center for Transitional Justice 2006), 20.

political abuse and violence”¹²⁸. In any case, both private spaces and public spaces for testimonies should be available for women in order to promote as much participation as possible.

As Saffon and Tacha correctly point out, the implementation of the commissions also offers other important participatory scenarios at the time of its composition, its evidence collection work, and the dissemination of its information¹²⁹. In Liberia, for example, the TRC held meetings with civil society when entering the report-writing phase, to evaluate the work of the commission from a gender perspective, “to provide recommendations from Liberian women to inform the commission’s final report; and to form a monitoring group regarding the implementation of these recommendations”¹³⁰. These spaces are key to gathering the necessary information to design recommendations to address the root causes of the violations committed against women. Unlike the public hearings, that often have a broad purpose, these meetings could be focalized at identifying what reforms and policies need to be enacted to promote gendered non-recurrence measures. Here, the participation of victims should be complemented with the participation of experts on the topics of the desired reforms.

Finally, a key space of participation is the composition of the TRC itself. As stated by Saffon and Tacha, truth mechanisms tend to be implemented by bodies that do not require their members to be experts (unlike justice measures, for example, that would require a degree of expertise in law), and therefore, allow the participation of representatives of the victims and other sectors of civil society in their composition¹³¹. For the Special Rapporteur, beyond an opportunity for participation, the representation of victims in the composition of the truth commission is a requisite *sine qua non* for the consideration of truth-seeking as a justice measure¹³². Accordingly, women should be represented in the composition of the truth commission. This, as we saw, was the case in the Timor-Leste TRC. Furthermore, as we stated before, the participation of women in the composition of the TRC can, in turn, facilitate the participation of women in the truth-telling spaces.

¹²⁸ Ibid, 27.

¹²⁹ María Paula Saffon Sanín and Viviana Tacha Gutiérrez, *La participación en las medidas de justicia transicional. Un estudio comparado*, (Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2018),, 70.

¹³⁰ Yvette Selim, “The opportunities and challenges of participation in transitional justice: examples from Nepal”, *Journal of International Development*, J. Int. Dev. 29, 1123–1148 (2017), 7.

¹³¹ María Paula Saffon Sanín and Viviana Tacha Gutiérrez, *La participación en las medidas de justicia transicional. Un estudio comparado*, (Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2018), 70-71.

¹³² Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46 (United Nations, 2012)., 54.

iii. Follow-up and monitoring of the TRC's recommendations

The final stage in which participation can occur is that of the follow-up and monitoring of the implementation of the TRC recommendations. This phase is normally located in a context of diminution of attention and resources to the transitional process. As correctly point out by Sprenkles, “[t]he lack of attention for the follow-up mechanisms is an endemic problem in the field of TJ”¹³³. As a result, there is little research conducted in the participation of women in this scenario.

Evidence shows that women continue to informally rally up for the implementation of recommendations after the conclusion of the TRC mandate. In Sierra Leone, for example, various women's groups marched on International Women's Day in 2007 to demand the enactment of three gender bills. On June of the same year, the senate approved all three legislations¹³⁴.

Beyond the efforts women's groups undertake to pressure for the implementation of the measures for the non-recurrence, it is necessary to promote formal mechanisms of implementation that include women in the process. Lessons could be drawn from the bodies that have been created by recommendation of some TRCs to oversee the reparations process. Countries like Peru and Sierra Leone have enacted reparations procedures that require the participation of local communities in consultation process or even on the representation of advisory bodies¹³⁵. Regardless of the modalities of implementation of the recommendations, women should be part of the process with real influencing powers, as it occurs in the previous stages of the truth process.

In general terms, there is a need to conduct further research on the implementation of the recommendations of the TRCs and the role of women in such process. What is clear is that, as a key stakeholder in the transitional context, women and women's groups continue to participate in the process as advocates for the implementation of the recommended measures even after the TRCs have

¹³³ Ralph Sprenkles, *'Restricted Access' Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms, A Comparative Perspective*, (Impunity Watch 2017), 42.

¹³⁴ Lyn Graybill, "Partial Justice and Reconciliation for Sierra Leone Women but Reparations and Reform Remain Elusive", *Research in Social Movements, Conflicts and Change* (2011), 112.

¹³⁵ See Jamesina King, "Gender and Reparations in Sierra Leone: The wounds of war remain open", in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations*, (Social Science Research Council 2006) and; 11. Guillerot, Julie, "Linking Gender and Reparations in Peru: A failed opportunity", in Ruth Rubio-Marín (ed.) *What happened to the women?: gender and reparations for human rights violations* (Social Science Research Council 2006).

closed their doors. In this sense, we agree with Sprenkles that “more structured and intensified attention to victim participation in this phase could indeed plausibly be conducive to strengthening the follow-up aspects”¹³⁶.

III. Enabling conditions

Finally, the third question to address in seeking to understand how participation should happen in the TRCs so that they are able to engender their recommendations is what are the enabling factors that should be incorporated to guarantee the maximum and most effective participation possible. We argue that there are four major considerations. First, a knowledge and understanding of the local gendered context. Second, the composition and technical abilities of the TRC. Third, considerations about the accessibility and safety to and in the TRC. Finally, the dissemination and sensitization about the process and the participatory spaces available for women.

i. Knowledge of local context

A first enabling factor for the participation of women in the truth process (and for all processes developed in the transition context) is the knowledge of the TRC of the local context, particularly, the social and cultural norms that dictate the roles of women in society. As correctly stated by the CEDAW Committee, “[t]he full participation and involvement of women in formal peacemaking and post-conflict reconstruction and socioeconomic development are often not realized on account of deeply entrenched [gender] stereotypes”¹³⁷. Hence, without the knowledge of the local gender context it will become much more difficult to overcome the gender barriers the participation of women.

Linking back to the cases previously studied, it becomes clear that paying attention to local gender norms from the beginning would have allowed the Timor-Leste TRC to foresee that women would not be able to work as staff of the commission in offices located in remote regions from their houses,

¹³⁶ Ralph Sprenkles, ‘*Restricted Access’ Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms, A Comparative Perspective*, (Impunity Watch 2017), 42

¹³⁷ Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations,, CEDAW/C/GC/30, (1 November 2013), 43.

because it was socially unaccepted for them to stay away from their homes for extended periods of time.

This cultural sensitivity could also indicate TRCs that women, due to the stigmatization of sexual violence in their countries, would be reluctant to speak about their experiences of rape or will refer to them using different verbal codes. Likewise, awareness of the gendered local context could tell the commissions that in a society where women's value is determined in relationship to the men in their lives, their testimonies will most likely privilege the experiences of their husbands, sons or brothers, instead of their own.

Indeed, we argue that an understanding of the local gender norms and stereotypes, if followed by actions directed at addressing its impacts on the participatory process, is perhaps the most important enabling factor for ensuring the meaningful participation of women. Its impact cuts across all the stages and modalities for the participation of women.

Access to this information should occur in the design phase, as it can impact decisions such as the mandate of the commission, the geographical distribution of the commissions' offices, the staff hiring process and all other enabling factors, such as the technical abilities of the TRC staff regarding gender topics, the accessibility and safety measures for the promotion of the participation of the women and the information and sensitization campaigns that could be undertaken.

As evidenced by previous experiences, local organizations, particularly those working with or composed by women themselves, have the necessary background to provide the commission with this information. Hence the importance of the relationship between the TRCs and civil society throughout the set-up and design of its work.

ii. Composition and technical abilities of the TRC staff

A second condition for the success of women's participation is the composition of the staff and their technical abilities for the conduction of gender sensitive work. In terms of the first issue, as we have previously mentioned, the participation of women as members of staff has proven to be useful in the process of statement-taking and the development of thematic hearings, in scenarios where women felt more comfortable sharing their stories with other women.

Apart from the inclusion of women in the formal structures of the commission, the staff should also be trained to address gendered human rights violations in order to be able to identify patterns and locate them within a gender context, as well as, to avoid the revictimization or invisibilization of women and their experiences. According to interviews conducted by the World Bank as part of a research on gender and truth commissions, in early interviews conducted in the Sierra Leone TRC, “victims were asked questions like “What were you wearing when it happened?” and “What were you doing out alone at night?””¹³⁸. If commissioners and staff themselves are reproducing gender stereotypes, their ability to break the gendered barriers for the participation of women and produce gendered guarantees of non-recurrence will be null.

Particularly for the process of promoting gendered guarantees of non-recurrence, the ability of statement-takers to read into the testimonies of women, identifying patterns of abuse and their connections with the root causes of violence against women will be essential. But women’s narrations will not impact the outcomes of the truth process if the members of the TRC are not willing to actively listen to them. In Peru, for example, some of the women who testified narrated their experiences with sexual violence without expressly referring to terms as rape. According to Guillerot, they often made reference to the acts of sexual violence using different terms, such as a reference to their ‘dignity’¹³⁹. Staff that is not trained to read into these verbal codes cannot make the connections between the experiences narrated and the stigmatizing context within sexual violence locates in a determined country.

In sum, the quality and value of the participation women is in direct relation to the ability of the commission to receive, process and empathize with their narrations through a gender lens and in a supportive environment.

iii. Accessibility and safety

A third group of factors and conditions that can enable the participation of women are the issues of accessibility and safety. By accessibility we refer to a broad-encompassing term that includes

¹³⁸ World Bank, *Gender, Justice and Truth Commissions* (Washington DC 2006),17.

¹³⁹ Julie Guillerot, “Linking Gender and Reparations in Peru: A failed opportunity”, in Ruth Rubio-Marín (ed.), *What happened to the women?: gender and reparations for human rights violations*, (Social Science Research Council 2006), 166.

considerations ranging from the physical access to the commission's offices to the overcoming of financial, linguistic or any other related kind of barriers. What is more, in the specific case of women's access to the commission, accessibility should also be understood as the measures necessary to overcome the cultural barriers that can hamper the participation of women.

As general enabling factors, the places where the commissions receives statements and conducts public hearings should be of easy access for the women who want to participate. In addition, the commission should operate in the language used by the different women who might participate in the commission. In terms of gender-specific considerations, Valji, Sigsworth and Goetz propose that the barriers that need to be overcome also include "the opportunity cost of women's time—women have to make up one way or another for the loss of their labour at home, in childcare and family maintenance"¹⁴⁰.

Finally, the TRCs should ensure the safety, both physical and mental, of the women-participants. Sprenkles argues, for example, that "victim participation, when it becomes meaningful, exposes victims to significant political pressures"¹⁴¹. For this reason, the commissions should accompany the participation process with "measures of confidentiality and a range of protection and security measures"¹⁴² as well as with "(outreach) strategies that take into account the political context in which TJ is implemented in order to develop a strategy able to counteract harmful political propaganda and smear campaigns geared at undermining TJ and demeaning victims"¹⁴³. Similarly, the Special Rapporteur has argued for the need to "include an evaluation of the risks to participating victims as well as to other stakeholders, including staff, as well as recommendations on how to mitigate some of the risks"¹⁴⁴. In the case of women, this analysis should take into consideration the gender norms present in the society. For example, in societies where victims are considered dishonourable or are still blame for sexual violence, a risk consideration would be if women are going to be ostracized by their communities if they share their experiences of sexual violence.

¹⁴⁰ Valji, Nahla, *A Window of Opportunity: Making Transitional Justice Work for Women*, (UN Women 2012), 4.

¹⁴¹ Sprenkels, Ralph, 'Restricted Access' Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms, *A Comparative Perspective*, (Impunity Watch 2017), 45.

¹⁴² Ibid

¹⁴³ Ibid.

¹⁴⁴ Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/34/62, (United Nations 2016), 67.

In terms of the safety of the victims from the point of view of the mental and emotional impacts of the process, the Special Rapporteur has emphasised that the experience of victimization has an impact on people's "readiness to put themselves at the forefront of claims-raising exercises"¹⁴⁵. Consequently, the willingness and ability of victims to participate "could be significantly enhanced by the provision of effective and much more sustained and long-term psychosocial support"¹⁴⁶.

iv. Information and sensitization

A final condition for the success of women's participation is the sharing of information and sensitization about the transitional process, the importance of women's experiences for the truth process and the final outcomes of the TRC.

The knowledge about the existence of the truth commission and the right to participate in it is a precondition for the access victims to such spaces. As explained by the Special Rapporteur, "there are many contexts in which victims — in fact precisely those who, because of numerous circumstances, have the weakest understanding of their rights — are called upon to participate in processes meant to restore those rights"¹⁴⁷. For women, whom have often been neglected to second place in the public arena, this sensitization about the participation as a right of their own becomes highly important and should be actively pursued by TRCs.

Moreover, access to information about the work of the commission and its goals is essential for the engagement of women and women's groups with the TRC. If women are not aware that the TRC will, for example, seek information for the development of recommendations, they cannot advocate and demand gendered guarantees of non-recurrence. Similarly, if women do not know the TRC will provide services like transportation or care spaces for children to facilitate the participation of women in the hearings, they might be discouraged to participate in hearings and testimonies do to the financial and practical barriers they experience.

¹⁴⁵ Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/34/62 , (United Nations 2016), 69.

¹⁴⁶ Ibid, 68.

¹⁴⁷ Ibid, 70.

It is essential that the sharing of information occurs throughout all stages of the truth process. Referring to the Sierra Leone case, King points out, for example, that “[w]omen’s participation in the discussions on reparations after the publication of the Truth and Reconciliation Commission’s report has been rather limited, partly because of the government’s failure to widely disseminate the report”¹⁴⁸. Thus, access to the final outcomes of the truth process is essential for the promotion of the implementation of the guarantees of non-recurrence recommended by the commission.

In conclusion, a revision of past truth commission experiences and standards on victims’ participation can provide information to identify minimum guidelines for TRCs to ensure the participation of women in truth processes and actively promote gendered guarantees of non-recurrence.

In general terms, women who endured the impacts of the repressive times or conflict context should always participate in the process. Along them, women’s groups and activists and specialist on the sought guarantees of non-recurrence can be important stakeholders in the process, facilitating the participation of women and providing necessary information for the promotion of gendered recommendations.

The truth process can be divided into three moments: design and set up, implementation and follow up and monitoring. The participation of women should be a constant in all three stages, adapting the modalities to the needs of each given moment.

In promoting women’s participation, TRCs should be cognizant of the factors that could enable the engagement of women with the process. An awareness of the local gender context would be a key first step in this process. It should be accompanied with a staff that includes women and is trained to address gendered forms of violence and the cultural-gender barriers for women to express their experiences. Likewise, actions should be promoted to ensure the accessibility to the commission and the safety of women who wish to participate in the process. Finally, information about the truth commission and the importance of women’s voices should be disseminated from the outset of the commission’s work to ensure the widest levels of participation possible.

¹⁴⁸ Jamesina King, “Gender and Reparations in Sierra Leone: The wounds of war remain open”, in Ruth Rubio-Marín (ed.), *What happened to the women?: gender and reparations for human rights violations*, (Social Science Research Council 2006), 259.

Conclusion and recommendations

A revision of past truth commissions reveals that the more women have been involved in the process, the better are the outcomes of the commissions in terms of producing a narrative and a series of recommendations that reflect women's experiences and needs. This should not come as a surprise as it is evident that women are the better placed individuals to explain the effects of the conflict or repression in their lives. However, many truth commissions have missed the connection between gender and the conflict, thus neglecting the spaces necessary for women to come forward with their unique experiences and points of view in the transitional context.

As truth commissions move closer to the goal of non-recurrence of the violations by producing long and detailed recommendations for the post-conflict context, making the connection with the participation of women as a way to produce gendered results becomes extremely important. The space open by TRCs to promote recommendations for the non-recurrence that address the root causes of the violations constitutes an essential window of opportunity to combat the gender inequality that predated the conflict or repression time.

The five cases reviewed in this research allowed us to identify a pattern of correlation between women's participation in the process and the production of gendered guarantees of non-recurrence. They also showed us that the inclusion of women in the process is not enough to promote the recognition of their experiences and gendered outcomes for the truth process. As we saw in several cases, many past experiences have had more women than men contributing through testimonies in truth commissions that had very male-centred outcomes. Hence, women's meaningful participation is not the same that simply adding women by numbers to the equation.

Through the revision of cases, it becomes evident that meaningful participation is a combination of the inclusion of women in the process with the powers that they are given to influence its development and outcomes and act in equal collaboration with other stakeholders involved in the process.

Beyond the practical differences that will arise in each transitional process, we identified a series of minimum guidelines or parameters that could benefit the participation of women and the promotion of recommendations that address the gendered violence they endured.

As a first group of guidelines, we propose that there are three main stakeholders that should participate. First, women who lived the repression or conflict period should, as we already mention, participate actively through the process. Alongside them, women's organizations and feminists activist could play an important role in both facilitating women's engagement with the process and providing key information about the root causes of the gendered violence they endured. Moreover, as the guarantees of non-recurrence could have a very technical nature, it would be important to include in the process experts that could help in the elaboration of feasible gendered recommendations. Finally, as we saw, women should be included in the formal structures of the commissions. Their presence has proved to work as an enabling factor in the spaces opened for women to share their experiences.

In terms of the moments and modalities, women can and should participate from the design and set-up of the commission to the development of its mechanisms and the implementation of the recommended measures. The different commissions analysed show that the sooner women can participate, the better their engagement will be in future stages.

Our research suggests that little attention has been paid to the implementation stage. In this sense, there is a clear need to fill the informational gap concerning the implementation of the guarantees recommended by commissions and the way participation should occur in that context. Notwithstanding this informational gap, we argue that what is important is to make sure that participation is a continuous process and not just a series of isolated events.

Finally, in analysing the challenges confronted by past truth commissions it is possible to pinpoint some of the factors that will enable the participation of women. First, and perhaps most importantly, the commissions should be aware of the local gendered context in which it locates in order to overcome the gender stereotypes and practices that could become a barrier for participation. Secondly, the commission should guarantee a staff composition that reflects gender parity and ensure that its staff is trained to deal with gendered forms of violence and promote a safe space for women to freely share their experiences. On a third level, measures should be adopted to ensure the accessibility of the truth commission and the safety of the participants. Finally, information about the truth commission and the importance of women's voices should be disseminated from the outset of the commission's work to ensure the widest levels of participation possible.

In general terms, it is important to recognize that many of women's experiences in conflict and in the engagement with transitional mechanisms are determined by their gender and the social norms that surround it. Being cognizant of this difference requires to understand that the process of participation in the specific case of women, has different requirements than the participation of other types of victims. In this sense, we suggest that more studies are needed to identify under what conditions participation can recognize and give value to women and their particular experiences.

Furthermore, most studies on victims' participation have focused on the pillars of justice, truth and reparations. Neglecting the goal on non-recurrence, especially now that it has been more clearly linked to the truth process, is missing out on an essential opportunity to produce social change. In this sense, more studies are needed to understand the role and know-how of participation to address the root causes and the non-recurrence of the gendered violence endured by women during periods of repression or conflict.

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