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## **VOICES FROM THE MARGINS:**

An Analysis of the Emerging LGBTIQ-subject of  
Truth Commissions.

JAMM07 Master Thesis

International Human Rights Law  
30 higher education credits

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Term: Spring 2018

# Contents

<b>SUMMARY</b>	<b>1</b>
<b>PREFACE</b>	<b>2</b>
<b>1 INTRODUCTION</b>	<b>3</b>
1.1 Background	4
1.2 Objective and Purpose	6
1.3 Research Question and Structure	6
1.4 Methodology and Materials	7
1.5 Delimitations	8
1.6 Terminology	8
<b>2 FROM OBLIVION TO INCLUSION: SEXUAL AND GENDER MINORITIES' ISSUES IN TRANSITIONAL JUSTICE</b>	<b>10</b>
2.1 Introduction	10
2.2 Victimisation of sexual and gender minorities in contexts of political unrest	11
2.3 Transitional justice and LGBTIQ victims	12
2.3.1 Post-WWII transitional justice: The Nuremberg Trials	14
2.3.2 Post-Cold War transitional justice: The role of truth commissions	16
2.3.2.1 South Africa (1995 - 2002)	18
2.3.2.2 Peru (2001 - 2003)	20
2.3.2.3 Paraguay (2004 - 2008)	21
2.3.2.4 Ecuador (2008 - 2009)	22
2.3.2.5 Brazil (2012 - 2014)	23
2.3.2.6 Colombia (2017 - present)	24
2.4 Conclusions	25

### **3 TRUTH MATTERS: TRUTH COMMISSIONS AND THE POWER OF DISCOURSE** **27**

3.1 Introduction	27
3.2 Why truth matters	28
3.3 Truth as discourse	30
3.3.1 Critical Discourse Analysis (CDA) & truth commissions	30
3.3.2 Truth reports as master narratives	32
3.3.3 Master narrative and collective memory	33
3.3.4 Master narratives as 'old beginnings'	34
3.4 Conclusion	36

### **4 THE EMERGING LGBTIQ-SUBJECT OF TRUTH COMMISSIONS** **38**

4.1 Introduction	38
4.2 Truth commissions and the making of victims	39
4.3 <i>Who</i> is the LGBTIQ-subject of truth commissions?	40
4.3.1 Location: Voices from the margins	41
4.3.2 Sources of Information: Who speaks <i>for</i> the victims?	45
4.3.3 Timeframes: A 'descriptive truth'	47
4.3.4 Recommendations: Truth reports as empty words	50
4.4 Conclusion	51

### **5 FINAL REMARKS: TOWARDS A 'CARNIVALISATION' OF TRUTH-TELLING** **55**

### **BIBLIOGRAPHY** **58**

# Summary

The core focus of this thesis is the LGBTIQ-subject of truth commissions, that is, the place and identities that have assigned to sexual and gender minorities in the final reports of these mechanisms. This thesis aims to understand if the said LGBTIQ-subject, provides a narrative for the inclusion of queer individuals in post-conflict and post-repression societies, or if on the contrary, it reproduces structures of marginalisation and oppression against these individuals.

The experiences of LGBTIQ individuals have been absent, in both practice and academia, from discussions about political change and social reconstruction in the aftermath of armed conflict and repression. This means that the rights to the truth, reparation, and justice; have been systematically denied to those who have suffered human rights abuses because of their sexual orientation, gender identity, and corporal diversity.

However, the inclusion of LGBTIQ voices in the final reports of five truth commissions (South Africa, Peru, Paraguay, Ecuador and Brazil) and the incorporation of an LGBTIQ perspective in the upcoming truth commission in Colombia; represent a hope for change in the approach of transitional justice towards sexual and gender minorities' issues.

Nonetheless, this emerging tendency does not *per se* guarantee the production of an inclusive narrative concerning LGBTIQ individuals. This work understands that the final reports of truth commissions can indeed provide a platform for a more inclusive society, but can also reproduce structures that oppress and marginalise, historically discriminated groups.

In this sense, this paper provides an analysis of the five truth reports that included cases of violence against sexual and gender minorities, to determine if they have provided a narrative of inclusion for these individuals, or contrarily, they have helped to maintain their oppression and marginalisation as a minority group.

# Preface

First and foremost, this master thesis is dedicated to my beloved family. Mami, Papi, Manolo, Abuelitas, Tías, Miguelito, y todos los demás miembros de mi familia; sin su constante apoyo no hubiera podido llegar hasta este punto de mi carrera. Cada uno de mis logros se los debo a ustedes, muchas gracias por su inagotable amor.

I also want to thank my friends Ana, Erlina, Flávia, Get, Jonathan and Victoria for supporting me during these last two years. Your friendship has been one of the highlights of my life in Sweden. Thank you for the laughs, thank you for the love.

This thesis is also dedicated to Thomas. Without your patient and encouragement, I would not have completed this work. Thank you for lifting me up when I needed it the most.

I also own my gratitude to my supervisor Markus Gunneflo for his constant help, advice, and constructive comments on my paper. I extend my acknowledgements to Professor Nancy E Dowd and Letizia Lo Giacco for their invaluable help in the early stages of this work.

Last but not least, this thesis would not be possible without the scholarship granted to me by the Swedish Institute. I am thankful to the SI for giving me the opportunity to be part of this master programme.

# 1 Introduction

Transitional justice is perceived as a hope of redress for individuals who suffered human rights abuses during times of civil unrest. Truth commissions in particular, as part of the transitional justice enterprise, are regarded as an avenue to write a **new national narrative** of inclusion for victims who were marginalised and abused during periods of oppression.

Such new narrative consists on the possibility to put the voices of marginalised groups in the forefront of the process of social reconstruction, in ways that enable them to engage as active citizens in the post-conflict scenario. This implies a hope for transformation; the end of a conflict and the opportunity to uncover human rights abuses, are perceived as chances to acknowledge the experiences of these groups during periods of violence and to tackle and transform the structures and factors that allowed for such violence to occur.

In this sense, the writing of a new national narrative of peaceful coexistence in the aftermath of conflict and repression is also seen as an avenue to build a new society that is more inclusive of traditionally marginalised groups.

However, as it will be developed in this work, the writing of this new narrative concerning neglected groups depends on how the identities of these individuals are constructed in the final reports of truth commissions. The cast of the past and the narratives produced by truth reports depend on the identities assigned to victims and other actors.<sup>1</sup>

Consequently, the inclusion of marginalised groups in truth reports is not *per se* enough to guarantee their inclusion in the post-conflict society; what counts is *how* their stories are told in these documents.

Taking the above into account, the precise aim of this work is to understand if the final reports of truth commissions have indeed provided a new narrative for LGBTIQ victims of conflict and repression. If their identities have been framed in a way that allows these individuals to

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<sup>1</sup> Gready P, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Routledge 2011) 166.

have a voice of their own in the post-conflict arena, and to engage as active citizens.

In this sense, this dissertation provides an analysis of the emerging **LGBTIQ-subject of truth commissions**, that is, the identities and places assigned to LGBTIQ individuals in the final reports of truth commissions, and their potential to transform the marginalised status of this group.

## 1.1 Background

International legal scholar Ruti G. Teitel coined the term **transitional justice**, to construct a conception of justice related to periods of radical political flux following past oppressive rule and conflict. Nowadays, we associate this term with an entire field of inquiry rooted in the necessity to respond to mass violence and atrocity in the language of human rights, democracy and the rule of law.<sup>2</sup>

The current paradigm of the transitional justice enterprise is the focus on victims and survivors of human rights abuses in the designing and implementation of its processes and mechanisms.<sup>3</sup> In this sense, transitional justice gains its moral legitimacy from its aim of acknowledging victims and providing redress.<sup>4</sup>

Nonetheless, in both practice and academia, questions about sexual orientation and gender identity have been largely absent from discussions about transition and political change. Despite the fact that crimes against sexually diverse individuals have been documented in different contexts of conflict or repression, there has not been sufficient research to expose these criminal patterns of abuse.<sup>5</sup>

Since the implementation of the Nuremberg Trials (the root of transitional justice), sexual and gender minorities have been marginalised from the mechanisms that have been implemented

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<sup>2</sup> Teitel RG, *Globalizing Transitional Justice: Contemporary Essays* (Oxford University Press 2014) 3-4.

<sup>3</sup> UN, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (UN 2010) Guiding Principle 6.

<sup>4</sup> Robins S, "Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations" (2017) 11 *Human Rights & International Legal Discourse* 41.

<sup>5</sup> Bueno-Hansen P, "The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America" (2017) 12 *International Journal of Transitional Justice* 126.

to provide redress for victims of human rights abuses. In this sense, **lesbian, gay, bisexual, transgender, intersex and queer individuals (LGBTIQ)** who have suffered the consequences of violence, have been unable to gain access to their fundamental rights to justice, truth, and reparation in the aftermath of conflict.

The above means that societies have been deprived of knowing the entire truth about the circumstances of the atrocities perpetrated against these individuals, and therefore, from a complete picture of the crimes committed during times of violence.

Despite this general trend of marginalisation, the XXI century has witnessed an emerging approach in the transitional justice field regarding LGBTIQ rights. Six truth commissions, starting with the South African Truth and Reconciliation Commission to the recently established Colombian Truth Commission, have included sexual and gender minorities' issues in their final reports or, as in the Colombian example, an LGBTIQ perspective in their mandate.

This tendency has spurred a nascent academic production in the field of transitional justice that questions the new developments in the area from an LGBTIQ perspective. Notably, the work of scholar Pascha Bueno-Hansen understands the emerging visibility of LGBTIQ rights as a **challenge** to the field of transitional justice that requires the development of 'relevant philosophical, theoretical and conceptual approaches to address cases of violence against gender and sexual minorities'<sup>6</sup>.

In line with this proposal, this work aims to contribute to the development of this field by providing an analysis of the **LGBTIQ-subject** that has been constructed in the final reports of the five truth commissions<sup>7</sup> that have included cases of violence against sexual and gender minorities.

The primary objective of this work is to understand if this subject has the potential to deliver the promise of redress and transformation that transitional justice has made to the victims of human rights abuses or if, on the contrary, the identities assigned to sexual and gender minorities maintain their *status quo* as a marginalised and neglected group.

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<sup>6</sup> Ibid.

<sup>7</sup> The Colombian truth commission, has recently started its work. Hence, it has not yet provided a report to analyse.



## 1.2 Objective and Purpose

The **purpose** of this work is to contribute to the emerging area of LGBTIQ rights in the field of transitional justice, and to some extent, to the larger project of *queering* international law, which entails a hope for change in the international law discourse concerning sexually diverse individuals.<sup>8</sup>

The primary **objective** of this paper is to uncover the construction of the LGBTIQ identity that has been performed in the final reports of truth commissions. This work aims to understand if this identity provides a platform of inclusion for sexual and gender minorities in the post-conflict arena or if, on the contrary, it reproduces limited and marginalised spaces for the inclusion of sexually diverse individuals.

## 1.3 Research Question and Structure

This piece aims to answer the following question:

**Have truth commissions provided a platform for sexual and gender minorities to be included in post-conflict/post-repression societies or, contrarily, have they replicated structures of oppression and marginalisation within the identities and places assigned to this minority group?**

To respond to this inquiry, this work will observe the following structure.

**Chapter 1**, the introductory chapter, aims to provide the reader with the primary aim of this thesis. It presents the background, the research question, the methodology, the structure, the terminology and the delimitations.

**Chapter 2** provides the reader with the context of the thesis. This chapter aims to understand

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<sup>8</sup> Otto D, "Introduction: Embracing Queer Curiosity" in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2018) 1.

what has been the response of transitional justice to LGBTIQ issues and why it is essential to address the role of truth commissions concerning sexual and gender minorities.

**Chapter 3** constitutes the theoretical basis of this thesis. It aims to analyse the role of truth commissions and their final reports from a critical stand. This chapter understands the final reports of truth commissions as discourses and highlights their possibilities and limitations from a critical discourse analysis (CDA) perspective.

**Chapter 4** is the backbone of the thesis. It provides an account of the LGBTIQ-subject of truth commissions, by analysing the truth reports that have included cases of violence against sexual and gender minorities.

**Chapter 5** provides the concluding analysis of this work.

## 1.4 Methodology and Materials

The primary sources of this inquiry are the final reports of the truth commissions that have included cases of violence against sexual and gender minorities. These commissions are: The South African Truth and Reconciliation Commission, the Peruvian Truth and Reconciliation Commission, the Paraguayan Truth and Justice Commission, the Ecuadorian Truth Commission and the Brazilian National Truth Commission.

This work employs the **main theoretical** stands of **critical discourse analysis (CDA)** to understand how these reports have constructed the identity of sexual and gender minorities. Critical discourse analysis is an interdisciplinary approach to the study of discourse that understands language as a form of social practice.<sup>9</sup> This implies that there is a dialectical relationship between a particular discursive event and the situations, institutions and social structures that frame it.<sup>10</sup>

In this sense, this thesis understands the final reports of truth commissions as a social practice

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<sup>9</sup> Wodak R and Meyer M, "Critical Discourse Analysis: History, Agenda, Theory, and Methodology" in Ruth Wodak and Michael Meyer (eds), *Methods of Critical Discourse Analysis* (SAGE 2009).

<sup>10</sup> Fairclough N and Wodak R, "Critical Discourse Analysis" in Teun A van Dijk (ed), *Discourse Studies: A Multidisciplinary Introduction* (Sage 1997) 258.

that is socially constitutive and socially conditioned.<sup>11</sup> Hence, this work argues that truth reports as written discourses have the power to shape social relations and to maintain or contest relations of power. At the same time, these reports are conditioned by the institutions and situations that frame it, which include not only the truth commissions that produce the reports but also a broader context of social and political flux.

It is essential to note that this thesis does not aim to analyse the discourse contained in the truth reports from a linguistic and semantic point of view. In the context of this work, CDA is used as a source of theoretical inspiration rather than a fixed methodological framework.<sup>12</sup>

## 1.5 Delimitations

It should also be noted that this paper does not pretend to uncover the construction of an unequivocal LGBTIQ subject in the final reports of truth commissions. This piece understands that ‘even if similarities exist among truth commissions, such as their truth-gathering function, they each have their own idiosyncrasies’<sup>13</sup>. The purpose of this work is to highlight **common traits** in the approach of truth reports towards LGBTIQ individuals while taking into account that each of these reports is built on different social and historical backgrounds.

## 1.6 Terminology

The acronym **LGBTIQ** is used in this work as an umbrella term that stands for lesbian, gay, bisexual, transgender, intersex and queer individuals. In the context of this inquiry, this term should be understood as a reference to all individuals who are not heterosexual or gender-binary. The words **queer**<sup>14</sup> and **sexual and gender minorities**, unless specified otherwise, will also be used in this context. The three terms will be employed interchangeably.

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<sup>11</sup> Ibid.

<sup>12</sup>Verdoolaege A, *Reconciliation Discourse: The Case of the Truth and Reconciliation Commission* (John Benjamins Publ 2008) 3-4.

<sup>13</sup> Laplante LJ and Theidon K, “Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru” (2007) 29 *Human Rights Quarterly* 228, 236.

<sup>14</sup> It should be noted that the term queer has two different meanings. Queer as an umbrella term that covers every individual who is not heterosexual and/or gender-binary; this will be the preferred usage of the word in this dissertation. The other meaning comprises a non-normative category of self-identity that rejects the mainstream identity politics of the LGBT movement.

The term **transitional justice** is understood as

‘the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof’<sup>15</sup>.

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<sup>15</sup> UNSC, Report of the Secretary-General: ‘The rule of law and transitional justice in conflict and post-conflict societies’ (2004) S/2004/616, para 8.

# **2 From oblivion to inclusion: Sexual and gender minorities' issues in transitional justice**

## **2.1 Introduction**

The recent inclusion of sexual and gender minorities in the work of truth commissions is part of a broader historical response that transitional justice has provided to LGBTIQ victims of conflict and repression. Understanding this response is fundamental because it is precisely through transitional justice mechanisms that victims are allowed to gain recognition and redress.

In this sense, this chapter aims to provide the reader with an understanding of the path that LGBTIQ victims of conflict and repression have transited in post-conflict settings. From Nuremberg to Colombia, the vulnerability of queer individuals has been addressed in different ways.

The first section of the chapter is devoted to developing the idea of the particular vulnerability that queer individuals suffer during times of political unrest.

The second section of the chapter comprises an overview of the two responses that transitional justice mechanisms have provided to this particular vulnerability. The first response, oblivion, is placed in the context of the end of the World War II and the Nuremberg Trials; the second response, inclusion, refers to the recent approach of truth commissions concerning sexual and gender minorities' issues in transitional settings.

The last section of the chapter provides a brief analysis of these responses.

## 2.2 Victimisation of sexual and gender minorities in contexts of political unrest

Sexual and gender minorities suffer particular forms of vulnerability as a result of their sexual orientation and gender identity.<sup>16</sup> The violence experienced by LGBTIQ individuals is based on the desire of the perpetrator to punish the ‘identities, expressions, behaviours or bodies that transgress traditional gender norms and roles, or that run contrary to the binary system of male/female’<sup>17</sup>.

Particularly in contexts of armed conflict and repression, LGBTIQ individuals and collectives have been targeted with unique forms of violence and marginalisation.<sup>18</sup> It is recognised under feminist and queer scholarship that in contexts of political unrest, the persecution of sexual pluralism can be understood as attempts to enforce compliance with prevailing stereotypes of masculinity and femininity, hence, sexual oppression is used as a political weapon to achieve control of the civil population.<sup>19</sup>

However, it should be noted that violent responses to the transgression of heteronormative conceptions of sexuality and identity during times of conflict are rooted in a pre-existent system of sex and gender. In fact, the consequences of armed violence and repression in the bodies and identities of queer individuals, are a result of societal factors that condition their experiences of victimisation during periods of political unrest.<sup>20</sup>

The research conducted by the National Centre for Historical Memory of Colombia (*Centro Nacional de Memoria Histórica*) concerning the LGBTIQ victims of the Colombian armed conflict, shows that, even if war does not produce homophobic and transphobic violence, particular forms of human rights abuses are aggravated in this setting.<sup>21</sup>

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<sup>16</sup> O’Flaherty M, “Sexual Orientation and Gender Identity” in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (3rd ed Oxford Univ. Press 2018) 297.

<sup>17</sup> OAS, Inter-American Commission on Human Rights, ‘Violence against Lesbian, Gay, Bisexual, Trans and Intersex persons in the Americas’ (OAS 2015) OEA/Ser.L/V/II. Doc.36/15 Rev.2, para 25.

<sup>18</sup> Serrano Amaya JF, *Homophobic Violence in Armed Conflict and Political Transition* (Palgrave Macmillan 2018) 118.

<sup>19</sup> Nesiya V, *Truth Commissions, and Gender: Principles, Policies, and Procedures* (International Center for Transitional Justice 2006) 46.

<sup>20</sup> Centro Nacional de Memoria Histórica, *Aniquilar la Diferencia: Lesbianas, Gays, Bisexuales y Transgeneristas en el Marco del Conflicto Armado Colombiano* (CNMH 2015) 65 – 125.

<sup>21</sup> *Ibid.*

The above implies that the outbreak of civil unrest is preceded by social inequalities that place particular persons or groups in situations of extreme vulnerability and disadvantage.<sup>22</sup> In the case of sexual and gender minorities, these inequalities are rooted in religious discourses, social imaginaries, generalised discrimination and legal institutions that produce everyday experiences of marginalisation in the life of sexually diverse individuals. This violence is understood as **structural** because is rooted in social structures or institutions that prevent individuals from satisfying their basic needs in conditions of equality.<sup>23</sup>

This structural violence provides a framework for the perpetration of **direct violence** in the context of political unrest. Preconceptions about sexual and gender minorities exacerbate pre-existent prejudices on gender and sexuality, resulting in the perpetration of human rights abuses against queer individuals *as a result* of their sexual orientation and gender identity.

In this sense, the particular vulnerability of sexual and gender minorities during civil unrest is based on the preceding structural violence that supports and enhances the commission of atrocities. ‘If LGBTQI people are at best, a vulnerable group during times of peace, in times of turmoil, they are subjected to experience a level of violence and exclusion beyond that borne by others.’<sup>24</sup>

## 2.3 Transitional justice and LGBTIQ victims

International Law and transitional justice, have not paid due attention to the situation of sexual and gender minorities in periods of civil unrest. Despite the particular vulnerability of this group during contexts of generalised violence, very little has been done to provide redress to this collective.

While International Human Rights Law and other branches of international law have recognised specific forms of gender-based violence (particularly rape) in contexts or armed

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<sup>22</sup> Padilla MB, Aguila EV and Parker RG, “Globalization, Structural Violence, and LGBT Health: A Cross-Cultural Perspective” (2007) *The Health of Sexual Minorities* 209.

<sup>23</sup> On structural violence see Galtung J, “Violence, Peace, and Peace Research” (1969) 6 *Journal of Peace Research* 167.

<sup>24</sup> Human Dignity Trust, “Criminalizing Homosexuality and LGBT Rights in Times of Conflict, Violence and Natural Disasters” < <https://goo.gl/BNigD3> > accessed May 3, 2018, para 1.

conflict and instability, truth commissions and special tribunals have generally remained silent on issues concerning sexual and gender minorities.<sup>25</sup>

The above implies a failure in transitional institutional mechanisms to recognise and address the violence against LGBTIQ individuals. The reason behind this issue is that the rights of this group are not perceived as necessary for the work of truth commissions and other organs of transitional justice.<sup>26</sup>

Nonetheless, international law is slowly starting to acknowledge that ‘discrimination against LGBT individuals is often exacerbated by (...) socioeconomic factors, such as poverty and armed conflict’<sup>27</sup> and that ‘torture and ill-treatment of persons on the basis of actual or perceived sexual orientation or gender identity is rampant in armed conflict and perpetrated by State and non-State actors alike’<sup>28</sup>.

This nascent trend has been accompanied by the inclusion of cases of violence against queer individuals, in the final report of some truth commissions. Starting with the Truth and Reconciliation Commission in South Africa to the recently established Commission for the Clarification of the Truth, Coexistence, and Non-Repetition in Colombia, there has been a total of six truth commissions that have included cases on homophobic violence in their final reports, or that have implemented a specific LGBTIQ perspective as part of their mandate.

The following subsections of this chapter will provide the reader with an overview of the evolution of transitional justice in relation to the inclusion of sexual and gender minorities. The first part will outline the situation of LGBTIQ individuals during the post-Second World War transitional justice model. The second part provides a snapshot of each of the truth commissions that have included cases of violence against sexual and gender minorities.

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<sup>25</sup> Fobear K, “Queering Truth Commissions” (2013) 6 *Journal of Human Rights Practice* 51

<sup>26</sup> Muddell K, ‘Sexual Minorities Study: LGBT Issues and Transitional Justice’ (paper presented at the Open Society Institute Forum: Gender and Transitional Justice, New York City, 7 February 2007) as cited by Fobear K, “Queering Truth Commissions” (2013) 6 *Journal of Human Rights Practice* 51

<sup>27</sup> UN Human Rights Council, ‘Report of the Office of the United Nations High Commissioner for Human Rights on Discrimination and violence against individuals based on their sexual orientation and gender identity’ (UN 2015) A/HRC/29/23, para 42.

<sup>28</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’ (UN 2016) A/HRC/31/57, para 69.



### 2.3.1 Post-WWII transitional justice: The Nuremberg Trials

The end of the Second World War and the establishment of the International Military Tribunal at Nuremberg mark the first phase of the genealogy of transitional justice.<sup>29</sup> The Nuremberg Trials and the principles that they developed are regarded as the 'birth certificate' of International Criminal Law and the notion of individual criminal responsibility in this area.<sup>30</sup>

Nuremberg also created a profound normative impact in the International Human Rights Law discourse. The horrors of the Holocaust became the galvanizing force that ensured a new approach to international law as regards the rights of the individual.<sup>31</sup>

Three main arguments supported the creation of this mechanism: First, the need to prosecute the Nazi leaders in accordance with a due process of law, second, the desire to make a deep impression on the world opinion about the crimes committed during the Holocaust and third, the belief that some record had to be kept in relation to the horrors of the war.<sup>32</sup> Hence, Nuremberg was not only about criminal prosecution but also about creating a specific narrative of the war for future generations.

However, the victims of the Holocaust had a marginal role during this process of collection of memories. They were used only as witnesses and were not even mentioned in the Nuremberg and Tokyo Charters.<sup>33</sup> Chrisje Brants and Katrien Klep argue in relation to Nuremberg:

‘The needs of individual victims figured not at all, while a form of collective victimhood was reserved for (the peoples of) the nations attacked by Germany (...) the Allies regarded themselves as victims of a brutal war of aggression, during which there had also been a programme to exterminate the Jews.’<sup>34</sup>

The above argument is illustrated by the situation of the LGBTIQ victims of the Holocaust

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<sup>29</sup> Teitel RG, *Globalizing Transitional Justice: Contemporary Essays* (Oxford University Press 2014) 3-4.

<sup>30</sup> Werle G and Jessberger F, *Principles of International Criminal Law* (3rd ed Oxford University Press 2014) Paras 3 - 29.

<sup>31</sup> Bates E, "History" in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (3rd ed Oxford University Press 2018) 16.

<sup>32</sup> Cassese A, *Cassese's International Criminal Law* (Oxford University Press 2013) 256.

<sup>33</sup> Zappala S, *Human Rights in International Criminal Proceedings* (Oxford University Press 2003) 220.

<sup>34</sup> Brants C and Klep K, "Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness" (2013) 7 *International Journal of Conflict and Violence* 36, 39.

after the war. During the Nazi regime, the elimination of homosexuality became one of the declared aims of the dictatorship; hence, sexual and gender minorities suffered specific forms of persecution.<sup>35</sup> However, the end of the war did not signify the end of the abuses committed against the homosexual victims of the Holocaust; on the contrary, they faced further persecution and criminalisation.

According to Günter Grau, there were three distinct phases during the Third Reich in the campaign against homosexuality: **(I)** from 1933 to 1935; Nazi leaders implemented measures to suppress the institutions that advocated for the decriminalisation of homosexuality, they also terrorised the meeting-places for sexually diverse individuals. **(II)** from 1936 to the beginning of the war, they created the 'Reich Office for the Combating of Homosexuality and Abortion', along with the implementation of trials and strict penal sanctions. During the last phase **(III)** from 1936 to the end of WWII, homosexual men were imprisoned in concentration camps and were sometimes castrated and used for typhus fever experiments.<sup>36</sup>

The last phase marked a stage in the radicalisation of the Nazi policy against sexual minorities. Homosexual prisoners in concentration camps were identified with the pink triangle as a distinctive symbol in their clothing. They had to stand not only the hard conditions of forced labour and torture (as any other prisoner), but they also suffered from prejudices and victimisation from the rest of the camp population; they were 'the lowest of the low in the camp's hierarchy'<sup>37</sup>.

Nonetheless, the measures implemented by the victorious Allied Powers to guarantee accountability and redress for the horrors committed by the Nazis did not include these stories of persecution. The testimonies and personal memories of the LGBTIQ survivors were not incorporated in the massive archive of Nuremberg.

In this sense, Nuremberg contributed to the construction of a unidirectional approach to the Holocaust, where the memories of many 'non-Aryan' and 'non-Jewish' groups were forgotten.<sup>38</sup>

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<sup>35</sup> Grau G, "Persecution, 'Re-Education', or 'Eradication' of Male Homosexuals between 1933 and 1945. Consequences of the Eugenic Concept of Assured Reproduction" in Günter Grau (ed), *Hidden Holocaust: gay and lesbian persecution in Germany 1933-45* (Cassell 1995) 1 - 7.

<sup>36</sup> Ibid.

<sup>37</sup> Röhl W, "Homosexual Inmates in the Buchenwald Concentration Camp" (1996) 31 *Journal of Homosexuality* 1.

<sup>38</sup> Mbabuike MC and Evans AM, "Other Victims of the Holocaust" (2000) 25 *Dialectical Anthropology* 1.

In fact, it was not only until the 1970s when the memory of the persecution of homosexuals during the Holocaust emerged in the context of the gay liberation and the fight for civil rights on the basis of identity politics. The period between the end of the war and the emergence of this movement was marked by the silence of the victims and the criminalisation of ‘homosexuals conducts’.<sup>39</sup>

In this sense, the first phase of transitional justice was marked by the oblivion of the LGBTIQ victims of the Holocaust.

We can learn two valuable lessons from this period. First, the example of the Nuremberg Trials shows that the structural violence against sexual and gender minorities, does not only condition and enhance violence during periods of conflict, it also impacts the situation of victims in the post-conflict setting. Ideas about sexual morals and institutions such as the criminalisation of homosexuality had an impact on the approach of the Nuremberg Trials towards queer individuals.

Second, Nuremberg also depicts that transitional justice mechanisms reproduce a hierarchization of victims. The individuals who are excluded in times of peace, abused in times of violence and forgotten in times of transition; suffer a **continuum of violence** that can indeed be reproduced by transitional justice mechanisms. Hence, while some victims obtain redress, others are re-victimised.

The following subsection will explore the situation of sexual and gender minorities in the second stage of transitional justice: the post-Cold War period.

### **2.3.2 Post-Cold War transitional justice: The role of truth commissions**

The second phase of transitional justice is associated with the wave of democratic transitions and modernisation that began with the collapse of the Soviet empire and the end of local

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<sup>39</sup> Jensen EN, “The Pink Triangle and Political Consciousness: Gays, Lesbians, and the Memory of Nazi Persecution” (2002) 11 Journal of the History of Sexuality 319.

conflicts and dictatorships related to the US/Soviet ‘bipolarism’. During this phase there was a reconsideration of the post- WWII model of prosecution, the fundamental question was ‘is the administration of criminal justice the proper way to achieve national reconciliation and reconstruction?’<sup>40</sup>

The re-evaluation of the Nuremberg model led to the creation of a new institutional mechanism that aimed to heal societies and reconstruct the history of past abuses: the **truth commission**.<sup>41</sup>

A truth commission is ‘a temporary body established with an official mandate to investigate past human rights violations, identify the patterns and causes of violence and publish a final report’<sup>42</sup>. They are not judicial inquiries; their aim is to establish the social and historical context of violations and large-scale patterns of abuse behind a massive number of cases.<sup>43</sup> This approach seeks to present a coherent narrative of conflict, based on the importance of acknowledging victims’ voices beyond prosecution.

According to Priscilla B. Hayner a truth commission has five main characteristics: ‘(1) it is focused on past rather than current events, (2) investigates a pattern of events that took place over a period of time, (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) it is temporary, with the aim of creating a final report; and (5) it is officially authorized or empowered by the state under review’.<sup>44</sup>

The first truth commission was established in Argentina in 1983, under the name of the National Commission on the Disappeared (*Comisión Nacional sobre la Desaparición de personas* - CONADEP). Since its creation, more than forty truth commissions have been implemented to inquiry human rights violations during specific periods of conflict and repression.<sup>45</sup>

However, homophobic and transphobic violence has often been ignored and placed outside the

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<sup>40</sup> Teitel, *Globalizing Transitional Justice* (n 29) 54.

<sup>41</sup> Ibid.

<sup>42</sup> Bakiner O, *Truth Commissions: Memory, Power, and Legitimacy* (University of Pennsylvania Press 2016) 24.

<sup>43</sup> International Center for Transitional Justice, *Truth Seeking: Elements of Creating an Effective Truth Commission* (Eduardo Gonzalez and Howard Varney eds International Center for Transitional Justice & Amnesty Commission of the Ministry of Justice of Brazil 2013)

<sup>44</sup> Hayner PB, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd ed Routledge 2011) 11- 12.

<sup>45</sup> Ibid.

mandates of these truth commissions. Only a handful of these mechanisms have included violations against sexual and gender minorities. The South African Truth and Reconciliation Commission in 1996, was the first of its kind to address this issue; since then, some South American countries have explored this topic in their truth commissions, starting with Peru in 2001, to the recently established truth commission in Colombia.

The following is a brief overview of the six truth commissions (South Africa, Peru, Paraguay, Ecuador, Brazil, and Colombia) which have included cases of homophobic violence in their final reports (or an LGBTIQ perspective in their mandate).

### **2.3.2.1 South Africa (1995 - 2002)**

**The South African Truth and Reconciliation Commission (TRC)** was instituted after forty-five years of the apartheid regime in this country and more than thirty years of armed resistance of the African National Congress (ANC).<sup>46</sup> The apartheid system supported white supremacy through a set of laws that enabled a white minority to monopolise the economic and political power in South Africa, by relegating the black majority to a powerless political status.<sup>47</sup>

The government used instruments of state power, including violence and gross human rights violations, to repress demands for freedom and equality.<sup>48</sup> During this period, the country suffered massacres, killings, torture, lengthy imprisonment of activists, and severe economic and social discrimination against the non-white population.<sup>49</sup> All parties to the conflict committed human rights abuses.

The negotiated transition to democracy culminated with the first national parliamentary elections of 1994 and the election of Nelson Mandela as president; the political transition included an agreement on the implementation of a truth commission. In 1995, the Promotion of National Unity and Reconciliation Act 34, provided a comprehensive mandate for the TRC which included the duty to establish a complete picture of the human rights abuses committed

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<sup>46</sup> Ibid 27.

<sup>47</sup> Chapman AR and Merwe HVder, "Assessing the South African Transitional Justice Model" in Audrey R Chapman and Hugo Van der Merwe (eds), *Truth and reconciliation in South Africa: Did the TRC Deliver?* (University of Pennsylvania Press 2008) 1 - 19.

<sup>48</sup> Ibid.

<sup>49</sup> Hayner (n 44) 27.

during the apartheid and the compilation of a report providing an account of these abuses.<sup>50</sup>

The TRC held special hearings on crucial sectors or institutions of society and their response or participation in abusive practices. During those hearings, some submissions and testimonies were provided detailing violence against sexual minorities.<sup>51</sup>

During the institutional hearings on the health sector, submissions were given in connection with aversion therapies administered to individuals to ‘change’ their sexual orientation without their consent.<sup>52</sup>

The National Coalition for Gay and Lesbian Equality (NCGLE) presented a submission during the Winnie Madikizela-Mandela Hearing in relation to the abduction of four men. These individuals were harassed and tortured during captivity, and one of them was murdered. The use of homophobic arguments to support these actions were used by the NCGLE to raise attention to this particular event.<sup>53</sup>

In the end, the TRC only made cursory references to the testimonies presented concerning the aversion therapy and the Winnie Madikizela-Mandela hearing in the final report. There was not a comprehensive hearing on human rights violations against sexual and gender minorities under the apartheid regime.

José Fernando Serrano-Amaya, explains that this was a result of the work, not only of the TRC but also of a conscious choice of LGBTIQ activists. According to this author, the NCGLE decided to frame the fight for gay liberation in the language of rights and the struggles for change in the post-conflict South Africa, rather than the recognition of victimisation and pain that characterised the TRC.<sup>54</sup>

As a result, the interplay between official truth, activism and political commitment gave distinctly limited participation to gay and lesbian organisations in the TRC.<sup>55</sup> As a truth-telling mechanism, the TRC did not provide space for complete visibility of the homophobic and

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<sup>50</sup> South Africa, Promotion of National Unity and Reconciliation Act 34 (1995)

<sup>51</sup> Fobear (n 25).

<sup>52</sup> South Africa, Truth and Reconciliation Commission, ‘Final Report, Volume 4’ (1998) para 41.

<sup>53</sup> Serrano Amaya (n 18) 120 – 125.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

transphobic violence perpetrated during the Apartheid.

The failure to adequately incorporate the voices of sexual and gender minorities in the final report of the TRC was a result of the choices made by activists and the lack of an LGBTIQ perspective in the work of the Commission. For Katherine Fobear, this is a reflection of the continued homophobia and heteronormativity in the post-apartheid South Africa.<sup>56</sup>

### **2.3.2.2 Peru (2001 - 2003)**

**The Peruvian Truth and Reconciliation Commission** (*Comisión de la Verdad y Reconciliación*) was established after the end of Alberto Fujimori's government to investigate the crimes and human rights abuses committed during the internal armed conflict that took place between 1980 and 2000.<sup>57</sup>

This Commission was the first of its kind to incorporate a gender perspective as part of its mandate and to include a specific chapter on sexual violence in the final report of this organ.<sup>58</sup> However, the gender perspective of the commission was focused exclusively on women; the experiences of sexual and gender minorities were included as an afterthought.

Volume II of the Commission's Final Report made a description and analysis of the leading actors of the conflict and their participation in the violation of human rights. This volume included a small section named '*Actos de terror contra minorías sexuales*' (Acts of terror against sexual minorities), in which they included actions committed by the rebel group *Movimiento Revolucionario Túpac Amaru* (MRTA) against some LGBTIQ individuals.<sup>59</sup>

According to the report, members of this group broke into a gay bar in the city of Tarapoto and captured eight individuals who were later murdered. The rebel group announced in their official newspaper that the massacre was committed because homosexuality was corrupting the youth of the region, and therefore the individuals (who were identified as transvestites) deserved to be punished.

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<sup>56</sup> Fobear (n 25) 56 – 57.

<sup>57</sup> Mantilla J, "La Comisión De La Verdad y Reconciliación En El Perú y La Perspectiva De Género: Principales Logros y Hallazgos" (2006) 43 Revista IIDH 323

<sup>58</sup> Ibid.

<sup>59</sup> Peru, Comisión de la Verdad y Reconciliación del Perú, 'Informe Final: Volume II' (2003) 444 – 445.

The Commission also identified a case of a gay man, who was killed by members of the MRTA; the section also mentioned it was possible that similar crimes were committed in other parts of the country. However, there was no further inquiry concerning these potential cases.<sup>60</sup>

At the end of this section, the Commission recognised that the MRTA had a specific aim to stimulate social prejudices against homosexuality and a policy to target sexual minorities.<sup>61</sup>

However, according to the International Center for Transitional Justice, the Commission addressed cases of violence against sexual minorities only by accident, when one of the staff members of this organ noticed a memorial led by a local LGBTIQ group commemorating the victims who died during the armed conflict.<sup>62</sup> Despite there being, a sense among many in the Commission that there was a common pattern among illegal armed groups of targeting sexual minorities, the topic did not receive much attention during the discussions held by the commissioners.<sup>63</sup>

In consequence, the final report of the Peruvian Truth Commission failed to provide an analysis of the systematic human rights violations committed against sexual and gender minorities during the armed conflict. The mandate of the Commission did not include an LGBTIQ perspective, and unlike other minority groups such as women and ethnic minorities; the final report only described some facts without implementing a contextual analysis of the roots of such violations.

### **2.3.2.3 Paraguay (2004 - 2008)**

**The Paraguayan Truth and Justice Commission (*Comisión de la Verdad y Justicia*)** was established to investigate human rights violations committed by state agents during the military dictatorship of Alfredo Stroessner (1954 - 1989). The final report of this commission includes a volume on paradigmatic cases of human rights violations, in which, two emblematic cases of violence against sexual and gender minorities are contained. Both cases are related to the

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Nesiah (n 19) 46.

<sup>63</sup> Muddell (n 26)



systematic persecution of gay men by the Paraguayan police forces and the judiciary.<sup>64</sup>

The case of Bernardo Aranda (1959) was related to the death of a famous radio broadcaster who was burnt to death in his apartment; the case of Mario Luis Palmieri (1982) was connected to the disappearance and murder of a 14 years old boy who was kidnapped from school. In both cases, the police suspected that the potential perpetrators of the crimes were gay men.<sup>65</sup>

As a consequence, the police forces implemented massive raids in homosexual meeting places during which, more than a hundred individuals were arrested and detained for several months without any respect for due process and judicial guarantees. Testimony gathered by the truth commission described how during their time in prison these persons were subjected to inhuman and degrading treatment, torture and sexual abuses.<sup>66</sup>

Using these cases as paradigmatic examples, the Paraguayan Truth Commission affirmed that during the dictatorship there was generalised and systematic persecution of sexually diverse individuals, where the judiciary and the armed forces implemented a *de facto* criminalisation of conducts.<sup>67</sup>

Notwithstanding, the chapter on recommendations and conclusions of the final report concluded that there was no reliable information in relation to the consequences of the military repression on LGBTIQ individuals. The two cases described above were included in a paragraph within the human rights violations associated with the gender perspective; this information was used to merely conclude that the military regime did not respect sexual difference.<sup>68</sup>The commissioners did not make recommendations about these violations.

#### **2.3.2.4 Ecuador (2008 - 2009)**

**The Ecuadorian Truth Commission (*Comisión de la Verdad*)** was created to investigate human rights violations committed from 1984 to 2008 by Ecuadorian state agents, with a

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<sup>64</sup> Paraguay, Comisión de Verdad y Justicia de Paraguay, 'Informe Final: Volume 7 Part II' (2008) 173 - 190.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Paraguay, Conclusiones y Recomendaciones del Informe Final de la Comisión de Verdad y Justicia del Paraguay (Conclusions and recommendations) (2008) Para 136.

particular focus on the presidency of Leon Febres Cordero (1984 - 1988).<sup>69</sup>

The final report of the Commission included a chapter on sexual violence and gender. This chapter contains a section on violence and discrimination against LGBTIQ individuals during 1990 - 2000.<sup>70</sup>

The report analysed the '*Más Seguridad*' (More Security) Plan of the city of Guayaquil, which gave police forces a broad discretion to detain and fine those who were perceived as a threat to public morals and security. The implementation of this plan led to the arrest, torture, invasion of privacy and sexual abuse of many LGBTIQ individuals. The report includes some paradigmatic cases and testimonies of persons who were detained by police forces.<sup>71</sup>

Based on its findings, the Commission recommended the implementation of public policy and norms to establish mechanisms to fight and prevent discrimination against the LGBTIQ population, as well as the participation of LGBTIQ organisations in discussions related to gender violence.<sup>72</sup>

### **2.3.2.5 Brazil (2012 - 2014)**

**The Brazilian Truth Commission (*Comissão Nacional da Verdade* - CNV)** was established to investigate gross human rights violations committed between 1946 and 1988 by state agents or persons supported by the state, with a particular focus on the military dictatorship (1964 - 1985).<sup>73</sup>

The final report of the truth commission included a section on human rights violations, committed against specific groups or social movements during the military regime. The volume contains a chapter on Dictatorship and Homosexuality (*Dictadura e Homossexualidades*), which provides an overview and analysis of the treatment and situation of LGBTIQ individuals during

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<sup>69</sup> Bueno-Hansen P, "The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America" (2017) 12 International Journal of Transitional Justice 126, 5.

<sup>70</sup> Ecuador, Comisión de la Verdad Ecuador, 'Informe Final, Volume I: Homofobia y transfobia: Violencia y discriminación contra el colectivo LGBTI en la década de los 1990 y 2000' (2014) 292 - 311.

<sup>71</sup> Ibid.

<sup>72</sup> Ecuador, Comisión de la Verdad Ecuador, 'Informe Final, Volume V: Conclusiones y Recomendaciones' (2014) paras 117 & 150.

<sup>73</sup> Brazil, Comissão Nacional da Verdade, 'Relatório (Final Report) Volume I' (2014) para 1.

this period.<sup>74</sup>

The final report highlights four specific forms of repression against sexual and gender minorities: an homophobic discourse, which linked sexual diversity to an ‘international communist agenda’; discrimination and the violation of the right to work, in relation to persons who were dismissed from their official positions as result of their sexual orientation; censorship of works of art and newspapers with homosexual content; and violence and raids held by police forces in LGBTIQ meeting places, which mainly targeted transgender women.<sup>75</sup>

As a result of this study, the Commission recommended the implementation of legislative and institutional reforms, such as the criminalisation of ‘*homolesbotransphobia*’, the implementation of legislation in relation to gender identity and the issuing of public apologies to the victims, reparations and the construction of memorials.<sup>76</sup>

### **2.3.2.6 Colombia (2017 - present)**

**The Colombian Commission for the Clarification of the Truth, Coexistence, and Non-Repetition** (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*) was created as a result of the peace negotiations that were held between the Colombian government and FARC (*Fuerzas Armadas Revolucionarias de Colombia*) between 2012 and 2016. These peace talks ended with the signing and ratification of the peace agreements, which contained the basis for the end of the internal armed conflict between the parties and the rules for the post-conflict reforms.<sup>77</sup>

Despite being a huge national controversy in this regard, the Colombian peace accords were the first of their kind to incorporate an LGBTIQ perspective and to recognise the existence of LGBTIQ victims of the internal armed conflict of this country.<sup>78</sup>

As a result, the Presidential Decree that organised the work of the truth commission established, as part of the mandate of this organ, the obligation to promote the recognition of the impact

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<sup>74</sup> Brazil, Comissão Nacional da Verdade, ‘Ditadura e Homossexualidades’ (2014) 20 - 88.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Colombia, ‘Acuerdo Final para la Terminación del Conflicto (Final Peace Accord)’ (2016)

<sup>78</sup> See Bueno Hansen (n 69) 5-6.

that the armed conflict had on sexual and gender minorities. This decree also established as one of the functions of the Commission, the creation of a workgroup on gender that ‘must implement its functions in coordination with women organisations and LGBT groups’<sup>79</sup>.

The Commission was officially instituted on December 2017, and the first testimonies were received in March 2018.<sup>80</sup> Its work in relation to sexual and gender minorities is still to be seen.

## 2.4 Conclusions

The analysis of the previous involvement of transitional justice with sexual and gender minorities has exposed an obvious absence of an LGBTIQ perspective in the work of truth commissions and other transitional mechanisms.

Despite the particular vulnerability of queer individuals during times of political unrest, transitioning societies have not inquired the consequences of violence in their lives. As exemplified by the Post-WWII transitional model, instances of structural violence such as the criminalisation of same-sex relations, not only have an impact of the kind of violence that LGBTIQ individuals suffer during turmoil, but also on the continuum of violence that they undergo in post-conflict settings. In this sense, by neglecting the experiences of this group, transitional justice may contribute to the perpetuation of their vulnerability.

The present chapter has also shown a recent trend among truth commissions of including cases of violence against sexual and gender minorities. Despite their different social and political contexts, it is possible to identify the following four trends in their work.

(I) as exemplified by Peru and South Africa, much of the information obtained in relation to LGBTIQ violence was based on the data provided by LGBTIQ groups; there is a **tendency to limit research to what activists consider to be the truth**. (II) Except for Brazil and Colombia, these truth **commissions have lacked a clear LGBTIQ perspective**, for the most part, issues concerning sexual and gender minorities were studied by the Commissions, as part of gender

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<sup>79</sup> Colombia, Presidency of the Republic of Colombia, ‘Decreto 588 de 2017’ (2017).

<sup>80</sup> Alsema A, “Colombia’s Truth Commission Takes Force” *Colombia Reports* (December 6, 2017) <<https://colombiareports.com/colombias-truth-commission-takes-force/>> accessed April 4, 2018

inquiries which had their main focus on women's issues. **(III)** there is **no inquiry about the structural factors and contexts of violence**, except for Brazil and the report from the National Centre for Historical Memory of Colombia, there is no research about the roots of human rights abuses. Lastly, **(IV)** as in the cases of Peru and Paraguay, no recommendations are provided concerning reparation and acknowledgment of queer victims.

While the recent inclusion of sexual minorities in the work of truth commissions, represents an advance in comparison to the oblivion that characterised the Nuremberg Trials, it is still necessary to think about the consequences and possibilities of the inclusion of this group in settings of political transition.

The next chapter of this work will discuss the relevance of truth-telling for LGBTIQ victims and the opportunities and limitations, which the final reports of truth commissions represent for the hope of achieving more inclusive post-conflict societies.

# 3 Truth matters: Truth commissions and the power of discourse

## 3.1 Introduction

In the current state of the art of transitional justice, there is a general agreement on the necessity to establish the truth about a society's past wrongs in order to restore peace and democracy after periods of political unrest.<sup>81</sup> The idea behind this maxim, is the belief that 'just as individuals need closure to leave trauma behind, whole traumatized societies would benefit from a public airing leading to closure'<sup>82</sup>.

The standpoint of this thesis is that, even if the truth is essential in transitional settings, it is equally important to acknowledge that history-telling in the name of justice is not a neutral or objective process.<sup>83</sup> The truth that is produced by transitional justice mechanisms is deeply rooted in social, cultural and power relations, and coloured by how those in power promote a particular narrative.<sup>84</sup>

The above is of vital relevance for sexual and gender minorities because their inclusion in the transitional justice arena has precisely been achieved through the work of truth commissions. In this sense, the hope for transformation and integration of LGBTIQ individuals in the post-conflict society depends significantly on how their experiences are portrayed in the final reports of truth commissions and how their identities are framed in the post-conflict narrative.

Taking the above into account, this chapter aims to develop three interrelated ideas: **First**, truth-telling is especially relevant for marginalised groups in post-conflict settings. **Second**, the truth that is told about these groups can be understood as a discourse, that shapes and it is shaped by power relations; and **third**, the dynamics between official truth and power, create a

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<sup>81</sup> Teitel RG, *Transitional Justice* (Oxford University Press 2000) 3.

<sup>82</sup> Roht-Arriaza N, "The New Landscape of Transitional Justice" in Naomi Roht-Arriaza (ed), *Transitional Justice in the twenty-first century: beyond truth versus justice* (Cambridge University Press 2006) 4.

<sup>83</sup> Brants C and Klep K, "Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness" (2013) 7 *International Journal of Conflict and Violence* 36, 38.

<sup>84</sup> *Ibid.*

distinctive identity of groups that can either contribute to their empowerment or play a role in their oppression.

The main idea of this chapter is that the inclusion of LGBTIQ individuals in truth reports has a broader significance beyond the mere literal meaning of the words that are contained in these instruments.

## 3.2 Why truth matters

From a legal perspective, the unveiling of prior human rights abuses is imperative for transitioning states.<sup>85</sup> As a matter of fact, international law recognises that ‘every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes’<sup>86</sup>.

The right to the truth has been held to belong not only to victims and their families but also to society as a whole.<sup>87</sup> In this sense, the truth that a state is bound to reveal falls into two categories. First, a state must provide an account about each particular incident of human rights abuses, including the circumstances under which they occurred and the perpetrators. Second, a state is also obliged to publicly disclose a full and complete truth about the structural and systemic causes of the atrocities of the past.<sup>88</sup>

The first category of truth is essential for individual victims and their relatives to access reparations, obtain justice in the form of prosecutions and find closure.<sup>89</sup>

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<sup>85</sup> For a discussion on the sources of this legal obligation see Sweeney JA, “The Elusive Right to Truth in Transitional Human Rights Jurisprudence” (2017) 67 *International and Comparative Law Quarterly* 353. Concerning the status of the right to the truth as a rule of customary international law see Naqvi Y, “The Right to the Truth in International Law: Fact or Fiction?” (2006) 88 *International Review of the Red Cross* 245.

<sup>86</sup> UN. Commission on Human Rights ‘Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity’ (2005) E/CN.4/2005/102/Add.1, 7.

<sup>87</sup> Szoke-Burke S, “Searching for the Right to Truth: The Impact of International Human Rights Law on National Transitional Justice Policies” (2015) 33 *Berkeley Journal of International Law* 526 533

<sup>88</sup> *Ibid.*

<sup>89</sup> Groome D, “The Right to Truth in the Fight against Impunity” (2011) 29 *Berkeley Journal of International Law* 175.

The second category is related to the construction of a collective narrative about times of violence. The truth that is revealed to the public and how this truth is shaped has an impact on how societies remember the periods of political unrest, and how victims and perpetrators are framed in the process of social reconstruction.

To guarantee the right to the truth in its two dimensions, states must implement effective mechanisms to disclose the events of the past.<sup>90</sup> While a wide range of tools and institutions can be enacted (national criminal proceedings, international tribunals, the disclosure of official archives)<sup>91</sup>, the most praised mechanism for the disclosure of truth, has been the truth commission. Both international law and academia, have endorsed this instrument as an important avenue to promote justice and uncover the truth.

Notably, the aim to protect, acknowledge, and empower victims and survivors have been established as essential objectives of truth commissions.<sup>92</sup> According to Martha Minow, ‘the most distinctive element of a truth commission, in comparison with prosecution, is the focus on victims, including forgotten victims in forgotten places’<sup>93</sup>.

In the same line of thought, Kimberly Theidon argues that ‘one goal of truth commissions, is writing new national narratives that are more inclusive of groups that have been historically marginalised within the nation-state’<sup>94</sup>.

Truth commissions are presented as an avenue, not only to satisfy the rights of victims who have been historically neglected, but also to put their voices and experiences in the forefront of the process of social reconstruction.

In this sense, the importance of truth commissions for sexual and gender minorities is monumental. Not only, they aim to guarantee their fundamental rights to truth and reparation (individual dimension of truth), but they also aim to build a platform for these individuals to

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<sup>90</sup> UN, Commission on Human Rights, ‘Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights’ (2006) E/CN.4/2006/91, paras. 47 - 54.

<sup>91</sup> *ibid.*

<sup>92</sup> International Center for Transitional Justice, *Truth Seeking: Elements of Creating an Effective Truth Commission* (Eduardo Gonzalez and Howard Varney eds International Center for Transitional Justice & Amnesty Commission of the Ministry of Justice of Brazil 2013) 9.

<sup>93</sup> Minow M, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press 2009) 60.

<sup>94</sup> Theidon K, *Intimate Enemies: Violence and Reconciliation in Peru* (University Of Pennsylvania Press 2013) 105.



tell their stories to the very same societies that neglected their life-experiences, in and out of conflict (collective dimension of truth).

As Katherine Fobear argues, ‘if the role of truth commissions is to acknowledge the voices and experiences of the marginalised, then overlooking state and local violence directed against sexual and gender minorities will not only limit discussions on human rights and accountability, but may also cause further marginalisation, trauma, and violence to occur’<sup>95</sup>.

Hence, the inclusion of LGBTIQ victims in the work of truth commissions has the potential to break the continuum of violence that sexually diverse individuals experience, even beyond the end of civil unrest. In this sense, **truth matters for them**, because it allows for their experiences to be heard and included in the narrative that constitutes the basis for the ‘new’ society.

However, recognising and addressing the structural and direct violence against these individuals requires more than merely placing these persons in truth commissions to give their testimonies.<sup>96</sup> It also requires an understanding of the limitations, biases, and potentialities of truth commissions that determine a specific outcome for victims of human rights abuses.

In this sense, even if including sexual and gender minorities in truth commissions is important, the mere inclusion is not enough to tackle structural and direct discrimination; what matters is *how* they are included and *what* is promoted in relation to this group.

In this order of ideas, the next section will pinpoint the limitations that truth commissions face in the inclusion of the voices of LGBTIQ individuals, by understanding truth reports as discourses that represent potentialities, risks, and limitations.

## 3.3 Truth as discourse

### 3.3.1 Critical Discourse Analysis (CDA) & truth commissions

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<sup>95</sup> Fobear K, “Queering Truth Commissions” (2013) 6 Journal of Human Rights Practice 51, 53.

<sup>96</sup> Ibid 61.

The aim of Critical Discourse Analysis is to analyse ‘opaque as well as transparent structural relationships of dominance, discrimination, power and control as manifested in language’<sup>97</sup>. It understands discourse as ‘an opaque power object in modern societies and aims to make it more visible and transparent’<sup>98</sup>.

CDA is a useful tool to uncover the politics of language; it pinpoints the fact that words have political significance beyond the mere meaning of the words. As famously stated by Norman Fairclough and Ruth Wodak:

‘CDA sees discourse – language use in speech and writing – as a form of ‘social practice.’ Discourse is socially constitutive as well as socially conditioned – it constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people. It is constitutive both in the sense that it helps to sustain and reproduce the social status quo and in the sense that it contributes to transforming it. Since discourse is so socially consequential, it gives rise to important issues of power. Discursive practices may have major ideological effects – that is, they can help produce and reproduce unequal power relations (...) through the ways in which they represent things and position people’<sup>99</sup>.

This thesis argues, from a CDA perspective, that the final reports of truth commissions as a form of written communication, constitute a discourse that can impact social relations, and at the same time, is constituted by preceding instances of power. This means that truth commissions give rise to issues of hegemony as a consequence of how they represent victims and other individuals.

Given the paramount importance of truth reports in the reconstruction of societies, this works argues that the representation of sexual and gender minorities in these instruments can maintain or transform their status quo.

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<sup>97</sup> Wodak R, “What CDA Is about: A Summary of Its History, Important Concepts and Its Developments” in R Wodak and M Meyer (eds), *Methods of critical discourse analysis* (SAGE 2001) 1-12.

<sup>98</sup> Blommaert J and Bulcaen C, “Critical Discourse Analysis” (2000) 29 *Annual Review of Anthropology* 447.

<sup>99</sup> Fairclough N and Wodak R, “Critical Discourse Analysis” in Teun A van Dijk (ed), *Discourse Studies: A Multidisciplinary Introduction* (Sage 1997) 258.

The following subsections will deepen into three main ideas: **(I)** Truth reports constitute master narratives of times of political unrest and authoritative claims of truth. **(II)** A multiplicity of factors determines them; hence they cannot be considered as new beginnings; and **(III)** they have the power to shape and influence the collective memory of a society, including the construction of specific identities of victims.

### 3.3.2 Truth reports as master narratives

Teresa G. Phelps, argues that the role of the final reports of truth commissions is to write ‘a version of the facts as they occurred in a circumscribed past’<sup>100</sup> and to provide an interpretation of those facts, by creating a plot that demonstrates cause and effect.<sup>101</sup>

Phelps understands these truth reports as **master narratives** that ‘impose a form of story on the circumscribed events that they are charged to uncover’<sup>102</sup>. In this sense, the role of truth commissions is not merely to compile and register testimonies and facts; it is also to provide meaning and temporal structure to those facts.

What makes truth reports the master narrative, in contrast to other versions of the past (for example; unofficial commissions of inquiry or civil society's truth initiatives), is precisely their ability to make authoritative claims of truth. Their precise aim is to flatten out different and complex memories and understandings of the past into a distinctive story, which constitutes the basis for the process of nation-building and reconstruction in the post-conflict arena.<sup>103</sup>

In this sense, truth reports as the master narratives of periods of conflict and repression, constitute a discourse about the past that is composed by the interpretation of different memories and experiences of victims and other actors. Furthermore, given the importance of the master narrative in times of political change; what is written in the final reports of truth commissions constitutes not only a discourse about a turbulent past and a former regime but also a story of an emerging political consensus.<sup>104</sup>

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<sup>100</sup> Phelps TG, *Shattered Voices: Language, Violence, and the Work of Truth Commissions* (University of Pennsylvania Press 2006) 79.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Brants and Klep (n 83) 37.

<sup>104</sup> Phelps (n 100) 80.

The above means that truth commissions not only collect testimonies; they also select and narrate experiences to create a specific state-sponsored history of periods of political unrest, which aims to shape the collective memory and identity of a nation in the aftermath of conflict. The subsection below will develop the idea of how truth reports influence collective understandings of the past during transitional scenarios.

### 3.3.3 Master narrative and collective memory

The term **collective memory** was coined by sociologist Maurice Halbwachs to explain how social groups influence individual memories.<sup>105</sup> According to Halbwachs, it is in society where persons acquire their memories, including memories about events that they did not experience directly.<sup>106</sup>

In this sense, it is through society that individuals recall the details of particular occurrences and the normative lessons that are drawn from those events. Thus, the construction of collective memory implies ‘the processing, storing and interpretation of historical events according to the distinctive features of specific contemporary societies’<sup>107</sup>. This process is selective, while some past events are remembered others fall into oblivion.<sup>108</sup> Hence, this process dictates *what* is remembered and *how* individuals and collectives remember it.

In order to store and construct collective memories, societies require a wide range of institutions. As Susanne Karstedt has noted, law and legal institutions with ‘their power to define property rights and relations of domination and subordination within a society, leave a stamp on social space and contribute to the process of shaping the collective memory of groups and society’<sup>109</sup>. In this sense, law plays an essential role in the formation of a communal sense of the past.

Particularly in scenarios of transitional justice, legal mechanisms perform an essential part in the construction of a collective understanding of a turbulent history. Periods of violence and

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<sup>105</sup> See Halbwachs M, *On Collective Memory* (University of Chicago Press 1992).

<sup>106</sup> Hirsch M, *Invitation to the Sociology of International Law* (Oxford University Press 2015) 47 - 90.

<sup>107</sup> Ibid 48.

<sup>108</sup> Ibid.

<sup>109</sup> Karstedt S, “Introduction” in Susanne Karstedt (ed), *Legal Institutions and Collective Memories* (Hart 2009) 3.

political unrest, often imply the absence of a shared framework of memory and the lack of collective agreement.

Hence, in political transitions, the construction of collective memory follows legal blueprints.<sup>110</sup> Especially concerning truth commissions and their aim to unveil the atrocities of the past, there is a need to establish a nation-building narrative.<sup>111</sup>

The above means that the discourse of truth commissions has the power to trigger collective understandings about a violent past. The master narrative of truth reports is not just another story about violence; **it is the written official history about violence.**

In this sense, truth reports dictate what happened, who were the victims and perpetrators and most importantly; how these different actors should be framed and treated in the new narrative of a nation.

All the above implies that the interpretation of facts that are presented by truth commissions is regarded as the official history of periods of political unrest. Giving the importance of this narrative in transitional justice settings, what is stated in truth reports has the power to shape the collective understanding of what happened during violence. This narrative does constitute not only a tale of the past, but also the foundation for the reconstruction of the society.

However, as it will be highlighted in the subsection below, the narrative provided by truth commissions cannot be regarded as neutral or objective.

### **3.3.4 Master narratives as ‘old beginnings’**

The transitional justice project asserts the idea of transitional histories as foundations.<sup>112</sup> The narratives produced by truth commissions and other mechanisms are perceived as ‘new beginnings’; as opportunities for societies to start over and build a future based on consensus.

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<sup>110</sup> Teitel, *Transitional Justice* (n 81) 69 - 117.

<sup>111</sup> Brants and Klep (n 83) 42.

<sup>112</sup> Teitel, *Transitional Justice* (n 81) 69 - 71.

However, the notion of transitional truths as ‘new beginnings’ elides the pre-existing historical accounts of nations.<sup>113</sup> In fact, even if the transitional justice enterprise is understood as a break from the past, truth commissions and other mechanisms are produced within a nation’s history.

The above means that transitional truths are embedded in specific political and historical roots that influence their outcome, which includes pre-existing relations of power and oppression between different sectors of society.

In this sense, the master narratives of truth reports, rather than being atomized narratives about the past, are indeed a continuation of a nation’s history.<sup>114</sup> Even if their primary outcome is to produce a fresh start for societies, their work is deeply rooted in previous accounts of violence and disagreement. Hence, if truth commissions aim to transform conflict into peaceful co-existence, their primary objective needs to include the assessment of previous structures of violence that influence their work.

Consequently, in relation to sexual and gender minorities, ideas about sexuality and sexual morals can influence the work of truth commissions regarding how the stories about LGBTIQ victims are told. The discourse produced by truth commissions is rooted in the pre-existent status quo of these individuals.

Additionally, factors such as the biases and political and moral conceptions of the commissioners and other members of the commission's staff, have to be taken into account. Just as the beliefs of a judge can influence his/her judgments, members of truth commissions can reflect their views and biases in truth reports.

Other factors to take into account include, for instance, the ideology of international donors that finance the transitional justice mechanisms or the political positions of the transitional government.

All of the above means that even if transitional justice mechanisms are perceived as platforms for societies to start over, they are still state-sponsored tools that respond to their specific

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

historical and political roots, and to the interests and ideologies of those who have the power to shape the master narrative.

Consequently, rather than referring to the transitional justice discourse as a new beginning, it would be more appropriate to understand the master narrative as an attempt to write over already written pages. Truth reports are 'old beginnings' that can reproduce as well as transform, the oppressed status of sexual and gender minorities.

### **3.4 Conclusions**

The analysis conducted in this chapter has highlighted the importance of truth-telling for sexual and gender minorities in post-conflict settings. Truth is essential for them, not only to access their fundamental rights to justice and reparation but also to be included in a collective narrative of a turbulent past that allows their voices to be heard.

The role of unveiling this truth has been assigned to truth commissions. These mechanisms have been praised for their victim-centred approach and their ability to bring the experiences of the marginalised to the forefront of the process of social reconstruction.

In this sense, truth commissions provide hope for LGBTIQ victims to be heard by society and to generate positive change in the post-conflict arena. This hope is centred in the inclusion of marginalised groups in their final reports.

However, this chapter has shown, that truth reports are not *per se* instruments of change. They are influenced by several factors that determine their potential to heal the social fabric and bring the concerns of victims into focus.

By using a critical discourse analysis stand, this chapter has understood truth reports as discourses that influence and are influenced by social and power relations. The particular relevance of the discourse produced by truth reports is that they embody an official claim of truth. They are the master narrative of periods of civil unrest.

This master narrative has two main characteristics. First, it has the power to influence collective understandings of periods of violence and to establish its interpretation of facts as objective history; they produce both collective and individual perceptions of the past. Second, this discourse is influenced by preceding social relations and power groups. In this sense, the historical accounts of truth commissions cannot be regarded as neutral ‘new beginnings’.

All of the above implies that the hope for sexual and gender minorities to find redress and recognition in truth commissions must take a critical stand. While their inclusion in truth reports is relevant, it is not enough.

The hope for a narrative that has the potential to influence the collective memory of society in regards to a conflictive past, and hence, to trigger the construction of a more inclusive post-conflict setting; **depends on the underlying factors that frame the identities of sexual and gender minorities in truth reports.**<sup>115</sup>

On the basis of the above premise, the following chapter will analyse how the final reports of the truth commissions that were outlined in Chapter 2, have constructed the identity of LGBTIQ individuals.

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<sup>115</sup> Fobear (n 95)



# 4 The emerging LGBTIQ-subject of truth commissions

## 4.1 Introduction

The preceding chapter of this thesis highlighted the relevance of truth-telling for marginalised groups in transitional justice settings and the role that the final reports of truth commissions play in allowing their voices to be heard in post-conflict scenarios.

Such reports were understood as discourses that hold power to make an impact on social relations during a process of political flux. The said impact can be transformative, in the sense that allows marginalised groups to gain a voice of their own in the post-conflict arena, or inimical, when it perpetuates the oppression exerted on unprivileged groups.

The present chapter understands that the outcome of truth reports for sexual and gender minorities depends on how their identities are framed in these instruments. As argued by Paul Gready, ‘the cast of the past, their narratives, and relationships depend on the questions asked and the identities assigned’<sup>116</sup>. His argument implies that truth commissions, employ the identities of those involved in their stories as a starting point to produce their master narrative.

In this sense, the primary aim of this chapter is to provide an account of the identity and places that have been assigned to sexual and gender minorities in truth reports, by highlighting and analysing the approach of the five truth reports that have included cases of violence against queer individuals.

The first section of the chapter will outline the idea of the ‘making of victims’ in the transitional justice enterprise, that is, how transitional justice mechanisms fetishize and portray a specific kind of victim.

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<sup>116</sup> Gready P, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Routledge 2011) 166.

The second section of the chapter aims to provide an answer to the question of *who is the LGBTIQ-subject of truth commissions?* This implies an analysis of the common traits of the LGBTIQ identity that are contained in truth reports. Such analysis will focus on four characteristics of the reports: Location, sources of information, timeframes and recommendations. In this sense, the second section of this chapter and its conclusion contain the principal analysis of this thesis and its contribution to existing literature.

## 4.2 Truth commissions and the making of victims

Justice projects that establish official bodies to find facts, perform the fundamental task to acknowledge and recognise the identities of the different actors and situations that are brought to their official attention.<sup>117</sup> For instance, they can classify an individual as a victim, a perpetrator or a conspirator; and a situation as a crime against humanity, as a genocidal act or a gender-based violation.<sup>118</sup>

The above implies that the fact-finding function of truth commissions includes the recognition of the identities of the different actors involved and the classification of atrocities of the past. This includes the recognition of identity-based grievances and their effects.<sup>119</sup>

Identity-based grievances are violations that are committed against a person or collective on the basis of their membership in a social group, whether they choose that membership or is ascribed by others.<sup>120</sup> Recognizing an identity-based violation implies the recognition of the identity of the victim of such violation. In this sense, by providing an account of events of the past, truth commissions also provide a narrative of the identities involved in those events.

Such recognition of identities is part of the process of acknowledging victims experiences and understanding that a particular harm, was committed on a person because that individual was part of a group or perceived as such.

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<sup>117</sup> Franke KM, "Gendered Subjects of Transitional Justice" (2006) 15 Columbia Journal of Gender and Law 813.

<sup>118</sup> Ibid.

<sup>119</sup> Arthur P, "Introduction: Identities in Transition" in Paige Arthur (ed), *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (Cambridge University Press 2013)

<sup>120</sup> Ibid.

However, in this process of recognition, truth commissions have been found to fetishize a particular conception of the victim and thus negate the complexity of their identity.<sup>121</sup> Feminist legal scholarship has been in the forefront of uncovering the type of victim that is produced by the transitional justice enterprise.

Much of the feminist insight on the work of truth commissions has revealed that ‘the range of harms considered by truth process is delimited in such a way as to exclude much of the experience of women’<sup>122</sup>. The lack of a gender perspective in truth commissions has built a victim-identity of women through the lens of sexual violence. They are included as victims ‘only where they explicitly experience certain kind of sexual violation or suffer the same type of abuse as men’<sup>123</sup>.

In this sense, ‘masculinist’ determinations of transitional settings, have created an identity of the woman-victim fundamentally as a victim of sexual violence. This not only fails to capture the different manners in which women may suffer injustice during conflict and repression but also limits analysis of the structural violence that allows specific human rights abuses to be committed against women, in both the public and the private spheres.<sup>124</sup>

The following section, drawing on the feminist and critical scholarship of transitional justice, will highlight specific characteristics of truth reports and uncover the identity that they have constructed concerning sexual and gender minorities.

### **4.3 *Who* is the LGBTIQ-subject of truth commissions?**

The path traversed in this thesis has now led us to ask the fundamental question of this work, *who is the LGBTIQ-subject of truth commissions?* This question inquires for the formation of the identity of sexual and gender minorities in truth reports.

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<sup>121</sup> Lawther C, “The Cast of the Past: Truth Commissions and the Making and Marginalization of Identity” (2018) 17 *Ethnopolitics* 113.

<sup>122</sup> Turner C and Ní Aoláin F, “Gender, Truth & Transition” (2007) 16 *UCLA Women's Law Journal* 229.

<sup>123</sup> *Ibid* 260.

<sup>124</sup> Nagy R, “Transitional Justice as Global Project: Critical Reflections” (2008) 29 *Third World Quarterly* 275.

The importance of this inquiry, as it has been developed in preceding chapters, stands on the idea of the power of the discourse that is produced by truth commissions. The identities produced in the final reports of these mechanisms are not a dead letter, on the contrary, they constitute a basis for the narrative that is told in post-conflict settings, and hence, for the possibility to put the voices of marginalised groups at the forefront of the processes of social reconstruction.

In this sense, uncovering the victim identity of LGBTIQ individuals in truth reports equals to the identification of possible pitfalls in the approach of truth commissions. Just as a feminist analysis of truth commissions uncovered the gender-victim of truth reports and its limitations, the following subsections will outline possible dangers of the approach of these reports concerning sexual and gender minorities.

Each of the subsections will focus on a different characteristic of the reports. The first subsection will analyse the **location** of sexual and gender minorities within truth reports; the second subsection provides an analysis of the **sources of information** that are used in the reports. The third subsection focuses on the **timeframes** that are analysed in the reports and the fourth subsection analyses how the cases of violence against LGBTIQ individuals are portrayed in the **recommendations** of the different commissions.

Concerning each of the characteristics, this thesis will provide an overview of the common traits found in truth reports and an analysis of those characteristics.

### **4.3.1 Location: Voices from the margins**

This subsection analyses *where* the voices and experiences of LGBTIQ are located within truth reports. The standpoint of this analysis is that the position of the cases of violence against sexual and gender minorities in the reports provides a sense of the importance given to such experiences by the commissioners.

The final report of the **South African Truth and Reconciliation Commission (TRC)**, does not include a specific section on violence against LGBTIQ individuals; as mentioned in Chapter 2, only two cases of violence against this collective were included in the report.

The first case, related to the abduction, torture, and abuse of four young men, was included in the special investigation on the Mandela United Football Club. The report states that ‘the youths were accused of engaging in sexual relations with the Reverend Paul Verryn’ as the reason for the detention.<sup>125</sup>

However, the report does not reflect on the reason provided by the perpetrators to commit the crimes; questions about sexual orientation were left out by the commissioners. While the report established individual responsibility for the abuses committed, it did not consider the motives behind those acts.

Similarly, the section related to the South African Medical Services recognised that ‘there were reports of a particular psychologist who used aversion therapy and electric shocks on homosexual military men as part of a treatment for their ‘gayness’’<sup>126</sup>. Again, questions about sexual orientation are left outside the scope of the report. This particular situation is not mentioned or analysed in any other section of the document.

Hence, the TRC treated the cases mentioned above as a marginal part of the more prominent investigations where they were contained. Cases of homophobic violence were mentioned, but not analysed.

In contrast to South Africa, the reports of the Peruvian, Ecuadorian, Paraguayan and Brazilian Truth Commissions did include specific sections on violence against LGBTIQ individuals.

The report of the **Peruvian Truth and Reconciliation Commission** dedicated one and a half page to the human rights abuses committed against sexual minorities by *Movimiento Revolucionario Túpac Amaru (MRTA)*.<sup>127</sup> Such violations were placed at the end of the chapter, even after the conclusions were provided.

Chapter 2 of this thesis, established how cases of violence against LGBTIQ individuals were included in the Peruvian Commission’s report as an afterthought. The location of the section on sexual minorities within the report, clearly reflects the lack of interest of the commissioners

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<sup>125</sup> South Africa, Truth, and Reconciliation Commission, ‘Final Report, Volume 2’ (1998) para 52.

<sup>126</sup> Ibid. Volume 4, para 41.

<sup>127</sup> Peru, Comisión de la Verdad y Reconciliación del Perú, ‘Informe Final: Volume II’ (2003) 444 – 445.

in this issue. This section is not connected to the primary analysis of the chapter; they are added facts that do not hold any coherence with the narrative of the report. Just as in the South African experience, the cases on violence against LGBTIQ individuals occupy a marginal place within the Peruvian report.

**The Ecuadorian Truth Commission** included the analysis of abuses committed against LGBTIQ individuals as part of the chapter on sexual violence and gender perspective.<sup>128</sup> As in the Peruvian experience, the description of cases of homophobic and transphobic violence is placed in the last section of the chapter, without much connection to the central analysis of the chapter.

While the report, places significant attention on the contextual and structural background of the human rights abuses suffered by women (particularly sex crimes); the same is not done in regards to sexual and gender minorities. The Commission does not provide an account of why and how these human rights abuses are connected to a broader gender perspective.

The Brazilian and the Paraguayan truth reports include specific sections on LGBTIQ violence. The report of the **Paraguayan Truth and Justice Commission** included two cases of violence against sexual and gender minorities as part of its section on paradigmatic cases of human rights abuses.

Unlike the commissions mentioned above, the Paraguayan report showcases a coherent narrative in relation to the violence committed against sexual and gender minorities. It explained how the selected cases were able to exemplify a pattern of abuses and discrimination committed against queer individuals.<sup>129</sup>

However, the chapter on final recommendations and conclusions pays little attention to these cases. They were included in a paragraph within the conclusions of the gender category, and no recommendations were provided concerning LGBTIQ victims of the military regime.<sup>130</sup>

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<sup>128</sup> Ecuador, Comisión de la Verdad Ecuador, 'Informe Final, Volume I: Homofobia y transfobia: Violencia y discriminación contra el colectivo LGBTI en la década de los 1990 y 2000' (2014) 292 - 311.

<sup>129</sup> Paraguay, Comisión de Verdad y Justicia de Paraguay, 'Informe Final: Volume 7 Part II' (2008) 173 - 190.

<sup>130</sup> Paraguay, Conclusiones y Recomendaciones del Informe Final de la Comisión de Verdad y Justicia del Paraguay (Conclusions and recommendations) (2008) Para 136.

The **Brazilian National Truth Commission** included a specific chapter on the situation of sexual and gender minorities during the dictatorship. This is the only document among these truth reports, to include an historical background of the violations committed against LGBTIQ individuals and to provide recommendations about those abuses.<sup>131</sup> The Brazilian report provided a specific section to tell the stories of LGBTIQ individuals during periods of repression and to give an account of the context in which those stories occurred.

The analysis of the location of cases of violence against sexual and gender minorities provides two common characteristics of the reports. First, it is clear how these cases occupy a marginal position within the reports. Except for the Brazilian truth report, the documents did not highlight these stories of abuse as part of a bigger context of violence; they included these cases without much connection to the history of periods of violence.

Second, there is also a tendency to include cases of violence against sexual and gender minorities within chapters on gender perspective or sexual violence; much of the focus of these sections is on women and their experiences during political unrest.

The stories of LGBTIQ individuals occupy a few paragraphs that are not connected to the primary analysis on gender. In this sense, gender analysis in truth reports seems to imply mainly women and sexual abuse, with insufficient space for the inclusion of the voices of sexual and gender minorities.

All of the above means, that truth reports have provided a marginal location to the experiences of LGBTIQ individuals. They speak from the margins of the reports in isolated paragraphs that are barely connected to more significant questions on gender and human rights abuses. Cases of violence against LGBTIQ individuals are not put into the spotlight.

In this sense, this thesis argues that for the most part, the final reports of truth commissions have reproduced the marginalisation of LGBTIQ individuals within their work. This is similar to the critical analysis conducted by feminist legal scholarship on ‘gender mainstreaming’, which has uncovered that the use of a gender perspective in the work of different institutions has not always translated into gender equality.<sup>132</sup>

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<sup>131</sup> Brazil, Comissão Nacional da Verdade, ‘Ditadura e Homossexualidades’ (2014) 20 - 88.

<sup>132</sup> Caglar G, “Gender Mainstreaming” (2013) 9 Politics & Gender 336.

Notably, concerning truth commissions, even 'well-intentioned' approaches to gender can result in invisibilization of women in operationalising work and a poor systemic and sustained focus on gender issues.<sup>133</sup> A similar pattern is present in truth reports concerning sexual and gender minorities. While there might be well-intentioned approaches and efforts to tell the stories of LGBTQI individuals, the reality is that for the most part, the final reports of truth commissions provide limited space for their experiences to be told to the public.

Consequently, an analysis of the location of cases of violence against sexual and gender minorities within truth reports shows a tendency of 'adding on' their experiences to these documents without much connection to the narrative that is told by the report. The inclusion of these cases provides a limited understanding of the impact of violence on the identities and bodies of LGBTIQ individuals. Hence, **even if queer individuals speak in truth reports, they speak from the margins.**

### **4.3.2 Sources of Information: Who speaks *for* the victims?**

In relation to the transitional justice enterprise, Tshepo Madlingozi asks whether the victim produced by this enterprise can speak and whether is legitimate for others to speak on behalf of the victim.<sup>134</sup> He notes that the exercise of speaking on behalf of victims can aggravate the disempowerment and marginalisation of these individuals.<sup>135</sup>

When the transitional justice experts, including NGOs, academics and human rights lawyers, speak in representation of victims; they are producing a specific identity of these victims that does not necessarily respond to their needs and realities. Hence, by creating a saviour-victim narrative, the transitional justice enterprise can deprive victims from their own voices and agency.<sup>136</sup>

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<sup>133</sup> Nesiah V, *Truth Commissions and Gender: Principles, Policies, and Procedures* (International Center for Transitional Justice 2006) 4.

<sup>134</sup> Madlingozi T, "On Transitional Justice Entrepreneurs and the Production of Victims" (2010) 2 *Journal of Human Rights Practice* 208.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*



Specifically, concerning gay and lesbian organisations, José Fernando Serrano Amaya notes that such collectives produce testimonies under particular logics of voice and authorship.<sup>137</sup> These logics are embedded in identities organised around the idea of ‘gay pride’, which entails the use of westernised categories of sexual orientation and gender identity.<sup>138</sup>

In this sense, Serrano Amaya argues that the regulated definitions of LGBT identities that are used by mainstream gay and lesbian organisations may affect the way in which people position themselves and are positioned in exercises of truth-telling and memorialisation. He uses the term ‘small-truths’ to refer to the experiences of individuals who cannot be related to regulated categories of LGBT.<sup>139</sup> Such small-truths, are often unheard and excluded from the stories presented by gay and lesbian organisations to truth commissions.

The above is part of what Joseph Massad calls ‘**The Gay International**’, a movement of organisations mainly dominated by western white males, which seeks to defend the rights of gays and lesbians around the world.<sup>140</sup> Massad notes that this movement excludes many of the concerns and identities of non-white individuals who cannot relate their experiences to the ‘Gay International’.<sup>141</sup>

The above means, that the exclusive reliance on gay and lesbian collectives to obtain information about human rights abuses might be problematic. If those organisations are part of a westernised ‘Gay International’, many small-truths are at risk of being excluded from the narrative produced by truth reports.

The South African case is an example of the above. As developed in Chapter 2 of this thesis, the political commitments made by National Coalition for Gay and Lesbian Equality, gave insufficient space for the voices of sexual and gender minorities to be heard in the TRC.<sup>142</sup> This organisation embodied a voice of authority to speak for LGBTIQ individuals, and consequently, its decisions determined the inclusion of their experiences in the post-Apartheid mechanisms, and the exclusion of small-truths.

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<sup>137</sup> Serrano Amaya JF, *Homophobic Violence in Armed Conflict and Political Transition* (Palgrave Macmillan 2018) 121.

<sup>138</sup> Ibid 133.

<sup>139</sup> Ibid 127.

<sup>140</sup> Massad J, “Re-Orienting Desire: The Gay International and the Arab World” (2002) 14 *Public Culture* 361.

<sup>141</sup> Ibid.

<sup>142</sup> Serrano Amaya (n 137 ) 120-125.

The truth reports of the Peruvian and Ecuadorian commissions relied exclusively on the information provided by LGBTIQ groups. They did not conduct much research outside the stories told by those groups; which focused on precise locations and identities. In this sense, the truth of those collectives became the official truth provided by the truth reports of Peru and Ecuador.

The Paraguayan and Brazilian experiences, conducted investigations of their own, resorting to historical documents and direct testimonies from the victims. In this sense, they were able to provide a more democratic truth in their final reports. However, it should be noted, that both reports reflected mainly the experiences of gay men during periods of repression. The voices of women, intersex and transgender persons, were mostly absent from the Brazilian National Truth Commission and the Paraguayan Truth and Justice Commission.

In this sense, an analysis of the five truth reports that include cases of violence against sexual and gender minorities shows that the information provided in these documents was obtained mainly from gay and lesbian organisations. Relying exclusively on these groups as sources of documentation poses the risk of neglecting the small-truths of those who are less-privileged within the LGBTIQ universe.

The LGBTIQ subject of truth commissions is gay and male and is powerfully shaped by the organisations that have the power to talk on behalf of sexually diverse individuals.

### **4.3.3 Timeframes: A 'descriptive truth'**

One of the main criticisms raised against transitional justice is related to its inability to acknowledge and tackle structural violence and the roots of the conflict. Transitional justice implies the existence of a fixed period during which a nation transitions from a violent past to a 'never again' future of peaceful co-existence.<sup>143</sup> Hence, transitional justice creates a sense of 'now' and 'then'<sup>144</sup>.

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<sup>143</sup> Nagy (n 124) 280.

<sup>144</sup> Ibid.

The creation of these artificial periods brings two main problems. The first one is related to the ‘**now**’ of transitional justice. Truth commissions and other mechanisms, usually obscure continuities of violence and exclusion by focusing its attention on the human rights abuses committed in a turbulent past, and thus neglecting ongoing social and economic inequalities.<sup>145</sup>

The Peruvian truth report is a perfect example of this problematic. While this document merely mentioned human rights abuses committed against sexual and gender minorities during the Peruvian armed conflict; at the time when the report was written, homophobia and transphobia were (and are) rampant in that country.

The Inter-American Commission on Human Rights reported that during 2001-2013, at least 38 LGBT persons were killed in Peru.<sup>146</sup> Also, it uncovered that during that period in some regions of the country, local governments had enforced policies aimed at the ‘eradication’ of gay persons.<sup>147</sup> In this sense, the report of the Peruvian Truth Commissions failed to place cases of violence against sexual and gender minorities as part of a bigger pattern of institutional and structural violence against LGBTQI individuals.

The above is a mere example of the pandemic homophobia and transphobia suffered in many post-conflict or post-repression countries. While the truth commissions in Brazil, Paraguay, and Ecuador were writing their reports, many cases of violence were perpetrated against sexual and gender minorities in these countries.<sup>148</sup> Hence, even if truth commissions look at a problematic past, they are still embedded in a violent present.

The second problem is the ‘**then**’ of transitional justice. By focusing on a specific period, transitional justice often neglects the context in which human rights violations occurred and the structural factors that enabled the outbreak of violence. This is problematic, because when truth commissions overlook the context of violations, their aim of unveiling the truth, becomes a mere description of facts and testimonies without any connection to the realities and localities where these facts occurred.

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<sup>145</sup> Ibid.

<sup>146</sup> OAS, Inter-American Commission on Human Rights, ‘Violence against Lesbian, Gay, Bisexual, Trans and Intersex persons in the Americas’ (OAS 2015) OEA/Ser.L/V/II. Doc.36/15 Rev.2, para 122.

<sup>147</sup> Ibid, para 144.

<sup>148</sup> Ibid.

Consequently, truth commissions fail to provide an account of how different institutions and structures furnished the commission of atrocities during times of political unrest. As explored elsewhere in this work, structural violence against LGBTIQ individuals is the factor that allows and enhances the commission of direct violence against this collective during times of conflict and repression.

The lack of a structural and contextual approach is a common trait in four of the five commissions analysed in this thesis. The Peruvian report, as mentioned before, did not pay significant attention to violence against queer individuals, which included a lack of contextual analysis. The same goes for South Africa.

While the Ecuadorian and Paraguayan commissions, tried to provide a contextual analysis of the violations, they focused in very narrow periods of time and locations. The Ecuadorian experience, focused its attention on a particular region, without explaining the reasons for such approach. The Paraguayan Commission focused on police persecution against gay men in a distinctive period, but failed to provide an account of how this generalised persecution affected others sectors of the LGBTIQ community.

The Brazilian experience is notable in its effort to provide both a contextual and structural account of the violence perpetrated against LGBTIQ individuals during the Brazilian dictatorship. This document gives an account of the social and historical context of the human rights abuses committed against queer individuals, as well as an analysis of the preceding structural violence that determined the commission of specific acts during the period of repression. Unfortunately, this is an exception among the truth reports analysed in this thesis.

All of the above means, that the emerging LGBTIQ-subject of truth commissions has been placed in narrow and decontextualized periods of time. Truth commissions have failed to place the human rights violations committed against sexual and gender minorities in specific social and historical contexts. In this sense, truth reports have been unable to acknowledge the roots of violence committed against this collective. The truth provided by truth commissions concerning homophobic and transphobic violence has been more a description of facts, than an effort to understand and acknowledge the causes of those facts.

### 4.3.4 Recommendations: Truth reports as empty words

One of the final goals of truth commissions is the contribution to social and political transformation.<sup>149</sup> Their role is not just to inform the public about the atrocities of the past; it is also to influence public policy and encourage change in the behaviour of groups and institutions.<sup>150</sup>

To achieve this goal, truth commissions provide final recommendations to tackle the causes of the abuses identified in the final report and thus, prevent their recurrence.<sup>151</sup> Even if these recommendations are usually not binding for governments, they are paramount to address the specific challenges that are faced by vulnerable populations.<sup>152</sup> In this sense, recommendations can help to prevent the repetition of violations against particular groups.

Given the above, the recommendations of final reports have the potential to unveil the patterns of abuse committed against sexual and gender minorities and to guarantee the non-repetition of violent acts. However, some of the truth reports analysed in this thesis did not include any recommendations concerning LGBTIQ victims. This is the case of Peru and South Africa.

The Paraguayan commission did include LGBTIQ victims in the conclusions of its final report. This document concluded that the military regime in Paraguay did not ‘respect sexual difference’. However, the document states that the commission did not have enough information to understand the impact of the military regime on sexual and gender minorities.<sup>153</sup> In this sense, the Paraguayan commission did not make any recommendations concerning the LGBTIQ victims of the military regime.

Unlike the previous experiences, the Ecuadorian Truth Commission recommended the implementation of public policy and norms to prevent discrimination against LGBTIQ

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<sup>149</sup> International Center for Transitional Justice, *Truth Seeking: Elements of Creating an Effective Truth Commission* (Eduardo Gonzalez and Howard Varney eds International Center for Transitional Justice & Amnesty Commission of the Ministry of Justice of Brazil 2013)

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Paraguay, Conclusiones y Recomendaciones del Informe (n 130) para 136.

individuals.<sup>154</sup> Even if this approach was important, it failed to address the systematic pattern of abuse perpetrated by the Ecuadorian public force against sexual and gender minorities.

The Brazilian National Truth Commission, as in many of the previous categories, is notable for its final recommendations. This organ recommended both individual and collective reparations based on the specific context in which the violations were committed. Additionally, the Commission also recommended the construction of ‘sites of memory’ in the places where the abuses against sexual and gender minorities were committed during the military regime.<sup>155</sup>

The lack of recommendations in truth reports means that even if cases and patterns of violence are identified, there is not a connection between those findings and the reconstruction of post-conflict societies. In this sense, even when cases of human rights violations are exposed, the absence of recommendations turn the findings of truth reports into **empty words**.

The above means that even if homophobic and transphobic violence is exposed, the lack of concrete actions to fight the roots of this violence allows for the perpetuation of violent acts in the post-conflict arena. The precise aim of truth commissions is to influence programs of reparation and memorialisation, and the avenue to achieve such influence is through the authoritative findings and recommendations of these mechanisms.

In this sense, the emerging approach of truth commissions to LGBTIQ issues is mostly disconnected from reality. Even if truth reports have highlighted some cases of violence, they do not propose concrete actions to tackle the re-occurrence of such acts after the end of conflict and repression.

## 4.4 Conclusions

This thesis departed from the idea of truth commissions as avenues to achieve the inclusion of sexual and gender minorities in post-conflict and post-repression societies. The belief behind this idea, is that the writing of national narratives of reconciliation and peaceful co-existence in the aftermath of perpetration of atrocities is also an opportunity to write a narrative of

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<sup>154</sup> Ecuador (n 128)

<sup>155</sup> Brazil (n 131) 310.

inclusion for groups who have been historically marginalised, and who suffered the worst forms of violence during civil unrest.

In this sense, the central inquiry of this work is to establish if this hope has been achieved in the final reports of the five truth commissions that included the experiences of LGBTIQ individuals during periods of violence. **The analysis provided in this chapter has demonstrated that for the most part, this hope has not been attained.**

The above conclusion is based on the analysis of four different common traits of the five truth reports.

The first category, location, demonstrated that cases of violence against sexual and gender minorities occupy a marginal position within the reports. The South African and Peruvian experiences, mentioned cases that involved LGBTIQ individuals, but did not pay attention to the significance of such acts on their identities; this implies a lack of an LGBTIQ perspective.

A second tendency identified within this category is related to the inclusion of sexual and gender minorities' issues outside the central narrative of the report. Their experiences are usually placed in chapters related to gender and sexual violence; however, much of the attention is given to women and their experiences to sexual abuse.

These two tendencies make evident a general trend of 'adding on' the experiences of LGBTIQ victims without much connection to the general story told by truth reports. In this sense, these experiences become isolated facts that do not have the potential to provide an understanding of the violence perpetrated against sexual and gender minorities.

The second category analysed the sources of information used by the truth commissions concerning LGBTIQ violence. This analysis uncovered that many of the commissions relied heavily on the information provided by gay and lesbian organisations. Such reliance implies a risk of silencing the experiences of the individuals who cannot relate their identities to mainstream categories of the 'Gay International'. In this sense, truth reports may reproduce westernised categories of sexual and gender minorities, by neglecting the stories of those who are less-privileged within the LGBTIQ collective.

The third category focused on the periods of time studied by truth reports. This analysis unveiled that many of the reports failed to provide an account of the historical and social context in which cases of violence against sexual minorities occurred. Also, they failed to place such cases in more prominent patterns of continuing abuse against LGBTIQ individuals. In this sense, most of the reports provided a 'descriptive truth', which implies a simple description of atrocities, without giving an account of the reasons behind such acts.

The fourth and last category analysed the recommendations provided by the truth reports. Three of the five commissions did not provide any recommendations concerning LGBTIQ victims, and one of the commissions provided general recommendations without much connection to the cases analysed in its truth report. Consequently, these reports did not provide any tools to influence public policy in the post-conflict society. In this sense, for the most part, the cases contained in these reports turned into empty words.

All of the above means, that most of the truth reports that were analysed in this chapter reproduced the oppression and marginalisation exerted on sexual and gender minorities. The identities of LGBTIQ individuals have been narrowly framed.

The stories of these individuals are reserved a secondary space in truth reports, their inclusion in truth commissions has not responded to the development of a specific LGBTIQ perspective, and many of their stories are a result of insufficient research, which relies heavily on the positions of gay and lesbian organisations.

Consequently, **the voices of LGBTIQ individuals are voices that speak from the margins of truth reports.** The LGBTIQ-subject of truth commissions has been constructed in a way that impedes broader discussions about intersectionality and gender. Even if the recent inclusion of the experiences of sexual and gender minorities in truth reports is an excellent advance in contrast to the oblivion that has characterised transitional justice, **this inclusion is still not enough to deliver the promise of change and redress for sexual and gender minorities.**

Given the above, it is possible to state that the master narrative of truth reports has been a discourse that has taken part in the continuum of violence perpetrated against LGBTIQ individuals. This does mean that we should desist from truth commissions as an avenue to find



redress for these persons, it means that is important to learn from previous truth-telling experiences to understand how these mechanisms could better contribute to triggering positive change, for a group that has been historically discriminated and marginalised.

## 5 Final Remarks: Towards a 'carnivalisation' of truth-telling

Teresa G. Phelps makes a distinction between storytelling as carnival and storytelling as official feast. Based on the analysis conducted by Mikhail Bakhtin on the medieval carnival<sup>156</sup>, Phelps argues that truth commissions are spaces for the 'carnivalisation' of truth-telling.<sup>157</sup>

According to Bakhtin, the carnival is a space of temporary liberation from the prevailing truth and established order; it is an alternative social space that allows the participation of all individuals; an opportunity to take a break from practices and structures of oppression.<sup>158</sup>

On the other hand, Bakhtin understands official feasts as elite-sponsored celebrations that reinforce the existing world. They 'look at the past, and use the past to consecrate the present'<sup>159</sup>. Phelps argues that criminal trials resemble official feasts, because the participation of victims is marginalised and unimportant.<sup>160</sup>

This thesis has demonstrated, that truth commissions can also resemble an official feast. The analysis of the LGBTIQ-subject of truth commissions has revealed that the identities and places assigned to sexual and gender minorities in the final reports of truth commissions do not provide (for the most part) spaces for the inclusion of this group in post-conflict/post-repression societies.

Chapter 1 of this thesis presented the hope enshrined in the transitional justice enterprise, and particularly truth commissions, to build narratives that are more inclusive of historically marginalised groups. However, Chapter 2 demonstrated that for the most part, such hope has not been achieved for LGBTIQ victims of conflict and repression.

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<sup>156</sup> See Bakhtin M, *Rabelais and His World* (Indiana University Press 1984).

<sup>157</sup> Phelps TG, *Shattered Voices: Language, Violence, and the Work of Truth Commissions* (University of Pennsylvania Press 2006) 67 - 69.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

Since the implementation of the Nuremberg Trials, the experiences of sexual and gender minorities were largely ignored by the transitional justice enterprise. Nonetheless, the recent inclusion of LGBTIQ voices in the final reports of truth commissions represents an emerging possibility to change this history of marginalisation.

However, Chapter 3 established that the mere inclusion of queer individuals in the work of truth commissions does not necessarily imply an opportunity for redress. This chapter developed the idea of truth reports as discourses that shape and are shaped by social relations. In this sense, even if these documents have indeed the possibility to bring positive change to oppressed groups, they can also reproduce structures of violence and marginalisation.

Chapter 4 demonstrated that the approach of the five truths reports analysed in this thesis has primarily given a marginal position to LGBTIQ individuals. An analysis of the locations, sources of information, time frames and recommendations of the reports, evidenced the construction of an inflexible LGBTIQ-subject that is unable to respond to the contextual and structural patterns of human rights violations.

The LGBTIQ-subject of truth commissions offers an insufficient opportunity for sexual and gender minorities to tell their stories to the public, and hence to achieve a more inclusive post-conflict society. This implies that the voices of queer individuals in truth reports are **voices that speak from the margins**.

Fortunately, the inclusion of LGBTIQ individuals in the work of truth commissions is a nascent field. The Brazilian experience and the upcoming truth commission in Colombia, represent a hope for the 'carnivalisation' of truth-telling for sexual and gender minorities.

However, it is essential to take into account, that transitional justice is not a silver bullet to alleviate structural barriers, constraints, and challenges that entrench LGBTIQ individuals.<sup>161</sup> The limitations of this enterprise have to be taken into account.

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<sup>161</sup> Park A, "Other Inhumane Acts": Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone" (2006) 15 Social & Legal Studies 315.

While there is an urgency of including an LGBTIQ perspective in the work of truth commissions, it is also necessary to understand that transitional justice settings have their assumptions; and that sometimes the cure could be worse than the malady.

Perhaps, it is important to start thinking about ways of overcoming the ambiguity of transitional justice mechanisms and their inability to portray the experiences of marginalised groups. For instance, Paul Gready and Simon Robins, propose a transformative justice approach to transitional justice that has the potential to emphasize local agency and challenge unequal and intersecting structures of exclusion.<sup>162</sup>

Much research is needed to understand how the introduction of the voices of LGBTIQ individuals in truth reports, could shape their status in transitioning societies, and how this can be mainstreamed into transitional justice mechanisms.

This work has demonstrated that the approach of truth commissions to sexual and gender minorities, has reproduced marginalisation and oppression from the past. They have played a role in the continuum of violence exerted on LGBTIQ individuals.

In this sense, the emerging LGBTIQ challenge to transitional justice consists in the development of relevant strategies to allow sexual and gender minorities to indeed transition from oppression to inclusion. This challenge implies, not only addressing the constraints and assumptions of transitional justice, but also of international law. Transitional justice has become a 'well-established fixture in the global terrain of human rights'<sup>163</sup>, and therefore a reworking of the underlying assumptions of truth commissions concerning sexual and gender minorities, also requires an unveiling of the identities produced by the international law discourse.

Hopefully, this work will make a small contribution to the aspiration of 'carnivalisation' of transitional justice for sexual and gender minorities, and of bringing redress to those for whom violence does not stop after the end of armed conflict and repression.

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<sup>162</sup> See. Gready P and Robins S, "From Transitional to Transformative Justice: A New Agenda for Practice" (2014) 8 International Journal of Transitional Justice 339.

<sup>163</sup> Nagy R, "Transitional Justice as Global Project: Critical Reflections" (2008) 29 Third World Quarterly 275.

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