LUND UNIVERSITY

ACHIEVING GENDER-JUST PROGRAMMES: A CASE STUDY ON SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION

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ABSTRACT

The aim of this paper is to research how transitional justice programmes have to this day inadequately addressed gender-based violence by specifically examining the overall framework of South Africa's Truth and Reconciliation Commission (TRC) in its goal towards reconciliation as a case study. To gain a thorough analysis on how its framework impacted its inclusion of women's experiences of conflict and how it could have worked towards having a more transformative effect on the lives of black women in South Africa. To conduct the analysis, this thesis applies the theories of gender justice, decoloniality, and intersectionality. And examines the framework of the Commission by specifically adopting a method of content analysis to establish and analyse its framework. The research found that the framework of the TRC (established as the *Conceptual Framework*, the *Mandate*, and *Reparations*) greatly impeded the adequate inclusion of women in its goal towards reconciliation. And that for it to be a gender-just programme, the framework needed to be more inclusive and considerate of women's unique experiences of conflict in its practice.

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SIMZ21 – 2023/Master's in Social Studies of Gender

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Acknowledgements

I would just like to say thank you to all my friends and family that have supported me throughout this process. It has not been easy but their support and faith in me has been unbelievable, and I am truly grateful for all the little encouraging conversations. Thank you to Monika especially, I am so grateful to call you my friend. I would also like thank my mums who has been a great comfort for me during this process. In addition, thank you to Khanyi for having such faith in me and keeping me in your thoughts and prayers.

Secondly, I would also like to thank the Graduate School (Katherine) and the Academic Writing Centre (Ann and Sandra) for assisting me through my struggles and helping me get on track. The learning process has been invaluable. It has taught me to it is okay to not always know what you are doing and to seek out help for assistance.

Last but not least, I would like to show my gratitude to my amazing partner who has been with me, thick and thin, through this writing process. I know I have not been the easiest human to deal with through all this stress. Your support and patience has kept me going.

Word Count: Approx. 22 500

List of Abbreviations

ANC – African National Congress

GBV – Gender Based Violence

HRV – human rights violations

ICTJ – International Center for Transitional Justice

NP – National Party

RE – Relativist Epistemology

TJ – transitional justice

TRC – Truth and Reconciliation Commission (South Africa)

* *Please note the TRC is often referred to interchangeably as 'the Commission'*

1. Introduction: Research Problem, Aim and Research Questions

Since the end of the Cold War, after numerous cases of mass violence and violations of human rights across the globe, the international community has become increasingly concerned with peacebuilding and transitional justice efforts (Lambourne, 2009: pg. 28). To briefly describe transitional justice, according to the International Center for Transitional Justice (ICTJ):

> Transitional justice refers to the ways [in which] countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response. (ICTJ, 2023).

These goals and ends can include, amongst others the restoration of the rule of law, judicial retribution to address a culture of impunity, the restoration of dignity for victims, reform of institutions, social and political reconciliation, nation-building, and the re-constitution of the past on the basis of a shared narrative (Lundy & McGovern, 2008: pg. 267). Transitional justice, thus, refers to the process of transitioning from a state of mass violation of human rights to a more peaceful and democratic state, and for victims, justice is viewed as an avenue for redress as well as accepting the past to build a new future (Lambourne, 2009: pg. 29).

During the past few decades, TJ has developed throughout Africa to address mass human rights violations (HRV) that have occurred during conflicts. However, there has been increasing debates within the field regarding TJ programmes inadequately addressing gender-based violence (GBV) (Scanlon and Muddell, 2009: pg. 9). South Africa's Truth and Reconciliation Commission (TRC) is no exception to this debate. After 40 years of Apartheid, the TRC was mandated in 1995 signifying the political negotiation between Nelson Mandela's liberation party, the African National Congress (ANC), and F.W. de Klerk, the former president of the Apartheid state and National Party (NP). In 1995, the TRC was mandated to examine alleged atrocities under the

Apartheid state and where appropriate grant amnesty to perpetrators who qualified, in addition to recommending compensation in the form of financial reparations to victims (Shore, 2008: pg. 161-162).

However, like many other TJ programmes in Africa, the TRC's overall approach in its goal towards reconciliation failed to broaden itself to better address women's experiences of conflict. Because of this, there is a need for TJ programmes to re-examine its practices in a way that not only reconsiders its prioritisation of HRV but also recognises the continuum of violence that persists in pre-conflict and post-conflict societies (Scanlon and Muddell, 2009: pg. 9). As Dlakavu (2022: pg. 173) states:

> ''Black women's experiences of the brutality at the behest of the apartheid State, their intimate narratives, their multiple forms of resistance and activism, were placed at the margins in the crafting of public memory of South Africa (SA)'s political transition into a democratic state.''

This research paper, thus, aims to address gender insensitivity within TJ programmes by examining the TRC's overall framework in its goal towards reconciliation. Its aim is to gain a thorough analysis on how the Commission's framework specifically impacted its inclusion of women's experiences of conflict and how it could have worked towards having a more transformative effect on the lives of black women in South Africa. To conduct the analysis, this thesis applies the theories of gender justice, decoloniality, and intersectionality. And examines the framework of the TRC by specifically adopting a method of content analysis to establish and analyse its framework through a case study design. To fulfil this aim, and to stress the importance of gender-just programmes, the research is guided by the following questions:

1. How did the framework of the TRC impact its inclusion of women within its goal towards reconciliation?
2. How could the TRC have geared towards being a more gender-just programme?

2. Background

Before moving on with the rest of this thesis, and to further develop the research problem, I think it is imperative to also locate the analysis in the wider context of current South Africa, post-TRC. Arguably, the biggest barrier to South Africa's reconciliation is the persistence of structural inequality. Apartheid's architecture was of such an institutional nature that to date it functions through the public/private, social, political, and economic life of all South Africans in some way. This has had significant impacts on black South African women as many women live 'permanently on red alert' that creates a chronic state of anxiety for women (Grey and James, 2016: pg. 308-310). Since 2008, South Africa has one of the highest rates of GBV in the world not currently at war (Grey and James, 2016: pg. 310). Gqola refers to this state as the 'the South African contradiction' which is considered as such given the TRC's attempt to include women in various aspects of the Commission (*Gqola, 2007: pg.* 117 cited in Grey and James, 2016: pg. 310).

The impacts of sexual violence along with high levels of economic and social inequalities in South Africa has inhibited the full participation of black women within the 'new' democracy. Because of this, a strong argument has been made that the endemic gender-based violence in modern day South Africa is attributed to the legacy of colonial violence and the TRC's lack of recognition for black women's complex experiences and 'truths,' as women's specified needs and interests were superficially considered (Grey and James, 2016: pg. 311).

In the now democratic South Africa, racially ranked hierarchies persist as a reminiscent of the Apartheid's system of forced segregation (Group Areas Act) which has left profound consequences for black women (Durbach, 2016: pg. 380). Colonial projects of dispossession in South Africa enacted racialising, and gendering underpinnings to consolidate white and settler rule. The ANC asserted that although

Apartheid policies targeted the black population, it is black women who were, and are most affected (Grey and James, 2016: pg. 305).

Apartheid was not merely a system of racial oppression but also one of patriarchal domination as the establishment of a gendered hierarchy ensured black women were inferiorised to and dependent on black men. Under colonialism and Apartheid, black women were increasingly deemed as unnecessary to the labour system. Their roles in the production of agriculture steadily deteriorated under colonialism whilst Apartheid evidently attempted to entirely exclude them from waged labour. In the midst of this, black men were separated from their families to work in major cities for most of the year under the migrant labour system for little pay. Under the Group Areas Act, black South African communities were uprooted to the margins of the homelands (Bantustans) where their citizenship was stripped, families broke apart and where millions of women were forced to the margins of existence (Durbach, 2016: pg. 367). In addition, the migrant labour system also led to the destruction of family life and intense emotional stress for black women who were not only denied the right to be economic actors, but were also disproportionately affected by maintaining rural households, marriage, as well as birth and immorality laws that aimed to restrain reproduction rates (Grey and James, 2016: pg. 305-306).

Further, black women were prevented from legally owning or renting homes which meant that divorce, desertion, or widowhood resulted in automatic homelessness *(*Grey and James, 2016: pg. 306). This gendered harm confined most black women to lives of domestic labour and hawking (Durbach, 2016: pg. 370). And sadly, the most direct measure of disadvantage for black women in current day South Africa is poverty due to its connection to Apartheid policies, as black women living in what was formerly classified as *Bantustan*s remain the most impoverished (Grey and James, 2016: pg. 308).

Thenjiwe Mtintso, former senior member of the ANC in exile, argued that the sexual violence against women by men in the camps during Apartheid was influenced by their psychologically harmful experiences at the hands of Apartheid police. In this, she also explained the 'double-barrelled' oppression of black women which reflected a patriarchal culture that women experienced at the hands of Afrikaners as well as their own comrades. Mtintso states it is as if they were not expected to perform beyond the 'female' stereotype and speaking out against this violence at the hands of their comrades was seen as betrayal (Durbach, 2016: pg. 370 & 375).

Thus, despite the country's transition to democracy presenting considerable gains for women such as the constitutional protection of gender rights, significant parliamentary representation, employment equity, gender-based violence offences legislation; the high levels of sexual violence sustained in post-Apartheid South Africa suggests that instilled gender disparities have outlasted political developments and institutional restructuring. Therefore, in light of new laws and institutions designed to transform gender disparities, this thesis turns to the framework of the of the TRC to develop on these arguments and to evaluate how this framework considered the extent to which black women experienced chronic and institutionalised violence and how a failure to do so resulted in this violence being unscrutinised and increasingly internalised and normalised in current day South Africa (Durbach, 2016: pg. 371-372).

3. Literature Review

This chapter aims to locate this study within existing academic knowledge regarding the fields of gender studies and political science, with a particular focus on the field of transitional justice. The discussion takes place in scholars' critique (Cameron (2006), Daly (2008), García-Del Moral (2018) etc.) of TJ mechanisms for its heteronormative practices (Schulz, 2020) and its lack of specificity and an intersectional approach to addressing human rights abuses which is currently a massive barrier to transforming the lives of women post-conflict.

Within the academic field of TJ, scholars have presented various conceptual insights to addressing the ongoing western, heteronormative, and patriarchal practices of TJ mechanisms by evaluating a variety of mechanisms and programmes in both global North and South contexts. One of the current issues with TJ mechanisms is its mistranslation of the values and practices of survivors of gross HRVs (Cameron, 2006) – causing further harm to these communities and social groups. Current developments within the academic field of TJ tackles the tension between western approaches to TJ and indigenous practices to justice. Western approaches tend to view indigenous practices as 'backward-looking' despite its more holistic approach to addressing coloniality and its inclusion of gender as an important point of analysis to gross HRVs (Cameron, 2006: pg. 52-55).

However, there has been dichotomous concerns brought forth by indigenous women, that on the one hand highlights the need to address the damage caused by colonial injustice and on the other hand the need to acknowledge the failures of both western and indigenous approaches in addressing the gendered nature of violence caused by the state which has seeped into the structural life of their communities. Given this, Cameron calls for practices that that adequately incorporates an intersectional and anti-racist perspective that distinguishes the social issues indigenous women face from that of indigenous men in hopes of addressing both the colonial and patriarchal

oppression by the state as well as the male elite within their communities (Cameron, 2006: pg. 55-56).

Building onto these concerns, Daly (2008) similarly argues that an intersectional race and gender political perspective to TJ mechanisms could acknowledge the state as privileging white and male interests and as a consequent could address the wider set of relations and harms that form part of gendered violence experienced by indigenous women. This perspective politically and analytically critiques categorical thinking in the domain of TJ and pushes for more constructive and progressive agendas.

To explain this issue further, in the example of the Australian Royal Commission into Aboriginal Deaths into Custody 1997, community interests were privileged over women's interests. Concerns with family violence were lost through the emphasises on issues of systematic racism. This issue resulted in indigenous women living in a state of being marginalised in feminist politics because of race and marginalised in anti-racist politics because of gender – leading to both feminist and anti-racist movements being antagonistic to each other in which both interests lose (Daly, 2008: pg. 21-24). As a result of this dichotomy, burden weighs on indigenous women to place community interests above their own in which they are forced to choose between culture/race and gender (Daly, 2008: pg. 4-7).

Due to a narrow conceptualisation of gender-based violence and a mainstreamed, 'add on' analysis of gender, violence against indigenous women remains significantly silenced in the practice of TJ and upholds an exclusionary and homogenised social position of 'woman' (Bueno-Hansen, 2018: pg. 1-2). Although, gender-mainstreaming was initially presented as a cross-cutting solution to addressing violence that disproportionately affects women and girls, its implementation in the field of TJ often succumbs to 'entryism.' 'Entryism' is the placing of women into existing institutions as a means of addressing gender inequity as opposed to transforming these political

institutions that would instead ensure substantive representation and participation of women for sustainable peace-building and effective redress for justice and gendered violations (Matandela, 2020: pg. 4-5).

Thus, there is a need for TJ projects to shift indigenous women's practices and knowledges to the centre of such processes and to prevent the essentialisation as well as marginalisation of indigenous women's struggles to ensure a transformative role in the way these mechanisms address the colonial and patriarchal biases inherent within the laws and institutions of post-conflict states (Acosta et.al., 2018). This is especially given that these laws and institutions are directly linked to the colonial legacies that have permeated into state behaviour which also led to cultural misunderstandings, specifically within African post-conflict contexts, that disregard the various important political and social roles women represented prior to colonialism (Matandela, 2020: pg. 5).

The dominant liberal human rights discourse within the field of TJ, fails to acknowledge the shifting of women's roles in the colonial era which prevented indigenous women's access to justice and legal rights within the colonial state. Particularly in the African context, the cooperation of the colonial state and the African male elders through customary laws consolidated the power of African males and their position as political elites. Customary law, often predominant in traditional justice interventions for example, has a history of being linked to the colonial state and to the co-optation of African male political elites which led to the control of African women's political agency, the misunderstanding of their political activities as well as to the limitation of their movement to towns. Therefore, liberal human rights discourse inadequately addresses the 'histories of pillage' linked to the state which had led to the inheritance of an African state that has discriminated against women consistently both in its colonial and post-colonial forms (Matandela, 2020: pg. 5-6). As Matandela states (2020: pg. 6):

> ''TJ in Africa needs to use a language that is adapted to how African women understand their experiences and towards their role as essential players for the promotion of human rights, peace and security, good governance, and development in Africa by including intersectionality into how governance, development and peace and security issues are understood.''

This thesis stands in agreement to the above statement. To ensure a transformative role in the way TJ addresses the colonial and patriarchal biases inherent within the laws and institutions of post-conflict states, Daly (2008: pg. 22-25) calls for ''an intersectional politics of justice that could become more complex and sophisticated by being informed by various social and political theories.'' This thesis thus, hopes to contribute to this by adopting both a decolonial and intersectional theoretical approach, as this is currently lacking in research regarding the TRC and to stress the importance of gender-just programmes in transforming the lives of women post-conflict.

Since there is a lack of current research that grounds the theorisation of both decolonial and intersectional theory specifically in the post-conflict reconciliation process of South Africa, this theoretical perspective contributes to this **research gap** by evaluating to what extent the TRC worked through the concerns brought forth by the above scholars in its framework and how it could have done so differently. The next chapter on theoretical framework provides more detail on how these theories will be used in the analysis to address this research gap, in which the current discussion presented in this literature review is further developed and applied to the TRC in the chapter on theory analysis.

4. Theoretical Framework

Since this thesis aims to analyse the TRC's past capabilities in better addressing women's experiences of conflict and does so by contributing to the ''sophistication'' of '*intersectional politics of justice*' using decolonial and intersectional theory, this chapter will provide an overview of the theories that are employed for the analysis and addressing the research questions to stress the importance of gender-just programmes. This chapter will also discuss the role of the theories for the analysis, which speaks to the call made by academics for practices that adequately incorporates an intersectional and anti-racist perspective that is more sensitive to gender issues within TJ. In this regard, gender justice is the overarching theory in which decoloniality, and intersectionality play an important role in complementing its problematisation of gender insensitivity within TJ programmes and which is applied to the framework of the TRC to address the research questions.

4.1 Gender-justice: What does it mean for a TJ programme to be gender-just?

The role of gender justice in this thesis is to emphasise the potential for TJ programmes to have transformational effects on the lives of women in post-conflict societies. This is due to the fact that much of the violence women experienced in post-conflict societies are informed by pre-existing structures that create inequalities between men and women. Because of this, there is a need for transitional processes to transform the underlying structures of inequality that sustain the conditions in which gendered harms persist and are inflicted. As part of the theoretical framework, gender justice allows this thesis to shed light on the missed opportunity for the TRC to transform the reconfiguration of power at a societal level as opposed to only focusing on the individual experiences of violence and injustice (Boesten and Wilding, 2015: pg. 75).

An important factor that needs to be acknowledged is that women do not only endure violence during conflict but before and after conflict due to existing gender ideologies and inequalities. Because of this, scholars such as Boesten and Wilding argue that the field of TJ has an obligation to address underlying structures of violence whether it be institutions, norms and values, family structures or economic relations that shape women's experiences and limit their opportunities (Boesten and Wilding, 2015: pg. 76-80). Thus, according to Susan McKay (2000: pg. 561), gender justice can be defined as ''legal processes which are equitable, not privileged by and for men, and which distinguish the nefarious forms of injustice women experience during and after armed conflict.''

A starting point to implementing gender justice within reconciliation processes concerns the substantive inclusion of women in the design and implementation of TJ mechanisms that would ensure a more favourable bottom-up process (Boesten and Wilding, 2015: pg. 76-80). Women's oppression due to their sex in relation to race, ethnicity, and class, as well as a male dominated and patriarchal state, has solidified the difficulty in securing gender justice in multiple arenas such as the public and private sphere (McKay, 2000: pg. 263). As observed by the Asian Pacific Forum on Women, Law, and Development (1992), the current definition of justice often presented in most TJ mechanisms is interpreted though a social screen that is patriarchal in various ways whether in relation to the family, the economic sector or violence committed against women (cited in McKay, 2000: pg. 263).

Ensuring gender justice therefore should move beyond obligatory quotas of women in committees as it would result in more attentiveness to the myriad of voices that would consider the concerns of survivors, activist groups, and local leaders. Doing so would also break patterns of inequality that cause conflict, as a more bottom-up approach challenges the expert vs lay (top-down) way of understanding governance that would otherwise merely view the causes of conflict in an un-politicised manner

that in turn ignores the social relationships that lead to violence against women in the first place (Boesten and Wilding, 2015: pg. 76-80).

Thus, gender justice in the context of this thesis concerns the missed opportunity for TJ programmes to address the continuation of gender-based violence in post-conflict societies due to a lack of prioritising the transformation of social relationships that lead to this violence. U.N. Special Rapporteur for Violence against Women, Rashida Manjoo, urgently called for legal and non-legal measures that not only challenge but also transform damaging gender relations (UN Women, 2011: pg. 97-98 cited in Boesten and Wilding, 2015: pg. 80). Part of which includes acknowledging that gendered violence is not limited to nor particularly characteristic of conflict despite the notion that gendered violence against women is often strategically used as a weapon of war in conflict. Research conducted in post-conflict societies such as Peru for example show a strong link to post-conflict hierarchies that are based on race, class, and gender (Boesten and Wilding, 2015: pg. 80).

Gender-based violence during conflict, therefore, cannot be separated from the gendered structures inherent within society pre and post conflict. Acknowledging this means to move away from addressing sexual violence in war as an extraordinary phenomenon that is isolated from the social, political, and economic context. Research conducted in Kenya, Uganda, and the DRC (cited in Boesten and Wilding, 2015: pg. 80) showcases that these aspects are intertwined and mutually constitutive as gender, economic class and political status results in some women becoming more vulnerable to gendered violence than others which further entrenches their marginalisation and oppression even after conflict. Such findings clearly emphasise the need for policies aimed at addressing sexual violence within the field of TJ to include the broader structures of inequality (Boesten and Wilding, 2015: pg. 80).

As part of the theoretical framework, gender justice is intended to emphasise the importance of gender-just programmes as it aims to address the reconfiguration of

power at a societal level. The individualistic emphasis on accountability for perpetrators and women as victims of sexual violence in traditional mechanisms may only result in the further stigmatisation, traumatisation, and inequality of women, especially when these mechanisms fail to provide sufficient justice. As stated by Boesten and Wilding (2015: pg. 80):

> …legal processes are seldom transformative for women, as they tend to label women as victims in need of protection. The gender binary that relies on women as victims only, but men as both perpetrators and protectors, ultimately allows for the reproduction of cycles of violence, or rather, reinforces continuums of violence.

Unfortunately, according to the reflections of many scholars such Gina Heathcote and Diane Otto (cited in Boesten and Wilding, 2015: pg. 80) existing TJ programmes have limited means to pursue gender equality. It is a big challenge to get women's demands onto the agenda amid 'transition' as women's concerns are assumed secondary to the broader goal of peace, which is due to the way these mechanisms perceive these goals as mutually exclusive rather than reinforcing one another (Boesten and Wilding, 2015: pg. 80). Thus, in align with these arguments, TJ programmes focus on individual responsibility should not come at the expense of addressing the broader structures of inequality especially if its goals and objective is to achieve a sufficient level of peace and reconciliation post-conflict (Boesten and Wilding, 2015: pg. 80). Since the TRC heavily focuses on reconciliation as part of its overall objective, it is important to discuss the relevance of gender justice to processes of reconciliation within TJ.

4.1.1 Gender Justice and Reconciliation

Regarding the relevance of gender justice to reconciliation, it is important to pay attention to the international debate on whether forgiveness and reconciliation can occur in the absence of justice, especially considering that notions of justice,

reconciliation and forgiveness are not consistent across all cultural, racial, and ethnic groups as would be the case in South Africa (McKay, 2000: pg. 561).

The contention mainly lies with religious views of forgiveness as necessary for reconciliation versus secular views that consider justice, forgiveness and reconciliation working in tandem towards a healed society (McKay, 2000: pg. 561). The degree to which justice is considered and the priorities given to reconciliation vary nation to nation. More often than hoped, national priorities are developed at the expense of gender justice especially in cases where reconciliation is valued more than justice to avoid disrupting a delicate process of transition. Because of this, the silencing of victims, particularly women, becomes perpetuated under the guise of forgiveness (McKay, 2000: pg. 566). Some theological literature goes as far as to emphasise the role of women in forgiveness as part of women's spiritual lives. However, this also occurs with secular approaches to reconciliation as they are designed to build peace by focusing too much on post-war reconstruction policy (McKay, 2000: pg. 567).

According to McKay (2000: pg. 566), reconciliation processes fall ill to patriarchal imperatives that further result in the disenfranchisement of the oppressed in which ''peace'' becomes fruitful only for those gaining from an inequitable relationship. Since reconciliation demands a level of behavioural change in addition to restructuring those ways in which society operates, working towards gender-just processes, that not only consider legal but also non-legal measures that transform damaging gender relations, can favourably work against reconciliation that is entrenched on inequitable power relations (McKay, 2000: pg. 566). Thus, this thesis with the help of the theoretical framework, will address these points further in the analysis regarding the TRC and its work towards reconciliation (McKay, 2000: pg. 567).

4.2 Decoloniality

Decoloniality emphasises the "decolonial turn" that marks the violence associated with colonialism and its continuous effects on the modern world despite its administrative abolishment during the 19th century. This ''turn'' according to Sabelo Ndlovu is traceable to the 1791-1804 Haitian Revolution in which the rebellion initiated by the slaves was successful in abolishing not only slavery but French colonial rule over Saint Dominigue (now known as Haiti).

The critical thoughts emerging from decoloniality originate from previously colonised epistemic sites like Latin America, the Caribbean, Middle East, Asia, and Africa (Ndlovu-Gatsheni, 2019: pg. 214-215). Latin American and Puerto Rican theorists such as Quijano, Mingolo and Ramón Grosfoguel introduced the concept of decoloniality to encompass the continuation of colonialism beyond the juridical abolishment of colonialism. Decoloniality concerns dismantling relations of power and formations of knowledge that solidify the proliferation of gendered, racial, and geo-political hierarchies and inequality (Ndlovu-Gatsheni, 2019: pg. 213-214). Thus, decoloniality can be understood as a school of thought that attributes this proliferation to phenomena such as colonialism, coloniality and globalisation (Ndlovu-Gatsheni, 2019: pg. 202).

Although colonialism and coloniality refer to the same situation, in the words of Nelson Maldonado-Torres who developed the concept of coloniality from Aníbal Quijano (Peruvian sociologist) and Walter D. Mignolo (Argentinean semiotician):

> ''Coloniality, instead, refers to long-standing patterns of power (the coloniality of power) that emerged as a result of colonialism, but that define culture, labour, intersubjectivity relations, and knowledge production well beyond the strict limits of colonial administrations. Thus, coloniality survives colonialism'' (Maldonado-Torres, 2007: pg. 243).

Therefore, coloniality refers to the sustained imbalanced relations of power in the modern world and a singular Eurocentric epistemology that professes to be universal, truthful, secular, and scientific (Ndlovu-Gatsheni, 2019: pg. 213). This is because colonialism forcibly incorporated Africa into a Eurocentric world culture through languages, international law as well as a moral order rooted in Christian thought – leaving what Africa knows about itself and each other influenced by the West (Mazrui, 1986: pg. 12-13).

In addition to colonialism and coloniality, decoloniality identifies globalisation as another fundamental contributing factor to the proliferation of hierarchies and inequality. Drawing from Fanon (*Wretched, 1961* cited in Ndlovu-Gatsheni, 2019: pg. 203), globalisation mimics the colonial and imperial patterns of destroying the existence of cultural diversity through establishing notions of developmentalism to which certain societies/social groups are pushed below the constructed "human line" ('non-beings'). Such societies/social groups have little to no choice but to conform to westernised notions of living, meaning and being. This is especially apparent with the increasing presence of international regulatory agencies, such as truth commissions for e.g., asserting a universalised notion of knowledge as well as human and civil rights (Thomas and Thompson, 2014: pg. 143). Universalism which asserts a fundamental truth onto the world is an important function of past imperial realignment in which local understandings/ways of knowing were inevitably forced to shift and blend into what Gordon describes as 'knowledge of the centre' - a systematic process in which 'knowledges' were organised into 'knowledge' (Gordon, 2014: pg. 81-82). Because of this, knowledge today is understood to be a singular framework, resulting in the incapacity to learn in a non-colonial manner (de Sousa Santos, 2014: 19).

In doing so, dominant epistemologies fail to encompass the cultural preferences and practices of oppressed societies/social groups – perpetuating a culture of universalism that inferiorises the development of power-sharing processes and the diverse culture of non-western epistemologies (Higgs, 2011: pg. 1). Understanding the

deep-seated nature of coloniality, decoloniality is therefore, a long-standing epistemological and political movement that emerges from struggles against hegemonic elements such as imperialism, colonialism, and globalisation (in the form of neo-colonialism). Decoloniality seeks to respond to this crisis by liberating ex-colonised persons and societies from global coloniality (Ndlovu-Gatsheni, 2019: pg. 206).

Thus, decoloniality addresses a demand for radical anti-colonial critique. Ndlovu describes decoloniality as an opportunity to shift the Western epistemic locale, in which the world is conceptualised and ranked, to the epistemic sites of the previously colonised. This would remind us to uphold these sites as legitimate points of departure to understand the modern world order (Ndlovu-Gatsheni, 2019: pg. 214-215). Therefore, decoloniality in addition to being a theoretical concept is both a political and epistemological movement that works towards preserving different knowledges, understandings of the world and existence in addition to challenging a universalised solution to multi-dimensional issues and the impositions of westernised values and knowledge systems on societies/peoples (Ndlovu-Gatsheni, 2019: pg. 203-204).

The role of decolonial theory in this thesis complements gender justice theory by emphasising relations of power that solidify the disenfranchisement of women in the post-colonial state. More specifically this theory works in the analysis to explore how the TRC's framework may have contributed to the perpetuation of relations of power and examines how in its work towards reconciliation it possibly fell ill to colonial frameworks, and whether its framework was adequate in challenging colonial structures that contribute to the marginalisation and oppression of black women..

4.3 Intersectionality

Intersectionality originates amongst Black feminists in the U.S. to theorise their experiences and social position within their communities – in particular how race and gender shapes social and political life. The concept addresses an important dimension of social complexity by examining the relationship between an individual's social categorisations (race, class, gender, ableism etc.). This theorisation echoes the sentiments of many black feminists who argue that their issues and experiences could not be described similarly to the issues of black men nor the issues of white women as the issues black women face are unique, therefore, their distinct perspectives, experiences, and identities cannot be understood based on the experiences and positions of black men nor white women (Weldon, 2008: pg. 193-194).

Bell Hooks in her book *Ain't I a Woman* argued that black women's unique experiences became obscured by a political movement and theoretical discourse that conceptualised being 'black' and a 'woman' as separate groups (Weldon, 2008: pg. 194). Patricia Hill Collins, an American academic specialising in race, class, and gender stressed against examining social categories separately but rather to understand how these categories mutually construct one another (*Collins, 1998: pg. 63* cited in Weldon, 2008: pg. 194). Kimberle Crenshaw, who coined the theory of intersectionality and is one of the founders of Critical Race Theory and (Carasthathis, 2014: pg. 305), emphasised particularly in the case of sexual violence that the position of black women at the nexus of race and gender relations meant that their experience of sexual violence is qualitatively different from the violence experienced by white women (*Crenshaw, 1991* cited in Weldon, 2008: 194). Thus, acknowledging this means avoiding the discourse of 'double oppression' which mistakenly suggests black women's experiences as being 'more of' white women's or black men's experience (Weldon, 2008: 194).

As Collins stresses, social categories such as race and gender, as well as all the others, intersect to create a 'matrix of domination' that uncovers the hierarchical nature of race and gender (*Collins, 1990* cited in Weldon, 2008: pg. 195). Rose Brewer emphasises that examining gender apart from race, class, ethnicity, and other social categories warps the intersectional nature that shapes the experiences of various groups of marginalised women (*Brewer, 1999* cited in Weldon, 2008: pg. 195).

Intersectionality as noted by Laurel Weldon however does not only apply to marginalised groups but rather it is an aspect of social organisation that shapes the social and political life of everyone. Thus, intersectionality as a critical feminist theory attempts to encapsulate social relations by referring to the relationship between social structures that create unique forms of oppression as well as experiences. In addition to this, intersectionality addresses the limitation of other theories that attempt to understand the relationship between social structures, for e.g., 'dual systems' theory, as distinct which resorts to a notion of 'more disadvantage' for certain individuals – in other words 'double oppression' (Weldon, 2008: pg. 195-197).

However, an identified issue brought forth by American political theorist Iris Marion Young regarding intersectionality is that it can appear to lead to an infinite process of splitting of social groups. This is because intersectionality regards social categories as not stable or unified due to differences among people of colour or people within the same class for e.g., which emphasises countless structures combining to define specific social positions as opposed to essentialist and exclusionary constructions of social positions (*Young, 1994* cited in Weldon, 2008: pg. 197-198). Nevertheless, as Young problematised the possibility of intersectionality to regress, she also proposed a possible solution by arguing that gender as a social category should be retained for political analysis. By focusing on gender, the complex social positions of certain individuals that leads to an infinite process of splitting of social groups is resolved and instead would result in focusing on the macro-politics of social organisation (*Young, 2005* cited in Weldon, 2008: pg. 200-201). Young emphasises

that social structures are macro-level and not individually based which means there isn't a need to ascribe a single or shared gender identity to men or women. As stated by Young:

> While attributing a shared gender identity to women is problematic, seeing "women" as sharing a structurally defined social position is not: "Thus, membership in the group called 'women' is the product of a loose configuration of different structural factors (Young, 2005: 21 cited in Weldon, 2008: pg. 201).

Following Young's sentiment that gender is a mode of social organisation that systematically disadvantages women, Mala Htun similarly distinguishes between structure and identity and argues that scholars should focus on large-scale social structures (*Htun, 2005* cited in Weldon, 2008: pg. 201). Thus, macro-level analyses do not imply shared identities across gender, race, class, etc, as Weldon argues that the ways in which women are disadvantaged cannot be understood unless we examine the ways these structures interact (Weldon, 2008: pg. 201-202).[1] In this sense, intersectionality may function less as a research method and more as a theoretical framework to interpret results of research (Carastathis, 2014: pg. 308).

Therefore, intersectionality complements gender justice by emphasising the hierarchical nature of the intersection race and gender which shapes the experiences of oppression women face before and after conflict; and which makes a distinction from the experiences of men. Its role as a theory in the analysis is to examine whether the TRC's framework addressed the workings of power in which oppression is maintained via hegemonic dimensions of power and various aspects of identity (Carastathis, 2014: pg. 307). It becomes useful in examining from a macro-level analyses the Commission's attempt to incorporate a gender perspective in its goal towards reconciliation and whether that perspective adequately addressed the social and structural positions of women that became solidified by the Apartheid regime.

[1] This thesis applies more of a macro-analysis of intersectionality by seeing "women" as sharing a structurally defined social position through its examination of the TRC's framework.

4.4 The Operationalisation of the Theoretical Framework

Haven established the theoretical framework and the role of the theories in serving the analysis, I have organised gender justice theory into three important points of analysis in which this thesis will apply its theoretical framework.[2] To address the research questions, the three categories of gender justice are influenced by the role of decolonial and intersectional theory in order to adequately assess how the TRC's framework may have contributed to the perpetuation of relations of power, and whether its framework adequately addressed the social and structural positions of women in South Africa. All three categories comprise of what gender justice as a theory problematises and highlights as important to achieving gender-just programmes (which is also emphasised in the literature review). And focuses on gender as a mode of social organisation that systematically disadvantaged black women in relation to the Commission's framework. Thus, the three categories for analysis is established and organised according to:

- Addressing GBV in Context of Broader Structures of Inequality
- Prioritising Women's Positionalities in Reconciliation Processes
- Transforming Harmful Gender and Social Relations

[2] The three points of analysis were organised after the establishment of the framework of the TRC had been completed through content analysis and forms part of the *interpretation* phase (see figure 3). This is included here for clarity regarding the role of the theoretical framework for analysis.

5. Methodology

This chapter will begin with an explanation on the research design used to carry out this thesis. The following sections will explain the epistemological standpoint I have adopted and will then move onto the data used for this case. The next section provides brief reflections on the weaknesses and ethical positioning of this study. The final section will focus on the method of content analysis employed.

5.1 Research Design

This thesis adopts a qualitative case study design, complemented by content analysis as part of the method employed for data analysis. In short, a qualitative case study is a research approach typical to social sciences and aims to provide an in-depth, multi-faceted understanding of a complex issue in its real-life context (Crowe et.al., 2011: pg. 1). This approach, elaborated on further below, seems appropriate in addressing the study's aim and research questions with the help of content analysis.

According to Yin (2014) in their book titled *Case Study Research*, case study research is one of several forms of social science research. Doing case study research is warranted in situations where (1) the main research questions are "why" or "how" questions; (2) a researcher has little or no control over behavioural events; and (3) the focus of study is a contemporary phenomenon as opposed to a historical one. The distinct need for case study research occurs out of the want to understand complex social phenomena. In this sense, a case study is an empirical inquiry that investigates a contemporary phenomenon (the "case") in depth and does so with the assumption that such an understanding is likely to shed empirical light about chosen theoretical concepts. With the use of theory such an understanding will hopefully result in 'lessons learned' that become applicable beyond the setting of the selected case (Yin, 2014).

Knowing this, a qualitative case study design would allow this thesis to further develop the theoretical framework in a way that emphasises the complex necessity for gender-just programmes that work towards transforming the lives of women post-conflict. This study specifically utilises a qualitative approach to a case study because it is considered valuable to investigate the research questions through a more in-depth analysis using theory (Yin, 2014). Since this thesis analyses the TRC's framework, a qualitative approach seems appropriate as it would allow this thesis to examine the TRC's policies, procedures, and implementation strategies with the use of content analysis in addressing the research questions. In addition, it would hopefully present 'lessons learned' using the TRC as a case that addresses gender insensitivity within TJ programmes.

5.2 Epistemological Standpoint: Viewpoint Relativism

The epistemological standpoint adopted in this thesis is a Relativist Epistemological (RE) standpoint. In short, adopting RE means denying the existence of an objective truth. RE deals with questions of differences in opinion and aids to justify these differences by taking into account the relativity of knowledge. Relativity of knowledge argues that knowledge is always relative to a specific framework whether it be from a perspective of culture, language, point of view etc (Hautamäki, 2020). Because of this, a RE standpoint acknowledges that no framework/perspective is necessarily more correct than another because no neutral criteria exist to arrange the frameworks/perspectives into a hierarchy (Hautamäki, 2020).

To be more specific, this study adopts a type of RE known as *viewpoint relativism*. Viewpoint relativism understands knowledge as being interpreted and filtered through the lenses of individual points of view and the consequences of such an understanding, depending on the point of view, leads to various perceptions of how we view society as it requires taking some aspect of reality (a chosen point of view) to examine this reality more critically. In this sense, knowledge is not viewed as a singular

form and is in fact considered to be subjective based on various points of view from which it is being examined (Hautamäki, 2020). The relevance of such a standpoint for this thesis relates to the role of theory in addressing and analysing the research questions regarding the framework of gender-just programmes.

However, a valid point of criticism for viewpoint relativism, is that it implies each point of view should be accepted or that, as stated earlier, each point is as good as the other (thus, no framework/perspective is more correct than another). However, this thesis agrees with Antti Hautamäki's rejection of such an extreme version of relativism in his book *Viewpoint Relativism, A New Approach to Epistemological Relativism*. Hautamäki's defence is that different points of view can be compared and their preferability can be determined by using different kinds of criteria especially when it materialises in practice (Hautamäki, 2020). Therefore, this is something to keep in mind when positioning this study to the wider issue of current TJ programmes, especially given the positioning of the theory applied to this issue and the arguments presented in the theoretical framework applied to the framework of the TRC in the analysis.[3]

5.3 Case Material

The material used for this case study consist of the final reports released by the Commission which are to be found on the Department of Justice and Constitutional Development's official website. Analysing relevant reports from the TRC allows this study to examine the TRC's policies, procedures, and implementation strategies as part of the TRC's framework in relation to the research questions. Thus, the reports assist this case study in identifying any gaps, biases, or limitations in the TRC's approach to gendered issues. A summary of all the reports can be found in the following section.

[3] The role of theory in this thesis presents a point of view that establishes a sort of preferability with regards to how TJ programmes should practice in relation to issues regarding gender.

The reports have been organised according to seven volumes, each with a particular focus which can be viewed in more detail in section 5.3.1 (Figure 1). The official reports contain information regarding its strategies ranging from key concepts that were used for the rationale of the TRC to reports on the work of the Amnesty Committee and HRVs Committee. For the purpose of this study, however, I have selected volumes based on their relevance to addressing the research questions as well as the purpose of the theoretical framework in this study. The volumes I will be using for the analysis are volume **1, 4, 5 & 6**. Upon review of the source material when conducting content analysis, I have chosen to omit volume **2, 3 and 7** as volume 2 focuses on a detailed account of the conflict that developed and the extent to which gross HRV took place in South Africa whilst volume 3 is an overview of the gross HRV reported to the Commission and presented by the regional profiles. Both are excluded due to a narrowly defined political view of the HRVs established in the Commission's mandate which impacted which violations were reported and presented. This issue will however be addressed in the analysis as the mandate of the Commission (Volume 1) is thoroughly reviewed for content analysis. In addition, volume 7 is omitted as it serves mostly as a tribute to the victims of Apartheid. Although its contents could serve a purpose in understanding its objective to construct a symbolisation of the oppression of victims under Apartheid, this study concerns itself more with the framework of the Commission in relation to gender justice. Thus, the chosen volumes seem most encompassing of the aim of this study.

5.3.1 Summary of the Reports

Based on the Department's website, the reports have been organised into the following contents, which I have placed verbatim into a table format below:

Figure 1 Reports Summary Contents

Volumes	Summary Contents
Volume 1	an introductory volume, containing important discussion of key concepts and debates within the Commission itself and in society at large. It provides the basis and rationale for the work of the Commission, as described in the chapters that appear in the following volumes. It also describes the way the Commission worked and the methods it used in order to fulfil its mandate.
Volume 2	addresses the commission of gross violations of human rights on all sides of the conflict. The first and greater part of the volume deals with the period between 1960 and 1990, while a separate chapter is dedicated to the unique political environment of the 1990s. The role of the state in the perpetration of gross violations of human rights is, for practical reasons, divided between violations committed outside South Africa and those committed inside South Africa.
Volume 3	addresses gross violations of human rights from the perspective of the victim, is a companion to Volume Two. For reasons of space, accounts which are described in detail in one are frequently simply referred to in the other. The chapters in this volume are regionally structured, reflecting the regional structure of the Commission. This allowed for a targeted focus on distinct geographical area and a detailed examination of variations between different parts of the country.
Volume 4	seeks to address the nature of the society in which gross violations of human rights took place, reporting on a series of 'institutional hearings' which sought to explore the broader institutional and social environment. In the process of conducting these hearings, the Commission sought to provide opportunities for self-examination by the various sectors, as well as discussion of their possible role in the future. In addition to hearings on the various sectors, the volume includes reports on three special hearings: on compulsory military service, children and youth and women.
Volume 5	contains the conclusions reached by the Commission, including analyses and findings and recommendations. It also includes the Minority Position of Commission Wynand Malan and the Commission's response to this.
Volume 6	contains the Reports of the Amnesty Committee, the Reparation and Rehabilitation Committee, the HRVs Committee; the Intersection between the Work of the HRVs Committee and the Amnesty Committee, Findings and Recommendations and lastly the report of the Chief Executive Officer, Managerial Reports and Annual Financial Statements.
Volume 7	is a tribute to the victims of Apartheid and a living monument to those who sacrificed so much in order that we could all enjoy the fruits of democracy. It contains the stories of those who came forward to speak of their suffering. Their stories symbolize the greater experience and suffering of our people, many of who were not able to come forward to tell their own story.

Source: Department of Justice and Constitutional Development: Truth and Reconciliation Commission (2023) https://www.justice.gov.za/trc/report/index.htm

5.4 Ethical Positioning and Study Weaknesses

First, I'd like to discuss my ethical positioning. Given that I am not personally interviewing anyone, as a gender studies scholar it is necessary to touch upon my social positioning within the topic of this study. As a South African woman of colour who was not born during the Apartheid years, it is important to acknowledge my privilege to be able to investigate such a topic at western university and in a way that bluntly, is detached from the real lived experiences. I must acknowledge that whatever conclusions this study reaches, it might not be accessible or relatable to many of the women these issues have affected. Haven said that the reason why I personally feel this topic is still necessary to investigate is because of the long-lasting effects Apartheid has had on the lived realities of women of colour in South Africa, regardless of whether we were born during or after Apartheid. The aim of this study is therefore merely limited to observations we can make about the role of current or past TJ programmes such as the TRC in reconciling a very hurt society and its limitations and possible failures in transforming the lives of many South Africans, particularly the lives of black women that would have otherwise been necessary to establishing a more equitable and healed society for future generations to come.[4]

Secondly, I would like to reflect on the practical weaknesses of this study. When conducting a case study, it is desirable to draw from multiple types of empirical data such as a combination of interviews and documents (Yin, 2014). However, this study solely focuses on documents as empirical data (the official reports of the TRC). Thus, since the primary form of empirical data for this study are documents, it is worth noting that an overreliance on the use of documents in this case should not be mistakenly

[4] For the purpose of this thesis, I would like make a distinction between women of colour (the more politically correct term in this case would be coloured women) and black women. This is because in South Africa being a coloured woman is usually not considered as sharing the same structural positioning and identity as that of a black woman due to Apartheid's history of racial classification and ranking. Thus, I mostly refer to black women in this thesis because the way Apartheid policies affected black women (who make up the majority of the population) was vastly different to that of coloured women. However, it is important to note that Apartheid did affect coloured women in overlapping yet distinguishing ways.

assumed as the unmitigated truth especially given the RE standpoint I consider for the positioning of thesis in the wider academic debate (Yin, 2014).

Nevertheless, as the focus of this thesis is more on the framework of the TRC, its strategies to reconciliation has been thoroughly established in its seven volumes which provide the necessary informational content needed to examine its work in regard to addressing the aim and research questions of this thesis. Thus, rather than considering this case study as a 'case' on the lived experiences of women, the research design serves more as an opportunity to shed light on the use of case study, with the help of content analysis and theory, in examining the primary documents of the Commission which is limited to the research problem, aim and research questions of this thesis.

5.5 Content Analysis

To conduct a more thorough investigation of the TRC's reports, the analysis was conducted through the method of qualitative content analysis using NVivo 14. According to Jane Forman and Laura Damschroder (2008: pg. 39) ''content analysis is a family of systematic, rule-guided techniques used to analyse the informational contents of textual data.'' Although there are several types of content analysis, this study adopts a qualitative approach in which categories are mainly derived from and applied to the data, which will be analysed qualitatively without the use of statistical techniques (Forman & Damschroder, 2008: pg. 39-40). NVivo was used to better manage the coding of data as well as to make connections that help facilitate the data analysis process given the amount of material that needed to be coded and analysed (Forman & Damschroder, 2008: pg. 59).[5]

The goal of qualitative content analysis, like most qualitative inquiries, is to understand a phenomenon rather than make generalisations based on statistical inference (Forman & Damschroder, 2008: pg. 40). The theory developed from the

[5] One report could contain up to 700 pages of data for example.

theoretical framework influences the categories used to code the data which also impacts the units of analysis around which the analysis is organised (Forman & Damschroder, 2008: pg.44). Content analysis is an inherently iterative process even when using a software program like NVivo, therefore, following Forman and Damschroder's process to qualitative content analysis, I have divided my approach to conducting this method into the three suggested phases: *immersion*, *reduction*, and *interpretation* (Forman & Damschroder, 2008: pg. 46).

For the first step in the process, I tried to get familiar with the reports early on before beginning the process of coding. As Forman and Damschroder (2008: pg. 46) suggest, ''data collection and analysis should occur concurrently.'' This begins with the *immersion* phase as the researcher engages with the data and obtains 'a sense of the whole' before rearranging it into discrete units for analysis. I did this through hand-written memo notes as well as digital annotations through NVivo. This essentially entailed inspecting the data and documenting any early thoughts or analytical hunches that would help later to identify and sharpen categories that would address the research questions (Forman & Damschroder, 2008: pg. 47). I searched for relevant data that related to the TRC's policies, procedures, and implementation strategies that constitute the overall framework of the TRC. Consequently, I eliminated volumes **2, 3 and 7** as they were not relevant or needed to for the scope of this thesis as well as to address the overall aim and research questions.

The next step, the *reduction* phase, involved developing a systematic approach to the desired data using codes. Codes represent concepts, processes, attitudes, or beliefs that represent human activity and/or thought. Codes help the researcher to reorganise the data to facilitate the interpretation of the data and to retrieve data by categories that will be analytically relevant to the study. The goal of this is to reduce the amount of raw data into categories that would be relevant to answering the research questions (Forman & Damschroder, 2008: pg. 48-51).

In doing so, I was able to break the selected data into manageable themes and thematic segments that represent the TRC's policies, procedures, and implementation strategies. I adopted a combination of both inductive and deductive coding keeping in mind the research questions and theoretical framework; however, this phase was mainly inductive. The reduction phase involved finding relevant data that related to the TRC's strategies by reading each of the selected volumes carefully and then creating categories and sub-categories as I read through the data line by line. This entailed developing sub-categories; for instance, sub-codes like *reconciliation through truth* and *amnesty as restorative justice* which formed part of the parent code *The Conceptual Framework*.

As stated, content analysis is an iterative process, thus, I revised the established categories before moving on with the rest of the data and created more categories and sub-categories where necessary, in addition to combining/removing/separating sub-categories. For example, a sub-code originally named *terminology*, which formed part of the parent code *The Mandate*, became combined with the data coded to the parent code due to overlaps in the data. The leftover data from this sub-code consequently formed a new, more distinct sub-code named the *scope and definition of HRV*. At this point, I had gotten a sense on what the main categories and sub-categories were to encompass as the TRC's framework. Thus, the three main identified categories that constitute the Commission's overall framework are:

(1) The Conceptual Framework
(2) The Mandate
(3) Reparations.

A codebook was then developed to help organise the codes and to ensure they could be used reliably to identify and understand the framework of the TRC. The categories were now fully fleshed, and I was able to apply these categories and their sub-categories to the rest of the data that needed to be coded. The codebook is represented

in Figure 2 shown below and is modelled off Forman's and Damschroder's example (2008: pg. 52). The observations regarding these categories will be discussed in more detail in the next chapter on category analysis.

Figure 2 Codebook

Categories	**Sub-Categories (children codes)**	**Description**	**Example**
The Conceptual Framework		Information on concepts that drive the objectives of the Commission. For e.g., truth, restorative justice, reconciliation, amnesty. INCLUDES information gathered from children codes.	
	Reconciliation through Truth	Information on the Commission's understanding of truth and reconciliation.	''The truth can be, and often is, divisive. However, it is only on the basis of truth that true reconciliation can take place.'' [VOL.1, pg. 18]
	Amnesty as Restorative Justice	Information on the reasoning for amnesty and its relation to the Commission's understanding of restorative justice.	''the tendency to equate justice with retribution must be challenged and the concept of restorative justice considered as an alternative. This means that amnesty in return for public and full disclosure (as understood within the broader context of the Commission) suggests a restorative understanding of justice, focusing on the healing of victims and perpetrators and on communal restoration.'' [VOL.1, pg. 118]
The Mandate		Information on the mandate of the TRC regarding its methodology towards its various roles for e.g., establishing as complete a picture as possible of HRV.	
	The Scope and Definition of HRV	Information on the terminology of the Commission's definition of gross HRV as defined by the Act. INCLUDES information from parent code relevant to	''The Act used neutral concepts or terms to describe the various acts that constituted a gross violation of human rights. For example, 'killing' and 'abduction' were used rather than murder or kidnapping.'' [VOL.1, pg. 70]

		determining the 'scope' of HRV.	
Reparations		Information regarding the Commission's scope on reparations.	
	Reparations and Rehabilitation Policy	Information on the Commission's policy that includes its recommendations to the President for reparations. INCLUDES information gathered from parent code.	''The Commission recommends that government accelerate the closing of the intolerable gap between the advantaged and disadvantaged in our society by, inter alia, giving even more urgent attention to the transformation of the education, the provision of shelter, access to clean water and health services and the creation of job opportunities.'' [VOL.5, pg. 308]

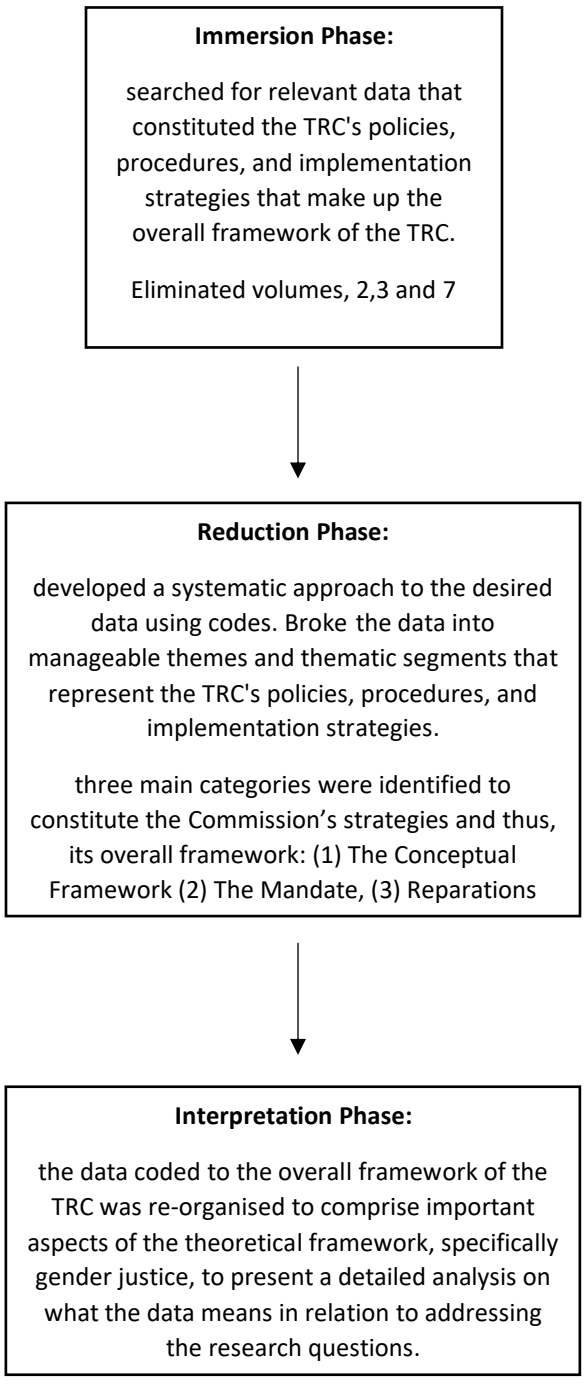
The final phase involved *interpreting* the data coded to these three main categories and then re-organising it deductively, using the existing theoretical framework, to help identify patterns that present a detailed analysis on what the data means in relation to addressing the research questions. In other words, the data coded as the overall framework of the TRC was re-organised appropriately to comprise important aspects of the theoretical framework that help address the research questions (Forman & Damschroder, 2008: pg. 55-56). This entailed, for example, re-organising the data coded to *the Mandate* to serve as a unit of analysis that would encompass the category *Addressing GBV in Context of Broader Structures of Inequality* for the purpose of addressing the RQs. Thus, the categories for theory analysis in which the operationalisation of the theoretical framework is applied and consists of the TRC's framework are:[6]

- Addressing GBV in Context of Broader Structures of Inequality (The Mandate)
- Prioritising Women's Positionalities in Reconciliation Processes (Conceptual Framework)
- Transforming Harmful Gender and Social Relations (Reparations)

To easily sum up the process of conducting content analysis, I have created a simple flow chart that can be found below to showcase this.

[6] as established in section 4.4

Figure 3 Flow Chart of Content Analysis



6. Establishing the Framework of the TRC (Category Analysis)

This chapter will focus on the findings and observations made from the categories (1) Conceptual Framework (2) Mandate and (3) Reparations as well as their sub-categories (children codes) as a necessary means to facilitating the theoretical analysis that will follow in chapter 7. The purpose of this chapter is to gain an understanding regarding the TRC's work towards reconciliation, to critically analyse in chapter 7 how its framework impacted its inclusion of women and to address how its framework could have worked towards being a more gender-just programme.[7] Thus, this chapter discusses and establishes the findings and observations of the three main categories identified through content analysis and which constitutes as a descriptive analysis of the overall framework of the TRC.

6.1 The Conceptual Framework

One of the main aspects of the Commission to discuss are the ''…philosophical, religious, and moral aspects'' that underpin the overall framework of the Commission in its work towards truth, justice and reconciliation. The Commission states that without these aspects ''the commission will be an empty legal vessel [that] would do a great deal of harm and achieve nothing (TRC Report Vol.1, 1998: pg. 103). This section will, therefore, discuss two of the sub-categories identified through content analysis that drive the 'philosophical, religious, and moral' framework of the Commission. These sub-categories are the Commission's regard for **Reconciliation through Truth** and **Amnesty as Restorative Justice**. These understandings, as discussed below, serve as part of the Commission's conceptual framework and is necessary in understanding

[7] Please note this chapter is established for transparency of the research findings conducted through content analysis to understand where exactly the chapter on theory analysis (7) pulls its data and analysis from the Commission.

the Commission's conceptual positioning towards achieving its objectives for reconciliation.

6.1.1 Reconciliation through Truth

> ''we remain convinced that there can be no healing without truth''
>
> (TRC Report Vol.1, 1998: pg. 4)

The goal of the TRC as indicated in its name was to foster reconciliation between perpetrators and victims of Apartheid; the structurally privileged and the oppressed. It sought to do so by establishing ''as complete a picture as possible'' of the injustices that have been committed in the past and did so through a 'public, official acknowledgement of the untold suffering' of victims (TRC Report Vol.1, 1998: pg. 103). As stated by the Minister of Justice at the time, the TRC's substance which is both a goal and a process:

> ''is the very essence of the constitution commitment to reconciliation and the reconstruction of society. Its purpose is to provide that secure foundation which the Constitution enjoins: '...for the people of South Africa to transcend the divisions and strife of the past, which generated gross HRVs...and a legacy of hatred, fear, guilt and revenge.''
>
> (TRC Report Vol.1, 1998: pg. 106).

The Commission viewed seeking the truth regarding the extent of gross HRVs that took place necessary to reconciliation. Despite facing backlash in doing so, as people feared it would only result in reinforcing feelings of hatred and revenge, the Commission insisted that it was necessary to prevent reconciliation that is established on falsehood. In other words, a process of reconciliation that does not face the reality or gravity of Apartheid would result to be short lived which is why despite the possibility of revealing the 'truth' to the public resulting in divisiveness, the Commission saw it as a necessity for reconciliation to take place (TRC Report Vol.1, 1998: pg. 17-18).

Truth was viewed as something that could bring 'closure' to victims by allowing them to make peace with what had happened. However, the Commission acknowledged that knowing the truth regarding HRVs did not necessarily lead to reconciliation. It understood that the pain involved reconciling victims is deeply personal and a 'complex and unpredictable process' which opened the possibility for victims to be further alienated. Nevertheless, despite truth not always leading to healing, it was seen as a necessary step towards reconciling victims and perpetrators of Apartheid (TRC Report Vol.1, 1998: pg. 107).

In its work towards the truth, the Commission acknowledged that this truth would need to encompass the various HRVs that have taken place that has had a lasting and damaging effect on the social relations of South Africa. It regarded these effects manifesting in two ways; the first being on the national level in the form of conflict between the oppressed black population and the former state, and the second on a communal level, between 'the young and the old, men and women, neighbours, as well as between different ethnic and racial groups.' The Commission found it necessary to attend to the ways in which these social relations were damaged during the conflict (TRC Report Vol.1, 1998: pg. 107). Through this, the Commission believed they could gain a better understanding of the structural violence and inequitable economic social arrangements that had manifested during the Apartheid regime which would allow them to properly deal with these issues for the post-reconstruction of South African society (TRC Report Vol.1, 1998: pg. 49).

Thus, based on the observations made under this sub-category, the Commission's quest for truth on 'the road to reconciliation' was a much longer-term goal and vision. The Commission needed to create the conditions in which reconciliation could be facilitated not only on an individual level but more importantly, within and between communities and the nation. As stated by Thenjiwe Mtintso, former chairperson of the Commission on Gender Equality, hearing victim's stories and their truths was an opportunity to give the voiceless a chance to speak, the excluded

a chance to be empowered and to be centred in the process. Through the process of truth-telling, victims and perpetrators could give meaning to the multifaceted experiences of the South African history which was communicated to the public by the media. This seemed particularly relevant in the South African context given the value of oral tradition to story-telling which made it a distinctive feature of the TRC, and which created an environment for narrative truth to be told which would have been constrained had the Commission viewed people's truth as arguments or claims in the court of law. This type of truth, which as stated was also seen to have potential to heal and was asserted as the basis for restoring human dignity as, according to the Commission, it facilitated the participation of everyday South Africans into the work of reconciliation (TRC Report Vol.1, 1998: pg. 110-114).

6.1.2 Amnesty as Restorative Justice

As the previous section noted, gaining the truth was vital for the TRC's road to reconciliation. However, to gain a full grasp of the nature and extent of HRV committed under Apartheid, as well as some level of accountability for those abuses, the Commission opted for conditional amnesty in addition to hearing victim's truths. Conditional amnesty required that offences related to gross HRV be disclosed publicly and truthfully by perpetrators before amnesty could be granted (TRC Report Vol.6, 2003: pg. 90).

Conditional amnesty, as opposed to blanket amnesty, was a decision reached during the negotiated settlement between the NP and the ANC. The Commission also felt that other options of seeking justice, such as the Nuremberg trials, was not a viable option due to the cost of resources and personnel it would require and that it would have scuppered the negotiation and impede a peaceful transition (TRC Report Vol.1, 1998: pg. 5-9). This was especially given as at the time of the negotiating settlement, there was a prevalent presence of military and political forces thus, making large-scale prosecutions and punishment a possible threat to the reconciliation process (TRC

Report Vol.1, 1998: pg. 118). However, as expected, some victims felt that the provision of amnesty would encourage impunity as it appeared to sacrifice justice and disrespect their suffering. The Commission found this view to be incorrect on the basis that firstly, amnesty applicants had to admit full culpability and disclose the true nature of their offences before amnesty could be granted and secondly, that the applicant's crimes had to be dealt with in a public hearing which possibly led to public shaming. Thus, the Commission felt that through these conditions, the issue regarding impunity was dealt with adequately (TRC Report Vol.1, 1998: pg. 5-9).

In addition, in the case of where amnesty was not granted, way was left open for failed applicants to be prosecuted in the form of conventional criminal trials. However, for many people justice equates to perpetrators being punished in proportion to the severity of their crimes. For many, condemnation of an atrocity, which seemed to be the extent of amnesty, was not enough (TRC Report Vol.1, 1998: pg. 119). As stated by the Commission:

> ''…while successful amnesty applicants could not be punished, the impact of public acknowledgement should not be underestimated. Perpetrators were not able to take refuge in anonymity or hide behind national amnesia.''
>
> (TRC Report Vol.1, 1998: pg. 120)

Despite the Commission declaring the system of Apartheid an HRV, it was agreed that offences taken under the justification of Apartheid law would not be regarded as a HRV, therefore, other forms of justice such as Nuremberg trials would not be sought for the various HRV committed 'legally' during the implementation of Apartheid (TRC Report Vol.1, 1998: pg. 52).

Thus, one of the main aspects to consider in the TRC's approach to justice is its conceptual understanding of restorative justice. As stated by the Commission:

> ''We have been concerned, too, that many consider only one aspect of justice. Certainly, amnesty cannot be viewed as justice if we think of justice only as retributive and punitive in nature.

We believe, however, that there is another kind of justice – a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships – with healing, harmony and reconciliation.''

(TRC Report Vol.1, 1998: pg. 9)

It was argued that restorative justice, as opposed to retributive or punitive justice, would have a greater focus on the experiences of victims. As a consequence, it would place importance on reparation that 'corrects' injustices and broken relationships, and that would foster reconciliation (TRC Report Vol.1, 1998: pg. 9). Based on the Commission's definition, restorative justice can be broadly defined as a process that 'shifts the primary focus of crime from the breaking of laws or offences against a faceless state to a perception of crime as violations against human beings.' It is also based on reparation as it aims to 'heal' and 'restore' all concerned including perpetrators. Further, it encourages victims, offenders, and the community to be directly involved in resolving conflict, with the state and legal professionals acting as facilitators (TRC Report Vol.1, 1998: pg. 126).

The Commission felt that a tendency to equate justice with retribution needed to be challenged. Philosophically, the Commission aligned restorative justice with the African traditional value of *ubuntu* which metaphorically refers to 'people are people through other people.' Its value emphasises the respect for human dignity, representing a shift to conciliation as all South Africans in some way or another have been affected by or culpable in the web of injustice and untold suffering that comprised Apartheid (TRC Report Vol.1, 1998: pg. 127). Thus, as observed under this sub-category, in fear of feeding into desires of revenge that comes with retribution, and which would undermine reconciliation, the concept of restorative justice in the form of amnesty was favoured. The Commission called upon the population to 'return to *ubuntu'* in which all South Africans now had a collective responsibility in promoting a culture of human rights. Therefore, according to the Commission's conceptual understandings, amnesty in return for full and public disclosure suggested a restorative notion of justice that the

Commission believed would result in the healing of victims and perpetrators as well as communal restoration by invoking a sense of *ubuntu* (TRC Report Vol.1, 1998: pg. 118).

6.2 The Mandate

The following section focuses on the mandate of the Commission identified through content analysis. The Commission was conceived as part of the bridge building process created to lead the country away from a divided past and to a future foundational on human rights and democracy (TRC Report Vol.1, 1998: pg. 48-49). As we have come to see, one of the main tasks of the Commission, which is underpinned by its conceptual framework, was to uncover as much truth as possible. This section will, therefore, focus on this aspect of the Commission's methodology in discovering the truth. The following sub-category identified to address this is the Commission's **Scope and Definition of HRV**, which will be discussed as part of the Commission's mandate.

6.2.1 The Scope and Definition of HRV

In its task towards uncovering the truth, and in 'spirit of transcending the divisions and strife of the past' the Commission sought to do so by (a) establishing as complete a picture as possible of the causes, nature, and extent of HRV committed from **March 1960 to May 1994** by conducting investigations and holding hearings, (b) restoring the human and civil dignity of victims by providing them the opportunity to relate to their own accounts and experience of violence followed by recommending reparations to the President in respect of their suffering, (c) granting amnesty to persons who made full disclosure related to acts associated with HRV and (d) providing a report that details the Commission's findings related to (a), (b), (c) and which as a result makes recommendations to the President that prevent future HRV from re-occurring (TRC Report Vol.1, 1998: pg. 55-57).

The functions of the Commission as an instrument responsible for societal transformation involved facilitating inquiries into gross HRV, including violations that were part of systematic patterns of abuse, clarifying the causes, nature, and extent of gross HRV, including the antecedents, context, perspectives and motives that led to violations, identifying all persons, authorities and institutions involved in HRV, clarifying whether such violations were the result of deliberate planning on part of the State or any of their organs or of any liberation/political movements, and finally, facilitating accountability for HRV committed, regardless of who was responsible (TRC Report Vol.1, 1998: pg. 55-57). All these functions were seen as necessary to the creation of institutions that are conducive to a stable and fair society (TRC Report Vol.1, 1998: pg. 136).

The scope of the Commission in carrying out the above functions was, however, attributed to the classification of Apartheid as a crime against humanity which had imperative consequences for the Commission's work towards reconciliation as victims of Apartheid gained the international right and acknowledgement to reparations based on international law (TRC Report Vol.6, 2003: pg. 595). As argued by the Commission regarding this classification:

> ''The classification of apartheid as a crime against humanity emphasises the scale and depth of victimisation under apartheid, and, to that extent, adds further weight and urgency to the need to provide adequate and timely responses to the recommendations of the Commission.''
>
> (TRC Report Vol.6, 2003: pg. 595)

In total, roughly 50 000 cases of gross HRV were considered (TRC Report Vol.1, 1998: pg. 136-141). Through its work, the Commission continued to embody a moral and therapeutic process of allowing victims to tell their stories, consequently providing acknowledgement for their suffering, specifically through the hearings (TRC Report Vol.1, 1998: pg. 144-146). The overall focus of the hearings was to expose to the public the fundamental issues regarding the complicity in human rights abuses under Apartheid with the hope that this exposure would lead to the successful

reconstruction of society as part of the objectives of the TRC. Three types of hearings were held by the Commission, (1) event hearings; in which the focus was not on individual experiences but on events and its context in which gross HRV occurred (also known as 'window cases'), (2) special hearings; sought to identify patterns of abuse experienced by particular vulnerable individuals and social groups, and (3) institutional hearings; sought to receive evidence from various sectors, institutions and organisations regarding their role in being complicit to or facilitating human rights abuses. Given the gendered aspect of this thesis, it is important to note that for special hearings, a separate hearing on women was held which will be discussed in more detail in the theory analysis (TRC Report Vol.1, 1998: pg. 148-149).

The Commission's definition for gross HRV as defined in the Promotion of National Unity and Reconciliation Act of 1995 (the Act) is:

> ''the violation of human rights through (a) the killing, abduction, torture or severe ill - treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date [10 May 1994] within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive''
>
> (TRC Report Vol.6, 2003: pg. 589)

The language regarding this definition played an imperative role in what cases were considered by the Commission. For e.g., the word 'killing' was chosen over 'murder' to allow the Commission to examine these violations without being restricted by legal justifications used by perpetrators for such conduct. It also allowed the Commission to conclude that individuals who suffered these violations were indeed victims. An important aspect of this definition to point out for the theoretical analysis that will follow later, is the Commission's definition of severe-ill treatment within the defined gross HRV. Severe-ill treatment was defined by the Commission as:

‘’acts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim, taking into account the context and nature of the victim.’’

(TRC Report Vol.6, 2003: pg. 591)

The Commission took various factors into account when determining on a case-by-case basis whether an act qualified as severe ill-treatment. These included the duration of the suffering or hardship, its physical or emotional effects and the age, strength, and state of health of the victim. Despite the focus of HRV on political offences, severe-ill treatment did include rape, sexual abuse, severe assault, harassment, along with solitary confinement, detention without trial, arson, and displacement (TRC Report Vol.6, 2003: pg. 589-591).

In addition to applying its definition of HRV, the Commission also had to determine the political motive of these acts which was no easy task given the structural nature of Apartheid (TRC Report Vol.1, 1998: pg. 80-82). The Commission employed a ‘less restrictive’ notion of political motive that considered a violation prescribed within the mandated period to constitute a gross HRV if it was ‘advised, planned, directed, commanded, ordered or committed by (a) any member of a public political organisation or liberation movement on behalf of or in support of that organisation or movement, in furtherance of a political struggle waged by that organisation or movement; (b) any employee of the former or current state or any member of the security forces of the former or current state in the course and scope of his or her duties directed against resisting a public political organisation or liberation movement engaged in a political struggle against the state’ (TRC Report Vol.1, 1998: pg. 81-82).

Further, what constituted violations that ‘emanated from the conflicts of the past’ restricted cases to a criterion that considered the context in which the violation took place and whether it occurred during the course of a political uprising, disturbance or event. It also considered the objective being pursued and whether the objective was primarily directed at a political opponent or state personnel/property or private

property/individual, and whether this objective was the result of deliberate planning. Because of this, the Commission found it difficult to apply this framework to a number of cases presented, for e.g., cases that were primarily of a racist and not political nature (TRC Report Vol.1, 1998: pg. 83).

Thus, as observed under this sub-category, the Commission's mandate was not designed to prevent or prohibit all contemporary HRV on a continuous basis but rather to address a particular subset of human rights abuses within the mandated period. For example, regarding the narrowing scope of severe ill treatment, the more one criterion was satisfied, the less relevant were the others. As the Commission illustrates, 'a severe beating of a sick, elderly person might have qualified as severe ill treatment even though a beating lasted less than a minute.' The criterion served more as that of an illustrative nature as opposed to exhaustive, but which generally was considered prohibited under international law. Whilst the acts that constitute gross HRV may qualify as such, individual cases may not have met the criterion of the several factors that constitute the acts described in the overall definition of gross HRV. Because of this, many cases were excluded from qualifying as gross HRV (TRC Report Vol.1, 1998: pg. 80-82).

The Commission argued that had it attempted to encompass the wider structural abuses of the Apartheid system into its definition of HRV, its task would have been immensely time consuming and complex as victims could have been excluded by legal technicalities that prevented them from claiming compensation for their suffering, which was due to Apartheid imposing a 'legal' form of oppression and disenfranchisement onto the majority of South Africans (TRC Report Vol.1, 1998: pg. 60-70).[8]

[8] through laws on forced removals, migrant labour system, bantustans, Bantu education etc.

6.3 Reparations

An integral part of the Commission mandated the Reparation and Rehabilitation Committee to identify and establish a set of recommendations to the President with regard to the policy that should be followed in granting reparations to victims and taking measures that rehabilitate and restore their civil dignity (TRC Report Vol.6, 2003: pg. 92). Therefore, this section will examine this through the sub-category **Reparations and Rehabilitation Policy** which has been identified through content analysis and which discusses the scope of reparations in transforming the lives of victims affected by Apartheid.

6.3.1 Reparations and Rehabilitation Policy

The Commission held in its report on reparations and civil society that whilst it was the legal and moral responsibility of the newly elected government to provide reparations to individual victims, the moral responsibility to be a part of the national project of reparation and rehabilitation reached much wider to the economic sector (which has previously been complicit in Apartheid crimes) as well as institutions of civil society including all South Africans (TRC Report Vol.6, 2003: pg. 159). Although the TRC acknowledged that reparations could never be proportionate to the harm suffered by victims, the hope of recommending reparations was to at least alleviate some of the material and psychological trauma endured by victims (TRC Report Vol.6, 2003: pg. 163).

A big challenge for the Commission in deciding the reach of reparations was how to acknowledge victims who directly engaged with the Commission whilst also acknowledging those who did not or were unable to for various reasons (TRC Report Vol.6, 2003: pg. 164). Thus, there was a challenge in distributing resources between victims who fell within the Mandate and those many victims who fell outside the

Mandate (TRC Report Vol.1, 1998: pg.124). As echoed by the minister of Justice at the time stated:

> ''We have a nation of victims, and if we are unable to provide complete justice on an individual basis - and we need to try and achieve maximum justice within the framework of reconciliation - it is possible for us...to ensure that there is historical and collective justice for the people of our country. If we achieve that, if we achieve social justice and move in that direction, then those who today feel aggrieved that individual justice has not been done will at least be able to say that our society has achieved what the victims fought for during their lifetimes.''
>
> (TRC Report Vol.1, 1998: pg.124)

Thus, the Commission acknowledged that without adequate measures to reparations and rehabilitation, healing and reconciliation would not be achieved (TRC Report Vol.5, 1998: pg. 170). At the same time, the Commission was anxious to impose a huge burden onto the newly elected government, and instead opted for a 'closed list' policy approach to reparations. In other words, only victims who made statements to the Commission would receive financial reparations (TRC Report Vol.6, 2003: pg. 732). The Commission ensured that the State President in consultation with the Ministers of Justice and Finance would establish a President's Fund in which all financial reparations would be disbursed to victims with the hopes that it is adequate in making a meaningful and substantial bearing on their lives and which is in relation to a dignified standard of living within the South African socio-economic context (TRC Report Vol.5, 1998: pg. 172-177). Thus, the responsibility for implementing the reparations recommended by the Commission fell to the office of the State or Deputy President and was to take place at national, provincial, and local levels (TRC Report Vol.5, 1998: pg. 194).

The proposed reparation and rehabilitation policy had five components; (1) *Urgent Interim Reparation* which provided financial assistance for people in urgent need during the life of the Commission, (2) *Individual Reparation Grants*; an individual financial grant scheme recommended that each victim of gross HRV

identified by the Commission receive a financial grant over a period of six years, (3) *Symbolic Reparations*; incorporates measures such as a day of remembrance and monuments that facilitate a communal process of commemoration for the suffering and victories of the conflict that are culturally appropriate, in addition to assistance with obtaining death certificates of loved ones, exhumations and reburials, (4) *Community rehabilitation programmes*; establishing community-based services and activities that promote culturally appropriate ceremonies for the healing and recovery of individuals and communities affected by HRV, and finally (5) *Institutional Reform*; include proposals of legal, administrative and institutional measures that prevent the recurrence of HRV (TRC Report Vol.5, 1998: pg. 175).

It was revealed in most statements that there was a high expectation from the reparation process to provide monetary assistance (TRC Report Vol.5, 1998: pg. 177-179). However, this can be left for interpretation as the Commission found that 38% of deponents requested financial assistance to improve the quality of their lives whilst over 90% requested a range of services be made available that could be monetarily purchased such as education, housing, and medical care (TRC Report Vol.5, 1998: pg. 184). The Commission was also guided by internationally accepted approaches that emphasise redress through adequate compensation, restitution through the re-establishment to a situation that existed prior to the violation, rehabilitation through medical and psychological care, restoration of dignity and re-assurance of non-repetition through legislative and administrative measures for the maintenance of a stable society (TRC Report Vol.5, 1998: pg. 177-179).

Thus, the decision was made to provide individual grants ranging between an amount of R21 700 - R23 023 per annum (1161.39 euros) which was roughly the median annual household income in South Africa in 1997. This amount was administered and differentiated according to three criteria such as the suffering caused by the violation, an amount needed to access services with those living in rural areas receiving more due to the higher expense of these services in comparison to urban

areas, and an amount that subsidises living costs that is differentiated according to the number of dependants/relatives in which those living in urban areas were favoured in receiving a higher amount. Recipients would receive 50% of their compensation every six months over the period of 6 years. Based on this policy and 22 000 victims who were to receive compensation, the total cost would amount to nearly R3 billion over six years (TRC Report Vol.5, 1998: pg. 184-185). A further analysis regarding the scope of reparations and it's gendered as well as transformative aspects (or lack thereof) will be further discussed in the next chapter on theory analysis.

7. Theory Analysis

Haven established the overall framework of the Commission; this chapter will now focus on addressing the research questions using the selected theory to evaluate the TRC's framework in its goal towards reconciliation and to critically analyse how its framework impacted its inclusion of women's experiences of conflict and how its framework could have worked towards being a more gender-just programme. As noted in the section on content analysis, the categories in which this analysis takes place, and which consists of the data coded as the framework of the TRC, are organised according to **(1)** Addressing GBV in context of broader structures of inequality, **(2)** Prioritising women's positionalities in conflict, and **(3)** Transforming harmful social and gender relations. These three categories comprise of what gender justice as a theory problematises and highlights as important to achieving gender-just TJ programmes. And is influenced by decolonial and intersectional theory to further assess the TRC's framework in relation to the RQs. The following sections are divided in sub-sections where necessary for sake of clarity.

7.1 Addressing GBV in Context of Broader Structures of Inequality

Much of the violence experienced in post-conflict settings are a result of pre-existing structures that create inequalities between men and women. Because of this, women do not only endure violence during, but before and after conflict (Boesten and Wilding, 2015: pg. 80). The context of this section relates to the need outlined by Cameron (2006: pg. 55-56) for TJ programmes to address the damage caused by colonial injustice on the one hand as well as the gendered nature of violence that has seeped into the structural life of many South African women on the other. Especially given the failure of both western and indigenous approaches to account for this complexity.

To address this need, this section will mainly analyse the category on the **Mandate** to address the research questions by focusing on the Commission's definition of HRV.

As established, the Commission was mandated as an instrument responsible for societal transformation to facilitate inquiries into gross HRV, (1) including violations that were part of systematic patterns of abuse, clarifying the causes, nature, and extent of gross HRV, which it did through investigations and holding hearings (TRC Report Vol.1, 1998: pg. 55-57). However, the main barriers for the TRC to investigate underlying structures of gender inequality was **firstly**, due to its mandate period to facilitate inquiries into gross HRV (from 1960 – 1994) and **secondly**, its narrowed definition to what constituted as gross HRV. These two points worked together in excluding gender and coloniality as an important point of analysis to gross HRV, which will be further addressed below using the theoretical framework interchangeably.

7.1.1 Period to facilitate inquiries into gross HRV

Decoloniality as a theory seeks to 'liberate' ex-colonised persons from global coloniality (Ndlovu-Gatsheni, 2019: pg. 206). As stated in the theory chapter, coloniality refers to the sustained imbalanced relations of power in the modern world as well as a Eurocentric epistemology that professes to be universal and truthful (Ndlovu-Gatsheni, 2019: pg. 213). The first inhibiter of addressing pre-existing structures that create and sustain imbalanced relations of power in South Africa was due to the Commission's limited time frame to which gross HRV were investigated.

The Commission attempted to mediate this issue by positioning its inquiries within a 'fuller' political and historical perspective. Unfortunately, only a small snippet of a much larger story that characterised the relationship between colonial/Apartheid law and its establishment of gendered and racial inequality could be addressed (TRC Report Vol.1, 1998: pg. 25). The Apartheid government, which inherited existing colonial structures, was set up in 1948. Its very essence was to segregate every aspect of social, political, and economic life by furthering the use of established legal antecedents through a 'supposed' democratic system that privileged the minority white population (TRC Report Vol.1, 1998: pg. 30).

However, the TRCs inability to address legal antecedents constructed on gendered and racial hierarchies, such as the 1913 Land Act, 1950 Group Areas Act, and the 1953 Bantu Education Act, could simply not be addressed due to its limited inquiry into gross HRV. As stated in its definition; ‘’the violation of human rights through (a) the killing, abduction, torture or severe ill - treatment of any person […] which emanated from conflicts of the past and which was committed during the period 1 March 1960 to 10 May 1994.’’[9] This barrier greatly inhibited its work in compiling as complete a picture as possible that would assist in restoring the human and civil dignity of victims, as well as the scope of reparations and recommendations that would be made to the President in hopes of preventing the recurrence of HRV.

Acknowledgement of Apartheid and its structural effects on the everyday life of South Africans seemed to merely extend to being classified as a crime against humanity, which as a positive, justified the urgent need for reparations. The structural violence imposed onto the majority of the population, and which exacerbates coloniality, was left largely unexamined within the Commission’s framework as conflicts which emanated from the past only constituted as a gross HRV if its occurrence was limited to the course of ‘a political uprising, disturbance or event.’ As stated in a chapter on the *Historical Context*:

> ‘’while only some 21 300 persons filed gross HRVs petitions with the Commission, apartheid was a grim daily reality for every black South African. For at least 3.5 million black South Africans it meant collective expulsions, forced migration, bulldozing, gutting or seizure of homes, the mandatory carrying of passes, forced removals into rural ghettos and increased poverty and desperation. Dumped in the ‘national states’ without jobs, communities experienced powerlessness, vulnerability, fear and injustice.’’
>
> (TRC Report Vol.1, 1998: pg. 34)

The gendered nature of this reality and its persistence of gendered and racial inequality was therefore, inevitably lost to the limited period in which a violation would

[9] (TRC Report Vol.6, 2003: pg. 589).

constitute as gross HRV. Although the hearings provided a wider scope on certain aspects of the public in being complicit or committing HRVs, the exclusion of the wider structural abuses was therefore, greatly restricted in its criterion to violations that 'emanated from conflicts of the past.'

7.1.2 Requirement of a political motive for acts of gross HRV

The exclusion of wider structural abuses became further exacerbated by the Commission's requirement of a political motive for acts to be constituted as gross HRV (''the violation of HRVs […] by any person acting with a political motive'').[10] Consequently, the objective of the violation was limited primarily to acts with a political motive and which needed to be directed at a political opponent, state personnel/property or private property/individual.

Although, the Commission attempted to include a gendered perspective in which rape and sexual abuse was considered within the criterion for 'severe-ill treatment', its overarching politically narrowed definition failed to account for the wider structural abuses of Apartheid and its imposed gendered oppression onto black women. This resulted in an inherent gender bias towards its work in compiling a complete a picture as possible of the causes, nature, and extent of HRV. The gender bias within the definition of gross HRV and a lack of an intersectional perspective to HRV results in what intersectional theory problematises as viewing the concerns and experiences of black women similar to that of black men (Weldon, 2008: pg. 193-194). This particularly materialised during the hearings in which the Commission acknowledged that despite the fact that more women testified than men, most of women's testimonies were about men whereas testimonies made by men largely consisted of their own experiences (TRC Report Vol.1, 1998: pg. 169-171). As the Commission states:

[10] (TRC Report Vol.6, 2003: pg. 589).

''This is not to say that women did not suffer violations themselves – they certainly did suffer – but the focus of women's testimony was more often about someone other than themselves and those victims tended to be men.''

(TRC Report Vol.1, 1998: pg. 172)

A narrowed definition of gross HRV inadvertently privileged the social category of race over gender, resulting in black women being viewed as ''black'' and ''woman'' separately, as black women only spoke on the racial, political experiences of fellow black men, resulting in their unique experiences becoming obscured by this categorical thinking (Weldon, 2008: pg. 193-194). To reiterate this issue, the Commission argued that men were the most common victims of violations: 'six times as many men died as women and twice as many survivors of violations were men' (TRC Report Vol.1, 1998: pg. 169-171). However, this observation or statistic is not surprising given the political nature of what constituted a gross HRV which mostly affected men who formed part of the public political sphere in fighting against Apartheid. As Khulumani facilitator, Nomarussia Bonase, explains, the TRC statement-takers never asked women about their political involvement or their actions within the struggle: 'they were not even asked what happened to them except as it happened to their families' *(Khulumani Support Group 2011* cited in Dlakavu, 2022: pg. 173).

The Special Hearing on Women was particularly indicative of this categorical thinking. The Hearing came about after concerns were brought to the Commission by NGOs, lawyers, and psychologists (etc.) regarding its work towards establishing a 'distorted' truth that lacked sensitivity to gender issues. Although, the Commission attempted to amend its procedures in a way that encouraged more women to speak on their own behalf, and not that of men, the few who did testify in relation to themselves were restricted to speaking of 'political experiences' as a 'woman' facing 'severe-ill treatment' by security forces in the form of emotional, physical, and sexual abuse (TRC Report Vol.4, 1998: pg. 284-286).

This is not to diminish the importance of showcasing such experiences, as it negates the notion that women were only confined to the private sphere, rarely active in the roles of the public political sphere when it came to being part of the liberation movement. However, most women constructed themselves as wives, mothers, sisters, and daughters in relation to their male relatives and/or loved ones (TRC Report Vol.4, 1998: pg. 290). And a narrowed, political definition of HRV created conditions in which only extraordinary cases of GBV, like that of women in detention for example, would be considered to constitute as gross HRV, thus, isolating the everyday struggles that were uniquely experienced by black women from the social, political, and economic context in which these struggles took place.

This definition, limited by the Commission's requirement for a political context and motive, in addition to the mainstreamed 'add on' analysis of gender (Special Hearing on Women), led to what Bueno-Hansen points out, the silencing of the violence indigenous women faced. And in addition, meant that the Special Hearing unintentionally upheld an exclusionary, homogenised social position of 'woman' in which only extraordinary experiences of GBV were considered within its overall framework (Bueno-Hansen, 2017: pg. 1-2).

Yet, statistics show that black women were more subjected to structural restrictions than black men under the Apartheid regime, for example the pass laws that affected various aspects of black women's lives. The most direct measure of disadvantage regarding this today is poverty, which disproportionately affects women living in what was previously known as the homelands areas and which has a clear relation to Apartheid policies (TRC Report Vol. 4, 1998: pg. 290). However, within the scope and definition of gross HRV, there was little room for women to come forward and confidently speak on these nuanced experiences which arguably would have been imperative for the scope of reparations and recommendations, and for preventing the recurrence of HRV that particularly oppress women. As Boesten and Wilding (2015: pg. 80) suggest, there is a clear need for policies aimed at addressing gendered violence

within the field of TJ to include broader structures of inequality. And as intersectionality (Collins, 1998: pg. 63) suggests, this means moving away from viewing social categories such as race and gender separately and rather how they mutually construct one another.

Part of addressing this issue as gender justice theory suggests (Boesten and Wilding, 2015: pg. 80), would be to move away from the notion that gendered violence is only limited to or characteristic of conflict. Had the Commission geared towards a more intersectional definition of gross HRV that considered the relationship between social structures and unique forms of oppression, the hearings could have provided the opportunity for women's qualitatively different experiences to come forward, and which could have contributed significantly to compiling a more holistic and complete a picture as possible. Instead, the fact that most women only spoke in relation to men meant that the narrow conceptualisation of gross HRV placed black women in an uncomfortable position in which they could only really speak on either being ''black'' when it was in relation to men or as a ''woman'' facing an extraordinary, and isolated 'political' case of GBV.

The Commission's narrow definition of gross HRV, resulted in various other, more nuanced HRV being left unexamined, especially structural abuses that fell outside the period of March 1960 to 10 May 1994 (TRC Report Vol.1, 1998: pg. 136-141). If incorporated, it could have holistically addressed the continuance of coloniality that intensifies gendered and racial inequality in current South Africa. This section thus, emphasises a missed opportunity for the Commission to design its mandate in a way that addressed GBV in relation to broader structures of inequality. This could have been achieved had its definition on gross HRV considered the qualitatively different experiences of black women to that of black men, instead of viewing social categories separately which, inadvertently based the distinct perspectives, experiences, and identities of black women on the positions of black men through its narrowed and political conceptualisation of HRV.

It is understandable that incorporating the wider structural abuses of Apartheid into the definition of gross HRV would have been a rather time-consuming task for the Commission. In addition, it is understandable that doing so could have possibly excluded victims because of the oppressive 'legal' nature of Apartheid, which would result in exclusionary legal technicalities. However, the Commission still struggled to interpret the categories of acts related to 'the killing, abduction, torture or severe ill - treatment of any person' as well as developing criteria to limit the determination of 'political motivation.' Despite its attempt to manage this exclusion by considering further factors that constitute the categories of acts and by adopting more neutral terms to describe these acts, its focus on a politically charged definition of gross HRV inevitably resulted in excluding an array of victims and social positions that were and are to date affected by the wider structural abuses of Apartheid (TRC Report Vol.1, 1998: pg. 78).

Therefore, the Commission's definition of gross HRV which has greatly been influenced by an international/Eurocentric framework (TRC Report Vol.1, 1998: pg. 94-102) relates to what Matandela (2020: pg. 5-6) problematises as liberal human rights discourse inadequately addressing the 'histories of pillages' linked to a newly formed 'African state' inheriting the former colonial state that consistently discriminates against women of colour in both its colonial and post-colonial forms. The TRC's focus on individual responsibility should not have arguably came at the expense of challenging broader structures of inequality especially since its objective was to achieve a sufficient level of peace and reconciliation, and to creating a bridge building process that leads the country away from a divided past to a future foundational on human rights and democracy (Boesten and Wilding, 2015: pg. 80).

Thus, the Commission did little to tackle the 'coloniality' of an inherited state, as imbalanced relations of power that intensify gendered and racial hierarchies and inequality are largely left unchallenged. This greatly supports the call for gender-just policies within TJ that address gendered violence by including broader patriarchal and

colonial structures of oppression. For the TRC to be a more gender-just programme, its mandate needed to avoid describing gendered violence as an extraordinary phenomenon of conflict that only referred to 'severe-ill treatment'. Instead, gross HRV needed to be defined and understood as violence that is in relation to the social, political, and economic context in which Apartheid was merely a product of, and which would have been more inclusive of the nature of oppression women faced under Apartheid (Boesten and Wilding, 2015: pg. 80).

7.2 Prioritising Women's Positionalities in Reconciliation Processes

A big challenge for TJ programmes is to get women's demands onto the agenda amid 'transition.' As Boesten and Wilding (2015: pg. 80) state, women's concerns are often viewed as secondary to broader goals of peace, in which peace is viewed as exclusive when in fact these two goals are reinforcing of one another. McKay (2000: pg. 263) argues that this is attributed to how women's oppression in relation to race, ethnicity, and class as well as to a male dominated state solidifies the challenge in securing gender justice in multiple arenas of TJ. Bell (2007: pg. 24) echoes this statement by saying that waging wars and negotiating peace agreements are both predominantly male affairs. Consequently, meaning that the processes that produce contemporary TJ mechanisms tend to be negotiated by state and non-state protagonists who are predominantly male, and which creates a need for the prioritisation of women's positionalities in reconciliation processes.

This section locates itself in Cameron's (2006: pg. 55-56) call for the practices of TJ programmes to adequately incorporate an intersectional and anti-racist perspective that distinguishes the social issues indigenous women face from that of indigenous men, and which would consequently prevent viewing these social issues as secondary to broader goals of peace. A starting point regarding this would have been for the Commission to adopt a more intersectional definition of gross HRV that considered the relationship between social structures and unique forms of oppression.

Doing so would have challenged the categorical positions women were placed through these practices, which tended to conflate their qualitatively different experiences and concerns to that of men, and which would have also shed necessary light on both the colonial and patriarchal oppression of the state as well as the male elite within their communities. This section will thus, focus on prioritising women's positionalities in processes of reconciliation by analysing the TRC's **Conceptual Framework** to examine how the TRC faced difficulty in centring black women, and to examine how the TRC could have been a more gender-just programme.

7.2.1 A Distorted Truth?

As stated under the sub-category on **Reconciliation through Truth**, the Commission viewed seeking the truth regarding the extent of HRV as necessary to prevent reconciliation that is established on falsehood. It felt that a process in which reconciliation does not address the reality or gravity of Apartheid would result in a process of reconciliation that is short lived. Because of this, truth was seen as something that could bring closure to victims, by allowing them, and perpetrators to make peace with what had happened. The Commission acknowledged that this truth would need to encompass the various HRV that has had a lasting and damaging effect on the social relations of South Africa to gain a sufficient understanding of structural violence as well as inequitable economic social relations (TRC Report Vol.1, 1998: pg. 103-107).

However, the Commission's quest for a truth that would encompass the various HRV which has had a lasting and damaging effect on the social relations of South Africa could not be fully achievable based on its definition of gross HRV, which resulted in a large portion of women's struggles and 'truths' being isolated from the social, political, and economic context in which Apartheid took place. Although the Special Hearing was set up to amend its work towards establishing a 'distorted' truth that lacked gender sensitivity, the 'add-on' analysis of gender in the Commission's framework unintentionally placed women in a categorical position. Daly (2008: pg. 4-

7) describes this position as indigenous women placing community interests above their own; thus, creating a dichotomous position in which they are forced to choose between race/culture and gender within broader goals of peace.

Any struggle or experience that fell between or outside these categorical positions, one which considers the position of black women at the nexus of race and gender (Crenshaw, 1991), could simply not be considered in the Commission's work towards establishing as complete and reliable a picture as possible. A somewhat 'fundamental' truth that lacked sensitivity to gendered issues became a truth restricted by a politically narrowed experience of HRV that tended to favour the experiences of black men.[11] This severely hindered the Commission's scope in gaining a sufficient understanding of the structural violence and the inequitable economic social relations that gravely affect black women to this day.

As decolonial theory points out (Gordon, 2014: pg. 81-82), universalism which asserts a fundamental truth onto the world is an important function of past imperial realignment in which local understandings or ways of knowing were inevitably forced to shift and blend into 'knowledge of the centre.' And which refers to a systematic process in which 'knowledges' were organised into 'knowledge.' In the case of the TRC, failing to adequately address the establishment of a distorted truth that was exclusionary to gender and coloniality as an important point of analysis to gross HRV, manifested in a variety of women's 'truths' becoming drowned out by a 'fundamental truth' that seemed to only assert itself in favour of the experiences of men. And because the disenfranchisement of women is nothing new in the now democratic South Africa, not representing women's truths resulted in an incapacity for the Commission to learn about the gendered nature of Apartheid in a non-colonial manner (de Sousa Santos, 2014: pg. 19).

[11] As the Commission argued that men were the most common victims of violations (TRC Report Vol.1, 1998: pg. 169-171).

The call for the TRC to amend its work in establishing a 'distorted' truth emphasises the importance for reconciliation processes to consider the complicated positionalities of black women at the nexus of race and gender from the outset. Gender justice theory (McKay, 2000: pg. 562) recognises that meaningful reconciliation cannot occur without efforts towards gender justice, which in the context of the TRC's conceptual framework meant prioritising black women's positionalities, struggles and experiences at a time when their contributions as public members of the community were critical to establishing a more nuanced truth needed for meaningful reconciliation to occur (McKay, 2000: pg. 563).

According to McKay (2000: pg. 564), this is especially imperative given that women's' voices give new meaning to experiences of shame in which their testimonies become transformed into political dignity. As the Commission believed, hearing victim's stories and their truths was an opportunity to give the voiceless a chance to speak, the excluded a chance to be empowered and to be centred in the process in which speaking their truth was seen as the basis for restoring human dignity (TRC Report Vol.1, 1998: pg. 110-114). Echoed by Weinstein and Lira (cited in McKay, 2000: pg. 565) ''giving testimony alleviates symptoms, has cathartic effects, and serves as political and legal levers against aggressors.''

Although, the Commission did well in allowing marginalised voices to give new meaning to South African history by taking what decolonial theory (Ndlovu-Gatsheni, 2019: pg. 214-215) sees as the opportunity to shift the predominantly western epistemic locale to the epistemic sites of the 'previously colonised.' As stated under **Reconciliation through Truth**, the Commission particularly did so by upholding the value of oral tradition in storytelling in which narrative truth was told through victims' multifaceted experiences (TRC Report Vol.1, 1998: pg. 110-114). In addition, this allowed victims' truth to be upheld as legitimate points of departure for establishing as complete and reliable a picture as possible and which allowed the Commission to challenge a narrative upheld by the Apartheid state as 'truthful' and 'legitimate' in

upholding a skewed moral order (Ndlovu-Gatsheni, 2019: pg. 213-215). Unfortunately, however, the opportunity for truth to be transformed into human dignity as well as to challenge an oppressive truth upheld by the Apartheid state, one which now forms part of the new understanding of South African history, was largely not afforded to black women. Thus, to a large extent excluding the participation of women in the public goal and process of reconciliation.

7.2.2 Restorative Justice 'falling ill to patriarchal imperatives'

This brings us to the next difficulty in centring black women within reconciliation, which was the Commission's decision for conditional amnesty as a form of restorative justice. As Bell (2007: pg. 24) states, processes that produce contemporary TJ mechanisms tend to be negotiated by state and non-state protagonists who are predominantly male, which greatly inhibits prioritising women in processes of reconciliation. The decision for amnesty came about as part of the negotiated settlement between the predominantly male parties the NP and the ANC. As stated in the sub-category **Amnesty as Restorative Justice**, restorative justice concerns itself with 'correcting imbalances, restoring broken relationships, and with healing, harmony and reconciliation' (TRC Report Vol.1, 1998: pg. 9).

This understanding of justice also aligned itself with *ubuntu*, 'people are people through other people' to emphasise the responsibility of all South Africans in respecting and promoting human rights. And which was particularly emphasised in fear of retributive justice feeding into feelings of revenge (TRC Report Vol.1, 1998: pg. 118). The degree to which justice is considered, and the priorities given to reconciliation vary nation to nation. Arguably, based on the discussion to follow, the TRC's adoption of religious views on reconciliation became national priority and consequently came at the expense of gender justice due to its patriarchal imperatives.

The Commission attempted to foster reconciliation firstly, between the State, and the communal level, and secondly, between the various social groups on the local

level, with the goal of transforming damaged social relations and with post-societal reconstruction in mind. To complicate this, however, the Commission faced difficulty in understanding the meaning of unity and reconciliation at the national level. The tension particularly came into effect between Christian understandings of reconciliation (which is more typically applied to interpersonal relationships) and the political conception of reconciliation applicable to establishing a healthy democratic society that restores trust in institutions. As stated in the first report:

> ''Many people […] were concerned about the imposition of a notion of reconciliation - associated with contrition, confession, forgiveness and restitution – on a diverse and divided society attempting to consolidate a fragile democracy. They argued that the most the Commission could and should hope for, at least in the short term, was peaceful coexistence.''
>
> (TRC Report Vol.1, 1998: pg. 108)

The Commission argued that a more political conception of reconciliation would have undermined the importance of apologies made by perpetrators (typically representatives of institutions and political leaders) working in tandem with forgiveness bestowed by victims in establishing a peaceful coexistence (TRC Report Vol.1, Chapt.5: pg. 108). Thus, the Commission found difficulty in striking a balance between these two notions of reconciliation especially given its hefty incorporation of restorative justice that focused more on the 'healing, harmony and reconciliation' of inter-personal relationships.

The TRC's goal of establishing a reconciliation process that is long-lasting and not based on falsehood seemed unattainable because of this. As stated by Omer (2020: pg. 2-4) the legacy of Christianity showcases the production of modernity as a totalising peace that is underpinned by neoliberal, patriarchal, and colonialist underpinnings, and which persists structural violence and disenfranchisement. Due to such underpinnings being no exception to the South African context, the TRC's reconciliation process fell ill to patriarchal imperatives that further disenfranchise particularly black women (McKay, 2000: pg. 566). The Amnesty and HRV Hearings were particularly indicative

of this issue, in which most of the facilitation of reconciliation took place between mainly white 'state-representative' perpetrators and black male victims (as seen in TRC Report Vol.6, 2003).

In the case of the TRC, the imposition of a notion of reconciliation associated with Christian understandings of 'contrition, confession, forgiveness, and restitution' in in its notions of justice, arguably resulted in a 'peaceful coexistence' that became fruitful only for those gaining from an inequitable relationship. The Commission's insistence on such a notion in healing interpersonal relationships, between mainly white perpetrators and black men, came at the expense of uncovering what intersectional theory (Collins, 1990) points to as the intersection of race and gender, and its hierarchical nature that has become the essence of social relations in South Africa.

Argued by Boesten and Wilding (2015: pg. 80), the individualistic emphasis on moral accountability for perpetrators, as in the case of the TRC, in which restorative justice 'shifts the primary focus of offences against a faceless state'[12], inevitably resulted in the further stigmatisation, traumatisation, and inequality of women. This is because although the Commission attempted to establish a participatory process of justice by invoking a sense of *ubuntu* in which all South Africans, regardless of their racial, gendered, ethnic and economic background, had a responsibility in promoting a culture of human rights, it appeared that only women embodied a sense of *ubuntu* when they spoke mostly in relation to men.[13] This was not reciprocated by fellow men who only spoke in relation their own experiences, and who barely participated in the Women's hearings.

The notion of restorative justice in restoring broken relationships, in establishing healing and reconciliation thus, only seemed to apply to and between men.

[12] (TRC Report Vol.1, 1998: pg. 126).

[13] For an interesting and more in-depth gendered discussion regarding the role of ubuntu in the TRC, view Driver, D., 2005. *Truth, Reconciliation, Gender: The South African Truth and Reconciliation Commission and Black Women's Intellect.*

Which refers to McKay's argument regarding a 'peaceful coexistence' that becomes fruitful only for those gaining from an inequitable relationship; as the exclusion of women's 'truths' in relation to an oppressive and patriarchal state become disguised by Christian rhetoric of forgiveness and restitution to avoid the delicate process of South Africa's transition into a democracy (McKay, 2000: pg. 566) & (McKay, 2000: pg. 556). Thus, this arguably caused women to become further stigmatised and traumatised, in which their inequitable relations to men became solidified as restorative justice failed to extend itself to the concerns, struggles and experiences of black women through its heavy focus on the individualistic moral accountability of perpetrators.

Current definitions of justice presented in most TJ programmes are interpreted through a social screen that is patriarchal in various ways (McKay, 2000: pg. 263). Hence, it is of little surprise that the importance placed by the Commission on apologies made by perpetrators working with forgiveness provided by victims resulted in a reconciliation process that favoured the inter-personal and predominantly male relationships between the State in relation to the oppressed black population, and between various of social groups on the local level.

7.2.3 How the TRC's understanding of Truth and Amnesty led to impunity

Gender justice theory (McKay, 2000: pg. 564) argues that a failure to arrest war perpetrators results in a continued sense of impunity that seeps into the post-conflict society. In case of the TRC, issues of impunity regarding its decision on amnesty would largely be attributed to the narrowed focus on offences, in which the Commission argued that the policy of Apartheid and the extent of its legalised social engineering nature restricted its capability to investigate and hold accountable where necessary the wider structural abuse of Apartheid (TRC Report Vol.1, 1998: pg. 26-29).

However, I agree with the Commission's decision to not opt for Nuremberg trials due to a few notable reasons already stated in Chapter 6.[14] Another reason being that the Commission believed criminal trials would have resulted in only a few cases being heard in the public domain and which its relevance would have been restricted to specific charges. Thus, it is understandable how amnesty as a form of restorative justice allowed for as many accounts as possible to be heard, which became a viable method of enquiry into establishing a more holistic account into gross HRV (TRC Report Vol.1, 1998: pg. 120-122).

Nevertheless, because of the TRC's Christian emphasises on healing and reconciling inter-personal relationships, survivors were requested to forgive perpetrators as 'a gesture that is divine in its generosity' and to be frank, for a large part not always humanly possible nor translatable to the practices and values of victims. Some could argue that this emphasis resulted in further harm to communities and social groups (Cameron, 2006). As for many victims, the granting of amnesty was a high price to pay for the public exposure of perpetrators. It was made even more difficult by the fact that those who applied for amnesty did not always make full disclosure. Perpetrators narrated versions of events that were sometimes different. The inability to reach a clear version of the truth, and consequently accountability in respect of incidents, led to confusion and anger for victims' families and members of the public (TRC Report Vol.1, 1998: pg. 121). Because of this, impunity was to some extent inescapable for the Commission, as the mere condemnation of an atrocity was not enough for many, especially when a distorted version of the truth brought confusion and anger instead of healing and closure. Thus, as stated in 7.1, the TRC's focus on individual responsibility should not have arguably came at the expense of challenging broader structures of inequality given its objective was to achieve a sufficient level of peace and reconciliation.

[14] Found under Section 6.1.2 Amnesty as Restorative Justice

To adequately include women in processes of reconciliation, their qualitatively different experiences and concerns should not come secondary to broader goals of peace. An establishment of a fundamental 'truth' and a notion of justice that fell ill to patriarchal imperatives only extended its potential benefits to male victims, thus, serving more as an impediment to relieving South African society from harm, rather than a necessity in redressing past offenses (McKay, 2000: pg. 567). As McKay (2000: pg. 564) states, the rationale that prosecution would impede attaining peace and reconciliation gravely works against the importance of gender justice as the acknowledgement of the horrific crimes committed against women suffer from a sort of national amnesia.

Although, it was arguably the viable option for the TRC to not opt for retributive justice, the rationale of a type of justice that invoked *ubuntu* in hopes of communal restoration, and which only women seemed to practice, arguably forced women to choose between culture/race and gender, thus, impeding the Commission's goal in attaining peace and reconciliation that is long-lasting and attentive to women's positionalities (McKay, 2000: pg. 564).

Therefore, addressing women's positionalities and nuanced experiences became secondary to goals of peace and to a process of reconciliation that mainly focused on men's 'truth' and male inter-personal relationships. The under-representation of women's suffering as referenced by McKay (2000: pg. 563) is due to a legal system ''designed to protect men from the superior power of the state but not to protect women or children from the superior power of men.'' The positionality of black women at the nexus of race and gender which causes them to experience both colonial and patriarchal oppression inevitably had negative impacts on women coming forward and sharing their personal experiences due to fears of shame and guilt, thus further alienating them from the process. In addition, little room was created through the Commission's notion on restorative justice to restore the broken relationships between men and women within context of broader structures of inequality. Failing to

prioritise women's positionalities resulted in a national denial regarding the extent of gender injustice women had to, and still do endure, leading to a continued sense of impunity that seeps into post-conflict South Africa which is evident with the rates of GBV today (McKay, 2000: pg. 565).

Thus, if the TRC geared towards being a more gender-just programme, its reconciliation processes shaped by its conceptual framework needed to actively work towards safely positioning women's truths within the public sphere. Doing so would challenge what Matandela (2020: pg. 5-6) points out as; dominant liberal discourse within the field of TJ failing to acknowledge the shifting of women's role in the colonial era, which prevents indigenous women's access to justice and legal rights within the post-colonial state. The establishment of an inclusive truth, in which there is a distinction between the social issues black women face from that of black men, becomes central to gender justice, and a process of reconciliation that not only prioritises the positionalities of women but also outlives the lifespan of the TRC. Safely placing women's truths in the public sphere would have created the space for women's testimonies that are not merely confined to the private sphere to come to light, and which would have also served as documented evidence against the colonial and patriarchal oppression of the Apartheid state and the male elite within their communities (McKay, 2000: pg. 565). In doing so, the TRC could have averted a reconciliation process that is predominantly built off, or fails to challenge, inequitable relationships. Instead fostering a reconciliation process that prioritises women's positionalities in its notions of justice by also working towards correcting the imbalances and broken relationships between men and women, and in context of broader structures of inequality.

7.3 Transforming Harmful Gender and Social Relations

Considering the previous sections, gender justice can therefore be understood as legal processes that are equitable, not privileged by and for men, and which makes a distinction regarding the nefarious forms of injustice women experience during and after armed conflict (McKay, 2000). Gender-just programmes concerns addressing the persistence of GBV in post-conflict societies by implementing a framework that transforms the social relationships that lead to this violence in the first place. U.N. Special Rapporteur for Violence against Women called urgently for legal and non-legal measures that not only challenge but also transform damaging gender relations (U.N. Women, 2011: pg. 97-98).

As stated previously, the Commission attempted to compile as complete a picture as possible of the nature, causes, and extent of gross HRV. This was necessary so that the Commission could gain an understanding of the damaging effect HRV had on the inequitable social relations of South Africa as well as the structural violence that has taken place. However, a somewhat 'fundamental' truth that lacked sensitivity to gendered issues and that was fundamental on a politically narrowed experience of HRV, which favoured the experiences of black men and led to a notion of justice that primarily focused on healing male interpersonal relationships, severely hindered the Commission's scope of gaining a sufficient understanding of the structural violence and the inequitable social relations that gravely affect black women to this day. Because of this, there was little room for women to come forward and confidently speak on their nuanced experiences which arguably would have been imperative for the scope of reparations and recommendations, and for preventing the recurrence of HRV that particularly oppress women. Thus, this section of the theory analysis will develop this discussion further by analysing the TRC's **Reparations and Rehabilitation Policy** and how as part of the framework it could have worked towards more adequately transforming harmful gender and social relations.

Arguably, the TRC had a very holistic reparations and rehabilitation policy as its scope ranged from individual grants to institutional reform. Through this scope, it hoped that its policy would work towards the transformation of damaged social relations. The Act which focused on the promotion of national unity and reconciliation required the Commission to make recommendations with regards to the creation of institutions conducive to a stable and fair society, as well as to introduce institutional, administrative, and legislative measures. In addition, the Act allowed the Commission to make recommendations to the President regarding any matter that promotes or achieves national unity and reconciliation (TRC Report Vol.5, 1998: pg. 305).

However, one of the biggest critiques facing the Commission's policy was an important factor that seemed necessary to fostering national unity and reconciliation as well as transforming social relations, which was the broader context of gross socio-economic inequalities that are a legacy of South Africa's colonial and authoritarian history. The Commission acknowledged its limited focus regarding this, despite how relevant it was to address given the institutionalised denial of majority of the population to resources and opportunities which was predominantly based on social categories of race and gender (TRC Report Vol.1, 1998: pg. 109). If incorporated to its policy, it could have holistically addressed the continuance of coloniality that intensifies gendered and racial hierarchies and inequality in current South Africa.

The Commission stated however, that it was not possible for one commission with a limited life span and resources to achieve reconciliation against decades of oppression, conflict, and deep divisions. Thus, the Commission believed that reconciliation and unity would only become a reality in South Africa if all its citizens committed themselves towards this goal (TRC Report Vol. 5, 1998: pg. 306).

As stated under the sub-category **Reparations and Rehabilitation Policy**, whilst it was the legal and moral responsibility of the newly elected government to provide reparations to individual victims, the moral responsibility to be a part of the

national project of reparation and rehabilitation reached much wider to the economic sector as well as institutions of civil society including all South Africans (TRC Report Vol.6, 2003: pg. 159). Two examples of this that the TRC recommended were that a scheme be put into place to enable those who benefitted from Apartheid policies to contribute to the alleviation of poverty in which a wealth tax was proposed, and that government institutions, the private sector and civil society take measures to include policies and practices that overcome racism (TRC Report Vol. 5, 1998: pg. 308).

Because of this, the Commission's Reparations and Rehabilitation Policy relied massively on the public of South Africa to carry out its work on transforming social relations. This was thus, further exacerbated by the fact that the Commission was only capacitated to make recommendations to the President through the Act. And because a large part of its capacity was to only recommend reparations for victims that fell within its mandate through mainly a closed list policy, many victims that fell outside the mandate and who had suffered from the broader context of gross socio-economic inequalities were not beneficiaries of the individual grant.

The Commission acknowledged in its chapter on concepts and principles that the road to reconciliation meant not only striving for the restoration of human dignity but also material reconstruction that would entail wide-ranging structural and institutional transformation working in tandem to healing broken relationships (TRC Report Vol.1, 1998: pg. 110). As stated by the Commission (TRC Report Vol.1, 1998: pg. 115):

> ''There can be little doubt that gross violations of human rights and other similar abuses during the past few decades left indelible scars on the collective South African consciousness. These scars often concealed festering wounds that needed to be opened up to allow for the cleansing and eventual healing of the body politic. This does not mean, however, that it was sufficient simply to open old wounds and then sit back and wait for the light of exposure to do the cleansing.''

However, 'opening old wounds and sitting back for the light of exposure to do cleansing' arguably seemed to be extent of the Commission's policy on reparations and rehabilitation. Especially given that many victims for example, saw a contradiction

between the work of the HRV Committee, which devoted its time and resources to acknowledging the painful experiences of victims of gross HRV, and the work of the Amnesty Committee, which freed many of the perpetrators of these violations from prosecution (and from prison) on the basis of full disclosure. This tension was deepened by the fact that the Amnesty Committee was given powers of implementation, while the Reparation and Rehabilitation Committee could, by and large, only make recommendations. Perpetrators were granted immediate freedom. Whilst victims were required to wait until Parliament had accepted or rejected the recommendations of the Commission, which arguably didn't help with concerns of impunity (TRC Report Vol.6, 2003: pg. 84).

In addition, the individual grants provided very little transformation for victims who did fall within the mandate. The amount offered to victims and the terms in which it was to be paid out arguably didn't cater to a large percentage of victims (90%) who requested services they had previously been systematically excluded from such as education, housing, and medical care. However, according to the National African-American Reparations Commission nearly R2 billion of the R3 billion allocated for the individual grants remain unspent. Over the past 5 to 6 years the Fund has grown to more than R300 million since 2018, and has received R531 million in investment revenue, however, only R98 million has been disbursed into reparations (NAARC, 2022). Although the Commission had made recommendations to the President regarding issues of education, housing, and medical care (TRC Report Vol.5, 1998: pg. 308), the extent and reaching nature of the reparations and rehabilitation policy has been severely disproportionate to the harm suffered by victims, especially given the current socio-economic state of South Africa.

Thus, to reiterate the sentiments of decolonial theory, to adequately address the proliferation of gendered, racial, and geo-political hierarchies and inequality, imbalanced relations of power need to be dismantled (Ndlovu-Gatsheni, 2019: pg. 213-214). Although the Commission attempted to have a wider scope to its policy and to

extend its policy to victims that fell outside the mandate, it arguably inadequately encapsulated what intersectional theory (Collins, 1990) identifies as social relations premised on the intersection of race and gender in creating a 'matrix of domination' that continues to proliferate these hierarchies and inequalities.

Its over-reliance on the economic sector and institutions of civil society to create and transform institutions conducive to a stable and fair society inevitably resulted in the re-privileging of white and male interests, especially given how these sectors and institutions had previously benefitted from Apartheid policies. This was thus, not an adequate approach in dismantling imbalanced relations of power, which needed to be addressed for the transformation of damaged gender and social relations, and for fruitful, equitable reconciliation to take place.

If the Commission had applied an intersectional race and gender political perspective to its framework, it would lead to what Daly (2008) argues is the acknowledgement of the state privileging white and male interests and as a consequent would focus on the social relations that form part of the gendered violence and disenfranchisement of black women. Although the Commission tried its best in making recommendations to transform wider society through its recommendations in institutional reform, community rehabilitation programmes, and symbolic reparations, because of the Commission's capacity to only recommend and not implement, the Commission favoured the reconstruction of society in its interim constitution over remedying massive injustices in the areas of housing, education, and health care (TRC Report Vol.1, 1998: pg. 124).

Such a decision was understandable given the limited lifespan of the Commission, however, as the Commission stated itself 'the road to reconciliation meant not only striving for the restoration of human dignity but also material reconstruction.' And given that the most impoverished of the South African population are black women due to a clear link to Apartheid policies, this meant that black women's living

conditions and oppression were unfortunately largely not addressed in the Commission's policy on reparations and rehabilitation, nor in its focus on the reconstruction of society due to its overall framework. There was a massive gap for the TRC to address underlying structures of inequality that would have been necessary in transforming harmful gender and social relations that are to date still inflicted onto black women in post-conflict South Africa (Boesten and Wilding, 2015: pg. 75).

Thus, as part of the framework, the TRC could have geared towards being more gender-just if it understood the nature of social relations which are largely premised on the intersection of race and gender in creating a 'matrix of domination.' Doing so would have allowed the Commission to address underlying structures of gender inequality in its recommendations, in which race would have not been the only point of analysis to structures such as institutions, norms and values, family structures and economic relations, as these continue to shape women's experiences and limit their opportunities in post-conflict South Africa (Boesten and Wilding, 2015: pg. 76-80). As Matandela argues (2020: pg. 5) this is especially given that these laws and institutions are directly linked to the colonial legacies that have permeated into state behaviour and that disregard the various important political and social roles women represented prior to colonialism.

I think non-legal measures for example, such as measures that address gendered norms and values, were greatly lacking in the Commission's policy (as seen in TRC Report Vol.5, 1998: pg. 308-349), and which would have been necessary in transforming damaging gender relations and preventing a reconciliation process entrenched on inequitable power relations. Policies on reparations need to play a transformative role in the way TJ programmes address the colonial and patriarchal biases inherent within laws and institutions of post-conflict states, and need to do so in retrospect of healing broken relationships between men and women, in context of broader structures of inequality, that in tandem, ensures adequate material reconstruction takes place, which arguably would have struck the needed balance

between Christian understandings of reconciliation and a political conception of reconciliation necessary for gender-just programmes (Acosta et.al., 2018).

8. Discussion and Conclusion

The aim of this paper is to stress the importance for transitional justice programmes to broaden itself to better address women's experiences of conflict. The research of this paper aimed to do so by examining the framework of the TRC to address how its framework impacted its inclusion of women's experiences of conflict and how it could have geared towards being a more gender-just programme. The necessity of such an examination is rooted in the living conditions of many South African women today, which is reminiscent of a multitude of colonial projects and Apartheid laws of disenfranchisement, which enacted racialising and gendering underpinnings to consolidate white and settler rule as well as the inferiorisation of black women to black men. Unfortunately, much of the work the TRC set out to do has yet to be completed and due to its gaps, biases, and limitations, much of South Africa's civil society is left to address the mountainous task of social justice, with little assistance from government.

In answering the research questions, this thesis found that the framework of the TRC (established as the Conceptual Framework, the Mandate, and Reparations) greatly impeded the adequate inclusion of women's experiences of conflict in its goal towards reconciliation. The Commission's lack of gender and coloniality as a point of analysis to gross HRV in its Mandate resulted in a multitude of women's everyday struggles becoming isolated from the social, political, and economic context in which these struggles took place. It also inadvertently based the distinct perspectives, experiences, and identities of black women on the positions of black men, thus, placing women in exclusionary categorical positions within its framework. Meaning that most women

could not come forward and confidently speak on their nuanced experiences. As Dlakavu (2022: pg. 173) succinctly puts it:

> "The TRC failed to recognise women as actors and activists in their own right - women who fought to defend their families, defend their lives, and to defend political gains.''

This further excluded women in the Commission's reconciliation process, as women's concerns became secondary to broader goals of peace within its conceptual framework. The establishment of a 'fundamental truth' that lacked sensitivity to gendered issued issues greatly hindered the Commission's scope in gaining a sufficient understanding of the gendered nature of Apartheid and its imposition of structural oppression that gravely affect women to this day. It did so by largely not affording the opportunity to black women for their truths to be upheld as legitimate points of departure in the construction of a new understanding of South African history.

In addition, the Commission's Christian emphasis on reconciliation by incorporating a notion of restorative justice with a hefty focus on healing predominantly male inter-personal relationships, resulted in the further stigmatisation and inequality of black women at the nexus of race and gender. As the rationale of a type of justice that invoked *ubuntu*, that only women seemed to practice, arguably forced women to choose between culture/race and gender, thus inadequately challenging the establishment of a 'totalising peace' that is underpinned by neoliberal, patriarchal, and colonialist underpinnings, and which continues to consolidate structural violence and the disenfranchisement of black women. Because of this, the Commission's conceptual positionings towards truth and amnesty inevitably had negative impacts on women coming forward and sharing their personal experiences due to fears of shame and guilt.

Failing to prioritise women's positionalities in its goal towards reconciliation, resulted in a national denial regarding the extent of gender injustice women endured, leading to a continued sense of impunity that seeps into post-conflict South Africa as

well as a reconciliation process that became established on inequitable relations of power. Thus, to a large extent women became excluded in the participation of the Commission's public goal and process of reconciliation. And due to the Commission's framework regarding its Mandate and Conceptual Framework, it was inevitable that its reparations and rehabilitation policy would also suffer from inadequately addressing harmful gender and social relations. Because the Commission's framework largely lacked a gendered and coloniality perspective to its work, black women's living conditions and oppression became largely un-addressed in its policy on reparations and rehabilitation. In addition, its policy's over-reliance on previous beneficiaries of Apartheid to transform structures and institutions conducive for a just and equitable society seemed overly optimistic, and unfortunately was not adequate in addressing gendered and racial hierarchies that sustain imbalanced relations of power and prevent meaningful reconciliation from taking place.

Thus, for the TRC's framework to be more inclusive of women in its goal towards reconciliation, it needed to gear itself more towards being a gender-just programme. This meant adopting a more intersectional definition to gross HRV that moved away from conceptualising GBV as only characteristic of conflict, and which only considered extraordinary cases of GBV in its criterion for 'severe-ill treatment.' Not only would this have created the space for women to speak more confidently on their distinct and nuanced experiences, their testimonies in the form of 'truths' would have also served as documented evidence against the patriarchal and colonial oppression of the Apartheid state as well as the oppression faced by the male elite within their communities. Consequently, this would have aided in preventing restorative justice 'falling ill to patriarchal imperatives' as its intended and potential benefits could have also extended itself to the concerns, struggles, and experiences of black women. In addition, by acknowledging the need to address broader structures of inequality in its framework, the Commission would have had the capacity to challenge the proliferation of gendered and racial hierarchies in producing harmful gender and

social relations within its reparations and rehabilitation policy, which would also consequently challenge laws and institutions that are directly linked to colonial legacies and which disregards the important political and social roles women represented prior to colonialism. All of this in turn could have favourably worked against building a reconciliation process that is entrenched on inequitable power relations.

To conclude, this thesis hopefully contributed to the wider existing academic knowledge in the fields of gender studies and political science, with a particular focus on the field of transitional justice, by specifically contributing to Daly's (2008: pg. 22-25) call for an *intersectional politics of justice* using the theoretical framework to stress the importance of gender-just programmes in transforming the lives of women post-conflict. This thesis also contributed to this by examining specifically the framework of the TRC as a case study example and by applying the discussion brought forth by the academics presented in the literature review in the analysis. For **further research**, it would be useful to examine how the NGO sector has taken up the work of the TRC in relation to its framework, and its perceptions to the TRC's work with a gender perspective and what they have decided to do differently to ensure transformation.

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