



**DEPARTMENT OF POLITICAL STUDIES  
FACULTY OF HUMANITIES  
UNIVERSITY OF CAPE TOWN**

**“Rape and GBV is part of the TRC’s unfinished business!”:**

illuminating a culture of impunity through tracing the legacy and collective  
memory of sexual violence in contemporary South Africa.

---

A minor dissertation submitted in partial fulfilment of the requirements for the award of the degree  
of  
Master of Philosophy (MPhil) in Justice and Transformation

---

Submitted by:

**Keabetsoe Luvano Ntuli  
NTLKEA002**

Supervised by:

**A/Professor Helen Scanlon**

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

Due Date: 12 February 2024

## Acknowledgments

I would like to thank my supervisor, Professor Helen Scanlon for her continued belief in me and the importance of this project. I would like to thank my family for their continued love and support throughout this process. And to my community, thank you for sharing your wisdom, your grace, your care, and compassion and for carrying me through this process. I am eternally grateful for you and all that we share.

### **Abstract**

The proliferation of sexual and gender-based violence (SGBV) in South Africa has ranked it as one of the countries with the highest rates of violence against women in the world – with interventions to address SGBV failing dismally to do so. A cursory glance at this issue may reveal that South Africa is in crisis, however, what underpins this crisis is the broader historical project of colonial and apartheid era crime and the culture of impunity that has surrounded this for decades. While the transition from apartheid saw substantial changes being brought about in the country, as part of the process of addressing past harms with a view of securing a peaceful and democratic future, the issue of gendered harm, particularly sexual violence, was depoliticised and deprioritised as an issue that needed to be acknowledged and accounted for in the historical record. Addressing the long-standing issue of sexual violence in South Africa, with a particular lens of understanding how sexual violence is political in the colonial and apartheid era, explores how a lack of accountability for this harm, fosters a culture of accountability and a dislocation of sexual violence in the collective memory.

**Table of Contents**

Chapter 1: Introduction .....	5
1.1 Problem statement .....	8
1.2 Objectives .....	8
1.3 Methodology .....	9
1.4 Limitations.....	9
1.5 Thesis structure.....	9
Chapter 2: Context Setting .....	10
2.1 Locating Sexual Violence within the South African Settler Colonial Project.....	10
2.2 Framing apartheid.....	12
2.3 Locating women within the liberation movement.....	17
2.4 Debating sexual violence during apartheid .....	18
Chapter 3: Framing theories of politicising sexual violence .....	23
Chapter 4: South Africa’s Transition: Women’s exclusion in a period of inclusion.....	28
4.1 Framing the TRC .....	31
4.2 Women at the TRC .....	33
4.3 Fostering a culture of impunity.....	37
Chapter 5: Conclusion .....	39
Reference List.....	41

# Chapter 1: Introduction

Throughout 2021 until 2023, a group of elderly people, most of whom were women of the Galela Campaign, gathered outside of the walls of the Constitutional Court in Johannesburg, calling on the government to pay out reparations for harms suffered under the apartheid regime. The Constitutional Court stands in the precinct of Constitutional Hill, which was the site of former colonial and apartheid-era prisons where Black detainees were subjected to severe human rights violations, thus making their calls for justice even more profound. While the precinct and the Court itself serve as a reminder of the fight for human dignity and equality, and the triumph of a new democracy, this group of activists called on the government to address the longstanding legacy of socioeconomic harm and inequality that is the result of colonial and apartheid rule. Amongst the rows of placards held by the women read the words “GBV is part of the TRC’s unfinished business!”. The presence of this powerful statement brought to light one of the issues that continues to plague South African society: sexual violence, and how it has often been dislocated from its historical roots.

Ongoing protests and activism, like that of the women of the Galela Campaign, or others on digital platforms have consistently shone a spotlight on the never-ending horror of femicide sexual and gender-based violence (SGBV) in South Africa. The call for a #TotalShutdown of South Africa came about in August 2018 as a response to the revelation that the femicide rate between 2015\2016 and 2016\2017 had increased by 117%. Rates of reported sexual offences experienced by women had also increased from 31 665 to 70 813 (UN Women, 2018). Instagram pages such as Women For Change SA have played an active role in trying to illuminate the widespread nature of sexual violence by providing the stories of the victims. In this protest, President Cyril Ramaphosa was given a Memorandum of Understanding outside the Union Buildings in Tshwane, Pretoria, which put forward a list of demands and suggestions for collaboration between civil society and the government to address and end femicide and SGBV. The #AmINext? Campaign began just over a year later in September 2019 following the violent rape and murder of Uyinene Mrwetyana, the murder of Jesse Hess and of Leighandre Jegels (Al Jazeera, 2019). In a similar manner, Ramaphosa was handed a list of demands to address the ongoing issue, and later that year, in an address to launch South Africa’s annual “16 Days of Activism for No Violence Against Women and Children”, the president stated that “Enough is enough”. On 17 June 2020, just a few months into the nation-wide Covid19 lockdown, Ramaphosa read out the names of at least 20 victims of rape and murder that had occurred during a two-week period from the beginning of June (Ellis, 2020). In 2020, the South African government launched its National Strategic Plan on Gender-Based Violence and Femicide, which seeks to address SGBV by establishing a policy framework that recognised that various needs and challenges faced by women, people

with diverse sexual orientation and gender identities, as well as women with disabilities, women of different ages and migrant women. Despite government commitments to combat SGBV, almost no progress has been in this regard. At the end of May 2023, the Minister of Police, Bheki Cele, announced the South African Police Services' crime statistics for offences that were detected by police between January and 31 March 2023. In just three months alone, over 15 000 women were assaulted, 10 500 were raped and 969 were murdered. These statistics are only reflective on what has been reported to police, ultimately leaving a number of women who have been victims of SGBV nameless and faceless in the justice system, with their stories untold. The rates of femicide and SGBV in South Africa are alarming, and undermine constitutional freedoms. However, these statistics are in no way representative of a post-apartheid reality. They are intricately linked to a much longer violent political project of settler colonial expansion and apartheid rule in South Africa.

South Africa's history is imbued with violent encounters of conquest, dispossession, exclusion, rape, torture, and murder. This reality shaped calls for justice for hundreds of years, which manifested in a variety of ways in the long struggle to bring about our current democracy. Whilst South Africa's transition to democracy was heralded all over the world and saw landmark changes, including a new Constitution, legislative and judicial transformations, as well as substantial related strides in social justice and political transformation, legacies of violence continue to shape South Africa's contemporary landscape. South Africa remains one of the world's most unequal societies, with 10% of the population owning 80% of the wealth in the country, and this is still heavily rooted in historical racial segregation. With staggering unemployment and poverty rates, and the majority of Black people struggling to access quality healthcare, housing and education, contemporary South Africa is a harrowing shell of unfilled dreams and promises.

Occupying a substantial place in the landscape of structural violence that has, in large part, been inherited from our colonial past, is the continued war on women in South Africa. Sexual and gender-based violence (SGBV) continues to be endemic in the country and forms part of a longer legacy of colonial-era violence. SGBV was an integral part of the domination of indigenous people throughout the periods of imperial and colonial expansion, both in South Africa and in other contexts. Colonial imaginaries and narratives around race, gender, and other constructions related to identity, which were inherently dangerous and violent, informed how women, particularly Black women, were perceived and ultimately abused, with the aim of this thesis focusing specifically on sexual violence (Abrahams, 1998; Baderoon, 2018; Gqola, 2015; Boonzaier, 2017). This was reinforced during the apartheid era, which further entrenched settler-colonial rule. This period also saw increasing state and non-state militarisation as the apartheid regime's escalating repression was met with armed resistance by liberation movements. SGBV remained prevalent throughout this period, and by the 1970s, South Africa was in a 'rape crisis', with reported cases sitting between 14 000 and 15 000

per year. Sexual violence became a concern in South Africa for feminist activists, Black community leaders, apartheid politicians, as well as ordinary citizens from the late apartheid period, but remained widely debated, misunderstood and routinely depoliticised, as a result of varying social and political agendas, and thus solicited differing responses (Bridger, 2023; Bridger & Hazan, 2022). These concerns continued throughout the 1980s and into the early 1990s, and debates around sexual violence became more nuanced and polarising as the end of apartheid drew nearer (Hassim, 2002; Magadla, 2023).

The early 1990s brought about substantial change in the social and political landscape of South Africa, and various state and non-state actors began to engage in an extensive negotiation process to bring apartheid to an end. Central to these negotiations was the establishment of a new, interim governing body that was inclusive and representative of the South African population as it entered into a new democracy. It was further responsible for overseeing the new Constitution and legislation including the Promotion of National Unity and Reconciliation Act of 1995 (the Act), which established the Truth and Reconciliation Commission (TRC). For better or for worse, the TRC was the most substantial justice-seeking mechanism, within the transitional justice field, that put in place for addressing apartheid-era harms and set the tone for what was remembered, commemorated, and repented for. Indeed, the very formation of the TRC was based on acknowledging the importance of engaging with and understanding the full nature and extent of structural harm. The mandate of the TRC was to investigate human rights violations that were committed by both the apartheid regime and liberation movements between 1960 and 1994 (The Truth and Reconciliation Commission Final Report, 2003). The gross human rights violations defined by the Act that could be investigated by the TRC were the “killing, abduction, torture or severe ill-treatment” of individuals or any attempts or conspiracies to commit the aforementioned violations. The TRC was further tasked with the view of recommending reparations for TRC-identified victims, as well as amnesty for perpetrators who provided a full and truthful account of politically motivated harms.

Whilst there was an acknowledgement of the varying ways in which apartheid fragmented the country across physical and psychological grounds there were critical issues that were side-lined by the body. SGBV was one such issue, and it was excluded from the scope of violations that the TRC could investigate and provide redress for. However, after extensive engagement with civil society, TRC staff, lawyers, academics, and various other actors made a submission to the TRC which recommended a “gendersensitive approach” to its functions (Goldblatt & Meintjes, 1996; Goldblatt & Meintjes, 1997). With this in mind, it becomes apparent how significant it is that this didn’t happen meaningfully for Sexual and Gender Based Violence (SGBV) committed during apartheid. Thus, the final TRC report’s lacklustre analysis and recommendations on redress for women’s experiences of (sexual) violence during apartheid in many ways reaffirmed concerns that gendered harm was an afterthought in the TRC’s work, and that women’s experiences of sexual violence

had been, and would continue to be, written out of history. This thesis goes further to include the TRC as playing a role in the embedding and cementing of a legacy of impunity for SGBV in the new South Africa, and argues that, although attempts were made, the TRC's mechanisms for addressing sexual violence and GBV were inadequate, and the legacy and culture of impunity that has been fostered around sexual violence is what currently forms part of its collective memory. That is to say, the lack of public reckoning and accountability has been a major hindrance in addressing South Africa's current GBV crisis as it is collectively remembered as a crime that one can commit with impunity.

## 1.1 Problem statement

Although several scholars have analysed sexual violence in South Africa and noted the pervasive culture of impunity that exists when it comes to prosecuting or holding perpetrators to account for SGBV, a gap in the literature exists when it comes to a) locating said culture as an integral part of South Africa's broader history of apartheid and settler colonial conquest, and b) interrogating the impact of the failure to contend with the legacy and collective memory of SGBV in the formation of a new South Africa.

## 1.2 Objectives

- This project aims to illuminate a long-standing history of sexual violence in South Africa and the silences that have encircled it, particularly at the time of the transition from apartheid to democratic rule, and thus leading into post-apartheid era.
- In the process of doing so, it calls into question how we as a country remember, and thus ultimately understand, sexual violence.
- This project aims to show the disconnect in attempts to address sexual violence at a state level, which is a historic legacy in and of itself, and reveals historic and contemporary tensions (linked to liberation movement sexual violence, and further state complicity in contemporary South Africa).

Ultimately, the landscape of memory around sexual violence is key to unlocking an engagement with it in contemporary South Africa. By unpacking intersecting vulnerabilities, we allow for the bridging of intergenerational gaps, and potentially adding a new level of engagement that extends beyond surface-level reforms by etching out a "new" collective memory.

## 1.3 Methodology

This thesis is interested in understanding how a culture of impunity around sexual violence has been maintained in contemporary South Africa as a result of a lack of acknowledgment and accountability for sexual violence that occurred during the colonial and apartheid period. I operationalise theories of politicising sexual violence in order to examine the transitional period in South Africa and its engagement with sexual violence during these periods. This thesis employs a qualitative research approach, through the analysis of primary and secondary source materials. The materials explored in this thesis include journal articles, book chapters, government policy documents, reports, research studies as well as news articles accessed online.

## 1.4 Limitations

This thesis has several limitations that should be noted from the outset. Whilst this project is primarily around sexual violence during the apartheid era, it was beyond the scope of the research to access archival materials, thus much of what has been analysed in this project are secondary accounts and analyses. There is particular emphasis placed on sexual violence in this period, as it was beyond the scope of this research to explore the varying forms which gender-based violence manifests in South Africa. Additionally, this paper focuses on the experiences of cis-gendered and predominantly heterosexual women, knowing that this is a narrow lens through which gender identity, sexuality and sexual orientation exist and are expressed and this is not to maliciously exclude or erase these experiences, or how gendered harm is enacted on LGBTQIA+ individuals.

## 1.5 Thesis structure

Chapter 1: Introduction and framing of research scope and objectives.

Chapter 2: Context setting - this chapter will outline the sexual violence within the settler colonial context and provide an exploration of sexual violence during apartheid and the debates around it.

Chapter 3: Theories of sexual violence - this chapter will frame theories of politicising sexual violence which will then be applied to the transitional period in South Africa.

Chapter 4: Discussion - this chapter will explore how sexual violence was engaged with and depoliticised during the transitional period and map the culture of impunity that is linked to this.

Chapter 5: Conclusion

## Chapter 2: Context Setting

### 2.1 Locating Sexual Violence within the South African Settler Colonial Project

As a critical point of departure in exploring the legacy and memory of sexual violence in South Africa, it is useful to locate the systems of sexual violence as a means of creating and ascribing value (or a lack thereof) to black women in the colonial and settler colonial project imaginaries. This brief exploration of these imaginaries serves to illuminate the institutionalisation of sexual violence in South Africa, and to inform the greater focus of this thesis, which is more contemporary South African history and the formal apartheid system regarding sexualised violence.

The long history of segregation, dispossession and violence in South Africa is rooted in settler colonial expansion and rule, which can be traced back to the arrival of Dutch settlers in 1652. Settler colonialism is a particular form of colonial expansion that is underpinned by the “logic of elimination”, where the settler population sets up a “new political order” in which they declare themselves as the sovereign on the land on which they settled (Wolfe, 2006; Park, 2020). Park (2020: 4-6) draws on the four logics of settler colonialism as outlined by John Collins (2011) which are “elimination, expansion, exceptionalism and denial”. Settler colonialism in South Africa did not necessarily follow the same trajectory as other settler colonies, and as articulated by Gabeba Baderoon (2015:258) in *Surplus, excess, dirt: slavery and the production of disposability in South Africa*. Baderoon states (2015) that settler colonialism and slavery created conditions in which indigenous African people, who were the majority, into “surplus people”.

One of the ways in which eradication of indigenous people occurred, and was common practice throughout colonial expansion, was through rape and sexual violence. In this instance, eradication is conceptualised as the destruction of how people are able to reproduce, physically and culturally. Sexual violence was a facet through which the settler exercised power and control over indigenous people, with Gqola (2015:41) emphasising that sexual violence “performed on the body what guns and cannons enacted on the conquered territory”. In South Africa, this can be seen with the arrival of Dutch settlers and early practices of enslavement in the Cape. Gqola (2015:42) draws attention to the establishment of the Slave Lodge in 1679, which served as “housing” for around nine thousand enslaved people owned by the Dutch East India

Company (DEIC). The Slave Lodge was known to be the first brothel and it was enslaved women who were “prostituted” (Gqola, 2015:43). The institutionalisation of rape in slavocratic societies was commonplace, and sexual labour was part of the other forms of labour that enslaved women were forced to perform (Gqola, 2015:43). Moreover, sexual violence was deliberate, and routinely practiced, as it was a means for slave masters to increase their wealth and “property” without having to pay more money because the children of enslaved women were born into slavery, irrespective of paternity, and would, resultantly, become labourers for the DEIC (Gqola, 2015:41). Being enslaved meant that “bodily autonomy [was] an impossibility”, and not only did their bodies belong to their masters, but so did their reproductive and sexual labour (Gqola, 2015:41). Sexual violence was normalised and legitimised in the colonial imagination and in slavocratic societies because it served the ruling colonial class, by maintaining control over the bodies and labour of the enslaved. Sexual violence was a practice of domination that was informed by underlying narratives and perspectives that colonial powers had constructed around indigenous people for years. In particular, it was intertwined with their conceptualisations of gender and sexuality and how they connected this with the creation of race.

*This next section will focus theorising gender and sexuality, through the lens of alterity, and reflecting on Magubane, Gqola and Abrahams writings on Sarah Baartman.*

Both Magubane (2001) and Gqola (2010) reflect on representations of Sarah Baartman in the European imagination as well as within the purported scientific and medical field. Dr Yvette Abrahams perhaps expands in most detail upon Sarah Baartman’s life and how the events that greatly shaped it were integral to white identity formation. Sarah Baartman, a woman born in 1789 of Khoi ancestry, was taken to London, England in 1810 as a subject of the developing and flourishing industry of “freak shows” in Europe. Baartman was on display for her living life, and her remains as well as two organs remained on display into the 1980s across Europe, and most consistently, in France. What constituted Baartman as a “freak” was her race and gender, an anomaly to what Spivak (1990:787) describes as the definition of the universal, in the colonial imagination, “the straight white Christian man of property”.

Abrahams (1998: 223) points out, “If the freak show itself came to play an important role in underpinning an imperialist mindset, the exhibition of the sexualized savage was equally important in imparting gender specificity to the dichotomy between colonizer and colonized. By far the majority of those who went to the colonies to aid the imperial effort were men. The image of the civilization they were called upon to spread became increasingly symbolized by their “fair countrywomen.” This image was created and disseminated in a dialogue with the image of the sexualized savage.” The freak show in Europe was integral to white identity formation, where binaries were fortified and meaning-making systems relied on aligning

‘goodness’ or ‘universality’ with whiteness, and therefore relegating all other racial categories as other and therefore inferior, criminal, and illegible.

The display of Sarah Baartman particularly fortified the regularity and acceptability of sexualized violence against Black women. Abrahams (1998: 224) further extends, “Thus, representations of Sara Baartman mark the turning point toward exhibiting the savage as raw sexuality. The obscure illustrations of travel writings became increasingly socially acceptable. Thus, while in 1790 an English translator of a French traveller omitted both the verbal description and the picture purporting to be of a naked Khoisan woman, by 1810 Sara Baartman’s body was being widely publicized in London. In effect, conventional norms of decency were to become inapplicable to women of colour.”

What particularly stands out in the display of Baartman’s body and the white identity formation is the theft of privacy and the focus of the body in white identity formation. Becoming a piece of public display as both a physical and discursive form of bondage illuminates the colonizer and colonized dynamic put forward by Abrahams and Baderon. To be colonized and a surplus person is to cease to be and only to be owned. The consumption and sexualization of Baartman and the lack of privacy of her body, her life, and her time go hand in hand with acceptable forms of violence. Spectatorship, ownership, sexualisation, and rape are all consequences of this dehumanisation. It is through devaluation that the state of dehumanisation of black women is both revealed and fortified. Understanding the way in which black women were viewed, and subsequently dehumanised within the colonial imagination, and how this was legitimised and codified within the apartheid system, specifically because the apartheid system was a continuation of the settler colonial project.

## 2.2 Framing apartheid

Apartheid was “an expression of settler colonialism” that was established in 1948 when the National Party (NP) took power following South Africa’s general elections that year. The NP had its foundations in far right nationalists, who believed that Afrikaner volk, a mythical ethnicised idea of a nation and people, were a distinct nation ordained by God to safeguard white, Christian civilisation (Klausen, 2022: 169). It was intent on maintaining Afrikaner nationalist control in South Africa and focused on intense demonisation of black people and the need to sustain white supremacist rule, prosperity, and purity. This was done through concerted systemic violence, propped up by legislative and judicial mechanisms, brutal measures of enforcement, and maintained by racist societal attitudes. For over 40 years, the NP’s segregationist legislative framework and praxis exemplified some of the main underpinnings of settler colonial logic. Yet,

it is important to note that unlike other settler colonial projects, apartheid in South Africa was not necessarily an “exterminationist project”, though it did kill Black people in large numbers. Rather, it kept Black people alive in “conditions of perpetual servitude and submission” as a means of maintaining white supremacist rule through the exploitation of labour and other means (Posel, 2011: 322). The apartheid regime was also incredibly insecure and thus, the tactics the state employed to maintain white minority rule reflected its desperate need for control.<sup>1</sup> Through a policy of “separate development”, the NP reproduced and reinforced existing laws of racial segregation and enforced these “through increasingly repressive methods” (Park, 2021: 223).

As Deborah Posel (2011) posits, the regime’s primary preoccupation was around the “politics of population”, and it went to extraordinary lengths to ensure that it organised and regulated the population accordingly. Racial groups within the population were strictly classified under this system and were categorised as White/European, Coloured, Indian and Native/African (Black) through the Population Registration Act of 1950 (Posel, 2011: 333). All spheres of life were influenced by these racial categorisations, which included but were not limited to, sectors of employment, areas of residence, political affiliations, freedom of movement, and communal life. In its formative years, the apartheid state focused on consolidating white supremacy as well as Afrikaner nationalism - which further required it to gain approval from white British people and this was done through campaigning around the notion of “die swart gevaar (the black menace)” (Posel, 2011: 323).<sup>2</sup> Historically, the relationship between British and Afrikaans people was tenuous. South Africa was still recognised as the Union of South Africa at this time, and was under Britain’s dominion, which had significant control over its international policy, while domestic affairs were governed independently in the Union. By the late 1950s, however, the NP changed the nature of its relationship with Britain in its efforts to buttress Afrikaner nationalism and by 1961, the NP had established a fully independent republic (Posel, 2011: 326). As it worked on consolidating racial difference, it also had to ensure that the spatial terrain of South Africa was such that racial separatism could occur on a grand scale (Posel, 2011: 329). Laws around land that had existed prior to the NP’s rule - such as the 1913 Natives Land Act, which allocated around 7% of land ownership to Black people, and relegated them to reserves on the peripheries of the country and the 1923 Natives (Urban Areas) Act, which was specifically aimed at regulating Black people’s access to urban land and only to service the needs of white people - paved the way for other laws like the Group Areas Act of 1950 and the later forced removals and much stricter regulation of movement that took place from the 1960s. These laws were complicated by the fact that the

---

<sup>1</sup> Population stats in 1948 according to race... Between 1946 - 1990 the percentage of Black people in South Africa increased from 68.6% to 76%. In comparison, the proportion of white people decreased from 20% to 13%, while Coloured and Indian populations remained stable. It ought to be noted that apartheid interfered with data collection and quality, demographic dynamics and population activities and research (Chimere-dan, 1992).

<sup>2</sup> Swart gevaar was a term used during apartheid to refer to the perceived security threat of the majority black African population to the white South African government and the white minority population.

need for cheap Black labour in a rapidly industrialising economy meant that ultimately, Black people would be entering into white areas in large numbers. As such, influx control measures like pass laws, that had been in place since colonial rule, were strengthened with all Black people being required to carry a reference book, or *dompas*, that permitted their presence in specific urban areas and only under certain conditions from 1952 (Posel, 2011: 364). The establishment of official self-governing Bantustans, or homelands, in 1959, which were originally reserves on which Black people were relegated to live, also significantly changed the landscape of spatial segregation and governance in South Africa. Through this Act, under the guise of separate development, Black people were allocated citizenship in their respective homelands based on ethnicity and were simultaneously officially stripped of South African citizenship. These homelands, which were severely under-resourced, remained a source from which Black labour was extracted but could just as easily be sent back to when their purpose in white areas was fulfilled (Posel, 2011: 329, 342). As expressed earlier, labour relations were also regulated according to race, and these relations reflected how racial capitalism underpinned apartheid. Black people predominantly occupied jobs that were “unskilled”, and were contract workers under the migrant labour system, which was constructed and maintained through reserving certain types of labour for certain races. This system was particularly harsh on Black workers through the migrant labour system, and entailed banning their collective unionisation and action (Park, 2021: 223).

Framing apartheid through this lens is necessary for several reasons - it explores the highly regulated and racialised nature of social, political, and economic life, in order to reveal its disdain for black people, its fixation on maintaining separation and its anxieties around racial purity. Over and above this, this grand legislative framework and its violent means of repression also had a particular gendered element. Whilst being racially oppressive, the apartheid state was also highly patriarchal in its design, also relying on existing notions under customary and common law from before its establishment, to both enforce and introduce laws that further disadvantaged Black women. Black women were in a significantly more vulnerable position than black men from a socio-political, legal, and economic standpoint during this period.

During this period, black women’s legal status was such that she was deemed a perpetual minor and was under the guardianship of either her husband or her father or his heir (United Nations Centre Against Apartheid, 1978: 11). This meant that for Black women property ownership was tenuous, and contingent on marriage status. Access to basic rights and services such as healthcare, education and access to consistent food production and supply was severely undermined, particularly in reserves where many black women were forced to remain, as apartheid further entrenched the migrant labour system (United Nations Centre Against Apartheid, 1978: 14-16). This also degraded Black family structures as Black men had to find work and live between urban and rural areas, further exposing Black women to insecurity that came with the

reliance on income received from their husbands, for instance. Additionally, employment opportunities for Black women were virtually non-existent in the reserves and severely restricted in urban areas as the apartheid state predominantly required the labour of black men, and as such Black women struggled to obtain work permits, which could also be denied if they could not secure housing in urban areas (United Nations Centre Against Apartheid, 1978: 17).

Prior to 1952, Black women were not subjected to the strict regulation of movement into urban areas in the same way that Black men were, which was a cause of major anxiety within the regime, as this meant that Black women were able to migrate to cities to live with their husbands, increasing their presence within these spaces which would be a threat to the white minority. The state's attempt to deal with this source of tension was to introduce the Native Laws Amendment Act in 1952 to apply stricter regulation of Black women's entry into urban areas, but resistance against this, saw the state relax its attempts to do so (Posel, 2011: 358). This was also done in large part to prevent unrest within township communities as well. However, the advent of "grand apartheid" in the 1960s saw the implementation of stricter control of movement of Black women. These intersecting vulnerabilities reveal a critical aspect of the marginalisation of Black women, and how in many ways, the insecurities they were exposed to formed part of the much larger political and socioeconomic project that was established through colonial and apartheid rule.

Much like other arenas of socioeconomic and political life under colonial and apartheid rule, gender and sexuality during this period were highly regulated by the apartheid state, with the view of maintaining white settler domination and purity, by ensuring that any possibility of intimacy that could lead to the mixing of races was extinguished. The apartheid state's preoccupation with maintaining separation between races was enshrined in its laws and policing of sexual relations between different racial groups. This also had significant implications on gendered dynamics insofar as the meting out of punishments for transgressions of these laws, and this was even evident in instances of rape and sexual violence as will be explored later in this section.

A year after the NP came into power, it established the Prohibition of Mixed Marriages Act which banned interracial marriage between white and non-white people. However, it felt that this was not enough to prevent miscegenation and soon after, in 1950, the ruling party passed the Immorality Amendment Act which prohibited extramarital sex between white and non-white people (Klausen, 2022: 173). This law was an extension of the Immorality Act of 1927 (that was passed by the coalition government of the NP and the Labour Party) which prohibited sex between white and specifically black (African) people (Klausen, 2022: 167). The 1927 Act functioned to instil a level of control over the white population, specifically poor white men, by shaping public opinion around the threat that having sex with African people posed to white

civilisation (Klausen, 2022: 167). The 1950 Act displayed a more concerted effort by the NP to maintain the purity of the white race, by broadening the scope of its “undesirables” to all people of colour and particularly Coloured people because Afrikaner nationalists held the view that in some instances, they could “pass as white” and thus posed the biggest threat to white purity (Klausen, 2022: 167-168). In 1957, the law was renamed the Immorality Act and was extended to include the prohibition of any attempt to “entice, solicit or importune... any immoral or indecent act” across races (Klausen, 2022: 185).

Whilst the Immorality Act and its various iterations primarily functioned to police white men and prevent the proliferation of any interracial intimacies and threaten the white minority, more broadly, the racist underpinnings of the legislation abjectly dehumanised people of colour, and more specifically: Black women. As Klausen (2022: 177) articulates, the notion of infidelity, or even sex with a Black woman “was seen as more than ‘senseless’ - it was seen as treacherous”. This sentiment was violent and deemed Black women a threat to the settler polity and its aspirations of maintaining both racial segregation and purity, and thus making them vulnerable to further abuse and humiliation (Klausen, 2022: 180). There were instances in which Black women were given a harsher sentence and were also more at risk of imprisonment than the white men they were arrested with due to a lack of financial means to secure legal representation. They were subjected to mandatory vaginal examinations by doctors after the arrest, as part of evidence collecting processes for the prosecution, which were humiliating and violative (Klausen, 2022: 182). Rape and sexual violence were also a key issue in this regard. Rape was prohibited during apartheid, regardless of the perpetrator’s race, and was defined in common law as “vaginal penetration without a woman’s consent”, and there were instances where Black women would report their experiences. However, it was this abject dehumanisation of Black women in the imagination of the colonial/apartheid state that prevented significant instances of intervention against sexual violence as it related to them (Klausen, 2022: 181). Not only were black women potential targets for rape by police officers after the arrests, but in cases where white men were caught raping Black women, the Immorality Act was used as the basis of determining the breaking of the law, and not the act of rape itself. In other words, white men were seldom charged or sentenced for rape, because the racist and heteropatriarchal foundations of the apartheid legal system made it so that Black women were not believed by virtue of their race, which is directly linked to colonial notions of the “unrapeability” of black women (Helman, 2018: 10). This ‘unrapeability’ finds its origins in the formation of Black women as non-women through colonial fixations on the African body, with the bodies of Black women operating as symbols of a lack of civilisation (Boonzaier, 2017: 471; Yates, 2013). In the cases where white men were charged with the offense of raping a Black woman, these charges were often reduced to violating the Immorality Act, which carried a lighter sentence. Moreover, there were instances in which Black women who testified that they were raped were also charged with their white rapists with “unlawful carnal intercourse”, and were essentially punished for being raped (Klausen, 2022: 182).

## 2.3 Locating women within the liberation movement

The considerable vulnerabilities that women faced throughout colonial and apartheid rule is widely evident and, as illustrated earlier, is clearly linked to the political and structural violence entrenched by the state. Women's active resistance against this violence was also significant, but they faced considerable barriers to participation and were subjected to violence within the liberation movement. Women's full membership within normative political structures in the form of the ANC only began in 1943, with the African National Congress Women's League (ANCWL) being established in 1948. Women were also active in spaces beyond formal political structures and became increasingly visible from the launch of the Defiance Campaign in 1952, which marked a turning point in resistance against apartheid with active campaigning, boycotting and strike action. A moment that is often reflected on in contemporary discourses around women's activism in apartheid is that of the multi-racial, anti-pass protest organised by women in 1956, which demonstrated profound collective action. There were numerous other instances in which women organised around various issues related to ongoing political repression, but this had been relatively passive until the advent of "grand apartheid".

The period between the 1960s and early 1990s saw an intensification of state repression and violence, with increased militarisation becoming a key feature of the state and subsequently of the liberation movements as well. The ANCWL was officially suspended from 1960 with the banning of political movements in 1960, and they went into exile. This moment saw the rapid increase of women becoming more active in the armed struggle and as they did so, the stories that many of them recounted, particularly in the aftermath of apartheid, exposed patterns of inhumane treatment and the particularities this had to their gender.

The torture of detainees within South Africa was a tactic commonly used by the Security Forces, and many women recounted stories of both the physical and sexual torture they were subjected to, particularly in the 1970s and 1980s (Goldblatt and Meintjes, 1996: 8). Women in the liberation movement were subjected to a wide range of indignities that were geared at inflicting harm both psychologically and physically as a means to crush resistance against the state. Access to sanitary care during menstruation in detention was limited. Women's genitalia were routinely exposed, touched, searched and electrocuted. They were subjected to sexual degradation and humiliation, not just through violent acts or threats of rape, but consistent verbal attacks on their bodies and their "womanhood" (Goldblatt and Meintjes, 1996: 8-9). Earlier explorations in this thesis have also shown the ways in which sexual violence occurred at the hands of state and non-state actors outside of the context of detention, as well as the ways this was? erased through

the legislation of the Immorality Act. These methodologies revealed how gender relations were constructed in relation to race, power and state control within the apartheid regime, as well as how integral the policing of sex and gender were to the regime's severe repression.

However, sexual torture and violence at the hands of the state was just one aspect for consideration as it relates to sexual violence. As Gqola (2015: 50) postulates, "political violence was always gendered" and this is particularly true in the South African context, in which the shifting nature of the NP's repression, and resistance to it, frequently masked the reconstruction of patriarchal power (Meintjes et al., 2001). Black liberation movements began their armed struggles from 1960, and the increasing militarisation, on both sides, reinforced heteropatriarchal structures and violations, with Black women often being subjected to violence in these contexts. It is from this point of departure that I engage with women's involvement in the armed struggle in exile, and the ways in which their gender was a major factor in the harms they experienced. This section aims to explore how gender coloured the experiences of women in the armed struggle, exploring both how sexual harassment and violence were a common feature, as well as elaborating on how they addressed it.

As the response to the apartheid regime by liberation movements, such as the ANC and PAC, became more militant, women increasingly joined the ranks of the armed struggle. Siphokazi Magadla (2023) explores some of the difficulties experienced by women in the liberation camps outside of the country. Women experienced varying forms of gendered discrimination, including sexual harassment through advances made by male soldiers as well as rape and sexual violence (Magadla, 2023: 79-81). Leadership structures within the camps were aware of these instances, and in the MK Code of Conduct, rape was listed as an act that was in violation of the Code and was punishable (Magadla, 2023: 80). However, women were in the minority in camps, and as such many chose to be silent about their experiences or place less emphasis on these occurrences for fear that this would erase the transformative impact that they had within the space.

## 2.4 Debating sexual violence during apartheid

This section aims to explore the existing debates and contradictory accounts and responses to sexual violence, which ultimately affect collective memory in the present day. Bridger and Hazan's (2022) exploration of sexual violence during apartheid, particularly from the 1950s, reveals the contradictions that become apparent when researching and exploring the historiography of sexual violence in South Africa during this period; arguing that there is no archive specifically addressing sexual violence. This in turn perpetuates further harms against victims and survivors by erasing their subjectivities, as it relates to their

experiences as well as their attempts at activism and organising. The period between the 1970s and 1990s saw a growing rise in public concern around sexual violence from a range of various actors, including community leaders in townships, the apartheid state and police, white feminist organisations as well as ordinary people (Bridger, 2023: 2). At the same time, however, there were notable silences around Black women's subjectivities. Bridger's (2023) analysis focused on Soweto as a site which provided insight into the high rates of sexual violence during this period, as well as exposed the nuanced socio-political milieu in which debates around sexual violence were taking place. These debates, and the narratives and perspectives that surrounded them, also exposed contradictions that existed in these concerns.

By the late 1970s, sexual violence had become a topic of debate amongst various actors and its proliferation was recognised as a "social issue" that required addressing (Bridger, 2023: 4). While historic state records were largely silent on the issue of sexual violence, particularly against Black women, and the state's fixation on the regulation of sex was based more on maintaining puritanical social order and racial stratification (as opposed to rape and sexual violence), there are indications that state actors during apartheid were acknowledging its prevalence. The reporting on rape statistics in parliament and in the media, as well as the debate led by Jimmy Kruger, the Minister of Justice in 1979, on a potential mandatory death sentence for convicted rapists speak to this acknowledgment (Bridger, 2023: 4-5). In addition to this, the establishment of predominantly white feminist anti-rape organisations such as Rape Crisis in 1976 and People Opposing Women Abuse (POWA) in 1979 – the first of their kind in South Africa – as well as increased reporting on rapes in different communities across the country, revealed growing concerns around sexual violence at a non-state level.

Similarly, stories of sexual violence and rape were frequently reported by the media between the 1950s and 1980s, particularly by Black-readership publications which were both popular and influential in township communities (Bridger & Hazan, 2022). These publications often reported the gruesome details of rapes that occurred in townships, noting both their frequency and excessive brutality, and by the late 1970s, when annual rape statistics were sitting between 14 000 and 15 000, the declaration that South Africa was in a "rape crisis" made headlines in several newspapers (Bridger & Hazan, 2022: 291). Seemingly, these accounts spotlight sexual violence and exhibit its profusion, however, they did so in a manner that erased individual experiences, often leaving victims nameless and faceless, whilst also revealing contrasting, and contradictory, concerns and understandings around sexual violence.

The debates and responses to sexual violence during this period were informed by a number of differing interpretations on its root causes, as well as who perpetrators were and what consequences they should face. Many of the white feminist, anti-rape organisations engaged with sexual violence through the lens of

patriarchy and power and worked to address common problematic misconceptions around it, which reinforced victim-blaming as well as the idea that perpetrators were always strangers or “social deviants” (Bridger, 2023: 7). While this frame of understanding of sexual violence did become more widely accepted from the early 1980s, many people, particularly in Soweto, held the opinion that sexual violence was not as tied to “universal patriarchy” as white feminists and feminist organisation posited. There was a general sentiment amongst communities and community leaders in townships that feminism was a western imposition that disproportionately focused on Black men, reinforcing colonial and apartheid stereotypes of violent Black men. Leaders of Soweto’s civic movement tied sexual violence to the socioeconomic degradation that Black people were subjected to as a result of apartheid system (Bridger, 2023: 8). In their view, issues such as lack of housing and overcrowding, unemployment, strict control over movement and same-sex hostels that housed migrant workers created the conditions in which sexual violence would thrive and as such, these structural issues needed to be addressed to then adequately deal with sexual violence. Other residents in Soweto viewed sexual violence as a crime around uncontrollable lust or as a result of women’s behaviour and provocation, while police linked the issue to rising crime, the running of illegal shebeens and alcohol abuse (Bridger, 2023: 7-9). These contrasting views attributed either race, gender or socioeconomic disparities as the cause of sexual violence but struggled to link these intersecting dynamics to why Black women, in particular, were vulnerable to sexual violence.

Responses to sexual violence were equally divided, and reflected the conflicting understandings and debates around the issue at the time. Policing was completely ineffective in large part due to the mistrust that the Black community had towards the police because of their role in the oppression and subjugation of Black people as a whole, the concentration of police resources in white areas, and black women not being believed when they did report rape to white police (Smythe, 2015). Police perpetrated further harm against Black women by perpetuating harmful stereotypes and behaviours in instances where Black women attempted to report sexual violence (Bridger, 2023: 12). Police often accosted Black women, either claiming that most of them were lying, or that somehow, their behaviour invited the rape. In other instances, police were also guilty of raping Black women and were thus complicit in sexual violence but were able to shape the narrative due to the socio-political and economic standing of Black women in the apartheid regime. In many ways, police engaged in acts of silencing Black women and their experiences, which ultimately shaped the archive on the history of sexual violence (Bridger, 2023; Bridger & Hazan, 2022).

Resultantly, residents in Soweto formed avenues of addressing sexual violence from around the 1960s. These ranged from school students and young activists in the liberation struggle who would challenge and punish local gangs and gangsters for preying on and attacking female students and young women to older groups of residents in Soweto known as the “makgotla”, a form of a people’s courts and home guards, who would patrol in the neighbourhoods, judge criminal cases, and prescribe the relevant punishment (Bridger,

2023: 13). There were, however, issues within these community-based justice seeking measures. Some of the younger activists would use their political clout to assert dominance and commit further harm to women, and in instances where they were guilty of sexual violence, would often be protected by their fellow comrades. The “makgotlas” could also be problematic in their responses to sexual violence, often reverting to patriarchal social attitudes that were punitive towards women, even though they were simultaneously punishing rapists (Bridger, 2023: 13).

While the landscape in which sexual violence was being addressed was broad, one of the most notable silences in the historiography of sexual violence in apartheid South Africa is around women’s subjectivities and experiences of rape (Bridger & Hazan, 2022). The justice system, and court records, often invisibilised cases of sexual violence perpetrated by white men against Black women by charging them with violation of the Immorality Act, for instance (Bridger & Hazan, 2022: 296; Klausen, 2022). Some of the language used in reporting, as well as in general sentiments on sexual violence in the media normalised it, and entrenched problematic notions of women’s complicity in their violation, along with their disposability. Additionally, another aspect of the context at the time that contributed to the silencing of Black women’s experiences was their location within the struggle against apartheid.

This silencing reveals a particularly pervasive form of violence which was reflected in attempts to erase something that was, in the same vein, written about as being ubiquitous. However, there is evidence of Black women’s active engagement on issues around sexual violence during this period. Some Black women in Soweto did speak out against sexual violence during this period, and drew attention to these intersections and argued that because they were Black women, they faced a particular type of oppression under the system of apartheid that exposed them to a higher level of violence (Bridger, 2023: 11). Black women would have to travel long distances to and from white areas for work and face violence when returning home alone late at night. In other instances, women were also financially dependent on their abusive partners because of the insecurity brought about by the apartheid state’s policies around access to housing, employment, land tenure, and education, which majorly disadvantaged Black women. Thus, these intersections, coupled with stigma around speaking out on their experiences of sexual violence, as well as the pervasive psychological fear in response to the threat of rape at any time were clear indications that Black women were vulnerable to sexual violence and that many of the concerns and debates that existed at the time failed to acknowledge these dynamics (Bridger, 2023: 10-11). Additionally Black women were central to expansion in women’s and civic organisations as well as trade unions from the late 1970s and into the 1980s (Bridger, 2023: 14). Within these spaces, women were able to publicly raise issues of domestic violence and gender inequality within the home as well as around sexual harassment in the workplace, amongst a range of other issues that affected their lives (Bridger, 2023: 14).

Despite this, there were still obstacles that Black women faced when organising around rape during this period. They struggled to access the resources and networks which were necessary for effective campaigning, particularly in comparison to white women and white feminist organisations. Furthermore, sexual violence was not given precedence within the liberation struggle, as activists were primarily concerned about issues that they saw as affecting *all* Black South Africans, and did not view sexual violence as being linked to broader political and structural violence in apartheid (Bridger, 2023: 14). Moreover, because there were no specialised establishments for rape victims in townships such as Soweto throughout the 1980s, with the first only being set up in 1992 at Baragwanath Hospital in Soweto in 1992, support systems struggled to have deeper systematic impact (Bridger, 2023: 13-14).

Thus the silencing of histories of sexual violence during apartheid in the archive, are somewhat contradicted in both social and political discourses from the 1970s. Those who had the power to define and write the archive had particular motivations and intentions when doing so. Thus, it is upon reflecting the opening statement of this thesis (“Rape and GBV are part of the TRC’s Unfinished Business”) that we are called to recollect these narratives and attempts at organising where so many silences exist.

These debates elucidate how sexual violence was prominent during this period, and that there was an acknowledgment of it. Its root causes were routinely denied, or dislocated from the long history of sexual violence, due, in large part, to the absence in historical court records. If we are to examine gendered and sexual harm as being inextricably linked to political violence in the South African context, it is necessary to understand how it formed part of structural harm and women’s subjectivities and agency are critical to this. These subjectivities also point to a marked lack of accountability around the issue of sexual violence, as the clear exposure of this form of violence was not accurately represented within the nation’s transitional period. The recounting of stories of sexual violence reveals several perspectives that are critical to understanding sexual violence at the time, as well as locating it within the broader historical, colonial project. During apartheid, and as the regime began to be dismantled, sexual violence against Black women had become such a structural practice, occurring at every level, whether it was a random attack, a state sanctioned assault or within a domestic context. It functions as a tool of control, subjugation, and humiliation, and constantly reproduces fear among Black women. It places them in a position in which they are acutely aware that at any point, an individual can threaten their life. It was, and remains to this day, a consistent psychological and physical threat. Yet, despite the rampant occurrence of this form of violence, acknowledgement, engagement, and politicisation of it in the context of broader political and structural violence located within colonial and apartheid rule, was far from substantial both during and after the transition.

## Chapter 3: Framing theories of politicising sexual violence

The debates that existed around sexual violence during apartheid located it as being ubiquitous, but in many ways these debates, which were motivated by varying concerns and displayed a lack of an intersectional lens of understanding women's vulnerabilities under the apartheid regime, depoliticised sexual violence in the broader context of apartheid South Africa. Sexual violence can be understood and viewed within a wider scope of gendered harm, all of which can be located in relation to, and directly linked to, political violence. Debates around sexual and gendered violence both during apartheid, and during the transition to apartheid placed these forms of violations within the realm of the personal, or the intimate, and severed the connection between them and the broader political climate. Exploring theorisations of sexual violence in South Africa, with an understanding from a broader international human rights law perspective is thus necessary to explore the ways in which political violence is intertwined with this.

Fionnuala Ní Aoláin's (2006) analysis of gender in the context of political violence is located within transitional periods and explores the aspects of the relationship between the legal and political dimensions of political violence as well as how the gendered nature of transitions are directly linked to how violent masculinities were present in and shaped conflict. This analysis argues that the limited scope through which violence is understood, often through a lens that has been defined predominantly by men, has a direct effect on efforts at conflict resolution and nation-building attempts. As a result of these gendered biases, measures for accountability in the post-conflict context reflect a lack of specificity as it relates to the experiences of violence that women faced (Ní Aoláin, 2006: 830-831).

Defining and understanding political violence is a critical aspect of the transition from conflict to peace as this understanding subsequently underpins measures taken to seek justice and accountability. Ní Aoláin (2006) draws from some of the normative definitions of political violence - drawn from Douglas Hibbs (1973) - to outline its main characteristics, namely that it is "anti-system in character, has political significance and involves collective... activity". There is both a physical and structural element to political violence, which combines the utilisation of force, in conjunction with legal, social and economic exclusions. There are other lenses through which political violence can be understood, which are particularly useful in the later framing of the link between sexual and political violence. André du Toit (1993) defines political violence as having a particularity around a "moral or public legitimation for the injury and harm done to others, as well as by the representative character of the agents and targets of these acts of violence". In other words, political violence exhibits and performs a specific political motivation and often garners public consequence beyond the "immediate harm or injury done" (du Toit, 1993: 6). The extensive ways in which

political violence has been defined and understood has also resulted in it being located solely within the realm of what is related to normative political structures, like states or organised (non-state) militant groups, for instance. Ní Aioláin's (2006) analysis of the relationship between gender and political violence exhibits several key observations. Discourse around political violence tends to centre the state, the violence it enacts and the non-state actors responding to it, and resultantly has meant that the dimensions in which gendered violence form part of political violence were largely excluded (Ní Aioláin, 2006: 836). These discourses also exclude the occurrence of intimate or domestic violence as forming part of political violence, and how in particular ways, violence that is anti-state driven can additionally facilitate intimate violence. Additionally, the privileging of the state's use of "collective violence" subsequently inhibits a wider focus on regulating violence, which has ramifications for women's safety (Ní Aioláin, 2006: 836). While increasing rates of sexual violence during times of war, civic unrest and political turmoil are generally recognised, there is little data on the correlation between incidents of sexual violence and other forms of political transformations, such as those accompanying national independence or the overthrowing of repressive regimes (Meintjes et al., 2001). Moreover, the predominance of men in peacebuilding processes during the transition, and the way in which definitions of political violence which tend to be focused around what is considered to be "public" or "regime-related" are used to determine the agenda in transitional periods, excludes "private" or "ordinary", read gendered, forms of harm, outside the scope of political violence (Ní Aioláin, 2006: 837).

It is necessary for transitional measures to engage with the varying forms of violence women experience during times of conflict in order to address justice and accountability seeking measures in transitional periods. Aioláin (2006) argues that women were subjected to violence in both the private and the public domain, and that it is because of their gender that they are particularly vulnerable to varying forms of violence, but that this has been largely absent in discourses around political violence. Furthermore, legal categorisations of political violence, such as war crimes and genocide for example, tend to lack a gender specific focus and are thus unlikely to specifically capture women's subjective experiences (Ní Aioláin, 2006: 839). Ní Aioláin's (2006) analysis of processes of gendering political violence are particularly insightful in framing how transitional societies, within peacebuilding processes, have neglected or depoliticised issues around gendered harm. Her framing locates the masculinist notions of nationhood, as well as the heteropatriarchal nature that underpin these notions and how these are subsequently built into conceptualisations of political violence, how it is enacted, *how it looks*, and process of peacebuilding that ensue in the aftermath of conflict.

Rape and sexual violence have occupied a specific place within conflicts globally, and South Africa is no exception. The recognition of rape during conflict by combatants as an international war crime fostered a

necessary conversation around how rape was not just a “by-product” of war, but rather an inherent part of it, and placing responsibility on both soldiers and commanders (Wood, 2018: 514). Wood (2018: 514-515) suggests that, while in some instances, rape perpetrated by combatants has been a method adopted and operationalised as military strategy, this is not necessarily always the case. and posits that in some instances, rape is actually a violent “practice” that is “driven from ‘below’ and tolerated from ‘above’”. Through this lens, she builds a typology of political violence by exploring how rape is practiced within armed conflict. She differentiates between rape as organisation policy, under which it can be applied as strategy, rape as a practice, and rape as absent (Wood, 2018: 515).

Wood (2018) argues that for “rape as practice” to be commonplace within armed conflict, it is necessary for certain conditions to exist. Firstly, some of the combatants must have a “preference for rape” or, secondly, the dynamic within the group of combatants is one that enables rape through coercion or the pressure to conform (Wood, 2018: 523). When considering the first condition, Wood argues that combatants’ “willingness” to rape, and that rape as practice, can emanate from the fact that in certain instances, the organisation recruits combatants from a context in which sexual violence is normalised, as are deeply entrenched, and problematic, notions around gender, particularly how masculinity is performed (Wood, 2018: 523). In the second instance, it is possible for the idea of gender hierarchies that are present within the combatant group itself to influence new recruits - this can be done from either a vertical perspective, where it is sanctioned by the commanding structure, or horizontally across fellow combatants. When understanding “rape as practice”, Wood (2018) postulates that the dynamic within the unit, and the socialisation around gender hierarchies within this context, play significant roles in endorsing and perpetuating sexual violence in different forms, whether it be rape, sexual assault or sexual torture. Moreover, the commanding structure’s tolerance of rape largely stems from a lack of care for the victims of the sexual violence and that enforcing prohibition of sexual violence would either jeopardise the security of his authority, or would simply be too cumbersome a task (Wood, 2018: 524-525).

Determining whether or not an organisation takes disciplinary action against perpetrators of rape within its ranks, or takes effective measures to prevent it, is important to establishing whether rape occurs as a policy or as a practice (Wood, 2018: 525). Wood (2018) makes the distinction that what makes rape a practice, is when the organisation “formally prohibits rape”, but does not make a concerted effort to punish it, and that it can be considered a policy if combatants are punished for *not* raping. Moreover, rape as a practice is also evidenced by its continuation, even when (ineffective) punishment does occur (Wood, 2018: 525-526). There are measures that organisations can take that exhibit that they have made rape a policy and this is evidenced in the type of language that they use that “authorises” or permits it, however, this can be difficult to establish in some cases. Understanding rape as a practice can be seen through both the lack of evidence

that it is an organisational policy, as well as an indication that it was tolerated by the commanding structure, or at least some members of it (Wood, 2018: 526).

The challenge that Wood (2018) also makes note of is with regards to exploring rape as a practice as a means of establishing typology of political violence, is the ambiguity that surrounds how rape is sanctioned or tolerated by command structures. This can be seen in instances where “partial orders” are given, in the sense that rape is not deliberately ordered as a command but rather allows for combatants to interpret it as a means of violence that can be enacted (Wood, 2018: 526-527). Thus, there also lies the potential of the *toleration* of rape as a practice forming part of organisational policy. Wood’s (2018) classification of sexual violence as political violence through the exploration of rape as a practice of war finds that the frequency of rape during conflict is not specifically dependent on rape being an organisational policy, but rather, this frequency can be attributed to it being a “practice”. However, rape as policy and/or practice are interrelated in a particular way. For instance, Wood (2018: 528) argues that viewing rape as a practice within conflict also enables a broader recognition and understanding of other forms of sexual violence such as sexual torture of detainees, as also forming part of organisational policy, which would subsequently increase the scope of scholarship around conflict-related sexual violence. This typology is also important for potentially shaping the potential how rape is prosecuted as a crime against humanity, war crime, or genocide in that it elucidates that rape does not have to be explicitly ordered, but that the intentions of those accused of rape have been shaped by the permissance of it by commanding structures. Understanding rape as practice can also expand on current understandings of justice by broadening the scope of prosecutorial focus to other forms of liability, and also aids justice and truth-seeking bodies, like truth commissions, to expand their conceptualisations of human rights violations as it relates to political violence, by developing the dynamics that spur sexual violence as organisational policy and as practice (Wood, 2018: 530). Finally, Wood (2018: 530) posits that understanding conflict-related sexual violence in the context of her established typology of rape as a practice, and as being maintained horizontally through group dynamics and the toleration of the commanding structure, should also aid in buttressing the aims of international humanitarian law by assisting in military training to prevent its occurrence as well as strengthen efforts to “address the sustained pattern of sexual abuse by UN peacekeepers” (Wood, 2018:530).

These theorisations around gendered and sexual violence exposes specific patterns that intricately link these forms of harm to conflict and political violence. They inform an understanding of political violence that can be broadly defined as has been understood as being enacted by the state, and the resultant collective action against that, which can be located within both the physical and structural realms. There is also a particular understanding of political violence as something “extraordinary”, particularly because of the scale at which harms are inflicted and the gravity that this has on public life, even by those who are not

directly experiencing “physical harm” for instance. Additionally, traditionally masculinist perspectives of conflict have also played an integral role in the way in which political violence is enacted, and thus addressed and remedied. Taking these factors into consideration, the delinking of sexual violence from political violence has somewhat logically followed. Debates during the apartheid period around sexual violence, as explored in earlier sections, depoliticised sexual violence in that they placed them within the private sphere, or, additionally, so commonplace that they formed part of what was considered “ordinary” violence. As such, the depoliticisation of sexual violence can be tied to both its normalisation, but also the way in which it was viewed as being a domestic or personal violation. If we are to consider the brutal political nature of the project of colonialism and apartheid, and its aims at ensuring structural inequalities, and how sexual violence was an intricate part of that project, it is necessary to understand sexual violence as being politicised. Its enactment, by different actors, both state and non-state, was extensive and was exacerbated by structural harm. In this section, I aimed to draw a specific link between sexual violence and political violence to draw attention to several key issues. It is through understanding political violence as being as being both a public and private harm, in that it was felt by everyone at all times, that we are able to understand how sexual violence was depoliticised, but that in fact, it is an inherent part of the political and structural violence that underpinned South African society. Those who have perpetrated sexual violence had been able to enjoy a certain level of impunity because of how sexual violence was understood, and in many ways, this culture of impunity was perpetuated within the transition, in which different stages in the various processes during this period, through the depoliticisation and dislocation of sexual violence from the broader scope of the political and structural project of colonialism and apartheid.

## Chapter 4: South Africa's Transition: Women's exclusion in a period of inclusion

In this section, I aim to explore the ways in which gender and sexual violence were depoliticised, and subsequently sidelined, during South Africa's peace process in the transition period from 1990. I begin by outlining the context in which the multi-party negotiations began, paying particular attention to the ways in which gendered issues related to women were both engaged with and erased. This context is integral in framing the social and political milieu in which the establishment of the Truth and Reconciliation Commission (TRC) took place and the issues that it dealt with. In doing so, I will highlight the key aims of the TRC itself, particularly as they pertain to establishing a framework of truth, as well as its measures taken around accountability and repair and the connection this has to the making of collective memory. Through this discussion, I highlight that the major blindspot of the TRC, as it relates to the aforementioned measures, was around gender and sexual violence and that despite burgeoning discussions around gendered harm as part of an ongoing culture of feminist activism in the country, the TRC perpetuated a culture of the depoliticisation of sexual violence that had been prominent throughout the colonial and apartheid era. Thus, what is imprinted in the social fabric of South Africa is a lack of acknowledgement of sexual violence as an integral part of the structural and political violence that permeated the country's history, and the legacy and culture of impunity that has been fostered around sexual violence is what currently forms part of its collective memory.

The early 1990s was a period of intense uncertainty, as South Africa approached the official end of apartheid in 1994. South Africa had reached a so-called "breaking point" by the mid-1980s, when the apartheid regime declared successive states of emergency from 1985 to 1986, and 1986 to 1990, which intensified state regulation and violence against growing unrest and violence from civilians who had been subjected to all forms of degradation for decades. 1990 marked a significant turning point, when former President, and last president under the apartheid regime, F.W. de Klerk lifted the State of Emergency and released key leaders of liberation movements from prison, beginning with former President Nelson Mandela, and lifted the ban on political parties. Against the backdrop of ongoing violence, South Africa began its peace process, beginning with the signing of the National Peace Accord in 1991, which prepared the conditions under which multi-party negotiations under the Convention for a Democratic South Africa (CODESA) could take place.

The negotiation process in the early 1990s was fraught with significant tensions, and there was a major concern around what issues should be dealt with to secure peace, and ultimately democratic rule in the country. The negotiation processes prioritised entry to normative political and social groups which, to a

large degree, were already established groups on the national level, and at that point, these were predominantly male-dominated (Hassim, 2002: 702). At the time, it appeared that the primary concerns that the ANC was focusing on addressing were those related to racial and class inequalities, and its alliance with COSATU and the South African Communist Party (SACP) buttressed this. However, as Aioláin (2006) articulated, predominant notions of the male-centric nature of conflict plays a role in the way in which peace processes reveal gender biases, and this became apparent within the negotiations process. Gender was one of the highly debated issues at the time, and responses on how to “gender” the transition varied significantly, which was also ultimately visible in the establishment and processes of the TRC at a later stage.

Women’s participation during the transitional years drew from this extensive history of feminist activism, and yet despite this history, they were not as overtly represented as political actors within this arena. Towards the end of the 1980s, women’s organisations, which had been widely active prior to this, had significantly dissipated and this was compounded by the unbanning of liberation movements in 1990, which brought about the merging of semi-independent organisations with the ANC Women’s League (Hassim, 2002: 694). As Shireen Hassim (2002) postulates, in *A Conspiracy of Women: The Women’s Movement in South Africa’s Transition to Democracy*, this merger imposed the framework of nationalism on the women’s movement, which in some ways was still trying to establish its own ideological framework, against a backdrop of intense political conflict. In September 1991, different representatives from several organisations, including women’s organisations, non-governmental organisations as well as political parties, met with the ANCWL to discuss the potential of a multi-racial national women’s structure which would be organised according to a guiding ideological framework (Hassim, 2002: 699). The meeting also concurred that the proposed structure would be in the form of a political coalition based on the grounds of safeguarding the interests of women in post-apartheid South Africa (Hassim, 2002: 699). The establishment of the Women’s National Coalition (WNC) in April 1992 emerged from these discussions, which consisted of eight regional coalitions and 70 organisations, and was mandated to draft a Women’s Charter of Equality, which would establish and coalesce the varying demands that individual women and women’s organisations had (Hassim, 2002: 700). The WNC was a crucial step in forming a women’s political movement and was integral in advocating for and organising around women’s inclusion in the negotiations process as well as the drafting process of the constitution (Hassim, 2002: 702). Despite its formation and significance in national collective memory, however, there were substantial challenges related to women’s involvement in the transition period overall.

Hassim (2002:700) highlights how during the first round of negotiations of CODESA in 1991, all the political party representatives that had the future of South Africa in their hands, were all men. The erasure of women from this process caused significant backlash. As a result of mounting pressure, CODESA’s

Management Committee proposed that women should join the delegations of political parties at the negotiations. The ANCWL proposed to CODESA that it should be granted a separate status from the ANC at the negotiations so that it would be able to incorporate gender issues within the scope of political party pressure, but the response from the ANC to this proposal was unfavourable, and it argued that the ANCWL was not a political party, and that CODESA was a forum for discussing political issues (Hassim, 2002: 715). The stance the ANC took in this regard was highly indicative that gender issues were easily dismissed, depoliticised, and relegated to secondary status in comparison to the other issues it deemed to be “political”. After further engagement, the ANCWL proposed that a Gender Advisory Committee be formed to engage and advise on both the gendered implications of decisions taken by the Management Committee and related working groups as well as CODESA’s terms of reference, to which the ANC agreed to (Hassim, 2002: 715). Despite this significant step, women’s participation was still not taken seriously and there was no official obligation to take on recommendations made by the Gender Advisory Committee.

This culture continued even after the breakdown of CODESA in August 1992 with a new round of negotiations in the form of the Multi-Party Negotiating Process (MPNP) in March 1993. These negotiations set up a Negotiating Council with representatives from 26 different political parties and aimed to set an agreed upon constitutional framework for the new democracy, putting in place seven Technical Committees that were responsible for engaging with different proposals (Hassim, 2002: 716). Former representatives in the Gender Advisory Committee within the CODESA process demanded that there be a Gender Advisory Committee as a Technical Committee in the MPNP as well as the inclusion of women in the negotiation teams of the various political parties (Hassim, 2002: 716). This resulted in women’s inclusion in delegations, but this was significantly limited, and so major efforts went into lobbying for further inclusion by actors outside of the MPNP. The WNC was instrumental in these efforts and set up the Multiparty Negotiation Process Monitoring Collective in July 1993 to bolster cooperation between the WNC and women negotiators. When the first draft of the new constitutional principles was presented in May 1993, based on deliberations held during CODESA, it completely excluded any overt mentions of nonsexism, and this was challenged by the WNC, which had also been working to ensure that a “strong equality clause” was included in the Constitution (Hassim, 2002: 719). These provisions were ultimately reflected in the Final Constitution of South Africa, which was promulgated in December 1996, however, the exclusions throughout this process illustrated a much broader tension around black women’s “belonging and citizenship” within South Africa (McEwan, 2003: 740).

The Government of National Unity (GNU) was established from 27 April 1994, until February 1997, and was a multi-party government consisting of the ANC (in alliance with the SACP and COSATU), NP, and the Inkatha Freedom Party (IFP), which sought to oversee the transition from apartheid, as well as oversee

the new Constitution of South Africa (South African History Online (SAHO), 2017). Under the GNU, the Truth and Reconciliation Commission (TRC) was established in July 1995 under the Promotion of National Unity and Reconciliation Act 34 of 1995, hereinafter referred to as the Act, under the new constitution. The NP later withdrew from the GNU in 1996 on the grounds that it felt excluded from decision-making in the legislative consultation processes, and its unwillingness to participate was further entrenched through its disengagement from TRC proceedings, blaming political biases in the process as the reason for this disengagement (SAHO, 2017).

## 4.1 Framing the TRC

The TRC, at the time of its establishment and years after it completed its work, was regarded as “the most ambitious and organised attempt” to engage with past injustices committed under authoritarian rule through truth-telling (Stanley, 2001: 526). The TRC was initially mandated to run from 1995 until 1998, but this was extended to 2002. It heard statements from over 22 000 victims and subsequently published and presented the first report, which included five volumes of findings in 1998, and the final two volumes were later published in 2003 (Kusafuka, 2009: 47). It was underpinned by the principle of acknowledging the atrocities of the past as a means of also promoting healing and reconciliation, in a new democratic era, and was thus a forward-looking process. A key facet of the Commission was “restoring the human and civil dignity of victims”, and thus the operationalisation of the philosophy of *ubuntu* (a Xhosa and Zulu phrase which articulates the notion of “humanness”, which was articulated in the Final Report as encapsulating the “respect for human dignity, [and] marking a shift from confrontation to conciliation”) became a key aspect as a means of getting all South Africans to participate in the nation-building project (TRC Final Report, Volume 1: 130). The court-like body was mandated to investigate “gross human rights violations” committed between 1960 and 1994, on both the parts of the apartheid state and the liberation movements, in order to establish an understanding of the nature, grounds as well as the full extent of these violations during this period, both in South Africa as well as elsewhere<sup>3</sup> (Promotion of National Unity and Reconciliation Act, 1995). The Act defined the aforementioned human rights violations as the “killing, abduction, torture, or severe ill-treatment of any person” as well as the conspiracy or attempt to conduct any of these violations. In addition to investigating these human rights violations, and establishing their nature as being *politically motivated* (a key concept to which I return later in this section), the TRC was also mandated to ascertain, through testimonies given at the TRC, perpetrators of politically motivated crimes, the victims of these crimes and what happened to them, and based off of the testimonies it heard, recommend measures for accountability, amnesty as well as reparation (Promotion of National Unity and Reconciliation Act, 1995). Three sub-committees were established within the TRC, namely the Human Rights Violations Committee, the Amnesty Committee, and the Reparations and Rehabilitation Committee,

---

<sup>3</sup> Atrocities also committed by those in other territories.

whose work dealt with those specific arenas but also informed aspects of the other Committees (Promotion of National Unity and Reconciliation Act, 1995). Perpetrators could apply for amnesty, and have it granted on the grounds that provided full disclosure of the harm, and that it was directly linked to a political motivation. It is critical to note that one of the main underpinnings of the TRC was that perpetrators of violence had to be able to prove that the harm they had committed was *politically motivated*. Political motivation, in this context, was determined on a case-by-case basis, and was also framed around an adaptation of the Norgaard Principles, which took into consideration different aspects such as context, motive, the object of the offence, the nature of the political offence itself as well as whether the harm was committed as an order or under the authorisation of the respective political organisation (TRC Final Report, Volume 1: 50). The recommendations for reparations put forward by the TRC were divided into four categorisations, namely individual reparation grants, which would provide monetary compensation to TRC identified victims, symbolic reparations, institutional reform to prevent possible reoccurrence of human rights violations as well as programmes aimed at community rehabilitation (TRC Final Report, Volume 1: 128).

As evidenced by its name, truth-telling was integral to the processes of the TRC, and in its final report, it defined the concept of “truth” according to four key notions. The first notion was around forensic, or factual, truth, which was based on the idea of submitting corroborated evidence collected through impartial procedures, which is based on a legalistic and scientific understanding. Another notion the Report defined was around narrative truth, which is gathered from individuals’ personal stories. Social truth was the third notion, which was around the idea of truth that was established through dialogue and discussion at a collective level, and finally, the notion of healing and restorative truth, which described the idea of a set of facts being placed within context in order to acknowledge personal experiences (Stanley, 2001: 528). Through this description, the TRC attempted to engage with the notion of truth from a perspective of being a “concept for everyone”, and uncovering truths that had been hidden, particularly in a context where denialism, of lived realities, dignity and truth, had been the status quo (Stanley, 2001: 528). The TRC thus viewed the truth, and the process of truth-telling, as a conduit of memory reconstruction.

Despite this emphasis on the telling of truth in a way that would illuminate the atrocities of the past, there was a particularly narrow scope through which the TRC engaged with said atrocities. The TRC, within the context of democratisation in the mid to late 1990s, placed significant focus on addressing political and civic harms. Even then, the scope of these harms coalesced around a particular agenda - and redress for these harms, while addressing broader structural violence, linked to socioeconomic deprivations, proved

more challenging.<sup>4</sup> Of the notable absences in the TRC's mandate and processes, gendered and sexual violence were substantial, and this solicited major concern and urgent intervention from various actors. The truth of gendered and sexual violence was substantially obfuscated by the TRC by the lack of an explicit foregrounding of sexual violence as a type of atrocity that was prominent during the apartheid period. Coupled with the TRC's overall lack of engagement with the settler colonial project in South Africa, and how intricately linked gendered and sexual violence were in this project, the overall gender blindspot in the initial stages of the TRC was largely problematic, but also further revealing of the political climate of the transition at the time, and its own tensions around gendered dynamics. With this in mind, the role of gendering truth and memory, in relation to the country's history, both prior to and during the transition, is integral in remembering legacies of sexual violence, and to further understand the way a lack of accountability for these harms is a considerable part of the landscape of contemporary South Africa.

## 4.2 Women at the TRC

In the initial stages of the TRC, a particular focus women's experiences of harm during apartheid, especially that around sexual violence, were not included within the scope of violations that it was mandated to investigate (Sarkin & Ackerman, 2019: 480). The presence and role of women within the space, however, was substantial. In *Women's Contributions to South Africa's Truth and Reconciliation Commission*, Pumla Gobodo-Madikizela (2005:9) noted that over half of the 21 277 testimonies heard at the TRC were given by women, and that over 60% of those were made by black women. Furthermore, 41% of the commissioners were women, and a large proportion of the staff were women as well (Gobodo-Madikizela, 2005:9). Despite their substantial presence in the process and the proceedings, there were many ways in which women, and their experiences, were sidelined. A key feature that arose out of the TRC as it relates to the role of women, was how they were positioned and how they positioned others in relation to themselves. Women mostly spoke on behalf of others, often their sons and husbands and the way in which these losses coloured their experience of harm during apartheid (Gobodo-Madikizela, 2005:15). While many women expressed that sharing these experiences contributed to their healing, the decentring of their experiences had the effect of relegating them to the category of "secondary victims".

The gendered harms of apartheid extended beyond sexual violence and were particularly pronounced against black women, and it was necessary for the TRC to engage with all forms of gendered harm in order to paint a complete "truth" of South Africa's apartheid past. A key issue that emerged in this context was that the rape was not classified as a form of torture in its own right, but rather viewed under the scope of

---

<sup>4</sup> This was in large part due to the nature of the negotiations process, which widely left economic power in the hands of the white minority.

“severe ill-treatment” under the TRC’s mandate, and it was argued that this was because rape was such a personal and horrific violation “that it couldn’t possibly be considered a political crime”<sup>5</sup> (Durbach, 2015: 183). As articulated earlier in the thesis, sexual violence was particularly prominent throughout apartheid and was perpetrated at all levels, from state to domestic, and this was reflected in social and political discourses from around the 1950s. Despite this, and strong indications that sexual violence was utilised as a means of “undermin[ing] resistance and enforc[ing] political acquiescence”, it appeared that the TRC, and processes leading up to its establishment, struggled to grapple with the political nature of sexual violence and where to locate it within these structures (Durbach, 2015: 182).

Resultantly, there arose a need for a space in which women could address their specific experiences of harm such as sexual violence, in such a way that added another dimension to the TRC. In 1996, The Centre for Applied Legal Studies hosted a workshop, in which a number of actors participated and shared reflections on the ongoing work of the TRC at the time and how women were represented and positioned, both in the sense of their inclusion and their exclusion in the process (Goldblatt & Meintjes, 1997: 8). This submission, which was led by Beth Goldblatt and Sheila Meintjes (1996) highlighted the particular vulnerabilities that women faced between 1960 and the late 1980s. The findings that emerged from that workshop were compiled into a submission that was put forward to the TRC, and had several recommendations around how to better incorporate a gendered lens as its work was unfolding. Their account does not focus solely on sexual violence, but also highlights the other dimensions of women’s experiences of violence, and is critical in understanding these intersecting vulnerabilities, which in many instances can be linked to sexual violence. One of recommendations made was the establishment of women-only hearings, in which women would be able to testify about their personal experiences of harm, and that these proceedings would further aid in adding a gendered analysis in the final report of the TRC (Goldblatt & Meintjes, 1997: 8). As a result of this submission, as well as pressure applied by women’s organisations and some of the Commissioners who believed in the importance of a gendered lens in truth-telling process, the TRC conducted two workshops, which included TRC staff, the media and representatives from women’s organisations, to explore the means through which women would be brought into the process, which subsequently led to the Commission agreeing to the proposal of Women’s Hearings (hereinafter referred to as the Hearings) be held (Goldblatt & Meintjes, 1997: 8).

In *Dealing with the aftermath: sexual violence and the Truth and Reconciliation Commission*, Goldblatt and Meintjes (1997) explore the response of the TRC to issues raised around the need to incorporate a gendered lens in its processes and recommendations as well as the issues arising with the Hearings

---

<sup>5</sup> This was articulated in the context of the granting of amnesty during the TRC process, but this sentiment articulates the issue of sexual violence was viewed as something separate and important to engage with, but was ultimately left in abeyance.

themselves. Three Hearings were held in three cities in which the TRC already had operations, namely Cape Town in August 1996, Durban in October 1996 and Johannesburg in July 1997 (Kusafuka, 2009: 55). The Hearings were geared towards providing a safe environment in which women would be able to testify around their personal experiences as women, as opposed to placing themselves in relation to their sons, husbands or other men through which they had to relay and position their victimhood (Goldblatt & Meintjes, 1997: 8). In their testimonies, women explained the various physical, sexual, and psychological forms of violence they experienced, in detention and elsewhere. What also emerged in these Hearings were patterns of discrimination against black women within the healthcare system as well as with regards to employment and financial and economic opportunities, further highlighting the magnitude of the vulnerabilities that women were exposed to during this period (Kusafuka, 2009: 56).

Sexual violence was particularly difficult to speak about at the TRC, and even within the Hearings themselves, for a number of reasons (Goldblatt and Meintjes, 1997). The general stigma around sexual violence and the intimate nature of the violation, as well as the devaluing of the experience itself can all be linked directly to the systemic dehumanisation of black women. As noted by Gqola (2015: 38), “shame is the product of dehumanisation”, which is inflicted by oppressive systems, and as such, shame also functions on the basis of silencing, which is enforced by these systems, and places the victim at odds with how to navigate this shame. The culture of blame, whether it was imposed by society or self-imposed by the victim, is indicative of a culture of silencing experiences that have been deemed as not just private, but equally disruptive in that they would require active engagement with patriarchal and racialised cultures and behaviours that had underpinned South African society for centuries. Another considerable tension that emerged in this process, which was also largely apparent prior to the transition, was that around testimony given in relation to the experiences of sexual violence at the hands of men in the liberation movement (Goldblatt and Meintjes, 1997: 12). MK veteran and former head of the Commission on Gender Equality Thenjiwe Mtintso spoke about the fact that she was aware that women soldiers within the liberation camps outside of South Africa had experienced sexual violence, but that this was difficult to take about, in large part, because of the threat these allegations posed to the organisation and the risk that these instances could be politicised and used to morally “equate” the actions of the apartheid regime to those of the ANC (Goldblatt and Meintjes, 1997: 12). It is also important to consider that many women did not want to speak about these experiences as a way of avoiding reliving the trauma of the experience, and also not wanting to be seen as victims in this way.

Ultimately, when the final TRC Report was published, it only included one chapter which exclusively spoke on experiences of women, and thus, the truth about the gendered nature of harm during apartheid, particularly around how sexual violence was prominent and systemic, and was inherently linked to the political violence that had devastated the country, was not accurately or comprehensively included and

engaged with (Scanlon & Muddell, 2009: 12). Additionally, when the TRC made recommendations for redress, in the forms of rehabilitation and reparation, it was evident that gendered considerations were placed on the back-burner. When considering these elements, this erasure is particularly substantial when considering the aims of the TRC, and the role it played in both envisioning forms of repair and rehabilitation, as well as how this “truth” is remembered in South Africa today.

There are visible tensions within the literature around the role of women in the different realms of the transitional period. While it is evident that the inclusion of women’s experiences was something that had to be fought for, there is a difficulty in navigating the realities of their victimisation and their activism. The writings of Siphokazi Magadla (2023) in *Guerrillas and Combative Mothers: Women in the Armed Struggle*, in which she interviewed former soldiers in the armed struggle, express the view that the fixation on the experiences of sexual violence within the liberation movement are problematic and that tend to erase women’s active resistance against both gendered and sexual harms in those spaces, but their overall role in the liberation movement. Moreover, the feminisation of forgiveness and *ubuntu* became a key feature of the TRC, as women were traditionally seen as “custodians of familial and communal morality” (Driver, 2005: 220). Dorothy Driver (2005) provides an exploration of the ways in which women appeared within the TRC, operationalising the phrases “women-in-themselves” and “women-in-community” to do so in *Truth, Reconciliation, Gender: the South African and Reconciliation Commission and Black Women’s Intellectual History*. It appears that in many ways, women had to consistently navigate that which was theirs, in relation to experiences, subjectivities and agency, with that of their communities and society as a whole.

The TRC came about as a result of the peace process that had been unfolding since 1990, and as explored earlier in this section, this process was fraught with tensions on how gendered dynamics would be incorporated into the new democratic dispensation. These initial proceedings were revealing of the underlying heteropatriarchal notions that shaped the constructions of nationhood - in that, other issues such as racialised and class dimensions of the violent apartheid regime were more “all-encompassing” in that they shaped the lives of all black South Africans and thus needed to be prioritised over issues of gendered violence. In many ways, this process buttressed an already existing culture of relegating gendered issues to the margins of political discourse, thus dislocating them from ongoing political violence that had propped up the colonial and apartheid regimes. The TRC enabled a similar process of depoliticisation through its lack of an incorporation of a gendered lens throughout its processes, with critics also noting that the addition of three women’s hearings also functioned to separate gendered issues, particularly those related to sexual violence, from the nation-building and truth-telling project it was embarking on. If we are to explore Wood’s (2018) typology of rape as political violence, through the lens of “rape as a practice”, it is particularly pertinent in understanding how the proliferation of sexual violence during the apartheid era can be viewed

as a “practice”. Rape was prohibited under apartheid law, but there is a large amount of evidence that reveals that it was tolerated at a state level, and widely enacted at both a state and non-state level, particularly against black women. Sexual violence did not have to be ordered, or put in place as “organisational policy”, in order for it to fall within the scope of it being politicised. Furthermore, political violence had the effect of greater public consequence, beyond the victim of the harm itself, and if we are to reflect on the psychological fear and threat that women felt during this period, which is still a considerable fear in contemporary South Africa, it is evident that sexual violence is intricately linked to political violence. It was incumbent on both the actors within the negotiations process as well as those within the TRC processes to acknowledge this form of harm, remove it from the realm of the private and place it squarely within the scope of what was considered to be political, or public. This lack of acknowledgment can be seen as fostering a culture of silencing, whilst simultaneously allowing perpetrators to evade accountability. This is the lens through which I locate the culture of impunity around sexual violence, both historically and in contemporary South Africa.

### 4.3 Fostering a culture of impunity

Politicising sexual harm, and gendered harms overall, within the transition was integral to revealing a layer of the country’s past that had long been established. While there has been an overall acknowledgment in contemporary political and social discourse around how there is a lack of accountability for apartheid-era harms, these are often located within the framing of varying forms of socioeconomic and structural injustice such as poverty, the issue of land ownership as well as a lack of access to basic social services, sexual violence, and gendered harm overall, has escaped similar scrutiny. I argue that the NP’s disengagement from the TRC process as a whole, with reasons for this being cited as being the political bias that the TRC displayed against it, is significant to note vis-a-vis measures of accountability for gendered and sexual violence. The apartheid regime played a significant role in the legitimisation and perpetuation of sexual violence, particularly against black women through its deeply entrenched ideals, that had formed part of colonial project. As such, there should have been greater emphasis placed on sexual violence as a whole, to also reveal the apartheid regime’s complicity in enacting sexual violence, which in many ways, would have also served to politicise it. Furthermore, each of the political parties involved in the transitional and negotiation processes, like the NP and IFP, absolved themselves of any forms of responsibility for the gendered harms that they had perpetrated, and entrenched, throughout the apartheid period, as did the ANC. Goldblatt and Meintjes (1997:12) note that when an organisational process was pursued by the ANC, in which some women participated, in the immediate aftermath of apartheid to engage to issues of sexual violence, the submission released by the party was vague about the “gender-specific offences” that women

soldiers had faced in the camps and that disciplinary measures had been taken against the perpetrators. The lack of explicit acknowledgment and accountability for sexual violence during this period was an act of even further harm, as it enabled perpetrators to essentially “get away with it”. Tied to this, is the fact that women’s limited initial negotiation processes and general disregard for their input, completely fractures what is understood to be “political”, which also flouted ways in which women could have addressed this as a critical issue during this period. There are key considerations to be made regarding how these dynamics all factor into the way in which memory is constructed and recollected in the post-apartheid era. The TRC took on a critical role in attempting to create memory in such a way that reflected the full truth of South Africa’s past. Yet, the memory and legacy we are currently navigating is fractured. It relies heavily on incomplete archives and narratives that are imbued with their own motives and understandings. Thus, a retelling or recollecting of these memories in a way that interrogates what we currently know is necessary for a reframing of the collective memory around sexual violence.

## Chapter 5: Conclusion

South Africa's contemporary landscape is marked with the legacies of colonial and apartheid domination. While social and political discourses have been able to locate ongoing socioeconomic and structural injustice within the broader frame of these legacies, sexual violence has been forgotten as a key aspect of the settler colonial and apartheid projects. In dislocating sexual violence from this history, it is difficult for the country to engage with and, thus, think through measures for repair, when the memory of sexual violence remains distorted.

I began by historicising sexual violence within the context of settler colonial expansion in South Africa and how it was underpinned by violent racist and patriarchal colonial imaginaries that fixated on the purported alterity of Black, African women. These imaginaries were intimately linked to how sexual violence was thus enacted and entrenched throughout this period, beginning with the enslavement and rape of Black women, who were dehumanised to the point that they were deemed as "unrapeable". Sexual violence formed part of the colonial political and structural project that sought to repress and subjugate.

It is from this point of departure that I argued that this deeply entrenched dehumanisation of black women became legitimised and commonplace within the apartheid regime. Apartheid rule fortified much of what had already begun with settler colonial expansion, but did so with a particular aim of sustaining Afrikaner nationalism as its cornerstone under the National Party. The NP used increasingly violent methods to ensure that the Black majority in the country did not threaten or destabilise white minority rule, and enforced severe policies that were focused on entrenching segregation, in order to maintain the purity and prosperity of white Afrikaans people. Black women were adversely affected by apartheid restrictions and their legal status made them vulnerable to intersecting forms of violation. One of these was sexual violence. The stringent policing of sex and intimacy between different races by the NP was a way of maintaining racial segregation, and its concerns about the threat that black women posed to the purity of the white race and the potential of miscegenation increased its violent response to black women in general. As a result of the various dimensions that overlapped and exposed black women to different vulnerabilities, they were also not protected by the law, which both dehumanised them and exposed them to further violence. The rape of Black women was not taken seriously by the state, particularly when it was perpetrated by white men, and as such, there is a lack of accurate representation around it. However, social and political discourses during apartheid are reflective of the proliferation and normalisation of sexual violence, particularly against black women, though debates around and responses to it varied. Ultimately, what the landscape of sexual violence within apartheid reveals is that the abject dehumanisation of black women, which can be linked directly to

the colonial era in South Africa, underpinned the intersecting violences to which they were constantly exposed, including sexual violence itself. Due to the political and structural nature of the apartheid project, the violence it enacted was within the scope of maintaining this project in place, and subsequent violent responses that emerged from liberation movements, also saw black women being subjected to sexual violence.

As such, it became critical to explore how sexual violence is in fact politicised and tied to political violence, as it had become depoliticised during the apartheid regime, in that it had become “ordinary” or normalised. Using theories which defined political violence, as well as created frameworks for understanding sexual violence as forming part of political violence, I explored how the male-centric nature of conceptualising conflict thus had a direct effect on how gendered dynamics were reflected during peace processes, and that the exclusion of both women and the accounts of gendered harm, including sexual violence, was substantial, and this was reflected in South Africa’s transition. Moreover, through an exploration of the idea of “rape as a practice” during conflict, I located this understanding within the apartheid context. In doing so, I revealed how the normalisation of sexual violence against black women was exhibited through the apartheid state’s toleration of it, but how it was easily enacted amongst non-state actors as well.

When taking into account the aforementioned theories, it is evident that the transitional period and peace process that ensued in this period dislocated sexual violence from its main considerations when attempting to address how to ensure that South Africa was able to achieve peace and democratic rule. This process, which was further demonstrated by the TRC, depoliticised sexual violence and relegated it to the realm of the “private” as opposed to political violence, which was considered to be more “public”. In doing so, these processes perpetuated a culture of silence and erasure in a period where truth-telling would have functioned to reflect accurately the memory of sexual violence. Instead, this process fostered an environment of a lack accountability and a culture of impunity for sexual violence, as perpetrators, whether they were state or non-state actors, did not have answer for the crime of sexual violence. Upon reflecting on the statement “Rape and GBV are part of the TRC’s Unfinished Business!”, it is necessary to think about how South Africa remembers its history, particularly when attempts to obscure certain memories are confronted with the legacy of the very same memories they are attempting to repress. Rates of sexual violence in contemporary South Africa, particularly relating to black women, cannot be dislocated from the country’s colonial and apartheid legacies - they need to form part of a broader collective memory so that we may remember the full “truth” of our past, and think through the potential for disrupting legacies of impunity that undermine the lives and safety of black women in the country.

## Reference List

Abrahams, Y., 1998. Images of Sara Bartman: Sexuality, Race and Gender in Early Nineteenth-century Britain. *South African Historical Journal*, 35(1), pp.89-114.

Al Jazeera, 2019. #AmINext: can gender-based violence in South Africa be stopped? Available at: <https://www.aljazeera.com/program/the-stream/2019/9/9/aminext-can-gender-based-violence-in-southafrica-be-stopped> [Accessed 13 December 2023].

Aoláin, F.N., 2006. Political violence and gender during times of transition. *Columbia Journal of Gender and Law*, 15(3), pp.829-849. <https://doi.org/10.7916/cjgl.v15i3.2533>.

Armstrong, S., 1994. Rape in South Africa: An Invisible Part of Apartheid's Legacy. *Focus on Gender*. 2(2):35-39. <https://doi.org/10.1080/09682869308520009>

Baderoon, G., 2018. Surplus, excess, dirt: slavery and the production of disposability in South Africa. *Social Dynamics*, 44(2), pp.257-272. <http://dx.doi.org/10.1080/02533952.2018.1494243>

Boonzaier, F., 2017. The Life and death of Anene Booysen: Colonial discourse, gender-based violence and media representations. *South African Journal of Psychology*, 47(4), pp.470-481. <https://doi.org/10.1177/0081246317737916>

Bridger, E., 2023. Apartheid's 'rape crisis': Understanding and addressing sexual violence in South Africa, 1970s–1990s. *Women's History Review*, pp.1-20. <https://doi.org/10.1080/09612025.2023.2219535>

Bridger, E. & Hazan, E., 2022. Surfeit and Silence: Sexual Violence in the Apartheid Archive. *African Studies*, 81(3-4), pp.286-305. <https://doi.org/10.1080/00020184.2023.2212606>

Card, C., 2003. Genocide and Social Death. *Hypatia*, 18, pp.63-79. doi:10.1111/j.1527-2001.2003.tb00779.x

Cherry, J., 2011. Animal history meets social history: A new look at horses in South African history. *South African Journal of Science*, 107(1/2). <https://doi.org/10.4102/sajs.v107i1/2.495>

Chimere-dan, O., 1992. Apartheid and demography in South Africa. *African Population Studies*, 7(7), pp.26-36. <https://doi.org/10.11564/7-0-419>

Crenshaw, K., 1991. Mapping the margins: Intersectionality, identity politics, and violence against women of colour. *Stanford Law Review*, 43, pp.1241-1299. <https://doi.org/10.2307/1229039>

Driver, D., 2005. Truth, reconciliation, gender: the South African Truth and Reconciliation Commission and Black Women's intellectual history. *Australian Feminist Studies*, 20(47), pp.219-229. <http://dx.doi.org/10.1080/0816464500090384>

Durbach, A., 2014. *Toward Reparative Transformation: Revisiting the Impact of Violence Against Women in a Post-TRC South Africa*. Cambridge University Press, 16(4), pp.174-198. <https://doi.org/10.1017/9781108233231.008>

du Toit, A., 1993. *Understanding South African Political Violence: A New Problematic?* University of Cape Town.

Du Toit, L., 2014. Shifting meanings of postconflict sexual violence in South Africa. *Signs: Journal of Women in Culture and Society*, 40(1), pp.101–123. <http://dx.doi.org/10.1086/676895>.

Ellis, E., 2020. Gender-based violence is South Africa's second pandemic, says Ramaphosa. Available at: <https://www.dailymaverick.co.za/article/2020-06-18-gender-based-violence-is-south-africas-secondpandemic-says-ramaphosa/> [Accessed 13 December 2023].

Goldblatt, B. & Meintjes, S., 1996. Gender and the Truth and Reconciliation Commission: a submission to the Truth and Reconciliation Commission. Johannesburg: Centre for Applied Legal Studies.

Goldblatt, B. & Meintjes, S., 1997. Dealing with the Aftermath: Sexual Violence and the Truth and Reconciliation Commission. *Agenda*, 36, p.7. <https://doi.org/10.2307/4066215>

Gouws, A., 2021. Reducing Women to Bare Life: Sexual Violence in South Africa. *Feminist Encounters: A Journal of Critical Studies in Culture and Politics*, 5(1), p.03. <https://doi.org/10.20897/femenc/9740>

Gqola, P.D., 2015. Rape: A South African Nightmare. Auckland Park, South Africa: MF Books Joburg.

Gqola, P.D., 2018. "(Not) Representing Sarah Bartmann," in *What is Slavery to Me?*, pp.61-104.

Helman, R., 2018. Mapping the unrapeability of white and black womxn. *Agenda*, 32(4), pp.10-21. <https://doi.org/10.1080/10130950.2018.1533302>

Hibbs, D.A., 1973. *Mass Political Violence: A Cross-National Causal Analysis*. New York: Wiley.

Klausen, S.M., 2022. "Do You Call Yourself a White Man?": Nationalism, Criminalization of Interracial Sex, and the Policing of White Male (Hetero)sexuality in South Africa during Apartheid. *The American Historical Review*, 127(1), pp.159-193. <https://doi.org/10.1093/ahr/rhac013>

Králová, J., 2015. What is social death? *Contemporary Social Science*, 10(3), pp.235–248. <https://doi.org/10.1080/21582041.2015.1114407>.

Kusafuka, A., 2009. Truth commissions and gender: a South African case study. *African Journal on Conflict Resolution*, 9(2), pp.45–67. <https://doi.org/10.4314/ajcr.v9i2.52172>.

Magadla, S., 2015. Women combatants and the liberation movements in South Africa: Guerrilla girls, combative mothers and the in-betweeners. *African Security Review*, 24(4), pp.390–402. <https://doi.org/10.1080/10246029.2015.1088645>.

Magubane, Z., 2001. Which bodies matter?: Feminism, poststructuralism, race, and the curious theoretical odyssey of the “Hottentot Venus”. *Gender & Society*, 15(6), pp.816–834. <https://doi.org/10.1177/089124301015006003>.

Meintjies, S., Pillay, A. & Turshen, M. (eds), 2001. *The aftermath: women in post-conflict transformation*. London: Zed Books.

Muddell, K. & Scanlon, H., 2009. Gender and transitional justice in Africa: progress and prospects. *African Journal on Conflict Resolution*, 9(2), pp.9–28. <https://doi.org/10.4314/ajcr.v9i2.52170>.

Oyěwùmí, O., 1997. *The invention of women: Making an African sense of western gender discourses*. Minneapolis: University of Minnesota Press.

Park, A.S.J., 2022. Settler colonialism and the South African TRC: Ambivalent denial and democratisation without decolonisation. *Social & Legal Studies*, 31(2), pp.216–237. <https://doi.org/10.1177/09646639211022786>.

Posel, D., 2011. The Apartheid Project, 1948–1970. In *The Cambridge History of South Africa*. Cambridge: Cambridge University Press, pp.319–368. <https://doi.org/10.1017/CHOL9780521869836.009>.

Ramaphosa, C., 2019. Enough is enough: Ramaphosa's speech for 16 Days of Activism for No Violence Against Women and Children. Available at: <https://www.iol.co.za/news/politics/enough-is-enoughramaphosas-speech-for-16-days-of->

[activism-for-no-violence-against-women-and-children-37939845](#) [Accessed 13 December 2023].

Sarkin, J. & Ackermann, S., 2019. Understanding the extent to which truth commissions are gender sensitive and promote women's issues: Comparing and contrasting these truth commission roles in South Africa, Guatemala, Peru, Sierra Leone and Liberia. *Georgetown Journal of International Law*, 50(2), pp.463–516. Available at: [https://run.unl.pt/bitstream/10362/165011/1/Sarkin\\_Comparing\\_and\\_contrasting\\_these\\_truth\\_commission.pdf](https://run.unl.pt/bitstream/10362/165011/1/Sarkin_Comparing_and_contrasting_these_truth_commission.pdf).

Smythe, D., 2015. *Rape unresolved: Policing sexual offences in South Africa*. Cape Town, South Africa: UCT Press.

South African History Online, 2012. States of emergency in South Africa: the 1960s and 1980s. Available at: <https://www.sahistory.org.za/article/states-emergency-south-africa-1960s-and-1980s> [Accessed 13 December 2023].

Truth and Reconciliation Commission, 2003. *Truth and Reconciliation Commission Final Report, Vol 1-5*. Johannesburg. Available at: <https://sabctrc.saha.org.za/reports.htm>

Stanley, E., 2001. Evaluating the Truth and Reconciliation Commission. *The Journal of Modern African Studies*, 39(3), pp.525–546. <https://doi.org/10.1017/S0022278X01003706>.

United Nations Centre Against Apartheid, 1978. *The effects of apartheid on the status of women in South Africa*. New York: United Nations.

United Nations Women, 2018. In South Africa, women call for #TotalShutdown of gender-based violence. Available at: <https://www.unwomen.org/en/news/stories/2018/8/news-in-south-africa-women-call-fortotalshutdown-of-gender-based-violence> [Accessed 13 December 2023].

Walker, M.U., 2016. Making reparations possible: Theorizing reparative justice. In: Claudio Carradetti, Nir Esikovits, eds. *Theorizing Transitional Justice*, London: Routledge, pp.211–222.

Wood, E.J., 2018. Rape as a practice of war: Toward a typology of political violence. *Politics & Society*, 46(4), pp.513–537. <https://doi.org/10.1177/0032329218773710>.

Yates, B.J., 2013. From white males to black females: Understanding the national bodies of Ethiopia (1896–1936). *Journal of Black Studies*, 44(1), pp.81–100.