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The Peruvian Truth and Reconciliation Commission's Treatment of Sexual Violence Against Women

by Julissa Mantilla Falcón

SEXUAL VIOLENCE AGAINST WOMEN is an expression of gender-based violence that affects thousands of women around the world during times of armed conflict, as well as in times of peace. Impunity and silence typically surround these cases. Many times, victims do not discuss what happened to them because of feelings of shame and guilt. In most cases, government authorities and some sectors of civil society do not consider sexual violence to be a human rights violation. Fortunately, international human rights instruments and judicial decisions have begun to define sexual violence as a violation of human rights and, in some contexts, as a crime against humanity or a war crime.

The work of the Peruvian Truth and Reconciliation Commission (PTRC) made important inroads in identifying sexual violence as a human rights violation. In its Final Report, the PTRC analyzed the situation of Peruvian women subjected to sexual violence during the armed conflict and countered the idea that it was simply a collateral damage of war. Asserting that sexual violence is a human rights violation, the PTRC established a record of the sexual violence that occurred during Peru's 20 year armed conflict and recommended that the State institute a system of reparations for the victims.

The Final Report of the PTRC, released on August 28, 2003, includes a chapter on sexual violence against women. This article presents its main findings.

THE ROLE OF TRUTH COMMISSIONS

IN GENERAL, TRUTH COMMISSIONS INVESTIGATE situations of gross human rights violations in a particular country to help that country confront its past and to prevent such abuses from occurring again. Truth commissions serve to validate the experiences of the victims, propose ways to repair the harm, and prevent those responsible from remaining in government institutions. Truth commissions do not replace the national prosecutor's office or the judicial branch; rather, they are additional, independent investigative bodies. At the end of their work, truth commissions generally issue a final report recounting and analyzing the facts, as well as providing recommendations for reparations and reforms of the State structure and organization.

THE PERUVIAN CONTEXT

THE PERUVIAN ARMED CONFLICT SPANNED from 1980-2000. The Shining Path, a domestic subversive group, initiated the armed struggle against the Peruvian State in May 1980 by symbolically burning electoral material in Chucchi, Ayacucho.

For years, the Peruvian people suffered from the violent actions of the Shining Path and the Peruvian armed forces. Thousands of people were disappeared, tortured, executed, and convicted without

due process of law. There was no accurate assessment of the true dimensions of the human rights violations that occurred during this bloody period, even though national and international institutions brought many of these cases to light. In particular, very little attention was given to violations of women's human rights.

Following Alberto Fujimori's escape to Japan in 2000 and the intense work of human rights NGOs, the transitional government of Valentín Paniagua established a truth commission in 2001 to investigate the crimes and human rights violations that occurred during the armed conflict.

The Supreme Decree that created the PTRC charged it with investigating murders, kidnappings, forced disappearances, torture and other gross bodily harm, and violations of the collective rights of the Andean and native communities in Peru. Although the Supreme Decree did not expressly charge the PTRC with investi-

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gating sexual crimes committed during the armed conflict, it provided for the investigation of “other crimes and gross human rights violations.” The PTRC decided to include sexual crimes in its mandate because of the broad language used in the Supreme Decree, the importance of the topic, and the need to recover the voices of women affected by such crimes.

THE WORK OF THE PERUVIAN TRUTH & RECONCILIATION COMMISSION

WHEN THE PTRC BEGAN ITS WORK, the precedents on the topic were the Guatemalan Truth Commission Report, which included a chapter on sexual violence against women, and the Report of the South African Truth and Reconciliation Commission, which organized three public hearings for women in The Cape, Durban, and Johannesburg.

In the case of Peru, Amnesty International and Human Rights Watch issued reports on sexual violence against women, but there was not a broad-based understanding within Peruvian society of the scope of these abuses or the plight of Peruvian women during the armed conflict. Throughout the conflict, State agents routinely raped women during interrogations, and members of the subversive movements also regularly attacked women. Many of these women became pregnant as a result of the rapes. Some raised children of unknown fathers, and some were forced to undergo abortions.

Many women who testified before the PTRC downplayed their own suffering as victims, primarily identifying themselves as the wives, mothers, daughters, and sisters of the predominantly male victims. When the time came to tell their own stories, many

“The Final Report of the Peruvian Truth and Reconciliation Commission is a fundamental step in the recognition of sexual violence against women as a human rights violation, recovering the voices and stories of Peruvian women who were denied justice and reparations for many years.”

women remained silent. Shame and the fear of social condemnation impeded women from talking about their experiences.

To encourage victims of sexual violence to participate in the PTRC’s investigation, the PTRC developed a series of training

documents that included communication strategies on how to conduct investigations in the country’s rural areas and provided guidelines for the interviewers. The PTRC also organized a public hearing on women’s human rights.



Exhumation of a grave at Lucanamarca, Peru.

THE LEGAL FRAMEWORK

THE MANDATE OF THE PTRC ALLOWED IT THE FLEXIBILITY to develop its scope as needed and to create a glossary to guide its research. The glossary was drafted from an international law perspective. The PTRC consulted sources of international human rights law, humanitarian law, and international criminal law in analyzing the systematic abuse that took place in Peru.

The PTRC reviewed the advances of international human rights law concerning violence against women. The original human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights, do not expressly define sexual violence as a human rights violation. These documents contain articles related to the right to life, the right to bodily integrity, the prohibition against discrimination, and the prohibition against torture, but none explicitly mentions violence against women. The PTRC, however, also considered treaties that expressly address issues of violence against women, such as the Convention for the Elimination of Discrimination Against Women of 1979 and the Convention of Belem do Para of 1994. The PTRC also referred to the Vienna Declaration of 1993, which recognizes human rights violations against women in armed conflicts as violations of fundamental principles of international human rights law and humanitarian law. The PTRC considered two documents of the Inter-American Commission on Human Rights that recognized rape as torture: the *Raquel Martin de Mejia* case and the *Report on Haiti*, both released in the 1990s.

According to international humanitarian law, sexual violence is understood as a violation of the minimum norms of humanity during international and internal armed conflict. For international conflicts, the Fourth Geneva Convention of 1949 and Protocol I prohibit rape and sexual abuses. In the case of internal armed conflict, this prohibition is found in common Article 3 of the Geneva Conventions, as well as in Protocol II.

The International Committee of the Red Cross (ICRC) studied the situation of women during armed conflict. The ICRC issued a report in 1999 identifying some contexts in which women are most threatened, including (1) displacement; (2) the search for disappeared relatives; and (3) the imprisonment of husbands and partners. The report concludes that sexual violence is frequent in those contexts, serving as a form of torture intended to degrade, intimidate, and target specific sectors of population, as well as force them to migrate.

In terms of international criminal law, the case law of the Ad Hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) contributed greatly to the work of the PTRC. That case law recognized sexual violence as a war crime and a crime against humanity, as well as a modality of torture, slavery, and gross bodily harm, if the elements of those crimes appear in the acts of sexual violence. The findings of these tribunals regarding sexual violence have since become established international legal norms. For instance, the Rome Statute of the International Criminal Court of 1998 included sexual violence as a crime against humanity in Article 7 and a war crime in Article 8.

Taking into account these precedents and principles of international human rights law, humanitarian law, and international criminal law, the PTRC's glossary defines sexual violence as

the realization of a sexual act against one or more persons or when a person is forced to realize a sexual act by force or threat of force or through coercion caused by fear of violence, intimidation, detention, psychological oppression or abuse of power used against that person or other persons, or taking advantage of a coercive environment or the inability of the person to freely consent.

The PTRC researched not only cases of rape, but also cases of sexual blackmail, sexual slavery, sexual mutilation, sexual handlings, sexual humiliation, forced prostitution, forced pregnancy, and forced nudity, among other forms of sexual violence. This expansive view of sexual violence was an important advancement that future truth commissions should consider.

FINDINGS OF THE FINAL REPORT

ACCORDING TO THE PTRC, THE NUMBER of cases of sexual violence against women was significantly less than the number of other human rights violations; however, the PTRC recognized the statistical under-representation of these cases. The same type of under-reporting occurred in Guatemala and South Africa due to the victims' feelings of guilt and shame. The PTRC found that, in addition to the victims' reticence to discuss their experiences, under-reporting was caused by the erroneous idea on the part of victims and Peruvian society at large that sexual violence is not a human rights violation, but a collateral damage of war. A third reason for under-representation was that much of the sexual violence occurred in the context of other human rights violations, such as massacres, arbitrary detentions, summary executions, and torture. Such abuses tend to conceal or overshadow cases of sexual violence.

VICTIMS OF SEXUAL VIOLENCE

The Report also found that victims of sexual violence tended to be illiterate or had only a primary education. The demographic

breakdown of the sexual violence victims is as follows: Quechua speakers (75 percent), rural (83 percent), peasant (36 percent), and domestic workers (39 percent). The majority of victims were young women, ranging from 10 to 29 years old; however, victims ranged in age from young girls to elderly women. The majority of victims were those women traditionally viewed as the most vulnerable in society, based on characteristics such as race, class, and age.

Women who searched for their missing relatives also frequently became victims of sexual violence, as did women who had any kind of relationship with any of the armed actors in the conflict (e.g. spouses, partners, relatives). Women suspected of being subversives and those who spoke out against the human rights violations often became victims of sexual abuse as well.



A volunteer conducts an interview for the PTRC.

PERPETRATORS

As for the perpetrators, the Report found that State agents (Army and Police) committed 83 percent of the acts of sexual violence, and subversive groups (such as the Shining Path) committed an average of 11 percent of the violations. Most violations occurred between 1984 and 1990.

OBJECTIVES OF SEXUAL VIOLENCE

The PTRC Report found that the main objectives of sexual violence were to punish, intimidate, pressure, humiliate, and degrade the population. In some cases, its purpose was to punish detained women for being members of subversive groups. In other situations, the daughters and wives of detained men were raped in front of those men to elicit information or confessions. Many other cases of sexual abuse had no apparent link to the armed conflict. Nonetheless, sexual violence was always an exercise of power and control by the aggressors.

SETTINGS OF SEXUAL VIOLENCE

The PTRC found sexual violence cases in at least 15 Peruvian cities. The city of Ayacucho had the largest number of registered cases, followed by Huancavelica and Apurímac, all of which are located in the highlands. The populations of these cities are mainly comprised of peasants. The PTRC found that racial and class-based discrimination motivated sexual violence.

Where State agents were the perpetrators, sexual violence occurred primarily on military bases and during military incursions as reprisals against populations suspected of being guerrilla sympathizers. Sexual violence also took place in police stations, government offices, and prisons where women were taken to be interrogated.

The sexual violence that subversive groups committed usually occurred during military confrontations, when the subversives captured individuals. In the Shining Path camps, the subversive leaders controlled people's lives and often forced women to marry members of the Shining Path. Many cases of rape and forced pregnancy arose in this context. The Shining Path leadership also established a structure in which teenagers became their "security officers." The leaders routinely raped the adolescent female "security officers" and imposed forced abortions on those who became pregnant.

THE INTERSECTION OF SEXUAL VIOLENCE WITH OTHER HUMAN RIGHTS VIOLATIONS

The PTRC report found that sexual violence occurred contemporaneously with other human rights violations. State agents used sexual violence as a form of torture to obtain information and to cause women to blame themselves for their role in the conflict. Sexual violence also occurred in the context of arbitrary detentions and forced disappearances and before summary executions and massacres. In those cases, men and women were separated, the men were killed first, and then the women were raped and murdered. Because many women died in such cases, it is impossible to recover their stories.

AFTERMATH OF SEXUAL VIOLENCE

Many women became pregnant as a result of the sexual violence and faced various consequences. Some women were forced to have abortions in unsafe conditions because abortion is illegal in Peru. Others carried their babies to term, and many children of rape continue to live with the traumatic circumstances of their conception.

As previously mentioned, many victims did not feel comfortable speaking about their own experiences. Much of the information provided to the PTRC, therefore, came from witnesses rather than from victims. The victims who did participate in the PTRC's investigations would often talk about sexual violence as if the victim were someone else. Others would use their own coded language to tell their stories without mentioning explicit details (e.g. "they affected my dignity as a woman" or "my condition as a woman").

IMPUNITY

The PTRC found no evidence of criminal prosecutions against members of the Army or the Police who committed sexual abuses; nor did it uncover information as to the investigation of complaints filed by victims of sexual violence.

Sexually abused women were often discriminated against by their own communities and families. This hostile environment made it very difficult for victims to denounce the crimes. Men rarely allowed their wives or daughters to report the sexual violence they endured. Total impunity was the rule.

Furthermore, testimony collected by the PTRC shows that doctors who examined rape victims did not inform authorities about those rapes. In some cases, the doctors themselves became sexual molesters and rapists.

CONCLUSION

THE PTRC CONCLUDED THAT SEXUAL VIOLENCE against women was a widespread practice by State agents during massacres, summary executions, and other organized actions of the Army and the Police. Sexual violence occurred in rural as well as in urban contexts.

Sexual violence also occurred in the context of arbitrary detentions and forced disappearances, crimes that were not within the jurisdiction of the National Prosecutor's Office. In the cases of arbitrary detentions and forced disappearances, sexual violence occurred on government premises with the acquiescence of the officers in charge. Government authorities rarely investigated the sexual violence in these cases.

Additionally, the PTRC concluded that rape was a systematic and persistent form of sexual violence that took place in a broader context of generalized violence. As the Rome Statute establishes, sexual violence constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack. As such, the sexual violence committed throughout the Peruvian armed conflict arguably constituted a crime against humanity.

The Final Report of the PTRC is a fundamental step in the recognition of sexual violence against women as a human rights violation, recovering the voices and stories of Peruvian women who were denied justice and reparations for many years. The reparations proposals presented in the Report include reparations not only for women directly victimized by sexual violence, but also for the children born from such violence. Moreover, the PTRC recommended that the government include specific references to women during the symbolic acts of reparation, such as offering apologies to victims. In a more general sense, the PTRC recommended that the reconciliation process be oriented toward a reassessment of the value of women through recognition of their rights and their full and equal participation in civic life.

The PTRC's Final Report has important implications for Peruvian society as well as for the broader international community. The PTRC's recognition that sexual violence against women is a human rights violation that could constitute a crime against humanity should be considered by the Peruvian government in the development of public policies and in the reform of criminal laws. Moreover, the Report will be useful for future truth commissions by providing valuable guidelines for documenting cases, analyzing the intersection between gender and human rights violations, and setting up a reparations plan that responds to the different needs and situations of men and women.

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