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**AN ESSENTIAL INTERVENTION:
CIVIL SOCIETY RESPONSES TO
REDRESSING AND PREVENTING
VIOLENCE AGAINST WOMEN IN
POST-APARTHEID SOUTH AFRICA**

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*An essential intervention: Civil society
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violence against women in post-apartheid
South Africa**

ANDREA DURBACH[†]

Despite pervasive accounts of sexual violence against women throughout South Africa's apartheid history, the definition of 'gross violations of human rights' in the legislation establishing the South African Truth and Reconciliation Commission (TRC) had no distinct reference to acts of sexual violence or gender-based crimes. Lobbying by women's NGOs and civil society resulted in the TRC convening special women's hearings and the expansion of the definition of 'severe ill-treatment' to encompass a range of abuses, including sexual violence. However, the TRC's predominant focus on crimes of killing, abduction and torture resulted in the criticism that it exhibited 'a blindness to the types of abuse predominantly experienced by women,'¹ excluding the possibility of accountability or reparations for these violations. This article explores the 'essential relationship'² between civil society and the TRC at various stages of South Africa's transition in holding the government to account for restoring the 'human and civil dignity' of women who suffered gross violations of human rights, 'many of which were gender specific in their exploitative and humiliating nature.'³ Given that 'violence against women has been one of the most prominent features of post-Apartheid South Africa,'⁴ the article further considers the innovation by South African civil society in developing various responses to this enduring harm, which extends beyond a

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¹ Truth and Reconciliation Commission of South Africa *Report* vol 4 (1998) 318 para 144 (hereafter cited as '*TRC Report*').

² 'Truth Commissions and NGOs: The essential relationship – The "Fraci Guidelines" for NGOs Engaging With Truth Commissions' 2004 *The International Center for Transitional Justice Occasional Paper Series*.

³ *TRC Report* vol 5 ch 6 para 161.

⁴ L Vetten 'Addressing domestic violence in South Africa: Reflections on strategy and practice' 2., available at <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/vetten.vaw.pdf>.

compensatory model of reparations towards a transformation of the conditions that perpetuate the violence.

I INTRODUCTION

[The] failure to address gendered power relations both before and during conflicts means that they are unlikely to be addressed, much less transformed, in its aftermath.⁵

The first official visit undertaken by the recently appointed UN Special Rapporteur on violence against women, Ms Dubravka Simonovic, was to South Africa, in December 2015. Following her visit, Ms Simonovic observed that as a young democracy, the scars of South Africa's past were 'still very much alive in its social fabric' and that violence against women had become 'normalised'.

The violence inherited from the (sic) apartheid still resonate profoundly in today's South African society dominated by deeply entrenched patriarchal attitudes towards the role of women in society which makes violence against women and children an almost accepted social phenomenon.⁶

Two years previously, her predecessor, Professor Rashida Manjoo, had argued in reports to the United Nations Human Rights Council for an acknowledgment of a due diligence responsibility or obligation on States to firstly, (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) 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⁵ T A Borer 'Gendered war and gendered peace: Truth commissions and postconflict gender violence: Lessons from South Africa' (2009) 15 *Violence Against Women* 1169 at 1172.

⁶ United Nations Office of the High Commissioner of Human Rights 'Special Rapporteur on violence against women, its causes and consequences finalizes country visit to South Africa' available at [http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16877&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16877&LangID=E#sthash.yVTfCMY5.dpuf).

⁷ R. Manjoo 'Report of the Special Rapporteur on violence against women, its cases and consequences' (2013) A/HRC/23/49 para 20.

the suffering of victims is not repeated (emphasis added).⁸ A range of reasons justify and explain this omission – the ‘entrenched patriarchal attitudes’ that have survived democratic transition, the perceived private or domestic nature of sexual violence which rationalises the ousting of State intervention,⁹ and a ‘backlash’ against women as they became increasingly economically independent and empowered. But a failure by the government to design and implement a comprehensive response to violations and to address the long-term social and economic costs associated with violence against women in South Africa,¹⁰ poses considerable threats to efforts ‘to reduce [women’s] poverty and poor health; . . . [and] to advance [the nation’s] peace and security.’¹¹

Throughout apartheid and during the term of the Truth and Reconciliation Commission (TRC) and beyond, many of the efforts to address and reduce sexual violence against women have been led and implemented by NGOs, such as Rape Crisis Cape Town Trust (established in 1976), People Opposing Women Abuse (POWA) (1979), Masimanyane Women’s Support Centre (1995), Women’s Legal Centre, (1999), One-in-Nine Campaign (2006), Luleki Sizwe (2008) and Transform Education About Rape and Sexual Abuse (TEARS) (2012).¹² This article explores the ‘essential relationship’ of civil society organisations to the operations of the TRC and the adaptation of their roles to the different stages of South Africa’s transition in addressing the issue of violence against women. It considers, in particular, the work of two NGOs in

⁸ M Urban Walker ‘Making reparations possible: Theorizing reparative justice’ in C Corradetti, N Eisikovits & JV Rotondi (eds) *Theorizing Transitional Justice* (2015) 217.

⁹ Manjoo (n 7) para 18. The meaning of State responsibility to act with due diligence was further examined by the second Special Rapporteur on violence against women in a 2006 report: Y Ertürk ‘Integration of the human rights of women and the gender perspective: violence against women: The due diligence standard as a tool for the elimination of violence against woman’ (2006) E/CN.4/2006/61 para 19 ff. ~~One of the primary problems she found was that the due diligence standard focused primarily on violence against women as an isolated act and failed to take into consideration the connections between violence and the violation of other human rights, including general principles of gender equality and non-discrimination. She also addressed the need to move away from a public/private dichotomy in viewing violence against women. Her argument is that categorising some forms of violence against women as part of the private sphere tends to have a normalising effect, and it makes States’ intervention seem to be different in such situations, as opposed to where there are ‘public’ incidents of violence.~~

¹⁰ KPMG Human and Social Services ‘Too costly to ignore – the economic impact of gender-based violence in South Africa’ available at <http://www.kpmg.com/ZA/en/IssuesAndInsights/ArticlesPublications/General-Industries-Publications/Documents/Too%20costly%20to%20ignore-Violence%20against%20women%20in%20SA.pdf>.

¹¹ TA Obaid ‘The International Day for the Elimination of Violence Against Women’ available at <http://www.unfpa.org/fr/node/7079>.

¹² E Stanley ‘Engendering change? An analysis of how NGOs work on the problem of violence against women in South Africa’ (2012/13) 8 *Journal of Politics & International Studies* 279; H Britton ‘Organising against gender violence in South Africa’ (2006) 32? *Journal of Southern African Studies* 145; J Bennett ‘Challenges were many: The one in nine campaign, South Africa’ available at http://www.iiav.nl/epublications/2008/challenges_were_many.pdf.

holding government to its reparative obligations to redress *and* transform. The first section of the paper considers the implications of the failure by the TRC to consider sexual violence against women as a distinct category of ‘gross human rights violations’ and the role of civil society in compelling the TRC’s consideration of ‘the types of abuse predominantly experienced by women.’¹³ The article then examines the work of the NGO Khulumani Support Group established in 1996, against the backdrop of the reparations mandate of the TRC and the South African government’s rejection of the Commission’s reparations recommendations and policies. The reparations mandate of the TRC spoke both to the acknowledgment and compensation of harm and the prevention of its repetition. By reference to the work of NGO Sonke Gender Justice (established in 2006), the final section of the article considers initiatives directed at the transformation of conditions that enabled – and continue to underlie – sexual violence against women, in attempts to prevent its recurrence.

II THE TRUTH AND RECONCILIATION COMMISSION AND ‘GROSS VIOLATION OF RIGHTS’: A RESTRICTED SPACE FOR WOMEN

The fact that . . . our government completely failed to address sexual violence as part of the political struggle has given it a legitimacy.¹⁴

The prevalence of sexual violence against women in South Africa after the country’s transition to democracy in 1994, are at levels that rank amongst some of the most extreme in the world, despite high levels of underreporting (due, in part, to a mistrust of police) and low levels of arrest and conviction.¹⁵ Although this violence pre-dates apartheid, the role of apartheid in fostering a culture of violence has been a significant factor in substantiating disturbing levels of violence against women and girls. Naemah Abrahams, Deputy Director of the Gender and Health Research Unit at the South African Medical Research Council has observed that ‘[o]ne of the consequences of decades of apartheid – State-sponsored violence and reactive community insurrection – is that for many people physical violence has become a first line strategy for

¹³ *TRC Report*, vol 4 at 318 para 144.

¹⁴ Interview with Judy Seidman, Khulumani Support Group on 12 January 2015.

¹⁵ H Moffett states that ‘South Africa has higher levels of rape of women and children than anywhere else in the world not at war or embroiled in civil conflict’: H Moffett ‘“These women, they force us to rape them”: Rape as narrative of social control in post-apartheid South Africa’ (2006) 32 *Journal of Southern African Studies* 129. See also L Vetten ‘Rape and other forms of sexual violence in South Africa’ in Institute for Security Studies *Policy Brief* 72 (2014); A Gouws ‘Recognition and redistribution: The state of the women’s movement in South Africa twenty years after the democratic transition’ (2014) 28(2) *Agenda* 20 at 22–23; Rape Crisis ‘Prevalence’ available at <http://rapecrisis.org.za/rape-in-south-africa/#prevalence>.

resolving conflict and gaining ascendancy.’¹⁶ The consequence of this ‘entrenched political culture,’ writes Graeme Simpson, founder and former Executive Director of the Centre for the Study of Violence and Reconciliation, was

a dramatic escalation of violence in almost all dimensions of society – within the community, the workplace and the home. Not only has this been a quantitative increase in levels of violence, but has also seen a qualitative shift in the forms and brutality of this violent conflict. . . . The victims of this “displaced aggression” are often those who are most vulnerable in society and over whom control is most easily, symbolically reasserted . . . women, children or elderly people who are subject to violent abuse, both within and outside of the private domain.¹⁷

As South Africa moved from a deeply repressive and brutal history towards the establishment of a non-racial democracy in the mid-1990s – which saw the incorporation of principles of gender equality within the new Constitution, a significant increase in parliamentary representation,¹⁸ the implementation of legislation on employment equity, domestic violence and sexual offences¹⁹ and the establishment of the Commission for Gender Equality – the country’s transition was steeped in a culture of extreme interpersonal, social and political violence. Despite the significant advances towards gender equality, the levels of sexual violence that have sustained (and arguably, increased)²⁰ in post-apartheid South Africa suggest that entrenched gender disparities have outlived political developments and institutional restructuring.

The objectives of the TRC, established pursuant to the Promotion of National Unity and Reconciliation Act 34 of 1995 (the ‘TRC Act’), were

¹⁶ N Abrahams ‘Sexual violence against women in South Africa’ 2004 1(3) *Sexuality in Africa* 4.

¹⁷ G Simpson ‘Women and children in violent South African townships’ in M Motshekga & E Delpont (eds) *Women and Children’s Rights in a Violent South Africa* (1993) available at <http://www.csvr.org.za/wits/papers/papwoch.htm>.

¹⁸ The ANC stipulates that at least 30 per cent of its candidates must be women. In the 1994 election, ANC women won 27.7 per cent of the seats in parliament: D Walsh ‘The liberal moment: Women and just debate in South Africa, 1994–1996’ (2006) 32(1) *Journal of Southern Africa Studies* 85. Ten years after the 1994 election, women held 33 per cent of parliamentary seats in both houses: J Piombo ‘The results of election 2004: Looking back, stepping forward’ in J Piombo & L Nijzink (eds) *Electoral Politics in South Africa: Assessing the First Democratic Decade* (2005) 281. Data compiled by the Inter-Parliamentary Union in December 2015 positions South African as having the eighth highest number of women representatives in parliament out of 144 nations surveyed. See ‘Women in national parliaments’ available at <http://www.ipu.org/wmn-e/classif.htm>.

¹⁹ Domestic Violence Act 116 of 1998; Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

²⁰ ‘South Africa is a country with one of the highest rape rates in the world, if not the highest. In 2012 there were 64 514 reported sexual assault cases according to the statistics of the South African Police Services. This may be by far an under reporting of rape. According to the “One in Nine Campaign” only 1 in 9 rapes are reported.’ A Gouws (n 15) 22–23.

to encourage victims to make statements about the gross violations of human rights they had suffered under apartheid, award amnesty to perpetrators of violations in exchange for the full disclosure of conduct associated with a political objective, and make recommendations to the government on measures of reparation aimed at rehabilitating and restoring the 'human and civil dignity' of victims.²¹ Despite the evidence that sexual violence was used to 'undermine resistance and enforce political acquiescence'²² during the period of focus for the TRC (1960 to 1994), it was not accorded a distinct category of human rights violation within the TRC Act,²³ which confined acts of 'gross violations of human rights' to the 'killing, abduction, torture or severe ill-treatment of any person.'²⁴ Victims were defined as individuals who suffered

physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights (i) as a result of a gross violation of human rights; (ii) or as a result of an act associated with a political objective for which amnesty has been granted.²⁵

Many reasons have been advanced for the omission of crimes of sexual violence from the categories constituting gross violations of human rights. One explanation highlights the personal/political distinction underlying the violation: 'rape was such a horrible personal crime that it couldn't possibly be considered a political crime for which amnesty [could be granted].'²⁶ But perhaps more importantly, the failure to incorporate sexual violence within the TRC definition was a consequence of the political environment in which the TRC legislation was designed and a high-level process of formulation which drew little on the voices of victims, particularly of women, 'who were actually at the forefront of the mass struggle and severely harmed in the process.'²⁷

One of the organisations which attempted to engage civil society in the development of the TRC legislation was the Khulumani Support Group (Khulumani), a membership organisation which currently has over 100 000 'victims and survivors of Apartheid-related gross human rights

²¹ Promotion of National Unity and Reconciliation Act 34 of 1995 preamble (the 'TRC Act').

²² C Nordstrum *A Different Kind Of War Story* (1997) 148.

²³ The definition of 'severe ill-treatment' evolved to include violations such as rape, sexual assault and abuse, and sexual harassment. See *TRC Report* vol 1 ch. 4 para 119 and the Coding Frame for Gross Violations of Human Rights contained in *TRC Report* vol 5.

²⁴ TRC Act s 1.

²⁵ TRC Act s 1. The TRC received statements from 21 290 people; more than 19 050 were found to be victims of a gross violation of human rights with a further 2 975 emerging from the amnesty process. See *TRC Report* vol 7 pt 1.

²⁶ Interview with Judy Seidman, Khulumani Support Group on 12 January 2015.

²⁷ Interview with Marjorie Jobson, Khulumani Support Group on 12 January 2015.

violations in South Africa.²⁸ Established in 1995 by three women who had previously worked together in an NGO, the Detainees' Parents Support Committee, the founders agreed that

. . . it was probably wise to take part [in the TRC] but they were very worried that the majority of people who should be involved in the Truth Commission would never be reached. . . . [T]hey did an extraordinary job of outreach long before the Truth Commission even realised that . . . [it was] a lot of hard work reaching people because in lots of areas [they] were terrified to . . . present themselves.²⁹

Ensuring that as many victims as possible were given the opportunity to testify before the TRC was an initial and core focus of Khulumani.³⁰ As a consequence of this work and their stated objective to provide forums beyond the term of the TRC which would give 'public voice to stories that had been [ignored], silenced and even suppressed,'³¹ Khulumani continued to work with victims across the country, recognising the enduring impact of apartheid's brutality and the imperative to 'repair and redress the gaps left by South Africa's transitional justice process.'³² It was through this process that '[Khulumani] started to realise how widespread [sexual violence] was and how under-reported it was.'³³

Despite the criticisms that the TRC 'failed women' and that its failure to acknowledge their particular experience of political violence 'has proved fertile ground for the gender violence that women face [in South Africa] today',³⁴ civil society did intervene to compel the TRC to address this dimension of political violence during its term of operation, with some degree of success. Soon after the TRC commenced its work in early 1996, a group of representatives from women's NGOs, TRC staff, psychologists, victims support NGOs and lawyers attended a workshop at the University of Witwatersrand on 'Gender and the Truth and Reconciliation Commission'. The workshop led to the development of a submission to the TRC which drew on comparative literature and interviews with a number of women to demonstrate that while men and

²⁸ Khulumani Support Group 'About us' available at <http://www.khulumani.net/khulumani/about-us.html>.

²⁹ Interview with Marjorie Jobson, Khulumani Support Group on 12 January 2015.

³⁰ To this end, Khulumani worked with the TRC and facilitated an expanded process of statement-taking, increasing the number of victims whose testimony would be considered by the TRC.

³¹ J Seidman & N Bonase 'Tsogang Basadi: Finding women's voice from South Africa's political conflict' available at <http://www.judyseidman.com/tsogang%20basadi%20paper.html>.

³² Seidman & Bonase (n 31).

³³ Interview with Judy Seidman, Khulumani Support Group on 12 January 2015.

³⁴ Seidman & Bonase (n 31).

women were subjected to torture and sexual torture during the three decades of rule to the TRC,

... the nature of these experiences, even the sexual aspects, were *felt differently*. Assaults on pregnant women, which led to miscarriage, body searches, vaginal examinations, were all assaults on the sexuality and sexual identity of women (emphasis added).³⁵

The submission resulted in the TRC convening three special women's hearings in Cape Town (August 1996), Johannesburg (July 1997) and Durban (October 1996),³⁶ but 'much to the Commission's alarm, and despite encouragement, women gave scant account of their own suffering or experiences of violence.'³⁷ The provision of a distinct forum overseen by an all-women panel of Commissioners and the design of gender-sensitive statement-taking protocols, failed to draw large numbers of women to testify possibly due to prevailing fears of giving public testimony, exposure to recriminations, humiliation and judgement.

The Commissions' model of truth was such that it assumed that women bore a special responsibility for talking about sexual violence. It expected that women could and should testify about it, and that they would do so under certain conditions, notably the provision of a 'safe space' within which to speak.³⁸

Although only a limited number of women appeared before the special hearings and testified about sexual violence,³⁹ the intervention by civil society succeeded in claiming some consideration of the gender specific nature of political violence in the TRC Final Report⁴⁰ and secured a

³⁵ B Goldblatt & S Meintjes *Gender and the Truth and Reconciliation Commission* (Submission to the TRC, May 1996).

³⁶ See submissions to the Women's Hearing: Goldblatt & Meintjes (n 35); S Meintjes available at <http://www.justice.gov.za/trc/special/women/meintjie.htm>; JS Ranken available at <http://www.justice.gov.za/trc/special/women/ranken.htm>. These submissions are considered in a dedicated chapter in the *TRC Report* vol 4.

³⁷ F Ross 'An acknowledged failure: Women, voice, violence and the South African Truth and Reconciliation Commission' in R Shaw, L Waldorf & P Hazan (eds) *Localising Transitional Justice: Interventions and Priorities After Mass Violence* (2010) 73.

³⁸ Ross (n 37) 73.

³⁹ See B Goldblatt & S Meintjes 'Dealing with the aftermath: sexual violence and the Truth and Reconciliation Commission' (1998) 13(36) *Agenda* 7 at 8: 'The first of these [special hearings] was arranged just before National Women's Day in 1996 in Cape Town and was very positive in providing a platform for women to recount their experiences of rights violations. Women spoke about giving birth in prison in front of laughing warders, being detained while still breast-feeding, being threatened with rape and being given drugged food which warders said might result in a detainee's foetus being aborted (SAPA, August 7, 1996; SABC TV TRC Focus, March 19, 1996). The hearing created the space for women to speak about sexual and biological violations that might otherwise have been difficult to discuss in a forum that included men.'

⁴⁰ *TRC Report* vol 4.

concession that the TRC had failed to ‘adequately capture the story of thousands of women . . . who experienced the brutality of the apartheid system.’⁴¹ This declared ‘unfinished business’ of the TRC⁴² – the untold stories of rape in the townships and in the ‘homelands,’⁴³ of women detained and tortured in prisons, and those who went into exile and lived in the camps of the liberation movement – has never been resumed by the South African government and ‘the step the TRC failed to take is the challenge South Africa faces today.’⁴⁴ This challenge – for acknowledgment and redress by the transitional justice mechanism mandated to restore ‘the human and civil dignity of victims of violations of human rights’⁴⁵ – has been taken up by Khulumani, which in enabling women to speak of their experiences, has re-opened the possibility for addressing their harm.

Government responses to their obligation to deliver reparations recommended by the TRC to those victims eligible under the TRC ‘closed list’ policy⁴⁶ has been wholly deficient; attempts to extend this obligation to victims who ~~suffered grave abuses that~~ did not strictly fall within the category of gross violation of human rights under the TRC legislation, met with considerably less enthusiasm. The next section considers various approaches adopted by civil society in seeking to respond to the needs of women who, despite experiencing the brutality of the apartheid system, were largely excluded from the TRC process and have failed to be accorded individual redress by the South African government.

III IN THE AFTERMATH OF THE TRC: A LONG ROAD TO REPARATIONS

We are obligated to offer reparations not to the exclusion of, but in addition to, social reconstruction.

⁴¹ TRC Report vol 7 pt 1 at 1.

⁴² TRC Report vol 7 pt 1 at 1.

⁴³ The Bantustans or homelands were a mechanism created by the apartheid government to move the majority of the black population to designated areas of land to prevent them from living in urban areas within South Africa and to deny them any rights or legal protection they might have had within South Africa.

⁴⁴ S Msimang ‘The strongest victims in the world’ *The Daily Maverick* 25 February 2016 available at http://www.dailymaverick.co.za/opinionista/2016-02-25-the-strongest-victims-in-the-world/?utm_source=Daily+Maverick+First+Thing&utm_campaign=763940f463-First_Thing_08_Feb2_7_2016&utm_medium=email&utm_term=0_c81900545f-763940f463-127696229.

⁴⁵ TRC Act preamble.

⁴⁶ Under the ‘closed list’ policy of the TRC, only those formally declared victims by the TRC (generally, those who made statements or presented testimony to the TRC during its term), were eligible to receive reparations.

⁴⁷ T Mofokeng & B Hamber ‘Contextualising reconciliation and reparations in South Africa’ in B Hamber & T Mofokeng (eds) *From Rhetoric to Responsibility: Making reparations to the survivors of past political violence in South Africa* (2000).

The Promotion of National Unity and Reconciliation Act 34 of 1995 provided that the TRC:

- (i) determine measures of reparation, to rehabilitate and restore the human and civil dignity of victims of human rights violations; and
- (ii) make recommendations aimed at the prevention of the commission of gross violations of human rights.⁴⁸

The TRC Reparation and Rehabilitation Committee was required to make recommendations to the President with regard to specific measures of reparations⁴⁹ (in some cases, directed at redressing short-term urgent or interim needs) and a broad, longer-term reparations policy. The Committee had no powers of enforcement and could not guarantee the implementation of its recommendations to government. The Commission was also empowered to make recommendations regarding the 'creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.'⁵⁰ In developing its recommended reparations policy, it drew on international law to inform the core principles or objectives underlying reparative measures⁵¹ and devised five categories of reparation,⁵² which reflected these norms. The Committee noted that 'without reparations and rehabilitation there can be no healing and reconciliation' and that the government was 'morally obliged to carry the debts of its predecessors and is thus equally responsible for reparations.'⁵³

⁴⁸ TRC Act preamble.

⁴⁹ The TRC Act s 1 defines reparations as including 'any form of compensation, ex gratia payment, restitution, rehabilitation or recognition.' Section 42 provided for the establishment of the President's Fund to hold and disburse funds for reparations. By 2000, the President's Fund had accumulated over R340 million from international donors, national budget allocations for reparation payments and interest: A Crawford-Pinnerup 'An assessment of the impact of urgent interim reparations' in B Hamber & T Mofokeng (eds) *From Rhetoric to Responsibility: Making reparations to the survivors of past political violence in South Africa* (2000).

⁵⁰ TRC Act s 4(h).

⁵¹ These core principles derived from the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the 'Van Boven Principles') were: redress (compensation); restitution; rehabilitation; restoration of dignity; reassurance of non-repetition.

⁵² Urgent interim payments (victims in urgent need of assistance and services); individual reparations grants (a financial payment to be paid out over 6 years to cover medical, education and housing needs); symbolic reparations/legal and administrative measures (eg day of national remembrance and reconciliation, memorials and monuments, excising criminal records); community rehabilitation (eg specialised trauma counseling services; provision of health and social services, adult basic education programmes and skills training); institutional reform (promoting a human rights culture and preventing the human rights violations that characterised apartheid).

⁵³ The Reparation and Rehabilitation Committee's final recommendations were initially contained in volume 5, chapter 5 of the TRC's (interim) Final Report of 1998 and summarised and augmented in the additional volumes of the Report released in March 2003.

Although the South African Constitutional Court confirmed reparations as a right,⁵⁴ implementation by the South African government of the TRC's reparation and rehabilitation policy and recommendations has been uneven. With the exception of the hard-won agreement to award urgent interim payments, the South African Government suspended the development or implementation of any reparations policy until the submission by the TRC of the final volumes of its report. During this period, government's rhetoric on reparations appeared 'to conflate them with their developmental discourse – arguing that the provision of socio-economic services and infrastructure delivery to the poor constituted reparations' but failing to acknowledge that 'development programs do not directly target individual victims or address specific personal needs, nor do they fulfil the obligations for reparation incumbent in international law.'⁵⁵

Despite the TRC's agreement to Women's Hearings, women had little impact on the development and design of the TRC's reparations recommendations. Although the TRC held consultative workshops with women's NGOs, victims support groups and gender experts, women's particular needs and interests – including measures to address 'the harms suffered by women as a category or the specific gendered aspects of the past violence' – were not integrated in the TRC recommendations or into reparations policies.⁵⁶ Where the recommendations did make reference to women and gender, they were in relation to broad issues of gender discrimination but not specifically directed at addressing violence against women, frequently a consequence of gender inequality and discrimination. Erin Daly argues that the comparatively low number and value of financial reparations measures 'should not obscure the steps that [were] taken to promote symbolic, communal, and other reparative measures.'⁵⁷ The symbolic reparations of relevance to women victims

⁵⁴ Mahomed J in *Azanian Peoples Organization (AZAPO) and Others v The President of South Africa and Others* 1996 CCT 17/96 (SACC) (which upheld the validity of the TRC's amnesty process, partially justifying this by highlighting a reciprocal need for a comprehensive reparations program for victims).

⁵⁵ P Pigou & N Valji 'South Africa, Reparations and the TRC's Recommendations: A Missed Opportunity' (2006) 7 *The Reparations Report* 5.

⁵⁶ Beth Goldblatt notes: 'From a gender perspective, the wording of the mandate failed to spell out the gendered differences in the experience of the conflict and the possible gendered differences in the needs of victims (in relating their violations and in reparations measures)'. B Goldblatt 'Evaluating the gender content of reparations: Lessons from South Africa' in R Rubio-Marin (ed) *What Happened to the Women? Gender and Reparations for Human Rights* (2006) 53. See also H Millar 'Facilitating Women's Voices in Truth Recovery: An Assessment of Women's Participation and the Integration of a Gender Perspective in Truth Commissions' in H Durham & T Gurd (eds) *Listening to the Silences: Women and War* (2005).

⁵⁷ E Daly 'Reparations in South Africa: A cautionary tale' (2003) 33 *The University of Memphis Law Review* 367.

predominantly acknowledge their role in the struggle against apartheid, rather than the harm they suffered as a result. These measures include the declaration of 9th of August as National Women's Day (to commemorate the day in 1956 when over 20 000 South African women marched on government building in Pretoria to protest the iniquitous 'pass laws'), the unveiling of the Monument to the Women of South Africa in August 2000 (at the site of the historic women's march) and the establishment of the Commission for Gender Equality in 1996 (housed in the former women's jail in Johannesburg).

In addition, the legislative measures introduced by the new South African government, such as the Domestic Violence Act 116 of 1998 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, sporadic training of additional community health workers, the provision of counselling services and the establishment of trauma centres, the most successful being the development of the Thuthuzela Care Centres,⁵⁸ were the result of the advocacy of gender activists and scholars, human rights practitioners and NGOs, rather than specific measures of redress intended to compensate a specific historical harm.

In their detailed submission to the TRC on behalf of a number of NGOs and gender activists in 1996, Meintjes and Goldblatt make the argument that the 'reparation and rehabilitation process should not simply be available for those who want it. . . . The Truth and Reconciliation process needs to be one aimed at healing the whole society'⁵⁹ and 'building of a human rights culture where all forms of discrimination and abuses against women are unacceptable.'⁶⁰ While the submission called for reparations which compensated women 'fully for their loss,' it further emphasised the need for the TRC to address inter-generational trauma, 'not just aimed at healing one generation's pain . . . [but] at setting in place the framework for the building of a human rights culture to be treasured by future generations.'⁶¹ Some years later in a re-examination of aspects of the submission, Meintjes argues that despite their call to the TRC that it integrate gender as a core aspect of its analysis of apartheid's impact,⁶² 'a vital structural aspect of apartheid and post-apartheid experience' was overlooked in the final report and 'gender – as a constitutive variable

⁵⁸ The Thuthuzela Care Centres were established with the support of the National Prosecuting Authority as a one-stop, integrated response to the critical levels of sexual violence against women and children, aimed at reducing secondary trauma for the victim, minimising the time in finalising cases and improving perpetrator conviction rates.

⁵⁹ Goldblatt & Meintjes (n 35).

⁶⁰ Goldblatt & Meintjes (n 35) ch G paras 14–18.

⁶¹ Goldblatt & Meintjes (n 35) ch G paras 14–18.

⁶² Goldblatt & Meintjes (n 35).

along with race and class – was entirely neglected’.⁶³ The absence of a gender analysis of apartheid combined with the limited mandate of the TRC and its narrow concern with ‘individual culpability rather than on apartheid as a system’⁶⁴ had implications for the development of the TRC’s reparations measures and policy which ultimately neglected the immediate and long-term needs of women victims of sexual violence.

(1) *Creating space for testimony and acknowledgment*

The need for the continued efforts by women’s organisations and NGOs to develop and maintain measures to address the ‘relentless consequences’⁶⁵ of sexual violence that victims would endure ‘long after the TRC has finished its work’ – given they ‘may take many years to come forward to speak about their experiences’⁶⁶ – informed the development of the Khulumani Support Group art and memory workshops. Through its process of consultation with victims of apartheid, many of whom had not testified before the TRC, Khulumani heard increasing accounts of the prevalence and impact of sexual violence suffered by women under apartheid, a reticence to report the violence and a lack of appropriate measures of redress specifically directed at their harm.

Developing an innovative approach to give ‘public voice to stories that had been [ignored], silenced and even suppressed’⁶⁷ during the term of the TRC, a decade after the TRC ‘had closed its doors,’⁶⁸ Khulumani conducted workshops in townships which brought people together to relate their experiences of political violence in the early 1990s. As women participants at these Art and Memory Workshops⁶⁹ expressed memories of political violence through drawings, paintings and conversation, it became clear that these expressions of their trauma, primarily a consequence of widespread rape by government soldiers and policemen,⁷⁰ ‘formed the vast majority of untold stories.’⁷¹ As women spoke about what they had depicted in their paintings and drawings, it became clear that ‘the amount of rape, sexual harassment, sexual violence that was built

⁶³ S Meintjes ‘South Africa’s Truth and Reconciliation Commission and Gender Justice’ available at <http://www.gwi-boell.de/en/2012/03/12/south-africa-s-truth-and-reconciliation-commission-and-gender-justice>.

⁶⁴ Meintjes (n 63).

⁶⁵ Justice Mahomed *AZAPO and Others v The President of South Africa and Others* para 43.

⁶⁶ Goldblatt & Meintjes (n 39).

⁶⁷ Seidman & Bonase (n 31).

⁶⁸ Seidman & Bonase (n 31).

⁶⁹ These workshops, held in the East Rand and the Vaal districts, outside Johannesburg, were organised by the South African History Archive (an NGO archive that collects history from South Africa’s liberation struggle) at the request and with the involvement of Khulumani Support Group.

⁷⁰ Seidman & Bonase (n 31).

⁷¹ Seidman & Bonase (n 31).

into women's lives, black women's lives especially, as standard practice all the time, [was] not really . . . given full credit [by the TRC].⁷² Women who had testified before the TRC spoke of the qualitative difference between the Khulumani workshops and the TRC, with one woman declaring that when she had endeavoured to report an experience of rape to a TRC statement-taker, she was advised that her account of rape could only be included if she had laid a complaint with police, who were frequently perceived as perpetrators.⁷³ In addition, the structure and format of the Khulumani process was ~~clearly~~ more conducive to victims speaking about sexual violence:

[O]f the over sixteen thousand cases where the TRC gave victim status, ONLY 9 actually were given for rape. Contrast this with a Khulumani workshop where out of 9 women present, four described being raped by soldiers or police.⁷⁴

Although these workshops were not able to provide any form of compensation to the women who participated, many spoke of the reparative qualities that came with telling their accounts 'to victims other than State officials, researchers and the media.'⁷⁵ The women who participated in the workshops experienced a form of transformation that allowed them to become 'active citizens, to shape our own lives and our own world; to change the laws and make the country work for our children and future generations'.⁷⁶

(2) *Maintaining dialogue with government for a 'just reparations policy'*⁷⁷

While the Khulumani workshops kept a channel of communication open for victims after the expiration of the term of the TRC, often providing ~~an important form of~~ therapeutic reparation for women who had not previously been able to disclose violations of sexual nature, the organisation also continued to engage with the government in an attempt to compel the implementation of the TRC reparations recommendations

⁷² Interview with Marjorie Jobson, Khulumani Support Group on 12 January 2015.

⁷³ Goldblatt & Meintjes (n 39) 15–16.

⁷⁴ Email correspondence with Judy Seidman, 25 February 2015.

⁷⁵ T Madlingozi 'Taking stock of the South African Truth and Reconciliation Commission 20 years later: No truth, no reconciliation and no justice' paper presented at the 3rd International Colloquium of the Instituto Humanitas at Unisinos, Brazil (16 September 2015).

⁷⁶ Ms Nomarussia Bonase, quoted in Khulumani Support Group 'How the TRC failed women in South Africa: A failure that has proved fertile ground for the gender violence women in South Africa face today' 2011 *Truth and Memory* available at <http://www.khulumani.net/truth-memory/item/527-how-the-trc-failed-women-in-south-africa-a-failure-that-has-proved-fertile-ground-for-the-gender-violence-women-in-south-africa-face-today.html>.

⁷⁷ Khulumani aims and objectives as listed in the Khulumani inaugural newsletter, quoted in O Makhalemele 'Southern Africa Reconciliation Project: Khulumani Case Study' available at <http://www.csvr.org.za/wits/papers/papoupa2.htm>.

beyond the payment of interim urgent and inadequate financial awards. Drawing on the expertise of a team of medical practitioners, economists, lawyers, and actuarial consultants, Khulumani submitted their own response to the TRC's recommendations to the South African government in late 2003.⁷⁸ This 'victim-driven set of policies' which addressed 'outstanding and unresolved matters arising from the work and purpose of the TRC', contained reparations proposals and costings for lifelong medical and psychosocial support for victims and the development of an economic programme to assist the families and dependents of survivors. Khulumani's growing membership base has informed its persistent dialogue with government and its rejection of the 'closed list' victim policy, arguing, in agreement with the TRC,⁷⁹ that the policy risks dividing communities if some people 'receive reparation that is not accessible to others who have had similar experiences.'⁸⁰ For this reason, Khulumani challenged government draft regulations released in 2011 to provide medical and educational benefits to 'TRC-identified victims' (many of whom had previously received nominal compensation pay-outs)⁸¹ and criticised government failure to acknowledge 'the perspectives of civil society organisations and victims' member groups which have sustained the struggle to construct measures to build a just and inclusive post-apartheid society.'⁸²

The possibility to include victims of sexual violence within government regulations that were directed at the TRC's recommendations regarding measures of community rehabilitation might have been incorporated within the 'community reparations' regulations issued by the Department of Justice in 2013.⁸³ These provided for the allocation of funds to 18 communities (evidently arbitrarily selected) across South Africa⁸⁴ to support 'community rehabilitation projects' directed at 'infra-

⁷⁸ The final report of the Reparation and Rehabilitation Committee was released in March 2003. Khulumani Support Group 'Building the future together: Khulumani reparations policy proposals' available at <http://www.khulumani.net/khulumani/documents/category/8-government.html?download=79:khulumani-reparations-policy-proposals-final-version>.

⁷⁹ See *TRC Report* vol 5 ch 5 para 37.

⁸⁰ Khulumani Support Group 'Khulumani expresses profound disappointment at Government's reparation regulations' available at <http://www.khulumani.net/khulumani/statements/item/459-khulumani-expresses-profound-disappointment-at-governments-reparation-regulations.html>.

⁸¹ Draft regulations released in 2011. See Khulumani Support Group 'A reparations campaign update from Khulumani support group – 17 Nov 2011' available at <http://www.khulumani.net/reparations/item/559-a-reparations-campaign-update-from-khulumani-support-group-17-nov-2011.html>.

⁸² Khulumani Support Group (n 81).

⁸³ Regulations Relating to Community Rehabilitation in GN 929 GG 37097 of 29 November 2013 para 2(3).

⁸⁴ S Bray 'Reparation in South Africa: the "unfinished business" of the TRC' available at <http://www.khulumani.net/truth-memory/item/979-article-on-the-unfinished-business-of-reparations-in-south-africa-in-the-pan-african-reparation-perspectives-bulletin.html>.

structure development; school construction and improvement; health and social services; skills development support; or any other activity aimed at promoting the healing and recovery of a community that has been affected by human rights violations.⁸⁵ While some of the community rehabilitation projects might have provided incidental forms of redress of value to victims of sexual violence, they, as with previous regulations, failed to address these victims specifically or their long-term psycho-social and economic needs.

(3) *Litigating for gender equality and for reparations beyond the 'closed list'*

Following the government's inadequate response to the TRC's reparations recommendations,⁸⁶ Khulumani turned its attention to secure reparations and redress for victims of apartheid beyond those on the government's 'closed list' policy, arguing that they had not been able to access the TRC proceedings for a variety of factors (referred to above).⁸⁷ In seeking to establish a right to reparations for victims who testified before the TRC and 'the even larger group of survivors of gross human rights violations under apartheid who did not manage to engage with the TRC process,' such as victims of sexual violence,⁸⁸ Khulumani commenced legal proceedings in the US District Court in New York under the Alien Tort Claims Act⁸⁹ in 2002 claiming 'relief for identified victims from . . . [five] foreign multinational corporations which [had] violated international law and collude[ed] with the apartheid government and security agencies in committing 'multiple crimes against humanity.'⁹⁰ After a series of hearings, interim judgments and appeals, the case was dismissed in July 2015.

⁸⁵ Regulations Relating to Community Rehabilitation para 2(3).

⁸⁶ About 22 000 victims received a one-off payment of R30 000; Khulumani maintains that it had collected records of at least 65 000 people who suffered 'gross human rights violations' under apartheid and proposed that a grant of R120 000 should be paid to these individuals in stipends of R2 000 a month over six years. R Davis 'General Motors concedes to Khulumani in apartheid reparations case' *All Africa* 1 March 2012 available at <https://www.globalpolicy.org/international-justice/alien-tort-claims-act-6-30/51363-general-motors-concedes-to-khulumani-in-apartheid-reparations-case.html>; see also Makhalemele (n 77).

⁸⁷ '[R]eparations programmes should not sacrifice adequate accessibility to the otherwise legitimately felt urgency of society to move forward. Narrow applications deadlines or a closed-list system may not allow different victims to come forward and claim reparations when they feel physically and psychologically prepared to do so.' R Manjoo 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on violence against women, its causes and consequences' (2010) A/HRC/14/22 para 40.

⁸⁸ N Reynolds 'Khulumani's reparations case' *Pambazuka* 6 January 2005 available at <https://www.globalpolicy.org/component/content/article/163/28122.html>.

⁸⁹ M Swart 'The Khulumani litigation: Complementing the work of the South African Truth and Reconciliation Commission' (2011) 16(1) *Tilburg Law Review* 30.

⁹⁰ Reynolds (n 88).

The South African Constitutional Court (and other superior courts) has established and confirmed the State's obligation to prevent discrimination against women and to protect their life, dignity, freedom and security.⁹¹ While many of the cases deal with known individual perpetrators with histories of committing sexually violent acts, the Constitutional Court has established the clear principle that the State has a duty under the South African Constitution and international law to take steps to prevent sexual violence against women: 'In addressing these obligations in relation to dignity and the freedom and security of the person, few things can be more important to women than freedom from the threat of sexual violence.'⁹² In a case in which the women's NGO, Tshwaranang Legal Advocacy Centre intervened as an *amicus curiae*, the Constitutional Court noted the importance of civil society in redefining sexual violence and its specific manifestation in relation to women:

Due in no small part of the work of women's rights activists, there is wider acceptance that rape is criminal because it affects the dignity and personal integrity of women. The evolution of our understanding of rape has gone hand in hand with women's agitation for the recognition of their legal personhood and right to equal protection. To this end, women in South Africa and the rest of the world have mobilised against the patriarchal assumption that underlay the traditional definition of rape. They have focused attention on the unique violence visited upon women. Much of this activism focused on creating support systems for women, such as rape crisis centres and abuse shelters; and also on the process whereby rape is investigated and prosecuted. It is now widely accepted that sexual violence and rape not only offends the privacy and dignity of women but also reflects the unequal power relations between men and women in our society.⁹³

These cases reflect the due diligence argument advanced by Manjoo and others, ~~both in relation to a fact~~  ~~to hold perpetrators to account but~~

⁹¹ Section 12 (1) (c) of the Constitution provides that '[e]veryone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources.'

⁹² *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) para 62; see also *S v Baloyi (Minister of Justice Intervening)* 2000 (2) SA 425 (CC). The case of two NGOs, the *Egyptian Initiative for Personal Rights and Interights v Egypt* (Communication 326/06) decided by the African Commission on Human and People's Rights (ACHPR) in December 2011, is analogous. The ACHPR found the State of Egypt responsible for sexual violence committed against a group of women journalists during protests in May 2005 by failing to protect the women's rights to equality and non-discrimination, to dignity and protection from cruel, inhuman and degrading treatment. See Communication 323/06: Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt, available at http://www.achpr.org/files/sessions/10th-ec/comunications/323.06/achpreos10_232_06_eng.pdf and 'Egypt held to account for failing to protect women demonstrators from sexual assault – Commission tells Egyptian Government to compensate women as well as to investigate the assaults and punish those responsible' available at <http://eipr.org/en/pressrelease/2013/03/14/1657>.

⁹³ *Masiya v Director of Public Prosecutions Pretoria (The State) and Another* 2007 (5) SA 30 (CC); 2007 (8) BCLR 827 (10 May 2007).

also to 'ensure comprehensive reparations for women victims of violence and their relatives.'⁹⁴ Given overwhelming evidence of prevalence and consistent calls by NGOs and women's activists and gender rights practitioners on government to address this national crisis, South Africa's failure to take comprehensive and effective steps to protect women from sexual violence and its causes (indeed, its failure to recognise sexual violence as a gross violation of human rights within the framework of the TRC), amounts, as argued by Manjoo, to a failure 'in their duty to respond to the violation.'⁹⁵ In addition, the due diligence argument extends to remedies or redress which 'cannot be just about returning women to the situation they were in' before the act of violence, but should be transformative in their objective, 'subvert[ing] instead of reinforce[ing] pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalisation and structural inequalities,'⁹⁶ that entrench and enable violence against women. This transformative work as reparation – a central focus of NGO, Sonke Gender Justice⁹⁷ is considered in the next section.

IV 'A WIDER CONCEPT OF "REPARATION"': SUPPORTING A TRANSFORMATIVE AGENDA

[There] isn't enough of men and women together . . . making demands on the state to treat this [gender-based violence] as a national emergency.⁹⁸

Attempts to tackle violence against women via measures of 'legislative reform, access to justice and the provision of services'⁹⁹ are legitimately criticised for their limited capacity to 'reconfigur[e] or reconstitute[e] the flawed moral and political relationships that invite abuses.'¹⁰⁰ In the case of *Azanian People's Organisation (AZAPO) v President of the Republic of*

⁹⁴ R. Manjoo, 'Statement by Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences' (Commission on the Status of Women, 4 March 2013, New York) available at <http://www.un.org/womenwatch/daw/csw/csw57/statements/statement-rashida-manjoo.pdf> 3.

⁹⁵ Manjoo (n 7) para 70.

⁹⁶ Manjoo (n 7) para 75.

⁹⁷ In March 2010, Sonke Gender Justice secured a judgment against the then leader of the African National Congress Youth League, Julius Malema from the Johannesburg Equality Court which found Malema guilty of hate speech and harassment after he publicly declared that the woman who accused President Zuma of rape in 2005, had 'had a nice time.' In welcoming the decision, Sonke warned of the 'impact that public statements can have in perpetuating gender-based violence and other forms of discrimination,' particularly when made by public figures. See D. Smith 'South African court finds ANC's Julius Malema guilty of hate speech' *The Guardian* 16 March 2010 available at <http://www.theguardian.com/world/2010/mar/15/anc-julius-malema-guilty-hate-speech>.

⁹⁸ Interview with Dean Peacock, Sonke Gender Justice on 21 January 2015.

⁹⁹ Manjoo (n 7) para 19.

¹⁰⁰ Urban Walker (n 8) 216.

South Africa, Mr Justice Mahomed, recognising that South Africa had ‘neither the resources nor the skills to reverse . . . [the] massive wrongs [of apartheid],’¹⁰¹ referred to ‘a wider concept of “reparation,” which would allow the State to take into account the competing claims on its resources’ and also ‘have regard to the “untold suffering” of individuals and families whose fundamental human rights had been invaded during the conflict of the past.’¹⁰² In relation to violence against women, this ‘wider concept’ of reparations has been articulated as the design and implementation of measures directed at eroding and transforming the conditions that enable the violence with a view to preventing its recurrence.¹⁰³

When established in 2006, the NGO Sonke Gender Justice (Sonke) initially focused primarily on ‘working with men and boys to promote gender equality’ and prevent sexual violence.¹⁰⁴ Key to this objective was the adoption of multiple strategies – community education and mobilisation, social media and policy initiatives – to transform gender norms and explore ‘contemporary constructions of gender’ and convey the long-term impact and costs of their perpetuation for both women and men. Sonke’s transformative work with men and boys has taken the form of community workshops and support for local activism, media training on how to report on gender and issues of masculinity, projects in prisons and on child rights and positive parenting. The ‘entry point’ for much of Sonke’s engagement with men is ‘about how bad patriarchal notions about manhood are for men’ and that ‘ideas about manhood contribut[e] in very real ways to men’s violence against women but, of course, also to men’s violence against men.’ Similarly, Sonke’s prison reform work concerns the long-term impact of sexual violence in prisons on both men and women ‘when men are released from settings where they’re essentially traumatised and tortured.’ Their Children’s Rights and Positive Parenting project examines ‘the relationship between corporal punishment and subsequent perpetration of violence by men against women . . . and the relationship between exposure to violence of children and [their] subsequent experiences with violence as perpetrators and as victims.’¹⁰⁵

Although maintaining its core focus on transformative work with men and boys,¹⁰⁶ from 2011, Sonke began work that sought to ‘transform

¹⁰¹ Justice Mahomed *AZAPO and Others v The President of South Africa and Others* para 43.

¹⁰² Justice Mahomed *AZAPO and Others v The President of South Africa and Others* para 45.

¹⁰³ See Manjoo (n 87); A Durbach & L Chappell ‘“Leaving behind the age of impunity”: Victims of gender violence and the promise of reparations’ (2014) 16 *International Feminist Journal of Politics* 543.

¹⁰⁴ Sonke Gender Justice, *Sonke Gender Justice Strategic Plan: Rights, Action and Accountability for Gender Justice 2014–2018* at 5–6 available at <http://www.genderjustice.org.za/publication/sonke-strategic-plan-2014-2018/>.

¹⁰⁵ Interview with Dean Peacock, Sonke Gender Justice on 21 January 2015.

¹⁰⁶ The scope of Sonke’s projects is not only considerable in substance (gender-based violence and HIV, sexual violence in prisons, child rights and positive parenting, decriminalising sex

unequal power relations between women and men.¹⁰⁷ Partnering 'directly with traditional women's rights organisations,¹⁰⁸ Sonke shifted its focus to the 'structural and social determinants of gender inequality,¹⁰⁹ often the determinants of sexual violence, demanding that the South African government develop a national strategic plan to address gender-based violence which, in addition to service provision and measures of deterrence, demonstrated a sophisticated prevention component. Underlying the demand for this plan was a call to account for the government's failure to address a 'national emergency.' In 2006, 260 representatives from government and civil society adopted the Kopanong Declaration in which they committed to mobilising resources to effect 365 days of specified initiatives to end violence against women and children.¹¹⁰ The Declaration envisaged 'men work(ing) together with women to eliminate patriarchy' and eradicate violence against women and children utilising an approach 'that takes account of the intersection of race, class, location, disability and sexuality and of the role of poverty and economic inequality in fuelling this scourge.'¹¹¹ The commitments within the Declaration were never costed and despite the South African government's establishment of a National Council on Gender-Based Violence in 2012 to draft and implement a national plan to address gender-based violence, no plan was developed. Instead, in August 2014, the government, without consultation with civil society but clearly prompted by their actions,¹¹² released an *Integrated Programme of Action Addressing Violence Against Women*

work), but also in reach, undertaking collaborative programmes throughout Africa (with Men Engage) and in America.

¹⁰⁷ Sonke Gender Justice (n 104) 5.

¹⁰⁸ Sonke Gender Justice (n 104) 6. The relationship between organisations such as Sonke Gender Justice (with its core objective to work with men and boys to address sexual violence) and traditional women's rights organisations or networks, has raised legitimate concerns about the potential for the former to undermine the work of, and divert resources from, the latter. The accommodation of these concerns within alliances which 'involve men and women working together' to transform 'patriarchal norms that construct harmful masculinities [which] are implicated in fuelling this violence,' is considered in Institute of Development Studies, 'Building Alliances to Address Sexual and Gender-based Violence,' Policy Briefing (Issue 105), December 2015 available at http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/7160/PB105_AGID124_BuildAlliances_online.pdf?sequence=1.

¹⁰⁹ Sonke Gender Justice (n 104) 5.

¹¹⁰ 'The Kopanong Declaration: 365 Days of Action to End Violence against Women and Children' available at http://www.unicef.org/southafrica/SAF_resources_365daysdeclaration.pdf.

¹¹¹ 'The Kopanong Declaration' (n 110).

¹¹² A report on the programme of action in the *Daily Maverick* quotes Sharon Kouta, the gender-based violence programme specialist for the Networking HIV/Aids Community of South Africa as saying: 'Civil society has not been consulted on this document': R Davis 'Gender based violence: Government might finally have a plan, but is it a good one?' available at <http://www.dailymaverick.co.za/article/2015-07-06-gender-based-violence-government-might-finally-have-a-plan-but-is-it-a-good-one/#.VqRnDMcijiU>.

and Children (2013–2018),¹¹³ which importantly acknowledges the need to move from a reactive towards ‘a preventative approach that addresses the root and underlying causes’ of violence against women and children and provides ‘a framework for a comprehensive and systematic approach aimed at achieving substantial and lasting change.’¹¹⁴ Although a comprehensive programme of initiatives is laid out, the plan is devoid of any budget or resource allocations and responsibility for the execution of the initiatives is largely assigned to government departments and agencies. This is despite the clear reference throughout the document to the important role of civil society and private actors in addressing ‘this scourge’:

Putting a stop to the serious, prevalent and deeply entrenched pandemic of VAWC (Violence against Women and Children) requires strong political will, clear accountability and the allocation of adequate resources and funding, together with the involvement and practical action of all segments and levels of society.¹¹⁵

In November 2014, in response to government inaction on the development and implementation of a National Strategic Plan and the suspension (or disbanding) of the National Council on Gender-Based Violence, given the lack of resources required to implement its mandate, civil society organisations marched in various cities and towns across the country and launched a national campaign¹¹⁶ for ‘a fully-costed, evidence-based, multi-sectoral, inclusive and comprehensive National Strategic Plan to end Gender-Based Violence’. It is envisaged that the national strategic plan, a working draft of which has been written by Sonke and campaign partners, will be developed by civil society in partnership with government.

V CONCLUSION

You can make 800 million Rand available for a green fund but where’s the money to address gender-based violence?

The initiatives devised by NGOs and gender activists to redress violence against women post-apartheid considered in this article speak to

¹¹³ Department of Social Development (Republic of South Africa), *South African Integrated Programme of Action Addressing Violence Against Women and Children (2013–2018)* available at http://www.dsd.gov.za/index2.php?option=com_docman&task=doc_view&gid=607&Itemid=39.

¹¹⁴ Department of Social Development (n 113) 23.

¹¹⁵ Department of Social Development (n 113) 23.

¹¹⁶ Sonke Gender Justice ‘National Strategic Plan (NSP) on Gender-Based Violence (GBV)’ available at <http://www.genderjustice.org.za/policy-development-advocacy/national-strategic-plan-gender-based-violence/>.

¹¹⁷ Interview with Dean Peacock, Sonke Gender Justice on 21 January 2015.

most of the categories or characteristics of reparations which the TRC recommended for consideration and implementation by the government. The ~~struggle for~~ recognition of harmful conduct within legislation ~~and for~~ acknowledgment and validation of testimony and accounts of harm via hearings and workshops; ~~the attempts to secure~~ an inclusive and comprehensive process for compensation and adequate and appropriate measures of rehabilitation; the development of programmes directed at transforming the practices, values and social and economic conditions that facilitate sexual violence against women.

All of these ~~initiatives~~ seek to restore ‘the human and civil dignity of victims of violations of human rights’¹¹⁸ and prevent the ongoing commission of violations. They also remind government of its due diligence responsibility to ~~both~~ rehabilitate harm and instigate long-term social, economic and cultural changes to prevent or undermine the recurrence of sexual violence against women and children. Although deterrence and curtailing impunity are essential to the challenge of reducing sexual violence, these NGOs have importantly focused on prevention, as legislative measures and criminal justice programmes struggle to make an indent on levels of prevalence and institutions evidently set up to canvass and address the needs of victims, are poorly resourced and often lack the necessary skill sets. This prevention work by NGOs has required moving beyond ‘responding to violence against women when it occurs’ to the crucial work of ‘transforming patriarchal gender structures and values that perpetuate and entrench violence against women.’¹¹⁹

The work of the NGOs outlined in the article is more appropriately the responsibility of the state. In ~~offering~~ this responsibility to the NGO sector, government often recognises that NGOs are often better skilled and positioned (and trusted) to undertake government services, ‘essentially outsource[ing] many essential statutory services to NGOs but without funding them to do so.’¹²⁰ Had the TRC been empowered to consider evidence that sexual violence was a critical aspect of apartheid’s impact, ‘part of what reparations [might] look like is funding women’s rights organisations to . . . do work across the spectrum of primary, secondary and tertiary prevention.’¹²¹ A study undertaken by KPMG estimated that the economic impact of violence against women in South Africa for the year 2012/2013 was between R28.4 billion and R42.4

¹¹⁸ TRC Act preamble.

¹¹⁹ Ertürk (n 9) para 15.

¹²⁰ Mara Glennie, Executive Director of TEARS (Transform Education About Rape and Sexual Abuse) quoted in Gender Links ‘Civil society takes to the streets to demand a National Strategic Plan to end gender-based violence’ available at <http://genderlinks.org.za/programme-web-menu/civil-society-takes-to-the-streets-to-demand-a-national-strategic-plan-to-end-gender-based-violence-2014-11-24/>.

¹²¹ Interview with Dean Peacock, Sonke Gender Justice on 21 January 2015.

billion,¹²² ‘representing 0.9 percent and 1.3 percent of GDP respectively.’¹²³ In 2014/15, the President’s Fund established to fund reparations recommended by the TRC, was valued at R1.273 billion.¹²⁴ Given the significant track record of expertise, relationships with affected communities, and innovative programmes of NGOs in addressing the harm of sexual violence against women over decades, the Fund could do well to invest in the essential work of these NGOs as an overdue commitment to undo a history of ‘deadly negligence’¹²⁵ and help institute the critical measures needed ‘to convert misfortune to be endured into injustice to be remedied.’¹²⁶

¹²² Approximately between AU\$2.5 billion and AU\$3.7 billion.

¹²³ KPMG ‘Violence against women costs the country R28.4 billion’ available at <http://www.kpmg.com/za/en/issuesandinsights/articlespublications/press-releases/pages/violence-against-women-costs-country-r284billion.aspx>.

¹²⁴ ‘President’s Fund Annual Report 2014/2015’ available at <http://www.justice.gov.za/reportfiles/other/presfund-anr-2014-15.pdf>.

¹²⁵ Gender Links (n 120).

¹²⁶ Per Sachs J in *S v Baloyi (Minister of Justice and Another Intervening)* 2000 (2) SA 425 (CC) para 12.