

SEEKING CLOSURE: CAN EGYPTIAN WOMEN LEARN FROM
THE 'TRUTH EXPERIMENTS' OF SOUTH
AFRICA & BOSNIA?

By

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Submitted to

Central European University

Department of Legal Studies

In partial fulfillment of the requirements for the degree of

LL.M. in Human Rights

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Budapest, Hungary

2014

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ACKNOWLEDGEMENTS

The writing of my thesis would not have been possible without the help of a few important people. Firstly, I must extend my gratitude to my thesis advisor, Dr. Vladimir Petrovic for his guidance and support in the past year. Without his invaluable comments and expert advice, and most importantly, his patience, this thesis would not be half as good.

To the Legal Studies Department and Central European University, for giving me a chance to explore, both in coursework as well as during my thesis, the uncharted, the exciting and the adventurous. Attending the Human Rights program has made me a better, braver person, and I will forever be indebted to my professors because they led me to pursue the extraordinary journey of a human rights activist.

I thank all the people who helped me in Kashmir during the floods in 2014 with shelter, food and sometimes, intermittent internet. Every so often, speaking with a victim of a human rights violation will give you newer insights than consulting reference books. I also thank the human rights researchers, activists, policymakers and writers, I met between 2013 to present - thank you for understanding when I abruptly brought up my thesis and asked for your suggestions. Thank you Carmel Delshad for your help in acquiring as well as comprehending the 'I Marched Along' interviews. I would also like to thank Former Prosecutor of the ICTY, Richard Goldstone, who taught me a course at CEU, and could spare time off his busy schedule to debate and argue with me about the vagaries of the South African TRC process.

Last but not the least, I thank my amazingly strong family, and my partner. Without their constant support, I would not be able to put my (metaphorical) pen to paper.

I show my gratitude to anyone else I have forgotten to mention here. However, any inadequacies in this thesis are solely my own.

EXECUTIVE SUMMARY

In this thesis, the phenomenon of politicized sexual violence in Egypt is examined, and an effort is made to categorize it under the existing theory of 'rape as a weapon of war'. My thesis also makes an attempt to understand how South Africa and Bosnia and Herzegovina have dealt with sexual violence against women during their transitions, and whether the peculiar mechanism of truth-seeking can be considered an effective mechanism to deal with sexual violence in Egypt.

The Arab Spring in Egypt did something that no previous political agitation had done before. Not only did it help to create an atmosphere for democratic change in the country, but was also instrumental in helping women break away from the private sphere and enter public spaces to pursue protests and demonstrations. Women were at the forefront of several protests and it could be said that they single-handedly brought democratic values into Egypt as Mubarak was overthrown. However, after eighteen days of the Revolution, during its myriad transitions, Egyptian women were pushed back into the private and removed from public spaces utilizing politicized sexual violence, and this has given rise to a problematic 'revolution-within-the Revolution' paradigm. Several attempts, albeit unsuccessful, through laws and policies, have been made to eradicate this 'epidemic'.

The first component of the thesis is a background of Egyptian women's struggle with sexual violence during the Arab Spring and its classification within the gender and conflict debate. The second component is a comparison of jurisprudence of sexual violence between South Africa and Bosnia and Herzegovina, keeping the debate limited to means that involved truth-seeking measures. The last component is an examination of the under-enforcement of gender within truth commissions in transitional contexts and re-defining 'harm' for gendered crimes, something that will help Egypt to deal with its sexual violence epidemic.

Under the present political and judicial climate, standard criminal prosecutions and usual forms of punishment might not be the best option to uproot the problem of sexual violence in Egypt.

Comprehensive forms of transitional non-judicial processes, such as truth-telling, that attempt to challenge the current public/private structures and bring about normative changes are imperative.

South Africa and Bosnia and Herzegovina have battled the problem of sexual violence when they were transitioning into autonomous, democratic states. South Africa chose to use the peculiar mechanism of truth-seeking, while Bosnia, for years, has toyed with the idea of introducing a truth commission over and above the International Criminal Tribunal for Yugoslavia to deal with the past but in vain. This thesis, therefore, tries to capture the mechanism of truth-seeking for victims of sexual violence (in these two states), and unravel the under-enforcement of gender within such mechanisms for Egypt.

LIST OF ACRONYMS

AI (Amnesty International)

BiH (Bosnia and Herzegovina)

CAVR (Commission for Reception, Truth and Reconciliation)

HRW (Human Rights Watch)

ICTJ (International Center for Transitional Justice)

ICTY (International Criminal Tribunal for the Former Yugoslavia)

MENA (Middle East and North Africa)

MENA (Middle East and North Africa)

NSWCP (National Strategy for War Crimes Processing)

OHCHR (Office of High Commissioner for Human Rights)

OpAntiSH (Operation Anti-Sexual Harassment or, *Qumwa did al-taharosh*)

PSL (Egyptian Personal Status Law)

REKOM (Regional Commission)

SCAF (Supreme Council of Armed Forces)

TRC (Truth and Reconciliation)

UN (United Nations)

UNDP (United Nations Development Programme)

INTRODUCTION

1. *Background*

Various studies have been developed exploring the ways in which women speak about their traumatic experiences (of sexual violence and rape) under authoritarian regimes or in the midst of conflict¹; however, these studies have tended to place these narratives further away from their national transitional justice concerns. In the deeply divided spheres of public and private, women's experiences of human rights violations are contained within the private: inside the homes, below the blankets of domesticity and relationships, and swept away under their quotidian lives.² In the meanwhile, men's lived experiences of tyranny and war appear in the public world: these are often stories of valour and bravery, and these form the primary narratives of any state's transitional justice perspective.³

However, the amount of literature exploring the consequences of a complete and irreversible breakdown of the public/private divide, especially in the event of a violent conflict or a regime change, is rather scanty. Often with a regime change, the entrenched patriarchy within a given turbulent state intensifies giving rise to several manifestations of women's inequality – one of which is a definite pattern of sexual violence.⁴ The women of two countries, South Africa and Bosnia & Herzegovina, were victims of this very phenomenon. The accounts of women in these states is a prime example of how “violence and violation are not only contained in time, but have effects that far exceed the original moment of violence”.⁵

¹ A comprehensive number of studies have been done, amongst other organizations, at the Gender Justice department at the International Center for Transitional Justice (ICTJ). *See generally*, ICTJ, 'Gender Justice', <https://www.ictj.org/our-work/transitional-justice-issues/gender-justice> (accessed on December, 21, 2014); Vasuki Nesiah et al., *Truth Commissions and Gender: Principles, Policies, and Procedures*, ICTJ (July 2006), https://www.ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf (accessed on December, 21, 2014)

² Nthabiseng Motsemme, *The Mute Always Speaks: On Women's Silences at the Truth and Reconciliation Commission*, *Current Sociology* September 2004 52 (5): 909-932.

³*Ibid.*

⁴ Elisabeth Jean Wood, *Variation in Sexual Violence during War*, *Politics & Society* September 2006 vol. 34(3): 307-342.

⁵*Supra* note 2.

However, very few studies⁶ have tried to examine the consequences of the complete and irreversible breakdown of this public/private divide, in the midst of a violent conflict or revolution, and what these consequences can do to women's rights as a discourse. When this work was thought of, it was conceived in the throes of the oft-repeated debate - of a debate that speaks of how violence (in transitional regions) breeds silence (in the fairer sex) and whether this can be taken care of through alternative measures - that is to say, the making of new laws, utilization of a new policy, the making of another new investigative committee. My argument seemed to become more lucid as I came across more literature on this issue: at the end of my readings, there seemed to be a gaping flaw in how previous studies have dealt with the resultant effect of the collapse of public/private divide, and what previously efficient measures can help allay the situation.⁷

In this study, I use Egypt as my primary example: Egypt's tryst with the Revolution is fairly recent, but the rendezvous of Egyptian women's struggle with patriarchy is not new. This patriarchy has been responsible for an acute divide between the public and the private worlds within Egypt, like in many other countries of the Middle East and North Africa (MENA). The divide, however, was suspended during the eighteen days of the Revolution - both men and women effectively took to the streets during the Revolution, and demanded that Hosni Mubarak, the fourth President of Egypt, be removed, and that the civil liberties of Egyptians be reinstated. After these eighteen days, when Mubarak was overthrown, things changed immensely: the divide between the public and the private had been breached and the Egyptian political parties used this

⁶ Doris Elisabeth Buss, *Going Global: Feminist Theory, International Law, and the Public/Private Divide*, in CHALLENGING THE PUBLIC/PRIVATE DIVIDE: FEMINISM, LAW AND PUBLIC POLICY 360-384 (Susan Boyd ed., University of Toronto Press, 1997); Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, ON THE FRONTLINES: GENDER, WAR AND THE POST-CONFLICT PROCESS (Oxford University Press 2011).

⁷ Though my argument on the outset seems like a take on political processes to allay sexual violence, I try to delve a little deeper in the private sphere as sexual violence within homes, breeds forms of sexual violence in public spaces. For this, I rely on McWilliams and Ní Aoláin's theory on intimate partner violence in conflict and post-conflict settings, and Hoover Green's 'internal structures in sexual violence'. See, Monica McWilliams, and Fionnuala Ní Aoláin, "There is a War Going on You Know": Addressing the Complexity of Violence Against Women in Conflicted and Post Conflict Societies, *Transitional Justice Review*: Vol. 1: Iss. 2, Article 2 (2013); United States Institute of Peace (USIP), *Ending Sexual Violence in Conflict*, <http://www.usip.org/events/ending-sexual-violence-in-conflict> (June 10, 2014) <http://www.usip.org/events/ending-sexual-violence-in-conflict> (accessed on March 15, 2015).

as propaganda for the transitional justice project and the making of the new government. Moreover, sexual violence was used as a tool to remove women from public spaces and push them back into the private domain.

2. Research Problem and Question

My thesis asks the following research questions:

- (a) Whether the pattern of sexual violence against the women in Egypt during the Revolution (and beyond) can find a place within the oft-quoted and very definitive discourse of ‘rape as a weapon of war’?
- (b) Whether Egyptian women can allay their trauma of sexual violence through an unconventional remedy: the right to truth?

3. Literature Review

There has been an enormous amount of literature on the phenomenon of rape. As rape became a subject of debate in situations of war and peace, a substantial amount of literature was carved out for wartime war, which then resulted in a lot of academic studies on ‘rape as a weapon of war’. This literature, however, leaves fundamental gaps in the knowledge of situations of conflict that are not trapped in the binaries of war or peace, or of sexual abuse that is not rape. For instance, there is a gaping flaw in the literature because it presumes that all sexual abuse happens either in war or peace and leaves out greys areas such as Egypt’s episodes of mass political violence. Moreover, much of the literature is fixated on (wartime) rape, and ignores several instances of sexual abuse that is not rape, but may still have been used as a weapon of war or genocide. These questions are almost completely missing from the present literature.

Mona Eltahawy's article titled '*Why Do They Hate Us? The Real War on Women is in the Middle East*'⁸ published in April, 2012, points out to the heinousness of gender crimes in the Middle East; ironically, most of these crimes have taken place after the Arab Spring, and Eltahawy states that sexual violence against women has now become an "epidemic" in the MENA. She claims that Egypt needs a double revolution: one revolution from the tyranny of the Mubarak in the government, and the other from the tyranny of the Mubaraks in the minds of the people.⁹

During the second anniversary of the Revolution, on January 25, 2013, Operation Anti-Sexual Harassment (OpAntiSH), a joint initiative set up by many Egyptian human rights organizations in November 2012, received a total of 19 reports of sexual assaults, rapes, and other forms of gendered harassment in the Tahrir Square area.¹⁰ Amnesty International reports, in a February, 2013 publication, that these attacks were carried out on women who were well-known for their role in Egyptian women's rights movements, and activists and protestors who were actively involved in the Revolution.¹¹ The report also stated that the attacks specifically took place in the late evenings between six to ten pm around Tahrir Square, "including on Talaat Harb Street, the entrance of the Sadat metro station, behind Omar Maqram Mosque, and by Hardees fast-food chain restaurant in the square itself".¹² Thus, Amnesty International points to a specific pattern of assaults -

*"The targeted women were either approached alone or separated from their friends (...) They were encircled by the mob and then countless hands groped their bodies, including their breasts, genitals and buttocks; pulled their hair; tugged their bodies in different directions; and attempted, in some cases successfully, to remove their clothes. The women were then violently dragged while surrounded by the mob to different locations."*¹³

⁸ Mona Eltahawy, *Why Do They Hate Us? The Real War on Women is in the Middle East*, Foreign Policy Magazine (April 23, 2012), <http://foreignpolicy.com/2012/04/23/why-do-they-hate-us/> (accessed on March 30, 2014).

⁹*Ibid.*

¹⁰ Operation Anti Sexual Harassment (website), <http://interactions.eldis.org/profile/operation-anti-sexual-harassment-opantish> (accessed on January 23, 2014). See also, Elisabeth Jaquette, *The Heroes of Tahrir: Operation Anti-Sexual Harassment*, Muftah (February 4, 2013), <http://muftah.org/heroes-of-tahrir/#.VV0RHJOqqko> (accessed on January 23, 2014).

¹¹ Amnesty International, *Egypt: Gender-based violence against women around Tahrir Square* (6 February 2013) MDE 12/009/2013, <http://www.refworld.org/docid/5114e69f2.htm> (accessed on March 30, 2014).

¹²*Ibid.*

¹³*Ibid* at 6.

The above-mentioned instances seemed very similar to the state of women in South Africa during the protests against apartheid, and in Bosnia after the fall of Communism - both nations wherein sexual violence against women was a means to flout another religious, ethical, racial or political community. South Africa, in a bid to truly ‘forgive and forget’ the conflict, and also to redress the harm of the victims, went the ‘third way’¹⁴ established the Truth and Reconciliation Commission; while Bosnia and the rest of divided Yugoslavia was left to its own devices about comprehending whether turning to truth would really be a good transitional scheme.

The situation in Egypt is fairly recent, and it has been witness to a number of changes in both, the ways in which the laws on sexual violence in conflict have come of age, and the numerous new measures that have been developed, over the years, to deal with the phenomenon. Therefore, as the transitional justice perspective develops in Egypt, it has a number of best practices, around the world, to discover a path that seems most sensible for its contextual purpose.

Theoretical literature discussing the myriad struggles of Egyptian women battling sexual violence is sparse, as this is a reasonably contemporary debate.¹⁵ Mona Eltahawy, Egyptian feminist and journalist, talks about the deep-rooted hatred of women in Egypt, where the women “marched and protested have had to navigate a minefield of sexual assaults by both the regime and its lackeys, and, sadly, at times by our fellow revolutionaries”.¹⁶ She states that Arab societies, after the Spring, should hold out against cultural relativism, and prevent women from being used as “cheap bargaining chips”. Eltahawy ends with a poignant message that might as well become the war-cry of Egyptian liberal women in the region -

¹⁴ Alexander Boraine, *Truth and Recognition in South Africa: The Third Way*, in TRUTH VERSUS JUSTICE: THE MORALITY OF TRUTH COMMISSIONS 144-157 (Robert I. Rotberg and Dennis Thompson eds., Princeton University Press 2000).

¹⁵ See, Paul Amar, *Turning the Gendered Politics of the Security State Inside Out? Charging the Police with Sexual Harassment in Egypt*, 299-328, International Feminist Journal of Politics, Vol. 13 (3) (2011); Fidh, *Egypt Keeping Women Out: Sexual Violence Against Women in the Public Sphere*, https://www.fidh.org/IMG/pdf/egypt_women_final_english.pdf (accessed on March 31, 2014).

¹⁶ Supra note 9.

“We are more than our headscarves and our hymens. Listen to those of us fighting. Amplify the voices of the region and poke the hatred in its eye. There was a time when being an Islamist was the most vulnerable political position in Egypt and Tunisia. Understand that now it very well might be Woman. As it always has been.”

The debate, on Egypt’s inherent patriarchy and how it breeds the politicized sexual violence, is further enhanced by the arguments of Samia Errazzouki, a Moroccan-American writer. Errazzouki points out that this is not the first time that Egyptian women have taken to public spaces for their rights, and that Eltahawy’s article completely dismisses the nuances of a socio-economic understanding of gender inequality in the MENA.¹⁷ In Errazzouki’s view, Eltahawy has also neglected other factors such as the fragments of oppression from the era of colonialism, the rise of dictatorship regimes in the post-colonial context, the systematic omission of women from political life.¹⁸ She says that “[t]here is more to gender inequality than just “hate””¹⁹, and cites the works of Leila Ahmed and Lila Abu-Lughod. Ahmed seems to have a careful, practical retort to Eltahawy’s work - she says wars must be waged on ‘real’ things²⁰, instead of on metaphors: her core argument attacks the religious content in Eltahawy’s piece - she attributes this to Eltahawy’s access to the Western media and states that it is a false belief that “exclusively Islam (...) constitutes the dangerously deadly heart of women’s oppression in the Middle East”²¹.

With regard to literature on transitional justice and women’s rights, my thesis borrows heavily from Fionnuala Ní Aoláin and Catherine O’Rourke, both of whose academic work theorizes women’s rights in conflict areas in a way that solutions offer ways to change governmental approaches from the grassroots, altering meta-conflicts and acting upon biases that lay within patriarchal systems in countries. O’Rourke’s seminal work with Christine Bell, *‘Does Feminism*

¹⁷ Samia Errazzouki, *Dear Mona Eltahawy, You Do Not Represent Us*, Al-Monitor (April 24, 2012), <http://www.al-monitor.com/pulse/originals/2012/al-monitor/dear-mona-eltahawy-you-do-not-re.html#> (accessed on March 31, 2014).

¹⁸*Ibid.*

¹⁹*Ibid.*

²⁰ Allison Good, *Debating the War on Women*, Foreign Policy (April 24, 2012), <http://foreignpolicy.com/2012/04/24/debating-the-war-on-women/> (accessed on March 31, 2014).

²¹*Ibid.*

*Need a Theory of Transitional Justice?*²² itself helps shape my arguments in a succinct way, urging transitional justice theorists to create an inclusive post-conflict environment for women's participation in reparation and governance.

Lastly, my work borrowed from Carmel Delshad and Kirsti Itameria's 'I Marched Along'²³ project and Elizabeth Herman's 'The Voice and The Veil'²⁴ - admittedly though, in both interview sets, the representative pool is unusually small. The interview sets gave me a sense of what it means to be a woman in Egypt, post-Mubarak, and this helped me draw up the contours of this thesis.

4. Thesis Statement and Hypothesis

The objective of this thesis is to comprehend the relation between transitional justice and gender in Egypt through the lens of sexual violence during the Arab Spring, and thereafter, situate it within the already present 'rape as a weapon of war' theory²⁵, instead of establishing another new discourse. By doing this, traditional methods of reconciliation can be utilized, rather than looking for newer mechanisms; moreover, a newer discourse on sexual atrocities in war would require years of understanding legal and policy-level nuances, which will certainly create more complications in the already chaotic atmosphere in post-conflict Egypt.

A peculiar culture of impunity surrounds the revolutionary landscape in Egypt - many women's rights activists opine that the sexual violence on women protestors is possibly by state-actors, and is pre-meditated, organized and methodized, with the explicit motive of removing them from public spaces completely, and silencing their testimonies from the political narrative of Egypt. This definitive pattern of sexual violence should ideally feature in the discourse of sexual

²² Christine Bell and Catherine O'Rourke, *Does Feminism Need a Theory of Transitional Justice? An Introductory Essay*, IJTJ (2007) 1 (1): 23-44.

²³ Carmel Delshad and Kirsti Itameria, Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

²⁴ Elizabeth D. Herman, *The Voice and The Veil*, The Global Post, <http://www.globalpost.com/special-reports/egypt-women-the-voice-the-veil> (accessed in October, 2014).

²⁵ This theory states that rape is not inevitable and is certainly not by-product of war; it is, in fact, a deliberate strategy military strategy in conflict. See, Office of High Commissioner for Human Rights (OHCHR), *Rape: Weapon of War*, <http://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx> (accessed on April 10, 2014).

violence during conflict, instead of inventing a theory for it. Moreover, the Supreme Council of the Armed Forces (SCAF), after the Revolution, subjected women protestors to forced “virginity tests” and other forms of gendered violence and torture.²⁶ This is a blatant example of how already-ingrained forms of patriarchy surface, even after a revolutionary overthrow of tyranny. Moreover, sexual harassment in Egypt, in my opinion, was a sign of this patriarchy, subsumed within the radically conservative and religious fabric of the Revolution.

In my thesis, I scrutinize this bizarre form of sexual violence in Egypt - wherein women are actively being removed from the scene of protests and demonstrations through this ‘tool’. As I engage in this research, I also examine two other countries - South Africa and Bosnia - in which women were kept away from transitional justice projects, and political activities, using similar forms of sexual harassment, and ostensibly their most successful endeavour to deal with it - truth-seeking.

Through this thesis, I aim to provide an outline of the truth-seeking processes (or lack thereof) in South Africa and Bosnia for breaking the silence of women victims of sexual violence, and vet whether or not they were efficacious in the broader framework of the transitions. In addition to this, I will examine whether it makes sense for Egypt’s political scenario to go ahead with a transitional justice mechanism that emphasizes primarily on truth-seeking and storytelling measures.

5. Limitation of Study

This study deals only with women as victims of sexual violence in post-conflict systems. Both the South African and the Bosnian conflicts saw the reportage of a considerable amount of male victims of sexual violence. This pattern has not yet been observed in the studies about post-conflict Egypt, either because not a lot of men were victims of sexual assaults and rapes during

²⁶ Egypt women protestors forced to take 'virginity tests', BBC News (March 24, 2011), <http://www.bbc.com/news/world-middle-east-12854391> (accessed on April 10, 2014).

the Revolution, or that these instances were simply not reported in a country that is so vastly and fervently patriarchal. At any points in the thesis, if the word ‘she’ replaces the words ‘survivor’ or ‘victim’, it should not be assumed that there has been a generalization in the understanding of the issue but that because of the lack of evidence, the scrutiny of male victims has not been possible.

Another limitation of this work stems from the fact that rape, even today, remains a notoriously underreported crime, and therefore, the statistics have been approximated and my analysis on the issue is fragmentary.

6. Methodology

My thesis relies heavily on secondary sources such as books, scholarly articles and reports on the transitions in South Africa and Bosnia & Herzegovina, with a strong emphasis on literature on sexual violence against women. Since the situation in Egypt is recent, books and journal articles on the issue is exiguous, and therefore, I have had to depend on the tremendous amount of newspaper articles, op-eds, documentaries, interviews and NGO reports. To add empathy to analyses, I have taken the liberty to accord the thesis with an angle that includes a personal perspective. For this, I have used two sets of preexisting interviews - one titled ‘I Marched Along’ by Carmel Delshad and Kirsti Itameria, and another by Elizabeth D. Herman, in association with The Global Post, named “The Voice and The Veil”.

With a prior knowledge that the subject-matter lacks a readily available analysis of facts and theory, what was needed was an approach to integrate these two with the lived experiences of those involved in the Arab Spring in Egypt. This was what was attempted while writing this thesis. While I comprehended the problems of sexual violence through the various reports I found on the issue, I used the preexisting interview sets to substantiate these facts, and analyse the issues that I was attempting to study.

7. Thesis Structure

The thesis is organized into three chapters. The first chapter titled, “*Double Revolution: Egypt’s Fledgling Transitions and Fragile Women*”, sets a scene for further discussion on sexual violence, illustrating the plight of women in Egypt during and after the Revolution. It provides a background for understanding the role of women in Egypt’s transition, and how these very same women are being pushed out of political circles using sexual violence as a tool. The chapter also expounds on the theoretical literature available on ‘rape as a weapon of war’, and endeavours to situate the Egyptian pattern of politicized sexual violence within that continuum. In the end of the chapter, I shall connect this scholarly theory to practical incidents on the ground by analyzing preexisting interviews.

My second chapter, “*A Truth Commission That Was and One That Wasn’t: Stories of Women from South Africa and Bosnia & Herzegovina*”, will explain the history of the establishment of transitional justice processes, namely truth commissions, in both the aforementioned countries, after their respective trysts with violent revolution and conflict. It will also involve a gendered reading of the truth-seeking projects in both countries, by using sexual violence as an independent variable. In this way, it will cull out best practices, and analyze these practices against the fabric of women’s silence in post-conflict situations.

The final chapter of the thesis is titled, “*Contemporary Debates About Truth Commissions and Gross Under-Enforcement of Women’s Experiences: An Analysis*”, and it will discuss most relevant literature that connects women’s rights in conflict and transitional justice. It will, then, appraise the mechanisms in South Africa and Bosnia (discussed in chapter 2) and discuss their flaws from the gender perspective. The chapter will also delineate the definition of (gender-related) harm in conflict areas, and how this gives way to the public/private debate, which in turn, results in the deconstruction of politicized sexual violence in Egypt, how it must be readdressed, and whether Egypt, learning from South Africa and Bosnia, can develop a mechanism to combat its sexual violence ‘epidemic’.

CHAPTER 1: 'DOUBLE REVOLUTION': EGYPT'S FLEDGLING TRANSITIONS & 'FRAGILE' WOMEN

1.1 Egypt's Revolution(s) & the Politicization of Sexual Assault

"We might have removed Hosni Mubarak in Egypt, Zine El Abidine Ben Ali in Tunisia, Muammar Gaddafi in Libya and Ali Abdullah Saleh in Yemen, but until the rage shifts from the oppressors in our presidential palaces to the oppressors on our streets and in our homes – unless we topple the Mubaraks in our mind, in our bedrooms and on our street corners – our revolution has not even begun."

--- Mona Eltahawy, *Headscarves & Hymens: Time to Topple the Mubarak in our Minds*.²⁷

The standard discourse on the Arab Uprisings has taught us that what Mohammed Bouazizi of Tunisia began with his self-immolation on December 16, 2010, spread across the Middle East and North Africa into Egypt, Libya²⁸ and Yemen²⁹, and was continued by both men and women alike.³⁰ In fact, women took part in all protests and demonstrations that became a part of contemporary Arab history. Thousands of women, alongside men, regardless of age or class, demanded an end to tyranny and corruption. Their demands included an established rule of law, a non-corrupt, transparent democracy and an accountable government.³¹ However, what the discourse on the Arab Uprisings has not taught us, but would be apparent to transitional justice scholars on a rigorous analysis of the Arab Spring, is that there has been, what Fionnuala Ní Aoláin has called, a "gendered under-enforcement"³² in the MENA region after the revolution.³³

²⁷ Mona Eltahawy, *Headscarves & Hymens: Time To Topple The Mubarak In Our Minds*, SEX: Open Society Initiative of Southern Africa (June 20, 2013), http://www.osisa.org/sites/default/files/sex_01_monaeltahawy.pdf (accessed on July 4, 2014).

²⁸ Alasdair McKay (Ed.), *The Arab Spring of Discontent: A Collection from e-International Relations*, EInternational Relations (2011), www.e-ir.info/wp-content/uploads/arab-spring-collection-e-IR.pdf (accessed on March 21, 2014)

²⁹ The Spring spilled into Yemen in 2011 when a major demonstration of about 16,000 protestors demanded in the capital city of Sana'a that President Ali Abdullah Saleh must resign. Saleh resigned after announcing that he would not run for reelection in 2013, and he would not bequeath power to his son. In February 2012, a presidential election was held in Yemen where Abd Rabbuh Mansur Hadi won and was sworn in for a two-year term. *See, Arab Uprising: Country By Country – Yemen*, BBC News World (December 16, 2013), <http://www.bbc.com/news/world-12482293> (accessed on March 21, 2014).

³⁰ Kerry McBroom, *Revolutionaries: The Women of the Egyptian Uprising*, Pace University Psychology Department (May 2013), https://www.pace.edu/honors-college/sites/pace.edu/honors-college/files/Honors_College/best_of/McBroome,%20Kerry.pdf (accessed on March 22, 2014) at 7.

³¹ *Ibid.*

³² Fionnuala Ní Aoláin, *Gendered Under-Enforcement in the Transitional Justice Context*, in *GENDER IN TRANSITIONAL JUSTICE*, 59, 59-62 (Buckley-Zistel & Stanley, eds., Palgrave, 2011).

When the Spring erupted in Tahrir Square in Egypt, it was because of a video that Asmaa Mahfouz, a twenty-six year old Egyptian and the founder of the April 6th Youth Movement³⁴, had posted onto Facebook on January 18, 2011³⁵ seven days before the anti-Mubarak protests began to flourish – urging all Egyptians to challenge Hosni Mubarak’s corrupt and undemocratic government head on. She said emphatically – “I, a girl, am going down to Tahrir Square, and I will stand alone. And I’ll hold up a banner. Perhaps people will show some honor (...)”³⁶, and her call to action to all Egyptian men was crisp, “Whoever says women shouldn't go to the protests because they will get beaten, let him have some honor and manhood and come with me on January 25th they don't even have to go to Tahrir Square, just go anywhere and say it: that we are free human beings.”³⁷ Under her leadership, the April 6th Movement also printed out 20, 000 flyers with the words “I will protest on January 25 to get my rights” and steadily circulated these to the people in Cairo.³⁸ Following her appeal to compatriots for immediate action, a staggering number of people participated in the Tahrir Square demonstrations in the centre of Cairo, and there was an unprecedented participation of women, sometimes even outnumbering men - assuming leadership and carrying out heroic feats. At Tahrir, they were not women, they were Egyptians.³⁹

³³ Karima Bennouna, *Système Dégagé? Women and Transitional Justice in the Wake of the Arab Spring*, Proceedings of the Annual Meeting (American Society of International Law) Vol. 106, (March 2012), 502.

³⁴ The April 6th Youth Movement is an activist group of Egyptian activists that support El-Mahalla El-Kubra, an industrial town, that had planned to strike on the same date. They were established in 2008, and took an active part during the Revolutions. See, <http://www.6april.org/> (accessed on March 21, 2014).

³⁵ *Asmaa Mahfouz and the YouTube Video that Helped Spark the Egyptian Uprising*, Democracy Now (February 8, 2011), http://www.democracynow.org/2011/2/8/asmaa_mahfouz_the_youtube_video_that (accessed on March 22, 2014).

³⁶ Asmaa Mahfouz’s Vlog [uploaded and translated by Iyad El-Baghdadi] (February 1, 2011), <https://www.youtube.com/watch?v=SgJlgMdsEuk> (accessed on March 24, 2014).

³⁷ *Ibid.*

³⁸ *Supra* note 4 at 8. See also, Rikia Saddy, *Social Media Revolutions*, Journal of Professional Communication 1(1):31-33, 2011.

³⁹ Nadia Taher, ‘We Are Not Women, We Are Egyptians’ *Spaces of Protest and Representation*, City, Vol. 16, No. 3, 369-376 (June 2012).

However, despite their participation, the role of women in contemporary Egypt has been downplayed⁴⁰, and the influence that women protestors had on the revolution has been massively underreported.⁴¹ Moreover, there has been a significant pattern of sexual violence against Egyptian women in post-revolutionary Egypt.⁴² The first eighteen days of the revolution, men and women marched alongside each other, attacking the *ancien regime* together as one single community and, the women did not need to assert their gender on the streets.⁴³ But soon after Mubarak was ousted, Egypt's revolution began to isolate the very women that had helped to build it, and a half of Egypt's population became inconspicuous from the country's transition mandate, and an 'epidemic'⁴⁴ of sexual violence began to keep women away from the political sphere of Egypt.

Therefore, it seems that the Arab Spring in Egypt has brought about something of a paradox – a revolution that began with the aspirations of putting an end to authoritarianism, abuse and oppression, has led to a steady rise in male chauvinism and sexual violence; what started out as '*asbaab yourid isqat al nitham*'⁴⁵ shthe people want to bring down the system, or Mubarak's *Système Dégagé*⁴⁶ (system out), has now become only a re-fortification of the pre-revolutionary Egypt of Mubarak, where sexual harassment on the streets and a general feeling of gender inequality was rampant. As Yasmin Sooka, former member of the South African Truth & Reconciliation Commission (hereinafter, 'South African TRC'), very shrewdly observes the delicate link between

⁴⁰ Savitri Goonesekere, *A Rights Based Approach to Realizing Gender Equality*, UN Women DAW (2002), <http://www.un.org/womenwatch/daw/news/savitri.htm> (accessed on March 14, 2015); Deborah Brand, *Sexual Violence in the Aftermath of Conflict: The Public/Private Divide on a Global Scale*, AfricanScene, <http://www.africanscene.co.za/2010/10/sexual-violence-in-the-aftermath-of-armed-conflict-the-publicprivate-divide-on-a-global-scale/> (accessed on March 15, 2015)

⁴¹ *Supra* note 41 at 9. See, Zainab Magdy, *Egyptian Women: Performing In The Margin, Revolting In The Centre*, Open Democracy (January 23, 2012), <https://www.opendemocracy.net/5050/zainab-magdy/egyptian-women-performing-in-margin-revolting-in-centre> (accessed on March 25, 2014).

⁴² Heather McRobie, *The Common Factor: Sexual Violence and the Egyptian State, 2011-2014*, Open Democracy: 50.50 Inclusive Democracy (October 6, 2014), <https://www.opendemocracy.net/5050/heather-mcrobie/common-factor-sexual-violence-and-egyptian-state-20112014>, (accessed on December 12, 2014).

⁴³ *Supra* note 41 at 20.

⁴⁴ Heather McRobie, *Sexual Violence And State Violence Against Women In Egypt, 2011-2014*, Chr. Michelsen Institute (CMI) Insight No. 7 (September 2014), <http://www.cmi.no/publications/publication/?5226=sexual-violence-and-state-violence-against-women>, (accessed on December 12, 2014).

⁴⁵ A popular political slogan - which translates to "the people want to bring down the regime" – that was associated with the Arab Spring, and first emerged during the Tunisian Revolution.

⁴⁶ *Supra* note 7.

transitions and violence against women – “[i]f transition does not address violence against women, the violence against them increases and reinforces their marginalization ... When you hear ‘liberation first, equality after!’ you can rest assured that equality will never come.”⁴⁷

To understand the nexus between the transitions in Egypt and its tryst with gender equality, it is perhaps important to study the temporal aspect of this linkage, while simultaneously decoding the literature on gender approaches towards transitional justice. Contextualizing the gender-transitional justice debate in Egypt is imperative, as is pinning down the exact points in contemporary Egyptian history when the sexual violence ‘epidemic’ began to surface.

The unprecedented mass movements in February 2011, besides forcing Hosni Mubarak to finally relinquish power after thirty years, also disrupted preexistent notions of what urban public space is, how it should be used, and what is permitted⁴⁸ and that to a large extent, becomes canonical in developing a trajectory of sexual violence during the Egyptian revolution. After the eighteen days of demonstrations, peculiar patterns of sexual assaults and abuse began to emerge, and it is perhaps important to distinguish between the two separate types of sexual violence that Egyptian women were subjected to, during that period.⁴⁹ A lot citizen-run initiatives such as the Tahrir Bodyguard, that helped to avoid instances of sexual harassment and rescued survivors of assaults, vouch that the first type was plain opportunistic – taking advantage of women as a humongous number of protestors, of both genders, were present on the streets in metropolitans such as Cairo and Alexandria.⁵⁰ This type of sexual violence was pursued by apolitical elements, who were exploiting the fact that women were the face of these revolutionary engagements. The

⁴⁷ International Centre for Transitional Justice, *Reparations and Gender Justice: Is Egypt Ready for Transitional Justice?*, Transitional Justice in Egypt & the Arab World: Challenges & Possibilities (October 30, 2011), <http://tjcairo.ictj.org/en/reparations-and-gender-justice-egypt-ready-transitional-justice>, (accessed on December 10, 2014).

⁴⁸ *Supra* note 17 at 2-3.

⁴⁹ *Supra* note 17 at 2.

⁵⁰ Serena Hollmeyer Taylor, Amy Tan, Phoebe Sloane, Maggie Tiernan, and Faiqa Mahmood, “*When She Stands Among Men*”: Sexual Harassment of Women at Political Protests in Cairo, January 2011 – August 2013, Al-Nakhla: The Fletcher School’s online Journal on South West Asia and Islamic Civilization (June 10, 2014), <http://alnakhlah.org/2014/06/10/when-she-stands-among-men-sexual-harassment-of-women-at-political-protests-in-cairo-january-2011-august-2013/>, (accessed on December 10, 2014).

second, and more heinous, streak of sexual violence was noticed in the few months after Mubarak resigned – a large number of gang-rapes around Tahrir square, often made to coincide with the demonstrations that the women were partaking in.⁵¹ This kind of harassment was considered to be political, as it was used as a mechanism to drive away women from protesting.⁵² As the relationship between the secular student revolutionaries (the youths of the April 6th Movement that led the revolution) and the Army, that held provisional power, became more strained, the frequency of the sexual assaults, and other modes of moral-policing, by the riot police and army increased.⁵³

The political nature of these assaults, coupled with the fact that there was moral and societal policing of women through sexual harassment, means that patriarchal conceptions of gender roles in Egyptian society – in the public as well as the private sphere - were being fortified by the provisional government. In fact, there were several noteworthy instances, when the Egyptian army and riot police created international headlines, trying to keep Egyptian women out of the protests against the Supreme Council of the Armed Forces (SCAF).

In March 2011, Abdel Fattah El-Sisi, the head of military intelligence at that time, sanctioned the detention and the forced performance of so-called “virginity tests” on seventeen women protestors.⁵⁴ The justification for this action was that proving that these women were virgins would help keep at bay false accusations of rape against the army. This defense was based on the spurious grounds that only virgin women can be raped, and was grounded on archaic patriarchal notions of the ‘pure woman’; moreover, these “virginity tests”, as Mona Eltahawy opines, were essentially sexual assaults - a technique that comprised of stripping women and examining their

⁵¹*Supra* note 7 at 2.

⁵²*Supra* note 16.

⁵³ Mariz Tadros, *Politically Motivated Sexual Assault: The Egypt Story No One Wants to Hear*, The Guardian (March 11, 2013), www.guardian.co.uk/global-development/povertymatters/2013/mar/11/politically-motivated-sexual-assault-egypt, (accessed June 21, 2014)

⁵⁴ Mariz Tadros, *The Perilous Slide Towards Islamic Dictatorship?*, Open Democracy (26 November 2012) www.opendemocracy.net/5050/mariz-tadros/perilous-slide-towards-islamist-dictatorship-in-egypt, (accessed June 21, 2014)

hymens - by the army as warning to future female demonstrators.⁵⁵ Virginity tests have been outlawed in Egypt for a long time, and international organisations, such as Amnesty International, regards it as sexual abuse.⁵⁶

One case that stood out was the incident of the 'girl in the blue bra', where in December 2011, among a number of protestors demanding the end of military rule in Tahrir Square, a young veiled woman was dragged and beaten by Egyptian police⁵⁷ she was stripped to her torso, and was bare but for her blue bra, jeans and her hijab that surrounded her face "forming a kind of black halo".⁵⁸ An image depicting this horrifying scene – this girl, unresisting, being dragged by a brute military police, bare and vulnerable – became an international symbol for the injustice that Egyptian women were being subjected to, even after a revolution that had claimed liberty and freedom.⁵⁹ Hilary Clinton, former U.S. Secretary of State, stated that the image displayed "systematic degradation of Egyptian women [which] dishonors the revolution, disgraces the state and its uniform, and is not worthy of a great people."⁶⁰ Despite these incidents, protests continued in public spaces, with both men and women participating. However, sexual violence, with several instances of gang-rape, intensified in the country.

When Mohammed Morsi, from the Freedom and Justice Party, that is seen to be associated with the Muslim Brotherhood, came to power in 2012, sexual violence in public spaces had already

⁵⁵ Mona Eltahawy, *These 'Virginity Tests' Will Spark Egypt's Next Revolution*, The Guardian (June 2, 2011), <http://www.theguardian.com/commentisfree/2011/jun/02/egypt-next-revolution-virginity-tests>, (accessed on June 21, 2014). See also, Mona Eltahawy, *Egypt Has a Sexual Violence Problem*, The New York Times (June 20, 2014), <http://www.nytimes.com/2014/06/21/opinion/mona-eltahawy-egypts-sexual-violence.html>, (accessed on June 21, 2014).

⁵⁶ Riazat Butt and Abdel-Rahman Hussein, *'Virginity Tests' On Egypt Protesters Are Illegal, Says Judge*, The Guardian (December 27, 2011), <http://www.theguardian.com/world/2011/dec/27/virginity-tests-egypt-protesters-illegal> (accessed on June 21, 2014).

⁵⁷ *Supra* note 17.

⁵⁸ Ahdaf Soueif, *Image Of Unknown Woman Beaten By Egypt's Military Echoes Around World*, The Guardian (December 18, 2011), <http://www.theguardian.com/commentisfree/2011/dec/18/egypt-military-beating-female-protester-tahrir-square>, (accessed on June 22, 2014). See, Kainaz Amaria, *The 'Girl In The Blue Bra'*, NPR (December 21, 2011) <http://www.npr.org/blogs/pictureshow/2011/12/21/144098384/the-girl-in-the-blue-bra>, (accessed on June 23, 2014).

⁵⁹ Sally Quinn, *Amid The Misogyny And Violence, One Thing Stood Out: The Blue Bra*, The Washington Post (December 30, 2011), http://www.washingtonpost.com/local/amid-the-misogyny-and-violence-one-thing-stood-out-the-blue-bra/2011/12/29/gIQAq6YZQP_story.html, (accessed on June 22, 2014).

⁶⁰ Webcast: U.S. Secretary Of State Hillary Rodham Clinton, Georgetown University (December 19, 2011), <http://www.georgetown.edu/webcast/hillary-clinton-2011-12-19.html>, (accessed on June 23, 2014).

become a new problem that plagued the transitional state, and activists began to assemble in public spaces to rise against it.⁶¹ On June 8, 2012, a demonstration that began to put an end to sexual harassment in Tahrir, concluded with several mass sexual assaults, gang-rapes and violence against women, in spite of the fact that women were at the forefront of the march, who were intentionally encircled by compassionate men in solidarity.⁶² At this time, the *Banat Misr Khatt Ahmar* (The Girls of Egypt are a Red Line), an organization formed by citizens established with the rightful purpose of raising awareness about sexual harassment and the damages it causes to a transitional country.⁶³

While *Banat Misr Khatt Ahmar* primarily addressed opportunistic sexual assaults during protests, another activist group called *Qunwa did al-taharosh* (Operation Anti-Sexual Harassment/Assault, or OpAntiSH, they call themselves), founded in late 2012 to battle and document sexual harassment in urban spaces, confronts cases of pre-planned and politically motivated sexual violence.⁶⁴ The idea of politically-motivated sexual harassment is to reinforce the public-private divide by causing violence against women; these predators generally targeted women to drive them back into their homes from places of protest, or they caused “partisan assaults” in which sexual harassment was a penalty or a reprimand to women because of their political allegiance.⁶⁵ OpAntiSH has three types of members - firstly, the confrontations group, whose primary responsibility is to directly confront sexual harassers through physical force; secondly, there is the safety group, which helps to remove the victim from the scene of crime to a safe place such as her home, the hospital or an calling for an ambulance; lastly, the core group, whose

⁶¹ Karuna Chandwani, *Nearly 100 Women Sexually Assaulted, Raped in Egypt's Anti-Morsi Protests*: HRW, International Business Times (July 8, 2013), <http://www.ibtimes.co.in/nearly-100-women-sexually-assaulted-raped-in-egypt039s-anti-morsi-protests-hrw-486610> (accessed on June 25, 2014).

⁶² *Supra* note 44.

⁶³ Randa Ali, *Egypt's Revolution continues: One Chant at a Time*, Aharam Online (January 23, 2012), <http://english.ahram.org.eg/NewsContent/1/114/32335/Egypt/-January-Revolution-continues/Egypt-Revolution-continues-One-Chant-at-a-Time.aspx> (accessed on June 25, 2014).

⁶⁴ *Supra* note 11.

⁶⁵ *Supra* note 44.

responsibility is primary coordination between OpAntiSH and the civilians for knowledge on the locations of these incidents.⁶⁶

Morsi's government did very little to the growing sexual violence problem in Egypt at that time, and very soon the fissure between the secular activists and the Muslim Brotherhood supporters gave way to extreme sexual violence being a part of these clashes. Morsi came under heavy criticism by the OpAntiSH for turning a blind eye to women's rights issues⁶⁷ and how there were fundamental problems in combating politically motivated sexual violence - problems in prosecution of sexual harassment cases, and in documentation of those cases within the larger context of the criminal justice system, as well as responses towards complaints of these sexual violence cases by the police.⁶⁸ Even in the international arena, Morsi was criticised for his (non) response to the 2012 UN Declaration that made a call to action to end to violence against women - the Morsi government claimed that remedying the problem would cause the "disintegration of [Egyptian] society".⁶⁹

The Egyptian woman became a pawn between two politics sects – the secular revolutionaries and the Islamists, and the clashes between them had become intense with Muslim Brotherhood supporters targeting women of the opposition – the “enemy women” of the regime⁷⁰ heprimarily to keep them away from demonstrating in public spaces. On the second anniversary of the revolution, January 25, 2013, it was recorded that there were about twenty-five gang rapes in and around political demonstrations in Tahrir square alone, including the infamous incident of Hania Moheeb, a journalist of Egyptian origin, who was sexually harassed because of her occupation, as

⁶⁶*Supra* note 11.

⁶⁷ Vivienne Walt, *Women's Rights at Odds in Egypt's Constitution Wars*, Time (December 9, 2012), <http://world.time.com/2012/12/09/womens-rights-at-odds-in-egypts-constitution-wars/> (accessed on June 25, 2014).

⁶⁸ Jenny Montasir, *Egypt's women pushback against threats to human rights one year after Morsi*, Women News Network (2013), <http://womennewsnetwork.net/2013/06/29/egypts-women-pushback/> (accessed on June 25, 2014).

⁶⁹ Patrick Kingsley, *Muslim Brotherhood backlash against UN declaration on women rights*, The Guardian (March 15, 2013), <http://www.theguardian.com/world/2013/mar/15/muslim-brotherhood-backlash-un-womens-rights> (accessed on June 25, 2014).

⁷⁰*Supra* note 43.

well as for being at loggerheads with the Islamic government's political decisions.⁷¹ In February 2013, the Human Rights Committee of the Egyptian Shura Council issued a declaration that stated that if women get on the streets and join men in demonstrations, then, they must bear responsibility for the sexual assaults they face.⁷²

With secular protests against Morsi and his controversial Presidential powers, the Egyptian Army claimed a second revolution, or what has been known to be the 'restoration' of the revolution, on June 30, 2013. Even during this *coup d'état* against the Morsi government by the Army, cases of politicised sexual violence intensified, with each side blaming the other for violence against women. A staggering number of 91 cases of sexual assaults on women were documented within four consecutive days after Morsi's ousting, and Human Rights Watch dubbed it an 'epidemic' singularly prevailing inside the transitional nation of Egypt.⁷³ After Morsi, the interim President Aldy Mansour, who was selected by the head of the armed forces, El-Sisi, authorized a law specifically designed to prohibit sexual harassment – while the law defined the crimes and the punishment, its content does not acknowledge the right to bodily and places emphasis on public morality; makes the offence contingent on stalking or following the victim; it also fails to provide for adequate implementation of the law by empowering survivors to prosecute offenders;⁷⁴ for instance, the law stated that a woman who claims sexual harassment must bring two witnesses with them while reporting her case.⁷⁵ There has been considerable academic discussion in contemporary Egypt on how sexual violence entered the political discourse⁷⁶, and remained a

⁷¹ Human Rights Watch (HRW), *Egypt: Epidemic of Sexual Violence*, (July 3, 2013), <http://www.hrw.org/news/2013/07/03/egypt-epidemic-sexual-violence>, (accessed on June 27, 2014).

⁷² Rana Muhammad Taha, *Shura Council members blame women for harassment*, Daily Egypt News (February 11, 2013), <http://www.dailynewsegypt.com/2013/02/11/shura-council-members-blame-women-for-harassment/> (accessed on June 27, 2014).

⁷³ *Supra* note 71.

⁷⁴ Yasmin El-Rifac, *Egypt's Sexual Harassment Law: An Insufficient Measure to End Sexual Violence*, Middle East Institute (July 17, 2014), <http://www.mei.edu/content/at/egypts-sexual-harassment-law-insufficient-measure-end-sexual-violence> (accessed on July 19, 2014).

⁷⁵ Al Jazeera Staff, *Egypt still has a sexual assault problem*, Al-Jazeera (July 17, 2014), <http://america.aljazeera.com/articles/2014/7/17/egypt-still-has-a-sexual-assault-problem.html> (accessed on July 19, 2014).

⁷⁶ *Supra* note 74; *Supra* note 55.

significant criticism for the Morsi government's grip on state affairs, despite the fact that the military as well as the riot police have also been responsible for the same.

El-Sisi assumed presidency in Egypt in June 2014 claiming a landslide victory. Under him, the issue of sexual violence in Egypt gained completely new perspectives. He introduced a new law curbing the way public protests function, in order to reduce assaults on women during demonstrations.

1.2 Plotting Politicized Sexual Violence in the Gender & Conflict Debate

According to Mariz Tadros, sexual violence that is motivated by politics is frequently utilized along with various other types of violence in order to “enforce or consolidate power and eliminate the opposition”⁷⁷, such as torture, incarceration and vilification by the media. While my paper deals with politicized sexual violence in contemporary post-revolutionary Egypt, it is significant, so as to comprehend the culture of politically motivated gender-based violence in Egypt, that Mubarak's regime has used this tactic extensively to intimidate his opposition.⁷⁸ These tactics were mostly exercised by the secret police in its premises, as well as by thugs of the authoritarian regime. For instance, on May 25, 2005, during a demonstration of the Kefaya Movement – where activists were protesting against the supposed hereditary transfer of power from Hosni Mubarak to his son, Gamal, and demanding constitutional amendments for multi-party elections to commence – several female activists were sexually assaulted, including the late journalist, Nawal Ali.⁷⁹ This incident was condemned by both international as well as national observers.⁸⁰

⁷⁷Mariz Tadros, *Politically Motivated Sexual Assault and the Law in Violent Transitions: A Case Study from Egypt*, The Institute of Development Studies: Evidence Report 8 (June 26, 2013), <http://www.ids.ac.uk/publication/politically-motivated-sexual-assault-and-the-law-in-violent-transitions-a-case-study-from-egypt> (accessed on October 15, 2014).

⁷⁸*Ibid.*

⁷⁹ Egypt Independent, *This Day in History, 25 May 2005: Mubarak thugs sexually assault journalist Nawal Ali* (May 25, 2013), <http://www.egyptindependent.com/news/day-history-25-may-2005-mubarak-thugs-sexually-assault-journalist-nawal-ali> (accessed on October 15, 2014).

⁸⁰See, Reporters Without Borders, Open letter to President Hosni Mubarak in Egypt's electoral year (May 27, 2005), http://archives.rsf.org/article.php3?id_article=13942 (accessed on October 15, 2014); Egypt Independent, *Kefaya: The*

While it was not uncommon for Mubarak to relinquish his opposition through sexual assaults, these assaults were more or less rare in comparison to the Egypt after Mubarak. This is because the number of women joining protests in pre-revolution Egypt were considerably low. During the revolution in 2011, the differences and hierarchies of gender gave way to founding a new democracy and citizenry: women became the face of the revolution; they led to the movements, they gave speeches, slept overnight in the tents in the centre of Cairo.⁸¹ After Mubarak's resignation, the Supreme Council of Armed Forces (SCAF) assumed power – an event that was praised because it was a short-lived transitional step before democratic elections could take place.⁸² However, as the Army grew more iron-fisted, people began to protest and this is when an informal accord was reached between the SCAF and the Muslim Brotherhood – the latter becoming a key player in quashing the opposition, using a variety of methods, especially sexual harassment and assaults in public spaces.⁸³ Although no ready evidence can be advanced that these attacks against women protestors were for political purposes, there are two reasons why this can be assumed: firstly, these incidents happened in public spaces, such as Tahrir Square, and while protests were in place; and secondly, mostly protestors were targeted – that is to say that civilian women who attended these protests, as opposed to the ones who stayed at home, were attacked.⁸⁴

To make sense of politically motivated sexual violence, first, the concept in itself, and then, in the context of Egypt, it is important to locate it inside the spectrum of gender under-enforcement in transitional justice.⁸⁵ This is a necessary exercise as the debate on rape, especially wartime rape, often leaves out unusual scenarios such as rapes in situations where there is no

origins of Mubarak's downfall (December 12, 2011, <http://www.egyptindependent.com/news/kefaya-origins-mubaraks-downfall>) (accessed on October 15, 2014).

⁸¹*Supra* note 31 at 8.

⁸² Chris McGreal and Jack Shenker, *Hosni Mubarak resigns – and Egypt celebrates a new dawn*, The Guardian (February 11, 2011), <http://www.theguardian.com/world/2011/feb/11/hosni-mubarak-resigns-egypt-cairo> (accessed on October 15, 2014).

⁸³*Supra* note 77.

⁸⁴*Supra* note 12.

⁸⁵ Fionnuala Ní Aoláin, *Gendered Under-Enforcement in the Transitional Justice Context*, in GENDER IN TRANSITIONAL JUSTICE, 59 – 87 (Buckley-Zistel & Stanley, eds. Palgrave, 2011).

declared war or substantive peace. Moreover, the discourse also disregards the use of various other means of defined and undefined forms of sexual abuse that is not rape but is used as a weapon of war.

My argument is to situate politically motivated sexual violence within the discourse of 'rape as a weapon of war', as a sub-type of gender-based violence in conflict. Postulates of the 'rape as a weapon of war' discourse states that sexual violence is reflective of a function or a purpose in conflict scenarios: to this effect, it has been referred to 'engine of war', 'war tactic', and 'instrument of genocide'.⁸⁶ To the reader, it might seem like a far-fetched alternative, instead of simply the creating a new discourse that honours the subject of politicized sexual violence only⁸⁷ To this has been done in the past, although it is still a nascent subject. However, the premise of sexual violence in conflict as well as politically motivated sexual violence is substantially analogous. Both, for a long time, have been seen as an inevitable 'by-product' of hostilities between belligerents, but very recently, it has been discovered that they are planned and targeted policies⁸⁸ - instrumental to the conflict. Both have a "systematic, pervasive, or officially orchestrated aspect"⁸⁹ - they are in no way "random acts, but appear to be carried out as deliberate policy"⁹⁰.

There might be a befitting retort that the application of 'rape as a weapon of a war' as a theory in the Egyptian scenario makes for a problematic situation as the Arab Spring (in Egypt or elsewhere) did not begin as a war, and nor was it explicitly referred to as international or non-international armed conflicts. The Revolution in Egypt is perceived as a revolution, an act of rightful civil disobedience – a simple act of protest to overthrow totalitarian leader and procure

⁸⁶ Doris Elisabeth Buss, *Rethinking 'Rape as a Weapon of War'*, Fem Leg Stud (2009) 17:145-163.

⁸⁷ *Supra* note 77.

⁸⁸ UN Security Council, Security Council Resolution 1820 [on acts of sexual violence against civilians in armed conflicts], S/RES/1820 (2008), (June 19, 2008).

⁸⁹ *Supra* note 86.

⁹⁰ *Supra* note 86.

liberal democratic values and equal rights.⁹¹ However, such oversimplification is a blatant mistake when delineating the Egyptian Revolution from a sexual violence perspective. Analyzing the Egyptian situation from a peace studies angle would reveal that Egypt before, during and, now, even after the Revolution and three unsuccessful transitions, has been a thriving hot-bed of a culture of impunity where sexual violence was used as a political tool to keep women away from governmental processes.⁹² Therefore, the question arises whether one can afford to distinguish between war, peace and war-like situations when it comes to gender violence.

Eric Hobsbawm, in his seminal work, 'War and Peace in the 20th Century'⁹³, has written extensively on how the line between conflicts, both intra- and inter-state, has become blurred because "the 20th century was characteristically a century not only of wars, but also of revolutions and the break-up of empires."⁹⁴ He also talks about how "the clear distinction between war and peace became obscure", and how situations of neither "peace" nor "war" became dominant, thereby, creating an array of situations that were in the grey area of war and peace.⁹⁵

'Rape as a weapon of war' as a theory, then, as a narrative, as Crawford *et al.* explain, is "disastrously incomplete".⁹⁶ Traditionally, the narrative is perceived to include only instances of rape or sexual violence in absolute war scenarios, where such instances occur involve discipline, and may have been ordered from the top-down, but leave out instances of sexual violence in war-like situations, like that of a revolution, where indifference or an absence of orders may lead

⁹¹ Stanford Encyclopedia of Philosophy, *Civil Disobedience* (January 4, 2007; edited on December 20, 2013), <http://plato.stanford.edu/entries/civil-disobedience/> (accessed on April 22, 2015).

⁹² Nathan J. Brown, Egypt's Failed Transition, *Journal of Democracy: Tracking the "Arab Spring"*, 24(3) (October 2013), <http://www.journalofdemocracy.org/sites/default/files/Brown-24-4.pdf> (accessed on April 30, 2015).

⁹³ Eric Hobsbawm, *War and Peace*, *The Guardian* (February 23, 2002), <http://www.theguardian.com/education/2002/feb/23/artsandhumanities.highereducation> (accessed on May 15, 2015).

⁹⁴ *Ibid.*

⁹⁵ Galtung's theory of negative - the mere absence of war, and positive peace - constructive resolution of the conflict. Later, in 2012, Fontan converts Galtung's rhetoric to the notions of "peace" and "not peace", thus, accommodating a plethora of scenarios that are not peace, but cannot be explicitly considered war either. See, Claske Dijkema, *Negative versus Positive Peace*, Ireenes.Net (May, 2007), http://www.ireenes.net/bdf_fiche-notions-186_en.html (accessed on May 15, 2015); Victoria Fontan, *DECOLONIZING PEACE* (Dignity Press, November 2012).

⁹⁶ Kerry F. Crawford, Amelia Hoover Green and Sarah E. Parkinson, War-time sexual violence is not just a 'weapon of war', *The Washington Post* (September 24, 2014), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/09/24/wartime-sexual-violence-is-not-just-a-weapon-of-war/> (accessed on May 15, 2015).

to an opportunistic but organized occurrences of rapes to prevent women from claiming public spaces, or to punish another political party by “violating their women”.⁹⁷ These scenarios may have been unthought-of during a period of absolute war, but since war and peace, in themselves, have been become such pliable concepts, it would only be fitting that ‘rape as a weapon of war’ too becomes an elastic notion.

My argument, therefore, revolves around the fact that Egypt, since the revolution, has been in a state of, what one would call, unsustainable peace or in a state of disturbed peace and on occasions, lapses into a state of lawlessness – in a grey area between war and peace.⁹⁸ Thus, in this case, we may look at Egypt’s politicized sexual violence problem as subsumed well within ‘rape as a weapon of war’.

In her momentous work, *‘Against Our Will: Men, Women & Rape’*, Susan Brownmiller states that “Man’s discovery that his genitalia could serve as a weapon to generate fear must rank as one of the most important discoveries”.⁹⁹ She states that while sexual violence is used both during war as well as peace to instil fear amongst women, in times of war, rape is used both as a means to attack women, as well as ‘injure’ the enemy.¹⁰⁰ As Brownmiller cogently explains, it “is a message passed between men – vivid proof of victory for one and loss and defeat for the other”.¹⁰¹ In Ni Aolain’s words – “In contexts of armed conflict, violence against women is a specific and determinative method and means of warfare, precisely intended to target the civilian community, shatter social bonds and fray cultural integrity.”¹⁰² McClintock as well as Anthias and Yuval-Davis, while exploring ideologies of gender and nationalism, affirm that women are essentially seen as the “symbolic representations of the body politic”, to be attacked and protected during

⁹⁷United States Institute of Peace (USIP), *Ending Sexual Violence in Conflict*, <http://www.usip.org/events/ending-sexual-violence-in-conflict> (June 10, 2014) <http://www.usip.org/events/ending-sexual-violence-in-conflict> (accessed on March 15, 2015)

⁹⁸*Ibid.*

⁹⁹ Susan Brownmiller, *AGAINST OUR WILL* (Ballantine Books 1975) (May, 1993).

¹⁰⁰*Supra* note 86.

¹⁰¹*Supra* note 102.

¹⁰² Fionnuala Ní Aoláin, Women, *Vulnerability and Humanitarian Emergencies*, *Minnesota Legal Studies Research Paper No. 10-27* (May 19, 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1611818 (accessed on October 29, 2014).

war, akin to a country.¹⁰³ Buss expounds on this theory further by stating that “Women, thus, become the embodied boundaries of the nation-state, and as such, are targets for violence directed against a national collectivity”.¹⁰⁴

Indeed in the Egyptian scenario, it is true that aggression against women during protests is not only to cause humiliation to the victim, but also to cause disgrace and dishonour to her family, her community and possibly, even to the political party whose loyalty she shares. As Mona Eltahawy, Egyptian-American journalist addressing the ‘Egypt, the Arab World & the War on Women’ theme in the All About Women 2014 conference in Australia, expounds –

*“...What happens is that our bodies as women become battlefields. Proxy battlefields, and sometimes direct battlefields in which the regime attacks me to emasculate the men, and the men must then feel that they must defend me to get back at the regime. And where am I in this equation? I don’t want to be attacked or protected. I want to be an equal part of what is going on, and it is my right to dismantle that regime (...)”*¹⁰⁵

Thus, it can be safely assumed that the phenomena of gendered violence during conflicts and patriarchy are deeply linked, that “masculinity is deeply tied to violence in conflicted societies”.¹⁰⁶ Ní Aoláin successfully borrows from Martha Fineman’s work ‘The Vulnerable Subject and The Responsive State’ to make sense of this nexus and how it affects gender inequality, and how that in turn provides for a framework that makes it easier for the state to justify violence against women on arbitrary grounds, for instance, during politically motivated sexual assaults.¹⁰⁷ She states that instead of perceiving episodes of gender violence in times of conflicts as isolated phenomenon completely detached from fundamental societal gender inequality, it is imperative to identify that a derivative of layered violence wherein “pre-existing

¹⁰³ See, Floyia Anthias and Nira Yuval-Davis, *RADICALIZED BOUNDARIES: RACE, NATION, GENDER, COLOUR AND CLASS AND THE ANTI RACIST STRUGGLE* (Routledge London, 1993); Anne McClintok, *IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEXT* (Routledge New York, 1995).

¹⁰⁴ Doris Elisabeth Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 25 Windsor Y.B. Access Justs 3 2007.

¹⁰⁵ MONA ELTAHAWY, *EGYPT, THE ARAB WORLD AND THE WAR ON WOMEN*, IDEAS ON THE HOUSE: SYDNEY OPERA HOUSE – ALL ABOUT WOMEN (APRIL 17, 2014), <HTTPS://WWW.YOUTUBE.COM/WATCH?V=U61W2OU3YFK> (ACCESSED ON OCTOBER 30, 2014).

¹⁰⁶ *Supra* note 5.

¹⁰⁷ Martha Fineman, *The Vulnerable Subject and The Responsive State*, 6 (2) Emory Law Journal (2010) 251-276.

and normalized violence for women is exploded”¹⁰⁸ and this bares them to even greater violence, insecurity and misogyny.¹⁰⁹ Thus, it is clear that politically motivated sexual violence is widely practiced - sometimes in covert activities such as virginity tests, and at other times, in the form of public assaults, gang-rapes and the like – by the state is an exploitation of the already intact gender hierarchy entrenched in Egyptian society.¹¹⁰ The revolution, Mubarak’s abdication and El-Sisi as president only intensified a vulnerability that previously existed in Egypt. As Catherine MacKinnon has rightly said – “*Sexual violence is central to gender inequality, not outside it or a subdivision of gender-neutral violence that just happens to hit women... the everyday sexuality of masculinity and femininity exists on a continuum with the aggression that becomes violence against women (...)*”¹¹¹.

Sharon Marcus weaves a stimulating argument in her examination of legal and political responses to rape in society: she states that there should be an approach that does not see sexual violence as a fundamental fact of women’s lives¹¹², but as “a language through which gender inequality is defined, altered, and potentially contested”.¹¹³ She makes use of the term “rape script” to denote sexual violence as a process, instead of a malaise, that drives as well as scripts anew the standings and types of gender inequality. The subject-matter of the rape script is varied, and is driven by what she calls as the ‘gendered grammar of violence’, where in grammar stands for rubrics that allocate positions of people within the script.¹¹⁴ An intriguing argument that runs parallel to Marcus’ is by Cahn and Ni Aolain.¹¹⁵ It states that the possibility of sustainable and positive peace is deterred when a society has an embedded gender hierarchy, and this increases the probability of conflict; in fact, gender inequalities that are somewhat deeply institutionalized

¹⁰⁸ David C. Gray and Benjamin A. Levin, *Feminist Perspectives on Extraordinary Justice* in FEMINIST PERSPECTIVES ON TRANSITIONAL JUSTICE 76 – 80 (Fineman and Zinsstag eds., May, 2013).

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Catherine MacKinnon, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES, 109 (Harvard University Press November, 2007)

¹¹² *Supra* note 86.

¹¹³ Sharon Marcus, *Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention*, in *Feminists Theorize the Political* 385- 403 (Judith Butler and Joan Scott eds., Routledge New York, 1992).

¹¹⁴ *Ibid.*

¹¹⁵ Naomi Cahn and Fionnuala Ní Aoláin, *Gender Masculinities and Transition in Conflicted Societies*, 44 New Eng. L. Rev. 1, 7 (2009).

construct differences between groups of people, which in turn becomes the rationale for “treating people worse not only will appear to be, but will indeed be, reasonable and not arbitrary at all”.¹¹⁶

Applying this in the Egyptian scenario, however, is tricky, especially because of Egypt’s spurious relationship with state feminism. After 1956, under Abdel Gamal Nasser and the Arab Socialist Union Party, women received voting rights and freedom of political participation, and Egyptian Personal Status Law (PSL) were reformed in relation to women’s rights.¹¹⁷ He also universalized female education. Mubarak carried this propaganda forward in 2009 when he introduced an electoral law, that set a minimum quota of 64 women in his 454 member People’s Assembly, and outlawed, female genital mutilation.¹¹⁸ Mubarak had a way of championing his cause of women’s rights to create a rift between Islamists and the secular opposition, and especially to secure financial aid from foreign donors; moreover, women’s organizations worked under the careful scrutiny of the regime.¹¹⁹ Along with Mubarak’s state feminism, there remained a morbid orthodoxy in male attitudes towards discrimination against women both in the public and private spheres.¹²⁰ A gender hierarchy that was being dismantled, was caught in the web of Islamist versus secular interests, and that became a rationale for introducing politically motivated sexual violence – a deliberate and orchestrated strategy, that has an organized and systematic aspect in society, in this case, to keep Egyptian women away from public spaces, and from essentially participating in politics - by the state itself.¹²¹

I want to consider politically motivated sexual violence as a sub-type of rape as a weapon of war is because revolutions belong to a category of mass political violence, and any type of sexual

¹¹⁶*Ibid.*

¹¹⁷Nadje S. Al-Ali, *Women’s Movements in the Middle East: Case Studies of Egypt and Turkey*, Geneva: United Nations Research Institute for Social Development (2002), <https://eprints.soas.ac.uk/4889/> (accessed on November 2, 2014).

¹¹⁸ Elisabeth Johansson-Nogués, *Gendering the Arab Spring? Rights and (in)security of Tunisian, Egyptian, and Libyan women*, Security Dialogue 44 (5-6) (October 2013), 393-409.

¹¹⁹*Ibid.*

¹²⁰*Ibid.*

¹²¹*Ibid.*

violence occurring in these contexts must be also treated as a weapon of mass political violence. Paraphrasing Jean Franco's rationale: it would keep us focused on the manipulated and planned use of sexual violence in conflicts, whether it be wars or revolutions, and would help us comprehend the trauma that this weapon inflicts on individuals, families and entire communities.¹²² Sexual violence in a politicized context, such as Egypt's, when seen as a strategized and planned policy¹²³, is effective as it is an objective manner to deal with the persistent trauma attached to the victim. Most importantly, an analysis of sexual violence under this discourse would relieve international lawyers, expert academicians, and respected judiciary on tribunals from faltering on the face of proving a political dimension - a political *mens rea*, if you will - of the gender-based violence.¹²⁴ Therefore, positioning politicized sexual violence in Egypt inside the 'rape as a weapon of war' continuum would uncover the political element in these cases, which would make post-conflict reconstruction from a gender perspective easier.¹²⁵

A dilemma that creeps up while fitting the Egyptian situation into the neatly-demarcated, albeit growing, definition of rape as a weapon of war, is that it may exclude various instances of gendered violence outside that definition, such as violence that does not fit into the conventional rape-script or happens in the aftermath of a conflict, where the perpetrator and the victim belong to different sides and have strategized needs. This problem is bound to surface in Egypt as the transition is not yet complete, and laws and their implementation are still fairly nascent. Ross and Nikolic-Ristanovic have both expressed their concern about this problem¹²⁶ while examining case studies from South Africa and the Former Yugoslavia, respectively – two countries whose trysts with gender and transitional justice that I borrow for my work. Ross illustrates how the South African Truth & Reconciliation Commission (hereinafter 'South

¹²²*Supra* note 86.

¹²³*Prosecutor v. Jean Paul Akayesu*, Case No. ICTR-96-4-T (Chamber 1), September 2, 1998, <http://69.94.11.53/default.htm> (accessed on November 20, 2014).

¹²⁴*Supra* note 118.

¹²⁵*Supra* note 118.

¹²⁶ Nicola Henry, *The Fixation of Wartime Rape: Feminist Critique and International Criminal Law*, Social & Legal Studies 1-19 (2013).

African TRC) stressed on a pre-defined rape script that removed the systematic suppression of women, by the Apartheid regime as well as the opposition, from the purview of the transition. In the Former Yugoslavia, as Nikolic-Ristanovic observes, that rape and sexual violence in Bosnia had twisted the boundaries of rape as a weapon of war as it was used in conjunction with other war strategies such as enforced disappearances, forced pregnancy, all of this amounting to genocide.¹²⁷

Discussions about politicized sexual violence will eventually all lead to what can be done to allay the plight of the survivors, which brings us to questions about how the discourses on gender and transitional justice can cross-cut each other to provide for effective mechanisms. Bell and O'Rourke talk about efforts to 'add' the aspect of gender in transitional justice programs, in relation to how sexual violence in conflict is legally treated, which can be secured by identifying and incorporating women's experiences of gender-based violence in conflict into building the narrative of the impending transition.¹²⁸ Karima Bennouna's argument for developing a gender perspective within the transitional mechanisms after the revolutions of 2011 is simple: she suggests that one must stretch out and "re-imagine" the extant discourse of transitional justice to guarantee women's rights in the MENA.¹²⁹ Bennouna also makes for an interesting synthesis of gender and transition by proposing two methods. The first, she says, to treat impunity and 'gender under-enforcement' as a significant element of transitional justice – this would mean providing complete access to justice to the women who were victims of the former regime, including special mechanisms to redress sexual violence.¹³⁰ This method has also been advanced by Fionnuala Ní Aoláin. The second approach is to exploit the gender-transitional justice nexus by making objective goals on social justice and fairness, especially advocating for equality for

¹²⁷*Ibid.*

¹²⁸*Supra* note 23.

¹²⁹*Supra* note 34.

¹³⁰*Supra* note 34.

women.¹³¹ In my view, both methods should be married in a way that along with alleviating and compensating the survivors of politicized sexual violence, a gender aspect, stemming from the experiences of these women, is also entrenched in the societal fabric of Egypt. This academic work, however, only deals with the former method of building an accountability mechanism in Egypt for politicized sexual violence against women.

1.3 Analysis of Interviews

While this thesis consists majorly of deriving from theory on conflict and women's rights, I will also analyze two sets of preexisting interviews that add evidence to theory and help me expound on the Egyptian situation better. The first set of interviews was made available to me by Carmel Delshad's "I Marched Along" project, a capstone initiative that Delshad and Kirsti Itameria developed during their term at the CUNY School of Journalism; these interviews explore how the uprisings had impacted their everyday life. The second set of interviews, called "The Voice and The Veil", by Elizabeth D. Herman, is in collaboration with The Global Post and seeks to indicate how Egyptian feminism was used to "turn revolutionary hopes into real equality for women". A recurring theme in both sets seems to be the rampant sexual violence on the streets of Egypt, during and after the revolution – a reason I chose to incorporate these preexisting interviews, and not any other set, in my work.

1.3.1 'I Marched Along' Interview Set

In Delshad and Itameria's "I Marched Along" project¹³², it seems that the participants were chosen at random, though concrete information does not exist on how the participants were selected. They differ in age – from youth to middle age – and are from varied socioeconomic classes; in the interviews, their actual names and occupations are revealed to the audience. The interviews were conducted by an unseen interviewer, who asks a series of questions to the interviewees; these documentary-style interviews were then edited and published on the website

¹³¹*Supra* note 34.

¹³²*Supra* note 23.

in a list of videos which are between two and ten minutes in length. None of the raw footage is available on the website. Four of the twelve interviews were conducted in Arabic and then, were translated into English by the researchers; the other participants chose to respond in English.

The participants in the “I Marched Along” project do not make up a cross-section of the population, and the views expressed by them may not be attributed to the Egyptian population.¹³³ Generally speaking, the sample is not representative and in no way, generates any momentous statistical data. However, the project gives an in-depth insight on the lived-experiences of people in Egypt – activists and the common man alike – and how these have molded the way they think about the revolution.

An analysis of the interviews would begin on how the participants viewed feminism, and what it could mean in the context of the January 25 uprisings. Most of the participants did not use the language of feminism in their responses. Participant Three¹³⁴, Lilian Wagdy, a citizen journalist, in the video she featured in, directly referred to the “feminist movement”; she also stated, in very classical feminist language, that during the revolution, she did not feel the need to “assert her gender”. On the other hand, Participant Seven¹³⁵, Bothaina Kamel, whose story is also covered by Herman’s project, very conscientiously distances herself from the feminist movement within the Uprisings – “I am not a feminist”, she echoes; Kamel was running for public office when her interview was conducted, her responses interspersed with footage from her presence in protests and demonstrations, and believed that gender must be disregarded when voting for qualified candidates. Participant One¹³⁶, Esraa Abdel Fattah, one of the founding members of the April 6th Youth Movement, takes the middle path: she does not mention the word ‘feminist’ in her responses, but her answers are characteristic of the model of feminism in the United States – she

¹³³Supra note 30.

¹³⁴Carmel Delshad and Kirsti Itameria, ‘Lilian Wagdy’, Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

¹³⁵Carmel Delshad and Kirsti Itameria, ‘Bothaina Kamel’, Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

¹³⁶Carmel Delshad and Kirsti Itameria, ‘Esraa Abdel Fattah’, Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

emphasizes the importance of women in Egyptian politics and believes that women's empowerment is in "political life". Despite subscribing to views that support the equality of women, Participant One is unwilling to use the feminist label on herself, and not without reason. Egyptian women have shown blatant resistance to the label as it has been said to reek of "Western imperialism and sexual liberation".

Participant Three¹³⁷ also states how during the uprisings, for the first time, she did not feel the need to "assert her gender" in the streets, and how it felt "normal" to protest alongside men she did not know. She even reported the blurring of gender roles when she said that men and women did similar activities - "we were both throwing rocks at tanks, we both put our lives in danger". Participant Three also turns our attention to the fact that this was first time ever that women came out to the public spaces in Egypt, occupying what had been so far perceived as exclusively men's spaces - "the feminist movement is part of the street movement ... now, women will go to the streets".

Participant Five¹³⁸, Tarek Mostafa, seemed to give an important male perspective on the rights of Egyptian women. He states that the only way to "liberate women... is to liberate everyone" - more rights for Egyptian citizens would result in more rights for Egyptian women. This leads to the age-old question whether women's rights should be subsumed within human rights. It is intriguing that Participant Five, despite claiming to be a "fighter for women's rights", would place the attainment of women's rights after the rights of all citizens.

There are two other male perspectives present in the interview set - participants Two¹³⁹, Alaa Al Aswany, and Twelve¹⁴⁰, Ahmed Awadalla, both bring different talking points to the table.

Participant Twelve talks about employing a "multi-sector approach" to fill the gaps that the laws

¹³⁷ Supra note 134.

¹³⁸ Carmel Delshad and Kirsti Itameria, 'Tarek Mostafa', Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

¹³⁹ Carmel Delshad and Kirsti Itameria, 'Alaa Al Aswany', Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

¹⁴⁰ Carmel Delshad and Kirsti Itameria, 'Ahmed Awadalla', Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

and policies leave when trying to allay sexual harassment in Egypt and recognizes that education and awareness are primary tools of this approach. He also states that gender equality in Egyptian society is “too ideal a battle”, and proposes that gender equity instead of equality and believes that the Revolution has opened up many doors for this. Participant Two talks about the role of religion in gender equality and states that women’s rights cannot be isolated from the rights of all Egyptians, echoing Participant’s Five’s responses. It is very evident from his responses that he does not prioritize the women’s liberation movement above the struggle for democracy in Egypt.

A theme running through the interviews was how the revolution has changed Egypt’s political scenario. All the participants believed that the revolution was not a failure, but they held various opinions of its degrees of success. Participants One and Seven were possibly the most hopeful, echoing statements such as “I believe in Egypt” and “[t]he revolution was liberation for everyone in Egypt.” Participants Three and Two were vague in their expectations of the effects of the revolution. Participant Four,¹⁴¹ Heba Habib, brought up the problems of sexual harassment that the revolution had not been able to address - “if you could walk down the streets in this country without being harassed, that would be achievement enough in my eyes.” Participant Eleven¹⁴², Azza Ghayaty, believed that the Revolution has changed very little for women - “A woman won’t create a revolution against her husband”.

Participant Nine, Rando Abo Eldahab, talks about how women’s rights are wedged between the interests of the liberals and the extremists, because of which the Revolution has failed Egyptian women in her opinion. Participant Three gives an impressive solution for the advancement of women’s rights in Egypt after the revolution - “bring down the old systems of beliefs”. Delshad and Itameria’s set also indicates subtly that despite the breakdown of public/private dichotomy in Egypt, several women still felt apprehensive to leave the private realm and in this, the

¹⁴¹Carmel Delshad and Kirsti Itameria, ‘Heba Habib’, Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

¹⁴²Carmel Delshad and Kirsti Itameria, ‘Azza Ghayaty’, Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

Revolution has not been successful. Participant Six¹⁴³, Amal Omar and Participant Eleven both confess that they did not go out to the streets during the protests. They believed that the Revolution is possibly fundamentally important in changing the situation of women in Egypt, but their duties in the house, for the safety of their children required them to stay at home. As a contrast to this, Participant Ten¹⁴⁴, Zahraa Kasem's responses are phenomenally indicative of how the public/private dichotomy is a thing of the past - "During the Revolution, I used to go to Tahrir with my mom, I'd leave my daughters alone... But I used to go [sic] I would tell them: I may not come back."

1.3.2. 'The Voice and the Veil' Interview Set

The second interview set, released in 2012, 'The Voice and The Veil'¹⁴⁵ by Elizabeth Herman and GlobalPost is different from 'I Marched Along' in more ways than one - they are not only in the video documentary format, they are in a written form as well, much like stories; we read stories on the lives of the chosen respondents by the interviewers themselves - it is not a direct conversation between the reader and respondents, the conversation is intercepted by the observations of the interviewers, editors and writers. This adds an introspective edge to the Herman interview set, unlike the work produced by Delshad and Itameria; but this also makes the interviews substantive, in my opinion. The work also valorizes the roles of the respondents through personalized *nom de guerres* given to them, for example, "The Protestor: Mariam Kirollos" and "The Poet: Marwa Maamoun".

The interviews reiterate what the previous set of interviews already said: during the days of the Revolution, the socio-political climate of Egypt had somehow changed. As has been observed by a respondent in the interview set, "It became surreal how perfect the relationship between men and women was. For a month I never thought I was a girl. No one ever looked at me like I was a

¹⁴³Carmel Delshad and Kirsti Itameria, 'Amal Omar', Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

¹⁴⁴Carmel Delshad and Kirsti Itameria, 'Zahraa Kasem', Egypt: I Marched Along, <http://egypt.imarchedalong.com/> (accessed in October, 2014).

¹⁴⁵Supra note 24.

girl... like “aliens who landed on the moon and marched with men! Side by side!”¹⁴⁶ The interview set shows that having women at the forefront seemed like a modern anomaly, despite Egypt’s long history with feminist revolutionaries.

In total, there are ten respondents, each with a title of her/his own, chosen with great care by the interviewers - The Politician (Gamila Ismail), the Pioneer (Nawal El-Saadawi), the Prodigy (Aya Mohsen), not an explicit title but, the Fighter (Samira Ibrahim), the two Egyptian Feminists - the Pulse (Sally Zohney) and the Provocateur (Mona Eltahawy), the Poet (Marwa Maamoun), the Partner, and the only male respondent (Ahmed Awadalla), the Performer (Sondos Shabayek) and the Protestor (Mariam Kirollos). There are evident themes of Egyptian women during the Revolution, their participation, thereafter, and how incidents of sexual harassment have marred the cause of the Revolution for women. In between, there are noticeable leitmotifs - the unrelenting schemas of family, relationships, and community that no argument about women cannot leave out.

“Part of us just wants to stay in the eighteen days because they were utopian, they were beautiful... but this can also kill you because there’s absolutely no relevance of it in the present.”, says the Performer¹⁴⁷, indicating that the scope for women’s rights began during the Revolution, and since then, it has faded, and now with the military in control, there is very little possibility of women taking on real power. The Politician¹⁴⁸, the ex-wife of another opposition leader Ayman Nour, to a large extent agrees with this - she says that Egyptian women helped “liberate Egypt, to liberate Egyptian society, to liberate Egyptians, women and men, although we failed in maybe liberating ourselves, as women.”

¹⁴⁶ Elizabeth D. Herman, *The Voice & the Veil: Egypt's Revolutionary Women*, August 1, 2012, <http://www.globalpost.com/dispatch/news/regions/middle-east/egypt/120731/egypt-revolutionary-women-voice-veil> (accessed on November 24, 2014).

¹⁴⁷ Elizabeth D. Herman, ‘The Performer’, *The Voice and The Veil*, The Global Post, <http://www.globalpost.com/special-reports/egypt-women-the-voice-the-veil> (accessed in October, 2014)

¹⁴⁸ Elizabeth D. Herman, ‘The Politician’, *The Voice and The Veil*, The Global Post, <http://www.globalpost.com/special-reports/egypt-women-the-voice-the-veil> (accessed in October, 2014)

The Prodigy¹⁴⁹, or “underage revolutionary”, as she calls herself, is a teenager, someone who was indifferent to the revolution and did not participate in it, but is aware that her life will be severely affected by the present political scenario of Egypt. She, unlike her parents, criticizes the SCAF over clashes in the cabinets and the military trials that they are conducting on the civilians.

The Pioneer¹⁵⁰, who is almost 80 years old, talks about an inevitable part of being a woman in Egypt - she says that she, like most women, has been revolting all her life, “[a]gainst King Farouk, against Gamal Abdel Naseer, against Anwar Sadat, against Hosni Mubarak.” Some of the interviews, especially the Fighter’s, brings about a unique perspective to the politicized sexual violence argument. The Fighter¹⁵¹, Ibrahim, talks about her main objective during the revolution was to stop the virginity tests, that violated women’s bodies. She was one of the eighteen women who was subjected to these so-called tests by the military, after being beaten, chained and tasered, in March, 2011. Reasons for these tests were bizarre; an Egyptian general stated that these girls had camped in tents with male protestors, and a large number of Molotov cocktails and drugs were found. The tests were conducted to “protect the army”¹⁵² so that these women would not be able to claim that they were assaulted or raped in custody¹⁵³, so the military wished to prove that they were not virgins.¹⁵⁴ That very year, virginity tests were banned as Ibrahim filed

¹⁴⁹Elizabeth D. Herman, ‘The Prodigy’, *The Voice and The Veil*, The Global Post, <http://www.globalpost.com/special-reports/egypt-women-the-voice-the-veil> (accessed in October, 2014)

¹⁵⁰Elizabeth D. Herman, ‘The Pioneer’, *The Voice and The Veil*, The Global Post, <http://www.globalpost.com/special-reports/egypt-women-the-voice-the-veil> (accessed in October, 2014)

¹⁵¹Elizabeth D. Herman, ‘The Fighter’, *The Voice and The Veil*, The Global Post, <http://www.globalpost.com/special-reports/egypt-women-the-voice-the-veil> (accessed in October, 2014)

¹⁵²Elizabeth Flock, Samira Ibrahim is the woman behind Egypt’s ban of virginity tests, http://www.washingtonpost.com/blogs/worldviews/post/samira-ibrahim-is-the-woman-behind-egypts-ban-of-virginity-tests/2011/12/27/gIQACKNgKP_blog.html, (accessed in November, 2014)

¹⁵³Melissa Bell, *Amnesty International: Egypt military admits to ‘Virginity tests,’ promises to end practice*, http://www.washingtonpost.com/blogs/blogpost/post/amnesty-international-egypt-military-admits-to-virginity-tests-promises-to-end-practice/2011/06/27/AGTwrjnH_blog.html, (accessed in November, 2014)

¹⁵⁴Xan Rice, Egyptians protest over ‘virginity tests’ on Tahrir Square women, <http://www.theguardian.com/world/2011/may/31/egypt-online-protest-virginity-tests?INTCMP=SRCH>, (accessed on November 24, 2014); Homa Khaleeli, *One brave woman’s fight against virginity-test ordeal in Tahrir Square*, <http://www.theguardian.com/lifeandstyle/the-womens-blog-with-jane-martinson/2011/oct/28/virginity-test-tahrir-square> (accessed on November 24, 2014).

a lawsuit against the military-led government; the doctor who violated her was acquitted¹⁵⁵ but the practice now stands banned in Egypt because of her efforts.

The Provocateur talks about how every political group within Egypt treats women like bargaining chips, whether it be the Mubarak supporters, the Military, the Muslim Brotherhood, or the Ultras. Just as the Military was violating women's bodies during and after the Revolution, the Ultras were banning women protestors from sleeping in the tents or being present in public spaces after 10 pm. Her understanding of women's participation within the broader framework of the Revolution is that none of parties had gender in their agenda; gender rights was a means to the end, and not the end in itself.

The Partner¹⁵⁶, a liberal Egyptian man, has a deep understanding of sexual harassment in Egypt: he denies that sexual harassment has anything to do with sexual frustration; he states that Egyptian society refuses to acknowledge and address human sexuality, and add to that disillusionment, patriarchal values and popular culture that indicates that women are subordinate to men and it makes for a perfect "recipe for the abuse of women". The Protestor states that sexual harassment, and other forms of violence on the streets, in Egypt is simply prevalent because they want to keep women off the streets, to make them believe that they are weak. But she says that, "[a] woman's voice is not a sacrilege, it is a revolution, a revolution."

According to the Politician, respect for women will only come when Egyptian society is "persuaded of women", which is far more difficult than removing Mubarak. Removing Mubarak from the government, and then, telling people to respect women is easy, creating this awareness and putting it to use in Egypt's patriarchal society is far more arduous. And to do this, there must be personal and social revolutions, according to the Provocateur because only "when

¹⁵⁵BBC News, *Egypt unrest: Court clears 'virginity test' doctor* (March 11, 2012), <http://www.bbc.com/news/world-middle-east-17330798> (accessed on November 24, 2014); Habiba Mohsen, *What made her go there? Samira Ibrahim and Egypt's virginity test trial*, Al-Jazeera, March 16, 2012, <http://www.aljazeera.com/indepth/opinion/2012/03/2012316133129201850.html> (accessed on November 24, 2014).

¹⁵⁶Elizabeth D. Herman, 'The Partner', *The Voice and The Veil*, The Global Post, <http://www.globalpost.com/special-reports/egypt-women-the-voice-the-veil> (accessed in October, 2014)

personal revolutions, something inside of us pushes us to say, I'm not doing this anymore. And when personal revolutions come together and meet in the square, they become political revolutions. But without the personal revolutions continuing, the political revolution will fail.”¹⁵⁷ The Pioneer's words, however, seem befitting here - “So it's a matter of, what's in your mind? What's your struggle? Are you really struggling for equality, justice, freedom? Are you doing that, on the personal level, in your home, outside, everything?”

1.4 Analysis: Sexual Assault on Foreign Journalists

What seemed to have spurred the local as well as global knowledge of these sexual harassment during the Revolution, is several incidents of sexual assault and rape of female journalists, especially foreigners, during the course of the protests. Lara Logan, from USA's CBS, was covering the tumults of the regime change in Tahrir Square in February, 2011. She had been separated from the rest of her crew and her bodyguard because of the mob, and in a matter of minutes, she was brutally assaulted and groped; the attack went on for about 40 minutes and about 200 to 300 men groped her.¹⁵⁷ She stated that “[f]or an extended period of time, *they raped me with their hands*.”¹⁵⁸ Another incident that stands out is the assault on France 24 journalist Sonia Dridi, also covering protests against the Muslim Brotherhood and then-President Mohamed Morsi, in Tahrir Square, when about 30 men groped at her¹⁵⁹.

Fair Observer journalist, Natasha Smith was also sexually harassed by a mob at Cairo's centre. A harrowing video online shows the gang-rape of a Dutch woman reporter by five Egyptian men, who were “revolutionaries”, at Tahrir Square, during protests against Morsi.¹⁶⁰ There were also assaults of women revolutionaries - for instance, Yasmine El-Baramawy, a protestor

¹⁵⁷ Chris Rovzar, *Lara Logan on Tahrir Square Attack: 'They Raped Me With Their Hands'*, New York Magazine (April 28, 2011) http://nymag.com/daily/intelligencer/2011/04/lara_logan_on_tahrir_square_at.html (accessed on March 20, 2015).

¹⁵⁸ Emphasis supplied.

¹⁵⁹ Abdel-Rahman Hussein, *France 24 journalist Sonia Dridi attacked in Tahrir Square*, The Guardian (October 21, 2012), <http://www.theguardian.com/world/2012/oct/21/sonia-dridi-attacked-tahrir-square> (accessed on March 20, 2015).

¹⁶⁰ Rapture Productions, *Female Dutch Journalist Gang Raped by 5 - Tahrir Square during Egypt Protest*, YouTube (July, 2013) <https://www.youtube.com/watch?v=UgWO6YPQqxw> (accessed on March 30, 2015).

demonstrating against Morsi's objectionable constitutional changes that granted him dictatorial powers, was brutally raped for 70 minutes by 15 men.¹⁶¹ The pattern of attack, in several cases documented by HarassMap and OpAntiSH, was that men rushed in from the indiscernible mob, and trapped her by linking their hands, also known locally as the 'circle of hell'¹⁶², and then, began stripping and groping her. The method seemed pre-meditated and well-rehearsed.¹⁶³ According to Logan, sexual violence is a weapon that is used to deny access to women journalists to the stories in Egypt; she states that it is so by design and not by chance.¹⁶⁴

Sexual violence on the streets has always been a huge problem in Egypt, and the women of Egypt have been battling it for the past twenty years; and recently, after the Revolution it has been happening regardless of the woman's nationality, identity, age, class or whether she was, at the time of the attack, veiled or not.¹⁶⁵ However, this series of sexual harassment against foreign journalists did something unique for the women of Egypt - it brought the cause of widespread sexual abuse and rapes to the forefront of issues in transitional MENA and attention from the global community. The issue was no longer one that would remain in private realm: sexual harassment in transitional Egypt had trickled to the international media and become a global public-sphere concern now.

The culture of impunity for sexual violence, of all types, against women in Egypt is unimaginable. Sexual assaults are a tool for removing women from political spaces, whether they be Egyptian women taking part in demonstrations or women journalists (foreign or national)

¹⁶¹Sonia Dridi, *I was gang raped in Cairo's Tahrir Square*, The Australian Women's Weekly (July 2, 2013) <http://www.aww.com.au/latest-news/real-life/i-was-gang-raped-in-cairos-tahrir-square-8588> (accessed on April 30, 2015)

¹⁶²Patrick Kingsley, *80 sexual assaults in one day – the other story of Tahrir Square*, The Guardian (July 5, 2013), <http://www.theguardian.com/world/2013/jul/05/egypt-women-rape-sexual-assault-tahrir-square> (accessed on April 30, 2015).

¹⁶³Angella Johnson, *Freedom in Egypt? It just gave men the freedom to rape me in Tahrir Square*, The Daily Mail (July 6, 2013), <http://www.dailymail.co.uk/news/article-2357633/Freedom-Egypt-It-just-gave-men-freedom-rape-Tahrir-Square.html> (accessed on April 30, 2015).

¹⁶⁴Megan Levy, *Five Men Rape Journalist, 22, In Tahrir Square: Reports*, The Sydney Morning Herald, <http://www.smh.com.au/world/five-men-rape-journalist-22-in-tahrir-square-reports-20130702-2p8sk.html> (Accessed On April 30, 2015).

¹⁶⁵*Supra* note 44.

who are covering such protests, and have been consistently used during the course of Revolution, and after, to make sure women are kept away from politics.

CHAPTER 2: A TRUTH COMMISSION THAT WAS & ONE THAT WASN'T: STORIES OF WOMEN FROM SOUTH AFRICA AND BOSNIA & HERZEGOVINA

2.1 History and Context

*"[T]he TRC's mandate provided a partial and conditional amnesty for politically motivated violence, so the Commission had to grapple with whether rape was a political act (...) Eventually, the Commission determined that rape was not political in terms of mandate interpretation. While this conclusion was motivated by an interest in heightened accountability for rape, it offers a rather ambivalent and problematic message regarding South African feminist struggles to gain greater recognition of the politics of sexual violence."*¹⁶⁶

*"This silence is driving everyone crazy: reporters, feminist activists, U.N. officials ... all of them enter small and crowded rooms in this or another camp [in Croatia, Bosnia], hoping to get closer to the real picture, to hear eyewitness testimony. But in vain... Why won't they talk? Don't they know it is good for them?"*¹⁶⁷

Both the South African as well as the situation in Bosnia & Herzegovina (hereinafter, BiH), after the fall of Communism, have been grossly under-theorized from a gendered lens.¹⁶⁸ The narrative of these two very different, but very alike, regions begins with the fact that women were the worst hit by the politicized violence that brewed – in South Africa because of the Apartheid regime and its opposition, and in BiH because of the systematic rape culture that developed as a mechanism for ethnic cleansing.¹⁶⁹ After apartheid was abolished, in 1995, the new South African government established a court-like body that would mete out restorative justice and heal the divided country by unearthing the truth about the human rights violations that had occurred during the apartheid – it was responsible for gathering information, conducting investigations and collecting evidence from both victims as well as perpetrators.¹⁷⁰ The Balkans, however, refrained from founding a body similar to the TRC, citing that a Tribunal,

¹⁶⁶ Priscilla Hayner quoting Vasuki Nesiah, while exploring the 'politically motivated sexual violence' in South Africa. Priscilla Hayner, *UNSPEAKABLE TRUTHS* 107 (Routledge New York, 2001) (2011).

¹⁶⁷ Karen Engle quoting Slavenka Drakulic. See, Karen Engle, *Feminism and Its (Dis)contents, Criminalizing Wartime Rape in Bosnia and Herzegovina*, 795, 99 *American Journal of International Law* 778 (2005); Slavenka Drakulic, *Mass Rape in Bosnia: Women Hide Behind a Wall of Silence*, *NATION*, Mar. 1, 1993, 253, 271.

¹⁶⁸ The World Bank, *Gender, Justice, and Truth Commissions* (July 2006), <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/GJTClayoutrevised.pdf> (accessed on November 23, 2014).

¹⁶⁹ *Ibid.*

¹⁷⁰ Rina Kashyap, *Narrative and Truth: A Feminist Critique of the South African Truth and Reconciliation Commission*, 449-467, *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, 12:4 (2009)

namely the International Tribunal for the Former Yugoslavia (ICTY), had already been established to investigate the human rights violations, and this decision of theirs was wrought in controversy.¹⁷¹ In this vein, Dr. Alex Boraine, in his book, subscribes to the opinion that ‘South Africa is not Bosnia, and never will be’¹⁷², but maintains that there were, between them, a few similarities –

*“Violence, a litany of human suffering, crimes against humanity, the loss of human and social dignity, the lies, half lies, denial and the deep longing for peace and stability are common to both Bosnia and South Africa. The South African Commission was an opportunity for ordinary people to get on with their lives and this may well help victims in Bosnia also. The approach, the strategy and the structure will be very different, but the elusive search for accountability and peace is universal and human rights are indivisible.”*¹⁷³

The origin of the South African TRC can be traced to 1993 when the agreement on amnesty was upheld by representatives of the South African state, its political parties and organizations, as a step towards abolishing apartheid and establish democracy and peace.¹⁷⁴ The TRC was established through the Promotion of National Unity and Reconciliation Act no. 34.¹⁷⁵ Its function was to examine the human rights violations committed during the period between March 1, 1960 and May 10, 1994, and understand the causes, nature and extent thereof.¹⁷⁶ Perpetrators of crimes, according to an ‘important compromise’ reached between the ANC and the apartheid government, would be granted amnesty if they made full disclosure of all relevant facts corresponding to the act of a political, as opposed to personal, nature; a victim would have to be designated, on coming forward to the TRC to make a statement or by being called by commissioners during an amnesty hearing,¹⁷⁷ and would have had to “individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional

¹⁷¹Janine Natalya Clark, *Does Bosnia Need a Truth and Reconciliation Commission? Some Reflections on its Possible Design*, 225-246, *Ethnopolitics: Formerly Global Review of Ethnopolitics*, 12:3 (2013).

¹⁷²Alex Boraine, *Beyond the TRC*, in *A COUNTRY UNMASKED* 379 - 422 (Alex Boraine, Oxford University Press 2000)

¹⁷³*Ibid* at 394.

¹⁷⁴Ayumi Kusafuka, *Truth commissions and Gender: A South African case study*, <http://www.ajol.info/index.php/ajcr/article/viewFile/52172/40798> (accessed on November 21, 2014).

¹⁷⁵Beth Goldblatt and Sheila Meintjes, *Gender and the Truth and Reconciliation Commission A submission to the Truth and Reconciliation Commission* (May, 1996), <http://www.justice.gov.za/trc/hrvtrans/submit/gender.htm> (accessed on November 21, 2014).

¹⁷⁶*Ibid*.

¹⁷⁷Beth Goldblatt, *Evaluating the gender content of reparations: Lessons from South Africa*, in *WHAT HAPPENED TO THE WOMEN? GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS*, (Ruth Rubio-Marin ed., Social Science Research Council, New York 2006).

suffering, pecuniary loss or a substantial impairment of human rights”¹⁷⁸ and this would have to be the result of a “gross violation of human rights”.¹⁷⁹

According to Justice Goldstone, who was also the Former Prosecutor of the International Tribunal for the Former Yugoslavia (ICTY), the TRC was a ‘bridge from the old to the new’ - “... *if the ANC had insisted on Nuremberg-style trials for the leaders of the former apartheid government, there would have been no peaceful transition, and if the former government had insisted on a blanket amnesty, then, the negotiations would have broken down.*”¹⁸⁰ The TRC, then, was the third way. Shaw *et al.* state that it was a ‘watershed event for transitional justice’ when South Africa decided to deviate from the regularized route of prosecutions, and chose to establish a truth commission.¹⁸¹ The truth commission, according to Roht-Arriaza and Mariezcurrena, was created to target the overall systematic human rights violations, rather than converging upon only the cases that had been brought to trial.¹⁸² Moreover, Nesiah observes, before the TRC came about, the element of gender had never been used as a lens in the working of a human rights institution, though it is true that women’s rights only became a part of the TRC’s mandate because of active lobbying by several women’s rights organizations in 1996.¹⁸³ Consequently, the TRC instituted hearings that were female-only – chaired by women commissioners, who heard cases of violation of the rights of women.

The TRC was founded on the principle that a truth-telling process would heal past human rights

¹⁷⁸*Ibid.*

¹⁷⁹ Sheila Meintjes, *South Africa’s Truth and Reconciliation Commission and Gender Justice*, Heinrich Boell Foundation, <http://www.gwi-boell.de/en/2012/03/12/south-africa%E2%80%99s-truth-and-reconciliation-commission-and-gender-justice> accessed on November 21, 2014). Meintjes calls this the ‘victims-focussed approach’.

¹⁸⁰*Supra* note 15 at 143.

¹⁸¹ Rosalind Shaw, Lars Waldorf and Pierre Hazan (eds.) *LOCALIZING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE* (Stanford University Press 2010).

¹⁸² Naomi Roht-Arriaza and Javier Mariezcurrena (EDS.), *TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE* (Cambridge University Press 2006).

¹⁸³*Supra* note 152 at 452.

violations, which would in turn expedite ‘the process of understanding our divided pasts’.¹⁸⁴ This would result in the mass public acknowledgement of ‘untold suffering and injustice’ – a platform to reinstate the dignity of the victims and give the perpetrators a fair opportunity to reconcile themselves with their own past.¹⁸⁵ The TRC had, within itself, three committees, each responsible for a different task: the Human Rights Violations Committee (HRVC), the Amnesty Committee (AC), and the Reparation and Rehabilitation Committee (RRC). A body so ahead of its times, the TRC was transparent, possessed strong quasi-judicial and investigative powers, and it had power to issue subpoenas, and search and seizure, and protect its witnesses.¹⁸⁶ Non-governmental organizations (NGOs) were to monitor and participate in the TRC’s process, and its hearings were open to the public.

The final report of the TRC was an excruciatingly long document, consisting of seven volumes – the first five volumes were released in October, 1998, and the last two volumes came out in March, 2003.¹⁸⁷ The report had a separate chapter that dealt with women’s experiences during the apartheid regime. Gender remained absent holistically from the truth-telling process, and an abject disregard of women’s experiences, especially of rape and other forms of sexual violence, in the larger scheme of apartheid and rights violations proved that there had been no gender mainstreaming in the TRC.¹⁸⁸ Instead a half-hearted attempt through *ad hoc* measures had been made by the TRC to address gender in only in a few procedures.¹⁸⁹

On the other hand, truth-telling initiatives have been a perplexing issue, and a controversial subject, in BiH.¹⁹⁰ The reason why is not as simple as it may seem: ethnicity propaganda during

¹⁸⁴ *Supra* note 156.

¹⁸⁵ *Supra* note 159.

¹⁸⁶ *Supra* note 159.

¹⁸⁷ *Supra* note 152.

¹⁸⁸ *Supra* note 159.

¹⁸⁹ *Supra* note 157.

¹⁹⁰ Maja Šoštarić, *War Victims and Gender-Sensitive Truth, Justice, Reparations and Non-recurrence in Bosnia and Herzegovina*, Impunity Watch Research Report (2012),

the war made it impossible for one single truth about the conflict to exist, and the country, till date, remains deeply divided about its past and sometimes, even its future. This is the primary reason why there has not been an official attempt to establish a national body that would initiate truth-seeking.¹⁹¹ Moreover, the mandate of the ICTY gravely overshadowed any truth-seeking initiative, and to some extent, was exemplary of the truth versus justice debate.¹⁹²

In fact, in Boraine's book, he talks about the opinions of Gavin Ruxton, Legal Advisor at the ICTY, and James Stewart, Chief of Prosecutions at the ICTY, were very precarious about having a truth commission in BiH, and stated that the timing would be wrong, and that Bosnians should wait until the mandate of the tribunal was accomplished.¹⁹³ According to them, there was no scope for a definitive truth in the divided society of Bosnia.¹⁹⁴ On the other hand, there were a number of people, who believed otherwise. Several people stated that the need for reconciliation in a divided country was immense, and that the people of Bosnia could not until the work of the Tribunal was done for the truth to be uncovered. The First Prosecutor of the ICTY, Richard Goldstone stated that there were many arguments for the establishment of a truth commission for the region, as the [South African] TRC had done far more for reconciliation and healing of the past, than had criminal prosecutions.¹⁹⁵ Tanja Neskovic, a youth representative, remarked, very conscientiously, upon this –

"What can I do to live in this country without hatred... we are not predestined to hate. We need a comprehensive truth, not isolated from the Tribunal but part of the whole jigsaw puzzle. But the Tribunal itself is not the whole puzzle, it is only part of it. I want to listen... but I also want to be heard. There is

http://www.impunitywatch.org/docs/Gender_Research_Report_BiH_English.pdf (accessed on November 21, 2014).

¹⁹¹ Graeme Simpson, Edin Hodžić and Louis Bickford, *"Looking Back, Looking Forward": Promoting Dialogue through Truth-Seeking in Bosnia and Herzegovina*, Justice and Security - UNDP (2012), http://www.in.undp.org/content/dam/bosnia_and_herzegovina/docs/Research&Publications/Crises%20Prevention%20and%20Recovery/Looking%20Back,%20Looking%20Forward-%20Promoting%20Dialogue%20through%20Truth-Seeking%20in%20Bosnia%20and%20Herzegovina/BiH_looking_back_looking_forward.pdf (accessed on November 21, 2014).

¹⁹² *Supra* note 154.

¹⁹³ *Supra* note 154 at 395.

¹⁹⁴ *Supra* note 154 at 395.

¹⁹⁵ *Supra* note 154 at 391.

no future without history. We need truth and reconciliation as a solid foundation to build a good house. At a recent meeting of 160 young people from all over Bosnia there was strong support for the truth and reconciliation commission."¹⁹⁶

What was being harped on was during the controversy was that a truth commission in Bosnia, would in no way be an alternative to the ICTY; it would only complement the work of the Tribunal. A counter to this, which was considered in Boraine's book and has been discussed intensely in other literature as well, is that a truth-seeking program in Bosnia would harm any work that the ICTY would pursue – that a commission would place more emphasis on truth rather than justice, and come up with contradictory findings, and thus, mar the efforts of the Tribunal.¹⁹⁷ This began the classic transitional justice dilemma of truth versus justice¹⁹⁸. In conclusion to the debate, Dr. Boraine vehemently stated that for the sake of the victims, there should be a truth and reconciliation commission, an entity that would harmonize the work of the Tribunal.¹⁹⁹

A Commission of Experts, established United Nations Security Council Resolution 780²⁰⁰, found that in the region of Bosnia & Herzegovina sexual violence was not "merely a by-product of the conflict... but a tactic of war. It was deliberately and systematically employed as a tool of ethnic cleansing".²⁰¹ There have never been efficient official truth-telling initiatives in BiH, but there have been attempts, albeit unsuccessful ones, to establish one.²⁰² Some notable instances include initiatives started in 1997, 2001 and 2005; the initiatives were started by Jakob Finci and his Citizen's Association for Truth and Reconciliation, but none of these bore any tangible

¹⁹⁶ *Supra* note 154 at 398.

¹⁹⁷ Beyazit H. Akman, *Tribunal vs. Truth: ICTY and TRC in the Case of the Former Yugoslavia*, HUMSEC Journal, Issue 2 (April 2008), http://www.humsec.eu/cms/fileadmin/user_upload/humsec/Journal/Akman.pdf (accessed on November 24, 2014). See also, Heather McRobie, *What stands in the way of Bosnia Reconciliation*, The Guardian (June 21, 2010), <http://www.theguardian.com/commentisfree/2010/jun/21/bosnia-still-waits-reconciliation> (accessed on November 24, 2014).

¹⁹⁸ Tom Syring, *Truth versus Justice: A Tale of Two Cities?*, 12 *Int'l Legal Theory* 143.

¹⁹⁹ *Supra* note 154.

²⁰⁰ UN Security Council, Security Council Resolution 780 [on concern at the continued "widespread violations of international humanitarian law" in Bosnia and Herzegovina], S/RES/780 (1992), (October 6, 1992).

²⁰¹ M. Cherif Bassiouni and Marcia MacCormick, *Sexual Violence: An Invisible Weapon War in the Former Yugoslavia*, Occasional Paper 1 (International Human Rights Law Institute, De Paul University College of Law), <http://mcherifbassiouni.com/wp-content/uploads/Sexual-Violence-an-Invisible-Weapon-of-War.pdf> (accessed on November 24, 2014).

²⁰² *Supra* note 172.

results.²⁰³ The attempt in 1997 was caught in the truth and justice dichotomy, with ICTY officials fearing the truth would interfere with their mandate and ‘create a dangerous parallel process’.²⁰⁴ In 2001, there was a conference on truth-telling processes and commissions, and a draft-law was conceived and produced, but nothing came of this either. Three speakers of the BiH Parliament, in 2005, endeavoured to create a truth commission with the support of United States Institute for Peace (USIP) and the Dayton Project, an NGO. However, this attempt failed after a flurry of criticisms from the press for its lack of transparency.²⁰⁵

Besides this, several local organizations attempted the processes of truth finding and telling, none of which could bring extraordinary justice to the fore. For example, the Sarajevo-based Research and Documentation Center or RDC assessed direct casualties of the Bosnian War, and endeavoured to gather the names of the victims in the conflict in BiH. The RDC had, by the end of their project, gathered the names of about 92,207 victims as well as location of their death, possible cause and potential perpetrators of the killing.²⁰⁶ Along with this, the RDC collaborates with the Dokumenta NGO, Zagreb and the Humanitarian Law Center, Belgrade to promote and facilitate truth-seeking activities.²⁰⁷ A protocol was signed between these three organizations in 2004, which helped give life to the Regional Commission for Establishing the Facts about War Crimes and Other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia in the period from 1991-2001 (hereinafter 'RECOM'). The protocol outlined a plan for cooperation and support to examine and document human rights violations in the states of the Former Yugoslavia.²⁰⁸ A regional debate on RECOM began in 2005, and from May 2006, a number of regional consultations took place. A huge number of people attended three

²⁰³Jakob Finci, *Why do we need a Truth and Reconciliation Commission?*, Association of Citizens for Truth and Reconciliation (2002) <http://www.angelfire.com/bc2/kip/engleski.html> (accessed on November 24, 2014).

²⁰⁴*Supra* note 172.

²⁰⁵Massimo Moratti and Amra Sabic-El-Rayess, *Transitional Justice and DDR: The Case of Bosnia and Herzegovina*, International Center for Transitional Justice (June 2009), <https://www.ictj.org/sites/default/files/ICTJ-DDR-Bosnia-CaseStudy-2009-English.pdf> (accessed on November 24, 2014).

²⁰⁶*Ibid.*

²⁰⁷*Ibid.*

²⁰⁸*Supra* note 172.

consultations, which contained 129 sessions and 5 assembly meetings – there were a total of 8700 individuals, 8 regional transitional justice forums. However, RDC left the coalition.²⁰⁹

There were two phases of the consultation: one, that emphasized greatly on observing the war crimes trials - this phase continued between 2006 to 2008; and the second, that was absorbed on the creating of regional debates on a concrete truth-seeking mechanism, the RECOM - this phase started in mid-2008 and continued until 2010.²¹⁰ It is important to know that in May 2009, after national coordinators were appointed for each country, the Statute for RECOM was adopted.²¹¹

Attention must, in due course, be turned to the distinctions between official (state-based) and unofficial (civil society-initiated) truth-telling, but beyond other basic differences, an interesting difference must be highlighted – the degree to which these initiatives involve the grassroots, and engage at the local level as opposed to nation-wide or region-wide levels. Simply put, it was interesting to see if there was any difference between how they identify with grassroots experiences of conflict, and by extension, some important social sectors such as women, children, youth and the like, rather than adhering already “established” international narratives about the past.²¹² This is significant as truth-seeking does what it is sociologically functioned to do – to present the mass population with an opportunity to find their ‘voice’.

If examined well, we would find that state-authorized official truth commissions tend to emphasize on the meta-narrative of a conflict, culling out only the big picture of incidents that built the conflict, and thereafter, the transition. On the other hand, local-level truth commissions engage with the community and its mobilizers, often taking the bottom-up approach. Both approaches together, especially in a fragmented country like BiH, would be more effective as

²⁰⁹*Supra* note 172.

²¹⁰*Supra* note 185.

²¹¹*Supra* note 185.

²¹²*Supra* note 173 at 32.

they would “connect the global with the local” weaving together various narratives of the same conflict.²¹³

Ironically, this did not happen in the context of BiH. There was underlying competition between the RECOM and the BiH Transitional Justice Strategy (TJS), a document that was commissioned in 2010, and was drafted by 15 experts (selected by the Council of Ministers) and with help from the United Nations Development Programme (UNDP).²¹⁴ The aim of the TJS is to “help right injustices and heal the traumas caused by the war”, and its proposal seeks to include non-judicial mechanisms such as truth-seeking and truth-telling, memorialization and protection of both individual and collective memory as well as reparations and institutional changes.²¹⁵ Dr. Goran Šimić calls it a potential “sustainable platform” that instills within itself the ‘never again’ outlook. However, while the RECOM strived, at least in their manifesto, to unearth the regional truth about the conflict in the former Yugoslavia, the TJS sought after the national truth in BiH – clearly, no symbiotic relationship was reached between the two initiatives, as there was an apprehension that two different truths may emerge, and tensions between them mounted.²¹⁶ Later, RECOM was also presumed to be a state-authorized initiative as it was not endorsed by other Yugoslavian states.

Because of a myriad initiatives, almost always disjointed from one another, the gender perspective within the truth-seeking/truth-telling paradigm in BiH never really developed, and the burden shifted to the ICTY. The ICTY, albeit accidentally, in my opinion, ended up establishing a discourse on sexual violence and gender in BiH, and within the larger context of

²¹³Amnesty International, *Whose Justice? The Women Of Bosnia And Herzegovina Are Still Waiting*, (2009), <http://www.amnesty.org/en/library/asset/EUR63/006/2009/en/8af5ed43-5094-48c9-bfab-1277b5132faf/eur630062009eng.pdf> (accessed on November 24, 2014).

²¹⁴*Supra* note 185.

²¹⁵Denis Dzidic, *Bosnia's transitional justice strategy requires political support*, TransConflict (October 19, 2012), <http://www.transconflict.com/2012/10/bosnias-transitional-justice-strategy-requires-political-support-090/> (accessed on November 24, 2014).

²¹⁶DENIS DZIDIC, *SIMIC: NO PEACE WITHOUT TRANSITIONAL STRATEGY*, BALKAN INSIGHT: BALKAN TRANSITIONAL JUSTICE (NOVEMBER 12, 2012), <HTTP://WWW.BALKANINSIGHT.COM/EN/ARTICLE/SIMIC-NO-PEACE-WTHOUT-TRANSITIONAL-STRATEGY/1455/13> (ACCESSED ON NOVEMBER 24, 2014).

the region – something that should have been left to the devices of a centralized fact-finding or a truth commission.

2.2 Gendered Reading of Truths

A gendered reading of both situations – South Africa, which was very conscientious with its use of truth, and Bosnia, which thought about truth differently – will raise critical questions about how these peace processes have largely left sexual violence in these regions during the conflicts, amongst other gender-related reparations, out of their transitional justice strategies.²¹⁷

In its existence, the South African Commission heard 21,298 statements, which concerned 37,672 allegations of human rights violations.²¹⁸ Most of these statements spoke of human rights violations against men – there were allegations of murder, attempted killing, torture and ill-treatment – and there was a negligible amount of complaints that revolved around women, especially sexual violence. About 54.8% statements came from women; however, out of these, only about 43.9% women reflected on their own experiences of being direct victims of violations. Only a total of 446 statements were coded as sexual abuse, and only 40% of these statements were about women as direct victims.²¹⁹ There were only 140 reported cases of rape, but according to Goldblatt, the number is a small fragment of the actual number of occurrences that took place between 1960 and 1994.²²⁰

Three separate special hearings on women took place in Durban, Cape Town and Johannesburg, giving women a platform to express their experiences, after recommendations from the

²¹⁷*Supra* note 152.

²¹⁸Gerald O'Sullivan, *The South African Truth and Reconciliation Commission: Database Representation*, in MAKING THE CASE: INVESTIGATING LARGE SCALE HUMAN RIGHTS VIOLATIONS USING INFORMATION SYSTEMS AND DATA ANALYSIS (Patrick Ball Herbert F. Spier Louise Spier eds., American Association for the Advancement of Science 2000), <https://hrdag.org/wp-content/uploads/2013/01/MakingtheCase-2000-fulltext.pdf> (accessed on November 24, 2014).

²¹⁹*Supra* note 156.

²²⁰*Supra* note 159.

University of Witwatersrand's Centre for Applied Legal Studies (CALS).²²¹ Besides these special hearings, the TRC had other gendered strategies such as making gender-sensitive statement-taking protocols, conducting extensive research on gender and including an entire chapter on women's experiences in the report.²²² The TRC also welcomed a 'Gender and the Truth and Reconciliation Commission' that consisted of a group of lawyers, trauma counselors and psychologists from the Gender Research Project of CALS and the Centre for the Study of Violence and Reconciliation (CSVR). They met every few weeks between 1996 and 1998, to debate about gender issues at the TRC and to plan how NGOs could help to create a reparations policy that would greatly benefit both the sexes, and not just the men.²²³

Despite all this, most of the female population testified as 'indirect, secondary victims', who had suffered 'harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights'²²⁴ because of human rights violations upon a male relative, who was, then, deemed the primary victim. Goldblatt and Meintjes argue that both sexes endured the political violence of the apartheid differently because of their prescribed societal roles. Moreover, during the time, even the forms of physical and psychological ill-treatment used against women were vastly different from the ones used against men: it involved insulting women's sexuality and her targeting their bodies.²²⁵

Two wings of the TRC – the Amnesty Committee and the Human Rights Violations Committee (HRVC) – grappled constantly with conceptual problems around the issues of sexual violence and rape. They attempted to draw a clear line between personal and political motives behind sexual violence during the apartheid years, despite there being ample evidence that rape had been endorsed by the regime, as a method of crushing mass protests, or utilized to intimidate,

²²¹Hugo van der Merwe and Guy Lamb, *Transitional Justice and DDR: The Case of South Africa*, International Center for Transitional Justice (June, 2009), <https://www.ictj.org/sites/default/files/ICTJ-DDR-South-Africa-CaseStudy-2009-English.pdf> (accessed on November 24, 2014).

²²²*Ibid.*

²²³*Ibid.*

²²⁴*Supra* note 159 at 60.

²²⁵*Supra* note 156.

terrorize and punish women.²²⁶ This becomes clear during a Special Women's Hearing on 29 July, 1997 in Johannesburg during a collaboration between the HRVC, and one Nozibonelo Maria Mxathule,²²⁷ a member of the Youth Congress, who was raped. The HRVC was on its way to comprehend the motives behind sexual violence during the apartheid – questions involved whether the act was committed in a political context or because 'he was just doing it as a man who wanted to do that to you as a person': *"did he do this [rape] because he knew you were a Comrade or he just did it because he wanted to have sex with you?"*²²⁸

The TRC also failed to go beyond its brief when discussing (politically motivated) sexual violence during amnesty applications. Shockingly, only three cases were dealt with that required direct applications for sexual violence – two involving rape and one concerning sexual assault. The first application was received from Kwanele Enough Thoba²²⁹, Wakhile Ronald Thompson and Jonginkose Makoma, who were former members of the Ciskei Police Elite Unit, asking for amnesty for attacking four detainees.²³⁰ Amnesty had been granted for three assault cases, two of which were women, but denied for the fourth case (also a woman).

The first two women were stripped naked, choked with rubber tubes and strangled with wet towels during questioning; however, in the fourth case, the woman, Ms. Msuthwana, who was the sister of a certain Charles Sebe's girlfriend, had had acid poured over her naked thighs and genitals in order to compel a confession from her.²³¹ The Committee stated that the attacks on the first two women were politically motivated, and hence the applicators were granted amnesty, while the one on Ms. Msuthwana was done with 'sadistic, if not lascivious intent', for which they

²²⁶*Supra* note 152.

²²⁷ Case of Nozibonelo Maria Mxathule, Case no. JB01840/03NW (Johannesburg), Truth and Reconciliation Commission: Women's Hearings (July 29, 1997), <http://www.justice.gov.za/trc/special%5Cwomen/mxathule.htm> (accessed on November 24, 2014).

²²⁸*Ibid.*

²²⁹ Amnesty Decision of Kwanele Enough Thoba, Case no. AC/97/0025, Matter no. AM 0077/96, Truth and Reconciliation Commission: Amnesty Committee, <http://sabctrc.saha.org.za/documents/decisions/58510.htm> (accessed on November 24, 2014).

²³⁰ Jeremy Sarkin-Hughes, *CARROTS AND STICKS: THE TRC AND THE SOUTH AFRICAN AMNESTY PROCESS* 351 (Intersentia Antwerp, 2004).

²³¹*Supra* note 209.

received no amnesty.²³² As it is evident in the above-mentioned example, that the Committee often dispensed cases, without discussing, in depth, about its ramifications on gender; often cases were debated without clarifying whether the offences would “exclude the possibility of political motivation” or, whether there were indispensable circumstances wherein the *actus reus*, of the offence itself, would be considered to be politically motivated.²³³

Sarkin-Hughes talks about the dilemma in dealing with cases of rape and sexual violence and amnesty sought for the same during the mandate of the South African TRC. He states that in recent times, rape has been recognized as a weapon of war and strife, and it is embedded in international law that rape in the context of conflict is political and must be punished.²³⁴ If this is followed in the South African context, then, it would be problematic to contend that in cases where amnesty is sought, rape is not political and amnesty, therefore, cannot be granted for them. However, this is not to say, Sarkin-Hughes warns, that rape will always be political, but identifying the political characteristics of rape, will undeniably lead to the plausibility that applications for rape maybe granted amnesty, when contexts surrounding the act have been deemed to be political.²³⁵

Another application for sexual violence was from Nhlapo, Nyethe, Modikoa and Mqibi,²³⁶ members of a self-defense unit in Thokoza, who supported the ANC. They had applied for amnesty for various crimes such as murder, arson, kidnaping and the rape of Sibongile Sambo, from the opponent party. In the Committee’s decision, rape is excluded from the cluster of crimes, and the other offences, barring rape, were fall within political perimeters. There was no reason given as to why rape had been excluded in this instance.²³⁷

In the application of Hlongwane, he was granted amnesty for about 54 offences but amnesty was

²³²*Supra* note 210.

²³³*Supra* note 210 at 352.

²³⁴*Supra* note 210, 349-354.

²³⁵*Ibid.*

²³⁶ Amnesty Decision of Chisoma and Ors., Case no. AC/2000/139, Truth and Reconciliation Commission: Amnesty Committee (2000), <http://www.justice.gov.za/trc/decisions/2000/ac200139.htm> (accessed on November 24, 2014).

²³⁷*Ibid.*

denied to him for two crimes – kidnap, rape and murder of one woman, and the rape and attempted murder of another.²³⁸ Again no justification for denying amnesty for rape was provided, and the context in which these crimes took place was not analyzed. It was rather clear at this point that the TRC did not want to accept that sexual violence could have political motivation. Under the TRC, the crime of rape was categorized as ‘severe ill-treatment’, and the Commissioners were forced to construe ‘severe ill-treatment’ to include the gender-neutral consequences of apartheid policies, for example, forced removals, denial of rights of employment or housing to the black community and the like.²³⁹ This resulted in not only excluding women’s experiences and gendered exploitations of the apartheid system, and defining victimhood as a very generalized and male-driven element in South Africa; but also because it disregarded findings of the international community that observe rape as “an instrument of genocide, a crime against humanity, a war crime and a form of torture and persecution”.²⁴⁰

Rashida Manjoo quotes Ilze Olckers, portraying how there had been immense criticism stemming from the fact that the drafting and passing of the TRC law had been rather gender-blind – “Women had not participated in their own voices in the period of leading up to the drafting of the TRC bill, or in the drafting of the bill itself. Some would argue women’s experiences had been largely defined out by the terms of the bill.”²⁴¹ While I have pointed out flaws inside the TRC while dealing with gender issues, especially sexual violence within the context of conflict, what I have left out (because it would go beyond the purview of my paper) is that the lack of involvement of women – whether it be consultations with women on these

²³⁸ Amnesty Decision of Hlongwane, Truth and Reconciliation Commission: Amnesty Committee (April 21, 1998), <http://sabctrc.saha.org.za/documents/amntrans/durban/54696.htm?t=%2Bhlongwane+%2Bde&tab=hearings> (accessed on November 24, 2014)

²³⁹ See also, *Pat Hlongwane - A perpetrator and victim of human right violations*, Truth and Reconciliation Commission: Special Report (Episode 4, Section 5), <http://sabctrc.saha.org.za/tvseries/episode4/section5/movie.htm> (accessed on November 24, 2014); *Half-truths: Police spy Pat Hlongwane*, Truth and Reconciliation Commission: Special Report (Episode 64, Section 3), <http://sabctrc.saha.org.za/tvseries/episode64/section3/movie.htm> (accessed on November 24, 2014).

²⁴⁰ *Supra* note 210.

²⁴¹ Rashida Manjoo, *The South African Truth and Reconciliation Commission— a Model for Gender Justice?*, United Nations Research Institute for Social Development Report (UNRISD) for Gender Equality (November 2004), [http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/F2177FF8C83E0BB4C125723400591907/\\$file/Manjoo.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/F2177FF8C83E0BB4C125723400591907/$file/Manjoo.pdf) (accessed on December 4, 2014).

issues, or the fact that drafting of the TRC law was largely handled by men – is the real reason why a gendered reparations policy was absent in South Africa.

Truth-seeking in Bosnia, in contrast, as I explained before would be difficult to analyze because the processes were so isolated, and never really started out with a mandate. However, choosing a jurisdiction that almost chose the ‘third way’²⁴² but abandoned it several times, midway, seemed like an intriguing element in this study of understanding the nexus between sexual violence in conflict and truth-seeking. Therefore, assessing gender-sensitivity, especially sensitivity to a controversial subject such as rape or sexual abuse, is challenging because the initiatives were either terminated *ab initio*, or only worked for brief intermittent periods of time – this includes the Commission for Srebrenica, the Bijeljina Commission and the Sarajevo Commission.²⁴³ As to whether both sexes contributed to the making and functioning of these Commissions also brings us to spurious grounds. Few reports suggest that all members of the Srebrenica Commission were male, while there were only two women among the members in the Bijeljina Commission, that became defunct just two years after its creation in 2009. Since the Sarajevo Commission never came into being, very little can be said about what was envisioned about the male-female ratio.²⁴⁴

The RECOM Statute, very perceptively, introduced provisions to address gender inequality: on the selection of the commissioners (Article 24), and on the appointment and membership of the so-called selection boards that the RECOM aimed to establish (Article 27).²⁴⁵ The provisions stated that every member state of the RECOM must have at least one commissioner needs to be a woman or a man, and at least one-third of the selection board must be women or men. These parts of the RECOM were heavily borrowed from the South African TRC.²⁴⁶

Wartime sexual violence in BiH provided both feminists and transitional justice experts alike

²⁴² *Supra* note 15.

²⁴³ *Supra* note 172 at 35.

²⁴⁴ *Ibid.*

²⁴⁵ RECOM process Wesbite, Results and Prospects, <http://www.zarekom.org/news/Process-Results-and-Prospective.en.html>. (accessed on December 4, 2014).

²⁴⁶ *Supra* note 172.

with an opportunity to grapple with how rape and sexual abuse was dealt in international law. The President of ICTY, Theodor Meron, rightly states, “Indescribable abuse of thousands of women in the territory of former Yugoslavia ... shock[ed] the international community into rethinking the prohibition of rape as a crime under the laws of war.”²⁴⁷ The ICTY has, in many ways, attempted to understand, and to a large extent, shaped the debates on sexual violence and rape in the region.²⁴⁸ In the ternion of cases – Čelebići²⁴⁹, Furundžija²⁵⁰ and Kunarac²⁵¹ – the Tribunal observed that rape and other forms of sexual violence against women constituted torture, and was, thus, a grave breach under the Geneva Conventions and the ICTY statute.²⁵² A problem with the rapes in BiH was that all sides had hijacked the exact number, and there was no real estimate of how many women (and men) had been sexually violated during the war. While the criminalization of wartime rape was an integral point in the history of this troubled region²⁵³, there has been very little understanding of what happened when an unusual route to (gender) justice – truth-seeking – was embraced.

Firstly, it is important to know and understand that there were two factions among the feminists when the rapes in BiH were being examined with a critical eye. Their primary bone of contention was about whether the rapes of Bosnian Muslim women (and Croatian women) should be treated differently from the rapes and sexual violence of Serbian women; they also debated about whether sexual violence in wartime should be seen differently from the rapes that happen “every day”.²⁵⁴ This debate is an intriguing point in history for understanding the ‘silencing’ of the sexual violence continuum even today, and will be discussed in detail in the final chapter. Secondly, as I

²⁴⁷ *Supra* note 149 at 779.

²⁴⁸ Andrew Osborn, *Mass rape ruled a war crime*, The Guardian (February 23, 2001), <http://www.theguardian.com/world/2001/feb/23/warcrimes> (accessed on December 7, 2014). See generally, UN ICTY, *Landmark Cases: Crimes of Sexual Violence*, <http://www.icty.org/sid/10314> (accessed on December 7, 2014).

²⁴⁹ *Prosecutor v. Mucić et al.* (Čelebići camp) (Trial Judgment), IT-96-21, ICTY (November 16, 1998).

²⁵⁰ *Prosecutor v. Anto Furundžija* (Trial Judgment), IT-95-17/1-T, ICTY (December 10, 1998).

²⁵¹ *Prosecutor v. Kunarac* (Foča camp) (Trial Judgment), IT-96-23 & 23/1-A, ICTY (June 12, 2002).

²⁵² Heidi Nichols Haddad, *Mobilizing the Will to Prosecute: Crimes of Rape at the Yugoslav and Rwandan Tribunals*, Hum Rights Rev (2011) 12:109–132.

²⁵³ *Sexual Violence and the Triumph of Justice*, ICTY, <https://www.youtube.com/watch?v=HZ4EM6iiq0k> (accessed on May, 2015).

²⁵⁴ Kelly Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles*, 21 Berkeley J. Int'l Law. 288 (2003).

have mentioned before, while the various truth commission-like bodies in BiH battled to exist, the function of charting the discourse of sexual violence against women in conflict, inter alia, was handed to the ICTY, and domestic war crimes prosecutions, especially the National Strategy for War Crimes Processing (NSWCP) in BiH.²⁵⁵

The ICTY, in many ways, made female sexual violence survivors "visible".²⁵⁶ Until mid-2011, the Tribunal had finished about 20 cases, of which, several were based on collective (under command responsibility) as well as individual charges of rape, sexual abuse and sexual violence. Besides this, it also maintains a very enviable percentage of those indicted - about 48% - and those convicted (44%) of sexual violence and gender crimes, and this is an impressive record if weighed against the total number of indictments (161).²⁵⁷ Moreover, women were included in the Tribunal as judges, lawyers, witnesses, and this deepened the level of 'gender expertise' and also increased the participation of women in the pursuit of gender justice. Both Chinkin and Charlesworth have observed that despite the increase in women's participation in the institution, the number of females in key positions still remained low; however, they acquiesce that "[i]n reacting to the allegations of sexual violence against women and appointing staff to the international criminal Tribunals, a greater degree of understanding of the need for women's participation has been shown than has been the case in other international institution."²⁵⁸

More than a handful of cases deserve mention. One of these was the Tadić case²⁵⁹, which was the first case in a war crimes tribunal that dealt with sexual violence charges. However, this involved male victims, as opposed to females, in a camp called Omarska close to Prijedor in Bosnia. In the Čelebići case, where gender crimes were committed against Bosnian Serbs by Landžo, Mucić and Delić (two Bosniaks, and a Bosnian Croat) in a camp, it was stated that rape served as a

²⁵⁵*Ibid.*

²⁵⁶Kelly Askin, Reflections on Some of the Most Significant Achievements of the ICTY, 907, 37 New England Law Review 903 (2003).

²⁵⁷*Ibid.*

²⁵⁸ Hilary Charlesworth and Christine Chinkin, THE BOUNDARIES OF INTERNATIONAL LAW 310 (Manchester University Press Melland Schill Studies 2000).

²⁵⁹*Prosecutor v. Tadić* (Trial Judgment) IT-94-1-T, ICTY (May 7, 1997).

manner of torture. The case of Furundžija was one that focused completely on the issue of sexual violence. Anto Furundžija, though not guilty of a gender crime himself, witnessed his subordinate raping a woman while interrogating her. The ICTY was convinced that rape, and sexual violence, an instrument of genocide, and is a grave breach of the Geneva Conventions.²⁶⁰

The Kunarac case made yet another headway in changing the paradigm of sexual violence in international law: Kunarac, Kovač and Vuković, who were Bosnian Serbs, kept a large number of women and young girls enslaved in the Foča camp and repeatedly raped them and engaged in various other forms of sexual violence. It was through this judgment that sexual enslavement came to be considered a crime against humanity.²⁶¹ Lastly, in the case of Radislav Krstić,²⁶² a Bosnian Serb who had a key role in the Srebrenica massacre, the Tribunal held that a nexus lay between ethnic cleansing, genocide and rape. Krstić was found guilty of forcibly transferring women and children to Kladanj, the humanitarian crises at Potočari and the rapes and sexual violence of women. The Chamber, through its decision, ascertained that Srebrenica was a devised plan, and executing the men coupled with the systematic sexual violence provided the genocide with a gender component. The case, very propitiously, declared that sexual violence, in fact, was a weapon of war.²⁶³

A study by the United Nations Development Programme (UNDP) called ‘Looking Back, Looking Forward: Promoting Dialogue through Truth-Seeking in Bosnia and Herzegovina’ states that similar work on sexual violence would be possible even if a truth-telling initiative would have been set up.²⁶⁴ A body encouraging truth seeking and promoting the participation of the grassroots and community-mobilizers would serve as a platform to advocate the voices of

²⁶⁰ *Supra* note 230.

²⁶¹ *Supra* note 231.

²⁶² *Prosecutor v. Radislav Krstic (Appeal Judgment)*, IT-98-33-A, ICTY (April 19, 2004).

²⁶³ *Supra* note 235.

²⁶⁴ *Supra* note 173 at 43.

women in BiH. While this seems like an interesting way to build on the sexual violence narrative in the region using personal testimonies and experiences, it would also allow women to "control the narrative"²⁶⁵ and practice storytelling in a way that there is scope of the emergence of a gender component, without vacillating on issues like the rights of the accused.

It would be easy to argue that the reverse may also be true, that working towards involving women in a project to uncover the truth is a risky one: questions about the point of testifying may surface. However, Vasuki Nesiah alludes to the wishes of women victims in BiH who want to dismiss the silence enshrouding them, but also desire audience; she reveals that, "... [O]ften they want non-material benefits; they want their suffering to be recorded somewhere, to mean something for future generations."²⁶⁶ This tips the scale for projects on sexual violence that encourage the power of voice, emphasizing on the psycho-sociological advantages of truth. Oral history projects, therefore, are immaculate experiments for the empowerment of survivors, especially of rape and sexual violence in conflicts situations like Bosnia, adding to the compatible narratives of war and expelling the learned helplessness of silence.

*"All of those who investigated the war rapes in Bosnia have noted that the silence of the victims was the biggest, and often invisible, obstacle to discovering the truth. My own experience confirms this. The silence of the victims during my investigation was also my adversary. Very often I felt as if I were standing in front of a wall, yet it was human beings, not bricks, that were in front of me. Human beings who were unhappy, shamed, humiliated and lost."*²⁶⁷

²⁶⁵ *Supra* note 173 at 46.

²⁶⁶ Vasuki Nesiah et al., *Truth Commissions and Gender: Principles, Policies, and Procedures*, ICTJ (July 2006), https://www.ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf (accessed on December, 21, 2014)

²⁶⁷ *Supra* note 149 at 795.

Engle quotes Seada Vranic's work (BREAKING THE WALL OF SILENCE: THE VOICES OF RAPED BOSNIA)

CHAPTER 3: CONTEMPORARY DEBATES ABOUT TRUTH COMMISSIONS & GROSS UNDER-ENFORCEMENT OF WOMEN'S EXPERIENCES

3.1 The Relationship Between Gender and Truth Commissions

*“Dominant hierarchies . . . often marginalize women’s priorities, interests, and participation . . . in fact, they render invisible the gendered patterns and structures In many cases, this invisibility is shaped and enabled by background social structures and ideologies, including discrimination embedded in the legal system, the dearth of women in the political sphere, barriers to women’s access to the media... These social norms, ideologies, practices, and institutional arrangements characterize contexts of war, but also peace.”*²⁶⁸

In their pivotal article, scholars, Bell and O’Rourke, question the extant transitional justice paradigm: ‘where are women, where is gender, where is feminism in transitional justice?’²⁶⁹ n something that I have endeavoured to do in this academic work by introducing an independent variable (sexual violence). Bell and O’Rourke censure the initial phase of transitional justice mechanisms, where women are generally kept away from the platforms and institutions that are proposing and implementing post-conflict justice. They state that this is because these mechanisms begin as gender-blind movements to change the *ancien régime*, and instill rule of law and basic rights in the new order; however, these revolutions are ultimately hijacked by male politicians, and despite the fact that women were part of the demonstrations and civil society movements, they are absent from the negotiating tables.²⁷⁰

What Bell and O’Rourke also do in their work is introduce the idea that the varied experiences of women may be used as a criterion to enhance their political prowess after a conflict. Thus, they assert that women must be included in transitional justice machineries and institutions because of the gender-based experiences that they face during conflict: while they face similar repression as civilians like men, being targets of sexual violence, as women, in the broader narrative of human rights violations may be helpful when discussing peace and post-conflict reconstruction.

²⁶⁸*Supra* note 245.

²⁶⁹*Supra* note 23.

²⁷⁰*Supra* note 23.

Towards the end of their article, they probe into whether or not these mechanisms result in bringing about a gender perspective, and more importantly, shape the concept of gender justice, in these societies at the close of the transition.²⁷¹ At the heart of their scrutiny are the social changes that can result from the work of truth commissions in post-conflict areas and their reports that can help recommend to the new order how gender justice can be an integral part of peace.

Throughout this work, I have attempted to, in some way or another, honour Bell and O'Rourke's framework of incorporating "women, gender and feminism" in transitional justice projects, so that it makes for an interesting exploration of truth commissions (or the lack thereof) tackling gender-based crimes in conflict, such as rape and sexual violence, in order to comprehend the situation in Egypt, and in some way, resolve it. The post-conflict mechanisms (again, or lack thereof) dealing with sexual violence in two of the three jurisdictions examined in this work – South Africa and Bosnia and Herzegovina – though quite progressive, have been criticized by activists as being dominantly androcentric and gender-blind. While the South African TRC resurrected the idea of 'voice' in its public testimonies, and began special hearings for women after protests by NGOs, the authorities in BiH failed to include storytelling and listening in its larger transitional justice narrative. However, both situations have been unable to 'break the wall of silence' when it comes to speaking about and engaging with sexual violence in the respective transitional societies.

In '*Victim to Victimhood*', Michael Humphrey states that all truth commissions are necessarily responsible for two distinctive components: the process and the product.²⁷² Their objectives are separate from each other, but each is dependent on the other. The process involves truth-seeking, which is sanctioned by the participation of the various parties concerned; the product -

²⁷¹ *Supra* note 23.

²⁷² Michael Humphrey, *From Victim to Victimhood: Truth Commissions and Trials as Rituals of Political Transition and Individual Healing*, *The Australian Journal of Anthropology* 14:2, 171-187 (2003).

which is often a report - on the other hand, endeavours to seal the narrative that has been gathered during the aforementioned process, and makes for an interesting way to bring the transition to a close and interpret the historic events of the past. The process of establishing the truth generally takes place in the commission hearings, and then, this truth is doled out to the public in the form of recommendations.²⁷³ Therefore, it is comprehensible that it is through these two components that sexual violence would be either articulated or silenced. Keeping this mind, it is imperative to instill the gender element in both the process as well as the product.

The South African TRC had deep-seated problems in understanding how the omission of women's experiences from truth seeking can be handled. The three reasons for this exclusion, according to Goldblatt and Meintjes, were – firstly, the category of 'severe ill-treatment' in the Promotion of the National Unity Act of 1995 (on which the TRC was based) was very narrowly interpreted and explicit and detailed plight of women's experiences of conflict, such as pass arrests, forced removals, and some forms of systematic violence, could not be included as gross human rights violations.²⁷⁴ Also, while rape and sexual violence were categorized as human rights violations (although the Commissioners almost never wanted to delineate them as such), body searches by male police, forcibly undressing females in police custody, and not providing sanitary towels, etc., were not included as human rights violations.²⁷⁵ Secondly, women's experiences did not hold importance in truth-gathering as they were perceived as secondary victims, something that was watered down because of how women were themselves perceived in South African society – as an inferior class. The public/private debate comes into being here as their plight was pushed to the private realm, while the oppression and suffering of men was the highlight of the public realm and considered politically eloquent. Lastly, the way the TRC functioned – a public commission, with its hearings being broadcasted to the general masses - discouraged women

²⁷³*Ibid.*

²⁷⁴Beth Goldblatt and Sheila Meintjes, *Dealing with the Aftermath: sexual violence and the Truth and Reconciliation Commission*, Agenda 36, 7–18 (1997).

²⁷⁵*Ibid.*

from testifying against gender-based crimes, especially rape and sexual violence as it increased chances of stigmatization and prejudice.²⁷⁶

Despite the fact that rape was seen as a weapon of conflict, the voices of Bosnian women were drowned out by the clash between parties trying to pursue justice over truth and reconciliation, and by the approach of other stakeholders towards the idea of truth as something that is inflexible to the sufferers of gendered crimes in conflict. While perpetrators were put on trial in an international tribunal, the right for truth²⁷⁷ was superseded by the need for justice in BiH.

In this vein, my effort has been to focus on the relationship of an issue like sexual violence with the vagaries of bodies like truth commissions. While there is a plethora of literature on the dynamics of tribunals and controversial issues such as gender-based crime, truth commissions have received very little attention when it comes to sexual violence and rape, both in practice as well as in academic writings.²⁷⁸ Despite this, it seems to me that theoretically, because of how truth commissions are set up, they would be more successful in addressing the silence that women in conflict areas often find themselves to be bound by.

The objective of my thesis has not only been to find a common thread between the situations in Bosnia and Herzegovina and South Africa, and paint a comprehensive picture of how the jurisdictions dealt with women's rights in their specific transitional justice frameworks; it also illustrates best practices, within general historical developments of these countries, on the linkage of gender and transitional justice in a way that crimes like sexual violence can find a place within the normative ethics of transitional justice reparations, and seeks to add to the body of

²⁷⁶*Ibid.*

²⁷⁷ The right to the truth is recognized internationally as the right of victims of atrocities to know the truth about the abuses that they have suffered.

ICTJ explains this as "Any person who has suffered atrocities has the unalienable right to know who is responsible; any family whose members have disappeared has the basic right discover their fate and whereabouts; every society where these crimes have taken place have the right to learn their history without lies or denial." See, International Center for Transitional Justice, *Can We Handle the Truth?*, <https://www.ictj.org/gallery-items/right-truth> (accessed on January 23, 2014).

²⁷⁸ Eduardo González and Howard Varne (eds.), *Truth Seeking Elements of Creating an Effective Truth Commission*, International Center for Transitional Justice (2013), <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf> (accessed on January 23, 2014).

knowledge that Egyptian activists may understand the use of *voice* in truth commissions and utilize it to their benefit.

3.2 Understanding the Concept of 'Harm' in Transitional Societies

Catherine O'Rourke observes, very shrewdly, that since transitions are 'liminal', if the reform of a past harm is to be linked to the *ancien régime*, that particular reform would be dependent on how the harm has been recognized in practical terms.²⁷⁹ This is one of points that occur in a plethora of academic work when comprehending the nexus between gender and transitions: until an act has been identified as a harm, it will be disregarded and removed from reparation attempts. O'Rourke points out that societies in transition are often punctuated by something of a 'meta-conflict'²⁸⁰, wherein various narratives of the previous regime strive to be included in the reformations of the new order. The competitive narratives – which ones are ultimately dominant, and which ones aren't – often define the previous regime, and what the objectives of the transition should be.²⁸¹

Annotating from Ní Aoláin's talk on '*Rethinking Reparations for Conflict-related Sexual Violence*' at the Western New England University, School of Law, while comprehending the regulatory framework of reparations after conflict, the "conceptual universe" one starts at is often a place where the (gendered) harms themselves are not fully recognized.²⁸² Therefore, the notion of reparations presupposes the repair of a harm that is legally identified. But when evaluating the circumstances of a country such as Egypt's, one often might begin with the presumption that the "harm is either not recognized, not qualified, or only a limited perception of that harm exists in

²⁷⁹ Catherine O'Rourke, *The Shifting Signifier of 'Community' in Transitional Justice: A Feminist Analysis*, 23 Wis. J.L. Gender & Soc'y 269, 282 (2008).

²⁸⁰ *Ibid* at 282.

²⁸¹ Fionnuala Ní Aoláin & Michael Hamilton, *Gender and the Rule of Law in Transitional Societies*, 18 Minn. J. Int'l L. 380 (2009).

²⁸² Fionnuala Ní Aoláin, *Rethinking Reparations for Conflict-Related Sexual Violence*, Western New England University, School of Law Clason Speaker Series (January 29, 2013), <http://web7.streamhoster.com/wnevideo/law-library/clason/fniaolain.html> (accessed on February 6, 2015).

law”, and remedying that presupposed harm is often only a fragment of what (Egyptian) women have experienced.²⁸³

The very first step, then, for the female victims of politicized sexual violence in Egypt is to demand complete recognition of the various dimensions of the harms they have suffered. However, merely recognizing gendered narratives of Egypt’s revolution does not avert the possibility of an aforementioned ‘meta-conflict’. It must be considered that while discussions about harm or how harm is recognized are itself sites of conflict between those who are gender-sensitive and those who are not, the classification of harm is debated by women, whose perspectives might change over time and in different settings.²⁸⁴

However, defining (gendered) harm is indeed problematic as forms of violence, that are perpetual and unrelenting and almost always a structural concomitant of patriarchy, are frequently left out of transitional justice debates, procedures and practices. Focus is concentrated, instead, on violations that Rubio-Marín and de Greiff term “paradigmatic expressions of political violence [that] disproportionately target men”²⁸⁵.

In the light of this, the analysis of Egypt’s politicized sexual violence is simple – looking at the political violence during the January 25 Uprisings as a general, normalized pattern of violence that affected most of the population would probably make the resolution of this dilemma easier. The fix would be easy and quick: all kinds of political violence such as torture, illegal incarceration, curtailing of other fundamental freedoms, and even sexual violence could be subsumed under one broad umbrella, and general or particular measures could then be applied by the new regime, incidentally remedying the ‘political wrongs’. All harms would be treated in the same manner, leaving little or no scope for women’s experiences of the revolution to be distinctly recognized. However, this would be invidious and, like many erstwhile transitional

²⁸³*Ibid.*

²⁸⁴*Supra* note 111.

²⁸⁵ Ruth Rubio-Marín and Pablo de Greiff, *Women and Reparations*, 318–337, *International Journal of Transitional Justice*, Vol. 1, (2007).

justice discourses and initiatives, would condense reformative mechanisms in a way that it would cater to human rights violations in a universal gender-blind manner, thereby, rendering the gender quotient completely irrelevant.

If Egypt deals with political harm in the aforementioned universal manner; dealing, first, with remedying the harm, but keeping women's experiences in the backburner for a later date, a mandate to be undertaken when the regime finds itself more institutionally suited to act upon gendered crimes, then, it could be as unfortunate as the South African scenario, wherein women denied themselves any opportunity to be identified as primary victims of sexual violence.²⁸⁶ Or it could be worse – women's issues would be pushed so far back that women find themselves silenced completely by the political mandates of the region or state, like Bosnia & Herzegovina.²⁸⁷

In my opinion, Egypt may be able to learn from the mistakes of South Africa as well as BiH, both of which left out greatly from its post-conflict mandate the issue of violence against women within a context of conflict; it may be able to define harm in a comprehensive way, and attack the silencing of gender in its transitional mandate. This is because the revolution began because of women's participation, and there are several women like Bothaina Kamel and Lilian Wagdy, who are tackling under-enforcement from within the system, and several others from the Egyptian diasporas who are constructively engaging with the international community to oversee post-conflict transformations.

A lot of scholarly verve has gone into protesting against obtuse outcomes of the meta-conflict, where narratives often get entangled in "conflict about what the conflict is about", and pointing out there is a need to develop feminist theories of harm. For instance, as mentioned above, O'Rourke's theory about the politics of outlining the notion of harm in transitional justice²⁸⁸, and

²⁸⁶*Supra* note 152.

²⁸⁷*Supra* note 153.

²⁸⁸ *Supra* note 260.

Ní Aoláin's suggestion that the current strain of international criminal law 'reveals ingrained and troubling gender bias' in several ways, thereby, invisibilizing the harms that women face in conflict, and in case, even where the conflict has ended.²⁸⁹ Theories of Robin West, that talks about "gender-specific injuries" wherein feminist scholars attempt to use women's lived experiences to describe their gender-specific pain to "communicate its magnitude", are also particularly prominent in this area.²⁹⁰ Most of the problem, especially in an area like Egypt where patriarchal structures have traditionally existed, arises from the fact that future transitional justice initiatives involve a reinforcement of the public/private divide.

A striking feature of legal accountability when gauging harm in post-conflict societies is a noticeable prominence on public acts, instead of private ones, in order to create and embed narratives in society. When creating this social narrative, the stories that matter are based in public, institutional and formal settings such as streets, public spaces; and not the ones in the private domain are disregarded. The latter take place within the intimacy of the home and are "central to their experiences of vulnerability"²⁹¹, and are often completely left out of real-time nuances of legal accountability. For Egypt, during all the years of tyranny, women's narratives of harm have been constrained within the private realm. However, because of the Revolution, an obvious point of connection has come through between the *situ* of harm to women (private) and the harm experienced by men, perceived to be primarily public. That is to say the advent of Revolution blurred the public/private divide and along with it, the definitions of legal accountability for gendered harm.

There is a plethora of sites closer to the ones that we already recognize (the public and the private) that compel us to think about 'primary harms' experienced by women in contexts of transition and are not identified by courts and legal processes. It is because of this that I

²⁸⁹ Supra note 263.

²⁹⁰ Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, in AT THE BOUNDARIES OF LAW: FEMINISM & LEGAL THEORY (Martha Fineman and NS Thomadsen eds., Routledge New York, 1991).

²⁹¹ Supra note 7.

strategize my arguments in a way that the new situ of gendered harm does not form another new body of theory, and are subsumed within the already established ‘rape as a weapon of war’ theory.

3.3 Truth Seeking and Gender Policy Transfer and Best Practices for Egypt

As I have pointed out before, South Africa and Bosnia & Herzegovina tried to adopt the truth commission approach to address legacies of gross human rights violations, and in their own way attempted to add gender in these experiments. In doing so, a dynamic debate has ensued about the relative merits of such approaches while addressing a violent past. However, what must be addressed in this paper is the commonly occurring dilemma in transitional justice debates: Is there one model of a truth commission that must be replicated in the extant Egyptian situation? What gives rise to the proliferation of truth commissions across different nations? How can this unlikely country be a likely candidate to adopt a truth commission, or a similarly structured body? What will inform its choices?

I begin with Cavallaro and Abulja’s argument that “top-down transitional justice schemes based on international models have been adopted by states largely as a result of the process of acculturation, and not as a consequence of their suitability for content-specific needs”.²⁹² A concern that plagues Cavallaro and Abulja and deeply influences their argument is that truth commissions are inhibited to emphasize on only violations of civil and political rights, and completely shunning violations that relate to corruption and economic crimes²⁹³, something that Egypt in its long-winding tryst with Mubarak has seen a lot of. Moreover, both theorists argued that the archetype of TRCs began the condemnation of only a particular set of human rights violations, and that as soon as this archetype gained legitimacy in the international community,

²⁹²Franklin Oduro and Rosemary Nagy, *What's in an Idea?: Truth Commission Policy Transfer in Ghana and Canada*, Journal of Human Rights 13:1 85 - 102 (2014)

²⁹³ James L. Cavallaro and Sebastian Abulja, *The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 122 (Kieran McEnvoy and Loma McGregor eds., Hart Publishing Oxford, 2008).

the script of the archetype was modified to include corruption and human rights violations of an economic nature, and this compromised heavily the socialization of this TRC archetype.²⁹⁴

Cavallaro and Abulja's theory makes perfect sense in most parts: the objectives and mandates of most truth commissions tend to be similar; moreover, ideally speaking, had there been no model or archetype or, as Dhawan calls it - 'norm-producer'²⁹⁵, of a truth commission, there would no truth-seeking policies to transfer transnationally. Transitional justice, and more so, truth commissions would not, then, be a "travelling norm"²⁹⁶. However, their argument on the socialization of the archetype affecting such policy transfer seems thin, and lacks empirical evidence. But it is true of truth commissions, as it is of other things; there are no "one-size-fits-all" mechanisms, whether they be paradigmatic or non-paradigmatic transitions. As Brahm notes, "virtually no two compilations of truth commission experiences around the world are identical"²⁹⁷.

It is a verity that there is no such thing as a typical truth commission; this is to say that archetypes may, from time to time, be created and destroyed and new archetypes may take its place, but there is no perfect, cookie-cutter model, detached from the context of the place that is being superimposed on, that can be replicated, in different countries.²⁹⁸ Hayner, in her groundbreaking work on truth commissions, stated that there are four features that almost all truth commissions have: (i) an emphasis on the past; (ii) the inquiry into the pattern of human rights violations; (iii) temporarily instituted; (iv) officially authorized by the state.²⁹⁹ In the face of the evolution of truth commissions, Mark Freeman defines truth commissions as:

²⁹⁴ *Supra* note 274.

²⁹⁵ Nikita Dhawan, *Transitions to Justice*, in GENDER IN TRANSITIONAL JUSTICE 264-283 (Susanne Buckley-Zistel and Ruth Stanley eds., Palgrave MacMillan 2011)

²⁹⁶ *Ibid* at 270.

²⁹⁷ Eric Wiebelhaus Brahm, *What is a Truth Commission and Why does it Matter?*, Peace and Conflict Review, 3(2), 1-4 (2009).

²⁹⁸ Geoff Dancya, Hunjoon Kim & Eric Wiebelhaus-Brahm, *The Turn to Truth: Trends in Truth Commission Experimentation*, Journal of Human Rights 9:1, 45-64 (2010).

²⁹⁹ Priscilla Hayner, UNSPEAKABLE TRUTHS 13 (Routledge New York, 2001)

*“[a]n ad hoc autonomous and victim-centered commission of inquiry set up in and authorized by a State for the primary purposes of (1) investigating and reporting on the principle causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the State during determinate periods of abusive rule or conflict; (2) making recommendations for their redress and future prevention.”*³⁰⁰

In her updated work, Hayner acknowledges Freeman’s definition and points out that it is rather cumbersome and rigid; she thus revises her previous description, identifying the need to delineate it further, and adding another new feature:

*“A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.”*³⁰¹

Keeping these criteria in mind, it would be useful to look at whether Egypt could, in fact, adopt a truth commission following its third transition, and perceiving the limits of this policy transfer. Pertinent questions will arise, before this exercise, of course – for example, will Egypt’s current political situation allow for such a liberal and unusual way of dealing with perpetrators of past crimes? What are the motivations for Egypt to take the ‘third way’, instead of the perfunctory trials and summary trials? Will Egypt look beyond the silence of the Egyptian women to include politicized sexual violence within the mandate of a possible truth-telling project? What if such a project failed, would the women be pushed further into the ‘private’ domain, their needs silenced yet again?

These questions are indeed significant, and the average reader would be precise in putting them forth when contemplating about placing a truth commission within the broader transition in Egypt. However, this exercise is purely theoretical; in fact, it is too early in Egypt’s transitional timeline to begin dabbling with questions of practical construction (as opposed to, feasibility) of truth-seeking/telling projects.

³⁰⁰ Mark Freeman, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 18 (Cambridge University Press 2006). Emphasis supplied.

³⁰¹ Priscilla Hayner, UNSPEAKABLE TRUTHS 10 (Routledge New York, 2001) (2011)

The Egyptian scenario, with women taking up the roles of men during the Revolution, and then later, their needs sidelined for the utilitarian greater ‘transitional’ good of the country, needs a project to address exclusively the violence against women during and before the January 2011 revolution, and such project should be devoted to finding the voices of the women, several of whom remain untraceable after the rampant sexual harassment campaigns of the Muslim Brotherhood after El Sisi’s swearing-in ceremony.³⁰² Moreover, at this juncture, restorative justice processes such as truth commissions seem to be a more viable option, instead of the conventional punitive justice routines that follow after a violent conflict. In addition, these processes have received immense endorsement from the international community as a ‘low-cost, high-yield mechanism’ to address and repair societies after conflict.³⁰³ In jurisdictions such as Egypt, truth commissions may be particularly categorized as restorative justice processes where the priority is accorded to accountability mechanisms in the broader sense, rather than on mechanisms that promote punishment, and the mechanism also favours a victim-centric perspective of the conflict. Such mechanisms have gained traction in the contemporary times as a result of a subsequent degeneration of confidence in the state institutions, following the conflict, as well as in the previous patterns of rule of law (or lack thereof), and traditional manners of accountability seem inappropriate in the post-conflict scenario. For a state like Egypt that lacks the vital confidence in law enforcement personnel since the Mubarak era, truth seeking seems to be a particularly worthwhile route to address regulatory lacunae especially in areas of gendered violence.

The predicaments around this mechanism in Egypt are aplenty. Truth-seeking processes call for direct confrontation between the victims and the perpetrators, allowing them to share a space where the victim articulates the harm done to them, and the perpetrator admits to the wrong that

³⁰² David Kirkpatrick and Mayy El Sheikh, *Video of Mass Sexual Assault Taints Egypt Inauguration*, The New York Times (June 9, 2014), <http://www.nytimes.com/2014/06/10/world/middleeast/video-of-mass-sexual-assault-taints-egypt-inauguration.html> (accessed on March 5, 2015).

³⁰³ *Supra* note 279.

gave way to such harm.³⁰⁴ While the direct confrontation, between Egyptian revolutionary women and the men who harmed them, may be a cause for concern, another problem, as noted by Mehta and Chatterji, is that “[t]aken-for-granted notions regarding community solidarity become deeply problematic when it is one’s neighbors who are the perpetrators of violence”.³⁰⁵ This might be a deeper difficulty in the Egyptian society than previously thought of as the victims continue to occupy the same corporeal spaces where the violations took place, and the same men who fought alongside them to overthrow Mubarak were now using sexual assaults to remove them from the Egyptian political space. For these victims, there may have been no severance between the violation of the past and the hurt of the present; there may have been no *vergangenheitsbewältigung*³⁰⁶ for these Egyptian women. Another problem is the lack of a meaningful support systems consisting of a psycho-social therapeutic mechanisms for the victims to deal with past trauma, where the harm is adequately acknowledged and thus, providing for a multi-disciplinary approach to combat sexual violence in a society, where gendered violence is pervasive and normalized.

Discussing the truth-seeking policy transfer of Egypt shall inevitably lead us to think about the near-perfect South African TRC, and that is a slippery slope. However, Kathleen Mahoney, primary author and Chief Negotiator for the Assembly of First Nations (AFN) dismisses this habitual overstating of the influence of the TRC and observes, “... we are all aware that South Africa was not the be-all and end-all of truth commissions”.³⁰⁷ And that is indeed the truth – Egypt need not superimpose the South African model completely for it too had some fatal flaws, especially in the fields of gender and sexual violence. And neither does Egypt have to follow the example of BiH – extreme vacillation about one single regional truth marred the chance of a

³⁰⁴ *Supra* note 278.

³⁰⁵ Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *ON THE FRONTLINES: GENDER, WAR AND THE POST-CONFLICT PROCESS* 167 (Oxford University Press 2011).

³⁰⁶ An amalgamated German word that explains the processes of dealing with the past, and is widely used in the transitional justice academia.

³⁰⁷ *Supra* note 273 at 94.

mandate that might have a breakthrough for women's storytelling projects and dealt with sexual violence in a way that no nation has previously adopted.

Notwithstanding this, however, if Egypt does go the 'third way', it would need a robust, dynamic civil society that can carry such a project forward, like that of Bosnia and Herzegovina, as at this point an official truth-seeking scheme does not seem to be on El Sisi's radar, especially one that holds a strong gender mandate; and at the same time, it would need a persuasive, intense albeit flexible mandate like that of SA TRC, preferably with an astute compartmentalization of committees, and among other things, the power to subpoena, and the power to name the alleged perpetrators.³⁰⁸ Being a country that has shown fervent results during the Revolution that swept throughout the Middle East, Egypt is fast becoming a part of the international community where the right to truth is gaining more legitimacy, and where the institution of truth commissions is being observed as an obligation of states in transition.

³⁰⁸*Supra* note 156.

CONCLUSION & RECOMMENDATIONS

After a lengthy debate regarding Egypt's many vagaries with gender and transitional justice, it can be argued that a victim-centric, institutional reparations reform that works alongside truth seeking in the course of a transition is imperative to any transitional justice scheme. My thesis, in no way, dismisses the use of criminal procedures; in fact, at this point, law enforcement and trials are necessary to prosecute high-ranking officials and the perpetrators of sexual violence, rape, sexual harassment that occurred during the revolution. However, through my paper, I have tried to incite debate about how criminal procedures and the law, especially in deeply patriarchal societies, cannot alone mend the untempered schisms between the social, moral and political ethos, which in turn gives rise to a society divided by gender inequality.

It is for this reason that alternate measures, such as truth-seeking, to deal with sexual violence must be established, especially in a country like Egypt, where formal, institutionalized systems, such as the judiciary, law enforcement, a basic government, have disintegrated in order for democratic, transparent ideals to be instilled within the structure during the transition. Moreover, to remove the problems that come with the public/private divide, Egyptian women must try to turn to truth. Truth telling, as has been seen, in parts, in my paper, in response to heinous violations of human rights (especially women's rights) can dynamically change the sociopolitical and cultural construction of a transitioning society like Egypt.³⁰⁹

However, it must be kept in mind that that turning to truth must come with "content-specific needs"³¹⁰ instead of needs that are born out of acculturation. This means that the nexus between gender and transition in Egyptian society has requirements that may be different from the needs of South Africa and BiH, and that the mandate of the commission should embody and reflect these needs prudently. It is important to remember that there is no one-size-fits-all type of truth

³⁰⁹ Alison Crosby and M. Brinton Lykes, *Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala*, 456-476, *The International Journal of Transitional Justice*, Vol. 5, (2011).

³¹⁰ *Supra* note 273.

commission, and successful truth commissions have devised innovative policies to add the component of gender within its transitional justice paradigm, while only borrowing the main skeletal structure from other countries.³¹¹ More significantly, it is imperative to understand that to combat gendered violence in post-conflict states, women must occupy public spaces – this means adding the element of gender across all reinstated political processes, whether it be truth-telling measures, erecting a working constitution or choosing a political representative in the legislature. While finding solutions for deeply patriarchal state like Egypt, it would be judicious to remember - ‘where are women, where is gender, where is feminism in transitional justice?’.

Recommendations

While South Africa and BiH remain very good examples for comprehending the struggles of women in Egypt, there are several other instances where sexual violence in conflict was dealt with by truth-seeking. For example, after the armed conflict in Guatemala, the Tribunal of Conscience for Women Survivors of Sexual Violence was organized, in March, 2010, where a number of Mayan and Ladina women were present, and testified in a public space consisting of state officials, civil society participants and other women survivors.³¹² The meeting had two unique purposes: firstly, they wished to institute the makings of a public space, so to speak, so that these women could come forward and engage in truth-telling and that members of the civil society as well as the state heard their testimonies; secondly, and more significantly, it was a sort of preparatory work to present a case of sexual violence/rape as a weapon of war in the Guatemalan courts for prosecution.³¹³

This Tribunal is a phenomenal piece of evidence that truth-seeking in sexual violence cases can act as a buffer from the perpetrators, as well as be a peculiar kind of fact-finding exercise before

³¹¹*Supra* note 273.

³¹²*Supra* note 290.

³¹³*Ibid.*

the matter can be brought to the courts.³¹⁴ Like Egyptian women, Mayan women survivors of sexual violence, live in the same spaces as their perpetrators and therefore, have deep concerns about their safety. This was taken care of, during the Tribunal, when Mayan women addressed the audience from behind curtains to hide their identities. Similar mechanisms will also be immensely successful in Egypt as the perpetrators of gendered crimes are still at large, and many of them occupy influential political positions, and victim protection programs may help to integrate more women into these processes. I opine that a truth-seeking mechanism before a trial(s), especially in a society where politicized sexual violence is rampant, will be imperative in changing the sociopolitical anatomy of Egyptian society. In fact, the process in BiH is witness to how trials alone do not in itself help mitigate the problems that mass sexual violence in conflict create.

A concern - what if the end of a truth-telling process does not culminate in the courts? - that might follow after the aforementioned recommendation is a reasonable question. Fiona Ross, pointing to the South African TRC, comments, 'Remembering and recounting harm is neither a simple nor a neutral act'. Truth telling becomes an essentially labyrinthine act with "gendered, cultural and political" repercussions, and the connotation of truth is comprised of a 'dialogical interaction'.³¹⁵ The Women's International War Crimes Tribunal (on Japan's Military Sexual Slavery) in Tokyo in December, 2000 was instituted to make a ruling on the sexual violence, particularly the phenomenon of 'comfort women', within the Japanese military, and to set an example to put an end of sexual violence against women in war time. The Tribunal found Emperor Hirohito, and the military, guilty,³¹⁶ and the crimes against women - rapes as well as

³¹⁴Claudia Paz y Paz Bailey, *Guatemala: Gender and Reparations for Human Rights Violations*, in WHAT HAPPENED TO THE WOMEN? GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS, (Ruth Rubio-Marin ed., Social Science Research Council, New York 2006).

³¹⁵Fleming Terrell, *Unofficial Accountability: A Proposal for the Permanent Women's Tribunal on Sexual Violence in Armed Conflict*, Texas Journal of Women and the Law 15(1): 107 (2005).

³¹⁶See, Rosalind Dixon, *Rape as a Crime in International Humanitarian Law: Where to from Here?*, Eur J Int Law (2002) 13 (3): 697-719.

sexual slavery - were adjudged ‘crimes against humanity’.³¹⁷ The judgments made were not legally binding, but what has remained of the publicly-made testimonies, is a narrative that remains embedded in public record, and an opportunity to ‘confront’ the perpetrator and his guilt. This seems like an important lesson to Egypt to deal with its sexual violence epidemic in an unusual, alternate way.

Moreover, it should be understood that survivors of sexual violence, especially in a country like Egypt, live within the same communities and families that may come to harm them through stigma and dishonour. As Chandra Talpade Mohanty states, the identity of these women are greatly intertwined with the lived experiences of these social relations.³¹⁸ Therefore, the experience of sexual violence is not only an individuated, isolated experience of physical and emotional harm, it is also “deeply structural and relational”. Velásquez Nimatuj talks about how sexual violence in such communities tend to be “systematic and collective in nature, rather than sporadic and individual”, often a ‘cultural terror’ during the course of which, the place of women in society is ‘dehumanized and delegitimized’.³¹⁹ To remove such societal stigma from sexual violence, it is important to discover newer methods of truth-seeking and story-telling.

Another significant aspect remains in acknowledging the contexts - both historical and social - where the sexual harm took place, and comprehending the interplay of community factors that help design a restorative justice project, and in doing so, we would understand that a lot of antagonism exists between survivors themselves, especially in societies like Egypt, where the good woman/bad woman dichotomy prevails as a hallmark of patriarchal control. Keeping this in mind, a truth-telling project can help manifold, especially to develop several perspectives of the sexual violence epidemic from various women from different groups and strata in society. It

³¹⁷*Supra* note 296.

³¹⁸*Supra* note 290.

³¹⁹*Supra* note 290.

also makes a point to locate women's struggles and lived experiences within the larger narrative, while acknowledging the nature of their socio-historical identities.

In my thesis, I have argued that gendering the truth-telling process, in Egypt or otherwise, is an inherently risky process. It brings up questions of how to 'un-invisibilize' (as opposed to *only* make visible) women's experiences of violence, without essentially reifying these experiences; how to use best practices (of other countries) without giving these Egyptian a platform or voice, and instead, listen to the struggles of these women; how to perceive gendered violence, that is perpetuated neither in conflict nor during peace-time, and categorize it within the already-established feminist discourse in order to legally substantiate its existence.

That being said, the more debate this issue generates, the closer we might get to solution that involves a relational approach to gender and truth seeking in fledgling democracies. The public/private distinction in Egypt has collapsed, and with it, a crisis of patriarchy has opened up, expressing itself in mass political violence towards women. This, in turn, has opened up newer possibilities in advocating for women's rights issues in the transitional paradigm of Egypt, the first step of which is allaying survivors of politicized sexual violence and reclaiming the Revolution of 2011 for half the population.

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