



**Commissions of Inquiry:
Integrating a Gender Perspective¹**

Concept Note: Scoping Exercise

**Monday, 21 January 2019
10:00 – 16:00**

**Connaught House, Room 7.05
LSE**

Reports by Commissions of Inquiry (Col) and other similar fact-finding missions have enormous potential to assist in mapping conflicts, documenting violations and in designing the content and trajectory of peace processes, accountability mechanisms, transitional justice and post-conflict transformation. The impact that they can have should not be underestimated which is precisely why undertaking a robust and holistic gender analysis is of critical importance.

That there is a need for such entities to more effectively integrate a gender analysis into their investigations and reporting is evidenced by the release by OHCHR, in autumn 2018, of its Guidance and Practice document [“Integrating a Gender Perspective into Human Rights Investigations”](#).

Typically, gender experts assigned to Col and fact-finding missions are specialists in one particular aspect of the investigation and usually in respect of sexual and gender-based violence (SGBV). The consequence of this is that reports tend to focus on rights violations against women and girls primarily through the prism of SGBV and fail to register the gendered aspects of other IHL and human rights violations. This narrow framing translates into recommendations that pivot around addressing impunity rather than locating state responsibility. Moreover little regard is directed at the structural causes of oppression, inequality and violence which are heightened or manifest themselves in different forms in times of conflict. Furthermore, the tendency to equate ‘gender’ with ‘women’ makes invisible rights violations directed at others by virtue of their gender.

This scoping workshop gives participants an opportunity to think about what is silenced through fact-finding, identify some good practice, and to consider alternative strategies that can maximize the impact of reports in facilitating peace, justice and equality.

Agenda

Introductory comments: Louise Arimatsu

“...gender analysis is a skill. It’s not a passing fancy, it’s not a way to be polite. And it’s not something one picks up casually, on the run. ... One has to learn how to do it, practice doing it, be candidly reflective about one’s short-comings, try again. To develop gender analytic skills, one has to put one’s mind to it, work at it, be willing to be taught by others who know more about how to do it than you do. And, like any sophisticated skill, gender analysis keeps evolving, developing more refined intellectual nuance, greater methodological subtlety. One has to get to the point where one can convincingly describe the processes of gender analysis and its value to others, including to those who are skeptical, distracted, and stressed out. It takes myriad forms of energy to do gender analysis and to convince others of its necessity.”

Cynthia Enloe, ‘Gender Analysis Isn’t Easy in Carol Cohn (ed) *Women & Wars*

Session 1

10:00-11:00

A gender analysis: potential and limitations

Introductory comments: Madeleine Rees

Discussion issues:

- Gender is a “complex term”.ⁱⁱ Is *that* the problem?
- ‘Gender’ is used to describe rather than as an entry point for analysis.
- Is part of the problem the conflation of SV/GBV?
 - GBV is typically used interchangeably with SV against women & girls whereas GBV perpetrated against men is often depicted as torture and when described as sexual, there is little gender analysis.
 - Male on male violence is not seen as necessitating a gendered analysis (eg the Imbonerakure [Burundi’s CNDD-FDD’s youth league] typically made up of young men, has been accused of perpetrating abuses against other young men who have either refused to join their party or have joined the opposition political party; yet the nexus between youth, masculinity and power is not fully explored) How to encourage Col to address societal masculinities pre- and post-conflict?
- How to dislodge binary narratives? To what extent might an intersectional analysis assist?
- How to address the problem of heteronormative framings?
- Documenting dynamics of gender: what were the pre-existing inequalities in the society and how have they changed over time and specifically during the armed conflict?

Session 2

11:00 – 12:00 Gendered harms

Introductory comments: Christine Chinkin

Discussion issues:

- How to register the material/lived experience which can be missed due to the fact-finder's pre-existing framing?
- Do legal framings elide lived experiences?
 - IHL perspective: targeting operations = military objectives v civilian objects.
 - Anthropologist/country expert: targeting operations = to starve the population.ⁱⁱⁱ
- How to prompt fact finders to chronicle patterns of harm in everyday life that extend beyond instances of sexual violence? Do stories of lived experiences enter into fact finding, or is the focus only on quantifiable harms?
- How might dominant conceptions of what counts as 'harm' or 'serious' violations - which are highly gendered and privilege CP over ESC violations - be challenged?
 - The loss of educational opportunities faced by girls, in particular, who have been forcibly displaced due to armed conflict are, even when documented, not treated as serious violations.^{iv} Little consideration is given to the likely and foreseeable consequences that girls will be forced into precarious economic and social conditions that can lead to further abuse and violence.
 - Shortages in respect of basic necessities (food, water, heating, shelter, access to health care and reproductive needs) are generally treated as inevitable consequences of warfare. But even when documented as violations (arbitrarily denying humanitarian relief; starvation) the gendered dimensions of the harm are typically not considered.
 - How might fact finders be encouraged to take account of the fact that women-headed households are a common consequence of conflict and the gendered implications of this in respect of rising costs of provisions/services? How can Col's capture the link between war, poverty and gender?
- If the gender analysis comes only after identifying the legal violation, what is missed?
- The impact of war on mental health is rarely, if ever, addressed by Col's notwithstanding the links between conflict, mental health and gender.
 - The exposure to violence has been associated with increased mental illness.^v Substance abuse has also been documented as increasing due to armed conflict,^{vi} which can have a knock on effect within domestic spaces. To what extent (if at all) should Col's be encouraged to pursue this line of inquiry?
 - Is the nexus between physical violence and loss of everyday security, being missed?
- How to prompt fact-finders to go beyond simply documenting the alleged legal violation?
 - IHL violations are usually registered by cataloguing a series of events/facts that suggest that the prohibition on attacking civilians, the proportionality principle and precautions in attack have been breached. Very often the facts open up an opportunity/entry point for assessing the gender dimensions of the violation: time, location, event but this is not pursued. Is this a missed opportunity that needs to be addressed?
- Does the existence of technologies, such as social media, bring greater awareness of gendered harms? How does the use of mobile phones to document violations assist fact

finders? How does the existence of 'big data' change the methods by which fact finders approach IHL violations, as death is easier to calculate rather than non-lethal violations

12:00 – 13:00

Lunch

Session 3

13:00 - 14:00

Addressing structural oppression and violence through a gender analysis

Introductory comments: Sareta Ashraph

Discussion issues:

- To what extent does the public/private distinction continue to exclude?
 - Is domestic violence recognised? Has the conflict in some cases increased domestic violence? How is this included? Is a loss of economic security related to the increase of domestic violence, due to shifting perceptions of masculinity?
- To what extent are fact finding missions adequately documenting the gendered social structures that prevailed prior to the conflict? The local and the global political economy prior to the war? The gendered implications of the emergence of parallel war economies?
- Some fact finding bodies are paying far greater attention to the political economy and to the linkages with the conflict (cause/aggravator) but few are integrating a gender analysis into the reports. How might this be tackled?
 - For example the Burundi Report has highlighted the link between political economy and gender: “against this backdrop, the Government has not redirected its domestic resources to give priority to social spending, the demand for which has risen steadily in a country whose population of 10.5 million is likely to double by 2030. On the contrary, a review of the annual State budgets shows that the amount of domestic resources devoted to defence and security expenditures has risen faster than the amounts allocated to basic services other than education. This situation has had a disproportionate impact on women because of their specific needs with regard to services, including health services, and because the lack of social services increases the burden of unpaid work borne by women within the family (para 59).”^{vii} How can a gender analysis be further developed?
 - In contrast to the Burundi Report, the Myanmar Report does not refer to ‘women’ or ‘gender’ beyond references to gender based violence or to women as victims of sexual violence. The Myanmar report does indicate a connection between natural resources, land use, and conflict which impacts upon individual lives. However, this lacks any gender analysis. “Each of the above-mentioned conflicts has a complex history and is fueled by various grievances, including with regard to land use, development projects, the exploitation of natural resources and illegal narcotics trading. The underlying factors, however, are demands for greater autonomy, self-determination and the elimination of ethnic or religious

discrimination, as well as resentment about Tatmadaw tactics targeting civilians and violating human rights (para 57).”

Session 4
14:00 - 15:00

Accountability and remedies through a feminist lens

Introductory comments:

Discussion issues:

- Cols focus primarily, if not exclusively, on those that they consider are committing serious violations of IHRL, IHL, ICL – generally, the parties to the conflict. The consequence of this is that other actors and any gendered harm/practices committed by them are elided. Does this matter?
- Individual accountability: ICL and gendered harms
- State responsibility
 - How to ensure that recommendations always incorporate measures to advance the protection of women’s rights founded on gender analyses?
 - How can Cols be encouraged to integrate a gender sensitive dimension into the recommendations and, as a matter of common practice, to urge states to adopt law/policies to ensure the full protection of women’s rights in compliance with their legal obligations?^{viii} To prevent conflict, the Col on Burundi identifies the need to “[R]eform the security sector and establish credible civilian oversight mechanisms; give priority to maximizing the allocation of resources for improving the population’s enjoyment of economic and social rights; and carry out reforms, particularly in the area of land ownership, to safeguard the right to development” (para 76).
- International and regional financial institutions are generally absent from Col reports with the exception of the 2018 Burundi Report (A/HRC/39/63). The Col’s assessment of the political economy, including an awareness of the gendered dimensions of the policies adopted by the state, enabled it to recommend that “the technical and financial partners of Burundi “suspend, or maintain the suspension of, any direct budget support to the Government until such time as priority is given to the allocation of domestic resources for the fulfilment of the Sustainable Development Goals and the economic and social rights of the population, and effective measures are taken against corruption; ensure that grants and financing provided to the Government are earmarked for projects to meet the population’s needs, and ensure that such funding is managed effectively and transparently; and regularly evaluate the impact of financial sanctions on the people of Burundi” (para 89). How might other Cols be encouraged to adopt a similar methodology?
- Private sector

Session 5

15:00 - 16:00

Strategic steps- What is next?

Specific issues for discussion:

- Shadow reports: what are the benefits of producing shadow reports? Disadvantages?
- What is the point of fact finding missions?
 - Cols “achieve very little, if anything”
 - Cols can fulfil “a range of functions. A really interesting example is the super rapid ‘Col’ set up by UNSG (at least one of them was an existing SR) to investigate the Harbel Camp massacre in the civil war in Liberia. I think that it prevented myth making. It was a single (but big) incident and the key element was speed and credibility. Others (e.g. Syria, Burundi) are more a matter of record keeping and hopefully having a limited deterrent effect.”
- What part can/should academics play, if any, in this process?

General issues for discussion:

- Do fact finding missions take away resources that could be better spent elsewhere? I.e. supporting civil society to alleviate crisis in food supplies etc
- How do fact finding missions attract a diverse group of people?
- How much does personal bias or relationships between the ‘fact finder’ and the ‘victim’ influence reporting?
- Is there a need to address the ‘politics of legal knowledge’ of fact finders from the Global North who are seen as having greater access and credibility?
- Cols: imperialist interventions
- Mandates?
 - “to examine alleged violations and abuses of IHR, IHL, ICL committed by all parties to the conflict **including the possible gender dimensions of such violations**, and to establish the facts and circumstances surrounding the alleged violations and abuses and, where possible, to identify those responsible.”^{ix}

ⁱ This workshop is part of a project that has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (Grant agreement No. 786494). For further details see: <http://www.lse.ac.uk/women-peace-security/research/Gendered-Peace>

ⁱⁱ Carol Cohn “a way of categorizing, ordering, and symbolizing power, of hierarchically structuring relationships among different categories of people and different human activities symbolically associated with masculinity or femininity”; “a structural power relation”

ⁱⁱⁱ Martha Mundy, “The Strategies of the Coalition in the Yemen War”

^{iv} <https://www.newsdeeply.com/syria/articles/2017/12/22/the-shifting-role-of-women-in-syrias-economy>

^v Alicia Londoño, Perla Romero and Germán Casas, ‘The association between armed conflict, violence and mental health: a cross sectional study comparing two populations in Cundinamarca department, Colombia’ (2012) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3605190/>

^{vi} Fahmy B. Hanna, ‘Alcohol and substance use in humanitarian and post-conflict situations’ (2017) <http://www.emro.who.int/emhj-volume-23-2017/volume-23-issue-3/alcohol-and-substance-use-in-humanitarian-and-post-conflict-situations.html>

^{vii} Further examples include: the Burundi Report states: The political crisis in Burundi has had a very negative impact on the country's economic and social situation and has fuelled an increase in poverty. The Government has nonetheless imposed additional taxes and contributions, in contravention of the right of all persons to an adequate standard of living, and has failed to devote the greatest possible share of its domestic resources to the realization of economic and social rights (Summary, Introduction). The political crisis in Burundi has had a very negative impact on the country's economic and social situation and has fuelled an increase in poverty. The Government has nonetheless imposed additional taxes and contributions, in contravention of the right of all persons to an adequate standard of living, and has failed to devote the greatest possible share of its domestic resources to the realization of economic and social rights (para 80).

https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColBurundi/ReportHRC39/A_HRC_39_63_EN.pdf

^{viii} <https://www.idlo.int/news/highlights/strengthening-womens-customary-rights-land>

^{ix} Resolution 36/31 establishing Yemen Col, September 2017