

Women and Transitional Justice

The experience of women as participants

Edited by
Lisa Yarwood



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Women and Transitional Justice

This book discusses the evolving principle of transitional justice in public international law and international relations from the female perspective at a time when the concept is increasingly recognised by the international community as an effective framework in which to negotiate and manage a community's post-conflict transition to peace and stability. The book adopts a gender lens with a particular focus on women's direct experiences and perceptions either as intended beneficiaries of transitional justice (TJ), protagonists in that process or as practitioners, in order to present a unique view in relation to the development of TJ. The range of experiences and knowledge in this collection provides a fresh and unique perspective through its blend of theory and practice.

This book will be of particular interest to students and scholars of law, political science and gender studies.

Lisa Yarwood specialises in transitional justice and state accountability. She is an independent consultant having worked in academic positions in Hong Kong and the United Kingdom and undertaken practical placements with the ICTR in Tanzania, Costa Rica and Panama.

For Alexi's Papa, for Fabien.

Notes on Contributors

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Foreword

Over the past two decades the field of transitional justice has grown and evolved at a rapid rate. It has increased not just in the number of contexts in which it is being employed, but also in the types of contexts. Today transitional justice processes can be found in relation to countries which are in conflict, post-conflict, transitioning, non-transitioning, post-authoritarian and long established democracies. The use of transitional justice mechanisms has also grown out of a renewed commitment at the global level to the centrality of justice as a foundation for sustainable peace. Similarly the mechanisms themselves have evolved: the architecture of international justice, mandates of truth commissions and goals of reparations programmes, to name just a few, are all vastly different from their manifestations just some short years before.

What has been slower to evolve however has been a recognition of the differential impact of conflict on men and women, and as a result the differential needs in relation to the measures employed to deliver justice. This, too, is now shifting. Within the United Nations, the Security Council has established a normative framework through its five resolutions on Women, Peace and Security which affirm that women's participation in all aspects of post-conflict recovery is critical to the stability of a country. This includes measures for post-conflict redress. These same resolutions have acknowledged that conflict-related sexual violence is a threat to international peace and security, in addition to being the most serious of crimes under international law.

Perhaps one of the most important developments in recent years has been the seminal jurisprudence of the Inter-American Court on Human Rights as well as policy emanating from within the UN that affirms that, for women, the goal of transitional justice cannot be to simply address singular violations. Rather, these mechanisms must address underlying structural inequalities and further transformative justice.

At a national level and within transitional justice mechanisms themselves mandates have evolved to include in some cases quotas for women's representation, dedicated gender expertise on staff, specific mention of sexual and gender-based crimes in mandates, and efforts for gender sensitivity in witness protection, outreach investigations.

Too much of the focus to date however has been on increasing women's representation in existing mechanisms or including specific mention of gender-based crimes in mandates. In other words, the focus has been on reforming existing measures. It is here that this book, *Women and Transitional Justice*, is poised to make an important contribution to the continuing evolution of this field. This edited compilation as a whole points to the need not for piecemeal reforms, but for the measures themselves to be re-evaluated from a new perspective; that of women's own experiences.

A re-evaluation of transitional justice measures based on the experiences and voices of women might highlight the need to revise the range of violations for which we seek redress, not simply to include sexual violence but also, for example, to include socio-economic rights violations which disproportionately impact women. It may point to the need for new mechanisms of justice, or for shifting how these mechanisms operate at present. It would most certainly necessitate a rethinking of the very goals of transitional justice – including definitions of 'conflict-related' or 'guarantees of non-recurrence'. Last, a focus on women's voices would likely point to a need to reprioritise our emphasis on one mechanism over another, or the sequencing of these mechanisms. For example, women's demands for justice are frequently placed on comprehensive reparations, an area where there has been too little international focus or national implementation to date.¹

This book reminds us of the critical importance of women's voice, participation and perspectives to all of the goals sought through transitional justice processes, and ultimately to their success. Most importantly, it brings to the forefront the contributions of women in this field and their views informed by their own experiences which can help to shape the transitional justice project going forward.

Ultimately, achieving gender justice through transitional justice measures will necessitate a broader approach and most importantly an engagement with all actors, in particular men. This book however points to the value of also creating spaces for dialogue between and amongst women transitional justice practitioners in order to share strategies, approaches and lessons learned to further the transformative potential of transitional justice.

Nahla Valji
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1 UN Women, 'Making Transitional Justice Work for Women' (2012).

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Each contributor has been able to extend special thanks at the start of their respective chapters, as have I noting in particular the generosity of time and spirit shown by Dr Aroha Harris and Jacinta Ruru. However, I wish to make a more personal thanks here to all the women in my life who have provided inspiration including my grandmothers Anita Ritchie and Edith Yarwood; my aunts in particular Jenny and Liz; my very dear friends near and far (many of whom have also directly contributed to this book); my sisters Anita and Sally and of course my dear mother Judy who never ceases to amaze me.

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Introduction

This book is concerned with transitional justice, which is an emerging feature of the international framework but which continues to escape definition given its organic and nebulous nature. A large proportion of commentary on transitional justice is provided by practitioners, NGOs and IGOs while only a small number of academics have undertaken research, although this is an increasing phenomenon to which the book aims to make a contribution. There is a significant body of academic commentary on international criminal justice and the work of the international courts, but this project is focused on a much broader notion adopting a working definition of 'transitional justice' that includes mechanisms of international criminal justice but also much more.

In the UN Secretary-General's 2004 Report on the Rule of Law and Transitional Justice in Post-Conflict Societies the notion of 'justice' was as 'an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs' and 'transitional justice' was considered to encompass 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'. The mechanisms listed in the Report were as diverse as short term peace operations, 'accounting for the past, building the rule of law and fostering democracy a[s] long-term processes' and at a minimum transitional justice was considered to secure 'political space for reformers, insulating law enforcement from political abuse and mobilizing resources for the strengthening of the justice sector'.¹ This book both adopts the definition as cited above while also leaving open the possibility that our understanding of transitional justice will adapt with time and as the principle itself evolves.

In fact, the Report indirectly forewarns that flexibility will be required when identifying what is required to ensure and facilitate transitional justice. It directly calls for dialogue with those groups most affected including

1 'Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' UN Doc. S/2004/616 (2004), paras 7 to 21.

2 Introduction

'minorities, the elderly, children, women, prisoners, displaced persons and refugees' in order to ensure the measures adopted ensure 'protection and redress in judicial and reconciliation processes'.² Thus, the second characteristic of this work is to focus on one of these groups and adopt a gender perspective to consider transitional justice from the perspective of women.

Just one general working definition of gender perspective (noting that each contributor has adopted and worked within her own definition) is that

gender perspective looks at the impact of gender on people's opportunities, social roles and interactions. Successful implementation of the policy, programme and project goals of international and national organizations is [therefore] directly affected by the impact of gender and, in turn, influences the process of social development. Gender is an integral component of every aspect of the economic, social, daily and private lives of individuals and societies, and of the different roles ascribed by society to men and women.³

One of the key characteristics therefore being that gender perspective is about social constructs relating to the different sexes whereas sex differences relate to the biological fact that females and males are different.⁴ This definition captures the context in which the issue of gender is relevant in this work because it is not the difference in sex per se that is of interest rather it is the consequences faced by women because they are women that are at issue.

Statistics highlighting the prevalence of violence against women in times of conflict are extreme and cannot, and are not, avoided in this work but the emphasis in this project is on how women have been instrumental in the transitional justice process following conflict. This extends from the role of women in the international criminal justice framework in seeking greater recognition of sexual violence by international courts and tribunals to the role played by women in the instigation and implementation of more non-traditional mechanisms. Thus the focus is more on the role played by women than the theoretical issues faced by women in this field.

The substance of the book focuses on the experience of women in transitional justice, in terms of being beneficiaries of the transitional justice process, protagonists in that process for example by playing an instrumental role in negotiating what form justice is to take, as participants in that

2 'Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' UN Doc. S/2004/616 (2004), para. 25.

3 Economic and Social Development, FAO 'Agricultural Census and Gender Considerations', available at www.fao.org/DOCREP/003/X2919E/x2919e04.htm, Chapter Two, 'The Gender Perspective' (accessed April 2012).

4 Ibid.

process such as a court witness/conflict peace negotiator or as practitioners such as being legal counsel before one of the hybrid courts.

In addition, all the contributors to this work are women and are either direct or indirect practitioners of transitional justice – offering a unique perspective on the issue of gender and transitional justice. Virginia Woolf considered it was ‘obvious that the values of women differ very often from the values which have been made by the other sex ... it is the masculine values that prevail’.⁵ Gilligan was more expansive in arguing that the difference in perspective

is rooted not only in [women’s] social subordination but also in the substance of their moral concern. Sensitivity to the needs of others and the assumption of responsibility for taking care lead women to attend to voices other than their own and to include in their judgment other points of view.⁶

This book tests both those perspectives aiming to indeed provide unique insight into the experience of women in the context of transitional justice.

The range of experience brought by the contributors to the book is formidable. Sarah Maddox has worked both at the international courts and in investigating and prosecuting high-profile organised crime leaders in Australia including their alleged relationship with the regime of Saddam Hussein, having studied at the United Nations Interregional Crime and Research Institute and the European Inter-University Centre for Human Rights and Democratisation, Italy. Practitioner based contributions are also provided by Julissa Mantilla Falcón who was former head of the Transitional Justice Unit at the Truth and Reconciliation Commission Peru and subsequently working for UN Women, Columbia. Dr Lisa Yarwood gained her experience at the ICTR, Catalina Díaz is an independent expert on transitional justice, Iris Marin is the Reparations Director of the Colombian Government Unit for the Integral Assistance and Reparations for Victims and Annelotte Walsh worked not only at the ICTR but also as an advocacy manager for UNICEF, Australia. Lisa subsequently completed her PhD in the UK before lecturing at the Chinese University of Hong Kong, Catalina is studying for an MPhil in sociology at the University of Oxford while Annelotte is currently a PhD candidate at Hong Kong University: thus these women have been able to combine their time working in practice with academic discipline in this work. The more theoretical sections are represented by Professor Amy Barrow, Dr Caroline Fournet, Dr Lauren Fielder and Dr Clotilde Pégrier writing from Hong Kong, Holland and Switzerland respectively. The international cross-section of participants is also intentional and avoids the allegation of

5 Woolf, V. *A Room of One's Own* (New York: Harcourt Brace and World, 1929) p.76.

6 Gilligan, C. *In a Different Voice* (Cambridge, MA: Harvard University Press, 1982) p.17.