

01. Introduction

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Towards the end of a three-year study investigating women's access to justice in northern Uganda, Kenya and eastern DRC, we returned to each country to present our preliminary analysis with the women who had shared their thoughts and experiences with us during the project. We wanted to include women participants as analysts and makers of meaning, rather than simply as witnesses to violence. Our audio recorders captured the women's discussions in small groups with no researcher present. In Nairobi, a group of women discussed the research project and the likelihood of any change occurring. These women, from different conflict affected regions of Kenya spanning from Mount Elgon in the west, to Malindi in the south-east, delivered a damning assessment of Kenya's political system and social organisation of power. 'No-one will listen to the voice of weak' declared one woman, to murmurs of agreement from her interlocutors. 'Justice should be done instead of telling us that they are taking it to the government. They know everything ... they know that you were violated, they don't care. The weak ones do not have their rights,' replied another woman. The women discussed the research project - funded by the Australian government during its term on the UN Security Council, and conducted with approval from the Kenyan government - and concluded that if our aim was to take the findings to their government, our government or the UN then 'We will not benefit, we will remain here...'

This short vignette, apart from being rather sobering, holds a number of points, of both principle and practice, that ought to be taken seriously.

This first is the issue of 'voice', a concept that has been widely embraced by a broad range of humanitarian and justice actors and is now central in discourses surrounding women, poverty and violence (Madianou et al 2015; Tacci 2008). The women discussing voice here don't focus on their inability to 'find their voice' or their need to be 'given voice' (as so many humanitarian programs claim to do), but of the fact that no-one is listening; that their social location as 'mere women' (a phrase we heard in all three countries) renders their voices inaudible. The concept of voice has roots in critical social theory (Butler 2005; Fassin 2012). Here voice is understood as a speech act - a mode of participating in social and political life

whether as an individual who ‘give(s) an account of oneself’ or as part of a collective engagement such as through social movements, party politics or other actions presenting concerns or ideas in the public realm (Madianou et al 2015, 3020-2). The idea of voice however, has been incorporated in humanitarianism and transitional justice in a very particular way - voice has come to mean the voice of the ‘victim’ or ‘survivor’ (distinct terms which rhetorically have become synonymous); archetypal images that women in war zones embody as well as, if not better, than any other group. Women’s voices are drawn upon as witnesses to raw suffering only; their voices are listened to in order to mobilise empathy, demonstrate the ‘human suffering’ of an atrocity, or to progress some other agenda. Women’s voices are seldom heard as political subjects, as expert opinion on justice, politics or power relations - these remain the preserve of the expert; the lawyer, aid worker, technocrat or researcher who will interpret and mediate the voices to their respective audiences.

Divorced from the structural critiques found in social theory, in the field, there is a presupposition that voicelessness arises from women’s lack of confidence or lack of knowledge of their ‘rights’. The adoption of ‘voice’ alone (its separation from its socio-political context) has material effects: it directs resources towards programs that target women’s ‘deficiencies’, programs such as women’s empowerment or rights education, while leaving the economic, social and political structures which underpin their disempowerment, untouched. The focus remains on building voice, rather than structural barriers to hearing, yet as Christina Kenny notes, this relies on a problematic assumption that ‘knowledge of rights leads linearly to “empowerment”’ (Chapter 14). This discourse, rather than empowering women, places the responsibility for achieving justice (or failing to do so) on those with very little social, economic and political power. Furthermore, the inclusion of women’s voices only as representations of suffering reinforces their status as symbolic victims, further impairing their ability to participate in justice processes as other than victim-witnesses.

This is closely related with the second point arising from the workshop participants’ discussion - that neither the effects nor the causes of gendered violence and injustice can be addressed outside of patriarchal social and political structures that continue to locate women in secondary positions. Technocratic interventions that don’t account for power relations - who is ‘weak’ and who is strong - are unlikely to respond to the justice demands of the least powerful. Atomised responses that seek reform in the police sector or in health services (important

initiatives), but without accounting for land ownership, status of widows or women's rights to participate in every level of decision-making will have limited effect in terms of achieving the transformations that transitional justice advocates have hoped for, or indeed of restoring women's confidence in the ability of the various transitional justice actors to improve their lives. The contributions to this volume come from a range of disciplines and cover a wide geographic spread, and while each chapter has a specific focus, one of the strongest themes to emerge across this body of work, is the need for a holistic approach to justice; to understand that class, race and gender interact in mutually constitutive ways in the lives of women. This manifests in different ways in each location, but patriarchal social and political structures in both national and international systems work against women realising justice and a stable foundation upon which to build dignified lives free from violence. The women discussants understand the need for political and social change to underpin any justice programs.

This leads to the final point arising from the workshop discussion - the profound loss of confidence the women expressed - in governments, the international community and researchers. The women trusted only direct personal relationships as a possible source of change, 'They should do this research and just decide on their own to help us, not that they are taking it to the government.' There was great hope that, in the aftermath of conflict and with the high-level determination to work towards justice, moments of rupture would open up space for addressing gendered injustices and responding to women's justice claims in particular. Indeed, gender justice has been a significant focus of political, legal, international development and scholarly attention over the last twenty-five years. Efforts however, have not achieved the progress that was anticipated, and all actors – humanitarian workers, international and national justice workers, and researchers – need to earn back the confidence and trust of communities affected by conflict. This trust is unlikely to be regained through 'more of the same', in which various combinations of transitional justice are 'brought to' conflict affected communities (Nagy 2014, 217). Madeleine Rees and Christine Chinkin (2015, 1215) identify that 'meaningful participation is perhaps the key entry point for transformation.' Yet too often, justice is approached as a 'thing to be delivered to a community or country seen as lacking 'capacity'. Many of the chapters in this collection point to the need to form much stronger, collaborative partnerships with communities, seeing the building of justice as a shared project.

This volume was conceived during a two-day multidisciplinary international symposium held in Sydney in July 2015. It brings together scholars from diverse disciplines to critique the interactions of gender with law, colonialism, race, humanitarianism and politics and, to think through the intersections between the range of harms, interventions and justice initiatives at both global and local levels. The contributors, while recognising the limited outcomes achieved to date, remain committed to the task of building new theoretical and political frameworks that are more responsive to the heterogeneity and complexity of women's experiences of conflict and transition. *Rethinking Transitional Gender Justice* challenges reductive historical narratives of women as either absent or peripheral in matters of state or appearing predominantly as victims and occasionally as valorised peace-makers. It both examines the diverse ways that women are victimised in conflict, while also building a stronger framework through which women's agency, resistance and strategies can be recognised and engaged.

Structure of the book

The book is divided into three sections: Rethinking Institutions; Rethinking Interventions, and; Learning from the Field. The first section seeks to identify and articulate some of the implicit assumptions that underpin transitional justice and gender as a first step in being able to question some of the existing orthodoxies in the hope of prising open space for rethinking bases for action. In chapter two, Lucy Fiske gives a brief survey of major developments in transitional justice over the last twenty-five years, with a specific focus on gender justice. In this chapter, Fiske traces how 'gender' has largely been drawn in to transitional justice in the form of sexual violence. Not only does this obscure the broad range of gendered harms that are often exacerbated during conflict and narrow the justice lens to a very particular focus, but it also reinforces traditional gender roles in which women are seen predominantly in terms of their reproductive capacities. Women's efforts to gain 'a seat at the table' as equal agents are repeatedly frustrated. This theme runs throughout all the chapters in this first section. Pamela Scully, in chapter 3, looks at Liberia's recent Ebola outbreak – both the cracks and fissures that the disease exposed in Liberia's post-conflict justice developments, and the international community's response – to hone in on the centrality of 'capacity' in the development and justice sectors. Liberians are viewed by the international community and their own leaders as inherently lacking capacity. Capacity however, is defined and identified by the

international community – the health, justice and development experts of the World Health Organisation, the IMF and international NGOs – in a thoroughly self-referential manner that mitigates against opportunities to recognise strengths, knowledge and skills of Liberian communities. Ebola, Scully argues, ‘was halted in Liberia largely independently of the interventions finally made by WHO, the CDC and the US military.’ Nine of eleven US military medical clinics did not treat a single Ebola patient, rather, it was communities’ own efforts that stopped the spread of disease.

This presumption of a hierarchy of knowledge, at which Western scientific knowledge sits at the apex, underpins post-conflict development. Shackel and Fiske pick up a similar theme, questioning whether the influx of well-intentioned humanitarian organisations actually works against empowerment of women. In resource poor post-conflict environments, humanitarianism locates much-needed resources (livestock, tools, seed-capital) within a framework of service-provider and client rather than citizen and representative. This dynamic, which few have the ability to resist, rewards the performance of passive victimhood and gratitude, while simultaneously domesticating the indignation that is required for longer term social and political change. Citizenship, they argue, ‘is not bestowed from above, but comes into being through its exercise.’

Giotis also takes ‘victimhood’ as her starting point, and investigates the international media’s role in the production of an increasingly standardised image of women in war. Foreign correspondents, often dependent on humanitarian actors for access to conflict and post-conflict zones, overwhelmingly report on women in war zones as helpless victims, often of sexual violence, in need of rescue. Giotis argues these representations ‘are variously intertwined with problematic traditions of patriarchy, decontextualized humanitarianism and racialised knowledge.’ Persistent colonial era racialised knowledge about Africa in general, and the DRC in particular, shapes both the foreign correspondents’ telling of the story of the DRC conflict, and the largely Western audience’s receptivity to horrific stories of sexualised violence – as they are in keeping with ‘our pre-existing notions of the DRC as the “heart of darkness.”’ Giotis traces both the discursive contours of reporting on African women in war, and on the broader economic and political contexts that support and encourage a particular style of media framing. Journalists’ close relationship with INGOs and peace-keepers, the embedded journalist model of

reporting, closes the information loop available to policy makers in Washington, New York and Geneva, creating an echo chamber effect and narrowing possible policy responses.

While these early chapters are all critical of the standardisation that has occurred in transitional justice and post-conflict interventions, Grewal's chapter points to some ways in which international interventions have contributed to local struggles for gender justice.

In 2011, Grewal returned to Sierra Leone - where she had previously worked as an international observer of the Special Court of Sierra Leone (SCSL) – to see what impact the SCSL had had on women's lives. Grewal found that, while the court had ultimately reached conservative conclusions in many judgments, and specifically in relation to marriage, Sierra Leonean women, especially those living outside the capital city in rural areas, had been able to use the judgments in support of their struggles for greater participation in the public sphere. The court judgments on marriage may have been conservative, but women were nonetheless referring to them in arguments within their own communities to challenge as illegal, a range of patriarchal practices that kept women in subservient and secondary roles. We ought to pay more attention to the ways in which non-elite actors use transitional justice institutions and instruments, to recognise the life that human rights has beyond its formal articulations as here we may find many creative initiatives. Paying attention to these localised initiatives may both help to lessen asymmetries in existing power relations (as recognition and attention affirms the significance of action) and provide some useful ideas in what sorts of strategies might help change the lived experiences of women in post-conflict societies.

Together, the chapters in this section encourage critical reflection on the ways in which race and colonialism, humanitarianism, law and patriarchy have endured and to expose the ways in which the continuity of these institutions serve to limit the transformative potential of transitional justice initiatives.

The second section, 'Rethinking Interventions', focuses on specific moments of transition and on different strategies of intervention, analysing how dominant conceptions of women and of gender manifest in 'real world' settings; operationalising the Women, Peace and Security (WPS) agenda in post-conflict settings, peace negotiations, the International Criminal Court and, memorialisation. Angeline Lewis, drawing on her experiences as a legal officer with the Australian Defence Force deployed in Iraq and Afghanistan traces the 'operational risks of Resolution 1325's generalist approach.' Lewis analyses how the generalist and universalist

understanding of ‘women’ as a category with UNSCR1325 overlooks ‘women’s interests within their own society, and the importance of other aspects of women’s identities, including religion, ethnicity and politics.’ While WPS marked important gains in the recognition of the ways in which conflict differentially impacts on men and women, its overly general approach to ‘women’ has underpinned an equally generalised approach to women by military forces in Iraq and Afghanistan. Lewis discusses case studies from both countries which demonstrate how uncritically universalist assumptions, either of the coherence of ‘woman’ as a category within a country or globally, can lead to practices which work against transitional justice’s overarching goals of building sustainable peace and justice. Misunderstanding the complexities and nuances of a foreign society and the importance of multiple aspects of peoples identities including gender, religion, ethnicity, culture and political opinion, can cause ‘a conservatisation of pre-conflict norms’ and work directly against transitional gender justice.

While Lewis explores the ways in which the generalisation of particular conceptions of women impact on the operationalization of UNSCR 1325, Kastner and Roy-Trudel argue that a similarly narrow and unexamined conception of masculinity is at play in peace negotiations. Times of war empower men who fit a particular type of masculinity – the hypermasculine warrior, and it is these men who remain ‘the principal players in the context of peace negotiations.’ Transitional justice has overwhelmingly incorporated ‘gender’ as coterminous with ‘women,’ which not only risks the reductive homogenisation of women (as described by Lewis) but also leaves gender as a social relation, and masculinity unexamined. Transitional justice prosecutions ‘assign guilt to a few individuals considered most responsible for the serious crimes committed during an armed conflict,’ which diverts attention away from ‘the collective dimension of these crimes and of structural violence.’ If gender relations and structural issues are not addressed, then the formal equality goals (inclusion of more women in various public roles during and post transition) will have little effect. ‘The female newcomers, if they are allowed access, need to fit within the existing framework and adhere to the standards that have been adopted by men. This approach, focused on formal equality, needs to be resisted; otherwise, inclusion risks manipulation and co-option.’ The uncritical approach to gender, and silence on masculinity, has resulted in only ‘cosmetic adjustments’ to peace negotiation models and significantly limited the impact of the WPS. Kastner and Roy-Trudel argue that peace negotiations present a particular key moment in determining what sort of society will be built

post-conflict, and that paying attention to gendered power relations (both within and between different sexes) during negotiations is of critical importance.

Jelke Boesten's chapter looks at the importance of memory work and memorialisation in transforming the 'the underlying inequalities that provided the conditions in which specifically gendered harms were possible.' How a conflict is remembered is a key terrain for 'hegemonic battles' for nation and may work to fortify and maintain pre-conflict hierarchies or to question and destabilise them. Boesten examines the competing memorialisation works of the military and state, and of human rights activists and artists, each seeking to establish distinct histories of the conflict. Both gender and class are key battlegrounds in these competing visions. Boesten examines several artistic works in her chapter, many of which were produced by the urban middle and upper classes residing in Lima, and traces the ways in which poor, often indigenous, rural women as survivors of rape and sexual violence, even when sexual violence is a central topic of the work, have been sidelined in these works. The introspective 'self-consciousness of the upper-middle classes' is contrasted with the artistic memorial works of victim-survivors. These works present 'a population caught between two fires – Shining Path on the one hand, and the military on the other.' These works present a quite different depiction of sexual violence, it is present, but not as a central theme, rather, it is depicted as one among many types of violence.

Boesten invites us to think more broadly about transitional justice and, in particular, to question what role cultural production might have in building justice, achieving reconciliation, symbolically repairing harms done and drawing our thoughts and sentiments to the social, economic and political hierarchies that preceded and continue beyond the years of armed conflict. Peru's conflict, as other case studies presented in this volume, exposed injustices that are distinctly raced and class-based and which highlight the impossibility of speaking of gender as a separate identity. There is, Boesten argues, restricted space for 'subversive narrative(s) that address inequalities' and the distance (geographic, political and social) that separates the rural population from the urban middle classes, 'constrain the possibility for more inclusive and questioning memorial art.' Nonetheless, memorial arts hold potential to speak across some of these divides and to forge alliances between the privileged and the marginalised. A key challenge in this is to move beyond memorial art as either a valorisation of national heroes or mere representation of raw suffering, to also encompass a social and political vision which

transgresses existing hierarchies of class, race and gender. ‘Repair is not enough, transformation is essential.’

The International Criminal Court plays a central role in the transitional justice landscape – its findings have both material effect (in the sentences handed down to convicted individuals and the jurisprudence established in prosecuting gender-based crimes) and a broader reach in influencing the discourse. In chapter 10, Rita Shackel examines the Courts prosecutions of sexual and gender-based violence crimes (SGBVC) to date, looking at decision-making and discretion from the investigation stage through prosecution, confirmation of charges, trial and outcome. While the Court has achieved significant and substantive progress in the prosecution of SGBVC it continues to struggle with evidentiary and procedural hurdles, alongside persistent gender-biased norms and misconceptions about the nature and impact of sexual and gender-based violence. Continued improvement in the prosecution of SGBVC is important, not only for the victims in those crimes prosecuted, but in recognition of the Court as a ‘potent source of influence in defining and constructing normative values and standards of conduct.’

One of the key challenges in improving gender justice through transitional processes and mechanisms is the disjuncture that all too often occurs between theory and practice, or between policy and operationalisation. And so, while the first two sections of *Rethinking Transitional Gender Justice* begin with some of the paradigmatic issues engaged in transitional gender justice, in the final section each contribution is rooted strongly in specific justice issues within particular post conflict settings.

In chapter 11, Punam Yadav looks at Nepal’s transitional justice processes ten years after the end of conflict. With a particular focus on Nepal’s two commissions of inquiry (the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons (CIEDP)), and the five-year National Action Plan on UNSCR 1325 and 1820, Yadav draws on her empirical work over the last ten-years to show the many ways in which women’s experiences during the war are excluded or marginalised within these mechanisms. Yadav highlights that the decision by the government of Nepal to separate the commissions from the gender-focused National Action Plan effectively ensured that women’s experiences of displacement, widowhood, sexual violence and difficulties realising their economic rights would largely be excluded from these important justice mechanisms.

Sofia Macher draws on her experience as a commissioner for Peru's *Comisión de la Verdad y Reconciliación* (CVR) to explore the speech strategies used by six Quechua women in their testimonies to the CVR. Macher outlines the ways in which the women were able to use their status as 'victims' as a basis for agency and to ensure a range of different experiences of women (as peasant leaders, as mothers and wives, and as children during the conflict) were included in the CVR's findings. Importantly, Macher draws our attention to truth commissions as an important democratic space which can facilitate active citizenship of structurally disadvantaged people (indigenous women in this case) who ordinarily do not get access to such a public platform. Although this democratic space closed with the close of the CVR, the archives remain and are an important resource in the current memory battles in Peru, as discussed in Boesten's earlier chapter.

Rahma and Fowsia Abdulkadir note that while women's participation in the public sphere in sub-Saharan Africa has increased in recent decades, participation is uneven across the continent and remains limited. Questioning why international and national women's movements have been able to make significant gains in some countries and less so in others, Abdulkadir and Abdulkadir look to Somalia's indigenous customary law, *xeer*, to explore what potential and limitations indigenous customary systems hold for achieving gender justice. While many of Somalia's formal governance structures have substantially collapsed during the protracted civil war, leading it to be seen as a failed state, *xeer* has persisted as a system for organising social and political life, resolving disputes and distributing resources (such as land). *Xeer* has the strength of being indigenous and holding widespread acceptance as legitimate. It is also however, a highly patriarchal system and formally prohibits women's participation in the public sphere. The authors survey 144 Somali people in Somalia and the diaspora about their views on women's participation in the public sphere (including conflict resolution and justice) and the potential of *xeer* to facilitate this participation. Engaging with indigenous justice and governance systems is critical in building sustainable peace and justice - systems which are seen as legitimate (as opposed to simply powerful) are likely to be more stable, but when these systems are strictly patriarchal they can present profound obstacles for women's justice demands. Navigating this difficult terrain is a key challenge for gender justice.

The following chapter, by Christina Kenny, centres on Kenya's 2010 constitution, drafted after the 2007/8 Post-Election Violence (PEV), and explores women's perceptions of the

constitution and their rights within it. Kenny contextualises discussion of the constitution within both a historical context of colonialism and the construction of post-colonial political elites, and within the current global liberal peace-building agenda - both of which are critical in understanding the ultimately conservative effects of the constitution despite its rhetorical appearance as progressive for women's rights. In particular, Kenny argues that the liberal peace-building project has directed both state and NGO energies overwhelmingly into women's empowerment and education activities, without acknowledging, much less addressing the myriad of structural barriers to women's empowerment. Kenny observes that 'shifting the responsibility of learning about and accessing their rights to women, fails to identify gender as a root cause of marginalisation,' and that following various training programs, many women have internalised this sense of self responsibility, but have not been assisted to develop any tools for deconstructing and challenging the gendered status quo. It is little surprise then, that the 2010 constitution did not bring any significant political change (in either parties or individuals) at the 2013 election. Education and empowerment programs, so easily transported by the increasingly global transitional justice and human rights elite, potentially do more to dress up 'business as usual' than to challenge and transform structures working against gender justice.

The theme of education is continued by Anne Maree Payne, Nina Burrige and Nasima Rahmani in chapter 15, this time based in Afghanistan. The authors identify that education is potentially a powerful tool for improving gender equality, but that the barriers that women face in accessing higher education in particular, are deep-seated, inter-generational and span culture, religion, class and gender. Education of both men and women is foundational in enabling men and women to access all other rights and in building sustainable peace, and as such, ought to be central in transitional justice programs. Drawing on interviews with Afghan men and women attending universities in Kabul, the authors identify that security, family support and economic factors are the principal barriers or enabling factors in women's accessing university level education. While human rights might be an aim of education, this language is unlikely to facilitate women's access to education. Rather, arguments that promote women's education in service of the 'greater good', through increased ability to be of service to their families, communities and country were proposed by both men and women. Such arguments may also help build family support for a woman's education, particularly if accessing education will entail moving away from the family to live near the university. The authors' research further identified

the importance of having female staff at universities, appropriate accommodation for women, possibly having sex-segregated classrooms and gender-specific scholarships, and programs aimed at building men's support of women's education are all important factors to consider in seeking to improve women's access to education.

The final chapter, by Dinesha Samararatne and Karen Soldatic, looks at women with disabilities in Sri Lanka. Both physical and psychological disabilities are a direct effect of war, yet are usually only tangentially included in transitional justice programs, if at all. Samararatne and Soldatic survey major pieces of Sri Lankan legislation and UN resolutions to demonstrate the overwhelming absence of disability as an issue requiring consideration in designing justice processes. Women with disabilities living in rural post-conflict areas face both additional difficulties in building a dignified life, and face multiple intersecting axes of disadvantage in seeking justice. This chapter draws attention to the need for transitional justice initiatives to consider positive obligations and to incorporate economic, social and cultural rights in their design. Too often, acquiring a disability means ostracism, poverty and enforced dependency on families who are typically living in poverty themselves. Attitudes to both disability and gender in Sri Lanka represent a significant impediment to justice for women with disabilities and, similarly to women's access to education in Afghanistan, a language of rights does not gain traction, and may in fact work to 'undermine the vital familial supports that the women relied on, especially in an environment with severely limited supports and services provided by the state.' The authors advocate for increased contextually based awareness of disability among transitional justice actors, alongside both soft methods of rights reform (attitudinal and educational change) and 'hard infrastructural changes' (accessible buildings, transport and communication).

The contributions in this volume point towards the need for holistic, multi-disciplinary and multi-level thinking in pursuit of gender justice. The barriers to gender justice have proven to be deeper and more persistent than even high level, legal and governance interventions can reach. By bringing together scholars and practitioners from law, sociology, development and political science working in distinct regions of the world, we hope to progress the important thinking that must be done. In doing so, we do not propose that there is any one answer or that the task ahead is one of 'cracking the code.' The temporal limits implied by the 'transition' of transitional justice reinforce an already present tendency to think of justice as an event, rather than a process and a long-term project. If the contributions here speak to the entrenchment of

obstacles to gender justice; the intransigence of patriarchies in law, politics, culture and religion, we think they also speak to the broad range of possible sites for struggle and the creativity and determination that becomes visible when one looks beyond the immediate and institutional face of transitional justice.

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