Transitional Justice as Global Project: Critical Reflections

Rosemary Nagy
Carleton University
rnagy@connect.carleton.ca

DRAFT – please do not cite without permission

Transitional justice as a field and practice has grown tremendously over the last fifteen years or so including: the institution of international criminal tribunals, hybrid courts and the International Criminal Court; the development of a "right to truth" and "right to reparation" under international law; the transnational proliferation of truth and reconciliation commissions; the creation of a UN Peacebuilding Commission; the expansion of transitional justice scholarship such that there is now a dedicated journal, research centers and academic programs; and the birth of international and regional transitional justice NGOs. In other words, transitional justice has become a well-established fixture on the global terrain of human rights. It insists against unwilling governments that it is necessary to respond to crimes against humanity and other gross human rights violations. The international community provides fragile new governments with important financial, institutional and normative support for reckoning with the past, attending to the needs of victims, and setting the foundations for democracy, human rights, and the rule of law.

Yet, there also appear worrisome tendencies of the international community to impose "one-size-fits-all," technocratic and decontextualized solutions (e.g. Drumbl 2005; Oomen 2005). To what extent does transitional justice appear from on high as "saviour" to the "savagery" (Mutua 2001) of ethnic, especially African "tribal," conflict? Steeped in western liberalism, and often located outside the area where conflict occurred, transitional justice may be alien and distant to those who actually have to live together after atrocity. It is accused of producing subjects and truths that align with market democracy and are blind to gender and social justice. And, in a post-9/11 world, transitional justice may increasingly be shaped by "the appropriation of the language of 'transition' and 'democratization' in furtherance of an apparently global project [that has] few effective international legal constraints" (Bell, Campbell, and Ní Aoláin 2004: 307).

All of this suggests a timely need to reflect critically upon transitional justice as a global project. By "global project," I mean the fact that transitional justice has emerged as a body of customary international law and normative standards. It is a project by virtue of the fairly settled consensus—a consensus that has largely moved past the initial debates of "peace versus justice" and "truth versus justice"—that there can be no lasting peace without some kind of accounting and that truth and justice are complementary approaches to dealing with the past. The question today is not *whether* something should be done after atrocity but *how* it should be done—and a professional body of international donors, practitioners, and researchers assists or directs in figuring this out and implementing it. Furthermore, I call this a "global" project, rather than an "international" one, in order to capture the three-dimensional landscape of transitional justice (local, national, global) and its location within broader processes of globalization.

In the following, I use the categories of *when*, to *whom* and for *what* transitional justice applies in order to challenge troubling features of its standardization. My aim is not to deny that national governments and local actors are active agents in their own transitional processes. Rather, my concern is to call attention to the ways in which their horizon of options may be channeled or streamlined by globalized considerations about the scope of transitional justice. These include

neoliberal doctrine, a trend toward judicialization, and the challenges of balancing culture and universal human rights. The reflections undertaken here based on a selective rather than fully comprehensive overview of developments in transitional justice. This piece is intended to be suggestive in nature and to raise questions for further research. For the sake of convenience, I presume a fairly singular international community, acknowledging here its rather nebulous and frequently divided nature.

Defining the Scope of Transitional Justice

It is not often remarked that figuring out how to implement transitional justice is necessarily a task of first determining the problem. Transitional justice seeks to redress wrongdoing but, inevitably, in the face of resource, time and political constraints, this is a selective process. Transitional justice thus involves a delimiting narration of violence and remedy. This raises, as Bell and O'Rourke (2007: 35) put it, "fundamental questions about what exactly transitional justice is transiting 'from' and 'to.'" Although there is no single definition of transitional justice, I suggest that predominant views construct human rights violations fairly narrowly to the exclusion of structural and gender-based violence. There is a privileging of legal responses which are at times detrimentally abstracted from lived realities. Little attention, if any, is paid to the role that established, Western democracies have in violence. Together, these tendencies profoundly affect perceptions of the nature of violence, victimhood and perpetration, and they skew the direction of truth, justice and reconciliation. I develop these claims below by first comparing several representative definitions of transitional justice.

In one of the narrower definitions, Teitel (2003: 893) explains transitional justice as "the view of justice associated with periods of political change, as reflected in the phenomenology of primarily legal responses that deal with the wrongdoing of repressive predecessor regimes."[1] Although Teitel rightly provides a normative challenge to Schumpeterian notions of a successful transition (marked by fair elections), she focuses almost exclusively on (re)establishing the rule of law through legal mechanisms— prosecutions, historical inquiry, administrative justice, reparation, and constitutional justice (see Teitel 2000). Her argument for law's "independent potential" (Teitel 2000: 213) to shape political change is an impressive work of legal theory, but gender, customary law, culture, and social justice are virtually absent as categories of analysis.[2] Teitel's cases are largely confined to post-authoritarian or post-communist regimes, rather than war-torn societies.[3] Her explicit concern with bringing "illiberal" regimes into the fold of liberal democracy, as well as her argument that transitional justice applies in "extraordinary" periods between regimes, treats established liberal democracies as benevolent models.

Roht-Arriaza, in her introduction to *Transitional Justice in the Twenty-First Century*, widens the context of transitional justice by defining it as "that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law" (2006: 2). Although she dismisses Teitel's "problematic" definition for "overvaluing" law and underestimating periods of flux, Roht-Arriaza nonetheless takes a "narrower" view; the edited collection focuses on truth commissions, criminal prosecution, vetting, and reparation. Security, culture and customary law are present as categories of analysis (e.g. Longman 2006; Gossman 2006), but the volume leaves

[1] Teitel's succinct definition of transitional justice draws from her 2000 book, *Transitional Justice* (see Teitel, 2003: footnote 1).

[2] There is some discussion of privatization under post-communist regimes (ch. 5).

[3] The same emphasis on post-communist and post-authoritarian transitions is found in Kritz's (1995) seminal volumes.

aside things such as memorialization, police and court reform, or tackling distributional inequities. Roht-Arriaza acknowledges that "a narrow view can be criticized for ignoring root causes and privileging civil and political rights over economic, social and cultural rights, and by doing so marginalizing the needs of women and the poor." But she nonetheless argues that "broadening the scope of what we mean by transitional justice to encompass the building of a just as well as peaceful society may make the effort so broad as to become meaningless" (2006: 2).

Mani provides one of the broadest understandings and critiques of what she terms "restoring justice within the parameters of peacebuilding" (2002: 17). Her prime concern is low-income, war-torn societies, and she argues, contrary to Roht-Arriaza's position above, that building peace and building a just society are inseparable processes. Drawing on Galtung's twin objectives of negative peace (cessation of conflict) and positive peace (removing structural and cultural violence), Mani is clear that a holistic approach is necessary. She argues for a three-fold view of "reparative" justice: restoring the rule of law through reforms to prisons, police and judiciary; rectifying human rights violations through trials, truth commissions, reparation and traditional mechanisms; and redressing the inequalities and distributive injustices that underlie war. Mani is particularly attuned to the importance of drawing on local knowledge and culture for sustainable peace. She also analyzes how international financial institutions have exacerbated the socioeconomic inequalities that underlie conflict. Yet, Mani draws only from the Western philosophical canon in her conceptualization of justice (Moon 2003), and she could go further in examining the involvement of Western states in conflict (Lui 2003). Furthermore, gender is surprisingly and inexplicably absent from an otherwise astute and ambitious analysis.

As should become clear, my sympathies lie with a broader approach. But this is not necessarily the prevailing view of transitional justice's scope. The UN Secretary General, in his 2004 report, defines transitional justice as:

> 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. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof (2004: para. 8).

Even Mani explicitly positions her approach as a "broader conceptual and contextual framework" that does not "attempt to replace or 'overthrow' transitional justice" but would "include all existing methods of transitional justice, including trials and truth commissions" (2005: 524). I do not expect we need to be bound by her self-understanding. The more important point, however, is to query the general relationship between transitional justice and things such as intervention, state-building, peacebuilding, conflict resolution, development, postcolonialism, social justice, gender justice, and global inequality. If scholars and practitioners carve out too narrow a space for transitional justice amongst these other considerations, it risks becoming a tool of depoliticized application and analysis and therefore susceptible to the concerns raised in this paper.

Channeling Transitional Justice: *When*, to *Whom*, and for *What* It Applies

Despite variation in the above approaches, there are also troubling consistencies that require challenging. I will unpack these troubling features through the criteria of for *when,* to *whom* and for *what* transitional justice applies. The *when* of transitional justice is tied to the very conception of transition. Whether transiting from authoritarianism-to-democracy or from war-to-peace(-to-democracy), as the above approaches see it, transitional justice has typically appeared salient only after massive direct violence has been brought to a halt. In part, this appearance has to do with the

emphasis within the literature on prosecution, truth-telling, reparation, reconciliation and reform, and less so on peace accords, transitional administration, and disarmament, demobilization and reintegration.

Transitional justice also implies a fixed interregnum period with a distinct end; it bridges between a violent or repressive past and a peaceful, democratic future. Notions of "breaking with the past" and "never again," which align with the dominant transitional mechanisms, mould a definitive sense of "now" and "then." This can problematically obscure continuities of violence and exclusion. For example, the efforts of the South African TRC to promote the "new" South Africa met with considerable challenge and resistance in the face of ongoing police violations of human rights, criminal, political and farm violence, racialised socioeconomic inequalities, *de facto* apartheid in the design and use of geographic space, and general racism and xenophobia (see Nagy 2005; Nagy 2004a; Lalloo 1998; Valji, 2003; Simpson 2000). More generally, constructing transition as a break with past violence also neglects the continuing problem of domestic violence that many women face in a militarized society and after male combatants return home. There is some evidence to suggest that violence against women actually increases in the "post-conflict" period (Duggan & Abusharaf 2006: 627).[4] This can occur due to post-traumatic stress, the need of men to reassert control in their homes, which had been headed by women during the war, or the sense of dislocation, powerlessness, and unemployment that combatants may face upon return (Chinkin & Charlesworth 2006: 946; see also Ní Aoláin 2006).

In Iraq and Afghanistan, the transition is constructed as being "from" a repressive police state under Saddam Hussein or cycles of war and repression culminating in the Taliban regime.[5] This neatly avoids the current matter of foreign military intervention and implies that the transitional problem has to do with "then," and not the "now" of occupation, insurgency, and the war on terror. (And, as I discuss below, it implies that the problem has to with "them," not "us"). With formal sovereignty being handed over only a year after invasion, the appearance sought is of an almost seamlessly standard interregnum that denies American presence. Although prosecution, vetting, reparation and truth-telling are taking or will take place in the midst of violence and insecurity, the concern of these transitional mechanisms is the history prior to 2001 in Afghanistan and 2003 in Iraq. The "to" of transitional justice is thus insulated from the current reasons for instability and seems to presume a democratic future without real self-governance (Chandler 2006).

Of course, with the ICC's indictments in Uganda, the DRC and Darfur, we do see prosecution being purposefully used to address current violence. Luis Moreno Ocampo, ICC Prosecutor, writes:

> The International Criminal Court is part of the transitional justice project because it aims to confront centuries-old methods of behaviour – those of conflict and war, the abuse of civilians, woman and children – and to reshape the norms of human conduct while violence is still ongoing, thus aiming, as stated in the Rome Statute, to contribute to the prevention of future crimes (2007: 8-9).

On the one hand, it appears that the ICC is facing a situation where actual prosecution will not take place due to difficulties of arrest, and, even if it does, it likely will be to little or even detrimental political effect. For instance, some Acholi leaders in northern Uganda have opposed the ICC's actions because, in part, they fear it will jeopardize peace talks (see Baines 2007: 101-102; Allen 2006;

[4] Ní Aoláin (2006: 848) notes that there may be an increase in reporting rather than in incidents.

[5] See Democratic Principles Working Group 2003; USIPeace Briefing 2003; Afghanistan Independent Human Rights Commission 2005.

Quinn 2005).[6] This raises questions about what exactly makes a mechanism or process "transitional" in the first place. On the other hand, even if the "to" of the ICC's contribution to transitional justice (a reshaped human behaviour?) is unclear, the "from" is not. Like Roht-Arriaza and especially Mani's conceptions above, it is a transition from the context of "conflict and war."

The concern with this consistent emphasis on applying transitional justice only *when* there is massive repression, conflict or war is, as Orford (2006: 863) argues, that "the literature gives the sense that large-scale human rights violations are exceptional" and "the focus is not on genocide or human rights violations in liberal democratic states." She "unsettles" this assumption by examining the "the everydayness and bureaucratization of genocide and of massive human rights violations" through a reading of Australia's (1997) *Bringing Them Home* report on the separation of Aboriginal and Torres Strait Islander children from their families (ibid: 854). Similar examples can be found in Canada and the US: the *Royal Commission on Aboriginal Peoples* (1996); the planned Residential Schools Truth and Reconciliation Commission; and the Greensboro (North Carolina) Truth Commission.[7] However, while it is important to acknowledge and address systemic human rights abuse, it is also rather awkward to affix the label "transitional" to justice long denied in liberal democracies. To say that the transition to democracy is as yet incomplete (Valls 2003) or that we are transitioning to a reconciled, more just society, is to risk overly broadening notions of democratization or transition.

The more pressing concern, I suggest, has less to do with *when* justice is transitional than with *to whom* transitional justice applies. Because transitional justice almost always applies to non-Western countries, it is vulnerable to the general challenge that critics raise against the supposed universalism of human rights. The general thrust of this challenge is that the West arrogates the universal to itself and then brings all others into its fold of humanity (e.g. Fitzpatrick & Darian-Smith 2002; Mutua 2001; Merry 2003; Orford 2002). The case of Iraq is most obviously liable to this charge. As noted above, the artificial time frame of transitional justice applies only to Saddam's Iraq. This glosses over the illegality of the US-led invasion, the damages caused by the corrupt UN oil-for-food program, ongoing insurgency, and human rights abuses committed by American soldiers at Abu Ghraib and elsewhere. Furthermore, as Chandler writes, when Paul Bremer created the Iraqi Special Tribunal:

> Commentators everywhere insisted on the importance of a fair trial, on 'justice being seen to be done,' not so much for Saddam's benefit as for the political and educational benefit of the Iraqi people. Implicit in this discussion was the idea that the Iraqi people could not move on without a thorough accounting of the past; that without this process there were not ready for the freedom their Western liberators offered them. Here responsibility for chronic violence and instability of the Iraqi people was shifted away from the actions of the intervening powers and placed with the psychological immaturity of the Iraqi people (2006: 172).

Prosecution and other transitional mechanisms are put in place to teach Iraqis, and not America and its allies, about the rule of law and human rights.

Neither paternalism nor asymmetry is confined to the Iraqi case. Charges of paternalism have been voiced, for example, regarding the transitional administrations run by the Peace

---

[6] I think a similar fear was voiced in 1995 when the ICTY indicted Milosevic prior to the conclusion of Dayton Peace Accords. Double check

[7] The Greensboro Truth Commission investigated the shooting deaths of five protestors and wounding of 10 others by the Ku Klux Klan and the American Nazi Party on November 3, 1979. For more information see http://www.greensborotrc.org/.

Implementation Council[8] in Bosnia-Herzegovina and by the UN in East Timor. Critics argue that state-building in Bosnia-Herzegovina has had little connection with ordinary people's lives. The different High Representatives to Bosnia have used their sweeping authority to impose legislation that was rejected by democratically elected parliamentarians, to ban political parties, and dismiss elected officials (Orford 2003; Chandler 2006). In East Timor, Orford (2003: 139) documents how postcolonial reconstruction treats the country as a "blank slate in terms of existing knowledge and experience, marked by cronyism, incompetence and corruption. The people of East Timor are portrayed as lacking a state, ethics, skills and respect for human rights." Katzenstein notes that in the building of the Special Panels for Serious Crimes, "many East Timorese in the judiciary felt sidelined by the UN staff" due to lack of consultation on institutional design (2003: 256). Mentoring programs quickly disintegrated when UN personnel entirely took over the tasks at hand, and East Timorese became "sick of internationals coming in and conducting 'workshops'" (ibid: 265).

As for the asymmetrical features of globalised transitional justice, these go right back to the Nuremburg precedent of victor's justice. In more recent history, victor's justice has prevailed in the ICTY's refusal to investigate violations of international humanitarian law committed by NATO during its bombing campaign in Kosovo and in the ICTR's halted investigation of the Rwandan Patriotic Front (RPF) for war crimes.[9] Furthermore, geographic "zones of impunity" are being created due to the state-centric nature of international law (Sriram & Ross 2007). For instance, the ICC does not apply to non-state parties except in the instance of Security Council referral, which will inevitably be limited by veto politics.[10] There are also the so-called bilateral "section 98 impunity agreements," which refer to a clause in the Rome Statute that prohibits the ICC from seeking extradition if this would force a state to act inconsistently with its other obligations under international law. Over one hundred countries have been induced by the United States to sign these bilateral agreements,[11] some of which have poor human rights records and have shown little ability or interest in domestic criminal procedures.

Third country prosecution can overcome the jurisdictional limits of other institutions or domestic amnesties. But as Wilke (2005: 84) points out, the universality of "justice without borders" is fairly particularistic: "either some of the victims have the citizenship of the prosecuting state, or the perpetrators (and some of the victims) are physically present in the country." The result is highly uneven globally speaking: the likelihood of pursuing justice is largely confined to liberal democracies that have the resources and political interest to mount a case. And even when a case is mounted, the challenges of extradition and lining up different legal systems can result in a watering down of charges, as seen when the British House of Lords reduced Spain's draft charges against Pinochet from thirty to three (Webber 1999). (And, of course, Jack Straw let Pinochet go home.)

International criminal justice also appears frequently unable to respond to violent conflict that spills across borders. Currently, as Sriram and Ross explain, the ICC is mandated to investigate human rights violations in northern Uganda but not LRA activities in southern Sudan or support by the Sudanese government to the LRA during Sudan's North-South civil war. The ICC has no

[8] The PIC is comprised of 55 countries (largely European, plus US, Russia, Japan, Saudi Arabia) and international organizations, including the UN, UNHCHR, and ICRC. For a full listing, see http://www.ohr.int/ohr-info/gen-info/#6.

[9] The ICTR halted its investigations due to the formidable pressure that the RPF had in virtually bringing the ICTR to a "standstill" through its control over witnesses (IRIN, 2004).

[10] Sriram and Ross argue (2007: 62) that the Security Council's Darfur referral to the ICC was narrowly tailored to state-party nationals in order to avoid US veto. A non-party state could also declare that it accepts ICC jurisdiction.

[11] For a list, see Georgetown Law Library at http://www.ll.georgetown.edu/intl/guides/article_98.cfm.

jurisdiction in Sudan except for in Darfur and only there to Sudanese nationals (Sriram & Ross 2007: 57). As another example, Charles Taylor is not facing trial in the Hague for crimes he committed in his own country, Liberia, or neighbouring Côte d'Ivoire, because the Special Court for Sierra Leone does not have extraterritorial jurisdiction (ibid.: 59).

The pursuit of transitional justice in East Timor is especially illustrative of zones of impunity. From 1974 to 1999, the people of East Timor suffered death and destruction under the illegal Indonesian occupation, with violence culminating during the 1999 plebiscite on autonomy. Under the subsequent United Nations Transitional Administration (UNTAET), the Serious Crimes Investigative Unit was created to investigate and prosecute crimes at the Special Panel for Serious Crimes (comprised of two international and one East Timorese judge). Although Indonesia and UNTAET signed a memorandum of understanding regarding the exchange of evidence, the Serious Crimes Unit has been unable to gain access to Indonesian suspects, and thus those with the "greatest responsibility" remain out of reach of the Dili-based court (see Sriram 2005; Human Rights Watch, 2005). The UN has not set up a process to address those responsible in Indonesia, indicating that Indonesia is obligated to do so. Under severe pressure, the Indonesian government has established an ad hoc court to deal with violations in East Timor, but it has so far acquitted all Indonesians, and some military officers implicated in atrocities have actually been promoted (Human Rights Watch, 2004).

The Indonesian president's treatment of East Timor independence as national humiliation (see ibid), combined with the limited mandate of East Timor's hybrid court, have resulted in a "near universal perception within Indonesia that the 1999 violence was the result of conflict between two opposing East Timorese factions, rather than a military-orchestrated terror campaign" (Nevins 2003: 684). But the problem is not simply Indonesia's intransigence. The problem also lies with the international community. Hybrid courts are touted as a means of doing "justice on the cheap" (Dickinson 2003), and there is a widespread perception among the East Timorese that the international community does not care about their plight (Sriram 2005: 88). The UN Commission of Experts recommended in its 2005 report that an international tribunal be established under Chapter VII of the UN Charter if Indonesia's "manifestly inadequate" ad hoc courts do not improve (para. 17; 29). Yet, even if an international tribunal were created, which appears unlikely, it would not address the broader injustices of occupation and exploitation. It would say little about Australian, American, British and Japanese support of Indonesia's occupation or how Indonesian control and impoverishment of the East Timor coffee sector (a major reason for occupation) fit into Cold War politics and volatile price shifts after 1989 (Nevins 2003: 682; 690-93).[12]

The East Timor situation thus points to a further concern that transitional justice operates in such a way that "the international community is absent from the scene of violence and suffering until it intervenes as the heroic saviour" (Orford 2006: 862). Foreign involvement in violence—through indifference, funding, training, cross-border raids, or conflict economies in arms, diamonds, or oil—is largely absent from or negligible in official transitional justice records. This occurs most starkly with prosecution because trials create fairly individualized, de-contextualized accounts of human rights crimes. Truth commissions are better equipped to paint the larger picture of violence. But, as Hayner (2000: 75-76) reports, few truth commissions have chosen to investigate the role of

[12] There are also lucrative oil and gas fields off the coast of East Timor. The right to freely dispose of these natural resources was signed away in the Timor Gap Treaty between East Timor and Australia without consultation with the East Timorese people or their interests being taken into consideration (East Timor CAVR, 2005: ch. 7.9, page 3).

outside actors in internal human rights violations.[13] There are some important exceptions. The Chad (1991-92) truth commission report outlines the extent of funding and training provided by the US, France, Egypt, Iraq and Zaire to intelligence services. The Chilean (1990-91) and El Salvadorean (1992-93) truth commissions briefly touch on the role of the US in their conflicts. The Guatemalan Historical Clarification Commission (1997-99) bluntly holds the United States (and to a lesser degree, Cuba) to account for its role in the armed conflict. The Sierra Leone (2000-2005) truth commission addresses quite extensively the role of foreign actors in the conflict, including Liberia's Charles Taylor, Libya, the diamond industry, and the international community for abandoning Sierra Leone in its hours of need. And, to return to the East Timor case discussed above, the Commission for Reception, Truth and Reconciliation (CAVR) holds the international community accountable for providing military backing to the Indonesian government and holds Indonesia and other states liable for reparation.

Yet, even when truth commissions do investigate the role of outside actors—and the majority do not—their focus is on the direct perpetrators and direct victims of crimes against humanity and violations of international humanitarian law. The issue is therefore not only to *whom* transitional justice applies, but also for *what* it applies. By and large, transitional justice pertains to genocide, torture, disappearance, massacre, sexual violence, and other war crimes. Its extension according to different circumstances tends to remain with gross violations of civil and political rights (arbitrary or indefinite detention, severe assault, ill-treatment, etc.) or criminal acts (property destruction, abuse of children etc.). Consequently, structural violence and social injustice are peripheral in the "from" and "to" of transitional justice. This critique applies to both the transnational and domestic contexts.

The social and political costs of this narrow framing are vividly apparent in the South African experience. Although the TRC clearly recognized apartheid as a crime against humanity, its mandate narrowly defined victims and perpetrators as those who had suffered egregious bodily harm. Apartheid thus featured as the context to crime rather than the crime itself. The everyday violence of poverty and racism—and consequently the ordinary victims and beneficiaries of apartheid—were placed in the background of truth and reconciliation. Because the TRC report largely appeared as a depoliticized chronicle of wrongful acts (Posel 1999; Wilson 2001), it did not sufficiently depict the ways that illegal acts of torture, killing, and terror were intrinsic to legally sanctioned apartheid, both as a defense of that system and in their very operative structure, which followed basic apartheid principles of ethnoracial stratification, differential privilege, and dehumanization (Nagy 2004b). Admittedly, there were understandable logistical reasons for limiting the scope of inquiry, and the TRC did hold a series of hearings on the role of civil society. But, as I have argued elsewhere (2005; 2004a), the overall effect was to relieve beneficiaries of obligations pursuant to national reconciliation and to pass over the suffering of millions in the "new" South Africa. This has had lasting effects on perceptions of justice and racial reconciliation in South Africa. These effects have spanned transnationally, as evidenced in the acrimonious debate and lawsuit over whether multinational corporations should pay reparation for aiding and abetting the crime of apartheid and whether "odious debt" owed to foreign banks should be relieved (see Nagy 2006).

In thinking of the costs elsewhere of a similarly narrow framing of *what* transitional justice addresses, I point to an important speech given by UN High Commissioner for Human Rights, Louise Arbour. Arbour argues, "it is irresponsible to assume that vulnerable minorities will fare

[13] In a related vein, the South African TRC did not cover the apartheid state's destabilization of Namibia, Mozambique or Angola. In contrast, the Chilean truth commission did address the transnational Operacíon Condor and the murder of Orlando Letelier and Ronnie Moffat in Washington, D.C.

better in the pursuit of their ESC[14] rights than they do in ensuring respect for their civil and political rights, and in protecting themselves from discrimination." The failure thus far of transitional justice to pay sufficient attention to ESC rights or discriminatory practices "was eminently predictable" given the heavy influence of criminal law in transitional justice and the "hidden assumption that ESC rights are not entitlements but aspirations" (Arbour 2006: 2). Arbour makes a powerful call for a significant shift in praxis:

> Without losing its raison d'être, I believe that transitional justice is poised to make the gigantic leap that would allow justice, in its full sense, to make the contribution that it should to societies in transition. Transitional justice must have the ambition of assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to, but also beyond the crimes and abuses committed during the conflict which led to the transition, into the human rights violations that pre-existed the conflict and caused, or contributed to it. When making that search, it is likely that one would expose a great number of violations of economic, social and cultural (ESC) rights and discriminatory practices (Arbour 2006: 3).

Engendering transitional justice will be an important part of taking up this call. Until quite recently, women and gender have been glaringly absent from transitional justice programs. The under-representation of women in peace negotiations and in the design of specific transitional mechanisms can lead to an "impoverished understanding of peace and security that focuses on militarism and power supported by force" (Chinkin in Bell & O'Rourke 2007: 30). Furthermore, as Ní Aoláin (2006: 803) points out, "the forms of accountability sought in the post-conflict/post-regime environment reflect the gender biases that manifest in the prior context." Masculinist determinations of the transitional problem have centered on political violence with, as noted above, an emphasis on "extraordinary" violations of civil and political rights. This construction disregards and treats as "ordinary" the private or intimate violence that women experience in a militarized, unequal society. It also fails to reflect the myriad of social and economic harms that are disproportionately placed upon women during and after repression or armed conflict.

When gendered citizenship means women experience unequal access to health care, sanitation, food, shelter, and medicine, they will inevitably experience political violence and its aftermath more harshly than men (Gardam & Jarvis in Levine, 2004: 10). In periods of political violence, many women bear the everyday burden of single-handedly managing the household in the face of increased responsibilities for extended family and with decreased resources. Women are also tasked with managing the turmoil caused by displacement and managing relations between traumatized children, family members and former fighters. Where political conflict may open opportunities to women, many find that these opportunities are lost in the "restored" or "reconstructed" dispensation (Chinkin & Charlesworth 2006: 941; Duggan & Abusharaf 2006: 628). As Levine notes, widows in particular may face discriminatory inheritance and employment laws, be forced to marry the brothers of their husbands, or have their children claimed for their husband's family. Furthermore, "economic opportunities, skills training programs, property allocation, and other reconstruction programs will all benefit the men, particularly demobilized male soldiers, to the exclusion of female-headed households (Levine, 2004: 15).

When "truth" is structured around extraordinary violence, women predominantly bear witness on behalf of deceased partners, children and grandchildren, that is, as indirect or secondary victims. Consequently, women's stories of violence and suffering do not fully emerge. Jolly (2002:

[14] Economic, social and cultural rights.

623) remarks in the South African case, "the TRC lacked the social and structural context to be able to conceive of these women as victim-survivors, authors and subjects of their own narratives." When women do appear as victim-survivors[15] in their own right, it is overwhelmingly as victims of sexual violence, something that is incredibly difficult to give public testimony about.[16] The recent recognition that sexual violence constitutes a crime against humanity, war crime, or genocide, rather than simply being collateral damage, a spoil of war, or violation of honour, has been an important advance for women's rights. But international criminal jurisprudence has also problematically created "mis-recognition" or "over-recognition" of women because "it fails to capture the array of manners in which women suffer gross injustice"(Franke 2006: 822). It further pins female victims of sexual violence to an essentialized identity that makes it difficult to "script new social possibilities," particularly where rape is highly stigmatized (ibid). The frequent association of women with the nation also renders women "curiously visible" (Buss 2007) in wartime rape cases. For example, Buss documents how the ICTR's *Gacumbitsi* decision determines the rape of a Hutu woman to be genocidal because she is married to a Tutsi; it is an attack on *his* person, not hers (2007: 11).[17] Not only is *Gacumbitsi* an awkward attempt to graft existing legal categories onto a complex reality;[18] it also fails to consider the sexual economy of racial stratification, whereby "Tutsi women were idolised, revered, and highly sexualized," and how this "facilitate[d] and enable[d] the patterns of genocidal sexual violence against *all* women" as women (Buss 2007: 13).

In short, the narrow focus within transitional justice on gross violations of civil and political rights overlooks the ways in which structural violence and gender inequality inform subjective experiences of political conflict, injustice and their consequences. Where structural violence enters the picture, it is largely in the background. Where gender enters the picture, it is fixated on sexual violence against women, neglecting sexual violence against men and non-sexual violence against women. That being said, there have been some advances, albeit mixed, with respect to *what* transitional justice addresses. There appears to be a recent concerted effort to bring gender into the transitional justice project. The International Center for Transitional Justice has undertaken several research and advisory projects on gender. The International Journal of Transitional Justice will focus its second issue on gender. UN Security Council Resolution 1325[19] has called for gender balance and gender mainstreaming in peacebuilding. At the same time, there are "there are no structural or institutionalized mechanisms to ensure women's participation or representation in the PBC (UN Peacebuilding Commission) or to ensure that women's needs, capacities, interests and rights are addressed in the PBC's work" (McAskie in NGO Working Group on Women, 2006: ix). And while the UN Secretary-General's report on the rule of law and transitional justice is very good at highlighting the importance of gender, it defines justice as between singular victims and perpetrators, thereby neglecting structural violence and ESC rights (2004: para. 7; see Arbour 2006: 3).

Transitional justice has also made some important, though tentative, strides in recent practice. The Special Court for Sierra Leone has constructed a new legal category of "forced marriage" as a crime against humanity to reflect the realities of Sierra Leone's and many other conflicts. Yet, as Park (2006: 324) cautions, this risks depicting girls as the "quintessential victim" rather than as agents. Furthermore, the reach of the Special Court into women's everyday lives may

---

[15] Discussion of women as combatants, perpetrators or collaborators is beyond my scope.

[16] The challenges and criticisms of witness protection and court sensitivity are numerous and widespread. Provide citations.

[17] Page references to manuscript, on file with author.

[18] See also Ní Aoláin (2006) on the gaps between law and women's subjective experiences.

[19] S/RES/1325 (2000).

be limited. Some women have expressed concerns about the Special Court, being unfamiliar with judicial procedures, used to a culture of silence, and unable to understand why only a handful of perpetrators are being prosecuted while the rest are amnestied and compensated in DDR programs (King 2006: 275).[20] And, as Park puts it, "international law is not a silver bullet to alleviate the structural barriers, constraints and challenges that entrench girls' vulnerability in peacetime and wartime" (Park 2006: 316). She points instead to the recommendations of the Sierra Leone TRC as important steps in remedying the marginalization of women and girls. The TRC's extensive and far-reaching recommendations include the repeal of discriminatory inheritance, marriageable age, and other customary laws, amendments to laws pertaining to domestic and sexual violence, promotion of skills training, education and economic empowerment of women, and setting up a Gender Commission (Sierra Leone TRC, 2004: vol.2, ch.3, paras. 107-111; 316-376). Following extensive gendered analysis in other sections of the report, these recommendations reach well beyond a sexualized accounting of gender-based violence to challenge structural inequality. Unfortunately, the Sierra Leone government has done "next to nothing" to implement recommendations, despite being legally bound to do so, and despite the recent provision of external debt relief (Graybill, 2007).

With respect to economic, social and cultural rights more generally, East Timor's truth commission (CAVR) dedicates an entire chapter of its report to their violations. Importantly, CAVR does not confine its findings to violations of ESC rights that occurred only as the by-product of military operations.[21] It broadly addresses the use of the education system as a propaganda tool, the manipulation of the coffee market, de-development, environmental degradation, and forced resettlement in hazardous areas (East Timor CAVR, 2005: ch. 7.9, p. 3ff.). There is also a separate chapter on forced displacement and famine, which affected nearly every person living in that time period (ibid: ch. 7.3.1). CAVR also ran women-only workshops and a public hearing on women in conflict. Levine (2004: 29-30) argues that these hearing fixed on sexual violence, not other gender-based suffering, such as loosing a limb to a landmine when searching for food, suffering domestic abuse, or losing a baby because access to medical care was denied due to checkpoints, harassment, or lack of documentation. Yet, recognition of sexual violence as a crime is important, especially in a country where "domestic violence remains rampant" (although it will be critical to raise awareness of links between the two in the following years) (Wandita, Campbell-Nelson, and Pereira 2006: 293; 313). CAVR succeeded in creating a safe space for women to speak, and it counterbalanced the failures of the Special Panel to pursue gender-based (sexual) crimes (ibid.: 315-317). CAVR also recognizes widows and single mothers (including women who bore children as the result of rape) as "vulnerable persons" eligible for reparation, and it states that at least 50% of reparation resources should be dedicated to women (East Timor CAVR, 2005: ch. 12, p. 39).

One-Size-Fits-All?

Although it is oft repeated by transitional justice scholars and practitioners that every situation requires a unique solution, accusations of one-size-fits-all solutions are equally frequent. The focus on specific sets of actors for specific sets of crimes, I have argued above, channels transitional justice toward a fairly narrow interpretation of violence within a somewhat artificial time

[20] The Lomé Peace Accord provided amnesty to perpetrators. The Special Court is mandated only to prosecute those bearing the "greatest responsibility." King also mentions that some women were apprehensive about testifying against child soldiers because this could lead to the death penalty. But this is the result of misunderstanding. The Special Court decided early on not to prosecute child soldiers.

[21] Whereas, for example, the South African TRC could only sneak in social and economic rights by treating arson as "severe ill-treatment." There has been strong criticism of it refusal to treat forced removal similarly (as severe ill-treatment or as a crime against humanity).

frame and to the exclusion of external actors. Thus, the categories of *when*, to *whom* and for *what* transitional justice applies already function to hone transitional justice into a particular kind of solution to address particular kinds of problems. In this section, I address how transitional justice is further affected by other features of globalization: neoliberalism, a trend toward judicialization, and debates over culture and human rights.

The channeling of transitional justice can be compounded when, for instance, its failure to prioritise ESC rights "assigns the economic and social imperatives of post-conflict reconstruction to international financial institutions, which have a limited interest in a human rights framework" (Chinkin & Charlesworth 2006: 946). Furthermore, as Mani (2002: 151) argues, transitional governments, whatever their leanings, "have to contend with an international climate where the prevalent liberal-democratic ideal…tends to favour freedom and liberty over equality." The emphasis on private property, individual initiative and personal freedom tends to diminish or delay responding to the inequalities that underlie conflict.

In South Africa, for example, a lot of critical commentary and political activism has risen in response to the neoliberal framing of its "miraculous" transition (e.g. Bond 2000; Marais 2001; Alexander 2002). By 1992, during transitional negotiations, the ANC dropped its longstanding commitment to social redistribution, in part due to the collapse of the standby Soviet model, the influence of corporate-sponsored planning exercises, and the global ascendancy of neoliberal doctrine. This shift from nationalization, progressive taxation, and redistribution toward the virtues of market forces and economic growth is exemplified in the government's 1996 macroeconomic policy, *Growth, Employment and Redistribution* (GEAR), which is generally condemned on the left as an embrace of neoliberalism that has worsened rather than redressed poverty and inequality. Importantly, the main platforms of GEAR were first outlined in a 1993 letter of intent signed by the Transitional Executive Council, which included the ANC, to secure an IMF loan to help the country with balance of payment difficulties (Marais 2001:104; 134). This overarching policy shift, as well as the negotiated constitutional entrenchment of private property and market-based land reform, has had a lasting effect on the parameters of truth and reconciliation in South Africa. It has facilitated beneficiary denial of responsibility for apartheid and, in the consolidation of a new African elite, smoothed the alignment of government and business in a project of "nation-building" that denies the language of obligation or reparation to the victims of apartheid (see Nagy 2006).

The channeling of transitional justice away from social inequality is also compounded by the "judicialization of international relations" that has occurred since the 1990s (Oomen 2005). Within international relations and development, there has been an increased push to "do justice," whether in the form of punishing perpetrators of gross human rights crimes and establishing truth commissions, developing legal and judicial institutions, or generally promoting the rule of law and human rights. The problem is not with law and human rights per se but with their over-emphasis and the depoliticized way in which "justice" can operate. As Oomen (2005: 893) writes, one of the reasons why judicialization has come to dominate international relations is that law is perceived as a safe, neutral, universal way to engage with other countries. But these are false and problematic assumptions about the law that transitional justice must guard against.

For one reason, a technocratic focus on "the law" abstracts from lived realities. Thus, for instance, gendered advances in international criminal law still mean that "any woman" could serve as a witness in landmark cases, as individuals are subsumed under "larger principles which their testimony helps establish" (Franke 2006: 820). In post-genocide Rwanda, the predominant flow of international aid has been to justice and peacebuilding, making agriculture, health and education secondary priorities (Oomen 2005: 895). But the privileging of a legalistic approach, which focuses on eradicating a culture of impunity and ethnic hatred through various sorts of trials, a National Unity and Reconciliation Commission and legal reform, overlooks the structural forces of exclusion

that precipitated the genocide (Uvin 1998). It also undervalues the socioeconomic ramifications of the genocide such as HIV/AIDS, widowhood and poverty. Moreover, this approach isolates law from politics and, along with the international "genocide credit" that the Rwandan government has accrued, has "deflected attention" from RPF authoritarianism and "all the real injustice taking place: the unlawful disappearances, lack of political freedom, the wars that Rwanda waged along and beyond its borders" (Oomen 2005: 906; see also Reyntjens 2004).

The apparent neutrality of law vis-à-vis politics can also work to the advantage of external powers implicated in violence. One may well believe, for example, that transitional justice in Iraq has served the interests of the US and Britain "in distancing themselves from Iraq's post-Saddam present" far better than it has served the Iraqi people (Chandler 2006: 173). But it seems to me that this kind of questioning has failed to surface in narrower approaches to transitional justice. For example, while Stover, Megally and Mufti (2006) are deeply critical of transitional justice in Iraq, they focus their critique on Paul Bremer's failure to consult with the Iraqi people. The illegality of the war enters the analysis insofar as it has alienated and limited the participation of foreign experts (ibid.: 232). They say it is "difficult to measure" how photographs from Abu Ghraib might have affected the process because "no rigorous polling was conducted on the issue at the time" (ibid.: 249). They concede that Abu Ghraib and mass arrests of Iraqi men by Coalition forces in 2003 "must have undermined the legitimacy and authority of the US occupation *in the minds of a considerable number of Iraqis*" (ibid.; emphasis added). But there are no normative claims about the illegitimacy or justifiability of the occupation or about whether "justice" is even possible in such a context. The article is completely agnostic on these points. The neutrality of the analysis mirrors the presumed neutrality of law that is characteristic of one-size-fits-all approaches that narrow on judicialized solutions. I am not sure whether a commitment to justice can truly afford not to ask the sorts of normative questions that a neutral stance neatly avoids.

Another problem closely related to the presumed neutrality of law is its presumed universalism, particularly regarding human rights. This issue is perhaps most overt in the practice of "legal transplants" like prefabricated criminal codes, transitional administrative laws and constitutions or other "justice packages" implemented in places like Kosovo, East Timor, Iraq, Afghanistan and Liberia (see Oomen 2005: 891). Such things should not necessarily be treated as sheer alien impositions; they could also be characterized more subtly as a constant intermixing and struggle between local and global values and practices. For example, Iraqi women in favour of interim constitutional protection of their human rights found themselves forced onto "the side of occupation;" they were caught between the horns of (imposed) liberalism and (illiberal) majoritarian democracy (Arato 2006: 236). But even as women's right were entrenched, Chinkin and Charlesworth (2006: 944-5) point out, the reference to Islam as a basic source of law rendered their constitutional protections highly vulnerable. How the dilemmas of culture and gender will play out in a "democratizing," conflicted Iraq remains to be seen. The point to raise here is a cautionary one: efforts to sensitize international standards to local practices must remain cognizant of power dynamics.

The dilemmas of negotiating the local and the global are also highly evident in the turn to traditional justice in Rwanda and Uganda. The use of gacaca courts in Rwanda follows from the failures of formal trials, including the ICTR, to process prisoners quickly enough or to involve local communities in truth, forgiveness and reconciliation. In Uganda, some Acholi leaders oppose the ICC's indictment of LRA leaders because prosecution and punishment go against traditional restorative values as embodied in mato oput and other cleansing ceremonies. The question from the international community (and locals) in both cases has been how to make traditional mechanisms consistent with international procedural and accountability standards. Harmonizing the two in the case of gacaca, as Longman (2006: 223) rightly suggests, requires a notion of fair trial that is "less

culturally bound" to the West. Yet, as has been noted in the Ugandan case, traditional cultural practices might not be representative of all Acholi, especially women and girls who have been targets of gender-based violence (Baines 2007: 107), and paramount chiefs are not necessarily seen as representatives of the people (Allen 2006: 149ff). As evidenced in Rwanda, where gacaca helps consolidate RPF power (see Oomen 2005; Corey & Joireman 2004), more culturally appropriate customary mechanisms are nevertheless still like any other legal system, that is, they are the embodiment of prevailing constellations of power.

Conclusion

Transitional justice is a discourse and practice imbued with power. Yet, it can be strikingly depoliticized. Efforts within the global project of transitional justice to retract from one-size-fits-all solutions need to guard against this. To do so requires a broader approach that encompasses structural violence and gender inequality. Transitional justice practitioners and scholars must also be attuned to the nestling of local and global and consider neither in isolation. Striking a balance between international standards and local contexts is and will continue to be an increasing challenge for the project of transitional justice. The significance of this challenge cannot be underestimated. It speaks to the very legitimacy of a globalized transitional justice as well as to the efficacy and legitimacy of mechanisms designed to help those who must live together after atrocity. International law and transnational norms have a heightened role in transitional circumstances precisely because national legal and political systems are weak or corrupt. At the same time, remote institutions, unfamiliar values and narrowly conceived mechanisms and analyses will not change ordinary people's lives for the better.

Reference List

Afghanistan Independent Human Rights Commission (2005) 'A Call for Justice', http://www.aihrc.org.af/Rep_29_Eng/rep29_1_05call4justice.pdf.

Alexander, Neville (2002) *An Ordinary Country: Issues in the Transition from Apartheid to Democracy in South Africa*. Pietermaritzburg: University of Natal Press.

Allen, Tim (2006) *Trial Justice*. London; New York: Zed Books.

Arato, Andrew (2006) 'Empire's Democracy, Ours and Theirs' in A. Bartholomew, ed., *Empire's Law*. London; Toronto: Pluto; Between the Lines.

Arbour, L. (2006) 'Economic and Social Justice for Societies in Transition', Second Annual Transitional Justice lecture hosted by the New York University School of Law Center for Human Rights and Global Justice and by the International Center for Transitional Justice New York University of Law School. [http://www.unhchr.ch/Huricane/Huricane.nsf/60a520ce334aaa77802566100031b4bf/40032f0dc00bf784c12572140031760a/$FILE/TransitionalJustice.pdf].

Baines, Erin K. (2007) "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda," 1 *International Journal of Transitional Justice* 91-114 (1).

Bell, Christine, C. Campbell, and F. Ní Aoláin (2004) "Justice Discourses in Transition," 13 *Social & Legal Studies* 305-328 (3).

Bell, Christine and C. O'Rourke (2007) "Does Feminism Need a Theory of Transitional Justice? An Introductory Essay," 1 *International Journal of Transitional Justice* 23-44 (1).

Bond, Patrick (2000) *Elite Transition: From Apartheid to Neoliberalism in South Africa*. London; Sterling VA; Scottsberg, SA: Pluto Press; University of Natal Press.

Buss, Doris (2007) "The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law," 25 *Windsor YB of Access to Justice* 3-22.

Chandler, David (2006) *Empire in Denial: The Politics of State-building*. London: Pluto.

Chinkin, Christine and H. Charlesworth (2006) "Building Women into peace: the lnternational legal framework," 27 *Third World Quarterly* (5).

Corey, Allison and S.F. Joireman (2004) "Retributive Justice: The *Gacaca* Courts in Rwanda," 103 *African Affairs*

73-89.
Democratic Principles Working Group (2003) "Iraqi Opposition Report on the Transition to Democracy," 14 *Journal of Democracy* 14-29 (3).
Dickinson, Laura (2003) "The Promise of Hybrid Courts," 97 *American Journal of International Law* 295-310 (2).
Drumbl, Mark A. (2005) "Law and Atrocity: Settling Accounts in Rwanda," 31 *Ohio Northern University Law Review* 41.
Duggan, Colleen and Adila M. Abusharaf (2006) 'Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice' in Anonymous, *The Handbook of Reparations*. Oxford: Oxford University Press.
East Timor CAVR (2005) *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR)*. http://www.ictj.org/en/news/features/846.html.
Fitzpatrick, Peter and Eve Darian-Smith (2002) 'Laws of the Postcolonial: An Insistent Introduction' in E. Darian-Smith & P. Fitzpatrick, eds., *Laws of the Postcolonial*. Ann Arbour: University of Michigan Press.
Franke, Katherine M. (2006) "Gendered Subjects of Transitional Justice," 15 *Columbia Journal of Gender and Law* 813.
Gossman, Patricia (2006) 'Truth, justice and stability in Afghanistan' in Anonymous, *Transitional Justice in the Twenty-First Century: Beyond truth versus justice*. Cambridge: Cambridge University Press.
Graybill, Lynn (9 Feb 2007) 'Debt Relief: a Panacea for Sierra Leone?', *CSIS Africa Policy Forum* http://forums.csis.org/africa/?p=24.
Hayner, Priscilla (2000) *Unspeakable Truths: Confronting State Terror and Atrocity*. New York: Routledge.
Human Rights Watch (2004) *Justice Denied for East Timor* . http://www.hrw.org/backgrounder/asia/timor/etimor1202bg.htm.
Human Rights Watch (29 Jun 2005) 'East Timor: U.N. Security Council Must Ensure Justice ', *Human Rights New* http://hrw.org/english/docs/2005/06/28/eastti11231.htm.
IRIN (3 Feb 2004) 'Rwanda: Focus on the UN Tribunal', *IRINNEWS.org* http://www.irinnews.org/print.asp?ReportID=39272.
Jolly, Rosemary J. (2002) "Desiring Good(s) in the Face of Marginalized Subjects: South Africa's Truth and Reconciliation Commission in a Global Context," 100 *South Atlantic Quarterly* 693-715 (3).
Katzenstein, Suzanne (2003) "Hybrid Tribunals: Searching for Justice in East Timor," 16 *Harvard Human Rights Journal* 245-278 (Spring).
King, Jamesina (2006) 'Gender and Reparations in Sierra Leone: the Wounds of War Remain Open' in R. Rubio-Marín, ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations*. Social Science Research Council .
Kritz, Neil J., ed. (1995) *Transitional Justice: How emerging democracies reckon with former regimes*, Washington : United States Institute of Peace.
Lalloo, Kiran (1998) "Citizenship and Place: Spatial Definitions of Oppression and Agency in South Africa," 45 *Africa Today* 439-460 (3-4).
Levine, C. (2004) 'Gender and Transitional Justice: A Case Study of East Timor', Canadian Consortium for Human Security. http://www.humansecurity.info/sites/cchs/files/pdfs/Fellow%20Papers/levine_corey_paper.pdf.
Longman, Timothy (2006) 'Justice at the grassroots? Gacaca trials in Rwanda' in N. Roht-Arriaza & J. Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century*. New York: Cambridge University Press.
Lui, Robyn (2003) "Beyond Retribution: Seeking Justice in the Shadows of War [book review]," 38 *Australian Journal of Political Science* 589-590 (3).
Mani, Rama (2002) *Beyond Retribution: Seeking Justice in the Shadows of War*. Malden, MA: Polity.
Mani, Rama (2005) "Rebuilding an Inclusive Political Community After War," 36 *Security Dialogue* 511-526 (4).
Marais, Hein (2001) *South Africa: Limits to Change: The Political Economy of Transition.* London, New York and Cape Town: Zed Books and UCT Press.
Merry, Sally E. (2003) "From Law and Colonialism to Law and Globalization," 28 *Law and Social Inquiry* 569-590 (2).
Moon, Claire (2003) "Beyond Retribution: Seeking Justice in the Shadows of War [book review]," 10 *International Peacekeeping* 149-151 (4).
Moreno Ocampo, Luis (2007) "Transitional Justice in Ongoing Conflicts," 1 *International Journal of Transitional Justice* 8-9 (1).
Mutua, Makau (2001) "Savages, Victims and Saviors: The Metaphor of Human Rights," 42 *Harvard International Law Journal* 201-242.

Nagy, Rosemary (2004a) "The Ambiguities of Reconciliation and Responsibility in South Africa," 52 *Political Studies* 709-727.
Nagy, Rosemary (2004b) "Violence, Amnesty and Transitional Law: 'Private' Acts and 'Public' Truth in South Africa," 1 *African Journal of Legal Studies* 1-22 (1).
Nagy, Rosemary (2005) "After the TRC: Citizenship, Memory and Reconciliation," 38 *Canadian Journal of African Studies* (3).
Nagy, Rosemary (2006) "Postapartheid Justice: Can Cosmopolitanism and Nation-Building be Reconciled?," 40 *Law and Society Review* 623-652 (3).
Nevins, Joseph (2003) "Restitution over coffee: truth, reconciliation and environmental justice in East Timor," 22 *Political Geography* 677-701.
NGO Working Group on Women, P.a.S. (2006) *SCR 1325 and the Peacebuilding Commission*. New York: UN. http://www.peacewomen.org/un/6thAnniversary/Reports_Events/NGOWG_Report.pdf.
Ní Aoláin, Fionnuala (2006) "Political Violence and Gender During Times of Transition," 15 *Columbia Journal of Gender and Law* 829.
Oomen, Barbara (2005) "Donor-Driven Justice and its Discontents: the Case of Rwanda," 36 *Development and Change* 887-910 (5).
Orford, Anne (2002) "Feminism, Imperialism and the Mission of International Law," 71 *Nordic Journal of International Law* 275-296.
Orford, Anne (2003) *Reading Humanitarian Intervention*. Cambridge: Cambridge University Press.
Orford, Anne (2006) "Commissioning the Truth," 15 *Columbia Journal of Gender and Law* 851.
Park, Augustine S. J. (2006) "'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone," 15 *Social & Legal Studies* 315-337 (3).
Posel, D. (1999) 'The TRC Report: What Kind of History? What Kind of Truth?', paper presented at conference 'The TRC: Commissioning the Past,' University of Witswatersrand, Johannesburg, 11-14 July 1999.
Quinn, J.R. (2005) 'Customary Mechanisms and the International Criminal Court: The Case of Uganda', paper presented at conference 'Canadian Political Science Association,' London, Ontario, 2-4 June 2005.
Reyntjens, Filip (2004) "Rwanda, Ten Years On: From Genocide to Dictatorship," 103 *African Affairs* 177-210.
Roht-Arriaza, Naomi (2006) 'The New Landscape of Transitional Justice' in N. Roht-Arriaza & J. Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century*. New York: Cambridge University Press.
Sierra Leone TRC (2004) *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*. Accra, Ghana: Graphic Packaging Ltd. http://www.trcsierraleone.org/drwebsite/publish/index.shtml.
Simpson, G. (2000) 'Rebuilding Fractured Societies: Reconstruction, reconciliation and the changing nature of violence - Some self-critical insights from post-apartheid South Africa', Paper commissioned by the United Nations Development Program. [www.csvr.org.za/papers/paperundp.htm].
Sriram, Chandra L. (2005) *Globalizing Justice for Mass Atrocities: A Revolution in Accountability*. London; New York: Routledge.
Sriram, L. C. and A. Ross (2007) "Geographies of Crimes and Justice: Contemporary Transitional Justice and the Creation of 'Zones of Impunity'," 1 *International Journal of Transitional Justice* 45-65 (1).
Teitel, Ruti G. (2000) *Transitional Justice*. New York: Oxford University Press.
Teitel, Ruti G. (2003) "Theoretical and International Framework: Transitional Justice in New Era," 26 *Fordham International Law Journal* 893-906 (4).
UN Commission of Experts (2005) *Summary of the report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999*.
United Nations Secretary-General (2004) *Report on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*.
USIPeace Briefing (2003) 'Establishing Justice and the Rule of Law in Iraq: A Blueprint for Action', http://www.usip.org/pubs/usipeace_briefings/2003/0801_ESIraq_law.html.
Uvin, Peter (1998) *Aiding Violence: The Development Enterprise in Rwanda*. West Hartford, CT: Kumarian Press.
Valji, N. (2003) 'Creating the Nation: The Rise of Violent Xenophobia in the New South Africa', http://www.csvr.org.za/papers/papnv1.htm (date accessed: April 2004).
Valls, Andrew (2003) "Racial Justice as Transitional Justice," 36 *Polity* 53-71 (1).
Wandita, Galuh, Karen Campbell-Nelson and Manuela L. Pereira (2006) 'Learning to Engender Reparations in Timor-Leste: Reaching out to Female Victims' in R. Rubio-Marín, ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations*. Social Science Research Council .
Webber, Francis (1999) "The Pinochet Case: The Struggle for the Realization of Human Rights," 26 *Journal of Law and Society* 523-37 (4).

Wilke, Christiane (2005) "A Particular Universality: Universal Jurisdiction for Crimes Against Humanity in Domestic Courts ," 12 *Constellations* 83-102 (1).

Wilson, Richard A. (2001) *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*. Cambridge: Cambridge University Press.