# Chapter 6
# Redressing Sexual Violence in Transitional Justice and the Labelling of Women as "Victims"

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**Abstract** The chapter discusses the implications of labelling women who have experienced sexual violence in times of war and repression as "victims" in discourse and practice of transitional justice. It is based on the assumption that men and women become targets of sexual violence primarily due to their respective gender roles in a society and argues that as a consequence the prevention of future violence requires a significant modification of these gender relations (or power asymmetries) and that a focus on masculinities is essential to understanding these dynamics. This chapter marks a first attempt to conceptualise the link between masculinities, sexual violence and the advancement of gender justice through transitional justice processes. Can the focus on women in the context of crime tribunals, in particular, contribute to more gender justice in the post-conflict society?

**Keywords** Sexual violence • Masculinities • Transitional justice • Victims • Labelling • Gender • Women

## 6.1 Introduction

The objective of this chapter is to discuss the implications of labelling women who have experienced sexual violence in times of war and repression as "victims" in discourse and practice of transitional justice. Sexual violence refers to assaults of a sexual nature against both women and men. It is by no means a new phenomenon,

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although it has recently received worldwide attention due to the widespread assault on women during the violent conflicts in *inter alia* Rwanda, Liberia and the Balkans, as well as currently in the Democratic Republic of Congo. Whereas previously, that is until the verdicts of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), it had been treated as a by-product of war—responded to with impunity—, it now forms a central part of transitional justice processes, in particular in the context of criminal prosecution. This is based on the realisation that men and women do not become targets of sexual assaults randomly or due to the sexual drives of the perpetrators but because of political and social calculations by the opposing parties to the conflict. It is increasingly referred to as a weapon of war.[1]

The chapter is based on the assumption that men and women become targets of sexual violence primarily due to their respective gender roles in a society. It argues that as a consequence the prevention of future violence requires a significant modification of these gender relations (or power asymmetries). Can this be achieved by redressing sexual violence through transitional justice processes? Can the focus on women in the context of crime tribunals, in particular, contribute to more gender justice in the post-conflict society?

In order to respond to these questions I shall first briefly outline forms and dynamics of sexual violence during violent conflicts to then focus on the concept of masculinity to analyse the power dynamics at the heart of assaults of men against women.[2] This shall lead to a discussion of how sexual crimes are being redressed by means of transitional justice in order to then, lastly, draw some conclusions as to whether this might have a positive impact on the prevailing gender relations in a society, contribute to more gender justice, and prevent similar crimes in the future.

This chapter marks a first attempt to conceptualise the link between masculinities, sexual violence, and the advancement of gender justice through transitional justice processes. It is based on literature research only and cannot but paint a highly complex picture with very broad strokes and strong generalisations. For now, however, the purpose is to sketch out some analytical connections, rather than presenting a refined picture.

## 6.2 Sexual Violence During Violent Conflicts

During violent conflicts, men and women become targets of sexual violence due to their gender-specific roles within a society. In this sense, they are not always simply targeted as individual but as representatives of the respective ethnic/religious/political etc. identity group.[3] This can take various forms. Regarding women, their

[1] See for instance Buss 2009 and Maedl 2011.

[2] Even though violence against men is a significant occurrence for the lack of empirical data this chapter focuses on women only.

[3] For an overview of motivations of rapists see Eriksson Baaz 2009.

social (and biological) role as reproducers of ethnic, religious or national groups through childbirth can turn them into targets of sexual assault, including rape (*inter alia* to impregnate them with children from the enemy group), mutilation of their reproductive organs, and forced sterilisation, to name but a few, which all aim to undermine the reproduction of their identity group. This has been referred to as acts of ethnic cleansing (or even genocide, as ruled by the ICTR). Moreover, rape and mutilation can be understood as a symbolic attack on the "Mother of the Nation", i.e. the guardian of the respective identity group or, as Jean Elshtain puts it, on the symbolic representation of the body politic.[4] This has significant—intended—social repercussions:

> Sexual violence against women is likely to destroy a nation's culture. In times of war, the women are those who hold the families and the community together. Their physical and emotional destruction aims at destroying social and cultural stability. Moreover the psychological effects of mass rapes within the community concerned may lead to the devaluation and dissolution of the entire group. The destruction of women and/or their integrity affects overall cultural cohesion.[5]

The destruction of social and cultural cohesion within a group reduces its external value, it is humiliated and degraded in the process. This is particularly visible in incidences where husbands, brothers and sons are forced to witness the rape of female members of their family, insulting them in their socially prescribed role as the protectors of "their" women. Moreover, it produces and re-produces relations of superiority and inferiority between the parties to the conflict.

## 6.3 Masculinities and Violence

Recent research suggests that it is important to look at the construction of masculinities to better understand sexual assaults against women in times of crisis.[6] Masculinity, or—due to their varied expression better referred to as masculinities—broadly denotes the manifestation of widespread social norms and expectations that define what it means to be a man.[7] It has been argued that some men perform their masculine identity through the use of violence which is intrinsically connected to the assertion of social status and the value of the self, in other words: it literally "makes men".[8] This social status is subject to the particular socio-cultural background of a society in conflict and reflected in gender relations, i.e. in the way in which social practice is ordered along the lines of the reproductive arena.[9]

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[4] Elshtain 1987, p. 67.

[5] Seifert 1996, p. 39.

[6] Hamber 2007; Sigsworth and Valji 2011; Theidon 2009.

[7] Hamber 2007, p. 379.

[8] Cahn et al. 2009, p. 105.

[9] Connell 2005, p. 72.

From the perspective of masculinities, men tend to assume different roles based on their *habitus*: from responsible heads of household, via protectors, to hyper-masculine action hero types,[10] to name but a few. According to R. W. Connell, this is due to the fact that men are taking a hegemonic position in society[11]: "Different masculinities exist in definite relations with each other, often relations of hierarchy and exclusion. There is generally a dominant or 'hegemonic' form of masculinity, the centre of the system of gendered power".[12]

Masculinities are socially constructed through distinction from other men (homosocial) as well as from women (heterosocial) producing and re-producing power relations.[13] This *libido dominandi*[14] is expressed in the desire to dominate other men as well as, rather secondarily, to dominate and potentially injure women as an instrument of the symbolic struggle. The injury of women is however not about the women themselves, rather, women serve as reference objects—similar to "trophies"—in the "battle" between men. This mirrors the analysis of sexual violence above, according to which the abuse of women is not necessarily about the women themselves but about insulting "their" men as well as destroying the culture and social cohesion of the other group.

This point is illustrated by a study of Wendy Bracewell on gender dimensions in the Yugoslav province of Kosovo in the 1980s. She found that in the discourses amongst Serb Kosovars on the rape of Serb women by Kosovo Albanians in the 1980s "sexual violence became a focus of public discourse […] because of the way the subject linked assumptions and anxieties to do with gender (and especially masculinity) to a vision of Serbian nationhood under threat".[15] In other words, the perceived threat to Serbian nationhood was translated into the focus on the abuse of Serb women. Bracewell thus argues that "Serb-Albanian relations in Kosovo were presented as a matter of competing masculinities, with the bodies of women serving as the markers of success or failure".[16] Hence, the outrage about the rapes in Kosovo had little to do with violence against women as such but with the means of communication between men whilst "[i]ndividual women vanished almost entirely from the discourse of 'nationalist' rape, except as emblems of male honour and symbols of the Serbian nation".[17] One moment when women became prominent though was when demonstrating in front of army barracks in order to appeal to Serb men (armed men, i.e. soldiers) to protect them. This form of female agency reproduced the hegemonic images of Serbian "protector masculinities" amongst Serbs through stressing the strength of the men in contrast to the

[10] Meuser 2002, p. 63.

[11] For a more refined understanding of the term hegemony in Connell see Beasley 2008.

[12] Connell 2000.

[13] Meuser 2002, p. 94.

[14] Bourdieu 1997, p. 215.

[15] Bracewell 2000, p. 571.

[16] Bracewell 2000, p. 572.

[17] Bracewell 2000, p. 573.

vulnerability of the women[18]—and it illustrates that the production and reproduction of hegemonic masculinities involves both, men and women.[19]

Based on this conceptualisation of masculinities and femininities it can be summarised that, in many cases, sexual violence against women is embedded in the performance of hegemonic masculinities and the dominant position of men.[20] Or, the other way round, it is due to the inferior social position of women, and the ensuing disrespect, that they become targets.[21] In order to prevent sexual violence against women in the future it is thus paramount to change their social position from being a mere "means of communication", i.e. passive objects, to active agents, in particular in times after violent conflicts when the future composition of a society is being renegotiated. This leads us to the central question of this chapter: can this be achieved by redressing sexual violence within the framework of transitional justice?

## 6.4 Sexual Violence and Transitional Justice

The recent inclusion of sexual violence against women in transitional justice processes has been a significant achievement. It has led to increased awareness, new legislation, and new norms, and it has constituted a particular subject position, i.e. the women as the "victim subject". For Ratna Kapur, the discourse of violence against women has been successful "partly because of its appeal to the victim subject. In the context of law and human rights, it is invariably the abject victim subject who seeks rights, primarily because she is the one who has had the worst happen to her. The victim subject has allowed women to speak out about abuses that have remained hidden or invisible in human rights discourse".[22]

A number of benefits are connected to this subject position (if and when officially recognised), such as rights and entitlements. First, as referred to in the quote, women have the possibility to use the victim position to speak up and inform about the wrongs they have experienced. This does not only potentially restore their dignity but is also a first step of these wrongs being put right. It gives them a voice and enables them to put their abuses out in the open—if shame and the fear of stigma permit.

Moreover, "victims" may qualify for reparations, both material and symbolic. The former are significant since they might assist "victims" in improving their economic position, with a potential impact on gender relations. More recent truth

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[18] Bracewell 2000, p. 574.

[19] See also Theidon 2009.

[20] This is, of course, simplified for the sake of the argument in this chapter. For an intriguing ethnographic take which comes to a somewhat different conclusion see Eriksson Baaz 2009.

[21] For the sake of the argument this is a very broad generalisation. Not only do men also become subjected to sexual violence, women also at times involved in instigating the rape of fellow females.

[22] Kapur 2002, p. 5.

commissions in Peru, Timor-Leste and Sierra Leone made explicit mention in their recommendations to financially compensate "victims" of sexual violence.[23] This is particularly significant for women who live in abject poverty due to the loss of material belongings and poor health due to assaults.[24]

Symbolic reparations in form of memorials, commemorations events or apologies may contribute to improving the standing of "victims" in a society since they single them out as a group worthy of special considerations. This might improve their social status and influence in society. Organised as lobby groups "victims" might be able to have an impact on social and political processes, such as for instance in Rwanda where women organisations achieved that sexual violence during the genocide was recognised and prosecuted as one of the most serious genocide crimes.[25]

Individually, too, women subjected to sexual violence might benefit from being labelled a "victim". Labelling can be an important step in the process of making sense of the crime and gaining control over one's life.[26] The public recognition of the deed, as well as the membership of a community of individuals with the same fate, might assist in coming to terms with the experience[27] as well as restoring the dignity of both individuals and groups. "Victims" in this sense are characterised by their innocence and consequently their moral authority over the rest of the society. As argued by Zur, "[t]he victim status is a powerful one. The victim is always morally right, neither responsible nor accountable, and forever entitled to sympathy".[28] And yet, despite these important achievements, the inclusion of sexual violence in transitional justice processes is a mixed blessing since it reproduces gender essentialisms and fixes the social position and political identity of women in the newly emerging society as perpetual "victims": passive, inferior, vulnerable and in need of (male) protection. In the sense of Gayatry Spivak, it is "[w]hite men saving brown women from brown men".[29]

Much of this is related to discursive processes of victimisation which happen in various dimensions. First, there is a risk that criminal tribunals, in particular, shift the role of women from agents in seeking justice to the category of "victims" in TJ processes. This is for instance illustrated in a study by Julie Mertus about the impact of criminal trials for wartime rape (at the ICTY) on women's agency.[30] The women's initial motivation to participate in the trials was to mobilise other survivors, to influence international opinion, and shape international norms, as well as to receive

[23] Rubio-Marin 2006, pp. 33, 34. Coming forward to claim material reparations is nevertheless a delicate issue due to stigma and shame.

[24] Goldblatt 2006.

[25] Mageza-Barthel 2012.

[26] Davis et al. 1998, p. 20.

[27] Hagemann 1992.

[28] Zur 2005, p. 20.

[29] Spivak 1988.

[30] Mertus 2004.

public recognition for their harms, to create a public historical record, and to achieve personal closure.[31] Yet, in the course of the proceedings they came to realise that they could not use the trials for their own purposes. Rather, according to Mertus, "witnesses almost universally experienced the trials as dehumanising and re-traumatising experiences" so that they became disillusioned with the adversarial process.[32] Through the particular form of questioning as practised in court—in which prosecutors appropriate the testimonies to their own schema of who did what, how, and when—the women did not have the opportunity to tell their whole story. They were not the focus of attention for their own sake but only in order to reveal something about the perpetrators.[33] This had little therapeutic impact, if any, while undermining their ambition to turn from "victims" of rape to agents in the transitional justice process. Again, they were reduced to the status of passive "victims", obstructing the development of a more gender just environment in the future.

This situation is further enhanced by what has been referred to as the "peril of representation"[34] as a consequence of international TJ entrepreneurs speaking on behalf of groups and individuals they label "victims", including women as "victims" of sexual assaults. The production of an "authentic victim" (or victim authenticity) changes the position of the person not just on the international stage, but also in her (or his) society. In this sense, "speaking for and about victims further perpetuates their disempowerment and marginality".[35] As a consequence, the "victim" produced by TJ entrepreneurs and others is passive, hapless, and dependent on others to speak on her or his behalf, reproducing relationships of (global and local) inferiority and superiority,[36] as well as undermining women who want to testify about sexual assaults and thus to turn from "victims" into agents. This, again, reduces the chances to dissent from the power asymmetries at the core of the abuses they encountered.

Furthermore, without diminishing the importance of prosecuting sexual violence, Katherine Franke directs attention to the fact that the selectivity of sexual crimes might have a counterproductive impact on broader issues of gender justice.[37] The exclusive focus on sexual crimes is based on a highly selective image of femininity—marked by peacefulness and non-aggressiveness—leading to ignoring women's role as political agents in times of crisis, and consequently also as executors of violence and cruelty. As illustrated by Kirstin Campbell with regards to the ICTY, the gendered patterns of legal practice lead to women predominately testifying to sexual violence whilst men refer to violence more generally.[38] She follows:

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[31] Mertus 2004, p. 111.

[32] Mertus 2004, p. 112.

[33] Mertus 2004, p. 115.

[34] Kennedy 2001, p. 121.

[35] Madlingozi 2010, p. 210.

[36] Madlingozi 2010, p. 213.

[37] Franke 2006, p. 825.

[38] Campbell 2007, p. 425.

> If women only narrate rape, then they appear as passive victims of *sexual* violence. Such narrative framing reproduces traditional models of active masculinity and passive femininity. It produces the problem of the *legal representation* of women's agency, which becomes particularly important in this context of the engendering of naming and witnessing harms of conflict.[39]

The ignorance of the activity of (some) women is crucial since women, too, might play an active role in a violent conflict—yet this often remains excluded in TJ processes.[40] In Liberia, for example, the Truth and Reconciliation Commission highlighted the plight of women as "victims" of violent (sexual) attacks, while it failed to draw attention to the fact that women formed a significantly large part of the warring factions (30 % of combatants were female[41]). Accordingly, their crimes were not considered in the public eye. In doing so, the findings of the Truth and Reconciliation Commission undermined the political activities as well as the competences of women to make independent policy decisions; it constructed them as passive objects. Here, once more, there is a risk that the portrayal of women as "victims" undermines efforts to render them equal agents in the post-conflict society.

Finally, it is important to note that while sexual violence against women has become visible in transitional justice processes, sexual assaults against men have not. There is growing empirical evidence that sexual violence against men, too, is used for strategic purposes during violent conflicts. *Inter alia* raping men may serve the function of emasculating them, i.e. degrading them to the status of women, in order to undermine their position in society. Stigma, shame, and humiliation make it almost impossible for men to come forward and to seek both, medical assistance and legal advice.[42]

## 6.5 Conclusions

This cursory and very sketchy portrayal of how sexual violence against women is dealt with in transitional justice processes suggests that there is a threat of victimising women in the process and thus turning them into passive objects, once again. This is crucial in relation to the central question of the chapter, i.e. if the redress of sexual violence through TJ can contribute to altering the gender relations in a society. In other words, can it reduce the hegemonic status of men and the inferior position of women? This, it was stated by way of introduction, is a significant condition for advancing gender justice in a society and for preventing sexual violence against women in the future.

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[39] Campbell 2007, p. 426.

[40] One exception is the court case against Pauline Nyiramasuhuko at the ICTR. She is accused of instigating Hutu militias to rape Tutsi women during the 1994 genocide in Rwanda.

[41] Pietsch 2010.

[42] As illustrated by the documentary "Gender Against Men" by the Refugee Law Project, Makerere University, Kampala, Uganda.

The examples referred to in this chapter suggest that, at present, the way sexual crimes are being redressed in transitional justice processes leads to the (renewed) victimisation of women, obstructing the chances of dissidence from their passive, inferior subject position. It reduces their potential to challenge the hegemonic position of men in society. The focus on the role of hegemonic masculinity in the occurrence of sexual violence suggests that it is significant to include it in the analysis of the prevention of abuses in the future.

This chapter has offered a brief exploration of the links between hegemonic masculinities, sexual violence in times of war and the chances of advancing gender justice through redressing these crimes in transitional justice processes. Due to the lack of literature its character remains suggestive, calling for more empirical research in the area. For it is only through careful analysis that the highly complex connections between these aspects can be drawn out.

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