

Victims in Transitional Justice

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Introduction

Victims of armed conflict and atrocities are now a crucial components of transitional justice efforts that are undertaken in conflict-affected countries. There is a widespread consensus in transitional justice literature on the centrality of victims. Having a victim-centred approach to transitional justice is supported and championed by many scholars, as well as the practitioners and policy-makers. However, it remains to be the case that the victim-centred approach is not effectively implemented in most of the efforts and there is a strong need for further research on how and by what means victims might actually be in the core of transitional justice efforts. This working paper examines the current state of literature on victims in transitional justice. Firstly, it explores where victims are situated by in transitional justice scholarship. Then, it investigates who the victims are and who is entitled to rights and benefits based on the victimhood status. Following that, the paper looks at how the victims are seen in the literature and in the mainstream transitional justice practices. It finally explores the complexities of victims and perpetrator categories.

1. Where are the victims in Transitional Justice?

In the initial stages of transitional justice responses to mass abuses and in attempts to deal with the legacy of violent conflicts, victims were not in the centre. Transitional justice has evolved from its initial state-centric approach to a more victim-centred approach over time.¹ Robins

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¹ Karstedt, Susanne. 2010. From absence to presence, from silence to voice: Victims in international and transitional justice since the nuremberg trials. *International Review of Victimology* 17 (1): 9-30; Álvarez Berastegi, Amaia, and Kevin Hearty. 2019. A context-based model for framing political victimhood: Experiences from northern ireland and the basque country. *International Review of Victimology* 25 (1): 19-36.

considers that a victim-centred approach means to have a transitional justice process which emerges directly out of the needs of the victims as expressed by the victims themselves and perceives it as a way to challenge the elite-led approach of most transitional justice processes by a bottom-up approach.² As Humphrey notes: “The victim has been put at the centre of the states’ post-atrocity strategies to reform governance, rehabilitate state authority and promote reconciliation.”³ Currently, the importance of the involvement of victims’ experiences and their roles in justice and accountability processes are widely accepted. The right to the truth, the right to justice and the right to reparations are considered as key elements in present transitional justice practice and scholarship.⁴ A shared understanding in the current state of the literature claims that the victims are not only key to implementation of a transitional justice process, but they should also be the active agents of the design, management, analysis and evaluation of it⁵. “Securing popular access to and participation in all aspects of transitional justice processes (design, implementation, evaluation), and encouraging culturally resonant mechanisms that resist global models, can be seen as an opportunity to challenge a range of exclusions and power relations at both the local and the international level.”⁶

The idea behind this understanding is that victims should be treated as active agents of peace and transitional justice processes rather than being passive recipients who benefit from the mechanisms. People’s perception of justice differs depending on the context. It might be retributive, restorative, social justice or a combination of these. Just like the existence of different types of victims, there are different versions of justice that will be meaningful to individuals as well.⁷ Looking at what victims need in order to fulfil their demands for justice

² Robins, Simon. 2012. Challenging the therapeutic ethic: A victim-centred evaluation of transitional justice process in Timor-leste. *International Journal of Transitional Justice* 6 (1): 83-105.

³ Humphrey, Michael. 2003. From victim to victimhood: Truth commissions and trials as rituals of political transition and individual healing. *Australian Journal of Anthropology* 14 (2): 171-87.

⁴ Hearty, Kevin. 2018. 'Victims of human rights abuses in transitional justice: Hierarchies, perpetrators and the struggle for peace. *International Journal of Human Rights* (7): 888.

⁵ Lundy, Patricia, and Mark McGovern. 2008. Whose justice: Rethinking transitional justice from bottom up. *Journal of Law and Society*: 265; Mendez, Juan E. 2016. Victims as protagonists in transitional justice. *International Journal of Transitional Justice* 10 (1): 1-5.

⁶ Gready, Paul, and Simon Robins. 2017. Rethinking civil society and transitional justice: Lessons from social movements and ‘new’ civil society. *The International Journal of Human Rights* 21 (7): 956-75.

⁷ Porter, Elisabeth J. 2015. *Connecting peace, justice, and reconciliation*. Boulder, Colorado: Lynne Rienner Publishers, Inc.

means that the moral agency of victims is acknowledged. This is only possible if the victims are consulted from the very beginning about their understanding of justice. However, that consultation process tends to remain superficial in most contexts.⁸ In order to deliver and ensure a sustainable and emancipatory peace, which recognizes the needs and interests of local constituents over the interests and politics of international community,⁹ the meanings and implications of different components of justice need to be comprehended. In a similar vein, having an understating of different meanings of the violent events and the social and symbolic implications of those events for the populations who were impacted are crucial to have a victim-centred approach.¹⁰ Regarding the decisions to take regarding the type of transitional justice method that will be employed in a particular context, Lambourne argues that the needs of all the participants should be reflected:

In determining the specific path to take in any particular transitional justice context, it is critical to take into account the needs, expectations and experiences of conflict participants – the perpetrators, victims, survivors and other members of society directly affected by the violence, who are intimately involved in the peacebuilding process.¹¹

Despite the acknowledgement of the centrality of victims in transitional justice processes and the universal commitment to it in principle; the victims-centred advocacy and the agency of victims are still ignored as a political force.¹² As Robins notes: “Evidence is presented that, despite a common rhetoric claiming that transitional justice is ‘victim-centred’, its principal mechanisms, namely trials and truth commissions, are actually driven by the needs of the state.”¹³ He argues that even the definitions of transitional justice exclude victims and it remains unclear what it is

⁸ Robins, supra n 2.

⁹ Visoka, Gezim, and Grace Bolton. 2011. The complex nature and implications of international engagement after kosovo's independence. *Civil Wars* 13 (2): 189-214.

¹⁰ Robins, supra n 2.

¹¹ Lambourne, Wendy. 2009. Transitional justice and peacebuilding after mass violence. *International Journal of Transitional Justice* (1): 29.

¹² Sajjad, T. 2016. Heavy hands, helping hands, holding hands: The politics of exclusion in victims' networks in nepal. *International Journal of Transitional Justice* 10 (1): 25-45; Robins, Simon. 2017. Failing victims? the limits of transitional justice in addressing the needs of victims of violations. *Human Rights and International Legal Discourse* 2017 (2): 41-58.

¹³ Robins, supra n 12.

meant by victim-centeredness.¹⁴ Lambourne agrees that the populations who were affected by the conflict are not usually consulted to determine the transitional justice process.¹⁵ Gready and Robins explain that the local populations are not encouraged to engage because the transitional justice practice is still state-centric.¹⁶ Hamber affirms that victims' rights are still not a priority for transitional justice agenda:

...victims' rights still need to be anchored in the transitional justice debate, despite the rhetoric that at times surrounds this. A rights-based approach to the needs of victims remains underdeveloped – morally, ethically, legally and, more critically, in practice. A paradigm shift is needed in which victims' rights start to determine the transitional justice agenda rather than victims' rights being seen as an obstacle to pragmatic political change.¹⁷

Transitional justice mechanisms are still predominantly state-centric which results in the ongoing tension between what victims perceive as their needs and what are offered to them by transitional justice practices that prioritise the needs of liberal state.¹⁸ Based on an empirical study that has been conducted with the families of victims of serious harms in Timor Leste, he indicates that the needs and expectation that victims express are in contrast with what transitional justice mechanisms brought to them.¹⁹

Hearty claims that there are practical and political limitations to the extent that transitional justice can actually serve the needs and demands of victims. Practical reasons stem from the resources, budget and time constraints²⁰ while political limitations are more related to the link between different types of victimization and different ways of interpreting the past.²¹ Another problem about the engagement of victims in transitional justice is the remoteness and detachment of transitional justice processes and mechanisms from the communities they are supposed to

¹⁴ Robins, supra n 12.

¹⁵ Lambourne, supra n 11.

¹⁶ Gready and Robins, supra n 6.

¹⁷ Hamber, Brandon. 2015. *Dealing with Painful Memories and Violent Past. Towards a Framework for Contextual Understanding*. Berghof Handbook Dialogue Series no. 11

¹⁸ Robins, supra n 12.

¹⁹ Robins, supra n 2.

²⁰ Humphrey, supra n 3.

²¹ Hearty, supra n 4.

serve.²² This includes the physical distance as well as a lack of understanding of social realities surrounding the victims of the conflict. This understanding requires a broader acknowledgment of how mass violence impacts the populations. One of the reasons for this detachment is the fact that transitional justice practice is usually led and shaped by elites, international professionals and the donors rather than the local movements in which victims are involved.²³ Robins expands “victims are likely to be far more strongly impacted by the social, economic and political circumstances in which they live every day than a remote and short-lived institution.”²⁴

Despite the common understanding of the need to complement judicial tools with the non-judicial ones, several authors address the still existing dominance of a narrow legalistic approach in transitional justice scholarship, as well as the policy and the practice.²⁵ Robins highlights that legalism detaches transitional justice practice from the victims who are supposed to be served, because the law is isolated from the social context in which the victims live.²⁶ Even though prosecutions or punishments are not the only forms of redress and they are usually only one of several different demands of victims, prosecutions are still privileged over other forms.²⁷ According to Robins,²⁸ this “prevalence of legalism” in general and the “primacy of prosecution” in specific result in several consequences. Firstly, they might overlook the diversity of ways in which violence is experienced. Secondly, they often fail to capture the full complexity of post-conflict contexts. Lastly, they have difficulties in fulfilling the main needs of victims due to their disconnection from the social context/background.²⁹ McEvoy notes that this disconnect can be found in Northern Ireland, Sierra Leone and Rwanda in the form of the view that transitional justice belongs to formal mechanisms and institutions which are distant from the communities

²² Robins, supra n 12.

²³ Gready and Robins, supra n 6.

²⁴ Robins, supra n 12.

²⁵ McEvoy, Kieran. 2008. ‘Letting Go of Legalism: Developing a ‘Thicker’ Version of Transitional Justice’, In McEvoy, K. and McGregor, L. (eds) (2008). *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*. Portland: Hart, 15-45; Robins, supra n 12.

²⁶ Robins, supra n 12.

²⁷ Huyse, Luc. 2003. ‘Justice’, In Bloomfield, D., Barnes, T. & Huyse, L. (eds) (2003) *Reconciliation after Violent Conflict: A Handbook*, Stockholm: International Institute for Democracy and Electoral Assistance, 97–115; Robins, supra n 12.

²⁸ Robins, supra n 12.

²⁹ Robins, supra n 12.

who have been affected by the conflict.³⁰ In tune with Robin's argument, McEvoy considers the relationship between dominant legalism and the state-centric approach as a dialectic one. Justice-delivery, he argues, is still seen mainly as the state's job.³¹ He also points at the risk that this approach is often an obstacle against local ownership and undermines the accountability towards whom transitional justice is claimed to serve.

Justice might mean different things to different peoples in different contexts. As Hamber suggests, what the victims expect from justice might vary in a range of measures from prosecutions to reconciliation, official apology to truth recovery.³² It might and often does include a combination of different methods which are both addressing the truth-recovery needs and the retributive justice. For this reason, hybrid approaches that combine internationally or nationally led trials, reparations, amnesty, truth commissions and more traditional, community-based and localized approaches are chosen to respond to different needs of the victims³³ in a way that builds on contextual and cultural approaches which preserve alongside the dominant Western perspective.³⁴ Gacaca courts in Rwanda and Fambul Tok in Sierra Leone are examples of these hybrid approaches which operated alongside criminal prosecutions and used traditional, cultural, localised resources for community level healing. However, there are certain difficulties and challenges to hybrid approaches as well. Gacaca, for instance, was internally hybrid according to Clark³⁵ due to its combination of legal and non-legal objectives (healing, forgiveness, clearing the backlog of genocide cases, etc.) and methods. He argues that some objectives of Gacaca are compatible with each other, such as the following four: forgiveness, healing, reconciliation, peace are compatible. However, he also addresses the difficulties in pursuit of hybrid and sometimes conflicting objectives simultaneously such as truth and healing, retributive/deterrent justice and restorative justice/reconciliation. Truth-telling, for example, does not necessarily lead to healing, as Clark demonstrates, and it might even further traumatize the

³⁰ McEvoy, supra 25.

³¹ McEvoy, supra 25.

³² Hamber, supra 17.

³³ Clark, Phil. 2010. The gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers. *International Criminal Law Review* (1): 101; Gready and Robins, supra n 6.

³⁴ Lambourne, supra n. 11

³⁵ Clark, supra 33.

victims which might hamper the reconciliation.³⁶ Similarly, Du Toit addresses the risks and dangers that might arise from the absence of careful reflection on how different mechanisms might complement each other.³⁷ He claims that the transitional justice mechanisms usually tend to be analysed in isolation from one another. However, he argues, if several mechanisms are not linked together, there is not a realistic picture at hand. For instance, the persecution of individual criminals does not deliver justice for wider issues. Likewise, reparations cannot address the social injustices or structural inequalities themselves. Truth-telling processes are not necessarily healing, they can have the adverse effects if they are not supported by other mechanisms. And, traditional, community-based processes run the risk of reinforcing gender roles if there is not specific attention paid to gender policy. This means that when designing transitional justice processes, one needs to be careful about how to integrate those mechanisms and how they are interlinked in a way that will avoid the risks and maximize the benefit.³⁸

Despite the extensive literature on various types of transitional justice mechanisms implemented in different contexts, the long-term impact of different transitional justice mechanisms on the lives of victims have not been investigated enough.³⁹ This reflects not only a gap in the literature, but also demonstrates the need to go beyond the discursive emphasis on the importance of victims and conduct studies that genuinely incorporates victims' experiences and conceptualization in order to transform the prescriptive approaches to transitional justice.⁴⁰

2. Who are the victims?

Having said these above, who are the victims to be consulted and whose expectations and demands are to be taken into consideration is another significant question that is quite

³⁶ Clark, supra 33.

³⁷ Du Toit, Fanie. 2018. *When Political Transitions Work. Reconciliation as Interdependence*. New York: Oxford University Press

³⁸ Du Toit, supra 37.

³⁹ Hamber, Brandon, and Richard A. Wilson. 2002. Symbolic closure through memory, reparation and revenge in post-conflict societies. *Journal of Human Rights* 1 (1) (03): 35-53; Hamber, supra n 17.; Robins, supra n 12.

⁴⁰ Gready and Robins, supra n 6.; Robins, Simon. 2009. Whose voices? understanding victims' needs in transition: Nepali voices: Perceptions of truth, justice, reconciliation, reparations and the transition in Nepal: By the international centre for transitional justice and the advocacy forum, march 2008. *Journal of Human Rights Practice* 1 (2): 320-31.

challenging in times of transitions especially in deeply divided societies.⁴¹ It usually brings with it the question of who is entitled to benefits and rights based on their victimhood.⁴² A victim status is not automatically granted as a result of being harmed. In transitioning societies, victimhood is socially, politically, legally, subjectively and technically constructed and produced.⁴³ As Humphrey indicates when he discusses the victimhood in the South African Truth and Reconciliation Commission (TRC), victimhood is not a universal category and it is defined by human rights law and determined by the mandates of the transitional justice mechanisms.⁴⁴ Hearty notes that “one might legitimately ask whether the victim centeredness involves all victims or only some victims, and if the latter, what, and who, is it that determines which victims will be included and which victims will be excluded.”⁴⁵

According to Robins, victims are defined by what happened to them and how it is articulated in law, rather than what and how they experience the whole process, and this might well neglect their agency.⁴⁶ For example, as is the case with the Compensation Law in Turkey and the Act on Victims of Terrorism in the Basque country, laws might articulate the victims as the victims of terrorism.⁴⁷ In this case, the fact that the state does not associate itself with terrorism means that only those who have been victimized by the acts of the armed groups will be entitled to rights. This draws a clear distinction between certain victim groups and others. Hearty argues that interpreting victimhood according to their victimizers, or the harms they suffer from makes the issue unrelated to victims themselves.⁴⁸ Victimhood, therefore, becomes a political field where

⁴¹ Moffett, Luke. 2016. Reparations for 'guilty victims': Navigating complex identities of victim-perpetrators in reparation mechanisms. *International Journal of Transitional Justice* 10 (1): 146-67; Saeed, Huma. 2016. Victims and victimhood: Individuals of inaction or active agents of change? reflections on fieldwork in Afghanistan. *International Journal of Transitional Justice* 10 (1) (03): 168-78; Álvarez Berastegi and Hearty, supra n 1.

⁴² Sajjad, supra n 12.

⁴³ Saeed, supra n 12.; Hearty, supra n 4.

⁴⁴ Humphrey, supra n 13.

⁴⁵ Hearty, supra n 4.

⁴⁶ Robins, supra n 12.

⁴⁷ Kurban, Dilek. 2012. Reparations and Displacement in Turkey. Lessons Learned from the Compensation Law. *Case Studies on Transitional Justice and Displacement, ICTJ* (July), 1–13; Álvarez-Berastegi, Amaia. 2017. Transitional justice in settled democracies: Northern Ireland and the Basque Country in comparative perspective. *Critical Studies on Terrorism*, 10 (3), 542-561.

⁴⁸ Heart, supra n 4.

the struggles about the meanings of past take place.⁴⁹ Álvarez Berastegi and Hearty⁵⁰ propose the context-based approach as a new lens to see political victimhood. Instead of defining the victimhood solely on the basis of the harm suffered or the level of blame and innocence, they consider the victim identity as a complex social process which is influenced by the particularities of each conflict context. While doing so, they put the suffering of victims at the centre, recognize that their needs depend on the specific circumstances of their victimisation, and also argue that this approach would not allow space for political manipulation that results from the binary understanding of the victimhood.⁵¹

As Hearty⁵² argues, there is a clear hierarchical approach to harms in transitional justice processes. This applies to both legal measures such as reparations, and the non-judicial mechanisms such as truth commissions. In terms of reparations, the budget is limited and there has to be a selectivity to decide which loss will be materially compensated. The Compensation Law in Turkey, for instance, has been critiqued for not including non-pecuniary damages.⁵³ With regards to truth commissions, the South African TRC provides a rich example. The narrow definition of victimhood⁵⁴ excluded structural violence and many victims did not have the space to benefit from this mechanism. Mamdani argues that the TRC individualized the crimes, dehistoricized and decontextualized the apartheid regime.⁵⁵ As Hamber notes:

Rather, the TRC chose to define victims narrowly, that is, as the direct victims of gross human rights violations such as murder, torture, abduction and disappearances. From this perspective, the TRC failed

⁴⁹ McEvoy, Kieran; Ron Dudai and Cheryl Lawther. 2017. 'Criminology and Transitional Justice' In Alison Leibling, Shadd Maruna and Lesley McAra (eds.) *The Oxford Handbook of Criminology*, Oxford: Oxford University Press; Hearty, supra n 4.)

⁵⁰ Álvarez Berastegi and Hearty, supra n 1.

⁵¹ Álvarez Berastegi and Hearty, supra n 1.

⁵² Hearty, supra n 4.

⁵³ Budak, Yeliz. 2015. Dealing with the past: Transitional justice, ongoing conflict and the Kurdish issue in turkey. *International Journal of Transitional Justice* (2): 219.

⁵⁴ According to the Act that set up the Truth and Reconciliation Commission, ... "gross violation of human rights" means the violation of human rights through -(a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive." (Promotion of National Unity and Reconciliation act, 1995 p.3)

⁵⁵ Mamdani, Mahmood. 2002. Amnesty or impunity? A preliminary critique of the report of the truth and reconciliation commission of South Africa (TRC). *Diacritics* 32 (3): 33-59.

sufficiently to make the link between the structural violations of apartheid (for example, systematic poverty or inequality in access to services) and the direct human rights violations suffered by those who testified. Victimisation was not defined as stemming from a direct act of political violence, while those who suffered the ravages of apartheid through forced removals, pass laws, malnutrition or poor education were not asked to testify. Neither were they directly categorised as victims.⁵⁶

In a similar vein, Mamdani addresses the narrow interpretation of the legislation in defining the victimhood and the exclusion of certain harms as a result. He indicates that the definition of victimhood was inconsistent with the acknowledgement of apartheid as a crime against humanity in the report of the Commission. “By championing a narrow interpretation, however, the Commission acknowledged only those violations suffered by political activists or state agents. It consequently ignored apartheid as experienced by the broad masses of the people of South Africa.”⁵⁷ The narrow interpretation of victimhood reflects a common phenomenon of transitional justice which Gready and Robins points at when they claim that transitional justice, like the liberal peace paradigm, puts greater emphasis on acts than it puts on chronic, structural and social violence.⁵⁸ Similarly, Baines notes that emphasising mostly on single violent acts detaches these acts from the historical and social context in which the violence was shaped.⁵⁹ “Consequently, the TRC’s account of the past excluded a proper accounting of the insidious structural violence of apartheid: in particular of the race, education, and pass laws, of which many thousands more people were victims than of party political violence.”⁶⁰ However, Du Toit argues that despite Mamdani is right to claim that structural violence was not focused enough in TRC, it would not be realistic to expect a TRC to focus structural violence comprehensively.⁶¹ He says, if the TRC had not individualized the crimes, reminded the personal responsibility of perpetrators and emphasized the personal dignity of victims, it would have to deal with millions of participants to deliver structural justice. For this reason, he thinks that although it operated within a limited mandate, the TRC managed to serve for social justice through three different

⁵⁶ Hamber, Brandon. 2002. 'Ere their story die': Truth, justice and reconciliation in South Africa. *Race & Class* 44 (1): 61-79.

⁵⁷ Mamdani, supra n 55.

⁵⁸ Gready and Robins, supra n 6.

⁵⁹ Baines, Erin K. 2015. "Today, I want to speak out the truth": Victim agency, responsibility, and transitional justice. *International Political Sociology* 9 (4): 316-32.

⁶⁰ (Mamdani, Mahmood. 1996, cited in Moon, Claire. 2009.

⁶¹ Du Toit, supra n 37.

ways.⁶² First, in the final report, structural violence was officially recognized. Second, some reparation tools were recommended to compensate the damages that the victims suffered under apartheid. And third, by emphasizing the personal dignity of victims, structural violence was challenged. In tune with Du Toit's approach, Hamber also draws attention to the importance given in the report of the TRC to social, economic and political context, such as the impact of poor living conditions on the emotional wellbeing of the victims.⁶³

The failure to address the structural inequalities by transitional justice is examined by those who propose transformative justice as a new agenda.⁶⁴ "Transformative justice is defined as transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level."⁶⁵ Transformative justice requires economic and structural inequalities to be addressed and the socio-economic rights are given priority in transitional justice agenda. Robins suggests that transitional justice scholarship does not focus enough on empirical research and the impact of transitional justice mechanisms.⁶⁶ In support of this argument, he focuses on ethnographic studies done in Timor Leste and Nepal with the victims and the families of victims to understand their needs as they express.⁶⁷ In both contexts, the daily struggle of surviving is a more important priority for victims than the prosecution of the perpetrators. Based on a survey done in Nepal, as Robins puts in his article, "the vast majority of the victims prioritized the daily struggle of surviving, a task made more difficult by victimhood, over judicial process."⁶⁸ However, basic needs, economic and social rights are not on the priority list of human rights agencies in transitional agenda in Nepal although they are among the top priorities of victims. A majority of victims believes that compensation is more important than prosecutions and the basic needs are higher

⁶² Du Toit, supra n 37.

⁶³ Hamber, Brandon. 2009. *Transforming societies after political violence: truth, reconciliation, and mental health*. Dordrecht: Springer.

⁶⁴ Gready and Robins, supra n 6; Evans, Matthew. 2016. Structural violence, socioeconomic rights, and transformative justice. *Journal of Human Rights* 15 (1): 1-20; McAuliffe, Pedraig. 2017. *Transformative transitional justice and the malleability of post-conflict states*. Cheltenham: Elgar

⁶⁵ Gready and Robins, supra n 6.

⁶⁶ Robins, supra n 2.

⁶⁷ Robins, supra n 40; Robins, supra n 2.

⁶⁸ Robins, supra n 40.

priority than judicial process.⁶⁹ In parallel to Nepal, the families of missing persons in Timor Leste are in favour of economic support as the most immediate needs of the victims.⁷⁰ Transformative justice might be an effective approach to address structural, social and economic issues⁷¹ alongside the other harms that transitional justice has conventionally been addressing.

This is also connected to which victim groups are going to be included. While the transitional processes are designed, the decision of which victim groups will be consulted or get involved might seriously affect the result of the whole process and it might even cause further inequalities or conflict among the victim groups. Victim groups contribute to justice in proportion with their capacity to organize.⁷² There are several reasons for that. First of all, not all victim groups have the same level of access to policy-makers or practitioners. Secondly, they are usually not equal in terms of the resources available to them. For instance, the literacy level of a particular victim group and the language they are fluent at are important factors that determine their ability to lobby and reach the relevant networks for their cases to be heard.⁷³ Some victim groups might be working with more established NGOs with national and international contacts, while some others might be relying on voluntary work and local support. This plays a certain role while practitioners are trying to reach some representatives of victim groups to consult.⁷⁴ The time limit of these processes and the urgency to establish the mechanisms might make it even harder to map the victim groups and ensure the participation of them all.

Typically those most affected by violations have little or no opportunity to impact upon the goals of the process or the nature of particular mechanisms. Furthermore, privileging discourse that is often alien to victims, such as the predominantly legal discourses of transitional justice, can empower elites and outsiders at the expense of victims, particularly the most disempowered, who have both the greatest need for and least access to the language of rights. This is an articulation of the fact that in a state where only elites

⁶⁹ Robins, supra n 40.

⁷⁰ Robins, supra n 2.

⁷¹ Evans, supra n 64; Gready and Robins, supra n 6; Lambourne, Wendy. 2011. Transformative Justice and Peacebuilding: A Psychological Perspective. Paper presented at “*Transformative Justice: Global Perspectives*” Worldwide Universities Network International Conference, University of Leeds, Leeds.

⁷² Mendez, supra n 5.

⁷³ Shepherd, Laura J. 2011. Sex, security and superhero(in)es; From 1325 to 1820 and beyond. *International Feminist Journal of Politics* 13(4): 504–521.

⁷⁴ Crocker, David A. 1998. “Transitional Justice and International Civil Society: Toward a Normative Framework,” *Constellations* 5: 492-517

know what rights are, they can become something that is largely claimed on behalf of victims rather than by victims themselves.⁷⁵

3. How are the victims seen?

3.1 Victims of individual violations

3.1.1 Trauma and emotional healing

The acknowledgment of the psycho-social impact of wars led to the development of transitional justice mechanisms that address the emotional well-being of victims and survivors. Emotions, emotional recovery and emotional practice have been central pillars to transitional justice discourse and practice, and transitional justice adopted an emotional healing-based language.⁷⁶ Moon mentions the rise of the therapeutic discourse which emerged as a result of defining the trauma as a psychological category that results from, the wars.⁷⁷ Although it was evident that wars had a concrete psychological impact on military personnel, it was not until the Vietnam War that a set of identifiable symptoms was defined as post-traumatic stress disorder (PTSD).⁷⁸ In terms of the focus of the psychotherapeutic responses and discourses surrounding war, 1990s marked a significant shift from individuals who fought the war to the entire communities who were traumatized by the war. This shift took place in parallel between the developments in the scholarship on war, which is most predominant in Kaldor's theory of new wars which suggests that the contemporary wars do not only take place between combatants, but they also involve the civilians and have greater impact on them.⁷⁹

While addressing the rise of a therapeutic understanding of post-conflict reconciliation processes, Moon describes two key ways of thought that are consequences of this understanding. The first one is that the war-torn societies are traumatised, and they need a therapeutic management for

⁷⁵ Gready and Robins, *supra* n 6.

⁷⁶ Karstedt, Susanne. 2016. The emotion dynamics of transitional justice: An emotion sharing perspective. *Emotion Review* 8 (1): 50-5.

⁷⁷ Moon, Claire. 2009. Healing past violence: Traumatic assumptions and therapeutic interventions in war and reconciliation. *Journal of Human Rights* 8 (1): 71-91.

⁷⁸ Moon, *supra* n 77.

⁷⁹ Kaldor, Mary. 1999. *New and old wars: Organized violence in a global era*. Cambridge: Polity Press.

the conflict to be resolved.⁸⁰ And the second one is that the post-conflict state has the task to contribute to the psychological well-being of the whole nation and its citizens.⁸¹ She argues that national reconciliation processes are the most obvious materialisation of the therapeutic claim of the post-conflict state to political legitimacy, and truth commissions are at the centre of this institutional claim.⁸²

According to the therapeutic discourse in transitional justice responses to violent pasts, trauma is not only an outcome of the conflict, but also a reason of its continuation, and that is why the post-war order should have the capacity to heal trauma.⁸³ The logic behind this is that the traumatized societies can reproduce the conditions that enabled the war at the first place. As Moon notes: “State-driven post-conflict reconciliation projects have increasingly drawn on the idea that trauma presents particular problems for peace because traumatized societies reproduce, ineluctably, the conditions under which violent conflict rematerializes.”⁸⁴ This demonstrates a clear similarity between the approach to treat individual trauma and the approach that considers an entire society as a single, homogenous entity which has been traumatised. In the article that they explore the differences the contradictions between individual psychological processes and national processes such as truth commissions, Hamber and Wilson use the phrase ‘psychologizing the nation’ which wrongly implies that the individual and national ways to deal with the past are almost identical and they argue “that psychologizing the nation can be an ideology for subordinating diverse individual needs to the political expediency of national unity and reconciliation.”⁸⁵ According to Moon, the ‘pathological interpretation of political violence’ is based on the illusion of a unitary entity which shares the same psychological pathologies as individuals.⁸⁶ As she notes:

This discourse intimately connects the assumptions normally applied to individual intrapsychic healing to national governance. In this context, we can understand postconflict reconciliation as a strategy of trauma

⁸⁰ Moon, supra n 77.

⁸¹ Moon, supra n 77.

⁸² Moon, supra n 77.

⁸³ Moon, supra n 77.

⁸⁴ Moon, supra n 77.

⁸⁵ Hamber and Wilson, supra n 39.

⁸⁶ Moon, supra n 77.

management writ large in which the nation appears as the subject of war trauma, thus appearing amenable to therapeutic intervention.⁸⁷

3.1.2 Individual Approaches to Trauma

Alongside the advantages of taking the psychological health of victims into account, psychoanalytic responses in transitional justice are said to have their own pitfalls, such as its insufficient focus on the political and social context. Hamber argues that both trauma and PTSD have been shorthand concepts which often fail to capture the complexities of the particular context in which the violence takes place. These concepts themselves do not necessarily explain the political, socio-economic and cultural aspects of the conditions that made the suffering possible. He indicates that the PTSD diagnosis serves to pathologizes a socio-political reality and it obscures the structural categories that are linked to long-term marginalization of victims such as poverty, inequality, gender, ethnicity among others. Moon also draws attention to the fact that the social and political roots of the conflict are usually obscured by putting too much emphasis on individual processes.⁸⁸ By referring to the TRC, which adopted a therapeutic approach to deal with the whole society as an individual, she says that it addressed the individual victims and perpetrators of these violations instead of shedding a light on the wider context that made the human rights violations possible at the first place.⁸⁹

In parallel to the lack of attention to the context, another risk is that PTSD might equate very different experiences of violence as if they all require the same treatment or result in the same consequences.⁹⁰ This is particularly important because political traumatization is strongly linked to the context and the healing of the suffering is only possible when the victims are able to make sense of it. Taking the individual out of the context does not allow for enough space to explore the attachment that one might attach to it. Hamber⁹¹ addresses the disrupting effect of extreme political traumatising on the meaning systems and notes that each incident refers to a particular set of meanings which therefore has specific political, social and cultural impact. Having an

⁸⁷ Moon, *supra* n 77.

⁸⁸ Moon, *supra* n 77.

⁸⁹ Moon, *supra* n 77.

⁹⁰ Hamber, *supra* n 17.

⁹¹ Hamber, *supra* n 63; Hamber *supra* n 17.

understanding of what is attributed to each event is a crucial part of the healing process. In a similar vein, Robins argues that “imposing the frame of trauma on victims implies a diagnosis of post-traumatic stress disorder and a consequent need for ‘therapy’, in contrast to potentially more relevant and local understandings of how they might respond to the impact of victimisation.”⁹²

Humphrey considers that the medicalization of suffering as PTSD is a Western approach which individualises and isolates the pain and gives the individual the burden to get over it.⁹³ Gilligan suggests that those who are professionally dealing with conflict-related trauma should develop a more nuanced understanding of the social, cultural and political context in which they are working with.⁹⁴ He also supports the view that trauma cannot be reduced to a mental issue which is isolated from the outside context. Those who discuss these topics from a critical perspective propose that mental health practices in post-conflict settings should acknowledge the specific cultural, social and political context and should be aware of the ties between the context and the individuals who have suffered from the conflict. For this reason, Becker argues that the diagnosis should involve the specific social and political context in which the symptoms occurred.⁹⁵

The basic issues of power and social conflict are not only ignored, but worse, are conceptually redefined as part of an individual psychological illness, thereby further hindering a person's capacity to act upon the situation. Exaggerating a little, one could say that first we have war and destruction, and then we offer individual therapy instead of social change.⁹⁶

This is in line with Hamber's argument that the ways of interpretation of the traumatic event by the individual and the community are as important as the event itself, therefore, they need to be addressed.⁹⁷ The concept of PTSD, in this regard, is considered to be insufficient to fully capture the impact of mass atrocities and violent conflicts on individuals.

3.2 In need of healing

⁹² Robins, supra n 12.

⁹³ Humphrey, Michael. 2010. The politics of trauma and reconciliation. *Temida* (Vol. 13).

⁹⁴ Gilligan, Chris. 2006. Traumatized by Peace? A Critique of Five Assumptions in the Theory and Practice of Conflict Related Trauma Policy in Northern Ireland, *Policy and Politics*, 34(2), 325-345

⁹⁵ Becker, David. 2004. Dealing with the Consequences of Organised Violence, *In* A. Austin, M. Fischer & N. Ropers (eds.). *Transforming Ethnopolitical Conflict*. The Berghof Handbook. Wiesbaden: VS Verlag, 403-420.

⁹⁶ Becker, supra n 95.

⁹⁷ Hamber, supra n 63.

As trauma is accepted as one of the most severe consequences of wars and atrocities on the victims, the relief of trauma is now seen as one of the basic needs of the victims, and thus one of the goals of transitional justice. Healing from trauma, therefore, is addressed by several scholars and tried to be achieved through different transitional justice mechanisms. However, despite the centrality of healing and emotional recovery in the debates on the impact and process of transitional justice, there is not enough empirical study to theorize whether transitional justice is and should be able to deliver healing and recovery for victims.⁹⁸ Moreover, evidence shows little proof that transitional justice has a positive impact on emotional wellbeing of victims. In fact, transitional justice has found to have less psychological benefits in post conflict settings where victims suffer from multiple traumas.⁹⁹

Among others, truth commissions have been discussed as one of the most important mechanisms to contribute to the healing of victims because of the general tendency to assume that truth-telling will bring healing to victims.¹⁰⁰ However, as argued by several scholars,¹⁰¹ revealing or sharing itself is not necessarily useful for emotional healing or recovery. In fact, there is evidence that victims and survivors experience increase in the symptoms of trauma such as anxiety, fear and stress following the recalling and retelling of the traumatic experience.¹⁰² According to the research done with the victims who participated in the TRC, giving testimony might leave some victims feeling more vulnerable¹⁰³ and can cause distress among some.¹⁰⁴ It also comes with an emotional pain for some victims and thus might be experienced as neither therapeutic nor empowering.¹⁰⁵ Testifying can create a spontaneous, emotional relief initially, but the relief is unlikely to continue unless it is supported by long term socioaffective help.¹⁰⁶

⁹⁸ Hamber, supra n 63; Stauffer, Jill. 2013. Speaking Truth to Reconciliation: Political Transition, Recovery, and the Work of Time. *Humanity*, 4(1), 27–48; Karstedt, supra n 76.

⁹⁹ Karstedt, supra n 76

¹⁰⁰ Porter, supra n 7.

¹⁰¹ Hayes, G. 1998. We Suffer our Memories: Thinking about the Past, Healing and Reconciliation. *American Imago*, 55(1), 29-50; Hamber, supra n 63; Karstedt, supra n 76; Du Toit, supra no 37.

¹⁰² (Clark, supra 33; Stauffer, supra n 98; Porter, supra n 7; Karstedt, supra n 76.

¹⁰³ Hamber, supra n 63.

¹⁰⁴ Backer, D. 2006. Victims' responses to truth commissions: Evidence from South Africa. In M. Ndulo (ed.), *Security, reconciliation and reconstruction: When the wars end*. London: University College of London Press.

¹⁰⁵ Byrne, Catherine C. 2004. Benefit or burden: Victims' reflections on TRC participation. *Peace and Conflict: Journal of Peace Psychology*, 10(37): 237–256.

¹⁰⁶ Karstedt, supra n 76.

Mendeloff agrees with this argument: “The overall lack of socioaffective responses might drive the strong and nearly universal feelings of anger and disappointment with which many victim-witnesses walk away.¹⁰⁷ This means that what type of response is given in the aftermath of the emotion sharing plays a greater role than the expression.¹⁰⁸

Hamber indicates that coming to terms with a traumatic past is a complex process and goes way beyond how victims express what happened to them in the past.¹⁰⁹ He notes: “Psychologically coming to terms with mass atrocity at an individual level concerns how individual experiences are dealt within their local community and by society as a whole.”¹¹⁰ He also points to the importance of making sense of the violent past or the traumatic event for the emotional recovery of victims.¹¹¹ As the ways in which victims make sense of the traumatic event matter as much as the event itself, healing is more likely when it provides a boarder framework to the harms happened. Therefore, a combination of cognitive responses to reframe the violent events and help to understand the causes, and socioaffective responses to support the victims will achieve the best results in terms of healing.¹¹²

The fact that the truth-revealing is only a small part of the healing process is demonstrated by research which indicated that the absence of truth, justice and reparations had the biggest negative impact on the healing of victims in the TRC process, and the absence of meaningful change in socio-economic conditions deepened this negative impact.¹¹³ However, it is important to note that the feelings of the victims who participated the TRC process were mixed and it is in fact difficult not to have mixed results of this type of processes. As Hamber notes based on the research done with the victims, the victims usually expressed both positive and negative emotions towards the impact of the TRC.¹¹⁴ An important part of the benefits of the TRC was

¹⁰⁷ Mendeloff, David. 2009. Trauma and vengeance: Assessing the psychological and emotional effects of post-conflict justice. *Human Rights Quarterly*: 592.

¹⁰⁸ Karstedt, supra n 76.

¹⁰⁹ Hamber, supra n 63.

¹¹⁰ Hamber, supra n 63.

¹¹¹ Hamber, supra n 63; Hamber, supra n 17.

¹¹² Karstedt, supra n 76.

¹¹³ Hamber, supra n 63.

¹¹⁴ Hamber, supra n 63.

related to the sense of dignity and respect that the victims gained through testifying and the counselling that some of the victims got in some forms.¹¹⁵

Perhaps, Hamber suggests, the expected outcome of a truth commission should not be therapeutic through testifying, but it should only aim to have some therapeutic benefits and at least do not have a negative impact on the emotional recovery of victims.¹¹⁶ Truth commissions have the potential to contribute the healing of the victims, but this is related to larger goals and it should be supported by other means that will deliver socio-economic recovery, justice, accountability and reparations. The consequences of testifying cannot be evaluated in isolation from the outer context which has to do with prosecutions, amnesty, reparations, etc. Hamber argues that if the truth is revealed to a sufficient extent, then truth commissions might allow individuals to put their own experience in a framework that makes sense personally and explain the traumatic event in accordance with that framework.¹¹⁷ Truth commissions might provide a framework for narratives. But its impact is also dependent on the social and political context and how political trauma is dealt by the community and the society. Hamber suggests that the compensation or financial reparation is important to make a material difference and facilitate the healing process of the victim, but it is still limited in terms of the psychological benefits it can offer especially in the absence of accompanying mechanisms.¹¹⁸ Gallagher, Hamber and Joy agree with the need to be mindful of the wider context and they note:

In summary, violence and dealing with its mental health legacy means that we need to understand violence in context and address it not only individually, but socially and politically. Although, it is extremely important to focus on the victims and survivors of the conflict, we need to simultaneously move beyond this narrow focus and consider the wider society.¹¹⁹

¹¹⁵ Hamber, supra n 63.

¹¹⁶ Hamber, supra n 63.

¹¹⁷ Hamber, supra n 63.

¹¹⁸ Hamber, supra n 63.

¹¹⁹ Gallagher, Elizabeth, Brandon Hamber and Elaine Joy. 2012. Perspectives and Possibilities: Mental Health in post Agreement Northern Ireland. *Shared Space: A Research Journal on Peace, Conflict and Community Relations in Northern Ireland*, 13, 63–78.

3.3 Lacking agency

3.3.1 What is agency and why is it important?

The agency that is available to victims of the conflict is another concept that draws significant attention in literature that discusses the role of victims in transitional justice.¹²⁰ The significance of agency lies in its capacity to challenge the approach which perceives victims as passive apolitical beings. However, transitional justice contexts tend to underappreciate and underestimate the political agency of victims or fully capture their experiences as political actors.¹²¹ For Robins, “agency is understood primarily as the autonomy of the subject, both as individual and community: the sense in which victims are in control of their own destiny and are agents in processes to address their needs.”¹²² Shepherd considers the key aspect of agency as “the idea of autonomy (literally “self law”), the capacity to act independent of external constraints or coercion.”¹²³ Björkdahl and Selimovic argue that when the agents employ agency with the purpose of challenging existing norms, power relations, and inequalities as well as claiming their rights, they exercise a form of critical agency.¹²⁴

In transitional contexts, agency is particularly important because the victims of the conflicts have often been victimized and marginalized long before the conflict itself. They are often subject to discrimination based on poverty, ethnicity, gender¹²⁵ and they are excluded from political power. Giving the emphasis to the agency of victims has the potential to challenge the existing power relations which enabled the conflict in the first place, and which tend to continue in the aftermath of the conflict as well. Because a fundamental transformation of the conflict is only possible when these power relations are recognized and challenged¹²⁶, agency of victims is of utmost importance. Without recognizing this, elite groups are likely to determine and implement

¹²⁰ Mendez, supra n 5.

¹²¹ Baines, supra n 59; Sajjad, supra n 12.

¹²² Robins, supra n 12.

¹²³ Shepherd, supra n 73.

¹²⁴ Björkdahl, Annika, J. Mannergren Selimovic. 2015. Gendering agency in transitional justice. *Security Dialogue*, 46(2), 165–182.

¹²⁵ Robins, supra n 12.

¹²⁶ Parlevliet, Michelle. 2010. *Rethinking Conflict Transformation from a Human Rights Perspective*. Berghof Handbook Dialogue Series no. 11

transitional justice mechanisms on behalf of the victims and reproduce the same power hierarchies in transitional periods. Regarding the need to be conscious about the power relations, McEvoy and McConnachie explains: “Nonetheless, an orientation towards maximising victim agency, a pragmatic assessment of the risks and capacity which that orientation entails and a greater self-awareness of the dangers of ‘speaking for’ victims are precisely what is required for effective praxis in transitional justice.”¹²⁷

An important part of the literature on agency is informed by critical peace research agenda and it focuses on power relations. In parallel to this, transitional justice literature has increasingly paid more attention to “locally owned process outside formal, often elite-driven.”¹²⁸ Thus, the agency of the victims is an important topic of interest to scholars who situate transitional justice in the broader liberal peacebuilding framework and advancing a more emancipatory and transformative approach to it from a critical point of view.¹²⁹ Within the liberal peacebuilding framework, institutions have a superior power over the society, and they operate independently from social forces and determine the outcome of social interactions.¹³⁰ Chandler claims that externally-imposed state-building leaves minimum space for local agency.¹³¹ Sharp agrees with this argument and states that transitional justice practice is usually carried out from an externally driven, top-down approach and fails to recognize local agency when it comes to key issues.¹³² Building upon these critiques, Young¹³³ argues that it is essential to explore different alternatives to existing transitional justice framework by challenging the embedded local and international hierarchies and providing space for actors whose voices remained unheard. Mac Ginty and

¹²⁷ McEvoy, Kieran, and Kristen McConnachie. 2013. Victims and Transitional Justice: Voice, Agency and Blame. *Social & Legal Studies*, 22(4), 489–513.

¹²⁸ Björkdahl and Selimovic, supra n 124.

¹²⁹ Andrieu, Kora. 2010. Civilizing peacebuilding: Transitional justice, civil society and the liberal paradigm. *Security Dialogue* 41 (5): 537-58, Sharp, D. N. 2013. Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice through the Lens of Critique. *Chicago Journal of International Law*, 14(1), 165; Sharp, Dustin. N. 2014. Addressing Dilemmas of the Global and the Local in Transitional Justice. *Emory International Law Review*, 29, 71–110.

¹³⁰ Chandler, D. 2013. Peacebuilding and the politics of non-linearity: rethinking ‘hidden’ agency and ‘resistance’, *Peacebuilding*, 1(1), 17-32

¹³¹ Chandler, D. 2011. The Liberal Peace: Statebuilding, Democracy and Local Ownership, *In Rethinking the Liberal Peace: External Models and Local Alternatives*, by Shahrbanou Tadjbakhsh ed. Abingdon: Routledge

¹³² Sharp, supra n 129.

¹³³ Young, G. (n.d.). Transitional Justice in Sierra Leone: A Critical Analysis, 1(1), 3–17.

Richmond state that the West considers that the subaltern has little agency and state that “However, many policy makers and researchers still remain sceptical because, from their perspective, reform can only be led by enlightened leaders and institutions, and most local agency is conflict- rather than peace-oriented or carries normatively unacceptable practices onwards.”¹³⁴ Björkdahl and Selimovic add that the links between agency and micropolitics of power and social transformation have not been theorized enough.¹³⁵

Informed by the critical peace research agenda, Mac Ginty and Richmond discuss the local turn in peacebuilding and they claim that the local turn concerns with the nature and the location of power in peacebuilding.¹³⁶ Local turn recognizes the power relations in peacebuilding and the significance of local and critical agency. They suggest that peacebuilding projects should support their objects instead of defining them.¹³⁷ Their emphasis on the subjects is connected to the discussions about agency and it is in tune with the above-mentioned approach that warns the transitional justice practitioners against speaking in behalf of victims and highlights the need to be conscious about victim’ agency.

3.3.2 Political agency and agency as resistance

Baines discusses the political agency available to wartime victims and the notion of agency in complicity and responsibility after violence by looking at Sara’s story.¹³⁸ Sara is a Ugandan woman who was abducted by the Lord’s Resistance Army (LRA) when she was a child and then was sexually abused in the LRA. She had also been faced to violence in her family before she was recruited. And in her adulthood, she faces several challenges in her own community and she is neglected by the society because she was part of the LRA. Baines presents a narrative that draws on four significant moments in Sara’s life, “characterized by periods of transformation and critical reflection.”¹³⁹ These moments are when she verbally confronts her

¹³⁴ MacGinty, Roger, and Oliver P. Richmond. 2013. The local turn in peace building: A critical agenda for peace. *Third World Quarterly*, 34(5), 763–783

¹³⁵ Björkdahl and Selimovic, *supra* n 124.

¹³⁶ MacGinty and Richmond, *supra* n 134.

¹³⁷ Mac Ginty and Richmond, *supra* n 134.

¹³⁸ Baines, *supra* n 59.

¹³⁹ Baines, *supra* n 59.

oppressors/perpetrators and draws attention to the harm they cause. First one is when she confronts her father, then the old LRA commander who sexually abused her, then the rebels who tried to kill her and her child and finally her husband who gave her no food. Baines considers these moments of confrontation with those who hold the power as “a particular form of politics practiced by subordinate groups in settings of extreme violence, which might be understood as a negotiation over the value of a human life.”¹⁴⁰ She uses the concept of political agency as the assertion of one’s “personhood in relation to others who would treat otherwise.”¹⁴¹ According to this definition, “Sara is a political agent in the sense that she asserts her personhood in relation to others who would treat her otherwise, contesting their actions and forcing them to recognize their complicity and responsibility.” Baines’ understanding points to an important aspect of victims’ agency, which is its political character.¹⁴² In other words, victim may be vulnerable, but it does not strip them of their capacity to go beyond coping and survival strategies.¹⁴³

In the book *Complex Political Victims*, Bouris discusses the ways the political victims exercise their agency; how they act in a way that will challenge their victimization and how we understand political victims as possessing agency.¹⁴⁴ She argues that the agency of political victims derives from several roles that they might take up during the peacebuilding process in the aftermath of the conflict. But in parallel to Baines, Bouris argues that it also comes from their capacity to make visible the discourses that oppress them and challenge it.¹⁴⁵ In a similar vein to how Baines sees Sara’s resistance to her oppressors by different means as the realization of her agency, Bouris also sees the agency in relation to resistance to the oppressing discourse and practices. She refers to Foucault’s concept of technologies of self, which is related to the subjectivation of one’s self as a resistance to politically attributed identity and it involves both ethical principles and behavioural practices.¹⁴⁶ She links this concept of Foucault to the contribution of victims to peacebuilding. As Foucault argues, challenging the attributed roles by the dominant, oppressive power is itself resistance and it is the actualization of one’s agency. He

¹⁴⁰ Baines, supra n 59.

¹⁴¹ Baines, supra n 59.

¹⁴² Baines, supra n 59.

¹⁴³ Baines, supra n 59.

¹⁴⁴ Bouris, E. (2007) *Complex Political Victims*. Bloomfield: Kumarian Press.

¹⁴⁵ Bouris, supra n 144.

¹⁴⁶ Foucault, 1988 cited in Bouris, supra n 144.

argues that the “victim” is such a role that is ascribed by the dominant power. Self-care (including bodily care), contemplation and self-reflection enables the subjectivation and a create a new experience of self.¹⁴⁷ In this understanding, subjectivation practises might become political resistance as well: “The practice of the care of the self has much political resonance and importance as well; it is the rejection of the politically ascribed identity, the rejection, in this case, of the identity enabling victimization and the identity of the ideal victim.”¹⁴⁸ This is how victims might exercise political agency by creating different identities for themselves that are challenging the ascribed ones. In this regard, resistance or the realization of agency do not need to be altering the physical conditions that victimize the victim. Challenging the discourse or making it visible is a way to exercise agency as well. For Bouris, this is also how political victims contribute to peacebuilding since it rejects the very discourse that enabled the victimization.¹⁴⁹ Although it might not give an end to oppression or the war, it still challenges the setting that enables the oppression to happen and allow victims to go beyond their victim position. “By insisting upon practices of self-subjectivation, by refusing to accept transcendental identities that emerge from a narrow political space, victims are challenging the very legitimacy upon which their victimization is premised and articulating an alternate and nuanced role for their own participation in the peacebuilding process.”¹⁵⁰ This argument is very much in tune with Baines: “Recognition of victim agency (such as the ways Sara contested those relationships that would harm her or fail her as a person) also reveals the spaces in which power is challenged. Sara’s response to each of the offenses named in her life story illustrates the concept of political agency advanced here.”¹⁵¹ According to Baines, Sara contested the way that her humanness is denied and led the others to face their responsibility and complicity. This is how Baines considers agency as relational and politically situated. In their article that discusses the gendered agency, Björkdahl and Selimovic¹⁵² similarly argue that “the agentive subject is always situated” and that locating agency in space allows us to see the hidden and diverse spaces that the agency

¹⁴⁷ Foucault, 1988 cited in Bouris, supra n 144.

¹⁴⁸ Bouris, supra n 144.

¹⁴⁹ Bouris, supra n 144.

¹⁵⁰ Bouris, supra n 144.

¹⁵¹ Baines, supra n 59.

¹⁵² Baines, supra n 59.

is exercised. They further claim that this is crucial to see the critical agents that might be situated outside the formal and informal structures and listen to their voices that are silent or silenced.

4. Complexities of victim and perpetrator categories

One of the other key topics in relation to victims in transitional justice lies in the complexities of defining the categories of victims and perpetrators. It is frequently argued that the victimhood is a relational category that is usually defined by the innocence, purity, lack of responsibility, the absence of guilt and moral superiority of the victim over the perpetrator guilt.¹⁵³ Victims are associated with innocence, purity and moral superiority while perpetrators are associated with blame, guilt, and moral inferiority.¹⁵⁴ Bouris claims that the reason why these characteristics are overly emphasized is because victim blaming is so common and also for practical purposes which is to simplify the actors and make policymaking easier.¹⁵⁵ The innocence that is attributed to the victim legitimizes their claim to rights and enables the victim to be entitled to resources and assistance.¹⁵⁶ McEvoy and McConnachie explain that the political and social construction of victimhood is related to Western criminology which considers victim as a category in opposition to perpetrator and according to this understanding, the true victim is the innocent victim.¹⁵⁷

Despite the practical needs to rely on these characteristics and the victim-perpetrator binary, several authors rightly pointed to the problematic consequences of the assumed binary of evil and guilty perpetrator and the innocent and blameless victim.¹⁵⁸ It is argued that the binary categorization often leads to the depoliticization of the question of responsibility. Too much focus on individual acts of violence obscures the historical, social, and political context.¹⁵⁹ This dichotomy also ignores the complexity of harm and the resistance to harm and it blurs the

¹⁵³ Bouris, supra n 144.

¹⁵⁴ Moffet, supra n 41; Hearty, supra n 4.

¹⁵⁵ Bouris, supra n 144.

¹⁵⁶ Bouris, supra n 144.

¹⁵⁷ McEvoy, K. and McConnachie, K. 2012. Victimology in transitional justice: Victimhood, innocence and hierarchy. *European Journal of Criminology*, 9 (5), 527-538.

¹⁵⁸ Bouris, supra n 144; McEvoy and McConnachie, supra n 157; Chakravarti, Sonali. 2014. *Sing the Rage: Listening to Anger After Mass Violence*. Chicago: University of Chicago Press; Baines, supra n 59; Hearty, Kevin. 2016. Legislating Hierarchies of Victimhood and Perpetrators. *Social & Legal Studies*, 25 (3), 333-353; Moffet, supra n 41.

¹⁵⁹ Baines, supra n 59.

complexity of responsibility. It reduces the victims to a passive position of one in need and lack of political agency. The ideal victim is the one without agency whereas the perpetrator is the one whose infinite agency should be taken under control.¹⁶⁰ Bouris argues that innocence signifies the non-combatant status of the victim and the absence of wrongdoing, and moral superiority is often associated with righteousness.¹⁶¹ However, this simplistic understanding does not provide us with a tool to capture the complex realities of modern conflicts where people go through different phases of being victims, victimizers, perpetrators, bystanders in the course of a conflict.¹⁶² Since human beings are more complex than we could explain with two binary categories, there is a whole set of dynamics and factors that stem from the socio-political settings. In the light of these complexities, the only way to have a realistic picture of what is needed from transitional justice is to be conscious about different roles of individuals:

Moreover, the discourse of ideal victim takes any culpability and responsibility out from the good, passive, blameless, innocent victim who has been harmed by the bad, guilty, evil perpetrator who holds the responsibility.¹⁶³ Borer claims that victims and perpetrators are often referred as two distinct categories in human rights discourse and they are considered as if they are homogenous in themselves.¹⁶⁴ In reality, it is very difficult to draw purely separate categories for victims and perpetrators as the individuals might have complex identities;¹⁶⁵ especially in those conflict settings where there are a lot of individuals who have been at the both sides of these categories. Therefore, it would be simplistic to argue that there are two distinct blocks of victims and perpetrators.¹⁶⁶

Human beings can move between kindness and wickedness in a single day, never mind across a lifetime lived in a society experiencing political or ethnic violence. Acknowledging that reality does not obfuscate individual or collective culpability. It does, however, expand the potential for human empathy to both

¹⁶⁰ McEvoy and McConachie, supra n 157.

¹⁶¹ Bouris, supra n 144.

¹⁶² Porter, supra n 7.

¹⁶³ Hearty, supra n 4.

¹⁶⁴ Borer, Tristan A. (2003) A taxonomy of victims and perpetrators: Human rights and reconciliation in South Africa. *Human Rights Quarterly*, 25 (4), 1088-1116.

¹⁶⁵ McEvoy and McConachie, supra n 157.

¹⁶⁶ McEvoy and McConachie, supra n 157; Moffet, supra n 41.

victims and perpetrators – even when the former are not blameless or when the latter have carried out atrocious acts – or where the two categories directly overlap.¹⁶⁷

As Baines demonstrates with the life story of a Ugandan woman Sara who was abducted by the Lord's Resistance Army when she was a child; an individual might have been in situations that she has been victimized and she might at the same time been in a place that victimized others.¹⁶⁸ As mentioned before, Sara has been in the LRA and played a role in the victimization of others, but she has also been victimized first by her family, then by the LRA and finally by the society. Baines considers that Sara's story is an example of how victimization goes beyond the singular acts of extreme violence and might be caused by different reasons such as poverty, marginalization, abuse and neglect.¹⁶⁹ This points at the importance of the recognition of diffuse responsibility in the contexts of mass violence and be conscious about the complicity of different parties of the conflict that goes beyond the actors who are directly involved in the fight. As Baines notes: "In this framework, "victim" and "perpetrator" are blurred and the community is both subject to the same overt and structural violence endured by Sara and is complicit in her suffering."¹⁷⁰ Baines indicates that going beyond the victim-perpetrator binary and recognizing the diffuse responsibility also allow us to acknowledge the victims' political agency, which will in turn enable the scholarship to focus on social relations.¹⁷¹ This new focus, she argues, will help us to see the limitations of transitional justice mechanisms which are based on the premise of the punishment of the perpetrator and the rescue of the victim.

Humphrey points at another important consequence of the binary categorization of the innocent victim and the guilty perpetrator.¹⁷² He argues that this division allows for collective support in times of prosecutions, but it also obscures the complicity of the wider society with the prior regime. By giving examples from the post-junta regime in Argentina and the post-communist Eastern Europe, he demonstrates that once the binary relation is established in trials, it is likely that the bystanders deny their previous links or support for the previous regime. He names it the

¹⁶⁷ McEvoy and McConnachie, *supra* n 157.

¹⁶⁸ Baines, *supra* n 59.

¹⁶⁹ Baines, *supra* n 59.

¹⁷⁰ Baines, *supra* n 59.

¹⁷¹ Baines, *supra* n 59.

¹⁷² Humphrey, *supra* n 3.

polarising impact of trials and he argues that it serves for the denial of the past.¹⁷³ In comparison to truth commissions, trials have a bipolar structure and individualising logic. The bipolar structure prevents the acknowledgment of collective complicity while the individualising logic creates the illusion that the past crimes stemmed from individuals. This ultimately obstructs to analyse and reflect critically on the overarching structure that enables that crimes and abuses to occur.¹⁷⁴

Conclusion

This literature review aims at giving an account of how the victims are discussed in transitional justice scholarship. Drawing on the authors who argue for a victim-centred approach in transitional justice, it discusses what the centrality of victims in transitional justice actually means in practice and how it is being approached from different authors. Transitional justice is both a scholarly and a practical field and this literature review addresses both dimensions of the field. The absence of sufficient empirical data makes it difficult to evaluate the impact of transitional justice mechanisms on those who have been most affected by the conflict. Without knowing the impact of different transitional justice approaches and mechanisms on those who have been affected by the conflict, it is very difficult to mention the existence of a victim-centred approach. The second part of the literature review, which focuses on the complexities of victimhood and the political agency and resistance, tries to explore different layers in which the victimhood is manifested. This demonstrates a clear need to have a nuanced understanding of what constitutes victimhood, and also what the opportunities are that emerge from a victimhood position. Drawing on the literature on political agency and resistance, this literature review also sheds lights on the different roles and stages that conflict-affected communities and individuals might go through. These complexities play a role in different levels in most of the conflicts and it is very important to acknowledge them in order to take the agency of victims into account and challenge the top-down, elite-driven approaches to transitional justice.

¹⁷³ Humphrey, *supra* n 3.

¹⁷⁴ Humphrey, *supra* n 3.