CRITICAL PERSPECTIVES IN TRANSITIONAL JUSTICE
CRITICAL PERSPECTIVES IN TRANSITIONAL JUSTICE

Nicola Palmer
Phil Clark
Danielle Granville
(Chief editors)

Ross Beaton
Par Engstrom
Briony Jones
Lydiah Kemunto Bosire
Julia Paulson
(Section editors)

Oxford Transitional Justice Research

intersentia
Cambridge – Antwerp – Portland
NOTE

The editors of this book are represented as 'Oxford Transitional Justice Research' (OTJR) to reflect the collective effort that enabled the production of the volume. Nicola Palmer, Phil Clark and Danielle Granville acted as chief editors, while Ross Beaton, Par Engstrom, Briony Jones, Julia Paulson and Lydiah Kemunto Bosire edited individual sections. The conference that generated this volume, however, was the result of the energy and hard work of the entire OTJR network, which comprises nearly 150 staff and students researching transitional justice issues across 15 departments and centres at the University of Oxford. Since 2007, OTJR has become one of the largest academic networks internationally which is dedicated to transitional justice research, publications and policy work. More information about OTJR can be found at the network’s website: www.csls.ox.ac.uk/otjr.php
ACKNOWLEDGEMENTS

Oxford Transitional Justice Research and the editors of this volume are grateful to the Law Faculty and the Centre for Socio-Legal Studies, University of Oxford, for their support throughout the production of this book. These bodies, as well as the Planethood Foundation, the Royal African Society, Rapisardi Intellectual Property, the Open Society Initiative for Southern Africa, and the African Studies Centre at the University of Oxford were generous supporters of the 2009 conference that formed the basis of this volume.

We are also enormously grateful for the editorial assistance of Caleb Fountain, Katherine Graham, Chloe Noonan and Jennifer Potvin, whose enthusiasm and attention to detail were invaluable as this book was being completed.

Finally, we would like to thank the editors of the Intersentia transitional justice series, Stephan Parmentier, Jeremy Sarkin and Elmar Weitekamp, as well as two anonymous reviewers for their insightful comments and suggestions, which greatly improved the book as a whole.
CONTENTS

Note ................................................................. v
Acknowledgements ........................................ vii
Abbreviations ................................................ xiii

Introduction

Challenging Transitional Justice
   Phil Clark and Nicola Palmer .......................... 1

Section 1: Critiquing Core Concepts in Transitional Justice

1. Transitional Justice and the Just War Tradition
   Larry May .................................................. 17

2. Transitional Justice as Retribution: Revisiting its Kantian Roots
   Shaina P. Wang .......................................... 31

3. A Discourse Theoretic Approach to Transitional Justice Ideals:
   Conceptualising ‘Reconciliation’ as an Empty Universal in Times
   of Political Transition
   Judith Renner ............................................ 51

4. Transitions as States of Exception: Towards a More General Theory
   of Transitional Justice
   Derk Venema ............................................. 73

5. Commentary on Critiquing Core Transitional Justice Concepts
   Max Pensky .............................................. 91

Section 2: Accountability, Human Rights and the Rule of Law

   Roberto Gargarella ................................. 101
Contents

7. Accountability After Atrocity in Peru: The Trial of Former President Alberto Fujimori in Comparative Perspective
   Jo-Marie Burt ................................................................. 119

   Antoine Buyse .............................................................. 147

   Ralph Henham .............................................................. 169

10. Can International Justice Be Restorative Justice? The Role of Reparations
    Carolyn Hoyle ............................................................ 189

11. Commentary on Accountability, Human Rights and the Rule of Law
    Par Engstrom .............................................................. 211

Section 3: Locality and Legitimacy

12. Legitimacy, Power and Memory at the Extraordinary Chambers in the Courts of Cambodia
    Peter Manning ............................................................ 217

13. Outreach, Inreach and Civil Society Participation in Transitional Justice
    Wendy Lambourne ...................................................... 235

14. 'Blow Your Mind and Cool Your Heart': Can Tradition-Based Justice Fill the Transitional Justice Gap in Sierra Leone?
    Martien Schotsmans ...................................................... 263

15. The Elusive Quest for Reconciliation in Northern Uganda
    Dean E. Peachey ............................................................ 289

16. Commentary on Locality and Legitimacy
    Kieran McEvoy ............................................................ 311
## Section 4: Memory, Ritual and Apology

17. "Lebanon of Dignity, a People that Perseveres": A Psychological Perspective on Collective Amnesia in Lebanon and its Implications for Transitional Justice  
   Diana Batchelor ........................................... 319

18. Performing Reconciliation: A Performance Approach to the Analysis of Political Apologies  
   Michel-André Horelt ........................................ 347

19. Self-Inflicted Genocide and State- and Nation-Building in Post-Soviet Russia  
   Danielle Granville ............................................. 369

20. Commentary on Memory, Ritual and Apology  
   Julia Paulson ..................................................... 393

## Section 5: Transitional Justice after Transition

21. The End of Impunity? 'Late Justice' and Post-Transitional Prosecutions in Latin America  
   Cath Collins ..................................................... 399

22. Transitional Justice in Post-Communist Central-Eastern Europe: Decomunisation and the Rule of Law  
   Adam Czarnota .................................................. 425

23. Prosecutions, Pardons and Amnesty: The Trajectory of Transitional Accountability in South Africa  
   Hugo van der Merwe ............................................. 443

24. Post-Conflict Accountability and the Demands of Justice: Can Conditional Amnesties Take the Place of Criminal Prosecutions?  
   Antje du Bois-Pedain .......................................... 459

25. Commentary on Transitional Justice after Transition  
   Marjorie D. Jobson ............................................... 485

Contributors' Biographies .......................................... 493
ABBREVIATIONS

ADHOC  Cambodian Human Rights and Development Association
AFRC   Armed Forces Revolutionary Council
AI     Amnesty International
ANC    African National Congress
APRA   American Popular Revolutionary Alliance
ARLPI  Acholi Religious Leaders Peace Initiative
AZAPO  Azanian People’s Organisation
CAVR   Commission for Reception, Truth and Reconciliation
CDF    Civilian Defence Forces
CELS   Center for Legal and Social Studies
CHRAC  Cambodian Human Rights Action Committee
CNVR   National Commission for Truth and Reconciliation
CPA    Concerned Parents Association
CRPC   Commission on Real Property Claims
CSD    Center for Social Development
CVR    Truth and Reconciliation Commission
DC-Cam Documentation Centre of Cambodia
DFID   Department for International Development
DINTE  National Directorate against Terrorism
DK     Democratic Kampuchea
DRC    Democratic Republic of Congo
ECCC   Extraordinary Chambers in the Courts of Cambodia
ECHR   European Convention on Human Rights and Fundamental Freedoms
HRC    Human Rights Chamber
HRW    Human Rights Watch
IACHR  Inter-American Commission on Human Rights
ICC    International Criminal Court
ICRC   International Committee of the Red Cross
ICTJ   International Center for Transitional Justice
ICTR   International Criminal Tribunal for Rwanda
ICTY   International Criminal Tribunal for the former Yugoslavia
IFP    Inkatha Freedom Party
IRCSL  Inter-Religious Council of Sierra Leone
KGB    Committee for State Security
KID    Khmer Institute for Democracy
<table>
<thead>
<tr>
<th>Abbreviations</th>
</tr>
</thead>
<tbody>
<tr>
<td>KMT</td>
</tr>
<tr>
<td>KR</td>
</tr>
<tr>
<td>KRT</td>
</tr>
<tr>
<td>LRA</td>
</tr>
<tr>
<td>MRTA</td>
</tr>
<tr>
<td>NaCSA</td>
</tr>
<tr>
<td>NKVD</td>
</tr>
<tr>
<td>NPA</td>
</tr>
<tr>
<td>NRA</td>
</tr>
<tr>
<td>OSCE</td>
</tr>
<tr>
<td>OTJR</td>
</tr>
<tr>
<td>PCLU</td>
</tr>
<tr>
<td>PRK</td>
</tr>
<tr>
<td>PSOE</td>
</tr>
<tr>
<td>PTSD</td>
</tr>
<tr>
<td>RJ</td>
</tr>
<tr>
<td>RS</td>
</tr>
<tr>
<td>RUF</td>
</tr>
<tr>
<td>SCU</td>
</tr>
<tr>
<td>SIE</td>
</tr>
<tr>
<td>SIN</td>
</tr>
<tr>
<td>SADF</td>
</tr>
<tr>
<td>SCSL</td>
</tr>
<tr>
<td>SLA</td>
</tr>
<tr>
<td>SWAPO</td>
</tr>
<tr>
<td>TRC</td>
</tr>
<tr>
<td>UCD</td>
</tr>
<tr>
<td>UN</td>
</tr>
<tr>
<td>VTF</td>
</tr>
<tr>
<td>VTFT</td>
</tr>
</tbody>
</table>