

# Victim Participation

## *The Thin Edge of the Wedge*

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# Victim Participation

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# Aims

- Broaden meanings of ‘justice’
- Work across domestic and international justice
- Devise method to assess and compare conventional and innovative mechanisms
- Encapsulated in the Victimisation and Justice Model
  - justice mechanisms
  - victimisation contexts
  - victims’ justice interests

# Caveats about 'victims'

- Status not fixed, but socially constructed and mobilised
- Diverse experiences of victimisation, diverse demands for justice, and multiple goals for justice

- More affirmatively

Victimisation is a process, not a category or fixed identity;  
justice is a process, not an event or intervention

# Key points

- Need new ways to describe and compare justice responses

*Conventional and Innovative Justice Mechanisms*

- Need to consider diverse contexts of victimisation

*Sexual Violence and Justice Matrix*

- Need a better measure of victims' experiences or judgments of justice

*Victims' Justice Interests (or Needs)*

# Justice mechanisms

- Not retributive and restorative justice, but conventional and innovative justice mechanisms
- Conventional and innovative justice
  - reside on continuum
  - overlap and are not mutually exclusive
  - can be combined in hybrid forms

# Conventional justice responses

- Evidence gathering, prosecution and trial, supports for victims in legal processes
- Part of criminal justice or work alongside of it
- Formal legality with focus on prosecution, trial, and sentencing
- Other mechanisms: victim impact statements, specialist courts, state-based compensation, victim lawyers, civil litigation

# Innovative justice responses

- Work alongside or be integrated with criminal or civil justice, part of administrative procedures, or in civil society
- Examples of mechanisms
  - meetings or conferences of victims and offenders
  - informal justice mechanisms
  - truth-telling or truth-seeking
  - material and symbolic forms of reparation
  - people's tribunals
  - documentary and street theatre
  - other art, activist, and memory projects in civil society

# Summing up

## **Innovative justice**

- broad set of justice mechanisms; restorative justice is one type
- may provide more openings for victim-defined participation and voice

## **Conventional justice**

- should have equal importance and standing, not be disparaged as the 'punitive justice'

# Victimisation contexts

## **Sexual Violence and Justice Matrix**

arrays country and offending-victimisation contexts

- **Country:** developed or developing nations, at relative peace or conflict/post-conflict
- **Offending-victimisation:** *individual*, *organisational* (individual using position of power), *institutional* (closed or symbolically closed community), and *collective* ('gangs'; state or quasi-state forces or combatants)

# Victimisation contexts (cont.)

- Individual context dominates landscape of thought
- Need to consider other contexts
- Pay attention to how context matters for justice from a victim's perspective

Offending-victimisation context	Country A Developed country at peace	Country B Developing country at peace	Country C Conflict, post-conflict
(1) Person acting alone	A <sub>1</sub> - peer and familial violence	B <sub>1</sub>	C <sub>1</sub> - peer and familial violence
(2) Person using position of organisational authority	A <sub>2</sub> - clergy abuse	B <sub>2</sub>	C <sub>2</sub> - foreign peace-keepers and aid workers
(3) Person using position of organisational authority inside closed institution	A <sub>3</sub> - residential schools	B <sub>3</sub>	C <sub>3</sub> - refugee camps or detention centres
(4) Offending in symbolically closed communities	A <sub>4</sub> - Indigenous communities	B <sub>4</sub>	C <sub>4</sub>
(5) Collective or organised group	A <sub>5</sub>	B <sub>5</sub>	C <sub>5</sub> - gangs, state or quasi-state actors in groups

# Victims' justice interests (background)

- Critique of my research and character of 'debate'
- No robust method to determine what is an effective justice mechanism
- Research relies on *victim satisfaction*

# Radical re-conceptualisation required

## **Rather than ask**

- Are victims satisfied ... ?

## **We should ask**

- Does a justice mechanism have the capacity to address one or more victims' justice interests (or needs) and to what extent does it do so?

# Victims' justice interests

## Elements

- participation, voice, validation, vindication, and offender accountability

## Should distinguish

- legitimacy of a legal or justice element *in its own right*
- emotional or psychological *effects* of a legal or justice element on a victim's well-being

# Victims' justice interests (cont.)

## **Participation**

- discussing ways to address offending and victimisation
- asking questions and receiving information ('truth')
- having information about case development and justice options

## **Voice**

- telling the story of what happened and its impact
- truth-telling

# Victims' justice interests (cont.)

## Validation

- affirming wrong occurred and victim was hurt
- being believed
- shifting weight of accusation from victim to others

## Vindication

- vindication of *the law* (affirming act was wrong) and *the victim* (affirming a perpetrator's actions were wrong)
- censuring offence and affirming solidarity w/victim
- expressed by symbolic and material forms of reparation and standard forms of state punishment

# Victims' justice interests (cont.)

## **Offender accountability**

- requiring individuals or entities to 'give accounts' for their actions
- taking active responsibility for the wrong caused
- offering sincere expressions of regret and remorse
- receiving censure or sanction that may vindicate a victim

## **Other types of victim needs**

- Survival (food, water, housing), service or support, and prevention

# Participation?

## **Edwards (2004)**

- No single form or rationale
- Control vs influence on decisions

## **McGonigle Leyh (2011)**

- Different types of participation in inquisitorial and adversarial systems

## **Doak (2005)**

- Victim's interest over state's interests?
- Can private and public interests be accommodated?

# Set big Qs to the side

- Start with smaller building blocks: justice mechanisms in context
- Expand elements of justice interests beyond participation

# How can victims' justice interests be applied?

- Individual contexts in developed countries at peace (cell A<sub>1</sub>)
- Institutional contexts in developed countries at peace (cell A<sub>3</sub>)
- Collective contexts in post-conflict societies (cell C<sub>5</sub>): more difficult

# Challenges for C5

- Transitional justice: a huge field
- Scale and severity of human suffering: are these magnified forms of ‘ordinary crime’ or something else?
- ‘Justice’ in a different register: ‘participation’ means to ask questions or receive information about ‘the missing’ and dead; ‘on-going process of “remaking the world” a ‘deep form of justice’ (Kent 2011)
- Additional elements (Backer 2012): development, redistribution, and political transformation

# From international/transitional to domestic justice

- Redistribution or recognition?
- Limits of prosecution and truth-telling
- What are the priorities? Whose priorities?
- Need for a major re-think of the transitional justice 'toolkit' that has emphasised 'legal justice'
- Innovative justice mechanisms: a necessity in C5, but 'too risky' in A1
- Time for a major re-think of the domestic justice 'toolkit'?

# Concluding points

- Study *justice mechanisms*, the building blocks of justice, in context
- Recognise diverse *contexts of victimisation*
- Devise way to assess and compare, with *victims' justice interests*
- Moving across international-transitional and domestic contexts