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Where are the Voices and Experiences of Persons with Disabilities/Disabled People in Transitional Justice Research and Practice?

Janine Natalya Clark^{*} 

Abstract

The ever-expanding field of transitional justice has, to date, largely overlooked the issue of disability, even though there is growing research on disability and armed conflict. Relatedly, little attention has been given to the accessibility of transitional justice processes. This Policy and Practice Note, the idea for which developed from the author's own personal experiences and reflections as a transitional justice scholar with a physical disability, points to unexplored synergies between the human rights and social models of disability (reflected within the UN Convention on the Rights of Persons with Disabilities), on one hand, and transitional justice, on the other. It also highlights and discusses three important dimensions of accessibility—procedural, contextual and methodological—that could be usefully explored within transitional justice scholarship and practice to give the issue of disability the recognition and prominence that it deserves.

Keywords: accessibility; Convention on the Rights of Persons with Disabilities; human rights model of disability; social model of disability; transitional justice

1. Introduction

I made my first visit to Bosnia-Herzegovina (BiH) in 1999, four years after the Bosnian war ended. It was just a day trip—to the western city of Mostar—but it was enough to spark what became a deep fascination with the country and with the former Yugoslavia more generally. It was the work of the International Criminal Tribunal for the former Yugoslavia (ICTY), in turn, that piqued my interest in transitional justice, meaning ‘the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses’ (UN 2004: para. 8). My last visit to BiH was in January 2020. I was halfway through a large research project about resilience, conflict-related sexual violence and transitional justice (see Clark 2022). The fieldwork had been completed, but I made the decision to spend a few months in the country while I was analysing the Bosnian data, as a way of more fully ‘immersing’ myself in it and maintaining a physical proximity to the wider context.

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I left BiH on 18 March 2020, sooner than I had planned. The previous day, the country had declared a national *vanredno stanje* (state of emergency) in response to the COVID-19 pandemic. Flights were being cancelled and I knew that it was only a matter of time before BiH closed its borders. I did not want to find myself in a situation of being unable to leave or to see my loved ones. I therefore booked a flight to return home. Yet even if the pandemic had not happened, I would still have had to leave early.

My mobility had suddenly deteriorated, for the second time, while I was in BiH. I was too unsteady on my feet to be able to go out much, and basic tasks—like going to the local shops to buy groceries—became very challenging. This was a completely new experience. For many years, I have undertaken fieldwork in BiH in the spirit of '[c]uriosity-driven learning' (Phillips 2012: 84). I have travelled extensively throughout this beautiful country, in the knowledge that I could go where I wanted, when I wanted. Now everything was different. I was only a few miles from the centre of Sarajevo, from the many cafés where I have chatted with friends, talked to people about my research and simply enjoyed absorbing the rhythms of everyday life. Now, it all felt so far away and inaccessible.

I often think about those final few weeks in BiH. When I am out in my wheelchair and silently cursing the unevenness of the pavements, I think about the hours that I spent looking out of the large apartment windows, looking down at the pavements and the unmelted patches of snow. Trigger et al. (2012: 514) talk about 'revelatory moments' during fieldwork, 'derived from the social and material field of the researcher's experience'. My own 'revelatory moment' occurred—although it was less a 'moment' and more a process of experiential learning and reflection—when I started to think about my own experiences in BiH within a larger transitional justice context. Doing so has led me increasingly to question why the field of transitional justice research has, to date, given so little attention to the voices and experiences of persons with disabilities—and to crucial issues of accessibility. Herein lies the importance of this Policy and Practice Note.

2. On terminology

The terms 'persons with disabilities' and 'disabled people' are both utilized in disability research. The first term is widely used at the international level, including in the UN Convention on the Rights of Persons with Disabilities (CRPD). It puts the person first and 'describes the disability as a feature of the person, for example a "person with Down's syndrome"' (Aidley and Fearon 2021: 23). The second term is an identity-first approach and reflects the so-called social model of disability, which emphasizes the role of societal factors and norms in fostering disability (as distinct from individual limitations caused by impairment). To cite Oliver (1983: 16), 'The social model ... sees disability as being created by the way the social world, for example employment, housing, leisure and health facilities, are unsuited to the needs of particular individuals'.

Issues of terminology reflect deeper political, cultural and contextual complexities (Suharto et al. 2016). As such, individuals and communities will often prefer either person-first or identity-first language.¹ Out of respect for these different preferences, this Note uses the terms 'persons with disabilities' and 'disabled people' interchangeably.

3. Disability and armed conflict

The World Health Organization (WHO n.d.) has underlined that 'Disability is part of being human. Almost everyone will temporarily or permanently experience disability at

1 Crocker and Smith (2019: 127), for example, point out that 'the Deaf community has chosen not to embrace the notion of person-first language but has embraced identity-first language ... The Deaf community contends that deafness is not a disability but rather a medical condition and that being deaf means that you are a member of a community of individuals who happen to have hearing impairments, but should not carry a negative connotation'.

some point in their life'. Although there is no universally accepted definition of disability, the aforementioned CRPD—which recognizes that disability 'is an evolving concept' (UN 2006: preamble, para. (e))—has been widely endorsed. As of May 2022, it had received a total of 164 signatures and 184 ratifications/accessions (UN Department of Economic and Social Affairs 2022). According to Article 1 of the Convention, 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. Significantly, in societies that have experienced war/armed conflict or other large-scale violence and human rights violations, there will almost certainly be large numbers of people—whether they have pre-existing or acquired conflict-related impairments—who fall within this broad definition (Battle 2015: 232; Lord 2023: 61), even if they do not self-identify as disabled.²

Pons et al. (2022: 62), for example, comment on evidence suggesting that the Khmer Rouge in Cambodia (1975–9) directly targeted persons with disabilities. During the 22-year rule of Yahya Jammeh in the Gambia, which ended in January 2017, the presidential convoy regularly 'travelled at an alarming speed without much regard to the road users who may accidentally or otherwise find themselves in the convoy's way' (Truth, Reconciliation and Reparations Commission the Gambia 2021: 30). Injuries were common and some of the victims became permanently disabled (Truth, Reconciliation and Reparations Commission the Gambia 2021: 30). Palmer et al. (2019: 863), moreover, underline that the bombing and destruction of health-care infrastructures—as is currently happening in the war in Ukraine—can result in injuries and health conditions developing into long-term disability and impairment.

In its Resolution 2475, the UN Security Council (2019: preamble) expressed 'serious concern regarding the disproportionate impact that armed conflict has on persons with disabilities, including abandonment, violence, and lack of access to basic services'. This is the first-ever UN Security Council resolution focused on persons with disabilities in the context of armed conflict (Ruminowicz 2023: 455). It also reinforces article 11 of the CRPD (UN 2006), according to which 'States Parties shall take ... all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters'.

Even if these texts have not resulted in a surge of scholarship focused on disabled people in situations of armed conflict (Crenn and Mohr 2023: 57), the topic is gradually receiving more attention. The *International Review of the Red Cross*, for example, recently published a comprehensive special issue on the topic of persons with disabilities in armed conflict, which enhances the timeliness of this Note. There has also been some important research, inter alia, on ex-combatants with disabilities (Lord and Stein 2015; Meier 2020; Rivas Velarde et al. 2022), on sexual and gender-based violence against disabled women and girls in conflict and 'post-conflict' settings (La Vecchia 2023; van der Heijden et al. 2019) and on refugees with disabilities (Mirza 2011; Smith et al. 2022). Given such research, and the aforementioned developments at the international level, it is even more striking that the field of transitional justice has given so little attention to disabled people, their voices and experiences.³

4. Disability and transitional justice

4.1 An overview

Within transitional justice scholarship, it is common that persons with disabilities are, at best, only briefly acknowledged or mentioned in passing (see, for example, Bryson 2016;

2 In their research with ex-combatants with impairments in Colombia, for example, Rivas Velarde et al. found that the concept of disability had mainly negative connotations—including of sickness and dependency. The individuals in the study instead felt 'more represented and empowered assuming war-related identities such as "war wounded," "veteran", "war crippled", and "hors de combat"' (Rivas Velarde et al. 2022: 31).

3 International criminal law has also neglected persons with disabilities (see, e.g., Pons et al. 2022).

Fairey and Kerr 2020; Rooney and Aoláin 2018). Hollander and Gill's research is one of the rare exceptions. Their work provides crucial insights into the everyday experiences of Ugandans whose bodies became 'marked' due to injuries sustained during two decades of war in northern Uganda. It also highlights frictions between the physical gendered performativity of these bodies, on one hand, and prevailing 'gender norms and expectations' on the other (Hollander and Gill 2014; Hollander and Gill 2014: 226). The authors rightly argue that 'Transitional justice must identify the needs, practices and concerns of different victim groups to ensure the participation of all local communities in the peacemaking process' (Hollander and Gill 2014: 234). However, they do not elaborate on how it might do this, beyond underscoring the need for disability mainstreaming (Hollander and Gill 2014: 232).

That the authors frame Ugandans with disabilities as 'one of the most vulnerable survivor groups' (Hollander and Gill 2014: 234), moreover, detracts from the agency of these women and men and, more broadly, from what disabled people can potentially contribute to transitional justice. It is significant in this regard that a forthcoming report by the UN Special Rapporteur on the Rights of Persons with Disabilities 'focuses on the active moral agency of persons with disabilities in helping build peace amid the ruins of post-conflict divided societies' (Quinn 2023: 48). Similarly, in its Resolution 2475, the UN Security Council (2019: preamble) recognizes 'the critical contributions of persons with disabilities and their representative organizations to conflict prevention, resolution, reconciliation, reconstruction, peacebuilding and addressing the root causes of conflict'. These ideas remain under-explored both within Hollander and Gill's article and within the field of transitional justice more broadly.

Samararatne and Soldatic's research examines disability and transitional justice with a specific focus on disabled women in Sri Lanka. The authors note that although their study tools were designed to be inclusive of women with intellectual disabilities, most of the interviewees had physical disabilities (Samararatne and Soldatic 2015: 763). Their research nevertheless illuminates the experiences of a small sub-section of disabled people vis à vis transitional justice. The women's own voices, however, do not come through strongly in the research and some of the suggestions that the authors make in relation to transitional justice are very general. One example is their suggestion that:

For transitional efforts to be effective, the conceptualisation of disability needs to expand beyond the existing limitations of transitional justice, recognising that the majority of the population with disabilities require basic amenities, necessities and various forms of security to be free from day-to-day forms of violence, discrimination and marginalisation (Samararatne and Soldatic 2019: 332).

This argument could also be made, *inter alia*, with regards to victims-survivors of conflict-related sexual violence, refugees and other groups. Of course, there are many fundamental everyday needs that are common to different victim populations. However, disabled people will often have particular needs—relating, for example, to accessibility or communication—that should be considered in their own right. Factors such as gender, colour, ethnicity, religion, class and caste, as 'intersecting attributes of multiple marginalized identities' (Banks 2018: 895), also contribute to shaping the experiences and individual needs of persons with disabilities (Kayess et al. 2014: 384; Lord 2023: 71; Meier 2020: 445).

4.2 The relevance of the human rights and social models of disability

Notwithstanding the fact that transitional justice scholarship, with only a few exceptions, has critically overlooked disabled people, the two main models of disability reflected within the CRPD—the human rights model and the social model—are highly relevant to the field. The human rights model of disability underscores the fundamental and inalienable rights of

persons with disabilities—rights that have often been denied or restricted precisely because of individual impairment (see, for example, [Mégret 2008](#): 500; [Stienstra 2022](#)). Article 1 of the CRPD ([UN 2006](#)), for example, states that the Convention's purpose is 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'. To this end, the Convention recognizes the rights of persons with disabilities, inter alia, to be treated equally before the law (article 12), to live independently and be included in the community (article 19) and to exercise freedom of expression and opinion (article 21). Highly pertinent to this strong accent on rights are 'the Western liberal roots of transitional justice' ([Sharp 2014](#): 80), and the field's concern with violations of human rights ([Andrieu 2010](#): 543). In short, there are underlying synergies between transitional justice and the human rights model of disability that have yet to be examined. The following example further illustrates this point.

The adoption of the CRPD was widely celebrated by disabled people across the globe ([Meekosha and Soldatic 2011](#): 1384). Some scholars, however, have problematized the Convention's emphasis on human rights. There are concerns that these rights are a Western construct and detract from the legacies of Western liberal democracies in producing impairment and harm (see, for example, [Berghs 2010](#): 864; [Soldatic 2013](#): 747). For some scholars, another issue is that human rights discourse reflects Western understandings of disability, neglecting 'alternative narratives of disability' ([Alshammari 2022](#): 371) and the weight of structural violence and inequality in shaping emic perceptions of disability. According to [Meekosha and Soldatic \(2011](#): 1383), 'Indigenous people and residents in the global South contest disability as a concept. Many do not recognise that they have a disability given overwhelming issues of bad health, cultural deprivation, loss of land, inadequate housing and poverty'. From a transitional justice perspective, the significance of such arguments is that they resonate strongly with efforts to 'decolonize' the field and to liberate it from its liberal underpinnings (see, for example, [Bueno-Hansen 2015](#); [Sharp 2015](#)).

Turning now to the social model of disability, what this accentuates—as previously noted—is the role of societies in creating disability ([Shakespeare 2006](#): 197), and it makes a key distinction in this regard between disability and impairment. This is reflected in the CRPD ([UN 2006](#)), and specifically in preambular paragraph (e) and article 1. Thinking about this social model of disability in relation to transitional justice, the crucial point is that processes of dealing with the legacies of past human rights violations should not themselves become part of the problem, by marginalizing or neglecting the experiences and voices of disabled people and not giving sufficient attention to some of the potential barriers (discussed more in the final section) to their participation and inclusion.

A recent initiative by MINUSCA—the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (CAR)—represents a welcome development in the context of this discussion. In March 2021, MINUSCA—in collaboration with the organization Action for the Promotion of Human Rights, Solidarity and Progress—set up a workshop specifically to provide information about the CAR's Truth, Justice, Reparation and Reconciliation Commission (CVJRR) for citizens with visual impairments. The workshop was a small, albeit important step in the direction of explicitly addressing accessibility issues within the design and operationalization of transitional justice. According to the [UN Peacekeeping \(2021\)](#) website, 'Spreading the word on the CVJRR will help improve access to justice for victims of armed conflict, conflict-related sexual violence, gender-based violence and many other human rights violations'.

Initiatives like this should not be a one-off. The final section of this Policy and Practice Note therefore explores several ways that transitional justice scholarship and praxis can directly engage with issues of accessibility. Such engagement is a crucial part of addressing the field's neglect of disabled people.

5. Going forward and three dimensions of accessibility

The CRPD adopts a very comprehensive and multi-dimensional approach to the concept of accessibility. Article 9(1) states that:

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas (UN 2006).

While these different elements of accessibility are relevant to transitional justice, in particular transportation, information and communications, here I focus on three particular dimensions of accessibility, linked to my own reflections on the issue as a transitional justice scholar with a disability. I argue that these three dimensions—namely, processual, contextual and methodological—provide the outlines for a new disability and transitional justice agenda. It is also important to emphasize, however, that different types of disabilities may require somewhat different responses to addressing issues of accessibility, and this should be kept in mind in relation to the points made below.

5.1 A processual dimension of accessibility

MINUSCA's efforts to reach out to persons with visual impairments in the CAR highlights broader questions regarding the accessibility of transitional justice processes. To what extent, for example, is outreach work accessible to and inclusive of disabled people? In October 2019 and January 2020, the International Center for Transitional Justice (ICTJ) organized workshops throughout the Gambia, linked to the country's Truth, Reconciliation and Reparations Commission and to the issue of reparations. According to the ICTJ (2021), 'A broad cross-section of civil society representatives and victims, including persons with disabilities and women from rural regions, attended the workshops'. It is unclear, however, what measures were specifically taken to make the workshops accessible to disabled people.

Relatedly, it is important to examine and critically question what provisions are made (and could be made) within transitional justice processes for individuals suffering from, for example, chronic pain, extreme fatigue or depression; and what 'reasonable adjustments' might be made for individuals with intellectual, neurodevelopmental or sensory impairments. Thinking about transitional justice and responses to harm, Stauffer (2015) reflects that: 'I kept finding too many moments where institutions designed to hear failed to listen well, and so also failed those they were most meant to serve'. This raises larger questions about how transitional justice 'listens'—and which voices it listens to. Rosenblatt's work is pertinent in this regard. Using a transitional justice lens to critique the organization Autism Speaks, he argues that the latter's emphasis on speaking means that its design for hearing was fundamentally flawed from the start 'because the organization did not originally identify hearing autistic voices as part of its mission' (Rosenblatt 2018: 15). Where do such voices—and the voices and stories of disabled people more broadly—fit within the 'mission' of transitional justice?

The report of Sri Lanka's Commission of Inquiry on Lessons Learnt and Reconciliation noted that:

During the Commission's visit to Kilinochchi⁴ a representation was made on behalf of many disabled people in that area. A request was made to the Commission to make arrangements to provide some assistance, as 'they cannot come to this meeting because they cannot even walk' (Commission of Inquiry on Lessons Learnt and Reconciliation 2011: 189).

⁴ During the civil war in Sri Lanka, Kilinochchi was the administrative capital of the Liberation Tigers of Tamil Eelam (LTTE).

It is unclear from the report, however, whether such assistance was provided. Some people with disabilities did give testimony to the Commission, although the representations footnoted in the report were specifically from ‘disabled soldiers’. Moreover, although the report recognizes some of the impacts of the civil war on ‘people with disabilities’ ([Commission of Inquiry on Lessons Learnt and Reconciliation 2011](#): 50), which is significant, it only explicitly mentions physical disability. This is one illustration of how it presents ‘a flat image of the disability community’ ([Samararatne and Soldatic 2015](#): 762), which does not sufficiently capture the diversity of voices and experiences—or the nexus between disability and other intersectional identities—that are relevant to processes of dealing with the past and the multi-dimensional complexities of ‘truth’.

5.2 A contextual dimension of accessibility

There are many environmental and contextual factors that may deter or ‘disable’ individuals from actively engaging in transitional justice. These include the stigma attached to disability (which can vary depending on the type of disability),⁵ and common stereotypes about it, within some socio-cultural milieu. [Mostert \(2016](#): 9) notes that in Ghana, for example, ‘Ashanti men with physical disabilities are prevented from becoming chiefs, and non-disabled chiefs can be destooled if they become disabled’; and [Aniyamuzaala \(2012](#): 281) points out that in Uganda, the traditional view of persons with disabilities as ‘objects of charity’ contributes to limiting their participation in community life. In their research in Peru, [Aguerre et al. \(2019](#): 2544), for their part, underscore that ‘disability is stigmatised in both Lima and Iquitos [the two cities that were the focus of their research], and caregivers and key informants alike voiced their concern over a lack of education and awareness regarding disability within their communities’.

It is also important to stress that negative social attitudes towards disability can feed into and exacerbate intersectional disadvantages, and, hence, the impact of such attitudes may be more acute for some disabled people than for others. As one illustration, the Kuwaiti scholar [Alshammari \(2022](#): 366), who has multiple sclerosis, points out that ‘Social markers of shame are attached to the notions of women’s disabilities. Disabled women receive very little attention in Islam; they are marginalized and made invisible’. [Mostert \(2016](#): 10) makes a similar point about women and disability in Africa. In diverse contexts, moreover, there are frequent linkages between disability and poverty ([Lord 2023](#): 71; [Soldatic and Grech 2022](#): 75), which can further limit the possibilities for disabled people to reach out to and access transitional justice processes (see, for example, [Krasniqi 2014](#): 173).

To sum up, there are valid and unexplored questions that remain to be answered about how the field of transitional justice might address some of these wider contextual accessibility challenges. Such questions, moreover, dovetail with some of the broader discussions within critical transitional justice scholarship about making the field more inclusive (see, for example, [Fobear 2014](#)), including with respect to different types of violence and harms (see, for example, [Sankey 2014](#)).

5.3 A methodological dimension of accessibility

The basic starting point for [Aidley and Fearon’s \(2021](#): 1) book *Doing Accessible Social Research* is that ‘current research methods and methodologies constitute potential barriers for disabled people to participate in the research’. The authors are not, however, referring to research that has an explicit focus on disability. Rather, they are making the argument that ‘there is little consideration of accessibility in research where disability or impairment is not part of the research question’ ([Aidley and Fearon 2021](#): 7–8). How many of us, for example, have expressly thought (or written) about accessibility in this sense when

5 Intellectual disabilities, for example, are often particularly stigmatised (see, e.g., [Scior et al. 2020](#): 168).

developing and undertaking research relating to transitional justice and human rights issues more broadly?

It should be noted that there is some emerging scholarship on creative forms of expression within transitional justice contexts. Shapiro-Phim (2020), for example, has discussed *Pbka Sla*, a dance drama that tells a story about the use of forced marriage during the Khmer Rouge period in Cambodia. Significantly, survivors of this forced marriage policy played a key role in developing *Pbka Sla* (Shapiro-Phim 2020: 214), a reparations project linked to the work of the Extraordinary Chambers in the Courts of Cambodia. Kuadio's (2022: 51) research has examined how, alongside state-led transitional justice processes in Côte d'Ivoire, Ivorian youth have used *Zouglo* music to articulate their own understandings of justice and, in so doing, have 'positioned themselves as key framers of what the Ivorian democratic future should be'.

The pivotal point is that people express themselves and their stories in very different ways. Going forward, and as part of developing more accessible ways of doing transitional justice research, there is substantial scope for exploring and experimenting with multi-sensory methodologies—to date mostly used in research with persons with profound intellectual disabilities (see, for example, Young et al. 2011). Fundamentally, developing research designs that are sensitive to 'the interplay between the sensory modalities' (Klemen and Chambers 2012: 112) would offer a more inclusive and accessible route to storytelling and story-sharing. In particular, it would give persons with disabilities the creative space to narrate and relay their experiences, ideas and priorities in ways that they themselves choose.

6. Conclusion and moving forward

The Director-General of the International Committee of the Red Cross has recently underscored that 'Persons with disabilities are all too often invisible to society, even more so in armed conflicts' (Mardini 2023: 4). It is certainly the case that these individuals have been largely invisible within transitional justice research and praxis—and it is time for this to change. Fifteen years after it entered into force, the CRPD has had little impact within the field of transitional justice. This Policy and Practice Note, the initial idea for which developed from my own personal experience, has highlighted the relevance to transitional justice of the two models of disability reflected within the CRPD—the human rights model and the social model. It has also discussed three dimensions of accessibility—processual, contextual and methodological—that would help to advance the field in new directions.

Ultimately, there are two overarching questions that need to drive this new research agenda. The first is directly linked to article 12 of the CRPD (UN 2006), which underlines that 'States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others'. Crucially, what experiences—direct and indirect, positive and negative—have disabled people had with respect to transitional justice? This question should be explored in relation to different disabilities and interlinked intersectional identities. Second, understanding the needs of persons with disabilities vis à vis transitional justice processes is essential, but it is also necessary to ask how the field of transitional justice can benefit from—and make space for—'knowledge, skills and tools co-produced by persons with disabilities' (Lord 2023: 94).

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