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# RETHINKING TRANSITIONS

## Equality and Social Justice in Societies Emerging from Conflict

*Edited by*

Gaby ORÉ AGUILAR and Felipe GÓMEZ ISA



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Intersentia Ltd  
Trinity House | Cambridge Business Park | Cowley Road  
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mail@intersentia.co.uk

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## FOREWORD

This book adds new dimensions to current transitional justice models. The title correctly suggests that in post-conflict situations there is no one agenda for coming to terms with large-scale past abuses but that a variety of ways and means commend themselves for rendering justice and rebuilding societies. The contributors to this volume offer perspectives which link the transitional justice debate to the structural causes of violence and conflict. Their chapters reveal a wide span of human compassion and expand transitional agendas to include the exigencies of justice for past, present and future generations. In fact, these agendas addressing large-scale patterns of injustice, discrimination, repression, exploitation and acts of brutality are essentially the core of a comprehensive human rights agenda.

In many conflict situations acts of violence causing human suffering affect and victimise most severely the vulnerable and marginalised sectors of society. It is widely recognised and expressed with serious concern by the United Nations Security Council that in particular women and children account for a large proportion of those adversely affected by armed conflict, and that in such situations sexual violence and rape are rampant. Similarly the recently adopted United Nations Declaration on the Rights of Indigenous Peoples (2007) recalls with deep concern that indigenous peoples have suffered from historic injustices as a result of the colonisation and dispossession of their lands, territories and resources. This book analyses and discusses the plight of vulnerable people who have endured a state of exclusion and discrimination for centuries. It asserts that transitional agendas should also tackle the root causes of exclusion and discrimination, render social and political justice, and foster processes of equality and participation with the goal of eradicating for good patterns and policies of exclusion and discrimination.

The normative basis for transitional agendas was in its essence already embodied in the Universal Declaration of Human Rights (1948), which was proclaimed as a common standard of achievement for all peoples and all nations. Subsequent legal instruments strengthened the edifice of human dignity and justice with special concern for the disadvantaged, the disabled, the excluded and the victims of gross human rights violations. These instruments affirm the claim that women's rights are human rights, that children's rights are human rights, and

that indigenous rights are human rights. It appears there is a growing awareness that all people, notably the marginalised, the excluded and the victims of deeply rooted discrimination, are to be included in the solemn human rights pledges and undertakings to which nations have committed themselves. However, as is repeatedly intimated in this book, a conspicuous gap persists between commitment and conduct, between undertakings and realities.

That reparation must be an essential ingredient in any process of transition is worthy of special attention, and reparations certainly form an essential component of the transitional agendas reflected in this book. Reporative justice in its various forms of restitution, compensation, rehabilitation and satisfaction, does not only imply acknowledgement of harm done and a legal and moral prerequisite to honour victims' rights, but it also constitutes a pledge to prevent the recurrence of wrongs committed. Having been from the inception closely involved in the long process that led to the adoption in 2005 by the United Nations of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, this preface writer notes with satisfaction that reparation principles were duly taken into account by contributors to this volume. While the reparation principles are not only meant to give guidance in transition processes, and while their function in coming to grips with historical wrongs is most relevant but still under dispute, it is beyond doubt that these principles and guidelines and their implementation should be key elements of justice in the framing of all transitional agendas.

Theo VAN BOVEN  
Maastricht, January 2010

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Gaby ORÉ AGUILAR and Felipe GÓMEZ ISA  
Madrid, June 2010





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