

Queering the Global Governance of Transitional Justice: Tensions and (Im)Possibilities

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ABSTRACT[∞]

In recent years, scholars and activists have been asking queer questions about transitional justice. Queer perspectives advocate for the recognition of anti-queer violence within transitional justice; the inclusion of LGBTQIA+ people in transitional justice processes; and the development of queer decolonial critiques of transitional justice. Informed by this research agenda, I develop a queer perspective to the global governance of transitional justice. I analyse documents from the UN, the International Center for Transitional Justice and the International Criminal Court. Representing mechanisms from across global transitional justice, I trace the (cis-heteronormative, colonial, carceral) violence of transitional justice and its institutionalization at the global level. I reflect on the queer tensions and (im)possibilities of global transitional justice, a site that is violent but holds transformative potential. The global governance of transitional justice must be queered to expand its social, political and conceptual remit, and to seek more radical, liberatory worlds within and beyond formal justice mechanisms.

KEYWORDS: Global governance, LGBTQIA+, queer, transitional justice, United Nations

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INTRODUCTION

In recent years, scholars, practitioners and activists have been asking queer questions about transitional justice.¹ Efforts at queering transitional justice reflect the need to protect and celebrate the lives of lesbian, gay, bisexual, trans, queer, intersex, asexual and other sexual and gender non-conforming people (LGBTQIA+) across peace, conflict and justice continuums.² In a move that reflects increasing scholarly and activist attention to gender, sexuality, race, colonialism and other vectors of power in transitional justice mechanisms,³ international institutions have begun to map a global architecture for queer human rights protections.⁴ Most recently, the UN Security Council (UNSC) held its second LGBTI-specific Arria-formula meeting, focused on ‘identify[ing] steps the Security Council can take to better incorporate the human rights of LGBTI persons in carrying out its mandate to maintain international peace and security.’⁵ This and other UN developments represent a growing global commitment to queering peace, security, human rights and transitional justice.⁶

In this article, I ask queer questions about the global governance of transitional justice as embodied in organizations such as the UN, international courts and nongovernmental organizations (NGOs). A queer approach to transitional justice requires ‘not only addressing violence against [queer people] but also addressing larger systemic forms of homophobic and heteronormative oppression.’⁷ Such a perspective follows the interventions of scholars queering atrocity prevention,⁸ sexual violence against men⁹ and the Women, Peace and Security agenda.¹⁰ I take a queer decolonial approach, which not only centres ‘marginalized queer voices’¹¹ but also challenges the cis-heteronormative and colonial assumptions and practices of transitional justice, and asks whether global transitional justice can be meaningfully queered and decolonized.¹² Considering the increasingly explicit embrace of queer rights across the global human rights

¹ Fidelma Ashe, ‘Sexuality and Gender Identity in Transitional Societies: Peacebuilding and Counterhegemonic Politics,’ *International Journal of Transitional Justice* 13(3) (2019): 435–457; Pascha Bueno-Hansen, ‘The Emerging LGBTI Rights Challenge to Transitional Justice,’ *International Journal of Transitional Justice* 12(1) (2018): 126–145; Katherine Fobear, ‘Queering Truth Commissions,’ *Journal of Human Rights Practice* 6(1) (2014): 51–68; Katherine Fobear and Erin Baines, ‘Pushing the Conversation Forward: The Intersections of Sexuality and Gender Identity in Transitional Justice,’ *The International Journal of Human Rights* 24(4) (2020): 307–312; Hillary Hiner et al., ‘Patriarchy Is a Judge: Young Feminists and LGBTQ+ Activists Performing Transitional Justice in Chile,’ *International Journal of Transitional Justice* 16(1) (2022): 66–81; Rocky James, ‘An Evolution in Queer Indigenous Oral Histories through the Canada Indian Residential School Settlement Agreement,’ *The International Journal of Human Rights* 24(4) (2020): 335–356; Katie McQuaid, ‘“There Is Violence Across, in All Arenas”: Listening to Stories of Violence Amongst Sexual Minority Refugees in Uganda,’ *The International Journal of Human Rights* 24(4) (2020): 313–334; José Fernando Serrano-Amaya, *Homophobic Violence in Armed Conflict and Political Transition* (Cham: Springer International Publishing, 2018); Philipp Schulz et al., eds., *Masculinities and Queer Perspectives in Transitional Justice* (Intersentia, forthcoming).

² In this article, I use the terminology of ‘queer people,’ or ‘LGBTQIA+ people and communities.’ While these are imperfect categories, they are better alternatives to terms such as ‘sexual and gender minorities,’ which employ minoritizing language.

³ Maria Martin de Almagro and Philipp Schulz, ‘Gender and Transitional Justice,’ in *Oxford Research Encyclopedia of International Studies*, ed. Nukhet Sandal (Oxford Online: Oxford University Press, 2022).

⁴ See Victor Madrigal-Borloz, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, UN Doc. A/77/235 (27 July 2022); Fabián Salvioli, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence: The Gender Perspective in Transitional Justice Processes*, UN Doc. A/75/174 (17 July 2020).

⁵ UN Security Council, ‘United Nations Security Council Arria-Formula Meeting: “Integrating the Human Rights of LGBTI Persons Into the Council’s Mandate for Maintaining International Peace and Security”’, United Nations (20 March 2023).

⁶ Jess Gifkins and Dean Cooper-Cunningham, ‘Queering the Responsibility to Protect,’ *International Affairs* 99(5) (2023): 2057–2078; Jamie Hagen and Catherine O’Rourke, ‘Forum-Shifting and Human Rights: Prospects for Queering the Women, Peace and Security Agenda,’ *Human Rights Quarterly* 45(3) (2023): 406–430.

⁷ Katherine Fobear, ‘Queering Transitional Justice: Reviewing the Field of Transitional Justice and Looking Toward Queer Possibilities,’ in *Masculinities and Queer Perspectives in Transitional Justice*, ed. Philipp Schulz et al. (Cambridge: Intersentia, forthcoming 2024): 3.

⁸ Gifkins and Cooper-Cunningham, *supra* n 6.

⁹ Philipp Schulz and Heleen Touquet, ‘Queering Explanatory Frameworks for Wartime Sexual Violence Against Men,’ *International Affairs* 96(5) (2020): 1169–1187.

¹⁰ Hagen and O’Rourke, *supra* n 6.

¹¹ Fobear, *supra* n 7 at 9.

¹² Mohamed Sesay, ‘Decolonization of Postcolonial Africa: A Structural Justice Project More Radical than Transitional Justice,’ *International Journal of Transitional Justice* 16(2) (2022): 254–271; Jennifer Matsunaga, ‘Two Faces of Transitional Justice: Theorizing the Incommensurability of Transitional Justice and Decolonization in Canada,’ *Decolonization: Indigeneity, Education & Society* 5(1) (2016): 24–44.

architecture, I ask: what does queering transitional justice entail at the global level? I develop a three-point agenda for queering transitional justice, which advocates for: 1) the recognition of anti-queer violence and violence against queer people within transitional justice processes; 2) the inclusion of LGBTQIA+ people in the creation, operation and implementation of transitional justice processes; and 3) the development of queer decolonial critiques of transitional justice. By transitional justice, I refer to both formal and informal articulations of justice – practices that work within and beyond the oft-studied sites of transitional justice, such as truth commissions, reparations, criminal accountability, memorialization and guarantees of non-recurrence. Communities affected by injustice self-define transitional justice, and this often means moving away from paradigmatic notions of transition, to explore historical, ongoing and aparadigmatic contexts where communities are reckoning with violence. The documents under analysis in this article concern all these manifestations of transitional justice, from grassroots to national and transnational efforts.

This article is inspired by the vibrant scholarly, practitioner and activist interventions queering transitional justice,¹³ and I see value in extending these insights to the global level, a site which standardizes and normalizes particular visions of transitional justice, often at the expense of others. I analyse three key documents from the UN, the International Center for Transitional Justice (ICTJ) and the International Criminal Court (ICC). Representing mechanisms from across the global transitional justice architecture, I read these documents queerly to expose the (cis-heteronormative, colonial, carceral) violence of transitional justice and its institutionalization at the global level. Applying my three-point agenda for queering transitional justice, I argue that all three documents predominantly skew towards the first two queer commitments of recognizing anti-queer violence and seeking queer inclusion in transitional justice processes. There are *some* attempts to challenge cis-heterosexist, colonial and retributive normativities of transitional justice within the documents. However, my queer decolonial critique raises concerns around their tendency to reify the trope of gender as a synonym for (cis, straight) women and to uncritically reflect on the carceral logics of anti-impunity transitional justice discourse, as well as colonial and racial global hierarchies. My analysis of these documents reflects the queer tensions and (im)possibilities of the global transitional justice project, as a site that is violent but holds transformative potential. The global governance of transitional justice is a site that must be queered, so that we might expand transitional justice's social, political and conceptual remit, and seek more radical and liberatory worlds within and beyond formal articulations of justice. Queerer transitional justice processes are possible, but only with sustained activism and dialogue across global and vernacular contexts.

The article proceeds as follows. First, I map queer scholarship on transitional justice and articulate my three-point agenda for queering transitional justice. Second, I introduce transitional justice as a form of global governance, informed by critical scholarship that problematizes the universalizing tendencies of a Eurocentric, (neo)liberal and (neo)colonial 'global' transitional justice project. I also introduce the three documents under analysis in this article. Third, I present my analysis. Finally, I conclude with some reflections on the queer tensions and (im)possibilities of the global governance of transitional justice and suggest further lines of research and practice.

QUEERING TRANSITIONAL JUSTICE

Scholarship, activism and practice seeking to queer transitional justice has steadily emerged over the last decade. Queer interventions have brought much-needed attention to the ways that LGBTQIA+ people and their experiences are excluded from and by various transitional justice

¹³ I develop this queer agenda as a white, cis-hetero woman living on the unceded lands of so-called Australia. My approach is one of coalition building and solidarity, practising a queer decolonial politics that centres queer, decolonial and subaltern voices and scholar-activists in my critique of globally institutionalized transitional justice practices.

processes. Within the broader corpus of transitional justice scholarship, 'there has been very little written addressing historical and current acts of violence' against queer persons.¹⁴ Within this context, queer transitional justice scholarship offers much-needed analyses and recommendations. I organize these contributions according to a three-point framework for queering transitional justice.

Recognition of Anti-Queer Violence and Violence against LGBTQIA+ People

Queer transitional justice scholarship asks that transitional justice processes recognize violence committed against LGBTQIA+ people, including homophobic and transphobic violence. This is a foundational queer commitment which entails 'the task of redressing the structural exclusion of non-normative sexualities from transitional justice discourse and practice.'¹⁵ It is vital that transitional justice processes acknowledge anti-queer violence, as failure to do so 'not only ostracizes [queer people] from transitional justice processes, but allows for further violence and violations ... to be committed in post-conflict periods.'¹⁶ Moreover, this normalization of anti-queer violence signals to LGBTQIA+ people that their lives are not seen as mattering, worth grieving or worth celebrating.¹⁷ Queer scholars have traced both the silences and the successes of queer recognition, most notably in Latin American contexts, where truth commissions have enabled queer experiences of violence to be heard.¹⁸ Fobear traces the 'accidental' inclusion of violence against LGBTQIA+ people in the Peruvian Truth and Reconciliation Commission, as well as the ICTJ brief submitted to the Colombian Constitutional Court which:

[F]ocused on the particular victimization suffered by [queer people] and the failure of the current system to recognize the same-sex partners of direct victims as beneficiaries of victim services and reparation programmes.¹⁹

The Colombian transitional justice and peace process has been largely celebrated by queer scholars and activists for recognizing violence against LGBTQIA+ people.²⁰ In the Chilean context, feminist and queer scholar-activists have noted the (limited) acknowledgement of violence against LGBTQIA+ people in official transitional justice processes, and they point to the work of 'well known activists from lesbian-feminist and anti-racist groups' who have compiled their own reports on the violence committed against 'dissenting sexual bodies' by police forces.²¹

These examples of recognizing anti-queer violence in/by transitional justice mechanisms represent important moves to queer transitional justice, but 'there is still much to be done, especially with regard to including LGBTQ+ groups and working through the recognition of historical violences and omissions of marginalized groups.'²² Queer analyses stress the need to recognize intersecting marginalizations and experiences of 'indigenous, economic and socially excluded persons, youth, women, minorities, LGBTQI+ ... persons.'²³ As reflected in the third commitment of queering transitional justice, it is vital that queer perspectives also 'advanc[e] ...

¹⁴ Fobear, *supra* n 1 at 51. See also Fobear and Baines, *supra* n 1 at 308.

¹⁵ McQuaid, *supra* n 1 at 314.

¹⁶ Fobear, *supra* n 1 at 54.

¹⁷ Caitlin Biddolph, 'Haunting Justice: Queer Bodies, Ghosts, and the International Criminal Tribunal for the Former Yugoslavia,' *International Feminist Journal of Politics* 26(2) (2024): 216–239.

¹⁸ Ashe, *supra* n 1; Bueno-Hansen, *supra* n 1; Fobear, *supra* n 1; Fobear, *supra* n 7; Hiner et al., *supra* n 1; Samuel Ritholtz et al., 'Under Construction: Toward a Theory and Praxis of Queer Peacebuilding,' *Revista de Estudios Sociales* 83(1) (2023): 3–22; Serrano-Amaya, *supra* n 1. Beyond the Latin American context, see James, *supra* n 1 for discussions concerning the absence of queer recognition in the Indian Residential School Settlement Agreement in Turtle Island (North America).

¹⁹ Fobear, *supra* n 1 at 58. On the Peruvian TRC final report, see also Serrano-Amaya *supra* n 1 at 119.

²⁰ Ashe, *supra* n 1 at 445; Bueno-Hansen, *supra* n 1 at 137; Ritholtz et al., *supra* n 18 at 12; Serrano-Amaya, *supra* n 1 at 31.

²¹ Hiner et al., *supra* n 1 at 76.

²² *Ibid.*, 70.

²³ Eilish Rooney and Fionnuala Ní Aoláin, 'Transitional Justice from the Margins: Intersections of Identities, Power and Human Rights,' *International Journal of Transitional Justice* 12(1) (2018): 3. See also Maja Davidović, 'Transform or Perish? The Crisis of Transitional Justice,' *Conflict, Security & Development* 20(2) (2019): 2.

decolonial approaches that help to connect and expose different histories of abuse and violence against racialized women and LGBTQ+ groups, particularly First Nations and Afrodescendant women.²⁴ However, just as it is important to recognize anti-queer violence, it is also vital that this call does not reproduce a 'violation-centric' view of queer people as only ever vulnerable and violated.²⁵ Such a perspective denies queer agency and pleasure, as well as the broader systems of homo- and transphobia that condition queer experiences of violence, joy and resistance.

Inclusion of LGBTQIA+ People and Advisors in the Creation, Operation and Implementation of Transitional Justice Processes

Queer transitional justice scholarship also seeks the meaningful inclusion of queer and marginalized voices in transitional justice processes, as well as their active participation in the creation, operation and implementation phases.²⁶ Queer scholars have traced both the exclusionary and inclusionary practices of transitional justice mechanisms, such as the 'limited participation of gay and lesbian activists and their organisations in the [South African] TRC',²⁷ and the important work of LGBTQIA+ activism in Colombia²⁸ and Chile.²⁹ Hiner et al. explore how 'young women and LGBTQ+ people in Chile have promoted new and creative forms of transitional justice through ... intergenerational transmissions ... performative artistic actions and ... the local and peripheral space,' or what the authors call 'an embodied, intergenerational and queer form of *feminist transitional justice*.'³⁰ In this context, local, activist-led transitional justice processes that centre the voices and expertise of LGBTQIA+ and marginalized groups 'not only means an expansion in the scope of the transitional justice paradigm, but also, and most importantly, a transformation of the paradigm itself.'³¹ The inclusion of queer voices within transitional justice processes is not a matter of 'add queer and stir',³² but a radical commitment to seeing queer people as agential, political actors who can transform how transitional justice is dominantly practised and understood.

McQuaid advocates for 'making space in transitional justice ... [and] creating safe spaces for minority voices',³³ underscoring how a failure to meet the first queer commitment of recognizing anti-queer violence in/by transitional justice processes raises the question of whether queer people 'would ever get the chance to participate or give testimony in criminal trials or truth commissions.'³⁴ In other words, if transitional justice fails to recognize and include queer perspectives, then how radical can commitments to queering transitional justice be if they do not address the structural exclusions and hierarchies of paradigmatic transitional justice?

Queer Decolonial Critique of Cis-Heteronormative, Colonial and Legalistic Foundations of Transitional Justice

Queer transitional justice scholarship not only seeks to work within and transform existing transitional justice practices but also aims to deconstruct, dismantle and build transitional justice

²⁴ Hiner et al., supra n 1 at 70.

²⁵ Sandra Duffy, 'Contested Subjects of Human Rights: Trans- and Gender-variant Subjects of International Human Rights Law,' *The Modern Law Review* 84(5) (2021): 1058.

²⁶ Ashe, supra n 1; Bueno-Hansen, supra n 1; de Almagro and Schulz, supra n 3; Fobear, supra n 1; Fobear, supra n 7; Hiner et al., supra n 1; Léa Lemay Langlois, 'Gender Perspective in UN Framework for Peace Processes and Transitional Justice: The Need for a Clearer and More Inclusive Notion of Gender,' *International Journal of Transitional Justice* 12(1) (2018): 146–167; McQuaid, supra n 1; Ritholtz et al., supra n 18; Serrano-Amaya, supra n 1.

²⁷ Serrano-Amaya, supra n 1 at 122.

²⁸ *Ibid.*, 156.

²⁹ Hiner et al., supra n 1.

³⁰ *Ibid.*, 68, 79.

³¹ Hiner et al., supra n 1 at 70.

³² Nicola Smith, 'Toward a Queer Political Economy of Crisis,' in *Scandalous Economics: Gender and the Politics of Financial Crises*, ed. Aida A. Hozic and Jacqui True (New York: Oxford University Press, 2016): 231–247.

³³ McQuaid, supra n 1 at 325–326.

³⁴ *Ibid.*, 327.

processes for more radical and liberatory worlds. As de Almagro and Schulz argue, ‘to queer transitional justice processes, it is not enough to only address anti-queer violence ... but also to address and critically interrogate larger systems of homophobia, transphobia, patriarchy, and heteronormativity’ of societies and the field of transitional justice itself.³⁵ This third commitment in my framework for queering transitional justice builds on Bueno-Hansen’s research that develops ‘a queer, intersectional and decolonial analytical lens that underscores the relevance of global LGBTI politics, and critiques transitional justice foundational assumptions regarding temporality and binary logics.’³⁶ Bueno-Hansen argues that paradigmatic transitional justice processes reinforce linear (colonial) temporalities and cis-heterosexual logics of violence, and it is through a queer decolonial critique that such normativities can be excavated and problematized.³⁷ Such a commitment honours queer Indigenous critiques of transitional justice, which interrogate the ‘heteronormative colonial-settler structures in reconciliation processes,’³⁸ and the ‘hierarchies of gendered and sexualized violence against Indigenous peoples by white settler colonialism.’³⁹ Radical queer critiques also scrutinize other normativities of transitional justice, including its foundations in (neo)liberal legalism, state-centrism and anti-impunity, retributive or carceral approaches.

In developing a queer approach to peacebuilding, Ritholtz et al. demonstrate the value of radical queer critiques and potentials that could similarly extend to the transitional justice space.⁴⁰ They argue that queer peacebuilding challenges ‘cisheterosexual assumptions in the study and construction of peace,’ but that it also ‘signifies a strategy, a possibility, and a demand for transformative change and social justice.’⁴¹ Extended to the study and practice of transitional justice, such a commitment envisions queerer futures of justice beyond the paradigmatic, global project of transitional justice.⁴² It is important, however, to proceed with caution. Some decolonial transitional justice scholars have warned against the possibility of salvaging transitional justice, a project that ‘can or should’ recognize colonial violences but cannot be a ‘substitute for structural justice which is core to decolonization.’⁴³ The task of a queer decolonial rethinking of global transitional justice, then, is to consider when and where transitional justice is appropriate for justice movements, and to centre notions of gender and racial justice ‘based on investigations of the particular past and present of local and regional contexts,’ evident, for example, in the Queer African Manifesto or the concept of *ubuntu*.⁴⁴ Queering the global governance of transitional justice demands attention to the particular, and its dialogical relationship with localized or vernacularized forms of transitional justice.

THE GLOBAL GOVERNANCE OF TRANSITIONAL JUSTICE

It has been well-established that the field of transitional justice is a globalized one – Nagy’s critique of transitional justice as a ‘global project’ has found resonance in much of the critical transitional justice scholarship.⁴⁵ When I speak of the global governance of transitional justice,

³⁵ De Almagro and Schulz, *supra* n 3 at 19.

³⁶ Bueno-Hansen, *supra* n 1 at 126–127.

³⁷ *Ibid.*, 126–127; see also Ashe, *supra* n 1 at 441; Rooney and Aoláin, *supra* n 23 at 7.

³⁸ James, *supra* n 1 at 346.

³⁹ Fobear and Baines, *supra* n 1 at 309.

⁴⁰ Ritholtz et al., *supra* n 18.

⁴¹ *Ibid.*, 8, 12.

⁴² See McQuaid, *supra* n 1 at 314.

⁴³ Sesay, *supra* n 12 at 270–271.

⁴⁴ Katharina Hoffmann and Thokozani Mbwana, ‘“Queering” Transitional Justice from African Decolonial Perspectives?’ in *Masculinities and Queer Perspectives in Transitional Justice*, ed. Philipp Schulz et al. (Cambridge: Intersentia, forthcoming 2024); 2, 7–8.

⁴⁵ Rosemary Nagy, ‘Transitional Justice as Global Project: Critical Reflections,’ *Third World Quarterly* 29(2) (2008): 275–289. See also Paige Arthur, ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice,’ *Human Rights Quarterly* 31(2) (2009): 321–367; Davidović, *supra* n 23; de Almagro and Schulz, *supra* n 3; Matsunaga, *supra* n 12; Khanyisela Moyo, ‘Feminism, Postcolonial Legal Theory and Transitional Justice: A Critique of Current Trends,’ *International Human Rights*

I invoke these critical interventions that problematize the cohering of a universalized, standardized and professionalized practice of transitional justice within the global, and those institutions that govern transitional justice at a global level. What constitutes the global, however, is inseparable from local and regional permutations of transitional justice. It is more accurate to understand transitional justice as entangled processes and conversations taking place at the global and local: global norms shape local contexts, and vernacular practices shape global norms.⁴⁶ Shaw refers to this as “the ‘frictional’ travels of transitional justice ... in which interventions may be both repressively top-down and locally integrated in creative ways.”⁴⁷ Thus, while I speak of and critique a global transitional justice project in this article, I am referring to the institutionalized paradigmatic project that manifests in global transitional justice discourse but that cannot be and is not detached from, nor unaffected by, the pluralistic ways that transitional justice is practised, transformed and challenged in local contexts.

The dominant origin story told about transitional justice as both a field of study and a practice is that it coalesced in the 1980s, stemming from ‘human rights activists, lawyers and legal scholars, policymakers, journalists, donors, and comparative politics experts concerned with human rights and the dynamics of “transitions to democracy,”’⁴⁸ particularly concerning transitions in Eastern European and Latin American countries. The beginnings of transitional justice, forged by human rights’ professionals, saw transitional justice evolve into a lawyerized, templated and standardized field of practice.⁴⁹ As a project that transgressed national boundaries, and one that often imposed top-down transitional justice processes upon transitioning or conflict-affected societies,⁵⁰ transitional justice in its professionalized form became the ‘global *lingua franca*’ of justice.⁵¹ Along with its ‘lawyerization,’⁵² the establishment of *ad hoc*, permanent and hybrid criminal courts and tribunals made the global project of transitional justice a predominantly legal endeavour.⁵³ Such an approach sits uncomfortably with critical transitional justice scholars who note the carceral effects of retributive measures, resulting in harms such as the mass incarceration of racialized, gendered and poor communities,⁵⁴ and ‘an unbalanced, two-tiered international legal system eager to criminalize the subaltern, racialized, citizen of the Global South “other.”’⁵⁵ As Davidović argues:

[A] deconstruction of transitional justice reveals that law and the language of human rights are violent and that, because of this violence, law suppresses alternative interpretations of justice in transitional justice.⁵⁶

Law Review 1(2) (2012): 237–275; Makau Mutua, ‘What Is the Future of Transitional Justice?’ *International Journal of Transitional Justice* 9(1) (2015): 1–9; Rooney and Aoláin, supra n 23; Jelena Subotić, ‘The Transformation of International Transitional Justice Advocacy,’ *International Journal of Transitional Justice* 6(1) (2012): 106–125; Stephanie Vieille, ‘Transitional Justice: A Colonizing Field?’ *Amsterdam Law Forum* 4(3) (2012): 58–68.

⁴⁶ Lieselotte Viaene and Eva Brems, ‘Transitional Justice and Cultural Contexts: Learning from the Universality Debate,’ *Netherlands Quarterly of Human Rights* 28(2) (2010): 224.

⁴⁷ Rosalind Shaw, ‘Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone,’ *International Journal of Transitional Justice* 1(2) (2007): 187.

⁴⁸ Arthur, supra n 45 at 324.

⁴⁹ Subotić, supra n 45 at 118, 121.

⁵⁰ Rooney and Aoláin, supra n 23 at 3.

⁵¹ Davidović, supra n 23 at 5–6.

⁵² Subotić, supra n 45 at 109.

⁵³ Davidović, supra n 23 at 5; Nagy, supra n 45 at 276–277; Rooney and Aoláin, supra n 23 at 1; Subotić, supra n 45 at 109; Vieille, supra n 45 at 63.

⁵⁴ Sabrina Axster, Ida Danewid, Asher Goldstein, Matt Mahmoudi, Cemal Burak Tansel and Lauren Wilcox, ‘Colonial Lives of the Carceral Archipelago: Rethinking the Neoliberal Security State,’ *International Political Sociology* 15(3) (2021): 415–439; Alexandre Martins and Caia Maria Coelho, ‘Notes on the (Im)possibilities of an Anti-colonial Queer Abolition of the (Carceral) World,’ *GLQ: A Journal of Lesbian and Gay Studies* 28(2) (2022): 207–226; Kate Grady, ‘Towards a Carceral Geography of International Law,’ in *Routledge Handbook of International Law and the Humanities*, ed. Shane Chalmers and Sundhya Pahuja (Abingdon: Routledge, 2021): 357–368.

⁵⁵ Oumar Ba, Kelly-Jo Bluen and Owiso Owiso, ‘The Geopolitics of Race, Empire, and Expertise at the ICC,’ in *Oxford Research Encyclopedia of International Studies*, ed. Nukhet Sandal (Oxford Online: Oxford University Press, 2023).

⁵⁶ Davidović, supra n 23 at 5.

With transitional justice's origin story focusing its gaze upon the post-Cold War context, much of the dominant transitional justice discourse holds that 'transitional justice's final ends are liberalization, democratization, strengthening the rule of law and the socialization of human rights norms.'⁵⁷ As many scholars suspicious of this discourse argue, the universalizing of transitional justice is deeply invested in a Western or Eurocentric approach to justice, and one that favours and upholds 'free market capitalism.'⁵⁸ Such an origin story also eclipses the disruptive roots of transitional justice, particularly as a response to apartheid (South Africa) and military dictatorships (Latin America).

Paradigmatic transitional justice tends to prioritize the redress of 'certain forms of violence (physical) and certain human rights (civil and political) at the exclusion of economic violence and economic justice more broadly,'⁵⁹ not to mention the social, cultural, environmental, colonial and gendered harms it has historically failed to include.⁶⁰ As decolonial transitional justice scholars have argued, violence committed by Western democracies, such as historic and ongoing (settler) colonial violence and military interventions, rarely falls under the remit of paradigmatic transitional justice.⁶¹ What might be called an international or global transitional justice project, industry or enterprise is one that is deeply invested in particular visions of justice that often 'impose "one-size-fits-all", technocratic and decontextualized solutions' to violence.⁶² Of course, there are also powerful challenges to this paradigmatic centre: in Chile, for example, where grassroots queer activists forge their own transitional justice processes;⁶³ and even within Western colonial states such as Belgium, where colonial harms are recognized (although not unproblematically addressed) through state processes.⁶⁴

The normalization of legal, neoliberal and Western approaches into a global transitional justice project has also reproduced global inequalities:

[I]n having elite transitional justice scholars and practitioners speaking to and about the experiences of those who have been the victims of harm in situations of repression and conflict from the comfortable distance of nonwar, nonrepression and often from the vantage point of the global North.⁶⁵

That transitional justice has emerged as an institutionalized field and as a tool of global governance, embodied and embedded in the mandates of international institutions and organisations such as the UN, suggests that such critiques are a valid cause for concern. How transitional justice is globally articulated and governed is ripe for queer analysis and critique, and not just for whether such a global project can be queered, but whether queer approaches might seek its dismantling if its elitist, cis-heteronormative, colonial and legal conceptions of justice exclude those who are subjected to paradigmatic transitional justice's gaze.

⁵⁷ Moyo, supra n 45 at 240. See also de Almagro and Schulz, supra n 3 at 4; Rachel Killean and Lauren Dempster, 'Mass Violence, Environmental Harm and the Limits of Transitional Justice,' *Genocide Studies and Prevention* 16(1) (2021): 24–25; Nagy, supra n 45 at 275–276; Vieille, supra n 45 at 60.

⁵⁸ Moyo, supra n 45 at 270. See also Mutua, supra n 45 at 3.

⁵⁹ Davidović, supra n 23 at 4. See also Mutua, supra n 45 at 4; Rooney and Aoláin, supra n 23 at 1.

⁶⁰ Killean and Dempster, supra n 57 at 16; Nagy, supra n 45 at 279.

⁶¹ Nagy, supra n 45 at 276–277. For examples of the growing body of decolonial and Indigenous transitional justice scholarship, see Abdullahi Ahmed An-Na'im, 'Editorial Note: From the Neocolonial "Transitional" to Indigenous Formations of Justice,' *International Journal of Transitional Justice* 7(2) (2013): 197–204; Matsunaga, supra n 12; Khanyisela Moyo, 'Mimicry, Transitional Justice and the Land Question in Racially Divided Former Settler Colonies,' *International Journal of Transitional Justice* 9(1) (2015): 70–89; Augustine S. J. Park, 'Settler Colonialism, Decolonization and Radicalizing Transitional Justice,' *International Journal of Transitional Justice* 14(2) (2020): 260–279; Angela Santamaría, Dunen Muelas, Paula Caceres, Wendi Kuetguaje and Julian Villegas, 'Decolonial Sketches and Intercultural Approaches to Truth: Corporeal Experiences and Testimonies of Indigenous Women in Colombia,' *International Journal of Transitional Justice* 14(1) (2020): 56–79; Sesay, supra n 12.

⁶² Nagy, supra n 45 at 275–276.

⁶³ Hiner et al., supra n 1 at 76.

⁶⁴ Tine Destrooper, 'Belgium's "Truth Commission" on Its Overseas Colonial Legacy: An Expressivist Analysis of Transitional Justice in Consolidated Democracies,' *Journal of Human Rights* 22(2) (2023): 158–173.

⁶⁵ Rooney and Aoláin, supra n 23 at 2.

In this article, I focus on three global institutions of transitional justice: the UN, the ICTJ and the ICC. Each of these embody the ‘institutionalization of transitional justice at the international level’⁶⁶ and offer fruitful sites at which a queer reading of the global governance of transitional justice might be undertaken. I extend my three-point queer agenda to three documents that focus on gender from each institution.⁶⁷ The three institutions are indicative of global transitional justice discourses but are not the only examples of global transitional justice institutions. I chose these institutions and documents given the diversity between the types of institutions (international court, NGO, UN body), and their potential to reflect different global transitional justice discourses. The UN document is a thematic report by the UN Special Rapporteur (SR) on the promotion of truth, justice, reparation and guarantees of non-recurrence, titled ‘The gender perspective in transitional justice processes.’⁶⁸ The SR role was created in 2011 and sits within the Office of the High Commissioner for Human Rights (OHCHR), the ‘lead [UN] entity on transitional justice.’⁶⁹ Under its mandate, the SR is tasked with various advisory, technical and normative commitments, some of which include ‘to identify, exchange and promote good practices and lessons learned,’ and ‘to integrate a gender perspective throughout the work of the mandate.’⁷⁰ While the OHCHR published an earlier report in 2014 focusing on gender-based and sexual violence in relation to transitional justice, the report makes scant reference to LGBTQIA+ people, in contrast to the 2020 thematic report under analysis in this article, which mainstreams an attention to queer lives in its gender perspective to transitional justice.

I also analyse the ICC’s 2022 ‘Policy on the crime of gender persecution,’⁷¹ authored by the Prosecutor’s Special Adviser on Gender Persecution. The ICC represents another example of transitional justice in its globalized form, reflecting paradigmatic transitional justice’s emphasis on legalistic, individualized and retributive modes of justice. The ICC entered into force in 2002 following the 1998 ratification of the Rome Statute, and prosecutes individuals responsible for genocide, war crimes, crimes against humanity and crimes of aggression. The policy paper is the first of its kind, and similarly to the SR’s thematic report, it attends to gender persecution broadly, encompassing the experiences not just of (cis-, straight) women but also of those with diverse sexual orientations, gender identities, gender expressions and sex characteristics.

Finally, I also analyse the ICTJ’s ‘Gender and transitional justice: A training module series,’⁷² a six-module series geared towards ‘broaden[ing] the knowledge of civil society groups and other practitioners about how to incorporate a gender-sensitive approach into the design and implementation of transitional justice programs.’⁷³ The ICTJ is an important case to include in my analysis of the global governance of transitional justice, noting that the ‘NGOization’⁷⁴ of human rights has accompanied and contributed to the professionalization of the transitional justice field.⁷⁵ The ICTJ is an international NGO that ‘partner[s] with victims and civil society,’

⁶⁶ Subotić, supra n 45 at 110.

⁶⁷ Document analysis is limited in that it focuses on the formalized policies of these institutions, and therefore cannot capture the embodied, dynamic and contested processes through which these documents are produced. In a larger project of which this article is part, I intend to interview UN transitional justice officials to contextualize and deepen the analysis offered here.

⁶⁸ Salvioli, supra n 4.

⁶⁹ Alison Davidian and Emily Kenney, ‘The United Nations and Transitional Justice,’ in *Research Handbook on Transitional Justice*, ed. Cheryl Lawther, Luke Moffett and Dov Jacobs (Cheltenham: Edward Elgar Publishing, 2017): 190.

⁷⁰ UN Human Rights Office of the High Commissioner, ‘About the Mandate: Special Rapporteur on Truth, Justice and Reparation,’ United Nations, <https://www.ohchr.org/en/special-procedures/sr-truth-justice-reparation-and-non-recurrence/about-mandate> (accessed 30 March 2023).

⁷¹ Lisa Davis, *Policy on the Crime of Gender Persecution*, The Office of the Prosecutor, International Criminal Court (December 2022).

⁷² Kelli Muddell and Sibley Hawkins, ‘Gender and Transitional Justice: A Training Module Series,’ International Center for Transitional Justice, <https://www.ictj.org/gender-and-transitional-justice-training-module-series> (accessed 1 May 2023).

⁷³ Ibid.

⁷⁴ Aziz Choudry and Dip Kapoor, eds., *NGOization: Complicity, Contradictions and Prospects* (London & New York: Zed Books, 2013).

⁷⁵ Subotić, supra n 45 at 118.

'advise[s] state actors,' 'facilitate[s] collaboration between victims and the state actors and institutions responsible for safeguarding their rights,' 'conducts innovative research' and 'assesses the social and political dynamics and power relationships on the ground to better inform and refine [the ICTJ's] approach.'⁷⁶ Their mandate is international in scope, given that the ICTJ operates in and is informed by practices from over 25 country contexts. The training module under analysis offers insights into how practitioners might implement a gender perspective in their transitional justice practices, reflecting, as with the other two documents, a normative component that articulates what transitional justice is and how it ought to be done. My analysis in this article and of these documents is not comparative in nature. Rather, I analyse both policy and training materials to better understand how these documents (in their diverse forms) are illustrative of global transitional justice norms and discourses, and how they might be queer(ed).

QUEERING THE GLOBAL GOVERNANCE OF TRANSITIONAL JUSTICE

In this section, I ask of each of these documents: what does queering transitional justice entail? I organize my analysis according to my three-point framework, while threading through a queer decolonial orientation throughout, noting how the documents' recognition of anti-queer violence, inclusion of LGBTQIA+ people within the creation and implementation process and their challenging of some transitional justice normativities must be situated within their reinforcing of transitional justice's cis-heteronormative, colonial and legalistic status quo.

Recognition of Anti-Queer Violence and Violence against LGBTQIA+ People

All three of the global transitional justice documents advocate for the recognition of gender-based violence within transitional justice processes. Where the documents explicitly articulate the need for transitional justice processes to recognize anti-queer violence and violence against LGBTQIA+ people, they do so by situating such harms within the structural inequalities and contexts that enable such violence to occur.⁷⁷ For example, the ICC Policy Paper notes:

Such recognition can also reflect the continuum of historical and longstanding structural discrimination and fundamental rights deprivations experienced by vulnerable gender groups such as women, girls and LGBTQI+ persons. It can also help to unearth misogynist, homophobic, and transphobic discrimination, when it intertwines with racial, ethnic and other forms of discrimination that undergird crimes.⁷⁸

This is an excellent example of how global institutions can queer transitional justice through the explicit recognition of anti-queer violence as a manifestation of normalized queerphobia and cis-heterosexism. It is also attentive to how transitional justice processes must recognize how anti-queer violence and violence against LGBTQIA+ people depends on and reproduces other forms of violence, including those driven by racism. The ICTJ Module Series similarly acknowledges how 'lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) community, are often persecuted on the basis of their sexual orientation,' and that:

⁷⁶ International Center for Transitional Justice, 'How We Work,' International Center for Transitional Justice, <https://www.ictj.org/how-we-work> (accessed 15 May 2023).

⁷⁷ Davis, *supra* n 71 at 7; Kelli Muddell and Sibley Hawkins, 'Gender and Transitional Justice: A Training Module Series – Module 1: Overview,' International Center for Transitional Justice (October 2018): 29; Muddell and Hawkins, 'Gender and Transitional Justice: A Training Module Series – Module 2: Truth Seeking,' International Center for Transitional Justice (October 2018): 17; Salvio, *supra* n 4 at 8.

⁷⁸ Davis, *supra* n 71 at 5.

[T]hose in the LGBTIQ community also tend to be extremely vulnerable to violence and completely excluded from justice processes in the aftermath of violence and repression because of deeply entrenched stigma around their gender identity and sexuality.⁷⁹

These are good examples of how global transitional justice actors can bring attention to the experiences of queer lives in conflict, as well as offering a normative commitment by encouraging the recognition of queer experiences in transitional justice processes.

However, in these documents, gender is predominantly associated with women, focusing on how transitional justice processes can and should better recognize violence against women. This is certainly much needed and desired, and is a feminist commitment that queer transitional justice scholars and activists also share, but it does reduce gender to a particular embodied experience:

To be fully gendersensitive, prosecutions must consider structural factors that make women particularly vulnerable to certain human rights violations, such as sexual and gender-based violence (SGBV). This requires a proactive focus on gender in terms of how investigations are carried out and charges are formulated.⁸⁰

Gendersensitive transitional justice practices must recognize the gendered harms and vulnerabilities that women face, but ‘gender is not a synonym for women,’⁸¹ and a more inclusive and expansive approach to gender would consider the experiences of LGBTQIA+ people, as well as intersecting and compounding colonial and racial harms. A queer decolonial critique exposes the cis-heteronormativity of this assumption, as well as how dominant discourses separate gendersensitivity and recognition of gender-based harms from other interconnected violences.

There are moments throughout the documents where this essentialism is challenged. The global transitional justice institutions consider ways that SGBV can be recognized in transitional justice processes, by focusing not exclusively on women but on all who are SGBV victims. In a statement contrary to much of its equating of gender with women, the ICTJ Module Series emphasises that ‘Gender does not equal women, and women’s experiences cannot be reduced to sexual violence.’⁸² Furthermore, it includes gender identity and sexual orientation as reasons why victims are targeted,⁸³ which the ICC Policy Paper also states, noting that, ‘By definition, gender-based crimes target groups such as women, men, children, and LGBTQI+ persons, on the basis of gender.’⁸⁴ This is about taking ‘a holistic approach to investigating gender persecution in understanding its intersection with culture and other persecutory grounds,’⁸⁵ a statement that challenges a longstanding fixation on women as the only victims of SGBV in transitional justice discourse and practice. While such a commitment by the ICC Office of the Prosecutor is to be commended, my queer reading of this document throws suspicion on the assumption of retributive justice as the preferred form of justice to address gendered harms. That an ICC Policy Paper would seek criminal prosecution is hardly surprising, but as a global transitional justice document it normalizes a kind of justice that anti-colonial, abolitionist and anti-carceral scholar-activists have exposed for its perpetuation of global hierarchies and carceral violences.⁸⁶ The kinds of transitional justice that are advocated by global transitional justice actors matter because

⁷⁹ Muddell and Hawkins, ‘Module 1,’ supra n 77 at 29.

⁸⁰ Muddell and Hawkins, ‘Gender and Transitional Justice: A Training Module Series – Module 4: Criminal Justice,’ International Center for Transitional Justice (October 2018): 9.

⁸¹ Terrell Carver, *Gender Is Not a Synonym for Women* (Lynne Rienner Publishers, 1996).

⁸² Muddell and Hawkins, ‘Module 1,’ supra n 77 at 36.

⁸³ Ibid.

⁸⁴ Davis, supra n 71 at 4.

⁸⁵ Ibid., 12.

⁸⁶ See e.g., Ba et al., supra n 55; Karen Engle, ‘A Genealogy of the Criminal Turn in Human Rights,’ in *Anti-Impunity and the Human Rights Agenda*, ed. Karen Engle et al. (Cambridge: Cambridge University Press, 2017); Grady, supra n 54.

they foreclose other ways of thinking, knowing and doing justice beyond its institutionalized forms.

All the documents under analysis emphasize the importance of recognizing gendered harms and violence against LGBTQIA+ people in/by transitional justice mechanisms, not just so that these experiences can be voiced and heard but also to design and implement inclusive, gender-sensitive and queer transitional justice processes.⁸⁷

Inclusion of LGBTQIA+ People and Advisors in the Creation, Operation and Implementation of Transitional Justice Processes

Each of the global transitional justice institutions advocate for the inclusion of marginalized communities, including women and LGBTQIA+ people, in the transitional justice process. However, what inclusion means across these documents differs, and I articulate five approaches that the global architecture of transitional justice encourages.

First, the documents advocate for the inclusion of women, queer and other marginalized and victim populations in transitional justice mechanisms to provide testimonies. The ICTJ Module Series sees this as having an advantageous effect on transitional justice processes such as truth and reconciliation commissions, which ‘can be particularly significant for broadening perceptions about how women can be affected by human rights violations’ and can provide ‘opportunit[ies] for women and other victims of gender-based violations to have a platform to narrate their experiences of human rights abuse publicly, and, in this way, reclaim the public sphere.’⁸⁸ The ICTJ Module Series continues to equate gender-based violence and gendersensitive inclusion with women, which, while important, elides the testimonies and inclusion of LGBTQIA+ people in transitional justice processes (who might come under the label of ‘other victims’). By contrast, the SR’s report offers a more inclusive commitment to ‘Include thematic public hearings on women, gender, homosexuality or the lesbian, gay, bisexual and transgender population with safe, dignified and informed procedures and spaces that avoid revictimization,’ as well as to ‘Adopt a proactive dissemination and communication strategy to motivate women, lesbian, gay, bisexual and transgender persons and victims of sexual violence in general to provide their statements.’⁸⁹ The explicit call for queer inclusion reflects the possibilities of a queerer global transitional justice.

Second, the documents also ask that transitional justice processes include gender or LGBTQIA+ advisors. This may take the form of ‘gender unit[s]’ evidenced in, for example, the Kenyan Truth, Justice, and Reconciliation Commission;⁹⁰ ‘gender champions’;⁹¹ and the inclusion of ‘advisers, recognised experts with legal and other expertise in particular fields, including on issues of sexual and gender-based violence,’⁹² evidenced by the ICC Office of the Prosecutor’s creation of the Special Adviser on Gender Persecution.⁹³ The SR’s report also recommends that transitional justice mechanisms include ‘consultants and experts of different sexual orientations and gender identities specialized in gender analysis.’⁹⁴ These are all promising steps to queering transitional justice, but they reinforce dominant assumptions about what constitutes transitional justice. For example, the ICC Policy Paper advocates for the inclusion of gender advisors and experts *within* a retributive, carceral mechanism of justice. Similarly, the SR’s report recommends ‘Reform[ing] the justice, security and armed forces sectors ... and establishing

⁸⁷ Salvioli, *supra* n 4 at 21.

⁸⁸ Muddell and Hawkins, ‘Module 2,’ *supra* n 77 at 7.

⁸⁹ Salvioli, *supra* n 4 at 21.

⁹⁰ Muddell and Hawkins, ‘Module 1,’ *supra* n 77 at 25.

⁹¹ Muddell and Hawkins, ‘Module 2,’ *supra* n 77 at 22.

⁹² Davis, *supra* n 71 at 29. See also Salvioli, *supra* n 4 at 6.

⁹³ Davis, *supra* n 71 at 5.

⁹⁴ Salvioli, *supra* n 4 at 6.

specialized sexual and gender-based violence units.⁹⁵ Such a recommendation would appear commendable: any reforms that include gendersensitive units in transitional justice are desirable and improve how transitional justice is done. However, such a reform of police, military and security sector organizations reflects feminist concerns that this is merely about making war safer for women and LGBTQIA+ people, rather than preventing or ending war, full stop.⁹⁶ Moreover, with security sector reform and enhancing the rule of law in transitional societies one of the key pillars of paradigmatic transitional justice (often coined ‘guarantees of non-recurrence’), a queer decolonial critique exposes how international, regional and state legal systems, police and armed forces are agents of violence that perpetrate SGBV,⁹⁷ commit homophobic and transphobic crimes⁹⁸ and uphold white supremacist global hierarchies.⁹⁹ This raises broader concerns about the tensions and (im)possibilities of queering the global governance of transitional justice through practices such as inclusion, if this global project continues to uphold cis-heteronormative, colonial and carceral status quos.

Third, the documents propose that transitional justice processes consult with women, queer groups, victims and activists in the design of transitional justice mechanisms. This is a deeper level of participation, as it seeks to create transitional justice mechanisms with queer input and consultation from:

[T]he initial planning and design phase ... the drafting phase of relevant pieces of legislation or policy; the implementation phase ... [and] evaluations of the program throughout its life span and subsequent revision phases.¹⁰⁰

The documents not only promote consultation,¹⁰¹ a practice that arguably presumes that transitional justice is a top-down process done by dominant transitional justice actors, but that they ‘meaningfully’¹⁰² include victims and affected communities as transitional justice designers themselves. The documents under analysis are examples of this kind of approach to inclusion. The ICC Policy Paper was the product of consultations with:

Special Advisers and staff of the Office as well as external actors, including representatives of States, UN experts, UN Women, international institutions, civil society organisations, affected communities, activists, academics, scholars and victims/survivors through workshops, panels, briefings and meetings before and during the drafting of this Policy.¹⁰³

The SR’s report was also the result of consultations,¹⁰⁴ and it cautions over the risk of failing to meaningfully include LGBTQIA+ people:

Without the participation of women, girls and boys, lesbian, gay, bisexual and transgender persons and victims of sexual and gender-based violence in consultative processes, transitional justice mechanisms are likely to reflect biased concerns, priorities, interests and experiences,

⁹⁵ Ibid.

⁹⁶ Laura J. Shepherd, ‘Making War Safe for Women? National Action Plans and the Militarisation of the Women, Peace and Security,’ *International Political Science Review* 37(3) (2016): 324–335.

⁹⁷ Jasmine-Kim Westendorf, *Violating Peace: Sex, Aid, and Peacekeeping* (Ithaca: Cornell University Press, 2020).

⁹⁸ Fobear, *supra* n 1; Hiner et al., *supra* n 1; Sarah Lamble, ‘Queer Necropolitics and the Expanding Carceral State: Interrogating Sexual Investments in Punishment,’ *Law and Critique* 24(3) (2013): 229–253; Martins and Coelho, *supra* n 54.

⁹⁹ Axster, *supra* n 54.

¹⁰⁰ Muddell and Hawkins, ‘Gender and Transitional Justice: A Training Module Series – Module 3: Reparative Justice,’ International Center for Transitional Justice (October 2018): 32. See also Salvioli, *supra* n 4 at 23.

¹⁰¹ Davis, *supra* n 71 at 5, 9–10, 28; Muddell and Hawkins, ‘Module 1,’ *supra* n 77 at 22, 38; Muddell and Hawkins, ‘Module 2,’ *supra* n 77 at 17–18, Muddell and Hawkins, *supra* n 80 at 31; Salvioli, *supra* n 4 at 4, 19–20, 23.

¹⁰² Muddell and Hawkins, ‘Module 1,’ *supra* n 77 at 7.

¹⁰³ Davis, *supra* n 71 at 5.

¹⁰⁴ Salvioli, *supra* n 4 at 4.

and ignore sexual and gender-based violence. Consultative processes with these individuals should encompass the entire transitional justice process, from design to implementation.¹⁰⁵

The ICTJ provides an example of this failure in the Peruvian truth-telling context, where:

There were complaints against the commission's gender program for not being more inclusive, and many in the feminist community stated that the shortcomings in the gender work could have been corrected if there were greater collaboration with indigenous women's groups.¹⁰⁶

In doing so, the ICTJ emphasizes the need not only to consult with women and LGBTQIA+ people but also to be intentional about ensuring that all voices are heard, including those of Indigenous, queer, rural, youth, poor and other marginalized communities (as well as the intersections and embodiments across them). This is a commitment to doing transitional justice queerly.

Fourth, and relatedly, the documents seek to mainstream a gender or queer perspective through transitional justice processes. In addition to including queer people in transitional justice mechanisms (e.g., via giving testimony), creating gender advisor positions and involving queer and marginalized communities in the design and implementation phases, this fourth approach demands the *systemic* design and reform of transitional justice processes to lay the groundwork for queer inclusion as integral to transitional justice mechanisms. This mainstreaming involves 'adopt[ing] and implement[ing] gender policies, incorporat[ing] regular gender-sensitivity trainings, and ensur[ing] equality in staffing.'¹⁰⁷ This is not about creating separate gender units within transitional justice mechanisms, but about queering all aspects of their operation:

[I]n order to provide an adequate and comprehensive response with respect to women and lesbian, gay, bisexual and transgender persons who were victims of serious human rights violations, and to ensure their effective participation in those processes.¹⁰⁸

Fifth and finally, the documents hint at the possibilities of a level of inclusion that is perhaps most meaningful: the (co-)production, leading or ownership of transitional justice processes by queer groups, victims and activists. Rather than speak of 'consulting' with affected communities, this approach recognizes affected communities as transitional justice agents who do transitional justice from the 'bottom up.' The ICTJ provides examples of this kind of inclusion and ownership in practice: of the Women's International War Crimes Tribunal on Japan's Sexual Slavery,¹⁰⁹ a people's tribunal created in the face of inaction to address the atrocities by official transitional justice processes; and of a mural in San Juan Comalapa, Guatemala, where 'teachers, artists, students, and other community members ... came together to tell the story' of genocide at the hands of Guatemalan armed forces, a mural that 'depicts what this community felt safe enough to engage in a public expression of the past and chart a course for a more peaceful and inclusive future.'¹¹⁰ Although there is no explicit mention of queer participation in these community-led and -owned transitional justice processes, they reflect the potential ways that transitional justice at all levels can centre the voices of those most affected by violence. Moreover, the inclusion of

¹⁰⁵ Ibid., 19.

¹⁰⁶ Muddell and Hawkins, 'Module 1,' supra n 77 at 50.

¹⁰⁷ Muddell and Hawkins, 'Module 1,' supra n 77 at 25.

¹⁰⁸ Salvioli, supra n 4 at 2.

¹⁰⁹ Muddell and Hawkins, 'Module 2,' supra n 77 at 11–12.

¹¹⁰ Muddell and Hawkins, 'Gender and Transitional Justice: A Training Module Series – Module 5: Memorialization,' International Center for Transitional Justice (October 2018): 20–21.

these examples is a promising indication of global actors' commitment to queering transitional justice.

Queer Decolonial Critique of Cis-Heteronormative, Colonial and Legalistic Foundations of Transitional Justice

My analysis reveals that these global transitional justice institutions practise some level of self-reflexivity in their commitment to exposing cis-heterosexist, patriarchal, colonial and legal normativities of paradigmatic transitional justice. However, they also reinforce harmful assumptions, including that gender is a synonym for (cis, straight) women; that international or 'top-down' transitional justice is best practice over locally owned and led or 'bottom-up' practices; and that retributive justice is best and that racist and colonial harms are purely the objects of transitional justice's gaze, and do not plague global transitional justice itself.

The documents are unified in their commitment to challenging patriarchal norms of transitional justice. The ICTJ is especially vocal in this regard, denouncing the ways that 'women have been represented [in memorials] ... as passive, disengaged victims despite their having been active players ... and contribut[ors] to war and peace efforts.' The ICTJ identifies examples of transitional justice processes that challenge the patriarchal status quo: 'in Nicaragua, where there is a statue depicting a Sandinista woman toting a gun while breastfeeding her baby,' and 'the truth commission in Tunisia becom[ing] one of the first to recognize the socioeconomic violations experienced by women under the country's two dictators.' An important part of this challenge to patriarchal norms is the critical interrogation of seeing women as only victims of sexual violence, by acknowledging how gendered harms across the war, peace and justice continuum 'could include curtailment of reproductive freedom, loss of land, physical and economic insecurity, enhanced burden of care, political exclusion, and economic hardship, among many other lasting consequences.' The ICTJ also cautions against transitional justice processes uncritically grouping together 'women, children, and the elderly,' instead encouraging transitional justice actors to 'parse out the nuances affecting different groups' experiences,' including how 'other factors such as race, class, geography, or religion may also play a significant role in victims' experiences of conflict and oppression.' Finally, the ICTJ also recognizes how dominant transitional justice norms and practices, including criminal and retributive justice, may perpetuate gendered inequalities.¹¹¹

These challenges to patriarchal norms of transitional justice are important and necessary, but they largely maintain the assumption that transitional justice subjects are straight and cis-gender. In contrast, there are moments in the SR's report where such cis-heteronormativity is challenged.¹¹² These confront the risks of transitional justice processes, such as reparations and memorialization, 'reproduc[ing] patterns of gender discrimination'¹¹³ or 'referring to a stereotypical and hegemonic point of view'¹¹⁴ when including LGBTQIA+ people in transitional justice processes. In these instances, there is a conscious effort to resist equating gender with women,¹¹⁵ and 'to focus on transformative reparations and to rule out stigmatizing ones.'¹¹⁶ However, these are modest attempts by the global transitional justice institutions to challenge the cis-heteronormative status quo. Indeed, as my analysis has indicated, there is a tendency of the ICTJ to reinforce a cis-gender, straight and binary norm of gender, evident in the essentialist

¹¹¹ Muddell and Hawkins, 'Module 1,' supra n 77 at 23–24, 31; 37; Muddell and Hawkins, 'Module 2,' supra n 77 at 21; Muddell and Hawkins, supra n 100 at 43; Muddell and Hawkins, supra n 80 at 45.

¹¹² Salvioli, supra n 4 at 10–11, 14, 18, 23.

¹¹³ *Ibid.*, 10.

¹¹⁴ *Ibid.*, 18.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*, 10.

definition of sex provided in the training modules,¹¹⁷ as well as a failure to recognize examples of SGBV that specifically target LGBTQIA+ people, such as conversion or aversion therapies.¹¹⁸

A queer decolonial critique also considers how these documents may challenge or reinforce colonial and racial normativities, alongside cis-heterosexist ones. The ICTJ is highly reflexive and aware of the colonial foundations of paradigmatic transitional justice. This is evident in its use of transitional justice examples in Western or Global North countries that expose historic and ongoing (settler) colonial and anti-Black racist violence, including: the Equal Justice Initiative and the Greensboro Truth and Reconciliation Commission in the United States, focusing on anti-Black racism and lynching; Canada's Indian residential schools compensation programme; and the Mau Mau Monument in Kenya which 'memorializes Kenyans killed and tortured by British forces during the Mau Mau uprising in the 1950s.' It also does a good job of exposing the violence of colonial memorials, such as Cecil Rhodes' memorials and the 'Rhodes Must Fall' protests against them.¹¹⁹ Of particular note here is the ICTJ's scrutiny of selective transitional justice processes that seek justice for white, European victims but fail their non-white, Global South counterparts:

One of the most egregious omissions from prosecutions following World War II was the lack of accountability for the systematic slavery of an estimated 200,000 Korean, Indonesian, Chinese, Filipino, Malaysian, and Taiwanese women ... The only trial that addressed acts of SGBV committed against 'comfort women' concerned the forcible seizure by the Japanese military of 35 Dutch women for rape and prostitution ... The juxtaposition of these two facts – that 200,000 Asian women did not see justice while 35 Dutch women did – highlights the importance of intersectionality and the way factors such as race, class, and ethnicity, among others, may impact victims' access to justice.¹²⁰

This is an excellent example of how the global governance of transitional justice can be queered in a way that critiques the racial, colonial and gendered foundations upon which the project rests. However, the challenging of colonial normativities through the inclusion and critique of colonial harms must be read alongside the global transitional justice's perpetuation of colonial global hierarchies. For example, the ICTJ reflects on the 'problematic' domestic laws in Uganda on SGBV,¹²¹ but it does not contextualize Uganda's legal system within its British colonial legacy and context, nor the homocolonialist discourses of Global North and colonizer countries like the UK in response to Uganda's Anti-Homosexuality Act.¹²² And while all documents have used examples from Global South countries as models of best practice for transitional justice, they have also denounced the same countries for poor transitional justice practice, and held up examples from Global North countries, such as the Netherlands, Germany and the UK, as models of gendersensitive transitional justice.¹²³ Hierarchies between the 'international' and 'local' are naturalized:

International and hybrid legal entities have made great strides in terms of gender sensitivity within rules of procedures. Numerous best practices have been established, which are discussed later. Unfortunately, many national jurisdictions lag far behind.¹²⁴

¹¹⁷ Muddell and Hawkins, 'Module 1,' supra n 77 at 28.

¹¹⁸ Muddell and Hawkins, supra n 80 at 7.

¹¹⁹ Muddell and Hawkins, 'Module 1,' supra n 77 at 23; Muddell and Hawkins, 'Module 2,' supra n 77 at 10; Muddell and Hawkins, supra n 100 at 27; Muddell and Hawkins, supra n 110 at 53, 14.

¹²⁰ Muddell and Hawkins, supra n 80 at 24.

¹²¹ *Ibid.*, 36.

¹²² Rahul Rao, 'The Locations of Homophobia,' *London Review of International Law* 2(2) (2014): 169–199.

¹²³ Muddell and Hawkins, supra n 110 at 34.

¹²⁴ Muddell and Hawkins, supra n 80 at 36.

Finally, while the ICC embodies the first two commitments to queering transitional justice that I have outlined in this article, it demonstrably fails to reflect on the normativities of transitional justice that it upholds. It does not challenge the cis-heterosexist, colonial and racial violences that sustain global transitional justice, nor does it consider the ICC's role within this global architecture, as an institution that upholds these hierarchies and advocates for retributive justice and its attendant carceral effects.

The ability of global transitional justice to engage in a queer decolonial critique of its own practices is limited, but there are important steps evidenced by the three documents I have analysed above that indicate there is still value and possibility in queering transitional justice.

CONCLUSION

In this article, I have developed a queer reading of the global governance of transitional justice, tracing how queer commitments manifest across three examples of global transitional justice institutions. My analysis has revealed that queering this global project is fraught with both tensions and (im)possibilities. Consider, for example, advocating for the meaningful inclusion of LGBTQIA+ people within transitional justice processes. All three documents reflect a willingness to include queer communities, survivors and activists, and they all recognize the need to think intersectionally about inclusion. However, several questions and tensions remain, such as: Who is doing the including? Who are the queer activists and advisors being included, and are those in a privileged queer position (e.g., cis, white, Global North men and women) monopolizing space and squeezing out marginalized queers who might not have the security or privilege to be visible?¹²⁵ Are queer people only recognized as violated subjects, or are they also agents of transitional justice? How might intersectionality be depoliticized, in ways that gloss over the differences within and between LGBTQIA+ experiences and instead homogenize queerness?¹²⁶ Does queer inclusion of the 'add queer and stir'¹²⁷ variety lead to queerer transitional justice processes? These questions provoke reflections about the possibility of global transitional justice ever being queer in the radical and liberatory sense.

My analysis revealed that the documents largely maintain the cis-heteronormative, colonial and retributive common sense of global transitional justice, even as (and perhaps because) they advocate for queer inclusion. This suggests that to some extent, current attempts at queering global transitional justice reinforce queer liberalism and homonormativity, where, without accountability over how the recognition of anti-queer violence and inclusion of LGBTQIA+ people within transitional justice processes is implemented, it risks privileging certain queers and co-opting queer politics within a legalistic, colonial and carceral apparatus. Moreover, while transitional justice mechanisms may promote queer inclusion and recognize anti-queer violence, this 'does not automatically mean acceptance or full recognition of citizenship' for queer people postconflict, or post a transitional justice process.¹²⁸ This has been noted in contexts where queerphobic and patriarchal norms persist (see e.g., Brazil, Colombia, Northern Ireland, South Africa, Uganda), even while transitional justice mechanisms have seemingly been queered.¹²⁹ Similarly, while not the focus of this article, regional mechanisms such as the African Union Transitional Justice Policy also demand further queer scrutiny, particularly as they interact with, for example, countries like Uganda, where anti-queer legislation (as a legacy of colonial and religious conservatism) challenges the queering of transitional justice by local queer activists.¹³⁰

¹²⁵ On the question of lesbian invisibility, see Hagen and O'Rourke, *supra* n 6 at 422.

¹²⁶ Duffy, *supra* n 25 at 1055; Juliana González Villamizar and Pascha Bueno-Hansen, 'The Promise and Perils of Mainstreaming Intersectionality in the Colombian Peace Process', *International Journal of Transitional Justice* 15(3) (2022): 574.

¹²⁷ Smith, *supra* n 33.

¹²⁸ Fobear, *supra* n 7 at 6.

¹²⁹ Fobear, *supra* n 7 at 5–6; Hoffmann and Mbwana, *supra* n 44 at 9.

¹³⁰ Hoffmann and Mbwana, *supra* n 44.

My findings indicate that even as global transitional justice actors increasingly seek to do transitional justice queerly, this is a far from perfect agenda, and that the global and vernacular discourses of transitional justice maintain promises and pitfalls for meaningful queering. It is also a project, though, that needs queering. Queerer transitional justice processes (both formal and informal) must be vernacular, context specific and driven by queer activists and affected communities. Queer decolonial activism exceeds official transitional justice processes, and this is especially important given the limitations of transitional justice for meeting queer decolonial demands for justice. The global transitional justice architecture cannot and should not be the sole voice for transitional justice, and yet it maintains normative power over how transitional justice is defined and operationalized across global, regional, national and local contexts. Questions remain whether global transitional justice can ever reflect a queer decolonial commitment to radical and liberatory visions of justice that are queer positive, anti-racist, anti-carceral and anti-colonial. However, future research and practice can and should find ways to make these visions possible, and help manifest queer decolonial justice possibilities, within and beyond the global transitional justice project.