

Spring 2014

Review of 'Transitional Justice in South Asia: A Study of Afghanistan and Nepal' by Tazreena Sajjad

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Recommended Citation

Tyynela, John. 2014. Review of 'Transitional Justice in South Asia: A Study of Afghanistan and Nepal' by Tazreena Sajjad. *HIMALAYA* 34(1).

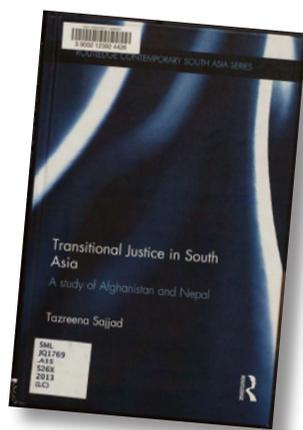
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Transitional Justice in South Asia: A Study of Afghanistan and Nepal

Tazreena Sajjad. London and New York: Routledge, 2013. 225 pages. ISBN 978-04-156-2997-3.

Reviewed by John Tynnela

In this timely comparative study, Tazreena Sajjad argues that transitional justice in Afghanistan and in Nepal has been confined to an agenda of reconciliation that only serves narrow elite interests. The legitimate demands of conflict victims for social and retributive justice have been ignored or suppressed. This result has been encouraged and sustained by a combination of elite politics and the tendency of international actors to import cookie-cutter approaches to transitional justice. Central to Sajjad's argument is her original research into the ways in which misrepresentations of what justice means to conflict victims – the 'static local' – have emerged and been exploited by elite actors. Sajjad urges greater understanding and fidelity to the desire for justice by conflict victims in a 'dynamic local' differentiated by gender, caste, tribal affiliation, poverty and other historical and cultural factors.

Sajjad's conclusions are based largely on interviews in both countries that explore three concerns: the extent of victim involvement in official commitments to seek justice, the way in which static concepts of 'the local' were operationalized in this process, and how more attention to the 'dynamic local' might strengthen

transitional justice (p. 4). It is evident that elite politics has prevailed during both transitions, and Sajjad reviews this in some detail. What is less clear from the Nepal perspective (the reviewer's area of expertise) is the extent to which a deliberately distorted version of the 'static local' has played any significant role; and, second, whether transitional justice support from donors and elite NGOs has undermined conflict victim interests.

In the years since Nepal's historic Jana Andolan ("People's Movement") of April 2006, local communities effectively have been held hostage to a convergence of interests among Kathmandu-base political leaders. A September 2010 International Crisis Group report succinctly described the agile and adaptive relationship between the highly centralized government bureaucracy and political party elites (International Crisis Group, *Nepal's Political Rites Of Passage*, Asia Report N°194 – 29 September 2010). This relative stability of the national political culture should, to some extent, relieve (or at least problematize) some donor worry about state failure (on the 'treacherous path' of transition, p. 6) that can sometimes result in timidity to speak out on impunity.

In this sense, Carothers' reference to "a state of equilibrium rather than transition," cited by Sajjad (p. 6), neatly sums up the profound disappointment that is Nepal's peace process. Some prominent figures in this process, including senior military commanders and political leaders, are

also alleged perpetrators of serious crimes under international law. Supreme Court-ordered investigations and prosecutions (p. 94) have been routinely ignored while conflict victims 'wait for justice' (Advocacy Forum and Human Rights Watch, *Still Waiting for Justice: No End to Impunity in Nepal*, October 2009). The military has grown in strength and, arguably, institutional independence, while the Office of the High Commissioner for Human Rights' presence from 2005 to 2012 ended with a comprehensive yet somehow muted final report (OHCHR, *Nepal Conflict Report*, October 2012). Even the election of a Constituent Assembly unprecedented in its level of gender and ethnic representation was unable to make any significant dent in this barrier to political participation (Martin Chautari, *The Debilitating Dynamics of Nepal's Constituent Assembly (2008-2012)*, Briefing Paper No. 8, March 2013).

Can a version of transitional justice emerge in this context with any fidelity to the 'dynamic local'? The chances are practically nil. The "real and raw" desire of conflict victims for justice (p. 144) remains in the shadows. However, far from favoring appeasement through 'cooker-cutter' reconciliation in Nepal (p. 19), international donors have supported human rights defenders in challenging this impunity. Whether in the hallways of the Constituent Assembly while drafting transitional justice bills, in pleadings before the Supreme Court on emblematic prosecutions, or at the grassroots level in support

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of conflict victims seeking interim relief benefits and reparations, donor-funded groups have persistently challenged impunity, as Sajjad also acknowledges (p. 99).

The engagement of conflict victims through the work of established human rights organizations or the more nascent conflict victim alliances has had its share of mistakes and setbacks (p. 86). There should be no surprise here given the multiple interpretations of justice that sometimes contend while pitted against impossible odds. The larger picture is one of a shared struggle for space within the pervasive political culture of impunity and lack of accountable governance. It is important not to lose sight of this.

Have elite interpretations of the 'static local' played a significant role in suppressing conflict victim voices? Sajjad makes a good argument regarding Afghanistan, but it is not entirely convincing in the case of Nepal (p. 88). Political party elites enjoy a comfortable monopoly on decision-making authority thanks to the longstanding hierarchical political culture and convergence of interests in Nepal since 2006. 'Reconciliation', like 'amnesty', is simply code for business as usual, but no misrepresentation of the 'static local' has been required for this discourse to dominate (even while continuously challenged by experienced human rights defenders and courageous conflict victim leaders).

Sajjad then asks how local understandings of justice could shape the future, notwithstanding the lost windows of opportunity. She correctly points out that past studies have not adequately explored local victim understandings of justice in Nepal or Afghanistan. She might also have noted that, in addition to some studies being overly "legalistic" (p. 97), others have been too superficially tied to a lexical ordering of conflict victim needs. As Sajjad suggests, appropriate qualitative research methods will elicit victim agency and longer-term aspirations intertwined with the immediate needs generated by armed conflict, grinding poverty, and discrimination, not to mention the profound mistrust of the State felt by most people.

Sajjad is surely correct that transitional justice must integrate the demands for social justice with the need to make criminal justice systems work against impunity, past and present (p. 145). In Nepal, there are some encouraging signs that the voices of conflict victims and human rights lawyers can be articulated in a constructive way thanks to emerging victim leadership, more lawyers able to look beyond the pages of their pleadings to the victims waiting in the hallways, and occasional donor wisdom and patience. Mistakes will be made, but it would be an additional error to fall into the trap, which Sajjad deftly avoids, of constructing a false opposition between human rights advocacy (in Kathmandu or in London) and her much-needed call

for attention to 'the dynamic local' where injustices, past and present, must also be understood and addressed.

John Tyynela has worked in Nepal (OHCHR, UNMIN, ICJ, ICTJ) and other Asian countries since 2005.