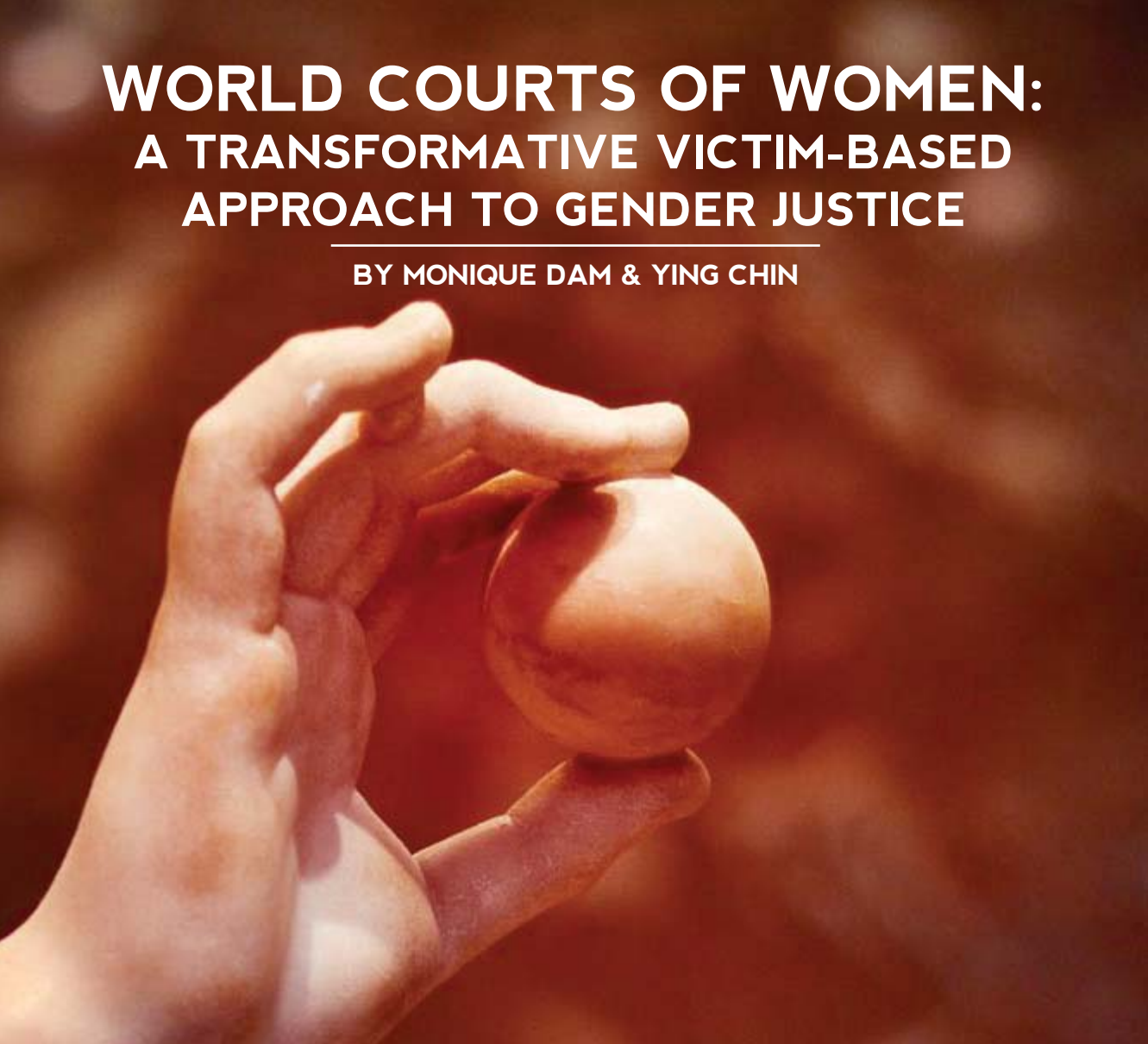




WORLD COURTS OF WOMEN: A TRANSFORMATIVE VICTIM-BASED APPROACH TO GENDER JUSTICE

BY MONIQUE DAM & YING CHIN



The World Courts of Women is a transnational feminist project of civil society which aims to provide a public forum for women who are excluded from official state-based and international legal and political institutions. Initially coordinated by the Asian Women's Human Rights Council,¹ these courts are currently organised under the guidance of Corinne Kumar; Secretary General of El Taller International, a global NGO committed to sustainable development and women's human rights.² To date, at least 30 such courts have been held in the Asia-Pacific, Middle East, Africa and Central America.³ World Courts of Women strive to include the experiences and perspectives of women which are often absent from dominant historical, legal and political narratives. In providing a symbolic 'court' of testimony for women from different parts of the world to name the crimes committed against them, victims and survivors can make their voice have their voices heard. The Courts are distinctly democratic, allowing victims to describe 'crime' and 'violence' in their own terms and thereby broadening the scope for different visions of injustice to be seen. Despite their lack of official authority, the Courts gain legitimacy through their commitment to a popular sovereignty model. The Courts have also played an important role in helping to build transnational solidarity and strengthening international and local women's rights activism.



I. AN UNCONVENTIONAL APPROACH

World Courts of Women have been described as a 'form of protest against forms of violence against women for which there is [sic] no legal remedies within local, national, or international judiciary systems'.⁴ Some might proclaim that 'court' is somewhat of a misnomer as the Courts are highly symbolic and function more as a forum of testimony for the voices of the women victims and survivors of violence. This symbolism is self-acknowledged as the Courts' state that their aim is to 'weave together the objective reality...with the subjective testimonies of the women; the personal with the political'.⁵ It is these women who name the crimes committed against them, which may not be generally recognised as a crimes under the law, reflecting the bottom-up nature of the courts and their radical democracy roots. The Courts seek to challenge the dominant human rights discourse in pursuit of 'a new generation of women's human rights by grounding themselves in the lived everyday experiences of women.

The formalism which traditionally endows courts with legitimacy is not prioritised; an expert 'Council of Wise Women and Men' presides over the Court from an un-elevated platform, and witnesses and audience members are not spatially compartmentalised.⁶ The jury is composed

of experts of diverse backgrounds such as social activists, academics, lawyers, writers and historians. For example, the Jury for the 2001 Court of Women for Peace, Against War held in South Africa included former UN ambassador Mahjid Rahnema, former UN assistant Secretary General Dennis Halliday, human rights author Aicha El Channa and notably Aung San Suu Kyi as an honorary member (at that time, she was still under house arrest and therefore unable to be present).⁷

Another unique feature of the Courts is the incorporation of testimonies of resistance and the emphasis placed on the need to listen to the voices of the women who resist the violence. Part of the World Court of Women Against War, for Peace was dedicated to listening to testimonies of women central to movements for peace in Jerusalem (Women in Black), Rwanda (Widows of Rwanda) and South Africa (Anti-Apartheid activists). The Courts of Women also facilitate interaction between local NGOs and activists through workshops, seminars and roundtables.⁸ The aim is to build solidarity as a way of strengthening the bottom-up struggle for women's human rights.

The Courts accept song, dance and visuals as a means of testimony. This is partly due to a concern to prevent re-traumatisation of the victims but it is also an effort to be inclusive, in recognition of the illiteracy of some women. The inclusiveness of

the Courts of Women permeate not only conduct of process, but also their thematic considerations – the Courts address a broad range of violence in an attempt to avoid privileging some experiences of violence over others. This is particularly important in a society where sexual violence against women has tended to receive more attention at the international level,⁹ a fixation perhaps coloured by stereotypes of female passivity and vulnerability that in turn influence law enforcement, legal bodies and social policy.¹⁰ This is reflected in the Women, Peace and Security agenda of the United Nations of which thematic resolutions have focused on sexual violence.

In contrast to this, the World Court of Women against War, for Peace, held in Capetown, South Africa in 2001, adopted a much

War Crimes Tribunals. By providing a space for women to articulate their experiences of war and post-conflict situations, the interconnectedness of issues of poverty, lack of social security, peace building and post-war reconstruction emerged. It thus facilitates analysis of the socio-economic dimensions of structural inequality and their impact on gender security, acting as an impetus for new visions of peace that incorporate gender justice.¹³

II. REDEFINING WHAT CONSTITUTES 'VIOLENCE'

The manner in which Courts of Women extend their focus beyond the traditional parameters of discussions about female violence can further be seen through the Courts' consideration of diverse forms of

IN RELATION TO VIOLENCE AGAINST WOMEN, IT IS PROBLEMATIC THAT INTERNATIONAL HUMANITARIAN LAW MAINTAINS A FALSE DISTINCTION BETWEEN TIMES OF WAR AND TIMES OF 'PEACE'.

broader view of the violence committed against women in conflict and in post-conflict contexts.¹¹ Forty women from the Philippines, Bosnia, Lebanon, Rwanda, Cambodia, Sierra Leone, South Africa and Afghanistan gave testimonies to the Court comprising of nearly 4000 women and men from provinces of South Africa and 62 different countries. The themes of the Court included the roots of war and conflict, the war of borders and boundaries, militarisation, the war against women, the war of exclusion, racism and the war against human security and the globalisation of poverty.¹² The Court explored alternative notions of justice and evaluated the efficacy of transitional justice legal institutions such as the Truth and Reconciliation Commission and International

violence. In the case of the 2001 World Court of Women Against War, for Peace, sessions were held on 'wars as genocide' in relation to rape as part of ethnic cleansing in Bosnia, 'wars without borders' which dealt with trafficking in Cambodia, 'war against civilisations' which considered the Stolen Generation in Australia, and 'wars against women' which examined dowry murders in India. The Court also examined the use of land mines in Cambodia and Agent Orange in Vietnam, a demonstration of the Court's divergence from the fixation with sexual violence at the international level to examine a broader spectrum of violence experienced by women during armed conflict. The Court also dealt with violence against women outside of periods

of armed conflict, reflecting the way in which women experience violence continuously even in times of 'peace'; including acts of female genital mutilation, fundamentalism and witch hunting. The Court of Women against War, for Peace demonstrates how the Courts of Women strive to encompass a broad range of violence to avoid the exclusion of certain experiences of violence.

World Courts of Women also seek to prevent the potential re-victimisation of female victims of gender crimes in the context of formal, top-down legal proceedings. In further redefining what constitutes violence, the Courts adopt a much broader approach to what comes into the ambit of a 'crime' and a human 'right' than mainstream perceptions. For instance, the Courts speak of the violence of neoliberal globalisation where the deprivation of people of their economic, social and cultural rights is embedded in structures, rendering perpetrators unclear. Courts of Women have previously challenged the legitimisation of processes in the name of national security, law and order, and progress such as colonisation, globalisation and militarisation, which are perceived as constituting wars perpetrated against women. Courts of Women thus play a valuable role in ensuring that women's lived experiences of political, social and economic inequalities are not overlooked, in giving them ownership of their experiences of violence as survivors and empowerment through resistance.

III. EMPOWERMENT THROUGH OWNERSHIP

In conventional criminal courts, victims are invited merely to bear testimony to the crime and their status as the victim is often not directly acknowledged. It is also problematic that criminal charges are often framed in language promoting the restoration of the previous patriarchal order, rather than challenging the status quo. In relation to

international humanitarian law, Dixon argues that the priority is to obtain convictions for breaches of abstract legal norms rather than convictions for the crime of what the accused actually did to the victim.¹⁴ In the case of Kunarac,¹⁵ the International Criminal Tribunal for the Former Yugoslavia (ICTY) was unwilling to recognise the collective subjectivity of Muslim women as a relevant civilian population, preferring to find the attack as directed against the Muslim civilian population generally.¹⁶ This decision reveals the limited potential of the international criminal process to recognise the specific and gendered harms suffered by victims of war crimes.¹⁷ To counter this, World Courts of Women seek to empower victims by allowing victims to name the crimes committed against them thereby enabling greater ownership of the process. The Courts recognise the importance of public acknowledgement of victimisation in the provision of healing and closure".¹⁸

The transformative potential of the Courts is also found in their subversion of traditional dichotomies and assumptions. Article 27 of the Fourth Geneva Convention states: "[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault"¹⁹; the language of which reflects the values of a patriarchal society. This characterisation of rape and other forms of sexual violence as attacks against the 'honour' of women implies that 'honour' is something lent to women by men and that a raped woman is 'dishonoured'. The trickle-down effect this can have on national institutions is significant; for instance, the phrase 'honour' is used in many national military guides.²⁰ The failure of such international instruments to portray sexual violence as a violent crime that violates bodily integrity presents a serious obstacle to addressing crimes of this nature against women. The protective, rather

than prohibitive, nature of the provisions indirectly reinforces the trivialisation of such offences.²¹ World Courts of Women can thus be seen as a vehicle through which to challenge such patriarchal assumptions which are embedded in law.

In relation to violence against women, it is problematic that international humanitarian law maintains a false distinction between times of war and times of 'peace'. Mainstream legal discourse can also be seen to operate around a 'hierarchy of harms', in which divisions are created between 'ordinary' and particularly egregious violence; where the latter category is more often perceived as meriting redress.²² This artificial separation results in the tendency for violence committed against women to fail to fit 'narrow legal categories that dominate general understandings of serious human rights violations', with the effect that 'normal pervasive sexual and physical violence against women is simply not counted in the overall narrative of conflict or regime change' (emphasis added).²³

who are often excluded by dominant legal and political institutions to give testimony of their experiences of violence in a multiplicity of unconventional ways such as through song, dance and visuals, resulting in greater inclusiveness. By enabling women to name the crimes committed against them in their own terms and rejecting hierarchical divisions of the courtroom, the Courts of Women adopt a radical democracy model which lends it popular legitimacy. Importantly, such democratic tendencies have been further realised through the Courts' demonstration of a conscious effort to recognise the diverse forms of violence that women experience in their everyday life; empowering participants through acknowledgment of their status as victims and survivors. It can thus be seen that the World Courts of Women provide a platform for women whose voices are unheard to condemn the perpetrators of the violence committed against them, and in so bringing its participants one step closer to a holistic realisation of gender justice.

IV. CONCLUSION

This article has attempted to demonstrate the potential of World Courts of Women to reinvigorate feminist concerns in the public sphere. The Courts have enabled women

REFERENCES

1. People's Movement Assembly Resolution of Action, *Introduction on the World Court of Women* (2007–2008) Women's Economic Agenda Project, <<http://weap.org/WCW/WCWAbout.htm>>.
2. Lucis Trust, *Interviews* (Lucis Trust World Goodwill Organisation, <http://www.lucistrust.org/en/service_activities/world_goodwill/interviews>.
3. Corinne Kumar, *The Vision*, Asian Women's Human Rights Council and EI International, <http://www.rutapacifica.org.co/descargas/mdn/pon_CorinneKumar.pdf>.
4. Marguerite Waller, *News: The Courts of Women* (17 April 2011) The Women's Economic Agenda Project <<http://weap.org/news/386/17/The-Courts-of-Women.htm>>.
5. Kumar, above n 3, 1.

6. Waller, above n 4.
7. Corinne Kumar, *The World Court of Women for Peace, Against War : A Brief Overview* (25 March 2001) Women in Black Leuven <http://snellings.telenet.be/womeninblackleuven/world_court_women.htm>.
8. Waller, above n 4.
9. Dianne Otto, 'Power and Danger: Feminist Engagement with International Law through the UN Security Council' (2010) 32 *Australian Feminist Law Journal* 97, 102.
10. Paula Ruth Gilbert, 'Discourses of Female Violence and Societal Gender Stereotypes' (2002) 8 *Violence Against Women* 1271, 1271.
11. United Nations Peacekeeping, *Women, Peace and Security* (2000) United Nations, <<http://www.un.org/en/peacekeeping/issues/women/wps.shtml>>.
12. Kumar, above n 7.
13. The Gender and Development for Cambodia, *Report on World Court of Women Against War, for Peace* (2–9 March 2009) Gender and Development for Cambodia <<http://www.bigpond.com.kh/users/gad/gadnet/repSA01.htm>>.
14. Rosalind Dixon, 'Rape as a Crime in International Humanitarian Law: Where to from Here?' (2002) 13 *European Journal of International Law* 697, 699.
15. Kunarac *et al.* (IT-96-23 & 23/1) "Foča".
16. Dixon, above n 15, 701.
17. Dixon, above n 15, 705.
18. Dixon, above n 15, 709.
19. Geneva Convention (IV) Relative to the Protection of Civilian Person in Times of War, adopted 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) art 27.
20. Customary International Humanitarian Law, *Practice Relating to Rule 93: Rape and Other Forms of Sexual Violence* (2013) International Committee of the Red Cross <http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule93>.
21. Otto, above n 9, 116.
22. Fionnuala Ní Aoláin, 'Women, Security and the Patriarchy of Internationalised Transitional Justice' (2009) 31 *Human Rights Quarterly* 1055, 1059.
23. *Ibid* 1061.