

The Conversations Project

At the School of Law, University
of Westminster

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In Conversation with:

Professor Hilary Charlesworth, Professor of International Law and Human Rights, Gita Sahgal, Gender Unit, Amnesty International, Kathryn Lockett, Womankind and in the Chair Dr Zoe Pearson, University of Keele On



Gender, Human Rights and International Law:

How does international law address gender issues? How do peacekeeping missions and peacekeeping agreements address gender issues? What are the problems and advantages of using international law and human rights law to address gender issues?

How are these frameworks and concepts used by academics and human rights activists? To what extent is women's contribution to peacekeeping agreements incorporated in developing countries as compared to developed states? Are there different standards?

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The Panel:

Hilary Charlesworth



Hilary is Professor of international law and human rights at the Australian National University. She has extensively published in the area of international law and feminism. More recently she has worked on peace building and peace keeping projects in the Pacific and Asian region near Australia.

Kathryn Lockett



Kathryn manages Womankind International's programmes. These include Afghanistan and India. She previously worked with local organisations in post-conflict and transitional states including Afghanistan and Nepal.

Gita Sahgal



Gita is Head of the Gender Unit at Amnesty International's International Secretariat. She previously worked as a freelance filmmaker and writer making investigative films on issues concerning multiculturalism, race and gender.

Zoe Pearson: Our first topic is international law and gender. From your varied perspectives, how do you think international law, in general, and peacekeeping missions and peacekeeping agreements, in particular, address gender issues? What are the problems and advantages gained in using international law and human rights law to address gender issues?

Kathryn Lockett: The current international legal framework in place such as the International Convention on the Elimination of Discrimination against Women (CEDAW), UN Security Council Resolution 1325 and the Rome Statute are generally considered to provide a strong framework for local organisations. They are used by organisations for their approaches at national level and as advocacy tools to implement international legislation, as well as post-conflict settlements and new constitutions. The problem, however, is one of implementation. From our experience of working with one of our partners *Save Somali Women and Children*, for instance, we found that during the Somali peace process women were completely excluded. Another problem is that transitional justice mechanisms often fail to deal with issues of gender equality or structural inequality and even less so with issues of impunity and justice.

Gita Sahgal: I agree with Katherine on the issue of implementation. Exclusion of women from the formal peace negotiations is almost universal. This applies even to countries where women have taken part in the process that led to peace negotiations. So, women have made strategic demands and very creative efforts and have nonetheless largely failed to get noticed. I believe impunity is the key problem, as often peace agreements are founded on various immunity agreements that permit the perpetrators to go free. The other problem regarding implementation is that violations during conflict are still not recognised. Rape, for instance, becomes a metaphorical statement about harm to the community in conflict but actual rapes of women are grossly unreported. Our research has found that rape as a so-called crime in peacetime is not seen as a crime against adult women as she is thought of as having agency. Also, in some

countries rape as a crime is seen as only happening to children, so its potential to cause outrage within the community is much more recognised when children are affected. Many of the arguments proposed by women's human rights groups trying to press women's claims in conflict have perhaps inadvertently set up a forum of competing vulnerabilities. Although the intellectual battles might have been won, issues of accountability and research, as well as how to make demands around these areas are far from solved.

Hilary Charlesworth: I feel that in many ways the battle hasn't been won from an international perspective. From my observations over 20 years, whereas there seems to have been great resistance to the absorption of issues of gender and sex into international law at first, what seems to have happened broadly speaking is an absorption of the language of gender and sex into international law. This is reflected in the language used in the ICC Statute and Resolution 1325. But this acceptance has been largely superficial and there are still huge battles to be fought. The human rights treaty bodies are a case in point—despite their extraordinary statements about three to four years ago in which they all adopted gender mainstreaming resolutions, they have reduced their commitment to women's rights to asking countries about the number of women in their judiciary and armed forces. The treaty body does a big tick and the gender question is considered done. From an academic perspective there has been hardly any take up of feminist ideas. Feminist ideas have been quite marginalised with many serious international lawyers continuing to talk in black letter ways. Going back to the issue of impunity, I have been struck by very different attitudes based on my experience in the Pacific. In Timor Leste, East Timor, the issue of impunity has been very big for women's groups and they feel that particularly some of the massive crimes perpetrated during the Indonesian occupation and after 1999, including the massive rates of domestic violence, haven't been dealt with as the UN-established special panel basically acquit everybody. In Bougainville in contrast, while some women wanted formal accountability mechanisms, many were sceptical about punitive mechanisms instead favouring traditional reconciliation

ceremonies as a form of accountability. In your experiences, are there different attitudes to the issue of impunity in different societies?

Kathryn Lockett: A lot of women are silenced because of cultural taboos. For example, in Afghanistan talking about sexual violence is a complete cultural taboo. In fact, if a woman goes to court to say she has been raped, she risks being imprisoned for sex outside of marriage. When customary law mechanisms, as opposed to codified law, are prevalent in certain areas, it becomes very risky for women to speak up about these issues. So, there is a cultural and a legal element. Transitional justice mechanisms are further complicated by the lack of counselling or other basic support services available to women to discuss and come to terms with these experiences. They frequently risk being shunned by their communities and families, so the lack of rehabilitation services presents a serious impediment to starting a new life. This also creates a very dangerous version of history, as the experiences of women get overlooked in the history books and cultural archives. Organisations therefore need to take a sensitive approach to finding out information first hand, as cultural taboos often prevent women from talking about their own experiences.

Gita Sahgal: There is a difference between women saying proactively they want some kind of traditional way of reconciling the community to the kind of silencing Katherine is talking about. The first issue refers to women's ability to access any form of justice whether they want to or not at the immense risk of death which certainly has been experienced by Amnesty in Afghanistan. In Bangladesh, for example, there is a strong demand for investigation of the war crimes committed in 1971 around the formation of Bangladesh where the Pakistani army occupied then Eastern Pakistan and committed huge violations including mass rape. Although, the incidences of rape were well known at the time, just like in Yugoslavia and Rwanda, the issue was completely buried due to the women's lack of will to testify. But the issue is beginning to gain traction largely because people identify a link between the human rights violations committed in 1971 and modern manifestations of

fundamentalism, such as demands for blasphemy laws, attacks on women and boycotts on organised women groups propagated by the increasingly powerful fundamentalist forces in Bangladesh.

Amnesty International has produced a manual on truth and reconciliation commissions. In Sierra Leone, for example, women working on the defence of human rights in conflict situations mobilised massively to the extent that they got women who had faced violations in the conflict to speak out. As an organisation we have been pressing for the recommendations adopted by the Truth and Reconciliation Commission, many of them drawn up by coalitions of women activists to be taken into account by governments, despite a massive lack of political will. These commissions are a useful way of setting out a historical record of all the acts committed by the various sides to a conflict but they should also be used as tools for holding individuals to account.

Hilary Charlesworth: I think one has to be very careful about how they are designed and much depends on the format. The Truth and Reconciliation Commission in East Timor, for example, published an extraordinarily detailed account incorporating women's voices. Yet now the question that Eastern Timorese women are asking is what to do next with this amazing historical document. It remains an issue.

Kathryn Lockett: I believe that both the resources and the political will need to be there to take these recommendations forward. This is where both academics and activists can help the women on the ground by making sure that international donors and international policy makers are putting their money where their mouth is.

Gita Sahgal: I agree with Hilary. What I meant by saying that the intellectual battle had been won was referring to a foundation, which exists and can be used, if we want to go ahead. However, that foundation in international human rights remains marginalised. Some of the developments we have had to deal with in the field of human rights have bizarrely led to the marginalisation of women's human rights precisely in order to defend the human rights framework. The defence of human

rights has been reduced to what are its most core elements-such as the very clear attack on the torture standard in the context of the war on terror.

Hilary Charlesworth: The post 9-11 era has changed fundamentally the debate about human rights. I have certainly observed this in the Australian human rights activist community where Amnesty and a number of other major groups are very focused on dealing with draconian laws. They put a lot of energy into defending this big wave of attacks on some very basic rights-the freedom of speech, the prohibition on torture yet campaigns about women aren't seen as the frontline. In many ways the change in atmosphere has been problematic for women.

Gita Sahgal: Amnesty International is doing a lot more work now through the Stop Violence Against Women Campaign by holding armed groups accountable wherever possible. For instance in the report marking the 5th anniversary of the Iraq invasion we have addressed both the legal framework, as well as attacks on civilians. We noted that some of the threats to women's rights occurred in situations where communities were being driven apart. So, that analysis is beginning to creep in, but it remains a massively underreported crime. We have also found that armed groups want to exercise social control over groups, who do not uphold what is considered to be the normative order, such as gay men or women who engage in prostitution, through dress code threats including in many non-Muslim contexts. Although we are beginning to understand how to report the ways in which these women are controlled, we are still struggling to understand this as an organisation.

Kathryn Lockett: Many women in conflict or post-conflict countries are struggling with cultural laws and issues surrounding acceptable and non-acceptable customs. One of the most effective ways of empowering women is when they take on some of these arguments and use them to advocate for their own rights. Our partners in Afghanistan, for example, do a lot of 'women's rights in Islam training' for local women and they find it to be highly empowering as it equips

women to know their rights under Islam when they go back to their communities. They will use an international framework to argue that women are equal, will find justification for it from the Koran and use this to lobby for legal change. It is very powerful.

Zoe Pearson: *How do local/global possibilities, but also tensions come across in your work?*

Hilary Charlesworth: This is always going to be an issue within the international human rights arena, so it's not just a problem that is confined to women. There is considerable room within the bounds of what is considered acceptable in human rights law to offer local translation of particular rights. There is enormous variation between countries. I was particularly struck by my experience as a mock CEDAW Committee member for the Pacific in Vanuatu where women's groups looked at these international standards as being tremendously important and considered them as effective tools for pushing the government. So while the standards are easy to critique, they can have a very real effect at the local level.

Kathryn Lockett: International standards not only provide solidarity across the global women's movement but also provide an international basis and give room for diplomatic pressure. Afghanistan signed up to CEDAW in 2003 which meant that its constitution had to guarantee equal rights for women and these are the local tools women are now using. This offers their work legitimacy and puts international pressure on the government to implement what they have signed up to.

Gita Sahgal: It is fundamental to us, too. In countries where there is a very active civil society, for example, we have produced work which would otherwise fall through the gaps. Following a public security report on state violations and gang violence in Brazil, Amnesty decided to focus on the particular ways in which women were targeted as human rights defenders. Most of the Brazilian human rights movement wasn't working within the communities and wasn't focusing on policing and prison issues. They did excellent work on domestic violence legislation but didn't work on

women victims of police violence, so Amnesty brought those two sets of issues together and acted as a useful bridge. It is important to engage with the practical reality on the ground and with its power structures whether you identify them as religious, feudal or political. International organisations sometimes forget that these are long political processes that can't be foreshortened. The implementation in the end is part of the political process within the country that has to be fought for. It is a hearts and minds struggle and it can't simply be decided through donors' decisions. Another important point to make is around the issue of FGM. A network called SIHA, Strategic Initiatives for Women in the Horn of Africa is exploring why equality frameworks have not been used to argue for women's rights and why the issue of equality is marginalised in donor's agendas and therefore women's advocates own agendas. They are very critical of the 'Islamising' of the FGM issue, which donors to some extent have been complicit in. They have actually promoted a role for religion which didn't exist in traditional society, and the issue of FGM, which is largely a violation committed by women on other women and girls and is guided by the power structures and leadership within the community of women, gets represented as a religious issue even though religious leaders have no influence over it whatsoever. So, one of the key critiques they made is that the debate shifted away from the equality argument.

Hilary Charlesworth: Some writers reason that equality arguments don't work in international and local campaigns because they often have little purchase in a particular society. One of my colleagues at the ANU, Sharon Bessell, wrote that people who advocate taking the equality line are barking up the wrong tree because it is completely non-strategic. In the context of East Timor and the relationship between the local and the global I have experienced that when a strategy is labelled as an international standard it quite often gets ridiculed by particular male leaders. It is very often part of a wider scepticism about women's rights.

Zoe Pearson: How are academics and activists using the framework of international law? What are their differing roles?

Kathryn Lockett: Academia plays a great role in highlighting patriarchy and gender roles. International organisations such as Womankind and Amnesty use the international framework and are able to go to international donors to push for better resources and diplomatic pressure. This is one very complementary way, as international organisations often have access to decision makers to open doors which local civil society simply doesn't have.

Gita Sahgal: I think equality is a hard sell because it is a revolutionary idea—that's the bottom line. Academics, such as Hilary and others write on accommodating women's differences within a CEDAW framework and thereby challenge us as practitioners to work out how to accommodate these challenges.

Hilary Charlesworth: It's very heartening to hear as an academic that your work is read, you're often surprised if people have read it. As an academic I often feel inadequate in the face of activism, I think of myself as someone with quite limited experience.

Gita Sahgal: But you engage with policy issues, don't you?

Hilary Charlesworth: I do but again I see this as easy work. I live in Canberra so I can go to Parliament House and speak to a few parliamentarians—that doesn't seem like frontline activism.

Kathryn Lockett: I think academia has a definite role to play particularly in identifying gender issues relating to violent masculinities. Academia has the potential to unpick some of the fundamental causes of violence. The more activists have access to some forms of feminist thinking, particularly through conversations like these, the better we will be able to cooperate.

Gita Sahgal: There is one area in which academic work could have a profound effect—ideas of transversal politics—being able to see the others point of view and being able to meet halfway which has helped in many situations where women on different sides in conflicts have been able to create spaces and talk to each other. Most

international lawyers and human rights investigators don't see the issues as sharply as academics. We still often study conflicts in terms of embedded conflicts, people who are always at each other's throats, tribal wars and so forth, which completely ignores the analytical thinking that might lead to some actual understanding of the use of massive violence not because a society is fragile but in order to create the other as the enemy. Massive violence is construed as an ideology that drives former neighbours apart. I think this is what happened on a smaller scale with the Hindu right in India against Muslims and Christian Indian women actually organised to bring women scholars and activists from abroad in order to analyse what happened through a legal framework wanting to understand the violence as a crime against humanity and a form of genocidal violence.