VOLUME 10

Transitional Justice

Gender-political perspectives for societies in transition

A study by **Rita Schäfer**

HEINRICH BÖLL STIFTUNG
GUNDA WERNER INSTITUT

TRANSITIONAL JUSTICE

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Edited by the Heinrich Böll Foundation

The author

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Gender-political perspectives for societies in transition
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CONTENTS

Foreword 7

1 Introduction 10

Structure of the study 11

2 Transitional Justice – Conceptual Principles 14

2.1 Emergence and definition 14

2.2 Political and scientific disputes surrounding transitional justice 21

3 Transitional Justice in Practice 25

3.1 Approaches and institutions at the international and national level 25

3.2 Instruments at the national level 33

3.3 National and local level: Gacaca courts in Rwanda 43

3.4 Other formalized and informal approaches 46

4 Security Sector Reforms 48

5 Conclusions 50

Bibliography 53

Weblinks 56

FOREWORD

Wars, armed conflicts, repressive regimes and dictatorships are giving rise to greater militarization in societies as well as brutalization, above all among commanders and combatants. Wars and repression go hand in hand with acts of violence committed against women and children, but also against men. Rape, and frequently mass rape, has meanwhile become openly known as an instrument of war used by rebel militias and regular armed forces ever since courageous women – with the assistance of women's organizations – began reporting acts of mass rape during the war in the former Yugoslavia in the 1990s. More recently, specific acts of brutality have become known in individual regions, such as the DRC, which amnesty international calls the «most dangerous country for women»; the UN ranks Kinshasa as the «rape capital of the world». The violence experienced there continues to take effect throughout society during the reconstruction and transitional phases even though the tyranny, armed conflicts and wars have ended – though the levels of impact vary depending on the gender. Daily life is often marked by caution, distrust, insecurity and renewed violence. The reconstruction and establishment of state structures and a democratic setting are being severely hampered; the risk of armed conflict breaking out once again remains very present.

For a number of years, so-called «transitional justice» approaches aimed at pro-cessing the conflict-stricken past of societies have increasingly gained in significance. In many cases, peace researchers and politicians especially have stressed their importance as a peacekeeping tool. «Transitional justice» not only entails legal procedures based on the perception of Western democracies – such as international and national war tribunals – but also a range of various instruments and mechanisms, most crucially truth and reconciliation commissions, reparation payments for survivors of war crimes, rehabilitation programmes and symbolic compensation as well as reforming the police force and the military as public institutions, along with legal practice. They not only aim at establishing justice but also at reconciliation, or at least they target to achieve improvements of the relations among the once conflicting parties. They are designed to help a frequently-divided society and enemy groups find their way to peaceful forms of coexistence as a means to averting future conflicts.

Especially women peace activists and feminist scientists have expounded the prob-lem that the manner in which transitional justice instruments are negotiated and applied will neither allow especially survivors of sexualized violence to see justice served, nor will it bring peace; and such crimes frequently never come to light – for example in certain truth and reconciliation commissions. As a result, existential needs, such as medical care, material support, advice, and also the protection of those affected by sexualized violence, which should ordinarily be provided, are in fact

neglected. Coinciding with this, it is also blinded out how to deal with the perpetrators. Experts, politicians and peace activists equally disagree on the extent to which it is necessary to unmask and cite past crimes at all and to hold the perpetrators accountable in a court of law with a view to affording the survivors and victims an opportunity to experience redemption and justice and to see their dignity restored.

International instruments, such as UN Security Council (UNSC) Resolution 1325, UNSC Resolution 1820 in particular, as well as the subsequent resolutions 1888/89 and 1960, make it clear that sexualized violence must be punished by law as a crime against humanity and/or a war crime. Not until June 2013 did the UN Security Council – by virtue of its new Resolution 2106 – send a clear signal to all national governments that the war on sexualized violence must take utmost priority during conflicts. The Council calls on member states and the conflicting parties not just to avert any form of sexualized violence but also to enforce a more stringent and more consistent investigation and pursuit of the perpetrators – also as a means of prevention and a deterrent. No amnesties should be offered in these cases as a rule. In doing so, the UN Security Council is reacting to the current way in which past events are processed, during which gender dynamics and acts of sexualized violence are either marginally included or not included at all.

Nevertheless, resistance to recognizing gender-based violence as a war crime or crime against humanity and to taking it into account during the processing phase is extremely high. In mainstream politics, but also in the scientific and academic fields, gender-based violence is still not given due seriousness in analyses and practical implementation – but is even trivialized as «collateral damage». This not only holds true for and in countries and regions in conflict but also for Western countries and (inter)national law enforcement authorities. Accordingly, the political institutions as well as the judiciary, the investigative authorities and the International Criminal Court are inadequately qualified and equipped to ensure that gender-based violence can be suitably processed.

The Gunda Werner Institute has, for many years, worked towards aligning peace and security policy to the principles of gender democracy. Among other things, the Institute pursues a strategy of seizing on issues that are traditionally male domains. It is in the spirit of this strategy that we have also seized upon aspects of transitional justice since 2011. In the course of expert talks and panel discussions open to the public, the GWI has drawn on a selection of examples from countries such as South Africa, Sierra Leone, the countries of the former Yugoslavia, Cambodia and the DR of the Congo to discuss and debate whether and to what extent transitional justice instruments, such as the truth and reconciliation commissions, can do survivors of gender-based violence justice and can contribute to gender justice and reconciliation within society as a precondition for sustainable peacekeeping solutions. Through its own offices, the Heinrich Böll Foundation furthermore supports partners actively engaged in conflict management and conflict resolution in crisis-torn and conflict-stricken countries as well as post-war countries.

In this context, it is also of significance to us that both the Federal Republic of Germany, as a member of NATO and a country that itself supports and conducts military interventions, and the EU ought to show a commitment to making an appropriate contribution towards coming to terms with the conflict and towards reconciliation even after wars and military deployments have come to an end.

This study aims to help plug ascertained knowledge gaps and to lend impetus for further debates and feasible approaches which embed transitional justice, in its gender characteristics, into fundamentally different, gender-just transformation strategies and democratization processes in post-war societies.

The Gunda Werner Institute would, first and foremost, like to acknowledge the con-tribution made by the author, Rita Schäfer, in the completion of this study, who has devoted many years of her proven expertise to this topic and who has been a pillar of support to the GWI itself as well as its expert talks and other events with her exceptionally diverse knowledge of the manifold processes in African countries. We would also like to extend our gratitude to Marieke Krämer, a former intern and freelance worker for the Gunda Werner Institute, for her conceptual groundwork, research work and preliminary studies on this publication, as well as to Barbara Unmüßig, President of the Heinrich Böll Foundation, for her critical input throughout this study, and – last, but not least – our gratitude also goes out to our proof reader, Elisabeth Schmidt-Landenberger, for her critical scrutiny of all things linguistic.

Berlin, March 2014

Gitti Hentschel
Director of the Gunda Werner Institute

1 Introduction

This study analyzes whether and how gender is taken into consideration during the transitional period following wars, violent conflicts and dictatorships. The key question posed here is: To what extent can transitional justice institutions and mechanisms achieve gender justice? This stems from the assumption that forms of gender-based violence as well as gender differences need to be considered when coming to terms with wars, mass violence and severe breaches of human rights. Only by doing so can violent structures be eliminated, sustainable peace processes created and social justice established.

It is therefore all the more important to take a critical view of the transitional justice approaches as well as the institutions in existence thus far. So-called transitional justice ultimately sets turning points: It is aligned to the past since it seeks to come to terms with severe breaches of human rights across defined periods of time, make perpetrators accountable and see justice done to victims. At the same time, it seeks to guide reconciliation processes in the present day. Moreover, it is forward-thinking because it aims to change state and social structures and establish new legal systems or moral values (Franke 2006: 813ff.). Thus, systematically integrating gender into fundamental legal reforms can help eliminated social and economic inequalities which were the cause of wars and manifested themselves in gender-based violence. Transformation approaches, such as the establishment of the rule of law and comprehensive institutional reforms – including democratic control of the security forces – are designed to prevent a repetition of excessive violence and severe violations of human rights by state institutions (the military, police force, and judiciary) and non-state actors in the future.

For these reasons, international resolutions on peace processes have entertained transitional justice and gender aspects for a number of years now. They call for acts of sexualized violence committed against women during wars to be prosecuted by law and averted. The UN has made this a focal point of its transitional justice guidelines as well. The same guidelines aim to establish the rule of law and to anchor human rights.[1] Nevertheless, since, in practice, transitional justice does not address gender dimensions in many places, it therefore boosts inequalities, hierarchies and patterns of violence in the mid- and long-term. This study outlines the details of these problems as well as the resulting challenges.

The study takes a critical look at gender ignorance found in German guidelines and action plans on conflict management whilst referencing international treaties and peace-keeping practice. Numerous peace studies and policy papers drafted by

1 http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf http://www.unrol.org/files/S_2011_634EN.pdf (all weblinks last viewed on 15.11.2013)

German research centres in their capacity as political consultants misjudge the key significance played by gender hierarchies and militarized masculinity.[2] This makes it all the more necessary to take a differentiated look at the potential and limits of international law requirements and institutions that play a forward-thinking role in policymaking, and of key transitional justice instruments and strategies from a gender perspective. This study aims to help towards doing so.

Structure of the study

This study explains the conceptual bases of transitional justice, how it emerged, and the controversies surrounding its use as a means of bringing about peace and processing the atrocities of war, mass-scale violence as well as state-authorized violence in dictatorships. It describes numerous international and national transitional justice institutions, such as the International Criminal Court, ad-hoc tribunals and hybrid courts. Their selection and the order in which they appear were determined by their legal relationship to one another and the fact that, in part, one leads on to the other. Other focal areas include: truth and reconciliation commissions; reparation demands that are recommended by the commissions in some places; local forms of the rule of law and forms of remembrance that are occasionally initiated in close succession following the convening or closing of the commissions. They are explained using certain countries as an example, such as South Africa, Rwanda and Sierra Leone, in particular since these countries are repeatedly cited as examples of post-conflict societies. The examples used in these case studies illustrate the interdependencies and ambivalences between the various transitional justice principles, such as criminal prosecution and justice, with particular emphasis being devoted to gender relevance; because irrespective of international law requirements and calls by women's rights activists from Africa, Asia, Latin America and Europe, many transitional justice mechanisms ignore the gender dimensions.

The concept of gender and gender-based violence

This study has used a comprehensive, intersectional concept of gender as an analysis tool. The concept not only concentrates on whether the raping of women is afforded consideration in courts of law or other transitional justice institutions. Moreover, for the purpose of this study, gender stands for a power phenomenon that is interwoven with multiple political, scientific and social power structures and manifests itself in complex patterns of violence in private and public life before, during and after wars or dictatorships.[3]

2 http://www.frient.de/publikationen-service/dokumente/library/transitional-justice-1.html

3 http://www.boell.de/publikationen/publikationen-boell-thema-ausgabe-1-2011-maenner-frauen-frieden-11266.html http://www.deutscher-frauenring.de/aktivitaeten/seminare/2013/internationales-seminar/dokumentation-der-tagung

Gender-based violence includes both physical and emotional violence as well as gender-based economic exploitation and suppression. Sexualized violence is one aspect of physical violence, whereby sexual acts are conducted in the interests of exerting power, i.e. are not driven by physical needs in any shape or form. During wars or violent conflicts, sexualized violence is often used for tactical or strategic reasons and ordered by commanding officers. The perpetrators and victims of such acts can be children, women and men of varying ages and gender identity or sexual orientation.

In repressive regimes or in societies, acts of gender-based violence frequently occur long before a war breaks out, as a result of grave socio-economic inequalities, religious hate campaigns, excessive nationalism or aggressive ethnicity. These processes, which contribute to the spreading and legitimation of violence and are, in certain places, specifically fuelled by the national or local elite and the media, are also gender-specific in nature. They fortify gender hierarchies, the differences between women with different status, the balance of power among men, homophobia and concepts of militarized masculinity (Hamber 2007: 375ff.).

Sexualized violence enacted on boys and men aims to destabilize society.

During acts of war, warmongers and the benefactors of war – mainly powerful men, but sometimes women from the men's family environment – violently boost inequalities (Buckley-Zistel/Stanley 2012). They order acts of sexualized violence to be committed: mainly on women and girls – but often on men and boys as well. These forms of homophobic ascription and humiliation which are associated with acts of rape conducted by men and, in many places, cut through key cultural or religious taboos, have thus far gone virtually uncommented by researchers, gender and peace organizations, health schemes, criminal justice systems or transitional justice mechanisms, and have neither been examined in terms of their concept nor have they been criminally prosecuted. Targeted violent assaults on people with a different gender identity or sexual orientation are equally not accounted for in transitional justice or the relevant international legal principles.

The widespread focus that transitional justice places on acts of rape committed against women as a strategy of war neglects the fact that these violent assaults are also an indirect form of violence against men. It is therefore all the more important that the concept of this gender dimension be taken into consideration. With this strategy, soldiers or guerrilla units attack the self-esteem and male self-image of men closely related to the victims, and destabilize society. At the collective identity level, such acts of rape come across as degradation of the religious and ethnic unit or of the nation and/or the so-called national body, which women symbolize.

The female body is regarded as a key symbolic point of attack in violence-laden conflicts.

Collective identity is not prescribed but re-established time and time again. Gender plays a significant role in this process. The female body especially is regarded as a key symbolic point of attack in conflicts riddled with nationalistic, ethnic or religious elements. At the same time, in wars with designs on conquering territories in order to access mineral resources, land or grazing pastures, commanders order the use of rape as a collective humiliation and expulsion strategy. Female bodies are therefore politicized during conflict processes. Culturally defined identity patterns and attributions of masculinity which identify men as the guardians of women and children are attacked as a result of women being violated; because men are then shown that they are incapable of protecting members of their family (Seifert 1996, 2006; Eifler/Seifert 2009).

In dictatorships, males representing state power, such as soldiers and policemen, use rape on similar grounds: as an expression of their omnipotence and as a strategy to humiliate opponents as well as to promote esprit de corps. In some cases, women soldiers and policewomen also take part in sexual torture, or the relatively few female commanders order the use of such torture. However, many transitional justice mechanisms fail to disclose these somewhat covert gender-specific motives and facets even though they are geared towards permanently damaging family and social cohesion and result in long-term trauma. Other motives behind rapists' actions, such as misogyny, homophobia, sadism or compensating for their own frustrations, largely go unnoticed in the transitional justice process. Focusing on the raping of women as an isolated, particularistic war strategy ignores other forms of gender-specific violence even though these are widespread among repressive regimes as well as in wars and violent conflicts. Survivors in no way view rape as an isolated form but relate them to other manifestations of violence, such as the destruction of cattle, harvests, technical equipment or houses, and to racist, nationalistic, ethnic/religious and sadistic humiliation.

For this reason, it is vital that the complex and multi-faceted gender correlations be understood in order to overcome the patterns of violence spurned by military forces and wars.

If this does not occur, there is a risk of forms of gender-specific violence and the militarization of entire societies continuing under new circumstances (Bell/O'Rourke 2007: 26ff; Schäfer 2008).

2 Transitional Justice – Conceptual Principles

2.1 Emergence and definition

Transitional justice approaches emerged in the 1980s and 1990s against the backdrop of political upheavals and in the aftermath of the fall of dictators or repressive regimes in Latin America and Eastern Europe (Teitel 2003). In those countries, the end of the East-West conflict deprived the legitimation of violence of all foundation. Governments which had authorized the supply of arms to dictatorships up to that time also found themselves forced to explain their actions and now had to assist in uncovering the atrocities.

Additionally, the national and regional upheavals exposed multilayered local conflicts which were in need of resolution. Government officials or civil society organizations called for an examination of the history of dictatorial regimes with the aim of affording young democracies an opportunity to re-position and re-define themselves. However, the success of such an undertaking depended on the extent to which state documents were made public or agencies and politicians were willing to cooperate. Human rights activists also demanded that acts of violence should be processed which had been committed systematically by the police, military and other security forces or death squads. They did not, however, want to destabilize the political situation and endanger any positive transformations.

Against this backdrop, new ways of coming to terms with severe human rights violations emerged – especially in societies in which perpetrators and victims were forced to continue to live side by side and the old elite continued to hold much of the power or controlled key resources. The country-specific power configurations hampered systematic criminal investigations against high-ranking perpetrators. The old elite cunningly prevented the power structures of repressive systems from being uncovered. For this reason, processing individual cases – mostly extreme acts of violence – became the focal point. Truth and reconciliation commissions were established in countries where no one party to the conflict could be determined to be the clear victor and peace agreements were the result of negotiated compromises (Marx 2007). Research by political scientists into transitions – most of which were analyses by US researchers focusing on the transition from a dictatorship to a democracy and free market economy – subsumed such commissions under the buzzword «transitional justice», following the buzzword «transitions to democracies» found in popular science.

The wars in the former Yugoslavia also required new answers.

However, the upheavals in Eastern Europe, Latin America or parts of Africa not only helped transitional justice mechanisms to assert themselves; rather, the wars in the former Yugoslavia in the early 1990s as well as the genocide which took place in Rwanda in 1994 also called for new answers (Buckley-Zistel 2008; Buckley-Zistel/Kater 2011). Some authors therefore differentiate between the transitional justice institutions which emerged prior to 1990 and those in the course of the 1990s when the international community prosecuted those responsible for acts of genocide and war criminals in criminal tribunals. These were followed by numerous prosecutorial and non-judicial forms of dealing with those criminal acts from the late 1990s onwards which, in some places, took place in very quick succession or even at the same time (Kayser-Whande/Schell-Facon 2008).

These days, transitional justice is an established term in international politics, as indeed it is in peace and conflict research, though various definitions and interpretations are in circulation. They comprise a broad range of institutions and mechanisms which are meanwhile applied in very different situations and with diverging objectives.[4]

Transitional justice stands out for its plurality, relationism and conditionality and runs the risk of being instrumentalized for political purposes. The multilayered dimensions of the problem, which characterize political, legal and societal transitional processes as well as competing debates on remembrance in the aftermath of repressive regimes or armed conflicts, explain the fragmentary and disputed nature of the transitional justice concept (Roht-Arriaza/Mariezcurrena 2006).

The focus was broadened to include violence during civil wars and in weak states.

Up until the mid 20th century, the focus of coming to terms with war crimes or state-enacted violence, depending on the specific country context and historical power configurations, was placed on prosecuting high-ranking perpetrators or the sponsors of violence in the respective government. This was the case during the Nuremburg Trials and the Tokyo War Crimes Tribunal, for example. The 1980s saw this extended to include severe human rights violations, which – as in certain Latin American countries – had been committed on behalf of the state. The focus has since widened and shifted. These days, for example, emphasis is not just placed on accompanying the transition from a dictatorship to a democracy and new political structures by condemning or ostracizing the perpetrators of violence but also on tackling violence in civil wars or weak states (Buckley-Zistel 2008).

This change is, in part, due to reforms which have been undertaken on the basis of international law, such as the 1948 Genocide Convention, the 1949 Geneva Convention, as well as its 1977 additional protocol, and the 1998 Rome Statute on which the

4 http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf

International Criminal Court in The Hague is founded. International criminal justice increasingly sought to bring to account those committing and responsible for war crimes and severe violations of human rights and to curb widespread general amnesties. Nevertheless – with the exception of the 1974 trials against the military junta in Greece – such amnesties were very common up until the 1980s, above all when dictators stepped down having previously negotiated compromises. The changes to the international legal norms came about by virtue of human rights organization initiatives; these organizations in particular approached the Inter-American Human Rights Court and the UN. The change in legal norms resulted in the emergence of new legal institutions for coming to terms with politically-driven violence and severe human rights violations. However, civil society organizations and scientists are today engaged in a debate as to which forms of transitional justice are meaningful in which contexts, having meanwhile recognized an increasing number of errors and structural problems. At the same time, their debates and political demands have shifted from focusing on the prosecution of perpetrators/states to victim orientation in practices of coming to terms with violence that is not embedded in the legal system. This has led to new controversies arising (Roht-Arriaza/Mariezcurrena 2006).

Gender in transitional justice was not addressed until the 1990s. The main driving forces behind this development have been women scientists and women's rights organizations, especially in the post-conflict countries of South Africa, Rwanda and the former Yugoslavia. Entrenching their demands in transitional justice approaches and mechanisms through international law, institutions and concepts is a laborious on-going process that is accompanied by ignorance and resistance. Whenever gender is taken into consideration, focus continues to be placed predominantly on women as victims.

> *The UN transitional justice concept encompasses violations of a variety of human rights.*

The UN defines transitional justice as «the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. It consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations».[5] Every measure must comply with international legal norms and human rights.

The UN transitional justice concept of 2010 places particular significance on establishing institutions in post-conflict countries which are in accordance with the rule of law. Peace and justice should complement each other, whilst equally taking the country's respective context into account. Transitional justice processes should also curtail breaches of social and economic rights. Combining breaches against a wide variety of human rights in such a manner is a particular hallmark of the UN

5 http://www.unrol.org/article.aspx?article_id=29

concept to which many states and civil society actors have shown very little response, however – including Germany. The combination is only addressed in part in peace and conflict research, one landmark exception to this being gender sensitive peace studies (Buckley-Zistel/Stanley 2012).

The UN emphasizes: gender should play a key role in the process of coming to terms with war crimes and human rights violations; gender justice is one of the aims of building peace processes and post-war societies. In this context, the UN guidelines and reports on transitional justice refer to UN Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2106 and 2122 adopted in the years 2000 to 2013 on «Women, Peace and Security». Specifically, this relates to the criminal prosecution of sexualized war-related violence and the promotion of women in peace committees.[6] Women should be involved in all transitional justice planning, implementation, monitoring and evaluation processes – such as truth and reconciliation commissions and reparations programmes – and in the establishment of the rule of law in order to shape transformations and build state institutions in a gender-equitable way (Gunda Werner Institute 2008).

This should fundamentally improve access to state institutions for women and men who, in the estimation of the UN Secretary-General, are particularly affected by war-related violence, and should facilitate the criminal prosecution of gender-based violence in the aftermath of wars. Resolution 1820 adopted by the UN Security Council in 2008 did, after all, define rape as a war crime and crime against humanity. In 2010, UN Secretary-General, Ban Ki-Moon, appointed a Special Representative on Sexual Violence in Conflict; regular reports document the challenges and failures.[7] The final report of the 57th session of the UN Commission on the Status of Women of March 2013 expressly calls for gender-based war-related violence to be prosecuted and punished. Victims should receive better compensation and greater legal assistance.[8] The UN Secretary-General's report published in September 2013 on the implementation of UN Resolution 1325 and on the follow-up resolutions building on its details outlines the significance of gender in transitional justice.[9]

For lasting peace: gender hierarchies must be abolished.

The UN transitional justice concept and the related UN reports attach importance to the economic and social discrimination of women being eliminated. Ultimately, gender-based war-related violence boosts the gender inequalities which were already established in pre-war societies and counted among the causes for the breakout of war. In the aftermath of wars, gender hierarchies prevent women from experiencing

6 http://www.securitycouncilreport.org/un-documents/women-peace-and-security/

7 http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_149.pdf

8 http://www.un.org/womenwatch/daw/csw/csw57/CSW57_agreed_conclusions_advanceunedited_version_18_March_2013.pdf

9 http://www.unwomen.org/~/media/Headquarters/Attachments/Sections/News/In%20Focus/Open%20Debate%20on%20WPS%202013/2013%20SG%20report%20on%20WPS%20pdf.pdf

justice and actively participating in shaping reforms and decision-making processes. The UN organizations are explicitly called upon to help establish gender justice and improve women's access to rights.[10]

Institutionally speaking, the transitional justice concept of the United Nations is assigned to the UN Office of the High Commissioner for Human Rights (OHCHR).[11] It identifies the extent to which peace treaties contain human rights principles and the requirements for transitional justice.[12] The UN Secretary-General's reports from 2004 and 2011 document the work undertaken by the UN in the field of transitional justice.[13] These reports also illustrate the gender activities: women working for the United Nations Fund for Women (UNIFEM) campaigned on behalf of women victims of war for many years. Among other things, they funded the activities of local women's organizations as well as gender training courses or the consultancy work for truth commissions, most notably in African and Latin American countries. The criminal prosecution of rapists was another of the causes they pursued. They equally sought to improve the economic situation of women in the aftermath of wars. In addition, they distributed handouts, for example for the UN to promote increased understanding of the significance of gender in transitional justice and also evaluated the role played by the UN in various transitional justice mechanisms, such as in truth and reconciliation commissions (UNIFEM 2010, 2012). UNIFEM has been a part of UNWomen since 2010.

The World Bank prepared a position paper in 2006 on the integration of gender into transitional justice institutions. Reforms in the judicial, education, health and housing sectors are meant to help establish gender equity and improve the situation of impoverished women victims of war through e.g. reparations (World Bank 2006).

The most important transitional justice approaches have a limited understanding of gender.

The most important **transitional justice approaches** are listed below. The definitions have been formulated by the renowned International Centre for Transitional Justice (ICTJ) in New York which advises state institutions and policymakers at the international, national and local level, prepares background analyses and works in partnership with women's/human rights organizations in post-conflict countries. Contrary to the UN guidelines, these approaches do not take into account gender dimensions for the most part. They have, however, been widely accepted by international researchers and the field of peace policy. These days, transitional justice comprises the following approaches and objectives:

10 http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf
11 http://www.unrol.org/files/E.CN.4.2006.93.pdf
12 http://www.unrol.org/files/96199_A-HRC-12-18-Add1.pdf
13 http://www.urol.org/files/2004%20report.pdf und http://www.unrol.org/files/S_2011_634EN.pdf

- *Criminal prosecution:* Judicial investigations and court trials seek to prosecute those primarily responsible for serious or systematic human rights violations and other crimes.
- *Truth and reconciliation commissions:* pursue the goal of uncovering past acts of violence and paving the way for personal as well as national reconciliation processes. Documenting what has occurred in the course of wars as well as the acts of violence contributes to a collective awareness-raising. In many cases, they establish non-judicial forums for public hearings involving victims as well as the questioning of perpetrators. The commissions make recommendations for amnesties or criminal prosecution. They often set up reparations or rehabilitation committees, which direct concrete demands to post-conflict governments. Since the 1990s, truth and reconciliation commissions have repeatedly been used as an alternative or complement to (inter)national criminal proceedings or special tribunals at the national level.
- *Reparations:* these are measures initiated by the state to compensate victims of violence or surviving relatives of murder victims; truth and reconciliation commissions often provide the impetus to do this. Reparations can be both financial and symbolic.
- *Security sector reforms:* National institutions such as the military, police and judiciary should undergo fundamental change to ensure that violent institutionalized practices, forms of repression as well as corruption are eliminated; the rule of law should equally be enforced.
- *«Memorialization»:* This term comprises every initiative which seeks to establish a culture of remembrance, i.e. national or collective commemoration. This includes memorials and museums designed to help raise awareness, come to terms with the past and avert human rights violations.
- *Amnesties:* Generally speaking, a distinction must be made between general and personal amnesties. The former is based on peace treaties or amnesty laws which effect impunity for all war crimes committed during a defined period of time. They seek to consolidate a fragile peace and young democracies. By contrast, applications for personal amnesties can, for example, be filed with truth and reconciliation commissions. International treaties nevertheless demand that genocide, war crimes and crimes against humanity be prosecuted.
- *Gender justice:* Efforts to oppose impunity for sexualized and gender-based violence are combined under this single claim. It should also be ensured that women who fall victim to violence be given equal access to reparations programmes following human rights violations.

In this classification, the ICTJ therefore only cites gender justice as an isolated sub-item. The significance of gender for all other transitional justice

mechanisms goes largely unnoticed. This is paradoxical since the ICTJ has drafted its own gender concept which requires that gender justice be integrated into transitional justice if lasting peace is to be achieved and violence eliminated. Women's voices should be heard. Women's groups are regarded as stakeholders who can effect transitional justice processes that focus on the victims. In its concept, the ICTJ largely equates gender with women and barely addresses violence-driven masculinity.[14]

This gender ignorance also characterizes the objectives of transitional justice approaches: an end to the impunity of systematic crimes against humanity and severe human rights violations; revelation, social ostracization and punishment for those responsible for violent crimes; documentation of violence as the basis for the process of collectively coming to terms with the past; truth finding;, compensation and reparations in favour of the victims and relatives of murdered victims; personal and national reconciliation; reconstruction and reinforcement of the rule of law; reform of the state security sector (police, juridicature, military); retrieval of state and social stability; the keeping and promotion of peace as well as the prevention of future atrocities (Bell/O'Rourke 2007: 23ff.).[15]

Critical voices speak of trivial processes or even a reconciliation industry.

Transitional justice processes are initiated at varying points in time: immediately following conclusion of a peace agreement – as in the case of Sierra Leone and in countries in Southeast Europe – or not for decades after a dictatorship is abolished, as was the case in Spain (Marx 2007). Women gender researchers raise concerns that peace agreements that are negotiated by rival warlords fighting for power and/or the control of resources as well as high-ranking members of the military frequently provide the models and plans for truth commissions and also declare general amnesties. Gender dimensions of violence are ignored in the majority of peace treaties and the subsequent transitional justice processes (Bell/O'Rourke 2007: 26ff.).

Depending on the country as well as the political will of the respective government and the international community, different forms of transitional justice are practiced in some countries – and this is done, in part, in close succession or at the same time. In the light of the ideological background established in many places and a tendency towards a bureaucratic and/or technicistic implementation of transitional justice mechanisms by governments and international donors, critical voices are becoming increasingly louder. The criticism even goes as far as to speak of an out-and-

14 http://ictj.org/sites/default/files/ICTJ-Global-Gender-Justice-2010-English.pdf

15 For information on the significance of the Security Sector Reform (SSR), see DCAF's detailed studies and differentiated training materials: http://www.dcaf.ch/Series-Collections/Gender-Tools-and-Resources as well as the GIZ paper on gender and SSR focusing on the police and community policing: http://www.giz.de/Themen/de/SID-A9BA2364-791076A1/dokumente/de-ssr-gender-2007.pdf

out reconciliation industry that has created entire ranges of log frames, monitoring tools and evaluation tools to measure success in order to apply these systematically in post-war countries.[16] Case studies, for example from Sierra Leone or Liberia indicate that gender aspects are being instrumentalized to measure the success of the reconciliation work without overcoming violence structures and inequalities (Schäfer 2008).

Some scientific studies also object to the conceptual and/or normative principles and ideological doctrines which did not include any clear guidelines on how to make deposed repressive regimes accountable, however. The consequence: the processes become inconsequential. In the meantime, human rights and victim groups decry that state measures are going in the wrong direction or are insufficient. Some even take their own action when their respective governments remain passive or cover up state-enacted violent crimes.

2.2 Political and scientific disputes surrounding transitional justice

2.2.1 What creates justice? Various justice principles

The principles for creating justice – including gender justice – are anchored in individual transitional justice approaches in a variety of ways (Franke 2006: 814ff.). Political and scientific disputes are sparked by the question as to what principles are effective and appropriate in what transitions. A further contentious issue is the normative character of transitional justice. Often, it is the international community that decides which processes are practiced in a post-war country; critics consider this approach a proliferation of «Western» justice norms (Shaw/Waldorf/Hazan 2010). At the same time, the challenges lie in the fact that the United Nations supports participative and self-determined transitions in post-war societies, especially since, in the best-case scenario, transitional justice mechanisms can reduce violence – and therefore also gender-specific forms of violence – in times of social instability. The examinations of this issue have yet to produce any clear findings that could be of practical relevance and continue to keep researchers occupied.

Restorative justice: this form of justice searches for alternatives to punishing the responsible parties. It strives for confessions of guilt from the perpetrators as well as forgiveness from the victims. The aim is for social initiatives based on local, though frequently revamped traditions to bring about positive conflict transformations. On many occasions, religious rituals are used in this context – at times in return for money or goods in kind. In an international context,

16 http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/WP4_2012.pdf

Christian interest groups are primarily the ones propagating restorative justice, which also has its roots in the bible.[17]

With regard to gender dimensions, they advise women to forgive. This request is interpreted by those responsible – for example, during public hearings in truth and reconciliation commissions – as a female contribution to national reconciliation and to nation-building, and is also frequently staged by the media (cf. Chapter 3.2.) Individual and collective healing is also called for and, in part, related to selective Christian convictions and gender stereotypes. Other religious beliefs are virtually paid no regard.

A culture of remembrance is also nurtured: monuments and memorial sites seek to ensure that the victims' suffering is not forgotten. Whether women are portrayed here only as the victims or also as political actors and the extent to which gender differences are afforded attention depends on the new government in question. Women are frequently excluded in the planning of such sites. Former anti-Apartheid women activists in South Africa additionally demand that the courage of resistance fighters opposing unjust regimes be recognized. This relates to the official historiography as well as to how history is communicated, in schoolbooks for example.

Retributive justice: this approach is founded on the fundamental principle of legalism. In response to violent crimes, punishment is applied as a legal and morally accepted strategy (cf. Chapter 3.1 for the significance of gender in various criminal investigations).

Redistributive justice: the aim here is to establish justice through financial and other forms of reparations (the importance of gender in reparations is the subject of Chapter 3.2.2.)

2.2.2 Justice and/or peace?

The correlation between peace and justice is a hotly disputed topic in the academic community. How should justice mechanisms be implemented and communicated for them to impact the building of peace? To what extent does convicting individual perpetrators at war crimes tribunals promote peace and justice, especially since it is often difficult to clearly define who is the victim and who the perpetrator in the face of complicated and enduring wars (Lincoln 2011)? At the same time, impunity for war criminals plus the lack of prosecutions undermines the rule of law and the dysfunctionality of the legal apparatus; it cements patterns of violence and promotes

17 Restorative justice is also an approach supported by politically influential fundamentalist Pentecostals such as Charles Colson (who died in 2012), Republican, member of the Christian-fundamentalist organization «The Family» and convicted offender in the Watergate scandal. http://www.restorativejustice.org/research

social demoralization. Impunity without the application of other transitional justice mechanisms is rejected in political and scientific debates. Yet when and to what extent criminal prosecution is used, is a highly contentious issue and discussed individually from country to country.[18]

In the debate surrounding transitional justice strategies, thought is given to how a balance can be struck between «punishment» and «amnesty» as well as between «truth» and «reconciliation». Are amnesties justified for perpetrators if the victims demand that they be punished? If one is to assume that finding the truth contributes towards national reconciliation and unity, do truth and reconciliation commissions appear to be the recipe for success? On the issue of which stakeholders can make themselves heard and whether they can help to frame the hearings, heavy criticism is in no means only levelled at the commissions by the victims or survivors. Observers also criticize those politically responsible for planning and implementing the commissions or for the criminal proceedings and not paying regard to gender differences. The responsible parties scarcely consult women's and human rights organizations and fail to put gender on a par with other social, economic and political power phenomena, inequalities and conflicts (cf. Chapter 3.2) (Bell/O'Rourke 2007: 30ff.; Ni Aolain/Rooney 2007: 338ff.).

Some peace researchers compare transitional justice approaches to liberal peacebuilding strategies. Critics accuse liberal peacebuilding of ignoring neo-liberal ideological principles. In doing so, structural socio-economic inequalities go unheeded even though they count among the reasons for wars breaking out or form the basis for exploitation and violence structures in repressive regimes. From a gender perspective, criticism is levelled at the fact that neo-liberally motivated interventions purport especially to promote the economic emancipation of women with a view to attaining consensus among the international community but then push entrepreneurial interests (Bell/O'Rourke 2007: 26ff.).

Individual transitional justice approaches and liberal peacebuilding share the fact that they seek to accelerate democratization processes. Behind a hasty transformation into a democratic system – for example through rashly held elections or implemented truth and reconciliation commissions in the aftermath of a war through which new governments seek to draw a line under the country's brutal past and rely on economic growth as a means of moving forward – lie high risks that a country could become destabilized. By contrast, the «institutionalisation before liberalisation» approach favours reforming existing state institutions and civil society organizations with the help of the international community. Critics raise the point that, through this approach, truth and reconciliation commissions could even destabilize the political power structure and are in no way consistent with the intended justice sought by victims; because former war criminals who have given testimony before a commission but have not been prosecuted for their crimes are known to have filled government posts once again in spite of institutional reforms. If the people in question are those responsible for acts of sexualized violence committed during wars, this is fatal

18 http://www.peacebuildinginitiative.org/index.cfm?pageId=1846

not only for the victims (Poulingy/Chesterman/Schnabel 2007; Roht/Mariezcurrena 2006).

According to peace and conflict researchers, a strict separation of conflict situations, on the one hand, and post-conflict situations, on the other, must also be viewed critically, especially since violence structures remain and violence continues to be exercised (Buckley-Zistel/Kater 2011). At the same time, this dilemma highlights how vital it is to develop comprehensive approaches to overcoming long-established violence structures within which gender-based violence must be expected. Fundamental reforms aimed at overcoming socio-economic inequalities should furthermore be introduced. Just how necessary this is can especially be seen by the gender-specific forms of violence enacted as an expression of gender hierarchies which – if not addressed – are adopted by children and youths. This is emphatically evidenced by the high rates of violence in South Africa (cf. Chapter 3.2.1) (Schäfer 2008: 92ff.).

3 Transitional Justice in Practice

3.1 Approaches and institutions at the international and national level

3.1.1 Ad-hoc tribunals

In the aftermath of the Second World War, momentous war crimes trials were held in Nuremberg and Tokyo between 1945 and 1949: they were designed to make the perpetrators accountable and put an end to impunity. Sexualized violence during wars did not constitute a crime in itself at either trial, however (Bell/O'Rourke 2007: 26ff.). In 1993, the International Tribunal for the Former Yugoslavia (ICTY) commenced its work in The Hague on the basis of UN Resolution 827; the International Tribunal for Rwanda (ICTR) in Arusha, Tanzania, followed in 1995 on the basis of UN Resolution 955. Both tribunals were the first to categorize and proscribe sexualized violence as a war crime (ibid: 26ff.; Franke 2006: 817f.).

Paving the way was the internationally binding Convention against the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979. On top of this came the final declaration of the World Conference on Human Rights in Vienna in 1993, which recognized women's rights as human rights and condemned gender-based violence. The UN Declaration on the Elimination of Violence against Women adopted late 1993 is also worth mentioning in this context. After all, this declaration condemned gender-based violence as an obstacle to lasting peace and explicitly criticized war-related violence against women. In 1994, the UN appointed a Special Rapporteur on Violence against Women, who, since this time, has documented gender-based violence in numerous post-conflict countries.

ICTY and ICTR explicitly included violence against men.

The ICTY and ICTR created legal precedents for the criminal prosecution of sexualized war-related violence by the international community (Bell/O'Rourke 2007: 26ff.). They defined rape and assaults on the sexual autonomy as a separate crime; violence against men was explicitly included here. Among a total of 476 charges brought by the ICTY, 64 crimes related to sexualized violence against women and 31 against men; in five cases, both women and men were the victims. Women were the victims in 19 rape charges, and men in four (Campbell 2007: 411ff.). On frequent occasions, Serbian commanders had forced imprisoned men to sexually abuse other prisoners. Neither the general public nor the media reports took notice of these acts of violence (Sivakumaran 2007; 2010). The media focused on the roughly 20,000 raped women; some

estimates claim that there had even been between 12,000 and 50,000 such criminal acts.[19]

In the years that followed, women gender researchers discussed the weighting between sexual dimensions of violence and the power aspects in the gender relationship as well as in society. They also considered physicality, biological and social gender as well as their association with ethnic and religious differences. After all, Muslim women and men in Bosnia had been abused because they belonged to a certain ethnicity and religious community (Seifert 1996: 35ff.).

Those observing the trials levied criticism at the ICTY's proceedings, one of their main bones of contention being that several female witnesses had not been questioned in a gender-sensitive manner as prescribed by the guidelines. In certain cases, the women victims/witnesses had been cross-examined without having been prepared for this in advance. Women judges and chief prosecutors were in the minority even though female women's rights activists had expected them to go out of their way to support and empathize with women victims/witnesses of acts of violence as their gender companions (Askin 2003: 514). The problem at the ICTY only changed once Patricia Viseur-Sellers, an experienced lawyer, was appointed as advisor to the chief prosecutor for gender-specific violent crimes (Viseur-Sellers 2005: 155ff.).

The ICTR also made women perpetrators accountable.

At the ICTR, which, thus far, has concluded over 50 trials and sentenced 29 defendants, Judge Ms. Navanethem Pillay made sure that one defendant (Jean Paul Akayesu) was sentenced for rape. She used a broad-ranging definition of rape, which was also applied in other cases that followed (Goldstone/Dehon 2003: 123).[20] There was another new element to the ICTR proceedings: women not only appeared as victims and witnesses but were also brought to justice as perpetrators, for example the former women's minister of Rwanda and a few Catholic nuns.[21] Despite this, some female gender researchers were critical of the fact that the tribunal should have paid greater regard to the intersectoral links between gender and violence-laden notions of ethnicity and racism. After all, Tutsi women had been raped, they argued, for being representatives of a certain «ethnicity» that had arisen through the country's colonial history and for being assigned certain negative traits as ethnic-racist stereotypes and sexist hate propaganda in the media before and during the genocide (Green 2002: 733ff.). The trials as well as the sentences passed down at the ICTY and ICTR undoubtedly initiated a paradigm change in international jurisprudence and politics (Franke 2006: 817ff.) even though they did not take gender into full consideration: conceptually, both tribunals largely equated gender-specific atrocities to acts of rape committed against women. Although sexualized assaults on men were prosecuted, homophobic violence mainly went unnoticed. Other gender-specific crimes were equally ignored.

19 http://www.gwi-boell.de/web/gewalt-konflikt-krieg-im-fokus-der-medien-5119.html
20 http://www.universaljurisdiction.org/cases/rwanda/994-ictr-jean-paul-akayesu
21 http://www.nesl.edu/userfiles/file/nejicl/vol12/oosterveld.pdf

Moreover, critics chided the geographical distance to the respective post-conflict societies, claiming that these were insufficiently informed about the work performed by the tribunals.

Select critical female lawyers assume that the ongoing lack of attention afforded to gender has its root cause in the male claim to be the dominant gender and in the authoritarian conduct of men in international institutions who are responsible for passing and implementing legal norms as well as for criminal proceedings (Franke 2006: 817ff.). Certain women legal experts criticize that focusing exclusively or primarily on sexualized war-related violence ignores the complex gender hierarchies and violence structures before and during wars. They also claim that the events experienced in war are suppressed by former women combatants for example who, in many cases, were perpetrators and victims alike, adding that the bases for a gender-just realignment of the legal system in post-war societies were only established to a limited degree; this concerns inheritance, marriage and land law reforms, for example (Goldstone/Dehon 2003: 121ff.).

Parallel to the ICTY and ICTR, other decisions were reached at the international, normative level in order to proscribe sexualized war-related violence. The concluding document drafted by the 1995 World Conference on Women in Beijing and the Action Plan adopted there distinguish between the various gender-specific forms of violence and explicitly condemn acts of sexualized violence committed in wars. The catalogue of demands includes the criminal prosecution of perpetrators and strategies designed to prevent gender-based violence.[22]

3.1.2 International Criminal Court (ICC) and gender

The International Criminal Court (ICC) in The Hague was established in 1998 on the basis of the Rome Statute. In doing so, the states signing the Statute laid the foundations for the criminal prosecution of war crimes, genocide and crimes against humanity. The ICC is responsible for crimes occurring on the territory of a signatory country or committed by a citizen of a signatory country. It is only engaged once every possibility in the incumbent national courts has been exhausted and no one has been criminally prosecuted. The UN Security Council, however, does have the right to refer special cases directly to the ICC. In post-war societies, criminal prosecution is often not possible because the national justice system is not functional. In many places, the legal apparatus had been part of a repressive regime and in no way unbiased prior to the breakout of the respective war. For this reason, certain legal experts postulate that the international community has a duty to intervene. This stance is the subject of heated debate, especially since major powers such as the USA have yet to sign the Rome Statute. Therefore, US war criminals cannot be impeached by the ICC. The ICC has, thus far, mainly investigated war criminals from African nations, admittedly at the request of the respective governments. This is a contentious matter within the African

22 http://www.un.org/womenwatch/daw/public/cover.pdf

Union, however. African women's and human rights organizations are resisting the attempts of certain African Union members to revoke the Rome Statute.[23]

The Rome Statute includes clear guidelines for victims of sexualized violence.

In terms of gender dimensions, the Rome Statute allows the ICC (Article 8(2)(b)(xxii), 8(2)(e)(vi) and 7(1)(g)) to prosecute various forms of sexualized war-related crimes (rape, sexualized enslavement, forced prostitution, forced pregnancy, forced sterilization) as war crimes and crimes against humanity (Boon 2011: 625ff.). Trafficking in women can also be added to the charges as a crime (Article 7(1)(h), 7(1)(c) and 7(2)(c)). The Rome Statute distinguishes between sexual and gender-based forms of violence. This differentiation is based on gender as a social construct in accordance with the rules and procedures of the United Nations and makes particular reference to the terminology of the Beijing Platform for Action. That having been said, it is a challenge for international justice to determine the complex interdependencies between these forms of violence (Campbell 2007: 411ff.). A further problem lies in the fact that the Beijing Platform for Action only pays regard to the male and female gender identity and not to homosexual or trans-sexual identities/orientations; these are not afforded consideration in the Rome Statute either (Oosterveld 2005: 55ff.).

The Statute contains guidelines not just for the judicial assessment, but also for the trials: victims and witnesses have the right to give testimony in non-public court proceedings to preserve their privacy (Article 68). They should be supported by trauma experts, who may take part in the trial (Article 43(6), Article 68(3 and 4)), and receive reparations for their involvement (Article 75). Moreover, a Trust Fund has been established to help them (Article 79).

The identity of witnesses should, wherever possible, be kept confidential when documenting the case by keeping their names anonymous. Victims of sexualized violence are under no obligation to actively participate in giving evidence. Judges are urged to structure the questioning of witnesses and/or victims of acts of sexualized violence in such a way that they are not intimidated or otherwise subjected to emotional pressure.[24] The appointment of judges and prosecutors/lawyers (Article 36(8)(a)(iii)) must be a fair representation of women and men; they should have legal advisers at their disposal for matters relating to gender-based violence (Article 42(9)) (Campbell 2007: 411ff.).

Point of criticism: female witnesses are given insufficient information and protection.

23 http://www.boell.de/de/internationalepolitik/internationale-politik-fatou-bensouda-internationaler-strafgerichtshof-rede-16662.html http://www.boell.de/sites/default/files/2012-08-Perspectives_Africa_1_12.pdf http://pambazuka.org/en/category/features/89175

24 http://www.iccwomen.org/publications/resources/docs/Gender_Integration_in_the_Rome_Statute.doc http://uclalawforum.com/massrape

However, these differentiated guidelines of the Rome Statute are implemented in practice to a limited extent only, critics complain. Female witnesses are not given sufficient information on their rights or the processes in the court room. The legal jargon, the critics argue, prevents women from testifying on rape in a manner that would allow their statements to have bearing in the proceedings, adding that the stringent procedural requirements of conducting a trial often deny female victims/witnesses an opportunity to recount their view of the events, i.e. to contextualize the violence suffered. Women who had survived sexualized violence were reduced to being mere victims in the trials and not recognized as survivors within the meaning of feminist demands, according to critics, who add that women were not always certain to be included in the witness protection programme for women. A number of them were stigmatized and suffered renewed assaults upon their return to their communities.

In the estimation of the critics, charges sometimes do not go far enough: in some trials against Congolese warlords and guerrilla leaders, they claimed, the forced recruitment of child soldiers was investigated, but not on the grounds of sexualized violence, even though this was among the techniques applied to recruit girls and one of the power structures prevalent in the units. The former chief prosecutor at the ICC argued that it was hard to prove the assaults on the basis of witness testimonies. According to the critics, an opportunity had therefore been lost to establish precedents for the criminal prosecution of sexualized violence (Scanlon/Muddell 2009: 16ff.). Only in one case was the raping of boys and men included in the charges (Sivakumaran 2007; 2010).

Time will tell whether these points of criticism will be eliminated during the tenure of the new chief prosecutor, Fatou Bensouda, who took up office in 2012. During her inauguration, she explicitly announced her intent to help children and women see justice served.[25] At the end of August 2012, she appointed Brigid Inder, the Director of the Women's Initiative for Gender Justice, as her gender adviser.

> *The Women's Initiative for Gender Justice calls for equal representation of women and men at the ICC.*

This women's initiative for gender justice is part of the Coalition for the International Criminal Court, a network of non-governmental organizations which follows the work of the ICC with a critical eye. The Women's Initiative for Gender Justice shares and exchanges views and experiences with international and national women's rights and peace organizations. Since 2005, it has been observing the institutional development of the ICC and its processes. Building on the lobby work of the Women's Caucus for Gender Justice, female women's rights experts had founded this initiative at the time the Rome Statute was being conceived and the ICC established.

25 http://www.boell.de/de/internationalepolitik/internationale-politik-fatou-bensouda-internationaler-strafgerichtshof-rede-16662.html

The Women's Initiative for Gender Justice conducts gender training courses and has compiled a practice-based manual.[26] Among other things, it calls for equal numbers of female and male lawyers to be appointed as ICC judges, and a legal advice centre as well as a witness protection programme for women witnesses to be established. It publishes detailed gender report cards on an annual basis, which contain gender-specific analyses of the institutional development, the staffing structure and the processes and/or charges.

These comprehensive reports also address outreach work in the countries of conflict and make recommendations for the International Criminal Court. In 2011 and 2012, the Women's Initiative for Gender Justice criticized, for example, the drastic cutbacks in personnel and funding for the outreach work. It claimed that, as a result, women in rural areas under investigation by the ICC would be insufficiently informed and that such educational and informative work was extremely important for working with witnesses as well as the transparency and acceptance of the ICC on the ground.[27] Individual scientists have verified this on the basis of their empirical studies (Chappell 2012: 50ff.).

3.1.3 Hybrid courts – case study: Special Court of Sierra Leone (SCSL)

The Special Court of Sierra Leone (SCSL) is the first example of a hybrid court. It was set up by the United Nations in cooperation with the government of Sierra Leone. Both domestic and international judges were appointed to the court. UN Resolution 1315 of 14 August 2000 determined that an independent special court should be established to investigate crimes against humanity, war crimes and other serious human rights violations committed during the civil war, most specifically starting from 30 November 1996, the day on which the Abidjan Peace Accord was signed, and extending up to the official peace agreement on 18 January 2002. This cross-border civil war began as far back as 1991; for over a decade, the Revolutionary United Front (RUF), supported by Liberian warlords and Liberia's subsequent president, Charles Taylor, fought against different governments that had come to power as well as various other opponents such as the Civil Defence Forces (CDF) in Sierra Leone.

Representatives of the RUF and the CDF – though not members of the Sierra Leone armed forces – ultimately had to answer before the SCSL. Although this selective choice of parties being charged was met with criticism throughout the country, the then president, Ahmad Tejan Kabbah, was particularly interested in prosecuting high-ranking representatives of the RUF and the CDF.

Despite the court being set up in the capital of Freetown, a large number of people were unable to follow whether the court was able to ensure that justice was served: its public relations department as well as both the national and local media were sparse in their reporting of individual trials (Lincoln 2011). The Special Court took little to

26 http://www.iccwomen.org/whatwedo/training/docs/Gender_Training_Handbook.pdf

27 http://www.iccwomen.org/documents/Gender-Report-Card-on-the-International-Criminal-Court-2011.pdf http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2012.pdf

no account of gender-based violence, a decision that was largely attributable to the attitude adopted by the judges. The court fell into disrepute when, in early 2005, the chief prosecutor, Peter Hallor, was himself found guilty of having abused a thirteen-year-old girl and sentenced to eighteen months in prison (Schäfer 2008: 255ff.).

All criticism aside – the SCSL set new standards in the trial against Taylor.

Liberia's former president, Charles Taylor, also had to account for his actions before the Special Court of Sierra Leone as a former warlord and warmonger. Taylor had been a key figure in Sierra Leone's civil war and funded the RUF. He was impeached by the SCSL in 2003 and taken into custody in 2006. Taylor was charged for, among other things, systematic forced marriages, sexual enslavement and rape as crimes against humanity. In order to avert any political destabilization in Sierra Leone, the trial was conducted in The Hague. On 26 April 2012, Charles Taylor was found guilty on all eleven counts by the Special Court of Sierra Leone. This marked the first time that a (former) head of state, as the commander-in-chief – and not as the immediate perpetrator – had also been convicted of sexualized violence.

At virtually the same time as the inaugural SCSL trials were being held, the Truth and Reconciliation Commission (TRC) in Sierra Leone commenced its work (see Chapter 3.2. for information on the problems that occurred with regard to overlaps in time and incongruities in content). A distinctive feature of the post-war developments in the political and judicial systems in Sierra Leone is that gender-based violence continues to be the order of the day, with the government demonstrating a distinct lack of political will to implement reforms in the legal and security sector even though it is indeed obliged to eliminate violence against women by virtue of the Action Plan on UN Resolution 1325 as well as certain legislative amendments (Olonisakin/Barnes/Ikpe 2011). This is an indication of the opportunities that have been missed in terms of broaching sexualized violence as a social problem in the course of coming to terms with war crimes. This makes the Taylor conviction before the SCSL all the more important for the political lobbying activities conducted by the handful of committed women's and human rights organizations.[28]

3.1.4 Hybrid courts – case study: Extraordinary Chambers of the Courts of Cambodia (ECCC)

In terms of gender, another hybrid court is of particular interest with regard to coming to terms with severe human rights violations: the Extraordinary Chambers of the Courts of Cambodia (ECCC). On the basis of a law passed in 2001 and amended in 2004 (ECCC Law), those primarily responsible for violent crimes during the Khmer Rouge's reign of terror in Cambodia between 17 April 1975 and 6 January 1979 were supposed to be criminally prosecuted.

28 http://gwi-boell.de/web/gewalt-konflikt-sierra-leone-liberia-charles-taylor-rita-schaefer-4535.html

The Khmer Rouge is the Communist Party of Kampuchea that was run by Pol Pot and responsible for forced displacement, forced collectivization, forced labour in the agricultural sector, forced marriage, the separation of parents from their children, massive repression, as well as the torture and execution of «enemies of the revolution». Focusing on the vision of new people, rules of conduct were enacted for every sphere of private life and squads deployed for the purposes of exercising control and punishment. The measures conducted by the military regime, which included human medical experimentation, sexualized violence against women and men as well as forced abortion, resulted in famine, sickness and death for at least 1.7 million people. Both the perpetrators and the victims of rape were penalized by the squads for their «moral crimes» (Studzinsky 2012: 90f.). A People's Revolutionary Tribunal existed as far back as 1979, though it did not take gender-based violence into account.

Following lengthy discourses on the trial content and which procedural law should be applied, the court finally commenced its work on 3 July 2003. It comprised ten international and 17 Cambodian judges. They investigated forced marriages, which had been systematically ordered by the government. Legal and scientific debates not only centred on how women but also on how men had become victims of such marriages. In one case in question, a German lawyer dealt with the forced marriage of a trans-sexual man. During her civil peace service, she took on the task of considering gender dimensions when representing victims.

Exceptional: The ECCC considered people of various gender identities.

Whether or not focusing on forced marriage helps to eliminate gender-based violence and gender hierarchies is questionable: sections of Cambodian society hold the belief that such focus is of secondary importance compared to other forms of mass violence. A further widely-held view is that the Khmer Rouge had and followed a moral code. What is more, the court itself is a contentious issue. Its powers and processes are the subject of heated debate and/or are seen by critics to be too restricted due to the political influence exerted on the ground by the current government.

External observers criticize the fact the government prevents the ECCC from doing its job, that it regulates and fails to sufficiently inform the general public about the court. They also bemoan the restricted conceptual view of forced marriage adopted by the court when considering gender-based violence. The ECCC does consider various gender identities at least, although this has had little to no impact on the gender policy of this post-conflict nation to date: gender policy continues to be exclusively geared towards women. Within Germany's peace policy community, the ECCC's exceptional gender concept is not afforded great attention, though this is a different matter in academic gender research (Buckley-Zistel/Stanley 2012).

3.2 Instruments at the national level

3.2.1 Truth and reconciliation commissions

Truth commissions are non-judicial institutions which seek to process human rights violations and violent crimes. Repressive regimes manipulate how historical events are portrayed in order to legitimize their own actions; truth commissions seek to counter such intentions. By focusing on the victim's perspective, they seek to help people overcome the violence they have suffered (Hayner 2001; Marx 2007). They hark back to initiatives in Latin America which sought to bring to light the machinations of the dictatorships there. Depending on the legal norms in place in the country, civil society organizations or governments are able to install truth commissions. Until 2011, there were some forty official truth commissions around the globe. As a rule, they have deployed a specific system of investigation: they have gathered evidence, researched at archives, evaluated state documents, and interviewed victims and witnesses as well as policymakers. They have drafted reports and formulated recommendations for reparations, amnesties and/or criminal proceedings, which they have then submitted to the newly-elected democratic governments.

From a gender perspective, a few critical comments should be observed: on the one hand, questioning victims/survivors at public hearings about sexualized violence can have a retraumatizing effect, fundamentally speaking. On the other hand, many commissions to date have not assessed rape as a systematic war crime and/or form of repression or torture. This was especially true of the commissions in Argentina and Chile; these focused primarily on the standard definitions of murder, torture and the elimination of political activists (Oettler 2007: 39ff.). A further frequent point of criticism is the geographical aspect: as with international tribunals, the public hearings at truth and reconciliation commissions are held in the capital city and are thus far removed from the majority of people who survived the violence. Since the hearings are open to the public anyway, the geographical distance offers potential victims/witnesses no protection from further violent acts being committed in their surroundings; on the contrary, the long journey to the hearing and the distance between them and their trusted circles of friends and family further exacerbate the situation.

In order to analyze whether and how gender is incorporated into truth and reconciliation commissions, various criteria must be taken into account: the individual mandates, the definitions of violence and rape, fundamental assumptions of gender roles; budgets, the composition of commission members and their gender expertise, as well as the range of gender training courses on offer, the quality of the questioning during public hearings and the special questioning of women. Other important factors include the significance of civil society (women's) organizations; the concluding reports and the implementation of recommendations, such as reparations or judicial reforms. Outreach programmes designed to inform the population as well as media reporting should also be reviewed in terms of their gender impact.

At the conceptual level, it is important whether truth and reconciliation commissions account for differences between women of different backgrounds, religion and

ethnic belonging, as well as their family and educational backgrounds and standing in society. These differences should be correlated to the various roles played by women and girls – girl soldiers, for example – during wars, violent conflicts and dictatorships. The divergent interests and varying needs in a post-conflict context must also be taken into account. By the same token, gender-based violence against men and people of a different sexual orientation/gender identity should be categorized and documented as an integral part of politically-motivated forms of violence, such as torture. This also includes homophobic orders issued to prisoners to abuse each other (Nesiah 2006). In the gender analyses of the truth and reconciliation commissions, it is, however, important not to determine the serious human rights violations as being isolated phenomena but as systematic components of structural violence patterns. These often set the tone for societies long before a war or dictatorship begins; they are fortified in repressive regimes and through militarization. Male identity and role ascriptions as well as the hierarchies among men must be afforded particular attention. If not, there is a danger that violence structures, and the martial disposition of masculinity will persist after a peace accord is reached. This occurs, above all, when governments, reformed state institutions and civil society organizations fail to undertake systematic counter-strategies.

3.2.1.1 Truth and reconciliation commissions in South Africa

South Africa is vaunted in numerous scientific studies and international politics as a positive example of non-judicial mechanisms for coming to terms with the past. At the same time, critical South African researchers and women's/human rights activists use the example of this country to illustrate the limitations of transitional justice.[29] Specifically, they levy criticism at the fact that the Truth and Reconciliation Commission (TRC) has not determined the gender disposition of Apartheid and gender-based violence to be elementary components of state institutionalized violence and exploitation structures. Broad-reaching land expropriations, forced relocations, arrests for violating racist passport laws, the dominance of corrupt chiefs presiding over the rural black population as well as the lack of rights for black women did not fall under the TRC's mandate.[30]

During the Apartheid era (1948-1994), state security forces, acting on behalf of the white minority government, committed severe human rights violations such as massacres, torture, murder and imprisonment through mass arrests. The majority black population was systematically discriminated against through broad-ranging Apartheid laws and state-institutionalized racism. Following a lengthy negotiating process, the first democratic elections were held in 1994. The Truth and Reconciliation Commission was established on the basis of a Truth and Reconciliation Commission law passed by South Africa's parliament in 1995. Its aim was to document serious human rights violations in the period between 1960 and 1994 and to uncover the

29 http://www.gwi-boell.de/web/violence-conflict-south-africa-reconciliation-commission-gender-justice-4350.html

30 The word «black» is not meant to be discriminatory here but has a positive connotation as it is a reference to South Africa's Black Consciousness Movement.

reasons behind politically motivated violent crimes. Two landmark incidents were the Sharpeville massacre of 21 March 1960 and the inaugural democratic elections held on 26 – 29 April 1994. The Commission's mandate comprised crimes committed by members of the national security apparatus and the armed resistance (Schäfer 2008: 51ff.).

Recognized public figures known for their integrity were selected to preside in the Commission, which comprised seventeen members, eight of them women. The Commission consisted of amnesty, human rights, reparations and rehabilitation committees. Whilst the amnesty committee was vested with the task of uncovering the forensic truth, the human rights committee was responsible for social and narrative truth. The amnesty committee was empowered to grant amnesties to individual perpetrators if they were able to furnish credible reasons that the violent crimes committed by them were politically motivated and provided that they could disclose details and the background to the acts of violence.

The truth-telling was meant to contribute to national reconciliation. The Commission interviewed 21,289 victims between 1996 and 1997, around 2,000 of whom took part in public hearings. 88.3 percent of all applications submitted for the purpose of registering victims of Apartheid were approved. In the run-up to the public hearings, over 5,000 amnesty applications were rejected on the grounds that they did not meet the criterion of politically motivated violence but rather that they related to sadistic acts of violence among other things. However, the majority of the efforts to hold accountable those in the former government, the secret service and the military, who were responsible for ordering the atrocities, failed. After the TRC officially came to an end, political disputes erupted time and time again because the government run by Thabo Mbeki (1999-2008) sought to introduce amnesty regulations which were not in line with the Commission's fundamental principles and would have favoured the perpetrators.

From 1995 onwards, the Centre for the Study of Violence and Reconciliation (CSVR), a South African non-governmental organization engaged in researching and eliminating structures of violence began a partnership with the Gender Research Group of the University of the Witwatersrand in Johannesburg. They vented criticism at the law which had been passed in order to establish the Commission. However, the recommendations put forward by the women gender experts were only adopted in part. Instead of structurally anchoring gender in the work performed by the TRC, the Commission was merely willing to hold three special hearings for women across the country (Meintjes 2009: 101ff.). There was a lack of gender-sensitive investigation methods; especially women without a school education saw the rigid question and answer format as an imposition. They were forced to verbally squeeze their traumatic experiences into pre-determined patterns which were geared towards a rigid recounting of events and a discourse on national reconciliation. The media's sexist and sensation-seeking reporting humiliated female witnesses time and time again. Men who had fallen victim to sexualized violence, in Apartheid prisons for example, did not dare to testify before the TRC; they were afraid of being humiliated in public.

The TRC report restricted gender to the individual experiences of women.

At the same time, the members of the Commission largely ignored gender-based humiliation and sexism as well as the institutionalized homophobia that was prevalent among South Africa's armed forces. This concerned electric shocks, hormone treatments and medical interventions performed on forcibly recruited, white homosexual soldiers in the years between 1967 and 1991. The doctors performing the treatment in military hospitals and psychiatric clinics regarded homosexuals as sick people and saw no reason for testifying before the TRC about their «cures». For its part, the TRC hid militarization from the entire society.[31] The racial humiliation and degradation of black men by the white regime as well as white women and men was equally not recorded as a strategy inherent within the system (Sriram/Pillay 2009). In the TRC's report, gender hierarchies were only mentioned in a separate chapter as individual experiences of women.

South Africa continues to be marked by immense gender inequalities, social divides, grave differences in property ownership and poverty-related problems, especially among the majority black female population. Gender-based forms of violence – above all rape and domestic violence – are especially frequent occurrences here. Homophobic violence and violence against young men – in the form of gang violence, for example – is the order of the day (Hamber 2007: 375ff.). Although the TRC accompanied the political change, it did not fundamentally revise the deep-rooted structures and legitimation of violence. This makes the work of gender organizations all the more important, such as the Sonke Gender Justice Network, which works with men and boys to eliminate violence-laden masculinity.[32]

3.2.1.2 The Truth and Reconciliation Commission in Sierra Leone

Following the example set by South Africa, the Truth and Reconciliation Commission (TRC) in Sierra Leone sought to uncover and document violent crimes committed during the civil war between 1991 and 2002 in order to promote national reconciliation. The TRC's work was scheduled to last 18 months in the years between 2002 and 2004. It identified 10,002 war victims, of whom 35.5 percent were women. 53 percent reported acts of sexualized violence committed by the RUF, 30 percent of whom had been victims of mass rape; six percent witnessed gender-based violence through other warring factions. These recorded figures bear witness to a mere fraction of the violent crimes that were actually committed. Lower-ranking perpetrators feared they would be referred by the TRC to the Special Court of Sierra Leone which, in part, convened at the same time (cf. Chapter 3.1.3). For this reason, they did not want to testify before the TRC. Accordingly, the significance and scope of the Truth and Reconciliation Commission in terms of processing violent crimes committed during the lengthy civil war were limited.

31 http://wissenschaft-und-frieden.de/seite.php?artikelID=1880

32 http://www.gwi-boell.de/downloads/presentation_Patrick_Godana.pdf

Other points of criticism: Although the TRC in Sierra Leone headed by Joseph Humper, a Methodist bishop, made reference to moral entitlement and the spiritual aura of the Anglican archbishop Desmond Tutu in South Africa, there was a lack of recourse to the collective, morally legitimized struggle. The composition of the Commission also proved problematic. It was dominated by Christians in a country whose inhabitants are primarily Muslim (Human Rights Watch 2003: 61f.). However, the TRC was criticized in particular for the national reconciliation process dominated by the post-war government. This process, it was claimed, was forced on traumatized people and ignored the problems as well as the elimination strategies on the ground. At the same time, high-ranking military personnel under the Kabbah government showed no willingness to testify on violent crimes before the Commission and to apologize for their actions.

Many people linked the hearings with false expectations.

Although a number of «chiefs», local authorities, announced the schedules for the TRC hearings, they themselves steered clear of the events. In many places, people had no idea what purpose the hearings served, or linked them with false expectations – in particular with the hope of reparations. The Truth and Reconciliation Working Group, a civil society initiative that followed the reconciliation process with a critical eye, sought to mediate (Sriram/Pillay 2009).

The TRC was also vested with the task of uncovering gender-based war-related violence, which international women's'/human rights organizations, the UN Development Fund for Women (UNIFEM), the then UN Special Rapporteur on Violence against Women and the UN High Commissioner for Human Rights had all called for. The latter had previously campaigned during the 1999 Lomé peace accord negotiations for women's interests to be considered. UNIFEM had funded a TRC consultancy and support programme for women.[33] However, since only a comparatively small number of rape victims testified before the TRC – not even at the special hearings – Binaifer Nowrojee, a Kenyan women's rights expert, did so on their behalf.

Some people were hesitant in testifying as witnesses. They feared that the tensions that continued to shape how they lived together could once again escalate into violence. Even though the TRC attempted to be culturally sensitive in its actions by holding public reconciliation ceremonies, it unwittingly thwarted local approaches to collectively coming to terms with war. These approaches largely consisted of silence – the «cooling down of emotions» – and related to concealing emotionally and physically painful individual experiences which politically influential local secret societies demanded. Over generations, the secret societies carried out genital circumcisions during girl and boy initiations, a prerequisite for being recognized as a fully-fledged adult. In the aftermath of the war, the secret societies exerted pressure on former

33 http://www.unrol.org/files/Guidance%20note%20on%20Gender%20&%20Transitional%20Justice.pdf

combatants in certain places to bow to their dictatorship or overcome their trauma on their own.

In October 2004, the TRC presented its report spanning several volumes and documenting over 8,000 witness testimonies. Even in the capital city of Freetown, it is very difficult to access, however; the rural population, which has not been able to enjoy a school education, knows little to nothing of its existence (Schäfer 2008: 251ff.). What is more, it only touches the surface of the gender-based violence that was committed: gender-based violence against men is afforded insufficient attention.

The situation today: local courts are dictated by the traditional elite.

Gender-based violence continues to remain a structural problem in society; despite certain legislative reforms, perpetrators are rarely brought to justice. Judicial reforms are very slow in advancing; the courts are poorly equipped, chronically understaffed and inefficient. Judges are seen to be incompetent and corrupt. For this reason, the majority of legal disputes continue to be heard before «customary courts», which pass sentence based on customary law and are firmly in the control of the traditional local elite. This is not a pre-colonial legal system but one created during the colonial era. At the end of the war in 2002, it nevertheless also primarily served to keep women and low-ranking young men dependent with harsh sentences. Hearings at customary courts on rape cases and other forms of gender-based violence mirror the gender hierarchies. The victims are usually pressured into reaching an agreement with the perpetrator at the family level and accepting «compensation» such as money or small livestock – provided that their accusations are taken seriously in the first place and not dismissed as lies.

The police have also shown themselves to be fairly resistant to attempts at reform: prior to the war, they especially proceeded with violence against regime opponents; gender-based violence was never prosecuted. These days, the police force is very poorly equipped just like the judiciary. There are repeated indications that the police work hand in hand with criminals and local hoodlums. The police have little to no training, are illiterate in certain cases and are poorly paid. Given these structural problems, the policewomen recruited especially to deal with family violence have very few opportunities to make any impact. Added to this, private foreign security companies can continue to offer their expensive services in cities and mining areas in spite of the problematic role they played during the war, which has resulted in a divided security system.

On top of this, local authorities, which tolerate gender hierarchies and gender-based violence as a means of preserving power, are also supported under the new patronage system. Neither parliamentarians nor the ministers of welfare, gender and children do any form of political lobbying in order to change this. Since the end of the war, genital circumcisions have begun to be performed on girls once again throughout the country and the daughters of impoverished parents are forcibly married off while still children. Individual women's and human rights groups in the country have

expressed their criticism at this but their influence remains minimal (Schäfer 2008: 261ff.).

3.2.2 Reparations programmes

Truth and reconciliation commissions are often linked with other transitional justice measures: these include reparations programmes. The Commission in Sierra Leone recommended the payment of reparations to war victims, for example. Here, it became apparent how complicated making meaningful and gender-just reparations can be. Unlike amputees, who had organized themselves well, only a few hundred raped women received reparations. At the same time, a large portion of the money was handed over to traditional authorities, the so-called chiefs. They were supposed to offer community and cultural programmes as a means of fostering social cohesion. This occurred even though corruption and exploitation on the part of numerous chiefs counted among the causes for the breakout of the war. The consequence: local socio-economic gender hierarchies and the power held by old men manifested themselves under new circumstances.[34] Yet, material compensation could have had a rehabilitating impact on the lives of impoverished and socially marginalized women.[35] They often found themselves in an economically precarious situation as a result of anti-women interpretations of the law (Bell/O'Rourke 2007: 26ff.). To ensure that reparations fulfil the specific needs of women of different standing and with varying traumatic experiences suffered during wars, state planners must bear in mind what priorities the affected parties themselves have and the extent to which women's organizations represent their interests. For example, support should not only be given to rape victims or the mothers and/or grandmothers of murder victims but also to women who have suffered other forms of physical or emotional abuse. Otherwise certain images of women and stereotypes will be reproduced, as case studies in Argentina have documented. Staunch female political opponents of the brutal military junta there were largely ignored as a victim group unlike the mothers of people who had been persecuted, which sparked controversy among those affected (Oettler 2007: 36ff.). One mothers' organization rejected reparations outright as it did not want to be seen to be «selling out». They reasoned that such payments individualized the fate of the disappeared and therefore detracted from the fundamental structures of violence.

In Guatemala, a country once torn by civil war, women feared that the reparation measures would result in stigmatizations in their social environment (cf. Chapter 3.2.3.). The various human rights, indigenous and refugee organizations, which had adopted male perceptions of male dominance, subsumed gender-based violence under political violence. Although rape victims were listed in the official guidelines on how to register war victims who should be entitled to compensation, hierarchies between the various groups of victims of violence were created in practice, for example between the tortured, displaced and people whose houses had been destroyed. Rape

34 http://www.justiceinperspective.org.za/africa/sierra-leone/reparations-programme.html
35 http://www2.ohchr.org/english/law/remedy.htm

victims were ranked below these. Maya women who spoke no Spanish and were not school-educated found it very difficult even to register officially as victims (Rubio-Marin 2006).

Structural problems prevent reparations being paid to victims.

Hierarchization, the unequal classification of victim groups, above all becomes problematic when the impoverished communities stop receiving payments. The envy felt towards women receiving reparations further burdens those who are often already severely traumatized (ibid.). Certain structural problems also exist: scores of people entitled to reparations do not have their own bank account because they do not receive a regular income for which banks require proof before an account can be opened. If the reparations are then paid to an account held by a male relative, it is not uncommon for him to hold on to the money. This makes it all the more important to be precise when checking the exact modes of payment (Rubio-Marin 2006). In South Africa, the local remitting offices and banks did not track whether the money had actually reached the people concerned or had been misappropriated by male bank employees or relatives of the female beneficiaries.

During the TRC hearings, a victims' organization known as the Khulumani Support Group was set up. It also acted as a point of contact for people who had encountered difficulties receiving their reparations. In view of the limited funds in the national budget, the Khulumani Support Group demanded in 2002 that international conglomerates that had profited from and helped to sustain the Apartheid regime be held accountable and required to make a financial contribution. In 2007, the NGO, which even today represents over 50,000 Apartheid victims and survivors, was able to file a claim for compensation with a court in the United States of America in reference to a specific clause in US law (Alien Tort Claims Act). Most recently, the US Supreme Court has been dealing with this case. The financial issues aside, Khulumani has been training female trauma experts and promoting mutual assistance for the still impoverished and socially marginalized inhabitants of townships and homelands.

The implementation of reparations programmes is also a problem in Morocco. Since gaining independence in 1956, thousands of civilians have been randomly detained, tortured, displaced and murdered. In response to the increasingly vocal domestic and international criticism, the present monarch, King Hassan II., founded the Advisory Council on Human Rights (CCDH) in 1990. Several hundred political opponents were released. New reparations initiatives promote projects in communities that had previously been excluded from the development processes on political grounds.

In 1999, the so-called Independent Arbitration Commission (IAC) came into existence. The Commission arranged for compensation to be paid to victims of politically-induced violence. Following pressure from civil society initiatives, the Equity and Reconciliation Commission (IER) was established in Morocco in 2004. Its objective was to uncover severe violations of human rights which had been committed by state security forces, especially during the 1980s. It was also vested with the task of

promoting the rule of law and making reparations programmes available (Dennerlein/Hegasy 2007: 102ff.). The legal and institutional reforms and reparations programmes that it recommended have only been rudimentarily implemented up to now. Social and economic gender inequalities are not afforded sufficient consideration, as female gender experts have pointed out and criticized.[36]

The lack of reparations in East Timor also ran counter the victims' justice needs. This was all the more disappointing for the still impoverished women, especially since the TRC there had worked with a differentiated gender and violence concept. The Commission had given consideration to numerous forms of violence that had been enacted during the Indonesian occupation (1974-1999), had taken the socio-economic background into account and held culturally sensitive hearings (Buckley-Zistel/Stanley 2012; Harris-Rimmer 2010). Gender-based violence remained a social structural problem, however.

Reparations could result in stigmatization and fuel envy.

Critics cite very fundamental objections to reparations: they could have the effect of silencing victims. A process of coming to terms with the past at an individual and collective social level would thus be undermined. Moreover, reparations could result in the recipients being socially stigmatized or fuel envy within society.

They call for compensatory payments made to individuals to be linked to comprehensive structural development measures as well as to educational and training measures for eliminating violence and hostility. State social benefits, free access to health care and education, symbolic actions on the part of the state, such as public memorial events or official apologies, are other potential measures that could be taken. Only then is it possible for a society to achieve lasting change.

3.2.3 Symbolic tribunals

In various countries, experiences have been gained as to which alternative approaches can ensure justice. The Women's International War Crimes Tribunal convened in Tokyo in the year 2000 was a symbolic and non-legally-binding tribunal that denounced the atrocities committed against around 200,000 Asian women during the Second World War. Between 1937 and 1945, so-called comfort stations were set up for Japanese soldiers in which young girls and women were abused as sexual slaves. These systematic war crimes were addressed by the military tribunal held by the allied forces in 1946. Recognized judges and prosecutors conducted the trial during which they indicted high-ranking military personnel and politicians. The Japanese government has yet to issue any admission of guilt. The fact that this court convened and delivered a symbolic sentence which made the public aware of the sexualized war

36 For information on the mandate, background, structures and findings of the Commission, see http://www.usip.org/publications/truth-commission-morocco For gender dimensions http://ictj.org/sites/default/files/ICTJ-Morocco-Gender-Transitional%20Justice-2011-English.pdf For women's rights in Morocco http://tn.boell.org/web/122-342.html

crimes was of symbolic value to the truth-finding process, society coming to terms with the events and the public indictment of the responsible parties (Matsui 2002).

Women from Guatemala charged national security forces with rape.

Referencing the Women's International Tribunal in Tokyo, women in Guatemala held a symbolic trial shortly before International Women's Day in March 2010: they charged state national security forces with having committed violent acts during the 36-year civil war (1960-1996). The war was preceded by a military coup in 1954 – in the run-up to which the US Secret Service had brought its influence to bear – which prevented a sustainable democracy from being established. Between 1978 and 1982 especially, national security forces engaged in excessive violence against the Maya population. Entire villages were exterminated, at least 150,000 people died, 50,000 disappeared, and rape as well as sexual enslavement were systematically committed (Oettler 2007: 54). Such violence against women was merely the atrocious continuation of the humiliation and suppression that had been the order of the day in the run-up to the war.

At the invitation of Guatemalan women's and human rights organizations, 28 female witnesses were heard at the women's tribunal, which was presided over by women judges. They accused the then government and public servants of being responsible for the acts, arguing that rape had been a part of the military strategy. The women judges called for an end to impunity, compensatory payments to be made to the people concerned and for ratification of the Rome Statute. The latter occurred on 2 April 2012.

In contrast to this symbolic tribunal, the truth and reconciliation commission (Comisión para el Esclarecimiento Histórico) which convened between 1996 and 1999 only selectively addressed sexualized violence against women.[37] The commission was based on the peace accord signed between the government and the guerrilla organization La Unidad Revolucionaria National de Guatemala (URNG) in 1996. Back in 1994, these conflicting parties had agreed to set up a commission with the aim of investigating severe human rights violations. In 2003, the government reached a decision to launch a reparations programme in support of the survivors; after a change of government in 2005, this decision was revoked, however (cf. Chapter 3.2.2).

The militarization of society endures in drug and gang warfare.

Gender-based violence has remained a problem in Guatemala until the present day. In 2011 alone, 685 women were murdered according to official statistics, with only four percent of the perpetrators being prosecuted and sentenced.[38] The culture of impunity continued to dominate in 2012 when at least a further 580 women were

37 http://www.usip.org/publications/truth-commission-guatemala

38 http://www.amnesty.org/en/news-and-updates/guatemala-must-act-stop-killing-women-2011-03-07

murdered. As early as 2006, the Inter-American Commission on Human Rights called for the state and government to put an end to impunity. The UN Secretary-General's Special Rapporteur on Violence against Women had also demanded the same action one year previously.[39]

Impunity fosters violence, especially since the perpetrators frequently belong to organized crime. Guatemala is a hub for the drug trade to enter the USA; transnational criminal gangs also profit from trafficking in women. Other conflicts exist as well: land ownership and land use rights are distributed very unequally; the population is divided between the rich and the poor. Over 28,000 security firms are officially registered, many of them founded by former military personnel. They also profit from a flourishing drug trade.[40] Para-military goon squads purport to be self-defence groups and, among other things, intimidate human rights activists. The militarization of society therefore endures at this level and in drug and gang warfare; they prevent lasting peace processes as well as a comprehensive coming to terms with violence committed during civil war and with social reorientation. One expression of continued violence is the widespread gender-violence committed against women as well as homosexuals and transsexuals. From the point of view of women's organizations, this makes it all the more important to put an end to impunity.

3.3 National and local level: Gacaca courts in Rwanda

The processing of murders and severe human rights violations through criminal prosecution during the genocide in Rwanda in 1994 was governed by the genocide law adopted in 1996 and the Gacaca law passed in 2001. Supplements to the Gacaca law were passed by Rwanda's parliament in 2004 among other years. Rape was initially set on a par with forms of violence such as property damage. Only after pressure had been exerted through massive political lobbying and public relations campaign undertaken by widows' and women's organizations did parliamentarians declare their willingness to elevate this form of violence to a higher level of criminal prosecution. Perpetrators were divided into different groups based on the gravity of the crimes and their responsibility for planning and carrying out acts of genocide. Those primarily responsible should be held accountable before the International Criminal Tribunal for Rwanda (ICTR) in Arusha and all other national courts and/or local Gacaca courts.

The genocide was preceded by hostilities from October 1990 onwards. The Rwandan Patriotic Front (RPF) attacked Rwanda from Uganda in an attempt to overthrow the government there. Victims of the violence included people from various sections of the population. By this time, Rwanda had already survived a changeful pre-colonial and colonial past: various colonial rulers and missionaries had intensified socio-economic hierarchies in society, institutionalized racist perceptions and manifested ethnic differences. An armistice law was passed in 1992 followed by the signing of the Arusha Peace Agreement on 4 August 1993. Despite these accords, the

39 http://cgrs.uchastings.edu/documents/advocacy/special_rapporteur_guate.pdf

40 http://www.boell.de/de/navigation/aussen-sicherheit-guatemala-drogenkartelle-12258.html

violent disputes continued. The assassination of President Habyarimana was followed by one hundred days of systematic genocide in the spring of 1994 during which around 500,000-1,000,000 people were brutally murdered. The majority of them were Tutsi, in keeping with the widespread ethnic categories in Rwanda.

The Gacaca courts were vested with the task of restoring social «harmony».

More than 100,000 perpetrators of genocide were detained, among them around 2,000 women;[41] only approx. six percent have been prosecuted thus far. Since the national judicial system was overburdened, the Rwandan government headed by Paul Kagame installed so-called local Gacaca courts. They were vested with the task of processing the genocide and helping to establish connective nationalism. The rules according to which these trials were conducted were amended again over time without civil society having any opportunity to influence them. They were a part of selective interpretations of history, on ethnicity for example, and referred to the village tribunals which had been seized of cases involving breaches of law or disputes during the pre-colonial era. There, women were not regarded as independent legal persons and were not entitled to speak. Prior to the genocide, Gacaca courts had been run by male elders; their powers had been revised repeatedly during and after the colonial era (Sriram/ Pillay 2009).

In the aftermath of the genocide of 1994, new Gacaca courts were held in approx. 9,000 settlements. Each one of them had around 19 elected lay judges. They underwent a crash course to prepare them for their duties. The courts were vested with the task of restoring social «harmony». Perpetrators who filed a guilty plea and issued a public apology received drastically reduced sentences resulting in them merely performing community work. These trials were criticized by human rights organizations because the defendants were not assigned a defence lawyer. Moreover, the competencies of the rashly selected and trained lay judges were dubious in many places. Several of them were illiterate and it was questionable whether they had understood how the laws were to be implemented at all (Human Rights Watch 2011:18ff.).

The lay judges were not given any gender training. Only a handful of women testified.

Moreover, the lay judges were not given any gender training; the public trials did not afford the rape victims any legal protection or justice. Their cases were also heard before Gacaca courts following the passing of a law amendment in May 2008 despite fierce protestations being voiced by women's organizations and associations of genocide widows (ibid.: 112). The inclusion of women judges in the process did not guarantee fair trials. Only a handful of women testified; they were fearful of being humiliated and of hostility towards them. Some lay judges even attempted to bribe

41 http://www.boell.de/de/navigation/afrika-voelkermord-ruanda-frauen-als-taeter-12490.html

rape victims and offered them money or livestock, the intention being to have them withdraw their testimony to enable «social harmony» to be restored (ibid: 112).

The trials mirrored gender hierarchies and sexist stereotypes.

During several Gacaca trials, the perpetrators denied all guilt whatsoever. Some justified their acts of violence and categorically refused to apologize to the victims or surviving family members (ibid: 115ff.) A few even accused the rape victims of spreading lies out of jealousy or because of family conflicts over land or livestock. In some areas, village inhabitants accepted interpretations at the expense of the victims and/or survivors who once again suffered trauma as a result of being confronted with the perpetrators and their broadsides. Scores of Gacaca courts thus became venues for carrying out misogyny, local rivalries and envy without the lay judges stepping in to prevent it. The trials mirrored gender hierarchies and sexist stereotypes.

Fundamentally speaking, political observers and researchers question the extent to which Gacaca courts, which had limited functions until 1994, were suited to eliminating gender through judicial means. Supporters emphasize that civil society is directly involved. Opponents criticize that the neo-traditional Gacacas are an expression of «contrived traditions» and interest-led institutions as part of the «social engineering» pursued by the Kegame government that has held power since the genocide. They also argue that the courts are dubious from a political and human rights perspective because they do not observe international legal standards (Huyse/Salter 2008). For this reason, the Office of the United Nations High Commissioner for Refugees (UNHCR) advised as far back as 1996 against allowing acts of violence committed during the genocide to be tried by new Gacaca courts.

Having initially been praised and devoid of criticism, especially in theological, ethnological and development policy studies, the Gacaca courts have been the subject of increasingly more vocal international criticism for a number of years for the lack of quality and reconciliatory impact these summary trials have had against mass violence. They do not even consider the minimum criteria for reconciliation processes, such as the willingness to uncover the truth, it is argued (Huyse/Salter 2008). A further point of criticism is that they frequently do not meet the needs of the genocide survivors either. These have varied until today based on gender, origin, the socio-economic situation and age. Poverty and severe traumatization continue to burden socially marginalized rape victims in particular (Schäfer 2008: 267ff.).

It became increasing difficult for victims and surviving family members to live and live together in the same place as the perpetrators. In some areas, genocide survivors were given accommodation in isolated settlements. Time and time again, raped women were accused of witchcraft. Corruption and misappropriation rapidly cut into the money that had been set aside in a state fund to assist women. Even so, the compensatory payments served to confirm the distorted picture that several Hutu had, as they believed that the Tutsi wanted to outdo them. Some observers have raised concerns that these problems have been further aggravated by the Kagame government's intolerance of democratization. Instead, state repression has paralyzed

the discussions on the inheritance of the culture of violence and on structural and/or socio-economic problems and/or possible solutions.

3.4 Other formalized and informal approaches

Other examples of alternative transitional justice mechanisms exist: In Tunisia, for example, activists network in order to document the experiences of women who, as prisoners of conscience, had suffered under Ben Ali's dictatorial regime. They sought to record gender-based violence in official documents as part of the repression and to make it public, reasoning that, only then would victims of violence have an opportunity to receive reparations or medical and psychological help. Addressing the reasons behind the violence is also intended to help eliminate the structural causes of gender inequality and avert violent assaults in the future.[42]

Local justice initiatives are another example (Shaw/Waldorf/Hazan 2010). In some of the regions torn by violent political and religious conflicts in the country, Indian women's organizations have established local arbitration courts to hear the numerous domestic violence cases. With the help of lay judges, the conflicting parties have negotiated legally-binding and socially-acceptable agreements.[43]

Some of these alternative models have the capacity to process sexualized and gender-based violent crimes to the extent that they do justice to the needs of the survivors. They do, however, run the risk of being caught up in the vice of local misogynistic norms, which, in many places, offer limited leeway for gender justice. This makes it all the more important to take a critical view of the specific local interpretations of traditions and culture which are often propagated by the local elite, i.e. influential and wealthy women and men. Questions must also be raised as to the extent to which the informal initiatives can demand accountability from the perpetrators. This is especially true of cases in which the perpetrators themselves belong to the elite and the victims are socially marginalized, impoverished women. The extent to which women are pressured to forgive in order to restore social «harmony» should be viewed critically. This committed desire for harmony often glosses over the culturally justified gender and generational hierarchies or even the exploitation of women of low standing and young marginalized men. Even greater caution should be exercised with respect to the local elite's pretence at seeking harmony (Huyse/Salter 2008).

Neo-traditional arbitration courts support the old power elite.

In post-war situations especially, in which power structures are newly established, the elite abuses the alternative transitional justice mechanisms in certain places: In Liberia, women's groups denounce the local neo-traditional arbitration courts over

42 http://www.dandc.eu/de/article/verunsicherte-maenner-selbstbewusste-frauen-und-geschlechtsspezifische-gewalt-nach http://tn.boell.org/web/122-340.html

43 http://www.medicamondiale.org/fileadmin/content/07_Infothek/Gerechtigkeit/medica_mondiale_Auf_der_Suchenach_Gerechtigkeit_Tagungsdokumentation_K%C3%B6ln_2008_dt.pdf; http://www.1000peacewomen.org/upload/110525%20Shortcut_to_Justice.pdf

which political authorities and the heads of secret societies preside, which acquit rapists if they make a small payment in kind and apportion blame to the victims (Olonisakin/Barnes/Ikpe 2011). The government profits from the restoration of order in rural areas, especially since the local authorities clearly take sides during election campaigns. Under different historical and legal circumstances, the Mozambique government also uses neo-traditional rites for the purpose of preserving power for itself (Huyse/Salter 2008).

4 Security Sector Reforms

The abuse of power by local stakeholders in connection with informal approaches to transitional justice and/or local courts in post-war societies should be correlated to the lack of reforms and an insufficient presence of state institutions; because no action is taken at the national and international level against those in government and the representatives of state institutions who fail to observe the criteria of good governance.

In many countries, the police, judiciary and military were largely responsible for committing the violence prior to the breakout of war or violent conflict and also prior to and during dictatorships. As national security institutions, they tolerated acts of violence or failed to prosecute; by doing so, they upheld the respective unjust regime. In the aftermath of wars and following the end of repressive systems, the main challenge lies in fundamentally reforming these institutions. In many countries, citizens have lost all trust in these institutions because they have been humiliated, abused or tortured in courts, police stations and military camps. Sexualized violent assaults frequently went unprosecuted and no action was usually taken to combat daily and gang criminality. Citizens even had to pay bribes to acquire the most basic of administrative services.

> *The DCAF has developed gender training courses for the police, judiciary and military.*

Full structural reform of state institutions is therefore all the more important. This relates to legal and political principles as well as the practices and working methods of the institutions in question. Special attention must be devoted to recruiting personnel; to this end, benchmarks for their conduct must be established and reviewed. The penalization of misconduct as well as binding accountability are equally important.

The Geneva Centre for Democratic Control of Armed Forces (DCAF) has developed numerous training materials on gender issues and conducted practice-based gender training courses in the past few years.[44] Since the DCAF works in partnership with UN organizations, the European Union, the OSCE and human rights organizations such as Amnesty International, the materials have widespread importance. They contain concrete proposals for police, judiciary and military reform and relate to the political framework, institutional structures, budgets as well as personnel development. Gender is a key factor in every area; this concerns gender in specific

44 http://www.dcaf.ch/Series-Collections/Gender-Tools-and-Resources http://www.gssrtraining.ch/

actions, gender knowledge and awareness among personnel. Gender mainstreaming is linked to a human rights approach.

The DCAF materials also explain the benefits that can be derived if more women are hired in such state institutions. They should be points of contact for victims of violence in police stations and courts. The concept is geared towards promoting women, including further training for women's organizations which should be strengthened in their role as critical observers of state reform programmes. This approach seeks to create an independent system for monitoring the state security sector outside post-war governments.

> *The DCAF calls for the police, judiciary and military to be held politically accountable.*

At the same time, the DCAF strives to make those in government more accountable in order to establish the rule of law and prevent human rights violations being committed by the police or soldiers and unjust sentences being pronounced by corrupt judges. The main target groups are male functionaries. The regional focus is on West Africa (Liberia, Sierra Leone), North Africa (Tunisia) and South-East Europe (Serbia, Bosnia and Herzegovina). Moreover, specific gender training courses have been carried out for individual departments within the male-dominated security sector, including in Nicaragua, East Timor, Afghanistan, Nepal and Indonesia.

Questions must be asked as to whether the changes which have focused on improving what is offered for women can eliminate the entrenched abuse of power, corruption and willingness to commit violence that exist among the frequently underpaid and very poorly educated representatives of state institutions. It would be important to examine their masculine self-images and role ascriptions, including structural homophobia as key elements of authoritarianism and militarism. Such a revision process should include criticism of their functions in repressive regimes.

5 Conclusions

Each transitional justice approach has potential and limits when it comes to effecting gender justice in post-war societies. They should not be carried out in isolation but in combination with fundamental transformations in the state, the legal system, the economy and society. The aims should be social justice, the enforcement and observance of human rights, democratization, effective elimination of corruption as well as concrete improvements in the legal and economic structure for the impoverished and marginalized sections of the population.

Promoting the local elite abets militarism and renewed abuse of power.

The intensification of social inequality and concentration of resources in the hands of the old/new elite at the local and national levels stand in the way of mid- to long-term peace and democratization processes as well as lasting changes in gender and generational hierarchies. If state and international stakeholders fail to take any action or, by fostering the mainly non-legitimate local elite in the short-term (and short-sightedly), even believe that they can establish order, there is a risk of a structural abuse of power, authoritarianism and militarism being re-established.

As a rule, these phenomena are articulated in militarized masculinity patterns and in criminal and gender-based violence. Moreover, renewed militarism opens the door for small weapons manufacturers and dealers to engage in lucrative business deals by arming local perpetrators of violence in post-conflict countries both legally and illegally. The victims of violence are, by no means, only women and children – girls and boys, but also men of different standing and age as well as people of different sexual orientations and gender identity. Cross-border gang crime – not just in Guatemala or South Africa – and petty crime on a daily basis in numerous post-conflict countries are proof of how urgently innovative gender approaches are required which are specifically designed to reach men and boys (Schäfer 2008).[45]

Greater focus should be placed on sexualized violence committed against boys and men during wars.

Sexualized violence committed against men and boys – which, to date, has only received a fraction of attention in peace, gender and security policy or human rights and international law – as well as its impact on the gender identity of the victims, their self-image and the subsequent interaction between men and women needs to be processed far more intensely. Experiencing justice in the aftermath of wars often

45 http://www.csvr.org.za/docs/genderbased1108.pdf http://www.genderjustice.org.za

also remains an unfulfilled dream for men who have suffered sexual humiliation and survived violent assaults (Sivakumaran 2007, 2010).

All security services must be held accountable.

With regard to the perpetrators, not only the state security forces, paramilitary, warlords or combatants in guerilla organizations need to be held accountable, but also those employed by private security companies – usually men; often trigger-happy veterans of different nationalities. They are frequently hired by governments and the UN for peacekeeping missions and cause insecurity and instability through their acts of (sexualized) violence that go unpunished. Although security firms rely on their own codes of conduct or the UN's immunity regulations, the majority of them operate in a grey zone of impunity – especially in terms of sexual abuse.

The connection between religious fundamentalism and gender should be analyzed.

Another important step would be also to focus on the connection between religious fundamentalists and gender. Here, a willingness to enact violence is not the only thing that is fuelled. In several post-conflict countries – including Islamic states – fundamentalist Pentecostal churches from the United States specifically target traumatized people with promises of salvation and cast them as the benefactors of order, which is currently the situation experienced by Syrian refugees in Jordan who have fled the civil war. At the same time, they scorn and condemn women's, homosexual and human rights and display hostility towards activists.[46]

These facts have been documented in detail for numerous post-conflict countries and are known throughout the international community. In spite of this, the cross-departmental guidelines published in the autumn of 2012 by the Federal Foreign Office, the Federal Ministry of Defence and the Federal Ministry for Economic Cooperation and Development (BMZ) outlining how to proceed in fragile states rely on traditional authorities and the local elite. The BMZ takes a similar stance in a BMZ strategy paper published in March 2013 on development and security.[47]

Critical demands are increasingly falling on deaf ears in Germany.

By doing so, the Federal government accepts that parallel structures to state institutions are created. In many places, these structures are not subjected to any form of democratic control, however, and their legitimacy is disputed among the local population. This holds true, above all, for women's rights, toleration of gender-based violence, the suppression of young women and men as well as other social groups

46 http://www.awid.org/AWID-s-Publications/Religious-Fundamentalisms http://www.awid.org/Our-Initiatives/Resisting-and-Challenging-Religious-Fundamentalisms

47 http://www.bmz.de/de/publikationen/reihen/strategiepapiere/Strategiepapier328_04_2013.pdf http://www.bmz.de/de/zentrales_downloadarchiv/Presse/leitlinien_fragile_staaten.pdf

which usually make up the majority of the population and, by no means, are fringe groups, as suggested in the guidelines.

The concerns of local human rights, women's, children's, youth, HIV/AIDS and LGBTI organizations as well as critical journalists fall victim to the short-term strategic goal of establishing administrative units on the ground as rapidly as possible. They all denounce the non-transparent patronage networks of the new/old local administrative elite in acquiring and distributing resources (for example land, development funds from various donors, and mineral resources) and call for lasting peace and development processes. These include democratization, the realization of human rights, gender justice and the elimination of corruption – i.e. key guidelines of good governance. Their critical demands are increasingly falling on deaf ears with respect to state planners and donors even though the peace and development policy gender action plans and human rights strategies demand this.[48] This makes it all the more important for a fundamental reorientation towards human rights demands and broad-reaching gender justice to occur.

48 http://www.auswaertiges-amt.de/cae/servlet/contentblob/633902/publicationFile/175250/121219_Aktionsplan_download.pdf http://www.bmz.de/de/publikationen/reihen/strategiepapiere/konzept173.pdf http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/e-info-tool_sexual_orientation_and_gender_identity_as_hr_issues_in_dc.pdf

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http://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf

Truth and reconciliation commissions (mandates, structures and reports):
http://www.usip.org/publications/truth-commission-digital-collection

UN General Assembly: Declaration on the elimination of violence against women (20.12.1993):
http://www.humanrights.ch/upload/pdf/050330_erklarung_gg_gewalt.pdf

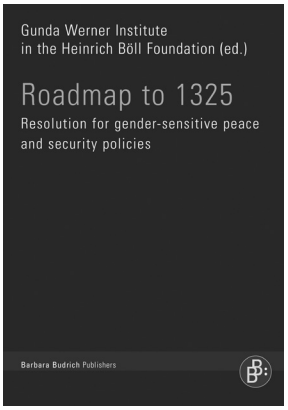
UN Secretary-General: Guidance Note – United Nations Approach to Transitional Justice (2010) and Implementation:
http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf
http://www.unrol.org/files/S_2011_634EN.pdf
http://www.unrol.org/document_browse.aspx?xd=1&cat_id=34

UN Special Rapporteur on Violence Against Women, its causes and consequences (since 1994):
http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx

UN Special Representative on Sexual Violence in Conflicts (since 2010):
http://www.stoprapenow.org/page/specialrepresentativeonsexualviolenceinconflict

UNIFEM evaluation of Gacaca courts, truth and reconciliation commissions and other transitional justice mechanisms:
http://www.unifem.org/attachments/gender_issues/women_war_peace/SupportingJustice_AnEvaluationOfUNIFEMsGenderAndTransitionalJusticeProgrammingInRwanda.pdf
http://www.unrol.org/files/Guidance%20note%20on%20Gender%20&%20Transitional%20Justice.pdf

Women's Initiative for Gender Justice (ICC, The Hague):
http://www.iccwomen.org



Roadmap to 1325

Globalization and new power configurations in the world have greatly changed the meaning of peace and security. Poverty, climate- and resource-related conflicts, instable governments, regional and international terrorist groups, and criminal organizations all pose a threat to security and stability everywhere. Is there a gender perspective to all this? For quite some time women's organizations and feminist networks have been increasingly involved, putting the gender perspective back on the agenda. Since October 2000, UN Security Council Resolution 1325 has been paving the way to greater gender sensitivity in peace and security policy. It could be a milestone for gender-equitable security policy. But up to now this resolution has not developed its own institutional strength within the UN system and the international community. This volume contributes to filling the gap in knowledge about approaches both to gender-sensitive peace and security policy.

With contributions by Sanam Naraghi Anderlini, Andreas Zumach, Karen Barnes, Lynne Christine Alice, Mariam Notten, Ute Scheub and others.

Roadmap to 1325
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In post-war periods and in the aftermath of serious, systematic human rights violations, gender-based forms of violence are usually forgotten during the processing of the past and reconciliation phase. Yet, only when they are paid due regard can lasting peace processes be established. Given this, it is important to subject transitional justice institutions and approaches to a detailed review.

The results: until now, transitional justice has, in many places, failed to address the gender dimensions but increasingly so the issues of inequality, hierarchies and violence patterns.
This study details these problems and presents the resulting challenges facing politicians and society.

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