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## In Search of Justice

**What does justice mean for women and girls who have experienced sexualised violence in violent conflicts?**

International Workshop  
7-11 September 2008  
Bad Honnef, Germany

This report is dedicated to the memory of Rhonda Copelon, who passed away on May 6, 2010. Rhonda was a key participant in the Workshop, sharing with us her vast legal experience in fighting for women's rights. Her commitment inspired us and women worldwide.

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## 1. Introduction

From September 7th – 11th 2008, the international workshop “In search of justice – what does justice mean for women and girls who have experienced sexualised violence in violent conflicts?” took place in the German town of Bad Honnef.

This workshop organised by *medica mondiale* concentrated on the question of how women and girls that have survived sexualised violence in armed conflicts can seek justice. More than 50 women from Africa, Asia, Latin America and Europe attended the meeting, most of them coming from post-war countries.

### Background

Women and girls have long been the target of attacks during wars, in particular in the form of sexualised violence. Until recently, this injustice had gone unpunished. But then, Bosnian and Croatian women set an example: in front of a live camera, they reported on the excessive extent of rapes that took place during the war in former Yugoslavia from 1992 – 1995. This triggered a wave of anger which finally resulted in the establishment of the International Criminal Tribunal for the former Yugoslavia.

### Legal reforms and transitional justice

Ever since, sexualised war violence has been made subject to criminal prosecution at least at an international level and has become an integral part of the canon of criminal acts of international law. This has been reinforced by UN Security Council Resolutions such as Resolution 1325 on women, peace and security adopted at the end of October 2000 or Resolution 1820 on the criminal prosecution of sexualised war violence adopted in mid-2008.

However, there is also a lot of criticism. Feminist lawyers often complain about the tribunals’ lack of expertise when it comes to issues related to sexualised violence. Female witnesses report on disrespectful behaviour exhibited by tribunal members. Local activists that facilitate access to potential female witnesses for the courts are at the mercy of repressive measures and acts of revenge. The question remains as to whether international tribunals with their formal limitations can give affected women a feeling of justice and whether they can fulfil their interest in a safe and secure future.

In many countries, national legal reforms have a merely limited range. Especially in countries that have a rudimentarily functioning and corrupt judiciary, legal reforms tediously

achieved are rarely put into practice. In addition, numerous women do not have access to traditional institutions; furthermore, their conflict resolution mechanisms are often anti-women and humiliating.

Truth and reconciliation commissions as well as compensation programmes are often out of reach for women and girls that have become victims of sexualised violence. In many cases, they completely ignore sexualised war crimes and thus prevent women surviving sexualised violence from experiencing justice.

While peace researchers and political planners often unconditionally praise transitional justice as being a means to secure peace, female legal experts and peace activists criticise that – despite distinct progress in the perception of sexualised violence – those tools in their current form and design are far from establishing peace, justice, truth or reconciliation for female survivors.

Both the existential demands for practical support, e.g. through health services or physical help, and the problem of ongoing violence and legal discrimination against women in post-war situations have gone unconsidered so far.

Violence, in particular sexualised violence, has become an every-day experience for the vast majority of females living on our planet. For them, sexualised violence exists before, during and after wars. However, after wars, armed conflicts, pogroms or terror regimes, the general level of violence in everyday life is usually much higher than before and women and girls are particularly affected. Also, the modern form of slavery, i.e. trafficking human beings for the purpose of forced labour and prostitution, is mainly aimed at women and girls.

### Objective of the workshop

After almost fifteen years of experience with international tribunals, truth and reconciliation commissions and national legal reforms, this workshop aimed at taking stock of the history of punishment of sexualised violence:

What progress has been made and needs to be preserved by all means? What remains unconsidered, what measures have completely failed from the viewpoint of women who have survived sexualised violence? What prevents women from seeking justice? Are there any alternative approaches, and if so, which? What role do local and traditional conflict resolution mechanisms play? What perceptions of justice do women in different war and crisis regions have with regard to their specific contexts?

Apart from taking stock of transitional justice and existing conflict resolution mechanisms and a critical stock-taking from a feminist perspective, the workshop particularly focused on the presentation and discussion of innovative justice initiatives launched by women at local and international levels. This included local boards of female arbitrators in India and a self-administered women's village in Kenya as well as the Women's International Tribunal on Japanese Military Sexual Slavery implemented in Tokyo in 2000. Those justice initiatives were presented by the activists themselves. For the first time, such initiatives were discussed in relation to the individual justice perceptions of women.

The key goal of this international conference that was organised as a dialogue forum was to create a platform and a space to open access to one's own justice concepts as well as to ideas and viewpoints of women. It was about applying one's own viewpoint as a yardstick for dealing with international and national law and transitional justice mechanisms.

Comparing the different approaches in a balanced way in the context of an interlinking discussion where participants exchanged their experiences, positions and perspectives averted a hierarchisation of the different levels as well as of participants.

### **Innovative dialogue forum**

This equality was reflected in the entire workshop concept and the composition of participants. International, national and local activists who have assumed the role of a mediator between women affected and the transitional justice institutions were invited. Some of the local activists have survived both wars and sexualised violence. On top of that, there were national and international legal experts who, for many years, have been working on justice issues from a feminist perspective and/or within transitional justice institutions.

All participants were considered to be experts, irrespective of whether they worked for a grassroots organisation or the United Nations. The organisers were specifically interested in fostering communication at personal level and facilitating the exchange of experiences of local activists, representatives of national institutions and members of international organisations. Consequently, the former women rights and gender expert in the Office of the High Commissioner for Human Rights as well as the then governing Special Rapporteur of the UN Secretary-General on Violence against Women participated in this unique international dialogue between women from war and post-war regions. Like all

other participants they came as women interested in discussions and not – as with other international conferences – as keynote speakers.

The entire workshop was designed as an innovative dialogue forum with structured working groups and individual, open discussion units. The conceptual and organisational arrangement of those units was the result of an intensive planning process that started before 2007. The workshop organisers brought in selected activists and legal experts from different countries to participate in the planning process. All those involved in the process have been working in the field of international, national and traditional law for many years.

### **Taking stock**

A total of four working groups that were composed of lawyers and activists and/or NGO representatives took stock of official legal instruments and conflict resolution mechanisms: working group 1 dealt with traditional law, working group 2 concentrated on national law, working group 3 discussed international criminal law and working group 4 focused on other conflict resolution mechanisms such as truth and reconciliation commissions. On the first two days, all four working groups – following a few guiding questions – elaborated on women and their realities in existing legal regimens. The moderators came from different countries and were asked to foster intercultural dialogue and be tolerant with regard to terminology.

This was followed by a differentiated criticism from the perspective of the various participants, also in their focus groups. Results were shared and discussed in the plenary. The third day saw the presentation and discussion of innovative and alternative justice initiatives of women. Discussions took place in an alternating fashion between plenary and small, spontaneously arranged working groups. On the last day, conclusions were drawn and steps were debated to continue the dialogue and the implementation of results.

### **Respect and well-being**

Tolerance and difference, mutual respect and well-being were also among of the mottos of the day. This included, for instance, the raising of thematic awareness of the interpreters. The conference languages were German and English. However there were also interpreters for Spanish and French. This laid the foundation for women from Europe, Africa, Asia and Latin America to express themselves in their own languages and communicate with others despite their varying linguistic backgrounds. One challenge

for the interpreters was, for example, the fact that the German term “Gerechtigkeit” describes an ethical concept that denotes a desirable ideal. The English term “justice”, in turn, encompasses law, jurisdiction and justice concepts. The interpreters were included in reflections on those important notions and concepts in good time. At a preparatory meeting they received a glossary as well as topic-related background materials to prepare themselves.

Every participant was personally welcomed and their well-being guaranteed. The organisers considered this a top priority with regard to the difficult topic. Apart from that, they thought that this diverse and personal helpfulness was a token of respect. As a consequence, all participants who arrived from abroad were personally picked up at and taken back to the airport. An expert on dreams specifically hired for the meeting assumed the task of acting in an integrative way. On top of that, she was a contact in case of minor health problems but also of mental strains that occurred because of the deeply moving workshop topic. Two female masseurs were constantly booked out during workshop breaks.

Some participants offered targeted relaxation and motion exercises that pursued different subjects e.g. creating trust and setting limits. Many activists took those easily comprehensible exercises home as an inspiration for their own work. This attentiveness vis-à-vis the needs of participants resulted from the longstanding experiences of the workshop planners, in particular in the field of psycho-social and medical support of women during wars and in post-war societies through *medica mondiale*.

The conference venue was the idyllic Villa Schaaffhausen in the German town of Bad Honnef. In contrast to characterless conference hotels, quiet zones and discussion rooms plus a big park with numerous opportunities to move and relax were available. Participants had the possibility to meet for informal talks in a yurt; another tent hosted the feminist travelling exhibition “Justitia is a woman”. <http://www.justitiaausstellung.de/>. One room at the convention location was reserved for presenting projects. Here, representatives of national and local organisations were able to present their materials, show films or exhibit and sell products of their projects.

### Workshop location Germany

Germany as a workshop location seems to be far away from current wars. However, the fact that appearances are deceptive is underpinned both by the war in former Yugoslavia and Germany’s increasing role in the military response to conflicts. As the organisers emphasised at the beginning of the workshop, it is also German history that urges commitment when it comes to coming to terms with acts of violence and atrocities in post-war societies and to make an effort for more just post-war settlements. Transitional law after the Second World War in Germany and Europe also disregarded rapes during the war, including both rapes committed by German soldiers in raided and occupied European countries and rapes in Germany committed by members of the Allied Forces.

## 2. About *medica mondiale*

December 1992: The Yugoslavian state is falling apart and there is war just three hours flying time from Cologne, Germany. Monika Hauser, an Italian gynaecologist living in Germany, learns from the media about the great extent of sexualised violence which afflicts primarily Muslim women. Not only is she horrified, but she also does something. Spontaneously she decides to go to Zenica, Central Bosnia. Ten thousand refugees, mostly women and children, have sought refuge there. Together with Bosnian specialist women, she works out a concept for the support of raped women. In this way the Bosnian women's organisation and the women's therapy centre *Medica Zenica* is born in April 1993 in the turmoil of war. Meanwhile Gabriela Mischkowski organises a small group of women in Cologne for logistic, financial and political support from Germany. Together with Monika Hauser they found the organisation *medica mondiale* in June 1993.

This is how it began. After the end of the war in Bosnia-Herzegovina, projects were started in Albania (1999), Kosovo (1999) and Afghanistan (2002) and in Liberia (2006) which all follow their own country-specific approaches. *medica mondiale* also financially supports local women's groups in their work against sexualised war violence in Cambodia, the Democratic Republic of Congo, in East Timor, Indonesia, Iraq, Israel, Mexico, Nepal, Sierra Leone, South Africa, Turkey and Uganda.

From the beginning, we are pursuing a dual strategy. On the one hand *medica mondiale* offers concrete individual help – gynaecological, medical, psychological, social, economic and legal – for women and girls in war- and in crisis-areas irrespective of their political, ethnic and religious affiliation. At the same time our goal is to strengthen their self-healing powers and to support them, in solidarity, to consciously determine their life anew. On the other hand, *medica mondiale* works politically, engaging itself locally, nationally and internationally for the achievement of women's rights as human rights and develops campaigns to combat the stigma of rape and the social exclusion of women who have survived sexualised violence.

We have laid down our fundamental self-understanding in a Charter. It includes ensuring the long-term control of projects in the hands of local women as well as providing training and qualifications in handling women-specific war trauma. That is why not only colleagues in the *medica mondiale* projects are trained in trauma work, psychosocial advising and trauma-sensitive treatment. Colleagues in public health institutions, psychosocial advice centres or local and international organisations are also trained in these

areas on the basis of the concept worked out by *medica mondiale*. An important element of this is to recognise one's own traumatisation and strain and to learn how to deal with this. Helpers also need help to self-help themselves.

Our work also aims at contributing to justice being done for women who have survived sexualised violence in armed conflict. The violent acts must be acknowledged by society as crimes without "ifs" and "buts" and the perpetrators must be punished. The former victims must receive every support to gain back agency and to claim satisfaction, reparation and compensation. The procedures in criminal law, truth commissions and other conflict regulation mechanisms must be gender-specific.

There is still a long way ahead to make a women-rights oriented society possible in the future. That is why *medica mondiale* will continue to be committed to the removal of social taboos from women who have been raped and to unreserved solidarity with affected women.

### Why we have organised this workshop

For more than 15 years, *medica mondiale* has focused on sexualised war violence. However, our attitude towards the criminal prosecution of sexualised war violence has been ambivalent from the very outset. On the one hand, we have vehemently demanded that an end be put to the impunity of sexualised violence. On the other hand, we have been concerned that the experience and the will of women and girls would again be disregarded during criminal prosecution and that they would be left alone with the emotional, mental and physical risk of them giving testimony. Like numerous other activists from many countries, we have consequently committed ourselves to demanding and establishing procedural rules that do justice to the specific nature of sexualised violent crimes and consider not only the traumatic but also the social implications this type of violence has for affected women and girls.

Our ambivalence has remained. Due to the great commitment of international female lawyers, more and more rape charges are being brought to international courts even though this often occurs rather hesitantly or even in the face of inner-court resistance. Today, sexualised violence has been enshrined in international law as a severe crime. This was emphatically underlined by UN Security Council Resolutions 1820 (in 2008) and 1888 (in 2009). However, our concerns have been confirmed, too: in practice, wit-

nesses have been humiliated again at international courts, pressured into testifying through fake promises, and treated without respect by court employees, with their stories being published against their will and their security not guaranteed.

So we need to ask ourselves: how high a commitment do we have to show in order to redesign the tools of transitional justice – criminal law, truth commissions, reparation programmes – sustainably and in a gender-equitable way? When and where will these tools give affected women and girls a real sense of justice? Is it enough to pursue a policy of fixing and repairing over and over again, i.e. to incorporate women's views into transitional justice only afterwards, so that women do not exert any influence on its basic de-

sign? Could we redefine our approach and assessment of transitional justice by taking a different perspective? Are there any alternative or parallel instruments of justice that better correspond to women's living realities and that we can pull out of the transitional justice shadow into light?

Those considerations made us develop the idea of this workshop. We wanted to find out how other women who attach an equally great importance to this matter would assess those aspects, what experience they have gained and what proposals they would make. In doing so, we intended to include as many different perspectives as possible in order to avoid bias, to respect differences, to learn from each other and to move forward together.



## 3. Programme

**Sunday, 07.09.2008 – Thursday, 11.09.2008**

### Sunday, 7 September

15:00	Registration
18:00	Welcome
19:00	Dinner
20:00	Introduction of participants
20:30	Conjuring & Magic

### Monday, 8 September

#### Stocktaking of formal justice instruments and practices

07:30 - 09:00	Breakfast, Bodywork & Moving Exercises
09:00 - 10:15	Plenary Introduction to the Workshop Organisational issues Form working groups
10:30 - 13:00	Discussion in four working groups (includes coffee break)
13:00 - 14:30	Lunch & Relaxation
14:30 - 16:00	Working groups continue
16:00 - 16:30	Coffee break
16:30 - 18:00	Plenary: Working groups present their findings
18:00 - 19:00	Free time
19:00 - 20:00	Dinner
Ab 20:15	Socialise at the ongoing Project Fair

### Tuesday, 9 September

#### Critique of formal justice instruments from women's perspectives

07:30 - 09:00	Breakfast, Bodywork & Moving Exercises
09:00 - 12:30	Discussion in working groups (includes coffee break)
12:30 - 14:00	Lunch & Relaxation
14:00 - 16:00	Plenary: Working groups present their findings
16:15	Excursion: Departure for Dragon's Rock (Drachenfels). Opportunity to go for a walk or shopping in Königswinter
19:45	Return to Villa Schaaffhausen
20:15	Dinner

### Wednesday, 10 September

#### Local, regional and international women's justice initiatives

07:30 - 09:00	Breakfast, Bodywork & Moving Exercises
09:00 - 10:45	Plenary Film & Discussion: Women's tribunal against military enslavement by Japan during World War 2, Tokyo 2000 Film & Discussion: Umoja Uaso Women's Group & Women's Village, Kenya
10:45 - 11:00	Coffee Break
11:00 - 13:00	Plenary continues Film & Discussion: Shortcut to Justice (Collective Justice Initiative), Gujarat, India; Reports on other initiatives
13:00 - 14:30	Lunch & Relaxation
14:30 - 16:00	Discussion in free working groups
16:00 - 16:30	Coffee break
16:30 - 18:30	First findings and evaluation (Plenary)
18:30 - 19:30	Free time
19:30	Barbeque & Party

### Thursday, 11 September

#### Conclusions and future prospects

07:30 - 09:30	Breakfast, Bodywork & Moving Exercises
09:30 - 13:00	Plenary
13:00	Lunch
15:00	Departure

## 4. Introduction Malin Bode

### Background to the conference

My name is Malin Bode and I'd like to take the opportunity this morning to welcome you once again to this conference. The idea of organising a conference such as this, which Gabi Mischkowski and I mulled over for a long time, has now come to fruition and I am absolutely delighted that it has!

I'd like to begin by introducing myself briefly. I am part of a group of feminist lawyers in Germany where I am both a practising lawyer and also involved in discussions in various contexts on feminist legal issues, primarily those arising from actual cases. I have been working with other feminist lawyers for 25 years publishing the feminist legal magazine STREIT, and for 30 years I have represented women in employment and social security law cases as a practising lawyer and also women in rape proceedings.

Several meetings were held a number of years ago shortly after the Yugoslavia Tribunal was set up where Gabi Mischkowski and I were pleased to learn about the successes in connection with the tribunal, but were also left wondering whether the witnesses at this tribunal had gained any personal satisfaction once the court proceedings were over and whether the tribunal really was the right way for women who have been forced to endure sexual violence in conflict and crisis situations.

The main concern for us remains as before to defend and indeed campaign that women who have been forced to endure sexual violence both in war and peacetime experience greater justice.

*medica mondiale* has invited women to this conference, who are currently involved in the issue of justice for women or who have been exposed to sexual violence during or after conflict or crisis situations.

Justice is a word that is used lightly in many contexts and in most cases means no more than that criminal proceedings (shaping official justice in the respective society) are brought against a perpetrator of sexual violence or the latter is brought before another conflict resolution body, such as a truth and reconciliation commission.

Women are demanding that justice is not just something that is talked about, but also that justice is something they also want to experience for themselves. However, at best, most women actually experience legal proceedings that are ultimately extremely patriarchal in terms of their format and

much the same as those that have always been experienced by women in the past.

We know that in spite of this huge steps have been taken in transition societies in order to respect the integrity of women. Rapes of women have been simply ignored too often and for long enough. It was considered not worth making a fuss about and in the worst cases as normal male behaviour, especially in times of war.

However, the past has unfortunately also shown often enough for women that the transition to a new form of society or state following a period of war or crisis does not necessarily improve the situation of women in relation to their respective situation prior to the war or crisis, but may make it even worse.

To the extent to which it is usual to speak of transitional justice in international contexts and when doing so to select a vague abstract concept of justice, which may, or perhaps even should, create the impression that the achievement of justice in transitional societies is being talked about, it is important to look more closely and consider the view that women have of these proceedings in transitional societies, in which their own fate is decided.

Are the interests of women considered in the context of transitional justice?

Experiences of transitional justice generally vary across the world and most of you are very familiar with these.

My childhood was affected by the fact that my family were angry and bitter that formerly active national socialists returned to good political and economic positions in post-war Germany whereas those persecuted by the Nazi regime were segregated rather than rehabilitated. People often railed against the justice system saying that many Nazi war criminals were not called to account, but their victims were forced to fight for recognition or a negligible pension. As a young girl I read a book on these issues by one brave academic, Professor Ilse Staff, one of only three female law professors in Germany at the time, and decided then that I wanted to pursue a career as a lawyer.

Nevertheless, transitional justice became part of the modern world to all intents and purposes with the Nuremberg trials conducted by the allied victors of the Second World War against the prominent leaders of Nazi Germany. Concerted efforts were made at the outset on all possible levels to deal with the crimes committed by the Nazi dictator-

ship. Panels of impartial citizens set up by the victorious allies attempted for a short time to prosecute the crimes committed including among the mainstream population. However, public interest in prosecuting the leaders of the Nazi regime waned with the advent of the amnesty legislation at the beginning of the 1950s. Although a few major trials took place subsequently, the Auschwitz trial in the early 1960s in Frankfurt for example, which only happened as a result of persistent pressure from tenacious Jewish senior public prosecutor, Fritz Bauer, against resistance from the legal system, it wasn't until the 1990s that rapes of women during the war and in the post-war period, which were prevalent among all sides involved, came into the public awareness. Legal reactions to this remain an absolute exception to the present day.

### Nature of the conference

I return to the subject of our conference.

It will be different from the usual conference format. We want to interpret the title of the conference literally (and when I say "we" I mean the whole preparatory group) as "In Search of Justice", and during the days we will spend together try to move one step closer to this.

Consequently, we won't be listening to a handful of prepared lectures meaning that we have hardly any time for discussion. We have invited you all as experts. Each of you, who has travelled a long way to be here, could give an excellent lecture as experts in your respective field and we are therefore hoping that you will contribute to a lively debate.

Since there are a lot of us here we will spend the first two days discussing in working groups thereby ensuring that there is enough time for everyone to talk and it will be easier to understand each other if we get to know each other even better and spend time together.

We thought long and hard about how to divide up the working groups and wanted to make sure that there was an eclectic mix of participants in each group. Hence, we arrived at those arrangements, which you are aware of, as you have already indicated your group preferences.

A lively debate is taking place worldwide claiming that sexual violence against women and girls in war and crisis areas and also in post-war periods and following acute crises should not go unpunished. A lengthy and painful international struggle by women has led to success in recent years. The rapists are now being brought to justice at an international level, both in international tribunals and now also at the ICC. The criminal nature of rape and also the criminal liability of military superiors were established in convictions

handed down by the international war criminal tribunals for the former Yugoslavia and Rwanda. However, the position of women as witnesses appearing before the international courts is humanely difficult following their experiences, and in many cases protection and support are completely inadequate.

Also at the level of national criminal prosecution, sexual violence against women and girls has found its way into several pieces of national criminal legislation. In practice, there are only a few proceedings, and none in which women feel as if they are taken seriously.

After a long struggle, the proceedings held by truth and reconciliation commissions, which have been set up in a large number of countries undergoing transition following periods of war and crisis, now also include sexual violence as a crime in their deliberations and proceedings. As far as we are aware this has only actually played a really significant role in a few proceedings and women are rarely generally encouraged when appearing before these commissions to talk in detail about their experiences.

Sexual violence in times of war and crisis is also picked out as a central theme in the context of traditional conflict resolution mechanisms and attempts at resolution are being made there. However, the women affected also feel that these are rarely satisfactory.

Furthermore, in these traditional conflict resolution mechanisms and also in proceedings instituted by the truth and reconciliation commissions, sexual violence against women is often seen (only) in conjunction with the apportioning of blame for the respective conflict to a specific ethnic group or segment of the population.

In all forms of conflict resolution, whether at a local, national or international level, the same questions remain for women: Do women actually have access to these institutions? Are their interests considered there and is their dignity preserved in the course of such proceedings?

We will tackle these questions together.

I would like to ask you, or rather **we** would like to ask you, that when discussing these issues, also in consideration of the translation that will always be required here, you please bear in mind that other delegates may use terms that are different from the ones you choose to use for political reasons. We need some tolerance there with regard to terminology if we want to engender a debate between so many different women from all parts of the world. We are already aware that we will only be able to achieve something if we manage to understand each other in the best sense of the word.

## Conference format

First things first. We would like to encourage you to be extremely biased and to focus on the perspective of women on legal and justice proceedings in cases of sexual violence in war and crisis areas and sharpen it. We don't have to defer to any kind of authority at this conference, neither those in the workplace nor in the government or society – everything that is discussed here is between ourselves.

What role do the affected women play in all these proceedings/cases? Can they influence the course of these proceedings? Are their experiences used as the basis for formulating rules or codes of procedure? Is society interested at a local, regional, national or international level in the life/survival of women violated in this way? Which experiences endured by affected women as witnesses in these various proceedings should be reported? What kind of positive societal reaction do women demand for themselves, what recompense should there be in order that these women can see a future for themselves and their children? What do women need in order to develop their own views with regard to these questions?

These are only some of the questions that we think might be important to you in terms of discussion.

Therefore, in order to coordinate the discussion in spite of the division into four working groups you will be given pre-prepared questions to facilitate discussion in the working groups. However, these only serve to support and promote discussion, not to restrict it.

We would like to begin the conference today (Monday) by taking stock of where we are at the moment. We would like initially to establish what has already been achieved and also what has been positive for us. I would like at this point to emphasise once again that we consider all participants to be experts in equal measure, experts in their own particular field. The experiences and knowledge they have gained there will provide us all with a comprehensive picture of the current position of women at the various levels of dealing with the issue of sexual violence against women in war and crisis areas.

In stage 2, i.e. tomorrow/Tuesday, we would like to make a critical comparison of these findings with the many previous experiences from a female perspective. We think that

a host of problems will come up. We are also hoping to build up an extremely comprehensive and differentiated picture. This may lead us to many individual ideas, desires and demands that we need to direct to the existing proceedings in order to allow women to feel better represented in these situations.

In stage 3, on Wednesday, we would like to take things a little further and spend time focussing on the women present here who will report on conflict resolution methods that women in different areas and parts of the world have developed themselves in the past. We will watch 3 films relating to this and we are pleased to welcome women from the respective projects that are presented in these films. They will explain the initiatives presented in film format from a personal perspective and share details of their own experiences. The films show the women's tribunal against military enslavement (of Asian women) by Japan during the Second World War, the Umoja Uaso Women's Group and their women's village in Kenya, and the collective justice initiative for women in Gujerat, India.

This will give us an opportunity to discover alternative options for conflict resolution. Perhaps this will be a better way to elicit the questions we want to put to the known and existing systems "in search of justice." Primarily of course, we will encounter options that could offer us an alternative for achieving greater justice for women.

We think it is important that we not only obtain knowledge of the systems that we discover are the best for us from a woman's perspective, but also that we can turn our attention to our own ideas independently from what we find.

With this in mind we hope that in the last stage on Wednesday afternoon and Thursday morning, everything that we have learned will be collated and that the improvements we want to see in terms of the situation of women affected will become apparent. Perhaps we might also put together some demands.

In any case, we shall aim to ensure that by the end of our discussions we have moved one step closer towards identifying the important issues for assessing legal systems and proceedings from a female perspective and thus a few steps closer towards obtaining justice for women.

I hope we will enjoy our time together!

## 5. Introduction Bonnie Keller

### Progress in the Women's and Feminist Movements

Since I am one of the older women at this Workshop, I am privileged to give a short historical perspective. There is a great diversity among participants here. However, wherever we come from we share a common history. This is one reason why we have re-named our plenary room the Umoja (kiSwahili for unity) room to signify our commonality and our united concern to ensure women's rights generally and the rights of women who have experienced sexualised violence in war and crisis situations specifically.

My own history of involvement in the women's movement began as a researcher in a small town in southern Zambia. In 1975 my friends and neighbours were summoned to a meeting for women, where a female minister of government addressed us. She reported on the International Year of Women in Mexico City where Zambia informed the world that "in Zambia women don't have any problems." At that time, more than three decades ago, I was practically alone researching Zambian urban women's economic and domestic problems. I had almost no Zambian colleagues, and the existing women's organisations were mostly church-based, with a conservative position on gender roles.

Between 1976 and 1985, the first Women's Decade, women's activism soared at local levels and became visible internationally. In particular women from the global South formed movements and identified themselves as feminists. Finally, I had like-minded colleagues in Zambia. The Forward Looking Strategies from the Third International Conference on Women in Nairobi, 1985, did not mention gender-based or sexualised violence however. By 1995 this had changed. The Platform for Action from the Fourth Women's Conference in Beijing included two areas of concern, Violence against Women and Women and Armed Conflict, reflecting the visibility that these issues had achieved.

Thus, there was genuine progress between 1975 and 1995, including an "explosion" of women's NGOs and local women's groups which contributed to the recognition that political, economic and social systems accorded women lesser value than men, that specific gender problems could be identified and addressed and that positive changes could be achieved.

In the past fifteen years sexualised violence in war and post-conflict areas has finally become an important issue for feminist movements and for communities, from local to international. The 1993 World Conference on Human Rights in Vienna included a hearing on the situation of

women, including sexualised violence, in Bosnia-Herzegovina. Since 1993, there has been extensive research on this topic and documentation of specific cases, for example by Amnesty International, Human Rights Watch, and an increasing number of groups, networks and coalitions of women activists.

The increase in awareness of the extent of sexualised violence in war and conflict, and of the trauma suffered by thousands of individual women, is a fantastic accomplishment of the activism of individuals, groups and networks of women. This awareness of serious human rights violations against women has also led to concrete actions. To mention only a few, the first ever United Nations Security Council Resolution (1325) on Women, Peace and Security dates from the year 2000. In order to strengthen this resolution, the UN Security Council passed Resolution 1820 in June 2008 which demands "an immediate and complete halt to acts of sexual violence against civilians in war zones." The struggle to eliminate sexualised violence in war also became anchored in international criminal law through the creation and work of the Tribunals for the former Yugoslavia and Rwanda and the International Criminal Court. The topic began to be included in truth and reconciliation commissions and in reparation programmes. At local level in post-conflict countries (e.g. Liberia), or in countries where conflict continues (e.g. the Democratic Republic of Congo), there are now local projects and programmes offering multi-faceted support to women and girl survivors.

We recognise of course that behind all of these actions and structures, which represent "progress," there are a multitude of problems, many of which we will be discussing at this Workshop. Structures and rules may have been established, but putting them into practice is another matter. Often we have the feeling of having gone one step forward, only to take two steps back. Those who work in this area become tired and burnt out, if not traumatised. There may have been progress, but the pace is slow and the number of victims increases.

However, we need to remember our past, shared history – when we worked together to make gender inequality in all its forms visible and when we fought to put sexualised violence onto local, national and international agendas. Now is the time for us to find out where we stand: how much progress has been made in each of the various levels and arenas where sexualised violence is an issue. The main topics of this Workshop are therefore to spell out what we have accomplished, where we are now, what the key problems are, how we go forward and especially what women themselves want when they seek justice.

## 6. Reports from the working groups

### 6.1 Working group 1: Traditional law

Participants came from the following countries: Afghanistan, Germany, India, Kenya, East-Timor and the US.

#### Traditional legal systems are male domains

According to the participants of this working group, traditional legal systems are often the only systems that are accessible for women during and after armed conflicts. National legal institutions are often out of reach; in many places wars have destroyed the infrastructure. Even before the respective wars broke out, women living in rural areas did not have access to their national judicial systems due to the absence of roads and transport systems. Apart from that, legal foundations were hostile to women; trials and judgments reflected the sexist attitude of many judges. Especially women in remote rural areas are only able to call upon traditional legal institutions.

The working group unanimously came to the conclusion that these institutions and their jurisdiction are extremely patriarchal. These are places where men have the sole authority to make decisions. Occasionally, they can even choose whether traditional, religious or national legal mechanisms should apply. Women have almost no say in traditional legal systems. They are considered unable to enforce their rights and must ask their spouses, fathers or brothers to represent them.

Furthermore, participants of this working group pointed out that traditional law is mostly applied during times of peace and is hostile to women even then. Most traditional conflict resolution mechanisms do not focus on women as individuals but on the restoration of family and social relations. In doing so, women are used as tools to secure the male-dominated peace regime.

The working group agreed that this principle could be found almost everywhere despite individual local differences. One example of that is “badal” in Afghanistan: in the case of a bloody deed, the family of the victim is offered a young girl of the family of the perpetrator as a means of “compensation”. This is to atone for the crime and avoid bloody revenge. After a rape, the arising conflict between the families is at best settled by giving cattle as compensation, at worst by forcing the raped women to marry the perpetrator. There are some places where victims are punished by death since their sheer existence is considered shameful for their families. This happens, for instance, in Iran or Pakistan.

In many countries, women and girls who have survived rapes are stigmatised, called prostitutes and ostracised; they have to leave their families and villages. The concrete situation often depends on the age and marital status of the raped woman. There are only a few countries where sanctions are imposed on the perpetrator while the length of sentence ranges from corporal punishment via banishment from society to killing. In some regions of West Africa, rapists are excluded from their village communities. However, perpetrators have much higher chances of being reintegrated into society than women who have survived rapes. If there are trials at traditional courts at all, it happens quite often that women and girls – by referring to gender stereotypes – are treated with hostility, revictimised and traumatised. This does additional harm to their reputation. Often it is not about achieving justice for women or making perpetrators criminally liable but protecting a system interpreted as being “traditional”.

“In terms of traditional law I see a problem in our country as there is the risk that survivors are retraumatised in traditional proceedings. Because those who head the trials have their own interests. I think it is important to apply existing laws because those laws punish sexualised violence.”  
(participant from the D.R. Congo)

#### What does “traditional” mean?

Some participants in this working group mentioned that the word “traditional” was misleading since legal practices that are called “traditional” are coined by colonialism in many countries. Colonial masters and some local authorities, for instance, determined in numerous African countries what is considered to be traditional law until today. However, some legal practices were created during this process only. So traditional law is by no means static but subject to power relations and variable. After the end of colonialism, retraditionalisation processes occurred in various places as a consequence of deep-rooted social and political changes. In other words, new legal practices are marketed as traditional by local authorities. Such an approach involves the risk of instrumentalising traditional law for power interests; however, it also provides opportunity for change.

While some participants perceived non-governmental justice systems as a lever for change, others tended to focus on their risks.

One has to bear in mind that traditional law in post-war societies can only sanction civilians but not soldiers. Raping soldiers who are members of regular armies can be sentenced by a military tribunal only; soldiers of UN peacekeeping troops by national courts in their countries of origin only.

Some participants emphasised the problem of an intensified, anti-women retraditionalisation in post-war societies. They claim that in the light of individual and social uncertainties such a development elevates customs to “eternal values” that had never existed before or had long become meaningless. An example of that would be some Sudanese refugee groups in Darfur that were displaced by government troops or militias and struggled hard to survive in refugee camps. This is where women practice circumcision of female genital organs again by referring to longstanding traditions although they had not done that anymore for centuries. Most participants considered the term “re-traditionalised conflict resolution mechanisms” as appropriate for such practices. At the end of the day, these are rules set by human beings that are subject to political change processes and social turmoil during wars. They can be changed by social decisions.

Furthermore, the power of some representatives of “traditional” systems is by no means based on the consent of local communities but merely on violence, as the example of Afghan warlords clearly shows. Jurisdiction should never be left to arbitrary authorities only because they demand it, one participant said. Subsequently, others posed the basic question of what traditional legal institutions legitimacy is based on and what persons or social groups within a society give them authority.

### Women courts – chance or alternative?

One participant suggested that women should no longer accept the sole claim to power of male authorities. She asked for women to make men accountable and demand power and participation in traditional legal institutions. According to her, a successful example would be traditional arbitration courts in the Indian state of Gujarat that local activists turned into women arbitration courts. They are even recognised by official family courts, she says. Therefore, women should not rush into rejecting traditional mechanisms in their search for local sanction options.

There were differing attitudes towards so-called legal pluralism, i.e. the situation in countries where two or more legal systems coexist in parallel. It is a debatable point to what extent women can use such a situation for their own purposes. While some participants perceived legal pluralism as a chance, others argued that women would be squashed by the systems.

With regard to religious legal conceptions that some jurisdictions are based on, some women made the point that their content and interpretations of women’s rights are by no means clear but rather ambivalent or even contradictory. Therefore, it is important to work towards changing the attitudes of religious authorities.

In terms of local women’s courts, there was a discussion on whether it is sufficient for those courts to be accepted by local society, or whether women should also be recognised by the national justice system.

“More than five years ago the conflict in Liberia ended; however, 90 % or even 95 % of the country still do not have a functioning judicial system. What can we do for women in this context so that they get access to justice? Based on these considerations I decided to attend the working group on traditional legal systems. I believe that we can make major interventions and implement change. Yet, how can we proceed without erecting a parallel system?”  
(Participant from the US)

When reflecting upon those highly complex issues, some participants pointed out that traditional jurisdictions that are being changed with the support of women’s groups are instruments that might bring justice to women and girls. This might possibly be the case with governmental or international legal systems because the latter are often non-existent or unreachable.

Despite numerous hurdles, women’s groups in some countries managed to give a new, positive and pro-women slant on traditional conflict resolution mechanisms. Consequently, activists who have committed themselves to fostering the human rights of women and girls at national and international level should not simply circumvent them. It would be desirable for them instead to also commit themselves to changing them and not only to working on the improvement of national and international law.

One participant highlighted that it is important to consider transformations of traditional systems not only with regard to female peacemakers but also as citizen’s commitment. It is about comprehensibly co-shaping relations in post-war societies. In this context, some working group participants emphasised that men should not only be seen in a negative light. They asked for a distinction to be made between perpetrators on the one hand and men who are interested in change on the other. Those men who are interested in change are important players when it comes to the reformation of traditional anti-women legal institutions.

The working group formulated recommendations in terms of what leverage women have to improve their living situations. The overall target was to put into practice justice concepts of those surviving violence.

The following steps may pave the way to achieving that:

- Opportunities for women's codetermination and influence need to be strengthened in all justice processes. In other words, women and girls need to be perceived as actors and need to get involved in decision-making processes, not only as token women.
- The attitudes of judges, politicians, local political and religious authorities need to be changed fundamentally. Codetermination, participation and involvement of women's groups in civil society need to be strengthened in order for them to act as pressure groups for women-survivors vis-à-vis courts and other judicial instances.
- Comprehensive support systems for survivors of sexualised violence need to be established so that their needs are taken into consideration. This includes the de-stigmatisation of women who were raped, comprehensive social discussions as well as outlawing any kind of violence against women.

These demands are milestones on the way to achieving the goal of informing women about their fundamental rights.

- Most people in war and crisis regions do not even know the traditional conflict resolution rules, not to mention their national legislation. In many places, it might be helpful to use national legal reforms, e.g. new laws against sexualised violence, to inform women about their rights at a local level. In Liberia, for instance, an attempt was made to change the local traditional system by referring to the new law against sexualised violence. For such translation efforts, it is important to impart basic legal knowledge specifically to women living in rural areas. Comprehensive knowledge of one's own rights may strengthen the negotiation power of women. In order for that to happen, it is important that women's organisations develop methodological instruments to make international and national legislation comprehensible for women living in rural areas and to sensibly use it in the context of local legal instances. Having said that, there is a need for a cross-border exchange that should also include grassroots groups.
- Much stronger than in the past, guidelines and measures to achieve gender equality need to be integrated into all peace negotiations, reintegration and reconstruction programmes, irrespective of whether it is about the reconstruction of roads, schools, wells, etc. Gender equality and overcoming gender-specific violence should become

integral parts of all planning efforts and programmes.

- Women and girls who have survived violence need to be supported in becoming their own advocates. Survivor groups that overcome their isolation and stigmatisation through cooperation may contribute to achieving that. They may encourage each other to raise their voice and thus exert influence on traditional and national legal systems.
- Local transformation approaches of traditional law need to be documented. The specific approach and concrete experiences of the actors involved need to be communicated at different levels. It is in particular women's grassroots groups that need to be networked cross-border and exchange their views and experiences. This requires funding which has so far failed to materialise.
- National and international legal experts should consider local transformation approaches.

## 6.2 Working group 2: National law

Participants in this working group came from Bosnia and Herzegovina, the Democratic Republic of the Congo, Germany, Haiti, India, Liberia, Rwanda and Uganda.

This working group mainly focused on legal systems in current post-war societies.

The legal situation in the individual countries

In numerous countries, rape is considered a crime against the family, a specific group or the state, but not a crime against the raped women. Sexism, contempt of women, possessive masculinity concepts, gender hierarchies and social power relations are not considered to be root causes for rapes, but rather distorted images like the allegedly provocative sexual behaviour, the clothes or the self-assertive conduct of a woman. Consequently, women who were raped are blamed and held liable for the crime.

This victimisation and stigmatisation gives reason for their silence about the experienced violence. In contrast to state jurisdiction it is only women's groups and parts of civil society in many countries that perceive rape as an attack against the physical and personal integrity of women.

Against this backdrop, existing state justice systems do not satisfy the requirements of women and girls, said the working group participants, despite the fact that women have fought for corresponding legal reforms for years in their countries and have made progress in certain parts. Thanks to their efforts, many countries have seen new violence prevention or penal laws adopted in the past few years that,



at least in some cases, come from comprehensive rape concepts and impose drastic sanctions for the commitment of rape.

### Problems with the criminal prosecution of rapes

Numerous problems aggravate the enforcement of existing laws: state courts are often inaccessible for geographical reasons and the justice system has not yet been restored in many places. In many current crisis countries, courts had also only existed in metropolises before the war and had worked rather slowly and unreliably. In many countries, the mostly male police officers, judges and prosecutors are incompetent or corrupt. They release rapists for cash or do not launch investigations, in particular, if defendants are powerful and influential men.

Also, the legal language constitutes a big hurdle for women. Often they do not speak a country's official language but merely a local vernacular, especially if they did not get a decent school education in their childhood. For them, legal terminology is incomprehensible and alienating. On top of that, they are unable to use the word "rape" because of powerful sexual taboos.

What complicates matters is the fact that many vernaculars do not have a term for those violent acts. In Uganda, for example, women paraphrase the situation by using expressions such as "This man made me a woman". If investigators and prosecutors fail to understand this symbolism, then criminal prosecution is doomed to failure even as early as the preliminary proceedings, and at the latest in court. In Haiti, a judge asked a witness whether she was raped (*violée*) or robbed (*volée*). When she simply nodded ashamed, the judge declared the defendant not guilty for the commitment of rape.

Participants reported on the specificities of criminal prosecution in their own countries and social background constraints:

In the Democratic Republic of the Congo there was a criminal law reform in 2006 according to which rape could be punished with imprisonment of up to 20 years. In practice, however, the situation has not changed much. The next prosecutor is often hundreds of kilometres away. Until 1996, women and girls were not allowed to testify in court. They were not considered independent legal persons and had to be represented by male family members. That has officially changed in the meantime; however, it is culturally still unacceptable for a woman to appear in court alone. It is already extremely difficult for a woman to talk about rape within her own family, i.e. to express herself. With regard to the criminal prosecution of war rapes there is the problem

that women only rarely know the militiamen or soldiers.

In Liberia, rape may be sentenced with life-long imprisonment due to a law initiated by Liberian president Ellen Johnson-Sirleaf. However, criminal prosecution takes place at best in cities; female lawyers do not practice in rural areas, only simple legal interns. Apart from that, costs for being legally represented which women factually need in the case of rapes in order to guarantee criminal prosecution is unaffordable. There is an association of female lawyers that has successfully dealt with individual cases in the past.

In rural Afghanistan, judges, if they exist at all, render sentences not according to national but to traditional law or Sharia. In *India*, it is solely prosecutors who represent raped women since there is no such thing as incidental action according to Anglo-Saxon law. As a consequence, women hardly have a say in trials.

In Haiti, rapists are liable to imprisonment of up to ten years; however, this happens in practice only if the raped woman is a member of the rich and influential upper class. Poor women hardly have a chance to a fair trial where the perpetrator is punished; in turn, they are forced not to testify as witnesses.

In Rwanda, a new law stipulates that rape should be punished with imprisonment of up to 25 years. Rwanda, by the way, has a constitution which is based on the principle of gender equality. With regard to the legal position of women this means great progress. The Gacaca courts that were established after the genocide are not responsible for dealing with rapes that were committed during the genocide in 1994. Apart from the International Criminal Tribunal for Rwanda, rape cases committed during the genocide are heard in national courts. Numerous detained genocide perpetrators confessed a couple of violent acts in order to be released from prison, yet rapes are only rarely mentioned. In the meantime the number of preliminary proceedings at state courts has increased though.

As a result of pressure exerted by women's organisations in Bosnia and Herzegovina, there are numerous war rape cases heard at the courts that have jurisdiction. In addition to the war crimes chamber of the Court of Justice in Sarajevo that is proportionally staffed with international judges and prosecutors, there are also purely nationally staffed district courts that render sentences on war crimes. A legal representation for witnesses is also missing here. Witness protection schemes take a different shape. While the war crimes chamber is connected to the standard of the Yugoslavia Tribunal in The Hague, the approach and behaviour to female witnesses at district courts is characterized by a lack of respect.

In Uganda, rapists even run the risk of capital punishment which

forces witnesses into a dilemma: many are not interested in the death of the perpetrator but in their own rehabilitation.

Powerful old or new elites quite often deter women from reporting rapes to the police or making them the subject of discussion: in *Liberia*, for instance, traditional women's and men's secret societies force raped women in rural areas to accept compromises. They are concluded between the family of the perpetrator and the victim in order to restore "social order" which is the power basis of local elites. In most countries rape in marriage is not a punishable act: In *Liberia*, too, (mainly male) MPs initially refused to give their consent to a bill on punishing rape in marriage. In *Haiti*, men threaten to bewitch raped women if they go to court.

### Compensation and damages

Compensation and damages for survivors of sexualised violence are, if at all, only receivable in the form of cash. Monetary services are insufficient though. In Germany, according to one participant, raped women reject restitution payments since they consider cash payments to remedy their sufferings undignified and disgraceful.

In the Democratic Republic of the Congo and Afghanistan where women until recently were not considered independent legal persons, it is not the women who get money which is occasionally paid instead of regular criminal proceedings according to traditional law, but their male family members.

In Rwanda, many women were raped during the genocide and were consequently infected with HIV/Aids and/or became pregnant. Numerous women and children do not get anti-retroviral medication. Weakened mothers are stigmatised and can barely care for their children. These, in turn, experience massive discrimination as "kids of the enemies" or "kids of malnutrition" and are thus rejected by society and sometimes even abused by their own mothers. Such cases are not covered by national legislation.

A bill on reparations has not yet been passed since international money promised for a relief fund has failed to materialise. Although Rwanda has the highest percentage of women in Parliament worldwide and many genocide survivors have organised themselves, their situation has not yet improved significantly. Countless women are afraid of reporting rapes to the police. They fear being stigmatised a second time. All the more, it is important to strengthen women's organisations as a representation of civil society interests. Despite their commitment the instruction of a bill on compensating rape victims failed due to the resistance of national decision-makers.

A positive exception to this rule is Bosnia and Herzegovina. In 2006, the globally unique disabled veterans pension

scheme for raped women was passed by parliament after the movie "Esma's Secret" (Grbavica by Jasmila Zbanic) had received strong public feedback. The movie tells the story of a woman who was raped during the war and her daughter who was produced by the rape. Women's groups gathered in front of the cinemas and managed to collect approximately 50,000 signatures in favour of the introduction of this bill within a short period of time. The law stipulates that affected women are entitled to a monthly pension of 250 Euro. But in practice it is not as easy as it looks. On the one hand, this applies to merely one part of the still divided country; on the other, there is a lack of information. Especially in rural areas, many women do not know how to file an application. And the application procedure for receiving pension payments is highly intransparent and susceptible to power abuse. There is just one NGO affiliated with the government that women need to refer to. To get a subsequent judgment they are interrogated by a medical commission whose members have either no or only little

"If you look at the situation in Congo you will see that the entire infrastructure is destroyed and that women do not have access to any institution. (...). International agreements do not help if the situation on the spot is so problematic. For instance, women cannot testify as witnesses since they do not have access to courts. So there is a gap between things happening at grassroots level and in courts. The question is how women's organisations may really help women, i.e. how they can help them access courts."  
(Participant, D.R. Congo)

experience with rape traumas. Many women's groups have committed themselves to changing this procedure.

In India, there is, in fact, a differentiated support system for victims of violence or natural disasters. But, firstly, rape is not covered and, secondly, the system focuses on humanitarian aid and not on legal claims.

### Support by men

In punishing rapists and socially outlawing sexualised violence, religious authorities may play an important role. In Bosnia, the Imam condemned rapes based on a fatwa and called upon all families and society to protect and not discriminate against women who have survived rapes.

Participants reported that in Rwanda, Kenya and Liberia, there are indeed young men who condemn rapes in public. They declare their solidarity with the women-survivors and intend to change men's violence-based attitudes. Those men could become allies of women's organisations.

### Critical conclusions

If criminal proceedings take place at a state court, if at all, the dignity and safety of women who have survived rapes are not protected; often they are re-traumatised. Judges and lawyers often tend to interrogate women in a voyeuristic and sexist way. It is not uncommon for judges to internalise the myth of women being blamed for a rape. Apart from that, the Anglo-Saxon tradition of cross-examination is often humiliating for witnesses. Giving testimony via video is often not possible for logistical reasons; and if that is a possible option judges have to give their consent first. There are only a few countries where raped women are informed about court proceedings before the trial starts, where they get legal assistance or psychological support. Consequently, an endless number of women experience trials as heteronymous, patriarchal, sexist and disgraceful.

That especially holds true if interrogated about their sexual biography.

All working group participants agreed that in their countries, apart from punishing the perpetrator, are also interested in an apology. What is important is the admission of guilt of the rapist in order to reduce the pain of women. A public apology may contribute to making women who have been raped credible and to ensuring that they are no longer treated as liars. It is about restoring their dignity and respect in society.

### The main conclusions drawn by participants in a nutshell:

- Women need to get involved in all social processes and need to get access to the most significant social institutions and bodies; concrete demands of women and women's organisations vis-à-vis the judiciary should serve as a basis for this. This relates to the implementation of legal reforms and improvements in accessing courts. For this purpose, it would be possible to establish mobile courts in rural areas, for example. Court proceedings as well as the behaviour and attitudes of judges, prosecutors and other judicial staff need to be changed. Many promote the impunity of perpetrators. The overall target is to overcome sexist attitudes and culturally embedded gender concepts since they victimise women in court. It is important to have legal information on court proceedings, psychological advice and especially a practical facilitation of factual legal representation before, during and after the trial.
- Women must be allowed to speak their mother tongues in all stages of proceedings and are entitled to get respect for their way of expression. Questions on the sexual

biography of women should generally be forbidden.

- Survivors who testify as witnesses in court require effective protection that does not end with the completion of proceedings. This also includes a secure future, i.e. material guarantees as well as health care with a special focus on HIV-infected women, and the certainty that such violence will never happen to them again. Children that were born after rapes should also get a place in society.
- International criminal law should be implemented at national level and be translated in national jurisdiction, also in rural areas.
- Women's organisations and local activists need to be supported comprehensively. Only the empowerment, networking and organisation of women may make social change happen that in turn may sustainably combat violent acts that women are exposed to at every level. They have committed themselves to empowering survivors and working on legal reforms and their effective implementation.
- However, putting an end to sexualised violence may not be achieved by activists and women's organisations at local and national level alone. It would be desirable to have enhanced global networking of women and the establishment of a permanent pressure group. The latter could contribute to making sure at a political and social level that governments and the international community assume responsibility for the criminal prosecution and outlawing of violence. In the unanimous conclusion of participants, women are guarantors of and starting point for those changes; they develop new social structures and take charge of their own lives. They demand that the conduct and attitudes of men change.

### 6.3 Working group 3: International Criminal Law

This working group was composed of women from Costa Rica, Germany, the Democratic Republic of the Congo, Kenya, Kosovo, Mexico, Nepal, East-Timor, Turkey and the US.

#### International criminal courts – justice for survivors of violence?

Female lawyers and women's organisations have successfully fought for sexualised violence to be recognised and sanctioned as a crime in international law. However, the implementation of the new basic principles of international law into various international and internationalised courts has been poor in many respects. When taking stock, working group participants came to the conclusion that the gap between affected women and local activists, on the one

hand, and international criminal courts, on the other, is very large. In the light of on-going violence against women, health implications of war violence as well as economic and family-related constraints, this gap seems often insurmountable. Consequently, new bridges need to be built to close this gap.

### One step forward ...

Working group participants considered the stronger role of victims and witnesses in comparison to war crimes trials at the end of the Second World War a positive development in international criminal law. Also, in comparison to many national court proceedings or traditional arbitration processes, more attention is attached to the rights and protection of victims and witnesses in international criminal law. A specific department is in charge of witness protection and support, even though this only applies to the duration of their testimony and arrival and departure. There is the possibility to give clandestine testimony, i.e. victims not to be identifiable for the general public. So upon request witnesses may testify under a pseudonym and behind partition walls; the public may be excluded during their testimony. Testifying via video would also be a general option in this respect.

Particularly important are procedural rules which, in rape cases, prevent the defence from again humiliating affected women. The defence is not allowed to ask the witness about her sexual biography and there is also no need to provide additional evidence to confirm a statement of the witness. In other words, credibility of witnesses is not called in question from the very outset, as in many national proceedings. She is subject to the same review as other witnesses. Of utmost importance for the empowerment of the rights of a witness and survivors is the possibility to enforce one's own rights through legal representation at the International Criminal Court (ICC) even though this is linked to restrictions. The inclusion of victim's compensation and rehabilitation in court proceedings was mentioned as further progress by participants. The establishment of the victim's compensation fund was also positively mentioned.

### ... two steps back

Yet, in practice there are numerous obstacles to embedding sexualised war violence in international criminal law and to empowering survivors' and witnesses' rights. This is mainly a challenge for women. Consequently, sexualised violence remains unconsidered in many indictments, as in the case of the Congolese rebel leader, Thomas Lobanga, before the International Criminal Court. While this trial refers to the coercive recruitment of children soldiers, it leaves sexualised violence against them unconsidered. At the Yugoslavia Tribunal there were numerous cases of rapes being left out in the charges to accelerate proceedings.

It is often said that rapes are extremely difficult to prove. On top of that, it is maintained that there are only a few women who were ready to testify because of the social stigma. Sexualised violence was not mentioned in the charges made by the UN-supported Tribunal against the Red Khmer in Cambodia although rapes were committed on a broad scale.

Above all, representatives of local women's groups that often establish contact between potential witnesses and international criminal courts reported on their great frustrations when getting in touch with the international judicial system. They did not only feel the nerve-racking and often humiliating cross-examinations to be unreasonable but also the fact that rapists as defendants had the right to interrogate the women themselves. Many women perceived this as another attack on their integrity. There were reports about cases where judges, despite a ban, accepted interrogations that focused on the sexual – allegedly immoral – biography of witnesses. In one case, a perpetrator threatened a woman holding a gun to her head and then raped her. He had had a sexual relationship with the woman before. The exclusively male chamber of judges considered this as mitigating circumstances and ultimately the perpetrator was acquitted.

NGO activists also complained about the lack of clarification given to witnesses on their rights and in particular about a lack of preparation for court events. Thus, witnesses in cross-examinations were completely unprepared when confronted with different statements they had made in the past and when caught up in contradictions on irrelevant aspects. Participants also shared examples of insensitive preliminary proceedings. And so an investigator of the International Criminal Court in the Democratic Republic of

“One point that I consider to be crucial (and) which should be a result of the conference is the need for a – let me call her – liaison officer for local activists at UN level so that every UN action involves the member states. Let’s remember one thing: member states represent us, we are the people! That is the first sentence of the Universal Declaration (of Human Rights). I believe that it is extremely important to have a liaison officer for local activists, so that every decision of the UN or regional mechanisms, for instance the Inter-American Court or the African Court, is linked to lobbying. (...) This would ensure that concerns and priorities of local activists are negotiated at every meeting.”  
(Participant, USA)

the Congo invited a woman from a remote village to an interrogation in the city; he finally sent her back home owing to prior commitments. This woman had travelled for days to make testimony and ultimately found herself in a completely alien city without any money. Participants demanded a culturally sensitive behaviour of court staff that also includes knowledge on local expressions. This is a top requirement especially in the case of sexualised violence and requires sensitive translations since it is often impossible for women to express circumstances of a rape in the official legal wording.

Another major topic of discussion was the lack of protection of witnesses before and after their testimony. Some NGO representatives put forward various examples of how a witness’ identity became publicly known although she had testified behind closed doors. Another case saw a witness being attacked and raped again by men of her own community upon return to her village since she was considered a disgraced person. Also, local activists often feel abandoned by international courts although it is they who establish contact between international criminal courts and potential witnesses or entire communities in regions that international investigators would normally never be able to access. Due to this mediating activity, they are often exposed to threats and even physical attacks, depending on the political context, by the state. However, if they are then severely threatened they are on their own.

The lawyers present agreed with the complaints of the NGO representatives, some of them voiced even more critical points. Up until today there has been no gender parity in courts when it comes to filling a vacancy, in particular at higher levels. Furthermore, there is a lack of mandatory education and training courses on sexualised and gender-specific violent crimes, although the Statute of the Interna-

tional Criminal Tribunal clearly prescribes corresponding competences in all areas. Patriarchal prejudices, but also people’s own anxieties in dealing with rape victims, thus remain unchanged and ineffective. This also includes the impaired perception of female survivors of sexualised violence as victims and not as human beings who have rights and want to make informed decisions.

On the other hand, some lawyers pointed out that former witnesses also gained positive experiences. Despite all constraints, those women had the feeling of having contributed to the clarification and establishment of justice.

The limited mandate of courts also needs to be taken into consideration. On top of that, judges and prosecutors need to strictly comply with the rules that also include the respect of the rights of the defendant. In public or vis-à-vis witnesses this is often difficult or not at all communicable and clashes with people’s expectations towards a court.

For instance, the detailed preparation of witnesses by the prosecutor is contested as undue influence and has even been prohibited by the International Criminal Court in a more recent judgment. As regards this case many participants thought that it would be better anyway to have a neutral body for the preparation of witnesses, e.g. witness protection divisions of courts or even better own legal representations. In this context, one of the participants reported on a group of women in Bosnia that were in the same camp during the war where almost all of them were raped. Later on, they appeared in court as a group. They put up demands for their testimonies, collected information and decided on every further step together. Through this joint approach they had a strong negotiating position vis-à-vis the court and were thus able to exert influence and encourage each other.

### Justice is more than law

In this context some participants referred to a specific point: in spite of all difficulties, the readiness of women to testify is often much higher than prosecutors assume. Furthermore, it is often not the shame that prevents women from testifying. However, there is a lack of knowledge in the courts to recognize the real hurdles and to develop strategies to overcome them within the realms of possibility.

According to one participant referring to post-war situations, we need to be aware of the fact that there is only a small number of women who are able to embark upon the formal, legal path. The overwhelming majority of women do not know how to get justice for what was done to them. Another participant said that a formal legal and gender-neutral approach ignores the socio-economic and cultural context of women’s lives and socialisation. Unless counter-

measures are taken, the formal legal approach will reproduce discrimination against women.

This is also reflected in the extreme imbalance between male and female witnesses at the Yugoslavia and Rwanda Tribunals. On the one hand, women are questioned less on general war crimes than men; on the other hand, poverty and poor educational opportunities of women impede them in enforcing their rights. Women are also socialised not to complain.

Current male-based legal systems are not suitable for empowering women, said a participant, as the dominating alien and often intimidating procedures tend to produce the opposite. The problem is, according to all participants, that women in post-war societies are generally excluded from reshaping society and from political decision-making processes as well as legally coming to terms with the past. UN Resolution 1325 adopted by the UN Security Council in 2000 that stipulates an effective involvement of women in all political processes is being ignored by governments.

#### Demands to change the international justice system

- All changes need to be geared towards strengthening women in their self-empowerment processes. In doing so, specific contexts need to be taken into account.
- The entire range of existing international tools, i.e. not only international criminal courts, needs to be utilised; this relates in particular to the protection of activists.
- For the protection of activists, one might apply the complaint mechanisms of the UN Special Rapporteur on Human Rights or the UN Special Rapporteur on Violence against Women. UN Resolution 1820 should be applied, too.
- Local activists require concrete protection networks. They need to be aware of the real risks that they run.
- There is a great need for more communication, cooperation and information in order to bridge the gap between international criminal law, women affected by war violence and local activists.
- What is important is the institutionalisation of a permanent monitoring system for court cases as well as the consistent documentation of court judgments, orders and proceedings.
- Court judgements, orders and proceedings need to be translated into a generally comprehensible language so that progress made in international criminal law may be used as a practical point of reference for national legal reforms in post-war countries.
- A more comprehensive clarification on the possibilities offered by international legal and human rights instruments for women in war and crisis areas is necessary.

This, in particular, holds true for the rights of a witness in international criminal courts.

- Country-specific and comparative research on the reasons that prevent women from enforcing their rights would be required.
- Experiences that women have gained with the legal systems of the different countries should be evaluated in a comparative way. This would make it possible to document to what extent the social empowerment of women and the strengthening of female self-confidence would contribute to improving access to formal legal systems for women.
- Women in their specific contexts need to develop their own criteria in terms of what type of conflict resolution and justice they favour and opt for. The women's network in the Asian-Pacific region that had organised the women's tribunal of Tokyo in 2000 could serve as an example. In parallel, women survivors tried to enforce their rights for apology and compensation in national courts.

#### 6.4 Working group 4: Other conflict resolution mechanisms

This working group was composed of participants from Chile, Costa Rica, Germany, Guatemala, Canada, Liberia, Peru and South Africa.

##### Truth and reconciliation commissions are not always an alternative.

This working group on other conflict resolution mechanisms mainly concentrated on truth and reconciliation commissions. In many countries, such as South Africa, Liberia, Guatemala, Peru and East-Timor, truth and reconciliation commissions were established after the end of an armed conflict. They are no alternatives to criminal proceedings even though they are often incorrectly perceived as such. They rather have the task of uncovering extreme human rights violations. According to the participants of this working group, all commissions put sexualised violence at the bottom of their agenda, if at all.

##### Structural problems of truth and reconciliation commissions

Many truth and reconciliation commissions are established too fast after the end of a conflict in order to stabilise post-war order or to secure the new political power structure. Governments and international players as well as the UN pursue their own interests and are interested in rapid

peace or fast amnesties at all cost, often at the expense of justice. Under such circumstances, numerous women are not willing to talk about their experiences with violence. In truth and reconciliation commissions, in criminal justice, in other institutions of conflict resolution and in NGOs there are differing, hardly reconcilable expectations, interests and justice concepts that clash. To solve this problem it would be necessary to clarify the perspectives and positions of women.

Commissions raise expectations that they cannot fulfil due to their internal structures and mechanisms, their staffing, time pressure and lack of financial resources. This is fatal for witnesses and survivors of violence, in particular if representatives of institutions categorise them mainly as victims and merely assign them the role of a victim during the hearings. Such an approach humiliates and re-traumatises many women, particularly since the formalised hearings and interrogations are run according to specific patterns of questions and by no means do justice to them. Apart from that, members of truth and reconciliation commissions often do not consider rapes since they concentrate their investigations mainly on murders, the vanishing of political activists and torture. They do not perceive rapes as being violent crimes during wars and conflicts.

“The two key factors for women were: Create trust in those who accompany witnesses, and time. Yes, that you get time, that one or two years are not enough for a truth and reconciliation commission. (...) It is important for the accompanying party to assess the Pros and Cons together with the witness... i.e. what she might say and whether she says it. (...) International organisations and NGOs are in a dilemma: the dilemma is that TRCs have guidelines and it is up to the NGOs to implement them in order to guarantee the support of survivors. In other words, NGOs need to fulfil the high and unrealistic promises of TRCs; at the same time they are unable to fulfil the interests of survivors.”  
(Participant from Germany)

### Whose truth?

As a rule, commissions convene in capitals or major cities of a country and are thus inaccessible for the majority of survivors of violence. The hearings take place in a country's official language which many women do not speak or understand. Indigenous in Latin America, for example, may not articulate themselves in Spanish, especially when it comes to putting personal violent experiences into words. Many local languages do not have terms for rape, or women paraphrase experienced violence because they are

ashamed of saying, for instance, that the perpetrator has robbed them of their dignity and abused them in the worst possible way. Translators often misinterpret such statements. Numerous women remain silent out of shame because other traumatising experiences dominate their memories or because they simply wish to suppress them. Here, one needs to add the women's fear of further discrimination and acts of revenge committed by the perpetrators, a specific group or their own families. Testifying witnesses are often only used to collect information on atrocities of the past. Then they are sent back home, without psychological preparation or support, without a chance of therapy and rehabilitation. Many do not get follow-up information either in terms of what will happen with their statements.

### Guatemala, Chile and South Africa

In Guatemala, the truth commission has not managed to contribute to curbing social violence. Perpetrators remained unpunished, impunity is still prevalent today. Many generals of the long-lasting civil war still hold high-ranking posts and control the media. The survivors and activists are coerced into remaining silent; violence is passed on to future generations. Compensation payments were only made to unarmed persons, i.e. not to combatants in guerrilla groups. Former guerrilla members, however, should get a chance to maintain their identity, to say that they were both victims and combatants. Sometimes they have to accept that their male comrades-in-arms also committed sexual violence against other women.

In Chile, an institute for human rights controlled by civil society was founded to give women a say. The human rights organisation Corporación Humanas is represented in Chile and other South American countries where it forges strategic alliances with women's rights organisations. It campaigns for a law that stipulates compensation for those women who were tortured and exposed to sexualised violence during the Chilean military dictatorship under Pinochet.

In South Africa, sexualised violence was made only a marginal subject of discussion in the truth and reconciliation commission. The President's Compensation Fund for victims was inaccessible for many victims. The “President's Fund” is a synonym for no payments, no responsibility and no access.

### Call for the participation of women

In some countries, compensation payments are fraught with problems; therefore responsible planners should focus

on the interests and needs of women. On the one hand, they should avoid stigmatisation; on the other, they should not trigger social envy. Against this backdrop, all participants agreed that individual compensation payments must be linked to concrete improvements of the financial and social living conditions in the women's environment. Such development measures resulting in structural change require cross-sector social discussions and awareness-raising that counteract feelings of unfair treatment. It is important to improve social and political participation of women; only then will they be able to contribute to beneficial development process. One step towards political participation may be the review of development budgets and government expenditure in post-war times with regard to gender equity. Such monitoring processes should take the implementation of women's and human rights into account. The working group came to the conclusion that there is still a great need to discuss the field of tension between reparations, individual compensation and development.

### NGOs pursue their own interests

Non-governmental and women's organisations must carefully analyse which demands from women they move centre stage and which they should rather neglect, e.g. concrete demands for compensation and social justice. NGO members should reflect in a self-critical way what interests they have to make sure that they do not instrumentalise or victimise the women they actually mean to support. The strict guidelines that mental health care consultancy groups need to obey, since they get international funds, are not perceived as real help by some women. Some women decide to found informal solidarity groups instead. As examples from Bosnia and Guatemala prove, these reflect their own ideas and concerns and are governed by their own regulations to the exclusion of the public. This shows how limited external help is and how pragmatic and constructive a response you find in some places. Hierarchies between members of NGOs and local women should also be reflected in the case of economically oriented programmes. It is important not to force women into the victim's corner but strengthen their status as farmers, for instance, or their own economic negotiating power. This provides a level playing field for both local women and NGO representatives.

Quite a few activists move between the areas of coming to terms with sexualised violent crimes committed during a war or conflict, current violence and prevention of violence – in particular, with regard to intergenerational aspects. Many find it difficult to define a focal point: while current violence would require more capacities, there are past crimes that need to be punished.

### No return to the old situation!

Many women find the demand for reconciliation and restoration of a status quo ante, i.e. the pre-war situation, insufficient and undesirable because numerous violent crimes in conflicts are based on extremely patriarchal structures and concern women who had suffered from various forms of suppression and massive disregard of their dignity and rights before a war or conflict. In addition to that, you find extreme impoverishment in various places which leads to a social brutalisation that lowers the inhibition threshold for crimes like rape. A major imbalance in power between soldiers of an occupation army and local women is guilty of aiding and abetting rapes.

In many cases, the key task must go beyond individual healing or social reconciliation processes and focus on the change of power relations and structures in a way that women and girls can live without the permanent fear of repeated violence and new attacks.

Working group participants are convinced that truth commissions have to fulfil the following prerequisites in order to become an appropriate means of coming to terms with violence:

- Silence needs to be ended so that sexualised violence will not repeat. Consequently, there is a need for a policy that clearly names and recognises these crimes.
- Women should be given the right to testify in their mother tongue. Commission members must speak the women's languages and develop a linguistic sensitivity for the statements made by women. It would make sense to include representatives of marginalised groups, e.g. indigenous people, into commissions and investigation teams.
- Before women who were raped give testimony they should get the chance to carefully discuss the pros and cons of a statement with their companions.
- Women need to be able to decide whether they want to testify publicly or whether the public should be excluded. There should be no interrogations conducted by men, and a protected environment needs to be created. What this should look like in concrete terms needs to be decided on an individual basis.

Justice concepts of women need to be at the centre of discussion; they should encompass the general recognition of the fact that crimes were really committed, the punishment of perpetrators, the compensation of survivors as well as guarantees that violent acts will not repeat. Especially the avoidance of renewed violence is considered a prerequisite for healing and has a future-oriented intergenerational dimension: mothers want to spare their daughters the same destiny.



For some countries that have already had truth and reconciliation commissions, it would make sense to implement women's tribunals modeled on the Tokyo Tribunal: they may contribute to restoring women's dignity and initiating social discussions on sexualised violence.

Survivors' fundamental needs must be guaranteed: among other things, they want to have a roof over their heads, health care, care for their children, protection from violence, infrastructure improvements, information and counselling, sheltered places, and justice.

Reparations and compensation funds must be integrated into national budgets. They need to be controlled and monitored to make sure that they are not misused by corrupt governments.

There needs to be a clear distinction between reparations, compensation and general development aid. Governments, for instance, must not abuse road construction as a substitute for targeted reparation programmes. Structures are needed which actively involve women in all decision-making and design processes of truth commissions, in reconciliation matters and debates on reparations, compensation measures, development and democratisation.

For survivors, it is decisive to leave the status as victim behind and regain the status as citizen. Women that were raped will only be able to develop from victims to survivors and ultimately to victors, if they are no longer caught in the violent circle. However, this requires time and comprehensive support. They should be able at every level to decide whether and what political alliances they want to forge.

## 7. Alternative forms of justice

Many participants considered day four of the workshop as the high point as alternative forms of justice were centre stage. Three films documented initiatives in Japan, India and Kenya in a meaningful way. Women who had developed these justice initiatives on an international, national or local level and were significantly involved in them talked about the films and answered questions.

### 7.1 International Women's Tribunal in Tokyo, 2000

'Breaking the History of Silence', was the title of the documentary about this symbolic women's tribunal, which took place in Tokyo at the end of 2000. Around 200,000 Asian women were forced into 'comfort stations' between 1937 and 1945 to act as sex slaves and prostitutes for Japanese soldiers. Many were abducted as young girls and raped over the course of several years in front-line brothels. No mention was made of these crimes at the allied forces military tribunal in 1946 and they have gone unpunished to date because the victorious powers in the Second World War sacrificed women for their strategic interests in the forthcoming Cold War. The plaintiffs came from North and South Korea, China, Taiwan, East Timor, Indonesia, the Netherlands, Malaysia, and the Philippines. 78 elderly survivors from various Asian countries came to Tokyo thanks to women's rights organisation initiatives and told the tribunal how they were beaten, humiliated and raped several times a day. Even after such a long time the memories of the torment and humiliation were painfully visible. The tribunal was symbolic, but it was organised in the same way as an ordinary tribunal with internationally recognised judges and prosecutors and it adhered strictly to the provisions of international humanitarian law that was applicable at the time. Nine high ranking Japanese politicians and soldiers, including Emperor Hirohito, stood accused. The Japanese government, the Emperor and the army have refused to make any confession of guilt to the present day and accept absolutely no responsibility. Nevertheless, symbolic acts can create an element of justice even after such a long time. They can rehabilitate the victims by publicly recognising and denouncing the wrong that has been done to them. The historic moment when the presiding judge and former president of the International Tribunal of the Former Yugoslavia, Gabrielle Kirk McDonald, passed her 'guilty' verdict is captured in the film.

Emperor Hirohito as Commander-in-Chief of the army since 1937 knew about the acts of violence in the troop brothels. In legal terms this should be considered a crime

"There are three things that I would like to say... Firstly: we stressed that the law that was applied at the Tokyo Tribunal in 1945 could also have been applied to the Comfort Women and if it had been applied, it would have confirmed the guilt of the perpetrators. Secondly, the prosecutors found evidence in the Japanese archives, for example, written correspondence from the War Secretary in Tokyo to one of the officers in occupied China. This correspondence stated: 'We need about 500 Comfort Women because we are sending troops close to the Russian border. We have no Comfort Women'. There were indications of what the signs at the facilities where the Comfort Women were held should look like. It was so 'normal' and even more surprising was the fact that supposedly no one knew about it apart from the signwriter. Thirdly, there are various sources in international law that can be cited...This judgement (of the Tokyo Women's Tribunal) has legal value. It can be cited by NGOs and can be cited in other cases. Therefore we should not consider it as a nice, neat judgement, but really make use of it."  
(Patricia Sellers)

against humanity and a breach of The Hague Land Warfare Convention of 1907, the Convention against Trade in Women of 1921, the Anti-Slavery Convention of 1926 and the UN Convention against Forced Labour.

The current Japanese government is the legal successor to the government at the time and owes the women an apology and compensation. The survivors cheered, beamed, cried and embraced each other. In the subsequent discussion, many of the workshop participants wished the survivors in their countries of origin could be given similar belated satisfaction.

Four workshop participants took part in the tribunal: the former gender expert for the prosecution at the Former Yugoslavia Tribunal, Patricia Sellers, was the chief prosecutor; US lawyer, Rhonda Copelon, acted in an advisory capacity; South Korean professor of sociology, Chinsung Chung, was co-organiser and women's rights activist, Rosa Maria do Rosario de Sousa from East Timor, campaigned for the witnesses and acted as their escort. She and other women's rights activists from countries in Asia and the Pacific region had been demanding since the beginning of the 1990s that the surviving Comfort Women should be granted justice. Their activities included solidarity conferences, networking meetings, legal lobbying, and targeted cooperation with international organisations.

The cooperation with former UN Special Rapporteur on violence against women, Radhika Coomaraswamy, was extremely important for the UN report published in 1996 on the rape and humiliation of the Comfort Women. Important work was also done by VAWW-NET Japan (Violence Against Women in War-Network Japan), because it invited the perpetrators to give evidence at the tribunal. In addition, targeted searches of Japanese archives uncovered numerous documents that provided clear evidence of the planned use of Comfort Women as part of military strategies.

Highly respected lawyers from four continents agreed to act as judges, three of the four were women. Patricia Sellers said that this was the most non-sexist environment that she had ever worked in. Another participant, Vahida Nainar, added that a public hearing, which she had been involved in organising, took place after the Women's Tribunal in Tokyo at which women from current war zones and crisis areas talked about their experiences of violence. Rhonda Copelon underlined that the conviction of the Tokyo Tribunal can also be applied to cases today because it is based on valid national and international law.

The judgement can be found at [www1.jca.apc.org/vaww-netjapan/english/womenstribunal2000/Judgement.pdf](http://www1.jca.apc.org/vaww-netjapan/english/womenstribunal2000/Judgement.pdf)

According to Chinsung Chung, the organisers of the Tokyo Tribunal are also trying to elicit an apology from the Japanese government and the army for the elderly victims and compensation. Both of these could be made a condition of Japan keeping its seat on the UN Security Council. The US Congress demanded an apology in 2007, and likewise the Dutch, Australian, Canadian and South Korean Parliaments. In Korea, the women receive support from several Buddhist organisations, for example, free medical and psychological care. A refuge was also built. However, the most important support for the surviving women was offered by a transnational network of campaigners, which persistently demanded recognition of the injustice and actually created the space in the first place for the former Comfort Women to be able to speak out without fear of discrimination. This network did important work preparing for the Tokyo Tribunal and still supports the women in a variety of ways.

A hall of remembrance is due to be built in memory of the victims. The initiators are also campaigning for the events to be included in history text books in Japanese schools. One academic publisher made reference to the fate of the Comfort Women in a 1996/1997 publication, but right wing groups in Japan made sure that this reference was removed when the text books were reprinted in 2000.

## 7.2 The Umoja Uaso Women's Village and Umoja Uaso Women's Group in Kenya

Rebecca Lolosoli, a woman from the Samburu ethnic groups in Kenya, founded the Umoja Uaso Women's Village comprising around 50 houses in the Samburu National Park in 1991. It was portrayed in a film of the same name. Women, who had been abused, and their children were accepted into the village. 35 of a total of 42 Umoja women were raped by British soldiers whilst searching for firewood. They were subsequently beaten by their husbands and chased out of their homes. The rapists, who were stationed on a nearby British army training base, have never been convicted. Kenya was a British colony until 1963. In a detailed investigative report dated July 2003, amnesty international put the number of rape cases involving the British armed forces in Kenya at 650, half of which were gang rapes.

According to Amnesty International many of the women and young girls – in one documented case even a young boy – suffered serious injuries and traumas. Between 35 and 45 women gave birth to children, who were verbally abused because of the light colour of their skin. The Kenyan authorities made no efforts to prosecute and an internal British military enquiry fizzled out.

According to Rebecca Lolosoli, there is no mechanism in the patriarchal Samburu society for doing penance for rape in the interests of women. So the Umoja women implement their own practised concepts of justice. They say: 'If one woman has a problem then we all have a problem and we solve it together.' They find the only way (to justice) is edu-

"To the question of what prompted Rebecca Lolosoli to become a campaigner and set up the women's village she said: 'It wasn't that easy because the men in our tribe didn't want me to stand up (in public meetings) and speak. They always shouted at me to sit down saying that they didn't want to hear me speak because women aren't allowed to speak when they are standing up.

So I kept trying it until the day when I stayed standing. They told me to sit down, but I carried on speaking while I was standing up and didn't sit down until I had finished. The women then started to think 'Let's go and see her and see if she can do anything for us'. When they came I organised a meeting and asked them whether we should set up a group so we could help each other. We began when we were still living in different places. Later we thought that it would be better if we all came to live together in a village and set up a community together so we would be safer and could help each other."

(Rebecca Lolosoli, Kenya)

cating women so that they can fight for their own rights and overcome male-dominated mechanisms.

Financial self-empowerment and independence can enable women to bring their cases to court.

According to Rebecca Lolosoli women and girls are considered by the patriarchal Samburu as family possessions and are circumcised; illegitimate children or the children of uncircumcised women are killed. In the Umoja Uaso Women's Village, however, women own land and cattle and have money, their children go to school and their daughters are safe – a quantum leap in Samburu society. The Umoja Women's Village takes in women from other ethnic groups, teenagers for example who are pregnant and have been abused. The aim is for these young women to go back to school.

The women make a living from their goats and selling jewellery to tourists. Part of their income is set aside for schooling and put into a type of communal health fund for medical treatment in the event of illness. In the village's own school, which also accepts children from other villages, one teacher educates the children in gender equality. Sons are allowed to live in the Umoja Women's Village as long as they comply with the rules and treat women and young girls with respect. However, when they become young men they have to leave the village. Most of them continue to support their mothers and the village through practical work or keeping watch over the village at night.

The women felt compelled to put up a high fence to protect against wild animals and angry ex-husbands. The film also showed that the women's village is a 'thorn in the side' for many Samburu men because of its modest financial success. The grown-up son of a woman living in the Umoja Uaso Women's Village keeps watch at night. If the women leave the village and go shopping in a neighbouring settlement they are often insulted by men or even threatened and accused of witchcraft.

After the film, several participants talked enthusiastically. Others were rather sceptical, especially as they had the impression that the women were withdrawing from their society. Rebecca Lolosoli strongly denied this saying that the women did not want to isolate themselves or antagonise the men. As Rebecca Lolosoli says in the film sometimes men come to the women and offer their support. 'Then I say to them that the best support they can give us is to treat their wives fairly and set an example for other men.' She set up the village in order to survive because she had been expelled herself. Other aims are the recognition of women's rights and a commitment to greater equality. This should make married and family life more harmonious. However, contact with women's groups in other parts of the country

or women's rights organisations in Nairobi, which is over 400 kilometres away, is difficult because of the poor transport links.

The Umoja Uaso Women's Village urgently needs international networking support in order to be able to continue. Campaigners like Rebecca Lolosoli also need practical protection against assaults by men as well as legal assistance. All the lawsuits against the British rapists have failed and the Kenyan government recently signed a new agreement allowing the British military base to remain. More information available at [www.umojawomen.org](http://www.umojawomen.org)

### 7.3 Collective Initiative for Justice

The Indian legal system is hopelessly overloaded; over 25 million cases are waiting to be heard. Primarily women affected by domestic violence and compulsory marriages can expect no help there. Consequently, in Kalyan Nagart, a ghetto on the edge of the city of Vadodara in the North West Indian province of Gujarat, women have joined forces in a 'collective initiative for justice'. The film, 'Shortcut to Justice' by film maker and *medica mondiale* worker, Sybille Fezer, shows the work of this women's arbitration court.

In one case these lay women took the dowry away from a man, who had mistreated his wife, going through each item and piece of furniture in the house and clarifying who had brought what into the marriage. Then they loaded all the woman's possessions onto a cart and took them away. Sometimes there is just separation, in other cases the man changes his behaviour. Rehana had been badly treated by her husband who threatened to kill her in front of their young daughter because she had 'only' given him three daughters and no sons. At the end of the trial at the arbitration court the perpetrator promised to treat his wife with respect. He gave in because he didn't want to go through having his family matters discussed in public.

"When a rape case is submitted to the women's group the group records the woman's statement (if she is in agreement with this) and everything that is necessary in order to start prosecution proceedings. This involves, for example, accompanying her to the police station, recording the first statement, which then forms the basis for the case, and accompanying the rape victim to a medical examination. The women's group offers these services prior to the actual legal proceedings."  
(Nimisha Desai, India)

This model has since been copied in other settlements, reported project initiator and head of the feminist women's organisation, 'Olakh', Nimisha Desai, who was present at the workshop. She launched the initiative in the context of the massacre of extremist Hindus by Muslims in 2002. Thousands of people were killed during this pogrom and sexualised violence was already playing a significant role during the propagandist incitement to violence. 'At the start, however,' Nimisha Desai reported, 'it was about conflict resolution, about living together again in communities. Men and women were involved. But then at some point the men stayed away and the women raised different subjects, in particular sexual and domestic violence.' The incidence and intensity of domestic violence also increased strongly after the conflict.

Nimisha Desai and her co-campaigners are also campaigning with localised communication forums for the improvement of dialogue between Muslim and Hindu women. They are also trying, in spite of the caste differences, to enable dialogue with casteless women.

Projects like the 'Collective Initiative for Justice' prove that conventional law can be creatively developed in favour of women. Conflict resolution is, however, a lengthy process often lasting for months on end. The arbitration courts convene on a regular basis in a public place and anyone can put forward grievances. They comply with particular rules, witnesses are called and records kept. The lay judges repeatedly subpoena the parties to a conflict or seek them out if one party does not appear. They hear everybody, even neighbours and village chiefs, until they reach a 'verdict'. By doing this, they create transparent, innovative forums

for dialogue conducted in public where the women affected can say what they want without being discriminated against.

Often they want the re-establishment of respect. The decisions are formally endorsed in accordance with local law and have the legal quality of certified agreements. Above all, however, they have a binding effect on a psychological and social level. All the conflicting parties sign the agreement, with a fingerprint if necessary, therefore consenting to implement it. Compliance with the agreement is checked by regular inspections.

Having said that, conflict resolution is not in any way just confined to a bit of paper, it often includes creative action. The negotiators protected one woman, who was consistently raped by her father-in-law, in a very practical way by taking it in turns to stay at the woman's house overnight. In cases of serious domestic violence an attempt is also made to get the neighbours involved in protecting the women. Publicity of this kind can have a preventative effect, but ultimately it does not provide comprehensive protection. The perpetrators are always clearly told that they are being watched and the women's group also works with the police. The women's group is a state registered organisation, which like many other women's association, has established a good working relationship with the police. It is never a question of self-administered justice, but is about documenting cases of rape, accompanying women through administrative formalities and giving them practical support. More and more often, the official family courts refer cases to this arbitration court.

## 8. Closing statement and summary of recommendations

The planning group – supported by Vahida Nainar – produced a list during the workshop summarising the recommendations that the participants had formulated in the individual working groups and plenary discussions. A few points were added during the final plenary session.

### 8.1 Closing statement

The participants found that women often find justice systems inadequate and/or inaccessible or even unable or unwilling to be fair to the female survivors of rape and other forms of sexualised violence. The inaccessibility of established justice systems is an ongoing problem. They are often a long way from where the women live, they speak a language that is foreign to women, are hostile in their treatment of women and take no steps to ensure the security of women leaving them insecure and vulnerable. Involvement in legal proceedings is often a demoralising experience that makes the survivors into victims once again.

Hence the participants established that, firstly, it is necessary to use, change and/or consolidate existing proceedings in search of justice and, secondly, that alternative models need to be developed, which are more accessible to women and meet their expectations of justice on a more sustained basis. At the same time, social awareness of the problem of rape and other forms of sexualised violence must be increased – through political campaigns, education campaigns, consultations at all levels, research and support for various women's initiatives.

The recommendations for action that were made during the discussions can be roughly divided into three categories. Each campaign or strategy developed must take account of the fact that it is acting in the global context of an extremist right wing and conservative social policy and a neo-liberal economy, which affects the lives of women.

### 8.2 List of demands

#### Solidarity, well-being and security

- Promotion of the well-being of the survivors of violence and female campaigners
- Promotion of the healing and restoration of traumatised bodies and spirits
- Creation of solidarity, support and campaign networks for women on all levels
- Development of escape or evacuation routes for female campaigners under threat
- Planning of specific campaigns on the security of female campaigners
- Security must include physical security  
This is completely different from the prevailing military definition of security. The armed forces dominate the cooperation between civil and armed forces both during and after military interventions.
- The voices of the survivors must be heard in all legal proceedings
- Destigmatisation of women and young girls who have been raped; women who have been infected with HIV as a result of rape and the children born as a result of rape
- Support for the campaign by Congolese women against sexual violence in the Democratic Republic of the Congo by signing their petition: <http://www.rdcviolencesexuelle.org/site/en/node/58>
- Consolidate women's organisations and devise sustainable mechanisms
- Creation of a database of various women experts and their connection with local women's groups
- Organisation of regular reflection, evaluation and strategy meetings
- Tackle the notorious problem of a lack of financial and human resources
- International recognition and awards for unique innovative solutions such as the Umoja Uaso Women's Village in Kenya.

#### Initiation, influencing and monitoring of legal developments on all levels

- Promotion of links between international organisations such as the United Nations and local initiatives
- Creation of a monitoring system for legal proceedings involving sexualised violence in conflict situations
- Monitoring of legal developments on all levels and publication of feminist reviews on this subject
- Cooperation and exchange between local women and female legal experts in order to institute legal proceedings on a national or international level
- Exchange and dissemination of positive court rulings and convictions, including the translation of legislation, convictions and legal texts into an everyday relevant language
- Organisation of working groups on specific issues in order to react to crisis situations
- Initiation and/or dissemination of alternative models of justice

#### Recognition, vigilance and awareness

- Memories must be kept alive. Reconciliation with the past is necessary in order to understand the present and comprehend the consequences that the past has on the present.
- Use of mass media such as films in order to create social awareness
- Documentation and dissemination of examples of good practice and success stories
- Every successful initiative needs trust and time
- Appeal to men both as the perpetrators and as the agents of change
- Development of strategies in order to increase the pressure on governments and the UN against multinational concerns and their exploitation of natural resources as a source of violence
- Make ethnic and racist discrimination visible as part of the context of our work
- Attention also to women in industrialised countries, primarily refugees or migrants, who endure violence

## Contact groups – four internationally networked teams

At the end of the conference four international teams or contact groups were formed. They intend to stay in touch, exchange suggestions and information and provide assistance quickly in urgent cases.

- The first contact group ('Project Support') intends to focus on how the skills of local women's groups can be consolidated.
- The second contact group ('Security Team') would like to improve the security of campaigners under threat. This includes situation-specific programmes as well as public relations work relating to the security problems faced by women and the general promotion of the welfare of campaigners who are under threat of burn-out.
- The third contact group ('Bridging the gap between international law and local activists') intends to build bridges

between activists and experts working on an international level. They plan to exchange information on regulations, legislation and judgements in order to close the gap between international criminal law and the actual living circumstances women find themselves in. This exchange should provide qualitative support for work on an international level and also critical follow-up and commentary on the legal practices of the International Criminal Court, for example.

- The fourth contact group ('Women's Justice Initiatives') plans to support justice initiatives such as 'Umoja' and the 'Collective Initiative for Justice', raise awareness of them on an international level and seek out similar initiatives. The cross-national exchange between such fundamental initiatives is also important.



## Participants

Agnes Bere, Maria	Judicial System Monitoring Programm, Timor Leste	Griese, Karin	<i>medica mondiale</i> e.V., Germany
Ameer Rasuli, Humaira	<i>medica mondiale</i> Afghanistan, Afghanistan	Hauser, Monika	<i>medica mondiale</i> e.V., Germany
Anderson, Letitia	UNIFEM/UN Action Against Sexual Violence in Conflict, Australia/USA	Husic, Sabiha	Medica Zenica, Bosnia-Herzegovina
Birhaheka, Immaculée	Promotion et appui aux initiatives féminines, DR Congo	Kenny, Erin	United Nations Population Fund, USA
Bonase, Noma-Russia	Khulumani Support Group, South Africa	Krug-Rohn, Stefanie	Institute for Foreign Relations, Programme zivik, Germany
Bophat, Keat	Khmer Rouge Tribunal, Witness Protection Unit, Cambodia	Lolosoli, Rebecca	Umoja Uaso Women's Group, Kenya
Brunet, Ariane	Coalition for Women's Human Rights in Conflict Situations, Canada	Lusenge, Julienne	Solidarité Féminine pour la Paix et le Développement intégral, DR Congo
Bruchhaus, Eva-Maria	<i>medica mondiale</i> e.V., Germany	Mendez, Luz	Women's Fight for Justice, Guatemala
Çalışkan, Selmin	<i>medica mondiale</i> e.V., Germany/Turkey	Mukasarasi, Godelieve	Solidarité pour l'Epanouissement des Veuves et des orphelins visant le travail et l'Auto Promotion, Ruanda
Chung, Chinsung	Korean Council for Military Sexual Slavery by Japan, South Korea	Muponisi, Chipso Gift	<i>medica mondiale</i> Liberia, Zambia/Liberia
Copelon, Rhonda	International Women's Human Rights Law Clinic, USA	Nainar, Vahida	lawyer, former Women's Caucus for Gender Justice, India
Desai, Nimisha	Olakh – A Space for Women, India	Nawabi, Massoda	<i>medica mondiale</i> Afghanistan, Afghanistan
Do Rosario de Sousa, Rosa Maria	Fokupers, Timor Leste	Ocitti, Agnes	Association of Volunteers for International Service, Uganda/Netherlands
Dylatahu, Zejnete	<i>medica</i> Kosova, Kosova	Odio Benito, Elizabeth	International Criminal Court, Costa Rica/Netherlands
Ertürk, Yakin	UN Special Representative on Violence against Women, Turkey/USA	Rees, Madeleine	Office of the High Commissioner for Human Rights, UK/Switzerland
Eugene, Elvire	Association femme soleil d'Haiti, Haiti	Schäfer, Rita	free lance Ethnologist
Falcon Mantilla, Julissa	Lawyer, Peru	Sellers, Patricia	Lawyer, former Ex-Tribunal Yugoslavia, USA/Belgium
Fezer, Sybille	<i>medica mondiale</i> e.V., Germany	Sharratt, Sarah	Psychologist, Costa Rica/Netherlands
Fries, Lorena	Corporación Humanas, Chile	Shehu, Lola Veprora	<i>medica</i> Kosova, Kosova
Fulchiron, Amandine	Unión Nacional de Mujeres Guatemaltecas, Guatemala	Studzinsky, Silke	Khmer Rouge Tribunal, Cambodia/Germany
Gautam, Shoba	Institute of Human Rights Communication, Nepal	Swen, Angeline	<i>medica mondiale</i> Liberia, Liberia
Gonzales Rivas, Gabriela	Khmer Rouge Tribunal, Witness Protection Unit, Mexico/Cambodia		
Grau, Bele	<i>medica mondiale</i> e.V., Germany		

## Organisation und Co-operation

### Planning Group:

Bode, Malin	Lawyer, Germany
Keller, Bonnie	Social Scientist, Lawyer, USA/ Germany
Mischkowski, Gabriela	<i>medica mondiale</i> e.V., Germany
Mosbahi, Jessica	<i>medica mondiale</i> e.V., Germany

### Facilitation:

Kiragu, Jane	Lawyer, Kenya
Klingspor, Christiane	Cross-cultural and inter- religious House of collective learning for women, Germany
Plakwicz, Jolanta	Gender consultant, Poland
Sichtermann, Marie	Geld & Rosen, Germany

### Well-being:

Maria Zemp	Trauma Expert, Germany
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### Documentation:

Hamzhei, Modjgan	Trauma therapist, Germany/Iran
Scheub, Ute	Journalist, Germany

### Photographer:

Suhan, Cornelia	Photographer, Germany
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### Interpreters:

Delgado, Carmen	Switzerland
Gruber, Veronika	Germany
Heikamp, Stefanie	Germany
Kaltwasser, Anne	Germany
Lourtau, Delphine	Canada
Tejera González	Spain
Von Arps-Aubert, Bettina	Germany

### Further staff:

Harder, Annette	<i>medica mondiale</i> e.V., Germany
König, Stefanie	<i>medica mondiale</i> e.V., Germany
Kriechel, Beate	<i>medica mondiale</i> e.V., Germany
Platzmann, Maren	<i>medica mondiale</i> e.V., Germany
Schäfer, Nuria	<i>medica mondiale</i> e.V., Germany

## Annex Photos

### Tokio Women's Tribunal



from left to right

**Rhonda Copelon** is Professor of International Criminal Law and Director of the International Women's Human Rights Law Clinic (WHR). She represents these institutions in the Coalition for Women's Human Rights in Conflict Situations, she is on the Advisory Council of Women's Initiative for Gender Justice and committee member of the Centre for Constitutional Rights in New York.

**Patricia Sellers (USA)** was the Legal Advisor for Gender and Prosecutor at the International Tribunals on Rwanda and Former Yugoslavia (ICTY and ICTR). She was Co-Chief Prosecutor in the Tokiyo Womens Tribunal. She now works as an independent expert on Internal Criminal Law.

**Chinsung Chung (South Korea)** is Professor of Sociology at Seoul National University. Since 1990 she has been working on the military sexual slavery of women by the Japanese Army in the Second World War. She is among the veterans of the Korean Council of Military Sexual Slavery by Japan. Together with women's organisations from North Korea, Japan and other Asian countries, she prepared the Women's Tribunal in Tokiyo.

### Kenia, Umoja Uaso Women's Village, Kenya



**Rebecca Lolosoli (Kenya)** is the founder of the Umoja Uaso Women's Group and the Umoja Uaso Women's Village, Kenya. The village started as a refuge for women who had been raped by British soldiers stationed in Kenya between 1980 and 1990; it is now a self-governed home for many women who suffered violence.

### India, Women's Courts

**Nimisha Desai (India)** is a founding member of the Women's Information and Counseling Centre Olakh. She trains women to work in local tribunals and works with the steering committee for the Strengthening of Women on the national Planning Commission. She was awarded not only a Fulbright Research scholarship but also one from Ashoka.



Portraits



**Vahida Nainar (India)** is a lawyer. She founded and leads the Women’s Research and Action Group in Mumbai. As former Managing Director of the Women’s Caucus for Gender Justice, New York she worked towards ensuring the integration of a gender perspective in the planning of the International Criminal Court. She teaches at the International Women’s Human Rights Clinic CUNY School of Law, in New York and is an active member of many international women’s organisations.



**Bonnie Keller and Elvire Eugene**

**Bonnie Keller (American living in Germany)**, is an Anthropologist and Development Expert. She is a volunteer at *medica mondiale* and was a member of the planning committee for this conference. She has over 30 years experience working in Africa in different areas covering women and gender.

**Elvire Eugene (Haiti)** is a lawyer and co-founder of the Association Femmes Soliel (AFASDA), the Association of Women of the Sun in Haiti. She supports survivors of sexualised violence in court and fights against human rights violations in female prisons.



**Gabriela Mischkowski** is a Historian. She co-founded *medica mondiale* in 1993. Since 1999 she works freelance for *medica mondiale* as Program Advisor for Gender Justice. She was a member of the planning committee for this conference.



**Immaculée Birhaheka (D.R. Congo), Sabiha Husic (Bosnia Herzegovina)**

**Immaculée Birhaheka** is a Development Sociologist and leader of the Organisation “Promotion et appui aux initiatives féminines” Promotion and Support of Womens’ Initiatives (PIAF) in eastern Congo.

**Sabiha Husic** is an Islamic Mualima. She has worked in the women’s therapy centre *medica Zenica* since its founding during the Bosnian war. She was first Theologist and Psychotherapist and since 2007, Executive Director.



**Malin Bode** is a lawyer, joint publisher and founding editor of the feminist legal journal “Streit” (Disput). In 1991 she initiated a group on Feminist Legal Theory. She was a member of the planning committee for this conference.

## General Workshop Information/Workshop Dynamic



Plenum



Movement - wellbeing



Working groups - indoors



Networking



Working groups - in the garden



Group picture of outing to the Drachenfels



Conference hall