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Sexual Violence as an International Crime, the Restorative Paradigm and the Possibilities of a More Just Response

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18.1. Introduction

Sexual violence is widespread and affects women and men in all countries, whether peaceful, fragile [1] or undergoing armed conflicts. A common characteristic among these places and persons is the lack of a just, appropriate and consistent response after such an offence. Restorative justice, in its maximalist approach, may be able to offer a number of responses to such crime which traditional criminal justice simply does not (at least not on its own).

There are a number of definitions of sexual violence. In its broad acceptance, sexual violence includes a variety of sexually harmful behaviours involving men, women and children. These behaviours may or may not imply physical contact, criminal or civil court proceedings or even a conflict or post-conflict context. The violence may, for example, be linked to child sexual abuse, sexual assault, molestation, rape, sexual trafficking, sexual slavery, forced sterilisation, forced marriages, forced pregnancy and sexual violence perpetrated through the use of communication technology. This chapter is concerned with international sexual crimes perpetrated within an armed conflict or an authoritarian re-

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1 The concept of 'fragile state' is borrowed from Catherine Burns and Kathleen Daly, "Responding to Everyday Rape in Cambodia: Rhetorics, Realities and *Somroh Somruel*", in *Restorative Justice: An International Journal*, 2014, vol. 2, no. 1, pp. 64–84. See also Wim Naudé, Amelia U. Santos-Paulino and Mark McGillivray, *Fragile States: Causes, Costs, and Responses*, Oxford University Press, Oxford, 2011.

gime. Victims[2] in this context have frequently suffered extreme violence which can manifest itself on a number of levels, traumatising and affecting not only them, but their families and entire communities. Furthermore, alleged perpetrators frequently continue to live within the very communities where the crime took place.[3] Whether perpetrated by government forces or rebel groups (or both), sexual violence may be part of a campaign of terror and torture intended to degrade, intimidate and target specific sectors of the population, as well as to force them to migrate.[4] In some conflicts, such as currently in eastern Democratic Republic of Congo or Nigeria, it may be used strategically as a weapon of war intended to destroy the very core of communities, families and livelihoods.[5]

A series of mechanisms, commonly referred to as 'transitional justice'[6] may assist a country in departing from its violent past.[7] These may include criminal prosecutions, reparations (material or symbolic), institutional reform (judiciary, government, security forces), and also commis-

2 We acknowledge that both 'victims' and 'survivors' are used in this context; for the sake of simplicity, we use 'victims' while acknowledging that it is not always the most accurate or acceptable term.

3 See, for example, Mark A. Drumbl, "Sclerosis: Retributive Justice and the Rwandan Genocide", in *Punishment and Society*, 2000, vol. 2, no. 3, p. 288.

4 See, for example, Maria Eriksson Baaz and Maria Stern, *Rape as a Weapon of War*, Zed Books, London, 2013.

5 On 19 June 2008, the United Nations Security Council passed resolution 1820, UN Doc. S/RES/1820, which addresses a wide range of harms associated with sexual violence in conflict and, crucially, recognises that sexual violence, by terrorising and destabilising entire communities is a tangible security threat and not 'just' an unfortunate consequence of conflict (http://www.legal-tools.org/doc/298f16/).

6 The term 'transitional justice' gained prominence in the 1980s and 1990s with the fall of military regimes in South and Central America and in Eastern Europe. See generally Ruti G. Teitel, *Transitional Justice*, Oxford University Press, Oxford, 2000.

7 The goals of transitional justice vary according to the historical and the political contexts of the conflict and the priorities of the society in transition. By and large, the goals of transitional justice are the presumed resumption or a transition to democracy, establishment of rule of law, reconstruction of the nation, psycho-social reconciliation of the people with the past and documentation of collective memory of the past to avoid repetition among others. See, for example, Teitel, 2000, *ibid.*; Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge University Press, Cambridge, 2006.

sions of inquiry or truth commissions.[8] The insecure aftermath of conflict and regime change means implementation of the latter is complex, but there is a growing consensus that some or all these mechanisms must be pursued simultaneously and in an integrated or blended manner for the transition to be successful and comprehensive.[9] As such, transitional justice in itself appears to have similar objectives to 'core principles' of a more maximalist approach to restorative justice such as healing, accountability and wrongs inflicted to a person rather than to the state.[10] Some specific mechanisms even follow the conventional restorative justice focus on encounter, amends, reintegration, inclusion of victim and offender[11] with procedures akin to victim–offender mediation or victim–offender dialogue.[12]

The restorative paradigm in the case of sexual violence in the context of transition is about looking into the possibilities of offering a more comprehensive response for this particular crime, which transcends the traditional punitive approach and its many limitations. It attempts to address the 'collective responsibility' rather than solely 'individual liability'.[13] It facilitates mechanisms for victims, offenders and communities in order to allow a transition in which eventually some healing and rebuild-

8 Report of the Secretary General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616, 3 August 2004 (http://www.legal-tools.org/doc/77bebf/).

9 See, for example, Drumbl, 2000, *supra* note 3; Charles Villa-Vicencio, "Transitional Justice, Restoration and Prosecution", in Dennis Sullivan and Larry Tifft (eds.), *Handbook of Restorative Justice*, Routledge, London, 2006; Estelle Zinsstag, "Sexual Violence against Women in Armed Conflicts: Standard Responses and New Ideas", in *Social Policy and Society*, 2006, vol. 5, no. 1, pp. 137–48; Estelle Zinsstag, "Sexual Violence, Transitional Justice and the Possibility of a 'Blended' Approach'", in Adam Czarnota and Stephan Parmentier (eds.), *Transitional Justice and Rule of Law: Institutional Design and the Changing Normative Structure of Post-Authoritarian Societies*, Intersentia, Antwerp, Cambridge, Portland, 2015.

10 See, for example, Lode Walgrave, *Restorative Justice, Self-interest and Responsible Citizenship*, Willan, Cullompton, 2008; Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, Herald Press, Scottdale, 1990.

11 For more information see Zehr, 1990, *supra* note 10.

12 See, for example, Susan L. Miller, *After the Crime: The Power of Restorative Justice Dialogues between Victims and Violent Offenders*, New York University Press, New York, 2011.

13 Estelle Zinsstag, "Sexual Violence against Women in Armed Conflicts and Restorative Justice: an Exploratory Analysis", in Martha Albertson Fineman and Estelle Zinsstag (eds.), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice*, Intersentia, Antwerp, 2013, pp. 189–213.

ing may be started and possibly some closure may be reached. Restoration encourages a more inclusive, victim-friendly and forward-looking approach to post-conflict justice. This alternative, which is characterised by a wide array of practices, cannot intend to replace but rather complement the traditional retributive response to atrocity after an armed conflict.[14] Charles Villa-Vicencio claims that the co-ordination of the two approaches is needed for a transition from a conflict-ridden country to a country with a functioning rule of law and where a human rights culture may develop to be successful.[15] Desmond Tutu also claims that:

> Retributive justice – in which an impersonal state hands down punishment with little consideration for victims and hardly any for the perpetrator – is not the only form of justice. I contend that there is another kind of justice, restorative justice [...] Here the central concern is not retribution or punishment but, in the spirit of ubuntu, the healing of breaches, the redressing of imbalances, the restoration of broken relationships. […] Thus we would claim that justice, restorative justice, is being served when efforts are being made to work for healing, for forgiveness and for reconciliation.[16]

This chapter examines the value of this type of justice for sexual violence by exploring some of the restorative justice mechanisms that are currently available to respond to victims of sexual violence after an armed conflict or in fragile states. Therefore only restorative mechanisms that are directly relevant, or may become so, for sexual violence survivors are examined, that is to say truth commissions, the Rome Statute of the International Criminal Court ('ICC Statute') and proceedings before the ICC as well as a selection of local restorative justice mechanisms.[17]

Indeed, it is paradoxical to note that internal strife and violence are often endemic after peace has been brokered,[18] and government structures (justice, security, administration) find themselves unable to address this because of lack of means or lack of political will (violence may, for in-

14 *Ibid.*

15 Villa-Vicencio, 2006, p. 391, see *supra* note 9.

16 Desmond Tutu, *No Future without Forgiveness*, Random House, New York, 1999, pp. 51–52.

17 Sometimes also referred to as informal justice systems.

18 In Guatemala, Haiti and South Africa, levels were actually higher after transition than during conflict or dictatorship.

stance, implicate security forces who are still in place). Sexual violence[19] follows the same general pattern, the only difference being that during an authoritarian regime or conflict it will manifest itself in the public sphere (as a means of terror or torture),[20] whereas in a transitioning society it tends to shift to the private sphere, typically in the form of domestic violence.[21] Reasons for this are varied and complex. They sit within deeply rooted discriminations, which pre-exist a conflict or authoritarian regime. They also appear simply because of lack of punishment and implicit legitimisation.[22] This all needs to be comprehensively understood for interventions to be effective.[23]

In this chapter we first examine responses to international sexual violence (section 18.2.). Next, we discuss some of the basic ideas behind the restorative justice paradigm (section 18.3.) in order to then examine restorative mechanisms which may be appropriate for dealing with international sexual violence (section 18.4.). We conclude by considering some ideas towards a way forward (section 18.5.).

18.2. Responses to International Sexual Violences

While sexual violence in war has been condemned since time immemorial, war codes and international conventions have tried, more recently, to offer tools to strengthen safeguards against this specific form of viola-

19 The present research considers sexual violence, which may or may not have resulted in criminal or civil court proceedings and may have occurred in peacetime or in a conflict/ post-conflict context. It does not, however, include domestic or any other forms of gendered violence.

20 As already noted, the term 'transitional justice' gained prominence in the 1980s and 1990s with the fall or military regimes in South and Central America and in Eastern Europe: Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, University of Pennsylvania Press, Philadelphia, 2006.

21 See, for example, Sheila Meintjies, Anu Pillay and Meredith Turshen (eds.), *The Aftermath: Women in Post-Conflict Transformation*, Zed Books, London, 2001.

22 Mary Caprioli, "Primed for Violence: The Role of Gender Inequality in Predicting Internal Conflict", in *International Studies Quarterly*, 2005, vol. 49, no. 2, pp. 161–78.

23 Tina Sideris, "Rape in War and Peace: Social Context, Gender, Power and Identity", in Sheila Meintjies, Anu Pillay and Meredith Turshen (eds.), *The Aftermath: Women in Post-Conflict Transformation*, Zed Books, London, 2001, pp. 142–58. She explains that "differentiating between rape in war and peace carries the danger that [...] rape that is used as a tactic of ethnic cleansing evokes moral outrage, yet forced sex in the privacy of family life is accepted" (p. 146).

tion.[24] But there has been a dearth of actual enforcement and prosecutions. In the aftermath of the Second World War, the Nuremberg and Tokyo international military tribunals did investigate and prosecute some sexual violence crimes, but this was limited in scope and impunity for sexual violence remained pervasive until about two decades ago.[25]

It was indeed 20 years ago that the international community drove forward the need to prosecute genocide, war crimes and crimes against humanity and, with this, to emphasise the inclusion of sexual crimes within the understanding of these crimes. The gendered interpretation of these crimes is especially clear in the ICC Statute (1998), but the emphasis on the need to prosecute these crimes also appears, although with some challenges, at the International Criminal Tribunal for the former Yugoslavia ('ICTY'), the International Criminal Tribunal for Rwanda ('ICTR'), the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.[26] There is an argument today that genocide, war crimes and crimes against humanity are so abhorrent to humankind that they are to be applied *erga omnes* by all jurisdictions that are able to do

[24] Instruments have already existed for some decades. See, for example, Part I, Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War, 27 July 1929, which explicitly mentions the need for protection of prisoners of war, both male and female against attacks on "their persons and honour" (http://www.legal-tools.org//1d2cfc/). Another is Control Council Law No. 10, a martial law decree issued after the Second World War, in which rapes are considered to be crimes against humanity (http://www.legal-tools.org/doc/ffda62/).

[25] See, for example, Patricia Viseur Sellers, "Foreword", in Anne-Marie de Brouwer *et al.* (eds.), *Sexual Violence as an International Crime: Interdisciplinary Approaches*, Intersentia, Antwerp, 2013, pp. vii–xii. For a historical overview, see Kelly D. Askin, "Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward", in de Brouwer *et al.*, 2013, pp. 19–55, *ibid.*

[26] The Genocide Convention includes sexual violence when it refers to Article 2(b) and Nazi sexual and reproductive experiments on women and men as well as Article 2(d) which refers to preventing birth for non-Aryans; United Nations General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948 (http://www.legal-tools.org/doc/498c38/). The understanding is that the genocide in Rwanda and Darfur also included sexual violence. For more information, see Anne-Marie de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Intersentia, Antwerp, 2005; Sarah Williams, *Hybrid and Internationalised Criminal Tribunals: Selected Jurisdictional Issues*, Hart, Oxford, 2012; Silke Studzinsky, "Neglected Crimes: The Challenge of Raising Sexual Gender-Based Crimes before the Extraordinary Chambers in the Courts of Cambodia", in Susanne Buckley-Zistel and Ruth Stanley (eds.), *Gender in Transitional Justice*, Palgrave Macmillan, London, 2012, pp. 88–112.

so, regardless of whether there is an international private law connection. Some states, such as Belgium and Canada, have legislation that enshrines this principle, referred to as 'universal jurisdiction'. Another example is France which prosecuted a former Rwandan leader for crimes against humanity during the 1994 Rwandan genocide.[27]

One of the preliminary conclusions practitioners and academics seem to be drawing from initial criminal prosecutions of international sexual crimes, however, is the difficulty of dealing with this form of crime. Both at international and domestic levels, courts face very practical problems due of the sheer numbers of victims involved, the lack of practical means to collect and preserve forensic evidence, and the difficulty of investigating, prosecuting and adjudicating where there is a scarcity of staff and a high risk of bribery. There are also obvious risks associated with victim and witness protection (particularly if alleged perpetrators are linked to security forces) and, finally, there are practical problems in offering reparation to victims or survivors because of the limited funds available.

These challenges are considerable but others are perhaps more decisive still in explaining why victims, particularly in cases of sexual violence, appear to favour informal or alternative justice systems over formal courts.[28] The latter crucially tend to give victims a voice in proceedings and offer them the opportunity, often through a familiar community figure, to express their needs and in some cases be offered some compensation.

Empirical studies themselves demonstrate that what victims want is not necessarily more painful or stringent punishments of an offender but the ability to receive information about proceedings of criminal acts they are party to and to be given the possibility to participate if they so wish.[29] Because entire communities are included in proceedings, there is also a greater chance of reparations actually being implemented, a less than cer-

[27] Pascal Simbikangwu is alleged by prosecutors of France's special genocide court to have been number three in the Rwandan Intelligence Unit during the 1994 genocide against minority Tutsis and moderate Hutus. His trial began in March 2014.

[28] See Burns and Daly, 2014, *supra* note 1.

[29] See, for example, Heather Strang, *Repair or Revenge: Victims and Restorative Justice*, Oxford University Press, Oxford, 2002.

tain outcome with a formal court hearing.[30] In most, if not all, societies, sexual violence carries with it heavy social implications, both for the victim and his or her community. It also has connections with underlying gender discrimination, which may pre-exist the violence. Having an informal system either on its own if formal court systems are not accessible, or in parallel to the court system,[31] may therefore be an interesting approach to addressing international sexual violence. We will therefore concentrate on an alternative or complementary approach represented by the restorative paradigm broadly defined, which may have the capacity to improve the existing responses to sexual violence in general and international sexual violence in particular.

18.3. The Restorative Paradigm

We intend to examine briefly the main characteristics of the restorative paradigm by making some theoretical and introductory remarks concerning restorative justice in order to set the ground for an examination of restorative justice mechanisms in relation to international sexual violence later in the chapter.[32]

18.3.1. Origins, Definitions and Debates

The origins and history of restorative justice have been described in a number of scholarly writings and here we only state some of the basic facts. Restorative ideals often date back as far as the ancient Greeks.[33] Some argue also that restorative justice actually originates and takes after a number of traditional forms of justice such as the ones used by the Maoris in New Zealand and the Navajos or First Nation people in North

30 United Nations Development Programme ('UNDP'), *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement*, United Nations Development Programme, UN Women and UNICEF, New York, 2012.

31 See, for example, Guinea, Liberia, Sierra Leone and Uganda.

32 For a more detailed presentation of restorative justice, see Marie Keenan and Estelle Zinsstag, "Restorative Justice and Sexual Offenses: Can 'Changing Lenses' Be Appropriate in this Case Too?", in *Monatsschrift für Kriminologie und Strafrechtsreform*, 2014, vol. 97, no. 1, pp. 93–106.

33 See, for example, Zehr, 1990, *supra* note 10; Dan van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice*, 4th ed., Matthew Bender, New Providence, 2010; Walgrave, 2008, *supra* note 10.

America.[34] Albert Eglash was one of the first to use the term 'restorative justice' in a consistent way from the late 1950s.[35] Other authors in the 1970s, such as Nils Christie[36] and Randy Barnett,[37] have laid the foundations and influenced its development with defining pieces of writing, whose legacy still resonates strongly today. Kitchener, Ontario (Canada) is generally considered the birthplace of the modern restorative justice movement, where in 1977 a probation officer used mediation with success to deal with two juvenile offenders who, after having pleaded guilty to vandalising several properties, visited each of their victims and arranged to pay restitution.[38]

There have been many discussions and debates around a possible definition of restorative justice. However, through its flexible nature, not one definition has emerged to be able to represent the diverse views. A definition that has received much attention is that of Tony Marshall in the late 1990s: "restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future".[39]

The United Nations *Handbook on Restorative Justice Programmes* also has taken a more process-orientated approach which some prefer: restorative justice "is any process in which the victim and the offender and, where appropriate, any other individuals or community members af-

[34] See, for example, Kathleen Daly, "Restorative Justice: The Real Story", in *Punishment and Society*, 2002, vol. 4, no. 1, pp. 55–79; Estelle Zinsstag, Marlies Teunkens and Brunilda Pali, "Conferencing: A Way Forward for Restorative Justice in Europe?", European Forum for Restorative Justice, Leuven, 2011.

[35] See Shadd Maruna, "The Role of Wounded Healing in Restorative Justice: An Appreciation of Albert Eglash", in *Restorative Justice: An International Journal*, 2014, vol. 2, no. 1, pp. 9–23; van Ness and Strong, 2010, see *supra* note 33.

[36] Nils Christie, "Conflicts as Property", in *British Journal of Criminology*, 1977, vol. 17, no. 1, pp. 1–26.

[37] Randy Barnett, "Restitution: A New Paradigm of Criminal Justice", in *Ethics: An International Journal of Social, Political and Legal Philosophy*, 1977, vol. 87, no. 4, pp. 279–301.

[38] See, for example, Zehr, 1990, *supra* note 10; Dan van Ness, Allison Morris and Gabrielle Maxwell, "Introducing Restorative Justice", in Allison Morris and Gabrielle Maxwell (eds.), *Restorative Justice for Juveniles: Conferencing, Mediation & Circles*, Hart, London, 2001, pp. 3–16.

[39] Tony Marshall, "The Evolution of Restorative Justice in Britain", in *European Journal on Criminal Policy and Research*, 1996, vol. 4, no. 4, p. 37.

fected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator".[40] Some authors such as Lode Walgrave have criticised this approach as it tends to focus more on the outcome of the process than on the process in itself.[41] The process is believed by some as needing to be the purpose itself as it may be extremely important for the stakeholders and may achieve results that neither the criminal justice system nor 'pure' restorative justice programmes can hope to achieve. As a consequence, Gordon Bazemore and Walgrave propose a very simple definition, only mentioning essential elements: "Restorative justice is every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime".[42] This definition is the gateway to enter the purist or maximalist debate.[43]

For the purposes of this chapter and in the context of sexual violence, we believe that a maximalist approach is the most appropriate. Indeed we believe that in the case of sexual violence 'pure' restorative justice programmes and approaches may not be suitable, as they would have very little result or impact on their own (without the intervention of the criminal justice system or unaccompanied by psychosocial treatment). However, we believe, as argued elsewhere, that well-designed restorative processes to cater for the specific needs and consequences of this particular type of crime may enable a much fairer response.[44] Other debates within restorative justice worth mentioning in this context are the institutionalisation debate[45] or the 'top-down' versus 'bottom-up' approaches to

40 United Nations, *Handbook on Restorative Justice Programmes*, United Nations, Office of Drugs and Crime, New York, 2006, p. 6.

41 Walgrave, 2008, see *supra* note 10. See also, for example, Dan van Ness and Karen H. Strong, *Restoring Justice*, 2nd ed., Anderson Publishing, Cincinnati, OH, 2002 for an outcome-based restorative justice model.

42 Gordon Bazemore and Lode Walgrave, "Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform", in Gordon Bazemore and Lode Walgrave (eds.), *Restorative Justice for Juveniles: Repairing the Harm of Youth Crime*, Criminal Justice Press, Monsey, NY, 1999, p. 48.

43 For more information see, for example, Walgrave, 2008, *supra* note 10; Ivo Aertsen, Tom Daems and Luc Robert (eds.), *Institutionalizing Restorative Justice*, Willan, Cullompton, 2006.

44 See Keenan and Zinsstag, 2014, *supra* note 32.

45 See, for more information, Aertsen *et al.*, 2006, *supra* note 43.

restorative justice,[46] which are both relevant in a transitional context since there is room for institutional reform and the community may be able to achieve much for victims when the state might not, or at least not yet. Furthermore, restorative justice practices may take place at any stage or level and this has also caused some discussions within the field. Some programmes may take place at a pre-sentence stage, some at a post-sentence stage, and some may take place completely outside of any court proceedings or even without police involvement[47] – and this is particularly true in some cases of sexual offences, for which there is a very low rate of reporting and even when reported the attrition rates soar.[48]

18.3.2 In Practice[49]

There are a number of different practices and programmes which can be defined as restorative. We only briefly describe a couple of types that have shown through practice to be particularly adequate in cases of sexual offences,[50] and may be more directly relevant to the transitional context, dealt with more specifically later in this chapter. We examine mediation, assisted dialogues and conferencing, which can be considered as 'traditional' or 'fully' restorative justice programmes.

There are several conditions which need to be fulfilled in order for a restorative justice programme to be able to be set in motion. One is that the offender must recognise his or her guilt prior to the initiative, or at least not deny it. A second is that participation by both parties should be

46 See, for more information, John Braithwaite, "Setting Standards for Restorative Justice", in *British Journal of Criminology*, 2002, vol. 42, no. 3, pp. 563–77.

47 Daly, 2002, see *supra* note 34.

48 See, for example, C. Quince Hopkins and Mary Koss, "Incorporating Feminist Theory and Insights into a Restorative Justice Response to Sex Offences", in *Violence Against Women*, 2005, vol. 11, no. 5, pp. 693–723; Kathleen Daly and Sarah Curtis-Fawley, "Restorative Justice for Victims of Sexual Assault", in Karen Heimer and Candace Kruttschnitt (eds.), *Gender and Crime: Patterns of Victimization and Offending*, New York University Press, New York, 2006, pp. 230–65.

49 Some of the ideas, facts and findings discussed in this section come from a European Commission-funded project entitled "Developing integrated responses to sexual violence: An interdisciplinary research project on the potential of restorative justice" (Daphne project JUST/2011/DAP/3350) which was co-ordinated by the University of Leuven (Belgium) and in which both authors were actively involved.

50 See Keenan and Zinsstag, 2014, *supra* note 32.

completely voluntary. The programme may take place within or without the involvement of the court. Indeed it is clear that today many such initiatives happen informally, organised by rape crisis centres, hospitals, within prisons and mediation services.[51] In some cases they take place through self-referrals rather than referrals generated by the criminal justice system or other official referring mechanisms. One of the main keys to any such programmes is a careful preparation of all parties prior to a meeting, facilitated dialogue, conference or circle. It has become clear that the outcome of the process often depends on the quality of the preparation.

Mediation or assisted dialogues are the most widespread restorative justice programmes regarding sexual violence. The main reason is that due to the specific characteristics and nature of and traditionally held views on sexual violence (some victims experience feelings of shame or guilt), the main stakeholders tend to favour not involving others when meeting with the mediator(s). That said, in some cases therapists or other support persons may also be present. Victim–offender mediation, which is the most common programme is described in Estelle Zinsstag *et al.* as a "one-to-one meeting between the crime victim and the offender […] generally facilitated by a mediator who helps the parties to achieve a new perception of their relationship and of the harm caused".[52] The victim and the offender may decide to meet face-to-face or indirectly, in which case it is possible to use video links, telephone facilities or surrogates for either of the main protagonists. The exchange of letters may also be a way of establishing a dialogue.[53] In the case of sexual violence, mediation, when practised in a safe environment, has been considered by some as favouring feelings of empowerment and autonomy.[54]

Conferencing, also often called family group conferencing, started in its current form in New Zealand when the Children, Young Persons and

[51] For examples of possibilities in a peaceful setting, see Brunilda Pali and Karin Sten Madsen, "Dangerous Liaisons? A Feminist and Restorative Approach to Sexual Assault", in *Temida*, 2011, vol. 14, no. 1, pp. 40–65; Clare McGlynn, Nicola Westmarland and Nikki Godden, "'I just wanted him to hear me': Sexual Violence and the Possibilities of Restorative Justice", in *Journal of Law and Society*, 2012, vol. 39, no. 2, pp. 213–40.

[52] Zinsstag *et al.*, 2011, p. 44, see *supra* note 34.

[53] Miller, 2011, see *supra* note 12.

[54] Karin Sten Madsen, "Mediation as a Way of Empowering Women Exposed to Sexual Coercion", in *Nordic Journal of Feminist and Gender Research*, 2004, vol. 12, no. 1, pp. 58–61.

Families Act was passed in 1989 and in Australia in the early 1990s.[55] The main difference when compared to other restorative justice programmes is the active participation of the family or close friends, also called the 'community of care'. All the parties affected by an offence will therefore be involved in the process and the decisions about the outcome, under the supervision of a facilitator and with the participation of a number of other relevant actors depending on the type of conferences, for example a police officer, a social worker, a community or legal representative.[56]

Both of those types of programmes could be introduced under one form or another in a transitional context, especially since these are ideal times to implement deep-rooted institutional and judicial reforms.[57] These programmes are flexible and can be adapted whether within or outside the criminal justice system for all types of crime.

18.4. Restorative Responses to International Sexual Crimes

As previously mentioned, victims of sexual violence, even in the context of a society that is transitioning away from conflict, appear to seek mechanisms of redress outside the formal courts because they provide them with a central role in proceedings, allow them to express their lived experience of a crime, their needs and how they envisage their future. Since the 1970s, this emphasis on harm to individuals rather than to an abstract society is gaining ground in the domestic law of non-transitional societies as well as in international law. Until recently, the primacy of victims' needs had been considered non-existent in criminal law since the twelfth to thirteenth centuries. For more than 800 years, crime was seen as inflict-

55 For more details see, for example, Estelle Zinsstag, "Conferencing: A Developing Practice of Restorative Justice", in Estelle Zinsstag and Inge Vanfraechem (eds.), *Conferencing and Restorative Justice: International Practices and Perspectives*, Oxford University Press, Oxford, 2012, pp. 11–32.

56 Zinsstag *et al.*, 2011, see *supra* note 34.

57 See the case of Northern Ireland where, in the transitional period a couple of years after the peace agreement, restorative justice has been introduced through legislation and is now implemented systematically in cases of juvenile crime. See Estelle Zinsstag and Tim Chapman, "Conferencing in Northern Ireland: Implementing Restorative Justice at the Core of the Criminal Justice System", in Estelle Zinsstag and Inge Vanfraechem (eds.), *Conferencing and Restorative Justice: International Practices and Perspectives*, Oxford University Press, Oxford, 2012, pp. 173–88.

ing harm to society rather than to an individual, and the only possible outcome was an adversarial proceeding in which the victim appeared only as a witness. [58] The result of proceedings could only be an acquittal or a custodial sentence for the offender.[59]

18.4.1. International Responses: ICC Statute, a Combination of Retributive and Restorative Justice?

In international law, the ICC Statute is the first international instrument that explicitly states that crime inflicts harm firstly to an individual and, hence, that the court must imperatively ask the individual what his or her needs are, both in terms of 'looking back' at the crime committed and 'looking forward' towards the future. When one considers statements of victims of international sexual crime,[60] these needs are reiterated. For victims or survivors, 'looking back' entails the search for factual truth, his or her version of the truth, and accountability of the offender for the crime. In societies emerging from dictatorship or conflict, truth-telling plays a critical role in acknowledging the wrongs suffered by victims, encourages individual and community healing, and may identify necessary reforms to prevent such violations from happening again.[61]

At the same time, 'looking forward' for victims entails an active participation in proceedings and providing some means of partially restoring his or her life. Yet the ICC Statute is heavily criticised by the very victims it is intended to assist. Although it purports to combine retribution

58 The reparative justice theory emerged because of the marginalisation of the interests and needs of victims when addressing the harm inflicted by a crime.

59 Rome Statute of the International Criminal Court, 17 July 1998, in force 1 July 2002 ('ICC Statute') (http://www.legal-tools.org/doc/7b9af9/). Article 75 expressly focuses on the needs of victims and requires the award reparations tailored to these needs.

60 See UN Office of the High Commissioner for Human Rights ('OHCHR'), "Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights", March 2011.

61 OHCHR, Human Rights Resolution 2005/66: Right to the Truth, UN Doc. E/CN.4/RES/2005/66, 20 April 2005; and International Center for Transitional Justice ('ICTJ') Briefing, "Confronting the Past: Truth Telling and Reconciliation in Uganda", ICTJ Uganda, September 2012. In a study on the reoccurrence of conflict in post-conflict societies in Africa, Paul Collier found that societies emerging from conflict stood a 40 per cent risk of renewed conflict within five years of a peace agreement or cessation of violence. See Paul Collier, *Economic Causes of Civil Conflict and their Implications for Policy*, Oxford University Press, Oxford, 2000.

and restoration by focusing on victims as well as on punishment, the reality is that the ICC's proceedings are so stringently based on traditional criminal proceedings that victims' voices, and general participation of offenders and community, cannot be conducted in accordance with a restorative justice paradigm. Efforts have clearly been made by the Court to try at least to capture victims' views – such as appointing special guidance to legal representatives of victims and having a Victims Participation and Reparation Section – but the outcomes remains limited.

Another problem linked to the restorative justice paradigm and the ICC Statute is the inability, in practice, of its institutions to reach out to a majority of victims, including victims of sexual violence. In the first ICC trial (*Thomas Lubanga Dyilo*) thousands of victims, including sexual violence victims, have, for practical reasons or reasons of opportunity in the prosecutor's indictment, not been included in proceedings.[62] The second trial (*Germain Katanga*) did include sexual violence, but the defendant saw his involvement 'downgraded' to accessory to the crimes in the indictment.[63] These are still early days in the ICC's history, but this issue has already caused serious misgivings about the Court on the ground. Of particular concern is the absence, so far, of cumulative charging by Chambers, thereby rejecting the fact that sexual violence results in an array of harmful behaviours (torture, persecution, trafficking, sexual slavery, for instance, as well as rape).

ICC institutions are acutely aware of these problems, and considerable efforts are undeniably been made to allow the ICC, the Office of the Prosecutor and the Registry to address specific needs of victims involved in proceedings before the Court, especially for the victims of sexual and gender-based violence.[64] As with ordinary domestic courts, however,

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62 ICC, *Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06, 14 March 2012 (http://www.legal-tools.org/doc/677866/); ICC, *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, ICC-01/04-01/06, 1 December 2014 (http://www.legal-tools.org/doc/585c75/).

63 ICC, *Prosecutor v. Germain Katanga*, Trial Chamber, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07, 7 March 2014 (http://www.legal-tools.org/doc/f74b4f/).

64 Measures include the repeated focus of the chief prosecutor, Fatou Bensouda (elected in 2011), to prioritise sexual and gender-based violence at all stages of proceedings. ICC, Office of the Prosecutor, "Policy Paper on Sexual and Gender-Based Crimes", June 2014 (http://www.legal-tools.org/doc/7ede6c/) has been drafted by her Office and been widely

limitations will always appear because of the formal and rigid procedures of a traditional criminal justice system. These challenges come to the fore with even greater prominence in the context of crimes committed on a massive scale in the context of conflict. Dealing with extreme violence, massive numbers of victims and complex societies with frequent inherent discriminations requires flexible systems capable of adapting to multiple needs.

18.4.2. Domestic Responses to International Sexual Crimes: Truth Commissions and Other Local Restorative Practices

Given the limitations of the traditional criminal justice system in dealing with international sexual crimes, this section highlights mechanisms that do not involve court systems (or at least not on their own). It focuses on truth commissions[65] and a selection of other local restorative practices, often founded on customary or religious traditions that pre-date the crimes they are brought to address. These approaches have a restorative value on multiple levels (individual, interpersonal and also societal, as most involve local communities).[66] Some involve dialogue with all parties (with a facilitator or a mediator); others consider the needs of one party only (generally victims). Some systems emphasise the importance of process, others of outcome (such as reparations or apologies). Many, however, focus on giving parties a voice and allowing them to relate their version of the past.

These processes may seem very different from conventional restorative justice mechanisms in a non-transitional setting. Their difference may also stem from the fact that they do not necessarily include all parties to a crime (victim, offender and community). In this sense they are not 'full' or 'pure' restorative justice, but they do all emphasise overarching

distributed for consultations among non-governmental organisations and victims groups Specialised offices have been set up within the Registry to assist victims and their counsel (legal, psychological assistance).

65 This terminology is used to mean both truth commissions and truth and reconciliation commissions.

66 David Androff, "Reconciliation in a Community-Based Restorative Justice Intervention", in *Journal of Sociology & Social Welfare*, 2012, vol. 39, no. 4, pp. 73–96. Official truth-telling mechanisms can also be fact-finding missions, *ad hoc* parliamentary committee hearings, documentation, exhumation processes, as well as criminal justice processes.

restorative justice principles of healing, accountability and wrongs inflicted to a person rather than on an abstract state.[67] There is, therefore, an argument to include these systems within a wider restorative justice response to crime.

In some cases, these practices may include the victim and offender as active participants in proceedings,[68] thereby contributing to them taking responsibility for the harm inflicted and adhering even more closely to the classic objectives of restorative justice (to allow "encounter, amends, reintegration, inclusion" for all parties affected by crime sometimes[69]).[70] In a context of transitional societies, this approach seems especially fitting. Situations are frequently so complex and dangerous that there are rarely obvious victims or perpetrators. Victims may have been complicit in the violation of the rights of others at one point and, similarly, perpetrators may themselves have been victimised at another.[71]

At present, the fundamental structure of criminal justice and the gendered operation of the adversarial system make it a highly problematic forum for addressing sexual crime.[72] Increasing awareness of the inadequacies of criminal justice in meeting the needs of victims motivates a growing movement to use alternative, more informal forms of instituting justice for victims, offenders and communities affected by sexual vio-

67 See generally Marian Liebmann, *Restorative Justice: How It Works*, Jessica Kingsley, London, 2007; Kay Pranis, "Restorative Values", in Gerry Johnstone and Daniel van Ness (eds.), *Handbook of Restorative Justice*, Routledge, London, 2007; Walgrave, 2008, *supra* note 10; Howard Zehr and Harry Mika, *Fundamental Concepts of Restorative Justice*, Pennsylvania Mennonite Central Committee, Akron, 1997.

68 Generally, the alleged offender does not usually appear voluntarily at the ICC (a notable exception is the case of *Bosco Ntaganda*, ICC-01/04-02/06) and is remanded in custody. There may be a dialogue between the victim and alleged offender, but within a formal court setting.

69 Zehr, 1990, see *supra* note 10.

70 The ICC and truth and reconciliation commissions do follow the overall spirit of restorative justice, or 'core principles', of healing, accountability and wrongs inflicted to a person rather than to the state.

71 David Gray, "An Excuse-Centered Approach to Transitional Justice", in *Fordham Law Review*, 2006, vol. 74, pp. 2621–93.

72 Bronwyn Naylor, "Effective Justice for Victims of Sexual Assault: Taking Up the Debates on Alternative Pathways", in *University of New South Wales Law Journal*, 2010, vol. 33, no. 3, pp. 662–84.

lence.[73] Nonetheless, Mary Koss notes that within jurisprudence scholarship the consensus is that restorative methods must be approached cautiously in cases of sexual violence.[74]

Using restorative justice approaches for serious crimes such as sexual violence is indeed not exempt from controversy, whether in a transitional justice setting or in peacetime. Some concerns relate to the lack of certainty on the rules applied as they depend on the parties and the process. To these concerns we respond that legislation is still applicable to the process so that upper limits in terms of sanctions and human rights standards do apply. Of greater concern, however, are objections based on the inherent unequal bargaining position of the victim, the lack of security of the parties, and the risk of appearing to trivialise the crime. These concerns must indeed be considered in the context of international human rights standards and particularly so in a post-conflict or post-authoritarian society where there are frequent issues of structural violence and deep-rooted discriminations. We should also recognise that victims of sexual violence themselves are using restorative justice mechanisms, even when formal courts are able to function. This may be because they offer creative, complementary and relevant responses to multiple layers of trauma.

Rather than rejecting these practices for sexual violence outright, there is an argument to say that, with appropriate support on human rights issues (including with regard to women), they may offer an interesting and practical means of dealing with international sexual violence.

18.4.2.1. Truth Commissions

Truth commissions, sometimes also referred to as commissions of inquiry, are temporary, non-judicial fact-finding bodies, which are authorised by the state, generally further to international impetus and with a suggested framework. Since the late 1990s and early 2000s, new truth commissions have learned from other truth commission experiences and adapted their

[73] Katherine van Wormer, "Restorative Justice as Social Justice for Victims of Gendered Violence: A Standpoint Feminist Perspective", in *Social Work*, 2009, vol. 54, no. 2, pp. 107–16.

[74] See Mary Koss, "Restorative Justice for Acquaintance Rape and Misdemeanor Sex Crimes", in James Ptacek (ed.), *Restorative Justice and Violence against Women*, Oxford University Press, Oxford, 2010, pp. 218–38.

mandate to their specific needs.[75] Truth commissions and commissions of inquiry focus on human rights abuses that occurred during a specified time, address the needs of victims and recommend measures to prevent the repetition of abuses.[76] Typically, commissions of inquiry have a mandate that is more limited in time and scope. Truth commissions and commissions of inquiry have been implemented officially since the 1970s.

There is some debate over what bodies can constitute a truth commission or commission of inquiry *per se*.[77] Some authors, such as Priscilla Hayner,[78] do not even offer a strong distinction between these two bodies. Overall, however, the objective is always the same: to allow parties to tell their story or 'truth', to receive acknowledgement and to begin restoring their lives. For ease of reading, this chapter refers to both systems as truth commissions.

18.4.2.1.1. Search for the Truth

The right to truth, an evolving legal concept in international law,[79] has its historical roots in the struggle of families of the disappeared in Latin

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75 See Truth Commission of Peru (Comisión de la Verdad y Reconciliación, CVR), Final Report, 28 August 2008.

76 Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed., Routledge, London, 2010.

77 This debate explains discrepancies in the numbers of truth commissions cited: 33 cited by the United States Institute of Peace, for instance, whereas Olsen, Payne and Reiter list 53 truth commissions, see *ibid*.

78 *Ibid*.

79 The right to truth is enshrined in a number of international instruments and resolutions. UN, Economic and Social Council, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 8 February 2005, UN Doc. E/CN.4/2005/Add.1. Principle 2 states: "Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes". OHCHR resolution 2005/66, see *supra* note 61, "recognizes the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights". UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of Humanitarian Law, Resolution 60/147, UN Doc. A/RES/60/147, 16 December 2005 ('UN Basic Principles'). Principle 24 provides that the right to reparations of the victim includes "verification of the facts and full and public disclosure of the truth". At the regional level, the Inter-American Commission has held that the right to truth is found in the right to a fair trial, the right to freedom of expression, and the

America who tried to force authorities to disclose information about the fate of their relatives. The search for the truth is seen as key element for a society to address its past, honour its victims and put in place measures that will allow for individual and societal reconstruction.

Truth commissions usually pursue their mandate, as the term indicates, to search for the truth. To do this, they conduct detailed research and hold public and *in camera* hearings into atrocities, including abuses of power and economic crimes. Unlike criminal trials, truth commissions enjoy a wider mandate that enables them to delve into the underlying causes of the conflict and look to the future.[80] Because of this, some groups, which may have traditionally been discriminated against, have seen them as an opportunity to highlight neglected abuses, provide a forum for victims and recommend reparations to redress injustices. In the case of women, for instance, although many may feel they have not always been as supportive as they could have been, they have recognised that truth commissions can provide an extraordinary window of opportunity that is responsive to women's history and quest for reform.[81] Similarly, pervasive discrimination against other groups, such as indigenous Andean populations in Peru, can also be addressed by truth commissions.

An interesting point made by some scholars, including the Canadian writer Michael Ignatieff, is that a truth commission actually has to address different types of truths (factual, personal, social truths and healing or restorative truths in the sense of acknowledgement of what happened).[82] The flexibility of a commission is interesting because it is able to address these multiple layers of truths while adapting to local beliefs, needs and even to local mechanisms of dispute resolution.[83]

To some, truth commissions may appear the only option in the search for truth. This may be the case where amnesty has been granted (as

right to judicial protections. The African Convention on Human and People's Rights includes the right to truth under the right to an "effective remedy".

80 ICTJ, 2012, see *supra* note 61.

81 Vasuki Nesiah, "Gender and Truth Commission Mandates", Presentation at Open Society Institute Forum: Gender and Transitional Justice: Pursuing Justice and Accountability in Post-Conflict Situations, New York, 7 February 2006.

82 Michael Ignatieff, "Overview: Articles of Faith", in *Index on Censorship*, 1996, vol. 25, no. 5, pp. 110–22.

83 Roht-Arriaza, 2006, see *supra* note 20.

in Sierra Leone) or where effective prosecution is difficult (those responsible may still be in power or perpetrators cannot be brought to trial). To most, however, they complement the formal judicial system. Trials indeed have their own shortcomings in establishing the truth, particularly for vulnerable victims such as women and children for whom the formal procedures of the court induce a high risk of secondary victimisation. Overall, the flexibility of truth commissions appears well-suited to establishing and enforcing what the UN special rapporteur Louis Joinet calls the "inalienable right to truth".[84]

18.4.2.1.2. Forms of Truth-Seeking

In some cases (South Africa, Timor-Leste and Sierra Leone), truth commissions involve hearings where victims[85] and perpetrators[86] are brought together[87] in a dialogue format. When a dialogue between the parties ex-

[84] UN, Economic and Social Council, Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political), Final Report Prepared by Mr Joinet pursuant to Sub-Commission decision 1996/119, 26 June 1997, UN Doc. E/CN.4/Sub.2/1997/20, para. 17.

[85] In international law, a person is a 'victim' where, as a result of acts or omissions that constitute a violation of international human rights and humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A 'victim' may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm. UN, Economic and Social Council, The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni, submitted in accordance with Commission Resolution 1999/33, 18 January 2000, UN Doc. E/CN.4/2000/62, para. 8.

[86] The term 'perpetrator' is widely used in international human rights law to describe individuals who are responsible for violations of human rights and international humanitarian law. Accordingly, the United Nation's Sub-Commission on the Protection and Promotion of Human Rights mandated Louis Joinet in 1997 to examine the question of impunity. A distinction is made here with the state itself, which is also responsible for human rights violations under international law. Historically, human rights law addressed itself essentially to violations committed by the state. The development of the concept of 'perpetrators' indicates a desire to focus on individuals who bear personal responsibility for human rights violations and abuses. See José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations", in *Hastings Law Journal*, 1992, vol. 43, no. 6, pp. 1425–38.

[87] This is not always the case and victims may, as in the truth commissions of Peru or Sierra Leone, simply relate their story to the commission *in camera*.

ists, each may go back and forth on the 'facts' and, out of this process, a vision of the truth may emerge that can enable participants to deal with the past and, perhaps, put it behind them. In time, this truth-telling process is intended to allow communities to have a common understanding of the past and to begin to reconcile (some truth commissions, such as those of Sierra Leone or South Africa, are indeed called 'truth and reconciliation commissions'). Reconciliation is sometimes misunderstood to refer to social harmony, which has led to expectations of friendly relationships between parties in conflict.[88] In a post-conflict and post-dictatorship setting, reconciliation definitions usually involve communication and mutual tolerance between opposing groups.[89] Reconciliation does not necessarily entail forgiveness. As in a conventional restorative justice process, forgiveness in a transitional context is often criticised as unrealistic.[90] This 'healing and restorative truth' provides the foundation for the second aim of most truth commissions, which is reconciliation. As in conventional restorative justice processes, however, the latter may not always be possible, or indeed desirable.

Women's experiences of conflict were often cast aside in initial truth commissions (such as in Chile or Argentina) under the rhetoric of a 'gender-neutral' approach. As Kimberly Theidon notes, however, this meant that men's perspectives and experiences were privileged thereby weakening the truth commissions' ability to understand and reform societies in transition.[91] Such criticisms explain why subsequent commissions, such as those of Guatemala, Peru, South Africa and later Haiti, Timor-Leste and Sierra Leone actively sought the testimony of women. Another milestone in specifically including women in truth-seeking procedures of

88 Krishna Kumar, "Promoting Social Reconciliation in Post-conflict Societies: Selected Lessons from USAID's Experiences", USAID Program and Operations Assessment Report No. 24, US Agency for International Development, 1999; Eric Stover and Harvey Weinstein (eds.), *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge University Press, Cambridge, 2004; Androff, 2012, see *supra* note 66.

89 See, for example, Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998.

90 See Kumar, 1999, *supra* note 88; Minow, 1998, *supra* note 89; Tutu, 1999, *supra* note 16; Androff, 2012, *supra* note 66.

91 Kimberly Theidon, "Gender in Transition: Common Sense, Women, and War", in *Journal of Human Rights*, 2007, vol. 6, no. 4, pp. 453–78. See also Fionnuala Ní Aoláin and Eilish Rooney, "Underenforcement and Intersectionality: Gendered Aspects of Transition for Women", in *International Journal of Transitional Justice*, 2007, vol. 1, no. 3, pp. 338–54.

truth commissions was the criminalisation of sexual violence in international criminal tribunals. This first occurred with the ICTR in the landmark *Akayesu* case,[92] then the ICTY, and then finally in the ICC Statute where sexual violence can constitute genocide, crimes against humanity or a war crime.

18.4.2.1.3. Truth Commissions and the Formal Judiciary

The use of these alternative restorative mechanisms in societies in transition may first stem from the absence of a functioning court and security system. Often transitioning societies will indeed no longer have sufficient judges, lawyers and security staff to ensure the functioning of a formal judiciary. In many cases, however, courts are not effective (due to corruption or lack of capacity) or too difficult or costly to access. Interestingly, some countries do have a functioning court system but victims, including of sexual violence, appear to prefer alternative, community-based, mechanisms. The choice may be linked to the inclusion of the victim, offender, community elders and hence a restorative approach, which is absent from the formal courts. In addition, because reparation is decided by the parties and the community, they tend to have a much greater chance of being implemented than those awarded by the courts.[93]

When truth commissions are set up, it is possible they are organised to collaborate with an existing formal court system, if it exists, just as it is able to do so with local restorative mechanisms (or informal justice systems). For Martha Minow, these systems can coexist and, with careful planning, they may even complement each other with truth commissions establishing accountability for widespread human rights abuses and, hence, augmenting the work of prosecutions.[94]

In some cases, a dual justice system (formal and informal justice system) exists in a transitioning society, such as in Liberia, Sierra Leone and Uganda. In others – for example, Rwanda with the *gacaca* courts (until May 2012) – legislation enacts how rights and procedures are shared

92 ICTR, *Prosecutor v. Jean-Paul Akayesu*, Trial Chamber, Judgment, ICTR-96-4-T, 2 September 2001 (http://www.legal-tools.org/doc/b8d7bd); ICTR, *Prosecutor v. Jean-Paul Akayesu*, Appeals Chamber, Judgment, ICTR-96-4-T, 1 June 2001 (http://www.legal-tools.org/doc/c62d06/).

93 For example, in Cambodia, see Burns and Daly, 2014, *supra* note 1.

94 Minow, 1998, see *supra* note 89.

between them. The links between the truth commissions and the formal judiciary are sometimes very apparent, for example in Argentina, Chad and Sri Lanka where information collected for the truth commissions eventually led to prosecutions. In other cases, truth commissions themselves have the ability to grant amnesties (as in South Africa or Kenya) and therefore to halt prosecutions.

Most practitioners today would admit that restorative justice is not to be opposed to retributive justice. There is indeed a form of retribution within restorative justice, even if there are clear differences such as victims having a central role, procedures being more informal, and a negotiated process that includes lay and professional actors. Experience in transitional societies in particular demonstrate what Kathleen Daly has observed, namely that "informal (and non-discriminatory, non-stigmatising) processes of social control, coupled with the use of dialogue and persuasion, should form a larger share of justice system activity".[95]

18.4.2.1.4. Restoration and Reconciliation

Truth-telling in itself is essential to restore people's shattered lives, but it is not necessarily sufficient. Reconciliation, although pursued by many truth commissions, is in itself a step further, which cannot be equated with truth-telling or even forgiveness.

Whether reconciliation occurs on an individual and community level depends on how a person responds to the truths revealed. This, in turn, generally depends on the level of psychological support offered, which, in most resource-strapped truth commissions, is unfortunately limited. Beyond the factor of individual and collective trauma, for a truth commission to have a restorative impact, let alone the possibility of achieving reconciliation, it will also require a combination of tangible variables: credibility and perceived fairness of proceedings, reparations for victims, and access to resources (political and financial) to ensure that its recommendations are implemented.

A truth commission needs credibility and legitimacy. This requires the involvement of all stakeholders, including civil society, to determine

[95] Kathleen Daly, "Revisiting the Relationship Between Retributive and Restorative Justice", in Heather Strang and John Braithwaite (eds.), *Restorative Justice: Philosophy to Practice*, Ashgate, Aldershot, 2000, pp. 33–54.

the truth-seeking mandate, the periods to be covered and the types of violations to be investigated. The truth commission must also remain independent and immune from political manipulation. The latter is not always easy given most transitioning societies continue to have at least some of the same leaders in the realm of power after transition has begun. Finally, the objectives and realistic outcomes of the truth commission need to be clearly explained from the outset, particularly to victims who may otherwise run the risk of being retraumatised.

Civil society in Sierra Leone, for instance, was involved in many aspects of the truth commission from its inception, including organising consultations on the draft legislation, taking statements, providing support to victims, giving input into the final recommendations, publicising the final report, and creating awareness on its findings and recommendations. The strong involvement of civil society ensured that certain crimes, such as sexual violence, remained high on the agenda throughout the commission's work.

A truth commission must have perceived fairness of its proceedings. A regular concern over truth commissions is the need for them to abide by procedural fairness, particularly when recommendations include traditional dispute resolution mechanisms. Such concerns were clear for the Liberian truth commission, for instance, but also in Timor-Leste's reconciliation commission, which referred to ancestral dispute resolution mechanisms through shamans.[96] Similarly, these issues have come up in the Ugandan debate over the use of traditional religious ceremonies (including '*matu oput*') to facilitate reconciliation between victims and perpetrators in Acholiland in northern Uganda. Concerns are especially vocal for vulnerable groups, such as women and children, who may suffer from societal discrimination. These informal restorative practices are considered further in the next section of this chapter.

Although conventional restorative justice mechanisms (in a non-transitioning context) do not necessarily involve reparations, a majority of victims involved in a truth commission tend to see these as essential to their healing process and their ability to look forward. As the International Center for Transitional Justice suggests, truth-telling without reparation may be perceived by victims to be an incomplete process as they reveal

96 Androff, 2012, see *supra* note 66.

their pain and suffering without any mechanism being put in place to deal with the consequences of this pain. Similarly, reparations without truth-telling could be perceived by the beneficiaries as an attempt to buy their silence.

Reparation may take a variety of forms (such as compensation, guarantees of non-repetition, rehabilitation, restitution or satisfaction),[97] but monetary compensation remains essential in a transitional context. As a consequence of mass violence, people often find themselves living in abject poverty, some having to endure the loss of limbs and others shunned because of their personal experiences such as rape and sexual slavery. For many victims, economic dependency and social exclusion are constant reminders of the suffering they have endured. A reparations programme with monetary measures may assist in a creating a context in which they may come to terms with the past and look forward.[98] In contrast to conventional restorative justice mechanisms, reparations recommended by truth commissions will frequently be of a collective nature (in whole or in part). In many cases, the sheer numbers of victims may mean it is not feasible to consider individual reparations. In cases of collective harm, collective reparations may also make sense to the community and encourage a sense of solidarity.

In all cases of reparations for mass atrocities, the primary duty to provide reparations lies with the state, either as instigator of the violence or because it failed in its task to provide adequate protection to its citizens. As Pablo De Greiff says, a clear commitment of the state, for example through a national reparations fund, leads to the restoration of civic trust.[99] However, in many cases, truth commission recommendations on reparations are only partly implemented, and sometimes not at all (consider recommendations in Sierra Leone, Liberia, Uganda, El Salvador, Guatemala, Peru and Paraguay, to name but a few). This is not to say the entire process is flawed and unhelpful. As truth commissions are mainly

97 See UN Basic Principles, 2005, *supra* note 79.

98 Sierra Leone Truth and Reconciliation Commission, *Final Report: Witness to Truth*, vol. 1, ch. 3, "Concepts", 2004, p. 84 ('SLTRC, Final Report').

99 Pablo de Greiff, "Repairing the Past: Compensation for Victims of Human Rights Violations", in Pablo de Greiff (ed.), *The Handbook of Reparations*, Oxford University Press, Oxford, 2006, pp. 1–20.

process-driven mechanisms,[100] it can be argued that the process of truth-telling, in itself, may have a restorative value for victims and their communities (possibly perpetrators when they are involved).

If this is the case, non-governmental organisations ('NGOs') and other justice mechanisms then tend to intervene. Some also advocate development programmes as a possible means of offering reparations, although this brings about the difficulty of addressing vicarious liability. It also runs the risk of confusion among victims as to what part of the programme relates to their reparation and what part simply targets an entire population facing difficulties post-dictatorship or post-conflict. Reparations and truth-telling mechanisms, which are not supported by the state, are briefly considered hereafter in recommendations of the Sierra Leone truth commission, under "alternative restorative justice mechanisms".

18.4.2.2. Sexual Violence and Truth Commissions

When truth commissions are set up in the aftermath of an authoritarian regime, the sexual violence they confront is mostly committed by government forces. Rebuilding in the context of sexual violence is difficult on a personal and societal level, but some truth commissions have chosen to address this openly. In doing so, many have referred to local alternative restorative justice mechanisms with a view to ensuring healing is both meaningful for victims and perpetrators and to avoid the process being held up by lack of political will.

In Latin America, for example, several truth commissions mention sexual violence specifically: Ecuador (2007), Haiti (1995–1996), Paraguay (2008) and Peru (2001–2003). In Africa, Liberia (2003) and Sierra Leone (1999) focus extensively on the issue. The Democratic Republic of Congo Truth and Reconciliation Commission does so too, although this was not done comprehensively and lacked credibility. Timor-Leste's Truth Commission (through the Serious Crimes Panels and the Reconciliation Commission) also focused on sexual violence. In the latter case, this was considered in relation to women, sometimes with regard to children, and more rarely with regard to men.

[100] For some truth commissions there is a greater focus on outcome (such as reparations recommendations in Sierra Leone) and others on truth-telling and process (such as in Peru).

A number of truth commissions have decided to include key issues on the agenda from the moment the commission is designed, so that substantial attention can be awarded to them throughout the truth commissions process (fact-finding, hearings, report and recommendations). This has been the case notably for the Sierra Leone and Timor-Leste truth commissions. Elsewhere, such as Peru, Guatemala and the Solomon Islands, the truth commissions did not have sexual violence in their mandate at the outset but have chosen to address this in their final reports and recommendations.

If the process is done in close consultation with local leaders and associations, and if it is done with a clear focus on fair trial standards, it may be a flexible and appropriate mechanism to deal with sexual violence cases. As women victims of sexual violence themselves indicated in the truth commission consultations in Liberia, victims appeared to prefer alternative restorative justice mechanisms to the formal judiciary to assist them in coming to terms with their past.

It is interesting to note the variety of ways in which sexual violence has been addressed in the context of truth commissions. Some, such as early commissions in Latin American (Argentina and Chile) do not necessarily include it as a critical aspect of truth-telling and reconciliation. Others (such as Peru, Guatemala and South Africa) do not specifically mention sexual violence, or indeed gender violence, in their original mandate but have come to focus on it in their hearings and final reports. This is especially the case for the Peru Truth and Reconciliation Commission which dedicates two entire chapters to women and sexual violence. Reforms and awareness campaigns have followed the work of this commission, which, in turn, broke the silence on the daily sexual abuse women are suffering in their homes and in the streets.[101]

It Haiti, Sierra Leone and Timor-Leste, on the other hand, there was always a strong emphasis on sexual violence (and gendered violence generally) as this was seen as an essential component of the truth and reconciliation process. Regrettably, this did not lead to recommendations in the

[101] Julissa Mantilla Falcón, "The Peruvian Truth and Reconciliation Commission's Treatment of Sexual Violence against Women", Human Rights Brief, Centre for Human Rights and Humanitarian Law, American University Washington College of Law, 2005. See also Final Report of the Peru Truth Commission (Comisión de la Verdad y Reconciliación, CVR), 28 August 2008.

final reports that are specific or creative. The Sierra Leone final report, while it does focus on sexual violence, offers only general recommendations. Nevertheless, the process of truth-telling, the attention on the plight of certain groups during conflict and also within the wider community outside conflict, seems to have had an important impact on victim recognition and on their renewed sense of citizenship. It may also have practical repercussions, such as legislative changes for certain groups victimised during a conflict or authoritarian regime (women and certain indigenous groups in Peru, such as those in the Ayacucho region) or changes in relation to sexual violence. The work of the Truth and Reconciliation Commission of the Solomon Islands, for instance, demonstrated that this form of violence was prevalent against men as well as women during civil conflict. As a consequence, changes were made in the Penal Code so as to extend sexual violence to include men as well. Similarly, the Equity and Reconciliation Commission of Morocco advised changes in the criminal laws and procedures so as to include sexual violence, and the Chilean National Commission for Truth and Reconciliation recommended that national laws be brought in line with international human rights standards and led to the creation of a Human Rights Institute[102]

18.4.3. Other Alternative Restorative Justice Mechanisms

In societies transitioning away from conflict or authoritarian regimes, pre-existing systems of dispute resolution (often referred to as informal justice systems) may emerge as an alternative means of offering restorative justice. These mechanisms generally use traditional systems and ceremonies that may or may not be religious. Village elders or religious leaders, such as shamans, frequently play the role of mediators or facilitators and, most often, processes involve victims, offenders and the wider community. There is generally a strong emphasis on making amends and rehabilitation of parties to a crime. Victim participation and victims' needs are key, although it is recognised that some groups (notably women and children) may not actually benefit from full and free participation. Some practition-

[102] Final Report of the Chilean National Commission for Truth and Reconciliation (Comisión de Verdad y Reconciliación), also known as the 'Retting Report' in February 1991. More than two decades later, the Chilean Congress passed Law No. 20.405 (November 2009) creating the Institute for Human Rights and reopened the qualification of victims entitled to reparations.

ers indeed feel the risk of discrimination for these victims is too high in the context of informal justice systems and hence they feel they should never deal with sexual violence.[103]

Although reservations about these systems are understandable, especially for vulnerable groups, it is difficult to dismiss them outright, even in the delicate context of sexual violence. Victims and their families do refer to them,[104] and they seem to offer adaptability to local traditions, an implication of the local community and a better likelihood that reparations will be implemented because of the community involvement in devising them. Some may argue that, with appropriate support in abiding with human rights standards, these systems may, in the context of transition, offer considerable benefits to parties to a crime even in cases of sexual violence. In the latter cases, the use of informal justice systems may even have some influence on societal beliefs in relation to this form of violence and to its victims.

Truth commissions themselves often consider that sexual violence victims and perpetrators may best achieve resolution through informal justice systems rather than the formal judiciary (Peru or Haiti, Liberia, Sierra Leone and Timor-Leste, for instance). Some recommend the use of local religious groups or women's groups (Peru and Haiti); others refer to traditional mechanisms (Liberia, Sierra Leone and Timor-Leste). In Liberia, the truth commission recommended extending the use of the traditional dispute resolution mechanisms called '*palava hut*'.[105] The latter have, until now, been part of the customary law system (formal and informal justice systems coexist in a dual justice system) and, traditionally, they have not resolved serious crimes such as sexual violence or rape. It is unclear at this stage how well the adaptation has worked. Other reconciliation mechanisms were also encouraged by the Liberian Truth and Reconciliation Commission, including the use of traditional leaders, especially

[103] UNDP, 2012, see *supra* note 30.

[104] See Truth and Reconciliation Commission of Liberia, *Final Report*, vol. 3, title 1, 58, June 2009.

[105] The definition of '*palava hut*' as adopted by the Liberia truth commission refers to a gathering place in a town or village, generally a thatched hut, where disputes are settled, usually through a process akin to mediation with a respected member of the community.

female traditional leaders, to facilitate reconciliation and influence community reconstruction.[106]

In Sierra Leone, the truth commission recommended extending reconciliation activities of the district reconciliation committees established in partnership with the Inter-Religious Council of Sierra Leone. The latter has had a wide variety of reconciliation activities, including reconciliation ceremonies where victim and perpetrator are brought together, sometimes with their respective communities. Traditional dances, theatre, traditional hunting, cleansing ceremonies (sometimes referred to as 'cleansing of the bush') may facilitate these processes. Specific categories of victims, including sexual violence victims, were awarded reparations in the form of free healthcare and free education for their children if the injury took place between 23 March 1991 and 1 March 2001. In contrast to the South African Truth and Reconciliation Commission, reparations are not reserved only to those who partake in commission proceedings.[107] There is some discussion about linking reparations to social assistance, since the latter is an obligation from the state to all its citizens. It may be acceptable if reparation is clearly labelled as such for specific categories of people.

The Sierra Leone truth commission also recommended that the government look into harmonising common law and customary law practices so that the latter abide by human rights standards. The truth commission had specific reservations about customary laws in relation to rape and sexual violence where, in the case of young girls, it was felt these were too often settled between perpetrator and the victims' family through monetary compensation and without the victim having any actual say in the matter. In addition, it was noted that, under customary law, consent of a minor for sexual relations is not required. The truth commission recommended that UNIFEM and the Ministry of Social Welfare and Gender Affairs raise awareness about the culture of silence that surrounds rape and sexual violence.

In Timor-Leste, the truth commission strongly referred to reconciliatory justice systems, which existed well before colonisation. The latter coexisted with formal courts as a dual system when the Timor-Leste conflict began in 1999. The system involves a community-led shaming of of-

106 See SLTRC, Final Report, vol. 3, title I, p. 90, *supra* note 98.

107 *Ibid.*, vol. 2, chapter 3, October 2004.

fenders and then exchanges of forgiveness and apology between perpetrators and victims. In some cases, these processes are facilitated by shamans or by village priests (95 per cent of the Timorese population are Roman Catholic). Critics have pointed out the risk of such systems leading to mob justice, although links with the formal truth commission, and hence international human rights standards, can mitigate these concerns to a degree.

In societies where truth commissions have not been installed, or only partially, informal justice systems have sometimes attempted to deal with the past and push for reconciliation through other means. In Uganda, two successive truth commissions have failed abysmally and, although a 2001 law has tried to foster peace through an amnesty programme aimed at ex-Lord's Resistance Army combatants in northern Uganda, most victims feel this should have been accompanied by measures of accountability and reparations.[108] For some, traditional dispute resolution mechanisms, such as cleansing and purification rites of the Acholi people, of which the '*matu oput*' is well known, were most suited to operationalise reconciliation. According to the Acholi moral code, parties in conflict must be reconciled and cleansed before being reintegrated into the community. In the *matu oput* ceremony, both perpetrator and victim must drink from the same cup and an Acholi leader, who has considerable influence in the community, facilitates the ceremony. Many in Uganda feel this may be an interesting approach, particularly given the perception that most perpetrators, particularly among former child soldiers, were in fact victims themselves. There are, however, reservations about this system, including the fact that there is no central quest for the truth about the past and that there is no apparent mechanism to ask victims what their needs are. As practitioners themselves indicate, there are multiple levels of truths and multiple levels of reconciliation that must be addressed in a context of a society in transition in order for peace to be sustainable.[109]

In the context of Rwanda, a National Unity and Reconciliation Commission was set up in 1999, but it considered only issues related to education and the causes of the Rwandan genocide of 1994. The use of

[108] ICTJ, 2012, see *supra* note 61.

[109] Chris Mburu, "Etude de cas: Ouganda", in *La Justice Transitionnelle dans le Monde Francophone*, Département Suisse des Affaires Etrangères, DFAE, Conference Paper, 2007, no. 2.

the well-known local courts, the *gacaca*,[110] was established through legislation.[111] They have no longer been in use since 4 May 2012, but the system is original and merits mentioning in the context of restorative justice and sexual violence in societies in transition. According to legislation, category one crimes (including those responsible for planning the genocide, and those responsible for rape and sexual violence) were not transferred to *gacaca* courts but to the formal justice system where victims benefited from anonymity and procedures *in camera*. However, if a suspect confessed to crimes early on in proceedings, before his or her name was included on the register of those suspected of genocide, he or she could confess and see the crime downgraded from a category one to a category two crime. The case would then benefit from a *gacaca* or local court procedure with a local judge and the local community. Rwanda and its legislation must abide by international human rights standards and, hence, so must *gacaca* courts. Even so, while *gacaca* courts did favour community participation and procedures familiar to the local population, there were misgivings. These included a general climate not conducive to openness and tolerance,[112] and judges who were not properly trained and who were not paid.

Alternative restorative justice systems in societies in transition of course go beyond informal justice systems to include more conventional restorative justice systems, such as mediation and conciliation, through NGOs or other civil society groups. Criticisms of these systems in relation to sexual violence are the same as for all restorative justice measures and sexual violence. A report of the Inter-American Commission on Human Rights, for instance, voiced classic concerns over victim protection and actual freedom of the victim (it especially referred to mediation and conciliation) although, as it pointed out, many jurisdictions do seem to revert

[110] *Gacaca* refers to 'grass', and by extension to 'justice on the grass', in Kinyarwanda. This form of local justice was used after the Rwandan genocide to assist the overburdened courts.

[111] Law No. 08/96, 30 August 1996 as amended by Law No. 16/04, 19 June 2004.

[112] On *gacaca* see Anne-Marie de Brouwer and Sandra Ka Hon Chu (eds.), *The Men Who Killed Me: Rwandan Survivors of Sexual Violence*, Douglas and McIntyre, Vancouver, 2009. See also Anne-Marie de Brouwer and Sandra Ka Hon Chu, "Gacaca Courts in Rwanda: 18 Years after the Genocide, Is There Justice and Reconciliation for Survivors of Sexual Violence?", in *IntLawGrrls*, 7 April 2012.

to restorative justice for sexual violence.[113] In Nicaragua, sexual violence cases have been settled through mediation,[114] and in Guatemala, the law allows the use of "victim's forgiveness" as a result of conciliation proceedings in cases of sexual violence.[115] In Honduras, statutory rape, incest, forcible abduction and "criminal sexual contact" may be subject to conciliation if the victim is over 14 years old.[116] El Salvador also appears to allow reconciliation mechanisms outside the courtroom in cases of sexual violence.[117]

Restorative justice measures undertaken by NGOs and civil society in cases of sexual violence go beyond conventional processes such as mediation or conciliation. As in the context of truth commissions, they include investigating systematic human rights abuses, giving a voice to victims and securing the greater involvement of civil society. They can undertake interviews, document human rights abuses (including sexual violence cases), publish reports, hold community meetings, and pursue community-led memorials such as those held annually to commemorate massacres or disappearances. Similarly, human rights groups and leaders may decide to set up an alternative non-governmental commission to investigate abuses. This was the case in Honduras where the Argentine Nobel Prize winner Adolfo Pérez Esquivel created such a commission to investigate abuses leading to and following the 28 June 2009 coup against President Manuel Zelaya. Others still may use public hearings where there is shaming, repentance and forgiveness.[118] The latter seems to be most used in societies with a strong Christian tradition, such as in Peru, South Africa and Timor-Leste. Sometimes, other truth-telling mechanisms have

[113] Inter-American Commission on Human Rights ('IACHR'), *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, Organization of American States, OEA Ser.L/V/II. Doc.63, 2011, pp. 75–76.

[114] Supreme Court of Justice of Nicaragua and the Spanish Agency for International Cooperation, legal analysis of verdicts delivered in cases involving intra-family and domestic violence and civil suits in family law, in *ibid.*, p. 74.

[115] Familiares y Mujeres Sobre Vivientes de la Violencia, "Análisis Sobre la Situación de Violencia en contra de la Mujer en Guatemala" [Analysis of Violence against Women in Guatemala], in *ibid.*, p. 53.

[116] Response to a questionnaire presented by Eduardo Montes Manzano, in *ibid.*, p. 74.

[117] Observatorio de la Violencia de Género contra las Mujeres (Observatory on Gender Violence Against Women), Organización de mujeres salvadoreñas por la Paz, in *ibid.*, p. 75.

[118] See John Braithwaite, *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge, 1989.

appeared in parallel to an internationalised court because the latter did not sufficiently respond to victims' needs (consider the truth-telling groups for victims which were organised by NGOs on the fringes of the Extraordinary Chambers in the Courts of Cambodia).

18.5. Concluding Thoughts: Sexual Violence as a Core International Crime and the Way Forward

The responses to international sexual crimes have changed over the last decade, focusing more closely on the needs of all the parties to the crime, particularly on victims. This may better address the specific and difficult needs that result from extreme violence on a massive scale, especially in societies with inherent tensions and discriminations. This approach may allow for individual healing, accountability, acknowledgement and real involvement in proceedings. This amounts to restorative justice. This chapter has analysed some characteristics and strengths of restorative justice, and considered reasons why an application of this justice paradigm to the theme of international sexual crimes may be warranted.

Some attempts are being made to combine a restorative justice approach to international sexual crimes and retributive justice. Although these are not theoretically incompatible, they are difficult to combine in practice due to the stringent and formal procedures of traditional criminal justice. The ICC Statute continuously tries to overcome this challenge, but with limited success so far.

Alternative restorative justice systems – whether they be truth commissions or informal justice systems – have an essential role to play in offering some form of redress to victims of international sexual violence which makes sense to them and which is thus more likely to be abided by, as well as ensuring that international standards are respected. There are clearly noteworthy concerns over fair trial standards, especially for vulnerable victims such as those of sexual violence. This must be considered carefully and each restorative system must, evidently, be appreciated and its own merits and understood as being only one measure among many in addressing sexual violence.

Although research in this field should proceed further, it appears that the complexity of international sexual crimes in conflict may be best accommodated if local restorative practices are able to connect with more formal systems of justice, both in order to have better assurances for hu-

man rights standards, but also to ensure that multiple needs (individual, interpersonal and community) can be addressed holistically. Restorative practices in societies in transition – particularly so in societies emerging from conflict where limited sources of justice are available – demonstrate considerable practical creativity. As such, they constitute an invaluable resource for considering new restorative justice approaches to sexual violence, both in transitioning societies and indeed in societies at peace.