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“Hybridity in Transitional Justice: A Qualitative Evaluation of  
Hybrid Approaches in Post-Conflict Societies. The Case of  
Rwanda”

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Laura-Anna Frühwald, BA

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## **Preface**

In the course of my work for this thesis, I was often asked if the topic I had chosen was not too heavy to write about. My answer was a hesitant “no”. Writing about how the past is handled, is different than writing about past events themselves. Our work as researchers, especially political scientists, is oftentimes very distant from reality. Nonetheless, as often in social sciences, what we study on our desks has implications in real life, whether good or bad, positive or negative, big or small. This becomes especially sensitive when it comes to topics such as conflict or transitional justice. It could be argued that researchers have no right to talk about these things, while sitting in our comfortable and safe positions. Am I even entitled to work on a topic, whose implications I actually have never experienced in reality? Should this stop me from studying such topics? I think the answer should, again, be a “no”; followed by a counter question: what would happen if researchers ceased to look into these issues? Also uneasy matters need to be researched, or we might run the risk of looking away, because we feel like it does not concern us. This might bear far greater risks than taking on the challenge of facing difficult topics. However, it is crucial not to overestimate ones knowledge or work and to always remind oneself of its boundaries and limitations. I constantly needed to remind myself that the words I type down on paper or read in books have real-life implications that belong to the reality of others in this world. It is important to keep in mind that what we – as researchers – write about also has a very real and existential side to it, while not letting us scare away by topics we might feel like we have no right to touch upon.

This work is written in deep respect for those who have faced, or are, facing the struggles of authoritarianism and war, which make up the starting point of the present theme. All those, whose lives will never be the same, because of what happened in the past.

## Acknowledgements

Scientific writing can often feel like a lonely endeavor, but it would be impossible without the guidance and company of others.

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# 1 Introduction

This thesis is set in the field of transitional justice. Transitional justice (TJ) refers to the measures taken in societies after periods of authoritarian rule or internal conflict, which witnessed gross human rights abuses. The central concern of TJ is how to overcome a troubled past to create lasting peace (Buckley-Zistel/Oettler 2011). In general, the focus lies on justice in times of transition (Ambos 2009:19). More specifically, TJ employs mechanisms and instruments to deal with past crimes, committed during times of conflict or repression (Brewer/Hayes 2011:10).

Originally, TJ addressed transitions from authoritarian regimes, in a process of democratization. However, as in so many other realms of international politics, the end of the Cold War changed the landscape of the field. New conflicts emerged and pressured international actors to get involved in peace-related activities (Paris 2004:16). The nature of conflicts had changed, away from confrontations between superpowers, towards internal, ethnic conflicts, or so called new wars (Miall et al. 1999:2). Conflicts and transitional situations became a prime concern in international politics (Paris 2004:3). As a consequence, TJ evolved “into a normalized and globalized form of intervention following civil war and political repression” (Shaw/Waldorf 2010:3).

Today, TJ covers a wide range of measures (Fischer 2011:407). It encompasses a whole range of judicial and non-judicial instruments and mechanisms to address past injustices and human rights abuses (Clark et al. 2008:390). Furthermore, it aims at more general goals such as reconciliation and healing in society, extending well beyond purely legal considerations (Brewer/Hayes 2011:10). A core question is: how can societies deal with their violent past to create a lasting and comprehensive peace? Essential to this are: truth, justice, and reconciliation (Buckley-Zistel/Oettler 2011:29).

There are numerous instruments of TJ: from international and national criminal tribunals, to truth commissions, as well as traditional forms of peacemaking (Buckley-Zistel 2011:9-19). Yet there is a clear tendency towards approaches that are based on the concept of “liberal peace”. These will be referred to as contemporary approaches to TJ, in this thesis, while they are also known as modern or western. They are the predominant approaches to TJ and peacebuilding, to date, and are based on a legalistic understanding and the concept of liberal peace. This is described as a western concept, focused on democratization, human rights, and the establishment of open markets. It implies a standardization of approaches to TJ and



peacebuilding. However, contemporary approaches have failed to deliver the desired results. As a consequence, local, indigenous forms of peacemaking have caught the attention of researchers and practitioners alike. This has led to a heightened attention towards traditional justice and conflict resolution. Traditional approaches also referred to as indigenous or customary, are local approaches, based on customs and traditions (Mac Ginty 2008:139-141). In fact, these tendencies have created a contradiction in present TJ. On the one hand, there is an emphasis on standardized, international norms and on the other, increased attention to local forms of justice (Shaw/Waldorf 2010:4f). As a consequence, approaches to TJ are presently characterized by hybridity. Hybrid approaches can quite simply be described as a mix of different elements of contemporary and traditional approaches (Boege 2006:2f). These hybrid approaches are believed to yield better results (Werner 2010:60).

### **1.1 Research Interest and Research Question**

As we have seen, TJ is a theoretical as well as practical concept that includes processes undertaken in societies coming out of periods of repression or internal conflict. Judicial processes, but also other instruments are the practical application. Nowadays, there is an array of possible instruments and approaches to TJ. Much debate has been centered on finding the most suited approach. Conventional forms of justice, such as criminal trials and tribunals are weighed against alternative forms, such as truth commissions. Yet, where are the pros and cons and which is ultimately the best practice?

The underlying research interest is to understand how societies try to deal with their past and pursue justice, which approaches are used and especially what role these play. Thus, how different approaches have an impact on processes of TJ. I intend to analyze how they can contribute to the reconstruction of a society and the reweaving of torn social and political fabric. The goal is not to come up with a perfect solution, but to provide an evaluation of approaches and possibilities, in connection with highlighting central aspects of TJ.

Thus, this thesis is concerned with instruments of TJ in general, as well as broader questions that arise in this context. However, the focus will be on hybrid approaches. The aim is to shed more light on these and their application in practice, as well as their possible contributions to TJ. Therefore, the present thesis intends to explore, describe, and evaluate hybrid approaches.

The guiding research question is: *What are the pros and cons of hybrid approaches to transitional justice in post-conflict societies, in light of the main aspects of TJ (justice, truth, and reconciliation)?* And consequently, in a more general vein: *are hybrid approaches more*

*suited for transitional justice in post-conflict societies than conventional approaches that were applied until now? And if yes, Why?*

The purpose of this thesis is to evaluate the assets and drawbacks of hybrid approaches to TJ. It seeks to produce a critical evaluation of the potentials and limits of hybrid approaches. These are a relatively new phenomenon, in a research field that is still in its beginnings and in the process of developing a sound, commonly accepted theoretical basis. At the same time, this thesis seeks to build a critique of previous approaches to TJ and to explore how hybrid approaches aim to overcome their failures. Thus, this thesis is an exploration of hybrid approaches as alternatives to other approaches and at the same time a constructive critique of the dominant approaches to TJ. The intention is to critically analyze conventional and hybrid approaches and their influence on TJ in post-conflict societies.

Only a few scholars have so far thoroughly engaged with the concept of hybridity in TJ. The present work aims to fill this research gap. Thus, the contribution of this thesis to the field lies in the in-depth theoretical study and evaluation of hybrid approaches. Both contemporary and traditional approaches have been explored extensively. However, their connection and application as hybrids, which is becoming ever more prevalent, is usually presented on a very abstract and theoretical level. Alternatively, when a case study approach is taken, a certain measure is simply identified as a hybrid without further elaboration. This thesis aims to bridge the gap between pure theoretical description and practical analysis, integrating both, following what has already been established in the academic literature and exemplifying it with the help of a case study. Although the essence of this thesis is of theoretical nature, and the emphasis lies on theoretical argumentation, it also offers the analysis of a hybrid approach in practice, based on previous empirical field research by TJ and peace studies scholars.

## **1.2 Method**

As outlined above, the aim of this thesis is to evaluate hybrid approaches, establishing possible positive and negative aspects for TJ in post-conflict societies. Given the research interest, the most appropriate method to answer the proposed research question is of qualitative nature. Qualitative methods in political science focus “on detailed, text-based answers that are often historical or include personal reflection from participants in political institutions, events, issues or processes” (Vromen 2010:249). In contrast, quantitative methods rely on quantifiable data and employ numerical, statistical methods. Qualitative

methods in political science are employed, for example, to study political institutions, in contrast to behavior such as voting, studied with quantitative methods. However, divisions are not clear-cut and oftentimes, especially nowadays there is an emphasis on combining qualitative and quantitative methods. Much of this depends on the specific research design, purpose, technique, and subject of analysis (Vromen 2010:249).

For the purpose of this thesis, I will use two qualitative methods, as outlined by Vromen<sup>1</sup> (2010:250): a literature review (building on existing, secondary literature and a few original documents) in text/discourse analysis, to build a theoretical framework, in addition to a case study.

A literature review is important to establish what has been previously studied in the field and what might be useful for the present research. It is more than just a simple description or summary of previous academic work, by presenting a critical assessment of previous research findings. A literature review includes books and articles (academic publications), policy documents, and reports. The task of the researcher is to review this already established knowledge, in order to detect important debates and gaps in the studied topic, which then can be filled by one's own research (Knopf 2006:127-130). Thus, secondary literature was used to support and validate my own analysis and conclusions.

In my research, I relied on previous contributions to the field to build a theoretical construct, which then could be applied to a specific case. Therefore, this thesis will start with building a theoretical construct and argument for the evaluation of hybrid approaches, relying on the help of an extensive, already existing body of literature. However, as research has often either taken a purely theoretical or practical viewpoint, my aim is to combine these two, by using a case study approach to exemplify the theoretical model and analyze real-life, practical implications of hybrid approaches. Consequently, the second part of my thesis will take a case study approach.

### **1.2.1 The Case Study**

Gerring (2004:341) defines a case study “as an in-depth study of a single unit (a relatively bounded phenomenon) where the scholar's aim is to elucidate features of a larger class of similar phenomena”. Thus, the case study method offers the possibility of an in-depth analysis of a specific phenomenon (Gerring 2004:348). However, research designs that only employ a single case “fall short in their *representativeness*” (Gerring 2004:348), which refers to the ability to spread findings onto a larger set of units or generalize across (unstudied) cases. I am

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<sup>1</sup> Vromen (2010:25) further adds in-depth interviewing and historical analysis.

well aware of that fact. However, generalizability is not the aim of my research. The case study is used as an example, one example among many, and does not aim to generalize findings over the whole spectrum of cases and contexts. It will serve as an example and a way to further analyze the practical applicability of the established theory, while keeping the limitations of a single case study in mind. “Researchers [...] tend to focus on a single or very few cases or examples when they use qualitative analysis to be able to gain an in-depth understanding of their research subject. Thus, generalizability over many cases is rarely a goal of qualitative analysis”, as Vromen (2010:255) points out.

In this thesis, I chose to focus on the case of Rwanda and more specifically a hybrid approach of local, community courts called “Gacaca” that were installed to prosecute crimes related to the 1994 genocide.

I chose this specific case for a number of reasons. First, Rwanda is certainly a very mediatized and known example (Vest 2002:21). Further, Des Forges and Longman (2004:49) state that “the Rwandan genocide has received greater judicial attention than any other case of mass atrocity in recent history”. Clearly, Rwanda is a case of high interest in TJ research. As a prime case it is widely researched (Hankel 2011:178), making it easy to access first hand field research, analyses, and secondary literature. Furthermore, it is a case that already dates back some time and the process of Gacaca has been completed. Therefore, it has been studied extensively and allows for assessment. Other cases might be more recent, but either lack in accessible material, or proper long-term assessment, due to their recent nature (Huyse 2008b:188). Another reason why the case of Rwanda is of high interest for my specific research is that a combination of approaches on different levels was applied (Schabas 2008:208). Instruments were installed on three levels (international – national – local) and thus can be compared in their effectiveness one of them being Gacaca on the local level. “Rwanda is the only country where a local accountability instrument has been wholly part of the official [TJ] policy” (Huyse 2008a:21). Thus, Gacaca represents a unique example of a hybrid process (Peterson 2012:6; Clark 2008b:303). “Given its position among a host of transitional justice strategies, *gacaca* presents an opportunity to evaluate the effectiveness of a local, hybrid institution in achieving core transitional justice goals of truth, justice and reconciliation” (Pozen et al. 2014:32). Hence, making it especially suited for the purpose of this thesis.

As a first step, to approach the case study, I designed a Conflict Map (based on Miall et al. 1999:92f and reproduced in Chapter 6). A Conflict Map represents a way to study a conflict,

in order to know the specific case and its context better. Before turning to the examination of TJ measures taken in Rwanda, specifically Gacaca, I then defined some questions that guided the analysis. These were: Which elements in Gacaca can be attributed to contemporary approaches and which to traditional? By whom and how was Gacaca installed? What was the outcome? How does Gacaca fit into the model of hybridity? The goal was then to produce a thorough analysis of Gacaca as a hybrid approach as well as its contribution to TJ in Rwanda. However, I did not focus on other more general questions, such as how the genocide could have been prevented or what could have been done differently beforehand. Instead, the focus was on Rwanda's specific response, which instruments were installed, how TJ was handled in Rwanda, according to the various questions and challenges of a transition, and how this might inform future activity in other cases.

All cases of TJ are unique, but the choices that countries in transition are faced with are similar, as Sriram (2004a:211) states. It is thus hard to find a general pattern or causality. "However, we can identify issues, factors and strategies of particular salience for transitional regimes" (Sriram 2004a:211). When TJ policies are being designed, actors often look to previous experiences and other cases, in an effort to analyze what has been unsuccessful or successful. As a consequence, actors can learn through the sharing of experiences or through the analysis of examples, even if a number of factors remain contextual and unique to each case (Roht-Arriaza 1995:4). The analysis of specific local applications and experiences of TJ can highlight new possible approaches (in a practical sense), but also challenge the theoretical basis of previous TJ approaches and the assumptions they carry (Shaw/Waldorf 2010:4).

### **1.3 State of the Art**

TJ, as a discipline, emerged in the late 1980s (Arthur 2009:321). Thus, it is a rather young discipline and field of study. However, it is rapidly expanding (Buckley-Zistel 2011:20). As Clark et al. (2008:381) note: "transitional justice is a nascent yet dynamic field in which key concepts and their bearing upon concrete conflict and post-conflict situations are constantly defined and redefined".

TJ started to evolve in the late 1970s/early 1980s when legal and political science research on transitions and regime change converged (Kayser-Whande/Schell-Faucon 2010:98). In the late 1980s/early 1990s, the study of transition became a new sub-field in political science. The central question was how to deal with the past to best suit the process of transition towards democracy and free markets (Buckley-Zistel/Oettler 2011:24). This was connected to the

“third wave of democratization”, a term coined by Samuel Huntington (Sikkink 2011:50). The trend towards democracy at the beginning of the 1990s and the evolvement of the concept of liberal peace had a direct influence on the definition and conceptualization of TJ (Graf et al. 2012:100). The end of the Cold War, a growing number of civil wars in Africa, and the wars on the Balkan, brought the topic of dealing with the past to the forefront (Buckley-Zistel 2011:9). Along with it came a juridification of international relations, the development of the human rights norm, and concepts of justice and liberal peace, which have influenced and furthered the debate (Buckley-Zistel 2011:19).

At the same time, non-judicial instruments as well as local and traditional approaches to conflict were included in TJ, in the late 1990s. Concepts such as reconciliation and a focus on victims became increasingly popular in scholarly literature (Kayser-Whande/Schell-Faucon 2010:99). The idea was that top-down interventions, led by external actors, were ignorant to local realities and cultures. The idea of “peacebuilding from below” (Miall et al. 1999:57) was brought forth. A strand of critical scholars, among them J.P. Lederach as the most well known proponent, sought to move away from problem-solving oriented approaches towards more comprehensive approaches to conflict (Miall et al. 1999:58).

The newfound attention for local capacities was connected to a heightened sensitivity to the question of culture in conflict in general; mainly as a consequence of expansive, and often unsuccessful, peacebuilding interventions in the 1990s. This led to the realization that interventions should be multi-dimensional in nature and include a wide scope of actors (Miall et al. 1999:19,61f). The different positions in the debate around culture are “part of a long-standing internal debate between those who advocate universal or ‘generic’ approaches to conflict intervention and those who argue for radical cultural pluralism and difference” (Miall et al. 1999:199). At present, culture and legal pluralism are widely discussed topics in contemporary scholarly debate (Hinz 2010:6).

Since I will be focusing on approaches to TJ in post-conflict societies, this thesis could also be seen as a contribution to the broader discipline of peace and conflict studies. One will find terms that relate to this field along the way. Thus, a few clarifying words are needed.

For the purpose of this thesis, I will adopt a broad definition of TJ, such as the one proposed by the United Nations:

The notion of “transitional justice” [...] comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.  
(UNSC 2004:4)

Originally, narrow definitions of TJ were common<sup>2</sup>. These limited the scope of TJ in terms of circumstances, as transition was solely defined as regime change, and in terms of measures, as only legal measures were considered (Springer 2009:9). As transitions after conflict gained in importance, TJ was defined more broadly and included more comprehensive goals. Originally narrow and legalistic definitions of TJ were broadened to include wider goals. This also resulted in an increased overlap of the fields of TJ and conflict resolution (Kayser-Whande/Schell-Faucon 2010:98). Both fields have moved closer to each other, especially after transitions following internal conflict were added to TJ.

One might rightfully question if TJ and conflict resolution are one part of the other or distinct, even if overlapping, fields (Kayser-Whande/Schell-Faucon 2010:97). According to Kayser-Whande and Schell-Faucon (2010:97), they especially overlap in their goal of sustainable peace and the concept of reconciliation. Nonetheless, Kayser-Whande and Schell-Faucon (2010) still define TJ and conflict transformation as two distinct fields of practice and research. However, I think that they are not as distinct as they are argued to be. To me, TJ is part of broader conflict resolution and peacebuilding efforts, or at least the overlaps are substantial. This might become apparent in subsequent chapters. In this context, Arthur (2009:360) raises the following question: “should those working in transitional justice [...] engage directly with social science literature on conflict resolution, state building, and peacebuilding”? My answer is yes and this thesis is aiming to do so, by drawing on literature from all of these fields.

Especially because the case analyzed in the present thesis is a case of TJ in a post-conflict context, matters of peacebuilding<sup>3</sup> and conflict resolution are prevalent.

Conflict resolution can be used to refer to an activity or a specific academic and practical field (Miall et al. 1999:21; Lederach 1995:16). As a term, it refers to both a process and a goal. Conflict resolution, as a process, aims to address the deep-rooted sources and causes for conflict, such as relationships between various actors (Miall et al. 1999:21f). Then, in the late 1990s, a new concept emerged. Conflict transformation was established in the repertoire of terminology. Conflict transformation focuses on long-term transformation of conflicts and their underlying, structural causes (Kayser-Whande/Schell-Faucon 2010:100). The concept of conflict transformation emerged, in order to provide a more adequate and holistic understanding. It acknowledges the constant evolvement of social relationships and envisions

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<sup>2</sup> Differences between broad and narrow definitions will be discussed in Chapter 2.

<sup>3</sup> “*Peacebuilding* is action undertaken at the end of a civil conflict to consolidate peace and prevent a recurrence of fighting” (Paris 2004:38). Thus, it is about re-establishing stability and order in post-conflict areas, through specific measures (Hutchison/Bleiker 2013: 81), as will be explored more closely in Chapter 3.

deep change in these and in the social system itself (Lederach 1995:18). The emphasis is on bottom-up processes and interactions of actors, on all levels of society, to produce new relationships and change attitudes. Thus, conflict transformation focuses on the long-term transformation of deeply enrooted, asymmetric relationships and other underlying causes that created the conflict (Miall et al. 1999:17-21).

Some see conflict transformation as a further development of conflict resolution (Miall et al. 1999:21). However, Miall et al. (1999:60), for example, acknowledge the dispute in terminology, but opt for defining transformation as the ultimate goal of conflict resolution. Thus, conflict transformation being “the longer-term and deeper [...] dimension of conflict resolution” (Miall et al. 1999:60). This is how I will use it in my thesis.

From what has been discussed so far, it might seem that political science and international relations dominate the debate on TJ and conflict resolution. Nonetheless, especially post-conflict analysis is interdisciplinary, including sociology, psychology, law, and anthropology (Brewer/Hayes 2011:6). For example, the approach to the study of traditional approaches in conflict resolution is usually anthropological, with a specific focus on legal pluralism (Huyse 2008a:10). Hence, TJ encompasses a broad field and includes scholars from law, philosophy, criminology, and other social sciences in general. As a discipline it is very broad, which is reflected in numerous research institutes, university courses, academic journals, and publications (Brewer/Hayes 2011:11).

Nonetheless, research and academia in peace and conflict studies, and TJ alike, is still “dominated by white men from the global north”<sup>4</sup> (Mac Ginty 2011:4) in both material and methodological terms. Local capacities are often overlooked in a predominant liberal discourse, engaged by academics and policy makers alike (Mac Ginty 2011:18). The influence of international relations and political science on peace and conflict studies means that the orthodox approach to peacebuilding emphasizes state institutions, formal top-down processes, and approaches geared towards problem-solving, that fail to challenge underlying structures (Mac Ginty 2008:146).

However, critics<sup>5</sup> of the predominant liberal peacebuilding approach “have emerged and now form a substantial and growing body of literature that questions the causes, ethics, and impacts of this ideologically biased approach” (Peterson 2010:18). The critical strand of

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<sup>4</sup> One has to be aware of their own conditioning. I do not exempt myself from this, as I too still evaluate, for example, traditional approaches from a western point of view. Also Boege (2006:3f) calls for caution and awareness of one's position, in this context.

<sup>5</sup> For example: Duffield (2001), Richmond (2005), and Mac Ginty (2011), among others.



peace studies seeks to question the underlying problems and assumed viewpoints (Mac Ginty/Richmond 2013:766f). Critical scholars especially aim to counter the predominant concept of liberal peace and “to open space for other understandings of politics, the state, rights, needs and law to be developed in the context of peace” (Mac Ginty/Richmond 2013:768). The present thesis is positioned along this line of thought.

#### **1.4 Structure of the Thesis**

This thesis is structured in three parts. The first focuses on the broader context of TJ. Chapter 2 will discuss central questions, aims, and goals of TJ. This chapter forms the basis for the other parts of the thesis. The second part will look at specific approaches to TJ. Here, the chapters follow a similar general structure, in which first the underlying concepts of an approach are laid out, followed by a look at specific characteristics, and concluded with a discussion of pros, cons, and shortcomings of each approach.

As the aim of this thesis is to evaluate hybrid approaches, and these represent a mix of different approaches, an important pre-step is to analyze previous approaches. Chapter 3 takes on contemporary approaches. Here, the concept of liberal peace will be displayed and discussed thoroughly, as approaches built on this concept constitute the focal point of critique. Chapter 4 focuses on traditional approaches of TJ. Chapter 5 will then turn hybrid approaches, the central topic of this thesis. This second part mirrors the interdisciplinary of TJ in general, as the chapters take on a more legal (Chapter 3) or anthropological perspective (Chapter 4) in addition to dealing with issues of peace and conflict studies and TJ.

The third, and last, part of the thesis will take on a case study approach. Chapter 6 presents the case of Rwanda and more specifically Gacaca. This chapter will conclude with an analysis, which, together with the previously established theoretical model, will form the basis for the Conclusion.

## 2 Transitional Justice

Transitional justice (TJ) is used to describe attempts at coming to terms with the past, after regime change or internal conflict (Wanis-St.John 2013:361). The aim is to deal with a violent past or period of repression, while at the same time preventing future outbreaks. The present defines the focus on the past and the future, in societies coming out of war and repression (Buckley-Zistel 2011:7). Thus, there is both a backward- and a forward-looking element inherent to TJ (Kayser-Whande/Schell-Faucon 2010:105).

In its original use, the concept of TJ referred to transitions from authoritarian regimes to democracy. Thus, the focus was on regime change and questions and challenges connected to these situations. Over time, as intra-state conflicts became more prevalent, the effects of these, such as gross human rights violations during conflicts, were added to the original focus of TJ (Weinstein et al. 2010:32f). As a result, the scope of TJ was extended to include peacebuilding activities.

Approaches to TJ are strongly influenced by the context and political circumstances they are embedded in (Weinstein et al. 2010:37). As TJ takes place in institutional settings and structures, it is not only a set of value-free and neutral measures, but also always a political project. What is to be reached, how it is to be done, and following which definition, is determined by the involved actors (Buckley-Zistel/Oettler 2011:34). As a policy domain, it involves specific actors, such as: nation states, bilateral donors, supranational institutions, the United Nations (UN), regional organizations, financial institutions, and specialized non-governmental organizations (NGOs) (Sriram 2009:93).

However, TJ not only describes a practical set of tools and approaches, used to deal with the past. It is also an academic concept and discourse. Therefore, it is a policy domain as well as an academic discourse.

TJ as an academic research field is very broad and interdisciplinary. This often leads to confusion and controversial debates on certain issues (Springer 2009:6). Definitions are not clear and straightforward and issues often contested. What is missing in TJ research, is a concise theoretical framework (Clark 2008a:193). There is an abundance of literature on TJ, which only adds to the confusion, making it hard to pin down what is important and what is needed to say. This following chapter is a humble approach at tackling this.

In a first step, I will discuss different ways of defining “transitional justice”. Followed by an overview of the historical developments in the practice and field of TJ. This will include a

few practical examples and highlight the most important cases of TJ<sup>6</sup>. The next section will explore central aims and objective, as well as challenges, which can be found in any transitional setting. Most importantly, I will then discuss the three central goals, or pillars, of TJ, before outlining the main instruments of TJ.

## 2.1 Definitions

As was mentioned before, there is not one universally accepted definition for “transitional justice”. Definitions and meanings vary; some are narrow and others broader.

Examples of narrow definitions are:

Transitional justice is made up of the processes of trials, purges, and reparations that take place after the transition from one political regime to another  
Elster (2004:1)

Or

[...] the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes  
Teitel 2003 (cited in Springer 2009:9)

Both definitions clearly describe possible tools of TJ. However, they are not only narrow in terms of possible measures, but also in terms of circumstances, as transition is defined as regime change. Springer (2009:9) rightfully discusses the limits of such a definition – what if TJ is applied not after regime change but internal conflict. I also would add the use of the legal element (“legal responses”) as limiting, in the sense that there are non-legal measures, which can be seen as part of TJ, as we will see later on.

By contrast, broad definitions would be the following:

The notion of ‘transitional justice’ [...] comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses [...] These may include both judicial and non-judicial mechanisms, [...] individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof  
UNSC (2004:4)

Or

Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms<sup>7</sup>  
ICTJ (Website)

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<sup>6</sup> For more examples, see Elster (2004) or Kritz (1995).

<sup>7</sup> The International Center for Transitional Justice (ICTJ) adds to its definition, that the list of possible measures is not closed and that others may be added in different cases (ICTJ Website).

As we can see, both of these definitions specify possible approaches to TJ, while at the same time remaining open to measures that go beyond purely judicial approaches. Furthermore, both definitions widen the applicability of TJ, in terms of circumstances of the transition, by including past, large-scale human rights abuses in general.

All contemporary definitions of TJ have three elements in common: they engage with crimes that violate human rights, they assume a context of transition or change, and they are oriented to a future goal (Kayser-Whande/Schell-Faucon 2010:98f). Furthermore, all definitions include the two elements of “transition” and “justice”. Thus, TJ is a concept that deals with justice in times of transition (Ambos 2009:19).

As to the “justice” element of TJ, which has been the center of attention in many philosophical and political debates, varying definitions exist. I will come back to this aspect in section 2.5.1.

The “transition” element comes from political science theories of regime change and is usually used to describe a process of political change, from one regime, or form of governance, to another. It takes place during bounded periods and therefore is temporary. Transition, in the context of TJ, means a “change in a liberalizing direction” (Teitel 2000:5). This implies a normative element in moving towards a better, democratic state (Teitel 2000:5). The question, however, is how the period of transition can be defined or de-limited. For example, defining elections as a benchmark for democracy and as such taking the first elections to be the end of the transition can be misleading, as it might not equate with peace. This further raises the question if TJ is even an appropriate term for the dynamic nature of the processes it aims to describe (Weinstein et al. 2010:36).

To conclude, both terms in TJ are contested, not surprisingly so is the concept of TJ itself. There is not one agreed and universally applied definition. Some authors even reject the use of the term altogether. Arthur (2009:331f) questions the unreflected use of the term and goes on to suggest abandoning it altogether, as it is not useful enough (Arthur 2009:363). Clark et al. (2008:391), for example, propose to use “post-conflict reconstruction”, for TJ in post-conflict settings.

Nonetheless, I will continue to use the term “transitional justice”, while acknowledging its limits. For the purpose of my thesis, I have adopted a broad definition, which allows a wide range of measures and approaches to be included.

## **2.2 Historical Development of Transitional Justice**

The idea that past wrongs have to be put right, through justice, is ancient (Weinstein/Stover 2004:19). Instances of TJ are said to date as far back as 400 B.C. and the city-state of Athens (Elster 2004:1). Dealing with political transitions certainly has a long history, but TJ is applied more systematically only in modern times, since the end of the Second World War (Springer 2009:5; Elster 2004:54). TJ, as a concept, even only appeared in the 1990s in scientific research and academic literature (Buckley-Zistel/Oettler 2011:21). Accordingly, I concentrate on the 20<sup>th</sup> century in the following brief description of the historical development of TJ.

Following Graf et al. (2012:99-101), historical developments in TJ can be broadly categorized into four phases; to which I will add a fifth, reflecting present developments.

### **2.2.1 Phase I – Early Developments (post-1945)**

The prominent Nuremberg and Tokyo trials, following WWII, are seen as the starting point of TJ (Graf et al. 2012:99; Buckley-Zistel 2011:8; Sikkink 2011:5). At that time, they were a novelty and represented a paradigmatic shift in international criminal justice. For the first time individuals could be held accountable under international law<sup>8</sup> (Teitel 2000:31-34). However, they did not go un-criticized. Accusations of victor's or successor's justice were raised (Stubler 2012:126; Teitel 2000:29-31). Nevertheless, the post-WWII trials laid the foundations for an internationalized criminal justice system (Stubler 2012:126; Graf et al. 2012:99). The shock of the Holocaust not only resulted in these trials but also in the creation of the United Nations (UN) and the Declaration of Human Rights, in 1948. The foundation for the human rights norm were laid and the state accountability model became central (Sikkink 2011:14-15).

The next instances of TJ took place around 30 years later, at the end of totalitarian regimes in Southern Europe, namely Greece, Portugal (both 1974), and Spain (1975) (Springer 2009:5; Sikkink 2011:5; Elster 2004:60). These were the first instances in which citizens held their former leaders and state officials accountable, in domestic trials, for previous human rights violations. Whereas, the Nuremberg and Tokyo trials were international trials, carried out by external powers (Sikkink 2011:31-33).

Two specific cases are worth mentioning in this context. The case of Greece was the first 'test' for the system of human rights, which had been installed in Europe following WWII. Consciousness for human rights grew on an international scale, in a period of relaxation in the

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<sup>8</sup> The option of holding individuals accountable for crimes against humanity is a controversial topic, which will be discussed more closely in Chapter 3 (section 3.3.2).

Cold War and the rise of leftist movements (Sikkink 2011:34-36). The case of Spain, however, stands out as a unique case “in that there was a deliberate and consensual decision to abstain from transitional justice” (Elster 2004:61). This decision grew out of the context of a negotiated transition, in which the old regime still had some power (Sikkink 2011:32). The result was based on an unwritten agreement between all parties, which is referred to as the Pact of Forgetting<sup>9</sup>, as it “institutionalized collective amnesia” (Encarnación 2008:437).

### **2.2.2 Phase II – Amnesties, Impunity (early 1980s)**

The case of Spain could be seen as emblematic for the period that followed the first wave of endorsing accountability in TJ. Until the mid-1980s the main strategy when dealing with the past was “to (try to) ‘close the books’” (Huyse 2008a:2). The Cold War had put a halt to the tendency of international criminal prosecutions, which were replaced by a culture of impunity. Wide-ranging amnesties were the consequence (Buckley-Zistel 2011:8; Graf et al. 2012:99).

### **2.2.3 Phase III – Truth Instead of Amnesties (late 1980s)**

When Latin America witnessed transitions to democracy from military regimes and dictatorships, in the 1980s, TJ was often applied in the form of amnesties (Elster 2004:62). At the same time, civil society started to criticize impunity. Truth commissions were established as a prime novelty and became the main instrument in TJ, representing a compromise between total amnesty and some form of accountability (Graf et al. 2012:9). Furthermore, the focus shifted from perpetrators to victims of gross human rights violations (Elster 2004:62).

In this context, Argentina established the CONADEP (National Commission for the Disappeared), which is seen as the first truth commission (Sikkink 2011:71). The case of Argentina caught international attention and aroused interest, in both academic research and practitioners’ circles. Consequently, there were widespread reactions to the Argentine case in other Latin American countries as well as internationally, all the way to South Africa (Sikkink 2011:88-91).

TJ “had become an international affair” (Sikkink 2011:91): the choice of actions in TJ began to be inspired by cases elsewhere. Moreover, the mid-1980s brought a major shift in policy. Under the influence of the growing human rights movement, there was a tendency towards greater accountability and prosecutions on an international scale (Huyse 2008a:2; Graf et al. 2012:9).

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<sup>9</sup> This pact has only been challenged in the last few years under the Zapatero administration, which proposed a law on historical memory and remembrance in 2007 (Encarnación 2008:437).

## 2.2.4 Phase IV – Human Rights, Democracy (1990s)

The increasing internationalization of TJ was a trend that continued in the 1990s, as becomes apparent in Kritz (1995:xxviii), and finally cumulated in the creation of the International Criminal Court (ICC). The early 1990s saw the establishment of the ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). These directly reflected the increased commitment towards accountability and international criminal trials (Weinstein et al. 2010:34) and served as precursors of the ICC (Huyse 2008a:2).

Sikkink (2011) refers to the developments, outlined above, as the “justice cascade”. This aims to describe shifts in the human rights norm, which resulted in an increase of international prosecutions and individual accountability for gross human rights violations (Sikkink 2011:5). The result being that individuals, as opposed to states or organizations, are responsible for human rights violations and should be called unto this responsibility through prosecutions and fair trials before international bodies (Sikkink 2011:13).

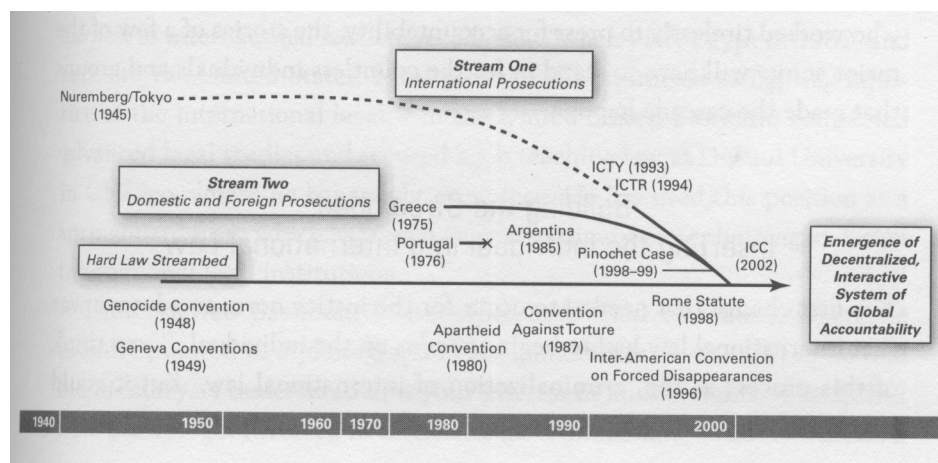


Figure 1: The Justice Cascade, Source: Sikkink (2011:97)

The justice cascade, illustrated in Figure 1, is a result of what Sikkink (2011:96) calls two streams, at the beginning of the 21<sup>st</sup> century, underpinned by international law, which serve as the foundation or streambed (Sikkink 2011:97). The first stream started with the Nuremberg trials and reappeared through the creation of the ICTY, in 1993, and ICTR, in 1994. It represents prosecutions on an international level, following “the doctrine [...] of individual accountability” (Sikkink 2011:96). The second stream represents prosecutions on a domestic level, starting with Greece and Portugal and gaining momentum with the case of Argentina. The two streams then combined in the late 1990s and cumulated in the 1998 Rome Statute, which led to the creation of the ICC (Sikkink 2011:96f). The human rights movement was a driving force behind the justice cascade, along with structural changes in the international

system, such as the End of the Cold War and the third wave of democratization (Sikkink 2011:24).

The justice cascade was influenced by real world events such as the end of the Cold War and the third wave of democracy, as well as further driven by the diffusion and gradual institutionalization of the human rights norm (Sikkink 2011:246f). It then started taking increased momentum in the first half of the 1990s. Especially the conflict in the Balkans and the Rwandan genocide pushed the model of individual accountability onto an international level, through the creation of the ICTY and ICTR. The Balkans and Rwanda were perceived as failures of the international community to react appropriately and led to a move towards more accountability on an international scale (Sikkink 2011:254).

Meanwhile, another trend was forming which had started in the late 1980s. Various developments led to the realization that judicial instruments alone are not adequate enough to resolve conflicts. The effectiveness of trials and their applicability to diverse cultural environments was more and more questioned. This led to a search for viable alternatives, in which the South African Truth and Reconciliation Commission (TRC) “was a turning point” (Huyse 2008a:2). The TRC in South Africa, established in 1995, is seen as yet another decisive moment in TJ, starting a trend towards restorative justice and showing that not only legal accountability can bring justice (Graf et al. 2012:101). With it came a shift, in TJ debates, from purely focusing on truth-telling and human rights, towards broader social issues such as acknowledgement, apology, healing, and reconciliation (Hamber 2007:115). What followed was an increased focus on non-judicial and traditional approaches and measures (Graf et al. 2012:101).

In the mid-1990s “transitional justice”, as a term, became more and more popular. At the same time, TJ became to be understood in a broader sense, away from a purely legal understanding, also including non-judicial approaches (Buckley-Zistel/Oettler 2011:25f).

### **2.2.5 Today – Double Tendency, Diversification**

Nowadays, Weinstein et al. (2010:35) see two contemporary trends in TJ: “international promotion of prosecutions and integration of local priorities and conditions” – a focus on accountability, through judicial measures on an international scale, while at the same time increased respect for local circumstances and approaches.

Globalization had and still has a direct effect on a number of societal spheres (Pilgram 2012:9f). There have been tendencies of unification and standardization of law, especially in criminal law, as expressed in the formation of the ICC, but also in more general legal regimes



such as human rights (Pilgram 2012:4). The creation of the ICC marks, according to Pilgram (2012:10), the emergence of international bodies that have the power to materialize a transnational legal order. On the other hand globalization also emphasizes legal pluralism, as traditional and local elements of law gain importance (Pilgram 2012:10).

The idea of individual accountability and criminal justice has most vehemently been called into question, in recent years, through the idea of restorative justice. The focus is on its benefits for reconciliation and societal healing. Taking it even a step further is a new development, in which retributive and restorative justice are no longer seen as mutually exclusive or counterproductive, but converge and become complementary (Sikkink 2011:256f). New approaches in TJ are aimed at adopting a more long-term focus and combining elements and approaches that formerly seemed conflicting or at odds (Springer 2009:7). For example, Ambos (2009) calls for an integrated, complementary approach, which combines criminal prosecution and non-legal alternatives.

### 2.3 Aims, Goals, and Challenges

The main objective of TJ efforts is to **move from a violent past to a peaceful future** (Carey et al. 2010:203). TJ rests on the assumption that the past must be addressed in order to prevent future conflict and atrocities (Graf et al. 2012:99; Buckley-Zistel/Oettler 2011:21). This central aim of **prevention** is reflected in the unofficial slogan of the TJ movement – “Never Again!” – which comes from the title of the official report of the Argentinian CONADEP, “*Nunca Más*” (Sikkink 2011:254; Springer 2009:19f).

At the same time, TJ is a way for the new political order to clearly distance itself from past wrongdoings (Teitel 2000:67). Dealing with the past, aims to “distinguish the new regime from the old” (Kritz 1995:xxi). Thus, TJ represents a “normative shift between regimes” (Teitel 2000:220). It is an attempt at **breaking with the past and manifesting change** through specific rites and symbols of passage, including processes of inquiry and punishment, official apologies, reparations as well as rituals of collective remembrance. TJ measures can be seen as “operative acts that aim at proclaiming the establishment of a new political order” (Teitel 2000:220-223). These symbolic acts are part of the wider political agenda of a new regime, which has to gain legitimacy, both internally and abroad, and aims at distancing itself from its predecessor. Consequently, TJ becomes part of processes of state- and nation building (Huyse 2008a:18). The same holds true in cases of transitions after conflict. TJ is thus always part of a political agenda (Buckley-Zistel 2011:9), as was already pointed out.

Concrete goals of TJ, according to Buckley-Zistel (2011:9) are: **establishing truth, holding perpetrators accountable, restoring the dignity of victims, and contributing to reconciliation**. These are similarly mentioned in the UN definition: “to ensure accountability, serve justice and achieve reconciliation” (UNSC 2004:4).

Obstacles on the way to achieve these ends are numerous (Carey et al. 2010:199-202): perpetrators can still hold positions of considerable influence and power, the legal justice system might be corrupt or dysfunctional, resources and the necessary support for the new government might be limited, and there can be strong ethnic divisions or antipathy between groups.

Furthermore, broad goals, such as social reconciliation can reveal the limits of approaches to TJ (Weinstein et al. 2010:36) – the broader the goals, the higher the possibility to fail. Buckley-Zistel and Oettler (2011:35) see a contemporary tendency to present TJ as a “mantra” that is positioned as the solution to all problems. This is to be taken with caution. There might be a gap between what is to be achieved and what can realistically be achieved.

Clearly, there are numerous obstacles to TJ. Challenges that Kritz (1995) discussed, when TJ as a field was just at its beginnings, still hold relevance today. According to Kritz (1995:xxvi), the **central question in TJ** is: how to deal with the past regime? Also Elster (2004) follows along this line and extends it in stating that the first and most important question to be asked is “whether to address the wrongdoings of the past at all”. If the answer is yes, this raises further questions on how to proceed: who is to be held accountable? How should the crimes be defined? Which forms of punishment are adequate? Should victims be compensated; who and how? (Elster 2004:116-220). The questions of what and how TJ should be administered, in order to achieve which ends, are recurring in all transitional settings (Clark 2008a:191f).

Indeed, there are multiple questions and issues policy- and decision-makers are faced with when dealing with TJ (Springer 2009:19). Various factors play a role, when answering these, such as the type of transition, internal or external political pressure leading to compromise, or fear of negative reactions to certain measures (Elster 2004:116). Additionally, different problems have to be addressed in transitions after conflict, as opposed to instances of transitions after authoritarian rule. Thus, one has to keep in mind that TJ in peacebuilding differs from TJ in regime change (Arthur 2009:360).

Kritz (1995:xxvi) describes TJ as a “balancing act”, in which choices have to be taken between often seemingly opposing approaches, such as **prosecutions vs. amnesties**.

On the one hand, prosecutions bring justice and public acknowledgement. On the other hand, they bear the danger of further dividing a society. Moreover, they raise some legal issues: the problem of elapsed time since the alleged crime (“*ex post facto*”) and violation of the basic principle of “no punishment without law”, meaning that the crime might not have qualified as such at the time it was committed (“*nulla poea sine lege*”) (Kritz 1995:xxi-xxiii).

In contrast to prosecutions, the option of amnesties is an expression of the wish to “leave the past behind” (Kritz 1995:xxii) without creating further tensions. However, in the question of prosecution versus amnesties “there is a growing consensus that, at least for the most heinous violations of human rights [...] a sweeping amnesty is impermissible” (Kritz 1995:xxii). This is certainly true nowadays. Amnesties are rarely being invoked as an option and remembering is mostly chosen over forgetting (Encarnación 2008:435).

The academic discourse around TJ is faced with the dilemma on how to deal with past atrocities in the most appropriate way, without exacerbating tensions or undermining peacebuilding efforts (Sriram 2009:92f). There have been heavily contested debates in TJ research around seemingly exclusive goals of truth vs. justice and peace vs. justice (Fischer 2011:409; Sriram 2004a). Sikkink (2011:228) considers these debates to be “the most controversial dispute in the scholarly literature”.

In the **peace vs. justice** debate arguments focus on the applicability and necessity of criminal justice in TJ (Fischer 2011:409). Proponents of a justice-centered approach argue in favor of prosecutions and punishment, for various reasons: deterrence, retribution, protection of human and victim’s rights, and restoration of the rule of law, among others. In contrast, proponents of a peace-oriented approach vouch for non-judicial approaches or measures towards reconciliation, in order to achieve stability, national reconciliation and wider social peace (Sriram 2004a:10-12).

In the **truth vs. justice** debate, trials or other mechanisms of accountability, such as truth commissions, are discussed. Especially in the 1990s, the simultaneous establishment of the ICTY and the TRC provided for a peak in this discussion. The uncovering of shortcomings and failures of truth commissions, following early enthusiasm, contributed to a broadening of the view on the debate (Fischer 2011:410f).

This was conducive “to overcoming the fixation on dichotomies on ‘truth vs. justice’ or ‘justice vs. peace’” (Fischer 2011:410f). What followed was a realization that truth and justice are not necessarily mutually exclusive goals. It does not have to be an either or choice (Sikkink 2011:227). Sriram (2004a:212) calls ‘peace vs. justice’ a “false dichotomy”, which

is overly simplistic. There is not one right approach or answer, but a range of possible options. Ways to ensure accountability can be seen as a continuum, from pure prosecutions, to truth commissions, to blanket amnesties (Sriram 2004a:5,21). In reality, most countries in transition choose a combination, as Sriram (2004a:39) concludes after evaluating and comparing nearly 30 case studies<sup>10</sup>. Peace and justice are mutually reinforcing and should be pursued simultaneously. Therefore, a balance needs to be found in times of transition. (Sriram 2004a:2,203). Complementary approaches, beyond purely criminal justice, are needed for successful TJ strategies and combining TJ mechanisms should be the focus of attention (Sikkink 2011:227f). The following section will explore the core aspects of TJ.

## **2.4 The Three Pillars of Transitional Justice**

The three core aspects of TJ are: **justice, truth, and reconciliation** (Graf et al. 2012:97; Carey et al. 2010:203-205). Buckley-Zistel and Oettler (2011:29) regard these as the three pillars of TJ. Scholars ascribe importance to each of these goals differently (Carey et al. 2010:206) and some might add further goals<sup>11</sup>.

I would like to stay with these three pillars, as the core goals and aspects of TJ, for the purpose of my thesis. Below, I will describe each of these dimensions, while keeping in mind that they are interconnected, as, for example, both – truth and justice – are needed to reach reconciliation.

### **2.4.1 Justice**

Law plays an important, but complex, role in periods of political transition (Teitel 2000:4). In these contexts its role goes beyond its conventional application in criminal law and punishment. It extends, for example, to the establishment of the rule of law (RoL).

Periods of transition not only broaden the role of law but they also highlight problems of criminal justice in general, which might not be apparent in already established justice systems. Therefore, justice, in transitional contexts, highlights the complexity of the politics behind criminal justice and raises issues that would normally not call for attention (Teitel 2000:67).

In times of transition, the application of criminal justice is introduced into the political sphere. It becomes the center of attention in political debates over regime change. Subsequently,

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<sup>10</sup> See Sriram 2004a: Table 2.1, p.39.

<sup>11</sup> For example, Mekonnen (2010:113) refers to reconciliation, reparation, truth, and accountability as “the four essential elements of transitional justice”

criminal law and justice become politicized in periods of transition, challenging common understandings and perceptions of justice (Teitel 2000:217).

Justice can be much more than pure criminal justice and trials. There are varying definitions, as it can mean different things to people (Springer 2009:16). Justice a very individual notion, but also shaped by cultural factors (Mani 2005:33).

Justice is a concept that is found in every culture. The concept of justice resonates in religious, political, and legal philosophical debates and describes the moral right way of dealing with injustices. It is universal as a concept, but what it entails and how it is reached differs (Mapaure 2010:26f). The definition of justice varies over different cultural context, as well as historically (Cottino 2008:291). Hence, justice and law are socially constructed (Villa-Vicencio 2009:48).

Conceptions of justice have a direct influence on actions being taken (Elster 2004:80). Prohibitions of the most violent acts, such as murder, are universal. Moreover, the notion that perpetrators need to be punished and the wrong done to victims compensated, in some way, is part of any legal culture (Sikkink 2011:255). All forms of justice do imply that punishment is necessary, however how it is administered and what justice should achieve differs (Clark et al. 2008:384). Therefore the main difference lies in how justice, and its objectives, are defined and administered.

I will now look at the three main forms of justice that can be found in different variants across the literature (e.g. Andrieu cited in Graf et al. 2012:102; Mani 2005).

### **Retributive Justice**

Justice in which individual accountability and punishment are central is referred to as retributive justice (Mapaure 2010:35). It aims to establish individual accountability in a legal process (Buckley-Zistel/Oettler 2011:30). It is centered on criminal prosecutions (Carey et al. 2010:213). Thus, retributive justice is criminal justice in its classical sense. Justice is delivered through international or national legal measures, such as prosecutions and trials. Emphasis is laid on punishing perpetrators and less on meeting the needs of victims. Thus, the focus is on perpetrators (Graf et al. 2012:104f). Retributive justice entails both a backward focus, through retribution, and a forward-looking element of deterrence for future crimes (Teitel 2000:17). It further includes the installment of the rule of law, re-establishing a judicial system, and a focus on security (Graf et al. 2012:102).

Retributive justice or criminal justice raises various questions and has its advantages and disadvantages (Carey et al. 2010:212; Graf et al. 2012:105). A more detailed discussion will follow in Chapter 3 (section 3.3.2).

Examples of TJ instruments geared towards retributive justice are: trials and tribunals, purges and lustration, as will be explored in section 2.5.

### **Restorative Justice**

Restorative justice goes beyond punishment and aims at broader goals, such as societal healing, truth, and reconciliation. It grows out of the idea that punishment can cause new hostilities and conflict (Carey et al. 2010:213). This, in turn, is based on the idea that a crime is more than the violation of certain rules: it is hurt caused onto a person by another person (Clark 2007:773). Thus, repairing social relationships to foster community healing is seen as more important than punishment (Buckley-Zistel/Oettler 2011:30).

Restorative justice processes aim at involving a variety of actors (Carey et al. 2010:213f). It represents a collective way to deal with the past and the future: all parties are involved in the resolution of conflict, perpetrators are encouraged to take responsibility, in order to restore their dignity, the victims' suffering is acknowledged, and room for the expression of personal experiences is given. Dialogue and reconciliation between all involved actors is central, repairing and building more stable social ties (Rauschenbach/Scalia 2008:457f). It is thus a holistic process involving the whole society (Graf et al. 2012:108).

Restorative justice focuses on truth, collective memory, reconciliation, and healing. The focus is on the victims (Graf et al. 2012:102). It does not advocate impunity or deny punishment; but employs more informal processes, in order to encourage dialogue, foster reconciliation between stakeholders, improve relationships, and facilitate the re-integration of victims and perpetrators into society (Clark 2008b:300).

Restorative justice and ways of pursuing it will be explored in more detail in Chapter 4 (e.g. section 4.2.2).

Examples of instruments geared towards restorative justice are: traditional justice and rituals, truth commissions, compensations and reparations, as will be explored in section 2.5.

### **Social Justice**

A third dimension of justice, which I will only mention briefly now, as my focus is on the previous two dimensions, is social or distributive justice.

Social justice addresses political, social, and economic injustices (Graf et al. 2012:102). It focuses on the underlying factors of conflict, such as structural injustice, inequality, and exclusion (Mani 2005:26). Social justice is often neglected in TJ, as Mani (2005:26) points out. It is mostly reduced to the issue of reparations, without sufficiently addressing other issues of socio-economic development and equal distribution of goods (Graf et al. 2012:111).

According to Mani (2005:27), all three dimensions of justice, presented above, would need to be addressed holistically and in combination, for long-lasting peace.

Ambos (2009:54) emphasizes, that if reconciliation is to be reached, some form of justice has to be applied, as too little justice would render reconciliation impossible. Justice does not have to equate with criminal justice per se. However, then other forms of accountability have to be applied. Thus, justice is inherently important.

#### **2.4.2 Truth**

Establishing the truth about the past is a very important element of TJ. This can be done through trials, truth commissions, and/or commemorative acts (Kritz 1995:xxvi). Thus, truth can be explored in various ways. However, it is never ultimate or a complete picture of what happened (Clark 2008a:202). The establishment of truth can be a very selective process, to the point where it carries potential risks and can be a source for renewed conflict. Nonetheless, truth plays a crucial role (Brewer/Hayes 2011:11). Past wrongs have to be publicly acknowledged and facts about past events established, before a process of reconciliation can be set in motion (Murithi 2006:21). Reconciliation is about creating empathy, which means to “identify with (to at least some degree) the experiences and situation of another” (Hutchison/Bleiker 2013:86) and seeing things from another viewpoint. Consequently, truth-telling is a pre-requisite to reconciliation, as it leads to more encounter between actors.

#### **2.4.3 Reconciliation**

Reconciliation as a term originated in philosophy and theology. In recent years, the concept has raised attention in the field of TJ<sup>12</sup> (Clark 2008a:194). It was brought into the debate through the South African TRC (Clark 2007:770). Nowadays, reconciliation is a central concept in TJ. It is especially used in post-conflict settings, when it comes to defining

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<sup>12</sup> Yet the concept of reconciliation has kept its religious-connotation, which might render it problematic in intercultural settings (Kayser-Whande/Schell-Faucon 2010:102). The embeddedness of reconciliation in religious discourse is problematic, not only because it connects reconciliation with Christian principles of forgiveness, but also because it overlooks the role of religion in conflicts (Brewer/Hayes 2010:9).

strategies for the reconstruction of war torn societies (Hamber 2007:115). Thus, it is an integral part of peacebuilding (Hutchison/Bleiker 2013:81).

Reconciliation is increasingly explored in transitional processes and post-conflict contexts. It “has become one of the four main categories of initiatives that receive donors’ support, along with political development, socio-economic assistance and security” (Fischer 2011:406). It is often especially needed after internal conflict, as the parties tend to share the same communities, are highly interdependent, and thus need to ‘get along’ (Springer 2009:29). In this context, it is assumed that a bottom-up process of reconciliation should be implemented to ensure long-term peace (Fischer 2011:406).

Reconciliation is a relatively new and complex concept. For this reason, it is often vaguely defined. However, a clear definition is crucial (Clark 2007:770). If reconciliation really has been reached, or if an approach contributes to reconciliation, depends on how the concept is defined (Ambos 2009:24). Ambos (2009:24) differentiates a “minimalist concept”, in which the absence of war or open conflict is the goal, from a more “substantive understanding”, which equates reconciliation with social harmony<sup>13</sup>. The definition of reconciliation I will be using in my thesis can be counted to the later.

An important, if not the most important, in this context is J.P. Lederach<sup>14</sup>. I will follow his understanding of reconciliation. According to Lederach (1997:27-29), the concept is based on three main assumptions:

- it recognizes relationships as being central to conflict and its resolution: conflict is viewed as a system, in which relationships are the basis and therefore need to be the focus of attention (Lederach 1997:26).
- it is based on the belief that the past needs to be acknowledged and a common future envisioned, in order to reframe the present (Lederach 1997:35).
- it is to be understood as “a social space [...] where people and things come together” (Lederach 1997:29).

Reconciliation is both a goal and a process, which is primarily focused on restoring and building intra-personal relationships (Lederach 1997:30). As a goal it is a long-term, future-oriented ideal. As a process it is the deconstruction of categories of “us” and “them” and the building of relationships in the present (Bloomfield 2003:12). As such, reconciliation attempts

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<sup>13</sup> Pozen et al. (2014:37) distinguish here between thin (peaceful coexistence) and thick reconciliation (forgiveness, social healing, and harmony).

<sup>14</sup> Lederach is seen as the leading scholar and practitioner in reconciliation; coming from a Christian background, which further intensifies the association of reconciliation with religious perspectives (Brewer/Hayes 2011:9).



to bridge the gaps between perpetrators and victims (Hutchison/Bleiker 2013:83) and involves “the rebuilding of fractured individual and communal relationships after conflict” (Clark 2008a:194). Through the focus on relationships, the emotional aspects of a conflict are respected and the need for addressing past grievances is highlighted while, at the same time, the focus is kept on a common future (Lederach 1997:34). Reconciliation is thus both backward- and future-oriented and based on the idea that the root causes of a conflict must be addressed, in order to achieve sustainable peace (Clark 2008a:194).

Reconciliation is a psychological approach, as it deals with societal healing (Hutchison/Bleiker 2013:81). Healing is aimed at wide spread trauma in post-conflict societies, resting on the assumption that if not addressed grievances can carry on through generations and be the cause of renewed conflicts (Clark 2008a:199-205). Thus, reconciliation aims to address the “underlying emotional sources of conflict” (Hutchison/Bleiker 2013:85). Emotions play a central role in reconciliation processes. Individual emotions can translate into collective ones and gain social and political relevance. Trauma, for instance, can shape collective identity and can be passed on through generations (Hutchison/Bleiker 2013:83f). Many studies point to this intergenerational transference of trauma and its effects (Clark 2008a:201; Fischer 2011:415). For example, Theissen (2004:13) notes that “feelings of victimization or guilt” can be passed on to consecutive generations. Unaddressed grievances can create instability and even open conflicts. Thus, emotions play an important role in the emergence and resolution of conflicts. The goal is to find non-violent ways to transform emotions, instead of forgetting or burying them. For that end, social spaces need to be created, in which past trauma can be acknowledged and healing attempted. It is thus important to create inclusive, public spaces in which collective emotions can be addressed, making a critical reflection on what happened possible (Hutchison/Bleiker 2013:83-88).

Reconciliation processes “must be accompanied by acknowledgement of the past, the acceptance of responsibility and steps towards (re-)building trust” (Fischer 2011:411). Therefore, they are crosscutting, as they combine a psychosocial and a legal component, which relates back to the justice dimension. Thus, such processes address a multitude of issues at the same time (Fischer 2011:416). Reconciliation combines restorative justice, social healing, and truth on an intra-personal, as well as intergroup level (Bloomfield 2003:12; Hamber 2007:120). Reconciliation has to start at the individual level, from which it grows to the communal and national levels. In this sense, interpersonal reconciliation is seen as the

foundation for wider reconciliation (Clark 2007:770). Thus, it is a process that set “beyond the institutional dimensions of peacebuilding” (Hutchison/Bleiker 2013:85).

Reconciliation is a long-term process (Theissen 2004:16; Fischer 2011:411), which cannot be imposed from the outside and should include all actors of society (Bloomfield 2003:13). It is highly contextual and must be locally constructed. Outside actors can import knowledge and support the institutional framework that nurtures mutual understanding. However, true reconciliation can only come from within (Theissen 2004:13).

The three pillars of TJ – justice, truth, and reconciliation – are closely interrelated, as we have seen above, and should be pursued in an integral fashion, for successful TJ and conflict resolution. I will now turn to the various measures and instruments that TJ initiatives rely on.

## **2.5 Instruments**

Transitional justice employs a wide range of processes and instruments (Sriram 2009:94). These include judicial and non-judicial measures (Ambos 2009:19).

The choice of TJ measures often depends on factors such as the kind of transition, the intensity of previous repression or conflict, the involvement of international actors, the availability of infrastructure, and the balance of forces (Sriram 2004a:22; Roht-Arriaza 1995:282). There are also questions of timing and sequencing to be kept in mind: which measures are to be taken first, when, and at what pace? (Huyse 2008a:17; Weinstein et al. 2010:37; Sriram 2004a:5).

Even if choices seem to be limited by the specific context, there still remains room for decisions. These are generally taken according to strategic reasons (Sriram 2004a:204,211). Often the choice is based on purely political considerations, especially if there is no public pressure towards a certain approach (Springer 2009:28).

This section presents the most common instruments of TJ:

### **2.5.1 Amnesties**

As already mentioned before, blanket amnesties are not practiced anymore and are prohibited under various sources of international law (Ambos 2009:55f). If some form of amnesty is applied, then it is only conditional or partial (Fischer 2011:409). Conditional amnesties are amnesties under specific circumstances, in which something is expected from the perpetrators in return for amnesty (e.g. disclosure of information, showing of remorse, acknowledgment of guilt, etc.). These are often found in connection with truth commissions. The South African TRC, for example, had its own amnesty committee (Ambos 2009:62f).

### **2.5.2 Trials and Tribunals**

#### *Retributive justice*

Trials and criminal tribunals are the prime instrument in TJ, even if alternatives are being explored. “Accountability for past abuses has remained the galvanizing principle behind transitional justice for many in the international community, and criminal sanctions continue to be the privileged option” (Weinstein et al. 2010:34).

Criminal justice measures include military trials (Encarnación 2008:437), domestic prosecutions, international ad-hoc tribunals, internationalized and hybrid courts, and the ICC (Wanis-St.John 2013:364).

See Chapter 3, for a more detailed discussion of trials and tribunals in TJ.

### **2.5.3 Traditional Justice and Rituals**

#### *Restorative justice*

The focus on punishment through western-style trials “dominates our understanding of transitional justice” (Teitel 2000:27). However, other forms of justice are increasingly being considered. Traditional justice is gaining popularity, as a counterpart to western-style trials and tribunals. Traditional justice encompasses local approaches to justice and conflict resolution (Buckley-Zistel 2011:17-19).

See Chapter 4, for a detailed definition and a thorough account on traditional approaches.

### **2.5.4 Truth Commissions**

#### *Restorative justice*

Truth commissions are the most prominent non-judicial instruments of TJ (Wanis-St.John 2013:364; Buckley-Zistel 2011:14). They are widely researched and often praised as an alternative to criminal sanctions (Ambos 2009:40-42).

Truth commissions are official, temporary bodies, installed or authorized by the state, to investigate past periods of abuse, repression or conflict, and finishing their work by giving recommendations for the future, usually in the form of a report. They have a clear focus on the past and on wider patterns of abuse, over a specific time-period, as opposed to a single event (Hayner 2001:14). As the name already suggests, the main function of a truth commission is to enable truth-seeking and fact-finding, in order to document and acknowledge past events. Truth commissions are focused on victims and their needs, as opposed to trials (Hayner 2001:24-28). Further, they are considered a means for dialogue, on a local as well as national scale, including a wide range of actors from all levels. For this reason, they are expected to contribute to reconciliation and social healing (Fischer

2011:410). Moreover, they are seen as a compromise between amnesty and accountability (Sriram 2004a:12). Usually perpetrators can receive amnesty or pardon, in exchange for full confessions (Roht-Arriaza 1995:300f).

Truth commissions can differ in their design and function (Hayner 2001:15). The majority has taken place in sub-Saharan Africa or Latin America (Hayner 2001:32). Until 2010, 40 such bodies have been installed worldwide, according to Buckley-Zistel (2011:14). Although the count can vary depending on the definition used. As Sikkink (2011:270), for example, only lists 28 countries with truth commissions. The most prominent, researched, and mediatized example is the South African TRC (Springer 2009:5f; Hayner 2001:33,42).

### **2.5.5 Compensations and Reparations**

#### *Restorative justice*

Reparations are monetary payments to victims or survivors, by either the perpetrator or other bodies (e.g. government, special funds). Reparations and compensations represent an official acknowledgement of the victims' suffering (Theissen 2004:8; Kritz 1995:xxvii; Roht-Arriaza 1995:9). They can be attributed for various damages – physical, psychological, material – or costs that arose out of the situation (Theissen 2004:8). Compensation programs raise a number of issues, such as: who should be compensated, is it feasible to compensate all, who should pay, should compensation be given to individuals or groups, how should compensations be paid in difficult economic situations (Roht-Arriaza 1995:9f,290)?

### **2.5.6 Purges and Lustration**

#### *Retributive justice*

Purges, vetting, and lustration expel certain groups or individuals, connected to the former regime, from public administration and other posts (Ambos 2009:48). Purges are thus aimed at 'cleaning out' the administrative sector. Examples of lustration laws are especially found in Eastern European cases (Kritz 1995:xxiv; Encarnación 2008:437). For example, the "lustration law" of 1991, in former Czechoslovakia, expelled public officials, who were linked to the former communist regime, from their positions and blocked them from any future employment in the public sector (Elster 2004:240). Such measures are controversial as they can be abused for political advantage, create instability, or be considered undemocratic, such as the case of voting bans for former regime members (Kritz 1995:xxvf).

### **2.5.7 Commemorative Acts**

TJ, in a broader sense, also increasingly includes acts of remembrance<sup>15</sup> (ICTJ Website). These commemorative acts take the form of history teaching, commemorative holidays, monuments, museums, places of remembrance, and so on. Remembrance is used to create specific narratives of the past, which in turn aim at creating a collective identity and supporting nation-building. These public acts of remembrance, also referred to as or included in memory politics, are often contested, controversial, and can even lead to re-newed conflict (Buckley-Zistel 2011:16f).

Having now reviewed the range of possible instruments and measures in TJ, I will focus on two in more detail, in the next chapters: trials and tribunals as well as traditional justice and rituals, which are increasingly being combined to create hybrid approaches – the central object of interest and analysis of this thesis.

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<sup>15</sup> Buckley-Zistel (2011) adds this dimension when speaking of TJ instruments; as does the ICTJ (Website), mentioning that these are increasingly being added to TJ approaches. I, however, do not fully agree with counting memory politics as a specific instrument of TJ, while I do agree that these dimensions are interrelated.

### **3 Contemporary Approaches**

Contemporary approaches to are currently the conventional and most heavily endorsed instrument of transitional justice and conflict resolution. They represent “the dominant form of internationally supported peacemaking” (Mac Ginty 2011:20). They are often also referred to as “modern” or “western”. I propose the term “contemporary” as it is slightly more neutral. The other terms have been loaded with various meaning throughout past discourses. Furthermore, I use the term contemporary, because these approaches are the predominant ones to date.

Contemporary approaches are on a specific concept, referred to as liberal peace, which will be explored in this chapter, as well as principles of international law. This chapter will start by exploring the liberal peace, as the underlying concept of contemporary approaches, its theoretical and practical origins, the ideas behind it, how it is applied in practice, as well as a thorough critique, highlighting the shortcomings of this concept. In a next step, I will turn from a more general view on liberal peace to the focus of this paper and see how liberal peace is incorporated into TJ. Finally, I will closely analyze the advantages and disadvantages of contemporary approaches.

#### **3.1 The Liberal Peace Thesis**

The liberal peace thesis provides the underlying concept of contemporary approaches to peacebuilding and transitional justice. Mac Ginty and Richmond (2009:2) “see the [liberal peace] as having become the de facto central organizing framework for peace interventions and reconstructions [...] over almost the past two decades”. It is therefore important to turn to the liberal peace thesis – its origins and assumptions – first, before looking at contemporary approaches in practice and more detail.

##### **3.1.1 Origins of the Liberal Peace Thesis**

The liberal peace thesis is firmly rooted in American foreign policy, dating back to the beginning of the 20<sup>th</sup> century (Quinn/Cox 2009:16). It first emerged under president Woodrow Wilson. At the Versailles peace conference, in 1919, Wilson stood for the promotion of democracy and free markets to create domestic and international peace (Paris 2004:40f).

During the post Cold-War era, these ideals provided the legitimation for several military interventions (Mac Ginty 2010:394). After the end of the Cold War, there was a common

enthusiasm, among leading international actors in world politics, for liberal ideas relating to economics and democracy. A consensus on how states should be organized was reached without much debate. The end of the Cold War resulted in a change in the balance of powers in international politics, which led to the adoption of an American model of peacebuilding and of the modern, liberal state as the ideal form of statehood. Liberal Democracy became the ultimate solution to all problems (Paris 2004:33-35). Liberalization, including democracy and free markets, was seen as “the surest route to lasting peace in countries [...] just emerging from civil wars” (Paris 2004:37).

This consensus on peacebuilding and post-conflict approaches is referred to as the liberal peace thesis (e.g. Richmond 2005). Other terms are: “liberal interventionism” and “liberal internationalism” (Mac Ginty 2010:393). Liberal ideas in the form of the liberal peace thesis not only shaped politics in the 20<sup>th</sup> century, but are also found nowadays in contemporary approaches to peacebuilding, TJ, and conflict resolution (Paris 2004:41).

Liberal peace is not only closely connected to Wilsonian politics, as described above, but also to the often discussed democratic peace thesis. This thesis states that democracies have a lower probability of engaging in war against each other (Mac Ginty 2010:393; Quinn/Cox 2009:10), in addition to being more politically stable on the inside, making them less prone to internal conflict. Thus, democracy and liberal states are seen as the solution for lasting internal and international peace (Paris 2004:42).

UN-Secretary General Kofi Annan exclaimed in 2000 that democracy and its promotion are the most effective ways of preventing inter- and intra-state conflict. This view connects to the political element of liberal peace. The liberal peace thesis argues that the internal buildup of a state determines its relations to the outside, as well as on the inside. Ideally this buildup rests on liberal values such as democracy and free markets (Quinn/Cox 2009:11,109). This directly links the liberal peace thesis to the democratic peace thesis. Proclaiming political, as well as economic liberalization, as the most promising ways to create peace (Paris 2004:42).

### **3.1.2 Liberal Peace in Practice**

The liberal peace thesis is a dominant paradigm that presents democracy and free markets as the only way to lasting peace (Sriram 2009:90). Liberal peace represents a model that is to be reproduced in post-conflict settings (Richmond 2005:4), following a complex system “of intervention, discipline, and power” (Mac Ginty 2011:45).

According to Richmond (2005:11) liberal peace represents a fixed notion of how peace is to be achieved, through specific forms of governance. The aim is to institutionalize liberal norms

and values, such as democracy, free trade, human rights, and the rule of law (Richmond 2005:4). Peace, in post-conflict societies, is to be achieved through installing a liberal order, which in turn, will create a more peaceful and stable international system. This includes advancing democracy through ensuring multiparty elections, reforming the economic sector along neoliberal ideas<sup>16</sup> (Peterson 2010:17), as well as securing “individual rights, separation of powers, [...] and [...] development along capitalist lines” (Quinn/Cox 2009:11). At the core of these liberal values is the individual, with his or her rights, but also responsibilities (Mac Ginty 2010: 393).

According to Mac Ginty (2011:12) the liberal peace rests on five pillars:

- Economics
- Governance
- State building
- Security
- Civil Society

Central goals are the establishment of the rule of law, democracy, free markets, and human rights (Mac Ginty 2011:26-28), often in connection with development cooperation (Mac Ginty/Richmond 2009:4).

Liberal peace is thus “a discourse, framework and structure” (Richmond 2005:206), which defines what is to be and how it is to be achieved. This specific version of peace is constructed through international military interventions, reconstruction, capacity building (Richmond 2005:150), and also – as described later – transitional justice efforts. Liberal peace is sustained by international peacebuilding efforts, employing “a prescriptive form of peacemaking” (Mac Ginty 2011:25), which follows a specific route to be taken towards peace.

The emphasis on a specific route to peace has provided grounds for arguments against this approach. Liberal peace has been faced with substantial criticism in recent years. I will now turn to the discussion around the liberal peace paradigm.

### **3.1.3 Critique of the Liberal Peace Thesis**

The views on the liberal peace thesis reach from full support for the goals of liberal peace, to seeing it as a new form of imperialism. Mac Ginty and Richmond (2009:2) describe these two extremes. The one side sees no other alternative to the liberal peace but total anarchy and war. The other side argues that it hides specific interests of certain actors, overly praises the

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<sup>16</sup> Such as privatizing previously state-owned elements, opening markets, and cutting back on public spending (Peterson 2010:17).



modern state, fails to see it as another possible source of conflict, and falsely believes that external actors can solve internal problems without the possibility of negative consequences. Between these two extremes there is an array of other positions (Mac Ginty/Richmond 2009:2). I will now discuss these views in more detail.

Richmond (2005) sees liberal peace as a new type of imperialism. Liberal peace is a form of hegemony hidden behind more noble objectives, while imposing a definition of peace and a way to achieve it. It is a firm social construct, which discredits any alternatives, and is seen as a universally applicable norm. Therefore, creating structures of dependence and a hierarchy in which those who have already achieved it are somehow seen as superior, giving legitimacy to their acts and interventions (Richmond 2005:3-7).

Duffield (2001:34) follows along this line, by defining liberal peace as an exertion of power, which contains mechanisms of selectivity, inclusion and exclusion. It is disruptive to an already existing social order, but “more nuanced, opaque and complex” (Duffield 2001:34) than classic imperialism. Also Mac Ginty (2011:31) describes it as a form of neo-colonialism that is not perceived as such. It reflects the “interests of the global north” (Mac Ginty 2010:393). These interests are to create a network for trade and to contribute to stability in the international system (Peterson 2010:19). Liberal peace is portrayed as the superior, rightful approach; a common and transferable model, carrying seemingly universal norms that can be enforced on others without further questioning (Mac Ginty 2011:28-31).

Nevertheless, international interventions may be based on good intentions and have saved many lives (Mac Ginty 2011:7). Quinn and Cox (2009:28f) argue that in reality the choice is either between American-led interventions or none at all. They see liberal peace as the only alternative to never-ending, internal conflict. It is true that western states are often the ones with the financial and logistic capacities to intervene in humanitarian emergencies, even if the means can be questioned and cause harm (Mac Ginty 2011:42f).

Criticism is often voiced towards the way liberal peace is imposed, rather than its general principles or ideas (Mac Ginty 2011:31). In fact, Richmond (2005:204) argues that the liberal peace should be questioned not only as an underlying concept but also a specific practice. Here, critiques point out that the liberal peace paradigm can be harmful and destabilizing, because it might be inappropriate to the context in which it is applied (Sriram 2009:90). As Paris (2004:42-44) highlights, the liberal peace thesis rests on assumptions that are only true for already established democracies. Yet what if certain structures are simply not present or

do not exist, as in failed and failing states? Moreover, other reasons for internal conflict, such as ethnicity, religion, or rivalries over resources and wealth are ignored (Quinn/Cox 2009:24). Not only can liberal peace interventions be harmful, but they are also often faced with unexpected obstacles and can have counterproductive effects, as seen in many cases (Afghanistan, Iraq, etc.). One of the challenges is that local actors could ignore, resent, or resist attempts at establishing liberal peace, because it does not correspond with their needs and interests (Mac Ginty 2011:6). Moreover, capacity building through liberal peacebuilding can actually destroy already existing capacity, as it is not sensitive to local needs (Richmond 2005:148,206).

Especially concerning is that liberal peace is often installed with the use of force, legitimizing violence as an accepted means to establish peace (Richmond 2005:13; Mac Ginty 2011:29). There is a clear “tendency towards militarized or coercive interventions” (Mac Ginty 2011:28). Even if a less militaristic approach is chosen, states still intervene through economic and financial measures (Mac Ginty 2011:29). Illiberal and very conservative means are used to achieve a “poor-quality peace” (Mac Ginty 2010: 395).

The consequence of liberal peace is a negative peace, in which the pure absence of violence already equates with peace (Richmond 2005:1). A view also expressed by Mac Ginty and Richmond (2009:6) in the following quote:

Crucially, while the liberal peace model is often effective in securing the quantifiable aspects of peace (the number of housing units reconstructed, the number of former combatants processed and the like) it is less effective in managing the affective dimension of peace – reconciliation, trust, inter-communal respect.

Peacebuilding following the liberal peace model does not appropriately deal with inequalities and grievances that might have led to the conflict (Sriram 2009:91). Thus, the open manifestations of conflict are addressed, but the underlying structures and causes of conflict are left unsolved (Mac Ginty 2011:42).

The main flaw of interventions, resting on the liberal peace concept, is that they do not adapt to the local circumstance they are faced with. This is the result of top-down, short-term, and rigid planning (Mac Ginty 2011:42). Mac Ginty (2011:39) aptly refers to contemporary approaches as “peacebuilding from IKEA”. This metaphor depicts the rigid characteristics of liberal peace interventions: they are carried out according to a certain formula and a specific ‘construction’- and time-plan, with a pre-defined outcome. The illusion is created that there is a single model, according to which all societies and states should be built to create peace

(Quinn/Cox 2009:16). Paris (2004:46) calls it a “recipe for peace”: the desired outcome is the creation of democratic states, the ingredients are liberal ideas, and the cooks are the international actors.

#### **3.1.4 Actors of Liberal Peace**

As mentioned before, liberal peace reflects the ideological and practical interests of its actors (Mac Ginty 2011:20), but who are these actors of the liberal peace? The principal carriers of liberal peacebuilding are usually powerful international actors or elites from within the state itself (Mac Ginty 2011:20; Paris 2004:22). International organizations, financial institutions, and leading states, from the global North, are the main actors. They delegate tasks in a chain of command, usually through national and local elites, state bodies, and non-governmental organizations (NGOs) (Mac Ginty 2011:32f).

#### **International Organizations**

As an example, the United Nations (UN) defines democracy as crucial for peace. It emphasizes civil rights and promotes representative democracy, through electoral assistance. Further, various UN agencies can be seen as peacebuilding actors. For example, the United Nations Development Programme (UNDP) puts an emphasis on good governance. The goal is to strengthen, build, and support – among others – judicial institutions, through development programs for third-world countries (Paris 2004:22-24).

#### **Regional organizations**

The European Union (EU) has in the past led numerous peacebuilding missions in the Balkan region. Later the focus shifted towards funding the establishment of democratic institutions and liberal market economies. Nowadays, the EU also funds programs for democracy promotion beyond Europe (Paris 2004:26).

The Organization for Security and Cooperation in Europe (OSCE) supported the establishment of representative and human rights in former soviet states. The North Atlantic Treaty Organization (NATO) has led many peacebuilding missions and is especially active during the implementation of peace accords and elections. The Organization of American States (OAS) carries out monitoring missions during elections in the Americas and supports the promotion of democracy. In both – NATO and OAS – democracy is a pre-condition for membership (Paris 2004:25-28).

Other regional organizations, with relevant roles in peacekeeping, conflict resolution and peacebuilding, are: the Organization of African Unity (OAU), the Economic Community of

West African States (ECOWAS), and the South African Development Community (SADC) (Miall et al. 1999:36f).

### **Financial institutions**

The International Monetary Fund (IMF) and the World Bank, also known as the Bretton Woods institutions, have enforced structural adjustment programs, when providing loans for developing countries. The idea behind these programs is that Western models of market-oriented, liberal economies should be installed, in order to enhance the move towards democracy (and vice versa). Structural adjustment defines certain pre-conditions, such as liberal democracy, good governance, and the rule of law, or other benchmarks, that have to be met in order to receive loans. Thus, it provides incentives to follow specific ways of political and economic organization (Paris 2004:29-31).

### **States and NGOs**

State institutions form the basis of liberal peace (Richmond 2005:211). They design and control governance and capacity building efforts. Development agencies of various donor countries put an emphasis on human rights and democracy, allocating development aid accordingly. NGOs then advocate, in compliance with their respective development agencies, liberal principles (Paris 2004:31-33). In that way, liberal peace is transferred from donor countries to developing countries or post-conflict zones.

## **3.2 Liberal Peace and Transitional Justice**

Transitional Justice and liberal peace are tightly linked (Sriram 2009:96). TJ constitutes a central element of peacebuilding and was defined as such by the UN-Secretary General, in a report from 2004 (UNSC 2004; Sriram 2009:95). Thus, it “is increasingly integrated in strategies of peacebuilding” (Sriram 2009:101). TJ is a peacebuilding activity and, as such, “one of the components of the liberal peace paradigm” (Wanis-St.John 2013:361).

Approaches to TJ need to be analyzed as part of the wider liberal peacebuilding consensus. Both – TJ and liberal peacebuilding – share “a number of under-examined assumptions and unintended consequences” (Sriram 2009:89): they are based on the assumption that peace can be equated with justice, democracy, and free markets, or at least that these are necessary preconditions for peace. TJ is moreover directly linked to liberal peacebuilding through activities addressing the establishment of the rule of law and democratic structures in general, such as judicial reform (Sriram 2009:50,95f).

A central element of liberal peacebuilding is the establishment of the rule of law (RoL). The rule of law is seen as essential for peace, as it promotes justice and order (Peterson 2010:15). It is a precondition for security and peace and constitutes a foundation for democratic regimes (Peterson 2010:22). According to Peterson (2010:27) the rule of law is installed in the transition phase to create a basis for further steps of liberal peacebuilding. For example, about two thirds of UN peacebuilding missions include RoL planning. RoL is achieved by specific approaches to TJ, such as judicial reforms.

Not only does the contemporary use of RoL mean the establishment of rules and laws, but much more the application of a liberal approach to law in general (Peterson 2010:16f). RoL is thus positioned as a means to liberal peace, rather than a goal in itself, as Peterson (2010:22) points out. This connects to a perception of law as a remedy, through which international actors establish it as a magic formula for all social problems (Peterson 2010:18). Whether law does actually fulfill these expectations will be examined later on, in section 3.3.2.

Following this enthusiasm for law, the number of judicial bodies in international law, especially international criminal law, has steadily increased in the last years<sup>17</sup>. The diversification of international criminal tribunals is one aspect of what is commonly referred to as the “fragmentation or [...] the diversification of international law” (Geiß/Bulinckx 2006:49).

Criminal bodies range from fully international tribunals to others that only include international elements, while remaining part of the national court system (Geiß/Bulinckx 2006:50). They have either been designed to be permanent or temporary and differ in their mandates. I will now briefly discuss each of these criminal bodies.

### **3.2.1 The International Criminal Court**

The International Criminal Court<sup>18</sup> (ICC) was founded in 1998, following calls for a universal and permanent criminal jurisdiction for international crimes (PICT Website). The court was established by, and is based, on the Rome Statute, which was adopted in 1998 (Geiß/Bulinckx 2006:52). The ICC entered into force in 2002, after being ratified by 60 nation states. It is an open organization; any nation state can become a member by ratifying the Rome Statute.

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<sup>17</sup> A matrix including all international judicial bodies can be found on the website of the Project of International Courts and Tribunals (PICT) - <http://www.pict-pecti.org/matrix/matrixintro.html>

<sup>18</sup> Not to confuse with the International Court of Justice (ICJ) – regulating inter state disputes (see PICT Website). The ICJ does not administer individual criminal accountability, but only receives complaints made by states (Sikkink 2011:110).

Furthermore, membership is voluntary (Stubler 2012:129f). To date<sup>19</sup> 122 states have become member of the ICC (ICC Website).

The ICC is independent from the Security Council, while still being intractably linked to the UN, as it for example submits annual reports to the General Assembly (PICT Website).

Its mandate, as stipulated in Art.5 of the Rome Statute, encompasses jurisdiction over genocide, crimes against humanity, war-related crimes, and acts of aggression<sup>20</sup>. The ICC can only prosecute crimes committed after July 1<sup>st</sup>, 2002, in the territory of a member state or committed by nationals of a member state, or following a non-party request. Only natural persons can be brought before the court (Geiß/Bulinckx 2006:56; Bangamwabo 2009:117f).

Hearings are public and held at the permanent seat of the ICC in The Hague, Netherlands. The working languages of the court are English and French. (Geiß/Bulinckx 2006:52-56).

To this date, “21 cases in 8 situations have been brought before the International Criminal Court” (ICC Website). At the moment there is a clear focus on Africa (Hoffmann 2011:82), reflected in the number of ongoing and possible prosecutions (Bangamwabo 2009:129).

The ICC only assumes its jurisdiction when national courts cannot or fail to prosecute cases. Thus, making it “a court of last resort” (PICT Website; Bangamwabo 2009:117), coming into force only when national courts are not able or unwilling to prosecute, or if there is strong evidence of tainted proceedings (Sikkink 2011:18). Further, the ICC does not have executive bodies. In this area it depends on the cooperation of its member states (Stubler 2012:138f).

Thus, the ICC is faced with problems of power over national jurisdiction, legitimacy, and enforcement (Vest 2002:26). Further, it has been criticized for lack of effectiveness, especially because three of the permanent members of the Security Council (China, Russia, the USA) are not members of the ICC (Stubler 2012:139f).

### **3.2.2 Ad-hoc Criminal Tribunals**

To date, two international, ad-hoc criminal tribunals have been established: the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Both were chronologically founded earlier in time than the ICC and laid the groundwork for its foundation. As such they have been central in the advancement of international criminal law (Bangamwabo 2009:128; Schneider 2009:97). They were created

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<sup>19</sup> as of May 2014.

<sup>20</sup> Acts of aggression (preemptive strikes, military assaults, war of aggression) were included following the conference of Kampala in 2010 (Burkhardt 2012:47).

according to Chapter VII<sup>21</sup> of the UN Charta and are supervised by the Security Council (PICT Website). Thus, they are embedded structurally and financially in the UN system. As opposed to the ICC, the ICTY and ICTR are limited in their scope of applicability and only designed to be temporary (Schneider 2009:82). Moreover, they have priority over the national court system (PICT Website).

I will now briefly discuss these two bodies, returning to the ICTR in more detail in the case study.

### **The International Criminal Tribunal for the Former Yugoslavia (ICTY)**

The ICTY was established in Mai 1993, following a UN-resolution, with the mandate to prosecute war crimes, gross human rights violations, violations of the Geneva Convention and genocide, on the territory of Yugoslavia since January 1<sup>st</sup>, 1991 (Hoffmann 2011:81; Geiß/Bulinckx 2006:56). Its creation and form were unprecedented, especially because war was still going on. The ICTY left a profound impression on the landscape of international criminal jurisdiction and consequently served as a model for the ICTR and ICC (PICT Website).

The ICTY has its seat in The Hague, Netherlands. Hearings are held in public and only natural persons can be tried. The working languages are English and French (Geiß/Bulinckx 2006:52-56), although there has been a project of translating documents into local languages (Höpfel 2012:145). To date 141 proceedings have been concluded. As the ICTY is non-permanent in nature, a “completion strategy” was set forth for its closure. As of April 2014 there were still 20 ongoing trials – including the highly publicized trials of Radovan Karadžić and Ratko Mladić. It is expected that these will be concluded in 2016 (ICTY Website).

### **The International Criminal Tribunal for Rwanda (ICTR)**

Following the example of the ICTY, an ad-hoc criminal tribunal was installed for Rwanda in reaction to the genocide of 1994. The ICTR was designed to prosecute crimes committed in 1994, in the territory of Rwanda or by Rwandan citizens in neighboring countries. Its jurisdiction includes crimes against humanity, genocide, and violations of the Geneva Convention (Stubler 2012:127; Geiß/Bulinckx 2006:52-56).

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<sup>21</sup> Chapter VII, Art. 39 of the UN Charter reads: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken [...] to maintain or restore international peace and security”, via: <http://www.un.org/en/documents/charter/chapter7.shtml>, accessed March 18, 2014.

The ICTR has its seat in Arusha, Tanzania, and the working languages are English and French. As with the ICTY, hearings are public and only natural persons can be tried (Geiß/Bulinckx 2006:52-56). It is still operating, as well, although it was designed to be temporary (ICTR Website).

### **3.2.3 Special Courts and Tribunals**

Special courts and tribunals, or hybrid courts, emerged towards the end of the 1990s and are seen as a new generation of criminal law bodies. As ad-hoc tribunals, they are temporary institutions, focusing on specific situations (PICT Website). They are not to be confused with hybrid approaches to TJ, to which I will turn later. Hybrid tribunals or courts do not incorporate any traditional approaches to justice. They are mixed structures, including international and national elements.

An example is the Special Court for Sierra Leone (SCSL). The SCSL is a hybrid tribunal, with “a mixed domestic-international structure” (Sriram 2004b:78), based on a treaty between the UN and the government of Sierra Leone (Bangamwabo 2009:112). It uses international and domestic law and has international as well as domestic judges (Sriram 2004b:76). Thus, it is hybrid in the sense that its composition and the applied jurisdiction are mixed (Bangamwabo 2009:112), but it still relies on a purely western model of justice. The incorporation of national personnel raises the question if these are not more shaped by a transnational (tending to be more western) culture of their profession as lawyers. Many of them have been formed in the West, by western norms and a discourse mainly incorporating liberal ideals (Burkhardt 2012:42).

Other examples for hybrid tribunals are found in East Timor, Cambodia, Iraq (Geiß/Bulinckx 2006:57), Kosovo (Sriram 2004b:79), and Lebanon (Hoffmann 2011:82).

## **3.3 Pros and Cons**

Contemporary approaches and tools of transitional justice, such as international criminal trials and tribunals, can have positive as well as negative influences and effects. I will discuss these in the following section. First, looking at the role of criminal bodies and what they are expected to achieve and then discussing their weaknesses and limitations.

### **3.3.1 The Role of Criminal Bodies in Transitional Justice**

The main task of criminal trials and tribunals is to contribute to justice by **providing individual accountability** for gross-human rights violations (Schneider 2009:81; Hoffmann 2011:85). Here, international law is modeled after domestic judicial systems (Sikkink



2011:258). Criminal law in this setting calls for individual accountability, even if acts were committed in a collective setting (Burkhardt 2012:46f). Individual accountability, in international law, is seen as important to prevent accusations of collective guilt towards a social group. By establishing individual accountability, notions of revenge against entire collectives can be countered (Rauschenbach/Scalia 2008:459; Weinstein/Stover 2004:14). Furthermore, international trials and tribunals are seen as neutral, objective, and less susceptible to corruption, as they offer an outsider's perspective and were not involved in the conflict itself (Schneider 2009:90; Hiéramente 2012:63).

Most importantly, by providing individual accountability, calls for punishment for past atrocities and gross human rights violations are being satisfied (Sriram 2004b:77; Prittwitz 2012:30). By focusing on justice through punishment, trials and tribunals are instruments of **retributive justice** (defined in section 2.5.1). They are often seen as the only way to satisfy the need for justice. Trials can “channel the [victims] desire for [...] vengeance” (Roht-Arriaza 1995:8).

Victims and their needs and rights have increasingly become a focal point in transitional justice. Not only have victims' needs been taken more and more into account, but also their legal status in international law processes has changed (Rauschenbach/Scalia 2008:442-444). Especially the ICC has improved their position substantially, involving them as “legitimate participants” (PICT Website), whereas previously they were only able to contribute as witnesses.

Aside from providing individual accountability, judicial proceedings can also be a way to **establish truth**. Truth is determined in impartial and neutral processes of fact finding (Roht-Arriaza 1995:8). In this way criminal bodies provide an open and public way of dealing and ultimately **coming to terms with the past** (Hoffmann 2011:83). Further, they counter a culture of forgetting (Schneider 2009:81), by presenting documents, videos, and testimonies, as accounts of the past that might not have been accessible to the public otherwise (Hoffmann 2011:82f). In this way, trials establish a common interpretation of the past and have a direct impact on collective memory (Sikkink 2011:173).

It is believed that trials can actually arouse strong emotional reactions and lead to a cathartic effect on a national scale (Sikkink 2011:162). Thus, judicial processes represent a way of addressing conflict in a society (Sriram 2004b:77) and contributing to state building by creating a common sense of identity (Jakobs 1992:64). Consequently, they are seen to function as a starting point in a process of national **reconciliation** (Schneider 2009:86).

Additionally, by providing a break with the past and delivering punishment for human rights abuses, criminal prosecutions contribute to the **establishment of the human rights norm**. They are seen as an effective tool in the advancement of human rights, as they respect and enforce international standards (Schneider 2009:90) and counter a culture of impunity, where grave human rights abuses would just go unpunished (Sriram 2004b:79). Therefore, contemporary approaches increase the awareness for and acceptance of human rights, as well as reinstall lawfulness after transitions or conflict (Schneider 2009:86; Prittwitz 2012:29f).

Judicial processes are crucial in **re-establishing the rule of law** and strengthening new judicial institutions (Roht-Arriaza 1995:8; Schneider 2009:86). Capacities and institutions are being (re-)built through judicial reform, where they are lacking as a consequence of the conflict: trials “can help promote stability, democratization, and the rule of law, through reinstituting normal legal procedures” (Sriram 2004b:77). Sikkink (2011:173) describes trials and prosecutions in this context as “symbolic events” that install social norms, defining what is right or wrong. This internal (re-)establishment of norms and the rule of law is additionally seen as a contribution to a more stable international system as a whole (Hiéramente 2012:65)

Trials are often regarded as a **preventive measure** (Schneider 2009:81; Prittwitz 2012:29f; Sikkink 2011:170). They are expected to deter future crimes by setting examples, through punishment and the incarceration of perpetrators (Sriram 2004b:77; Roht-Arriaza 1995:8). This argument is often based on research about the deterrent effect of domestic trials, which correlates punishment with declines in crime rates. This line of reasoning often fuels heated debates with various positions. Taking a positive stance towards legal prosecution, also for large-scale crimes such as human rights violations, presupposes a view of individuals as purely rational actors that measure costs against benefits before taking actions. This view is contrary to other psychological or social models, which also take broader societal factors into account (Sikkink 2011:170-172).

This already hints to the fact that, contemporary approaches are often criticized. Indeed, what are the problems of these approaches and where are possible limits? In a next step, I will look at practical issues and more general concerns, raised in connection with these approaches to TJ.

### 3.3.2 Weaknesses and Limits

Criminal trials and tribunals, especially on an international scale, are **expensive and time-consuming** (Hoffmann 2011:87; Höpfel 2012:145). As they are confronted with large-scale acts of violence, they are often overloaded by an immense number of cases (Roht-Arriaza 1995:9; Hoffmann 2011:87; Höpfel 2012:145). In addition, there are other practical problems, such as **language-barriers** (Schneider 2009:87). As we have seen earlier, in the cases of the ad-hoc tribunals (ICTY, ICTR) and the ICC, international judicial proceedings are often held in foreign languages (Hiéramente 2012:56). Respecting local languages – as is attempted in the case of the ICTY through translating all its' documents – would be a precondition for their function within state building processes, as points of reference for a common identity (Höpfel 2012:145).

Furthermore, the proof of guilt is frequently complicated due to **missing evidence**, the limited timeframe (Schneider 2009:87), or victims' reluctance to give testimony, out of fear of threats or persecution by others (Hoffmann 2011:88f). The question is often how to collect and access evidence, in order to properly establish guilt (Roht-Arriaza 1995:9). Even if this is achieved, there is a lack of executive powers, as international trials and tribunals often do not have their own executive. This makes them dependent on the cooperation and support of nation states and raises **problems of enforcement** (Schneider 2009:87-89).

The inclusion of victims and consideration for their needs is a new trend in international criminal law – as was mentioned above. Especially the ICC has been focusing on **issues of monetary compensation for victims and safety of witnesses** (Hoffmann 2011:85f). The question here, as raised by Hoffmann (2011:88f), is how this can be done effectively? And how victims should be chosen, out of the immense number of cases (Hoffmann 2011:86)?

Furthermore, appearing before court can actually lead to so-called **secondary victimization** (Rauschenbach/Scalia 2008:445; Höpfel 2012:143). Giving statements and being questioned in a court setting can be highly traumatizing. The law system was simply not designed to function as a therapeutic measure for victims and adequate resources are lacking. Thus, participating in court proceedings might be less beneficial for victims as often believed, especially when it comes to dealing with the past (Rauschenbach/Scalia 2008:445-450). Moreover, justice is a very personal notion (Sikkink 2011:163) that can often not be met by trials.

Besides, the trauma experienced by victims, following large-scale atrocities, directly translates to whole communities and societies. Extensive research has found that trauma is

passed on through generations. Thus, affecting the relationships of individuals towards their community and society on a macro-level (Rauschenbach/Scalia 2008:450f) – a scope just too big for judicial processes, which are limited in their scope by their inherent selectivity.

As we have seen above, practical concerns directly correlate with more fundamental questions. Contemporary approaches to TJ are faced with challenges and substantial criticism, concerning methodological issues.

One of the main questions raised, which relates to law in times of transition in general, is: *Is criminal law even fit for the tasks that are to be achieved in times of transition?*

Let me start to examine this question more closely, by going back to the establishment of individual accountability, outlined as one of the main tasks of criminal tribunals.

Everyday criminal law is conceptualized around micro-criminality, where an individual hurts another individual. However, the offences dealt with in TJ (such as genocide) are of a collective nature (Vest 2002:29). Vest (2002:28) raises a fundamental question in this context: Is criminal justice, which is essentially based on an individual definition of responsibility for crimes, the appropriate way to handle collective acts, such as genocide? This links to a more general question: is criminal law an adequate tool to cope with the past?

Jakobs (1992:38-40) speaks of three conditions<sup>22</sup> that have to be present in order for criminal law to work as an instrument for coping with the past:

- the crime has to be connected to an individual that can be held accountable and it has to be proven that it was done with bad intentions
- punishment has to be necessary for the establishment or preservation of social order
- and the exercised law has to be applicable, time- and location-wise

Jakobs (1992:63) addresses these issues focusing on the examples of dealing with Nazi crimes and the former DDR, in Germany. He sees criminal justice as limited in this context and not fit for the task on its own. A totalitarian system, with all its consequences and the overlapping categories of victims and perpetrators, cannot be dealt with through criminal law alone.

The focus on the individual blends out broader structures and processes that led to the crime in the first place and does not solve the underlying conflict (Jakobs 1992:42). The focus on single acts blurs the view on the whole system (Burkhardt 2012:51f) – underlying structures are faded out and the full scope of the conflict is not grasped. The conflict loses its political

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<sup>22</sup> „Zurechenbarkeit, Erforderlichkeit, Positivität“ (German original) Jakobs (1992:38).

dimension and is brought into an individual, private setting. Thus, leading to the individualization of a political conflict (Jakobs 1992:42,56).

Vest (2002:237) – as the others – argues that dealing with collective crimes has to be adapted. It has to move away from a primarily individual focus and take into account the whole context, without running the risk of collectively accusing an entire society (Vest 2002:301). To successfully deal with a difficult past the whole ‘network of terror’ as well as single acts within it have to be analyzed (Vest 2002:397). Vest (2002:399f) sees the need for a model that conceptualizes the whole, including the system itself, while establishing accountability for everyone involved, as individual freedom of choice cannot entirely be left out.

The fundamental question here is who should be prosecuted, if the acts were committed by individuals, but under orders of a higher authority (structures of command) or in the name of an organization (Roht-Arriaza 1995:14)? What if the culprit only becomes one because of the society he was born into (Jakobs 1992:39-41)?

This is another problem of individual accountability. Human behavior is often influenced by a variety of complex factors (Waller 2007:139). For example, the force of a collective should not be underestimated (Waller 2007:33). There is psychological evidence that individuals act differently in a group than they would on their own. The group functions as a moral authority, helping individuals to justify their actions (Waller 2007:37). Through the feeling of belonging to a group the individual might not feel responsible for his or her acts, when responsibility is diffused along a chain of command. A conflict on a macro-scale brings individuals to commit crimes they would never do in another setting – here lies the essential difference to everyday “micro-criminality” (Burkhardt 2012:42f).

Evidently, group dynamics play a major role in individual behavior (Waller 2007:52f). The freedom of choice for individuals should on the other hand not be dismissed entirely, as Burkhardt (2012:46) emphasizes, referring to recent studies in this field. Neither the culprit should be given the chance to hide behind the state, nor vice versa (Prittwitz 2012:37). Under conventional jurisdiction, in criminal law, a nation state is not defined as a possible perpetrator. The state is seen as the defender of law, not the offender (Vest 2002:301). However, Prittwitz (2012:38) argues that if in cases of TJ responsibility of the state is hidden, much more harm can be done as if the responsibility of the individual is left out.

To sum up, crimes committed under abnormal circumstances, as in the context of systematic repression, challenge the common understanding of justice, which cannot be applied as easily (Teitel 2000:41).

Another central question raised towards contemporary approaches is: *Do contemporary approaches contribute to conflict resolution and social reconciliation, as expected?*

As an instrument aiming for retributive justice, they have a limited impact on deep-rooted conflict transformation. Retributive justice is based on the idea of due punishment, which is the only rightful sanction for wrongs done by an individual. “Fundamentally, it is the modern formulation of the ancient ‘eye for an eye’ logic” (Cottino 2008:290). Retributive justice can be a hindrance to the restoration of relationships and reconciliation within a society. By demanding punishment, it only replaces injustice with another injustice and thus cannot recreate the balance that existed before (Jakobs 1992:38; Cottino 2008:291).

Imprudent use of criminal law in times of transition can actually lead to a re-escalation of the conflict (Prittwitz 2012:34): “trials can perpetuate the old habits of blaming and scapegoating, of categorizing people as us or them” (Sriram 2009:97). Transitional Justice – as part of liberal peacebuilding – can have destabilizing effects, by exacerbating tensions (Peterson 2010:23; Rauschenbach/Scalia 2008:456). Instead of bringing reconciliation, trials can create divisions in society and unsettle already fragile situations (Roht-Arriaza 1995:9).

By contrast, Sikkink (2011:166f) argues that evidence, which is brought up against trials, is often counterfactual (‘they could be..., if.... ‘, on a theoretical basis). This evidence has to be recognized as such and not taken as the reality. Accordingly, it would need much more empirical and comparative studies to actually prove the negative effects of trials.

Another debate surrounding the role of criminal bodies in TJ, and in this case also in general, was already mentioned shortly in section 3.3.2. It relates to the preventive function of prosecutions, trials, and punishment. The question here is: *Does deterrence even work?*

Here, Cottino (2008:292) refers to empirical research, which has evidenced that punishment does not have a direct deterring effect. Thus, questioning the widely held assumption of a “general-preventive effect of punishment” (Cottino 2008:292). The main weakness of the deterrence paradigm is that it presupposes the rational choice of individuals. Human behavior is certainly much more complex than that and is influenced by an array of contextual factors (Cottino 2008:294-296). In addition to this, Jakobs (1992:62) clearly states that punishment does not bring deterrence.

However, Sikkink (2011) found, through extensive and systematic quantitative research, that trials improve the situation of human rights. Her research shows that “countries with [...] prosecutions tend to have lower levels of repression” (Sikkink 2011:183). Thus, prosecution of human rights violations, on a large scale, ameliorates the situation of human rights.

Although she does warn that one should be careful of seeing trials and prosecutions as the only solution (Sikkink 2011:185-187).

Having reviewed some of the discussions around central questions raised towards contemporary approaches to TJ, *are there any other challenges these are faced with?*

Judicial processes are often accused of being an instrument of victor's justice, even if nowadays there is a trend of looking at violations from both conflict sides (Schneider 2009:84). Law is commonly seen as neutral and objective, but it is important to keep in mind that "law is always an exercise of power" (Dyzenhaus/Ripstein cited in Peterson 2010:19).

Contemporary approaches to TJ represent top-down approaches. Power is transferred to external, international actors and taken from the affected communities. For example, when it comes to the decision which law is being applied and installed after conflict (Peterson 2010:24). The effect is the following: "Instead of conflict-affected societies viewing the law as an instrument that they can rely on and contribute to with the aim of renegotiating their relationship with their community and the state, the law becomes yet another arena in which the conflict continues to be played out" (Peterson 2010:27).

Judicial processes face the fundamental problem of local acceptance, as they fail to adapt to particular circumstances and cultures (Rauschenbach/Scalia 2008:455) – as is true for liberal peace interventions in general (see section 3.1.3). They are seen as inflexible and geographically, as well as conceptually, distanced from the communities they aim to restore. Their rigid nature is especially apparent when it comes to the respect for and inclusion of local practices (Hiéramente 2012:56). The liberal peace rests upon a western, liberal legal framework, which is disassociated from local realities (Richmond 2009:568).

Evidence suggests that law has its shortcomings, it "may contribute to justice in a rather abstract sense, but not necessarily to providing to the socially required climate of peace through reconciliation" (Hinz 2010:10). Contemporary approaches often fail to deal with the emotional aspects and subjective perceptions of a conflict. Long-term peacebuilding should be aimed at taking these subjective realities into account and emphasize the restoration of relationships in divided societies, by addressing past grievances (Lederach 1997:24-26). This is where the concept of reconciliation has been introduced into the debate.

All the practical and methodological problems, challenges, and issues outlined above, but also more pragmatic reasons, have led to the search for alternatives to criminal law and new approaches in TJ (Höpfel 2012:144). This tendency is further explored in the chapters that will follow.

## 4 Traditional Approaches

Traditional approaches and conceptions of justice have increasingly drawn attention as an alternative to contemporary approaches (Buckley-Zistel 2011:17). The 1990s brought “a renaissance in the concept of ‘the indigenous’” (Mac Ginty 2008:140). For example, the United Nations (UN) declared the period from 1995 to 2004 to be the decade of the indigenous peoples. The increased interest in indigenous issues led to a re-discovery of traditional elements and approaches to conflict, especially in the field of conflict resolution and transitional justice (TJ) (Mac Ginty 2008:140f). Consequently, actors of international peacebuilding have introduced indigenous approaches into their agendas (Werner 2010:61).

Mac Ginty and Richmond (2013) refer to this renewed interest as the “local turn” in peacebuilding. This concept refers to an interest in approaches that are developed at a local level and are connected to native traditions (Mac Ginty/Richmond 2013:769). Scholars and practitioners alike heavily emphasized the need for a local turn (Mac Ginty/Richmond 2013:763). This is, for example, expressed by the rhetoric of actors of liberal peacebuilding. Mac Ginty and Richmond (2013:772) analyzed that the use of the term ‘local’, by international organizations, in policy documents, relating to peacebuilding, has steadily increased since the turn of the century.

With the local turn being evident, the question arises where this renewed interest comes from? The local turn is a consequence of a liberal peace crisis, indicated in scholarly debates as well as “real-world events” (Mac Ginty/Richmond 2013:766). It came “onto the international issue agenda” (Mac Ginty 2011:59) with the help of indigenous activism and an overall recognition of the shortcomings of previous peacebuilding activities. The failures of various peace interventions<sup>23</sup>, led to an “intervention fatigue” (Mac Ginty/Richmond 2013:774). This resulted in a search for alternatives – as was mentioned in the previous chapter – and a willingness to explore local and traditional approaches (Mac Ginty/Richmond 2013:774f). The renaissance of the traditional can thus be seen as a reaction to the failures and shortcomings of previous approaches (Mac Ginty 2008:140).

At the same time, changes in the development sector led to an emphasis on local participation, empowerment, ownership, and sustainability (Mac Ginty/Richmond 2013:775; Mac Ginty 2011:47). These concepts were consequently adapted in peacebuilding, along with the idea of creating culturally appropriate approaches. The aim is to develop local capacity that would be

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<sup>23</sup> Mac Ginty and Richmond (2013:774f) mention Iraq and Afghanistan as examples in this context.



better equipped to deal with future problems and enable sustainable peace (Mac Ginty 2008:142). This is where traditional approaches to conflict resolution have been invoked.

The following chapter will explore these traditional approaches. I will start by defining traditional peacemaking before I go on to examine the underlying concepts of peace and justice. Then, I will look at how justice and peace is to be achieved, closely describing general goals and objectives and specific characteristics of traditional approaches. This section will also include a quick spotlight on traditional approaches in Africa specifically. In the last part of this chapter, I will then analyze the strengths and weaknesses, as well as limits, of traditional approaches.

#### **4.1 Definition**

Traditional peacemaking is defined as: “dispute-resolution and conflict-management techniques that are based on long-established practice and local custom” (Mac Ginty 2008:145f). Thus, traditional approaches are defined as practices that evolved in a specific context and have been used over time. Although it has to be noted that these are not static and unchangeable, since they are – as any other tradition – evolving and adapting with time and influenced by exogenous factors (Boege 2006:5f). Often “customary” or “indigenous” are used as synonyms. All these terms describe forms of life and communal organization that are shaped by traditions, while at the same time being dynamic and adaptive (Clements 2009:7).

Traditional approaches are more than historical artifacts. They are still highly relevant in multiple contexts (Dietrich 2008:93). They “are usually the primary means of resolving disputes in many countries” (Mapaure 2010:34). Furthermore, indigenous legal traditions continue to play a major role in numerous societies (Mekonnen 2010:107). Thus, they are a reality for countless local communities (Hinz 2010:19). Peacebuilding and TJ initiatives have to take this reality into account. It presents a way to access communities, in which state authorities are not easily accepted or play an inferior role to traditional authorities (Boege et al. 2009:18).

Many exogenous factors (such as colonialism and globalization) and internal processes have influenced traditional societies. Thus, definitions separating between “modern” and “traditional” do not mean to describe two clear-cut and homogenous entities. Nevertheless, certain characteristics of both can be defined. In the case of traditional approaches, these relate to the characteristics that differ from introduced institutions, connected to the modern

nation state (Clements 2009:5). To sum up, both contemporary and traditional approaches are used today, rely on a long history, and might overlap. However, they operate on very different underlying logics.

## **4.2 The Underlying Concepts**

### **4.2.1 Energetic Peace**

Any approach to conflict resolution is based on a specific concept of peace. As we have seen in Chapter 3, it is liberal peace for contemporary approaches. Whereas, traditional conflict resolution follows an energetic understanding of peace, in which peace is equaled with harmony. Humans, nature, and the cosmos form a whole, in which the individual has his or her own place, and all parts are connected and constantly engaged in reciprocal relationships (Dietrich 2008:68). Following this energetic understanding, peace is not defined in negative terms, as the absence of conflict, but more holistically. In this context, “peace means social, economic and psychological wellness and integrity of the human, spiritual and ecological environment” (Gebrewold 2011:432).

### **4.2.2 Restorative Justice**

Justice in an energetic worldview is connected to the sense of harmony described above. It serves to restore social peace (Mapaure 2010:27). The aim is the wellbeing of the community. Harmony and balance within the community can be regained through restoring relationships. This sense of justice is referred to as restorative justice (Boege 2006:7; Mekonnen 2010:108f).

Restorative justice is a collective definition of justice. It contrasts the definition of justice inherent to contemporary approaches, which is centered on the individual. Individual versus collective views of justice reflect a cultural “difference in perception” (Mapaure 2010:39). In a setting, in which communal identity and group affiliation are central, the predominantly western concept of individual accountability might not be applicable (Sriram 2009:100). This directly influences the practical application of justice.

### **4.2.3 Customary Law**

The application of traditional justice, and thus the basis for traditional approaches, is customary law (Mapaure 2010:27). Traditional Approaches are “legitimized and regulated by – unwritten – customary law” (Boege 2006:7). It reflects a holistic worldview (Boege 2006:9) and differs from modern – or common – law most strongly in the view on justice, as was discussed above (Cottino 2008:290).

The definition of justice has a direct influence on the way punishment is pursued. Traditional approaches often emphasize retribution through the restoration of relationships within the community, reparation towards victims, and reintegration of offenders into society. Following these principles, categories such as “offender/perpetrator” and “victim” do not hold the same meaning as in common/modern law (Cottino 2008:297-299).

### **4.3 Characteristics**

Traditional approaches to justice and conflict resolution vary from context to context. Boege (2006:6) refers to this as “contextual embeddedness”. Moreover, practices also differ greatly within cultures, countries, subgroups, and communities (Villa-Vicencio 2009:39), as these are never fully homogenous (Hinz 2006a:14). Nevertheless, common features and aspects of traditional approaches can be found across cultures. Thus, even if every case is different and details depend on the context, some recurrent characteristics can be established (Mac Ginty 2011:54; Boege 2006:6). These will be explored in detail, in the following sections.

#### **4.3.1 General Goals and Objectives**

While details and specific characteristics differ, they nevertheless “reflect a common [...] dialectic” (Villa-Vicencio 2009:41). There are overall goals and objectives, which form the basis for traditional approaches. According to Huyse (2008b:181) the overall goals are social healing and harmony as well as the prevention of future violence. These are to be reached through: truth telling, accountability, reparation, and reconciliation. The overall goals might appear similar when comparing traditional and contemporary approaches. However, there are substantial differences in how they are achieved (Huyse 2008a:14).

The primary objective of traditional conflict resolution is the reinstallation of harmony in interpersonal relationships and consequently the community as a whole. In highly communal settings, individuals rely on each other as parts of a wider collective (Boege 2006:7f). Disputants often have no choice, but to stay within the same community (Mac Ginty 2011:55). For this reason, the focus is on reconciliation through dialogue between the two parties, but also the broader community (Mekonnen 2010:109).

Individual accountability and establishment of guilt is – as opposed to retributive forms of justice – not central (Buckley-Zistel 2011:18). In contrast, reparation and compensation are seen as preconditions for reconciliation and constitute the “*punitive element*” (Hinz 2010:14). Following the idea of restorative justice, a wrong is set right by compensation and not

imprisonment (Hinz 2010:13). Imprisonment would only remove a vital element out of the community and disable the reinstallation of harmony (Gebrewold 2011:431).

Most importantly, conflict resolution is seen as a process much more than a final solution or a specific outcome (Mac Ginty 2011:57).

#### **4.3.2 Specific Characteristics**

Traditional conflict resolution is a holistic process. It encompasses various dimensions and includes a high number of actors. The whole community is involved in the process, which is usually led by elders or other respected persons. It is public and decision-making is based on consensus. Furthermore, spiritual elements play an important role (Werner 2010:70; Boege 2006:9). I will now closely explore these characteristics.

Traditional conflict resolution is often held in open spaces, which are accessible to the community. Thus, the process is **public**. This ensures transparency and adds an element of accountability (Mac Ginty 2011:55).

As a conflict is a communal matter, its resolution becomes only possible in a **communal setting**. Therefore, a large number of actors and persons are involved. Including the parties to the conflict, their relatives, and other directly or indirectly affected persons as well as the whole community. As a result, traditional approaches encompass a **wide range of actors** (Gebrewold 2011:438f).

Families or clans represent individuals and make up the conflict parties. This is based on the concept of group accountability (Boege 2006:9). Extended families are central points of reference in indigenous societies in general and specifically in traditional conflict resolution (Hinz 2010:13). Close family ties result in collective responsibility, for an individual's actions (Cottino 2008:298). As a result, there is a "communal responsibility to restore the damage done to the victim" (Villa-Vicencio 2009:41).

**Elders**, or other respected members of the community, lead the process of conflict resolution (Mac Ginty 2011:54). This includes: chiefs, kings, healers, or religious authorities (Boege 2006:9). These persons do not have judicial training in a western sense, but are seen as the keepers of societal norms and values (Schilling 2005:204f). They function as mediators (Boege 2006:9) and take on various other roles throughout the procedure. For example, they preside the formulation of a consensus at the end of the process (Lederach 1995:98). As

customary law is widely unwritten and not codified, it is the elders who carry out jurisdiction (Schilling 2005:204f).

It is believed that the elders derive legitimacy for their actions and decisions directly from the spirits of ancestors. These are called upon during the process (Werner 2010:70) and the decisions of elders are portrayed as their will (Gebrewold 2011:434f). For this reason, the spirits of gods and ancestors play an important role (Boege 2006:9; Mapaire 2010:36f). Thus, traditional approaches include **spiritual elements** (Mac Ginty 2011:67).

Furthermore, traditional approaches also include a **storytelling element** (Mac Ginty 2011:55), in line with long-standing oral traditions. The process is about “talking things out” (Cottino 2008:298). Evidence is frequently given in the form of stories (Villa-Vicencio 2009:42), without following specific rules. Oftentimes fables, analogies, metaphors, or proverbs are included; in order to illustrate and better describe what happened (Lederach 1995:81f).

Everyone is invited to voice their opinion and express their view of the events. After everyone has spoken, the elder, or the person presiding the process, summarizes what has been said and adds his opinion (Cottino 2008:298). The final decision on how to proceed is then, usually, reached in consensus (Villa-Vicencio 2009:44f).

Therefore, traditional conflict resolution is **based on consensus**. This requires an often very lengthy truth-finding process in which a truth is being established, that includes the view of all parties (Boege 2006:8f). Furthermore, sentences and reparations are decided on in a shared decision-making process (Villa-Vicencio 2009:44f). Moreover, the process has to remain **flexible** and there are **no fixed rules or procedures** (Huyse 2008a:15).

**Compensation** for victims is symbolic and serves as a reminder for the settlement that has been reached during the process. This often takes the form of an “exchange of material goods” (Boege 2006:8) or animals<sup>24</sup>, between families (Hinz 2010:13). The amount of compensation is usually pre-fixed<sup>25</sup> in relation to the crime and is meant to be symbolic, without primarily material importance (Hinz 2010:14; Cottino 2008:298; Mac Ginty 2008:148f).

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<sup>24</sup> In Africa, for example, these are often cattle (Hinz 2010:13). Additionally, Lederach (1995:98) mentions camels the Somali context.

<sup>25</sup> Hinz (2006b:39) refers to a research project, which had found that “ten head of cattle” were a reoccurring compensation for murder in Africa.

The conflict resolution process ends with an affirmative **ceremony or ritual**<sup>26</sup> (Werner 2010:70). Examples for these symbolic rituals are found in abundance throughout the academic literature. These can be the sharing of a drink, the exchange of presents, and the celebration of a feast (Mac Ginty 2008:148f, Schilling 2005:207f). They can also take the form of prayers, sacrifices, or other specific rituals (Boege 2006:9) and spiritual ceremonies (Villa-Vicencio 2009:45). The rituals can include drinking a potion, washing off bad spirits, going into trance (Huyse 2008a:14), or smoking together as a sign of peace (Hinz 2010:5). Music, singing, and dancing are often parts of these rituals (Helfrich 2005:105f; Boege 2006:9).

All in all, these rituals serve as an affirmation for the consensus reached in the process of conflict resolution (Boege 2006:9). Their function is to further strengthen the newly reestablished relationships (Mac Ginty 2008:148f, Schilling 2005:207f). This can go as far as arranged marriages between two formerly disputant groups, in order to prevent future conflict through the establishment of direct ties (Mekonnen 2010:111; Mac Ginty 2008:152; Helfrich 2005:116f; Lederach 1995:99).

#### **4.3.3 Traditional Approaches in Africa**

As we have seen so far, there are numerous examples of traditional approaches to conflict resolution. Local forms of conflict resolution that are based on traditional practices exist in many societies (Mac Ginty 2010:403). Numerous examples are found in Africa.

Since the case study, examined in Chapter 6 of this thesis, is located in Africa, I would like to point out some specific characteristics of that region. Keeping in mind that if one is dealing with Africa as a geographic region, it should be clear that it does not represent a homogenous entity. It is, as any regional codification, a construct (Dietrich 2008:96). Africa is made up of multiple and diverse cultural and ethnic groups. Generalizations are to be taken with caution (Murithi 2006:14), as African cultures do not form a homogenous entity (Medhanie 2011:24). The African continent witnessed the forced introduction of western modernity through colonialism, as a consequence, many variations and forms of traditional conflict resolution as well as definitions of peace can be found in coexistence today (formal vs. informal, modern vs. traditional) (Gebrewold 2011:429).

On the African continent, the renewed focus on all things local and traditional went hand in hand with an “African renaissance”<sup>27</sup>. Finding African solutions to African problems has

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<sup>26</sup> I would argue that western trials could also be seen as ritualistic and ceremonial. Huyse (2008a:15) expresses the same: rituals can also be found in modern courts, but in a different manner.

<sup>27</sup> ”afrikanische Renaissance” (German original) (Helfrich 2005:45)

become a guiding principle (Buckley-Zistel 2011:18). This implies a renewed interest in traditional African values and knowledge as well as the re-evaluation and definition of a specifically African identity. Focus is laid on resuscitating local capacities for problem-solving (Helfrich 2005:45-48).

A central concept that is found throughout the continent, although in different lingual variations, is “Ubuntu” (Murithi 2006:17). It is fundamental to African philosophy (Mekonnen 2010:105f) and describes the close relationship between the individual and the broader community. Individuals are understood as social beings, intractably linked with others and embedded in a complex structure of relationships, versus an understanding of individuals as autonomous and free (Medhanie 2011:253-255).

Ubuntu suggests that a person is only a full person in relation to others (Murithi 2006:17f) – “I am because we are, and because we are therefore I am” (Mekonnen 2010:107). This underlines “the cohesiveness of African society and the importance of kinship” (Mekonnen 2010:107). The community is the highest authority (Mbiti 1974:262).

If one person does wrong, this wrongdoing has wide-ranging consequences, due to the interwoven net of family relationships (Mbiti 1974:261). Any action one takes falls back on his social group that is responsible for each individual (Murithi 2006:19; Medhanie 2011:253). Furthermore, spirits play a central role in African religious life (Mbiti 1974:88). The souls of the dead are constantly present and always met with due respect (Gebrewold 2011:434f). Concerning conflict resolution this means that it is not a purely individual or intra-personal matter, but a much more complex undertaking. Thus, it has to include the whole community and a wide range of actors (Gebrewold 2011:438f).

#### **4.4 Actors**

As was pointed out before, traditional approaches involve a wide range of actors. Their communal aspect leads to “a high degree of public participation” (Huyse 2008a:16). Consequently, traditional approaches are bottom-up processes. Thus, in most of the cases, civil society is the main actor and stakeholder. Elders, leaders, and local NGOs take care of carrying out, monitoring, and implementing the process (Huyse 2008a:15).

In addition, traditional approaches are often heavily supported and sponsored by external actors (Mac Ginty 2011:58f). In line with the trend towards indigenous approaches, they promote and fund traditional approaches to conflict resolution and justice. This raises a range of issues: who ultimately has the decision-making power on how the process is carried out? Are traditional approaches adapted to receive funding and fit specific agendas? (Mac Ginty

2011:63). These questions will be taken up and discussed in more detail in the following chapter (section 5.2).

## **4.5 Pros and Cons**

Traditional approaches have a range of positive aspects and influences as well as weaknesses and limits. I will first turn to their strengths, which stand in contrast to some of the shortcomings of contemporary approaches.

### **4.5.1 Strengths**

Highlighted as strengths and positive features of traditional approaches are: the communal element, the focus on dialogue, the local dimension, the transformative aspect, and sustainable outcomes (Mac Ginty 2008:142).

Traditional approaches are positioned at the grassroots level, thus they can be defined as bottom-up approaches (Mac Ginty 2011:47; Lederach 1995:97). They include and involve the whole community and are highly **participative** (Mac Ginty 2011:66; Hinz 2006a:13). This is referred to as an “inclusive participatory approach” (Boege 2006:13), which gives a high number of actors the chance to be involved in the decision-making process (Huyse 2008b:187).

Contrary to contemporary approaches, which are outcome oriented, traditional approaches are process oriented (Helfrich 2005:125). Furthermore, they employ narrative and dialogical truth as opposed to factual or objective truth, which is used in standard trials. **Dialogical truth** is defined as the truth that emerges through discussion and social interaction and reflects lived experiences (Villa-Vicencio 2009:43). Through discussions, the complexity of conflict and crime, with its grey areas of guilt, is better grasped than through formal ways of establishing facts (Huyse 2008a:15).

Dialogical or narrative truth is reflected in the storytelling element, outlined as a specific characteristic of traditional approaches (see section 4.2.2). Bottom-up processes of truth-telling, which include story-telling and aspects of oral history can bring a feeling of respect and recognition to victims, even if the way in which truth is generated might not seem neutral (Brewer/Hayes 2011:11). Dialogical truth can be beneficial for healing on a personal and social level (Villa-Vicencio 2009:43). Therefore, traditional approaches put a “focus on the psycho-social and spiritual dimension of conflict transformation” (Boege 2006:14).



As they are more focused on reconciliation, communal healing, and reintegration, traditional approaches to conflict resolution constitute a more comprehensive approach (Boege 2006:16; Huyse 2008b:187). By opening up the possibility of viewing conflict in various dimensions, addressing the underlying structures, and focusing on the restoration of relationships, traditional approaches are more geared towards **conflict transformation** (Mac Ginty/Richmond 2013:771). Ultimately, they can lead to a more sustainable form of peace (Huyse 2008b:188).

Most importantly, traditional approaches tie in with already existing, local expertise, making them **more easily accepted** (Mac Ginty 2011:55; Mapaire 2010:38). Thus, they are legitimated by and within local communities and are more accepted than solutions brought in from the outside (Boege 2006:12). Therefore, the big advantage of approaches, based on local capacities and traditions, is that they are **culturally appropriate** (Hinz 2006a:13).

Moreover, traditional approaches, which take place at the community level, are not only culturally but also geographically closer to the affected people, making them more accessible (Huyse 2008b:187; Hinz 2006a:13). Often “people are excluded by reasons of geography, language, finance and a sense of alienation caused by complex cultural factors” (Bennett 2006:164) from the national court system. Traditional forms of justice use the local, vernacular languages (Hinz 2006a:13) and relate to different perceptions of time, as they employ a circular instead of a linear concept of time (Boege 2006:12).

On a practical level, informal traditional approaches are less costly than standardized judicial processes (Mac Ginty 2011:55; Hinz 2006a:13). Furthermore, local approaches can replace missing state institutions, in situations of failing or failed states (Boege 2006:11) or in instances where the national court system is overburdened (Hinz 2006a:13). Moreover, as bottom-up approaches, they support peacebuilding “from the local to the national level” (Boege 2006:11) and thus support wider initiatives of national peacebuilding and transitional justice.

However, one has to be careful not to idealize traditional approaches through un-reflected analysis. The picture is much more complex, than a simplistic characterization of the good local and bad international. One has to beware of generalizations or simplifications (Mac Ginty 2011:51-53).

Various authors warn of an overly optimistic evaluation, influenced by romantic views of all things local, traditional, and/or indigenous (Mac Ginty 2011:51; Huyse 2008a:8; Medhanie

2011:260; Buckley-Zistel 2011:20; Murithi 2006:14). To take on such a viewpoint can actually be dangerous (Mac Ginty 2011:51), as it obscures that “local actors and contexts can be partisan, discriminatory, exclusive and violent (as can international actors) [...] [and] also contain power relations and hierarchies” (Mac Ginty/Richmond 2013:770). Thus, traditional forms of conflict resolution are not per se better than to contemporary, liberal approaches. They too create dilemmas, are problematic, and have flaws (Boege et al. 2009:19; Mac Ginty 2011:47).

I will now explore the negative aspects, weaknesses, and limits of traditional approaches.

#### **4.5.2 Weaknesses and Limits**

One of the most voiced criticisms, concerning traditional approaches, is that they “contradict universal standards of human rights and democracy” (Boege 2006:16). While being culturally more appropriate to local contexts, they may oppose concepts of international law (Ambos 2009:48f). International organizations have found that traditional approaches do not comply with human rights standards and violate the western concept of fair trial. This clash of norms and principles is indeed problematic (Mapaure 2010:38-43).

Following a western perspective, it can be argued that leaders in traditional justice systems are biased, since they often know the conflict parties personally and might even have been involved in the case, in one way or another. This would be impossible in western judicial processes. Further, the separation of powers in a western sense (distinction between the judiciary and the executive) is absent. Traditional rules are at the same time the source as well as the enforcers. Thus, they hold various positions at once. Moreover, they are not trained professionals (Bennett 2006:159-162).

Another perceived problem of traditional approaches is that their success is hard to measure or quantify, since they are process- and not outcome-oriented. Success is often described as a collective feeling, which is hard to prove with facts. This is an obstacle for external actors, who want to see measurable and quantifiable results (Mac Ginty 2011:56).

However, this again expresses a western point of view, following the belief that fixed rules and standards are needed. It has to be kept in mind that the very essence of traditional approaches is their informality and flexibility (Bennett 2006:161f).

Nonetheless, participation in processes of traditional conflict resolution is often defined according to age and following a strict social hierarchy, which excludes marginalized social groups (Gebrewold 2011:433f). Concern is voiced especially in regard with the position and treatment of women. Traditional approaches are often accused of either not being gender sensitive (Villa-Vicencio 2009:39), patriarchic, or outright exclusionist (Mac Ginty 2011:52;

Mapaure 2010:40; Werner 2010:61). Although changes are slowly being made, traditional approaches tend to be dominated by men, enforcing patriarchal structures (Huyse 2008b:183). Therefore, they emphasize conformity to conservative societal structures (Mac Ginty 2011:52) and leave little room for criticism.

Further, traditional approaches are seen to be susceptible to abuse by corrupt leaders (Boege 2006:17). Approaches can be invented or labeled as ‘traditional’, in order to assure legitimacy and funding. Thus, tradition can be instrumentalized to serve certain interests (Hinz 2006a:16f).

Hence, traditional approaches tend to be conservative and anachronistic (Boege 2006:17). Further, they can reinforce power structures (Mac Ginty 2011:52). This is an attribute that I would, however, similarly ascribe to contemporary approaches. All the more, power structures, hierarchies, and patriarchies need to be analyzed, addressed, and challenged for conflict resolution processes to be successful. Exclusionary practices are a root cause of conflict and the inclusion of women (and all other marginalized groups) is a precondition for successful peacebuilding and TJ (Miall et al. 1999:61; Mac Ginty 2011:52).

The evidence presented so far, seems to suggest that the criticism voiced towards traditional approaches is merely based on a discrepancy in perspectives. However, criticism is still valid and relevant. Furthermore, traditional approaches are faced with other limitations and substantial challenges.

Traditional structures are strongly influenced by forces of modernity, which might bring problems of acceptance (Boege 2006:16). As an example, Mac Ginty (2011:53) mentions the disconnections of the young generation from the networks of extended families and the missing respect for elders (see also Huyse 2008b:186). Further, trends, like urbanization and globalization, may undermine the communal structures that serve as a basis for traditional approaches (Mac Ginty 2011:52). Often the social fabric they rely on has been destroyed due to war and internal displacement (Huyse 2008b:185). Especially in post-civil war societies, this social fabric is deeply disrupted. It has to be taken into account, when applying traditional approaches, that these “societies have undergone extended and traumatic dislocation as a result of war and authoritarianism” (Mac Ginty 2011:53).

Another limitation arises out of one of the main strengths of traditional approaches – their local- and cultural-embeddedness. As traditional approaches are very context and culture specific, they become limited in their range of applicability (Huyse 2008b:183; Boege

2006:16; Cottino 2008:299). Having initially been designed for conflicts in relatively small and locally bounded contexts, the complexity of today's large-scale conflicts poses a problem (Boege 2006:10; Villa-Vicencio 2009:39).

An argument is that the scope of traditional approaches is limited, as they were just "not designed to deal with [...] war crimes and crimes against humanity" (Huyse 2008b:185). However, I suggest that this is also the case with contemporary approaches, based on criminal law, as was demonstrated in Chapter 3. Therefore, this is a problem in general.

As a possible answer, I would suggest the following observation by Boege (2006:10): large-scale conflicts can be broken down to small-scale conflicts. Dealing with the latter directly influences the whole. Thus, lower level conflicts have to be dealt with if the larger conflict is to be tackled at all. Therefore, approaches to conflict should aim at creating mutually reinforcing top-down and bottom-up processes.

To summarize, traditional approaches are undergoing changes through the forces of modernization and are only applicable in a limited context. Nonetheless, they have potential. First, they allow for a more holistic view on conflict and its resolution. Second, they have positive characteristics that should be applied in contemporary approaches (Boege 2006:17f). As they have positive effects on truth-telling, accountability, and reconciliation, they are conducive to reach the broader goals of TJ (Huyse 2008b:192).

Therefore, traditional approaches should be given due importance, without over-glorifying them as the only solution. The positive as well as negative attributes have to be taken into account (Huyse 2008b:192f). Some scholars, as Villa-Vicencio (2009:40), argue that the value of traditional approaches has to be recognized, while in turn they need to be adjusted to present challenges. Mekonnen (2010:117) sees traditional approaches as complementary to contemporary approaches to transitional justice. But why should one be adapted to the other, instead of seeking ways of mutual reinforcement?

"The question is whether and how these practices can be incorporated into the dominant transitional justice debate" (Villa-Vicencio 2009:41). Traditional approaches have become an integral part of TJ initiatives (Huyse 2008b:192f). Thus, contemporary/western and traditional/local are not discreet and static categories anymore (Mac Ginty 2011:51). Huyse (2008b:193) emphasizes that a dichotomy between international/western versus local/traditional is both misleading and false. The choice should not be an either or. Furthermore, adjustment should not be a one-way street. Traditional approaches need to be adapted to incorporate certain international standards and at the same time contemporary

approaches need to respect local realities. Both dimensions should not be seen as contradicting or competing with one another, but as complementary.

Traditional and contemporary approaches need to be combined for successful conflict resolution (Boege 2006:17). This requires strategies that encourage mutual encounter, cooperation, and exchange, in order to incorporate positive aspects from both approaches (Villa-Vicencio 2009:47; Hinz 2010:20). Hybrid approaches could be an answer and accomplish this, as will be demonstrated in the following chapter.

## 5 Hybrid Approaches

“Hybridity is an increasingly common theme in [...] transitional justice” (Clark 2007:765). Already in 2004, the UN expressed the need for more locally appropriate forms of peacebuilding that respect local tradition as well as international standards (UNSC 2004; Werner 2010:63). Similar evidence for the interest in hybridity is also found in more recent policy documents. For example, Belloni (2012:35) points out that the World Bank has shifted from standardized to more contextual approaches. This shift is expressed in the “World Development Report” of 2011<sup>28</sup>. The report breaks with the previous focus on prescriptive solutions and calls for approaches that include local capacities. Furthermore, as noted by Mac Ginty and Sanghera (2012:6) the OECD released “A New Deal for Engagement in Fragile States”<sup>29</sup> in 2011, acknowledging the failure of previous short-term peacebuilding interventions that were merely focused on technocratic solutions, without incorporating the local population. Also, a 2011 UNDP report<sup>30</sup> emphasizes the need for local governance and “moves away from top-down prescriptive rigidity” (Mac Ginty/Sanghera 2012:6).

Clearly, there is a growing interest in hybridity and hybrid approaches to TJ, among policy makers and academics alike. International actors have come to realize that the top-down interventions of the past failed to deliver the expected results. This led to a common understanding that approaches to peacebuilding and TJ need to move away from prescriptive peacebuilding towards more long-term interventions (Mac Ginty/Sanghera 2012:5). This trend is directly connected to an increased interest in traditional approaches (Clark 2007:765; Schilling 2005:119), described as the ‘local turn’ in the previous chapter. This recognition of the importance of including local actors through local ownership, participation, and partnerships, has allowed for the interest in hybrid approaches (Mac Ginty/Sanghera 2012:6).

Hybrid approaches are the result of interactions between international and local actors (Mac Ginty/Richmond 2013:778). They represent a combination of contemporary/western and traditional/local elements (Boege 2006:2f). However, the aim is to go a step further and move beyond the pure dichotomies of ‘international versus local’ and ‘western versus traditional’. As a result, the limits of one-sided approaches that neglect contextual factors and pluralism

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<sup>28</sup> The report specifically deals with conflict, as reflected in its title: World Bank (2011): World Development Report 2011: Conflict, Security and Development, World Bank: Washington D.C.

<sup>29</sup> See OECD (2011): A New Deal for Engagement in Fragile States, International Dialogue on Statebuilding and Peacebuilding, via: [www.oecd.org/international%20dialogue/aneuidealforengagementinfragilestates.htm](http://www.oecd.org/international%20dialogue/aneuidealforengagementinfragilestates.htm).

<sup>30</sup> See UNDP (2012): Governance for Peace: Securing the Social Contract, UNDP Bureau for Crisis Prevention and Recovery: New York.

can be recognized. Furthermore, a pluralistic view on peace and conflict resolution becomes possible, which acknowledges that there are various ways of defining and reaching peace (Mac Ginty/Richmond 2013:764f). This entails a redefinition of what is to be achieved – what peace is and how it can be defined in various contexts (Mac Ginty/Richmond 2013:779).

Hybrid approaches “are awkward, constantly changing, and difficult to describe” (Mac Ginty 2011:11). Nevertheless, this chapter tries to grasp and describe this phenomenon, as not doing so would render the concept useless. The first half of this chapter will build a theoretical construct. I will start by looking at what “hybridity” means, by tracing the historical background of the term and the concept and introducing a definition. This is followed by an exploration of hybridity in peacebuilding, as the backdrop to hybrid approaches in TJ, and the description of a specific model of hybridity, which aims to explain how hybridity emerges and is sustained. The second half of the chapter will take on a more analytical perspective. The examination of characteristics of hybridity as an analytical tool and hybrid approaches in practice, offers a way to evaluate positive aspects; followed by critique and questions that are left unanswered.

## **5.1 The Concept of Hybridity**

### **5.1.1 Historical Background and Definition**

The term “hybridity” is used in connection with a wide range of phenomena. Thus, definitions vary according to the context. Definitions have also varied historically, ranging from negative to positive interpretations (Pieterse 2001:220).

Hybridity, as a term and concept, has a long historical background and spread across various fields (Peterson 2012:10). It originated in natural sciences, more specifically biology, agriculture, and botany. In these contexts, hybridization describes the mixing of two plants or species through cross-breeding. In the 19<sup>th</sup> century, the term was imbued with a very negative connotation. The colonial discourse, at that time, transferred it from the world of plants to the human species. A preoccupation with the concept of race and difference made mixing a taboo. At that time, “hybrids” were seen as unwanted and a negative ‘outcome’ of encounters between colonizers and colonized (Pieterse 2001:223-226; Mac Ginty 2011:70). Then, around the turn of the century, a paradigm shift took place. Discoveries in genetics revealed, that hybridity was a way to add strength. The concept was brought back to natural sciences and freed of its negative connotation. It permeated the social sciences through anthropology, more

specifically through the analysis of religious syncretism<sup>31</sup> (Pieterse 2001:223-226). The concept then spread across numerous disciplines, to be included in linguistics (creole languages), governance (institutional/organizational hybridity), engineering (hybrid cars), sociology, media studies, and others (Pieterse 2001:223; Mac Ginty 2011:69).

Nowadays, the concept is most commonly used in the discourse on culture (Pieterse 2001:223). It is especially popular in anthropology, post-colonial-, and cultural studies, where it is used in connection with questions of identity, interculturality, and multiculturalism (Pieterse 2001:221; Peterson 2012:11). In this discourse “hybridity” is seen as positive. Instead of being a threat to discreet cultural entities, it is seen as a constant process of interaction and exchange, reflecting “the fluidity of human societies” (Mac Ginty 2010:397).

As we have seen, the term and concept of “hybridity” has a long historical background. Over time, “hybridity” and “hybrid” have become fashionable terms in many disciplines. However, its emergence as a concept in peace and conflict studies is rather new (Mac Ginty 2011:68f). It is especially popular among scholars of a critical strand in peace and development studies. In this context hybridity has been positioned as an alternative to liberal peacebuilding (Peterson 2012:10). Here hybridity is applied in connection with post-conflict and transitional processes and the focus is on hybrid governance and hybrid political structures, as well as the combination of approaches (Mac Ginty 2010:397).

According to Boege et al. (2009:17) “ the term ‘hybrid’ [...] focuses on the combination of elements that stem from genuinely different societal sources that follow different logics; and [...] affirms that these spheres do not exist in isolation from each other, but permeate each other”. They result in new political structures that are characterized by the combination and interaction of these different origins (Boege et al. 2009:17). TJ is a part of peacebuilding in which tensions between the international and the local are most visible. Traditionally TJ transports the ideals of the liberal peace. However, more and more culturally sensitive, indigenous approaches are being introduced. As a consequence, hybrid approaches also emerge in TJ (Wanis-St.John 2013:361).

The concept of hybridity functions as an analytical tool to look at “how internationally led peace-support interventions interact with local, actors, structures, and norms to produce a hybrid peace” (Mac Ginty 2011:69). Hybridity aims to describe the process through which

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<sup>31</sup> Religious syncretism describes „the fusion of diverse religious beliefs and practices“ - Encyclopædia Britannica (2014), via:<http://www.britannica.com/EBchecked/topic/497438/religious-syncretism> accessed: April 16, 2014.



contemporary and traditional approaches (as outlined in Chapters 3 and 4) clash and combine (Mac Ginty 2011:69).

In this context, the concept of hybridity questions two trends in academic research: first, purely negative criticism of liberal/contemporary approaches, without constructively advancing the discussion; and second, the tendency to romanticize everything traditional and local, without the necessary scrutiny (Mac Ginty 2011:2f).

“Hybrid” as it is used in the context of this thesis “refers to the coexistence and interaction of the international and the local, of liberal and illiberal norms, institutions, and actors” (Belloni 2012:24). This understanding moves beyond a purely additive view, of adapting one approach to the other, and aims to describe the fluidity of the interaction of various actors (Belloni 2012:24).

Mac Ginty (2011:18,89) emphasizes that two points have to be clear when the concept of hybridity is being used: First, it is more than the mixing of two entities to form a third one. Thus, hybridity is not to be understood as the melding together of previously completely separated and pure entities. Hybridization might have already taken place to some extent, as in social reality nothing is separated like in a laboratory. Second, it is always a two-way process of exchange and interaction between groups and their structures, practices, and worldviews. Hybridization is not a sudden event, but a gradual process in which actors constantly (re-)negotiate their place, as they adapt and evolve (Mac Ginty 2011:72f). Thus, hybridity is complex and constantly evolving, depending on the positions and actions of the involved actors (Mac Ginty/Sanghera 2012:4).

### **5.1.2 Hybridity in Peacebuilding and Transitional Justice**

Processes of hybridization take place in social environments at any time and place, but they are enhanced through certain factors. Periods of change, as well as fast economic growth accelerate hybridization (Mac Ginty/Sanghera 2012:3). Additionally, war and post-conflict environments have an influence (Mac Ginty 2011:9). For example, peacebuilding interventions often produce hybridity, as international norms and values are projected onto local contexts (Mac Ginty 2011:75).

Boege (2006) refers to hybrid structures in post-conflict zones as “hybrid political orders”. These emerge when “local customary patterns and logics of behavior mix and overlap with modern and post-modern patterns and logics” (Boege 2006:3). Boege (2006:2f) proposes to conceptualize post-conflict societies as settings in which various institutions compete,

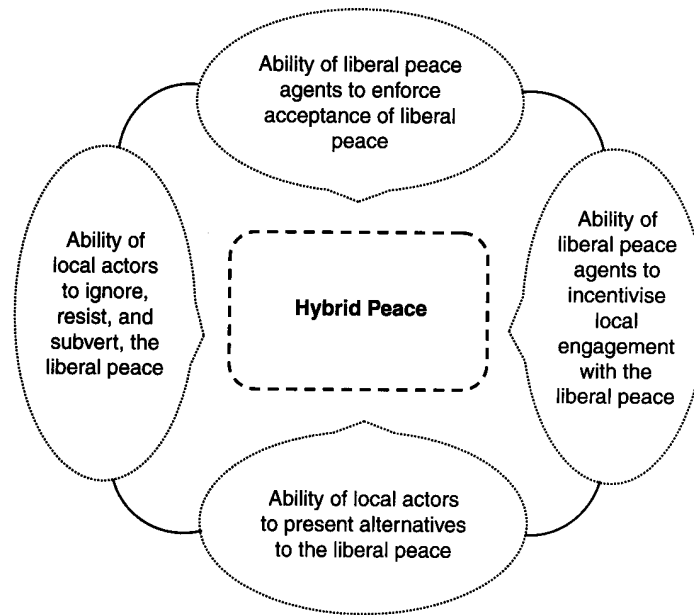
overlap, and connect. The state as the main actor and only point of references loses its power, while attention is drawn to other actors. “Statelessness [...] does by no means mean chaos. Having no state institutions in place does not mean: no institutions at all” (Boege 2006:2). Instead a range of other actors comes into play, such as: international organizations, aid agencies, NGOS, and civil society.

The concept of hybrid political orders tries to move away from the perception of state frailty as a hindrance, towards a broader perspective that allows for alternative approaches to conflict and its resolution (Boege et al. 2009:13f). Boege et al. (2009:14) emphasize that “it might be theoretically and practically more fruitful to think in terms of hybrid political orders”, as this would support a move from purely state-centered analysis towards a focus on the strengths that lie in hybrid approaches. Ultimately, this would lead to constructive relationships between the state and local actors. Resulting in governance structures that are more accepted, since they are not imposed from the outside, but reflect local realities and structures (Boege et al. 2009:20). “Recognizing the hybridity of political orders should be the starting point for any endeavors that aim at peacebuilding, development, and state-building” (Boege et al. 2009:19f). Thus, it is important to conceptualize post-conflict and transitional environments as hybrid political orders, in order to understand in which context hybrid approaches develop.

Belloni (2012:27-32) presents four theoretical approaches to conceptualize the emergence and development of hybrid structures: game theory, path-dependence theory, critical theory, and international incentives. Within the last category Belloni (2012:30f) describes a model by Mac Ginty (2011), which offers one way to conceptualize hybridity. I will now turn my attention to this model.

### **5.1.3 The Four-Part Model of Hybridity**

Mac Ginty (2011) proposes a four-part model to conceptualize the emergence of hybrid approaches to peacebuilding. The model represents a way to visualize the hybridization processes that take place in post-war environments (Mac Ginty 2011:8). Additionally, it tries to explain how “hybridization is perpetuated” (Mac Ginty 2010:404).



**Figure 2: The Four-Part Model of Hybridity, Source: Mac Ginty (2011:9)**

The model is based on four factors, which constitute hybrid approaches. It aims at demonstrating their ways of interaction, as they conflict or cooperate in constant interplay (Mac Ginty 2011:8). Therefore, according to Mac Ginty's four-part model, as seen in Figure 2, hybridization is the result of four parts coming together in constant fluid interaction (Mac Ginty 2011:77).

These four parts, as described by Mac Ginty (2011:8), are:

- the compliance powers of liberal peace agents, networks, and structures;
- the incentivizing powers of liberal peace agents, networks, and structures;
- the ability of local actors to resist, ignore, or adapt liberal peace interventions; and
- the ability of local actors, networks, and structures to present and maintain alternative forms of peacemaking.

The compliance power refers to the dominance of liberal peace and its portrayal as the best way of achieving peace. Its actors often enforce this notion, by referring to the historical background and rich cultural heritage liberal ideas stem from (Mac Ginty 2010:399). As a consequence, liberal peace is perceived as the only viable way to peace. Depending on the context, it is then enforced through military interventions or through more subtle economic sanctions. Thus, actors of the liberal peace coerce their version of peacemaking on others. Determined by the intensity of the intervention there is more or less room for alternatives. This has a direct effect on the extent of hybridity that is possible (Mac Ginty 2011:78-80).

The incentives that are presented, in order to convince others to accept liberal peacebuilding measures, are: peace, power, and financial resources. As a reward for compliance with liberal peace policies, resources and financial aid are introduced to post-conflict areas. However, this

is heavily contested, as humanitarian aid and development assistance never remain neutral. These transfers and investments often take place in unequal power relations and hierarchies (Mac Ginty 2011:81f). At the same time, the high number of international and external actors and their, oftentimes, diverging interests and policies can create gridlock. This is where room is created for local actors to come into play (Belloni 2012:30).

Local actors, in this context, are situated at all levels within a post-conflict state: from national governments down to individuals. Reactions to the liberal peace can range from total rejection to acceptance, with many variations in-between. This perception of local actors as active stakeholders intends to move away from the dominant picture of helpless beneficiaries (Mac Ginty 2011:84). Local resistance to the liberal peace can take many forms and occur in various places. It can be negative at times, but also lead to more sustainable forms of peace: “in some cases, resistance leads to a better form of peace: a peace that is more comfortable and sustainable for the communities that must live in that peace” (Mac Ginty 2011:212).

However, the power to resist liberal peace building initiatives depends on the context. Two factors have an effect on the potential for resistance: first, the economic, political, and social capital at hand, as well as the extent to which traditional values and structures still exist (as they may have been diminished by the conflict); and second, the willingness of liberal peace interventions to involve local actors (Mac Ginty 2011:85f,402).

As these are more focused on the macro-level, alternatives to the liberal peace can especially be developed on the micro-level, in more marginal areas. Thus, alternatives “are likely to be context-specific and restricted to issues, geographical areas, and peoples over which the liberal peace cannot or will not exercise control” (Mac Ginty 2011:87). Therefore, alternatives remain limited, as the liberal peace can hardly be fully replaced, also due to its vast material power (Mac Ginty 2011:87).

The four-part model shows that hybridity results out of the enforcement of liberal peace, its soft-power aspect, the resistance of local actors to these initiatives, and the presentation of viable alternatives. When all four parts collide, in whichever power-constellation (some stronger than others), hybridity is the result (Mac Ginty 2010:403).

Subsequently, a space is created that is conducive to the emergence of hybrid approaches and ultimately a hybrid peace (Mac Ginty 2011:9). Hybrid peace is not static or fixed, but a dynamic process, reflecting the activities of actors in these four parts and their impact on others. Thus, hybrid peace is constantly evolving and depends on various actors, situated on multiple levels of society (Mac Ginty 2010:403f).

In such an environment, only a “few actors are able to chart and maintain a unilateral course” (Mac Ginty 2011:9). Actors and their goals are constantly re-shaped through the interactions with others (Mac Ginty 2011:89). All involved actors have to take into account the wider structures they are embedded in and adapt to the impact that is created by the actions of others, as they are dependent on each other (Mac Ginty 2010:392). Thus, conflicts and their resolution are always a combination of complex interactions and processes (Mac Ginty 2011:70). The four-part model of hybridity enables a more holistic analysis of conflict, moving beyond macro-level actors and away from a short-term view (Mac Ginty 2011:12). Mac Ginty (2011:68f) emphasizes that his concept of hybridity includes local actors, without romanticizing them. Further, it deconstructs the liberal peace as an overly powerful concept, allowing for appropriate critique and the exploration of possible alternatives. Thus, the concept of hybridity deals with two common misconceptions: the first being that the liberal peace is overly powerful – although it still represents the dominant form of peacebuilding and should be criticized as such; and the second the tendency to romanticize all things local (Mac Ginty 2011:207).

However, Mac Ginty (2011:77) stresses that the model remains an abstraction, since reality is certainly much more complex. Nonetheless, it allows to move away from a purely state-centric view and to identify the variety of involved actors. As any other social model or theory, the four-part model remains a simplification. Nonetheless, it is meant to be useful to gain a better understanding of the dynamic processes that occur in post-conflict societies that are faced with peacebuilding interventions and TJ (Mac Ginty 2011:89).

Mac Ginty’s model is one of many ways to conceptualize hybridity, as was mentioned at the beginning of this section. However, I chose to focus on the four-part model in more detail, because I believe that it is especially suited to describe the emergence of hybrid structures. Compared to the others described by Belloni (2012), it includes the context (in contrast to game theory), accounts for the fluidity of approaches that might change over time (less in path-dependence theory), is less state-centric (than critical theory), and involves local actors as active agents as opposed to merely beneficiaries of an external plan (in contrast to game- or path-dependence theory), but still accounts for the real power of the liberal peace (critical theory makes it seem easy to subvert).

Belloni (2012:30) similarly expresses the advantages of the four-part model. He concludes that it highlights the complexity of the context, in which peace building and TJ take place.

Further, local actors are involved as active stakeholders, which have the power to resist and shape international peacebuilding, in contrast to merely subjecting to it. At the same time, it acknowledges that the local ability to shape peacebuilding still remains limited.

## **5.2 Actors**

Hybrid approaches include a wide range of actors as we have seen above. They involve actors and institutions on various levels from international, to national, and local as well as other non-state actors (Belloni 2012:24). Since hybrid approaches link and combine top-down and bottom-up processes, they include actors of contemporary and traditional approaches, as described in the previous two chapters.

## **5.3 Characteristics**

### **5.3.1 Hybridity as an Analytical Tool**

The common analysis of conflict prescribes labels to specific ‘groups’. This leads to the creation of boundaries and categorizations as homogenous entities, where there would actually be much more diversity, than be perceived from the outside (Mac Ginty 2011:1). By contrast, hybridity “encourages us to recognise the fluidity between groups” (Mac Ginty/Sanghera 2012:4). It shows that they are not hermetically sealed-off, unchangeable, and static (Mac Ginty/Sanghera 2012:3). Most importantly, it problematizes boundaries and moves beyond binaries (Pieterse 2001:220,238).

“The concept of hybridity has been heralded as a tool that aids researchers in moving away from what have come to be seen as unhelpful binaries [...] such as modern versus traditional, Western versus non-Western and towards thinking about the multiplicity of outcomes that might occur when two entities meet and interact “ (Peterson 2012:12). The concept of hybridity questions fixed categories and remains open to the fluidity and changing nature of social realities and processes of peace (Mac Ginty 2011:2; Mac Ginty 2010:408). Thus, hybridity can provide an understanding for the dynamics involved in conflict (Belloni 2012:33).

Oftentimes conflict-analysis is too narrow, linear, and static, not accounting for the possibility of changes in attitudes or issues (Mac Ginty 2011:2). Hybridity can function as an appropriate analytical tool, when looking at conflict and conflict resolution (Mac Ginty/Sanghera 2012:4; Pieterse 2001:238). As such, it offers “a more holistic perspective” (Mac Ginty/Sanghera 2012:8), moving away from static models of analysis that only focus on state institutions (Mac Ginty 2012:6f; Richmond 2009:577).

The analysis of conflict, as well as approaches to peacebuilding, should overcome the fixation on the state and be replaced by new ways and concepts that move beyond a state-centric perspective and include other actors and institutions. Thus, just as conflicts today are more complex, so should the answers be (Boege 2006:18f). The concept of hybridity conceptualizes conflict and its resolution as a multi-layered interaction of actors, with many facets and nuances (Mac Ginty 2011:10). Thus, it is “a means of capturing the complexity and nuances of conflict” (Mac Ginty 2011:8). Complexity is acknowledged through the recognition of the specific circumstances and challenges that each post-conflict situation brings (Belloni 2012:33f).

Acknowledging hybridity counters mediatized pictures of total destruction and decay in post-conflict zones in addition to the perception of local actors as mere victims who rely on outside aid (Mac Ginty 2011:209f). Usually local capacities for dealing with conflict and providing security do already exist (Mac Ginty 2011:209; Belloni 2012:34). In order to resort to these, in times of transition, local actors must be involved “as active agents – and not merely auxiliaries” (Weinstein/Stover 2004:21). When people in a conflict are not seen as recipients of outside aid, but as a resource, local and traditional knowledge becomes valuable in defining possible approaches. Furthermore, this enhances sustainability and self-reliance (Lederach 1995:31f). Thus, approaches need to engage with the local and its actors. Additionally, the focus has to move from a negative view of what is missing, to looking at how already existing resources can be used and further developed (Belloni 2012:34).

### 5.3.2 Positive Aspects of Hybrid Approaches

The concept of hybridity draws attention to local actors that might otherwise not be taken into account. In this way, it recognizes and acknowledges already existing forms of political practice (Mac Ginty 2011:5,17). As a consequence, hybrid approaches **respect local realities** and encourage local responsibility (Boege et al. 2009:19). This in turn, brings more local acceptance and enhances the legitimacy of the chosen approach. Moreover, hybrid approaches are **more aligned with local needs and expectations** (Belloni 2012:24). As a consequence, hybrid approaches can produce a more sustainable and stable pace (Mac Ginty 2010:408; Jarstad/Belloni 2012:4; Belloni 2012:34; Richmond 2009:572).

Hybrid approaches acknowledge that local ownership is just as important as building state institutions (Boege et al. 2009:19). They highlight the plurality of peace and possible ways to achieve it, while at the same time emphasizing that elite-level peace processes can provide

stability (Richmond 2009:578). External and elite-level actors can provide a safe environment (Clements 2004:19), enable communication between opposing parties, and provide resources (Mac Ginty 2011:223). They contribute knowledge, international credibility, and financial resources for local capacity building (Theissen 2004:13f). External intervention is needed – “The idea that the international community has the option of staying uninvolved and doing nothing is an illusion” (Miall et al. 1999:219). Outside intervention will always be an element of peacebuilding. It can bring in resources, new points of view on protracted conflict, and a necessary level of security. However, what remains questionable is the sustainability of such interventions (Mac Ginty 2011:57).

“Transitional justice initiatives often fail to take a holistic approach to post-conflict reconstruction” (Clark et al. 2008:385). However, approaches need to account for the complexity of the setting they are applied in (Clark et al. 2008:386). As conflict itself is very complex, any attempt at dealing with it has to be as well, addressing the underlying sources (Miall et al. 1999:94). One measure alone, such as trials and tribunals, can always only solve one piece of the puzzle (Hoffmann 2011:90). Thus, Hoffmann (2011:90) sees it as crucial and desirable to combine instruments and approaches and nurture exchange between different institutions, in order to provide a more holistic perspective.

Following a holistic perspective means that interventions in post-conflict areas have to aim at multiple aspects, dimensions, levels, and stakeholders (Weinstein/Stover 2004:21). Top-down and bottom-up approaches have to be combined for successful peacebuilding, as no approach alone can bring a stable peace. State structures (elite-level) are just as important as structures at the grassroots level, but both rely on the other in successful peacebuilding. Micro-level (grassroots) and macro-level (elite) processes have to be connected and their reciprocal relationship understood, as activities on one can influence the other (Clements 2004:18). All in all, TJ strategies should involve a combination of approaches and instruments, in proper sequence (timing), as well as actors from all levels (Theissen 2004:12). It is crucial for long-lasting peace that the local population is engaged in the process in order to create understanding between all stakeholders and actors in a post-conflict society (Mani 2005:33).

Hybrid approaches focus on peacebuilding at various levels of society (Mac Ginty 2011:73). Liberal peacebuilding mainly includes supranational or state actors. Whereas, hybrid approaches include other actors, such as traditional leaders. Further, they **combine formal aspects with informal practices** and traditional institutions (Jarstad/Belloni 2012:3). Therefore, hybrid approaches involve a variety of actors (Belloni 2012:34) along with their



norms, beliefs, and institutions. Hybrid approaches aim to mediate between “a wide array of interconnected [...] liberal and non-liberal, practices” (Richmond 2009:578). Through the inclusion of traditional and local practices, hybrid approaches use elements that are familiar to the local population. Concepts such as democracy can become less alien and more understandable, if they are adjusted to different contexts (Werner 2010:61). In that way, existing tensions between these varied positions are countered (Richmond 2009:578). Clements (2009:3) emphasizes that attention needs to be paid to actors and institutions that have the ability to act as a bridge between different worldviews. For example, legal concepts are not universalistic, even if they claim or aim to be so. They often lose their meaning when applied out of contexts (Hinz 2006b:34). Paradigms have to be questioned and alternatives developed, **which recognize the plurality of worldviews and legal concepts** (Hinz 2006b:41). Hybrid processes mean positive interaction; through which different positions are constructively reconciled with each other (Mac Ginty 2010:407). Recognizing hybridity means moving beyond definitions of justice and peace that are seen as superior (such as the liberal peace) and supports the notion that there are different views on peace – thus a “plurality of peace” (Mac Ginty 2011:11).

Hybrid approaches are seemingly better equipped to deal with methodological issues, but is this also the case with more practical matters? While, liberal/contemporary approaches are better equipped to deal with the technocratic aspect of peacebuilding, local/traditional approaches are better at dealing with the emotional dimension of peacebuilding, such as reconciliation (Mac Ginty 2010:408). Nonetheless, no approach should be abandoned entirely. Instead ways need to be found “to enrich western and non-western traditions through their mutual encounter” (Miall et al. 1999:4). The **adaptability and fluidity** of hybrid approaches allows for the integration of different elements into something new (Boege 2006:6). Consequently, hybrid approaches aim at **combining the most effective features** of contemporary and traditional approaches (Mac Ginty 2010:408).

Teitel (2000:219) points out that there is not one correct way of or approach to dealing with the past, as transitions always depend on various factors and circumstance. Likewise, as many other scholars, Sriram (2004a:5) emphasizes that “there is no one-size-fits-all prescription”. Issues of justice, especially in post-conflict settings, are always complex and cannot be met by template-style, universal solutions (Mani 2005:31). There is not a magic formula of TJ that can be applied to all post-conflict contexts and societies, as each case is unique and brings

special circumstances (Springer 2009:20). Therefore, Ambos (2009:6f) stresses that specific and contextual approaches to TJ are needed, which are designed following interdisciplinary analysis. Instead of pre-fixed, template-style solutions, the focus should be on formulating “unique solutions based on the cultural and historical context” (Werner 2010:72). Contexts always vary and a number of factors have to be kept in mind when designing TJ-initiatives (as was noted already in Chapter 2). These are, among others: the international involvement, the type of violence and transition, as well as the availability of traditional approaches and resources (Huyse 2008b:198).

“Only an approach that is appropriate to the specific country and context, that takes the existing options for action into account and is sensitive to local traditions and conflict resolution practices can hope to succeed” (Theissen 2004:12). Hybrid approaches take a contextual view on conflict, moving beyond one-sided approaches (Pieterse 2001:238). Thus, it can be argued that by remaining contextual and focusing on the local circumstance, hybrid approaches allow for a more context-sensitive and situational approach. Furthermore, as Clark (2007:765) points out, they constitute a more holistic approach in which various institutions and actors are combined to achieve maximum effects. As such, they can be more comprehensive and effective.

To recap, hybrid approaches have a range of positive aspects, as was outlined above. Nonetheless, there are possible pitfalls, shortcomings, and a range of open questions that have to be kept in mind.

#### **5.4 Critique and Open Questions**

Especially Peterson (2012) builds a critique of the concept of hybridity, highlighting its limitations. Many studies depict it as the new ‘magic formula’. Peterson (2012:17) refers to this tendency as “utopian idealism”. It certainly often seems like the comprehensive aims of hybrid approaches and what they are thought to be capable of achieving, sounds too good and almost unattainable. Can they hybrid approaches really fulfill these high expectations?

Peterson (2012:17f) does acknowledge the advantages of using the concept, yet calls for caution and careful analysis: “while there are clear analytical advantages in employing a lens of hybridity in peace and development programming, they need to be balanced against the potential analytical hurdles”. Thus, Peterson does not question hybridity as a category in itself, but calls for attention and a better understanding of possible downsides.

Peterson (2012:13) raises the question if hybridity as a concept that aims at moving away from binaries does not itself enforce these. To be useful as an analytical tool, that looks at the interaction between entities, categories still need to be defined that might as well create binaries and taint findings. Here she calls “for greater methodological clarity. Researchers interested in exploring hybridity need to consider carefully who or what entities they seek to analyse” (Peterson 2012:13f).

Another issue that is mentioned is the problem of relativism. This follows the assumption that the concept of hybridity carries the danger of rendering itself useless, if everything is described as hybrid: “if everything is hybrid, what does hybridity mean?” (Pieterse 2001:236). As a consequence, the concept loses its power as an analytical tool (Mac Ginty/Sanghera 2012:7), or might even become obsolete (Mac Ginty 2011:73). However, Mac Ginty (2010:396) argues that if hybridity is conceptualized as a process, this is less likely to happen. Therefore, it is important to recognize different degrees of hybridity (Mac Ginty 2011:73). Hybrid approaches differ and come in various shapes and types. Some tend more towards liberal/contemporary approaches while others put more emphasis on traditional elements (Jarstad/Belloni 2012:3).

Nonetheless, Mac Ginty (2011:210) acknowledges that hybridity “is often problematic and not necessarily pacific”. Hybrid approaches do have their limits and can face dilemmas, when the actors that are involved have very differing ideas and viewpoints (Mac Ginty/Sanghera 2012:6; Richmond 2009:572f). “For example, Western liberal notions of inclusion may be offended by the patriarchy of some endogenous social practices” (Mac Ginty/Sanghera 2012:6). Thus, international actors might not be willing to accept hybrid approaches, when local ways of dealing with conflict collide with international standards (Mac Ginty 2011:212). Another possible pitfall in the practical application of hybrid approaches is that these could be instrumentalized and used as a justification for hegemonic actions by international actors. The concept of hybridity offers ways to gain legitimacy as it ‘sells well’. Using the term “hybrid” or emphasizing the interest in local partnerships could just be a pretext to gain legitimacy (Peterson 2012:17). Even if liberal peace actors have come to encourage the incorporation of traditional approaches, this might just be used as a vehicle for advancing the liberal peace (Mac Ginty 2011:60f).

Connected to this, and indeed very problematic, is the tendency of “downplaying [...] issues of injustice and power” (Peterson 2012:14). On the one hand, there are differing levels of power at the local level. Not everyone has the capacity to question or resist the liberal peace

and power imbalances at the local level itself also create marginalized groups (internal marginalization) (Peterson 2012:14). On the other hand, there are profound structural inequalities between international and local actors. “Where do these global power differentials fit in the employment of hybridity?” – Peterson (2012:15) asks. Does the emphasis on the possibility of resistance to the liberal peace, obscure these tendencies of domination and injustice (Peterson 2012:14)? Hybridity can actually fail to see existing power-relations and inequalities, if actors are perceived as equal in hybrid approaches (Pieterse 2001:224).

“It is important not to underestimated the power of the liberal peace” (Mac Ginty 2010:408) as it is still the dominant and most prominent approach to peace. Mac Ginty (2008:156) concludes that the liberal peace remains dominant, even in hybrid approaches. As a result, traditional approaches are overruled and marginalized (Mac Ginty 2008:156).

The incorporation of traditional approaches, if adapted to meet specific international standards and criteria, raises questions (Werner 2010:61f), such as: How much have traditional approaches been adapted to suit the norms of the liberal peace? Are they still indigenous and authentic enough to be trusted by the local population? How can communities be properly engaged in the design-process of hybrid approaches, to ensure local ownership and cultural appropriateness?

The liberal peace, with its resources, can be so overpowering that it limits the space for alternatives. Granted, liberal peacebuilding can provide the needed support for local measures. However, the question remains if heavily funded traditional approaches can still be seen as such (Mac Ginty 2008:157). Too much external influence or extensive adaptation to western ideals can mean that the essence of traditional approaches is lost, which in turn also affects their attractiveness and effectiveness (Mac Ginty 2008:156; Mekonnen 2010:118). Mac Ginty (2011:61) suggests that much of the control and decision-making power still lies with the actors of the liberal peace. Most of the processes have the tendency of ending in an adaption to western norms. Although there is a tendency towards actually taking the local serious and actively engaging in mutual interaction, it is often mere pretense (Mac Ginty/Richmond 2013:776-779).

Ideally, hybridity should be the outcome of an equal interplay of various elements and actors. Therefore, it is important to analyze how these hybrid structures came to be and who had the decision power in the design-process. There are indeed different types of hybridity. Some hybrid approaches emerge naturally and others are purposefully installed. This is also referred

to as organic versus intentional hybridity, referring to hybridity that is created, as opposed to hybridity that develops through everyday practices (Peterson 2012:19). Here, Pieterse (2001:237) also differs between asymmetric and symmetric hybridity, to account for the weight and power of different elements within hybrid approaches.

“The question is how to accomplish a realistic level of complementarity between international and domestic institutions” (Villa-Vicencio 2009:47) without running the risk of being imposed from the outside and facing charges of neo-colonialism. How this is done depends on contextual factors (Villa-Vicencio 2009:48). The blending of different practices is often difficult to achieve, as hybridity is not easily developed and is influenced by a lot of factors (e.g.: the possible weakened position of local actors after war or internal conflict) (Mac Ginty/Sanghera 2012:4). Therefore, Mac Ginty and Sanghera (2012:4) call for caution when recommending a hybrid approach as the perfect solution.

To foster truly hybrid approaches, a system of exchange and cooperation would need to be created, to which all involved actors feel responsible and that allows for difference and cooperation at the same time. This might be difficult, as it would involve mediation between very different positions and inherently bounded worldviews, as well as definitions of peace (Richmond 2009:572f).

Another important question that remains is: How to balance the various elements in hybrid approaches, without creating imbalance? For example: how much prosecution, without hindering reconciliation? What is the right balance between retributive and restorative justice? This reflects a main challenge in designing any TJ response (Chakravarti 2012:1).

Maybe some of these questions can be answered by looking at a specific case. Thus, after having presented general thoughts on hybrid approaches, I will now turn to a their practical application. This chapter, in addition to the three previous chapters, constituted a theoretical approach. It should now be clear what the main issues of TJ are, how different approaches look like, and how these interact to form fusion practices that are referred to as hybrid approaches. With this theoretical construct as a base, I will now turn to the case of Rwanda and more specifically the hybrid institution of Gacaca.

## 6 Case Study – Rwanda

Between April and July 1994, one of the most grueling genocides in contemporary history took place in Rwanda. In just three months, almost a million people were brutally killed (Hankel 2011:169).

Systematic violence on ethnic grounds had prevailed in Rwanda since independence from colonial rule. First violent attacks on the Tutsi minority took place in the late 1950s and early 1960s. The government exempted itself from responsibility through granting widespread amnesties. This only further fuelled distrust between groups and deepened ethnic cleavages (Karekezi et al. 2004:70). In the early 1990s, tensions in Rwanda were highly ethnicized, along Hutu/majority versus Tutsi/minority lines. Ethnicity was also strongly politicized and instrumentalized by the regime, at that time (Ingelaere 2008:30). On April 6, 1994 an airplane carrying the Hutu president Juvénal Habyarimana, and other high-ranking officials, was shot down. This event sparked the genocide against the Tutsi minority. What followed was unprecedented: in just 100 days 80,000 Tutsi and moderate Hutu, and members of the opposition, were killed (Ingelaere 2008:25). Even if it is often portrayed as spontaneous mass murder, what happened in Rwanda, in early 1994, was in fact a genocide planned and administered by the state, which had mobilized an extremely high number of civilians (Des Forges/Longman 2004:50f).

The number of victims and perpetrators, the systematic violence, the public involvement, and the short time span of events were deeply shocking (Karekezi et al. 2004:70). The international community was outraged by the events. The same year, an ad-hoc international criminal tribunal was installed (Hankel 2011:169). Nevertheless, the reluctance and failure of the international community to intervene earlier and maybe even prevent the genocide is often analyzed and debated (for example by Carey et al. 2010:174-177). Yet I will not go into detail about this. Moreover, a comprehensive analysis<sup>32</sup> of the causes and developments leading to the genocide is not the aim. For further details and information on Rwanda one can consult the Conflict Map in section 6.1. However, the main focus is on the measures taken after the events, thus the response to the genocide. Therefore, I will concentrate on how Rwanda dealt with its past and aimed at administering transitional justice.

The first section of this chapter contains the Conflict Map, which provides background information on the case. Following this general overview of the case, I will turn to Rwanda's

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<sup>32</sup> As can be found in Paris (2004:69-78).

TJ approach, tracing the measures that were implemented on three levels, from the international to the local level. The focus will then remain on the local level and the next section will concentrate on the actual object of interest – Rwanda’s Gacaca courts, as a hybrid approach to TJ. I will describe the evolvement of Gacaca from a traditional justice system to its modern application as an approach to TJ. The following section will then elaborate on the characteristics and process of the modern institution. Following these general descriptions, I will analyze how Gacaca fits into the theoretical model of hybrid approaches, as outlined in the previous chapter. On this basis, the next section will turn to an in-depth evaluation of the positive and negative aspects of Gacaca. Subsequently, I will examine Gacaca’s contribution to TJ in Rwanda and finally point to lessons learned from this specific case.

## **6.1 Conflict Map**

The following section is based on the “Conflict Mapping Guide” by Miall et al. (1999:92f). I follow the structure and headings of this guide. It was designed for use in conflict analysis<sup>33</sup>, which is applied to ongoing conflicts in order to anticipate possible developments and define entry points for conflict resolution. However, I have adapted this method in the context of my thesis and used it as a tool to gain an overview of a past conflict. Using the conflict mapping method, I hoped to gain insights into the past and present situation in Rwanda. This helped me to better situate and understand my case study, while at the same time only remaining a spotlight on a much more complex conflict. Thus, this Conflict Map served as background information and was an important first step in approaching the case study.

## **I BACKGROUND**

### **a. Map of the Area and Brief description of the country (*Rwanda today, early 2014*)**

Rwanda is a country in Central Africa, spanning an area of 26,340 km<sup>2</sup> (comparable to the size of Macedonia or approx. one third of Austria) (Statistik Austria 2013:536f; Magnarella 2005:801). It is a landlocked country in Africa’s Great Lake Region, bordered by Burundi, Tanzania, the Democratic Republic of Congo, and Uganda (CIA 2013). As Rwanda’s terrain is rather hilly, it is often termed the “land of a thousand hills” (Magnarella 2005:801).

About 12 million people live in Rwanda, making it Africa’s “most densely populated country” (CIA 2013). Only 19% of population (as compared to 68% in Austria) resides in urban areas, such as the country’s capital Kigali (CIA 2013).

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<sup>33</sup> For a concise guide to conflict analysis, see: APF (et al.) (2004): Conflict-Sensitive Approaches to Development, Humanitarian Assistance and Peacebuilding: A Resource Pack, Chapter 2.



**Figure 3: Map of Rwanda and surroundings, Source: own design**

Rwanda is inhabited by three linguistically and culturally rather homogenous groups (Bangamwabo 2010:225). The exact numbers vary, but range around: 80% Hutu, 15% Tutsi, 1% Twa. The official languages are Kinyarwanda, French, and English (CIA 2013).

Rwanda's administrative structure was introduced under Belgian colonial rule and divides the country into districts, sectors, and cells/cellules. Cells are equivalent to neighborhoods and sectors to small villages (Ingelaere 2008:41). One cellule includes around ten extended families, which amounts to approximately 830 people. A sector is made up of six cellules, with an average of 5000 people (Clark 2007:780). There are a total of 10.000 cells and 1.500 sectors (Hankel 2011:173). Four provinces range above the other subdivisions (CIA 2013). This division was apparently valid until recently. However, Pozen et al (2014:38) refer to "five provinces subdivided into districts, sectors, cells and villages".

In 2010, Paul Kagame was elected to serve his second term as president. Rwanda is officially a presidential republic, with a multi-party system and regular elections (CIA 2013). In spite of that, the country can be described as under semi-authoritarian rule. Everything down to the smallest entity of social life is controlled by the state and there is a lack of freedom of expression (Hankel 2011:179-182).



“Rwanda is a poor rural country with about 90% of the population engaged in (mainly subsistence) agriculture” (CIA 2013). It had been “a poor agricultural society” (Caicedo 2010:74) and highly populated country already prior to the conflict. The years before the outbreak of the genocide were characterized by rapid population growth, which, according to Caicedo (2010:74), might have exacerbated the situation. The 1994 genocide deeply affected Rwanda’s already fragile economy. Yet the years following the genocide have led to considerable economic growth, although almost half of the population still lives in poverty (approx. 44% below the poverty line) (CIA 2013).

Not only Rwanda, as a society, was and still remains deeply affected by the 1994 genocide, but also the surrounding region (Clark/Kaufman 2008:1). The whole Great Lakes Region has been very instable over the past 20 years (Bangamwabo 2010:225).

#### **b. Outline history of the conflict** (*Historical Background*)

Pre-colonial times were characterized by Tutsi supremacy in a feudal system (Bangamwabo 2010:225). Rwanda was a Tutsi kingdom, in which these were wealthy cattle farmers and the Hutu majority underprivileged agricultural farmers. It is often said that before colonialism the classifications of Hutu and Tutsi only referred to one’s occupation and social status and could be acquired or lost over time. However, there are different views on these categorizations as either ethnic or socio-economic makers (Ingelaere 2008:26).

Rwanda was colonized by Germany in 1897, followed by Belgium from 1919 until the country’s independence in 1962. The Tutsi minority cooperated with the colonial forces in order to secure power. During that time ethnic identity became central and significant (Ingelaere 2008:26). This was reinforced when Tutsis were privileged under colonialism. The Belgian colonial forces allowed the Tutsi elite to rule under their supervision, which enforced a hierarchy and imbalances along ethnic lines (Caicedo 2010:71).

In 1959 a Hutu rebellion took place and the Tutsi elite was ousted from power. Following these events, the first wave of refugees fled to neighboring countries. In exile, a second generation of Tutsi refugees formed the Rwandan Patriotic Front (RPF) and its’ military arm – the Rwandan Patriotic Army (RPA) (Ingelaere 2008:27; CIA 2013; Caicedo 2010:78).

Rwanda gained independence in 1962. The first elections were held, which the Hutu party MDR (Mouvement Democratique Republicain) won. A Hutu-dominated, totalitarian regime was installed (Bangamwabo 2010:226). A single party political system and a highly centralized hierarchy, with far-reaching chains of command, deeply permeated social life and

served to enforce presidential power. President Juvénal Habyarimana strongly propagated Hutu-power, further fueling ethnic tensions (Ingelaere 2008:28).

In 1990 some liberal reforms were carried out, including attempts at installing a multi-party system. These were reactions to outside influences, such as the wave of democratization following the end of the Cold War and structural adjustment programs. At the same time, the RPA attacks Rwanda, marking the beginning of a civil war (Ingelaere 2008:28). In 1993, peace talks between the RPF and the Hutu government take place in Arusha, Tanzania. In August of the same year, the Arusha Agreement is signed and a UN peacekeeping force deployed to Rwanda – the United Nations Assistance Mission for Rwanda (UNAMIR). However, the transitional government, which had been decided upon in the peace agreement, was never installed and UNAMIR only deployed with delay and reduced resources (Miall et al. 1999:133f). Clearly, the Arusha peace talks had failed and the Peace Agreement was never implemented (Bangamwabo 2010:226). What followed were political instability, militarization, radicalization, and attacks on the Tutsi minority (Ingelaere 2008:29).

On April 6<sup>th</sup>, 1994 a plane, carrying President Habyarimana, is shot down, killing all its passengers. The same night, a meticulously planned and centrally organized genocide began. It was “deliberately organized” (Miall et al. 1999:133) and “state-orchestrated” (CIA 2013). The first victims were the political opposition (including moderate Hutus) and civilians who were involved in the peace process. The violence quickly spread across the country. Subsequently, anyone belonging to the Tutsi minority was targeted. At the height of the genocide, the UNAMIR peacekeeping force was drastically reduced, following a decision of the UN Security Council. Only a small group remained stationed in the capital (Miall et al. 1999:135). In not more than three months – from April to June 1994 – around 80,000 people were killed and millions internally displaced or forced to flee into neighboring countries. The extent, time-span, and complexity of the genocide were unprecedented and deeply shocking (Clark/Kaufman 2008:1; Miall et al. 1999:135).

On July 4<sup>th</sup>, 1994 the RPF takes over power, following a military intervention and victory. A Tutsi-led government is installed and the old regime flees, along with another wave of refugees. However, the violence continues until the late 1990s, contributing to high regional instability through spillover effects.

Nowadays, the RPF, as the clear victor, shapes post-genocide Rwanda with a wide-ranging strategy on transitional justice. This TJ agenda rests on visions of justice, reconciliation, and unity. The Gacaca Jurisdictions are an integral part of this vision of a “new” Rwanda (Ingelaere 2008:31f).

## II THE CONFLICT PARTIES AND ISSUES *(before and during the 1994 genocide)*

### **a. Who are the core conflict parties?**

- The Hutu-led government (in the hands of a small elite) under President Habyarimana, in power for the past 27 years (prior to 1994); with militias and (partly) state-controlled media (Caicedo 2010:76f). Additionally, the CDR (Coalition pour la Défense de la République), a Hutu-based, openly anti-Tutsi, party; created in 1992 entertaining direct links to high-ranking members of the regime (Paris 2004:72)
- The Rwanda Patriotic Front (RPF), a – mainly Tutsi – nationalist, rebel organization; created in 1988, in Uganda; waging a guerilla war, with the agenda of liberating Rwanda from the oppression by the Hutu government (Caicedo 2010:78f)
- Moderate Hutus (inner-Hutu opposition), supporting democratic changes and peace talks as well as the inclusion of the RPF (Caicedo 2010:81,90)
- France (supporting the Habyarimana regime, by supplying weapons and military training for the Rwandan army) and Uganda (supporting the RPF), as outside influences (Der Standard 2014; Caicedo 2010:79)
- The Rwandese diaspora in neighboring countries; a large number of refugees, who fled at various times and are mostly living in refugee camps in neighboring countries; nationalist, highly organized, and politicized (see RPF) (Caicedo 2010:73)

### **b. What are the conflict issues?**

Perceived and constructed as an ethnic conflict, it is often noted that it cannot be seen as purely an outbreak of lingering ethical violence or tribal hatred. It goes much deeper and is more politicized than might appear at first sight. Poor governance and social inequality could be seen as structural causes. Other factors that contributed were: the diaspora, that played a role in feeding and escalating the conflict, as well as a growing radicalization and militarization of the country (extensive training of militias). A climate of distrust and hatred on ethical grounds was created and cultivated over the years. However, the trigger of the genocide was the assassination of President Habyarimana. What followed was an unprecedented mobilization of the population, which had been prepared through widespread propaganda (radio station, newspapers) (Caicedo 2010:73).

### **c. What are the relationships between the parties?**

Prior to the 1994 genocide social, political, and economic power was firmly in the hand of the Hutu-led government.

Tutsis were excluded from opportunities in these areas. Nonetheless, inequality was also prevalent among Hutus (elite vs. general population) (Caicedo 2010:72f).

**d. What are the different perceptions of the causes and the nature of the conflict?**

- Government: protecting Rwanda from the Tutsi minority and the threat it poses to the Hutu majority, which might be enslaved by the minority again, just as in pre-independence times. Furthermore, Tutsis and moderate Hutus were the scapegoats for Rwanda's economic problems (Caicedo 2010:76f).
- RPF: liberating Rwanda, gaining political power and control; called for political and economic reforms, the establishment of an un-corrupted, democratic government, and the right of refugees to return (Caicedo 2010:89).

Ethnicity is always discussed when talking about the genocide. There are those who define the ethnic division between Hutu and Tutsi as racial, historical, and real and then there are those who view it as a construct that was created under colonialism and sustained for political reasons (Caicedo 2010:71). Caicedo (2010:71) mentions that there is no record of inter-ethnic conflicts in the pre-colonial history of Rwanda. This could be evidence for rivaling ethnic identities being installed through colonialism. These were then used as a mobilizing factor for violence during and after the civil war. in the 1990s (Caicedo 2010:72).

**e. What is the behavior of the parties?**

RPF – waging a guerilla war through its' military arm (RPA), carrying out attacks

Hutu Government – engaging in war, training militias, mobilizing and arming the general population, carrying out attacks on Tutsi and moderate Hutu, ultimately genocide; aided by media propaganda (Caicedo 2010:91)

Additionally, the CDR – spreading its' Hutu-supremacy propaganda through the private radio station RTL (Radio-Télévision Libres des Mille Collines); created “self-defense” units among the population and CDR militias; engaged in attacks on Tutsi and actively involved in the events of 1994 (Paris 2004:72f)

### III THE CONTEXT: GLOBAL, REGIONAL AND STATE-LEVEL FACTORS

**a. State level**

Economic factors: Troubled economic situation, especially in the agricultural sector, which employed about 95% of the population at that time (Magnarella 2005:802). Export deficits, due to the dropping of coffee prices on the international market; inflation, due to a structural

adjustment program in 1990; droughts and other environmental problems that had a direct impact on food crops, creating shortages in the years prior to 1994. Clearly, the economic situation of the time exacerbated already existing tensions (Caicedo 2010:74f; Paris 2004:77). Political factors: External liberalization pressure on the Hutu regime caused it to feel threatened. Furthermore, internal political pressures grew, such as the growing power of the RPF, discontent of less-privileged Hutu, and ethnic tensions (Paris 2004:75). Consequently, Tutsi and moderate Hutus were portrayed as the enemy, in an effort to re-gain legitimacy (Caicedo 2010:75).

#### **b. Regional level**

High levels of instability characterized the region as a whole, already previous to the events in Rwanda. Armed conflicts in virtually all the neighboring countries created spillover effects, such as an available arms market. Furthermore, the neighboring countries had various interests in supporting one or the other party to the conflict (Caicedo 2010:74)

#### **c. Global level**

Alongside other external influences, mentioned above, the global level is especially characterized by the reluctance or failure of the international community to get involved in the conflict. An inadequate response and the unwillingness of major powers to intervene, in order to protect civilians, led to accusations that the international community watched the genocide unfold right before their eyes (Caicedo 2010:87f). The reluctance to intervene was the result of a number of factors. One of which was an overly cautious attitude towards peacekeeping after earlier failures in Somalia (Miall et al. 1999:136f).

### **6.2 Transitional Justice Measures**

The brutality and scope of the genocide deeply affected Rwanda's society. Virtually everyone was involved or affected by the genocide, as well as the conflict before and after. Nowadays, almost everyone is a genocide survivor, victim, perpetrator, refugee, or both. This makes the past very present in Rwandese society, with perpetrators and survivors living side-by-side; rendering the task how to deal with the past even more daunting (Rahman 2010:70f).

The response to the genocide by Rwanda's new government, which was installed in the summer of 1994, became an extensive enterprise. It aimed at countering impunity and fostering reconciliation. In order to achieve these aims, various judicial and non-judicial measures, on different levels, were installed (Karekezi et al. 2004:71).

Rwanda's approach to transitional justice is one of the prime examples for accountability in post-conflict contexts (Schabas 2008:207; Uvin 2003:116). The prosecution and punishment of all perpetrators was a central concern, although the administration of justice was complicated by the high rate of public involvement (Des Forges/Longman 2004:49,51). As in many other settings of mass atrocities, the number of perpetrators overburdened the judicial system (Springer 2009:19).

Initially, only international and national prosecutions were installed. However, as failures of these became apparent the idea to turn to a traditional institution for conflict resolution, called "Gacaca", was born (Karekezi et al. 2004:71). As a result, Rwanda's response to how to come to terms with the past became fragmented and "involved a multifaceted approach" (Rahman 2010:70), in which different judicial measures on an international, national, and local level were combined. Such an approach was clearly needed due to the scope and scale of the genocide (Rahman 2010:70f).

I will now look at these different measures, from the international to the local level. This also corresponds to the chronological order at which the different instruments were installed: on the international level, an ad-hoc criminal tribunal was installed in 1994, then in 1996 a law was adopted, which equipped domestic courts to prosecute genocide related crimes, and finally in 1999 the decision was taken to install Gacaca on the local level.

### **6.2.1 International**

In November 1994, the **International Criminal Tribunal for Rwanda (ICTR)** is installed; modeled after the International Criminal Tribunal for the Former Yugoslavia (ICTY)<sup>34</sup> and based on a Security Council resolution (Des Forges/Longman 2004:52). Its mandate defines the purpose of the tribunal as: the prosecution of and punishment for gross human-rights violations, crimes against humanity, and genocide, committed in the year 1994. The persons responsible for these acts are to be tried, in order to foster peace and national reconciliation through justice (UNSC 1994:1,3-5).

The ICTR was established, similar to the ICTY, by the international community, as a reaction to its failure of timely intervention (Weinstein/Stover 2004:10f). Coming from the outside, the tribunal had the advantage of being seen as neutral and unbiased (Schabas 2008:212). Schneider (2009:87) states that the merit of the ICTR lies in having substantially contributed to truth finding and having been able to establish how the genocide was organized and carried out. Moreover, the ICTR is seen as having substantially contributed to the establishment of

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<sup>34</sup> See Chapter 3, section 3.2.2.

international human rights law (Des Forges/Longman 2004:57). However, it faced a range of problems.

Especially at the beginning, the tribunal came across serious administrative problems (Schabas 2008:211). There was a lack of staff, adequate equipment, and financial resources. Besides, a clear strategy on how to proceed was missing. Moreover, it was faced with serious accusations of corruption and allegations of poor treatment of witnesses. Additionally, it carried out its work under difficult relations with the Rwandan government (Des Forges/Longman 2004:52-55). Yet one of its greatest weaknesses, by far, was that the population had little knowledge about the work of the tribunal and perceived it as too distant and foreign (Des Forges/Longman 2004:62; Sriram 2004b:77; Rahman 2010:71). Through the geographic (the ICTR was held in Tanzania) and linguistical distance (it was held in English), but also its limited mandate and authority, its contribution to reconciliation was limited (Weinstein/Stover 2004:11). Besides, the ICTR proceedings proved to be costly and slow (Schabas 2008:211; Sriram 2004b:78). All these shortcomings “led to a growing sense that the ICTR by itself was not a sufficient response” (Rahman 2010:71).

### 6.2.2 National

Another layer of the genocide response was the **domestic court system** at the national level. Following the genocide, more than 100,000 persons were arrested and detained. The Rwandan courts took on the majority of trials<sup>35</sup>. However, legal foundations, a sound judicial infrastructure, and trained personnel were lacking, due to the conflict (Des Forges/Longman 2004:58). As many other spheres of public life, the national justice system had been deeply devastated by the genocide (Schabas 2008:212; Wielenga/Harris 2011:16).

In August 1996, a specific law was created to try acts of genocide, referred to as the “Organic Law”<sup>36</sup>. It created specialized courts and chambers for trials. Furthermore, it defined four categories of offenders (Des Forges/Longman 2004:58f):

- Category I<sup>37</sup>: includes the planners, organizers, leaders, and supervisors of the genocide, high-ranking members of the government or military involved in the genocide, as well as particularly cruel murders and rape
- Category II: includes murder or the intention to kill (also under orders)

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<sup>35</sup> In two cases Switzerland and Belgium carried out third-party domestic trials of alleged genocide perpetrators. Both ended in prison sentences (Des Forges/Longman 2004:49,57f). Just recently, the trial of a former official of the Rwandan army has begun in France (according to news coverage, e.g. in the Austrian daily newspaper “Der Standard”, February 6, 2014, pp.4).

<sup>36</sup> Organic laws are seen as complements to the Constitution and rank immediately after it (Schabas 2008:214).

<sup>37</sup> Only a small number of detainees in the domestic system fall within this category, as the ICTR is mainly responsible for trying first category offenders (Schabas 2008:214; Sriram 2004b:78).

- Category III: is applied to cases of bodily harm
- Category IV: contains property offences

The trials at the domestic level, especially in their initial phase, were faced with criticism. This related to the lack of proper legal counsel for defendants and some mishandlings concerning fair trial (Schabas 2008:216). Additionally, the domestic trials were accused of being politically influenced, one-sided, and part of an agenda to re-enforce ethnic divisions by the new leadership. Moreover, the domestic prosecution process was very slow (Des Forges/Longman 2004:59-61).

Prior to 2002, one out of four, in the adult population, was imprisoned and awaiting trial (Wielenga/Harris 2011:16). Even though the domestic system worked on a high number of cases, 60,000 persons were still in prison and awaiting trial by 2005. A number that was estimated to take over 80 years to be prosecuted, as Schabas (2008:219) points out, while others claim even higher numbers<sup>38</sup>.

All in all, Rwanda was faced with a situation that even a functioning judicial system would struggle with. Dire circumstances in Rwanda's prisons – such as overcrowding, sickness, deaths, and incarcerations for long periods of time without a trial – were weighing on the domestic court system and the public alike (Hankel 2011:171; Uvin 2003:116). Besides, survivors and perpetrators were oftentimes faced with living alongside each other, when prisoners were released and sent back to their communities, as a measure to counter growing pressures (Clark 2008b:310f). Ways of dealing with these social problems, and alternatives to standard judicial measures, were desperately needed (Wielenga/Harris 2011:16).

### **6.2.3 Local**

In 1998, the president of Rwanda established a commission, which had the task to explore alternatives to conventional judicial proceedings. The goal was to counter the problems faced by the domestic court system and to explore mechanisms that would involve the public in the TJ process (Schabas 2008:221). At various expert meetings from 1998 to 1999, which included government, military, and judicial representatives, in addition to political leaders and civil society, the possibility to turn to traditional methods and institutions was discussed (Karekezi et al. 2004:71; Ingelaere 2008:46,36f). The idea was to install “community-based courts [...] overseen by locally elected judges” (Clark 2008b:297), modeled after or building on an already existing traditional institution. The commission agreed on the establishment of

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<sup>38</sup> For example, Rahman (2010:71) refers to 200 years or Uvin (2003:116): “more than a century”.



local Gacaca courts in June 1999 (Schabas 2008:221). The new Gacaca quickly advanced to be “an unprecedented legal-social experiment in its size and scope” (Uvin 2003:116f).

“The major impetus for developing Gacaca as a new judicial strategy came out of a desire to speed up trials [...] but it also was driven by discontent with [...] the classical judicial approach, with its adversarial nature” (Des Forges/Longman 2004:62). As a central element of a nationwide program for TJ, it was to serve the broader objective of truth-finding and reconciliation on a local/communal level, in order to support the reconstruction of Rwandan society (Clark 2008b:299).

### **6.3 Gacaca**

Gacaca refers to a traditional method of dispute resolution and indigenous judicial system, which was nearly forgotten when it was replaced by European legal institutions, under German and Belgian colonization. However, it was partly resurrected and employed on a local level after independence (Schabas 2008:222; Waldorf 2010:186f). “Gacaca” means ‘grass’ in Kinyarawandan, as Gacacas were traditionally held while sitting on the grass (Schabas 2008:221). The original version of Gacaca had been carried on, at the local level, through colonialism and after independence, even if in already altered form<sup>39</sup> (Ingelaere 2008:34f). It was then brought back into the spotlight through a government initiative in 1999, as described above.

Scholars agree that the old and new Gacaca differ substantially (Rauschenbach/Scalia 2008:454; Clark 2008b:302). It is argued that they are essentially different and only have few similarities. Nonetheless, a common orientation remains (Ingelaere 2008:32).

#### **6.3.1 Evolvement of Gacaca**

In pre-colonial times, Gacaca was based on unwritten law and took place as outdoor gatherings to discuss community disputes (Clark 2007:777f). It had an informal character and included all aspects of traditional approaches, as outlined in Chapter 4 (Karekezi et al. 2004:73). The traditional Gacaca handled property crimes, but sporadically also included cases of murder (Ingelaere 2008:35,44; Schabas 2008:222). The main objective was to re-install order and harmony, through the re-integration of individuals into the community. Imprisonment was not an option. The process was led by elders, which were strictly men. Women were only allowed to participate if they were directly involved in the dispute, as defendants or claimants (Clark 2007:778). Participation was voluntary, but social pressure

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<sup>39</sup> I do not see an evolvement of the ‘original’ version as problematic or contradicting, as it would actually correspond to the definition of traditional approaches as constantly evolving – see Chapter 4, section 4.1.

regulated the process and ensured the enforcement of decisions, as disputes were seen as a communal matter. Decisions were reached in consensus (Karekezi et al. 2004:73). At the end of the process, the reconciliation of the conflicting parties was symbolized by an affirmative ritual, which included the sharing of drink or food (Clark 2007:778f).

During Belgian colonial rule, Gacaca was slowly formalized and institutionalized, in order to operate alongside the official, judicial system (Clark 2007:779). Moreover, its jurisdiction became limited to civil disputes (Hankel 2011:171). Modifications of this kind continued after independence. However, the biggest evolution took place when Gacaca needed to be adapted to meet the challenges caused by the genocide (Ingelaere 2008:44). As a result, some elements and features remained, others were adjusted, and new ones were added (Wielenga/Harris 2011:16).

The modern version of Gacaca is referred to as “Inkiko Gacaca”, which can be translated to Gacaca trials (Waldorf 2010:187). It is also referred to as “Gacaca jurisdictions” (as stipulated in Organic Law No. 33/2001). This new version is “highly formalised, with strict rules of procedure” (Bangamwabo 2010:231). It is based on written law, making it less informal, with specific rules and clear procedural steps that have to be followed. Furthermore, it is ultimately overseen by local state-authorities (Karekezi et al. 2004:74). Thus, the overall process in Gacaca jurisdictions is more systematic and organized (Clark 2007:788).

Initial support for Gacaca and public participation in the process was high (Werner 2010:64). However, after sinking rates of attendance and reduced interest in Gacaca, mandatory attendance for the adult population was introduced, in 2004 (Waldorf 2010:190). Non-compliance could be met with fines or even short prison sentences (Hankel 2011:173). Imprisonment became an option for punishment in general, but could be (partially) replaced by community service, in exchange for a confession (Clark 2008b:303). A “Confession and Guilty Plea Procedure” was included in the Gacaca Law, which implied that full confession and disclosure of the crime, in the last three categories, could reduce sentences (Schabas 2008:214).

Ingelaere (2008:32) argues that the new Gacaca represented an intervention by the state, which only loosely resembles its predecessor. However, it differs from western forms of justice as there are no professional lawyers, the community is directly involved, and the defendants speak for themselves (Bangamwabo 2010:231). Furthermore, the Gacaca courts

still take place outside. Various visual sources<sup>40</sup> show people sitting in a circle (or group) on a piece of land or grass, surrounding the lay judges on a makeshift bench. Thus, some traditional features have clearly remained<sup>41</sup>. Most significantly, the local character and communal element were carried on. Evidence and punishment are debated openly (in a public, outside space), the community participates in the whole process, and the lay judges come from within the community<sup>42</sup>. Additionally, punishment must include a restorative element. This emphasis is aimed at restoring social harmony (Karekezi et al. 2004:74; Clark 2008b:302).

Therefore, the aim of reconciliation in addition to the emphasis on public participation has remained (Clark 2007:787). The involvement of victims and the possibility of community service, instead of imprisonment, point to the fact that restorative elements continue to exist. However, adaptations have also brought retributive elements, following western forms of justice (such as punishment in the form of prison sentences). Additionally, the process is less collective, as the perpetrators face Gacaca alone, instead of being represented by their families or clans (Wielenga/Harris 2011:18f). Thus, Wielenga and Harris (2011:16f) attest a strong shift from restorative to retributive justice, in the new version of Gacaca.

### **6.3.2 Characteristics and Functioning of the Gacaca Courts**

After a pilot phase in 751 communities that had started in 2002, the new Gacaca was implemented on a nationwide scale in 2005 (Ingelaere 2008:38). This took place in two phases. The first phase, from 2005 to 2006, saw the collection of accusations and cases to be tried. In July 2006, the second phase was launched, in which the accused were tried in the Gacaca of their respective home community (Ingelaere 2008:41f).

Gacacas were installed in each of Rwanda's administrative levels from cellules, followed by sectors, to districts, and provinces (Organic Law No. 33/2001, Art.3). This corresponded to a structure of local government and organization that originates from the Belgian colonial period<sup>43</sup>. In 2007, 15,103 courts were operational. To handle the high amount of cases, often more than one Gacaca was installed per community (Ingelaere 2008:43).

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<sup>40</sup> Numerous pictures and videos can be found online, when prompting a search for „Gacaca in Pictures“; e.g. via: <http://www.inthetallgrass.com/> or <http://www.anneaghionfilms.com/my-neighbor-my-killer/> or <http://www.hrw.org/news/2011/05/31/rwanda-mixed-legacy-community-based-genocide-courts> accessed: April 21, 2014.

<sup>41</sup> I have not found any evidence that would point to an affirmative ritual being part of the Gacaca process in its new version. However, it could be argued that they are a ritual in themselves.

<sup>42</sup> Furthermore, formal legal education was not a precondition to be elected as a judge, but some training was provided upon election (Schilling 2005:284f,293).

<sup>43</sup> For more information, see Conflict Map (section 6.1).

Organic Law No. 40/2000, of January 2001, established Gacaca in a legal sense. It stipulates the investigation and prosecution of acts of genocide and crimes against humanity, committed in Rwanda between the 1<sup>st</sup> of October 1990 and the 31<sup>st</sup> of December 1994. It includes internationally accepted definitions and conventions to genocide and crimes against humanity (see Organic Law 33/2001, Art.1), while at the same time referring to the traditional institution (Clark 2008b:302).

The preamble of the Organic Law 40/2000 (reproduced in Schabas 2008:223f) states that it is “essential that all Rwandans participate on the ground level” in the process of fact-finding and the re-establishment of peace. It further enumerates the objectives of the Gacaca courts, which are: establishing truth, bringing the perpetrators of genocide to justice in a public setting, countering a culture of impunity, administering punishment, enabling reconciliation, and ultimately resolving Rwanda’s problems by Rwandan methods and customs. The objectives of Gacaca are repeated in Organic Law No. 33/2001, as achieving reconciliation and justice in Rwanda, to reconstruct its society and to provide punishment, while at the same time allowing the convicted perpetrators to reintegrate into society.

Gacaca applied the four categories of crime defined in the Organic Law of 1996, as described in section 6.2.2. In 2004, the Gacaca-law was amended<sup>44</sup> to simplify the structure and process. In this amendment, the four categories of perpetrators were subsumed into three. Rape was added to Category I crimes. Category II and III were merged. Category II now included murder, attempted murder, and grave bodily harm with or without the result of death. Category IV became Category III and remained applicable to property issues, such as theft or looting (Schabas 2008:224f).

The Gacacas on cellule-level collected information and divided the alleged perpetrators into categories, in addition to prosecuting Category III crimes. Category II perpetrators were transferred to sector-level Gacacas. Until 2008, Category I crimes were not prosecuted by Gacacas. Since then, as the number of perpetrators awaiting trial grew and national courts could not handle the amount of cases any more, Category I crimes were also tried in sector-level Gacacas (Hankel 2011:173f).

As to their internal structure, each Gacaca court had a General Assembly, a Bench, and a Coordinating Committee. The General Assembly, at the cellule level, included all inhabitants

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<sup>44</sup> It was amended a total of five times, until 2008 (Clark 2008b:298). Amendments were intended to incorporate changes (Clark 2007:787-789) and simplify the process. For example, the original number of 20 lay judges per Gacaca was reduced to three (Hankel 2011:172).

of a community over the age of 18. These then elected 24 well-respected people, over 21 years of age, within the community, referred to as “inyangamugayo” (Schabas 2008:224f). Inyangamugayo are “honest persons”, according to Art.9 of the Gacaca Law, with positive qualities, such as high morals and integrity (described in Art.10), regardless of sex, status, origin, or religious affiliation. Legal training, or even formal education, was not required (Ingelaere 2008:41). These 24 lay judges were then delegated to the General Assembly, Bench, or Coordinating Committee in a specific process (Schabas 2008:224f). The Bench prepared lists of perpetrators and victims. The General Assembly then carried out the public hearings. Anyone was invited to voice their opinion and testify at these hearings, as the Gacaca Law stipulated open public participation and even a duty to testify. The Bench, in turn, decided on judgments by consensus or majority vote. The Coordinating Committee supervised the process and recorded the judgments (Organic Law No. 33/2001; Bangamwabo 2010:230).

Gacaca was enabled to hand out prison sentences up to lifelong terms. However, sentences could be lessened by confessions and full disclosure of the crime. The earlier in the process these were brought forth, the higher was the reduction (Hankel 2011:174). Thus, the final sentences varied from imprisonment, community service, to reparations, or a combination of all (Bangamwabo 2010:231). Based on customary practice, reparations were not given out individually, but by family (Ingelaere 2008:44).

The Gacaca jurisdictions officially terminated their work in June of 2012, after roughly 2 million trials (Pozen et al. 2014:36).

### **6.3.3 Gacaca as a Hybrid**

After having presented the main characteristics and the process of the modern Gacaca, I would like to turn my attention to the assessment of Gacaca’s hybridity.

In his book, Mac Ginty (2011:48f) mentions Gacaca in the chapter on traditional approaches and not in the one on hybrid approaches – why is this so? It quiet simply depends on the definition of hybridity that is used and how rigidly one sticks to it. If hybrid approaches are seen as purely the mixing of two different entities, then Gacaca can most certainly be counted as a hybrid approach. However, if a deeper definition is applied, as in Mac Ginty’s case, in which hybrids evolve through bottom-up and top-down interaction, then Gacaca might not qualify as a hybrid. Especially since one could argue that it was merely imposed by the state.

However, a hint towards local actors actually being involved, in the decision-making around the new Gacaca, can be found in the expert meetings, mentioned in section 6.1.3. Yet accounts, on civil society actually being involved, differ. Moreover, it also depends on what was counted as civil society. Ingelaere (2008:46) mentions that civil society was hardly existent at that time, due to the repressive nature of the previous regime. He sees the commission as more of an enforcement of government policy through an elite. Nonetheless, what is for certain, is that the Gacaca jurisdictions were established following a government initiative (Clark 2008b:297), thus in a top-down process.

At the same time, Ingelaere (2008:35) describes the evolvement of Gacaca, after the genocide, as a “spontaneous emergence of the Gacaca activities” on a local scale. The already existing and partially functioning old Gacaca was being revived even before state authorities gradually started to turn to these local initiatives, as pressure on domestic courts grew (Ingelaere 2008:35). If this was the case, then Gacaca can be positioned along the fourth part of Mac Ginty’s four-part model of hybridity – described in section 5.1.3 – relating to the ability of local actors to provide an alternative to liberal peace in “marginal spaces” (Mac Ginty 2011:87.). Additionally, Uvin (2003:117) mentions that international donors were also present in the discussion meetings, alongside governmental and societal actors, which would point to an interaction between external and internal actors and thus also correlate with Mac Ginty’s model of hybridity.

To sum up, there is some controversy as to the categorization of Gacaca. However, as already mentioned previously, I consider Rwanda’s Gacaca courts to be a hybrid approach.

Gacaca is “a hybrid form of justice that combined traditional structures with modern principles in a new context” (Werner 2010:65). As we have seen in section 6.2.1, it relied on customs and traditions, while at the same time incorporating international standards of human rights (Ingelaere 2008:53). Thus, it represents an approach of “unique, hybrid nature” (Clark 2007:836), situated within a hybrid system of TJ in Rwanda in general (Clark 2007:767).

The new Gacaca was founded on “very broad legal statutes that permit a large degree of communal negotiation within [...] formal boundaries” (Clark 2007:774). Thus, making it a hybrid institution of TJ, incorporating informal and formal elements alike. Additionally, Gacaca was centralized and decentralized at the same time. The courts were implemented and shaped at the local level, while remaining controlled by the state to some extent (Ingelaere 2008:53).

However, not only Gacaca as an institution is hybrid, but hybridity is also found in the design of its' objective of justice, which "represents an ingenious hybrid of retributive [...] and restorative justice outcomes, with the ultimate aim as restorative" (Clark 2007:829). Thus, there is a clear mix of retributive and restorative justice elements (Ingelaere 2008:53). In a practical application this means that the handing out of punishment, with the possibility of imprisonment, represents retributive justice. At the same time, punishment is combined with the restoration of relationships. This focus on relationships and the ultimate goal of reconciliation represent restorative justice. Furthermore, the possibility of community service, which aims at the re-integration of perpetrators and encounters between members of the community, is both part of a restorative justice approach and a form of punishment. Another form of combining punishment and reconciliation, especially benefitting the survivors, are reparations and compensations. Therefore, Gacacas hybrid nature becomes most apparent in its approach to justice (Clark 2007:829-834).

Clark (2007:834-836) regards the combination of non-legal and legal objectives, such as justice and reconciliation, as Gacaca's main achievement. Together these elements form a more holistic response, which includes positive aspects of both and reduces possible negative effects. In contrast, Ingelaere (2008:53) sees hybridity, in this context, more as inhibiting and a source of fragility: "the Gacaca courts are a novelty, on the one hand, mimicking a traditional conflict resolution mechanism but with the reduced potential for reconciliation, while, on the other hand, they mimic the modern legal system, with a reduced guarantee of due process". Nonetheless, Ingelaere (2008:53) goes on to point out that the hybrid nature of Gacaca could also be seen as an asset. Thus, as two approaches that enrich each other.

I would see hybridity to be a source of success, in line with the later argument. Therefore, a preliminary conclusion might be that, taking the case of the Gacaca as an example, hybrid approaches can be evaluated quite positively. However, I will now turn to a more in-depth analysis of the positive and negative aspects of the Gacaca courts.

#### **6.3.4 Critique**

Chakravarti (2012:2) identifies three moments in scholarly analysis of Gacaca: initial expectations were followed by increased skepticism and finally strong criticism. Clark (2008b:301) advocates a nuanced view between overly pessimistic or optimistic evaluations. In accordance with this, I will now highlight both positive as well as negative aspects of Gacaca and point to questions that remained.

One of the major strengths of Gacaca is certainly its **communal** element (Clark 2008b:312). Clark (2008b:304-306) explored through fieldwork that Gacaca was often open to interpretation, as the community is actively involved in the process and can adapt the institution based on their specific needs. Thus, making it **more flexible and fluid** than other judicial institutions.

Furthermore, Gacaca represents a “participatory form of justice” (Bangamwabo 2010:240). The general population is believed to be the main driving force behind the process. The lay judges merely facilitate open, public, and informal dialogue (Clark 2008b:312).

Gacacas were designed to be **informal and accessible**, encouraging interaction and active participation (Chakravarti 2012:8,19). Participation did not depend on social status, gender, income, or education (Schilling 2005:333f). Due attention was especially given to involve women in the process, making the new Gacaca more **gender-sensitive** than its traditional version (Clark 2007:788). Popular participation is usually excluded in other approaches to TJ, which focus on the impartialness and neutrality of external actors (Clark 2007:808). However, Gacaca aimed at involving a high number of actors and strengthening local communities in a **participatory** approach (Karekezi et al. 2004:73; Chakravarti 2012:8). It took justice out of the courtroom and made it accessible to the population (Schilling 2005:341).

Furthermore, it is an approach to TJ that is contextually embedded and respects local culture and customs in relation to justice. It is thus closer to the affected population and **culturally appropriate** (Rauschenbach/Scalia 2008:453). Therefore, the Gacaca process is more familiar to the general population, which consequently leads to **increased acceptance and legitimacy** (Werner 2010:65). Longman et al. (2004) carried out an empirical study (during the initial trial phase of Gacaca) on how Rwandans see the contribution of judicial measures towards justice and reconciliation. Interestingly, the attitudes towards Gacaca were overwhelmingly positive, reflecting a high confidence in the process. Gacaca was expected to contribute substantially to reconciliation. This stands in contrast to more restrained attitudes towards international or national trials (Longman et al. 2004:212-222). Also Ingelaere (2008:51), asserts that the Rwandan population preferred Gacaca to the more distant national courts and the ICTR.

Moreover, Gacaca produced **positive results in quantitative terms**, dealing with a vast number of crimes (Ingelaere 2008:52). While being associated with relatively low costs and speedier implementation (Bangamwabo 2010:240). For these reasons, the Gacaca courts represent a viable alternative to the ICTR and domestic court system (Werner 2010:65).



Early interest and initial enthusiasm in the Gacaca process soon changed into fatigue. Compulsory attendance had to be installed, after plummeting rates of participation (Ingelaere 2008:55). As the process was designed to rely on public involvement, little interest and low levels of attendance were a hindrance (Clark 2008b:317-319). According to Clark (2008b:318), this lack of enthusiasm had various reasons. People could simply not afford to participate on a regular basis, which meant to neglect income-generating activities. Other reasons could be that it was too traumatic to relive painful experiences, victims might have been scared to face the perpetrators, or there were just too many things happening at once in Rwanda. The decision to introduce **forced participation** was controversial and raised questions (Ingelaere 2008:48)

Another controversial decision was related to Gacaca's gender dimension. Along with the amendment, mentioned previously in section 6.2.2, it was decided to transfer rape cases from national courts to Gacaca jurisdictions. This drastically **hampered gender-sensitiveness**. Many women decided against presenting their case in public, for genuine reasons (Waldorf 2010:191f).

However, the most common critique is related to the judicial process itself. It is often mentioned that Gacaca **failed to meet basic international standards of fair trial**. For instance, the Gacaca courts are seen as biased, since the proceedings were carried out by the community, which itself was directly involved in the investigated cases (Clark 2008b:308-310; Werner 2010:65). Strong proponents of this critique were Amnesty International<sup>45</sup> and Human Rights Watch (Clark 2007:804; Chakravarti 2012:4).

The views expressed by critics, in what Clark (2008b:310) calls "the dominant discourse on *gacaca*", are often based on the assumption that Gacaca should contribute to justice in a more retributive sense, as its proponents mainly come from a legal background. Meaning that justice can only be reached by following seemingly universal, standardized norms and procedures. Gacaca is then evaluated against this conception of justice, including standards of due process, fair trial, and human rights. The number of prosecutions and sentences define success. Moreover, deterrence becomes the main objective of Gacaca, failing to include others such as reconciliation (Clark 2007:803-806; Clark 2008b:307-310). "In short, the dominant discourse fails to account for the hybrid nature of *gacaca* and the hybrid methods and objectives it embodies" (Clark 2007:807). Thus, as substantial and legitimate these objections might be, critics often fail to properly analyze Gacaca and neglect its hybridity.

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<sup>45</sup> For more information, see Amnesty International (2002): Rwanda. Gacaca: A Question of Justice, AI Index: AFR 47/007/2002, pp.28-41, via: <http://www.amnesty.org/en/library/info/AFR47/007/2002>, accessed: April 21, 2014.

Another critical aspect is Gacaca's **top-down nature** and its use as an instrument for installing state control. It is suggested that Gacaca was branded as a traditional and local approach to gain legitimacy. Thus, the new government relied on a rhetoric of local empowerment and tradition, to gain support for its TJ policies (Chakravarti 2012:6). It used Gacaca to strengthen its position (Hankel 2011:180) and turned it into a political project (Bangamwabo 2010:240).

Furthermore, the **remodeling of a traditional mechanism** always raises questions: is it a completely new approach, which only carries an already existing name; or can it stay true to the essence of the traditional approach, while adapting to new circumstances (Werner 2010:71)? The idea, for the re-design of Gacaca, was to use its core elements and subsequently adapt them to present challenges. However, some critics remark that all that is left of the original Gacaca is its name (Schilling 2005:299f). For example, Mac Ginty (2011:48) mentions that, as a consequence of heavy sponsoring by the international community, Gacaca was adapted to meet donor requirements and lost even more of its traditional character, which it was initially praised for. Moreover, Rwanda's society has become fragmented, complex and heterogenic, due to common changes in the societal structure in addition to the deep impact of the conflict and genocide. Social conformity is much less strong and the community has lost its ultimate value (Schilling 2005:337-340). These are factors that might have a negative influence on Gacaca's functioning, especially its traditional elements.

All these controversies over specific aspects aside, one central question still remains: did Gacaca contribute to transitional justice? It certainly aimed at contributing to restorative justice and reconciliation in theory, but was this achieved in practice?

Clark (2008b) found, through extensive field research, that in some communities Gacaca has been effective and is viewed positively by the population. In these cases, the Gacaca courts are perceived as a way to find truth and to move on. They become a place for healing, solidarity, acknowledgement, and empowerment. However, in other cases Gacacas produced tensions within the community, due to the overwhelming and traumatic process of hearings and less constructive ways of discourse and engagement (Clark 2008b:314-316). Similarly, Karekezi et al. (2004:81) observed "a dissonance between gacaca courts in theory and in practice". Often judges failed to animate the population to take an active part in the process. Other hindrances were a lack of information, due to the little number of survivors, the

displacement of the population, and distrust among the population, which inhibited truth-telling and fact-finding (Karekezi et al. 2004:81-82).

I will now analyze Gacacas contribution to justice, truth, and reconciliation in Rwanda in more detail.

### **6.3.5 Gacaca: Truth, Justice, and Reconciliation**

According to Waldorf (2010), a common sight along roads in Rwanda for many years was a billboard advertising Gacaca with the slogan “Inkiko Gacaca: Ukuri, Ubutabera, Ubwiyung” – which can be translated as: “Gacaca Courts: Truth, Justice, Reconciliation” (Waldorf 2010:192). This poignantly shows the goals that were set for the Gacaca process, but were they eventually reached in practice? I will now turn my attention to this question and explore Gacaca’s contribution to the three dimensions of TJ.

#### **Truth**

One of Gacaca’s main achievements is the establishment of facts and its contribution to truth finding, as a necessary prerequisite for reconciliation (Wielenga/Harris 2011:23). However, truth finding was often inhibited, through false or non-delivered statements. Also, cases of wrongful accusations or strategic confessions were recorded (Waldorf 2010:193-195). Most significantly, Gacaca’s contribution to truth-finding is contested by the notion that the truth, which was established is one-sided and not accepted by all. Thus, Gacacas are often seen to have delivered only partial and one-sided truth (Ingelaere 2008:56; Wielenga/Harris 2011:23). The governmental campaign for Gacaca was based on a vision for national reconciliation that employs a very uniform, simplified, and one-sided historical narrative. This predominant narrative sees a constructed picture of ethnicity (Hutu versus Tutsi), which was installed by colonialism and culminated in extreme “Hutuism”, as the source of the conflict in Rwanda (Hankel 2011:179f). Hankel (2011:180) states that this narrative can easily be proved wrong, as the Tutsi-forces, under the Rwandan Patriotic Front (RPF), also carried out violent acts and crimes against humanity. However, these are treated as a taboo and views that challenge the official narrative are not permitted. The official narrative is further enforced through memory politics on a large scale, in a system of semi-authoritarian rule. For example, Brewer and Hayes (2011:12) point out that the Rwandan government has banned history teaching in schools and introduced legislation that prohibits certain ways to talk about the genocide.

The official historical narrative is enforced through the Gacaca process through its fact-finding competences that overlap with the justice dimension, as it only included the investigation of crimes against Tutsi (Hankel 2011:180). It has been critically remarked by a

number of researchers that crimes committed by the military arm of the RPF<sup>46</sup> or revenge related crimes against Hutus were not included in Gacaca trials (Ingelaere 2008:56; Des Forges/Longman 2004:62; Wielenga/Harris 2011:22; Werner 2010:65). As a result, the Gacaca process might have created a picture of Hutus as perpetrators and Tutsis as victims that could further divide the country (Hankel 2011:180).

Differing positions exist on how to deal with Gacaca's one-sidedness. Clark and Kaufman (2008:11) call for only prosecuting RPF crimes after all genocide-related crimes have been dealt with, defending the view that the morally more serious crimes have to be dealt with first. Whereas, others (Ingelaere 2008:56; Chakravarti 2012:7) rightfully point out that if pain and suffering on the Hutu side is not duly recognized, grievances are fueled that might break out at a later point.

## **Justice**

As mentioned above, perceptions of justice in favor of the Tutsi minority and against the Hutu majority are often expressed. At the same time, Waldorf (2010:197) observed dissatisfaction on the side of survivors, who claim that real justice was not delivered. A further potential problem is, as was mentioned before, the non-compliance of Gacaca with international norms for fair trial. Moreover, Waldorf (2010:196f) suspects that Gacaca even failed to meet its own standards as expressed in the Gacaca Law (particularly with regard to the qualities of the lay judges).

Another highly debated question is whether the justice that was delivered by the Gacaca courts can be seen as retributive or restorative. Carey et al. (2010:208) consider the modern Gacaca as an institution that combines both approaches to justice. Also Buckley-Zistel (2011:19) identifies it as a hybrid of retributive and restorative justice elements, even if it is strongly formalized and equipped with judicial powers. Ingelaere (2008:44,46), on the other hand, conceptualizes Gacaca as based on a retributive view of justice. He argues that it leans more towards punishment than reparation and that the reconciliatory element is almost missing. Only the possibility of community service is an important restorative element (Ingelaere 2008:57). The possibility of prison sentences or monetary reparations, in turn, are expressions of a shift from a restorative to a retributive model of justice (Schilling 2005:301). It is true that the possibility of a prison sentence up to life inhibits the re-creation of communal harmony, as outlined in the characteristics of traditional approaches in Chapter 4. However, we have also seen – in section 6.2.3 – that the main feature of Gacaca as a hybrid

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<sup>46</sup> RPF crimes were processed in separate military trials (Wielenga/Harris 2011:22).

approach was to incorporate retributive as well as restorative elements, instead of favoring one approach over the other. I would argue that this is exactly where Gacaca's hybridity is the most apparent.

### **Reconciliation**

One rather negative conclusion is that Gacaca did not promote trust and reconciliation. According to Waldorf (2010:198-200), Gacaca failed to bring reconciliation and only further divided communities, rendering forgiveness impossible. New categories of perpetrators and victims were created, which only reinstall and enforce ethnic divisions. Whereas, Clark (2007:38) sees Gacaca as a first and important step in the right direction, even if its goals might only be achieved long after the Gacaca process itself has been completed.

However, Clark (2007:833) does warn of an overly enthusiastic view of its contribution to reconciliation, as this is a process that may take a long time. Distrust is still deeply entrenched and relationships cannot be rebuilt quickly. Nonetheless, Gacaca did contribute to reconciliation in two ways. First, by fostering active, meaningful, and face-to-face engagement between survivors and perpetrators, in contrast to trials or other TJ instruments. Engagement is crucial for the rebuilding of relationships and ultimately reconciliation. Second, by enabling the re-integration of perpetrators into the community. Punishment in the form of community service (e.g. rebuilding destroyed homes) encourages even further engagement between the stakeholders, as they are ultimately working together for a common future. In addition, compensation for victims is another reconciliatory element (Clark 2008b:313-315).

On this basis, it may be concluded that Gacaca represents a way to deal with the past; a process that can have negative and positive nuances and is certainly complex, but also needed as a way to reshape the present and build a common future (Rahman 2010:73). Gacaca aimed to go beyond formal justice, deterrence, and pure punishment, by including restorative justice and reconciliation (Clark 2008b:313). It acknowledges that reconciliation and justice are interdependent and should be pursued simultaneously. Thus, Gacaca incorporated punishment into a more holistic approach, which is better equipped to foster reconciliation (Clark 2007:836).

So far, primarily theoretical considerations and conclusions were presented, but how did the local population view Gacaca's achievements? Pozen et al. (2014:34) rightfully remark that most of the analyses rely on theoretically founded arguments rather than empirical evidence.

As the number of quantitative data around these issues is limited, Pozen et al. (2014) carried out an empirical survey, in order to determine what Rwandans themselves had to say about the effectiveness of Gacaca. It was the first survey of this kind, conducted after the Gacaca process had come to an end, and aimed at assessing attitudes towards Gacaca in respect to truth, justice, and reconciliation (Pozen et al. 2014:32f). As these are hard to measure, specific aspects of each concept were picked out and operationalized (Pozen et al. 2014:36f). Thus, in relation with the three goals of TJ, Pozen et al. (2014:50f) found that:

- “Regarding truth the great majority of respondents indicated that *Gacaca* established a reliable historical record of the genocide”.
- In connection with justice, respondents were satisfied with Gacaca’s fairness, ability to bring about accountability, justice for victims, and punishment for perpetrators.
- As to reconciliation, Gacaca was successful in both deterring future crimes and increasing trust among the population.

In summary, responses were primarily positive, especially in connection with the overall function and effects of Gacaca. However, negative views were voiced, relating to the way Gacaca was carried out. Here respondents pointed to cases of false accusations, security issues, corruption, and exclusion of certain groups (Pozen et al. 2014:41-47).

Having now reviewed the numerous positive as well as negative aspects of Gacaca and having analyzed its contribution to TJ in Rwanda, I would now like to turn my attention to the broader field of TJ. What can be learned from this specific case? What can findings contribute to other contexts and what remains particular? What are the lessons learned from the Gacaca process in Rwanda, for TJ research and practice in general?

### **6.3.6 Lessons Learned**

Clark et al. (2008:381) note, that the case of Rwanda and its unique way of confronting the past “exhibit the tensions that we can find in transitional justice around the world and throughout history”. One of these is the **tension between the ideal goal and the practical capability** to achieve it. The case of Rwanda shows that there are always gaps between what TJ approaches are designed to achieve and what they can really achieve in practice. How approaches are applied in practice and what their outcomes are might differ from their noble objectives. Clark et al. (2008:389) refer to this as “the aspiration-capacity gap”. The Rwandan case reflects problems and questions in TJ in general, but also had its very specific way to deal with the past and constitutes a unique approach to TJ.

Rwanda has a very distinctive dwelling structure. About 80% of the population lives in rural areas and small towns (see Conflict Map, section 6.1). In such a setting, Gacaca's communal orientation makes sense. However, this might not be feasible in other contexts. Even in the case of Rwanda some difficulties were encountered. Gacaca courts were mostly installed in rural areas, but also in urban settings. The later faced problems of migration and anonymity that countered the communal element of Gacaca (Ingelaere 2008:41).

Rwanda's unique dwelling structure is one element that points to the fact that no approach to TJ can be universalized. This in turn may underline the strength of hybrid approaches, as these try to **consider the local context**.

Thus, one major lesson from Rwanda's experience with Gacaca is that, when designing TJ, **local approaches should be given more attention**. However, one needs to distinguish between top-down, state-installed and bottom-up, community-owned approaches. Gacaca is seen to fall into the first category. In this context, local TJ mechanisms are altered from their original form and become problematic. The consequences, in this case, were formalities, coercion, and fading popular interest (Waldorf 2010:202). However, if Gacaca was carried out properly, it represented an opportunity for all involved stakeholders to present their stories in an open environment, enabling justice and reconciliation. At the same time, it was open to instrumentalization as **part of a political project**, reinforcing ethnic tensions and oppression (Bangamwabo 2010:241). Something that is true for TJ approaches in general, as was pointed out in Chapter 2.

TJ measures are usually implemented top-down. This however is a major weakness. "Governments and international institutions [...] rarely, if ever, consult affected populations when formulating policies aimed at rebuilding post-war societies" (Longman et al. 2004:206). Often thorough research is not carried out, due to the circumstances in post-conflict areas and the need for quick responses. Yet **consulting the views of the population** could render TJ policies more effective (Longman et al. 2004:224). Ultimately, the goal would be to move beyond merely consulting the local population, towards **active engagement**. This could be achieved by "building collaborative relationships" (Shaw/Waldorf 2010:25), which empower local populations to take on an active role in the decision-making process and design of TJ approaches, in order to create new, locally embedded approaches (Shaw/Waldorf 2010:25).

For TJ to be successful, it has to be designed according to the reality and needs on the ground. Pozen et al. (2014:51f) conclude that the Rwandan case exemplifies a need for justice that is accessible to the local population. When designing future TJ approaches, policy makers have

to measure the benefit of accessible, local forms of justice, with all their flaws, against maybe more pragmatic, impartial, and politically acceptable forms of international justice.

In the realm of justice, Gacaca's "innovative character [...] lies in its mixture of judicial systems and of retributive and restorative justice" (Karekezi et al. 2004:73). It incorporated elements from differing definitions of justice and as a consequence initiated scholarly thinking on combining TJ approaches. Instead of focusing on the critique of one approach or favoring one over the other, possible fruitful interaction should be analyzed (Chakravarti 2012:8). Situations of transition and social reconstruction require a **combination of retributive and restorative approaches to justice** and the pursuit of reconciliation on various levels (intrapersonal to national) (Rauschenbach/Scalia 2008:455).

When it comes to reconciliation, "*Gacaca*'s attempt to facilitate engagement between parties differentiates it from most other transitional justice mechanisms employed around the world" (Clark 2007:808). One way that Gacaca increased the possibility of reconciliation was through supporting dialogue within the community (Werner 2010:65). Rwanda's focus on reconciliation and its' attempt to support **national reconciliation** from the bottom-up, through engagement, surely is remarkable. However, enforcement of reconciliation as a political priority, as in the case of Rwanda, is also questionable (Ingelaere 2008:52). This points to the broader question if reconciliation can be forced or prescribed at all (Schilling 2005:337).

Not surprisingly, reconciliation is one of the themes in which the "acute tensions between aspirations and capabilities" (Clark et al. 2008:383) becomes apparent. A number of **questions arise in relation to the concept of reconciliation**. Bloomfield (2003:11) calls into question if it is universally applicable or merely a purely western approach, based on the Christian tradition of forgiveness? Theissen (2004:12f) further legitimately questions if the idea of friendship and respect on an intra-personal level can be forced onto former rivals, especially in cases where there is a long history of protracted conflict, structural violence, and mistrust. Is reconciliation really feasible in such situations? Reconciliation requires, often painful, encounters and sustained interaction between former enemies. This could actually exacerbate tensions. In the end, peaceful coexistence may be a more realistic goal to achieve (Clark et al. 2008:383). Nonetheless, Clark et al. (2008:383) argue that reconciliation should remain a central goal in post-conflict societies, but that "some are more prepared than others". In Rwanda for example, the prevalence of Christianity was found to be conducive to reconciliation and its underlying idea of forgiveness and healing. In other contexts reconciliation might be harder to pursue.



Clearly, reconciliation is an ambivalent concept (Fischer 2011:411), which is not easily transposed from context to context (Hamber 2007:121). It cannot be imposed from the outside. What can be done is to provide a framework and facilitate mutual encounters, but the actual act of reconciliation can only take place between the involved people themselves. For this reason, it is important that reconciliation processes once again build on local structures, while international actors provide knowledge, support, and international acceptance. Moreover, one has to be aware that full understanding between adversaries might never be possible, especially immediately after conflict (Theissen 2004:12f). TJ measures can only function “as a starting point for long-term reconciliation processes [...] the long-term aim of reconciliation may be reached neither quickly nor easily” (Theissen 2004:16).

## 7 Conclusion

This thesis set out to evaluate hybrid approaches to transitional justice in post-conflict settings. For this end, the elements of hybrid approaches were laid out and their positive and negative aspects analyzed, building on the critique of previous approaches. Additionally to this first theoretical part, which was based entirely on a thorough literature research and a hermeneutic way of argumentation, also a specific case study was presented. The case of Rwanda's Gacaca was used to further qualitatively analyze hybrid approaches. It also functioned as a more practical counterpart to the first theoretical part of the thesis.

Chapter 2 set the stage for what was to follow and outlined the broader field of TJ. This chapter examined some of the main questions and challenges countries in transitions are faced with. It also highlighted three pillars of TJ: justice, truth, and reconciliation. The next chapter turned to a thorough analysis of contemporary approaches to TJ. These also constituted the main focus of critique. Contemporary approaches, which are based on the concept of liberal peace pose many challenges and have often failed. Their impact on post-conflict societies and transitional environments can be quite negative. Nonetheless, approaches based on the concept of liberal peace remain the main approach to TJ and peacebuilding. These are usually based on a retributive view of justice; imply international instruments, in top-down processes, active at the international or state level, and including formal elements. At the same time, there has been a trend towards respecting local and traditional approaches. Many scholars describe this as the local turn in peacebuilding. As explored in Chapter 4, traditional approaches are based on a more restorative concept of justice. They are focused on the local, grassroots level; include local communities, in a bottom-up process, with informal elements. Traditional approaches bring many advantages. Most importantly, they are more culturally appropriate and closer to the affected societies. However, traditional approaches also have negative aspects and are ill equipped to tackle the complex problems raised by today's conflicts.

In recent years, a new phenomenon has evolved: hybrid approaches to TJ. Practitioners and scholars alike express a move towards these. Hybrid approaches aim to combine previous approaches, through interaction of various actors, in order to move beyond the restrictions of one-sided approaches. They combine different views on justice, elements, and actors, in a holistic process. Chapter 5 focused on exploring the concept of hybridity and hybrid approaches. They bring substantial advantages, by aiming to combine previous approaches in order to create new, more sustainable answers. In theory these new approaches seem to be a

great solution, with the positive aspects clearly outweighing the negative; yet does this hold true in practice?

To answer this question, and to further exemplify the theoretical model built in the first part of this thesis, The second part turned to the in-depth analysis of an example of a hybrid approach. The chosen example is most probably the prime example of a hybrid approach to TJ: Rwanda's Gacaca. Gacacas are local community courts, installed after the grueling genocide of 1994. They are often taken as a positive example of a TJ approach. However, Chapter 6 also provided a more nuanced view. Rwanda's case illustrates very clearly the possibilities but also limitations of TJ.

The theoretical approach and the analysis of the case study have both led to interesting findings and answers. The value of this thesis is certainly the in-depth analysis of a new phenomenon. To date, hybrid approaches have either been explored theoretically or practically. The present thesis aimed at incorporating both theoretical and practical elements. Thus, it represents a concise, qualitative exploration of hybrid approaches, as a commonly acknowledged yet little explored new phenomenon.

In general, hybrid approaches combine two streams in contemporary TJ. On the one hand an expansion of international standards, human rights, accountability, and legalism and on the other hand a trend towards local empowerment and traditional elements. Hybrid approaches can bridge these two seemingly disparate tendencies and integrate them.

Even though there has been a move towards local empowerment, one-size fits all approaches to TJ and peacebuilding are still highly propagated (Mac Ginty/Richmond 2013:777). The advantages are obvious: they are less costly, can be applied very quickly, and require little effort. However, they often fail to take into account the local context and lead to unwanted or even opposing outcomes. Instead, approaches to TJ and conflict resolution should always be context-specific. Given the specifics of each case, there simply cannot be a "magic formula" to TJ, which could be applicable anywhere (Springer 2009:20).

No approach will be perfect. Important is that approaches to TJ, and conflict resolution, are appropriate to the context and culture in which they operate (Werner 2010:70). Local realities should always be the focus of attention. The substantial advantage of hybrid approaches, compared to conventional, one-sided approaches, is that they make it possible to detect already existing resources and local capacities. Consequently, the aim is to include these as well as a high number of actors and different worldviews. Furthermore, hybrid approaches are flexible and move away from standardized approaches.

Altogether, this leads to more legitimacy and ultimately more stable outcomes. Through involving the local dimension, hybrid approaches can be more contextual and focused on local realities, while still involving external actors and the international community at large. Both, contemporary and traditional approaches have strengths and weaknesses. Thus, combining these, in mutual exchange, is “a way forward” (Boege 2006:18).

On this basis it may be concluded that hybrid approaches are more suited, than conventional approaches, for TJ and conflict resolution in post-conflict settings. However, what is the specific contribution of hybrid approaches to the three pillars of TJ – defined as truth, justice, and reconciliation; and what can be learned in that respect from the case study?

### **Truth**

Hybrid approaches can be an instrument of truth-finding. Especially if the traditional element of dialogical truth is incorporated, a more holistic truth-finding process is facilitated, in which a larger number of actors is given a voice. This can certainly be attested in the case of Rwanda’s Gacaca. Through their highly participatory and communal focus, these community courts gave everyone the chance to be involved in the process and voice their account of events. Thus, generating a broad picture through open dialogue. However, as we have seen in section 6.2.5, Gacaca is accused of only having delivered partial and one-sided truth on a broader scale. Gacaca is part of a political project of TJ in Rwanda, which enforces repressive memory politics in a system of semi-authoritarian rule. What can be said about the genocide in public is strictly regulated and only Hutu crimes are prosecuted at Gacacas. This not only creates an incomplete picture of the past, but also grievances. If only a single narrative is permitted, leaving others unrecognized, reconciliation is hampered and at worst new causes for conflict created. The case of Rwanda shows quite poignantly that TJ is always also a political project that can be instrumentalized to enforce a certain version of memory politics. TJ approaches need to be seen as such and motivations behind any approach understood and uncovered.

### **Justice**

Hybrid approaches are a way to combine and integrate restorative and retributive justice. This was clearly exemplified by the case study. The Gacaca community courts made the judicial process accessible to the local population. The process aimed to respect local culture and customs, rendering it more culturally appropriate and more readily accepted, than the ICTR, as an example of a contemporary approach. The Gacaca process incorporated elements of

retributive as well as restorative justice, such as punishment in addition to the restoration of relationships thus reconciliation, through encounter. Furthermore, the case study evidenced that hybrid approaches can combine formal and informal aspects of traditional and contemporary approaches and mediate between different worldviews. It also showed how conceptions of justice can collide, clash, and differ, as in the discussion around standards of fair trial. Differences in understanding, defining, and approaching justice have to be taken into account for successful TJ. It is important to be aware of different perceptions and definitions of justice and aim for their inclusion. Hybrid approaches can be a way to explore alternative ways of justice.

Advocating for a combined approach to justice, that includes restorative elements and is not solely focused on retributive justice, does not mean to advocate impunity. Searching for alternative approaches to TJ should not imply no justice at all. Thus, the pursuit of justice and punishment are important elements and should not be discredited from the start. However, it is important to question assumptions that are connected to specific concepts of justice. The aim is not to defend impunity, but to show limits of conventional legal concepts in dealing with matters of TJ.

Criticizing classical criminal justice, or the underlying concept of liberal peace, does not mean to deny them. What is to be criticized is the culturally insensitive application, without respect for already existing political cultures (Medhanie 2011:259). The western concept of democracy and human rights has become so predominant, that it almost always is implied as a set framework without further questioning. (Arthur 2009:363; Boege 2006:3).

Human rights and international law are important. This is beyond doubt. However, the question is how these are enforced. As Prittwitz (2012:30) emphasizes, gross human rights violations should never go unpunished. However, the deterrent effect and the overemphasis of other positive influences are to be questioned. What is needed is a critical stance and a cautious attitude that takes into account that criminal law can also be abused and have negative consequences (Prittwitz 2012:31f). In a similar vein, Sriram (2009:90) highlights that justice in post-conflict societies is not to be rejected overall but “simply presuming that justice generates or equates to peace is potentially quite problematic”. What is needed is “an approach that is multidisciplinary and conscious of legal plurality” (Mapaure 2010:45). At times, alternative approaches will “oppose the priorities of internationalized accountability” (Wanis-St.John 2013:371), as was also seen in the case of Rwanda. Tensions between local approaches and international law can probably never be completely resolved, but compromises can be found (Wanis-St.John 2013:371).

Another challenge is posed by situations of transition, where a large part of the society was directly involved in acts of war. Conventional TJ instruments are either perpetrator- or victim-centered. However, more comprehensive instruments are needed, especially in response to today's conflict in which the distinction between perpetrator and victim is often blurred. All survivors need to be included in an inclusive and comprehensive process of justice (Mani 2005:31). Arthur (2009:360) rightfully points out that TJ in peacebuilding differs from TJ in regime change. Different problems have to be addressed in transitions after conflict. This holds especially true when it comes to the re-integration of former combatants for example. Is it feasible to imprison a large part of a society, just for the sake of justice? Does this maybe diminish the possibility for successful social reconstruction? Are there other ways that can bring the same feeling of justice being done, while being much more conducive for conflict transformation? Here local level approaches need to be considered, that aim at the re-integration of former combatants. A suggestion is to have separate mechanisms or instruments for higher-level officials and lower level fighters. For example, Hasse (2001:569) argues that high-ranking political and military leaders, as well as especially cruel war crimes, or perpetrators who are not willing to cooperate within alternative approaches to TJ, should continue to be tried in front of an international tribunal.

## **Reconciliation**

In the case of Rwanda, Gacacas have enabled direct engagement between perpetrators and survivors, in a mediated setting. The focus on re-integration of perpetrators, as well as victims, is conducive to reconciliation. Specific measures such as community service, which is an instrument for punishment and engagement at the same time, in addition to compensation for victims, have added to the reconciliatory element. Through involving of different actors and nurturing positive interaction between these, hybrid approaches can support societal reconciliation substantially. Lederach (1997:27) emphasizes: "reconciliation requires that we look outside the mainstream of international political traditions, discourse, and operational modalities if we are to find innovation". Hybrid approaches could be a way to explore alternatives.

However, the case study has also revealed that reconciliation is an important yet ambivalent concept. Reconciliation is a problematic concept, which is not easy to grasp and much less quantifiable. Thus, a measure of how much reconciliation is brought by a certain approach is almost impossible. Nonetheless, the inclination of certain approaches towards more or less reconciliation can still be evaluated, even if merely on a theoretical level.

What the theoretical assessment and the case study have shown is that, specifically in post-conflict situations, the three dimensions, mentioned above, cannot be seen as separate. None of these aims can be pursued comprehensively on their own. Therefore, a combination of various approaches is needed.

The case study suggests that Gacacas combined these three goals, aiming to pursue them simultaneously and thus rendering it a more holistic approach to TJ. Gacaca was one of the first TJ instruments to be installed that combined punishment of perpetrators with communal reconciliation through public truth telling. Thus, it is a prime example of the combination of the three elements of TJ (Pozen et al. 2014:32). Complementary approaches, beyond criminal justice, are crucial for successful TJ (Sikkink 2011:227f). A single measure cannot solve the complex issues of TJ. Therefore, a combination of criminal justice instruments and others is needed. Formal and informal measures have to be merged to form a comprehensive approach (Mani 2005:31).

It can be argued that properly designed Hybrids are aimed at combining approaches. They combine judicial and non-judicial instruments of TJ and include psychological aspects such as healing, trauma and reconciliation. The strengths of hybrid approaches lie in attempting to bridge the differences between varying approaches, include multiple actors, and combine TJ instruments. This renders them more effective and comprehensive than standardized, one-sided approaches. How TJ and its objectives are defined directly translates into how success or failure is evaluated. If one sees TJ purely as a means to deliver justice, contemporary approaches might suffice. By contrast, if TJ is defined as something that aims to combine reconciliation, truth, and justice, hybrid approaches are more suited to reach satisfying outcomes.

This thesis argues that hybrid approaches are a viable alternative. However, it is important to remain cautious and aware of possible downsides. Hybrid approaches can be instrumentalized, as a way to gain legitimacy under the disguise of local empowerment and interaction. The question is how much they are really built on mutual interaction and engagement, or if they merely are the capture of approach through another. Existing power-relations and structural inequalities, that hinder mutual exchange and real interaction between actors, might be overlooked.

A lot of open questions remain and hybrid approaches should certainly not be propagated as the perfect solution, as there is no such thing as a perfect solution. Even hybrid approaches have their flaws and this thesis does not aim to offer the perfect approach to solving all the

problems TJ is faced with. Miall et al. (1999:215) rightfully emphasize that no approach should be propagated as a panacea. Choices should always be taken in light of the context and circumstances of each case.

Too high expectations towards a certain approach can create disappointment and in turn obscure possible positive aspects and achievements. It is important to keep in mind that approaches to TJ can only initiate a long-term process of reaching goals, which depend on numerous factors. The scope of any approach, that aims to deal with the past, remains inherently limited. Approaches to TJ remain ambivalent, political solutions that often arise out of compromise and work in a very complex setting of psychosocial trauma, cultural and historical identities, and socio-political power structures (Graf et al. 2012:113).

TJ and conflict resolution can only be part of wider social reconstruction schemes that aim at different short- and long-term goals, on various levels of society, in addition to other aspects such as structural inequalities and asymmetries (Fischer 2011:422f). Thus, a combination of approaches, not only to TJ, but in general is crucial. TJ initiatives are and should only be one of many interventions and necessary measure in post-conflict societies. They can always only be part of broader, more comprehensive conflict resolution (Graf et al. 2012:113).

These remarks point to the problematic of gaps between aspirations and goals. As the concept of TJ becomes overloaded with aims and goals, the possibility for success is diminished. The main problem is the definition of “transitional justice” itself: a too broad definition poses problems, such as setting unrealistic goals and aims. The tendency to adopt very broad definitions of TJ (to which this thesis is no exception), in which it is loaded with almost unattainable goals, can lead to the dilution of the concept. Kayser-Whande/Shell-Faucon (2010:102) point out that TJ is expanded beyond its original meaning to “include everything to do with justice, retrospection, democratization, conflict transformation and peacebuilding in the attempt to gather all the complexity and be holistic” (Kayser-Whande/Shell-Faucon 2010:102). As a consequence, TJ aims at goals that might take much longer than any intervention can reasonably achieve (Kayser-Whande/Schell-Faucon 2010:107). This is also something Weinstein et al. (2010:31) warn about. The contributions of any approach to TJ vary highly according to the context, but also to the tasks these are expected to fulfill (from their designers as well as the local population). Oftentimes TJ approaches are loaded with high expectations and unrealistic goals. However, they can only be successfully within realistic expectations (Weinstein et al. 2010:31). The expectations towards what TJ can



achieve, how much and how quickly, would need to be adapted accordingly (Kayser-Whande/Schell-Faucon 2010:107f).

Additionally, there is the question of how to measure the effects and outcomes of TJ (Schneider 2009:15). This leads to difficulties in really being able to assess the impact of any approach to TJ. Even if success of a specific approach in one case could be evidenced, each case remains different.

All in all, these limitations should not pre-conclude research from the start. The goal of this thesis was not to determine what works better or to draw lessons learnt from one case that can be generalized on a broader scale. The aim was to evaluate the advantages and disadvantages of hybrid approaches, following what has already been established in academic literature and exemplifying this with the help of a case study; and subsequently, draw first conclusions by locating certain tendencies expressed in the theory and through the case study.

Quantifying the impact of hybrid approaches was not the goal, but could be a venue for further research. One could argue that the theoretical model of a hybrid approach, as was laid out in this thesis, sounds very promising, yet remains abstract and might not always be applicable in practice. To test if the aims of TJ really can be better achieved by hybrid approaches would need much more quantitative research, establishing precise criteria for what is to be reached. The present thesis can serve as a pre-step to such analysis.

Belloni (2012:35) points to a research gap: hybridity in theory is becoming more and more accepted and positioned as a real alternative to liberal approaches. However, how it should look like in practice to yield the best results, providing for peace and enabling positive interaction, is not explored enough yet; and remains a whole different question. Richmond (2009:576) also calls for a comprehensive research agenda that specifically looks at the interactions and processes that take place at the “local-liberal interface”. To integrate alternative approaches into TJ strategies calls for creativity, cooperation and exchange; support in building local capacities, time, and further research are needed (Huyse 2008b:194). A central focus, for further research, could be on how contemporary and traditional approaches combine and interact (Werner 2010:73). Here, special attention should be paid to the outcome and if it really is the result of equal interaction to form something new. Peterson (2012:20) proposes to analyze how external actors react to and control hybridity, detecting “tipping points at which hybridity is disallowed or destroyed”. This could facilitate planning and produce recommendations for effective interaction, between actors along the international-local interface. Furthermore, research could investigate the reactions and

experiences with hybridity at the local level, keeping in mind that local actors can have very varied positions. This could help practitioners in pre-empting how interventions might be received in host societies (Peterson 2012:20).

Clearly, further research into hybrid approaches in particular is needed, as well as into TJ in general. An interesting venue for research would be to look at why hybrid approaches have not developed in Europe (e.g. in the Balkans). Is it because there are no more traditional approaches to be found, or because the liberal peace is so strong even at the grassroots? Or are there other reasons? Would there actually be valuable local capacities outside the mainstream, if we looked? Furthermore, possible practical developments should be closely monitored and already are the subject of new research and scholarly debate. For example, there has been heated discussion on different models of TJ, in the context of the conflict in Northern Uganda (Huyse 2008b:192f).

However, the focus should not only remain on one approach. TJ and conflict resolution efforts on all levels of society, at different times, should be analyzed; reflecting on possible effects between different dimensions and measures. Close attention should be paid to other interventions and TJ efforts: “How did they complement, contradict or otherwise influence one another?” (Kayser-Whande/Schell-Faucon 2010:107). Most importantly, there is a clear “lack of long-term analysis or systematic empirical research” (Fischer 2011:414) into the impact of TJ approaches on societies in general, as well as victims and perpetrators in specific. Only a few extensive, comparative analyses exist and “there is still little empirical basis for reaching strong conclusions about the systematic effects of TJ mechanisms, either positive or negative” (Fischer 2011:414). There is a large body of literature that remains very theoretical and based on assumptions (Fischer 2011:414). This would mean that more in-depth analysis and data-generating research is needed. This should take the form of a combination of quantitative and qualitative approaches, as these are too often pursued separately: quantitative and qualitative methods “need to more deliberately engage with one another in creating a more nuanced and useful political science” (Vromen 2010:255). Additionally, more cooperation among scholars and researchers of the Global North and South is needed (Medhanie 2011:262).

By combining quantitative and qualitative approaches, and providing theoretical discourse as well as practical analysis, social science can generate recommendations. Through these policy recommendations, social science can make an impact on real-world developments. Especially when it comes to sensitive subjects, such as TJ or post-conflict resolution, practitioners, actors, and scholars should work hand in hand for the benefit of those they aim to serve.

However, the vast amount of theoretical approaches to TJ and post-conflict often “bears little relation to the on-the-ground lives of people in the midst of conflict or peace-support operations” (Mac Ginty 2011:209). In the end, it should be about finding the most efficient strategy for the recipients (Mac Ginty 2011:67). Adapting approaches to local realities would also necessarily mean to consult the population. A recommendation drawn from the case of Rwanda was that more research is needed into what truth, justice, and reconciliation mean to people (see Pozen et al. 2014). A new strand of research has started to focus on victim’s views and needs. Listening to the needs of those, who are supposed to benefit from TJ interventions, is a new tendency in TJ that seems promising and should be inquired further. What is needed is “locally grounded research, alternative understandings of justice, local practices, and survivor’s experiences” (Shaw/Waldorf 2010:25). Keeping in mind that the needs and attitudes of survivor’s are very complex, differing, and may change over time (Shaw/Waldorf 2010:26). Furthermore, the needs that arise in post-conflict societies range from pragmatic (such as rebuilding houses) to more profound (such as reconciliation). These have to be pursued in a balanced fashion and decisions have to be taken on which to tackle first (Clark et al. 2008:386). Lessons from the past should be taken to reassess TJ in general, allowing for the exploration of new approaches and options. The challenge will lie in listening to victim’s needs and questioning pre-defined assumptions (Weinstein et al. 2010:48).

“Given the hybridity of many of today’s [...] conflicts, conflict transformation and peacebuilding also has to be of a hybrid nature, combining and bending [...] approaches” (Boege 2006:19). Furthermore, different definitions of conflict and peace, as well as different approaches, should be combined. This requires thorough reflection of worldviews in addition to cross-cultural understanding and communication (Boege 2006:4). Instead of deciding over what works or what does not and searching for the perfect solution, it should be about mutual learning, questioning assumptions, and considering alternatives, in a quest for completely new approaches to TJ, which are dynamic and unique to each context. Approaches have to start in a local context and lead to a global process of learning, which opens space for plural approaches and concepts of justice, truth, and reconciliation.

Ideally, hybrid approaches constitute a venue for interaction between different worldviews, concepts of justice, and approaches to conflict. As a result, raising awareness that it does not have to be an either or, but that different actors can interact and cooperate to find common ways to designing fruitful processes. This involves an appreciation for what is given and a willingness to join resources, in order to achieve common goals. This would also imply the

questioning of fixed worldviews, of right and wrong, definitions of truth and justice, and a consciousness about ones assumptions and their impact. Different approaches should be seen as a resource and a starting point for something more sustainable, on contrast to trying to adapt everything to one overarching standard.

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## Appendix

### List of Abbreviations

CDR	Coalition pour la Défense de la République
CONADEP	National Commission on the Disappearance of Persons
ECOWAS	Economic Community of West African States
EU	European Union
ICC	International Criminal Court
ICJ	International Court of Justice
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IMF	International Monetary Fund
MDR	Mouvement Democratique Republicain
NATO	North Atlantic Treaty Organization
NGO(s)	Non-Governmental Organization(s)
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PICT	Project on International Courts and Tribunals
RoL	Rule of Law
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
RTLM	Radio-Télévision des Milles Collines
SADC	Southern African Development Community
SCSL	Special Court for Sierra Leone
TJ	Transitional Justice
TRC	Truth and Reconciliation Commission
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNDP	United Nations Development Programme
WWII	World War II/2, Second World War

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## **Abstract (Deutsch)**

Transitional Justice ist ein wissenschaftliches und praktisches Forschungsfeld, welches sich mit der Aufarbeitung einer gewaltsamen Vergangenheit, in Gesellschaften nach einem totalitären Regime oder Konflikt, beschäftigt. Ziel ist es den Grundstein für eine friedliche Zukunft zu schaffen. Zentral dabei sind Wahrheit, Gerechtigkeit und Versöhnung.

Herkömmliche Ansätze der Transitional Justice sind primär an westlichen Konzepten von Recht, Demokratie und Konfliktlösung orientiert. Diese, auf standardisierten Verfahren basierenden Ansätze, erzielen jedoch oft nicht die gewünschten Ergebnisse. Daher sind in der jüngsten Vergangenheit Tendenzen zu einem wiederauflebenden Interesse an traditionellen Methoden und alternative Herangehensweisen zu verzeichnen. In diesem Zusammenhang haben hybride Ansätze, als neues Phänomen, Aufmerksamkeit erregt. Dennoch befassen sich, bis dato, nur wenige ForscherInnen mit dem Konzept der Hybridität in der Transitional Justice. Daher sind hybride Ansätze nur selten Gegenstand eingehender Forschung und wissenschaftlicher Auseinandersetzungen.

Die vorliegende Arbeit hat nun zum Ziel hybride Ansätze der Transitional Justice grundlegend zu untersuchen. Dabei geht es um eine kritische Betrachtung der Vor- und Nachteile dieser und deren Wirkung in post-Konflikt Gesellschaften. Im ersten Teil der Arbeit werden allgemeine Themen und Problemfelder sowie verschiedenen Ansätze der Transitional Justice mit Hilfe von Sekundärliteratur dargestellt und theoretisch betrachtet. Diese theoretische Herangehensweise wird dann durch die Analyse eines konkreten Fallbeispiels ergänzt. Dabei handelt es sich um das Fallbeispiel Ruandas, wo nach dem Genozid von 1994, lokale, auf einem traditionellen Rechtssystem basierende Dorfgerichte (Gacaca) eingesetzt wurden.

Hybride Ansätze gehen über eine reine Vermischung von westlichen und traditionellen Elementen hinaus und sind komplexer als vorerst angenommen. Dennoch bringen sie einige Vorteile mit sich. Im Idealfall passen sie sich lokalen Begebenheiten besser an und führen durch erhöhte Partizipation und Legitimität zu besseren Erfolgen in der Konfliktlösung.

Diese Arbeit versteht sich daher auch als konstruktive Kritik an bisherigen Ansätzen. Hybride Ansätze stellen eine eindeutige Alternative zu herkömmlichen Formen der Transitional Justice dar, auch wenn kein Instrument als das einzig wahre hochstilisiert werden sollte.

**Schlagwörter:** Transitional Justice, Konfliktlösung, Versöhnung, traditionelle Ansätze, Hybridität, Ruanda, Gacaca

## **Abstract (English)**

Transitional justice is a field of practice and research that is concerned with how societies deal with a troubled past, after periods of authoritarian rule or conflict, to create a peaceful future. There are numerous approaches that essentially aim at justice, truth, and reconciliation. However, the primary focus in the past has been on western concepts of law, democratization, and conflict resolution. These measures have often failed to deliver the desired results. As a consequence, traditional approaches and other alternatives have been explored. In this context, hybrid approaches have emerged.

Hybrid approaches have caught the attention of practitioners and researchers alike. Yet only a few scholars have engaged with the concept of hybridity in transitional justice. Thus, hybrid approaches are little explored, and if so, only on a purely theoretical or practical level.

The aim of the present thesis is to bridge this gap, by providing an in-depth study of hybrid approaches to transitional justice in post-conflict societies. It seeks to produce a theoretical construct of hybridity and an evaluation of the advantages and disadvantages of hybrid approaches. In addition to relying on academic literature, this thesis investigates the case of Rwanda. Following the genocide of 1994, community courts, based on a traditional model of jurisdiction, were adapted and installed. They are commonly known as Gacaca and represent a unique hybrid institution and approach to transitional justice.

Simply described as a mixture of western and traditional elements, hybrid approaches are much more complex than they might appear at first. Nonetheless, they do have a range of positive attributes, such as being more contextual, culturally appropriate, and accepted, than conventional, standardize approaches. This renders them more suited for transitional justice in post-conflict societies. Therefore, this thesis also offers an exploration of transitional justice as a field in general, followed by the critique and evaluation of conventional approaches and an exploration of how hybrids overcome their shortcomings. Hybrid approaches are a viable alternative, even if no approach should be propagated as the ultimate tool.

**Keywords:** transitional justice, conflict resolution, reconciliation, liberal peace, traditional approaches, hybridity, Rwanda, Gacaca

## CURRICULUM VITAE

### LAURA-ANNA FRÜHWALD

#### Education

- |                   |   |
|-------------------|---|
| Since 10/2006     | University of Vienna, Austria<br>Political Science <ul style="list-style-type: none"><li>• Focus on: International Politics, Peace and Conflict Studies, Migration, Politics &amp; Culture</li></ul>      |
| 01/2011 – 06/2011 | University of Gothenburg, Sweden (Erasmus semester)<br>School of Global Studies <ul style="list-style-type: none"><li>• Courses: Theories in Conflict Resolution; Migration, Power and Identity</li></ul> |
| 10/2005 – 10/2006 | University of Vienna, Austria<br>Development Studies  |
| 09/1996 – 06/2004 | AHS Wenzgasse, GRG13 Wien, Austria<br>High School <ul style="list-style-type: none"><li>• Graduated with Honors</li></ul>   |
| 08/2001 – 07/2002 | Pembroke High School, Upstate New York, USA<br>High School (AFS Year-Program)   |

#### Work Experience

- |                   |   |
|-------------------|---|
| 01/2013 – 06/2013 | HOPE'87, Vienna, Austria<br>NGO for Development Cooperation and Humanitarian Aid<br>Assistant |
| 09/2010 – 11/2010 | Austrian Consulate General Chicago, USA<br>Full-time Internship (Volontariat)                 |

#### Other Experience

- |               |   |
|---------------|---|
| Aug/Sept 2012 | AFS-Scholarship for the “Europe-Asia Cross Cultural Academy” at UKM (University Kebangsaan Malaysia), Kuala Lumpur; 2 week-Seminar on Intercultural Communication and Conflict Resolution |
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#### Languages

German, French – native  
English – fluent/near-native  
Spanish, Portuguese, Slovak – basic knowledge