

SEEKING PEACE

TRANSFORMING

THE LAW:

THE CASE OF

WOMEN'S

COURTS

Özlem Kaya

Özgür Sevgi Göral

HAKİKAT ADALET HAFIZA MERKEZİ
TRUTH JUSTICE MEMORY CENTER

HAFIZA  MERKEZİ



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FOREWORD

Truth Justice Memory Center aims to uncover the truth concerning serious human rights violations committed in the past and the basic characteristics of these violations; support the victims and their relatives in their pursuit of justice; and contribute to political peace and democracy by strengthening collective memory regarding these violations. In line with these objectives, the Center carries out activities to document these human rights violations in accordance with international standards; monitor the trials and cases that might set precedence; disseminate the multi-dimensional truth concerning serious human rights violations through a variety of methods; and enable the recognition and reparation of the damage caused by these violations.

The Memory Studies Program of the Truth Justice Memory Center essentially aims to document serious human rights violations and generate information and knowledge about these violations. Making this information a subject of the memorialization initiatives in different forms constitutes the basis of the Memory Studies Program's area of work. Since its foundation in 2011 to date, the program's main field of activity has been to collect the information that constitutes the database on enforced disappearances created by the Center (www.zorlakaybedilenler.org). Additionally, the program has considered the gender based analysis of rights violations as one of its primary areas of focus. In the context of Turkey where the great majority of the forcibly disappeared are men, the idea of looking at the experiences of the disappeared persons' spouses emerged from this gender based approach. In 2014, from this standpoint; namely that an in-depth understanding of the phenomenon of enforced disappearance necessitates a consideration of the experiences of the wives of the disappeared and also a feminist approach that the experiences of the wives of the disappeared should be a subject of analysis in and of itself, program officers Özlem Kaya and Hatice Bozkurt wrote the report titled "*Holding Up the Photograph: Experiences of the Women Whose Husbands were*

Forcibly Disappeared. This present report is the second concrete output of our belief that the rights violations, and the pursuits of truth and justice in the context of these violations, as well as the discussions on transitional justice must be gendered.

This report that comprises three sections discusses the "women's courts", which is a mechanism that can create a space for the truth and justice pursuits and the struggles for peace carried out by women in Turkey and on the global scale. The section titled "Looking at the peace struggle from within the women's movement" focuses on the truth, justice and peace struggles of the women of Turkey. By tackling the political relationships between the feminist movement in Turkey and the Kurdish women's movement; the political accumulation created by these two specific movements; and the different routes of the women's pursuits of peace, justice and truth, this section explores the experiences of the women of Turkey and what these experiences mean in the context of gendering the peace struggle. This section does not aim to conduct an in-depth evaluation of the two movements; such a claim would far exceed the scope and limits of this report. The aim here is limited to giving an overview of the two movements in terms of their relationships with one another and the women's pursuit of truth and justice. The first of the two main and much more comprehensive sections that constitute the core of the report analyzes the global peace struggle's demands for truth and justice from a gendered approach. In this section, the two core mechanisms of the transitional justice perspective, namely, Truth Commissions and Criminal Trials are examined from a feminist perspective in the framework of different country cases. One of the objectives of this first main section is to represent the women's radical criticisms to these mechanisms, which are not raised to "incorporate themselves" into these mechanisms but which rather require a rethinking of these mechanisms through a gender based approach. Women's informal pursuits of truth and justice are also briefly discussed in this section.

The third section of the report opens the mechanism of women's courts to discussion by focusing on three examples: Japan, countries of the former Yugoslavia, and Colombia. It first puts forth the historical origins and predecessors of women's courts and then examines each country case separately. We tried to discuss the selection criteria for these three countries, the political outcomes of these countries' experiences, and how these outcomes can be evaluated in the context of Turkey throughout the report. Here, it should perhaps be reemphasized: The report aims to reflect on the wide-ranging pursuits of the women of Turkey who are struggling for peace and striving to undertake the quest for truth and justice from a gender perspective in conjunction with pertinent experiences from across the world. Essentially, by identifying the accumulated knowledge and experience at the local level, the report aims to discuss the pursuits across the world and specifically the examples of women's courts, and pose certain questions to open up a discussion on this basis. In writing this report we were greatly inspired by the incredible efforts of the women of Turkey and the experiences of the international feminist movement as well as specific women's movements. We believe that in Turkey, where the peace struggle is going through rather difficult times, these discussions will be eventually held despite all hardships and in a much more exhaustive manner in the future. We hope that the report will nourish these discussions, contribute to the women's struggle which has been our inspiration, and deepen the struggle for peace. Once again, we thank all the women who supported and inspired us in the writing of this report through their struggles, the initiatives they have formed, the texts they have authored and the interviews they held with us; they have incited our desire to keep working. As in numerous places across the world, in Turkey as well, the struggle for peace will become much more meaningful with the recognition of women's experiences and the extending of gender based approaches. This report has been written with the hope of making an albeit small contribution to this end.

**LOOKING AT THE
PEACE STRUGGLE
FROM WITHIN
THE WOMEN'S
MOVEMENT**

The ethno-political conflict known as the Kurdish issue, which has been continuing for more than three decades, has affected, transformed and shaped the society of Turkey economically, politically, socially and culturally. The armed conflict, which began in 1984 between PKK (Partiya Karkerên Kurdistan - Kurdistan Workers' Party) and TSK (Turkish Armed Forces) and continued throughout the 1990s and 2000s, and its consequences in the broader context pushed all political actors in Turkey to take a stand, assume a position, form alliances and adopt a political discourse on this issue. The feminist movement, which asserted itself as a specific and autonomous political subject essentially after 1980, and the women's liberation movement of Turkey, which was transformed with the positioning of the Kurdish women's movement, have also created and shaped discourse, politics and agency in this field for the past three decades.

The entirety of all the various discourses, politics and actions that were developed also created an important accumulation in terms of the women's pursuit of peace, truth and justice in Turkey. This section of the report will first discuss the emergence of the Kurdish women's movement and the impact it created. Then, the emergence of the feminist movement in Turkey and how it diversified and pressed on will be explored particularly in the context of its relationships with the different Kurdish women's movements. Finally, the grounds, initiatives, actions and approaches offered by the women's liberation movement in Turkey as per its pursuit of peace, truth and justice will be addressed. We do not aim to conduct an exhaustive assessment of all these areas in this report; making an in-depth evaluation of the two movements is a task much beyond the scope of this report. In this section, we will give an overview of the two movements and underscore their relationships and certain experiences in the women's pursuit of truth and justice, in the framework of the prominent points made during the interviews we conducted for this study and certain important issues that are striking in terms of the scope and content of the study.

The Conflict, the Kurdish Issue and the Kurdish Women's Struggle

The post-1980 society of Turkey was marked by the conflict that has been politically, socially and culturally shaped around the Kurdish issue. The fact that the armed conflict between TSK and PKK continued despite all the fluctuations and negotiation attempts caused significant social transformations. On August 15, 1984, with the raids it organized in Şemdinli and Eruh, PKK asserted itself as an armed force and the process which we can call the first period of the conflict ensued until the early 1990s. It is possible to say that in this first period the phenomenon of PKK and the multi-dimensional ethno-political consequences of the Kurdish issue were not taken much seriously at the state level. The official discourse aimed to minimize the conflict with the PKK, and preferred to describe the issue as "a handful of bandits". Like all the other discourses historically produced around the Kurdish issue that limit the discussion into different frameworks such as underdevelopment, feudality, reactionism, tribalism, development and banditry,¹ this discourse also served to obstruct the comprehension of the issue.

By the 1990s, the impossibility of explaining the issue with the discourse of "a handful of bandits" had become exceedingly clear. Discussions on subjects such as decentralization and equal citizenship, a new and democratic constitution, the right to mother tongue, and the Kurdish language being used in public space began to be voiced loudly in the political arena by the Kurdish intellectuals and several important Kurdish public figures. Additionally, the foundation of the Halkın Emek Partisi (People's Labor Party) in 1990 led

¹ Mesut Yeğen, *Devlet Söyleminde Kürt Sorunu* [State Discourse on the Kurdish Problem] (İstanbul: İletişim Yayınları, 1999).

by Fehmi Işıklar with ten other parliamentarians who left the Sosyal Demokrat Halkçı Parti (Social Democratic Populist Party) and the rapid political support this party garnered created an important impact. Throughout the 1990s, the deepening of the conflict and the ever-increasing mass support for the Kurdish movement changed the picture significantly. The state's response to this was harsh and violent; the Kurdish region was ruled by a constant state of emergency regime. This constant state of emergency was enabled through the establishment of state of emergency district governorships, which were the political gatekeepers of the security approach, and the unlimited field of influence and power wielded by the military and other security forces. The new security strategy of "Establishing Territorial Dominance and the Expulsion of the PKK Organization from the Region" developed in 1993 amounted to an ever more reckless implementation of the unconventional warfare methods: The repertoire of state violence, which comprised strategies of widespread and systematic torture and maltreatment, enforced disappearances, extrajudicial and arbitrary executions and forced migration, meant the systematic perpetration of serious rights violations.²

The 2000s, on the other hand, were years of both intense warfare and also a time when pursuits of resolution, negotiation and peace intensified and crystalized in terms of the Kurdish issue. This period can be described as a time when special warfare methods were used selectively and certain elements within the state acted to resolve the conflict through negotiations. Throughout the 2000s, talks were held at various levels both with Abdullah Öcalan and PKK executives; the best known one was the secret negotiations in 2010 between PKK executives and MIT (National Intelligence Organization) officials, which publicly came out as the Oslo Process right before the June 2011 general elections. In the 2000s, the

² Özgür S. Göral, Ayhan Işık and Özlem Kaya, *Unspoken Truth: Enforced Disappearances* (İstanbul: Hakikat, Adalet ve Hafıza Çalışmaları Derneği Yayınları, 2013), 19.

PKK and especially Abdullah Öcalan also built the most salient emphasis of their discourses on the pursuit of peace and negotiations. The late 1990s and the 2000s were simultaneously marked by the new actors who came to the fore in the Kurdish political movement and political arena. These actors, who emerged in the political arena and can be coined as the new collective challengers³ had a function of voicing alternative truth narratives, expanding the repertoire of civilian disobedience actions, carrying the vilified concepts of the Kurdish movement insistently to the political sphere, and thus opening and broadening the arena of politics in Turkey. Local political leaders, intellectuals and opinion leaders of the Kurdish society succeeded in creating a permanent effect through the political parties that supported the assertions of the Kurdish political movement. Especially in the 2000s when the Kurdish political movement was more permanent in the parliament, this effect was strengthened, institutionalized and deepened.

Women were among the most important new challengers. Women who mobilized within the Kurdish political movement as of the mid 1990s began to discuss the political and organizational possibilities and implications of a separate Kurdish women's movement. Surely, the texts by Abdullah Öcalan that drew attention to the women's specific oppression and the need for a separate form of organizing created an important effect at this point. However, the determining factor here was the large masses of Kurdish women who were engaged in the Kurdish movement, and who pondered the political implications of their experiences in this movement, and sought and struggled to make politics on the sexism both within the organization and in every sphere of social life. As a result of their efforts to create a Kurdish women's movement, the Kurdish women succeeded in developing a new type of organizing, "... women grappled with

³ Nicole F. Watts, *Activists in Office: Kurdish Politics and Protest in Turkey* (Seattle: University of Washington Press, 2010), 51-75.

their mistakes, shortcomings; but developed their own unique models".⁴ The foundation of Demokratik Özgür Kadın Hareketi (Democratic Free Women's Movement - DÖKH) in September 2003 signifies an important breaking point; with this decision, the women have also started the process of autonomous organizing. By using the power of being part of a mass movement, and at the same time the influence of its own distinctive political discourse resulting from its organizational autonomy from this movement, the Kurdish women's movement rendered its demands visible. It was as a result of this period that the autonomous women's organizing as a founding political actor attained very important achievements ranging from the formation of grassroots organizations that would create a transformative effect on the women's everyday lives in the municipalities, to the establishment of permeant mechanisms of empowerment both in political and social spheres. It is possible to talk about two important outcomes of this period in terms of our study. First, as of the mid 1990s, an environment of collaboration was developed between the Kurdish women's movement and the feminists of Turkey which was at times strained and discordant but simultaneously fruitful and multi-dimensional. The feminist movement and the Kurdish women's movement acted together in certain campaigns and organized joint actions on days such as March 8 and November 25; these initiatives were at first contentious but gradually became collaborative and built common ground. But the cooperation was not limited to this: "They acted together and co-organized activities in the campaign for the adoption of the New Civil Code, during the drafting of the Shadow Reports for the CEDAW Committee, and joint actions such as the protest against

4 Gülşen Bozan and Ayfer Ekin, "Kürt Kadın Hareketi ve Örgütlenme Deneyimleri," [Kurdish Women's Movement and Experiences of Organizing] in *Özgürlüğü Ararken – Kadın Hareketinde Mücadele Deneyimleri*, [In Search of Freedom – Experiences of Struggle in the Women's Movement] eds. Berivan Kum, Fatma Gülçiçek, Pınar Selek and Yeşim Başaran (İstanbul: Amargi Yayınları, 2005), 207.

the invasion of Iraq."⁵ These joint actions and political campaigns at the same time paved the way for ideological and political discussion and exposure between the Kurdish women's movement and the feminist movement. The second important outcome of the emergence of the Kurdish women's movement was the rise of a strong generation of women politicians in the Kurdish political movement, who also influenced the political climate of Turkey, and introduced practices such as the women's quota and the co-leadership system, thus increasing the profile and performances of the women parliamentarians, and underlined the transformative power of the spokespeople of the women's movement. These two outcomes created a transformative impact across the board in Turkey ranging from the definition of the peace issue to the main topics of discussion in the peace struggle.

On the other hand, the Kurdish women's movement encountered many problems areas resulting from the fact that it was positioned within the ideological and political umbrella of a mass political movement. The tension experienced by the Kurdish women's movement between the general demands of the political movement and the specific demands of the women should not be disregarded either. Despite the women's efforts to the contrary, this tension was often resolved in favor of the general demands and the agenda of the political movement.⁶ In a country like Turkey where politics is effectively instituted through male privileges, the insistence and efforts for the women's quota and the practice of co-leadership, which brings

5 Handan Çağlayan, *Kürt Kadınların Penceresinden – Resmi Kimlik Politikaları, Milliyetçilik, Barış Mücadelesi* [From the Window of the Kurdish Women – Official Identity Politics, Nationalism, Struggle for Peace] (İstanbul: İletişim Yayınları, 2013), 85.

6 Handan Çağlayan, *Analar, Yoldaşlar, Tanrıçalar – Kürt Hareketinde Kadınlar ve Kadın Kimliğinin Oluşumu* [Mothers, Comrades, Goddesses – Women in the Kurdish Movement and the Constitution of the Woman's Identity] (İstanbul: İletişim Yayınları, 2007).

women to executive positions at every level, are extremely important. These achievements signify certain mechanisms the Kurdish women attained through much labor and struggle. However, these very important achievements do not eradicate certain limitations. The discourses and actions of the Kurdish women's movement are oftentimes determined by the overarching discourses and actions of the movement. The Kurdish women who developed a strong dialogue with the women's movement and share their demands may at times withdraw to more confined positions within the movement. Moreover, all these achievements are still far from effectively eroding the existent sexism in mixed-gender organizations; all these mechanisms ranging from the women's quota to co-leadership, from organizational autonomy to the strong support for the women's political say, can be maintained only through the constant struggles of the Kurdish women.

The Feminist Movement and the Different Subjectivities of Women

The 1980s is the period when a strong feminist movement began to take root in Turkey. Considering the 1980s, even the use of the concept of feminism was quite a radical and new step in itself. Until then, the systematic oppression and exploitation patterns experienced by women were either addressed by leftist organizations as a "woman's problem" in an instrumental and reductionist manner, or the issue was completely ignored.⁷ Within the social opposition, feminism was branded as a petit

⁷ Fatmagül Berktaş, "Türkiye Solu'nun Kadına Bakışı: Değişen Bir Şey Var mı?" [The Left's View of Women in Turkey: Did Anything Change?] in *Kadın Bakış Açısından 1980'ler Türkiye'sinde Kadınlar* [Women in Turkey in the 1980s: from the Woman's Perspective], ed. Şirin Tekeli (İstanbul: İletişim Yayınları, 1995).

bourgeois movement that made misguided analyses which served to divide the working class. In the early 1980s, a number of women who were influenced by the radical breath of second wave feminism began to come together primarily to talk with one another and to make a political interpretation of the entirety of their experiences as women. In the early period of the feminist movement, the basic principles and organizing forms of the feminist movement began to be discussed mostly through translation activities, and certain spheres which until then were coded as personal and private and were not deemed subjects of politics started to be carried into the arena of politics. This first period includes the publication of a feminist page in the weekly *Somut* in 1983, the establishment of a "publishing, service and consultancy" company called Kadın Çevresi (Women's Circle) which was "based on the labor of women working with or without pay inside or outside the home and aimed to promote this labor," and the translation of feminist classics by forming a book club again through the Kadın Çevresi.⁸

Throughout the 1990s and 2000s, the feminists of Turkey, who put forth feminism as a specific political movement, both strived to preserve the radical spirit of the movement and struggled to create a permanent accumulation through different types of organizations and institutionalizations. While periodizing the post-1980 trajectory of the feminist movement in Turkey, Gülnur Acar Savran says that the movement should essentially be addressed in three periods: The period of formation, creating an ideological body of knowledge and experience in the first half of the 1980s, first through discussions among ourselves, then on the pages of *Somut* weekly, and then in structures such as Kadın Çevresi. A period of campaigns and dynamism that began with the Solidarity Campaign against Battery in 1987 and continued until the beginning of the 1990s;

⁸ Özgür S. Göral, "Kadınlar vardır ya da Türkiye'de feminist hareketin eleştirel bir analizi," [A critical analysis of the feminist movement in Turkey] *Devrimci Marksizm* 4 (2007).

and a period of institutionalization and project feminism since the early 1990s to date.”⁹ The institutionalization process and project feminism had positive outcomes such as the mainstreaming of feminism, and middle class, educated and urban women establishing rooted and permanent relationships with feminist politics. On the other hand, this situation was criticized from several viewpoints: the fundamental criticisms were that it transformed the political goals into technical project objectives and street militancy into institutional forms; diluted the radical spirit of the movement and increased the number of disconnected and unrelated feminist groups that engaged in “activism” with very different agendas; and caused the movement in general to “age” and estranged the young feminists.¹⁰

In addition to politicizing the women's poignant problems and creating political mobilization through campaigns or other types of political actions in these newly politicized areas, certain groups within the feminist movement of Turkey also began to discuss what sort of an attitude to adopt in the face of political events on the national level. For instance, in the framework of the “Black Protest” against Violence in the Prisons organized in 1989, feminists called upon the women to wear black to protest the violence in the prisons. With this action, the feminist movement “... reacted to an event beyond its specific agenda for the first time, which brought in its wake certain discussions.”¹¹ As the 1980s unfolded into the 1990s when the armed conflict deepened and

9 Gülnur Savran, “Yolun neresindeyiz?” [How far have we come?] *Pazartesi* 36 (1998).

10 Aksu Bora and Asena Günel, Introduction to *90'larda Türkiye'de Feminizm*, [Feminism in Turkey in the 1990s] eds. Aksu Bora and Asena Günel (İstanbul: İletişim Yayınları, 2002), 9.

11 Socialist Feminist Collective, “Cezaevlerindeki Şiddete Karşı ‘Siyah Eylem’ / 1989,” [“Black Protest” Against Violence in the Prisons / 1989] *Sosyalist Feminist Kolektif*, accessed April 7, 2017, <http://www.sosyalistfeministkolektif.org/kampanyalar/tarihimizden-kampanyalar/cezaevlerindeki-siddete-kars-siyah-eylem/>.

intensified, the Kurdish issue and the political stance and alliances to be established in this context became ever more urgent. As the Kurdish women's movement began to assert itself in the 1990s, certain Kurdish women also began to define themselves as independent Kurdish women's groups and make feminist politics. In other words, both the stirrings in the Kurdish women's movement, which began to take root within the mass Kurdish movement and would gradually turn into an autonomous organizing, and the feminist Kurdish women's groups such as Roza and Jujin, which organized as small groups intent to address the experiences of being Kurdish and womanhood as intertwined issues in resonance with the feminist movement, emerged simultaneously.¹²

A tense yet productive relationship formed between the women who organized within the Kurdish political movement and struggled to create a more independent women's organizing effort and the feminist movement of Turkey. Throughout the 1990s, different political orientations within the feminist movement of Turkey became predominant. Feminist approaches, which we could broadly call mainstream, organized and institutionalized through civil society projects, acted essentially with the perspective of “improving” the women's situations, and prioritized legal reforms. On the other hand, the women, who embraced the radical spirit of feminism and defined themselves rather as radical and socialist feminists in Turkey, continued to believe in struggling through campaigns and different forms of organizing; however, they too entered certain broad political and institutional coalitions and collaborations. At the same time, the socialist and radical feminists were among the actors who collaborated most with the Kurdish women's movement, developed shared discourse, took

12 Halide and Canan, “Roza ve Jujin Dergileri,” [Roza and Jujin Journals] in *Özgürlüğü Ararken-Kadın Hareketinde Mücadele Deneyimleri*, [In Search of Freedom – Experiences of Struggle in the Women's Movement] eds. Berivan Kum, Fatma Gülçiçek, Pınar Selek and Yeşim Başaran (İstanbul: Amargi Yayınları, 2005).

joint stance and built alliances. These women, who politically distanced themselves from some sort of state feminism, not only developed political relationships with the Kurdish women and the Kurdish women's movements but also took a political stance on the Kurdish issue in the public arena.

On the other hand, despite the many important and productive interactions, the relationship between the different elements of the feminist movement in Turkey and the Kurdish women's movements is far from being conflict-free or non-contentious. A tense dispute erupted between the Kurdish women and certain actors of the feminist movement in 1998 when Multi-Purpose Community Centers (ÇATOM) were opened across the Kurdish provinces with the purpose of providing education and contraception services particularly aimed at women. The Kurdish women criticized the feminists who held a positive view of the ÇATOMs for being blind to these institutions' assimilationist, racists and essentially oppressive nature driven by social control, and underlined that this blindness was not coincidental but rather pointed at a structural problem.¹³ Moreover, this dispute does not indicate a field of tension specific to the 1990s; also throughout the 2000s, and even among the women who act together to a significant extent, the Kurdish women "feel the necessity to struggle for the right to an expression that is not limited to the position of the 'victim,' and demand to be recognized as a subject of the women's movement".¹⁴ Similar to certain fundamental criticisms raised by the black feminism, the Kurdish women's movement and other Kurdish women/feminists have expressed repeatedly throughout the 1990s and the 2000s that they are subjected to hierarchical forms and habits of discourse and have the "perception of being approached like 'the little sister,' the legitimacy

¹³ İçten Keskin, "Kürtaj tartışmaları ve feminizm," [Abortion debate and feminism] *Fe Dergi: Feminist Eleştiri* 7, no 1 (2015), accessed April 10, 2017, http://cins.ankara.edu.tr/13_7.pdf.

¹⁴ Çağlayan, 86.

of whose word is limited to the framework of victimhood". The Kurdish women criticized the feminist movement also for describing their agenda through a single state of womanhood and rendering their own experiences secondary.

All these criticisms and tensions did not hinder Kurdish women and other feminist women from struggling together for the truth and justice. Despite the ongoing discussions and at times escalating political tensions, the women came together sometimes as individuals and sometimes by forming different organizations, coalitions and alliances, and carried out the struggle for peace, truth and justice at various levels. Throughout the 2000s, the feminist movement diversified and institutionalized in numerous forms and feminist women continued their struggle through a variety of channels such as instigating legal change, attaining outcomes through project feminism; strengthening the feminist struggle through women's studies centers in the academia;¹⁵ renewing and reclaiming the radical essence of the feminist stance by forming radical groups; and at the same time they placed weight on putting forth their say and making politics in the context of the Kurdish issue and the ongoing conflict. Aside from the extraordinary resolve of the Kurdish women's movement and other feminists of Turkey to carry out the peace struggle and to voice women's pursuits of truth and justice in face of the ongoing conflict, it was

¹⁵ As an important academic upshot of the accumulated feminist experience, women's studies departments and centers were founded in various universities throughout the 1990s. İstanbul University Women's Research and Education Center was founded in 1993 followed by METU Gender and Women's Studies Graduate Program in 1994 and Ankara University Women's Studies Center in 1996. In the 2000s, these departments both extended to other state and private universities and diversified, and also enabled the formation of an important academic feminist literature and discourse. The relationship of this academic discourse with feminist activism was both fruitful and strained. About these departments, see: Filiz Can, "12 Üniversitede Kadın Çalışmaları Merkezi," [Women's Studies Centers in 12 Universities] *Bianet*, May 10, 2006, accessed April 25, 2017, <https://m.bianet.org/bianet/kadin/78864-12-universitede-kadin-calismalari-merkezi>.

very often the women, the Kurdish women and the feminist women, who were the conveyers and executors of the quest for peace, truth and justice around the Kurdish issue in Turkey. However, this extraordinary resolve did not lead to the acknowledgement of the gender regime in the constitution of neither the content nor the topics of discussion of the overall peace struggle carried out in Turkey.¹⁶ In other words, despite the fact that women were its executors and subjects, the peace struggle carried out in Turkey was for the most part not constituted as a gendered agenda molded with the women's experiences.

Different Routes in Women's Pursuits of Truth and Justice

The Saturday Mothers/People is one of the first initiative that comes to mind when talking about the women's struggle for peace, justice and truth in the context of the conflict around the Kurdish issue. The women, whose husbands and children were forcibly disappeared or extrajudicially and arbitrarily executed, politicized their identities as mothers and wives and carried these into the public arena; they eroded the traditional patriarchal meanings of their ascribed mother and wife identities, and by mobilizing the empowering aspect of their domestic roles they

16 Nevertheless, an important intellectual accumulation was created in this field. See: Burcu Şentürk, *İki Tarafta Evlat Acısı* [Both Sides Suffering the Loss of Their Children] (İstanbul: İletişim Yayınları, 2012); Nazan Üstündağ, "Türkiye'de barış süreci ve toplumsal cinsiyet," [Peace process and gender in Turkey] *Heinrich Böll Stiftung Turkey*, accessed November 20, 2017 (İstanbul: Heinrich Böll Stiftung Derneği Türkiye Temsilciliği, 2011), accessed November 27, 2017, <https://tr.boell.org/tr/2014/11/13/turkiyede-baris-sureci-ve-toplumsal-cinsiyet>; Güneş Daşlı, Nisan Alıcı and Ulrike Flader, *Kadınların Barış Mücadelesinde Dünya Deneyimleri: Sırbistan, Kosova, Sri Lanka, Suriye* [Women's Struggles for Peace: Experiences from Serbia, Kosovo, Sri Lanka, Syria] (İstanbul: Demos Yayınları, 2017).

repositioned themselves as political subjects.¹⁷ Saturday Mothers/People demonstrations began in a political climate in which it was actually the women who predominantly took the initiative since the outset. Feminist, socialist women, and women from the Kurdish women's movement with feminist leanings, who were extremely active during the foundation and later works of the Human Rights Association, constructed this civilian initiative inspired by the Mothers of the Plaza de Mayo in Argentina. A group of mostly women comprised of around 50 human rights advocates and relatives of the disappeared came together after a series of events including the enforced disappearance of Hasan Ocak in İstanbul, whose tortured body was found 58 days later in a potter's field and during the search for which it was understood that Rıdvan Karakoç was also disappeared; again, in the same period the enforced disappearance of Ayşenur Şimşek was brought to public attention. Moving from the example of the Mothers of the Plaza de Mayo in Argentina, they decided to organize a silent demonstration to be held periodically and made a call for "the people disappeared in custody to be found and the responsible parties to be prosecuted". On May 27, 1995 they came together and held their first sit-in at the Galatasaray Square. This was repeated every week for 200 weeks. However, in that period when especially the strategy of enforced disappearance continued to be employed, there was an attempt to

17 For several important examples concerning women's interventions into the political sphere by transforming their motherhood and spousal roles, see: Özlem Aslan, "Politics of Motherhood and the Experience of the Mothers of Peace in Turkey," unpublished master's thesis, Boğaziçi University, 2007; Başak Can, "Barış Anneleri," [Peace Mothers] *Toplum ve Kuram* 9 (2014); Nükhet Sirman, "Cuma, Cumartesi, Pazar Anneleri," [Friday, Saturday, Sunday Mothers] *Amargi* 15 (2011); Meltem Ahıska, "Kayıp Annelerinin Şiddete Tanıklığı / The Mothers of the Disappeared, Witnesses to Violence," *Amargi* 2 (2006); Filiz Karakuş, "Anaların acısı barış getirir mi?" [Would the pain of the mothers bring peace?] *Feminist Politika* 25 (2015); Hatice Bozkurt, Özlem Kaya, "Holding Up the Photograph": *Experiences of the Women Whose Husbands were Forcibly Disappeared* (İstanbul: Hakikat Adalet ve Hafıza Merkezi Derneği Yayınları, 2014).

vehemently suppress this effort to publicize the issue; those participating in the demonstration were faced with increasing police violence and oftentimes taken into custody. Due to all this oppression the relatives of the disappeared declared, "For us everywhere is Galatasaray, we will keep seeking our disappeared relatives" and discontinued the Galatasaray sit-ins on March 13, 1999.¹⁸ After the Ergenekon indictment was prepared in 2008, the demonstrations were restarted on January 31, 2009. What instigated this new round of demonstrations was the fact that persons responsible for enforced disappearances were also being put on trial in scope of the Ergenekon investigation. This time it was not only in İstanbul but also in Diyarbakır and later in Cizre that the relatives of the disappeared began to organize Dayikên Şemiyê (Saturday Mothers) demonstrations with the demand to "Find the disappeared, prosecute the perpetrators". The individual criminal cases opened against the perpetrators of enforced disappearances played a very important role in the spread of the demonstrations to the towns of the region. Especially in scope of the Temizöz and Others case,¹⁹ the relatives of the

18 Doğu Eroğlu, "Maside Ocak ile söyleşi: 'Her kayıp yakını sevdiğinin son sözünü bilmek ister,'" [Interview with Maside Ocak: "Every relative of the disappeared wants to know the last words of her loved one"] *Türkiye'den Şiddet Hikâyeleri*, [Stories of Violence from Turkey] accessed April 26, 2017, <http://www.siddethikayeleri.com/portfolio/her-kayip-yakini-sevdiginin-son-sozunu-bilmek-ister/#.WUvaeGjiUk>.

19 After the Diyarbakır Public Prosecutor's Office's indictment dated 15.07.2009 was accepted, a case was opened into the 21 murders by perpetrators unknown committed in the Cizre district of Şırnak between 1993-1995 during the period when Cemal Temizöz was the Cizre District Gendarmerie Commander. On charges of founding an interrogation team which under his orders took into custody and murdered a vast number of people, it was demanded for Temizöz to be sentenced to 9 aggravated life imprisonments plus 100 years; however, the case was concluded on November 5, 2015 with the acquittal of all defendants. For detailed information, see: *Faili Belli / Perpetrator Not-Unknown*, accessed June 12, 2017, <http://failibelli.org/en/dava/the-temizoz-case/>.

disappeared, the overwhelming majority of whom were women, traveled from Cizre to Diyarbakır and thus organized their first demonstrations in the courtrooms. The relatives of the victims participated in these court hearings en masse, they followed and became intervenors to the proceedings. These demonstrations constituted the beginning of the Dayikên Şemiyê demonstrations which would later be held regularly every week. The demonstration that began in Cizre in January 2011 was in time extended to other towns such as Batman and Yüksekova.

On the other hand, the Temizöz and Others is not the only case file that the women have been following in pursuit of justice in the ongoing conflict in the context of the Kurdish issue in Turkey. Kurdish women in particular have been the active subjects of the quest for rights and justice especially in the 1990s and throughout the 2000s after every conjuncture when the violence intensified and became more widespread. The Kurdish women, who were first banned and later constantly hindered from speaking their mother tongue Kurdish on all sorts of technical pretexts, have applied to the prosecutors and filed criminal complaints sometimes with the support of men in their families and sometimes on their own, they made sure to follow every hearing of the few cases that were eventually opened, and never stopped asking for the whereabouts of their relatives and never gave up on calling the perpetrators to account. By defining all these as a sort of political and moral duty, they have been the ever present yet invisible subjects of the pursuit of justice carried out in the jargon-laden and complex language of the field of law, in which their experiences have been ignored. The Kurdish women's persistent struggles in the judicial arena became more visible especially after 2008 as a result of the criminal proceedings against state officials who committed crimes in Kurdish provinces;²⁰

20 For information on these cases, see: *Faili Belli / Perpetrator Not-Unknown*, accessed June 12, 2017, <http://failibelli.org/en/>.

these were conducted as individual trials without drawing the connections between the cases. Despite the accumulated experience of the women who have been seeking justice through such an adamant struggle in the judicial arena, neither the academia nor the civil society shows any interest in the studies that discuss how to evaluate the women's experiences in the high criminal court proceedings and examine the effect of gender roles in this field where a true gender blindness prevails.

At this point we should also mention a significant body of knowledge and experience created by the feminist movement concerning the women's different positions in the proceedings of high criminal courts. Besides the politicization of the women's experiences arising from their struggle for truth, justice and peace in the Kurdish issue, the women's experiences caused by various forms of male violence have also been a subject of criminal justice processes. As in many parts of the world in Turkey as well we encounter widespread, systematic and multidimensional male violence. Women experience systematic and lethal violence perpetrated by men and most commonly by the men they know, that is, their husbands, lovers, relatives or friends, and sometimes lose their lives due to this violence.²¹ The disclosure of the women's experiences of male violence by exposing the information pertaining to the domestic sphere, which is deemed private, in trial processes has come about with the struggle of the feminist movement of Turkey. Here, it should be acknowledged that it was through the noteworthy struggle of the feminist movement that the murders of the women who lost their lives due to male violence were coined as femicide, and the feminist initiatives

²¹ Mary P. Koss, Lisa A. Goodman, Angela Browne, Louise F. Fitzgerald, Gwendolyn Puryear Keita, and Nancy Felipe Russo, *No safe haven: Male violence against women at home, at work, and in the community* (Washington, DC: American Psychological Association, 1998).

and lawyers²² who followed these trials have played an important role in the prosecution of these femicides. Feminists have managed to open an important political space not only in the trials of the women who lost their lives due to male violence but also in the trials of the women who had to resort to violence in face of male violence. The feminists who intervened in these trials revealed the systematic violence women are subjected to inside the family institution, the collaboration between male violence and the various state institutions, and how the women are left alone in face of these forms of violence; feminists turned these into a subject of political struggle, produced information and legal strategies, and voiced this knowledge in the public arena.²³ Thinking about the feminist experience accumulated in this area in relation to the women's pursuit of justice in the framework of the Kurdish issue may lead to important revelations in the context of the women's pursuit of truth and justice. Moreover, besides challenging

²² Foremost, Mor Çatı (Purple Roof Women's Shelter Foundation) has collected important information and experiences of struggle on the subject of male violence and its various manifestations; accessed April 26, 2017, <https://www.morcati.org.tr/en/>. Also working in this field are, Kadın Cinayetlerine Karşı İsyandayız İnisiyatifi, [We Revolt Against Femicide Initiative] accessed April 26, 2017, <http://kadincinayetlerineisyandayiz.blogspot.com.tr>; the tally of violence documented on *Bianet* which gathers and publishes monthly data on the women killed by male violence, accessed April 26, 2017, <http://bianet.org/konu/erkek-siddeti-cetelesi>; Kadın Cinayetlerini Durduracağız Platformu, [We Will Stop Femicide Platform] accessed April 26, 2017, <https://kadincinayetleriniurduracagiz.net>.

²³ The study compiled from the monthly reports published by İstanbul Feminist Collective fulfils a very important need on this subject: İstanbul Feminist Kolektif, ed., *Kirpiğiniz Yere Düşmesin: Kadınlar Hayatlarına Sahip Çıkıyor* [Women are claiming their lives] (İstanbul: Güldünya Yayınları, 2016). Also, see: Cemre Baytok, "Political Vigilance in Court Rooms: Feminist Interventions in the Field of Law," unpublished master's thesis, Boğaziçi University, 2012; Filiz Karakuş, "Tecavüz bir erkek eylemidir, bir erkeklik suçudur!" [Rape is a male act, it is a crime of masculinity!] *Feminist Politika* 14 (2012).

the given positions of the women in criminal trials, the same experience will be useful in developing new mechanisms such as the women's courts which we aim to discuss in this report.

Finally, we should talk about Barış İçin Kadın Girişimi (Women for Peace Initiative – BİKG) which has accumulated an important body of knowledge and struggle in terms of the women's pursuit of peace. From the 1990s to date, there have been a series of initiatives for the women to voice and convey to the political arena how they are affected by the conflict around the Kurdish issue. These initiatives enabled the connections between war and sexism to be questioned and the demands to be heard. This questioning led to a number of initiatives that were founded and represented by women and carried the different identities of women to the political sphere along with their demand for peace. The important initiatives in this area are, the Arkadaşıma Dokunma (Do Not Touch My Friend, 1993) campaign which advocated the equality of citizens with different ethnicities and their protection by other citizens through friendship; Barış Anneleri (Peace Mothers, 1993) initiative formed by Kurdish mothers who lost their children in the conflict; Women for Peace Initiative (1996) formed to establish the discourse of peace through women; Barış İçin Kadın Buluşmaları (Women's Meetings for Peace, 2004); Vakti Geldi (It Is Time, 2005). The Women for Peace Initiative (BİKG), which was founded in 2009 drawing on the knowledge and experience of these initiatives, carried out a very important and active struggle in the peace process and can be considered the most important initiative especially in terms of different women making politics together on the struggle for peace. Throughout the peace process, BİKG consulted with different political actors, drafted reports, opened to discussion the issue of women's active participation in the peace and negotiation processes both in scope of the United Nations resolution number 1325 on Women, Peace and Security and also

in the context of the specific characteristics of Turkey and the Kurdish issue, and pondered the relationship between peace and gender equality, and mobilized many women around these discussions.²⁴ Through conferences, workshops and various other types of meetings, BİKG managed to include in its activities women from the Kurdish women's movement, women with different political backgrounds, and women in the academia. When the peace process was ended, the quests for peace in Turkey were disrupted across the board, but BİKG kept itself going. It organized solidarity campaigns to redress the destruction arising from the curfews, held meetings on the possibility of a new peace process, and at a moment when the conflict restarted it strived to render visible the relationship between the conflict-related militarism and sexism and the women's experiences. Therefore, BİKG also created and put into circulation an important experience in its own field.

Surely the women's quests for justice, truth and peace are not limited to the examples we have cited above. Addressing each one of these experiences in detail is a task much beyond the scope and aims of this study. The examples we have referenced here rather represent the experiences which would be useful to keep in mind while discussing the possibility of a women's court in the context of Turkey. The discussions and efforts carried out on women's courts are closely related to women's pursuits and struggles for truth, justice and peace in each country. Therefore, while thinking about women's courts in the context of Turkey, the subjects and political discourses of the women's liberation movement in Turkey should be kept in mind as well as the relationships different subjects have established with one another. Additionally, despite the very valuable initiatives and accumulated knowledge in this field, the information and politics of the women's experiences in their specific truth

²⁴ Women for Peace Initiative, *Report on the Process of Resolution, January-December 2013* (İstanbul: Barış için Kadın Girişimi, 2013).

and justice quests in the context of the peace struggle have not been sufficiently developed, set forth or diversified. Women's courts, which signify a new and feminist intervention to the field of law, are shaped as a result of these very experiences and struggles and aim to expand the existing practices. The rest of the report will address the historical context of the women's courts and their manifestations in different countries. We hope that a well-rounded discussion on women's courts will make a humble contribution to the truth, justice and peace quests of the women in Turkey.

RESEARCH

SUBJECT AND

METHODOLOGY

The idea of focusing on the women's courts is not what we had in mind when we first started this study. Essentially, we set out to compile the various methods women have developed to uncover the gendered experiences caused by armed conflict. On the other hand, we were aiming to examine the gender based methods that have been used in different contexts by talking with the active political subjects about the methods, new opportunities and limitations discussed in the context of the Kurdish issue in Turkey. However, when we began to research the examples from around the world, we realized that holding a concurrent discussion on the methods that are different from one another would not go beyond making a superficial compilation. We saw the women's courts as an important example because it both constituted a feminist intervention to the field of law and also made it possible to ponder the women's quest for truth and justice together. Therefore, we decided to examine the women's courts, which are established by the women who carry out the struggle for peace by discussing the gendered effects of conflicts, and we resumed our literature review with this focus.

As you can read in more detail below, the women's courts were established in the aftermath of different conflict situations in many countries of the world, and each one was formed with its own specific methods. Given the impossibility of mentioning all of these examples, we chose three cases: Japan, countries of the former Yugoslavia and Colombia. In selecting these examples, we sought to choose the courts that both employed different methods and were set in countries with different conflict situation dynamics. Thus, we wanted to create an extensive content that can nourish the discussions to be held in the context of Turkey.

In order to generate this content, we made a literature review on the women's pursuit of truth and justice, the discussions of gendering transitional justice, and the different women's courts. Elif İnal supported us in conducting this literature review. For this report, we also held in-depth interviews with 16 people. Of these

interviews, fourteen were with women who labored for the women's peace struggle in Turkey, and two were held via Skype with women who worked in the women's courts in Colombia. The interviews were conducted by Özlem Kaya and Özgür Sevgi Göral. In these interviews we talked about the important milestones in the history of the peace struggle of the women in Turkey, as well as the scope and limitations of this struggle. While talking about how politics in the field of truth and justice are being shaped in general, we also tried to discuss the subject of women's courts itself. Our interviews with the women proved very useful in developing the content of the report, understanding the different examples of women's courts, interpreting the different manifestations of the women's quests for truth and justice, discerning the relationship between the struggle for peace and the political struggles of the women in Turkey, and comprehending the elements that a discussion on women's courts should entail in the context of Turkey. We thank the women we have interviewed for giving us their time and sharing their valuable experiences and observations, and all the women in Turkey and across the world who have been carrying out the struggle for peace, we are grateful for the many years of discussion they have already held on these issues that constitute the subject matter of this report and for never giving up on their struggles.

**THE DEMAND
FOR TRUTH AND
JUSTICE IN
THE STRUGGLE
FOR PEACE**

The peace struggle, on one hand, means objecting to the destruction brought on by war and advocating for talks on alternative solutions to the conflict situations that cause the war, and on the other hand, it entails building the dream for a common future. Because peace can be demanded and struggled for only as far as there is a will to live together. The first step towards ensuring this is to recognize that equal rights is the *sine qua non* of living together, and to employ various means to guarantee that what happened during the conflict is never experienced again.

Instruments conceptualized as transitional justice mechanisms were and continue to be employed in many countries in order to ensure that what happened in the past is experienced “never again”. Truth commissions were established to uncover the serious human rights violations committed in periods of war and conflict and under authoritarian administrations; to inform the society at large about how these violations were perpetrated and the underlying conditions and reasons; and to build a collective memory. These commissions published reports on the results of their investigations. These reports held a comprehensive historical account of the conflict and put a symbolic end to that period in history, and made institutional, legal and social recommendations to live in peace. While truth commissions served as nonjudicial mechanisms, there were also investigations launched concerning the committed crimes and trials were held to identify and punish the perpetrators. Along with all these mechanisms of coming to terms with the past, reparation programs were developed which included pecuniary and non-pecuniary compensations and aimed to redress to some extent the grave destruction caused by these experiences. These mechanisms, which have been discussed for over 30 years, are surely neither flawless nor absolute, they do not have sharp boundaries and cannot be implemented identically in different historical contexts. The criticisms brought by the women’s organizations and feminists have been very influential in paving the way for all these mechanisms to gradually heed to the category of gender and the relationship

of domination that determines this category. Below we will touch upon how this discussion has resonated in the truth commissions and the sphere of criminal proceedings, as well as the impacts it created over time. In the next section of the report, the women’s courts will be explained through three examples; we will include only the discussion topics in the field of truth commissions and criminal trials aiming to provide a basis for the discussion on women’s courts and the conceptual and methodological issues that determine this discussion.

Women’s Intervention to the Truth Commissions

There are numerous issues concerning the truth commissions that continue to be discussed such as the women’s participation in these commissions both as commission members and witnesses; the inclusion of women’s different experiences in the truth that has been uncovered, as well as the conditions that cause these differences. In the early truth commissions established in Argentina and Chile, gender was not taken into consideration as a category, and eroding gender inequality was not adopted as a goal among the demands that were made. In later commissions certain steps were taken for women to participate in the commissions as commission members and witnesses and to enable equal representation. Established to focus on the serious human rights violations committed in the past, these commissions did recognize sexual violence, which mostly targets women, as a human rights violation, however, failed to take its gendered structure into consideration and did not discuss the special measures required to reveal or redress it. The South African Truth and Reconciliation Commission both founded its own gender unit and also became the first commission to organize sessions that encouraged women to recount their own experiences and express their own demands. The commissions established in Peru and Sierra Leone also followed this example.

Having women testify in the commissions as witnesses surely is not in and of itself a guarantee of arriving at the gendered experiences. The number of women and men who came to the commission in South Africa and told their experiences was almost equal. However, while 79 percent of the women testified about violations committed against men, only 8 percent of the men's testimonies concerned violations committed against women.²⁵ Therefore, the Commission decided to organize special women's hearings.

However, the South Africa and Peru commissions, which are considered good practices in this sense, were not flawless either. Ross, who conducted research on the South African truth commission and the women's testimonies, emphasizes that no distinction was made on whether the women testifying in the commission were actively participating in politics, whereas this was indeed a determining factor in the women's experiences. She also criticizes how the violence and many other harms that politically active women suffer as political opponents are rendered invisible and the women are depicted merely as "victims of sexual violation".²⁶ This perhaps also had to do with the fact that the male members of the South African Truth Commission were insistent on limiting the definition of the "victim" to those with physical, bodily injury. However, a more nuanced definition of victimhood is required to duly include the women's experiences.²⁷ Meanwhile, the work of the Peruvian commission's gender unit was severely criticized by the Peruvian feminists who saw the truth commission process as a lost opportunity.

25 Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003), 17.

26 *Ibid.*, 82-89.

27 Pumla Gobodo-Madikizela, *Women's Contributions to South Africa's Truth and Reconciliation Commission* (Cambridge, MA: Women Waging Peace - Policy Commission/Hunt Alternatives Fund, 2005), accessed April 3, 2017, https://www.inclusivesecurity.org/wp-content/uploads/2012/08/11_women_s_contributions_to_south_africa_s_truth_and_reconciliation_commission.pdf.

Even though sexual violence received in-depth treatment in the commission's final report, it was criticized for failing to bring to light the gendered patterns of other human rights violations and open a national conversation about the enabling conditions of abuse against women.²⁸

The truth commissions' focus on serious human rights violations committed in the past makes it necessary to question the "weight" of gendered experiences. When serious human rights violations committed during periods of conflict and under authoritarian regimes are limited to war crimes and crimes against humanity, the truth that the truth commissions seek to uncover has the risk of excluding not all but a large part of the women's experiences. The everyday life being turned upside down, the obligation to cope and at the same time help others cope with the psychological effects of different forms of loss, and the obliteration of economic and social rights, are all experiences suffered mostly by women; but since these are not recognized among "serious human rights violations" they may be categorically left outside the field of interest of the truth commissions. Over time, certain steps were also taken on this subject. For instance, the women's hearings of the Timor-Leste Commission for Reception, Truth and Reconciliation, which worked between 2002 and 2003, did not only address sexual violence but also "concentrated on other aspects of women's experiences of conflict, including the violations of women's socio-economic rights and the more wide-ranging consequences of conflict".²⁹

28 Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies and Procedures* (New York: International Center for Transitional Justice, 2006), 4, accessed April 3, 2017, https://www.ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf.

29 Nahla Valji, *A Window of Opportunity: Making Transitional Justice Work for Women* (New York: UN Women, 2010), 12, accessed April 3, 2017, <http://www.unwomen.org/-/media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf>.

One of the most important steps for the truth commissions to reach the women's gendered experiences is the development of certain methods to uncover these experiences. And the first step towards this end is to reach the women and listen to what they have to tell. However, as we have mentioned above, this on its own is not a sufficient method. Because in most situations women are regarded as the "witnesses" of the events that take place during periods of conflict, who recount the violations encountered by the men around them. Women themselves consider their own experiences insignificant and do not disclose them. However, testimonies are not unmediated, they are shaped with the questions being asked. They are also determined by the language and the physical environment in which they are told. Therefore, while devising the measures to be taken for women's participation, it is necessary to develop methods that encourage them to tell their own experiences. The gender committee of the commission established in the Republic of Liberia made specific preparations for interviewing women and provided them with pre-hearing support. Thus, the representation of women as witnesses was equal to that of men, and they were able to speak of their own experiences. In Timor-Leste, where women did not come to the commission to testify as witnesses, the gender unit carried out an oral history project and conducted in-depth interviews with 200 women, thus attaining information on the women's experiences.³⁰

Of course, all these discussions and the steps taken did not perfect the practices of truth commissions implemented across the world. Even though it is not possible to speak of a linear progress, as result of all these criticisms and ongoing struggles, the category of gender became an important category for the truth commissions. It was understood that it is of paramount importance to have a quota for women staff, identify sexual violence as a specific crime to be investigated, provide protection and psycho-social support for the witnesses, make

³⁰ *Ibid.*, 11.

a broader definition of gendered experiences, establish a gender unit to run and monitor these works, and ensure the participation of women's organizations and feminist organizations in the planning of all these processes in order to increase the quality of these works, emphasize their political significance and recognize the political subjectivity of women.

Women's Intervention to the Field of Criminal Proceedings

Yet another transitional justice mechanism comprises the judicial processes conducted to identify, try and punish the perpetrators. These trials can be carried out by the states' own national criminal courts as well as the specially authorized international criminal tribunals. The rights violations committed against women came to be taken into consideration in the judicial field as the result of a certain struggle. The Nuremberg International Military Tribunal (Nuremberg Tribunal) and the Tokyo International Military Tribunal for the Far East (Tokyo Tribunal), which were established after the Second World War to prosecute war crimes, did not hold any special proceedings to try gender based crimes. Actually, during the preparation phase of these tribunals, a United Nations War Crimes Commission was set up in October 1945 on behalf of the 17 allied states. The responsibility of this Commission was to identify, apprehend, try and punish the persons accused of war crimes. The Commission enumerated 32 rights violations that would constitute the basis of the Nuremberg and Tokyo trials, and among these were also the crimes of "rape" and "abduction of girls and women for the purpose of enforced prostitution". Despite the abundant evidence about the establishment and operation of the "comfort stations" where the Japanese army forced women into sexual slavery, which will be explained in further detail below, the "crimes against comfort women were never tried at the

Tokyo War Crimes Trial".³¹ In the founding charter of the tribunal there were no reference to sexual crimes, however, acts of rape against civilians were included in the indictment as inhumane treatment, ill treatment, inflicting pain and failure to respect family honor and rights. Perpetrators who committed the crime of rape as such were put on trial by the Tokyo Tribunal. However, these crimes against women to be placed under the definition of "failure to respect family honor and rights" was problematic on its own. Moreover, even though the crime of rape was punished, the crime of sexual enslavement failed to be included in the tribunal's agenda.³² In the judgements of the Nuremberg Tribunal, acts of sexual violence against women were included in scope of torture.

Yet another important example in the field of criminal prosecutions was realized in 1993. United Nations Security Council decided to establish a temporary international criminal court to prevent impunity for crimes committed during the war in the former Yugoslavia and to try the perpetrators. In 1994 a similar temporary tribunal was established for Rwanda. International Criminal Tribunals for the former Yugoslavia and Rwanda are exemplary as the two courts that played an important role in the recognition of gender based crimes at the international level. In article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), which regulates crimes against humanity, the act of rape was clearly defined as a crime against humanity. In the trial of Tadic held before the ICTY, for the first time an international court recognized and prosecuted rape separately as a war crime.³³ "The

³¹ Nicola Henry, "Memory of an Injustice: The 'Comfort Women' and the Legacy of the Tokyo Trial," *Asian Studies Review* 37, no. 3 (2013), 366-367.

³² *Ibid.*, 368.

³³ Andrea R Phelps, "Gender-based War Crimes: Incidence and Effectiveness of International Criminal Prosecution," *William & Mary Journal of Women and the Law* 12, no. 2 (2006): 508, accessed April 3, 2017, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1114&context=wmjowl>.

tribunal declared that this ruling 'accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something long denied to victims of sexual assault by the common law'."³⁴

The Statute of the International Criminal Tribunal for Rwanda (ICTR) included a provision similar to that of the ICTY. However, the ICTR Statute did not only regulate acts of sexual violence against women as crimes against humanity but also recognized rape in its article 4 as an outrage upon personal dignity in violation of the Geneva Conventions and Additional Protocol II. Moreover, the ICTR judgement in the Akayesu trial in 1998 "marked the first conviction for genocide by an international court, the first time an international court punished sexual violence in an internal conflict, and the first time that rape was found to be an act of genocide." In its judgment, the tribunal also made a broad legal definition of rape and noted that "these acts of violence need not include penetration or even physical contact".³⁵

Thus, the perception that regards these crimes—an overwhelming majority of which are perpetrated by men against women—almost as some natural phenomena experienced during times of war or renders them invisible by addressing them in scope of family honor was, albeit partially, surpassed and acts of sexual violence began to be perceived as a specific tool of war. Following the experiences of ICTY and ICTR, the International Criminal Court (ICC) was established in 2002 as a permanent court, and its founding document the Rome Statute also defined gender based violence as a possible war crime and crime against humanity. "Included in this definition are rape, sexual slavery, enforced prostitution, forced pregnancy, enforced

³⁴ *Ibid.*, 509.

³⁵ Valji, 6. For more detailed information on the procedural innovations introduced in the international criminal tribunals, also see: Jocelyn Campanaro, "Women, War, and International Law: The Historical Treatment of Gender-Based War Crimes," *The Georgetown Law Journal* 89 (2000).

sterilization and 'any other form of sexual violence of comparable gravity'.³⁶

The fact that sexual violence crimes are defined by the international law and the perpetrators are punished for these crimes is surely very important. Especially the fact that the statute of limitations and amnesty laws are not applied to the perpetrators of these crimes is a significant development in terms of preventing impunity for crimes of sexual violence, however, this issue is also subject to criticism from several perspectives.

The need to gender the "human" category in the field of human rights is germane also to the crimes against "humanity". The crime of sexual violence is perpetrated almost invariably by men predominantly against women and in no small numbers also against men, girl and boy children. Calling attention to the perpetrator, especially in crimes against women, is important for pointing at the relationship of domination that underlies this violence. On the other hand, women are subjected to men's sexual violence also in times of "peace," and most often the perpetrators are again the men who are closest to the women. The increasing militarism and the escalating violence of masculinity during times of war also intensify the male violence that women are subjected to by those closest to them. Placing rape into the category of political crimes perpetrated by soldier members of warring groups during times of war and conflict, and thus placing it within the jurisdiction of international humanitarian law and human rights law, carries the risk of minimizing both the everyday male violence, which increases during periods of conflict and is not necessarily perpetrated by the warring men, and also the violence that continues in "peace" time. While the international criminal law treats the rapes committed in times of war as "exceptional," the ones committed in peacetime are considered "ordinary violence". Therefore, the violence that women encounter in peacetime does not enter the jurisdiction of international law, and moreover, the

³⁶ Valji, 6.

societal circumstances underlying the violence against women in peacetime and enabling the rapes committed in times of war are not taken into consideration. However, the violence women experience both in peacetime and during war are caused by very interrelated reasons.³⁷

Exactly at this point it should be noted that there is an effort to break the connection between crimes against humanity and the period of war. Even if there is a general definition recognizing that this type of crimes can be committed both in times of war and peace, this connection between the periods of war and peace is not yet completely eliminated.

Male violence, which is cruelly manifested as sexual violence in general and rape in particular, is a political crime even in situations when it is not considered in the category of crimes against humanity. The reason why sexual violence is perpetrated at such devastating levels during times of war and conflict is both the other power relationships that determine the wars and also the power relationship between genders that is fed by the patriarchal system which shapes the societies not only in times of war but also in times of peace. Disregarding this fact shrouds the structural dimensions of gender based violence. "For this reason, instead of attributing an exceptionality to the periods of war and conflict, it is important to reassign the political meaning to all forms of violence that have been stripped of this meaning, and emphasize that these are the continuation of the structural inequalities."³⁸

Furthermore, placing particular emphasis on rape in scope of international criminal law, which

³⁷ Wendy Lambourne and Vivianna Rodriguez Carreon, "Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women," *Human Rights Review* 17, no. 1 (2016): 78.

³⁸ Hülya Dinçer, "Geçiş Dönemi Adaleti ve Toplumsal Cinsiyet: Kimin İçin Adalet Kimin Hakikati," [Transitional Justice and Gender: Whose Justice, Whose Truth] *Galatasaray Üniversitesi Hukuk Fakültesi Dergisi* 2 (2014): 243.

is created to prosecute war crimes and crimes against humanity, poses the risk of rendering other dimensions of sexual violence invisible, such as forced sex work, enforced sterilization, forced pregnancy, and sexual harassment. Upon criticisms raised from this perspective, the Rome Statute recognized not only rape but also other forms of sexual violence as crimes against humanity, and the statute of the Special Court for Sierra Leone defined forced marriage as an inhuman act and a crime against humanity, “the Trial Chamber specified that rape and forced marriage are distinct acts, as are forced marriage and sexual slavery, and as such, it is possible to be convicted of them all”.³⁹ Lastly, as we have also mentioned in reference to the truth commissions, the violations experienced usually by women during times of war but are not evaluated in the category of “serious” human rights violations were not addressed in any of these trials. Even though the perpetrators of the economic and social rights violations were known, it was not possible to charge them with any crime.

Moreover, the women's groups and feminists underlined that due to its certain structural elements, the field of criminal proceedings may limit the women's struggle for justice. In criminal trials, the main objective is to prove the crime and identify the criminal.⁴⁰ In course of the trials, the existing truths become evidence and by being questioned as evidence they become

³⁹ Valji, 7.

⁴⁰ For an example of the “trials for the truth” established in line with the argument that the mission of the criminal judges does not have to be merely punitive but can also be declarative, that they can make “declaratory resolutions” in which the main objective is the establishment and clarification of the facts rather than the judgment and conviction of the criminals, see: Sévane Garibian, “Ghosts Also Die. Resisting Disappearance through the ‘Right to the Truth’ and the *Juicios por la Verdad* in Argentina,” *Journal of International Criminal Justice* 12, no. 3 (2014); Elena Maculan, “Prosecuting International Crimes at National Level: Lessons from the Argentine ‘Truth-Finding-Trials,’” *Utrecht Law Review* 8, no. 1 (2012), accessed June 15, 2017, <https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.183/>.

open to suspicion.⁴¹ Given the fact that whether the victim's testimony constitutes sufficient evidence has been a subject of debate for many years, it is far from easy to prove the sexual violence perpetrated against women primarily due to the lack of witnesses, the difficulty of coping with the secondary trauma caused by the obligation to produce evidence, and the possible discrimination that the victim will encounter. Therefore, taking into consideration the gendered structure of such crimes, certain methods are suggested such as accepting the woman's testimony as sufficient basis especially in sexual crimes and reinterpreting the presumption of innocence—a principle of criminal law to protect the defendant—by placing the burden of evidence to disprove the crime on the men who are charged with this type of crime. Furthermore, the courtrooms and judicial structures do not allow for the women to express their complex and multi-dimensional experiences. In the judicial processes, the testimonies of the women and everyone else are meaningful and admissible only to the extent that they determine the crime and the culprit. However, trials can also be conceived as something more than a tool of ensuring punitive justice. “Justice for these witnesses entails the public telling of their stories and a sense that they are being heard. But this kind of truth-telling is not within the jurisdiction of formal legal fora. The translation of human suffering into a vocabulary and a form that is acceptable and appropriate to a judicial proceeding can be a dehumanizing experience, not only for victims of sexual violence, but particularly for them.”⁴²

In most instances, the courts are not interested in the analyses and declarations concerning the other factors that have led to this crime. Thus,

⁴¹ For a detailed research on this subject, see: Daniela Accatino and Cath Collins, “Truth, Evidence, Truth: The Deployment of Testimony, Archives and Technical Data in Domestic Human Rights Trials,” *Journal of Human Rights Practice* 8, no. 1 (2016).

⁴² Katherine M. Franke, “Gendered Subjects of Transitional Justice,” *Columbia Journal of Gender and Law* 15, no. 3 (2006), 818.

especially in trials where political subjects are involved in the process, there is an effort to extend this space in order to establish the courtrooms themselves as a political site. The methods used as different forms of intervention to this space include stepping outside the definitions of crime-criminal-victim in order to point at an active political subject, sometimes by pushing the limits of the position of the victim; and at times by expanding the definition of “defense” in the defendant’s position, questioning the reasons of the act that constitutes a crime and making a political analysis of these reasons.⁴³

In general, the professional structure and unique language of the field of law hinders the intervention of women who have been systematically excluded from especially the field of education and the public space. It is much more difficult for the women to understand the language of all the professionals in the court, be it the prosecutor, the judge, the lawyer or the bailiff. Even their level of knowledge required to launch the court process may not be sufficient. Apart from this, as we mentioned at the very beginning, these trials may be held at local courts and also at specially authorized international courts. The women’s access to these courts established away from where they live can be an obstacle in and of itself. Upon such criticisms concerning the fact that ICTY was established in The Hague in the Netherlands and ICTR in the city of Arusha in Tanzania, the hybrid Special Court of Sierra Leone was established in Freetown the capital of Sierra Leone and continued its work in this city, except for one hearing which was held in The Hague due to security reasons. On the other hand, there might also be various disadvantages to having the courts in the physical space of all kinds of social relationships that control and oppress the lives of the women. Special measures and encouragement mechanisms are required to overcome these challenges. The necessity to create all kinds of protection and encouragement mechanisms is pertinent both

⁴³ For a detailed study on the intervention of feminist lawyers and feminist activists in the femicide trials, see: Baytok.

for truth commissions and criminal proceedings. None of the women interviewed during a research conducted in Bosnia had gone to testify at the ICTY. This research which makes no claim to being representative does present an important data: the interviewed women said that they could not go to testify because they felt ashamed and afraid.⁴⁴

Even in cases where all these encouragement mechanisms are implemented, the criminal courts are still very far from ensuring that all the perpetrators are tried and sentenced to the punishment they deserve. In terms of mass atrocities, it is not possible to bring charges against all the perpetrators who caused horrible damages in the past and attain a “perfect justice” by calling them to account. Instead, the courts can address only a limited number of cases that may set precedence, or identify the leader or mastermind of the violence, and sometimes try and punish only the people they can capture. “Witnesses in these cases are invaluable resources in the production of wholesale justice, but the individuals become less important than the larger principles which their testimony helps establish.”⁴⁵ A myriad of crimes are left outside the process of criminal prosecutions, moreover, since the steps taken in procedural and legal fields cannot on their own have the power to redefine the relationships of domination, there remain inadequacies in implementation, which is one of the criticisms against ICTY and ICTR that are presented as best practices. Among the cases brought before the ICTY, as of September 2016, a total of 78 individuals (48%) of the 161 accused had charges of sexual violence included in their indictments. Among them only 32 individuals have been convicted for their responsibility for crimes

⁴⁴ Maja Šoštarić, *War Victims and Gender-Sensitive Truth, Justice, Reparations and Non-Recurrence in Bosnia and Herzegovina* (Utrecht: Impunity Watch, 2012), 67, accessed April 12, 2017, http://www.impunitywatch.org/docs/Gender_Research_Report_BiH_English.pdf.

⁴⁵ Franke, 820-821.

of sexual violence.⁴⁶ The ICTR handed down 21 sentences, 18 of these were convictions. However, 90 percent of these judgments contained no rape convictions, and moreover, there were double the number of acquittals for rape than there were rape convictions.⁴⁷

Informal Truth and Justice Processes

As we have mentioned above, both in truth commissions and in criminal proceedings women have usually been recognized only as witnesses or victims subjected to rights violations. Confining the women's position merely to the experience of victimization actually veils their position as the subjects of an incredible struggle who have survived this experience and persevered. At the same time, many of them have become political subjects also due to this experience. Such a politicization embodies a subjectivity that cannot be confined to the definitions of "witness" or "victim". Women's experiences may also differ depending on whether they are subjects of such a political activism. Truth and justice processes disregard the women's political agency and exclude their struggles, and resultantly women are not seen as subjects of the peace processes.

This very politicization renders the women's pursuits of truth and justice, which they have organized around their own needs that they themselves have identified, very valuable. Women's critiques concerning the mechanisms of confronting the past are very effective and important both in terms of deepening this discussion and in responding to the actual needs. The key feature of transitional justice mechanisms, which to some extent guarantees

⁴⁶ "Crimes of Sexual Violence - In numbers," *International Criminal Tribunal for the former Yugoslavia*, accessed April 18, 2017, <http://www.icty.org/en/in-focus/crimes-sexual-violence/in-numbers>.

⁴⁷ Valji, 8.

their effect, is the fact that they are mechanisms recognized at the state level. This entails the state, which in most cases is the perpetrator, to acknowledge its own responsibility, declare its will to instate the institutional measures for the establishment of a just system to live in peace, and take concrete steps to make the required arrangements. However, informal processes have also been carried out across the world in order to point at the shortcomings of such mechanisms, to produce alternatives to respond to these shortcomings, and sometimes to draw attention to the structural limitations of both the truth and the justice processes, and to support the different fields of struggle.

The women's most fundamental criticism of this field concerns the concept of "transitional period" itself. Because the transitional justice mechanisms limit the past within a certain period of conflict and focus on the specific conditions of that conflict period and thus do not take into consideration what happens before or after that conflict period. And when we assume that these mechanisms point at an "after," at a future when peace is instituted following an "extraordinary" period of conflict, the main goal is to reestablish a "before" when people lived in peace without conflict. By asserting that there is no such conflict-free earlier period, women expose the pre-conflict male domination as a relationship of domination that shapes the periods of conflict and war and the mechanisms of oppression used by authoritarian regimes. In that case, the envisioned peace is possible only through a transition period in which steps are taken to erode—albeit cannot eradicate—this relationship of domination. As we have mentioned before, considering conflict as an "extraordinary" period between periods of non-conflict creates yet another problem; by deeming the rape and violence that women encounter during this period as extraordinary, it brings the violence experienced in periods of peace or non-conflict to the realm of the ordinary. For this reason, women demand the transitional justice mechanisms to ensure a transformative justice and are struggling to this end. Transformative justice can at the same time transform the

transitional justice's definition of "extraordinary" crimes and offer a definition that includes also the crimes that are deemed "ordinary" because they are committed during times of peace.⁴⁸ In other words, women are in favor of "transformation" rather than "restoration" during periods of transition.⁴⁹

While criticizing the formal truth and justice processes in which the state is an actor, and forcing them to change, women have simultaneously been operating informal truth and justice processes in many countries. Women make interventions to the operations of truth commissions through their critiques, and at the same time they establish their own commissions, run their own mechanisms, and submit shadow reports to the currently active mechanisms. For instance, the organization Ruta Pacífica de las Mujeres, in consultation with truth commission experts worldwide, established the Colombian Women's Truth and Memory Commission which released its report titled "Women's Truth: Victims of the Armed Conflict in Colombia" in December 2013 drawing on testimonies from close to 1,000 women.⁵⁰ At the same time women are monitoring the trials and voicing their demands for justice concerning the rights violations they have encountered, and also questioning the sexism inherent to the field of law by founding informal courts. The point we want to underline here is that such informal processes do not necessarily indicate a lack of trust in the formal processes or mean that there are no longer any expectations from these processes. Informal mechanisms aim to create a pressure on the formal mechanisms, and at the same time generate the autonomous

⁴⁸ Lambourne and Carreon, 86.

⁴⁹ Christine Bell and Catherine O'Rourke, "Does Feminism Need a Theory of Transitional Justice? An Introductory Essay," *The International Journal of Transitional Justice* 1 (2007): 41.

⁵⁰ Virginia M. Bouvier, *Gender and the Role of Women in Colombia's Peace Process* (New York: UN Women, 2016), 26, accessed April 18, 2017, <https://www.usip.org/sites/default/files/Gender-and-the-Role-of-Women-in-Colombia-s-Peace-Process-English.pdf>.

spaces for talking about the utopias that will push the limits of these formal mechanisms.

In the next section of the report, through three country cases we will discuss the experience of women's courts that intersects the fields of truth and justice. Before moving on to these country cases, we will briefly touch upon the emergence of the women's courts and the people's courts that are considered to be their predecessors. The three examples we have selected are Japan, countries of the former Yugoslavia and Colombia. There are specific reasons for choosing these three examples. As we will explain in further detail below, the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery established in Tokyo is a specific example that focuses on the war period and directly implements the official court format. The example from the former Yugoslavia is very important in the sense that it is a court which emerged in the aftermath of an ethnically-based war and was founded by women from different countries who came together fully aware of their differences and did not disregard their positions as the perpetrator and the victim which were determined through their ethnicities. Women's Court for the Former Yugoslavia is a special court that also makes a feminist critique of the concept of justice. It is also a court that places importance on the process as much as the result and strives to implement the feminist method at every stage of the process. Lastly, we decided to include the example from Colombia. In Turkey we are watching closely how the peace process is carried out in Colombia and the limits to its acceptance by the society at large. As informal mechanisms, the women's courts contribute to the formal mechanisms by enabling the latter to be more widely embraced by the society and improved through criticisms. This is another reason why it is important to take a look at the alternatives that women have created and the criticisms they have raised in Colombia which is presently going through a contentious peace process.

WOMEN'S COURTS

Predecessors That Push the Limits of Law: People's Courts

Even though we consider the women's courts among informal transitional justice mechanisms, the route followed by these courts is not different from the people's courts organized in many countries of the world. The first and most important example of these courts is the people's court also known as the Russell Tribunal established in 1966 upon the call of Bertrand Russell and Jean-Paul Sartre in the aftermath of America's military intervention in Vietnam. Even though Russell stated that the court represents no state and that they are aware of the fact that they cannot hold the decision makers of the Vietnam war responsible for the crimes committed against the people, these limitations of the court also worked in its advantage. The organizers of the court especially emphasized that they are free to conduct a serious and historical investigation without a state rationale or other similar obligations.⁵¹ Similarly, Sartre also proclaimed that the tribunal's "legitimacy derives equally from its total powerlessness, and from its universality" and that the tribunal which "emerged from a void in response to an appeal (...) does not claim to replace any established body".⁵² The Tribunal's conception of the basic rights of the Vietnamese people was confirmed also in the Paris Peace Accords signed in 1973.⁵³

The path opened by this tribunal also brought along the discussion of who will ensure justice. In such a period when supranational justice

51 "Vietnam War Crimes Tribunal," *Vietnam War Crimes Tribunal*, accessed January 22, 2017, <http://raetowest.org/vietnam-war-crimes/russell-vietnam-war-crimes-tribunal-1967.html#v11-russ>.

52 *Ibid.*

53 Tetsuya Takahashi, *Can Philosophy Constitute Resistance?* (Tokyo: The University of Tokyo Center for Philosophy, 2008).

mechanisms and institutions were not yet established in the international arena, this type of tribunals continued to be held by those who did not trust the justice of governments but still defined the crime and the criminal with reference to the intergovernmental and supranational laws and treaties in effect in the institutional arena. Moreover, with the establishment of the Permanent Peoples' Tribunal (PTT) in 1979 following a conference held in Algeria, such independent courts assumed a permanent character. As it has been stated among the goals of the tribunal, "its long experience of research, analysis, and development of innovative criteria for the interpretation and promotion of the law have made the PPT one of the most active opinion tribunals for the expression of initiatives and movements that push for effective laws that can meet the growing challenges of globalization and economic impunity."⁵⁴

The people's courts do not have a legitimacy in international law, and actually they do not have such a claim either. Even though they are organized under the name of courts or tribunals, ever since their inception to date they have been established in different forms in different countries. While some of them maintained the courtroom format (with certain changes to democratize the architecture), others adopted the large meeting format. While some made decisions by following the internationally accepted treaties and protocols, others made recommendations. The main aim of these tribunals, which emerged as a criticism to the inability of the criminal prosecutions to enable true justice, was not to create an alternative to the formal judicial system but to create a complementary and supplementary system at some level.⁵⁵ Dianne Otto argues that people's tribunals have three

54 *Permanent Peoples' Tribunal*, accessed March 5, 2017, <http://permanentpeopletribunal.org/?lang=en>.

55 Daša Duhaček, "Women's Court: A Feminist Approach to In/Justice," in *Women's Courts: About the Process*, ed. Staša Zajović (Belgrade: Women in Black and Center for Women's Studies, 2015), 69.

legal objectives: First one is to draw attention to the international (and sometimes national) courts' failure to enforce the existing laws. Second one is to promote new legal regulations drawing from the experiences of especially the marginalized and oppressed groups. And the third one is to define the struggle for justice as a common struggle and bring the issue of collective responsibility to the fore.⁵⁶

The extent to which criminal trials in general reveal the actual experiences and affect the collective memory is a long-debated subject, which requires us to rethink the people's courts in this framework. As the sole authority to conduct trials and reach a punitive verdict, the courts are the platforms where the victims of rights violations, the witnesses, and the suspects, who are identified through necessary investigations, present their personal testimonies. Based on the laws and all these personal statements and different testimonies, the courts decide what has "really" happened. The courtroom is an arena where contesting memories and testimonies come face to face, and the winner of the contest becomes the judicially proven truth. Through their jurisdiction the courts create a space where the contesting memories come face to face and a certain memory and truth is accepted while the other one is trivialized and in some cases almost "falsified".

The international criminal courts are criticized also for failing to address the political responsibility and historical context underlying the crime as they focus on identifying the individual perpetrators.⁵⁷ This situation also points

⁵⁶ Dianne Otto, "Impunity in a Different Register: People's Tribunals and Questions of Judgment, Law and Responsibility," in *Anti-Impunity and the Human Rights Agenda*, eds. Karen Engle, Zinaida Miller and D. M. Davis (New York: Cambridge University Press, 2016), 294-295, https://www.researchgate.net/publication/318900223_Impunity_in_a_Different_Register_People's_Tribunals_and_Questions_of_Judgment_Law_and_Responsibility.

⁵⁷ Henry, 372.

at the failure of the law to do historical justice. The incredible state of evil experienced at a level that is felt by the entire society for generations does not originate from the individual anomalies of persons who were in power at a certain period. Henry asks what would have happened if the Tokyo Tribunal had addressed the issue of sexual slavery and punished the perpetrators, and says, "this would not necessarily have reduced historical denial or prevented the bitter memory wars that have ensued, although it might have given survivors a more solid basis from which to counter such arguments. Moreover, it is unlikely that the prosecution of sexual slavery at the Tokyo Trial would have helped to clarify the parameters of what exactly constitutes sexual slavery, or the distinction between enforced prostitution as a war crime and as an example of gendered structural violence. These debates and uncertainties, of course, continue today."⁵⁸

In this sense, confronting and coming to terms with the collective responsibilities of the societies is as important as coming to terms with the individual perpetrators. By voicing a dual objective such as uncovering the truth and contributing to the administration of justice, the people's courts present an opportunity to discuss the most basic issues of these two fields.

Women's Courts: First Examples

The women's courts, like the people's courts, is not a mechanism that was developed to focus only on periods of war and conflict. The main goals of these courts, which are organized around certain subjects and within the specific conditions of their respective countries, is to underline the injustice women encounter in the sphere of judicial proceedings, create public opinion on this subject, and contribute to the development of alternative methods to be implemented in the future.

⁵⁸ Ibid.

The International Tribunal on Crimes against Women held on March 4 – 8, 1976 in Brussels is the first example in this respect. This five-days long tribunal was organized as an international feminist conference centered on personal testimonies.⁵⁹ Simone de Beauvoir sent an opening statement to the tribunal attended by more than 2,000 women from 40 countries⁶⁰ which read, "I salute this Tribunal as being the start of a radical decolonization of women".⁶¹ This first example was not held in the traditional court format, there was no panel of judges, instead the women declared that they are all their own judges. In this tribunal where women "completely rejected patriarchal definitions of crime; all man-made forms of women's oppression were seen as crimes". Some of the crimes that women testified about were not recognized as crimes in many of the countries at the time; in fact, the women asserted that the very laws enforced by some countries can be defined as crimes themselves. "For example, many countries still make it a crime to use contraception or to obtain an abortion. If laws were made to serve women's interests instead of men's then it would be a crime to force women to be mothers against our will."⁶² During the first four days of the tribunal, the first four hours were set aside for the women's testimonies that focused on the violations they experienced in their own countries, such as the inaccessibility of abortion, medical crimes,

⁵⁹ Diana E. H. Russell and Nicole Van de Ven, eds., *Crimes Against Women: Proceedings of the International Tribunal* (California: Les Femmes Publishing, 1976), 7, http://womention.org/wp-content/uploads/2013/09/Crimes_Against_Women_Tribunal.pdf.

⁶⁰ Participating countries: Australia, Austria, Belgium, Brazil, Canada, Chile, Denmark, Egypt, England, France, West Germany, Greece, Guinea, Holland, Iceland, India, Iran, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Mozambique, the Netherlands Antilles, Norway, Philippines, Portugal, Puerto Rico, Scotland, South Africa, Spain, Sweden, Switzerland, Syria, Taiwan, the U.S.A., Vietnam and Yemen.

⁶¹ Russell and Van de Ven, 5.

⁶² *Ibid.*, 7.

economic crimes, double oppression of Third World women, rape, prostitution, pornography, persecution of lesbians, violence against women political prisoners, the problems faced by single mothers, and the subject of capitalism and women's oppression. Following the testimonies, workshops were held on the aforementioned rights violations as well as other suggested topics of discussion. In these workshops women discussed the conditions giving rise to these crimes, their solution suggestions and analyses. The last day of the tribunal was set aside for resolutions and proposals for change. The tribunal was open to the participation of women only, except for the half hour press conferences which were open also to male members of the press and were held every day before the start of the sessions. This first tribunal that addressed the crimes committed against women prioritized the identification of the commonalities among women. This was an important act of coming together which demonstrated that international feminism can rise against the male-dominated nationalist policies.

In conclusion, the International Tribunal on Crimes against Women completely rejected the definitions of crime made by patriarchal societies; and believed in the power of personal testimony to educate, politicize, and motivate people. This was a method used in small consciousness raising groups by the women's liberation movements in many countries.⁶³ "By stressing the centrality of women's experience, the healing effects of the testimonial process, and different conception of legal subjectivity, Women's Courts create alternative political spaces and are a cogent expression of resistance to violence."⁶⁴ However, the purpose of this first Women's Tribunal was fundamentally different from the Russell

⁶³ *Ibid.*, 152.

⁶⁴ Adriana Zaharijević, "On Trial at the Women's Court: Gender Violence, Justice and Citizenship," *Citizenship in Southeast Europe*, accessed March 10, 2017, <http://www.citsee.eu/citsee-story/trial-women%E2%80%99s-court-gender-violence-justice-and-citizenship>.

Tribunal which can be considered its predecessor. “The International Tribunal on Crimes against Women did not assess the responsibility under international law of one State or the other, it did not apply international law, it did not prepare a final decision containing recommendations. Its purpose was not to ‘judge’ but rather to criticize ‘state-made law’, highly discriminatory against women.”⁶⁵

This tribunal was followed by other examples that held trials without punitive objectives and were organized on the basis of different types of discrimination and problems experienced by women. In 1992, a common platform was initiated by Asian Women’s Human Rights Council and El Taller International which began to organize World Courts of Women in coordination with local women’s organizations. Since 1992 to date, over 40 courts have been organized in Asia, Middle East, Southeastern Europe, Africa, Latin America and the USA.⁶⁶ The goal of these courts is “to protest violence against women, not as an individual crime, but as embedded in other systemic forms of violence,” and they place “emphasis on testimonies of protest and survival, not just suffering and pain, which are linked to a politics of collective responsibility.”⁶⁷ In this respect they adopt a similar approach with the women’s tribunal held in Brussels. The World Courts of Women have inspired the women’s courts organized in many countries and shared their experiences even when they did not actively partake in the organization of a specific tribunal by cooperating with the local institutions.

In the next section of the report we will talk about three courts established after periods of

⁶⁵ Sara De Vido, “Women’s Tribunals to Counter Impunity and Forgetfulness: Why are They Relevant for International Law,” *Deportate, Esuli, Profughe*, no. 33 (2017): 153.

⁶⁶ For information on the world courts organized in the USA, see: *World Courts of Women on Poverty in the US*, accessed March 10, 2017, <https://worldcourtsofwomen.wordpress.com/>.

⁶⁷ Otto, 309-310.

conflict and war with the aim of focusing on the conflict-related rights violations experienced by women. The women’s courts established in Japan, in countries of the former Yugoslavia, and in Colombia have followed different methods from one another in many respects, but essentially they all enable us to think about the women’s experiences during periods of war and conflict; the power relationships that cause these experiences; the rights deprivations resulting from these experiences; the perpetrators and persons responsible for these rights deprivations; the different dimensions of subjectivities produced by these rights deprivations; and how justice can be ensured.

Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery

One of the most well-known examples of women’s courts organized with the aim of revealing women’s wartime experiences is the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery held in 2000. Many Asian women, most of them South Korean, were kidnapped mainly during the Second World War and forced into sexual slavery for the soldiers in the Japanese army. On December 13, 1937 Japanese troops captured Nanking, then the capital of the Republic of China. During the next six weeks, the members of the Japanese army killed the civilians, committed mass rapes and plundered the city. The multitude and prevalence of the rapes committed in this period led to the incident to become historically known as the Rape of Nanking. As of 1932, the Japanese government began to establish “comfort stations” where women were forced into prostitution; the aim was to cope “with widespread military disciplinary problems,” to restore the image of the Japanese army which was condemned by the international public due to this incident, and “to

avoid other cases of mass rape similar to the one in Nanking".⁶⁸

It is estimated that between 50,000 to 200,000 women were abused in these military stations. No steps were taken to address this issue until the 1990s. As of 1991, ten court cases were opened on the subject with the personal efforts of women living in different countries. The cases aimed to prove the responsibility of the Japanese government and asked for damages to enable a modicum of redress; however, all the cases were dismissed.⁶⁹ The Japanese government completely denied all allegations of responsibility.

The report written by the United Nations (UN) Special Rapporteur on Violence against Women R. Coomaraswamy in 1996 was the first UN document on the subject of "comfort women" and in a sense shed light on the way the issue was discussed in the beginning. Such that, the recommendations at the end of the report included compensation but not the punishment of the perpetrators. Two years later in 1998, a second report was written by G. McDougall, the UN Special Rapporteur on Systematic Rape and Sexual Slavery, which included the punishment of the perpetrators among its recommendations. The McDougall report maintained that the lack of punishment for such crimes allowed for their reoccurrence as in the case of Kosovo.⁷⁰

In such a period when a recognition at this level

⁶⁸ De Vido, 154; Carmen M. Argibay, "Sexual Slavery and the Comfort Women of World War II," *Berkeley Journal of International Law* 21, no. 2 (2003): 376, accessed March 13, 2017, <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1242&context=bjil>.

⁶⁹ De Vido, 154.

⁷⁰ Rumi Sakamoto, "The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: A Legal and Feminist Approach to the 'Comfort Women' Issue," *New Zealand Journal of Asian Studies* 3, no. 1 (2001): 52-53, accessed March 13, 2017, <http://www.nzasia.org.nz/downloads/NZJAS-June01/Comfortwomen.pdf>.

was voiced in the international arena, and the women kept in the "comfort stations" began to come out and recount what they lived through, the Japanese government was also compelled to take certain steps. In 1993, the statement by the Chief Cabinet Secretary of Japan Yohei Kono, also known as the Kono Statement, admitted that the Japanese army forced women into prostitution;⁷¹ many people deemed the statement ambiguous on the issues of legal responsibility and compensation. In 1995 another statement was issued by the Japanese government⁷² and the same year the Asian Women's Fund was set up through private donations in Japan "to provide monetary compensation to surviving comfort women".⁷³ While some of the women benefited from this fund many of them did not want to receive it. Because without an official recognition a monetary compensation, which did not even use state funds, was seen merely as a measure to cover up the demands. Especially the fact that the women forced into sexual slavery were predominantly Korean was shifting the public discussion on the subject to an axis of nationalism. However, the Japanese and Korean feminists struggled to move the debate beyond nationalism and to discuss the issue of sexual slavery in the context of international human rights.

⁷¹ "Statement by the Chief Cabinet Secretary Yohei Kono on the result of the study on the issue of 'comfort women,' August 4, 1993," *Ministry of Foreign Affairs of Japan*, accessed March 13, 2017, <http://www.mofa.go.jp/policy/women/fund/state9308.html>. We understand that this statement in particular and the issue of women forced into sexual slavery in general have been occupying the agenda in Japan seeing as in 2004 the Japanese government said that the Kono Statement could be reviewed. This attempt was met with the protests of numerous groups and the statement was kept as is.

⁷² "Statement by Prime Minister Tomiichi Murayama: On the occasion of the 50th anniversary of the war's end, August 15, 1995," *Ministry of Foreign Affairs of Japan*, accessed March 13, 2017, <http://www.mofa.go.jp/announce/press/pm/murayama/9508.html>.

⁷³ Henry, 373.

The idea of establishing a women's tribunal on sexual slavery was first developed as a suggestion by the Violence against Women in War Network (VAWW-NET). When the proposal was presented to the participants of the Asian Women's Solidarity Conference held in Seoul in 1998 it was widely supported by numerous groups. Thereupon an international committee was set up for the organization of the tribunal. There were three groups in this committee: VAWW-NET based in Japan, that is, the country accused of founding these stations; institutions based in the countries where the women forced into sexual slavery were predominantly abducted from (South and North Korea, China, Taiwan, the Philippines and Indonesia); and the international advisory committee comprised of activists who participated in conflict resolution processes in different countries. Two legal advisors participated in the tribunal; its preparation process lasted two and a half years. As per its charter, the tribunal was composed of chief prosecutors from third party countries; chief prosecutors from the victimized countries and regions; a panel of judges, who were eminent, internationally known legal experts in the field of human rights; and witnesses.⁷⁴ Five days long hearings were organized in the formal court format. The hearings were started with the presentation of the case to the judges by the prosecution which comprised of representatives from different countries. Thirty-five women testified in person or on video during the tribunal that was held with the participation of comfort women who came from North and South Korea, the Philippines, China, Taiwan, Indonesia, East Timor, Malaysia, or lived in Japan. Moreover, two former Japanese soldiers testified about the rapes in which they partook. During the preparation phase of the tribunal, members of the organization committee visited many countries to collect the women's testimonies which were thus documented and recorded on video. The women's experiences included the crimes of systematic and widespread rape, sexual slavery, forced abortion, sexual violence,

⁷⁴ Takahashi, 96.

enforced sterilization and child rape committed by the Japanese army.⁷⁵

Outside the auditorium where the tribunal was held, women's groups had booths, distributing newsletters, selling books and T-shirts, and collecting signatures for petitions. There were displays of paintings by victims, appeals and messages for peace, photographs of victims demonstrating in front of Japanese embassies or showing the scars that still remain on their bodies. Inside the auditorium, the front seats were reserved for the women coming from outside Japan, from the "victimized countries" where the comfort women were predominantly kidnapped from. Throughout the course of the tribunal, the communication with the media was very well coordinated in order to reach a much wider public besides the thousand people who watched the proceedings onsite. The media was provided with press releases and information packages. Security measures were taken against possible demonstrations and attacks by the nationalist groups in Japan. The main door of the tribunal was kept locked at all times and the entries and exits were done through the adjacent building. At the end of the tribunal, all the participants went up to the stage with signs that read "End Impunity of Wartime Sexual Slavery," and "No Peace without Justice".⁷⁶ Afterwards, a demonstration was held in the streets of Tokyo. Despite its formal process of criminal proceedings, both this demonstration held immediately afterwards and also the paintings by victims, the photographs of the women, and the messages for peace that were displayed throughout the tribunal constituted steps that expanded the boundaries of this formal structure. Even though it implemented the rules of international law, the tribunal declared that its deliberations were shaped by "the principles of law, human conscience, humanity and gender justice".⁷⁷

⁷⁵ De Vido, 155.

⁷⁶ Sakamoto, 50.

⁷⁷ De Vido, 156.

From the onset, the aim of the tribunal was to deliver a judgment from the perspective of international law and gender justice on the crime of sexual slavery committed in the Japanese army before and during the Second World War. Many international law experts, who served on the international tribunals for the former Yugoslavia and Rwanda, participated in the tribunal as judges and prosecutors. Here it is important to note that this was a period when the international tribunals for the former Yugoslavia and Rwanda had also recognized the gender based crimes committed during times of war. Therefore, it can be said that as a result of the feminist organizations' struggle, the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery held in 2000 placed the issue of sexual slavery into the context of international war crimes by putting an emphasis on punishment.⁷⁸ In response to the argument that laws cannot be applied retrospectively which Japan used in its defense, the Tribunal argued against the rule by stressing that sexual crimes constitute crimes against humanity.

"As the Japanese government did not respond to the invitation, a Japanese lawyer, acting as *amicus curiae* (independent adviser), explained the Japanese position."⁷⁹ On the final day of the tribunal, the judges found both the Japanese State and the Emperor Hirohito, who was also the Supreme Commander of the Army and the Navy, guilty of war crimes and crimes against humanity. The tribunal ruled that other high ranking military officials also have legal responsibility and that the post-war Japanese governments have acted negligently and are liable for failing to take the necessary measures to this day, such as accepting this responsibility and apologizing to the victims and compensating the survivors for the damages they have suffered.⁸⁰ This judgement was delivered in line with the international

⁷⁸ Sakamoto, "The Women's International War Crimes Tribunal," 53.

⁷⁹ *Ibid.*, 49.

⁸⁰ Takahashi, 108.

criminal proceedings, it listed the names of the accused, narrated the facts of the case and the merits, and included recommendations and reparations.⁸¹

Neither the Tokyo Trial nor the Russell Tribunal, which was a people's court, made a special definition concerning the sexual crimes against women. However, as we have mentioned above, in the 1990s, the international criminal tribunals for the former Yugoslavia and Rwanda expanded the definition of crimes against humanity to include sexual crimes. Women's International War Crimes Tribunal ruled that the crime of sexual slavery committed by the Japanese army is not only a crime against humanity but also a violation of the international laws that prohibit slavery and the International Labor Organization Convention that bans forced or compulsory labor.⁸²

The justification of the verdict was drawn from the conventions that were in effect at the time of the crime. This judgement simultaneously underscored the responsibility of both the state and the individuals, which was the most fundamental difference between the Women's International War Crimes Tribunal and the other international tribunals. While international criminal tribunals focus on individual criminal responsibilities and prosecute the persons, international human rights courts determine the responsibilities of the states by investigating whether they apply the necessary criminal sanctions against the individual perpetrators. Like the Tokyo Trial, which was established specifically for Japan, the Women's International War Crimes Tribunal also conducted a criminal court trial and identified the persons responsible. However, the Tokyo Trial had not acknowledged the responsibility of the Japanese state, and had completely prevented any political responsibility of individuals by granting immunity to the heads of state and high-ranking officers. In order to expose

⁸¹ De Vido, 155.

⁸² Takahashi, 101.

this situation as well, the Women's Tribunal declared a judgment that also emphasized the responsibility of the state.

The judgement had no legal consequence. However, in its recommendations the tribunal held that the Japanese government must issue a "full and frank" apology, compensate the victims and survivors, and "establish a mechanism for the thorough investigation into the system of military sexual slavery". It also recommended the establishment of "a Truth and Reconciliation Commission that will create a historical record of the gender based crimes committed during the war, transition and occupation".⁸³

In this method of trial, which aimed to uncover the truth as well, there were also certain disadvantages to implementing the formal court procedures. As we have mentioned earlier, women's participation in the court essentially as "witnesses" may, to some extent, hinder the emotions, personal deliriums, angers and even silences and reticence inherent to witness testimonies from entering the courtroom. However, in the tribunal held in Japan especially the judges and prosecutors developed certain methods to prevent this. For instance, as a way of showing their respect for and recognition of the experiences of the women who suffered rights violations, the judges cited the women's testimonies at length as they delivered the judgement. Women's courts in general place importance on the intersection of the political and the personal; while narrating their experiences the women sing, laugh, cry, shout, which in a way demonstrates how they have resisted and survived.⁸⁴ In this sense, the Women's International War Crimes Tribunal criticized the

83 The Women's International War Crimes Tribunal, *The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Judgment on the Common Indictment and the Application for Restitution and Reparation* (Delivered: The Hague, December 4, 2001), accessed March 13, 2017, http://vawwrc.org/judgement_e01.pdf.

84 Adriana.

traditional international law's "indifference toward women" from the point of view of gender justice.⁸⁵ The "judgement" delivered by the tribunal tore down the validity of the Japanese government's interpretation of international law.⁸⁶

Lastly, five years after the tribunal, the organizers of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery brought to life the idea of creating a museum where the records of this tribunal and various other materials related to women forced into sexual slavery would be gathered together. The museum that was opened in 2005 in Tokyo was named Women's Active Museum on War and Peace. The museum "is a place where the reality of war crimes is recorded and kept for posterity." It was founded by women who say, "We come here to remember historical facts about 'comfort women,' and to listen to their stories. And we raise our voices and say, 'Never Again, anywhere in the world'."⁸⁷ The museum preserves the records kept throughout the preparations and the proceedings of the tribunal, and also hosts different exhibitions on women's wartime experiences and struggles for peace in the broader sense. The idea of the museum itself is the embodiment of the women's courts' aspiration to uncover the truth and convey it to the future generations. This tribunal and the museum founded in its aftermath draw attention to the limitations of justice, and at the same time prove that a criminal justice in favor of women can be attained through a trial in line with international law. By discussing personal and collective responsibility, it forces the limits of the individual punishment system and also shows us that reparative justice can be supported with various steps that can be transmitted to the future generations in order to ensure that these events are not forgotten.

85 Takahashi, 103.

86 *Ibid.*, 110.

87 "About us," *Women's Active Museum on War and Peace*, accessed June 28, 2017, <http://wam-peace.org/en/aboutus/>.

The Women's Court in Sarajevo: A Feminist Approach to Justice

The women's court established after the war in the former Yugoslavia both followed the country specific tribunals that proceeded on the path opened by a higher tribunal of international recognition (International Criminal Tribunal for the former Yugoslavia - ICTY) and also set out from the critique of this international tribunal. The situation was very different from Japan. Important steps had been taken in the international arena and by the individual countries for the recognition and resolution of the war waged in the former Yugoslavia. These steps were not limited to merely uncovering the events that took place, but to some extent also involved the recognition of the responsibility of the states and individuals. Nevertheless, women decided to take concrete steps to voice their criticisms of the processes that were carried out and play an active role to ensure their own justice.

A decade after the death of Josip Broz Tito in 1980, who was named President for Life in 1974, the Socialist Federal Republic of Yugoslavia dissolved following a period of brutal and bloody war. The unrest in the country was betokened in the early 1990s when the republics constituting Yugoslavia began to hold their own multi-party elections. The political tension, which became tangible in 1991 when Slovenia and Croatia declared their independence, before long caused the onset of Yugoslavia's conflict-ridden dissolution process. In 1992, after the declaration of independence in Bosnia, the conflict between the Bosnian Muslims, Serbs and Croats intensified. In 1995, the Srebrenica genocide took place which was considered the gravest atrocity committed in Europe after the Second World War; as per the Dayton Peace Agreement signed in December of the same year, Bosnia and Herzegovina was divided

in two between Muslims-Croats and Serbs. Through 1998 to 2000, the conflict between the Serbian Police, the Yugoslav military units, and the Kosovo Liberation Army reached a new level with NATO's intervention to the region in 1999. The conflict between the Albanian guerrillas and the new Serbian government founded after Milosevic lost the presidential elections in 2000, was resolved through dialogue; and the conflicts between Macedonia and Albania in the early 2000s were resolved through international mediators. Throughout this long period of conflict, even though Serbia and its leader Milosevic were predominantly responsible for the war, each one of the former states of Yugoslavia, albeit in different forms, also became the perpetrators and the victims. This was a bloody process of dissolution during which numerous ethnic massacres, genocide, war crimes, and crimes against humanity were committed. Approximately 130,000 people were killed, thousands were thrown in concentration camps, were raped, hundreds of thousands were torn from the lands where they had lived for centuries and were forced to migrate.⁸⁸

Some of the highest-ranking officials responsible for these crimes were tried at the abovementioned International Criminal Tribunal for the former Yugoslavia, certain trials also continued to be held in the domestic courts. However, this did not suffice to ease the conscience or meet the demand for justice of a people who experienced a grave carnage in its manifold dimensions. The peoples who had lived together throughout history were now in the lands of different countries and further distanced from one another with the nationalist sentiments that were sharpened by the war. Even though overcoming this destruction is extremely difficult, important steps were taken. Among these, the most eminent was the step taken by the rights organizations, victims organizations, youth organizations, war veterans, religious groups, and the relatives of the victims

⁸⁸ Murat Çelikkan, ed., *Hakikat Komisyonları* [Truth Commissions] (Istanbul: Anadolu Kültür Yayınları, 2014), 115-116.

who came together in March 2011 to found a regional truth commission in order to establish the rights violations and war crimes committed during the war; the “Regional Commission to establish the facts about the war crimes and other gross human rights violations perpetrated within the territory of the former Yugoslavia” (RECOM)⁸⁹ emerged as the product of such an effort and will.

Moreover, towards the end of 2010, the women from the countries of the former Yugoslavia who also partook in the RECOM process came together and set out to establish a Women's Court. First, they held an international workshop titled “Court of Women for the Balkans” in Sarajevo in October. The commission formed for the preparation of the court began its work at the end of the year, and in 2012 the initiative was renamed as “The Women's Court – A Feminist Approach to Justice”. This court was the first women's court to be established in Europe. Similar to the way the women from Japan, North Korea, China and other countries who were forced into sexual slavery came together at the women's tribunal held in Tokyo by rising above the nationalism that triggered the conflicts between these countries, the women in the former Yugoslavia also strived to find their common denominators without shrouding their differences amidst the conflicting nationalisms. They discussed their differences and commonalities and the methods of bringing feminist principles into life, and brought these discussions also into the method of organizing the court. There were joint meetings and the decision for a joint court, as well as meetings that the individual countries organized with their own initiative and their own agendas.

The fact that the court, the preparatory process of which lasted years, was subtitled “A Feminist Approach to Justice” is of particular importance. The court strived to adopt an approach that was not constructed top-down and prioritized

⁸⁹ “What is RECOM?,” *RECOM*, accessed June 1, 2017, <http://recom.link/sta-je-rekom/>.

the women who suffered rights violations. In this court, which is of great significance even in terms of pondering how a court can be feminist, it was the women who determined how the crime and the perpetrator will be defined and described.⁹⁰

Since the women who organized the court emphasize that they consider the process to be as important as the result itself, we should give more detailed information regarding the process. Almost all members of the Women's Court were women who partook in the efforts of establishing the Regional Truth Commission after the war ended between the countries of the former Yugoslavia. However, like the international tribunal that was established, this regional truth commission also fell short of working with a feminist perspective and meeting the women's needs. Therefore, the efforts for a Women's Court continued. At the international workshop titled “Court of Women for the Balkans: Justice and Healing,” which was held in October 2010 in Sarajevo, the women talked about the importance of women's courts and how different approaches to justice can be created.

Among the institutions that formed the organization committee of the Women's Court, there were organizations from all countries of the former Yugoslavia: Bosnia and Herzegovina, Montenegro, Kosovo, Macedonia, Slovenia and Serbia. The different experiences of the women from different countries began to be discussed from the very beginning. While some women in Bosnia and Herzegovina, Kosovo and Croatia had suffered through the gravest hardships of the war, other women in Serbia, Montenegro and Croatia were coming from the states where “the war machinery was organized”. However, there was also the common experience that brought all the women together as the ones who had

⁹⁰ “The Women's Court: A Feminist Approach To Justice,” *Popular Resistance*, May 22, 2015, accessed March 22, 2017, <https://www.popularresistance.org/the-womens-court-a-feminist-approach-to-justice/>.

“paid the highest price of the war, militarism and nationalism”.⁹¹

In line with the feminist principle of autonomy, through the special meetings held in different countries it was demonstrated that the demands of the women in different countries can be differentiated at certain points without contradicting one another. For instance, the women who gathered in Serbia and Montenegro emphasized the importance of identifying and punishing those responsible through criminal and non-criminal sanctions and underlined that putting pressure on the state to this end should be a priority. In Bosnia and Herzegovina, the domination of NGOs and projects in this field emerged as a problem that needs to be solved, and the women agreed that in order to cope with it they should identify their own agendas and priorities outside these projects. In Croatia, women discussed the issue of feminist activists' lack of engagement with peace activism; and in Macedonia, women emphasized the importance of establishing closer contact with the persons who have suffered rights violations and collecting their testimonies.⁹²

In this process, in order to inform the various segments of the public about the women's courts and the feminist concept of justice, a variety of methods were employed including 10 training sessions held in different countries; 16 regional educational seminars each lasting three days and consisting of workshops, lectures and film screenings; 136 public presentations to inform the public about the process and to gather relevant suggestions and criticisms of the people who want to be involved in this process; and 16 feminist discussion circles on

91 Staša Zajović, “The Women's Court - a Feminist Approach to Justice: Review of the Process of Organizing of the Women's Court,” in *Women's Courts: About the Process*, ed. Staša Zajović (Belgrade: Women in Black and Center for Women's Studies, 2015), 11, <http://www.helsinki.org.rs/doc/Womens%20Court%20About%20the%20Process.pdf>.

92 Zajović, 14.

various themes ranging from maternal politics of peace to feminist antimilitarism, feminist ethics of responsibility to feminist ethics of care, alternative models of justice to new paradigms of history, and the testimony of women. Moreover, 73 documentary films were prepared on these topics.⁹³

For the organizers the preparation process itself was as important as the concluding event. Because this process, which was an opportunity to discuss and implement the feminist principles, also facilitated the participation of as many women as possible in the process at varying levels, and thereby made it possible to conduct a more realistic assessment of the different/common needs. The women who participated in the preparatory process also voiced their ideas on what sort of a need the Women's Court can fulfill. After the war in the countries of the former Yugoslavia, besides the trials held before the ICTY the national courts also conducted a number of trials; however, most of the participating women said that the judicial processes carried out at the local level were done merely to counter the international pressure, and that they did not seek justice, or aim to recognize the committed crimes, or respect the dignity of the victims, or change the value system. The ICTY also had certain shortcomings. An international criminal court cannot meet the demand for justice of all the women who have been subjected to rights violations, moreover, in the framework of the abovementioned limitations, it did not place emphasis on the historicity and continuity of the crimes committed against women. During the fieldworks carried out by the organizers of the women's court, the potential witnesses of the court said that in all countries of the former Yugoslavia, impunity is a prevailing problem; there is a huge gap between the laws and their implementation; there are major shortcomings in witness protection programs which, coupled with the already existing structural inequalities, expose the witnesses to various forms of repression by the institutions and by their social communities;

93 Zajović, 18-22.

the reparation and compensation programs are at best limited to material compensations, and steps aiming to ensure a broader social transformation are not taken.⁹⁴

In consideration of all these shortcomings, the participants of the preparatory process enumerated the reasons for organizing the Women's Court as follows:

- To render visible the continuity of violence against women committed in peace and in war;
- To give voice to the individual experiences of women and include the women's experiences in public memory;
- To acknowledge the victims' sufferings, establish the facts, and create pressure on the community and the institutions;
- To understand the social, economic, family, cultural, personal and political contexts in which violence against women happens and which renders this violence possible;
- To satisfy the needs that the institutional justice mechanisms cannot fulfill and pave the way for the creation of new approaches to justice;
- To empower women and create international women's solidarity networks;
- To prevent the perpetration of these crimes in the future and establish a just peace by confronting the past crimes and illuminating the social mechanisms that made these crimes possible.⁹⁵

The court was organized on May 7-10, 2015 in Sarajevo. Its organizers were the Movement of Mothers of Srebrenica and Zepa Enclaves, Foundation CURE (Bosnia and Herzegovina), Center for Women's Studies, Center for Women

⁹⁴ Ibid., 23-25.

⁹⁵ Ibid., 26-27.

Victims of War (Croatia), Kosovo Women's Network, National Council for Gender Equality (Macedonia), Anima (Montenegro), Women's Lobby (Slovenia), Women's Studies, and the feminist initiative of Women in Black (Serbia).

The court was focused on four types of violence: Ethnically based violence, militaristic violence, continued gender based violence, and economic violence against women. These four types of violence were fleshed out: Under ethnically based violence, the court enumerated institutional discrimination based on ethnicity (such as expulsion from work due to ethnic identity, forced identity changes) and repression by society (such as rejection of ethnically mixed marriages). Examples of militaristic violence were the war against civilians and the various forms of coercion to join the forced mobilization. Continued gender based violence included both the war crime of rape and the stigmatization of the women who testify about these rapes, and the male violence against women which increases with the war. Finally, privatization as crime against women (deprivation of labor rights and socio-economic rights), and living in a state of constant economic crisis were listed among the forms of economic violence against women.⁹⁶ These categories do not correspond to the categories used in international criminal law. As was the case in the first women's tribunal, the women in Sarajevo also tried to redraw the limits of the law in their favor. This is a choice that also pushes the limitations of law, which are established to protect legal principles such as the rule of law and the *nullum crimen, nulla poena sine praevia lege poenali* (there can be no crime or punishment without a law). Sara de Vido claims that the generally accepted legal principles at the same time "prevent international bodies to investigate all possible abuses against women".⁹⁷ Stretching these

⁹⁶ "About the Women's Court," *Women's Court – Feminist Approach to Justice*, accessed March 3, 2017, <http://www.zenskisud.org/en/o-zenskom-sudu.html>.

⁹⁷ De Vido, 161.

principles and going beyond the customary law also presents an opportunity to expose the sexist structure of law.

The women's court in Sarajevo comprised of two bodies. The first one was the judicial council with seven women members, and the second was an advisory group with three women members. At this point we must draw attention to the importance of women members. Clearly, the equal representation of women does not directly ensure gender sensitivity in the established mechanisms, but it nevertheless has important impacts. Because the exclusion of women from these mechanisms is caused by the same reasons that prevent the revelation of women's experiences and gender justice. Looking at the ratio of women judges in international tribunals, we see that in the International Criminal Tribunal for the former Yugoslavia, which we consider among the good examples, out of 26 judges only 7 are women; in the tribunal for Rwanda this ratio is 19 to 5. The highest ratio is in the International Criminal Court where 9 out of 18 judges are women.⁹⁸ Even though it was not reflected on the ratio of judges, during the ICTY it had become clear that the women judges played a very important role in enabling the rights violations experienced by women to be addressed in the court. It was required to have at least one woman present in the committees where women testified about their experiences of sexual violence.⁹⁹ Even when the subject was given consideration, this was the extent of the steps taken, which was criticized by the women's groups; meanwhile,

⁹⁸ Valji, 7.

⁹⁹ Julie Mertus, *Women's Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina* (Cambridge, MA: Women Waging Peace - Policy Commission/Hunt Alternatives Fund, 2004), accessed March 5, 2017, https://www.inclusivesecurity.org/wp-content/uploads/2004/07/19_women_s_participation_in_the_international_criminal_tribunal_for_the_former_yugoslavia_icty_transitional_justice_for_bosnia_and_herzegovina.pdf.

all members of the women's court established in Sarajevo consisted of women.

The court was also supported by experts who presented the social and historical conjuncture in which the crimes had taken place. There was no individual standing trial before the court. This court in Sarajevo was not held in the traditional courtroom format. The women witnesses were the main subjects of the Women's Court. After listening to the witnesses, the judicial council declared its judgement and recommendations. In the preamble to this declaration of judgement and recommendations, the court addressed the participating women as follows:

"For too long, you have been invisible and denied the right to actively participate in truth telling, history making, and demanding and defining justice. In formal legal proceedings, you are treated as victims or as witnesses providing legal evidence, but in the Women's Court you decided to speak loudly and in your own way. You recognised and defined these crimes and demanded justice. Your voices and experience can no longer be ignored. You have become a recognised part of history. Without you, the Women's Court would not have happened. We honor your courage and honesty, and we thank you for your trust."¹⁰⁰

In this outcome declaration, five thematic crimes were identified: the crime of war against the civilian population, the crime of using women's bodies as a battlefield, the crime of militaristic violence, the crime of persecution of those who are different in war and peace, the crime of social and economic violence. All these crime categories were detailed through examples and it was stated that these criminal acts constitute violations of human rights, crimes against peace, war crimes, genocide,

¹⁰⁰ *Women's Court: Feminist Justice, Judicial Council, Preliminary Decisions and Recommendations* (Delivered: Sarajevo, May 9, 2015), 1, accessed March 3, 2017, http://www.zenskisud.org/en/pdf/2015/Womens_Court_Preliminary_Decision_Judicial_Council_2015.pdf.

and crimes against humanity. It was adjudged that “all participants in the conflict committed crimes”, and “all the nationalist political and military regimes on the territory of the former Yugoslavia committed crimes against peace and were engaged in an aggressive war.” It was emphasized that “all these regimes, as well as the international community, refused to protect the citizens of the states or territories in which they were using armed force.”¹⁰¹

The emphasis on the issue of responsibility was frequently repeated in the Women’s Court of the former Yugoslavia. The fact that in general no one wanted to assume responsibility for the things that took place in different societies was the most criticized issue, which was a point of discussion during the preparatory meetings of the court as well. According to the women who came together, the moral and political sense of responsibility was not developed in their societies particularly due to nationalism and the transfer of responsibility to the “other” (primarily to those of another nation) and the denial of war crimes committed “in their name”. Nevertheless, women emphasized the importance of addressing the issue of responsibility and accountability from the feminist perspective.¹⁰²

The Women’s Court of the former Yugoslavia presents a very important example as one of the courts that discussed feminist principles most extensively. This case, in which the women drew the borders of their own justice, enables us to also question the limits of the justice offered by criminal trials. Women demonstrate how it can be possible to stand together as women against a system that differentiates them through ethnic identities and to build bridges between their experiences, and reveal the great import of the power generated by the mere ability to do this.

¹⁰¹ Ibid., 2-6.

¹⁰² “About the Women’s Court,” *Women’s Court – Feminist Approach to Justice*.

Women’s Tribunals in Colombia

More than one women’s court was established in Colombia and each one of them employed a process in which the local organizations founded by women were very active. As we will explain in further detail below, the first two of these courts were processes that did not spread across the entire country but were carried out in a more limited region.

The conflict in Colombia continued for over 50 years with the participation of several armed organizations. Its onset is regarded to be the partisan conflict between the Liberal and Conservative parties in 1948 which erupted into a civil war called La Violencia (the decade of violence). Even though the period of civil war ended in 1957 with an agreement between the two parties, the people’s support for the organized insurgents grew by the day due to the “vast inequities in land tenure and distribution of wealth and resources, combined with the political, economic, and social exclusion of vast portions of the population, particularly rural peasants”.¹⁰³ In the 1990s, five of these insurgent groups signed peace agreements with the Colombian government, however, three groups including the Colombian Revolutionary Armed Forces (FARC) continued their armed struggle. Especially when the regional paramilitary groups became armed and entered the war in support of the Colombian army, all “dirty war” strategies were used ranging from enforced disappearances to sexual violence. Among the people targeted were also human rights defenders, journalists, and trade unionists. As is the case in most wars and conflict situations, in Colombia as well, those who were abducted, tortured and arbitrarily

¹⁰³ Virginia M. Bouvier, *Gender and the Role of Women in Colombia’s Peace Process* (New York: UN Women, 2016), 4, accessed April 18, 2017, <https://www.usip.org/sites/default/files/Gender-and-the-Role-of-Women-in-Colombia-s-Peace-Process-English.pdf>.

detained by different warring groups were predominantly men. Women and girl children were subjected to massive displacement, sexual violence, rape, forced labor, sexual slavery and forced abortion. As the men in their families were killed, women shouldered the entire burden of maintaining daily life with all its responsibilities. Especially in a conflict where the distribution of land was one of the fundamental problem areas, it was more difficult for the women, who were bereft of their rights to property, to struggle against this on their own. The indigenous and Afro-Colombian women suffered all these violations more severely. All parties to the armed conflict inflicted sexual violence especially on the indigenous women as a method of warfare.¹⁰⁴

Following several peace attempts between the Colombian government and FARC, which were interrupted for various reasons, the process that is still continuing today began in 2011. Intermittent military operations, attacks and clashes continued while the peace process was underway. The peace agreement signed on October 2, 2016 was rejected in a referendum with 50.24 percent voting against it; only 37.42 percent of the electorate participated in this referendum. However, the ceasefire was not ended despite the referendum results, and both parties declared their commitment to continue the negotiations. Through the struggle of the groups that supported the peace deal, a new agreement text was drafted and signed. It is difficult to think about the women's alternative struggles for truth and justice independent from the ongoing peace process in Colombia. All kinds of mechanisms organized by the women are carried out by drawing strength from the agreements signed by senior officials, and at the same time with the aim of influencing these agreements. The women are organizing with a view to support and critique the official truth and justice mechanisms, as well as to determine their own needs and demands. The mechanisms women establish enable them to come together, make contact with one another, and also help

¹⁰⁴ Bouvier, 5, 7.

pave the ground for coming to terms with the past at the social level.

The women in Colombia want to found a new language to recount the pain they have suffered and their struggles, and they object to the language they have been forced to use in order to convey these. They want to recount not only the suffering, murdered, or surviving women whose rights were usurped, but also the women whom they see as heroes. They believe that only as such can they move from the position of the victim to that of the actors who write their own truths, and this is the way they want to enter the collective memory.

The World Courts of Women initiated by Asian Women's Human Rights Council (AWHRC) and El Taller International, place special emphasis on establishing a different form of narration in every country they are organized. In this respect, they follow quite a different method from the method of "trial" employed by the court held in Japan. The first court in Colombia is set apart from the others also because it is part of an international network. Women from El Taller and AWHRC as well as from the regions of Bolívar, Valle, Cauca, Putumayo, Chocó and Risaralda participated in the organization which called itself the pre-court and was held on October 8, 2005 in Cali. More than 200 women participated in this one-day event, while the total number of women who partook in the entire event including its preparatory meetings was over a thousand. Among the participating women were also ex-combatants and artists. Reaching women from as many different groups as possible and enabling all these women's groups to communicate with one another and this court space to provide the grounds for such a communication were among the main goals. Because it was very important to overcome the climate of fear that was created in that period. Nevertheless, the desired level of participation could not be attained.¹⁰⁵

¹⁰⁵ "Corte de Mujeres, Contra el Olvido y para la Re-Existencia," *Chroniques du Monde*, Oct. 8, 2005, accessed April 11, 2017, http://chroniques.monde.free.fr/article.php3?id_article=48.

As we have mentioned above, this first court in Colombia was the one furthest from the formal court format. Different forms of expression such as theatre and dance were as important as the women's verbal testimonies. According to one of the organizers of the Women's Court, the emotional and the symbolic; the personal and the political; the logical and the artistic; the rational and the expressive were all at once present in these courts. The participating women used whichever aesthetic form or verbal narrative they chose to convey their own experiences, the rights violations they encountered, how they sustained their daily lives, the demands of the movements they participate in and the reasons why they join these movements, their land demands, and how they struggle to improve their working conditions. At the end of the court, a group of judges named the Memory Women declared the final judgement. The members of this group were women who worked on women's issues in trade unions or associations. The declared judgement was quite different from the judgements of criminal trials. The persons individually responsible were not identified, no international convention or law was invoked. It only called upon the Colombian government to honor the women victims and to support them. At the time of the court organized in Cali, the peace process that is still underway today had not yet started; among the issues that were discussed was the ongoing conflict's effect on the women and the necessity to include women in any peace process to be built in the future.

In 2012, two more women's courts were organized spearheaded by Organización Femenina Popular (Popular Women's Organization). One was held again in Cali and the other in Bucaramanga. These courts also followed in the footsteps of AWHRC. Established at a time when a continuous peace process had started, these two courts expressed more clearly that the women's movement aims to develop its social and political capacity while at the same time struggling against war and for peace. Both these courts were held in the format of panel discussions and were carried out as

nonjudicial mechanisms that create a space for talking about the suggestions on what should be done in order to reveal the truth, to institute justice and reparations, and to prevent the recurrence of the past experiences. These courts which did not claim to be national set forth three main objectives: first, to document the violence experienced by women regionally; second, to discuss the social and political sanctions against the committed crimes; and last, to identify the priority areas for the women's political advocacy efforts.¹⁰⁶ Violence against women was one of the main themes, however, it was also aimed to develop a regional agenda for peace that covered the issues of land distribution, memory, justice and reparation.¹⁰⁷ The event in Bucaramanga was organized on November 25 International Day for the Elimination of Violence against Women. Male violence against women was also connected to the negotiation process that was underway at the time: "This court is taking place at a time when the forms of violence and discrimination against women have escalated. Meanwhile, paradoxically, the country has entered a period when negotiations have started on ending armed violence and instituting peace."¹⁰⁸ The women proclaimed that the Colombian state cannot institute a real peace without ensuring gender justice by uncovering the truth, enabling individual and collective reparation, acknowledging the memory of women, and preventing the recurrence of the past violations.

106 "Cortes de Mujeres en Colombia," *Organizacion Femenina Popularareas*, July 20, 2012, accessed April 11, 2017, <http://organizacionfemeninapopularareas.blogspot.com.tr/2012/07/cortes-de-mujeres-en-colombia.html>.

107 "Corte Regional de Mujeres," *Organizacion Femenina Popularareas*, Nov. 20, 2012, accessed April 11, 2017, <http://organizacionfemeninapopular.blogspot.com.tr/2012/11/25n-corte-regional-de-mujeres.html>.

108 "Declaracion del Movimiento Social," *Organizacion Femenina Popularareas*, Nov. 20, 2012, accessed April 11, 2017, <http://organizacionfemeninapopular.blogspot.com.tr/2012/11/declaracion-del-movimiento-social-de.html>.

Another women's court at the national level was also founded in Colombia. The Organizing Committee established through the collective effort and with the representatives of women's organizations, feminist organizations and human rights organizations working in different fields in the country organized the Symbolic Tribunal against Sexual Violence in Colombia on September 26, 2011. The organization named Corporación Humanas undertook the facilitation of the process.

The most fundamental goals were the recognition of the rights of the women who were subjected to conflict related sexual violence throughout the armed conflict in Colombia; the continued impunity on this subject to be ended; and the state to produce an effective solution to this end. From the onset, the organizers emphasized that this symbolic tribunal does not aim to replace judicial justice or any institution that guarantees this justice. Again from the very onset, a clear stance was adopted promising that the dignity of the women who suffered rights violations will be protected during the court's preparation and development as well as the ensuing monitoring processes; the participation of these women in all processes as active subjects will be ensured; no discrimination will be made among women based on ethnicity, political or social identity, sexual orientation, age, etc.; the necessary measures will be taken to prevent revictimization; and the necessary protection and safety mechanisms will be established. Written rules were identified on the abovementioned and similar subjects laying out the scope and aims of the tribunal as well as the types of collaborations to be employed to these ends.¹⁰⁹

Sexual violence was defined to include rape, sexual slavery, forced pregnancy, forced prostitution, forced sterilization and all forms of sexual violence of comparable gravity. Moreover,

109 "Reglamento de Funcionamiento Para El Tribunal Simbolico Contra La Violencia Sexual En El Marco Del Conflicto Armado Colombiano," *Humanas Colombia*, accessed April 11, 2017, <http://www.humanas.org.co/archivos/reglamentofinal.pdf>.

no differentiation was to be made as to which armed group the perpetrator was affiliated with; all armed actors, paramilitary groups and guerillas who became party to the conflict in Colombia could be the perpetrators of this violence. There are many reports demonstrating the prevalence of sexual violence crimes throughout the course of the military conflict in Colombia. According to one such report published by Oxfam in 2009, between the years of 2001 and 2009, armed groups raped 95,000 women, led to 26,000 forced pregnancies, forced 27,000 women to have abortions, and sexually abused over 175,000 women.¹¹⁰ Even though the Justice and Peace Law enacted in 2005 granted amnesties or reduced sentences to members of armed groups who confessed to their crimes, among the crimes confessed the ratio of sexual crimes remained very small.¹¹¹

In view of the fact that organizing such a court may put at risk both the women who have suffered rights violations and the human rights defenders in Colombia, certain strategies were developed: Advocacy activities were organized with state institutions and international institutions, aiming to increase the support for the court; it was enabled for the international organizations to participate in and monitor the court; additional measures were taken to protect the women who suffered rights violations, as well as their representatives and human rights defenders; confidentiality of the testimonies was guaranteed; one-to-one interviews were held with the women before testifying; if women gave permission these interviews were recorded; it was facilitated for institutions that can provide

110 Rodrigo Uprimny, "Tribunal simbólico contra la violencia sexual en Colombia," *El Espectador*, Sept. 26, 2011, accessed April 11, 2017, <http://www.elespectador.com/opinion/tribunal-simbolico-contra-la-violencia-sexual-en-colombia-columna-302058>.

111 "Fallo simbólico contra la violencia sexual en el conflicto armado," *Verdadabierta*, Sept. 26, 2011, accessed April 11, 2017, <http://www.verdadabierta.com/component/content/article/41-violencia-contra-mujeres/3571-el-fallo-simbolico-de-la-violencia-sexual-en-el-conflicto/>.

psychological support to be involved this process.¹¹²

The court had a group of woman and man judges renowned in fields of human rights, feminist theory and psycho-social studies; an expert group specialized in fields of anthropology, medicine, psycho-social support and gender with experience in working with victims of conflict related sexual violence; and an international monitoring board and secretariat. At the start of the court process, decisions were made together with all the organizers on all the issues ranging from the duties and authorities of the aforementioned groups, to the headings that should be mentioned in the report to be written by the group of judges who would author the final report and the declarations. The court was held at the National University of Bogota. The court heard seven cases of sexual violence committed by paramilitary groups, guerrillas, and state officials.¹¹³ These were all examples of cases where despite the threats against them the women had resorted to the legal system and sought their rights, but could not attain any results. Most often they were ignored, asked to provide evidence, and were even accused of being responsible for what happened to them.

The group of judges consisted of one Chilean, one American, two Spanish and one Guatemalan feminist judge experienced in international law, women's rights and strategic judgement. This group of judges heard the detailed account of all the events from the witnesses. However, in order not to put the women who suffered rights violations at risk and to prevent revictimization, the real identities and the places of crime were not included in the testimonies. Along

with the testimonies, expert reports on the subject were also presented to the court. In light of all these reports and testimonies, it was concluded that throughout the armed conflict in Colombia, sexual violence was employed systematically as a weapon of war by all armed groups. The final report published at the end of the court proceedings made reference to the international obligations of the Colombian state, the international treaties it is party to, the documents of the Inter-American Court, the United Nations conventions and special reports, the Constitutional Court decisions and the laws in effect in Colombia. Concluding that the crime of sexual violence is a structural problem of the ongoing armed struggle in Colombia and that it is crucial to find a peaceful solution to this struggle, the final report made a number of recommendations ranging from institutional measures to reparation programs which should not be limited to material compensation.¹¹⁴

The women's courts organized in Colombia are very important examples especially for situations when there is an ongoing peace process conducted at the state level, because they focus on the collective destruction caused by war, the categories of crimes committed by all warring parties, and the gendered categories of these crimes. They present us with a good example again with their emphasis on impunity stating that these courts cannot aim to ensure an alternative justice. At the same time, they demonstrate that different groups in support of each other can conduct similar processes. Each court places special importance on the forms of women's self-expression and provides a very important opportunity to create the grounds for the women's groups to be able to act together.

112 "Reglamento de Funcionamiento Para El Tribunal Simbolico Contra La Violencia Sexual."

113 Mar Gallego, "Tribunal simbólico emite fallo que sentencia la violencia sexual contra mujeres," *Desde Abajo*, Oct. 21, 2011, accessed April 11, 2017, https://www.desdeabajo.info/ediciones/18382-tribunal-simbólico-emite-fallo-que-sentencia-la-violencia-sexual*-contra-mujeres.html.

114 For the complete final report, see: "Pronunciamento Final del Tribunal Simbolica Contra la Violencia Sexual en el Marco del Conflicto Armado," *Humanas Colombia*, accessed April 11, 2017, <http://www.humanas.org.co/archivos/Pronunciamentofinal.pdf>.

**IN LIEU OF A
CONCLUSION:
THE IMPORTANCE OF
WOMEN'S COURTS
IN THE PURSUIT OF
TRUTH AND JUSTICE**

The women's courts constitute a very important method because they present an opportunity to think about the complex relationship between truth, justice, law, history, memory and gender roles. Since it carries out the discussion through the gendered experiences of women, it centers the discussion on patriarchy which intersects all these relationships. Like all other mechanisms it also entails certain commonalities, but it differs depending on the specific dynamics of different conflict situations and the historical experience of organizing and co-action of the women who are the fundamental implementers of such methods in the given region.

First and foremost, even though we consider women's courts an informal justice mechanism we should separate it from the other informal mechanisms. The mechanisms that are employed in certain post conflict societies because they are both more readily accessible and traditionally deemed more reliable and therefore considered more suitable to the social structure are called informal justice processes. In such traditional methods, the essential objective is to restore the political, social and moral order. Informal mechanisms postulate that criminal trials may fail to ensure a restorative justice given their focus on identifying and punishing the perpetrator; and also based on the critique of a universal definition of justice, these mechanisms claim that each society can ensure its own justice through its own methods. However, as researchers working on this subject also point out, this type of customary mechanisms of justice usually carry the risk of reinforcing the existing gender inequality through the way they address gender related crimes. Because generally the patriarchy at the core of "tradition" is thus upheld in order to restore the unequal "harmony" in the society which adheres to this tradition.¹¹⁵ Meanwhile, the women's courts, which we conceptualize as an informal justice mechanism, strive to draw attention to the sexist practices of formal criminal prosecution

¹¹⁵ Elisabeth Porter, "Ethical Commitment to Women's Participation in Transitional Justice," *Global Justice: Theory, Practice, Rhetoric* 6, no. 1 (2013): 12-13.

processes and the gendered structure of justice. Unlike other informal and traditional mechanisms, the women's courts do not take the founding power relationships and gender regime of the social order as a given.

In a geography like Turkey, where impunity is extremely deep-rooted, placing emphasis on an informal process may also create the risk of taking this impunity as a given. As we have mentioned earlier, drawing attention to informal processes should not be considered as creating alternative methods to criminal prosecutions. In the example of women's courts, it is even more conceivable to assume that such an alternative process is at work, because they call themselves courts. However, in all the examples we have examined it has been specifically emphasized that they do not aim to hold trials that would constitute an alternative to criminal prosecutions. Nevertheless, the women's courts also have the potential of influencing the field of judicial proceedings. First of all, these courts can point at the problems in the implementation of the laws presently in effect. And they can remind the actors whom they target (in most cases the states and sometimes all parties of the armed struggle) about their responsibilities arising from the international conventions they have signed and are party to.¹¹⁶ As we have mentioned above, this is what the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery established in Tokyo and the Symbolic Tribunal Against Sexual Violence in the Context of the Colombian Armed Conflict established in Bogota have done. Additionally, by drawing attention to the shortcomings of the existing legislation, they can also propose new legal regulations that aim to transform especially the gender relationships. Even though it does not exactly do this, the women's court established in Sarajevo made recommendations for the redefinition of the crimes committed against women through a feminist approach. It may be possible to push for new legal regulations through such recommendations. Finally, the women's

¹¹⁶ Otto, 296-303.

courts can develop the gendered approach they agree upon in their final reports, and by focusing on certain cases they can submit *amicus curiae* briefs to those trials.¹¹⁷ The Latin term *amicus curiae* means a “friend of the court”. The *amicus curiae* brief, which is submitted to a court by third parties, aims to “encourage the court to take decisions in a broader, more comprehensive and proper legal framework, and develop case law by presenting alternative legal arguments”.¹¹⁸

In addition to all these legal interventions, the women's courts expand the borders of criminal trials that prosecute individual perpetrators, and open to discussion the issue of collective crime and responsibility. Thereby rendering visible the collective destructions and the collective responsibilities outside the individual crime, it helps build at the social level the foundations of the peace struggle's goal to live together.¹¹⁹

117 De Vido, 167-169.

118 Truth Justice Memory Center, *Amicus Curiae Report on Enforced Disappearances* (Istanbul: Hakikat, Adalet ve Hafıza Çalışmaları Derneği Yayınları, 2016), http://hakikatadalethafiza.org/wp-content/uploads/2017/05/FINAL-AMICUS-BRIEF_ENG.pdf. It is important to note that this is a method used in Turkey. On December 12, 2015, the Truth Justice Memory Center presented its legal opinion on the enforced disappearance of Hasan Gülünay in 1992 to the Constitutional Court with the joint signatures of Turkish Economic and Social Studies Foundation, Human Rights Foundation of Turkey, European Center for Constitutional and Human Rights, and the Human Right's Joint Platform constituents Human Rights Association, Human Rights Agenda Association, Human Rights Research Association, and Helsinki Citizens' Association. The Court accepted the document for review. Again on behalf of the Truth Justice Memory Center, Başak Çalı, Hülya Dinçer and Osman Doğru drafted two *amicus curiae* briefs to be presented to the Constitutional Court, both briefs emphasized the importance of the right to truth. See: “We presented two new legal opinions to the Constitutional Court,” *Hafıza Merkezi*, accessed April 18, 2017, <http://hakikatadalethafiza.org/en/we-presented-two-new-legal-opinions-to-the-constitutional-court/>.

119 For a discussion on collective responsibility and individual crime, see: Karl Jaspers, *The Question of German Guilt* (New York: Fordham University Press, 2001).

The experience of women's courts, which stands at the intersection of the demand and struggle for truth and justice, plays a very important role in the uncovering and public acknowledgement of the crimes against women. Moreover, this court experience is important also for the women to come together by using certain advantages of the informal process and to listen to each other, hear the different experiences, and negotiate ways of being able to act together.

In the first section of the report, we touched upon how the women struggle against and intervene in the ongoing conflict around the Kurdish issue in Turkey. The Kurdish women, both through their own forms of organizing and also together with the feminists and women from different organizations in Turkey, have asserted their demand for justice and truth and continue their struggle for peace. Furthermore, again as we have mentioned at the very outset and although it is not considered directly under the heading of the peace struggle, there are many women among the active subjects of the struggle for coming to terms with the crimes related to the conflict around the Kurdish problem. Looking at the experiences from across the world in light of the experience built by the history of all this struggle may give the active political subjects an idea for developing different methods.

As the Truth Justice Memory Center, we are trying to create an accumulation of knowledge on the different mechanisms used in processes of coming terms with the serious human rights violations committed in the past and thereby support the actors who play a role in the construction of social peace. In examining the women's courts as a method that aims to come to terms with the gendered effects of armed conflicts, our goal was to generate a discussion through these courts. We want to conclude this report with certain questions and problem areas which we hope will start this discussion in line with this goal. Surely, those who will seek answers to these questions are the active political subjects who work in the struggle for peace, truth and justice.

- Could holding a discussion on the women's courts be a method to facilitate the gendering of the struggle for peace?

- Could these courts be a method of bringing together the different actors of the struggle for peace?

- In a geography where impunity is so deeply rooted, would it create the risk of relegating the importance of criminal prosecutions?

- Would addressing gendered crimes by bringing certain crime categories to the fore create the risk of trivializing the others?

- Would it create an opportunity to reconsider the long-lasting struggle against impunity from the gender perspective?

- Would thinking about the different forms of women's courts lead to a choice to be made between exposing the conflict-related gendered experiences and attaining a concrete political result concerning these crimes? Would making such a choice have a limiting effect on the struggle?

- Would a discussion on "which" women's experiences will be addressed when speaking about the "women's gendered conflict experiences" pave the way for talking about different womanhood experiences? Would such a discussion be beneficial for building bridges between women in the context of the Kurdish issue?

- Especially in a geography like Turkey, where the specificity of the local conditions is often emphasized, should the women's courts be discussed on the national level or in its international dimension?

**THE WOMEN
INTERVIEWED
FOR THIS REPORT**

AYŞE BERKTAY

AKSU BORA

HANDAN ÇAĞLAYAN

DOLY ENRIQUEZ

YAKIN ERTÜRK

FİLİZ KARAKUŞ

EREN KESKİN

BESİME KONCA

GÜLSEREN ONANÇ

PINAR ÖĞÜNÇ

YILDIZ RAMAZANOĞLU

DIANA ESTHER GUZMAN RODRIGUEZ

NÜKHET SİRMAN

FATMA BOSTAN ÜNSAL

CANDAN YILDIZ

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(Truth Justice Memory Center)

Truth Justice Memory Center aims to uncover the truth concerning serious human rights violations committed in the past and the basic characteristics of these violations; support the victims and their relatives in their pursuit of justice; and contribute to political peace and democracy by strengthening collective memory regarding these violations.

This report that comprises three sections discusses the “women’s courts”, which is a mechanism that can create a space for the truth and justice pursuits and the struggles for peace carried out by women in Turkey and on the global scale. The first section focuses on the truth, justice and peace struggles of the women of Turkey. The first of the two main and much more comprehensive sections that constitute the core of the report analyzes the global peace struggle’s

demands for truth and justice from a gendered approach. The third section of the report opens the mechanism of women’s courts to discussion by focusing on three examples: Japan, countries of the former Yugoslavia, and Colombia.

In writing this report we were greatly inspired by the incredible efforts of the women of Turkey and the experiences of the international feminist movement as well as specific women’s movements. We believe that in Turkey, where the peace struggle is going through rather difficult times, these discussions will be eventually held despite all hardships and in a much more exhaustive manner in the future. We hope that the report will nourish these discussions, contribute to the women’s struggle which has been our inspiration, and deepen the struggle for peace.

