

The Bad Man and the Good Woman: The Invisibility of Female Perpetrators in Criminal War Tribunals

A two in-depth case study analysis on the presence of gendered norms in judgements of the former Yugoslavian and the Rwandan tribunal

Master Thesis Political Science
by
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Preface

Before you lies my thesis “The Bad Man and the Good Woman: The Invisibility of Female Perpetrators in Criminal War Tribunals”, a research on the ways in which criminal tribunals as transitional justice mechanism are gendered. It has been written to finish my Master’s in Political Science at the Radboud University Nijmegen.

This project was undertaken because I gained a lot of interest in criminal war tribunals when I received all original copies of ‘The Trial of German Major War Criminals: Proceedings of the International Military Tribunal sitting at Nuremberg Germany’ from an acquaintance. And after reading much literature on transitional justice processes during the master’s course *Political & Geographical Conflict Resolution*, I noticed several critiques on these processes. One of these critiques was that transitional justice mechanisms, including criminal tribunals, recognize men solely as perpetrators and women as victims, which leads to the invisibility of female perpetrators of war crimes. Because empirical evidence on this topic was lacking, I took the opportunity to study this matter, focusing specifically on the ICTY and ICTR, and enrich existing studies on gender and transitional justice. The research was challenging, but the analysis has allowed me to answer if, and in what ways tribunals are gendered.

I would like to thank my supervisor for her excellent guidance during this process. To my friends and family: I would like to thank you for all your wonderful support as well. E. Klem deserves a special word of thanks for converting several important document files, so that they could be examined.

Mariska I. Jansen
24 June 2019, Veenendaal UT

Abstract

In post-conflict communities, transitional justice (TJ) mechanisms help and provide justice for the victims and deal with wrongdoers from the troubled past. Criminal tribunals in particular, deal with the investigation and prosecution of war crimes. However, men are often associated with violence and women are only seen as victims of sexual violence and witnesses of crimes. This research project examines if criminal tribunals as TJ mechanisms are gendered, and if so, in what ways. Because existing gender literature mainly focuses on women as victims of sexualized violence and empirical research on this topic is lacking, I argue that a gender analysis is required to explain the gendered norms on which criminal tribunals are based. This is investigated by looking at two cases, which both had their first indictment in 1994: the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The criminal tribunals treat women extensively as victims of war crimes and barely as perpetrators and so they are based on gender stereotypes. This in turn leads to female perpetrators being hardly visible.

Keywords: transitional justice, criminal tribunals, former Yugoslavia, Rwanda, gender, female perpetrator

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List of abbreviations

TJ:	Transitional Justice
ICTY:	the Criminal International Tribunal for the former Yugoslavia
ICTR:	the International Criminal Tribunal for Rwanda
UN:	United Nations
ICTJ:	the International Center for Transitional Justice
ICC:	the permanent International Criminal Court
NSF:	the Nationalsozialistische Frauenschaft
LRA:	Lord Resistance Army
SCSL:	the Special Court for Sierra Leone
ECCC:	the Extraordinary Chambers in the Courts of Cambodia
STL:	the Special Tribunal for Lebanon

Introduction

It is no longer easy to distinguish between the bad man and the good women and child (Weiss, 1999, p. 8). There are different examples of women who are/were active as combatants during conflict. In Colombia women and girls were associated with illegal armed groups (Schwitalla & Dietrich, 2007). A high number of them fought or is still fighting for guerilla forces. During the genocide in Rwanda, female perpetrators appeared as well (Lorentzen, 2016, p. 15). The first woman to be tried by the International Criminal Tribunal for Rwanda (ICTR), former Minister of Family and Women Affairs Pauline Nyiramasuhuko, challenged the conventional view that women have been solely the victims of massive human rights violations (Buckley-Zistel & Zolkos, 2012, p. 1; Björkdahl & Selimovic, 2017, p. 79).

Furthermore, the verdict by the ICTY against Biljana Plavsic, former President of the Bosnian entity Republika Srpska, also shows that women can diverge from the norm as passive, innocent victim (Björkdahl & Selimovic, 2017, p. 79). Although, female perpetrators are still a minority in armed groups – they represent about 10 to 30 percent (Ortega, 2010, p. 2).

1.1 Research question

Apart from these anecdotal examples of female combatants being tried, TJ mechanisms are argued to be based on gender stereotypes (Aoláin, 2006). While looking at the ICTY, men mostly testified about the conflict and women testified around sexual violence (Campbell, 2007). “If men primarily narrate war, then they appear to function as actors within the conflict. If women only narrate rape, then they appear as passive victims of sexual violence” (Campbell, 2007, p. 426).

To study whether criminal tribunals are gendered and so, if female perpetrators are invisible, I formulated the following research question:

Are criminal tribunals as transitional justice mechanisms gendered, and if so, in what ways?

To answer this research question, I will draw on a theoretical framework based on gender literature, gender in peace resolution and literature about transitional justice mechanisms. Furthermore, I will conduct a qualitative case study on two international criminal tribunals. I will derive several expectations from the theoretical framework and will test these by analyzing tribunals' documents.

1.2 Theoretical approach

To explain the ways in which criminal tribunals are gendered, this study will take on a social constructivist approach incorporated by a gender analysis to transitional justice literature. Charli Carpenter calls this 'gender constructivism' (Carpenter, 2003, p. 663). It means that this study focuses on the gender perceptions in transitional justice of female victims and perpetrators of war crimes. Therefore, this research project will include a theoretical framework on gender and transitional justice. Its aim is to find out what role gender plays in tribunals.

First, criticisms regarding gender on criminal tribunals as a facet of transitional justice will be covered. Different critical scholars argue that TJ reproduces gender stereotypes of women as victims and men as perpetrators (Björkdahl & Selimovic, 2017, p. 79; Buckley-Zistel & Zolkos, 2012, p. 11; Campbell, 2007, p. 426; Charlesworth, 2008, p. 358; Korac, 2006, p. 2; Lorentzen, 2016, p. 3). Second, the theoretical framework will cover diverse scholars who discuss the concept of gender in TJ and three main approaches of gendering transitional justice

are identified (Aoláin, 2006; Buckley-Zistel & Zolkos, 2012; Campbell, 2007; Hamber, 2007; McKay, 1998).

1.3 The cases

This research is based on two in-depth case study analyses of criminal tribunals: the ICTY and the ICTR. These two cases of criminal tribunals are selected for this study because they are the only international tribunals established and carried out by the UN Security Council, without cooperation with the national government (International Justice Resource Center, 2019). Also, they were both established around the same time; in both conflicts mass rape was used as a weapon and, most importantly, in both cases one woman was convicted by the court (Smeulers, 2015; Askin, 2004, p. 16). Until now, these are the only two women ever convicted by an international criminal tribunal. “Over 280 men have been convicted by international criminal courts and tribunals and these two women thus represent less than one per cent of all people convicted by such tribunals” (Smeulers, 2015, p. 207). For this reason, it is important for this study to analyze both the records of the ICTY and the ICTR.

The woman convicted by the ICTY is the former Serbian politician Biljana Plavsic, who was convicted for persecution as a crime against humanity in 2003 (Smeulers, 2015, p. 207). Also, a political leader Pauline Nyiramasuhuko, a former Rwandan minister, is the female perpetrator convicted by the Rwanda tribunal (2015, p. 219). She was prosecuted for her leading role in the commission of widespread rape in Butare and the genocide.

Proceedings of the ICTY and ICTR can be found online by a search tool by the United Nations (United Nations, 2009a; United Nations, 2014). Within the records I will be specifically looking at the judgements of the accused. These documents are the most suitable for this study because they provide a background of the accused individuals and a summary of the whole proceedings. By conducting a content analysis on these judgements, I will determine how

female victims and perpetrators are perceived by the criminal tribunals and if they reproduce gender stereotypes.

1.4 Societal and scientific relevance

Gendered norms and, as a consequence, the invisibility of female perpetrators of war crimes have an important impact on the outcome of TJ processes (Björkdahl & Selimovic, 2017; Campbell, 2007). Even the long-term success of peacebuilding itself may be affected. If the criminal tribunals do not deal with the past adequately, it can result in a resumption of the conflict (Loyle & Davenport, 2016). Gendered norms can contribute to only identifying women as victims during conflicts and further perpetuate gendered inequalities in post-war societies.

Scientifically, there has not been much empirical research on the gendered dimensions of TJ mechanisms (Buckley-Zistel & Zolkos, 2012). “The relatively few studies that exist on the question of gender in TJ have focused almost exclusively on women as victims of sexualized violence” (Buckley-Zistel & Zolkos, 2012, p. 2). This reproduces the problem and reinforces stereotyped gender binaries (Lynch, 2018). Despite common assumptions associating women with peace and victimization, women are not only victims in war (Borer, 2009, p. 1171). Luisa Maria Dietrich Ortega even encourages more empirical research on female ex-combatants and their engagement with TJ mechanisms (Ortega, 2010, p. 1).

For these reasons mentioned above, gender analysis on criminal tribunals is very important. It can improve TJ mechanisms, which can prevent a conflict from resuming and prevent further human right violations, by acknowledging the dangers of gendered norms.

This study will be structured as follows: in the next chapter the literature review will be presented. First, the concepts of transitional justice and criminal tribunals will be covered. Then the theoretical framework on gender and transitional justice will be presented and finally,

different assumptions will be derived from theory which will be tested in the analysis. The third chapter, the methodology chapter, will cover the methodological choices for this study. It will justify and critically reflect on the selected research method, cases, method of analysis and selected documents. The next chapter will provide the analysis and present the results of the analyzed documents of the ICTY and ICTR. Fifth and finally, I will conclude this study by summarizing and discussing the findings.

Literature Review

In this chapter I will examine the existing literature on gender and transitional justice. My aim is to explore how gender has been dealt with in TJ, and in particular criminal tribunals, and to explore contemporary debates which address the issue of gender in transitional processes. Based on this literature, I will conclude how gender works in tribunals. This theoretical chapter will form the basis from which I derive assumptions for what I expect to find when analyzing documents of the ICTY and ICTR.

Scholars have been criticizing transitional justice and tribunals in particular for ignoring women's agency during conflict, especially female perpetrators of war crimes. As a response to this critique, gender has been introduced in the TJ literature through three main approaches. In theory and practice, it is argued that the focus remains on women's harm and suffering, which leads to the reproducing of gender stereotypes where women are solely seen as victims.

This theoretical chapter is divided into three main parts and is structured as follows: in the first part I will examine the literature on transitional justice and in particular criminal tribunals and I will provide a clear definition on both these concepts. In the second part, I will include a theoretical framework on gender and transitional justice. I will highlight the criticisms of criminal tribunals raised by different scholars, who argue that the tribunals ignore the role gender plays in TJ. Then I will move to different theoretical approaches of gendering transitional justice and scholars who put gender into discussion in TJ literature. In the third and final part, I will conclude how gender works in tribunals, what the main strands of scholars on TJ literature are and formulate hypotheses based on the assumptions derived from this theoretical chapter.

2.1 Transitional Justice and the Criminal Tribunal

This first part of the theory chapter is devoted to transitional processes, highlighting their particular characteristics. This section is aimed at understanding how transitional justice and in particular criminal tribunals work. There are different types of transitional mechanisms, like truth commissions and reparation programs, but I will discuss and focus on the tribunals because it is the task of these courts to find the facts and prosecute perpetrators of war crimes. Also, the tribunals are often seen as the most important TJ mechanism to stop the human rights abuses and to rebuild the post-conflict society (Humphrey, 2003, p. 495).

This section will be structured as follows: first I will introduce some literature on transitional justice, and I will state my working definition for this research project. Then I will move to the literature on the concept of criminal tribunals as a facet of TJ. For this concept, I will state my working definition as well and provide some historical background on criminal tribunals.

2.1.1 Transitional Justice

There is a substantial body of literature on transitional justice and its definition. When big conflicts have taken place and mass crimes are committed, whole communities are affected (Clark, 2008, p. 334) and transitional justice mechanisms are expected to help and provide justice for the victims, specifically for the periods of transition from violence to peace or from authoritarianism to democracy (Millar, 2011, p. 515). The processes deal with ‘wrongdoers from a troubled past’, as C. Loyle and C. Davenport put it (Loyle & Davenport, 2016, p. 126). TJ mechanisms are adopted to promote truth and reconciliation; to prevent the (political) conflict from resuming and to increase democratization in the post conflict society. Associated activities to deal with the previous events involve human rights trials, truth commissions,

reparations programs, amnesty and lustration (Loyle & Davenport, 2016, p. 127). This leads to different facets of TJ, of which the criminal tribunal is one.

The general definition of TJ by the International Center for Transitional Justice (ICTJ) nicely combines the definitions by the different scholars above and it is the most comprehensive definition of TJ (Mihir, 2012, p. 12). Therefore, I will work with this definition of transitional justice, which states that:

“... a transitional justice process includes ways, means, institutions or instruments to respond to systematic or widespread violations of human rights. These mechanisms seek recognition for victims by bringing perpetrators to justice in order to promote possibilities for peace, stability and democracy. The process provides therefore the grounds for criminal, social or historical justice that adapt to societies transforming themselves after a period of human rights abuse such as during war, armed conflicts, periods of dictatorship, and autocratic suppression. International law, or international human rights and humanitarian law instruments such as treaties (covenants, conventions), declarations, agreements or protocols, are the legal basis for this process.”

2.1.2 Criminal Tribunals

Another group of scholars have focused on the concept of criminal tribunals within TJ literature. Beth K. Dougherty defines the tribunals by their creation and states that they are created to end impunity and provide justice to the victims through a fair judicial process (Dougherty, 2004, p. 328). So, the individuals responsible for human rights- and law violations are held accountable. The tribunals undertake what the national courts of the post-conflict countries could not, which is to investigate and prosecute the human rights abuse. According to Franke, it is the task of tribunals to find facts and recognize, acknowledge or even call up certain individuals (Franke, 2006, p. 814). Facts could be things like harm, injury and guiltiness. When talking about recognizing individuals we can think of a criminal or victim. However, certain criminal

practices could also be recognized by tribunals, for example a genocide or crimes based on gender or ethnicity (Franke, 2006, p. 814).

I define the concept of criminal tribunals based on how Katherine Franke (2006) and Beth K. Dougherty (2004) have described it. I chose to combine their definitions of tribunals because by itself, both definitions are incomplete. So, my working definition of criminal tribunals becomes: *International criminal tribunals undertake what the national courts of post-conflict countries could not, which is to investigate and prosecute the gross human rights abuse, to end impunity and to provide justice to the victims through a fair judicial process. It is the tribunals' task to find facts (like harm, injury and guiltiness) and recognize, acknowledge or even call up certain individuals responsible for human rights- and law violations to hold them accountable.*

2.1.3 Historical background: generations of tribunals

In history, it was the task of national courts to hold perpetrators accountable (Romano, Nolkaemper, & Kleffner, 2004, p. 143). But, because these courts are often impartial and because of the scope of crimes it can be a big burden, the first generation of international courts took over. The Tokyo and Nuremberg trials can be seen as part of this generation. Only after several decades, this idea of international prosecution found broad acceptance (p. 143). After different atrocities and national crises during the 1980s and 1990s representatives of international institutions made clear that establishing international courts was the best way to intervene, to stop human rights abuses and to reintroduce the rule of law (Humphrey, 2003, p. 495). And so, the United Nations Security Council gave birth to the second generation of international courts when they established the ICTY in 1993, the ICTR in 1994 and the permanent International Criminal Court (ICC), established in 2002 by an international treaty (Mihir, 2012, p. 16; Romano et al., 2004, p. 143).

What is interesting to note is that prosecutions by tribunals can really deliver something with respect to transitional justice (Franke, 2006, p. 816). In particular, gender-based violence during war has been known for a long time, but only until two decades ago sexual violence and rape became recognized as a war crime. Both the ICTY and ICTR were the first international tribunals to prosecute several men “on the grounds that rape and other forms of sexual and gender violence be recognized as among the most serious offenses over which these tribunals have jurisdiction” (Franke, 2006, p. 817).

Adding to my working definitions, it is important to take into account that for TJ to have a fruitful impact on a society and its democratization, it is often a mix of mechanisms that is relevant and even needed (Mihir, 2012, p. 16). Also, in one particular war-torn country, it might be the best way to establish criminal tribunals right away. As in the cases of the former Yugoslavia and Rwanda. However, setting up a truth commission at first might be recommended in another country. This was the case in South Africa, where a commission was established after the Apartheid regime in 1994 (Mihir, 2012, p. 16). The suitability of a certain mechanism differs between situations and, according to Anja Mihir, it depends on “the consensus within the society, the nature of the conflict, the severity of the crimes and whether perpetrators and victims must live side by side in one country or in different countries” (Mihir, 2012, p. 48).

To conclude, in this section I have covered existing literature on the concept of transitional justice and on one of its mechanisms, namely criminal tribunals. In short TJ is an international response to widespread human rights violations. The criminal tribunal as one of TJ’s processes, mainly has the task to end impunity and provide justice to victims by prosecuting wrongdoers of major war crimes. In the next paragraph I will introduce the notion of gender to transitional justice. This is because over the years different scholars have criticized

criminal tribunals for ignoring the role gender plays in transitional justice. As a reaction to this criticism, multiple scholars put gender into discussion in TJ literature and different approaches of gendering TJ have arisen.

2.2 Gender and Transitional Justice

In the previous section of this theoretical chapter the concepts of transitional justice and criminal tribunals have been covered. Existing literature on both these concepts has been examined and the working definitions for this study have been formulated. Furthermore, it has been made clear why this research specifically focuses on criminal tribunals as TJ mechanism. Different scholars have been criticizing tribunals and argue that it ignores the role gender plays in TJ. Therefore, this second section of this theory chapter will introduce a theoretical framework on gender and transitional justice. It will first cover most of the criticism on criminal tribunals regarding gender. Also, actual roles played by women during war will be briefly covered. Then I will move to the different scholars who put gender into discussion in TJ literature. In particular, three main approaches of gendering transitional justice will be discussed. Finally, I will conclude with my expectations for this research when studying the ICTY and ICTR and develop several assumptions.

2.2.1 Critiques on Criminal Tribunals

“Valerie stood with the other woman, watching the men go. She couldn’t help bristling at this division of the sexes. Her fingers itched to hold a weapon, too, to do something, to kill something with her anger. She spotted her father trudging soundlessly at the back, wrecked within the depths of this heavy coat. She hurried to him. His eyes were broken, like something shattered. “I’m going with you,” she told him, trying to keep the pity from her voice. “No.” “But she was my sister.” “No, Valerie.” He slung his axe over his shoulder. “This is not for women.””

- Sarah Blakley-Cartwright in the Red Riding Hood, 2011

Images of men holding weapons and innocent female victims in the background are well known. It is argued by multiple scholars that transitional justice reproduces these gender stereotypes of women as victims and men as perpetrators (Björkdahl & Selimovic, 2017, p. 79; Buckley-Zistel & Zolkos, 2012, p. 11; Campbell, 2007, p. 426; Charlesworth, 2008, p. 358; Korac, 2006, p. 2; Lorentzen, 2016, p. 3). Even though female perpetrators appeared and still appear in diverse atrocities and genocides like Rwanda (Lorentzen, 2016, p. 16). Different scholars emphasize that TJ neglects women's roles as agents and perpetrators.

2.2.1.1 TJ's neglect of female's roles as agents and perpetrators

Notwithstanding important steps have been taken to include gender perspectives in transitional justice, like the recognition of rape as a war crime by the ICTR. But it is, how Buckley-Zistel and Zolkos call it, 'a mixed blessing (2012, p. 10). "Criminal prosecutions - at their most sensitive to gender issues - recognize women as victims of sexual violence, and the women who come before the court must perform a kind of sexual vulnerability in order to be so seen as victims by the court" (Franke, 2006, p. 822). According to Franke, the tribunals seem to expect that female witnesses testify against sexual violence and this results in women becoming memorized as some kind of victims, which is a small part of women's experiences (Franke, 2006, p. 825). In other words, this focus on sexual violence crimes against women leads to the neglect of women's roles as agents and perpetrators (Lorentzen, 2016, p. 3).

Implicit within the TJ mechanisms are the roles of men and their relationship to women, where men are seen as the perpetrators and women as victims of political conflict (Hamber, 2007, p. 8). The definition of sexual violence in the tribunals for example, is said to be a gender-neutral term which refers to violence against both women and men (Campbell, 2007, p. 416). However, according to Kirsten Campbell the term still relies on notions of gendered bodies and actions. These terms are related to rape as a crime against humanity under the humanitarian

law. International criminal law defines it in two elements: the conduct of penetration and the intent of the perpetrator (p. 418), which according to Campbell is reflective of a masculine model of sexuality, because the sexual act here is understood in terms of an active masculine body which penetrates a passive feminine body.

Of the 35 completed cases by the ICTY, seventeen cases involve sexual violence (Campbell, 2007, p. 422). Campbell mentions a striking aspect which is that the indictments specify the victims' gender in all cases, except three. What is surprising is that the researcher found a overrepresentation of male victims related to sexual violence and this does not reflect the reasonable expectation, because the incidences of female assault in the conflict are known to be much higher (Campbell, 2007, p. 424).

Looking at the convictions of the tribunals, only two women have been convicted by an international criminal court until now (Smeulers, 2015, p. 1). The ICTY convicted Biljana Plavsic in 2003 for persecution as a crime against humanity. The Rwanda tribunal sentenced Pauline Nyiramasuhuko to life imprisonment in 2011 for her role as leader in the genocide and the prevalent rape in the south of Rwanda, Butare. "Over 280 men have been convicted by international criminal courts and tribunals and these two women thus represent less than one percent of all people convicted by such courts and tribunals. This raises the question why so many male perpetrators and so few female perpetrators have been convicted" (Smeulers, 2015, p. 1).

Alette Smeulers argues that both the cases of Plavsic and Nyiramasuhuko show that (ordinary) women who rise to positions in power are equally capable of committing and organizing mass atrocities as men in the same positions (Smeulers, 2015, p. 19). According to her, gender stereotypes might be present in the tribunals and women might be familiar with this fact. Both women "tried to rely on their gender as proof that they could not have been involved in such extreme crimes ... Plavsic lenient sentence might have been affected by her gender and

appearance but it did not make the judges of Nyiramasuhuko more lenient – she received the maximum penalty” (Smeulers, 2015, p. 19).

Laura Sjoberg and Caron E. Gentry argue that three narratives permeate public discourses about women involved in prisoner abuse at Abu Ghraib and female perpetrators in general (Sjoberg & Gentry, 2007, p. 81). Namely, the mother narrative, which describes violent women as mothers who want to belong, who feel a need to nurture and who are loyal to men; the monster narrative, which describes violent women as insane, inhuman or in denial of their femininity; and finally the whore narrative, which describes the women as having an evil female sexuality and as most vulnerable (Smeulers, 2015, p. 12).

Sjoberg and Gentry talk more about representations in the media, however, Smeulers thinks these stereotypes could also be present in courts (p. 13). “Next to being portrayed as evil monsters, female perpetrators are also often portrayed as lacking agency”, as being forced. “Women themselves have in some cases supported these stereotyped gender images. Especially while defending themselves in front of a court many women tried to exploit these sentiments by declaring that they could not possibly have committed atrocious crimes out of their own accord. In some cases, this worked and some judges trying female perpetrators were influenced by these same gender stereotypes” (Smeulers, 2015, p. 13).

Smeulers already pointed out that only two women have been convicted by the ICTY and ICTR, one in each tribunal. But when looking at other literature we can expect other things as well when studying the specific tribunals for this research project. For example, based on the literature by Franke and Lorentzen we might expect to find in this research that women are mostly seen as witnesses and victims of sexual violence by the tribunals and therefore their role as agents and perpetrators is ignored. We also might expect this based on the literature by Campbell and Hamber, which states that particularly the roles of men and their relationship to women are implicit within the TJ mechanisms, which leads to women being seen only as

passive victims and witnesses. Thus, according to these scholars, we can expect to find that the tribunals only recognize female victims in a limited way, namely victims of sexual violence.

However, against the background of Campbell's study, we might also find an overrepresentation of male victims and women are then barely mentioned at all in the tribunals. Finally, based on the literature by Sjoberg and Gentry, we might expect the mother narrative, monster narrative and whore narrative to be present as well in the documents of the tribunals and therefore might expect women to be framed according to these narratives. So, based on the three narratives laid out by Sjoberg and Gentry and according to Smeulers, we can expect that when the tribunals recognize some female perpetrators, they will be recognized in a fashioned way through (one of) the three narratives.

Concluding, these expectations can be formulated into two hypotheses:

H1: When female victims are identified by the tribunals for Rwanda and the former Yugoslavia, their recognition will be only partial and will be limited to being victims of sexual violence.

H2: If female perpetrators are recognized by the tribunals for Rwanda and the former Yugoslavia, they will be recognized in a fashioned way through the mother, monster and/or whore narrative.

2.2.1.2 Actual roles played by women during war

Research on TJ suggests that women are generally less involved in mass atrocities than men. They represent about 10 to 30 percent of violent groups (Ortega, 2010, p. 2), but the fact that only two women until now have been convicted by an international criminal tribunal and women are mostly portrayed and treated as victims of sexual violence does not reflect the roles

women actually play (Smeulers, 2015, p. 1). In fact, Smeulers argues women can be just as evil as men.

Many women also join war efforts and take on different roles as perpetrators (Borer, 2009, p. 1171). They “join voluntary state militaries and take up arms as combatants in liberation wars” (p. 1171). Female perpetrators were for instance active in the Rwandan genocide (Jones, 2002; Lorentzen, 2016, p. 14; Sharlach, 1999). Next to female leaders participating in the genocide, “at the grassroots, very often, groups of women ululated their men into the ‘action’ that would result in the death of thousands of innocent men, women and children, many of them their own neighbors” (Jones, 2002, p. 84).

Women were also involved in military actions in Sri Lanka (Korac, 2006, p. 2). Furthermore, women took on such roles in Nazi Germany as well (Wodenshek, 2015, p. 4). “Nazi women enthusiastically rallied to participate in the Nationalsozialistische Frauenschaft (NSF), or the National Socialist Women’s League, which organized women in a range of activities, from finances to education to training in auxiliary services” (p. 4, 5). Ruth Kemper, author of *Women in Nazi Germany*, states that both young boys and girls were put in Nazi training programs and were trained as small assistants of Hitler (Wodenshek, 2015, p. 5). About 3,000 women, Nazi-trained career Party leaders, were considered to be the most dangerous female perpetrators in Nazi Germany, because most of their identities remained unknown. These women mostly served as heads of Departments and coordinated women’s organizations (p. 6). Two other groups of female perpetrators were the 584,000 female Nazi leaders, who voluntarily did political work of the Nazi party, and 1.6 million ordinary members of the NSF, which was part of the Nazi Party before 1936.

Wendy Adele-Marie Sartie, author of *Women and Nazis: Perpetrators of Genocide and other Crimes during Hitler’s Regime, 1933-1945*, argues that women’s roles as camp guards in Auschwitz, Bergen-Belsen, Buchenwald and Ravensbrück, consisted of torturing and

murdering thousands of victims (Wodenshek, 2015, p. 19). According to her, women made a conscious decision to kill and participated in mass murder. The reason for this was the fact that women saw an opportunity for economic and social equality to men. “They chose to participate to prove they were just as capable as their male counterparts and became some of the most violent and deadly female perpetrators” (p. 20).

Apart from these examples of female perpetrators in Nazi Germany, women are said to have been active as female fighters in Peru, Liberia, Sri Lanka, Eritrea, Ethiopia, Nicaragua, Vietnam, El Salvador, Columbia, Guatemala, Nicaragua, Sierra Leone and Uganda (Smeulers, 2015, p. 9). “In both Sierra Leone and Uganda’s Lord Resistance Army (LRA) 30 percent of the members are female” (p. 14).

Concluding, in this part of the theoretical framework on gender and transitional justice I have covered existing critics on transitional justice and criminal tribunals by different scholars who state that there are still gender stereotypes present in the processes. According to this literature, it seems that women are still excluded from the processes; women are seen as passive wives without agency who are just suffering; they are seen as victims of sexual violation; and women perpetrators are seen as deeply evil. When researching the ICTY and ICTR, I might expect to find more cases of sexual violence and therefore more women as passive victims who need to testify before the court in the tribunal of Rwanda because of the massive rapes that took place during the genocide. In this section, I have also shown that women, just like men, join war efforts and a lot of female perpetrators are active in conflicts and mass atrocities. The next paragraph will examine the different approaches to gendering transitional justice, because multiple scholars put gender into discussion as a reaction to the criticism laid out above.

2.2.2 Gender approaches to Transitional Justice studies

This section covers the different theoretical gender approaches to transitional justice to understand in what ways gender has been embodied in TJ studies and also what these studies have omitted so far. Studies on transitional justice have come a long way before theorists applied a gender perspective to the phenomenon (Lorentzen, 2016, p. 3). “Early work on transitional justice either ignored the gender dimension or focused on women as victims of sexual violence, thus reproducing gender stereotypes of women as victims and men as perpetrators” (p. 3). More recently, ‘the project of gendering TJ’ (2012, p. 5), as Buckley-Zistel and Zolkos refer to it, has been pursued on the basis of mainly three approaches.

At first, gendering TJ was based on a critique that women were insufficiently included in the processes. This approach is focused on the systemic acts which privilege and universalize male perspectives. And that these acts represent female perspectives of the conflict as inferior or invisible. Fionnuala Ní Aoláin’s study is an example of this approach to gendering TJ (Aoláin, 2006). She focuses on the absence of women in the processes of transition and argues this has become a matter of preoccupation in international society (p. 848). Other scholars have contributed to this systemic approach, albeit arguing from a liberal institutional position or a critical feminist stance (Buckley-Zistel & Zolkos, 2012, p. 6). Debates occurred between these particular scholars on classifying several forms of sexual violence as war crimes like rape and trafficking. The study by Kirsten Campbell is exemplary in this respect as she examines how gender structures legal mechanisms like the ICTY with a focus on the prosecution of sexual violence in armed conflict (Campbell, 2007).

The second approach is more actor-based and focuses on the diverse forms of victimization of women (Buckley-Zistel & Zolkos, 2012, p. 7). It is concerned with whether women are subjected to the same violations as men and the different impact this may have on them. Therefore, recent studies within this approach also address what specific needs are

necessary for women. Susan McKay represents this second approach when she studies the gender-specific effects of armed conflict on girls and women (McKay, 1998). She argues that women are mostly subjected to violations of sexual exploitation and gender-based violence, which have big psychosocial consequences (p. 381). Furthermore, McKay addresses a specific need necessary for women, namely the need to safeguard women from gender-specific violence and to support them in their psychosocial healing (McKay, 1998, p. 391).

The third and final approach to gendering TJ focusses, according to Buckley-Zistel and Zolkos, less on the legal categories of women, but instead the discourses of femininity and masculinity (Buckley-Zistel & Zolkos, 2012, p. 7). Proponents of this approach criticize the traditional and masculine conceptions of legal institutions. Brandon Hamber takes on this approach when examining ongoing violence against women in South Africa during and after war and the relationship with TJ through a hegemonic, masculine prism (Hamber, 2007).

What these various gendered approaches have in common is their attempt to transform TJ, especially the implementation, but they are all still endorsing the ideal of TJ mechanisms in general (Buckley-Zistel & Zolkos, 2012, p. 8). Unlike studies which are part of the critical feminist approach that argue transitional justice is intrinsically implicated in the patriarchal and neo-liberal structures. Katherine M. Franke for example, is concerned that the emphasis on women's harm will be used in the service of a patriarchal, democratic state (Franke, 2006). She argues that "in different ways, and by different means, rebuilding post conflict societies is almost inevitably a process of re-masculinization" (Franke, 2006, p. 824).

Concluding, this paragraph has covered the different gender approaches to transitional justice. It has become clear that there are three different ways of how gender has been dealt with in TJ and in tribunals. The first way is that women were either ignored or not included at all in the process or tribunal. The second manner is that women are subjected to different violations than men during and after conflict, and TJ does not take this into account. The final

way of how gender has been dealt with, or actually has not been dealt with, in TJ is that the processes are based on masculine conceptions and therefore women find themselves in a masculine 'world'.

Against the background of these three strands of scholars on TJ literature, we can expect to find that the Rwandan tribunal and the tribunal for the former Yugoslavia will deal with gender in the same ways as the above assumptions state. Namely, that women are not included at all in the tribunals; that there is no recognition by the tribunals to specific experiences by women and that the ICTR and ICTY are mostly based on masculine perceptions. Based on these three theoretical approaches and the derived expectations, a third hypothesis can be formulated for this study on the ICTY and ICTR:

H3: Women are, either as victims or as perpetrators, not recognized at all by the tribunals for Rwanda and the former Yugoslavia and their experiences will be ignored completely.

In the third and final part of this theoretical chapter, I will conclude this chapter and repeat the different kinds of ways women are framed in tribunals according to the literature. I will formulate some frames based on these representations and formulate hypotheses. Finally, some reflection on this theory chapter will be included.

2.3 Conclusion

In the first part of this theory chapter, the concepts of transitional justice and criminal tribunals have been covered. TJ can be defined as an international response to widespread human rights violations and the criminal tribunals, which are a specific facet of TJ, are there to end impunity and to provide justice to victims by prosecuting perpetrators of mass atrocities. After defining

the concepts of TJ and the tribunals, the second part of this chapter introduced the theoretical framework on gender and transitional justice.

First, the framework covered the existing criticisms on transitional justice and tribunals regarding gender. It has been argued that there are remaining gender stereotypes present in the tribunals. The different kinds of ways women are framed in tribunals according to the literature, if they are not excluded from the processes in the first place, are that women are seen as passive wives without agency who are just suffering; that they are seen as victims of sexual violation; and female perpetrators are seen as deeply evil and as nurturers. These treatments do not match the roles women actually play during conflict, according to the literature on female perpetrators.

The theoretical framework on gender and TJ finally discussed the three approaches to, how Buckley-Zistel and Zolkos call it, gendering transitional justice. The first approach is based on a critique that women are excluded from TJ; a second approach focuses on the different ways women are victimized and if this differs from men; the final approach focuses on the discourses of femininity and masculinity and is based on the assumption that TJ institutions are built on masculine conceptions. In different ways, scholars from these different approaches argue that women are excluded from the tribunals, either as victims or as perpetrators.

2.3.1 Hypotheses

From this theoretical framework, several hypotheses have been formulated:

H1: When female victims are identified by the tribunals for Rwanda and the former Yugoslavia, their recognition will be only partial and will be limited to being victims of sexual violence.

H2: *If female perpetrators are recognized by the tribunals for Rwanda and the former Yugoslavia, they will be recognized in a fashioned way through the mother, monster and/or whore narrative.*

H3: *Women are, either as victims or as perpetrators, not recognized at all by the tribunals for Rwanda and the former Yugoslavia and their experiences will be ignored completely.*

Thus, based on the critical literature on transitional justice, we can expect to find that female victims are only recognized in a limited way, namely as victims of sexual violence and second, that if female perpetrators are recognized by the tribunals, they will be framed by the mother, monster and/or whore narrative. Furthermore, based on the three theoretical gender approaches to TJ, we can expect to find that women and their experiences are not included at all in the tribunals.

2.3.2 Reflection on theory

Even though all the aforementioned literature is striving for more attention to gender in TJ mechanisms, it seems that scholars cannot get away from gender bias in their own studies. This is because the categories and arguments which are often developed in research are premised on the male model. For example, according to Sartie (Wodenshek, 2015, p. 19), women made a conscious decision during World War II to act violent and participate in mass murder because they wanted to prove they were just as capable in anything 'like men'. This argument shows a normative bias because men are assumed to be perpetrators naturally and it is argued that women only perpetrate crimes because they want to be like men.

The next chapter will cover the selected methods for this study on gendered patterns in tribunals. The use of a qualitative method and in particular a directed content analysis will be justified. Furthermore, I will explain what specific kind of documents will be selected for the analysis and finally the next chapter will include a reflection on the methodological choices.

Methodology

Having examined the existing literature on gender and criminal tribunals as facet of transitional justice in the former chapter, this chapter focuses on the methods which will be used to analyze in what ways criminal tribunals are gendered. This research project uses the International Criminal Tribunal for the former Yugoslavia and the Tribunal for Rwanda as case studies. These typical cases will be analyzed in-depth using a qualitative case study method. A content analysis will be conducted on the judgement documents of the tribunals to capture how women are perceived in the tribunals and to see if gender stereotypes are reproduced. Specifically, a directed approach to content analysis will be used to be able to extend theory on gender and TJ. Using this approach, different lead codes and subcodes will be derived from theory and will be formulated. The analysis on the tribunals' documents will then be conducted to see if these codes are present. Next to these deductive codes, some additional codes, called inductive codes, might be added in from the analyzed documents.

This method chapter will be structured as follows: first the selected cases for this study will be justified and I will justify the choice for a qualitative method. The second section will cover the selected method of analysis for this study, which is a directed content analysis. I will explain what this specific method entails and explain why this is the best method for capturing gender stereotypes in the tribunals' documents. Third, this chapter will move to operationalization and will show what is evidence for the role of gender in tribunals. Fourth, the data sources will be discussed, and I will explain why the judgements of the tribunals as specific kind of documents are the best and most telling source for this analysis. In the fifth and final part of this method chapter, I will conclude which methodological choices have been made

for this analysis on gendered norms in tribunals and will critically reflect on the strengths and pitfalls of the selected methods and data sources.

3.1 Case selection

For this study on the ways in which criminal tribunals are gendered, a qualitative case study method will be used. Such a study focuses on answering the ‘how’ and ‘why’ questions of a phenomenon (Baxter & Jack, 2008, p. 545). A researcher conducting a qualitative case study seeks greater understanding of a case; appreciates its uniqueness, complexity, embeddedness and interaction with its contexts (Stake, 1995, p. 16). A case “connotes a spatially delimited phenomenon (a unit) observed at a single point in time or over some period of time” (Gerring, 2007, p. 19). According to John Gerring (2007, p. 20), a case study as qualitative research method can be understood as “the intensive study of a single case where the purpose of that study is – at least in part – to shed light on a larger class of cases (a population)”. Therefore, using this method, it is possible to gain better understanding of the whole phenomenon by focusing on a key part or case. He adds to this that this specific method may incorporate multiple case studies (p. 20). However, “the fewer cases there are, and the more intensively they are studied, the more a work merits the appellation ‘case study’” (Gerring, 2007, p. 20).

Case studies can focus on different units: individuals, organizations, groups of people or for example events (Gerring, 2007, p. 1). An important task in case study research is selecting the case or cases which will be studied in-depth (Seawright & Gerring, 2008, p. 294). Therefore, Jason Seawright and Gerring identify seven case study types to make the case selection process easier: typical, diverse, extreme, deviant, influential, most similar, and most different (p. 296). Finally, according to Max Travers, five methods exist that are used in qualitative case study research: “observation, interviewing, ethnographic fieldwork, discourse analysis and textual analysis” (Travers, 2001, p. 2).

This qualitative case study method is suited for analyzing the role of gender in tribunals because there is only a small number of cases available. Until today, only five international criminal tribunals, established by the UN Security Council, are in existence (Government of the Netherlands, 2019). Two of them are the tribunal for the former Yugoslavia and the tribunal for Rwanda and are selected for this study.

The qualitative method is also well-suited because to answer the research questions, the cases will have to be studied in-depth. A third reason why a qualitative case method will be used, is the fact that empirical research on gendered norms in TJ is lacking and this research therefore still finds itself in an explorative stage. In this stage of a research process, qualitative case studies are best suited. According to John Gerring (2007, p. 41) “It is the very fuzziness of case studies that grants them an advantage in research at the exploratory stage...”. However, this does not mean that the case study is some kind of pilot method and will only be used for preparing quantitative research (Flyvbjerg, 2006, p. 221). The case study will be of value in itself and is valuable in the preliminary or exploratory stage of an investigation to generate hypotheses. “The advantage of the case study is that it can ‘close in’ on real-life situations and test views directly in relation to phenomena as they unfold in practice” (Flyvbjerg, 2006, p. 238).

As mentioned above, the ICTY and ICTR have been selected for this research project. While looking at Gerring’s different techniques of case selection (2007, p. 89), namely typical, diverse, extreme, deviant, influential, crucial, pathway, most-similar, and most-different, both tribunals can be seen as typical cases of criminal tribunals. The typical-case approach is chosen because I want to study if and in what ways criminal tribunals are gendered. Therefore, this study will have to focus on cases which are representative of my working definition of tribunals which states among other things that *international criminal tribunals undertake what the national courts of post-conflict countries could not, which is to investigate and prosecute the*

gross human rights abuse, to end impunity and to provide justice to the victims through a fair judicial process.

Gerring defines typical cases as examples of some cross-case relationship or phenomenon (Gerring, 2007, p. 89). Typical cases are by definition representative. Although these specific cases are often used in research for hypothesis-testing, sometimes typical cases can serve an exploratory role, like the ICTY and ICTR in this study (Gerring, 2007, p. 91). Other international criminal tribunals, next to the tribunal for the former Yugoslavia and for Rwanda, have been established by UN Security Council Resolutions (International Justice Resource Center, 2019). So, for example, the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), and the Special Tribunal for Lebanon (STL) could have been selected as typical cases for this study as well. However, these tribunals, apart from the ICTY and ICTR, have a special characteristic which is not described in my working definition of tribunals. Namely, they are ‘internationalized tribunals’, which means that these tribunals are a cooperation between the international community and the national governments (International Justice Resource Center, 2019). Therefore, this study only focuses on the ICTY and the ICTR as typical cases.

The ICTY and the ICTR established respectively in The Hague in 1993 and in Arusha in 1994 by UN Security Council Resolutions were intended to bring justice to the victims of mass crimes that were the result of former Yugoslavia and Rwanda’s state failure to protect its citizens (Askin, 2003, p. 1; Humphrey, 2003, p. 495). Other reasons for the establishment of these tribunals were the likelihood that Rwanda and former Yugoslavia would not hold national trials to prosecute the perpetrators; to prevent the atrocities from resuming; to make sure neighboring countries would not be affected and to promote reconciliation (Humphrey, 2003, p. 495). These two typical cases are suited for analyzing the role of gender in tribunals because these were the first tribunals to acknowledge rape and gender-based violence (Björkdahl &

Selimovic, 2017; Buckley-Zistel & Zolkos, 2012; Franke, 2006; Hamber, 2007; Von Oppeln, 2017). Therefore, these tribunals have both been an important breakthrough in recognizing female experiences during war.

The ICTY was the first tribunal to acknowledge war rape as a crime against humanity (Björkdahl & Selimovic, 2017, p. 73; Von Oppeln, 2017, p. 2). Different convictions for gender-based violence followed after that. The ICTR convicted a mayor called Jean-Paul Akayesu in 1998 for rape and therefore he became the first individual in international court to be judged on war rape (Björkdahl & Selimovic, 2017, p. 73). After that conviction, people became aware that rape formed a big part of the genocide in Rwanda.

In the case of the ICTY, Michelle Jarvis, associate Legal Officer, even states that “special teams have been established investigating especially gender issues and there is also staff responsible for gender monitoring” (Von Oppeln, 2017, p. 6). She argues further that “while looking at the ICTY and ICTR case law, there is surely growing recognition for female suffering during war time due to sexual offences”. Although the tribunals for the former Yugoslavia and Rwanda lasted for about two decades, this study will not focus on specific time periods. Instead, it will examine the tribunals’ prosecutions across time.

The following part of this chapter will cover the selected method of analysis for this study, namely a directed content analysis. For this kind of analysis, specific deductive codes will be formulated in advance, which are derived from theory and are evidence for different gender stereotypes.

3.2 Method of analysis

To analyze the tribunals’ documents of the trials, a qualitative directed content analysis will be conducted using the program Atlas.ti. In this paragraph, I will discuss this specific method and

argue why this approach to content analysis is selected and why it fits this study the best. I will cover what a directed content analysis actually entails and how it works.

According to Hsiu-Fang Hsieh and Sarah E. Shannon, content analysis, or textual analysis, is a widely used qualitative research method (Hsieh & Shannon, 2005, p. 1277). Because for analyzing textual data, researchers acknowledge content analysis as a flexible method. Furthermore, “qualitative researchers have always known that one can learn a lot about the world by looking at documents... much of the interaction that takes place in modern societies is mediated by different kinds of texts” (Travers, 2001, p. 5).

This kind of method is used for this analysis to capture how women are perceived in the tribunals, because by using a content analysis it becomes possible to subjectively interpret the content of text data “through the systematic classification process of coding and identifying themes or patterns” (Hsieh & Shannon, 2005, p. 1278). This qualitative method focuses on “the characteristics of language as communication with attention to the content or contextual meaning of text” (2005, p. 1278). Therefore, a qualitative content analysis is very suitable for this study, because via this approach it is possible to examine the documents of the tribunals and look for gender stereotypical codes in a structured way.

According to Hsieh and Shannon, three different types of content analysis exist (Hsieh & Shannon, 2005, p. 1277). The conventional, directed and summative approach. All three types are used to interpret meaning from textual documents. A conventional analysis is mostly used when existing theory on a phenomenon is limited (Hsieh & Shannon, 2005, p. 1279). Its aim is to describe a phenomenon and generally interviews are conducted when using this method. Often the result of a conventional analysis is concept development or model building (2005, p. 1281). A directed content analysis “starts with a theory or relevant research findings as guidance for initial codes” (Hsieh & Shannon, 2005, p. 1277). Its aim is to contribute to existing theory of a phenomenon or even to extend it and the findings can be presented by

showing codes which are deductive, derived from theory, and inductive, derived from analyzed texts, with exemplars as evidence (2005, p. 1282). Third and finally, the summative content analysis focuses on discovering underlying meanings of words or content (Hsieh & Shannon, 2005, p. 1284). Its aim is to understand the contextual use of words or content and to identify certain patterns. The findings then provide inside into how certain words like ‘death’ are actually used.

When keeping in mind the three different approaches, the directed approach seems to fit this study the best. Therefore, for this study different codes will be derived from the existing theory on gender and transitional justice. A directed content analysis is selected because this study’s aim is in line with the goal of such an analysis: “to validate or extend conceptually a theoretical framework or theory” (Hsieh & Shannon, 2005, p. 1281). This is important because existing theory on gender and transitional justice is incomplete and needs further description.

The directed approach to content analysis is guided by a structured process (Hsieh & Shannon, 2005, p. 1281). Against the background of prior research and literature, a researcher begins with identifying key concepts, variables and/or hypotheses as initial coding categories. Then, a next step would be to operationalize by determining definitions for each coding category. For example, what does it mean to be identified as a victim of sexual violence? Then the researcher can begin with coding immediately with the predetermined codes. “Data that cannot be coded are identified and analyzed later to determine if they represent a new category or a subcategory of an existing code” (Hsieh & Shannon, 2005, p. 1282). Therefore, a directed content analysis will not be fully deductive, but some codes will be defined during the data analysis as well from relevant research findings. Finally, when the coding is finished, the findings can offer supporting and/or non-supporting evidence for the theory. The evidence will be presented by showing examples for different the codes. “The theory or prior research used will guide the discussion of findings. Newly identified categories either offer a contradictory

view of the phenomenon or might further refine, extend, and enrich the theory. The main strength of a directed approach to content analysis is that existing theory can be supported and extended” (Hsieh & Shannon, 2005, p. 1283).

In the following part I will move to operationalization and will show what is evidence for the role of gender in tribunals. First, I will provide a definition of the concept of gender. Then, as part of the directed content analysis, and based on the identified hypotheses from theory as initial coding categories, I will formulate specific codes and determine their definitions.

3.3 Operationalization

In this paragraph I will start with operationalizing the analysis on gender stereotypes in the documents of the ICTY and ICTR. I will formulate codes which are evidence for the role of gender in the tribunals. However, before moving to this operationalization, I will cover what is actually meant by the concept of gender by different scholars and what I take to be the concept.

3.3.1 The concept of gender

Gender norms shape our ways of thinking (Björkdahl & Selimovic, 2017, p. 71), about how we conceptualize a crime and how we identify a victim. Gender is a social construct and thus it is a concept which is learned, rather than an innate category (Oosterveld, 2005, p. 67). Harriet Bradley agrees with this definition and adds that gender is a category we use as human beings to divide up the world we perceive around us and to make sense of it (Bradley, 2013, p. 6). It is lived experience, as she describes it. As a social phenomenon, gender influences every individuals’ experience. Even though often implicitly presumed, gender is not just about women (Van Dijkhorst & Vonhof, 2005, p. 7). It deals with roles of both women and men.

Against this background, I argue that gender is a social construct which manifests itself in masculinities and femininities and it controls how we think about people. This means that because of these gendered norms we only categorize people as ‘man’ or ‘woman’ and when we think, for example, of women, we see them as vulnerable and as nurturers or as Vasuki Nesiah puts it (2006, p. 42), only as victims compared to men who we see only playing the role of perpetrators during conflict. Furthermore, I agree with Bradley (2013, p. 3) that gender is a social phenomenon, because what it means and how we see people is dynamic and can differ across cultures and societies.

For some time now, feminist scholars have pushed the concept of gender from biological differences between men and women and something made to the social as complex relationships and processes and as “a set of culturally shaped and defined characteristics associated with masculinity and femininity” (Henry, 2007, p. 64). According to Marsha Henry gender is often thought about in binary terms, which is problematic. She means to say that the concept is thought about as either masculine or feminine and we often define men and women as polar opposites. She states that gender must be understood as “more fluid, interactive and contingent”, because “then men and women (and masculinity and femininity) can be understood as inhabiting positionalities that are more complex” (Henry, 2007, p. 64).

Judith Butler argues that gender is not what someone is or what someone has, but gender is a norm (Butler, 2004, p. 42). A mechanism “by which notions of masculine and feminine are produced and naturalized, but gender might very well be the apparatus by which such terms are deconstructed and denaturalized” (Butler, 2004, p. 42). So, it is not a fixed concept, but rather something that varies according to time, culture and place.

However, gender is a busy term (Bradley, 2013, p. 2). It is a contested concept which is used very widely in many diverse contexts. Therefore, the usages of gender are continuously evolving and “its meaning is quite slippery” (Bradley, 2013, p. 1). According to Bradley (2013,

p. 2), this is because gender is a highly politically charged concept and it is woven together with the struggles over power between men and women during the past centuries. This in turn, affects everyone in every aspect of life. “How we look, how we talk, what we eat and drink, what we wear”, how we behave, where we work, and “how other people relate to us” (Bradley, 2013, p. 7). Furthermore, gender is part of a multifaceted intersection of identity (Henry, 2007, p. 64). Thus, gender is not something that stands alone, but it stands along with class, ethnicity, race, nationality and sexuality.

3.3.2 Coding scheme for gendered perceptions of women’s roles during conflict

Now that it is clear what is meant by the concept of gender, I will move to formulating the codes for the directed content analysis. These codes will be deductive because they are derived from existing theory by different scholars on gender and transitional justice. But when analyzing the documents of the tribunals, some other codes may be defined as well. These will be called inductive codes, because they will not emanate from theory. To conclude, at the end of this part of the operationalization paragraph the defined deductive codes will be presented in a table.

The hypotheses derived from existing theory on gender and TJ, which are formulated in the theoretical chapter of this study, will form the different coding categories, or *lead codes*. So, this means that there are two lead codes: *female(s) as victim(s)* and *female(s) as perpetrator(s)*. The third hypothesis states that women and their experiences are ignored by the tribunals, so evidence for this hypothesis would be that women are not mentioned at all in the documents.

The first lead code *female(s) as victim(s)* will have one deductive subcode: victim(s) of sexual violence. The second lead code *female(s) as perpetrator(s)* has the following subcodes: perpetrator(s) believing in its/their goal; mother(s) who want(s) to belong; evil, inhuman

monster(s) and whore(s) being forced. When looking at these codes derived from theory, there is a notable uneven distribution of the subcodes. Therefore, I hope to contribute to the literature on gender and transitional justice with this study by finding a further differentiated view and understanding of how the victim role is gendered.

The subcode *victim(s) of sexual violence* is derived from the critical theories by Franke (2006) and Lorentzen (2016). These authors argue that women become memorized as this kind of victims because the tribunals mostly expect them to testify against sexual violence. Campbell (2007) added to this that the tribunals still work with a definition of sexual violence which is not gender-neutral. The sexual act is understood in a such a way that the victim is already presumed to be female and the perpetrator a man. Evidence for this subcode would be a testimony by a female witness or witnesses of sexual violence or rape or when there is reference to victims of sexual violence or rape in the tribunals' documents. Evidence for the lead code *female(s) as victim(s)* would then be the presence of the subcode *victim(s) of sexual violence* or other subcodes which will derive from the analyzed documents itself which refer to women being victims.

The same goes for the lead code *female(s) as perpetrator(s)*, but its evidence is based on different subcodes which refer to women being perpetrators. Here the first subcode *perpetrator(s) believing in its/their goal* means that women are actually acknowledged by the tribunals as agents and perpetrators like men. Evidence for this subcode to be present, there should be a reference to a female perpetrator or female perpetrators who acted without outside force in the documents with no further attribution as to what type of perpetrator they are.

However, references to female perpetrators could also be gendered in the sense that female perpetrators are seen different as men, namely as mothers, monsters or whores. This expectation is derived from Sjoberg and Gentry's theory (2007) who recognized these three narratives. In all three there is a high attention to the fact that the female perpetrators are women.

According to the mother narrative, women engage in violence because they feel a need for acceptance and feel that they need to please the men around them (Sjoberg & Gentry, 2007, p. 81). With this narrative, female perpetrators are described as likable women who take care of people, but who feel lonely without a man in their lives and are therefore less sensitive and less of a woman and are capable of engaging in violence (Sjoberg & Gentry, 2007, p. 82). The monster narrative assumes women engage in violence because they are unaware of right and wrong; are completely detached from reality; are intractable and irrationally evil and have some coldness which ensures that they enjoy harming their victims (2007 p. 82). Finally, the whore narrative states that women engage in violence because there is something wrong with their sexuality and they cannot control their need for sex or violence and because their violent behavior is caused by a relationship they are involved in (Sjoberg & Gentry, 2007, p. 75).

So, the second subcode for the lead code *female(s) as perpetrator(s)* is *mother(s) who want(s) to belong*. This is the first code derived from Sjoberg and Gentry's theory (2007). It means that a female perpetrator is described as a violent woman as mother who wants to belong, feels a need to nurture and who is very loyal to men and follows their lead. Such a description in the documents of the ICTY and ICTR would be considered evidence for this subcode. Another subcode derived from Sjoberg and Gentry's theory on narratives about female perpetrators is the *evil, inhuman monster(s)*. Evidence for this code would be a description of violent women as insane, detached from reality, inhuman or in denial of their femininity. The fourth and final subcode *whore(s) being forced*, also is based on Sjoberg and Gentry's theory. It is based on the assumption that women are described as having an evil female sexuality, as most vulnerable and as being involved in a relationship which causes their violent behavior. So, such a description in the analyzed documents would form evidence for this final subcode to present.

In Table 1 below the lead codes and subcodes, derived from theory on gender and transitional justice, are summarized. This table also summarizes the codes' meanings and what would be evidence for a code to be present in the documents of the tribunals which will be analyzed.

Table 1. Summary deductive lead codes and subcodes for directed content analysis

Lead code	Subcode	Meaning	Evidence
Female(s) as victim(s)	Victim(s) of sexual violence	Women are seen solely as victims of sexual violence or rape during war	A testimony by a female witness or witnesses on sexual violence or rape or when there is talk about victims of sexual violence or rape in the tribunals' documents, it specifically refers to female victims
	Perpetrator(s) believing in its/their goal	Women acknowledged as perpetrators and agents without being framed	A female perpetrator or female perpetrators who acted without outside force being named without putting a special emphasis on the fact that they are women
Female(s) as perpetrator(s)	Mother(s) who want(s) to belong	A violent woman as mother who wants to belong, feels a need to nurture and who is very loyal to men and follows their lead	A description of the associated meaning
	Evil, inhuman monster(s)	A violent woman as insane, inhuman or in denial of their femininity	A description of the associated meaning
	Whore(s) being forced	Women having an evil female sexuality and being most vulnerable	A description of the associated meaning

3.4 Data

In this part of the methods chapter, the data sources will be discussed. It will be argued what type of sources will be analyzed for this study to determine the ways in which criminal tribunals are gendered. Furthermore, in this section it will be stated why specifically the judgements as documents are selected; why they are suited for this research project and what can be learnt from them.

The ICTY and ICTR both have an online database with all the court records of the tribunals available (United Nations, 2009a, 2014). In both the online databases an advanced search on case documents is possible. For example, it is possible to search documents of all the accused at once, or one accused individual can be selected. Furthermore, specific case documents can be searched for with the tool, from Indictments, Decisions and Orders to Judgements. Finally, a specific time period can be chosen as well.

The aim of this study is to identify the gendered patterns in the tribunals. Therefore, the judgements of the accused by the tribunals are selected for the analysis because this specific kind of documents are the most telling and seem most suitable. These documents provide a short background on the accused and they summarize the whole proceeding in court. Because the judgement files are often quite big, around 500 pages, the directed content analysis will directly search for words which are associated with the lead- and subcodes in these documents. These words are: women, woman, girl, she, her, victim and perpetrator.

However, because of limited resources and time available for this study, not all the accused of the ICTY and ICTR will be selected. The reason for this is that some accused do not have judgements available online at all or only have judgements available which include scanned documents. It will not be possible to analyze these specific documents of about 500 pages during this study, because in scanned files it is impossible to search for certain codes and words and the text cannot be selected. However, 61 accused individuals of the ICTY and 55 of

the ICTR remain for this study and actually have judgements available based on textual documents. Therefore, these accused individuals will be selected for this study. Furthermore, some accused individuals have cases which are intertwined and therefore, they are part of the same judgement file. So, not every accused has an individual document. In contrast, some accused have two or multiple judgement files on their case. Therefore, 39 documents of the ICTY and 63 documents of the ICTR remain and are analyzed for this study.

Next to this, the two female perpetrators accused by the two tribunals have to be included in this study as well to be able to analyze the gendered perceptions of female perpetrators. Unfortunately, both women only have judgements available with scanned documents. But, because they are extremely important for this study on the ways in which tribunals are gendered, extra effort has been made to convert their documents from scanned files to documents with editable text.

An analysis of the judgements can teach us who are the witnesses who come before court; which individuals are prosecuted; how perpetrators and victims are described; if and what kind of female experiences are included and overall if there are gendered patterns visible in the tribunals' proceedings. The next and final paragraph will conclude this methods chapter by summarizing the methodological choices which have been made for this analysis on gendered norms in tribunals and it will critically reflect on the strengths and pitfalls of the selected methods and data sources.

3.5 Conclusion

This chapter has focused on the methods that will be used for the analysis on the gendered patterns in criminal tribunals. In this final section, a short summary of the methodological choices will be provided, and I will critically reflect on the selected methods and point out their strengths and pitfalls.

A qualitative case study will be used as method for this research project and the tribunal for the former Yugoslavia and the tribunal for Rwanda are selected as typical cases. An important argument for why this qualitative method is most suitable for this analysis is because the focus will be only on those two cases and they will be studied in depth. The ICTY and ICTR are selected as typical cases, because they are representative of my working definition of criminal tribunals. Furthermore, they are interesting cases because these tribunals were the first to acknowledge rape and gender-based violence.

The method of analysis for this study is a directed content analysis. Via this approach, it becomes possible to examine gendered patterns in the documents of the tribunals in a structured manner. It entails that codes will be derived from existing theory, which can be categorized in two types: lead codes and subcodes. The subcodes can be seen as specific categories of the lead codes and provide a more structured approach. The meaning of the deductive codes and what would be evidence for them to be present, is summarized in table 1 in this chapter. Next to this, other codes may be defined during the analysis as well, when some textual parts do not correspond with the deductive codes.

The most important strength of the chosen method of analysis is that existing theory can be supported and/or extended (Hsieh & Shannon, 2005, p. 1283). However, every method has some pitfalls. The findings of this study may have limited generalizability to other criminal tribunals, because it only focuses in a qualitative manner on the specific cases of the ICTY and ICTR. This does not mean that I think it is impossible to generalize from a case study and that a case study cannot contribute to scientific development. Because I agree with Bent Flyvbjerg (2006) that that is a misunderstanding about case study research. But, the findings of this study may only be generalizable to a limited extent to other existing criminal tribunals, like the Court for Sierra Leone or the Special Tribunal for Lebanon, because these tribunals are a cooperation between the national governments and international community. Therefore, influences by

national governments may create very different proceedings than those of the ICTY and ICTR, which are established and carried out solely by the United Nations.

Furthermore, the selected directed content analysis may be biased. According to Hsieh and Shannon (2005, p. 1283), “using theory has some inherent limitations in that researchers approach the data with an informed but, nonetheless, strong bias. Hence, researchers might be more likely to find evidence that is supportive rather than nonsupportive of a theory”. This may be the case for this study because codes are derived from existing theory on gender and TJ and the directed content analysis will directly search for words that are associated with these codes in the documents. Therefore, the analysis may be biased because textual parts are selected on the dependent variable.

Also, these scholars argue that overemphasizing the theory may blind a researcher to specific contexts of a phenomenon (Hsieh & Shannon, 2005, p. 1283). This means that this analysis captures the tribunals’ perceptions but is less able in identifying the contextual features of the tribunals and the accused. It could be, for example, that there are certain reasons for why women mostly testify against sexual violence and are therefore solely seen as victims of this phenomenon. For example, according to Franke (2006, p. 822), it could be “a form of overcompensation for the years of ignoring women’s place in humanitarian law”. Next to this, female perpetrators might be presented in a gendered fashion because these women know about the common gendered narratives and use them strategically in court to not be prosecuted or to get a mild punishment (Sjoberg & Gentry, 2007, p. 71). Thus, there may be different dynamics going on in the tribunals’ proceedings, which would need further research to capture them.

The online databases of the ICTY and ICTR provide all the case documents of the tribunals’ proceedings and this study will specifically focus on the judgements as specific type of documents. For the reason that they are most telling and most suitable for the analysis on gendered patterns in tribunals. This specific focus on the judgements for the analysis may have

an impact on the outcome as well. This is mostly because these documents summarize the backgrounds and indictments of the proceedings of the accused, which may mean that important information is left out. Also, results may be biased because not all the accused by the tribunals are included in this study. Only the 61 individuals by the ICTY and the 55 accused by the ICTR are selected, which have judgements available with textual documents, including the two female perpetrators whose scanned documents have been converted to editable text. In total, 39 documents of the ICTY and 63 documents of the ICTR remain for the analysis. This seems like a big difference in the amount; however it is important to take into account that overall the ICTR' judgements are much shorter and therefore the total amount of words which are analyzed is for both tribunals about 13000.

Furthermore, results of the analysis may be skewed because some accused individuals have cases which are intertwined and therefore, they are part of the same judgement file. Because of this, the codes mentioned could have been increased if every accused had its own document. To get a more comprehensive picture of the ways in which the ICTY and ICTR are gendered and to make this study more generalizable, further research should include more judicial documents than only the judgements and should look at all the accused by the ICTY and ICTR. Also, the results might be skewed because many quotations are repeated in the tribunals' documents. I tried to cope with this bias by only coding the first occurrence of a specific sentence.

Finally, during the process of coding, subjectivity by the researcher is involved, which may influence the results of the analysis. For example, it already starts with the interpretation of the analyzed texts, which influences which parts will be included in the analysis and which will be left aside. However, apart from these pitfalls, this analysis can provide some interesting insights into the ways in which tribunals can be gendered. Furthermore, it can enrich the theory on gender and transitional justice with empirical evidence, which until now was lacking. In

particular, this study can contribute to the theory by finding a further differentiated view and understanding of how the victim role is gendered.

The next chapter will present the results of the content analysis. First, the overall findings will be presented. Then, before evaluating the hypotheses, the evidence for this study will be illustrated by evidence from documents of each tribunal.

Results

In this chapter the results of the directed content analysis on judgements of the ICTY and ICTR will be presented. This analysis was conducted to determine in what ways criminal tribunals are gendered by capturing how women are perceived by the tribunals as victims and as perpetrators. I therefore searched the documents for words associated with the deductively generated codes which were then supplemented through inductively arrived codes.

The results show that female perpetrators are still hardly recognized by the tribunals and that women are mostly referred to as civilian victims just like men; as victims of sexual violence and as victims who are extra vulnerable during conflict. Therefore, it is argued that the first and second hypotheses of this study are partially supported, and the third hypothesis is rejected.

This chapter is structured as follows: first, the general results of the content analysis will be presented with an emphasis on the most striking. The evidence will be illustrated with evidence from the documents. I will conclude with an evaluation of the findings in light of the three hypotheses developed in the theoretical chapter.

4.1 Results

In this paragraph the overall results of the analysis will be presented. First, the overall pattern of codes will be covered before I turn to a discussion of how the tribunals differ from each other.

4.1.1 Women as victims of war and the invisibility of female perpetrators

First, what stands out when looking at the documents is that compared to female as victims, the lead code *female(s) as perpetrator(s)* is hardly ever mentioned in both tribunals (table 2). Also,

when looking at the tribunals separately, the ratio between these two lead codes is highly similar. Regarding the ICTR; out of the total appearances in which women are acknowledged in the tribunal, the percentage of women who are referred to as perpetrators is 2.6%. Regarding the ICTY, this percentage is 3.5%. However, the total occurrence of both the lead codes, and thus the times women are mentioned, is almost double in the documents of the former Yugoslavian tribunal.

Table 2. Total occurrences of the lead codes in the analyzed documents of the ICTY and ICTR

	ICTR 63 958	ICTY 39 1320	Totals
Female(s) as perpetrator(s) 8 56	16	40	56
Female(s) as victim(s) 7 1694	597	1097	1694
Totals	613	1137	1750

Also, what is striking, is that the deductive subcodes of *female(s) as perpetrator(s)* rarely, if at all, figured in the documents of both the tribunals (table 3). Especially, the codes derived from Sjoberg and Gentry’s theory (2007) hardly occur. Women are portrayed only once as *evil, inhuman monster(s)* in the ICTY and only once as *mother(s) who want(s) to belong* in the Rwandan tribunal. The code *whore(s) being forced* does not occur in any analyzed document. By comparison, the deductive subcode *victim(s) of sexual violence* of the lead code *female(s) as victim(s)* does occur a significant number of times in both tribunals. In particular, keeping in mind that the total number of code occurrences in ICTR documents is almost half of the occurrences in ICTY documents, women are very often referred to as victims of rape and/or other kinds of sexual violence by the Rwandan tribunal compared to the ICTY.

Table 3. Total occurrences of the deductive codes in the documents of the ICTY and ICTR

		ICTR 63 958	ICTY 39 1320	Totals
Evil, inhuman monster(s)	1		1	1
Mother(s) who want(s) to belong	1	1		1
Perpetrator(s) believing in their goal	23	16	7	23
Victim(s) of sexual violence	431	232	199	431
Whore(s) being forced	0			0
Totals		249	207	456

Table 4. Total occurrences of the inductive codes in the documents of the ICTY and ICTR

		ICTR 63 958	ICTY 39 1320	Totals
Perpetrator(s) acting in self-defense	5		5	5
Perpetrator(s) grieving their losses	3		3	3
Perpetrator(s) not violent themselves	3		3	3
Perpetrator(s) who deserve no severe punishment	21		21	21
Victim(s) as civilian(s)	799	254	545	799
Victim(s) belonging to special vulnerable group	342	44	298	342
Totals		298	875	1173

Furthermore, in the analysis some content did not correspond with the codes derived from the theory. Therefore, new inductive codes (table 4) were created to account for this content as well. What immediately stands out is that these inductive codes appear more than twice as much as the codes derived from theory in the tribunals' documents. The first four 'perpetrator codes' are categorized as subcodes under *female(s) as perpetrator(s)*. The two 'victim codes' are placed as subcodes under *female(s) as victim(s)*. It is striking that the perpetrator codes derived during the analysis, only occur in documents of the ICTY. Next to this, the inductively derived code(s) related to different victim roles seem to occur extensively in ICTY's documents though to a lesser extent in judgements of the ICTR.

The first inductive subcode, *perpetrator(s) acting in self-defense*, only occurs five times in documents of the ICTY and means that a woman or women joined armed groups and/or acted violent to protect themselves. The two subcodes, *perpetrators grieving their losses* and *perpetrators not violent themselves*, occur each in total only three times. The first code means that women start acting violent because they mourn the death of their family members. The latter that female perpetrators are seen as playing a more minor role in perpetrating war crimes than their male partners, because women are seen as not being violent themselves. The final perpetrator subcode, *perpetrators who deserve no severe punishment*, appears a bit more often, and means that women are seen as more remorseful than men and as having less authority than male perpetrators; therefore, female perpetrators are assumed to deserve judicial consideration for a less severe punishment. This subcode and its meaning was derived from Biljana Plavsic's judgement, in which the prosecution stated that Plavsic had a lesser role in perpetrating crimes than other leaders and this was one of the reasons why she deserved judicial consideration.

In proportion to the total number of code appearances in the tribunals' documents, the subcode *victim(s) as civilian(s)* occurs approximately equally in both tribunals. This code means that women are seen as civilian victims just like men. The quotes coded with this subcode consist mostly of factual statements saying that all civilians, including men, women, and children, are victims of some particular crime. Finally, the last subcode derived from the documents, *victim(s) belonging to special vulnerable group*, appears most often in ICTY documents and means that a special emphasis is put on the fact that women are part of a group of victims. A potential reason can be that women are seen as more vulnerable than men.

Table 5. Occurrences of testimonies by women about the conflict and against sexual violence in the documents of the ICTY and ICTR

	ICTR 63 958	ICTY 39 1322	Totals
Female(s) testifying about the conflict 587	380	207	587
Female(s) testifying against sexual violence 116	71	45	116
Totals	451	252	703

In addition to the overall findings, the number of times women testified before both the tribunals was also taken into account in the analysis. This was done, because according to Franke (Franke, 2006, p. 825), criminal tribunals seem to expect that women testify against rape and other forms of sexual violence and this leads to a limited recognition of women's experiences during war and women being solely identified as some kind of victim. Therefore, two additional codes were created for the analysis (table 5), *female(s) testifying about the conflict* and *female(s) testifying against sexual violence*. The first means that women testify about important conflict related matters as for example, whereabouts of individuals who perpetrated crimes; facts about attacks on villages and about conditions in camps and locations where victims were being held captive. The second code means that female witnesses testify against sexual violence, most often against rape, and that they testify because they were a victim of sexual violence themselves or witnessed such a crime taking place during war.

What is striking is that, according to the results, women appeared as witnesses for facts about the conflict extremely often in both tribunals, compared to the occasions women testified against sexual violence (table 5). Furthermore, it is remarkable that, again, the ratio between these two groups of female witnesses is very similar. Out of the total occurrences of women testifying before the tribunal, the percentage of females testifying about the conflict before the Rwandan tribunal is 84% and of females testifying against sexual violence the percentage is

16%. Regarding the former Yugoslavian tribunal, the percentage of the first group of female witnesses is 82% and for women testifying against sexual violence it is 18%.

In the following section, the results will be discussed in more detail accompanied by evidence from the judgement files of the tribunals. First, I will cover the results of the former Yugoslavian tribunal and then the findings of the tribunal for Rwanda.

4.1.2 Women in the ICTY: prominent as victims, and perpetrators with diverse roles

Beginning with evidence from the ICTY, I will discuss the role women seem to play as victims in the tribunal's documents by first discussing the observations based on the deductive codes followed by those of the inductive codes. Then the depiction of women as perpetrators in the tribunal will be addressed. In total, 39 documents of the tribunal for the former Yugoslavia were analyzed, which have a total word count of 13.871.

4.1.2.1 Women as victims

In almost all the ICTY judgement files, 37 out of 39, the lead code *female(s) as victim(s)* occurs. The results of the analysis show that there are five interesting documents in which women appear as victims about a hundred times or more in different ways. These judgement files are of the accused individuals: Valentin Coric; two of Ratko Mladic; Franko Simatovic; and Mico Stanisic (United Nations, 2009a).

What is most striking is that women are referred as victims of sexual violence in 34 out of 39 ICTY documents. In all of the analyzed ICTY documents, women appear as victims of sexual violence 199 times (table 3). Subsequent to women being addressed as *victim(s) as civilian(s)* and *victim(s) belonging to special vulnerable group*, this code scored highest in terms of the frequency in which it occurred in ICTY files. Examples of content marked by this code in Valentin Coric's judgement are (United Nations, 2013a, p. 62, p. 69):

"(...) Every day, women and girls are taken out from the collection centres of Podgrade, Lapsunj [sic] and Duge, which are not secure, and taken to houses where they are raped, abused and humiliated. For example, naked women have to serve them, they are beaten until they agree to have sex, and some have their hair shaven off.

Likewise, several witnesses said that in August 1993, Muslim women were victims of “rapes” by local HVO soldiers and "men from the outside coming in". In view of the evidence and the context of the alleged facts, the Chamber considers that the victims and witnesses used the word “rape” to refer to a non-consensual penetrating sexual relationship.

These exemplary quotes state that during the war in former Yugoslavia women, especially Muslim women, were being taken from camps to other locations and were beaten and raped by perpetrators. Because these acts can be considered as sexual violence and women are acknowledged as the victims, these quotes fit with the evidence of the subcode *victim(s) of sexual violence*.

When women are being referred to as victim of other crimes than sexual violence, they are either assumed to have incurred violence either because they were general citizens or because of their belonging to a civilian’s special vulnerable group (table 4). The subcode *victim(s) as civilian(s)*, which means that women are portrayed as victims just like men in factual statements, occurs 545 times in all the ICTY judgement files and spreads out over 32 ICTY documents. It is important to note that this subcode appears in equal frequency in both the ICTY and ICTR. In one of the judgement files of accused Ratko Mladic (United Nations, 2017, p. 1305, p. 1536, p. 1591) women appear as civilian victims 68 times. Exemplary statements with respect to this subcode are the following:

Hana Mehmedović stated that there was a line of yellow tape or rope blocking the road, at which men were directed toward buses and women toward trucks.

...according to a witness, Muslim men were separated in Potočari from women, children, and elderly and moved into a white house across from the UN compound on 13 July 1995.

...convoys of buses and trains were organized by the Bosnian-Serb authorities to drive tens of thousands of men, women, and children out of Bosnian-Serb claimed territory...

The quotes above show factual statements in which women are recognized as victims in the same way men and children are. Namely, that they are separated and transported in diverse vehicles to other locations. It is assumed they are victims of war because they are general citizens. Therefore, the subcode *victim(s) as civilians* is supported by these statements.

The inductive code *victim(s) belonging to special vulnerable group*, which means that women are portrayed as particularly vulnerable and as always innocent, appeared almost 300 times in judgements of the former Yugoslavian tribunal (table 4) spread out over 27 documents. For example, the gendered role as an extra vulnerable victim is assigned to women in the quotes below. The first three quotes stem from Mico Stanisić's judgement file (United Nations, 2013c, p. 175, p. 178, p. 399) and the final exemplary statement manifests itself in Franko Simatović's judgement (United Nations, 2013b, p. 410):

The houses were then burned. During the attack on Brisevo, at least 68 persons were killed, 14 of whom were women.

At the Prijedor SJB building (also referred to as the "Prijedor SUP" and "MUP building"), Muslims and Croats were detained, including a woman and an underage boy.

The Trial Chamber finds that, on 27 May 1992, members of the SJB Ilijaš attacked the village of Gornja Bioča. Residents of the village, including women and children, fled to the woods, where they stayed all night.

Having considered the circumstances in which the Muslims were transferred out of Bukovačke Čivčije, and that those displaced included women and children, the Trial Chamber finds that the Muslims were civilians or persons placed hors de combat.

When the former Yugoslavian tribunal talks about killed, detained, fled or deported victims, women are referred to as being some of the victims in a special subordinate sentence. Potentially, these sentences are added because women are presumed to be particularly vulnerable. For this reason, these exemplary quotes fit with the evidence for the subcode *victim(s) belonging to special vulnerable group*.

4.1.2.2 Women as perpetrators

Women are acknowledged as perpetrators of war crimes in 10 of the 39 documents of the ICTY. What is striking is that while the lead code *female(s) as victim(s)* occurs about a thousand times in documents of the former Yugoslavian tribunal as opposed to *female(s) as perpetrator(s)* which only has a total occurrence of 40. Furthermore, it is remarkable that there is not one document where women are solely referred to as perpetrators, not even in Biljana Plavsic's judgement, the only woman who was prosecuted by the ICTY. The results show that if any 'perpetrator code' is present in a judgement file, the subcode *victim(s) belonging to special vulnerable group* is always present as well. Thus, if female perpetrators are acknowledged by the ICTY, they only appear in documents in which women are portrayed as particularly vulnerable victims as well.

Women appear most often as perpetrators in different ways in several ICTY documents of the following accused: Mehmed Alagic; Ratko Mladic; Biljana Plavsic; and Mico Stanisic (United Nations, 2009a). First, the deductive subcode *perpetrator(s) believing in their goal* appears seven times (table 3) in seven documents. This means that instead of in a gendered way, women appear as perpetrators of war crimes just like men only seven times in seven ICTY judgements. The following quotes are examples of this subcode and manifests itself in judgements of the accused individuals Alagic Mehmed (United Nations, 2006, p. 481), Ratko Mladic (United Nations, 2017, p. 470), Biljana Plavsic (United Nations, 2003, p. 6):

Next, the testimony suggests that men and women at the cemetery began to beat the prisoners, including Mario Zrno.

The next morning, Kršić suggested tea be made for the detainees. A group of women dressed in black grabbed the tea, cursed at the detainees, and assaulted the soldiers and the Muslim women and children while they made their way to the buses, despite orders from Kršić to Jošić that the detainees were not to be hurt.

The Bosnian Serb leadership, including Mrs. Plavsic, ignored the allegations of crimes committed by their forces: Mrs. Plavsic disregarded reports of widespread ethnic cleansing and publicly rationalised and justified it. She was aware that the key leaders of the Serbian Republic of BH ignored these crimes despite the power to prevent and punish them.

These quotes state that women engaged in violence, like beating prisoners or justifying ethnic cleansing, during the conflict in former Yugoslavia like men. In the sense that women are not referred to as particular kind of perpetrators and as being fully aware of their violent actions.

Therefore, the subcode *perpetrator(s) believing in their goal* is supported by these evidentiary quotes.

Second, the other three deductive ‘perpetrator subcodes’ (table 3) are derived from Sjoberg and Gentry’s theory (Sjoberg & Gentry, 2007). Only the subcode *evil, inhuman monster(s)* occurs once in proceedings of the former Yugoslavian tribunal (table 3), namely in Biljana Plavsic’s judgement (United Nations, 2003, p. 17). The following quotation was coded with this subcode because it is part of Plavsic’s own statement, and it seems as if she describes being detached from reality and being irrationally evil:

This daily work confirmed in my mind that we were in a struggle for our very survival and that in this struggle, the international community was our enemy, and so I simply denied these charges, making no effort to investigate. I remained secure in my belief that Serbs were not capable of such acts. In this obsession of ours to never again become victims, we had allowed ourselves to become victimisers.

The first kind of portrayal of women perpetrators which was not accounted for by the deductively generated codes and thus led to an inductively created subcode was them being *perpetrator(s) acting in self-defense*. Overall, this code occurs five times in three ICTY documents. An example of women acting violent for self-protection is found in the judgement of accused Ratko Mladic (United Nations, 2017, p. 469):

Witness RM-089 and Elvedin Pašić provided evidence on the composition of the group of Muslims who fled Večići for Travnik during the night of 2 November 1992. In particular, both witnesses, who were also part of that group, specified that some women and children joined the group of armed men.

In this quote it is stated by witnesses of the ICTY that women were part of a group of victims which fled from the conflict and later joined a group of armed men. A potential reason for them to join an armed group is that they wanted to defend themselves. This is why this quote is coded with the subcode *perpetrator(s) acting in self-defense*.

The second inductive subcode *perpetrators grieving their losses* appears only three times in two judgements of the tribunal for the former Yugoslavia. This code entails that women mourn the death of their loved ones and therefore start acting violent. For instance, a description of mourning women acting violent can be found in Mehmed Alagic's judgement file (United Nations, 2006, p. 481):

And Mario Zrno was beaten by everybody, by the women who arrived there, by grandmothers, by the elderly who were grieving the deaths of their close family.

Women are in this quote referred to as perpetrators who started beating an individual, whom they believed was (partly) responsible for the deaths of their loved ones during the former Yugoslavian conflict. Therefore, this quote is considered as evidence for the subcode *perpetrators grieving their losses*.

Third, the inductively derived subcode *perpetrators not violent themselves* occurred three times only. In these cases, women are seen as incapable of being violent and therefore have a lesser role in the fulfillment of crimes than men as in Plavsic's judgement by the ICTY (2003, p. 3, p. 6):

For her part, Mrs. Plavsic embraced and supported the objective [...] and contributed to achieving it. She did not participate with Milosevic, Karadzic, Krajisnik and others in its conception and planning and had a lesser role in its execution than Karadzic, Krajisnik and others.

And, as a leader and later an accused, she learned a great deal about the gravity and nature of the crimes committed by the forces which she led and inspired during the war; and she recognises her obligation to accept responsibility for acts committed by others.

In the above statements, specifically on Plavsic's actions, women are portrayed as perpetrators who do not participate in the execution of war crimes and in contrast to men, do not act violent themselves. The subcode *perpetrators not violent themselves* is supported by these evidentiary quotes for this reason.

Fourth and finally, *perpetrator(s) who deserve no severe punishment* appears 21 times in three ICTY documents of which nineteen stem from Plavsic's judgement. This code entails that female perpetrators deserve less severe punishment because women are more repentant than men and often have lesser authority as the following quotes from Plavsic's document illustrate (United Nations, 2003, p. 19, p. 23):

The Prosecution notes that Mrs. Plavsic accepts responsibility for her role as a member of the collective and expanded Presidencies of the Serbian Republic of BH and Republika Srpska, but points out that, as set out in the Factual Basis, there are distinctions to be made between herself and other leaders.

The accused was not in the very first rank of the leadership: others occupied that position. She did not conceive the plan which led to this crime and had a lesser role in its execution than others. Nonetheless, Mrs. Plavsic was in the Presidency, the highest civilian body, during the campaign and encouraged and supported it by her participation in the Presidency and her pronouncements.

...the Prosecution notes that the accused has expressed her remorse "fully and unconditionally" and the hope that her guilty plea will assist her people to reconcile with their neighbours. The Prosecution states that this expression of remorse is noteworthy since it is offered from a person who formerly held a leadership position, and that it "merits judicial consideration".

These quotes above, particularly about female perpetrator Plavsic who is prosecuted by the ICTY, state that there is a distinction between women and men regarding perpetrators because it is illustrated that women have a lesser role in the execution of crimes and are more willing to express remorse. Therefore, these exemplary quotes fit with the evidence for the subcode *perpetrator(s) who deserve no severe punishment*.

4.1.3 Women in the ICTR: as victims of sexual violence and as general citizens

In this section, I will present the results of the content analysis pertaining to the tribunal for Rwanda. It is structured analogues to the previous one beginning with a discussion of the results related to women being depicted as victims and continuing with them being portrayed as perpetrators in the documents. 63 ICTR documents formed part of the content analysis and the total amount of words of these documents is 13.012.

4.1.3.1 Women as victims

Women are referred to as victim almost six hundred times in judgement files of the ICTR (table 2) and in 59 out of 63 documents. While in comparison with the former Yugoslavian tribunal, the frequency with which this code occurred is lower, but one has to also consider that the number of documents that were analyzed is significantly higher. Therefore, the appearance of the codes is much more spread out over the files and code occurrences are significantly less per document. The highest number of 'victim subcodes' in one document is 66, namely in Pauline Nyiramasuhuko's judgement. Other interesting judgements of the ICTR with the most code

occurrences are files of accused individuals Jean Paul Akayesu; Theoneste Bagosora; Augustin Bizimungu; and Jean-Baptiste Gatete (United Nations, 2014).

Women are being addressed as victims of sexual violence more than two hundred times in ICTR documents (table 3). However, what is striking is that only in 29 out of 63 documents of the ICTR women are referred to as victims of rape or other kinds of sexual violence. Also, while this subcode was far from being the most common in ICTY documents, in files of the ICTR the subcode *victim(s) of sexual violence* is almost as common as the inductive subcode *victim(s) as civilian(s)*. The following quotes are examples of women being referred to as victims of sexual violence and manifests itself in the judgement of the accused Jean Paul Akayesu (United Nations, 1998, p. 172, p. 176):

She also testified that the Interahamwe took young girls and women from their site of refuge near the bureau communal into a forest in the area and raped them.

Witness NN, a Tutsi woman and the younger sister of JJ, described being raped along with another sister by two men in the courtyard of their home, just after it was destroyed by their Hutu neighbours and her brother and father had been killed.

Similar to the exemplary quotes about victims of sexual violence manifested in ICTY documents, these quotes state that women, Tutsi's in particular, were being taken to remote places during the conflict in Rwanda and were raped. Because this is a form of sexual violence and women are the victims, these quotes fit with the evidence of the subcode *victim(s) of sexual violence*.

The inductive subcode *victim(s) as civilian(s)*, which means women are being addressed as general citizens just like men who are victims of violence, occurs 254 times in 47 documents of the Rwandan tribunal (table 4). As mentioned in the previous paragraph, this 'victim code'

appears the most and in equal frequency in both the ICTY and ICTR documents. Exemplary statements of women being referred to as civilian victims just like men in the document of accused Jean-Baptiste Gatete (United Nations, 2011b, p. 3, p. 58) are:

Hundreds and possibly thousands of Tutsi men, women and children were killed by assailants using guns and traditional weapons.

A number of refugees were forced to transport the bodies of Tutsi victims to a nearby mass grave where they too were killed and thrown in. Several thousand civilian Tutsi men, women and children were killed during the attack.

These exemplary quotes are statements in which women are portrayed as victims just like men. Both quotes state that they were killed by aggressors who used guns and other kinds of weapons. Similar to evidence from the former Yugoslavian tribunal, it is assumed they are victims of war because they are general citizens, in this case citizens from Tutsi lineage. Therefore, the subcode *victim(s) as civilians* is supported by these statements.

What is striking is that the subcode *victim(s) belonging to special vulnerable group* appeared only 44 times in 22 ICTR documents (table 4), while in ICTY documents women are referred to as particularly vulnerable group almost 300 times in 27 documents. The following quotes were coded with this subcode and manifests itself in judgements of the accused individuals Augustin Bizimungu (United Nations, 2011a, p. 181) and Theoneste Bagosora (United Nations, 2008, p. 370):

In addition, Ndindiliyimana protected a number of Tutsi at his own home, including Tutsi women, clergy and 20 to 30 orphans.

Starting on 12 April, those identified as Tutsis were killed, including children, elderly and women.

The way women are referred to as being some of the victims in a subordinate sentence in the above quotes, is equivalent to how women are referred to in the ICTY documents as extra vulnerable victims. Therefore, these quotes fit with the evidence for the subcode *victim(s) belonging to special vulnerable group*.

4.1.3.2 Women as perpetrators

Women are recognized as perpetrators of crimes during the war only 16 times in two judgement files of the Rwandan tribunal. Also, what is striking is that only the deductive ‘perpetrator codes’ appear in proceedings of the ICTR. The two judgement files in which female perpetrators are acknowledged are the files of the accused Tharcisse Renzaho and Pauline Nyiramasuhuko, the only woman who is prosecuted by the Rwandan tribunal.

The subcode *perpetrators believing in their goal* appears 14 times in Nyiramasuhuko’s and two times in Renzaho’s judgement (table 3). Examples of quotes in which women are acknowledged as perpetrators just like men in Nyiramasuhuko’s document (United Nations, 2011c, p. 842, p. 1182) and in Renzaho’s file (United Nations, 2009b, p. 138) are:

The Chamber considers Nyiramasuhuko's alleged participation in meetings to be material to the count of conspiracy to commit genocide. It constitutes one of the means which the alleged conspiracy was committed and is a key element of the conduct imputed to Nyiramasuhuko which forms the basis of the conspiracy charge.

In executing the plan, they organised, ordered and participated in the massacres perpetrated against the Tutsi population. Nyiramasuhuko elaborated, acfiered to and executed this plan.

Angeline Mukandutiye and Odette Nyirabagenzi were present at Saint Paul during this attack in May. The witness saw Mukandutiye holding a list and recalled four names from it. Although he did not notice the total number of names. The two women disagreed on the number of persons to be killed. Nyirabagenzi wanted to include everyone at Saint Paul, while Mukandutiye said that only those on the list should be chosen.

The quotes above state that Nyiramasuhuko willingly participated in a conspiracy to commit war crimes, particularly genocide and that she executed massacres. In the third quote it is stated that women were willingly putting people on kill lists. These quotes refer to women as perpetrators like men and not as a special kind of perpetrators. For this reason, the subcode *perpetrator(s) believing in their goal* is supported by these evidentiary quotes.

The only subcode derived from Sjoberg and Gentry's theory (Sjoberg & Gentry, 2007) which is present in a document of the ICTR is the code *mother(s) who want(s) to belong*. This portrayal means that (likable) women engage in violence because they want to be accepted, want to take care of people and often they feel lonely without a man in their lives. Such a description of a female perpetrator is present in Nyiramasuhuko's judgement, where she is alleged to have stated during the war that women with another ethnicity, Tutsi, take away the men who belong to her 'group' (United Nations, 2011c, p. 1197):

Chamber further finds that Nyiramasuhuko ordered the woman to whom she distributed the condoms to "[g]o and distribute these condoms to your young men, so that they use them to rape Tutsi women and to protect themselves from AIDS, and after having raped them they should kill all of them. Let no Tutsi woman survive because they take away our husbands."

4.2 Evaluation of hypotheses

In this paragraph, I will evaluate the three hypotheses formulated at the beginning of this study and will argue that the first and second hypotheses are partially supported, and that the third hypothesis is not supported. Therefore, the findings of this study are to a certain extent in line with Sjoberg and Gentry's theory on the mother, monster and whore narrative (Sjoberg & Gentry, 2007) and not with the theoretical gender approaches to transitional justice which state that women and their experiences of war are not included at all in criminal tribunals. The first hypothesis states that:

H1: When female victims are identified by the tribunals for Rwanda and the former Yugoslavia, their recognition will be only partial and will be limited to being victims of sexual violence.

According to the results of the analysis, this expectation is partially supported. The 'victim code' *victim(s) of sexual violence* occurs 431 times and is, after the subcode *victim(s) as civilians*, the most common portrayal of female victims when looking at the total code appearances of both tribunals together. Especially, in the Rwandan tribunal women are mostly recognized as victims of rape and/or other kinds of sexual violence (table 3). It is striking that in these documents of the ICTR, women appear as victims of sexual violence 232 times out of 597 times women appear as victims of the war in total. In the case of the ICTY, these appearances are 199 times out of 1097 total occurrences of female victims. So, women are described and recognized as victims of sexual violence more than one third out of total appearances as victims in the ICTR judgements. Whereas, in documents of the former Yugoslavian tribunal, this specific description as victims is about one fifth of the total 'victim appearances'.

However, this hypothesis is only partly supported because women are not only recognized as victims of sexual violence but are highly identified as victims in other ways as well. Thus, the victim role of women in tribunals is more diverse than women solely being victims of sexual violence. The subcode *victim(s) as civilian(s)*, derived and created during analysis, is the most common in both tribunals (table 4). Thus, strikingly, women are most often recognized just as civilian victims and not in a highly gendered manner. Furthermore, another inductive subcode, namely *victim(s) belonging to special vulnerable group*, occurs extensively as well, precisely 342 times (table 4). Therefore, women are also described as victims of war who are extra vulnerable, without mentioning sexual violence.

So, the findings of this study are partially in line with the theories from which this hypothesis was derived. These were the critical theories by Campbell (Campbell, 2007), Franke (Franke, 2006), Hamber (Hamber, 2007) and Lorentzen (Lorentzen, 2016), which state that women are most often acknowledged as witnesses and passive victims of sexual violence by criminal tribunals and therefore other experiences are ignored.

The second hypothesis states that:

H2: If female perpetrators are recognized by the tribunals for Rwanda and the former Yugoslavia, they will be recognized in a fashioned way through the mother, monster and/or whore narrative.

The results of this analysis show that overall, female perpetrators are not highly recognized (table 2) and the whore narrative is not present at all in both tribunals. But, the other two narratives occur in the tribunals' documents, although, both only occur once. Therefore, I argue that this second hypothesis is partially supported. Pauline Nyiramasuhuko is described by the Rwandan tribunal one time as a mother who wanted to belong who engaged in violence because

she wanted to be accepted and who wanted to take care of ‘her’ people. The ICTY attached the role of an inhuman, evil monster to Biljana Plavsic once, when she described herself as being detached from reality and as irrationally evil.

Also, while women were not depicted as a whore being forced to act violent, and solely the two female perpetrators prosecuted by the tribunals are described only once with the mother and monster narrative, women are nevertheless occasionally acknowledged as perpetrators. In the tribunals’ documents, different ‘perpetrator roles’ are assigned to women, which do not immediately contradict this hypothesis. But this finding makes clear that existing literature on roles in which women perpetrate crimes, like Sjoberg and Gentry’ study (2007), should be revisited, and the diverse perpetrator roles of women in tribunals from this study should be included.

Female perpetrators are often described in the judgements as agents who deserve no severe punishment because they are portrayed as more remorseful and as having lesser authority than men. Also, most often women perpetrators are described as wrongdoers just like men (table 3), who believe in and stand by their own actions. Furthermore, female perpetrators are occasionally portrayed as agents who act violent out of self-defense; who act violent because they mourn their family members; and/or as perpetrators who are actually not capable of being violent themselves (table 4).

Apart from this, it is striking that, although a number of times female perpetrators are recognized just like men, there is not one document where women are solely recognized as perpetrators, without the code *victim(s) belonging to special vulnerable group* being present. Thus, if women are recognized as perpetrators just like men, this recognition is always accompanied by women being portrayed as particularly vulnerable victims.

The third and final hypothesis states that:

H3: *Women are, either as victims or as perpetrators, not recognized at all by the tribunals for Rwanda and the former Yugoslavia and their experiences will be ignored completely.*

By now it is clear from the results that female victims, as well as female perpetrators, with diverse roles are recognized by the criminal tribunals in this research. Therefore, this hypothesis is rejected, and my findings are not in line with the three strands of scholars of gendering TJ, which conclude that women are excluded from tribunals. The first group of scholars stated that women are ignored and not included at all in tribunals' proceedings (Aoláin, 2006; Campbell, 2007). The second strand of these theories stated that transitional justice, and therefore criminal tribunals, do not take into account the fact that women are subjected to different kind of violations during war (McKay, 1998). And finally, scholars part of the third strand argued that women find themselves in a 'masculine world' when being in TJ proceedings because these proceedings are based on masculine conceptions (Franke, 2006; Hamber, 2007).

If the total appearances of codes would resemble the amount of recognition, then the experiences of women are significantly more recognized by the ICTY than by the ICTR (table 2). Also, a lot of testimonies are done by women, not only about them being victims of sexual violence, but also about facts of the conflict, like whereabouts of accused individuals and time frames (table 5). This also contradicts the expectation that women are not included at all in the proceedings of the tribunals. Furthermore, this finding on female witnesses is not in line with Franke's theory (2006), which states that tribunals expect women to testify against sexual violence and that therefore, women are identified solely as victims of this war crime.

However, apart from these findings, it is important to note that although female perpetrators with diverse roles are acknowledged occasionally, I argue that justice is not really done to this group of women. Because, still, both the tribunals have prosecuted solely one

female perpetrator, and the judicial action to them, particularly to Biljana Plavsic by the ICTY, is accompanied by special considerations for a less severe punishment.

In the next and final paragraph of this chapter I will conclude my findings with a summary of the results.

4.3 Conclusion

In this chapter the results of the content analysis on documents of the former Yugoslavian tribunal and the Rwandan tribunal have been presented. Its aim was to find out how women are referred to in the tribunals' judgements to be able to answer the question in what ways criminal tribunals are gendered. In this chapter, first the general results were presented with a focus on the most outstanding. Then the evidence for this study was illustrated by evidence from documents of each tribunal. Finally, the findings were concluded with an evaluation of the hypotheses.

In the previous chapter I already stated that this research method may be biased because I directly searched for the words associated with the codes, and thus, with the dependent variable. Also, this analysis is not able to cope with the contextual features behind certain codes. Furthermore, these results may be skewed because for different reasons not all the accused individuals by the tribunals are selected, and some of the accused share the same judgement file because their cases are related. Finally, during this qualitative analysis, subjectivity is involved which may influence the results. However, apart from these shortcomings, this study can extend existing theory on gender and transitional justice with empirical evidence on how different roles during war are gendered. In particular, the other roles in which women perpetrate crimes and more diverse victim roles women seem to play in tribunals, should be included in the literature.

The results show that women are perceived by the tribunals as victims and as perpetrators in different ways. The most striking finding is that women perpetrators are hardly

mentioned in judgements of both the tribunals. Out of the total occurrences in which women are acknowledged in the Rwandan tribunal, the percentage of women who are referred to as perpetrators is 2.6%. Regarding the ICTY, this percentage is 3.5%. Next to this, if women are recognized as perpetrators just like men, this recognition is always accompanied by women being portrayed as particularly vulnerable victims.

Furthermore, what is striking is that the deductively generated subcodes, derived from theory, in total occurred less often than new inductive codes, which were derived from the content itself. The deductive subcodes were *perpetrator(s) believing in their goal*; *victim(s) of sexual violence*; and the three codes derived from Sjoberg and Gentry's theory (2007), namely *evil, inhuman monster(s)*; *mother(s) who want(s) to belong*; and *whore(s) being forced*. The inductively generated subcodes were *perpetrator(s) acting in self-defense*; *perpetrator(s) grieving their losses*; *perpetrator(s) not violent themselves*; *perpetrator(s) who deserve no severe punishment*; *victim(s) as civilian(s)*; and *victim(s) belonging to special vulnerable group*.

Regarding the hypotheses developed in the theoretical chapter, the first two hypotheses are argued to be partially supported and the third hypothesis for this study is rejected. The first hypothesis stated that *when female victims are identified by the tribunals for Rwanda and the former Yugoslavia, their recognition will be only partial and will be limited to being victims of sexual violence*. The results of this study are partly in line with theories from which this hypothesis was derived, because women are extensively described and recognized as victims of sexual violence in both the tribunals. In the ICTR, more than one third of the total occurrences as victims, women were figured as victims of sexual violence. For the ICTY, this particular appearance as victim was about one fifth of the total number of times women are referred to as victims. However, this hypothesis is not fully supported because women are recognized as victims in other ways as well. In particular, women are very often seen as civilian victims just like men; and as victims who are presumed to be extra vulnerable.

The second hypothesis stated that *if female perpetrators are recognized by the tribunals for Rwanda and the former Yugoslavia, they will be recognized in a fashioned way through the mother, monster and/or whore narrative*. It is argued that this hypothesis can be partially supported as well by the findings of the analysis. Although the occurrence is very limited, two of the three narratives from Sjoberg and Gentry's theory (2007), appear in the tribunals' judgements. Namely, *evil, inhuman monster(s)* occurred only once in a judgement of the ICTY, and *mother(s) who want(s) to belong* occurred once in the Rwandan tribunal. Furthermore, women are depicted as perpetrators in many other ways. Thus, female perpetrators are nevertheless recognized by both the tribunals. Therefore, the way the perpetrator role is conceived in the literature from which this hypothesis was derived needs revision to include other roles, found in this study, in which women perpetrate crimes.

The third and final hypothesis stated that *women are, either as victims or as perpetrators, not recognized at all by the tribunals for Rwanda and the former Yugoslavia and their experiences will be ignored completely*. This expectation can be rejected in its entirety. The tribunals recognized women as victims, as well as perpetrators, and females were often asked and allowed to testify on war crimes in both the tribunals (table 5). Therefore, the findings of this study are not in line with the theories, namely the three strands of scholars of gendering transitional justice, which state that women's experiences during war are ignored completely by the criminal tribunals. Regarding female witnesses in both tribunals, it is striking that more than 80% testified about the conflict, such as facts on conditions in camps, and less than 20% testified against sexual violence, which contradicts Franke's theory (2006) that states that tribunals expect women to testify against sexual violence.

However, it is important to take into account, that although female perpetrators with diverse roles are acknowledged occasionally, the question remains if justice is proportionally done to this group of women. Because, still solely two female perpetrators have been prosecuted by the

tribunals, and the legal action to them, particularly to Biljana Plavsic by the ICTY, is accompanied by special considerations for a less severe punishment.

Discussion and Conclusion

By analyzing how women are captured in judgement files of the former Yugoslavian and the Rwandan tribunals, this study has shown how women are referred to as victims and as perpetrators and therefore, it has shown in what ways criminal tribunals are gendered. This research clearly illustrates that female perpetrators are still hardly visible in the tribunals. Solely two women have been prosecuted by the criminal tribunals, Pauline Nyiramasuhuko by the ICTR and Biljana Plavsic by the ICTY.

This final chapter is structured as follows: in the first section, I provide a discussion on the relevance and importance of the results from this study by summarizing, evaluating and reflecting the overall findings. In the second section, I will conclude this study on the ways in which criminal tribunals are gendered by answering the research question stated in the introduction; by reflecting on this research' aim, method and results; and by discussing recommendations for further research.

5.1 Discussion

The presence of gendered norms and the ignorance of female perpetrators of war crimes affect the outcome of transitional justice mechanisms, like criminal tribunals. When tribunals do not deal with the past properly, long-term peace might not even be possible and there is a risk that the conflict will resume.

The results indicate that criminal tribunals, specifically the ICTY and ICTR, are gendered in different ways. The results show that female perpetrators are barely recognized by the tribunals and that women are mostly referred to as civilian victims just like men; as victims of sexual violence and as victims who are extra vulnerable during conflict. Also, the only two

female perpetrators who are prosecuted by the tribunals, especially Plavsic by the ICTY, are depicted as particular kind of perpetrator who deserves no severe punishment.

5.1.1 Interpretation of the results

The results are partly in line with the first hypothesis, which states that *when female victims are identified by the tribunals for Rwanda and the former Yugoslavia, their recognition will be only partial and will be limited to being victims of sexual violence*. Although women are referred to as victim of sexual violence more than one third out of the total occasions women are depicted as victims in documents of the Rwandan tribunal and about one fifth in ICTY judgements, women are also recognized as victims in other ways. Most often women are assumed to have incurred violence because they were general citizens in the conflict just like men. Another victim role which was attached to women is that they are particularly vulnerable victims.

The second hypothesis is partially supported by the results as well. It states that *if female perpetrators are recognized by the tribunals for Rwanda and the former Yugoslavia, they will be recognized in a fashioned way through the mother, monster and/or whore narrative*. Female perpetrators were not referred to as whores being forced to act violent, and solely Nyiramasuhuko was once portrayed by the ICTR as acting violent because she was a mother who wanted to belong and Plavsic was only once described by the ICTY as an inhuman, evil monster. However, women were occasionally recognized as perpetrators of war crimes. Specifically, 56 times women are recognized as perpetrators out of the total times women appear in the judgements, which is equal to 1750 times. The roles that were assigned to female perpetrators in the documents are: that they perpetrate crimes just like men and believe in their actions; that they act violent out of self-defense or because they mourn the death of their family; that they are actors in the background, incapable of being violent themselves; and that they are more remorseful and have lesser authority than men and therefore deserve a milder punishment.

Nevertheless, it is striking that when women are acknowledged as perpetrators just like men, this acknowledgement is always accompanied by portrayals of women who are assumed to belong to an extra vulnerable group as victims.

The findings of this study are not in line with the third hypothesis: *women are, either as victims or as perpetrators, not recognized at all by the tribunals for Rwanda and the former Yugoslavia and their experiences will be ignored completely*. The results suggest that women and their experiences are actually acknowledged by the tribunals, either as victims and as perpetrators. However, this is more the case for the former Yugoslavian tribunal than for the Rwandan tribunal, in which the appearances of women in total is half of the occurrences in the ICTY documents. Furthermore, many female witnesses testified before the tribunals' chambers, and most of them testified about facts of the conflict and some against sexual violence. Apart from this, regarding the limited acknowledged of female perpetrators, the findings suggest that the judicial action towards them is nevertheless still gendered.

This discussion on the hypotheses already shows that the results of this research are not in line with the three strands of theories on gendering transitional justice (Aoláin, 2006; Campbell, 2007; Franke, 2006; Hamber, 2007; McKay, 1998), from which the final hypothesis was derived. In different ways, these scholars conclude that women are not included in TJ and therefore in the criminal tribunals. The findings of this study challenge this argument, because female victims are extensively acknowledged in the tribunals' documents and women are occasionally recognized as perpetrators as well. Furthermore, regarding the analyzed judgements, in total more than 700 women testified before the tribunals and shared their experiences during war.

Regarding the critical theories on transitional justice (Campbell, 2007; Franke, 2006; Hamber, 2007; Lorentzen, 2016), from which the first hypothesis was derived, and which argue that women are solely recognized by the tribunals as passive victims of sexual violence, this

study provides a more differentiated view on women's roles as victims in criminal tribunals. The results demonstrate that, next to women being portrayed as victims of sexual violence, women are most often referred to as general civilian victims just like men. Also, women are frequently described as victims who belong to a special vulnerable group. It is important that these roles based on gendered norms are acknowledged, because as mentioned at the beginning of this section, it affects the outcome of transitional justice mechanisms.

The results partly contradict the claims of Sjoberg and Gentry (2007), who argue that when female perpetrators are acknowledged, they will be described according to the mother, monster or whore narrative. The appearance of these narratives is very limited, and the whore narrative does not occur at all. However, female perpetrators are occasionally mentioned, and the analysis provides a new insight into the roles of women as perpetrators in tribunals.

However, next to these contributions, this study builds on the main existing evidence of all the aforementioned theories that female perpetrators are still hardly visible in criminal tribunals. Also, when female perpetrators are prosecuted, in both the cases solely one woman, they receive special judicial considerations for a milder punishment.

5.1.2 Alternative explanations of the results

Apart from the effect of gendered norms, an alternative explanation for why female perpetrators are barely acknowledged by the tribunals could be that there are simply not many of them. However, this argument is rejected by different scholars who state that female perpetrators did play a big role during, for example, the genocide in Rwanda and the war in Sierra Leone (Brown, 2014, p. 448; Cohen, 2013, p. 385). Nicole Hogg gives a possible explanation for the invisibility of female perpetrators in tribunals, specifically for the Rwandan tribunal, by stating that women "were rarely directly engaged in the killings" (Hogg, 2010, p. 70). She argues that women participated in the conflict in different ways than men (2010, p. 79), namely by not

aiding Tutsi refugees; by assisting killers with providing and bringing food and drinks to roadblocks; and by informing men about Tutsi's hiding places. She adds to this that "it is difficult to find proof and witnesses against people who participated in a less obvious manner" (2010, p. 81). Sara E. Brown and Aletta Smeulers agree with this explanation that women are a different kind of perpetrators who are harder to prosecute (Brown, 2014, p. 458; Smeulers, 2015, p. 219). Brown states that "it is due in part to this limited agency exercised by women and their anonymity in the mainstream narrative that the role and pervasiveness of female perpetrators of the Rwandan genocide is often left unaddressed" (2014, p. 449).

Another possible explanation seems similar to the notion of gendered norms and is what Hogg calls "the chivalry of men", originated from Otto Pollak's chivalry theory (Hogg, 2010, p. 81). She states that "male witnesses, investigators, prosecutors and judges are so infected by gender stereotypes that they either cannot perceive of women as criminals or feel protective towards them in spite of their suspected or proven criminality" (2010, p. 81). This could explain the fact that there are only two women prosecuted by the ICTY and ICTR and why their prosecution is accompanied by judicial considerations for a less severe punishment. Because people find it hard to accept that women are killers. However, this explanation is questionable, because Hogg argues here that there are only men involved in the prosecution process who can be infected by gender stereotypes. Whereas, women can be influenced by stereotypes as well and this study shows that also a lot of female witnesses testified before both the tribunals' chambers. Smeulers adds that Biljana Plavsic's "guilty plea helped – without doubt – but probably also her gender and appearance might have played a role: 'she seemed out of place among a group of ruthless men'" (Smeulers, 2015, p. 224).

Existing gender relations before and during war could possibly explain the extreme difference in appearances of women as victims and as perpetrators as well. Hogg on Rwanda (2010, p. 82): "In our tradition, women are supposed to be humble people, to welcome visitors

at home and show a good image”. Brown makes a similar argument by arguing that “gendered assumptions about the sacredness of motherhood and female passivity are still real in their function and application in Rwandan society...society still struggles to understand the ability of women, sisters, daughters, wives and mothers to participate in genocide” (Brown, 2014, p. 451). But the question remains if these specific gender relations in Rwanda or similar gender relations were present in the former Yugoslavia as well and thus, if these relations can really explain the fact that female perpetrators are hardly visible.

Furthermore, Smeulers (2015, p. 209) argues that “although it is absolutely true that many women are victimized and suffer as a consequence of war, so do many men...in general there seems to be a tendency to consider all males – even the unarmed ones – as combatants and the women as civilians...‘while unarmed men seem fair game, the killing of women and children arouses general revulsion’”. The presence of this particular tendency in tribunals may explain why women are, next to being mentioned as general civilian victims just like men, referred to as victims belonging to a particularly vulnerable group.

Finally, there are differences, but also similarities between the former Yugoslavian tribunal and the Rwandan tribunal (Akhavan, 1996, p. 502), which could explain the results. However, the question remains to what extent one thing which explains something in a specific tribunal, is immediately applicable to all other tribunals, like the gender relations in Rwanda.

5.1.3 Limitations of this study

It is beyond the scope of this study to answer the question of why criminal tribunals are gendered and to take into account contextual features of results. For example, if gendered norms are used strategically by women who are prosecuted for war crimes. Also, while not studied in this research, analysis of the perceptions of men and the roles assigned to them in tribunals’ documents and comparing that to the perceptions of women would be an interesting follow up

to this study. Such a study could conclude in what ways criminal tribunals are gendered based on both gender perceptions. Furthermore, similar to other studies on transitional justice which draw attention to gender, this research has a normative bias because of the categories and codes that are developed, which are always premised on the male model. For example, the subcode *perpetrators believing in their goal*, which means that women act violent because they stand by their actions ‘just like men’.

Regarding the research methods used, the generalizability of the results is limited by the focus on the two case studies, namely the ICTY and the ICTR. The reliability of the findings is impacted first, by the fact that only the judgements were selected as documents for this study; and second, not all judgements of the tribunals could be analyzed, due to the fact that many documents were not available on the online database or were based on scanned files which could not be searched through efficiently. Also, the results may be skewed because some accused individuals share the same judgement file because their cases are related.

Nevertheless, the results of this study are still valid for capturing how women are perceived by the tribunals, because in total more than hundred documents were analyzed using the program Atlas.ti and this was done in a structured manner. Furthermore, despite this study’s gender bias, the empirical evidence shows in what ways women are referred to as victims and as perpetrators and what roles are assigned to them by the tribunals. Therefore, the findings of this research provide a further differentiated view of women’s perpetrator and victim roles in tribunals’ documents, which enrich existing theory on gender and transitional justice.

Thus, this research enriches existing theory with empirical evidence, which until now was lacking. Women are not solely referred to as victims of sexual violence but are also acknowledged as victims who have suffered from violence because they are general citizens and as victims belonging to a particularly vulnerable group. This study’s findings also provide a further differentiated view of which roles are assigned to women who are acknowledged as

perpetrators. Namely, perpetrators believing in their goal; evil, inhuman monster(s); mother(s) who want(s) to belong; perpetrator(s) acting in self-defense; perpetrators grieving their losses; perpetrator(s) not violent themselves; and perpetrator(s) who deserve no severe punishment.

Apart from these identified roles, it is striking as well that female perpetrators of war crimes are hardly acknowledged in judgements of both the Rwandan tribunal and the tribunal for the former Yugoslavia. Also, the legal action towards Nyiramasuhuko and Plavsic, the only two women prosecuted by the criminal tribunals, is still accompanied by special judicial considerations for a lesser punishment.

These findings could be helpful for society, and in particular for people working for transitional justice mechanisms like tribunals, to deal with the experiences during war more adequately. By being aware of these gendered norms and roles assigned to women, more diverse experiences of women during war can be identified and female perpetrators of war crimes might become more visible. This could result in better reconciliation processes and reduces the risk of a resumption of the conflict.

5.2 Conclusion

This research aimed to identify if criminal tribunals as transitional justice mechanisms are gendered and, if so, in what ways. Based on a qualitative content analysis on two case studies, it can be concluded that the tribunals are in fact gendered, because female perpetrators are hardly visible and, next to being referred to as general civilian victims, women are very often identified as victims of sexual violence and as particularly vulnerable victims. Furthermore, solely two women are prosecuted by the ICTY and ICTR and the legal action towards them is questionable as well, for the reason that they are depicted as special kind of perpetrators who should not receive severe punishment.

For this research a directed content analysis was conducted on selected judgement files of the Rwandan and the former Yugoslavian tribunal. Codes were derived from existing theory to find out if expectations from these studies were present in the tribunals' documents. Content which did not correspond with these deductively generated codes, was accounted for with inductive codes created during analysis. Although I directly searched for the words 'women', 'woman', 'female', 'girl', 'she', 'her', this research method was very effective in capturing how women are perceived in tribunals' documents and what roles are assigned to them. Furthermore, while using this method unexpected insights arose of diverse perpetrator and victim roles.

5.2.1 Recommendations for further research

To better understand the implications of the results, future studies could address how men and their roles as victims and as perpetrators are identified by the tribunals and this could then be contrasted with the identification with women as described in this thesis. Also, future research can build on this study by determining the causes and contextual features of the findings. Are gender perceptions strategically used by female perpetrators for example? Or are women a different kind of perpetrators, who are harder to prosecute? Furthermore, further research could address all the judgements of accused individuals by the ICTY and ICTR for a more complete picture and could examine all court records available by the tribunals, like indictments and testimonies. Finally, it would be interesting to address international criminal tribunals other than the former Yugoslavian and the Rwandan tribunal, for example the Special Court for Sierra Leone or the Special Tribunal for Lebanon. Because these tribunals are acknowledged as internationalized tribunals, meaning that they are a cooperation between the international community and the national governments, it would be interesting to see if this leads to different results, compared to the ways in which the ICTY and ICTR are gendered. Addressing other

tribunals would also be interesting, because if the results tend to be similar to those of the ICTY and ICTR, it would strengthen the conclusion that criminal tribunals are gendered.

Concluding, this research confirms the existing assumption that female perpetrators are barely visible in criminal tribunals. Solely one woman is prosecuted by each tribunal. The results show as well that the judicial action towards the female perpetrators remains questionable to the extent that they receive specific judicial considerations for a milder punishment. Furthermore, the findings of this study challenge the theories on gendering TJ, which argue that women are not included at all in the tribunals (Aoláin, 2006; Campbell, 2007; Franke, 2006; Hamber, 2007; McKay, 1998). Women are actually extensively recognized as victims and occasionally as perpetrators and women shared their experiences during war via testimonies more than 700 times in total. Next to this, this study enriches existing critical theories (Campbell, 2007; Franke, 2006; Hamber, 2007; Lorentzen, 2016) by providing empirical evidence which shows that women are not only portrayed as victims of sexual violence, but as well as general civilian victims just like men and as victims who belong to a special vulnerable group. Finally, this research addressed a gap in the knowledge of perpetrator roles by women which are present in the tribunals. In addition to the limited recognition of female perpetrators as mothers, monster and/or whores (Sjoberg & Gentry, 2007), women are also acknowledged as perpetrators who believe in their goals; who are mourning; who act in self-defense; who act in the background and are not violent themselves; and as perpetrators who deserve a milder punishment because they have less authority than men.

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