

# REMEP

RETALIATION, MEDIATION AND PUNISHMENT

[Eds Dominik Kohlhagen and IMPRS REMEP]



## RESEARCH AGENDA AND PROJECTS

HALLE (SAALE) 2015



International Max Planck Research School  
on Retaliation, Mediation and Punishment

MAX PLANCK INSTITUTE FOR SOCIAL ANTHROPOLOGY  
**DEPARTMENT 'INTEGRATION AND CONFLICT'**  
FIELD NOTES AND RESEARCH PROJECTS XII

# SERIES EDITOR'S PREFACE

(GÜNTHER SCHLEE)

## ABOUT THE SERIES

This series of *Field Notes and Research Projects* does not aim to compete with high-impact, peer reviewed books and journal articles, which are the main ambition of scholars seeking to publish their research. Rather, contributions to this series complement such publications. They serve a number of different purposes.

In recent decades, anthropological publications have often been purely discursive – that is, they have consisted only of words. Often, pictures, tables, and maps have not found their way into them. In this series, we want to devote more space to visual aspects of our data.

Data are often referred to in publications without being presented systematically. Here, we want to make the paths we take in proceeding from data to conclusions more transparent by devoting sufficient space to the documentation of data.

In addition to facilitating critical evaluation of our work by members of the scholarly community, stimulating comparative research within the institute and beyond, and providing citable references for books and articles in which only a limited amount of data can be presented, these volumes serve an important function in retaining connections to field sites and in maintaining the involvement of the people living there in the research process. Those who have helped us to collect data and provided us with information can be given these books and booklets as small tokens of our gratitude and as tangible evidence of their cooperation with us. When the results of our research are sown in the field, new discussions and fresh perspectives might sprout.

Especially in their electronic form, these volumes can also be used in the production of power points for teaching; and, as they are open-access and free of charge, they can serve an important public outreach function by arousing interest in our research among members of a wider audience.

MAX PLANCK INSTITUTE FOR SOCIAL ANTHROPOLOGY  
DEPARTMENT 'INTEGRATION AND CONFLICT'  
FIELD NOTES AND RESEARCH PROJECTS XII  
REMEP – Retaliation, Mediation and Punishment:  
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# PUBLISHED VOLUMES

In the FIELD NOTES AND RESEARCH PROJECTS Series the following titles have been published so far:

2012

(I) Schlee, Günther (ed.): *Pastoralism in Interaction with other Forms of Land Use in the Blue Nile Area of the Sudan: Project Outline and Field Notes 2009–10*

(II) Schlee, Isir, Beleysa Hambule, and Günther Schlee: *The Moiety Division and the Problem of Rendille Unity: A Discussion among Elders, Korr, 21<sup>st</sup> January, 2008*

2013

(III) Awad Alkarim and Günther Schlee (eds): *Pastoralism in Interaction with other Forms of Land Use in the Blue Nile Area of the Sudan II: Herbarium and Plant Diversity in the Blue Nile Area, Sudan*

(IV) Lenart, Severin: *The Complexity of the Moment – Picturing an Ethnographic Project in South Africa and Swaziland: Vol. I: Photo Essays and Fieldwork Reports, 2007–11*

(V) Lenart, Severin: *The Complexity of the Moment – Picturing an Ethnographic Project in South Africa and Swaziland: Vol. II: Photo Essays and Court Cases, 2007–11*

(VI) Finke, Peter, and Günther Schlee (eds): *CASCA – Centre for Anthropological Studies on Central Asia: Framing the Research, Initial Projects*

2014

(VII) Schlee, Günther: *The Social and the Belief System of the Rendille – Camel Nomads of Northern Kenya: English Version: Halle 2014/German Original: Berlin 1979*

(VIII) Schlee, Günther: *Das Glaubens- und Sozialsystem der Rendille – Kamelnomaden Nord-Kenias: German Original of Volume VII, Reprint*

(IX) Isir and Günther Schlee: *Rendille and Ariaal – A Linguistic and Cultural Affiliation Census I: Logologo: Sabamba, Odoola, Manyatta Juu; Nama-rei: Ong’eli (Lomorut, Harugura, Ilmongoi); Goob Lengima; Korr: Bosnia, Lorora; Laisamis: Rengumo; Lepindira*

2015

(X) Awad Karim, Elhadi Ibrahim Osman, Günther Schlee and Jutta Turner: *Pastoralism in Interaction with other Forms of Land Use in the Blue Nile Area of the Sudan III: The Methods of Citizen Science in the Study of Agro-pastoralism*

(XI) Schlee, Günther: *“Civilisations”*

(XII) Kohlhausen, Dominik and IMPRS REMEP (eds): *REMEP–Retaliation, Mediation and Punishment: Research Agenda and Projects*

For teaching purposes, all volumes are available as online PDFs under [www.eth.mpg.de/dept\\_schlee\\_series\\_fieldnotes/index.html](http://www.eth.mpg.de/dept_schlee_series_fieldnotes/index.html)

# INTRODUCTION

(GÜNTHER SCHLEE)

The study of the logics of action in the field of retaliation, mediation and punishment and of the interpenetrations of these logics in the Humanities and Social Sciences Section of the Max Planck Society goes back to a colloquium about retaliation and regulation in the absence of a central power (*Vergeltung und Regulation ohne Zentralgewalt*) held at a meeting of the Section in 2004. The presentations and discussions at that meeting evolved into a book (Schlee and Turner 2008) with topics ranging from acephalous societies as they can still be found in regions of the world not effectively penetrated (but generally still somehow indirectly affected) by modern statehood to the question of whether our international state system can be compared to an acephalous society. It does, after all, it consist of states which are formally equal to each other and sovereign. There is no world government.

The next milestone was the foundation of an International Max Planck Research School (IMPRS) with the title ‘Retaliation, Mediation and Punishment’ (REMEP) in 2008. The spokesperson was Hans-Jörg Albrecht, a lawyer and criminologist at the Max Planck Institute for Foreign and International Criminal Law, Freiburg, with myself as the deputy speaker.



Prof. Dr. Dr. h.c. Hans-Jörg Albrecht  
(M. LANGHORST, 2006)

In 2012 REMEP was evaluated. The evaluation report came to the conclusion that ‘REMEP is a unique cross-institutional and interdisciplinary venture that offers students an unrivalled opportunity and funding to undertake doctoral research on important topics in a highly collaborative and genuinely innovative intellectual environment. The reviewers view the IMPRS REMEP as a great success in both science and education. The reviewers support the continued funding for the IMPRS in Freiburg, Halle, Frankfurt and Heidelberg for another 6 years and recommend that a corresponding application for extension should be submitted.’

We submitted such an application, the program was extended for another six years, and Hans-Jörg and I changed roles: I became speaker and he became my deputy.

Typically an IMPRS is located at one Max Planck Institute in cooperation with the neighbouring university. As the evaluation board noticed, our IMPRS is unique as it comprises institutional partners at several MPIs and several universities, spread all across Germany. The project entails emotional costs and benefits. On the one hand, our research deals with, among other things, human rights abuses, violent conflicts, blaming campaigns and slander on the Internet, genocide, mass graves, blood feuds, and other depressing themes. Other topics, like marital conflicts, may be unpleasant for the people involved, but not so depressing for the researchers. On the other hand, it is also a source of joy. Due to its interdisciplinary character it is an inexhaustible fountain of inspiration and new, unusual questions. Participants are richly rewarded for the extra travelling it requires.



Prof. Dr. Günther Schlee  
(Th. MEINICKE, 2015)

## REFERENCE

Schlee, Günther, and Bertram Turner (eds). 2008. *Vergeltung*. Frankfurt (Main) and New York: Campus Verlag.

# ABOUT THE IMPRS REMEP

## REMEP IN SHORT

*The International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP) is a research and teaching network in the fields of sociology, social anthropology and jurisprudence. Research within REMEP addresses questions common to the disciplines involved as to how peace, social order and social control are negotiated, constructed, maintained and re-gained. REMEP is one of twelve IMPRS in the social sciences. International Max Planck Research Schools offer talented junior scientists the opportunity to earn a doctorate under excellent research conditions in close collaboration with universities, which confer the PhD degrees.*

The IMPRS REMEP is unique in its set-up, as it builds on the capacities of three Max Planck Institutes and two universities creating synergies necessary to conduct first class interdisciplinary research on the multi-faceted and cross-cultural area of study on retaliation, mediation and punishment. For university graduates who wish to work towards a doctoral degree in social anthropology, law or sociology, REMEP offers unique multi- and interdisciplinary training and research opportunities. Outside academia, REMEP's research agenda is particularly relevant for international organizations and stakeholders of policy reforms, as well as for journalists and advocacy groups. The regional and thematic focuses of the doctoral research projects provide in-depth knowledge on micro-level conflict dynamics and on restoration of order in areas affected by large-scale conflict.

REMEP was founded in January 2008. In 2014, the research school was extended for a second period of funding of six years (2014–2019). At present, 51 doctoral students have been admitted to the Research School, out of which 19 (37%) are of German and 32 (63%) of non-German citizenship. Among the students, 29 (57%) are female and 22 (43%) male. 18 doctoral students already completed their doctoral theses or handed in their dissertations.

26 REMEP students are or were affiliated with the Max Planck Institute for Foreign and International Criminal Law in Freiburg, 18 students with the Max Planck Institute for Social Anthropology in Halle and 5 students with the Max Planck Institute for European Legal History in Frankfurt. The Max Planck Institute for Comparative Public Law and International Law in Heidelberg was member of REMEP until the retirement of Prof. em. Dr. Dr. h.c. Rüdiger Wolfrum in 2012 and hosted 2 REMEP students.



REMEP Group photo at the Summer University 2014

(2014)



# REMEP'S RESEARCH PROGRAM

*REMEP addresses retaliation, mediation, and punishment and their role in establishing, maintaining, and forming social order in the face of conflicts, various forms of crime, terrorism, insurgencies, and civil war. At the same time, globalization, the internationalization of politics, and migration all result in new arenas of conflict and new answers to deal with such conflicts. As such, REMEP's research focuses relate to the scientific fields studied at the Max Planck Institutes in Halle, Freiburg, and Frankfurt, as well as the Law School of Freiburg University and the Institute for Social and Cultural Anthropology at the Martin Luther University Halle-Wittenberg. REMEP adopts an approach that is comparative and multidisciplinary; it is focused on the creation of added scientific value by building bridges between disciplines. History of law, international law, criminal law, criminology, and anthropology analyse REMEP through different lenses, at different periods of time, and on the basis of different bodies of theory and methods.*

## SCIENTIFIC SUBJECT

In contemporary society, despite the dominance of the nation-state in establishing and maintaining social order, other social actors also effectively form and uphold social order. At the same time, in the course of globalization, with its worldwide dynamics of interaction, normative projections have to be coordinated within a global context. Moreover, the social agents that participate in local processes of social ordering are no longer acting in the local field alone; rather, they interact with a multitude of others on the global level and are thus exposed to new problems of governance and legitimacy. Research on these fundamental questions about social order within the Human Sciences section of the Max Planck Society is centred on specific scientific agendas of wide scope, such as to understand conflict and integration, the changing composition of society, and processes of integration, or to explain the communal dimension of goods and the corresponding collective decision-making processes. The same holds true for many research activities carried out at the universities. Yet, there are scientific problems shared by all these agendas that underlie the fundamental question of social order and require theoretical groundwork. One of the main problems of such a cross-cutting nature is the relationship between retaliation, mediation and punishment.

The scientific agenda of the IMPRS aims at theorizing REMEP and social order on the basis of different disciplinary perspectives. By focusing on the conceptions, procedures and stereotypes of retaliation, mediation and punishment and their significance in establishing and maintaining social order, the IMPRS responds to the need for joint inquiries into cross-cutting problems common to many of the scientific fields that emerge out of the demand to explain an increasingly complex world. At the same time, the

IMPRS research focus contributes basic knowledge to the across-the-board question of how social order operates in the emergent complexity of interaction worldwide. For this purpose, all disciplines involved in the IMPRS take as a joint starting point the assumption that retaliation, mediation and punishment have developed everywhere and throughout history, albeit with differing contents and meanings. Consequently, the question of REMEP provides the condition for theoretical generalizations both in terms of time and space, thus establishing the necessary basis to understand at a global level a fundamental element of social order. This requires comparative work from the perspective of social and legal sciences, as well as from corresponding historical research that traces back the role of REMEP in the processes of social ordering. With such an approach to a basic cross-cutting problem of social order that up to now has found little, if any, systematic interest, the scientific work in REMEP contributes to the related scientific agendas within the Human Sciences Section of the Max Planck Society and the corresponding research at the university level.

Following on from this starting point, the scientific agenda of the Research School seeks to understand retaliation, mediation and punishment as a resource for social actors that has developed three fundamental options for establishing and maintaining order. Retaliation, mediation and punishment are understood broadly as normative elements of social ordering rather than as pertaining to a specific body of state law, although retaliation, mediation and punishment may be shaped by state law and its institutions. According to this concept, all the disciplines involved in the scientific agenda of the Research School start from the assumption of the plurality of forms of establishing and maintaining social order and of its corresponding social agents. In line with this, the disciplines analyse from their theoretical standpoints and with their methodological canons how the different social agents – international organizations, the state, the church, non-governmental organizations, local communities, families and neighbourhoods – make strategic use of retaliation, mediation and punishment. Corresponding to this approach, research of the participating disciplines depicts specific functions of retaliation, mediation and punishment in the varying forms of interactions to establish and maintain social order, in terms of intensity and scope, time and space. This provides a fertile basis for comparative analysis of the relative significance of retaliation, mediation and punishment in establishing and maintaining social order.

#### ACADEMIC DISCIPLINES

The social sciences involved in REMEP study social integration and conflict as well as the social causes and consequences of crime, criminal behaviour, and the development and impact of laws. Alongside the social sciences, the fields of jurisprudence participating in the IMPRS concentrate on the purpose, structure and application of criminal law and international criminal

law, and the history of social communication about law. Both social sciences and jurisprudence are incorporated into REMEP to explain the significance of retaliation, mediation and punishment for social order in today's world.

#### *CRIMINOLOGY AND CRIMINAL LAW*

Criminology aids in understanding how and to what extent criminal punishment contributes to social order and how order is established if formal systems of enforcement and justice fail or are not available. The discipline of criminal law contributes to explaining the normative concepts of criminal punishment and violence as well as its relation to mediation. Scientific inquiries in the Research School by both disciplines cover:

- informal conflict regulation, its relation to criminal justice, and mediation in the criminal justice system;
- privatization of criminal justice and (re-)privatization of social control;
- exemptions from the prohibition on private violence;
- international criminal justice and its relationship to local justice;
- the explanation of social environments that generate their own modes of social control, including organized crime, crime markets, urban environments and immigrant communities.

#### *LEGAL HISTORY*

Legal history contributes to understanding the development of a state-based, formal system of punitive control and criminal justice, the establishment of the monopoly on violence and modern punishment (including the role of communities in the construction of norms), the mediation and negotiation of conflicts, and the participation of the community in formalized punitive control. Scientific inquiries in the IMPRS in the field of legal history include:

- the explanation of participation and functions of communities in institutionalized, formalized, punitive control;
- the privatization of formal control, justice and punishment;
- processes of decision making and negotiation;
- sanctuary and/or asylum as a resource of mediation and negotiation;
- religious deviance and the role of religious norms and institutions;
- the relationship between social sanctions and penal punishment;
- the use, function and mediation of violence.

#### *SOCIAL ANTHROPOLOGY*

Social anthropology contributes to understanding the social significance of retaliation, mediation and punishment in the interaction between different models of normative and institutional ordering that operate under various social and political conditions, including segmentary and acephalous societies. Scientific inquiries in the Research School in the field of social anthropology extend to:

- the legitimacy, procedure and embeddedness of retaliatory actions in state law, religious law and customary law;
- the role of retaliatory discourses and practices on the international level between nation-states or within states, either backed up by state legal intervention and/or religious authorities or directed against the state legal system;
- the re-evaluation of local traditions and values as markers of identity and social belonging for particular social formations;
- the role of retaliatory rhetoric such as ‘blood feuding’ and of the automatic recourse to violence;
- the variety of moralities of retaliation and the ethics of retaliatory action.

### *COMPLEMENTARITY*

Each of the disciplines adds a special set of skills to the whole. While criminology contributes theory and research based primarily on quantitative methods and a field of research closely connecting normative and social sciences, anthropology provides a focus on the actor, theories of action and qualitative and interpretive methods, as well as expertise in conducting research in places where a power monopoly and state institutions are absent, remote or attenuated. Criminal law opens the way for an analysis of strongly formalized procedures, the structure, content and meaning of normative discourses, as well as their role in the formation of criminal and international policies and institutions. History of law provides for methodological expertise and rich experience in textual analysis and the interpretation of long-term social and legal processes.

### **CURRENT RESEARCH FOCUS<sup>1</sup>**

In light of the theoretical advancements and preliminary research results that REMEP has achieved during the first years of cooperation, the overall research profile has been fine-tuned and further elaborated, highlighting a number of common strands and identifying epistemologically promising fields of research. During the first research phase, the insight to connect the core question to the issue of security emerged as a guiding concept for further research that is open to theorizing in all the contributing disciplines. To stay abreast of those changes, a number of overarching topics have been identified and emphasized on the research agenda: (1) the impact of global governance institutions such as the International Criminal Courts (ICCs), as well as of globally operating non-governmental organizations such as Human Rights Watch and Amnesty International; (2) the impact of transnational securitiza-

<sup>1</sup> This section is based on the section ‘Fine-Tuning of the Research Agenda’ written by Bertram Turner and Richard Rottenburg in: IMPRS REMEP. 2012. *Application for Project Continuation/Extension*, Halle (Saale): IMPRS REMEP.

tion politics; (3) the importance of global financial flows for the management of conflict; (4) the role of travelling technologies of ordering, new arrangements of governance, and networks of cooperation; (5) the impact of rights-based approaches and human rights; and (6) the importance of religious law and tenets of faith in the transformation of ordering practices. These issues promise new insights into the overall question of the normative power and the social working of the basic concepts of REMEP.

In order to deal with the relationship between local and translocal processes and to grasp the different ranges of ordering technologies, REMEP is designed as a ‘scaling project’ that links three interconnected scales: the state, local and translocal, and transnational scales.

### *REMEP AND THE STATE PERSPECTIVE*

The first scale and point of reference for all considerations is still the modern state with its legislation, formal judiciary and institutional apparatus.

In a historical perspective, the arrival of the modern state and the monopolization of power have established the state penal system as the only legitimate form of criminal punishment and state-organized coercion as the only legitimate form of coercion when enforcement of rules and the maintenance of social order within the framework of a state and on its territory are at stake. In conformity with the fundamental research frame outlined in the first paragraphs, we refer here to a concept of violence in its broadest sense that goes beyond the scope of physical violence and includes all manifestations of violence and coercion. As part of the monopoly on power, criminal sanctions can be regarded as having successfully channelled (retaliatory) violence by insisting that private forms of violent coercion are against the law and will not be tolerated. This means that the power to punish is seen as embodied in the modern state and the institutions that deliver and enforce punishment, such as the police, the courts, and prosecution and correctional services. On the other hand, legal history identifies a variety of practices to settle conflicts outside the courts or in an infrajstice setting that date back to the pre-modern state. From this perspective the diversity of conflict regulation, traditional means of mediation and retaliation, modes of infrajstice and forum shopping remains an element of the formation of modern legal systems and challenges the concept of ‘state building’.

Such basic components of the concept of the modern state are challenged and subject to transformation under conditions of globalization and neoliberalism. Private retaliatory violence in cases of noncompliance with rules or criminal acts violating private interests has been outlawed; there are, moreover, niches of (legitimate) exemptions, among them legitimate self-defence and states of necessity as well as different forms of ‘private’ yet state-endorsed modes of arbitration, mediation and conflict regulation which are gaining ever more importance nowadays. Such developments have side-

lined not only private violence and the violent component of retaliation as a means to respond to crime, deviance or other disturbances of the social order, but also mediation and reconciliation, the other complementary components of concepts of retaliation, in the settlement of conflicts and have imposed the dominance of the state in enforcing conflict regulation and conflict resolution.

Despite the effectiveness that is usually associated with the dominance of the state judiciary in conflict resolution and outlawing illegitimate action, new developments have contributed to the insight that the relationship between retaliation, mediation and punishment in the attempt to establish and maintain social order and human security is far more complex and less evident than has been suggested by conventional normative and social theory.

Moreover, while the politics of colonization have exported the European model of the state and its administration to virtually all corners of the world, it is fair to assume that in many world regions a strong state (in terms of holding a full-blown monopoly on power) does not always persist, and thus there may be room for a variety of arrangements in dealing with conflict. In some areas (e.g., Somalia or Afghanistan) societies and social order are basically dominated by solidarity patterns, models of identification and forms of violence that include retaliation and feuds. Moreover, transnational actors intervene in such areas, bypassing the institutional apparatus of a failed or weak state and thereby generating new forms of normative and institutional hybridity often leading to new breakdown.

#### *REMEP AT THE LOCAL AND TRANSLOCAL SCALE*

The second and smaller scale refers to segments of society that may for various reasons be widely exempted from the rule of law approach that characterizes the general response to deviance and crime or that enjoy a certain room for manoeuvring in addressing internal conflicts. The point of departure is thus the observation that within the nation-state, with its monopolized power and judiciary, only an extremely small number of relevant cases are able to mobilize the state apparatus. In a wide range of arenas, from milieus of illegality such as drug markets and well-established traditional subcultures to religious communities and basic social units such as the family, recourse to law and justice-based conflict regulation is, for obvious reasons, either severely restricted or totally prevented. For this reason the research design is connected to the fundamental question of who has the prerogative to interpret or define certain human actions as deviant and a threat to security or social order, while other actions, although no less conflictive, are considered constructive and good for societal advancement.

The emergence of the metropolis in the last two centuries has resulted in the existence of urban environments such as ghettos, *quartiers en difficulté*, *favelas* and townships that tend to generate their own modes of social control

which not only do not rely on formal justice systems and the institutions representing them, but even try to avoid them. Instead, order is maintained to a large extent by agents who are not acknowledged by the state and who apply their own peculiar repertoires and techniques. In particular, the functioning and functions of organized crime and conventional underworlds are of interest here. The latter includes the history of what today is dealt with as organized crime and its overlapping with social systems that had once been opposed to the imposition of governance (mafia, jakuza, triads). In other cases actors elect to go forum shopping, whereby the state judiciary is integrated in a wide range of interacting normative regimes and institutions that bear structural similarities to certain pre-modern constellations of conflict regulations.

Moreover, in recent decades policy makers have not only encouraged conflict regulation and victim-offender mediation beyond the judiciary, but have provided a statutory basis for inserting mediation into formal justice systems. These developments certainly partially reflect the need for economizing in the field of formal justice systems, but also substantiate the well-founded assertion that modern criminal punishment does not always deliver the desired outcome (e.g., conflict resolution, decreasing recidivism) or that it produces unwanted side effects that can be avoided by resorting to reconciliation and mediation.

#### *REMEP AT THE TRANSNATIONAL SCALE*

At the third scale REMEP focuses on processes of globalization and transnationalization. It is mainly the governance of human security at the transnational scale that has recently attracted increasing interest. Security requirements find expression in the production of normative templates that address a variety of issues, ranging from protection against threats to public safety to any given domain relevant to livelihood security. Commonly, such processes are communicated in the language of neoliberal achievements. Legal history shows that security as a leading category and administrative practice emerged in the 18<sup>th</sup> and 19<sup>th</sup> centuries and was influenced and accompanied by the formation of transnational criminal law and security regimes. A key question concerns the legal pluralism, fragmentation and ‘regime collisions’ of these emerging transnational criminal law regimes, answers to which could yield historical explanations for current structural problems of international criminal law and criminal justice.

The politics of securitization are mainly dominated by the global governance institutions, such as the United Nations and its numerous sub-organizations, the IMF, the World Bank, the World Trade Organization, etc. Yet, peace agreements brokered by non-state actors aimed at ending national conflicts increasingly complement traditional peace agreements between state actors in the production of international order. These agreements include account-

ability and reconciliation measures and important provisions aimed at regulating conflict resolution, resource distribution and the environmental aspects of conflicts. Even though the UN Charter remains a benchmark in peaceful conflict settlement, the traditional mechanisms provided for in Article 33 of the UN Charter are nowadays complemented by forms of negotiation, mediation and intervention carried out by regional actors such as the EU, AU, NATO and OSCE. Consequently, REMEP's research agenda also considers the role of international law actors other than states. Transnational actors such as powerful INGOs, civil society organizations, epistemic communities, strategic alliances of interest groups, social and faith-based movements, and multinationals contribute to a new legal architecture of security and averting conflict. They are setting up legal frameworks of security for various areas of human livelihood, thereby re-defining the conditions of people's legal agency. Analysis of the governance of conflict and violence (crime prevention, gated communities, urban security, anti-terrorism legislation, law on torture, on war, on war crimes, mass atrocities) and normative scripts for all kinds of post conflict scenarios emerge as major fields of research. In this context, control over the flow of information and informational politics also plays a decisive role. In addition, health, food and resource security, economy and finance are domains in which transnational normative securitization becomes increasingly important, as these are considered to compose the main fields in which conflicts at various scales may turn into threats to global security.

Proceeding from the assumption that there is a coherent logic behind this wide range of normative operations, the research agenda includes the investigation of the means and ends of such politics of securitization. How are such transnational templates of security law translated into local settings? Who are the actors, the beneficiaries claiming the setup of a transnational legal architecture of security? Whose security is secured and who profits from the politics of securitization? What kind of normative processes have been launched and in what ways do they interact with complex plural legal configurations at various scales, affect the nomosphere and impact the livelihood conditions of ordinary people? For instance, in what way are such processes connected to rights-based approaches and human rights politics as either strengthening or impeding factors?

In this field, the monopoly on power and the nation-state step back behind international and transnational forms of police, military and intelligence cooperation, which are expressed in the development of cross-border systems of collecting and exchanging information as well as in the emergence of supranational intervention and task forces.

Moreover, and following the same logic, the privatization of social control is on the increase, not only for controlling the most obvious expressions of economic and technical globalization, as in the case of the self-regulation (and related hybrid co-regulation) of financial markets, multinational corpo-

rations and the Internet, but also in the use of violence within the context of counterterrorism and new wars.

Another strand that gains momentum in the research on the impact of retaliation, mediation and punishment in the context of large-scale conflict, crime and the exchange of violence is the increasing technologization and the encounter of law, science and technology in dealing with those scenarios. Law and legal institutions increasingly refer to other knowledge regimes in the development of mechanisms of intervention, in the production of evidence, in the use of informational flows, in reference to the production of memory, in addressing public grievances, and many other issues that are directly related to the research agenda.

#### *REMEP AT THE TRANS-SCALAR LEVEL*

Finally, at a trans-scalar level, increasing human mobility, flows of migration and the emergence of diasporas have contributed to the transformation of societies that used to cultivate and cherish an image of ethnical and religious homogeneity or to maintain a narrative of formal civic equality. Migrants may bring along their own plural legal repertoires and concepts of order, thereby creating configurations of cultural diversity and multicultural societies. Some of these migrant communities may remain alienated and distanced from the formal justice system as well as from its agents (in particular the police). Cut off from access to state-based conflict regulation, immigrant communities sometimes develop their own informal ways of coping with conflict and its regulation. On the other hand, such new impetus may affect the established models of order and security and contribute to the emergence of accommodated forms of dealing with conflict in society, such as forum shopping or reference to overarching institutions or religious experts.

Around the globe, the character of warfare is changing, from symmetric violent conflicts between states to conflicts which have been called small or private wars, wars that are of an asymmetric nature and represent what has been called 'economies of violence'. This is paralleled by a trend towards subjecting states to international laws that, following the model of ordinary criminal law, prohibit states' use of (organized) violence and the extreme and disproportional use of violence (crimes against humanity, torture, genocide, war crimes)..

This trend is expressed most significantly in the establishment of the International Criminal Court and its predecessors in the form of international ad hoc criminal courts. It is in this field in particular where the relationships between retaliation, mediation and punishment are of particular interest, as the institutionalization of international criminal law appears to be taken as a laboratory for experimentation. In this laboratory, the scope of punishment seems limited, as are mediation and the recourse to violence. The increase in truth commissions working parallel to ICCs underlines the obvious necessity

to create a balance between punishment on the one hand and techniques of mediation and reconciliation on the other hand. Moreover, the progressive shift of international criminal justice towards a more victim- and restoration-oriented approach currently challenges, or at least complicates, the traditional rationale underlying the purposes of the punishment of mass atrocities.

Taken together, the research agenda contributes to the analysis of emerging hybrid regimes of security control and containment of violence at various scales and in various concrete settings, always taking into account the transnational and international scale of such security regimes.

## ORGANIZATION

Prof. Dr. Günther Schlee, Director at the MPI for Social Anthropology, is Speaker of the IMPRS REMEP. He represents the Research School and chairs its Executive Committee. Prof. Dr. Dr. h.c. Hans-Jörg Albrecht, Director at the MPI for Foreign and International Criminal Law, is Deputy Speaker. The main tasks of the Executive Committee of the IMPRS REMEP are to direct and supervise all academic and administrative activities and to take all important financial decisions. Hence, it is responsible for all major policy decisions, the formal admission of doctoral students to the program, the overall organization of training activities, and the evaluation of the students and their research projects. The Executive Committee meets at least once a year, usually during the Summer or Winter Universities.

### *EXECUTIVE COMMITTEE*

Apart from the speaker and his deputy, the Executive Committee is made up of members of each of the six institutions participating in the IMPRS REMEP:

- Prof. em. Dr. Keebet v. Benda-Beckmann, former head of the ‘Project Group Legal Pluralism’ (2000–2012), associate at the Max Planck Institute for Social Anthropology;
- Prof. Dr. Thomas Duve, Director at the Max Planck Institute for European Legal History, Frankfurt, succeeded Prof. Dr. Dr. h.c. mult. Michael Stolleis;
- Prof. Dr. Marie-Claire Foblets, Director at the MPI for Social Anthropology;
- Prof. Dr. Karl Härter, Senior Research Scientist at the Max Planck Institute for European Legal History;
- Prof. Dr. Roland Hefendehl, Director of the Institute for Criminology and Business Criminal Law at the Faculty of Law, University of Freiburg;
- Prof. Dr. Walter Perron, Chair for Criminal Law, Criminal Procedure and Comparative Criminal Law at the Faculty of Law, University of Freiburg;
- Prof. Dr. Richard Rottenburg, Director of the Institute of Social Anthropology at the Faculty of Philosophy, Martin Luther University Halle-Wittenberg;

- Prof. Dr. Dr. h.c. mult. Ulrich Sieber, Director at the Max Planck Institute for Foreign and International Criminal Law, Freiburg;
- Dr. Bertram Turner, Senior Research Scientist at the Max Planck Institute for Social Anthropology, Halle (Saale).

*FORMER MEMBERS OF THE EXECUTIVE COMMITTEE*

- Prof. em. Dr. Franz von Benda-Beckmann, (2008 – †2013), former head of the ‘Project Group Legal Pluralism’ at the Max Planck Institute for Social Anthropology;
- Prof. em. Dr. Wolfgang Frisch (2008–2013), Former Director of the Institute for Criminal Law and Legal Theory at the Faculty of Law, University of Freiburg;
- Prof. em. Dr. Dr. h. c. mult. Michael Stolleis (2008–2010), former Director at the Max Planck Institute for European Legal History;
- Prof. em. Dr. Dr. h.c. Rüdiger Wolfrum (2008–2012), former Director at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg.

*SCIENTIFIC COORDINATORS*

- Dr. Dominik Kohlhagen, IMPRS REMEP Coordinator at the Max Planck Institute for Social Anthropology in Halle;
- Prof. Dr. Karl Härter, local IMPRS REMEP Coordinator and Senior Research Scientist at the Max Planck Institute for European Legal History in Frankfurt;
- Dr. Carolin Hillemanns, local IMPRS REMEP Coordinator at the Max Planck Institute for Foreign and International Criminal Law in Freiburg.

# DOING RESEARCH WITHIN REMEP

(IMPRS REMEP)

*The multidisciplinary approach adopted in REMEP is pursued and implemented along different strands. A common curriculum introduces students attached to REMEP to theory, methods and research as represented in the three Max Planck Institutes and the two universities. The courses provided at each institute offer basic training and are geared towards a multi-disciplinary body of students. Winter and summer universities provide a framework for the presentation and discussion of PhD projects. In all the disciplines involved in REMEP, project outlines and results are placed under the review and scrutiny of both REMEP students and senior researchers. All institutes involved in REMEP are active in developing a network of scientists and research institutes with an interest in the core questions of the Research School. To this end, internationally renowned scientists and professionals are invited to give lectures and hold workshops (which are open to all REMEP students).*

## THE COMMON CURRICULUM

The integrated multidisciplinary curricular activities of the IMPRS REMEP are designed for a three-year period. The language of instruction is English. Participation in most tutorials and workshops is mandatory. A conscious decision was made not to put a credit system in place. The group of doctoral students is relatively small, with diverse academic backgrounds represented. Therefore, the main aim is to ensure that the students, on an individual basis, receive the necessary training in order to successfully conduct their research within their respective disciplines, while becoming acquainted with the pertinent methods and theories of the other disciplines involved.

## INTRODUCTORY COURSES

At the beginning of the first year, all incoming doctoral students are required to participate in introductory courses that take place consecutively at each of the IMPRS locations. The doctoral students are introduced to the relevant empirical methods and significant theories of the various disciplines. Each workshop lasts between two and four days and, thus, allows sufficient time for both the faculty and the student body to get to know all participants as well as other researchers at the Max Planck Institutes and universities.

In Frankfurt, the course addresses the history of the state and the emergence of modern punishment in Europe. Course modules cover the history of criminal law, criminal justice, modern punishment and the modern state in Europe from the late middle ages to modern times, including the development of state-based forms of institutionalized, formalized, punitive control and the establishment of a monopoly on power. Another focus is on theory, models, methods and results of research in the field of Criminal Justice His-



REMEP Winter University 2012

(2012)

tory, including issues such as the ‘enforcement/implementation of norms’, ‘participation of the social community in criminal justice, punitive control and coercion’, the ‘negotiation/mediation of norms, conflicts and social/punitive control’ and the ‘complex relationships between norm and practice’, as well as such models as ‘utilization/ instrumentalization of criminal justice’ (*Justiznutzung*) and ‘infrajustice’.

In Freiburg, a major focus is on theories of crime and punishment. The course covers the development of theories concerning criminal sanctions and punishment, including sentencing and the relationship between models of man, theories of crime and punishment theory. The course conveys basic knowledge about the goals that can be pursued with criminal punishment as well as information on contemporary systems of criminal sanctions. The introduction into systems of criminal sanctions is presented in a comparative perspective and includes criminological findings about the actual effects of criminal punishment and sentencing. The course also questions retaliation and mediation within the framework of criminal law. It gives insights into the escalation potential of retaliation, the reintroduction of mediation and reconciliation as a result of rediscovering the victim and developing crime victim policies, restorative justice as an alternative to maintaining order and peace through retaliatory punishment, and prospects and limits of mediation and reconciliation in individualized and heterogeneous societies.

In Halle, a particular emphasis is put on methods of ethnographic research, as well as retaliation and mediation in tribal societies. It focuses on retaliation, mediation and punishment as conflictive and/or integrative socio-legal strategies of exclusion and inclusion highlighting processes of conflict man-

agement ranging from the exercise of violence to reconciliation between formally equal social, political or organizational formations on various institutional levels, from kinship structures via state organization to the international level. Another course module covers normative ordering and retaliatory practices in plural legal configurations, global justice, cultural defence, the transnationalization of legal standards and the idea of retaliation, and the anthropology of retaliation (from an evolutionary model of blood feud to the conceptualization of the social working of the idea of reciprocity in normative ordering and conflict settlement, including colonial and postcolonial settings).

### *SUMMER AND WINTER UNIVERSITIES*

Twice a year, all doctoral students and faculty members convene during the so-called Winter and Summer Universities. This three- to five-day retreat is organized by the student body, usually on a rotating basis, i. e., students from one partnering MPI take the lead, with the help and guidance of the REMEP coordinators.

The Summer and Winter Universities are designed around a three-tier model:

1. Incoming doctoral students are required to present and defend their research proposals (15 minutes) and to answer questions and engage in discussions with the faculty and student body (30 minutes).
2. Second-year-students are expected to share their research results (30-minute presentation), which will then be discussed in a plenary session (30 minutes). The Summer and Winter Universities offer the students a plat-



REMEP Summer University 2014

(2014)

form to compare their research results on a cross-disciplinary basis with the results of their colleagues, while being made aware of the connections and discontinuities between social and legal developments. The relative quality of one's own concepts, methods and theoretical background is also tested.

3. All students in their third/final year may act as chairpersons and are expected to deliver presentations in thematic workshops on topics relevant to REMEP. In the past, a panel format has proved to be quite successful for these workshops. The students are asked to conceptualize their thematic workshops, to suggest guest speakers and to invite faculty members as both speakers and commentators. In preparing a workshop, students may seek direction and support from the faculty and the coordinators. The aim of the workshops is to contribute to theory on the role of retaliation, mediation and punishment for peace, social order and human security. Ideally, scientific publications should result from these workshops, such as individual papers or edited volumes.

The Winter and Summer Universities sometimes also comprise a teaching component delivered by the faculty members and internationally renowned guest researchers. The format of this component may vary from meeting to meeting as necessary.

#### *SOFT SKILLS SEMINARS*

During the academic year, the curriculum is complemented by soft skills seminars, e.g., on project management & trouble shooting, rhetoric and presentation skills, and academic writing. Each seminar is conducted by a pro-



Soft skills course during the Winter University 2012

(2012)

professional soft skills trainer. The trainings can be organized before or after a Winter/Summer University, but also take place on location at one of the partner institutes.

### THESIS SUPERVISION

The thesis supervision may vary in detail from one REMEP location to another. However, the standard form of supervision is the following: all doctoral students conduct their research under the supervision of two professors at one of the REMEP partner institutions. It is also possible for one of the supervisors to be an outside expert affiliated with another institution, e.g., the home university of the doctoral student.

In general, each doctoral student has a day-to-day supervisor, who is usually a senior researcher at the respective partner institution and who provides guidance to the doctoral student on a regular and informal basis. The doctoral student and the first supervisor jointly agree on who should be the second supervisor and the day-to-day supervisor.

The two supervisors and the day-to-day supervisor constitute the so-called Thesis Advisory Committee (TAC), which takes all relevant decisions such as the approval or rejection of the proposal defence, which usually takes place after the drafting of the research design, i.e., six to eight months after acceptance into the Research School. The TAC is also responsible, where applicable, for the approval of fieldwork plans. The doctoral student shall meet at least every half year with all members of his or her TAC in order to report on and seek guidance and feedback regarding the research of the previous six-month period and the research



Prof. Dr. Richard Rottenburg (left) visiting REMEP doctoral student Stefanie Bognitz in the field, Rwanda (2012)

planned for the upcoming half year. A written progress report to the TAC is due every year.

The Max Planck Society for the Advancement of Science does not confer doctoral degrees and titles. Therefore, all REMEP students are doctoral candidates at the partner universities or, in the case of some of the foreign doctoral students, at their home universities.

According to the pertinent rules of the partner universities on the conferral of doctoral degrees and titles ('Prüfungs- und Promotionsordnung'), both the first and (usually) the second supervisor grade the written thesis and examine the student during the oral examinations.

## REMEP IN FRANKFURT

The Max Planck Institute for European Legal History regards as one of its most important tasks contributing to the basic research in legal studies, social sciences, and historical humanities through historical research based on theoretical reflection in the field of law and other forms of normativity. Its research focuses on historical law *modi*, their constitution, legitimation, transformation and practice. Particular attention is paid to the positioning of 'law' in the field of other normative orders. The development of perspectives on global history enhances and extends the research tradition of legal history in Europe. Under the direction of Thomas Duve (since 2009) and Stefan Vogenauer (since 2014), the institute is now extending its scope to other regions. Global perspectives should help to overcome the analytical division of areas, to critically evaluate some fundamental assumptions of European legal history, and to present Europe as a global region from a legal historical viewpoint.

Many research projects are carried out with universities and research institutions in Germany and abroad. Guest researchers undertaking research residencies at the Institute provide it with a connection to a diverse range of environments for academic discourse. The Institute's research, publications, international graduate schools and co-operation initiatives make it a reference point for the national and international scientific community.

Current projects of particular interest for the topic of the IMPRS scientific agenda and training deal with the history of crime, criminal law and criminal justice, the development of state-based systems of formal punitive control and the politics of public order and public security from the Late Middle Ages to the early 20<sup>th</sup> century. Specific projects explore the legal responses to political crime and the formation of transnational criminal law and security regimes from the 18<sup>th</sup> century onward.

Senior Research Group Leader Karl Härter and various members of the scientific staff support the work of the REMEP students and participate in the curriculum by lecturing and holding seminars. The students are members of the Department for Social and Historical Sciences and the Faculty of Law

at the University of Darmstadt and the University of Frankfurt. Doctoral students can also graduate under the supervision of Thomas Duve at the Johann-Wolfgang-Goethe University of Frankfurt am Main and Karl Härter at the University of Darmstadt.

#### REMEP IN FREIBURG

Criminal law studies at Freiburg University School of Law focus on legal theory, comparative legal studies and (international) commercial criminal law. These three fields are closely linked with each other. In line with this strategy, research in legal theory focuses mainly on the analysis of the supranational foundations for legitimating criminal law, whereas comparative legal sciences study and compare specific regulations and the structural fundamentals of regulatory systems. Historical and philosophical aspects constitute the starting point for these considerations. Studies in (international) commercial criminal law concentrate on challenges and problems of criminal law occurring in a globalized and transnational economy. Research is based on legal theory, comparative legal studies and the empirical basis of criminal law; it profits greatly from the interaction with the MPI Freiburg. Because of the importance of basic research in comparative legal studies and (international) commercial criminal law, the University of Freiburg created a completely new branch of criminal law studies. In addition, the Freiburg University School of Law carries out intensive research in the fields of criminal processes and criminal sanctions and sentencing, which are of great importance in criminal practice. Close cooperation with the MPI for Foreign and International Criminal Law (MPICC) in Freiburg ensures additional synergistic effects.

The MPICC is dedicated to comparative normative and empirical research in the fields of crime, criminal law and criminal justice. The Institute consists of the Department of Criminal Law (Ulrich Sieber) and the Department of Criminology (Hans-Jörg Albrecht). Placed at the intersection of law and social sciences with a strong comparative focus, the research agenda of the MPICC is interdisciplinary in scope and international in scale. On this basis, the departments work together to address normative and empirical questions of crime, criminal law, and national, supranational and international crime-control policies. The goal is to understand the interdependencies of crime, crime control and criminal law, as well as to support worldwide the reform of criminal law and crime-control policies. The broad disciplinary scale and scope of the research agenda of the MPICC is reflected in the multidisciplinary and international composition of the Institute's staff, which comprises lawyers, sociologists and psychologists from different countries within and outside Europe. This interdisciplinary environment is facilitated by an international structure in which the major regions of the world are divided, for analytical purposes, into country sections. Within this structure, the expertise

of many decades of comparative research on criminal justice systems of the world has been accumulated. Present projects of the MPICC that relate to the topic of the IMPRS REMEP scientific agenda and training focus on the death penalty, hate crimes, drug markets, organized crime, terrorism and victims of war, as well as on criminal law and state crime, honour and criminal law, the implementation of the Statute of the International Criminal Court, and conflict resolution strategies in different cultural settings.

Doctoral students at the MPICC in the Department of Criminal Law graduate with the doctoral degree ‘Dr. iur.’ from the Faculty of Law of the University of Freiburg, where the directors of the MPICC hold an honorary professorship. Both directors participate in the curriculum of the Faculty of Law, lecturing each semester on criminology and specific fields of criminal law, holding seminars and participating in exams at the undergraduate and postgraduate levels. At the same time, Roland Hefendehl and Walter Perron, two of the professors of criminal law who hold chairs at the University of Freiburg, participate in the IMPRS. Walter Perron is also an external member of the Max Planck Society. Some doctoral students in the Department of Criminology graduate from the Faculty of Law with the ‘Dr. iur.’ title because criminology is based in the Faculty of Law of the University of Freiburg (as in most other universities in Germany). Others graduate from the Faculty of Philosophy with a PhD; this depends on the individual educational background of the student. Hans-Jörg Albrecht, the Director of the Department of Criminology at the MPI is also a member of this faculty. On this basis, all disciplines that are of relevance to research at the MPICC can be integrated in the doctoral education.

#### REMEP IN HALLE

The Institute for Social and Cultural Anthropology (ISA) at the Martin Luther University Halle-Wittenberg (MLU) focuses on contemporary developments related to new forms of globalization and localization, and hence on the emergence of a world society with transnational networks and all-embracing mediatizations. These developments raise new questions about old anthropological issues such as universalism and difference. The challenge of exposing the blind spots of Euro-American cultures by learning about other cultures is part of this contemporary process. Attempts at de-escalating conflicts and catastrophes inside and outside Euro-America also need to negotiate between, on the one hand, interventions (necessarily based on universal standards) in intolerable developments and, on the other hand, the potential for hegemony that these interventions represent. From a methodological point of view, social anthropology, as practised at the ISA, belongs to the qualitative and interpretive social and cultural sciences. Within this group of disciplines it sets itself apart via its central theoretical question: How is it possible to translate inaccessible alienity into intelligible alterity (from *alius*

to *alter*) without losing the difference in the process of doing so? The skilled processing of this paradox is the business of social anthropology. The three chairs of the ISA reflect this agenda in their further specifications. REMEP faculty member Richard Rottenburg currently works on ‘Law, Organization, Science and Technology’, Burkhard Schnepel on ‘Diaspora, Migration and Transnationalism’, and Thomas Hauschild on religion, politics and the geography of the Mediterranean and Europe.

The MPI for Social Anthropology concentrates on the comparative analysis of contemporary social organization and change with a view to anthropological theory building. It was established in 1999 by Chris Hann and Günther Schlee. Marie-Claire Foblets joined the Institute as its third director in 2012. More than 175 researchers work at the Institute, the great majority in one of its three departments: ‘Law & Anthropology’ (Foblets), ‘Integration and Conflict’ (Schlee), ‘Resilience and Transformation in Eurasia’ (Hann). In a joint set of interrelated questions, the research units analyse issues of integration and conflict, social identification, property relations, religion, forms of social security, economy and ritual, political economy of cultural heritage, historical anthropology and legal pluralism. Within this framework researchers address basic social problems and theory building in social sciences. Extensive fieldwork is an essential part of all research projects. Focal research areas are spread throughout Europe, Asia and Africa.

The MPI for Social Anthropology is embedded in an international research network. Since its foundation in 1999 it has developed alongside the neighbouring ISA to become the largest centre of anthropological competence and research in Europe. For many years now, the Martin Luther University Halle-Wittenberg and the Max Planck Institute for Social Anthropology have collaborated in a series of research projects on the basis of a broad cooperation agreement. Research projects addressing issues related to the IMPRS REMEP research design and training include those dealing with conflict analysis in settings where a background of segmentary social organization and clan or tribal structures interacts with the state. Furthermore, retaliation – particularly in processes of conflict regulation – within and beyond state normative systems in connection with transnationalism, religion and migration are being addressed in the Department ‘Law & Anthropology’.

Both the MPI for Social Anthropology and the Martin Luther University Halle-Wittenberg closely cooperate in the Graduate School ‘Society and Culture in Motion’ and the ‘Centre for Interdisciplinary Area Studies – Middle East, Africa, Asia’ (ZIRS). This includes the participation of the directors and senior staff in lecturing. Since 2010 the institutions have jointly organized a post-graduate course in social anthropology open to all PhD candidates. REMEP PhD students in Halle, being fully integrated into different research units at the MPI and ISA, have developed a strong internal cohesion and their own REMEP identity, and have adopted an academic culture of comparative and interconnected research.

**IMITERERE Y'UMURENGE WA GI**

<b>BIRANGA GISHAMU</b>	<b>UBUKINGU</b>	<b>UKWEZI KWA IMIYOTI</b>
UBUSO: 30,2 km <sup>2</sup>	1. GUHUZA UBUTAKA	GUKEM
ABATURAGE: 13423	-IMBOGA: 31/19 → 252%	BY'AB
UTUGARI: 4	-IBISHYIMBO: 608/300 = 206%	*INTEKO
IMIDUGUDU: 25	-IBIGORI: 144/150 = 98%	83%
AMAKURU: 2	-IMYUMBATI: 185/200	*UBUY
AMASHURI: 3	2. KURWANYA ISURI: 982%	126%
AYISUMBUYE: 3	3. GUTURAMU MIDUGUDU	*INTEKO
ABANZA: 6	*INGO: 1849/2950 = 62,6%	99%
IBIGONDERABUZIMA: 1	4. AMAKOPERATIVE AFITE UBUZIMA	
AMADINI: 4	GATOZI: 6/7	
IBITUNGA ABATURAGE	5. ABANYAMURYANGO	
1. UBUHINZI	BA SACCO: 3552/3468	
UBWOROZI: 99%	6. IMISORO NAMAHORO:	
UBUKORIKORI: 1%	37.684.670/33.066.384 = 113,9%	

# SHAMU MURI RUSANGE

ICICURASI 2011-2012  
DORERE  
MYIZA

## UBUTABERA

## IMIBEREHO MYIZA

WURA IBIBAZO  
MUTURAGE

1. KURANGIZA  
IMANZA

1. UBWISUNGANE MU  
KWINUZA: 99.7%

ABATURAGE  
83 = 100%

\* INKIKO ZISANZWE  
12/14 = 85%

2. KURINGANIZA  
URVBYARO: 71%

BOZI:  
100 = 100%

\* INKIKO GACACA  
86/1080 = 80%

3. IBYUMBA BY'AMASHURI  
12YBE: 5, E.P: 8

Z'ABUNZI  
115 = 86%

\* ABUNZI  
4/4 = 100%

4. AMAZUY'ABATI-  
SHOBOYE BACITSE  
KU ICUMU RYA  
JENOSIDE: 4/4  
5. KUBAKIRA ABA-  
TISHOBOYE BAVUYE  
MURINYAKATSI:  
197/197

# SCIENTIFIC OUTPUT

(IMPRS REMEP)

*The impressive list of publications that can be found at the end of this booklet exemplifies the important results that have already come out of the IMPRS REMEP and how actively the doctoral and senior researchers are involved in the Research School. During the first years of its existence (2008–2015), some 18 doctoral dissertations were finalized. Three international conferences were organized in different REMEP locations with the participation of doctoral students, not to mention numerous workshops that took place during the Winter and Summer Universities.*

## FINALIZED DISSERTATIONS

The results of the first finalized dissertations and the response they have found in academia and in the press are quite impressive. In June 2014, the Max Planck Society awarded the Otto Hahn Medal to Dr. Andreas Armorst for his doctoral thesis, *Jihadi Violence. A study of al-Qaeda's Media*, which he completed within the framework of the IMPRS REMEP. Armorst's thesis analyses claims of responsibility and video messages from jihadist movements. It was supervised by Prof. Dr. Hans-Jörg Albrecht, as well as Prof. Dr. Baldo Blinkert and Prof. Dr. Stefan Kaufmann of the Institute of Sociology, University of Freiburg. Julia Kassel's thesis, *Honour Killings in Germany, 1996–2005. A Study Based on Prosecution Files*, was widely quoted in the German media (TV, radio and press). Showing that culturally motivated honour killings usually receive more severe punishments than differently motivated killings, her work is today considered one of the most important studies on this issue.

Among these and other doctoral projects that have been finalized or are now close to finalization, five thematic strands have been identified by Prof. Dr. Dr. h.c. Hans-Jörg Albrecht in his 2012 report on the IMPRS REMEP.

## *CRIMINAL PUNISHMENT, RETALIATORY VIOLENCE, INTERACTIONS AND SOCIAL ORDER*

The first thematic focus lies on interactions between formal criminal law responses and (retaliatory) violence. Dr. Armorst's study analyses texts produced and distributed by a terrorist group and the narratives of why and how the application of violence is legitimate, functional and necessary. David Jensen's thesis focuses on the role of retaliatory gang violence and the impact various forms of official punitive and administrative responses can have. Cléssio Moura de Souza's almost concluded project focuses on the role of violence in the informal economies and social orders of the *favelas* of Rio de Janeiro. The responses to honour killings in Germany scrutinized by Julia Kassel provide an opportunity to look into how motives of violence (refer-

ring to retaliation, informal norms and cultural differences) are construed. Interactive processes are dealt with in Carolijn Terwindt's thesis, *Ethnographies of Contentious Criminalization*, in three regions displaying territorial, separatist and environmental conflicts. Legal responses to the Saxon Peasant Uprising of 1790 are analysed by Thomas Walter. Zahir Abdal-Kareem focuses on land-based conflicts and their settlement in eastern Sudan.

#### *MEDIATION AND RECONCILIATION IN COMPARATIVE PERSPECTIVE*

A second focus of research projects is a comparative perspective on the role of mediation, reconciliation and consent as seen from the angle of strictly formalized procedures and plural legal orders. The emergence of informal norms justifying sentence bargaining in German criminal proceedings is studied by Dr. Kiyomi von Frankenberg, while Meng-Chi Lien examines the insertion of mediation in the criminal process of countries displaying different legal cultures (Taiwan, mainland China and Germany). Severin Lenart's study addresses the dynamics of dispute processes in plural legal orders in South Africa and Swaziland. Another angle of the relationship between punishment and reconciliation emerges with Professor Juan Benito Cañizares Navarro's analysis of the development of rules in Europe to protect the honour and dignity of convicted persons against elements of criminal punishment that stigmatize and socially exclude them.

#### *VIOLENT PASTS, TRANSITION AND PATHS TO JUSTICE AND SOCIAL ORDER*

A third group of doctoral research projects assesses retaliation, mediation and punishment from violent pasts and/or from significant economic and political transitions; they also analyse the various paths which might be taken when re-establishing social order and ascertain acceptable ways of delivering justice and dispute settlement. Such questions are addressed by different research projects in regions where the state is either weak or virtually non-existent. Friederike Stahlmann's project, 'Disputing amidst Uncertainty', places a focus on disputes and dispute settlement on the ground and in communities, while Nathan Muwerezza studies the northern Uganda conflict from the perspective of how retributive and restorative approaches interact in a situation that was internationalized via a referral to the International Criminal Court. The role of various non-state actors and the invocation of rights are discussed in projects entitled 'The Promise of Access to Justice in Rwanda' (Stefanie Bognitz), 'Transitional Justice from Below in Colombia' (Gustavo José Rojas Paez), and 'Beyond the al-Anfâl in post-Ba'ath Kurdistan' (Fazil Moradi). These projects focus on actors, interest groups and victims, as well as on the use of national/international human rights law in the process of negotiating and implementing peace and delivering compensation. The processes and outcomes of organizing accountability and criminal

justice through community-based institutions are studied by Johanna Mugler in her thesis on post-Apartheid South Africa, a country still deeply divided along ethnic lines with vast inequality. Khurelbaatar Erdem-Undrakh's thesis on Mongolia offers an interesting opportunity to study the transition from an authoritarian criminal justice system to a system which falls in line with European and international normative standards.

*PUNISHMENT AND THE INTERACTION BETWEEN CONCEPTS OF INTERNATIONAL AND LOCAL ORDERS*

The fourth group of projects centres around the international legal and policy framework and its interaction with national and regional/local levels. Shakira Bedoya Sanchez's project, 'The Politics of Order', analyses the notion and meaning of punishment in international law. The question of how local, national and international levels of formal justice interact guides projects on the role of criminal law in reconstructing social order in Bosnia-Herzegovina (Lejla Rüedi) and the referral practices and patterns observed in the ICTY and the ICTR (Jennifer Schuetze-Reymann). Interactions between local conflicts and international mechanisms are examined in the field of international arrest warrants issued during ongoing and large-scale violence; the study of the potential of international criminal law to protect minorities is addressed in Inga Švarca's project on the role of the European Court of Human Rights as an external actor in resolving transitional conflicts that have arisen out of Latvian approaches towards the country's Russian minority. China's position towards the International Criminal Court and the Rome Statute is analysed in Chenguang Zhao's thesis from the perspective of legal culture and the responsiveness of legal cultures to international criminal laws that express a vision of international order. Finally, in Daniel Bonnard's project, a look back to war crimes trials in the French Occupation Zone in Germany (1945-1953) re-examines the onset of international criminal law practices.

*PUNISHMENT, SOCIAL CONTROL, REGULATION AND GOVERNANCE*

The fifth group of projects comprises studies that deal with the interplay between legal, economic and political rationalities in the regulation of corporate crime and how such processes form corporate criminal law and shape its practice. Among the finalized research projects, Jin Ling's thesis, *Compliance and Money Laundering Control by Banking Institutions in China*, analyses interactions between criminal law, administrative regulations and modes of self-control.

## CONFERENCE ‘ON RETALIATION’

Within the scope of REMEP, a series of international conferences has been organized to present and discuss recent research on the basic concepts of retaliation, mediation and punishment in a transdisciplinary setting combining anthropological, historical, international, legal and criminological perspectives and aiming at comparison. The first conference, ‘On Retaliation’, took place in 2011 at the MPI for Social Anthropology in Halle (see the details in the 2012 REMEP Speaker’s Report). A volume based on the conference proceedings has been submitted to Berghahn. The volume, co-edited by Bertram Turner and Günther Schlee, brings together recent developments in the research on retaliation in diverse disciplines in a coherent overview addressing the social consequences that recourse to retaliation may entail in various social circumstances. The contributions touch upon the interaction between retaliation, violence, the state’s monopoly on legitimate punishment, the repertoire of international sanctions, socio-political frameworks, individual dispositions, religious interpretations, historical developments, economic processes, deviant behaviour, social transgression and much more.



Photo from the conference ‘On Retaliation’

(2011)

## CONFERENCE ‘ON MEDIATION’

The second REMEP conference was held 4–8 February 2014 at the Max Planck Institute for European Legal History, with a focus on the concept of mediation. Invited experts and members of the Research School presented basic theoretical and empirical approaches as well as recent research and case studies on mediation with reference to the basic concept and to the disciplines cooperating in the REMEP program.

One of the main aims of the conference was to enhance the interdisciplinary dialogue on a subject matter that is intensely debated within different fields of knowledge, but often without taking into account the findings from other disciplines. Starting from the basic problem of the complex interrelations between retaliation, punishment and mediation, the conference explored the variety of actors, groups and conflicting parties resorting to mediation or acting as mediators in different constellations, ranging from central political/judicial authorities, states, global governance institutions, and transnational organizations to nongovernmental organizations, regional actors, ethnic or religious communities, kinship groups, and local, diaspora, expatriate and migrant groups. Within this broad field, one specific aim was to analyse the role and function of mediation with regard to the interdependencies, overlaps, tensions and collisions between acephalous societies (characterized by the absence of a central political authority or areas of limited governance) on the one hand, and nation-states and central authorities on the other hand.

The conference presenters discussed a variety of conflict scenarios related to social and economic conflicts, cultural diversity and diverging normative orders, violence, crime, and international conflicts. The use of mediation



Group photo at the conference ‘On Mediation’

(2014)

was described in situations that ranged from alternative dispute resolution in egalitarian societies to conflict management procedures in (post-)conflict societies, often embedded in plural normative configurations. Several presentations showed that mediation can influence or even challenge retaliation, punishment or formal legal procedures, and vice versa. On the other hand, it was shown that (private) parties not only resort to mediation, but can also use retaliation or the legal system to regulate conflicts, thus enhancing the actors' abilities to manoeuvre within or among these repertoires, especially under conditions of plural normative settings or cultural diversity.

As an outcome, the conference showed that mediation as a concept and a practice of conflict management and dispute resolution refers to institutional and normative hybridity as well as to plural normative configurations such as local or customary law, religious law, private or criminal law, or supra-national norms. Most of the conference presentations will be published in a co-edited volume by Karl Härter, Carolin Hillemanns and Günther Schlee.

#### CONFERENCE 'SURVIVING GENOCIDE'

From 10–13 December 2014, the IMPRS REMEP hosted the international conference, 'Surviving Genocide', at the MPI for Social Anthropology in Halle. One of the co-organizers was IMPRS REMEP doctoral student Fazil Moradi. The aim of the conference was to scrutinize the internationally acknowledged ways of dealing with the aftermath of acts of genocide and to discuss modes of representation that transform the survivors' suffering, coping and claims. Central questions were the limits of transitional justice mechanisms and punishment, the way mediation and reconciliation commissions reposition the question of the past, and the diversity of other forms of expression to make the unspeakable representable.

Invited speakers included social anthropologists and legal scholars already engaged in genocide studies and in the anthropology of violence, law and justice, as well as scholars from other disciplines such as art history and philosophy of art, and artists. They were asked to enquire into the representation of acts of genocide and experiences of such acts in the arts, mass media, law and episteme. Regardless of the different representational modes, the focus was on the translation of acts of genocide into visual and verbal expression. Presentations examined the ways in which poetry, painting, drawing, photography, film, music, literature/fiction, museum, memoir, academic writing, testimony, law and the discreet legal proceedings at national and international courts deal with the aftermath of acts of genocide.

Within this context, the ramifications of globally circulating modes of representation, power and gender relations, aspects of social insecurity, dominant political and historical narratives, the ambiguities and the limits of representations, ways of silencing and exclusion (who speaks for acts of genocide and who is silenced) and memorialization were of importance.

As an outcome, the conference investigated interdisciplinary approaches to genocide and showed that such an approach can contribute to more comprehensive and ethical ways of understanding the long-lasting effects and the transformation and complexity of acts of genocide.

The conference presentations will be published in a co-edited volume by Fazil Moradi, Maria Six-Hohenbalken and Ralph Buchenhorst, provisionally titled *Surviving Genocide: On What Remains and the Possibility of Representation* (Ashgate).

**International Conference**

## **Surviving genocide: on what remains and the possibility of representation**

10–13 December 2014



**Keynote Lecture | 10 December 2014 | 16:30**  
**Alexander Laban Hinton (Rutgers University, USA): "Trials of the Foreign"**  
**Venue: MLU, Graduate School "Society and Culture in Motion"**  
**Seminar Room | Reichardtstr. 6 | 06114 Halle**

**Conference | 11–13 December 2014**  
**Venue: Max Planck Institute for Social Anthropology**  
**Advokatenweg 36 | 06114 Halle | [www.eth.mpg.de](http://www.eth.mpg.de)**  
**Organizers: Fazil Moradi | Maria Six-Hohenbalken | Ralph Buchenhorst**

 Max Planck Institute for Social Anthropology  International Max Planck Research School on Retaliation, Mediation and Pacifism  OAW  isa  SOCIETY and CULTURE in MOTION

Conference Poster 'Surviving Genocide'

(2014)

## REMEP FACULTY

PROF. DR. GÜNTHER SCHLEE  
(SPOKESPERSON)

*Max Planck Institute for Social Anthropology,  
Department 'Integration and Conflict'*



Günther Schlee has been the Director of the Department 'Integration and Conflict' at the MPI for Social Anthropology in Halle/Saale, Germany since 1999. From 1986 to 1999 he held a professorship in Social Anthropology at Bielefeld University. He received his doctorate from Hamburg University with a thesis entitled *The Social Belief System of the Rendille: Camel Nomads of Northern Kenya*. His postdoctoral research, again based on field research in north-eastern Africa, resulted in his Habilitation thesis at Bayreuth University, which was later published as *Identities on the Move* (Manchester University Press, 1989). Characteristic of his research is a focus on interethnic relations and the combination of historical, sociological and philological methods. This approach is illustrated in his book *How Enemies are Made. Towards a Theory of Ethnic and Religious Conflict* (Berghahn, 2008).

PROF. DR. DR. H.C. HANS-JÖRG ALBRECHT  
(DEPUTY SPOKESPERSON)

*Max Planck Institute for Foreign and International  
Criminal Law*



Hans-Jörg Albrecht is currently Director at the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany. He teaches courses in criminal law, criminal justice and criminology at the University of Freiburg. He has been guest professor at the Center for Criminal Law and Criminal Justice at the China University of Political Science and Law and at the law faculties of Hainan University, Renmin University, Wuhan University, Beijing Normal University and Dalian Ocean University. He holds a life membership in Clare Hall College at Cambridge University, UK; a professorship and permanent faculty membership at the Faculty of Law of Qom Higher Education Center in Teheran, Iran. His research interests include sentencing theory, juvenile crime, drug policies, environmental crime, organized crime, evaluation research, and systems of criminal sanctions. He has published, co-published and edited numerous books on sentencing, day-fine systems, recidivism, child abuse and neglect, and drug policies.

PROF. DR. KEEBET VON BENDA-BECKMANN  
*Max Planck Institute for Social Anthropology*

Keebet von Benda-Beckmann is an associate of the Department of Law & Anthropology at the Max Planck Institute for Social Anthropology in Halle/Saale, Germany, and was formerly head of the 'Project Group Legal Pluralism' (2000–2012) at the same institute. Since 2003 she has been an Honorary Professor of Legal Anthropology at the University of Leipzig and since 2004 Honorary Professor of Legal Pluralism at the Martin Luther University Halle-Wittenberg. She has carried out research in West Sumatra and on the Moluccan Island of Ambon (both in Indonesia) and among Moluccan women in the Netherlands. She has published extensively on dispute resolution, social security in developing countries, property and water rights, and decentralization, and on theoretical issues in the anthropology of law. Together with Franz von Benda-Beckmann and Anne Griffiths she co-edited *Spatialising Law* (Ashgate, 2009) and, with Franz von Benda-Beckmann and Julia Eckert, *Rules of Law and Laws of Ruling: On the Governance of Law* (Ashgate, 2009). Together with Franz von Benda-Beckmann she wrote *Political and Legal Transformations of an Indonesian Polity* (Cambridge, 2013).



PROF. DR. THOMAS DUVE  
*Max Planck Institute for European Legal History*

Thomas Duve is the Managing Director of the Max-Planck-Institute for European Legal History and Professor for Comparative Legal History at the Goethe University Frankfurt. His research focuses on the legal history of the early Modern Age and the Modern Era with particular interest in Ibero-American legal history and the history of legal scholarship in the 20<sup>th</sup> Century.



PROF. DR. MARIE-CLAIRE FOBLETS

*Max Planck Institute for Social Anthropology,  
Department 'Law and Anthropology'*

Marie-Claire Foblets (Lic. Iur., Lic. Phil., Ph.D. in Anthropology) is Professor of Law at the University of Leuven (Belgium) and since 2012 also Director of the Department of Law & Anthropology at the Max Planck Institute for Social Anthropology in Halle/Saale, Germany. She has held various visiting professorships both within and outside Europe. She has conducted extensive research and published widely on issues of migration law, including the elaboration of European migration law after the Treaty of Amsterdam, citizenship/nationality laws, compulsory integration, anti-racism and non-discrimination, etc. In the field of anthropology of law, her research focuses on cultural diversity and legal practice, with a particular interest in the application of Islamic family law in Europe, and more recently in the accommodation of cultural and religious diversity under state law.



PROF. DR. KARL HÄRTER  
(LOCAL COORDINATOR OF THE  
FRANKFURT GROUP)

*Max Planck Institute for European Legal History*

Karl Härter is Senior Research Group Leader at the Max Planck Institute for European Legal History, Frankfurt/Main, Germany. Since 2007 he has been a Professor of Early Modern and Modern History at the University of Darmstadt. He studied history, politics, sociology and law in Frankfurt and Darmstadt and passed the First and Second State Examinations (1984 and 1986). From 1987 to 1990 Professor Härter was a researcher at the Institute for European History in Mainz, Germany. He received his PhD in 1991 and his Habilitation, as well as an adjunct professorship, in 2002. Since 1991 he has been teaching history at the Universities of Darmstadt and Cologne. His research interests focus on early modern and modern legal history, the history of crime and deviance, criminal justice, public law and constitutional history.



PROF. DR. ROLAND HEFENDEHL

*University of Freiburg*

Roland Hefendehl was born in Freiburg in 1964. He studied law and did his clerkship (*Referendariat*) in Berlin and Freiburg. He obtained his PhD and his Habilitation from the University of Munich. From 1999 onwards he was professor at the universities of Berlin and Dresden. Since 2004 he has been Director of the Institute of Criminology and Business Criminal Law at the University of Freiburg. His research interests focus on (business) criminal law, criminology and crime policy.



PROF. DR. WALTER PERRON

*University of Freiburg*

Professor Dr. Walter Perron was born in Worms/Rhein in 1956. He studied law in Mannheim and Freiburg, where he obtained his PhD and Habilitation. Between 1993 and 2002 he worked at the Universities of Tübingen, Konstanz and Mainz. Since 2003 he has been professor at the University of Freiburg, where he was the Deputy Dean of the Faculty of Law from 2004 to 2006 and the Dean from 2006 to 2008. Professor Perron is Deputy Speaker of the International Max Planck Research School for Comparative Criminal Law. His research interests are comparative criminal law and criminal procedural law.



PROF. DR. RICHARD ROTTENBURG

*Martin Luther University Halle-Wittenberg*

Richard Rottenburg holds a chair in anthropology at the Martin Luther University Halle-Wittenberg. For the academic year 2014/15 he was Heuss Professor at the New School for Social Research in New York. He directs a research group focusing on the anthropology of law, organization, science and technology (LOST). He has written numerous journal articles, books and edited books on economic anthropology, networks of formal organizations, the making of objectivity, biomedicine and governmentality, the making of anthropology, and on theorizing translation, experimentalization, quantification and governance. At the heart of his current work, inspired by renditions of pragmatist social theory, are the



emergence of material-semantic orderings and their institutionalization created in and through contingent ordering practices. The main objects of these inquiries are evidentiary practices (mainly experiments, test, measurements) and multilayered infrastructures, which can solidify and circulate evidence to confirm and to critique juridico-political assemblages. His latest publication, together with Sally Engle Merry, Sung-Joon Park and Johanna Mugler, is the edited volume *A World of Indicators: The Making of Governmental Knowledge through Quantification* (Cambridge, 2015).

PROF. DR. DR. H.C. MULT. ULRICH SIEBER  
*Max Planck Institute for Foreign and International  
Criminal Law*



Ulrich Sieber is Director at the Max Planck Institute for Foreign and International Criminal Law in Freiburg/Germany, professor and faculty member at the law faculties of the Albert Ludwigs University of Freiburg and the Ludwig Maximilians University of Munich, and guest professor at the Renmin University of Beijing, the Beijing Normal University and the University of Wuhan, China. He is the President of the German Association for European Criminal Law, member of the board of directors of the International Association of Penal Law (AIDP), Vice-President of the Association Internationale pour la Défense Sociale and the Speaker of the International Max Planck Research School for Comparative Criminal Law in Freiburg. His main areas of research deal with the changing face of crime, criminal law and legal policy in today's 'global risk society'. Major project areas concern comparative criminal law and European criminal law, especially with respect to organized crime, terrorism, economic crime and cybercrime.

DR. BERTRAM TURNER  
*Max Planck Institute for Social Anthropology,  
Department 'Integration and Conflict'*



Before joining the Max Planck Institute for Social Anthropology in Halle, Bertram Turner was academic assistant (assistant professor) at the Institute of Social Anthropology and African Studies in Munich (1993–2001), where he taught anthropology with a special focus on religion and legal anthropology. Having studied social anthropology, ancient history, physical anthropology and human genetics in Munich, he received his doctorate for comparative research on asylum and conflict in 1996. He has held university teaching positions

in Munich, Leipzig and Halle. He has conducted extended field research in the Middle East and North Africa, Germany and Canada. Since 1996 his research interests in south-western Morocco include the management of natural resources, politics of resource extraction, entanglements of law, science and technology, Islamic activism, conflict settlement, and human security under conditions of plural legal configurations. He continues the latter field of research in Halle within the framework of the IMPRS REMEP, of which Turner was the local coordinator from 2008 to 2013. His research in Canada has a specific focus on faith-based dispute management and on processes of translation within the nomosphere, especially between Moroccans and Canadians of Moroccan origin.

Turner has published widely on the anthropology of law, religion, conflict, morality, development and resource extraction. Among his more recent publications are a peer-reviewed article, 'Neoliberal Politics of Resource Extraction: Moroccan Argan Oil' (*Forum for Development Studies*, 2014) and a co-edited volume, *Religion in Disputes: Pervasiveness of Religious Normativity in Disputing Processes* (Palgrave Macmillan, 2013). Another edited volume, *On Retaliation*, is in preparation with Berghahn (see above).

## SCIENTIFIC COORDINATORS

DR. DOMINIK KOHLHAGEN  
(GENERAL COORDINATOR)

*Max Planck Institute for Social Anthropology,  
Department 'Integration and Conflict'*

Dominik Kohlhagen studied law at the University of Hamburg, Germany, and anthropology at the University of Paris 1 Panthéon-Sorbonne, France, where he obtained his PhD. From 2010 to 2013 he worked as a researcher at the Centre for the Study of the Great Lakes Region (University of Antwerp, Belgium). Since 2014, he has been the coordinator of the IMPRS REMEP. His research focuses on legal pluralism in West and Central Africa. For the last five years, most of his work has concentrated on local justice systems and land rights in Burundi, where he has carried out extensive fieldwork. His recent publications include the monograph *Diasporas africaines et mondes du droit: Une anthropologie juridique d'une migration entre Douala et Berlin* (ANRT, 2013); a two-volume report called *Fields of Bitterness* (ICG, 2014), written for the International Crisis Group on land reform in Burundi; and *Concilier avant de juger*, a booklet on mediation in the local courts of Burundi, published by the Belgian NGO RCN Justice & Démocratie in 2015.



DR. CAROLIN HILLEMANS  
(LOCAL COORDINATOR, FREIBURG)  
*Max Planck Institute for Foreign and International Criminal Law*



Carolin F. Hillemanns joined the Max Planck Institute for Foreign and International Criminal Law in November 2007. During the first funding period of the IMPRS REMEP she successfully managed and coordinated the Research School (2008–2014). Since March 2014 she has been local coordinator and researcher at the MPICC. She obtained a *Maîtrise en Droit Public* from the University of Montpellier I (France) in 1995. In 1997, she graduated from Heidelberg Law School (Germany) and passed her bar exam in 1999. From 2000 to 2002 she was a research associate at the Chair of Professor D. Thürer, Institute of Public International and Comparative Constitutional Law, University of Zurich (Switzerland), where she received her doctorate in 2004. In 2002–2003 she was a Visiting Scholar at New York University School of Law (USA). In 2006 and 2007 she served as Executive Director of the International Criminal Defence Attorneys Association, Montreal (Canada). Her research focuses on transitional justice mechanisms. She has done presentations, research and publications in the fields of corporate social responsibility, international criminal law and policy, transitional justice, international human rights law, institutional law of the European Communities, democracy and federalism, globalization, and German constitutional law.



Drawing of an 18-year-old boy accused of involvement in more than 70 homicides, internment unit for adolescents in Maceió, Brazil (C. MOURA DE SOUZA, 2013)

POREM  
TOS!!!  
SALA SOA  
CRANIO Voa!!!

- PLANTRA
- 1- DEUS FAZ
  - 2- MÃE CRIAR
  - 3- NÓS MATAR

Vida Loka

MULTIÇÃO



SÓ OS DUCOS SOBREVIVER

QUIE  
ONVIVIO

SSO PEAS ALMAS DOS MEUS  
FRA. RESO SIM PARA QUE  
FOGO DO INFERNOM

PLORINGÃS  
SANGUINARIO



Signing an agreement after mediation, Southern Province, Rwanda (S. BOGNITZ, 2013)





Prison in Maceió, Brazil

(C. MOURA DE SOUZA, 2013)



# GROUP IDENTIFICATION AND RESOURCES CONFLICTS IN GEDAREF STATE, EASTERN SUDAN. WHO ALLIES WITH WHOM? WHY? AND HOW?

(ZAHIR MUSA ABDAL-KAREEM)

*Zahir Musa Abdal-Kareem is a Sudanese citizen. In 2000, he finished his Bachelor of Science in Sociology and Social Anthropology at the University of Khartoum, where he then worked as a teaching assistant. In 2010 he obtained his Master's from the University of Khartoum with a thesis titled 'Contested Land Rights and Ethnic Conflict in Dar Masalit, West Darfur State, Sudan'. Zahir Musa Abdal-Kareem entered the Max Planck Institute for Social Anthropology in Halle (Saale) in April 2010, and since June 2010 he has been a member of the IMPRS REMEP. His main focus is on the anthropology of conflict, identification in the course of land issues, anthropology of the state, and law and social control. Professor Günther Schlee of the MPI and Professor Musa Adam Abdul-Jalil of the Department of Social Anthropology at the University of Khartoum are his supervisors.*

The study investigates the issue of identification in relation to land-based conflicts in south Gedaref State, Eastern Sudan. This issue is classified within the topic of 'identification in the course of conflict situations'. The study is divided into two main general themes: land-based conflicts and the related processes of ethnic identification.

Processes of identification will be studied via nomad-sedentary relations and their connections to land issues in south Gedaref State. Issues like access to and use and management of land resources and the extent to which they take part in the onset of conflicts at the local level will be dealt with as well. On the one hand, conflicts between farmers and pastoralists, farmers and farmers, and pastoralists and pastoralists will be investigated. On the other hand, conflicts between owners of big mechanized farming projects versus 'farmers and pastoralists in Gedaref' will also be tackled.

Likewise, the different economic, administrative, political, and socio-cultural aspects underlying land-based conflicts will be taken into account. This study argues that the final outcome of what we see today, regarding the issue of farmer-pastoralist relations in this area, is automatically a combination of the abovementioned different aspects. This study presumes that, within the

context of Gedaref rural areas, some factors have necessarily played more significant roles than others. Key questions: are land-based conflicts affected by land overutilization? And thus, should the study put more emphasis on the issue of land management? Is this land overutilization, if it exists at all, triggered by demographic factors or by the realities that have been created by the introduction of the intensified technology in this area? However, more attention will be paid to the subject of conflict management rather than resource management. The question of how farmers and pastoralists deal with the issue of the access to the natural resources, land in particular, together with the overall socio-cultural structures within which they are imbedded will be handled as well.

Issues that are related to the crisis of governance in Sudan, including the autocratic leadership, corruption, inadequate national policies, and the use and control over resources at the national state level, will be examined. Accordingly, the study will relate the processes at the grass-root level to wider economic, administrative, and political contexts in which they are entrenched.

The question of the legal dimension of land issues and to what extent it has contributed to the emergence of the conflicts in this area will be scrutinized. Here, the study will examine whether there is a contradiction within the dominant pattern of the land tenure system in this area. More specifically, light will be shed on the two very important issues of the customary, as well as the statutory land tenure systems.

Other important aspects that are connected to the roles played by commercialization together with the expansion of both livestock and farming activities, including the introduction of mechanized farming projects, in Sudan will be addressed. Here, the questions of to what extent/ and how have farmers and pastoralists been integrated into the international world economy and what are the implications at the grass-root level will be considered. Concern-



Local chief chatting with one of his friends in his house, South Gedaref State, Sudan  
(Z. ABDAL-KAREEM, 2011)



Herders from Uuda Fulbe and Lahawiyyin Arabs, South Gedaref State, Sudan  
(Z. ABDAL-KAREEM, 2012)

ing the second issue, processes of ethnic identification, this study adopts the notion that focusing only on the issue of natural resources – land in this study – is not sufficient for an adequate analysis of the conflict phenomenon.

## IMAGINING A STATE AND NEGOTIATING IDENTITIES IN POST-CONFLICT SOMALIA

(FADUMA ABUKAR MURSAL)

*Faduma Abukar Mursal is a Swiss citizen. She holds a Bachelor's degree in Political Science from the University of Lausanne. In 2014 she received her Master's in African Studies from the University of Basel. Her thesis, 'Forced Migration and Transnational Justice', uses the example of Somali forced migrants in Cairo. In August 2014 she entered the IMPRS REMEP at the Max Planck Institute for Social Anthropology, Halle (Saale). Faduma Abukar Mursal is a member of the LOST group (Law, Organization, Science and Technology) at the Martin Luther University Halle-Wittenberg. She is particularly interested in state theories, violence, transnationalism, nationalism, state failure and formation, peace building, and transitional justice. Her first supervisor is Prof. Günther Schlee.*

This research project addresses the processes of state formation in southern Somalia. By drawing on extensive fieldwork in Mogadishu, it aims more specifically at exploring the ways in which Somali national identity is negotiated, (re-)defined, and contested in the context of 'state revival'.

# GENDER AND ART IN THE QUEST FOR PEACE. WOMEN'S INVOLVEMENT IN PEACE BUILDING AND THE ROLE OF ART IN PEACE PROCESSES IN SUDAN

(NADINE REA INTISAR ADAM)

*Nadine Rea Intisar is a German citizen. She holds a Diploma in International Development from the University of Vienna. Since June 2014 she has been a member of the IMPRS REMEP at the Max Planck Institute for Social Anthropology, Halle (Saale). She works as a member of the LOST group (Law, Organization, Science and Technology) at the Martin Luther University Halle-Wittenberg. Her research interests are in the fields of gender and feminist theory, conflict transformation, international peace building and peacekeeping, international law, and political and legal anthropology. Her first supervisor is Prof. Günther Schlee.*

The research focuses on the inclusion of women in conflict transformation in Sudan. It questions the role women leaders play in western Sudan, their role in the International Peace Building Mission's programs, their participation in mediation and negotiation, and their influence on their communities and particularly on 'traditional authorities' and 'traditional justice'. The research will look at this topic from a postcolonial feminist perspective, taking into account discourses of development, women's agency, and peace building.

# UNDER WATCHFUL EYES: CITIZEN VIGILANCE AND SECURITY IN POST-9/11 AMERICA

(KERRIN-SINA ARFSTEN)

*Kerrin-Sina Arfsten is a German citizen born in 1979. She holds a B.A. in Sociology and French (Bates College, ME, USA, 2002) and an M.A. in International Criminology (Institut für Kriminologische Sozialforschung, Universität Hamburg, 2009). Her research interests are governing security and*

*risk/privatization of security, security practices of the border, vigilantism, the relationships between state, law, and violence, the relationships between emotion, power, and resistance/dissent, the role of images in modern spectacles of crime and punishment/visual criminology.*

Kerrin's PhD research project explores how public vigilance is mobilized through state-initiated security advertising campaigns and employed as a technology of security government post-9/11. To this end, the first part of the project examines the official vigilance discourse. It analyses the mentalities and intellectual machineries that constitute the public as both an object and agent of government in the 'war on terror', as well as the specific tactics, techniques and programs that are deployed to actualize these rationalities in the course of people's everyday lives. It also analyses the material inscriptions of the campaign's rationality – its posters, PSAs, TV spots, etc. – which act upon the population. The second part of the project then explores how public vigilance as a cultural practice that seeks to institutionalize routine public watching in everyday life is appropriated, negotiated, or contested by the recipients of the vigilance message.

## THE POLITICS OF ORDER. AN ANALYSIS OF PUNISHMENT IN INTERNATIONAL LAW (SHAKIRA BEDOYA SÁNCHEZ)

*Shakira Bedoya Sanchez is a Peruvian citizen. In April 2008 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 28. Shakira received an LL.B. from the Pontifical Catholic University, Peru, in 2005. She was then admitted to pursue her doctoral studies at the Eric Castrén Institute of International Law and Human Rights at the University of Helsinki, Finland, where she studied for one and a half years. She is enrolled in the Faculty of Law at Freiburg University and was awarded a scholarship from the Max Planck Society. Her supervisors are Prof. Dr. Hans-Jörg Albrecht and Prof. Dr. Martti Koskeniemi, Director at the Erik Castrén Institute of International Law and Human Rights at the University of Helsinki, Finland. Shakira was a visiting scholar at the Lauterpacht Centre for International Law (University of Cambridge) from January to April 2011. In October 2011 she conducted research at the MPI for Social Anthropology in Halle.*

The sudden 'boom' in global criminal justice and the subsequent extension of principles and procedures of criminal law into the international realm are part of a broad historical era in which international law has turned to ethics. As such, punishment as a legal discourse is built on a universal and anti-formalist moral vocabulary, which currently functions on the premise of overwhelmingly Western ideas of criminal justice and international politics. Arguments in support of international criminal justice often refer to 'deterrence', 'national reconciliation', or recovering the 'dignity of the victims'. Yet these justifications are ambiguous; they are rarely articulated with sufficient concreteness so as to be able to measure their implementation in practice. First of all, it is not always clear that the pursuit of criminal trials is the most efficient means to effect peace and national reconciliation. As many diplomats have argued, the prospect of trials may aggravate conflicts and make settlement more difficult. In national societies, criminal law is usually justified by reference to the deterrent effect criminal punishment is expected to have. It is unclear whether any such deterrent effect may be assumed at an international level, especially if the trial is held by foreign judges at a geographically distant location. Studies on the attitudes of populations in the former Yugoslavia do not give much support to the view that an international trial might have a significantly positive effect on political reconciliation. The research project sets out to describe and provide an understanding of the current process of criminalization of international law and to present an assessment of the underlying conditions and rationale in which punishment generates, performs, and reproduces a particular form of political international order. In this framework, punishment is taken as a discursive institution, that is, as a set of narratives constructed upon legal and quasi-legal arguments about what, whom, and how to punish. In this view, it operates as a collection of 'active' categories and procedures with the capacity to 'speak of' the social world and deliver authoritative classifications. The objective of this research is to arrive at a reasoned account of how the mechanics of punishment are employed by international actors in a highly political international community and to discuss the effects of this criminalization on the construction of social political order. This investigation is interdisciplinary and aims to approach the topic of punishment in international law by looking beyond classic legal standpoints. As such, drawing from postmodern theory, it seeks to incorporate and combine angles from criminology, deconstruction theory, philosophy of law, and philosophy of culture.

# THE PROMISE OF ACCESS TO JUSTICE IN RWANDA

(STEFANIE BOGNITZ)

*Stefanie Bognitz is a German citizen. She holds a Magistra Artium in Social Anthropology, History of Arts, English and American Studies from Martin Luther University Halle-Wittenberg. Her M.A. thesis, 'Contesting Tongues. The Politics of Language Rights and Claims at an Afrikaans-medium University in South Africa', was written during an exchange with the Department for Sociology and Social Anthropology, Stellenbosch University, South Africa. In April 2011 she entered the IMPRS REMEP at the Max Planck Institute for Social Anthropology in Halle (Saale). She did her fieldwork in Rwanda from March 2012 until February 2013. She is especially interested in transitional justice, rule of law, legal aid, mediation, dispute, human rights, and civil society. Her supervisors are Prof. Richard Rottenburg and Prof. Sally Engle Merry.*

This ethnography addresses the implications of contemporary re-makings of legal institutions. The study considers repercussions of the aftermath of genocide and its legal redress. It argues that transitional justice mechanisms in post-conflict contexts, such as Rwanda, produce their own afterlife. Today the Rwandan justice system has become a site of continuous transformation, experimentation and juridification. The making of law gains momentum and has shifted the threshold of the justice system. Emerging legal institutions and involved actors reiterate past violence and injustice by investing in certain forms (of legal aid or dispute resolution in mediation committees). The study shows how these organizational forms and legal institutions are embroiled in a violent history and the hopes and anticipations of a better future.

The ethnographic fieldwork traces actors, complaints, and cases and their forms of inscription on the threshold of the Rwandan justice system. By resorting to the ethnographic method of extended cases, the research follows individuals in their tireless pursuit of rights and justice. Against the dynamics of gain and loss, beneficiaries and claimants have to mobilize persons and resources and develop competences. Given the need to navigate new institutional arrangements in local governance structures and the necessity to calculate transforming organizational assemblages of providing access to justice, actors' capabilities and strategies are put in focus. The analysis thus follows legal aid and mediation provided to actors on the threshold of the justice system.

In establishing legal aid and mediation as forms of organizing access to institutions of the justice system, Rwandan legislation and legal institutions are anticipated to right the wrongs of the past by including ordinary Rwandans

in the legal sphere. Focus groups of beneficiaries of legal aid and disputing parties in mediation committees include, but are not limited to, the poor, elderly, widows, divorced spouses, children, genocide survivors and orphans, returnees and repatriates, or simply peasants. The study is also an attempt to consider the capacity of ordinary Rwandans or peasants in the making and analysis of legal institutions on the threshold of the justice system.

For both legal aid and mediation, the study traces genealogies of disputes which include, but are not limited to, access and rights to land, matrimonial regimes, succession, and securing land through disputing and titling. Such disputes often contain several layers of dissatisfaction or unarticulated feelings of injustice. The thesis shows how claimants recur to general forms (accepted, abstracted) by tracing dispute transformations from ‘real’ to ‘processed disputes’. How are disputes made in legal aid and mediation?

The thesis shows how the global travelling model of mediation as an informal and alternative form of dispute resolution is translated into a post-conflict context as a mandatory organizational extension of the justice system which relies upon voluntary mediators – mandatory voluntarism, which can be generalized for other contemporary forms of Rwandan legislation and policy-making. Mediation in the Rwandan context is not necessarily an alternative mechanism of dispute resolution, but a legal fix responding to the need to make the justice system accessible in order to settle disputes of claimants in precarious conditions. At the same time, legal aid and mediation – because of their situational flexibility and openness to negotiation as such – hold a certain promise with regard to the Transformation of social relations of disputants (Bush and Folger 2005) and in their orientation towards the future



Mediators praying before hearing claims, Southern Province, Rwanda

(S. BOGNITZ, 2012)

(Menkel-Meadow 2004). Both evoke hope for peaceful social relations and integration as a core anticipation of social ordering.

In showing how legal institutions rely on confirmation and critique, the study follows actors in their critical capacity to confirm or challenge institutions. The empirical material shows that formalization and institutionalization of access to justice in Rwanda not only provide spaces for collaboration and critique but make actors seize competences creatively. However, it also suggests caveats of legal aid and mediation as forms to reorganize the justice system into an inclusive, user friendly, pro-poor, and all-embracing institution. The promise of access to justice comes with the belief to ease the enormous gravity of juridification and remedy the exploit of legal means. But on the contrary, it reinforces the making of law as a promising vision of inclusive citizenship (legal citizenship) and equal participation through legal rights, their enforcement, and accessibility. Thus, providing access to justice and the reinforcement of law promote and provoke each other.

The overall PhD project contributes to pragmatic social theory and shows what actors (ordinary Rwandans) can do with the assistance of legal aid and which creative and critical capacities actors develop in mediation. Depending on these capacities and on itineraries chosen to pursue on the threshold of the justice system, legal aid and mediation can be mutually interconnected and collaborate with regard to the making of cases and prevention or creation of disputes.

The thesis shows how (re-)creations of trust and integrity, compassion, hope, and social cohesion are inscribed in legal institutional designs in order to provide for spaces of participation through the evocation of legal justice. '[L]egal instruments appear, [...] to offer a means of commensuration: a rep-



Mediators and disputing parties during a field visit, Southern Province, Rwanda  
(S. BOGNITZ, 2012)

ertoire of standardized terms and practices that, [...], permit the negotiation of values and interests across otherwise intransitive lines of difference' (Comaroff and Comaroff 2006: 11). However, the thesis also accounts for what Habermas calls the 'crisis of juridification'.

This process of social ordering through the making of law and juridification shows how legal aid and mediation are ever incomplete attempts to produce more predictability of or certainty in the justice system with regard to the outcome of disputes and pacification of social relations. Thus, social ordering may have unintended consequences that provoke yet new anticipations of social ordering.

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Hearing a witness during mediation, Southern Province, Rwanda

(S. BOGNITZ, 2014)

# WAR CRIMES TRIALS IN THE FRENCH OCCUPATION ZONE IN GERMANY (1945–1953)

(DANIEL BONNARD)

*Daniel Bonnard is a Swiss citizen. In April 2010 he was admitted to the IMPRS REMEP at the MPI for European Legal History at the age of 26. He received an M.A. in Early Modern History from the Philipps-University Marburg, Germany. Until October 2013 he was funded by the MPI for European Legal History and was also working at the International Research and Documentation Center for War Crimes Trials (ICWC) at the Philipps-University Marburg. He is enrolled as a doctoral student at Marburg University. Eckart Conze, Professor of Early Modern History at Marburg University, and Prof. Dr. Karl Härter are his supervisors.*

After the Second World War, between 1946 and 1953, the French Military Government Courts convicted 2,130 nationals of the defeated Axis Powers. The trials were based on the Allied Control Council Law Number 10 and concerned staff of concentration camps, members of the Gestapo and police forces, as well as industrialists. The project is based on the analysis of court records, collected and structured with the help of an electronic database. Political sources (Generalia) and private records of legal actors will complete the study. A survey of the verdicts allows one to systematize three complexes of crimes:

- crimes related to concentration camps and sub-camps
- crimes related to forced labour
- crimes committed by state officers, in particular, by policemen and guards

In the trials, the judges applied diverse norms to adjudicate these crimes, but the verdicts were influenced by other factors such as the status of the victims or the hierarchical position of the perpetrators. The project aims at the analysis and explication of these heterogeneous court practices dealing with war crimes and crimes against humanity. A basic assumption is that the jurisdiction of the special tribunals was a result of the occupation of Germany and Germany's subsequent loss of sovereignty. Furthermore, the political character of this jurisdiction could be seen as constitutive. In this respect, the study understands the Allied tribunals as a type of legal discursive arena in which retaliatory conflicts occurred with regard to the atrocities committed against French citizens. With regard to the performative, narrative and medial dimensions of the trials, the study asks how the French legal authorities dealt with Nazi crimes within this framework and addresses the following questions:

1. How did the French prosecutorial program emerge? Which international criminal law norms were applied by the French government tribunals?
2. What role did the Vichy-Syndrome (Willis) play? How could the need to distance France from the politics of wartime collaboration have been related to the thoughts and actions of legal actors during the proceedings?
3. How could the need to forge a (founding) myth of a judging nation be related to the experience of legal actors?
4. What was the frame of reference of the legal actors? How did they refer to the experience of the military justice in France and to the American and British prosecution of war crimes in Germany?

The study focuses on the mentalities and practices of the prosecutors using selected trials in which defendants were accused of crimes against humanity. Exemplary case studies will explore the theoretical background of the prosecutors and their legal practices in court. The study makes use of historical discourse analysis to deconstruct norms, institutions, and practices of the war crimes trials. As a result, the project lays emphasis on the interplay of relationship between non-judicial discourses and courts and pays special attention to the role of experts' reports in the construction of legal knowledge about Nazi violence.

## COMPETING PRACTICES IN CONFLICT? HOW NOMADIC FULBE IN THE FAR NORTH PROVINCE OF CAMEROON (B)ORDER THEIR WORLD

(AB DRENT)

*Ab Drent is a Dutch citizen born in 1977. In 1998 he did his undergraduate degree in Development Studies at the Wageningen University. He continued to study anthropology and the ecology of natural resource management. For his Master's he followed nomadic Fulbe in Cameroon over the course of ten months to study their mobility. The resulting multi-disciplinary thesis was awarded with the Wageningen University Thesis Prize in 2005. After graduating from university he worked as a consultant for an 'Art Science' project in Cameroon and Nigeria, organizing fieldwork and filming. Since April 2008 he has been a PhD candidate at the IMPRS REMEP at the Max Planck Institute for Social Anthropology in Halle. From January 2013 until February 2015 he managed a veterinary research project in Cameroon for the Department of Preventive Veterinary Medicine at the Ohio State University.*

Turning common resources into seasonal social spaces – an analysis of the seasonal management of common resources and rhythmic conflicts in the Far North Province of Cameroon

Mainstream scientific- and political discourse suggests that conflicts between farmers and transhumant pastoralists are increasing. It is also claimed that ‘a tragedy of the commons’ comparable to the fate of Hardin’s herders, who shared a meadow and were forced to deplete it, is unavoidable. Social scientists, on the other hand, are frequently heard opposing these claims. According to them, relations between pastoralists and settled people have always alternated and still are alternating between cooperation, competition, and conflicts. Moreover, common resources are not open to everybody at any time, but their access and use is regulated by institutions and multiple legal and normative systems. However, both parties fail to support their claims with data, not in the least because of the heterogeneous nature and lack of clear definition of resource conflicts and the remote areas in which they take place.

The objective of this PhD research is to support the claim that common resources are not the same as open access resources and that though conflicts form an integral part of common resource use, they are not necessarily a tragedy. To do this, the thesis will present extended case studies in three areas in the Far North Region of Cameroon in different seasons. These areas have different socio-political histories and ecological conditions but their bush land is commonly shared and accessible for seasonal users, like transhumant herders and fishermen or migrant farmers.



Farmer and herder on a field, Northern Cameroon

(A. DRENT, 2009)



Customary court of a canton chief, Northern Cameroon

(A. DRENT, 2009)

Conceptually, the thesis will build on the claim of Lefebvre that space is socially produced. It will describe how in rural semi-arid areas with common resources social spaces are locally re-created every year out of interactions between (1) an attempt by the state- and development project authorities to impose their ideological or theoretical paradigm on a space, (2) the way that space is 'traditionally' perceived and used by local resource users in time and space, and (3) the environmental objects, and processes, in that space.

Local resource conflicts are in the end about two (or more) activities by two (or more) different actors or groups that cannot be done simultaneously in the same place. An analysis of the way users of common resources, the state, and the physical environment produce a shared seasonal social space will thus provide us with an accurate insight how resources are managed and how conflicts emerge and are solved.

In the case studies, a particular focus will be put on the role of the following four variables in the production of social space and the emergence of resource conflicts: 1. Ethnic identity and the spiritual-magic world, 2. the existence of plural legal systems 3. changing ideological or scientific paradigms behind state and development project interventions 4. The tension between rhythms and unpredictability.

In conclusion, this research shows that common resources do not necessarily end as a tragedy, but on the contrary shows under what conditions they can become a temporary, seasonal social space.

# NEGOTIATING THE ORDER, GAINING THE RIGHTS: THE CREATIVE USES OF LAW BY INDIGENOUS PEOPLES IN COLOMBIA FROM THE 16<sup>TH</sup> TO THE 20<sup>TH</sup> CENTURY

(KARLA ESCOBAR)

*Karla Escobar is a Colombian citizen. She is a historian and political scientist with a Master's degree in History from the Universidad de los Andes, Bogotá, Colombia and a Master's degree in History of the Hispanic World from the Universidad Jaume I (Castellón de la Plana, Spain). Currently, she is a doctoral student enrolled in the Law School at the Universidad de los Andes, and is conducting her research within the context of the IMPRS REMEP at the Max Planck Institute for European Legal History.*

This project seeks to identify the mechanisms used by indigenous groups in Cauca (Colombia), to claim collective rights from the authorities during the period from the 16<sup>th</sup> to the 20<sup>th</sup> century. The research project investigates the ways in which some indigenous groups actively participated in the construction of a particular social order, emphasizing especially their creative and strategic involvement of law within systems traditionally designed to oppress them.

A long-term perspective will provide a better understanding of the strategies that indigenous groups are applying today. It will also assist in reframing a history which views local communities as active participants in the construction of the new American order. Traditionally, research has given more voice to the hegemonic powers and rather little attention has been paid to the strategies undertaken by the local communities to adapt themselves to the new challenges imposed on them since the arrival of the Spaniards. Early on, leaders of indigenous communities implemented trading strategies based on the use of Spanish regulations, not just to obtain individual benefits but also collective privileges. This strategy actively contributed to the construction of a particular social order, which has usually been interpreted as a construction made entirely 'from above' with passive participation of the populations that were dominated.

This research posits that the question of how the so-called subaltern groups have participated in the construction of different hegemonic orders should be central both academically and politically. A look 'from below' not only

allows to review historiographical traditions, but identities worldwide. It is expected that these reformulations will have an impact on the law and its enforcement in the medium and long term, with real transformation in our immediate contexts. For this reason, the research will enrich the analysis about how social order is negotiated, constructed, maintained, and re-gained.

## INVOCATIONS OF RECIPROCITY AND PATTERNS OF ACCUMULATION OR WHY MEN RAID

(IMMO EULENBERGER)

*Immo Eulenberger, a German citizen, obtained a Staatsexamen in History and Philosophy/Ethics from the University of Leipzig, Germany, where he worked as junior lecturer for Social Anthropology from 2005 to 2007. He gathered data on violent conflict in North-eastern Africa from 2007 to 2010, including as coordinator of a cross-border peace building program for pastoralists. He then took up a PhD position at the MPI for Social Anthropology, enrolled at the University Halle-Wittenberg, did 19 months of further fieldwork (2011–2015) and is presently on parental leave with two children (since Nov.2013). Among his research interests are interrelations of patterns of inter-group conflict, resource use, accumulation, and ethics; space; ecology; pastoralism; local history; ideology; mythology; trans-Atlantic African religion (14 months of fieldwork in Cuba 1999–2002); and culturised conflict in India (fieldwork 2006).*

Retaliation, mediation, and punishment as key forms of human interaction and as concepts of interpretation are closely related to the notions of justice and reciprocity. With my research project, I intend to illustrate this relation for the case of a North-east African region where two very different socio-cultural models – traditional (semi-)nomadic pastoralism and the globalized modern system – meet.

This regional scenario gives opportunity to examine my hypothesis that we can identify the principle of reciprocity as a cross-culturally and trans-socially universal base for any concept of justice, be it in its positive form as recompense or in negative terms as retribution and retaliation, and that the different positions, viewpoints, and attitudes individual and collective actors might assume in this regard can be traced back to collective commitments and individual interests that configure the ways in which the reciprocity principle is interpreted and applied, but that even its most biased and

bold interpretations cannot possibly challenge or alter its universally agreed fundamental validity as normative yardstick of social action.

The mentioned two basic organizational and cultural systems shaping the social landscape in my research area, the Ateker region of the borderlands of Sudan, Ethiopia, Kenya, and Uganda, are extremely different in crucial dimensions: in regard to the patterns of production and exchange, of social inclusion and exclusion, internal and external conflict regulation, normative reasoning and behavioural ideals. The society of the pastoralist majority works, when left alone, without division of labour along professional lines, without hereditary positions of power or permanent political offices. Traditionally, the internal affairs of these communities are peacefully resolved through collective decision making based on open debate, the consensus principle and commonly accepted norms and beliefs tied to ethnic identity and gerontocratic authority, while external conflict is dealt with either in bilateral negotiations of the involved parties or through organized collective violence.

Attempts of national governments, international and local NGOs to gain control over or contain the inter-ethnic violence of pastoralist populations, as well as efforts to ‘modernize’ them and ‘eradicate’ their perceived poverty, have so far produced rather ambiguous results. My research explores the roots of these continuous failures. The involved nation states’ problems with corruption, rights abuses and political violence are well known and the involvement of ‘modern’ structures and actors in the violence has increasingly been highlighted. Yet to avoid shallow and stereotypic explanations, this project draws on research across disciplines to explore how exactly structure and



Ateker peace meeting, South Sudan

(I. EULENBERGER, 2008)

agency interplay in the production of both violent conflict and peace. It asks which conditions have the strongest impact on it, reconstructs the history of collective violence here, and revisits interpretations of livestock raiding and collective violence in view of data from over 1500 communications recorded in the region in over 40 months of fieldwork. This includes quantitative inquiries into the role of punishment, retaliation and rewards in pastoralist warriors' motivation to expose their lives to the lethal risks of inter-ethnic warfare and to inflict serious damage on others.

At the first level, this study looks at how practices are informed by identification patterns constituting a cognitive landscape of social distinction, and how this translates into patterns of accumulation and redistribution, of cooperation and solidarity producing a historical arena of interaction of mutable social units with contrasting claims on and conflicts over resources.

On the second level, these findings are related to the landscape of discourses accompanying action and institutionalized practice, and especially to their normative elements that can help identifying different ethical concepts which, on their side, inform individual action and collective practice alike.

The third level frames the results into a comparative context where the universality of the reciprocity principle can be traced through the socially determined difference in norms and praxis of interaction and, where analysis can justify it, ventures to conclusions and practical recommendations.

## SOME MERCY AND FEW RIGHTS? CONCEIVING SOCIAL AND LEGAL PLURALISM IN THE CATHOLIC CITY

(LUCIA FACCHINI)

*Lucia Facchini is an Italian citizen born in 1985. She obtained a Bachelor's degree in Languages and East Asian Studies from the University Ca' Foscari in Venice, Italy. After she interned at the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) in Nürnberg in 2011, she completed her Master's at the University of Osnabrück with a thesis titled 'Migration and Asylum according to the European Neighborhood Policy from 2003 to 2010'. Since October 2012 she has been funded by the Graduate School 'Society and Culture in Motion' at the Martin Luther University Halle-Wittenberg and collaborates with the IMPRS REMEP at the MPI for Social Anthropology. Her first supervisor is Prof. Marie-Claire Foblets.*



(L. FACCHINI, 2013)

The starting point of this project is an ongoing conflict related to indiscriminate evictions in a district characterized by high rates of international migration. Owners and tenants – regular and irregular residents alike – are in danger of being evicted from buildings slated for demolition. In this situation, relationships among actors seem to be conceived of in terms of a sort of ‘bundle of wrongs’, whereby both private actors and institutions are inscribed in reified schemes of mutual guilt. This raises questions about the extent to which the principles of transparency, participation, and appeal are implemented, and for whom. The housing question is used here as a lens through which contemporary factors of institutional, economic, and ethno-religious distress are explored, with a particular focus on the unsustainable political and economic capitalization of migration processes in contemporary Italy, such as Muehlebach 2012, Molé 2010, Herzfeld 2009, and the social and environmental impacts of housing and urban policies.

The study draws on recent ethnographies of neoliberalism in Italy and studies on local-level policy-making (Tosi and Vitale 2011; Lorenzetti and Rossi 2009), shifting the focus from the effects for the whole democracy of the extraordinary hurdles that migrants in Italy experience to attempts to gain basic political power. The thesis therefore questions how awareness and practices of resistance, if any, are raised against these dynamics of economic and politic denial. The responses of local actors to this officially dual, in fact multiple normative system, when the conflict emerges and hits what people call ‘home’, are at the core of this research.

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# 'ESTABLISHING AS COMPLETE A PICTURE AS POSSIBLE.' MEDIA AND TECHNOLOGIES OF TRUTH IN THE SOUTH AFRICAN TRUTH AND RECONCILIATION PROCESS

(ANNE FLECKSTEIN)

*Anne Fleckstein is a German citizen. In October 2012 she was admitted to the IMPRS REMEP. She studied cultural sciences and German literature in Berlin and Lyon. Prior to her academic work, she worked in the international cultural sector, at the French Embassy and for the Goethe Institute, where she was responsible for public relations. In July 2014 she became the press officer of the Burg Giebichenstein Art School in Halle. Until October 2014 she was funded by the MPI for Social Anthropology. Prof. Friedrich Balke of the University of Bochum and Prof. Richard Rottenburg are her supervisors.*

From 1996 to 2002, the Truth and Reconciliation Commission South Africa (TRC) launched a public national process of coming to terms with the past which was to mark the end of the apartheid regime and the beginning of a new democratic South Africa. Since the 1970s, the establishment of investigative and truth commissions had been common practice in times of political transition, especially in South American and African countries. Through its

ostentatious public character, however, the TRC in South Africa set new criteria for future designs of ‘transitional justice’.

The Ph.D. project examines which procedures, technologies, and media contribute to the constitution, authorization, and transmission of historical knowledge and paradigms of remembrance in the TRC. It traces the media and cultural technologies of processing ‘an act’ within the TRC (which forms the nucleus of a case of human rights violation) by following the operative track of single sample cases and, thus, seeks to understand how historical events and epistemological orders are established during a political transition. Fundamental to this perspective is the understanding of the Commission as a ‘dispositif’ (apparatus) which constitutes what is determined to be ‘true’. This Foucault-inspired approach seeks to emphasize the TRC’s high permeability for various cultural practices and technologies and, concurrently, the ephemeral establishment of institutionality. Based on the analysis of TRC documents, videos, and interviews, the project acts on the distinction of two domains: the visible and the invisible space, i. e. procedures which took place in the publically visible domain and internal procedures ‘behind the scenes’. The media and technologies of truth to be analysed comprehend administrative procedures, juridical practices, technical data processing, and cultural technologies, which form the conditions for the ‘truth-speaking’ in the hearing halls, the establishment of ‘cases’ and ‘acts’ behind the scenes, the various transmissions of stories up to the final report of the TRC, and the actions of the persons involved. These conditions also include technologies like e. g. enumerating, witnessing, selecting, deleting, translating, interrogating, advocating, or adjudicating, as well as material dispositifs (microphone, data-base, questionnaires et al.).

The common perception of the South African truth commission as having been a singular historical turning point, which was particularly promoted through the public hearings, is to be complemented by the significance of administrative, technical, and juridical procedures for the constitution of a ‘new’ historiography during a political transition, which places the Commission in an assemblage of historical continuities. The political relevance of the present thesis must be seen in the evaluation of the South African TRC as an experimental and, at the same time, paradigmatic form of dealing with political transitions which, nevertheless, emerged from a very specific cultural and local context. The implementation and practice of certain media and technologies which transmit, translate, and transform narratives into historical facts are of vital importance for the very existence and functioning of an ephemeral institutional body like the TRC. In order to understand how such political instruments establish epistemological orders and put into practice specific ideas of justice and national reconciliation, one has to look at its practical and technical conditions of functioning.

# THE INTERNET AS SOCIAL CONTROL MECHANISM

(ALEKSANDRE GLONTI)

*Aleksandre Glonti was born in 1990. He is a Georgian citizen. He obtained an LL.B. (2011) and a Master of Criminal Law (2013) from Grigol Robakidze University, Tbilisi, Georgia. In 2013 Aleksandre enrolled in Freiburg University. He is supervised by Prof. Dr. Dr. h.c. Hans-Jörg Albrecht and Prof. Dr. Walter Perron. From 2009 to 2010 Aleksandre worked as a volunteer analyst at the chief prosecutor's office in Tbilisi, Georgia. Since 2010 he has held various positions in the Ministry of Internal Affairs of Georgia, including Chief Specialist in the International Relations Department and Detective–Investigator of the Central Criminal Police Department. Today Aleksandre heads the Cyber Security and Cybercrime Research Center at the Georgian Association of Criminology. In particular, he is interested in the current state of the respective fields in the Caucasus region, as well as in the former member republics of the Soviet Union.*

Recent advancements in the field of cyber technologies have had a profound effect on social interactions. The Internet, with its omnipresence, has influenced the emergence of new forms of communication such as social networks, forums, blogs, dashboards, news feeds, and other types of online social media. The online nature of these sources of information attracts users from many different countries, uniting the world into a single ‘global village’ (MacLuhan 1964).

In this relatively uncontrolled continuum, people have invented new ways to control deviant behaviour. Online social control takes the form of exposing deviant actors and, via the internet, shaming and stigmatizing them. While at first glance this self-established phenomenon may appear to force people to conform to socially accepted norms, closer observation reveals that it usually ends up being transformed into a chaotic state of affairs which may most accurately be described as ‘mob justice’ or anarchy. This transformation may be attributed to different perceptions of deviance: as the Internet unites people from all over the world, there is no single accepted behavioural pattern. Thus, in the 21<sup>st</sup> century, we still have a ‘Stone Age’ on the internet – a place where everyone may express their thoughts without any recognition of principles of human rights, data privacy, and other normative regulations and without fear of state punishment. Moreover, the information on the Internet may bear a defamatory character. Regardless of whether this is true or false, negative effects remain the same in either case.

The aim of the dissertation project is to systematize types of shaming processes and to determine:

- 1) What are the aims of the internet shaming process initiator?
- 2) Why do spectators engage in the internet shaming process?
- 3) What are the consequences for the victims of internet shaming?
- 4) How can the shaming process on the internet be regulated normatively?

# REGULATING INSIDER TRADING. THE INTERPLAY BETWEEN ECONOMIC, LEGAL AND POLITICAL RATIONALITIES IN THE PROHIBITION OF INSIDER TRADING AND ITS ENFORCEMENT

(CSABA GYÖRY)

*Csaba Györy is a Hungarian citizen. In July 2009, he was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 29. He studied law, sociology, and philosophy at the ELTE University in Budapest and at the Humboldt University in Berlin. He holds a J.D. degree from ELTE Law School (2005). Between 2005 and 2008 he worked as a junior research fellow at the Department of Criminology at ELTE Law School, where he was a member of the Hungarian team of the second International Self-Reported Delinquency Study (ISR2). Between 2005 and 2006 he also worked as a legal analyst for Amnesty International in Brussels and Budapest. In 2007/2008 he was a guest researcher (funded by the German Academic Exchange Service) at the Institute of Criminological Research at Hamburg University (Prof. Scheerer, Prof. Krassman). He is a member of the Executive Board of the European Society of Criminology. In the context of REMEP, he is enrolled at the Faculty of Law at Freiburg University. Prof. Dr. Roland Hefendehl and Prof. Dr. Hans-Jörg Albrecht are his supervisors.*

Despite the processes of unification driven by globalization and ongoing efforts to fully integrate European financial markets, there are many elements in the structure, organization, and regulation of national financial markets that show remarkable perseverance. The differences in regulation appear not only in the ‘law in the books’ (density of regulation; scope of criminalization

of the breaches of financial regulation; procedural powers of enforcement entities; etc.), but also in the ‘law in action’ (enforcement intensity; allocation of resources within regulatory and enforcement agencies; exercise of prosecutorial discretion; etc.). The basic research question of the project is the following: what accounts for the differences in the scope of criminalization of the breaches of securities regulations and for the differences in enforcement intensity across different national financial markets? And how can these differences be measured? The research concentrates on insider trading, a form of securities fraud, as a case study. The hypothesis is that these differences are the result of the interplay of at least three factors: 1, the political and economic environment of financial regulation as a whole; 2, the status of criminal law and the relationship between civil or administrative and criminal enforcement; 3, institutional and organizational practices, recruitment processes, attitudes of officials in regulatory authorities and law enforcement agencies.

In the analysis of the interconnectedness of financial markets and financial regulation, the theoretical framework is based on the varieties of capitalism approaches in comparative political economy. When it comes to the research questions of whose ultimate subject the law is, however, two of the weaknesses of comparative political economy approaches prove to be particularly problematic: they share a tendency to ontologize the distinction between markets and institutions, as well as to focus on formal state institutions, which tend to disregard the social sources of state capacity. The research posits, however, that each legal system has an inner logic and a moment of inertia which is partly constituted by its dogmatic structure and partly by its application by the authorities and the courts. In this respect, the research project draws on the system theory approach in legal sociology, especially on the works of Gunther Teubner.

The first phase of the research involves the analysis of the development of insider trading regulations and case law in the context of the evolution of financial markets in Germany and in the USA. This also encompasses the analysis of all insider trading cases in the USA and Germany (both civil and criminal) from the period 1980–2010 (USA) and Germany (1995–2010) to establish trends in ‘everyday enforcement’.

This analysis was complemented with an empirical, qualitative study among regulators and prosecutors. It comprised interviews (53) with officials at regulatory agencies, prosecutors, attorneys, and compliance professionals as well as the documentary analysis of legal briefs, memos, testimonies, speeches, and other documents.

# CHANGING PATTERNS OF CONFLICT AND CONFLICT MANAGEMENT IN THE LOWER OMO VALLEY, SOUTHWESTERN ETHIOPIA

(KALEB KASSA)

*Kaleb Kassa is an Ethiopian citizen born in 1980. In November 2012 he was admitted to the IMPRS REMEP. He is funded by the MPI for Social Anthropology. He is enrolled as a doctoral student at the Martin Luther University Halle-Wittenberg. Prof. Günther Schlee is his first supervisor.*

This project investigates the changing nature of conflict and the mechanisms in which it has been handled in the pastoral areas of southwest Ethiopia. Taking into account a growing prominence of the Ethiopian state in shaping interethnic relations in the context of both conflict and peace, this project particularly focuses on examining how social order and stability in the region have largely been shaped by extrinsic interests and identities rather than intrinsic realities. The preliminary data suggest that in recent years the state-building and consolidation processes and the emerging development narratives in the Lower Omo Valley have introduced diverse lines of conflict among different actors over matters that cover various dimensions of humanity. In addition, conflict itself and the different strategies of reducing it are redefined in a way that they fit into the interests of the new actors and the po-



Fieldwork in Daasanach, Ethiopia

(K. KASSA, 2014)



Nyangatom and Kara attending a government organized peace meeting in Kibish, Ethiopia  
(K. KASSA, 2014)

liticized context in which they are operating. Finally, a strong reliance of the state on coercive strategies in managing conflict overlooked the importance of customary mediation and negotiation, on the one hand, and has set a green light for further conflict and retaliation, on the other hand, for the reason that it lacked a therapeutic component of reducing conflict.

The data for this project were drawn from an ethnographic fieldwork carried out among the pastoralists of Daasanech, Hamar and Nyangatom in South-Western Ethiopia in 2014. A combination of qualitative data collection strategies such as participant observation, individual interviews, case histories, focus group discussions, and general household survey was employed. The aim is to theorize on conflict and conflict management in the changing context of Lower Omo Valley.

## DOMESTIC VIOLENCE IN EAST JERUSALEM: ESTABLISHING GENDER JUSTICE WITHIN CONFLICTING LEGAL ORDERS

(SIRIN KNECHT)

*Sirin Knecht is a Swiss national born in 1986. She holds a B.A. degree in Anthropology and Geography from the University of Basel and a Master's degree in Anthropology of Transnationalism and State and in Geography from the University of Bern. For her master's thesis, 'Borders as an Instru-*

*ment of Structuring and Practices: Asymmetries of Citizenship on the Example of Palestinian Marriages in Israel/Palestine’, she conducted fieldwork in Ramallah for four months. Since May 2015 she has been a PhD candidate at the Free University of Berlin, conducting her research at the MPI for Social Anthropology within the context of the IMPRS REMEP. Her research interests include legal pluralism, international criminal law, transitional justice, state law, non-state law, (Islamic) family law, human rights discourses, conflict studies, and legal anthropology. Her supervisors are Prof. Olaf Zenker of the Free University of Berlin and Prof. Marie-Claire Foblets.*

In contexts of war and violent conflict, the perspectives, experiences, and specific problems of women are frequently neglected. Yet, women constitute a particularly vulnerable group that is often subjected to two-fold violence: first, the violence exercised by an occupying force or a sovereign state and second, by excessive forms of domestic violence exacerbated by male experiences of the first form of violence. This can be accompanied by a third level of violence in the sense of a patriarchal social order. Starting from this assumption, this project will investigate the multiple ways in which domestic violence among Palestinians in East Jerusalem is perceived, handled, contested, and legally addressed. The project thereby focuses particularly on an emerging call for ‘gender justice’ that makes reference to, and is embedded in, globally circulating human rights discourses. Such attempts to locally establish gender justice with reference to human rights regimes thereby turns out to be a highly complicated project, given the plurality of coexisting and conflicting legal and normative orders. This project will focus, on the one hand, on actors, interest groups, and experts, and on the other hand, on their usages of national and international human rights law in negotiating and implementing peace and delivering compensation – especially concerning women’s rights as a minority rights issue. In this process, local human rights experts play a crucial role in both academically studying human rights and in promoting these rights through a translation process into local practices of addressing domestic violence by means of the law.

Sirin’s project fits very well into the conceptual framework of REMEP, because it investigates how different social actors such as international organizations, the state, non-governmental organizations, local communities, families, and neighbourhoods make strategic use of retaliation, mediation and punishment with regard to domestic violence. The project will scrutinize the multiple interrelations between the prevailing local legal pluralism (including human rights discourses), in which legal processes of domestic violence take place and will consider the crucial role that experts play in this process through the promotion of human rights. Furthermore, this research project will contribute to the understanding of violence in the domestic context that is profoundly shaped by the ongoing and long-lasting Israeli-Palestinian conflict.

# THE GUARANTEE OF FAIR TRIAL PRINCIPLES IN ISLAMIC STATES. THE CASE OF THE ISLAMIC REPUBLIC OF AFGHANISTAN

(MANDANA KNUST RASSEKH AFSHAR)

*Mandana Knust Rassekh Afshar, a German and Iranian national, was born in 1976. She studied law at the universities of Frankfurt (Staatsexamen) and Paris (Maîtrise en droit international public). From 2005 to 2010 she worked as a researcher at the Max Planck Institute for Comparative Public Law and International Law (MPIL) in Heidelberg, Germany. Within the MPIL she was integrated in the working group 'Global Knowledge Transfer – Afghanistan'. She trained Afghan decision makers, civil society officers, and lawyers in fair trial principles and human rights. She is a member of the working group on Post-Conflict Justice in Africa and the Middle East. In addition to her research expertise, she has extensive teaching experience at the universities of Frankfurt, Freiburg, Mannheim, Iringa, and Kabul, and has published in the fields of public international law, human rights law, Islamic law, and transitional justice.*

The doctoral dissertation 'The Guarantee of Fair Trial Principles in Islamic States' systematically compares the guarantees of fair trial principles in different legal systems operating simultaneously in the Islamic Republic of Afghanistan. I analyse the principle of legality, the right to equality before the law and equal treatment by the law, and the prohibition of torture or cruel, inhuman, or degrading treatment or punishment in both post-conflict and non-post-conflict situations as seen in the case of the Islamic Republic of Afghanistan.

The research project explores the different fair trial guarantees in the normative and practical implementation of international law in Afghanistan, Afghan constitutional and criminal law, Islamic Law, and the traditional tribal laws of Afghan Pashtuns and Tadjics. My aim is to determine the different (and sometimes inconsistent) understandings of the right to a fair trial in Afghanistan. This objective will, in turn, help answer the question of how the various procedures must be structured with respect to the requirements of all four legal systems applicable in Afghanistan.

Currently, the co-existence of the various legal systems – against the backdrop of a post-conflict setting – is highly complex. On the one hand, the call to abide by internationally set minimum human rights standards will remain

unheard in a religious country based on tribal culture, like Afghanistan, when norms and principles that are deemed binding by the Afghan people are not considered in formal proceedings. On the other hand, the guarantee of fair trial principles requires a government and judicial system, which are based on the rule of law. The hypothesis is that without coming to terms with the wrongdoing of the former system, it is highly doubtful that the rule of law can be successfully established in a post-conflict state like Afghanistan. Therefore, the research results of the legal comparison serve as a ground for developing a procedural model of transitional justice in order to help Islamic states come to terms with past atrocities. Such a model that takes into account the specific needs and requirements of reconciliation and reconstruction processes in an Islamic state does not exist yet. Afghanistan is only one of many Islamic or Muslim majority states in transition from a regime of injustice to peace, security, and rule of law. Developing such a model of transitional justice is not only important for the guarantee of fair trial principles in Afghanistan but could prove useful for future transitional processes of other Islamic or Muslim majority states.

The analysis of the cultural and religious understanding of retaliation, mediation, and punishment in Islamic sanction systems is conducted by a comparative legal approach under consideration of criminological and anthropological methods. The results of this analysis provide a better understanding of the dispute regulations and the ideas of the establishment of social order through criminal law within Islamic countries. Based on these generated results, the dissertation harmonises the basic Islamic understanding of conflict resolution and international fair trial standards through developing model procedural rules for Afghanistan.

## BEYOND THE AL-ANFÂL IN POST-BATH KURDISTAN: ON THE FORCE OF MEMORY IN THE PURSUIT OF JUSTICE

(FAZIL MORADI)

*Fazil Moradi is a Swedish citizen. In July 2011, he was admitted to the IMPRS REMEP at the MPI for Social Anthropology at the age of 32. In 2010 he obtained a Bachelor of Social Sciences in Sociology, International Relations, and Gender Studies at the Universities of Uppsala and Gothenburg, Sweden. In 2011 he graduated with a Master in Social Sciences in Sociology, Middle East Studies, and Philosophy from the University of Uppsala. Fazil is*

*enrolled at the Martin Luther University Halle-Wittenberg and is funded by the Max Planck Society. Prof. Dr. Richard Rottenburg and Prof. Dr. Victoria Sanford are his supervisors. He conducted ten months of fieldwork between 2012 and 2015 in the Kurdistan region of Iraq. In December 2014 he organized the international conference 'Surviving Genocide: On What Remains and the Possibility of Representation' at the Max Planck Institute for Social Anthropology, Halle, Germany.*

The al-Anfâl operations as acts of systematic violence of the Iraqi Ba<sup>°</sup>athi state against the Kurdish rural civilian population as well as organized political opposition groups stand at the heart of the study. The name 'al-Anfâl' (literally, the spoils) is taken from the Qur<sup>°</sup>an (chapter/Sûrah 8). The study is the first systematic anthropological analysis of the al-Anfâl operations and the claims of memory and justice put forth by survivors and relatives of the victims in the post-Ba<sup>°</sup>ath Kurdistan region of Iraq.

The study challenges the historiography of the al-Anfâl, which is often only defined as 'conventional military operations and chemical attacks carried out between 23<sup>rd</sup> February until 6<sup>th</sup> September 1988'. The al-Anfâl is also interpreted as responsible for killing an estimated 182,000, women, children, and men, the destruction of 4,500 villages, as well as the displacement and the resettlement of 1.5 million Kurds from rural areas. In its verdict of the al-Anfâl trials, released in 2007, the Iraqi High Tribunal in Baghdad recognizes the al-Anfâl as acts of genocide, war crimes, and crimes against humanity.



Interview with Al-Anfâl survivors

(F. MORADI, 2012)

How best to come to terms with the memories and the spectacular violence of injustice inflicted during these acts of exterminatory violence has become a matter of concern for survivors and relatives of the victims, the Ministry of Martyrs and Anfâl Affairs, non-governmental organizations, and transnational activists in the post-Ba'ath Kurdistan region. While the Ministry and local and translational activists are repeating a narrative that remembers and produces the al-Anfâl as a collective memory, i. e. crimes committed against the Kurdish nation and homeland, and are actively pursuing international recognition of the al-Anfâl as genocide, survivors and relatives of the victims insist on and repeat their own multiple memories of loss and displacement and at same time claim legal, moral, and divine justice. As the political narrative homogenizes and writes the al-Anfâl as a finished and complete history and repeats it as a way of forgetting, the memory of survivors' repeats the al-Anfâl as incalculable, inexplicable, and heterogeneous – resisting closure – and projects itself towards another always-evolving future.

The research project examines the repetition and translation of memory of the al-Anfâl and its inexorable bond with justice in the post-Ba'ath Kurdistan. As the first interdisciplinary study it explores the ways in which survivors and relatives of the victims, the Kurdistan regional government, and civil and political activists are engaged in the processes of repetition and translation that alters memory as well as entwines it with justice, including reparations in proportion to the harm endured during and in the aftermath of the al-Anfâl. It discusses how audio/visual representations, mournful music and songs, theatrical staging, and verbal repetition (i. e. annual remembrance days) multiply, make visible, and communicate the memory of the al-Anfâl.



Survivors revisit death camp, Topzāwā

(F. MORADI, 2012)



Ceremony of returned mortal bodies

(F. MORADI, 2012)

In addition, it focuses on how these acts of repetition marginalize survivors, in particular women, transform them into clients, subjected to economic policy of politics of membership in political parties in the region, and produce or write the al-Anfâl as ‘infinitely public’.

Survivors and relatives of the victims invoke memory as a responsibility marked with and not thinkable without justice. The research thus engages with how this memory enters other domains where it is repeated and multiplied independently of the survivors. The repeated memory, however, obligates the newly configured Federal Iraqi State and, in particular, the Kurdistan regional government to assume accountability and responsibility for the crimes committed by the previous regime. Therefore, memory tinged with responsibility and justice, as an evolving future order, confronts the past order of exterminatory acts of violence of the Iraqi Ba<sup>°</sup>athi as well as the desired future order of the Kurdistan regional government. Thus, the study is concerned with the diverse ways in which the al-Anfâl genocide is repeated or translated. It raises questions such as: Whose genocide is the al-Anfâl? In what ways is the al-Anfâl enunciated and remembered? What and who (female/male) is remembered? How is the memory of the al-Anfâl repeated? Who (male/female) is allowed to speak about it? To what end and to whom do they speak? Finally, the research examines how the memory of the al-Anfâl is displaced and exhausted in the region, and yet how it continues to harbour responsibility and remains the only force in the pursuit of justice.

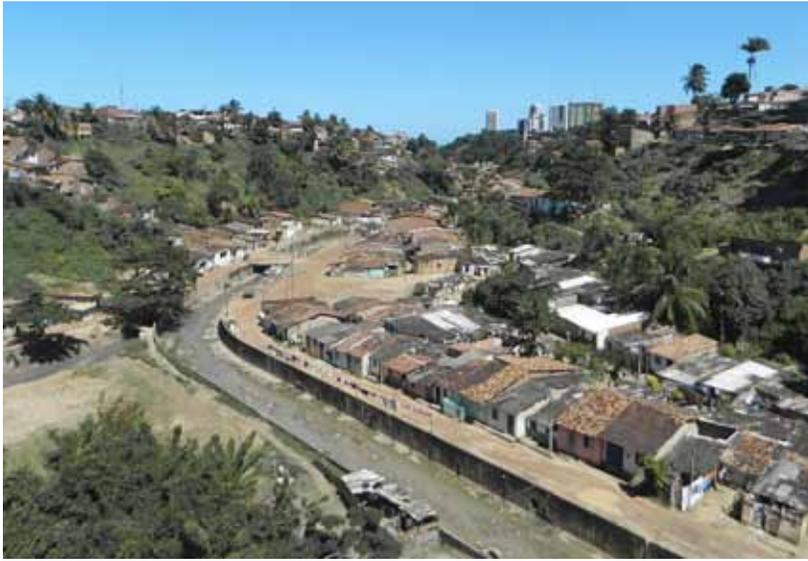
# YOUTH AND VIOLENCE IN BRAZIL: EXPLORING YOUTHS' NARRATIVES ABOUT STREET VIOLENCE RELATED TO DRUGS AND SOCIAL ORDER IN BRAZIL'S MOST VIOLENT CITY

(CLÉSSIO MOURA DE SOUZA)

*Cléssio Moura de Souza is a Brazilian citizen. In October 2011 he was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 31. He obtained an LL.B degree from the Pontifical Catholic University of Rio de Janeiro, Brazil in 2006, and an LL.M degree from Freiburg University in 2011. He is funded by the Max Planck Society. He is enrolled at the Faculty of Law at Freiburg University. Prof. Dr. Hans-Jörg Albrecht and Prof. Dr. Walter Perron are his supervisors.*

Street violence in Brazil has been increasing in the last years and youths represent the majority of victims and perpetrators. These tendencies have been shown by national and international studies in which violence is measured using homicide figures. The studies have been very useful for scholars to identify where and how violent acts occurred as well as profiles of the victims. In the particular case of Brazil, the study *Mapa da Violência* emphasized the existence of a direct link between the increase of homicides, involvement of youths in criminal activities, and the use of fire arms. Yet, the mass media report daily on people being robbed, beaten, and murdered in the streets and on armed confrontations between criminal groups to maintain or gain the control over drug trafficking areas. In response to these facts, the government invests in police forces in an attempt to re-establish social order and to win areas back, which are considered to be domains of criminal groups and organized crime. Within this context, the important question emerges regarding the process through which youths become involved in street violence – considering individual development, criminal life, environment, social rules, groups, family, and ties that motivate or enforce youths to be part of criminal groups.

With a population of 932,748, Maceió is the 14<sup>th</sup> most populated regional capital in Brazil (among 27 capitals) but it holds the first position in homicide rates since 2008. In 2014, the Organization *Seguridad Justicia y Paz* published a list with the 50 most violent cities around the World in 2013 and Maceió was in 5<sup>th</sup> position in this ranking, behind four other Latin-American



Grotta Vale Do Reginaldo, a shantytown in Maceió (C. MOURA DE SOUZA, 2013)

cities. Maceió is the first Brazilian city in this ranking and confirms the results of the latest studies of *Mapa da Violência*, in which the city is marked as the most violent place for youths (between 15 and 24 years) and adults (over 25 years) since 2008. To explain this phenomenon in Maceió, the study *Map of Violence 2008* suggests that some cities are experiencing rapid industrial growth, which in turn attracts an influx of workers, including a substantial amount of young people. As the number of would-be workers arriving in the cities often exceeds the available work opportunities, a vast number of unemployed youths without qualification are not able to enter the formal labour market. Without a perspective to find work in the formal market, youths are attracted to informal or illegal activities, such as selling drugs, producing and selling illegal copies of CDs and DVDs, physical tasks in which they have to work as bricklayers' assistant, or transporting things into the markets and on the streets of the city.

*Favela, comunidade, morro* and *grotta*, are examples of specific terms used to designate stigmatized communities or neighbourhoods in Maceió. Those parts of cities are known to be dangerous or prohibited areas, which people have to avoid due to the many brutally violent acts taking place there. Those areas became the perfect spot for drug business, since there is a large amount of unoccupied youths on the streets waiting for an opportunity to gain status, identity, recognition, and money. Drug trafficking brought new values and rules to the streets and violent acts emerged as the most effective tool to manage the relation among people in those areas.

This is an ethnographic study based on participant observation, in-depth qualitative interviews with male youths, who had intense contact with street



Cidade Sorriso, a poor neighbourhood in Maceió

(C. MOURA DE SOUZA, 2013)

violence, and also expert interviews. Judicial and police reports were also collected and they will be used as a secondary data source. All data were collected during the seven months (from January until July 2013) in Maceió.

The main objectives of this study are to identify processes that cause male youths to be involved in street violence in Maceió, emphasizing risk factors such as individuality, family, peers, school, and community; to examine the role the violence plays in criminal groups and the social order on the streets of Maceió; and to observe the relation between youth street violence and urban areas of the city. Other important points of the study are the investigation of the ‘universe’ of drug trafficking, understanding why this business has become so attractive for youths, and examining how the street violence is related to drug dealing and trafficking and how can it be used as an instrument of punishment in order to establish social control in the communities.

## BOUNCERS AND THE (RE-)ESTABLISHMENT OF ORDER

(CHRISTINE PREISER)

*Born in 1985, Christine Preiser is a German citizen. She started studying sociology, political sciences, and European ethnology in Tübingen (2005), then transferred to the University of Freiburg (2006), where she contributed to several qualitative research projects on migration, bank systems, and security. She obtained the degree of Magistra Artium in 2011 and started work-*

*ing at the University Hospital Tübingen. There she conducted two qualitative research projects, established a monthly colloquium on qualitative methods, and has been giving workshops on qualitative methods. In January 2013 she started her PhD project and entered the IMPRS REMEP. Her research interests are social order, public and private security, qualitative methods, urban space, and nightlife.*

Scientific literature and pop-cultural documents equally describe nights in a nightclub as a complement to daily routines and constraints. The nightclub is depicted as an urban playground where guests aim at – temporarily – losing control, experiencing excess, and completely letting themselves go. Still, nightlife itself is highly regulated, on a formal level by licensing laws, opening hours, periods of rest, or drinking bans for (certain) urban areas; and on an informal level by ordering characters such as bouncers. Bouncers are the Cerberus of nightlife. Setting, enforcing, and negotiating rules belong to the daily routines of their occupation. They shape nightclubs as public-private spaces of limited freedom of access and behaviour and thus have a direct and indirect influence on people's leisure time activities.

They play an important role in popcultural reports, often without being mentioned explicitly. The same holds true for scientific research where bouncers stay almost invisible in the versatile body of literature on night-life. Scientific research on bouncers took place in countries such as Great Britain, the USA, Canada, and Australia, but no research has been conducted in Germany so far. This dissertation will bridge the gap between the popcultural relevance and the scientific neglect of bouncers. The general research question of the PhD project is: How do bouncers (re-)establish order in German nightclubs?

The project is an ethnographic study, mainly based on overt participant observation and short interviews on site. Christine conducted fieldwork in three nightclubs in two German cities and observed bouncers two nights a week for 8–10 weeks per nightclub. She analysed her field notes with a mixed-method approach of coding techniques and sequential analysis of interactions. Christine focuses on the interplay and constant negotiation of legal regulations, informal practices, and space.

# HONOUR-BASED VIOLENCE BETWEEN FORMAL AND INFORMAL MEDIATION

(CLARA RIGONI)

*Clara Rigoni is an Italian citizen born in 1987. In 2011 she finished her LL.M. at the University of Bologna with a thesis in public comparative law. In 2011 and 2012, she was guest researcher at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg and at the Benjamin Cardozo School of Law, New York. In September 2013, she obtained a European Master's Degree in Human Rights and Democratization at the European Inter-University Center (Venice) and Utrecht University. Her research interests include violence against women, honour-based violence, theories of punishment, restorative justice, detention conditions and alternatives to detention, European criminal law, human rights law, migration law, legal pluralism, alternative conflict resolution, and Islamic law.*

The set of norms and sanctions embodied in a criminal justice system reflects social values and principles, which are considered to be homogeneous and shared by the community they are addressed to. Migration flows and the resulting social diversity, which affect nowadays all European states, pose serious threats to the validity of the mentioned model and to the homogeneity of such values. Crimes committed by members of migrant minorities in adherence to their own cultural or religious traditions cannot be addressed nor tackled without taking into consideration the context in which they take place and the background of the parties. The influence the perpetrator's belief system had on the commission of the crime, as well as the (direct or indirect) pressure coming from family- or community members, should not be underestimated.

Sexual and domestic violence, as well as forced marriages, are often the expression of so-called 'honour-based violence', which relies on cultural or religious norms and codes of honour reflecting a social order that rests on defined gender roles and behaviours. Recently, some European countries started developing new legislation and strategies to tackle this specific form of violence. However, the internal dynamics and characteristics of these crimes make their investigation and sentencing very difficult. The collective character of the offence clashes, in fact, with the intimate-partner-violence model used by most European countries for cases of domestic and family violence, while the extreme vulnerability of the victims and their often young age, make reporting these crimes very hard and dangerous. This is the reason why NGOs, community structures and religious leaders often come into play as an alternative to the police.



Clara Rigoni (left) presenting at the REMEP Summer University (2014)

The important role played by family and community both in honour crimes and in alternative dispute resolution (ADR) mechanisms suggests a possible connection between the two. However, notwithstanding the possible advantages inherent to the use of these instruments for such cases, the existing risks should not be underestimated. In the absence of any study on the subject, the purpose of this project is therefore that of analysing official and unofficial mediations taking place in different European countries in order to answer the following questions:

- To what extent, if at all, could restorative approaches applied to honour crimes and forced marriages complement the ordinary criminal justice system and address the needs of the subjects involved, with special regard to their access to justice?
- What are the main differences between formal and informal mediations in light of the participants' rights and satisfaction?

The study concerns three European countries, namely the United Kingdom, Norway, and Belgium. In the United Kingdom, given the strong rejection of mediation for cases of honour-based violence, the analysis focuses on informal programs run by community structures and NGOs. In Norway, state-based mediation programs are often used to tackle honour crimes and in particular forced marriages, sometimes with the involvement of community or religious leaders. Finally, Belgium makes increasing use of mediation for cases of family violence, including sometimes honour crimes.

The research applies mainly qualitative methods, relying on interviews conducted among practitioners working with honour-based violence, NGOs, police officers, mediators, community and religious leaders, victims, and perpetrators.

# TRANSITIONAL JUSTICE FROM BELOW – CHANCES AND PROSPECTS IN CONTEMPORARY COLOMBIA

(GUSTAVO JOSÉ ROJAS PAEZ)

*Gustavo Rojas Paez is a Colombian citizen. In October 2010 he was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 31. Gustavo became an attorney at law in 2006 after studying law at the Universidad Libre de Colombia, Bogotá. In 2008 he obtained an M.A. degree in Sociology of Law from Onati University. Gustavo is enrolled in the Faculty of Law at Freiburg University. Prof. Dr. Hans-Jörg Albrecht, Dr. Pablo Galain Palermo (Head of Section at the MPI for Foreign and International Criminal Law), and Prof. Dr. Walter Perron are his supervisors.*

Transitional justice – understood as the range of procedures of justice in times of transition – has emerged as a focus for scholarship and practical policymaking over the past decades (McEvoy and McGregor 2008:1) ‘Transitional Justice from below’ is a new paradigm that challenges established and more state-centred procedures of transitional justice (McEvoy and McGregor 2008). It comprises a range of activities at the grassroots level of societies in conflict.

This project will attempt to identify pathways and factors as well as obstacles for the development of this new paradigm of transitional justice in an ongoing conflict. In particular, it will explore the chances of transitional justice from below to offer viable routes towards peace, in contrast to state-directed models. The project will follow the process of Transitional Justice ‘in the making’ both ‘top down’ and ‘bottom up’. It will explore the ways in which both are linked together in the Colombian context.

Transitional justice from below in Colombia transcends state-centred conceptualizations of transitional justice and challenges the importance of the state in recreating social order. My research aims to pave the way for Participatory Action Research (PAR) in Latin America and other regions where the role of community in legal processes is underestimated. The proposed project will help establish a platform for other actors and future activities to overcome distinctions between academics, practitioners, and those directly affected by social processes (Borda and Mora-Osejo 2007).

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# TRANSFORMATION IN GUMUZ- OROMO RELATIONS: IDENTITY, CONFLICT, AND SOCIAL ORDER IN ETHIOPIA

(AMEYU GODESSO RORO)

*Ameyo Roro is an Ethiopian citizen born in 1980. He has a BA degree in Sociology and Social Administration (2003) and an MA degree in Sociology (2008) from Addis Ababa University, Ethiopia. From 2004 to 2012 he was part of the academic staff at Jimma University. In November 2012 he was admitted to the IMPRS REMEP at the MPI for Social Anthropology. His first supervisor is Prof. Günther Schlee.*

The dissertation project aims at examining the dynamism of Gumuz-Oromo relations in the framework of conflict and social order. The fieldwork sites are, where direct and explicit tensions have been formed, namely along the borders of Kamashi Zone in Benishangul Gumuz National Regional State and Eastern Wallaga of Oromiya National Regional State. The study sheds light on how the formation of regional states after 1991 in Ethiopia re-examined and exacerbated interrelationships between the Gumuz and Oromo neighbours. Yet, the questions of how order emerges and how it is sustained necessitates understanding the dynamics of conflict. The answers to the questions are usually not viable without understanding the role of major actors involved in mediation and punishments in the due course of managing conflict towards maintaining order. Hence, the study cherishes realizing the nexus in the study of conflict, mediation and/or punishment [retaliation] and social order. In doing so, the study raises an array of questions. What are

the sources of conflict? Are they primarily about identity, constituted ideologies, or other political aspects? Or are resources and boundaries more likely than other causes the reason for structural violence? What are the historical memories and recurrent discourses resulting in suspicion and fear among the Gumuz that the Oromo are against their regional autonomy? And how are social order and peaceful interaction maintained between Gumuz and Oromo and enforced between regional states?

The project will be based on fieldwork conducted in places with direct and explicit tensions between Gumuz and Oromo. The cases studies will be examined concerning their regional, national, and international contexts. The focus will be extended by a historical overview on the changes of indigenous social institutions, state and government structures, and the related issues.

## THE REGULATION OF MARITAL CONFLICTS ON THE LEFT BANK OF THE RHINE AND IN FRANCE BETWEEN 1798 AND 1814

(LAILA SCHEUCH)

*Laila Scheuch is a German citizen born in 1988. In May 2014 she was admitted to the IMPRS REMEP at the MPI for European Legal History. She studied history, English, and pedagogy (Erstes Staatsexamen) at the Johannes Gutenberg-Universität Mainz. Her first supervisor is Prof. Karl Härter.*

Marital conflicts and their regulation are multiply intertwined with processes of social ordering. With regard to this element of social ordering, cultural notions of social and sexual deviance play a role as well as religious and legal norms. The modes of conflict regulation employed can vary between mediation, retaliation, and punishment and the social agents involved can be diverse. Yet, exactly what kind of social order people had in mind when pondering the regulation of marital conflicts and what they considered to be appropriate means in order to construct and maintain this order has been subject to historical change. Starting from these general considerations, the dissertation carries out a comparative case study on the regulation of marital conflicts in the Rhineland and in France between 1798 and 1814.

In France during the Revolutionary and Napoleonic years (1789–1814/5), a time of fundamental socioeconomic and political transformation in-between the Early and the Late Modern Period, two major changes were set into place

in the field of marriage regulation. Firstly, marriage law was secularized: It was fully taken out of the power of the (Catholic) Church and conferred to the realm of the state. In practice, this meant for example the proclamation of the principle of civil marriage (1791) and the realization of this principle by introducing for the first time in the Early Modern Period the right to secular divorce (1792). Secondly, marriage law was decriminalized. Adultery, for instance, was not any longer to be juridically punished. The revolutionary legislators had intended a marriage law that would provide the citizens with a great amount of individual freedom. Correspondingly, the regulation of marital conflicts was largely handed over to families and friends, who had the right to negotiate divorces in so-called family assemblies. The function of the state was limited to administrative tasks. With the passing of the marriage law of the Code civil (1803) under Napoleon, however, the purposes – and concomitantly the means – of conflict regulation of the legislators had shifted. The maintenance of marriages, which were considered to be the smallest unit of and in themselves a reflection of the state, evolved as the highest aim. Consequently, the responsibility for divorce proceedings was transferred from the family assemblies to the civil courts. The mediating instance was thus reassigned from the private to the public sphere. Another aspect of the renewed significance of the jurisdiction in marital conflict regulation was the recriminalization of female adultery. When the formerly German states of the left bank of the Rhine were integrated into France due to the French success in the War of the First Coalition, the Revolutionary (1798) and later on the Napoleonic matrimonial laws (1803) were ‘exported’ to these territories.

Against this background, the study aims to find out how the right to secular divorce as a new (and partially imposed) means of marital conflict regulation was received and used in various legal settings by the people and to what extent, consequently, divorcing was considered socially deviant. It furthermore asks what kind of judicial and social strategies were employed to deal with divorces and/or the underlying conflict between husband and wife (e. g. mediation, punishment, coping mechanisms). Another central research interest focuses on the role of gender and culture in divorce law, marital conflict regulation in practice, and the reception of both. Depending on the law in force, the dissertation will be based on a variety of sources ranging from court records to divorce certificates and other registries’ documents to the relevant laws and discursive texts. These sources will be investigated using quantitative and qualitative methods as well as being approached from a transnational perspective to examine this essential element of social ordering.

# MAPPING JUVENILES' RELATIONS WITH THE POLICE IN THE MULTI-ETHNIC CITY

(ANINA SCHWARZENBACH)

*Anina Schwarzenbach was born in 1984 and is a Swiss citizen. She is a doctoral candidate in the Faculty of Philosophy, University of Freiburg. She conducts her research at the Max Planck Institute for Foreign and International Criminal Law, Department of Criminology, in Freiburg, Germany. In 2011 she graduated from the University of Zurich with an M.A. in Social Sciences. In 2012 she graduated from the University of Bern with an LL.M. in Criminology. Since 2013 she has been a member of the IMPRS REMEP. Her main research interests are in the fields of youth crime, violence in the urban setting, social disadvantage, policing and police legitimacy.*

The PhD project aims at giving an empirical contribution to the issues of social order and police-(minority) youth relationship in multi-ethnic urban settings by focusing primarily on juveniles' perceptions of and experiences with police forces in Germany. In particular, issues of social exclusion and socio-spatial segregation in urban areas, impact of cultural and political determinants on juveniles' attitudes as well as living conditions and lifestyles of (minority) youth are believed to influence the frequency and quality of adolescents' encounters with the police. Moreover, peculiarities of the police structures and police officers' attitudes towards (minority) youth as well as potential discriminatory practices of the judicial system and the police authorities must be considered in the analysis of conflicts in the police-youth interaction. Finally, juveniles' attitudes and perceptions in various roles, e. g. as disturbers of the social order, offenders, victims and/or witnesses of crime, and delinquent behaviour are investigated. By understanding the dynamics that lead to conflicts between juveniles and by outlining the police officers' reaction to juveniles' (mis-)behaviour, additional information about the reasons of youth violence is gained.

The central assumption is that the juveniles' image of and experiences with the police, driven by the before mentioned factors, strongly influence juveniles' perception of the legitimacy of the social order and therefore might ultimately be a trigger for collective youth violence in multi-ethnic societies. A mixed method approach using both quantitative and qualitative data answers important questions on unfair or discriminatory treatment of minority and disadvantaged youth, on juveniles' attitudes and behaviours towards the police, and, ultimately, on the causes of low police legitimacy and collective violence in disadvantaged urban areas.

The PhD project relies upon data from the ‘Police and Adolescents in Multi-Ethnic Societies (POLIS)’ research project, a French-German cooperation funded by the ‘Agence Nationale de la Recherche (ANR)’ and the ‘Deutsche Forschungsgemeinschaft (DFG)’. As part of the project, in two cities in both Germany and France a large school survey as well as extensive participant observations and interviews with police officers have been conducted. Juveniles’ experiences with representatives of the social order and conflicts in encounters with police officers are examined using multivariate statistical methods. Next to the various personal and contextual factors, particularly questions concerned with the police image and trust in the police, experiences of (dis-)respect and attitudes towards the police are central for the analysis of the police-youth interaction.

Through the analysis of the quantitative school survey, paralleled by qualitative data gathered from the participant observations and the interviews with police officers, factors that might lead to juveniles’ distrust in the police and influence conventional or deviant norms and delinquent behaviour are identified. The PhD project focuses mainly on the situation in Germany but includes comparisons with France. The findings from the POLIS Research Project pinpoint commonalities and differences between Germany and France, especially with regard to the role of background and experiences.

The findings suggest that ethnicity and problems related to socio-spatial segregation and inequalities matter particularly in France. In Germany, they have a rather indirect impact on the quality and frequency of juveniles’ interaction with the police. The findings of the thesis, besides giving an insight on problems and conflicts related to the police-youth relationship and a valuable contribution to the scientific debate on the issue, may aid at improving social policies and police strategies in urban settings that focus on (minority) youth.

## DISPUTING AMIDST UNCERTAINTY. PROCEDURES OF DISPUTE MAN- AGEMENT IN ‘POST-WAR’ TIMES: DISPUTING PARTIES’ ACCOUNTS, BAMYAN, AFGHANISTAN 2009

(FRIEDERIKE STAHLMANN)

*Friederike Stahlmann is a German citizen born in 1980. She obtained a Magister Atrium degree in the Study of Religions (major) at Philipps-Universität Marburg in 2005. Having specialized in Islamic Studies and the Middle East*

*and spending seven months in Afghanistan in 2003–2004, she wrote a thesis on the impact of Islam in legal orders in Afghanistan. In order to advance her legal understanding, she then attended a master's program in International and Comparative Legal Studies at SOAS, London, focusing on law and society, law and governance, and human rights. With a thesis titled 'Religious Police Reinvented? Commanding Right and Forbidding Wrong as a Matter of Governance' she obtained the MA in Law degree with distinction in 2007. As of April 2008 she has been a doctoral student of the IMPRS REMEP at the Max Planck Institute for Social Anthropology in Halle (Saale). Her supervisors are Prof. Günther Schlee and Prof. Keebet von Benda-Beckmann.*

This research project analyses the realization of procedures of disputing under the special circumstances of so-called 'post-war' times. Violent regime changes, wars, and especially civil wars are not only prone to causing immense suffering and injustice, but also to undermining the means and institutions through which injustice could be addressed and remedied. The data gathered about disputing processes in Bamyan, Afghanistan in 2009 confirm such persuasive injustice and a continuing rule of might rather than of law. However, the reasons usually suggested could not adequately explain these dynamics. Not only was Bamyan an extra-ordinarily peaceful place in 2009; the formal conditions for a successful establishment of an order of justice were also fulfilled to a surprisingly high degree. By tracing and analysing the considerations by victims of trespass, this research shows that one main reason for this continuing injustice lies in the experiences people have had during the civil



Remnants of an ancient Buddha statue and the late bazaar - both destroyed in the recent wars (F. STAHLMANN, 2009)



Waiting for what there is to come

(F. STAHLMANN, 2009)

war. These destroyed socio-legal support systems that are essential for a positive disputing environment and undermine the legitimacy of current legal authorities. However, the most detrimental factor for access to justice is the fact that times of peace are short-lived. The expectation that more war and further regime changes are soon to come makes it a matter of survival to ally with those with relatively more power rather than oppose them through disputing, and turns disputing procedures into tools of the mighty rather than of the law.

## RESTORATIVE JUSTICE, INTERNATIONAL MEDIATION AND RESPECT: AN INTERDISCIPLINARY EMPIRICAL ANALYSIS OF RESPECT IN INTERNATIONAL RELATIONS

(ADEPEJU O. SOLARIN)

*Adepeju Solarin was born in 1981. She possesses dual nationality (USA and Nigeria). She obtained a BIS (2004) and MLS (2010), both from the University of Minnesota Twin Cities, USA. Her research interests focus on restorative justice, peace-making, international mediation, respect, conflict resolution, and mixed methods.*

The aim of Peju's project is to establish the relevance of restorative justice philosophy and practice in international conflict resolution through an empirical study of two international mediation episodes – Oslo 1993 Talks and Accra 2003 Talks.

She uses mixed qualitative methods including process tracing, qualitative content analysis, and ethnography. She posits that respect is a salient factor – preceding trust – in international conflict resolution. It is also the convergent factor between restorative justice and international relations.

The conceptualization and empirical study of respect highlights a rare, but significant subject matter for mediation and provides a better understanding of the dynamics of retaliation and punishment in international relations, while also demonstrating how and why mediation could be relevant in certain contexts.

## PUNISHMENT AND SENTENCE ENFORCEMENT FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE FORMER YUGOSLAVIA

(FILIP VOJTA)

*Filip Vojta is a Croatian citizen born in 1987. He studied at the Faculty of Law of the University of Zagreb, where he obtained his LL.M. in 2011. He was a guest research fellow at the Max Planck Institute for Foreign and International Criminal Law (MPICC). Since 2012 he has been enrolled as a doctoral candidate within the IMPRS REMEP at the Faculty of Law of the University of Freiburg. Mr. Vojta is a research member of the Max Planck Partner Group for Balkan Criminology. He has participated in numerous specialization programs and international conferences in various fields of law, criminology, and social anthropology and is a Vice Chair of the ESC Postgraduate and Early Stage Researchers Working Group. He has published in areas of international criminal law, supranational criminology, and penology. Since 2014 he has been a PhD Spokesperson at the MPICC.*

Filip's doctoral research project 'Punishment and Sentence Enforcement for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia' represents a significant contribution to the research agenda

of the IMRS REMEP on the use of punishment as an instrument of social control and governance of security on the supranational level. Its focus is placed on empirically investigating the after-trial phase of ICTY's (International Criminal Tribunal for the Former Yugoslavia) procedures, or to be more exact, the enforcement of its sentences – a field of study that has so far not been investigated.

Marking the 'rebirth' of international criminal justice in the midst of gross human rights violations in the early 1990s in the Balkans, the ICTY has with its sentencing practice been influencing not only the relations among formerly conflicting parties in the region, but also the development of international criminal law in general; arguably the most important international reaction to atrocities worldwide. As such, it has introduced a distinctive system for the enforcement of its sentences – also subsequently adopted by other international criminal tribunals (e. g. International Criminal Tribunal for Rwanda, International Criminal Court) – where, in absence of an international prison system, international convicts are sent to serve their sentences in various national prison systems. Up until today, the ICTY made enforcement agreements with 17 European states and more than 50 ICTY convicts were transferred to 14 of these states to serve their sentences.

The nature of such an enforcement system brings up questions which challenge the legitimacy of international punishment as an accepted instrument of social control. First and foremost, the research evaluates the adequacy of national prison systems, in terms of conditions, regimes, and programs, to purposefully address a distinctive nature of criminality which differentiates most of the international prisoners from the ordinary prison population. Secondly, considering the dispersion of international prisoners among various national states, the research measures the level of standardization of such enforcement, a factor of great influence on the overall perception of the ICTY punishments. Consequently, the research evaluates to what extent the enforcement and its outcome purposefully contribute to the overarching principle of international criminal justice, that is, the restoration and maintenance of peace among conflicting parties.

The systematic empirical inquiry into punitive approaches that have been developed towards the ICTY convicts is heavily based on qualitative methodology, namely, the exploratory interviews with imprisoned ICTY convicts, released ex-prisoners, prison staff, and ICTY officials. As such, the research project encompasses an extensive, meticulously prepared fieldwork which entails traveling to the enforcing European states as well as the Balkan region. Consequently, the project findings will not only contribute to the current state of the art in the field, thus filling the existing research gap, but also result in a set of recommendations for improved treatment of international prisoners.

# THE EFFECTS OF INTENSIVE PROBATION ON JUVENILE AND ADOLESCENT MULTIPLE OFFENDERS. AN EMPIRICAL ANALYSIS OF THE EFFECTS OF INTENSIVE PROBATION

(MARIA WALSH)

*Maria Walsh is a German citizen born in 1984. She studied educational sciences, criminology, and psychology at the Ludwig Maximilian University in Munich, earning her M.A. in July 2011 with an empirical analysis titled 'Education in Juvenile Correctional Facilities – The Subjective Perception of the Implementation of Laws and Regulations from Various Perspectives'. She worked as a researcher in the Department of Criminology at the Max Planck Institute for Foreign and International Criminal Law from August 2011 to April 2013. She has been a doctoral student at the IMPRS REMEP since April 2013.*

As part of the evaluation of the pilot project 'Rubikon' – an intensive probation project initiated by the probation services of the Munich District Court I – this study assesses the implementation and results of intensive probation on juvenile and adolescent multiple offenders who require additional support and supervision. Furthermore, it focuses on conditions that may improve the likelihood of criminal desistance among this group.

The research is conducted by means of triangulation. The study covers the implementation of the project as well as the effects of certain sanctions on recidivism of young multiple offenders. Furthermore, it contains a qualitative part dealing with the topic of the subjective effects of certain treatments on the criminal career of young multiple offenders.

# LEGAL RESPONSES TO REVOLTS DURING THE FRENCH REVOLUTION: THE CASE OF THE SAXON PEASANT UPRISING OF 1790

(THOMAS WALTER)

*Thomas Walter is a Germany citizen born in 1982. From 2004 to 2010 he studied modern history, philosophy, and psychology at the University of Jena and at the University of Jyväskylä (Finland). During his studies he worked as a student assistant at several federal archives and at the Department of History of the University of Jena. After having received his Master's degree in 2010, he both started his PhD project at the Max-Planck-Institute for European Legal History in Frankfurt/Main and joined the IMPRS REMEP in March 2011. Along with revolts and criminal law in the early modern period, his research interests include (legal) rituals, social movements (esp. social psychological approaches), and forensic psychiatry. His supervisors are Prof. Karl Härter and Prof. Jens Ivo Engels of the Technische Universität Darmstadt.*

The study investigates the different legal reactions to revolts in the Holy Roman Empire from 1789 to 1806, from which the Saxon Peasant Uprising of 1790 stands out in terms of both intensity and spatial diffusion. Since the German public was thoroughly informed about the course of the revolution in France, German authorities assumed these revolutionary ideas influenced the revolts in Germany. Drawing from juridical, administrative, and normative sources as well as from contemporary treatises and other publications, this study seeks to uncover to what extent authorities considered the revolts in late 18<sup>th</sup> century Germany to be distinguishable from prior revolts and what new threats they were deemed to pose to the political system of the Holy Roman Empire. Special attention will be paid to the question concerning the extent to which the criminal prosecution of the rebels reflected this perception of, and the discourse on, the revolts. Along with traditional punitive responses used to symbolically restore the infringed political order, the legal and political discourses as well as a wider range of possible reactions will be examined with regard to criminal justice, administrative practice, and social control. Moreover, the study investigates the specific criminal prosecution of the rebels and the ringleaders, as well as the preventive measures of social control taken against suspect social groups (for example, preachers and advocates) which authorities considered responsible for both the revolts

and the adoption of revolutionary ideas. However, revolts are not to be scaled down to a mere conflict between authorities and subjects; they, too, represent a conflict within the local societies. Thus, the measures aiming at the reintegration and social control of the prosecuted rebels – in order to prevent future violent riots – will also be discussed. By examining the process of pacifying revolts, the criminal prosecutions of the rebels, and the means taken to prevent future revolts in the era of the French revolution, the study seeks to contribute to the understanding of the role of retaliation, mediation, punishment, and repression in times of political and social unrest.

## CONFLICT DYNAMICS IN A THREE-LEVEL GAME: CONFLICT FORMATION IN GAMBELLA, SOUTH-WEST ETHIOPIA

(MOSSA HAMID WASSIE)

*Mossa Hamid Wassie is an Ethiopian citizen. He graduated from the University of Addis Ababa. He has been a member of the IMPRS REMEP at the Max Planck Institute for Social Anthropology since June 2014. His first supervisor is Prof. Günther Schlee.*

The Gambella region of Ethiopia, bordering Jonglie State of South Sudan, is one of the most conflict-ridden regions that can be seen as an example for one of the most, if not utmost, complex regions with regard to contemporary political conflicts in the country. The historic roots of conflict in Gambella between the Anywaa and Nuer can be traced back to the eastern expansion of the Eastern Jikany Nuer from Southern Sudan. Large-scale hostilities between the two groups continued owing to the incompatible modes of production and livelihood as the Nuer (mostly pastoralist) trespass with their animals onto Anywaa farm land where the latter live in mixed settlements. The local conflict dynamics were cooperative at some time and conflictual at another time as the balance of power continued to oscillate over the years. In the post 1991 restructuring of the Ethiopian state, the conflict in Gambella over political representation, land entitlements, and different and conflicting modes of production do not only emanate from local realities but also linkages to national political developments and developments across the national borders. With the introduction of the new, post-1991 political dispensation, the Anywaa and Nuer employed different political strategies to access and

legitimize resource claims. This Ph.D. project is aimed at understanding how the new political dispensation of 'ethnicity' is interpreted, negotiated, and appropriated by the competing actors in the region. Understanding how 'ethnic' categories make sense to the political actors in Gambella is the guiding question. How are the social boundaries between various groups reinforced by the new political boundaries, with ethnicity as supra-organization? How are the categories of 'highlanders' and 'indigenous', and particularly the Anywaa, constructed? And how are they perceived by those in the highlander category (which includes various people who identify themselves with ethno-based national states in the highland parts of Ethiopia) and the indigenous people? The project proposes that understanding the patterns of conflict in Gambella should take into consideration both the inherent logic of conflict and alliance formation at the local level and the wider political contexts in its historical dimensions. As alliances are formed and broken in the region, where friends become enemies and enemies can become friends with amazing rapidity, looking at 'who is going to gang up with whom against whom' (Schlee, 2008: 14) and how local groups are mobilized as circumstances change (Young, 2007) will help to see the regional conflict dynamics in the local where wars and violence are actually practiced.

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(2013)

## JIHADI VIOLENCE. A STUDY OF AL-QAEDA'S MEDIA

(ANDREAS ARMBORST)

*Dr. Andreas Armbrorst is a German citizen born in 1980. He was a doctoral student at the IMPRS REMEP from April 2008 to February 2012 at the Max Planck Institute for Foreign and International Criminal Law in Freiburg. Prof. Dr. Hans-Jörg Albrecht and Prof. Dr. Baldo Blinkert of the University of Freiburg were his supervisors. He studied sociology at the University of Trier and the University of Nebraska in Lincoln, USA (2000–2006). Between 2004 and 2006, he was a research assistant for two institutes at the University of Trier (ASW and ZENTRAS). In 2006 he graduated in sociology with his thesis 'Criminal Behaviour in Different Urban Settings'. Thereafter he received a Master's degree in International Criminology from the University of Hamburg. In June 2014 he was awarded the Otto Hahn Medal for his doctoral thesis. He is currently Marie Curie Fellow at the University of Leeds.*

Many speculations revolve around the political goals of Islamists and jihadists. What is it that al-Qaeda's leaders think they can achieve through political violence? Dr. Armbrorst's book, based on his dissertation, provides clear answers to this and other important questions. Based on the systematic analysis of claims of responsibilities and video messages of al-Qaeda leaders, it opens intriguing insights into the world view and mindset of the

jihadi movement. Thereby it enables the reader to gain a clearer picture of the political-religious program of Islamism and to better distinguish between its radical and moderate political claims. This knowledge is important because political Islam and jihadi violence are not only increasingly important topics in domestic politics, but also became, through the Arab Spring, tangible factors in foreign affairs.

In al-Qaeda's ideology, theological and political arguments are blended into a coherent media strategy. Political claims and grievances are convincingly backed up by quasi-journalistic evidence, whereas theological arguments are complemented by legal references to the Quran and Sunna. In addition, the jihadi leaders provide doctrines and strategies describing how the use of force can defend Islam against its perceived three existential threats – the global conflict, Arab despotism, and secular governance. Theological and strategic considerations converge in al-Qaeda's rationale for violence.

## THE PROTECTION OF THE HONOUR AND DIGNITY OF THE CONVICTED IN 19<sup>TH</sup>-CENTURY EUROPE: PENAL REGULATIONS IN FRANCE AND SPAIN

(JUAN B. CAÑIZARES NAVARRO)

*Dr. Juan Benito Cañizares Navarro is a Spanish citizen. In April 2008 he was admitted to the IMPRS REMEP at the MPI for European Legal History at the age of 23. Juan obtained his law degree from the University of Valencia, Spain, in 2007. He received a scholarship from the Max Planck Society. He concluded his dissertation and received his academic title from the Faculty of Law at the University of Valencia, Spain, in July 2011. Prof. Dr. Karl Härter and Prof. Dr. Aniceto Masferrer, Professor of Legal History and Comparative Law at the University of Valencia, were his supervisors. Juan is now a professor at the Universidad Cardenal Herrera – CEU, Spain.*

At present day, all European countries prohibit the infliction of inhuman or degrading penalties, and France, Germany, and Spain provide examples of these protections to ensure the basic rights of people to honour and dignity. Even though many countries have not stated an explicit prohibition of inhuman or degrading penalties in their respective constitutions, the penal practice of all European countries follows the principle that punishment should not damage the honour and dignity of delinquents. However, this was the

result of a long-lasting, sometimes ambivalent historical development which started with the Enlightenment and influenced the revolutionary and Napoleonic French criminal codification as well as the following criminal codes and laws in many European states. For example, *carcan*, *dégradation civique* and *bannissement* were considered infamous forms of punishment in the Penal Code of 1791, the *Code des délits et des peines* of 1795 and the Napoleonic Penal Code until they were repealed in 1994 (except for the punishment of *carcan*, which was already abolished in 1832).

The aim of the thesis is to reconstruct the history and development of ‘in-human or degrading penalties’ with regard to the protection of the honour and dignity of convicted and delinquents. Though every crime could breach the honour and dignity of the affected person, the vagueness, the extent, and the concrete literature written about this content obliges us to limit the object of the research project to the penalties. It focuses on the honour and dignity of the people that have been found guilty of perpetrating an offence and as delinquents belong to a category of people whose honour and dignity could be easily violated or damaged through the criminal procedure and above all the applied penalty and the concrete execution of punishment aiming at public humiliation. In this regard the question of punishment is closely interlinked with the problem of retaliation but also takes into account that honour (of victims as well as of convicted/delinquents) is ‘mediated’ through the agents of the criminal justice system as well as the public.

The thesis is conceived as a case study focusing particularly on the protection of honour and dignity of the convicted in the French and Spanish criminal law traditions from the 18<sup>th</sup> century until the First World War. It studies the legal and anthropological notion and use of honour in criminal law and the legal discourses concerning the penalties that were considered dishonourable, harmful, or shameful for the convicted person. As a result the thesis scrutinizes the ambivalent development of the purposes and practice of punishment in the age of codification, which still could humiliate convicted in a retaliatory manner, but based on a human and rational criminal law should no longer damage the honour and dignity of convicted members of the civil society.

# THE MONGOLIAN PENAL SYSTEM FROM THE PERSPECTIVE OF GERMAN CRIMINAL LAW

(KHURELBAATAR ERDEM-UNDRAKH)

*Khurelbaatar Erdem-Undrakh is a Mongolian citizen. In April 2008 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 30. She concluded her project in 2015. Previously, she obtained an LL.B degree from the National University of Mongolia in 1998 and an LL.M degree from Freiburg University, Germany, in 2004.*

The main characteristics of the present Mongolian criminal law and its sanction system had been developed in the 1920s. Important developments of the legal practice in Mongolia followed by the way of recreation, changes, and reforms. The new starting-points for questions of criminal law and of criminology respectively and also the resulting need for research were generated in the last two decades in connection with a radical change in society, politics, and economy. Such changes are for example the political turn of events after the collapse of the Soviet Union, the transition to a multi-party-system and to parliamentary democracy in the beginning of the 1990s as well as the economic transformation from a planned to free market economy entailing new kinds of criminality, raising problems with alcohol and drugs, new poverty, and homeless children.

The first democratic constitution of 1992 was the basis for Mongolia to become a modern state, which was ‘democratic, in accordance with the rule of law and respecting human rights’. This included the adoption of modern criminal law abiding by the values and standards of a constitutional state. The criminal sentences and penalties had to be developed in accordance with the rule of law and conform with the standards of humanity. The principles of proportionality and of humanity were observed.

During the phase of transformation, the criminal code of 1990–1992 comprised substantial amendments, albeit not reaching the standards of modern international law. There was an urgent need for a new criminal code, which would cause a revolutionary reform of criminal law. The Mongolian criminal law and the sentences were fundamentally changed by the legislative reform of the criminal law of 1 February 2002. Twelve years had been necessary to create a new, ‘non-socialist’ criminal code. Goals of this study are, first of all, to describe and analyse the development of the Mongolian criminal law. Then, suggestions for regulation and attempts of reform for the long term will be discussed.

The study also takes a comprehensive look at the historical development of law. The conception of the Mongolian criminal policy is taken as the basis to discuss and analyse in a normative and empirical way, which elements of the sentences system and criminal law must be criticized, where changes are possible, or if changes happened. Also, the implementation in praxis will be examined. Simultaneously empirical research will be done using publicly available statistics and court files. The method of secondary analysis will be applied to existing material and data. Another topic is the sort of punishment, sentence, and abolition of e. g. the death penalty etc. Furthermore the thesis will give a short review of German criminal law and assesses the reformed Mongolian criminal law in comparison to the German. Finally, the project investigates the performance of the German legal system in Mongolia, as the Mongolian system is based on the German model.

## CONSENSUAL RESOLUTION OF CONFLICTS

(KIYOMI VON FRANKENBERG)

*Dr. Kiyomi von Frankenberg is a German citizen. In May 2008 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 25. Kiyomi obtained an Erstes Staatsexamen in law, graduating from the University of Cologne in 2007. She was funded by the Max Planck Society. The conferral of her doctoral degree and title from the Faculty of Law of Freiburg University was in summer 2012. Prof. Dr. Roland Hefendehl and Prof. Dr. Hans-Jörg Albrecht were her supervisors. Today she works as a defence attorney with the Kanzlei Nagel Schlösser in Hanover, Germany.*

Plea bargaining seems to be alien to German criminal procedure. Consequently, it has often been subject to harsh critique. It is a central issue among German criminal lawyers for about 30 years. Plea bargaining is said to suspend the German criminal procedure and therefore to infringe its basic tenets in several respects (e. g. the principle of public trial, principle of legality, principle of fairness).

Only in 2009, the German parliament passed a law that allowed for plea bargaining, which until this point had been practiced extra-legally. In 2013, the Federal Constitutional Court decided, that this law itself is not unconstitutional, but the court rejected the practice of plea bargaining.

In order to reveal the course of plea bargaining proceedings, judges, defence counsels, and prosecutors were interviewed in a case-related network

analysis with a focus on major German corporate criminal law proceedings (i. e. well-known defendants, high amount in dispute, intensive media coverage).

This study provides an insight into the precise course of plea bargaining negotiations and thereby reveals the normative order that underlies plea bargaining proceedings in corporate criminal law cases. The primary focus is on the importance of consent for penal dispute settlement in situations, when purely authoritative legal decisions are not available due to highly complex legal cases with difficult evidence situations.

The trustful and professional communication atmosphere of plea bargaining provides an opportunity to regain predictability of the course and the outcome of criminal trials and to cope with their complexity without neglecting fundamental legal values of the criminal proceeding.

According to the empirical results of this study, plea bargaining can be seen as an effort to maintain the basic tenets of criminal procedure and to enforce principles of criminal law even if there are difficulties arising from complicated legal norms, highly intricate facts of corporate criminal law cases, and considerable problems of evidence.

The set of norms that shapes the normative groundwork for plea bargaining is not geared only towards efficiency and expediency, as is frequently criticized by academic discourse. Rather, plea bargaining appears a method to make decisions and to impose sentences in intricate legal cases in a more rational way in situations when the Code of Criminal Procedure seems to be inappropriate to cope with the difficulties of corporate criminal law. In doing so, plea bargaining points out the challenges the criminal procedure system is confronted with by corporate crime. These problems await profound consideration on the level of both criminal law and criminal procedure law.

## NECESSITY OR NUISANCE? RECOURSE TO HUMAN RIGHTS IN SUBSTANTIVE INTERNATIONAL CRIMINAL LAW

(JULIA GEBHARD)

*Dr. Julia Gebhard is a German citizen born in 1981. She studied law in Trier, Germany (Erstes Staatsexamen 2006) and graduated from the LL.M. program in International Human Rights Law in Lund, Sweden, in 2008. She was a research fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany from 2008 to 2013, and*

*as a legal analysis assistant at the International Criminal Court from 2011 to 2012. She received a scholarship from the FAZIT Foundation of the Frankfurter Allgemeine Zeitung from 2012 to 2013. She was a researcher and lecturer at the Andrassy University of Budapest in 2014–2015. Currently she is working as a legal officer for the OSCE's Office for Democratic Institutions and Human Rights in Warsaw, Poland.*

This research explores the influence of human rights law in the development and practical application of international criminal law. The relationship between international criminal law and human rights law is not yet conclusively established. On the one hand, international criminal courts and tribunals require well-defined crimes in order to uphold the principle of *nulla poena/ nullum crimen sine lege*. On the other hand, practitioners in this relatively recent discipline have to resort to outside areas in order to fill gaps and interpret the definitions of crimes established by the respective statutes. The acts punishable under international criminal law are on many occasions clearly influenced by the requirements set out in human rights treaties. The Rome Statute of the International Criminal Court provides several compelling examples of this in the so-called ‘treaty crimes’. These crimes were enshrined in international human rights treaties but the customary nature of them was not established beyond doubt.

Apart from generally examining the interrelation between human rights law and international criminal law (Part I) and creating an inventory of the use of human rights law in the practical application of substantive international criminal law (Part II), the research project primarily aims at pointing out areas in which synergies between international criminal law and human rights law exist. It explores the views of practitioners, in particular of judges at the International Criminal Court, towards the use of human rights law in their area of expertise and demonstrates how human rights law can be used in order to strengthen the weight of the legal argument in international criminal law (Part III).

Bassiouni identifies five different stages of emergence and development of human rights as a logical progress from the shaping of shared values, the emergence of non-binding commitments with respect to them, and the elaboration of specific normative prescriptions towards enforcement. As the fifth and final stage, he identifies the penalization of violations of these shared values. According to Bassiouni, international criminal proscriptions are the final model of enforcing internationally protected human rights.

However, even though human rights law and international criminal law might be described as ‘two sides of the same coin’ there are crucial structural differences between the two areas, one establishing a penal regime based on individual criminal responsibility, the other one prescribing a catalogue of rights whose principal respondent is the state.

Following on from these considerations, the research project examines the practical influence of human rights in the jurisprudence of international criminal courts and tribunals. The underlying research question is what role human rights law plays in the development and practical application of international criminal law. The project scrutinizes the extent of direct ‘use’ of human rights law, either mandatory as customary international law or optional as ‘interpretational guidance’ by the respective courts and tribunals and looks into how much the structural differences between the two regimes are accounted for in this context. Additionally, the influence is examined which the idea of human rights protection had and still has on the development of international criminal law. Specifically, the areas which are analysed in this project are minority rights law, women’s rights, and gender issues as well as the prohibition of torture. In relation to these, the project examines if and how the influence of human rights law is mirrored in crimes punishable under substantive international criminal law and the perception of judges. The project focuses on the Rome Statute and the judgements and decisions of the International Criminal Court, but it also considers the jurisprudence of the ad hoc and ‘hybrid’ courts where appropriate.

## INTERNATIONAL ARREST WARRANTS IN ONGOING CONFLICTS. THE LEGAL FRAMEWORK OF CRIMINAL LAW INTERVENTIONS BY EXTERNAL ACTORS (MAYEUL HIÉRAMENTE)

*Dr. Mayeul Hiéramente was born in 1983. He has dual nationality (France and Germany). He studied law at the University of Hamburg and the Université de Paris-X Nanterre from 2002 to 2008. During this time he worked as a student assistant to the Chair of Criminology at Universität Hamburg as well as in the Institute of Peace Research and Security Policy (IFSH). From 2008 to 2011 he conducted research on international criminal law at the Max Planck Institute of Foreign and International Criminal Law. From 2011 to 2013 he did his legal clerkship at the Hanseatic Higher Regional Court and interned at, among other places, the Office of Public Counsel for the Defence at the International Criminal Court. He was admitted to the German Bar in 2014 and has worked as a defence attorney in the field of white-collar crime since then.*

The project takes a normative approach to the (regrettably) often termed ‘justice vs. peace dilemma’, better described as a conflict between the need (or will) to use criminal law to punish perpetrators of international crimes and the need to end hostilities, thus preventing combat and the commission of new crimes. The project established normative criteria (with a focus on public international law, in general) to resolve the abovementioned conflict where the political conditions impede the simultaneous pursuit of criminal prosecution and the implementation of peace agreements. The newly created International Criminal Court (ICC) was the focus of the project since in two of the situations – Northern Uganda and Darfur (Sudan) – this conflict occurs, *inter alia*, due to the ongoing nature of the violence. The arrest warrants issued against the Ugandan rebel leader Joseph Kony and the sitting president of the Republic of Sudan, Omar Al-Bashir, are the source of contention in the current political and legal debate. One aim of the dissertation was to assess which international obligations are pertinent to the conflict arising from the issuance of these international arrest warrants. Even a cursory review of relevant sources reveals conflicting obligations and rights. On the one hand, international conventions (such as Art. IV of the Genocide Convention) and customary international law (e.g. punishment of crimes against humanity) set out an obligation or at least a right to punish the main perpetrators, while on the other hand, international law (especially the UN Charter, a number of human rights treaties, as well as the concept of ‘Responsibility to Protect’) favour the prevention of future crimes and hostilities.

The primary aim of the dissertation was to evaluate whether international law (either in abstracto or in concreto) favours one of these legal obligations or rights. Therefore, the project focussed on the concept of *jus cogens* and Article 103 of the UN Charter and addressed the question of the legal relevance of the concept of ‘Responsibility to Protect’ in order to determine whether there is a hierarchy of norms in international law and, if there is, whether the hierarchy is pertinent to the cases examined in the dissertation. It also addressed other aspects of the theory of conflicts of norms. Based on this analysis, the dissertation proceeded with the procedural consequences of the anticipated finding that there is no valid claim for the primacy of the criminal law approach in international law. For this reason, the project addressed the concrete decisions that were and will be taken in the cases of Northern Uganda and Darfur (Sudan). It evaluated the possibilities *de lege lata* of the Office of the Prosecutor and the Pre Trial Chamber of the ICC to take into account the normative indicators when deciding if an arrest warrant should be issued (Art. 57 III (a) Rome Statute) or withdrawn or an investigation opened or closed (Art. 53 II (c), III (a)–(b) Rome Statute). It provides an analysis of the ability of the UN Security Council to act under Article 16 of the Rome Statute or even solely on the basis of Chapter VII of the UN Charter. The dis-

sertation concludes by addressing the legal consequences of the decisions for future national or international criminal proceedings (especially the doctrine of abuse of process) and gives a short overview on the feasibility of possible compromises. For this purpose, international conventions, national and international jurisprudence, literature, and written media sources were analysed. This was supplemented by an analysis of non-binding international documents and governmental statements in order to explore the content of the relevant customary international law based on a ‘modern positivist’ approach.

## MARAS: A STUDY OF THEIR ORIGIN, INTERNATIONAL IMPACT, AND THE MEASURES TAKEN TO FIGHT THEM

(DAVID JENSEN)

*Dr. David Jensen is a U.S. and Costa Rican citizen. In November 2008 he was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 26. He was funded by the Max Planck Society. He concluded his dissertation and received his academic title in 2012. Prof. Dr. Hans-Jörg Albrecht and Prof. Dr. Walter Perron were his supervisors. David obtained an LL.B. degree from the University of Costa Rica in 2003 and an LL.M. from the University of Freiburg in 2010.*

This thesis presents the results of a study examining the Maras gang, their international impact, and the measures taken to fight them. It was conducted in order to fill the information gap concerning this gang and to address the following issues: what is the origin of the Maras? How do they function and how have they spread to so many countries? The study also analysed the reactions from government officials in Central America to the threats resulting from the growth of this gang. The results of the study are presented in five chapters.

Chapter 1 describes the origin of the Maras and the growth of Hispanic gangs in the United States, the Central American migratory flow, why individuals join gangs, and why they join the Maras and the structure and organization of the network. Chapter 2 presents an analysis of the national situation in three countries – Guatemala, Honduras, and El Salvador – in their responses to the growth of this gang, the measures taken to combat it, and the consequences of these measures. Chapter 3 is a comparative case study of the situations in the three countries highlighted in chapter 2. It examines the regional factors that contribute to the expansion of the Maras,

the Maras in Central American, measures implemented, and consequences of the measures taken by the three countries. Chapter 4 analyses the Maras and the measures taken against them from a theoretical point of view. The chapter looks at punishment and retaliation, the purposes of criminal punishment, zero tolerance policing, criminal law for the enemy, and the culture of control. Chapter 5, the final chapter, contains concluding remarks about the growth of this gang and the effects of measures taken to fight it.

## HONOUR KILLINGS IN GERMANY, 1996–2005. A STUDY BASED ON PROSECUTION FILES

(JULIA KASSELLT)

*Dr. Julia Kasselst is a German citizen. In May 2009 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 28 and finished her project in February 2014. Julia passed the Erstes Staatsexamen in law at Humboldt University, Berlin in 2006 and obtained an M.A. degree in International Criminology from Hamburg University in 2008. She was funded by the Max Planck Institute for Foreign and International Criminal Law. Priv.-Doz. Dr. Dietrich Oberwittler, senior researcher and research group leader at the MPI for Foreign and International Criminal Law, was her day-to-day supervisor.*

So-called ‘honour killings’ have received more and more attention in recent years against the backdrop of discussions about the integration of migrants particularly from Islamic countries. Ideal typically, honour killings are domestic homicides of females who are perceived by the offender(s) as violating behavioural norms, especially sexual chastity and submission under patriarchal rule, or more generally of keeping a distance from ‘western’ life styles. The killing serves to restore the family’s honour and may be agreed upon and planned collectively by the family. In this perspective, the killing is not a crime but a legitimate sanction according to archaic principles of self-help.

However, a comprehensive definition of honour killings and its discrimination from other forms of domestic killings is far from clear-cut. An honour killing in the strict sense is the killing of a girl or young woman by their blood relatives to restore collective family honour. Yet, much more frequent are intimate partner homicides bordering on honour killings. A lot of lethal domestic violence in secular, western societies is directed against women as

well, often motivated by the same patriarchal norms of (sexual) faithfulness or triggered by the female partner's intention to separate. There seems to be a large grey area between 'typical' honour killings and 'ordinary' intimate partner killings. In this perspective, to stress the dissimilarity or 'otherness' of honour killings in western societies may be insufficient to grasp a more complex reality of domestic violence among migrant groups which has rarely been investigated in Germany.

In this situation, the project intends to identify and analyse all cases of honour killings adjudicated in Germany between 1996 and 2005 on the basis of judicial files and media reports. In order to achieve this goal, searches of police case lists and full-text media archives were conducted. In the full-text archive of the Deutsche Presse Agentur (German News Agency), a complex search process was used to select potential honour killing cases from around 92,500 reports. The empirical analysis of this study is based on 78 cases whose case records could be evaluated.

Based on these findings, we estimate the total possible known number of honour killings in Germany to be about twelve per year, three of which are honour killings in the strict sense. This projection includes partner homicides in the grey zone between collective family honour and individual male honour, the classification of which as honour killings is doubtful. Given that there are roughly 700 homicide-related deaths in Germany per year, including many in families and relationships, honour killings are (quantitatively) very rare events.

In 80% of the honour killings in the strict sense, an unwanted love affair by a woman, outside or after marriage, was the central factor involved. The paramount motives in partner conflicts are the separation or the (alleged) sexual infidelity of the victim or indirect victim, in accordance with the main motives of 'normal' partner homicides. At 43%, the percentage of male victims was unexpectedly high. Unwanted male partners were often attacked alongside the female victims; in some instances only the male was attacked.

A number of assumptions surrounding the phenomenon of honour killings can be refuted. Honour killings do not occur in all social and educational levels, but only in the most disadvantaged and poorly educated milieus. There is no evidence to suggest strong participation among second or third generation immigrants. There is also no evidence to suggest an increase in the number of honour killings in recent years. These results give rise to the hope that honour killings will not become a permanently established phenomenon of violence in Germany.

# CHIEFS AND WITCHES IN A GENDERED WORLD: LEGITIMACY AND THE DISPUTING PROCESS IN THE SOUTH AFRICAN LOWVELD

(SEVERIN LENART)

*Dr. Severin Lenart is an Austrian citizen. In April 2008 he was admitted to the IMPRS REMEP at the MPI for Social Anthropology at the age of 27. He concluded his project in October 2013. Severin was enrolled in the Faculty of Philosophy at the Martin Luther University Halle-Wittenberg. Prof. Dr. Keebet v. Benda-Beckmann and Prof. Dr. Richard Rottenburg were his supervisors. Severin obtained an MPhil degree in Social and Cultural Anthropology from Vienna University, Austria, in 2007. He did his fieldwork in South Africa (Mpumalanga) and Swaziland (Hhohho) from October 2008 until October 2009. From September 2011 until October 2011 he did field research in South Africa (Mpumalanga). He is especially interested in legal anthropology, political anthropology, social transformation and power in conflict and post-conflict societies, and gender.*

The thesis deals with dynamics of disputes and disputing processes in situations of legal pluralism in predominantly siSwati speaking South Africa and Swaziland. Within the scope of the IMPRS REMEP, the study analyses different dimensions of dispute processes such as the expression of social relations and the distribution of power. Of particular interest are – apart from the partition of culturally similar areas by colonially drawn international boundaries – the cross-linked and overlapping spaces of socio-political-legal systems and institutions which are embedded in contrasting contexts of liberal democracy and absolute monarchy. The broader question that follows is: how do people deal with social conflict in pre-dominantly siSwati speaking South Africa and Swaziland?

To answer this question, the study is contextualized in two distinct but contiguous directions: first, from a comparative perspective in order (1) to open the way for the analysis of disputing in the interplay of the transnational Swazi customary law with two different state legal systems; as well as (2) to consider the transformations of this customary law under two different nation-state concepts; and, by adopting a transnational social field approach, (3) to examine the connection of actors through direct and indirect relations across borders; as well as (4) to analyse the transnational governance regime and therefore political, cultural, and legal constructs which are not restricted to a single nation-state.

Social conflict is conceptualized in this project as comprising the nature of the conflict, its context, development as well as mechanisms and strategies to deal with it. Its analysis is based on mainly four subject or conflict areas I have identified in the field sites of Barberton/Emjindini in South Africa and Piggs Peak/Mpofu in Swaziland. These four areas (witchcraft dynamics; impact of intoxicants; intimate social relations; development and land) are cross-linked rather than disparate categories and subjects of disputes themselves or discourses through which conflicts are dealt with.

This study of disputes and disputing processes from a comparative and transnational perspective contributes, first of all, to the aims of the IMPRS REMEP to analyse the social working of law and questions of how peace and social order are negotiated, constructed, and maintained in so-called conflict or post-conflict societies. Furthermore, this project aims to take up an empirical and theoretical dimension of legal anthropology under transnational conditions which has been largely set aside in spite of the noticeable pertinence of conflicts and their management across all cultures and levels of society.

## MEDIATION IN CRIMINAL MATTERS. A COMPARISON BETWEEN GERMANY, TAIWAN, AND CHINA (MENG-CHI LIEN)

*Dr. Meng-Chi Lien is a Taiwanese citizen. In April 2008 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 28, and finished her project in February 2015. Meng-Chi obtained an LL.B. degree from National Taiwan University, Taipei and an LL.M. degree from the Division of Criminal Law at National Taiwan University. Meng-Chi was enrolled in the Faculty of Law at Freiburg University. Prof. Dr. Hans-Jörg Albrecht and Prof. Dr. Roland Hefendehl were her supervisors.*

Mediation in criminal matters (MIC) is widely recognized as a viable alternative to more traditional and repressive responses to crime. As part of the restorative justice movement, MIC has achieved widespread attention in many countries. However, the development of MIC has been quite different in Germany, Taiwan, and China. In addition to extensive variations in legislation, e. g. a complete legal framework and widespread acceptance of MIC in Germany versus severe restriction in Taiwan and China – in practice German public prosecutors are overly prudent in referring cases to media-

tion agencies, whereas the Taiwanese and Chinese public prosecutors have demonstrated great enthusiasm in employing mediation frequently, despite different goals motivating the use of mediation in both contexts. This sharp contrast provides the fertile basis for this comparative research. In light of the fact that only a few MIC studies have aimed to address the problems and needs from the position of the public prosecutor, it is the intention of the present research to examine the required preconditions for an extensive MIC application from the viewpoint of the public prosecutor.

## COMPLIANCE AND MONEY LAUNDERING CONTROL BY BANKING INSTITUTIONS IN CHINA. SELF-CONTROL, ADMINISTRATIVE CONTROL, AND PENAL CONTROL (JING LIN)

*Born in 1982, Dr. Jing Lin is a Chinese citizen. She studied law at the China University of Political Science and Law (CUPL) in Beijing, graduating in 2005 with a Bachelor of Laws degree. Between 2005 and 2009 she completed an LL.M. in Comparative Criminal Law at the Chinese-German Institute for Legal Studies at CUPL. From 2007 to 2008, she received a scholarship from the DAAD to complete an LL.M. at the University of Freiburg. Jing Lin was accepted by the IMPRS REMEP in 2009 and was awarded a doctorate by the University of Freiburg in 2014. Since 2013 she has worked as senior researcher at the Max Planck Institute for Foreign and International Criminal Law. Jing Lin's research interests range from economic criminal law and economic crime control to juvenile criminal law, criminal procedural law, and human rights protection.*

Since a series of corporate scandals such as the cases of Enron, Siemens, and WorldCom occurred, the academic field has been mired in debates about how to control economic crime. Strategies of compliance promotion and crime/deviance prevention have been widely studied, ranging from traditional formal control approaches such as the instrument of penal control to informal approaches such as instruments of corporate governance (self-control). This study seeks to delineate the current economic crime/deviant control mechanisms in China. Three popular control instruments with escalating severity – self-control, administrative control, and penal control – are studied.

The aim of this study is to explore how these three instruments are regulated in China, their advantages and limitations, how they are linked to one another, the challenges they seek to confront, and the type of solutions that are required to achieve a smooth functioning – thus it is a comprehensive approach. The compliance of financial institutions and money laundering control in China will be studied as a case in point.

Apart from a literature review and an introduction of the research design (Part 1), this study analyses three control approaches, i. e. self-control (Part 2), administrative control (Part 3), penal control (Part 4), and then further studies their linkages (Part 5). Besides the theoretical framework based on John Braithwaite's responsive regulation and Julia Black's risk-based responsive regulation, this study samples empirical material from official documents (annual reports of the People's Bank of China, the Supreme People's Procuratorate and the Supreme People's Court), relevant news report, and interviews with professional staff. Given that each of the three instruments has both advantages and limitations, a networking approach (comprehensive approach) is essential to achieve sound compliance among financial institutions.

Self-control is the key element in the networking approach, considering that self-regulation is prevention-oriented with internal control systems and internal 'police' (compliance officers) that facilitate the early discovery of misconduct. A key element to achieve efficient enforcement of these instruments is creative linkage among them. First, control instruments with different levels of severity should be allowed to shift in response according to the regulatee's behaviour and the resulting risks. Second, incentive devices are not necessarily limited in informal control approaches, but should also be applied to formal control approaches, even to punitive control approaches. Likewise, punitive devices should be involved in informal control approaches.

This study is based on the assumption that the applicability of penal control (primarily punishment) to white collar crime control is seriously limited; it also assumes that an effective regulation presupposes the involvement of other control approaches, e. g. self-control and the proactive linkage of various approaches. Therefore, in line with the research program of the IMPRS REMEP, it addresses general concerns on the limits of penal control in the maintenance of social and economic order and suggests a comprehensive approach.

# ORGANIZING ACCOUNTABILITY AND CRIMINAL JUSTICE IN SOUTH AFRICA

(JOHANNA MUGLER)

*Johanna Mugler is a German citizen. In April 2008 she was admitted to the IMPRS REMEP at the MPI for Social Anthropology at the age of 28. She defended her thesis in July 2015. Johanna obtained a B.A. degree in Social Anthropology from the University of Cape Town, South Africa, in 2004. In 2006 she obtained an M.A. in Social Anthropology from Ludwig Maximilians University in Munich, Germany. She is currently a lecturer at the University of Bern.*

How are South African criminal justice employees, who call on others to account for wrong doings, held accountable? Moreover, to whom and for what, according to which standards, with what mechanisms and with what effects and consequences? These are the questions that lie at the heart of this PhD project. Interest in and demands for accountability are particularly urgent in a context like the new democratic South Africa, which still has to grapple with the legacy of an – for the most part entirely – unaccountable apartheid state. With its focus on the running of state institutions, the project contributes to the understanding of what role state criminal justice institutions play in the establishment, negotiation and maintenance of social order in post autocratic societies. Here the question of trust is of particular interest. How do post autocratic criminal justice institutions, which have been distrusted since they were the scaffolding of a repressive social order, re-establish relationships of trust? A key strategy is to establish mechanisms of accountability. These are supposed to give citizens confidence in the reasonableness and fairness of state demands and actions. Their aim is to minimize unpredictability and arbitrariness and to control discretion. The increasing interest in consensus on the importance and desirability of the concept of accountability however, does not come with consensus about its meaning.

Accountability is a variable social relationship and its terms are often vague, fiercely debated and associated with diverse practices. It can be formal and informal, public and private, grounded in professional discretion and expertise, or with standardized routines and protocols. It has been associated with elections and electoral recall; rationalized, professionalized and bureaucratic frameworks; judicial review; open and transparent government; market like mechanisms to enhance efficient, effective and economic public services; or with being more responsive to or respectful of, the needs of the

public. For many years, though, the dominant version of accountability has been linked to quantification and measurement. The increasing use of formal quantitative measures and verifiable accounts in many settings has been criticized for shifting the standard of accountability to performance as a ‘bottom line vision of accountability’; in other words, for narrowing down the understanding and practice of how accountability is defined and demonstrated.

This PhD project focuses on how the recent emphasis on quantitative accountability has shaped and influenced criminal legal practice in South Africa. Rather than treating quantitative forms of accountability as something inherently good or bad this project contributes with its in-depth empirical analysis of ‘what numbers do in organizations’ and ‘what people do with numbers in organizations’ to a more nuanced and critical understanding of their role and consequences. While exploring the normative, social and political dimensions of quantification and classification practices within South African criminal justice institutions, the project is at the same time critical of the view of numerical omnipotence and the numerical rhetoric of control and dominance. Instead, it carefully describes the various webs of accountability different criminal justice actors have to attend to (with a focus on prosecutors, police men and managers) as well as how they translate these diverse organizational demands into practice. By using accountability relationships and quantification as a lens to understand how complex social projects, like ‘delivering justice’ are accomplished, the study brings the everyday work of regulatory authorities – particularly institutions of punishment in post-autocratic settings – into focus.

## RETRIBUTIVE VS RESTORATIVE JUSTICE IN THE NORTHERN UGANDA CONFLICT. A CASE FOR SELECTIVE JUSTICE. THE APPLICATION OF DIFFERENT FORMS OF CRIMINAL JUSTICE

(NATHAN MUWEREZA)

*Dr. Nathan Muwereza is a Ugandan citizen. In August 2010 he was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 38. He concluded his doctoral thesis in July 2013. Nathan*

*obtained a diploma in education in 1998 from the Institute of Teacher Education of Kyambogo University, Uganda, a B.Sc degree from Makerere University, Uganda, in 2003, and his M.Phil. degree in 2007 from Cambridge University, UK. He worked in Uganda as a teacher and tutor in secondary and technical schools; was elected a political representative to the local government council in 2001; was a consultant for the Norwegian refugee council in northern Uganda in 2007–2008; and was a program coordinator for a regional anti-corruption coalition in Uganda in 2008–2009. For most of 2011 Nathan was on an extended fieldwork stay in Gulu, Uganda among victim communities of the war in Uganda and Sudan. After he obtained his PhD he founded the organization ‘Changemakers’, which he still directs.*

The complexities of the conflict in northern Uganda have presented serious challenges to the ICC and its role in administering justice. Without careful analysis and approach, the ICC is destined to present an antagonistic precedent for criminal justice systems worldwide, notwithstanding the relationship between countries involved (Sudan, DR Congo, Uganda and others); and the psychosocial and economic development dilemmas accompanying conflicts in such countries. Government positions in these conflicts with regard to causes and statutory responsibilities to victims are questionable. Promises of peace from the governments offer hope, but are rarely fulfilled. The role of invisible actors/supporters, the victims’ attitudes themselves and other quiet but significant parties, only complicates the design of strategies to deal with or prevent gross human rights violations. Although the ICC’s involvement in the Uganda conflict was warranted, pursuing justice in the midst of conflict led to more harm than good. Moreover, much local discontent and mistrust surround the work of the ICC. While this may be because the ICC is based on a retributive justice model while local efforts are based on a restorative justice model, these local efforts themselves yielded little if any result in regard to ending the wars or preventing crimes. Yet there is no doubt that international crimes and gross violations of human rights in the region are evident and ongoing; a fact that warrants international intervention. The criminal complications of the war in northern Uganda are coined by several factors. The conflict is shaped by attitudes of the parties and individuals involved; the socioeconomic, political and historical connotations; and the influence of other countries in the region as a whole.

So, which way do we go? Should we seek restoration or should we punish? Also, who should be restored or punished? Thus, in view of the complexity, geographical scope and kinds of crimes, as well as the type of perpetrators and perceptions of victims, analysing the forms of criminal justice best applicable in the northern Uganda conflict was a worthwhile undertaking; and so are the implications for such an application to criminal justice systems and/or forms.

Through and extended field stay in northern Uganda and South Sudan, victims' attitudes were collected and analysed with the help of MAXDA. Findings resulted in a thesis for the conferment of a doctoral degree of the Albert Ludwig University, Freiburg. The main research question of the project is 'In view of the complexity, geographical scope and kinds of crimes, as well as the type of perpetrators and perceptions of victims, which form of criminal justice is best applicable in the northern Uganda conflict; and what implications exist for such an application to criminal justice systems and/or forms?' The study will then answer the following sub questions:

1. Which actions have been executed by which party in the conflict and are ignored?
2. What attitudes and perceptions do victims have towards perpetrators?
3. How are victim communities addressing the aftermath of the atrocious actions in view of the forms of justice (local, national and international)?

Interview items were constructed around these questions to collect data in the field.

## WAR CRIMES TRIALS IN BOSNIA AND HERZEGOVINA. SELECTED ASPECTS OF TRANSITIONAL JUSTICE MECHANISMS

(LEJLA RÜEDI)

*Dr. Lejla Rüedi is a German citizen. In September 2008 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 26, and was simultaneously a research associate at the University of Bern in Switzerland. She concluded her research project in August 2013. She obtained an LL.M. in International and European Public Law from the University of Amsterdam, Netherlands, in 2007. She received a scholarship from the SNF (Schweizerischer Nationalfonds). Lejla was enrolled in the Faculty of Law at the University of Bern, Switzerland. Prof. Dr. Hans Vest, Director at the Institute for Criminal Law, International Criminal Law and Legal Theory at the University of Bern, and Prof. Dr. Hans-Jörg Albrecht were her supervisors.*

This research monograph is about transitional justice mechanisms as applied in Bosnia and Herzegovina with a clear focus on criminal justice mechanisms, primarily on national war crimes trials. Bosnia and Herzegovina has

been a complex field of experiments for the outreach and referral program of the International Criminal Tribunal for the former Yugoslavia (ICTY). Meanwhile, most of the war crimes trials that were referred from the ICTY to the domestic jurisdiction have been completed. While these trials were mainly focused on the ‘big fishes’ that were regarded as the most responsible for the atrocities during the 1992–1995 armed conflict, the rest of the suspected war criminals are prosecuted by the national authorities. This study provides an overview of national war crimes prosecutions in Bosnia and Herzegovina focusing on key problems of substantive and procedural criminal law aspects, such as the application of various different criminal codes for the same crimes at the state and entity level as well as the introduction and application of plea bargaining in war crimes cases.

# INTERNATIONAL CRIMINAL JUSTICE ON TRIAL: THE LEGAL IMPLICATIONS OF THE REFERRAL PRACTICE OF CASES FROM INTERNATIONAL TO NATIONAL JUSTICE MECHANISMS

(JENNIFER SCHUETZE-REYMANN)

*Dr. Jennifer Schuetze-Reymann holds both American and German citizenship. In April 2009 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 31, and obtained her PhD in February 2015. Jennifer received LL.B and B.C.L. degrees from McGill University, Canada, in 2003, and an LL.M degree in 2005 from the Institute of Comparative Law at McGill University. The dissertation is expected to be published later in 2015 in the series ‘Reports on Research in Criminal Law’ of the Max Planck Institute for Foreign and International Criminal Law in Freiburg.*

The 20<sup>th</sup> century has witnessed the rapid proliferation of a variety of international and internationalized criminal courts and tribunals (ICTs), whose creation have been justified by the International Community’s resolve to punish perpetrators of the gravest international crimes so as to contribute to restoring peace and justice to (post-)conflict regions. A comparison of the various

courts and tribunals reveals a range of different ‘justice’ models, with specific legal frameworks and jurisdictional features determining each ICT’s relationship with, inter alia, relevant sources of law and national judicial institutions. The specific contours of the relationship between the ICTs and relevant national accountability mechanisms continue to be subject of some uncertainty, not least in light of the fact that national courts have now increasingly begun to prosecute international crimes. This growing trend is also consonant with the complementarity principle of the new permanent International Criminal Court (ICC), which is premised on the understanding that national courts are best suited to prosecute international crimes themselves.

Given the sheer scale of the crimes committed and the limited resources of ICTs, it is crucial that these courts function in parallel with national/ local courts in a pluralistic integrative system of international criminal law (ICL). At the same time, parallel judicial activities are giving rise to an array of complex legal conundrums. Contemporary legal discourse is therefore increasingly focusing on the practical and theoretical implications of a certain ‘diversification’ (also referred to as ‘fragmentation’) of the body of ICL, not just on an institutional level but on a procedural and substantive one as well.

While many academic contributions have focused on the deferral of cases from national courts to ICTs, less attention has been paid to the opposite practice, namely referrals from international tribunals to domestic courts.

The referral practice of the International Criminal Tribunals for the Former Yugoslavia and Rwanda (ICTY and ICTR respectively) to national courts as a crucial component of the U.N. Security Council formulated Completion Strategy, which sets a date by which the tribunals should conclude definitively trial and appellate activities, illustrates – in a highly concrete manner – various legal challenges arising from pluralistic accountability mechanisms in the prosecution of international crimes. The effective implementation of the Completion Strategy is contingent on the tribunals’ ability to transfer cases and investigative materials to national jurisdictions for prosecution.

The referral practice lends itself well to a study as it evinces the complex interplay between normative actors, legal orders, sources of law and other normative projections. This interplay is part of a greater trend, which is becoming increasingly relevant as the ICC starts adjudicating its first cases. The referral practice could also be relevant for the ICC, despite its different jurisdictional framework.

The first research objective was to examine the most significant legal conundrums caused by the transfer of cases and investigative materials from the ICTY/R to national courts. The second objective was to understand possible root causes of such legal conundrums. The third objective was to formulate possible solutions. The fourth objective was to ascertain how such solutions could be transplanted into the ICC context. The fifth objective was

to draw general conclusions about pluralistic interactions of different legal systems and norms in the ICL fora today and thereby to contribute to the growing debate regarding the theory of legal pluralism.

Research methods comprise an in-depth analysis of relevant norms, judicial decisions, and transcripts emanating from the ICTY, ICTR, ICC and national courts, as well as a literature review and experts interviews.

# THE PROCEDURE OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING COUNTRIES IN TRANSITION. THE ECTHR'S TRANSITIONAL JUSTICE CASES AGAINST LATVIA (INGA ŠVARCA)

*Dr. Inga Švarca is a Latvian citizen. In March 2009 she was admitted to the IMPRS REMEP at the MPI for Comparative Public and International Law at the age of 32. Inga obtained a Dipl.-jur. from Latvia University in 2000 and an LL.M. degree in International and European Law from Riga Graduate School of Law, Latvia, in 2001. She concluded her doctoral thesis in February 2012 and today works at the Institute of European Mediation and Arbitration.*

After the collapse of the Soviet Union, all post-communist states in Europe were countries in transition facing specific judicial problems when they acceded to the European Convention on Human Rights. These new member states applied various transitional justice tools resulting in numerous applications examined by the European Court of Human Rights (ECtHR). Nevertheless, the ECtHR has not (yet) followed a clear and foreseeable methodical approach to deal with these unique and complicated cases in an equal manner. This analysis comes up with suggestions how to deal methodically with the changing role of the ECtHR and the challenges created by countries in transition with their manifold legacies.

Latvia is used as a concrete example of a country in transition to demonstrate how issues of human rights violations have been addressed in a multi-cultural country that did not create any special trial or alternative dispute

resolution body to address the wrongs of the past and to (re)establish the rule of law. Despite the collapse of the former Soviet Union and the emergence of many new independent countries, e. g. Georgia, Lithuania, Latvia, Russia, Ukraine, the basic procedural rules of the ECtHR have remained the same. Certainly, such a methodical approach can, on the one hand, be described as keeping up legal certainty and stability. On the other hand, the peculiarities of the countries in transition and the almost overnight shift away from more than half a century of totalitarianism to a society based on the rule of law, human rights and democracy were in many cases neglected: massive corruption, nepotism and incompetence were the hallmarks of a non-independent judiciary in the aforementioned countries.

The goal of the study is to establish what role the ECtHR plays concerning countries in transition and how, if at all, it can contribute to a successful accomplishment of the process. The study assesses the procedure of the ECtHR regarding cases against Latvia on transitional justice issues. After drawing conclusions, the study will come up with proposals for improving the procedural rules of the ECtHR to meet the demands of countries in transition.

## ETHNOGRAPHIES OF CONTENTIOUS CRIMINALIZATION. EXPANSION, AMBIVALENCE, AND MARGINALIZATION

(CAROLIJN TERWINDT)

*Dr. Carolijn Terwindt is a Dutch citizen. In August 2009 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 30, and concluded her project in November 2011. After graduating in law and cultural anthropology at Utrecht University, she founded a project organizing urban 'Olympic Games' aimed at facilitating social cohesion in Amsterdam. She has worked as a lecturer and researcher in Utrecht, Amsterdam and Freiburg. She currently works with the European Center for Constitutional and Human Rights (ECCHR) in Berlin in the Business and Human Rights Program, with a focus on Asia.*

This dissertation addresses the challenge of liberal democracies to deal with fundamental conflicts in society about, for example, political representation and natural resources, and the subsequent transfer of such conflicts into the criminal justice arena when actors fail to deal with competing demands in the

political arena. In an exploration of tensions between law and justice, and the competing conceptions of ‘crime’ and ‘harm,’ this work analyses criminalization processes in three contentious episodes: the Chilean-Mapuche territorial conflict, the Spanish-Basque separatist conflict and the eco-conflict in the United States. Although prosecutors invariably asserted their independence and the democratic mandate to ‘simply’ enforce the law, this dissertation describes the gradual politicization of criminal proceedings as opposing actors implicated in the political struggle move into the criminal justice arena and make it subject to and the space of claim-making. This study not only challenges the belief that criminal law can be applied in an independent and neutral manner. Taking a constructivist perspective on the prosecutorial narrative and analysing how mobilization and discursive action of ‘victims’ and ‘prisoner supporters’ aim to push or challenge criminal prosecutions, it describes in detail the ways in which such conflictive and interpretive processes fundamentally alter the logic and development of criminal prosecutions.

## THE ICC AND CHINA: THE PRINCIPLE OF COMPLEMENTARITY AND THE NATIONAL IMPLEMENTATION OF INTERNATIONAL CRIMINAL LAW

(CHENGUANG ZHAO)

*Dr. Chenguang Zhao is a Chinese citizen. In July 2009 she was admitted to the IMPRS REMEP at the MPI for Foreign and International Criminal Law at the age of 26, and concluded her research project in February 2013. Prof. Dr. Hans-Jörg Albrecht and Prof. Dr. Albin Eser were her supervisors. Chenguang obtained an LL.B. degree from Beijing Normal University, China, in 2005, and an LL.M. degree from the College for Criminal Law Science, Beijing Normal University, in 2008. Today she is a teaching assistant at the College for Criminal Law Science of Beijing Normal University.*

For a long time, a disconnection has existed between international and domestic justice. The relationship between international and domestic justice was treated as one of two autonomous systems, like yin and yang in Chinese. With the advent of the International Criminal Court (the ICC), which came into being on 1 July 2002 with the ratification of its founding treaty by 60 states, the two systems work increasingly in tandem. The principle of com-

plementarity is one of the corner stones of the architecture of the ICC. It is an approach of 'encouragement and punishment,' as expressed in the Chinese saying by Xian Li Hou Bing 'courtesy first and penalty second'. Under the principle of complementarity, states have primary jurisdiction over the ICC. So long as the legal system of a state can efficiently investigate and prosecute the core international crimes prohibited in the Rome Statute, the ICC will not intervene. But if a state is unwilling or unable to investigate and prosecute these crimes, the ICC will invoke the principle of complementarity to step in. Therefore, the principle of complementarity has an impact on the national implementation of international criminal law, as well as on its exercise of jurisdiction in many aspects, including for third party states.

Although China was actively involved in the Rome Conference, the Chinese delegation ultimately cast a negative vote. As a third party to the ICC that has neither signed nor ratified the Rome Statute, this does not mean that China can dissociate itself from the influences of the ICC or shirk responsibility for the suppression of core international crimes. Precisely the opposite is the case. Being a third party state to the ICC, China has ratified the genocide, torture, and other international conventions and is obliged to prosecute these international crimes by implementing these international conventions into national law. However, the core crimes have thus far not been incorporated into Chinese criminal law. Questions arise as to whether China is willing and able to prosecute core crimes and if so, on what legal basis.

This research work focuses on the possible impact of the principle of complementarity on the implementation of international criminal law in China as a third party state and the prospect of the relationship between China and the ICC based on this analysis. The extremely broad research program can be split into several core issues and central questions: How does complementarity operate? How does complementarity affect the identity of the ICC and its role with respect to domestic jurisdictions? Why does the principle of complementarity matter for China? What is the status of national legislation and the prosecution of international core crimes in China and what are the causes of the current insufficiency? To what extent does the principle of complementarity have a catalytic effect on the domestic implementation of international criminal law in China and what reforms should be carried out? How can China take advantage of the principle of complementarity to protect its sovereignty, and what future prospects exist for the relationship between China and the ICC?

The subject of this study is the national legislation and punishment of core international crimes in China against the backdrop of the impact of the ICC. The philosophy of retaliation, mediation, and punishment constitutes the theoretical basis for the whole work which corresponds closely to the research agenda of the IMPRS REMEP. Research methods consist of an analysis of relevant norms, international conventions, national and international jurisprudence, written media sources as well as a literature review.



Turkana raiders fetching water

(I. EULENBERGER, 2009)





Bashingantahe Council in Burundi settling a dispute

(D. KOHLHAGEN, 2011)





Prison in Maceió, Brazil

(C. MOURA DE SOUZA, 2013)



# PUBLICATION LIST

*Following bibliography in reverse chronological order lists the most significant publications of REMEP's doctoral students and some publications of the faculty members that are thematically related to REMEP.*

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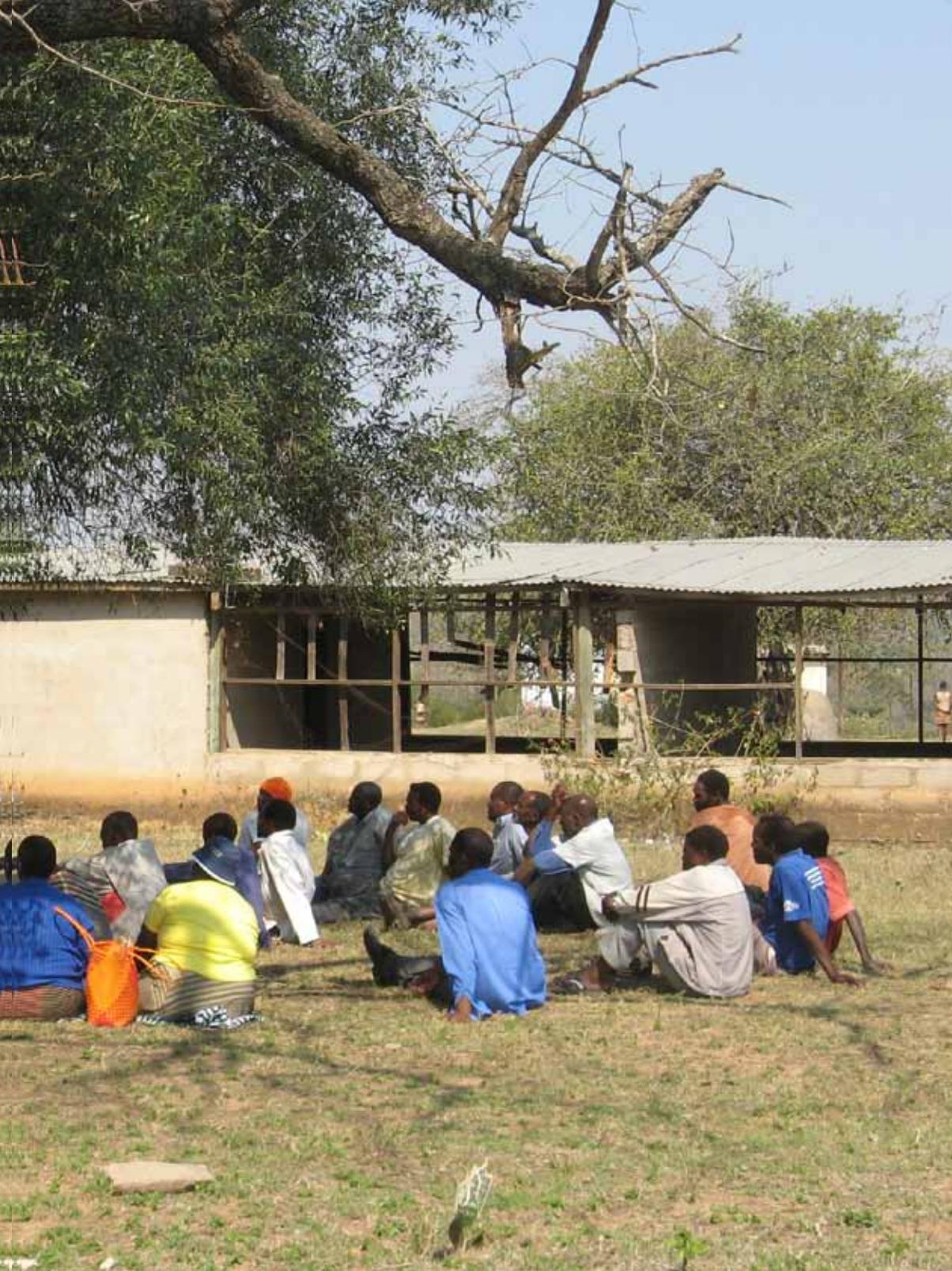
A former court building in Burundi that was destroyed during a rebel attack  
(D. KOHLHAGEN, 2008)





Justice under the tree

(S. LENART, 2009)





'Algemas' (handcuffs), photo taken in an internment unit for adolescents in Maceió, Brazil

(C. MOURA DE SOUZA, 2013)



# BOOK PUBLICATIONS

Andreas Armbrorst  
*Jihadi Violence.  
A Study of al-Qaeda's Media*  
(Berlin: Duncker & Humblot, 2013)



Kiyomi v. Frankenberg  
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Mayeul Hieramente  
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