

WOMEN'S RIGHT TO POLITICAL PARTICIPATION IN POST-CONFLICT TRANSFORMATION

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Where does the breeze begin to blow? I have been a woman for too long, so mind my smile. It hides my pain. It hides my scars. It hides my memories, so tell me sister where does the breeze begin to blow? I need to languish in its breath to begin my renewal. (A Zulu Love Letter)

Abstract

This thesis is looking at the experience of girls and women in times of armed conflict in order to offer some solutions to increase women's participation in post-conflict transformation of society. Women and girls experience war in many different ways, but both as victims and agents of change. This latter role often goes unnoticed and women are traditionally forced to go back to traditional gender roles. Undertaking the study of some cases of African countries, the author tries to analyse the impact that women's movements for peace have had on the substantive content of peace agreements. While it is difficult for women to participate in the reconstruction of their society once the conflict ceased, it might be more efficient to include women at the very beginning of peace negotiations. Women's right to take part in the conduct of public affairs is a means as well as a reparative measure, both aiming at increasing women's political participation in a transformed post-conflict society.

Résumé

Ce travail de recherche s'appuie sur la condition des femmes en situation de conflit armé. L'objectif est de déterminer les failles en matière de justice transitoire, vue sous l'angle des femmes, et de proposer des éléments de solutions pour que les femmes puissent participer pleinement à la transformation de leur société au sortir d'un conflit. En temps de guerre, on ne voit souvent dans les femmes que les principales victimes de violence sexuelle et on tend à oublier le rôle très positif et constructif qu'elles jouent par ailleurs dans la transformation de leur société. C'est de ce rôle dont traite cette thèse. Généralement, dès qu'une certaine stabilité est retrouvée, les femmes se voient contraintes de reprendre leur vocation traditionnelle qui occulte alors leurs efforts pour la paix. L'argument développé ici propose d'impliquer les femmes dès le début des négociations de paix. Une étude portant sur plusieurs cas de pays africains permet de conclure que ce n'est qu'à cette condition que les femmes peuvent réellement avoir une influence sur la teneur des accords de paix, et donc l'évolution de leur société d'après conflit. Le droit des femmes à prendre part aux affaires publiques est ainsi vu comme un moyen d'assurer une meilleure représentation des femmes sur la scène politique, mais aussi comme une mesure de réparation servant le même objectif.

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1. INTRODUCTION

From April 28 to May 1st 1915, a historic meeting of women took place in The Hague. The scheme of the meeting had been decided at a small conference of women activists from neutral and belligerent countries in Amsterdam at the beginning of 1915. They decided they could no longer wait and sit for the end of the war and organized the first International Congress of Women (ICW). For the first time in history, women across borders decided to meet in order to discuss their possible role in bringing about peace. By peace, they did not only mean to end World War I, but more all conflicts in the world.¹ Two outcomes are noteworthy. First, the women attending the International Congress adopted a Resolution, in which they denounced women's sufferings in war and called for the creation of a non-partisan organisation to mediate disputes between countries. The women of the ICW also demanded that women be granted equal political rights with men² and that they be able to present proposals to peace settlements.³ Second, delegations were created to visit national leaders in an effort to promote mediation of the war.⁴ Those two strategies of women, i.e. gathering together and stating their position in a document, and lobbying leaders for their voice to be heard, are strategies that are found in contemporary women's peace missions. While they might "rarely be greeted with the deference that heads of states accorded to delegates of the ICW [...] this indifference has not stopped women from organizing for peace."⁵

Amongst the contemporary women's movements for peace is the Mano River story. The Mano River originates in the Guinea highlands and forms the border between Liberia and Sierra Leone.⁶ The particularity of the Mano River region is that conflict in one country

¹ Harriet Hyman Alonso, "Introduction to the Illinois Edition" in Jane Addams, Emily G. Balch & Alice Hamilton, eds., *Women at the Hague : the International congress of Women and its Results* (Chicago: University of Illinois Press, 2003) at vii [Women at the Hague].

² Resolutions Adopted by the International Congress of Women at the Hague, May 1, 1915: see Appendix 3 in Women at the Hague, *ibid* at 72. Paragraph 9 of the Resolutions call for the enfranchisement of women: "Since the combined influence of the women of all countries is one of the strongest forces for the prevention of war, and since women can only have full responsibility and effective influence when they have equal political rights with men, this International Congress of Women demands their political enfranchisement."

³ See para.19 of the Resolutions, *ibid*.

⁴ See Women at the Hague, *supra* note 1 at vii.

⁵ Elisabeth Rehn & Ellen Johnson Sirleaf, eds., "Women, War, Peace: the Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building" (UNIFEM 2002) at 75 [Rehn & Sirleaf, UNIFEM 2002].

⁶ Wikipedia, online.

inevitably affected the others. Women were struggling for peace in the region, until they realised that peace could be achieved through regional efforts. The women of Guinea, Liberia and Sierra Leone joined together to form the Mano River Women's Peace Network (MARWOPNET). And it is their initiative that really showed the potential as well as limits of women's peace movements.⁷ After creating the MARWOPNET, women organised protests, issued public declarations and lobbied the regional leaders. They convinced the Presidents of the three countries to meet and discuss a regional solution to the conflicts. The efforts of those women has been acknowledged and rewarded. MARWOPNET received in December 2003 the annual United Nations prize in the field of human rights, in appreciation for its contribution to bring peace to the region.⁸ While MARWOPNET was a signatory (as witness) to the 2003 Liberia peace agreement,⁹ the women were however not invited to the peace conference.¹⁰ This is exactly the problem that this thesis is looking at. Despite women's efforts in taking part in peace processes, they are denied a basic right: the right to participate in decision-making.

This thesis is entitled "women's right to political participation in post-conflict *transformation*". The original title was "women's right to political participation in post-conflict *reconstruction*." The change of wording is very important and goes along the line of the argument of this thesis. It is therefore important for the reader to understand this modification. The term 'reconstruction', when used in reference to the post-conflict phase seems problematic at least from women's perspective. Indeed, this term calls upon a return to 'normal', without necessarily seeking an improvement of the situation of the affected population. Sheila Maintjes, Anu Pillay and Meredith Turshen acknowledged the delicacy of choosing the

⁷ Michale Fleshman, "African women struggle for a seat at the peace table" (2003) 16: 4 Africa Recovery, 1, online: Africa Recovery < <http://www.un.org/ecosocdev/geninfo/afrec/vol16no4/164wm1.htm> >.

⁸ "MARWOPNET awarded 2003 United Nations Prize in the Field of Human Rights" Femmes Africa Solidarité, Press Release, 3 December 2003, online: Peace Women <http://www.peacewomen.org/resources/Peace_Negotiations/FASPressRelease2003.html>.

⁹ See the Comprehensive Peace Agreement between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, Accra, 18 August 2003, online: United States Institute of Peace <http://www.usip.org/library/pa/liberia/liberia_08182003_toc.html> [Liberia CPA].

¹⁰ See Kari H. Karamé, "Gender Mainstreaming the Peace-Building Process" at 11 in Kari Karamé, ed., *Gender and Peace-Building in Africa* (Oslo: NUPI, 2004), online: Training for Peace <<http://www.trainingforpeace.org/pubs/nupi/genderrapporten.pdf>> [Karamé].

wording when referring to the period that follows a ceasefire.¹¹ It seems indeed more appropriate to talk about post-conflict *transformation*. As Elsie Onubogu and Linda Etchart notices, ‘reconstruction’ assumes an element of restoring a situation that previously existed:

But this is not necessarily what women want. Emerging from situations of armed conflict, women may not want to return to the status quo before the conflict and may seek full citizenship, social justice and empowerment based on respect for their human dignity and human rights. The goal is societal transformation rather than restored dependence and subordination.¹²

This thesis attempts to view the terrain of women’s political participation in post-conflict societies, while critically highlighting the state of the art – both in available doctrine, as well as addressed in international law and reflected in a few case studies undertook in the African continent. The final aim is to understand how, in situations of post-conflict, women’s political participation can be improved. To this end, the thesis is divided into several sections. The second section of this thesis is intended to ground the discussion and justify the choice of topic. Women are generally under-represented in decision-making and it is argued that post-conflict societies represent an opportunity for women’s right to political participation to be reaffirmed and guaranteed. It is very important to realize that men and women are treated differently in many cases, such as access to resources, influence on the public affairs of one’s country, etc. “Realizing these differences enhances the awareness of possible inequalities between women and men, which can form a constraint to development because they may limit the ability of men, but more often of women, to develop and exercise their full capabilities, for their own benefit and for that of society as a whole”.¹³ The following two parts of the thesis are aimed at presenting the state of the law with respect to the right to political participation on one hand, and to the right to reparation on the other. The discussion that follows engages with the core

¹¹ Sheila Meintjes, Anu Pillay & Meredith Turshen, eds., *The Aftermath: Women in Post-Conflict Transformation* (London, Zed Books Ltd: 2001), at 1-2 [Meintjes et al. 2001]. The authors chose the wording of “aftermath” over “war-torn societies” used by the United Nations Research Institute for Social Development, or “post-conflict” as preferred by several United Nations specialised agencies, such as the World Bank. They found that reference to a ceasefire was irrelevant for women, as “there is no aftermath for women”: gender violence does not stop after a ceasefire, but rather increases, and “the scenarios following war are as various as the conflicts themselves.”

¹² Elsie Onubogu & Linda Etchart, “Achieving Gender Equality and Equity in Peace Processes” in Rawwida Baksh et al., *Gender Mainstreaming in Conflict Transformation: Building Sustainable Peace* (London: Commonwealth Secretariat, 2005) 34 at 41 [Onubogu & Etchart].

¹³ Tsjeard Bouta & Georg Frerks, “Women’s Roles in Conflict Prevention, Conflict Resolution and Post-Conflict Reconstruction: Literature Review and Institutional Analysis” Netherlands Institute of International Relations, The Hague, November 2002, 27 [Bouta & Frerks].

argument of this thesis. The right to political participation and the right to reparation will be useful instruments in articulating the argument for women's need to take part in the peace process at the earliest stage in order to guarantee and secure their participation in decision-making. As it will be shown in the last part of the thesis, the status granted to women in peace negotiations will have an important impact on the influence they might have on peace agreements, and hence on the articulation of new structures aimed at guaranteeing long lasting peace. In a fifth part of the thesis, it will be argued that women's political participation could be promoted as a reparative measure. Indeed, violence against women in times of armed conflict is often rooted in discriminatory practices and laws, which deny an equal status to women with men. Addressing the roots of violence against women by acknowledging their right to political participation is a necessary first step toward peace and democratic transformation of society.

In order to support the arguments developed in this thesis, a couple of country cases are studied. It would indeed have been interesting to look at one country in particular. While it was the first angle of research undertaken by the author of this paper, this method revealed itself to be limitative both in terms of information available and conclusions to find. In expanding the research, it seemed that a geographic choice had to be taken. The decision to focus on the African continent was essentially dictated by a personal interest in this continent and a language issue.¹⁴ The countries studied being for the most part located in the same region, it was interesting to see that the situation in one country will inevitably influence the situation in the neighbouring countries. Furthermore, the choice of case studies has mainly been directed by the amount of available information. While it might have been more pertinent to focus only on one country, the information available by country was deemed insufficient for an in-depth analysis.

The focus of this thesis is undeniably on women. More precisely it is on women and girls, as in times of armed conflict, the essence of their situation is the same, and because they are the victims of similar violations. While this thesis does not pretend to be in line with

¹⁴ It would have been interesting to look at the Latin American continent, as it has also know its share of conflicts and as current politics tend to put women on the forefront. However, the author of this thesis was handicapped by her inability to research in Spanish.

feminist scholars, focusing on women quickly appeared obvious and necessary because women are all too often invisible and silent: women are the main victims of armed conflicts; they are under-represented on the political scene; they are often discriminated against, especially in patriarchal societies. Furthermore, while post-conflict societies are faced with a disproportionately large number of women victims and survivors, issues of transitional justice, such as accountability of the perpetrators and reparation of the victims, must take into account the specificity of the people who suffered most from the conflict.¹⁵

There has been in the past few years some significant improvements. As an example, rape went from being considered a crime against women's honour¹⁶ to a crime against humanity.¹⁷ There has been an increased visibility of gendered violence, leading to the explicit inclusion of rape, sexual slavery, enforced prostitution, forced pregnancy, gender-based prosecution, sexual enslavement, enforced sterilisation, and sexual violence as war crimes and crimes against humanity in the Rome Statute of the International Criminal Court.¹⁸ Recently, the Appeals Chamber of the Special Court for Sierra Leone found forced marriage to be a crime against humanity.¹⁹ The necessity to involve women in peace-related issues has also been recognised and is now promoted. However, much work remains, and much of the discourse and practice continue to disregard the potential of women's participation in the post-conflict phase. This gender-blindness is clearly evident in peace negotiations which have failed to grant an equal status to men and women victims or participants in the conflict, and in resulting peace agreements which fail to incorporate women's views and needs. In order to

¹⁵ Binaifer Nowrojee, "Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath" Human Rights Watch Africa, 1996 [Nowrojee], at 3: "Rwanda has become a country of women. It is currently estimated that 70 percent of the population is female and that 50 percent of all households are headed by women."

¹⁶ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287, art. 27, online: Office of the High Commissioner for Human Rights <<http://www.unhchr.ch/html/menu3/b/92.htm>>.

¹⁷ See Statutes of the ICC, ICTR and ICTY.

¹⁸ Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9, art 7(1)(g) [ICC Statute].

¹⁹ The Trial Chamber had found the residual category of crimes against humanity, other inhuman acts, to be confined to acts of a non-sexual nature, finding forced marriage to be subsumed in the crime of sexual slavery. However, the Appeals Chamber found that the Trial Chamber read restrictively the residual category of crimes against humanity, as excluding sexual crimes. The Appeals Chamber found forced marriage to be a distinct crime from the crime of sexual slavery, and that it is not necessarily a sexual crime, sex being only the incident to the forced relationship. For further details, see *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara & Santigie Borbor Kanu*, Case No. SCSL-2004-16-A, 22 February 2008.

seize opportunities for meaningful change, women must be included in all steps of the peace process.

2. NO MEANINGFUL TRANSFORMATION OF POST-CONFLICT SOCIETIES WITHOUT WOMEN

While the literature on war has been increasingly paying attention to the gender characteristics of men and women, hence recognizing that men and women do not experience political violence and other gross violations of human rights and humanitarian law in the same way, they have however overcome to take into consideration the diversity among women and their different roles in armed conflict. Women must not only be seen as passive victims, but as active agents as well. By doing so, women will better benefit from the window of opportunities that conflict situations offer them.

2.1. The multifaceted women in times of armed conflict

2.1.1. *Women as victims of armed conflict*

While gender-based violence against women was not a new phenomenon,²⁰ the conflict in Bosnia-Herzegovina drew the world's attention to the widespread use of rape of women as a method of warfare.²¹ However, while it is widespread, sexual violence has been underreported and survivors have suffered in silence. Many organizations have taken up the task of documenting violence against women in times of armed conflict. Having acknowledged that women experience war differently, it is now also acknowledged that the impact of the violations committed by warring parties during armed conflict is different for women than from men, especially because of the social stigma attached to rape and other forms of sexual violence.²²

²⁰ See Annette Lyth, "The Development of the legal protection against sexual violence in armed conflicts – advantages and disadvantages" (December 2001), p. 2, online: Kvinna Till Kvinna <<http://www.iktk.se/publikationer/rapporter/pdf/development.pdf>> [Lyth]; See also Jan Ruff-O'Herne "Fifty Years of Silence: Cry of the Raped" in Helen Durham & Tracey Gurd, eds., *Listening to the Silences: Women and War* (Leiden: Martinus Nijhoff Publishers, 2005) 3.

²¹ See for example, Maggie O'Kane "Reporting on Women during Armed Conflict: A War Journalist's Perspective" in Helen Durham & Tracey Gurd, eds., *Listening to the Silences: Women and War* (Leiden: Martinus Nijhoff Publishers, 2005) 89.

²² See for example, Christine Chinkin, "Rape and Sexual Abuse of Women in International Law" 1994:5 E.J.I.L. 1 [Chinkin].

The United Nations Commission on Human Rights, in its resolution 1994/45 of 4 March 1994, defined “violence against women” as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life, and including domestic violence, crimes committed in the name of honour, crimes committed in the name of passion, trafficking in women and girls, traditional practices harmful to women, including female genital mutilation,, early and forced marriages, female infanticide, dowry-related violence and deaths, acid attacks and violence related to commercial sexual exploitation as well as economic exploitation.²³

“As members of the civilian population, women (and girls) are subjected to innumerable acts of violence during situations of armed conflict.”²⁴ While women, as members of the civilian population, suffer the indirect effects of war, such as shortage of food for example, there is clear evidence from around the world that women are also subjected to direct acts of violence against their persons. Women are often directly targeted because they are women, despite the belief that their gender constructed role as caretakers would grant them better protection from the warring parties.²⁵ The Beijing Platform for Action stated that “although entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex.”²⁶

In many cases, women are singled out for violent treatment because they are women, violence towards women being part of a larger strategy of political domination and gendered-violence being used as a weapon of war.²⁷ Other reasons may be because of their relationship to a man, or because of the social, religious or ethnic group to which they belong.²⁸ During the

²³ UNHCHR, Commission on Human Rights, Resolution 2003/45 “Elimination of Violence against Women” at ¶4.

²⁴ Charlotte Lindsey, “The Impact of Armed Conflict on Women” in Helen Durham & Tracey Gurd, eds., *Listening to the Silences: Women and War* (Leiden: Martinus Nijhoff Publishers, 2005) 21 at 23 [Lindsey].

²⁵ Lindsey, *ibid.* See also Catherine Newbury & Hannah Baldwin, “Profile: Rwanda” in Krishna Kumar, ed., *Women and Civil War: Impact, Organizations, and Action* (London: Lynne Rienner Publishers, 2001) 27 [Profile: Rwanda]. “In previous episodes of violence in Rwanda, men had been the main targets while women and children were usually spared. (...) but in 1994, (...) the perpetrators of the massacres targeted women and children as well as men. All Tutsi women were targeted, simply because they were Tutsi, and large numbers were killed, often after having been subjected to sexual violence and torture.”

²⁶ Platform for Action and the Beijing Declaration, Fourth World Conference in Women (1995), ¶135, online: United Nations Division for the Advancement of Women <<http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>>.

²⁷ *Ibid.* See also Nowrojee, *supra* note 15 at 2.

²⁸ Lyth, *supra* note 20 at 3.

genocide in Rwanda, Tutsi women were at risk,²⁹ even those married to Hutu men, as were Hutu women married to Tutsi men – considered as accomplices – and Hutu women associated with groups seen as opponents to the Hutu extremists.³⁰

While sexual violence during armed conflict is not a new phenomenon, its use as a tactic of war is increasing. Binaifer Nowrojee noted in a report on sexual violence during the genocide in Rwanda that “throughout the world, sexual violence is routinely directed against females during situations of armed conflict.”³¹ The scale of sexual violence against women is such that it often indicates a deliberate strategy by belligerents to use gender-based violence as a weapon of war to (i) instil terror among the civilian population,³² (ii) demoralise men for failure to protect their women,³³ (iii) secure information on male relatives, and (iv) further the extermination of a population.³⁴ “The deconstruction of a culture can be considered one of the

²⁹ The three first Hutu Commandments referred to Tutsi women: “1. Every Hutu should know that a Tutsi woman, whoever she is, works for the interest of her Tutsi ethnic group. As a result, we shall consider a traitor any Hutu who marries a Tutsi woman, befriends a Tutsi woman, employs Tutsi woman as a secretary or a concubine. 2. Every Hutu should know that our Hutu daughters are more suitable and conscientious in their role of woman, wife and mother of the family. Are they not beautiful, good secretaries and more honest? 3. Hutu women, be vigilant and try to bring your husbands, brothers and sons back to reason.” Hutu Ten Commandments, online: Wikipedia <http://en.wikipedia.org/wiki/Hutu_Ten_Commandments>.

³⁰ Profile: Rwanda, *supra* note 25 at 28.

³¹ Nowrojee, *supra* note 15 at 2.

³² See for example, Amnesty International “Burundi – Rape: the hidden human rights abuse” (2004), at 1-2, online: Amnesty International <<http://www.amnesty.org/en/library/asset/AFR16/006/2004/en/dom-AFR160062004en.pdf>> [AI – Burundi rape]. “The scale of rape during the Burundian crisis indicates a deliberate strategy in some parts of the country by belligerents to use rape and other forms of sexual violence against women as a weapon of war to instil terror among the civilian population and to degrade and humiliate it.” See also the Combined fourth and fifth report of the Democratic Republic of Congo to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/COD/4-5, 30 November 2004, at 46. The authors of the report mentioned a 2002 report by Human Rights on the conflict in DRC, which said that sexual violence, and in particular rape, against women and girls was used as a war strategy to gain control over civilians.: “the aggressors intended to traumatize, humiliate and terrorize communities, so as to destabilize and punish them for supporting the opposing side.”

³³ See for example “Women’s Bodies as a Battleground: Sexual Violence against Women and Girls during the War in the Democratic Republic of Congo – South Kivu (1996-2000)”, Réseau des Femmes pour un Développement Associatif, Réseau des Femmes pour la Défense des Droits et la Paix, and International Alert (2005) at 48 [DRC – South Kivu]. The authors of this study have attempted to understand the reasons behind the sexual violence committed during the conflict. They found that one of the reasons for women to be targeted is because women “symbolise their community. The men of the community are targeted through them and through their bodies.”

³⁴ Rapes committed in Rwanda and DRC were aimed at destroying women’s identity by means of ethnic cleansing.

primary goals of warfare, because only through its destruction – which involves destruction of people – can a decision be forced.”³⁵

Sexual violence may take gender-specific forms, such as rape,³⁶ sexual assault, sexual slavery, sexual mutilation, forced pregnancy, forced prostitution, forced sterilization and forced abortion. Such acts may qualify as crimes under international law. While this issue goes beyond the scope of this chapter, it will only be mentioned that perpetrators of such acts can be charged under international law for acts of genocide, war crimes, or crimes against humanity.³⁷

The countries of the African Great Lakes region are linked by “a history of interrelated conflicts.”³⁸ Women from these countries have been subjected to atrocious forms of violence, based on their gender and/or ethnicity. While the use of sexual violence against women has been widespread in recent armed conflict, it is very difficult to give an estimate of the women victims of sexual violence because some of them have been killed following the abuse or have died since the end of the conflict, but also and mainly because many women who have suffered such acts of violence fear to speak out as there is a real social stigma attached to sexual violence.

During the 1994 genocide in Rwanda, women were subjected to sexual violence on a massive scale. “Administrative, military and political leaders directed or encouraged both the killings and sexual violence to further their political goal: the destruction of the Tutsi as a group.”³⁹ Rwandan women were targeted because of their gender and their ethnicity. The

³⁵ Lyth, *supra* note 20 at 3.

³⁶ Meredith Turshen said that rape was the most common act of violence against women in wartime. See Meredith Turshen, “The Political Economy of Violence against Women during Armed Conflict in Uganda” (2000) 67:3 Social Research 803 at 804 [Turshen 2000].

³⁷ See the Rome Statute of the ICC, *supra* note 18, which is the first international treaty to recognize a range of acts as of sexual and gender violence as among the most serious crimes under international law. See art. 7(1)(g) of the ICC Statute which includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity as individual acts constituting crimes against humanity. These specific sexual violence crimes may also constitute crimes against humanity. The ICC Statute is the first international treaty that specifically codifies the crimes of sexual slavery, forced pregnancy and gender-based persecution. Many scholars have studied this issue. For more details, see “Sexual Violence as International Crime” Human Rights Watch, online: <<http://www.hrw.org/campaigns/kosovo98/seviolence.shtml>>; see also Lyth, *supra* note 20; see also Chinkin, *supra* note 22; see also Kelly Dawn Askin, “Gender Crimes Jurisprudence in the ICTR: Positive Developments” 2005:3 J.I.C.J. 1007 [Dawn Askin].

³⁸ Human Rights Watch, “African Great Lakes Region: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights” (2005), online: Human Rights Watch <http://hrw.org/english/docs/2005/03/10/burund10295_txt.htm>.

³⁹ Nowrojee, *supra* note 15 at 1.

sexuality of Tutsi women was identified in the Hutu extremist propaganda as a mean through which the Tutsi community sought to infiltrate and control the Hutu community.⁴⁰ Testifying before the International Criminal Tribunal for Rwanda, Major Brent Beardsley demonstrated the pervasiveness and impact of rape during the genocide:

One, when they killed women it appeared that the blows that had killed them were aimed at sexual organs, either breasts or vagina: they had been deliberately swiped or slashed in those areas. And, secondly, there was a great deal of what we came to believe was rape, where the women bodies or clothes would be ripped off their bodies, they would be lying back in a back position, their legs spread, especially in the case of very young girls.⁴¹

While violent acts against women have received some attention, especially in light of the possibilities to prosecute those crimes at the ICTR, women and girls of Burundi, Uganda and DRC have also been subjected to atrocious forms of violence.⁴²

2.1.2. *Women as agents in times of armed conflict*

There are two reasons for looking at women as agents in times of armed conflict. First, it is by looking at the active roles undertaken by women during armed conflicts that an “‘empowerment’ perspective *vis-à-vis* women’s positions in conflict can take place, in contrast to a ‘victim’ discourse.”⁴³ The term “agent” is therefore used here as a contrast with “victims”. Second, it is also interesting to look at women as agents (and in particular as combatants) because, as it will be argued, such agency can be interpreted as a form of political mobilization, and/or a window of opportunity to unchain the shackles of tradition.

2.1.2.1. Women as combatants

While women primarily experience war as members of the civilian population, it should not be assumed that women are always part of the civilian population, playing caring and nurturing roles. In some conflicts, women are involved and even collude in causing conflicts.⁴⁴ In Rwanda for example, some women were accomplices to and participants in horrific acts

⁴⁰ See the first 3 Hutu Commandments, *supra* note 29.

⁴¹ Examination-in-chief of Brent Beardsley, former aide to the force commander General Roméo Dallaire, UN peacekeeping mission in Rwanda, *Bagasora* case (ICTR-98-41-T), Trial Transcript of 3 February 2004.

⁴² See for example, DRC – South Kivu, *supra* note 33 at 8.

⁴³ Bouta & Frerks, *supra* note 13 at 28.

⁴⁴ Report on the workshop on Conflict Transformation in Africa: African Women’s Perspectives, held in Dakar, 23-26 May 2000, 19-20, online: <<http://www.international-alert.org/pdf/workshop.pdf>> [Report Dakar 2000].

committed during the genocide.⁴⁵ The wife of President Habyarimana was an influential member of the extremist faction in power and was said to have played a major role in the genocide.⁴⁶

In many other conflicts, women have supported military operations, either by taking up arms, or more usually by providing them with food, logistics, and shelter. In Liberia, for example, “women played diverse roles in the [recruitment] process and provided what can be termed as the primary infrastructure of resistance.”⁴⁷ They were also key in Charles Taylor’s levy of finances.⁴⁸ In Congo Brazzaville, it is reported that it was a woman who was in charge of supplying militias with foodstuffs during the first civil war, and that during the second civil war, it was another woman who organized the recruitment of mercenaries on behalf of the dominant ethnic group. She was head of the President’s office and president of a women’s NGO.⁴⁹

As Charlotte Lindsey argued:

Women are actively involved in many armed conflicts around the world and have played a part in wars throughout history. It was the Second World War that highlighted their role, primarily in reserve or support units (including work in munitions factories) in the German and British forces, and, in the case of the Soviet Union, their direct participation in the fighting as members of all services and units ‘constituting 8% of the total armed forces’.⁵⁰ Since then, women have assumed a much greater role and joined the armed forces more frequently, voluntarily and involuntarily, performing both support and combatant roles.⁵¹

⁴⁵ See Nicole Hogg, “‘I never poured blood’: women accused of genocide in Rwanda” (McGill Thesis, 2001). In her thesis Hogg noted that many of the genocide suspects included several thousands of women. In March 2001, women represented 3.2% of all genocide suspects in Rwanda. Although she acknowledged that the actual level of women’s involvement in the genocide was of great controversy, she noted that female genocide suspects were facing accusations ranging from minor property offences to murder. (60) See also Elizabeth Powley, “Strengthening governance: the role of women in Rwanda’s transition” UN OSAGI, EGM/ELEC/2004/EP.5, at 4, online: United Nations < <http://www.un.org/womenwatch/osagi/meetings/2004/EGMelectoral/EP5-Powley.PDF>>. “In fact, women represent only 2.3 percent of genocide suspects in Rwanda (3,442 of 108,215 imprisoned).”

⁴⁶ Report Dakar 2000, *supra* note 44 at 19-20.

⁴⁷ Emmanuel Kwesi Aning, “Gender and Civil War: The Cases of Liberia and Sierra Leone’s Civil Wars” 1 :4 (Winter 1998), 1at 7 [E. Kwesi Aning].

⁴⁸ E. Kwesi Aning, *ibid*.

⁴⁹ Report Dakar 2000, *supra* note 44 at 20.

⁵⁰ Françoise Krill, ICRC, “The protection of women in international humanitarian law” (1985) 249 Int’l Rev. Red Cross, 337.

⁵¹ Lindsey, *supra* note 24 at 2.

The research undertaken by Susan McKay and Dyan Mazurana to collect data on the involvement, use and roles of girls in armed forces and armed groups worldwide is an important resource of information.⁵² It covers the period from 1990 to 2003. According to these data, girls were part of fighting forces in 55 countries, and engaged in the fighting (mainly civil wars) in 38 of these countries. They undertake a multitude of roles, depending on the nature of the conflict and the fighting force they are in.⁵³ These roles include combat soldiers, spies, suicide bombers, messenger, child caring, cooking, and sexual services. Although information is still lacking to draw an accurate picture of the situation of women and girls in fighting forces, their presence should be assumed and taken into consideration in the design and implementation of any policy or program addressed to former combatants.

The civil wars in Liberia constituted one of Africa's most intransigent and brutal conflicts, involving many child soldiers. "It has been characterized by brutal ethnic killings and massive abuses against the civilian population."⁵⁴ During the conflict, Liberian women have been the victims of savage violence, while trying to survive and provide for the needs of their family and community.⁵⁵ While acknowledging the pain and suffering women encountered during the conflict, one of the specific characteristics of the Liberian conflict is the extent to which some women got involved into the conflict. Not only have some of them provided the troops with support (food, communication, etc.), some Liberian women have actually fiercely directly engaged in the combats, as soldiers. As it was reported by this journalist:

In other African conflicts, like Uganda and Congo, women have participated in rebel movements, but usually in supporting roles. They cook, clean, and often sleep with soldiers - not always by choice. But here in Liberia, often out of revenge for husbands slain at the hands of the enemy, women have fought on the front line as part of an elite and feared unit unique on the continent.⁵⁶

⁵² Susan McKay & Dyan Mazurana, *Where are the girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War* (Rights & Democracy, 2004) at 21 [Where are the girls?].

⁵³ *Ibid.* at 25.

⁵⁴ Human Rights Watch, "How to Fight, How to Kill: Child Soldiers in Liberia" (2 February 2004), online: HRW <<http://hrw.org/reports/2004/liberia0204/>>. See also African Women and Peace Support Group, *Liberian Women Peacemakers – Fighting for the Right to be Seen, Heard and Counted* (Africa World Press Inc., 2004) at 2 [Liberian Women Peacemakers].

⁵⁵ See Liberian Women Peacemakers, *ibid* at 2ff.

⁵⁶ Nicole Itano, "The sisters-in-arms of Liberia's war" (26 August 2003), online: The Christian Science Monitor <<http://www.csmonitor.com/2003/0826/p07s01-woaf.html>>.

It is interesting to go beyond facts and look for the motives of women to directly engage in the fighting. These appear to be as diverse as for men, varying with the nature of the conflict and the woman. However, it seems that two main reasons could be put forward. The first reason for women to engage in fighting seems to be to prove their equality to men. They felt that if men could fight, well, women could do it to:

For me, that concept of a man dominated war, especially when there is war, I wanted to prove that wrong, because we are today's women, an active woman, totally involved in the world's most historic role, a mother, a wife, a full-time career woman. Going through a difficult war, but yet coming out successfully. Whatever a man do, a woman can do it, and better than that.⁵⁷

These female fighters interviewed clearly presented their experience in war as, in some sense, self-affirming. Their experience in war could then be seen as somewhat self-affirming. Women, as equal to men, wish to take part in the future of their country. Furthermore, by doing so, they might have a sense of liberating themselves from any patriarchal authority. The second main reason for women to directly engage in hostilities could be was to protect themselves. They felt that men were not able to ensure the protection of women anymore, having to hide from rebel forces and being in combat zones, usually far away from their family.

2.1.2.2. Women as coping and surviving actors

“Clearly women’s wartime experiences, so frequently portrayed in terms of victimisation, offer the potential for social transformation.”⁵⁸ The experience of conflict by Liberian women does not depart from this finding: “although women suffered, they also triumphed. The war forced them to take on new roles.”⁵⁹ Because most of the men are on the battle field, women have to undertake new responsibilities in the family and societal realm. As a general and maybe obvious first point, the political economy of war mobilizes the entire population, male and female, for the war effort. Most women and some men will work in farms and factories.⁶⁰

⁵⁷ Transcripts, CNN International Programming, aired 25 August 2003, online: Cable News Network <http://transcripts.cnn.com/TRANSCRIPTS/030825/i_ins.01.html>.

⁵⁸ Meintjes et al. 2001, *supra* note 11 at 7.

⁵⁹ Liberian Women Peacemakers, *supra* note 54 at 7.

⁶⁰ Sheila Meintjes, “War and Post-War Shifts in Gender Relations” in Meintjes et al. 2001, *supra* note 11, 63 at 65.

Having to provide for the needs of their family, women will face new dangers and responsibilities.⁶¹ “At the height of the Liberian war, food shortages became a common denominator in the daily struggles of women.”⁶² It is actually a common denominator for most women who find themselves caught in the middle of a civilian war. In order to feed their families, some Liberian women who were educated and employed pre-war had to resort to selling grated cassava in the markets.⁶³ Some women even participated in atrocities themselves, as they would have some food by joining factions.⁶⁴

By using coping mechanisms, they operate as active agents.

The new situations that confront women in these times may allow them to move out of the realm of the private, to assume responsibilities in the public sphere, and develop independence and self-respect. Commentators have pointed out the positive effect of armed conflict on some patriarchal societies.⁶⁵

Indeed, women who became the sole provider for their family tend to show a new determination to participate in their country’s political, economic and social transformation.⁶⁶ A 2002 study identified four coping mechanisms used by women to survive in times of crisis.⁶⁷ First, they “make adaptations to their existing roles and activities within their immediate environment.”⁶⁸ As an example, some Liberian women opened and held a home for the provision of assistance” and guardianship to orphaned and prostituted teenagers, who could not go home because of fear of reprisals.⁶⁹ Second is migration: women flee the zones of

⁶¹ As Charlotte Lindsey mentioned in her study: “Armed conflicts greatly affect the lives of women and can completely change their role in the family, the community and the ‘public’ domain. This is normally unplanned. The breakdown or disintegration of family and community networks forces women to assume new roles. (...) Women are head of households and breadwinners, taking over responsibility for earning a livelihood, caring for farms and animals, trading, and being active outside the home – activities often traditionally carried out by men. This necessitates the development of new coping skills and confidence, requiring courage and resilience to help sustain and rebuild families and communities torn by war.” (Lindsey, *supra* note 24 at 12-13).

⁶² E. Kwesi Aning, *supra* note 47 at 11.

⁶³ E. Kwesi Aning, *ibid*.

⁶⁴ E. Kwesi Aning, *ibid*.

⁶⁵ Judith Gardam & Michelle Jarvis, “Women and Armed Conflict: the International Response to the Beijing Platform for Action” (2000) 32 Colum. H.R.L. Rev. 32 at 42-43 [Gardam & Jarvis 2000].

⁶⁶ O. Bennett, J. Bexley & K. Warnock, *Arms to fight, arms to protect: women speak out about conflict* (London: Panos Publications, 1995) at 29 [Arms to fight, arms to protect].

⁶⁷ Bouta & Frerks, *supra* note 13 at 35-36.

⁶⁸ *Ibid* at 35.

⁶⁹ E. Kwesi Aning, *supra* note 47 at 11.

combat, while adapting to a new environment.⁷⁰ They flee the conflict zone in order to find a safer place to live and to earn a subsistence living.⁷¹ Third, women often take over tasks previously carried out by men, the most common one being becoming head of household.⁷² After the end of the genocide in Rwanda, 34% of the households were headed by women.⁷³ In this new role, women often face many obstacles, as their status prior to the conflict never allowed them to undertake such responsibilities. Fourth and finally, women have to take over activities that were previously forbidden to them by society, because traditionally reserved to men.⁷⁴

Puechguirbal wrote that Congolese women were not victims as they fought for their survival and the survival of their families. She noted that war allowed women to control their income, as their husbands were no longer head of the household. She however deplores that there is little documentation of what many observers believe was a great increase in women's independence and self-confidence."⁷⁵

2.1.3. The importance of taking into consideration women's multifaceted roles in armed conflict

There are many reasons underlying the argument that it is crucial to take into consideration women's multifaceted roles during armed conflict. First and foremost, those roles will shape women's position in the aftermath of the conflict.⁷⁶ Second, the literature on women and war has overly depicted women as victims of armed conflicts, and this, to their detriment. "Political historiography has tended to study the *impact* of war on women and thus to reinforce

⁷⁰ Bouta & Frerks, *supra* note 13 at 35.

⁷¹ Many Liberian women left for Nigeria.

⁷² Bouta & Frerks, *supra* note 13 at 36.

⁷³ Codou Bop, "Women in Conflicts, Their Gains and Their Losses" in Mentjes et al., *supra* note 11, 19 at 27.

⁷⁴ Bouta & Frerks, *supra* note 13 at 36. See also Norwegian Institute of International Affairs "Gendering Human Security: from Marginalisation to the Integration of Women in Peace-Building – Recommendation for policy and practice from the NUPI-Fafo Forum on Gender Relations in Post-Conflict Transitions" (2001) NUPI-report No. 261, NUPI and Fafo, Oslo, at 18, online: Fafo <<http://www.fafo.no/pub/rapp/352/352.pdf>> [NUPI report].

⁷⁵ Nadine Puechguirbal, "Women and war in the Democratic Republic of the Congo" (2003) 28:4 Signs 1271 at 1274 [Puechguirbal DRC].

⁷⁶ See Meintjes et al. 2001, *supra* note 11 at 5. "Some women take up arms or enter soldiery behind the lines; their experience in the aftermath is linked to their training for war, the conditions of demobilisation, and the availability of services, especially for the disabled. (...) The majority of women do not take up arms (...); when they stay on alone, they assume tasks formerly assigned to men."

a view of women as passive objects.”⁷⁷ By depicting women as solely victims of war, this reinforces the image of women as dependent on the protection of men. “By focusing on their role as victims, rather than as agents, scholars have tended to exculpate and extricate women from history.”⁷⁸ It creates a negative rhetoric for women.⁷⁹ Although seeing women as victims is one important aspect of the experience of war by women,⁸⁰ which has long been denied or at least not officially recognized, “the focus on sexual violence against women should not diminish the significance of other aspects of women’s status and of the consequences of armed conflict for women.”⁸¹ Third, if women are solely depicted as victims, in the post-conflict phase, they will inevitably face negative societal attitudes.⁸²

2.1.3.1. A misrepresentation of reality

In light of the current discourse, the following question needs to be asked: are women inevitably vulnerable in times of armed conflict? It is difficult to answer negatively to this question; an analysis of most contemporary conflicts shows the extent to which women can be caught up in the conflict and the primary targets of attacks.⁸³ However, it is interesting to look at the reasons for such vulnerability. Is it an inherent vulnerability or does it rather depend on other factors, such as the type and nature of the conflict, the position of the woman in that

⁷⁷ Margaret R. Higonnet & Patrice L.-R. Higonnet, “The Double Helix” in Margaret R. Higonnet, et al., eds., *Behind the Lines: Gender and the Two World Wars* (New Haven: Yale University Press, 1987) at 46 [emphasis added] [Higonnet]. My argument should not be misunderstood here. I do not mean to accuse feminists of having constructed women as inevitable victims. It would be “to confuse empirical reality with constructions of identity. The purpose of feminist activism on sexual violence began with the necessity of making the private pain and shame of women public.” (Liz Kelly et al., “Beyond Victim or Survivor: Sexual Violence, Identity and Feminist Theory and Practice” in Lisa Adkins & Vicki Merchant, eds., *Sexualising the Social – Power and the Organisation of Sexuality* (New York: St. Martin’s Press, 1996) 77 at 82 [Kelly et al. 1996]). Indeed, feminists have not only documented and brought to light this reality, they have also come up with alternative institutions, advocating for its acknowledgement and the condemnation of its perpetrators. However, more emphasis has been made by scholars and international actors on this last aspect, and this is regrettable.

⁷⁸ Higonnet, *ibid.*

⁷⁹ *Ibid.* at 42, 45: “The gains some women achieved through war affected their sense of individual potential and independence; but their losses, which held the public eye, involved their situation as dependents – lovers, mothers, or widows. (...) A study of war is useful for the reassessment of these difficulties in gender analysis, since it reveals the importance of the rhetoric through which women are perceived, by themselves as well as by others.”

⁸⁰ It could be argued that “documenting what women do in wartime is one way to make women’s potential visible.” Meintjes et al. 2001, *supra* note 11 at 8, citing Meredith Turshen & C. Twagiramariya, eds., *What Women Do in Wartime: Gender and Conflict in Africa* (London: Zed Books, 1998).

⁸¹ Naomi Cahn, “Women in Post-Conflict Reconstruction: Dilemmas and Directions” (2000) 12 Wm. & Mary J. Women & L. 1 at 42 [Cahn 2000].

⁸² Women victims of rape are often rejected by their family and community.

⁸³ The conflicts in Rwanda and in Uganda for example, have impacted upon women in a special and important way. Many women have been the victims of sexual violence.

conflict and the stage of the conflict? As Charlotte Lindsey mentions in her report, it seems that:

The very nature of women's vulnerability often lies more in the fact that armed conflicts have evolved to the extent that the civilian population is totally caught up in the fighting and women are frequently the ones trying to maintain and provide for the everyday survival of themselves and their families.⁸⁴

Then one could argue that women are particularly vulnerable rather because "they are [often] held up as symbolic bearers of cultural and ethnic identity and the producers of the future generations of the community."⁸⁵ Women have been constructed, especially in patriarchal societies, as the locus of carriers of culture: "women's bodies are constructed as both territory to be conquered and vehicles through which the nation/group can be reproduced."⁸⁶ In Burundi, for example, "the status of (...) women has been determined by their role as wives and mothers."⁸⁷ Despite legal attempts to advance the status of women, their standing in society is still very depended on their productive role, i.e. on the number of boys they have. While the government of Burundi is trying to educate the population on the many other roles women can play in a society, beyond those of mothers and wives, women are still relegated to second place in the life of society and the weight of prejudice still bears down on women.⁸⁸ In Uganda, the Constitution itself highlights the maternal role of women in society, by stating that

⁸⁴ Lindsey, *supra* note 24 at 12.

⁸⁵ Caroline O.N. Moser & Fiona C. Clark, eds., *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence* (London: Zed Books, 2001) at 8 [Moser & Clark 2001]. As the authors go on, "in such situations, women may be vulnerable to attack or threats from their own community for not conforming to this role, or conversely they may be targeted by the enemy in order to destroy or subvert this role. In their identity as 'society's reproducers', women are abused both by rapists and, later, through rejection by their own husbands, families and communities."

⁸⁶ Liz Kelly, "War Against Women: Sexual Violence, Sexual Politics and the Militarised State" in Susie Jacobs, Ruth Jacobson & Jennifer Marchbank, eds., *States of Conflict: Gender, Violence and Resistance* (London: Zed Books, 2000) 45 at 50 [Kelly 2000].

⁸⁷ Initial Report of Burundi to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/BDI/1, 3 July 2000 [Initial Report of Burundi to CEDAW].

⁸⁸ Initial Report of Burundi to CEDAW, *ibid.* at 13. As an example, the education of girls, as opposed to the education of boys, is often limited to courses in domestic science or nursing courses, which ensure the inferiority of women in society. With the creation of the Union des Femmes du Burundi by the Government, women became aware of the role they could play in society but very few women occupy leading positions in civil society or in public affairs.

“the State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.”⁸⁹

2.1.3.2. A double victimisation

Later on in this thesis (political participation as a reparation measure), it will be argued that rape, beyond being an act of violence against women, is also an act of political and economic violence.⁹⁰ Here, the idea is to condemn an exclusive focus on sexual violence, as it creates a double victimisation and a further marginalisation of women in the post-conflict phase. As Turshen explains “[r]ape exacerbates women’s vulnerability because of the many social and cultural issue related to women’s ‘cleanliness’ and ‘good behaviour’.”⁹¹ Therefore, a discourse focused on the victimisation of women during armed conflict participates in the double victimisation of women and in their marginalisation in the post-conflict phase.⁹²

Furthermore, by positioning women as victims, the fact of victimization becomes the defining feature of an individual’s identity and life experience:

“Victimism is an objectification which establishes new standards for defining experience, those standards dismiss any question of will, and deny that the women even whilst enduring sexual violence is a living, changing, growing interactive person ... It denies the reality of [women’s] circumstances and the very real human efforts they make to cope with those circumstances.”⁹³

2.2. The need for transformative justice

Taking into account not only the experiences of men and women, but also the multifaceted roles of women during armed conflict will lead to a different approach to post-conflict transformation. Not only is it crucial to respond to past abuses, it is also important to

⁸⁹ Art. 33(3) of the Constitution of the Republic of Uganda (1995), online: Uganda Online Law Library <http://www.ugandaonlinelawlibrary.com/files/constitution/constitution_1995.pdf>.

⁹⁰ This argument will be based on two of Meredith Turshen’s articles. Turshen 2000, *supra* note 36. See also Meredith Turshen, “The Political Economy of Rape: An analysis of Systematic Rape and Sexual Abuse of Women during Armed Conflict in Africa” in Moser & Clark 2001, *supra* note 85, 55 [Turshen 2001]. Based on her articles, it will be argued that the victimization of women is enhanced by their status prior to the conflict.

⁹¹ Turshen 2001, *ibid.* at 65.

⁹² See Moser & Clark 2001, *supra* note 85 at 9: “The lack of recognition of women’s active role during armed conflict and political violence means that they are doubly victimized in reintegration interventions for conflict-affected populations.” See also Ana Cristina Ibáñez, “El Salvador: War and Untold Stories – Women Guerillas” in Moser & Clark, *supra* note 85 at 117.

⁹³ Kelly et al. 1996, *supra* note 77 at 82.

prevent similar abuses from occurring in the future.⁹⁴ Transformative justice, as opposed to restorative justice, seems to be the way to consolidate women's empowerment during armed conflict, allowing society as a whole to benefit from the windows of opportunity a conflict can offer.

2.2.1. *Post-conflict transformation: back to the statu quo?*

While conflicts create windows of opportunity, women have often been the victims of a backswing in the post-war period: they fail to consolidate wartime gains.⁹⁵ It seems that “the historical record confirms that societies neither defend the spaces women create during struggle nor acknowledge the ingenious ways in which women bear new and additional responsibilities.”⁹⁶ Judith Gardam and Michelle Jarvis even argued that in some cases, women may lose rights acquired during the conflict therefore going back in times of peace to a worst social situation than prior to the conflict. In anyway, in most cases, the return to peace means for women a return to pre-war positions, roles and status:

Women are often expected to withdraw again into the home either because men are back (after demobilization, displacement, etc.) and want the jobs, or because the community is trying to go back to the ‘normality’ of the pre-war status quo.⁹⁷

“The Rwandan experience highlights how, in the aftermath of genocide, women's lack of property (since property passes only through the male members of the household), results in widows being forced off farms or being unable to return to them.”⁹⁸

⁹⁴ Ellen Lutz, “Transitional Justice: Lessons Learned and the Road Ahead,” in Naomi Roht-Arriaza & Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press, 2006) 325 at 325 [Lutz].

⁹⁵ See also Nadine Puechguirbal, “Involving Women in Peace Processes: Lessons from Four African Countries (Burundi, DRC, Liberia and Sierra Leone)” in Kari Karamé, ed., *Gender and Peace-Building in Africa* (2004) 47, online: Training for Peace <<http://www.trainingforpeace.org/pubs/nupi/genderrapporten.pdf>> [Puechguirbal in Karamé].

⁹⁶ Mentjes et al., *supra* note 11 at 8. See also Gardam & Jarvis 2000, *supra* note 65 at 42-43.

⁹⁷ Lindsey, *supra* note 24 at 12. To illustrate her argument, Charlotte Lindsey cited Ana Julia from El Salvador: “Before the war women were not taken into consideration. Women were only working in the home. But, when war came, women came out of the house to demonstrate their capability. In part, it was war which meant that women could be taken seriously and that they could do a lot of things. It made people realize that women are capable of changing our society.”

⁹⁸ Azza Karam, “Women in War and Peace-Building: the roads traversed, the challenges ahead” (2001) 3:1 International Feminist Journal of Politics 2 at 12 [Karam]. See also Human Rights Watch, World Report 1999, online: Human Rights Watch <<http://www.hrw.org/worldreport99/women/women3.html>>.

To explain why the changes in women's activities during wartime did not improve their status once the conflict is over, Margaret & Patrice Higonnet have used the image of a double helix, with its structure of two intertwined strands:

This image permits to look at women not in isolation but within a persistent system of gender relationships. The female strand on the helix is opposed to the male strand, and position on the female strand is subordinate to position on the male strand. The image of the double helix allows us to see that, although the roles of men and women vary greatly from culture to culture, their relationship is in some sense constant.⁹⁹

While the image of the double helix might help visualize the phenomenon, it fails to explain the reasons behind women's backlash. The reasons that could be thought of are various and might depend on the context of the conflict. As one explanation, some scholars have argued that too much importance is given to those changes, in that they are not dramatic but rather an expansion of women's traditional role of caretakers.¹⁰⁰ Such changes occurring in war time would be hence interpreted as solely short-term variations: "the radical changes for women precipitated by war are understood to be mere interruptions of 'normal' gender relations. The nation calls upon women to change their roles only 'for the duration'".¹⁰¹ The counter-argument to this proposition is easy: when such changes, however temporary they might seem, produce positive outcomes, ensuring social equality for example, "then the rapid retreat from those advances during the immediate post-war years seems puzzling."¹⁰² Another reason would be that women are unaware of those changes and hence unless there is an institutionalisation of those changes in the post-conflict phase, they will be lost.¹⁰³ When looking at women's efforts not only in taking care of their community but also in raising their concerns about issues addressed in peace negotiations talks, it seems that this argument misread the global involvement of women. If no satisfactory answer can be found to explain women's inability to consolidate wartime gains, it might be because the post-conflict phase (i.e. after the signature of peace agreements) is not the best phase to address societal transformation, hence the argument

⁹⁹ Higonnet, *supra* note 77 at 34.

¹⁰⁰ See Mentjes et al. 2001, *supra* note 11 at 9. This argument was mentioned by Martina Belic at the Johannesburg conference, referring to the experience of women during the conflicts in former Yugoslavia: "the impulse to women's societal transformation and autonomy is circumscribed by the nationalist project, which constructs women as purveyors of the community's accepted and acceptable cultural identity."

¹⁰¹ Higonnet, *supra* note 77 at 31.

¹⁰² *Ibid.*

¹⁰³ See Mentjes et al. 2001, *supra* note 11 at 9.

of this thesis that this issue must be addressed earlier on and that women need to be included at the earliest stage of the peace process.

2.2.2. *From retributive to restorative to transformative justice : an opportunity for societal transformation*

“Transformative justice uses the power unleashed by the harm of a crime to let those most affected find truly creative, healing solutions.”¹⁰⁴ Transformative justice is very inclusive and victims’ oriented. Through transformative justice, it is sought to respond to past abuses, but also to prevent similar abuses from re-occurring, hence looking at the past but being focused on the future. The international legal system has very much been perpetrators’ oriented, i.e. being retributive in nature, focusing on two questions: who did it and how can we punish them?¹⁰⁵ As Morris notes, in such system of justice, we fail to identify the victims and the ways that can help them to heal and move on.¹⁰⁶ A restorative system of justice is more victims’ oriented but still anchored in the past, failing to acknowledge the window of opportunity created for the victim by the harm she suffered. Indeed it is important to focus on the future because there is no need to return to pre-conflict conditions. Rather, a different direction needs to be taken, where past abuses are not denied but integrated in the new society.

Many authors have recently made the argument that women’s wartime experiences offer the potential for social transformation.¹⁰⁷ This thesis being focused on women’s political participation, it is interesting to focus on forms of political mobilisation from women during the conflict, either through their involvement as combatants or as coping and surviving actors.

2.2.2.1. Political mobilisation coming from the engagement of women as combatants

There are few studies or reports describing the situation of women engaged in the military, directly as soldiers. It is however still possible to assert that some women who

¹⁰⁴ Ruth Morris, *Stories of Transformative Justice* (Toronto: Canadian Scholars’ Press, 2000) at 3 [hereinafter Morris].

¹⁰⁵ *Ibid.* at 4.

¹⁰⁶ *Ibid.*

¹⁰⁷ See for example Meintjes et al. 2001, *supra* note 11 at 7.

became fighters came to occupy positions of authority in the military.¹⁰⁸ As Codou Bop noted, the military “symbolises force and power. To become part of it means that one belongs to a dominant group.”¹⁰⁹ The military involvement of women has lead these women to transform the way they perceive themselves as individuals and in the community. Therefore it might be argued that the military involvement of women opens the door to public space, and hence to political space:

Having opened the doors to public space – and hence to political space – to the committed, war first encouraged the emergence of citizen consciousness among relatively large group of women and later strengthened their will to participate in decision-making. In fact, wherever women have fought, arms in hand, with the support of men at their side, they have sought (clearly with unequal results) to promote the active participation of women in the political life of the country.¹¹⁰

2.2.2.2. Political mobilisation coming from the engagement of women as non-combatants

Even when women do not engage directly in hostilities as combatants, it is possible to distinguish the emergence and strengthening of a certain female leadership extending even to the national and regional level. In Liberia, for example, women who did not engage directly in hostilities found ways to cope with the conflict. They constantly found ways to feed their families and keep their community together.¹¹¹ “This spirit overflowed into the political arena, and women took the lead in demanding peace.”¹¹² As this author said:

There came a time when women decided that relief work and advocacy alone were not enough. They moved to direct political activism. Together they took to the streets in protest and would soon invade the men’s peace talks. When their separate women’s organizations came together

¹⁰⁸ See Codou Bop, “Women in Conflicts, Their Gains and Their Losses” in Meintjes et al. 2002, *supra* note 11, 19 at 20. “A relatively significant number of women became fighters, and among them, some, by virtue of their personality or their abilities, came to occupy important positions in the military hierarchy.” See also Where are the girls?, *supra* note 52 at 17: “armed conflict and girls’ and women’s participation in fighting forces sometimes provided opportunities for these girls and women – such as achieving positions of power not previously possible and learning new skills.”

¹⁰⁹ Codou Bop, “Women in Conflicts, Their Gains and Their Losses” in Meintjes et al. 2002, *ibid.* at 21.

¹¹⁰ *Ibid.* at 21-22.

¹¹¹ See the NUPI report, *supra* note 74 at 20: “In conflict situations, most women, regardless of age, social level, etc., tend to view the survival of the family or household as their main responsibility. (...) It is the average civilian women who are central to keeping the wheels of civil society running after the collapse of the state machinery. These activities entail considerable social or political risk.”

¹¹² Liberian Women Peacemakers, *supra* note 54 at 8.

and formed a united movement for peace, a higher level of impact and respect was accorded their work.¹¹³

Forms of female leadership emerging from a conflict should therefore be promoted and developed in the post-conflict phase. “Although shy at first, women became community team leaders as the system evolved.”¹¹⁴ Such leadership positions within communities and society at large should be maintained. The importance of coping mechanisms in terms of self-assertion and political involvement should not be denied. As this woman (Leela) who experienced the conflict in Sri Lanka said:

[B]efore [the abduction of my son on his way to school], I was not involved in any organisation and was confined to my home. There was no necessity for me to take part in community activities. But with the disappearance of my son (...) I have become self-confident and now I can go alone to police stations and courts and move with people. This is the strength I have gained through my pain and sorrow.¹¹⁵

As mentioned earlier, women who are part of the civilian population must find ways to cope with the conflict and the impact it has on the life of their family and community. This surviving spirit can be seen as overflowing into the political arena, for example when women took the lead in demanding peace. As an example, Sierra Leonean women gathered and formed networks in order to share information on the conflict and pressure the government to end the conflict and hold democratic elections, by organizing peaceful marches.¹¹⁶

In Rwanda, the post-genocide era has been characterized by various challenges at different levels of the social transformation. In reaction to those challenges, Rwandan women have developed strategies, creating women’s organisations and networks.¹¹⁷

Forms of female leadership emerging from a conflict should therefore be promoted and developed in the post-conflict phase. Such leadership positions within communities and society

¹¹³ *Ibid.* at 16.

¹¹⁴ *Ibid.* at 9. The author is here talking about the role women played in finding food.

¹¹⁵ Cited in Onubogu & Etchart, *supra* note 12 at 41.

¹¹⁶ See Puechguirbal in Karamé, *supra* note 95 at 55-57.

¹¹⁷ See Report in Dakar, 2000, *supra* note 44 at 10. “A coalition of 35 women’s organisations, *Profemmes/Twese Hamwe*, has been created (...) As a rallying point, *Profemmes/Twese Hamwe* is dedicated to ending all forms of discrimination against women, facilitating inter-ethnic dialogue, promoting the creation of partnerships between the actors involved in women’s advancement, strengthening the organisational and institutional capacities of member associations and creating a space in which women can communicate and mobilise around the role of women in society.”

at large should be maintained. The importance of coping mechanisms in terms of self-assertion and political involvement should not be denied. As an example, Rose, a survivor of the conflict in Liberia, said that the women of Liberia have proved themselves and that they are now becoming independent of men.¹¹⁸

2.2.2.3. The pivotal moment for women: from war to peace

The positions and roles of women during a conflict are reflective of their positions and expectations after the conflict ends. It is therefore important to look at the pivotal moment for women: from war to peace. Peace, in the sense of security and restoration of the rule of law, is a long process. It is crucial for women to participate in this process, and to present their needs. By the many roles women play and by the many identities women have, their experience is invaluable. Discarding such resource is putting peace in jeopardy.

Political violence itself and the transitional period can often open up intended or unintended spaces for empowering women, effecting structural social transformations and producing new social, economic and political realities that redefine gender and caste hierarchies. In most political conflicts, the traditional division between private and public space collapses. [...] Consequently, periods of regime change and transition to democracy should offer historic opportunities for the redefinition of gender roles. And yet, the literature on post-conflict and transitional societies indicates that often these opportunities are lost.¹¹⁹ At a time when women who have been victims of gender-based violence have an opportunity to being agents for positive social change, and when those who have undertaken some forms of agency during the conflict can ascertain those roles, gender-discriminatory attitudes are often further entrenched when men return to their communities and their families, and traditional roles and duties are reestablished.¹²⁰

Post-conflict situations are usually seen as situations of crisis and deprivation. In the same way that armed conflicts may offer the potential for societal transformations, post-conflict situations may as well present windows of opportunities to reconstruct societies and

¹¹⁸ Arms to fight, arms to protect, *supra* note 66 at 44: “Right now, women are bus drivers, drivers for international agencies. You could not find that before. They had to have a secretarial or office job.”

¹¹⁹ Meintjes et al., *supra* note 11.

¹²⁰ Colleen Duggan & Adila M. Abusharaf, “Reparation for Sexual Violence in Democratic Transitions: The Search for Gender Justice” in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006) 623 at 629 [Duggan].

right injustices. They consist of “the possibility for gender relations and identities to be renegotiated, and for women to increase their participation in public life.”¹²¹ Naomi R. Cahn, after having acknowledged the potentially positive impacts of armed conflict on women stated that “following the conflict, the country, civil actors, international donors, and multilateral institutions must address the myriad of role that women have experienced during the conflict.”¹²²

3. RIGHT TO POLITICAL PARTICIPATION

Participation in political life is crucial as it is one of the ways to fight against discrimination that impedes women from participation into economical and social life as equals. While women’s right to political participation is affirmed in many conventional sources of international law, the reality is more uncertain and women remain under-represented in politics. While the right to vote in elections and to be elected is the component of the right to political participation that is most often discussed and analysed, this thesis will attempt to develop the less addressed component of the right to political participation, i.e. the right to take part in the conduct of public affairs. It seems that it is where most progress could be achieved for women, in particular in transitional situations. While this part of the thesis remains somewhat theoretical, a more practical application of the argument will be offered later on (parts 6 and 7).

3.1. International legal framework

3.1.1. *International and regional instruments*

The right to political participation figures prominently in a full range of international instruments, the principal being the *Universal Declaration of Human Rights* (UDHR). Article 21 states:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.

¹²¹ Onubogu & Etchart, *supra* note 12.

¹²² Cahn 2000, *supra* note 81 at 4.

- (3) The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.¹²³

While adopted in the form of a non-binding resolution, the Universal Declaration over the years has come to be accepted as an authoritative source of law, which its member states must promote.¹²⁴ A state which would deny individuals or groups a right contained in the Declaration because of their sex would violate the fundamental principle of non-discrimination.¹²⁵

The right to political participation is reinforced by a large body of existing conventional law, by the resolutions and other acts of international organizations, and by the practice of states. For example, article 25 of the *International Covenant on Civil and Political Rights* (ICCPR) states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.¹²⁶

Unlike the UDHR, the ICCPR is a legally-binding treaty and the state parties are legally bound to give effects to its provisions.¹²⁷ However, the system of enforcement is not really designed to provide individuals with legally enforceable remedy in cases of violations by the state.

¹²³ *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).

¹²⁴ Thomas Buergenthal & Sean D. Murphy, *Public International Law in a Nutshell*, 4th ed. (St. Paul: Thomson / West, 2007) 137 [Buergenthal & Murphy].

¹²⁵ *Ibid* at 138.

¹²⁶ *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 [ICCPR].

¹²⁷ This might explain why, while article 21 of the UDHR already contained essential political rights, their adoption in the ICCPR was in no way undisputed.

Indeed, the monitoring body, the Human Rights Committee can only make recommendations to the state parties.¹²⁸

Article 25 of the ICCPR is only applicable to citizens, and on that note, it contrasts on one hand with Article 21 of the Universal Declaration of Human Rights, which confer the right to political participation to everyone, and on the other hand, with the other provisions of the Covenant, which are conferred on all people within a State Party's jurisdiction. However, States parties are not prohibited from conferring the political rights contained in Article 25 to other groups than citizens, but still on a non-discriminatory basis.

While the right to political participation must be read together with the fundamental principle in human rights law of non-discrimination, many international and regional instruments have specified women's right to political participation. At the international level, the *Convention on the Political Rights of Women* reaffirms, in its Preamble, the right of women to participate in the political and public life of their country. It emphasises the importance of the equal participation of men and women in the public affairs of one's country.¹²⁹ The Convention is very succinct; it reaffirms the specific elements of the right to political participation, as stated in the UDHR and the ICCPR:

Article I

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Article II

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Article III

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.¹³⁰

¹²⁸ Martin Dixon, *Textbook on International Law*, 6th ed. (Oxford: Oxford University Press, 2007) at 347.

¹²⁹ *Convention on the Political Rights of Women*, adopted by General Assembly Resolution 640 (VII) (20 December 1952) [*Convention on the Political Rights of Women*]. "The Contracting Parties, (...) Recognizing that everyone has the right to take part in the government of his country directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights."

¹³⁰ *ibid.* at art. 1-3.

The Convention was an effort from the Commission on the Status of Women (CSW) as a law-making body in rectifying the disadvantage suffered by women through a “corrective treaty.”¹³¹ The Commission further addressed inequality suffered by women with the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW). Articles 7 and 8 of CEDAW reaffirm women’s right to participate in the political and public life of their country, at the national and international level, prohibiting discrimination against women in political and public life.¹³² Article 7 requires States parties to “take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life.”¹³³ Article 8 requires States parties “to ensure the presence of women at all levels and in all areas of international affairs.”¹³⁴

At the regional level, article 9 of the *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* (hereinafter PRWA) states:

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
 - a. women participate without any discrimination in all elections;
 - b. women are represented equally at all levels with men in all electoral processes;
 - c. women are equal partners with men at all levels of development and implementation of State policies and development programmes .
2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.¹³⁵

The PRWA “is a significant tool for peace builders.”¹³⁶ Chinkin and Charlesworth reinforce the argument of its utilization in light of some objections to using international law for the

¹³¹ Alan Boyle & Christine Chinkin, *The Making of International Law* (Oxford: Oxford University Press, 2007) at 122.

¹³² *Convention on the Elimination of all Forms of Discrimination against Women*, adopted by General Assembly Res. 34/180 (18 December 1979), art. 7, 8 [CEDAW].

¹³³ UN CEDAW, General Rec. No. 23 (1997).

¹³⁴ *Ibid.*

¹³⁵ *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000), reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005, art. 9: “Right to Participation in the Political and Decision-Making Process”.

empowerment of women in the Third World where international law has been seen as an instrument of colonization.¹³⁷ Article 5 of the PRWA is also worth mentioning here as it furthers Article 5(a) of the CEDAW in requiring state parties to “modify the social and cultural patterns of conduct” which endorse harmful cultural and traditional practices.

3.1.2. *As applied nationally*

While women’s right to political participation is affirmed in international law, they remain under-represented in politics. We can therefore observe a distinction between the *de jure* and the *de facto* situations.

Burundi, for example, is a State party to the different international instruments mentioned above. In its initial report to the Committee on the Elimination of Discrimination against Women, government representatives stated that “there was no discrimination against women in Burundi with regard to voting” and that “women had the right to stand for election (...), the right to take part in the formulation and implementation of State policy, hold public office, and perform all public functions at all levels of the Government.”¹³⁸ While there seems to be no institutional or legal barrier to women’s political participation in Burundi, women remain under-represented in all posts of responsibility. The following were identified as obstacles to women’s participation in the public life of the country: (i) weight of tradition, which perpetuates women’s inferiority complex and prevents them from engaging in politics and asserting themselves; (ii) low level of education; (iii) absence of promotion of women’s leadership; and (iv) family duties.¹³⁹

The same conclusion can be drawn from the various reports submitted by the Democratic Republic of Congo (DRC). Indeed, in DRC, there seems to be no obstacles to prevent women from pursuing a career in politics; however, women remain under-represented. Once again, there is a disparity between *de jure* and *de facto* situations, and public affairs remains a male-dominated matter.¹⁴⁰ “Few Congolese women are in positions of leadership in civil society or

¹³⁶ Christine Chinkin & Hilary Charlesworth, “Building Women into Peace: the international legal framework” (2006) 27:5 Third World Quarterly 937 at 943 [Chinkin & Charlesworth 2006].

¹³⁷ *Ibid.*

¹³⁸ Initial Report of Burundi to CEDAW, *supra* note 87 at 16.

¹³⁹ *Ibid.* at 17.

¹⁴⁰ Combined fourth and fifth report of the DRC to CEDAW, *supra* note at 29-30.

in the political sphere.”¹⁴¹ The Committee on the Elimination of all forms of Discrimination Against Women recommended the DRC to undertake concrete measures to increase the number of women in decision-making positions and to introduce temporary special measures such as quotas to accelerate women’s equal participation in public and political life.¹⁴²

While it is not the main focus of this thesis, quotas have been seen as a temporary measure to counteract the discrimination against women and their under-representation in politics. This mechanism has been somewhat successful in Uganda and Rwanda, for example. In Uganda, “through the affirmative action policy, the number of women in decision-making positions had risen from 17% in 1994 to 39% in 2002.”¹⁴³ To an even greater extent, Rwanda is an example of “fast track to gender balance in politics.”¹⁴⁴ In 2003, Rwanda “unexpectedly surpassed Sweden as the number one country in the world in terms of women’s parliamentary representation.”¹⁴⁵

However, as it is the case in Uganda, “despite some achievements in gender equality and the advancement of women, many challenges remain and among which, the persistence of traditional attitudes and practices.”¹⁴⁶ The problem with quotas or similar temporary measures is that it could well “result in the mere symbolic inclusion of women in politics in order to make the country appear ‘modern’.”¹⁴⁷

Deploing the under-representation of women in public and political life, the Committee on the Elimination of Discrimination against Women found two major factors for such situation: (i) women’s economic dependence on men, and (ii) stereotyping.¹⁴⁸ This finding by the Committee confirms the need for the right of women to political participation to be

¹⁴¹ Human Rights Watch “The war within the war: sexual violence against women and girls in Eastern Congo” 2002, at 21 [HRW Eastern Congo 2002].

¹⁴² CEDAW Concluding comments on the DRC fourth and fifth report, CEDAW/C/COD/CO/5, at 5 [CEDAW Concluding comments on DRC fourth and fifth report].

¹⁴³ Report of the CEDAW, 26th, 27th and exceptional sessions, GA 57th session, A/57/38, Uganda, at 164-165 [Report of the CEDAW, 26th, 27th and exceptional sessions].

¹⁴⁴ Ali Trip et al., “Sub-Saharan Africa: on the fast track to women’s political representation” in Drude Dahlerup, ed., *Women, Quotas and Politics* (London: Routledge, 2006) 112 [Trip et al.].

¹⁴⁵ Drude Dahlerup “Introduction” in Drude Dahlerup, ed., *Women, Quotas and Politics* (London: Routledge, 2006) 3 at 3 [Drude]. Women in Rwanda had 48.8% of the seats, as opposed to 45.3% for women in Sweden.

¹⁴⁶ Report of the CEDAW, 26th, 27th and exceptional sessions, *supra* note 143 at 164-165.

¹⁴⁷ Trip et al, *supra* note 144 **Erreur ! Signet non défini.** at 4.

¹⁴⁸ UN CEDAW, General Rec. No. 23 (1997), *supra* note 133, ¶9.

considered as a priority in post-conflict situations, as wartime allow for such obstacles to be overcome.

3.2. Critique of the existing instruments : an overemphasize on the electoral aspect of the right to political participation

International norms express citizen's right to political participation in two different ways: "the relatively vague and abstract right to take part in the conduct of public affairs or government, and the relatively specific right to vote in elections."¹⁴⁹ As an example, article 25 (a) of the ICCPR provides a general formulation of the right to political participation¹⁵⁰: "the right of citizens to participate in the determination of their political status and the enjoyment of the right to choose the form of their constitutions or government."¹⁵¹ Article 25 (b) and (c) provide for the specific aspects of the right to political participation: the right to vote and be elected in free and genuine elections, and the right of access to public service. The rights contained in Article 25 of the Covenant can be said to be political rights *stricto sensu*, as opposed to political freedoms, which are corollary rights necessary for the full enjoyment of the rights listed in Article 25 of the Covenant, such as freedom of opinion, expression, information, media, assembly and association.¹⁵² Those rights, political in function but civil in nature, remain at the limit between civil and political rights.

The literature on the right to political participation emphasises the election component of the right to political participation and has largely disregarded its other component. There is a very limited body of literature on the right to take part in the conduct of public affairs. The commentaries on the ICCPR as well as UN documents, such as general comments, declarations and recommendations have all emphasised the electoral aspect of the right to political participation, without delving into its general formulation.

Henry J. Steiner analyses the rights declared in the Covenant within five categories placed on a spectrum. On one end of the spectrum are rights over which there is a near-

¹⁴⁹ Henry J. Steiner, "Political Participation as a Human Right" (1988) 1 Harv. Rts. Y.B. 77 at 78 [Steiner].

¹⁵⁰ Sarah Joseph, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2nd ed., (Oxford: Oxford University Press, 2004) at 650 [Joseph].

¹⁵¹ Johann Blair, *The International Covenant on Civil and Political Rights and its (First) Optional Protocol: a Short Commentary Based on Views, General Comments and Concluding Observations by the Human Rights Committee* (Frankfurt : Peter Lang, 2005) at 109.

¹⁵² Joseph, *supra* note 150 at 565.

universal consensus (i.e. commitment to individual autonomy and choice). On the other end of the spectrum are rights whose meanings and purposes are disputed. He argues that political participation lies at that end of the spectrum.¹⁵³ The major difficulty lies in the first paragraph of Article 25 of the Covenant, which Henry Steiner calls the “take part clause”.¹⁵⁴ Both the Universal Declaration and the Covenant begin with this general formulation of the right to political participation, thereby giving an apparent priority and emphasis to it. However, “the article does not indicate how citizens are to ‘take part in the conduct of public affairs’ other than by identifying periodic and ‘genuine’ elections as an ingredient of the right to participate.”¹⁵⁵ A review of the debate during the drafting periods does not give any indicia on ways to realize citizen’s right to take part in the conduct of public affairs. As well, a comparison to the European Convention on Human Rights and Fundamental Freedoms and its First Protocol, is not conclusive; the First Protocol, while bringing into the Convention the right to political participation, only addresses electoral participation.¹⁵⁶

This restrictive approach towards the right of every citizen to political participation is problematic as elections “do not necessarily produce outcomes which reflect either the diversity of interests or identities in societies.”¹⁵⁷ Furthermore, as stated above, it is unsure to what extent it addresses the root of the issues underlying women’s under-representation in politics.

Henry J. Steiner is amongst the few authors who have actually considered the question of why Article 25 of the Covenant *only* specifies elections, while leaving the general

¹⁵³ Steiner, *supra* note 149 at 84-85: “The discordant understandings of this right were made explicit during the periods of drafting of the Universal Declaration and the International Covenant. They stem from the incompatible political theories and practices which inform the right. (...) What emerged from the periods of drafting and debates were norms that expressed an important ideal of political participation. But they gave little indication of the different ways of institutionalizing that ideal.” For more details on the debates during the drafting periods, see Steiner, *supra* note 149 at 89ff.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.* at 86.

¹⁵⁶ First Protocol to the European Convention on Human Rights on the Enforcement of Certain Rights and Freedoms not Included in Section 1 of the Convention, art. 3: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” See Steiner, *supra* note 149 at 96: “[T]he First Protocol, while bringing the problem of political participation into the Convention, speaks only to the requirement of elections. It says nothing about non-electoral participation, for it includes no equivalent to the general ‘take part’ clause of Article 25 of the International Covenant.”

¹⁵⁷ Sirkku K. Hellsten, Anne Maria Holli & Krassimira Daskalova, eds., *Women’s Citizenship and Political Rights* (Palgrave Macmillan, 2006).

formulation of the right to political participation vague and suggestive. According to him, the “answer to that question lies in part in the conceptual structure of the human rights instruments and in ideological premises to liberal society.”¹⁵⁸ The first comment that can be made is that despite the vagueness of the clause, Article 25 (a) imposes an obligation on States parties, the minimal duty to permit, foster or arrange the participation of every citizen to the conduct of public affairs. As no specific details beyond free and fair elections are mentioned, the respect of this clause is essentially left to the discretion of the State. Henry Steiner argues that under the traditional understanding of liberal democratic theory, such duty is negative (protecting citizens in their political participation in public life) rather than positive (creating institutional frameworks to ensure citizens’ participation).¹⁵⁹

The lack of literature on the right to take part in the conduct of public affairs might also be explained by the difficulty in specifying the measures or institutions involved, and the anticipated problematic monitoring mechanisms that would be required. These obstacles do not come into play for electoral participation.

3.3. Women’s right to take part in the conduct of public affairs in post-conflict situations

Despite this lacuna, it seems that “the right to take part in the conduct of public affairs” deserves some attention as it could reveal itself to be very useful in ensuring the involvement of women at different levels of government and at different stages of peace-building processes. The right to take part in the conduct of public affairs seems to be the most flexible in terms of forms of participation, and the most comprehensive in terms of issues being touched upon, and therefore the most promising for women in a transitional context from war to peace. Indeed, the right to take part in political affairs or government could be appealed to ensure the involvement of women during peace negotiations and peace-building processes, while the right to democratic elections seems to intervene at a later stage. Furthermore, while free and fair

¹⁵⁸ Steiner, *supra* note 149 at 109. Henry J. Steiner undertook in his article to look at the right to political participation from an ideological and conceptual perspective, rather than from a right-based or practical perspective. This might explain his answer to this question. Notwithstanding his position, he attempts at determining which mechanisms could be contained in this “take part” clause.

¹⁵⁹ Steiner, *supra* note 149 at 109. “Such governmental duties of tolerance and equal protection for all political activities could be viewed as a minimum

elections are promoted as the primary tool of democratization,¹⁶⁰ the basic tenet of such process remains the participation of the population to the formulation of public policies.

3.3.1. *Rationale for an improvement of women's involvement in politics*

While the author of this thesis has chosen, for various reasons, to focus on women, there are some general motives behind improving women's participation in politics of one's country.

An expert group meeting discussed women's political participation and presented its conclusions and recommendations at the 15th session of the Commission on the Status of Women. They believed to be of utmost importance to advance women's participation in politics, and agreed on the following arguments for their position:

- *The justice argument* – women account for approximately half the population and therefore have the right to be represented as such.
- *The experience argument* – women's experiences are different from men's and need to be represented in discussions that result in policy-making and implementation. These different experiences mean that women 'do politics' differently from men.
- *The interest argument* – the interests of men and women are different and even conflicting and therefore women are needed in representative institutions to articulate the interests of women.
- *The critical mass argument* – women are able to achieve solidarity of purpose to represent women's interests when they achieve certain levels of representation.
- *The symbolic argument* - women are attracted to political life if they have role models in the arena.
- *The democracy argument* – the equal representation of women and men enhances democratization of governance in both transitional and consolidated democracies.¹⁶¹

This finding summarizes well the various arguments put forward when calling for measures to improve women's participation in politics, be in times of peace or in times of democratic transformation. The UN Committee on the Elimination of Discrimination against Women has also argued that “democracy will have real and dynamic meaning and lasting effect only when

¹⁶⁰ Eric C. Bjornlund, *Beyond Free and Fair: Monitoring Elections and Building Democracy* (London: Johns Hopkins University Press, 2004) at chapter 1 & 2.

¹⁶¹ United Nations Division for the Advancement of Women, Report of the Expert Group Meeting, “Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership” EGM/EPDM/2005/report (October 2005), Addis-Ababab, Ethiopia, at 8-9, online: UNDAW <<http://www.un.org/womenwatch/daw/egm/eql-men/FinalReport.pdf>>.

political decision-making is shared by women and men and takes equal accounts of the interests of both.”¹⁶²

3.3.2. *The specificity of post-conflict situations*

While women are generally under-represented in politics, “barriers to women’s political participation are often magnified in post-conflict societies.”¹⁶³ As a comment to Article 7 of CEDAW, the Committee on the Elimination of Discrimination against Women emphasised the extent to which the exclusion of women from political life and the decision-making process silences women’s experiences, contributions and concerns, *especially in times of crisis*.¹⁶⁴

Among the reasons that could explain such situation, one could think of the volatile security situation; militarism being most of the time still in place, women would still be the target of sexual violence, most likely in their homes (sexual violence in times of war being transformed as domestic violence in times of peace).¹⁶⁵ Also, in times of crisis, the political leaders tend to be associated with the winning factions in the conflict, as opposed to issue-focused.¹⁶⁶ Furthermore, the traditional obstacles to women’s participation remain, and are even exacerbated during the conflict: women’s economic dependence on men, and stereotyping.¹⁶⁷

However, and at the same time, “post-conflict countries frequently offer unique opportunities to institute changes in the political structure and political culture that ensure the recognition and realization of women’s right to participate fully and equally in politics.”¹⁶⁸ Indeed, one should not under-estimate the importance of the context in which participation claims are brought. Indeed, the political context (colonialism, military dictatorships, authoritarian regimes or religious states), will influence the point of departure, strategy and forms of participation of women in various movements.¹⁶⁹ In the context of post-conflict societies, how does the context influence women’s participation? Women have been silenced

¹⁶² UN CEDAW, General Rec. No. 23 (1997), *supra* note 133, ¶15.

¹⁶³ Online: United Nations <<http://www.un.org/womenwatch/osagi/wps/publication/Chapter3.htm>>. See also Duggan, *supra* note 120 at 627.

¹⁶⁴ UN CEDAW, General Rec. No. 23 (1997), *supra* note 133 at ¶9.

¹⁶⁵ Online: United Nations <<http://www.un.org/womenwatch/osagi/wps/publication/Chapter3.htm>>.

¹⁶⁶ *Ibid.*

¹⁶⁷ CEDAW, GR No.23, *supra* note 133 at 9.

¹⁶⁸ Online: United Nations <<http://www.un.org/womenwatch/osagi/wps/publication/Chapter3.htm>>.

¹⁶⁹ Codou Bop, “Women in Conflicts, Their Gains and Their Losses” in Meintjes et al. *supra* note 11 at 20ff.

during the conflict, and they have been targeted for the symbolism they represent for their community, society and country. This needs to be reversed in a post-conflict situation, by giving women a voice, by treating them as equals to men, and by acknowledging their leadership role in society. Despite the scarcity of resources and despite the numerous issues to be addressed in post-conflict situations, women's right to political participation should be considered as a priority as from its application will flow a democratic societal transformation.

3.3.3. *The right to take part in the conduct of public affairs*

While it is believed that the right to take part in the conduct of public affairs is comprehensive in terms of the issues being touched upon, an issue that still needs to be looked at is the scope of the right of every citizen to take part in the conduct of public affairs. The Human Right Committee has defined the "conduct of public affairs" as:

a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, as well as the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.¹⁷⁰

The problem with defining the scope of the right to take part in the conduct of public affairs is that it has only been addressed with respect to indigenous people. The question then is whether an analogy could be used as a symbolic to demonstrate that political participation and the conduct of public affairs are linked, and also whether such analysis can be used for other groups than indigenous people, i.e. women?

3.3.3.1. The right to take part in the conduct of public affairs as a minority right

In order to develop this idea of an analogy between women's and indigenous people's right to take part in the conduct of public affairs, it is important to start with explaining in more details the approach that has been undertaken with respect to minorities. The Human Rights Committee has commented the application of Article 25(a) of the ICCPR in a few decisions.

¹⁷⁰ UN HRC, General Comment No. 25 (1996), CCPR/C/21/Rev.1/Add.7.

In *Marshall v. Canada*, representatives of the Mikmaq tribal society alleged a violation of Article 25 (a) by Canada.¹⁷¹ The basis for their complaint was the refusal of the state party to permit specific representations for the Mikmaqs at a constitutional conference convened for the purpose of identifying and clarifying aboriginal rights. This communication raised the question of the scope of Article 25 (a) of the Covenant.¹⁷² The Human Rights Committee, deciding in favour of the state party, found that:

Surely, it cannot be the meaning of article 25 (a) of the Covenant that every citizen may determine either to take part directly in the conduct of public affairs or to leave it to freely chosen representatives. It is for the legal and constitutional system of the State party to provide for the modalities of such participation.¹⁷³

The Human Rights Committee found that although prior consultations with the most interested groups may constitute the conduct of public affairs, Article 25 (a) does not guarantee any directly affected group the right to choose the modalities of participation in the conduct of public affairs. Therefore, the *Marshall* decision appears to confirm that Article 25 does not guarantee a citizen a right to direct participation in public affairs, beyond the specific instances mentioned in Article 25 (b) and (c). However, in its concluding observations on the third periodic report of Mexico, the Human Rights Committee recommended that the Government give its indigenous populations “the opportunity to participate in decision-making on matters that concern them.”¹⁷⁴ In its General Comment No. 23 on the rights of minorities, the Human Rights Committee stated that the enjoyment of cultural rights protected under Article 27 of the Covenant “may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”¹⁷⁵

¹⁷¹ *Marshall v. Canada*, Communication No. 205/1986, U.N. Doc. CCPR/C/43/D/205/1986 (1991) [*Marshall v. Canada*].

¹⁷² *Marshall v. Canada*, *ibid.* ¶5.4: “It remains to be determined what is the scope of the right of every citizen, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.”

¹⁷³ *Marshall v. Canada*, *ibid.* ¶5.4.

¹⁷⁴ Concluding Observations of the Human Rights Committee on the Third Periodic Report of Mexico, UN Doc. CCPR/C/79/Add.32 (18 April 1994) ¶18.

¹⁷⁵ UN HRC, General Comment No. 23 (1994) UN Doc. CCPR/C/21/Rev.1/Add.5, ¶7.

In *Ilmari Länsman et al. v. Finland*,¹⁷⁶ and in *Jouni E. Länsman et al. v. Finland*¹⁷⁷ the Human Rights Committee decided in favour of the state party, noting that the interest of the directly affected group had been consulted during the decision-making process, and that the authors of the complaint did not react negatively at that time. Furthermore in the latter case, the Committee emphasised that the State authorities “did go through the process of weighing the authors’ interests with the general economic interest.”¹⁷⁸ As Sarah Joseph concluded, these post-*Marshall* decisions “indicate that minorities, including indigenous peoples, *do* have rights of direct participation in decisions which may impact on their traditional culture.”¹⁷⁹ She somehow shyly proposes that “direct rights of participation may perhaps therefore be derived from article 27, if not article 25.”¹⁸⁰ An interesting issue at this point of this thesis would be to determine whether women could, in post-conflict situations, use Article 25 (a) to sustain their claim of political participation.

3.3.3.2. The right to take part in the conduct of public affairs as a collective right of women

Could an analogy with indigenous people be used to defend the argument that women could use the analysis made by the Human Rights Committee of Article 25(a) of the ICCPR and of its application to minorities, in order to sustain their own claim to political participation in post-conflict situations?

Could women be defined as a minority group? Louis Wirth defined minority group as “any group of people who because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination.”¹⁸¹ While women in post-conflict situation are victims of discriminatory behaviour, being excluded from participating in the decision-making relative to the transformation of the society they live in,

¹⁷⁶ *Ilmari Länsman et al. v. Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (1994) ¶9.5-9.6.

¹⁷⁷ *Jouni E. Länsman et al. v. Finland*, Communication No. 671/1995, U.N. Doc. CCPR/C/58/D/671/1995 (1996) ¶10.4- 10.5.

¹⁷⁸ *Ibid.*

¹⁷⁹ Joseph, *supra* note 150 at 658.

¹⁸⁰ *Ibid.*

¹⁸¹ Louis Wirth, “The Problem of Minority Groups” in Ralph Linton, ed., *The Science of Man in the World Crisis* (Columbia University Press, 1945) cited in Helen Mayer Hacker “Women as a minority group” (1951) 30:60 *Social Forces* 60.

the defining feature of women as a minority group would have to be gender. Because of the diversity of women, any cultural or political characteristics would have to be rejected. This might actually constitute a difficulty for women being defined as a group, most feminists claiming that women's diversity ought to be recognized and promoted. The particularity of post-conflict situations for women is here again to be raised, as it constitutes a window of opportunity for women. Indeed, while women may have believed that they were subject of discrimination because of their distinctive features, making it normal in some way, the conflict situation usually gives them the strength to demand a change in their status and situation. It seems difficult to make the argument that women should be considered as a group, even if it is to make the argument that women, as a group, ought to take part in the conduct of public affairs. In numbers only, women rarely constitute a minority, and it is usually even the contrary in post-conflict situations. Furthermore, as it has been shown in listing the international legal documents referring to women's rights to political participation, it remains a human right, hence being recognised to every human being without discrimination on the basis of sex or gender. This does not however deny the importance of affirmative action, but it seems that such method might fail to address the roots of women's exclusion, hence failing to guarantee long-term changes.

While it seems therefore difficult to use indigenous people's right to take part in the conduct of public affairs as an argument to further women's claim in post-conflict situations, it still seems possible to offer some options for further reflexion. As one way of approaching the issue, the theory of Geneviève Koubi on individual, group and collective rights will be briefly presented and drawn upon.¹⁸² Koubi criticises the individualist perspective of human rights which has been adopted in the international covenants, because it ends up limiting the contextualisation of those individual rights.¹⁸³ She distinguishes between groups' rights and collective rights, defining the latter as individual rights exercised collectively, by opposition to the former, usually defined as rights recognised to a subject of law: a group, itself defined by

¹⁸² See for example Alain Fenet, Geneviève Koubi & Isabelle Schulte-Tenckhoff, eds., *Le droit et les minorités* 2d ed. (Bruxelles: Etablissements Emile Bruylant, 2000).

¹⁸³ Geneviève Koubi, "Reflexions sur les distinctions entre droits individuels, droits collectifs et 'droits de groupe'" in Raymond Goy, ed., *Du droit interne au droit international : le facteur religieux et l'existence des droits de l'homme* (Publications de l'Université de Rouen, 1998) 105 [Koubi].

its distinctive features (religion, culture, etc.).¹⁸⁴ She relies on an analysis of international law which concludes that collective rights are defined as individual rights exercised collectively as a group, hence being limited and restricted to this group exercise of the right.¹⁸⁵ She considers that those rights are hence groups' rights, as they exist only as exercised by the group. To this definition of groups' rights, she opposes collective rights, which she defines as individual rights in nature which can also be exercised collectively with others, those others being not limited to the belonging of a group defined by distinctive features such as culture, language, religion, etc.¹⁸⁶ Therefore, it seems that the collective exercise of an individual right is a channel through which effectively implement this right, allowing for its contextualisation in the social and cultural context.

With this understanding of collective right as defined by Koubi in mind, women's right to political participation in the sense of taking part in the conduct of public affairs is an individual right that belongs to every women, but which can be implemented collectively. It has a collective and individual dimension. Individually, there are many ways in which women can take part in the conduct of public affairs/ For example, they can inform themselves on the politics, they can start organisations to raise their concerns, etc. Collectively, some women can exercise women's right to political participation by representing them, in attending peace negotiations for example. The context (i.e. post-conflict situation) will be important in order to conceptualize the claims (i.e. to be included in the peace negotiation process).

From a legal point of view, one would believe that women's claim for their right to political participation to be respected could solely rely on the implementation of the legal documents guaranteeing it. However, in the context of post-conflict situations, women's status prior to war and women's victimization during the conflict call or allow for another approach to be taken. The reparative argument to support women's claim for participation could be seen as complementary or distinct, but is in anyway worth analysing. It seems that the current literature on women's political participation has neglected looking into this direction.

¹⁸⁴ *Ibid.* at 106.

¹⁸⁵ F. Sudre, *Droit international et européen des droits de l'homme* (Paris : Presses Universitaires de France, 1989) at 122 cited in Koubi, *ibid.* at 109.

¹⁸⁶ Koubi, *ibid.* at 109.

4. RIGHT TO REPARATION

Before starting the analysis of the right to reparation under international law, it is important to contextualise the discussion. First, while the focus of this thesis will be on the existence of a right to reparation in international law, it is necessary to look at national law and practice, if one is to grasp the full picture of the current status of victim's right to reparation with respect to human rights violations. Such analysis however goes beyond the scope of this thesis.¹⁸⁷ Second, there are a few specific characteristic of gross violations of human rights that will need to be taken into consideration when addressing the issue of reparation, such as the scale of perpetrators and victims, the scarcity of resources that generally follows situations of conflict, and the overall social and political context.¹⁸⁸ Finally, as it is the focus of this thesis, particular attention will be paid to reparation in the specific context of transitional justice. In such cases, "reparation generally serves a number of political objectives"¹⁸⁹ and "while returning to the situation *ex ante* and wiping out all consequences of the wrongful act are practically impossible, reparation should help a society in finding a new balance."¹⁹⁰

4.1. The meanings of "reparation"

A few distinctions are to be made. First, while the term "reparation" is often used in international law to designate measures adopted for the redress of various harms suffered as a consequence of certain crimes or breaches of state responsibility,¹⁹¹ it also refers more narrowly to reparations programmes – that is, to the direct provision of benefits to the victims of different types of violation, usually in the wake of a conflict or a period of political upheaval.¹⁹² Because the focus of this thesis is on conflicts which involve actors others than States, this latter use of the term "reparation" will be the focus here. Second, some authors have

¹⁸⁷ See for example, Heidy Rombouts, Pietro Sardaro & Stef Vandeginste, "The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights" in Stephan Parmentier et al., eds., *Out of the Ashes: Reparation for Victims of Gross and Systemic Human Rights Violations* (Antwerpen: Intersentia, 2006) 345 at 420ff [Rombouts, Sardaro & Vandeginste].

¹⁸⁸ Dinah Shelton, *Remedies in International Human Rights Law*, 2d ed. (Oxford: Oxford University Press, 2005) at 389-390.

¹⁸⁹ Rombouts, Sardaro & Vandeginste, *supra* note 187 at 353.

¹⁹⁰ Rombouts, Sardaro & Vandeginste, *supra* note 187 at 354.

¹⁹¹ Pablo de Greiff, "Justice and Reparations" in Pablo de Greiff, ed. *The Handbook of Reparations* (New York: Oxford University Press, 2006) 451 at 452 [de Greiff]. See, also, J.-Maurice Arbour & Geneviève Parent, *Droit international public*, 5th ed. at 593.

¹⁹² de Greiff, *ibid.* at 452.

emphasised the distinction between “reparations” and “reparation”, referring to the latter for a variety of measures seeking to restore the victims in the *statu quo ante*, while the former would be used to designate monetary compensation.¹⁹³ This usage would correspond to the language used in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law. For the purpose of this thesis, the singular of the term will be used, as the interest goes beyond mere monetary compensation. Finally, while tracing back the origin of the word “reparations” to the Second World War, when it meant the indemnities that ought to be paid by the losers to the winners of the war, for the damages caused by the war,¹⁹⁴ Torpey distinguishes two different senses of the modern notion of “reparations”, one calling for one’s responsibility or wrongdoing, while the other sense is more characterized by a “generalized distress” and is void of any notion of guilt.¹⁹⁵ Torpey admits though that recently the two meanings have come to be equated.

4.2. The sources of a right to reparation

The scepticism of some authors with regard to the existence of a right to reparation under international law should be acknowledged, even if their opinion is not followed in this thesis.¹⁹⁶ Indeed, other authors affirm that it can be derived from current international law, basing such finding on “a comparative analysis of relevant international instruments and on the case law of international dispute settlement mechanisms, including international human rights bodies.”¹⁹⁷

4.2.1. *Origins of a right to reparation*

The right to reparation was initially affirmed as a principle of state responsibility

¹⁹³ John Torpey, “Victims and Citizens: the Discourse of Reparation(s) at the Dawn of the New Millenium” in Stephan Parmentier et al., eds., *Out of the Ashes: Reparation for Victims of Gross and Systemic Human Rights Violations* (Antwerpen: Intersentia, 2006) 35 at 38-39 [Torpey].

¹⁹⁴ *Ibid.* at 36.

¹⁹⁵ *Ibid.* at 37-38.

¹⁹⁶ See for example, Randelzhofer & Tomuschat, *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights* (The Hague: Martinus Nijhoff Publishers, 1999) [Randelzhofer & Tomuschat].

¹⁹⁷ Rombouts, Sardaro & Vandeginste, *supra* note 187 at 501.

following the commission of an internationally wrongful act.¹⁹⁸ It was affirmed by the Permanent Court of International Justice in the *Factory at Chorzów* case in 1927.¹⁹⁹ The case concerned an unlawful expropriation as Poland had taken the German interests in the factory in violation of its treaty obligations. In this case, the Court observed that “it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.”²⁰⁰ The Court further noted that “reparation is the indispensable complement of a failure to apply a convention, and [that] there is no necessity for this to be stated in the convention itself.”²⁰¹

4.2.2. *The codification of a right to reparation*

The contours of the obligation to provide for reparation in the context of interstate disputes have since been codified by the International Law Commission.²⁰² Hence, under international law, two obligations arise from the breach by a State of its international obligations: first, the obligation to cease the wrongful act and to offer adequate guarantees of non-repetition, and second, the obligation to make full reparation of the damage caused by the wrongful act.²⁰³ However, while the position of the individual under international law is fundamentally changing,²⁰⁴ the classic theory remains that obligations under international law are between States. Problems therefore arise when transposing State responsibility to reparation claims by individuals for gross human rights violations.

¹⁹⁸ Ruth Rubio-Marín, “The Gender of Reparations: Setting the Agenda” in Ruth Rubio-Marín, ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations* (International Center for Transitional Justice, 2006) 24 [Rubio-Marín].

¹⁹⁹ *Case Concerning the Factory at Chorzów (Claim for Indemnity) (Merits)*, [1928] PCIJ, ser. A, No. 17 [Chorzów case].

²⁰⁰ *Ibid.* at 24.

²⁰¹ *Ibid.*

²⁰² Rubio-Marín, *supra* note 198 at 42, n. 21.

²⁰³ Articles 30 and 31 of the “Responsibility of States for Internationally Wrongful Acts” (2001), reproduced in the annex to General Assembly resolution 56/83 of 12 December 2001 [ICL draft articles]. See also Rombouts, Sardaro & Vandeginste, *supra* note 189 at 362: “The basic principle of reparation as an automatic consequence of the commission of an internationally wrongful act was laid down by the Permanent Court of International Justice in the *Factory at Chorzów* case (1928).”

²⁰⁴ The United Nations Compensation Commission was established to provide reparation directly to individuals and corporations. While victims needed State’s representation in order to obtain remedy, it still represents a recognition of an individual right to compensation. See for example, Hans Van Houtte, Hans Das & Bart Delmartino, “The United Nations Compensation Commission” in Pablo de Greiff, ed. *The Handbook of Reparations* (Oxford: Oxford University Press, 2006) 321.

The right to reparation is further contained in a number of conventional sources of human rights and humanitarian law, either explicitly or implicitly. The International Covenant on Civil and Political Rights provides the right to have an effective remedy in case of a violation of the rights and freedoms recognised in the Covenant. However, the Human Rights Committee clarified the content of such right to a remedy as chiefly of procedural rights and obligations.²⁰⁵ It should however be noted that the African Charter, for its part, does not contain such individual's right to a remedy, while however referring to a more collective form of reparation in case of deprivation of people's wealth and resources.²⁰⁶ Furthermore, in international human rights law, the right to reparation could be attached to the general duty of States to establish effective domestic remedies, in order to obey to a general duty to provide reparation for human rights violations.²⁰⁷ However, while human rights bodies, such as the Human Rights Committee, represent a venue for individuals, they can only make recommendations, which are not legally enforceable by individuals, to the States. To conclude, while a right to reparation can be found in conventional sources of international law, problems arise when looking for a right that can be invoked by individuals at the international level.

4.2.3. *The consecration of the right to reparation: the Rome Statute and the Basic Principles and Guidelines*

The Statutes of the ICTY and ICTR are very limited with respect to the victims' right to reparation. The only one form of redress they contain is restitution of unlawfully taken property.²⁰⁸ A further difficulty is the restrictiveness regarding the issue of right-bearers, i.e. those enabled to claim such form of remedy.

²⁰⁵ See art. 3, 9 and 14 of the ICCPR, *supra* note 126.

²⁰⁶ *African Charter on Human and Peoples' Rights*, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, art. 21 [*African Charter*].

²⁰⁷ Rombouts, Sardaro & Vandeginste, *supra* note 187 at 367, n. 58.

²⁰⁸ *Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Other Such Violations Committed in the Territory of Neighboring States*, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453 mtg., Annex, U.N. doc S/955 (1994), art. 23 [ICTR Statute]; *Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., Annex, U.N. Doc. S/827 (1993), art. 24 [ICTY Statute].

A progress has been made with the Rome Statute for the ICC, which recognizes the right of victims to obtain reparations, including restitution, compensation and rehabilitation, and provides mechanisms expressly for this purpose.²⁰⁹

The most sustained and recent effort in codifying the right to reparation has been the work of the United Nations Commission on Human Rights (now Human Rights Council), which elaborated international principles on reparation for victims of human rights violations. In particular, the work of Van Boven and Bassiouni has led to the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law (hereinafter BPG) on 19 April 2005 by the UN Human Rights Commission. While the BPG is not a binding instrument in international law, it resembles a codification of the existing obligations, while going further than the present state of international law with some of its principles.²¹⁰

4.3. The content of a right to reparation

4.3.1. *Initially*

In the *Factory at Chorzów* case, the Permanent Court of International Justice stated that “reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”²¹¹ The Court however noted that “[i]t is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law.”²¹² The Court even observed that it was the most common form of reparation.

In the first codification of the responsibility of States for internationally wrongful acts, the approach adopted by the International Law Commission distinguished between restitution (defined as re-establishing the situation which existed before the wrongful act was

²⁰⁹ Art. 75 of the ICC Statute, *supra* note 18. The Trust Fund will likely be the main venue for victims to claim and obtain reparation. Major debates still surround the Trust fund, especially with respect to its funding.

²¹⁰ Rombouts, Sardaro & Vandeginste, *supra* note 187 at 362.

²¹¹ *Chorzów* case, *supra* note 199 at 40.

²¹² *Ibid.* at 23.

committed),²¹³ compensation (understood in monetary terms)²¹⁴ and satisfaction (which refers for example to an apology or an acknowledgement of the wrongdoing).²¹⁵

4.3.2. *The Basic Principles and Guidelines*

The BPG identify five forms of reparation, which should be provided depending on the gravity of the violation and the circumstances of each victim: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²¹⁶

Restitution is about restoring the victim, to the extent possible, to the original situation that existed before the violations of human rights or international humanitarian law occurred. Such definition seeks, for example, at the return of property or the payment of damages for loss suffered. It may also include the restoration of legal rights or social status.

Compensation should be the reparation provided for any economically assessable damage resulting of violations of human rights or international humanitarian law, such as material damages and loss of earnings, or costs required for medical health care. Compensation is typically the payment of money to redress the harm caused by the violation of human rights.²¹⁷ It has traditionally been the focus of most national and international courts.

Rehabilitation can include medical, psychological, legal and social services aimed at facilitating the victims' recovery and reintegration. Such forms of reparation have often been called upon in light of the issue of child soldiers, and for those directly engaged in armed conflicts more generally.²¹⁸ It is usually regarded as an individual matter.²¹⁹

"Satisfaction and guarantees of non-repetition refers to the range of other measures, which may contribute to the broader and longer-term restorative aims of reparations."²²⁰ A central component of this is the public acknowledgement of the violations. The underlying

²¹³ ICL draft articles, *supra* note 203, art. 35.

²¹⁴ *Ibid.* at art. 36.

²¹⁵ *Ibid.* at art. 34, 37.

²¹⁶ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res. 60/147, UN GA, 60th Sess., UN Doc. A/RES/60/147 (2006) ¶18 [BPG].

²¹⁷ Rombouts, *supra* note 187 at 28.

²¹⁸ "Reparation: a sourcebook for victims of torture and other violations of human rights and international humanitarian law" (2003) The Redress Trust, at 20 [Redress].

²¹⁹ Rombouts, *supra* note 187 at 29.

²²⁰ Redress, *supra* note 218 at 21.

concepts of these forms of reparation are victims' right to know the truth and victims' right to hold perpetrators accountable. "Guarantees of non-repetition is a relatively clear notion referring to the installation of mechanisms that serve to prevent the reoccurrence of similar violations through the re-organisation of the socio-political environment, ensuring democracy and the rule of law."²²¹

4.4. A critique of the right to reparation

A flexible approach surrounds the right to reparation, and its content will vary depending on the circumstances, such as, for example, women victims of sexual violence in a transitional context. However the specific issues faced by women and girls in the aftermath of the conflict have not been fully taken into consideration in the design and implementation of reparation programmes. While conceptually, reparation understood as a right might be problematic, women's right to reparation must address their specific needs.

4.4.1. *Reparation as a right*

When addressing reparation programmes, different conceptual frameworks have been distinguished. These are reparation as right, reparation as symbol and reparation as process.²²²

The reparation as right approach is consistent with the current international practice and the classic juridical understanding of the consequences proceeding from a breach of international law.²²³ Reparation is thus an individualized right owed towards States in breach of the obligations under international law. As it will be criticised below, reparation as a right insists on compensation as a form of reparation. Another conceptualization of reparation programmes has been offered; it is the reparation as symbol. Such an understanding broadens the reparatory measures that can be envisaged. While such conceptualization does not deny the importance of compensatory reparative measures, it acknowledges their inadequacy or insufficiency. Indeed, gross and systematic violations of human rights and humanitarian law

²²¹ Rombouts, *supra* note 187 at 30.

²²² Geneviève Painter, "Towards Feminist Theoretical Approaches to Reparations" (Paper presented to the Annual Meeting of the Coalition for Women's Human Rights in Conflict Situations, September 2006) [unpublished] at 3 [Painter].

²²³ *Ibid.* at 3, 11. See also Anne Saris & Katherine Lofts, "Reparation Programmes: A Gendered Perspective" in C. Ferstma, M. Goetz & A. Stephen, eds., *Reparations for victims of genocide, crimes against humanity and war crimes: systems in place and systems in the making* (London: Redress, 2008) [forthcoming], at 8 [Saris & Lofts].

are committed on individuals who are part of a broader group or society. Reparative measures must therefore encompass this collective nature.²²⁴ The last conceptual framework to be considered is reparation as a process. It seeks at identifying not so much the reparative measures but rather the people involved in the design and implementation of reparation programmes, and the role played by such programmes in the more general transformation of society. “In facilitating this process, reparations are envisaged as participatory and empowering.”²²⁵

4.4.2. *Women’s right to reparation*

As a general comment, the notions of restitution and compensation underpinning most reparations programs are highly problematic, particularly in the context of gender-based violence.²²⁶

Reparation as restitution is problematic in two ways. First, in light of the irreversible nature of some of the damages suffered, especially in the case of sexual violence against women, it may be impossible to achieve full restitution of the injury suffered.²²⁷ Second, it may not correspond to women’s perspective of reparation as rehabilitating women in their situation prior to the conflict would mean restoring the gender *statu quo*.²²⁸ In such cases, restoring a victim to her position before the conflict began would be tantamount to returning her to a state of marginalization and inequality that to some extent facilitated the harms experienced in the first place.²²⁹

Reparation as compensation is also problematic for the following reasons. First, many of the harms inflicted upon women in conflict situations are very difficult to assess economically. Second, many States face lack of resources when it comes to reparation. It is clear that

²²⁴ See Painter, *ibid*. See also Saris & Lofts, *ibid*.

²²⁵ Saris & Lofts, *ibid*. at 7.

²²⁶ Vahida Nainar, “Women’s Right to Reparation” (Paper presented to the International Meeting on Women’s Right to Reparation, Nairobi, March 2007) at 29 [Nainar]. “There is a general understanding that reparation is, in effect, restitution. This understanding is inadequate. Reparation helps to repair but it does not necessarily restore — as in restoring the victim to her material and physical condition prior to the violation.”

²²⁷ See *ibid*. at 29-30.

²²⁸ *Ibid*. at 15, 29-30. See also de Greiff, *supra* note 191 at 455.

²²⁹ Nainar, *supra* note 226 at 30.

estimating the economic value of life is in itself problematic; in terms of a reparation policy, this will definitely be an issue.²³⁰

Reparation as satisfaction and guarantees of non-repetition are the most interesting forms of reparation when looking at women victims of sexual violence and in a context of political and societal transition. Such forms of reparation may allow counteracting the relative blindness of the BPG to the realities of a post-conflict context.

4.4.3. *The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*

The Coalition for Women's Human Rights in Conflict Situation organized in March 2007, in partnership with Urgent Action Fund – Africa and Rights & Democracy, the Nairobi conference on women's right to reparation. During this meeting, activists, jurists and survivors discussed on the subject of reparation and drafted together the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. "The Declaration espouses a gender-just concept of reparation; it promotes an understanding of reparation-as-process, asserting that reparation must be seen as a transformative process that is both participatory and empowering."²³¹ The Declaration highlights the needs for reparation programmes to be holistic, being social (rehabilitation, reconciliation, restitution) but also political (balance of power, democracy, freedom).²³² They must be individual and collective in nature, and aim at consolidating women's empowerment:

[R]eparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls; that reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of violations of women's and girls' human rights predate the conflict situation.²³³

Therefore it is a principle stated in the Declaration that reparation measures comply with human rights standards, thus addressing the roots of violence against women.

²³⁰ Nainar, *supra* note 226 at 28.

²³¹ Saris & Lofts, *supra* note 223 at 13.

²³² See working paper, *supra* note 226 at 17.

²³³ Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, March 2007, online: Coalition for Women's Human Rights in Conflict Situations <http://www.womensrightscoalition.org/site/reparation/signature_en.php> [Nairobi Declaration].

As mentioned in a recently published article, the Nairobi Declaration redefines reparation in an effort to bring a solution to the problem of delivering justice to women and girls who have been the victims of sexual violence in conflict situations.²³⁴ Many people, including international law experts, parliamentarians, judges, ambassadors, human rights activists, women's rights organisations, etc. have signed on the Declaration.²³⁵ Mention was made of the Nairobi Declaration by the African Commission in the Preamble of the Resolution on Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence.²³⁶ It is also even more interesting to know that despite its non-binding nature, the Declaration has been used in 2007 by the international mediators in the Juba peace talk between the Ugandan government and the Lord's Resistance Army.²³⁷

5. POLITICAL PARTICIPATION AS REPARATION: ADDRESSING THE ROOTS OF VIOLENCE AGAINST WOMEN

In light of the continuing and endemic violence against women, the increase in acts of sexual violence against women and girls, together with the need to improve the status of women in order to achieve the elimination of discrimination against women, the United Nations Commission on Human Rights, in its resolution 1994/45 of 4 March 1994, decided to appoint a Special Rapporteur on violence against women, including its causes and consequences.²³⁸ The Special Rapporteur was given for mandate to obtain information on violence against women, its causes and consequences, and to "recommend measures, ways and

²³⁴ Valérie Couillard, "The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence" (2007) 1:3 Int'l J. Transitional Justice 444.

²³⁵ On the number of signatories, more information can be found on the website of the Coalition for Women's Human Rights in Conflict Situations: <http://www.womensrightscoalition.org/site/reparation/index_en.php>.

²³⁶ Commission Africaine des droits de l'homme et des peuples, Résolution sur le droit à un recours et à réparation pour les femmes et les filles victimes de violence sexuelle, Nov. 2007, online: Commission Africaine des droits de l'homme et des peuples <http://www.achpr.org/francais/resolutions/resolution111_fr.html>. « Saluant l'initiative de la société civile qui énonce, dans la Déclaration de Nairobi sur le droit à un recours et à réparation pour les femmes et les filles victimes de violence sexuelle, qui prévoit des principes directeurs pour la mise en œuvre de programmes efficaces et spécifiques visant la réparation dans les cas de violence sexuelle en situation de conflits. »

²³⁷ Isabelle Solon Helal, Address at the Annual Meeting for the Coalition for Women's Human Rights in Conflict Situations, Montreal, October 2008 [unpublished].

²³⁸ UNHCHR, Commission on Human Rights, 1994/45, "Question of integrating the rights of women into the human rights mechanism of the United Nations and the elimination of violence against women".

means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences.”²³⁹

The theoretical argument supported in the following part of this thesis is that there is a direct link between discrimination against women in peacetime and violence perpetrated against women in wartime. In other words, one reasons for the commission of violence against women in times of armed conflict is the status of secondary citizens given to women in many patriarchal societies. In light of this, it is argued that political participation of women could be seen as a reparation measure directly addressing the roots of violence against women, hence preventing its reoccurrence. It is also a symbolic reparative measure, by giving voice to women and by acknowledging their leadership role.

5.1. Status of women prior to the conflict

5.1.1. *Women as secondary citizens*

Women are often considered as secondary citizens, being subordinated to men in the enjoyment of their rights. In Burundi for example, discrimination against women is still prominent: “the traditional society is a patriarchal and patrilinear one, in which a woman is constantly under the protection of a father, brother, uncle, husband or family council.”²⁴⁰ There is a *de facto* and *de jure* discrimination inherent in the status of women in Burundi.²⁴¹ As an example, the Family Code of Burundi states that the man is head of household and that the woman must obey him.²⁴² Despite some legal changes in an attempt to redress the situation of women, discrimination against women in Burundi remains widespread.²⁴³

The Congolese society is also profoundly patriarchal and many deeply rooted stereotypes regarding the role of women in societies still prevail.²⁴⁴ Congolese women and girls are considered to be second class citizens.²⁴⁵ Existing law and social norms maintain women and

²³⁹ *Ibid.* at ¶7b.

²⁴⁰ Initial Report of Burundi to CEDAW, *supra* note 87 at 7. See also, AI Burundi – Rape, *supra* note 32 at 2.

²⁴¹ Initial Report of Burundi to CEDAW, *ibid.* at 8.

²⁴² *Ibid.*, at 43.

²⁴³ AI Burundi – rape, *supra* note 32 at 3.

²⁴⁴ CEDAW Concluding comments on DRC fourth and fifth periodic report, *supra* note 142.

²⁴⁵ *Ibid.* See also LaShawn R. Jefferson, “In War as in Peace: Sexual Violence and Women’s Status” Human Rights Watch, World Report 2004, at 4, online: Human Rights Watch <<http://www.hrw.org/wr2k4/15.htm>> [HRW World Report 2004].

girls as subordinate to men.²⁴⁶ The following discriminatory beliefs were identified by the Government of the Democratic Republic of Congo (hereinafter DRC) in its report to the Committee on the Elimination of Discrimination Against Women: nature made women inferior to men; women do not build villages, i.e. they are not capable of managing a community; women are the weaker sex; women are the receptacle for the seed that engenders children; women are financially dependent on their husbands.²⁴⁷ There is often a gap between the law relating to women's rights and the reality of the women. For example, while the law states the equality of men and women, grants women the right to vote and guarantee women's right to inheritance, the reality faced by Congolese women is much more discriminatory. For example, in case her husband deceases, her in-laws could deprive her from her house and all the goods acquired by the couple during their marriage. Women are dependant on men, as they need the authorisation of their husbands to undertake any activities outside of the household.²⁴⁸

Uganda is no exception; while it is composed of a diversity of ethnicities, all of them are patriarchal and maintain women as inferior to men.²⁴⁹ Men are seen as natural leaders and discriminatory customs and societal norms bears down on women, to such extent that very few women take up the challenge of challenging expectations on women's behaviour.²⁵⁰

5.1.2. *Women's productive and reproductive functions*

In many patriarchal societies, women are defined by their reproductive functions. This assertion was noted by the Special Rapporteur on violence against women, its causes and consequences, in her report on the Economic and Social Policy and its Impact on Violence against Women.²⁵¹ As she mentioned, many women have no rights over their bodies and they have no choice over their sexuality. Virginity is valued as the major virtue, which is preserved

²⁴⁶ HRW Eastern Congo 2002, *supra* note 141 at 20. HRW World Report 2004, *ibid.* at 5. "The law and social norms defined the role of women and girls as subordinate to men. The Congolese Family Code expressly subordinates women in the family by requiring them to obey their husbands, who are recognised as the head of the household."

²⁴⁷ Combined fourth and fifth report of DRC to CEDAW, *supra* note 140 at 26.

²⁴⁸ Puechguirbal DRC, *supra* note 75 at 1272.

²⁴⁹ Third periodic report of Uganda to CEDAW, 3 July 2000, CEDAW/C/UGA/3, at 24.

²⁵⁰ *Ibid.*, at 31.

²⁵¹ Report of the Special Rapporteur on violence against women, its causes and consequences, submitted in accordance with Commission on Human Rights resolution 1997/44, "Economic and social policy and its impact on violence against women", E/CN.4/2000/68/Add.5, at 4 [Report Special Rapporteur on violence against women]. "In many societies, women are defined solely by their reproductive function."

by forced marriage and child marriage.²⁵² In Sierra Leone, forced marriages were common, as prior to the adoption of a new law on marriage and divorce (June 2007), there was no minimum age for marriage.²⁵³ It should be noted that forced marriage not only may have an impact on the health of girls exposed to early sexual activity, but also on their education, their parents seeing little interest in providing them with an education.

In many patriarchal societies, women are also defined by their productive function. While economic and social policies continue to ensure the dependence and subordination of women to men, women are the ones who support their families and communities, representing the majority of the workforce, especially in rural areas.²⁵⁴ In Burundi for example, “agricultural production, which contributes 56% of the GDP, is left in the hands of women, who number an estimated 51% of the total population.”²⁵⁵ In Uganda, it has been said that women do 80% of the farm work.²⁵⁶ However, women’s access to land has traditionally been dependent on their relationships with fathers, husbands, brothers and sons.²⁵⁷ Women are traditionally discriminated against in terms of their ability to own or inherit property. In Sierra Leone, for example, “the discriminatory attitudes that prevail make it difficult and can even prevent women from owning dwellings, land or any other kind of property.”²⁵⁸ Inheritance laws are discriminatory as they favour the male members of the family. In cases their husbands die, women are left to the mercy of their in-laws. This discrimination has tremendous impacts on women, preventing women from achieving economic self-sufficiency.²⁵⁹ Rwandan women were facing a similar situation, as the children were the ones entitled to own property in case of

²⁵² *Ibid.*

²⁵³ The minimum is now 18 years old. See the new Registration of Customary Marriage and Divorce Act, which was passed on 14th June 2007.

²⁵⁴ Report Special Rapporteur on violence against women, *supra* note 251, at 4-5. The Special Rapporteur cited the following statistics: “In developed countries, women do 51% of all work; in developing countries as much as 53%. Women do 2/3 of all unpaid work, while men do 2/3 of all paid work. In industrialized countries, women who are employed and have a child aged under 15 have the longest working day, amounting to 11 hours. When a woman takes up employment, the unpaid work she previously was responsible for still remains and she will have to work on average one hour additional per day.”

²⁵⁵ Initial Report of Burundi to CEDAW, *supra* note 87 at 6.

²⁵⁶ Turshen 2000, *supra* note 36 at 808.

²⁵⁷ See *ibid.*

²⁵⁸ K. Barnes et al., “Addressing Gender-Based Violence in Sierra Leone: Mapping Challenges, Responses and Future Entry Points” August 2007, at 15, online: International Alert <[http://reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDUnidFilename/PANA-78XHK3-full_report.pdf/\\$File/full_report.pdf](http://reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDUnidFilename/PANA-78XHK3-full_report.pdf/$File/full_report.pdf)> [K. Barnes et al.].

²⁵⁹ *Ibid.* at 15.

deceased husbands.²⁶⁰ After the genocide, the transitional government enacted a new bill regulating matrimonial regimes and successions. For the first time in Rwanda, a law provided for equality between men and women in these matters.²⁶¹

In post-conflict situations, there are two pressing issues. The first one concerns the impact of land tenure systems on refugees and displaced persons, and the difficulties faced by women returning home at the end of the conflict. The second issue relates to women's ownership or rather lack thereof, as the position of women is worsened by the conflict. Those two issues seem to be more pressing in the post-conflict phase as they are further weakened by the conflict and the post-conflict phase. Indeed, "the absence of men has serious repercussions on the capacity of women who remain in the village to gain access to resources."²⁶² This is explained by the presumption that men are heads of households and by the fact that the law recognises them the privilege over women of owning property and land.

To conclude, discrimination against women and their status of second class citizens in society maintain women in subordination of and dependence on men, and the persistence of patriarchal attitudes preclude women from seeking leadership positions in their society.²⁶³

5.2. Violence perpetrated against women in times of armed conflict

As it has been developed in the first part of this thesis, women, as part of the civilian population, are victims of armed conflicts. However, they have also increasingly become a deliberate target of sexual violence, primarily because they are regarded as symbolic bearers of caste and ethnic identity. Sexual violence has become a war strategy to humiliate the enemy.

5.3. Addressing the roots of violence against women: transforming women's status in times of peace

In March 2007, women's rights advocates and activists, as well as survivors of sexual violence in situation of conflict have come together and issued the Nairobi Declaration on

²⁶⁰ "Securing women's rights to land, property and housing: country strategies" Rights & Democracy, 2000, at 59-60 [R&D 2000].

²⁶¹ *Ibid.* at 59-61.

²⁶² Codou Bop, "Women in Conflicts, Their Gains and Their Losses" in Meintjes et al., *supra* note 11 at 27.

²⁶³ See for example, Report of the CEDAW, 26th, 27th and exceptional sessions, *supra* note 143 at 167. See also Initial Report of Burundi to CEDAW, *supra* note 87 at 11.

Women's and Girls' Right to a Remedy and Reparation.²⁶⁴ The preamble of the Declaration states:

Acknowledging that gender-based violence committed during conflict situations is the result of inequalities between women and men, girls and boys, that predated the conflict, and that this violence continues to aggravate the discrimination of women and girls in post-conflict situations;²⁶⁵

Sexual violence against women tends to continue in the aftermath of conflict, often in the form of elevated levels of domestic violence.²⁶⁶ This continuation occurs in part because of the volatile security situation, but mostly because sexual violence is linked to pervasive underlying structural inequalities that do not end simply because peace is restored.²⁶⁷

The Commission on Human Rights, in its Resolution 2003/45 similarly stressed that “all forms of violence against women occur within the context of *de jure* and *de facto* discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State.”²⁶⁸ The Special Rapporteur on violence against women further stated that “violence against women generally derives from the perceived inferiority of women and the unequal status granted by laws and societal norms.”²⁶⁹ The Special Rapporteur also concluded that:

economic and social policies that continue to ensure women's economic dependence on men often result in violence against women. (...) A major factor underlying violence against women is their low economic and social status relative to men and their dependence on men to provide protection and the means of survival.²⁷⁰

While most of these assertions and comments have been made in light of domestic violence against women in peacetime, they remain all the more applicable in times of armed conflict. It has been argued that in many patriarchal societies, women are defined by their reproductive and productive functions. It will be shown that the social status of women in peacetime is directly linked to the violations committed against women in times of armed conflict. To

²⁶⁴ Nairobi Declaration, *supra* note 233.

²⁶⁵ *Ibid.*

²⁶⁶ Duggan, *supra* note 120 at 627.

²⁶⁷ *Ibid.*

²⁶⁸ UNOHCHR, Commission on Human Rights, Resolution 2003/45, ¶18.

²⁶⁹ Report Special Rapporteur on violence against women, *supra* note 251 at 3.

²⁷⁰ *Ibid.* at 4.

support this argument, Meredith Turshen's analysis of rape as an act of social, political and economic violence will be used.²⁷¹ In two articles grounded on the armed conflicts in Uganda,²⁷² Mozambique and Rwanda,²⁷³ Turshen develops the argument that "in civil wars, armies use rape systematically to strip women of their economic and political asset."²⁷⁴ Based on her argument, the idea is to link the economic dimension of rape to the productive role of women, and to link the political dimension of rape to the reproductive role of women.

Rape committed in times of armed conflict is an act of *economic violence*, as "civil conflicts are in part about the transfer of economic assets from the weak to the strong."²⁷⁵ Women constitute an economic asset essentially through the gender construction of their *productive role*. Women and girls are abducted to fulfil domestic duties such as porter, farmers, cooks, cleaners, launderers, and tailors. Also, because soldiers live off the land in times of conflict, women have been compelled to support soldiers by sharing with them the gains of their labour. More cruelly, combatants also alienate women's productive labour by denying its benefit to the enemy. Most commonly, this is done by amputating limbs, in particular arms and legs.²⁷⁶ Rape is also an act of economic violence when it is used to steal property from women. "In the context of civil war, combatants use rape strategically in order to acquire women's assets, some of which are needed for the prosecution of the war or are among the reasons for it."²⁷⁷ As Turshen recognises, "the relationship between the theft of property and violence is complex because most African women do not own property outright."²⁷⁸ Nevertheless, she found that rape was sometimes used to acquire women's material possessions:

The moment [the government forces] entered one's house, they could do thorough checking. Those who had interest in women could do the raping while their husbands and fathers would be looking

²⁷¹ See Turshen 2000, *supra* note 36; see also, Turshen 2001, *supra* note 90.

²⁷² Turshen 2000, *ibid*.

²⁷³ Turshen 2001, *supra* note 90.

²⁷⁴ *Ibid*. Turshen develops the exact same arguments in the two articles, although articulated somehow differently.

²⁷⁵ Turshen 2000, *supra* note 36 at 804.

²⁷⁶ Turshen 2001, *supra* note 90 at 61. Meredith Turshen describes the abduction of women and girls as "perhaps the crudest form of asset transfer in civil war".

²⁷⁷ Turshen 2000, *supra* note 36 at 804.

²⁷⁸ Turshen 2000, *supra* note 36 at 814.

on. The government soldiers were mostly fond of women, chicken, cows and other material things like clothes and mattresses. The girls would be taken as wives.²⁷⁹

Women also constitute an economic asset as sexual slaves. Because of the dependency of women on their relationship with men in times of peace, they are often considered as property in most patriarchal societies. The absence of control over their sexuality has justified or lead to sexual slavery in times of conflict:

An Obote government soldier abducted a 14-year old girl and took her to his base where he repeatedly raped her. When he was transferred, he sold her for one thousand Ugandan shillings (about one U.S. dollar) to another soldier; this soldier sold her again for the same amount when he was transferred.²⁸⁰

Rape is also an act of *political violence* because of the social stigma attached to it. During armed conflict, women are the targets of sexual violence because of their *reproductive role*.²⁸¹ In their reproductive role, women are essentially defined as wives and mothers. There are thus two aspects to consider. First, women are raped to tear down the societal structures and unity, as women sexually abused are usually marginalised from society, often being rejected by their own families. Many Rwandan women who, after having testified before the ICTR of the sexual abuses they had suffered, have been rejected by their family and their husband.²⁸² In patriarchal societies where women are valued for their role as wives and mothers, the reintegration of victims of sexual abuses is very much predicated on their marriageability. Second, the gender construction of women as mothers makes them a symbol of the future generations. Therefore, women are either raped to impregnate, making women bear children of the enemy, or abused to prevent them from reproducing.²⁸³ This is a tactic that has been

²⁷⁹ ISIS-WICCE, *Documenting Women's Experiences in Armed Conflict: Situations in Uganda 1980-1986, Luwero District*, Kampala: ISIS-Women's International Cross Cultural Exchange, 1998 cited in Turshen 2000, *supra* note 36 at 814.

²⁸⁰ *Ibid.*, at 811.

²⁸¹ D. Newbury, "Understanding Genocide" (1998) 41:1 African Studies Review 73 at 92 cited in Turshen 2001 *supra* note 90 at 62. "[In Rwanda] women of childbearing age were especially targeted, both during and after the genocide itself. During the genocide, Tutsi women were targeted as reproducers of society. But women were not killed simply as 'by-product' of war, or as 'collateral damage'; instead, targeting women was a policy specifically encouraged and directed to further the goal of the leaders of the genocide: to destroy all Tutsi as a social group."

²⁸² Cited in Nowrojee, *supra* note 15 at 24.

²⁸³ See V. Jefremovas, "Loose Women, Virtuous Wives, and Timid Virgins: Gender and the Control of Resources in Rwanda" (1991) 25 Can. J. of African Studies 378 at 383 cited in Turshen 2001, *supra* note 90 at 66.

used in ethnic cleansing conflict. “In this context, surviving rape and bearing the rapist’s child means loss of family, community and livelihood.”²⁸⁴

Therefore, women victims of sexual violence are prejudiced with a double victimisation. As Meredith Turshen concludes, these examples “illustrate the underlying gender biases that make women vulnerable, during conflict and in the aftermath, to a loss of assets. Rape exacerbates women’s vulnerability because of the many social and cultural issue related to women’s ‘cleanliness’ and ‘good behaviour’.”²⁸⁵ Therefore, one can conclude that while women should *a priori* not be more vulnerable than men in times of armed conflict, gender-based violence committed in times of war is the result of the inequalities between men and women predating the conflict.

While increasing attention has been devoted to the issues of sexual violence committed against women, the majority of the studies focus on describing the incidents and condemning them as violation of women’s human rights. However, sexual violence committed against women in times of armed conflict is not an isolated phenomenon; it has social and cultural roots in the status of women in peacetime. Some recent studies have attempted to study the violence committed against women in times of conflict in light of the status of women prior to the conflict. Those studies have concluded that there is a link between the violence committed against women during war and the lower status of women in patriarchal societies.²⁸⁶

In one of those studies in DRC, and in particular in the South Kivu region, it has been argued that the social situation and economic status of women had to be taken into consideration in order to understand why acts of sexual violence were taking place:

An awareness of the way social gender relations are perceived, and above all, of men’s attitudes to women’s bodies in times of peace in South Kivu and in the neighbouring countries where some of the perpetrators of this violence come from makes it easier to understand how such atrocities could have occurred.²⁸⁷

²⁸⁴ Turshen 2001, *supra* note 90 at 66.

²⁸⁵ *Ibid.* at 65.

²⁸⁶ See AI Burundi – rape, *supra* note 32; see HRW Eastern Congo 2002, *supra* note 141; see DRC – South Kivu, *supra* note 33.

²⁸⁷ DRC South Kivu, *ibid* at 25.

The authors of this paper further argued that “these acts of [sexual] violence are linked to the persistence of unequal gender relations and particularly to the way women’s bodies are regarded. War exacerbates this inequality of power relations because the general security crisis places women in an even weaker and more vulnerable position.”²⁸⁸ The Committee on the Elimination of Discrimination against Women, while commenting on the combined fourth and fifth report of DRC, was concerned that women’s economic and social situation were among the causes for the violations of women’s human rights and discrimination against them.²⁸⁹ In its report to the Committee, DRC recognized that violence against women was a recurring question exacerbated by armed conflicts.²⁹⁰ They acknowledged that causes of violence against women could be found in the constraint of tradition and discrimination against women.²⁹¹

Amnesty International, in a report on the use of rape as a weapon of war in the Burundian conflict concluded that “there is a direct link between general discrimination against women and abuses against women in war time. The treatment of women in Burundi as second class citizens is closely related to the phenomenon of violence against women and inadequate State reaction to the violence.”²⁹²

The Special Rapporteur on violence against women, its causes and consequences, in her report of the mission to Rwanda on the issues of violence against women in situation of armed conflict, affirmed that “the status of women within Rwandan society generally exacerbated the violence inflicted against Rwandan women on such a large scale.”²⁹³

To conclude, it is thus argued that gender-based violence committed during conflict situations is the result of the inequalities between women and men, girls and boys, that predated the conflict. While this violence continues to aggravate the discrimination of women and girls in post-conflict situations, it is argued that enhancing the participation of women in

²⁸⁸ *Ibid.* at 45.

²⁸⁹ CEDAW Concluding comments on DRC fourth and fifth report, *supra* note 142 at 3.

²⁹⁰ Combined fourth and fifth periodic report of DRC to CEDAW, *supra* note 140 at 44.

²⁹¹ *Ibid.* at 45.

²⁹² AI Burundi – rape, *supra* note 32 at 4.

²⁹³ Report of the Special Rapporteur on violence against women, *supra* note 251 at 7.

decision-making will contribute to improve the situation of women and girls, by ending discrimination.²⁹⁴

6. THE CONSOLIDATION OF WOMEN'S EMPOWERMENT

In a report submitted to the Commission on Human Rights, the Special Rapporteur on violence against women, its causes and consequences stated that:

women must have a greater role in the peace process, during which time the framework for future government structures and administration are set in place, and a concerted effort must be made to involve women in society's efforts to address the past.²⁹⁵

Earlier in this thesis, the identification of women as agents, as opposed to women as mere victims, has been emphasised. While this thesis is focused on the post-conflict phase, it is of course very difficult, if not impossible, to pinpoint the transition moment between conflict and post-conflict. For the purpose of this part of the thesis, the beginning of peace negotiations will be considered as the starting point of the so-called post-conflict phase. Although it is acknowledged that it does not necessarily correspond to the end of hostilities or violence, especially for women,²⁹⁶ it seems to be a turning point for women if their wartime gains are to be consolidated.

Peace agreements are a pause in peace processes, bringing an official end to armed conflicts and concluding peace negotiations. Their importance is double: first they symbolise the agreement of the warring parties to end the hostilities; second, they set the new order, emphasising certain values and rights deemed primordial in a post-conflict setting. Their role and importance speaks of the necessity for women, as members of the society, to be part of their elaboration and implementation. Therefore, the participation of women will first be looked at.

²⁹⁴ See Human Rights Watch "Human Rights are Women's Rights" (1995): "Rape is not an accident of war, or an incidental adjunct to armed conflict. Its widespread use in times of conflict reflects the special terror it holds for women, the special power it gives the rapist over his victims, the special contempt it displays for its victims. The use of rape in conflict reflects the inequalities women face in their everyday lives in peacetime. Until governments live up to their obligations to ensure equality, and end discrimination against women, rape will continue to be a favourite weapon of the aggressor."

²⁹⁵ Report of the Special Rapporteur on violence against women, *supra* note 251 at 4.

²⁹⁶ This is particularly true for women. Many authors have argued that a different time frame should be considered for women than for men, when addressing this transitional moment. Indeed, violence against women does not stop with the conflict. On the contrary, many reports have noted the resurgence of violence against women, after the official end of the conflict.

Arguing for women's participation in peace negotiations as a means to ensure the consolidation of their wartime gains implicitly takes for granted that women will have an impact on the organisation and pursuit of the talks and on the substance of the agreement. It seems worth asking here whether such assumption is true, and whether women really do have an influence on the outcome of peace negotiations, beyond mere participation. A feminist analysis of the peace agreements and international instruments on peace negotiations will lead to the conclusion that, despite their efforts in participating in peace negotiations and striving to make a difference, women have limited impact on the content and nature of peace accords.²⁹⁷

6.1. Towards gender-sensitive peace agreements: the participation of women in peace negotiations

Peace accords are often seen as a culminating point of peace process. In the language of governments and the military the accords are referred to as an end-game scenario ... In reality the accords are nothing more than opening a door into a whole new labyrinth of rooms that invite us to continue in the process of redefining our relationships.²⁹⁸

Peace negotiations are a critical moment in the peace process for women to get involved, present their views and design their future. The underlying reason for such statement is the importance of peace agreements in the structure of the post-conflict society and order. Peace accords, while officially putting an end to a conflict, go beyond a mere ceasefire in setting the new order. Although the need for women to participate in peace negotiations has been stated and is even part of the international legal framework, the practice shows that women still face insurmountable obstacles to substantive involvement. A review of the language of the various international instruments (declaration of the UN General Assembly, UN Security Council resolutions and peace agreements) and their identification of women might explain their inefficiency.

²⁹⁷ Puechguirbal in Karamé, *supra* note 95.

²⁹⁸ John Paul Lederach, Professor of International Peace-building University of Notre Dame and Eastern Mennonite University, cited in *Liberian Women Peacemakers*, *supra* note 54 at 39.

6.1.1. *The importance of peace agreements in peace processes*

6.1.1.1. Defining peace agreements

The official end to an armed conflict is often symbolized by the signature of a peace accord by the warring parties. As an example, Article II of the Liberian Comprehensive Peace Agreement (CPA) states:

The armed conflict between the present Government of Liberia (GOL), the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) is hereby ended with immediate effect. Accordingly, all the Parties to the Ceasefire Agreement shall ensure that the ceasefire established at 0001 hours on 18th June, 2003, results in the observation of a total and permanent cessation of hostilities forthwith.²⁹⁹

While we can notice a rise in the number of documents described as peace agreements,³⁰⁰ the use of peace accords has found new contexts, and they have become the framework to reconstruct societies in the wake of interstate conflict. Indeed, so-called modern conflicts are not fought between States but within them, usually between governmental forces and rebel groups. Such conflicts are characterized by a violation of the humanitarian principle of distinction, as civilians tend to be the target of attacks and the victims of gross human rights violations. Therefore, any long term resolution of such conflicts must seek, beyond the consolidation of a cease fire agreement, the rebuilding of the State and the society.³⁰¹ Therefore, in the context of an internal armed conflict, a peace agreement, more than a symbol of a cease fire, also constitutes the primary legal framework for post-conflict peace-building.³⁰² As Christine Chinkin said, “the function of peace agreements in today’s world has become the

²⁹⁹ Liberian CPA, *supra* note 9, art.2. A similar provision can be found at Article 1 of the Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Lomé, Togo, July 7, 1999 [Lomé Agreement]: “The armed conflict between the Government of Sierra Leone and the RUF/SL is hereby ended with immediate effect. Accordingly, the two sides shall ensure that a total and permanent cessation of hostilities is observed forthwith.”

³⁰⁰ Christine Bell noticed that since 1990 about half of the civil wars have been terminated in a peace agreements, which represents an important increase: “more than in the previous two centuries combined, when only one in five resulted in negotiated settlement.” Christine Bell, “Peace Agreements: their Nature and Legal Status” (2006) 100 Am. J. Int’l L. 373 at 373 [Bell 2006].

³⁰¹ Christine Chinkin, “Gender, Human Rights, and Peace Agreements” (2003) 18 Ohio St. J. Disp. Resol. 867 [Chinkin 2003].

³⁰² See Elisabeth Porter, “Women, Political Decision-Making, and Peace-Building” (2003) 15:3 Global Change, Peace & Security 245 [Porter] “A peace settlement is not merely about ending war, but also about establishing the conditions for a new just polity.” See also Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Cambridge, UK: Polity Press, 1999).

broader one of societal reconstruction.”³⁰³ The same can be said of the South African Interim Constitution, and while it was not an interstate armed conflict, the country was left in need of a new societal order after the apartheid. As a result, such peace accords are usually divided into two main parts: a first part of the accord is devoted to the cease-fire, while a second part will address post-conflict governance.³⁰⁴ As an example, the Liberian CPA, in the form of a constitutional agreement, states in its Preamble that “it designs the relationship between state institutions and the individual and constructs active and participatory citizenships.”³⁰⁵ As such, the peace agreement is going to regulate the lives of all the citizens in the post-conflict phase.

Having said that, it should be noticed that the term “peace agreement” remains vague in terms of its legal nature.³⁰⁶ Bell distinguished three types of documents that bear the name “peace agreements” but which occur at different stages of the peace process and whose content vary. She first identify the “prenegotiation agreement” which revolves around basic issues such as how to get everyone to the peace table, who is going to participate and with which status, which issues will be addressed, etc.³⁰⁷ As will be mentioned later in this thesis, the issue of the status of participants is very important with respect to women, as the impact they might have on the substantive peace agreement will depend on the status they have during the peace talks. The more substantive agreements tend to tackle the roots of the conflict, declare a cease fire and adopt constitutional provisions aimed at good governance and furthering the peace.³⁰⁸ Bell finally identify “implementation/renegotiation agreements” which develop the previously agreed upon substantive peace agreements. With these distinctions in mind, while the prenegotiation agreements are often not publicized, while the implementation agreements are based on the former agreements and sometimes inexistent, this thesis will focus on the substantive peace agreements.

³⁰³ Chinkin 2003, *supra* note 301 at 687.

³⁰⁴ See for example the Lomé Agreement, *supra* note 299.

³⁰⁵ Christine Chinkin, “Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women” EGM/PEACE/2003/BP.1 (31 Oct. 2003) at 7, online: United Nations Division for the Advancement of Women <<http://www.un.org/womenwatch/daw/egm/peace2003/reports/BPChinkin.PDF>> [Chinkin UNDAW 2003].

³⁰⁶ Bell 2006, *supra* note 300 at 374.

³⁰⁷ *Ibid.* at 376-377. For example, “the Harare Declaration, promulgated by the Organization of African Unity in 1989, set out conditions for multiparty talks in South Africa, which began to influence the parameters for negotiations, and formed the basis of Nelson Mandela’s secret talks with President F. W. de Klerk.”

³⁰⁸ Bell 2006, *supra* note 300 at 377-378. See for example the Arusha Peace and Reconciliation Agreement for Burundi, the Liberian CPA.

6.1.1.2. The nature of peace agreements

A peace agreement is generally a binding instrument in international law, structured around a framework of existing obligations of international treaty and customary law.³⁰⁹ Indeed, many United Nations guidelines have addressed peace agreements, especially as accountability for past human rights abuses is concerned.³¹⁰ A peace agreement therefore involves, not only the population concerned by the conflict at stake, but also the international community.³¹¹ As a result, it allows for the articulation of basic human rights, such as the right to political participation. Peace agreements are hence the first step to ensure an improvement of women's rights and a compliance with international standards.

6.1.2. *The importance of women's participation in peace negotiations*

The importance of women's participation in peace negotiations was formally recognised in 2000 by the United Nations (UN) Security Council (SC) in its resolution 1325 on women, peace and security.³¹² The United Nations (UN) Security Council Resolution 1325 was “a groundbreaking moment for women's peace activism”³¹³ as it is the first international instrument addressing the issue of women's contribution to conflict resolution and peace, while stressing the underlying importance of women's participation in the peace process:

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution³¹⁴

Since peace accords have two objects, namely to put an official end to the conflict and to frame the post-conflict society, it is very important for women to participate in the peace talks. First,

³⁰⁹ Christine Chinkin, “Gender, International Legal Framework and Peace-building” in Kari Karamé, ed., *Gender and Peace-building in Africa*, Training for Peace, (2004) Norwegian Institute of International Affairs, Oslo, 27 at 30 [Chinkin in Karamé]. For a more complete discussion of the legal nature of peace agreements, see Bell 2006, *supra* note 300.

³¹⁰ See for example the Report of the Secretary General on “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies”, UN Doc. S/2004/616.

³¹¹ Chinkin UNDAW 2003, *supra* note 305 at 7.

³¹² UN S. C. Res. 1325 on Women, Peace and Security, U.N. SCOR, 4213th Sess., at 3, U.N. Doc. S/RES/1325, 31 October 2000 [UN SC Res. 1325].

³¹³ International Crisis Group, “Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda” Africa Report N°112 (28 June 2006) [ICG Report N°112].

³¹⁴ UN SC Res. 1325, *supra* note 312.

women and men have been affected by the conflict, be it as civilians or combatants. Women as well as men will be affected by the peace agreement. It is therefore important for women to ensure that their view is being acknowledged and taken into account. It is even more so important as agreements “are not determined by words, but by the power relations that impose their interpretations.”³¹⁵ Second, and related to the first point, the participation of women in peace negotiations is crucial if inclusive social justice is to be guaranteed.³¹⁶

The first argument that is being made here is linked to the importance of peace agreements in the peace process. As peace negotiations seek to put an end to the conflict, the experience of all must be acknowledged and taken into consideration when drafting the peace agreement. “Considering that most peace agreements are largely brokered by men, and since the absence of women in top decision-making positions is still a reality, it is logical to assume that it is a rather male-dominated vision of a post-war conflict that would be generated.”³¹⁷ Not recognising the particular experience of women would consist in a denial not only of their sufferings but also of their active participation. It would furthermore reinforce a subordination of women in a patriarchal society.³¹⁸ As Christine Chinkin argued:

An effective peace process should be built on the widest base of experience and therefore must take account of local women’s lived experiences during the conflict and their enormous responsibilities post-conflict.³¹⁹

The second argument is based on inclusive social justice. Lee Ann Bell defines social justice as:

[The] full and equal participation of all groups in a society that is mutually shaped to meet their needs. Social justice included a vision of society in which the distribution of resources is equitable and all members are physically and psychologically safe and secure.³²⁰

³¹⁵ Noam Chomsky, “Power in the Global Arena”, Amiel Lecture, London, May 1998, online : <http://www.chomsky.info/talks/199805--.htm>. While Chomsky was talking about a trade agreement, it seems that the same could be said about a peace agreement.

³¹⁶ See Porter, *supra* note 302 at 249. Elisabeth Porter asks the following question: “does it really matter if women are not present at negotiating tables?” To address this issue, she puts forward three arguments: “First, women are affected by conflict and thus by the consequences of a peace agreement. Second, and related to the first point, women’s inclusion in all stages of peace processes is crucial for inclusive social justice. Third, the presence of women makes a difference to the sorts of issues generally brought to formal peace processes.” The first two of her arguments are addressed here, while her third argument is mentioned later (see part II.B.1).

³¹⁷ Karam, *supra* note 98 at 9.

³¹⁸ See Porter *supra* note 302 at 249: “The consequence of a peace agreement that does not address these needs is that women’s subordination is exacerbated.”

³¹⁹ Chinkin 2003, *supra* note 301 at 873.

Grounded on concepts of liberty and equality, it seems that social justice should be the core principle assumed in a peace agreement. Social justice is about the equitable repartition of resources between individuals of a society. How can social justice be guaranteed in the post-conflict phase if women are not at the peace table? By participating actively in the peace negotiations, women participate in the drafting of the peace agreement and therefore on the framing of their society post-conflict, therefore seeking to ensure that new structures of government and societal institutions do not ignore women's needs.³²¹

Another argument that would support the importance given to women's participation in peace negotiations is the prioritization of issues that need to be addressed. Indeed it appears that "women in conflict zones themselves have clear ideas about priority issues within their own context."³²² While women from Rwanda, Burundi, Liberia or DRC they all asserted the need for measures to protect women and girls, the priority was given, for example, to disarmament in Liberia, the inclusion of women in the transitional government in DRC.³²³

6.1.3. *The reality of women's participation in peace negotiations*

Although "the international community speaks a great deal about including women in formal peace-making processes and recognising their peacebuilding contributions, [it] fails to do so in a systematic, meaningful way."³²⁴ Rhetoric by no means ensures commitment and implementation. A review of the practice allows for few conclusions, except that the absence of women generally in public decision-making is overwhelming. As Vanessa Farr noted:

A paralysing paradox lies at the heart of women's exclusion from peace processes. In the first place, the ideal of woman as a nurturer who only has jurisdiction in the private sphere of the home is difficult to dislodge, even when women behave in contradiction to this stereotype. Secondly, while they may be active in a number of arenas, in times of conflict, many women make themselves as invisible as possible.³²⁵

³²⁰ Lee Ann Bell, "Theoretical Foundations for Social Justice Education" in Maurianne Adams, Lee Anne Bell & Pat Griffin, eds., *Teaching for Diversity and Social Justice: a Sourcebook* (New York: Routledge, 1997) 1 at 3.

³²¹ See Porter, *supra* note 302 at 249-250.

³²² Chinkin & Charlesworth 2006, *supra* note 136 at 942.

³²³ *Ibid.*

³²⁴ ICG Report N°112, *supra* note 313 at 1.

³²⁵ Vanessa Farr, "Gendering Demilitarization as a Peacebuilding Tool" Bonn International Center for Conversion, Paper 20 (June 2002) at 10, online: Bonn International Center for Conversion <<http://www.bicc.de/publications/papers/paper20/paper20.pdf>>.

The main obstacle to women's participation in peace negotiations is the strong traditional belief that only the parties to the conflict seat at the peace table. Women are not military leaders and rarely acknowledged as combatants. Some practical reasons might seem to justify this belief: first, women tend to be less educated than men, therefore lacking a political leadership experience; second, women tend not to be culturally recognised and accepted as a authority figure; third, women tend to lack the necessary financial resources to attend peace talks, as these are likely to be held in a neighbour country.³²⁶ Despite these a priori practical justifications, such a belief is to be criticized for two reasons. First a strict reading of this traditional belief calls for women at the peace table. Indeed, it is increasingly acknowledged that women directly take part in conflicts as combatants and that women's experience of armed conflict is specific. A strict reading of this traditional view would therefore allow for women to be granted some form of representation at the peace table. However, even when women have been part of fighting units, they have never been granted any power in the peace process as recognition of their involvement.³²⁷ Second, such an approach, even if it was to be justified in order to put an end to the conflict, does not seem to provide the best framework for post-conflict societal transformation, as it goes against the democratic principles of participation.³²⁸

Other obstacles to women's participation in the peace process might be restrictive local customs and traditions, especially in patriarchal societies, or stereotyped assumptions about gender roles. Indeed, this latter obstacle leads to a denial of the political dimension or potential of coping strategies, networking of women or their leadership positions during armed conflict.³²⁹ Authors have also pointed out the security and logistic issues that women may face in attending peace talks when those are being held far from the local community, in another country.³³⁰ Although this might be seen as a strategy in avoiding the risk of resurgence or worsening of fighting, it imposes an additional burden on women wishing to attend such

³²⁶ See Porter, *supra* note 302 at 250.

³²⁷ See Chinkin 2003, *supra* note 301 at 871.

³²⁸ See Porter, *supra* note 302 at 250.

³²⁹ Chinkin 2003, *supra* note 301 at 871.

³³⁰ *Ibid.* at 872.

negotiations. Chinkin and Charlesworth have also expressed concerns over women's security when they decide to leave their home and enter the political scene of their countries.³³¹

6.1.3.1. A few examples of women's participation in peace negotiations

Women's participation in the peace process often starts with women gathering to share information and their views on how to end the conflict. They often create women's organisations and organise peaceful marches for peace. While women are almost always marginalised from the peace negotiations, they lobby for the right to be seen and heard. They sometime succeed in having a seat at the peace table, but they rarely achieve equal status with the men.

6.1.3.1.1. Sierra Leone

"The war gave new momentum to the women's movement and it provided a uniting vision that was seized upon by the women in Sierra Leone."³³² In 1994, while women's group were getting ready to attend the Beijing conference, "a number of women's organisations created the Sierra Leone Women's Movement for Peace (SLWMP) with the aim of demonstrating against the civil war and raising awareness on women's rights."³³³ The SLWMP deemed that only direct intervention in politics was going to get their voice heard. They felt that the national crisis was too serious to be left to the military government, and that women could bring unique skills to resolving the conflict.³³⁴ They organized a campaign of appeals to government and rebels, by coordinating peaceful marches, prayer rallies, radio debates, meetings with the government, seeking to mobilize women from all backgrounds.³³⁵ By doing so, the SLWMP put the issue in the public domain in a non-partisan and non-confrontational manner, allowing for a public debate on how to end the conflict. A national consultative conference took place in August 1995 (Bintumani I, after the hotel where it was held), where

³³¹ While basing their assertion on a Human Rights Watch report on the situation in Iraq, these authors have noted that the fear of violence inhibits women from taking part in the conduct of public affairs, as some women who have entered the political scene have allegedly been threatened or even murdered. See Chinkin & Charlesworth 2006, *supra* note 136 at 941.

³³² K. Barnes et al., *supra* note 258 at 12.

³³³ Puechguirbal in Karamé, *supra* note 95 at 56.

³³⁴ See Puechguirbal in Karamé, *supra* note 95 at 56. See also Yasmin Jusu-Sheriff "Sierra Leonean Women and the Peace Process" (2000) Accord issue 9, online: Conciliation Resources <<http://www.c-r.org/our-work/accord/sierra-leone/women-peace.php>> [Yasmin Jusu-Sheriff].

³³⁵ Yasmin Jusu-Sheriff, *ibid*.

women presented a position paper, insisting on the need to return to civilian rule and to organize democratic elections.³³⁶ Violence however broke out after the conference, with rebels cutting off the hands of people to prevent them from voting.³³⁷ A second national consultative conference was held and it was decided that the elections should take place. Women played an important role in the taking place of the conferences, and in their outcome, i.e. the prioritisation of democratic elections and civilian rule.³³⁸ Despite this active role, women's demands were ignored in the Abidjan Peace Accord signed in 1996.³³⁹ It was believed women's involvement had a destabilizing potential on traditional politics, so their participation was strongly discouraged.³⁴⁰ The SLWMP remained active in uniting women and urging government and rebels to end the conflict, up until the signature of the second peace agreement (the Lomé Agreement in 1999). The Lomé peace process was actually the only one in which Sierra Leonean women were allowed to participate in. As it will be seen later on in this thesis, the result is somewhat disappointing as the Lomé agreement only makes a weak reference to women.³⁴¹ However, "the women's movement in Sierra Leone was one of the most vocal elements within civil society and women became increasingly aware of their right to participate in the future of the country."³⁴²

6.1.3.1.2. Democratic Republic of Congo

Despite the continuous effort of Congolese women to participate, the peace process in the DRC has been male dominated and resulted in a peace agreement which lacked gender-sensitiveness and any provisions to make a difference for women. The cease fire agreement signed by the belligerent parties in 1999,³⁴³ provided for a national dialogue to be held between the DRC government and the opposition (both armed and unarmed). No provisions in the cease fire agreement enabled Congolese women to take part in the dialogue. As a reaction to this situation, many women's organisations were created with the aim of sending delegates to the

³³⁶ *Ibid.*

³³⁷ *Ibid.*

³³⁸ K. Barnes et al., *supra* note 258 at 12.

³³⁹ See Puechguirbal in Karamé, *supra* note 95 at 56.

³⁴⁰ Yasmin Jusu-Sheriff, *supra* note 334.

³⁴¹ See art. 28 of the Lomé Peace Agreement, *supra* note 299.

³⁴² K. Barnes et al., *supra* note 258 at 12-13.

³⁴³ On 10 July 1999, in Lusaka, Zambia, the DRC, along with Angola, Namibia, Rwanda, Uganda and Zimbabwe, signed a Cease Fire Agreement for the Cessation of Hostilities between all belligerents' forces active in DRC.

dialogue.³⁴⁴ It was very difficult for women to participate in the Inter-Congolese Dialogue (ICD) because they were threatened and felt endangered.³⁴⁵ As a result, only one woman was designated by civil society to attend the negotiations. In order to overcome this major obstacle to their participation in the transformation of their country, Congolese women from different backgrounds gathered in South Africa and wrote the Nairobi Declaration and a plan of action which called for the immediate inclusion of women and their concerns in the peace negotiations. This meeting also resulted in the creation of a Congolese women's caucus. All these efforts lead to a timid participation of women as the women's caucus was invited to address the audience at the peace talks.³⁴⁶ Unfortunately, the impact of Congolese women did not go any further, as far as the peace talks are concerned, as no provision of the peace agreement addresses women's needs.³⁴⁷

6.1.3.1.3. Burundi

The case of Burundi is “a prime example of the importance of unity and collective action to women interested in impacting peace processes.”³⁴⁸ Burundian women were initially barred from the formal negotiations that began in 1998.³⁴⁹ In reaction, women decided to join forces to protest against this exclusion and lobby outside of the peace negotiations room, seeking the attention of international media.³⁵⁰ Their initiatives led to the creation of numerous non-governmental organizations which constituted a forum for women with different background to unite over common concerns and needs.³⁵¹ While the peace talks were ongoing, Burundian women worked at the grassroots level, informing women of the issues being addressed and seeking their opinions. Burundian women being denied participation in the peace negotiations, they sent a delegation of women to the third round of the inter-Burundi peace negotiations meet

³⁴⁴ Puechguirbal DRC, *supra* note 75 at 1274-1276.

³⁴⁵ *Ibid.*

³⁴⁶ They chose to stage a play instead of delivering a speech, illustrating the suffering of women and children during the conflict.

³⁴⁷ See Puechguirbal in Karamé, *supra* note 95 at 51-53.

³⁴⁸ Femmes Africa Solidarité “Peace agreements as a means for promoting gender equality and ensuring participation of women” EGM/PEACE/2003/OP.1 (1 November 2003), at 3, online: United Nations <<http://www.un.org/womenwatch/daw/egm/peace2003/reports/OP1FAS.PDF>>[Femmes Africa Solidarité].

³⁴⁹ “Inclusive Security, Sustainable Peace: a Toolkit for Advocacy and Action – Conflict Prevention, Resolution and Reconstruction” International Alert & Women Waging Peace (2004) at 23, online: Hunt Alternatives Fund <http://www.huntalternatives.org/download/41_section2.pdf> [Toolkit 2004].

³⁵⁰ See *ibid.* at 23. See also Puechguirbal in Karamé, *supra* note 95 at 48.

³⁵¹ See Puechguirbal in Karamé, *ibid.*

with the facilitator, former Tanzanian President Julius Nyerere.³⁵² They convinced him of the importance to bring the conflicting parties together and impressed him with their courage and determination, so much so that he promised to support their efforts.³⁵³ This was a victory for Burundian women, as their voice had been heard. Nyerere spoke on their behalf to the leaders of the negotiating parties, convincing them of the importance for them to meet the women and listen to their plea.³⁵⁴ “As a result, delegates officially recognized women’s contributions to peace building and guaranteed women’s direct involvement in the accord’s implementation.”³⁵⁵ After all these efforts, women were finally included in the peace negotiations, but only as observer status.³⁵⁶ While such status was probably beyond women’s first hope, it was not enough for women to play a significant role at the roundtable. As this Burundian woman explained, while it was a success, it was the result of a long process:

[in] the first rounds [of negotiations], only men attended. This we felt was not normal, since the problem of Burundi affected all of us. So we tried to find a way to join in the negotiations. Even after we got there, we noticed the men were not happy with our presence. ‘We don’t see any reason for you women to be here’, they said. ‘You should return home. These issues of peace are exclusively men’s business!’ Eventually, we were allowed in as observers but with no right to take part in talks.³⁵⁷

Another groundbreaking moment was reached at the All-Party Burundi Women’s Peace Conference, attended by two women representatives of each of the 19 parties and where women agreed on a set of recommendations to improve the drafted peace accord. Women particularly stressed the need to strengthen the focus on women and gender issues, particularly the need to punish war crimes against women, women’s right to property, land and inheritance, women’s participation in decision-making and equal access to education.³⁵⁸ Except for the quota to promote women’s participation in decision-making, all of the women’s

³⁵² Femmes Africa Solidarité, *supra* note 348 at 3.

³⁵³ *Ibid.*

³⁵⁴ *Ibid.*

³⁵⁵ United Nations Development Fund for Women, *Securing the peace: Guiding the international community towards women’s effective participation throughout peace processes* (New York: UNIFEM, 2005) at 13 [Securing the peace UNIFEM].

³⁵⁶ Femmes Africa Solidarité, *supra* note 348. See also *ibid.*

³⁵⁷ United Nations Development Fund for Women “Engendering Peace, Reflections on the Burundi Peace Process” (2001) African Women for Peace Series at 5 cited in Puechguirbal in Karamé, *supra* note 95 at 49.

³⁵⁸ Femmes Africa Solidarité, *supra* note 348. See also Puechguirbal in Karamé, *ibid.* at 48.

recommendations were included in the final Arusha peace agreement.³⁵⁹ While the Arusha peace agreement will be analysed below, and while some gender-sensitive clauses were indeed incorporated in the final agreement, their implementation has yet to follow, and women are still struggling to take part in the conduct of public affairs.³⁶⁰ Women were denied the status of full participants at the peace table and their recommendation for a quota to improve women's participation in decision-making was also denied. This might explain the long-term impact of women's involvement in the transformation of their society, despite a gender-sensitive peace agreement. This conclusion supports the argument of this thesis, i.e. that women need to be involved as equal participants in all the steps of the peace process.

6.1.3.1.4. Liberia

Liberian women were no exception in the peace process: they were excluded from the peace talks, given that only official parties in the conflict were invited to the peace table.³⁶¹ As a reaction to this situation, "women united their efforts and issued declarations and petitions to the international community".³⁶² Liberian women gathered in women's organizations, called public meetings, went on the radio, organized peaceful demonstrations, etc.³⁶³

If looking at the experience of women in Liberia, the first women to manage to attend peace negotiations had strong political affiliations and were hence taking part to the process as members of factional delegations.³⁶⁴ One might question the democratic dimension of such representation as it seems to correspond to a political elite rather than to average women, having experienced the conflict. Furthermore, such participation of women is not about representing women as a group but rather representing political ideas. Besides that, some

³⁵⁹ See Toolkit 2004, *supra* note 349 at 26. See also Puechguirbal in Karamé, *ibid.*

³⁶⁰ See Puechguirbal in Karamé, *ibid.* at 50.

³⁶¹ Bineta Diop, "Case study on countries in the Mano River region", Expert Group meeting on democratic governance in Africa: strategies for greater participation of women, Arusha (Tanzania), December 2005, at 11 [Diop].

³⁶² Diop, *ibid.*

³⁶³ See Liberian Women Peacemakers, *supra* note 54.

³⁶⁴ *Ibid.* at 22-23. "Some women with strong political affiliations managed to attend peace negotiations on a number of occasions as members of factional delegations and not as representatives of Liberian women. (...) The situation was exacerbated by the fact that even those women attending conferences as parts of factional delegations were very few in number."

women sought to attend peace talks by themselves.³⁶⁵ After the end of the first civil war and despite their coordination initiatives in setting up women's organizations, women were still not recognized as observers or as participants, be it by ECOWAS or by the UN.³⁶⁶ As the experience of Liberian women shows, the belief that women had nothing to do at the peace table was difficult to overcome. In December 1994, Liberian women made their first attempt to participate in a formal peace negotiation, although they had not been invited, despite many lobbying efforts. Women were not allowed to attend the conference, but they stayed and lobbied at every break. Their efforts paid off eventually. Indeed, this situation quickly became publicized:

Although unable to actively participate in the proceedings, they were allowed to sit in the conference room, hear the negotiations, analyze the positions of different actors and identify possibilities for advocacy and mediation.³⁶⁷

While it was a success, it was not enough. Liberian women continued to lobby and promote their viewpoints at every break in the proceedings. By the third day of the Accra Clarification conference, they received official participant status.³⁶⁸ For the first time, they have been heard and seen.³⁶⁹ As Biop mentions in her report, "this could contribute to an irreversible change in the role and perception of women in Liberian society."³⁷⁰ With the signing of the Abuja peace accord in 1996, one phase of the Liberian conflict and peace process was concluded. However, the peace broke: sporadic outbreaks of violence in 1997 and 1998 were followed by the resurgence of civil war between 2000 and 2003. Liberian women moved into action again. Women's organizations called for peace, taking the streets to protest against the violence.³⁷¹ Women were included in the peace talks that took place in June 2003, but they continued to lobby outside of the negotiating halls.³⁷² They clarified their position in the Golden Tulip Declaration, in which they sought to strategize on the inclusion of women within all existing

³⁶⁵ *Ibid.* at 23: "some of the earliest involvement of women at the peace tables stemmed from personal access, not necessarily through factional affiliations." As an example, the author cites Victoria Reffell, a journalist, who happened to be in a position to meet with various political representatives. The author gives a couple of other examples of individual actions.

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.* at 24.

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid.*

³⁷⁰ Diop, *supra* note 361 at 11.

³⁷¹ Liberian Women Peacemakers, *supra* note 54 at 32-40.

³⁷² *Ibid.* at 48.

and proposed institutions.³⁷³ The Declaration states that while women constitute more than half of the population, and while they have contributed in numerous and important ways to the socio-economic development and the political and peace processes, women remain excluded from decision-making bodies.³⁷⁴ A peace accord was signed in Accra in August 2003.

6.1.3.1.5. South Africa

While the example of South Africa is slightly different from the other examples used in this thesis, in that it was not an intrastate conflict, it remains an interesting example to look at, in particular with respect to the involvement of women, as the country post-apartheid was in need of transformation and constitutional structures. There was also a window of opportunity for women to get involved in the constitution-drafting, and women did not hesitate to take on this chance of dramatic change, and pushed for an extensive definition of equality.

In South Africa, women got together “to establish a women’s constituency that resonated with the political parties.”³⁷⁵ They worked closely with men, not only against the system of apartheid, but against all forms of oppression. They were then able to integrate the liberalisation of women as part of the broader struggle against apartheid.³⁷⁶ In establishing organizations uniting women despite differences of race, religion, and ethnicity, women “gained a sense of their right to full equality”.³⁷⁷

[South African women] are insisting that their emancipation not be regarded as incidental to the overall liberation from apartheid. The two struggles are indivisibly linked ... [the women] want to ensure that South Africa doesn’t go the way of many independent states in Africa where women contributed as much to the overthrow of colonialism and yet find themselves still oppressed, discriminated against, and treated as second-class citizens.³⁷⁸

The women’s constituency became an important tool in the process of negotiation and constitution-drafting. South African women did not stop there, and demanded a 50% representation at the negotiations. Some authors explain the success of South African women

³⁷³ See Preamble of the Golden Tulip Declaration of Women Attending the Peace Talks in Accra, online: Peace Women <<http://www.peacewomen.org/resources/Liberia/GoldenTulip.html>>.

³⁷⁴ *Ibid.*

³⁷⁵ Toolkit 2004, *supra* note 349 at 23.

³⁷⁶ Karam, *supra* note 98 at 10.

³⁷⁷ Sheila Meintjes, “War and Post-War Shifts in Gender Relations” in Meintjes et al. 2001, *supra* note 11 at 70.

³⁷⁸ M. Mathabane, *African Women: Three Generations* (New York: Harper Collins, 1994) at 346.

by their choice to focus on women's issues. "They played a key role in the broader struggle for liberation, winning the respect of their male counterparts, and making contributions to all issues addressed in the negotiations."³⁷⁹ It seems that South Africa is a noteworthy example, especially in terms of the strategy adopted by women, as in many other cases, when women let their concerns be subsumed under larger considerations, they lost.³⁸⁰

6.1.4. *International instruments – a call for women's participation*

As mentioned earlier, "women generally have been excluded from political decision-making processes."³⁸¹ This exclusion was recognised as one (of twelve) critical area, requiring attention and action from the international community at large and every State in particular, in the Platform for Action that emerged at the Fourth Women's World Conference in Beijing (1995).³⁸² Another area of concern was 'women and armed conflict', to which an entire strategic objective was devoted. These areas were to represent the major obstacles to women's advancement. "As a sign of the times, violence against women in armed conflict situations was specifically addressed."³⁸³ As noted in paragraph 135 of the Platform for Action, "while entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex."³⁸⁴ The Beijing Declaration called upon the economic and political empowerment of women, in order to ensure their equal and full participation in all efforts for the prevention and resolution of conflict. Indeed, although the charismatic role of women in conflict resolution and peace-keeping was progressively recognised, women were still lacking a consequent position in decision-making.³⁸⁵ It seems that this situation remains the same, more than 10 years later. The Platform for Action led to positive answers from governments, showing a strong commitment to the goals of democracy and gender equality. Many countries argued having "constructive responses to addressing both the impact of armed conflict on women and increasing political

³⁷⁹ Toolkit 2004, *supra* note 349 at 23.

³⁸⁰ Kumari Jayawardena, *Feminism and Nationalism in the Third World* (London: Zed Press, 1986) cited in Karam, *supra* note 98 at 10.

³⁸¹ Porter 2003, *supra* note 302 at 245.

³⁸² Beijing Platform for Action, *supra* note 26.

³⁸³ Where are the girls?, *supra* note 52 at 9.

³⁸⁴ See the Beijing Platform for Action, *supra* note 26, ¶ 135.

³⁸⁵ *Ibid.*

participation of women”.³⁸⁶ However, they also strongly asserted the impossibility to combine these two goals, as they did not consider women’s political participation as a priority, in light of more pressing issues, such as security. However, it should here be reiterated the risk in setting aside gender issues: it might just reinforce the assumption that sex and gender do not matter in post-conflict transformation.³⁸⁷

The necessary link between peace and women’s participation in decision-making was reiterated by the United Nations Security Council, on 8 March 2000. The UN SC issued a statement recognizing that:

[P]eace [was] inextricably linked to equality between women and men, and affirming that the equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security.³⁸⁸

Later that year, the United Nations General Assembly acknowledged some improvements in the situation of women and armed conflict, such as “a wider recognition that armed conflict has different destructive impacts on women and men and that a gender-sensitive approach to the application of international human rights law and international humanitarian law is important”.³⁸⁹ The General Assembly nonetheless expressed its concerns with regard to outstanding obstacles to the advancement of women, which continued to be overlooked, such as “the under representation, at all levels, of women in decision-making positions (...) in peacekeeping, peace-building, post-conflict reconciliation and reconstruction, as well as lack of gender awareness in these areas”³⁹⁰, and “the continued violations of human rights of women and the increase in all forms of violence against women.”³⁹¹ The General Assembly recommended, especially, the “development of gender-sensitive strategies for the delivery of humanitarian assistance”³⁹², the reflection of the differences in the impact of armed conflicts

³⁸⁶ Porter 2003, *supra* note 302 at 246.

³⁸⁷ Chinkin UNDAW 2003, *supra* note 305 at 12.

³⁸⁸ Cited in Gardam & Jarvis 2001, *supra* note 65 at xiv.

³⁸⁹ United Nations, Report of the Ad Hoc Committee of the Whole of the 23rd special session of the General Assembly, GA A/S-23/10/Rev.1 at 18.

³⁹⁰ *Ibid* at 19.

³⁹¹ *Ibid*.

³⁹² *Ibid* at 44.

on men and women in relevant policies³⁹³, and the improvement of the capacity of women affected by situations of armed conflict through their involvement in the design and implementation of humanitarian activities.³⁹⁴

Resolution 1325 of the United Nations Security Council (UN SC) was “a groundbreaking moment for women’s peace activism.”³⁹⁵ It is binding on all States.³⁹⁶ The resolution established, for the first time, a coherent policy framework for promoting women’s inclusion in a wide array of issues related to peace and security.³⁹⁷ The UN SC passed the first resolution ever that specifically addressed the impact of war on women, and women’s contributions to conflict resolution and sustainable peace, while stressing the underlying importance of women’s participation in every decision made during the peace process:

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution³⁹⁸

The Security Council recognised the importance of understanding the impact of armed conflict on women in order to maintain and promote international peace and security.³⁹⁹ It also clearly linked it to the importance for women to participate in peace negotiations. Such acknowledgements need to be welcome, as well as the recognition that for women to be interlocutors in peace processes, they must be recognised not only as victims, but as “active agents and participants in conflict” and as activists contributing to the survival of their community.⁴⁰⁰ However, the UN SC has lacked some ambition, as it limited its recommendations to the involvement of women in the peace processes and to the gender mainstreaming of institutions involved in the post-conflict phase of the conflict.⁴⁰¹ Although it

³⁹³ *Ibid* at 49.

³⁹⁴ *Ibid* at 50.

³⁹⁵ ICG Report N° 112, *supra* note 313 at 1.

³⁹⁶ See *Charter of the United Nations*, 26 June 1945, Can. TS 1945 No.7, art. 25. “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

³⁹⁷ ICG Report N° 112, *supra* note 313 at 1.

³⁹⁸ UN SC Res. 1325, *supra* note 312.

³⁹⁹ *Ibid*.

⁴⁰⁰ See *ibid*. See also *Where are the girls?*, *supra* note 52 at 9.

⁴⁰¹ It is particularly disappointing as gender mainstreaming is often narrowly understood as simply treating women in the same way as men.

seems very important for women to be involved in every step of the peace process, the practice shows that it is not sufficient to ensure the advancement of women. Women need to be further included in the post-conflict phase. This is to be deplored especially in light of the practice. Furthermore, and although “the international community speaks a great deal about including women in formal peace-making processes and recognising their peacebuilding contributions, [it] fails to do so in a systematic, meaningful way.”⁴⁰²

6.2. The participation of women in peace negotiations: towards gender-sensitive peace agreements?

It has previously been argued that in order to have peace agreements which take into consideration women’s experience of the conflict and women’s needs in the post-conflict phase, women should be involved in the peace negotiations fetching up to a peace accord. This statement is based on the assumption that women’s involvement will lead to gender-sensitive peace agreements, but is this the case? How much influence do women participating in peace talks have on the substance of the peace accord? What obstacles still restrain women from having an impact on the content of a peace agreement? Is women’s participation in peace negotiations sufficient to ensure that their interests and needs are taken into account in the post-conflict phase?

Most authors, who assessed the political participation of women, considered the impact of women’s participation as a justificatory argument for their involvement. Such analysis led to the conclusion that despite their efforts in participating in peace negotiations and striving to make a difference, women have limited impact on the content and nature of peace accords.⁴⁰³ In this thesis, the approach sought is different, as the main argument for women’s involvement relies on the implementation of women’s right to political participation.⁴⁰⁴ However, a similar assumption seems to be made: the participation of women in peace negotiations is expected to

⁴⁰² ICG Report N° 112, *supra* note 313.

⁴⁰³ See Puechguirbal in Karamé, *supra* note 95.

⁴⁰⁴ Christine Chinkin for example, says that “equal participation in public life is demanded by human rights standards of equality and fairness” citing Article 8 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which corresponds to the representation of governments at the international level. However, it seems here that a reference to Article 7 of CEDAW – which corresponds to the allocation of political power nationally – would have been more appropriate. Despite the involvement of the international community in peace negotiation process, it remains a local process. Local ownership, as opposed to international imperialism, needs to be secured. See Chinkin 2003, *supra* note 301 at 872.

lead to the adoption of gender-sensitive peace agreements. As it will be discussed, the influence women may have on the content of peace agreements depends to a large extent on the status they are being granted during the peace process. The result expected is not achieved yet, and women are still not equally treated.

6.2.1. *Participation or mere representation? The influence of women on peace agreements*

6.2.1.1. Theoretical framework

Talking about the influence of women on the substance of a peace agreement devolves on addressing the issue of power allocation during peace negotiations. The first victory of women over a history of exclusion has been to gain the status of observers at peace talks. However, the remaining challenge remains for women to be granted the status of representatives of women as a group.

Being granted the status of observer is a first step towards women's participation in peace process. It allows women to keep informed of the ongoing negotiations. However, it is a minimal form of participation as it remains very informal. Furthermore, it fails to address the marginalization of women; it might even be argued that it reinforces this marginalization. Mentioning the status of observers and the existence of parallel peace process allowing women to gather, share their experience and agree on a wide range of set of recommendations, Christine Chinkin noted that "these means of associating women with the process are no substitute for direct participation."⁴⁰⁵ They might however allow women to organise themselves and exercise pressure on the parties participating in the formal peace process.

The direct participation of women in peace processes will only be achieved by women being granted the status of official participants, on an equal footing as men. It is only when women gain such status that the resulting gender-sensitiveness of peace agreements can be addressed. But what is meant by gender-sensitive peace agreement? When arguing for women's participation in peace negotiations, what is being sought? It has been argued that

⁴⁰⁵ Chinkin 2003, *supra* note 301 at 874. She further reiterates that "such alternatives should be in addition to, and not in place of, the goal of including women directly within the processes."

women, because of their experience of the conflict, will seek to put on the agenda a number of issues that they believe should be prioritized in post-conflict situation.

One of the main concerns of women in this transitional phase from war to peace is gender-based violence. Women are often the targets of sexual violence during the conflict. However, such violence does not end with the ceasefire. On the contrary it has been argued that violence against women, especially in the form of domestic violence, increases after the end of the hostilities.⁴⁰⁶ Therefore, women will seek the adoption of preventive measures as well as a commitment to punishment of such crimes, in order to ensure the eradication of violence against women. Women will also ask for reparation and rehabilitation of women victims to be addressed.

Another important concern for women in the peace process is to secure women's rights, not only civil and political rights, but also economic and social rights, and in particular the right to education. Despite the tendency to focus on the former group of rights (civil and political rights), the latter is of no lesser importance in terms of society building. Indeed, education is central to transformation of gender relations. Women will therefore tend to emphasise the need to include human rights in peace agreements, especially by including equality provisions. The prohibition of discrimination on the grounds of sex is central to the goal of consolidating wartime gains of women, ensuring women's right to full personhood and equality before the law. As Christine Chinkin noted, such provision needs to be supplemented with a definition of discrimination and the adoption of measures to identify discrimination and to redress past abuses.⁴⁰⁷ In a more recent article written in collaboration with Hilary Charlesworth, Chinkin goes even further, suggesting that a provision containing the principle of non-discrimination on the basis of sex would not be sufficient to achieve equality between men and women. They noted that such a disposition is rarely found in peace agreements or constitutions built as part of a peace building effort.

Last but not least, women will seek a commitment to the full implementation of their right to political participation, by requiring the adoption of specific measures (i.e. quotas,

⁴⁰⁶ Anu Pillay, "Violence against Women in the Aftermath" in Meintjes et al., *supra* note 11 at 35. The continuity or increase of violence against women would be mainly due to the power shifts and expansion of gender roles during the conflict.

⁴⁰⁷ Chinkin 2003, *supra* note 301 at 34.

positive action, etc.) and the guarantee of subsidiary rights, such as freedom of expression, freedom of movement and freedom of association.

To summarize, Christine Chinkin stated that a gender-sensitive peace agreement should address the following issues:

- (i) restricting impunity and ensuring accountability for gender-based violence;
- (ii) right to land ownership and right to inheritance;
- (iii) return of refugees and internally displaced persons;
- (iv) rehabilitation of former combatants, with a particular attention to women former combatants and women as support providers;
- (v) legal guarantees for women's political participation; and
- (vi) the guarantee of human rights.⁴⁰⁸

All these remarks will now be used as a framework for the analysis of a number of peace agreements. Such analysis will allow us, by looking at the involvement of women during the corresponding peace processes, to determine whether participation of women can actually make a difference.

6.2.1.2. Analysing peace agreements

6.2.1.2.1. Addressing gender-based violence

An analysis of peace agreements on the issue of addressing gender-base violence, not only on acknowledging its occurrence during the conflict, but also in restricting impunity and ensuring accountability for crimes committed against women and girls, the conclusion is unfortunately not a positive one. Indeed, very few peace agreements do deal with the issue of gender-base violence, and even fewer recommends actions to be taken to repair the victims and prevent gender-based violence to go unpunished. For example, very few provisions of the Liberian Comprehensive Peace Agreement address the issue of gender-based violence. Article XXXI requests “special attention to the issue of the rehabilitation of vulnerable groups or war victims (children, women, the elderly and the disabled) within Liberia, who have been severely

⁴⁰⁸ *Ibid.*

affected by the conflict in Liberia.”⁴⁰⁹ However, this wording is incomplete in light of the existing international legal framework dealing with violence against women, which requires the prohibition of all forms of gender-based violence to be incorporated into national legislation. In a similar vein, the Lusaka Ceasefire Agreement fails to strongly condemn violations against women. In fact, the only reference to sexual violence that is made in the agreement is as follows: “the Ceasefire shall entail the cessation of (...) all acts of violence against the civilian population, (...) [which] include (...) sexual violence.”⁴¹⁰ While sexual violence against the population is mentioned, the formulation of this article denies completely the impact of gender-based violence on women. It cannot be equated to acts of violence against the population. The gravity of sexual violence against women and girls is therefore diminished in the Lusaka Ceasefire Agreement.

The Lomé Peace Agreement is worth looking at, as it fails to mention gender-based violence in its article dealing with human rights violations.⁴¹¹ It is even more interesting to note that the agreement initially and controversially granted amnesty for crimes committed during the war, including sexual violence, but the United Nations succeeded in appending a last minute hand-written note exempting crimes against humanity such as systematic rape from this clause.⁴¹²

On a more positive note, both in terms of the gender-sensitivity of peace agreements and in terms of women’s impact on the substance of such agreements, is the Arusha Peace and Reconciliation Agreement. While women recommended for war crimes against women to be punished and eliminated, Article 6 of Protocol I to the Arusha peace agreement calls for the “prevention, suppression and eradication of acts of genocide, war crimes and other crimes against humanity, as well as violations of human rights, including those which are gender-based.”⁴¹³

⁴⁰⁹ Liberian CPA, *supra* note 9 at art. XXXI(1a).

⁴¹⁰ Lusaka Ceasefire Agreement, July 10, 1999, art. 1, online: United States Institute of Peace <http://www.usip.org/library/pa/drc/drc_07101999_toc.html> [Lusaka agreement].

⁴¹¹ Lomé Agreement, *supra* note 299 at art. XXVI.

⁴¹² K. Barnes et al., *supra* note 258 at 12.

⁴¹³ Protocol I (Nature of the Burundi Conflict, Problems of Genocide and Exclusion and Their Solutions) of the Arusha Peace and Reconciliation Agreement, art. 6, online: United States Institute of Peace <http://www.usip.org/library/pa/burundi/pa_burundi_08282000_pr1.html> [Burundi peace agreement Protocol I].

6.2.1.2.2. Securing economic and social rights

While Christine Chinkin identified the right to land ownership and the right to inheritance as issues to be addressed in a gender-sensitive peace agreement, this part of the analysis will be looking at economic and social rights more generally, as those are also of concerns for the women.

While the Liberian CPA refers to basic civil and political rights, it fails to include some essential economic and social rights, such as the right to education, the right to health, the right to land ownership and the right to inheritance. As another example, The Lomé Agreement contains a very general commitment to the right to education and health.⁴¹⁴

On a more positive note, the Arusha Peace Accord recognises that the right to property is a fundamental right for all people of Rwanda, and that, therefore, all refugees should repossess their property upon return.⁴¹⁵ The Arusha Peace and Reconciliation Agreement for Burundi is once again more pro-active in defending women's rights, addressing women's concerns over their right to property in its Article 3 of Protocol II, which states that "property rights shall be guaranteed for all men and women."⁴¹⁶ Article 3 of Protocol II also states that no one may be denied access to education and that it is the State's responsibility to organize, develop and promote access to education.⁴¹⁷

6.2.1.2.3. Preparing the return of refugees and displaced persons

As it has been mentioned above, the Burundian women were allowed to make specific recommendations vis-à-vis the accords and their implementation. Those recommendations were taken into consideration, with one exception. On the issue of the return of refugees and displaced persons, the women of Burundi were concerned that women returning from refugee

⁴¹⁴ Lomé Agreement, *supra* note 299 at art. XXXI.

⁴¹⁵ United Nations High Commission for Refugees, Kigali Office, "Women's property rights and the land question in Rwanda" in *Women's land and property rights in situations of conflict and reconstruction* (UNIFEM, 2001) 38, at 39, online: United Nations High Commission for Refugees <<http://www.unhcr.org/refworld/pdfid/46cadad90.pdf>> [UNHCR Property rights in Rwanda].

⁴¹⁶ Protocol II (Democracy and Good Governance) of the Arusha Peace and Reconciliation Agreement, art. 3(19), online: United States Institute of Peace <http://www.usip.org/library/pa/burundi/pa_burundi_08282000_pr2ch1.html> [Burundi peace agreement Protocol II].

⁴¹⁷ Burundi peace agreement Protocol II, *ibid.* at art. 3(17).

camps might not have access to their former lands and properties, which would create insecurity upon their return.⁴¹⁸

In the same vein, the Arusha Peace Accord reaffirms the right of all refugees to repossess their property on return.⁴¹⁹ “In its section related to the Protocol on Repatriation of Refugees and the Reinstallation of Displaced People, especially in article 4, it recommends the restitution of land and houses to these two categories of people.”⁴²⁰ Because in Rwanda, as in most African societies, land is acquired through occupation, the intention behind this clause was to avoid land disputes and find a solution to the problems of land claims that were likely to arise with the return of refugee and displaced persons. This solution tended to promote social harmony and national reconciliation.

6.2.1.2.4. Addressing the rehabilitation of former combatants

The analysis of peace agreements has not lead to the finding of a best practice regarding this issue. While the rehabilitation of former combatants is addressed in the Liberian CPA, being delegated to the international stabilization force, no specific reference to the situation of women former combatants is made. Similarly, while Article 30 of the Lomé peace agreement calls for particular attention to be accorded to the issue of child soldiers, no reference is made to the specificity of the experience of “bush wives” and girls enrolled as combatants within the rebel forces.⁴²¹

6.2.1.2.5. Securing women’s political participation

With respect to women’s political participation, the Lomé Peace Agreement provides for “popular participation in the governance of the country and the advancement of democracy in a socio-political framework free of inequality, nepotism and corruption” in its Preamble.⁴²² Article 24 of the agreement further states that basic civil and political liberties, among which the right to take part in the governance of one’s country, should be fully protected and promoted within Sierra Leonean society. It should however be noted that the 1996 Abidjan

⁴¹⁸ Securing the peace UNIFEM, *supra* note 355 at 13.

⁴¹⁹ See UNHCR Property rights in Rwanda, *supra* note 415 at 39.

⁴²⁰ *Ibid.*

⁴²¹ Lomé Agreement, *supra* note 299 at art. 30

⁴²² *Ibid.* at Preamble.

peace agreement provided for women and men to be nominated to the National Electoral Commission. While it failed to secure a threshold, at least it called for women's participation.

With respect to women's right to political participation, the Liberian CPA fails to integrate a gender perspective to the extent of promoting women's participation. While some articles of the Liberian CPA purport to be supportive of women's participation in the post-conflict transformation of society, they fail to secure a threshold that could guarantee women's participation.⁴²³ While the Liberian CPA contains a provision for the inclusion of women, it does not require women's participation in political structures.⁴²⁴ The Liberian peace accord is the result of peace talks in which women have played a role but where their recommendations have been excluded from final agreements.⁴²⁵ While Liberian women have fought to be heard, this might reflect the need for women's contributions to be acknowledged by all the participants in peace talks. On a more positive note, one may also look at this example of Liberia in light of the current situation, i.e. Ellen Johnson Sirleaf was elected President of Liberia in 2005. She is Africa's first elected female head of state. Despite the lack of gender-sensitive provisions in the Liberian CPA, the continuous fight of Liberian women to be heard and have a say during peace talks might have resulted in the 2005 election of a female president.

6.2.1.2.6. Guaranteeing human's rights

While most peace agreements refer to international human rights conventions and treaties as a basis for the guarantee of human rights in their country, the implementation of those

⁴²³ See Lois Lewis Bruthus, "Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women (Liberia)" EGM/PEACE/2003/EP.1 (4 November 2003), online: United Nations Division for the Advancement of Women <<http://www.un.org/womenwatch/daw/egm/peace2003/reports/EP1Bruthus.PDF>>. As Lois Bruthus noted: (1) Article XVI paragraph 3 provides for the inclusion of women as members of the Governance Reform Commission, but fails to secure a threshold; (2) Article XVIII paragraph 2 (b) provides for the inclusion of women in the National Election Commission, but fails to specify their role or secure a threshold; (3) Article XXIV paragraph 3 (b) provides for women organizations to be part of the National Transitional Legislative Assembly, but fails to specify a threshold; (4) Article XXVIII provides for national and gender balance in all elective and non-elective appointments within the National Transitional Government of Liberia, but fails to secure a threshold, by imposing a quota or providing measures for non-compliance.

⁴²⁴ The language of Article XXVIII is rather imprecise: "The parties shall reflect national and gender balance in all elective and non-elective appointments within the government."

⁴²⁵ Toolkit 2004, *supra* note 349 at 22.

international legal documents has often yet to be seen. As an example, Article 3 of Protocol II to the Arusha Peace and Reconciliation Agreement states that

the rights the rights and duties proclaimed and guaranteed inter alia by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi.⁴²⁶

In this part of the analysis, two main issues will be looked at, i.e. the prohibition of discrimination on the ground of sex and the existence of equality provisions throughout the peace agreement.

While no equality provision or specific reference to women can be found in the Lomé peace agreement or in the Liberian CPA, the Arusha Peace Accord calls for equality of all citizens before the law⁴²⁷ and non discrimination based on sex.⁴²⁸

However, the most interesting example is the Arusha Peace and Reconciliation Agreement. The recurrence of the importance of equality between men and women throughout the peace agreement is worth underlying. Article 1 of Protocol II (Democracy & Good Governance) entitled fundamental values states that

All Burundians are *equal in value and dignity*. All citizens are entitled to equal rights and to equal protection of the law. No Burundian shall be excluded from the social, economic or political life of the nation on account of her/his race, language, religion, *gender*, or ethnic origin.”

Article 3 of Protocol II is, by excellence, the equality clause:

All women and men shall be equal. No one may be discriminated against, *inter alia*, on grounds of origin, race, ethnicity, gender, colour, language, social situation, or religious,

⁴²⁶ Burundi peace agreement Protocol II, *supra* note 416 at art. 3.

⁴²⁷ Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law, art.1, online: International Conflict Research <<http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/rwan1.pdf>>. “National unity must be based on equality of all citizens before the law, equal opportunities in all fields, including the economic field and respect for fundamental rights as stipulated, notably, in the Universal Declaration of Human Rights and in the African Charter on Human and Peoples’ Rights.”

⁴²⁸ *Ibid.*, at art. 3. “National unity entails the rejection of all exclusions and any form of discrimination based notably, on ethnicity, region, sex and religion.”

philosophical or political convictions, or by reason of a physical or mental handicap. All citizens shall enjoy equal protection of the law, as well as equal treatment under the law.

It is particularly noteworthy in comparison to other peace agreements, where such clause is sometimes rarely found. Article 5 of Protocol I to the agreement states “equality between women and men” amongst the general political measures to be adopted as part of the solution to end the conflict and strengthen the peace.⁴²⁹ Article 7 further calls for the “constitutional guarantee of the principle of equality of rights and duties for all citizens, *men and women*”.⁴³⁰

The Arusha Peace Agreement for Burundi is very inclusive of women and gender-sensitive. It insists on the inclusion of women and the prohibition of any form of exclusion. While it is not perfect, in particular as it fails to promote and secure women’s right to participation in public affairs and decision-making, it remains an example in many ways.

6.2.1.3. Lessons learnt

After having briefly analysed the situations of women in Sierra Leone, in the Democratic Republic of Congo, in Burundi, and in Liberia at times of war and peace negotiations, and after having weighted their impact on the resulting peace accords, which lessons have we learnt?

It seems that when thinking about women’s experience in their struggle to be heard, two words resonate: united and lobbying. Most women’s movements have as a reaction to their exclusion from the peace talks by men. Taking responsibility for the transformation of their society, women have got *united* over issues that, as women, they felt were more pressing. They went beyond political affiliations, social backgrounds and went past their differences in order to bring their country to peace. To win their case, women have constantly lobbied for their right to participate and they have used every means at their disposal. They used the media to alert the international community and pressure the participants at the peace table. They used arts to raise awareness over gender issues that were being disregarded. They struggled but never gave up. They sometimes achieved in taking the floor at a peace conference. In some cases, women succeeded in being granted the status of observers. They however rarely achieved equal status with men.

⁴²⁹ Burundi peace agreement Protocol I, *supra* note 413, at art. 5.

⁴³⁰ *Ibid.* at art. 7 [emphasis by author].

When looking at the resulting impact of women on the substance of peace agreements, the conclusion seems to be that it is very timid. For example, and as explained above, the inclusion of women at the Inter-Congolese Dialogue was not an easily achieved objective. Women's participation in the peace process was timid, which resulted in a peace agreement which is not gender-sensitive. The Lusaka Agreement fails to make reference to women as actors and agents of change for peace. It falls short from considering women's particular needs.

Having difficulties in being recognised equal status with men, and therefore being equal participants to the peace talks, women still struggle in having their views incorporated into peace agreements. As an example, Sierra Leonean women have played a crucial role in bringing the parties to the conflict to seat at the peace table and consider a negotiation settlement. However, the women's movement fell short from contributing to the wording of the Lomé peace agreement and integrate their own concerns and priorities into the document as actors and agents of change for peace, not as mere victims. The Lomé agreement is not gender-sensitive, or aware in any way of women's situation during the conflict and post-conflict.

Beyond the failure of most peace agreements in integrating a gender perspective, the language used must be criticized as it further restrains women's capacity to be seen as actors and independent individuals in the peace process.⁴³¹ Therefore, it can be said that while it is important for women to participate in the process, it is not simply the inclusion of women *per se* (the quantity of women) but the ideology of women (the quality) that can make a difference. One can go even further in saying that for the ideology of women to make a difference, all participants must be educated to receive it. It seems that it could be the explanation for the existing gap between the status of observer being granted to women, and the status of equal participants still being denied to women. Commenting on the situation in the DRC, Puechguirbal noted that:

the participation of women in the peace process did yield some positive results in terms of gender awareness. However, due to the low level of representation in the process and the difficulties of changing Congolese attitudes towards women, the road to equality is yet to be attained in the DRC.

⁴³¹ See Puechguirbal in Karamé, *supra* note 95 at 58ff.

Another conclusion to be noted is the need for women to be included in decision-making mechanisms at the earliest stages possible. Indeed, in most of the situations examined in this thesis, women were included as the result of outside pressure and only at the last formulation of the process.

6.2.2. *The identification of women in peace agreements: a feminist critique*

It has been shown that women's participation in peace negotiations is not entirely satisfactory to ensure gender-sensitive peace agreements. Even though they manage to bring to the agenda issues that are specific for women, no peace agreement so far has been recognised as incorporating a gender perspective. An analysis of the legal discourse on the role of women in peace-building will confirm this conclusion, showing that nothing has been achieved beyond the "add women and stir project."⁴³² As Nadine Puechguirbal noted:

language is always a key indicator of how men and women are defined within a given society and what roles they are expected to play. (...) Since peace accords will frame the society that will be built in a post-conflict environment, it is of prime importance that work be done on changing the language that is used by the men at decision-making levels.⁴³³

One might then want to ask to what extent is the status of women in the post-war setting defined by warriors' men seating at the peace table in terms of how they experienced war?⁴³⁴ "If the men in power continue to depict women primarily as war widows, victims of heroic mothers, we have little room for post-conflict societal transformation."⁴³⁵

As it has been mentioned earlier, it is important to take the multiple roles of women into consideration. This thesis has tried to emphasise the role of women as agents, as opposed to objects/subjects or victims. Indeed, if women are solely depicted as victims, they will inevitably face negative societal attitudes in the post-conflict phase. However, an analysis of the current discourse on women and war, and on women in peace processes, will show that emphasis has been put on women as victims, as a justification for their further involvement, but

⁴³² Louise Vincent, "Current Discourse on the Role of Women in Conflict Prevention and Conflict Transformation: A Critique" (2003) Conflict Trends: Women, Peace and Security 5 [Vincent].

⁴³³ Puechguirbal in Karamé, *supra* note 95 at 4.

⁴³⁴ *Ibid.* at 7.

⁴³⁵ Puechguirbal DRC, *supra* note 75 at 1278, citing Cynthia Enloe, "Demilitarization – or more of the same? Feminist questions to ask in the postwar moment" in Cynthia Cockburn & Dubravka Zarkov, eds., *The Postwar Moment: Militarities, Masculinities and International Peacekeeping* (London: Lawrence & Wishart, 2002) at 29.

to their detriment. “Political historiography has tended to study the *impact* of war on women and thus to reinforce a view of women as passive objects.”⁴³⁶ Furthermore, by depicting women as solely victims of war, this reinforces the image of women as dependent on the protection of men. “By focusing on their role as victims, rather than as agents, scholars have tended to exculpate and extricate women from history.”⁴³⁷ It creates a negative rhetoric for women.⁴³⁸ The SC Resolution 1325 has been said to constitute “a groundbreaking moment for women’s peace activism”⁴³⁹ as it stressed the underlying importance of women’s participation in the peace process. The Security Council acknowledged the need for women to be recognised, not only as victims, but also as “active agents and participants in the conflict” and as activists contributing to the survival of their community.⁴⁴⁰

Louise Vincent published a concise article where she tries to theoretically deconstruct the discourse on the role of women in conflict prevention and conflict transformation, in order to critically analyse its pitfalls.⁴⁴¹ She believes that the current discourse calling upon a gender perspective is drawn “from a variety of conflicting theoretical trends ranging from liberal pluralism through to standpoint feminism.” She believes that these theories do not allow for a true participation of women in peace processes, but rather reaffirm hegemonic ideas upon which the discourse is developed.

Her analysis of the discourse in light of standpoint feminism is very interesting. To start with, she noted that “calls for conflict prevention strategies to take into account a ‘gendered perspective’ (...) lack a clear theoretical grounding and have become a somewhat hollow talisman whose real meaning is unclear.”⁴⁴² It is true that, in a majority of cases, ‘gender’ is actually used to call a focus on women’s perspective, whatever that could mean. She makes an analogy between the discourse in peace processes and the major assumptions upon which is grounded standpoint feminism. In a similar vein, she notes that there is an emphasis on the

⁴³⁶ Higonnet, *supra* note 78 at 46.

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid.* at 42, 45: “The gains some women achieved through war affected their sense of individual potential and independence; but their losses, which held the public eye, involved their situation as dependents – lovers, mothers, or widows. (...) A study of war is useful for the reassessment of these difficulties in gender analysis, since it reveals the importance of the rhetoric through which women are perceived, by themselves as well as by others.”

⁴³⁹ ICG Report N°112, *supra* note 313.

⁴⁴⁰ UN SC Res. 1325, *supra* note 312; see also, Where are the girls?, *supra* note 52 at 9.

⁴⁴¹ Vincent, *supra* note 432.

⁴⁴² *Ibid.*

particular experiences of women, which are not taken into consideration in current policies and programs. The interesting point is that she justifies her analysis of the discourse by saying that “simply to ‘include’ women or women’s voice (...) in a politics that is flawed and based on unsatisfactory ethical and moral bases will have little transformative effect.”⁴⁴³ She adds that “the add women and stir project serves to valorise the very centre that is problematic to begin with.”⁴⁴⁴

When looking at peace agreements, it seems that women remain mainly defined as victims or as a group of persons in need of protection.⁴⁴⁵ Such a definition of women in the peace agreements limits their capacity in the peace process and in the post-conflict setting, to be seen as actors and independent individuals. The Lomé Agreement, for example, while acknowledging the particularly devastating impact of war on women and the importance of ensuring their role in the process of national transformation, restricted the definition of women, and therefore gender, to this characterization:

Given that women have been particularly victimised during the war, special attention shall be accorded to their needs and potential in formulating and implementing national rehabilitation, reconstruction and development programmes to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone.⁴⁴⁶

Although the recognition of gross violations of human rights committed against women needs to be incorporated into peace agreements, a representation of women limited to their victimization is a further obstacle to women’s consolidation of wartime gain, and to their political participation in post-conflict society. In the Lomé Agreement, women are seen as the keepers of the moral basis of the society, the family honour as well as the bearer of the cultural values of the community.⁴⁴⁷

⁴⁴³ Vincent, *ibid.* at 10. See also more generally, Catharine MacKinnon, *Toward a feminist theory of the State* (Cambridge: Harvard University Press, 1989).

⁴⁴⁴ S. Benhabib, *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996) 44, cited in Vincent *supra* note 432 at 10.

⁴⁴⁵ As Nadine Puechguirbal noted from a comparative analysis of peace accords in Burundi, Democratic Republic of Congo (DRC), Liberia and Sierra Leone, women are depicted “mainly as members of a vulnerable group, as victims in needs of protection.” See Puechguirbal in Karamé, *supra* note 95 at 47.

⁴⁴⁶ Lomé Agreement *supra* note 299, at art. XXVIII ss.2. See also R&D 2000, *supra* note 260 at 62.

⁴⁴⁷ Puechguirbal in Karamé, *supra* note 95 at 55.

Another critique is to be directed against the use of sex as a sociological variable at the same level as other variables, such as refugees and internally displaced persons, for example.⁴⁴⁸

Article XXXI paragraph 1(a) of the Liberian CPA, entitled vulnerable groups, states:

The [National Transitional Government of Liberia] shall accord particular attention to the issue of the rehabilitation of vulnerable groups or war victims (children, women, the elderly and the disabled) within Liberia, who have been severely affected by the conflict in Liberia.⁴⁴⁹

As Nadine Puechguirbal argues, this Article of the peace agreement adds women as a distinct category of persons deserving protection, hence making them appear as a minority sociological category.⁴⁵⁰ Article 19 of the Arusha Peace Accords also defines women as a vulnerable group, such as children, the aged people and the handicapped.

Much work is therefore needed to consolidate women's participation in peace negotiations, emphasising their right to political participation, in the view to enhance the incorporation of a gender perspective into peace agreements. Furthermore, the implementation of peace agreements with a consistent awareness to gender issues is central for women, if we are to go beyond the "add women and stir project." Therefore it is important for women to continue to be involved in the implementation phase of the agreement.

"No matter how many women are included in the peace negotiations or the reforms that ensue, it is up to all participants, women and men, to ensure that gender issues are addressed at all levels."⁴⁵¹ Creating a political space for women to gather and share their views is essential in ensuring women's participation in the conduct of public affairs.

7. BIBLIOGRAPHY

PRIMARY SOURCES: LEGAL DOCUMENTS

African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 60/147, UN GA, 60th Sess., UN Doc. A/RES/60/147 (2006).

⁴⁴⁸ *Ibid.* at 58.

⁴⁴⁹ Liberian CPA, *supra* note 9 at art. XXXI.

⁴⁵⁰ Puechguirbal in Karamé, *supra* note 95 at 58.

⁴⁵¹ Rehn & Sirleaf, UNIFEM 2002, *supra* note 5 at 82.

Charter of the United Nations, 26 June 1945, Can. TS 1945 No.7.

Comprehensive Peace Agreement between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, Accra, 18 August 2003.

Convention on the Elimination of all Forms of Discrimination against Women, adopted by General Assembly Res. 34/180 (18 December 1979).

Convention on the Political Rights of Women, adopted by General Assembly Resolution 640 (VII) (20 December 1952)

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

Lusaka Ceasefire Agreement, July 10, 1999.

Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, March 2007.

Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Lomé, Togo, July 7, 1999.

Peace Agreement Between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, 4 August 1993.

Protocol I (Nature of the Burundi Conflict, Problems of Genocide and Exclusion and Their Solutions) of the Arusha Peace and Reconciliation Agreement.

Protocol II (Democracy and Good Governance) of the Arusha Peace and Reconciliation Agreement.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000), reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005.

Report of the Special Rapporteur on violence against women, its causes and consequences, submitted in accordance with Commission on Human Rights resolution 1997/44, "Economic and social policy and its impact on violence against women", E/CN.4/2000/68/Add.5.

Report of the Secretary General on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies", UN Doc. S/2004/616.

Third periodic report of Uganda to CEDAW, 3 July 2000, CEDAW/C/UGA/3.

United Nations Security Council Resolution 1325 on Women, Peace and Security, U.N. SCOR, 4213th Sess., at 3, U.N. Doc. S/RES/1325, 31 October 2000.

SECONDARY MATERIAL: LEGAL DOCUMENTS

Beijing Platform for Action and the Beijing Declaration, Fourth World Conference in Women (1995).

Initial Report of Burundi to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/BDI/1, 3 July 2000.

Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Other Such Violations Committed in the Territory of Neighboring States, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453 mtg., Annex, U.N. doc S/955 (1994).

Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., Annex, U.N. Doc. S/827 (1993).

Combined fourth and fifth report of the Democratic Republic of Congo to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/COD/4-5, 30 November 2004.

Committee on the Elimination of Discrimination Against Women, Concluding comments on the Democratic Republic of Congo fourth and fifth report, CEDAW/C/COD/CO/5.

Concluding Observations of the Human Rights Committee on the Third Periodic Report of Mexico, UN Doc. CCPR/C/79/Add.32 (18 April 1994).

Report of the Committee on the Elimination of Discrimination Against Women, 26th, 27th and exceptional sessions, GA 57th session, A/57/38, Uganda.

“Responsibility of States for Internationally Wrongful Acts” (2001), reproduced in the annex to General Assembly resolution 56/83 of 12 December 2001.

Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9.

Universal Declaration of Human Rights, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).

United Nations, High Commission Human Rights, Commission on Human Rights, Resolution 2003/45 “Elimination of Violence against Women”.

United Nations Human Rights Committee, General Comment No. 25 (1996), CCPR/C/21/Rev.1/Add.7.

SECONDARY MATERIAL: JURISPRUDENCE

Case Concerning the Factory at Chorzów (Claim for Indemnity) (Merits), [1928] PCIJ, ser. A, No. 17.

Ilmari Länsman et al. v. Finland, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (1994).

Jouni E. Länsman et al. v. Finland, Communication No. 671/1995, U.N. Doc. CCPR/C/58/D/671/1995 (1996).

Marshall v. Canada, Communication No. 205/1986, U.N. Doc. CCPR/C/43/D/205/1986 (1991).

Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara & Santigie Borbor Kanu, Case No. SCSL-2004-16-A, 22 February 2008.

SECONDARY MATERIAL: MONOGRAPHS

Addams, Jane., Balch, Emily G. & Hamilton, Alice., eds., *Women at the Hague: the International Congress of Women and its Results* (Chicago: University of Illinois Press, 2003).

African Women and Peace Support Group. *Liberian Women Peacemakers – Fighting for the Right to be Seen, Heard and Counted* (Africa World Press Inc., 2004).

Benett, Olivia., Bexley, Jo. & Warnock, Kitty. *Arms to fight, arms to protect: women speak out about conflict* (London: Panos Publications, 1995).

Benhabib, Seyla. *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996) 44.

Bjornlund, Eric C. *Beyond Free and Fair: Monitoring Elections and Building Democracy* (London: Johns Hopkins University Press, 2004).

Blair, Johann. *The International Covenant on Civil and Political Rights and its (First) Optional Protocol: a Short Commentary Based on Views, General Comments and Concluding Observations by the Human Rights Committee* (Frankfurt : Peter Lang, 2005).

Boyle, Alan. & Chinkin, Christine. *The Making of International Law* (Oxford: Oxford University Press, 2007).

Buergenthal, Thomas. & Murphy, Sean D. *Public International Law in a Nutshell*, 4th ed. (St. Paul: Thomson / West, 2007).

Dahlerup, Drude., ed., *Women, Quotas and Politics* (London: Routledge, 2006).

de Greiff, Pablo., ed. *The Handbook of Reparations* (New York: Oxford University Press, 2006).

Dixon, Martin. *Textbook on International Law*, 6th ed. (Oxford: Oxford University Press, 2007).

Durham, Helen. & Gurd, Tracey., eds., *Listening to the Silences: Women and War* (Leiden: Martinus Nijhoff Publishers, 2005).

Fenet, Alain., Koubi, Geneviève. & Schulte-Tenckhoff, Isabelle., eds., *Le droit et les minorités* 2d ed. (Bruxelles: Etablissements Emile Bruylant, 2000).

Hellsten, Sirkku K., Holli, Anne Maria. & Daskalova, Krassimira., eds., *Women's Citizenship and Political Rights* (Palgrave Macmillan, 2006).

Jayawardena, Kumari. *Feminism and Nationalism in the Third World* (London: Zed Press, 1986).

Joseph, Sarah. *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2nd ed., (Oxford: Oxford University Press, 2004).

- Kaldor, Mary. *New and Old Wars: Organized Violence in a Global Era* (Cambridge, UK: Polity Press, 1999).
- Karamé, Kari H., ed., *Gender and Peace-Building in Africa* (Oslo: NUPI, 2004).
- MacKinnon, Catharine. *Toward a feminist theory of the State* (Cambridge: Harvard University Press, 1989).
- Mathabane, Mark. *African Women: Three Generations* (New York: Harper Collins, 1994).
- McKay, Susan. & Mazurana, Dyan. *Where are the girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives during and after War* (Canada: Rights & Democracy, 2004).
- Meintjes, Sheila., Pillay, Anu. & Turshen, Meredith., eds., *The Aftermath: Women in Post-Conflict Transformation* (London, Zed Books Ltd: 2001).
- Morris, Ruth. *Stories of Transformative Justice* (Toronto: Canadian Scholars' Press, 2000).
- Moser, Caroline O.N. & Clark, Fiona C. eds., *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence* (London: Zed Books, 2001).
- Parmentier, Stephan. et al., eds., *Out of the Ashes: Reparation for Victims of Gross and Systemic Human Rights Violations* (Antwerpen: Intersentia, 2006).
- Randelzhofer, Albrecht. & Tomuschat, Christian. *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights* (The Hague: Martinus Nijhoff Publishers, 1999).
- Rubio-Marín, Ruth. ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations* (International Center for Transitional Justice, 2006).
- Shelton, Dinah. *Remedies in International Human Rights Law*, 2d ed. (Oxford: Oxford University Press, 2005).
- Turshen, Meredith. & Twagiramariya, C. eds., *What Women Do in Wartime: Gender and Conflict in Africa* (London: Zed Books, 1998).
- United Nations Development Fund for Women, *Securing the peace: Guiding the international community towards women's effective participation throughout peace processes* (New York: UNIFEM, 2005).
- United Nations, Report of the Ad Hoc Committee of the Whole of the 23rd special session of the General Assembly, GA A/S-23/10/Rev.1.

SECONDARY MATERIAL: ARTICLES

- Bell, Christine. "Peace Agreements: their Nature and Legal Status" (2006) 100 Am. J. Int'l L. 373.
- Lee Ann Bell, "Theoretical Foundations for Social Justice Education" in Maurianne Adams, Lee Anne Bell & Pat Griffin, eds., *Teaching for Diversity and Social Justice: a Sourcebook* (New York: Routledge, 1997) 1.
- Cahn, Naomi. "Women in Post-Conflict Reconstruction: Dilemmas and Directions" (2000) 12 Wm. & Mary J. Women & L. 1.

- Chinkin, Christine. "Rape and Sexual Abuse of Women in International Law" (1994) 5 E.J.I.L. 1.
- . "Gender, Human Rights, and Peace Agreements" (2003) 18 Ohio St. J. Disp. Resol. 867.
- . & Charlesworth, Hilary. "Building Women into Peace: the international legal framework" (2006) 27:5 Third World Quarterly 937.
- Couillard, Valérie. "The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence" (2007) 1:3 Int'l J. Transitional Justice 444.
- Dawn Askin, Kelly. "Gender Crimes Jurisprudence in the ICTR: Positive Developments" 2005:3 J.I.C.J. 1007.
- Duggan, Colleen. & Abusharaf, Adila M. "Reparation for Sexual Violence in Democratic Transitions: The Search for Gender Justice" in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006) 623.
- Enloe, Cynthia. "Demilitarization – or more of the same? Feminist questions to ask in the postwar moment" in Cynthia Cockburn & Dubravka Zarkov, eds., *The Postwar Moment: Militaries, Masculinities and International Peacekeeping* (London: Lawrence & Wishart, 2002) 29.
- Fleshman, Michale. "African women struggle for a seat at the peace table" (2003) 16: 4 Africa Recovery 1.
- Gardam, Judith. & Jarvis, Michelle. "Women and Armed Conflict: the International Response to the Beijing Platform for Action" (2000) 32 Colum. H.R.L. Rev. 32.
- Higonnet, Margaret R. & Higonnet, Patrice L.-R. "The Double Helix" in Margaret R. Higonnet, et al., eds., *Behind the Lines: Gender and the Two World Wars* (New Haven: Yale University Press, 1987) 46.
- Ibáñez, Ana Cristina. "El Salvador: War and Untold Stories – Women Guerillas" in Caroline O.N. Moser & Fiona C. Clark, eds., *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence* (London: Zed Books, 2001) 117.
- Jefremovas, Villia. "Loose Women, Virtuous Wives, and Timid Virgins: Gender and the Control of Resources in Rwanda" (1991) 25 Can. J. of African Studies 378.
- Karam, Azza. "Women in War and Peace-Building: the roads traversed, the challenges ahead" (2001) 3:1 International Feminist Journal of Politics 2.
- Kelly, Liz. et al., "Beyond Victim or Survivor: Sexual Violence, Identity and Feminist Theory and Practice" in Lisa Adkins & Vicki Merchant, eds., *Sexualising the Social – Power and the Organisation of Sexuality* (New York: St. Martin's Press, 1996) 77.
- . "War Against Women: Sexual Violence, Sexual Politics and the Militarised State" in Susie Jacobs, Ruth Jacobson & Jennifer Marchbank, eds., *States of Conflict: Gender, Violence and Resistance* (London: Zed Books, 2000) 45.
- Koubi, Geneviève. "Reflexions sur les distinctions entre droits individuels, droits collectifs et 'droits de groupe'" in Raymond Goy, ed., *Du droit interne au droit international : le facteur religieux et l'existence des droits de l'homme* (Publications de l'Université de Rouen, 1998) 105.

- Krill, Françoise. "The protection of women in international humanitarian law" (1985) 249 Int'l Rev. Red Cross 337.
- Kwesi Aning, Emmanuel. "Gender and Civil War: The Cases of Liberia and Sierra Leone's Civil Wars" 1:4 (Winter 1998) 1.
- Lutz, Ellen. "Transitional Justice: Lessons Learned and the Road Ahead," " in Naomi Roht-Arriaza & Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press, 2006) 325.
- Lyth, Annette. "The Development of the legal protection against sexual violence in armed conflicts – advantages and disadvantages" (Sweden: IKTKR, December 2001).
- Newbury, Catherine. & Baldwin, Hannah. "Profile: Rwanda" in Krishna Kumar, ed., *Women and Civil War: Impact, Organizations, and Action* (London: Lynne Rienner Publishers, 2001) 27.
- Newbury, David. "Understanding Genocide" (1998) 41:1 African Studies Review 73.
- Nowrojee, Binaifer. "Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath" (Human Rights Watch Africa, 1996).
- Onubogu, Elsie. & Etchart, Linda. "Achieving Gender Equality and Equity in Peace Processes" in Rawwida Baksh et al., *Gender Mainstreaming in Conflict Transformation: Building Sustainable Peace* (London: Commonwealth Secretariat, 2005) 34.
- Painter, Geneviève. "Towards Feminist Theoretical Approaches to Reparations" (Paper presented to the Annual Meeting of the Coalition for Women's Human Rights in Conflict Situations, September 2006) [unpublished].
- Porter, Elisabeth. "Women, Political Decision-Making, and Peace-Building" (2003) 15:3 Global Change, Peace & Security 245.
- Puechguirbal, Nadine. "Women and war in the Democratic Republic of the Congo" (2003) 28:4 Signs 1271.
- . "Involving Women in Peace Processes: Lessons from Four African Countries (Burundi, DRC, Liberia and Sierra Leone)" in Kari Karamé, ed., *Gender and Peace-Building in Africa* (Training for Peace, 2004) 47.
- Saris, Anne. & Lofts, Katherine. "Reparation Programmes: A Gendered Perspective" in C. Ferstma, M. Goetz & A. Stephen, eds., *Reparations for victims of genocide, crimes against humanity and war crimes: systems in place and systems in the making* (London: Redress, 2008) [forthcoming].
- Steiner, Henry J. "Political Participation as a Human Right" (1988) 1 Harv. Rts. Y.B. 77.
- Trip, Ali. et al., "Sub-Saharan Africa: on the fast track to women's political representation" in Drude Dahlerup, ed., *Women, Quotas and Politics* (London: Routledge, 2006) 112.
- Turshen, Meredith. "The Political Economy of Violence against Women during Armed Conflict in Uganda" (2000) 67:3 Social Research 803.
- . "The Political Economy of Rape: An analysis of Systematic Rape and Sexual Abuse of Women during Armed Conflict in Africa" in Caroline O.N. Moser & Fiona C. Clark, eds.,

Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence (London: Zed Books, 2001) 55.

Vincent, Louise. "Current Discourse on the Role of Women in Conflict Prevention and Conflict Transformation: A Critique" (2003) *Conflict Trends: Women, Peace and Security* 5.

Wirth, Louis. "The Problem of Minority Groups" in Ralph Linton, ed., *The Science of Man in the World Crisis* (Columbia University Press, 1945) cited in Helen Mayer Hacker "Women as a minority group" (1951) 30:60 *Social Forces* 60.

SECONDARY MATERIAL: REPORTS

Amnesty International "Burundi – Rape: the hidden human rights abuse" (2004).

Barnes, K. et al., "Addressing Gender-Based Violence in Sierra Leone: Mapping Challenges, Responses and Future Entry Points" (International Alert, August 2007).

Bouta, Tsjeard. & Frerks, Georg. "Women's Roles in Conflict Prevention, Conflict Resolution and Post-Conflict Reconstruction: Literature Review and Institutional Analysis" Netherlands Institute of International Relations, The Hague, November 2002.

Chinkin, Christine. "Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women" EGM/PEACE/2003/BP.1 (31 Oct. 2003).

Diop, Bineta. "Case study on countries in the Mano River region", Expert Group meeting on democratic governance in Africa: strategies for greater participation of women, Arusha (Tanzania), December 2005.

Farr, Vanessa. "Gendering Demilitarization as a Peacebuilding Tool" Bonn International Center for Conversion, Paper 20 (June 2002).

Femmes Africa Solidarité "Peace agreements as a means for promoting gender equality and ensuring participation of women" EGM/PEACE/2003/OP.1 (1 November 2003).

Human Rights Watch. "The war within the war: sexual violence against women and girls in Eastern Congo" (Human Rights Watch, 2002).

---. "African Great Lakes Region: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights" (Human Rights Watch, 2005).

---. "How to Fight, How to Kill: Child Soldiers in Liberia" (Human Rights Watch, 2 February 2004).

International Alert & Women Waging Peace. "Inclusive Security, Sustainable Peace: a Toolkit for Advocacy and Action – Conflict Prevention, Resolution and Reconstruction" (2004).

International Crisis Group, "Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda" Africa Report N°112 (28 June 2006).

ISIS-WICCE, *Documenting Women's Experiences in Armed Conflict: Situations in Uganda 1980-1986, Luwero District*, Kampala: ISIS-Women's International Cross Cultural Exchange, 1998.

- Jefferson, LaShawn R. "In War as in Peace: Sexual Violence and Women's Status" Human Rights Watch, World Report 2004.
- Bruthus, Lois Lewis. "Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women (Liberia)" EGM/PEACE/2003/EP.1 (4 November 2003).
- Norwegian Institute of International Affairs "Gendering Human Security: from Marginalisation to the Integration of Women in Peace-Building – Recommendation for policy and practice from the NUPI-Fafo Forum on Gender Relations in Post-Conflict Transitions" (2001) NUPI-report No. 261, NUPI and Fafo, Oslo.
- Powley, Elizabeth. "Strengthening governance: the role of women in Rwanda's transition" UN OSAGI, EGM/ELEC/2004/EP.5.
- Redress, "Reparation: a sourcebook for victims of torture and other violations of human rights and international humanitarian law" (2003) The Redress Trust.
- Rehn, Elisabeth. & Johnson Sirleaf, Ellen., eds., "Women, War, Peace: the Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building" (UNIFEM, 2002).
- Report on the workshop on Conflict Transformation in Africa: African Women's Perspectives, held in Dakar, 23-26 May 2000.
- Réseau des Femmes pour un Développement Associatif, Réseau des Femmes pour la Défense des Droits et la Paix, and International Alert. "Women's Bodies as a Battleground: Sexual Violence against Women and Girls during the War in the Democratic Republic of Congo – South Kivu (1996-2000)", (2005).
- Rights & Democracy. "Securing women's rights to land, property and housing: country strategies" (2000).
- United Nations Division for the Advancement of Women, Report of the Expert Group Meeting, "Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership" EGM/EPDM/2005/report (October 2005), Addis-Ababab, Ethiopia.
- United Nations High Commission for Refugees, Kigali Office, "Women's property rights and the land question in Rwanda" in *Women's land and property rights in situations of conflict and reconstruction* (UNIFEM, 2001) 38.

SECONDARY MATERIAL: OTHERS

- Hogg, Nicole. "'I never poured blood': women accused of genocide in Rwanda" (McGill Thesis, 2001).
- Itano, Nicole. "The sisters-in-arms of Liberia's war" The Christian Science Monitor, Press Release, 26 August 2003.
- Jusu-Sheriff, Yasmin. "Sierra Leonean Women and the Peace Process" (2000) Accord issue 9.
- "MARWOPNET awarded 2003 United Nations Prize in the Field of Human Rights" Femmes Africa Solidarité, Press Release, 3 December 2003.

Vahida Nainar, “Women’s Right to Reparation” (Paper presented to the International Meeting on Women’s Right to Reparation, Nairobi, March 2007).

Transcripts, CNN International Programming, aired 25 August 2003.