

**AN ANALYSIS OF AFRICAN UNION MECHANISMS FOR WOMEN
PARTICIPATION IN PEACE BUILDING AND DECISION MAKING
AFTER POST CONFLICT SITUATIONS: THE CASE OF
MOZAMBIQUE AND RWANDA**

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DECLARATION

I declare that *An Analysis of African Union Mechanisms for Women Participation in Peace Building and Decision Making after Post Conflict Situations: The Case of Mozambique and Rwanda* is my own work, that it has not been submitted before for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Mutesi Angela Padua

Signed

November 2008

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LIST OF ABBREVIATIONS

ACHPR	African Charter of Human and Peoples' Rights
ANC	African National Congress
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DRC	Democratic Republic of Congo
FRELIMO	Frente de Libertação de Moçambique
LPQ	Legislative Party Quota
MDGs	Millennium Development Goals
MP	Members of Parliament
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organisation
NURC	National Unity and Reconciliation Commission
OAU	Organisation of the African Unity
OMM	Organizacio da Mulher Mocambicana
RENAMO	Reistencia Nacional Mozambique
RPF	Rwandese Patriotic Front
SA	South Africa
SADC	Southern African Development Community
VPQ	Voluntary Party Quota
UN	United Nations
UNC	United Nations Charter
UNFPA	United Nations Fund for Population
UNGA	United Nations General Assembly
UNIFEM	United Nations Development Fund for Women
UNMIL	United Nation Mission in Liberia
UNTAG	United Nations Transitional Assistance Group
ZANU	Zimbabwe African National Union

Table of Contents

TITLE PAGE	1
DECLARATION	2
ACKNOWLEDGEMENT	3
LIST OF ABBREVIATIONS	4
Table of Contents	5
CHAPTER 1: INTRODUCTION	7
1.1 Background to the study	7
1.2 Problem Statement.....	8
1.3 The Scope	9
1.4 objectives.....	10
1.5 Methodology	11
1.6 Literature review	11
1.7 Conclusion.....	14
CHAPTER 2: AFRICAN WOMEN AND ARMED CONFLICT	15
2.1 Introduction.....	15
2.2 Adverse Impact of Conflict on Women	15
2.3 Amidst the Challenges Springs Out Opportunity	17
2.4 Importance of Including Women in Peace-building and Decision Making in Post-Conflict Situation in a Bid to Achieve Sustainable Peace	20
CHAPTER 3: AFRICAN UNION MACHINERY FOR WOMEN PARTICIPATION IN PEACE-BUILDING AND DECISION MAKING	24
3.1 Introduction.....	24
3.2 An Overview of African Union Mechanism that Promote Women Participation in Decision Making in Post-Conflict Situations	26
3.3 The Applicability of the AU Framework in National Laws and Policies.....	31
3.4 The Significance of the AU Framework in Promoting Women Participation in Decision Making in Post-Conflict Situations and Peace Building.....	34

CHAPTER 4: AN ANALYSIS OF MOZAMBIQUE AND RWANDA IN THEIR EFFORTS TO INCREASE THE PARTICIPATION OF WOMEN IN PEACE-BUILDING AND DECISION MAKING AFTER POST CONFLICT SITUATIONS	37
4.1 Introduction.....	37
4.2 Mozambique	37
4.2.1 Historical Background	37
4.2.2 An Analysis of Women Decision Making in Post-Conflict Mozambique.....	37
4.3 Rwanda	45
4.3.1 Historical Background	45
4.3.2 An Analysis of Women Decision Making in Post-Conflict Rwanda.....	47
4.3.3 National Framework that Promote the Participation of Women in Decision Making	49
CHAPTER 5: RECOMMENDATIONS AND CONCLUSIONS	54
5.1 Recommendations	54
5.2 Conclusion.....	57
BIBLIOGRAPHY.....	58

CHAPTER 1: INTRODUCTION

1.1 Background to the Study

'Almost exclusively, men prosecute the war, negotiate peace agreements and take it as their responsibility to implement the agreement. This leaves gender issues... on the fringes of the reconstruction agenda.'¹

Although armed conflicts damage people and erode their rights, women tend to be the main victims of this erosion. Gardam and Jarvis argue that women in almost all communities suffer widespread discrimination,² which is exacerbated during armed conflict³ thus rendering women particularly vulnerable as compared to other groups in society. This discrimination against women is well articulated in the 'Solemn Declaration on Gender and Equality in Africa,'⁴ which points out that although women bear the brunt of conflict and internal displacement, including rapes and killings, they are largely excluded from conflict prevention, peace-negotiation and peace building processes.⁵

It should be stressed that conflicts increase gender inequality which is already evident in conflict stricken societies.⁶ The inequalities are manifested by a host of abuses against women that armed groups carry out during conflict including killing, rape, physical violence, assault, sexual slavery, slave labour, abduction, torture, trafficking, mutilation and disembowelment of pregnant women. These are some of the atrocities that have been committed in all the major African conflicts from Liberia, Sierra Leone, DRC, Rwanda, Mozambique, Burundi, Northern Uganda, Southern Sudan, to Somalia. There

¹ M Juma 'The role of the African Union machinery in promoting gender justice in promoting gender justice in post conflict societies.' (2005) African Women for Peace, Advocacy Magazine 3

² JG Gardam & MJ Jarvis Women Armed Conflict and international law (2001) 20

³ AE Jack 'Gender and Armed Conflict Overview report' Bridge Development Gender August 2003 <http://www.bridge.ids.ac.uk/reports/cep-conflict-report.pdf> (accessed 14 September 2008)

⁴ Adopted by the AU Assembly of Heads of State and Government in Addis Ababa Ethiopia in July 2004

⁵ Juma (n 1 above) 3

⁶ For example in DRC, gender inequalities escalate during conflict, they are manifested in acts such as horrific sexual violence which are used as a weapon of war; however, lack of education and health care which exist pre-conflict worsens the desperate situation of women. See 'Stories from the field' October 2008 http://www.caritas.org.au/AM/Template.cfm?Section=Caritas_at_a_glance&Template=/CM/HTMLDisplay.cfm&ContentID=4436 (accessed on 15 October 2008)

is a clear increase in the subjection of women to war crimes. Statistics the world over seem to indicate that women are the main victims of war.⁷

To realise viable peace, there is need for gender sensitive peace-building, failure to do so will alienate women and increase their vulnerability and the violation of their rights. In post-conflict reconstruction, therefore, it is imperative to involve women in decision making processes.

Traditionally, women are perceived as peace makers, nurturers, and home-keepers. They occupy the private arena and make their contributions to the society which in many cases goes unnoticed especially in the time of peace and prosperity in a state. During and immediately after a conflict women are often pushed in the public arena, this can happen in different ways for instance some are involved in the conflict (in the Rwandan conflict for example some women are reported to have been involved in the perpetuation of genocide)⁸; some women are forced into the roles of heading the families and being bread-winners when the men take up arms and get involved in the conflict.

Often in post conflict situations, many victims of the conflict are women and children; hence women are required to cater for the children and the elderly in the society. Unfortunately, in the peace-building process, women's participation in the public spheres is curtailed and the space for their public action is retracted.

1.2 Problem Statement

During and after conflict the main victims of inequality and exploitation are women. The problem women face is twofold; first, during the armed conflict, women are not only victims but are also burdened with the duty of being the heads of their families and at times the society while their husbands are away. Second, after the armed conflict despite all their contribution, women are sidelined in peace-building and decision making

⁷ Juma (n 1 above) 3

⁸ N Itano '3000 Rwandan Women Await Trial for Genocide' Women's E News (2005) <http://www.womensenews.org/article.cfm?aid=1152> (accessed 7 October 2008)

process. By and large, women as engaged players during armed conflict are notoriously exploited after the conflict.

At the heart of this thesis is to critically analyse and show the merits of women participation in decision making during post conflict peace-building processes. This thesis will also explore the African Union (hereinafter referred to as AU) mechanisms that can facilitate women participation in peace-building and decision making processes in post-conflict countries.

1.3 The Scope

The scope of this thesis will be limited to Rwanda and Mozambique as countries that have suffered armed conflicts but progressively managed in post conflict to increase women participation in both peace-building and decision making processes. An analysis shall be made of the two countries, with the view of ascertaining what the two countries can contribute to countries that are in a post-conflict phase in terms of providing best practices. Consequently, a framework will be drawn from these best practices in conjunction with the provisions under the AU to address the role of women in decision making processes during post conflict.

Generally, there are a number of international instruments and protocols that have been enacted to address and empower women in decision making.⁹ This thesis will focus mainly on AU mechanisms that deal with women's participation in decision making after post conflict. Notably, the AU has enacted a peace and security protocol,¹⁰ which generally addresses issues of peace and security. To be sure, article 14(3) of the protocol envisages assisting vulnerable groups that have been adversely affected by violent conflicts.

⁹ Convention on Elimination of Discrimination Against Women Adopted on 18 December 1979 entry into force on 3 September 1981, in accordance with article 27(1)

¹⁰ Protocol relating to the Establishment of the Peace and Security Council of the African Union adopted by the AU assembly on 10 July 2002, entered into force on 26 December 2003

Article 14(3)(e) specifically stipulates that the Peace and Security Council shall render assistance to vulnerable persons, including children, the elderly, women and other traumatised groups in society. To my mind, article 14(3)(e) can be of critical importance in ensuring effective women participation when interpreted positively in light of the object and purpose of the article.

In addition, this thesis will explore the importance of the Protocol on the Rights of Women, adopted by the AU in July 2003. The choice of this protocol is apparent because by its nature, it is the most far-reaching Protocol on the Rights of Women in Africa. It offers, thus far, the most comprehensive protection to African women of any international or regional human rights instrument. The protocol expresses the right to peace, including the entitlement of women to participate in the promotion and maintenance of it. It sets forth economic and social welfare rights, including equal pay for equal work, maternity entitlements, and recognition of the economic value. The above instruments will be discussed in more detail

1.4 Objectives

This thesis seeks to critically analyse the mechanisms available in the AU instruments that promote the involvement of women in decision making during the peace building processes. The underlining objectives of the thesis are:

- (a) To highlight the human rights challenges that face women in a post-conflict situations.
- (b) To identify the opportunity availed by the peace-building process to open up new horizons for female empowerment.
- (c) To show that the involvement of women in peace-building processes is a contribution to long lasting peace as exemplified from countries such as Rwanda and Mozambique.
- (d) To suggest interpretations to the existing AU instruments that will enhance the involvement of women in the peace building processes.
- (e) To demonstrate the obligation of the AU member states in promoting the involvement of women in the peace-building process in their respective countries.

1.5 Methodology

- (a) As a result of time limitation and resources, this thesis will generally rely on desk work, library and internet research. The purpose of the library research is to examine existing literature on the topic and find appropriate ways to enhance participation of women in decision making processes in post-conflict situations.
- (b) Throughout this thesis, there will be use of AU instruments and to some extent international law instruments. This approach is used as a benchmark on which to weigh the legal instruments of both Rwanda and Mozambique in addressing the involvement of women in post-conflict.

1.6 Literature Review

The AU adopted the Protocol on the Rights of Women in Africa¹¹ which has been hailed for being far-reaching and offering the most comprehensive protection to women in Africa.¹² Another instrument that has long been commended for its 'women-specific' framework especially in as far as it relates to discrimination against women is the Convention on the Elimination of all forms of Discrimination against Women (hereinafter referred to as CEDAW).¹³ However, CEDAW has not escaped criticism of being 'un-African' because of its 'omission' of many issues facing women in Africa.¹⁴ It is on the basis of this inadequacy that propels the current study to explore the possibilities that are offered by the African Women's Protocol in particular and that which is promised by the African system in general to deal with the plight of women being sidelined in peace building and decision making in post-conflict situations.

¹¹ Adopted in 2003, entered in to force in 2005.

¹² ME King, 'What difference does it make gender as a tool in building peace?' in D Rodriguez and EN Togboa (eds) *Gender and Peace Building in Africa*, University for Peace. (2005) 27

¹³ Adopted in December 1979, entered into force on 18 December 1981.

¹⁴ See R Karugonjo-Segawa 'The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2005) Research Partnership, Danish Research Institute for Human Rights; See also SA Kaniye-Ebeku 'A New Hope for African Women: Overview of Africa's Protocol on Women's Rights (2004) *Nordic Journal of African Studies* 13 264, available at <http://www.njas.helsinki.fi/pdf-files/vol13num3/ebeku.pdf> (accessed 12 April 2008);

The African Charter on Human and Peoples Rights (hereinafter referred to as ACHPR)¹⁵ is the main instrument that recognises and protects the rights of all peoples in Africa. Furthermore, article 18 of ACHPR prohibits discrimination against women.¹⁶ Despite the protection contained in the ACHPR, it is said to be insufficient in its protection of women.¹⁷ The author agrees with this contention because, most of the inequality existing in society that affect a woman's access to participation in peace-building and decision making occur in the private realm yet, the African Charter defines human rights standards in terms of discrete violations in the public realm.¹⁸ It is therefore paramount to utilise the African Women's protocol to fill the gaps in the parent instrument.

The AU provides for the establishment of a Peace and Security Council,¹⁹ this is a decision-making organ specifically mandated in areas of peace-building, consolidation of peace and post conflict reconstruction, including elaborating specific activities that need

¹⁵ Also sometimes called the 'Banjul Charter' was adopted by the African Union in Nairobi, Kenya, in June 1981 and entered into force in October 1986.

¹⁶ Art 18(3)

¹⁷ WILDAF 'The African Charter on Human and Peoples' Rights and the Additional Protocol on Women's Rights', available at <http://wildaf.org.zw/news4.html> (accessed 25 January 2001) in MS Nsibirwa 'A brief analysis of the Draft Protocol to the African Charter in Human and Peoples' Rights' (2001) 1 *African Human Rights Law Journal* 40. See also J Oloka-Onyango 'Beyond the rhetoric reinvigorating the struggle for economic, social and cultural rights in Africa' (1995) 26 *California Western International Law Journal* 1; W Benedek & W Heinz (eds.) (1992) *Regional Systems of Human Rights in Africa, America and Europe: Proceedings of a Conference* (Friedrich Naumann, Stiftung) 17; CA Odinkalu 'Implementing Economic, Social and Cultural Rights under the African Charter on Human and Peoples' Rights' in M Evans & R Murray (eds.) (2000) *The African Charter on Human and Peoples' Rights: The System in Practice 1986-2000* 178-218; CE Welch 'Human Rights and African Women: A comparison of Protection under Two Major Treaties' (1993) 15 *Human Rights Quarterly* 549; E Delpont 'The African regional system of Human Rights-Why a protocol on the rights of women', available at <http://www.powa.co.za/documents/sadc%20intro%20african%20system%20and%20draft%20protocol.doc> (accessed 5 September 2008).

¹⁸ J Oder 'Reclaiming women's social and economic rights in Africa: The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2004) 5 *ESR Review*

¹⁹ As above n 10

to be undertaken.²⁰ Despite the fact that women are adversely affected by conflict, the protocol only makes a fledgling reference on women in peace-building and post-conflict situations in article 14(e) where women are included in the category of 'vulnerable' groups. Therefore, in considering the input made by this protocol it is important to give consideration of other AU instruments and offer a positive interpretation of the above mentioned article in order to deal with women specific concerns.

In a well researched article entitled 'The Role of the AU machinery in promoting gender justice in post-conflict societies', Dr. Monica Juma points out the insufficiency of article 14(3)(e) in dealing with gender specific issues in post-conflict situations. Further, the speculative nature of article 14(3) (e) is highlighted. She argues that a positive interpretation could be adopted to address specific gender and injustice issues. I respectively agree with the views expressed by Juma in as far as the need to give a positive interpretation to above article is concerned. However, requiring more than a positive interpretation to the extent of redrafting the whole article is to my view overstretching the argument.

The essence of Juma's article is to address the meaning of gender justice which is crafted as "...set of norms and principles that assign rights and duties, and guarantee appropriate distribution of benefits and burden among societal members." By and large, she notes that the concept of gender justice is embedded in six issues which are; security, political and democratic transformation, socio-economic well being, human rights and justice and humanitarian relief and assistance. Juma carefully notes the importance of including women in decision making activities in post conflict situation and the benefits it has in the political and democratic transformation of a country. In sum, she argues that the AU can only achieve gender justice if it is guided by the spirit and purport of gender equality when designing frameworks for post-conflict reconstruction.

Without hesitation of the fact that all the above issues are substantial and relevant, this thesis will elaborate more on the need for a comprehensive framework in which women are explicitly promoted in peace-building and decision making activities. In my view, this

²⁰ As above n 10, art. 3,6, 13 and 14

ensures that women specific needs that exist in post-conflict situations are addressed, and long lasting peace is achieved in the peace building process.

1.7 Conclusion

After a conflict, a state goes through the process of reconstruction and redressing human rights violations, women being the bulk of the conflict survivors, they need to be part of the decision making body. Not only is the participation of women important in solving gender specific problems, it is also important in achieving a lasting peace, this was pointed out in the UN Security Council Statement on the International Women's day, 8 March 2000; '... the 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....' Thus, this dissertation seeks to be a humble contribution to the quest of sustainable peace in Africa.

CHAPTERS 2: AFRICAN WOMEN AND ARMED CONFLICT

2.1 Introduction

The goal of this chapter is threefold. Firstly, it will highlight by the use of African examples the adverse effect that armed conflict has on women. Secondly, it will demonstrate that despite the peculiar situation women are faced with, there is a unique opportunity in the post-conflict phase, to enhance their participation in decision making roles. Finally, it will show the benefit of involving women in decision making as a means to sustainable peace.

In the wake of widespread armed conflict in Africa, women and young people are recognized as the primary victims of conflict.²¹ The traditional perception of women as victims often blurs the possibility of viewing women in active roles such as being part of decision making bodies during post-conflict situations. However, today it is imperative that women bear the burden of reconstruction of their destroyed communities and repairing relationships, since they constitute the bulk of the survivors of conflict.²²

2.2 Adverse Impact of Conflict on Women

It is important to take into account a wide variety of factors when considering the impact of armed conflict on women. Academics who have tried to 'essentialise' the experiences of women have been criticised of failure to take into account other relevant factors that impact upon a woman's life which in turn, affects her in armed conflict. The factors that affect how armed conflicts impact women differ between cultures and individual women in those cultures; for instance, factors such as race, ethnicity, nationality, class, age,

²¹ CP Conway 'The Role of Women in Reconstruction and Stabilization Operations' United States Institute of Peace http://www.usip.org/pubs/specialreports/srs/srs3_companion.pdf (accessed on 15 August 2008)

²² In terms of statistics- See K Mardy, 'Project against Domestic Violence, Cambodia: On the Record, Women of Southeast Asia fight Violence' The Advocacy Project <http://www.advocacynet.org/resource/528> (accessed on 20 September 2008) (estimated that women comprised 60 % of the population following the Khmer Rouge regime in Cambodia); Human Rights Watch, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (1996) 2 (estimated that following the 1994 genocide in Rwanda, women constituted 70% of the population).

disability and sexuality, in addition to gender, are relevant when assessing a woman's experience in armed conflict.²³

Although it is easy to generalise the impact of events that take place during armed conflict situations on women, thereby over-simplifying the issues and may be misinterpreting the impact on individual women. There are nonetheless, common experiences that one can possibly identify; however, due to the limitation of this work, the author will mention common experiences without going into details of the adverse impacts of armed conflict on women of different backgrounds.

Generally, during conflict women are particularly vulnerable; one of the reasons for this disproportionate impact of armed conflict on women is the endemic discrimination that they experience in all societies.²⁴ In fact in the Beijing Platform for Action it was said that '[w]hile entire communities suffer consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex.'²⁵ Therefore, inequalities that women experience globally in their day to day life are exacerbated by armed conflict, and even may lead to new forms of discrimination against them.²⁶

Notwithstanding the host of atrocities women suffer during conflict, they unfortunately persist in post conflict. For instance it is believed that, the presence of foreign militaries and UN peacekeepers has in some cases led to additional abuse of women and young people affected by conflict.

Since time immemorial violence against women, in particular sexual violence has been part and parcel of armed conflict. However, it is only in recent times that it has been

²³ Western Feminist have been criticised for attempting to 'essentialise' the experience of all women based on their gender, without regard to other factors that impact upon their lives. See C Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses', in C Mohanty (ed), *Third World Women and the Politics of Feminism* (1991) 51; and T Higgins, 'Anti-Essentialism, Relativism, and Human Rights', (1996) 19 *Harvard Women's LJ* 89

²⁴ Gardam & Jarvis (n 2 above) 20.

²⁵ Fourth World Conference on Women, Action for Equality Development and Peace, Beijing Declaration and platform for Action, UN Doc A/Conf.177/20(1995) [hereinafter Beijing Platform Action]

²⁶ As above n 3

somewhat rigorously documented.²⁷ Africa has not been an exception to these atrocities, there are many examples that demonstrate gender specific attacks on women; for instance, during the conflicts in Sudan there was gang rape of young girls in Darfur,²⁸ the insurgency in Cote d'Ivoire caused widespread insecurity marked by several cases of rape and indecent assault, girls as young as 12 were assaulted at gunpoint.²⁹ In other incidences women were sexually violated in their homes in the presence of their husbands.³⁰

The UN Special Rapporteur on the Elimination of Violence Against Women, Radhika Coomaraswamy, estimated that 72% of Sierra Leonean women and girls experienced human rights abuses during the war and that over 50% were victims of sexual violence.³¹ In Rwanda, there were reports of women being 'rescued' only to become sexual slaves or 'wives' of their captors during the 1994 conflict,³² and incidents of buying and selling of women among the interahamwe.³³

2.3 Amidst the Challenges Springs out Opportunity

Despite these gloomy realities women experience during armed conflict, some commentators are of the view that there are positive aspects that one can reap out of the

²⁷ S Brownmiller in her 1975 work, presents stark accounts of rape and other sexual atrocities committed during the two world wars, as well as the rape of women in conflicts in East Pakistan, and Vietnam. See S Brownmiller 'Against Our Will: Men, Women and Rape' (1975) 40-86

²⁸ L Abirafeh 'From Afghanistan to Sudan: How Peace Risks Marginalise Women' <http://www.fmreview.org/textOnlyContent/FMR/24/25.htm> (accessed on 20 August 2008). H Kenyan, 'Somalia: The Great Escape', in H O'Connell (ed) Women and Conflict (1993) 26.

²⁹ Women War and Peace Gender Profile of the Conflict in Cote d'Ivoire accessed from http://www.womenwarpeace.org/cote/docs/cote_pfv.pdf (accessed 13 August 2008)

³⁰ Human Rights watch 13 August 2007. 'Cote d'Ivoire: 'Peace Process Fails to address Sexual Violence' http://hrw.org/english/docs/2007/08/01/cotedi16558_txt.htm (accessed 13 August 2008)

³¹ R Coomaraswamy, 'Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women', Communication on Human Rights, 58th Session, Provisional Agenda Item 12(a), at 15, U.N. Doc.E/CN.4/2002/83/Add.2 (2002) <http://www.amnesty.org/en/library/asset/IOR41/007/2004/en/dom-IOR410072004en.html> (accessed on 23 August 2008)

³² Human Rights watch, Shattered lives Sexual Violence During the Rwandan Genocide and its Aftermath (1996)

³³ Human Rights Watch 'Sexual violence as a weapon of war' <http://www.hrw.org/reports/2002/drc/Congo0602-04.htm> (Accessed on 19 August 2008)

whole ordeal.³⁴ It is often argued that the new situation may allow women to move out of the realm of private, to assume responsibilities in the public sphere and develop independence and self-respect,³⁵ and it is also said that it may have a positive effect on some patriarchal societies.³⁶ It is this very opportunity for active participation presented to women, for decision making during reconstruction that this paper seeks to espouse.

It is worth noting that wars transform societies, they cause a complete disorganisation of a state. Thus, in peace-building and reconstruction during the post-conflict period it is only obvious that a complete reorganisation of the society is inevitable. At this point of reorganisation an opportunity should be seized to incorporate gender sensitive policies.

As it was pointed out before, women assume more roles in the public realm than they did before conflict. In post-conflict period, division between the 'public' realm (men's activities) and the private realm (women's activities) is usually blurred. For instance in camps for refugees or internally displaced persons, the public and private are inextricably linked. Issues for decision making (public realm activities/ men's activities) often centre on areas which are traditionally, of concern, to women in the private realm: Some of the examples are adequate food, housing, sanitation, education, health care facilities, and privacy to mention but a few.³⁷

In addition, women as well as men, find themselves having to take new roles in the camps.³⁸ In this way, camp life has provided women with a unique opportunity to organise, to act collectively, to participate in decision making and to advocate for

³⁴ Gardam and Jarvis (n 2 above) 51, see also, C Enloe, *The Morning After: Sexual Politics at the End of the Cold War* (1993) 61.

³⁵ O Bennet 'Arms to Fight Arms to Protect: Women Speak out about Conflict' (1995) 10-11 (in relation to women in El Salvador).

³⁶ H Kenyan (above n 28) 26

³⁷ 'Women's Right to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview.' A Research Study Conducted with the Support of the Government of Sweden. United Nations Centre for Human Settlements Land Management Series No. 9 at 33

³⁸ P Worby 'Organizing for a Change: Guatemalan Refugee Women Assert Their Right To Be Co-owners of Land Allocated to Returnee Communities.' Paper prepared for the Kigali Inter-Regional Consultation on Women's Land and Property Rights under Situations of Conflict and Resolution, February 16-19 1998.

changes and/or the implementation of policies that are in keeping with women's interests and needs.³⁹

As noted, even during armed conflict women take up roles that were traditionally or customarily proscribed from them. In light of armed conflict, many women become the sole heads of households; this is due to the fact that men are absent training for conflict or fighting on the front lines. During this period there are no restrictions to what women can and cannot do; they fulfil their traditional roles as well as that of men.⁴⁰

Consequently during armed conflict women are involved with activities such as, community decision making, subsistence farming, earning a livelihood, caring of children and the elderly and lastly, some women also participate in the battlefield. In Rwanda as a result of the war, women had to take up non-traditional roles such as managing the refugee camps and building their own communities.⁴¹ In Eritrea on the other hand, women comprised of 30% of the military forces as commandos, assault troops, tank and truck drivers, mechanics, doctors and teachers.⁴² In addition conflict provides women with an opportunity and reason to become more political, and participative in the political discussions.

³⁹ In most camps gender discrimination extends to the participation of women in planning and programming life in camps or other settlements. See Report of the representatives of the Secretary General. Mr Frances M Deng, Submitted pursuant to Commission on Human Rights Resolution 1995/57. E/CN.4/1996/52, 22 (February 1996) at par 54 <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/75550ee91a4fb1ff802566cc005c2c63?Opendocument> (accessed on May 2008)

⁴⁰ H Kenyan (n 28 above) 38

⁴¹ MV Geldermalsen, 'Women Breaking the Vicious Circle: A Gender Perspective on Cause and Effect in the Burundese and Rwandese Conflicts', Habitat Debate (1995) see also, B Sorensen 'Women and Post-Conflict Reconstruction: Issues and Sources' United Nations Research Institute for Social Development Program for Strategic and International Security Studies WSP Occasional Paper No. 3, June 1998 [http://www.unrisd.org/unrisd/website/document.nsf/0/631060b93ec1119ec1256d120043e600/\\$FILE/opw3.pdf](http://www.unrisd.org/unrisd/website/document.nsf/0/631060b93ec1119ec1256d120043e600/$FILE/opw3.pdf)

⁴² T Tekle, (2001) Women's Access to Land and Property rights in Eritrea', in Women's Land and Property Rights in Situations of Conflict and Reconstruction: Towards Good Practice. United Nations Development Fund for Women, a reader based on the February 1998 Inter-regional Consultation Kigali, Rwanda.

All in all, (as sadistic as it may sound) armed conflicts avail a woman with an opportunity to challenge the stereotypical perceptions of gender. A statement issued by the (Frente de Libertação de Moçambique) FRELIMO⁴³ Central Committee in 1972 epitomises the new light in which a woman is viewed after overcoming the hurdles of armed conflict:

“The... woman stands up as a political, armed element [of the struggle] ... but at the same time she presents herself as an agent of new ideas, through the mobilising work she is doing among the people, as well as by the very example of her own active presence, which is contributing to the eradication of many myths regarding the inferiority of women.”⁴⁴

Unfortunately, despite the capability of women to participate in decision making in post-conflict phase, their participation in decision making is curtailed in the post-conflict and reconstruction phase. Women are forced to resume their pre-conflict social roles, with only limited or circumscribed participation in the public life, decision making and committees that coordinate aid.⁴⁵

2.4 Importance of including women in Peace-Building and Decision Making in Post-Conflict in a Bid to Achieve Sustainable Peace

Miller and King have defined peace as “a political condition that ensures justice and social stability through formal institutions, practices and norms.”⁴⁶ Accordingly, they emphasize that for peace to be achieved and sustained there must be, a balance of political power among the various groups within a society, region, or, the globe; a sense of equality and respect, in sentiment and in practice, to mention but a few.⁴⁷

From the above view of sustainable peace it is obvious that there is a need to involve the participation of both women and men, of different age, race and ethnicity in the

⁴³ FRELIMO is a political party that was founded in 1962 to fight for Mozambican independence. It has ruled Mozambique from 1975 until the present day, initially as a single party, and later as the majority party in a multi-party parliament. <http://en.wikipedia.org/wiki/FRELIMO> (Accessed on 20 August 2008)

⁴⁴ S Arnfred, Lessons from Mozambique, *Agenda: A Journal about Women and Gender* 10 (1991) 45.

⁴⁵ Worby (n 38 above) 1 and Geldermalsen (n 41 above) 20

⁴⁶ Miller, and King (2003) *A Glossary of Terms and Concepts in Peace and Conflict Studies* University for Peace 29

⁴⁷ As above, 29-30

processes of peace-building and decision making as members of the various groups within the society. However, women have often been excluded in these processes, yet, their input is especially required in post-conflict situation since in conflict, they are affected and cope differently⁴⁸, thus they bring a varied experience to the peace processes.

Despite marginalisation, the UN Security Council Resolution 1325 recognised that women worldwide were playing a positive role in conflict resolution and peace-building. It acknowledged that peace cannot be sustained unless women have an active role in formulating political, economical and social policy and that without women full participation in peace process, there cannot be sustainable development in the reconstruction of societies.⁴⁹ In addition, article 142(b) of the Beijing Plat Form for Action stresses the importance of having women representatives in administrative structures and other positions in all relevant international bodies at the international, regional and national levels.⁵⁰ The importance of involving women is that it contributes to accessing the local communities in addressing other issues such as security.⁵¹ Rehn and Sirleaf further highlight that integrating women in the peace process ensures that the underrepresented member of society are represented at all levels of the peace building process.⁵²

⁴⁸ See Byrne, Bridget (1996) *Gender, Conflict and Development: Overview*. Brighton, UK: Institute of development studies 1

⁴⁹ This is contained in Resolution 1325 adopted by the Security Council on 31 October 2000 at its 4213 meeting.

⁵⁰ Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A / C O N F . 1 7 7 / 2 0 (1 9 9 5) and A / C O N F . 1 7 7 / 2 0 / A d d . 1 (1 9 9 5) www1.umn.edu/human/intee/e5dplw.htm (accessed 2 8 October 2008)

⁵¹ N Puechguirbal, 'Involving Women in Peace Processes: Lessons from African Countries (Burundi, DRC, Liberia and Sierra Leone)' in Karame, Kari *Gender and Peace Building in Africa*. NUPI

⁵² R Elizabeth and EJ Sirleaf , (2002) *Women, War and Peace: The Independent Experts' Assessment of Impact on Women and Women's Role in Peace-building* (New York UNIFEM) 10 file://D:\Conflict References\Gender studies\Women , War and Peace\UNIFEM - Women, War and Peace _ files\assessment.jpg (accessed on October 20 2008)

In Africa, it is suspected that the exclusion of women is connected to acute violent conflicts.⁵³ Therefore to achieve sustainable peace there is need to involve women and women organisations in the peace-building and decision making processes. The proponents of the need to increase women participation come to this conclusion through incorporating findings that improvements in the education and status of women stabilise and uplift the whole of society, that is, the situation of men, children, and women.⁵⁴ Documented research shows that women's situation is improved when there are more women involved in the decision making positions; for instance, it has been demonstrated that female Members of Parliament (MPs) to a higher extent than male MPs represent issues of particular concern to women.⁵⁵

Women's importance in peace-building can be shown also through the following example of women contributions in the Peace negotiations of Burundi a member of the Great Lakes region. With the help of UNIFEM, In July 2001, nineteen Burundian negotiating parties were convinced into accepting the need for the direct involvement of women in the peace process. This led to the first All Party Burundi Women's Peace Conference. Twenty-three of the women's recommendations presented to the facilitator, former South African president Nelson Mandela, were included in the final peace accord. As Noeleen Heyzer observed, 'precedent was set and the entire peace agreement benefited. Now, support for implementation remains the crucial challenge'.⁵⁶

As it has been noted, women form the bulk of survivors during post-conflict, thus to ensure their protection one sure way is by allowing their voices to be heard in terms of decision making from the grass-root level upwards. Because, if conflict is a result of different group's unequal access to political power, Kofi Annan suggests that, the logical conclusion is that democracy—inclusive democracy, not winner-take-all democracy—

⁵³ King (n 12 above) 31

⁵⁴ As above

⁵⁵ J Lovenduski & P Norris 'Westminster Women: The politics of presence' Political Studies (2004) <http://ksghome.harvard.edu/~pnorris/ Acrobat/Westminster%20women.pdf> (accessed 20 August 2008)

⁵⁶ See King (n 12 above) 41. See also N Heyzer, 'Women, war and peace: mobilizing for security and justice in the 21st century', Dag Hammarskjöld Lecture, 29 September 2004.

presents the opportunity for everyone to participate in the decisions that affect their lives.⁵⁷ Reducing unequal gender hierarchies could make a positive contribution to peace and social justice, and any security framework should be based on ungendered assumptions.⁵⁸

⁵⁷ K Annan, 'Peace and development—one struggle, two fronts', address to the World Bank, Washington, D.C., 19 October 1999

⁵⁸ JA Tickner, *Gendering World Politics: Issues and Approaches in the Post-Cold War Era* (2001) Columbia Press University, New York 36-64

CHAPTER 3: AFRICAN UNION MACHINERY FOR WOMEN PARTICIPATION IN PEACE-BUILDING AND DECISION MAKING

3.1 Introduction

The AU came into existence in 2001;⁵⁹ it replaced the Organization of the African Unity (OAU),⁶⁰ which was established in 1963. All African states are members of AU except Morocco which withdrew membership in 1984 following the recognition of Western Sahara by OAU (thus currently AU has 53 members). The AU is better structured to deal with conflict compared to its predecessor. This is because, unlike the OAU, the AU has both statutory authority and capacity to intervene in matters related to peace and security.⁶¹ Article 4(h) and (j) of the Act specify, the following rights:

‘The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances, namely: war crimes, genocide and crimes against humanity... the right of Member States to request intervention from the Union in order to restore peace and security.’⁶²

In recent years the AU has given increased attention to the position of women.⁶³ Particular attention has been given to women’s rights in times of conflict and their right of participation and role in development.⁶⁴ Originally, women had been ignored in democratic discourses thus they have not been part of decision making processes; it culminated in ‘their oppression and subordination in ... patriarchal societies’ and this has ‘...kept them outside the parameters of formal politics.’⁶⁵ In order to remedy the situation, international human rights law has to take necessary action to give effect to the principle

⁵⁹ Constitutive Act of the African Union CAB/LEG/23.15, entered into force 26 May 2001.

⁶¹ VK Holt and MK Shanahan ‘African Capacity-Building for Peace Operation: UN Collaboration with the African Union and ECOWAS (2005) www.stimson.org (accessed on 25 September 2008)

⁶² Constitutive Act (n 59 above) article 4(h) and (j)

⁶³ See for example, Decision on Women and Gender, CM/Dec.579 (LXXIII).

⁶⁴ R Murray Human Rights in Africa: From the OAU to the African Union (2004) 134.

⁶⁵ S. Tamale, ‘Towards Legitimate Governance in Africa: The Case of Affirmative Action and Parliamentary Politics in Uganda’, in Quashigah and Okafor (eds.), *Legitimate Governance in Africa* 235-62, at 235 and 236. See Rachael Murray, (above n 52) 135

of equality in favour of a group that has been disadvantaged (women).⁶⁶ In doing so caution must be taken to ensure that such measures taken in terms of international human rights are proportionate and necessary to achieve the equality.⁶⁷

The AU has recognised the role of women in decision making at all levels, it has called upon states 'to establish mechanisms for tripartism and social dialogue with all civil society groups, including women and youth, and to demonstrate their political will, commitment and positive attitude to social dialogue'.⁶⁸ In addition to this, the AU calls upon all member states to;

'take special measures to promote the participation of women in *political decision-making*, particularly in governments, Inter-African organisations, in national delegation participating in African meetings including peace and development process; enhance the status of women and build human and financial capacities of departments in charge of the promotion of women at all levels to enable them ensure implementation and follow-up of the African and Global Platforms for Action,'⁶⁹

Important to note is that the AU has also recognised the role women can play in conflict resolution, rehabilitation and peace-building;⁷⁰ it is believed that women's experiences as refugees and internally displaced persons, will assist in bringing new perspectives in the three mentioned areas that occur in post-conflict situations.

⁶⁶ Murray (n 64 above) 135. See also UN Human Rights Committee General Comment No. 18(37), 10 November 1989

⁶⁷ Murray (n 64 above) 136. See CEDAW, art. 4(1) and 7 CEDAW. See also M Russell and C O'Connell, 'Positive Action to Promote Women in Politics, Some European Comparisons', ICLQ 52 (2003) 587-614.

⁶⁸ Decision on the Report of the Secretary General on the Twenty Third Session of the OAU Labour and Social Affairs Commission (CM/2174(LXXII)), CM/Dec.535 (LXXII) para 13 www.chr.up.ac.za/hr_docs/african/docs/cm/cm33.doc (accessed on 20 May 2008)

⁶⁹ Decision on the Progress report of the Secretary General on the Efforts Played Towards Mainstreaming African Women's Concerns into Peace and Sustainable Development Processes Doc. CM/2117(LXX), CM/Dec.469(LXX).

www.achpr.org/english/Special%20Mechanisms/Women/Decision%20_%20progress%20report%20_%20African%20Women's...doc (Accessed on 20 August 2008)

⁷⁰ Report of the Secretary General on the Twenty-Second Ordinary Session of the OAU Labour and Social Affairs Commission, CM/Dec. 465 (LXX) 1999 para 11 www.chr.up.ac.za/hr_docs/african/docs/cm/cm33.doc (accessed on 23 May 2008).

Conclusively, one can say that the approach of the AU to the need of increasing of women participation in the processes of peace-building and decision making is that, women are a necessary component of peace, therefore one cannot have peace-building and decision making processes in post-conflict situations void of them.

3.2 An Overview of African Union Mechanism that Promote Women Participation in Decision Making in Post Conflict Situation

There are a number of instruments in the African system that facilitates the cause of women in post-conflict situation, especially in enhancing their participation in decision making. This is reinforced by the Solemn Declaration on Gender Equality adopted by African Heads of State and Government on 6 July 2004; where they made the following statement at the Third Ordinary Session of the AU Assembly in Addis Ababa

“[We reaffirm] our commitment to the principle of gender equality as enshrined in Article 4 (I) of the Constitutive Act of the African Union, as well as other existing commitments, principles, goals and actions set out in the various regional, continental and international instruments on human and women’s rights, including the Dakar Platform for Action (1994), the Beijing Platform for Action (1995), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)), the African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999); the Outcome Document of the Twenty-third Special Session of the United Nations General Assembly Special Session on the Implementation of the Beijing Platform for Action (2000); UN Resolution 1325 (2000) on Women, Peace and Security; and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003) ...”⁷¹

In the above statement we see that an international legislative framework is set, this will be crucial in directing the efforts of African states to ensure full and equal participation of women in all spheres of public life.⁷² The statement is useful in campaigning that a state enacts legislation that will ensure equality and development of women in decision making.

⁷¹ Solemn Declaration on Gender Equality adopted by African Heads of State and Government on 6 July 2004, Opening Statement, Paragraph 1.

⁷² K Koen ‘Claiming space Reconfiguring women’s roles in post-conflict situations’ (2006) 121 Institute for Security Studies <http://www.iss.co.za/pubs/papers/121/Paper121.htm> (accessed 21 September 2008)

Further, there are articles in the AU instruments that promote women participation in peace-building and decisions making after post-conflict situations, below are some of them:

Article 4(l) states that the AU Constitutive Act shall be guided by the following principle; 'Promotion of gender equality'. Peace-building and participation of women in decision making in post-conflict situation is closely linked to the right to equality. The above view was shared in the tenth anniversary of United Nations Transitional Assistance Group (hereinafter referred to as UNTAG) in Namibia. It was acknowledged that "... women have been denied their full role in these [peace] efforts, both nationally and internationally, and the gender dimension in peace processes has not been adequately addressed".⁷³ The declaration continues:⁷⁴

'Equal access and participation by women and men should be ensured in the area of conflict at all levels and stages of the peace process.'

UNTAG explained that peace is viewed as inextricably linked with equality between women and men. These are therefore affirmations, that equal access to 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. This is a particularly important aspect in reconstruction.

Therefore, article 4(l) is essential in ensuring that women are provided with equal access to and participation in decision making as well as involvement in all efforts of Peace building. It means that in the power structures and frameworks of post-conflict reconstruction, gender equality must be promoted.

Another article worth noting is 18(3) of the African Charter on Human and Peoples Rights (ACHPR) which states that

⁷³ Windhoek Declaration: The Namibia Plan of Action on 'Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations', Windhoek, Namibia, 31 May 2000.

⁷⁴ As above

'The state shall ensure elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in the international declaration and conventions.'

In the same vein as article 4(l) above, this article ensures that women are not sidelined in the peace building process as well as in taking part in decision making during post-conflict situations. More often than not peace agreements and UN resolutions set the tone of reconstruction of post-conflict societies; however, women experience discrimination firstly, in the processes of making the documents, and secondly in the language used in them, thus, thwarting women's influence in peace-building and decision making in post-conflict situations.

An analysis of the language used demonstrates that women are usually confined to the position of victims or to their biological fate. In turn this affects their participation in the public realm in that they are not accepted as autonomous individuals in the public arena.⁷⁵ Here are a few examples to illustrate the influence of language; in the Lomé Peace Agreement⁷⁶ that aimed at bringing peace to Sierra Leone, there was only one reference to women in the body of the text, it read: "Given that women have been particularly *victimized* during the war, special attention shall be accorded to their needs and potentials 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."⁷⁷

In addition, in the UN Security Council Resolution 1509 that was adopted on 19 September 2003 to create the UN Mission in Liberia (hereinafter referred to as UNMIL) it was stressed that the mission's mandate should pay "particular attention to *vulnerable* groups including refugees, returning refugees, and internally displaced persons, women, children and demobilized child soldiers".

⁷⁵ N Puechguirbal 'Gender and Peace Building in Africa: Analysis of some Structural Obstacles' in D Rodriguez and EN Togboa (eds) Gender and Peace Building in Africa, University for Peace.(2005)2.

⁷⁶ Signed in July 1999

⁷⁷ AE Jack (n 3 above). See also J Reno, "Women's strategies for peace: Gains and Losses in Sierra Leone", in Report on the Workshop on Conflict Transformation in Africa: African Women's Perspectives, Dakar, 23-26 May 2000, 74.

The above two examples are hardly the only ones, one may continue a long list of peace agreements that fail to recognise women as autonomous parties thus failing to facilitate their participation in peace building and decision making position in post conflict reconstruction. However, the two examples are sufficient to draw the picture.

In the first example, it is important to note that women are assigned the roles of keepers of the moral basis of the society, the family honour as well as the bearer of the cultural values of the community. Therefore, they are to behave according to a strict division of labour that encompasses all the tasks related to the home and the community.

In the second example, it is worth noting the underlining use of sex as a sociological variable at the same level as other variables: refugees and displaced persons are composed of men, women, boys and girls. This means that, by putting women in the same groups as the elderly, the handicapped and the children, one assumes that women constitute a minority sociological category in the same way as categories that are based on age, colour, religion, handicap, ethnic group. This very definition undermines the potential of women as independent actors with rights.

Additionally, women experience discrimination in the process of making the peace agreements, this is mainly due to the role of 'victim' they are limited to. Consequently, both the government and rebel movements dismiss their participation with the argument that making war and peace is men's work. In this respect women have had to fight their own battles to secure a seat at the peace table.⁷⁸ Therefore, article 18(3) is imperative to deal with the immense discrimination that women are faced with.

Furthermore, article 10(2)(c) of the protocol on the rights of women is also of great significance. It provides that;

'... parties shall take all appropriate measures to ensure the increased participation of women: in the local, national, regional, continental and international decision making structures to ensure

⁷⁸ Puechguirbal (n 75 above) 5. See also, M Fleshman, "African women struggle for a seat at the peace table", (2004) 16 *Africa Recovery*, United Nations Department of Public Information 15.

physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women.’

During post-conflict reconstruction there are many issues that need to be dealt with, this article calls for increased involvement of women. One may wonder what the implication of encouraging women participation is. In her article ‘What Difference does it make Gender as a Tool in Building Peace’, Mary Elizabeth King states that ‘a new perspective gaining recognition asserts that the empowerment of women is the only way to achieve lasting peace... At the core of such thinking... rests the concept that building sustainable peace requires the significant involvement of women and women’s groups.’⁷⁹ Increased participation of women is viewed as fundamental to expanding economic growth, improving health status, reducing poverty, sustaining the environment, and consolidating democracy in societies long bowed to authoritarianism and tyranny.⁸⁰ In conclusion, article 10(2)(c) is not only essential in promoting women participation in peace-building and decision making during post-conflict situations, but it is also important in ensuring a long lasting peace.

Last but not least it is important to note article 14(3) of Protocol Establishing the Peace and Security Council which states that:

‘Peace Building

Institutional Capacity for Peace-building:

- 3 To assist member states that have been adversely affected by violent conflicts, the Peace and Security Council shall undertake the following activities:
 - (a) Consolidation of peace agreements that have been negotiated;
 - (b) Establishment of conditions of political, social and economic reconstruction of the society and the government institutions;
 - (c) Implementation of disarmament, demobilisation and reintegration programmes including those of child soldiers;
 - (d) Resettlement and reintegration of refugees and internally displaced persons;
 - (e) Assistance to vulnerable persons, including children, the elderly, women and other traumatised groups in the society.’

⁷⁹ King (n 12 above) 31

⁸⁰ As above

As it was highlighted in Chapter 1, article 14(3)(e) makes a fledgling reference to gender-specific issues in post-conflict situations; in addition it uses the language that assigns woman the role of a victim. However, one may argue that with a positive interpretation, this provision could be used to address gender specific concerns and justice.⁸¹ It is the author's contention that this article is sufficient to enable women to rally for the promotion of participation of women in decision making positions during post-conflict situations and also in peace-building. However, Juma is of the view that unless this provision is given a positive interpretation it cannot address issues specific to gender needs and injustice.⁸² Her argument is that the provision does not provide for solutions to gender specific issues explicitly and thus one can only speculate.

I defer with Juma because of the essence of article 14(3)(e) which specifically addresses inequality through the empowerment of women and providing ways in which they can be more involved in decision making, thereby there is no need of speculation. For instance, in providing assistance to women as a vulnerable group, one is called upon to address the inequality that is exacerbated by conflict. In doing so, one can use this article to address the unequal and under-representation of women in decision making processes.

Generally, the above articles are samples that show that the AU system has provisions that can be utilised to advance the participation of women in decision making positions during post-conflict situations and also in peace-building.

3.3 The Applicability of the AU Framework in National Laws and Policies

In terms of International law, by joining the AU, member states unilaterally and collectively agreed to the applicability of AU agreements in domestic legal setting. By and large, this commitment translates in AU laws becoming or forming part of national laws. This approach resonates with international law. The applicability of international law as part of national law is a well documented debate.⁸³ Viljoen argues that in order for provisions of international human rights treaties to be applicable in a certain country, it

⁸¹ Juma (n 1 above) 3.

⁸² As above

⁸³ See J Dugard International Law A South African Perspective (2005) 47-54

will depend on the status enjoyed by international law in that domestic legal system.⁸⁴ Usually a state may follow the monist or dualist legal theory; a monist state is one whereby international treaties become part of national law once a state has ratified the treaty concerned, thus there is no need for any act of adoption by the courts or transformation by the legislature.⁸⁵ In dualist states on the other hand, international norms, in principle, need to be domesticated before they become part of the national law.⁸⁶ However, it has been noted that there is a lack of consistency, regularity and uniformity in the application of these theories.⁸⁷

Under the monist theory, it is maintained that international law is not a foreign law;⁸⁸ however, it is generally accepted that the whole body of international law binding a state cannot be applied by national court directly.⁸⁹ Thus, there has been an emergence of the 'harmonization theory' which holds that in case of conflict between international law and national law a judge must apply his own jurisdictional rules.⁹⁰ Therefore, customary international law is to be applied directly as part of the common law, but the conflicting statutory rules and acts of state may prevail over international law. Consequently, 'harmony' is achieved between international law and national law. However, in a dualist state it is less certain what the status of customary international law is, though it may be assumed that, as in the common law tradition, custom automatically becomes part of national law.⁹¹

In a significant Kenyan case, *Mary Rono v Jane Rono and another*⁹², the Court of Appeal indicated that the rigid distinction between the monist and dualist theories, which

⁸⁴ F Viljoen 'International Human Rights Law in Africa' (2007) 530

⁸⁵ Dugard (n 83 above) 47

⁸⁶ As above

⁸⁷ Viljoen (n 84 above) 530. See also O Tshosa, 'National Law and International Human Rights Law. Cases of Botswana, Namibia and Zimbabwe' in Aldershot: Ashgate (ed) (2001) 270.

⁸⁸ Dugard (n 83 above) 47

⁸⁹ As above.

⁹⁰ DP O'Connell International law (1970) 44 45; H Booysen Volkereg en Sy Verhouding tot die Suid Afrikaanse Reg (1989) 68 69. See also Dugard (n 83 above) 48

⁹¹ Viljoen (n 84 above) 531.

⁹² *Mary Rono v Jane Rono and another*, Civil Appeal 66 of 2002, Court of Appeal at Eldoret, Judgement of 29 April 2005. See Viljoen (n 84 above) 535.

are associated with civil and common law jurisdictions respectively, is no longer tenable.⁹³ In this case, the court stated that, 'the current thinking of common law theory is that both international customary law and treaty law can be applied by state courts where there is no conflict with existing state law, even in the absence of implementing legislation.'⁹⁴ In casu, the court directly applied an unqualified equality provision in CEDAW to arrive at a decision which was at odds with domestic law, thus giving CEDAW direct effect in a nominally 'dualist' constitutional order.⁹⁵

Taking a look at how this translate in terms of the African system, it is imperative to take cognisance of the fact that all AU members have ratified the ACHPR which entered into force in 1986.⁹⁶ However, Nigeria is the only dualist state that has domesticated the Charter. This was done in 1990 when Nigeria adopted the African Charter on Human and Peoples' rights (Ratification and Enforcement) Act,⁹⁷ The domesticating provision of the Act stipulated that the provisions of the African Charter, which are attached in a schedule to the Act, 'have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.'⁹⁸

The other African states are able to demonstrate that they have given effect to the AU human rights treaties by way of legislation. States have also been able to do this by way of reports submitted in terms of their treaty obligations. For instance they show that their Constitutions give rights that correspond to relevant Charter provisions.⁹⁹

⁹³ As above

⁹⁴ As above

⁹⁵ As above

⁹⁶ The Charter was drafted in Banjul in the Gambia, and has thus also come to be known as the Banjul Charter.

⁹⁷ Laws of Federation, 1990, ch 10

⁹⁸ As above art 1

⁹⁹ Viljoen (n 84 above) 537. An example is Lesotho's 'Initial Report on the Implementation of the African Charter on Human and Peoples' Rights' (August 2000) where s 4(1) of its constitution was cited as reflective of art 2 of the Charter (non-discrimination), s 5 as being in conformity with article with art 4 (life), and s 8 as giving effect to art 5 (torture); and further invoke national law and case-law as evidence of national 'transformation'.

In the case of Mozambique, its Constitution states in terms of article 17(2) that; 'The Republic of Mozambique shall accept, observe and apply the principles of the Charter of the United Nations and of the Charter of the Organisation of African Unity', from this one may deduce that in terms of the Mozambican jurisprudence, it is constitutionally obliged to apply the principles of the ACHPR since it replaced the OAU, in terms of which the Mozambican Constitution had acknowledged its applicability in Mozambican law.

To be sure, article 18 of Mozambican Constitution stipulates that, validly approved and ratified International treaties and agreements shall enter into force in the Mozambican legal order once they have been officially published and while they are internationally binding on the Mozambican State. In addition, article 18(2) highlights the fact that norms of international law shall have the same force in the Mozambican legal order as have infra-constitutional legislative acts of the Assembly of the Republic and the Government, according to the respective manner in which they are received.

In light of the foregoing, it is clear that in terms of Mozambican law, the state has the responsibility of honouring in their national law all the international treaties and agreements that it has ratified. Therefore, it is safe to assume that in Mozambique women can claim the rights provided in the AU system that promote their participation in peace-building and decision making process, especially the ones that were elaborated above.¹⁰⁰

In the case of Rwanda, it's Constitution in article 190 states that, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws upon their publication in the official gazette.¹⁰¹ This means that in Rwanda, women can rally for the rights in the AU system since Rwanda has adopted the ACHPR and its Protocols on the rights of women as well as for Peace and Security.

¹⁰⁰ Mozambique ratified the Constitutive Act of the African Union on 17 May 2001, it ratified the Protocol on the Peace and Security Council on 20 May 2003 and it ratified the Protocol on the Rights of Women on 9 December 2005.

¹⁰¹ Organic law is a law or system of laws which forms the foundation of a government, corporation or other organization's body of rules. A constitution is a particular form of organic law for a sovereign state. Rwanda will be bound except in the case of non compliance by one of the parties.

In sum, the AU human rights law especially provisions which are concerned with the rights of a woman is applicable in the national states of member states which either apply them directly in monist states or after enacting national legislation that is in the case of dualist states.

3.4 The Significance of the AU Framework in Promoting Women Participation in Decision Making in Post Conflict Situations and Peace Building

The commitments that African states have set for themselves in terms of the African regional system, have little effect if governments on the continent do not give expression to them and ensure that women can participate in peace and reconstruction processes. It is common in countries that are either experiencing conflict or those that are not to find that institutional mechanisms that favor women participation in spheres of public life are weak or poorly implemented.¹⁰² The reason for this is that State machinery and mechanisms that should be in place to give effect to women's empowerment are usually not sufficiently resourced, and the policies and programmes are not integrated. Most African states have established machinery, either in the form of ministries or departments, to oversee government initiatives for the empowerment of women.¹⁰³

The various machinery that are responsible in overseeing government initiatives for the empowerment of women are often mandated with the duty of monitoring the domestication and implementation of legislation giving effect to these right-based instruments. And due to their important role, in Addis Ababa in October 2004, at the ten-year review of the Beijing Declaration and Platform for Action, considerable concern was raised about the performance of these machineries. In particular it was noted that their capacities to spearhead the women's rights agenda are extremely limited owing to severe (and often disproportionate) cuts in budget allocation and human resources.¹⁰⁴

¹⁰² Koen (n 72 above) 8

¹⁰³ As above

¹⁰⁴ S Mukasa, Challenges of domestication: The Protocol to the African Charter on People's and Human Rights, www.pambazuka.org (28 September 2008).

In conclusion, regardless of the setbacks that face the implementation of the framework provided by the AU, to promote the participation of women, the important thing is that they are available for member states to utilise. Member states should be encouraged to comply with their commitments which will make the AU highly effective in providing an arena for women participation in decision making position during post conflict situations and peace building.

CHAPTER 4: AN ANALYSIS OF MOZAMBIQUE AND RWANDA IN THEIR EFFORTS TO INCREASE THE PARTICIPATION OF WOMEN IN PEACE-BUILDING AND DECISION MAKING AFTER POST CONFLICT SITUATIONS

4.1 Introduction

This chapter looks at two African states that have an outstanding percentage of women in decision making positions yet they have both had a fairly recent history of conflict. Firstly, an analysis of Mozambique will be made, whereby its conflict past will be discussed and then its post-conflict situation will be put into perspective and the reasons for its success in providing women with opportunities in decision making. Secondly, Rwanda's history and genocide will be discussed, then the author will analyse the steps that have been taken in post-conflict Rwanda to include women in peace-building and decision making processes. In both of these countries the author will demonstrate how the AU mechanisms have been utilised and in some cases both countries have done more than the minimum threshold set in the AU.

The aim of chapter 4 is to explore how both Rwanda and Mozambique have been effective in creating the best framework that African states can adopt in post-conflict situations with the help of the AU framework. In essence, chapter 4 will highlight successful best practices from Mozambique and Rwanda which can be used as frameworks to enhance the participation of women in peace-building and decision making processes in post-conflict societies.

4.2 Mozambique

4.2.1 Historical Background

Present day Mozambique was only defined in 1885 during the Berlin Conference. By nineteenth century, Portuguese explorers had reached Mozambique. They settled and established a degree of control over the country. However, in 1960's colonial revolts were staged by dissatisfied African's. In 1962 an anti-colonial struggle group-FRELIMO was formed, headed by Eduardo Mondlane. A guerrilla war was launched in 1964, FRELIMO rapidly gained control of territory in the North, set up liberated zones, where

new political and social structures were established.¹⁰⁵ Consequently, Mozambique gained its independence on 25 June 1975 with FRELIMO becoming the ruling and only party.

In power, FRELIMO gave support to African National Congress (ANC) and Zimbabwean liberation movements. In retaliation, the governments of first Rhodesia and later apartheid South Africa fostered and financed an armed rebel movement in central Mozambique called the Mozambican National Resistance (RENAMO). RENAMO destabilized the newly independent Mozambique. A civil war erupted, millions of Mozambicans perished, many took refuge in neighbouring states, and others were internally displaced.

In 1983 President Samora Machel conceded the failure of socialism and the need for major political and economic reforms in Mozambique. In 1986 he died, and was succeeded by Joaquim Chissano, who began peace talks with RENAMO. A new constitution was enacted in 1990, it provided for a multi-party political system, market-based economy, and free elections. In October 1992 the civil war ended, and by mid-1995 more than 1.7 million Mozambican refugees returned, it is the largest repatriation witnessed in Sub-Saharan Africa. In addition, approximately 4 million internally displaced people returned to their areas of origin.

4.2.2 An Analysis of Women Decision Making in Post-Conflict Mozambique

The two decades of conflict affected Mozambicans immensely. On a positive note, the experience of being displaced and living in different countries broadened people's experiences and in some instances led to changes in existing gender divisions of labour.¹⁰⁶ After independence a number of concessions were made for women interests,

¹⁰⁵ S Baden, 'Post-conflict Mozambique: Women's special situation, Population Issues and Gender Perspectives: to be integrated into skills training and employment promotion Report of a consultancy for the Action Programme on Skills and Entrepreneurship in countries emerging from armed conflict International Labour Office (Geneva)' (1997) Bridge Development Gender <http://www.bridge.ids.ac.uk/reports/re44c.pdf> (accessed 10 August 2008)

¹⁰⁶ As above

for instance the representation of women on lower local decision making was ensured. By 1977 women made up 28 percent of the local government and 12 percent of national ones.¹⁰⁷

The increased involvement of women in decision making was a result of a modernizing revolution.¹⁰⁸ After the civil war, FRELIMO won a majority in the parliamentary elections;¹⁰⁹ it had a long commitment to women's emancipation. In 1973, FRELIMO's leader Samora Machel stated that 'The liberation of women is a fundamental necessity for the revolution, the guarantee of its continuity and the precondition for its victory.'¹¹⁰ During the revolutionary rule of FRELIMO, only one women's organization existed in Mozambique, the Organization of Mozambican Women (OMM), it did not arise as an autonomous initiative of women, but rather, an expression of FRELIMO's will to liberate women. However, today women have transformed from being mobilized by FRELIMO for the purpose of achieving the nationalist and socialist goals of the party to organizing themselves for feminist political change within an active and growing women's movement. It important to note that active participation of women organization has contributed positively for the participation of women in decision making processes.

In post-conflict elections, there was a significant cut of FRELIMO's representation in parliament due to the rise of democracy.¹¹¹ Thereby, FRELIMO cannot take sole credit for the increase in women in decision making position during post-conflict Mozambique, although it played a significant role. The increase of women in decision making position after the end of Mozambique's 12 year civil war may be explained by the process of

¹⁰⁷ G Geisler Women and the Remaking of Politics in Southern Africa, in Nordiska Afrikainstitutet (ed) (2004) 113

¹⁰⁸ S Baden (n 101 above)

¹⁰⁹ As above

¹¹⁰ K Sheldon 'Women and revolution in Mozambique: A luta continua' in Women and revolution in MA Teatreault (ed) Africa, Asia, and the new world (1994) 33 61.

¹¹¹ The first elections to be held in Mozambique were in 1994, FRELIMO won and the opposition RENAMO acknowledged the results. The second elections in 1999 FRELIMO won with 52.3 percent, and its representation in parliament was significantly curtailed. It secured 133 seats out of the 250. The main opposition party RENAMO won the remaining 117 parliamentary seats. http://en.wikipedia.org/wiki/Elections_in_Mozambique (accessed on 10 October 2008)

democratization which led to the adoption of new institutional, electoral, and party rules that facilitated greater levels of women's political representation.¹¹²

Paramount in these regulations is the Constitution of the Republic of Mozambique;¹¹³ it is the supreme law in Mozambique. The Constitution contains articles that promote and protect the right of women to participate in decision making. For instance article 6 states that;

'All citizens are equal before the law, enjoy of the same rights and are subject to same obligations, regardless of colour, race, gender, ethnic origin, place of birth, religion, level of education, social and civil status of parents or profession.' Emphasis added.

Further, article 67 states that

'Women and men are equal before the law in all domains of economic, social, political and cultural life.'

The above two article resonate with the rights in article (3)1 ACHPR¹¹⁴ which Mozambique ratified in 1989, as well as CEDAW¹¹⁵ which Mozambique ratified in 1993.¹¹⁶ Further, the two articles highlight one of the principles of AU, namely, to promote gender equality.¹¹⁷ As explained above, equality is an important element in both

¹¹² T Konate, and CL Morna. 'Electoral gender quotas—sub-Saharan Africa.' Unpublished manuscript <https://myweb.space.wisc.edu/atripp/PS660/Tripp2005.pdf>. See also MM Hughes 'Understanding the Positive Effects of Civil War on Women's Parliamentary Representation.' Paper presented at the 102nd American Sociology Association Annual Meeting, August 11-14. http://www.sociology.osu.edu/people/mmh/conflict_paper.pdf (accessed on 10 October 2008)

¹¹³ Adopted on 2 November 1991

¹¹⁴ Article 3(1) of ACHPR provides that, 'every individual shall be equal before the law,

¹¹⁵ Article 2(a) of CEDAW provides that, 'States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means ... (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.'

¹¹⁶ It was adopted through resolution n° 41/93 of the Mozambique's Parliament, dated June 2, 1993, which entered in force on May 16, 1997.

peace-building and participation of women in decision making processes.¹¹⁸ The denial of equal participation leaves a lot at stake in that a substantial group of the post-conflict society is marginalized and these issues are not adequately addressed.

Articles 6 and 67 of the Mozambican Constitution ensure that the right for women to claim and participate in decision making like their male counterparts is protected, thereby discrimination on grounds of 'sex' is outlawed. These articles advocate for formal equality which means sameness of treatment, rather than substantive equality.¹¹⁹ Ultimately all that is required to achieve equality is that all persons are equal bearers of rights, thus inequality is viewed as a deviation that can be eliminated by extending same rights and entitlement to all in accordance with the same 'neutral' norm or standard of measurement.¹²⁰ The main importance of this approach to equality is that it ensures formal equality for women.

However, the above articles alone cannot address the need of accelerating the participation of women in decision making positions given the systematic discrimination that Mozambican women have suffered in all aspects of social life.¹²¹ Consequently, there is a need to achieve substantive equality.

¹¹⁷ Article 4(l) provides that 'promotion of gender equality' is one of the principles of the AU.

¹¹⁸ Look at section 3.2 of this thesis

¹¹⁹ For instance, on a formal conception of equality, equality is achieved when all children are educated according to the same school curriculum. Substantive equality however, would require equality of outcome. If children with disability (for example deaf children) undergo the same school programme as other children they may very well be receiving an education that is inadequate for their special needs. To realise the right to equality of such children it may therefore be necessary to treat them differently to everyone else. T Loenen 'The Equality Clause in the South African Constitution: Some Remarks from a Comparative Perspective' (1997) 13 SAJHR 410 405. See also, I Currie & J de Waal *The Bill of Rights Handbook* (2005) 233

¹²⁰ I Currie & J de Waal (As above) 233

¹²¹ Examples of discrimination Mozambican women have suffered in social life include; In terms of commercial law, until 2005 when revision of this law was approved, the operating law in force in Mozambique was one that was dated from 1888, it contained provisions that contradicted principles of gender equality; According to it a married woman could only engage in commercial activity only when allowed by her husband. Another example, is in terms of the right to property and subsequent use of it and availability of it to its owners (Article 1305 of the Mozambican Civil Code), there shouldn't be any discrimination against women. In case of single women, the widowed and divorced, the law is complied with. But when dealing with women married in communion of goods, the law defines that both themselves and

Therefore, in terms of article 57 of the 1999 Constitution it is stated that 'The State shall promote and support the emancipation of women, and shall act to improve the role of women in society.' This article calls for affirmative action in order to speed up the equality gap between the women and men. Mozambique ratified the ACHPR Protocol on the Rights of Women;¹²² therefore, through article 57, Mozambique is honouring its obligation under article 9 of the Women's protocol to take affirmative action in order to promote the participation of women in political and decision making process. The article provides that;

- '1. States parties shall take specific positive action to promote participative governance and the equal participation of women in political life of their countries through affirmative action, enabling legislation and other measures to ensure that...
 - (b) Women are represented equally at all levels with men in electoral processes...
4. States parties shall ensure increased and effective representation and participation of women at all levels of decision-making.'

In addition in terms of article 4 of CEDAW of which Mozambique is party to, state parties are called upon to take special measures aimed at accelerating de facto equality between men and women. Thus, Mozambique is in line with its obligation under CEDAW too.

Affirmative action means preferential treatment for disadvantaged groups of people.¹²³ An affirmative action program will entail a member of a disadvantaged group being preferred for the distribution of some benefits over someone who is not of that group; usually the grounds of preference are race and gender.¹²⁴ In this case Mozambique is challenged by the instruments by which it is party too as well as its own Constitution to take appropriate actions to increase the participation of women in decision making. This is a challenge that Mozambique is responding to head-on, given the record that it has up to date.

their husbands need each other's signatures to do away with (sell) property. But in practice, the law more demands the authorization of male spouses, even in case of a marriage that is not with the communion of goods.

¹²² The protocol was adopted in 2005, Mozambique ratified it on 9 December 2005

¹²³ I Currie & J de Waal (n 119 above) 264

¹²⁴ As above

Further, In view of taking the challenge of implementing affirmative action programs, the Mozambican government program for 2005-2009, which was approved by the Parliament, states that Mozambique has committed itself to strengthening of the participation of women and women organizations affording them opportunities in political, economic, social and cultural life through positive discrimination.¹²⁵ Therefore, women are able to boost their participation in decision making through this affirmative action initiative.

Currently, Mozambique uses the most common and effective measure to achieve an increased number of women in decision making; this is the electoral quota system.¹²⁶ Gender quotas are viewed as important policy tools to increase women's access to decision-making bodies. Mozambique offers Voluntary Party Quotas (VPQ); this is where a minimum target of women candidates in political parties is set.¹²⁷ VPQ's are not legal quotas but voluntary adoption of quotas by a political party.¹²⁸ VPQ' are an affirmative action measure in that they seek to redress the gender inequalities, through increasing the representation of the disadvantaged group in this case women. The statutes of the two major parties, FRELIMO and RENAMO stipulate a target of 30% for the participation of women, which has been respected and sometimes even exceeded in the list of candidates and in the composition of the two benches in Parliament.¹²⁹

¹²⁵ Programa Quinquenal do Governo para 2005-2009. (Aprovado pela Resolucao no. 16/2005, de 11 de Maio, da Assembleia da Republica, publicada no Boletim da Republica no. 19, 1^a Serie).

¹²⁶ Mozambique has Political Party Quota for electoral candidates <http://www.quotaproject.org/country.cfm> (accessed on 12 August 2008).

¹²⁷ J Ballington 'strengthening Internal Political Party Democracy: Candidate Recruitment for a Gender Perspective.' Paper presented at EISA/NIMD workshop on How to Strengthen Internal Party Democracy? At the World Movement for Democracy: Third Assembly, Durban, South Africa, 2 February 2004. <http://www.idea.int/gender/upload/JB%20-%20WMD%20PP.pdf> (Accessed 21 August 2008) 7

¹²⁸ As above

¹²⁹ Shadow report to the 'First National Report on the Implementation of the Convention on the Alimination of all Forms of Discrimination Against Women- CEDAW.', 2003. Submitted to the CEDAW Committee's 38th Session, May-June 2007. <http://www.iwraw-ap.org/resources/pdf/Mozambique.pdf> (Accessed on 20 August 2008) 25

FRELIMO took the decision to have a quota system for the representation of women in 1992, during its 6th Congress.¹³⁰ It decided to offer 30 percent keeping with the quota stipulated by Southern African Development Community (SADC).¹³¹ However, the gain of the quota system was not achieved without a struggle; in that during the transitional period Mozambique like South Africa experienced great pressure on their political parties from women activists and women organizations.¹³² In Mozambique the Women NGOs included, OMM, MULEIDE, Forum Mulher, GEDLIDE Institute to mention but a few, they started to challenge the gender imbalances in the society, claiming for a more active participation by women to have more access to decision making bodies.¹³³ Eventually it bore fruit through the adoption of VPQ's, today women make up 34 percent of the parliamentary members in Mozambique making it the country with the third highest position in the world.¹³⁴

It is important to note that the use of quota systems has become a common way of securing women representation in post-conflict states.¹³⁵ Examples of post-conflict states that have used quota systems like Mozambique are; Afghanistan, Bosnia, Herzegovina, East Timor, Kosovo, Rwanda and South Africa.¹³⁶ Quota systems are preferred because when they are properly implemented and enforced they guarantee women representation in decision making bodies especially the parliament.¹³⁷ For instance out of the 15 countries with the highest number of women in parliament, 12 use quota systems of some sort.¹³⁸

¹³⁰ A Abreu 'Enhancing Women's Participation in Electoral Processes in Post-Conflict Countries Experiences from Mozambique' <http://www.un.org/womenwatch/osagi/meetings/2004/EGMelectoral/Inf4-docs.PDF> (accessed on 23 August) 6

¹³¹ The SADC Plan of Action <http://www.sadc.int/index/browse/page/63> (accessed on 25 August 2008)

¹³² Ballington (above n 127) 8

¹³³ Abreu (above n 130) 4

¹³⁴ <http://www.quotaproject.org/country.cfm> (accessed on 21 August 2008)

¹³⁵ Ballington (above n 127) 14

¹³⁶ Above n 130

¹³⁷ Ballington (above n 127) 11

¹³⁸ Above n 134

In conclusion, Mozambique has taken innovative measures which have ensured that women have a place in decision making, in its post-conflict period. This is a positive achievement which should be considered when creating a framework for best practices for increasing the participation of women in peace-building and decision making processes in post-conflict countries.

4.3 Rwandan

4.3.1 Historical Background

There are three social groups in Rwanda which existed even in pre-colonial times; Hutu, Tutsi and Twa- united by a common language, religion, and cultural traditions.¹³⁹ Currently the population of Rwanda 8.8 million¹⁴⁰: the majority Hutu comprises eighty-five percent of the population, the minority Tutsi comprises fourteen percent, and the indigenous Twa are less than one percent.¹⁴¹ In pre-colonial times the cattle-owning Tutsi were politically dominant over the predominantly agriculturalist Hutu and at times they were distinguishable by their physical features. Pre-colonial Rwanda was far from perfect; nevertheless, there never existed conflict that resembled the Hutu and Tutsi 'inter-ethnic' clashes.¹⁴² However, it is true to say that there existed dissatisfaction with Tutsi feudal lords at the time.¹⁴³

¹³⁹ Des Forges, 'Human Rights Watch, Leave None To Tell The Story: Genocide in Rwanda' (1999) 31 34 at <http://www.hrw.org/reports/1999/rwanda/> (accessed on 30 September 2008).

¹⁴⁰A Boddy-Evans 'Reducing Rwanda's Population (Not by Genocide This Time)' <http://africanhistory.about.com/b/2007/02/14/plans-to-reduce-rwandas-population-not-by-genocide-this-time.htm> (accessed on 6 October 2008).

¹⁴¹ C Mgbako, 'Ingando Solidarity Camps: Reconciliation and Political Indoctrination in Post-Genocide Rwanda' (2005) 18 *Harvard Human Rights Journal* 204.

¹⁴² Lambourne, W 'Post-Conflict Peace Building: Meeting Human Needs For Justice and Reconciliation.' *Peace Studies Journal* <http://www.peacestudiesjournal.org.uk/docs/PostConflictPeacebuilding.PDF> (accessed on 20 August 2008)

¹⁴³ J Pottier, 'Re-imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century' at 112 (2002). See Mgbako (n 141 above) 204

Rwanda was colonized by Belgians who codified the identities of Hutu and Tutsi into 'racial hierarchies'.¹⁴⁴ Belgians favored the Tutsi elite giving them colonial administrative work and access to education but discriminated against the Hutu, thus strengthening the Hutu resentment of the Tutsi that had developed in pre-colonial times.¹⁴⁵ In 1962 Rwanda gained its independence, slightly before this time, the Belgians had begun to support reversal of the 'racial hierarchies' they had initiated.¹⁴⁶ But this was a little too late since there was already deep rivalry between the Hutu and Tutsi groups, which led to a series of Tutsi massacres in 1959. Consequently, thousands went into exile in neighboring countries, such as Burundi, DRC, Uganda and Tanzania.¹⁴⁷ Between 1959 and 1994, there was immense discrimination and erratic massacres against the Tutsi.¹⁴⁸

As refugees, Tutsi suffered marginalization thus carried a strong desire to return home. In 1988, Rwandese Patriotic Front (RPF) a rebel army was formed.¹⁴⁹ The RPF attacked Rwanda from 1990 to 1993, ending in the 1993 power-sharing agreement between the Rwandan government and the RPF.¹⁵⁰ Unfortunately, after the 1993 Arusha Peace Accord some extremist within the Rwandan government fearing that they were losing their grip on political power undermined the peace agreement and organized for the genocide.¹⁵¹ The 1994 genocide of the Tutsi and massacre of opposition Hutus is said to have recorded the highest number of killings within the shortest and fastest pace in the 20th Century. One comes to this conclusion after comparing the Rwandan genocide with the holocaust perpetrated by the Nazi regime against the Jews in Germany and the event of the Second World War.¹⁵² It is believed that around 800,000 to 1,000,000

¹⁴⁴ Lambourne, (n 142 above) 322 see also Pottier (above n 139) 112 and Mgbako (above n 137) 204

¹⁴⁵ Lambourne (as above)

¹⁴⁶ Forges (above n 139) 38

¹⁴⁷ Mgbako (n 141 above) 204. See also, Lambourne (n 138 above) 322.

¹⁴⁸ Lambourne, (n 142 above)

¹⁴⁹ Forges (n 139 above) 48

¹⁵⁰ As above 59-64

¹⁵¹ As above 125-29

¹⁵² See J Ravinder 'Genocide in Rwanda: the root causes' (1997) 3 *East African Journal of Peace and Human Rights* 51. See also President P Kagame 'Conflict resolution in Africa: the case of Rwanda'. (6 March 2003) Speech delivered at the Baker Institute, Houston.

people were killed within a pace of approximately three months in the Rwandan genocide.¹⁵³

4.3.2 An Analysis of Women in Decision Making in Post-Conflict Rwanda

The current women's parliamentary success in Rwanda has generated increasing attention from both scholars and activists.¹⁵⁴ Only 14 years after the genocide, today Rwanda is hailed for having the highest percentage of women in parliament and other decision making position in government; women make 56.25 percent of the members in the parliament,¹⁵⁵ thus making it the leading state in the world to have such a percentage.¹⁵⁶ There are hosts of reasons that may have attributed to such an increase of the number of women in decision making position in post-conflict, which will be discussed below.

It is worth noting that the participation of women in the Rwandan conflict is not of great significance, because the number of female fighters was minimal especially when one considers those that were part of the guerillas that put an end to the genocide.¹⁵⁷ It is thus imperative when one is researching on women in Rwanda, to focus on the role of

¹⁵³ According to K Kindiki, referring to UD Doc E/CN.4/1994/7 (1994) para 24, the exact number of those killed in the genocide is yet unknown. See K Kindiki, 'Prosecuting the perpetrators of the 1994 genocide in Rwanda: its basis in international law and the implications for the protection of human rights in Africa'. (2001) 1 African Human Rights Law Journal 64

¹⁵⁴ C Jane 'From Rwanda's ashes, women are building a new' (2000) Women's E-news. Cambridge , E Jodi 'Women take lead in reconstruction of Rwanda.' <http://www.womensenews.org/article.cfm?aid=290>, (accessed 30 September 2008). G Hamilton & Heather B 'Rwanda's women: The key to reconstruction.' <http://www.jha.ac/greatlakes/b001.htm> (30 September 2008). See also, M John 2005 'Strategies for increasing women's participation in government.' Expert Group Meeting on Democratic Governance in Africa. Nairobi, Kenya, 6-8 December 2005. See also, S Helle 'Women's representation in the Rwandan parliament—an analysis of variations in the representation of women's interests caused by gender and quota.' (2005). See also P Elizabeth 'Women in Parliament Beyond Numbers. Case Study: Rwanda. Rwanda: Women hold Up Half the Parliament' The Institute of International and Electoral Assistance <http://www.idea.int/publications/wip2/upload/Rwanda.pdf> (accessed 20 October 2008)

¹⁵⁵ Rwanda Sets a World Record for Women In Parliament' <http://www.awid.org/eng/Issues-and-Analysis/Library/Rwanda-sets-world-record-for-women-in-parliament> (accessed on 19 October 2008)

¹⁵⁶ As above

women and women's groups in the aftermath of the genocide. Directly after the genocide, Rwanda saw an increase in the numbers of women's associations.¹⁵⁸ The associations received much support in terms of international aid. The associations developed at both the grass-roots and national levels.¹⁵⁹ In 1997, more than 15,400 women's organizations were operating in Rwanda.¹⁶⁰

Apart from the obvious big numbers of the organizations, women and women's organizations played important roles throughout the rebuilding process.¹⁶¹ Some of the examples include, the 1994 contribution by a women's association called Pro-Femmes/Twese Hamwe a women's organization. Under the umbrella of this pre-existing organization of women's associations, women drafted a document addressing Rwanda's post-conflict problems and suggested methods in which women could foster reconciliation.¹⁶² In 1998 women served as mediators and civilian authorities to effectively end the ongoing insurgency in northern Rwanda.¹⁶³

In addition to the above, women contributed in the building up to the new constitution adopted in 2003, for example Pro-Femmes/Twese Hamwe served as a key advocate for women by eliciting suggestions from women at the grass-roots level, meeting with the state gender machinery, making recommendations to ensure that the constitution increased women's political representation, and then lobbying for constitution's adoption.¹⁶⁴ The incorporation of women's associations into the reconstruction effort facilitated the adoption of political factors that further empowered women.¹⁶⁵

¹⁵⁸ MM Hughes 'Understanding the Positive Effects of Civil War on Women's Parliamentary Representation' http://www.allacademic.com//meta/p_mla_apa_research_citation/1/8/4/3/7/pages184371/p184371-1.php (accessed on 20 August 2008), See also, P Elizabeth (above n 139)

¹⁵⁹ Hughes (above n 158)

¹⁶⁰ N Catharine & H Baldwin 'Aftermath: Women's organizations in post-conflict Rwanda.' Working Paper No. 304 July 2000. Washington, DC: Centre for Development Information and Evaluation, US Agency for International Development.

¹⁶¹ As above

¹⁶² As above

¹⁶³ John (above n 154)

¹⁶⁴ Elizabeth (above n 154)

¹⁶⁵ Hughes (above n 158)

4.3.3 National Framework that Promote the Participation of Women in Decision Making

The following are the provisions that were created in terms of the Constitution and other national legislation to ensure the participation of women in decision making position in post-conflict Rwanda.

Under chapter two of the Rwandan Constitution the guiding principles of Rwanda are set down. Article 9 of that chapter states that;

‘The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof...
- building a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs....’

This fundamental value has guided Rwanda, in that it has translated into an increase in the number of women in decision making positions. Article 9 reflects the requirements of article 7 of CEDAW, which provides that, state parties should take appropriate measures to eliminate discrimination against women in the political and public life by ensuring that women have equal rights to men in order to ‘...participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.’¹⁶⁶ Rwanda has not only protected women from discrimination,¹⁶⁷ but it has actually gone beyond this requirement by securing a minimum of 30 percent of posts in decision making.

The right to participate in political and decision making process is also guaranteed in African Protocol on the Rights of women, which Rwanda has ratified.¹⁶⁸ According to article 9 of this protocol, states parties are required to promote equal participation of women through affirmative action, enabling national legislation and other measures to ensure that ‘...women are represented equally at all levels with men in all electoral

¹⁶⁶ Art 7(b) CEDAW

¹⁶⁷ In terms of art 16 of the Rwandan Constitution ‘All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law’

¹⁶⁸ Rwanda ratified on 25 June 2004

processes.¹⁶⁹ Rwanda has done this through article 9 of its Constitution. In practice this is reflected by the percentages of women in the government for instance women make up 20 percent of the cabinet,¹⁷⁰ 56 percent of the parliament,¹⁷¹ and out of the four governors in Rwanda one is a woman.¹⁷² In addition to this, the Executive Secretary of the National Unity and Reconciliation is a woman,¹⁷³ as well as the Secretary General of National Aids Control Commission.¹⁷⁴

In granting women 30 percent in decision making positions, Rwanda is providing Legislated Party Quotas (LPQ): this is a quota system that is constitutionally binding, or legislated in political party and electoral laws.¹⁷⁵ The law stipulates a minimum target of women candidates in political parties for election, and generally applies to Proportional Representation electoral systems like Rwanda.¹⁷⁶ However, this law does not always guarantee that the target is met unless there is strict placement and enforcement mechanisms guaranteeing women are placed in electable positions on party lists.¹⁷⁷ As shown above, in the Rwandan case, the quota system is constitutionally binding.¹⁷⁸

Further, in regard to political parties, the Constitution has also set standards that must be maintained by political organization in Rwanda in order to promote participation of women in decision making positions. In view of participation of women, the political parties are supposed to ‘...operate in such a manner as to ensure that women and men have equal access to elective offices.’¹⁷⁹ Therefore a political party that does not provide for participation of women in decision making will be deemed unconstitutional. In Rwanda political parties need to be obligated to ensure gender equality because they

¹⁶⁹ Art 9(1)(b) Rwandan Constitution

¹⁷⁰ This is according Rwandan government official website. <http://www.gov.rw/> (accessed on 9 October 2008)

¹⁷¹ D Kezio-Musoke ‘Rwanda: Female-Majority House Elects Speaker After Historic Poll’ Daily Nation (Nairobi) 6 October 2008. <http://allafrica.com/stories/200810070155.html> (Accessed on 10 October 2008)

¹⁷² As above (n 166)

¹⁷³ www.nurc.gov.rw/staff.php

¹⁷⁴ <http://www.cnls.gov.rw/staff.php>

¹⁷⁵ Ballington (above n 127)

¹⁷⁶ As above

¹⁷⁷ As above

¹⁷⁸ As above

¹⁷⁹ Art 52 of the Rwandan Constitution.

are the main vehicles through which candidates are elected into parliament, and it is a fundamental decision making body.

Further, in terms of the constitution, political parties are prohibited from basing themselves on grounds that may give rise to discrimination and one of the grounds that are listed is 'sex'.¹⁸⁰ In the same vein, political parties are required to reflect the unity of Rwanda and gender equality and this must be done whether in the recruitment of members, putting in place organs of leadership and in their operations and activities.¹⁸¹

A Rwandan political party that does not adhere to the requirements of article 52 runs the risk of facing sanctions. In terms of article 55 of the Rwandan Constitution, the Senate may lodge a complaint with the High Court of the Republic against a political organization which has grossly violated the obligations contained in the provisions of Articles 52, 53 and 54 of the Constitution.¹⁸² In case of appeal, the appeal is heard by the Supreme Court.

In the case a political organization is found in violation of the either articles 52, 53 or 54, the High Court of the Republic may, depending on the gravity of the violation proved

¹⁸⁰ As above, art 52 Rwandan Constitution

¹⁸¹ As above, art. 54 Rwandan Constitution

¹⁸² Art 52 states that, 'Political organizations fulfilling the conditions required by law are permitted to be formed and to operate freely; they must abide by the Constitution and other laws as well as democratic principles and they should not destabilize national unity, territorial integrity and security of the nation. Political organizations participate in the education of citizens on politics based on democracy and elections and operate in such a manner as to ensure that women and men have equal access to elective offices. The leadership organs of political organizations shall maintain offices at the national level. The organic law governing political organizations determines their offices at other levels of administrative entities.'

Art 53 states that, 'Rwandans are free to join political organizations of their choice or not to join them. No Rwandan shall be subjected to discrimination by reason of membership of a given political organization or on account of not belonging to any political organization.'

Art 54 states that, 'Political organizations are prohibited from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination. Political organizations must constantly reflect the unity of the people of Rwanda and gender equality and complementarity, whether in the recruitment of members, putting in place organs of leadership and in their operations and activities.'

impose any of the following sanctions against the political organization found guilty of the violation; Formal warning; suspension of activities for a period not exceeding two years; suspension of activities for the whole Parliamentary term; or dissolution. The above demonstrate the measures that are in place to guarantee that women do not only have rights on paper but to see to it that these rights are enforceable and women are able to be in electable positions. Therefore, this year's world record of 56 percent of women parliamentarians was inevitable.

The right of women to participate in decision making positions is not only protected under the Rwandan Constitution but also through the setting-up of the National Women Council.¹⁸³ In terms of article 4 of this law, the National Women's council is said to be 'a social forum where girls and women put together their views in order to solve their own problems and to participate in and have a say in the development of the country.'

The Women's Council has helped enormously in enhancing the participation of women in decision making. In addition, Rwandan policies such as 'vision 2020' also reiterate the need for affirmative action to remedy the under-representation of women in decision making. Vision 2020 is basically Rwanda's own expression of the Millennium Development Goals.¹⁸⁴

According to the vision, since women consists 53 percent of the population, and they participate in subsistence agriculture more than men and usually feed and provide care for the children and ensure their fundamental education; They in turn need to gain increased access to education, access to the opportunities to develop themselves and access to decision making positions. Therefore, one of the goals for Rwanda is to achieve gender equality and equity, by continuously updating and adapting its laws on gender. In terms of the vision Rwanda aims at supporting education for all, eradicating all forms of discrimination, fighting against poverty and practice affirmative action in favour of women. Conclusively, in order to achieve a better Rwanda in terms of vision

¹⁸³ Law no. 27/2003 Determining the Organization, Attributions and Functions of the National Women's Council

¹⁸⁴ 'Programming Framework: Together for Rwanda's Development Twese Hamwe mu Itaremberere ry'u Rwanda' Canadian International Development Agency. <http://www.acdica.ca/CIDAWEB/acdicida.nsf/En/JUD-22212111-MYG> (accessed on 19 October 2008)

2020, gender needs to be integrated as a cross-cutting issue in all development policies and strategies.¹⁸⁵

From the above it is clear that there are a number of best practices that can be acquired from the Rwandan Framework that will be beneficial to other countries emerging from conflict to emulate and increase women participation.

¹⁸⁵ 'Rwanda's Vision 2020' www.rwandainvest.com/IMG/pdf/Vision-2020.pdf (accessed on 19 October 2008)

Chapter 5: Recommendations and Conclusions

5.1 Recommendations

Throughout this dissertation the focus has been on women and their participation in peace-building and decision making during post-conflict. As far back as 1981 when CEDAW entered into force states were convinced that the full and complete development of a country needed the maximum and comprehensive participation of women on equal terms with men in all fields.¹⁸⁶ Despite this, women have been unequally represented in peace-building and decision making processes.

In the AU frame-work there are provisions that can be utilised to enhance the participation of women especially in post-conflict situations such as the ACHPR, the African Women's Protocol, the African Protocol on Peace and Security and other international instruments as encouraged by the AU which include; CEDAW, the Dakar Platform for Action (1994), the Beijing Platform for Action (1995), the African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999); the Outcome Document of the Twenty-third Special Session of the United Nations General Assembly Special Session on the Implementation of the Beijing Platform for Action (2000); UN Resolution 1325 (2000) on Women, Peace and Security.¹⁸⁷

All in all the AU has provided useful and beneficial provisions for promoting the rights of women to participate in decision making processes and peace-building; however, for the AU provisions to be worthwhile, a lot depends on member states commitment to give meaning to them. One thing is for sure, problems facing women in the participation in peace-building and decision making are numerous and multi-faceted especially in a conflict situation. Therefore, there is need for actions to be taken in order to alter the situation.

¹⁸⁶ CEDAW, preamble para 12. See also K Mansson 'Integrating human rights in United Nations peace-building activities: Developing gender justice best practices.' African Women in Peace Advocacy Magazine September 2005

¹⁸⁷ As above n 68

As it has been shown in 2.4 above, women are part of the group that is affected by conflict and as such they need to be involved in peace-building and decision making during post-conflict. Furthermore it has been shown that women are an essential component of peace-building because of the experiences they bring on board. They help the processes to address all the issues facing a post-conflict society, without their input a lot of issues may be left unresolved because there would be no one to voice them. One thing must be understood; today building peace is not a process that concerns only rebel groups and governments but a process that involves all members of the community who have an interest in achieving peace. In conclusion, since it is important to increase the participation of women in peace-building and decision making in post-conflict situations in Africa, recommendations will be given with the view of increasing women participation.

Firstly, in regard to the Women's Protocol, it is important that the AU member states are encouraged to ratify it. Currently out of the 54 member states only 21 states have ratified it.¹⁸⁸ Furthermore, once ratified, member states are encouraged at the national level to amend their constitutions to ensure that they are complying with the African Women's Protocol. This should be followed by amending and adopting specific laws to give effect to their obligations under the African Women's Protocol to promote women participation in their countries. An example of Mozambique and Rwanda has been provided to illustrate how this can be done;

In Mozambique, the Constitution's articles 6, 67 and 57 have complied with the requirements of the Women's Protocol. Articles 6 and 67 have given expression to the right of equality as required by article (3)1 ACHPR¹⁸⁹, they also highlight one of the principles of AU, promotion of gender equality.¹⁹⁰ Whereas, article 57 has complied with the obligations under article 9 of the Women's protocol to take affirmative action in order for the promotion of the participation of women in political and decision making process. Further, Mozambican major political parties FRELIMO and RENAMO have endorsed VPQ's according to which women receive 30 percent in decision making positions this

¹⁸⁸ Chart of ratification in C Heyns & M Killander (eds). *Compendium of Key Human Rights Documents of the African Union* third edition (2007)358

¹⁸⁹ Article 3(1) of ACHPR provides that, 'every individual shall be equal before the law,

¹⁹⁰ Article 4(l) provides that 'promotion of gender equality' is one of the principles of the AU.

method has proved to be very effective in securing the opportunity for women to participate in decision making

Rwanda on the other hand has shown an even greater commitment, in that the article 9 of its Constitution, has not only complied with the obligations of article 9 of the Women's Protocol, by providing affirmative action but it has guaranteed the women of Rwanda a minimum of 30 percent representation at all levels of decision making bodies. This as was pointed out before is LPQ, Rwanda and Afghanistan are the only countries with this provision and they are both states that due to their conflict past have seen it necessary to boost women's level of representation in decision making bodies.¹⁹¹ Member states are encouraged to follow suit.

In addition to the above, Rwanda has enacted national legislation, for example Law no. 27/2003 concerned with the organization, attributions and functions of the National Women's Council. Such national legislations are aimed at enhancing the participation of women in decision making.

Secondly, member states should develop regulatory measures; having amended the laws and adopted specific ones, member states should put in place regulatory measures, whereby specific groups, such as professionals, women groups and cultural leaders, to mention a few, will be targeted for training and awareness. Due to the fact that society has been a stumbling block to women's rights in the public realm, the society should be targeted to change its perception on gender roles.

Thirdly member states should also take policy measures, the governments of the member states should take on all policies that raise the status of women and protect their rights contribute in decision making and the peace-building processes. Such policy measures could include gender mainstreaming, affirmative action, Economic programmes which sufficiently incorporates the needs of women.

¹⁹¹ As above 130

5.2 Conclusion

In conclusion, The AU normative framework is laudable because it seems to take cognisance of women in Africa who are faced with conflict situations, and the need to include them in peace-building and decision making. In particular the African Women's Protocol is radical and transformative thereupon relevant in addressing the issue of under-representation of women in peace-building and decision making during post-conflict situations. Therefore I appeal to member states of the AU that have not ratified the African Women's Protocol to do.

However, to avoid the misfortune of the African framework being reduced to a mere paper tiger, the obligations that ratifying states undertake through during ratification must be respected. Because, definitive test lies in whether or not the AU frame work has been utilised and implemented to address the need to include women in peace-building and decision making in post-conflict situations. Ultimately it is the authors hope that through the involvement of women and other stake holders, the quality of life, for not only women, but also children and men will be improved after tragic conflicts. This can only occur if the rights in the AU system especially the African Women's Protocol and the Protocol on the Peace and Security Council actually results into concrete changes in social policies and laws. At the end, the ball is in the court of the African states who have pledged commitment to the African Union, to commit to their undertakings and improve the human rights of not only women but all children of the African continent.

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