

Black Women and International Law

DELIBERATE INTERACTIONS, MOVEMENTS,
AND ACTIONS

Edited by

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Law, Peace-Construction, and Women's Rights
in Africa: Who Will Safeguard Abeena and Afia?

Jeremy I. Levitt

INTRODUCTION

Since the end of the Cold War, African states have become the testing grounds for Western conflict resolution experiments, particularly transitional political power-sharing agreements that are supposedly intended to end deadly conflict, secure peace, and build democracy in divided societies.¹ One of the most troubling aspects of deadly armed conflict is the disparate impact it has on women. Seventy percent of deaths in internal conflict are noncombatants – the majority of whom are women and children. Maternal death is the “highest lifetime risk” of women in conflict-ridden and postconflict states. It is estimated that more than 600,000 women have died of pregnancy or childbirth complications during armed conflict in Africa over the past decade and a half, one-fifth of whom were young girls. As Aili Tripp observes, “[c]ivil conflict breaks open, pathologizes, distorts and can even transform societal rifts,”² splits that simultaneously systematize violence against women and pervert gender-neutral conflict resolution devices. Conflict resolution, peacebuilding, and “peace construction” processes – that is, how peace is conceptualized,

negotiated, normatively institutionalized, and operationalized – have given birth to power-sharing models that structure gender inequality into political transitions, ultimately disenfranchising women in the transitional and post-conflict orders. Although women represent the global majority – meaning that they represent the group with the largest stake in peace – they have had the smallest voice in shaping it. Women and women representing women's interests are rarely included in peace negotiations because the “enterprise” of peacebuilding is unfortunately “owned” by men and male-centered institutions. Women infrequently benefit from transitional peace agreements that restructure power, and rarely do they secure any positions in transitional governments, let alone influential positions. The “orderly” exclusion of women and women's issues in peace processes during peace negotiations and in the postconflict transitional political apparatus is a global human rights problem that arguably affects the longevity of peace deals because the opinions, welfare, and interests of the majority are not represented.³ Nowhere is this wretchedly unlawful condition more apparent than in power-sharing peace agreements, which brings us to the question: Who will safeguard Abeena and Afia?⁴

Despite these realities, African women have vociferously advocated to end armed conflict and participate in peace processes and transitional justice practices. Within the broad conception of peacemaking and peace construction, women's participation is vital to sustainable peace, security, and the realization of fundamental rights. Power sharing is the most important component of any peace agreement because such arrangements determine who will have a seat at the table of power, in what capacity, and for how long. They determine the constitution of the new political order and the distribution of political, legislative, and judicial power to elites, and hence control the nature and character of future political transitions, as well as choosing those who rule

¹ The terms *power sharing*, *political power sharing*, *transitional political power sharing*, and *power-sharing arrangements* are used interchangeably. For purposes of this chapter, *power sharing* is broadly defined to mean the range of peace processes that seek to construct (e.g., mediate and negotiate) and apportion (e.g., share power) political power in peace deals. In this context, transitional political power sharing takes place between contesting groups (warlords, rebels, and junta) and national governments for a fixed and impermanent period of time, until elections take place. Power-sharing accords and provisions seek to outline and codify into law decision-making mandates that allocate political power and authority. Although military and economic power sharing are important, this chapter primarily focuses on transitional political power sharing birthed during violent internal armed conflict, not on those forms of power sharing that have been solely written into legislation or constitutions during peacetime.

² Aili Mari Tripp, *Gender, agency and peace negotiations in Africa*, in *GENDERED INSECURITIES: HEALTH AND DEVELOPMENT IN AFRICA* 170 (Howard Stein & Amal Hassan Fadlalla eds., 2012), at 170.

³ That said, the author is cognizant of the fact that women advocates and decision makers may have malevolent rather than benevolent intentions; hence, prescriptions for their inclusion should not be underwritten by “benign” paradigms. Despite the imminent need for gender equality in peace construction, women also serve as combatants, obstructionists, and peace spoilers. Like men, they engage in corrupt behavior aimed at derailing peace processes and leveraging the greater cause of gender equality for personal gain.

⁴ In the Akan language in Ghana Abeena (Tuesday) and Afia (Friday) are girls' names representing the days of the week in which they were born. I use the names Abeena and Afia as metaphors to symbolize African women and girls, as well as the days of the week in which the Convention against All Forms of Discrimination against Women (CEDAW) (adopted Tuesday, December 18, 1979, entered into force on September 3, 1981), the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (adopted Friday, July 11, 2003, entered into force on Friday, November 25, 2005), and UN Security Council Resolution 1325 (adopted unanimously Tuesday, October 31, 2000), were adopted.

the peace. Too often, women are disenfranchised during peace transitions and subjugated to the rule of human rights abusers and unsympathetic leaders. Nonetheless, their collective efforts have significantly shaped the dynamics of peace arrangements and, perhaps more importantly, the legal framework in which they are supposed to operate. Consequently, the subject of this chapter, law, power sharing, and women's rights in Africa, presents a vibrant opportunity to examine the various operative and normative roles Black women have played in peace construction, from marginalized victims to innovative activists. What is abundantly clear is that the various waves of African women's movements in the 1990s stirred a seething brew of activism that has shaped and is shaping the normative tide against their orderly exclusion in peace construction.

Power sharing has become far more than a tool of conflict resolution. It is a graphic enterprise with the capacity to rebuild or ruin societies emerging from deadly conflict and/or coups. It is a commonly practiced "fine art" that broad-brushes society in a way that inhibits sustainable peace because it disregards controlling rules intended to safeguard human rights, women's rights, and democracy. The recent coups or extraconstitutional seizures of power in the Central African Republic (2008), Guinea (2008), Kenya (2008), Madagascar (2009), Mauritania (2009), Niger (2010), Burkina Faso (2011), and the Central African Republic (2012) exhibit the precarious record of power-sharing schemes in Africa. Women played negligible roles as decision makers in all of these peace processes, which may lend insight into their categorical failure. It thus should come as no surprise that, to varying degrees, these states also have troublesome human rights records and traditions of discouraging women from participating in government and governance. It follows that the international community – regional and international organizations – must embrace more artful, inclusive, and effective conflict-resolution models in societies seeking to end deadly conflict and ensure women's active participation in peace processes. In this sense, the traditional orthodoxy of placing a higher premium on peace and conflict resolution than on human rights and justice should be considered an unacceptable tradeoff with the principle of the rule of law that intends to shield people, especially women, from the arbitrary edicts of male-centered groups holding discretionary power.

How to construct a just and sustainable political order, share power, and ensure gender equality and justice in societies emerging from armed conflict is one of the most arduously understated and complex issues confronting contemporary international law and politics in the twenty-first century. During peace negotiations, in the transitional regime, and in the postconflict

order, women are systematically alienated and discriminated against in Africa, Eastern Europe, South and Central Asia, Latin America, and the South Pacific. Power sharing is also challenging because, at the most fundamental level, it significantly impacts the human rights and democracy entitlements of women, given that impunity, whether through amnesty or inaction, curbs rights-based claims and participatory governance and reconstitutes political power and its future disposition. Consequently, peace agreements that do not sufficiently include or consider the welfare and interests of women run afoul of settled regional and international law norms such as, for example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1988), United Nations Security Council Resolution 1325 (2000), and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (African Women's Protocol, 2003). These legal instruments, among others, underwrite the most fundamental principles in the international human rights of women related to power sharing, including the rights of women to participate in peace negotiations and processes as decision makers, partake in the formulation and implementation of government policy, hold public office, and perform government functions at all levels, including regionally and internationally. The significance of this largely unaddressed problem was identified by the Secretary-General pursuant to Security Council Resolution 1325 (2000):

Women are under-represented in formal peace negotiations, whether as local participants representing warring factions, or as representatives of international authorities overseeing or mediating deliberations and institutions invited to the negotiating table. In addition, central issues of concern to women, including their participation in post-conflict political, social, civil, economic and judicial structures, do not always reach the negotiating table, in part because of the exclusion of women from formal peace negotiations. Women not only call for issues specific to themselves but raise issues that affect society as a whole, such as land reform, access to loans and capacity-building. All actors committed to equality and non-discrimination – whether male or female – should have the responsibility and capacity to ensure that peace agreements incorporate gender equality issues.⁵

Notwithstanding, to date, not a single national government in Africa has heeded the UN's call to formally and forthrightly study the gendered impacts of peace processes, and less than a handful of scholars and academic institutions worldwide have formally initiated research programs on the impact of

⁵ *Women, Peace and Security*, study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000), 61.

peace agreements on women. Very few of the academics who have initiated projects/programs have seriously considered the gendered dimensions of power sharing. Essentially, African women have been forced to challenge the unlawful status quo produced by illegal peace deals, which makes them both objects and subjects of conflict resolution doctrine and the "Law on Power Sharing."⁶

Nevertheless, the object–subject dichotomy only reveals a part of the complexity presented by transitional political power sharing. Power-sharing governments are a dependent appendage of an externally located ideal: an imaginative democratic and gender-neutral entity composed of peace-loving "bandits of the law." It is alien to women and other victims of conflict; the overall rebel–woman subject dichotomy contains several nesting dualities: man/woman, inclusion/exclusion, ruler/ruled, victim/victimizer, peace/war, impunity/justice, and lawful peace/unlawful peace. Its inner logic is fashioned by the vocation of male domination and multilateral institutional collusion, which has led to women's movements that reject the legitimacy of power-sharing agreements. It follows that, since women are the most adversely affected by exclusionary power-sharing deals that reward warlords, rebels, and juntas with sovereign power and authority, women contest the legitimacy and legality of these deals even as they advocate for the adherence to rules that protect participatory rights during peacemaking and work to author a new normative order that safeguards their long-term interests in peace construction.

This chapter seeks to address this seemingly dichotomous phenomenon in conflict resolution: the orderly exclusion of women from peace construction and particularly from power-sharing processes and the catalytic role women play in advancing peacebuilding norms. The proposed research is comparative, normative, interdisciplinary, and qualitative, drawing from international human rights law, peace, and conflict resolution studies and from the conceptual propositions of women's studies. It employs what I refer to as an African rights-based approach to examine the legality and political efficacy of power-sharing agreements that exclude, alienate, or disenfranchise women, and it assesses the normative impact, if any, that African women have had on the development of equality rules, doctrine, norms, and jurisprudence in peace construction, with a focus on power sharing.⁷ The chapter

⁶ Jeremy I. Levitt, *ILLEGAL PEACE?: AN INQUIRY INTO THE LEGALITY OF POWER-SHARING WITH AFRICAN WARLORDS AND REBELS* 238–43 (2012).

⁷ The African rights-based approach is based on law, norms, doctrine, and jurisprudence that contests gender inequality and necessitates the empowerment of women as individual and collective subjects of law with equal and affirmative rights, duties, and responsibilities that

comparatively references peace deals birthed in the post–Cold War era in Africa and evaluates both the extent to which they provide specific protections for African women and whether Black women have influenced the gendered dimensions of what the author refers to as "peace construction" and its doctrinal progeny, the "Law of Power Sharing."⁸ Consequently, it contemplates the role that law indicates for itself to play in informing, shaping, and regulating gender equality in transnational political power-sharing deals. What role does law indicate for women, and what roles do women indicate for themselves to play in fashioning, observing, and safeguarding women's rights in peace agreements? Are the aims of peace, gender equality and justice, rule by law, and democracy attainable, let alone compatible, when women are excluded from peace construction and simultaneously forced to live under unlawful power-sharing agreements and transitional governments ruled by the amnestied warlords, rebels, and juntas responsible for committing atrocities against them?

LAW, POWER SHARING, AND WOMEN'S RIGHTS

Problems with Power Sharing

About 50 percent of peace agreements fail within five years.⁹ I have argued elsewhere that a major reason for this failure rests in their extralegal or unlawful anatomy, which is precipitated by expediency, necessity, and a smug disregard for the rule of law and historical experientialism.¹⁰ Their illegality occurs at the national, subregional, regional, and international levels, where predominant law, doctrine, and norms that protect women's rights are intentionally flouted. However, nowhere is such infringement more apparent than in the international human rights of women. One analyst argues that only 5 out of 111 peace agreements "signed between the adoption of UN Security

must be guaranteed, promoted, and protected by states and by regional and international institutions.

⁸ Levitt, *supra* note 6, at 237–43.

⁹ Thomas Reuters Foundation, *Half of peace accords fail in five years*, March 14, 2011, available at <http://www.trust.org/item/?map=half-of-peace-accords-fail-within-five-years/>

¹⁰ In this sense, historical experientialism philosophically connotes that law's internal logic is derived from historical experiences of either people, states, or institutions, which in turn generates knowledge of its central purpose (e.g., the adoption of the Genocide Convention on December 9, 1948, by the UN General Assembly was a consequence of the Holocaust perpetrated by Nazi Germany during World War II). Consequently, it is important to understand the historical rationale for rule existence or history of law, particularly in the area of human rights, in order to ascertain the probable impacts of ignoring it.

Council Resolution 1325 in October 2000 and the end of December 2008 ... included provisions linked to accountability for gender-based violence."¹¹ To make matters worse, none of them mandated gender equality in peace negotiations or in transitional or permanent allocations of political power. The systematic exclusion of women from peace processes and peace negotiations is a form of "democratic impunity," and I suspect this is why domestic violence, alcoholism, and drug abuse substantially increase in postconflict environs; these are problems that intersect, conflate, and disproportionately affect women but remain ignored in peace-construction processes. Moreover, the general exclusion of women from conflict prevention, management, and resolution serves as a root cause of conflict in and of itself. First, it excludes the societal majority and those with the greatest stake in peace: women. Second, such marginalization sidelines the group with debatably the most successful track record of peacebuilding and bottom-up postconflict reconstruction, despite being undermined by gender discrimination. Third, it is no secret that during and after armed conflict, families with large numbers of women and children, female-headed families, and women and girls impacted by armed conflict are increasingly affected by homelessness, poverty, landlessness, joblessness, and inadequate access to food and potable water. These conditions ultimately produce fractured families and distressed children who are physically and ideologically vulnerable, disadvantaged, and highly susceptible to "recruitment" by would-be rebels. The exclusion of women from peace processes, coupled with gender-neutral power-sharing agreements that codify rules and structures that exacerbate and concretize gender disparities, creates a nexus of circular causation with power sharing, societal distrust, discrimination, and the resumption of deadly conflict as permanent features.

Consequently, whether UN-sanctioned or not, womenfolk are horribly underrepresented in peace processes as peace negotiators, signatories, and chief mediators.¹² For example, women were almost entirely absent from all seven of the negotiations and peace deals that preceded the Juba peace talks between the government of Uganda and the Lord's Resistance Army (LRA)

¹¹ The five peace agreements are the 2006 Darfur Peace Agreement of Sudan (DPA), the 2007 Agreement on Accountability and Reconciliation in Uganda and its 2008 Annexure to the Agreement, the 2003 Inter-Congolese Negotiation, the final Act of the Democratic Republic of the Congo (DRC), and, finally, the 2006 Regional Pact on Security, Stability and Development in the Great Lakes Region. See Sahla Aroussi, *Women, peace and security: Addressing accountability for wartime sexual violence*, 13 (4) INT'L FEMINIST J. POL. 576, 581.

¹² See generally, UN Development Program for Women (UNIFEM), *WOMEN'S PARTICIPATION IN PEACE NEGOTIATION: Connections between Presence and Influence* (August 2010).

that produced the 2008 Final Peace Agreement (Juba Peace Agreement).¹³ Only one LRA female mediator participated in the negotiations leading to the gender-neutral Juba Peace Agreement, which means that neither the UN nor the Ugandan government appointed women negotiators. For some time, women peace activists have argued that "formal mediation processes include no women – not at the table representing national interests, not in mediation support teams, not within observer delegations," and rarely are their perspectives solicited.¹⁴ Rather, women spend the bulk of their time seeking to be included in peace processes rather than "focusing their time and attention on service as equal participants in efforts to set a comprehensive and inclusive agenda for peace."¹⁵ On this point, Tripp notes that, despite the fact that "women have demanded a seat at peace talks, in transitional governments," and "on constitutional commissions engaged in drafting new constitutions" and have also "pushed for increased representation in legislative bodies", "[i]t is still rare to find women leading official peace negotiations."¹⁶ This essentially means that conventional conflict resolution and transitional governance processes are systematically flawed because they bar women from holding decision-making positions during peace negotiations and consequently exclude them from the power-sharing governments they establish. Accordingly, women's concerns, issues, and needs are left to the whims of violent, male-centered groups that hold discretionary power, whether these are political elites in incumbent regimes, warlords, or rebels engrossed with haggling over control of the body politic and the economy.

As already noted, armed conflict affects women more than any other group. Power sharing exacerbates and accentuates the negative impacts of armed conflict on women in transitions to peace, meaning it lengthens transitional

¹³ All seven agreements were entered into between 2006 and 2008 and, according to the Juba Peace Agreement, are listed as follows: the Cessation of Hostilities Agreement and its six addenda; the agreement on comprehensive solutions and its protocol (that address security arrangements, power and wealth sharing); the agreement on accountability and reconciliation and its annexure (that address issues of war crimes and crimes against humanity, including how to deal with the International Criminal Court's [ICC] indictments on LRA leaders); the agreement on a permanent ceasefire; the agreement on disarmament, demobilization, and reintegration; the agreement on implementation and monitoring mechanisms; and the implementation schedule that shall be signed with and attached to the final peace agreement.

¹⁴ Theresa de Longis, *Across conflict lines: Women mediating for peace*, 12th Annual Colloquium Findings, The Institute for Inclusive Security 3 (2011). One clear exception is Betty Bigombe, a long-time political player in Uganda and current minister of state for water resources, who served as chief mediator between the Ugandan government and LRA (2004–2005) prior to the Juba Peace Agreement. It is widely believed that her efforts, which did not resolve the conflict, set the stage for the Juba peace process.

¹⁵ *Id.*

¹⁶ Tripp, *supra* note 2, at 177.

periods between war and peace, on the one hand, and delays peace and reconstruction, on the other. For example, gender-based violence exponentially increases in transitional and transnational postconflict environs; however, very few safeguards have been conceived that (1) protect women from lurking predatory forces in the transitional postconflict milieu, (2) seek retributive and reparative justice for sex crimes, and (3) institutionalize gender training into demobilization and reintegration schemes. Although women are pioneers in the development of informal and formal grassroots peacebuilding processes, they remain largely invisible at the negotiating table when major decisions are taken, when policy is framed, and when the new constitution of order is adopted. Hence, they function in an oppressive conundrum where "invisibility and activity, victimhood and agency run parallel."¹⁷ As has been previously noted, the situation for women worsens when there is political power sharing because such power sharing "usually improves the situation of the rebel group relative to the status quo" and inevitably leads to a perverse arrangement in which women victims of war are forced to live under the rule of opulent and oppressive warlords and rebels.¹⁸ This may explain why there were spikes in sexual violence in postconflict power-sharing states such as, among others, Liberia and Sierra Leone. On this point, a prominent study on sexual violence and armed conflict concluded, "A number of countries emerging from armed conflict report a very high and/or increasing incidence of criminal and family violence. Impunity for acts of sexual violence committed during the conflict, postconflict poverty, lack of livelihood opportunities and the weakened rule of law, may combine to foster increased inter-personal and sexual violence, and to make women and girls particularly vulnerable to sexual exploitation and trafficking."¹⁹ Moreover, power dynamics expressed through sexual violence may be more prevalent as the strength of "bandits of the law" increases through power sharing.²⁰ In addition, power sharing and impunity send a potent psychological message to demobilized or former rebels, suggesting that armed violence is a viable path to political and economic power. For example, Liberia's Prince Y. Johnson, a brutal former warlord turned senator and presidential contestant in the 2012

elections, has never been held accountable for his barbarous and serial rape, torture, and murder of Liberians while a commander in Charles Taylor's wicked National Patriotic Front of Liberia. Johnson also served as the notorious leader of the brutal splinter faction, the Independent National Patriotic Front of Liberia, during Liberia's vicious civil war (1990–1997), which was directly responsible for killing thousands of Liberians. Johnson is allowed to hold office and roam free with impunity: one wonders what message this sends to desperate youth and would-be rebels.

In this context, it is important to note that impunity for sexual crimes and/or the social repression of women may serve as initial indicator(s) of the probability of gendered violence during and after armed conflict. It has also been argued that states with high levels of gender inequality produce more internal armed conflict.²¹ Societies that relegate women to second-class status during peacetime have greater proclivities for gendered violence not simply because of widespread abuses of discretionary power in the private and public spheres, but also because of how normative violence impacts women's images of themselves and the dogma about them. Subjugation reinforces exploitive patterns of patriarchy and masculinity that, for example, constrain feminine enterprise or women's labor power and the ability of women to participate in and shape peace processes. Again, one clear example is that during and immediately after armed conflict, women bear the brunt of family obligations, which makes them largely immobile, less knowledgeable about transitional peace initiatives, and hence ineffective advocates for themselves, for their children, and for restorative and retributive justice. This, in turn, reduces the likelihood of their participation in grassroots or other peace movements and processes, and it increases the probability that they will only be viewed as victims. In essence, the livelihood of women declines more than that of any other group during and immediately after armed conflict. Therefore, women have a vested interest and a vital role to play in both early warning and prevention of conflict and in conflict resolution and postconflict justice. Women also have the greatest incentives to mitigate the harsh impacts of conflict on their families by ensuring that shelter, medical care, food, water, and education are accessible during episodes of conflict. In this way, individually and collectively, women become human safety nets that create protective webs during crises and build strategic alliances with similarly situated women across sociocultural lines: Liberia, Rwanda, South Africa, Sierra Leone, and Sudan are prime examples. In these countries, women organized

¹⁷ Elisabeth Porter, *Why women's contribution to peacebuilding matters*, 10 (3) INT'L. STUD. REV. 632 (2008) (reviewing Sanam Naraghi Anderlini, *WOMEN BUILDING PEACE: WHAT THEY DO, WHY IT MATTERS* [2007]).

¹⁸ Stephen E. Gent, *Relative rebel strength and power-sharing in intrastate conflicts*, 37 INT'L. INTERACTIONS 215, 218 (2011).

¹⁹ Megan Bastick, Karin Grimm, & Rahel Kunz, *SEXUAL VIOLENCE IN ARMED CONFLICT: A GLOBAL OVERVIEW AND IMPLICATIONS FOR THE SECURITY SECTOR* 10, 155–67 (2007).

²⁰ The terms African warlords, rebels, and juntas; bandits of the law; and *pirates de la loi* are used interchangeably.

²¹ Mary Caprioli, *Primed for violence: The role of gender inequality in predicating internal conflict*, 49 INT'L. L. STUD. Q. 161, 172 (2005).

across racial, ethnic, political, and religious lines to protect the vulnerable and effectuate peace.

African Women's Movements: Building Normative Architecture

As the introduction to the volume indicates, African women have a rich legacy of national leadership that dates back to antiquity. They have, among other things, been revered as gods, ruled and built nations as pharaohs and queens, led vast armies, pioneered in science and technology, fashioned law and religion, established vast enterprises,²² and served as peacemakers. In the modern era, African women have been visibly active in global governance since the 1970s and served as the primary mobilizing force behind the establishment of the African Training and Research Center for Women (ATRC) within the UN Economic Commission for Africa. The ATRC served as a base for women's advocacy within the UN system and ensured that women's issues were represented in the formulation of international law and policy.²³ Such advocacy led to the 1982 Lagos Plan of Action, which included a comprehensive section on women and development, a section that promoted women's equality and advancement in the public and private spheres.²⁴ In this sense, African women were actively engaged in global governance processes long before women from other regions. These efforts spurred paradigm-shifting women's conferences, beginning with the 1985 Nairobi Conference and climaxing with the 1995 Beijing Conference, which called for an increase in the "participation of women in conflict resolution at decision-making levels, the protection of women living in situations of armed and other conflicts or under foreign occupation" and for taking "measures to ensure women's equal

access to and full participation in power structures and decision-making."²⁵ The Beijing Conference, which reinforced CEDAW, created the normative architecture for women's continued activism in human rights protection and peacebuilding that culminated in the adoption of the African Women's Protocol and UN Security Council Resolution 1325.

African women and girls have also fought, both willingly and unwillingly, in domestic and regional wars, and, unfortunately, the post-Cold War surge in internal armed conflict in Africa has significantly amplified their presence on the battlefield, particularly in Burundi, the Democratic Republic of the Congo, Liberia, Mozambique, Sierra Leone, and Uganda. Women comprised about 9 percent of combatants in Sierra Leone's brutal Revolutionary United Front (RUF) and 25 percent of Charles Taylor's savage National Patriotic Front of Liberia (NPLF). In the 1970s and 1980s, women served in subsidiary roles and as combatants "in armed liberation and guerilla movements in Mozambique, Zimbabwe, Guinea-Bissau, Eritrea, Uganda and elsewhere."²⁶ Their dual roles as combatants and peace stewards explains why their appeal for greater recognition and participation in peace construction is gaining normative expression. As one female combatant in Liberia noted, "We fight better than the men and make peace better than them too, so why are we kept outside?"²⁷ Although African women have played double roles on Africa's killing fields as victims and victimizers,²⁸ their marginalization in transitional peace and justice processes has unleashed waves of women's movements throughout the continent.²⁹

Consequently, the twenty-first century has ushered in a new era of "ebony movements" that have triggered lawmaking processes in the domestic and international realms. At the domestic level, "Africa has some of the highest rates of female legislative representation in the world, with women claiming over 30 percent of the parliamentary seats in Mozambique, South Africa, Tanzania, Uganda, and Burundi."³⁰ Women claimed 56 percent of lower house seats and 38 percent of upper house (senate) seats in Rwanda

²² See generally David Sweetmen, *WOMEN LEADERS IN AFRICAN HISTORY*, African Historical Biographies (1984). It is also interesting to note that African women pioneered and evolved the regime on microfinance. See generally Women's World Banking, available at <http://www.swwb.org/about/about-wwb> (last visited November 27, 2012).

²³ See generally Report on the Fourth Meeting of the African Regional Coordinating Committee for the Integration of Women in Development, UN Economic Commission for Africa-Silver Jubilee Anniversary Meetings, Fourth Meeting of the Technical Preparatory Committee of the Whole, Addis Ababa, Ethiopia, April 14-22, 1983, Item 8(a) of the provisional agenda, E/ECW/TPCW.4/8 (April 18, 1983).

²⁴ Lagos Plan of Action for the Economic Development of African 1980-2000, Organization of African Unity, Lagos, Nigeria, April 28-29, 1980. The Lagos Plan of Action identified several areas where women should be advanced, including "agriculture and nutrition, handicrafts and small-scale industries, employment, education and training, science and technology, trade, natural resources (especially water supply), energy, health and family life, population, research, mass media, and establishment of national and sub-regional machineries for integration of women in development." *Id.*

²⁵ Women in Armed Conflict Diagnosis, Strategic Objective E1, Platform for Action, The UN Fourth World Conference on Women, Beijing, China, September 1995, available at <http://www.un.org/womenwatch/daw/beijing/platform/armed.htm> (last visited June 11, 2013).

²⁶ Tripp, *supra* note 2, at 176.

²⁷ Interview with female ex-combatant of the Liberians United for Reconciliation and Democracy (LURD) faction in Monrovia, January 25, 2009.

²⁸ See generally Hillary Charlesworth, *Are women peaceful? Reflections on the role of women in peace-building*, 15 *FEMINIST L. STUD.* (2008).

²⁹ Aili Mari Tripp, Isabel Casimiro, Joy Kweisa, & Alice Mungwa, *AFRICAN WOMEN'S MOVEMENTS: CHANGING POLITICAL LANDSCAPES* (2009). This volume is one of the most comprehensive studies of African women's movements ever published.

³⁰ *Id.* at 17.

(September 2008 elections), and in Senegal 42 percent of legislative seats and 40 percent of upper house seats are held by women (July 2012 elections). This does not include an estimated 42 percent of lower house and 32 percent of senate seats held by women in South Africa (April 2009 elections). Women are also being elected to key government posts, as typified by the 2005 and 2012 presidential victories of Ellen Johnson-Sirleaf of Liberia and the peaceful transition of power to Joyce Banda in Malawi in 2012; they are using their positions to lobby for constitutional reforms and general legislation to protect women's rights, ensure gender equity, and alleviate gender discrimination.³¹ New women's rights law and policy are also being adopted by more gender-balanced legislatures. It appears that African women have seized upon new political space opened up by armed conflict and/or state collapse in the legislative and executive realms. At the regional level, it is thus not surprising that Gertrude Mongella, chairperson of the 1995 Fourth World Conference of Women, became the first president of the Pan-African Parliament of the African Union.³² Ironically, in March 2004, a year and a half after she took office, the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa entered into force (November 2005). African women are increasingly relying on the Protocol to contest impunity in power-sharing peace agreements that place warlords and rebels in authoritative positions. They also regularly assert its equality provisions, among other rules, to justify and legitimize their participation in peace negotiations.

African women have mobilized all over the world (Burundi, Democratic Republic of the Congo, Liberia, Mozambique, Rwanda, Sierra Leone, Somalia, South Africa, and Uganda) to influence peace processes because peace deals often have longer lasting impacts on the rights and well-being of women than does armed conflict. Women have known for decades that society cannot genuinely recover from the evils of armed conflict if they are not actively involved as equal stakeholders and their issues are not forthrightly addressed in the design and implementation of transitional regimes: this knowledge is only beginning to find normative expression in law and policy. For example, women's rights verbiage, from victim to stakeholder classifications, can be identified in about 90 percent of the peace agreements that have resolved internal armed conflict between 1990 and 2012. African

³¹ *Id.* The authors note that there have been six female prime ministers in Africa since the mid-1990s. Other notable examples include Luisa Dia Diogo's tenure as prime minister of Mozambique since 2004 and Specioza Wandera Kazibwe's election as vice president of Uganda (1994–2003).

³² *Pan-African President: Gertrude Mongella*, AFRICA RESEARCH NEWS BULLETIN, Mar. 1–31, 2004, at 15667.

women have taken holistic approaches to conflict, prevention, management, and resolution that draw on local culture and custom, such as instituting Gacaca courts in Rwanda and Palava Hut tribunals in Liberia, and at times also incorporate Western peacemaking theory and modeling. Women, more than any other group, understand that their participation in peace construction is necessary to address and inform vital transitional and postconflict issues that disproportionately impact women, particularly mothers. These issues range from access to food, water, shelter, medical treatment, and sanitation to the need for security, justice, reparation, and employment opportunities. As one analyst noted, "[w]omen's participation in and influence over the terms of peace is therefore both a precondition for addressing a range of postconflict issues and to long-term prevention of armed conflict and of the harms that war inflicts disproportionately on women."³³ This is precisely why it is imperative that they participate in every phase of peace construction, including the conceptual, drafting, interpretive, and operative stages, and serve as peace negotiators, brokers, technicians, and transitional government officials. When women participate as decision makers in political processes, the character of the body politic and the content of political outcomes arguably change for the better.³⁴

"African womanist" approaches arguably accelerate gender equality during and immediately after armed conflict more effectively than Western feminist attitudes.³⁵ This is often because their approaches and the new rules that follow reflect the views of local women, unlike the law and conflict resolution models developed by international consultants and specialists, which largely ignore them. Gwendolyn Mikell rightly notes that African feminism "owes its origins to different dynamics than those that generated Western feminism" because it "has largely been shaped by African women's resistance to Western hegemony and its legacy within African culture."³⁶ This dichotomy in oppositional approaches is accentuated during war and explains why "African

³³ Margaret E. McGuinness, *Women as architects of peace: Gender and the resolution of armed conflict*, 15 MICH. ST. J. INT'L. L. 63, 64 (2007).

³⁴ Sue Thomas, *The impact of women on state legislative policies*, 53 J. POLITICS 974 (1991).

³⁵ African womanists embrace incremental rights-based approaches that leverage and manipulate traditional pathologies and patriarchies to achieve women's equality without robustly disturbing nonviolent and nonoppressive social and cultural practices to which their societies subscribe. African womanists are not preoccupied with attacking African culture, the cultural dynamics of masculinity, or the idea of male dominance of women: rather, they focus on achieving women's equality in all spheres of life by leveraging, not threatening, conventional verities. The end goal is not to become men, replace men, or destroy masculine constructions, but rather to work with and lead men as coequals in human development while amplifying feminine ideals and creations.

³⁶ AFRICAN FEMINISM: THE POLITICS OF SURVIVAL IN SUB-SAHARAN AFRICA 4 (Gwendolyn Mikell ed., 1997).

womanism" is markedly different; it is "distinctly heterosexual, pro-natal, and concerned with many 'bread, butter, culture, and power' issues."³⁷ This organic approach in some ways illuminates why African womanist methods that employ intercultural leveraging have been effective. This approach seeks to consciously manipulate or leverage traditional authority structures, social interaction norms, patriarchal modes of communication, and social relations in order to sway "spoils" or "winner-take-all" approaches.³⁸ As Sylvia Tamale wisely observes:

For many African women the sustainable solutions to their oppression, exploitation and subordination hardly lie in vague, alien legal rights, but in a careful and creative deployment of the more familiar cultural norms and values. Thus far, the blunted tools of human rights have had a very limited effect on the lives and realities of African women. While the top-down constitutional and legal framework is necessary as a foundational touchstone of women's rights, our activism must begin from the assumption that bottom-up approaches anchored in local cultures and traditions are more likely to succeed than those working from without.³⁹

It follows that bottom-up approaches to conflict resolution and peace construction that integrate women's concerns and needs seem to produce more holistic and enduring peace agreements because the legitimacy of womanist-centered peace deals increase when women, the numerical majority in civil society, embrace them.

Consequently, African women activists are intentionally and unintentionally constructing independent approaches to African diplomacy and conflict prevention, management, and resolution that may disturb conventional multi-track diplomacy typologies.⁴⁰ One African womanist approach, which I refer to as "intracultural leveraging" has been successfully used by African women's groups in peacemaking processes for decades. This form of advocacy naturally synthesizes informal and formal advocacy approaches and leverages social networks, cultural practices and norms, technical knowledge, and activism with political elites and/or war contestants. Intracultural leveraging embraces culture as a basis of engagement and integrates advantageous analytical and advocacy strategies rather than replicating West-centric feminist approaches,

³⁷ *Id.* at 5.

³⁸ For a pioneering study on African feminism, see AFRICAN FEMINISM, *supra* note 36.

³⁹ Sylvia Tamale, *The right to culture and the culture of rights: A critical perspective on women's sexual rights in Africa*, URGENT ACTION FUND-AFRICA 165 (2007).

⁴⁰ See generally MULTI-TRACK DIPLOMACY: A SYSTEMS APPROACH TO PEACE (Louise Diamond & John McDonald eds., 1996).

making it a variegated example of "situated judgment."⁴¹ This approach appears to be most effective when used by a broad cohort of women ranging from homemakers to professional executives (e.g., market women, teachers, seamstresses, traditional leaders, lawyers, doctors, mediators, bankers, and diplomats). To emphasize this point, Sanam Anderlini notes that some women's rights movements approach peace construction "with an explicit message of equality and demands for the right to participate in decision-making and the firm belief that peace processes should promote more equitable relations between men and women. Others build on their socially accepted identities as mothers, daughters, or along ethnic, religious, or tribal lines, and focus on critical peace and security issues."⁴²

Intracultural leveraging seems to balance equality claims while embracing traditional sociocultural identities. Hence, African women have employed social identities to promote their right to participate as decision makers in vital peace and security issues that affect their existence. They see themselves as durable actors in forging law, norms, doctrine, and jurisprudence aimed at achieving equality and reinforcing positive cultural traditions in the private and public spheres and, for the purpose of this analysis, in peace processes.⁴³ For example, African women in South Africa not only served as the nucleus of the antiapartheid movement, but also fiercely contested the conscription of children into the South African National Defense Force (SANDF) and freedom-fighting groups such as *UmkhontoSizwe* (MK). African women activists such as Angelina Atyam avidly protested against the abduction of children in Uganda by the Lord's Resistance Movement, thereby bringing national and international attention to the issue. Liberian activists established the Liberian Women's Initiative (LWI) to represent the voices of those affected by the Liberian civil war. Led by a former school teacher, Mary Bromwell, the group engaged in community messaging and sensitization while advocating for an end to the war, the inclusion of women in the peace process, a comprehensive peace agreement, and democratic elections, using nonviolent demonstrations and media campaigns to influence war contestants. In fact, Liberian women have been credited for "perfecting the art of 'corridor lobbying'" by petitioning domestic, regional, and international mediators to ensure that their intellectual and policy-related concerns influenced

⁴¹ Margaret Jane Radin, *The pragmatist and the feminist*, 63 S. CAL. L. REV. 1699, 1718–19 (1990).

⁴² Sanam Naraghi Anderlini, WOMEN BUILDING PEACE, WHAT THEY DO, WHY IT MATTERS 62 (2007).

⁴³ See generally AFRICAN WOMEN'S MOVEMENTS, *supra* note 29.

Liberia's various peace talks between 1994 and 2003.⁴⁴ Notwithstanding, in 1996, even Ruth Perry, Liberia's incoming transitional head of state, was barred from directly participating in peace talks because she was not "accredited" to partake in them,⁴⁵ a situation that vividly illustrated how women, irrespective of their qualifications and standing, are more welcomed in the hallways of peace than in the boardrooms of peace construction.

Nevertheless, African women continue to strive to ensure gender equality in all aspects of peace construction, particularly in the areas of power sharing and retributive justice.⁴⁶ One reason for their unrelenting advocacy stems from the realization that armed conflict "accentuates existing differences of power and access to resources, weakening the position of those who are already without power," namely women.⁴⁷ Local women understand all too well the disproportionate impact that war has on their families. For example, in 1996, after her fourteen-year-old daughter Charlotte was abducted, raped, and forced into marriage by the LRA in Northern Uganda (along with 138 other girls) after a night raid on their boarding school, Angelino Atyam established the Concerned Parents Association (CPA) to advocate for the protection and rights of children, peace, and reconciliation.⁴⁸ Although the LRA's diabolical leader, Joseph Kony, attempted to acquire Atyam's silence with the return of her daughter, she refused Kony's offer.⁴⁹ Atyam became a champion of children and women's rights in Uganda's peace process; she was eventually appointed to the six-person delegation that represented her country in meetings with international stakeholders seeking to end the conflict.⁵⁰ Another illuminating example is that of Asha Hagi Elmi Amin (Asha Amin). In 2000, after women were systematically excluded from a series of peace talks aimed at ending clan warfare in Somalia, Amin, founder of Save Somali Women and

Children (SSWC), demanded that they be included.⁵¹ Although the UN allowed her to attend the peace negotiations as an observer, she was plainly ignored by the leaders of all five participating clans, which were led by men. As a result she "decided to both play by and subvert the rules" by forming "a sixth clan, the women's clan," or SSWC, because she believed that women would be stronger bridges for peace.⁵² SSWC "put pressure on clan elders, religious leaders, Islamic scholars and politicians to put women at the negotiating table as equal partners and decision-makers."⁵³ In January 2004, she represented the women's clan as the only woman cochair of the final phase of the Somali National Reconciliation Conference, ultimately becoming the first Somali woman to sign the peace accord.⁵⁴ Hagi's efforts ultimately led to gender mainstreaming in the Somalia National Peace Process and gender quotas in the Federal Parliament, among other reforms.⁵⁵

One unique development unearthed in this study is the special ability of African women to organize and to build capacity during armed conflict, during transitions from war to peace, and in the postconflict environment. This new activism can be attributed to several factors including, at the national level, women's ability to develop alliances during peace negotiations irrespective of race, ethnicity, clan, religion, or party affiliation; an increase of women in national parliaments; and donor support for women's empowerment programs. At the regional level, new norm-generating dynamics include the subregional, regional, and international normalization of the women's rights movement after the 1995 Beijing Conference, the domestication of women's rights norms in national systems, the codification of human rights and democracy conventions at the regional level, and the debility of authoritarianism and one-party rule in Africa.

⁴⁴ *Id.* at 63.

⁴⁵ African Women and Peace Support Group, *LIBERIAN WOMEN PEACEMAKERS: FIGHTING FOR THE RIGHT TO BE SEEN, HEARD, AND COUNTED* 26–31 (2004). It is interesting to note that Ruth Perry was Africa's first female head of state and Ellen Johnson-Sirleaf its first democratically elected female president.

⁴⁶ African women launched several prominent regional institutions and networks primarily concerned with peacebuilding including the Femmes Africa Solidarité (FAS), African Women's Committee for Peace and Development and the (AWCDP) (now African Unions Women Committee and Federation of African Women's Peace Networks [FERFAP]).

⁴⁷ Judy El Bushra, *Feminism, gender, and women's peace activism*, 38 *DEVELOPMENT AND CHANGE* 131, 136 (2007).

⁴⁸ Anderlini, *supra* note 42, at 68. See also, Jonathan Wilson-Hartgrove, *A nonviolent response to Joseph Kony*, March 9, 2012, available at <http://www.patheos.com/blogs/jonathanwilsonhartgrove/2012/03/a-nonviolent-response-to-joseph-kony/>, last visited October 30, 2012.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Founded in 1991, SSWC seeks to stop violence against women by empowering them to become human rights advocates, to provide humanitarian relief to war victims and war-torn communities, and to promote a peaceful transition to constitutional democracy. See *Peace Direct: Supporting local action against conflict, save Somali women and children*, Somalia, available at <http://www.peacedirect.org/peacebuilders/past-projects/somalia/> (last visited October 30, 2012).

⁵² Anderlini, *supra* note 42, at 69.

⁵³ *Peace Direct*, *supra* note 51.

⁵⁴ The peace accord was the *Declaration on the Harmonization of Various Issues Proposed by the Somali Delegates at the Somali Consultative Meetings* (January 29, 2004, State House, Nairobi, Kenya). Save Somali Women and Children, available at <http://www.sswc-som.com/index.php?page=accomplishments> (last visited October 30, 2012); See also Anderlini, *supra* note 42, at 69; *Somalia wins "alternative Nobel"*, BBC News, October 1, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7646771.stm> (last visited October 30, 2012).

⁵⁵ *Save Somali women and children*, available at <http://www.sswc-som.com/index.php?page=accomplishments> (last visited October 30, 2012).

Perhaps one of the most compelling examples of such capacity building was the establishment of the Mano River Women's Peace Network (MARWOPNET) in 2000. This network aimed, among other things, to bring peace to the region of West Africa by organizing and mobilizing women's groups to be full stakeholders in peacemaking, democratization, and development processes.⁵⁶ MARWOPNET was a formidable subregional movement of women in West Africa, namely Liberia, Sierra Leone, and Guinea-Bissau, that very effectively used "intracultural leveraging" to lobby at the local, national, and international levels for women to be included in conflict prevention, management, and resolution, and particularly for them to be included as stakeholders during peace talks. In August 2003, MARWOPNET's efforts were bolstered by the Women in Peace Building Network (WPBN), a small women's refugee organization, which, in a show of courage and desperation in protest of ongoing hostilities, threatened to strip naked and lock negotiators behind closed doors until a comprehensive peace agreement was agreed upon and signed. On August 18, 2003, MARWOPNET officially witnessed the signing of the Accra peace agreement that ended armed conflict in Liberia. One of its signature accomplishments was that it secured women's participation in the Accra peace process – albeit at the periphery of power – and sternly protested against any "UN-sponsored peace agreement that basically rewarded leaders of the armed factions with positions in the transitional government while doing little to disarm them."⁵⁷ Consequently, disarmament became a precondition to power sharing, to the chagrin of rebel leaders. Interestingly, as the MARWOPNET example shows, women have found ways to shape debates and influence peace outcomes even when they have been excluded from peace processes. Their actions and efforts have had significant political and legal impacts on peace-construction processes. Consequently, the "peace industry" has been forced to accept that gender equality is a critical aspect of peace construction and consequently to adopt rules, norms, and doctrine aimed at ensuring women's participation – particularly the right to play a part in peace negotiations, inform peace deals, and partake in transitional governance structures as decision makers. MARWOPNET's peace activities illustrate the growing trend in African women's advocacy networks (AWANs) or regional advocacy networks (RANs) that have significantly contributed to and fashioned conflict resolution processes; other AWANs have actively influenced the development

of regional and international law and doctrine, including the design and adoption of the African Women's Protocol⁵⁸ and UN Security Council Resolution 1325.⁵⁹

Hence, the orderly exclusion of women from peace negotiations, power-sharing deals, and the transitional regimes such arrangements ratify has birthed tenacious activism, which in turn has significantly impacted legal developments at the regional and international levels. On this point, referencing the impact of women on the development of UN Security Council Resolution 1325, which aims to ensure women's full participation in all phases of peacebuilding, Anderlini notes: "So the strategic targeting of the Security Council and push for a resolution that endorsed women's inclusion in peace-making was not only a deliberate attempt at shifting the paradigm and the norms governing peace processes, but also a means of ensuring that they had a chance to determine the future – theirs and their society's – at the point in time when foundations were being laid."⁶⁰ African women and women's groups were key participants – as victims, advocates, and technicians – in the foundational thinking behind UN Security Council Resolution 1325, as well as in

⁵⁸ Melinda Adams & Alice Kang, *Regional advocacy networks and the protocol on the rights of women*, 3 *POLITICS AND GENDER* 451–74 (2007). Examples of such regional groups include, among many others, the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC), African Women's Development and Communication Network (FEMNET), Women in Law and Development in Africa (WiLDAF), and Solidarity for African Women's Rights (SOAWR). In 1984, IAC was established in Addis Ababa, Ethiopia, to advocate "for the removal of harmful traditional practices that affect the health of women and children"; it is comprised of "National Committees in 28 African countries and 15 Affiliates/Group Sections in Europe, USA, Canada, Japan and New Zealand." See *Inter-African Committee on Traditional Practices Affecting the Health of Women and Children*, available at http://www.iac-ciaf.net/index.php?option=com_content&view=article&id=10&Itemid=3 (last visited November 19, 2012). In 1988, FEMNET was created in Nairobi, Kenya to "share experiences, information and strategies among African women's non-governmental organizations (NGOs) through advocacy, training and communications so as to advance African women's development, equality and other human rights" and includes numerous individual and nonprofit members throughout Africa. FEMNET, available at <http://femnet.co/index.php/en/background-history> (last visited November 19, 2012). In 1990, WiLDAF was created to promote women's rights in Africa. It is comprised of 500 organizations and more than 1,200 individual members in thirty-one countries. WiLDAF, available at <http://www.wildaf.org/index.php/whoweare/history> (last visited November 15, 2012). In 2004, SOAWR was established in Nairobi and "is a coalition of 36 civil society organizations across the continent working to ensure that the Protocol to the African Charter on the Rights of Women in Africa remains on the agenda of policy makers and to urge all African leaders to safeguard the rights of women through ratification and implementation of the Protocol." SOAWR, available at <http://www.soawr.org/en/> (last visited November 25, 2012).

⁵⁹ AFRICAN WOMEN'S MOVEMENTS, *supra* note 29, at 204.

⁶⁰ Anderlini, *supra* note 42, at 71.

⁵⁶ See *Mano River Union Women's Peace Network*, available at <http://www.marwopnet.org/objectives.htm>

⁵⁷ Tripp, *supra* note 2, at 182.

other core women's rights law, including CEDAW and the African Women's Protocol.⁶¹ All three documents concretely pronounce on the unlawfulness of women's exclusion during peace construction and, more formidably, on the illegality of power sharing as a tool of conflict resolution. It is not farfetched to argue that UN Security Resolution 1325 and the African Women's Protocol would not have been adopted but for the near-universal recognition of the cruel and exclusionary impacts of war and peacebuilding on African women. Such law has been emboldened by doctrine and jurisprudence emanating from human rights commissions and courts and international criminal law tribunals such as the International Criminal Tribunal for Rwanda (ICTR).⁶²

This section provides insight into the multifarious ways in which African women and women's groups have conceived and contributed to the development of peacebuilding law, which is an important component of the international women's rights protective regime; the next section examines the legality of transitional political power sharing through the prism of CEDAW, the African Women's Protocol, and Resolution 1325.

LAW AND LAWLESSNESS: NORMATIVITY AND EXCLUSIVITY

The International Human Rights of Women in Peace Construction

The exclusion of women as key actors in peace construction tramples on the civil liberties that are protected in most national constitutions in Africa; such exclusion is unlawful under regional and international law.⁶³ Peace agreements that include political power-sharing provisions are often the most offensive to human rights law and democratization processes, especially the international human rights of women in Africa, as exemplified in CEDAW, UN Security Council Resolution 1325, and the African Women's Protocol, each of which normatively builds on the other. Transitional political power-sharing agreements operate in a nebulous legal realm because they are

typically shaped by political necessity and expediency and are principally concerned with ending deadly intrastate armed conflict rather than with protecting rights and delivering justice. In this sense, they consciously ignore the prevailing domestic, regional, and international legal norms that are intended to shape and inform them. As the earlier discussion notes, political power sharing too often has a broad and disproportionate impact on the human rights and democracy entitlements of women, given that impunity, whether through amnesty or inaction, curbs rights-based claims and reconstructs or reorders the framework of governance and its future disposition. In Cote d'Ivoire, the Democratic Republic of the Congo, Guinea-Bissau, Liberia, Rwanda, and Sierra Leone, to name a few examples, women were largely absent as "players" from the negotiating tables that birthed their respective peace agreements, despite, for example, the ardent advocacy of the Mano River Women's Peace Network (MAROWET) in Liberia and a small collective of women's groups in Sierra Leone.⁶⁴ Notwithstanding, although women and women's groups may have informed the aforementioned peace processes to varying degrees, it is popular myth that they were key players in what remained male-dominated enterprises.⁶⁵ In each instance, the collective interests of women stood virtually ignored during peace negotiations and peacebuilding processes. As a result, women's issues were also largely overlooked in the postconflict order. This troubling phenomenon is symptomatic of a perplexing global pattern of discrimination that harms the welfare and interests of women in direct contravention of CEDAW.

CEDAW mandates that states parties must condemn discrimination against women in all forms and prescribes policy to ensure their equality with men in national constitutions, legislation, and other law.⁶⁶ Although CEDAW's equality model discounts intracultural leveraging approaches, its parity requirement directly applies to peace agreements because they form a part of domestic, regional, and international law and are often sanctioned by legislation. CEDAW requires member states to safeguard the rights of women on an equal basis with men and to ensure, through tribunals, courts, and other public institutions, that women are effectively protected from any act of discrimination.⁶⁷ Thus, the mere adoption of power-sharing peace

⁶¹ For example, Femmes Africa Solidarité (FAS) has been one of the most effective African women's peacebuilding organizations that aims, among other things, to ensure women's active participation and leadership in conflict prevention, management and resolution processes as well as other peacebuilding activities. The Femmes Africa Solidarité (FAS), available at <http://www.fasngo.org/ReportsActivities.html> (last visited November 29, 2012).

⁶² Human Rights Watch, *GENDER, WAR CRIMES & CRIMES AGAINST HUMANITY: DIGEST OF THE CASE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA* (2010), at 126–134. *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (African Commission on Human and People's Rights, 2003), available at <http://www1.ohchr.org/ac.za/index.php/browse-by-subject/227-burundi-democratic-republic-of-the-congo-v-burundi-rwanda-and-uganda-2004-ahrlr-19-achpr-2003.html>

⁶³ This section draws heavily from an earlier work of the author. Levitt, *supra* note 6, at 154–59.

⁶⁴ *Women, peace and security*, study submitted by the secretary-general pursuant to Security Council Resolution 1325 (2000), U.N. Publ. (2002), at 61–62.

⁶⁵ UN Development Program for Women (UNIFEM), *WOMEN'S PARTICIPATION IN PEACE NEGOTIATION: CONNECTIONS BETWEEN PRESENCE AND INFLUENCE* (August 2010), at 1–10.

⁶⁶ 41 Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, art. 2(a), 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (December 18, 1979), entered into force September 3, 1981 (hereinafter CEDAW).

⁶⁷ *Id.* at art. 2(c).

agreements – ad hoc political mandates accorded the weight of super law – abrogates CEDAW. This means that the disparate impact of power sharing – whether hard, moderate, or soft – on women must be carefully weighed during peace negotiations,⁶⁸ and women must be afforded judicial reprieve when such impacts are ignored. CEDAW also prohibits states and, by extension, international institutions from engaging in any act or practice that discriminates against women and specifically directs state parties to take all appropriate measures, including legislation, to amend or eradicate any existing law, regulations, customs, or practices that likewise discriminate.⁶⁹ Hence, national legislatures – whether transitional or not – have a legal duty to reject agreements that discriminate against women, particularly when women are excluded from negotiations and issues specific to their welfare that are not sufficiently recognized. Public authorities and institutions, including besieged government officials and warlords and rebels, that have acquired some measure of legal personality arguably have a duty to comply with CEDAW. Finally, these important rights and duties underwrite the most fundamental principles in CEDAW related to power sharing: the right of women to participate in the formulation and implementation of government policy, to hold public office, to perform government functions at all levels, and to represent their governments at the regional and international levels.⁷⁰

The right of women to actively participate in peace processes was reaffirmed by UN Security Council in Resolution 1325, which stresses the “importance of their equal participation and full involvement in all” peacemaking efforts, especially their role in “decision-making” with regard to conflict prevention and resolution,⁷¹ and it affirms the need for full implementation of international human rights law and international humanitarian law, which are aimed at protecting women and girls during and after armed conflict.⁷² The resolution recognizes that full participation of women in peace processes “can significantly contribute to the maintenance and promotion of international peace and security” and urges all member states to increase the numbers of women at all levels of decision making in national, regional, and international institutions, including peace construction.⁷³ It also calls on all actors – whether state or nonstate – to adopt gender perspectives “when negotiating and implementing peace agreements” and to end impunity and protect

⁶⁸ Levitt, *supra* note 6, at 154–58.

⁶⁹ *Id.* at art. 2(d), (f).

⁷⁰ *Id.* at arts. 7(a), (b), and 8.

⁷¹ Preamble, UN Security Council Resolution 1325, adopted by the Security Council at its 4213th meeting on October 31, 2000.

⁷² *Id.*

⁷³ *Id.* at arts. 1 and 2.

women and girls from gender-based violence during armed conflict by prosecuting perpetrators.⁷⁴ Consequently, Resolution 1325 provides a firm veil of legality and legitimacy of principles in CEDAW concerning the right of women to participate in, make, and implement government policy and execute government functions at all levels. However, unlike CEDAW, the resolution specifically applies to armed conflict and the rights of women to partake in every phase of peacemaking, including the design and operation of transitional power-sharing arrangements. Hence, the protective and participatory principles in UN Security Council Resolution 1325 should influence the character of all peace processes. Unfortunately, the UN and regional and subregional actors – all of whom play informative roles in ending armed conflict in Africa – do little to operationalize such law and to make certain that women actively play a part in peace negotiations as decision makers or serve as senior officials in transitional governments. Notwithstanding, Resolution 1325 amplifies the equality paradigm and serves as a catalyst for women and women's groups to organize and demand representation in conflict management and resolution structures, particularly in peace-building arrangements in Burundi, Democratic Republic of the Congo, and Sudan.⁷⁵

Although Resolution 1325 amplifies CEDAW's platform for women's rights during armed conflict, the 2013 adoption of General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Postconflict Situations, of the Committee on the Elimination of Discrimination against Women, emboldens and crystalizes Resolution 1325. General Recommendation No. 30 is the most authoritative interpretation of the applicability of CEDAW during and after armed conflict and other imminent situations that threaten the well-being of women. It intends to bolster states parties compliance with CEDAW's equality and protective principles during and after armed conflict and “other situations of concern” including the “war on terrorism” and “internal disturbances.”⁷⁶ It provides states parties with authoritative guidance “on legislative, policy and other appropriate measures to ensure full compliance with their obligations under the Convention to protect, respect and fulfil

⁷⁴ *Id.* at arts. 8, 10, and 11. The UN Security Council also asked the Secretary-General to conduct a study on the “impact of armed conflict on women and girls and the role of women in peace-building and the gender dimensions of peace processes and conflict resolution.” *Id.* at art. 16.

⁷⁵ UN Department of Public Information, *FACTS AND FIGURES ON WOMEN, PEACE AND SECURITY*, U.N. Doc. DPI/2409 (2005).

⁷⁶ Comm. on the Elimination of Discrimination against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post Conflict Situations, Paragraph 26, 56th Sess., September 30–October 18, 2013, U.N. Doc. CEDAW/C/GC/30 (September 4, 2013).

women's human rights"⁷⁷ General Recommendation No. 30 explicitly and authoritatively concludes that CEDAW necessitates women's participation at every level of conflict, prevention, management, and resolution, including the shaping, development, and implementation of peace agreements and transitional justice initiatives.⁷⁸ It provides no leeway for devolutionary reinterpretation and seems to place a positive duty on state and nonstate actors to refrain from engaging in any conduct or activities that abrogate CEDAW's protective mandate. In this context, any form of transitional political power sharing that nullifies predominant or controlling rules (domestic constitutions, regional and international women's rights norms) and excludes women from actively participating in peace processes at every level of decision making from peace negotiations to transitional governance and justice arrangements to disarmament and demobilization, is woefully unlawful. Not only is their exclusion in peace construction distressingly unlawful, but it is also arguably the greatest indicator of their long-term political disenfranchisement and gender-specific violence and poverty in the postconflict environment.

General Recommendation No. 30 equality provisions were sternly and immediately backed by UN Security Council Resolution 2122, which assertively recognizes the importance of women's participation and leadership in peacemaking and firmly establishes as a matter of doctrine the critical role of gender equality to long-term peace and stability.⁷⁹ It seems to acknowledge the need to track, study, and address the full scope of gender-based violence and harms against women during armed conflict. Recommendation No. 30 is by far the UN's most fervent call to action of member states, UN entities, international financial institutions, and nonstate actors to strengthen the capacity of institutions to sustainably assist "women and girls affected by armed conflict and post conflict situations."⁸⁰ It also calls upon states parties to end impunity and "to thoroughly investigate and prosecute persons responsible for war crimes, genocide, crimes against humanity or other serious violations,"⁸¹ which is a welcome call, given the unacknowledged but never-ending nexus of circular causation between impunity, power sharing, and deadly conflict. Essentially, this means that the UN Security Council must take affirmative efforts to comply with its own dictates by ending the practice of sanctioning or endorsing unlawful power-sharing peace deals that

⁷⁷ *Id.* at Paragraph 1.

⁷⁸ *Id.* at Paragraphs 45–47.

⁷⁹ *See generally*, UN Security Council Resolution 2122, adopted by the Security Council at its 7044th meeting, on October 18, 2013.

⁸⁰ *Id.* at Paragraph 11.

⁸¹ *Id.* at Paragraph 12.

discriminate against and disenfranchise women, a practice deeply entrenched in the ethos of UN conflict management and resolution practice.

The systematic exclusion of women and women's issues in peace agreements – both during negotiations and in the transitional political apparatus – is a global human rights problem that detrimentally affects the longevity of peace because the opinions, welfare, and interests of those most affected by armed conflict are not represented. On this point, the UN Secretary-General reported:

Women are under-represented in formal peace negotiations, whether as local participants representing warring factions, or as representatives of international authorities overseeing or mediating deliberations and institutions invited to the negotiating table. In addition, central issues of concern to women, including their participation in post-conflict political, social, civil, economic and judicial structures, do not always reach the negotiating table, in part because of the exclusion of women from the formal peace negotiations. Women not only call for issues specific to themselves but raise issues that affect society as a whole, such as land reform, access to loans and capacity-building. All actors committed to equality and non-discrimination – whether male or female – should have the responsibility and capacity to ensure that peace agreements incorporate gender equality issues.⁸²

Despite this clear message, the UN, African Union (AU), and other African regional institutions continue to sanction or legitimize political power-sharing agreements that prevent women from being full stakeholders in their creation and implementation. African governments in (for example) Burundi, Liberia, Sierra Leone, Guinea-Bissau, and Rwanda, along with the UN and other peace brokers and peace guarantors, failed to ensure that women were accorded decision-making seats at "all" tables of power during and after peace negotiations and did not consider the impact of power sharing on women generally. In these cases and many others, government and international institutions have routinely failed to guarantee or secure women positions of authority in transitional governments or to provide domestic venues (e.g., courts and tribunals) to challenge the legality and legitimacy of peace arrangements that flagrantly contravene international law. Because, in Africa, a right to justice, internal self-determination, and democracy exists, power sharing without consideration of women's rights flouts them woefully. Furthermore, impunity through explicit (e.g., Burundi, Cote d'Ivoire, Sierra Leone) or implicit (e.g., Liberia and Guinea-Bissau) amnesty is too often a scandalous tradeoff, a malevolent

⁸² *Women, peace and security*, study submitted by the Secretary-General pursuant to Security Council Resolution 1325 (2000), U.N. Publ. (2002), Para. 191 at 61.

feature of power-sharing arrangements that discriminates against women and subverts retributive justice.

The justice component of human rights is paramount because women disproportionately suffer from sexual violence, displacement, and other forms of violence during armed conflict even as they bear the brunt of family responsibilities. Women's family commitments are too often lopsided during peace time, but during armed conflict they are unbearable: women take on additional work as caregivers, as well as fulfilling duties traditionally reserved for men and caring for the sick, wounded, and disabled. Access to courts is another major problem in many countries, especially in postconflict environments in which justice for women is virtually nonexistent. As a result, women are too often left to fend for themselves and their families without any form of social assistance and redress. As already noted, the failure of peace accords to include, let alone contemplate, women's justice affirmatively disenfranchises them. What's more, the consequential interplay among making peace during armed conflict, postconflict justice, and development deserves special attention, given that the bulk of donor aid for postconflict construction is controlled and directed by men. This not only means that women are denied seats at tables of power during peace negotiations and transitions, but also that their developmental and reparatory needs, such as health, nutrition, education, literacy, psychological services, security, and justice are arrogantly flouted, not made equal with those of similarly situated men. As such, power sharing systemically disenfranchises women in the preconflict and postconflict order – an outcome that only societies and institutions with an ingrained pathology of violence against women can tolerate. From this background, there is a systematic practice in the structure and operation of power sharing that boldly discriminates against and impinges on the fundamental human rights and democratic entitlements of women, rights that are enshrined in CEDAW, UN Security Council Resolution 1325, and regional human rights norms in Africa.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted on July 11, 2003, and entered into force on November 25, 2005.⁸³ The African Women's Protocol reinforces and expands the Banjul Charter and the Grand Bay Declaration and also comprehensively addresses disparities engendered by power sharing.⁸⁴ It is the first regional human rights treaty to focus exclusively on women's rights,

⁸³ *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, adopted by the Second Ordinary Session of the Assembly of the Union in Maputo on July 11, 2003.

⁸⁴ African Women's Protocol, *supra* note 77, at art. 8–11.

particularly on the elimination of discrimination against them.⁸⁵ In this sense, it also claims, restates, reinforces, and reinstitutionalizes equality and non-violent precepts and doctrine in CEDAW and Resolution 1325.⁸⁶ The Protocol requires member states to actively mainstream gender equality in law, doctrine, and policy and to integrate gender perspectives in rules, policy decisions, and programs in all spheres of life, including, presumably, peace agreements.⁸⁷ It mandates that states have a positive duty to safeguard the dignity of women, as well as to protect them from all forms of violence. This includes, among other things, the duty to prevent and eliminate such violence by ensuring equal and effective access to justice and legal services, including legal aid, and to guarantee enforcement of equality rights and the investigation, prosecution, and punishment of perpetrators of violence.⁸⁸ Furthermore, it requires states to provide adequate budgetary resources to curb violence against women and to establish mechanisms and accessible services for redress, rehabilitation, and reparation.⁸⁹ The African Women's Protocol directs member states to guarantee that women are equally represented in the judiciary and to take "specific positive action" to promote equal participation in governance, including, as previously noted, equality in the distribution of positions in power-sharing deals.⁹⁰ Despite these legal rules and mandates, state compliance has been lackluster, deepening the disparity of protection between women and men.

The "responsibility to include" falls on governments, insurgent groups, and, by extension, other actors actively participating in peace negotiations, including, again, the UN and African regional organizations.⁹¹ In fact, the African Women's Protocol mandates states parties to take appropriate measures to ensure women's participation in the "structures and process of *conflict prevention, management and resolution* at the local, national, regional, continental and international levels" and in all "aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation."⁹² Although the participation of civil society in the negotiation and implementation of the Accra Agreement in Liberia was limited, such participation,

⁸⁵ Adrien Wing, *Women's rights and Africa's evolving landscape: The Women's Protocol of the Banjul Charter, in AFRICA: MAPPING NEW BOUNDARIES IN INTERNATIONAL LAW* 27–33 (Jeremy I. Levitt ed., 2008).

⁸⁶ *Id.*

⁸⁷ African Women's Protocol, *supra* note 83, at art. 2.

⁸⁸ *Id.* at arts. 3, 4, 8, and 11.

⁸⁹ *Id.* at arts. 4 and 25.

⁹⁰ *Id.* at art. 9.

⁹¹ The terms IGAD and SADC mean the Inter-Governmental Authority on Development and the Southern African Development Community, respectively.

⁹² *Id.* at art. 10 (emphasis added).

especially among women, provided the agreement with greater legitimacy than the agreements reached in Lomé and Abuja, which included remedial to virtually no participation by women's organizations, respectively. That said, women's participation in Liberia, and to some extent in Sierra Leone, was more participatory than technical. It follows that prevailing rules dictate that women's contributions to peacemaking processes should not be "participation neutral," meaning that their quantitative contribution must be complemented by the opportunity for qualitative input. Some analysts attribute stronger civil society involvement in the Accra peace process to its apparent transition to democracy, arguing that

the stark contrast in Liberia between the outcomes of the 1996 Abuja Accords and the 2003 Accra Agreement is telling in this regard. After early roles in the 1996 peace process, Liberian civil society groups were excluded and deals were made among the factional armies leading to the emergence of Charles Taylor as president the following year. Taylor's predatory government teetered for several years before collapsing in resumed civil war. The 2003 peace process, on the other hand, saw strong civil society participation, with the [women's] groups even signing the final agreement as witnesses. Credible elections followed, leading to the emergence of Ellen Johnson-Sirleaf as president, who has governed with broad civil society input and has begun moving Liberia forward. The two series of negotiations for Sierra Leone similarly illustrate this point.⁹³

Anecdotal evidence from this study and others suggests that peace processes are more sustainable when women actively participate in them as equals, supporting Hillary Charlesworth's call to "revive the equality framework as the basis of the claim that women should be involved in conflict resolution and formal peace-building" while being "cautious" about "invoking" affinity and utility arguments.⁹⁴ This may be because women are the most affected by armed conflict and are consequently the greatest stakeholders in peace. As such, the African Women's Protocol explicitly and normatively addresses the global pathology of violence against women during times of peace and war and, in the field of conflict resolution and intervention, decrees that women should actively participate in the design and implementation of peace arrangements. This essentially means that male-centered spheres of discretionary power that dominate peace processes are inconsistent with and prohibited by the law as it currently stands.

⁹³ Anthony Wanis-St. John & Darren Kew, *Civil society and peace negotiations: Confronting exclusion*, 13 (1) INT'L. NEGOTIATION 11, 27, 30 (2008) (emphasis added).

⁹⁴ Charlesworth, *supra* note 28, at 359.

CONCLUSION: WHO WILL PROTECT ABEENA AND AFIA?

Waves of African women's movements in the 1990s stirred activism that struggled against the normative tide that abetted their orderly exclusion from peace construction. Still, even now, law, doctrine, and norms that purport to protect women from the evils of illegal peace and impunity are largely ignored, particularly by the UN and regional organizations. On this point Hillary Charlesworth aptly notes, "The need to involve women in peace-building is regularly ignored by the UN and other international institutions. Sanam Anderlini talks of the UN's 'Triple-A' syndrome with respect to women and peace: apathy, ad hoc practices and amnesia. The Security Council has made reference to Resolution 1325 in just 25% of its country-specific resolutions from 2000 to 2006, and the Secretary-General has rarely appointed women to leadership roles in peace-building."⁹⁵ In essence, UN inaction forces women to suffer the indignities of war, to quietly succumb to the illegality of peace through the arbitrary political edicts of either misdirected or evil men during peace negotiations and transitions to peace, and, finally, to live under the nonjusticiable rule of the various warlords and rebels who brutalized them.

The systematic exclusion of women in peace construction is a form of "democratic impunity" and contributes to domestic violence, alcoholism, and drug abuse in postconflict environs; these are problems that disproportionately affect women but remain ignored in peacemaking and peacebuilding processes, and they arguably serve as a root cause of conflict itself. Notwithstanding their marginalization, women bear the greatest burden and incentive to neutralize the exacting impacts of war on their families by ensuring that shelter, medical care, food, water, and education are accessible during episodes of conflict. In this way, they become safety nets that create protective webs during crises and forge alliances with similarly situated women across sociocultural lines. In this sense, African womanist approaches seem to accelerate the aim of gender equality during and immediately after armed conflict more effectively than Western feminist attitudes or West-centric multitrack models. Their methods – especially intracultural leveraging – and the new norms and rules that echo them derive from African women with a tradition of resistance to the legacy of Western hegemony within African culture.

African women have proven to be a potent normative force. As they have in the past, they will continue to informally and formally monitor, evaluate, and

⁹⁵ Charlesworth, *supra* note 28, at 358–59.

report the legality of peace agreements, and when states and institutions falter in their commitment to women's rights issues, they will continue to advocate for "legal" peace processes or those that necessitate their inclusion and safeguard women's rights. This not only requires gender mainstreaming in the design, development, and implementation of peace agreements but, more importantly, "gender balance" or equitable participation in peace construction (i.e., mediation, negotiation, technical and implementation teams) and transitional governance processes is necessary as well.⁹⁶ And, although gender parity may be difficult to achieve in some societies or circumstances, states, regional, and international institutions and NGOs have a legal duty to prioritize women's issues by making them more formidable stakeholders in peace construction and peacebuilding, including the validation and inclusion of informal conflict-resolution approaches in which women play prominent roles. They can amplify their participation through the recruitment of local women as mediators and advisors, funding of women and women's groups to participate in peace negotiations, including the provision of childcare, transportation, and, when necessary, security. International negotiators and mediators should not advance peace deals that blatantly contravene regional and international human rights norms intended to safeguard the rights of women. Subregional, regional, and international organizations should likewise refrain from endorsing peace prescriptions that infringe their own rules, norms, standards, and jurisprudence – rules intended to protect women's rights – in the service of nonsensical and politically expedient rationales.

In conclusion, the UN, AU, the Economic Community of West African States, and other African regional institutions, as well as the member states that comprise them, have demonstrated an uncanny schizophrenia when protecting (or failing to protect) the rights of women to be full stakeholders in conflict prevention, management, and resolution processes. This study highlights the extreme efforts that African women have been forced to make to effectuate their participatory rights as citizens with the most vested interest in sustainable peace. They have been vociferous advocates for peace, lobbying for the normative inclusion of women's issues at the design and implementation phases of peace construction and thereby reinforcing normative gains with systematic practice, where one movement influences the character and content of others, as vividly demonstrated by the cases of Liberia and Sierra Leone, among others. The transnational nature of African women's movements has been a potent force in the development of a "Law of Power Sharing"

⁹⁶ Christine Chinkin, *Gender, Human Rights and Peace Agreements*, 18 OHIO ST. J. ON DISP. RESOL. 867, 870–71 (2003).

that seeks to safeguard women's rights. Hence, until the UN and other moral guarantors of peace approach women's rights issues in conflict management and resolution attentively, as prescribed by law, African women will continue to suffer under illegal peace agreements while simultaneously serving as Abeena and Afia's principal guardians.