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# WOMEN AND PEACE

The Role of Women and Women's  
Civil Society Organizations  
in Peace Processes

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RICERCHE

**FrancoAngeli** 

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I diritti umani non sono astratte prove di sentimentalismo umanitario. Hanno, dalla loro parte, grandi visioni del mondo e concezioni filosofiche. Ma queste non sarebbero che esercitazioni o elucubrazioni teoriche se non si fossero incarnate in potenti movimenti sociali di rivendicazione di libertà e giustizia.

Si è trattato d'una storia plurisecolare della libertà come liberazione. I suoi protagonisti concreti sono state le forze di coloro che stavano al basso della piramide sociale, non avendo, quelli che stavano in alto, bisogno di diritti, poiché a loro bastavano i poteri. Si è trattato anche della storia dell'uguaglianza. Senza uguaglianza, infatti, i diritti cambiano natura: per coloro che stanno in alto, diventano privilegi e, per quelli che stanno in basso, carità; ciò che è giustizia per i primi è ingiustizia per i secondi; la solidarietà si trasforma in invidia sociale; le istituzioni, da luoghi di protezione e integrazione, diventano strumenti di oppressione e divisione. Senza uguaglianza, il regime dei diritti – la democrazia – diventa oligarchia: i diritti di partecipazione politica diventano armi nelle mani di gruppi potere, e i diritti sociali diventano concessioni condizionate al beneplacito di chi è nelle condizioni di poterne fare meno. Di questa funzione emancipatrice dei diritti umani si è in gran parte persa la consapevolezza. E ciò è potuto accadere proprio in conseguenza della loro diffusione, che ha messo in secondo piano il loro diverso significato, e ne ha fatto perdere la forza contestatrice delle situazioni e delle istituzioni della disuguaglianza. Oggi, però, di fronte al riapparire di profonde divisioni e di gravi discriminazioni nelle compagini umane, derivanti da cause complesse, occorre riprendere i discorsi sui diritti rimettendo in primo piano il loro significato originario.

Questa è la prospettiva della Collana di studi che si propone: un approfondimento dello studio dei diritti umani nelle situazioni della vita in cui singoli individui e gruppi sociali (detenuti, ammalati, portatori di handicap, emigrati, minoranze d'ogni genere) soffrono discriminazioni a causa delle loro particolarità individuali e della loro posizione nella organizzazione sociale.

La Collana comprende distinti contributi scientifici suddivisi in tre sezioni: atti di seminari e convegni (ATTI), raccolte di materiali e commenti all'ordinamento e alle novità legislative (FATTI) e studi monografici (SAGGI).

*Tutti i volumi pubblicati saranno sottoposti a un processo di peer review che ne attesta la validità scientifica.*



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Collana diretta da  
Gustavo Zagrebelsky  
e Marilisa D'Amico

**FrancoAngeli** 

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# PREFACE

*Kathryn Abrams\**

An American feminist brings an atypical perspective to a volume on women, conflict, and peacebuilding. As a geographically isolated power, whose exceptionalism and prioritization of negative rights often complicate its relationship to international human rights regimes, the US has an anomalous relationship to conflict and peacebuilding. Armed conflicts, with or without our instigation, are almost always raging somewhere else. Our peacebuilding interventions lack the immediacy of knowing that emergent social and political structures will shape our futures. A US vantage point has infused feminist perspectives on these questions as well, often prompting us to assume a leadership or voice that our experience does not authorize.

Yet my anomalous perspective has also made me keenly appreciative of the many insights provided by this volume. Framed at one level of abstraction, the book's organizing themes are familiar, albeit vital, to feminist readers. First, women's roles in conflict and peacebuilding – as many other social, political, and institutional activities – are inevitably heterogeneous or plural. And second, women manifest and utilize agency in contexts where they are often presumed by powerful actors to have none. But, as deployed by authors whose experience with conflict and peacebuilding is concrete and often local, these insights come to ground in ways that seem to me provident and unexpected. Whether readers respond to these essays with surprise or familiarity, those who take women's collective agency seriously will find galvanizing insights about the plural trajectories of that agency, and the conditions that help to bring it into being.

This volume offers the crucial reminder that the agency of women is not inevitably liberatory. Costanza Nardocci's chapter on the Rwandan

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genocide exposes the complicity, and sometimes the overt activity, of women in the mass killing, sexual assault, and sexual enslavement of other women. Her essay raises the question whether the implication of women in internecine violence stems from their ongoing constraint in politics in which they remain unequal, from intersectional identifications that bulk larger for them than gender solidarity, or from something else entirely. In an equally striking example, Islah Jad describes how the “NGO-ification” of Palestinian liberation – the collective voice and processes fostered by Western feminist organizations – has inadvertently delegitimized the grass-roots voices of Palestinian women activists. This example too reminds us that women, and feminists, are not immune to the lure of institutional power, and that our gender should not exempt us from asking hard questions about our choices and commitments.

But more often, in this volume, the examination of agency offers a message of possibility. From these more hopeful essays come valuable insights about the structures or features of shared life that support collective forms of agency among women.

First, women’s agency can be fostered through participation in institutional structures that utilize and amplify the voices of civil society actors. Edin Skrebo, for example, documents the mutually-enabling relation between the Mothers of Srebrenica and the ICTY. The ICTY grasped the value the Mothers might provide, in uncovering facts and demanding accountability for the deaths of loved ones, and in helping to establish the structures that might support a re-emergent Bosnia-Herzegovina. Her essay shows how novel institutions of reconciliation can offer a generative platform for the work of women.

Women’s agency can also be supported by cultures whose collective dimensions foster solidarity among them. These might be local cultures where women draw from the ambivalent experience of traditional gender roles a solidarity that enables unexpected forms of action. The Mothers of Srebrenica and the Madres (and Abuelas) of the Plaza de Mayo in Buenos Aires responded to mass violence by leaning into their protective fury as mothers. Or these might be international cultures – such as that of the International Congress of Women vividly documented by Sancar Koyuncuoglu. The concerted voice for peace raised by this organizations in the first decades of the 20<sup>th</sup> century was ultimately overwhelmed by the tempests of war. But as Elda Guerra explains, their pacifism – born of “a historical experience not a natural inclination” – gave rise to innovative efforts that moved from resisting war to envisioning and constructing post-conflict societies, including the Grenham Commons women’s peace encampment, the Madres, and the Women in Black.

These essays also shed light on practices of feminist resistance, an intense if sometimes covert form of agency engendered by the high stakes of life in cruelly patriarchal societies. Cristiana Cella details the work of the Revolutionary Association of Women of Afghanistan (RAWA), who honed their skills working clandestinely in small groups under the Taliban, and the Russian and US occupations. Since 2021, when the abrupt and chaotic withdrawal of the US handed control to back the Taliban, the women of RAWA have conducted literacy, math, and sewing classes in basements, set up mobile women's health units, and inspired women to venture door to door, providing haircuts or home cooking, with their "tools" hidden under their burkhas.

These case studies make clear that the substantial exclusion of women from formal roles in conflict negotiation or mediation, or even UN-led peacebuilding processes has deprived these efforts of a vital resource that could pluralize their vision and move them in new directions. Inclusion seems particularly vital as women are distinctively disadvantaged in conflict situations, as victims not only of conventional warfare but of sexual assault, and as those who suffer the effects of war but are expected to sustain their families until the peace. These contributions may prompt a larger inquiry into ways that women's agency might be fueled, fortified, or channeled, so that women in all roles – be they institutional actors, members of international NGOs, civil society actors, participants in clandestine resistance, or survivors of conflict — can experience the satisfactions of solidarity, and mine the resources for greater flourishing that their distinctive experiences provide.

In short, it has been my great pleasure to be educated and energized by these essays. I am confident that it will be yours as well.



# INTRODUCTION

*Marilisa D'Amico, Tania Groppi, Costanza Nardocci*

*In the first twenty years since the Security Council adopted resolution 1325 on women, peace, and security, we witnessed some historic firsts for gender equality. While we must pause to appreciate these firsts, we must recall that we have neither significantly changed the composition of peace tables, nor the impunity enjoyed by those who commit atrocities against women and girls.*

These are the words of UN Women Executive Director Sima Bahous at the Security Council Open Debate on “Women, Peace, and Security: Towards the 25<sup>th</sup> Anniversary of 1325”, convened by Mozambique on March 8<sup>th</sup>, 2023.

The importance of the statement chiefly lies in the ongoing challenges that UN Women Executive Director denounced women face even after more than twenty years since the approval of the landmark United Nations Resolution No. 1325 (S/RES/1325) on Women, Peace, and Security. The urge “to ensure increased representation of women at all decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict”, as solemnly affirmed in the Resolution, continues to be, unfortunately, a goal too far to reach.

The book departs from two key unsolved dilemmas. The first deals with the lack of women’s participation in peacebuilding and negotiating processes. The second covers the stereotype that pictures women as passive actors lacking agency, incapable of taking action during armed conflicts and, likewise, taking the lead in rebuilding Countries following the devastation of wars and genocides. These are the trajectories the book intends to explore.

About structure and methodology, the book chooses to approach the controversial relationships among women, peace, security, and war dedicating two separate Sections to each of the core topics at stake.

The First Section – *Women, Peace and Peace Processes* – gathers contributions that intend to disclose the heterogeneity of ways, strategies, and mechanisms women may contribute to by establishing, restoring, and maintaining peace within their respective legal systems. Conversely, the Second Section is entirely dedicated to the challenging roles played by women during armed conflicts.

Discussing the Second Section – *Women in Armed Conflicts* –, instead, the analysis underneath the contributions highlights the extensive nature of women’s agency, looking at cases where women were actively involved in the direct perpetration of war and war-related crimes, especially in the forms of violence against other women and young girls, to those where women indirectly joined armed conflicts by ordering acts of war or “merely” collaborating to the destruction of the out-group.

The variety of *statuses* and roles women may embody during armed conflicts and post-war situations, as emerges in the contributions here collected, allows to challenge the wrong stereotypical reading of women, that neglects their ability to “do wrong”. On the opposite, the here endorsed gender reading of women’s roles during war times and peacemaking processes boosts the reconsideration and denial of the wrong construction of gender relationships that conceive men as the one and only powerful human beings capable of dictating who is the enemy, when to fight him and how to destroy him.

The stories collected in the book, which gather experiences and testimonies from all over the globe, undoubtedly prove the opposite centrality of women, their multifaceted nature, and ultimately, their similarity to men in their attitude toward peace, war, and security.

Put differently, women can fight, order the commitment of war crimes, incite or commit genocide, and be complicit in the realization of these same crimes siding with men and acting like them.

Such an alternative, but more realistic, interpretation of the role of women in the context of armed conflicts does not solely matter, in that it represents an additional example of the wrongfulness of all interpretations that neglect the equal implication of women and men.

More significantly, it explains that intersectionality is the leading factor for fully understanding these phenomena and shaping human relationships and (ethnic) conflicts.

The intersection between gender and race and/or ethnicity, alongside cultural and religious traits, seems in fact to better depict the reasons that stand behind human relations during peace but, most importantly, in war times. In other words, the perceived “otherness”, that pushes

women against other women and that let women become and act as agent of war does not solely rest on gender.

Conversely, it constitutes the result of the interplay among a variety of traditional factors of discrimination, that jointly combined have a say in how peace processes, on the one hand, war, on the other, manifests themselves.

All of the above does not diminish the high likelihood that women are disproportionately exposed to forms violence during armed conflicts.

In this perspective, reference should be made to the argument that recognizes that violence against women presents specific traits when performed in times of war. Similarly, this explains the doctrine that advocates for the envisioning of new forms of violence perpetrated against women as for the cases of mass rape, gang rape, and mutilation, until the most controversial concept of genocidal violence and genocidal rape.

Not differently, the United Nations acknowledged this emergent and additional feature of violence against women after Resolution No. 1325 with Resolution No. 1820 of 2008, which explicitly recognizes sexual violence as a weapon and tactic of war, noting that «rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide».

In light of the above, the picture results extremely complex and diverse, as the roles women may embody in times of war.

On this, the book invites to challenge the traditional stereotype of women as passive victims during war crimes to encourage a new conceptualization of women's contributions in armed conflicts.

Moreover, the First Section, which looks instead at the subsequent phase focusing on what follows armed conflicts meaning peace processes, similarly reproduces an analogous controversial interpretation of the *status* of women.

The persistent lack of women in the top positions in charge of leading negotiations and peace processes testifies to the other side of the coin of the same stereotype mentioned above. The more women are considered extraneous to war as a social phenomenon, the more they are excluded from all the actions and initiatives to be put in place to restore peace.

According to UN Women, women made up 19% of delegations in UN-led peace processes in 2022 compared to 23% in 2020, and in 2021, only 32% of peace agreements reached at the global level featured provisions about women, girls, and gender more broadly.

Although, there is no question as to the benefit of promoting gender diversity in peace and security and despite it is still widespread the idea



that women are inherently peaceful beings, ironically, women are not allowed to contribute to establishing or restoring peace.

Being peaceful, or perceived peaceful, does not alter the persisting power relationships between men and women that, as known, are not confined to the private sphere, conversely expanding to the public sphere and to international affairs, where women continue to be largely underrepresented.

Eventually, the book argues for the endorsement of a new and alternative understanding of the roles of women, framing the investigation in light of the dichotomy between peace and war.

In short, women should be neither considered entirely passive victims, neglecting their agency in times of war according to an erroneous gender stereotype, nor as human beings whose participation in the peacemaking processes could be left behind, ignoring their beneficial, if not determinant, effect on the positive outcomes of domestic and supranational negotiations leading to post-conflict resolutions.

The essays here collected were presented during the International Conference, *The Role of Women and Women's Civil Society Organizations in Peace Processes*, organized at the University of Siena in collaboration with the University of Milan and with the partnership of Scuola Normale Superiore di Pisa and Runipace (Rete universitaria per la pace) on April 5<sup>th</sup> and 6<sup>th</sup>, 2022. The Conference was organized within the 2017 PRIN Project "Framing and Diagnosing Constitutional Degradation: a Comparative Perspective" (P.I., Professor Tania Groppi).

The contributions were presented and published here in English. Exceptions have been made in a limited number of cases to ensure the broader reach of the book and to give voice to all the authors who participated in the Conference.

We would like to thank all the contributors, the Chairs of the Session, the former Italian Minister of Justice, Marta Cartabia, for her opening speech, and Professor Glenda Sluga for her closing remarks.

The editors also extend their thankings to Sevgi Doğan for her invaluable contribution to the subject and assistance in the organization of the Conference.

A special thank goes also to Virginia Lemme for her thorough revision of the text.

PART ONE  
WOMEN, PEACE AND PEACE PROCESSES



# SOME FREEWHEELING REFLECTIONS ABOUT WOMEN AND PEACE

*Federico Lenzerini\**

SUMMARY: 1. Women and peace processes – 2. Why would an increased role of women in peace processes be necessary? – 3. The way forward.

I can promise you that women working together – linked, informed and educated – can bring peace and prosperity to this forsaken planet.

Isabelle Allende<sup>1</sup>

## 1. Women and peace processes

The very renowned first sentence of the UNESCO Constitution affirms that, «since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed». At the time when this Constitution was adopted, in 1945, the use of the word “men” was obviously determined by the fact that no much attention was yet devoted to the demand of using a gender-inclusive language. However, in my opinion, “men” – by the above sentence – appears more appropriate than, e.g., “humans”, or “women and men”, or “persons”, even according to a contemporary perspective paying particular attention to gender issues. In fact, history shows that throughout the world wars are almost always fueled, provoked, declared, fought, won or lost by men, women usually having very little or no role in this regard. Peace-processes are also carried out, in most cases, by men. At the Women in the World Summit

\* University of Siena, Italy.

1. See [www.goodreads.com/quotes/1065630-i-can-promise-you-that-women-working-together-linked](http://www.goodreads.com/quotes/1065630-i-can-promise-you-that-women-working-together-linked) (accessed July 21, 2023).

of 2013 Hillary Rodham Clinton said that, «[w]hen women participate in peace-making and peace-keeping, we are all safer and more secure»<sup>2</sup>. In fact, generally speaking, women are guided by a level of compassion and sensitiveness – not to mention diplomatic skills – which in many cases are not present in the minds of men, often including those men who reach the most important levels of leadership. Even the Security Council of the United Nations (UN), since 2000, appears to be aware of this factual assumption. In its Resolution 1325, it urged States «to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict»<sup>3</sup>. It also urged the UN Secretary General «to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel»<sup>4</sup>, and expressed «its willingness to incorporate a gender perspective into peacekeeping operations»<sup>5</sup>. In its website, the United Nations defines peacekeepers women as «key players and change agents of peace»<sup>6</sup>, particularly because of their potential to help armed forces to attain more legitimacy at the eyes of local people, to gain people’s trust (especially as regards women), to better prevent certain crimes which are very common in the context of armed conflicts. Principally gender-based violence, exploitation or abuse.

In practice, however, only rarely women are offered the opportunity of using their skills of peace-keepers or peace-makers. In most cases the role of women in peace processes is limited to stereotyped roles – such as, for instance, assistance to local women and children, medical or nursing services, etc. – without recognizing them significant roles of leadership in managing and implementing the strategies at the basis of peace-building. The reality is that in most cases women continue to be sidelined in formal peace processes. They are usually treated according to the stereotyped view that women are the weak sector of the human society, and their role is “to be protected” rather than act as protectors.

2. See [unfoundation.org/blog/post/5-inspiring-women-our-favorite-quotes/](https://unfoundation.org/blog/post/5-inspiring-women-our-favorite-quotes/) (accessed July 21, 2023).

3. See Resolution 1325 (2000), adopted by the Security Council at its 4213<sup>th</sup> meeting, on 31 October 2000, para. 1.

4. Ivi, para. 4.

5. Ivi, para. 5.

6. See United Nations Peacekeeping, *Promoting women, peace and security*, available at: [peacekeeping.un.org/en/promoting-women-peace-and-security](https://peacekeeping.un.org/en/promoting-women-peace-and-security) (accessed July 21, 2023).

Between 1992 and 2019, in the context of peace processes, women only represented 13 per cent of negotiators, 6 per cent of mediators, and 6 per cent of signatories of peace agreements; «[a]bout seven out of every ten peace processes did not include any women mediators or women signatories»<sup>7</sup>. In 2020,

[w]omen were included as delegates in 3 out of 4 United Nations (co-)led process (75 per cent) [...] and in 8 out of 13 total delegations. However, women [only] represented 23 per cent of delegates from parties to conflicts in these processes. Without persistent measures supported by the United Nations, this number would have been even smaller<sup>8</sup>.

These estimates speak for themselves.

## **2. Why would an increased role of women in peace processes be necessary?**

What is necessary is a clear shift in the paradigm according to which the leading roles in peace processes are usually reserved to men, because women possess a degree of compassion and sensitiveness that men in many cases do not have. Somebody would claim that it may be difficult to circumstantiate this assertion in empirical terms, especially for the reason that, historically, women have not been offered so many opportunities to lead peace processes. However, it is anyway corroborated by important studies. One of them, for instance, has concluded that «substantial inclusion of women and civil society groups in a peace negotiation makes the resulting agreement 64 percent less likely to fail and, according to another study, 35 percent more likely to last at least fifteen years. Several analyses suggest also that higher levels of gender equality are associated with a lower propensity for conflict, both between and within states»<sup>9</sup>. Furthermore, a «qualitative

7. See UN Women, *Facts and figures: Women, peace, and security*, October 2022, available at: [www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures](http://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures) (accessed July 21, 2023).

8. See *Women and peace and security*, Report of the Secretary-General, UN Doc. S/2021/827, 27 September 2021, para. 21.

9. See Jammie Bigio, Rachel Vogelstein, *How Women's Participation in Conflict Prevention and Resolution Advances U.S. Interests*, Council on Foreign Relations Press, October 2016, available at: [cdn.cfr.org/sites/default/files/pdf/2016/10/Discussion\\_Paper\\_Bigio\\_Vogelstein\\_Women%20in%20CPR\\_OR.pdf](http://cdn.cfr.org/sites/default/files/pdf/2016/10/Discussion_Paper_Bigio_Vogelstein_Women%20in%20CPR_OR.pdf) (accessed July 21, 2023), p. 1.

evaluation of women's influence in recent peace processes – notably in Guatemala (1996), Northern Ireland (1998), Liberia (2003), and the Philippines (2014) – further illustrates the critical role that women can play in resolving conflict and promoting stability»<sup>10</sup>. In any event, even more than scientific or sociological studies, it is the ontology of genders which clearly shows that the position I am advocating here is true, a reality of which humanity has been aware since ancient times – in such limited cases where wisdom has been able to overcome the brutal and groundless logics of man dominance.

For example, in the early 2000s, in Paris, while I was participating as a member of the Italian delegation in the negotiations for the *Convention for the Safeguarding of the Intangible Cultural Heritage* – later adopted by the UNESCO General Conference on 17 October 2003 – I had an interesting conversation about culture with the representative of Nigeria. During this conversation he asked me whether I had an idea about the reason why certain values that are particularly close to the identity and distinctiveness of the person are usually associated with the word “mother”, and not “father”. One may think about, for instance, “mother tongue” or “motherland”. I have to admit that I had never reflected on this issue before. He told me that in Nigeria they have their own explanation, presented by a traditional popular story. After God had created the man and the women, He thought that He wanted to give them a gift. So, He approached the man and asked him whether he would like to have a son. The man answered “oh, that would be great. He could help me in working in the fields and watch the flocks when I am taking rest”. Then God approached the woman and asked her the same question. The woman's eyes became dreamy and she softly whispered “oh, a son”; then she added, “I would hug him, raise him and love him for the rest of my life”.

It is just a matter of propensity to love, a propensity that would make peace processes much more likely to be successful. Women could even determine a transformation of the minds of men, who, still today, in the XXI century, after millennia of human evolution, believe that they can resolve international disputes by using weapons and producing destruction and human suffering. The armed aggression by Russia against Ukraine, commenced on 24 February 2022, is a sad evidence of this reality. Women better understand what are the fundamental values to be preserved. Normally, a woman is wise

10. Ivi, p. 3.

enough to understand that «peace is more powerful than trying to prove a point»<sup>11</sup>.

### 3. The way forward

As noted in the context of the UN, «the history of traditional peacemaking is littered with examples of failed mediation attempts and broken peace agreements. Conversely, a growing body of evidence shows unequivocally that women’s participation contributes to the conclusion of talks and the implementation and durability of peace agreements»<sup>12</sup>. As we have seen in the previous sections, the world needs the compassion and sensitiveness of women to build a true and stable peace. This inference is not only the result of metaphysical evidence, but is also validated by plain cultural considerations. Rigoberta Menchu Tum – famous Guatemalan Feminist, Indigenous Rights Activist and Peacemaker, who in 1992 was awarded the Nobel Prize for Peace in consideration of her efforts for social justice and ethno-cultural reconciliation based on respect for the rights of Indigenous peoples – once said that «[p]eace cannot exist without justice, justice cannot exist without fairness, fairness cannot exist without development, development cannot exist without democracy, democracy cannot exist without respect for the identity and worth of cultures and peoples»<sup>13</sup>. It is an undeniable fact that the cultural element – particularly appreciation of cultural diversity and of the value of others’ cultural identities – is an essential prerequisite for peace, through tolerance and mutual understanding<sup>14</sup>. But this requires the spontaneous activation of a virtuous circle which implies on its turn that the essential elements of each culture of the world are properly preserved, valorized and introduced in

11. See Gift Gugu Mona, *Woman of Virtue: Power-Filled Quotes for a Powerful Woman*, available at: [www.goodreads.com/work/quotes/75687431-woman-of-virtue-power-filled-quotes-for-a-powerful-woman](http://www.goodreads.com/work/quotes/75687431-woman-of-virtue-power-filled-quotes-for-a-powerful-woman) (accessed July 21, 2023).

12. See UNWOMEN, *Women’s Participation and a better understanding of the Political*, A Global Study on the Implementation of United Nations Security Council Resolution 1325, available at: [wps.unwomen.org/participation/](http://wps.unwomen.org/participation/) (accessed July 21, 2023).

13. See [quotefancy.com/quote/1570067/Rigoberta-Mench-Peace-cannot-exist-without-justice-justice-cannot-exist-without-fairness](http://quotefancy.com/quote/1570067/Rigoberta-Mench-Peace-cannot-exist-without-justice-justice-cannot-exist-without-fairness) (accessed July 21, 2023).

14. See, in this regard, Federico Lenzerini, *Fostering Tolerance and Mutual Understanding among Peoples*, in Abdulqawi A. Yusuf (ed.), *Standard-setting in UNESCO*, Volume I: *Normative Action in Education, Science and Culture, Essays in Commemoration of the Sixtieth Anniversary of UNESCO*, Martinus Nijhoff 2007, pp. 187-205.



such a circle in order to promote appreciation for them. In this regard, women play a decisive role, because they «are the custodians of cultural, social, and religious values, and are uniquely positioned to transmit these ideals to the next generation[s]»<sup>15</sup>. It follows that, not only women must be involved in peace processes, but the latter must be shaped taking into account the cultural specificities of the communities particularly involved in the process, placing women in an effective position of leadership. This is necessary exactly because women know better than the rest of the community what are the real needs of their own people, the realization of which would lead to the achievement of a stable and lasting peace. In addition, as emphasized several times above in this text, women possess the necessary wisdom, compassion and sensitiveness for leading a peace process to success.

Furthermore, we must remember that a culture of peace is usually not the result of a process which triggers spontaneously in the minds of men, too often pervaded by the brutal logics of war. Construction of the defenses of peace in the minds of men necessitates a process of education that teaches «children not to hate. Through education, we raise leaders who act with wisdom and compassion. Through education, we establish a true, lasting culture of peace»; in this regard, «women – mothers, grandmothers, and other family members – often being the first teachers of children, they can play a vital role in educating young people to value peace and not war»<sup>16</sup>.

And, in any event, even if one would persist in disagreeing with all the previous considerations and would be determined to ignore all the material, ontological and metaphysical evidence – in addition to logical reasoning – used to support them, we could sweep all objections away by referring to a very plain “historical” argument. Men have tried to build peace for some 3,500 years, in most cases without obtaining significant outcomes or failing. Now the time has come for women to try.

15. See Maya Morsi, *Women: custodians of cultural, social and religious values*, Union for the Mediterranean, available at: [ufmsecretariat.org/women-custodians-cultural-social-religious-values-maya-morsi/](http://ufmsecretariat.org/women-custodians-cultural-social-religious-values-maya-morsi/) (accessed July 21, 2023). See also Sudha Jha Pathak, *Women Custodians of Tradition*, in Nisha Dhanraj Dewani, Amulya Gurtu (eds.), *Intellectual Property Rights and the Protection of Traditional Knowledge*, Information Science Reference, 2019, pp. 182-203.

16. See UNWOMEN, *A culture of peace requires the participation of women*, Speech by UN Women Deputy Executive Director Lakshmi Puri at the High-Level Forum on the Culture of Peace, UN Headquarters, New York, September 9, 2014 (quoting the UN Secretary General), available at: [www.unwomen.org/en/news/stories/2014/9/speech-by-lakshmi-puri-at-culture-of-peace-event](http://www.unwomen.org/en/news/stories/2014/9/speech-by-lakshmi-puri-at-culture-of-peace-event) (accessed July 21, 2023).

# WOMEN, PEACE, NON-VIOLENT CONFLICT RESOLUTION: A HISTORICAL PERSPECTIVE

*Elda Guerra\**

SUMMARY: 1. Women at The Hague: the “acceleration” of the end of ongoing conflicts – 2. In the 1930s: acting to prevent war – 3. The second half of the 20<sup>th</sup> century: women in peace processes and the search for non-violent conflict resolution.

In a seminal book, *Women and War*, published more than thirty years ago, Jean Bethke Elshstain, deconstructed a persistent narrative, deeply inscribed in our mental representations and cultural traditions. Elshstain wrote:

We in the West are the heirs of a tradition that assumes an affinity between women and peace, between men and war, a tradition that consists of culturally constructed and transmitted myths and memories. Thus, in time of war, real men and women [...], perceived as beings who have complementary needs and exemplify gender specific virtues, take on in cultural memory and narrative the personas of Just Warriors and Beautiful Souls<sup>1</sup>.

Modern wars, up to the current conflict dramatically before our eyes, with the disappearance of the distinction between home front and military fronts, with the involvement of the civilian population, show us a different situation. Women are present in various forms in the theatre of war, and the mythology of the hero is challenged by the tasks that soldiers are obliged to perform: there is fear and pity, and there is also, along with brutality, that male compassion evoked in so many war tales.

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1. J. Bethke Elshstain, *Women and War*, University of Chicago Press Edition, 1995, p. 4.

For this reason, I wish, first of all, to make it clear that the focus of my speech is not on women as a collective and indeterminate subject, but on groups, associations or individuals who in different ways have given rise to international movements and networks and have intertwined the pursuit of greater justice between the sexes and genders – in both the public and private spheres – and the search for policies aimed at affirming a culture of peace and a coexistence possible without resorting to arms<sup>2</sup>.

This does not mean denying the fact that women’s historical experience is intimately connected to caring for life, but it is a historical experience, not a natural inclination, inherent, so to say, in being actual or potential mothers. The words of Jane Addams, a key figure in the history of modern social reformism and pacifism, are clear in this regard. According to Jane Addams, the claim to female citizenship was based on the historical shift from a society dominated by «warfare» to a society founded on «nourishing human life». In this sense, women’s historical experience became essential for modern States<sup>3</sup>. The second consideration has to do with the temporal dimension, in the sense that the history of women’s political movements has spanned the last two centuries, measuring itself, from time to time, with the different historical contexts, with the challenges and dilemmas posed by the many wars they were faced with.

Finally, I will focus on the action carried out by civil society organisations, in dialogue and sometimes in opposition to state political actors, official diplomacy or supranational bodies such as the League of Nations and the United Nations. This is not a separate story: it unfolds in fact – with its own specificity – in the interrelationship with contemporary pacifist or pacifist movements, to use British historian Martin Ceadel’s distinction between absolute pacifism and the search for peace policies<sup>4</sup>.

It is impossible to summarize such a long and complex story in the short space of a speech.

I have therefore decided to present a few examples based on some keywords that have from time to time characterized the discourse and practices of these groups at crucial moments in the history of the twentieth century: “acceleration” of the end of ongoing conflicts; “prevention”

2. For an overview of feminist peace research, *Routledge Handbook of Feminist Peace Research*, Routledge, 2021.

3. J. Addams, *Newer Ideals of Peace*, Macmillan, pp. 24-25.

4. M. Ceadel, *Pacifism in Britain. 1914-1945: the Defining of a Faith*, Clarendon Press, 1980, p. 5.

of war starting from the struggles for the reduction and limitation of armaments; search for “mediation” and “non-violent solutions”.

## **1. Women at The Hague: the “acceleration” of the end of ongoing conflicts**

The first example takes us to the heart of the European theatre between 1914 and 1915. At that time, there was already on the scene a large women’s movement, gathered in important international associations, such as the International Council of Women or the International Woman Suffrage Alliance, which demanded the overcoming of the various forms of oppression and subordination and the recognition of women as citizens à part-entière.

There were basically two key aims at the time: stopping the arms race, made even more terrible by technological advances, and supporting arbitration policies to resolve national disputes.

Against this background of confidence in a better world for women and men, the world war broke out. What was the reaction of these associations? Firstly, to try and stop the escalation.

On the first of August 1914, on the eve of Germany’s declaration of war against France, the International Woman Suffrage Alliance launched, from London, an appeal: «We, the women of the world, view with apprehension and dismay the present situation in Europe, which threatens to involve one continent, if not the whole world, in the disasters and horror of war. [...] Powerless though we are politically, we call upon the Governments and Powers to avert the threatened unparalleled disaster»<sup>5</sup>.

But shortly afterwards, with the invasion of Belgium and the entry of Great Britain into the war, the discourse of “Sisterhood” was deeply fractured, and the protagonists too of the international associations were divided along national lines. However, some of them did not stop their fight for peace, which was transformed from an action to prevent and stop military escalation into an action to accelerate its end through the search for a possible mediation.

In spite of enormous difficulties, an international conference was convened at the end of April 1915 in Le Hague: a neutral territory but at a short distance from the battlefields of Flanders. Around 1200

5. *International Manifesto of Women*, in *Jus Suffragii*, vol. 8, n. 13, September 1, 1914.

women attended, mostly from the Netherlands, but also from other belligerent and neutral countries, and 12 nationalities were represented. That congress was the precursor to the foundation of another large international women's association, which still exists today, the Women's League for Peace and Freedom. From it emerged a "proposal" and "action" with the aim of accelerating the end<sup>6</sup>.

The proposal was this: «This International Congress of Women resolves to ask the neutral countries to take immediate steps to create a conference of neutral nations which shall without delay offer continuous mediation. The Conference shall invite suggestions for settlement from each of the belligerent nations and, in any case, shall submit to all of them simultaneously, reasonable proposals as basis of peace»<sup>7</sup>.

The action consisted of sending peace messengers to all governments: «In order to urge the Governments of the world to put an end to this bloodshed and to establish a just and lasting peace, this International Congress of Women delegates envoys to carry the message express in Congress Resolutions to the rulers of the belligerent and neutral nations of Europe and to President of the United States»<sup>8</sup>.

They also went to the Pope: it was a symbolic action, but it opened the way for women's associations and their networks to become, like other movements, a political actor on the international scene and, after war, an interlocutor with the League of Nations.

## 2. In the 1930s: acting to prevent war

As regards to the interlocution between women's associations and the League of Nations on the subject of peace, one of the most significant moments was between the 1920s and 1930s. At a time when the winds of war were blowing over Europe again, thousands of women moved to collect signatures for petitions on disarmament to prevent a new war and to ensure a lasting peace. This large-scale communication campaign, carried out together with other pacifist associations, was launched in view of the convening in Geneva – by the League of Nations – of

6. J. Addams, E.G. Balch, A. Hamilton, *Women at The Hague. The International Congress of Women and its results*, Introduction by H. Hyman Alonso, University of Illinois Press, 2003; M.G. Suriano, *Percorrere la nonviolenza. L'esperienza politica della Women's International League for Peace and Freedom (1915-1939)*, Aracne, 2012.

7. International Women's Committee for Permanent Peace, *Report of the International Congress of Women at The Hague*, April 28 - May 1, 1915, p. 10.

8. *Report of the International Congress of Women at The Hague*, cit., p. 11.

the Conference for the Reduction and Limitation of Armaments. The Women's Disarmament Committee was formed with the participation of the various international women's associations to coordinate the enormous work. The petitions with all the signatures collected, more than 6 million, arrived in Geneva at the Conference venue which opened on 2 February 1932, the same day that Japan attacked China.

I cannot dwell on the speeches or the extraordinary choreography that was put in place, except to say that trucks were used to transport the signatures and that all the parcels wrapped in the colours of the different nations were deposited at the foot of the presidential table until the clerks had to intervene to move them to the adjacent corridors<sup>9</sup>.

This phase was destined to precipitate in the second half of the 1930s. Immediately after the failure of the Conference and the rise of Nazism and the threats to democracy, for these internationalist feminists the dilemma arose as to what to do in the grip between pacifism and the defence of democracy.

In the end, most of the movement found itself in the words of the Declaration of Principles, drawn up by the International Alliance, in July 1939 at the Thirteenth Congress in Copenhagen. So wrote the women of the International Alliance in their Declaration:

In these dangerous times where the fundamental principles concerning the relations between individual and State, and between States themselves are being challenged, it is essential that women should be fully aware of the responsibilities which their feminist conviction entails.

The sacredness of human personality has always been the keystone of the women's movement [...]. Their fight was essentially part of the great struggle against oppression of creed, race, class and sex. [...]

The women's movement therefore, although apart from party politics, was founded on a political conception. In consequence it stands for equality of sex, race and creed<sup>10</sup>.

These words prefigure the relationship between women's rights and human rights, which after the founding of the United Nations and the Universal Declaration of Human Rights would be at the centre of a long and complex path until the recognition of women's and girls' rights as human rights in themselves, in 1995, at the Beijing International Conference.

9. E. Guerra, *Il dilemma della pace. Femministe e pacifiste sulla scena internazionale*, Viella, 2014, pp. 151-161.

10. International Alliance of Women for Suffrage and Equal Citizenship, *Report of the Thirteenth Congress*, July 8<sup>th</sup> to 14<sup>th</sup> 1939, The Rydal Press, p. 8.

### 3. The second half of the 20<sup>th</sup> century: women in peace processes and the search for non-violent conflict resolution

The Statute of the United Nations and the subsequent Declaration, in the drafting of which Eleanor Roosevelt played a fundamental role, included, among the many legacies, that of international women's movement. From the preamble the belief in «equal rights of men and women» was made explicit and the principle was solemnly developed in the first article. A special body was also created: the Sub Commission on the Status of Women, which later became the Commission on the Status of Women. I will say no more, referring to the many important studies, including those by Glenda Sluga and the biography of Eleanor Roosevelt by Raffaella Baritono, as well as other important contributions that follow<sup>11</sup>. I will just recall that this commission had the task of proposing policies towards women promoted by the United Nations and of urging their implementation through a series of Conventions and Declarations approved by the Assembly. One of the most important for this period was the Declaration on the Elimination of Discrimination against Women, of 1967, which would constitute a fundamental antecedent to subsequent developments. It should be kept in mind that this shift took place in the more general context of a world that was still bipolar, but strongly marked by the results of post-colonialism and crossed by the incipient forms of a new globalization. Not only that.

The 1980s also saw a feminist revival of women's actions against the escalation of nuclear weapons in a movement that crossed Europe from Greenham Common to Comiso to prevent the installation of nuclear-armed missiles. This period saw, furthermore, innovative forms of resistance to dictatorships and their crimes such as the Madres De Plaza de Mayo or the birth in Jerusalem and Tel Aviv of the Women in Black, Israeli women who in their black clothing wanted to symbolize the double mourning for the victims of the Israeli-Palestinian conflict and for the militarization of their state<sup>12</sup>.

Against this backdrop, the last example concerns the network «Visiting difficult places», promoted by Italian women together with

11. G. Sluga, P. Clavin, *Internationalisms: a Twentieth Century History*, Cambridge University Press, 2016; R. Baritono, *Eleanor Roosevelt. Una biografia politica*, il Mulino, 2021.

12. M. Marx Ferree, A. Mari Tripp, *Global Feminism: Transnational Women's Activism, Organizing, and Human Rights*, New York University Press, 2006; C. Cockburn, *From Where We Stand. War, Women's Activism & Feminist Analysis*, Zed books, 2007.

Israeli and Palestinian women, which saw a succession of meetings and exchanges between Turin, Bologna, Jerusalem, Gaza and Nablus – from 1988 to 1992 – with the aim to seek possibilities for non-violent conflict resolution<sup>13</sup>. Without going any further, I would like to point out that over the course of this initiative, starting with the international seminar with the still extremely pertinent title *Many women, one planet*, a new expression was put into circulation which was destined to be widely used: “transversal politics”. Raffaella Lamberti, one of the Italian protagonists, wrote on this subject: «“Transversal Politics” was the expression I proposed to name the political practice of crossing differences, asymmetries, divisions and bloody conflicts [...] It recapitulated the gestures of “rooting” and “shifting” in an overall movement that did not deny but rather maintained the different identities and positions»<sup>14</sup>.

At the basis of the proposal of a «transversal politics», there was, in fact, a double movement on the part of the subjects in play: on the one side the consciousness of oneself and one’s own identity history, that is «rooting» and on the other side, the movement towards welcoming the perspective of the other, that is «shifting».

As for the choice of the word «transversal», Lamberti, adds: «how can we avoid the risk of a word like transnational? [...] I insist that “situating” in this case meant meeting and talking to each other within a deep and bloody conflict. Transversal politics expressed the idea better»<sup>15</sup>.

Some time later, Nira Yuval-Davis, who was present at the seminar took up that innovative approach and wrote:

Like many other feminist activists, I have been in search of a name for what so many of us are doing. I found it when I was invited by Italian feminists from Bologna to a meeting they organised between Palestinian and Israeli women (both Jewish and Palestinian)<sup>16</sup>.

«Transversal politics» was precisely the name as the expression: «recognizes that from each positioning the world is seen differently, and thus that any knowledge based on just one positioning is “unfinished” – which is not the same thing as saying it is “invalid”. In

13. E. Guerra, “*Visitare luoghi difficili*”. *Pensiero e pratiche del femminismo italiano per la soluzione non violenta dei conflitti*, in *DEP. Deportate, Esuli, Profughe*, n. 46, 2021.

14. R. Lamberti, *Produzione di politica a mezzo politica*, *orlando.women.it*, p. 12.

15. Ivi, p.13.

16. N. Yuval-Davis, *What is “Transversal Politics?”*, in *Soundings*, 12, 1999, p. 94.



this epistemology, the only way to approach “the truth” is by a dialogue between people of differential positionings»<sup>17</sup>.

The seminar took place in September 1992, while the season of the new Balkan wars had already opened, wars which put before the eyes of the world the modern use of the archaic weapon of war, represented by rape. But more on this in other contributions.

In conclusion, one last remark: the presence of women’s organisations in peace processes, together with the dramatic emergency constituted by the specific vulnerability of women’s and girls’ bodies, in war scenarios and in the home, constitutes an important antecedent for the recognition of women’s rights as human rights in the mid-1990s.

At the same time, together with the important role played by women in the reconciliation processes after civil wars in different parts of world, especially in many African countries, it is also an important antecedent for another recognition, namely Resolution 1325 issued in 2000 by the United Nations Security Council and subsequent ones<sup>18</sup>. In fact, beyond calling attention to the specific ways in which women and girls were affected by armed conflict, it also called for gender mainstreaming into all post-conflict processes and peace support operations.

Today, it seems to be only a wish, but perhaps it helps imagining some possibility to overcome this very uncertain moment. On the other hand, in the words of a historian of pacifism, it is also a matter of looking at the «inverse»<sup>19</sup> of the history, with the awareness that every historical conjuncture contains within itself a plurality of possibilities and that utopias are also part of history.

17. Ivi, p. 95.

18. C. Cohn (ed.), *Women&Wars*, Polity, 2013; Leymah Gbwee, *When women stand together as one. The power of women’s grassroots peace movements*, in *Journal of International Affairs*, 2, 2019; P. Kirby, L. Shepherd, *Reintroducing women, peace and security*, in *International Affairs*, 2, 2016.

19. The definition is taken from Norman Ingram, *L’envers de l’entre-deux-guerres en France: ou la recherche d’un passé pacifiste*, in Maurice Vaisse (dir.), *Le pacifisme en Europe: des années 1920 aux années 1950*, Bruylant, 1993.

A HISTORICAL READING:  
XII INTERNATIONAL CONGRESS  
OF WOMEN (1935) IN ISTANBUL  
AND ITS CONTRIBUTION TO THE WORLD PEACE

*Yasemin Sancar Koyuncuoglu\**

SUMMARY: 1. The Congress in Istanbul – 2. Opening of the congress – 3. Discourses on peace – 4. Conclusion.

Since its emergence, the international feminist movement has brought up issues such as women’s liberation, women’s rights and equality, emancipation, and women’s empowerment. But, throughout the history, and especially after the First World War, feminists also exerted serious efforts to ensure world peace by taking an anti-war position. Within that period, they declared their opinions in different occasions. In this regard, the paper will focus on one of the occasions, like “XII International Congress of Women” held in 1935 and will touch on the discourses about peace throughout this congress. It will deal the issue of the role of women to establish peace in history by considering the contribution of women’s civil society organizations in peace processes especially by examining the various newspapers as a primary source published in Istanbul.

Between the dates 18 April and 24 April in 1935, the XVII International Women’s Congress was held in Istanbul under the umbrella of The International Alliance of Women (IAW). It was hosted by the Turkish Women’s Union (TWU), which was one of IAW’s members. This congress was an example of the contributions of activist women to the peace movement in history. Before the XVII Congress held in Istanbul, IAW had organized congresses in different European cities after the first congress in Washington D.C. (1902). The others respectively were held in Berlin (1904), Copenhagen (1906), Amsterdam (1908), London (1909), Stockholm (1911), Budapest (1913), Geneva

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(1920), Rome (1923), Paris (1926) and in Berlin (1929). Unfortunately, between the years 1913-1920 any congress could be held due to the social instability of First World War. The First World War was a turning point for the International Union which was concerned about what direction European countries would evolve. For this reason, peace had become one of the main agenda items for the Union, which took an anti-war stance. The issue of peace would continue to be the main topic at the congress in Istanbul. Regarding the preliminary meeting held by the commission members before the congress in Istanbul, the headline *250 women, all anti-war*<sup>1</sup> published in a local newspaper had indicated that the main topic of the congress in Istanbul would be peace.

## 1. The Congress in Istanbul

The meeting point of the IAW<sup>2</sup> in 1935 was Istanbul. The main reason behind holding the congress, hosted by the Turkish Women's Union (TWU)<sup>3</sup>, in Istanbul was the fact that Turkish women had achieved their political rights, such as right to vote and to be elected, in those days<sup>4</sup>. Besides, Turkey was holding the highest number of female deputies among the parliaments in Europe at that time<sup>5</sup>. While women's political rights were limited in many developed western countries, granting the right to vote and to be elected in an eastern country like Turkey, where women were closed to social life at the beginning of the 20<sup>th</sup> century, was an exemplary development for the world women's movement. As a matter of fact, throughout the congress this issue was often emphasized by the delegates<sup>6</sup>. Adele Schreiber, the first vice president of the International Women's Alliance, in a statement she gave to a newspaper, had made a similar emphasis by saying that

1. *250 Kadın Hepsi de Harp Aleyhtarı*, in *Son Posta*, 16 April 1935, p. 1.

2. The International Alliance of Women (IAW) is still one of the important an international NGO comprising 41 member organizations.

3. TWU, founded in 1924 in Istanbul, became a member of IAW in 1926.

4. Women in Turkey obtained their first political rights by participating in municipal elections in 1930 and in 1934. By the amendment made in the constitution and election law, they gained the right to be elected as a deputy. In the 1935 Turkish general elections, 18 women were elected as deputies.

5. A. Davaz, *Eşitsiz Kızkardeşlik: Uluslararası ve Ortadoğu Kadın Hareketleri, 1935 Kongresi ve Türk Kadın Birliği*, Türkiye İş Bankası Kültür Yayınları, 2015, p. 679.

6. Z. Toprak, *1935 İstanbul Uluslararası Feminizm Kongresi ve Barış*, in *Düşün*, n. 24, 1986, pp. 24-29.

«Turkey is a country that has attracted the world's attention with its great revolutions regarding women's achievement of their political rights»<sup>7</sup>. Also, Katherine Bompas, secretary general of IAW central office, made a similar point. In her statement, she had mentioned that the political rights of Turkish women's achievement of their political rights was encouraging for all women over the world and would be a helping force in their struggle<sup>8</sup>. Likewise, the Australian delegate, Mrs. Cardell-Oliver had also stated that Turkey has drawn the world's attention and that the last reforms which left many European nations behind in the field of woman question were the greatest factor that brought them in Istanbul<sup>9</sup>. In a similar way, one of the delegates from Switzerland, Ringwald, juris scientiae doctor, had emphasized in her interview that, although the Turkish constitutional law was taken from Switzerland, Turkish women gained greater advantages in the political field compared to Swiss women<sup>10</sup>.

The geographical location of Istanbul would also serve the purpose of reaching the women from the Middle East and Far East for the International Union. Schreiber had also emphasized this issue in an interview that she gave to a local newspaper. She stated that the congress had convened for the first time in an Eastern country unlike previous congresses organized by the IAW<sup>11</sup>. Istanbul was the most suitable city to go beyond the borders of the region defined as “west”, which was one of the strategies of the International Union, and to include eastern women into the organization. Cooperation of the women from the East and the West was one of the issues on which the Union attached an importance. According to the decision taken in the congress, it was necessary for all women of the world to work together for women's rights to advance. Thus, the advancement of women's rights in the East and the West and the achievement of all rights would also contribute to the world peace<sup>12</sup>. This kind of transnational solidarity among women was also compatible with the first wave feminism which was about “sisterhood”. This approach was emphasized by some delegates throughout the congress. According to Cécile Brunschvicg, a French

7. *Uluslararası Kadın Kongresi*, in *Cumhuriyet*, 3 April 1935, p. 3.

8. *Dünya Feministleriyle Görüşmeler*, in *Cumhuriyet*, 10 April 1935, p. 5.

9. *Kadın Haklarının 70'lik Gönüllüsü İstanbul'da*, in *Cumhuriyet*, 10 April 1935, p. 3.

10. *Kadınlar Kongresi Hazırlığı İlerliyor*, in *Cumhuriyet*, 11 April 1935, p. 2.

11. *Uluslararası Kadın Kongresi*, in *Cumhuriyet*, 3 April 1935, p. 3.

12. A. Davaz, *Eşitsiz Kızkardeşlik: Uluslararası ve Ortadoğu Kadın Hareketleri, 1935 Kongresi ve Türk Kadın Birliği*, cit., pp. 679-733.

delegate, staying loyal to their religion and national ideals, all women of the world could unite. That was what the Union was trying to ensure<sup>13</sup>. Nancy Astor, the first female member of the British Parliament, was also addressing this issue by the following words: «The sincerity in this meeting shows that the differences in nationality do not prevent the women of the world from being very good friends and sisters, and that is what is desired»<sup>14</sup>. Apart from these, also for Huda Shaarawi, the head of the Egyptian Women's Union, all women of the world needed to unite and act in the same way<sup>15</sup>.

In addition to these, the economic support of the Turkish government to the congress had an impact on the Union which was having difficulties in coping with the financial problems in those years. Even the congress planned to be held in Athens in 1932, it couldn't have been held due to the extensions of the 1929 economic crisis that affected the world. With the economic support of the Turkish government, which would have covered some expenses of the congress, the Union would have been financially relieved for a while<sup>16</sup>. Besides, the postal and telegraph administration of Turkey had printed 15 commemorative stamps as a souvenir of the women's congress. It was to be used from the date of the congress until the end of the year<sup>17</sup>. *XII<sup>ème</sup> Congr es Suffragiste International, Istanbul 1935* was written in French on each stamp. The series featured prominent figures of the international women's movement and portraits of leading women writers and peace advocates in various fields at the turn of the century<sup>18</sup>. Among 15 serial stamps, Nobel Prize awarded women were included in the majority of the stamps and two of them were issued in the name of two women (Bertha Von Suttner (1843-1914) and Jane Addams [1860-1935]) who were awarded the Nobel Peace Prize in 1905 and 1931 respectively<sup>19</sup>. Half

13. *Biz T rkiye'ye Hayran Olmaya Geldik*, in *Cumhuriyet*, 16 April 1935, p. 6.

14. *D nya Kadınlarının Tezah r : D nk  Miting  ok Geniř Bir Cazibe Yarattı*, in *Son Posta*, 22 April 1935, p. 6.

15. *Kadının Kurtuluřunu Atat rk'e Bor luyuz*, in *Cumhuriyet*, 13 April 1935, p. 5.

16. A. Davaz, *Eřitsiz Kızkardeřlik: Uluslararası ve Ortadoęu Kadın Hareketleri, 1935 Kongresi ve T rk Kadın Birlięi*, cit., pp. 602-604.

17. *D nya Kadınları Bug n Yıldız Sarayında Toplanıyor!*, in *Cumhuriyet*, 18 April 1935, p. 8.

18. *Bir Belge, Cumhuriyetin Kadınlar Adına Bastıęı İlk Pullar*, in *Kadın Belleęi, Kadın Eserleri K t phanesi ve Bilgi Merkezi Vakfı Yayın Organı*, Sayı:1, 2005, p. 14.

19. The persons and allegorical figures on the stamps are as follows: Mustafa Kemal Atat rk (the founder of the Republic of Turkey), Carrie Chapman Cat (Founder and Honorary President of IAW), Nobel Prize winners: Madame Curie (in science), Grazia Deledda (literature), Selma Lagerl f (literature), Sigrid Undset (literature), Jane Adams

of the revenue of the stamps, printed in a series of hundred thousand, would have gone to the Turkish government and the other half donated to the International Alliance<sup>20</sup>. It was the first time in history of the world that women who struggled to enter the public sphere in 1935 were included in the stamps used by all segments of society. It was also an unconventional development during that period for a state to issue a series of stamps to celebrate an event related to women. Since the first postage stamp issued in 1849, human figures have been included in 3,000 of all the stamps issued. Considering that 72 women were included in only 62 of these human figures' stamps<sup>21</sup>, this stamp series has had symbolically an important place in the history of women's right movement.



*Commemorative stamps for the congress.*

(peace), Bertha Von Suttner (peace), allegorical figures about working women (a pilot, policeman, farmer, teacher and voting woman), as well as a picture of Yıldız Palace where the congress was held and the emblem of the union.

20. M. Turan, *1935 Kongresi Arşivi: Türkiye'deki İlk Uluslararası Kadın Kongresinin Belgeleri*, in *İN Toplumsal Tarih*, n. 75, 2000, pp. 36-37.

21. A. Davaz, *Eşitsiz Kızkardeşlik: Uluslararası ve Ortadoğu Kadın Hareketleri, 1935 Kongresi ve Türk Kadın Birliği*, cit., pp. 621-627.

Except from the geographical and economic reasons, before the congress, many opportunities were created for the participants with the efforts of the TWU. For example, while the hotel discounts were provided for some delegates coming from abroad, some other delegates were hosted by TWU members at their places. In addition, a free pass was obtained from the tram company in Istanbul and a special bus service was organized to Yıldız Palace, where the congress was held. Apart from these, for the delegates, some services such as a hairdresser, postal service and a travel agency staff were provided in the congress center<sup>22</sup>. Considering all these possibilities, it was a logical decision for IAW to choose Istanbul as the congress city within the framework of the union's strategy, objectives and economic difficulties.

## 2. Opening of the congress

The congress had assembled the all feminists around the world with the participation of delegates from the women's unions of different countries under the umbrella of IAW. Most of them was from European countries. It was known that around three hundred women<sup>23</sup>, from nearly forty countries<sup>24</sup>, participated in the congress. Due to this cultural diversity, the speakers at the congress could make presentations in French, German and English<sup>25</sup>. Despite all their differences, hundreds of women from all over the world demonstrated a common will for full

22. M. Turan, *1935 Kongresi Arşivi: Türkiye'deki İlk Uluslararası Kadın Kongresinin Belgeleri*, in *In Toplumsal Tarih*, n. 75, 2000, p. 37. Also see *Kadınlar Kongresi Ruznamesi Hazır*, in *Cumhuriyet*, 6 April 1935, p. 2; *Biz Türkiye'ye Hayran Olmaya Geldik*, in *Cumhuriyet*, 16 April 1935, p. 6.

23. According to the statement of the president of the union, Corbett Ashby, 210 delegates and 83 members from different countries' women unions will participate in the congress. *Uluslararası Kadınlar Birliği Başkanı Dün Geldi*, in *Cumhuriyet*, 12 April 1935, p.2.

24. In two newspapers of different dates, these countries participating in the congress were listed with little difference as follows (in alphabetical order): America, Australia, Austria, Belgium, Bermid Islands, Brazil, Bulgaria, Czechoslovakia, Denmark, Palestine, Finland, France, India, Netherlands, England, Iran, Ireland, Spain, Sweden, Switzerland, Italy, Iceland, Japan, Jamaica, Poland, Luxembourg, Hungary, Egypt, Norway, Poland, Portugal, Romania, Serendib, Ceylon, Syria, Turkey, Uruguay, Yugoslavia, Greece, New Zealand. See: *Feminizm Kongresi*, in *Cumhuriyet*, 18 April 1935, p. 5; and *Kadınlar Kongresi*, in *Cumhuriyet*, 4 April 1935, p. 2.

25. *Uluslararası Kadınlar Birliği Başkanı Dün Geldi*, in *Cumhuriyet*, 12 April 1935, p. 2.

equality and peace during eight days<sup>26</sup>. Considering the transportation problem in 1920's, participation in the congress was not easy. Moreover, this was the period in which economic depression was felt. In the light of this economic crisis, it was quite valuable to witness hundreds of women coming together for a conference.

The congress activities were carried out in Yıldız Palace, which was specially opened for this meeting. The congress started in 18<sup>th</sup> of April at ten in the morning<sup>27</sup>. The meeting room reserved for the congress was for 500 people. Since the number of delegates attending the congress was 360, there was not much room for the audience in the hall. Speakers were placed in different rooms for the women who lived in Istanbul and who wanted to follow the congress as audiences<sup>28</sup>. *Cumhuriyet*, the national newspaper of Turkey, had shared the news about the congress, congress on its home page, attracting great attention. The news headline was: *Women of the world gathering at Yıldız Palace today!* In the drawing depicted in the news, there was a young woman and man holding the world in their hands. Under the picture, the words «unity» and «solidarity» were written<sup>29</sup>. The first subject of the congress was «women's issues» and the second agenda was «peace». The purpose of the congress was also reflected throughout the newspaper columns. The headline was as follows: «We want equality for women and peace for humanity»<sup>30</sup>.

The keynote speaker of the congress was Corbett Ashby, the president of International Women Alliance. In her opening speech, after stating that they would fight over the traditions which hinder the developments of women's rights, she touched upon the issues of equal right to education for men and women, equality under the law, professional and economic freedom, she emphasized that women would join their forces to achieve peace. According to her, the congress in Istanbul had an extraordinary importance in the history of feminism. Women attending the congress were having the same purpose: “freedom for women, peace for humanity”. For her, every word spoken at this congress, every gesture

26. A. Davaz, *Eşitsiz Kızkardeşlik: Uluslararası ve Ortadoğu Kadın Hareketleri, 1935 Kongresi ve Türk Kadın Birliği*, cit., pp. 613-614.

27. *Kongre Bu Sabah Açıldı*, in *Akşam*, 18 April 1935, p. 1.

28. *Kongre Bu Sabah Açıldı*, in *Akşam*, 18 April 1935, p. 4; *Kongrenin İlk Günü*, in *Son Posta*, 19 April 1935, p. 8.

29. *Dünya Kadınları Bugün Yıldız Sarayında Toplanıyor!*, in *Cumhuriyet*, 18 April 1935, p. 1.

30. *Otuz Yurdun Kadınları Dün Toplandılar*, in *Cumhuriyet*, 19 April 1935, p. 1.



made should have served peace, directly or indirectly<sup>31</sup>. In fact, this was not the first congress of the Union in which women were talking about peace. After the First World War, the organizing committee had put the issue of “peace” on their agenda. In 1926, the congress in Paris decided to establish a standing commission to assist the work of the League of Nations and to examine how women could exercise their political rights to advocate for peace<sup>32</sup>. But it was during the congress held in Istanbul that the greatest emphasis was placed on peace. For many researchers, the defense of peace in the world, the peaceful resolution of conflicts, the limitation of arms and disarmament were emphasized for the first time in the congresses of the International Alliance of Women<sup>33</sup>.

Some delegation members of the Union had come earlier to Istanbul to observe congress preparations. Among them, Adele Schreiber, the first vice president of the International Women’s Alliance, was the first delegate who arrived in Istanbul on April 2, 1935. Schreiber was emphasizing that one of the main purposes of the Union was to «work for peace» and «struggle for disarmament»<sup>34</sup>. Another delegate who came to Istanbul before the conference was the president of IAW Corbett Ashby. She was also pacifist and asserting that «Women want to work with men in order to ensure world peace, they have no other purpose than this!»<sup>35</sup>. Rosa Manus, the second vice president of the IAW, was also declaring that the congress would focus on international peace, economic crisis, and disarmament beside women’s right<sup>36</sup>.

### 3. Discourses on peace

Discourses on peace were frequently underlined throughout the congress. It was possible to follow the women delegates’ voice from the columns on daily newspapers published on congress days. Among the ideas for the realization of peace, for instance, according to Australian delegate Kardel Oliver: «World peace can only be fully

31. Z. Toprak, *Türkiye’de Kadın Özgürlüğü ve Feminizm (1908-1935)*, Tarih Vakfı Yurt Yayınları, 2014, pp. 490-500.

32. *Kadınlar Kongresi İçin Hazırlıklar Başladı*, in *Cumhuriyet*, 9 April 1935, p. 4.

33. Z. Toprak, *1935 İstanbul Uluslararası Feminizm Kongresi ve Barış*, in *Düşün*, n. 24, 1986, p. 25.

34. *Uluslararası Kadın Kongresi*, in *Cumhuriyet*, 3 April 1935, p. 3.

35. *Biz Türkiye’ye Hayran Olmaya Geldik*, *Cumhuriyet*, 16 April 1935, p. 6.

36. [ataturkansiklopedisi.gov.tr/bilgi/xii-uluslararasi-kadinlar-birligi-kongresi/?-uluslararasi-kadinlar-birligi-kongresi&pdf=3247](http://ataturkansiklopedisi.gov.tr/bilgi/xii-uluslararasi-kadinlar-birligi-kongresi/?-uluslararasi-kadinlar-birligi-kongresi&pdf=3247).

secured if women enter political life»<sup>37</sup>. Huda Shaarawi, the Egyptian delegate, having a similar point of view, had pointed out that the way for women to render effective services for peace was possible when the women came into power. Arguing that women's place in the political arena should have been strengthened, she reminded that the members of IAW work to ensure peace. For her, if they had been unsuccessful, the responsibility of this wouldn't have belonged to them, but to the imperialist states<sup>38</sup>. On the other hand, according to the president of the peace commission and the American delegate Josephine Schain, forty women's organizations representing millions of women in the east and west were ready to serve sisterhood and peace. Schain, who wanted to draw attention to the increase in the armament of countries, argued that armories should have been strictly controlled to reduce weapons<sup>39</sup>.

It is also possible to follow the opinions of the delegates attending the congress about the subject of peace from the interviews they gave to the newspapers. Thanks to Turkish female journalist Suad Derviş, who had interviewed some of the delegates from different countries, it became possible to capture their thoughts about peace. The interviews were published in the newspaper with the title of *Interviews with the World Feminists*<sup>40</sup>. When we examine the answers to the question "What do women's unions or women do and can do for peace?" posed to the delegates, it is seen that the majority of women agreed on the necessity of raising a peace-loving generation and how this duty could be accomplished by mothers. Apart from this traditional point of view, which limits the woman as the parent responsible for the education of the child, there were also those who thought that the place and power of women in the political arena should increase and that only in this way women against war could take an effective action in the name of peace. For example, Emilie Gourd, a Swiss delegate, believed that women should follow the issue of peace closely, and that the danger of war would decrease as the number of women who understand and make politics in the world increases<sup>41</sup>. On the other hand, according to the delegate of New Zealand, Amy Grace Kane, when the danger of war came, women could use this vote against the war in the countries where

37. *Kadınlar Kongresi Başlarken*, in *Son Posta*, 10 April 1935, p. 8.

38. *250 Kadın, hepsi de Harp Aleyhtarı*, in *Son Posta*, 16 April 1935, p. 16.

39. *Kadınlar Bu Akşam Büyük Bir Miting Yapacak*, in *Son Posta*, 21 April 1935, p. 8.

40. See the series of articles under the title *Dünya Feministleri ile Görüşmeler*, in *Cumhuriyet*, 8-17 April 1935.

41. *Harb Tehlikesine Karşı En İyi Çare Ne İmiş?*, in *Cumhuriyet*, 11 April 1935, pp. 1-6.

they had political rights. In countries where they did not have a right to vote, they should have tried to gain this<sup>42</sup>. According to Mood Marson, a Jamaica delegate who held a similar point of view, peace could only be achieved by organizing and advocating against war. However, the goal of world women was to have right to vote, which is the necessary preliminary step to enter the world parliaments. Because when the woman was in the parliament, the decision of war could not be made easily. For her, to prevent war, women had to have political rights<sup>43</sup>. Likewise, for Rosa Manus, women should have taken part in decision-making mechanisms to be effective<sup>44</sup>.

Apart from all these views, there were also those who believed that there would not be an optimistic course about the future of the countries in terms of peace, almost as they were sensing Second World War. Despite this, they believed that women should have continued to strive for peace and stay in solidarity. For Katherine Bompas, the political horizons were very dark. She did not hope that immediate measures and remedies would avert the great catastrophe. Nevertheless, women's organizations of each country should have made an attempt with their own governments<sup>45</sup>. Adele Schreiber, who was introduced as a very important figure among European feminists by the journalist Derviş, after stating that the IAW's peace commission held conferences to raise the idea of peace, she drew attention to the interests of the arms industry. According to her, the political situation of the countries was very tense. Schreiber exhibited a pessimistic viewpoint regarding the ability of women's organizations, which had no official power, to resist these waves of ambition. She believed that they would not be effective against the apocalyptic Second World War, yet women should continue to be united<sup>46</sup>.

Besides these interviews, in the same newspaper the thoughts of Turkish women on similar issues were also questioned in a series of articles titled *What do Turkish women think about feminism?*. Among these, two remarkable interviews were made with Belkıs Halim Ethem and Cemile Aytaç. According to Turkish delegate Belkıs Halim Ethem,

42. *Erkekler İçin İyi Düşünürüm, Onlarsız Pek Yapamıyoruz!*, in *Cumhuriyet*, 14 April 1935, p. 3.

43. *Kadınlar Harbi Değil, Subu Yapacaklardır!*, in *Cumhuriyet*, 16 April 1935, pp. 1-8.

44. *Büyük Erkeklerin En Büyük Kusurları Nedir?*, in *Cumhuriyet*, 9 April 1935, p. 5.

45. *Biz Türk Kadınlarına Ciddan Gıpta Ediyoruz*, in *Cumhuriyet*, 10 April 1935, pp. 1-5.

46. *Mm. Adel Şrayber Pek Nikbin Görünmüyor*, in *Cumhuriyet*, 8 April 1935, p. 6.

it was necessary to look for the key to peace not in the nurture of the woman, but in the silence of the arms factories. For her the causes of war should be sought in social and economic factors. As long as there were people and countries that had shed all their factories, knowledge and science for the sake of war, that is, as long as their economic and social factors did not disappear, and as long as imperialism prevailed, the conferences and congresses were a futile effort<sup>47</sup>. On the other hand, Cemile Aytaç stated that it was good to believe that humanity was moving towards peace, but it was hard to believe. The whole world was preparing for war, and everyone was in a hurry as if the danger would begin tomorrow. There were also discussions and studies on the way to reconciliation, but these looked like desperate struggles in front of the approaching danger. She mentioned that it was good to believe that humanity was moving towards peace, but it was hard to believe. In reality the whole world was preparing for war, and everyone was in a hurry as if the danger would begin tomorrow. There were also discussions and studies on the way to reconciliation, but these looked like desperate struggles in front of the approaching danger. For her, leaving aside this living reality, it was not right to soften in our transcendent ideas of reconciliation and to raise the youth with such decency<sup>48</sup>. Both women, who didn't hesitate to say what they thought, were having a realistic point of view about the near future of Europe.

Another moment in which the discourses of peace were voiced once again during the congress was the afternoon session congress on April 22. Only this session was organized in the conference hall of Istanbul University rather than Yıldız Palace. It was the peace and league of nations commission of IAW that organized the session, and it was advertised in a newspaper with the subtitle *Very passionate speeches for peace were delivered at the meeting in the university hall*. Apart from the women members of the International Union, a high number of the university youth also followed the session<sup>49</sup>. According to the news with the subtitle *All the speakers fulminate the arms manufacturers*, there was no place to sit, not even to stand in the hall, which was quite crowded<sup>50</sup>.

47. *Feminizm için Türk Kadını Ne Düşünüyor?*, in *Cumhuriyet*, 21 April 1935, p. 4.

48. *Ibidem*.

49. *Dünya Kadınları Dün Bir Miting Daba Yaptılar*, in *Cumhuriyet*, 23 April 1935, p. 2.

50. *Kadınların Mitingi Harb Aleyhinde Bir Tezahür Oldu*, in *Akşam*, 23 April 1935, p. 1.

The session at the congress consisted in a meeting where the wishes of peace were made on behalf of the whole world and a common voice that all women should work for this end was expressed. According to Turkish female parliamentarian Mihri Pektaş, who was one of the speakers, the roles of women and men were the same and therefore were to achieve peace. While stating that there was no separate peace for men and women, and there were no different roles in the achievement of peace, Pektaş wanted to emphasize that war was destructive regardless of gender<sup>51</sup>. She was optimistic about the near future. According to her, their aim was to ensure world peace and she believed that they would eventually triumph over war<sup>52</sup>. Ms. Seniha Rauf, on the other hand, gave a blazing speech against war and weapons factories: «Until now, men were killing each other. The women could only cry in the face of this terrific situation. But now the mothers have taken action. All young people are with us. We will not let men die. Everyone is with us. But except for one group; special weapons manufacturers. They want to set people against each other, they want to make people fight. Our cause is against them»<sup>53</sup>. Another parliamentarian of Turkey, Esma Neyman, had pointed out that despite the end of the war for 16 years, people did not feel comfortable even for 16 days. She had reminded that even if the wounds of the First World War were not healed yet, people were recruited in many countries in Europe, financial systems were collapsing, unemployment and street protests were increasing day by day. According to her, the guarantee of peace was mutual trust, and unless the European countries created such trust, the danger of war would remain. Neyman, who thought that more robust measures should be taken, had predicted that if a war broke out, it would not be limited to a few countries, but would spread all over Europe and this would cause the destruction of Europe<sup>54</sup>. It seems clear that throughout the congress all women, in unison with their anti-war rhetoric, dreamed of a peaceful future.

51. Ivi, p. 4.

52. *Kadınların İkinci Mitingi: Sulh Yolunda Bir Kere Daha Ant İçtiler*, in *Son Posta*, 23 April 1935, p. 10.

53. *Ibidem*.

54. A. Davaz, *Eşitsiz Kızkardeşlik: Uluslararası ve Ortadoğu Kadın Hareketleri, 1935 Kongresi ve Türk Kadın Birliği*, cit., pp. 713-714.

## 4. Conclusion

During this conference, where the war was cursed many times, the possibilities of what kind of disasters Europe would face in the future in case of a new world war were discussed. Unfortunately, the concerns expressed during the congress were justified, and war would turn into a reality. The solution advanced by the participants would be insufficient and would not be able to prevent a new world war. Despite this, the effort of feminists with different nationalities from all over the world, who came together for eight days for the sake of lasting peace and for full equality between men and women, was very valuable.

It is also important to note that women's history of the peace movement have been ignored for a long time by the discipline of international relations. There are primary sources of what women have done for peace in history. But official historical narratives have ignored women. Examining all the past efforts of these feminists for world peace and their demands, objections and solutions proposal for gender equality makes it possible to look at history from a different perspective. In other words, such a reading of women's history means shedding light on how women contributed to the peace process in world history.

As a result, the Istanbul congress was an important meeting to reveal the roles of women's unions from different countries in building peace. Feminist women, who felt responsible for the future of world peace as well as women's problems, and who had a common stance against war and armament, also exhibited an example of transnational cooperation. Within the decisions and proposals taken in favor of peace, this congress was an example of struggle for the establishment of lasting peace and an example of an anti-war protest.



# JUDITH BUTLER'S MILITANT NONVIOLENCE

Valentina Surace\*

SUMMARY: 1. Between dependence and resistance – 2. The force of the weak – 3. Critique of the existing order – 4. A counter-order.

## 1. Between dependence and resistance

Judith Butler, at the beginning of her thinking path, proposes a reinterpretation of Hegel's *Phenomenology of Spirit*, in order to deconstruct the autarchic and self-sufficient subject of classic metaphysics, showing its constitutive ecstaticity and dependence on the other<sup>1</sup>. This interdependence implies *vulnerability*, which is a *shared* condition of exposure, although it is *differentially* distributed in the society, by distinguishing worth living and grievable lives from sacrificable and unworthy of mourning lives. As Butler explains, «we are in our skins, given over, in each other's hands, at each other's mercy. This is a situation we do not choose. It forms the horizon of choice, and it grounds our responsibility»<sup>2</sup>.

Butler recalls the Levinassian concept of *responsibility*, which is responding *to the other* before responding *for oneself*, because it «emerges as a consequence of being subject to the unwilling address

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1. Cf. J. Butler, *Subjects of Desire: Hegelian Reflections in Twentieth-Century France*, Columbia University Press, 2012<sup>2</sup>. I analyse this issue in Valentina Surace, *Corpi estatici. Judith Butler interprete dell'ausser sich hegeliano*, in *Lo Sguardo. Rivista di filosofia*, 33, 2021 (II), pp. 413-424, available at: [www.losguardo.net/it/corpi-estatici-judith-butler-interprete-dellausser-sich-hegeliano/](http://www.losguardo.net/it/corpi-estatici-judith-butler-interprete-dellausser-sich-hegeliano/); *La traccia del negativo. Judith Butler e le ontologie implicite*, in S. Dadà, M. Polleri (eds.), *Sulla fondazione. Anarchia e istituzioni* (Almanacco di filosofia e politica diretto da Roberto Esposito 5), Quodlibet, 2023, pp. 167-178.

2. J. Butler, *Giving an Account of Oneself*, Fordham University Press, 2005, p. 101.



of the other»<sup>3</sup> and not as consequences of being free. Responsibility is *infinite*, wider than finite freedom, and *anarchic*, because it has no subjective principle, such as freedom. The accusative appeal of the other refers to a radical *passivity*, because we can neither evade nor delegate the response. In Butler's view, «there is a certain violence already in being addressed [...], compelled to respond to an exacting alterity»<sup>4</sup>. However, the ethical challenge obliges to a «nonreciprocal response»<sup>5</sup>. Levinas teaches that the exceptional presence of the other «is inscribed in the ethical impossibility of killing him in which I stand»<sup>6</sup>. As Butler emphasizes, in the face of the other «one is aware of the vulnerability of that other, [...] but one is *also* aware of one's own violence»<sup>7</sup>. So responsibility is the result of the vulnerability I see and the violence that I may cause. In this sense, «the face operates to produce a struggle for me, and establishes this struggle at the heart of ethics»<sup>8</sup>.

In the footsteps of Levinas, therefore, Butler outlines an «ethic of nonviolence»<sup>9</sup>, whose mandate is not to preserve the *self*, but to protect the *other* against destruction, because «to destroy the other is

3. Ivi, p. 85. I consider this further in V. Surace, *Judith Butler per una responsabilità critica*, in *Logoi.ph. Journal of Philosophy*, vol. VI, n. 15, 2020, pp. 161-172, available at: [drive.google.com/file/d/1R4w9lo5XnwwkSKMCuxGwN5Ecg271Jkxs/view](https://drive.google.com/file/d/1R4w9lo5XnwwkSKMCuxGwN5Ecg271Jkxs/view).

4. J. Butler, *Precarious Life: The Powers of Mourning and Violence*, Verso, 2004, p. 139. About Butler's social ontology, see V. Surace, *Soggetti precari. L'ontologia sociale di Judith Butler*, Mimesis, 2023.

5. J. Butler, *Giving an Account of Oneself*, cit., p. 100.

6. E. Levinas, *Totalité et Infini. Essai sur l'extériorité* (1961), *Le Livre de Poche*, 1996, trans. by A. Lingis, *Totality and Infinity. An essay on exteriority*, Martinus Nijhoff Publishers, 1979, p. 87. For a brilliant analysis of Levinas' ethics, see R. Fulco, *Essere insieme in un luogo. Etica, Politica, Diritto nel pensiero di Emmanuel Levinas*, Mimesis, 2013.

7. J. Butler, *Parting Ways: Jewishness and the Critique of Zionism*, Columbia University Press, 2012, p. 56. Butler observes that Levinas recounts the story of Jacob and Esau in order to show that nonviolence comes from the «constant tension between the fear of undergoing violence and the fear of inflicting violence» (ivi, p. 59). Jacob, while waiting for Esau's arrival, was greatly afraid and anxious (Gen 32:8). As Levinas highlights, «he was fearful for his death, but anguished at possibly having to kill» (E. Levinas, *Paix et proximité*, in *Altérité et transcendance*, Fata Morgana, 1995, trans. by M.B. Smith, *Peace and Proximity*, in *Alterity and Transcendence*, The Athlone Press, 1999, p. 135).

8. J. Butler, *Precarious Life: The Powers of Mourning and Violence*, cit., p. 135.

9. Ivi, p. 131. According to Volpe, Butler's idea that «we are formed in and through violence» and we are called to «practice non-violence» is similar to the Christian one (M.A. Volpe, *Review of Frames of War When Is Life Grievable?*, in *Modern Theology*, vol. 27, n. 3, 2011, p. 542, DOI: [10.1111/j.1468-0025.2011.01698.x](https://doi.org/10.1111/j.1468-0025.2011.01698.x)).

to destroy my life, that sense of my life that is invariably social life»<sup>10</sup>. This is Butler's alternative to "moral sadism", a violence that grounds itself in an ethics of purity, which negates violence, as well as to the "ontologization of violence", considered to be so deterministic that it precludes any possibility of an ethical commitment to safeguarding the life of the other<sup>11</sup>.

Human beings, as vulnerable, are *differentially* exposed to violence, which is exercised both *physically*, by injuring, consuming, annihilating the body, and through the *performative power* of language and norms, which is *dual*<sup>12</sup>. Language can cause «a certain kind of surviving»<sup>13</sup> as well as the loss of one's place in the community, especially through hate speech's denigration. The norms serve to be recognised (as citizens first and foremost)<sup>14</sup>, but are also the main cause of disavowal of those who depart from their ideal. As Foucault teaches, the power of the norms homogenizes and excludes the non-conforming, in short, it *normalizes*, producing normal or abnormal people<sup>15</sup>. Giving an unambiguous definition of violence is not possible, because it «is always interpreted»<sup>16</sup>,

10. J. Butler, *Parting Ways: Jewishness and the Critique of Zionism*, cit., p. 130.

11. See J. Butler, *Frames of War: when is Life grievable?*, Verso, 2009, p. 177.

12. See J. Butler, *A Note On Performative Acts of Violence*, in *Cardozo Law Review*, n. 13, 1991-1992, available at: [fdocuments.in/document/j-butler-a-note-on-performative-acts-of-violence.html](https://documents.in/document/j-butler-a-note-on-performative-acts-of-violence.html). I consider this issue further in V. Surace, *Judith Butler e il carattere performativo del potere*, in *Im@go. A Journal of the Social Imaginary*, n. 14, 2019, pp. 248-270, available at: [cab.unime.it/journals/index.php/IMAGO/article/view/2407](http://cab.unime.it/journals/index.php/IMAGO/article/view/2407).

13. J. Butler, *Excitable Speech: A Politics of the Performative*, Routledge, 1997, p. 4.

14. For further details about this issue, see J. Butler, G.C. Spivak, *Who sings the Nation-State? Language, Politics, Belonging*, Seagull Books, 2007.

15. See M. Foucault, *Surveiller et punir. Naissance de la prison*, Gallimard, 1975, trans. by A. Sheridan, *Discipline and Punish: The Birth of the Prison*, Vintage Books, 1995, pp. 177-184.

16. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, Verso, 2020, p. 14. Violence «is from the start defined within certain frameworks and comes to us always already interpreted, "worked over" by its frame. [...] Whatever is called "violence" becomes regarded as violent from a particular perspective embedded in a defining framework, but those frameworks are also defined in relation to one another and can be analysed in relation to strategies of suppression and opposition» (ivi, pp. 136-137). Butler unmasks the mechanism by which violence passes itself off as legitimate by naming as violent that which resists it, as happens when a legal regime represses dissent. Based on the Arendtian and Jewish idea of *unchosen cohabitation*, which implies the obligation to preserve the plurality of the population of the earth as well as the right of everyone to inhabit it, Butler denounces as illegitimate the violence perpetrated, for example, by the Israeli state. Publicly criticizing state violence is, according to Butler, «an ethical obligation within the Jewish tradition, religious and secular» (J. Butler, *Is Judaism Zionism?*, in J. Habermas, C. Taylor, J. Butler, C. West (eds.), *The Power of*

in the sense that it appears within frameworks that are sometimes conflicting. Nevertheless, «violence is, always, an exploitation of that primary tie»<sup>17</sup>, which binds us to the other. Violence is a way in which «a primary human vulnerability to other humans is exposed in its most terrifying way»<sup>18</sup>. However, vulnerability can be mobilised in order to derail or defuse violence. So «vulnerability is neither fully passive nor fully active, but operating in a middle region»<sup>19</sup>, between *dependence* and *resistance*, or rather *subversion*, which is a term that communicates something of the violent mire from which it emerges<sup>20</sup>.

## 2. The force of the weak

Butler, believing that «no position against violence can afford to be naive»<sup>21</sup>, challenges some major presuppositions of nonviolence. First of all, she refutes the characterization of nonviolence as «a weak and useless passivity»<sup>22</sup>, which comes from the gender prejudice that

*Religion in the public Sphere*, Columbia University Press, 2011, p. 73). However, those who criticize the Israeli state are accused either of insensitivity to Jewish suffering or of anti-Semitism. This accusation has as its premise the violent identification of Jews with the state of Israel, which means denying the existence of other non-Jewish citizens who live within the state, denying the distinction between Zionist and non-Zionist Jews and denying the existence of a large number of Jews who live outside Israel, but do not feel that they are in a state of exile [*galut*] to be overcome by returning to their homeland (see J. Butler, *Who owns Kafka?*, in *London Review of Books*, vol. 33, n. 5, 2011, available at: [www.lrb.co.uk/the-paper/v33/n05/judith-butler/who-owns-kafka](http://www.lrb.co.uk/the-paper/v33/n05/judith-butler/who-owns-kafka)).

17. J. Butler, *Precarious Life: The Powers of Mourning and Violence*, cit., p. 27.

18. Ivi, p. 28. Butler juxtaposes Levinas' legacy with that of Simone Weil, who «offers us an understanding of what it means to address another and to be dispossessed in the course of that address» (J. Butler, *Giving Away, Giving over* (Interview by T. Dumm), in *The Massachusetts Review*, vol. 49, n. 1/2, 2008, p. 103, DOI: 10.2307/25091284). As Rita Fulco observes, for Weil the act of addressing derives from each person's perception of the other as vulnerable. However, personal sensitivity cannot be sufficient, as Judith Butler points out (R. Fulco, *Soggettività e potere. Ontologia della vulnerabilità in Simone Weil*, Quodlibet, 2020, p. 60, note 106), stating that our capacity to respond does not depend exclusively on «internal talents» (J. Butler, *Giving an Account of Oneself*, cit., p. 29), but it «is conditioned and mediated by frames of reference that are variably humanizing and dehumanizing» (*ibidem*).

19. J. Butler, *Rethinking Vulnerability and Resistance*, in J. Butler, Z. Gambetti, L. Sabsay (eds.), *Vulnerability in Resistance*, Duke University Press, 2016, pp. 25-26.

20. See J. Butler, *Afterword*, in E.T. Armour, S.M. St. Ville (eds.), *Bodily Citations: religion and Judith Butler*, Columbia University Press, 2006, p. 285.

21. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 86.

22. Ivi, p. 202.

links masculine to activity and feminine to passivity. Nonviolence, as Mahatma Gandhi suggests, is a *soul force*, which «takes an embodied form»<sup>23</sup>; it is a force that emerges from a «putative “weakness”»<sup>24</sup>, from the powers of the weak. Here Butler hints at that Pauline teaching (2 Cor 12:9-10), of which Benjamin and Derrida are heirs in different ways.

Derrida speaks about «a *weak force*»<sup>25</sup> as «a principle of resistance or of dissidence»<sup>26</sup> *without power* that opens up to the to-come, which cannot always be fully present. Butler believes that nonviolence is not «a principle, if by “principle” we mean a strong rule»<sup>27</sup> that can be applied in the same way to any situation, but it is «a practice of resistance, both vigilant and hopeful»<sup>28</sup>; nevertheless, it «is an ideal that cannot always be fully honoured in the practice»<sup>29</sup>.

Benjamin, in turn, asserts that each generation has been endowed with «a *weak* messianic power»<sup>30</sup> in order to redeem history. Benjamin mentions nonviolence as a weak power first in relation to the «resolution of conflict»<sup>31</sup>, which takes place when men use pure means of agreement. For Benjamin, «there is a sphere of human agreement

23. Ivi, p. 22.

24. Ivi, p. 23.

25. J. Derrida, *Voyous*, Galilée, 2003, trans. by P.-A. Brault, M. Naas, *Rogue. Two Essays on Reason*, Stanford University Press, 2005, p. 14.

26. J. Derrida, *Inconditionnalité ou souveraineté. L'Université aux frontières de l'Europe*, Patakis, 2002, trans. by P. Kamuf, *Unconditionality or Sovereignty: The University at the Frontiers of Europe*, in *Oxford Literary Review*, vol. 31, n. 2, December 2009, p. 130, DOI: [10.3366/E0305149809000467](https://doi.org/10.3366/E0305149809000467). For an excellent consideration of Derridian “to-come” in the perspective of responsibility to the other, see C. Resta, *L'evento dell'altro. Etica e politica in Jacques Derrida*, Bollati Boringhieri, 2003.

27. J. Butler, *Frames of War: when is Life grievable?*, cit., p. 165.

28. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 29.

29. Ivi, p. 22.

30. W. Benjamin, *Über den Begriff der Geschichte*, in *Gesammelte Schriften*, Bd. I/2, hrsg. von R. Tiedemann, H. Schweppenhäuser, Suhrkamp, 1974, trans. by E. Jephcott, *On the Concept of History*, in *Selected Writings 1938-1940*, vol. 4, eds. by H. Eiland, M.W. Jennings, Harvard University Press, 2006, thesis II, p. 390. For further details about the “asymptote” of a possible convergence of Benjamin’s idea with that of Derrida, that is, about the “leap” between *weak* and *without*, see J. Derrida, *Marx & Sons*, in M. Sprinker (ed.), *Ghostly Demarcations. A symposium on Jacques Derrida's Specters of Marx*, Verso, 1999, pp. 250 ff.

31. W. Benjamin, *Zur Kritik der Gewalt*, in *Gesammelte Schriften*, Bd. II/1, hrsg. von R. Tiedemann, H. Schweppenhäuser, Suhrkamp, 1977, trans. by E. Jephcott, *Critique of Violence*, in *Selected Writings 1913-1926*, vol. 1, eds. by M. Bullock, M.W. Jennings, Harvard University Press, 2002, p. 244.

that is nonviolent to the extent that it is wholly inaccessible to violence: the proper sphere of “understanding”, language»<sup>32</sup>. Butler asserts that the effort to come to terms can be resolved only through «a concrete struggle of translation»<sup>33</sup>. Nevertheless, she maintains that language as such is wholly inaccessible to violence, because it «has within it the constitutive possibility of translatability, [...] an opening to a foreign language, an openness to being contacted and transformed by the foreign»<sup>34</sup>.

Although Benjamin clearly equivocates about the meaning of nonviolence, as Butler notes, he mentions it as a weak power also in relation to the proletarian general strike, which is «anarchistic»<sup>35</sup>, but «nonviolent»<sup>36</sup>, because it «sets itself the sole task» of destroying state power»<sup>37</sup>. In Butler’s view, distinguishing the violence of a regime from the violence that seeks to take it down is not possible, because violence cannot remain a *mere means*, but it always becomes an *end in*

32. Ivi, p. 245.

33. J. Butler, *Excitable Speech: A Politics of the Performative*, cit., p. 88. In the footsteps of Derrida and Spivak, Butler considers the task of translation as necessary and impossible, not because it is something that is unreal and unrealizable, but because it advances in the name of an-other reality to-come (see J. Butler, *Performativity, precarity and sexual politics*, in *AIBR Revista de Antropologia Iberoamericana*, vol. 4, n. 3, 2009, DOI: [10.11156/AIBR.040303E](https://doi.org/10.11156/AIBR.040303E)). For this issue, see J. Derrida, *Psyché. Invention de l'autre. Tome 1*, Galilée, 1997; P. Kamuf, E. Rottenberg (eds.), *Psyché. Inventions of the Other*, vol. 1, Stanford University Press, 2007, pp. 191-225; G.C. Spivak, *Translator's Preface and Afterword to Mahasweta Devi, Imaginary Maps*, in D. Landry, G. MacLean (eds.), *The Spivak Reader. Selected Works of Gayatri Chakravorty Spivak*, Routledge, 1996, pp. 267-286. For an excellent consideration of Derridian concepts of translation and impossible, see C. Resta, *Poetica e politica della traduzione*, in *La passione dell'impossibile. Saggi su Jacques Derrida*, il melangolo, 2016, pp. 76-112.

34. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 128.

35. W. Benjamin, *Critique of Violence*, cit., p. 246.

36. *Ibidem*.

37. *Ibidem*. Benjamin’s equivocal position regarding nonviolence is confirmed by some of his statements about the general strike: «today organized labor is, apart from the state, probably the only legal subject entitled to exercise violence. Against this view there is certainly the objection that an omission of actions, a nonaction, which a strike really is, cannot be described as violence [...] And as in the view of the state, or the law, the right to strike conceded to labor is certainly a right not to exercise violence but, rather, to escape from a violence indirectly exercised by the employer [...] The moment of violence, however, is necessarily introduced, in the form of extortion into such an omission, if it takes place in the context of a conscious readiness to resume the suspended action under certain circumstances [...] Understood in this way, the right to strike constitutes in the view of labor, which is opposed to that of the state, the right to use force in attaining certain ends» (ivi, p. 239).

*itself*<sup>38</sup>. However, Butler sees an analogy between proletarian general strike and divine violence that destroys law and, in doing so, it «is lethal without spilling blood»<sup>39</sup>. As Butler asserts, «in destroying legal violence, divine violence [...] establishes the possibility of extra-legal exchange that attends to violence, but is itself nonviolent»<sup>40</sup>. So Benjamin's «nonviolent form of destructiveness»<sup>41</sup>, directed against the legal order, unmasks the conceptual schemes that justify its violence. In this sense, as Butler observes, nonviolence is not «a moral position adopted by individuals»<sup>42</sup>, but «a social and political practice undertaken in concert»<sup>43</sup>. Nonviolent practice includes the biblical prohibition against killing, but «it is not reducible to that prohibition»<sup>44</sup>, because it is always the refusal of coerced obedience to law. Butler thinks that «we need norms in order to live [...] and to know in what direction to transform our social world»<sup>45</sup>, therefore, she does not fully follow Benjamin to his «anarchist conclusion»<sup>46</sup>. However, she asserts that we must criticize law, «even engage in provisional anarchism when law becomes unjust»<sup>47</sup>.

38. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 13.

39. W. Benjamin, *Critique of Violence*, cit., pp. 249-250.

40. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., pp. 129-130.

41. J. Butler, *Parting Ways: Jewishness and the Critique of Zionism*, cit., p. 80. Butler, comparing *Critique of Violence* with *Theological-Political Fragment*, suggests that in Benjamin's views *destructiveness* «is also *messianic*» (ivi, p. 87). I interpret Benjaminian messianic destructiveness in the light of the Pauline “as not” (1 Cor 7:29-31), which implies the dismissal of all worldly power, since only the Messiah is sovereign, in V. Surace, *Messianismo e politica: il Frammento teologico-politico di Walter Benjamin*, in C. Resta (ed.), *Schegge messianiche. Filosofia Religione Politica*, Mimesis, 2017, pp. 31-53. I also consider Derrida's “messianic without Messiah” in a political perspective, in V. Surace, *Messianismi e cosmopolitica: Derrida oltre Kant*, in C. Resta (ed.), *Schegge messianiche. Filosofia Religione Politica*, cit., pp. 55-78.

42. See J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., pp. 20-21.

43. Ivi, p. 21.

44. Ivi, pp. 56-57. Butler suggests that the commandment “You shall not kill”, conceived by Benjamin as a norm for the action, «is not only the basis for a critique of legal violence but also the condition for a theory of responsibility that has at its core an ongoing struggle with nonviolence» (J. Butler, *Parting Ways: Jewishness and the Critique of Zionism*, cit., p. 75). Butler even argues that the solitary wrestling with the commandment that constitutes Benjamin's view of responsibility «comes to have resonance with Levinas's position» (ivi, p. 87).

45. J. Butler, *Undoing Gender*, Routledge, 2004, p. 206.

46. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 136.

47. J. Butler, *Parting Ways: Jewishness and the Critique of Zionism*, cit., p. 173.

### 3. Critique of the existing order

In Butler's view, Benjamin's version of nonviolent destructiveness seems to follow on Marx's suggestions about critique «understood as part of a bloodless destruction»<sup>48</sup>. However, criticism does not simply consist in destroying existing principles of the actual world, but in showing their real contradictions and reworking them through various catachrestic usages, which deviate from the proper to discover the new. As Butler highlights, in Marx's opinion the anarchists have no clear conception of what the future *should* be, the dogmatists proclaim what it *must* be, whilst the critical philosophers *find* the new world «by developing its principle from the old world»<sup>49</sup>.

Butler affirms that «critique takes place whenever and wherever a free exercise of reason takes place»<sup>50</sup>, recalling Kant's concept of Enlightenment as developed by Hanna Arendt. Arendt asserts that critical thinking «does not create values, [...] and it does not confirm but rather dissolves accepted rules of conduct»<sup>51</sup>. Destruction has a liberating effect on the ability of judgment, «the most political of man's mental abilities»<sup>52</sup>. It is the Kantian faculty to judge particulars without subsuming them under general rules, which allows us to «consider men in the plural»<sup>53</sup>. Arendt sees at work the interconnection between the faculty of thinking and the faculty of judging particulars in the German society during the Nazi regime. She notes that the participation of the majority was caused by a «universal breakdown, not of personal responsibility, but of personal *judgment*»<sup>54</sup>. The nonparticipants, called irresponsible by the majority, «were the only ones who dared judge by themselves»<sup>55</sup>. They were capable of doing so not because they disposed of the old system of values, but because «they asked themselves to what extent they would still be able to live in peace with themselves after having committed certain deeds»<sup>56</sup>. As Butler highlights, Arendt's

48. J. Butler, "Philosophy Has Become Worldly": Marx on Ruthless Critique, in *PMLA*, vol. 131, n. 2, 2016, pp. 460-468, DOI: 10.1632/pmla.2016.131.2.460, p. 467.

49. Ivi, p. 463.

50. J. Butler, *Critique, Dissent, Disciplinarity*, in *Critical Inquiry*, vol. 35, n. 4, 2009, p. 781, DOI: 10.1086/599590.

51. H. Arendt, *Responsibility and Judgment*, Schocken Books, 2003, p. 188.

52. *Ibidem*.

53. Ivi, p. 142.

54. Ivi, p. 24.

55. Ivi, p. 44.

56. *Ibidem*. Arendt highlights that the non-participants «refused to murder, not so

«distinction between practical reason and obedience»<sup>57</sup> suggests that «one's responsibility cannot be understood as an uncritical allegiance to law, since law itself may turn out to be criminal [...], in which case we have a responsibility to oppose bad law, even a responsibility that would, under those conditions, be defined as disobedience»<sup>58</sup>.

Butler is aware that the law guarantees a social existence and in doing so it prejudices the possibility of criticizing it; nevertheless, she shares Arendt's idea that responsibility does not coincide with uncritical obedience, because it is related to thinking, which leads one to oppose a criminal law. To be critical does not mean to be anarchically ungovernable, but to question the uncritical obedience to authority. In the footsteps of Foucault, Butler defines critique as a virtue, because «virtue is not only a *way* of complying with or conforming with pre-established norms. It is, more radically, a critical relation to those norms»<sup>59</sup>. Virtue itself is counter to regulation and order.

#### 4. A counter-order

In Butler's view nonviolence is a soul force, but it «does not necessarily emerge from a pacific or calm part of the soul. Very often it is an expression of rage, indignation, and aggression»<sup>60</sup>. Nonviolence «cannot simply repress aggression»<sup>61</sup>, but it must reroute aggression,

much because they still held fast to the command “Thou shalt not kill”, but because they were unwilling to live together with a murderer – themselves» (*ibidem*).

57. J. Butler, *Hannah Arendt's Death Sentences*, in *Comparative Literature Studies*, vol. 48, n. 3, 2011, p. 282, DOI: 10.5325/complitstudies.48.3.0280.

58. J. Butler, *Parting Ways: Jewishness and the Critique of Zionism*, cit., p. 169. In Butler view's, when the law becomes unjust – as in the case of Europe, which criminalises those who try to save the lives of migrants – then it is right to become criminals. Or perhaps we should say “criminals” in quotes, since it is precisely the law itself that is criminal (see J. Butler, *In lotta per la nonviolenza* (Interview by D. Di Cesare), in *L'Espresso*, September 27, 2020, p. 69, available at: [www.edizioninottetempo.it/pub/media/productattach/es/espresso\\_butler.pdf](http://www.edizioninottetempo.it/pub/media/productattach/es/espresso_butler.pdf)).

59. J. Butler, *What is Critique? An Essay on Foucault's Virtue*, in D. Ingram (ed.), *The Political: Readings in Continental Philosophy*, Blackwell Publisher, 2002, p. 215. See M. Foucault, *Qu'est-ce que la critique? (Critique et Aufklärung)*, in *Bulletin de la société française de philosophie*, vol. 84, n. 2, 1990, trans. by K.P. Geiman, *What Is Critique?*, in J. Schmidt (ed.), *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, University of California Press, 1996, pp. 382-398.

60. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 21.

61. *Ivi*, p. 39.



that does not mean «to turn that aggression “inward”, to craft an inner world composed of a guilty conscience and to vent that aggression against oneself in the name of morality»<sup>62</sup>, as Nietzsche first notes. Butler, therefore, wonders how to *cultivate* aggression for nonviolent purposes<sup>63</sup>. To answer this question, she rereads the correspondence between Freud and Einstein, who «are both concerned with what checks destructiveness»<sup>64</sup>.

Following Einstein’s «militant pacifism»<sup>65</sup>, which is an aggressive stance against war, Butler introduces the notion of *aggressive nonviolence*. For her, aggression must be separated from violence, because there are ways of shaping aggression that operate at the service of democracy, including strikes, civil disobedience, boycotts and even revolution<sup>66</sup>. As «peace is a certain resistance to the terrible satisfactions of war»<sup>67</sup>, so nonviolence «takes hold in the force field of violence itself»<sup>68</sup>. Nonviolence, therefore, is not a peaceful state, but a «struggle *against* violence»<sup>69</sup>, which emerges «when destruction becomes the ardent aim of desire»<sup>70</sup>. It’s precisely because we are capable of waging war that peace becomes a necessity and «it is precisely because one is mired in violence that the struggle exists and that the possibility of nonviolence emerges»<sup>71</sup>.

62. J. Butler, *Giving an Account of Oneself*, cit., p. 14.

63. See J. Butler, A. Cavarero, *Condizione umana contro “natura”*, in L. Bernini, O. Guaraldo (eds.), *Differenza e relazione: l’ontologia dell’umano nel pensiero di Judith Butler e Adriana Cavarero*, ombre corte, 2009, p. 126.

64. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 171. See A. Einstein, S. Freud, *Warum Krieg?* (1932), in S. Freud, *Gesammelte Werke*, Bd. XVI, Fischer, 1950, trans. by A. Moellenhoff, *Why War? The Correspondence Between Albert Einstein and Sigmund Freud*, Chicago Institute for Psychoanalysis, 1978.

65. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 181.

66. See J. Butler, *The Human Condition. Vulnerability, Survivability*, Centre de Cultura Contemporània de Barcelona, 12 February 2008 (Lecture), available at: [www.cccb.org/en/multimedia/videos/the-human-condition-vulnerability-survivability/211495](http://www.cccb.org/en/multimedia/videos/the-human-condition-vulnerability-survivability/211495).

67. J. Butler, *Peace is resistance to the terrible satisfactions of war* (Interview by J. Stauffer), in *Qui Parle*, vol. 14, n. 1, 2003, p. 108, DOI: 10.1215/quiparle.14.1.99.

68. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 40.

69. J. Butler, *Reply to Mills and Jenkins*, in *differences. A Journal of Feminist Cultural Studies*, vol. 18, n. 2, 2007, p. 186, DOI: 10.1215/10407391-2007-007.

70. J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 39.

71. J. Butler, *Frames of War: when is Life grievable?*, cit., p. 171. Adriana Cavarero defines Butler’s nonviolent subject as a “belligerent subject”, who, challenged by the vulnerability of the other, fights against his constitutive aggressiveness, that is, against the aggressiveness that makes him suitable for the violent practice of war (see A. Cavarero, *Judith Butler and the Belligerent Subject*, in *Annali d’italianistica*, vol. 29, 2011, pp. 163-170).

Butler learns how redirecting the destructive drives from Freud's analysis of *melancholia*, which is the reaction to the loss of a loved object. One trend of melancholia is *mania*, which is the living being's protest against the prospect of its destruction<sup>72</sup>. Mania express the desire to survive the loss, which counters the tyrannical power of the lost object. Adhering to tyrannical power leads one to identify with it, while countering it leads one to dis-identify from it. Identifications are generally regarded as important for social bond. However, for Butler, dis-identification can create «social solidarity of failure»<sup>73</sup>, that is solidarity between those who fail to live up to the reality as it is. Mania «does offer a cipher for understanding those “unrealistic” forms of insurrectionary solidarity that turn against authoritarian and tyrannical rule»<sup>74</sup>. Similarly, nonviolence «introduces a vigorous “unrealism” into the modes of solidarity that seek to dismantle violent regimes»<sup>75</sup>, by insisting on a counter-reality. As Butler learns from Levinas, vulnerability is «the condition for all solidarity»<sup>76</sup> – all plural agency, and as such it can open to *another* form of reality, in which *the other* is protected against violence.

72. *Melancholia* is composed of two opposing trends: the first is *self-beratement*, which becomes the signature action of conscience, the second is *mania*, which breaks the bond to the lost object. Butler observes that «if the super-ego is the continuation of the death drive, mania is the protest against destructive action directed toward the world and toward the self» (J. Butler, *The force of nonviolence. An Ethico-Political Bind*, cit., p. 167).

73. Ivi, p. 170.

74. Ivi, p. 168.

75. Ivi, p. 171. Agencies that «create a counter-socius in the midst of hierarchical and regulatory power regimes» (J. Butler, A. Athanasiou, *Dispossession. The Performative in the Political*, Polity Press, 2013, p. 175) are *movements* (e.g. LGBTQ+, the Women in Black fighting against the Israeli occupation of Palestinian territories, Las Madres de la Plaza de Mayo, the mothers of the Argentinean disappeared, Ni Una Menos fighting against *machista* violence, *Ta'ayush*, “living together”, made up of Arabs and Jews) and individual or collective *performances* (e.g. the body art of Regina José Galindo, who protests against the regime in Guatemala, and of the dancer Erdem Gündüz, who stages obedience and opposition to Erdogan's regime, the mouth sewing act of the refugees in Würzburg and the poems of the prisoners in Guantánamo).

76. E. Levinas, *Autrement qu'être ou au-delà de l'essence*, Le Livre de Poche, 1996, trans. by A. Lingis, *Otherwise than being or beyond essence*, Duquesne University Press, 2006, p. 117. As Butler argues, the experience of pain is not «depoliticizing» (J. Butler, *Precarious Life: The Powers of Mourning and Violence*, cit., p. 22), since it does not lock us into a private dimension, but binds us to the other, fostering supportive and counter-powerful relationships. See J. Butler, *Cosa possono fare i corpi insieme?* (Interview by F. Castelli), in F. Zappino (ed.), *Il genere tra neoliberismo e neofondamentalismo*, ombre corte, 2016, p. 167.



# SIN MUJERES NO HABRÁ VERDAD NI PAZ GRANDE EN COLOMBIA

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SUMMARY: 1. La tardía llegada de los lentes de género para la lectura de la guerra en Colombia – 2. El liderazgo y las grandes decisiones de la paz siguen en el mundo de los hombres – 3. A manera de conclusión.

## **1. La tardía llegada de los lentes de género para la lectura de la guerra en Colombia**

La guerra, tan patriarcal, militar y masculina ha dejado graves impactos en la geografía del dolor en el amplio territorio nacional y toda una fábrica de víctimas ensañada contra las mujeres, niñas, niños, ancestrales, migrantes, diversas, diversos y pobres en Colombia<sup>1</sup>. Los lentes de interseccionalidad, de interculturalidad y de género han ingresado lentamente en el análisis y estudio del conflicto, sus causas, efectos, acuerdos y desacuerdos y el eterno reciclaje de una guerra que no termina.

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1. Comisión de la Verdad, Cifras de la Comisión de la Verdad presentadas junto con el Informe Final, 2022, disponible en el sitio *Comisión de la Verdad: web. comisiondelaverdad.co/actualidad/noticias/principales-cifras-comision-de-la-verdad-informe-final*. Según cifras de la Comisión de la Verdad, aproximadamente 450.664 personas perdieron la vida como causa del conflicto armado entre 1985 y 2018; 121.768 personas fueron desaparecidas forzosamente entre 1985 y 2016; en cuanto a víctimas de secuestro, la cifra es de 50.770 personas entre 1990 y 2018; en reclutamiento de niños, niñas y adolescentes el número de víctimas es de 16.238 entre 1990 y 2017; aproximadamente el 80% de las personas muertas fueron civiles, el 20% fueron combatientes; en cuanto a ejecuciones extrajudiciales o “*falsos positivos*” la cifra es de 6.402 víctimas entre 2002 y 2008; y, en cuanto a cifras de violencia sexual, siendo el 92% de las víctimas mujeres y niñas, la cifra es de 32.446 actos en contra de la libertad y la integridad sexual.

Dicho enfoque diferencial, para entender la guerra y el conflicto, se hizo evidente en pleno siglo XXI. Sin duda, su uso se potenció con los estudios realizados por el Grupo de Memoria Histórica (2007-2010), luego denominado, a partir de la Ley 1448 de 2011 o Ley de Víctimas, como “Centro Nacional de Memoria Histórica”<sup>2</sup>. Este enfoque también surgió gracias a la llegada de las víctimas a los procesos de negociación y de justicia en clave transicional; el trabajo de diversas mujeres activistas, académicas y de la mano de toda la dinámica social, política y feminista llevada a cabo durante el proceso de negociación entre el gobierno colombiano y las Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP)<sup>3</sup>, entre 2012 y 2016. Una marca que se observa de forma plena en la Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición<sup>4</sup> creada en el marco del proceso de paz del gobierno colombiano y las FARC-EP, su correspondiente informe, el mismo Acuerdo de Paz<sup>5</sup> y toda la institucionalidad que lo implementa con las sabidas complejidades y dificultades conocidas. El ingreso de las víctimas, la polifonía más allá de la verdad masculina fue fundamental para la transformación y democratización de la construcción de la paz y de las condiciones del no retorno a la violencia.

Sin duda, estos lentes han permitido escribir otra historia de la violencia con las palabras y la sensibilidad de las mujeres. Leer más allá de la escritura patriarcal sobre las razones de la guerra, pero también, sobre la construcción de la paz, en donde la fotografía sigue siendo de hombres, con algunas excepciones.

Así, el siglo XXI ha sido testigo de la transformación de la literatura sobre la violencia en Colombia, incluso los expertos en estos asuntos fueron llamados: “los violentólogos” (década de los 80)<sup>6</sup>, muy a pesar

2. CNMH, Contexto Centro Nacional de Memoria Histórica, disponible en el sitio *Centro de Memoria Histórica*: [centrodememoriahistorica.gov.co/contexto/](http://centrodememoriahistorica.gov.co/contexto/).

3. J. Pino, *Las FARC-EP: de movimiento social a grupo armado*, en *Katharsis*, n. 17, 2014. «Se puede establecer que las FARC-EP surgen como un movimiento ligado a las autodefensas campesinas de tendencia liberal, que quisieron defender la propiedad de la tierra de los abusos de colonos privados y autoridades del gobierno, para luego convertirse [...] en un movimiento insurgente armado», p. 1.

4. Comisión de la Verdad. ¿Qué es la Comisión de la Verdad?, disponible en el sitio *Comisión de la Verdad*: [www.comisiondelaverdad.co/que-es-la-comision-de-la-verdad](http://www.comisiondelaverdad.co/que-es-la-comision-de-la-verdad).

5. Gobierno Nacional de Colombia, FARC-EP, *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, 2016, disponible en: [www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11\\_1.2016nuevoacuerdofinal.pdf](http://www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11_1.2016nuevoacuerdofinal.pdf).

6. Y. Realpe, *La construcción de la violentología como práctica discursiva en Colombia, 1958-1987*, Universidad Andina Simón Bolívar (tesis de maestría, Universidad Andina, sede Ecuador), 2014: «La historia de Colombia, tiene distintos estadios de violencia,

de tener en selecto grupo una que otra mujer académica. La historia sobre las comisiones de estudio sobre la violencia estuvo coordinada por hombres, lo cual no demerita tremendo trabajo en medio de la violencia exacerbada que incluso, en ocasiones, los llevó a salir del país para proteger su vida.

Los clásicos de la literatura de la violencia en Colombia pueden dar cuenta de la lenta incursión del enfoque de género y de la pluma de las mujeres en los estudios sobre la violencia. Sin duda, esta incursión tuvo consecuencias en la participación de las mujeres en la construcción de los procesos de paz llevados a cabo en Colombia durante el siglo XXI:

(i) En un *primer momento*, se identifica a la Comisión Investigadora de las causas de la violencia de 1958 creada por la Junta Militar que impulsó el Frente Nacional<sup>7</sup>, la cual estuvo concentrada en «investigar las causas de la violencia política partidista que había ensangrentado al país desde el decenio del cuarenta y a la identificación de las secuelas sociales dejadas por ella»<sup>8</sup>, identificada con una metodología del testimonio y con las palabras *rigor y objetividad*, tal como lo ha descrito González Sánchez<sup>9</sup>. Misión compilada en el gran libro clásico (dos tomos): *La Violencia en Colombia* escrito por Germán Guzmán Campos, Orlando Fals Borda y Eduardo Umaña Luna<sup>10</sup>.

(ii) Para luego saltar a un *segundo momento* en el que el Estado invocó a la academia sobre las perspectivas de la violencia en los años 80 y

durante los cuales ésta, se transforma, se profundiza, se dispersa, se amplía, se diversifica. Esta situación propició la necesidad de comprender y explicar este fenómeno social, tan complejo y disperso, que involucra a toda la sociedad, en todos los ámbitos; haciendo de la violencia, un “lugar común” de preocupación e investigación en Colombia. Emerge un “saber” ocupado de “pensar” este problema social, el cual será conocido como violentología, generando un campo discursivo propio, una comunidad académica y la instauración de un discurso “específico”; tema de investigación que llegó a ser, el de más prolífica producción académica, durante varias décadas como los 60, 70 consolidándose en los 80», p. 9.

7. Comisión de Estudios sobre la Violencia, Colombia: Violencia y Democracia. *Informe presentado al Ministerio de Gobierno*, Universidad Nacional de Colombia, 1989.

8. El REP, p. 9.

9. J. Jaramillo, *Las comisiones de estudio sobre la violencia en Colombia. La “voz crítica” de uno de sus protagonistas* (entrevista con el historiador Gonzalo Sánchez), en *Análisis Político*, n. 73, 2011, pp. 159-168.

10. G. Guzmán, O. Fals, E. Umaña, *La Violencia en Colombia*, 3 tomos, Taurus, 2016.

las supuestas medidas para paliarla. Esta fase fue liderada por la Comisión de Estudios sobre la Violencia, coordinada por Gonzalo Sánchez, quien sintetizó su informe en el libro titulado: *Colombia: violencia y democracia*<sup>11</sup>. Una fase que se caracterizó por la descripción, la interpretación del fenómeno y la identificación de multi violencias: «violencia socioeconómica, violencia sociocultural y la violencia sobre los territorios»<sup>12</sup>, todo arropado por una cultura de la violencia, reproducida por la familia, la escuela y los medios de comunicación. En estas dos fases relacionadas apenas se menciona a las mujeres ni como actoras de guerra ni como víctimas ni como académicas de manera relevante. La escritura, aunque fundamental, fue masculina; así mismo, lo fue la guerra.

Antes de relacionar el tercer momento, es necesario reconocer el impacto tenue del feminismo en el mundo de las mujeres a finales del siglo XX y comienzos del XXI. Esta incursión inconsciente o consciente se vio reflejada en diversos asuntos, entre otros: activismo feminista; movimientos sociales; mayor ingreso al mundo académico y, con ello, al escenario del estudio de la guerra y el conflicto; protagonismo marginal de algunas mujeres en grupos guerrilleros; invisible y limitada participación en los acostumbrados procesos de negociación masculinizados de paz, ya sean exitosos o frustrados (FARC, M-19, PRT, Quintín Lame, EPL); impulso de la Asamblea Nacional Constituyente de 1991, con la respectiva participación de cuatro mujeres en ese escenario de 70 integrantes<sup>13</sup>, y la gran inserción del marco de la paz cuyo gran punto de inflexión será el artículo 22 de la Constitución Política de 1991<sup>14</sup>.

(iii) Un *tercer momento* se dio en plena vigencia de la Constitución Política de 1991, posterior al frustrado proceso de paz que se quiso impulsar con el Gobierno y las FARC-EP, entre los años 1998 y 2002, en el marco de la negociación con el paramilitarismo en Colombia y en pleno mandato de la Ley 975 de 2005 de Justicia y Paz, la cual solicitó elaborar un relato sobre el origen y la evolución de los actores ilegales.

11. Comisión de Estudios sobre la Violencia, Colombia: Violencia y Democracia. *Informe presentado al Ministerio de Gobierno*, cit.

12. El REP, p. 11.

13. L. Estupiñán, M. Gómez, *La utopía constitucional descolonial y feminista chilena. Una lectura desde Colombia*, en *Constitucionalismo de la resistencia y la integración desde y para Abya Yala*, REDCCAL, 2023, pp. 147-170.

14. Constitución Política de Colombia, 1991, «Artículo 22. La paz es un derecho y un deber de obligatorio cumplimiento».

El gran informe se tituló: *¡Basta Ya!* (2013)<sup>15</sup>, bajo la autoría del Centro Nacional de Memoria Histórica. Un hito que permitió visibilizar con mayor contundencia a las mujeres tanto en materia de investigación y escritura como en un análisis profundo sobre su condición de víctimas e, incluso, de victimarias en el conflicto colombiano. El cambio de metodología y el acercamiento polifónico mediante la ampliación de las voces antes silenciadas permitieron la transformación por completo de la historia y de la construcción de la memoria, la verdad y de la misma paz en Colombia.

Al Grupo de Memoria Histórica, denominado desde 2011 como Centro Nacional de Memoria Histórica nuevamente liderado por el historiador Gonzalo Sánchez, estuvo vinculado un número significativo de mujeres, así la historia cambió en materia de construcción de verdad, memoria y paz. En este escenario oficial de Misión, se resaltan diversos estudios coordinados por mujeres o con grupos significativos de ellas, en materia de investigación: Pilar Riaño Alcalá, en la coordinación de investigaciones sobre: *La Masacre de Bahía Portete. Mujeres Wayuu en la mira*<sup>16</sup> y *Recordar y narrar el conflicto. Herramientas para reconstruir la memoria histórica*<sup>17</sup> o María Emma Wills en la coordinación de las investigaciones tituladas: *Mujeres y Guerra. Víctimas y resistentes en el Caribe colombiano*<sup>18</sup> y *Mujeres que hacen historia, tierra, cuerpo y política en el Caribe colombiano*<sup>19</sup>. La literatura sobre la guerra y la violencia escrita por las mujeres se hace más explícita, ya sea dentro de la Comisión o fuera de ella, en escenarios académicos y en ONGs. Cómo no recordar los aportes de Martha Nubia Bello, Claudia López, María Victoria Uribe, María Teresa Uribe de Hincapié, Liliana María López Lopera, Julieta Lemaitre e Ingrid Bolívar, entre otras que se lamenta no mencionar en el escrito.

Es necesario señalar que el documento: *¡Basta Ya!*. constituye un punto de partida fundamental para identificar al sistema patriarcal y su componente militar como un escenario propicio para la exacerbación

15. Grupo de Memoria Histórica: “¡BASTA YA! Colombia: Memorias de guerra y dignidad”, Centro Nacional de Memoria Histórica, 2013.

16. Grupo de Memoria Histórica: *La masacre de Bahía Portete. Mujeres Wayuu en la mira*, Taurus, 2010.

17. Grupo de Memoria Histórica, *Recordar y narrar el conflicto. Herramientas para reconstruir memoria histórica*, Fotoletras S.A., 2009.

18. Grupo de Memoria Histórica: *Mujeres y Guerra. Víctimas y resistentes en el Caribe Colombiano*, Taurus, 2011.

19. Grupo de Memoria Histórica: *Mujeres que hacen historia. Tierra, cuerpo y política en el Caribe colombiano*, Taurus, 2011.



de la violencia contra las mujeres, tan normalizada en el escenario colombiano. En dicho documento se diferencian las diversas clases de violencias sexuales ejercidas contra ellas y el modus operandi de cada uno de los actores de la guerra, ya sea legales o ilegales: paramilitares, guerrilla y fuerza pública. Por supuesto, que el peor escenario se vivió en el mundo del paramilitarismo cargado de lecturas conservadoras y hasta fascistas sobre el papel de las mujeres. Ni las mujeres en sociedad civil ni aquellas vinculadas a la guerra, que según el documento llegaban a un 40% en las filas, se salvaron de la violencia sexual, de los abortos forzados y de la imposibilidad de ejercicio libre en materia de reproducción<sup>20</sup>.

Identificar al sistema patriarcal como factor fundamental de la violencia transforma la lectura del conflicto armado en Colombia. Según el informe:

Las variaciones entre paramilitares, guerrilleros e integrantes de la fuerza pública registradas en testimonios y en cifras confirman la tesis de que los hombres que cometen estos crímenes, más que responder a instintos irrefrenables desatados en medio del conflicto armado, están reaccionando a incentivos o sanciones que han establecido los comandantes y las dirigencias de cada una de las organizaciones armadas. Las representaciones de la feminidad y la masculinidad que las organizaciones inculcan en sus integrantes en los entrenamientos militares; las estrategias militares que utilizan para derrotar a sus enemigos y establecer sus dominios; los repertorios de regulación social que aplican para mantener su dominio; el comportamiento de los comandantes frente a las mujeres, entre otras circunstancias, promueven o inhiben la ocurrencia de la violencia sexual<sup>21</sup>.

Para la época, el feminismo ya había tenido un impacto importante en la administración de justicia con enfoque de género y de interseccionalidad, un tema que en pleno año 2023, fecha en la que se escribe este aporte, apenas sigue en proceso de implementación. Sin embargo, es necesario recordar como antecedente de este gran estudio, la sentencia hito de la Corte Constitucional sobre el desplazamiento forzado: la T-025 de 2004<sup>22</sup>, en la que ya se habían identificado caminos de dignificación para millones de mujeres, niñas, niños, diversos,

20. Grupo de Memoria Histórica, *¡BASTA YA! Colombia: Memorias de guerra y dignidad*, cit., p. 83.

21. El REP, p. 84.

22. Corte Constitucional, Sentencia T-025, 2004, disponible en *Corte Constitucional República de Colombia*: [www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm](http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm).

diversas, ancestrales y más personas afectadas por el flagelo de la guerra a manera de desplazamiento forzado. Dentro de las grandes tareas estaba y, lo sigue estando: la reconstrucción del tejido social, el retorno y el restablecimiento, el derecho a la vida, la integridad física, psicológica y moral, el derecho a la familia y a la unidad familiar, la subsistencia mínima y a un mínimo vital, la salud, la protección, la educación básica y el apoyo para el sostenimiento. En ese momento, luego de tamaña violencia contra ellas, faltó pensar en una justicia transicional para reconstruir la vida, la transformación de la justicia, institucional y de la sociedad. Vendrán entonces otras fases y lecturas con lentes de diferencia para entender semejante historia de horror en Colombia.

Tampoco se puede terminar esta fase, sin recordar a la Ley de Víctimas y de Restitución de Tierras, Ley 1448 de 2011 que ya insertaba en su revolucionario texto *el enfoque diferencial* o lo que en ella se identifica así:

Una serie de medidas encaminadas a enfrentar la situación de vulnerabilidad acentuada de algunas víctimas en razón de [debido a] su edad, género, orientación sexual y situación de discapacidad. La Ley ofrece especiales garantías y medidas de protección, asistencia y reparación a los miembros de grupos expuestos a mayor riesgo de violaciones de sus derechos fundamentales: mujeres, jóvenes, niños y niñas, adultos mayores, personas en situación de discapacidad, líderes sociales, miembros de organizaciones sindicales, defensores de derechos humanos y víctimas de desplazamiento forzado, y de esta manera contribuye a la eliminación de los esquemas de discriminación y marginación que pudieron ser la causa de los hechos victimizantes<sup>23</sup>.

(iv) Una cuarta fase que está precedida por todo el proceso de negociación entre el Gobierno y las FARC-EP, la participación de las víctimas y de las mujeres en la construcción del Acuerdo Final, tal como se relata más adelante. En esta cuarta fase, se realizó un esfuerzo más por leer el conflicto desde la academia y desde los hombres preferentemente, un asunto que fue propiciado al interior del proceso de negociación bajo la creación, en el año 2014, de la denominada Comisión Histórica del Conflicto y sus Víctimas, en el marco de las negociaciones entre el Gobierno y las FARC-EP. Dicha Comisión estuvo integrada por 12 investigadores y 2 relatores, quienes entregaron sus informes en febrero

23. Congreso de la República de Colombia, *Ley 1448 de 2011*, texto disponible en GOV.CO *Función Pública*: [www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43043](http://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43043) - ~:text="Por la cual se dictan,y se dictan otras disposiciones."&text=Ver Decretos Nacionales 4155, 4633,48, 49 y 50.

de 2015. Un informe que recopiló en relatoría los 12 ensayos entregados por los 12 comisionados, de quienes una sola era mujer: María Emma Wills, cuyo ensayo estuvo cifrado en determinar el origen, las causas, los efectos e impactos del conflicto, así como los factores y circunstancias que han contribuido para su permanencia. La comisionada mujer presentó un informe que se denominó: *Los 3 nudos de la guerra colombiana* con tres grandes temas:

1. un campesino resistente sin representación política;
2. una polarización social en el marco de una institucionalización fracturada y;
3. unos quiebres y articulaciones perversos entre regiones y centro que fracturan al Estado internamente<sup>24</sup>.

Todos estos hechos antecedieron a La Comisión de la Verdad surgida en el marco del Acuerdo de Paz de la Habana que representa el gran hito de la cuarta fase que se relata. Dicha Comisión tuvo como gran tarea:

El esclarecimiento de los patrones y causas explicativas del conflicto armado interno que satisfaga el derecho de las víctimas y de la sociedad a la verdad, promueva el reconocimiento de lo sucedido, la convivencia en los territorios y contribuya a asentar las bases para la no repetición, mediante un proceso de participación amplio y plural para la construcción de una paz estable y duradera<sup>25</sup>.

Esta entidad fue creada mediante el Acto Legislativo 01 de 2015 y el Decreto 588 de 2017, bajo la denominación de Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición.

Se trató de un mecanismo de carácter temporal y extrajudicial del denominado Sistema Integral de Verdad, Justicia, Reparación y No repetición (SIVJRNR), con el que se adoptó de manera plena tanto en su integración como en todo el ejercicio de construcción de la memoria: el enfoque étnico, de género, persona mayor, discapacidad, niños/as, psicosocial y de estrategia cultural<sup>26</sup>. Así la construcción de la verdad se

24. M. Wills, *Los tres nudos de la guerra colombiana: un campesinado sin representación política, una polarización social en el marco de una institucionalidad fracturada, y unas articulaciones perversas entre regiones y centro*, 2014, texto disponible en: [www.centrodehistoriainstitucional.gov.co/descargas/comisionPaz2015/WillsMariaEmma.pdf](http://www.centrodehistoriainstitucional.gov.co/descargas/comisionPaz2015/WillsMariaEmma.pdf).

25. Comisión de la Verdad, *¿Qué es la Comisión de la Verdad?*, párr. 1, disponible en *Comisión de la Verdad*: [www.comisiondelaverdad.co/que-es-la-comision-de-la-verdad](http://www.comisiondelaverdad.co/que-es-la-comision-de-la-verdad).

26. *Ibidem*.

volvió paritaria en Colombia, dado que desde su decreto fundacional se dio el mandato de que la selección de los comisionados y comisionadas debía hacerse teniendo en cuenta el criterio de la participación equitativa entre hombres y mujeres<sup>27</sup>.

La Comisión de la Verdad duró cuatro años efectivos de vida, varios de ellos trabajados durante la fase de la pandemia, lo cual dificultó de manera significativa el desarrollo de su pretensión descentralizadora y territorial. Por primera vez, la verdad se construyó desde los territorios mediante la realización de 14.000 entrevistas, conversación con más de 30.000 personas de todas las regiones, identidades étnicas, experiencias de vida, y la recepción de más de 1000 informes de instituciones públicas, de entidades privadas y de movimientos sociales<sup>28</sup>. A partir de una metodología inductiva descrita por ellos como de escucha, observación abierta, análisis y construcción de conclusiones, cifrada en una gran pregunta: «¿Por qué, a pesar de los múltiples acuerdos y procesos de paz, el conflicto armado no logra cerrarse completamente y, en cambio, se recicla?»<sup>29</sup>.

El informe consta de 11 tomos y una declaración, a manera de convocatoria, a lo que ellos denominaron la *paz grande*, titulada en el actual gobierno del presidente Petro: *Paz Total*<sup>30</sup>. Todo el trabajo de la Comisión refleja la adopción plena de los enfoques de interseccionalidad, interculturalidad y la perspectiva de género. De hecho, estos tres enfoques se observan de manera plena en el tomo titulado: *Mi Cuerpo es la Verdad. Experiencias de mujeres y de personas LGTBQ+ en el Conflicto Armado*. Un tomo que sistematiza la experiencia dolorosa de miles de mujeres que fueron víctimas del conflicto armado en Colombia.

Una sistematización que denota que los actos inhumanos y aberrantes que padecieron 10.864 mujeres escuchadas en la Misión donde, por la credibilidad a sus palabras, testimonios y legitimación de las violencias padecidas durante el conflicto, fueron la impronta. Todo un esfuerzo de la Comisión para concluir que «la guerra no era más que un refuerzo

27. Comisión de la Verdad, Los y las comisionadas, disponible en *Comisión de la Verdad: [web.comisiondelaverdad.co/la-comision/los-y-las-comisionadas](http://web.comisiondelaverdad.co/la-comision/los-y-las-comisionadas)*. La página web de la Comisión de la Verdad mantiene registro de la participación total de 12 comisionados/as: 7 hombres, 5 mujeres.

28. Comisión de la Verdad, Informe de Hallazgos y Recomendaciones en Informe Final de la Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, 2022

29. El REP, p. 24.

30. Congreso de la República de Colombia, Ley 2272 de 2022, texto disponible en: [img.lalr.co/cms/2022/12/11105137/Ley-de-Paz-Total.pdf](http://img.lalr.co/cms/2022/12/11105137/Ley-de-Paz-Total.pdf).

del patriarcado, una contribución al gigantesco negocio de la venta de armas; y sobre todo comprendieron que por el camino de la guerra no se encontraría en Colombia una salida hacia la recuperación de la dignidad»<sup>31</sup>.

En medio de la construcción de la verdad, las mujeres se convirtieron en «sujetos políticos y agentes de transformación»<sup>32</sup>. Padecieron la guerra, pero luego sostuvieron la paz, a pesar del denominado: «círculo vicioso de las violencias» (p. 33)<sup>33</sup>. Ellas protagonizan el relato de la emancipación y la resistencia a la guerra: las indígenas, campesinas, negras, afrodescendientes, palenqueras y urbanas. También están las historias de las niñas, esas afectadas mil veces por el modelo patriarcal de la guerra.

En este informe de la Comisión de la Verdad se reiteró que el conflicto armado exagera las violencias contra las mujeres, toda una forma de reafirmación «de la masculinidad centrada en el poder de la fuerza y el uso de la violencia»<sup>34</sup>. Los cuerpos de las mujeres, por extensión, también son la tierra, la naturaleza, el territorio, la familia, las plantas, el amor, los hijos y los animales. Afectar a las mujeres y humillarlas, por ende, implicaba destruir su cuerpo. Así la guerra no solamente afectó sus cuerpos violados, torturados, asesinados y despojados, sino que profanó su territorio y todo su contexto de cuidado en el hogar, la familia, lo comunitario y lo social. El control, más allá de sus cuerpos y de sus territorios, representó una forma de despojo y apropiación violenta e ilegal de sus bienes, lo que generó una ruptura del tejido social y de toda su historia familiar y comunitaria.

Las mujeres, en ausencia del Estado Social de Derecho en sus territorios, fueron sometidas a justicias patriarcales, misóginas y perversas de todos los actores de la guerra formales e informales, legales e ilegales y de una burocracia que en la misma línea patriarcal las invisibilizó y revictimizó. La barbarie no se hizo esperar ni por parte de los guerrilleros ni de los paramilitares ni de la fuerza pública. Cada uno de estos actores utilizó sus cuerpos de muchas formas inexplicables para vengarse de ellas y manifestar su masculinidad y misoginia.

Gran cantidad de las violencias relatadas también se circunscribe a

31. *Mi Cuerpo es la Verdad. Experiencias de mujeres y personas LGBTQ+ en el conflicto armado*, en Informe Final de la Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, 2022, p. 30.

32. *Ibidem*.

33. El REP, p. 33.

34. *Ibidem*.

las razones de ingreso de muchas mujeres como actoras de la guerra. En este punto víctimas y victimarias. ¿Qué tanta vocación de guerra tenían aquellas mujeres que ingresaron a las filas de los ejércitos irregulares en Colombia? Sobre este punto vale la pena recordar un estudio sobre mujeres desmovilizadas entre 1990 y 2003, en el que se señala lo siguiente:

Un 28% de las mujeres considera que la razón para ingresar fue la afinidad política, frente al 26% de los hombres. Cuando se les interroga sobre otras razones, el 46% de las mujeres aduce haberlo hecho por situaciones conflictivas en su hogar, frente al 26% de los hombres. El 56% de las mujeres dijo haber entrado por resentimiento con algún grupo armado y, apenas el 7% de los hombres argumentó esta motivación. El 48% de las mujeres dijo haberse enlistado por razones económicas, frente al 25% de los hombres<sup>35</sup>.

Sin duda, el estado de cosas inconstitucional en el que viven millones de mujeres en Colombia, especialmente las más vulnerables, contribuyó para la elección de esta opción de vida que no merece reproche sino entendimiento histórico y contexto.

Sobre el fenómeno del desplazamiento, el informe de la Comisión relata que el Registro Único de Víctimas (RUV) cuantifica en 8.064.719, las víctimas directas de este flagelo, de las cuales 4.025.910 son mujeres<sup>36</sup>. Un fenómeno<sup>37</sup> que aún no encuentra solución en Colombia y que además es objeto de “redesplazamiento” o de desplazamiento del desplazamiento<sup>38</sup>. Se detiene en las circunstancias de dolor que produce este fenómeno en las mujeres, quienes dejan de ser las lideresas y señoras en sus territorios para convertirse en desarraigadas, excluidas, pauperizadas y marginadas en los cinturones de miseria de los municipios o de las grandes ciudades que las reciben con discriminación y odio. Se relatan todos los obstáculos posibles para el retorno, la reclamación de sus tierras y bienes en una sociedad en donde la propiedad suele estar en cabeza prevalentemente de los hombres.

35. G. Castrillón, *¿Víctimas o Victimarias? El rol de las mujeres en las FARC. Una aproximación desde la Teoría de Género*, OPERA, p. 86.

36. Comisión de la Verdad, *Mi Cuerpo es la Verdad. Experiencias de mujeres y personas LGBTIQ+ en el conflicto armado*, cit., p. 64.

37. L. Estupiñán, L. Parra, L. Cortés, *El desplazamiento forzado interno: Un estado de cosas inconstitucional que no termina*, Universidad Libre, 2022.

38. L. Estupiñán, L. Parra, *El desplazamiento forzado en Colombia desde una perspectiva interseccional*, en E. Bindi, V. Carlino (editado por), *Migración y derechos: una mirada global desde la frontera*, Giapichelli, 2023.

¿Quién se quedó con la tierra? Esto es parte del asunto que se pretende resolver con la reforma rural integral que se impulsa en el Acuerdo de Paz de la Habana.

También, se revisan las cifras de las mujeres lideresas asesinadas, del techo más que de cristal sino de cemento que tienen las mujeres para la participación en política, a pesar de los avances en el voto para ellas desde finales de los cincuenta, la ley de cuotas y más.

En fin, un documento que reiteró con creces lo ya evidenciado inicialmente por el Grupo de Memoria Histórica, frente a la relación entre la guerra, el conflicto, el sistema patriarcal y el militarismo. Así las cosas, mediante estos avances con lentes de género, interseccionalidad, territorialidad e interculturalidad, se pudo agregar al origen de la violencia en Colombia, un componente más que necesitaba de máxima documentación y evidencia. Los tres momentos de origen de la violencia en el siglo XX, en Colombia, identificados por Gonzalo Sánchez:

1. los años treinta y de la mano de sendos conflictos agrarios;
2. el denominado *bogotazo* o la liquidación del movimiento popular que encarnó Jorge Eliecer Gaitán, el reconocido líder asesinado en el año 1948;
3. el denominado *Frente Nacional* o el cierre de espacios democráticos (1958-1974), esto es, la alternancia entre los partidos tradicionales en Colombia<sup>39</sup>.

Lo anterior debe leerse dentro del marco del sistema patriarcal caracterizado por hombres que buscaron en las armas y la guerra un modo de vida en el que las mujeres y los más vulnerables llevaron, como siempre, la peor parte.

El Informe de la Comisión identificó tres dimensiones del patriarcado en la guerra y la violencia en Colombia<sup>40</sup>: una primera dimensión de la permanencia de la violencia tanto en escenarios públicos como privados para las mujeres durante toda la vida. Todo un *continuum de violencias*<sup>41</sup> sin fin, recrudescidas por el machismo, el sexismo, la eterna situación de subordinación y de discriminación estructural histórica en la que

39. G. Sánchez, *Colombia: Entre la guerra y la paz, Unidad para la atención y reparación integral a las víctimas*, en *Enfoque diferencial e interseccional*, 2017, texto disponible en: [www.unidadadvictimas.gov.co/sites/default/files/documentosbiblioteca/enfoquediferencialeinterseccional.pdf](http://www.unidadadvictimas.gov.co/sites/default/files/documentosbiblioteca/enfoquediferencialeinterseccional.pdf).

40. Comisión de la Verdad, *Mi Cuerpo es la Verdad. Experiencias de mujeres y personas LGBTIQ+ en el conflicto armado*, cit., p. 178.

41. *Ibidem*.

están inmersas las mujeres. Una segunda dimensión que relaciona la guerra con las armas, la violencia y *la masculinidad guerrera*<sup>42</sup>. Un asunto que se agrava con el componente conservador que encarna la doctrina militar en donde los cuerpos de las mujeres se relacionan con imaginarios virginales y religiosos, que al no verse reflejados en la realidad justificarían la tortura, los actos más atroces y de represión contra ellas. Esta dimensión después adoptará el nombre de *ideología de género*, todos unos jueces/zas morales para impedir cualquier transformación en la doctrina de la subordinación de las mujeres. Un asunto tan complejo, al que se sumaron diversos grupos religiosos y cristianos en Colombia, que incluso tuvo un impacto en la votación por el NO al Acuerdo de Paz de la Habana (2016), por considerar que el enfoque de género afectaría la tradición, las buenas costumbres, la moral y la familia tradicional en Colombia<sup>43</sup>. Y una tercera dimensión, identificada con *la desprotección por parte del Estado*<sup>44</sup>, un asunto que va más allá del abandono institucional, territorial y del disfrute pleno de la dignidad y el Estado social de Derecho para las mujeres.

## 2. El liderazgo y las grandes decisiones de la paz siguen en el mundo de los hombres

Han sido más de 60 años de un conflicto armado masculinizado y soportado por un férreo sistema patriarcal, no solo por los evidentes hechos misóginos de los que las mujeres han sido víctimas sino también por su sistemática *invisibilización*. Su conformación como sujetas políticas de la transformación aún no se observa con contundencia al construir los procesos de paz y su liderazgo. La fotografía de las

42. *Ibidem*.

43. L. Estupiñán, M. Romo, *La Construcción de la justicia transicional de cierre de guerra en Colombia: Una lectura en clave de sur y pluralismo*, en L. Estupiñán (editado por), *Constitucionalismo transicional en Colombia: El derecho a la paz como un deber de construcción dialógica*, 2018: «Efectivamente, el 2 de octubre del año 2016, el Gobierno convocó un plebiscito por la paz. Los colombianos asistieron a las urnas para votar “Sí” o “No” a la pregunta: “¿Apoya usted el acuerdo final para terminar el conflicto y construir una paz estable y duradera?”. Al final del ejercicio electoral, el “No” ganó con 6.422.136 votos, esto es, el 50,23% de la votación. El “Sí” obtuvo un total de 6.361.762 votos. Aun así, la abstención en este momento histórico llegó al 62,59%: la expresión de abstencionismo más alta de Colombia en los últimos 22 años», p. 26.

44. Comisión de la Verdad, *Mi Cuerpo es la Verdad. Experiencias de mujeres y personas LGBTIQ+ en el conflicto armado*, cit., p. 178.



delegaciones y de quienes toman las grandes decisiones en materia de paz sigue siendo masculina, aunque todo el soporte y trasfondo de la transformación está en las víctimas y las mujeres.

Es importante recordar que para 1991 ya se habían intentado diversos procesos de negociación con los grupos guerrilleros, dentro de lógicas de amnistía e indulto, es decir, de perdón y olvido, muy comunes para esa segunda parte del siglo XX en el mundo, hoy impensables en clave de justicia transicional y de víctimas<sup>45</sup>. Ya para dicha época aparecían las mujeres de forma tenue en la construcción de las políticas y los acuerdos de paz.

En la investigación de Nina Chaparro González y Margarita Martínez Osorio<sup>46</sup>: *Negociando desde los márgenes. La Participación política de las mujeres en los procesos de paz en Colombia*, las autoras afirman que durante el gobierno de Belisario Betancur (1982-1986), por primera vez, se incluyeron las mujeres en las mesas de negociación. De hecho, recuerdan los cuatro acuerdos de paz suscritos en 1984 entre el Gobierno y las Fuerzas Armadas Revolucionarias de Colombia (FARC), el Ejército Popular de Liberación (EPL), el Partido Comunista, Marxista Leninista (PCC ML) y la Autodefensa Obrera (ADO), todos ellos firmados por 52 hombres y cuatro mujeres (26 hombres por parte de las guerrillas, 26 hombres por parte del Gobierno, una mujer por parte de las guerrillas y tres mujeres por parte del Gobierno). También resaltan la participación de 17 mujeres con relación a 158 hombres en las Comisiones de Paz creadas por dicho Gobierno<sup>47</sup>. Igualmente, se habla de una participación marginal de las mujeres en las Comisiones de Paz durante el gobierno de Virgilio Barco (1986-1990). Una apuesta de paz que culminó de forma exitosa con el acuerdo de paz con el M-19 y su posterior incidencia en la Asamblea Nacional Constituyente de 1991.

Al margen de estas representaciones institucionales o delegatarias anotadas, las mujeres en Colombia, antes de la Constitución Política de 1991, ya participaban en espacios sindicales, políticos y sociales, así fuera de forma marginal en los temas de liderazgo. Pero el ambiente democrático vivido de manera previa, alterna y posterior a la Asamblea Nacional Constituyente tuvo un impacto positivo en la construcción de las mujeres como sujetas políticas de transformación y de incidencia en

45. L. Estupiñán, M. Romo, *Construcción de la justicia transicional de cierre de guerra en Colombia: una lectura en clave de sur y pluralismo*, cit.

46. N. Chaparro, M. Margarita, *Negociando desde los márgenes. La Participación política de las Mujeres en los procesos de paz en Colombia (1982-2016)*, Dejusticia, 2016.

47. *Ibidem*.

la construcción de la *paz grande*. Varios de los movimientos de mujeres surgidos, también golpeados por la violencia, fueron determinantes para la construcción de una doctrina de paz desde la voz de las mujeres: Red Nacional de Mujeres (1992); la Red Departamental de Mujeres Chocoanas y el proyecto “La Comadre” (1993); Programa de Mujer y Familia del CRIC; la Asociación de Mujeres del Oriente Antioqueño (Amor) (1994); la Ruta Pacífica de Mujeres (1996); la Asociación de Mujeres Afrodescendientes del Norte del Cauca (ASOM) (1997)<sup>48</sup> y, en general, todo un despliegue nacional fortalecido en el año 2000 por la Resolución 1325 de las Naciones Unidas que, sin duda, soportó con más fuerza el papel y la participación de las mujeres en un escenario cerrado y patriarcal tanto para la creación de la guerra como para su finalización.

Si bien, el proceso de paz impulsado por Andrés Pastrana (1998-2002), entre el Gobierno Nacional y las FARC fue frustrado, también es cierto que el movimiento de las mujeres víctimas y afectadas por la guerra ya no daba un paso atrás en materia de construcción de la paz. En este punto, imposible olvidar la gran marcha de las mujeres por la paz, recordada por la historiadora Cecilia Barraza<sup>49</sup>, citada en el Informe Final de la Comisión de la Verdad. Un hecho histórico acaecido en el año 2002 con una movilización de más de 80.000 mujeres, como una respuesta a los fracasos del Caguán (diálogo del gobierno de Pastrana con las FARC-EP) que dejó, de manera positiva, una puerta abierta en materia de participación de más de 700 mujeres en la zona territorial directa de negociación, aunque ninguna de ellas aparece en los documentos oficiales. Así relata esta participación Gloria Tobón:

[...] yo te puedo decir había más de 80 organizaciones de mujeres y más, todo el país se estaba moviendo alrededor de eso, nosotras hacíamos las consultas de mujeres, recogíamos memorias, pero al mismo tiempo hacíamos las reuniones quincenales discutiendo los documentos, una discusión de un documento para llevar una ponencia sobre mujeres y economía al Caguán de consenso, eso fue un trabajo muy juicioso, muy interesante. [...]

El Gobierno tomó en cuenta esas ponencias? “Sí, en todos los documentos se empezó a incorporar [el enfoque de género], eso ya no volvió a desaparecer en la agenda, nada se hacía sin que estuvieran las mujeres y nosotras estábamos ahí pendientes de eso” (Tobón, 2016).<sup>50</sup>

48. Comisión de la Verdad, *Mi Cuerpo es la Verdad. Experiencias de mujeres y personas LGBTQ+ en el conflicto armado*, cit., pp. 270-271.

49. El REP.

50. N. Chaparro, M. Margarita, *Negociando desde los márgenes. La Participación política de las Mujeres en los procesos de paz en Colombia (1982-2016)*, cit., p. 54.

De otro lado, también se señala que durante el periodo presidencial de Uribe (2002-2010), la institucionalidad de género entró en una fase de precariedad completa. Una época que cerró conversaciones con el movimiento feminista y las agendas de género. Sin embargo, ellas siguieron con su trabajo de la paz en las calles, en las redes y en los escenarios internacionales muy en la línea de incidir en las conversaciones adelantadas durante este gobierno con los paramilitares<sup>51</sup>. Nada de esto fue en vano, las víctimas llegaron al proceso de construcción de la verdad, la justicia y la paz; los estudios sobre la violencia también se feminizaron y, desde este instante, esas voces nunca se volvieron a callar, a pesar de no tener un protagonismo contundente en la firma de los documentos de cierre o de avance de negociaciones.

El precario escenario de participación de las mujeres en la construcción de la paz tendrá un punto de inflexión durante el proceso de negociación llevado a cabo entre el Gobierno de Colombia y las FARC-EP (2012-2016). Toda una nueva dinámica que se verá reflejada en el Acuerdo de Paz firmado (2016), a pesar de los ajustes al que fue sometido luego del NO al plebiscito por la paz. Sin duda, esta impronta o participación de las mujeres en el proceso de construcción de la paz, no hace parte de una concesión dada de forma inicial, ya que ellas se integran un año después de iniciado el proceso de negociación. Todo un impulso feminista: víctimas, lideresas y activistas, respaldado por distintas colectivas que reclamaban un lugar digno en el escenario de la Habana.

Esta fuerza colectiva se materializó en el Encuentro Nacional de Mujeres por la Paz realizado en diciembre del año 2012, allí mujeres de todos los rincones de Colombia llegaron a Bogotá «para aunar y tejer sueños y acciones, para perfilar una sociedad también a la medida de las mujeres; sociedad en la cual se nos reconozca como sujetos de derechos en lo público y lo privado, se otorgue autoridad a nuestras voces y se validen nuestras experiencias como valor de la condición humana»<sup>52</sup>. De dicho encuentro surgió el denominado Manifiesto de las Mujeres por la Paz en el que se enlistaron propuestas y promesas para hacer, del Acuerdo de Paz que estaba en construcción, un proceso feminista y democrático. En este sentido, dentro de las propuestas se encontraban:

51. El REP.

52. Encuentro Nacional de Mujeres por la Paz, *La Paz sin las mujeres ¡NO VA! Manifiesto de Mujeres por la Paz*, 2012, texto disponible en *Ruta Pacífica de las Mujeres org.co*: [www.rutapacifica.org.co/agenda-de-paz/178-la-paz-sin-las-mujeres-no-va-manifiesto-de-mujeres-por-la-paz](http://www.rutapacifica.org.co/agenda-de-paz/178-la-paz-sin-las-mujeres-no-va-manifiesto-de-mujeres-por-la-paz).

1. integrar los derechos de las mujeres en el proceso de paz;
2. inclusión de mujeres excombatientes;
3. revisión de la política de seguridad para la garantía de la seguridad de la mujer en espacios privados y públicos;
4. desmantelamiento total del paramilitarismo;
5. igualdad entre mujeres y hombres para el acceso equitativo de la tierra, entre otras.

De las promesas hechas en pro de la garantía de los derechos de las mujeres, se resalta el trabajo por brindar fuerza a las voces de las mujeres para su participación como sujetas políticas dentro del proceso de paz<sup>53</sup>.

Este ímpetu feminista posibilitó que llegaran a la mesa de negociación dos mujeres en el año 2013: Nigéria Rentería y María Paulina Riveros, quienes fueron nombradas por parte del Gobierno como plenipotenciarias. La primera de ellas fue reemplazada posteriormente, por la que en esa ocasión fungía como Canciller. Por parte de las FARC, conforme lo señalan Lina Chaparro y Margarita Martínez: «Es difícil tener una cifra exacta del equipo negociador pues no diferenciaron bien entre negociadores y asesores. Lo cierto es que había una mesa de diez personas (que no siempre eran las mismas) y de las que se puede decir que solo había una mujer nombrada como negociadora: Tanja Nijmeijer»<sup>54</sup>. Con ellas, se sembró dentro del histórico proceso de paz, lo que después sería la transversalización del enfoque de género en el Acuerdo, esto a pesar de la limitada y desproporcionada participación de las mujeres en comparación con la participación masculina, pues «la mesa de negociaciones quedó finalmente compuesta por tres mujeres y diecisiete hombres, lo que indica que el 15% de los integrantes de esta instancia eran mujeres»<sup>55</sup>.

Tras este gran logro, el 7 de junio del 2014, por medio de un comunicado conjunto entre el Gobierno y el grupo armado dieron a conocer que acordaron:

Crear una subcomisión de género, compuesta por integrantes de las delegaciones, para revisar y garantizar, con el apoyo de expertos/as nacionales e internacionales, que los acuerdos alcanzados y un eventual acuerdo final tengan un adecuado enfoque de género<sup>56</sup>.

53. *Ibidem*.

54. N. Chaparro, M. Margarita, *Negociando desde los márgenes. La Participación política de las Mujeres en los procesos de paz en Colombia (1982-2016)*, cit., p. 69.

55. *Ibidem*.

56. Gobierno Nacional, FARC-EP, *Declaración de principios para la discusión*

Dicha subcomisión fue instalada el 7 de noviembre del año 2014, es decir, dos años después de iniciados los diálogos con el grupo armado. Esta nueva instancia estuvo liderada por dos mujeres: María Paulina Riveros y Victoria Sandino Palmera, delegadas del Gobierno Nacional y de las FARC-EP, respectivamente.

Esta Subcomisión le mostró al país la importancia de las mujeres en la construcción de la paz e hizo consciente a la sociedad respecto a la errónea masculinizada imagen que se tenía en ese momento de la guerra. Una idea no consistente con la realidad vivida por las numerosas mujeres que hicieron parte del conflicto, razón por la cual Nigieria Rentería considerara en su momento:

Hoy es impensable que esta Mesa de Conversaciones no incorpore el tema de género como un aspecto central y transversal. No se trata de considerar a las mujeres desde una mirada revictimizante, sino como sujetas de derechos y protagonistas en la construcción de la paz. Ellas han sentido el impacto del conflicto en sus cuerpos y en sus vidas. Han sido, siguen siendo y serán las principales constructoras del tejido social<sup>57</sup>.

Sin dejar de lado, por supuesto, que esto no se trata solo de las mujeres como partícipes o víctimas del conflicto, sino también como víctimas de todo un entramado patriarcal que se arraiga a las raíces más profundas de nuestra sociedad y que, sin lugar a duda, exacerba las violencias que contra ellas se han cometido, y se siguen cometiendo.

En este sentido, esta subcomisión estuvo integrada por cinco personas de cada delegación que tenían como objetivo la aplicación del enfoque de género en lo acordado en el proceso de negociación, de forma que esta finalidad permitió: la participación de 18 organizaciones de mujeres y de población LGTBI; que el 60% de las víctimas que participaron en la construcción del Acuerdo fueran mujeres<sup>58</sup>; y, además, garantizó la transversalización del enfoque diferencial y de género dentro del documento final del Acuerdo de Paz. La Subcomisión de Género cumplió un papel trascendental e histórico, pues por medio

*del punto 5 de la agenda*, 2014, p. 3, texto disponible en: [sueje.edu.co/wp-content/uploads/2020/05/junio-7.pdf](http://sueje.edu.co/wp-content/uploads/2020/05/junio-7.pdf).

57. Oficina del Alto Comisionado para la Paz, *Los mecanismos e instancias de participación de la mesa de conversaciones y la construcción de paz desde los territorios*, tomo VII, 2018, p. 311.

58. Cinco Claves para un Tratamiento Diferencial de la Violencia Sexual en los Acuerdos sobre la Justicia Transicional en el Proceso de Paz, *Las mujeres en los Acuerdos de Paz*, 2016.

de esta se logró escuchar las voces de aquellas mujeres que el sistema había mantenido en la periferia, que vivían realidades desconocidas y que se habían convertido en víctimas de esa historia única que ponía en la guerra un rostro exclusivamente masculino.

Así fue como se gestó el enfoque de género dentro del Acuerdo de Paz de la Habana, entre luchas y reivindicaciones feministas que se impulsaron por el necesario reconocimiento de los impactos desproporcionados que sufrieron las mujeres como consecuencia de la guerra, y también con la creación de medidas diferenciadas que estuvieran adaptadas al entorno social, familiar, político y económico de cada mujer atravesada por los impactos de una guerra que las ha instrumentalizado, perpetuando las relaciones desiguales de poder que se sostienen en la estructura patriarcal y machista de la sociedad colombiana.

Todo este esfuerzo quedó consignado en el documento del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera, incluso en su fase posterior de ajuste ante el NO del plebiscito. Dicho documento está dividido en 6 puntos:

1. reforma rural integral;
2. participación política;
3. fin del conflicto;
4. solución al problema de las drogas ilícitas;
5. víctimas;
6. implementación, verificación y refrendación.

Todos estos apartes están regidos bajo una serie de principios entre los cuáles está la igualdad y el enfoque de género, definido en el punto número 1 del Acuerdo, pero transversal al mismo. El Acuerdo, concretamente, señala que el reconocimiento de las mujeres como sujetas políticas:

Implica la adopción de medidas específicas en la planeación, ejecución y seguimiento a los planes y programas contemplados en este acuerdo para que se implementen teniendo en cuenta las necesidades específicas y condiciones diferenciales de las mujeres, de acuerdo con su ciclo vital, afectaciones y necesidades<sup>59</sup>.

59. Gobierno Nacional de Colombia, FARC-EP, *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, cit., p. 12, texto disponible en: [www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11\\_1.2016nuevoacuerdofinal.pdf](http://www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11_1.2016nuevoacuerdofinal.pdf).

En este sentido, se comprende que en cada punto exista una ruta de acción en clave de enfoque de género, lo demuestra el hecho de que dentro del Acuerdo de Paz la palabra *mujer* sea mencionada 197 veces<sup>60</sup>.

Pues bien, con respecto al *primer punto*: reforma rural integral, en términos generales, lo que busca el Acuerdo es el “buen vivir” para los campesinos/as en Colombia. Una población históricamente empobrecida y marginada por un Estado centralista que concentra toda su mirada en lo urbano<sup>61</sup>. Reducir la brecha entre el campo y la ciudad, reactivarlo y hacerlo digno para la vida de seres humanos, animales y la misma naturaleza<sup>62</sup>. En materia de género reconoció la discriminación histórica a la que han sido sometidas las mujeres campesinas y rurales en Colombia, para lo cual, la democratización del acceso y el uso de la tierra para ellas es necesario. Toda una reforma rural integral en clave de mujeres campesinas y rurales en donde la vida sea posible a través de su arraigo a la tierra, la seguridad alimentaria, el buen vivir, la propiedad, la igualdad, la no discriminación y el acceso al Estado Social del Derecho en el mundo campesino. Un gran avance se ha dado en la reforma constitucional que reconoció al campesinado como sujeto de derechos en Colombia<sup>63</sup>, con las consecuencias que implica dicho paso constitucional para el mundo de las mujeres. Sin embargo, el desarrollo de este punto del Acuerdo está ralentizado, entre otras, por la difícil transformación del imaginario feudal, patriarcal, militar y mafioso que ha tenido la tierra en Colombia y que no se puede superar de la noche a la mañana.

El *segundo punto* del Acuerdo titulado: Participación Política, busca fortalecer la democracia y ampliar la participación de la ciudadanía en lo público y en la construcción de paz. Toda una apuesta por desvincular las armas de la política<sup>64</sup>, y generar un espacio de reincorporación de

60. Cinco Claves para un Tratamiento Diferencial de la Violencia Sexual en los Acuerdos sobre la Justicia Transicional en el Proceso de Paz, *Las mujeres en los Acuerdos de Paz*, cit.

61. La Oficina del Alto Comisionado para la Paz, *El Acuerdo Final de Paz. La oportunidad para construir paz*, texto disponible en: [www.refworld.org/es/pdfid/5a874f254.pdf](http://www.refworld.org/es/pdfid/5a874f254.pdf).

62. L. Estupiñán, *Construcción del Estado en los territorios del abandono. Aportes a partir del Acuerdo de Paz*, en L. Estupiñán (editado por), *Constitucionalismo transicional en Colombia: El derecho a la paz como un deber de construcción dialógica*, Universidad Libre, 2018, p. 161.

63. Congreso de la República de Colombia, Acto Legislativo 01, 2023, texto disponible en GOV.Co *Función pública*: [www.funcionpublica.gov.co/evalgestornormativo/norma.php?i=213790](http://www.funcionpublica.gov.co/evalgestornormativo/norma.php?i=213790).

64. La Oficina del Alto Comisionado para la Paz, *El Acuerdo Final de Paz*.

los otrora alzados en armas al mundo de la democracia. El bipartidismo y el exterminio de la Unión Patriótica fueron, entre otros, ignominias proscritas en este Acuerdo de Paz. Sin mujeres, no hay política, por ello su visibilización y legitimación es apenas una estrategia de democracia feminista libre, entre otras, de violencias basadas en género. De ahí la importancia de implementar al menos 26 medidas<sup>65</sup> con enfoque de género en asuntos de liderazgo democrático y de participación, que giran en torno a lo siguiente: la protección de líderes y lideresas sociales, apoyo a la creación y fortalecimiento de organizaciones y movimientos sociales, la promoción de la no estigmatización y de una mayor participación de las mujeres en instancias de decisión y en procesos electorales, pedagogía, paridad, entre otras<sup>66</sup>. Una apuesta que, entre la continua cifra de líderes y lideresas asesinadas y ex combatientes asesinados y asesinadas, muestra la falta de agencia por parte del Estado colombiano en materia de protección a los actores del conflicto, además de evidenciar las debilidades del blindaje al Acuerdo de Paz.

El *tercer punto* denominado “fin del conflicto” tiene como centro la terminación definitiva de las acciones ofensivas entre la Fuerza Pública y el grupo armado FARC-EP. Un paso fundamental y necesario para la debida implementación del Acuerdo: que en los territorios se extienda la paz y la ausencia de armas. Que dónde gobernaba la violencia y el miedo a la guerra, reinara la institucionalidad y la garantía de una vida digna para todos y todas. Para esto, el Acuerdo buscó que el grupo armado abandonara las armas y se reincorporara a la vida civil, lo que, para el caso de las mujeres, implicaba comprender aquello que significó ser victimarias como una forma de también ser víctimas; o ser victimarias, como un ejercicio de autonomía y libre elección, pero que en todo caso implicó el padecimiento de violencias e impactos diferenciados que se debían enfrentar con medidas ajustadas a sus realidades. Aspecto acogido por el Acuerdo, en tanto establece que «el proceso de reincorporación tendrá en todos sus componentes un enfoque diferencial, con énfasis en los derechos de las mujeres»<sup>67</sup>.

*La oportunidad para construir paz*, texto disponible en: [www.refworld.org/es/pdfid/5a874f254.pdf](http://www.refworld.org/es/pdfid/5a874f254.pdf).

65. Grupo de Género en la Paz-GPAZ, *La Paz avanza con las mujeres. III Informe de observaciones sobre los avances en la implementación del enfoque de género del Acuerdo de Paz*, 2021.

66. *Ibidem*.

67. Gobierno Nacional de Colombia, FARC-EP, *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, cit., p. 68, texto disponible en: [www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11\\_1.2016nuevoacuerdofinal.pdf](http://www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11_1.2016nuevoacuerdofinal.pdf).



Por otro lado, este punto del Acuerdo, de igual modo, trae consigo las garantías de seguridad que se brindarían en el marco de las múltiples violencias cometidas en contra de los diferentes movimientos sociales, políticos, defensores/ras de derechos humanos, y líderes/sas sociales. Sobre esto, el Acuerdo busca proteger a las mujeres de los riesgos específicos que pueden poner en peligro su vida, libertad, integridad y seguridad, con la debida aplicación del enfoque de género que se constituye como principio orientador de esta medida. Las numerosas violencias que se cometieron en contra de las mujeres como una forma de ejercer poder y dominación, se convierten en la escena insignia de esta guerra que deja en los cuerpos de las mujeres la huella imborrable de la misoginia, y que hace fundamental tener en cuenta dentro de este punto el enfoque de género.

El *cuarto punto* designado: la solución al problema de las drogas ilícitas, se implanta en un problema de orden global del que Colombia ha sido víctima. Este punto busca 3 cosas: primero, que los/las cultivadores/ras puedan ejercer otra actividad económica en el marco de la legalidad; segundo, que los/las consumidores/ras sean tratados/das y rehabilitados/das; y tercero, que se logre combatir toda la cadena del narcotráfico<sup>68</sup>. Un problema de magnitud global que se ha tratado desde el prohibicionismo, a pesar de la vasta evidencia sobre la poca utilidad que surte para el enfrentamiento del problema real. Una situación que ha debido tratarse como un problema de salud pública y en perspectiva de derechos humanos, con sus excepcionales matices en lo judicial. Este punto se enmarca en el cambio necesario que debe hacerse en Colombia y en la región: un cambio de discurso sobre el problema de las drogas en el mundo, necesario para que los más vulnerables de esa cadena del narcotráfico no sigan siendo las víctimas de un sistema esencialmente orientado a castigar y atacar al pobre. Este punto enfrenta grandes retos en cuanto a la sustitución de los cultivos ilícitos, porque implica entender las dinámicas de los territorios y, a partir de eso, brindar alternativas al campesinado colombiano que ha vivido bajo el yugo de las grandes redes de narcotráfico, sin dejarle opciones, y poniendo en riesgo su vida. Una vez más, un asunto de especial atención cuando se trata de las mujeres, que han vivido distintas formas de violencia derivadas de la producción, comercialización y de las economías criminales,

68. La Oficina del Alto Comisionado para la Paz, *El Acuerdo Final de Paz. La oportunidad para construir paz*, texto disponible en: [www.refworld.org/es/pdfid/5a874f254.pdf](http://www.refworld.org/es/pdfid/5a874f254.pdf).

algunas de ellas como la trata de personas y la explotación sexual<sup>69</sup>, dos tipos de violencias que impactan especialmente en las mujeres debido a su sexo, produciendo en ellas y en sus entornos impactos desproporcionados. Una situación que, al reconocerse, permite la aplicación de un enfoque de género en los diferentes programas creados para cumplir lo estipulado en este punto.

El *quinto punto* del Acuerdo de Paz está orientado a las víctimas. El actor más vulnerable de la guerra colombiana, que los/las condenó a la muerte, al abandono, al desplazamiento forzado, a la violencia sexual, al secuestro, al dolor indescriptible de perder un ser amado en un conflicto incomprensible y ajeno, a la pobreza, a una vida dónde eso de los derechos humanos, no llega a tener significado alguno. Este punto tiene cuatro objetivos de vital importancia para una *paz real*, para una *paz grande*:

1. Verdad;
2. Justicia;
3. Reparación;
4. Garantía de no repetición.

Esta apuesta se busca lograr mediante el “Sistema Integral de Verdad, Justicia, Reparación y no Repetición”, que se compone de diferentes instancias como los son, la “Jurisdicción Especial para la Paz – JEP” (encargada del componente de la justicia), la “Comisión de la Verdad” (encargada del componente de la verdad), y la “Unidad de Búsqueda de Personas dadas por Desaparecidas”. Dentro de este punto, atendiendo a las cifras de mujeres víctimas del conflicto, se tendió a blindar el Acuerdo con un enfoque de género orientado a garantizar una participación equitativa de las mujeres en la Comisión de la Verdad, la conformación de un equipo de investigación para los casos de violencia sexual y, en general, la transversalización del enfoque de género para atender a esos graves y desproporcionados impactos de la guerra en la vida de las mujeres y niñas, esclareciendo patrones de violencias para desmantelarlos y garantizar que las mujeres campesinas, indígenas, negras y afrocolombianas puedan gozar de una vida libre de violencias.

Finalmente, en el *sexto punto* del Acuerdo titulado: “Implementación,

69. Cinco Claves para un Tratamiento Diferencial de la Violencia Sexual en los Acuerdos sobre la Justicia Transicional en el Proceso de Paz, *Las mujeres en los Acuerdos de Paz*, cit.

Verificación y Refrendación”, se busca incorporar el enfoque de género en todos los mecanismos de implementación del acuerdo; adicional a esto, se crea una instancia compuesta por representantes de seis organizaciones colombianas de mujeres encargadas de hacerle seguimiento a la labor de “La Comisión de Seguimiento, Impulso y Verificación a la implementación del Acuerdo Final”<sup>70</sup>. Y una vez más reitera el enfoque transversal de género dentro del Acuerdo, tanto para su interpretación como para su implementación.

Sin duda, este Acuerdo de Paz representa un avance histórico para las mujeres en materia de negociación de la paz o de finalización de una guerra, de construcción del enfoque de género en cada una de las fases, los documentos concertados y el correspondiente proceso de implementación. Sin embargo, como se ha reseñado en el presente escrito, no ha sido un camino fácil ni antes, ni durante, ni después del proceso de negociación. Basta recordar el 2 de octubre del 2016, cuando los medios de comunicación informaron:

Colombia: ganó el “No” en el plebiscito por los Acuerdos de Paz con las Farc: En un resultado sorprendente, los votantes colombianos rechazaron este domingo el acuerdo alcanzado por el Gobierno con la guerrilla de las Fuerzas Armadas Revolucionarias de Colombia (FARC), sumiendo en la incertidumbre el proceso de paz con los insurgentes<sup>71</sup>.

La pregunta del plebiscito por la paz fue: “¿Apoya usted el acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera?” el 49,78% de los votantes respondieron que sí, mientras que el 50,21% le dio el “no” a un país sin guerra<sup>72</sup>. El primer dato relevante acerca de estos resultados es que el voto *NO* fue contundente en las zonas menos afectadas por el conflicto<sup>73</sup>, mientras que el *SÍ* ganó en aquellas zonas en donde se ubican los territorios más afectados por la guerra.

Tras esta derrota, el Gobierno liderado por el expresidente Juan

70. N. Chaparro, M. Margarita, *Negociando desde los márgenes. La Participación política de las Mujeres en los procesos de paz en Colombia (1982-2016)*, cit.

71. BBC Mundo, Colombia: ganó el “No” en el plebiscito por los Acuerdos de Paz con las Farc, 2016, texto disponible en *BBC News Mundo: [www.bbc.com/mundo/noticias-america-latina-37537187](http://www.bbc.com/mundo/noticias-america-latina-37537187)*.

72. Registraduría Nacional del Estado Civil, Plebiscito 2 octubre 2016, texto disponible en *Registraduría del Estado Civil. Colombia: [elecciones.registraduria.gov.co/pre\\_plebis\\_2016/99PL/DPL40ZZZZZZZZZZZZZZZZ\\_L1.htm](http://elecciones.registraduria.gov.co/pre_plebis_2016/99PL/DPL40ZZZZZZZZZZZZZZZZ_L1.htm)*.

73. Y. Basset, *Claves del rechazo del plebiscito para la paz en Colombia*, 2018, p. 247.

Manuel Santos decidió abrir un “diálogo nacional” con los representantes del “NO”, para ajustar el Acuerdo y hacerlo viable. Una vez surtido este proceso, dentro de su alocución dada, manifestó los cambios más importantes implementados luego del triunfo del NO:

Una preocupación que compartieron muchos colombianos y en particular la iglesia y las organizaciones religiosas, fue que el Acuerdo de Paz pudiera contener elementos de la llamada “ideología de género” y se afectaran los valores de la familia. Pues bien, ese tema fue revisado con sumo cuidado por la iglesia católica, por los pastores cristianos, y otros voceros del NO, se hicieron las modificaciones para garantizar que la llamada ideología de género no esté presente, nunca lo estuvo, ni siquiera de manera sugerida. Lo que sí se dejó claro es que este capítulo busca garantizar que las mujeres, que han sufrido especialmente este terrible conflicto, sean tratadas con prioridad y que sus derechos como víctimas estén totalmente protegidos<sup>74</sup>.

A pesar de lo dicho por el presidente Santos, la renegociación no afectó contundentemente los puntos del Acuerdo Final, más bien, se limitó a incluir a los grupos cristianos y minorías religiosas en el documento finalmente refrendado por el Congreso de la República y a reducir la alusión al enfoque de género<sup>75</sup>. La campaña del NO, su exitoso resultado y el posterior proceso de renegociación, reiteran las tensiones propias del sistema patriarcal que soportó la guerra y que ahora, en cabeza de grupos tradicionales y de las iglesias, invocaron su propia “ideología de status quo” o del “apartheid”.

The 2016 “No” campaign, that styled itself as being “in favor of peace but against gender ideology”, showed that the most traditional and conservative features of a society (private property and reproductive, heterosexual marriage, among others) remain in the social imagination as “universal” values, even if they are not realized in practice<sup>76</sup>.

74. Alocución Juan Manuel Santos (Caracol Televisión), *En 56 de los 57 temas hubo cambios y mejoras: Santos sobre nuevo acuerdo de paz*, 2016, video disponible en Youtube: [www.youtube.com/watch?v=6fS63ICEDIQ](http://www.youtube.com/watch?v=6fS63ICEDIQ).

75. P. Pabón, J. Aguirre *and the gender component in the Colombian peace process. Obstacles to its inclusion and implementation*, in A. Molina, N.C. Doubleday (ed.), *The Colombian Peace Agreement. A Multidisciplinary Assessment*, Routledge 2021.

76. El REP., p. 212.

### 3. A manera de conclusión

Analizar la participación de las mujeres en la construcción de la verdad y de la paz en Colombia va más allá de ingresar porcentajes y cifras; lo cuantitativo cuenta, pero lo cualitativo también representa una transformación simbólica inocultable. Este capítulo presentó un análisis cualitativo en línea de tiempo, evolución, impacto del movimiento feminista, de las mujeres, de las disidencias sexuales, de todas las víctimas de la guerra, del ingreso de los lentes feministas, de género, de derechos humanos, de interseccionalidad, de interculturalidad y de centralidad de las víctimas en la reconstrucción del tejido social, luego de una interminable violencia y guerra. Desde una perspectiva comparada, este análisis cualitativo, que también reporta algunas cifras significativas, denota el aporte que ha realizado Colombia frente a la participación de las mujeres, de las víctimas, las diversidades y los más vulnerables en la construcción de la verdad y de la paz.

La pluma que leyó la guerra y la violencia por décadas tuvo que virar a la paridad escritural. Un asunto que se reflejó en la producción académica relacionada con la violencia, pero luego con la integración e, incluso, con los informes del Centro Nacional de Memoria Histórica y de la Comisión de la Verdad. No fue fácil ni de la noche a la mañana. El ingreso de mujeres en los grupos de estudios, misiones, comisiones y más se realizó poco a poco y de la mano invisible del feminismo mundial o de la construcción de las mujeres como sujetas políticas, académicas y sociales.

Una opción inicial para el mundo del privilegio propio de la academia de los años noventa. El escenario cambió de forma sorprendente en materia de escritura y lectura de la guerra y la violencia, lo que permitió identificar al sistema patriarcal como el gran soporte de la guerra en Colombia, su componente militar, masculino, machista y toda la violencia ejercida sin piedad sobre las mujeres. Esta arista no había sido contemplada antes. Un enfoque que logra su máximo desarrollo en la construcción del informe final de la Comisión de la Verdad surgida en el marco del Acuerdo de Paz de la Habana – entre el Gobierno y las FARC EP. Todo un tomo para entender la guerra y la violencia con lentes de género, interseccionalidad e interculturalidad.

La misma evolución frente a los procesos de construcción de la paz que, cuantitativamente hablando, apenas llegó a un 15% de participación de las mujeres en la mesa de negociación de la Habana (2016). Una baja representación que aún persiste en los nuevos procesos

de negociación que se impulsan en Colombia (ELN y desarrollo de *paz total*). La evolución también ha sido lenta en materia de grandes delegatarios/as y decisiones finales; la paridad sigue siendo una lucha constante en el escenario de construcción de la paz. Pero ellas, bajo el lema de “*sin mujeres no hay paz*”, persisten, ya sea en la administración de justicia (integración de la justicia de paz), en la participación de las víctimas, o en la organización de diversas dinámicas feministas para la construcción e implementación de las condiciones del *nunca más* a la guerra.



# THE LANGUAGE OF ELISA LONCON\*

*Aïcha Liviana Messina\*\**

To elucidate the role that women can play in a peace process we must first take a moment to consider whether peace is simply the opposite of war, or rather the failure of its logic. If peace were simply the “end” of war, or its negation, it would remain captured within the logic of war. Peace would then be no more than a truce, something that can only be achieved through war. Then again, to elucidate the role of women in peace processes we must also take a moment to specify to specify what we mean when we refer to “women”. Defined as a gender identity or sociological category, the place of women in society is determined by a patriarchal organization of the world. In this sense, even if women behave differently, we may still see “women” through a masculine lens. The double challenge of a reflection on the role of women in peace’s process is in then to be able to bring about a focus where, from one side, “women” will not depend on a patriarchal point of view, and where, from another side, the peace process in question will break war’s logic (rather than mainly opposing it)<sup>1</sup>.

Given these two premises, I will focus not on “women” regarded as an already identified category, but on just one woman, on how *a* woman, in the singularity of her actions, happens to question our worldviews and the logics – the violent logics – that constitute them. Methodologically speaking, to think of “women” in general is to frame “women” as the opposite of “men”. Focusing on one sole women, on the contrary, will

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1. On the question of peace as independent from the logic of war, see E. Lévinas, *Paix et proximité*, in *Altérité et transcendance*, LGE, 2006, as well as Jacques Derrida’s commentary in *Adieu à Emmanuel Lévinas*, Galilée, 2007. I discuss this at length in *L’Anarchie de la paix. Levinas et la philosophie politique*, CNRS, 2018.



allow us to assess a particular way of acting – a style, we might say – rather than a gender identity. Moreover, it allows us to reflect on the specific contexts within which “gender identities” are constituted and on how the singularity of actions, and their performative dimension, might undo the determinant role of those contexts.

Following this methodological guideline, I will then center my attention on Elisa Loncon, who was elected president of the Chilean Constitutional Convention in July 2021, and on the context of violence that created a demand for such a constituent process in Chile. I will hence seek to understand how *a* woman – namely: Elisa Loncon – might modify our forms of thinking and categorizing through the ways she expresses her how history. More generally, I will ground my reflection in the Chilean context, where the constituent process remains underway, although no longer led by Loncon<sup>2</sup>.

On July 4<sup>th</sup> of 2021 Elisa Loncon was elected president of the Chilean Constitutional Convention. As is generally known, this constituent process came about as a result of a wave of social unrest that shook Chile in 2019 and that could only be confronted through a radical questioning of the foundational institution of Chilean society, namely: its Constitution. Chile’s current Constitution was written during the Pinochet dictatorship. The fact that the country’s transition to democracy was not accompanied by a new Constitution means that expressions of violence – somehow powerful – still remain. Indeed, the guiding principles that were established during Pinochet’s regime have not been removed<sup>3</sup>. The democratic process that followed the 1988 plebiscite has not been conceived as a *radical* change; even so, this lack of radicality or of structural changes does not necessarily amount to a *status quo*: Chile is now a democracy. However, a

2. When I presented the first draft of these thoughts in April 2022, Elisa Loncon was still acting as president of the Constitutional Convention. A year and a half later that process is now deemed to have failed. In fact, a majority of Chilean voters rejected the proposal for a new Constitution drafted by the assembly. However, a new constituent process is now underway, which is structurally different from the former and in which indigenous people are considerably underrepresented.

3. The Chilean Constitution has been modified after the end of the Dictatorship, but no substantial change has been made. Indeed, during her term in office Michelle Bachelet did propose important modifications and faced a strong opposition that prevented these from being applied. Nowadays, and especially since the 2019 social movement, there is a political consensus that those modifications should have been introduced.

striking feature of the first constituent process, the one led by Elisa Loncon during 2021-2022, is that it directly confronted the need for structural changes that were unexpected for Chilean society at the time. In fact, assembly seats were equally divided between women and men, and seventeen seats were reserved for members of indigenous communities, with Loncon herself being a member of one of the latter, acting as president.

Elisa Loncon is a university professor of linguistics and an activist. Her research and political activities hinge on the teaching of the Mapudungun language. She herself was raised in Mapudungun, a language that, at least at the public level, has remained unheard in Chile. Her election as president of the Constitutional Convention was certainly unexpected and gave rise (or so I will try to show) to uncertainties grounded in both fear and hope. Although her appearance, chosen name, and social position gender Loncon as a “woman”, from a political point of view, I would argue, what mainly matters is what she performs and not the gender category she sticks to: her public speeches always begin with statements in Mapudungun, and she wears the traditional clothes of the Mapuche culture. Hence, Elisa Loncon makes herself known, first and foremost, through language, so that both her name and her political activities are indeed inseparable from the unheard language she dares to speak in public.

Considering the peculiarity of this way of appearing in public and of addressing the public, my leading question will be: are we to understand Loncon’s way of appearing, dressing, and speaking as an ostentation of identity traits that risks blocking the constituent process by entrenching itself in essentialist claims, for instance, or in an unquestioned cosmivision? Or do such ways of being allow instead for a questioning of the codes and tacit constituents that shape the public sphere in general, rather than reaffirming features associated with a given identity? And if the latter is the case, what is the political effect of this way of questioning codes? We may note that identity claims often position communities and subjects as warriors. Can this way of dressing, of speaking, of holding oneself in public make a difference in the violence that is inherent to our social, national, and State configurations?

In a research that I consider very important for all studies related to violence, the Colombian philosopher María del Rosario Acosta has argued that in order to acknowledge certain forms of trauma and violence we must necessarily question the frames within which we understand

and listen<sup>4</sup>. Colonial violence, for instance, brought about a radical change in society, which has rendered injuries, traumas, and suffering inaudible. Hence, in order to relate to the violence that constitutes our societies, to be able to become aware of it, we need to hear traumas *as unheard*, as hidden in our very forms of being. Acosta accordingly links her work on violence and trauma with the task of unfolding “grammars of listening”. Since the social structures that constitute us make us deaf to violence, we require languages or forms of being that can build a bridge with the unheard. In this context, literature and art play a crucial role in questioning customary forms of understanding and introducing “noise” into the sphere of what is unquestioningly accepted as meaningful<sup>5</sup>. In other words, to simply name violence is not enough to acknowledge the different forms of violence that are inherent to our societies, worlds, epistemic frames, homes, institutions, spaces, or languages. On the contrary, we can only name certain forms of violence after we have been able to hear them, and to hear them is to grasp them as something that already questions and modifies the very categories by which we expect to hear, understand, and bear witness to violent facts. We need only recall the many centuries of women denouncing being raped, without ever being heard.

Following Acosta, I would like to show that Elisa Loncon, in her decision to address the public in Mapudungun, is not merely claiming her origins. Indeed, she is in fact performing a “grammar of listening”, a change in the way we hear. For years, and even before being a candidate to the Constitutional Convention and becoming a well-known public figure, she has consistently made it a point to begin a conversation or a public speech in Mapudungun before shifting to Spanish, the official language of Chile. Now, it is important to know that only a very small portion of the population in Chile speaks Mapudungun or is even aware of its existence. Most citizens of Chile (myself included) are completely unfamiliar with many of the indigenous languages spoken in the land, including Mapudungun. Now, to address others in a language that only a tiny fraction of the population can actually understand has an immediate political effect: *it is when you don't understand a language that you begin to hear it*. To speak an unknown language in a context

4. See, for instance, M. Acosta, *Gramáticas de la escucha como gramáticas descoloniales: apuntes para una descolonización de la memoria*, en *Eidos*, n. 2, 2020, pp. 14-40.

5. On this production of noise within the literary text, see the work of Maurice Blanchot, in particular *Le pas au-delà*, Gallimard, 1973.

where we are not used to hear it is a way of *making noise*. It calls for our attention, although to be precise we might say that such a language is not *an object of attention*; instead, it intervenes in our *internal* processes of paying attention. When we hear a foreign language that we don't understand, in a context in which we don't expect it, it first resonates as something foreign within the familiar; it literally makes noise within what we regard as familiar or official. In speaking it in public, *as if it were also our language*, the language of our public sphere, and hence of our citizenship (and one could ask: why couldn't an indigenous language be the language of our citizenship?), this foreign or external language begins to produce an *internal resonance*. What we first hear as coming from an outside now begins to strike within ourselves. It strikes not only as being a foreign or even an excluded language, but as an excluded language of which one is deprived. It makes noise as a lack within oneself – not as the language of the “Other” – questioning henceforth the very structures that make anyone of us deaf to violence.

In speaking Mapudungun in public, *as if it were an official language*, it seems to me that Elisa Loncon is not simply claiming her identity; rather, she is introducing a provocation into our sensory and epistemological frames. She is creating an *internal void rather than an external field* that would belong only to others. She is thus blurring (but not annulling) the frontiers between the interior and the exterior, the official and the particular, the living or sanctioned language and the one that is excluded or ignored. She is even blurring the frontier that divides the past and the present, the languages that live and those that we assume (perhaps mistakenly) to be dead. She is questioning the sensory and epistemological frames through which we perceive reality by bringing us into relation with what we ignore – this unheard of that might be neither excluded nor forgotten, that might acquire a meaning or a resonance only in the future<sup>6</sup>.

Indeed, Elisa Loncon generates a sense of disturbance, and just for this reason her election was a huge surprise. She questions our very ways of being, and she does so with a striking yet powerful solitude. This is another point that I would like to make regarding the political effect of her language and the risk of confinement within a political position that is narrowly linked to an identity. Identity claims are

6. Acosta insists on the fact that it is impossible to have access to trauma *as it happened in the past*; we can only become aware of trauma through the repetitions that it provokes, hence only in the future. See M. Acosta, *Gramáticas de la escucha*, cit., p. 20.

powerful (and potentially violent) when they refer to groups of people that do not tolerate a questioning of their principles and behavior. An identity becomes violent either when it imposes rules and forms of being on others, or when it is constituted by the negation or elimination of others who do not fit within a limited set of features and principles. In my perception, Loncon's practice of speaking in Mapudungun is not intended to impose a meaning on others, nor does it entail a negation of the other. Although it calls upon us to perceive something ignored, it does not negate a current state of being. It reminds us that the language most spoken in Chile ignores the existence of other languages that may be currently spoken and that may grant ways of thinking, memories and even possibilities of being. Moreover, and most importantly for my present point, just because Mapudungun is generally ignored in Chile – even by some people who have a Mapuche origin – by speaking Mapudungun *in public* Loncon is not expressing her belonging to a community, but rather her solitude. She is problematizing what it means to belong to a community, and not affirming it as a matter of fact. Loncon's solitude is both striking and politically unusual. In public, she dares speaking in a language that her interlocutors do not understand, and that might not even be spoken in that way in her own community of origin. Hence, the way she performs such a language and such traditional closes, rather than coinciding with identity claims, which entail that both language and community constitute solid roots and forms of belongings, exposes multiple solitudes: the solitude that comes with carrying a language that is spoken only in some parts of the territory; the solitude that comes with the fact of being an heiress without an heiress (since the language she speaks comes from a legacy that might not be transmitted); hence the solitude of carrying something that cannot be passed on and of experiencing the potential blockage of historical processes.

These are not minor matters. Indeed, receiving and transmitting a legacy is part of what makes us participants of a history, of what inscribes our lives in a community, in stories that are open to multiple interpretations. *Language is precisely what frees us from being blocked in an identity.* Conversely, being unable to speak and transmit a language has the perverse effect of creating fixed and dead identities. For this reason, I don't think that Loncon's gesture fixes her in an identity. Rather, by appearing as a woman dressed in traditional clothes, by speaking a language that is not understood in the public sphere, she embodies the solitude of her community, and her solitude with regard to this community – hence her solitude with regard to the different communities that make up Chile, and maybe also the solitude of those

who do hear, but who can only hear their lack of understanding. In fact, once an interlocutor appears as out of place in a given a context, the other conversational partner is also taken away from his or her context. Indeed, beyond producing the hearing of something unheard, beyond relating subjects to their ignorance, Loncon's language produces solitude and decontextualization. It interrupts momentarily our ways of being, of adhering to determined groups, and by doing so it opens an undetermined horizon.

Now, of course, we may ask: do Elisa Loncon's public appearances and performances produce only lack, ignorance, and indetermination? Arguably, if her speech is only meant to question and disturb, it may be difficult to characterize its political effects as somehow constructive. To this question I will sketch two correlated answers: the first concerns the problem of the recognition of indigenous peoples in Chile, and the role of language therein; the other concerns how language can play a role in the possibility of becoming a political subject.

First, Elisa Loncon's language has a concrete and positive effect in theoretical discussions of colonization and in their practical impact. In fact, to speak a language that is ignored in the public sphere is already a way of questioning colonial history. Moreover, and most importantly, this questioning deploys categories that are not necessarily lodged in this colonial history – the only history that many of us scholars are able to enact, constrained as we are to think and question in its language and categories. So, the fact that Loncon speaks in public in Mapudungun has an effect in the very *modality* through which our colonial history is to be questioned. To that extent, it has a practical effect in our potential approach to a theoretical challenge, namely: how it is that we go about the task of questioning ourselves and the very violence (colonial, amongst many others) that constitutes our forms of thought.

The theoretical quandary raised by our colonial history may indeed be phrased as follows: is it possible to politically recognize indigenous peoples without subsuming them to the language of the “colonizer”? In other words: is there an act of recognition that is not an act of subsumption? For structural (rather than moral) reasons recognition is always enacted in the language of those who have been the agents of past negations and violence. Recognition can only take place in the language of the colonizer. However, Elisa Loncon's *way* of speaking in public brings a difference into the structure of this structural violence. If colonial history is now being questioned through words or fragments of words that do not necessarily belong to it, the result is not a recognition of “indigenous

peoples” (as if such identification could be applied unproblematically) but a questioning of society as a whole. Thus understood, recognition comes to entail the overall transformation of a mode of perceiving, understanding, and being (of a whole society, not only of some groups of people). A change of language will necessarily transform the very world, the epistemic frames within which people not only appear but also construct themselves. In this sense, what is really new – and not exempt from problems – about Chile’s constituent process is not only that seventeen seats were reserved for members of indigenous communities, but the fact that their presence in the assembly unavoidably introduced the question of the language to be spoken therein. Until 2020, no one in Chile would have anticipated the inclusion of “indigenous people” in a constituent process. Their “recognition” in Chile has been either unthinkable (because narratives of Chilean identity tend to privilege its European origins) or “weak”, as Maite de Cea and Claudio Fuentes have shown<sup>7</sup>. In my opinion, this negation of indigenous communities, or this weakness in their recognition, must be understood as an epistemological problem rather than a moral one. As I have suggested earlier, an act of recognition might be a way of subordinating an other by deploying the very same categories that were previously used to disregard them. In this sense, recognition is still a form of subordination, and for this reason I claim that *recognition can only be truly achieved if the subject of recognition is transformed*, dislodged from the categories that have previously framed it. A transformation of this sort is only possible through a questioning of the very foundations of a society: a questioning that answers to something that escapes it but that nonetheless makes noise *within it*. The way I see it, Loncon’s language is politically eventful not by calling for the inclusion of “indigenous peoples” but by signaling the need for a general transformation of the frames that constitute our society as a whole.

My second and most important point here is that Elisa Loncon’s decision (and commitment) to speak in Mapudungun calls critical attention, in a universal way, to the place of language in anyone’s formation as a subject. In fact, a language is not a mere instrument that allows us to communicate a meaning that already exists. If it were so, a speaking person would be no more than the agent of a meaning. Instead, language is twofold: it is a world, the expression of a cosmovision, but

7. Claudio Fuentes, Maite de Cea, *Reconocimiento débil: derechos de pueblos indígenas en Chile*, en *Perfiles latinoamericanos*, vol. 25, n. 49, 2017; see also Aïcha Messina, *Un peuple d’écrivains*, in *Esprit*, Mars 2020.

it is also that through which persons constitute themselves, through narratives, through ways of addressing others, through ways of apprehending or misunderstanding what others say. Language makes history possible because it makes room for mistakes and gaps that urge us to question our understanding or point of view. When we say that a language is dead, what has died is not only a cosmivision but the very possibility of being transformed by a language, of revisiting one's own history so as to reinvent and pass it on. It is history and subjectivity that are blocked when a language ceases to be spoken. Now, since language has an impact on the history of the subject, by speaking an unheard language Loncon is in fact summoning any one of her listeners to become a subject through language. Hence the point is not so much the identification of oneself within a given language but allowing to any language the chance of its historicity, its mistakes, its displacements.

Now, to conclude, I would like to return to my initial question: what can we say about the role of women in the context of a peace process in light of this analysis of Elisa Loncon's language? At the onset of my inquiry, I argued that peace is not the mere negation of war. If that were the case, I claimed, peace would be inscribed as a moment within the logic, the language, and the grammar of war. Against this notion, and thinking with Levinas, we can understand peace as a disturbance of this logic, and as something that entails its failure or complication. Indeed, for Levinas peace occurs as a disturbance in the aggressive disposition that is constitutive for any one of us. It is not a state of (indifferent) tranquility, but rather an irreducible worry.

If we consider peace as such a disturbance, I do think that Elisa Loncon's *language* was productively efficacious in initiating a peace process in Chile. This "peace process" does not entail an end to war or a resolution to the enduring conflict between Chile's indigenous communities and its State apparatus. It also does not entail an end to the social movement that exploded in 2019. Instead, what is taking place here as a peace process is the introduction of a deviation into the language that structures the conflict by defining one term in opposition to another and thus blocking any possible exit. Elisa Loncon disturbs this logic that established insurmountable oppositions by questioning any one of us in our singularity, introducing noise into the way in which we come to be constituted as individual historical subjects. She plays a role in such a peace process by creating disturbance, rather than by tranquilizing or stabilizing minds and social identities.

Now, we should also bear in mind that the constituent process led by



Elisa Loncon concluded with a project for a new Constitution that was not approved by a majority of voters in a national plebiscite. Moreover, Chile is now engaged in a second constituent process dominated by representatives of the far right. Does this mean that Loncon failed in her struggle, and that disturbance is doomed to be politically insignificant? If peace is understood first and foremost as a transformation of subjects in general, I would argue that Loncon's fight cannot be measured by the number of votes for and against the Constitution proposed by the assembly she led. There is certainly a gap between what a vote contains in terms of possibilities and subjectivities and the deep transformation that a new Constitution can bring into play. A decision to vote one way or the other is usually determined by what we do know, whereas a constituent process is about making space for unknown configurations. A constituent process is about constituting, not (or not only) about representing<sup>8</sup>. What is at stake in a new Constitution are unknown expectations and new ways of being subjects. However, one can only vote on the basis of what is known. In this sense, it is no surprise that the process remains underway after the rejection of the first proposal. But this should not be taken to mean that Loncon's language was ineffective: she did open a field of transformation, although it is one that remains unlocatable and that, just for that reason, should not be reified into a fixed state of things.

8. On the claim that it is not enough for a constituent process to merely represent, see my article *Fracasos y batallas*, published a few days after the plebiscite: [www.theclinic.cl/2022/09/07/fracasos-y-batallas/](http://www.theclinic.cl/2022/09/07/fracasos-y-batallas/).

# CONNECTING HUMAN DEVELOPMENT, DIGNITY, AND GENDER EQUALITY TO ENHANCE PEACE: AN INTERNATIONAL LEGAL FEMINIST PERSPECTIVE

*Sara De Vido\**

SUMMARY: 1. Introduction – 2. Human dignity and gender equality: the missing connection – 3. Human development and women – 4. Agency, participation, vulnerability and freedom – 5. Human development, dignity and peace – 5.1. Participation and agency – 5.2. Vulnerability and freedom from violence – 6. Conclusions.

## **1. Introduction**

This contribution is based on the book *The Practice of Human Development and Dignity*, edited by Paolo Carozza and Clemens Sedmak<sup>1</sup>, which is an interdisciplinary attempt to grasp the complexity of the concepts of human development and dignity looking at the practice in different contexts. My analysis will focus on the first two parts of the book, namely «Conceptualizing dignity through practice» and «Dignity, well-being, and flourishing: relating objective and subjective dimensions». My reading of the book is inspired by a feminist international legal perspective, looking more specifically into the *Women, Peace and Security Agenda* (WPS Agenda) of the United Nations (UN), and applying the arguments stemming from the Carozza and Sedmak's work to the role of women in conflict and post-conflict settings.

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1. P.G. Carozza, C. Sedmak (eds.), *The Practice of Human Development and Dignity*, University of Notre Dame Press, 2020.

## 2. Human dignity and gender equality: the missing connection

It might sound unusual, but human dignity and gender equality have been rarely connected in the academic and political discourses. As a scholar pointed out, «in debates on gender inequalities as part of the broader set of problems being addressed in feminist and queer political theory, human dignity plays no significant conceptual role»<sup>2</sup>. A few references to human dignity can be found in both binding and non-binding legal instruments and in the jurisprudence of mainly regional human rights courts, though. Hence, for example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, contains in the preamble a reference to the fact that discrimination against women violates the principles of equality of rights and respect for *human dignity*. The General Recommendation No. 38 of the CEDAW Committee considers migration as a constitutive element of modern society, which «can be empowering for women» only if «they are able to migrate and work in conditions in which their *dignity* is respected»<sup>3</sup>. In the draft General Recommendation on the rights of indigenous women, the CEDAW Committee mentions «[t]he effects of the violence suffered by indigenous women», which severely impact «their human rights to life, *dignity*, personal integrity and security, health, privacy, personal liberty, and to be free from torture»<sup>4</sup>. It also stresses that health professionals are often insensitive to the «realities, culture, and worldview of indigenous women», and «rarely offer services respecting their *dignity*, privacy, informed consent, and reproductive autonomy»<sup>5</sup>.

At regional level, violence against women was defined as «an offense against human dignity» in the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). The respect for women's dignity is also present in the 2011 Council of Europe Istanbul Convention on preventing

2. A. Thiem, *Human Dignity and Gender Inequalities*, in M. Düwell, J. Braarvig, R. Brownsword, D. Mieth (eds.), *The Cambridge Handbook of Human Dignity*, Cambridge University Press, 2014, p. 501.

3. CEDAW Committee, General recommendation n. 38 (2020) on trafficking in women and girls in the context of global migration (CEDAW/C/GC/38), para. 22. Emphasis added.

4. CEDAW Committee, Draft General Recommendation on the Rights of Indigenous Women and Girls, available at: [www.obchr.org/en/calls-for-input/calls-input/draft-general-recommendation-rights-indigenous-women-and-girls](http://www.obchr.org/en/calls-for-input/calls-input/draft-general-recommendation-rights-indigenous-women-and-girls), emphasis added.

5. *Ibidem*, emphasis added.

and combating violence against women and domestic violence (Istanbul Convention) in two ways: first, as purpose of the policies and guidelines to be prepared in the information and communication technology sector and the media (Article 17), and secondly, as the purpose or effect of unwanted verbal, non-verbal or physical conduct of sexual nature (Article 40, sexual harassment).

Shifting the focus to the jurisprudence and quasi-jurisprudence of regional human rights bodies, the Inter-American Commission of Human Rights found that sexual violence committed by members of the security forces of a State against the civilian population constitutes a violation of Articles 5 and 11 of the American Convention on Human Rights, respectively prohibiting torture and guaranteeing respect for the human dignity of persons who have been deprived of their liberty, and the right to respect a person's privacy and recognition of one's dignity<sup>6</sup>. In a case of forced sterilisation, the European Court of Human Rights acknowledged that the fundamental rights and freedoms of the applicant were violated as a consequence of the medical procedure performed without her informed consent, and that the case should be read in light of the requirement to respect a person's dignity and integrity enshrined in Article 1 of the Convention on Human Rights and Biomedicine<sup>7</sup>. The scarcity of references on the connection between human dignity and eradication of gender-based discrimination against women shows the «difficulties inherent in appealing to human dignity as a philosophical resource in the context of overcoming gender inequalities»<sup>8</sup>. Nonetheless, recalling human dignity as foundational of human rights is pivotal to disrupt structural discrimination against women, because it is their dignity as human beings that is affected by discriminatory patterns that put them in a subordinate position in society. Dignity is also linked to what I have called a «human rights-based approach to autonomy»<sup>9</sup>, in particular with regard to sexual and reproductive health, which is jeopardised both in times of peace and in times of conflict by States' policies and laws in the health sector that discriminate against women on the basis of gender. In other words, dignity can be conceived as

6. Inter-American Commission on Human Rights, Report n. 53/01, case 11.565, *Ana, Beatriz and Celia Gonzalez Perez v. Mexico*, 4 April 2001, paras. 43-44.

7. European Court of Human Rights, *V.C. v. Slovakia*, Application n. 18968/07, judgment of November 8, 2011, para. 115.

8. A. Thiem, *Human Dignity*, cit., p. 501.

9. S. De Vido, *Violence against Women's Health in International Law*, Manchester University Press, 2020.

a non-discrimination framework<sup>10</sup>. As stressed by Njoya, first, the view of dignity as non-discrimination regards the «experience of degradation and indignant protests against human rights abuses». Secondly, the right of legal appeal, following Jeremy Waldron's thought, is the foundation of public respect for human dignity, thanks to which violations of human rights and abuses become public; this is what the author calls a «civic concept of dignity», based on the principle of equality<sup>11</sup>. However, women's access to justice, consisting in the availability of effective judicial remedies, has been constantly jeopardised by several factors, as the CEDAW Committee highlighted in General Recommendation No. 33<sup>12</sup>.

### 3. Human development and women

In light of the above, considering the missing connection between human dignity and gender equality, it is possible to reflect on the main endeavour of Carozza and Sedmak's book, that is to conceptualise human dignity in light of development practice. As they argue, indeed, «development work done without sensitivity to human dignity is blind, and an understanding of human dignity without attention to human experiences and practices is empty»<sup>13</sup>. In other words, «what does it mean to design programs and projects that are based on a fundamental respect for human dignity?»<sup>14</sup> As the UN Development Programme defines it in its 2010 *Human Development Report*, human development is «the expansion of people's freedoms to live long, healthy and creative lives, to advance other goals they have reason to value and to actively engage in shaping development equitably

10. W. Njoya, *Dignity as Non-Discrimination: Existential Protests and Legal Claim-Making for Reproductive Rights*, in *Philosophy and Social Criticism*, vol. 43, n. 1, 2017, pp. 51-82. DOI: 10.1177/0191453716645145.

11. W. Njoya, *Dignity*, cit., p. 54.

12. CEDAW Committee, General Recommendation n. 33 (2015) on women's access to justice (CEDAW/C/GC/33), para. 13: «The centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems [...] all prevent women from accessing justice».

13. P.G. Carozza, C. Sedmak, *Introduction. Human Dignity and the Practice of Human Development*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 2.

14. Ivi, p. 7.

and sustainably on a shared planet»<sup>15</sup>. What is then a feminist human development as linked to peace? Before going through the chapters of the first two parts of the book, trying to identify keywords necessary to answer this question and link human dignity to the achievement of gender equality, it should be stressed that the concept itself of «human rights», as developed at the international level, is not devoid of criticism, being expression of a patriarchal way of conceiving international law<sup>16</sup>.

#### 4. Agency, participation, vulnerability and freedom

In the analysis of Carozza and Sedmak's book, I identified some keywords – highlighted in italics in the text – that will constitute the foundation of my critical analysis according to a feminist perspective in the second part of this contribution.

I will start with Part I, «Conceptualizing dignity through practice». In his chapter, Clemens Sedmak uses Save the Children as example of the practice of human dignity in the context of development. Looking at this contribution using a feminist lens, the work of Eglantyne Jebb (1876-1928) stands out. Pacifist, researcher and social worker, humanitarian woman, she co-founded the Save the Children Fund in 1919, and advocated against forced marriages and other abusive practices against children<sup>17</sup>. She called upon women to raise the issue of children's safety against abuses in Europe<sup>18</sup>. The word associated to

15. UNDP, *The Real Wealth of Nations: Pathways to Human Development*, available at: [www.undp.org/content/dam/undp/library/corporate/HDR/HDR\\_2010\\_EN\\_Complete\\_reprint-1.pdf](http://www.undp.org/content/dam/undp/library/corporate/HDR/HDR_2010_EN_Complete_reprint-1.pdf), p. 2. Even though it is not the purpose of this contribution, it should be noted that this definition of human development is anthropocentric, and it is impossible to conceive development these days without appreciating the interconnection of human beings with nature. The well-being of ecosystems was partly taken into consideration in the 2020 report *The Next Frontier. Human Development and the Anthropocene*, available at: [hdr.undp.org/system/files/documents//hdr2020pdf.pdf](http://hdr.undp.org/system/files/documents//hdr2020pdf.pdf).

16. There is no room to develop this aspect, but see in that respect, C. Chinkin, H. Charlesworth, *The Boundaries of International Law*, Manchester University Press, 2000 and 2022.

17. C. Mulley, *The Woman Who Saved the Children: A Biography of Eglantyne Jebb, Founder of Save the Children*, Oneworld, 2009. See also R. Milano, *I figli dei nemici. Eglantyne Jebb. Storia della rivoluzionaria che fondò Save the Children*, Rizzoli, 2019, and the review by B. Bianchi in *Deportate, Esuli, Profughe*, vol. 44, 2020, pp. 203-205.

18. C. Mulley, *The Woman Who*, cit., p. 243.

Sedmak's analysis is *vulnerability* with specific regard to the situation of children. As the author argues, «deep practices of human dignity can be identified by looking at “especially vulnerable persons” and by looking at “fundamental human acts”»<sup>19</sup>.

In Séverine Deneulin's chapter<sup>20</sup>, *agency* is identified as a core aspect of human dignity. The analysis is located within the framework of Amartya Sen's capability approach to development, though Nussbaum's framework, which includes a specific conceptualisation of human dignity, seems more adequate from a feminist perspective, being focused on women's freedom, including freedom from violence. It is however interesting to note the approach used by the author when she works on the concept of agency, as in Sen's analysis, through relations. Joining a women's group, respectful of women's agency, can be an example of practice.

Simona Beretta reflects on basic drivers of development – resources, technology, institutions and preferences – which depend on complex interactions among individual decisions made in real time and within concrete relations. Her chapter stresses that development is a process driven by *freedom and agency*, and that «enabling vulnerable people to become protagonists is the only path to sustainable development»<sup>21</sup>.

Dominic Burbidge reflects on structure agency and agency passivity. He argues that the structure agency paradigm in development studies is part of the process of hegemonic subordination of the Global South and proposes agency passivity as an alternative: «passivity is the practice of enjoying things as they are»<sup>22</sup>. According to this framework, there is no such thing as «power per se», and in the developing world this means to see mutually beneficial goals, to understand development as a process of identifying and respecting vocations, to listen «well»<sup>23</sup>. I consider that this framework might in theory work well in a gender balanced world, where everyone has his/her voice. Surely it is not adequate in societies characterised by rooted gender imbalances and by stereotypes on the role of women. As Amartya Sen has shown through the analysis of the

19. C. Sedmak, *Enacting Human Dignity*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 41.

20. S. Deneulin, *Human Dignity. Does It Imply a Certain Kind of Agency?*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 46.

21. S. Beretta, *The Importance of Time and Relations for Development*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 76.

22. D. Burbidge, *Genuine Development. Reflections on Agency and Passivity*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 88.

23. Ivi, p. 89.

capability approach, women experience a differential treatment in all common activities, and he also encouraged their *agency*, with benefits for women and children alike<sup>24</sup>.

Moving to part II of the book, Matt Bloom and Deirdre Guthrie report lived experiences of dignity through humanitarian and global health professionals and work on the psychological dimension of dignity. They also reflect on authenticity, meaning the capacity to share thoughts, feelings, and behaviour expressing one's true self one's true self. Despite this very personal dimension of authenticity, a person's sense of self is shaped by society and culture<sup>25</sup>. As they point out, «relationships and cultures we are immersed in tell us what kinds of identities we should have, and they also tell us whether certain parts of our fundamental identity characteristics (e.g., our gender, race, socio-economic status, or occupational category) are acceptable or not»<sup>26</sup>. In the analysis of the practice, the authors stress the inner element of dignity, «a sense of one's own value or worth as human being»<sup>27</sup>.

Robert Dowd explores the relation between human dignity and human development. He contends that «if an organization assumes that development is the spark of dignity rather than the other way around, it is more likely to devote more resources towards achieving material results or outcomes than toward inclusive participatory processes»<sup>28</sup>. Hence, he suggests considering dignity as a driving force for human development, and not *vice versa*. The practice reported in the chapter refers to the participation to a programme raising awareness among people of their dignity and their own wisdom and capabilities, in twelve villages of central Uganda. The key aspect of the programme was *participation*. Did the programme work? People, especially women, focused on the material changes in their lives rather than on the increasing sense of dignity, hence it was difficult to appreciate whether there had been or not an increase in awareness of human dignity<sup>29</sup>. As Dowd interestingly assumes, though, dignity

24. A. Sen, *Women's Survival as a Development Problem*, in *Bulletin of the American Academy of Arts and Sciences*, vol. 43, n. 2, 1989, pp. 14-29. DOI: 10.2307/3824748; A. Sen, *Many Faces of Gender Inequality*, in *Frontline*, vol. 18, n. 22, 2001.

25. M. Bloom, D. Guthrie, *The Lived Experience of Dignity*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 106.

26. *Ibidem*.

27. Ivi, p. 108.

28. R.A. Dowd, *Participation, Human Dignity, and Human Development*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 118.

29. Ivi, p. 129.



can be expressed through experience and *participation*; in other words, people do not say that their awareness has increased, but they show that by taking greater initiative on behalf of their personal and communal well-being<sup>30</sup>.

Bruce Wydick, Robert Dowd, and Travis Lybbert reflect on hope and human dignity in a field experiment of micro-finance loans with a Protestant evangelical institution in Oaxaca Mexico<sup>31</sup>. In the experiment in Mexico, 601 women were engaged with a Bible-based curriculum centred around the components of hope. In legal terms, though, hope matters because every law is based on the desire, more or less explicit, of changing things for the better, to respond to a need. Hope also mirrors a sense of *freedom*, of achieving goals and aspirations.

## 5. Human development, dignity and peace

From the analysis of the chapters included in Carozza and Sedmak's book, I identified five keywords that will guide the reflection that follows, centred on the role of women in conflict and post-conflict settings, as drivers of peace. The keywords are participation, agency, vulnerability and freedom. I will reflect on participation and agency, on the one hand; and on vulnerability and freedom, on the other hand.

### 5.1. Participation and agency

In this part I will reflect on three aspects relevant for the understanding of the role of women in conflict and post-conflict settings. Participation and agency guarantee women's development, protect and emphasise their dignity as individuals. The first one is the WPS Agenda (a); the second one refers to women's movements (b); the third one focuses on women's tribunals (c).

- a. The WPS Agenda. As reported by the UN in 2017, «wherever women take part in a peace process, peace lasts longer. In fact, a peace agreement, which includes women, is 35 per cent more likely to last

30. Ivi, p. 131.

31. B. Wydick, R.A. Dowd, T.J. Lybbert, *Hope and Human Dignity*, in P.G. Carozza, C. Sedmak (eds.), *The Practice*, cit., p. 139.

at least 15 years»<sup>32</sup>. However, as acknowledged by the UN Secretary General in his 2021 report on the WPS Agenda, «after a downward trend, the percentage of peace agreements with gender provisions has started to rise, but at 28.6 per cent the share remains well below the high of 37.1 per cent recorded in 2015», and, most significantly, «none of the ceasefire agreements reached between 2018 and 2020 included gender provisions»<sup>33</sup>. He encourages an increasing participation of women in post-conflict settings and peace keeping operations and endorsing the feminist call for peace by stressing the need of reversing the rise in global military spending and greater investment in human security. Participation must be coupled with agency, to acknowledge that women are not only victims but also key agents for change, working for peace and disarmament, among others. The UN Security Council recognised this central role of women in peace and development already in the year 2000, when it issued Resolution 1325, calling for leadership and participation of women in maintaining and promoting peace and security<sup>34</sup>. Nonetheless, the WPS Agenda has its weaknesses, including being decided by a body that reproduces patriarchal structures, the UN Security Council. Some of the most recent resolutions reflect this patriarchal approach: protecting women – and children – as vulnerable subjects on the one hand; denying the recognition to women victims of sexual violence in conflict and post conflict the rights to health and reproductive health, on the other hand<sup>35</sup>.

- b. Women's Movements. Participation and agency also mean women's movements. The strength of women's movements has been clear since the beginning of the 20th century, when the 1915 International Women's Peace Conference in The Hague<sup>36</sup> anticipated, among

32. [www.un.org/en/desa/we-need-more-women-leaders-sustain-peace-and-development#:~:text=The%20evidence%20is%20clear%3A%20wherever,to%20be%20unstable%20and%20unsustainable.](http://www.un.org/en/desa/we-need-more-women-leaders-sustain-peace-and-development#:~:text=The%20evidence%20is%20clear%3A%20wherever,to%20be%20unstable%20and%20unsustainable.)

33. Women and Peace and Security, Report of the Secretary-General, S/2021/827, September 27, 2021, para. 5, b).

34. Security Council Resolution 1325 (2000) on Women and Peace and Security, S/RES/1325 (2000), October 31, 2000.

35. On the ambiguity of the WPS Agenda resolutions of the UN Security Council, with regard to the right to reproductive health, see S. De Vido, *Violence against women's health through the law of the UN Security Council: A critical international feminist law analysis of Resolutions 2467 (2019) and 2493 (2019) within the WPS agenda*, in *QIL*, vol. 74, 2020, pp. 3-30.

36. From a report of that time: «These women from the belligerent or near-belligerent countries had in many cases seen war in its crudest forms. They had, some

others, the peaceful resolution of disputes as legal norm<sup>37</sup> at a time in which the legal debate and State practice were still developing. Jane Addams, who chaired the Conference, gave a closing address in which she emphasised the commitment to peace of the delegates as «a spiritual internationalism». In the Twelve-Point Resolution, the delegates focused on building peace through women's action: «[t]his International Congress of Women is convinced that one of the strongest forces for the prevention of war will be the combined influence of the women of all countries»<sup>38</sup>. It is not possible in a short contribution to thoroughly analyse the influence women's movements has had over the years in dealing with hostilities. Let us only mention the pivotal role played by the Women's international league for peace and freedom (WILPF), which was created during the International Women's Peace Conference, and which is still working today<sup>39</sup>.

- c. Women's Tribunals. Women's tribunals respond to violations of women's rights occurred during and/or after armed conflicts or in times of peace. Compared to peoples' tribunals<sup>40</sup>, women's courts respond not only to injustice – or better, lack of justice – but also to the exclusion of women from the mechanisms of the peaceful resolution of disputes at the international level<sup>41</sup>. They constitute a

of them, lost near relatives; others were even then uncertain whether their husbands at the front were still in the ranks of the living; still others had been witnesses to unforgettable scenes of suffering and agony in hospitals or in bombarded cities. And yet, as one prominent delegate remarked, “their sorrows, like those of the women of Greek tragedy, were the impersonal sorrows for the wrongs of the world, and not for their own individual sufferings”». Cfr. L.P. Lochner, *The International Peace Congress of Women*, in *The Advocate of Peace (1894-1920)*, vol. 77, n. 7, 1915, pp. 173-175.

37. From the Twelve-Point Resolution, para. 2: «*Arbitration and Conciliation*: The International Congress of Women, believing that war is the negation of all progress and civilization, declares its conviction that future international disputes should be referred to arbitration or conciliation, and demands that in future these methods shall be adopted by the Governments of all nations». Available at: [hist259.web.unc.edu/international-womens-peace-conference-in-the-hague-april-28-may-1-1915/](http://hist259.web.unc.edu/international-womens-peace-conference-in-the-hague-april-28-may-1-1915/).

38. *Ibidem*. Twelve-Point Resolution, para. 7.

39. [www.wilpf.org/](http://www.wilpf.org/). See, among others, C. Confortini, *Intelligent Compassion: Feminist Critical Methodology in the Women's International League for Peace and Freedom*, Oxford University Press, 2012.

40. See, among others, D. Otto, *Impunity in a Different Register: People's Tribunals and Questions of Judgement, Law and Responsibility*, in D. Davis, K. Engle, Z. Miller (eds.), *Anti Impunity Agenda and Human Rights*, Cambridge University Press, 2016; A. Byrnes, G. Simm, *People's Tribunals and International Law*, Cambridge University Press, 2018.

41. H. Charlesworth, C. Chinkin, *The Boundaries*, cit.

«feminist approach to justice», which allows women to be «agents and interpreters of history»<sup>42</sup>. In other words, women who have been victims of abuses participate to these tribunals as witnesses. In this way, they are able to report facts occurred in a specific moment and place, they also speak about the circumstances and the context of violence, trying to enucleate, also thanks to the support of experts, the causes of violence. Women's tribunals challenge the persistent discrimination against women which is at the very basis of gender-based violence and give women a voice. The first women's tribunal was the International Tribunal on Crimes against Women, convened in Brussels in 1976 (*Brussels Tribunal*)<sup>43</sup>. Despite not being a formal method for the solution of disputes, these tribunals played a pivotal role in gathering evidence and testimonies, stressing aspects of a conflict that have been forgotten, and raising awareness of the injustices surrounding a certain conflict. They represent participation and agency, because women's voices are listened to in a respectful way, and they contribute to the knowledge of events and to the elaboration of recommendations and strategies to tackle with the negative effects of post-conflict settings.

## 5.2. *Vulnerability and freedom from violence*

Vulnerability is a concept that is difficult to grasp from a legal point of view. It can be argued that human beings are *per se* vulnerable, as sociopolitical beings, to exploitation, manipulation, oppression, political violence, and rights abuses (*inherent vulnerability*, as it was defined)<sup>44</sup>. Vulnerability can also be caused or exacerbated by the personal, social, political, economic, or environmental situations in which individuals or social groups find themselves. In that sense, this kind of vulnerability

42. S. Zajović, *The Women's Court – A Feminist Approach to Justice: Review of the Process of Organising of the Women's Court*, in S. Zajović (ed.), *Women's Court: About the Process*, Centre for Women's Studies, Belgrade 2015, p. 40.

43. D.E.H. Russell, N. Van De Ven, *Crimes against Women: Proceedings of the International Tribunal*, Les Femmes, 1976, p. 151. For further information on women's tribunals, see S. De Vido, *Women's Tribunals to Counter. Impunity and Forgetfulness: Why are They Relevant for International Law?*, in *Deportate, Esuli, Profughe*, vol. 33, 2017, pp. 145-173.

44. C. Mackenzie, W. Rogers, S. Dodds, *Introduction*, in C. Mackenzie, W. Rogers, S. Dodds (eds.), *Vulnerability: New Essays in Ethics and Feminist Philosophy*, Oxford University Press, 2013, p. 1. See also F. Ippolito, *Understanding Vulnerability in International Human Rights Law*, Editoriale Scientifica, 2020, p. 6 ff.

may be short term, intermittent or long term (*situational vulnerability*). Vulnerability can also be *pathogenic*, and generated by a variety of sources, «including morally dysfunctional or abusive interpersonal and social relationships and sociopolitical oppression or injustice»<sup>45</sup>. Vulnerability of women in conflict as victims/survivors of violence can be said to be both situational – for obvious reasons – and pathogenic at the same time, because it mirrors patterns of discrimination and oppression present in times of peace. Johan Galtung, talking about «structural violence», maintained that «[c]onflict is much more than what meets the naked eye as “trouble”, direct violence. There is also the violence frozen into structures, and the culture that legitimizes violence». Vulnerability is the condition that prevents the expression of human dignity. Conflicts, and post-conflict settings as well, very often represent, represent violence and reproduce violence, which disproportionately affects women and girls. Already in 1975, Susan Brownmiller, in her pioneer work *Against Our Will*, broke the silence surrounding rape against women, also in times of war:

[...] rape in war is qualitatively different from a bomb that misses its military target, different from impersonal looting and burning, different from deliberate ambush, mass murder or torture during interrogation, although it contains elements of all above. Rape is more than a symptom of war or evidence of its violent excess. Rape in war is a familiar act with a familiar excuse<sup>46</sup>.

Almost twenty years after Brownmiller, Christine Chinkin acknowledged that «women are raped in all forms of armed conflict, international and internal, whether the conflict is fought primarily on religious, ethnic, political or nationalist grounds, or a combination of all these», and that «rape in war is not merely a matter of chance, of women victims being in the wrong place at the wrong time»: it is rather «a question of power and control which is “structured by male soldiers” notions of their masculine privilege, by the strength of the military’s lines of command and by class and ethnic inequalities among women»<sup>47</sup>. Rape is a tactic of war<sup>48</sup>.

45. C. Mackenzie, *Introduction*, cit., p. 9.

46. S. Brownmiller, *Against Our Will*, Ballantine Books, 1975, p. 32.

47. C. Chinkin, *Rape and Sexual Abuse of Women in International Law*, in *European Journal of International Law*, vol. 5, 1994, pp. 326-341. DOI: 10.1093/oxfordjournals/ejil.a035874.

48. See also S. De Vido, *Collective Memory of Rape: An analysis from an International Law Perspective*, in *Sociologia del Diritto*, n. 3, 2016, pp. 101-132. DOI: 10.3280/SD2016-003006.

Responding to vulnerability entails acting against conflict-related sexual violence, a phenomenon that targets all genders but disproportionately affects women and girls. The UN Secretary General, in his annual report on conflict-related sexual violence, identified the contributing factors to this «widespread and systematic» violence, even in the midst of a global pandemic, in «rising inequality, increased militarization, reduced civic space and the illicit flow of small arms and light weapons»<sup>49</sup>.

## 6. Conclusions

Following Robert Dowd's thought, I agree that dignity is at the basis of human development and that it is not human development that builds dignity but *vice versa*. In feminist legal perspective, this means that it is necessary to build a human dignity devoid of discrimination on different intersectional grounds, where vulnerability is not addressed in a patriarchal way, reproducing patterns of discrimination rooted in society, but through freedom from violence, agency and participation, which include women's access to justice. This is the foundation of human development from a feminist perspective, which overcomes the inherent patriarchal nature of the concept.

A feminist human development is, in other words, a peaceful development where no one is left behind.

49. Conflict-Related Sexual Violence, Report of the UN Secretary General, S/2022/272, March 29, 2022, p. 3. The report does not take into consideration the situation in Ukraine.



# THE ATTACK ON WOMEN'S FREEDOM AND THEIR ROLE IN ESTABLISHING PEACE AND SECURITY IN ILLIBERAL TURKISH DEMOCRACY\*

*Sevgi Doğan\*\**

SUMMARY: 1. Introduction – 2. Theoretical basis – 2.1. Caesarist-Bonapartist type of authoritarianism – 2.2. Gramsci's theory of the intellectual – 2.3. Caesarism-Bonapartism authoritarianism in the Turkish context – 2.4. The role of intellectuals in constructing gender and deconstructing gender – 3. Empirical part – 3.1. The gender issue and the AKP government's approach – 4. Women's role in peacebuilding: the possibility of hegemony-based on gender equality (gender equality based-hegemony) – 5. Conclusion.

## 1. Introduction

UNSC Resolution 1325 on Women, Peace and Security (WPS) Agenda is shaped around four pillars – participation, prevention, protection, and relief and recovery – and places normative stress on the importance of the National Action Plan (NAP)<sup>1</sup> to implement the resolution<sup>2</sup>. However, out of more than 80 countries which have adopted NAP(s) about WPS, Turkey – the case study of this article

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1. CEDAW's 2016 concluding observations on Turkey refers to the national action plan for the implementation of Security Council resolution 1325 (2000) on women and peace and security and called Turkey for formally approving and implementing the plan on gender equality «in cooperation with representatives of women's organizations» (article 25c, 36c, and 38) (CEDAW 2016).

2. Z. Alemdar, B. Yinanc, *Women, Peace and Security Agenda in Turkey and Women in Diplomacy: How to Integrate the WPS Agenda in Turkish Foreign Policy*, in *CATS: Center for Applied Turkey Studies*, 2021, pp. 1-17, p. 1, available at: [www.cats-network.eu/publications/cats-network-publications/](http://www.cats-network.eu/publications/cats-network-publications/) (accessed September 15, 2021).



– has failed to implement a NAP, even though it formally adopted it within Res. 1325<sup>3</sup>. In the context of UNSC Resolution 1325 on WPS, the idea is not only to protect women from violence, but to support and enable women’s participation in politics and public issues, providing them with political and social empowerment. One of the criticisms of the four pillars is that the emphasis is made more on prevention of violence towards women and their protection than their subjectivity; by doing this women are considered as victims more than as agents<sup>4</sup>.

Despite its international obligations to make provisions for ensuring gender equality and to protect the human rights of women, the Turkish government remains reluctant to develop comprehensive policies for gender equality, to consider women as “active agents” in politics, and to recognise their inevitable and substantial contributions to security and peace building. President R.T. Erdoğan demonstrated this reluctance in his speech during the First International Summit on Women and Justice held in Istanbul on 24 November 2014 in which he highlighted the inequality between men and women in line with the Islamic perception of creation that addresses this inequality.

However, the paper tries to show how the recent struggle that women have established by their own efforts against the government’s violent actions and policies might *not-only* lead a counterhegemonic<sup>5</sup> (alternative revolutionary – in Gramscian sense) project or play a counterhegemonic role, but also might build (alternatively lead) a hegemony based on gender-equality.

For discussing this argument, the article will be divided into two different parts: a theoretical part and the application of this theory to the case study. The theoretical part begins with an evaluation of Antonio Gramsci’s theory of Caesarism and his theory of the intellectual in order to analyse AKP’s authoritarianism in relation to its policies on gender equality and the agenda on women, peace and security. Erdoğan’s authoritarianism will be labelled as a regressive Caesarist authoritarianism, which plays a crucial role in re-establishing the essentialist approach of women’s position in society, family and politics by a series of policies and decisions such as the withdrawal from the

3. Peace & Freedom, *What are WPS National Action Plans?*, in *1325 National Action Plans (NAPs)*, available at: [1325naps.peacewomen.org/](http://1325naps.peacewomen.org/) (accessed October 20, 2021).

4. L.J. Shepherd, *Gender, Violence & Security*, Zed Books, 2008.

5. Here the concept of counter-hegemony is used to refer to an opposition to the existing dominant power or status quo.

Istanbul Convention. In literature, this theoretical contribution is not studied yet in relation to the empirical studies on women's question in Turkey. While Doyle's study shows that many «women's organizations, with the exception of Islamic organizations» prevents «regressive change but rather advance progressive change»<sup>6</sup>, Erdoğan's regressive Caesarist authoritarianism targets to eliminate women's activism and their effectivity in promoting progressive change leading to advances not only in women's right but also in the whole of society.

Furthermore, to shed light on the ongoing feminist-women/government tension, this article looks at the role of AKP's "organic intellectuals" who operate within the Turkish society in order to support the government's project, relying on Gramscian and Marcusean insights while analysing AKP's *regressive* authoritarianism according to Gramsci's *regressive* Caesarist(-Bonapartist) model. Its organic intellectuals consolidate this traditional and religious vision of women in society.

In the second part, the effects and consequences of this *regressive* Caesarist authoritarianism will be examined in relation to gender equality. This will include studies on AKP's policies and its WPS agenda, and both arguments and suggestions about a concept resulting from women's struggle: a possibility of (cultural-intellectual and political) hegemony based on gender equality (*gender-equality based-hegemony*). This part will concentrate on the AKP's policies from 2002 onwards (the year in which it came to power), with a particular focus on the period after 2016, after the attempted *coup d'état* and the establishment of a presidential system in 2018. Therefore, the article admits that AKP's political structure and its ideological basis in authoritarianism, hierarchy and patriarchy<sup>7</sup> explains its unwillingness to implement the WPS Agenda.

Under the second subtitle of the second part, I propose the concept of gender-equality based hegemony which is possible through women's struggle, that is from a counterhegemonic position towards an establishment of a *gender-equality based-hegemony*. The question is whether the cultural and intellectual activities created by women's struggle can be considered as a new type of intellectual stratum and

6. J.L. Doyle, *State control of civil society organizations: the case of Turkey*, in *Democratization*, vol. 24, n. 2, 2017, p. 251.

7. S. Coşar, M. Yeğenoğlu, *New Grounds for Patriarchy in Turkey? Gender Policy in the Age of AKP*, in *South European Society and Politics*, vol. 16, n. 4, 2011, pp. 555-573.

intellectualism in terms of Gramsci's theory of the new intellectual, to construct a new gender-equality based-society or a new (cultural-intellectual and political) hegemony<sup>8</sup>.

The methodology that I have used is as follows firstly, the literature on the Turkish political structure and its theoretical base is reviewed through a Gramscian lens. Secondly, the literature on gender issues in Turkey in relation to the AKP's policies is reviewed and analysed according to Gramscian intellectual theory and Marcus's notion of a one-dimensional society.

## 2. Theoretical basis

Under this title, the paper will concentrate on Gramsci's theory of Caesarist-Bonapartist model and theory of intellectual, which, will subsequently be discussed in a Turkish context.

### 2.1. *Caesarist-Bonapartist Type of Authoritarianism*

Mussolini uses the state to dominate the party and he uses the party only to some extent, during difficult times, to dominate the state<sup>9</sup>.

A. Gramsci

Gramscian concepts and theories such as hegemony and the intellectual along with the Caesarist-Bonapartist model help us to understand the current Turkish government's (AKP) approach to women and their position in society. Gramsci explained Mussolini's ascent in relation to the theory of Caesarism or Bonapartism within the modern framework; he explored fascism as a form of Caesarism. For Gramsci, the most important element of Caesarist-Bonapartist model is not leadership but the transformation of state apparatus and politics,

8. J.L. Doyle, *State control of civil society organizations: the case of Turkey*, cit., p. 5.

9. A. Gramsci, *Quaderni dal Carcere*, QC2, §75, edited by V. Gerratana, Einaudi, vol. 3, 1977, p. 233 (henceforth cited as *QC*, paragraph as §, number of Notebook, for example, as *QC13*); A. Gramsci, *Prison Notebooks*, J.A. Buttigieg (ed. and trad.), vol. 1, Columbia University Press, 1992, p. 320, hereafter *PN*; Antonio Gramsci, *Selections from the prison notebooks*, Q Hoar, G. Nowell-Smith (eds.), Lawrence-Wishart, 1992, hereafter *SPN*.

i.e., «an integral reformulation of the criteria of legality, capable of legitimizing and institutionalizing squad violence»<sup>10</sup>.

Not only did he aim to grasp “the victory of fascism” and the defeat of revolutionary transformation, but he wanted to understand politically and theoretically how liberalism and liberal institutions generally had also experienced this failure<sup>11</sup>. Gramsci explained this failure as a problem of hegemony: the failure of dominant groups to establish their cultural influence and nurture political consensus<sup>12</sup>.

In this respect, Gramsci assesses the Italian crisis as «catastrophic»<sup>13</sup>. In the battle between forces, in which there are neither losers nor victors, the new cannot be born, and the balance between them turns out to be catastrophic, dramatic and aggressive. In this situation «a great personality»<sup>14</sup> as defined by Gramsci, appears to arbitrate between the opposite forces. However, Gramsci did not concentrate on the conception of the leader. Instead of the charismatic leader, Gramsci affirms the category of Caesarism<sup>15</sup>. In a modern sense, Caesarism can emerge from parliamentary compromises and coalition governments<sup>16</sup>. Both fascism and Nazism initially arose in a constitutional and legal fashion to govern within parliamentary coalitions<sup>17</sup>.

The problem of hegemony is directly related to the concept of Caesarism, which Gramsci defines in terms of the exercise of coercive force, described in military terms. In the *Notebooks*, Gramsci writes that «indeed military theory was developing in the direction of war of movement»<sup>18</sup> but war of position is essential to gaining power. Gramsci stresses that «military leadership must always be subordinate to political leadership»<sup>19</sup> and emphasizes the importance of a war of position, associating the modern authoritarian regimes with the «balance of forces».

10. A. Gagliardi, *Tra rivoluzione e controrivoluzione. L'interpretazione gramsciana del fascismo*, in *Laboratoire Italien*, 2016, available at: [journals.openedition.org/laboratoireitalien/1062](http://journals.openedition.org/laboratoireitalien/1062) (accessed September 18, 2021).

11. B. Fontana, *The Concept of Caesarism in Gramsci*, in P. Baehr, M. Richter (eds.), *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism*, Cambridge University Press, 2004, pp. 176-177.

12. Ivi, p. 177.

13. A. Gramsci, *QC13*, §27, cit., p. 1617.

14. A. Gramsci, *SPN*, cit., p. 219.

15. F. Antonini, *Caesarism and Bonapartism in Gramsci: Hegemony and the Crisis of Modernity*, Brill, 2021, p. 109.

16. A. Gramsci, *SPN*, cit., p. 220.

17. B. Fontana, *The Concept of Caesarism in Gramsci*, cit., p. 181.

18. A. Gramsci, *SPN*, cit., p. 110.

19. Ivi, p. 88.

Gramsci describes the Caesarist solution in two forms: progressive and regressive<sup>20</sup>. Progressive Caesarism means that third force intervention helps the progressive forces rise to power, while in its regressive form it serves reactionary forces to triumph. In the first case, the Caesarist regime is the consequence of an organic crisis resulting in a “quantitative-qualitative” transformation – a passage from one type of state to another, in which there are substantial improvements for the subaltern class. Regressive Caesarism, on the other hand, is characterized as merely quantitative, meaning that there is no passage from one type of state to another and no improvements for marginalized groups – only the continuation of the oppressive status quo.

For Gramsci, having military power and exercising coercion are necessary but not sufficient factors for maintaining a durable form of Caesarism in contemporary societies. Accelerating social and economic changes, developing mass communication, and promoting mass organization require governments to rely on new forms of power<sup>21</sup>. This means that hegemony needs to accentuate the importance of cultural and ideological factors. «That form of Caesarism combines elements of the coercive and administrative organs of the state (the military, police, and security bureaucracies) with its ideological and cultural apparatus (mass media, mass communication, and mass mobilization)»<sup>22</sup>.

## 2.2. Gramsci's theory of the intellectual

Gramsci highlights that «the “normal” exercise of hegemony [...] is characterised by a combination of force and consent, which balance each other reciprocally, without force predominating excessively over consent. Indeed, an attempt is always made to ensure that force will appear to be based on the consent of the majority»<sup>23</sup>. Gramsci contrasts the concept of hegemony with *mere* domination – the exercise of coercion over other (subaltern) groups. However, domination or coercive force is not the only character of hegemony; an intellectual and moral leadership or moral and cultural mechanism of consensus or persuasion is necessary for the establishment of hegemony<sup>24</sup>.

20. Ivi, p. 219.

21. Ivi, p. 220.

22. B. Fontana, *The Concept of Caesarism in Gramsci*, cit., p.194.

23. A. Gramsci, *SPN*, cit., p. 80.

24. B. Fontana, *The Concept of Caesarism in Gramsci*, cit., p. 184.

In this sort of hegemony, intellectuals play a great role as intermediaries between the ruling class and those who are ruled by them in order to disseminate and produce knowledge, culture, values and beliefs within society. Gramsci warns us that, due to the complexity of their social and political institutions, it will be difficult to bring about revolutionary or transformative change in contemporary democratic societies through a war of movement – that is, a direct assault similar to the seizure of the Winter Palace by Bolsheviks in 1917. Therefore, social transformation is achievable only through a war of position, that is an ideological, intellectual, cultural struggle aimed at realizing hegemony<sup>25</sup>.

As a result of this theoretical clarification, Gramsci's aforementioned theories and concepts will be applied to the Turkish case.

### 2.3. Caesarism-Bonapartism authoritarianism in the Turkish context

Turkey did not witness a full democracy based on the separation of powers which control the public institutions and government, allowing people to freely decide who rules them under a multiparty system. In 2016, Turkey was exposed to radical change. Accelerated by the attempted *coup d'état* of that year, its *so-called* democracy<sup>26</sup> was overthrown and reversed by AKP's government, especially by removing the principle of separation of powers, that is, the cornerstone of democracy. Within this year, Turkey witnessed serious social and political conflicts, such as the military operation<sup>27</sup> in the East and Southeast of Turkey, ISIS attacks in different cities, the increase of violence against women and child abuse<sup>28</sup>,

25. A. Gramsci, *SPN*, cit., p. 243.

26. Turkey's democracy was subjected to severe military interventions and witnessed the closure of different parties in different period.

27. The conflict between PKK and the Turkish government was ceased for 2 and half years and peace process began (2013-2015). In 2015, the conflict between two parties began again and the military operation started to the cities such as Sur in Diyarbakir, Cizre ve Silopi in Şırnak, Nusaybin in Mardin ve Yüksekova in Hakkari.

28. İnsan Hakları Derneği (IHD), *25 Kasım 2016-25 Kasım 2017: Kadına Yönelik Siddet Raporu*, 2017, available at: [ibddiyarbakir.org/Content/uploads/20009e38-73c8-418e-aa7d-e4463f8a989e.pdf](http://ibddiyarbakir.org/Content/uploads/20009e38-73c8-418e-aa7d-e4463f8a989e.pdf) (accessed May 11, 2022); Kadın Cinayetlerini Durduracağız Platformu (KCDP), *Kadın Cinayetlerini Durduracağız Platformu, 2016 yılı raporu*, 2017, available at: [kadincinayetleriniidurduracagiz.net/veriler/2786/kadincinayetlerini-durduracagiz-platformu-2016-yili-raporu](http://kadincinayetleriniidurduracagiz.net/veriler/2786/kadincinayetlerini-durduracagiz-platformu-2016-yili-raporu) (accessed May 11, 2022); Asuma & İmdat, *Türkiye'de Çocuk İstismarı Raporu – 2*, 2018, available at: [cobum.giresun.edu.tr/Files/ckFiles/cobum-giresun-edu-tr/RAPOR-ÇOCUK-İSTİSMARI-tam\\_v2\\_cleancopy.pdf](http://cobum.giresun.edu.tr/Files/ckFiles/cobum-giresun-edu-tr/RAPOR-ÇOCUK-İSTİSMARI-tam_v2_cleancopy.pdf) (accessed May 11, 2022).

and the failed *coup d'état* attempt which paved the way for a new type of neoliberal-authoritarianism<sup>29</sup>. This section seeks to explore the AKP's authoritarianism with reference to the Caesarist-Bonapartist model and the negative impacts of AKP's authoritarian policies on gender, violence against women, and women's rights, by taking into consideration its neoliberal political structure and policies<sup>30</sup>.

The authoritarianism of AKP can be described in the context of a Caesarist and Bonapartist model. This model describes: forces in conflict; charismatic leadership; combination of coercion/domination and consent; destruction of democratic and republican elements and instead, the reconstruction of an imperial or single-man regime; a bureaucratic military-police dictatorship; and lastly, neoliberal policies. The Turkish Caesarist-Bonapartist model should be considered in relation to the confessional issue, in the sense that this authoritarianism requires a more confessional conception of state and power to strengthen its patriarchal extension<sup>31</sup>. «The bureaucracy, the military associations, the police (broadly conceived), and so on are the instruments through which the fascist regime realizes its control over the masses and more, generally, over civil society»<sup>32</sup>. These are also instruments of contemporary, authoritarian regimes.

In the context of Gramscian Caesarism, it can be said that the AKP emerged from a conflict between the religious and secular – *laik*<sup>33</sup> –

29. Neoliberal authoritarianism is a sort of «critique of state-oriented political and economic system» (S. Dogan, *Analyzing authoritarianism and democracy through academic freedom in Turkey*, in *Nuovi Autoritarismi e Democrazie: Diritto, Istituzioni, Società*, vol. 3, n. 2, 2021, p. 174), therefore, stressing on the existence of individual freedom especially for consumption, emphasizing on flexible working arrangement/condition, making laws to pave the way for privatization and privatization of public institutions (education and health sectors etc.), usurping of human rights guaranteed by law such as freedom of expression, right to assembly and demonstration etc., dominating over communication instruments such as press by means of using the public institutions.

30. See *AKP program*, 2001, available at: [www.akparti.org.tr/parti/parti-programi/](http://www.akparti.org.tr/parti/parti-programi/) (accessed September 15, 2021).

31. I particularly thank Fabio Frosini for his comments on my interpretation of Turkish case in terms of Gramsci's conception of Caesarism and Bonapartism, who suggested the confessional conception of state and power.

32. F. Antonini, *Caesarism and Bonapartism in Gramsci.*, cit., pp. 165-166.

33. For the concept of *laiklik* in terms of Turkish context see: 1982 Constitution (2 article); T. Parla, A. Davison, *Secularism and laicism in turkey*, in *Secularisms*, J.R. Jakobsen, A. Pellegrini (eds.), Duke University Press, 2008, pp. 58-75; N. Celik, *From Secularism to Laïcité and Analyzing Turkish Authoritarian Laiklik*, in *Insight Turkey*, vol. 20, n.1, 2018, pp. 189-208.

groups, and the leftist and rightist groups. Even though this conflict has always existed, in the 1990s the dispute manifested between National Outlook (*Millî Görüş*)<sup>34</sup> – an Islamic and anti-Western movement – and a secular-Western view which tried to circulate its values both in the political and social areas<sup>35</sup>. As a result, some Islamic parties which supported the ideas of National Outlook were banned on the grounds that they conducted religiously-based politics. By promoting Islamic fundamentalism, they were considered a threat to the secular or *laik* structure of the State. For instance, the Welfare Party (*Refah Partisi*) was banned from politics in 1998 after being accused of violating the principle of separation between religion and State. The increased tension led also to a division within National Outlook – on one hand were the “reformists”, who later established the AKP under Erdoğan leadership in 2001, and on the other, were the “traditionalists”, who still promoted the original ideas of National Outlook<sup>36</sup>.

As Gramsci says, «the forces in conflict balance each other in a *catastrophic manner*», which results in «a third force C interven[ing] from outside, subjugating what is left of both A and B»<sup>37</sup>. AKP emerged as a third force not only because of the conflict between the secular and religious outlook, but also because of the conflict that existed among the religious groups or forces (like National Outlook). According to Gramsci, the rise of Caesarism is the result of different political crises. The AKP was seen as a political solution not only by forces inside National Outlook but also external forces which regarded the AKP as a reformist-European oriented party, and therefore as an example of a moderate Islam that could be a good case in point for the Islamic world. Italian history demonstrates something similar. «Fascism is seen [...] as a political solution (although a limited and problematic one) to the *organic crisis*, as an effort to restore the “broken” bourgeois hegemony» (italics mine)<sup>38</sup>. As a civilian movement, despite its shortcomings, the AKP succeeded in comprehending the needs of society and using this as

34. It is a religious-political movement founded by Necmettin Erbakan that emphasized the decline of the Muslim world as a result of the Western values such as secularism.

35. N. Altuntaş, Y. Demirkeanoğlu, *Adalet ve Kalkınma Partisi'nin Kadına İlişkin Söylem ve Politikalarına Bakış: Muhafazakâr Demokratlıktan Muhafazakârlığa Doğru Evrilişin İzdüşümleri*, in *Journal of Academic Approaches*, vol. 8, n. 1, 2017, pp. 66-67.

36. Ivi, p. 67.

37. A. Gramsci, *SPN*, cit., p. 219.

38. F. Antonini, *Caesarism and Bonapartism in Gramsci: Hegemony and the Crisis of Modernity*, cit., pp. 165-166.



a political manoeuvre towards the beginning of its tenure (i.e., between 2002-2011, in which it was *apparently* “democratic” in terms of its social and political promises).

In a Bonapartist manner, the AKP under the Erdoğan presidency attempts to transform the republic and the (semi-)democratic structure of the State into a more authoritarian one by way of a presidential system based on a one-single man-regime. After the attempted coup in 2016, Turkey moved towards a more authoritarian model with statutory decrees (OHAL). The AKP made use of «the coercive and administrative organs of the State (the military, police, and security bureaucracies)»<sup>39</sup> to control and reorganize society through the declaration of decrees which moved Turkey towards a more authoritarian structure. Through the referendum on 16 April 2017, 18 articles of the Turkish constitution were changed. The set of amendments included: the abolition of the current parliamentary system and its replacement with a presidential system; the elimination of the office of the prime minister, increasing the number of deputies in the parliament from 550 to 600; and making changes to the structure of the Supreme Council of Judges and Prosecutors (HSYK). This new system can be described as a single-man regime and the command-order oriented system is “one-dimensional”. The Turkish-type presidential system can be described in Gramscian terms as a government which operates as a “party” which is over and beyond the interests of people and the multiparty system.

From a Gramscian perspective, I believe that AKP failed to succeed in a cultural hegemony and therefore relies only on domination and manipulation. While AKP tries to hold power, it is only concerned with the form, meaning AKP misses the consent of society and also domination of cultural and intellectual life, as Gramsci points out in his notebooks<sup>40</sup>. Although it had power through the consent of people by means of democratic election, including the referendum and general and local elections from 2002 to 2019, it fails to conquer or dominate the cultural and intellectual area. The AKP tried to achieve its ideological and cultural domination in collaboration with the Fetullah Gülen movement until the attempt coup of 2016. However, the Gülenist attempt to establish political domination failed by the coup in 2016.

39. B. Fontana, *The Concept of Caesarism in Gramsci*, cit., p. 194.

40. H. Dikici-Bilgin, *Civil Society and State in Turkey: A Gramscian Perspective*, in M. McNally, J. Schwarzmantel (eds.), *Gramsci and Global Politics: Hegemony and Resistance*, Routledge, 2009, p. 110; A. Öncü, *Dictatorship Plus Hegemony: A Gramscian Analysis of the Turkish State*, in *Science and Society*, vol. 67, 2003, pp. 303-328.

Therefore, its political movement lacks moral-intellectual leadership. However, this isn't to say that the AKP does not have "organic intellectuals". These intellectuals exist not for creating and contributing to cultural and intellectual development through ideological revolution, as Gramsci explains in the *Notebooks* but rather for propaganda<sup>41</sup>. They contribute to the government's anti-gender equality and sexist discourses and play an important role in establishing a counterrevolutionary position.

#### *2.4. The role of intellectuals in constructing gender and deconstructing gender*

By putting women at the centre of religious discourses and making them a bearer of moral or ethical principles, the government re-creates, approves and cements their second-class position. AKP is against women's inclusion not only in civil society but also in politics. AKP's policies are strengthened by government-sponsored intellectuals. The dominant and authoritarian power succeeds in doing so through its organic intellectuals – judges, prosecutors, lawmakers, newspaper columnists, theologians, academics and the like – who endorse violence against women along with one-dimensional society.

One-dimensional society means not to see these problems and forces of domination in a critical and negative way. Marcuse, in *One-Dimensional Man*, underlines the importance of the critical or negative thinking because of its characteristic of being two dimensional which is capable of seeing contradictions. One dimensional way of thinking does not allow persons to be aware of the forces of domination and therefore there would not be no demand for changes. AKP's organic intellectuals help the authoritarian regime to maintain the existence of the established society through one-dimensional thinking.

While Marcuse focuses on the way of thinking and criticizing, Gramsci highlights that intellectuals are important elements of any political system, because of the directive, organizational, and educative functions that they perform<sup>42</sup>. The AKP's organic intellectuals direct and organize the AKP's policies, including manipulating and provoking people, but they seem to lack any real connection with ordinary people. These intellectuals behave, write, and disseminate knowledge about

41. A. Gramsci, *SPN*, cit., pp. 5-24.

42. A. Gramsci, *SPN*, cit., p. 16.

social, political and economic problems according to the party's policies. The main characteristic of these intellectuals is their lack of critical reasoning, while they seem to have a poor record in organizational and connective functions<sup>43</sup>. One might note an episode in 2019 when a spokesman of the AKP, the senior state official at the Religious Affairs Directorate (Diyanet), marginalized LGBTQI+ individuals by calling them a «heresy contrary to creation». In a similar way, in May 2020, the Turkish Platform of Thought advocated Turkey's withdrawal from the Istanbul Convention and supported the government's anti-gender policies through a report in which they underlined the difference between sexes more than problems of gender equality and violence.

Emphasizing the traditional division of labor and espousing an essentialist view of women along with the Turkish-Muslim female identity, this authoritarianism tries to marginalize those who identify themselves as Kurdish, trans, or as members of the LGBTQI+ community, as well as those who fight for gender-equality and against violence perpetrated on women. While this authoritarianism increasingly restricts the space available for civil society, in recent years, one can observe that women are the only opposition group who continue to struggle on the streets for their rights despite overwhelming attacks against them by the government<sup>44</sup>. As Gramsci underlines, civil society is not a mere reflection of the private sphere but it is a sphere where civil society participates in political debates<sup>45</sup> and produces new thinking, culture and new intellectual projects. Using Hegel's and Gramsci's conception of civil society, Ketola<sup>46</sup> defines it in terms of women's movements and their civil society organizations as a place or a space where there is competition in a Hegelian sense and where one can find the hegemonic versus counterhegemonic struggles in a Gramscian sense. Therefore,

43. G. Vacca, *In cammino con Gramsci: con un saggio di Marcello Mustè*, Viella, 2020, p. 48.

44. See J.L. Doyle, *State control of civil society organizations: the case of Turkey*, in *Democratization*; D. Kuzmanovic, *Refractions of civil society in Turkey*, Palgrave, 2012; Q. Wiktorowicz, *Civil Society as Social Control: State Power in Jordan*, in *Comparative Politics*, vol. 33 n. 1, 2000, pp. 43-61; A.O. Keysan, *Activism and Women's NGOs in Turkey: Civil Society, Feminism and Politics*, I.B. Tauris, 2019; M. Ketola, *Europeanization and Civil Society Turkish NGOs as instruments of change?*, Palgrave Macmillan, 2013; H. Dikici-Bilgin, *Civil Society and State in Turkey: A Gramscian Perspective*, in M. McNally, J. Schwarzmantel (eds.), *Gramsci and Global Politics: Hegemony and Resistance*, Routledge, 2009, pp. 107-119.

45. Ketola, *Europeanization and Civil Society Turkish NGOs as instruments of change?*, cit., p. 76.

46. Ivi, p. 77.

women might lead a new way of thinking, a new type of epistemology and a new type of intellectuals through their practices, struggles and methods in order to build an equality-based democracy, and therefore peace and security in society. As Sirin Tekeli says, «the feminist struggle is about changing mindsets and cultural values and about forcing society to recognize the dignity of women as individual human beings»<sup>47</sup>.

While the AKP's organic intellectuals try to destruct what the women's movement has obtained after a long struggle, women can construct a hegemony based on peace and equality. As Gramsci states, a new historical situation creates a new ideological superstructure. The representatives (intellectuals) of this ideology must be conceived as new intellectuals who are born from new situation different from the previous intellectuality<sup>48</sup>. Here, in line with what Gramsci says, one can imagine that feminist intellectuals or (critical) intellectual women might be able to create a new ideological superstructure in which they fulfil the role of the new intellectuals, or organic intellectuals within a new historical situation.

### 3. Empirical part

#### 3.1. *The gender issue and the AKP government's approach*

We fight just to gain our rights to be a worker, a doctor, a parliamentarian as we are mothers.

Women's World<sup>49</sup>

This section tries to draw attention to the importance of *democratization from below*, i.e., through women's organizations and movements. The consolidation of democracy demands pluralistic and inclusive politics. Arat and Pamuk speak of three different groups who approach the woman question in a different manner and who contribute to democratic development in Turkey: «women who called themselves feminists and have sparked and expanded the women's movement in

47. S. Tekeli, *The Turkish Women's Movement: A Brief History of Success*, in *Quaderns de la Mediterrània*, vol. 14, 2022, available at: [www.iemed.org/publication/the-turkish-womens-movement-a-brief-history-of-success/](http://www.iemed.org/publication/the-turkish-womens-movement-a-brief-history-of-success/) (accessed May 9, 2022).

48. A. Gramsci, *QC8*, §171, cit., p. 1044.

49. A magazine, published between 1913 and 1921 during the ottoman period (C.A. Kılıçkiran, *The Women's Movement in Turkey "We Also Existed Then"*, in *Insight Turkey*, vol. 9, 1997, p. 103).

Turkey over the years; Islamist women who have fought mostly for their gender-based religious rights; and Kurdish women and feminists who have sought recognition of their ethnic and gender identity»<sup>50</sup>. In this respect, they mentioned three challenges in the democratization process in Turkey: Islamists contesting the secular nature of the Turkish state; Kurds challenging the ethnic nationalism of the Turkish state<sup>51</sup>; and «women who criticized the illiberal nature of civil rights in the country and demanded the expansion of their rights as women»<sup>52</sup>. Women, even coming from different cultural, ethnic, and religious background, collaborated/collaborate with each other to democratize society.

These women's movements argued for the insufficiency of a «Republican project of modernity» and highlighted «its limits in democratizing the country»<sup>53</sup>. They struggle against authoritarian, secularist and nationalist patriarchy respectively. With the decline of democracy in the 2010s, women encountered new challenges, fighting for the rights that they had already obtained after a long history of struggle<sup>54</sup>.

The decline in protecting women's right demonstrates how the AKP's policy about gender is contradictory. AKP's gender policy can be split into two phases: 1) from 2002 to 2011 the party was in favour of supporting women in social and political life; 2) since 2011, the AKP's policies have become more and more «conservative» and «traditionalist»<sup>55</sup>. The party in government «ignored existing egalitarian laws, and began to promote Islamically inspired models of traditional roles that could restrict women's access to and benefit from the existing legal framework which feminists had worked so hard to

50. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, Cambridge University Press, 2019, p. 229.

51. H. Bozarslan, *Kurds and the Turkish State*, in R. Kasaba (ed.), *The Cambridge History of Turkey 4: Turkey in the Modern World*, Cambridge University Press, 2008, p. 333.

52. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, cit., p. 228.  
53. Ivi, p. 229.

54. C.A. Kılıçkiran, *The Women's Movement in Turkey "We Also Existed Then"*; S. Tekeli, *The Turkish Women's Movement: A Brief History of Success*; R. Bakan, O. Tuncel, «Women's Struggle in Turkey». *YaleGlobal Online*, 2019, available at: [archive-yaleglobal.yale.edu/content/womens-struggle-turkey](https://archive-yaleglobal.yale.edu/content/womens-struggle-turkey) (accessed May 9, 2022).

55. For a further explanation about the periodic development of AKP's policies on gender see A. Telsereen, *Changing Gender Politics in Turkey throughout the 2000s: A Feminist Analysis of Gender Policies Pursued by Justice and Development Party (Adalet ve Kalkınma Partisi – AKP) Governments*, in *Interdisciplinary Political Studies*, vol. 6 n. 2, 2020, pp. 357-395.

improve»<sup>56</sup>. The AKP's policies on gender issues do not go beyond the discourse of victimhood and are against the idea of political agency. As Erensü and Alemdaroglu write:

No matter how it is explained, the accounts of Turkey's authoritarian trajectory often assume a breaking point after which the otherwise reformist AKP had to change gears and switched into a repressive mode, resurrecting the sectarian, patriarchal, and authoritarian character of the party<sup>57</sup>.

During its first years in power, AKP carried out substantial amendments to the Constitutional and the Penal Code regarding gender equality «in line with the demands of EU conditionality»<sup>58</sup>. However, despite these legal and institutional changes, it seems that no significant progress has been made in terms of the position of women in Turkey under AKP's governance<sup>59</sup>. The Global Gender Gap Report indicates that women's position in society and the idea of gender have not been comprehended and therefore there are no considerable changes in this regard. In reports compiled from 2016 to 2020, Turkey always appears towards the bottom of the list: according to the 2020 report, for instance, out of 153 countries Turkey ranks 130<sup>th</sup><sup>60</sup>. Between 2002 and 2011, the AKP took concrete steps with regard to gender issues and women's human rights protection. In this period, civil organizations took a crucial role in empowering Turkish democracy<sup>61</sup>. On the one hand, it cooperated with several NGOs under its own patronage and engaged in dialogue with women's associations in order to make women visible in public life and to disseminate the view of *gender justice* instead of *gender equality*; on the other hand, it marginalized those more radical towards body, gender-equality, and sexuality and who could monitor the state's

56. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, cit., p. 253.

57. S. Erensü, A. Alemdaroglu, *Dialectics of Reform and Repression: Unpacking Turkey's Authoritarian "Turn"*, in *Review of Middle East Studies*, vol. 52, n. 1, 2018, p. 19.

58. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, cit., p. 253.

59. N. Altuntaş, Y. Demirkanoglu, *Adalet ve Kalkınma Partisi'nin Kadına İlişkin Söylem ve Politikalarına Bakış: Muhafazakâr Demokratlıktan Muhafazakârlığa Doğru Evrilişin İzdüşümleri*, in *Journal of Academic Approaches*, vol. 8, n. 1, 2017, p. 88.

60. World Economic Forum, *the Global Gender Gap Report*, 2020, available at: [www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality](http://www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality) (accessed September 17, 2021).

61. H.A. Aksoy, *Gendered Strategies between Democratization and Democratic Reversal: The Curious Case of Turkey*, in *Politics and Governance*, 2018, vol. 6, n. 3, p. 103.

gender policies<sup>62</sup>. The women who were excluded from public life, whose education right were taken away because of their headscarves and who wanted to eliminate this unfairness played an important role in the rise of the AKP and the continuation of electoral support for the AKP<sup>63</sup>.

After the general election of 12 June 2011, the AKP returned to a traditionalist outlook, departing from its election manifesto which regarded women as individuals and subjects. After the election, the name of the Ministry of State for Women (*Kadıncı Sorumlu Devlet Bakanlığı*) was changed to the Ministry of Family and Social Policies thanks to decree-law No. 633 on 29 October 2011. The implication is that women's roles were confined to family and that women's rights were limited to this institution. Particularly after 2011, one can observe that the AKP left the "so-called liberal" policies aside and returned to conservative values such as those considering women as a part of family and community, as the bearer and reproducer of tradition<sup>64</sup>. In public speeches<sup>65</sup>, Erdoğan has consistently encouraged women to have

62. For example, the Women and Democracy Association (KADEM, Kadın ve Demokrasi Derneği) is one of the NGOs that the AKP sponsored to focus on women's issue in line with the party's program and which is called as one of the government-organized NGOs (GONGOs). These GONGOs play a counterrevolutionary role in representing Turkey in international arena and keeping control over civil society. Additionally, taking anti-feminist position, these organizations call for (gender) justice instead of (gender) equality which Erdoğan differentiated in one of his speech (during the First International Summit on Women and Justice, 24 November 2014). What they mean by gender justice is the elimination of the homogenous image of women created by the idea of gender equality which, according to the president of KADEM, ignored the differences among them (S.A. Yılmaz, *A New Momentum: Gender Justice in the Women's Movement*, in *Turkish Policy Quarterly*, vol. 13 n. 4, 2015). This signifies that they address the differences among men and differences among women; there is no equality between man and woman but there is justice among them.

63. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, cit., pp. 269-270.

64. N. Altuntaş, Y. Demirkanoglu, *Adalet ve Kalkınma Partisi'nin Kadına İlişkin Söylem ve Politikalarına Bakış*, cit., p. 84.

65. Hurriyet, *Erdoğan: En az üç çocuk doğurun*, March 7, 2008, available at: [www.hurriyet.com.tr/gundem/erdogan-en-az-uc-cocuk-dogurun-8401981](http://www.hurriyet.com.tr/gundem/erdogan-en-az-uc-cocuk-dogurun-8401981) (accessed September 18, 2021); NTV, *Erdoğan: İş işten geçmeden en az 3 çocuk'*, September 10, 2009, available at: [www.ntv.com.tr/turkiye/erdogan-is-isten-gecmeden-en-az-3-cocuk,ZEQbCeWHVks06lEDbd72Ng](http://www.ntv.com.tr/turkiye/erdogan-is-isten-gecmeden-en-az-3-cocuk,ZEQbCeWHVks06lEDbd72Ng) (accessed September 18, 2021); Bianet, *Erdoğan: 1-2-3-4 Çocuk, Gerisi Allah Kerim*, September 18, 2014, available at: [bianet.org/bianet/siyaset/160991-erdogan-1-2-3-4-cocuk-gerisi-allah-kerim](http://bianet.org/bianet/siyaset/160991-erdogan-1-2-3-4-cocuk-gerisi-allah-kerim) (accessed September 18, 2021); Euronews, *Erdoğan: "3 değil 5 çocuk yapın"*, March 19, 2017, available at: [tr.euronews.com/2017/03/19/erdogan-3-degil-5-cocuk-yapin](http://tr.euronews.com/2017/03/19/erdogan-3-degil-5-cocuk-yapin) (accessed September 18,

at least three children serving to consolidate patriarchal notions and conservative family values.

After 2011, the AKP began to regard the family as a social policy and legitimated the idea of the “sacred mother” and “sacred family” through its policies which defined women through the family. The Turkish president, during various public meetings<sup>66</sup>, has underlined the idea that man and woman cannot be equals. In 2014, he claimed that religion (Islam) gave a sacred position to women in society which is motherhood and which is, for him, repudiated by the feminists and feminism<sup>67</sup>. Other AKP bureaucrats besides Erdoğan have made discriminatory remarks about women, emphasizing maternity as the best possible career for women, claiming that virtuous women should not laugh in public, and that pregnant women must stay at home rather than going outside or being visible in public space. Instead of implementing egalitarian laws, they aim to impose traditional religious roles on all women<sup>68</sup>.

In doing so, AKP proves that it never regarded gender issues as basic social, cultural and political problems; therefore, instead of designing emancipatory policies and contributing to the realization of the WPS Agenda, AKP politicizes the discourse about gender and turns it into an instrument for strengthening and consolidating its power and shoring up public support. Its liberal policies on gender equality aimed at cementing the support of certain groups of women and to restore its one-dimensional project of “New Turkey”. This New Turkey «is organized around the supreme power of the President, erosion of checks and balances and separation of powers»<sup>69</sup>. It includes redesigning the legal and political system along with the *re- and de*-construction of academia and the reformulation of the gender issue. At the beginning of its foundation, Erdoğan defined the form of his party’s politics as conservative<sup>70</sup>-

2021); Evrensel, *Cumburbaşkanı Erdoğan, kadını “aile” ile tarif etti, yine “En az 3 çocuk” dedi*, February 19, 2021, available at: [www.evrensel.net/baber/426333/cumburbaskani-erdogan-kadini-aile-ile-tarif-etti-yine-en-az-3-cocuk-dedi](http://www.evrensel.net/baber/426333/cumburbaskani-erdogan-kadini-aile-ile-tarif-etti-yine-en-az-3-cocuk-dedi) (accessed September 18, 2021).

66. Vatan, *Kadınla erkek eşit olamaz!*, July 20, 2010, available at: [www.gazetevatan.com/-kadinla-erkek-esit-olamaz---318006-siyaset/](http://www.gazetevatan.com/-kadinla-erkek-esit-olamaz---318006-siyaset/) (accessed September 26, 2021).

67. T. Daloglu, *Erdogan rejects women’s equality*, in NENA, 02 December 2014, available at: [nena-news.it/erdogan-rejects-womens-equality/](http://nena-news.it/erdogan-rejects-womens-equality/) (accessed October 20, 2021).

68. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, cit., p. 255.

69. Z. Yılmaz, B.S. Turner, *Turkey’s deepening authoritarianism and the fall of electoral democracy*, in *British Journal of Middle Eastern Studies*, vol. 46 n. 5, 2019, pp. 691-698.

70. Although it is not clear what exactly conservative means here, it can be said that the term “conservative” refers to being the devout and resistant to change along with being in favor of traditional values.



democratic, thus differentiating itself from National Outlook and other Islamist-based parties and the political standpoint of anti-Westernism more generally. During its first period, AKP's policies could be described as *hybrid*, composed of "conservative" and "democrat" discourses together. In its second period, it abandoned *hybrid* politics and provided only a conservative, conventional and religious vision.

After the termination of the peace process in 2015, the failed coup attempt in July 2016, and the transformation of Turkey's parliamentary system into a presidential one by referendum in 2017, women's rights have suffered serious setbacks and their status is in danger of going backwards. After the failed coup attempt in July 2016, many organizations that worked for the rights of women and children, including human rights and 11 women's organizations<sup>71</sup>, were closed by KHK<sup>72</sup> (decree-laws) which were officially finalized in 2018. These were ostensibly issued to clear away traces of the Gulenist movement within the State but began to extend to other opposition elements in the country. These organizations were established in different cities in Turkey in order to provide a space for women who were violated and to provide advice and support. Women become even more vulnerable with the closure of these centres because some women organizations, like VAKAD (Van Women's Association), have done women's studies for many years and have followed cases based on violence/murder against women; moreover, these organizations and associations supported women with the economic, legal, psychological and social consultancy; they opened literacy courses for women and provided scholarships for girls<sup>73</sup>.

Given the fact that AKP shifted its policies from democratic reform to conservatism as far as the gender issue is concerned, it is important to underline that AKP's Caesarist regime is regressive. The emergence

71. B. Barisik, *OHAL'de Kadın O Halde Direnis in Hukuk Gundemi Dergisi: 8 Mart Kadın Özel Sayısı*, 2018, p. 16; KESK, *OHAL Fırsatçılığı İle En Çok Kadınlar Hedef Alındı!*, in KESK, May 7, 2018, available at: [kesk.org.tr/2018/05/07/obal-firsatciligi-ile-en-cok-kadinlar-hedef-alindi/](http://kesk.org.tr/2018/05/07/obal-firsatciligi-ile-en-cok-kadinlar-hedef-alindi/) (accessed April 19, 2022). Adıyaman Kadın Yaşam Derneği, Anka Kadın Araştırmaları Derneği, Bursa Panayır Kadın Dayanışma Derneği, Ceren Kadın Derneği, Gökkuşluğu Kadın Derneği, KJA, Muş Kadın Çatısı Derneği, Muş Kadın Derneği, Selis Kadın Derneği, Van Kadın Derneği (VAKAD) (C. Tahaoglu, *Kadın Dernekleri Kapatıldı, Hangi Çalışmalar Yarıda Kaldı?*, in *Bianet*, November 16, 2016, available at: [m.bianet.org/bianet/toplumsal-cinsiyet/180798-kadin-dernekleri-kapatildi-hangi-calismalar-yarida-kaldi](http://m.bianet.org/bianet/toplumsal-cinsiyet/180798-kadin-dernekleri-kapatildi-hangi-calismalar-yarida-kaldi), accessed April 19, 2022).

72. Most part of associations and centers were closed by decree no. 677 on 22 November 2016. With decree 375 associations were closed (Karatas 2017).

73. E. Karatas, *KHK'lar, kadınlar ve çocuklar*, in *taz*, October 16, 2017, available at: [taz.de/Sivil-Toplum-Oerguetleri/!5453611/](http://taz.de/Sivil-Toplum-Oerguetleri/!5453611/) (accessed September 29, 2021).

of a Caesarist government implies the continuation of the previous system and the preservation of the existing power under a different form. This does not result in a qualitative but merely quantitative Caesarism. Considering its policies about the Kurdish question, the gender issue, and the growth of restrictive and oppressive procedures and measures taken over the last years, such as imprisonment of journalists, academics, entrepreneurs, politicians, the representatives of civil society organizations, women's organizations, women human rights defenders, and other activists, the closure of non-governmental organizations including women's organizations, associations and centres, the AKP's Caesarist regime represents a regressive one, in the sense that it was not able to promote an organic change in society: it represents a continuation of previous authoritarian regime in a different form. Without an ideological dimension and unwilling to support knowledge production and intellectual-cultural development, including knowledge produced by feminist movement, AKP has failed to construct progressive Caesarist-Bonapartist authoritarianism.

#### **4. Women's role in peacebuilding: the possibility of hegemony-based on gender equality (gender equality based-hegemony)<sup>74</sup>**

The world is gigantic and awful and complicated. Every action launched on its complexity awakens unexpected echoes<sup>75</sup>.

A. Gramsci

Making use of women's knowledge production on topics like gender, violence, war, peace, conflict, women's economic, cultural and political status, the way to participate in peace process, etc., is of great importance for a democratic society. Their participation in the educational processes is also crucial in order to eliminate all types of violence, not because they are more sensible than men or that they bring their heart and feelings to the table, but because they are part of this society, and their experiences, knowledge, and perspectives are

74. I would like to thank to Elisa Piras for her suggestion about hegemony based on gender equality instead of my original concept women's hegemony.

75. Translation is mine. «Il mondo è grande e terribile e complicato. Ogni azione lanciata sulla sua complessità sveglia echi inaspettati» (F. Frosini, G. Liguori (eds.), *Le Parole di Gramsci*, Carocci, 2010).

different from the dominant male standpoint. They have been more exposed to the existing system's deficiencies and the damage it causes. Another important thing worth mentioning is their capacity to structure a *dialectical relation* between feeling and reason, i.e., heart or spirit and mind by avoiding any reductionism.

Ignoring the role of women and children in bringing about peace and security is emblematic of the AKP's policies of gender mainstreaming and shows their lack of commitment to the implementation and realization of the WPS agenda. Aytac stresses how it is crucial to collaborate with NGOs for the implementation of the WPS agenda in Turkey. Thus, she writes that there are a few NGOs which concentrate on the relationship between peace and women and that there is no specific organization dealing with the WPS agenda<sup>76</sup>. Sarıgil notes that the Turkish model of Humanitarian Aid and Assistance lacks a gender perspective and commitment to equality<sup>77</sup>.

Given that gender equality is a necessary condition for structuring a democratic and peaceful existence, women's perspectives, knowledge and experiences can contribute to solutions for war and conflict. Within the framework of the Turkish-Kurdish conflict, which began and intensified in the 1990s, women became vocal about the gender-related risks of the conflict and worked towards opening a space for reconstructing peace. Since 1990, Kurdish and Turkish women have collaborated in the creation of women's peace groups. In 2009, some of these activists founded the "Women's Initiative for Peace" to further the ongoing struggle against male domination and war<sup>78</sup>. These women believed that the Kurdish question could be resolved and peace restored if women's voice could be heard and if they could participate in the peace process<sup>79</sup>. Kurdish

76. G.B. Aytac, *Women, Peace and Security Agenda: Mainstreaming, Peacekeeping and Turkey's Defence Policies*, in *CATS: Women Peace and Security Policy Reports for Turkey*, 2021, p. 10, available at: [www.cats-network.eu/publications/cats-network-publications/](http://www.cats-network.eu/publications/cats-network-publications/) (accessed September 26, 2021).

77. B.Ö. Sarıgil, *Women, Peace and Security Agenda and Humanitarian Assistance: A New Terrain for Turkey's Humanitarian Diplomacy*, in *CATS: Women Peace and Security Policy Reports for Turkey*, 2021, available at: [www.cats-network.eu/publications/cats-network-publications/](http://www.cats-network.eu/publications/cats-network-publications/) (accessed October 20, 2021).

78. Barış için Kadın Girişimi [Women's Initiative for Peace], Heinrich Boll Stiftung Derneği Türkiye Temsilciliği, 13 November 2014, available at: [www.kadinininsanbaklari.org/portfolio-view/baris-icin-kadin-girisimi/](http://www.kadinininsanbaklari.org/portfolio-view/baris-icin-kadin-girisimi/) (accessed September 28, 2021).

79. Z. Alemdar, *Women, Peace and Security Agenda: A Roadmap for Turkey*, in *Independent and cutting-edge analysis on global affairs*, 8 September 2019, available at: [turkishpolicy.com/article/968/women-peace-and-security-agenda-a-roadmap-for-turkey -ftnref3](http://turkishpolicy.com/article/968/women-peace-and-security-agenda-a-roadmap-for-turkey-ftnref3) (accessed September 28, 2021).

and Turkish feminist groups worked together to build a culture of peace: for instance, in the 2000s, the feminist magazine *Amargi* created a space in which these activists could write about the damages produced by militarism and war<sup>80</sup>.

Notwithstanding women's attempts at contributing to the peaceful resolution of the conflict and their proposals for the strengthening of democratic norms and institutions, they were excluded from the negotiation processes during and after the conflict in the East and Southeast of Turkey regarding the Kurdish question; during the last years, their rights have been not only violated, but questioned. In the concluding observations on Turkey's seventh periodic report in 2016, CEDAW recommended that Turkey take necessary steps to begin peace negotiations and «ensure that women and women's rights organizations are included in all peace negotiations and post-conflict efforts for rebuilding and reconstruction» (article 37a)<sup>81</sup>. The implementation of international conventions such as CEDAW and Security Council resolution 1325 is necessary at a national and regional level in preventing the violation of human rights during and after conflict.

The headscarf ban was another challenge in the democratization process. Religious women struggled to obtain rights against secular restrictions on dress in public space. In 2013, the hijab ban was repealed by the AKP and therefore the Islamist women's protest against the headscarf ban petered out. Their struggle, unlike the critique of the contradictory religious view on women, was supported by many feminist-secular groups considering their fight as a human right issue. «With the rise of the AKP to power in 2002 and the positive atmosphere generated by the EU accession process, Islamist women's CSOs began to cooperate with some feminist and Kurdish women's CSOs to improve women's rights»<sup>82</sup>. Critical Islamist CSOs and groups of Muslim feminists worked with other women's CSOs to fight against the proposed abortion ban in 2013<sup>83</sup>. The basic criticism made by these critical Islamist CSOs was directed at the government's intervention on their body once the secular state did the same for their hijab. Therefore,

80. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, cit., p. 250.

81. CEDAW, *Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Turkey*, 25 July 2016, available at: [tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/TUR/CO/7&Lang=E](http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/TUR/CO/7&Lang=E) (accessed September 28, 2021).

82. H.A. Aksoy, *Gendered Strategies between Democratization and Democratic Reversal*, cit., p. 106.

83. *Ibidem*.

they refuted all «types of control over women's bodies whether in the name of modernity, secularism, the Republic, religion, tradition, custom, morality, honour or freedom»<sup>84</sup>. Secular feminists and pious women collaborated together against the attempt of the AKP majority in parliament to change the Penal Code in 2016. This revision included a law that «would allow men who had sex with underage children, including rape, to have their punishment deferred if they married them. The bill aimed to protect those men who contracted religious marriages with girls below the age of marriage as prescribed by the Civil Code»<sup>85</sup>.

Since women and children are more vulnerable groups because of migration, poverty, violence, rape, discrimination resulting from male wars, it is necessary to hear women's words about the war and its results, about peace and its process, its conditions and the way to reconstruct it. The establishment of *gender-equality based-hegemony* can be a solution to the damage produced by conflict and war which are the result of the existing capitalist system. By the concept of *gender-equality hegemony*, I am referring to the Gramscian sense of hegemony which demands a consensus and an intellectual-cultural leadership based on gender equality. More precisely, political and cultural hegemony. “The charismatic *women of destiny*”<sup>86</sup> can bring a different perspective to the social, cultural and political problems of a world in crisis; it is the crisis of male supremacy and, as Gramsci says, this old system is bound to die, allowing a new one to be born through a *gender-equality based-hegemony*.

Women demand for their recognition as individuals who can control their lives and who can decide on their bodies.

Instead, many feminist scholars argue that the increased focus on sexual violence has seen “women returned [...] to the singular destination of victimhood” [...], and the emphasis on women's agency and the role they could play in building peace recede into the background<sup>87</sup>.

84. Y. Arat, *Religion, Politics and Gender Equality in Turkey: implications of a democratic paradox?*, in *Third World Quarterly*, vol. 31, n. 6, 2010, p. 880.

85. Y. Arat, Ş. Pamuk, *Turkey between democracy and authoritarianism*, cit., p. 260.

86. Originally, Gramsci refers to «charismatic “men of destiny”» (A. Gramsci, *SPN*, cit., p. 210).

87. J. Thomson, *The Women, Peace, and Security Agenda and Feminist Institutionalism: A Research Agenda*, in *International Studies Review*, vol. 21, n. 4, 2019, p. 610.

This is a crucial and significant criticism which stresses on women as actors of their actions and decisions and on their power and ability to construct peace and *peaceful hegemony*.

(Feminist) Women are considered as enemies for several reasons: firstly, because they produce knowledge about the gender question by criticizing the patriarchal structure of society; secondly, because women are now more visible in public life; thirdly, they have a particular way of struggling which is different from the traditionalist style in the sense that they are more open to negotiation and they are more colourful in struggle. However, women may assume cultural-intellectual leadership and could bring about peace through an anti-militarist, anti-war stance.

## 5. Conclusion

This study focused primarily on women's role in the peacebuilding and peacekeeping process in Turkey by two ways: a) firstly it investigated how AKP's policies undermine the development of a gender perspective in civil and political society through the use of Gramsci's organic intellectuals and his Caesarist-Bonapartist model to explain Erdoğan's authoritarianism; b) secondly it acknowledged that women and women's organizations might have a great potentiality of creating/leading a hegemonic alternative by taking a counterhegemonic position.

The article tried to interpret the current regime as Caesarist-Bonapartist by using Gramscian theory and terminology which is in line with its approach to the gender issue. This study demonstrated that the AKP could not establish its own hegemony while it failed to build cultural-intellectual and ideological leadership.

This article demonstrated that the AKP tried to establish its hegemony by engaging in civil and political society. Instead of establishing this hegemony by the *spontaneous* development of civil society, i.e., by supporting *independent* civil organizations, and instead of implementing the WSP agenda which advocates for female participation in the peace building process and underlines the importance of NAPs, it built up its civil organization to control civil society, to support its agenda, to circulate its ideology and views. This essentialist and victimhood-oriented approach blocks the AKP from implementing the WPS agenda. In a country like Turkey, where religious and ethnic conflicts have always existed, the implementation of the WPS agenda becomes crucial to empower women and their organizations or associations to deal with intersecting religious, ethnic, economic, and sexist problems.

In a Gramscian sense, women's movements in civil society can create a counterhegemonic power not only against the hegemony of the state but also the hierarchical, patriarchal, nationalist, conservative, racist and colonialist structure of the state and society. Women's movements can create a new potential for a *gender equality based-hegemony*. As Gramsci analyses through his theory of intellectuals, he believes that the bourgeois intellectuals, during the fascist period, supported the state to gain people's consent within civil society by producing and controlling the ideas. What Gramsci is suggesting is to criticize, question, and struggle against these ideas and create new counter-ideas or a new counter-ideology to gain people's consent. In this respect, women's movement and feminist ideology can respond to a Gramscian hegemonic demand<sup>88</sup>.

Gramscian thinking helps us to understand how the women's movement can create «a new organization of knowledge»<sup>89</sup> by replacing and removing the old *regressive-aggressive* one.

88. For a different perspective on Gramsci's theory of civil society and women's civil society organizations and movements see M. Ketola, *Europeanization and Civil Society Turkish NGOs as instruments of change?*, cit., p. 163. The author mostly focuses on the contradictions and conflicts between counterhegemonic voices in society while they challenge «each other's legitimacy in a public debate» (*ibidem*).

89. H. Dikici-Bilgin, *Civil Society and State in Turkey: A Gramscian Perspective*, cit., p. 112.

PART TWO  
WOMEN IN ARMED CONFLICTS





# PROFESSIONALISM AND THE NGOISATION OF THE NATIONAL AGENDA

*Islab Jad\**

I pointed out in previous works that from its inception onwards, women's activists were heavily involved in the Palestinian national movement.

They sought to mobilise public opinion, whether in the Arab world or in the world at large, in supporting their national rights to independence and self-determination.

That role was recuperated later on by the GUPW mainly outside the Occupied Territories. In the course of the first Palestinian uprising and the move of the centre of the struggle to the Occupied Territories, that role was largely taken over by the Palestinian women's movements in the Occupied Territories who were better equipped to express their suffering and their daily realities under the policies practised by the Israeli Occupation forces.

From the nineties onwards, however, the effects of NGOisation started to be felt within the formulation of the national agenda. This position is credible since some of the main donors for Palestinian NGOs insisted upon "correct political conditions" in an attempt to separate these organisations from politics<sup>1</sup>. But, again, it would be an oversimplification to perceive NGOs as passive recipients, and donors simply following or executing their government policies.

It was argued that local NGOs, as well as international actors have a space to negotiate their mutual relationships.

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1. The head of USAID in Tel Aviv announced the intention to make further aid conditional on positive political developments. The formal statement made by the head of USAID Larry Garber, announced that aid would stop if a declaration of independence were made by the PNA. On this, see S. Hanafi, L. Tabar, *The Intifada and the Aid Industry: The Impact of the New Liberal Agenda on the Palestinian NGOs*, in *Comparative Studies of South Asia, Africa and the Middle East*, 2002, p. 35. In 2003, the same organisation circulated a form on all Palestinian NGO recipients of its funds to "certify" that they don't support "terrorism" through their activities.

Cohen and Comaroff, for example, state that NGOs «do not respond to a need, but negotiate relationships by convincing the other parties of the meaning of organisations, events and processes [...] they act as brokers of meanings»<sup>2</sup>.

I would argue that, besides their ability to convince international donors of the vitality of their work, “peace activists” are equally involved in this process driven by their own interests. The involvement in “peace process” activities by many NGOs including WCLAC, aside from getting funding, support the claim to acquire more power and legitimacy. “Peace process” activism might constitute a power base for the NGO elite to reach decision-making positions whether in the PA or in the leadership of the Palestinian women’s movements and other social movements.

The visual display of the “peace process” (the handshake between Rabin and Arafat in the lounge of the White House in 1993 which did not reflect reality on the ground) was accompanied by an abundance of projects on conflict resolution, peace building measures, building trust, “engendering the peace process” and “parallel negotiations” funded by international donors. These projects, written in highly technical English, usually involved women’s activists in conferences in Europe or in the US meeting Israelis, in order to dismantle psychological barriers, push women into decision making, and to enhance parallel gendered negotiations. In most cases, it was up to the international actors to choose their local interlocutors.

Many political positions concerning vital issues related to refugees, Jerusalem, forms of resuscitance, the formation of the future state are taken at the conferences in the international arena without consulting anyone back home. One might argue that there is no single interlocutor to consult with. This may be true, and indeed many male actors in the international arena do not consult “back home”.

The difference for Palestinian NGO activists is that they are not backed by any legitimate political actors in the PA or civil society, since they have no constituency or political party or organisations to belong to. Claiming feminist credentials and professionalism are the main criteria to qualify as participants in these forums. In this context, professionally written reports and easy and efficacious channels of communications are important. However, some of these NGO elites lack political training as activist leaders, which, in many cases, weighs heavily on their legitimacy back home.

2. Cohen, Comaroff, 1976, p. 88, cited in D.J.M. Hillhorst, *The real world of NGOs: Discourses, diversity and development*, Zed Books, 2003, p. 191.

The prevalence of the type of projects discussed above is usually linked to the power of the donor community to dictate or influence local NGO agendas<sup>3</sup>. Some claim that this flow of projects does not necessarily reflect a well-orchestrated policy by international NGOs and donors. The international donor community is not monolithic, but is driven by different interests, visions and politics.

Chabbott, for example, suggests that there are some international development professionals who have used their concerns, which are distinct from those of their funders, to carve out a larger role for international NGOs in the world polity over time<sup>4</sup>. She suggests that these international actors have developed «a discourse of development, which placed increasing emphasis on the role of external factors in national development, simultaneously constraining nation-state autonomy and creating space for non-state actors in development»<sup>5</sup>.

In addition, a combination of schooling and work experience has produced a specialised cadre of international development professionals who spend the bulk of their working lives on a series of assignments in global metropolises and the capitals of low-income countries.

She claims that these professionals become somewhat detached from their countries of origin; their perspectives and concerns may be quite different from those of legislators and ordinary citizens who fund international development organisations. Given their distance from the funders, they face significant opportunities and temptations to exercise personal and professional prerogatives<sup>6</sup>.

It is these professionals, rather than national politicians or diplomats, who have generated the international development discourse, written the UN reports, drafted conference statements, designed conference follow-up strategies, and helped new nation-states draft national development policies<sup>7</sup>.

3. R. Kunibert, H.W. Singer, *The Foreign Aid Business: Economic Assistance and Development Co-Operation*, Edward Elgar, 1996, M. Pinto Duschinsky, *Foreign political aid: the German political foundations and their US counterparts*, in *International Affairs*, 1991, p. 33 ff.

4. C. Chabbott, *Development INGOs*, in J. Boli, G. Thomas (eds.), *Constructing World Culture: International Nongovernmental Organisations Since 1875*, Stanford University Press, 1999, p. 223.

5. Ivi, p. 238.

6. Ivi, p. 243.

7. S. Carapico, *Foreign aid and democratization*, in *Middle East Journal*, 2000, p. 379 ff.; C. Chabbott, *Development INGOs*, cit., p. 244.

Carapico noticed the same tendency concerning the Middle East where an industry of funding and projects has developed around issues related to democracy, peace building and women's rights in which the majority of democracy-brokers in Europe, North America and Australia kept busy writing proposals and bids to public bureaucracies for their projects in the Arab world. This is an industry which relies on public funds, administered through grants and contracts, linked to great powers' foreign policies<sup>8</sup>.

Given the power of the international NGOs, I would argue that this power might trickle down and give more leverage to local professionals in "doing the professional job", i.e. the implementation of the project plan, reporting and evaluation, on the ground. The better the quality of the professional work, the better and stronger the relations with the donor. The more local professionals can meet expectations, the better their chance of being part of the "virtual community"<sup>9</sup>, which creates a common career path set out by those humanitarian-oriented organisations which shape their common culture and belief system.

This system includes a belief in the centrality of development to human progress, in the responsibility of governments to promote it, in the imperative for international development assistance to support it, in the definition of development in "human" rather than strictly economic (or political) terms<sup>10</sup>.

Thus, the link with international donors is not a one-way route but donors and local actors interlink in a web of relations much more complicated than one party imposing its will on the other. This is not to say that both parties have equal power but just to problematise the links between them to include the personal interests of both donors and recipients which give them the power to decide what to take and what to leave.

The links between NGO actors and donors will be illustrated in the following section in which I trace the move of WCLAC from an exclusive focus on the gender agenda into a more political agenda dealing with the representations of national issues in the international arena. This move led to further fragmentation of the grass-roots women's organisations and marginalisation from the international arena.

The eruption of the second *intifada* in 2000 witnessed a

8. S. Carapico, *Foreign aid and democratization*, cit.

9. M. Castells, Manuel, *The Information Age: Economy, Society and Culture*, vol. I: *The Rise of the Network Society*, Blackwell, 1996.

10. C. Chabbott, *Development INGOs*, cit., p. 244.

rapprochement between WCLAC and another women's NGO, the Jerusalem Centre for Women (JCW)<sup>11</sup>.

The birth of the Jerusalem Centre for Women as a Palestinian façade for a Palestinian Israeli “joint venture”<sup>12</sup> illustrates the NGOisation of the national agenda. An international peace activist contacted leaders of the European Union to convene a women's conference in 1989 gathering more than 150 women leaders from around the Mediterranean, including all the Maghreb countries, Egypt, Jordan and Turkey, as well as Europe and the United States.

The meeting “Give Peace a Chance – Women Speak Out” was held at the European Union headquarters, with a large media presence. The purpose of the conference was to break the Israeli law that forbade Israeli women from meeting with women of the PLO. The conference was successful in advocating a peaceful solution to the conflict and a recognition of the “other”. This conference was the beginning of many similar events in which international actors handpicked Palestinian women's representatives to promote peace and mutual understanding<sup>13</sup>.

Having easy access to international contacts and the mastery of foreign languages were important criteria in the choice of these representatives.

In a recent report by the “Alternative Information Centre”, a radical left-wing Israeli Palestinian organisation, the abuse of the “peace jargon” used in these international conferences, was referred to by saying that «one of the negative outcomes of the Oslo “peace process” which is often overlooked is the total corruption of otherwise positive and constructive phrases such as “dialogue”, “trust”, “people to people initiatives”, and “confidence building”».

11. See the *Jerusalem Centre for Women (JCW)*, Appendix A, [www.j-c-w.org](http://www.j-c-w.org).

12. The Jerusalem Link was established in 1993 to advance the active involvement of Palestinian and Israeli women in achieving peace and social justice. The creation of the Jerusalem Link, comprising two independent women's peace centres – The Jerusalem Centre for Women and Bat Shalom – was facilitated by a common political understanding first enunciated in the Brussels Declaration, agreed upon at the first International Palestinian-Israeli Conference held in May 1989. This was convened by Ms. Simone Susskind, under the title: “Give Peace a Chance: Women Speak Out”. These principles were revised on March 10, 1990 and subsequently reaffirmed at the Second International Israeli-Palestinian Conference held in Belgium in September, 1992, which led to the foundation of The Jerusalem Link as a “joint venture”.

13. S. Hanafi, L. Tabar, *NGOs, elite formation and the Second Intifada*, in *Between the Lines*, 2002, p. 31 ff.; S. Carapico, *Foreign aid and democratization*, cit.

The abuse, according to the report, comes from the neglect of mobilising people on the ground to find strategies to end the Occupation<sup>14</sup>.

Such efforts used to be made by grass-roots organisations and political parties that are seldom invited to such conferences or events by the donors who fund and support these activities, now seen as “projects”. In an effort to organise an alternative gathering in Bilbao, Spain, the organisers of the Alternative Centre had to stress to «participants that they were not heading to Bilbao in order to “negotiate” with Israelis» but instead to «discuss with them and the international participants what could be done jointly in a material and practical manner in order to fully terminate Israel’s Occupation [...] and in building true and action-oriented cooperation between Palestinian and Israeli activists»<sup>15</sup>.

With these assertions, one might expect that political parties and grass-roots organisations who still have, to some extent, the capacity to mobilise or organise people on the ground would be the ones invited to discuss an “alternative” vision, but this was not the case.

Many NGOs, including the Jerusalem Centre for Women (JCW), were the ones to participate as representatives of Palestinian “civil society” and Palestinian women’s movements.

Thus, they are progressively becoming gatekeepers.

No wonder that the organisers, in their evaluation report stated that some of the most important shortcomings of the first seminar organised were: the lack of active participation of women, and the «somewhat limited political scope of Palestinian participants»<sup>16</sup>.

In this respect, it is legitimate to ask why, from the Palestinian side, women’s grass-roots organisations and other NGOs could not come together and put forward a common agenda for such activities in the national and international arenas.

In what follows, an account of an initiative set up to achieve the goal of developing a unified agenda is presented<sup>17</sup>.

14. Alternative Information Centre, Part I, Evaluation of the Political Seminar: *A Middle East without Wars and Oppression is Possible: an International Seminar on the Palestinian Struggle and Globalization*, organised by the Alternative Information Center (AIC) on August 29-31, 2003 in Bethlehem, available at: [www4.alternativenews.org/display](http://www4.alternativenews.org/display).

15. Alternative Information Centre 2003.

16. *Ibidem*.

17. The initiative to set up a women’s coalition (Women for Peace and Justice In Palestine – *nass’a*) to bring back the national issues to the fore took place in December

The initiative to establish *Nass'a* (Women for Peace and Justice in Palestine) was triggered as an answer to a European initiative to invite some Palestinian and Israeli women to participate in a tour of different European capitals to lobby European governments in favour of a peaceful solution for the Israeli-Palestinian conflict. The participants, coming from different background that included the leaders of grass-roots women's organisations and some women's NGOs such as WCLAC and JWC, wanted to find suitable ways of ending Israeli Occupation of Palestinian land in all its manifestations, including land confiscation, the building of settlements, the judaization of Jerusalem and the expulsion of the Palestinian people.

The vision reflected a concern with combining national struggle with a feminist framework by encouraging «other Palestinian national democratic forces in building a Palestinian state and community, based on the principles of inclusive democracy and good governance, particularly in relation to civil and political liberties and social justice, while combating all forms of discrimination and oppression»<sup>18</sup>.

It was specifically stated that participants were committed to the use of peaceful means while endorsing the right of Palestinian people to resist Occupation through all legitimate means. The statement was a reflection of the importance of participating in building a feminist Palestinian peace movement that believes in resisting the Occupation through peaceful means and in spreading the values of peaceful co-existence among peoples, premised on the acceptance of the other on the basis of justice and equality.

In a way, participants were seeking to revive the old unifying role of women's grass-roots organisations in the first *intifada*, now fragmented and almost absent, by encouraging Arab, international and Israeli feminist co-operation to attain freedom, equality and justice for the Palestinian people.

As an active participant in the founding of this coalition and the formulation and discussion of its founding documents, I would suggest that the coalition was unable to take off.

Many reasons could be put forward to explain why, ranging from the weakening of all forms of political parties and grass roots organisations,

2001. The women involved had the aim of: «unifying the power of Palestinian women and presenting it as a positive force with a comprehensive vision towards the resistance to Occupation and building the Palestinian state and community», on this, see *Nass'a* documents, January 2002.

18. *Nass'a* documents, January 2002.



with the exception of Islamists, to the different personal agendas and interests of the participants.

However, one of the most obvious factors was related to the continuous conflict over the legitimacy of the “new” women’s NGOs in “representing” the national agenda in the international arena. WCLAC and JCW, now acting as the recipients of most funding for projects dealing with advocacy for the national agenda worldwide, were active participants in the coalition. Seen as apolitical and disconnected from the reality on the ground and more in tune with the international donors who fund their “activities and projects”, the different meetings became a site of conflict<sup>19</sup>.

The idea of establishing the coalition was itself seen by some older women’s activists as a form of “cover up” or a “fig-leaf to provide legitimacy” for the “new” NGOs<sup>20</sup>.

Valuable time and effort was wasted in resisting the push by some NGOs and other participants, to institutionalise the coalition, by insisting on a common blueprint, a standardised way of carrying out activism or what became the “normal” way of doing political activism through “having an office, writing a proposal and hiring a coordinator to do the job”.

A great deal of effort was also expended in debating which organisation would act as co-ordinator. This was not a simple question, since it was mainly about who will “own” the coalition and its future activities and consequently the funding. It was also about who would have the power and the legitimacy to represent the others and what should be the “address” of the group. Such issues were hard to reach a consensus over, since older activists were protecting their legitimacy and the space they had gained after many sacrifices and efforts in the national struggle.

As one of the “old” activists put it:

19. A similar trend was repeating itself, Giacaman, director of Muwatin and a professor of philosophy in Bir Zeit University, reported that in the second month of the *intifada*, a meeting was held in Ramallah for representatives of municipalities, unions, federations, the PLC (the Palestinian Legislative Council) and NGOs in order to fill the leadership vacuum within civilian affairs. During this meeting, most of the time was taken up with conflicts over the leadership role and structure. Giacaman points out that part of the reason why this initiative did not succeed was because of the «instability in the legitimacy (of NGOs’ role) and the absence of the legal and administrative structure for insuring this legitimacy», see S. Hanafi, L. Tabar, *The Intifada and the Aid Industry: The Impact of the New Liberal Agenda on the Palestinian NGOs*, cit., p. 35.

20. Please, on this, see Siham, Interview.

The different NGOs are always trying to divert the activity of the group so that it is under the control of their respective organisations. They don't work to integrate themselves into the group but rather to fragment the group to their own benefit, they come to see what they can *take* out of it and not what they can add or *give* [stress added] to it<sup>21</sup>.

In order to carve out a new basis for legitimacy, distinct from that gained by grass-root women's leaders' participation in the national struggle, the new activists (NGO leaders) made excessive use of the language of "professionalism", "expertise" and links with international donors. It was a common occurrence, in these meetings, to hear how many important state representatives and news agencies met with these new women's leaders and how many international prizes they had been granted for their efforts in the "peace process" and women's advancement.

However, this language was not convincing for old leaders and was sometimes even met with derision, as one of the "old" leaders put it: «when we organise demonstrations, they stop their cars in front of the demonstrations, get their banners out and stand in the first row to be photographed. They can sell this to the outside, but nobody buys this internally»<sup>22</sup>. At the time of writing, the women's coalition of *Nass'a* has still been unable to get off the ground.

## Concluding remarks

In the above analysis, I tried to explore the interrelationships and the terms of engagement between two different types of women's organisations: a mass-based women's movement and a newly emergent NGO sector.

I show that "professionalism" might not be a suitable mechanism to disseminate ideas about gender equity to the grass roots or to the state, but that it maintained a focus on the interests of and provided a power base for a few women.

I also argued that professionalisation, as part of an NGOisation process might not lead to more participation for the "target groups" or the grass roots. The "project logic" was dominant in the NGO's functioning and the difficulties encountered in the field, were understood to stem from

21. On this, see Samia, Interview.

22. On this, see Nahlah, Interview.

“maybe placing too much emphasis on coordination”. Differences and the need for more deliberation were seen as “difficulties” hindering the implementation of the set plan. To overcome such difficulties, “project logic” therefore, urges restricting committees so that they would handle the deliberation in a more “productive” way. The “project logic” pushes towards upward vertical participation and not downward horizontal participation.

I showed that the “project logic” might lead to further concentration of power in the hands of administrators. NGOisation pushes the NGO structure to be more exclusive rather inclusive. It leads to the transformation of a cause for social change into a project with a plan, timetable, and a limited budget which is “owned” for reporting and used for the purposes of accountability vis-à-vis the funders.

This concentration of power might impede the spread of a social movement in continuous need of networking, deliberation and mobilisation, based on daily contact and personal connections. This process of dissemination is time-consuming and hard to frame in timetables, especially in the constantly changing conjuncture of Palestine. Concentration of power in the hands of administrators might not be helpful in drawing out lessons learnt from activism. NGOs could be as complicit as donors in hiding mistakes and pitfalls. I showed that if donors are driven by the logic of the efficiency of their funds, NGO leaders and staff might be driven to prove their high level of “professionalism” and efficiency.

Throughout this chapter, I have presented an argument on the role of mobilisation to bring about collective action to resist the Occupation through which women involved have been able to gain power and were able to articulate their different gender needs and interests.

The “old” feminist discourse produced by PFWAC and other groups, did not rest on the application of universal agendas for enforcing women’s rights and empowerment.

Rather, the organisation expanded its membership as a result of hard work and daily contacts with women whose concerns informed the agenda for women’s empowerment. Thus, “non-entrepreneurs” were empowered by collective action which was sustained and involved a process that takes time, effort and networking.

I hope to have demonstrated the contrast between the PFWAC, Al-Haq women’s committee and WCLAC as different types of organisation. The first achieved important gains for women in their lives and in society. The second saw its role as an initiator for issues of concern to women, leaving the organised women’s power to then

tackle it in society. In contrast to the PFWAC, WCLAC followed the logic of NGOisation.

As a result, it entered a highly contested public sphere where Islamic discourse was becoming hegemonic, empowered by the failure of the PA. The fact that this NGO opened this Pandora's Box created more problems than it solved.

Through militarization and resistance, as a male-dominated practice, the Islamists became a threatening alternative political power against the PA and the PLO. Through their various social support organisations they also became more dominant in setting the context of the social gender order, becoming hegemonic in civil society through their control of important cultural institutions.

Against this background, I believe that women's NGOs and the new discourses they brought to the public sphere in relative isolation from the overall social, economic and political context might have inadvertently acted to dis-empower, de-legitimise and fragment civil society secular actors and their movements.

Paradoxically, the Mock Parliament project, which was meant to generate consultation and consensus, created feelings of animosity between the different women's groups.

Rather than consolidating a unified women's front, the project led to further fragmentation, and heightened divisions particularly between the women's NGOs and mass-based organisations.

As I argued above, discourse is not mere words but rather «collective action frames for social movements and its power structure»<sup>23</sup>.

The “new” discourse, used by the new NGO elite, might be interpreted to discredit old forms of organisation and a means of co-opting popular organisations.

The NGO discourse was used to forge a space in the public arena at the expense of old mass-based organisations. It recast the “old” basis for legitimacy founded on resistance and sacrifice as a basis for women's subordination and isolation. The point here is to question if this purportedly “counter-hegemonic” discourse is deployed to increase or decrease women's social activism and their political power. I believe any counter-hegemonic discourse must take into account the «totality of the historical situation, which includes both the structural

23. D.A. Snow, R.D. Benford, *Framing processes and social movements: an overview and assessment*, in *Annu. Rev. Sociology*, 2000, p. 612; S. Tarrow, *Social Movements in Europe: Movement Societior Europeanization of Conflict?*, in *EUI Working Paper RSC*, n. 94/8, 1994.

and superstructural element»<sup>24</sup> whether this is the continuation of the Occupation, an impotent authority, weakened political parties, weakened women's organisations or the growing power of Islamic movements.

I do not believe that NGO activism begins to do this.

24. N. Bobbio, *The future of democracy: A Defence of the Rules of the Game*, Polity Press, 1987.

# ASSOCIATION “MOTHERS OF SREBRENICA”: THE FIGHT WITH INJUSTICE AND UNCERTAINTY

*Małgorzata Myl-Chojnacka\**

SUMMARY: 1. Introduction – 2. Association “Mothers of Srebrenica” vs the United Nations and the Netherlands – the facts – 3. The immunity of international organization vs the victims’ right to remedy – 4. Attributing peacekeepers’ wrongdoing – how to weigh the State’s liability? – 5. Victims’ right to remedy and to reparations – 6. Conclusions.

## **1. Introduction**

The breakup of the Socialist Federal Republic of Yugoslavia, which began in the 1990s, resulted in a long-lasting and violent armed conflict that spread across the Balkans. In March 1992 Bosnia and Herzegovina issued a declaration of independence and, immediately thereafter, brutal fighting between Bosnian Serbs and Muslims broke out. Srebrenica, a small town located in Republika Srpska (an entity of Bosnia and Herzegovina), has become an infamous and shameful symbol of the crimes committed during the fights<sup>1</sup>. In July 1995 thousands of Bosnian Muslim males (called Bosniacs) were killed by Bosnian Serb forces in the Srebrenica genocide. The crime was committed despite the measures and actions taken by the United Nations and by the United Nations Protection Force (hereinafter UNPROFOR). It is worth mentioning, that on 16<sup>th</sup> of April 1993 the United Nations Security Council passed Resolution 819, demanding that “all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any hostile act”. However, already at the end of April 1993 the UN Security Council received a special report in which

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1. O. Spijkers, *Legal mechanisms to establish accountability for the genocide in Srebrenica*, in *Human Rights & International Legal Discourse*, vol. 1 n. 2, 2007, p. 248.

UN mission informed that the actual situation in Srebrenica did not correspond to either the spirit or the intent of the Resolution 819<sup>2</sup>. The Serb forces did not appear to be ready to withdraw, and eventually, Srebrenica was taken over in July 1995. The presence of the UNPROFOR peacekeepers (who were at the time under the command and control of the Dutch military) did not prevent approx. 8000 Bosnian males from being killed. As a result, many of the victims and their relatives issued civic claims to hold the United Nations and the Netherlands liable for crimes committed by failing to prevent genocide in Srebrenica – the town they pledged to protect.

This paper aims at analysing the legal proceedings against the United Nations and the Netherlands in the context of Srebrenica genocide. Central in this paper is the “Mothers of Srebrenica” case that was issued at the District Court of The Hague (hereinafter: District Court) in June 2007 and continued till 2019 when the decision of the Supreme Court of the Netherlands (hereinafter: Supreme Court) was delivered. The analysis is conducted from two perspectives: general legal perspective and victims’ perspective. For this reason, firstly, the issue of the immunity and the accountability of international organization and international peacekeepers will be addressed. Then, it will be evaluated whether and (if so) to what extent the judgment itself may constitute an example of a measure of satisfaction for the victims and their families.

## **2. Association “Mothers of Srebrenica” vs the United Nations and the Netherlands – the facts**

Shortly after the end of the war in Bosnia and Herzegovina, many civic organisations were driven from the great desire to seek truth and justice for victims and their families<sup>3</sup>. The Association “Movement of Mothers of Srebrenica and Žepa Enclaves” (hereinafter: Association “Mothers of Srebrenica”) is perhaps the most well-known<sup>4</sup>. The organisation was

2. *Report of the Security Council Mission Established Pursuant to Resolution 819, UNSCM*, April 30, 1993, S/25700, p. 8.

3. M.E. Keough, S. Kahn, A. Andrejevic, *Disclosing the Truth: Informed Participation in the Antemortem Database Project for Survivors of Srebrenica*, in *Health and Human Rights*, vol. 5, n. 1, 2000, p. 70.; L. Vallen, *All That Remains: Identifying the Victims of the Srebrenica Massacre*, in *Cambridge Quarterly of Healthcare Ethics*, vol. 10, 2001, p. 336.

4. J. Hasanbasic, *Liability in Peacekeeping Missions: A Civil Cause of Action for the Mothers of Srebrenica against the Dutch Government and the United Nations*, in *The Emory International Law Review*, vol. 29, 2014, p. 415.

founded in 1996 in the Netherlands and represents approximately 6000 women – direct and indirect victims of the past atrocities. The main mission of the organisation was to gather survivors and family members of the victims who disappeared or were killed in Srebrenica and Žepa in 1995 and to enable them to directly participate in finding the truth about the victims of the genocide. Over the time, the Association’s mission has evolved to include a number of other activities, ranging from participation in the process of postmortem exhumation, the identification process and burial of victims; to dealing with economic, social, and health issues, as well as the education of children of its members<sup>5</sup>. The organisation has also directly contributed to seeking for legal redress, justice and satisfaction for victims and their relatives.

On 4 June 2007 the Association “Mothers of Srebrenica” issued civic claim against the United Nation and the Netherlands in the District Court of The Hague. The plaintiffs sought compensation from both co-defendants and demanded to compel them to accept moral responsibility for Srebrenica genocide. It began a long lasting battle for recognition of the UN and the Dutch’s liability for the crimes committed in Srebrenica. It is worth noting, that the UN routinely declines to appear before national courts, instead invoking its immunity through letters sent to the Permanent Representative of the host state of the national court where jurisdiction is sought<sup>6</sup>. The “Mothers of Srebrenica” case was no exception, and it was left to the Netherlands to assert the immunity of its co-defendant before the Dutch courts. The decision of the District Court was delivered on 10 July 2008 and was quickly found disappointing. The court determined that it was not competent to hear any actions brought against the United Nations on account of its immunity<sup>7</sup>. This decision was upheld by the Court of Appeal of The Hague (hereinafter: Appeal Court) which, on 30 March 2010, confirmed that the UN enjoyed absolute immunitational court therefore had no jurisdiction to hear the case<sup>8</sup>. In response to

5. See more: [enklave-srebrenica-zepa.org/english.onama.php](http://enklave-srebrenica-zepa.org/english.onama.php) (accessed: May 17, 2022).

6. A. Miller, *The Privileges and Immunities of the United Nations*, in *International Organizations Law Review*, vol. 6, 2009, p. 41.

7. District Court of The Hague, *Mothers of Srebrenica et al v. State of the Netherlands and the United Nations (immunity case)*, Case n. 295247/HA ZA 07-2973, Judgment in the Incidental Proceedings, July 10, 2008, para. 6.1.

8. Court of Appeal of The Hague, *Mothers of Srebrenica et al v. State of the Netherlands and the United Nations (immunity case)*, Case n. 200.022.151/01, Judgment in the First Civil Law Section, March 30, 2010, para. 2.5.



this, Association “Mothers of Srebrenica” appealed to the Supreme Court of the Netherlands. On 13 April 2012, the Supreme Court confirmed that under the applicable provisions, in particular of the UN Charter and of the Convention on the Privileges and Immunities of the United Nations, the UN was granted far-reaching immunity and could not be summoned before the national courts of the countries that were parties to the latter Convention. The Supreme Court stressed in particular that the UN’s immunity, which was absolute, was intended to ensure its functioning in complete independence and thus served a legitimate purpose<sup>9</sup>. It should be noted that in 2012 the Association “Mothers of Srebrenica” lodged its application also with the European Court of Human Rights (hereinafter: ECHR). The applicants maintained that the granting of immunity to the UN had violated their right of access to court. Relying on Article 13 (right to an effective remedy), they also complained that the granting of immunity to the UN would allow the Netherlands State to evade its liability. In 2013 the ECHR rejected the complaint as manifestly ill-founded as the granting of immunity to the UN served a legitimate purpose<sup>10</sup>. The decisions of the courts raised some questions on the rationale of the absolute immunity, and its relation to the right to remedy. This will be discussed below in the text.

Different conclusions were reached regarding the liability of the Netherlands. The Association “Mothers of Srebrenica” asked the Dutch courts to hold the state liable for the failure to prevent genocide, including the failure to protect 350 Bosnian Muslim men who were in Dutchbat’s compound. The Bosniacs were deployed from the Dutchbat compound and then killed by Serbs forces. On 16 July 2014 the District Court ruled that the state was liable for the loss suffered by relatives of 350 men<sup>11</sup>. The decision was confirmed in 2017 by the Appeal Court which determined the state’s liability for 30% for the damaged caused by wrongful deportation<sup>12</sup>. In 2019 the Supreme Court reduced this

9. Supreme Court of The Netherlands, *Mothers of Srebrenica et al v. State of The Netherlands and the United Nations* (immunity case), Case n. 10/04437, Judgment, April 13, 2012, para. 4.3.6.

10. *Stichting Mothers of Srebrenica and Others v. the Netherlands* (Decision), ECHR, Application no. 65542/12, June 11, 2013.

11. District Court of The Hague, *Mothers of Srebrenica et al v. State of the Netherlands and the United Nations* (liability case), June 16, 2014.

12. Court of Appeal of The Hague, *Mothers of Srebrenica et al v. State of the Netherlands and the United Nations* (liability case), Judgment in the First Civil Law Section, June 27, 2017.

“loss of a chance” – based liability to only 10%<sup>13</sup>. The Dutch courts’ decisions, again, raised some doubts. Firstly, the approach to liability apportionment is not rooted in international law<sup>14</sup>. Secondly, the Dutch courts rejected the Netherlands’ wrongfulness and liability for the failure to protect thousands of males from the mini safe area outside the compound. This, in turn, lead to the question on the duty to prevent genocide, as well as, on the victims’ right to truth and satisfaction. This will be discussed herein.

### **3. The immunity of international organization vs the victims’ right to remedy**

The decisions delivered by the Dutch courts in the “Mothers of Srebrenica” case were of great importance both for the parties of the case and for the international community as a whole. As mentioned above, the courts stated that the UN exercises the absolute immunity. The decisions raised some doubts: firstly about the scope of the immunity (especially that the Dutch courts intended to base their decisions on different determinations); secondly about the exercise of the victims’ right to effective remedy.

According to Article 105 of the UN Charter: “The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”. This obligation was also confirmed and further evaluated in Article II section 2 of the Convention on the Privileges and Immunities of the UN<sup>15</sup>. The Dutch District Court interpreted the obligation in such a way that domestic courts are obliged to respect the UN’s immunity from any civic claim relating to activities of the UN that aim to fulfil the organization’s purposes<sup>16</sup>. However, the Appeal Court and the Supreme Court took a more general approach. The courts agreed that it was not

13. Supreme Court of The Netherlands, *Mothers of Srebrenica et al v. State of The Netherlands and the United Nations (liability case)*, Case n. 10/04437, Judgment, June 19, 2019.

14. C. Ryngaert, K. Istrefi, *Introduction: Special Issue “The Legacy of the Mothers of Srebrenica Case”*, in *Utrecht Journal of International and European Law*, vol. 36 n. 2, 2021, p. 115.

15. Convention on the Privileges and Immunities of the United Nations, 13 February 1946, United Nations, Treaty Series, vol. 1, p. 15, and vol. 90, p. 32.

16. District Court of The Hague, *Mothers of Srebrenica...* (immunity case), cit., para. 5.12.

necessary to evaluate the need for UN's immunity in particular cases<sup>17</sup> as the UN enjoys the most extensive immunity and, therefore, cannot be summoned to appear before any domestic court in the countries that are party to the above mentioned regulations<sup>18</sup>.

Having confirmed the absolute immunity, the Dutch courts had to evaluate the next core legal question – the question of the alternative legal remedies to victims and their relatives. Article VIII section 29 of the Convention on Immunities of the UN obliges the UN to “make provisions for appropriate modes of settlement of disputes of a private law character to which the United Nations is a party”. Unfortunately, the Convention does not specify what consequences of failure to provide alternative legal remedies at the UN level. The interesting remarks were made on that issue by the Dutch Appeal Court and the Supreme Court. The Appeal Court demonstrated that the claimants did in fact have an alternative legal remedy, but not at the UN level. The court referred to the individual proceedings before the International Criminal Tribunal for the former Yugoslavia<sup>19</sup>. This approach was criticized as beside the point<sup>20</sup> since it did not concern remedies against international organisation. The Supreme Court also dealt with the need for an alternative legal remedy. In this respect, the court found a support in a judgment of the International Court of Justice (hereinafter: ICJ) on the jurisdictional immunities of states<sup>21</sup>. The ICJ's decision was interpreted by the Dutch body in such a way that there is «no basis in the State practice from which customary international law is derived that international law makes the entitlement of a State to immunity dependent upon the existence of effective alternative means of securing redress»<sup>22</sup>. The Supreme Court's reasoning was based on an equation of state and UN immunity. The court, however, did not

17. Court of Appeal of The Hague, Mothers of Srebrenica... (immunity case), cit., para. § 4.4.

18. Supreme Court of The Netherlands, Mothers of Srebrenica... (immunity case), cit., para. 4.2.

19. O. Spijkers, *Questions of Legal Responsibility for Srebrenica before the Dutch Courts*, in *Journal of International Criminal Justice*, vol. 14, 2016, pp. 823-828.

20. I. Dekker, C. Ryngaert (eds.), *Immunity of International Organizations: Balancing the Organization's Functional Autonomy and the Fundamental Rights of Individuals, in Making Choices in Public and Private International Immunity Law*, TMC Asser Press, 2011, p. 102.

21. *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, International Court of Justice, judgment of 3 February 2012.

22. Supreme Court of The Netherlands, Mothers of Srebrenica... (immunity case), cit., para. 4.3.13, with reference to ICJ, cit., para. 101.

evaluate the actual existence of alternative legal remedies at the UN level or elsewhere<sup>23</sup>.

The Dutch courts' decisions to uphold the immunity of the UN, despite the lack of an alternative legal remedy for victims, raise lots of dilemmas<sup>24</sup>. People claiming to be victims of the UN's actions have no possibilities to effectively access any form of dispute settlement<sup>25</sup>, even when the action is related to the failure to prevent genocide. The Association "Mothers of Srebrenica" argued that the interests of the claimants should prevail over those of the UN because the proceedings are connected with the *ius cogens* norm. This approach was not approved either by the Dutch courts, or by the European Court on Human Rights. The Dutch Appeal Court acknowledged that the accusation of the UN's negligence was serious, however, it was still insufficient to obstruct the UN's invocation of immunity<sup>26</sup>. Similar conclusions were reached by the Dutch Supreme Court that confirmed that the UN is entitled to immunity regardless of the extreme seriousness of the accusations<sup>27</sup>. The European Court of Human Rights, in its decision in 2013, agreed that the granting of immunity to the UN served a legitimate purpose and confirmed that a civil claim did not override immunity for the sole reason that it was based on an allegation of a particularly grave violation of international law<sup>28</sup>. Ironically, in this decision the ECHR considered immunity to be of greater value and importance than gruesome violations of human rights, such as genocide<sup>29</sup>.

23. See e.g.: A. Reinisch, U.A. Weber, *In the Shadow of Waite and Kennedy: The Jurisdictional Immunity of International Organizations, the Individual's Right of Access to the Courts and Administrative Tribunals as Alternative Means of Dispute Settlement*, in *International Organizations Law Review*, vol. 1, 2004, p. 67.

24. B.E. Brockman-Hawe, *Questioning the UN's Immunity in the Dutch Courts: Unresolved Issues in the Mothers of Srebrenica Litigation*, in *Washington University Global Studies Law Review*, vol. 10, n. 4, 2011, p. 747.

25. O. Spijkers, *Questions of Legal Responsibility for Srebrenica before the Dutch Courts*, cit., p. 825.

26. Appeal Court of The Hague, Mothers of Srebrenica... (immunity case), cit. paras. 5.8 and 5.10.

27. Supreme Court of The Netherlands, Mothers of Srebrenica... (immunity case), cit., para. 4.3.14.

28. Stichting Mothers of Srebrenica and Others..., ETPC, cit., para. 158.

29. J. Hasanbasic, *Liability in Peacekeeping Missions...*, cit., p. 444.

#### 4. Attributing peacekeepers' wrongdoing – how to weigh the State's liability?

The absolute UN's immunity implied that only claims directed against the state of the Netherlands could proceed to the merits stage. The main question that arose was whether the acts of the peacekeepers could be attributed to the Netherlands. In other words: whether the state of the Netherlands was liable for Dutchbat's failure to prevent the death of Bosniacs in Srebrenica. This issue was evaluated in two aspects: the liability for the death of 350 Bosnian males who were in Dutchbat's compound, and the liability for the victims outside the compound.

As mentioned above, the Dutch courts attributed the relevant conduct of the UN peacekeeping mission to the Netherlands. The state was held liable (in 10%) for the damage caused by the wrongful deportation of 350 Bosnian males who had sought refuge in or around the Dutchbat compound. This, in turn, raised the question about the liability apportionment and its rationale. The approach is not one on which the courts looked to international law for guidance<sup>30</sup>. However, it is laid down by the Dutch law and is based on two theories<sup>31</sup>. First one – the proportionate liability – can be applied if multiple potential causes exist but it is impossible to prove which factor caused the damage<sup>32</sup>. Moreover, very specific factual circumstances must be fulfilled: one or more causes must fall within the sphere of risk of the potentially liable party or parties, and one or more potential causes must fall within the plaintiff's sphere of risk<sup>33</sup>. The second theory for establishing partial liability is the loss of a chance. In this approach the uncertainty is not which circumstance or act caused the actual damage. The central uncertainty is

30. T. Dannenbaum, *A Disappointing End of the Road for the Mothers of Srebrenica Litigation in the Netherlands*, in *European Journal of International Law: EJIL Talk*, available at: [www.ejiltalk.org/a-disappointing-end-of-the-road-for-the-mothers-of-srebrenica-litigation-in-the-netherlands/](http://www.ejiltalk.org/a-disappointing-end-of-the-road-for-the-mothers-of-srebrenica-litigation-in-the-netherlands/) (accessed: May 10, 2022).

31. R. Rijnhout, *Mothers of Srebrenica: causation and partial liability under Dutch tort law*, in *Utrecht Journal of International and European Law*, vol. 36, n. 2, 2021, pp. 127-140.

32. A.S. Hartkamp, C.H. Sieburgh, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands Burgerlijk Recht. 6. Verbintenissenrecht. Deel III. Algemeen overeenkomstenrecht*, Kluwer, Deventer 2014, p. 81.

33. See e.g.: Hoge Raad 31 March 2006, *Nederlandse Jurisprudentie* 2011, 250, comm. T.F.E. Tjong Tjin Tai (Nefalit/Karamus), no. 3.13; Hoge Raad 21 February 2012, *Nederlandse Jurisprudentie* 2013, 237, comm. S.D. Lindenbergh (Deloitte/Hassink), no. 3.5.2; Hoge Raad 14 December 2012, *Nederlandse Jurisprudentie* 2013, 236, comm. S.D. Lindenbergh (Nationale Nederlanden/S. and L.), no. 4.2.

whether the result would have been better in the hypothetical situation had the party responsible refrained from committing the wrong<sup>34</sup>. Thus, it is necessary to compare the hypothetical situation that would have arisen without the wrong and the situation that came into being after the wrong<sup>35</sup>. This theory, however, cannot be applied without any restrictions. It should be estimated whether the chance of a better result was a real possibility, hence, it was not negligible<sup>36</sup>.

In the case of “Mother of Srebrenica” the partial liability, based on the loss of a chance theory, was applied. Eventually, the Dutchbat was held liable for 10% of the damages associated with the killing of the 350 men whom Dutchbat had evicted from its compound into the hands of Serbs forces<sup>37</sup> (at the same time, the state of the Netherlands was held fully liable for the 10% apportioned to the Dutchbat). The Appeal Court and the Supreme Court evaluated whether there was a real chance that the Bosniacs, had they remained behind in the compound, would not have fallen into the hands of the Bosnian Serbs<sup>38</sup>. It was assessed that, Bosnian Serbs forces would have conducted an inspection of the compound and the Bosnian Muslims would have been discovered either way<sup>39</sup>. The courts underlined that the prospects of the men were very blank, even if they had remained in the compound. It was assumed, that the Bosnian Serbs would have done everything within their power to remove the Bosniacs from the compound, including threatening to use a violence against the Dutchbat<sup>40</sup>. On the other hand, the Appeal Court and the Supreme Court could not rule out completely the possibility if the Dutchbat had been able to withstand the treat of violence, the Bosnian Serbs would not have been willing to risk attacking the compound in order to deport Bosnian Muslims. All in all, the chance that the men would have escaped the Serb forces had

34. R. Rijnhout, *Mothers of Srebrenica...*, cit., p. 132; See also: Hoge Raad 21 February 2012, Nederlandse Jurisprudentie 2013, 237, comm. S.D. Lindenbergh (Deloitte/Hassink), no. 3.5.3.

35. A. Bloembergen, *Schadevergoeding bij onrechtmatige daad (dissertation Utrecht)*, Kluwer, Deventer 1965, pp. 14-18.

36. See e.g.: Hoge Raad 21 February 2012, Nederlandse Jurisprudentie 2013, 237, comm. S.D. Lindenbergh (Deloitte/Hassink), 3.8; Hoge Raad 23 December 2016, Nederlandse Jurisprudentie 2017, 133 (Netvliesloslating), comm. S.D. Lindenbergh, 3.5.5; Hoge Raad 27 oktober 2017, Nederlandse Jurisprudentie 2017, 115, no. 3.4.2.

37. Supreme Court of The Netherlands, *Mothers of Srebrenica...* (liability case), cit., para 4.7.9.

38. Ivi, para. 4.7.1 ff.

39. Ivi, para. 4.7.3.

40. Ivi, para. 4.7.9.

they been given the choice of remaining in the compound was small, but not negligible. Consequently, the Dutchbat was held partially liable for the damage associated with the killing of the 350 men<sup>41</sup>.

The Dutch courts also dealt with the question of the Dutchbat's liability for the victims that were kept in "mini-safe area" outside the compound. The main attention was paid to the separation of men and boys from children, women and the elderly, which can be assumed as the prelude to the genocide<sup>42</sup>. The Appeal Court had found that Dutchbat's supervisory facilitation of the separation of these groups played no clear causal role in the deaths of the men and boys<sup>43</sup>. As such, it did not find the Netherlands liable for those deaths. Nonetheless, it held that the Netherlands engaged in an internationally wrongful act through its participation in the separation<sup>44</sup>. The Supreme Court, however, overturned that declaratory holding and assumed that the Dutchbat "was reasonably entitled to opt to continue to cooperate in the evacuation by designating groups"<sup>45</sup>. It was conditioned by situation in which decisions had to be taken based on a weighting of priorities. According to the court, the priority for the Dutchbat was to prevent chaos and accidents involving women, children and elderly<sup>46</sup>. This decision is not only controversial and disappointing, but most of all, hard to accept<sup>47</sup>. It justifies the direct participation of peacekeepers in a process of sorting (in fact genocidal sorting) on the grounds that the facilitation aimed at preventing chaos and accidents. The implications of the decision might go far beyond the case – it cements an accountability gap between the victims of peacekeepers' wrongdoing and reparations<sup>48</sup>.

41. *Ibidem*.

42. T. Dannenbaum, *A Disappointing End of the Road for the Mothers of Srebrenica...*, cit.

43. Appeal Court of The Hague, *Mothers of Srebrenica...* (liability case), cit., paras. 64.1-64.3.

44. *Ivi*, para. 61.8.

45. Supreme Court of The Netherlands, *Mothers of Srebrenica...* (liability case), cit., para. 4.5.4.

46. *Ivi*, para. 4.5.3.

47. K. Boon, *The State of the Netherlands v. Respondents & Stitching Mothers of Srebrenica. International Decisions*, in *American Journal of International Law*, vol. 114 n. 3, 2020, p. 486.

48. C. Ferstman, *International Organizations and the Fight for Accountability. The Remedies and Reparations Gap*, Oxford University Press, 2017, p. 115.

## 5. Victims' right to remedy and to reparations

The case of the “Mothers of Srebrenica” not only concerns important legal questions (that were mentioned in previous paragraphs) but it is also of a great importance for the victims and their relatives. One of the main aim of the proceedings before the Dutch courts was the victims' need to exercise their rights to remedy and to reparations. However, the Dutch courts' decisions in these matters seem to be disappointing. As explained above, granting the absolute immunity to the United Nations creates an obstacle for implementing the victims' right to effective remedy. The fulfilment of the right to reparations has not been conducted effectively either.

Reparations are meant to acknowledge and repair the causes and consequences of human rights violations. States that commit or fail to prevent violations have a legal obligation to provide reparations. It was confirmed in many international regulations, as well as, by international human rights bodies<sup>49</sup>. It is important to remember, however, the reparations are also considered as victims' right. It has been expressed, *inter alia*, in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereafter: Principles and Guidelines on the Right to a Remedy and Reparation)<sup>50</sup>. Para. 15 of the resolution constitutes that a State shall provide (in accordance with its domestic laws and international legal obligations) reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. The reparation shall be adequate, effective and prompt, as well as proportional to the gravity of the violations and the harm suffered. Moreover, may be of various kinds (material or symbolic) and may be awarded for pecuniary and non-pecuniary damage.

49. See e.g.: Art. 9(5) and art. 14(6) of the International Covenant on Civil and Political Rights; art. 5(5) and art. 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms; art. 10 and art. 63(1) of the American Convention on Human Rights; art. 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; art. 15(5) of the International Convention for the Protection of All Persons from Enforced Disappearances.

50. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, United Nations General Assembly Resolution 60/147, 16 December 2005.



In the case of the “Mothers of Srebrenica”, the Supreme Court ordered that under Dutch law, a foundation cannot claim a monetary compensation<sup>51</sup>. Thus, the claim for damages may only be lodged by the surviving relatives of males who were evacuated from the compound. With reference to that, on 17 December 2020 the Netherlands announced that as from 1 March 2021 the relatives of the 350 murdered Bosnian Muslims can use of out-of-court settlement<sup>52</sup>. The arrangement covers both pecuniary and non-pecuniary damages<sup>53</sup> and contains fixed compensation amounts: 15.000 € for widows, and 10.000 € for next of kin<sup>54</sup>. These lump sums aim at compensating the damage in 10% as the Netherlands liability amounted to 10%. It is important to note that, if a plaintiff accepts the out-of-court settlement, it is regarded as settlement in full, thus, the case is finalised<sup>55</sup>.

While the out-of-court settlement applies only to monetary compensation, neither the courts, nor the State, related to other types of reparation. Meanwhile, Principles and Guidelines on the Right to a Remedy and Reparation indicates different forms of reparations and do not limit it only to the monetary payment. Victims of gross violations of human rights and international humanitarian law are also entitled to restitution, rehabilitation, guarantees of non-repetition and satisfaction (para. 18). The latter one covers different measures to repair or alleviate suffering, restore dignity of victims and their family members, and facilitate reconciliation and reunite with a society. For this reason, the satisfaction is often referred to as symbolic redress. It is also a tool to combat a conspiracy of silence about past atrocities and to confirm that serious violation of human rights have indeed taken place. This, in turn, allows the victims and their relatives to overcome the trauma, and prevents similar actions in the future. Therefore, satisfaction is often considered as necessary and required type of reparation. In “Mothers of Srebrenica” case a symbolic redress wasn’t directly ordered, what led to some controversies. However, it should be noted that satisfaction can take various forms. It was repeatedly confirmed by human rights bodies, which concluded that a judgment itself could constitute an excellent example of a measure of satisfaction. It is due to the fact that

51. Supreme Court of The Netherlands, Mothers of Srebrenica... (liability case), cit., para. 4.8.1.

52. Kamerstukken (n. 91), 1.

53. Kamerstukken (n. 92), 2.

54. Kamerstukken (n. 92), 2.

55. Kamerstukken (n. 92), 3.

by issuing a sentence, a court confirms that a violation was committed and that rights of a victim were seriously violated<sup>56</sup>. Moreover, the Inter-American Court of Human Rights has multiply emphasized that the judicial decision contributed to rebuilding the sense of victims' dignity and restoring values important to victims, thus, helping them to redirect their life or memory in the conditions of their existence<sup>57</sup>. Similar conclusions were presented by the European Court of Human Rights, which often explicitly stated that its judgments should be considered a form of satisfaction<sup>58</sup>. The practice of human rights bodies is coherent with Principles and Guidelines on the Right to a Remedy and Reparation. According to para. 22, satisfaction for victims of serious violations of human rights is a very different and heterogenous form of reparation and may include e.g.: a verification of the facts and full and public disclosure of the truth and public apology, including an acknowledgement of the facts and an acceptance of responsibility. It can be, therefore, argued that the judgments in the "Mothers of Srebrenica" case were to a certain extent a form of satisfaction – albeit as yet insufficient.

## 6. Conclusions

The Dutch courts' decisions have had the world's attention since the beginning. It was mostly due to the gravity of the events that occurred. Moreover, the legal issues involved were of a great importance both to the international community and to the victims and their relatives. Thus, high expectations were placed in the proceedings. The Dutch courts' decisions met the expectation to a certain extent, but on the other hand, remained a huge deficiency.

The Dutch courts focused mainly on the liability of the Netherlands, as the UN was granted the absolute immunity. The immunity was confirmed also by the European Court of Human Rights. The bodies

56. *The Right to a Remedy and to Reparations for Gross Human Rights Violations. A Practitioners' Guide*, International Commission of Jurists, Geneva 2006, s. 141.

57. See e.g.: *De la Cruz Flores v. Peru* (Merits, Reparations and Costs), IACtHR, November 18, 2004, para. 164; "*Cotton Field*" v. Mexico (Merits, Reparations and Costs), IACtHR, November 16, 2009, para. 582.

58. See e.g.: *Ocalan v. Turkey* (Merits and Just Satisfaction), ECHR, Application no. 46221/99, 12.05.2005; *F. v. Switzerland* (Merits and Just Satisfaction Judgment), ECHR, Application no. 11329/85, 18.12.1987; *Norris v. Ireland* (Merits and Just Satisfaction Judgment), ECHR, Application no. 10581/83, 26.10.1988.

decided that the UN should exercise its immunity even despite the seriousness of the accusation. It is, therefore, hard to imagine what allegation would override the UN's immunity, if genocide was not seen as a sole reason. In addition, the immunity before the domestic courts is applied even in case of the lack of alternative dispute mechanisms. It might be argued that the UN's immunity does not mean that the organisation is not liable at all for its failures<sup>59</sup>, but this liability seems to be meaningless if the UN can never be held accountable.

The Dutch courts' decisions are more satisfactory with regards to the liability of the Netherlands. The judgments leave the door open to hold responsible for peacekeepers abuses. It proves that conduct by military forces during war time may be closely scrutinised by national courts, including civil courts. However, the door only remains open slightly and might be shut at anytime depending on the court's willingness. Moreover, the Dutch courts' decisions leave a space for "weighting a liability" and applying a partial apportionment. In addition, the judgments whitewashes the participation of the Dutchbat in (genocidal) sorting on the grounds that no difference was made. With reference to the victims' reparations, it must be noted that although the Netherlands granted out-of-court settlement, it only applies to monetary compensation and, if accepted, preclude victims from further proceedings. Symbolic redress was not directly addressed in the Dutch courts' decisions. Although the judgment itself might be considered as a form of satisfaction, sometimes this approach seems to be unsatisfactory. All in all, the Dutch courts' decisions confront the Association "Mothers of Srebrenica" with difficult questions: should they accept the judgments and the out-of-court settlement or should they commence follow-up proceedings? Should the victims apply also for satisfaction or should they accept the courts' decisions as a form of symbolic redress? It is very disappointing that after 13 years of legal battle the victims and their relatives are left with the burden of the questions.

59. N.M. Blokker, H.G. Schermers, *International Institutional Law*, Martinus Nijhoff Publishers, 2018, p. 1005.

# GENDER RELATIONSHIPS AND LEGAL CHANGE IN SYRIA. THE FAMILY LAW REFORMS OF THE ROJAVA REVOLUTION

*Davide Grasso\**

SUMMARY: 1. Introduction – 2. Research question and methodology – 3. The Syrian legal tradition – 4. Family law and pluralism in Syria – 5. The ARs' Social Contracts in 2014, 2016 and 2023 – 6. ARs' 2014 "Women's Law" and the 2016 DFSN's Criminal Code reform – 7. Implementation of the provisions – 8. Conclusions.

## 1. Introduction

The violence affecting Syria since 2011 has led to a loss of effective sovereignty of the Syrian state over swaths of its territory, with varying extents in space and time. In some cases, the establishment of *de facto* institutions has been imposed by armed movements with an Islamist orientation. A re-Islamization of norms regulating several areas of associated life has followed<sup>1</sup>. This concerns regions controlled by the Interim Government in Syria (SIG), declared by the Syrian National Coalition (SNC) in 2013 and protected by the Syrian National Army (SNA) since 2018, and by the Salvation Government (SG) declared by a network of groups formed by the Syrian branch of the international militant Salafi network known as Al-Qaeda (*Hay'at Tahrir al-Shām*, HTS) in 2017<sup>2</sup>. It was also the case, with much greater clamour and over

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1. L. Al-Shami, R. Yassin-Kassab, *Burning Country. Syrians in Revolution and War*, Pluto Press 2016, pp. 108 ff.

2. I. Álvarez-Ossorio, *Le Conseil national syrien: Genèse, développement et défis*, in *Maghreb-Machrek*, vol. 3, p. 51, 2012; S. Heller, *The Strategic Logic of Hayat Tahrir al-Sham*, in *Perspectives on Terrorism*, vol. 11, n. 6, 2017.

a wider territory, of the so-called Islamic State (IS), which proclaimed itself as “caliphate” in 2014<sup>3</sup> and has been able to exercise effective control over part of the Syrian territory until March 2019.

A fourth de facto institution emerged during the war has promoted, nevertheless, opposed policies. The Autonomous Regions (ARs) proclaimed their autonomy in 2014 in the Kurdish-majority areas (Rojava) bordering the Turkish border in the north. The leading organs of the ARs enacted a fundamental charter, the Social Contract of the Autonomous Regions (SC-AR) incorporating most of principles consistent with the rule of law and all international treaties on human rights. The ARs were formed by the Movement of the Democratic Society (TEV-DEM) created in 2011 under the leadership of the Kurdish Democratic Union Party (PYD)<sup>4</sup>.

In the following years, the armed wings of the PYD (the Women’s and People’s protection units: YPJ and YPG) waged a war against IS in alliance with the International Coalition against Daesh (IC) promoted by the USA<sup>5</sup>. The YPG-YPJ promoted in 2015 with Arab and Assyrian units the Syrian democratic forces (SDF), while the TEV-DEM instituted the Syrian democratic congress (SDC) transforming the ARs into the Democratic Federation of Northern Syria (DFNS) in 2016, the Autonomous Democratic Administration of North and East Syria (AANES) in 2018 and the Autonomous Democratic Administration of North and East Syria (ADANES) in 2023. This coincided with the extension of the self-government process to Arab-majority territories<sup>6</sup>. The new institutions approved a new Social Contract of the Democratic Federation (SC-DF) in 2016, a Memorandum of Agreement of the Autonomous Administration in 2019, and a third Social Contract for the Democratic Administration (SC-DA) in 2023<sup>7</sup>.

3. P.-J. Luizard, *Le piège Daech: L’Etat islamique ou le retour de l’Histoire*, La Découverte 2015; M. Revkin, *The Legal Foundations of the Islamic State*, in *The Brookings Project on U.S. Relations with the Islamic World*, 2016, p. 23.

4. E. Ayboga, A. Flach, M. Knapp, *Revolution in Rojava: Frauenbewegung und Kommunalismus zwischen Krieg und Embargo*, Vsa Verlag 2016, trans. by J. Biehl, forw. by D. Graeber, *Revolution in Rojava. Democratic Autonomy and Women’s Liberation in Syrian Kurdistan*, Pluto Press 2016, pp. 47-121.

5. H. Cudi, U.S. YPG Fighter, *Interview*, Qamishlo, April 2016.

6. D. Grasso, *Il fiore del deserto. La rivoluzione delle donne e delle comuni tra l’Iraq e la Siria del nord*, Agenzia X, 2018; H. Allsopp, W. Van Wilgenburg, *The Kurds of Northern Syria. Governance, Diversity and Conflicts*, Tauris, 2019.

7. MD-FDRBS (Meclisa Damezrîner a Federaliya Demokratîk a Rojava-Bakurê Sûriyê), *Reşnivîsa Hevpeymanî Civakî ya Federaliya Demokratîk a Bakurê Sûriyeyê*, 2016, eng. transl.: *The Constituent Assembly of the Democratic Federalism of*

Today ADANES controls areas rich in water, agricultural, and energy resources in the governorates of Aleppo, Ar-Raqqa, Al-Hasakah, and Deir el-Zor, attracting the attention of scholars and the media due to the political centrality assigned to women at the ideological, institutional, and political-organizational levels<sup>8</sup>. Women's self-government civil units (the Women's Communes and the Women's Houses) are coordinated in the Kongra Star<sup>9</sup>. The YPJ flank the YPG as an autonomous women's army within the SDF. What has not yet been sufficiently emphasized is that such a military and political centrality of women has spilled over onto the legislative level<sup>10</sup>.

In 2014, the ARs promulgated the Fundamental Principles and General Provisions for Women (GPW): a piece of legislation that overturns state Family law and local customs, setting itself in open opposition to the transformations carried out on the same subject by the SIG, the SG and IS. In 2016 the DFNS produced significant amendments to the sections of the Syrian Criminal Code regarding «Family and Public Morals» (CC-A). With the aim to produce a detailed codification of the Principles' dictate, amendments to the GPW (GPW-A) have been under discussion at the AANES' Legislative Council since 2021.

*Northern Syria, Social Contract of the Democratic Federalism of Northern Syria (SC-DF)*, 2016; available at: [bit.ly/3BUSwFC](http://bit.ly/3BUSwFC) (accessed February 7th, 2024); GC-AANES (General Council of the Autonomous Administration of North-Eastern Syria), *Document of Understanding*, Unreleased Document, June 22nd, 2019; MG-RXDBRS (Meclisa Giştî ya Rêveberiya Xweseriya Demokratîk a Bakur û Rojhilatê Sûriyê), *Hevpeymanîya Civakî ya Rêveberiya Xweseriya Demokratîk a Bakur û Rojhilatê Sûriyê*, December 12th, 2023, engl. transl.: *Social Contract of the Autonomous Democratic Administration of North and East Syria (SC-DA)*, December 14th, 2023, available at: [shorturl.at/jtyX0](http://shorturl.at/jtyX0) (accessed February 7th, 2024); see also Rojava Information Center, *AANES Social Contract*, 2023 Edition, available at: [shorturl.at/jtyX0](http://shorturl.at/jtyX0) (accessed February 7th, 2024).

8. C. Cemgil, C. Hoffmann, *The "Rojava Revolution" in Syrian Kurdistan: A Model of Development for the Middle East?*, in *IDS Bulletin*, vol. 47, n. 3, pp. 53-76, 2016; T. Schmidinger, *Rojava. Revolution, War, and the Future of Syria's Kurds*, Pluto Press, 2018; A. Shahvisi, *Beyond orientalism: exploring the distinctive feminism of democratic confederalism in Rojava*, *Geopolitics*, 2018.

9. Kongra Star, Charter Preparation Committee, *Kongra Star Charter*, August 25, 2020, available at: [bit.ly/3rRuZ45](http://bit.ly/3rRuZ45) (accessed February 7th, 2024).

10. R. Mendanlioglu, *Geschichte und Gegenwart der "Frauenrevolution" in Rojava*, in *Work in Progress. Work on Progress. Doktorand\*innen-Jahrbuch 2020 der Rosa-Luxemburg-Stiftung*, Herausgegeben von Marcus Hawel, 2020.

## 2. Research question and methodology

The purpose of this contribution is to analyze the GPW by placing them in the Syrian legal framework and tradition, taking into account also two subsequent legal texts that have been discussed, drafted and/or approved in the ARs. The research questions are thus the following: which are the juristic features of these legal texts? What the historical and political context of their production? To achieve this, in the first part of the essay I will introduce the Syrian legal system of Personal Status, placing it in its historical and juristic context. In the second part, I will analyze the provisions relevant for Family law and Personal Status matters enacted by the various institutions declared by the TEV-DEM and the Kongra Star in the North-East. In the third part, I discuss the application of the new norms outlining the social, political and geopolitical implications of it. The following information is based on the relevant legal texts, the scholarly literature and the author's fieldwork between 2016 and 2017. Among the sources are interviews conducted by the author between 2021 and 2022 with women and men speaking on behalf of the AANES, the Kurdish Movement and the Kongra star in Syria and Europe.

The methodology includes desk research on historical and legal sources and legal textbook examination of legal documents collected during the fieldwork or online. The fieldwork was conducted through nine months of participant observation when, between 2016 and 2017, the author has cooperated with DFNS institutions in Syria. During this period, 10 interviews relevant to this study, conducted with 6 women and 4 men aged between 18 and 54, were collected. They were relevant for reconstructing the institutional, social and ideological context of the confederal revolution, described in more detail elsewhere<sup>11</sup>. Between 2021 and 2022, two more interviews were conducted online with women (one Kongra Star representative and the co-chair of the AANES Legislative Council). They made it possible to reconstruct the sociological and historical context of the preparation and promulgation of the laws here analyzed. The interviews were semi-structured in nature and were not aimed at the

11. D. Grasso, *Autorité/avant-garde/autogestion: une tension incomprise dans la révolution confédérale*, in P. Crétois, Pierre, É. Jourdain, *La démocratie sous les bombes. Syrie-Le Rojava entre idéalisation et répression*, Le Bord de l'Eau, 2022; Id., *The People's Communes in Rojava and North-Eastern Syria. Characters, Evolution and Contradictions of an Institution of Self-Government*, in *Études Kurdes*, vol. 15, 2022.

personal path of the interviewed, rather at the recent history of the ARs and the legal, social and political context surrounding the new institutions.

Limitations of the research may result, in the first place, from the fragmentation of the resources available to some of the interviewees regarding the subject matter. This fragmentariness is due to a conflictual and dynamic institutional scenario, in which the condition of war, social conflict and embargo affecting north-eastern Syria since 2012 can make it difficult to identify, in all instances, the decisive sources of law on a certain portion of the territory and in any given phase (even for the protagonists and the dwellers themselves). Another limitation is the present nature of the conflict, where officials or militants of the confederal institutions may have reasons to omit elements of interest for the investigation.

The researcher defined the ethical profile of his investigation with the interviewees and attempted to define with them his position as a non Syrian and non Kurdish political activist and scientific researcher, interested in producing reports from the field, on one side, and an academic spin-off of the knowledge acquired in the course of his institutional as well as research activity in the region. Sensitive information, the disclosure of which could damage individuals involved in this research, has not been included in the contribution.

### **3. The Syrian legal tradition**

The legal framework concerning the regulation of gender relations in the family realm was established by the Syrian Arab Republic primarily in the 1953 Law of Personal Status (LPS), amended in 1975, 2003, 2006, 2010 and 2019. The enactment of the LPS constituted, in 1953, both an intervention carrying a transformative impact, and a compromise with a time honored legal tradition. The region had been, until World War I, part of an empire that used to adopt predominantly the Hanafi school of Fiqh for the interpretation of Sharia. During the 19<sup>th</sup> century the empire undertook a policy of reforms aimed at strengthening the authority of the state. This should have been attained through new legal tools of European derivation, including gradual codification of Islamic legal tenets. Sharia is a written corpus, but it is not organized in the textual fashion labeled as “code” in the Roman and modern European traditions. Codifying Sharia meant therefore rewriting it, modifying its textual form and, consequently, changing the letter of a divine dictate.



This can be seen as opening a space for human intervention in the realm of a supernatural power<sup>12</sup>.

Initiating such an unprecedented process were the Ottoman Tanzimat reforms in the Nineteenth century, including the 1856 Imperial Reform Edict (*Islâhat Hatt-ı Hümayûnu*). The latter had particular significance in family and inheritance matters as it dictated equality before the law for all subjects, independently from their creed. The codes on criminal (*Ceza Kanunname-i Hümayûnu*, 1858) and civil law (*Mecelle-'i Ahkâm-ı Adliye*, 1877) followed<sup>13</sup>. These provisions caused a partial departure from the principle, derived from Quranic revelation, of regulating family relations according to classifications of individual and social postures towards the divine. The Quranic classification orders faiths by degrees of dignity and mandates consequent criteria of tolerance by the Islamic power. Non Muslims were previously given the opportunity to have their lives saved, or avoid slavery, through conversion. Jews and Christians were the exception: as “people of the book” (*Ahl al-Kitâb*) they were granted the privilege of entering into a collective contract with the established authority. In exchange for the payment of a tax they would obtain protection by acquiring the status of *dhimmi*. With this premise, the law allowed Jews and Christians to organize their families and inheritance relations under different laws, i.e. independently from Islamic dictates. This included the establishment of autonomous legislative as well as judicial authorities. In the remaining public legal space they were subject to Sharia. There were also other restrictions for the *dhimmis*, concerning dietary customs and publicity of worship<sup>14</sup>.

In 1876, under the influence of the European model of legal change, the Sultan abolished the *dhimmi* status, proclaiming all its subjects citizens of the empire. This was a major break with the Quranic tradition, introduced by the most powerful Muslim authority in the world. In 1917, under the influence of domestic revolutionary and secular impulses, a single court for family and inheritance matters was established, replacing the separate Muslim, Christian and Jewish courts. However, this reform lasted two years. After the conquest

12. See T. Koch, *Islamic Law: Ordained Shari'ah Principles v. Man-Made Code*, UWTSO, 2017.

13. T. Heinzelmann, *The ruler's monologue: The rhetoric of the Ottoman penal code of 1858*, in *Die Welt des Islams*, n. 54, pp. 3-4, 2014; B. Abu-Manneh, *Two Concepts of State in the Tanzimat Period: the Hatt-ı Şerif of Gülhane and the Hatt-ı Hümayun*, in *Turkish Historical Review*, n. 6, p. 2, 2015.

14. R. Aluffi Beck Peccoz, *Şaria*, in *Enciclopedia del Diritto*, Annali VIII, Giuffrè 2015.

and dismembering of the Empire following World War I, the French Mandate installed an ephemeral Arab monarchy in the new territory called Syria, roughly corresponding to the later independent lands. King Faysal reinstated the Hatt-ı Hümayûnu in 1919, reintroducing separate courts for Christians and Jews. However, the Mandate soon put an end to the monarchy and, in 1930, promulgated a constitution declaring, similarly to the Lebanese fundamental law, religious freedom as «absolute». In 1936 the Mandate authorities had to abort, due to strong popular opposition, an attempt to enforce a decree that, while maintaining the autonomy granted in matters of Personal Status to Christians and Jews, eliminated the religious foundations of the ancient status of *dhimmi*. The tentative provision would have actually declared, differently from the 1917 law, the three religious jurisdictions (including the Islamic) as of equal legal dignity.

World War II led to the formal independence of the Syrian Arab Republic in 1941, which was followed by the effective withdrawal of French troops in 1946. Between World War I and the aftermath of World War II, most of Arab populations, with the exception of the Palestinians, gained independence. The new constitutions of most of these states declared Islam the «state religion» and Sharia «the» or «a» source of law (sometimes qualified as the «principal» or «main» source). By contrast, the Syrian constitutions of 1950, 1953, 1964, 1973 and 2012 (still in force) merely declare Islam «the religion of the President of the Republic». This was a rather unique solution in the Arab world. Only exception in Syrian history was the 1958 constitution, which – establishing the United Arab Republic (UAR) and the state unification with Egypt – made no mention of Islam whatsoever. In the Syrian constitutions of 1973 (Art. 3) and 2012 (Art. 3), Fiqh is declared «one of the main sources» of law: not Sharia, rather its human interpretation and study is therefore mentioned.

Explicit references to Islam in many Arab constitutional laws often served to legitimize or cover, in post-World War II anti-colonial times, an effective secularizing action of the legal systems by the newly independent authorities. This occurred through textual reformulation and formalization, as well as through substantial provisional change in the process. Syria undertook extensive codification of public, private and procedural law. Such reformulations had much more impact on the legal system than previous Ottoman reformulations. They were largely inspired by European legal solutions (French, Italian, German and Swiss). Such solutions were iterated in most of the Arab world, including Syria, through the mediation of Egyptian codifications in civil matters.

In the Syrian case, the Lebanese codification was influential in criminal matters. The Civil Code and the Criminal Code were promulgated in 1949 and are still in force today.

The former affirms, at Art. 1, the centrality of Sharia as a general guide for all matters not expressly regulated by the Code. The second contains a Memorandum clarifying that the Ottoman Qanun regulating criminal matters since 1858 (which had already abolished specific Quranic punishments) was «no longer appropriate to accommodate the development of social, economic, commercial and intellectual life in Syria»<sup>15</sup>. The concept of apostasy, for example, does not appear in the post-independence Syrian legal system; flogging is no longer provided for and theft is not punished by amputation of a limb, rather by imprisonment. Many of the punishments that in the tradition of Sharia are left to the judge's discretion have been regulated by written norms.

#### 4. Family law and pluralism in Syria

In 1953, the Republic turned to regulating family and inheritance law. The new Law of Personal Status (still in force today) was to replace the Ottoman regulations rehabilitated by King Faysal and the subsequent French provisions. A government commission was assembled for this purpose. It consisted of Muslim jurists, civil lawyers and political representatives. The sources from which they drew were:

- The Hatt-ı Hümayûnu;
- A draft code drawn up by the Egyptian jurist Qudri Pasha;
- Egyptian laws from 1920-1946;
- A treatise on Personal Status drafted by the Damascene judge Ali Al-Tantawi, which drew legal solutions from all four Islamic schools;
- A selection of solutions characteristic of the Hanafi school.

The LPS was drafted in 308 articles. Islamic law is therein declared «predominant». In the last three articles, legislative and judicial autonomy is provided for specific communities: the Christians, the Jews and the Druze<sup>16</sup>. The judicial and legislative autonomies, contrary to

15. R.A. Diab Esq, *Religion and the Law in Syria*, in *Arab Center for International Humanitarian Law and Human Rights Education*, 2010, available at: [bit.ly/3iRURIE](http://bit.ly/3iRURIE) (accessed February 7th, 2024).

16. A. Rabo, *Family Law in Multicultural and Multireligious Syria*, in G. Collste

what had been the case til then, applied to the LPS only in matters of marriage, divorce or parental custody (the so-called “pure family law”<sup>17</sup>) and excluded the discipline of inheritance. This was a further breach with the Islamic legal tradition. Succession is regulated in the main body of the text, based on Sharia, which therefore applies also to non-Muslims. As a result, and following the authorities’ political aim, legal uniformity is ever since greater. This notwithstanding, the larger uniformity does not entail a civilistic logic, rather a religious one. This at least in Personal Status matters, contrary to what happens in all other realms of law in the Syrian system<sup>18</sup>.

Peculiar is the inclusion of the Druze, a Muslim religious minority, among religious groups deserving legal autonomy in Personal Status matters. The Druzes entered in 1953 the sphere of Personal Status autonomy according to a novel logic, totally unrelated to Quranic precepts. The Druze are one of the country’s non-Sunni Muslim communities. They experience since then the contradiction of being defined as a *madhab* (legal school) in the general legislation (Code of Judicial Authority, Art. 36), and a *tawaif* (religious denomination or sect) in the LPS<sup>19</sup>. On the other hand, the other non-Sunni Muslim communities (Twelver Shiite, Ismailites and Alawites, constituting with the Druzes about 16% of the population) are not recognized legal autonomy in family matters<sup>20</sup>. In principle, they have to comply with the Sunni conception of the general Sharia dictate of the LPS. This is true also for the Yazidis, a Syrian religious community which does not perceive itself as part of any testamentary tradition<sup>21</sup>. This is true for

(ed.), *Possibilities of Religious Pluralism*, Linköping University Electronic Press, 2005, pp. 71-87.

17. R. Aluffi Beck Peccoz, *Islamic Law. Marriage*, in *Routledge Handbook of Religious Laws*, Routledge 2019.

18. J.N.D. Anderson, *The Syrian Law of Personal Status*, in *Bulletin of the School of Oriental and African Studies*, University of London, Cambridge University Press on behalf of School of Oriental and African Studies, 17: 1, 1955, pp. 34-49.

19. M.S. Berger, *The Legal System of Family Law in Syria*, in *Bulletin d’études orientales*, Institut Français du Proche-Orient, 49, 1997, pp. 115-127.

20. J.N.D. Anderson, *The Syrian Law of Personal Status*, cit., p. 49; R. Maktabi, *Gender, family law and citizenship in Syria*, in *Citizenship Studies*, vol. 14, n. 5, 2010, pp. 559-561; see also Id., *Female Citizenship under Authoritarian Rule in the Middle East: Ba’thist Syria and Beyond*, in *The Middle East Book Review*, n. 9, 2018, pp. 157-175.

21. A. Ventura, *Confessioni scismatiche, eterodosse e nuove confessioni sorte nell’Islam*, in G. Filoramo, (ed.), *Islam*, Laterza, 1999; D. Grasso, *Il fiore del deserto*, cit., pp. 109-118; R. Beritan, C. Cruciati, *La montagna sola. Gli ezidi e l’autonomia democratica di Sengal*, Alegre 2022.

Syrian non-believers as well, whose existence isn't acknowledged by the state's legal system<sup>22</sup>. Every citizen must be inscribed in the national registers according to a religious affiliation: Islamic, Christian, Druze or Jewish. This affiliation becomes all the more decisive when the state intervenes to regulate family life<sup>23</sup>.

For these reasons, the LPS differs from the rest of the body of law. The Syrian main legislation does not distinguish between citizens on the basis of religion<sup>24</sup>. It is true that, by constitution, the republic places the interpretation of one religious dictate – the Islamic – among the sources of law. It is also true, on the other hand, that it does not consider it «the sole» source of law, as it happens in other countries. The mention of religious communities has been expunged from the constitutional dictate since 1973. It was the early stages of Assad family's hegemony in the Baath Party, the latter ruling since 1963. Hafez Al-Assad's supporters had staged a so-called "Corrective Revolution" to improve through "moderation" what had been achieved through the previous phase of Baathism.

Notwithstanding the constitutional change following this turn, the legal pluralism entailed in the LPS still sanctioned believers of different religions as subjected to different laws<sup>25</sup>. Not all of them, moreover, were entitled to detach themselves from the hegemonic Sunni, Hanafi legislation. The LPS is in fact a legal body distinct from the Civil Code, which, moreover, regulates economic matters that may be relevant in the consequences of marriage. This creates sometimes tortuous judicial paths. There is anyway no room, in the Syrian legal system, for civil marriage, civil divorce or civil succession law<sup>26</sup>.

On the judicial level, the General Section of the LPS provides for the jurisdiction of Sharia Courts which, in the post-independence legal system, survive exclusively in this context. According to the dictate of the last three articles, the autonomous Druze courts (Madhabi Courts) must be formed by judges appointed by the communities after consultation with the Ministry of Justice. The latter, instead, merely takes note of the appointments of Christian and Jewish judges (Ruhi Courts) by the

22. R. Maktabi, *Gender, family law and citizenship in Syria*, in *Citizenship Studies*, vol. 14, n. 5, n. 5, 2010, p. 560.

23. E. van Eijk, *Pluralistic Family Law in Syria: Blane or Blessing?*, in *Electronic Journal of Islamic and Middle Eastern Law*, n. 2, 2014, pp. 73-74.

24. M.S. Berger, *The Legal System of Family Law in Syria*, cit. pp. 115-118.

25. *Ibidem*.

26. R. Maktabi, *Gender, family law and citizenship in Syria*, cit., pp. 559-560.

respective communities. The Christian courts are multiple due to the variety of the country's Christian communities:

1. Greek Orthodox Church
2. Armenian Orthodox Church
3. Syrian Orthodox Church
4. Evangelical Church
5. Catholic Churches
  - a. Roman
  - b. Latin
  - c. Armenian
  - d. Chaldean
  - e. Syrian
  - f. Maronite

The main differences in legislation concern, for the Druze, the prohibition of polygamy, plus different solutions concerning dowry, divorce, adultery and *li'an*. Christians have their own rules on betrothal, marriage, counter-dowry, alimony and children custody. Contrary to what was the case under the Sultanate and the French Mandate, two matters previously mandated to autonomous legislations by communities must conform to Sharia, as stated earlier, as informing the general section of the LPS: these are key issues such as parental authority (*wilāya* or guardianship: to be distinguished from custody) and the definition of kinship relations and the inheritance discipline. These matters are consequently taken, even for Druze, Jews and Christians, before Sharia courts.

The persistent protests of Christian communities against this situation led, in 2006, to the promulgation of amendments to the LPS. Such amendments have been drafted by Archbishop Antun Mosleh, delegated to this task by the Syrian Council of Catholic Churches. The amended code grants more autonomy to Catholic Christians in regulating succession law. Since 2006, the inheritance of Catholic women is equal to that of men (following Sharia, and therefore the general section of the LPS, daughters get half). Another novelty is the equality of Catholic spouses in matters of parental custody. Contrary to the dictate of the LPS, in the event of divorce, the woman may keep with her the property she brought into marriage and that which is the fruit of her labour during the marriage. The amendments, however, raised protests from other Christian communities, who accused the government of discrimination between Christian denominations.

## 5. The ARs' Social Contracts in 2014, 2016 and 2023

The efforts to reform family law promoted by women's associations, lawyers or legal experts before 2011 focused on the need to strengthen the bargaining power of women within the couple. To this end, they mostly focused on reference to Islamic norms and on interpretations of Quran and Sunna that be more favorable to the women's role in the family. Above all, the struggles were directed against the use of customary practices invalidating women's rights that are guaranteed by Sharia. Mandatory registration of marriages has therefore been at the heart of these battles. Civil rights and international law enforcement groups, social and legal workers taking in Syrian courts cases on divorce, custody and alimony joined these efforts. They achieved, however, little result. In 2009 a broad mobilization of women's associations had rather to abort a government attempt to reform the LPS in a conservative direction. Feminists blogs and groups exposed passages of a leaked draft law displaying a jargon linked to Salafi understandings of Islamic dictates<sup>27</sup>.

The entire framework of the LPS would have been suspended or supplemented in various Syrian territories after the outbreak of the civil war in 2012. Multiple de facto institutions and powers did arise in the country since then. The legal reformulation of family life and generational or gender relations has been at the heart of political battles between the Baath party and opposition forces during the war, and between opposition forces themselves<sup>28</sup>. Family law carries worldwide indeed, and in the Islamic world specifically, an accentuated symbolic, political and social significance<sup>29</sup>.

Historically, Personal Status regulations have been classified by colonial and early anti-colonial powers as the legal realm in which the divine derivation of law had to be recognized (insofar as there

27. R. Maktabi, *Female Citizenship in Syria. Framing the 2009 Controversy over Personal Status Law*, in R. Hinnebusch, T. Zintl (eds.), *Syria from Reform to Revolt: Political Economy and International Relations*, University of Syracuse Press 2015.

28. O. Szekely, *Fighting about Women: Ideologies of Gender in the Syrian Civil War*, in *Journal of Global Security Studies*, vol. 5, n. 3, 2020.

29. G. Tabet, *Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria*, in *SHS Papers in Women's Studies / Gender Research*, July 4, 2005; R. Maktabi, *Female citizenship in the Middle East: Comparing family law reform in Morocco, Egypt, Syria and Lebanon*, in *Middle East Law and Governance*, 3, 2013, pp. 280-307; *Id.*, L. Brynjar, *Middle Eastern Patriarchy in Transition*, in *Die Welt des Islams*, 3-4, 2017, pp. 265-277.

confined)<sup>30</sup>. As Rania Maktabi has pointed out, Syrian conservative preachers have initiated in the last decades a struggle advocating for the strengthening or protection of the religious character of rules regulating the assumed “private sphere” of associated life – i.e. family relations. Sharia tenets concerning Personal Status are conceived by them as «the last bastion of sacred law»<sup>31</sup>.

The struggle for reform of family law, whether in secular or conservative directions, is therefore perceived as crucial by all actors in the Syrian War<sup>32</sup>. Islamist opposition movements to the Syrian regime have hastened, after taking territorial control since 2012, to establish Sharia courts.

In the Autonomous Regions controlled by the Kongra Star and the TEV-DEM, instead, a new fundamental law called Social Contract (SC-AR) was promulgated in 2014<sup>33</sup>. It devoted ample space to the enunciation of women’s rights, explicitly sanctioning (in contrast to the LPS) the end of centrality of Sharia dictates in inheritance and family law matters. A «transitional phase» was declared to take place under provisional institutions, aimed at moving society away «from dictatorship, civil war and destruction» in the direction of a «democratic society» (Preamble).

Following the SC-AR, the transitional phase ought to be aimed at building a society that is «free [...] from the intervention of religious authorities in the public sphere». According to Art. 92 «religion and the state» must be «separate». The right to the expression of religious beliefs is guaranteed «without limits, insofar as it does not adversely affect the general system». Art. 93 states: «authorities that contradict this Charter bear no legitimacy». In the General Principles (Title I), Art. 6-12 state that individuals as well as communities (including religious communities) are equal before the law. This contradicts the core of Art. 306 of the LPS, providing for the supremacy of Islam. Titles II and III (Fundamental Principles, Rights and Freedoms) enshrine the accession to all international human rights treaties and conventions (Art. 20-21). Independent Syria had acceded to several conventions on human, women’s and children’s rights, but mostly with reservations. In line with

30. A. Gambaro, R. Sacco, *Sistemi giuridici comparati*, Utet, 1996, p. 340; R. Sacco (ed.), *Il diritto africano*, Utet, 1995, pp. 128-129.

31. R. Maktabi, *Gender, family law and citizenship in Syria*, cit., p. 561.

32. O. Szekely, *Fighting about Women*, cit., pp. 408-410.

33. M. Bianchi, *Sulla soggettività internazionale: il caso Rojava. Spazi grigi per la regione a maggioranza curda nel nord della Siria*, Ph.D. Thesis, Università degli studi di Pisa, 2016.



the Syrian constitution, the SC-AR affirms «the inviolable right of women to participate in political, social, economic and cultural life», adding that the duty of the new institutions is to ensure «the effective realization of women's equality and an end to gender discrimination» (Art. 27-28).

A new Social Contract (SC-DF) was approved by the SDC between July and December 2016, following the DFSN declaration of democratic autonomy in March<sup>34</sup>. The Preamble states that «all segments of the population, and in particular women and youth, will form their own democratic organizations and institutions». At Art. 2 the entire «system» is said to be based on «women's freedom». Therefore «exploitation, monopoly and reification» of women are outlawed (Art. 11). Art. 12 states that the system «adopts [male-female] co-presidency in all political, social, administrative fields» and considers «equal gender representation» as a fundamental principle. Women's freedom and rights, and gender equality, must be «guaranteed» in society and women must be enabled to exercise «a free will in a democratic family» (Art. 13-14). Art. 25-26 state that «no violence, manipulation or discrimination against women» is permitted. Women have the right to «make decisions on matters that concern them» (*Ibidem*). Art. 68 of the SC-DF provides indeed for «the existence of autonomous women's organizations and the equal representation of women». These are also defined as «the basis» in the field of justice. Decisions concerning women – the same article states – must be taken «by a women's justice system» that the Kongra Star is entitled to institute.

The SDC promulgated a third Social Contract (SC-DA), the most recent, on December 12th, 2023, after years of difficult mediation between the now numerous communities involved over a vast territory. The name of AANES was changed again to the Autonomous Democratic Administration of North and East Syria (ADANES). All women's rights and the prerogatives of women's autonomous institutions contained in the SC-DF were confirmed in Art. 19, 24, 25, 50, 51, 102, 103, 108, 111, 112, 119. There are, however, some innovations. In the Preamble, women are defined as «a pillar of the democratic system». Art. 14 provides for the elimination of the «exploitation of women» through the

34. Meclisa Damezrîner a Federaliya Demokratîk a Rojava-Bakurê Sûriyê, *Reşnivîsa Hevpeymanî Civakî ya Federaliya Demokratîk a Bakurê Sûriyeyê*, 2016; eng. transl. The Constituent Assembly of the Democratic Federalism of Northern Syria, *Social Contract of the Democratic Federalism of Northern Syria*, (SC-DF), 2016; available at: [bit.ly/3BUSwFC](http://bit.ly/3BUSwFC) (accessed February 7th, 2024); see S. Marinelli, *The 2016 Rojava Social Contract: a Democratic Experiment of Civil and Social Rights in Northern Syria*, International Law Blog, October 24, 2016.

development of a «communal economy». The percentage of women's representation in all councils is raised to 50 per cent (Art. 78). The institutional organization of women's political and judicial action is also defined in greater detail. In the fourth section, a «Women's Council» is established to «represent» women (Art. 110, Para. 1), «make[s] decisions about women» (Para. 2), «organize[s] laws related to women and the family» (Para. 6), «work[s] to educate and organize women» (Para. 7) and, interestingly, «to formulate a Social Contract for women» (Para. 9). An elaborate judicial system managed and run solely by women, aimed at regulating family law and adjudicating on women's affairs («decisions concerning women», Art. 115, Para. 7) is prescribed in Art. 115-117.

## 6. ARs' 2014 "Women's Law" and the 2016 DFSN's Criminal Code reform

On 22 October 2014, the president of the Women's Body in the Executive Council of the AR's Cizire Autonomous Region, Amina Omar, promulgated a law titled *Basic Principles and General Provisions Concerning Women* (hereinafter GPW). The text, published without much international notice during the YPG-YPJ's resistance against IS in the Autonomous Region of Kobane, is commonly referred to, locally, as «the Women's Law»<sup>35</sup>. It is constituted by a set of norms enunciated in a declamatory style and through an inaugural tone. The prescriptions were enacted by the legislative institutions established by the SC-AR on the basis of a text drafted by a women-only Commission previously appointed by the Kongra Star<sup>36</sup>. Due to the reluctance of many representatives of the gender-mixed Legislative Council of Cizire to approve the revolutionary provisions, the women's organizations of the confederal movement declared that they were ready to implement and defend the provisions autonomously, considering that they had their own independent army (the YPJ) and police (the Asaysha Jin)<sup>37</sup>.

35. Rêveberiya Xwesriya Demoqratik Li kantona Cizîrê Rojava – sûrî, Encûmena Cîbicîker – Desteya Jin, 2014, *Rêgezên bingehîn û ferweriyên (bukmên) giştî yên Taybet bi jinê ve*, Jimar 9, 22/10/2014; Minister of Women Body, Administration of the Democratic Autonomy, *Basic Principles and General Provisions for Women*, (GPW), 9, October 22, 2014; available at: [bit.ly/3BQZXxj](http://bit.ly/3BQZXxj) (accessed February 7th, 2024).

36. A. Pasha, Member of the Justice Council of the Cizire Region, AANES, *Interview*, Online, June 2021.

37. H. Sozdar, Unit Commander of the YPJ, *Personal conversation with the author*, Tell Abiyad, Syria, 2016.

The provisions entailed in the GPW aren't compatible with the general structure of the LPS. Art. 2 states that equality between men and women must be complete in every aspect «of public and private life». This specific equality requirement contradicts the root of the republican framework, which proclaims formal equality of men and women in the public sphere, but carves out – through the LPS – a family, “private” space where different rules apply. What is even more disruptive for the previous legal system, the GPW defines marriage a «civil contract», getting rid of any direct power of religious tenets in the legal realm (Art. 12). The parties to the civil contract, moreover, are granted equal rights to proceed to divorce (Art. 14). Art. 14 abolishes unilateral repudiation, and the woman is guaranteed possession or fair repayment of property, including jewelry, that she brought into marriage (Art. 29). The crime of adultery is punished equally (Art. 18) if committed by husband or wife.

For these reasons the text constitutes a revolution in relation to both Islamic and customary norms<sup>38</sup>. In addition to prohibiting marriage with minors, consistently with the SC-AR (Art. 16), it guarantees «equality between men and women in work and wages» (Art. 8), as well as maternity leave for female workers up to their third child (Art. 28). The equal legal value of male and female testimony in court is also affirmed, differently from the LPS (Art. 9)<sup>39</sup>. Art. 10 prohibits the marriage of women without their consent and Art. 11 abolishes the *mahr* (the Quranic allocation of money to the bride by the groom) as it would equate «the value of women» to that of a «material good over which possession is exercised». The *mahr* tradition, states the article, is to be replaced by an «equally shared marriage life». Art. 13 prohibits polygamy, which is allowed with limitations by Sharia and the LPS.

Art. 15 puts the rights of men and women on an equal footing in matters of inheritance, contrary to the Sharia tradition and the general dictate of the LPS. This is instead in line, as other GPW provisions, with the 2006 amendments concerning the Catholic minority. The so-called «honor killing» (femicide committed for adultery or other “indecent” conduct) is equated with the ordinary murder at Art. 17 of the GPW, reinstating on this matter the ordinary distinction between intentional or premeditated murder. This typology of crime, considered as to allow the strongest extenuating circumstances by the Syrian Criminal Code (Art. 192; 240-

38. N. Baassiri, *Women's Activist: Rojava Laws a Dream Turned Reality*, Syria Untold, March 25, 2017, available at: [bit.ly/3zRX1PF](http://bit.ly/3zRX1PF) (accessed February 7th, 2024).

39. E. van Eijk, *Family Law in Syria: A Plurality of Laws, Norms and Legal Practices*, Ph.D. Thesis, Leiden University Repository, 2013, p. 88.

242; 548), used to be punished through fewer years of imprisonment and possibly with barely a few months<sup>40</sup>. Art. 548 of the republican Criminal Code had been amended in 2009 as follows: «He who catches his wife, sister, mother or daughter by surprise, engaging in an illegitimate sexual act and kills or injures them unintentionally must serve a minimum of two years in prison». Previously the same crime «benefited from a complete “exemption of penalty”» (Human Rights Watch 2009).

The protection of women victims of violence, and of pregnant detainees, is affirmed at Art. 19-21, 30 of the GPW along with that of children victims of trafficking. The right to maternal custody over children is extended by Art. 25 to the age of 15, after which the child has the right to choose his or her custodian from among his/her parents. Children are acknowledged protection and maintenance, at the same article, by both parents until the age of 18.

On April 2<sup>nd</sup>, 2016, the Legislative Council of the Cizire Canton in the newly proclaimed DFSN approved Amendments to the Syrian Criminal Code entitled: *Family related – Chapter III, In Crimes against Family and Public Morals* (CC-A). Art. 157 punishes anyone who concludes a marriage contract on behalf of a child under the age of 18 with imprisonment from three to seven years, including the guardian and anyone who was a party to the agreement. The text establishes prison and financial penalties for those who contravene the GPW: one to two years and 500,000 Syrian pounds for male polygamists and those who have contracted the marriage between the parties (Art. 158); three to seven years (and compensation proportionate to the woman’s economic condition) for those who contract a compensatory marriage, i.e. resulting from tribal disputes or feuds (Art. 161); one to two years for male adultery, if it is denounced or in *flagrante delicto* (Art. 162).

The law promulgated by the DFNS also punishes incest with one to three years, not less than two years if the perpetrator is the *wali*, i.e. the male guardian of the woman (Art. 164); seven years to life imprisonment for rape, not less than ten if the victim is under twelve years of age (Art. 165); nine years to life imprisonment for those who have sexual intercourse with minors under eighteen years of age (art. 166); three to twenty years for prostitution trafficking (Art. 168-169); three to fifteen years for anyone who kidnaps another person, not less than five if he/she is a minor (Art. 170); one to three years for anyone who «seduces a girl with a proposal of marriage and breaks her virginity» (Art. 171); not less than five years for anyone who causes a woman’s abortion without her consent, not less than

40. Ivi, pp. 121-122.

ten years if this results in the woman's death (Art. 174); from three years to life imprisonment and up to four million Syrian pounds for anyone who profits from trafficking of women or children (Art. 177).

Some articles of the new Code are striking in the nature of the crimes or penalties. Marriage contracted in the name of a daughter without her consent is punishable by imprisonment from one to three months or by penalties of up to one hundred thousand Syrian pounds, if the complaint is made before the marriage; from three months to one year and up to three hundred thousand pounds if the complaint is made after the marriage, no later than one year afterwards (Art. 159). The mild nature of these penalties is probably due to the deeply rooted customary nature of these behaviors. In fact, the LPS limits the power of the *wali* to decide on marriage without the woman's consent, but also the woman's power to decide whom to marry without the *wali*'s approval. Much of the decisive power is left by the LPS to the Sharia judge, a male by law. The ratio of the CC-A newly established penalties might be related to the fact that the prospect of very harsh punishments inflicted on the *wali* (often the woman's father), could make it for many women psychologically difficult to press charges.

The CC-A punishes, consistently with the Sharia tradition, unlawful sexual intercourse (e.g. not sanctioned by the marriage bond). Departing from traditional legal solutions, however, it stipulates the punishment in a prison sentence ranging from three months to one year, only if there is a complaint or in *flagrante delicto* (Art. 163). This sanction substitutes those provided for by the Quran (a hundred lashes, II: 24) or Sunna, contemplating even death by stoning<sup>41</sup>. Physical molestation or groping of men or women leads to imprisonment for three to six months (Art. 172). A similar penalty is provided for any man who manages, possibly in disguise, to enter places for women only (Art. 173).

## 7. Implementation of the provisions

The implementation of the GPW and the CC-A has encountered considerable difficulties since 2014. However, it also achieved results<sup>42</sup>. The revolutionary nature of the norms clashed with local customs,

41. Ṣaḥīḥ Muslim, XVII: 4194; see V. Hamzić, Z. Mir-Hosseini, *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts*, London, Women Living Under Muslim Laws, 2010.

42. A. Benario, *Zum Verhältnis von Recht und Moral: Die Dialektik der Frauengesetze*

traditions, beliefs and personal interests, but attracted consensus by those who wished for reforms. Added to this scenario is the problem of the legitimacy of the AR as sources of law, which is denied by other institutions (*de jure* or *de facto*) involved in the Syrian conflict. This quest for legitimacy is entangled in a civil war with multiple direct international involvement<sup>43</sup>. This is why it brought about multiple offensives perpetrated by state and non state actors against AANES institutions, notably by the Republic of Turkey in 2018 and 2019. Turkey has succeeded in taking away important territories from the confederal authorities striving to implement the GPW and the CC-A. Where ADANES judicial authorities can still proceed to enforce the new rules, a further obstacle is the poor technical formalization of the legal tools, primarily the GPW<sup>44</sup>.

To date, the application of the GPW and, *a fortiori*, the CC-A, is only envisaged in three of the seven Regions into which ADANES is organized: Cizire (partly occupied by the SNA and Turkey since 2019), Euphrates (including the pre-existing Kobane Canton, partly occupied by SNA and Turkey since 2019) and Afrin (mostly occupied by SNA and Turkey since 2018). These are the three Kurdish-majority areas of Syria, called *Rojava* in Kurmancî. In the Turkish occupied territories of Rojava, autonomous institutions have been dismantled and there is therefore no chance to implement the GPW and the CC-A. In the remaining regions (Manbij, Al-Tabqa, Ar-Raqqa, Deir el-Zor) the GPW and the CC-A are not in force.

The administrative system of AANES/ADANES, created as of 2018 as a result of the inclusion of these last areas in territories controlled by the SDF, provides for a wide margin of legislative autonomy on the part of each Region. The legislative councils of Cizire, Euphrates and Afrin voted for the GPW, while this was not the case for the other four regions. This is due to two main reasons. The civil councils governing the Arab Regions aren't expression of the same social process as the legislative councils in Afrin, Euphrates and Cizire<sup>45</sup>. They also do not

*in Rojava*, Kurdistan Report, 2017, available at: [bit.ly/3jgrqAz](http://bit.ly/3jgrqAz) (accessed February 7th, 2024).

43. H. Rasit, *Competing revolutionaries: Legitimacy and leadership in revolutionary situations*, in *The British Journal of Sociology*, vol. 72, n. 4, 2021, pp. 1092-1112.

44. H. Sharine, Judge of Amude's Tribunal (DFNS), *Interview*, Amude, Syria, March 2016.

45. W. Van Wilgenburg, *Struggle against ISIS and the integration of Arab territories in the autonomous Administration*, in *The Autonomous Administration of North and East Syria between a rock and a hard place*, Transnational Press 2020, pp. 97-116.

have the same socio-political composition as those organs. The civil councils of the Arab Regions are bodies instituted in exile while those regions were under the control of IS. They were created by dissidents from the Salafi government and by sympathizers with the model of self-government proposed by the TEV-DEM and the Kongra Star. Once these bodies took over the provisional civilian government of the newly liberated areas, they involved representatives of local kinship structures interested in sharing the tasks of the new administration<sup>46</sup>. This makes these bodies less democratic than those in Rojava. The Rojava councils are not based solely on cooptation, rather on a process of popular participation and delegation by discussion and vote that has lasted for years<sup>47</sup>. Moreover, the newly established Civil Councils of the Arab Regions came to be quite dependent on tribal structures grounded on a rigid patriarchal culture.

Neither the linguistic or ethnic cleavages, nor religious allegiances are decisive to this political divide. Patriarchal kinship structures (*qabīla* and *aşiret*) are influential among Kurds as much as Arabs in North and East Syria. Kurds in the Cizire and Euphrates Regions follow the Shafi school of law, no less rigid in matters of personal status than the Hanafi school marking the LPS, prevalent among Arab Islamic believers in those regions, and among Kurds in Afrin and Aleppo<sup>48</sup>. The linguistic divide is not relevant here. What makes the decisive difference between the Kurdish and Arab communities of Syria is the social, educational and propaganda work of the PKK in the 20<sup>th</sup> century, and the PYD's in the 21<sup>st</sup><sup>49</sup>. These organizations are strongly committed to spreading the idea that women's autonomy and leadership is at the heart of the original Mesopotamian culture, largely denied and marginalized by various forms of colonialism, including those imposed in the name of Islam<sup>50</sup>. The Arab regions of AANES weren't affected by such an ideological work among the population.

46. Rojava Information Center, 2021, *Beyond Rojava. North and East Syria's Arab Regions*, June 2021, available at: [bit.ly/3mLjV82](http://bit.ly/3mLjV82) (accessed February 7th, 2024); see also E. Ayboga, A. Flach, M. Knapp, *Revolution in Rojava*, cit., pp. 54-60, 154-163.

47. D. Grasso, *The People's Communes in Rojava and North-Eastern Syria*, cit., pp. 112 ff.

48. J. Lamce, *Marriage Requirements in the Classic Doctrine of the Islamic Sunni Schools*, in *Academic Journal of Interdisciplinary Studies*, 3: 1, March 2014.

49. T. Shmidinger, *Rojava. Revolution, War, and the Future of Syria's Kurds*, cit., pp. 74-85.

50. A. Öcalan, *Liberating Life: the Women's Revolution*, International Initiative Edition and Mesopotamian Publishers 2013.

That doesn't mean that groups of Arab women didn't implement steps to self-organize in AANES. To date, among the Arab cities of AANES, Women's Houses and Kongra Star activities are allegedly most advanced in the city of Ar-Raqqa<sup>51</sup>.

The acceptance of the GPW has been greater in the Cizire and Euphrates Regions, where it is in force. A very few families are voluntarily complying with it in Manbij, Ar-Raqqa or Deir el-Zor, where its application is only recommended by the ADANES and Kongra Star. In these areas, Kongra Star carries out house-to-house awareness-raising work to make the existence of this legal instrument known to women who would like to advocate for its use<sup>52</sup>. Given the non-compulsory nature of compliance with the GPW, the intention is there to motivate women to bring their fathers and husbands, in the event of controversy, before the reconciliation commissions of the Women's Houses, which in any case attempt to produce a mutually favorable mediation inspired at the GPW. This model is also applied in Rojava, where the Communes and Women's Houses favor consensual family paths, mostly avoiding coercion<sup>53</sup>.

51. Rojava Information Center, *Beyond Rojava*, cit.

52. H. Viyan, Militant of the Kongra Star, *Personal conversation*, Qamishlo, Syria, September 2016; Anf News, *Die Frauengesetze der Autonomieverwaltung von Nord- und Ostsyrien*, Anf Deutsch, June 19, 2021, available at: [bit.ly/3f5ydM8](https://bit.ly/3f5ydM8) (accessed February 7th, 2024). J. Wartmann (*Negotiating what it means to be "free": gender equality and governance in North and East Syria*, in *International Feminist Journal of Politics*, 1-22, 2023) correctly highlights that these activities, undertaken by Kongra Star, take place in opposition to – or to the detriment of – convictions of those women, who do not approve of the content of the proposed reforms. This qualifies, however, a revolutionary process as such: a phase of patent social discord, without which existing or traditional social hierarchies could hardly be challenged.

53. O. Horo, H. Hêbun, *Ciban Xidro: Das Frauengesetz Muss Umgesetzt Werden*, Anha News, July 14, 2021, available at: [bit.ly/37ejYQt](https://bit.ly/37ejYQt) (accessed February 7th, 2024); see also Y. Duman, *Peacebuilding in a Conflict Setting*, in *Journal of Peacebuilding & Development*, 12: 1, pp. 85-90, April 2017. It seemingly still exists a distinction, in the Women's Houses' judicial practice, between conciliation committees following disputes within Muslim families and those performing the same tasks for Christian couples and families. In principle, this subdivision would be at odds with the uniformity inspiring the GPW, though it does not contradict its literal dictate. Future research should ascertain to what extent this practice is the result of an additional element of pragmatic arrangement with existing social divides or, at the contrary, of an explicit ideological orientation. In the first case, the concrete distances between social groups and the inclination to implement the spirit of the new law gradually could be construed as decisive. In the second case the conviction might be relevant, that residual judicial pluralism (no longer referring to religious courts, nor to a legal dictate of divine derivation) does not conflict with the protection of the general interests of women and minors. On the intersection of "social segments" interests



Opposition to these laws and implementation practices has taken on a political and even violent guise. Some of the public demonstrations against the AANES, in recent years, had policies on women and family as their focus, as well as the modification of school curricula (especially the introduction of Jineolojî, the Women's Science proposed by Kongra Star)<sup>54</sup>. Such demonstrations have often called for the return of AANES territories under Baath control. These oppositional sectors of the population have continued to marry, live and divorce according to the dictates of the LPS or to customary law, ignoring the new rules as much as they have been able to. This attitude is all the more radical among individuals or families close to Islamist groups such as the SNA, HTS or IS.

IS clandestine cells militarily attack civilian and personnel of the ADANES, or tribal leaders involved in the Civil Councils, on a daily basis. The SNA has been conducting offensives since 2017 against AANES with direct Turkish support. As a result, almost the entire Afrin Region (with the exception of the Tell-Rifaat area), as well as the areas of Tell Abyad in the Euphrates Region and Ras al-Ain/Serekaniye in the Cizire Region, are under the de facto authority of the SIG, for which SNA groups carry out military policing duties<sup>55</sup>. In these areas all Women's Houses and confederal institutions have been disbanded, and the GPW banned. There paramilitary groups re-institute Sharia courts applying legal solutions that do not conform to the LPS, as IS has done in the territories under its control. Such solutions can be Hanbalite (IS, SG, SIG) or framed in the Hanafi tradition, possibly deprived of secular adjustments entailed in the post-independence LPS formulation (SIG).

and those of "communities" see D. Grasso, *Gender Equality or Legal Pluralism? An Ostensible Puzzle in Syrian Rojava's Legal System*, in *Syrian Studies Association Bulletin*, 2, 2021.

54. H. Zilan, Member of Kongra Star (DFNS), *Interview*, Qamishlo, Syria, November 2017; see also P. Dinç, *The content of school textbooks in (nation) states and "stateless autonomies": A comparison of Turkey and the Autonomous Administration of North and East Syria (Rojava)*, *Nations and Nationalism*, 26: 4, 2020; A. Boyle Espinosa, A. Ronan, *Rojava's "war of education": the role of education in building a revolutionary political community in North and East Syria*, in *Third World Quarterly*, 44: 2, 2023, pp. 1-19. On Jineolojî see Institute Andrea Wolf, *Mujer, Vida y Libertad: Desde el corazón del movimiento de mujeres libres del Kurdistan*, Descontrol Editorial i Imprenta 2020.

55. L. Radpey, *Assessing International Law on Self-Determination and Extraterritorial Use of Force in Rojava*, *Lawfare*, November 13, 2020, available at: [bit.ly/3zW9vpr](https://www.lawfare.com/ly/3zW9vpr) (accessed February 7th, 2024).

## 8. Conclusions

On 22 June 2019, a Document of Understanding between the representatives of the seven AANES Regions was approved by the general Legislative Council. It was a legal document formally listing provisional principles and procedures of AANES, pending agreement on the contents of a new Social Contract<sup>56</sup>. Although Art. 31 of the Document of Understanding states that «all individuals are equal before the law and there shall be no discrimination between citizens on the grounds of nationality, religion, creed, origin, social status, sex or color», the word «women» appears only in one instance throughout the document, at Art. 5: «The Women’s Authority shall organize itself and form its committees as required». The renewed Social Contract, approved in 2023, does contain and reinforce, as stated earlier, provisions on women’s rights and the autonomy of women that were present in the 2014 and 2016 laws. Nevertheless, the fact that its promulgation had been announced several times starting 2021, and never took place until late 2023, testifies to the political tensions within the AANES/ADANES, especially between Kongra Star and Pyd militants, on one side, and representatives of several influential tribal groups on the other<sup>57</sup>.

Since 2021, a detailed draft codification of Family law has circulated, entitled *Amendments to the Women’s Law* (GPW-A). This text, which some activists in the Judicial Council call the “Civil Code of Women” (as to distinguish it from the CC-A)<sup>58</sup>, consists of forty-two articles. It exhibits traits of legal comprehensiveness and technical sophistication far greater than the GPW. Interestingly, while sticking on the Sharia legal formulation style, it enhances to the extreme women’s powers in the family, strengthening all along children’s interests vis-à-vis paternal authority. The text has been ever since lying, awaiting approval, at the AANES and ADANES Legislative Councils.

According to the co-Chairwoman of this body, Rima Barakat, the difficulties in approving the GPW-A stem, again, from the opposition of tribal representatives from Manbij and Deir el-Zor, who threatened

56. General Council of the Autonomous Administration of North-Eastern Syria, *Document of Understanding*, Unreleased Document, June 22<sup>nd</sup>, 2019.

57. Rojava Information Center, 2021, *The AANES has announced that NES-wide elections will be held after the renewal of the social contract*, Twitter, June 14, 2021, available at: [bit.ly/3xaPSrL](https://bit.ly/3xaPSrL) (accessed February 7th, 2024).

58. A. Pasha, Member of the Justice Council of the Cizire Region (AANES), *Interview*, Online, June 2021.

to withdraw support to the Council itself (and AANES or ADANES as a whole) if the GPW-A is approved<sup>59</sup>. In areas under Turkish or Baathist siege, where tribal alliances can be decisive for military developments, this is an existential threat to the entire confederal revolution<sup>60</sup>. This circumstance underlies the centrality of Family law in the political and social conflicts of contemporary Syria. Women's bodies, power and autonomous political action trigger changes with great social and political implications. They end up in being one of the unacknowledged roots of social crisis resulting in geopolitical ones, with tremendous domestic, international, legal and military impact.

59. R. Barakat, Co-President of the Legislative Council (AANES), *Interview*, December 2021.

60. I. Orkan, Chair of Ufficio d'Informazione del Kurdistan in Italia – Uiki Onlus, *Interview*, Online, May 2021; J. Szuba, *Alliance between SDF and Syrian regime is "very far away", senior Kurdish official Salih Muslim says*, The Defence Post, February 18, 2019, available at: [bit.ly/3xbH70M](https://bit.ly/3xbH70M) (accessed February 7th, 2024).

# DRAWING POST-APARTHEID GEOGRAPHY IN SOUTH AFRICA: THE CONSTITUTIONAL COURT'S APPROACH TO HOUSING, LAND, AND GENDER

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SUMMARY: 1. Introduction – 2. Apartheid geography and land reforms in South Africa – 2.1. Spatial and gender inequality under colonialism and apartheid – 2.2. Land reforms in contemporary South Africa – 3. The Constitutional Court's approach to land, housing, and gender in *Daniels* and *Rahube* – 3.1. *Daniels v. Scribante* – 3.2. *Rahube v. Rahube* – 4. Uncovering the colonial-apartheid legal geography in contemporary South African legal system – 4.1. Racial and gender inequality as a “past sin” – 4.2. A new spatial and gender-responsive jurisprudence for South Africa – 5. Concluding observations.

## 1. Introduction

The essay addresses the Constitutional Court's contribution in advancing women's rights to land, housing, and property in South Africa within the framework of post-apartheid land reforms.

As is known, the colonial and apartheid regimes shaped South African human and legal geography<sup>1</sup>. Law was used to create and maintain racially

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1. The term “legal geography” has been firstly used by F.W. Maitland, *Township and Borough: The Ford Lectures 1897*, Cambridge University Press, 1898, p. 11 with reference to the legally relevant relationships between the law, space, and the community. In the past two decades, legal geography methodology is contributing to investigate the interdisciplinary connections between law and space by focusing the attention on how spaces affect legal implementation and drafting (the spatiality of law), how law contributes to the construction of spaces and places, and how do lawyers understand and engage with matters of jurisdiction and scale. See L. Bennet, A. Layard, *Legal Geography: Becoming Spatial Detectives*, in *Geography Compass*, vol. 9, n. 7, 2015, pp. 406-422, DOI: [10.1111/gec3.12209](https://doi.org/10.1111/gec3.12209). See also N.K Blomley, *Law, space, and the geographies of power*, Guilford Press, 1994; I. Braverman, N. Blomley, D. Delaney, A. Kedar (eds.), *The expanding spaces of law: a timely legal geography*,

and classed-based spaces, as well as the uneven distribution of goods and resources between white and black people<sup>2</sup>. In turn, the construction of racially identified spaces influenced the drafting and implementation of the law<sup>3</sup>. This occurs as places which are inscribed with legal significance «are not simply the inert sites of law but are inextricably implicated in how law happens»<sup>4</sup>. Thus, law and space co-constituted each other in South Africa, on terms beneficial to white people.

As regards rights to land, housing, and property, Western categories and legal constructs were transplanted into the South African legal system during the colonial era<sup>5</sup>. This also entailed introducing the Western understanding of rural and urban development, i.e., capitalism, individualised cash economy, and cheap migrant labour<sup>6</sup>. The apartheid regime further drew South African geography through land dispossession and relocation of black people to racially based “homelands” and reserves<sup>7</sup>.

Since 1994, the National Government has introduced land reform programmes to redress past injustices and advance fundamental civil rights through land restitution, land redistribution, and the reform of the tenure system<sup>8</sup>.

Stanford University Press, 2014, M. Nicolini, *Territorial and Ethnic divide: A new legal geography for Cyprus*, in M. Nicolini, F. Palermo, E. Milano (eds.), *Law, Territory and Conflict Resolution. Law as a Problem and Law as a Solution*, Brill, 2016, pp. 285-315.

2. T.W Bennet, *African Land – A History of Dispossession*, in R. Zimmermann, D. Visser (eds.), *Southern Cross: Civil Law and Common Law in South Africa*, Clarendon Press, 1996, pp. 65-94.

3. On the definition of apartheid geography see R. Madlalate, *Dismantling apartheid geography: transformation and the limits of law*, in *Constitutional Court Review*, vol. 9, n. 1, 2019, p. 197. DOI: 10.2989/ccr.2019.0008. See also, A. Akinwumi, *Powers of reach legal mobilization in a post-apartheid redress campaign*, in *Social & Legal Studies*, vol. 22, n. 1, 1993, pp. 25-41; J Robinson, *The Power of Apartheid: State Power and Space in South African Cities*, Butterworth-Heinemann, 1996.

4. I. Braverman, *Who's afraid of methodology? Advocating a methodological turn in legal geography*, in I. Braverman et al. (eds.), *The expanding spaces of law: a timely legal geography*, Stanford University Press, 1994, p. 1.

5. See M. Nicolini, *L'altra Law of the Land. La famiglia giuridica mista dell'Australia*, BUP, 2016, pp. 117-131; pp. 156-166.

6. See H. Wolpe, *Capitalism and Cheap Labour-Power in South Africa: From Segregation to Apartheid*, in *Economy and Society*, vol. 1, n. 4, 1972, pp. 425-456; N. Worden *The Making of Modern South Africa: Conquest Segregation and Apartheid*, 3rd ed., Blackwell, 2000, p. 75.

7. See T.W Bennet, *African Land – A History of Dispossession*, cit., pp. 65-94.

8. White Paper on South African Land Policy (April 1997), Department of Land Affairs, 1997, available at: [www.gov.za](http://www.gov.za).

The alteration of South African traditional forms of economic and social organization during the colonial and apartheid regimes was particularly harmful for women. Due to dispossession and overpopulation, landlessness increased within the reserves and the homelands. This crisis was deepened by colonial policies, according to which customary land and inheritance laws had to be strictly enforced by white officials and traditional (male) leaders. The patriarchal version of customs was thus preferred as it better served colonial and apartheid policies<sup>9</sup>.

Against this background, the essay focuses on the approach adopted by the Constitutional Court of South Africa towards women's land, housing, and property rights, highlighting its contribution to the development of a new «spatial jurisprudence» beyond colonial and apartheid spatial constructions<sup>10</sup>.

In the first part, the essay deals with spatial and gender inequalities during colonialism and apartheid. In this respect, it introduces the notion of “apartheid geography”<sup>11</sup>. Then, it discusses the land reform programmes promoted by the South African national government.

The second section focuses on the Constitutional Court's approach towards women's land, housing, and property rights by drawing the attention to two landmark decisions: *Daniels v. Scribante* (2017) and *Rahube v. Rahube* (2018)<sup>12</sup>.

The judgments at hand are particularly interesting, as the Court partially departed from traditional legal methods and reasoning by providing an extensive social and historical contextualisation of land and housing claims.

Not only did the Constitutional Court show awareness of spatial inequalities created by the colonial and apartheid regimes, but it also recognised their resilience in contemporary South African legal and social reality.

This was possible as the Constitutional Court's arguments went beyond the “black-letter law” to read the impugned provisions through the lens of legal geography.

Furthermore, the Court dealt with individual experiences of

9. A. Claassens, *Recent changes in women's land rights*, in *Journal of Agrarian Change*, vol. 13, n. 1, 2013, p. 73. DOI: [10.1111/joac.12007](https://doi.org/10.1111/joac.12007).

10. R. Madlalate, *Dismantling apartheid geography*, cit., p. 195.

11. *Ibidem*.

12. *Daniels v Scribante & Another* [2017] ZACC 13, 2017 (4) SA 341 (CC); *Rahube v. Rahube* [2018] ZACC 42, CCT319/17 (CC).

discrimination by considering the intersections of the historical, social, and political grounds in the legal construction of spaces, as well as the outcomes of these intersections in terms of women's land, housing, and property rights. By adopting the intersectional approach to land, race, and gender<sup>13</sup>, the Court acknowledged that colonial and apartheid construction of rural and urban spaces marginalized women by enforcing the «patriarchal model of men as the heads of extended families presiding over their wives and children»<sup>14</sup>.

Finally, the third section of the essay deepens the discussion on the implications of the spatial and gendered approach adopted by the Constitutional Court with regard to women's land and housing rights.

The article highlights the Constitutional Court's capacity to decoding apartheid geography in post-apartheid legal system, capturing the points at which law, space and gender intersect. Legal geography methodology and the intersectional approach to race, gender, and space successfully help the Court to uncover the reiteration of apartheid spatial construction, as well as gendered patterns of land access and ownership in apparently neutral legal provisions.

## 2. Apartheid geography and land reforms in South Africa

### 2.1. *Spatial and gender inequality under colonialism and apartheid*

Apartheid spatial inequality is a recurring theme in South African case law with reference to housing, land, and property rights<sup>15</sup>. In this respect, the term “apartheid geography” has been used in literature to denote «the creation and maintenance of racially-identified spaces, coupled with racial and class-based segregation and an uneven

13. K. Crenshaw, *Mapping the margins: Intersectionality, identity politics, and violence against women of color*, in *Stanford Law Review*, n. 43, 1991, pp. 1241-1299. See also, L. McCall, *The complexity of intersectionality*, in *Signs: Journal of Women in Culture and Society*, vol. 30, n. 3, The University of Chicago Press, pp. 1771-1800.

14. A. Claassens, *Recent changes in women's land rights*, cit., p. 74.

15. See, *Government of the Republic of South Africa and others v. Grootboom and others* [2000] ZACC 19, 2001 (1) SA 46 CC; *Port Elizabeth Municipality v. Various Occupiers* [2004] ZACC 7, 2005 (1) SA 217 CC at paras 11-12; *Federation of Governing Bodies of South African Schools (FEDSAS) v. Member of the Executive Council for Education, Gauteng and Another* [2016] ZACC 14, 2016 (4) SA 546 (CC) at para 38; *Gelyke Kanse and Others v Chairperson of the Senate of the University of Stellenbosch and Others* [2019] ZACC 38.

distribution of social goods and public amenities»<sup>16</sup>, also shaped through discriminatory law and practices.

To mention just a few examples, racialization of South African urban and rural spaces occurred under the Black Land Act 27 (1913), the Natives (Urban Areas) Act 21 (1923); the Black Communities Development Act 18 (1936).

The production of apartheid geography was further characterised by statutory measures which allowed the native people eviction from their land. The Group Areas Acts n. 41 (1950) and the Group Areas Acts n. 36 (1966) regulated the acquisition, alienation, and occupation of land and established six self-governing territories (KwaNdebele, QwaQwa, Gazankulu, Lebowa, KwaZulu-Natal and KaNgwane) and four independent nation states, the so-called “homelands” of Transkei, Bophuthatswana, Ciskei, and Venda<sup>17</sup>.

These acts determined the racial composition of urban spaces: black people who were not required as workers in the urban areas were forced to move to designated township and reserves.

Not only dislocation affected black people socio-economic rights under the apartheid regime, but the legacies of racialisation, segregation and land deprivation are still visible in contemporary South Africa; for instance, «in the large number of black people experiencing precarious tenure in land and housing rights» in those areas that were assigned to them under the apartheid era<sup>18</sup>.

The colonial and apartheid regimes used the legal system «to advance a racist agenda and ensure that the formation of South Africa’s urban and rural areas occurred on terms beneficial to white people»<sup>19</sup>. Law was instrumental «to determine who could be present, as well as when and on what terms this was to occur»<sup>20</sup>.

When it comes to women, they were simply “absent” in the apartheid

16. R. Madlalate, *Dismantling apartheid geography*, cit., pp. 195-217. See also J. Robinson, *The Power of Apartheid: State, Power and Space in South African cities*, Butterworth-Heinemann, 1996.

17. On December 2021, the Parliament of South Africa voted against the amendment of Section 25 of the Constitution which provided for the expropriation for land reform without compensation. See also Elmien du Plessis, *No expropriation without compensation in South-Africa Constitution – for the Time Being*, in *VerfBlog*, 2021/12/09, available at: [www.verfassungsblog.de](http://www.verfassungsblog.de), 2021.

18. A Lemon (ed.) *Homes Apart: South Africa’s Segregated Cities*, Indiana University Press, 1991, pp. 1-9.

19. R. Madlalate, *Dismantling apartheid geography*, cit., p. 198.

20. Ivi, p. 199.



legal construction of rural and urban spaces, as they were excluded from holding land, housing, and property rights.

More in details, pre-colonial era exhibited a variety of forms of acquisition and inheritance of land which also allowed women to acquire land and housing<sup>21</sup>. Under the colonial and apartheid regimes instead the Western legal concept of exclusive ownership was introduced. Land was only vested in men and women's land, housing, and property rights were connected to marital status; thus, impairing women's social and economic position within the rural family and the society<sup>22</sup>.

During the negotiation of the post-apartheid Constitution, rural women's organizations were successful in ensuring that customary law should be subject to the Bill of Rights<sup>23</sup>. Furthermore, they repeatedly challenged discriminatory laws before courts<sup>24</sup>. Gender inequalities in terms of land and housing have been also subject to discussion and addressed by the government within the framework of the post-apartheid land reforms. In this context, women and civil society organisations actively campaigned to advancing women's rights to land and property.

Despite their engagement in such a transformative project, South African women still suffer from consolidated gendered patterns governing land, housing, and property.

## 2.2. *Land reforms in contemporary South Africa*

In the 1990s, the post-apartheid governments started land and property reforms. The aim was to ensure the security of tenure for labour tenants in white-owned farms, as well as redistribution and restitution of land. Due to the relevance of land rights in the transition from apartheid to constitutional democracy, land reforms were embedded in the 1996 Constitution.

Section 25 affords a considerable degree of protection to property

21. B. Oomen, *Chiefs in South Africa: Law, Power and Culture in the Post-Apartheid Era*, Boydell & Brewer Ltd, 2005; D. Posel, *State, Power and Gender: Conflict over the Registration of African Customary Marriage in South Africa c. 1910-1970*, in *Journal of Historical Sociology*, vol. 8, n. 3, pp. 223-256.

22. H.J Simons, *African Women: Their Legal Status in South Africa*, C. Hurst & Co., pp. 264-266

23. C. Albertyn, *Women and the Transition to Democracy in South Africa*, in *Acta Juridica*, 1994, pp. 39-63.

24. Ivi, pp. 39-63.

owners; at the same time, it provides that «the state must take reasonable legislative and other measures within its available resources, to foster conditions which enable citizens to gain access to land on equitable basis», advancing land rights on equal terms.

Yet the reform process is hampered by extensive institutional dysfunctions, lack of transparency, and systemic rights violations, thus, impeding the fulfillment of post-apartheid constitutional promises<sup>25</sup>.

This failure is particularly harmful for young people and women<sup>26</sup>, who, as already mentioned, were excluded from land ownership by the codification of «the overlapping patriarchies of white officials and black elders» in colonial and apartheid laws<sup>27</sup>.

In the aftermath of the apartheid, land, housing, and property rights remain the cornerstone of activism in the quest for the advancement of women's socio-economic rights and the catalysts of the democratization process. In this respect, the Constitutional Court is playing a decisive role to advancing the cause of women' equality and justice over land and housing<sup>28</sup>.

### **3. The Constitutional Court's approach to land, housing, and gender in *Daniels and Rahube***

In *Daniels and Rahube*, the Constitutional Court discussed the impugned legal provisions within the broader historical and social context in which they were conceived and operated.

The contextualisation of land claims allowed the Court to recognise the resilience of colonial and apartheid spatial logic in the legal construction of rural and urban spaces in South Africa. Most importantly, the Court uncovered the duplication of apartheid legislation in contemporary laws

25. Department of Agriculture, Land Reform & Rural development of South Africa, *Annual Report, 2020/2021 on Agriculture, Land Reform and Rural Development*, 2022, available at: [www.dalrrd.gov.za](http://www.dalrrd.gov.za).

26. D. Hitchcock-Lopez, *If a Person Must Die, Then So Be It: A Constitutional Perspective on South Africa's Land Crisis*, in Wash. U.J.L. & Pol'y, 2019, p. 318.

27. A. Claassens, *Recent changes in women's land rights*, cit., p. 82. See further, S. Marks, *Patriotism, Patriarchy and Purity: Natal and the Politics of Zulu Ethnic Consciousness*, in L. Vail (ed.), *The Creation of Tribalism in Southern Africa*, University of California Press, 1989, pp. 215-240.

28. *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another* [2019] ZACC 30.

on land and property<sup>29</sup>. The development of a “post-apartheid spatial jurisprudence”<sup>30</sup> is coupled with the assessment of the legal frameworks governing land, housing, and property in the light of the intersections between race, gender, and space.

### 3.1. *Daniels v. Scribante*

In *Daniels*, the applicant, Ms Yolanda Daniels, resided in a dwelling on the farm Chardonne as an occupier under the Extension of Security of Tenure Act 62, 1997 (ESTA). The dwelling required improvements to bring the house to a level «consonant with human dignity»<sup>31</sup>. The farm owner refused the permission to make the improvements. Ms Daniels unsuccessfully argued before the Stellenbosch Magistrates’ Court, the Land Claim Court and the Supreme Court of Appeal that she was entitled to make the necessary improvements without the consent of the property owner.

The Constitutional Court instead rejected the argument that the owner has no constitutional obligation to ensure dignified living conditions to the tenant and ruled in favour of Ms Daniels.

The decision is ground-breaking, and it has been extensively discussed in literature because it acknowledged that constitutional positive obligations might have direct horizontal effects on private persons.

The Court held that the imposition of a positive duty on a private individual was justified by the importance of Ms Daniels’ right to adequate housing *ex art. 26 Const.*, and the tenuous nature of the owner’s duty to compensate an occupier for the improvements. The imposition of such a duty indeed remains within the court’s discretion.

There is also an aspect of the ruling that received little attention in scholarly contribution, namely the approach of the Constitutional Court to the legal construction of rural space. In this respect, the Court not only did consider whether the occupiers under the ESTA have the right to improve their dwelling without the owner’s consent<sup>32</sup>, but it also reframed the issue in terms of restoration of human dignity for an

29. J. Dugard, *Unpacking Section 25: What, If Any, Are the Legal Barriers to Transformative Land Reform?*, in *Constitutional Court Review*, vol. 9, 2019, pp. 135-160.

30. R. Madlalate, *Dismantling apartheid geography*, cit., p. 207.

31. *Daniels v. Scribante* at para 59.

32. Indeed, such a right is not contained in the Extension of Security of Tenure Act 62, 1997 (ESTA).

occupier holding precarious land rights due to apartheid discriminatory legislation.

The majority judgment extensively illustrated the colonial and apartheid policies which created spatial discrimination and, consequently, socio-economic inequalities. The Court also drew a connection between racial discrimination and gender-based discrimination. The intersectional approach highlighted the gendered dimension of land disputes. Intersectionality and legal geography methodology allowed the Court to reach conclusions that would have been unsupported considering the “black letter” of the law.

The Court affirmed that, although past discriminatory laws were repealed, some legacies of the apartheid legal construction of spaces still remain, thus contributing to fostering race and gender-based discrimination in contemporary rural and urban spaces<sup>33</sup>. In his concurring opinion, Justice Froneman affirmed that three things must be done to fulfill constitutional promises: «(a) an honest and deep recognition of past injustice; (b) a re-appraisal of our conception of the nature of ownership and property; and (c) an acceptance, rather than avoidance or obfuscation, of the consequences of constitutional change»<sup>34</sup>.

### 3.2. *Rahube v. Rahube*

The resilience of apartheid legislation and policies clearly emerges in *Rahube*, decided on 30 October 2018 by the Constitutional Court.

In the case at hand, the Applicant, Ms. Rahube, and the First Respondent, Mr. Rahube, are siblings who moved into a house in Mabopane in the 1970s. In 1987, the Department of Interior of the Bophuthatswana Government Service issued a Certificate of Occupation in Mr Rahube’s name under the Native Proclamation Act R293 (1962). In 1988, the Department of Local Government and Housing of the Republic of Bophuthatswana issued a Deed of Grant in Mr Rahube’s name as head of the household. Under the apartheid regime only men were considered as “family heads” and could obtain Deeds of Grants. Women, instead, were denied land and housing rights.

33. In a separate concurring judgment, J. Cameron is more cautious towards the bold use of historical arguments in the majority ruling by affirming that «it is not within the competence of judges to write history» (para 149).

34. *Daniels v. Scribante* per J. Froneman at para 115.

In 1991, the Upgrading of Land Tenure Rights Act automatically upgraded land rights acquired under the apartheid to ownership rights. Since the Native Proclamation excluded women from land and housing ownership, the upgrading measures indirectly perpetuated gender-based discrimination in contemporary land and property law.

Ms. Rahube was thus automatically excluded from property ownership in favour of her sibling, Mr. Rahube. The latter instituted eviction proceedings against Ms. Rahube in Garankuwa Magistrates' Court in 2009.

Ms. Rahube successfully opposed the eviction proceedings. The High Court held that the land tenure rights which the Upgrading of Land Tenure Act recognized and converted to land ownership were indeed acquired under a discriminatory legal regime.

The Constitutional Court unanimously upheld the High Court's findings that section 2(1) of the Upgrading of Land Tenure Rights Act was unconstitutional and therefore invalid, since it violated women's right to equality. In a ground-breaking judgment, the Court considered the broad historical and social context in which land laws operate.

As already mentioned, the Upgrading Land Tenure Act automatically converted to ownership the land tenure rights acquired under the Native Proclamation. The latter formalized land tenure customary law based on a patriarchal paradigm, providing that only the "family head" – i.e., men – could hold tenure rights. Consequently, the Court found the impugned provisions irrational and unconstitutional because they were aimed to ensure security of tenure of those damaged by past discriminatory legislation; instead, they indirectly contributed to perpetuate land rights discrimination based on sex and gender<sup>35</sup>.

The Court made extensive use of the social and historical narrative to contextualise the dispute. The judges noticed that the Upgrading Land Tenure Act does not provide a definition of the "family head". However, considered in the broad context of past discriminatory measures, policies, and social practices, it cannot be read in a gender-neutral way<sup>36</sup>. The contextualization of relevant legislation revealed that women were placed "outside the law"<sup>37</sup> and excluded from holding land tenure rights during the apartheid.

In the light of these considerations, the Constitutional Court found

35. *Harksen v Lane* N.O. [1997] ZACC 12; 1998 (1) SA 300 (CC); 1997 (11) BCLR 1489 (CC) at para 43.

36. *Rahube v. Rahube*, at paras 23 and 33.

37. *Rahube v Rahube*, per J. Goliath citing T. Nhlapo, at para 33.

that section 2(1) of the Upgrading Land Tenure Act was irrational, since it was based on a position acquired under apartheid legislation and, thus, it contradicted the aim of the Act itself. The section under scrutiny was also unreasonable, insofar it was designed to ensure equitable access to property and tenure security in a way that indirectly discriminated against women.

#### **4. Uncovering the colonial-apartheid legal geography in contemporary South African legal system**

In both *Daniels* and *Rabube*, the Constitutional Court shed light on a paradox hidden in the South African legal system: although post-apartheid land, housing, and property laws are explicitly designed to rectify historical injustices, they indirectly contribute to reproducing colonial-apartheid geography and, consequently, women's spatial inequality and insecurity.

The resilience of apartheid geography may be mainly attributed to the long-lasting consequences of its legal construction of spaces, as well as to the duplication of the colonial-apartheid logic in contemporary legislation on urban and rural development.

The Constitutional Court shows awareness of the mechanisms that underpin the construction of urban and rural areas through law and their persistence over time. Consequently, the Court is developing a «post-apartheid spatial jurisprudence»<sup>38</sup> which uncovers the duplication of colonial and apartheid patterns over land and property in present laws and administrative practices.

##### *4.1. Racial and gender inequality as a “past sin”*

It is not a novelty for the South African courts to draw from history in their reasonings as *argumentum quoad auctoritatem*. However, the resilience of colonial-apartheid construction of spaces in post-apartheid laws is rarely acknowledged by the judges.

As regards women's' socio-economic rights, the Constitutional Court of South Africa has usually adjudicated disputes by describing apartheid geography as a “past sin” repaired by the 1996 Constitution. According to this view, the apartheid discriminatory legal system is still

38. R. Madlalate, *Dismantling apartheid geography*, cit., p. 217.

part of the history of the country, but it no longer affects South African people<sup>39</sup>.

Take, for example, *Mazibuko v. City of Johannesburg* (2009) on water rights. The precedent-setting decision has been extensively criticised by legal scholars as it fails to advance the constitutional right to access to adequate water in poor urban areas<sup>40</sup>.

Mrs Lindiwe Mazibuko and other applicants challenged the City of Johannesburg's Free Basic Water policy, which provided for six kilolitres of water per month free to every account holder in the city and the installation of a system of pre-paid water meters in the black township Phiri. Once the free water kilolitres per household had been consumed, the inhabitants had to buy extra water credit to avoid the water supply being shut off for the rest of the month. Mrs Mazibuko – who shared her dwelling with thirteen children, her two sisters and their mother – and the other applicants complained that the local water policy did not guarantee the right to access to sufficient water protected in the Constitution (art. 27)<sup>41</sup>. This was not least in consideration of the fact that the black township of Phiri, in Soweto, is one of the poorest and overcrowded areas of Johannesburg.

In an extremely conservative ruling, the Court considered apartheid spatial construction in historical terms by arguing: «[...] the group affected are people living in Soweto who have been the target of severe unfair discrimination in the past». The judges recognised that the apartheid legal framework was discriminatory based on race. However, in the Court's narrative, the effects of discrimination are depicted as something belonging to the past which does not affect contemporary South African society.

When considering the applicants as victims of a past discrimination, the judges failed to acknowledge the reproduction of spatial inequality in contemporary urban spaces through apparently race-neutral legislation and the negative consequences in terms of distribution of resources, public goods, and amenities.

As reported in *Mazibuko*, apartheid urban policies destined the township of Phiri to black people only. The urban plan conceived each

39. Ivi, pp. 208-212. See also L. Stewart, *The Politics of Poverty: Do Socio-Economic Rights Become Real Only When Enforced by Courts?*, in *Diritto Pubblico Comparato ed Europeo*, 2011, pp. 1510-1526.

40. L. Stewart, *Do Socio-Economic Rights Become Real Only When Enforced by Courts?*, cit., 2011, pp. 152-1521.

41. *Mazibuko & Others v City of Johannesburg & Others* [2009] ZACC 28, 2010 (4) SA 1 (CC) at para. 108.

dwelling as a single-family unit. However, racially based demographic policy and forced displacement of black people caused overpopulation. The dwelling of Phiri became overcrowded. Moreover, they lacked space and basic facilities. In brief, the houses were inconsonant with human dignity.

Furthermore, water supply was insufficient to meet the basic needs of the inhabitants and the distribution system of pre-paid water meters was unaffordable for low-income residents. Women were the «most adversely affected by prepayment water meter-related problems» since they have «to make difficult choices between going for days without water and conserving water in ways that compromise health or dignity»<sup>42</sup>.

The context in which the *Mazibuko* dispute originated was indeed the result of the apartheid spatial construction of urban spaces. Whilst apartheid legal system has been dismantled, the consequences of racial and class-based policies are still visible in South African rural and urban geography, and they contribute to foster spatial discrimination.

However, in the case at hand, the Constitutional Court did not recognise the resilience of apartheid geography<sup>43</sup>. The spatial narrative in *Mazibuko* depicts racial discrimination as a matter of the past and the contemporary urban spaces as gender and race neutral. By ignoring the long-lasting adverse effects of apartheid legal construction of spaces, the Court effectively allowed the reproduction of past inequalities and it failed to ensure women's equal access to water, sanitation, and hygiene.

#### 4.2. A new spatial and gender-responsive jurisprudence for South Africa

Almost ten years later, the attitude of the Constitutional Court towards apartheid geography and its consequences in present times has changed.

In both *Daniels* and *Rahube*, the Court went beyond legal formalism to advance socio-economic rights within the framework of the transformative mandate of 1996 Constitution<sup>44</sup>.

42. J. Dugard, A. Alcaro, *Let's Work Together: Environmental and Socio-Economic Rights in the Courts*, in *SAJHR*, 2013, pp. 564-565.

43. R. Madlalate, *Dismantling apartheid geography*, cit., pp. 208-212.

44. A. Sen, *Human Rights and the limits of law*, in *Cardozo Law Review*, 2005-2006, p. 2927; D. Brand, *Courts, socio-economic rights and transformative politics*, LLD Thesis, Stellenbosh University, 2009, p. 70.



The extensive historical and socio-economic contextualisation of the disputes provided by the judges was more than a mere picture from past times, it was functional instead to the recognition of the resilience of apartheid legal construction of space and the impact of apartheid geography on women's rights in contemporary South Africa.

Furthermore, while previous judgments mainly concentrated on racial and class-based discrimination, in *Daniels* and *Rabube*, the Constitutional Court explored the conflation of sex, gender, race and space when considering the possible discriminatory consequences of legislative provisions. The intersectional approach towards race, gender, and space further contributed to uncovering the resilience of colonial-apartheid patterns.

With regard to sex and gender, in particular, the Constitutional Court argues that in Section 9 of the Constitution both sex and gender are mentioned, and the terms are treated on distinct grounds. In *Rabube*, the impugned legislation discriminated based on both the biological and the sociological view of women, as well as their role in South African society<sup>45</sup>.

Indeed, the approach to race, gender, space, and law contained in the *Daniels* and *Rabube* decisions can foster the already vibrant debate on women's spatial insecurity and discrimination with regards to land, housing, property, and related rights in South Africa.

Both pioneering judgments are even more interesting if discussed within the larger debate regarding the status and content of customary law, the implications of the codification of indigenous laws on land, marriage and inheritance during the colonial and apartheid regimes, as well as their (direct or indirect) enforcement in the legal system.

Customary land and property systems, as well as chthonic and religious laws on marriage and inheritance, are mostly blamed for failing to secure women's land and housing rights<sup>46</sup>.

However, a deep look into South African legal pluralism reveals

45. As noted by Justice Goliath in *Rabube* «The exclusion of women from being the head of the family is based on the social perception of what women can do and how they should behave. This is a sociological phenomenon, not a biological one. For these reasons, this judgment examines the provision using both the grounds of sex and gender in the Constitution, but reference will be made predominantly to gender because the overwhelming effect of the impugned provision is to reinforce social rather than biological characteristics attributed to women». *Rabube v. Rabube* at p. 9, note 22.

46. T.E. Higgins, J. Fenrich, *Customary Law, Gender Equality, and the Family. The Promise and Limits of a Choice Paradigm*, in J. Fenrich, P. Galizzi, T. Higgins (eds.), *The Future of African Customary Law*, Cambridge University Press, pp. 440-444.

a more nuanced and complex scenario as official customary law, i.e., codified in statutes, frequently diverges from living customary law applied in each traditional community<sup>47</sup>.

When codifying customs, the colonial rulers extensively relied on the practices described by (male) traditional leaders, which exaggerated their status and prerogatives at the expenses of women and younger members of the community<sup>48</sup>. Moreover, codified customary law was deeply influenced by English common law and Roman-Dutch law, which contributed to strengthening the patriarchal system in society.

In both *Daniels* and *Rabube*, the Constitutional court discovered the (not so) hidden link between current discriminatory practices regarding land and housing rights and the colonial-apartheid legal framework, which enforced official customary legal provisions.

In *Rabube*, for instance, the Court expanded the boundaries of relevant considerations beyond the “black-letter law” to include the effect of racially based apartheid law and gender on the legal construction of urban and rural spaces. It affirmed: «Under apartheid, the effects of patriarchy were compounded by legislation that codified the position of African women as subservient to their husbands and male relatives»<sup>49</sup>.

The colonial-apartheid legislation duplicated in some contemporary legal provisions over land; thus, perpetuating the racialized and gendered construction of space which characterized past regimes.

The nature and scope of customary law was influenced by the power relations and socio-economic context of colonial and apartheid regimes.

In pre-colonial rural context, women raised children and were primary crop producers. They played an essential role for the continuation of the rural family<sup>50</sup>. Women’s place in the rural and family economy gave them a bargaining power within the community.

Albeit generally within a patrilineal form of social organization, the relationship between women and land is more nuanced in living customs

47. Alongside official and living customary law, South African jurisprudence listed another form of customary law: the academic law, i.e., the recording of customs in legal doctrine referred to by judges when deciding a case. These customary legal systems are described in the minority judgment by Justice Ngobobo in *Bhe and others v. Magistrate, Khayelitsha and Others*, 2005 (1) SA 580 (CC).

48. M. Mamdani (ed.), *Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Right and Culture*, David Philip, 2000, p. 5. See also, L. Pospisil, *Formal Analysis of Substantive Law: Kapauku Papuan Laws of Land Tenure*, in *American Anthropologist*, vol. 67, n. 5, 1965, pp. 186-214.

49. *Rabube v. Rabube* at para. 26.

50. H.J Simons, *African Women: Their Legal Status in South Africa*, cit., p. 74.

than in codified/official customary law<sup>51</sup>. As documented in a range of anthropological and ethnographic accounts, pre-colonial women often enjoyed primary right to arable land and housing. This means that the patriarchal conception of society that characterized most traditional communities (but not all of them) was accentuated in the colonial and apartheid legal systems<sup>52</sup>.

The preference for a patriarchal system of social organisation, the concept of “male primacy”, and the Western legal construction of “exclusive ownership” vested into the Native Administration Act (1927) and, before that, the Natal Code of Native Law (1878) cemented the «overlapping patriarchies of white officials and black elders»<sup>53</sup>.

Compared to previous times, women’s status under the apartheid regime sharply deteriorated. Land shortages created by apartheid law and practices changed the agricultural economy. Consequently, women became vulnerable to eviction and land-grabbing by male family members who did not rely on their agricultural work anymore. Codified customary law entrenched by apartheid laws adapted to the circumstances by vesting land rights exclusively in men.

As explained above, the Upgrading of Land Tenure Act censored in *Rabube* automatically converted to ownership the rights in property acquired under the discriminatory framework of sec. 23 of the Native Administration Act 38 (1927), it indirectly duplicated apartheid geography and gender discrimination in post-apartheid South Africa.

## 5. Concluding observations

This essay combined legal geography methodology and the intersectional approach to race, gender, and space to discuss recent developments in South African constitutional jurisprudence on women’s land, housing, and property rights.

In *Daniels* and *Rabube*, the Constitutional Court departed from traditional approaches to law and abandoned legal formalism to discuss women’s land and property claims within the broader historical and social context.

Most interestingly, the spatial approach to land and housing disputes

51. M. Mamdani, *Beyond Rights Talk and Culture Talk*, cit., pp. 1-13.

52. T. Ranger, *The Invention of Tradition in Colonial Africa*, in E. Hobsbawm, T. Ranger (eds.), *The Invention of Tradition*, Cambridge University Press, 1983.

53. A. Claassens, *Recent changes in women’s land rights*, cit., p. 82.

adopted by the Court uncovered the resilience of colonial and apartheid spatial logic in contemporary legal construction of rural and urban spaces in South Africa.

Under the colonial and apartheid regimes, South African women were excluded from the legal construction of rural and urban spaces. Despite women's activism and women's public participation in the transition from apartheid to democracy, as well as the government's pronouncements of prioritising women in access to land, official data shows that they still constitute less than a quarter of the beneficiaries of land redistribution and reallocation nationally<sup>54</sup>. Furthermore, land tenure reforms promoted by post-apartheid governments often failed to address consolidated discriminatory patterns on land.

In *Daniels* and *Rahube*, the Court acknowledged that structural women's spatial and economic inequalities are linked to the resilience of apartheid geography. Whilst colonial and apartheid laws are now repealed and replaced, they still operate silently in the interstices of post-apartheid legal systems, jeopardising South African women's socio-economic rights in both rural and urban areas.

54. Department of Agriculture, Land Reform & Rural development of South Africa, *Annual Report, 2020/2021 on Agriculture, Land Reform and Rural Development*, 2022, available at: [www.dalrrd.gov.zaf](http://www.dalrrd.gov.zaf).



# THE ROLE OF WOMEN'S ASSOCIATIONS IN THE RECONCILIATION PROCESS IN POST-WAR BOSNIA AND HERZEGOVINA: SOME RELEVANT EXAMPLES

*Edin Skrebo\**

SUMMARY: 1. War, Peace, Transition and Women – 2. Bosnia and Herzegovina's post-war reality – 3. The rise of women's associations in Bosnia and Herzegovina – 3.1. Women's associations working in the field of war trauma – 3.2. Associations involved in the economic sphere – 3.3. The Association of the mothers of Srebrenica and the search for truth – 4. Conclusion

The challenge of rebuilding societies after war is much more complex and difficult than the task of putting an end to fighting

Stiefel, 1999

## **1. War, Peace, Transition and Women**

The 1990s were a sort of traumatic awakening for the European continent from a long period of torpor and tension caused by the ideological conflict between the Western and Eastern blocs<sup>1</sup>.

Indeed, 1989 ended with the fall of the Berlin Wall<sup>2</sup>; 1991 opened with the collapse of the Soviet Union<sup>3</sup> and the traumatic dissolution of

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1. M. Gilbert, *Cold War Europe. The Politics of a Contested Continent*, Rowman & Littlefield Publishers, 2014, pp. 281-331.

2. W.F. Buckley Jr., *The fall of Berlin wall*, Wiley, 2009, pp. 119-128.

3. J. Lévesque, *The Enigma of 1989. The USSR and the Liberation of Eastern Europe*, University of California Press, 1997, pp. 81-109.

Yugoslavia<sup>4</sup>, which was followed by an extremely fierce war not seen on European soil since the end of the Second World War<sup>5</sup>.

Among the Republics that made up the Socialist Federative Republic of Yugoslavia, the one that seems to have paid the highest price during the conflict was certainly Bosnia and Herzegovina. The first armed clashes took place on the territory of the country as early as the first months of 1992, which then intensified following the referendum for independence from Yugoslavia and the subsequent international recognition of Bosnia and Herzegovina by the international community<sup>6</sup>. Thus, between 1992 and 1995, the three main ethnic groups present in the country clashed: Bosniacs, Serbs, and Croats. In a whirlwind of violence that brought with it about one hundred thousand deaths, mostly civilians<sup>7</sup>; about twenty thousand women victims of rape<sup>8</sup>; until it reached the apex of wickedness with the genocide of Srebrenica in 1995, where about eight

4. L. Silber, A. Little, *Yugoslavia: Death of a Nation*, Penguin Books, 1997, pp. 197-232; M. Glenny, *The Fall of Yugoslavia: The Third Balkan War*, Penguin Books, 1996, pp. 98-129; J.R. Lampe, *Yugoslavia as History. Twice There was a Country*, Cambridge University Press, 2000, pp. 111-119; J. Pirjevec, *Le guerre Jugoslave 1991-1999*, Einaudi, 2001, pp. 21-33.

5. P. Rumiz, *Maschere per un massacro*, Feltrinelli, 2013, pp. 12-23; P. Mojzes, *Balkan Genocides. Holocaust and Ethnic Cleansing in the Twentieth Century*, Rowman and Littlefield, 2011, pp. 220-255.

6. Uited Nation General Assembly, 46/237, UN doc. A/RES/237 (20 July 1992), available at: [documents-dds-ny.un.org/doc/UNDOC/GEN/N92/353/05/IMG/N9235305.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N92/353/05/IMG/N9235305.pdf?OpenElement) (accessed May 2022); Conference on Yugoslavia Arbitration Commission: opinions on questions arising from the Dissolution of Yugoslavia, 31 I.L.M. 1288 (January 11 and July 4, 1992), available at: [www.pf.uni-lj.si/media/skrk\\_mnenja.badinterjeve.arbitrazne.komisije.1\\_10.pdf](http://www.pf.uni-lj.si/media/skrk_mnenja.badinterjeve.arbitrazne.komisije.1_10.pdf) (accessed May 2022); C. Rogel, *The Breakup of Yugoslavia and the War in Bosnia*, Greenwood Press, 1998, pp. 29-43; L. Silber, A. Little, *Yugoslavia: Death of a Nation*, cit., pp. 122-144.

7. M. Tokač, *The Bosnian Book of the Dead. Human Losses in Bosnia and Herzegovina 1991-1995*, Istraživačko dokumentacioni center Sarajevo, Sarajevo 2012; E. Tabeau, *Conflict in Numbers. Casualties of the 1990s Wars in The Former Yugoslavia (1991-1999)*, Helsinki Committee for Human Rights in Serbia, Belgrade 2009, pp. 35-565; J. Zwierchowski, E. Tabeau, *The 1992-1995 War in Bosnia and Herzegovina: Census-Based Multiple System Estimation of Casualties Undercount*, in *Conference Paper for The International Research Workshop on "The Global Costs Conflict"*, Berlin, 1-2 February 2010, available at: [www.icty.org/x/file/About/OTP/War\\_Demographics/en/bib\\_casualty\\_undercount\\_conf\\_paper\\_100201.pdf](http://www.icty.org/x/file/About/OTP/War_Demographics/en/bib_casualty_undercount_conf_paper_100201.pdf) (accessed May 2022).

8. N. Ruzza, *Gli stupri etnici nelle guerre dell'ex Jugoslavia. Lo sguardo delle scrittrici migranti*, in *Deportate Esuli Profughe. Rivista telematica di studi sulla memoria femminile*, n. 24, 2014, pp. 18-35, available at: [www.unive.it/pag/fileadmin/user\\_upload/dipartimenti/DSLCC/documenti/DEP/numeri/n24/Dep\\_02\\_Ruzza.pdf](http://www.unive.it/pag/fileadmin/user_upload/dipartimenti/DSLCC/documenti/DEP/numeri/n24/Dep_02_Ruzza.pdf) (accessed May 2022).

thousand Bosniacs men and boys were massacred in the enclave under the protection of UN soldiers by the army of *Republika Srpska*<sup>9</sup>.

During this tragic war, the victims were both men and women: no one was spared suffering. However, in the collective imagination, it is the figure of the man, usually, a soldier engaged in the conflict, that garners the most attention. In reality wars and, more generally, humanitarian disasters affect women more than men<sup>10</sup>, creating a real disproportion between the burden that war inflicts on men and women, all shifted to the disadvantage of women. Indeed, in many conflict scenarios, not only do women bear the inherent hardships that war brings, such as death and destruction but also the entire burden of family and survival management falls on women<sup>11</sup>. This disproportion between the two genders is also exacerbated by the fact that the voice of women and women's associations, in general, is not or hardly heard in peace processes. In fact, a study carried out in 2020 by the Council on Foreign Relations found that between 1992 and 2019 women accounted for an average of only 13% of negotiators in war contexts; 6% of mediators engaged in the search for possible solutions to achieve peace; and 6% of signatories to the world's major peace agreements<sup>12</sup>.

Given these premises on the difficult role of women in armed contexts and on the absence of a significant role of women in the moment of reconciliation and peace talks, it arises spontaneously to wonder what contribution the women associations of Bosnia and Herzegovina were

9. ICTY, Appeals Chamber, *The Prosecutor v. Radislav Krstić*, IT-98-33A, Judgment of 19 April 2004, available at: [www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf](http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf) (accessed May 2022); ICTY, Appeals Chamber, *The Prosecutor v. Radovan Karadžić*, MICT-13-55-A, Judgment of 20 March 2019, available at: [www.irmct.org/sites/default/files/casedocuments/mict-13-55/appeals-chamber-judgements/en/190320-judgement-karadzic-13-55.pdf](http://www.irmct.org/sites/default/files/casedocuments/mict-13-55/appeals-chamber-judgements/en/190320-judgement-karadzic-13-55.pdf) (accessed May 2022); ICTY, Appeals Chamber, *The Prosecutor v. Ratko Mladić*, MICT-13-56-A, Judgment of 8 June 2021, available at: [www.irmct.org/sites/default/files/case\\_documents/210608-appeal-judgement-JUD285R0000638396-mladic-13-56-en.pdf](http://www.irmct.org/sites/default/files/case_documents/210608-appeal-judgement-JUD285R0000638396-mladic-13-56-en.pdf) (accessed May 2022); L.J. Nettelfield, S.E. Wagner, *Srebrenica in the Aftermath of Genocide*, Cambridge University Press, 2013, pp. 1-30.

10. R. Asimović Akyol, *For Bosnian Women, No Justice and No Seats. In the Balkan Wars, women were targets. In postwar governments, they've been pushed out of sight*, in *Foreignpolicy.com*, available at: [foreignpolicy.com/2019/10/03/bosnian-women-balkan-war-no-justice-and-no-political-power/](http://foreignpolicy.com/2019/10/03/bosnian-women-balkan-war-no-justice-and-no-political-power/) (accessed May 2022).

11. O. Simić, *ActIvism for Peace in Bosnia and Herzegovina: a Gender Perspective*, in *Global media journal*, vol. 8, n. 15, 2009, pp. 1-17, available at: [www.globalmediajournal.com/open-access/activism-for-peace-in-bosnia-and-herzegovina-a-gender-perspective.pdf](http://www.globalmediajournal.com/open-access/activism-for-peace-in-bosnia-and-herzegovina-a-gender-perspective.pdf) (accessed May 2022).

12. Council on Foreign Relations, *Women's Participation in Peace Processes*, 2020, available at: [www.cfr.org/womens-participation-in-peace-processes/](http://www.cfr.org/womens-participation-in-peace-processes/) (accessed May 2022).



able to provide, first, during the war period, but especially later, in the context of the reconciliation process.

In fact, in post-conflict Bosnia and Herzegovina, the role of women in the process of reconciliation and the search for truth was central<sup>13</sup>, as women were, in some cases, the only survivors of the atrocities of war and thus the only ones who could engage in civil society for reconciliation<sup>14</sup>. In fact, it was always women who were the first to undertake the search for their loved ones who disappeared during the war by founding associations that are still involved in civil society in Bosnia and Herzegovina<sup>15</sup>. The most famous case of women's associations dedicated to the search for truth and committed to the process of reconciliation is certainly the "Association of Mothers of the Enclave of Srebrenica and Žepa"<sup>16</sup>. The association of mothers, daughters, and wives of the more than eight thousand Bosniacs boys and men who were victims of the Srebrenica Genocide has been working over the past twenty-six years through appeals to national and supranational courts to establish not only the circumstances in which their loved ones were killed but also to investigate the responsibility for the events in which they themselves were involved<sup>17</sup>. However, the "Mothers of Srebrenica" is only one of the most famous associations, especially for the fundamental role it has played in the search for the truth about what happened in Srebrenica and in the preservation of memory. In the immediate aftermath of the conflict, there was a real boom in Bosnia and Herzegovina in the number of associations, most of which were founded by women<sup>18</sup>.

In this contribution, I would like to attempt to trace the brief story and work of some women's associations operating in Bosnia and Herzegovina and involved in the construction of the reconciliation process and the search for truth, a fundamental step in achieving reconciliation. What

13. K. Kumar, *Women and Women's Organizations in Post-Conflict Societies: The Role of International Assistance*, in *Center for Development Information and Evolution United States Agency for International Development*, 2000, p. IV, available at: [web.worldbank.org/archive/website00996A/WEB/PDF/KRISHNAK.PDF](http://web.worldbank.org/archive/website00996A/WEB/PDF/KRISHNAK.PDF) (accessed May 2022).

14. E. Helms, *Innocence and Victimhood: Gender, National, and Women's Activism in Postwar Bosnia-Herzegovina*, University of Wisconsin Press, 2013, pp. 11-13.

15. Ivi, pp. 28-29.

16. O. Simić, *What Remains of Srebrenica? Motherhood, Transitional Justice and Yearning for Truth*, in *Journal of International Women's Studies*, vol. 10, n. 4, 2009, pp. 224-232.

17. Ivi, pp. 224-227.

18. E. Helms, *Innocence and Victimhood*, cit., pp. 90-120.

I would like to attempt here is a greater understanding of the role that these associations have played in Bosnia and Herzegovina in the context of creating a shared memory and in the search for real reconciliation. It will certainly not be possible to obtain precise quantitative results, because reconciliation is not something that can be measured with a standard unit of measurement but is an extremely complex result that requires constant effort and great commitment. What I am proposing here is rather an analysis of the initiatives and efforts that these associations have attempted on the road to reconciliation. I would also like to warn that it will not be possible to analyze all the associations and all the initiatives they have carried out, but I will limit this brief overlook to those associations operating at the local level. Moreover, the analysis will involve those associations that are still active, excluding those that have had a project limited in time.

Once the necessary premises have been established, this paper will first of all attempt to give a picture of the reality of Bosnia and Herzegovina as regards the reconciliation process and above all how the events of the war and the subsequent sentences of the International Criminal Tribunal for the former Yugoslavia (ICTY) are perceived in the reality of the three main ethnic groups (Bosniacs, Serbs, and Croats). This general framework should make it possible to illustrate in the best possible way the role of women's associations in the process of reconciliation and search for truth, as it will be able to better contextualize the difficulties and efforts that these associations have sustained and still sustain.

## **2. Bosnia and Herzegovina's post-war reality**

The war in Bosnia and Herzegovina ended in 1995 with the signing of the General Framework Agreement for Peace, better known as the Dayton Agreement<sup>19</sup>. The peculiarity that should be underlined here is the fact that a significant role in the transition and reconciliation process was entrusted to bodies of the international community.

Concerning the relationship between the process of reconciliation

19. *General Framework Agreement for Peace in Bosnia and Herzegovina*, available at: [peacemaker.un.org/sites/peacemaker.un.org/files/BA\\_951121\\_DaytonAgreement.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121_DaytonAgreement.pdf) (accessed May 2022); R. Holbrooke, *To End a War*, Modern Library, 1999, pp. 397-423; P. Leroux-Martin, *Diplomatic Counterinsurgency. Lessons from Bosnia and Herzegovina*, Cambridge University Press, 2015, pp. 211-133; S. Bose, *Bosnia after Dayton. Nationalist Partition and International Intervention*, Oxford University Press, 2007, pp. 203-133.

and transition and international bodies, a primary role was assumed by the International Criminal Tribunal for the former Yugoslavia. The ICTY was a court established *ad hoc* by the United Nations Security Council with resolutions 808 and 827<sup>20</sup>, on 22 February 1993 and 25 May 1993 respectively, with the mandate to try individuals responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991<sup>21</sup>. In particular, the prosecution of the principal offenses concerned serious violations of the 1949 Geneva Convention, crimes against humanity, genocide, and violation of the customs and laws of war. The Tribunal, which concluded its mandate on 31 December 2017, held 161 trials, of which over eighty were final convictions, nineteen acquittals, and thirty-seven defendants had their charges dropped or died during the trial<sup>22</sup>. Undoubtedly, the Tribunal played an indispensable role in researching and determining the events that occurred during the conflict<sup>23</sup>.

However, especially in Bosnia and Herzegovina, it can be seen that the work of the ICTY is not evaluated in the same way among the three

20. UNSC Resolution 808, UN doc. S/RES/808 (22 February 1993), available at: [www.icty.org/x/file/Legal\\_Library/Statute/statute\\_808\\_1993\\_en.pdf](http://www.icty.org/x/file/Legal_Library/Statute/statute_808_1993_en.pdf) (accessed May 2022); UNSC Resolution 827, UN doc. S/RES/827 (25 May 1993), available at: [www.icty.org/x/file/Legal\\_Library/Statute/statute\\_827\\_1993\\_en.pdf](http://www.icty.org/x/file/Legal_Library/Statute/statute_827_1993_en.pdf) (accessed May 2022).

21. M. Sterio, M. Scharf, *The Legacy of Ad Hoc Tribunals in International Criminal Law. Assessing the ICTY's and the ICTR's Most Significant Legal Accomplishments*, Cambridge University Press, 2019, pp. 73-103; G. Boas, W. Schabas, *International Criminal Law Developments in the Case Law of ICTY*, Martinus Nijhoff Publisher, 2003, pp. 101-145; W. Schabas, *The UN International Criminal Tribunals. The Former Yugoslavia, Rwanda and Sierra Leone*, Cambridge University Press, 2006, pp. 161-184; J. Hagan, *Justice in the Balkans. Prosecuting War Crimes in the Hague Tribunal*, Chicago University Press, 2003, pp. 81-111; V. Preskin, *International Justice in Rwanda and the Balkans. Virtual Trials and the Struggle for State Cooperation*, Cambridge University Press, 2012, pp. 27-148.

22. International Criminal Tribunal for the former Yugoslavia, available at: [www.icty.org/en/about](http://www.icty.org/en/about) (accessed May 2022); International Criminal Tribunal for the former Yugoslavia, *Key Figures if the Cases*, available at: [www.icty.org/en/cases/key-figures-cases](http://www.icty.org/en/cases/key-figures-cases) (accessed May 2022); B. Holá, A. Sellers, C. Bijleveld, *International Sentencing Facts and Figures. Sentencing Practice at the ICTY and ICTR*, in *Journal of International Criminal Justice*, n. 9, 2011, pp. 411-439. DOI: 10.1093/jicj/mqr014.

23. D. Orentlicher, *Some Kind of Justice. The ICTY's Impact in Bosnia and Serbia*, Oxford University Press, Oxford 2018, pp. 91-113; J. Mihajlović Trbovc, *The (Lack of) impact of the ICTY on Public Memory of the War in Bosnia and Herzegovina*, in C. Stahn et al. (eds.), *Legacies of the International Criminal Tribunal for the Former Yugoslavia. A Multidisciplinary Approach*, Oxford University Press, 2020, pp. 559-570; J. Trahn, I. Vukušić, *The Three-tiered Approach to Justice in Bosnia-Herzegovina and Benchmarks for Measuring Success*, in Id., cit., p. 472.

main ethnic groups that make up the country<sup>24</sup>. It is difficult to describe how divided the Bosnian-Herzegovinian society is internally between the three main ethnic groups present with regard to the perception of the judgments of international courts and, in general, of the events of the war. Therefore, the best way to describe this situation is surely to propose the results of some surveys that have been held in the country and that will perfectly render the idea of this division.

In fact, a 2012 survey<sup>25</sup>, conducted in Bosnia and Herzegovina by the Belgrade Centre for Human Rights<sup>26</sup>, shows first of all a different opinion on the Tribunal and its work according to the entity of residence<sup>27</sup> of the respondents. In fact, when asked “what is your attitude towards the Tribunal?”, 59% of the inhabitants of the Federation of Bosnia and Herzegovina responded that they were in favor, in whole or in part, of the work of the ICTY, while 39% responded with a negative opinion about the Tribunal. With regard, however, to respondents residing in the *Republika Srpska*, only 15% expressed a favorable opinion of the ICTY, while 84% expressed a negative opinion of the Tribunal’s work<sup>28</sup>.

24. R. Kostić, *Transition Justice and Reconciliation in Bosnia-Herzegovina: Whose Memories, Whose Justice?*, in *Sociologija*, vol. 54, n. 4, 2012, pp. 649-666. DOI: [10.2298/SOC1204649K](https://doi.org/10.2298/SOC1204649K); D. Orentlicher, *Some Kind of Justice*, cit., pp. 263-270; J. O’Neil Bell, *Reconciling after Transitional Justice: When Prosecutions are not Enough, the Case of Bosnia and Herzegovina*, in *Croatian International Relations Review*, vol. 84, n. 25, 2019, pp. 54-77. DOI: [10.2478/cirr-2019-0003](https://doi.org/10.2478/cirr-2019-0003); M. Milanović, *The Impact of the ICTY in the Former Yugoslavia: An Anticipatory Postmortem*, in *American Journal of International Law*, vol. 110, n. 2, 2017, pp. 233-259. DOI: [10.5305/amerjintelaw.110.2.0233](https://doi.org/10.5305/amerjintelaw.110.2.0233); R. Hodžić, *Twenty Years Since Srebrenica: No Reconciliation, We’re Still at War*, in *Balkans*, available at: [balkanist.net/twenty-years-since-srebrenica-no-reconciliation-were-still-at-war/](http://balkanist.net/twenty-years-since-srebrenica-no-reconciliation-were-still-at-war/) (accessed May 2022); M. Milanović, *Narratives of Justice for the Balkans: Establishing Responsibility for Genocide in the Bosnian War*, in *Serbian Yearbook of International Law*, vol. 2, 2006, pp. 237, available at: [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=920686](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=920686) (accessed May 2022); M. Milanović, 2010, *The International Court of Justice and Mass Atrocities in the Former Yugoslavia*, DOI: [10.2139/ssrn.1686780](https://doi.org/10.2139/ssrn.1686780) (accessed May 2022).

25. The full survey data can be found at the following link: [www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-Medunarodnom-krivičnom-tribunalu-za-bivšu-Jugoslaviju-u-Hagu-ICTY-2012-detajlnje-tabele.pdf](http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-Medunarodnom-krivičnom-tribunalu-za-bivšu-Jugoslaviju-u-Hagu-ICTY-2012-detajlnje-tabele.pdf) (accessed May 2022).

26. *Ibidem*.

27. With the Dayton Peace Accords of 1995 and the adoption of a new Constitution, Bosnia and Herzegovina became a federal state consisting of two entities: the Federation of Bosnia and Herzegovina, with a Bosniak and Croat majority, and the *Republika Srpska*, inhabited mainly by ethnic Serbs.

28. The full survey data can be found at the following link: [www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-](http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-)

This trend had already been confirmed by another survey conducted two years earlier by the same NGO<sup>29</sup>, in which people belonging to the three main ethnic groups in the country were asked to express their opinion on the Court's work. The poll showed that 72.9% of Bosniacs considered the trials of the ICTY to be positive and conducted fairly. On the other hand, 78.2% of Serbs were denying the fairness of the trials, as were 58% of Croats<sup>30</sup>.

These data, read together, show how the perception of the Tribunal's work varies considerably depending on the ethnic group. In fact, in Bosnia and Herzegovina, there is a clear distinction in the perception of both the events of the war and the trials before the International Criminal Tribunal. This has had profound consequences on the transition process. In fact, the Serbs population saw the ICTY as an international body mainly committed to incriminating high-ranking members of the army and politicians belonging to their ethnic group, while the other ethnic groups, Bosniacs and Croats, would be incriminated, numerically speaking, to a much lesser extent<sup>31</sup>.

This first piece of data shows how the influence of an external, in this case international, body influenced the perception of the Bosnian-Herzegovinian population in the process of reconciliation and transition<sup>32</sup>. In fact, in spite of the more than one hundred and sixty trials before the International Criminal Tribunal for the former Yugoslavia and the hundreds of thousands of pages of evidence collected on the tragic events in Bosnia and Herzegovina, even today in Bosnia and Herzegovina the judgment on the Tribunal's work appears very sceptical, especially among the ethnic Serb population and, to a lesser extent, among Croats<sup>33</sup>. What emerges is an ethnically oriented narrative

*Medunarodnom-krivičnom-tribunalu-za-bivšu-Jugoslaviju-u-Hagu-ICTY-2010-detajne-tabele.pdf* (accessed May 2022).

29. *Ibidem*.

30. *Ibidem*.

31. M. Milanović, *The Impact of the ICTY*, cit., pp. 233-259; on the concepts of group and national narratives, see generally the contributions in J. Brockmeier, *Narrative and Identity: Studies in Autobiography, Self and Culture*, University of Toronto, 2001, pp. 11-123; in particular, see C. Fleisher Feldman, *Narratives of National Identity as Group Narratives: Patterns of Interpretative Cognition*, in Id., pp. 129-143. See also D. Bar-Tal, N. Oren, R. Nets-Zehngut, *Sociopsychological Analysis of Conflict-Supporting Narratives: A General Framework*, in *Journal of Peace Research*, n. 51, 2014, pp. 67-85. DOI: 10.1177/0022343314533984; M. Milanović, *Nasledje Medjunarodnog Krivičnog Tribunale za bivšu Jugoslaviju*, Beograd 14 December 2021.

32. See note n. 23.

33. M. Milanović, *The Impact of the ICTY*, cit., p. 237; D. Orentlicher, *Some Kind*

of what happened during war<sup>34</sup>. In fact, in a 2012 survey conducted in the two federated entities that make up Bosnia and Herzegovina on a sample of 1,037 people, in the *Republika Srpska* 87% of respondents said that all sides in the conflict suffered and that all were to blame<sup>35</sup>. While in the territory of Federation of Bosnia and Herzegovina, to the question “Who suffered the greatest losses?”, 92% of respondents in Sarajevo answered that the greatest losses were among the Bosniacs. On the other hand, when asked the same question, 68% of the respondents in Western Herzegovina answered that the Croatian population was the greatest victim of the conflict<sup>36</sup>. This shows that the ethnic groups in Bosnia and Herzegovina live in a kind of “parallel reality”, whereby each group reads the historical data and events of the war through an ethnic lens<sup>37</sup>.

If we want to relate this data to the ethnicity of the respondents, it follows that in the *Republika Srpska*, inhabited predominantly by ethnic Serbs, a collective narrative has formed that all parties have been the subject of great suffering and are equally to blame<sup>38</sup>. In the Federation of Bosnia and Herzegovina, on the other hand, the narrative varies considerably according to ethnicity. Indeed, the Bosniacs claim that they were the biggest victims of the conflict and that it was the Serbs who committed the greatest war crimes<sup>39</sup>. At the same time, Croats claim to have been the biggest victims of the conflict<sup>40</sup>.

What emerges from these surveys is a divided reality: where each ethnic group is engaged in a singular struggle for the narrative not only of the facts, but also of its own role as the main victim of the events of the war. This “competitive victimhood”<sup>41</sup> constitutes one of the greatest obstacles to the development of a more democratic society<sup>42</sup>.

This is also found in constructing the collective memory of the main

*of Justice*, cit., pp. 270-279; J. Mihajlović Trbovc, *The (Lack of) impact of the ICTY*, cit., pp. 559-570.

34. M. Milanović, *The Impact of the ICTY*, cit., pp. 240-241.

35. Ivi, pp. 247-249.

36. Ivi, pp. 238-240

37. *Ibidem*.

38. Ivi, p. 247.

39. *Ibidem*.

40. *Ibidem*.

41. R. Hodžić, *Twenty Years Since Srebrenica*, cit., available at: [balkanist.net/twenty-years-since-srebrenica-no-reconciliation-were-still-at-war/](http://balkanist.net/twenty-years-since-srebrenica-no-reconciliation-were-still-at-war/) (accessed May 2022).

42. M. Noor et. al., *When Suffering Begets Suffering: The Psychology of Competitive Victimhood Between Adversarial Groups in Violent Conflict*, in *Personality and Social Psychology Review*, vol. 16, n. 4, 2012, pp. 351-374. DOI: 10.1177/1088868312440048.

tragic events that occurred during the war in Bosnia and Herzegovina. The survey of 2012<sup>43</sup> shows that ethnic prejudice decisively clouds the memory of those interviewed in the *Republika Srpska* where 15% of respondents claim to have heard of crimes committed in the Prijedor detention camps and only 11% claim to have heard of crimes committed by Serbs in Bijeljina and Zvornik. On the other hand, when the interview was redirected to events that victimized Serbs, such as the rapes of ethnic Serb women that occurred in the Čelebići prison camp, the population of the *Republika Srpska* responded with 33% affirmatively knowing about such events<sup>44</sup>.

To a slightly lesser extent, however, the same situation can be found in the Federation of Bosnia and Herzegovina. Here, 38% of the respondents claimed to be familiar with the events in the Čelebići camp and 52% had heard of the crimes committed by the *mujahideen* against the Croat and Serb population of central Bosnia.

This figure shows a greater knowledge of the events that took place during the war on the part of the population living in the Federation of Bosnia and Herzegovina. On the other hand, in the *Republika Srpska*, there seems to be a kind of erasure of collective memory, especially when crimes were committed by Serbs and greater resistance to forgetting when these crimes were committed against Serbs<sup>45</sup>.

The first conclusion to be drawn from the above-mentioned data is that in Bosnia and Herzegovina the perception of the work of the ICTY changes considerably depending on the ethnic group interviewed<sup>46</sup>. It can be seen, therefore, that among the Bosniacs population the Tribunal enjoys greater favor than among the ethnic groups of Serbs and Croats.

This aspect, which is not secondary, constitutes one of the greatest limits to the process of reconciliation and transitional justice. Today, the Bosnian-Herzegovinian reality is heavily conditioned by the events of the war that took place in the 1990s, so much so that one can speak of a “war for truth” taking place in the country, where there is no place for recognition of the pain of others and of one’s own, let alone reconciliation<sup>47</sup>.

43. M. Milanović, *The Impact of the ICTY*, cit., pp. 233-259.

44. *Ibidem*.

45. The full survey data can be found at the following link: [www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-Me-unarodnom-krivi-nom-tribunalu-za-bivšu-Jugoslaviju-u-Hagu-ICTY-2012-detaljnetabele.pdf](http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-Me-unarodnom-krivi-nom-tribunalu-za-bivšu-Jugoslaviju-u-Hagu-ICTY-2012-detaljnetabele.pdf) (accessed May 2022).

46. M. Milanović, *The Impact of the ICTY*, cit., p. 250.

47. R. Hodžić, *Twenty Years Since Srebrenica*, cit., available at: [balkanist.net/twenty-years-since-srebrenica-no-reconciliation-were-still-at-war/](http://balkanist.net/twenty-years-since-srebrenica-no-reconciliation-were-still-at-war/) (accessed May 2022).

### 3. The rise of women's associations in Bosnia and Herzegovina

In order to understand the reasons that favored the emergence of many women's associations in the post-war context in Bosnia and Herzegovina, it should be remembered that both purely local factors and others that can be defined as external contributed to this<sup>48</sup>.

First of all, the social, economic and political transformations that took place during the conflict played a decisive role. In fact, the war tended to subvert the social order and thus also favored important changes that subsequently led to increased participation of women in public affairs<sup>49</sup>. A further relevant aspect regarding the creation of women's associations in post-conflict contexts is certainly the fact that transition processes favor the space for non-governmental organizations. In fact, the transition process towards democracy, with the creation of more free media and favoring associationism, has given unprecedented freedom to groups. The international community itself, with funding and projects, has encouraged the creation of non-governmental organizations to help build a civil society. All this has obviously favored the ground for the foundation of new associations<sup>50</sup>.

With regard to other factors that favored the foundation of women's NGOs in post-war Bosnia and Herzegovina, one of the first reasons to highlight is the greater awareness that women acquired during the war period. Indeed, the role of women was crucial in the war effort, in the management of displaced persons and refugees, and in participation in the political context. This active participation enabled many Bosnian-Herzegovinian women to develop a sense of responsibility, which then translated into the need to set up associations. In addition, the absence of a system of services provided by the State has encouraged many associations to make up for this by founding organizations for this purpose<sup>51</sup>.

The area in which the first women's associations were established in Bosnia and Herzegovina was humanitarian<sup>52</sup>: to help refugees and internally displaced persons created by the conflict. In fact, the cities

48. K. Kumar, *Women and Women's Organizations*, cit., available at: [web.worldbank.org/archive/website00996A/WEB/PDF/KRISHNAK.PDF](http://web.worldbank.org/archive/website00996A/WEB/PDF/KRISHNAK.PDF) (accessed May 2022).

49. *Ibidem*.

50. E. Helms, *Innocence and Victimhood*, cit., p. 90.

51. M. Walsh, *Aftermath: The Role of Women's Organizations in Postconflict Bosnia and Herzegovina*, in *Center for Development Information and Evolution U.S. Agency for International Development*, vol. 308, 2000, p. 2, available at: [citeserx.ist.psu.edu/viewdoc/download?doi=10.1.1.579.787&rep=rep1&type=pdf](http://citeserx.ist.psu.edu/viewdoc/download?doi=10.1.1.579.787&rep=rep1&type=pdf) (accessed May 2022).

52. E. Helms, *Innocence and Victimhood*, cit., p. 95.



in which the first women's associations were founded are precisely the cities where the flux of refugees and displaced persons was greatest during the 1990s<sup>53</sup>. These cities are Tuzla, Zenica, Sarajevo, Mostar and Banja Luka, where even now the largest number of women's associations in Bosnia and Herzegovina are concentrated<sup>54</sup>.

One of the main reasons why many Bosnian-Herzegovinian women founded non-governmental organizations was because this "third sector" was an area relatively independent from male-dominated establishment circles, and this allowed women's associations to carve out a space for themselves within the country's civil society<sup>55</sup>. This allowed women's associations to break out of the purely ethnic mould of the male-dominated political system<sup>56</sup>.

Among the many women's associations that have been founded in Bosnia and Herzegovina in the last quarter of a century, two macro-categories of NGOs can be distinguished, based on the goals they pursue. The first associations to be founded were primarily of a humanitarian nature, created with the aim of helping the displaced population by providing material and psychological aid. Among these associations, those created to help women who were victims of violence stand out in particular. With the end of the conflict, other associations were founded, but this time with the aim of seeking the truth about what happened to loved ones who disappeared during the war.

The following is a presentation of some women's associations in Bosnia and Herzegovina engaged in different fields, whose work is still fundamental to the reconciliation process. In particular, three areas will be examined in which women's associations have particularly distinguished themselves: support for women who were victims of sexual violence during the conflict; economic and employment assistance to women in the reconciliation process; and the last, most emblematic and perhaps best-known case, that is, commitment to the search for truth.

### *3.1. Women's associations working in the field of war trauma*

One of the first women's associations to be founded in Bosnia and Herzegovina was the NGO "Medica" in Zenica, in April 1993, by a

53. Ivi, p. 96.

54. *Ibidem*.

55. Ivi, p. 93.

56. *Ibidem*.

group of German feminists led by Monika Hauser<sup>57</sup>. The primary objective of the new association was to help women survivors of rape, involving a team of psychologists and medical professionals from Bosnia and Herzegovina<sup>58</sup>. Once the association started its work, during the war it also dedicated itself to helping displaced persons and refugees and other activities. However, with the end of the conflict and with the passing of time, until today, the association has dedicated itself more and more to women victims of rape during the war, providing them with psychological and human support, as well as the children of these women<sup>59</sup>. Today, the NGO is committed to providing outpatient and psychological assistance to women in general, and especially in the field of domestic violence<sup>60</sup>, not only providing the necessary psychological and legal assistance but also providing shelter for women subjected to violence, known as “safe houses”<sup>61</sup>. In addition, the association has extended its range of action to areas outside the municipality of Zenica. In fact, it has founded a new office in Visoko, in order to be able to support women who live in rural areas and who would find it difficult to come into contact with the association’s urban reality<sup>62</sup>. Today, the NGO “Medica” is a respectable reality in the sphere of women’s associations in Bosnia and Herzegovina, has more than seventy employees and represents one of the most solid associations in the sphere of defense of women against domestic violence<sup>63</sup>.

The “Medica” association represents the type of women’s association that was set up in Bosnia and Herzegovina during the war, whose primary objective was to help women who had been victims of rape and other crimes perpetrated during the conflict. As time went by and new problems arose, this association was able to broaden its horizons: it mainly provides help to women who are victims of domestic violence<sup>64</sup>.

The contribution that this association has made to the reconciliation process may at first glance appear difficult to identify, but it is precisely this role of helping women victims of rape that has enabled the victims to

57. Ivi, p. 99.

58. *Ibidem*.

59. Ivi, p. 101.

60. For more details see the website of the “Medica” Association, [medicazenica.org/](http://medicazenica.org/) (accessed May 2022).

61. *Ibidem*.

62. E. Helms, *Innocence and Victimhood*, cit., p. 101.

63. For more details see the website of the “Medica” Association, [medicazenica.org/](http://medicazenica.org/) (accessed May 2022).

64. E. Helms, *Innocence and Victimhood*, cit., p. 102.

overcome. It has made an important contribution to the reconciliation process, which especially in the field of war rapes seems to have taken a back seat, but to which the “Medica” association has given back a voice and brought back into the debate within the society of Bosnia and Herzegovina.

Another NGO committed to helping and defending women victims of rape is undoubtedly the association “Women Victims of War” (*Udruženje žena žrtve rata*)<sup>65</sup>, founded in Sarajevo in 2003 and which today has over three thousand women members. The association defines itself as “multi-ethnic, multi-national and non-partisan”<sup>66</sup>, which is why it includes women of all ethnicities who have been victims of rape. The role of the association has been important in the reconciliation process because it has brought the issue of wartime rape to the attention of the public and civil society in Bosnia and Herzegovina, but also beyond its borders<sup>67</sup>.

### 3.2. Associations involved in the economic sphere

The reconciliation process in Bosnia and Herzegovina involves helping many women to build a future for themselves. In this field, the association “*Naš Most*” from Zenica has distinguished itself<sup>68</sup>. The NGO was set up at the end of the war to provide material support to the refugee population settled in Zenica that had moved from various parts of the country. With the end of the war and access to various grants and international aid, the association has become a micro-credit centre, where women members can apply for micro-loans to open their own small businesses with which they can become independent and very often try to get out of a difficult situation caused by having lost their livelihood during the war<sup>69</sup>.

Today, with over a thousand members, the association is mainly involved in the social field, trying to help women in economic difficulty. It does not limit itself, however, to purely economic aid, but tries to help develop the entrepreneurial side of its female members and with professional training courses<sup>70</sup>.

65. For more details see the website of the Association, [zena-zrtva-rata.com/](http://zena-zrtva-rata.com/) (accessed May 2022).

66. E. Helms, *Innocence and Victimhood*, cit., p. 105.

67. Ivi, p. 106.

68. Ivi, p. 108.

69. Ivi, pp. 100-101.

70. Ivi, p. 109.

Fundamental help to women and their families displaced during the war was given by two associations worth mentioning here: the association “Through Heart to Peace”<sup>71</sup>, founded in Zagreb during the war by a group of displaced women in Croatia, and the NGO “Women from Podrinje”<sup>72</sup>, founded at the end of the war by a collective of women who had been displaced from the territory along the Drina river. These two associations provided material support to help women return to their pre-war places of residence, particularly in those areas where the majority of the population before the war was Bosniac and where, with the end of hostilities, they became a minority as a result of the “ethnic cleansing” perpetrated by the army of the *Republika Srpska* against them<sup>73</sup>.

### 3.3. *The Association of the mothers of Srebrenica and the search for truth*

The NGO “Mothers of the Srebrenica and Žepa Enclaves”<sup>74</sup>, founded in 2002 by Hatidža Mehmedović, one of the survivors of the Srebrenica Genocide, plays a key role in the reconciliation and transition process in Bosnia and Herzegovina. The association is named after two towns in eastern Bosnia that during the war constituted two Bosniacs enclaves in a territory ruled by the *Republika Srpska*’s army. One of these two towns, Srebrenica, would later become infamous in July 1995 for the genocide that took place here against the Bosniacs population.

The association was born out of the need of women survivors of the genocide to search for their loved ones who had disappeared when the army of *Republika Srpska* took the town. This has made the association famous and it has been fighting since its foundation to get the relevant authorities to investigate the massacre. In fact, the association’s program included the following aims: “research and publicity about the events that took place in Srebrenica in July 1995”<sup>75</sup>; the search and opening of mass graves, in order to identify the victims, without delay; making

71. Ivi, p. 110.

72. Ivi, p. 112.

73. E. Melander, *Ethnic Cleansing in Bosnia-Herzegovina, 1991-1995*, “Disaggregating the Study of Civil War and Transnational Violence”, University of Essex, November 24-25, 2007; T. Kivimäki, M. Kramer, P. Pasch, *The Dynamics of Conflict in the Multi-ethnic State of Bosnia and Herzegovina. Country Conflict-Analysis Study*, Friedrich Ebert Stiftung, 2012, pp. 18-60.

74. For more details see the website of the Association, [www.enklave-srebrenica-zepa.org/](http://www.enklave-srebrenica-zepa.org/) (accessed May 2022).

75. *Ibidem*.

it possible for the population of Srebrenica to return to their places of residence; the opening of a full and precise investigation by the ICTY into the responsibilities and failure of the UN to protect the safe area of Srebrenica; ensuring fair compensation for the surviving victims of the genocide; the arrest and capture of all those involved in the genocide for trial before international and local courts<sup>76</sup>.

Since its establishment, the “Mothers” have been pushing the BiH government for stronger cooperation with the ICTY, as well as demanding accountability from the Dutch peacekeepers and the UN for their failure to protect their loved ones<sup>77</sup>.

The role and determination of the “Mothers of Srebrenica” association have been crucial not only in the search and exhumation of the bodies of their loved ones but also in the preservation of their memory. The association has also distinguished itself in the field of the search for truth and responsibility for the Genocide. It is sufficient to mention, among others, the battle that the association conducted with the Netherlands to examine the responsibility of the Dutch battalion in charge of security and defense of the “protected area” of Srebrenica. A battle that went all the way to the European Court of Human Rights in 2013<sup>78</sup> and the Dutch Supreme Court ruling in 2019<sup>79</sup> that recognized the direct responsibility of the Dutch battalion for the deaths of three hundred people who had found refuge at their base in the context of the capture of the enclave of Srebrenica by the army of *Republika Srpska*<sup>80</sup>.

The “Mothers of Srebrenica” are an example of how women can reinvent their role in a post-conflict society and become active agents of change. They have achieved astonishing results due to their persistent, peaceful, and patient struggle to find out and spread the truth about what happened to their missing loved ones in Srebrenica in 1995. With

76. O. Simic, *What Remains of Srebrneica? Motherhood, Transitional Justice and Yearning for the Truth*, in *Journal of International Women’s Studies*, vol. 10, n. 4, 2009, p. 225, available at: [research-repository.griffith.edu.au/handle/10072/37865](https://research-repository.griffith.edu.au/handle/10072/37865) (accessed May 2022).

77. *Ibidem*.

78. ECtHR, *Sichting Mothers of Srebrenica and Others v. Netherlands*, no. 65542/12, Judgment of 11 June 2013, available at: [hudoc.echr.coe.int/eng - {{itemid}}:{{001-122255}}](https://hudoc.echr.coe.int/eng-{{itemid}}:{{001-122255}}) (accessed May 2022).

79. Dutch Supreme Court, no. 17/04567, July 19, 2019, available at: [uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:1284](https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:1284) (accessed May 2022).

80. T. Dannenbaum, *A Disappointing End of the Road for the Mothers of Srebrenica Litigation in the Netherlands*, in *Blog of European Journal of International Law*, available at: [www.ejiltalk.org/a-disappointing-end-of-the-road-for-the-mothers-of-srebrenica-litigation-in-the-netherlands/](https://www.ejiltalk.org/a-disappointing-end-of-the-road-for-the-mothers-of-srebrenica-litigation-in-the-netherlands/) (accessed May 2022).

very little education and no access to powerful decision-making bodies, the “Mothers” enjoy respect and recognition by the local and the international community. One thing is certain: these women are brave, strong, and influential. They made men in the position of power sit down, listen to them and recognize their existence, pain, determination, and the threat to dominant power – certainly a transformative moment.

However, there is still a long bumpy road before them. As long as those responsible for the genocide walk freely and until missing sons and husbands are discovered, identified and buried, Srebrenica will remain the city of ghosts and the “Mothers” will not be able to find the truth and the long-lasting peace they desire. But despite all these challenges, the messages of hope sent by the children and the “Mothers of Srebrenica” will remain and remind the world that there are hopes for a brighter future in this war-torn country<sup>81</sup>.

#### 4. Conclusion

In Bosnia and Herzegovina, there are also other women’s associations that have been firmly and convincingly committed to the process of reconciliation and transition<sup>82</sup>. For this reason, it is worth mentioning that we have only briefly and without claiming to be exhaustive, described those associations whose work has been particularly significant in certain areas.

Although this constitutes only a superficial survey of the role of women’s associations in the field of transition, it can be said that the role of women has been fundamental<sup>83</sup>.

First of all, these associations have been able to help a large number of women victims of rape and violence, who otherwise would not have been able to receive adequate material support, but especially psychological. In addition, the awareness-raising campaigns of some

81. T. Dannenbaum, *A Disappointing End of the Road for the Mothers of Srebrenica*, cit., p. 232.

82. The complete list of over one hundred and twenty women’s NGOs in Bosnia and Herzegovina can be found at the following link of the Ministry of Justice of Bosnia and Herzegovina: [www.mpr.gov.ba/NVO/default.aspx?id=7059&langTag=bs-BA](http://www.mpr.gov.ba/NVO/default.aspx?id=7059&langTag=bs-BA) (accessed May 2022).

83. A. Bina, *Transitional Justice or Transitional Injustice? A gendered analysis of transitional justice, with a case study on Bosnia and Herzegovina*, available at: [repository.gchumanrights.org/bitstream/handle/20.500.11825/815/Bina.pdf?sequence=1&isAllowed=y](http://repository.gchumanrights.org/bitstream/handle/20.500.11825/815/Bina.pdf?sequence=1&isAllowed=y) (accessed May 2022).

associations have made it possible to make the population aware of this issue, which many people wanted to keep quiet about after the war or, worse still, conceal it because was scandalous and shameful<sup>84</sup>.

The other strong point of the women's associations in the field of transition was undoubtedly their ability to adapt to new needs. While in the immediate post-war period it was mainly material aid to refugees that was needed, over the years the women's associations were able to broaden their horizons: they were committed to defending women's rights within the social and political context that emerged after the war.

Largely due to their gendered position as non-combatants and outside politics, women were in fact in a much more favorable position than men to undertake such reconciliation efforts, and many of them did. The fact that women have dominated cross-ethnic contacts and anti-nationalist initiatives since the war began was a particular source of pride for these women and one that donors, local activists, and others promoting women's role in reconciliation liked to emphasise<sup>85</sup>.

All this suggests that the transition process in Bosnia and Herzegovina cannot ignore the fundamental contribution of women and women's associations.

84. I. Skjelsbaek, *Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia and Herzegovina*, in *Feminism & Psychology*, vol. 16, n. 4, 2006, pp. 373-404. DOI: [10.1177/0959353506068746](https://doi.org/10.1177/0959353506068746).

85. E. Helms, *Innocence and Victimhood*, cit., p. 94.

# GENDER DIGITAL INCLUSION AND HUMAN RIGHTS IN PEACEBUILDING: A CASE OF SOUTHEAST ASIA

*Thi Ngoc Anh Nguyen\**

**SUMMARY:** 1. Introduction – 2. Towards gender digital inclusion in peacebuilding: A human rights-based approach – 2.1. Understanding gender digital inclusion in peacebuilding – 2.2. Gender digital inclusion in the international human rights framework – 3. The emerging practice of gender digital inclusion in peacebuilding – 3.1. Strengthening networking and cooperation between local women’s civil society organisations: The Philippines Women Insider Mediation Platform – 3.2. Raising awareness of local conflict dynamics and women’s roles in peace processes: Podcast She Talks Peace – 3.3. Developing counter-narratives of online violence: Myanmar’s Panzagar anti-hate-speech campaign – 3.4. Empowering women and girls through capacity-building activities: Kadtudtula “Digital Peace Storytelling Workshop” – 4. Barriers to gender digital inclusion in peacebuilding – 5. Conclusion.

## **1. Introduction**

For a long time, Southeast Asia (SEA) has faced the consequences of entrenched political violence and organised conflicts, including subnational conflicts, violent extremism, violent mass movements, and social protest<sup>1</sup>. Even though the violence is less extreme, high-profile occurrences and persistent local conflicts significantly impact many countries like Thailand, Myanmar, Malaysia, Indonesia, and the Philippines. Transforming conflicts and building sustainable peace

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1. The Asia Foundation, *Violent conflict, tech companies, and social media in Southeast Asia: key dynamics and responses*, The Asia Foundation, San Francisco 2020, available at: [asiafoundation.org/publication/violent-conflict-tech-companies-and-social-media-in-southeast-asia/](https://asiafoundation.org/publication/violent-conflict-tech-companies-and-social-media-in-southeast-asia/).



has become critical strategies at both regional and national levels. The Covid-19 epidemic, which is spreading throughout the hostile and confrontational terrain that is happening in the region, has injected further fear and agony into an already chaotic situation<sup>2</sup>. The constant lockdown and limited space for offline peace activities, together with the emergence of digital technologies, have generated new opportunities for online engagement in peace processes.

The new frontier of conflict and bloodshed in the SEA has been shifted to the digital space due to the extension of internet connectivity, improved telecommunications infrastructure, and more affordable technology products<sup>3</sup>. Thoms argues that by adapting to digital technologies, peacebuilding organisations have more significant occasions to explore new methods to generate funds, acquire support, share information, and organise actions to promote and sustain peace<sup>4</sup>. Online spaces have created new chances for everyone to participate in and support peace efforts simply by clicking a button. The advent of digital technology has significantly contributed to the emergence of novel opportunities for civic engagement. This is primarily due to the provision of robust tools that empower individuals to generate and disseminate data in previously unattainable ways, fostering transformative effects, facilitating dialogue and networking, and enabling information sharing and debunking false information<sup>5</sup>. However, it is imperative to consider that digital technologies have the potential to serve any purpose intended by their users, which may include fuelling hatred, division, or violence<sup>6</sup>. Regardless, Baytiyeh argues that we cannot ignore their potential impact «in protesting against socioeconomic and political injustices, promoting intergroup relations and communications, empowering people for peace, and mobilising communities for change during post-conflict recovery»<sup>7</sup>.

2. A. Bruke, A. Arayawuth, T. Chand, S. Chingchit, D. Lander, A. Neelakantan, S. Zihiri, *The state of conflict and violence in Asia 2021: Identity-based conflict and extremism*, The Asia Foundation, San Francisco 2021, available at: [asiafoundation.org/wp-content/uploads/2021/10/The-State-of-Conflict-and-Violence-in-Asia-2021.pdf](https://asiafoundation.org/wp-content/uploads/2021/10/The-State-of-Conflict-and-Violence-in-Asia-2021.pdf).

3. The Asia Foundation, *Violent conflict, tech companies, and social media in Southeast Asia*, cit.

4. H. Thoms, *Social media – a new ally for peacebuilding*, PAX, 2021, available at: [paxforpeace.nl/media/download/Social%20Media%20A%20New%20Ally%20for%20Peacebuilding.pdf](https://paxforpeace.nl/media/download/Social%20Media%20A%20New%20Ally%20for%20Peacebuilding.pdf).

5. *Ibidem*.

6. H. Baytiyeh, *Social media's role in peacebuilding and post-conflict recovery*, in *Peace Review*, vol. 31, n. 1, 2019, p. 80. DOI: 10.1080/10402659.2019.1613599.

7. *Ibidem*.

In the emergence of technology for peace, greater *digital inclusion*<sup>8</sup> of historically marginalised groups, such as women, is also seen as a possible benefit of employing digital technology in peacebuilding efforts. It has also been in line with the multilateral goal of promoting women's participation in peace processes since the Security Council of the United Nations (UN) adopted Resolution 1325 in 2000. Yet, digital technology usage for peace in practice raises complex ethical, privacy, and security issues, which may reproduce power disparities and conflict dynamics in online contexts<sup>9</sup>. Many women who are in need of peace lack the means to bridge the technological gap, making them “digitally invisible”<sup>10</sup>. The emerging applications of new technologies in mainstream peacebuilding efforts, in short, have left so many people behind. At the same time, the literature has not focused on inclusion as the agents of change in improving and designing the digital system for peace processes<sup>11</sup>.

Hirblinger argues that the extent of women's digital engagement is determined by various contextual elements, including the technological, social-cultural, and political milieu in which technology is applied<sup>12</sup>. As a consequence, women persistently encounter political, financial, technical, and cultural disparities that hinder their ability to effectively employ digital technologies to enhance inclusion in conflict prevention and peacebuilding efforts<sup>13</sup>. Dharmapuri and Shoemaker

8. Digital inclusion is first developed from the concept of digital divide, which is generally used to explain the gap and inequalities between individuals and societies in multidimensional aspects of digital technology usage, covering accessibility, ability, and capacity. It is argued that digital inclusion is the process of democratising access to digital technology to enable marginalised groups to participate in an information society. In this chapter, the term “gender digital inclusion” is used to draw attention to the empowerment of women and girls by effectively using digital technologies and allowing them to engage in and benefit from current digitalised economies and societies.

9. Peace Direct, *Digital pathways for peace: insights and lessons from a global online consultation*, Peace Direct, London 2020, available at: [www.peacedirect.org/wp-content/uploads/2020/08/PD-LVP-Tech-Report.pdf/](http://www.peacedirect.org/wp-content/uploads/2020/08/PD-LVP-Tech-Report.pdf/).

10. R. Mac Ginty, *Peacekeeping and data*, in *International Peacekeeping*, vol. 24, n. 5, 2017, pp. 695-705. DOI: 10.1080/13533312.2017.1383561.

11. S. Dharmapuri, J. Shoemaker, *Women, peace & security and the digital ecosystem: five emerging trend in the technology and gender policy escape*, One Earth Future Foundation, Broomfield 2021, available at: [oursecurefuture.org/sites/default/files/WPS%20Digital%20Ecosystem.pdf/](http://oursecurefuture.org/sites/default/files/WPS%20Digital%20Ecosystem.pdf/).

12. A. Hirblinger, *Digital inclusion in peacemaking: a strategic perspective*, Centre on Conflict, Development and Peacebuilding, Geneva 2020, available at: [repository.graduateinstitute.ch/record/298396](http://repository.graduateinstitute.ch/record/298396).

13. A. Hirblinger, *Digital inclusion in mediated peace processes: how technology can enhance participation*, United States Institute of Peace, Washington 2020, available at: [www.usip.org/publications/digital-inclusion-in-mediated-peace-processes-how-technology-can-enhance-participation](http://www.usip.org/publications/digital-inclusion-in-mediated-peace-processes-how-technology-can-enhance-participation).

also note that most technology designers have not been aware of existing international frameworks for human rights and gender equality, leading to a lack of human rights protection in any digital peacebuilding agenda<sup>14</sup>.

To complement the existing literature and provide a more contextual analysis, this chapter examines the use of digital technology to increase women's roles in SEA peacebuilding activities from a human rights-based approach. In particular, this chapter seeks to explore whether *gender digital inclusion* (GDI) can strengthen women's role in peacebuilding processes and the obstacles to advancing GDI in the digitalisation of peacebuilding. The author focuses less on the specific technologies used and more on their impacts on the roles in the regional context.

The first section of this chapter delves into the concept of GDI in peacebuilding activities and highlights the interrelation between GDI and human rights. The chapter then moves to analyse the emerging practice of women's inclusion in the SEA digital peacebuilding programmes of the SEA and its impacts on women's role in sustaining peace and building resilience in their communities. Finally, the last section sets off barriers for GDI implementation based on in-depth conversations with women peacebuilders, focusing on the cultural and sociopolitical context, ethics of technology, and the protection and promotion of women's rights in the region.

## **2. Towards gender digital inclusion in peacebuilding: A human rights-based approach**

This section explores the concept of GDI in the peacebuilding agenda. In this sense, it further provides a summary of the international human rights frameworks relevant to GDI in peace processes with a focus on equal access to digital technology and gender equality.

*usip.org/sites/default/files/2020-09/20200929-pw\_168-digital\_inclusion\_in\_mediated\_peace\_processes\_how\_technology\_can\_enhance\_participation-pw.pdf*; A. Hirblinger, *Digital inclusion in peacemaking: a strategic perspective*; S. Dharmapuri, J. Shoemaker, *Women, peace & security and the digital ecosystem: five emerging trend in the technology and gender policy escape*.

14. S. Dharmapuri, J. Shoemaker, *Women, peace & security and the digital ecosystem*, cit.

## 2.1. Understanding gender digital inclusion in peacebuilding

The *inclusion* concept is part of a broader normative penetration into peace processes and post-conflict peacebuilding. In an effort to achieve *inclusivity*<sup>15</sup>, *inclusion* has become a critical component of international and national efforts to assist the peaceful resolution of conflicts and the establishment of sustainable peace. In line with this perspective, Hirblinger and Landau argue that the strategic application of digital technology has the potential to promote inclusivity in ways that traditional methods are unable to achieve<sup>16</sup>. Digital technology has the potential to enhance efforts aimed at safeguarding vulnerable populations while concurrently mitigating the likelihood of a disruption in the peace process or a resurgence of armed conflict<sup>17</sup>. Hirblinger further defines *digital inclusion* in a peace process as «the voice of conflict stakeholders [...] integrated into that process in the form of digital data»<sup>18</sup>.

Drawing on this perspective, digital technologies are no longer tools or gadgets for peace activities only anymore<sup>19</sup>. They contain knowledge and information that impacts the dynamics of peace processes. Hence, equal access to digital technology becomes critical to guarantee the inclusion of marginalised groups such as women. GDI, therefore, has the potential to become associated with women's empowerment in peacebuilding, aiming at protecting their rights, enhancing their voices and strengthening their roles.

As a matter of fact, GDI enables more direct forms of engagement, avoiding the difficulty of allocating seats at the table in a manner that represents the composition of those impacted by the conflict<sup>20</sup>. In addition, women are often presented as victims who need protection during conflicts. The motivation for inclusion is to reduce women's vulnerability by expanding their engagement in peace efforts<sup>21</sup>. Digital

15. The UN Guidance on Effective Mediation defines *inclusivity* as «the extent and manner in which the views and needs of conflict parties and other stakeholders are represented and integrated into the process and outcome of a mediation effort».

16. A. Hirblinger, D. Landau, *Daring to differ? Strategies of inclusion in peacemaking*, in *Security Dialogue*, vol. 51, n. 4, 2020, pp. 305-322. DOI: 10.1177/0967010619893227.

17. *Ibidem*.

18. A. Hirblinger, *Digital Inclusion in mediated peace processes*, cit., p. 10. In addition, Hirblinger argues that “voice” includes all factual information, preferences, experiences, opinions, and beliefs.

19. *Ibidem*.

20. *Ibidem*.

21. T. Väyrynen, *Gender and peacebuilding*, in O. Richmond (eds.), *Palgrave*

technologies simplify women's participation in peace activities and political institutions while also reducing the likelihood of continuous violence against women by providing early warning and action. Women peacebuilders, through digital inclusion, also have the opportunity to increase the legitimacy of procedures and results by incorporating stakeholders other than the main conflict parties<sup>22</sup>.

Altogether, it is not access to digital technologies that can foster inclusion, but how these technologies meet the social requirements of local communities. In peacebuilding, GDI requires a comprehensive strategy and appropriation of technology in which the views and needs of women are articulated, transmitted, and integrated into peace processes. Although digital technology cannot alter the political environment in which peace processes take place, it enables peacebuilders to react to these issues in new ways by providing more adaptable forms of participation that are less reliant on infrastructure and physical location<sup>23</sup>.

## 2.2. Gender digital inclusion in the international human rights framework

The concept of “*digital inclusion*” concept was built on the foundation of equal access to the Internet, which was later expanded and labelled as “*digital right*”. Reventlow defines “digital rights” as human rights that enable a person to access, utilise, produce, and disseminate online content on digital devices and in virtual spaces and communities<sup>24</sup>. According to Peacock, there are popular debates among civil society and academics about whether the digital right is «a human right in and of itself, part of already-existing freedom of expression guarantees, or not a right at all.»<sup>25</sup> In this sense, it is argued that the digital rights deserve the protection as other human rights, in part because digital access impacts how people exercise their already-established rights and partly due to the substantial growing effects of digital technology on individuals and society<sup>26</sup>.

*advances in peacebuilding: critical developments and approaches*, Palgrave Macmillan, 2010. DOI: [10.1057/9780230282681\\_8](https://doi.org/10.1057/9780230282681_8).

22. A. Hirblinger, *Digital inclusion in peacemaking*, cit.

23. A. Hirblinger, *Digital inclusion in mediated peace processes*, cit.

24. N. Reventlow, *Digital rights are human rights*, Digital Freedom Fund, 2017, available at: [digitalfreedomfund.org/digital-rights-are-human-rights](https://digitalfreedomfund.org/digital-rights-are-human-rights).

25. A. Peacock, *Human rights and the digital divide*, Routledge, 2019, p. 4. DOI: [10.4324/9781351046794](https://doi.org/10.4324/9781351046794).

26. A. Peacock, *Human rights and the digital divide*; M. Replitz, *The human right to*

Scholars argue that digital rights should be grounded on the foundation and “normative vision” of human rights<sup>27</sup>. They include, but are not limited to, the right to freedom of opinion and expression, the right to information, the right to equality and non-discrimination, the right to political participation, and the right to privacy. These rights are contained under the international human rights framework, which includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights.

In terms of human rights, the UN Human Rights Committee (HRC) has formally recognised the impact on society and the need to promote access to it. HRC’s General Comment 34 on the Right to Freedom of Expression and Opinion states, «there is now a global network for exchanging ideas and opinion that does not necessarily rely on the traditional mass media intermediaries.»<sup>28</sup> In the same year, the Special Rapporteur on Freedom of Expression took a much less cautious approach, asserting the unique attributes of the medium and consequently its effect on how individuals and society collectively exchange information. Furthermore, he argues that UDHR and ICCPR were written with the foresight to include new mediums through which individuals exercise their right to free speech, and thus they are equally applicable to the Internet<sup>29</sup>. This assertion has supported many scholar’s opinion on digital access as a human right and further shed light on the need to broaden the scope and content of freedom of expression to address inequalities in accessing the Internet, including infrastructure, access to relevant content, and digital literacy skills<sup>30</sup>. In 2016, an

*free internet access*, in *Journal of Applied Philosophy*, vol. 37, n. 2, 2020, pp. 314-331. DOI: 10.1111/japp.12395.

27. See, for example, A. Peacock, *Human rights and the digital divide*, cit.; K. Mathiesen, *Human rights for the digital age*, in *Journal of Mass Media Ethics*, vol. 29, n. 1, 2014, pp. 2-18. DOI: 10.1080/08900523.2014.863124; K. Karppinen, *Human Rights and the Digital*, in H. Tumber, S. Waisbord (eds.), *The Routledge Companion to Media and Human Rights*, Routledge, 2017, pp. 95-103. DOI: 10.4324/9781315619835-9; M. Reglitz, *The human right to free internet access*, cit.

28. *General comment no. 34 on article 19: Right to freedom of opinion and expression*, CCPR/C/GC/34, Human Rights Committee, 2011, para. 15, available at: [www2.obchr.org/english/bodies/hrc/docs/gc34.pdf](http://www2.obchr.org/english/bodies/hrc/docs/gc34.pdf) (accessed May 30, 2022).

29. F. La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/17/27, Human Rights Council, 2011, pp. 16-17, available at: [www2.obchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27\\_en.pdf](http://www2.obchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf).

30. *Ibidem*.

addition was made to Article 19 of the UDHR, declaring Internet access a basic human right<sup>31</sup>, integral to enabling individuals to exercise their free speech, and recognising «access to information on the Internet facilitates vast opportunities for affordable and inclusive education globally»<sup>32</sup>. The General Assembly also emphasised the significance of «the empowerment of all women and girls» through greater access to digital technology<sup>33</sup>.

Furthermore, the recommendations of the UN World Summit on the Information Society (WSIS) held in 2003 underscore the need for special attention to vulnerable groups. The subsequent Plan of Action further encouraged States to «promote research and development to facilitate accessibility of ICTs for all, including disadvantaged, marginalised and vulnerable groups»<sup>34</sup> to guarantee their «full inclusion in the information society»<sup>35</sup>.

Subsequently, the Declaration of Principles, adopted by the 2003 WSIS, acknowledges that individuals should have the opportunity to acquire essential skills and knowledge to «participate in, and benefit fully from, the Information Society and the knowledge economy.»<sup>36</sup> It also recognises the difficulty of using the potential of technology to promote gender equality and women's empowerment. For this reason, the Declaration urges the States to «mainstream a gender equality perspective and use ICTs as a tool to that end»<sup>37</sup>. In addition, the 2005 WSIS adopted the Tunis Commitments and the Tunis Agenda, once again committing to eliminating the gender digital gap and promoting gender equality in the information society<sup>38</sup>. Resolution A/RES/70/1, adopted

31. *Human Rights Council thirty-second session, agenda item 3: promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/32/L.20, United Nations General Assembly, 2016, available at: [www.article19.org/data/files/Internet\\_Statement\\_Adopted.pdf](http://www.article19.org/data/files/Internet_Statement_Adopted.pdf).

32. Ivi, p. 2.

33. Ivi, p. 3.

34. *World summit on the information society: Plan of Action*, WSIS-03/GENEVA/DOC/5-E, WSIS, 2003, para. 10(c), available at: [www.itu.int/net/wsis/docs/geneva/official/poa.html](http://www.itu.int/net/wsis/docs/geneva/official/poa.html) (accessed May 30, 2022).

35. *Ibidem*, para. 9(e).

36. *Declaration of principles: building the information society: a global challenge in the new Millennium*, WSIS-03/GENEVA/DOC/4-E, WSIS, 2003, para. 29, available at: [www.itu.int/net/wsis/docs/geneva/official/dop.html](http://www.itu.int/net/wsis/docs/geneva/official/dop.html) (accessed May 30, 2022).

37. *Ibidem*, para. 12.

38. *Tunis commitment*, WSIS-05/TUNIS/DOC/7-E, WSIS, 2005, paras. 13 and 23, available at: [www.itu.int/net/wsis/docs2/tunis/off/7.html](http://www.itu.int/net/wsis/docs2/tunis/off/7.html) (accessed 30 May 2022). *Tunis agenda for the information society*, WSIS-05/TUNIS/DOC/6(Rev. 1)-E, WSIS,

by the General Assembly during the review of the implementation of WSIS, further stresses the mutual reinforcement between bridging the gender digital divide and achieving gender equality<sup>39</sup>. Thus, it encourages states to adopt «immediate measures to achieve gender equality in Internet users by 2020, especially by significantly enhancing women’s and girls’ education and participation in ICTs, as users, content creators, employees, entrepreneurs, innovators, and leaders»<sup>40</sup>.

Furthermore, equal access to the advantages of digital technology is an essential component for states to fulfil their human rights obligations and duties under international law in respect of human rights, especially in ensuring respect for women’s fundamental rights. In the context of the digitisation of peacebuilding, the gender divide violates established international obligations and norms as regards the right to equal participation in all efforts to maintain and promote peace and security, as stated in the Convention on the Elimination of All Forms of Discrimination against Women, General Recommendations 23 and 30, the Beijing Declaration and Platform for Action, and as supported in the Resolution 1325 of the UN Security Council and its numerous subsequent resolutions.

Similarly, the 2030 Agenda for Sustainable Development, grounded in, *inter alia*, the UDHR and other human rights instruments, also emphasises the States’ responsibility to «respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind»<sup>41</sup>. Goal 5 of the 2030 Agenda and the Sustainable Development Goals also sets targets for all States to achieve gender equality, including gender equality in digital contexts. Additionally, several other goals related to digital technology are also relevant to debates about reducing the digital gap and building a human rights foundation for GDI.

After all, a systematic approach to embedding human rights in the new digital architecture of peacebuilding and closing the gender digital divide requires that all relevant policies and programmes are

2005, pars. 90 and 114, available at: [www.itu.int/net/wsis/docs2/tunis/off/6rev1.html/](http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html/) (accessed May 30, 2022).

39. *Resolution adopted by the General Assembly on 16 December 2015*, A/RES/70/125, General Assembly, 2016, para. 27, available at: [documents-dds-ny.un.org/doc/UNDOC/GEN/N15/438/42/PDF/N1543842.pdf?OpenElement/](http://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/438/42/PDF/N1543842.pdf?OpenElement/) (accessed 30, May 2022).

40. *Ibidem*.

41. *Resolution adopted by the General Assembly on 25 September 2015*, A/RES/70/1, General Assembly, 2015, pars. 10 and 19, available at: [www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf/](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf/) (accessed 30 May 2022).



based on human rights norms and standards. This will help address the entire spectrum of human rights issues that digital technology raises. Human rights should be a central premise, as well as the primary aim of the digitisation of peacebuilding to strengthen the GDI framework. In practical terms, human rights might be seen as protection against *standard threats*, for instance, violence, oppression, and deprivation, which jeopardise human interests in the online space<sup>42</sup>.

### 3. The emerging practice of gender digital inclusion in peacebuilding

This section analyses the emerging practice of GDI projects and their effects on women's participation in SEA peacebuilding activities. It is noted that this section only focusses on the projects that can serve the GDI goal, hence, it does not examine other digital peace practices that may indirectly affect women and girls in the process. The section provides brief examples of four different approaches in the region.

#### 3.1. *Strengthening networking and cooperation between local women's civil society organisations: The Philippines Women Insider Mediation Platform*

Mindanao, located in the southernmost region of the Philippines, is the second-largest island in the archipelago. It has seen not only persistent conflicts for many decades but also robust women's participation in all peace processes, including negotiations, mediations, and sustaining peace<sup>43</sup>. In 2020, the Covid-19 epidemic spread throughout the country, leading to strictly enforced lockdowns as infection rates increased. This has proliferated existing conflict tensions in Mindanao, as well as limited the communications of women civil society organisations in all peace activities<sup>44</sup>.

In line with this context, the Women Insider Mediation – Rapid Action Mobilization Platform (WIM-RAM) was launched with

42. K. Mathiesen, *Human rights for the digital age*, in *Journal of Mass Media Ethics*, cit., p. 8.

43. I. Santiago, *The participation of women in the Mindanao peace process*, UN Women, New York 2015, p. 3, available at: [www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2017/participation-of-women-in-mindanao-peace-process.pdf/](http://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2017/participation-of-women-in-mindanao-peace-process.pdf/).

44. A. Bruke *et al.*, *The state of conflict and violence in Asia 2021*, cit., p. 125.

the support of the Australian Embassy in the Philippines, the Royal Norwegian Embassy in Manila, and the European Union in 2021<sup>45</sup>. It serves as a community-based women representative of civil society organisations from the Moro and Indigenous Peoples communities on the island<sup>46</sup>. The WIM-RAM provides women peacebuilders with a network, resources, and training to strengthen and sustain their work. United Nations Development Programs (UNDP) in the Philippines further connects participants with national and regional decision-making processes to ensure that local communities and women's voices are included and represented<sup>47</sup>.

Throughout their operation, social media platforms, particularly Facebook, have been proven to be an effective virtual platform for communication and information exchange. These platforms enable individuals to stay connected and well-informed about local conflicts, as well as provide opportunities to engage in discussions and offer guidance on intricate matters such as administrative reforms, decentralisation, and resource governance. As a result, peacebuilders can exert influence on the negotiation process within their local communities. A more stable online platform for networking and knowledge and resource sharing is also developed to increase the inclusion of women in digital peace activities<sup>48</sup>.

### *3.2. Raising awareness of local conflict dynamics and women's roles in peace processes: Podcast She Talks Peace*

The podcast *She Talks Peace* is co-hosted by Amina Rasul Bernardo, President of the Philippine Centre for Islam and Democracy, and Dina Zaman, a Malaysian journalist and co-founder of IMAN Research<sup>49</sup>.

45. *3rd State of Bangsamoro Women Address*, Bangsamoro Women Commission, 2021, available at: [bwc.bangsamoro.gov.ph/chairperson-speech/3rd-state-of-bangsamoro-women-address/](http://bwc.bangsamoro.gov.ph/chairperson-speech/3rd-state-of-bangsamoro-women-address/) (accessed April 17, 2022).

46. *Ibidem*.

47. UNDP, *Peacebuilding in a pandemic: Meet the Bangsamoro women mediators taking on challenge*, UNDP Asia and the Pacific, text available: [undp-asia-pacific.sborhandstories.com/peacebuilding-in-a-pandemic/index.html](http://undp-asia-pacific.sborhandstories.com/peacebuilding-in-a-pandemic/index.html) (accessed April 17, 2022).

48. UNDP, *Women Insider Mediators Platform*, UNDP Asia and the Pacific, available at: [www1.undp.org/content/tolerance-and-diversity/en/home/WomenInsiderMediatorsPH.html](http://www1.undp.org/content/tolerance-and-diversity/en/home/WomenInsiderMediatorsPH.html) on April 17, 2022.

49. A. Rasul, *SHE TALKS PEACE: The role of women peacebuilders*, MindaNews, 2021, available at: [www.mindanews.com/mindaviews/2021/10/she-talks-peace-the-role-of-women-peacebuilders/](http://www.mindanews.com/mindaviews/2021/10/she-talks-peace-the-role-of-women-peacebuilders/) (accessed April 19, 2022).

Each episode aims to provide an informative and engaging online platform for the public to know the stories of women peacebuilders in many countries such as Malaysia, the Philippines, Indonesia, Afghanistan, Yemen, etc.; their dreams and hopes for a world without violence. The podcasts want to promote gender equality and encourage women and girls to participate in activities to sustain peace and develop their local communities through each story. This statement underscores the significance of women peacebuilders in facilitating enduring peace and security within their communities, as well as their ability to provide timely and precise information on conflict situations in the region.

### *3.3. Developing counter-narratives of online violence: Myanmar's Panzagar anti-hate-speech campaign*

In 2014, in response to widespread public appeals for hate and even murder of Muslims, a group of Myanmar activists, including former political prisoners, launched a campaign against hate speech<sup>50</sup>. Their *Panzagar* campaign used social media and public events to encourage others to be mindful of what they say so that hatred amongst people does not spread. The icon is a person with a flower in their mouth, symbolising the spread of peace through positive words.

In 12 months, the campaign was downloaded 2.7 million times and 12.9 million stickers were used<sup>51</sup>. It also included physical initiatives such as pamphlet distribution, regional excursions, and offline events. *Panzagar's* advantages involved broad coordination among civil society organisations and individuals that merged innovative ideas with the abilities required to bring them to life<sup>52</sup>.

Specifically, the campaign effort led to sustainable actions. It resulted

50. R. Einzenberger, "If it's on the internet it must be right": An interview with Myanmar ICT for Development Organisation on the use of the internet and social media in Myanmar, in *Austrian Journal of South-East Asian Studies*, vol. 9, n. 2, 2016, pp. 301-310. DOI: 10.14764/10.ASEAS-2016.2-9.

51. B. Ridout, M. McKay, K. Amon, A. Campbell, *Mobile Myanmar: the impact of social media on young people in conflict-affected regions of Myanmar*, Save the Children, Yangon 2019, p. 20, text available: [resourcecentre.savethechildren.net/pdf/mobile\\_myanmar\\_2019\\_2019-11-06.pdf](https://resourcecentre.savethechildren.net/pdf/mobile_myanmar_2019_2019-11-06.pdf).

52. T. O'Connor, *Stakeholder mapping of countering hate speech in Myanmar – External Report*, Search for Common Ground, Washington and Brussels, 2018, available at: [www.sfcg.org/wp-content/uploads/2018/01/SFCG-Stakeholder-Mapping-Report-external-20Nov2017-FINAL-for-printing.pdf](http://www.sfcg.org/wp-content/uploads/2018/01/SFCG-Stakeholder-Mapping-Report-external-20Nov2017-FINAL-for-printing.pdf).

in the establishment of MIDO, one of the most visible and active organisations in conflict resolution, internet initiatives, and community-level peace activities in Myanmar. *Panzagar* also led to the exchanges with communities on peaceful coexistence memories to create «a log book of positive messages that can then be communicated through various channels»<sup>53</sup>.

### 3.4. Empowering women and girls through capacity-building activities: Kadtudtula “Digital Peace Storytelling Workshop”

Kadtudtula “Digital Peace Storytelling Workshop” is an initiative project of the Alliance of Magnanimous Youth Leaders in collaboration with the Bangsamoro Youth Commission and funded by UNDP and the European Union. The workshop aims to build a culture of peace through stories told through digital campaigns. In May 2021, twenty youth leaders from different municipalities in Maguindanao participated in various capacity-building activities, contributing to identifying narratives on young people, peace, and security. These activities centred on a basic understanding of communication for development, digital media literacy, and campaign pitching<sup>54</sup>.

Through this initiative, young peacebuilders were prepared with technical skills in peacebuilding communication and advocacy, along with an understanding of countering misinformation and disinformation and promoting positive-alternative messages. The project also helps to amplify youth’s voices on peacebuilding and preventing and combating violent extremism through digital platforms and social media campaigns.

## 4. Barriers to gender digital inclusion in peacebuilding

The final section explores what obstacles challenge the digital inclusion of women and girls in mainstream peacebuilding efforts<sup>55</sup>.

53. C. Silverman, *Can positive messaging on social media promote peacebuilding in Myanmar?*, Malmö University, 2018, p. 29, available at: [www.diva-portal.org/smash/get/diva2:1483087/FULLTEXT01.pdf](http://www.diva-portal.org/smash/get/diva2:1483087/FULLTEXT01.pdf).

54. UNDP, *Kadtudtula Digital Peace Storytelling Platform*, UNDP Asia and the Pacific, 2021, text available: [www1.undp.org/content/tolerance-and-diversity/en/home/IntrafaithDialoguePlatformPH1.html](http://www1.undp.org/content/tolerance-and-diversity/en/home/IntrafaithDialoguePlatformPH1.html) (accessed April 20, 2022).

55. This section builds on twelve in-depth interviews with women peacebuilders from grassroot civil society organisations in SEA (in this section, the interviewees

The author asked peacebuilders about their experience and practices in strengthening women's inclusion in digital peacebuilding and the problems they faced while designing, organising, or participating in these activities. Overall, the issue of Internet connection and access to digital technology was always mentioned first, as it is the core foundation for good GDI strategies. Good access to the Internet and other digital technologies is limited to a few people in many areas. As previously analysed, social gender inequalities create a barrier for many women and girls to access digital technology, including devices such as smartphones or laptops. Some peacebuilders also expressed concern about the lack of funds and resources to solve the issue of digital access and expand influence on larger target women groups in local communities. In addition, the availability of digital technology is also a problem. In many areas, women and girls have to rely on outside resources to access the Internet, which limits their ability to use the Internet and other communication technologies to their full advantage.

However, accessibility is only the first step toward enabling GDI. Physical access is necessary but insufficient for learning and developing technical skills. Peacebuilders' experiences also demonstrate that social disadvantage in the form of inferior qualifications and literacy may lead to women being unable or reluctant to use online technology. In addition, women's inability to be entirely digitally involved can also lead to social marginalisation, mainly through limited involvement and socio-political networking possibilities. Moreover, capacity-building activities often focus more on the younger generation. Due to limited resources, civil society organisations often choose people to participate in these training activities based on their ability and the ability to fully understand what is taught, as well as the «willingness to come back and support their local community»<sup>56</sup>. The age gap in the digital training agenda inadvertently excludes a large group of women from practising their political rights in a new inclusion approach.

are all referred to as “peacebuilders”). A sampling strategy combining elements of the purposive and snowball sampling procedures has been chosen. All interviewees were fully aware of the SEA agenda for gender and peacebuilding and able to provide insights into their diverse experiences in different digital peace activities. Many of them have participated directly or indirectly in the practice of GDI that forms the previous section. All interviews were conducted via video call between January and April 2022. The author also offered full anonymity to the interviewees to guarantee the quality of the conversations about politically sensitive issues.

56. Women peacebuilder in the Philippines, 8 April 2022, video call interview.

Senior women peacebuilders can still use technology to express their opinions, but they don't really know how to use it more effectively. You know, like how to record a video or make a campaign on social media. [...] Even for me, joining online meetings sometimes is difficult without the help of young members to set up [the call] or fix the camera<sup>57</sup>.

Nonetheless, a lack of digital literacy<sup>58</sup> affects women's participation in peacebuilding in various ways. For instance, senior women have fewer opportunities to involve in digital spaces, which have been the primary form of peace activities in the last two years, due to the impacts of Covid-19. Poor digital literacy can further enable the abuse of technology for harmful purposes. A variety of tactics, specifically tailored to the online context, are employed by proponents of violence in the SEA region. These include distributing misinformation or disinformation through "sock puppet" accounts with phoney identities or websites that resemble reputable news, spreading explicit hate speech, harassing and threatening online opponents, and sharing inflammatory messages to influence violent acts<sup>59</sup>. It is challenging for people with poor digital literacy to recognise these "exploiting" strategies, making them «victims of disinformation and misinformation» who support violence instead of peace, or worse, promote violence «in the name of peace»<sup>60</sup>. In other instances, specific "super-spreader" incidents have unleashed waves of ethnic prejudice, sparked online hate speech, and resulted in physical assaults. It can be seen in Malaysia during the pandemic, for example, where social media platforms have seen an increase in statements dehumanising unregistered migrants, notably Rohingya refugees<sup>61</sup>.

The obsessive control of digital participation by the states is also a big part of the problem in SEA. According to the RSF World Press Freedom Index, all SEA countries currently sit in the bottom half, ranked from 119 (Malaysia) to 175 (Vietnam) on the 180-country list<sup>62</sup>.

57. Women peacebuilder in Malaysia, 3 February 2022, video call interview.

58. Digital literacy here is understood as the ability to navigate digital world using reading, writing, technical skills, and critical thinking. Digital literacy defines a person's ability to use digital technology to find, evaluate, and communicate information.

59. The Asia Foundation, *Violent conflict, tech companies, and social media in Southeast Asia*, cit.

60. Women peacebuilder in the Philippines, March 15, 2022, video call interview.

61. The Asia Foundation, *Violent conflict, tech companies, and social media in Southeast Asia*, cit. A peacebuilder in Malaysia also mentioned this event during the interview.

62. 2021 *World Press Freedom Index*, Reporters Without Borders, 2021, available at: [rsf.org/en/ranking](https://rsf.org/en/ranking).

In these unstable countries, a theoretical commitment to free speech is undermined by restrictive laws, arrestment, and even the murder of peacebuilders. Since political or ideological ends are the main drivers of violent conflicts in the SEA, government surveillance has become a real threat to the privacy and security of peacebuilders while participating in digital space. The problem with freedom of expression in SEA is that the laws are rather «vague», leaving an open door for twisting their words in order to «control peace supporters or arrest them» because of political motivations<sup>63</sup>. Many governments have attempted to exploit the epidemic to implement additional internet surveillance techniques that go beyond what is required to track down suspected carriers, potentially reinforcing existing disparities and norms<sup>64</sup>. Peacebuilders also highlight recurrent violent efforts to silence women peacebuilders, including online encouragement to abuse, and the chilling effect on women's civic activity<sup>65</sup>. «Women [...] are more vulnerable and are targets of physical attack, online harassment or hate speech»<sup>66</sup>. Non-ethical surveillance in the absence of robust independent courts is proof of human rights violations in SEA and a failure to defend dissenting voices against politicians in power.

Although surveillance is part of the reason why online space is unsafe for peacebuilders, many peacebuilders acknowledged the gender gap

63. Women peacebuilder in Myanmar, January 27, 2022, video call interview.

64. For instance, there were new emergency powers granted to Cambodian Prime Minister Hun Sen to monitor telecommunications and control social media. The new legislation, which came into force at the same time as a growing crackdown on dissent, threatens to imprison local human rights defenders for their criticism of the government's anti-pandemic tactics and actions. See E. Goldrick, *Cambodia's Hun Sen Regime Introduces Repressive Emergency Laws under Cover of Covid-19*, New Mandala, 2020, available at: [www.newmandala.org/cambodias-hun-sen-regime-introduces-repressive-emergency-laws-under-cover-of-covid-19/](http://www.newmandala.org/cambodias-hun-sen-regime-introduces-repressive-emergency-laws-under-cover-of-covid-19/) (accessed 15 May 2022).

65. For example, many women civil society organisations in Myanmar have been forced to shut down because of the escalating violence in the country since the 2021 coup. Various women have been assaulted or arbitrarily detained because of their jobs, including medical workers, journalists, and activists in the field, as well as those supplying food and shelter to people in need. The estimated 10,533 detainees held by the State Administration Council and its linked military forces from February to November 2021 include almost 2,100 women and girls, according to the latest estimates. See M. Bachelet, *Security Council Open Debate on Women, Peace and Security – Protecting Participation: Addressing violence targeting women in peace and security processes*, United Nations Human Rights Office of the High Commissioner, 2022, available at: [www.ohchr.org/en/2022/01/security-council-open-debate-women-peace-and-security-protecting-participation-addressing/](http://www.ohchr.org/en/2022/01/security-council-open-debate-women-peace-and-security-protecting-participation-addressing/) (accessed 15 May 2022).

66. Women peacebuilder in Myanmar, January 27, 2022, video call interview.

in protection against online gender-based violence, such as threats of death or rape, bullying, harassment, stalking, and other offences. Therefore, empowering women to use digital technology also requires educating them to be educated on how to do it safely and securely, for instance, by helping them understand the importance of personal data and with whom to share them. It should further include how to recognise online gender-based violence, and what to do when they face abuse and violence. «Capacity-building [with a focus on] digital literacy and digital safety» should be «the priority of women, peace, and security strategy in the next few years if we want to increase women’s participation in online activities»<sup>67</sup>.

In the meantime, national laws and policies are not efficient. They fail to recognise the continuum of violence against women and girls, including women activists and human rights advocates, experience in cyberspace. In addition, police are less likely to take the case of technology-facilitated abuse seriously because they think there is no actual physical violence or real impact on victims’ lives. As a result, a culture of impunity prevailed in SEA. Women and girls are discriminated against and abused online in a variety of ways, but governments are not fulfilling their human rights obligations to make reasonable and necessary efforts to address such violence. Therefore, when it comes to creating a long-term safe, secure, and supportive digital environment for peacebuilders, there is no alternative but to develop national effective, responsible, inclusive national institutions that can protect and empower individuals while also fostering trust in society. It involves incorporating “*gender considerations*” and “*gender sensitivities*” into all relevant policies and programmes’ design, implementation, monitoring, and evaluation of relevant policies and programmes, as well as establishing precise and transparent progress benchmarks<sup>68</sup>. It is imperative to formulate a strategic approach that fosters the creation of inclusive and secure engagement platforms specifically tailored for peacebuilders from diverse backgrounds and communities. This also requires paying attention to protect their lives, rights, and works in this endeavour.

Peacebuilders further highlight how internet intermediaries are not prepared to deal with the increased usage of their platforms for both peace and violence purposes in conflicts. In SEA, platform governance is also more challenging due to the different and variety of characteristics of local conflicts. For example, there are various small,

67. Women peacebuilder in Malaysia, February 3, 2022, video call interview.

68. Women peacebuilder in the Philippines, March 15, 2022, video call interview.



localised armed groups that exist in the conflict terrain, functioning on other common grounds such as shared values, ethnicity, religion and politics. Their tactics vary significantly and rapidly depending on the demographics and operational demands of the area, making a general-purpose approach inadequate. Peacebuilders also noted that the diversity of languages and cultures, along with the smaller profits from SEA countries, can also be part of the reasons for the thin spread of attention from digital platforms to previous issues. Furthermore, the governments in SEA may themselves be protagonists in conflicts and may seek to restrict the voices of peaceful opponents by using their legislative power on digital platforms. Peacebuilders expressed their difficulties while trying to contact internet intermediaries regarding this matter and their slow response towards harmful information shared on their platforms. Additionally, local peacebuilders can become valuable partners for internet intermediaries in developing and enforcing more effective policies in local conflict situations, but such a partnership requires deep commitment and trust.

After all, it still depends on the Internet intermediaries to address the human rights violence linked to their business activity, including those that occur on their platforms or due to their products. They should also make efforts to increase transparency and accountability in the governance of platforms to prevent discrimination against women and girls from occurring. Internet intermediaries should also strive to provide material that challenges gender stereotypes and offer an equal place for women-curated online content as a matter of policy, moving forward the freedom of women to participate in conflict negotiations and sustaining peace in the online area. It is necessary to have strong collaboration between Internet intermediaries, governments, and civil society organisations to create a more democratic and affluent digital world that guarantees the *inclusion* of women and girls. Such cooperation may help technology businesses better understand local human rights issues and how to minimise them. All peacebuilders stressed that bridging the gender digital gap in SEA peacebuilding processes requires a multi-stakeholder emphasis on context-sensitivity and women-centredness, whether offline or online.

## 5. Conclusion

This chapter illustrated the GDI concept in peacebuilding and its relationship to human rights. The author argues that human rights should

serve as the basic premise and objective of the digital transformation of peacebuilding in which the views and needs of women are articulated, transmitted and integrated into the processes. The practice of GDI in SEA demonstrated its advantages in helping women quickly respond to the increased digitisation of sustaining peace, which significantly advances their roles in negotiation processes and resilience building. The author also determined four main barriers to the digital inclusion of women peacebuilders, which are lack of digital literacy, risks of security and privacy violence because of non-ethical surveillance, threats of technology-facilitated violence against women, and internet intermediaries are not liable for how their products are used or what is shared on their platforms, whether by peace or violent actors.

In the end, the goal of all peace actors should be to understand the unique role and effect of digital technology on the activities of peace-sustaining and conflict-prevention initiatives. Women peacebuilders can use their thorough awareness of local settings to design suitable and adequate digital peacebuilding strategies that will not marginalise any group, especially women and girls, with rigorous and constant evaluation to establish new good practices. Furthermore, the development of digital peacebuilding activities should be led by human rights standards to minimise negative rights repercussions, whether deliberate or unintended. Peace decisions that do not take into account women's views, reality, and rights are not sustainable. There is a pressing need for explicit support and substantial allocation of resources toward women peacebuilders, including addressing barriers such as the gender digital gap, boosting financial assistance, and dramatically enhancing responsibility for assaults and intimidation against women and girls. Multi-stakeholder cooperation to promote GDI and address the discrimination, inequality, and denials of women's participation should be prioritised in order to sustain peace, in which the critical components are context-sensitivity, capacity-building, security and transparency, and women-centredness.



# LA MISE EN ŒUVRE DE LA RÉSOLUTION 1325 DU CONSEIL DE SÉCURITÉ DE L'ONU PAR LA TUNISIE

*Salwa Hamrouni\**

SUMMARY: 1. L'apport de la loi cadre contre la violence faite aux femmes – A. Une définition extensive de la violence – B. Une stratégie hésitante de lutte contre les violences faites aux femmes – 2. La mise en œuvre de la résolution 1325 à travers le renforcement de la participation politique des femmes – 2.1. La régression sur la question de la parité – 2.2. La régression des garanties de l'accès aux hauts postes administratifs – 3. La mise en œuvre de la résolution 1325 à travers l'inclusion des femmes dans les processus de paix et de sécurité – A. Une justice transitionnelle sensible aux femmes comme un effort de pacification post-conflit – B. La timide féminisation du secteur de la sécurité.

La Tunisie a connu une révolution en 2011 pour garantir liberté, égalité et dignité. Les femmes tunisiennes ont été les premières à demander plus d'égalité dans les textes juridiques, mais aussi dans les faits.

Toutefois, face à ces demandes de plus d'égalité, la résistance d'une partie de la société a été manifeste. Les travaux de la Constituante entre 2011 et 2014 ont connu de grandes contestations féminines pour garantir plus de droits et libertés et pour garantir l'égalité des genres.

La résistance des conservateurs et notamment des islamistes, a fait que la demande des femmes de plus de droits reste lettre morte. Plus que cela. Les acquis de la femme tunisienne depuis 1956 ont été présentés comme un plafond que les femmes ne peuvent pas ou ne peuvent plus dépasser.

Ceci nous a montré que les femmes sont généralement le maillon faible dans toutes les périodes de transition. Dans tous les conflits et sur le continent africain, les premières victimes sont toujours les femmes et les filles.

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Torture, violence sexuelle, lésions corporelles, telles sont les pratiques qui étaient très courantes dans le monde de la guerre.

La Tunisie a ratifié plusieurs textes protégeant les droits et libertés, le pacte des droits civils et politiques, le pacte des droits économiques, sociaux et culturels, la convention internationale contre toutes les formes de discriminations l'égard des femmes et plusieurs autres textes garantissant les droits et libertés et garantissant l'égalité hommes-femmes, que ce soit dans le domaine politique, économique ou le domaine du travail.

La Tunisie a également ratifié le protocole africain sur les droits de la femme qui traite du droit des femmes à la sécurité<sup>1</sup>.

Au niveau universel, le 31 octobre 2000, le Conseil de sécurité des Nations unies a adopté la résolution 1325 visant à garantir les droits des femmes lors des conflits armés et dans les négociations post-conflit<sup>2</sup>.

D'autres résolutions ont suivi et ont mis l'accent sur la violation des droits des femmes lors des conflits la résolution 1820 adoptée en 2008 et qui reconnaît la violence sexuelle comme une tactique de guerre.

La Tunisie est parmi les 6 pays arabes qui ont adopté un plan national pour la mise en œuvre de la Résolution 1325<sup>3</sup>.

A priori, on pourrait penser que la Tunisie n'était pas intéressée par cette résolution étant donné qu'elle n'a pas vécu un conflit armé interne comme plusieurs autres États africains.

Il est donc question d'une notion assez large de conflit pour pouvoir intégrer la résolution 1325 dans les politiques publiques tunisiennes visant à impliquer les femmes dans le processus de négociations lors des crises.

Dans cette résolution, le conseil demande instamment aux États Membres de faire en sorte que les femmes soient davantage représentées à tous les niveaux de prise de décisions dans les institutions et mécanismes nationaux, régionaux et internationaux pour la prévention, la gestion et le règlement des différends.

1. Selon l'article 4 du protocole de Maputo, du 11 juillet 2003; «Toute femme a droit au respect de sa vie, de son intégrité physique et à la sécurité de sa personne. Toutes formes d'exploitation, de punition et de traitement inhumain ou dégradant doivent être interdites».

2. [www.un.org/womenwatch/ods/S-RES-1325\(2000\)-F.pdf](http://www.un.org/womenwatch/ods/S-RES-1325(2000)-F.pdf).

3. Il s'agit de la Palestine, la Jordanie, le Liban, l'Irak et le Yémen. Voir à ce propos le manuel de référence sur l'élaboration des plans nationaux de mise en œuvre de la Résolution 1325. Publication du centre de la femme arabe pour la formation et la recherche CAWTAR, Tunis, 2000. [www.cawtarclearinghouse.org/](http://www.cawtarclearinghouse.org/).

La question qui se pose donc est celle de savoir: *Quelles sont les mesures décidées par la Tunisie pour mettre en œuvre la résolution?*

Le 4 juillet 2018 la Tunisie a adopté un plan d'action national composé de quatre thèmes: prévention, protection, participation, secours, consolidation de la paix et reconstruction ainsi qu'un cinquième thème qui est l'information<sup>4</sup>.

Le plan d'action national a été préparé avec la société civile et en particulier les organisations féministes ainsi que les organisations internationales et a été élaboré par le ministère de la femme, de l'enfance et des personnes âgées.

Le plan a été subdivisé en une série de plans sectoriels préparés par des comités composés de 168 membres, dont 23 de la société civile et 125 des structures ministérielles et des institutions administratives et constitutionnelles.

Plusieurs ateliers de sensibilisation, de formation et de réflexion ont été organisés afin d'aboutir à l'adoption de plans d'action pour la mise en œuvre de la résolution.

Sur le fond il nous semble que le plan d'action national peut être vu sous trois angles fondamentaux. Le premier est relatif à la lutte contre la violence (I). Le second est relatif à la participation politique des femmes (II). et le troisième est en rapport avec la contribution des femmes à la paix et à la sécurité (III).

## **1. L'apport de la loi cadre contre la violence faite aux femmes**

La résolution du Conseil de sécurité des Nations unies s'inscrit dans sa fonction essentielle de maintien de la paix et de la sécurité internationales. Depuis l'agenda pour la paix de B. Ghali, le concept de paix s'est élargi<sup>5</sup>. Elle n'est plus seulement liée à l'absence de conflit armé, mais nécessite le développement de la démocratie, de la légalité et la prise en compte des catégories vulnérables au sein des Etats<sup>6</sup>.

Les périodes de conflits sont généralement porteuses de plus de violence envers les femmes. Cette violence a pris plusieurs formes et est

4. [lapresse.tn/27579/resolution-1325-du-conseil-de-securite-femmes-paix-et-securite-pas-de-paix-sans-les-femmes/](http://lapresse.tn/27579/resolution-1325-du-conseil-de-securite-femmes-paix-et-securite-pas-de-paix-sans-les-femmes/).

5. [digitallibrary.un.org/record/145749](http://digitallibrary.un.org/record/145749).

6. Voir également Christian Schricke, *L'Agenda de la Paix du Secrétaire général B. Boutros-Ghali – Analyses et premières réactions*, in *Annuaire Français de Droit International*, 1992, pp. 11-31.

allée vers le viol dans plusieurs conflits armés qu'ils soient internes ou internationaux.

Dans sa résolution 1820 adoptée en 2008, le conseil de sécurité de l'ONU a noté que les viols et les violences sont faites aux femmes comme un moyen de guerre ce qui constitue un crime de guerre.

Voulant concrétiser les dispositions constitutionnelles de l'article 46, la Tunisie a adopté une loi sur la violence faite aux femmes en août 2017<sup>7</sup>.

La loi contre la violence a été préparée et défendue par la société civile composée essentiellement par une coalition d'associations nationales soutenues par des organisations internationales comme ONU Femmes ou le FNUAP. La loi 52 a adopté une définition assez large de la notion de violence, de ces auteurs et de son contexte (A). Elle a également déterminé les grandes lignes d'une véritable stratégie de lutte contre la violence (B).

### *A. Une définition extensive de la violence*

La violence contre les femmes est souvent associée à des actes physiques même s'ils sont d'inégale gravité pour le corps féminin (frapper, blesser, torturer...).

La loi n°58 sort de ce schéma classique pour intégrer toutes formes de violence. Les violences physiques les plus courantes, notamment dans le cadre familial, mais elle prend en considération les violences économiques, les violences psychologiques et les violences politiques. La loi s'attaque également à la violence faite aux femmes quel que soit son contexte: cadre privé ou public.

La loi tunisienne définit d'abord la violence à l'égard des femmes comme: «toute atteinte physique, morale, sexuelle ou économique à l'égard des femmes, basée sur une discrimination fondée sur le sexe et qui entraîne pour elles, un préjudice, une souffrance ou un dommage corporel, psychologique, sexuel ou économique et comprend également la menace de porter une telle atteinte, la pression ou la privation de droits et libertés, que ce soit dans la vie publique ou privée».

La violence sexuelle y est définie comme «tout acte ou parole dont l'auteur vise à soumettre la femme à ses propres désirs sexuels ou aux désirs sexuels d'autrui, au moyen de la contrainte, du dol, de la pression ou autres moyens, de nature à affaiblir ou porter atteinte à la volonté».

7. Voir le JORT n. 65 du 15 août 2017.

Il est important de relever à cet égard que le législateur tunisien a expressément exclu la nature des rapports avec la victime en précisant qu'il y a violence sexuelle «indépendamment de la relation de l'auteur avec la victime». Cette précision permet d'intégrer le viol conjugal dans la catégorie des violences sexuelles et par conséquent de consacrer le principe du consentement à l'acte sexuel.

La loi a également été innovante en intégrant la violence politique à l'égard des femmes. La scène politique Tunisienne a connu plusieurs dérives à ce propos. Propos violents, accusations liées à la moralité, humiliation, atteinte à la vie privée des femmes sont les formes les plus courantes pour résoudre les conflits politiques avec les femmes. La loi a donc défini cette violence comme «tout acte ou pratique fondé sur la discrimination entre les sexes dont l'auteur vise à priver la femme ou l'empêcher d'exercer toute activité politique, partisane, associative ou tout droit ou liberté fondamentale». Cette définition permet donc de sanctionner la violence politique comme atteinte à la citoyenneté de la femme et comme un moyen d'intimidation l'empêchant d'exercer ses droits politiques.

Les inégalités économiques entre hommes et femmes restent quand même assez prononcées en Tunisie. La violence économique a été définie comme «tout acte ou abstention de nature à exploiter les femmes ou les priver des ressources économiques, quelqu'un soit l'origine, tels que la privation des fonds, du salaire ou des revenus, le contrôle des salaires ou revenus et l'interdiction de travailler ou la contrainte à travailler».

En effet, malgré l'égalité des salaires, certains secteurs connaissent de fortes discriminations comme pour le secteur agricole. Les femmes restent également objet de discriminations économique en étant privées de l'égalité en matière d'héritage<sup>8</sup>. Ce fait reste toutefois très peu contesté par la société en dehors des associations militantes.

Concernant toutes ces formes de violence, la loi numéro 52 a prévu des circonstances aggravantes. Il s'agit en réalité. De la situation de vulnérabilité. Défini comme étant une «situation de fragilité liée à l'âge jeune ou avancé, la maladie grave, la grossesse, ou la carence mentale ou physique affectant la capacité de la victime de résister à l'auteur des faits». Nous remarquons que dans cette définition de la vulnérabilité la question des conflits et de la situation des femmes lors des conflits n'a pas été traitée. Il nous semble donc que la loi aurait dû préciser ou

8. La question de l'héritage a été posée lors du rapport de la commission des libertés individuelles et de l'égalité (COLIBE) en 2018. Le projet de loi préconisant l'égalité a été enterrés par la majorité parlementaire de l'époque.



ajouter que la situation de vulnérabilité peut être causée par d'autres situations. La liste expliquant la fragilité concerne l'âge, la maladie, la grossesse ou la carence mentale mais ne concerne nullement la fragilité liée au statut de victimes lors d'un conflit de quelque nature que ce soit.

### *B. Une stratégie hésitante de lutte contre les violences faites aux femmes*

D'une manière générale, la loi de 2017 pose une obligation à la charge de l'Etat qui «s'engage à élaborer les politiques nationales, les plans stratégiques et les programmes communs ou sectoriels et à prendre les règlements et mesures nécessaires à leur mise en œuvre dans le but d'éliminer toutes les formes de violence à l'égard des femmes dans l'espace familial, l'environnement social, le milieu éducatif, de formation professionnelle, sanitaire, culturel, sportif et médiatique» (article 5). Il s'agit là d'une obligation de résultat pour l'Etat car seule une politique volontariste et transversale sera à même d'éliminer toutes les formes de violences.

La loi relative à la violence contre les femmes traite de plusieurs aspects. Il s'agit d'abord de la prévention, de la protection et de la répression et la prise en charge.

#### La prévention

La violence à l'égard des femmes est une expression de la domination patriarcale. Dans les sociétés conservatrices cela prend plus d'ampleur et nécessite donc un travail sur la société. La loi pose donc une obligation de sensibilisation et de formation à toutes les structures de l'Etat. C'est ainsi que l'article 7 de la loi prévoit que «Les ministères chargés de l'éducation, de l'enseignement supérieur, de la formation professionnelle, de la culture, de la santé, de la jeunesse, du sport, de l'enfance, de la femme et des affaires religieuses doivent prendre toutes les mesures nécessaires pour prévenir et lutter contre la violence à l'égard des femmes dans les établissements relevant de leur ressort...».

#### La protection

La loi prévoit également une protection pour les femmes victimes de violence.

Toute une section a été consacrée à cet aspect crucial dans toute politique de lutte contre les violences.

La loi considère que la protection est un droit dont jouit la victime. Par conséquent, la protection des femmes victimes de violences.

La protection est exigible car l'État doit garantir un certain nombre de droits dont le droit à la vie, le droit à l'intégrité physique e, à la sécurité, à la sûreté, à la dignité, au respect de la vie privée... La femme victime de violences a un besoin crucial de protection de la part des structures étatiques car elle est par définition dans une situation de faiblesse qui peut la pousser à renoncer à ses droits, à culpabiliser et à trouver les justifications aux actes de violences dont elle est fait l'objet.

Ainsi, La femme victime de violence et les enfants qui résident avec elle, bénéficient de plusieurs droits: la protection juridique appropriée à la nature de la violence exercée à son encontre, de manière à assurer sa sécurité, son intégrité physique et psychologique et sa dignité, ainsi que les mesures administratives, sécuritaires et judiciaires requises à cet effet, et ce, dans le respect de ses spécificités: conseil juridique, réparation, suivi sanitaire et psychologique...

La loi a aussi créé des structures spécialisées au sein de la police pour recevoir les plaintes et pour mettre fin aux pratiques policières qui découragent les femmes de porter plainte.

La protection nécessite à la fois une volonté étatique et des moyens de mise en œuvre: selon l'article 10 de la loi les ministères de la justice et de l'intérieur élaborent des programmes intégrés de lutte contre la violence à l'égard des femmes dans l'enseignement et la formation au sein des établissements qui relèvent de leur ressort, et ce, pour développer les modes de traitement des plaintes et des affaires liées à la violence à l'égard des femmes.

Le ministère de la justice prend également toutes les mesures nécessaires pour réhabiliter l'auteur de l'infraction de violence à l'égard des femmes et le réintégrer dans le milieu familial et social.

## Les sanctions

La loi a aussi prévu des mécanismes de sanction et de répression. C'est pour cette raison que le législateur a modifié certaines dispositions du code pénal en ajoutant d'autres. En effet. La violence faite aux femmes. Peut tomber sous le coup de la loi pénale concernant les blessures, la violence, l'homicide ou encore le viol.

Malgré cela il existe certaines situations internationalisées où la violence à l'égard des femmes est faiblement, voir même pas du tout encadrée par la loi. Il en est ainsi des femmes impliquées dans les conflits armés.

En effet, en Tunisie, certaines femmes tunisiennes ou certaines d'entre elles ont été la cible du mouvement de radicalisation qui est né après 2011.

Le déclenchement du conflit syrien et l'implication de plusieurs jeunes tunisiens dans ce conflit s'est accompagné de l'implication de certaines femmes dans cette guerre.

Les autorités tunisiennes et en particulier la majorité qui a gouverné depuis 2011 n'a rien fait pour protéger ces femmes contre le phénomène de recrutement qui a visé à les impliquer dans une guerre qui n'est pas la leur.

Des centaines de femmes tunisiennes se sont impliquées dans le conflit syrien et ont servi les terroristes qui les ont utilisées dans la guerre mais aussi qui les ont soumises aux pratiques les plus violentes, surtout lorsque certaines de ces femmes ont voulu renoncer à ce qu'elles avaient entrepris.

C'est pour cela que le plan national d'action vise également les mesures de déradicalisation et de lutte contre le terrorisme. Mais les faibles moyens, la complexité des situations liées au terrorisme international, tout cela a fait baisser l'efficacité des peu de mesures prévues.

## La prise en charge

La prise en charge fait partie de la stratégie de lutte contre la violence. Elle peut être définie comme l'ensemble des services, interventions, mécanismes que l'État met à la disposition de la victime, lui permettant de reprendre confiance en elle, de transcender son statut de victime, de retrouver sa dignité, et le sens de sa citoyenneté, jusqu'à ce qu'elle soit réhabilitée et réinsérée dans la société.

La prise en charge de la victime est considérée comme une obligation incombant à l'État, qui s'effectue conformément aux principes et mécanismes établis par la loi sur la base de la reconnaissance du statut de victime de la femme et des enfants vivant avec elle ce qui permet à la victime de jouir de ses droits dont la confidentialité de la vie privée et des données personnelles, sa dignité et sa liberté de prendre ou de ne pas prendre une décision.

La prise en charge concerne donc l'orientation et l'accompagnement juridique, des procédures judiciaires adoptées aident la victime à porter plainte et briser le silence.

La prise en charge prend également la forme d'un accompagnement social, sanitaire et psychologique appropriés.

Enfin cela nécessite également une écoute qui se déroule dans des

espaces sûrs et indépendants dans lesquels l'intimité et la dignité de la victime sont respectées.

Ainsi nous pouvons affirmer que plusieurs des dispositions relatives à la lutte contre la violence faite aux femmes répondent au souci exprimé par la résolution 1325 concernant la prévention et la protection notamment. Quant à la participation, la Tunisie a aussi connu une évolution à ce propos.

## **2. La mise en œuvre de la résolution 1325 à travers le renforcement de la participation politique des femmes**

Le texte de la résolution exige la participation des femmes dans le processus de règlement des différends au sein des Etats mais aussi au sein de l'ONU.

La résolution 1325 «exhorte les États membres à veiller à ce que les femmes soient mieux représentées à tous les niveaux de prise de décision dans les institutions et mécanismes nationaux, régionaux et internationaux de prévention, de gestion et de règlement des différends».

### *2.1. La régression sur la question de la parité*

La Tunisie a opté pour la parité depuis les élections de 2011.

La constitution a consacré le principe de la parité ainsi que l'égalité des chances dans son article 46<sup>9</sup>.

La législation électorale adoptée depuis 2011 a permis la parité verticale, c'est-à-dire la parité dans les listes électorales et l'alternance entre hommes et femmes en ce qui concerne le classement des listes<sup>10</sup>.

En 2017, la Tunisie a également adopté la parité horizontale à côté de la parité verticale pour les élections municipales qui nous ont donné des municipalités avec 46% de femmes au niveau municipal<sup>11</sup>.

9. Article 46: «L'Etat s'engage à protéger les droits acquis de la femme, les soutient et œuvre à les améliorer. L'État garantit l'égalité des chances entre la femme et l'homme pour assumer les différentes responsabilités et dans tous les domaines. L'Etat œuvre à réaliser la parité entre la femme et l'homme dans les conseils élus. L'État prend les mesures nécessaires afin d'éradiquer la violence contre la femme».

10. Voir le Décret-loi n. 2011-35 du 10 mai 2011, relatif à l'élection d'une assemblée nationale constituante.

11. Loi organique n. 2017-7 du 14 février 2017, modifiant et complétant la loi organique n. 2014-16 du 26 mai 2014 relative aux élections et référendums.

Toutefois, malgré l'adoption du plan d'action pour la mise en œuvre de la résolution 1325, le pouvoir législatif n'a pas accepté l'idée d'une parité à la tête des listes électorales pour permettre à plus de femmes d'accéder au législatif. Pire encore, avec le décret-loi n° 8 du 8 mars 2023, et avec la révision concernant le mode de scrutin, la parité n'est plus de mise en Tunisie. En effet, le président de la République a choisi le mode de scrutin uninominal. Nous savons tous que ce mode permet une très modeste participation des femmes des jeunes aux élections. Le résultat n'a pas tardé à venir avec une assemblée avec seulement 17% de femmes.

La faible implication politique s'explique aussi par la violence politique: violence politique à l'égard des femmes commence dans leurs propres partis politiques et se termine à l'assemblée législative où nous avons vu des femmes politiques attaquées.

## *2.2. La régression des garanties de l'accès aux hauts postes administratifs*

Faire participer les femmes dans les processus de prise de décision exigent entre autres une présence égalitaire dans les hauts postes administratifs.

Au niveau réel, tous les rapports sur la participation des femmes à la prise de décision et leur accès à leurs postes indiquent que plus la fonction est importante, moins il y a de femmes. De nombreux rapports nationaux ont également montré que le taux d'accès des femmes à des postes supérieurs dans la fonction publique n'est pas cohérent avec le nombre total de femmes employées. Mentionnons par exemple qu'entre 2010 et 2016, on constate que les femmes cadres représentent 30%, alors que les femmes directeurs généraux ne dépassent pas 25%<sup>12</sup>.

Se référant à la législation nationale, nous ne trouvons dans les lois réglementant les postes de direction de la Présidence de la République ou de la Présidence du Gouvernement très peu de références à la nécessité de respecter l'égalité ou à l'égalité des chances entre les femmes et les hommes existant dans ce domaine.

Le 25 mai 2016 un conseil pour la parité et l'égalité des chances a été créé pour remédier à la faible représentation des femmes. Le conseil des pairs dont la fonction est d'établir une stratégie nationale pour le genre

12. Voir le rapport «présence des femmes dans la fonction publique et accès aux postes de décision en Tunisie», Rapport de la Présidence de gouvernement, ONU femmes décembre 2017, pp. 45 et ss.

et de veiller au respect de l'égalité des sexes dans les nominations aux hautes fonctions n'a pas pu percer à cause à la fois de sa composition pour la plupart gouvernementale et à cause des compétences limitées qui lui sont accordées.

La régression concernant la représentation des femmes dans les postes de décision concerne également ce qui a été établie par une circulaire du gouvernement Youssef Chahed en 2018 exigeant la parité dans les propositions de nomination aux hauts postes de responsabilité<sup>13</sup>. Le gouvernement présidé par Mme Najla Bouden a décidé de renoncer à cette exigence de parité, et s'est limité à la condition de la compétence.

Nous pouvons ainsi dire que la mise en œuvre de la résolution 1325 dans son aspect relatif à la participation politique connaît aujourd'hui plusieurs difficultés liées aux choix politiques qui ne font pas de l'implication des femmes dans la prise de décision une priorité.

### **3. La mise en œuvre de la résolution 1325 à travers l'inclusion des femmes dans les processus de paix et de sécurité**

La résolution 1325 traite de la participation des femmes à toutes les mesures de maintien de la paix et de consolidation de la paix. Deux exemples nous semblent être intéressants pour la mise en œuvre de telle exigence: L'effort de pacification sociale et politique à travers l'exemple de la justice transitionnelle (A) et à travers le secteur de la sécurité (B).

#### *A. Une justice transitionnelle sensible aux femmes comme un effort de pacification post-conflit*

Les premiers pas vers la justice transitionnelle ont été initiés par la société civile.

Il s'agit d'un ensemble de mécanismes judiciaires et non judiciaires, visant à la pacification et à la démocratisation des sociétés au lendemain de périodes de conflit ou de dictature...

La justice transitionnelle a été associée à la création du ministère des droits de l'homme et de la justice transitionnelle le 16 janvier 2012, chargé de la gestion logistique du processus.

13. Circulaire n. 31 du 29 novembre 2018.

Ce nouveau ministère a mis en place une commission technique chargée du suivi du processus, qui est composée d'organisations internationales, ainsi que de six associations et ONG impliquées dans le processus. Parmi ces dernières, on trouve la Coordination nationale indépendante de la justice transitionnelle, composée entre autres de l'Association tunisienne des femmes démocrates ATFD, qui s'est constituée en mai 2012 en réaction à l'appropriation du processus de justice transitionnelle par le parti islamiste.

La mise en œuvre de la justice transitionnelle a fait l'objet d'une forte concurrence entre les collectifs de femmes à référents islamiques, nés après la révolution, et les associations historiques de femmes réputées laïques et progressistes.

La justice transitionnelle a permis de voir une contradiction dans le mouvement revendiquant le féminisme: des violations différentes mais un même objectif: le jugement et la réconciliation

Loi organique 2013-53 du 24 décembre 2013 relative à l'instauration d'une justice transitionnelle et à son organisation a traité de la vérité dans son article 4: La révélation de la vérité est l'ensemble des moyens, procédures et enquêtes adoptés pour le démantèlement du système de dictature, et ce par la détermination et l'identification de toutes les violations, la recherche de leurs causes, de leurs circonstances, de leurs origines, et des conditions dans lesquelles elles se sont produites ainsi que des résultats qui en découlent... Lors de la révélation de la vérité, il est tenu compte de l'impact spécifique des violations commises à l'encontre des femmes, des enfants, des handicapés, des catégories à besoins spécifiques, des malades et des catégories vulnérables.

L'article 12 prévoit quant à lui un traitement particulier aux femmes victimes: l'Etat procure une assistance immédiate et une indemnisation provisoire à ceux qui en ont besoin parmi les victimes notamment les personnes âgées, les Femmes, les Enfants, les handicapés, les personnes ayant des besoins spécifiques, les personnes malades et les catégories vulnérables, et ce, sans attendre les décisions et les jugements portant réparation du préjudice.

Il est vrai que le processus de la justice transitionnelle a précédé le plan d'action pour la mise en œuvre de la résolution 1325, mais il n'en reste pas moins que l'idée même de la reconnaissance des crimes contre les femmes, la prose en charge, le pardon...sont des questions qui auraient pu mettre fin à l'impunité et servir de leçons pour l'avenir. Cela n'a pas été possible en Tunisie à cause l'échec de tout le processus totalement manipulé par les partis au pouvoir.

## *B. La timide féminisation du secteur de la sécurité*

La sécurité de la femme et par la femme est au centre de la résolution 1325 ou les Etats membres du conseil réaffirment «le rôle important que les femmes jouent dans la prévention et le règlement des conflits et dans la consolidation de la paix et soulignant qu'il importe qu'elles participent sur un pied d'égalité à tous les efforts visant à maintenir et à promouvoir la paix et la sécurité et qu'elles y soient pleinement associées, et qu'il convient de les faire participer davantage aux décisions prises en vue de la prévention et du règlement des différends».

La sécurité peut être vue sous l'angle de l'un des droits des femmes ce que nous avons largement traité dans la partie relative à la violence; soit comme un secteur où les femmes jouent comme acteur de changement.

La mise en œuvre de la résolution 1325 dans le domaine de la sécurité nécessite une action étatique dans des domaines aussi menaçants pour la sécurité des femmes comme l'immigration, les personnes déplacées, le terrorisme...

Aussi bien sur la question migratoire que sur la question des femmes liées au terrorisme beaucoup reste à faire en Tunisie.

La sécurité c'est aussi une question institutionnelle qui devrait intéresser les femmes.

La Tunisie n'a pas eu une grande réforme du secteur de la sécurité encore moins pour une inclusion des meilleure femmes.

Le secteur de la sécurité reste donc peut inclusif des femmes. Même si elles commencent timidement à intégrer des postes élevés, le secteur résiste encore à la présence féminine dans les plus hautes fonctions (il n'y a par exemple jamais eu de femme ministre de l'intérieur ou de la défense).

Du côté du pouvoir législatif, l'ancien règlement intérieur du parlement consacre le contrôle civil et démocratique du secteur de la sécurité en créant une commission spéciale chargée du suivi des dossiers et des questions relatives à la sécurité et à la défense.

En Tunisie, la présence des femmes était de 31,5% dans la commission d'organisation de l'administration et des affaires des forces armées du parlement 2019-2021. Un quart des membres étaient des femmes, y compris parmi les rapporteurs. La commission d'enquête ad hoc concernant les réseaux de recrutement de jeunes dans les zones de conflit est également présidée par une femme.

Là aussi nous avons pu noter une régression avec l'actuelle assemblée puisque les 10 membres du bureau sont de sexe masculin<sup>14</sup>.

14. [arp.tn/ar\\_SY/commission/fixe/composition/60/m/82](http://arp.tn/ar_SY/commission/fixe/composition/60/m/82).



Pourtant, le plan d'action nationale de la mise en œuvre de la résolution 1325 visait principalement, au cours de la période 2018-2020, à autonomiser les femmes et les filles et à renforcer leur participation à construire une paix et une stabilité durables et contribuer à l'élimination de toutes les formes de discrimination fondée sur le sexe ainsi que l'immunisation de la société contre les dangers des conflits, de l'extrémisme et du terrorisme.

Construire la paix c'est aussi être dans le cercle de la délibération et de la décision sur des questions aussi sensible que la sécurité nationale du pays.

Au total, les différents axes du plan d'action de la mise en œuvre de la résolution ont été la prévention, la protection, la participation, les secours, la consolidation de la paix et la reconstruction avec une attention particulière orientée vers les Médias et le plaidoyer.

Malgré cela, la mise en œuvre reste en deçà des attentes de la société civile avec notamment la persistance des foyers de discriminations qui faussent toute action favorable aux femmes.

La Tunisie qui a eu le prix Nobel de la paix, entre autres à travers une femme<sup>15</sup>, reste donc en deçà des exigences internationales.

Une véritable mise en œuvre de la résolution 1325 exige à notre sens une véritable volonté politique de mettre fin aux discriminations qui sont la source de toutes les vulnérabilités féminines, ce qui ne nous semble pas être actuellement le cas en Tunisie.

15. Il s'agit de Mme. Widad Bouchamawi alors présidente de l'union tunisienne de l'industrie, du commerce et de l'artisanat (UTICA) membre du quartet ayant obtenu le 9 octobre 2015 le prix Nobel de la paix 2015 pour son soutien à la transition démocratique en Tunisie et le sauvetage du pays d'une crise certaine par l'organisation du dialogue national.

# AFGHANISTAN: WEAPONS OF PEACE IN THE HANDS OF WOMEN

*Cristiana Cella\**

SUMMARY: 1. Introduction – There is no peace for Afghanistan – There is no peace for women – 2. A historical perspective: the long road of women's struggles – 1963-1973: New phase of opening; Opposite ideologies and new characters; Fundamentalist parties are born; Far left parties are born – 1973-1979: Political changes; The struggle of women and democrats – 1979-1989: The invasion and Russian occupation. War of resistance; American weapons; Resisting in Kabul; Resisting in the mountains – 1989-1992 – 1992-1996: Civil war; At Afshar, 17 years later, women's weapons of peace – 1996-2001: The first reign of the Taliban – 2001-2021: US/NATO invasion and occupation; War without escape. Civilians; War without escape, Women's lives; Laws; Warriors of peace; Before the end – August 15, 2021: History goes back; Women's weapons; The little resistance.

## **1. Introduction**

Since August 15, 2021, Afghan women have again been trapped under the blue folds of the cloth prison. The burka has become mandatory as in the 90s. And a burka of silence enveloped the Afghan events, increasingly dramatic but out of international awareness, pushed far, in time and space. A great opportunity for the Taliban, who, beyond any control, do what they want with the men but above all with the women of their country. Women who cannot study, work, leave the house without a man and without being made invisible by the burka. The Taliban government rules over a devastated country, where darkness, misery and despair close any door to hope. The Taliban can only offer their male population the enslavement of women.

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I propose a historical look at Afghanistan that traces the causes of the current disaster and interweaves the historical events, almost always violent, that have taken place in the country, with the deep, conscious and courageous resistance of women. A journey of more than 50 years.

On the one hand, we follow the progress of the historical events that have involved Afghanistan, invasions, civil wars, occupations, proxy wars. On the other hand, the difficult road of the courageous women who, during these 50 years (of which 40 years of war) have carried out their struggles with weapons of peace, for justice, for women's rights, for democracy, fighting on their many fronts: the villages, even the most remote, the cities, the houses-prisons, the streets, the workplaces, the classrooms, the kitchens, the bedrooms, the courtyards, the minds of men and their minds as well. Open or hidden actions, secret battles, in the deep shadows of their offended feelings. Extraordinary challenges, always.

To continue to use these weapons, it's necessary the stability of heart and mind, determination, foresight and a lot of courage is needed. A simple, light courage, that I have known alongside these women, with the association to which I belong, the Cisdà (Coordinamento Italiano Sostegno Donne Afghane), in their precious work.

When we ask activists how they challenge their fear every day, they tell us that this is what must be done now in order not to succumb, to go beyond their own small personal life and open up to a bigger project that includes and goes beyond their own self. They are scattering seeds, believing that they'll be flowering. Otherwise they would be really defeated.

### *There is no peace for Afghanistan*

Peace has not existed in Afghanistan for more than 40 years.

Two generations have never lived it. 25% of the population was born after 2000 and has never experience it. They never knew it, they cannot regret it and they do not know how to build it. Generations of nothing, raised without education, with few and ferocious words in the mind, colonized by Islamic fundamentalism. In a simple hatred, without questions.

In recent decades, as in previous centuries, Afghanistan has been a land of conquest for its strategic position in the center of Asia and for its potential riches. A gaming table of the great powers, in which everyone moved their pawns, sought them, inspired them, built them, fed them

generously with weapons and money, blowing on fires easy to flare up. Proxy wars and foreign invasions have marked these years, pressing, without space for hope, with little time to draw breath.

International solidarity has not moved for Afghanistan, which today disappears even from the words that recall history, as if it had never existed.

The Western media threw it on the front page only in August 2021 and for a short time full of propaganda.

Then, the curtains were lowered and the paths marked. And, behind the curtain, the bosses on duty carry on their business, their interests, their personal brutality. Today it is the turn of the Taliban.

### *There is no peace for women*

There is no peace without justice and equal rights. So also for women there has never been peace for 40 years, in their war within wars.

But there was a time when this peace could still be built, when there was a good open road ahead. It ended badly. And women had to keep fighting for their basic rights.

A difficult war, with body and soul, in the space of life.

A lot of courage, some victories and many defeats. The last one in August 2021.

These two paths have been closely intertwined over the last few decades. To every violence, to every change of regime, to every new humiliation, women have adapted their resourceful action.

Some of these interweavings between the events of history and the women's struggles I have personally experienced. When I was first in Kabul in the summer of 1980 and, since 2009, with the association to which I belong, CISDA, which has been following projects for women in Afghanistan since 1999: 23 years of close and continuous relationship and collaboration with women's associations who, clandestinely or openly, often at the risk of their lives, carrying on their battles. First of all, RAWA. (*Revolutionary Association of the Woman of Afghanistan*), [www.rawa.org](http://www.rawa.org)<sup>1</sup>.

1. It is the historic revolutionary association of women of Afghanistan, born in Kabul in 1977, as an independent socio-political organization of Afghan women fighting for human rights and social justice in Afghanistan. The founder and inspirer of the movement, Meena, was assassinated in 1987 in Quetta, Pakistan, by agents of the Khad, the secret service of the pro-Russian Afghan Government, in connivance with the fundamentalists of Gulbuddin Hekmatyar.

## 2. A historical perspective: the long road of women's struggles

### 1963-1973

I want to start from this decade, 1963/1973, perhaps the last, in which Afghanistan experienced a period of peace and relative democracy.

Afghanistan has not always been hell for civilians and women. It is enough to look at the photos of that era to understand it. No one would now believe that that city was Kabul. The white mountains of the Hindu Kush like a crown, reflecting the colors of the hours of the day, the large and tree-lined avenues, the sidewalks covered with red carpets, to age them under the steps of the city, the clear, bright air, the modern buildings, the girls with short skirts and fashionable hairstyles, the lively traffic, the clubs, the universities where the new world was experienced. The women, militants of Rawa, smile when they talk about that period. Boys and girls together on the lawns of the gardens of *Babur*, high above the city, with beers and books of every ideology, to discuss, to get angry, to quarrel, to fall in love. A sort of Afghan '68. Deciding how to dress, whether or not to wear the veil, what to study, who to love and how to live was a personal decision. At the University there were many girls, 60% of the doctors were women. The subjects taught in schools were the same for boys and girls. It had been the king, years before, who had opened the doors of the University to women and the girls had filled them. He had also facilitated their entry into the workforce by reserving government posts for them. Women got the right to vote and to be voted for the first time in 65. Afghanistan was moving towards a European-style constitutional monarchy, towards a future of democracy and, with all its cultural conflicts, towards progress not of the West but of Afghanistan. The voices of democratic men and women were heard.

#### *New phase of opening*

In 1964, the New Constitution was promulgated.

The King, Zahir Shah, legalizes political parties, recognizes freedom of the press and assembly. The Constitution states that laws promulgated by Parliament take precedence over *sharia*. Even if the laws of the state cannot violate the principles of Islam.

Women are given the right to vote and to be elected.

In 1965, the first elections in Afghan history were held for men and women.

Women fought for the right to vote and got it with the support of the king. Both parents of Meena (founder of Rawa) voted for the first time in their lives, in September '65, in the first parliamentary elections that had ever been called [...]. The new constitution extended freedom of speech and of the press. [...] Many educated Afghans had assimilated Western knowledge and adopted modern and democratic methods, trying to combine them with tradition<sup>2</sup>.

Those who were responsible for education, training and culture in the country were convinced that young people had to complete this process.

Afghan culture could embrace democracy, tolerance and human rights, but only on condition that Afghanistan had the necessary time to follow its own path and implement modernization at its own pace. And time was running fast<sup>3</sup>.

### *Opposite ideologies and new characters*

New parties are born, the clandestine ones come out into the open. In the urban and university environment, there is a new intellectual effervescence, new ideas and new projects come to light.

Politically opposed groups, far-left, moderate Islamic democrats and Islamists are emerging.

Malalai High School was not a religious school. Prayers were not recited daily, although all Muslim girls attended the hour of reading the Koran, the holy book of Islam. Hindu girls (in Kabul there are several Hindu communities that in recent decades, as today, are fiercely persecuted) were dispensed from the study of the Koran and no one marginalized them for their religion. The Afghan tradition, which had its roots in the more tolerant teaching of Islam, preached respect for different cultures and religious beliefs. In Afghanistan Sufism was widespread, a current of Islam that advocated fraternity with other religions<sup>4</sup>.

Sunni fundamentalists have always been unleashed against Sufism.

Sufism (is) a mystical current aimed at providing its disciples with an inner path, linked to spiritual exercises and not to bookish knowledge and a

2. Melody Hermachild Chavis, *Mai tornerò indietro*, Sperling & Kupfer, 2005, p. 19.

3. Ivi, p. 22.

4. Ivi, p. 27.

legalistic approach. Both cultured Islam and Sufi mysticism are aspects of a popular religion that absorbs deep-seated customs, social considerations, and particularistic identities. To this popular Islam... Starting from nineteenth-century Deobandism, a “high” Islam, scripturalist, which rejects any form of syncretism and any heterodox practice and seeks to impose a homogeneous and puritanical doctrine, has been opposed. The spread of this Islam, which is an abstract construction aimed at replacing the lived and tradition, has accelerated thanks to the Islamist groups that have emerged in the urban areas of the country, starting from the 50s/60s of the twentieth century and the decision of the Saudi royal house to finance them from the 80s and to spread an ideology, the Wahhabi one, rigidly opposed to any form of popular and syncretistic devotion. As a result, traditional religious figures, whether linked to educated Islam or Sufism, have weakened to the advantage of Islamist groups that have ideological ties and affinities with outside groups<sup>5</sup>.

This is also the phase in which the characters and ideologies that will play a fundamental part in the future of Afghanistan are formed. The contrasts between the different positions are beginning to consolidate and oppose with greater vigour.

In 1965 the PDPA (*People's Democratic Party of Afghanistan*) is born, following the model of the Soviet Communist Party. Supported and financed by Moscow. Already from the following year it splits into two currents. A more radical one that wants to impose reforms without compromise, led by Taraki and then Amin and the other, led by Babrak Karmal, more favorable to a gradual approach to changes in society and collaboration with the king. The rupture and division took place formally in 1967. The party is divided into two groups: the Khalq (people) led by Taraki and the Parcham, led by Karmal.

### *Fundamentalist parties are born*

These leaders will later be protagonists of the darkest Afghan events.

For them, the change had to be sought elsewhere, in the re-Islamization of society, to be carried out following the conquest of central power. [...]

Islamist ideology constituted a break with the Afghan tradition [...] the Islam of experience, with all its syncretisms and compromises, had to be transformed into a rigid and “authentic” ideology, in the sense of conforming to the example of the prophet Muhammad. For this to happen, a government

5. E. Giunchi, *Afghanistan. Storia e società nel cuore dell'Asia*, Carocci, 2007, p. 33.

of pious people dedicated to the cause had to come to power: the state of the Muslims had to be replaced with the Islamic state in which sharia would be imposed on every area of public and private life<sup>6</sup>.

This ideology, coming from outside, begins to spread in universities, among students and professors. The initial nucleus of these formations was represented by a group of professors from the faculty of Kabul: Niazi, Rabbani, Sayyaf. They come from madrasas and the prestigious Cairo al-Azhar University.

In 1972 the Islamist movement, gathered around these figures, formed a council, which will later be given the name of Jamiat-e-Islami, which also included Gulbuddin Hekmatyar, an engineering student active in the student movement<sup>7</sup>.

Hekmatyar will become head of a party, Hezb-e-Islami, the most intransigent, extremist and ferocious of the entire rich constellation of fundamentalist groups. He will be one of the most ferocious *warlords* and will destroy Kabul, causing thousands of civilian casualties.

Both the Communist Party and the Islamist parties are born in the universities and want to impose strict rules on the population from above.

The entry into the University of Islamist parties upsets young democrats and especially women.

But another change was happening in Kabul. While many fought to reconcile the old with the new, at the university a professor preached a new doctrine fanatical and hostile to progress. His name was Rabbani and he taught at the faculty of *sharia*. [...] Rabbani's fundamentalists went so far as to demand that women leave the university. But, far from leaving, the girls continued to walk around the campus holding each other cheerfully under their arms. At that time women were approaching new faculties, such as engineering and architecture. Many were Western dress, including the short skirts that were so fashionable in the West.<sup>8</sup>

For fundamentalists an insult to Islam and traditional codes of behavior.

6. Ivi, p. 59

7. Ivi, p. 60.

8. Melody Hermachild Chavis, *Mai tornerò indietro*, cit., pp. 45-46.



Rabbani called his small group of followers (including Gulbuddin) to action. They attacked the women on campus, throwing muriatic acid on their exposed legs and causing painful burns. As if in an angry rage, they also threw acid on the girls' faces, causing serious injuries<sup>9</sup>.

### *Far-left parties are born*

The first revolutionary Marxist (Maoist) movement born in Afghanistan was the Progressive Youth Organization (Sazman-e-Jawanan-e Mutarraqi, PYO abbreviation in English), born in 1965, the same year the PDPA was founded, pro-Soviet and reformist People's Democratic Party of Afghanistan<sup>10</sup>.

It was founded by two brothers, with a romantic history, rebellious sons of a noble feudal landowner pro-monarchist. Their training takes place in Kabul, one graduates in Mathematics and Physics, the other becomes a doctor. They study the texts of Marx and Mao. They teach, work and engage in intense clandestine political activity. They then distributed their land to peasants whom they had seen suffering and being treated like slaves. They dedicated themselves to their legal defense against the abuses of the powerful.

The PYO began as an underground organization but soon converted to overt political activity in the universities and factories of Kabul and other cities in the country, notably Herat, Mazar-e-Sharif and Jalalabad<sup>11</sup>.

Like PYO, other groups flourished at that time, with much the same revolutionary spirit. Movements that, a few years later, merged into a new organization: Sama.

In the summer of 1980 I met these young militants who were organizing underground resistance against the Russians in the capital. They were going through, at that time, a difficult period in their history, as we will see later.

In these years, Afghanistan becomes one of the favorite destinations of young Western travelers who fill the cities and travel on the rough roads of the country with their vans and their battered cars. Life in the streets never fades, not even at night. Afghan and Western boys and

9. Ivi, p. 46.

10. E. Piovesana, *Shūlai. Il movimento maoista afgano raccontato dai suoi militanti (1965-2011)*, Città del Sole, 2012, p. 18.

11. Ivi, pp. 18-19.

girls get together, listen to music, smoke joints and exchange ideas and dreams.

Young women and men who want democracy and equal rights are beginning to arm themselves politically to oppose both the PDPA and the Islamists.

The clash is open. As we have seen, Islamists at the University throw acid in the face of female students and female students react with mass demonstrations, even against the government that does not arrest the guilty. Meanwhile, women carry on a “feminist” battle within their movements, aware of the importance and priority of women’s rights for a democratic society.

Towards the end of the decade the political situation becomes more tense. The deterioration of the living conditions of the population and a severe famine push to rebellion. The new ideas irritate traditionalists and rural mullahs and constant revolts erupt against the modernization of society. Protests, demonstrations and strikes are also intensifying in Kabul. The clashes between leftist students and Islamists are getting tougher.

## 1973-1979

### *Political changes*

The Government, at the beginning of the 70s, to face the protests, backtracks and unleashes a wave of repression to stop the unrest (1972). Things are starting to change.

In 1973 Daud, cousin of the king, took advantage of Zaher S ha’s trip to Italy to seize power and put an end to the constitutional monarchy. It is a coup d’état. Afghanistan becomes a Presidential Republic headed by Daud.

In 1977 a New Constitution was promulgated. The Parliament is unicameral and the single party, the National Revolutionary Party, that of Daud.

The Islamists try to oppose Daud and his government but fail. The repression is strong.

Many of them flee to Pakistan, to Peshawar. Here they have the support of the Pakistani government, the ISI (Pakistani secret service) and local Islamism. Gulbuddin, Sayyaf, Rabbani, Massud await their moment in Peshawar. A moment that will not be long in coming.

Daud, meanwhile, impatient with Moscow’s protection, distances himself from the Soviet Union and approaches Iran and Pakistan.

The USSR, therefore, is alarmed by a possible rapprochement of Afghanistan with the United States.

And they take action.

In April 1978 the coup against Daud of the PDPA (Taraki, Amin, Karmal) succeeded. It is the so-called Saur (April) Revolution

But the PDPA in power is far from solid. It is deeply and fiercely divided between its two factions.

On April 30, two days after the new coup, the Democratic Republic of Afghanistan was born, proclaimed by a revolutionary council. Taraki is Prime Minister and Amin is Deputy Prime Minister and Foreign Minister. The USSR immediately recognized the Republic but did not seem to have had a part in the coup. Russians know that the party that is now in power has little following, is fragile and divided. Two months after the revolution, the leaders of the Parcham are conveniently sent abroad and are neutralized. Within a few months the Party is completely controlled by the Khalq, increasingly dominated by Amin. The two men, Taraki and Amin, move with great violence against the dissidents. It is an authoritarian and ruthless government. Reforms, although valid, largely aimed at improving the status of women, are imposed by force, sparking riots. In the summer of '78 rebellions spread everywhere. In '79 also in Kabul. Many soldiers desert.

A harsh repression begins against all kinds of opponents, Parcham, Islamists, representatives of the clergy, liberal intellectuals and Maoists. Young people on the extreme left and democrats will fall en masse under the blows of repression.

The victims, from 1978 to 1980 will be between 50,000 and 100,000.

Moscow worries and advises Taraki to stop the repression and implement more gradual reforms. Most importantly, he strongly advises to get rid of Amin, taking him out as soon as he returns to his homeland, but Amin is faster, just ahead of him and kills him shortly after his return. The government in Amin's hands is increasingly chaotic and violent.

### *The struggle of women and democrats*

In 1977, the activists of the student movements came to a fundamental awareness. Women will fight alone for their rights, with free reflections, methods and actions that are their own. Rawa is born, founded by Meena Keshwar Kamal, an organization structured in small clandestine groups, which has maintained the same form until today.

Meena pushed her friends to go beyond their own family and join a group with a much broader perspective. This was revolutionary in itself. [...]

Meena said: who, if not women, will work for women and only for women?

Women, she said, are an oppressed community within another oppressed community. We have different goals from those of men and much more to go, [...] After much debate, they decided that religious observance should be a personal choice and could not be imposed either by the Organization or by any future government of Afghanistan. Theirs would have been a secular association, calling for a secular government for Afghanistan and religious freedom for all<sup>12</sup>.

The young democrats, the left-wing parties, the intellectuals, the moderate and progressive Islamists, are organizing to oppose the ferocious governments of Taraki and Amin. Many are victims of their repression. Prisons are filling up more and more but they are also becoming a place of aggregation and political elaboration.

The commander of the group of democratic mujahideen that I followed in the Paktia mountains in 1980 was among them. Here's how he tells this period.

If I am here today, as you see me, to support this resistance, I owe it to Taraki. When they arrested me, along with many others, they locked me in a small cell in Pul-e-Charki (*Kabul prison*). We were cramped as sardines, we couldn't breathe. We heard the screams, day and night. Continuous torture and daily killing. Every dawn could be the last light for each of us. They came to pick us up, we never knew who it would be. They took out the chosen ones and shot them in the large square of the prison, called the Polygon. We heard the shots, each time as if they hit us. We were many, many thought like me, others did not. There was a lot of discussion, we had nothing to lose, our life was worth nothing and was hanging by a thread. My ideas convinced them and slowly a group with many projects was formed. We wanted to go to the mountains to fight for a free Afghanistan, for an open and democratic society where everyone was respected. If we had lived. If.

I was freed thanks to my brother, a famous and feared bandit, who very convincingly threatened the head of the prison. After a few months I found the survivors of those days suspended above death and we decided to realize our project.

12. Melody Hermachild Chavis, *Mai tornerò indietro*, cit., pp. 73, 74, 77.

## 1979-1989

### *The invasion and Russian occupation. War of resistance*

The situation is critical and the American are taking a fundamental step, fraught with consequences, for the next 40 years.

The Russians are not keen on intervening in Afghanistan but the situation, in which the PDPA and Amin are unable to govern the increasingly violent rebellions, worries them. The failure of the PDPA would be their failure and would throw the country into the hands of the Americans.

Falling the Soviets into the Afghan trap was a fervent desire of the United States. We are in the Cold War. What better than a long and exhausting war could give the coup de grace to the USSR?

It is in early March that the CIA transmits its top-secret proposals to President Carter for support for the anti-communist Afghan rebels. The proposal remains suspended in uncertainty for a long time. The United States, with the Khomeinist revolution, has lost its support for Tehran and the idea of turning the fierce fundamentalism that is now on the scene against the Soviet Union seems tempting. The revolts against the communist government, meanwhile, in Afghanistan, become increasingly violent and repressed in blood.

Carter was convinced and on July 3 signed the authorization document for the operation. The CIA would have supported the rebels but without sending weapons, to protect themselves from any Russian reprisals, if they were discovered. That's just over \$500,000 in propaganda and psychological activities, radio equipment, medical equipment, and cash. Everything, as will happen later, would have passed from the hands of the Pakistani ISI (Inter Services Intelligence) and its government. «Brzezinski, Carter's national security adviser, had already charted the broad outlines of a CIA-led American campaign in Afghanistan that would remain in place for the next decade.» Writes Steve Coll, co-editor of the Washington Post. Brzezinski already made it clear at Christmas that the rebels must be supported, armed and advised, using Pakistan as a mediation, otherwise the Russians will not be stopped. This is the brilliant new move of the Cold War.

In January 1998, in an interview with the *Nouvel Observateur*, Brzezinski revealed: «I explained to the President that, in my opinion, our support would produce a Russian military intervention in Afghanistan. We didn't push the Soviet Union to intervene, but we consciously increased the chances that they would». He continues: «It was an excellent idea to lure the Russians into the Afghan trap. On the day the Red Army crossed the border, I wrote to the President that we would have a chance to give Russia their Vietnam». So, a real success for the Americans. The beginning of a catastrophe, for the Afghan population, which will last more than 40 years.

Asked by the journalist about his responsibility for supporting Islamist terrorism, Brzezinski replies: «What is more important for the history of the world? The Taliban or the fall of the Soviet Empire? Some exalted Islamists or the liberation of Central Europe and the end of the Cold War?». The hypothesis of the affirmation of fundamentalist Islamism and terrorism is nonsense, dismissal decisively<sup>13</sup>.

The Russians then crossed the Amu Darya and invaded the country in December 1979. Neither the soldiers nor the Russian population at home know anything about the war.

In front of my hotel, on Flower Street, Kabul, in the summer of 1980, there was a large flower shop.

Every morning, in the small street, two Russian armored vehicles park, with a few soldiers, sparse and sunburned. They arrive with a list in hand, load a large number of funeral wreaths and leave with their cemetery cargo. The coffins, full, but more often empty, with those crowns on them, are loaded onto large Antonov transport planes and returned to their families, village by village, as if the dead were only that, that only child. Died, according to the government, like everyone else, of viral hepatitis. The young soldiers I was able to interview couldn't understand what they were doing there. They were surprised that they were badly received by the population and that they did not find the Chinese enemies from whom they had to save the Afghans. No one was talking about war and invasion.

A system of lies and silences that, for Russians, seems valid even today.

Propaganda, on the other hand, knows no silence. It is shouted all day by loudspeakers that croak incessantly throughout the city. The sinister sound of bombing over the mountains is a blast of mines to dig a tunnel. This is how the Russians bring help to their Afghan brothers. Obviously no one believes the metallic voice that mixes with the song of the muezzin.

### *American weapons*

The Americans and the CIA secretly support and arm the fundamentalist leaders of Peshawar, in anti-Russian function for 10 years, so that their Vietnam is as bloody and long as possible.

13. C. Cella, *Chi ha spianato la strada ai fondamentalisti in Afghanistan*, in *Altreconomia*, June 2023.

From '84 to '86 the resources provided to the mujahideen increased enormously, reaching their peak in 1987.

In the 80s, 10 billion dollars reach the mujahideen, along consolidated paths: the CIA buys weapons, sends them to Pakistan, where the ISI distributes them. Kindly provided also by Egypt, China, Turkey, Israel, with substantial support also from Pakistan, Saudi Arabia and other Islamic formations.

The parties compete for arms and money by jostling in the Peshawar bubble to assert themselves at the expense of the other groups.

But the decisive military breakthrough came in 1986 to end Russian air supremacy. The CIA provides the rebels with the deadly FIM-92 Stinger, anti-aircraft missile launchers, which they carry comfortably on their shoulders. Ideal for guerrilla warfare in the mountains. Between 2000 and 2500 Stinger arrive in Afghanistan. They effectively hit the target with heat-seeking guidance. Between '86 and '89 Russian helicopters and transport planes fall by the hundreds.

Being under the threat of Russian MI24 combat helicopters is not a good experience. You can't do anything, you can't defend yourself. "Hide!" the commander said to me, but where? Around only desert and low shrubs. "Remove the rings, close your eyes, they sparkle and can reveal our presence!" It sounds like magical superstition. Hands in the earth, eyes down. All you can do is flatten yourself in the yellow dust and hope. The frustration of the mujahideen is enormous. They shoot, angrily, against the titanium monsters with the old Enfield rifles, so as not to feel helpless.

The Stingers turn the situation around and, to feel exposed and vulnerable will be the Russian pilots, who fall by the hundreds. Fundamentalist leaders triumphantly conquer ground.

After the withdrawal of Russians, we are at the beginning of the 90s, the CIA realizes that those missiles, which no one had returned, have become a loose mine. They could have been used by terrorists, against Americans. After all, Iran had already bought several of them. Both President George Bush and his successor Bill Clinton approve a top-secret program that authorizes the CIA to buy back at any price all the Stingers they could get their hands on. Tens of millions of dollars are allocated to the operation. The *warlords*, engaged in their catastrophic ethnic warfare, agree to resell them at prices ranging between \$80,000 and \$150,000 a piece. In that creeping and treacherous war, the sky is not threatening and CIA dollars become the secret chest of the warlords, the fuel of the destruction of the country.

The use of drugs as a weapon of war by the CIA begins (Reagan 1981).

Weapons in exchange for opium, thus stimulating opium production in the country.

I interviewed several leaders of fundamentalist parties in Peshawar, where time seems to disappear in the tangle of many trades. Boring interviews, all the same. Each leader claims to be the best, his party the strongest, the most Islamic, to have the largest number of followers. This is why everyone is convinced that he is in charge of the country, once the Russians are driven out. Someone proposes to show us their glorious war in exchange for 1000 dollars. Trafficking in journalists is another convenient source of income. Everyone keeps the Koran at hand and talks about *sharia*, recommending it as an excellent solution for Italy too.

### *Resisting in Kabul*

In the summer of 1980 I was in Kabul to meet the secular resistance of the city.

I managed with various stratagems to extend the visa, from week to week, because to understand the hidden network of the resistance in Kabul took time and trust.

Maoist parties, Islamic democrats and women's associations, gathered in different groups, immediately organized resistance, starting from the city, against the invasion and against the fundamentalists who fought in the mountains and enriched themselves in Peshawar.

In the first months after the arrival of the Red Army, the city erupts with anger and fills the streets. High school women and girls are always at the forefront. The great demonstrations that invade the streets seem to be born from nothing, sudden, but they are carefully prepared in the utmost secrecy. The summonses, written in leaflets, called "*Shab Nama*", or letters of the night, are distributed secretly on the edge of the curfew, or during the day, in shops. It is mainly women and even children, less suspicious, who carry them around under the eyes of the Russians. For one of these letters you risk a lot.

The students burn the gifts that the Russians deliver in the schoolyards. The girls take to the streets, thinking that it is up to them to defend the freedom of the country, sure that the army of their men would not have the courage to shoot at them. But they are wrong. The little women, the adults, the old women who throw the burka in the face of the soldiers, shouting at them that they are the whores of the Russians, end up on the asphalt, killed or wounded. The population of



the city even climbs on the roofs of houses, flat as terraces. A whole city above the roofs, in silence. The Russians do not understand what they are dealing with, they ride their helicopters, they do not know how to move. The compact silence finally breaks, furious slogans erupt, shouts erupt. People take to the streets. It is a massacre.

When I met them, these militants were crushed by grief and helplessness. But they didn't give up. It was necessary to change strategy.

Mass demonstrations are abolished. The resistance organizes targeted attacks in the heart of the city against the Russians, preferably bigwigs. Young people, women in particular, collect information about their workplaces in contact with Russians. Information that the new strategy badly needs.

Another important decision makes its way into the heart of the resistance of women and men. It is necessary to leave the cities and move towards the villages. Many return home, to their territory. These militants know well that their action, their ideas, their hopes, they are completely ignored in the countryside. Lost places where tradition is sovereign and the mullah is law. Confinement to cities had been a serious mistake. They begin to build democratic resistance in the mountains. They know well the value of solidarity and patronage relationships, between families, groups, ethnic groups, in Afghan rural society. They must gather trust around them for the great project of reconstruction of their country that they have in mind and know that these people, farmers, shepherds, traders, trust only those they know.

### *Resisting in the mountains*

I lived through the beginning of this war that had been trying to organize itself for a few months. Smaller groups were born, like the one I was part of, with ancient rifles, a single mortar, a mare, little experience and little money, but a lot of courage. Eternal marches, little food, and an ambitious project on the horizon: to attack the airport of Khost, in the province of Paktia. Fortunately, we were not alone, from time to time other groups joined, more fierce, who built fragile alliances. Some, like the commander Bul Bul, met in the mountains, chose to infiltrate the well-armed small armies of fundamentalist groups. They gained the trust of the fighters and worked with them, discussing politics and the future. Freeing their minds from fundamentalism and organizing their war with better weapons.

The women, including those of Rawa, were at their side. That was

the time to fight together for their future, for freedom from occupation and fundamentalist ideology. They learned the basics of first aid and went to the mountains.

Their idea of the future and their political project were clear and extraordinary. Illusions were not made. They were realistic and aware of the events that involved them. They were sure that the Russians would leave sooner or later, but they knew that the victorious fundamentalist mujahideen would plunge the country into an even worse disaster.

These fighters refined strategies and weapons, became many and continued to fight on two fronts their very difficult war. During the decade of occupation, more than 65,000 were killed. Often these people are the parents, grandparents or relatives of the militants we have known in recent years. There are groups and villages where these fighters are still considered heroes today. Despite everything, those ideas resisted, marked paths, protected hopes.

## 1989-1992

The Russians are leaving. The retreat begins on 15 May 1988 and ends on 15 February 1989. The fundamentalists, on the other hand, are advancing.

The Russians leave the government of the country in the hands of Najibullah, former head of the Khad, the Afghan secret police. The President seeks to initiate reforms and deal with opponents. It is tempting to sound the alarm against the fundamentalist danger and the serious risk of supporting their race to power. He tries to alert the world at the UN Assembly (1988) about the impending civil war, tries to make an agreement with Massud, one of the most famous leaders of the Islamist resistance. He fights to defend the government from the *warlords*, but the USSR cuts off funds and abandons him to its fate. Nobody cares about saving the country from fundamentalists. The threat is underestimated as well as the consequences.

In 1992, Najibullah was forced to resign. He takes refuge at the UN, launches yet another cry for help, shows the inevitable and tragic future of the country to the world powers, without success.

The mujahideen take over the country, with the Rabbani government. Every leader, every warlord, wants control of the country. The struggle for supremacy will lead the country and especially Kabul into an unprecedented hell.

## 1992-1996

### *Civil War*

The mujahideen leaders of the parties of Peshawar, loaded with modern American weapons and dollars, fight each other in the streets of Kabul for 4 long, very long years. 65,000 victims. 6 million refugees. The city is a battlefield, the streets of every day, unpredictable front lines, where no one is spared from the ferocity of mutual assaults.

I listened to the stories of three women, in Kabul, in 2010. Stories that are difficult to hear. The woman who shares her memories with me is beautiful, dressed in white satin, with only one leg.

A good husband, three children and a big house, we all live together with parents and siblings, right here, in Afshar, a few streets away. With our neighbors, Hazaras, Pashtuns, Tajiks, we are sisters. It's the eighties, sad news arrives, the war of the Russians rages on, but Kabul remains out of the fighting. My husband works hard and we don't miss anything. It's 1993, in the middle of winter, when our lives fall apart. The hell began a year ago, when the mujahideen, the jihadis, those crazy fundamentalists, victorious over the Russians, loaded with weapons, began to shoot each other for the conquest of power.

Unfortunately they are still here, the same ones who still govern the country today. Allies of the Government and the Americans. Is that so. How can this happen? Calculation. Blindness. Blindness of those who were not there.

The districts of the city are like enemy states in war. The front lines are constantly moving. Difficult to horizontally. We cannot understand, not even know. We only hear the voices of neighbors, of those coming from another area. They only talk about ferocity. Worse than any memory. An incomprehensible madness is mistress of the city. No one is safe. Hazara, Pashtun, Tajik, suddenly all enemies. Death awaits you at every corner, at every moment. Just meet the wrong people. Working is impossible. Going out for water and food is a deadly risk. It is our father who takes charge of it. He goes out for some water, goes to war. It's up to him, he says, he's already lived a lot. When he comes out, we all cry. We open the door, every hour, cautiously, to see him return. But that day he does not return from the mission, he disappears. Impossible to go out looking for it. Rockets rain down everywhere, non-stop. Hekmatyar, one of the most powerful jihadis, shoots a thousand in a single day. Afshar, with a Shiite majority, is stormed. The attack was planned, we learned later, and started in early February, under the orders of Rabbani, Sayyaf, Fahim and Massud. Afshar will be razed to the ground. They say that in a single day the dead were five thousand. Here in our streets. Voices, figures. But we do not know, we cannot understand, horror stuns.

Those who return say that you can not walk, the streets are cluttered with dead, everywhere. Someone dares to take them at night, in the thick darkness. But how do they recognize them? They kill everything that has life, everything that moves, even dogs and cats.

We stay there, closed. The breath is short, torn, where will the next one fall? The relief, brief, the amazement of still being alive. The city burns and explodes. The house next door, friends, relatives, neighbors. We all change faces. It is the habit of terror, of that breath that never reaches the end. It grays, turns off. Living, surviving or dying, is just a coincidence, a prayer. Nothing else. You can't even escape.

We are barricaded behind closed windows, when it is our turn. The rocket hits our house in full. It takes away my right leg and half of my family, my mother, my husband, and the 2-year-old, buried by the collapse of a wall. You can't get out, dead and wounded remain there. All together<sup>14</sup>.

Four years of a raging civil war between *warlords* who commit, every day, the most heinous war crimes. The Afshar massacre, West Kabul, 1993, is one of the most serious. An endless horror, which falls especially on women and girls. Daughters are hiding, teenagers disappear, they are taken away.

Many are fleeing this unbearable brutality towards Pakistan and Iran.

Human Rights Watch and Amnesty International documentation refers primarily to the violent clashes of February 11, 1993. Atrocities difficult to describe were committed by the factions of Shura-e Nazar, the armed party of Massud, allied with Abdul Rasul Sayyaf of Ittehad-e Islami, and rival Hezb-e Wahdat. Reports report mass rape, kidnapping, torture and massacres of combatants and civilians. Thousands of civilians died during that terrible year, 1993.

### *At Afshar, 17 years later, women's weapons of peace*

Afshar is still a bare, empty neighborhood, where the wind blows and raises dust and women's veils.

It is precisely here, where the pain has made voids and dug chasms, that the NGO Opawc works. We have followed their valuable work in this *Hazara* majority neighborhood for 20 years. Literacy courses, crafts, tailoring and above all women's rights. Difficult family stories arrive in each classroom, and Opawc activists form groups of women within the

14. C. Cella, *Sotto un cielo di stoffa. Avvocate a Kabul*, Città del Sole, 2017, pp. 78-79.

neighborhood to collect testimonies, help victims of violence, and bring as many girls as possible to school. A capillary and fruitful work that opens many minds and nourishes precious hopes.

Democratic women's and men's organizations begin a work of collecting testimonies on the civil war, which will continue in the following years, to give voice to the allegations of killings and serious human rights violations, to be submitted to the International Criminal Court of Aia.

## 1996-2001

### *The first reign of the Taliban*

In this year the civil war ends leaving chasms of horror behind, a ghost capital, made up of skeletons of houses, and war criminals unpunished. It ends with the seizure of power by the Taliban. The first ferocious and symbolic act of the Taliban conquest is the barbaric killing of Najibullah taken from UN offices together with his brother, both tortured and killed.

The Taliban mean the end of political instability and play into the hands of the US. No one, as is the case today, stands in the way of the consolidation of their power.

Women's rights are disappearing. Taliban violence forces thousands of people to flee the country.

But women don't stop. They organize secret schools, assistance to unemployed women, organize refugee camps in Pakistan. Camps where there are schools for girls, hospitals, assistance. They grow and train peace fighters like them, who will take over and carry on over the years the resistance of women, armed with awareness and education.

At the risk of their lives, the women of Rawa collect documents on Taliban atrocities. They shoot videos of stoning in stadiums, get them out of the country.

In this period, as in that of the civil war, Afghanistan is abandoned to itself and its tragic events do not interest anyone, it is off the Western radar. And the video is dismissed as too raw and unbearable for Western audiences. In 2001, it will sell like hot cakes, it will be broadcast worldwide. The Taliban, in fact, have become enemies of the West. Or so it seems.

## 2001-2021

### *US/NATO invasion and occupation*

In October 2001, US and NATO troops invaded Afghanistan. The Taliban are retreating, waiting for better times to rise again. The war propaganda is deafening and generates many hopes, all disappointed in the following years. Foreign troops will bring women's rights, modernization, democracy, Afghan state-building and the elimination of terrorists to the country. They will bring all this with bombs, with sophisticated weapons to be tested in the field, with the war of drones and *contractors*. With the special troops of the CIA, Afghan, committing endless violations of the rights of civilians.

The Americans form a government with their old allies, the *warlords*, "*our bastard*" they call them. The same war criminals who have devastated the country and who impose a fundamentalist vision of society, a mentality similar to that of the Taliban, ferocious against women. Beyond propaganda, the women's war will continue for the affirmation of their rights and will be increasingly hard.

### *War without escape. Civilians*

In these years of occupation, war is everywhere and violence takes different forms. Surviving is a gamble. Every year with CISDA we went to Afghanistan and the situation, after the first years of hopes, continued to worsen, life had to be conquered every day.

Government and provinces are in the hands of the fundamentalists, the *warlords* who had destroyed the country, in the shadow of the foreign occupiers who support them.

The Taliban are slowly regaining ground and controlling more and more territory, permanently or alternating with government forces in a continuous conflict. As the years go by, they gain space and the country finds itself divided between these two forms of government, one more ferocious than the other, especially against women.

Life is increasingly fragile and precarious. We notice it from the number of bodyguards that our friends make available to us in each stay. Every year they are more. Security continues to deteriorate. "Every morning when I leave the house, I greet my children as if it were the last time. No one can be sure of coming home at night." So tells us a militant of one of our friend's Ong.

The traps that swallow the lives of civilians are many. Just be in the wrong place, at the wrong time. There are suicide attacks, by the Taliban and Isis, the IEDs (*Improvised Explosive Devices*), attached to machines or buried in the ground, the ground war between Afghan government troops and Taliban, devastating, inaccurate and deadly: mortars, grenades, rockets, highly explosive and not very precise in the trajectory. Obtuse weapons that hit a vast area with a very high risk. The bombings of the USA and NATO, increasingly frequent and deadly over the years, the dirty missions of the special troops trained by the CIA, in the “night raids”, the night assaults, which sow fear in the villages, the targeted assassinations of the Taliban, the drone attacks. Even difficult to get to grips, save oneself, live.

The numbers of the war, until 2017, speak clearly:

- 241,000 victims, including more than 71.000, civilians.
- 3.5 million displaced persons.
- 2 million disabled people.
- The production of Afghan heroin reaches 90% of world production: 6000 tons per year for the fifth consecutive year.
- From the 17<sup>th</sup> onwards, aerial bombardments intensified and the number of civilian deaths increased by 330%.
- But there is also the garbage of war, a small forgotten death, the unexploded objects left on the ground, the little death. They take away especially children.
- There are militias, trained by the CIA, under the orders of the *warlords*, responsible for serious human rights abuses, murders and rapes.
- 2/3 of Afghans have mental problems, invisible wounds.
- There are about 3 million drug addicts.
- The war burdens are high and, certainly, could be better spent. For the USA, they are 2300 billion dollars, for Germany 19, for Italy 8.7.
- In the face of so much money, ended for the most part in corruption, infrastructures, schools, hospitals, roads are very few.

Afghanistan 2017. It happens like this, while life, tenaciously, continues.

While you are sewing, in front of the door, to have more light, while you are chatting with your daughter and the rice is boiling in the pot, while everyone is at home and the village is silent, while you hope that silence hides you, while you play in the street with your friends, while you are on the bus and returning from work, while you take the goats to pasture, while you sleep or pray to Allah that, even for today, it does not touch you. You know it can happen,

but you don't expect it, not now. You can't think about it all day. Fear stuns, it is useless. Because you can do nothing to avoid it. A thunder, a flash, a wind of fire that runs towards you. And nothing, ever again, will be the same. It happens to hear nothing and to wake up in the hospital, or, worse, to try, in the smoke, in the fire, to save the children, the wife, the husband, the mother. Praying that they are still alive. Even collect your child's parts in a plastic bag. The sky is clear, treacherous. Even from there the end of the world can come, as the survivors call it. The world of others continues, but yours is gone. This is what is happening in Afghanistan today. For fifteen years, indeed for almost forty<sup>15</sup>.

The increase in civilian casualties is constant and grows, according to reports by UNAMA, HRW and Amnesty International, every six months, with regularity, constancy and indifference. The number of victims of aerial bombardments is also increasing.

### *War without escape. Women's lives*

The data for the twenty-year period 2001/2021, which concern the condition of women, are not very encouraging: 87% of women are illiterate (up to 95% in Taliban areas). Access to education is made impossible in many areas of the country. 87% of women have experienced some form of violence. Forced marriages range between 60 and 80%, 57% are marriages of girls. The number of suicides is very high, especially self-immolations with fire. A sad record: Afghanistan is the second country in the world for maternal and infant mortality. 95% of women prisoners serve sentences for "moral crimes" such as running away from home, from an abusive husband, to save their lives. *Ba'ad* (marrying a woman or girl to right a wrong or settle a dispute) and *Badal* (exchanging girls between families for marriage) are shared and common practices. Impunity for crimes against women remains very high throughout this period.

There are improvements in the condition of women, but they are very limited.

Structural violence against women has not been affected during these 20 years, despite the propaganda.

In the face of some women who managed to assert their autonomy and follow their professional path, often with serious risks, the rest of

15. Ivi, p. 179.



the world of women suffocated in silence and daily violence. However, there were fundamental support structures for women: Legal Help Centers, with legal, medical and psychological assistance, Protected Homes, the Ministry of Women's Affairs, associations and NGOs. Among a thousand obstacles, some roads for women could be traveled and protected. All this, today, is gone.

### *Laws*

Yet there were good laws. The judicial system had been reformed by the Italians.

CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) was ratified in 2003.

In 2004, the Constitution was promulgated, which provides for Article 22: «Afghan citizens, both men and women, have the same rights before the law». The effectiveness of this article is weakened by Article No. 3: «No law may be contrary to the principles and provisions of the sacred religion of Islam». Sharia is therefore the foundation of law and cannot be ignored under any circumstances.

In 2009, the EVAW (Elimination of Violence against Women), signed into law by Karzai but never ratified by Parliament, revises strong criminal penalties for those guilty of 17 different forms of violence and criminalizes harmful traditions, *ba'd* (girls given in brides to right a wrong) and *badal*, (exchange of girls and girls between families.)

Only 5% of cases are dealt with under criminal procedure under the Evaw Act (Unama '16). In 80% of cases, either mediation or Parallel Justice, an informal legal system based on *sharia* and traditional tribal laws, works.

Few turn to government justice for the high costs of corruption.

If you happen to be born a woman, things are clear from the start. Rarely the birth of a girl is a family celebration. Some women are despised and punished for giving birth to daughters. But you can manage to spend a decent childhood. Maybe you even go to school and you like it. Fortunately, there are about 5 million children who do not go. You have friends and hopes for the future. But your body grows without permission, years pass, you can not stop them, even if you would like, you have nine, ten, twelve, and your position in the family changes. They look at you with different eyes, your father, your uncle, your brother. They talk about you, they show you to unknown men,

generally as old as they are. Mercantile looks. They bargain. As a child, you find yourself prey, resource, bargaining chip. You suddenly understand that your life has never been yours. Perhaps, simply, your family needs money, has nothing else to sell, except you. Maybe he has a debt that he cannot pay, and expenses, however, are always there: the brothers have to study, you have to buy seeds, animals, opium, heroin, furniture, televisions [...] Or your brother offended another family, raped a girl, cheated, killed someone. And you are the only way to repair the offense. You will marry one of them and everything will be fine. Your brother will be safe and you will be a slave. They call it *baad*. You repair the guilt and carry it on you. Or you have been engaged since you were born, the exchange of daughters has already been decided. Agreements between families. Mandatory. They call it *badal*. Nobody asks you anything. You will see the husband, the man who bought your life, only on the wedding day. Cursed day, they always say. Maybe he's old, fat, crazy, sick, addicted, violent, rapist. Nobody cares, not even your father. Thus begins the new life, in the name of normal and daily violence. The little bride will no longer go to school, she will get pregnant, too soon for her immature body. Pregnancy will cause serious problems for her and the baby. Babies, born to girls under eighteen, are 60% more likely to die in the first year. Death by childbirth is more likely. If it survives, it will continue to grow, forgetting even how old it is, how much time has passed. He will have other children and will fight the war, his alone, within the war of all.

But it also happens that you can't bear it anymore. Rebellion makes things worse. Asking for help is difficult. Especially if you live in a rural area of the country, especially if you don't even know you have rights. Self-immolation by fire is still a tragic choice for many women. Escape needs courage. You're alone, you know. Relatives and neighbors are all against you, if they help you, they risk a sentence. Families will retrace your steps, like ferocious hunters. Mockery, shame, outrage must be punished. If they find you, your life could end there. If the police find you, it won't be a walk in the park. What awaits you is to be sent back from yours, suffer more violence, or find yourself behind new bars. Running away from home, by informal law, is a serious crime, even if you risk your skin. It is the accusation of *zina*, adultery, the intention is also enough, which is attributed to you *ex officio*, for them, fleeing, means this. If you then ran away with your lover, you do not save yourself from condemnation. He too will be tried for adultery and kidnapping. The sentences are heavy, many and long years in prison. [...]

Maybe you have luck and they let you study. Maybe just to increase your price. But even getting to school is difficult. The girls on the street, with books under their arms, are exposed, without protection, to any aggression: kidnappings, violence, acid attacks. Intimidation in girls' schools is continuous. It happens that a handful of Taliban break into the school and oblige, under penalty of death, all the girls to wear the burka inside the classrooms. It also happens, if you are the director of a school for girls and you fight for their right

to study, that your house is hit by a rocket and that your son is kidnapped and killed by the Taliban. You find him only when a violent rain brings his body out of the earth<sup>16</sup>.

There are not many women who can take advantage of the new opportunities. They are women who live in the city, are part of the middle class and have money, they were born into open families and determined to support them. But there are also obstacles on the road for those who can study and do a job of responsibility.

Journalists, judges, lawyers, doctors, democratic politicians, members of the government administration, human rights defenders, NGO staff, policewomen, become targets, victims of planned attacks. The Taliban label them as “military targets”.

Work, for women like this, with public responsibilities, becomes a high-risk challenge. Protection requests fall on deaf ears. They have to fend for themselves. No murderer is punished.

Justice for women remains a chimera. Impunity becomes daily practice, horror sinks into normality.

It is difficult to appeal to the laws of the State, for the high costs, for the fear of retaliation, for the smallness of the penalties imposed. Unfortunately, good laws, in the 20 years of occupation, have been little used and much hindered.

The structures of power, which were supposed to apply them, such as Parliament or the Government of the different provinces, were firmly in the hands of the fundamentalists, Warlords or Taliban, who continued to govern part of the country. Protecting women and condemning perpetrators of violence was hardly a priority. Obstructing the paths taken to obtain justice was common practice in which threats, intimidation, murders were used that targeted lawyers, social workers, prosecutors and policewomen.

### *Warriors of Peace*

Every woman in Afghanistan is forced to fight. Tremendous daily and secret battles, often solitary. It was so in the twenty years of occupation, it is even more so today, under the obsessive Taliban madness. But there are also those who choose to fight, for themselves and for everyone else, and organize themselves for this.

16. Ivi, pp. 187-188, 190.

In the 20 years of occupation we have followed these women, day after day, year after year. Their organizations, some secret and clandestine, such as Rawa, others, NGOs that openly supported women, such as Hawca, Opawc, Saijss, built new lives and projects of freedom. Small, large, projects within civil society. The weapons of peace sharpened every day. Many women, in these years of tireless work of activists, have changed. They acquired tools and awareness of their value, they were ready to make good use of them.

Today all this has disappeared, women are forced to find new strategies.

### *Before the end*

The last days before the capture of Kabul are not easy times.

Here is the testimony of Amnesty International's report of 15 December 2021:

The Taliban, the U.S. military and Afghan security forces were all responsible for attacks that caused enormous suffering to civilians before the country's government collapsed in August.

This is what Amnesty International says in a new report.

The report, *No Escape: War Crimes and Civilian Harm During The Fall Of Afghanistan To The Taliban*, documents torture, extrajudicial executions and killings by the Taliban during the final stages of the conflict in Afghanistan. The research also lists civilian casualties during a series of ground and air operations by the Afghan National Defense and Security Forces (ANDSF) and US military forces.

Agnès Callamard, Secretary General of Amnesty International, said:

The months leading up to the collapse of the government in Kabul were marked by repeated war crimes and the relentless bloodshed committed by the Taliban, as well as deaths caused by Afghan and US forces.

Meanwhile, in Doha, in the so-called "peace talks" the country, with all its unhappy inhabitants, was left by the United States, according to the agreements, in the hands of the Taliban, without any real conditions. The order was to let the Taliban forces pass without hindering their race to Kabul. They just had to not create problems for NATO troops, let them escape without too much damage. And so it was.

**August 15, 2021**

*History goes back*

This is how Senator Bilquis Roshan, who was at work in her office in Parliament, recounts that dramatic day.

I was in my office at Parliament. There was a lot of tension. The future was coming and he didn't have a pretty face. The advance of the Taliban continued inexorably, smoothly. Kabul was about to be handed over to the Taliban. Then, the news came: they took Surobi, the gateway to the city. (town on the road between Kabul and Jalalabad, 60 kilometers from the capital). They could have walked into my office in a matter of hours. The Taliban had been threatening me for years and it was not a good idea to be found there. I left immediately, with my driver. The city was unrecognizable, I had never seen such a thing. Thousands of cars, military vehicles, people running, a frightening chaos. The news had set in motion the panic of the city, which seemed unstoppable. It did not advance an inch. I got out of the car and walked on. I walked two hours to get home<sup>17</sup>.

After 20 years of Western occupation, on August 15, 2021, the final act of yet another Afghan disaster takes place. The most devastating one, the surrender of the country to the Taliban. Prepared and managed by NATO and US troops who 20 years earlier had entered Kabul with the flags of democracy, to «liberate women and the population from the ferocious Taliban».

The Government, supported by the occupiers, collapses in one day, with all its well-trained puppets.

The country plummets, especially the country of women.

Suddenly, there is no right to live. The women, their thoughts, their voices, their steps, their gestures disappear behind the closed windows of the houses, behind the blue folds of the burka, behind the thick black veils that take your breath away. This is precisely the image that recurs most often in the words of women who tell us about their lives now: suffocation. «The Taliban, if they could, would take the air away from inside our lungs». A friend from Kabul tells us. There is no space, no time, no roads for the future. Control, Taliban obsession, fills every corner of life and mind. In these two years, every day, every month, the Taliban bans have sadistically restricted the space around women and

17. C. Cella, *«Sono in molti a doversi vergognare per la distruzione dell'Afghanistan»*, in *Altreconomia*, August 2023.

seem to invent, again and again, more bars, more tortures of body and mind. We are alive but we do not live, so they all say.

Every day, in mosques across the country, the miserable fanatical voice of the Taliban warns the men. They should not let their wives go to school or to courses of any kind, because they learn the wrong things and can become independent. The educated woman terrifies them<sup>18</sup>.

Women can no longer study, work, or leave the house without a *mabram* (*man of the family to escort them*). If you don't have it, you're exposed to any retaliation. They cannot take care, have justice, they cannot attend parks, public places, hairdressers, gyms, tourist places, travel, attend public offices. Violence against women is no longer a crime, no one opposes it. Total impunity, connivance, and support for male criminal behavior have made domestic violence a daily practice that reaches unprecedented heights.

The Ministry of Justice no longer exists, *sharia* is the only law, managed by the Taliban. No one disapprove an abusive husband anymore. There is no more place for escape and salvation. As a result, mental illness and suicide of women and girls also increases. Young women and teenagers never go out. The parents fear that they will be kidnapped by the Taliban. Of many, as well as of the arrested girls, who protested in the streets, nothing more is known. Killing, torture and senseless punishments are common practice. The hunt for activists, lawyers, policewomen, judges, men and women who worked with the previous government, is unleashed. Neighborhoods and apartments are searched regularly. Fear is part of life. «We are deeply concerned about the apparent perpetration in Afghanistan of gender persecution – a systematic and grave human rights violation and a crime against humanity» (UN Report May 2023).

A country that, meanwhile, continues to sink deeper and deeper, in the most tragic humanitarian crisis of its troubled history. In 2022, more than 90% of the population did not have enough food and continue to face severe food insecurity.

Tens of millions of people spend days without eating, or regularly skipping meals. Malnutrition generates diseases, which, without assistance, end up killing, especially children. In front of the bakers of the cities there are very long queues, not to buy bread but to beg for it

18. C. Cella, *Imparare a cucire e tornare a vivere. Le sarte che sfidano i Talebani*, in *Altreconomia*, September 2023.

from those lucky enough to still be able to buy it. In order to survive you would do anything. Increasingly extreme measures, such as the sale of children, boys and girls, to militiamen, the organ trafficking, especially kidneys, which yield about 400 euros each. 100% of family with women as households, who can no longer provide a living, do not have enough food.

### *Women's weapons*

But women do not give up and refuse to disappear.

The militants of so many years and so many battles, do not leave. Almost no one escapes abroad. Only if the danger becomes too high. «It is right now that women need us most. We know the Taliban, we have already lived with them. They don't scare us».

With their organizations, they have remained to support women in these times of the devil. They invent projects, crossroads, new strategies to circumvent the Taliban bans and continue to help women. Their lives have become fragile. Every time we hear them, we meet them on the computer screen, they smile at us lightly, but we see that this life consumes them every day. With each time the dangers increase and the things that could have been done the previous month can no longer be organized. They are worried and attentive, but their activities do not stop. They camouflage, hide, limit themselves but do not stop. Secret activities, like everything that still lives in Afghanistan.

And so, they continue their projects, as many years ago, they organize clandestine schools, in homes, basements, courtyards, English and mathematics courses for older girls, literacy and sewing, a profession and the awareness of existing, of having rights. They set up small shelters, for a few women fleeing violence. They turn the country on mobile health units, to bring assistance in remote villages where care has never existed. They manage apartments for girls, where they do school and live together, against isolation and depression. They produce saffron, in fields run by groups of women who change their lives and those of the neighboring villages, with their hands full of flowers. All this until you succeed. They have no illusions, but they cannot disappoint the expectations of the girls. They cannot give up supporting their thirst for the future that, in those few hours of common study, is nourished and remains alive, dragging hope even in the darkest places.

## *The little resistance*

There are not only militants. Girls, children and elderly women, in cities and villages, open spaces of daily resistance, spreading trust in the community. They try to resist Taliban hatred with smaller daily gestures of defiance. Neighborhoods, houses, courtyards are the space, sharing the main tool. Women share their knowledge, creating small self-managed schools, mathematics or pastry, English or sewing, computers or embroidery. Those who know or know how to do something share it with others. Small schools of everything. Young people continue to play forbidden music in the cellars, draw, paint, girls go out boldly with light and colorful veils, make up carefully under the burka, and many continue to work, escaping Taliban sanctions so as not to stay at home and watch their children starve. Zahida, follows the sewing course of her neighbor, who dreamed of becoming a designer, and sews clothes full of colors, Parwana, embroiderer of wonders that no one can buy anymore, invents new sweets and takes her catering service around the neighborhood. Adhia continues to sell chickens on the street, ready to run away or trade salvation for a chicken. Zohra is a hairdresser, from house to house, hiding the “tools of the trade” under the burka, Shazia faces the daily intimidation of the Taliban, in order to continue selling the best “*bolani*” (fried dough buns stuffed with vegetables) in Kabul and make her children eat. Sahar is the soul of her neighborhood, she teaches everyone, old and young, everything she knows. Here are her words:

The Taliban can never completely close the doors to women’s education. When they close a door, we find a new way and continue to study and learn new things to make ourselves stronger and stronger and to resist, firmly and with our weapons, the darkness. I know that we are living an unbearable situation for every woman but we do our best to move forward and not be crushed.





# TRANSNATIONAL CONNECTIONS TO STOP RAPE NOW: ENGAGING THE WOMEN IN CRSV ADVOCACY

*Alexandra C. Budabin\*, Natalie F. Hudson\*\**

SUMMARY: 1. Studying the dynamics of transnational advocacy networks – 2. Background on transnational advocacy for the Women, Peace, and Security Agenda – 3. Case study of transnational advocacy around CRSV – 3.1. Political training, opportunities, and story-telling – 3.2. Support for local mobilization, funding, and agenda-setting – 3.3. Communications, single narratives, and compromises – 3.4. Leveraging from and embedding the discourses of UN SCR 1325 – 4. Conclusions.

Although bringing women together to address gender security has a long history going back to World War I, it wasn't until 1995 that the Beijing Platform for Action explicitly linked women's experiences in conflict to human rights and international security. This led to the language of women's experiences of armed conflict and their protection needs in the context of war being circulated at the UN. When the UN Security Council passed resolution 1325 on Women, Peace, and Security (WPS) in 2000, protection was one of the four pillars – alongside participation, prevention, and relief and recovery. UN Security Council Resolution (SCR) 1325 was a critical first step in framing women's rights as essential to the maintenance of international peace and security, laying the foundation for securitizing conflict-related sexual violence (CRSV)<sup>1</sup>. After the passage of SCR 1325, references to CRSV did emerge in the context of Security Council country-specific resolutions, but these were always linked to other forms of violence. It was clear that CRSV was not a stand-alone security issue nor enough to motivate intervention.

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1. N.F. Hudson, *Gender, Human Security and the United Nations: Security Language as a Political Framework for Women*, Routledge, 2010.

In light of the weak prioritization given to SCR 1325 within official circles, it became evident that greater political will would be needed to convince state-based security actors of the real and urgent threat posed by gender insecurity and ensure adequate attention and implementation. This political will would come in part from transnational advocacy networks that ran various campaigns to pressure the international community and national level actors. An array of human rights, peacebuilding and women's NGOs had already come together to successfully lobby UN Security Council members to pass 1325<sup>2</sup>. Notably, this network did not make a concerted effort at mobilization outside of the UN, but rather directed their advocacy at states and IGOs.

Following reports of CRSV in the Congo and Sudan in the early 2000s, both newly created and established NGOs came together in various configurations to present these conflicts as the first test cases for Security Council Resolution (SCR) 1325. Building on these cases and related advocacy, the UN launched a UN ACTION campaign called Stop Rape Now that advocated on behalf of various CRSV situations. These networks offered the possibility to link women advocates and activists across borders, especially pertinent for women in conflict-affected countries. But the extent to which these networks offered a smooth path towards mobilizing for the implementation of SCR 1325 in the area of CRSV is mixed: the transnational networks offered opportunities for access, communications outreach, and other resources for women activists in the South to advocate on issues related to gender security, but the agendas remained driven by Northern elites. While the situation has ameliorated over time with greater empowerment for women from conflict-affected countries, tensions and uneven power dynamics endure in problematic ways.

This chapter looks closely at the transnational advocacy networks for CRSV following the adoption of UN SCR 1325 and explores the dynamics of connecting women and organizations across borders. The piece draws from a larger research project that examines the impact of the WPS Agenda on transnational advocacy, trying to see what *normative leverage* the WPS policy framework gave, if any, to organizations and individuals mobilizing in their spheres or globally on gender security

2. The six founding members of the NGO Working Group on WPS were Women's International League for Peace and Freedom, Amnesty International, International Alert, Hague Appeal for Peace, Women's Commission for Refugee Women and Children, and Women's Caucus for Gender Justice. The NGO Working Group on WPS now has 18 members. [www.womenpeacesecurity.org/](http://www.womenpeacesecurity.org/).

issues, particularly in relation to CRSV<sup>3</sup>. We have selected examples from interviews we have conducted with over 50 advocates inside and outside of the UN system, many of whom have had direct field experience in Sudan, the Congo, or are themselves from there. We contextualize this data within the debates around dynamics of transnational advocacy networks especially concerning communication strategies as theorized by Keck and Sikkink<sup>4</sup>. We connect to these debates by presenting stories and perspectives on transnational advocacy around CRSV from some of our interview subjects. We conclude with some thoughts on both worrying and encouraging trends in transnational advocacy linking women and women's organizations around the WPS Agenda related to CRSV.

## 1. Studying the dynamics of transnational advocacy networks

Prospects for fostering political will to implement the WPS Agenda would depend on moving beyond the UN and mobilizing a wider public through transnational advocacy. We follow Keck and Sikkink in studying how transnational advocacy networks influence both international and local political outcomes. As a cross-border form of collective action, transnational advocacy connects advocates and activists – that is, advocates acting on behalf of others alongside activists representing themselves and those more closely connected to the stakeholders. In many cases, activism is risky due to a repressive or authoritarian context<sup>5</sup>; this can certainly be generalized to thinking about how activism during conflict often needs external allies. Located beyond the fighting, advocates can approach the international community, apply pressure, and mobilize a global civil society to respond to the conflict and address atrocities being committed.

As conceived by Keck and Sikkink, activists and advocates in transnational advocacy networks work together but across two dimensions: Activists facing blockages to national mobilization reach out across borders and share information, firsthand accounts, and other

3. For more information, see [acbudabin.wordpress.com/project-on-gender-reframing/](http://acbudabin.wordpress.com/project-on-gender-reframing/).

4. M. Keck, K. Sikkink, *Activism beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, 1998; A. de Waal (ed.), *Advocacy in Conflict: Critical Perspectives on Transnational Activism*, Zed Books, 2015.

5. G. Accornero, T. Gravante, *Bridging social movement studies between Global North and Global South*, in *Partecipazione E Conflitto*, vol. 1, n. 15, 2022, p. 196.

evidence to advocates with resources, access to political spheres, and media connections who can raise awareness and lobby for solutions in international spheres. Within repressive or conflict-affected countries, activists will also seek support in mobilizing supporters and pressuring their own domestic political spheres. These dimensions have often had a geographic or metaphoric character of linking the Global North to the Global South or western to non-Western. Therefore, it's been important to recognize how these networks reflect and reproduce structures of asymmetric power relations.

Many of the most prominent transnational advocacy networks have worked on issues related to gender, enacting a kind of global sisterhood of women connected by similar experiences<sup>6</sup>. As discussed in Keck and Sikkink's book, women's networks in the 1970s and 1980s were characterized by divisions described as a North-South split over where to direct their energies. But these tensions around agenda-setting and venues were partly transcended in the mid-1980s when the issue of violence against women was able to unite North and South groups. Though gender may bring activists together in a type of «universal sisterhood that emphasizes the unity and common experience of women», Mohanty would warn us to pay attention to «power differences within and among the various communities of women»<sup>7</sup>. These intersectional dynamics are certainly present in transnational advocacy around the 1325 agenda and CRSV particularly in reference to control over messaging, framing the nature of harm, choice of tactics, messengers and venues or platforms used, that takes place outside the conflict-affected country as well as the distribution of funding for local organizations.

The transnational connections between women working at the grassroots level with professional advocates for women's issues has also come under scrutiny for reinforcing North-South dynamics. Transnational feminist approaches to activism offer a corrective to these dynamics by insisting on the inclusion of local and regional feminist knowledge in global initiatives<sup>8</sup>. Transnational feminist approaches also demand a «global feminist consciousness that contests patriarchal, neo-liberal/

6. A.C. Budabin, N.F. Hudson, *Sisterhood Partnerships for Conflict Related Sexual Violence*, in *World Development*, vol. 104, 2021, pp. 1-13.

7. R.D. Ciccía, D. della Porta, E. Pavan, *Feminist Alliances: The Ideas, Practices and Politics of Intersectional Solidarity*, in *European Journal of Politics and Gender*, vol. 4, n. 2, 2021.

8. G. Heathcote, *Protesting the Preamble: The UN Security Council and the Dilution of Feminist Activism*, in *OpenGlobalRights* (blog), August 19, 2020, available at: [www.owg.org](http://www.owg.org).

capitalist and racist power dynamics... and networking that recognizes the intersectionality of forms of oppression»<sup>9</sup>. This approach illustrates the impact of colonial histories on the entire advocacy endeavor. Our previous research on public-private partnerships within CRSV advocacy as well as celebrity activism speak to these critical concerns<sup>10</sup>. Further, transnational feminist approaches reflect collaborative action around concrete issues. We will see the ways in which transnational advocacy was able to incorporate and elevate voices from more vulnerable contexts.

Communication strategy is a major theme for transnational advocacy networks as well as a prime source of tension. To theorize how transnational advocacy networks operate, Keck and Sikkink put forth the concept of information politics to describe the ways in which networks create, collect, manipulate, and implement information in the form of testimonies, evidence, and reports as resources in campaigns and various operations. Yet, as Pruce and Budabin discuss, the suffix “politics” conveys a sense of the contestation and power dynamics in the collection and deployment of information that reflects the imbalances across activists in affected zones and advocates located in more secure zones<sup>11</sup>. Particularly for transnational advocacy around conflict, information is intentionally packaged and presented in ways that appeal to policy-makers in power centers for the international community such as the US and UK<sup>12</sup>. This may mean a preference for hearing from professional advocates over local stakeholders, a situation that often leads to a narrow and simplistic understanding of the conflict. Our research on diaspora activists and Global South actors in transnational advocacy around CRSV offers some insights into the political opportunities available and the enduring blockages in information politics<sup>13</sup>.

[openglobalrights.org/protesting-the-preamble-the-un-security-council-and-the-dilution-of-feminist-activism/](https://openglobalrights.org/protesting-the-preamble-the-un-security-council-and-the-dilution-of-feminist-activism/).

9. N. Reilly, *Women’s Human Rights: Seeking Gender Justice in a Globalizing Age*, Polity Press, 2009, p. 10.

10. A.C. Budabin, N.F. Hudson, *Sisterhood Partnerships for Conflict Related Sexual Violence*, in *World Development*, vol. 104, 2021, pp. 1-13.

11. J.R. Pruce, A.C. Budabin, *Beyond Naming and Shaming: New Modalities of Information Politics in Human Rights*, in *Journal of Human Rights*, vol. 15, n. 3, 2016, pp. 408-25.

12. A. de Waal (ed.), *Advocacy in Conflict*, cit.

13. A.C. Budabin, N.F. Hudson. *Local Voices in Transnational Spaces: Diaspora Activists and the Women, Peace, and Security Agenda*, in *Interdisciplinary Political Studies* vol. 8, n. 1, 2022, pp. 169-185.

As Brysk shows in her work *Speaking Truth to Power*, the success of a social movement in building political will is often dependent on the choice of frames and messaging for building collective identities, mobilizing around particular actions, and representing claims<sup>14</sup>. Scholarship on advocacy narratives, for example, has found that these representations are often simplistic, faulty, and disconnected from on the ground realities<sup>15</sup>; when they become dominant, these narratives have unexpected and often negative consequences for various situations<sup>16</sup>. The dependence on moving information in real-time to policy spheres will continue to demand trade-offs in speed and accuracy as well as the need for the most attractive messenger. These challenges are certainly evident in transnational advocacy on WPS, and unpacking the unique gender dimensions as seen in the global sisterhood frame of paying attention to the connections between womens' group addressing CRSV enriches our understanding of shifting power dynamics at work in this particular political space.

## **2. Background on transnational advocacy for the Women, Peace, and Security Agenda**

While our project looks at mobilization following the passing of SCR 1325, we recognize that the original success of the resolution was the result of intensive transnational advocacy efforts by human rights, peacebuilding, and women's NGOs centered on the international community and policy-making in the United Nations in the 1990s<sup>17</sup>. This network did not make a concerted effort at mobilization outside of the UN, but rather directed their advocacy at states and state security institutions. As a normative agenda, these efforts aimed to bring gender mainstreaming to the realm of international security. The link between security and development had already taken hold in the post-Cold War

14. A. Brysk, *Speaking Rights to Power: Constructing Political Will*, Oxford University Press, 2013.

15. A.C. Budabin, L.A. Richey, *Batman Saves the Congo: How Celebrities Disrupt the Politics of Development*, University of Minnesota Press, 2021, Chapter 2.

16. S. Autesserre, *Dangerous Tales: Dominant Narratives on the Congo and Their Unintended Consequences*, in *African Affairs*, vol. 111, n. 443, 2012, pp. 202-222.

17. F. Hill, M. Aboitiz, S. Poehlman-Doumbouya, *Nongovernmental Organizations' Role in the Buildup and Implementation of Security Council Resolution 1325*, in *Signs: Journal of Women in Culture and Society*, vol. 28, n. 4, 2003, pp. 1255-1269; C. Cohn, *Sex and Death in the Rational World of Defense Intellectuals* in *Signs: Journal of Women in Culture and Society*, vol. 12, n. 4, 1987, pp. 687-718.

period, shaping international aid policy<sup>18</sup>. In parallel, the international community increasingly was taking seriously the many ways that security is gendered<sup>19</sup>. These global policy shifts gained momentum following the Fourth World Conference for Women in Beijing 1995, which called for the increased access of women to conflict prevention and resolution processes.

These transnational advocacy networks achieved success in 2000 when the UN unanimously adopted Security Council Resolution (SCR) 1325. This resolution was a landmark step in raising awareness of the impact of armed conflict on women and girls and in acknowledging the vital role of women as agents in conflict prevention, resolution, and post-reconstruction. For the first time in the history of the UN, the Council formally decided on a gender issue, making gender concerns relevant to all Security Council actions<sup>20</sup>. SCR 1325 and the nine resolutions that followed constitute the core of the WPS and in large part have contributed to the securitization of women's rights and gender equality<sup>21</sup>. Research on gender, security and development continues to demonstrate the ways in which these concepts are both independently understood and interrelated<sup>22</sup>, and even indivisible in the context of peacebuilding<sup>23</sup>.

Despite the passing of SCR 1325, the scourge of CRSV was neglected in major episodes of violence and conflict in the early 2000s<sup>24</sup>. As defined by the United Nations, «conflict-related sexual violence» refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict<sup>25</sup>. While

18. M.R. Duffield, *Development, Security and Unending War*, Wiley, Hoboken, 2007.

19. C.E. Gentry, L.J. Shepherd, L. Sjoberg (eds.), *Routledge Handbook of Gender and Security*, Routledge, 2019.

20. L. Olsson, T.L. Truggestad (eds.), *Women and International Peacekeeping*, Routledge, 2001.

21. N.F. Hudson, *Gender, Human Security and the United Nations*, cit.

22. M. Henry, *Gender, Security and Development*, in *Conflict, Security & Development*, vol. 7, n. 1, 2007, pp. 61-84.

23. L.J. Shepherd, *Gender, UN Peacebuilding, and the Politics of Space: Locating Legitimacy*, Oxford University Press, 2017.

24. A. Swaine, *Conflict-Related Violence against Women*, Cambridge University Press, 2018.

25. *Conflict-Related Sexual Violence Report of the United Nations Secretary-General (S/2019/280)*, available at: [www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/07/report/conflict-related-sexual-violence-report-of-the-united-nations-secretary-general/2019-SG-Report.pdf](http://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/07/report/conflict-related-sexual-violence-report-of-the-united-nations-secretary-general/2019-SG-Report.pdf).



passed as a bold normative agenda, SCR 1325 and subsequent ones have not been enough to implement global policies and provide needed protection in situations of armed conflict for women and girls<sup>26</sup>. As experts argue, «sexual violence still remains to a large extent a silent and hidden crime»<sup>27</sup>. This neglect within official circles raised the prospect that greater political will would be necessary to pressure state-based security actors to implement SCR 1325.

This political will would come in part from transnational advocacy networks linking NGOs across the world. Advocacy to implement the WPS Agenda has had transnational, national, and local dimensions, targeting both individual states and international organizations like the UN<sup>28</sup>. It was incumbent upon advocates to branch out from the UN and also target states in their campaigns and lobbying. In partnership with the NGOs operating in and around the United Nations, a grassroots effort to mobilize (mainly) women has cropped up to ensure the security of women in conflict<sup>29</sup>. In our own work, we have tracked and compared networks around CRSV in Congo and Darfur (Sudan)<sup>30</sup>. There was also a UN ACTION campaign called Stop Rape Now that advocated on behalf of a variety of CRSV situations. These various networks offered the possibility to link women across borders, especially pertinent for women in conflict-affected countries.

However, the extent to which these networks offered a smooth path towards mobilizing a grassroots public for the implementation of SCR 1325 in the area of CRSV is mixed. Women may be brought together,

26. J. True, *Explaining the Global Diffusion of the Women, Peace and Security Agenda*, in *International Political Science Review*, vol. 37, n. 3, 2016, pp. 307-323.

27. V. Bernard, H. Durham, *Editorial: Sexual Violence in Armed Conflict: From Breaking the Silence to Breaking the Cycle*, in *International Review of the Red Cross*, vol. 96, n. 894, 2014, p. 430.

28. F. Olonisakin, K. Barnes, E. Ikpe (eds.), *Women, Peace and Security: Translating Policy into Practice*, Routledge, 2011.

29. A. Björkdahl, J.M. Selimovic, *Gender: The Missing Piece in the Peace Puzzle*, in O.P. Richmond, S. Pogodda, J. Ramović (eds.), *The Palgrave Handbook of Disciplinary and Regional Approaches to Peace*, Palgrave Macmillan, 2016, pp. 181-92; A.K. Kreft, *Responding to sexual violence: Women's mobilization in war*, in *Journal of Peace Research*, vol. 56, n. 2, 2019, pp. 220-233.

30. N. Hudson, A.C. Budabin, *When Advocacy Securitized: New Actors and Audiences in the Securitization of Sexualized Violence in Conflict*, in M. Butler (eds.) *Securitization Revisited: Contemporary Applications and Insights*, Routledge, New York, 2019; A.C. Budabin, N.F. Hudson, *Local Voices in Transnational Spaces: Diaspora Activists and the Women, Peace, and Security Agenda*, in *Interdisciplinary Political Studies*, vol. 8, n. 1, 2022, pp. 169-185.

but still face unequal opportunities in pursuing effective action on gender security. This is partly due to the global governance environment where “best practices” for addressing CRSV have often concretized «global solutions to what are inevitably local problems»<sup>31</sup>. The NGOs and individuals involved in WPS transnational advocacy networks are more diverse than pre-1325 but there remain tensions around not only discourse and framing but in representation. As Taylor describes, the question comes down to «whose goals count in advocacy», mimicking some of the classic challenges raised in transnational advocacy networks, even those created by and for women, as suggested above<sup>32</sup>. For example, Cohen and Green explored the information politics around representing CRSV in Liberia and found that the transnational advocacy organizations based in the North promulgated inaccurate portrayals that were picked up by international media<sup>33</sup>. Much has been written on the rape-as-weapon-of-war narrative that became dominant and problematic in explaining the breadth and complexity of CRSV, in Congo most prominently<sup>34</sup>. It is clear that some voices are heard over others. Still, we see developments in the ways in which transnational advocacy is embracing the meaningful inclusion of more voices with the potential to alter understandings of CRSV to better reflect local contexts and challenge hegemonic understandings.

The stakes are high for engaging in effective transnational advocacy by and for women in CRSV affected situations. And this is because research shows that the incidence of sexual violence during conflict leads to the mobilization of local women in civil society organizations as well as more linkages with international women’s NGOs<sup>35</sup>. Women experience and perceive conflict-related sexual violence as a collective threat that

31. S. Dewey, T. St. Germain, *Between Global Fears and Local Bodies: Toward a Transnational Feminist Analysis of Conflict-Related Sexual Violence*, in *Journal of International Women’s Studies*, vol. 13, issue 3, n. 4, 2012, pp. 49-64, 49.

32. S. Taylor, *Advocacy and the Women, Peace and Security Agenda*, in S.E. Davies, J. True (eds.), *The Oxford Handbook of Women, Peace, and Security*, Oxford University Press, 2019.

33. D.K. Cohen, A.M. Green, *Dueling Incentives: Sexual Violence in Liberia and the Politics of Human Rights Advocacy*, in *Journal of Peace Research*, vol. 49, n. 3, 2012, pp. 445-458.

34. N. Chiwengo, *When Wounds and Corpses Fail to Speak: Narratives of Violence and Rape in Congo (DRC)*, in *Comparative Studies of South Asia, Africa and the Middle East*, vol. 28, n. 1, 2008, pp. 78-92; M.E. Baaz, M. Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond (Africa Now)*, Zed Books, London, 2013.

35. A.K. Kreft, *Responding to sexual violence*, cit.

leads them to organize and become politicized both locally and globally. Kreft tracked this phenomenon across cases where there has been a high prevalence of CRSV to show that these cases are associated with higher women's political mobilization. To be sure, there are important control variables such as state repression, ability to organize, and other conflict-related, political, and social factors. Our work complements this research by identifying the dynamics in transnational advocacy around CRSV that encourage or impede effective connections linking activist and advocates.

### **3. Case Study of transnational advocacy around CRSV**

This section explores some of the dynamics that characterize transnational connections between women activists and advocates working on CRSV. What follows are anecdotes and insights from interviews we conducted with activists and advocates working on the issue of CRSV specifically or more generally on the WPS Agenda. We have organized these along some of the main lines of debate related to resources, information, and agenda-setting.

#### *3.1. Political training, opportunities, and story-telling*

Some organizations in the Global North can offer not only access to international policy-making spheres, but also resources like political training and funds. Before Covid happened, we were in Washington, DC where we met with Swanee Hunt, a prominent philanthropist and former US ambassador, who has devoted herself and her fortune to addressing issues surrounding women and war. She has created organizations such as Women Waging Peace and Inclusive Security to strengthen the skills and influence of women leaders around the world and she advocates for having women as part of peace processes. Using her own connections and experience of being in government, Ambassador Hunt and her organizations have been responsible for many trainings behind the scenes and for bringing women together with policy-makers. Ambassador Hunt recounts how she used a lot of role-playing-exercises to train women in advocacy:

One of my favorite [stories] is, we're in Nairobi, and the women are Sudanese and South Sudanese. I'm going to say it's 2003. So, we're going to

do this role play to get ready for doing advocacy with a policy maker. So, the person that comes in to play the part of the policy maker is the American Ambassador! You know, hey, can you coach these women so they can talk to the prime minister. And I loved that. Of course it's a two-for. The American Ambassador walks out of there, eyes big [from what he has learned]<sup>36</sup>.

While this example says a lot about Ambassador Hunt's social capital, it also provides an example of the preparation that may be needed for activists looking to engage in political advocacy in international spaces. Further, the example is also one of access: Ambassador Hunt arranged for the women to tell their stories and do their lobbying with the US Ambassador. These arrangements were made by the advocates on behalf of the activists. It is often incumbent on the advocacy organization to bring their experience in navigating these political landscapes – both national and international – that may be useful for women activists.

Whereas there are times when advocates speak on behalf of others, there is more attention paid now to letting stakeholders and activists tell their own stories. In addition to organizing access and political opportunities such as the political training described above, there is also recognition that women appreciate help in telling their stories in an impactful way. The Women for Women International CEO Laura Adams described the efforts to offer training:

We asked every woman if they wanted to be in a story telling training, and we put people through a leadership training which included story telling, and those women who have had that training, oh my God, the way they tell their story... confident, powerful, they love telling it. So, you know, if people want to, and you give them that kind of support? Fine. But none of this gets done on the plane or within two weeks<sup>37</sup>.

At the end of her remarks, Ms. Adams is referring to the commitment involved in implementing leadership and story-telling trainings. They require a dedication of time and resources. While such trainings endeavor to preserve the authentic voice of the activists, the trainings themselves may enact the practice of processing that voice through the filter of elite values prioritizing certain parts of the story over others.

Efforts are made to bring women from the conflict-affected country to speak for themselves. But organizing these events with witnesses has risks. Ms. Adams raised the pitfall of bringing survivors of war to speak

36. Swanee Hunt, Interview with Authors, January 10, 2020.

37. Laura Adams, Interview with Author, January 10, 2020.

in the US to different audiences. Despite what might seem an optimal situation, there were risks that survivors may be subjected to unknowing audiences who might be patronizing or pitying. As Ms. Adams summed up:

If the woman really wants to do it, and she's a really powerful advocate, and she wants to do that, and there's an opportunity to make change, absolutely. But there were a number of times I have seen it happen without it leading to any change and with it leading to all kinds of terrible contradictions<sup>38</sup>.

There are expectations now for letting women tell their own stories, but advocates recognize that not all settings may be useful or even ethical. Discussions around mistreatment and the need for protection characterize these encounters arranged by transnational advocates. Political trainings can be extractive, speaking opportunities can be retraumatizing, and storytelling does not necessarily lead to change.

### *3.2. Support for local mobilization, funding, and agenda-setting*

The need for resources particularly for gender issues is critical but, as our research shows, it often comes with certain conditions. We met with Ridolphine Katabesha of Vital Voices, another women's organization based in DC that was founded in 1999 to advance women's leadership around the world. In 2010, Ms. Katabesha had been working with a women's media organization in the Congo that had started in 2003 to go to remote villages in Eastern Congo where there was conflict. The organization's mandate was to help women raise their voices, discuss their experiences, access health care, and assert their rights. They had a campaign called "Stop Silence Against Violence Against Women" that involved doing interviews for radio and training women in journalism. As Ms. Katabesha described, «A lot of women I worked with in the DRC who survived and who were victims of rape who had a very hard time talking about their experience – they shifted to become themselves actors and started training other women and started doing these meetings in the community, and like them themselves being actors of change, and that was really interesting». We can see here the steps towards collective mobilization around a gender security issue by women with a shared identity as well as local political training opportunities.

38. *Ibidem*.

What is further important about Ms. Katabesha's account are the transnational connections she described. Her organization relied on support and funding from international organizations because they would never have gotten funding from the Congolese government. But not all support is equal – a Northern donor like Vital Voices let the local director decide what project to do whereas other international organizations may need the women's media organization to fit their mission around democratization or other donor-defined goal. And sometimes, the local organization, like Ms. Katabesha's, will do their best to fit these missions and to meet the requirements in order to get funding. She concluded by saying, «I can say we couldn't do anything without the help from those organizations, but things are not better right now, it's still a lot of work even though a lot of money has been sent there, but things are different from when it started»<sup>39</sup>. In many of the interviews, in reference to Congo especially, there was a sense that local groups had to work on the issue of sexual violence because that's what they believed outsiders bringing funding and support wanted to hear.

### *3.3. Communications, single narratives, and compromises*

Advocacy organizations in the North are often the ones with access to relevant policy-making spheres and global media. This means they are responsible for sharing the stories and thus enact some of dangers raised by novelist Chimamanda Adichie about a single story – who tells the story and how this is critical in human rights advocacy<sup>40</sup>. Within the advocacy landscape, there is also a sense that issues have to be marketed. Over and over, the advocates we spoke to used the language of branding – a cause needs to be sold, people have to buy into the issue, etc. This is often the driving force of advocacy – to mobilize the public, maintain the attention of elites, and get media coverage. A simple and clear story line is seen as critical. And this follows not only agenda-setting, but also media logics that would affect and shape transnational advocacy around CRSV.

Long-time advocate and researcher Alex de Waal did research in Sudan and Somalia where he met and interviewed survivors of sexual

39. Rideldphine Katabesha, Interview with Author, January 9, 2020.

40. [www.ted.com/talks/chimamanda\\_ngozi\\_adichie\\_the\\_danger\\_of\\_a\\_single\\_story?language=en](http://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story?language=en).

violence. And when he presented this research in the North on behalf of African Rights, he tried to take «a distinctively different approach to human rights advocacy in which we didn't really make the human rights organization the center of the narrative. Trying to actually take ourselves out and empower people who we thought could solve the problem. As a result of which we [...] didn't get sustained publicity»<sup>41</sup>. The efforts to center women activists aimed to elevate their voices and stories. However, these efforts failed to capture the attention of the media that preferred for the advocates to present the issue.

The dictates of the audience in the target countries go beyond media logics. For example, for those advocating around CRSV in Darfur, the objective of the transnational advocacy campaign was to reach wide audiences. But as Marie O'Reilly, Head of Research at The Institute for Inclusive Security pointed out, «for mass appeal you need the one simple, single message. It can't be complicated. It can't be two messages. It has to be the one message, and their message was stop genocide. [...]. Even if we heard something about rape, we're not going to focus on that. We don't muddy the water.[...] If you end the genocide then presumably you will end the rape, right?»<sup>42</sup>. The risks of such narrowing and simplifying can have serious political and material impacts for women survivors and activists in conflict zones. From what the ideal victim looks like to where money is spent in post-conflict reconstruction, how the problem is defined often determines how the solution is conceived and resources allocated.

Bridget Conley Zilcic of World Peace Foundation conducts research on the endings to conflict. For her, the lesson in the case of Darfur was that the story of women was just «one of the threads that was woven throughout but it didn't define [the conflict] the way Congo was later defined»<sup>43</sup>. In the case of transnational advocacy around the Congo, Dr. Conley Zilcic describes how «the patterns of violence were complicated. And so violence against women served [a] straightforward narrative of good and evil»<sup>44</sup>. Here, even when women's experiences were taken seriously it was only in terms of one form of harm that women endured during armed conflict.

In some instances, there were compromises between CRSV professionals and communications teams. We met with a staff member

41. Alex De Waal, Interview with Author, October 20, 2016.

42. Mary O'Reilly, Interview with Author, February 21, 2017.

43. Bridget Conley Zilcic, Interview with Author, March 14, 2016.

44. *Ibidem*.

of the UN Action Campaign called Stop Rape Now. This was a UN sponsored campaign to raise awareness of 1325 internally to different member states as well as to the broader public. Her office worked with an advertising firm that took on the campaign pro bono. She found herself literally working against a well-meaning firm that was saying, «It would catchier if it was this language».<sup>45</sup> She described discussions on language that moved to UN field offices and back to New York City. But she observed «they were able to contribute things that we would just never have been able to do». Here, again, we see the access and resources that Global North advocates have, but we also see the compromises that are made in order to fit the story into the western frame.

### *3.4. Leveraging from and embedding the discourses of UN SCR 1325*

Finally, specifically with 1325, there has been acknowledgment from the moment that the resolution passed that the linking of gender with security discourses has had both a broadening and limiting effect. We asked our subjects what 1325 has meant for them, if anything. Jessica Neuwirth, the founder of the US-based NGO Equality Now which was founded in 1992, who has worked on women's rights and justice issues in Congo and elsewhere, argued that linking women's issues to peace and security «is good in the immediate sense in that it gives you tools in the UN that you wouldn't have otherwise»<sup>46</sup>. In this sense, the language gave many «a foot in the door» or an entry point, but that access was conditioned by the way in which individuals, organizations and even the harms suffered were conditioned by gendered understandings of women's role in societies.

Others praised UN SCR 1325 as useful for leveraging the role of women. Women for Women CEO Laura Adams described,

It has given us a tool, so that's fantastic. The one that I personally love the best is that the mid-term evaluation or the evaluation that showed that when women are peacebuilders at the table that it doubles the chances of peace... that stat and that research is phenomenally useful. I think it has significantly helped [on] the whole bring women peacebuilders to the table<sup>47</sup>.

45. Staff Member of UN Action Campaign, Interview with Authors, February 24, 2017.

46. Jessica Neuwirth, Interview with Author, May 9, 2016.

47. Laura Adams, Interview with Author, cit.



Thus, the recognition that UNSCR 1325 intended has been entrenched: that women suffer differently in conflict and that women are necessary for ensuring that a society sustains peace. These conceptualizations of women do not necessarily, and sometimes, reinforce traditional ideas about women as peaceful mothers, defenseless civilians, and innocent victims. Thus, for some activists and advocates, the 1325 was regarded as limiting and even performative, particularly in relation to the outsized attention on CRSV. An advocate with Futures without Violence Leila Milani argued that 1325 is not enough, that «putting a woman at the peace table is a quick fix»<sup>48</sup>. The effort is more of a token rather than a substantive shift in women's place in society.

And here, UN SCR 1325's attention to CRSV is useful as long as it also takes into account a continuum of violence, recognizing that sexual- and gender-based violence does not occur in a vacuum and is often not the only harm women suffer. Further, it is not the only harm women need addressed; it is intimately tied to other forms of violence that women endure. Ms. Milani continued «Not until you have the groundwork in countries and the social norm change necessary to have the people of that country buy into, not just the value of women, the equality of women, but really ending the violence against women»<sup>49</sup>. Ms. Adams argued along similar lines, but also expanded the perspective on WPS,

one of the evolutions that is really important is the recognition that rape as a weapon of war is not the main issue. It's not the main issue for women in conflict. It's not the main issue within violence against women, IPV [intimate partner violence] is much stronger... so that shift is important, and I am not personally involved enough to know, but I'm not sure that 1325 helped that much, the broader issues of women in conflict. And the current triple nexus talk about women, peace, and security being the third nexus is problematic for us because for us the triple nexus is economic, social, political, and violence<sup>50</sup>.

Structural violence – sexual and economic – are often interconnected in powerful ways and must be addressed holistically. This was confirmed by Marie O'Reilly of Inclusive Security. She did field work in Congo and observed how the focal point in Congo around peace and security is to address sexual violence. In her words,

48. Leila Milani, Interview with Author, February 21, 2017.

49. *Ibidem*.

50. Laura Adams, Interview with Author, cit.

What the women kept telling me is, yes, this is important and we can't get support for anything else. They would tell me: how can we work on protection when women are not empowered in Congolese society to do this work and are not treated as equals. So it was very interesting to see how the international agenda was really pushing the issue of sexual violence, but often at the expense of being able to address it in any meaningful way because [...] there was no more international support for women's participation<sup>51</sup>.

In this way, CSRV not only emerged in transnational advocacy as the most urgent matter to be addressed for women but also was framed as the most solvable. The rape-as-a-weapon of war narrative clearly outlined the problem, the perpetrator, and the militarized solution.

Overall, there was acknowledgement from advocates that the SCR 1325 had provided a useful normative agenda, but that work needed to be done to have it reflect local circumstances and more nuanced understandings of women's experiences in war. When asked about the advantage of using a gender lens to discussing conflict, de Waal responded, in terms of

the analytical sophistication, the empirical richness, and the normative and policy power of the gender lens [it] is incredibly relevant. But on the other hand, like all of these things, it has the danger of becoming a singular narrative in itself. It's one of those situations in which the greatest enemy of success is success. [...] You may have the most fantastic consensus in New York or Geneva or something but if that doesn't match onto what's needed in Congo or Darfur or Somalia or wherever, it's a problem<sup>52</sup>.

This suggests that transnational advocacy around CRSV was not doing enough to meaningfully include women and local perspectives to move the WPS Agenda forward.

#### **4. Conclusions**

We offered this investigation of the dynamics of transnational advocacy to show some of the opportunities and pitfalls present in fostering transnational connections for women address CRSV specifically and issues related to gender, security, and peace more broadly. Our research confirms that that transnational advocacy certainly offers many

51. Marie O'Reilly, Interview with Author, cit.

52. Alex de Waal, Interview with Author, cit.

benefits such as transferring resources to conflict-affected countries and securing access to political spheres and global media for activists in conflict-affected countries. These linkages are necessary for activists and survivors who may face safety issues in their own countries. That said, many of the tensions between advocates operating outside on behalf of activists and victims within conflict-affected countries still persist.

Our research also suggests a few encouraging trends in light of some of these asymmetrical power dynamics that characterize transnational advocacy, often based in the Global North, that seeks to address issues like CRSV in the Global South. There is increased attention to conducting advocacy in an ethical and dignified way with an emphasis on making sure the agenda is driven by stakeholders. But advocates working with activists in Northern environments note that sometimes compromises are often necessary –especially in terms of communications and framing – to get the story out and issue awareness raised.

Finally, the SCR 1325 has provided a useful framework and common language for addressing women’s human rights in armed conflict and peacebuilding. However, the Women, Peace, and Security Agenda has elevated the issue of CRSV and raised funds for relief efforts while narrowing attention on protection over participation and prevention. Moreover, the distribution of those resources has been skewed in light of muddled, even flawed, understandings of CRSV and how to stop it. Overall, from this preliminary work, we see that these transnational advocacy networks demonstrate mixed results in involving women and connecting to women’s civil society organizations in meaningful ways to move the WPS Agenda forward and to resolve the issue of CRSV.

# FROM BOOSTING CONFLICTS TO REBUILD A COUNTRY: RWANDAN WOMEN AT THE CROSSROADS BETWEEN GENOCIDE AND EMPOWERMENT

*Costanza Nardocci\**

SUMMARY: 1. Introduction: a history of controversies and ongoing criticisms – 2. Rwandan women before the genocide: an intersectional reading between gender and race – 3. After the genocide: a country of women only? – 4. Rwandan women in the peacebuilding process. The implementation of UN Resolution No. 1325 from the 2003 Constitution to the revised 2015 Constitution – 5. Rwanda's National Action Plans: from 2009 onwards – 6. Going down... rwandan laws: the public and the private sphere, urban *vs.* rural women – 7. What's now: unsolved dilemmas in the post-genocide era.

## **1. Introduction: a history of controversies and ongoing criticisms**

Discussing women's role in the Rwandan pre and post genocide era is particularly challenging. The same is for an investigation that aims at unraveling whether and, if yes, how Rwandan women took an active part in the genocide of 1994<sup>1</sup>.

Certainly, Rwandan women played a twofold role during the 1994 genocide, that, as widely known, juxtaposed the Tutsis against the Hutus.

On the one hand, a consistent portion of Rwandan women belonging to the Hutu majority did participate in the genocide. Hutu women

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1. On the key features of the Rwandan genocide, see, among others, A. Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, Human Rights Watch, 1999; S. Straus, *The Order of Genocide: Race, Power, and War in Rwanda*, Cornell University Press, 2006; M. Mamdani, *When Victims Become Killers: Colonialism, Nativism, and Genocide in Rwanda*, New Jersey: Princeton University Press, 2001; L.A. Fujii, *Killing Neighbors: Webs of Violence in Rwanda*, Cornell University Press, 2011; C. Taylor, *Sacrifice As Terror: The Rwandan Genocide of 1994*, Berg, 1999.

in favor of the political camping of destruction of the Tutsi minority have been, in fact, either directly politically involved, being in charge of institutional positions, or cooperated with the Hutu government in a variety of ways. The literature speaks of Hutu women who lured Tutsi women, enslaved them and, eventually, forced them to act as sexual slaves for Hutu men. Others, as said, were in charge of political position.

The case of Pauline Nyiramasuhuko, Minister for Family Welfare and the Advancement of Women of the Hutu government at the time of the genocide, is emblematic of the determinant role Hutu women played in the perpetration of the crime of genocide. It comes with no surprise, thus, that Pauline Nyiramasuhuko has been the first woman ever convicted of the crime of genocide and of the conspiracy to commit genocide<sup>2</sup>.

Besides Hutu women, on the other hand, Rwandan women have also been victims during the genocide. Those who belonged to the Tutsi minority were repeatedly sexually assaulted, systematically raped, imprisoned and enslaved, and eventually killed by the Hutu majority<sup>3</sup>.

It can be interfered from the above that the role of Rwandan women during the genocide was widely diverse largely depending on the ethnicity and/or race of the women involved.

Such a twofold role of Rwandan women, who were simultaneously perpetrators and victims during the 1994 genocide, places the present analysis in an interesting theoretical framework that challenges the stereotypical reading of women during armed conflicts. Reference is made to the denial of women's agency in armed conflicts and in their understanding as passive actors and victims.

In line with this rationale, the article examines Rwandan's women role in the post-genocide era<sup>4</sup> and during the peace-building

2. See *Nyiramasubuko et al. (Butare)*, (ICTR-98-42). The case originated from the accusations of crimes against humanity and genocide against the Tutsi minority brought before the International Criminal Tribunal for Rwanda (ICTR) against six members of the established government at the time of the 1994 genocide. For an overview on the legal proceedings featuring the case at issue, see M.A. Drumbl, *She Makes Me Ashamed to Be a Woman: The Genocide Conviction of Pauline Nyiramasubuko*, in *Michigan Journal of International Law*, 34, 3, 2011, p. 599 ff.

3. For an overview on the relationship between Hutus and Tutsis through ethnic lines, see C. Newbury, *The cohesion of oppression: citizenship and ethnicity in Rwanda. 1860-1960*, Columbia University Press, 1988.

4. For an in depth analysis of the reality of women's rights in Rwanda, see,

process<sup>5</sup> to, then, move on to investigate the current status quo of the rights of Rwandan women in present times.

The article argues that, notwithstanding the progress made across the last decades to empower Rwandan women first and foremost in the public sphere, massive differences among Rwandan women still persists especially between urban and rural women, who are often subject to different sets of norms of personal and customary law.

## **2. Rwandan women before the genocide: an intersectional reading between gender and race**

To better understand the role played by Rwandan women in the peace building process that started after the 1994 genocide and that brought Rwanda within the ten top Countries of the Global Gender Gap Report of the World Economic Forum, it is necessary to depart from a brief outline of what was the status of Rwandan women in the Rwandan legal system before the genocide.

The analysis hinges on an intersectional perspective as it devotes a specific focus to the differences existing between Hutu and Tutsi women.

The genocide did not surprisingly explode in April 1994. Rather, it was preceded by a systematic political campaign of hate and incitement to violence and hatred against the Tutsi minority which was actually rooted in the history of Rwanda<sup>6</sup>.

As widely known, Rwanda was created as a united State as a result of the forced unification of three ethnic communities, among which the

extensively, P. Abbott, D. Malunda, *The Promise and the Reality: Women's Rights in Rwanda*, in *African Journal of International and Comparative Law*, 2016, 561 ff.

5. On this, extensively, J. Mutamba, J. Izabiliza, *The role of women in Reconciliation and Peace building in Rwanda ten years after genocide: 1994-2004; Contributions, Challenges and Way Forward*, The National Unity and Reconciliation Commission (NURC), 2005, available at: [repositories.lib.utexas.edu/bitstream/handle/2152/4786/3871.pdf%3Bsequence=1](https://repositories.lib.utexas.edu/bitstream/handle/2152/4786/3871.pdf%3Bsequence=1); E. Powley, *Strengthening Governance: The role of women in Rwanda's transition, women, waging Peace. Policy commission*; Hun, Alternatives Funds, 2003.

6. On the role played by propaganda and, more specifically, on the intersectional nature of the propaganda perpetrated against Tutsi women even highlighting the inadequacy of international human rights law to properly tackle hate speech and incitement to sexual violence, see extensively L.L Green, *Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law*, in *Columbia Human Rights Law Review*, 33, 2002, p. 733 ff.

Hutu represented the vast majority. According to the available data, the Hutu represented the 85% of the population, the Tutsi the 14% and the Batwa were around the 1%<sup>7</sup>.

The difficult cohabitation among the three social groups resulted in a typical example of an ethnic conflict, that juxtaposed the Hutu majority to the Tutsi minority and that eventually resulted in the 1994 genocide. The genocide lasted around 100 days and had devastated consequences. Official data reported 1.174,000 victims on 7.300,000 Rwandan inhabitants with an average of 400 victims per hour, 7 victims per minute. What's more, data also affirmed that between 250.000 and 500.000 Tutsi women were raped and were subjected to sexual assault during the genocide<sup>8</sup>.

Therefore, as usually occurs in case of forced interactions among different ethnic social groups, the conflict did not leave women behind<sup>9</sup>.

Conversely, women found themselves often placed at the crossroads of the conflict as they symbolically represented and represent in these

7. See C. Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994*, Routledge, 1999. For a more comprehensive study on the ethnic composition of Rwanda before the genocide, C. Newbury, *The Cohesion of Oppression Clientship and Ethnicity in Rwanda, 1860-1960*, Columbia University Press, 1993.

8. On this, R. Degni-Ségui, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Report about Human Rights in Rwanda*, United Nations Economic and Social Council, 1996, Special Reporter of the Commission on Human Rights in Rwanda. The full report is available at: [digitallibrary.un.org/record/228462?ln=en](http://digitallibrary.un.org/record/228462?ln=en). More broadly, on the numbers of the victims of the genocide, see Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda*, Cornell University Press, 2006.

9. Emblematically, it can be recalled the “Hutu Ten Commandments”, according to which it was stated that: «[e]very Hutu should know that a Tutsi woman, wherever she is, works for the interest of her Tutsi ethnic group. As a result, we shall consider a traitor any Hutu who: marries a Tutsi woman; befriends a Tutsi woman; or employs a Tutsi woman as a secretary or a concubine. Every Hutu should know that our Hutu daughters are more suitable and conscientious in their role as women, wives, and mothers of the family. Are they not beautiful, good secretaries, and more honest?». On this, see the comments of P. Landesman who observed that: «[u]nlike the Nazis, who were fueled by myths of Aryan superiority, the Hutus were driven by an accumulated rage over their lower status and by resentment of supposed Tutsi beauty and arrogance. [...] This pernicious idea [...] came to full fruition during the genocide. The collective belief of Hutu women that Tutsi women were shamelessly trying to steal their husbands granted Hutu men permission to rape their supposed competitors out of existence. Seen through this warped lens, the men who raped were engaged not only in an act of sexual transgression but also in a purifying ritual», in *A woman's Work*, in *The New York Times*, 2002, available at: [www.nytimes.com/2002/09/15/magazine/a-woman-s-work.html](http://www.nytimes.com/2002/09/15/magazine/a-woman-s-work.html).

circumstances the main target to eradicate the out-group through the destruction of the carriers of the reproductive function.

Besides the specific features of the genocide and what we know about what happened, as the focus here should be placed on the role of women in rebuilding Rwanda, it is worth mentioning what was the conditions Rwandan women lived before April 1994.

As a matter of fact, Rwanda was not exactly an example of a Country inspired by the principle of gender equality. On the opposite, Rwandan women were almost entirely absent from the public sphere and likewise subdued to their male counterparts in the private sphere.

As for the private sphere and regardless of their ethnic and racial origin, Rwandan women were neglected inheritance rights, and their economic independence was highly limited as they needed the husband's consent to open a bank account and to undertake any sort of economic activity.

Additionally, Rwandan women's citizenship was also subject to severe limitations.

Rwandan women, in fact, were supposed to lose their citizenship in case of a marriage with a non-Rwandan citizenship which contributed to isolate and marginalize their position within the society.

Same inequality featured the public sphere.

No Rwandan woman sit in local institutions, nor in the national Government with the exception of the Parliament that was composed by 17% by women. As a consequence, Rwandan women, Tutsi, Hutu and Batwa, were denied equal rights in the private and in the public sphere at least until the outbreak of the genocide.

Such a description of Rwandan women's condition before the genocide, helps understand the double nature of their role during the genocide mentioned at the beginning of the article.

If there is something peculiar about Rwandan women, this has a lot to do with the fact that, depending on their ethnicity and race, they acted either as perpetrators, Hutu women, or victims, Tutsi women.

There is more to say about the identification of who was a victim and who contributed to the realization of the genocide, which cannot be described as a male-only product.

Although ethnicity and race were the key elements for the identification of the targeted group and for the purpose of the qualification of the crime of genocide, gender undoubtedly acted as a determinant and intersectional factor.

The victims were actually not Tutsi women only. As a proof of the gendered nature of the genocide, Hutu women married to Tutsi men



were also raped and killed similarly to all those Hutu women who were associated to the Tutsis for a variety of reasons as well as, unfortunately, Hutu or even Batwa women who happened to be in the wrong place at the wrong time.

The intersection between gender and race was, therefore, the main feature of the targeted group. Moreover, it could be argued that gender was predominant vis-a-vis to ethnicity and race in the identification of the out-group.

Nevertheless, women were also significantly involved in the genocide and were perpetrators of the crimes committed exactly as men were. Hutu women in charge of political ministers were actively involved in the genocide, as for the case of Pauline Nymarashuko<sup>10</sup>.

But Hutu women helped the realization of the genocide in a variety of additional ways. They were spies and they were used to luring Tutsi women to force them to become sexual slaves at the service of Hutu men. They were a sort of honey traps for the cause of the Tutsi genocide, serving the Hutu majority.

Hutu women's agency during the genocide brings about several consequences. The first is the refusal of the stereotypical view of women as helpless victims. The second is the different construction of gender roles in armed and ethnic conflicts, that unveils the opportunity to endorse a new reading of women's agency in armed conflicts admitting that they could certainly be victims but that, at the same time, women may also be perpetrators and active actors of the commitment of crimes against humanity.

Moving from this interpretation of women's role in armed conflicts, it is interesting to investigate which role Rwandan women played after the genocide and during the peace building process.

### **3. After the genocide: a country of women only?**

The understanding of the role of Rwandan women in the peace building process, that followed the 1994 genocide, requires to look at the status quo existing in the Country as a result of the massive destruction of the Tutsi community.

10. Pauline Nyiramasuhuko, at that time Minister of Family and Women's Development of the interim government that followed the death of Rwandan President Habyarimana on April 6<sup>th</sup> 1994, was the first woman ever condemned for the crime of genocide by the International Criminal Tribunal for Rwanda (ICTR).

From a gendered perspective, the analysis is particularly important as data reports that the genocide left behind a Country composed for a high majority by women. At least 70% of the entire Rwandan population were, in fact, women<sup>11</sup>.

The data should not be interpreted as a sign that undermines the reading of the Rwandan genocide as an operation that severely targeted and hampered women. Actually, instead, there are several reasons explaining the 70% female predominance in Rwanda in the second half of 1994.

First, it should be considered that a vast number of Tutsi men made it to run away from the Country right before and also during the genocide, surviving the massacre. The sex imbalance between men and women belonging to the Tutsi community in Rwanda during the genocide is one of the reasons that justifies the appellative of Rwanda as a Country of “women only” as of the gender proportions existing after the genocide. Additionally, and besides those who were killed, several Rwandan women were instead systemically raped, sexually assaulted and eventually survived the genocide.

On the Hutu’s side, even in case of complicity in the genocide, women’s agency in the genocide was largely neglected. As a consequence, Hutu women were not incarcerated and returned to their previous daily life conversely to what happened to Hutu men who were instead massively imprisoned.

Additionally, and even more importantly for the present investigation, it should be highlighted that Hutu women’s active role in the genocide, even when there were accusations about their involvement, proved to be very difficult to prove before Courts as Hutu women acted or were considered more as helpers rather than direct perpetrators. The narrative of the post-genocide era rarely, in fact, conceived Hutu women as perpetrators due to their rare engagement in the killings of the Tutsis<sup>12</sup>.

Besides the variety of roles Rwandan women played in the genocide – ranging from being victims, perpetrators and even rescuers –, being a numeric majority because of the sex imbalance resulted after the

11. This data is reported by Human Rights Watch in the report, *Shattered Lives. Sexual Violence during the Rwandan Genocide and its Aftermath*, 1996, available at: [www.hrw.org/legacy/reports/1996/Rwanda.htm](http://www.hrw.org/legacy/reports/1996/Rwanda.htm).

12. In the literature, please refer to E. Powley, *Strengthening Governance: The Role of Women in Rwanda’s Transition*, 2003, available at: [www.inclusivesecurity.org/wp-content/uploads/2012/08/10\\_strengthening\\_governance\\_the\\_role\\_of\\_women\\_in\\_rwanda\\_s\\_transition.pdf](http://www.inclusivesecurity.org/wp-content/uploads/2012/08/10_strengthening_governance_the_role_of_women_in_rwanda_s_transition.pdf).

genocide did not immediately result in a benefit for Rwandan women both in the public and in the private sphere. If it is true that urban women engaged in the reconstruction of the Country as a result of the economic shift caused by the lack of men and the super majority of women, a different sort was reserved to women living in rural areas, who remained largely excluded from the peacebuilding process at first, but, even more importantly, from the empowerment measures put into place around 2003<sup>13</sup>.

Especially for rural women, therefore, the fewer number of men produced a significant increase in polygamic marriages as a way for the widows to react to poverty and, more generally, to the lack of economic and financial resources. As before the outbreak of the genocide, even after June 1994, Rwandan women continued for quite some time to be deprived of any right to land and of property and inheritance rights, which made essential for them to enter into spousal relationships allowing theirs and their children's survival.

Needless to say, that the majority of Rwandan women were either widows or alone as a consequence of Hutu men's incarceration and of the killing of the Tutsis.

In short, the genocide left a Country to be rebuilt and an impressive sex imbalance that stood behind the economic shift that pushed a portion of Rwandan women in charge of traditionally male occupations. Here, starts the investigation into what Hutu and Tutsi women made it to realize in the peacebuilding process that began in June 1994 and that intensified across 1996.

#### **4. Rwandan women in the peacebuilding process. The implementation of UN Resolution No. 1325 from the 2003 Constitution to the revised 2015 Constitution**

As mentioned, despite the fact that Rwandan women played a variety of roles during the genocide, from perpetrators to rescuers to victims, they have been somehow united in the process that guided the rebuilding of the Country.

Even before the United Nations' Resolution No. 1325 of 2000 on Women, Peace and Security, Rwandan women actively participated to the funding of clubs and unions aimed at laying the foundations for the

13. An. Ansoms, *Rwanda's Post-genocide Economic Reconstruction: The Mismatch between Elite Ambitions and Rural Realities*, in *Strausand Waldorf*, 2011, 240 ff.

restoration of peace in the Country. As an example, two of these – the Unity Club and the Rwandese Forum women leaders – were founded in 1996 by Kagame’s First Lady. More broadly, there is nowadays a consensus in the literature with regard to women’s involvement in the peacebuilding process that followed the Rwandan genocide and in the gendered reading of the circumstances of facts that lead to the adoption of the 2003 Constitution<sup>14</sup>, later revised in 2015<sup>15</sup>.

Although Rwanda approved its first National Action Plan in 2009 to implement UN Resolution No. 1325<sup>16</sup>, the 2003 Constitution marked a significant step in the making of the “new” Rwanda.

Whether or not Rwanda was successful in implementing the UN Resolution and getting women engaged in the process, it should be investigated first by looking at the contents of the 2003 Constitution.

From the outset, the text significantly increased women’s human rights especially in the public sphere.

Among the most relevant provisions, it should be recalled that, for the first time, Rwandan women were granted the right to vote and to be elected, as provided under Article 8 of the 2003 Constitution, whose third paragraph stated that: «[a]ll Rwandan citizens of both sexes who fulfill the requirements provided for by the law have the right to vote and to be elected»<sup>17</sup>.

Women’s presence in the political arena and their participation to the decision-making process was nevertheless not left to the pure deliberations of Rwandan citizens<sup>18</sup>. To increase and favor Rwandan women’s political representation, Article 9 of the 2003 Constitution went on by stating that at least 30% of posts in all decision-making organs should be granted to women<sup>19</sup>.

14. The text of the 2003 Constitution of Rwanda is available at: [www.ilo.org/dyn/natlex/docs/ELECTRONIC/64236/90478/F238686952/RWA64236.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64236/90478/F238686952/RWA64236.pdf).

15. The revised Constitution can be consulted at the following link: [www.constituteproject.org/constitution/Rwanda\\_2015](http://www.constituteproject.org/constitution/Rwanda_2015).

16. The text of the 2009 Rwanda’s NAP can be consulted at the following link: [1325naps.peacewomen.org/wp-content/uploads/2020/12/rwandan\\_national\\_action\\_plan\\_1325.pdf](http://1325naps.peacewomen.org/wp-content/uploads/2020/12/rwandan_national_action_plan_1325.pdf).

17. The constitutional provision is included under Title I, *The State and National Sovereignty*, Chapter One, *General Provisions*.

18. On this, see J.E. Burnet, *Gender Balance and the Meanings of Women in Governance in Post Genocide Rwanda*, in *Anthropology Faculty Publications*, 2008.

19. The constitutional provision read as follows: «[t]he State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof: 1° fighting the ideology of genocide and all its manifestations; 2° eradication of ethnic, regional and other divisions and promotion of national

The importance of such provision should also be emphasized in light of its collocation among the Fundamental Principles enshrined under Chapter Two of the 2003 Constitution.

In tune with the gender quotas constitutionally provided under Article 9, the 2003 Constitution reinforced the safeguard of women's human rights in additional provisions of the text. Article 11, therefore, protected the right to not be discriminated against, *inter alia*, because of sex<sup>20</sup>, and Article 16 contained the equality clause affirming that «[a]ll human beings are equal before the law» and that they «shall enjoy, without any discrimination, equal protection of the law». Article 54<sup>21</sup> is another highly interesting provision as it promoted gender equality even in the phase that precedes the formation of political parties, requiring that they «must constantly reflect the unity of the people of Rwanda and gender equality».

Gender equality constituted a guiding principle also with regard to the composition of the two representative assemblies. Articles 77<sup>22</sup> and 82, concerning the Chamber of Deputies and the Senate respectively, reinforced the principle of gender equality respectively recalling Article 54, the former, hinging on the importance that the electoral lists should be in compiled «in full respect [...] of] the principle of gender equality in matters relating to elective offices», and providing a reservation of at least 30% of seats to women in the Senate, the latter<sup>23</sup>.

unity; 3° equitable sharing of power; 4° 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; 5° building a State committed to promoting social welfare and establishing appropriate mechanisms for ensuring social justice; 6° the constant quest for solutions through dialogue and consensus».

20. Article 11 read as follows: «All Rwandans are born and remain free and equal in rights and duties. Discrimination of whatever kind based on, *inter alia*, ethnic origin, tribe, clan, colour, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability or any other form of discrimination is prohibited and punishable by law».

21. Provided under Title III, *Political Organizations*, according to which it is stated that: «[p]olitical 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».

22. See, § 3, Article 77 according to which: «[t]he list shall be compiled in full respect of the principle of national unity as stipulated in Articles 9 and 54 of this Constitution and the principle of gender equality in matters relating to elective offices as stipulated in article 54 of the Constitution».

23. See § 1, Article 82.

Additionally, the necessity to ensure a gender-balanced composition of all bodies of the public administration of the State echoed under Article 126, which explicitly provided that: «[p]ublic servants are recruited, posted and promoted in conformity with the principle of equality of citizens, through an objective, impartial and transparent system on the basis of the competence, merit and integrity of applicants of both sexes»<sup>24</sup>.

The robust gendered approach of the 2003 Constitution of Rwanda emerges even clearer from what was called the National Gender Machinery (NGM) Institutions. Article 185 of the Constitution, titled “The ‘Gender’ Monitoring Office”, established a public and independent institution with a list of responsibilities, among which: the monitoring and supervision of the «compliance with gender indicators of the programme for ensuring gender equality and complementarity in the context of the vision of sustainable development and to serve as a reference point on matters relating to gender equality and non-discrimination for equal opportunity and fairness»<sup>25</sup>; and the release of recommendations related to the promotion of gender equality. Moreover, and besides the Gender Monitoring Office, Rwanda demonstrated a remarkable inclination towards the safeguard of the new constitutional principle of gender equality through additional measures, including the nomination of the Governmental position of the Ministry of Gender and Family Promotion and the creation of independent bodies like the National Women’s Council, set forth under Article 187<sup>26</sup>, and the Rwandan Forum for Women Parliamentarians.

Finally, women’s rights were protected also beyond the enacted Constitution, in light of the international human rights law treaties signed and ratified by the State of Rwanda: the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the 2011 Kampala Declaration on Sexual and Gender Based Violence<sup>27</sup>;

24. The constitutional provision is included under Chapter Three, *The Executive*, Section Three, *Public Servants*.

25. Article 185, § 1, no. 1.

26. Reference is made to Title IX, Chapter One, *National Councils*, titled *National Council of Women*. According to Article 187, the 2003 Constitution provided that: «[t] here is hereby established a National Council of Women. The law shall determine its organization, functions, operation and its relations with other State organs».

27. The text of the Declaration, adopted by the Member States of the Great Lakes Region, can be read at the following link: [www.icglr-rtf.org/wp-content/uploads/2017/06/15-16th-December-2011-Kampala-Declaration-by-Heads-of-State-from-icglr.pdf](http://www.icglr-rtf.org/wp-content/uploads/2017/06/15-16th-December-2011-Kampala-Declaration-by-Heads-of-State-from-icglr.pdf). For an update on the implementation of the Kampala Declaration, see

the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women In Africa<sup>28</sup>; the Solemn Declaration on Gender Equality in Africa<sup>29</sup>. According to Article 190 «international treaties and agreements [...] should have been] more binding than organic laws and ordinary laws except in the case of non-compliance by one of parties». The provision, therefore, strengthened the safeguard of the principle of equality based on sex by linking its respect to the system of international human rights law. The choice possessed a significant weight in limiting the sovereignty of the State and this was precisely one of the Article of the 2003 Constitution later emended in 2015 when the new Rwandan Constitution came into force.

The 2015 Constitution, in fact, inverted the order in the system of the sources of the law and the status of international law stating that, first, international treaties are binding in so far as they comply with the Constitution and organic laws; second, that this should apply only in case they have the same force of national laws; and, third, that, in any case, they are subordinated to organic laws. With Articles 95<sup>30</sup>, Hierarchy of Laws, and 168<sup>31</sup>, Binding force of international treaties and agreements, Rwanda placed, thus, international human rights law in a highly contested place within its system of the sources of law, greatly diminishing the impact of international principles within its legal system.

Moreover, and in comparison to the 2003 Constitution, the inversion

the latest 2020 Report published on the website of the Great Lakes Region at the following link: [icglr.org/ova\\_doc/housing-development-plan-2/](https://www.icglr.org/ova_doc/housing-development-plan-2/).

28. See the text of the Maputo Protocol at the following link: [au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf).

29. The Solemn Declaration on Gender Equality in Africa was adopted by the AU Assembly in 2004. The text can be read at the following link: [au.int/sites/default/files/documents/38956-doc-assembly\\_au\\_decl\\_12\\_iii\\_e.pdf](https://au.int/sites/default/files/documents/38956-doc-assembly_au_decl_12_iii_e.pdf). It should also be recalled that Rwanda is also State Party of the UN International Covenant for Civil and Political Rights and of the UN International Covenant for Economic, Social and Cultural Rights.

30. «The hierarchy of laws is as follows: Constitution; organic law; international treaties and agreements ratified by Rwanda; ordinary law; orders. A law cannot contradict another law that is higher in hierarchy. Organic laws are those designated as such and empowered by this Constitution to regulate other key matters in the place of the Constitution».

31. «Upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation in accordance with the hierarchy of laws provided for under the first paragraph of Article 95 of this Constitution».

of the trend derives from a series of additional amendments that reinforced the male-leadership of President Kagame, the first elected President of Rwanda following the genocide.

Despite the revised Constitution adopted in 2015 provides nowadays that the President of the Republic shall be in charge for 5 rather than 7 years under Article 101, Term of office of the President of the Republic, as it was previously stated under the 2003 Constitution, the new Article 172 contains a very peculiar rule that favored and will favor the long-term and male-only presidency of Kagame, who happened to be elected President first in 2003 and, later, in 2010 and in 2017. Article 172 allows, in fact, a term of 7 years duration for the office of the President of the Republic who, “without any prejudice to Article 101”, was in office at the time the revised Constitution came into force<sup>32</sup>. As Kagame was in President in 2015 and was re-elected in 2017, he is expected to be sitting as President of Rwanda for 7 years more, until 2024. Moreover, and in light of the possibility for Kagame to stand for re-election for another term, he may likely continue to be in charge as President of the Republic until 2035.

All the above considered and confining the examination to the Constitution as amended in 2015, although gender equality made its own entrance in the public debate and was formally enshrined in several constitutional provision, Rwanda continues to be a male-only ruled Country.

The extent to which the Constitution of Rwanda distances itself from the reality of the Country and, especially, from the condition of the majority of Rwandan women living in rural areas will be detailly explored below.

Before it, another step to evaluate Rwandan women’s role in the peacebuilding process comes from the analysis of the first and second National Action Plans approved by Rwanda in compliance with

32. Article 172 reads as follows: «[t]he President of the Republic in office at the time this revised Constitution comes into force continues to serve the term of office for which he was elected. Without prejudice to Article 101 of this Constitution, considering the petitions submitted by Rwandans that preceded the coming into force of this revised Constitution, which were informed by the particular challenges of Rwanda’s tragic history and the choice made to overcome them, the progress so far achieved and the desire to lay a firm foundation for sustainable development, a seven (7) year presidential term of office is established and shall follow the completion of the term of office referred to in the first paragraph of this Article. The provisions of Article 101 of this Constitution shall take effect after the seven (7) year term of office referred to in the second paragraph of this Article».



the United Nations Agenda on Women, Peace and Security under Resolution no. 1325.

## 5. Rwanda's National Action Plans: from 2009 onwards

Another way to explore how Rwanda reacted to the humanitarian crisis and devastation of the genocide deals with the analysis of the National Action Plans adopted by Rwanda in compliance with Resolution No. 1325 on Women, Peace and Security (WPS Agenda).

In compliance with the United Nations Security Council, since 2004 contracting States are encouraged to implement Resolution No. 1325 by way of developing strategies and policies in light of the core pillars of the Resolution through the enforcement of ad hoc National Action Plan.

As the core of the WPS Agenda deals with the engagement of women in the areas of peace and security, it is extremely helpful to unravel if and how Rwandan women acted to restore peace in the Country in the aftermath of the 2003 Constitution.

Rwanda approved its first NAP in 2009 for the time period 2009-2012<sup>33</sup> and its second in 2018 for the years 2018-2022<sup>34</sup>. The latter represents, therefore, the most recent NAP Rwanda adopted since 2009.

The first Rwandese NAP is particularly interesting in unshadowing the challenges persisting in the Country even after the coming into force of the 2003 Constitution and in detailing the reacting strategies Rwanda intended to develop to comply with Resolution No. 1325<sup>35</sup>.

The examination of the criticisms existing at the time of the first NAP and its comparison with the second NAP, adopted in 2018, serves the purpose of verifying whether Rwanda was successful over the last decades in empowering women, all women from the urban to the rural areas without leaving behind rural and minority women in the peacebuilding process.

33. The full version of the first NAP could be read at the following link: [1325naps.peacewomen.org/wp-content/uploads/2020/12/rwandan\\_national\\_action\\_plan\\_1325.pdf](https://1325naps.peacewomen.org/wp-content/uploads/2020/12/rwandan_national_action_plan_1325.pdf).

34. The second NAP could be read at the following link: [1325naps.peacewomen.org/wp-content/uploads/2020/12/rwandan\\_national\\_action\\_plan\\_1325.pdf](https://1325naps.peacewomen.org/wp-content/uploads/2020/12/rwandan_national_action_plan_1325.pdf).

35. The challenges identified in the NAP are the following: “[m]any stakeholders lack appropriate framework for their interventions and this does not contribute to efficient follow-up and evaluation process; Women are still few in National Police, Army and peace keeping missions; Lack of 1325 UN Resolution action plan; Genocide ideology still persists; Feminization of poverty, Persistence of cultural barriers to women’s right.

The first NAP had five key components, that revolved around: the prevention and tackling of gender-based violence; the protection of women's rights, taking into account their special needs; the enforcement of Rwandan women's participation in decision making processes related to peace and security; the empowerment in the post genocide social and economic reconstruction, including women in all the activities connected to the peacebuilding process that started off after the end of the genocide; the implementation of the action plan to ensure its full realization and efficacy<sup>36</sup>.

In line with these five components, the first NAP referred to four main priorities.

The first priority<sup>37</sup> dealt with the prevention of gender-based violence through the ratification of the relevant international human rights law treaties and the establishment of a system of law to safeguard women's human rights<sup>38</sup>.

The second priority<sup>39</sup> symbolically recalled the past history of Rwanda, in that it aimed at protecting and rehabilitating the survivors' dignity harmed and violated by the acts committed during the genocide. Once again, the emphasis is placed on women and young girls suffering from gender-based violence providing that Rwanda should enact laws specifically targeted to ensure a system of protection to the victims of gender-based violence as well as their access to reproductive healthcare services including HIV/AIDS.

The third priority<sup>40</sup> shifted from the private to the public sphere with the ultimate goal to increase women's participation and representation in all decision-making bodies, their direct engagement in conflict prevention, management, conflict settlement as well as their access and participation to «diplomatic and peace negotiations missions at national, regional and international level»<sup>41</sup>.

36. See 12 ff. under the Chapter "Logical Framework".

37. "Prevention of gender-based violence".

38. Rwanda's commitments with this respect were the following: «1. Rwanda is ready to ratify and implement all international and regional conventions relating to gender equality and equity. 2. Rwanda is ready to review and adopt policies and laws which support women's involvement in the peace process and security. 3. Rwanda is ready to disseminate contents of the national laws, regional and international conventions relating to women's rights including 1325 Resolution», 12-13.

39. "Protection and Rehabilitation of Survivors' dignity".

40. "Participation and representation".

41. See 17 ff.

Lastly, priority four<sup>42</sup> was broader in scope and more concerned with the overall empowerment of Rwandan women by way of: the implementation of research on gender, the development of men-women collaboration at all levels, the financial support of women's initiatives.

Whereas the first NAP was, perhaps, more general and less Country-specific, the second Rwanda's NAP<sup>43</sup> builds on the former focusing on persistent criticisms that obstacle the full achievement of the four pillars of the UN Resolution No. 1325.

With regard to women's participation to the public sphere, worth mentioning is the efforts declared by Rwanda to eliminate all barriers precluding women effective access to decision making organs, conflicts resolution mechanisms and peace building processes, especially at the local level where the influence of women continued to be unequal compared to men's, due to the persistent subordinate *status* of rural women.

In a way, the second NAP starts taking seriously one of the biggest challenges faced by the Country in the years that followed the genocide, meaning the division and the highly differentiated *statuses* between urban women and the vast majority living in rural areas.

Same concern about the lacking support to rural women was clearly denounced some years before by the CEDAW's Committee in its thematic report on Rwanda released in 2017<sup>44</sup>. The UN treaty body condemned Rwanda for its inadequate support and protection of marginalized women from direct and indirect discriminations, but most significantly from intersectional forms of discrimination as described in its Resolution No. 28<sup>45</sup>. However, the CEDAW's Committee did not limit its focus on marginalized women requiring Rwanda to comply also with Resolution No. 34 of 2016 on the rights of rural women<sup>46</sup>.

Moreover, the thematic report sheds light on the conditions of

42. "Women and gender promotion".

43. The text could be read at the following link: [1325naps.peacewomen.org/wp-content/uploads/2020/12/NAPRwanda2018.pdf](https://1325naps.peacewomen.org/wp-content/uploads/2020/12/NAPRwanda2018.pdf).

44. The 2017 Concluding observations on the combined seventh to ninth periodic reports of Rwanda in its fulltext could be read here: [tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FRWA%2FCO%2F7-9&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FRWA%2FCO%2F7-9&Lang=en).

45. On this, see § 11.

46. Reference is made to the United Nations Committee on the Elimination of Discrimination against Women General recommendation n. 34 (2016) on the rights of rural women, available at: [digitallibrary.un.org/record/835897?ln=en](https://digitallibrary.un.org/record/835897?ln=en).

the marginalization suffered by other female social groups as Batwa women<sup>47</sup>, women with disabilities<sup>48</sup> and refugee women<sup>49</sup>.

The dichotomy between urban and empowered women, on the one side, and minority women, on the other, continues to represent one of the core challenges for Rwanda. Thus, it comes with no surprise that, once again, the CEDAW Committee revealed in its 2021 conclusions on Rwanda the ongoing risks of non-compliance with the CEDAW Convention due to the scarce implementation of State laws to the benefit of minority women, who are conversely likely subjected to customary or personal laws and who are, as a result, exposed to gross violations of constitutional principles and international human rights law.

Moving further, in continuity with the previous NAP, another objective of the 2018 NAP concerns the prevention and the contrast of violence against women, which, as reported, affected at that time at least 35% of Rwandan women between the age of 15 and 49<sup>50</sup>. Yet again, a specific focus is placed on the experience of violent practices perpetrated to the detriment of women living in local areas.

In terms of measures to adopt, the NAP insists on the opportunity to improve the capacity of the legal and justice sector and its accountability to avoid the impunity and the poor condemnation of the responsible of acts of violence. Access to the justice system collocates itself at the core of the measures proposed by the 2018 NAP jointly considered with the enhancement of multi-sectorial services, among which those concerning education and economic security.

Lastly, the 2018 NAP aims at favoring the development of policies to support women's participation in regional and international peace processes<sup>51</sup> in coherence with the *rationale* supporting the NAP, meaning the necessity to have women actively present in all phases of the political life of the Country in its internal and international affairs.

47. Batwa women, the CEDAW Committee stated that: «is concerned about intersecting forms of discrimination and marginalization experienced by Batwa women, who are exposed to extreme poverty, limited access to basic services, illiteracy, unemployment and gender-based violence. The Committee understands that, following the genocide, the State party's priority has been to avoid any form of ethnicity-based categorization. It is concerned, however, that this approach contributes to obscuring the specific problems of Batwa women», § 44.

48. See § 47.

49. See § 48-49.

50. See p. 16 of the 2018-2022 Rwanda's NAP.

51. *Ibidem*, see p. 21.

## 6. Going down... rwandan laws: the public and the private sphere, urban vs. rural women

The true reality of Rwandan women jointly considered with their role in the peacebuilding process should be investigated even from the perspective of the laws and policies enacted after the end of the genocide and, especially, following the coming into force of the 2003 Constitution<sup>52</sup>.

If it is true that Rwanda adopted several laws in compliance with the principles set out under the new Constitution and mainly those inspired by the principle of gender equality, lots of criticisms still persist especially with respect to the condition of certain groups of women, as for the cases of Batwa women, rural, refugee and disabled women as acknowledged in the already mentioned 2017 Country Report of the CEDAW Committee.

Whereas urban women significantly benefited from the change of path of the leading Government, rural and minority women continued and continue to be subjected to alternative systems of laws that greatly differ in their *rationale* and content from the State laws approved in compliance with the Constitution. Harmful practices are still very common in rural areas. In 2021, UNICEF reported that child marriages are contracted in the 6,8% of cases<sup>53</sup>, the World Economic Forum that the 37% of women living in the rural area are exposed to from intimate partner violence<sup>54</sup> and, despite no official data exists on female genital mutilation, there is no reason to believe this conduct is by no means practiced in today's Rwanda<sup>55</sup>.

As State laws are not applied in rural Rwanda, local disputes are, therefore, settled through customary laws, according to systems of personal law and parallel jurisdictions quite frequently denying rural

52. Reference should be made here to S. Rugege, *Women's Empowerment in Rwanda: The Respective Roles of Courts and Policy*, in *African Journal of International and Comparative Law*, 2016, 476 ff.

53. Percentage of women aged 20 to 24 years old, who were married or in union before the age of 18 years old. See the UNICEF global databases. E. Fraser, V. Ahlenback, *VAWG in Rwanda: Evidence Review*, 2022, report that child marriages are more common in rural Rwanda. For the full report, see the following link: [ww2preventvawg.org/sites/default/files/2022-11/Ending\\_VAWC\\_HD\\_Report\\_33\\_VAWG\\_in\\_Rwanda.pdf](http://ww2preventvawg.org/sites/default/files/2022-11/Ending_VAWC_HD_Report_33_VAWG_in_Rwanda.pdf).

54. UNFPA reports that 20% of all Rwandan women have been the victims of intimate-partner violence between 2000 and 2018.

55. Not surprisingly, it was signed in Kigali Declaration, "From Rhetoric to Reality: Closing the Funding Gap and Uniting for Action to End Female Genital Mutilation/Cutting", presented in 2023. The full text can be read here: [actiontoendfgmc.org/2023-kigali-declaration](http://actiontoendfgmc.org/2023-kigali-declaration).

women's right to access to justice. This is one of reason why the exclusion of women from land succession and polygamous marriages represents an ongoing concern for rural women, while urban women started occupying leading positions in the Government, national institutions as well as in public administration bodies.

Despite the differences that continue to exist between urban and rural women, it is worth describing the legal developments that featured Rwanda's reconstruction and reconciliation process towards the realization of the principle of gender equality in the private and public spheres.

It goes beyond the scope of the article to examine exhaustively each law that might be relevant with this regard. Nonetheless, the aim will be to clarify which legislative interventions had at least the potentials to empower Rwandan women by investigating how the established Rwandan Government intervened across the years in the private and in the public dimensions.

First of all, and looking at the private sphere, the 1999 Rwandan Civil Code innovated the previous matrimonial regime providing for equal rights between men and women and banning polygamous unions.

Similarly, the Civil Code recognized property and inheritance rights to women who started being placed on an equal footing to men thanks to the conquered economic and financial independence.

The trajectories traced in the Civil Code will be later implemented through further laws enacted in the years that followed.

In 2016, Rwanda, thus, adopted Law No. 27 governing matrimonial regimes, donations and successions. Building on the 1999 Civil Code, the law introduced a regime of equal inheritance rights regardless of the gender of the heir as well as equal property rights among the spouses.

The equal distribution on management of the household between the spouses was also adopted in 2016 with Law No. 32 of 2016 and Law No. 54 of 2011 on the rights of the child placed same parental responsibility on both parents regardless of their gender to contrast the patriarchy widespread in the Country.

To increase women's economic independence, the recognition of women's right to lands similarly represented a step forward. Law No. 43 of 2013 governing lands in Rwanda, for instance, ensured equal rights to men and women about land access, ownership and utilization<sup>56</sup>.

56. See Article 4, which states as follows: «[a]ll forms of discrimination, such as that based on sex or origin, in relation to access to land and the enjoyment of real rights shall be prohibited. The right to land for a man and a woman lawfully married shall depend on the matrimonial regime they opted for».

The recognition of the right to property to women is notable, because before the genocide women were neglected any form of property rights, including land rights<sup>57</sup>, but, even more importantly, to avoid the predominance of personal and customary laws which quite often prevail over State laws negatively impacting on women's rights<sup>58</sup>.

Alongside the legislative reforms, the judiciary contributed to the empowerment of women. Worth mentioning is the judgment *Kamagaju v. Mukagabima and Others*, where the Intermediate Court of Nyamagabe declared the unconstitutionality of Rwanda customary law governing land rights, applying State law and, therefore, ensuring the effective safeguard of the principle of gender equality.

Additionally, Rwanda approved further laws in other fields, such as in the labor market with Law No. 13 of 2009<sup>59</sup>, that introduced measures of protection of women against gender-based violence and harassment in the workplace, Law No. 3 of 2016<sup>60</sup> recognizing maternity leave and financial security for working women, Law No. 31 of 2016 on donations and successions<sup>61</sup>, and Law No. 66 of 2018, that prohibits sex-based discrimination in the workplace<sup>62</sup>.

Once again about violence against women, in 2018 the Country resorted to criminal law to punish violent conducts perpetrated to the detriment of women under Law No. 68.

57. See, extensively, S.S. Mohan, *The battle after the war: Gender discrimination in property rights and post-conflict property restitution*, in *Yale Journal of International Law*, 2011, p. 460 ff.; M. Ndangiza, F. Masengo, C. Murekatete, A. Fox, *Assessment of the Legal Framework Governing Gender and Property Rights in Rwanda*, in USAID-Rwanda, 2013.

58. On this, see N. Didace, *Enforcement of Women' Property Rights by Rwandan Courts: Battle of Equality before the Law*, in *Imperial Journal of Interdisciplinary Research*, 2017, who observes that: «[I]and is one of the most important and fundamental natural resource in Rwanda, and is the most important asset for both production and survival. Customary law figures prominently in the day-to-day functioning of family law and land rights, with large impacts on women. Women who were widowed, divorced, or separated had no ownership rights to marital property», p. 1504.

59. *Law regulating labour in Rwanda*, adopted on May the 27<sup>th</sup>, 2009. The fulltext can be read here: [www.ilo.org/dyn/travail/docs/514/NEW\\_LABOUR\\_LAW\\_N13.2009\\_OF\\_27.5.2009.pdf](http://www.ilo.org/dyn/travail/docs/514/NEW_LABOUR_LAW_N13.2009_OF_27.5.2009.pdf).

60. *Law governing persons and family*, adopted on August the 28<sup>th</sup>, 2016.

61. *Law governing matrimonial regimes donations and successions*, adopted on July the 3<sup>rd</sup>, 2016. The fulltext is available at: [www.migeprof.gov.rw/index.php?eID=dumpFile&t=f&f=12209&token=48fb34fb2c8749781fa63dad9399fba198533fe4](http://www.migeprof.gov.rw/index.php?eID=dumpFile&t=f&f=12209&token=48fb34fb2c8749781fa63dad9399fba198533fe4).

62. *Law regulating Labour in Rwanda*, adopted on August the 30<sup>th</sup>, 2016. The fulltext can be read at the following link: [www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=108704&p\\_count=21&p\\_classification=01](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=108704&p_count=21&p_classification=01).

Nevertheless, there are still significant areas of concern in need to be addressed. Just to mention some, the Penal Code keeps on providing that marital rape is subject to lower sentences than extra-familial rape. Marital rape has been, instead, criminally sanctioned under Law No. 59 of 2008<sup>63</sup>, which also criminalizes the victims' refusal to testify in gender-based violence cases.

Despite all the efforts, as often happens, the law proved to not be enough to alter and effectively tackle effectively discriminations and human rights violations. As the CEDAW Committee reported in 2017 and, more recently in 2021<sup>64</sup>, Rwanda needs to properly address the differences in treatment between urban and rural women, the marginalization of Batwa women, the weakness conditions of women in non-matrimonial *status* or in polygamous marriages that continue to be spread in certain areas of the Country.

In short, the progresses made in the legislative framework from 1999 onwards in the fields of private and family life did not fully succeed in tackling the disparities among women living in Rwanda on the basis of their race, ethnicity and geographical or social belonging.

This is precisely one of the core challenges the 2017 CEDAW Committee is urging Rwanda to address<sup>65</sup>, although the Country reached the top ten position Global Gender Gap Index annually released by the World Economic Forum for several years although not anymore in 2023.

Beyond the private sphere, data indicates that women's empowerment is particularly evident in the public sphere<sup>66</sup>.

63. The Law on the Prevention and Punishment of Gender-Based Violence. For an analysis of the bill, see E. Pearson, *Demonstrating Legislative Leadership: the Introduction of Rwanda's Gender-Based Violence Bill*, the Initiative for Inclusive Security, 2008, available at: [inclsvesecurity.wpenginepowered.com/wp-content/uploads/2012/08/1078\\_rwanda\\_demonstrating\\_legislative\\_leadership\\_updated\\_6\\_20\\_08.pdf](https://inclsvesecurity.wpenginepowered.com/wp-content/uploads/2012/08/1078_rwanda_demonstrating_legislative_leadership_updated_6_20_08.pdf).

64. See the Tenth periodic report submitted by Rwanda under article 18 of the Convention, due in 2021, and published on June 3rd, 2021.

65. See § 11, where the CEDAW Committee recommended Rwanda to «repeal all remaining legal provisions that are discriminatory towards women and that it adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds and encompasses direct and indirect discrimination in both the public and private spheres, as well as intersecting forms of discrimination against women, in line with article 1 of the Convention and general recommendation n. 28. It also recommends that the State party provide capacity – building programmes for judges, local authorities and mediation committee members (*abunzi*) on the strict application of such anti-discrimination legislation».

66. With specific regard to political participation, see, among others, H.E. Britton,



According to the latest gender gap records published by the World Economic Forum, Rwanda has been in the top ten of the ranking of Countries that are making the most successful progresses in their attempts to close the gender gap until 2022. It was actually one of the best performers in the African Continent in terms of the indexes measured by the World Economic Forum.

However, it seems that past achievements have started slowly to decline.

In 2021, Rwanda ranked 7<sup>th</sup>, in 2022 6<sup>th</sup>, while in 2023 the Country ranked 12<sup>th</sup>, leaving only Namibia among the African States in the top ten.

The most significant data about Rwanda comes from the high percentage of women sitting in the Parliament. On this, data shows that Rwanda is the first and only Country worldwide to have a majority of women sitting in the national Parliament. Rwandan women represent the 61,3% in the Chamber of Deputies and the 36% in the Senate<sup>67</sup>. The increasing political representation of Rwandan women started in 1995, when their presence in the Parliament revolves around 4%, to then increase until 2003 reaching 48,8%<sup>68</sup>.

A prominent role in boosting Rwandan women's presence in the Parliament was originally played by the provisions adopted under the 2003 Constitution. Gender quotas set forth under Article 54 of the Constitution significantly favored the current data and the massive presence of women in the national decision-making bodies. Moreover, Rwanda also approved Law No. 10 of 2013<sup>69</sup>, which introduced a legislative prohibition to discriminate also based on sex in political parties.

Nevertheless, parliamentary representation is not the only data supporting Rwandan women's significant presence in politics. Similarly, Rwandan women occupy the 55% of governmental and ministerial positions<sup>70</sup>, showing again the successful commitment of the State of

*Women in the South African Parliament: From Resistance to Governance*, University of Illinois Press, IL, 2005; A.M. Goetz, S. Hassim, *No Shortcuts to Power: African Women in Politics and Policy Making*, Zed Books, 2003.

67. The official data can be gathered from the website of the Parliament of Rwanda at the following link: [www.parliament.gov.rw/women-representation](http://www.parliament.gov.rw/women-representation).

68. On this, see T. Longman, *Rwanda: Achieving Equality or Serving an Authoritarian State?*, in H. Evelyn Britton, G. Bauer (eds.), *Women in African Parliaments*, Lynne Rienner Publishers, p. 2006, 144.

69. Organic Law n. 10/20/2013/OL of 11 July 2013 governing political parties and politicians, which prohibits any form of discrimination based on gender, sex, race and religion in political parties.

70. The data are reported by UN Women at the following link: [www.unwomen.org/sites/default/files/2022-06/Rwanda%28EN%29.pdf](http://www.unwomen.org/sites/default/files/2022-06/Rwanda%28EN%29.pdf).

Rwanda towards the promotion and realization of the principle of gender equality.

However, despite the high percentages, there are at least three factors to consider to fully understand the reality of the Country, that contribute to diminish the weight and the significance of women's presence in the decision-making bodies operating at the national level.

The first deals with the already mentioned disparity between urban and rural women<sup>71</sup>.

The majority of Rwandan women live outside urban areas which means that women sitting in the Parliament or in charge of ministerial positions represent a slight minority compared to the majority of Rwandan women that does not reflect but conversely reproduces the imbalance *statuses* granted to urban women *vis-à-vis* to those living in rural areas.

Connected to this, stands a second reason. The disparity between urban and rural women does not merely produce its effects in the private sphere, expanding conversely even in the public. The marital *status* of rural women, their subordination to men within family units, their subjectivity to customary laws embedding unequal power relationships between men and women also result in their lack of access to the political arena. Women's political representation at the local level is scarce and not comparable to that experienced at the national level. In other words, rural women's unequal condition in the private sphere is likewise reflected in their absence from the decision-making bodies operating at the local level<sup>72</sup>.

71. On this, see, extensively, A. Ornert, *Evidence on inequalities in Rwanda*, K4D Helpdesk Report. Brighton, UK Institute of Development Studies, 2018. On the role of gender stereotypes in explaining the reduces numbers of women at the local level, see Haguruka, *Women participation in decision-making positions – Report*, 2019, available at: [haguruka.org.rw/wp-content/uploads/2022/07/Understanding-Factors-Leading-to-under-Representation-of-Women-in-Decision-Making-at-Local-Level-Designed-Covers-3.pdf](http://haguruka.org.rw/wp-content/uploads/2022/07/Understanding-Factors-Leading-to-under-Representation-of-Women-in-Decision-Making-at-Local-Level-Designed-Covers-3.pdf).

72. In light with this, see the statement of the Gender Machinery Office released after the publication of the 2021 Global Gender Gap Report, where it is stated that: «[w]hile steady progress has been made in terms of women's participation in decision making, much is needed to be done to improve their representations at the local levels as we have seen today. For instance, today, among 30 Districts mayors, only 9 are women; among the vice mayors in charge of economic affairs, women are not above 10%; for the position of Executive Secretary of the Districts, there is only 1 woman vs 29 men» and, similarly, that «[i]n the same line, the underrepresentation of women is not only in the political sphere. For example, in terms of representation of women in business, according to the latest Establishment Census (2017), only 33% of companies in Rwanda are owned by women.

There is also a third reason that argues for attributing a different meaning to the data reported by the World Economic Forum. The literature suggests, in fact, that women elected in the Chamber of Deputies are predominantly representatives of the dominant political party of the Country, the Rwandan Patriotic Front (RPF), with the consequence that women's presence in the Parliament is the result of Rwandan women's alliances with the RPF rather than the expression of their political representation of true constituencies<sup>73</sup>.

Additionally, it should be recalled that women represent the 7%, 11% and 35% respectively of the district sector and cell executive secretaries, the 29,63% of District mayors<sup>74</sup>, and only the 14,81%<sup>75</sup> of the vice-district mayors, who are women, are in charge of economic affairs *contra* the 76,7% who are, instead, in charge of social affairs matters in 2017<sup>76</sup>. As commonly witnessed in the north and in the south of the globe, there still persistent stereotypes that believe women are incapable or inadequate to be appointed to positions dealing with international affairs, finance, economy, confining them to areas considered more in tune with the supposed female nature as those involving family and the private sphere more broadly.

While women's political representation (at least at the national level) increases over the years, another field is instead going in a different

Among these, more than 98% of women owned/led businesses are small or micro in terms of employment, whereas less than 1% are large». To read the entire statement, please refer to the following link: [www.migeprof.gov.rw/index.php?eID=dumpFile&t=f&f=29395&token=cbfac0d5aec1a3a6738c7496e40489976bb791ff](http://www.migeprof.gov.rw/index.php?eID=dumpFile&t=f&f=29395&token=cbfac0d5aec1a3a6738c7496e40489976bb791ff).

73. On this, see T. Longman, *Rwanda: Achieving Equality or Serving an Authoritarian State?*, in H. Evelyn Britton, G. Bauer (eds.), *Women in African Parliaments*, Lynne Rienner Publishers, 2006.

74. See the Report submitted by Haguruka to the African Commission on Human And Peoples' Rights in September 2022, available at: [kvinnatillkvinna.org/wp-content/uploads/2022/10/Shadow-Report-Article-9-Rights-of-Women-Politics-and-decision-making-Maputo-Protocol-2022-Haguruka.pdf](http://kvinnatillkvinna.org/wp-content/uploads/2022/10/Shadow-Report-Article-9-Rights-of-Women-Politics-and-decision-making-Maputo-Protocol-2022-Haguruka.pdf). The Report, also, highlights that: «[t]hough there has been a slight increase of women District mayors compared to previous terms where between 2016 and 2021 women stood at 26.7% and between 2014 and 2018 the figure was at 6.7%».

75. *Ibidem*. On this, the Report underlines that: «[t]he number of women District Mayors and their deputies in charge of economic affairs falls short of the constitutional threshold of 30% and also does not comply with article 9 of the Maputo Protocol as far as equal representation between men and women is concerned».

76. The data are reported in the 2019 Bejin Country Report on Rwanda. In 2018, the percentage was, instead, 66,7. The fulltext of the Report is available at: [www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/64/National-reviews/Rwanda.pdf](http://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/64/National-reviews/Rwanda.pdf). See, also, the Rwandan National Institute of Statistics, 2016.

direction. The Rwandan judiciary system does not in fact reproduce the same trend discussed above justifying Rwanda's top ranking in the Global Gender Gap.

Actually, in the judiciary system, Rwandan women's presence is more unstable and fluctuating. Not surprisingly, women represent less more than the 50% of judges and clerks<sup>77</sup>, while only the 26% and 28% of women are, respectively, Court Presidents or vice-Court Presidents<sup>78</sup>. A higher number of women were, instead, sitting in the Gacaca Court System, proving the role of Rwandan women in the post-conflict and peace-building processes<sup>79</sup>.

Beyond the data, the picture that emerges from the above is that, despite progresses have been made, there is still a long way to go, and the direction is twofold. On one way, efforts should be put in place to restore existing discriminations among women belong to the majority and to marginalized communities or social groups. On the other, the *status* of urban women speaks of an "ambivalent parity"<sup>80</sup> as the empowerment of Rwandan women is almost exclusively based on their political representation in the national Parliament, whereas other areas, such as the judiciary system, and to same extent family and private life are still a matter of concern.

## 7. What's now: unsolved dilemmas in the post-genocide era

«Feminism isn't for Rwanda. That's for Western».

Following the genocide, with the establishment of a "new" Country with its own politically institutions and a Constitution safeguarding universally recognized human rights and fundamental freedoms, Rwanda is nowadays one of the leading African State for its commitment to gender equality.

As discussed above and besides those who actively participated in the genocide without any sort of criminal punishment in the years that

77. On this, see the Rwandan Annual Judiciary Report 2016-2017.

78. More broadly, on this topic, see J.M. Kamatali, *Rwanda: Balancing Gender Quotas and an Independent Judiciary*, in G. Bauer, J. Dawuni (eds.), *Gender and the Judiciary in Africa. From Obscurity to Parity?*, Palgrave McMillan, 2016, p. 137 ff.

79. On this, J. Izabiliza, *The Role of Women in Reconstruction: Experience of Rwanda*, Paper presented at *Consultation on Empowering women in the Great Lakes Region: Violence, Peace and Women's Leadership*, Addis Ababa, Ethiopia, 30 May-1 June 2005.

80. The expression comes from M. D'Amico, *Una parità ambigua. Costituzione e diritti delle donne*, FrancoAngeli, Milano, 2020.

followed, Rwandan women significantly contributed to the rebuilding of the Country. Women's engagement laid at the core of the foundations of the "new" Rwanda. In fact, if one looks at the constitutional provisions dedicated to the empowerment of women in the public sphere, no doubt arises as of the willingness' of national institutions to act in favor of women's presence in the political arena. The reported data are, therefore, in line with this goal which testifies of the almost exclusive focus on the public sphere that featured the vast majority of the legislative efforts from 2003 onwards.

Nevertheless, what it seems undoubtedly achieved proves all its weaknesses. The Concluding Observations of the CEDAW Committee unshadowed several concerns in the already cited 2017 periodic report on Rwanda and the UN are not the only showing concerns<sup>81</sup>.

Beyond the problematic and already mentioned legal *status* of the CEDAW Convention as a result of the amendments adopted in 2015 and resulting in the revised Constitution, the Committee expressed concerns on a variety of subjects.

These range from: the not fully achieved equality within the family, the lack of a comprehensive anti-discrimination law applicable in all fields; the difficulties in accessing the justice system especially for rural and minority women<sup>82</sup>; the inadequate protection of reproductive rights, including the suggested decriminalization of abortion and the establishment of post-abortion facilities accessible for all women; the obstacles represented by gender stereotypes affecting women's economic and financial empowerment<sup>83</sup>; women's difficulties in accessing the education system; the high rates of gender-based violence «largely underreported because of the victims' fear of stigma, retaliation and women's economic dependence on the perpetrator, as well as their lack of awareness of their rights and how to claim them»<sup>84</sup>.

Besides the failure of Rwanda to comply with the CEDAW Convention, several questions remain unanswered and lots of challenges persist when it comes to the real condition of Rwandan women and their actual role in the peacebuilding process.

Concerning the former, one of the prominent aspects regards

81. Talks of paradoxes in describing the condition of women's rights in Rwanda M.E. Berry, *When "Bright Futures" Fade: Paradoxes of Women's Empowerment in Rwanda*, in *Journal of Women in Culture and Society*, 2015, p. 1 ff. See, also, F. Reyntjens, *Rwanda, Ten Years On: From Genocide to Dictatorship*, in *African Affairs*, 2004, p. 177 ff.

82. See §§ 12 and 13.

83. See §§ 20 and 21.

84. § 22.

the fact that the efforts to empower Rwandan women tackled the public sphere much more than private and family life. This led to the preservation of patriarchy, that is still widespread in the Country, to the resort to Customary or Personal Laws in rural areas reinforcing the examined dichotomy between urban and rural women and allowing the persistence of harmful practices and forms of violence against women and young girls.

All this implies that a very few numbers of women truly benefited from the progresses made by Rwanda and that there is a strong necessity to reconcile the differences among women throughout the Country, combating the discrepancies between Statutory and Customary laws.

While the empowerment of women was central in the rebuilding of the Country, another aspect that should be considered deals with women's role in the peace building process. On this, despite women have been actively involved, they have nevertheless been guided by a man, President Kagame, who is still President of the Republic of the State of Rwanda. Put differently, the leadership in the restoration of peace was a male one with women, urban women, who follow behind.

These two elements allow to question whether numbers counted in the empowerment of Rwandan women in the post-genocide era and whether the women who happened to be in charge of rebuilding the Country acted in the interest of all women. The answer seems to be negative.

Women's political representation did not favor the safeguard of gender equality in all areas of the Country, neither it did it for all Rwandan women as well as in all fields.

Bearing in mind that Rwandan women living in rural areas represent the 60% of the female population, without considering the number of Batwa women, it is self-evident that the empowerment of Rwandan women is still far away to be achieved<sup>85</sup>.

However, the history of Rwanda remains a history of ambiguity, a history that leaves behind many doubts as to whether and how women joined and contributed to the peacebuilding process in the post-genocide.

And the ambiguity derives from the current situation of the Country, that sheds light on the actual role of Rwandan women in the rebuilding of the Country.

85. On this, see S. Randell, M. McCoskey, *Sustainable Rural Development in Rwanda: The Importance of a Focus on Women in Agriculture*, in *International Journal of Agricultural Extension*, 2014, p. 107 ff.

What is peculiar now about Rwanda is no doubt the public position women were able to achieve in the post-genocide era, that preceded the aftermath of the 2003 Constitution. The explicit safeguard of gender quotas in the Constitution, the mandatory rule of their presence not inferior to the 30% of parliamentary seats and all the constitutional provisions that now promote gender equality are emblematic of the attempts to boost women's presence in the political, economic and social life of the Country.

While the sex imbalance resulted from the genocide provoked the economic shift that explains women's actual and sometimes even majoritarian presence in decision-making bodies and in public administration offices, it was, nevertheless, not enough to alter the reality of the private sphere, which continues to be rooted in a patriarchal structure of family relations, and to benefit all women regardless of their race, ethnicity, social and economic class.

In light of the above, Rwanda could be described today as a gender divided Country<sup>86</sup>.

Divided, first, along ethnic, racial and socio-economic lines due to the differences in treatment between urban women, the empowered ones, on the one side, and rural and minority women, on the other, who instead were not included in the empowerment process and probably even sooner in the peacebuilding process.

Secondly, such a division is not limited to the intersection between gender, race and ethnicity, but greatly impacts on the dichotomy between the private and the public sphere.

As noticed, gender equality in today's Rwanda features predominantly the public sphere and it does not affect the private sphere much. This is a matter of ongoing concern, that should not be overestimated, given the importance of promoting the advancement of women's rights without distinctions based on ethnicity, race and social and economic *statuses*.

Only the future will tell which way Rwanda will take and whether it will eventually succeed in tackling the discrepancies between urban and rural women, contrasting the ongoing intersectional discriminations featuring the reality of Rwandan women, as well the said divide between the public and the private spheres.

86. Critically, see G. Warner, *It's The n. 1 Country For Women In Politics — But Not In Daily Life*, NPR, July 29, 2016, available at: [www.npr.org/sections/goatsandsoda/2016/07/29/487360094/invisibilia-no-one-thought-this-all-womans-debate-team-could-crush-it](http://www.npr.org/sections/goatsandsoda/2016/07/29/487360094/invisibilia-no-one-thought-this-all-womans-debate-team-could-crush-it); J.E. Burnet, *Women Have Found Respect: Gender Quotas, Symbolic Representation, and Female Empowerment in Rwanda*, in *Politics and Gender*, 2011, 303 ff.

# THE STRUGGLE OF WOMEN SEARCHING FOR THEIR DISAPPEARED LOVED ONES IN MEXICO\*

*Irene Spigno\*\**, *Carlos Galván Gutiérrez\*\*\**

SUMMARY: 1. Introduction – 2. The context of enforced disappearance in Mexico – 2.1. The “dirty war” – 2.2. The feminicide wave – 2.3. The fight against the Narco – 3. Women searching for their disappeared relatives – 3.1. Origin of the movement – 3.2. The hard life of a woman searching for her disappeared loved ones – 3.3. A good practice: the “dialogue model” – 4. Final remarks.

## 1. Introduction

To understand the magnitude of the phenomenon of the forced disappearance of persons in Mexico we must take a brief journey back in time and share some stories.

It is 1974 and we are in the State of Guerrero, located in the southeast of the country. It is considered a difficult territory for being the scene of several political and social movements opposing the country’s political regime, which have been controlling the executive and legislative powers (at the federal as well as the local level) since the 1920’s.

Within this context, we tell you the story of Jorge, who is a 24-year-old man. He is very active in the political and social life of his town. One day Jorge is detained by members of the Mexican army while he is traveling by bus with some friends. Following his arrest, he is seen in the military barracks in the same town, with evidence of him having been

\* Although this paper is the result of the shared reflections of the two authors, sections 1 and 2 should be attributed to Irene Spigno, and section 3 to Carlos Galván Gutiérrez, while section 4 is a combined effort.

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physically assaulted. From that moment to date, his whereabouts are unknown, and he has not been heard from again<sup>1</sup>.

In 2001, Esmeralda is 14 years old and is a domestic worker<sup>2</sup>. She arrived in Ciudad Jerez few months earlier, with her mother, siblings, nieces and nephews, and has not yet made any friends. As her 15<sup>th</sup> birthday approaches, her family is organizing a party to celebrate it. In addition, Esmeralda wants to continue her studies and to prepare herself to have a good job that will allow her to support her mother and family. On October 29, 2001, Esmeralda disappears after leaving the house where she works.

Her young body, tortured, raped, and brutally mutilated, is found lifeless in a cotton field a few days later, along with the remains of many other women. Ciudad Juarez is located in the north of Mexico, in the State of Chihuahua, on the border with El Paso (Texas, United States) and can be characterized as a city with strong social inequalities, which provide ideal conditions for the development of various forms of organized crime, and which have generated a pronounced increase in rates of insecurity and violence. This data is even more alarming when it comes to violence against women<sup>3</sup>. The Mexican State is aware of the fact that since 1993 there has been a notable increase in the number of murders of women, with the rates of homicides of women having doubled compared to those of men<sup>4</sup>.

1. This case resembles what happened in the Inter-American Court on Human Rights (IACtHR) *Case of Radilla Pacheco v. Mexico*. Preliminary Exceptions, Merits, Reparations and Costs. Sentence of November 23, 2009. Series C, n. 209. On this case see J.R. Cossío Díaz, *Algunas notas sobre el caso Rosendo Radilla Pacheco*, in *Anuario mexicano de derecho internacional*, vol. XIV, 2014, pp. 803-834.

2. Esmeralda is, along with Laura Berenice Ramos Monárrez and Claudia Ivette González, one of the victims of the IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Exceptions, Merits, Reparations and Costs. Sentence of November 16, 2009. Series C, n. 205. On this case please see I. Spigno, *A diez años de la sentencia González y otras ("Campo Algodonero") vs. México*, in L.E. Ríos Vega-I. Spigno (dirs.), J.A. Estrada Marún (coord.), *Estudios de casos líderes interamericanos*, vol. XXI: *A diez años de la sentencia de "Campo Algodonero": reflexiones sobre el desarrollo de la jurisprudencia interamericana en materia de violencia de género*, Tirant lo Blanch, 2021, pp. 3-21.

3. Since 1993, there has been a significant increase in the number of disappearances and femicides against women and girls, making Ciudad Juarez the «[...] focus of attention of the national and international community due to the particularly critical situation of violence against women prevailing since 1993 and the deficient response of the State to these crimes»: IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., para. 114.

4. IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., para. 115 ff.

It is now 2011, and Mexico is going through a challenging time. Jose Angel and Nitza Paola are a young couple: they are abducted from their home by a group of approximately ten people in military uniform who force them to board their vehicle. These arrests were made as part of a military operation aimed at dismantling organized crime networks and logistics. To this day, their whereabouts remain unknown<sup>5</sup>.

No, these are not made-up stories. They are real life stories of a country like Mexico where, despite never having faced any interruption in its democratic character, there are now, to date, more than 110,000 disappeared persons<sup>6</sup>.

These are stories that do not end with the disappearance of people. It is when a person disappears that a story of terror begins that goes far beyond any perverse imagination that even the most terrifying film director could have ever created. It is a terror made of fear, anguish, despair, and frustration on the part of the families of the disappeared person who never lose hope of finding their loved ones alive. And it is also a story of terror because of the omissions of the authorities involved and the strong impunity that reigns in the country. And in this story of terror there are men and women who suffer daily and face countless obstacles in the search for their loved ones. And this is precisely the story we are going to tell in the following pages.

## 2. The context of enforced disappearance in Mexico

Traditionally, in Latin America, forced disappearances have been used as part of strategies to control, detain, and even systematically eliminate “subversive groups”<sup>7</sup>. These strategies are generally organized

5. This is the case in which the IACtHR declared the international responsibility of Mexico in the *Case of Alvarado Espinoza et al. v. Mexico*. Merits, Reparations and Costs. Sentence of November 28, 2018. Series C, n. 370.

6. According to the information located on the official page of the National Registry of Missing and Unlocated Persons, as of October 16, 2023. However, this number does not reflect the total number of cases, as many are not reported by family members due to a number of reasons, such as fear, lack of knowledge of their rights, or distrust of the authorities, among others.

7. Instituto de Políticas Públicas en Derechos Humanos, *A 40 años del Cóndor. De las coordinaciones represivas a la construcción de las políticas públicas regionales en derechos humanos*, IPPDH, 2015, p. 136. See Carlos E. Zamora Valadez, *La reparación del daño a las víctimas de desaparición. Reflexiones a partir del caso mexicano*, Tirant lo Blanch, 2024 [forthcoming].

and executed by the armed and public security forces, but sometimes also by intelligence services or paramilitary groups, who act with the cooperation, tolerance, or acquiescence of the State<sup>8</sup>.

In Mexico, enforced disappearance is a serious problem that has acquired and continues to develop specific characteristics, that distinguish it from the enforced disappearances that have occurred in other Latin American countries, essentially due to the fact that Mexico has never, formally at least, lived any apparent interruption to its democratic regime. Rather, it has experienced an evolution that can be classified mainly into three different historical and social phases, which will be analysed in the following pages.

### 2.1. *The “dirty war”*

The practice of enforced disappearance in contemporary Mexico appeared for the first time during the so called the “dirty war”<sup>9</sup>. This is a period of time that started in the late 1960s and lasted until the 1980s. It was characterized by strong political and social demands made by different groups and organizations against the consequences produced by many decades of the so called “perfect dictatorship”<sup>10</sup>. Mexico never knew an authoritarian breakdown like the majority of Latin America States, but rather it experienced an uninterrupted period of nearly 70 years through which it was governed by one political party: the Institutional Revolutionary Party (PRI from its name in Spanish *Partido Revolucionario Institucional*). During the PRI regime (1929-2000), there was no political alternation. Various political practices were established to ensure control and power over the country was maintained (such as the President of the Republic “electing” his successor)<sup>11</sup>.

8. ONU-DH Mexico, *La desaparición forzada en México: Una mirada desde los Organismos del Sistema de Naciones Unidas*, CNDH, 2015, p. 9.

9. See J. Mendoza García, *La tortura en el marco de la guerra sucia en México: un ejercicio de memoria colectiva*, in *Polis*, vol. 7, n. 2, 2011, pp. 139-179.

10. See R.R. Lagier, *México ¿la dictadura perfecta?*, in *Amérique Latine Histoire et Mémoire. Les Cahiers ALHIM*, vol. 38, 2019, online..

11. R.G. de Barros Gomes, *La Dictadura Perfecta: un análisis de las estrategias de permanencia del régimen priista en México*, in *Faces de Clio*, n. 4, 2018, p. 148. In fact, the Institutional Revolutionary Party (PRI), which controlled all local governments until 1989, maintained an absolute majority in the Chamber of Deputies until 1997 and retained the Presidency of the Republic until the year 2000: see Open Society Foundations, *Atrocidades innegables. Confrontando crímenes de lesa humanidad en México*, 2016, p. 22.

The political change started in 1968<sup>12</sup>, the year which saw a social movement in which university students, professors, intellectuals, homemakers, workers, peasants, merchants, and professionals make specific demands, such as freedom for political prisoners and the reduction or elimination of authoritarianism<sup>13</sup>. This movement sought democratic change in the country. The Government reaction towards these political and social demands was repressive and authoritarian. Various sectors of the population were criminalized for organizing themselves either to demand greater democratic participation or to put a stop to authoritarianism, patrimonialism, and oppression. At this stage, students, union leaders and other groups became the target of the ruling regime, which for three six-year presidential terms (1964-1982) maintained systematic campaigns of violence against social movements, which were aggravated by the “strong hand” policy encouraged throughout Latin America by the United States, due to the fear of leftist activism<sup>14</sup>.

The violent repression of these political and social demands by Mexico, through the concentration of military forces<sup>15</sup>, not only against members of the social groups and *guerrilla* groups, but also against “ordinary” citizens with no links to the social and political movements opposed to the regime, generated a high number of human rights violations<sup>16</sup>, including torture, illegal detention and enforced disappearance<sup>17</sup>. One example of this repressive type of response is the massacre of students who protested in the Plaza de Tlatelolco, on October 2 of 1968<sup>18</sup>.

This is how the Mexican Government, concerned about maintaining

12. S. Loeza, *México 1968: los orígenes de la transición*, in *Foro internacional*, vol. 30, 1989, p. 66.

13. I. Semo, *La transición interrumpida: México 1968-1988*, Universidad Iberoamericana, 1993.

14. *Ivi*, p. 23.

15. It is estimated that by 1971, the Mexican Army had 24,000 soldiers stationed in Guerrero, which represented one-third of its total force: see on this point IACtHR, *Case of Radilla Pacheco v. Mexico*, *cit.*, para. 137.

16. See Centro de Derechos Humanos Miguel Agustín Pro Juárez, *Desapariciones forzadas durante la guerra sucia en México e impunidad. Informe conjunto al Comité contra las Desapariciones Forzadas*, 2014, p. 3, available at: [tbinternet.obchcr.org/](http://tbinternet.obchcr.org/).

17. According to data included in the Final Activity Report from the State of Guerrero Truth Commission (Comverdad for its name in Spanish) of 15 October 2014, 230 cases of enforced disappearance were documented during the “dirty war”.

18. Open Society Foundations, *cit.*, p. 23. See also E. Poniatowska, *La noche de Tlatelolco: testimonios de historia oral*, Ediciones Era, 1998.

political and social control in the face of *guerrilla* movements and the growing discontent of the citizenry, used its armed forces to silence dissent. And this is how hundreds of people disappeared.

## 2.2. *The feminicide wave*

In the following years, State repression also generated an increase in violence and insecurity rates. Although this was a general issue for the whole population, violence against women for gender reasons increasingly became such a serious problem that it merited specific attention from across the country<sup>19</sup>.

One case that particularly attracted attention in the early 1990s was that of Ciudad Juárez, a densely populated city in northern Mexico<sup>20</sup>, specifically in the State of Chihuahua, which has a border with El Paso (Texas, United States). Being a border city, the transit of migrants, both Mexican and foreign, is significant. It is an industrial center, and the most developed economic activities relate to the *maquiladora* industry. Despite this, Ciudad Juárez is characterized by strong social inequalities that, combined with its proximity to the United States, have created ideal conditions for the development of various forms of organized crime<sup>21</sup> and an increase in the rates of insecurity and violence.

This data is clearly and evidently reflected, mainly, in cases of violence against women. From 1993, there was a significant increase in the number of disappearances and femicides perpetrated against women and girls, making Ciudad Juárez a city where the rate of femicides was “disproportionately larger” compared to other border cities with similar characteristics, and gender violence was – and still is – alarming, reaching even higher levels in 2006, due to the so-called “war against drug trafficking”, led by the then-president Felipe Calderón Hinojosa against criminal groups<sup>22</sup>. During this stage, gender-based crimes against

19. On this point, please see I. Spigno, *Gender violence against low-income women in Mexico. Analysis of the Inter-American doctrine*, in *Rivista Diritti Comparati*, Special Issue I, 2019, pp. 167-193. See also S.J. Vázquez Camacho, *El caso “Campo Algodonero” ante la Corte Interamericana de Derechos Humanos*, in *Anuario Mexicano de Derecho Internacional*, vol. XI, 2011, pp. 520 ff.

20. According to the 2015 census, Ciudad Juárez had a population of 1,400,000 inhabitants.

21. IACtHR, *Case of González et al. (“Cotton Field”) v. Mexico*, cit., para. 113 and footnote 65.

22. C.E. Zamora Valadez, *El Derecho penal del enemigo en la legislación mexicana*.

women were committed both by members of organized crime and by private actors, but also by police and members of the Mexican Army.

Within this context, gender-based crimes against women were characterized by specific and common patterns. First of all, victims were generally young women, between 15 and 25 years of age; they were students, migrants, workers in maquilas, or in stores or other local enterprises. Some of them had been living in Ciudad Juárez for a relatively short time and were generally low-income women. Secondly, a significant number of the femicides showed signs of sexual violence. More specifically: women disappeared, some turning up days, weeks or months later, their bodies having been found in wastelands and having been sexually abused or raped, tortured, and mutilated. Thirdly, investigations by State authorities, both after the disappearance and after the news of the death, were characterized by numerous irregularities that led to a lack of clarification, which effectively translated into impunity for the perpetrators.

The discriminatory and slack attitudes on the part of State authorities to the femicides in Ciudad Juarez were evident, demonstrating a strong stereotypical conception of the victim and reflecting a generalized culture of discrimination against women that has played a determining role in both the “motives” and “methods” of the crimes, as well as in the authorities’ response to them.

### *2.3. The fight against the Narco*

Unfortunately, violence in Mexico has not diminished: on the contrary, it has clearly increased, especially after the assumption of the Presidency of the Republic by Felipe Calderón Hinojosa in 2006. His victory was narrow, and the presidential election generated a legitimacy crisis. Furthermore, this came at a time when levels of violence and insecurity in the country were very high<sup>23</sup>, due to the presence of the organized crime, which despite having existed for a long time, was increasingly out of control<sup>24</sup>.

*¿Son proporcionales las restricciones de derechos de los acusados de delincuencia organizada?*, Master’s thesis in law with emphasis on the criminal accusatory system, Autonomous University of Coahuila, 2017.

23. *Ibidem*.

24. Report of the Working Group on Enforced or Involuntary Disappearances (GTD/DFI) on its mission to Mexico, UN document A/HRC/19/58/Add.2 of 20 December 2011, para. 16, available at: [www.hchr.org.mx/](http://www.hchr.org.mx/) (accessed October 2023).

President Calderón Hinojosa sought to address this difficult situation in two ways: first of all, by tightening the criminal justice system, through various constitutional and legal reforms<sup>25</sup> and, secondly, by directly confronting criminal groups through the militarization of citizen security, with the so called “war against drug trafficking”.

This second measure meant the deployment of thousands of military personnel in urban areas and at strategic points such as highways and checkpoints, as well as the inspection of houses, individuals and vehicles, often without a warrant<sup>26</sup>. With this strategy, it also became common to place military personnel as heads of local police forces, despite the fact that the logic and training of the army and the police are clearly different<sup>27</sup>. Inevitably, violence increased and, once again, it led to gross human rights violations, including among others, through enforced disappearances.

Indeed, one of the most serious consequences generated by the so-called “war against drug trafficking” was the increase in the numbers of disappeared persons<sup>28</sup>.

### 3. Women searching for their disappeared relatives

Evidently, Mexico’s recent history has been framed by the serious problem of enforced disappearance within a generalized context of violence and impunity linked to many authorities’ omissions. When a person disappears, the law recognizes the right to be searched. However, due to the fact that authorities have done almost nothing to prevent or offer a solution to this problem, the families of the disappeared persons have been forced to push and promote the issue themselves, and they

25. J. Chabat, *La respuesta del gobierno de Felipe Calderón al desafío del narcotráfico: entre lo malo y lo peor*, en *Los grandes problemas de México. Seguridad nacional y seguridad interior*, El Colegio de México A.C, 2010.

26. Report from the GTDFI, *cit.*, para. 23.

27. As evidenced by the drastic increase in the number of complaints received by the National Human Rights Commission (CNDH for its name in Spanish *Comisión Nacional de Derechos Humanos*), for example, against the Ministry of National Defense, which went from 182 in 2006 to 1,230 in 2008: CNDH, Recommendation 026/2011, p. 8.

28. According to data included in the Global Report 2023: Mexico of 11 January 2023, over 90,000 people have disappeared since the beginning of the fight against the Narco. Available at: [www.brw.org/es/world-report/2023/country-chapters/mexico](http://www.brw.org/es/world-report/2023/country-chapters/mexico) (accessed October 2023).

have done so by organizing themselves into groups and demanding authorities to take action. Such groups sometimes even seek to perform all the key investigative steps that might be expected to be carried out when it comes to the search for a disappeared person.

Among the actions that would be expected to be carried out in the search of a missing person, we can identify: criminal investigations, meetings with authorities and government institutions and exhumations in places where there may be human remains of people who were deprived of their freedom. There are those who demand from public prosecutors that investigations are carried out properly, who raise their voices in meetings to say what needs to be done regarding the problem of disappeared persons, and who attend every place that could have been used as a mass grave in the hope of achieving a finding.

We are talking mainly about women who have taken on an essential role in the fight against the disappearance of persons; mothers, wives, sisters and daughters<sup>29</sup> with different contexts and stories, but with a common goal: to find their loved ones. They are the so called “*buscadoras*”.

The efforts carried out by women with relatives of disappeared persons, whether or not organized in collectives, not only include the search for or efforts to find their loved ones; they also extend to their family, social and professional spheres. The absence of a person through enforced or involuntary disappearance unleashes multiple consequences that transform the reality of those who are part of the family nucleus of the direct victim. For this reason, the following pages will primarily analyze the reality of the challenges and consequences faced by women who search for their disappeared, both related to and outside the search.

### *3.1. Origin of the movement*

The disappearance of persons has not always been considered, by governmental authorities, as an issue for which efforts need to be made and/or to which institutions, budgets and models of dialogue should be dedicated. As already mentioned, the context of enforced disappearance in Mexico reveals a problem in the fact that public agents – at federal, state, municipal and local level – have often had an active or omissive

29. It should be noted that there are men who are also actively searching for their relatives, and who are a part of the groups of families mentioned, even if their numbers are significantly lower than that of women.



role within these events (as perpetrators or enablers)<sup>30</sup>. In order to find a solution to this problem, it was necessary to put the problem of the disappearance of persons at the forefront of the public agenda. And it was possible only when families of disappeared people started to organize themselves into collectives.

Organizations of families searching for their loved ones have served as a response to events such as the “Dirty War” and the “*Halconazo*”<sup>31</sup> or the disappearance of women for gender reasons or the “war against narcotraffic”; events in which a devastating extermination took place, and after which the fate and whereabouts of hundreds of victims is unknown, even today. Although there are records of disappearances since the 1960s, it was not until decades later that a movement of families of disappeared persons began to appear, which started due to a lack of commitment and the government’s refusal to even accept the existence of the problem.

A disappearance produces multiples effects, many of which alter the lives of those who have a family or emotional bond with the disappeared persons and represents a violation of many fundamental rights<sup>32</sup>. A wife who, after the disappearance of her husband, is left without his economic support or sustenance and in charge of raising her children; a mother who, after the disappearance, sees her daily life totally transformed, and because of the search is forced to divide her time and attention between that and the rest of her family, which sometimes causes some neglect in some areas such as food, health, or education. This is just one of the many examples we could make.

Collectives are made up mostly of women searchers. They began their activity as individual struggles in which the difficulties of people coping with their daily lives were combined with having a disappeared family member. In the meanwhile, they had to deal with the disheartening actions (or lack thereof) of the investigating authorities or government institutions.

30. UN-DH Mexico, *La desaparición Forzada en México: Una mirada desde los organismos del Sistema de Naciones Unidas*, CNDH, 2019, p. 70.

31. In the case of the “*Halconazo*”, for example, a massive student demonstration in protest at the government’s changes to the student system was “controlled” through a massacre that lasted for several hours, in which even medical personnel were threatened if they tried to treat the injured people – a threat which, additionally targeted students, press and civilians. J. Mendoza, *El jueves de Corpus: La masacre estudiantil de 1971 en México narrada a 50 años*, Universidad Pedagógica Nacional, México, 2021, available at: [www.scielo.org.mx/](http://www.scielo.org.mx/) (accessed October 2023).

32. IACtHR, *Case of Goiburú et al v. Paraguay*, cit., 159.

Quite soon, the individual struggle began to become a collective one<sup>33</sup>: investigations of disappearances, which occurred in the 1960s and 1970s, –first null and, subsequently, deficient–, and never resulting in a formal investigation, led to the push for families to seek justice. It is important to note that the existence of the criminal offence in the Federal Criminal Code<sup>34</sup> and, subsequently, the criminal codes of the federative entities, did not mean that effective and fruitful investigations were carried out immediately. Furthermore, the role played by authorities and public institutions in carrying out the attacks against the population was an important abettor in the commission of a crime that left no trace and led to the union of relatives to whom the fate and whereabouts of the disappeared person were concealed by the State itself<sup>35</sup>.

Another crucial factor in the struggle of women’s search organizations was that State institutions, whose function was to protect and guarantee their fundamental rights, started to engage more and more in commissioning disappearances, so indirect victims had to wage their own struggle first individually and later, collectively.

The formation of collectives has its origins in the period known as the “dirty war”; however, the event that accentuated the need for families to unite and demand justice and answers from the State was the “war against drug trafficking”. Attempts to fight organized crime in Mexico – initiated in December 2006 – resulted in a wave of more violence, corruption and increasing armament, which in turn brought an extremely high number of homicides, kidnappings, and disappearances<sup>36</sup>.

Since the “war against drug trafficking” – which, as mentioned above, dramatically increased the number of disappearances – actions have been brought together by family organizations with the objective to obtain justice, which includes ensuring the investigation and determination of the responsibility of those who committed the disappearances; knowing the truth, and achieving compliance with other aspects of reparation, such as the preservation of the memory of the victims and institutional

33. M. Villarreal, *Los colectivos de familiares de personas desaparecidas y la procuración de justicia*, in *Redalyc*, 2016, available at: [www.redalyc.org/](http://www.redalyc.org/).

34. Article 168 of the Federal Criminal Code.

35. C. Beristain, *El contexto de las desapariciones forzadas en México*, in *A dónde van los desaparecidos*, Mexico, 2023, available at: [adondevanlosdesaparecidos.org/](http://adondevanlosdesaparecidos.org/) (accessed October 2023).

36. J.D. Rosen, R. Zepeda, *La guerra contra el narcotráfico en México: una guerra perdida*, in *Reflexiones*, vol. 94, 2015, pp. 153-168.

changes, so that the violation of the dignity of the families does not continue, as well as keeping the fight against the issue at the forefront of the agenda of States.

### *3.2. The hard life of a woman searching for her disappeared loved ones*

A woman searching for her family member faces many difficult moments in her daily life, due first of all to the absence of her loved one, but also because of what the search process entails. If we take a close look at the changed reality of a woman who has lost her son, husband, brother or father, we can see, the difficulties involved in the absence of her family member inside and outside her home, and how complicated it is for them to approach the authorities and institutions dedicated to the investigation of the crime of disappearance of persons.

We also should ask why it is mostly women who take on the role of searching for disappeared people? Very often, women are the only ones in the family who can materially search due to a displacement of the rest of the family, the absence of men in the family, or because the woman does not have a separate nuclear family. However, although the assumptions to which we refer may be present, when observing in more detail the cases in which there are other family members who could collaborate in the search, it can be identified that the reasons why women have generally been in charge of searching for their missing or disappeared family member are linked to traditional gender roles. By this, we refer to the role of the “woman caregiver”<sup>37</sup>, with the unique drive that leads them to take charge of the search, primarily when it is the mother of the person who has disappeared.

Although it can be argued that such an “instinct” may be based on gender stereotypes that have been reproduced for decades in Mexico, *buscadoras* do not carry out this role as a burden, but as a struggle for justice and, mainly, as an act of love towards the loved one who is absent.

How does daily life change for a person’s family when they disappear? Certainly, it depends on the role the disappeared person played in the family. However, it will almost certainly have an effect as far as economic support is concerned. If the disappeared person was the one, within the family structure, who contributed to covering the expenses generated by the maintenance of a house, food, education in

37. J. Ortégón Osorio, *Searching women: elements for reflection to contribute to their comprehensive reparation*, in *Pensamiento Jurídico*, n. 55, 2022, p. 26.

the case of children, among others, all these responsibilities become, completely, the responsibility of the other persons that make up the household<sup>38</sup>. On many occasions, the people who become responsible for covering the expenses described above are the women with whom the direct victim lives.

Furthermore, in addition to the fact that the expenses related to household maintenance, children's education, food, and other basic services do not cease and sometimes fall on a single person when a disappearance occurs, the work carried out by women searching for their loved ones multiplies. By this, we refer to the action and proceedings they attend in order to keep the importance of solving issue of disappeared persons present<sup>39</sup>, which, despite absorbing a significant amount of their time, ultimately represents additional unpaid work for them. Such actions include carrying out searches, taking part in protest marches, meetings with authorities or various institutions, and acts of remembrance, among others.

One aspect to consider is that, in many cases, the searches mentioned in the preceding paragraph are carried out in places other than where the women searchers reside. Consider situations, for instance, in which a person has disappeared and, out of concern for their safety, the family has moved to a different municipality or State<sup>40</sup>. In such cases, investigations and proceedings are carried out in the place where the person disappeared and, unless there are indications that the direct victim was displaced, the family searching for them is forced to return to the place they left in order to follow up on the investigation and/or to keep an eye on other developments.

We cannot fail to mention the cases in which women searchers are forced to leave their place of work because they have to divide their time between caring for children or grandchildren and searching for their loved ones. As we have said, the search for a disappeared person is a task that, although admirably and tenaciously carried out by wives, daughters, sisters, and mothers, is nevertheless an exhausting one due

38. C.E. Zamora Valadez, *La reparación integral del daño a víctimas de desaparición forzada. Análisis y propuesta metodológica: un enfoque particular al caso mexicano*, Doctoral Thesis in Human Rights, University of Palermo in *co-tutela* with the University of Valencia, Spain, 2022, available at: [roderic.uv.es/handle/10550/83883](http://roderic.uv.es/handle/10550/83883).

39. UN Women Mexico, *Hasta encontrarles: la lucha incansable de las madres buscadoras*, in *Un women*, 2022, available at: [mexico.unwomen.org/](http://mexico.unwomen.org/) (accessed October 2023).

40. IACtHR, *Case of Alvarado Espinoza et al. v. Mexico*, cit., p. 157.

to the multiplicity of tasks involved; all additional to the task of raising their dependents or those of the disappeared person.

All of this, in several cases, leaves no room for *buscadoras* to carry out paid work to which they can dedicate a certain number of hours, which results in them having to abandon the place where they work professionally, or alternatively to reducing the time they dedicate to the activity they carry out for their economic sustenance. The result is a decrease in family income and a complicated situation in which the same number of responsibilities in the family environment must be attended to with less support due to the absence of the disappeared person.

As a second factor, after the economic aspect, we must consider the physical and psychological impacts of the disappearance of a loved one, as well as the search process, on the women who are searching. In relation to the physical impacts, women dedicated to the search agree that, as a result of the situation in which they find themselves, they have begun to suffer various ailments or have experienced a deterioration in pre-existing afflictions. These include premature aging, backaches, or headaches due to long days of searching, and pressure disorders, among others.

Psychological impacts are, in the same way as physical impacts, complex and multiple. The Inter-American Court of Human Rights has established that moral harm – which comprises the suffering and distress caused to the victim – is evident when there are serious human rights violations, as in the case of the disappearance of persons<sup>41</sup>, and that this harm extends to those who had close contact with the victim, such as mothers, wives, daughters and sisters who assume the role of searchers, and which therefore extends over generations<sup>42</sup>. Some of these psychological impacts include the loss of ability to have fun or enjoy special events or dates, the feeling of constant fear, loss of appetite and even resorting to certain risky behaviors.

A little has been said about the transformation of the reality of a searching woman when, in addition to the daily responsibilities that existed before the absence of their loved one, she assumes the role of investigating and following up on the disappearance. As a third aspect of those involved in the disappearance of a person, the “life plan”<sup>43</sup> of

41. IACtHR, *Case of Velásquez Rodríguez v. Honduras*, cit., p. 51.

42. P. Atziri Paz, *Mujeres buscadoras de personas desaparecidas, con todo en contra*, in *Reporte Indigo*, 2023, available at: [www.reporteindigo.com/](http://www.reporteindigo.com/) (accessed October 2023).

43. The IACtHR recognizes the life project of the family members as one of the

the searching women changes as the search becomes a priority and other interests or plans take a secondary role. For example, this can include the displacement of families due to fear or threats, the maintaining of their availability to attend search days or other proceedings, affecting the individual projects of sons or daughters –whether adults or minors–, and the refusal of the searching women to extend their family nucleus or form a new one.

Based on experiences narrated directly by women searchers, having a disappeared family member often means that this situation becomes the center of their activities, their mood, or their future plans. Not knowing whether their family member is alive or not, and being uncertain about the fate or whereabouts of the person or the conditions in which he or she is found, makes it difficult to carry out even the most mundane daily activities; to this can be added the feelings or opinions of other family members, who sometimes ask these women to stop searching and continue with their lives, either because of the passage of time, the other needs that arise in the family unit, or the emotional exhaustion that all this entails.

Moreover, the stigma that unfortunately still surrounds the issue of disappeared persons cannot be ignored, not only with respect to the circumstances in which a disappearance has occurred, but this can also extend to the relatives of the direct victim and their motives for participating, or not participating, in the search<sup>44</sup>. Women searchers, for their part, are forced to deal not only with an extremely distressing situation in which they never wanted to find themselves following the disappearance of their family member, but they can also then face accusations that they are “profiting” from the circumstances, or the belief that the searchers “live” through the support provided by the institutions when search days, meetings or other procedures are carried out.

Such accusations, in addition to being unfounded, add significant emotional burdens to the already complicated situation faced by women searchers, who, despite sometimes having psychological care provided by governmental institutions, often feel misunderstood. This, due to the complexity of a situation such as enforced disappearance,

aspects to be repaired for the crime of forced disappearance of persons. IACtHR. *Case of Alvarado Espinoza et al. v. Mexico*, cit., p. 314.

44. C. Robledo Silvestre, *Las buscadoras, más solas que nunca*, in *A dónde van los desaparecidos*, 2022, available at: [adondevanlosdesaparecidos.org/](http://adondevanlosdesaparecidos.org/) (accessed October 2023).

reinforces the need for mothers, daughters, sisters, or wives to count on solidarity networks<sup>45</sup> with women who are living in similar situations, which, in turn, results in the growth of collectives, or the creation of new ones.

Now, focusing on the rest of the nuclear family, we return to the idea that the impacts arising from the disappearance and, subsequently, the search for a disappeared person, extend to other members of the family. While women searchers are physically and psychologically affected as a result of the reality they face, the children and adolescents who are part of the nuclear family also bear the effects of the disappearance and show it through feelings of abandonment, dropping out of school, poor moods or through risky behaviors, among other effects.

Although women searchers strive, day after day, not to transmit the anguish of the disappearance or the wear and tear of the search, to the children who live with them, all this is complicated when they themselves find it difficult to see the positive aspects of life or their situation. Based on testimonies provided by women searching for their disappeared relatives, there are several emotional stages arising from a disappearance. At the beginning there is a feeling of guilt for the simple fact that they are laughing or enjoying something, and only eventually – and among the searching women themselves – can they share moments like this, without this meaning that they have separated themselves from the situation or stopped feeling guilty for the family members who are, in certain ways, “neglected”, particularly children and adolescents.

In addition to the social, familial, and personal aspects that become part of the life of a woman searching for her son, husband, father, or brother, it is important to talk about their experiences during the search for their loved one. The mechanisms or organizations that have been formed by women searching for their loved ones after the disappearance<sup>46</sup>, include carrying out activities such as parallel investigations to those carried out by agents of the Public Prosecutor’s Office, exchanging information among collectives, and generating plans to make the magnitude of the problem visible.

45. L. Pérez Jiménez, *¿Qué han sido los avances en la lucha contra la desaparición forzada en México?*, in *Revista 100 días*, 2022, available at: [www.revistaciendiascinep.com/](http://www.revistaciendiascinep.com/) (accessed October 2023).

46. I. Spigno, *La desaparición forzada de personas en México: crisis de la democracia y de los derechos humanos*, in *Agenda Estado de Derecho*, 2020, available at: [agendaestadodederecho.com/](http://agendaestadodederecho.com/) (accessed October 2023).

The effects of the disappearance have caused *buscadoras* to become activists<sup>47</sup> and to be at the forefront of search mechanisms, with the difficulties or stigmas that have already been mentioned, and in Mexico there is currently a growing leadership and a broad participation of women in non-institutional search mechanisms. This, however, brings certain challenges for women searchers, and the most significant ones have to do with the direct contact they have with the authorities and institutions in charge of the search. Since there is no legislation that foresees participation and intervention of women searchers in the investigation process carried out by the prosecutors' offices, on many occasions they are exposed to situations of secondary victimization by public servants – something that, according to the guiding principles for the search for disappeared persons, should be sanctioned<sup>48</sup>.

The secondary victimization mentioned in the previous paragraph often arises in the experience that women searchers have, on many occasions, from their first approach to criminal investigation institutions, where they are received by public servants who are reluctant to carry out their work, and who provide answers that, unfortunately, are likely well known to even those who are not so familiar with the problem of the disappearance of persons, such as, the disappeared woman “left with her boyfriend” and the disappeared man “had bad habits”. These responses are not only discouraging, but also offensive and in violation of human rights. They lead to women deciding to carry out search efforts without the presence of authorities, often risking their lives in the process. Some of these actions include searching for people in rivers, highways, and other places without any kind of protection.

Hope comes when the *buscadoras* meet others who are fighting for the same objective, and who have similar experiences in their social and family spheres and in their contact with authorities. Undoubtedly, the collectives of relatives of disappeared persons – as we have already said, made up mostly of women searchers – provides hope for mothers, sisters, daughters, and wives who, for a long time, have had to carry out an individual struggle. It is important to recognize that, although over the years the collectives have multiplied, and the existing ones have been strengthened, there are still women who, not being part of

47. O. Lopez, *After Four Sons Disappear, a Mother Dedicates Her Life to Mexico's Disappeared*, in *The New York Times*, 2022, available at: [www.nytimes.com/](http://www.nytimes.com/) (accessed October 2023).

48. UN-DH Mexico, *Principios rectores para la Búsqueda de Personas Desaparecidas – Comité contra la desaparición forzada*, 2019, p. 12.



any group or organization, continue to face the challenges that we have exposed throughout these pages.

It is impossible to talk about women searchers or collectives of relatives of disappeared persons without mentioning the progress that, thanks to them, has been achieved in Mexico and the various federative entities with respect to addressing the problem of disappeared persons, one of which is the improved coordination with the entities that still owe them answers.

### 3.3. A good practice: the “dialogue model”

The most important thing regarding the disappearance of persons in Mexico, is the struggle for rights by the collectives of disappeared persons, created and led mostly by women searchers. It has been a struggle against impunity, discrimination, a lack of attention by governmental institutions to the problem, and the revictimization they have received from the authorities in charge of the search and investigation. We emphasize the resistance of authorities to accepting the magnitude of the problem, because the first step to achieving what we consider to be the greatest progress that has been made in the issue of disappearance, has been the recognition of the problem and the way to address it.

In this section, we refer to a model of dialogue that has been developed in the State of Coahuila between the government and the collectives of disappeared persons led by women searchers<sup>49</sup>, facilitated by an Autonomous Working Group (GAT from its name in Spanish, *Grupo Autónomo de Trabajo*) composed of experts in the protection and defense of human rights. As expressed earlier in this chapter, one of the greatest challenges in addressing the issue of disappeared persons has been the lack of understanding between families and the government, and to be able to reach a point where the will or objectives of family members are united with the efforts of institutions and authorities.

The creation of the Autonomous Working Group has facilitated dialogue between families and the government, which are based on the experience and needs of the searchers –predominantly women– and recommendations made by relevant entities regarding the problem of

49. L.E. Ríos Vega, I. Spigno, *El grupo autónomo de trabajo en Coahuila, un modelo de interlocución entre familiares de personas desaparecidas, gobierno y sociedad civil*, 2018, pp. 28-32.

the disappearance of persons. The work agenda that has been developed has led to the identification, delimitation and follow-up of specific objectives related to the problem of disappearance, and has only come about through the participation of the women searchers and other members of collectives, as well as an openness from the Government that had not been seen in previous years or even decades.

The agreement that has been generated between the families and the Government has several characteristics, among them a clear delimitation of who should be doing or getting what when dealing with any problem such as the disappearance of persons: on the part of the families, the ownership of their rights and the protection they deserve; on the part of the government, the obligation to carry out all the actions that ensure such protection. Another key part of the agreement is that the autonomous group that facilitates communication between the searchers and the Government must be made up of people who are approved by a majority of the families, and all the recommendations determined by this group must consider the key issues that have been proposed nationally and internationally to fight the problem.

In order to follow up on the work agenda that is defined jointly by the Government and the collectives of disappeared persons led by women searchers, meetings are scheduled during the year to review the progress of each recommendation on the issue of disappeared persons. The areas in which the work agenda remains divided, and for which there remain issues, are search and investigation – for which institutions such as the State Prosecutor’s Office, the Search Commission and the Human Identification Center are involved –, legislative harmonization and comprehensive attention to the families – with the assistance of personnel from the State Executive Commission for Attention to Victims, for example.

In 2011, the UN Working Group on Enforced and Involuntary Disappearances visited Mexico in order to learn about the efforts that have been carried out in the country as regards the problem of the disappearance of persons. These meetings were attended, among other organizations, by women’s search groups, and at the conclusion of the meeting a series of recommendations were issued to the Mexican State, which included generating coordination between authorities for the investigation of the forced disappearance of persons and implementing a protocol for the search of persons and immediate attention.

The visit of this working group to Mexico was possible thanks to the requests of families of disappeared persons, and the recommendations addressed to the Mexican State led to the implementation of several

actions, among which was the creation of the Autonomous Working Group that would facilitate the dialogue between authorities and families. It is important to note that there has been a long process to strengthen and improve the model of dialogue that has been created between the government and women searchers<sup>50</sup>, since, at the beginning of this dialogue procedure, the meetings that took place consisted mostly of complaints – albeit well-founded – on the part of the families, and a refusal to accept responsibility on the part of the authorities.

However, with the help of the intervention of the Autonomous Working Group, it has been possible to provide information and claims in a calmer way, and rather than generating two opposing groups, it has been possible to work on the union of interests and objectives, without this meaning that the families fail to point out when any measure is not contributing or hinders the fight against the problem of disappearance. Through reports, the Autonomous Working Group has issued recommendations that involve the families, and have resulted in advances such as allowing family members to know the progress of investigations, creating legislation related to enforced and involuntary disappearances, and constitutional and legal reforms to better protect the rights of victims of disappearance.

Among the most important achievements that have emerged from the dialogue model is the organization of an International Forum on Enforced and Involuntary Disappearances in Mexico, which was held in 2013 to discuss, with the collectives led by women searchers, the implementation of public and budgetary policies for the protection of human rights of direct and indirect victims of enforced disappearance of persons. Within this forum, specific working groups were created, with the priority to address the problem of disappearance of persons, the search and investigation, legislative harmonization, and humanitarian attention.

In the years following the creation of the “model of dialogue” between government and families, women involved in the search for their loved ones and who make up the collectives of relatives of disappeared persons, closely follow the compliance with the recommendations issued regarding the attention to the problem.

Currently in Coahuila, the 8 collectives that exist in the State participate in carrying out each of the actions on the work agenda; it is

50. Men who are also members of collectives of relatives of disappeared persons are not excluded from this model of dialogue; the term “women searchers” is used because they constitute the majority of the members of these groups.

important to recognize that, thanks to the joint efforts of the mothers, wives, daughters and sisters of the disappeared persons, the opinion of the indirect victims has been prioritized to carry out any progress regarding the issue, which is particularly significant because it represents the results of decades of efforts to ensure, first, that the authorities give the forced disappearance of persons due importance and, eventually, that women with disappeared loved ones are recognized for the role they have assumed since the 1960s in the wake of the disappearances, as caregivers, searchers and drivers of an improvement in the investigation of this crime.

#### **4. Final remarks**

Like other movements and organizations – such as LGBTQI+ and feminist groups –, the collectives formed by relatives of disappeared persons have originated from the prevailing need to push for a strengthening of the justice system after decades of violent events, and the refusal of the authorities to recognize the magnitude of the problem of the disappearance. One specific aspect that the groups mentioned in this paragraph share, is that they all have within them a significant number of people directly or indirectly affected – historically and currently – by serious human rights violations.

In the case of forced disappearance of people, this is a phenomenon that has constantly had to be brought to the attention of the people and institutions in charge of the country's security. Its effects are as devastating when they occurred in the 1970s as when they occur in 2023; however, the mechanisms to demand justice and the means to avoid the oblivion of disappeared persons have been multiplied impressively due to a key factor: mothers, sisters, daughters, and wives in search of one, or more, loved ones who never came back home.

Since the first events of forced disappearances recorded in the country, we have been able to appreciate the changes that have occurred regarding the actions of authorities, and the involvement of families in the follow-up of cases. It is evident that, in the 1960s and 1970s, disappearances were characterized by being hidden and even denied by the Government, and recognition of the facts and the responsibility of the agents was not achieved until decades later.

Although it has been, unfortunately, a slow process that has involved the expansion of the problem and the multiplication of victims, the forced disappearance of people has become a priority issue for which

institutions and the government are forced to have discussions and generate action, all due to the courage of the people who are the protagonists of this chapter: women searching for their disappeared loved ones, who have inspired us to follow their histories and the challenges they face every day to obtain answers and generate structural changes for cases of disappearances of people that, unfortunately, continue to happen in Mexico.

For every family, the disappearance brings immense changes in all aspects of their lives: each advance in terms of addressing the problem constitutes a way to continue paying a historical debt towards them. The path has been complicated and painful, and is not free of sacrifices and challenges for these women, a fact which we cannot ignore.

It is essential to give context in order to face this problem seriously and at the same time to bring attention to the women who, with their courage and work, continue to transform the discouraging reality of the country regarding disappearances. However, as has been said, discussing the impressive work of the *buscadoras* also at the same time requires talking about the exhaustion and hardship that comes with getting involved in a fight against something as big as the phenomenon of disappearance – failing to mention these struggles would be a disservice to those women.

When mothers, wives, daughters, and sisters of disappeared persons leave meetings with federal or State authorities, days of searching or worktables, they go back to their homes and daily activities, where the same responsibilities that existed before the disappearance are waiting for them together with a whole new multitude of them: searching women are obliged to be present for the family members with whom they live, and for those who are missing. This requires a sacrifice, not infrequently, of their own needs, life plans, and even physical and mental health. Furthermore, the effects that a disappearance produces on the family affect the most vulnerable members, such as children and adolescents who, in most cases, are under the care of searcher women the most. The involvement and participation of these women in the search for the disappeared person means having to divide themselves between the procedures that said search requires, and day-to-day responsibilities such as ensuring an adequate education for their children or grandchildren, the maintenance of a job or profession in some cases, not to mention other interests or even recreational activities which, on many occasions, are forced to be put aside.

Along with these challenges, however, there is the tenacity and determination of these women to confront a system that has failed them,

to demand changes in the functioning of institutions where they have been revictimized or excluded, and to ask for direct communication with the authorities with the objective of working on solutions to a problem that has transformed the reality of the families of the 112,546<sup>51</sup> people who, like Jorge and Nitza Paola, are still missing, or the 13,760<sup>52</sup> who, like Esmeralda, have unfortunately been found deceased.

The admiration for the women who search, and the recognition for their work, must go hand in hand with the commitment of people in society not to be indifferent to the problem of forced disappearance. The effort regarding this issue continues to be worked on, and requires the collective interest for it to be completely fulfilled.

51. According to the information located on the official page of the National Registry of Missing and Unlocated Persons, as of October 16, 2023.

52. *Ibidem*.



## NOTES ON EDITORS

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