

# **(De)legitimizing rape as a weapon of war: Patriarchy, narratives and the African Union**

Thesis

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By  
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## **Key words**

Africa, women, rape, weapons, delegitimizing, armed conflict, narrative, norms, security studies, social construction, feminism, chemical weapons, anti-personnel landmines, African Union (AU), Peace and Security Council (PSC), Regional Economic Communities (RECs).

## **Abstract**

The African continent has over the past 40 years witnessed a continued scourge of violent conflict and human rights abuses. These conflicts have significantly undermined the social, political, and economic prosperity of African citizens. Additionally, women and children are particularly affected by these conflicts. Women and children are regarded as ‘the most vulnerable’ as they often become the targets of sexual abuse by the enemy.

The African Union (AU) is primarily responsible for the resolution of conflicts on the continent. It professes to be committed to the prevention of human rights abuses and the protection of African women (and children) during armed conflicts. It has thus developed an array of mechanisms, protocols, and instruments to address the exploitation and sexual abuse of women during conflict periods. These instruments include: The Constitutive Act of the AU (2000); The Solemn Declaration of Gender Equality in Africa (2003); the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa- ACHPRWA (2004); and the Protocol relating to the Peace and Security Council.

In this research project, I consider whether the narratives used in these AU documents sufficiently and explicitly address the use of rape as a strategic weapon during armed conflicts; or whether these narratives inadvertently contribute to a culture that perpetuates war-time rape. My analysis shows that these AU documents deal with war-time rape in very vague and euphemistic terms. Although gender discrimination, sexual violence, exploitation, discrimination, and harmful practices against women are condemned, the delegitimization of rape as a weapon of war is not specifically discussed. This allows for varying interpretations of AU protocols, including interpretations which may diminish the severity of strategic rape. This has led me to propose that the narratives used in these AU protocols and related documents

draw on patriarchy, perpetuate patriarchy, and thus inadvertently perpetuates a culture that perpetuates the use of rape as a weapon of war.

A factor that contributes to the problematic nature of the AU narrative around war-time rape, is that the AU does not explicitly distinguish between two constructions of war-time rape: (1) rape as a by-product or consequence of conflict and (2) rape as a socially constructed and strategic weapon. This study suggests that when this distinction is made, it is possible to delegitimize rape as a weapon of war. Framing rape only as a by-product of violence is a limited and dishonest account of how rape is employed in war zones and what it represents. This limited framing of rape as an *inevitable* by-product of armed conflict is insufficient to address the problem. I propose that in order for rape to be delegitimized as a weapon, a strong/stern narrative is required; a narrative much like that used to ban the use of chemical weapons and anti-personnel landmines.

The theoretical framework used for this study is couched in feminist theory, particularly Feminist International Relations (IR) Theory. The research project is an exploratory and was conducted from a social constructionist paradigm, as it has considered the impact of the narrative concerning war-time rape in AU documents on the reproduction or legitimization of rape as a weapon of war in African armed conflicts. In line with this paradigm of study, the methodology employed includes the deconstruction of the narrative through textual and feminist/discourse analysis. The research process was further guided by the feminist perspectives on methodology provided by Tickner (2006) and Enloe (2007). The guiding principles of the research were thus to ask questions that are not usually asked by men, to produce analysis that is of use to women, and finally to ultimately lead to social change that would transform international politics in such a way to improve the lives of women. Hence, I have sought to highlight the relationship between the narrative used in AU documents, patriarchy, and rape as a weapon of war. By deconstructing this narrative, I sought to contribute analysis that could contribute to the creation of a new international norm pertaining to war-time rape. I propose that rape is neither necessary nor inevitable in conflict situations as suggested by the *International Campaign to Stop Rape & Gender Violence in Conflict*. I therefore provides proposals (based on the findings), on how the AU (by means of its narrative) may contribute to the delegitimization of rape as a weapon of war.

## Contents page

Acknowledgements	iii
Abstract	v
Abbreviations	x
<b>CHAPTER 1: INTRODUCTION</b>	<b>1</b>
1.1. Context of the study	1
1.2. Problem statement	2
1.3. Research question	8
1.3.1. The sub-questions that will be asked	8
1.4. Research objectives	9
1.5. Proposition of the study	9
1.5.1. Theoretical framework	9
1.6. Research methodology	17
1.6.1. Relevance and significance of the study	19
1.6.2. Feminist analysis in International Relations (IR)	20
1.7. Outline of chapters	21
<b>CHAPTER 2: THE SOCIAL CONSTRUCTION OF NORMS, NARRATIVES, GENDER AND INSECURITY IN THE INTERNATIONAL SYSTEM</b>	<b>23</b>
2. 1. Introduction	23
2. 2. Norms and the social construction of reality	23
2. 3. Narratives and the social construction of reality	27
2.3.1. Articulation, interpellation and enaction	30
2.3.2. The narrative construction of reality	31
2.4. The social construction of sex and gender	33
2.4.1. Patriarchy	38
2.5. The social construction of security and insecurity	42
2.5.1. Gender, security and insecurity in African conflicts	44
2.6. Conclusion	48
<b>CHAPTER 3: PATRIARCHY AND THE CONSTRUCTION OF RAPE AS A WEAPON OF WAR</b>	<b>50</b>
3.1. Introduction	50
3.2. Patriarchy in Africa	50
3.3. Rape as a weapon of war	56
3.3.1. Rape in war-time: two constructions	57

3.3.2. International cases of rape as a weapon in war	63
3.3.3 African cases of rape as a weapon	66
3.3.4. The purpose of strategic rape	69
3.4. The agency of women in armed conflicts	77
3.4.1. Examples of African women's agency	80
3.4.2. The agency of men (soldiers and rebels) in African armed conflicts	86
3.5. Conclusion	90

## **CHAPTER 4: THE RESPONSE OF THE INTERNATIONAL COMMUNITY TO RAPE AS WEAPON OF WAR**

4.1. Introduction	92
4.2. International response to chemical weapons and anti-personal landmines	92
4.2.1. The Chemical Weapons Convention	93
4.2.2. The Anti-Personal Landmine Treaty	95
4.3. International response to the use of rape as a weapon of war	98
4.3.1. Gender mainstreaming	99
4.3.2. Convention on the Elimination of All Forms of Discrimination against Women	100
4.3.3. Beijing Declaration and Platform for Action	102
4.3.4. United Nations Security Council Resolution 1325	104
4.3.5. United Nations Security Council Resolution 1820	105
4.3.6. United Nations Security Council Resolution 1888	107
4.4. Shortcomings of international instruments and UN policy responses to rape as a weapon of war	109
4.5. Conclusion	111

## **CHAPTER 5: PATRIARCHY AND THE NARRATIVE USED IN AFRICAN UNION (AU) PROTOCOLS**

5.1. Introduction	112
5.2. The African Union	112
5.2.1. African Charter on Human and Peoples' Rights	113
5.2.2. The Peace and Security Council (PSC)	114
5.3. Narrating gender-based sexual violence in AU protocols	115
5.3.1. The Constitutive Act of the African Union	116
5.3.2. The Solemn Declaration on Gender Equality in Africa	118
5.3.3. The Protocol to the African Charter on Human and People's Rights on the Rights of Women (ACHPRWA)	119
5.3.4. Protocol relating to the Peace and Security Council (PSC)	122
5.3.5. The African Women's Decade: 2010-2020	125
5.4. Analysis	127
5.4.1. Articulation	127
5.4.2. Interpellation	139



5.4.3. Enaction	143
5.5. Conclusion	146
<b>CHAPTER 6: CONCLUSION AND FUTURE RESEARCH</b>	<b>147</b>
6.1. Introduction	147
6.2. Looking back	147
6.3. Looking forward	154
6.3.1. Future research	158
<b>Bibliography</b>	<b>164</b>
<b>Addendum A</b>	<b>191</b>
<b>Addendum B</b>	<b>192</b>
<b>Addendum C</b>	<b>193</b>
<b>Addendum D</b>	<b>199</b>
<b>Addendum E</b>	<b>201</b>



**List of figures**

Figure 1: Juxtaposition of rape as by-product and weapon of war	62
Figure 2: Reports of sexual violence in Syria	66

## Abbreviations

<b>ACDHRS</b>	African Centre for Democracy and Human Rights Studies
<b>ASF</b>	African Standby Force
<b>AU</b>	African Union
<b>AWD</b>	African Women's Decade
<b>CEDAW</b>	Convention on the Elimination of all forms of Discrimination Against Women
<b>CEWS</b>	Continental Early Warning System
<b>CSW</b>	United Nations Commission on the Status of Women
<b>CWC</b>	Chemical Weapons Convention
<b>DRC</b>	Democratic Republic of the Congo
<b>FEMNET</b>	Equality Now and the African Women's Development and Communication Network
<b>IIIIK</b>	Heidelberg Institute for International Conflict Research
<b>ICBL</b>	International Campaign to Ban Landmines
<b>ICC</b>	International Criminal Court
<b>ICJ</b>	International Commission of Jurists
<b>ICJ</b>	International Court of Justice
<b>ICRC</b>	International Committee of the Red Cross
<b>ISS</b>	Institute for Security Studies
<b>OHCHR</b>	United Nations High Commission for Human Rights
<b>OPCW</b>	Organization for the Prohibition of Chemical Weapons
<b>OSAA</b>	United Nations Office of the Special Adviser on Africa
<b>OTP</b>	Office of the Prosecutor
<b>PSC</b>	Peace and Security Council
<b>SDGEA</b>	Solemn Declaration on Gender Equality in Africa
<b>UN</b>	United Nations
<b>UNDPI</b>	United Nations Department of Public Information
<b>UNODA</b>	United Nations Office for Disarmament Affairs

<b>UNSC</b>	United Nations Security Council
<b>WDGG</b>	Women, Gender and Development Directorate
<b>WHO</b>	World Health Organization
<b>WiLDAF</b>	Women in Leadership and Development in Africa



# CHAPTER 1: INTRODUCTION

## 1.1. Context of the study

The Institute for Security Studies (ISS) (2010, p. 17) reported that the past 40 years have witnessed a continued scourge of violent conflict, civil war and human rights abuses across the African continent. Sub-Saharan Africa has been particularly prone to conflict (Migiros, 2013; HIIK, 2012, p. 30; OSAA, 2005, p. 7). The Rwandan genocide, the civil war in Burundi, Sierra Leone and Uganda, as well as the on-going conflicts in the Democratic Republic of Congo (DRC) and between Sudan and South Sudan, serve as some of the most prominent examples. These violent conflicts have significantly undermined the social, political and economic prosperity of African citizens, with women and children significantly bearing the burden of these conflicts.

Women and children are the most affected by conflicts because they often become the targets of sexual abuse by the enemy of their state (ISS, 2010, p. 17). Gender-based sexual violence is committed on an epidemic scale during periods of conflict, with millions of women and girls falling prey to rape, sexual slavery and genital mutilation.<sup>1</sup> Some analysts believe that these acts of gender-based sexual violence are a mere extension of the gender discrimination which is prevalent in societies during times of peace (ISS, 2010, p. 17). As most African states are characterized by patriarchal social systems, women are often oppressed, abused and exploited. During times of conflict however, the sexual abuse of women acquires a specific meaning and it is used as a weapon. It is meant to represent the defiling and dishonouring of a nation or group, or the feminization of one group of men by another group of men (Pettman, 1996, p. 50).

According to Meger (2011, p. 101), rape has always been a feature of war, however in recent times, its occurrence has increased. It is more frequently used as a systematic weapon by armed forces. Research has shown a decided shift in the nature of war and conflicts, from primarily interstate conflicts which are characterized by highly organized methods of warfare and weapons, to intrastate conflicts which are characterized by random acts of violence (Meger, 2011, p. 101, 107; Hutchful, 2008, p. 63). Kaldor (2006, p. 2) refers to these intrastate conflicts as 'new wars' adding that they are perpetrated primarily by guerrilla and counterinsurgency groups who target and intimidate civilians, abuse human rights, are dependent on private

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<sup>1</sup> In this study, genital mutilation will refer to the cutting off of women's sexual organs, such as their breasts.

funding, and are highly disorganized. These groups seek to overthrow governments to attain political power, or simply to act out criminal tendencies (Snow, 1997, p. 115). Munkler cited in Meger (2011, p. 107) contributes to this argument, claiming that in ‘old wars’ combatants comprised approximately 90 percent of casualties, whereas in ‘new wars’ civilians comprise approximately 80 percent of the casualties and 20 percent of casualties are combatants.

It is within this context that this study has been conducted. The body or organization primarily responsible for the resolution of violent conflicts, civil wars and human rights abuses across the African continent is the African Union (AU). Thus some of the key policy responses to the use of sexual violence during African armed conflicts have come from the AU and its related institutions.

The Organization of African Unity (OAU), the predecessor of the AU, was limited in its ability to intervene in the affairs of its member states and respond to the challenges facing the continent. The AU thus seeks to promote peace, development, cooperation and integration on the continent, by using its “right and power to intervene in the internal affairs of its member states in grave circumstances, such as war crimes, genocide and crimes against humanity” (Constitutive Act of the African Union, 2002, p. 5; Mathews, 2008, p. 33). The AU is also responsible for promoting and ensuring “respect for democratic principles, human rights, the rule of law and good governance” (Mathews, 2008, p. 33). The AU therefore rejects impunity, terrorism, political assassination, and unconstitutional changes in government. Essentially, it strives to promote acceptable living conditions for all African citizens on a continent that bears the burden of corruption, poverty and underdevelopment (Mathews, 2008, p. 33).

## **1.2. Problem statement**

The AU has developed an array of mechanisms, protocols and instruments to address the exploitation and abuse of women during periods of conflict (ISS, 2010, p. 17). Some of these instruments include: The *Constitutive Act of the AU* (2000); The *Solemn Declaration of Gender Equality in Africa- SDGEA* (2003); and the *Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa- ACHPRWA* (2004). However, the implementation of these instruments and protocols seems to remain a test to the AU. Some have argued that this is due to a lack of commitment by its member states (Parpart & Thompson, 2012, p. 181-182; ISS, 2010, p. 17). The slow ratification and implementation of the

ACHPRWA has been cited as an example of this poor political will; less than 50% of AU member states have ratified this protocol (Byanyima, 2008, p. 321).

Furthermore, the SDGEA requires that AU member states report annually on the progress they have made towards gender equality. However, very few member states have submitted these reports (ISS, 2010, p. 17). Byanyima (2008, p. 328) argues that one of “the greatest obstacle to the integration of a gender perspective into the work of the AU lies in the existing methods of work, which are old and deeply entrenched”. For example, the men (and women) who work within the AU may themselves have grown up in patriarchal societies and may hold to patriarchal traditions and notions (consciously or unconsciously).

These traditions and values may consequently influence the manner in which they approach the task of promoting gender equality on the continent and the manner in which war-time rape is perceived. It could perhaps also lead these men (and women) to turn a blind eye to certain practices or to accept certain practices, such as men violently beating women and children to ‘discipline’ them, claiming that these practices form an intricate part of their culture. They may also regard rape as an unavoidable feature of war. African women thus remain marginalized and discriminated against in both private and public spaces; especially during armed conflicts. This may be because men (and women), particularly those in positions of power, have not transformed the way they think about women and the role women should play in society (Byanyima, 2008, p. 321; Ratele, 2004, p. 1-2). This study hence seeks to understand this deep-rooted patriarchy and its contribution to the construction and use of rape as a weapon of war, specifically, how patriarchy prevents the delegitimization of rape as a weapon of war in the AU context.

This study does not suggest that rape is a legitimate weapon; it does however argue that rape is more than a war crime or inevitable by-product of armed conflict. The *Basic rules of the Geneva Conventions and their Additional Protocols* declare that combatants are expected to conduct themselves in a correct manner during hostilities and that the methods or means of warfare are not unlimited. It thus provides that combatants are “prohibited to employ weapons, projectiles and methods and materials of warfare of a nature to cause superfluous injury, particularly those which are intended to cause, or can be expected to cause widespread, long-term and severe damage to the natural environment”. By this definition, rape should be understood to comprise an illegitimate weapon because it causes unnecessary injury to women by using their bodies as

instruments of warfare. However, there is no specific treaty that recognizes and bans the use of rape as an illegitimate weapon of war.

This study acknowledges that war-time rape may occur for a number of reasons. Rape is sometimes attributed to the breakdown of societies and values during conflict or the ‘craziness of war’ (Baaz & Stern, 2008, 78). Rape may also be attributed to ‘boys being boys’ (Lopes, 2011, p. 7; Higate & Henry, 2004, p. 490). Combatants for example may rape as a means of bonding, recreation and to prove their masculinity. Goldstein cited in Higate (2003) argues that soldiers around the world seem to show a preoccupation with sex; particularly in times of war. This is attributed to the need of soldiers to satisfy their sexual urges or ‘needs’; reinforcing the perception that soldiers are macho, hyper-charged, sexually potent beings, who ‘need’ to express their maleness by means of sex (Møllmann, 2013; Lopes, 2011, p. 7-9; Higate, 2003). This is particularly so with African men/soldiers who are often perceived and represented as virile, beastly, adulterous and insatiable (Porter, 2013, p. 489-490; Baaz & Stern, 2008, p. 75; Baaz & Stern, 2009, p. 506). Universally, rape provides soldiers with an instrument to prove themselves as heterosexual, tough, and as ‘real’ men (Lopes, 2011, p. 3-4; Ricardo & Barker, 2008, p. 4).

Rape is, however, also used by armed forces as a strategic, cost-effective and meaningful weapon; a means to instil fear, humiliate, destroy, dehumanize and feminize. Military commanders may instruct combatants to use rape as part of their arsenal or ‘turn a blind eye’ when their combatants rape. Thus rape is used to cause injury just as a gun, knife or machete. This study hence argues that war-time rape can be said to comprise two distinct occurrences/constructions of rape: (1) as a by-product or consequence of conflict and (2) as a socially constructed and strategic weapon. I would like to suggest that when a distinction is made between these two constructions or uses of rape that occur during war-time, rape can be delegitimized as a weapon of war. This study acknowledges that war-time rape is a complex issue and that it may often be challenging to distinguish between rape as a by-product of violence and rape as a strategic weapon when it occurs during conflicts.

During 2008 the United Nations Security Council (UNSC) in *Resolution 1820* for the first time made a distinction between the widespread sexual violence during conflict, and the use of rape as a tactic of war that is used to “humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group”. This distinction (between rape as a by-product of conflict and rape as a strategic weapon) was welcomed by many women’s rights

groups working towards ending gender-based sexual violence during armed conflicts as a “much-needed step in the right direction” (OHCHR, 2008). Meger (2012) supports this distinction, arguing that there is a danger in an over-reliance on the blanket term “*rape as a weapon of war*” as it gives the impression that war is chaotic and senseless; when perpetrators may in fact have strategic goals in mind. She adds that the use of rape as an instrument of terror has a distinct function in civil conflicts.

This distinction is particularly insightful and useful to this study in understanding and defining how rape may be constructed and used as a weapon. Thus the understanding that this study will adopt is that rape is constructed as a weapon when political leaders, military or rebel commanders instruct that it be used, particularly against national or sub-national groups, for a number of strategic purposes.<sup>2</sup> In these instances, rape is used as a distinct military strategy. The term ‘*rape as a weapon*’ will thus be used to mean the perpetration of rape against civilians by armed forces, during interstate and intrastate armed conflicts for strategic political, social, economic and military purposes.<sup>3</sup> Furthermore, the terms ‘*rape as a weapon*’ and ‘*strategic rape*’ will be used interchangeably in this study. Strategic rape will thus be juxtaposed with rape that occurs as a by-product of conflict or the breakdown of values and societies during war. This study by no means regards one form of rape as more acceptable than another; however it will only focus on the delegitimization of strategic rape or rape as a weapon of war.

#### WESTERN CAPE

Moreover, the *UNSC Resolution 1325* (2000, p. 3) calls upon all parties to armed conflicts to respect international humanitarian law, particularly those pertaining to the rights and protection of civilian women and girls. The *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1949) in Part II, Article 3(1) provides that persons who are not engaged in the hostilities should be treated humanely, “without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria” such as political opinions or nationality or ethnicity. It thus in Article 3(1 a & c) prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment”.

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<sup>2</sup> These purposes will be discussed in Chapter Three of this study, when the construction of rape as a weapon of war is considered.

<sup>3</sup> This understanding is supported by the United Nations in UNSCR 1820 (2008) which states that sexual violence is a tactic of war when it is used against civilians and linked with military or political objectives and that serve (or intend to serve) a strategic aim related to the conflict.



Part III, Section I, Article 3 provides that “protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats”. It further states that: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. The *Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of Non-International Armed Conflicts*, in Article 13(2) also adds that civilian populations should not be the object of attack; “acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”.

The use of rape as a weapon of war exploits notions of honour, nationality, sex, dignity and humiliation, for the purpose of spreading terror, and subsequently violates these provisions of the Geneva Conventions. Yet, despite the provisions discussed above, rape is more often than not regarded and treated as an inevitable by-product of war (Meger, 2011, p. 101; Baaz & Stern, 2009, p. 498; Clifford, 2008, p. 3; Enloe 2000b, p. 134). As a result the use of rape as a weapon during armed conflicts (the second occurrence or construction) continues unabated and remains almost universally unaddressed and unpunished (Radhakrishnan, 2013).

This study argues that when rape is not recognized as a strategic weapon, it will be considered the spoils of war or collateral damage, and subsequently treated as such. Thus, the necessary steps to delegitimize rape as a weapon are not taken. This claim is supported by Jody Williams, the Nobel Laureate who was instrumental in the campaign to ban landmines, states that, “Rape doesn't just appear out of the ether. It happens because systems don't recognize the full rights of women, and, as such, then supports a continuum of violence against women and girls” (Tofte, 2013).<sup>4</sup> Not acknowledging and prosecuting rape as a strategic weapon which deprives women of the rights afforded them by international humanitarian law allows for the perpetuation of this

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<sup>4</sup> Together with five other Nobel Laureates, namely Shirin Ebadi, Wangari Maathai, Rigoberta Menchu Tum, Betty Williams and Mairead Maguire, Williams has started the *International Campaign to Stop Rape & Gender Violence in Conflict*. This campaign seeks to see rape delegitimized as a weapon of war. A similar campaign is the *Weapons Discrimination Project* which is being undertaken by the Global Justice Centre. This campaign also seeks to “have rape treated as an illegal weapon under the laws of war in order to ensure survivors’ rights to accountability and redress” and works towards the “dismantling the patriarchal and discriminatory political and legal structures that foster impunity for perpetrators of sexual violence in conflict and block avenues of justice for victims to seek redress” (Radhakrishnan, 2013). My research project will be carried out in recognition of these international campaigns.

practice. Strategic rape can only be delegitimized when it is sufficiently/explicitly acknowledged and addressed as a weapon of war.

This study proposes that the use of rape as a weapon should be considered with the same degree of seriousness or severity as chemical weapons and landmines; it should be categorised in the same class as these morally repugnant weapons. Chemical weapons and landmines have been delegitimized by specific treaty laws that are characterized by strong and decisive narratives. This study suggests that rape as a weapon of war warrants the same policy response. This sentiment was recently supported by Special Representative of the UN Secretary-General on Sexual Violence in Conflict, Zainab Hawa Bangura, who stated that, “It is time that rape is treated as a security issue with real consequences, not a second-class crime that happens to second-class citizens . . . [t]his war tactic is as effective as any bomb and as destructive as any mine, and it needs to be addressed with the same determination as any other deadly weapon used in war” (Radhakrishnan, 2013). Marianne Møllmann (2012) of Amnesty International also supports this argument, stating that there is ample precedent for the ban of rape as a weapon of war; as there was for the use of landmines, cluster bombs and chemical weapons.<sup>5</sup>

Furthermore, this thesis studies the existing norms pertaining to the use of rape during armed conflicts, with the intention of contributing to the construction of a new norm. It will argue that a stronger worded narrative can contribute to the creation of a new norm which considers rape as a strategic, deliberately used and illegitimate weapon of warfare. Akila Radhakrishnan from the Global Justice Center (2013) suggests that,

Not only would treating rape as a prohibited weapon/tactic of war be essential to deterrence and changing norms that legitimize war rape, but it would also bring victims a whole new set of rights. Individuals raped in conflict would have a right to accountability and reparations for their injuries from the use of an illegal weapon/tactic, which would be separate and in addition to their right to have perpetrators charged with rape as a war crime or crime against humanity, for instance.

It is in light of the claims that most of the world’s armed conflicts are taking place in Africa and that women are most affected by the atrocities committed during these conflicts that this research project considers the policy response of the AU to the use of rape as a weapon of war. In

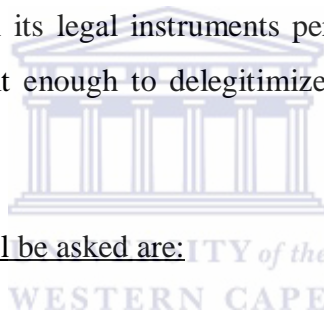
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<sup>5</sup> Refer to Addendum A for a list of international humanitarian treaties.

essence, this study will consider African solutions to African problems; a phrase often used by AU officials, African leaders and African academics. Various African regional economic communities (RECs) have their own policies relating to sexual violence and gender equality; this study, however, will only focus on the AU's policy response, in particular the narratives used to frame these responses. This study will investigate whether the AU regards rape as a strategic weapon of war or as by-product of conflict and a war crime; whether its protocols and policies make a distinction between these forms of war-time rape. It will examine whether the AU by means of its narratives contributes to the changing of norms and perceptions regarding war-time rape. This study will consider how patriarchy may influence these AU narratives and the delegitimization of rape as a weapon of war.

### 1.3. Research question

The study thus aims to answer the following research question: Are the narratives used by the African Union (AU), particularly in its legal instruments pertaining to peace and security and human rights, sufficient and explicit enough to delegitimize rape as a *weapon of war* during armed conflicts in Africa? <sup>6</sup>



#### 1.3.1. The sub-questions that will be asked are:

- What is war-time rape?
- How is rape constructed as a weapon of war?
- Why and when is rape used as a weapon during African armed conflicts?
- What are the international norms regarding other illegitimate weapons, e.g. landmines and chemical weapons?
- What are the international norms regarding the use of rape as a weapon of war?
- How do these international norms find expression in the AU narratives?
- Does patriarchy find expression in the AU narratives?
- Does the AU acknowledge that rape is used as a strategic weapon during armed conflicts?

### 1.4. Research objectives

The objectives of this study are to:

- Explore the role of patriarchy in the construction of rape as a weapon of war;

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<sup>6</sup> This study does not argue for a more explicit description of rape, but rather, a more explicit acknowledgement that rape is used as a strategic weapon.

- Highlight the work of the AU and PSC on the African continent, with specific regard to addressing rape as a weapon of war;
- Determine whether the instruments and protocols provided by the AU are sufficient to ensure that rape as a weapon of war is delegitimized; and
- Question whether the AU narrative reinforces patriarchy, be it consciously or unconsciously, thus allowing for the perpetuation of strategic rape.

## **1.5. Proposition of the study**

It is proposed that the narratives used by the AU, particularly the *Protocol relating to the Peace and Security Council* and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women*, and other relating documents, are not explicit or stern enough to delegitimize rape as a weapon of war. These protocols do not acknowledge that rape is constructed or used as a strategic weapon, but portray rape as a by-product of armed conflict. Furthermore, these protocols do not explicitly and sufficiently raise the severity of strategic rape to the level of other morally repugnant weapons such as landmines and chemical weapons, or sufficiently provide for the punishment of perpetrators; which subsequently contributes to the perpetuation of rape as a weapon of war. This study does not argue for explicitly graphic descriptions of rape in the AU narratives as this may produce what Pettman (1996, p. 104) refers to as war pornography or 'warnography'. Rather, it argues for a narrative that explicitly acknowledges patriarchy and its contribution to the construction and perpetuation of rape as a weapon of war, and subsequently rejects the use of this weapon. This study proposes a stronger worded narrative similar to that which was used in treaty law to delegitimize landmines and chemical weapons.

### **1.5.1. Theoretical framework**

The theoretical framework is couched in feminist theory.

#### *1.5.1.1. Feminist Theory*

Bennett (2006, p. 8) explains that feminism is the belief that women and men should be afforded an equal opportunity to realize their full humanity. Many negative connotations have been attached to feminism, where it is simply an argument which states that women should enjoy the privileges of full human rights as men do. Furthermore, Smith cited in Bennett (2006, p. 13)

argues that feminism is “the political theory and practice to free all women; women of colour, working-class women, poor women, disabled women, Jewish women, lesbians, old women, as well as white, economically privileged, heterosexual women.” Feminism bases this argument on the belief that women face a relative disadvantage to men in social, political and economic circumstances encountered on a daily basis (Bennett, 2006, p. 10). Feminism is based on the premise that women have historically been oppressed, exploited and abused by men (Bowden & Mummery, 2009, p. 1). Feminists however believe that men and women can engage in meaningful relationships, be it professional or social.

Although all feminists cannot be put under one umbrella, the various types of feminist theories all serve to overcome gender inequality and oppression. I have considered a number of feminist theories (such as Marxist/Socialist Feminist Theory, Radical Feminist Theory and, Third World and Black Feminist Theory). However for the purpose of this study I will only engage with *Liberal Feminist Theory* and *Feminist International Relations Theory*. I will juxtapose these two theories to gain insight into the international and AU policy response to the use of rape as a weapon of war. These theories will now be discussed.

#### 1.5.1.2. *Liberal Feminist Theory*

Liberal feminist theory is a broad and evolving theory; and there is disagreement on numerous points or issues (Stanford Encyclopedia of Philosophy, 2013; Tong, 2009, p. 11, 39). However, liberal feminist all agree that women should be freed from oppressive gender roles and social structures which favour men over women. Liberal feminism focuses on the individual rights of women, seeking equal opportunities and privileges for men and women (Tong, 2009, p. 34; Evans, 1995, p. 2). Liberal feminists have thus come to be regarded as “equality feminists” as they seek to end women’s exclusion and under-representation in all spheres of life (Stanford Encyclopedia of Philosophy, 2013; Pettman, 2005, p. 673). They propose that men and women should be able to live their lives in the manner they wish; provided that it does not infringe on the rights of others. Women (and men) should be able to choose their sexual orientation, their occupation and the extent to which they want to be involved in public life.

Mary Wollstonecraft (cited in Tong, 2009, p. 13-14), an eighteenth century philosopher and advocate for women’s rights, argued that men and women should be afforded the same opportunities for rational and moral development. Men and women should have the same access to education and decision-making positions; women should be able to attain their full human

potential just as men (Bennett, 2006, p. 8). Wollstonecraft argued that only when this happens, will men and women be truly equal. John Stuart Mill, cited in Tong (2009, p. 16-17) a philosopher who wrote a century after Wollstonecraft, adds that women should also be provided with a full spectrum of political and economic rights. He argued that some women can do anything men can do, thus women should not be kept from participating in the public spheres of life. He believed that the legal subordination of one sex is wrong and a significant hindrance to human development; that gender inequality should be corrected by ensuring that power or privilege is not attributed to only one group/sex (Mill, 1869, p. 17).

These arguments presented by Wollstonecraft and Mill form the primary tenets of liberal feminism. Liberal feminists advocate for rationality, autonomy, freedom, equality, fairness and justice. During the twentieth century, the political and economic demands by liberal feminists grew. The National Organization for Women (NOW) was established in the United States and the feminist movement spread throughout the world. NOW called for rights to contraceptives, abortion, maternity leave, fair wages and sexual equality; it called attention to individual rights. This organization emphasized women's right to choose their careers over having families. This group of liberal feminists argued that women can be as successful as men in the workplace and should be treated as equals by their male colleagues and superiors. Some feminists who belonged to NOW also believed that men and women are androgynous, thus gender and sexual orientation should be determined by individuals. Although many liberal feminists disagreed on certain points (such as androgyny) and how to handle hurdles pertaining to gender equality, they agreed that structural and attitudinal impediments continue to hinder women's progress (Tong, 2009, p. 35).

Liberal feminism may further be divided into two types: classical and welfare (Tong, 2009, p. 35). Classical liberal feminists focus on the advancement of the political and legal rights of women. Welfare liberal feminism on the other hand regard matters related to housing, education, health care and social security as most important for ensuring gender equality. Despite their difference in focus, Evans (1995, p. 37) suggests that all forms of liberal feminism promote for the advancement of women and their rights.

Furthermore, liberal feminists generally advocate that women should be free from the threat of violence and that the state is primarily responsible for the protection of women and their dignity (Stanford Encyclopedia of Philosophy, 2013). They argue that state power should be used for

feminist ends; state resources and infrastructure should be used to ensure gender equality. Liberal feminists suggest that states should thus put in place gender quotas to ensure proportional representation of men and women. Women should also be given equal opportunities for employment, in an attempt to address the 'feminization of poverty' by materially improving the lives of women (Evans, 1995, p. 16). The state should further enact laws prohibiting sexual harassment in the workplace and policies to remedy past and ongoing discrimination (Stanford Encyclopedia of Philosophy, 2013).

Liberal feminists thus argue that women should be brought into the important spheres of modern life, such as politics, economics, education and religion (Whitworth, 1997, p. 12; Tickner, 1992, p. 15). They argue that women have been under-represented (particularly in international institutions, policy making processes and the economy) and should thus be incorporated, and allowed to fully participate in public life. One reason given for the exclusion of women is that they have been socialized differently from men. Girls are socialized to behave passively and partake in feminine activities (such as cooking and cleaning), while boys are socialized to be aggressive and physically strong (Tong, 2009, p. 36). By extension then, fields such as international relations, security, trade, military studies, and arms control, have been regarded as men's territory. Another reason for women's exclusion from public, economic, political and social life is to keep men in positions of authority (Whitworth, 1997, p. 13). Moreover, women have been systematically discriminated against by means of legislation that excludes them from employment opportunities and decision-making roles. Thus the call to 'bring women in' to public life is made from the premise that women were never there; making a clear distinction between the public and private spheres of life (Bowden & Mummery, 2009, p. 18; Whitworth, 1997, p. 14).

Other feminists (international relations feminists in particular) conversely argue that women have always been part of private and public life, just playing different or less visible roles to men (Whitworth, 1997, p. 14-15). These feminists ask 'where are the women?' (Enloe, 2000a, p. 7; Pettman, 2005, p. 584). An investigation into this question often reveals women working in factories, as secretaries, as maids and childminders, as nurses or cooking staff, or as housewives. These feminists thus call for the recognition of the contributions made by women to modern life; their contributions in the military, medicine, science, education, politics and the international system. Moreover, liberal feminists assert that gender equality can be achieved by placing more women in the existing national and international decision-making structures; which will

consequently lead to policies that eliminate the practice of sexual violence, inequality and bias (Whitworth, 1997, p. 16; Zalewski, 1993, p. 15).

Liberal feminism has however been criticized by some as encouraging women to act like men in order to gain more power and privilege, or success when placed in decision-making positions (Tong, 2009, p. 37). Jagger, cited in Tong (2009, p. 37) for example argues that the rational, free and autonomous self described by liberal feminist is a description of the 'male' self. Jagger further laments that liberal feminisms focus on the individual ignores human interdependence and the importance of communities. She argues that liberal feminism focuses on money and political power, forgetting intangible resources such as love and belonging (Tong, 2009, p.40).

Elstain, cited in Tong (2009, p. 40) adds to this critique stating that liberal feminism provides no way of creating real communities and places high value on male qualities. She argues that liberal feminism claims that women should want to become like men and that they can become like men; it over-simplifies what can and should be done to improve the lives of women (Tong, 2009, p.41). She says that liberal feminism ignores the valuable roles played by women in societies and over-estimates the amount of women who want to become like men.

Other critics of liberal feminism add that this theory does not address the issues of black or working-class women (Tong, 2009, p 43). These critics argue that liberal feminism relates primarily to white, well-educated, upper middle class and wealthy women. Neither does liberal feminism acknowledge the need to change patriarchal social systems (Tong, 2009, p 43). Some have said that this theory does not acknowledge the need for system or institutional reform, but simply seeks to place women in existing institutions. As Zalewski (1993, p. 15) puts it, liberal feminists take a "add women and stir" approach to gender equality. Thus, it is argued that liberal feminist theory fails to address patriarchal social structures and how these may impact on women's decision-making capability and behaviour.

Liberal feminism permeates international instruments developed to improve women's positions around the world. Although it will not be used to frame the investigation and steer the analysis, the theory is important to understand and critique AU instruments that pertain to war-time rape.

#### *1.5.1.3. Feminist International Relations Theory*

Feminist international relations (IR) theory became popular in the 1980s, as a response to women's widespread exclusion from mainstream international relations: war, diplomacy,



economic trade and the affairs of the state (Tickner, 1997, p. 611). These feminists argue that main-stream IR theory remains largely silent on gender; it does not take gender seriously or consider it relevant to the study of security and conflict (Parpart & Thompson, 2012, p. 177; Carpenter, 2002, p. 153-154). Feminist IR theory criticizes IR's masculine, state-centric focus (Tickner, 1997, p. 615). These feminists hence sought to create awareness around the various roles played by women in the international system; their contributions to the international system as diplomatic wives, workers on military bases, farm workers, sex workers, missionary teachers and tourists (Enloe, 2000a, p. 48). This was done to challenge thinking regarding what IR is really about, and who should be included and excluded in the study of international security, economics and politics; what the legitimate subject matter of this field should be (Tickner, 1997, p. 616). Feminist IR theorists thus argued that the inherent masculinity of IR as a discipline perpetuates gender inequality. They claim that IR as a field of study devalues and excludes everything and everyone perceived as feminine, and by this token, women.

Feminist IR theorists believe that gender is more than the categories of men and women. They put forth that gender relates to the categories of masculinity and femininity, and the power and privilege attributed to each of these categories (Carpenter, 2002, p. 155; Tickner, 1997, p. 614). They argue that masculinity and femininity are socially constructed, and thus seek to understand how these distinctions (masculinity and femininity) influence the lives of men and women in the international system. Feminist IR theorists further seek to understand how gender shapes international relations or the global political economy. They believe that gender hierarchies (which are detrimental to women, effeminate men, gay and lesbian persons) have an overt influence on the behavior of states and thus warrant investigation (Keohane, 1998, 193-194; Tickner, 1997, p. 619). These feminists call for IR to be studied from a *gendered lens* and with a *feminist consciousness*, which they argue would allow for a deeper understanding and discussion on issues pertaining to gender inequality and insecurity. Enloe (2007, p. 102-103), for example, argues that the IR discipline does not recognize or value the actions and experiences of women (or effeminate men) and thus excludes them from important discussions which affect their lives in tangible ways.

Not only does feminist IR theory challenge understandings of gender, but it questions the role of the state as the provider of security – a clear departure from liberal feminist theory. IR feminists argue that regarding the state as the primary provider of security allows for the reinforcement of dichotomies such as protector/protected, strong/weak, rational/emotional and public/private

(Tickner, 1997, p. 614). These dichotomies subsequently perpetuate gender inequality as qualities perceived as masculine are valued, while qualities perceived as feminine are devalued. These dichotomies create misleading stereotypes about men (as strong, rational, protectors) and women (as weak and vulnerable) which are exploited for social, political and economic gains (Keohane, 1998, p. 194).

States are thus provided with an excuse to wage war, in the name of proving their masculinity and protecting their vulnerable women and children (Tickner, 1997, p. 627). A sub-field within IR feminism called *feminist anti-militarism* has subsequently been developed in response to this state-centric, militaristic thinking. This sub-field opposes weapons of mass destruction and argues that gender distinctions are the reason for militarism and war (Cohn & Ruddick, 2003, p. 4-5). IR feminists thus ‘investigate how military conflict and the behavior of states in the international system are constructed through, or embedded in, unequal gendered structural relations and how these affect... individuals, particularly women’ (Tickner, 1997, p. 616).

Feminist IR theorists are also critical of the construction or understanding of security in mainstream international relations. They argue that security means different things to different people; that men and women experience security or insecurity in distinctly different ways. They also maintain that men and women approach security from different perspectives; however, this does not necessarily mean that women are more peaceful than men. Ruiz (n.d., p. 3-4) thus adds that the following questions should be asked when considering state security, foreign policy and a state’s pursuit of its national interest: “who is defining the national interests? If women were included in such discussions, would the national interest be interpreted differently, and if so, how? How would the definition of ‘security’ change? Would military and defence capabilities still be atop the agenda? Would women necessarily be less militaristic in their approach to IR issues?”

Furthermore, feminist IR theory is also concerned with documenting and understanding the representation of women in national and international legislation (such as treaties and conventions), and how this representation affects women (Whitworth, 1997, p. 24). This approach calls for more than simply including women or changing previously discriminatory legislation, as liberal feminists argue, but investigating how men and women are represented in international legislation; and why they are represented in the ways they are. This approach seeks to understand by whom notions of masculinity and femininity have been created, sustained and

legitimized in a manner that ensures that women remain under-represented and marginalized; it is an investigation into patriarchal social arrangements and institutions. Feminist IR theorists ask how ideas “about the appropriate relationship between women and men, about appropriate roles of women in society, about what it is to be a man or woman, feminine or masculine, inform the practices of particular actors and institutions” (Whitworth, 1997, p. 24). They claim that an understanding of what are considered to be appropriate (or inappropriate) relationships between women and men can be gained through examining social practices and norms, particularly the *discourse* or *narrative* used by international actors and institutions.

Feminist IR theorists further ask questions about the ideological and material relationship between women and men. MacKinnon, cited in Whitworth (1997, p. 25) explains that, “Femininity is a lowering that is imposed; it can be done to anybody and still be what feminine means. It is just to women whom it is considered natural”. Feminist IR theorists thus argue that gender is used to construct inequalities between women and men to keep men in positions of power and privilege. Power relationships do not emerge by themselves, but by the deliberate efforts of actors in strategic positions; social relations are always constructed to benefit a particular group for a particular reason (Cox cited in Tickner, 1997, p. 619; Whitworth, 1997, p. 18). Feminist IR theorists also argue that most key actors in international relations (diplomats, policy makers, heads of state and academics) are males who have grown up in patriarchal societies and thus lack consideration for women’s roles in world politics (Ruiz, n.d., p. 1). Hence feminist IR theorists use the lenses of gender and patriarchy to analyse how women have been excluded from and marginalized in international relations.

Feminist IR theory has been criticized for its primary focus on women in the international system (Carpenter, 2002, p. 156-159). This theory deals primarily with the emancipation of women, failing to deal explicitly with men’s need for emancipation from patriarchal social structures. Women and children are primarily described as the casualties or victims of war, and gender-based violence is seen primarily as violence against women (Carpenter, 2002, p. 157). Thus this theory fails to acknowledge that men too can be victims during armed conflict; men can also be sexually abused, internally displaced and forced to become refugees. This theory is said to focus too much on how women experience the world and war and not enough on men’s experiences; especially men who are feminized and marginalized. Furthermore, this theory is criticized as shutting out those who are interested in gender studies but who do not see themselves as feminists per se. Carpenter (2002, p. 156) states that often “scholars who have

engaged or even used gender in their work without subscribing to the feminist agenda have received an icy reception from feminists”.

Based on a preliminary review of the literature on the research topic, feminist IR theory appears to be the most appropriate approach to use for conducting the study; despite the critiques mentioned above. It calls for more than the simple inclusion of women into international institutions and does not assume that all women experience life in the same way (as liberal feminism is said to); but seeks to understand the logic behind gender stereotypes, discriminatory traditional practices and gender inequalities. As Tickner (1997, p. 621) states, adding gender as a category of analysis goes beyond simply adding women, but seeks to transform knowledge and the international system. This approach hence allows me to investigate why certain meanings are attached to the bodies of women; how, why and by/for whom these sexualized meanings are constructed. This in turn informs my investigation of how rape is constructed as a weapon of war. This approach further assists me in understanding the association dichotomies of men/women with respect to war/peace, strength/weakness, and international/domestic relations, as well as whether women fulfil the gender stereotypes and traditional roles ascribed to them by these dichotomies. It also allows for insight to be gained into how norms become entrenched; especially how the norms regarding war-time rape have come to be accepted as such. Feminist IR theory thus frames the investigation into the significance of the AU’s policy response to the use of rape as a weapon in armed conflicts across the continent.

## **1.6. Research methodology**

The study is an exploratory study, which uses primary and secondary data. I make use of existing literature, such as books, journal articles, newspaper articles, media reports, internet sources, speeches, and official AU documentation, policies, protocols and statements. The study is conducted from a social constructionist paradigm, as it studies socially constructed realities, various discourses and consequent power relations. The study considers the impact of the AU narratives concerning war-time rape on the delegitimization of rape as a weapon of war. Although this study draws on and examines international legal instruments, it is not be a legal analysis. This study is a discourse analysis that looks at the narrative of these legal documents as they apply to strategic rape.

This study is qualitative in nature. Qualitative research projects aim to study, interpret and understand the experiences and social realities of individuals and groups. It focuses on “subjective meanings, definitions, metaphors, symbols, and descriptions of specific cases” in an attempt to “capture important features of the social world” (Neuman, 1997, p. 329). Qualitative methodology allows one to obtain and interpret information about the “values, opinions, behaviours, and social contexts” (Family Health International, 2005, p. 1). Essentially, qualitative methods enable researchers to understand how power, norms and relationships are constructed and function in the international system. This approach assists in the development of my understanding of social constructions such as sex, gender, patriarchy, security, norms and narratives. It further assists me in understanding the meanings attached to the bodies of men and women, as well as the meanings ascribed to nations, international institutions and weapons.

The qualitative approach aims to answer questions about the ‘what’, ‘how’ or ‘why’ of a social phenomenon (Brikci & Green, 2007, p. 3). This approach provides for the collection of data in written or spoken language, the formation of observations about the data and the analysis of the data in categorized themes (Durrheim, 1999, p. 40). This methodology will hence allow me to observe how rape is constructed as a weapon and why it is used. It will also enable me to investigate what the response of the international community and the AU to the use of rape as a weapon is; what themes emerge from these policy responses. My observations will allow me to draw inferences about the international and AU policy response to the use of strategic rape; what these responses mean.

Qualitative methods include the construction of textual descriptions about how people experience their social, economic and political realities. It provides descriptions of the ‘human’ side of an issue – which often comprises complex behaviours, beliefs, opinions, emotions, and relationships (Family Health International, 2005, p. 1). Hence this methodology assists me in understanding and describing human agency in the international system; and whether actors always play the roles they are ascribed.

Qualitative methodology also provides for the deconstruction of texts. I thus deconstruct the AU narratives regarding war-time rape. This is done through textual and feminist/discourse analysis, making use of content analysis and historical precedents to interpret research findings. Content analysis is “a research technique for making reliable and valid inferences from texts to the contexts of their use” (Krippendorff, 2004, p. 18). It is a tool with which researcher seeks to

answer a research question in a manner that will allow others to reach the same conclusions/findings. It entails the analysis of a body (or bodies) of text, during which the researcher considers the *content* and *context* of the text in order to make sense of (interpret) said text. The researcher then proceeds to make inferences that will answer the research question, as well as validate or refute the proposition of the study.

Qualitative researchers assume that it is impossible to remove all forms of bias, or completely eliminate the researcher's feelings, from a research project (Neuman, 1997, p. 333). Although it is possible to use certain mechanisms and techniques to guard against personal opinions, feelings, beliefs, previous assumptions and experiences influencing the study, the researcher's presence is always implicit (Neuman, 1997, p. 334). Even the choice of research methods demonstrates the researcher's bias towards certain methods. This however does not mean that the researcher arbitrarily interjects their personal opinions (Neuman, 1997, p. 334). I am thus keenly aware that my personal experiences, opinions and perspectives as an African woman who has grown up in a patriarchal society, may have influenced this study. My knowledge of the high levels of sexual violence and gender discrimination prevalent in South Africa may also have influenced this study.<sup>7</sup> With the chosen research design however, I aim to prevent the study from taking any overtly, biased positions that may influence the findings of this research project.

#### 1.6.1. Relevance and significance of the study

Tickner (2006, p. 22) argues that in order for feminists to make valuable and determinative research findings, they should focus on the questions that are usually not asked by men, to discover how and why these issues affect women. Hence, this study seeks to highlight the relationship between the narrative used in AU documents, patriarchy and rape as a weapon of war. This relationship is not often questioned, as it is assumed that rape is a normal occurrence during armed conflicts. This study seeks to understand how and why rape has come to be considered a normal by-product of armed conflicts (particularly in Africa) and whether the AU narratives contribute to the maintenance of this perception in any way.

Furthermore, feminist research must be useful to women (Tickner, 2006, p. 25). Feminists should conduct research that will enable women to improve their living conditions and overcome the oppressive conditions and structures they face. Using a picture of present social conditions,

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<sup>7</sup> See Rape Crisis (2014), IRIN News (2013), Pillay (2013), Mabuse (2012) and Medical Research Council (2009).

feminist research should map the way to deconstruct previous knowledge and assumptions about gender. This study hopes to contribute new insight into how existing knowledge can be deconstructed to improve the lives of ordinary African women. This is done by means of deconstructing the narrative used in AU documents to gain insight into how rape may be delegitimized as a weapon of war.

Lastly, feminist research should be conducted with the ultimate goal of social change (Tickner, 2006, p. 28-29). Feminists should aspire to contribute to the transformation of the international system. This study therefore seeks to provide recommendations to the AU, based on the findings of the proposed study, regarding how the narrative used in its documents could contribute (or further contribute) to the delegitimization of rape as a weapon of war.

#### 1.6.2. Feminist analysis in International Relations (IR)

According to Enloe (2007, p. 99), feminism consists of a number of complex understandings regarding how power operates, how it is legitimized, how it is perpetuated, how and to whom it is distributed, and how it is used. A feminist analysis of international relations (IR) would therefore seek to assess these questions about power, as they pertain to gender. A feminist analysis would entail the asking of questions regarding the power dynamics at play between men and women, both in public and private spaces. It would investigate the power relationships between men and women which flow from the complex relationships between femininities and masculinities. Essentially, a feminist researcher would seek to understand the relationship between power, femininity and masculinity in the international system; acknowledging that all of these are socially constructed (Enloe, 2007, p. 100). A feminist analysis must always display a “perpetual interest in the uses and consequences of power” (Enloe, 2007, p. 101).

This study, by means of a feminist analysis, investigates how power and privilege is created and sustained by the AU narratives. The research conducted seeks to establish “what forms power takes, how exactly is it wielded, who wields power, who gains by it and who is silenced by it, or excluded, marginalized or oppressed by it, and who is able to contest and resist those uses of power, and how” (Enloe, 2007, p. 101). This study aims to evaluate the AU narratives, asking whether they empower men and women who seek the delegitimization of rape as a weapon or dis-empower them by perpetuating patriarchy and (consequently) the use of rape as a weapon of war. To whom do these documents give power, perpetrators or victims? How do those who write the narrative or these documents use their power, and for what purpose? By conducting a

feminist analysis, this study seeks to explain how the narrative used in AU documents does or does not mitigate the use of war-time rape as a weapon of war. This study is essentially an investigation into the workings of power when rape is used as a weapon, and the AU's policy response to the use of this weapon.

### **1.7. Outline of chapters**

The thesis will be structured as follows:

*Chapter 2:* This chapter further outlines the theoretical framework of this study. It deals with the social construction of narratives, norms, sex and gender, patriarchy, security and insecurity, building on the discussion in chapter of Feminist IR Theory. This chapter argues that the variables being studied in this project are socially constructed and may subsequently be reconstructed; thus the perception that rape is a normalcy in armed conflicts or ideas regarding the use of rape as a weapon may be reconstructed by means of tools such as narratives. This chapter will therefore explore how narratives work to construct and reconstruct norms.

*Chapter 3:* This chapter discusses patriarchy in Africa and demonstrate the role it plays in the construction of rape as a weapon of war; it will assert that patriarchy creates an environment in which the perpetration of sexual violence is acceptable or considered to be 'normal'. Prominent international examples of war-time rape will be discussed, as a means of providing background to the use of rape as a weapon in African armed conflicts. This chapter also puts forth an in-depth discussion of how rape is constructed as a weapon and why it has become such a prominent feature of warfare in Africa. Furthermore, it problematizes women's agency and victimhood in armed conflict.

*Chapter 4:* This chapter discusses the delegitimization of morally repugnant weapons such as landmines and chemical weapons. The chapter considers the international policy response to war-time rape (in the form of United Nations Security Council resolutions) and the stereotypes which characterise the narrative of these documents. This chapter argues that by re-stating stereotypes which classify women as weak, vulnerable and in need of protection by men, they continue to be treated as such; these stereotypes manifest in practice. Thus it is argued that there should be an attempt to do away with stereotypes which limit the role women play in the international system and in Africa.



*Chapter 5:* This chapter discusses the narrative used in AU protocols and policies relating to sexual violence, especially during armed conflicts. This discussion is guided by a model used in the theoretical framework (Chapter Two), which speaks about the articulation, interpellation and enactment of norms that are socially constructed by means of narratives. This chapter hence addresses what is articulated in AU documents, then proceed to consider what norms the AU seeks to get its member states to enact; as well as to what extent it has been successful in doing so.

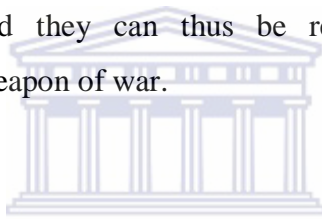
*Chapter 6:* This chapter serves as the conclusion and provides suggestions for the way forward. It argues for the narrative of AU protocols and policies to be similar to that used in treaty law which delegitimizes chemical weapons and landmines. It also argues for a policy which specifically and explicitly recognizes, rejects and delegitimizes rape as a weapon of war.



## CHAPTER 2: THE SOCIAL CONSTRUCTION OF NORMS, NARRATIVES, GENDER AND INSECURITY IN THE INTERNATIONAL SYSTEM

### 2.1. Introduction

In this study I investigate whether the AU narratives (its peace and security and human rights protocols) are sufficient and explicit enough to delegitimize rape as a weapon of war during armed conflicts in Africa. An essential part of the investigation is to clarify conceptually what narratives are, along with norms, gender, security and rape. This chapter will thus clarify these concepts. These concepts are essential vocabulary for forming a proper understanding of how rape is constructed and used as a weapon during armed conflicts, as well as the AU's response to the use of this weapon. The study proceeds from the point of view that human reality is socially constructed and thus can be deconstructed and reconstructed as Feminist IR theory would suggest. Sex and gender, patriarchy, security and insecurity are equally socially constructed through narratives and norms and they can thus be reconstructed to understand (and delegitimize) rape as an abhorrent weapon of war.



### 2.2. Norms and the social construction of reality

The meaning of 'norm' and what it constitutes is widely contested. According to the *Blackwell Dictionary of Twentieth-Century Social Thought* a norm is generally understood as an expected pattern of behaviour or socially acceptable behaviour; including social habits and rules, traditions, customs or conventions (Outhwaite & Bottomore, 1993, p. 425). Norms may further be understood as *predictive* expectations (what behaviour will actually take place) and *normative* expectations (beliefs about behaviours that should take place) (Outhwaite & Bottomore, 1993, p. 425). Based on this definition, it may be deduced that norms relate to *how things ought to be* and *what people ought to do*.

Carlsnaes, Risse and Simmons (2002, p. 143) in the *Handbook of International Relations* concur that norms may be defined as the regularities of behaviour between actors in the international system or various cultures. They also assert that norms reflect actual patterns of behaviour and

give rise to expectations of what actions should take place in particular situations.<sup>8</sup> Chayes and Chayes, cited in Carlsnaes, Risse and Simmons (2002, p. 143), add that norms include prescriptive statements, rules, standards, principles which determine the choices people can make or actions they can take in various situations. It attaches a sense of obligation to actors in the international system; a sense of obligation to self or to others. Therefore a norm may be described as a “prescribed pattern of behaviour which gives rise to normative expectations as to what ought to be” (Carlsnaes, Risse & Simmons, 2002, p. 143). This is the definition of norms that will be used in this thesis.

Constructivists offer many explanations for how norms come to be regarded as such. They declare that the social ideas, attitudes and perceptions that prevail in the world and different societies are socially constructed (Kegley, 2009, p. 39-40; Wendt, 1995, p. 71-72). They focus on the ideas and beliefs that inform actors on how they should behave in the international system, as well as the shared understandings between actors (Jackson & Sørensen, 2007, p. 254; Carpenter, 2002, p. 162). According to Durkheim, cited in Ruggie (1998, p. 858), the way people view the world and the relationships that take place therein is moulded by the social pressures and perceptions they encounter daily within the reference groups to which they belong; such as their families and society at large. Moreover, constructivists believe that one cannot understand the behaviour of actors without considering the social significance and meanings attached to the social structures through which they act. In other words, material conditions (such as money and education) and structures acquire meaning through shared knowledge and the manner in which they are used by actors (Jackson & Sørensen, 2007, p. 254; Phillips, 2007, p. 60; Whitworth, 1997, p. 67, 74; Wendt, 1995, p. 73-74).

These socially constructed ideas, perceptions and attitudes are then translated into norms. It can thus be said that norms are produced by the beliefs and perceptions that are prevalent in a particular society; norms are socially constructed. For example, how a community or state regards rape during peace time will inform whether it will be regarded as a ‘normal’ or an unacceptable weapon during conflicts. Constructivists view all behaviour as norm-driven, with states seeking correspondence between their own actions and what is considered legitimate behaviour internationally (Jackson & Sørensen, 2007, p. 257; Phillips, 2007, p. 63; Wendt, 1995,

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<sup>8</sup> Norms thus relate to all forms of social interaction and practices, such as the roles men and women should play in armed conflicts, society (public) and the home (private).

p. 74). Norms will determine how states go about furthering their interests in the international system. It will not only influence how states relate to other states, but also how they relate to their own citizens. If norms are then socially constructed and all behaviour is norm-driven, they possess the ability to be changed for a variety of reasons or outcomes (Kegley, 2009, p. 40; Wendt, 1995, p. 73).

Norms may be reconstructed by those in positions of power to form more acceptable social practices. For example, if strategic rape has become tolerated in a particular state or region, this norm may be changed by those in positions of power (such as AU officials, policy makers, political leaders and heads of state). Reconstruction may be achieved by formulating policies which outlaw the use of rape as a weapon of war. However, norms may also be changed by persons who are not in positions of (official) power (such as women's groups and human rights activists) by contributing to the creation of awareness by means of their activism. They possess the ability to question norms and thus challenge them.

Towns (2010, p. 42) adds to this debate that norms are central components of the international system, not only informing actors on how they should behave (as constructivists claim), but contributing to the actual construction of actors in the international system. Thus Towns (2012, p. 42) defines norms as “social standards for the proper behaviour of actors of a stipulated identity (with identity never being given but always in-the-making)”. She goes on to define identity as “the social meaning and practices through which an actor becomes distinctively recognizable or known as such, enabling the becoming of an acting ‘self’” (Towns, 2010, p. 43).

Essentially, identity is the demarcation of how a particular actor can and should act in the international system. This demarcation of identity, and subsequently behaviour, is what has come to be understood as norms. It is the behaviour which is indicative of a particular actor or group of actors. It can thus be said that the relationship between acceptable behaviour and identity is reciprocal. For example, norms dictate how women in particular societies should behave, both in private and in public; in other words, what roles are acceptable for women to assume in society. Certain practices, for example domestic work and child-care, become synonymous with women; it becomes a norm. Norms thus speak to the construction of gender which will be discussed later on.

Norms regarding acceptable and unacceptable behaviour for actors in the international system subsequently lead to social hierarchies. This is because norms not only stipulate behaviour but attach certain values to actors and their behaviour. Towns (2010, p. 44) claims that “norms are essentially about value, as they validate certain kinds of behaviour for specific sorts of actors and devalue other sorts of behaviour”. Herein lies the primary force of norms, that they are able, not only to differentiate between actors and their behaviour, but that they determine the value of actors and their behaviour. As constructivists would argue, norms dictate what normal and abnormal behaviour is, what is desirable and undesirable, and what best practice is (Townes, 2010, p. 45). This validation and devaluation of actors and behaviour thus allow actors to make assessments of each other. These assessments are open to contextual reinterpretation and contestation as norms in themselves are subjective, as a result of their being socially constructed; as previously stated.

Norms also result in the ordering of social relations which in turn may lead to the formation of social inequalities. This is because different interpretations of norms may often result in dissimilar standards of assessment and different interpretations of hierarchies among states (Towns, 2010, p. 46). For example, what one state considers as immoral or backward behaviour may be the cultural norm for another state. An illustration of this point may be found in the difference between how Western states and Middle Eastern states perceive the social position of women and the manner in which women are treated within these states. In Afghanistan, Iraq or Saudi Arabia a woman may be beaten for having extra-marital relations, or may be killed by her family because she was raped. Women are expected to dress in a particular manner and behave according to what their religion and culture considers as acceptable. Western states may regard such practices as undemocratic, backward and patriarchal, while these states may consider this the norm as stipulated by their cultural identity (Towns, 2012, p. 9). Thus it is seen that norms are not universal and are open to contestation and interpretation.

This study seeks to ascertain what the international norm is regarding war-time rape, particularly the use of strategic rape. It further seeks to establish whether the attempt to establish universal norms pertaining to the way women should be treated (particularly during armed conflicts) has been successful in ensuring equality for African women. Moreover, it seeks to ascertain whether the AU narratives and international women’s human rights law have been accepted and implemented; despite the cultural and patriarchal practices mentioned in the examples above.

### **2.3. Narratives and the social construction of reality**

Another concept which is pertinent to the study and which contributes to the understanding of how norms are created is narratives. According to Georgakopoulou (2006, p. 122) “narrative remains an elusive, contested and indeterminate concept”. Narratives may be used for a variety of purposes, such as methodological and epistemological purposes, as a communication tool, a supra-genre and a text-type. Most importantly, narratives can be used to make sense of the world we live in and the events that take place therein (Georgakopoulou, 2006, p. 122). It assists humans in understanding history, time, life, their own experiences and that of others.

It can therefore be said that narratives entail the use of spoken word, text and context for the purpose of telling a very specific story (or not telling a story), or to conveying a particular message (or not convey a message). Furthermore, the study of narratives is a rich and diverse field, which renders stories worthy of analysis for tapping into an understanding of human experiences (Georgakopoulou, 2006, p. 122). Narratives may also be used to convey a particular perspective to a specific audience, who will then determine the meaning of that narrative for themselves (Ochs & Capps, 2001, p. 57). This may result in varying interpretations of the same narrative, which is why narratives are often described as being rich and diverse. This richness and diversity of narratives is what allows one to analyse narratives such as those used by the AU in its human rights and peace and security protocols from a different perspective and gain insight into the various implications these narratives may have on the formation of norms and on the actual lives of ordinary African people.

Constructivists have much to say about how the richness and diversity of narratives contributes to social construction. Ruggie (1998, p. 858) for instance, argues that social knowledge and ideas are constructed by means of linguistic practices, religious beliefs, legal codes, moral norms and similar ideational factors. Wendt (1995, p. 74) adds that social knowledge and ideas are important, in that apart from them, power and interests have no meaning. Constructivists thus place significant emphasis on the role that sociolinguistic practices play in the social construction of norms. Jackson & Sørensen (2007, p. 165) concur that the social construction of norms is achieved by using “thoughts and beliefs, ideas and concepts, languages and discourses, signs, signals and understandings among human beings”.

Narratives, as a sociolinguistic tool, have a great impact on how societies interpret and perceive the world around them. Certain words, meanings and signals are attached to material matter, to

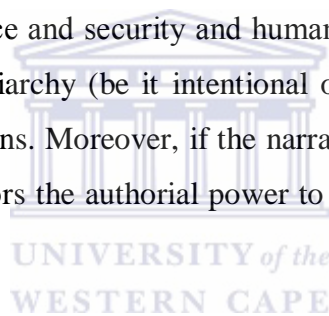
assist societies in conveying their intentions and understand their own experiences (Phillips, 2007, p. 62). Thus it can be said that narratives enable societies to express their perceptions about norms, identity and culture; as well as whether they accept or contest these. Women, for example, may not necessarily accept the norms, identity and culture that are imparted to them (by a patriarchal society, the narratives of the AU or the international community) and may very well choose to contest these norms once they understand them; this will be addressed in Chapter Three.

Furthermore, narratives are a means of constructing social and power relationships. Narratives may be used in identity politics, to ascribe identity and value to certain entities; for example ascribing values to the bodies of women (Kraus, 2006, p. 104). Narratives may consequently be said to be a “strateg[y] of dominance consist[ing] of the devaluation of the other and the construction of serviceable others to sustain power relationships” (Kraus, 2006, p. 104-105). According to Langenhove and Harre, cited in Kraus (2006, p. 107), the act of narrating in itself is an act and display of power. Those who author narratives do so from positions of power and dominance, with the intention of maintaining that power and distributing it only to those whom they (the author) deem worthy (Tickner, 1992, p. 12). Narratives are thus a useful tool which may be used by AU officials and the narrators of official AU policies and protocols to distribute power to ordinary African citizens, particularly African women. By this logic, AU officials either choose (consciously or unconsciously) to contribute to the existing inequalities between African men and women, or to contribute to the reversal of these inequalities by the narrative used in AU policies and protocols. This study hence investigates whether AU protocols contribute to or deter discriminatory practices against African women, particularly patriarchy and the use of rape as a weapon of war.

Kraus (2006, p. 105) provides two approaches to the study of narratives which proves useful to this research project, namely the post-structuralist and deconstructivist approaches. Briefly, the post-structuralist approach to narrative study criticizes homogenization and coherence in narratives and the analysis thereof. This approach argues that there is superficial coherence in society and therefore the stories provided by societies are fragmented. It claims that the experiences of individuals in society are too different for coherent narratives to be deduced from it. People living in various societies interpret their lives and the events that take place therein in a myriad of ways. Simply put, this approach claims that there is no coherent story to be told and to be understood by others (Kraus, 2006, p. 105). The deconstructivist approach on the other hand

emphasises the active role that the reader plays in constructing the meaning of the narrative. This approach argues that readers deduce their own meanings from narratives and that the author does not have the sole power to assign meaning to the narrative; the author shares authorial power with the reader of the narrative. Therefore, narratives have unstable meanings and values and ideologies are often hidden and inscribed in texts in nuanced ways to influence the way readers will interpret narratives.

Abbott (2008, p. 36) supports the argument that the rhetoric of a narrative is its power. Simply, a narrative may be used to convey strong or subtle feelings or opinions on various issues. The rhetoric (words, phrases and concepts) used in a narrative also enables people to interpret the issues being addressed. In this way, a narrative can be very influential because through it opinions, feelings and norms may be created and carried into society by individuals (Ruggie, 1998, p. 858). Additionally, if one changes the rhetoric used in the narrative, even in the slightest way, the entire meaning of the narrative changes (Abbott, 2008, p. 36). These approaches are useful to the study of the AU's peace and security and human rights protocols. These protocols may be laden with nuances of patriarchy (be it intentional or unintentional) and thus provide opportunity for varying interpretations. Moreover, if the narratives are vague and euphemistic it gives African leaders and perpetrators the authorial power to interpret the protocol as they may wish.



I would therefore like to suggest that narratives inevitably result in causation and normalization; narratives cause certain opinions or impressions to be transmitted to society, which later become normality. As noted in the preceding section, norms may be defined as what a society considers to be normal or acceptable behaviour in a given situation (a prescription of behaviour in society), which help a society understand its place in the world (Pretorius, 2008, p. 111). These norms may be conveyed knowingly or unknowingly by the author of the narrative or individuals in society. Simply put, social interaction and combined knowledge, lead to the construction of social facts and norms by means of narratives (Ruggie, 1998, p. 858). Those in positions of power may wish to communicate a particular message or norms through a narrative. However, in some instances messages or norms are conveyed unknowingly due to the various ways of interpreting the narrative and the rhetoric used, as mentioned above.

Furthermore, Muppidi (1999, p. 126) states that due to the connections between meanings not being intrinsic, they are often contested, resulting in the politics of meaning fixing. A struggle



ensues between social groups and politically powerful persons over what certain words and ideas should mean; they seek to influence the meaning of social thought and practice. The process of meaning fixing will now be further interrogated for the purpose of understanding what the steps are that contribute to a narrative being accepted and subsequently becoming a reality for a particular group of people or community.

### 2.3.1. Articulation, interpellation and enaction

Pretorius (2008, p. 107) explains that one way to fix meanings in social thought and practices, such as those espoused in narratives, is to constantly state them as being normal, natural and unproblematic. By constant *articulation*, the meanings of narratives are fixed and sustained. According to Weldes (1996, p. 303) constant articulation contributes to the representation of social objects, events, persons or narratives as common sense, natural or a reflection of reality. Muppidi (1999, p. 125) concurs that although there may be no “intrinsically necessary connection between different elements of meaning”, by the constant restating of the meanings attributed to specific elements these meanings come to be regarded as legitimate, unproblematic or natural realities. Furthermore, socially produced meanings are articulated through political struggles amongst various actors in the international system, with the goal of these meanings being accepted by large groups of people (Mupiddi, 1999, p. 125).

Thus it can be said that meanings are constructed and fixed politically, either by public officials or state actors. Althusser (1970) supports this line of argument claiming that the articulation of norms can be communicated by means of Repressive State Apparatus (RSA) or Ideological State Apparatus (ISA). RSAs include the police, courts, government, and the army, while ISAs comprise of universities and schools, churches, family, trade unions and political parties. These social institutions educate people to accept certain rules, representations of ‘reality’, systems of ideas (ideologies) and social conditions as the norm.

The second step in fixing the meaning of narratives is *interpellation*. Pretorius (2008, p. 107) explains that people following a narrative often regard themselves as characters acting out a script. These characters act out the meanings and norms that have been continuously articulated in or through a narrative; articulation and interpellation thus go hand in glove. Larkin (2001, p. 47) uses the word ‘adoption’ instead of interpellation, stating that people choose whether they will or will not ‘adopt’ a narrative as their own. In other words, by means of interpellation the character is showing that they accept the narrative as truth.

According to Muppidi (1999, p. 125-126) interpellation is an indication that the character is convinced and compelled to accept the meanings in a narrative. Althusser (1970) claims that individuals experience interpellation when they accept that a narrative or ideology refers to them; they accept themselves as the subject of a narrative or specific ideology. Due to individuals being born into certain beliefs or ideologies, they will most likely accept these as the social conditions which are to guide their daily behaviour. For example, if a girl is born into a patriarchal family she will be called to be submissive and respectful to her father or male elders; interpellation manifests itself through the dictates of her culture. In this way, interpellation contributes to the perpetuation of power relationships and social conditions; it ensures that a ruling class or group maintains its power (Althusser, 1970).

The final step in meaning fixing is *enaction* or social doing. Pretorius (2008, p. 107) explains that during this step the character begins to enact the narrative or their role therein. By acting out the narrative, its meaning is reinforced and the narrative is sustained as normal, natural or true. Enloe (2000a, p. 15-16) and Pretorius (2008, p. 107-108) remark that the social structure created by narratives are sustained by various agents, which comprise not only of powerful elites and officials, but ordinary people who enact the narrative in their daily lives.<sup>9</sup> The previous example of the girl born into a patriarchal family may be cited here; by choosing to obey her father and be submissive, she is enacting a particular narrative.

However, citizens (or state officials) do not necessarily act out narratives in a robot-like fashion. They may very well resist interpellation and enaction, and assert their own understanding of the world and their place in it (Enloe, 2000a, p. 16; Muppidi, 1999, p. 125). Butler, in Salil (2006, p. 61-62), however, argues that interpellation calls people into being 'something', and this 'something' limits their choices on how to act. Butler states that gender, for example, is an act or strategy which has cultural survival as its end goal. Therefore, to preserve culture, women are expected to behave in a certain way, and when they do not 'do' their gender properly, they are punished by society.

### 2.3.2. The narrative construction of reality

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<sup>9</sup> The agency of various actors will be discussed in a Chapter Four. Agency is to be understood as the actions of and the choices made by women (Parpart, 2010, p. 1).

Articulation, interpellation and enaction speak to the narrative construction of reality; a term coined by Bruner (1991). Bruner (1991, p. 5-6) states that narratives inform the mind on how to construct reality; in other words, narrative in the form of spoken words and written discourse form representations of the world. Narratives are culture specific and never 'point-of-viewless' (Bruner, 1991, p. 3). Peoples' understandings of 'reality' are determined by a process of knowledge gaining and knowledge using, which takes place within a certain context. It can hence be said that humans gain and construct their knowledge through their interaction and experiences with other humans (by written and spoken narrative) in the social world. Humans then decide what these experiences will represent and how it will represent their 'reality'. The narrative we use shapes our experience of human affairs, and likewise, our experience of human affairs shapes the narrative we use. Therefore reality construction and narrative construction, and the communication thereof can be said to be reciprocal processes.

Narratives also provide a basis for interpretation. Narratives are thus concerned with norms and cultural legitimacy and subsequently provide insight into why people may choose to act in a certain way, in certain circumstances. Narratives can also be constructed in such a way that they either reaffirm certain cultural beliefs or norms, or in a way that bring these cultural conventions into question. Furthermore, narratives may be culturally negotiated. Simply put, ordinary people within a specific culture may contribute to the process of negotiating the meaning of a narrative (Bruner, 1991, p. 14).

Ordinary people's contribution to the meaning of narratives thus implies that they have choice, or the ability to make choices: agency. Larkin (2001, p. 1) here emphasizes the role that choice plays in the narrative construction of reality. He explains that social realities such as war (however these realities may include peace, rape and gender roles) are the outcome of deliberate and purposeful choices made by individuals or states; they do not come about by themselves although they are often described as inevitable (Larkin, 2001, p. 1). Actors in the international system choose their behaviour and their response to the behaviour of others in the international system. By this understanding, actors possess the capability to make calculated choices to abstain from making certain decisions or acting in a particular manner.

For example, when rape as a weapon of war is not addressed by the AU or state actors, this is the result of a deliberate choice. The purpose of this study is to gain insight into the factors which inform the choices made by the AU relating to the use of rape as a weapon during African armed

conflicts. The study also seeks to investigate how deliberate choices can be made in order to avert the occurrence of rape as a social reality; in other words what choices can be made by the AU to delegitimize this weapon. Furthermore, leaders are dependent on ‘scripts’ to inform them of the choices they can and cannot, or rather should and should not, make in the international system (Larkin, 2001, p. 5). These scripts or narratives may include rules, resolutions, declarations, protocols and charters just to mention a few. Despite the presence of these narratives, actors reserve the choice to comply or not comply with them; they choose whether to interpellate and enact narratives. This choice to obey or comply means that actors may be held accountable for their choices and action in the international system (Larkin, 2001, p. 6).

The role articulation, interpellation and enaction play in the construction and fixing of meanings and social relations are particularly insightful with regards to the research question. They allow one to think about the manner in which the AU narratives are constructed, as well as by whom and for what purposes. They also enable one to gain insight into what the factors may be that are contributing to the successful or unsuccessful implementation of said protocols and subsequently the extent to which these narratives have contributed (or not contributed) to the delegitimization of rape as a weapon of war. A discussion around the articulation, interpellation and enaction of AU peace and security and human rights protocols will be engaged with in a later chapter.

The social construction of sex and gender form the context of the narratives and norms relating to war-time rape. The next section elaborates on this context.

#### **2.4. The social construction of sex and gender**

The words ‘sex’ and ‘gender’ are often used synonymously, inferring that they have the same meaning. Gender is used as a euphemism for sex, as it sounds less crude or offensive; it is more socially acceptable. ‘Gender’ has also come to be used as a code word for women (Pettman, 2005, p. 674).<sup>10</sup> The *Blackwell Dictionary of Twentieth-Century Social Thought* defines gender as the category of being a man or a woman and the subsequent social relations which stem from these categories (Outhwaite & Bottomore, 1993, p. 243). Definitions such as these are

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<sup>10</sup> Gender is also closely related to patriarchy and socially constructed inequality between men and women (Outhwaite & Bottomore, 1993, p. 425).

contentious because it has been suggested that one's biological sex should and does not determine one's gender.

Feminist IR theorists however have argued that gender is far more than a social category of male and female or the acting out of masculinity and femininity; as a man can display feminine characteristics without being a woman and a woman can be considered as masculine without being a man. They have sought to understand how these social categories interact, for what purpose and to whose benefit. Griffiths (2005, p. 298) in the *Encyclopaedia of International Relations and Global Politics*, thus states that Feminist IR theorists have defined or regard gender as a "system of power relations governing the interactions of males and females which usually privileges the former over that latter".

Feminist IR theorists subsequently argue that sex and gender are distinct and significantly different entities and because they work together to create social meaning they warrant deeper investigation. Pettman (2005, p. 674) and Peterson and Runyan (1993, p. 5) state that 'sex' is regarded as the biological difference or distinction between women and men; in other words whether you are born a male or a female. Gender on the other hand is the interpretation of these sexual differences and the socially learned behaviour and expectations attributed to women and men; in other words, what it means to be a male or a female in society at any given time or place. Peterson and Runyan (1993, p. 5) elaborate that "whereas biological sex identity is determined by reference to genetic and anatomical characteristics, socially learned gender is an acquired identity. We learn, through culturally specific socialization, how to be masculine and feminine and to assume the identities of men and women".

Thus it may be said that gender is the way in which societies elaborate on biological differences or sexes (Bennett, 2006, p. 16). Pettman (2005, p. 584) adds that gender is both a personal identity which revolves around how women and men respectively experience the world, and a social identity which revolves around what society expects from men and women in the workplace, home, religion, the economy, sports and most importantly the international system. These distinctions between sex and gender have highlighted the historic power relations at play between men and women and that women as a social category are almost always under-represented or excluded from relations of power not only in international relations but society at large (Pettman, 2005, p. 674).

Tickner (1992, p. 7) states that these power or gender relations are socially and deliberately constructed in such a way to reinforce unequal relationships between women and men, and reinforce compliance to men's superiority. Pettman (2005, p. 584) supports this explanation, arguing that gender is a social construction that interprets what it means to be a male or female in society; what is appropriate behaviour for men and women. Whitworth (1997, p. 66, 71-74) adds that gender is socially constructed in and by international economic and political institutions, through ideological and material relationships between men and women; a relationship that has historically been unequal. Simply put, gender is "a social category imposed on a sexed body" (Bennett, 2006, p. 16). These social categories determine not only how we see ourselves, but how others identify and relate to us, as well as how we (on the basis of being male or female) are positioned in social structures and power hierarchies (Peterson & Runyan, 1993, p. 8).

According to Peterson and Runyan (1993, p. 5) gender entails and is reinforced by the "socially learned behaviour and expectations that distinguish between masculinity and femininity". The characteristics which define what is masculine and feminine are culturally produced and may vary across cultures and history (Peterson & Runyan, 1993, p. 6-7; Tickner, 1992, p. 7). Certain colours, sports, social activities and meanings are attached to gender, which dictate how men and women should behave. For instance, girls are encouraged and expected to play with dolls and tea sets and to be gentle and affectionate, while boys are socialized to play with guns and cars, to reject their emotions and be 'tough' (Tong, 2009, p. 36; Whitworth, 1997, p. 12; Pettman, 1996, p. 92-93).

Boys and girls are taught to 'do' their gender by performing the 'appropriate' tasks assigned to their gender; girls are prepared for domestic work and childbearing while boys are prepared for military service and labour in the public sector. Essentially, in most cultures gender signifies an unequal relationship between men and women, and the domination of women by men (Tickner, 1992, p. 7); greater value has been ascribed to masculinity while femininity has become synonymous with inferiority (Peterson & Runyan, 1993, p. 7). This notion is further supported by Towns (2010, p. 139) who states that gender and sex indeed represent the "power-laden subordination of women to men".

Feminists thus argue that since gender is a social construction, it can be contested, changed or reconstructed (Pettman, 2005, p. 674; Whitworth, 1997, p. 13; Peterson & Runyan, 1993, p. 19).

The attempt to change this social construction of gender and women's perceived inferiority and inequality in society is what we presently know as *feminist theory* or *feminism*. However it is important to note that different feminisms or feminist theorists have different and often opposing views on how gender is constructed, how gender relations should be viewed and how it should be contested or changed (Pettman, 2005, p. 674).

For example, there are women or feminists who do not believe that gender construction has resulted in inequality between men and women. They believe that women and men are indeed different genetically, but they differ from liberal or mainstream feminists in that they believe 'different' does not necessarily mean 'unequal'. These women, such as the anti-feminist movement in Australia argue that they want to be women; they want to perform the domestic roles which are believed to be better suited to women than men (Pettman, 2005, p. 675). As a result of their support of biological determinism they believe that women should be nurturing, passive, peaceful and feminine; they believe that these qualities are the natural attributes of women.

Some feminists also support this belief and add that due to biological determinism, women are intrinsically more peaceful than men; they argue that it is a "biological inevitability that men are more aggressive, hierarchical, and territorial than women" (Whitworth, 1997, p. 17). By this logic, young boys will choose to emulate the behaviour of their fathers and other men while girls will choose to emulate their mothers and other women. In this way the 'natural' characteristics of men and women are perpetuated in society; gender is perpetuated.

Other feminists however dispute this view of the construction of gender, stating that it reinforces yet another dichotomy, nature and nurture, which subsequently leaves room for exploitation (Pettman, 2005, p. 675). They argue that mainstream ideas regarding the construction of gender portray the body as a neutral object onto which gender is imposed. They thus find it more useful to draw attention to sexual difference or distinctions and how these present themselves in the body (Pettman, 2005, p. 675). By this logic, an individual can choose their gender based on their sexual orientation or preference; a man can thus be feminine and a woman masculine, as previously stated.

Postmodernist feminists support this argument by rejecting the notion that all individuals have an 'authentic core' or preconceived gender identity which is either male or female. They argue

that “any attempt to define individuals as such forces the individual back on himself and ties him to his own identity in a constraining way” (Whitworth, 1997, p. 21). Alcoff cited in Whitworth (1997, p. 22) adds that this rejection of a preconceived gender identity gives women (and men) increased freedom to be who they want to be by allowing them to choose their sexual orientation as well as whether they prefer to behave in a masculine or feminine manner. They can ‘do’ or ‘perform’ the gender they choose (Pettman, 2005, p. 675).

According to Guillaumin (1995, p. 153), social theories, particular those pertaining to sex and gender are defined by those in positions of legal, political and economic power; theory emerges from the spoken thoughts of those who dispose of power. These social theories then determine social relationships and cement conceptual perceptions of how society should work. Social theories form the mental face of concrete relationships (Guillaumin, 1995, p. 156). Montesquieu cited in Guillaumin (1995, p. 154), adds that tradition or culture and legal institutions further contribute to this fixing of social relationships, and women’s relationship to power. These means of socialization may include the family, schools, religious institutions, governments and their laws, as well as the media (Peterson and Runyan, 1993, p. 19, 21). In the worst case, women are relegated to the domain of the domestic and denied any part in the monopoly on power and violence. Attempts to change their position in society (by means of literature, discussions or protests) are often discounted or regarded lightly by those who possess this monopoly.

WESTERN CAPE

Discrimination against women, which manifests itself in unequal access to resources, lower wages earned than men, domestic violence or extreme sexual violence such as rape, is often regarded as natural. Gender relationships have been covered by a “mask of naturalness, of spontaneous reality, that which is literally not thought about, because it is pre-thought, regarded as the preliminary to any society and to any form of consciousness” (Guillaumin, 1995, p. 166). These social practices, which are determined by social theories, are subsequently regarded as being the simple order of things which are not to be questioned; simply put, the superiority of men over women should not be questioned because it is the norm.

Guillaumin (1995, p. 156) argues that social theories should seek to overturn such perspectives regarding women’s place and role in society. The challenge is that theory often only allows for the examination of these social norms and those in a position to cause change and transformation in society often do not display the political will to do so. They find it impossible to integrate notions that suggest that women and men are equal in their thinking. The persistent sexual



inequality and discrimination which takes place in society on a daily basis is an issue that requires serious thought; these thoughts must be incorporated into the thinking of those with a monopoly on power.

Guillaumin (1995, p. 169) believes that when a person thinks about a fact, they are already contributing to contesting or changing that fact. Education and the reform of mental attitudes regarding sex and gender play an important role in transforming society; however, this may not be sufficient to cause change (Guillaumin, 1995, p. 162). Ideas and social theories that have been accepted as natural facts and norms need to be called into question. The social logic hidden behind sex relationships needs to be investigated by means of activism, analysis and consciousness (Guillaumin, 1995, p. 169). Additionally, for real social change to occur and for women to be regarded as equal to men, those who possess the monopoly on resources, power and violence need to relinquish their dominance. Those in positions of power need to see the need for change and be willing to enact that change.

As is seen from the discussion above, sex and gender are highly contested. This research project will therefore not be confined to one definition of sex or gender, or what a man or woman constitutes. Rather it will allow this broad discussion to guide the research and provide understanding on the complexities being dealt with in this study. As this research project is an analysis of the narrative used in AU human rights and security protocols, the definition of women used in the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa proves useful and safe. It states that women comprise "persons of female gender, including girls" (ACHPRWA, 2004, p. 4). This simplistic definition, in light of the contestation regarding what sex and gender comprise, will guide the research project.

#### 2.4.1. Patriarchy

Another concept relating to the construction of gender, which will be used throughout this study, is *patriarchy*. It is traditionally understood as ecclesiastical power (the power of religious leaders) or the legal power that a husband or father exercises over his wife and children. It is regarded as men's rightful position as the head of their homes and society (Outhwaite & Bottomore, 1993, p. 449). Patriarchy is, however, more than this. It is a social arrangement in which women and men are stereotyped with gender-acceptable characteristics and behaviours, which they are expected to perform in the societies to which they belong. When men and women do not comply with these norms, their behaviour is deemed 'negative' or 'inauthentic'

(Whitworth, 1997, p. 20). Patriarchy also comprises the exploitation of the power historically afforded to men. It entails the marginalization of women by powerful men in order to maintain an unequal relationship between men and women, to the benefit of men. Simply, patriarchy is “a social system in which men dominate, oppress and exploit women” (Outhwaite & Bottomore, 1993, p. 449).

According to Millet cited in Krieger (1993, p. 686) “patriarchy is a gendered system of social control that pervades all aspects of human existence”. Walby, cited in Bennett (2006, p. 56) concurs with Outhwaite & Bottomore (1993, p. 449) that patriarchy consists of the domination, exploitation and oppression of women by men through social structures or practices. Tickner (1992, p. 15) adds that these social structures and practices espoused in patriarchy are institutionalized through legal, economic, social and cultural institutions. These social structures may include governments, political parties, family and community relationships, international institutions, educational institutions and the like. Feminist critique of patriarchy argues that it is the traditions, customs and laws that state what women can and cannot do in society; it is a system in which women are subsumed by men in every sphere of life (Maseno & Kilonzo, 2011, p. 45; Bennett, 2006, p. 55; Kambarami, 2006, p. 2; Peterson, 1992, p. 45).

However, women or certain groups of women have also benefitted from the social arrangements of patriarchy. Bennett (2006, p. 10, 59) argues that patriarchy has been sustained in part by many women’s oppression of other women. For instance, wealthy women often pay other women low wages to take care of their children, clean their homes, do their hair and paint their nails. Women’s agency has thus strengthened patriarchy (Bennett, 2006, p. 59). Some women have gone as far as to support violence against other women, in their support of masculinist privilege (Parpart, 2010, p. 10). This point will be elaborated upon in a later chapter.

Patriarchy further relates to identity construction, which stems from notions of sex and gender. Sex and gender are exploited to determine appropriate and acceptable behaviours for men and women. Patriarchy is used to determine what is considered to be masculine and feminine characteristics and behaviour. Masculinity or the masculine refers to all things male, while femininity or the feminine is attributed to all things female. Masculinity and men are associated with strength, power, independence, aggression, ambition, logic and ruggedness (Peterson & Runyan, 1993, p. 22). Femininity and women on the other hand are associated with weakness, passivity, naivety, emotional instability, gentleness, a lack of ambition and logic (Peterson &

Runyan, 1993, p. 22; Tickner, 1992, p. 9). Thus two opposite poles of a gender dichotomy are created which stereotype men and women. These stereotypes result in men being favoured and valued above women; as masculinity is described positively and femininity negatively (Kronsell, 2006, p. 124). It may thus be said that a society is patriarchal to the extent that it favours or values male privilege and domination above women (Bennett, 2006, p. 55).

Patriarchal exploitations of notions of masculinity and femininity are prevalent in the international system too; although gender and its implications are usually not considered in the study of IR. Power, leadership and influence are attributed to men (as opposed to women) on the basis of their manliness, and thus perceive capability. Women are marginalized on the basis that they do not (in most cases) display the masculinity and physical strength of men; therefore they are associated with weakness, defencelessness, dependency and ineptitude and subsequently relegated to the realm of the domestic. They are tasked with child bearing and rearing, the maintenance of the household (such as cooking, cleaning and laundry) and taking care of the sick (Kronsell, 2006, p. 124; Peterson & Runyan, 1993, p. 8). It is accordingly argued that women should not be given the same influential positions as men, as they simply do not possess the qualities needed to rule or lead. The same is said of men who do not display masculine characteristics. Women and effeminate men are only allowed into these positions of influence or attributed power when they begin to act like men; when they display masculinity (Peterson, 1992, p. 45). These stereotypes suggest that patriarchal gender relationships, stereotypes or arrangements are inevitable, timeless and fixed (Kronsell, 2006, p. 109; Peterson & Runyan, 1993, p. 22; Tickner, 1992, p. 8); thus they are considered legitimate, unquestionable and unchangeable.

The international system offers numerous examples which attest to the prevalence of patriarchy. In Middle Eastern countries such as Afghanistan and Saudi Arabia women are expected to cover themselves completely by wearing burqas and veils when in public, are not allowed to wear jewellery and make-up as these are seen as unholy, western practices and to treat all men with respectful submission (Parpart, 2007, p. 7; Towns, 2010, p. 9). In India women have for centuries been regarded as second class citizens. This has been the result of the caste system which determines people's place in the social hierarchy based on their ethnicity. Women's lives are further controlled by cultural practices such as arranged marriages and the paying of bride price (Mohanty, 1998). In China women were subjected to patriarchal cultural practice such as foot-binding and arranged marriages. Foot-binding was done to ensure that women had small

feet in order to walk gracefully; the smaller a girl's feet were, the higher bride price her family received (Mohanty, 1998).

Although patriarchy refers to male domination and privilege, it does not, however, imply men as a generic group (Bennett, 2006, p. 55). It is the manner in which society operates to ensure the subordination of women and the deliberate decisions taken by men in positions of power to this end; patriarchy is a social arrangement. It is a social system which creates, maintains and perpetuates gender or power hierarchies, which subordinate women to men. To ignore these stereotypes and power hierarchies means to perpetuate the domination and subordination that takes place between men and women in the international system (Tickner, 1992, p. 8-9). Thus patriarchy will be vigorously questioned and challenged throughout this study. For the purpose of this study, the words *patriarchy*, *masculinity* and *male privilege* will be used interchangeably as they all refer to a social arrangement in which men are favoured above women.<sup>11</sup>

The examples discussed above show that patriarchy has been prevalent across the international system for centuries, as women have been regarded as the possessions of men, who have chiefly benefitted from this social arrangement. Despite the numerous culturally and historically distinct types of patriarchy that have presented in the international system<sup>12</sup> this research project will however focus primarily on patriarchy within the African context (the subject of the next chapter). The intention is to gain insight into how patriarchy impacts the lives of African women and men, particularly during armed conflicts. It seeks to establish whether there is a relationship between patriarchy and the use of rape as a weapon of war.

Furthermore, Kronsell (2006, p. 109) argues that international institutions may espouse and perpetuate gender stereotypes and hierarchies, thus it is useful to study the documents and narratives produced by these institutions to determine what is written and not written, what is said and not said. This allows insight into the thought process behind these documents and within international institutions.

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<sup>11</sup> The idea that patriarchy may be referred to as male privilege is supported by Peterson (1992, p. 48), whose approach to, or understanding of, patriarchy is similar to that which will be used in this study.

<sup>12</sup> For a discussion of these types see Maseno & Kilonzo (2011) and Kandiyoti (1988).

Inasmuch as the AU narratives that will be scrutinised rely on the notions of security and insecurity for their legitimacy, the construction of these notions as it pertains to armed conflicts in Africa demands special attention.

## **2.5. The social construction of security and insecurity**

The meaning of security and insecurity, as with most other socially constructed entities or understanding of social realities, is contested and ambiguous; as evinced by the discussion thus far. Questions around what the object of security is, what constitutes a threat to security and whether security of the state or individuals should take preference contribute to this ambiguity (Griffiths, 2005, p. 749). Krieger (1993, p. 820) in the *Oxford Companion to Politics of the World* further explains that security is “a state of mind in which an individual, whether the highest political leaders of the land or an average citizen, feels safe from harm by others”. Security is when a state or citizens believe that they cannot be harmed by another state or non-state actor (Krieger, 1993, p. 820). Security is not an objective condition of being, but a subjective state of mind as there is no way of saying whether states or citizens are justified in their perceptions of security (Krieger, 1993, p. 820).

By this definition, *insecurity* can be said to be the perceived absence of security, the belief that one is in danger or vulnerable to threat. Additionally, one state or individual’s security may result in another’s insecurity; therefore it is unlikely that a scenario or time will arise where all states and individuals enjoy perfect security in the international system (Krieger, 1993, p. 820; Peterson, 1992, p. 31). Wendt (1992, p. 406) supports this argument stating that insecurities “evolve from cycles of interaction in which each party acts in ways that the other feels are threatening to the self, creating expectations that the other is not to be trusted”. When one or more states increase their military capability it heightens the fears of other states as they realize the inadequacy of their own militaries and their inability to sustain their security; consequently resulting in an arms race.

Moreover, Weldes, Laffey, Gusterson and Duvall (1999, p. 11), Wendt (1995, p. 71) and Ruggie (1998, p. 856) purport that entities such as states and communities are culturally produced or socially constructed. Security and insecurity are thus also culturally produced, as they proceed from the actions of entities or states and communities which are socially constructed. Security studies therefore seek to understand how and why insecurities are constructed.

Weldes et al. (1999, p. 10-11) states that “insecurity is itself the product of processes of identity construction in which self and the other, or multiple others, are constituted... identity and security are produced in a mutually constitutive process”. When entities establish their own identities, they do so by relating the characteristics by which they hope to be socially recognized; for example, race, ethnicity or culture. They establish what they are, as opposed to what they are not. In this way, the ‘self’ and the ‘other’ are created. The ‘self’ (the entity’s identity) excludes the ‘other’ and thus poses a threat to its existence. The ‘other’ is represented as evil, different and dangerous, for the sake of securing the identity of the ‘self’. This perceived threat is what translates into danger or insecurities (Larkin, 2001, p. 36; Wendt, 1995, p. 73). When differences are used to represent ‘otherness’, identity becomes a source of insecurity (Weldes et al., 1999, p. 11, 19). This process has come to be known as the *cultural process of identity construction*.

Not only are identities socially constructed, but certain meanings and qualities are assigned to these identities (as alluded to in the discussion of sex, gender and patriarchy). According to Wendt (1992, p. 196-197), people react to objects according to the social meanings or interpretations they have learned to attach to them; they will react based on the meanings objects have for them. Therefore, people will react to different identities according to the social meanings attached to those identities. “These meanings are fundamentally cultural: they are made possible by particular discourses or codes of intelligibility that provide the categories through which the world is understood” (Weldes et al., 1999, p. 13).

People do not necessarily have the same feelings towards certain identities, but they learn from their social settings how to relate to these ‘different’ identities. Hall cited in Weldes et al. (1999, p. 14), argues that these codes of intelligibility inform us of how the world works and how we should behave therein. State officials and leaders can represent the ‘self’ as safe and the ‘other’ as dangerous, conditioning people to react in a particular way when encountering people who are different to themselves. People are taught that those who are like oneself are not a threat; however those who are different to oneself pose a great danger. It can therefore be said that the meanings that entities attribute to themselves threaten the identities of other entities, thus creating insecurities (Wendt, 1995, p. 77-78).

Although the state is an important agent in producing insecurities, it is not the only agent. There are numerous other discourses which contribute to the creation of identity and difference, such as nationalist projects which create imagined communities (Weldes et al., 1999, p. 15). This is

particularly the case in Africa. When numerous imagined sub-national communities reside in one geographical area, this may lead to insecurities. These communities often contend for land and resources based on their respective perceived cultural and religious entitlements. Individuals or groups which do not belong to the same community or ethnicity as the government may feel that their identity is threatened. For example, South Sudanese citizens have chosen to secede from Sudan because they do not feel safe being governed by a government of an ethnicity perceived as being different to their own. As each sub-national community tries to assert its identity, it threatens the identity of other national communities; it is a reciprocal process (Weldes et al., 1999, p. 15; Wendt, 1995, p. 77). Conflict between communities with different cultures and identities more often than not result in the production of insecurities.

### 2.5.1. Gender, security and insecurity in African conflicts

The allusion to gender or gender nuances used in the description of security and insecurity are often ignored or overlooked in the study of IR as previously mentioned. I thus regard it pertinent to include a discussion of gender and how it pertains to the construction of security and insecurity in this study. Parpart and Thompson (2012, p. 177) state that gender is an important component in the study of conflict and state security/insecurity, particularly in Africa. Hudson (2005, p. 162) adds that a gender perspective of security is important in that it reveals “a complex and fluctuating mix of interlinked gendered knowledge constructions and practices within all sectors of security and at all levels (e.g. gender and globalization, patriarchy and militarism, structural violence and physical violence)”. However gender and its role in the construction of insecurities is often overlooked or excluded in security studies and international relations theory and practice; despite the fact that war and peace are gendered sites requiring feminist analysis (Parpart and Thompson, 2012, p. 178).

Security studies and international relations focus primarily on power, states, institutions, international trade, war and leaders. The images and understanding of reality these notions bring to mind are that of soldiers, army tanks and weapons; all masculine images. Hence the study of security and insecurity, as well as IR, are regarded as masculine fields of study; with domestic relationships, the community, the home and human or personal security being considered more feminine fields of study and outside the scope of international relations (Parpart & Thompson, 2012, p. 178; Pettman, 2005, p. 670, 672). As discussed above, the masculine is always associated with power and authority, while feminine traits are associated with weakness and passivity (Baaz & Stern, 2008, p. 59; Pettman, 2005, p. 671; Enloe, 2000a, p. 3-4, 12-13;

Peterson & Runyan, 1993, p. 22). Although gender is not the only variable to be factored into studies of security and insecurity, it remains a particularly important one. It brings analytical depth and insight to the understanding of international issues such as governance, conflict and (in)security (Parpart & Thompson, 2012, p. 177).

Tickner (1992, p. 27-28) and Pettman (1996, p. 87) argue that the study of security and insecurity in IR has primarily been influenced by masculine, realist notions of state security and warfare as the international system is generally perceived as anarchical and dangerous. Tickner (1992, p. 29) adds that realism is the most used academic approach in attempts to understand the behaviour of state actors in the international system, and that it is the dominating worldview used by foreign policy practitioners and national security specialists. Theorists, who have greatly moulded the field of IR and have had a significant influence on the conceptualization of realism, include Hans Morgenthau, Kenneth Waltz, Thomas Hobbs and Niccolo Machiavelli. These theorists have argued that states are the most important actors in the international system and have constructed the state as a 'political man' striving to ensure the protection of his state's sovereignty and the advancement of its national interests. This endeavour often necessitates the use of violence and subsequently leads to war (Pettman, 1996, p. 88).

Tickner (1992, p. 37) states that this 'political man' is socially constructed based on "a partial representation of human nature abstracted from the behaviour of men in positions of public power". Men and the state are constructed as physically strong, intelligent, rational and independent entities, which are entitled to political, economic and social power and responsible for the protection of their (civilian) population. This population comprises of women and children, who are constructed as weak, emotional, senseless and dependent on male/state protection. Tickner (1992, p. 37) adds that "this socially constructed type of masculinity has been projected onto the international behaviour of states". Through their engagement with other states in the international system states seek to represent themselves as strong contenders, able to win wars and protect their boundaries and citizens; states seek to prove that they are 'real men' (or their masculinity) whilst seeking the emasculation of other states.

An emphasis is therefore placed on military capability, violence and male heroism. The young soldier must prove himself to be a 'real man' (not a woman or gay) and a good soldier by killing men from the 'enemy' nation or state (Pettman, 1996, p. 93). Elstain cited in Pettman (1996, p. 96) claims that, "War is the means to attain recognition, to pass, in a sense, the definitive test of



political manhood... The freedom of individuals and states is not given as such but must be achieved through conflict. It is in war that the strength of the state is tested... The man becomes what he is in some sense meant to be by being absorbed in the larger stream of life: war and the state". States and their men thus wage war in pursuit of security and manhood. The exploitation of notions of masculinity and femininity are instrumental in this endeavour and the construction of (strong, masculine) perceptions of the state or nation.

Furthermore, socially constructed meanings are attached to the bodies of men and women based on these notions of masculinity and femininity. The roles men and women should play in the pursuit of security are subsequently determined. Men are to be the brave soldiers fighting in war, while women are to be the helpless victims who patiently wait for the return of their husbands, brothers, fathers and sons from war (Elshtain as cited in Pettman, 2005, p. 671). Men acting on behalf of the state are regarded as 'protectors', while women are regarded as the 'protected' (Peterson, 1992, p. 46; Tickner, 1992, p. 28). Additionally, men's bodies are associated with war and violence, while women's bodies are associated with peace and nurture (Pettman, 1996, p. 92).

These socially constructed meanings facilitate the construction and use of rape as a weapon during armed conflicts. These stereotypes render women invisible in the international system as war and the pursuit of security are primarily associated with men and states. This false assumption that men and states are the only or most important actors in the international system and security initiatives will be discussed in a later chapter. Also, not all men are necessarily violent and masculine and not all women are necessarily peaceful and nurturing.

Moreover, there seems to be constant contention between the pursuit of national security and global security. Global or international security is diminished or inhibited by the competition between states and the resulting insecurities. Women are particularly affected by these insecurities. During armed conflicts, rebel and militia groups often prey on civilians, particularly women whose homes and villages they loot for resources and whom they rape and kill (Wood, 2009, p. 134; Baaz & Stern, 2008, p. 64). State militaries also often occupy cities and major towns during wars and conflicts, and women and children are often caught in the crossfire. The United Nations Security Council has repeatedly stated that women and children are the primary "victims" of, and most adversely affected by, armed conflicts; they comprise the vast majority of refugees, displaced persons and targets of all forms of human rights abuses by armed forces

(UNSC Resolution 1325, 2000, p. 1; UNSC Resolution 1820, 2008, p. 1; UNSC Resolution 1888, 2009, p. 1).

Peterson (1992, p. 45) adds that states are the main organizers of political, economic and social power relations. States largely determine who will hold public authority and to what end this authority will be exercised. Men (especially from elite groups) have conversely enjoyed patriarchal privilege in the public realms of life (by holding influential political, social and economic positions) as well as the private realms of life (by acting as the authorities in their households). Feminists have consequently argued that all spheres of life are interlinked and affected by each other (the private is public and the public is private), therefore this construction of power relationships between women and men need to be revisited (Pettman, 2005, p. 672; Whitworth, 1997, p.18; Pettman, 1996, p. 22; Peterson, 1992, p. 45). Feminists hold that women should be afforded equal access to resources and equal opportunities to men to contribute to the political, economic and social landscape of their states. Most importantly, women should be afforded equal opportunities to determine, and contribute to, the security policies of the states.

Feminists, particularly Feminist IR theorists, therefore challenge state-centric views on conflict, security and (in)security, which represent ordinary people, especially women and children, as little more than victims of war, giving no attention to gender, non-state actors and the everyday life (Parpart & Thompson, 2012, p. 178-179). The feminist theories and literature pertaining to IR have come about by the deliberate efforts of women scholars (and some men), to initiate an intellectual transformation (Enloe, 2007, p. 104-105). This they strived to do by reforming university curricula, launching new journals and encouraging publishers to print material that would bring attention to the power dynamics between men and women. According to Sjoberg (2010a, p. 3), feminists have constantly sought to bring attention to “gender as a socially constructed system of symbolic meanings that creates social hierarchies based on perceived associations with masculine and feminine characteristics”.

Moreover, state-led initiatives to empower women and transform gender relations often simply reinforce gender hierarchies in which women are expected to be subordinate. Thus, feminist scholars endeavoured to bring awareness to the role played by women in this very masculine field of study, not just as victims waiting to be rescued, but as active and equal participants in the international system (Coulter, 2008, p. 67-68; Enloe, 2007, p. 102; Utas, 2005, p. 405; Whitworth, 1997, p. 13). This lack of acknowledgement of the important role played by women

in society has also contributed to African feminists growing wary of state-based solutions to war-time rape, gender inequality and gender based violence (Parpart & Thompson, 2012, p. 182).

Several scholars of gender and security in Africa sketch a bleak picture of African institutions in this regard. According to Hudson (2005, p. 167, 170-171) the frequent use of gender based violence by African states has tainted perceptions of AU member states' commitment to the attainment of gender equality and women's empowerment. Parpart and Thompson (2012, p. 182) suggest that African states only pay 'lip service' to the promotion of gender equality as gender based violence and discrimination continues at record levels in these states; African leaders may appear to support gender policies, but for the most part they continue to sideline 'women's issues' for the promotion of masculinist power relations. The economy, the political system, the running of the state and the functioning of the military often take preference over gender policies.

Despite the AU's inclusion of a gender perspective into its work, it has not changed the way these institutions view security; its masculine notions and understandings of security persist (Parpart & Thompson, 2012, p. 191). Despite these institutions recognizing sexual violence as a problem, they seek to address these issues with military security; thus perpetuating masculine understandings of security (Parpart & Thompson, 2012, p. 191). These measures in many instances have failed to address gender based violence, and particularly the use of rape in armed conflicts. Further exacerbating this problem is that these institutions label African women as the 'poorest of the poor' and 'the most oppressed of the oppressed' in the very mechanisms and policies which are to ensure their equality. In reality, political measures initiated by states have done little to improve gender equality in its truest sense.

## **2.6. Conclusion**

This chapter has discussed norms and narratives as features of social construction, in particular the social construction of sex and gender, and security and insecurity; particularly considering the impact constructions of sex and gender have on the construction of security and insecurity in the international system. It has been asserted that the variables being studied in this research project have all been socially constructed through a process of articulation, interpellation and enaction of meanings scripted by influential individuals or groups in states, African institutions

and the international system more generally for particular purposes or with specific motives or intentions. The rest of this thesis will address these motives or intentions; more specifically, whether the narrative in the AU human rights and peace and security protocols has been constructed ambiguously in order to sustain patriarchy and the subsequent disempowerment of African women. It will also investigate whether these narratives have been constructed in a manner which is sufficient to delegitimize the use of rape as a weapon of war, and whether the use of rape as a weapon is adequately acknowledged and addressed within these narratives.

The following chapter will focus on patriarchy within the African context, especially its relationship to how rape is constructed and used as a weapon of war. Thus the following chapter will also consider what rape is, when it is used, who its primary targets are, and for what purpose it is perpetrated.



## **CHAPTER 3: PATRIARCHY AND THE CONSTRUCTION OF RAPE AS A WEAPON OF WAR**

### **3.1. Introduction**

The next step in the argument is to explore the role of patriarchy in the construction of rape as a weapon of war. The proposition of this study suggests that the AU's peace and security and human rights protocols may draw on, or be informed by, a culture of African patriarchy. These narratives, by means of their vagueness and euphemisms, may contribute to the reinforcement of patriarchal norms, and thus provide for the perpetuation of the use of rape as a weapon during armed conflicts. I am proposing that patriarchy creates the condition in which rape is considered acceptable or a normalcy.

This study does not suggest that the narrative used in AU documents and the patriarchal norms pervasive in African societies necessarily or always result in war-time rape. However, in periods of violent conflict, a combination of these conditions may be sufficient to lead to the occurrence of war-time rape.

The plausibility of this relationship can only be verified by gaining an understanding of how African patriarchy is constructed and works. Thus an extensive discussion on patriarchy in the African context is warranted. This discussion will inform my understanding and discussion of how rape is constructed as a weapon, who the primary targets are and what effects the use of this weapon has on societies. Moreover, it will assist in understanding why rape is perceived as such a useful weapon during African armed conflicts. This chapter will not only consider rape in African conflicts, but international examples too. This discussion will be informed by the discussion on the social construction of sex and gender, as well as the 'engendering' of insecurities in African armed conflicts, discussed in Chapter Two.

### **3.2. Patriarchy in Africa**

Many African cultures regard women as inferior to men, and thus 'rightfully' unequal (Maseno & Kilonzo, 2011, p. 49). The ISS (2010, p. 17) and Kambarami (2006, p. 3) concur that patriarchy is particularly pervasive in African cultures. Patriarchy is bred through a process of social construction and socialization, which begins in the home (with the family) and is then

extended to other sectors of society (such as school, the economy and politics). “The family, as a social institution, is a *brewery* for patriarchal practices by socializing the young to accept sexually differentiated roles” (Kambarami, 2006, p. 3). In the home, boys and men are socialized to regard themselves as the ‘breadwinners’ and ‘warriors’ of the family; they should provide for, and protect, their mothers, sisters and wives. Girls and women conversely are socialized to be submissive housekeepers, who are to ensure that all the needs of the men in their home are met. This includes cooking, cleaning, taking care of the ill and providing for men’s sexual needs.

Children are further socialized by the toys they play with. Girls are given dolls, which they are to tenderly love and care for; emulating the role of the women in their communities (Hogg, 2010, p. 72; Kambarami, 2006, p. 4; Whitworth, 1997, p. 12). Boys are given puzzles, building blocks and cars to play with; toys which encourage mental stimulation and physical exertion. Hence they are taught to emulate the men in their communities. Boys are admonished to be ‘tough’ and ‘strong’ and never to cry, because showing emotion is regarded as ‘acting like a girl’ (Hogg, 2010, p. 72; Pettman, 1996, p. 93; Peterson & Runyan, 1993, p. 82). It is these beliefs which inform men’s behaviour during peace-time and subsequently armed conflicts; men may use violence in order not to be regarded as weak or womanly, to prove their masculinity.

Patriarchal norms are further entrenched by African cultures pertaining to marriage. In many African societies, like South Sudan, marriage and bride-price practices are integral to society. Men are required to pay the traditional bride-price of cattle to demonstrate their readiness for marriage; thus men seek to accumulate cattle to demonstrate their wealth and subsequent ability to support a family (Lacey, 2013, p. 7; Stern, 2011, p. 3-4). Women and girls are thus seen as economic commodities and are treated like objects by their families; a female is only as valuable as the number of cows she can bring in (Lacey, 2013, p. 9). Wives in turn are expected to produce many children to replace the cows her husband’s family paid for her in bride-price (Lacey, 2013, p. 9; Ansell, 2001, p. 702). Bride-price may also be regarded as a means to forge bonds between two families (Lacey, 2013, p. 7; Shope, 2006, p. 69; Ansell, 2001, p. 695). In South Africa for example, the payment (cows or cash) made by the man’s family is often used to pay for the education of the bride’s siblings or to purchase goods, such as furniture for her parent’s household (Shope, 2006, p. 69).

In numerous African cultures, a man may marry as many wives as he wants. Even where matriarchy is practiced, men remain the heads of their households (Puechguirbal, 2003, p.1273).

These patriarchal attitudes and norms further allow men to have extra-marital affairs. Conversely, women who are 'caught' doing likewise are ostracized by their communities and labelled as 'loose', 'cheap' or 'spoilt' (Kambarami, 2006, p. 4). The International Centre for Human Rights, cited in Kambarami (2006, p. 4), reports that it is more socially acceptable for men to engage in pre-marital sex, whereas women are expected to preserve their virginity for marriage. Thus it is seen that sex and the right to it form an intrinsic part of patriarchy as will be elaborated and demonstrated later.

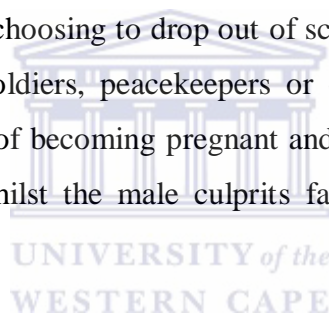
Virginity, marriage and motherhood are consequently highly regarded in many African cultures, which has contributed to the persistence of cultural practices, such as virginity testing (Forster-Towne, 2011, p. 45; Kambarami, 2006, p. 4; Farwell, 2004, p. 395). A woman who does not abstain from premarital sex (be it consensual or forced), is regarded as tarnishing the name and image of her family (Kambarami, 2006, p. 4). Additionally, women are to wait for their husbands to initiate sex and set the conditions for sexual encounters (such as the use of birth control and protection), and they are expected to be sexually submissive to their husbands (Kambarami, 2006, p. 5). According to Leclerc-Madlala cited in Kambarami (2006, p. 5) and IRIN News (2004), a wife's compliance to her husband's sexual demands form part of the marriage contract in African cultures. This often leads to women contracting HIV/AIDS and sexually transmitted infections (STIs) as they have no control over their husbands' sexual encounters.

In many African cultures, patriarchy restricts women from pursuing an education and participating equally in the economy and politics; all necessities if women are to be empowered and gender equality is to be obtained. These cultures do not encourage girls to attend school and get an education, as being too highly educated will deem them 'unmarriageable' (Stern, 2011, p. 8; Chirimuuta, 2006). Human Rights Monitor, cited in Kambarami (2006, p. 6), reports that parents are also more willing to invest in the education of their boys, as these will carry on the family name. Educating girls is seen as a waste of money since they will eventually get married and benefit another family.

Conversely, in some African cultures education may raise the 'value' or 'social status' of a woman. In South Africa, Botswana and Zimbabwe for example, the family of a woman who is highly educated may demand higher *lobola* or bride-price (Shope, 2006, p. 69; Ansell, 2001, p. 706). *Lobola* traditions dictate that a man should recompense a woman's family for the time and

money they have invested in her; in her education and everyday living expenses. Women with education are seen as having more worth, and lobola becomes a mechanism for perpetuating class distinctions and the commodification of women (Shope, 2006, p. 69). It reinforces patriarchy by shifting the ownership of a woman from her father to her husband. This often leads to domestic and sexual abuse as men feel they have bought their women (Dintwat, 2010, p. 283; Ansell, 2001, p. 706). Others however argue that lobola raises a man's appreciation for his wife and the children born from their marriage, and shows respect and gratitude to his wife's parents (Mwamwenda & Monyooe, 1997, p. 270; Ansell, 2001, p. 705). Thus it is seen that patriarchy is complex; what in one society reduces the value of a woman, may in other society raise the value or social standing of a woman.<sup>13</sup>

Girls may however in some instances be forced to stay at home, to undertake domestic chores and provide care for their siblings or sickly relatives. Girls who do attend school often have to deal with sexual advances, discriminatory remarks and violence from male teachers and students. This results in many girls choosing to drop out of school. Girls who choose to become sexually involved with teachers, soldiers, peacekeepers or older males, for higher marks or financial gain perhaps, run the risk of becoming pregnant and subsequently being ostracized by their families and communities; whilst the male culprits face no consequences (Chirimuuta, 2006).



Women who do not complete their primary or secondary education have very few viable employment options. They may have to work in rural markets, making and selling crafts or tending and selling agricultural goods. Women however do not hold positions of power in local markets or the committees which regulate these markets (Puechguirbal, 2003, p. 1273). In some countries like Kenya, patriarchal traditions still prohibit from owning land; despite national and international legislation which provide for gender equality (Nordström, 2013, p. 7). There are still persistent inconsistencies between customary law and civil law (Stern, 2011, p. 6). Those women who do make it into the corporate world soon realize that men control government structures, policy development, economics and means of production (Parpart, 2004, p. 1-2).

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<sup>13</sup> Enloe (2000b, p. 285) argues that it is patriarchy's facile adaptiveness that allows it to persist and manifest in various forms in different societies.



Patriarchal attitudes in the workplace make it difficult for women to progress in their careers and occupy leadership positions; many women remain in secretarial and clerical positions for all their working lives (Kambarami, 2006, p. 6; Parpart, 2004, p. 2; Enloe, 2000, p. 9). Women in corporate working environments often encounter sexual harassment and violence from their male colleagues and employers and may need to offer sexual favours to advance in their careers. Charvet, cited in Kambarami (2006, p. 7), argues that these situations occur because women are not seen as human beings, but as sexual beings.

Furthermore, many African cultures does not encourage women to participate in politics, the military, peace-keeping or peace-building initiatives; in some instances they may even be prohibited from doing so by threat of violence (Parpart & Thompson, 2012, p. 182-183; Puechguirbal, 2003, p. 1275). Women who enter military service may still be subject to sexual violence, as evinced by the case of a South African marine cadet, Akhona Geveza, who was raped and murdered by a senior official (Hartman, 2014). Heineken (1998, p. 221) argues that men may feel threatened by women working in similar positions and may still perceive women as better suited to support or non-military positions. Furthermore, “women who enter politics have to really prove that they have tough calibre in order to withstand the pressure brought about by patriarchal attitudes which define women as weak citizens not fit for public office” (Kambarami, 2006, p. 7). Thus it is seen that patriarchy constantly stereotypes women as vulnerable and weak victims, and not as valuable contributors to the economy and politics (Puechguirbal, 2003, p. 1276; Enloe, 2000a, p. 16). Women are treated as objects, rather than active participants in the international system (Enloe, 2000a, p. 42). Patriarchal notions such as these fuel gender inequality and prohibit women from constructive and consistent participation in economic and political life (Fakier, 2006, p. 8).

Not only does patriarchy inhibit the participation of women in public life, it is inherently and fundamentally violent. In patriarchal cultures violence is used to control women, in the private and public spheres of life. Thus patriarchy is conducive to the use of gender-based violence (physical and emotional) and cultural practices such as female genital mutilation. In African societies violence is often synonymous with ‘discipline’. Women who are regarded as being insubordinate, un-submissive or disobedient may be beaten by her husband, father or men in the community. A Kenyan man interviewed by Maseno and Kilonzo (2011, p. 52-35) affirms this by saying:

Personally I beat my wife very often when she does not obey my orders. Women at times behave like children and have to be 'straightened up'. They at times talk too much and have to be shut up!

Patriarchy affords men power, and men hence seek to retain this power and privilege by beating and controlling 'their' women in order to prove their masculinity. Abuse or gender-based violence has consequently come to be considered as acceptable or a norm in African societies (Bubbenzer & Lacey, 2013, p. 4; Stern, 2011, p. 6; Maseno & Kilonzo, 2011, p. 52; Hogg, 2010, p. 73). Moreover, women who are raped are regarded as bringing dishonour to their families. Thus they are often violently beaten, killed or ostracized by their husbands, families and communities. Women are further regarded as shaming their families when they engage in relationships with men outside their culture or religion, by their choice to have premarital sex, commit adultery or when their families do not provide a sufficient dowry (Foerstel, 2011, p. 345).

Patriarchy also entitles men to sex (Wodi, 2005, p. 2). Men's ability to have sex or gain access to sex is equated with masculinity; it communicates whether they are strong, virile, manly (as opposed to gay or effeminate) men. It has often been argued that men need sex to function optimally, which has contributed to the production and perpetuation of heterosexual male violent masculinity (Lopes, 2011, p. 6; Baaz & Stern, 2009, p. 499; Higate, 2003). Such beliefs are conducive to the practice of rape, particularly marital rape, another patriarchal manifestation of violence.<sup>14</sup> This is evinced by a male sergeant interviewed by Baaz and Stern (2009, p. 506) who claims that:

Because women are like flowers, and she could satisfy my needs [sexually]. When you have been in a battle it is like a desert, then she could help you with that.

The belief that women are to provide men with sex and that men may force sex when women do not submissively engage, is even perpetuated and entrenched by women. A female military officer interviewed by Baaz and Stern (2008, p. 78) argues soldiers need sex when they do not have money to pay for a prostitute; they are left with few other choices but to rape:

So, the way our soldiers are raping, it is because of a lack of money. Maybe he has not been with a woman for 3 or 4 months and has no money on his pockets. What is he supposed to do?

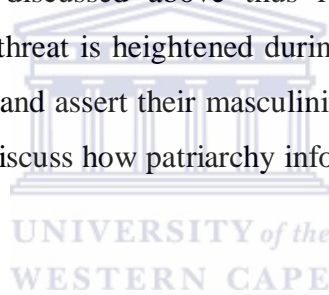
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<sup>14</sup> It is important to note that not all African men engage in rape, be it peace-time, marital or war-time rape.

This sentiment is repeated by a male colonel interviewed by Baaz and Stern (2009, p. 509) who states that:

A soldier, if he has no possibilities, no money so that he can go the normal way... if he has nothing to give a women-he will take her by force. He will take a woman by force. Physically men have needs. He cannot go a long time without being with a woman.

Thus it is seen that patriarchy demands that women provide men with sex, as men cannot survive without regular sexual release or satisfaction. It also entitles men to take sex when not offered freely. Furthermore, patriarchy represents women as the property of men, with men being in control of every aspect of women's lives. The symbolism attached to the bodies of women, women being regarded as the possession and wealth of men, and the belief that men are entitled to sex, is what makes rape such a meaningful weapon. Women's bodies are reduced to sexual entities which are ascribed with various meanings, and thus exploited by men for various purposes. The patriarchal culture discussed above thus renders women and their bodies susceptible to sexual violence; this threat is heightened during periods of war or conflict when men especially seek to demonstrate and assert their masculinity. With the above discussion as a background, I will now proceed to discuss how patriarchy informs the construction of and use of rape as a weapon of war.



### **3.3. Rape as a weapon of war**

Rape has come to be considered a normal or expected occurrence during armed conflicts. It is regarded as an “inevitable” and “integral by-product of warfare” (Magwaro, 2013; Haeri & Puechguirbal, 2010, p. 116; Kivlahan & Ewigman, 2010, p. 468; Parpart, 2010, p. 3; Baaz & Stern, 2009, p. 498; Buss, 2009, p. 145; Alison, 2007, p. 82, 84; Diken & Laustsen, 2005, p. 111; Farwell, 2004, p. 389; Copelon, 1994, p. 197). Enloe (2000b, p. 134) adds that war-time rape is often regarded as unavoidable pillage or collateral damage. Griffiths (2005, p. 851) describes rape as a “ubiquitous feature of warfare”, which has persisted since primitive times. This theme has even been depicted in contemporary movies such as *Braveheart* and *King Arthur* which portray rape as the ‘spoils of war’. It has thus become a belief that rape is a normal by-product of war, and due to a culture of continual impunity pertaining to war-time, its use has been perpetuated (Clifford, 2008, p. 3; Farwell, 2004, p. 389; Card, 1996, p. 14).

This study however proposes that war-time rape is more complex than this. Although rape may occur as a by-product of war or armed conflict, it is not always a by-product of conflict. Rape may be used as a strategic and meaningful weapon. Rape has for centuries been used as a deliberate policy and planned strategy in warfare. In armed conflicts, enemy soldiers often attack and rape civilian women to signify victory over that particular nation or community and to demoralize its combatants. Commanders may in fact give direct orders for their combatants to use rape, or turn a blind eye when they do rape. Strategic rape has been used by state militaries and rebel groups alike. Examples of past conflicts during which rape has been used as a weapon of war include the Bosnia war, the civil wars in Rwanda, Liberia, Uganda, the recent conflict in Mali and in the on-going conflict in the Democratic Republic of Congo (DRC). Despite the policy response of the international community (addressed in the following chapter) rape and sexual violence continues to be used as a widespread and primary weapon in African conflicts.

### 3.3.1. Rape in war-time: two constructions

Some of the key concepts which will be used throughout this study are '*sexual violence*', '*war-time rape*' and '*rape as a weapon of war*' or '*strategic rape*'. In addition to the definition of rape adopted in Chapter One, it is necessary to distinguish between these concepts for the purpose of providing clarity to this study. *Sexual violence* may be defined as a broad category that includes "rape, sexual torture and mutilation, sexual slavery, enforced prostitution, enforced sterilization, and forced pregnancy" (Wood, 2009, p. 133). *Rape* is commonly understood as the act of forcing a woman or man to have sexual intercourse against their will. More detailed definitions however define rape as "the penetration of the anus or vagina with any object or body part or of any body part of the victim or perpetrator's body with a sexual organ, by force or by threat of force or coercion, or by taking advantage of a coercive environment, or against a person incapable of giving genuine consent" (Wood, 2009, p. 133).

Rape may occur as a by-product of domestic and gender-based violence during peace-time. The following examples demonstrate this. In South Africa, the Medical Research Council (MRC) in 2009 found that three out of four men admitted to rape, and nearly half of these admitted to raping more than once. More recent statistics show that a woman is raped every 26 seconds in South Africa; during the period of 2010 to March 2011 more than 60 000 cases of sexual assault were reported (Mabuse, 2012). In India, the recent gang-rape of a 23 year-old woman on a moving bus in Delhi has brought awareness of the high levels of rape being committed throughout the country. According to a report released by the National Crime Records Bureau in

India, 24 206 rape cases were registered in India during 2011 alone (Malhotra & Dutta, 2013). Rape figures often under-represent the actual amount of rapes that take place as victims may be reluctant to report crimes of such an intimate nature to the police; who are often accused of regarding rape cases with apathy (Malhotra & Dutta, 2013; Roy, 2012).

Rape may also occur as a by-product of violence during war-time rape; however these rapes are often more violent than in peace-time rape due to the breakdown in values and societies. Soldiers and combatants may rape for recreation or to satisfy their sexual 'needs'. Furthermore, rebel and militia groups may also engage in rape when there is a lack of internal hierarchy and discipline or a weak ideological basis within the group. In an interview conducted by Wood (2009, p. 145) a former military officer stated that, whether rape occurs or not:

depends on the officer in charge. . . . It depends on field commanders: Good commanders don't allow it, keep tight rein on discipline. By and large troops adhere to that. Weak commanders lead to excesses. It's a matter of professionalism.

This relationship between strong leadership or discipline and whether combatants rape is further emphasized by Baaz and Stern (2008, p. 79). The soldiers from the DRC whom they interviewed expressed that they would be less likely to rape and commit other forms of sexual violence if there was a threat of severe punishment (preferably involving public humiliation) and if they had strong, disciplined and honest commanders.<sup>15</sup>

Rape in war-time may however also be used for strategic purposes; it may be intended to carry a specific meaning. This is demonstrated by the Bosnia War (where women from the Muslim and Croatian minorities were the primary targets of rape) and the Rwandan Genocide (where women from the Tutsi minority were the primary targets of rape). The *Encyclopaedia of International Relations and Global Politics* thus refers to strategic rape as an act of "gendercide", which entails violence against, the exploitation of, or the mass killing of males or females (Griffiths, 2005, p. 300). According to Nordström cited in Clifford (2008, p. 3), "Rape, as with all terror-

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<sup>15</sup> Soldiers accused their leaders of being corrupt and stealing their wages, which renders them unable to provide financially for their wives. Due to the poverty and suffering they experience, they argue that they have no choice but to prey on local populations for survival. They claimed that their wives deny them sex when they do not bring money home, thus they are 'forced' to rape to satisfy their 'sexual needs'. They also complained of being away from home for extended periods of time, and thus needing to use prostitutes or rape and (Baaz & Stern, 2008, p. 64, 77-79).

warfare, is not exclusively an attack on the body- it is an attack on the 'body politic'. Its goal is not to maim or kill one person, but to control an entire social-political process by crippling it. It is an attack directed equally against personal identity and cultural integrity”.

These various occurrences/uses of rape in war-time are however often conflated in the literature; the terms *rape as a weapon*, *sexual violence* and *war-time rape* are used interchangeably. McDougal (2000, p. 6) states that the sexual violence and rape prevalent in armed conflict situations are usually seen as “spoils of war or part of the services that are made available to combatants”, adding that rape is “an effective way to terrorize and demoralize members of the opposition, thereby forcing them to flee”. McDougal (1998, p. 8) and Kivlahan & Ewigman (2010, p. 468) further suggests that war-time rape is a deliberate and strategic policy undertaken by combatants who wish to destroy their enemies. Clifford (2008, p. 3) adds that war-time rape may include single and multiple instances of rape, gang rape, as well as forced prostitution, forced impregnation and sexual slavery. This study however proposes that not all occurrences of rape in war-time are strategic (used as a weapon) and not all occurrences are a by-product of conflict (Meger, 2012). This study therefore argues that war-time rape is constructed in two distinguishable ways; (1) rape as by product of violence, the breakdown of values and ill-discipline, and (2) rape as a weapon of war or strategic rape.

This study will focus on the construction and use of rape as a weapon of war. The use of rape as a weapon of war can also be understood as an act of genocide and a crime against humanity; whereas rape as a by-product of conflict may be understood as a war crime.

Article 6 of the *Rome Statute on the International Criminal Court* (1998, p. 3) defines *genocide* as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”. These acts include killing persons who belonging to particular group, causing serious bodily or mental harm to members of a specific group, attempting to physically destroy a group or part of a group, and forcibly moving children of the group to another group. When women (or men) from a particular sub-national group are raped to display the inferiority, humiliation and dishonour of their nation, this may be considered an act of genocide. In such instances, rape is employed to destroy communities and defile (or purify) their bloodline. Rape is also used to realign the loyalties of future generations/children and cause serious mental harm to members of a particular group. Hence rape is used as one of the means to perpetrate genocide, as in the case of the Rwandan and Bosnian genocides.

Article 7 of the *Rome Statute* (1998, p. 3) defines a *crime against humanity* as acts committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. These acts include murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment and deprivation, torture or any other inhumane which is intended to cause great suffering, or serious injury to body or to mental or physical health. The perpetration of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” is also considered a crime against humanity. A crime against humanity by this definition may then occur during peace and conflict times. Furthermore, Article 7 (2a) adds that the phrase ‘*attack directed against any civilian population*’ means a course of conduct that is a State or organizational policy. Hence, when combatants are given orders by their commanders to rape, or when commanders ignore the occurrence of rape, rape is used as a strategic policy. This is considered a *crime against humanity*.

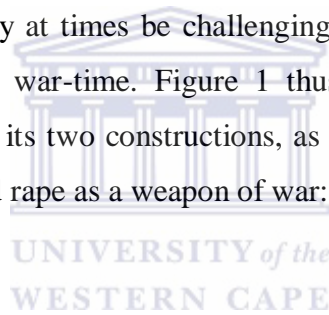
Article 8 of the *Rome Statute* (1998, p. 5) defines *war crimes* as “grave breaches of the Geneva Conventions of 12 August 1949”. These grave breaches include wilful killing, attacks against civilians, acts meant to cause humiliation and degradation, mutilation, cruel treatment and torture. Rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of sexual violence, also constitute war crimes. By this definition, rape that occurs as a by-product of conflict may be understood to constitute a war crime. The UN Office of the High Commissioner on Human Rights (OHCHR, .n.d.) adds that perpetrators may be held criminally liable on an individual basis for committing these serious breaches of international humanitarian law; whether these acts are committed against civilians or enemy combatants, during interstate or intrastate conflicts.

Moreover, Article 8(2b) of the Statute (1998, p. 7) adds that the use of “weapons, projectiles and material and *methods of warfare* which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict” also constitute grave violations to international humanitarian law and a war crime. This study argues that the act of rape can be constructed as a weapon or method of warfare that causes superfluous injury or unnecessary suffering. Article 8(2b) however declares that *weapons* or *methods of warfare* only come to be considered as serious violation of international humanitarian law when their use is “subject to a comprehensive prohibition and

are included in an annex to this Statute”. Hence, the use of strategic rape will only be considered as a weapon or illegitimate method of warfare when it is comprehensively prohibited as such. Furthermore, when a distinction is made between rape as a by-product of armed conflict and the use of rape as a strategic weapon, both acts will constitute a war crime in their own right.

This construction or understanding of rape as a weapon of war would give victims more justice by acknowledging that not all occurrences of rape are a by-product of violent conflict. As noted in Chapter One, not only is the recognition and prohibition of rape as a weapon or strategic war tactic essential to the “deterrence and changing norms that legitimize war rape”, it would afford “victims a whole new set of rights” (Radhakrishnan, 2013). It entitles victims to accountability and reparations for their injuries from the use of this weapon, and contributes towards ending the culture of impunity. It acknowledges that rape is more than an inevitable or unavoidable by-product of conflict.

This study acknowledges that it may at times be challenging to distinguish between these two constructions when rape occurs in war-time. Figure 1 thus aims to provide clarity on my understanding of war-time rape and its two constructions, as well as the focus of this study, by juxtaposing rape as a by-product and rape as a weapon of war:





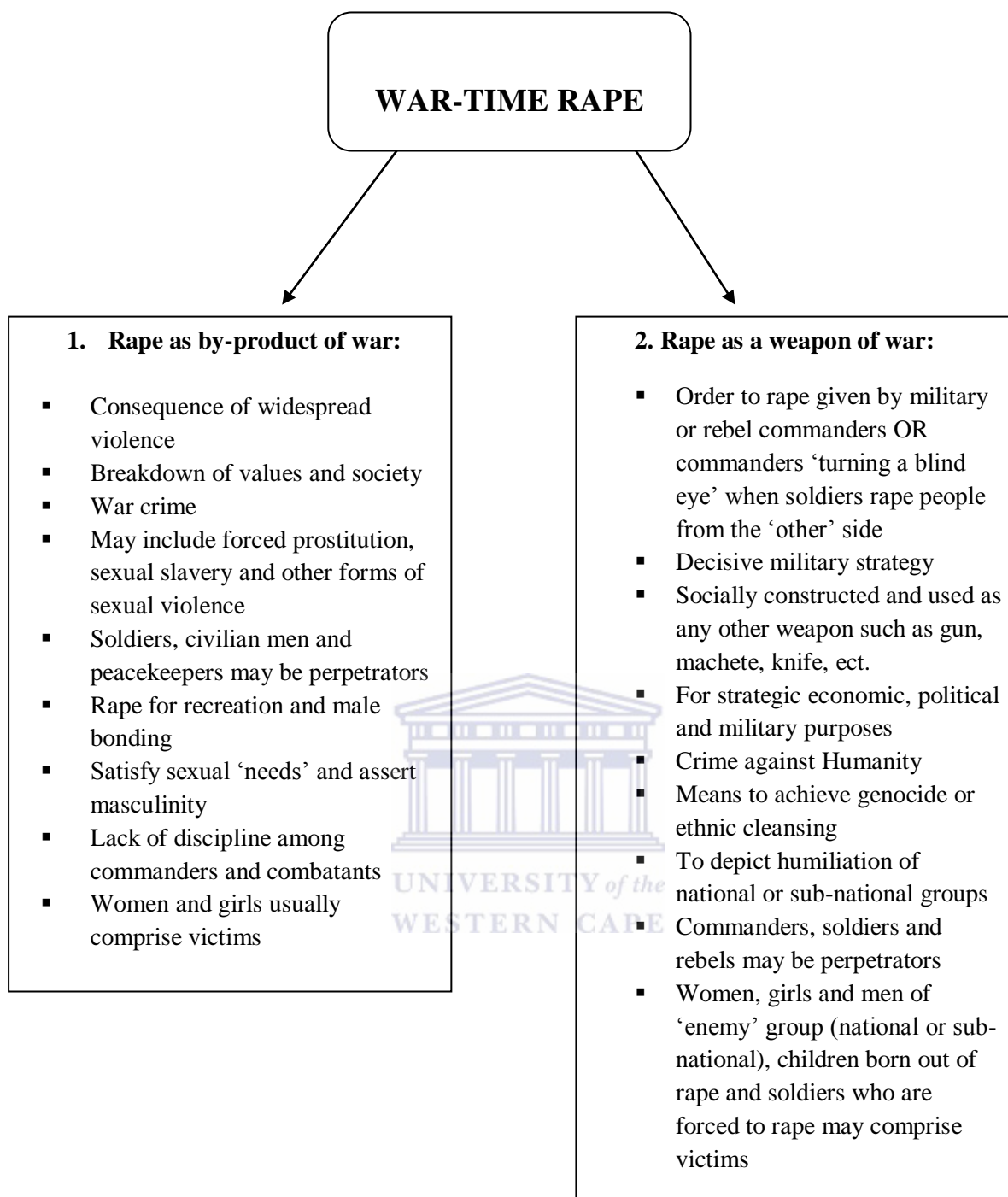


Figure 1: Juxtaposition of rape as by-product and weapon of war

This study suggests that when this distinction is made, it is possible to delegitimize rape as a weapon of war. Framing rape only as a by-product of violence is a limited and dishonest account of how rape is employed in war zones and what it represents. This limited framing of rape as an inevitable by-product of armed conflict is insufficient to address the problem. As Clifford (2008,

p. 3) argues, the idea the rape is a “normal by-product of war” contributes to continual impunity and increases its use as a weapon. Presenting rape as little more than a “common and unavoidable” occurrence in conflict results in failing to address its broader construction and use (Clifford, 2008, p. 9). In war-time, the penis is used for violence just like a gun, knife or machete; combatants can choose to use rape as a weapon. Therefore this study proposes that rape be understood as a deliberate strategy or weapon in war to fight the enemy. Due to its contravention of international humanitarian law, strategic rape should be considered an unacceptable and morally repugnant weapon to use; and subsequently be delegitimized.

The use of rape as a weapon is not limited to African armed conflicts, as the international community offers numerous examples spanning across history. To gain insight into the wide-ranging uses of rape as a weapon of war, a few international examples will now be considered.

### 3.3.2. International cases of rape as a weapon in war

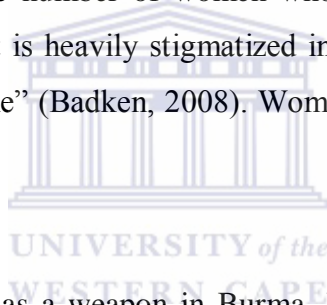
In the Bosnian War (1992-1995), rape was used for ethnic cleansing; the majority of the women who were raped were Muslim and Croatian. Women were impregnated to give birth to ‘Serbian’ babies. Rape camps were set up in which women were detained and repeatedly raped until it could be confirmed that they were pregnant (Farwell, 2004, p. 396; Pettman, 1996, p. 101; Copelon, 1994, p. 202, 204). Once pregnant, these women were watched carefully to prevent them from aborting their babies. Serbian soldiers would rape women in the streets and in front of their families to represent the disgrace and humiliation of their nation (Copelon, 1994, p. 204).

The same approach was used by state-backed Pakistani troops during the fight for Bangladesh's independence in 1971. Troops impregnated women with ‘Punjabi’ babies in order to weaken the cultural integrity of opposing groups (Murthy, 2012). Another example is that of the Kosovo War (1996-1999), during which rape was used to extort money from Albanian families; as well as a means of ethnic cleansing. In some countries, such as Colombia, rape is used to instil fear in various towns and villages, giving perpetrators control over economic resources. During the period of 1997 and 2005 alone when paramilitary groups tried to expand their control throughout the country, hundreds of women became victims of rape, sexual torture and mutilation (Brodzinsky, 2009).

During World War I hundreds of French women were raped by German soldiers (Harris, 1993, p. 170). These soldiers further used rape as a weapon in World War II in their attempt to

exterminate primarily Jews, in addition to ‘Gypsies’ and Jehovah’s Witnesses (Ravitz, 2011). The Soviet armed forces, referred to as the Red Army, later raped German women with immense brutality in response to calls by their superiors to avenge their motherland and prove their dominance. Girls from as young as eight years old to women as old as 80 years old were raped (Beevor, 2002). Natalya Gesse, a war correspondent during World War II, describes the Red Army as an “army of rapists” (Beevor, 2002). Mary Louise Roberts, the author of a book called “What Soldiers Do: Sex and the American G.I. in World War II France”, claims that American soldiers also perpetrated rape widely among French women. These rapes were often interpreted by French citizens as depicting an assault on their sovereignty and dignity (Schuessler, 2013).

Furthermore, during the war in Iraq, rape was perpetrated not only against women, but against men; US soldiers raped male prisoners to represent their feminization (Glaister & Borger, 2004). Prisoners at the Abu Ghraib jail were also forced to rape each other and women were forced to expose their bodies to soldiers. The number of women who were raped during the Iraq war remains unknown as “sexual assault is heavily stigmatized in the Middle East, and victims are often afraid to talk about it to anyone” (Badken, 2008). Women also fear the retaliation of their rapists and do not trust the police.



More recently, rape has been used as a weapon in Burma. When soldiers from the Burmese Army came into conflict with the Kachin Liberation Army in May 2012, they captured a Kachin woman and raped her repeatedly for three days (Linn, 2012). The woman was held hostage in a church and a Kachin man was captured and forced to watch the woman being raped. The Burmese government has denied using rape as an army policy; however a report by the Women's League of Burma states that sexual violence is being used by the Burmese army to demoralize and destroy ethnic communities (BBC, 2014). Furthermore, Burma has a military dominated Supreme Court, and the cases of victims who accuse soldiers of rape and abduction are not taken very seriously. “The law does not protect citizens; instead it defends the vicious soldiers who commit gang rape” (Linn, 2012). Thus a culture of impunity provided for the continued use of rape as a weapon by soldiers in Burma, allowing them to target ethnic women and destroy towns and villages.

In a special report on the situation in Burma during March 2013, the Special Rapporteur to the UN revealed that “abuses such as attacks against civilian populations, extrajudicial killings, arbitrary arrest, torture, and sexual and gender-based violence” are on-going; there remains a gap between supposed reform at the top and implementation on the ground (Leah & Gay, 2013). The Burmese government continues to deny that its soldiers (as well as Burmese monks) have used and are using rape as a weapon against Muslim and Christian minorities, and there is no serious indication that it will take action against soldiers for these human rights abuses (Stop Rape in Conflict, 2014; Hodal, 2013; Kachin Women’s Association Thailand, 2013; Leah & Gay, 2013).

Another recent example is that of the Syrian civil war. Since the onset of the conflict in March 2011 between President Bashar al-Assad’s government and opposition forces seeking to oust him, thousands of civilian women have been raped and have subsequently fled to refugee camps to find safety. Approximately 90 000 women and children have fled their homes for fear of rape and sexual torture (Magwaro, 2013). However, rape and sexual abuse has also taken place in these camps. The wide-spread, systematic use of rape in Syria has been compared to the Bosnian war and the Rwandan genocide. As in the case of these conflicts, rape is being used as a tool of control, intimidation, and humiliation in the Syrian civil war (Wolfe, 2013; Sherlock, 2012).

Rape has been perpetrated by both government soldiers and rebel forces. It has been alleged that President al-Assad has instructed Syrian soldiers to rape women and girls; this allegation has been attested to by Syrian soldiers (Ensor, 2014; Wolfe, 2013; Meger, 2012). As Syria is a conservative and patriarchal society, rape is regarded with disdain; talking about rape is considered a taboo and women who are raped have in countless instances been disowned by their families due to the shame and dishonour associated with rape (Wolfe, 2013; Chemaly, 2013). A recent study by the Women Under Siege Project revealed that women comprise nearly 90% of those raped in the on-going Syrian conflict; as depicted in the graph below (Wolfe, 2013).

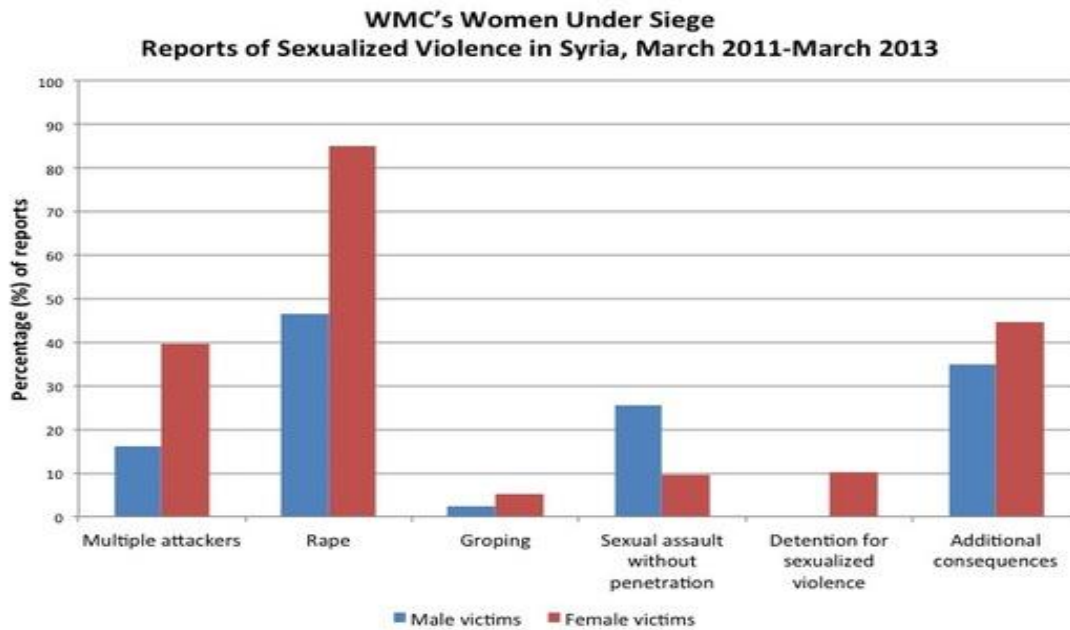


Figure 2: Reports of sexual violence in Syria

However, men and boys have also experienced sexual violence during the conflict. Rape, electric shocks to genitals and beatings have been used to terrorise civilian men (Wolfe, 2013; Meger, 2012). Civilian men tell stories of, not only being sexually abused, but of being forced to watch as ‘their’ women are being raped (Wolfe, 2013). Civilian women report being repeatedly raped, gang-raped and brutalized with utensils such as bottles (Wolfe, 2013, Sherlock, 2012). Furthermore, there is little or no evidence that the perpetrators of these crimes have been punished, as the state itself is implicated; hence the use of rape as a weapon of war in Syria persists.

It is thus seen that rape has been used as a weapon across the international system. Despite the difference in the context of conflicts, women face similar challenges – patriarchal traditions, low ranking social positions, poor access to legal resources, economic exploitation and sexual abuse. These conditions are the daily reality for millions of women around the world and those in Africa.

### 3.3.3. African cases of rape as a weapon

Despite the international use of rape as a weapon of war, this research project will focus primarily on its use in Africa. A study conducted by the *American Journal of Public Health* in

2011 revealed that 1,152 women are raped in the Democratic Republic of Congo (DRC) every day – a rate equal to 48 per hour; which is significantly higher than the previous United Nations estimate of 16,000 in one year (Adetunji, 2011). Women are raped by both by rebels in ethnic disputes (strategic weapon) and state soldiers (by-product of conflict). These rapes are brutal and women are often impaled with broken glass bottles, tree branches and guns (Gettleman, 2007). “The United Nations (UN) has labelled this country as the centre of rape as a weapon of war and commentators have gone as far as to describe the country as one of the worst place on earth to be a woman” (Adetunji, 2011). It has been suggested that it is more dangerous to be a woman than a soldier in this ongoing ethnic conflict (OHCHR, 2008). The peace process in the DRC has been slow and hampered by clashes between militia groups, international trade in minerals and diamonds, a lack of political will and deep-seated mistrust between contending parties (Baaz & Stern, 2008, p. 63; Higate & Henry, 2004, p. 487).

In the Sierra Leone war, which spanned from 1991 to 2002, rebel groups (the Revolutionary United Front and National Patriotic Front of Liberia) entered the country from Liberia in a bid to overthrow the government in order to gain control over its mineral wealth (Coulter, 2008, p. 58). This war has been described as one of Africa’s most brutal conflicts, and no part of the country was spared the violence of war. According to the Physicians for Human Rights cited in Coulter (2008, p. 58), “Approximately 75 000 people were killed, and many more injured, and as many as 250 000 girls and women are estimated to have been subjected to rape or sexual violence”. The rebels were also accused of gross human rights abuses such as cutting off civilians’ limbs, mass destruction of property and inciting violence amongst various factions in the country (Coulter, 2008, p. 58).

Somalia has also been considered one of the worst places to be a woman. Its own minister for women’s development and family welfare has called the nation a ‘living hell’ for women and girls (Hom, 2011). In Somalia rape (for strategic purposes and as a by-product of violence) is committed en masse and perpetrators easily evade justice. Rape victims are often too scared to report sexual violence because they fear being blamed for their rape. Victims, not perpetrators, are usually rejected and beaten to death by their families and communities. Women who complain also risk their rapist/s taking revenge (Weibel, 2007).

In Darfur, rape has also become part of life for millions of women; girls as young as four years old face rape daily as a consequence of ethnic conflict. Rape has been used by state

sponsored/supported Janjawid rebels to terrorize communities and women in internally displaced persons (IDP) camps (Reeves, 2012; Wolfe, 2012; McGee, 2011, p.3; Amnesty International, 2004). The epidemic proportions of rape have been worsened by government officials who refuse to acknowledge that it occurs, and who threaten to expel relief workers who speak out against gender-based violence (Robertson, 2008). Due to the stigma attached to rape as well as many women's fear of retaliation, the statistics available may be inconclusive at best, only reflecting a portion of what the real percentages may be. Furthermore, rape has been used as a military strategy or weapon of war in newly independent South Sudan (Bubenzer & Lacey, 2013, p. 5). Members of opposing ethnic groups rape with the intention of destroying social and cultural stability of their enemies.

Rape has also been used as a weapon during the recent conflicts in Mali and the Central African Republic (CAR). It has been reported that Tuareg rebels and other armed groups in Mali have used rape as a strategic weapon (IRIN News, 2013; UN Women, 2013; Human Rights Watch, 2012a; Lloyd-George, n.d.). After the March 2012 military coup the UN Refugee Agency (UNHCR) registered 2 785 cases of sexual and gender-based violence, with most of these cases involving rape (IRIN News, 2013). The use of rape in the Malian conflict has even been compared to the Rwandan genocide (UN Women, 2013). Tuareg rebels have not only perpetrated widespread rape, but have also committed other war crimes such as executions, amputations, public floggings, using of child soldiers, and pillaging hospitals, schools, aid agencies, and government buildings (HRW, 2012). Furthermore, rape as a by-product of the conflict has also occurred, with Malian women accusing UN peacekeeper of sexual violence (Omari, 2013b).

In the on-going conflict in the CAR, Seleka rebels have perpetrated mass-rape against women; killing women who refuse to have sex or surrender their food (Amnesty International, 2013; Human Rights Watch, 2013; Omari, 2013a; UN News Centre, 2013). Examples such as that of a 14 year old girl, who was raped while her parents were held at gunpoint, have become all too common. When the rebels had finished, they told the parents, "We have done what we came to do" (HRW, 2013).

When reading rape statistics, one is inclined to ask what the reasons for these high levels of violence against women may be, and why women seem to be particularly targeted. Arendt cited in Meger (2011, p. 103), suggests that physical and political violence are a means to an end;

violence requires an objective to define and guide its function. The statistics and example of war-time rape also reflects a wide and complex range of issues – with varying socially constructed meanings – such as, gender, culture, psyche and the body (Diken & Laustsen, 2005, p. 112). I will now proceed to explore these issues and the socially constructed meanings of strategic rape, in an attempt to better understand how and why rape is used as a weapon of war. The following is a discussion of the ‘ends’ or intended purpose of strategic rape.

#### 3.3.4. The purpose of strategic rape

There is a rich body of feminist research which helps us understand how and why rape is used as a weapon, which this study will draw upon. Farwell (2004, p. 390) suggests that rape has been constructed as a weapon of war through a complex relationship between patriarchy, militarization, nationalism and gender. Firstly, rape is constructed as a weapon of war by means of the symbolism attached to the bodies of men and women. The state is often represented as male and the nation as female, with boundary transgressions being represented as a sexual invasion or assault (Pettman, 2005, p. 679). Rape “attacks women’s physical and emotional sense of security while simultaneously launching an assault, through women’s bodies, upon the genealogy of security as constructed by the body politic” (Koo, 2002, p. 525).

Secondly, women are described as the physical reproducers of a nation, and as the signifiers of difference (Pettman, 2005, p. 680). They are expected to have the right children (children of their nationality) with the right men (men of their nationality) (Pettman, 2005, p. 680). They are further expected to pass on their national language, culture and traditions to their children in order to preserve their national culture and heritage. It can therefore be said that they are regarded as the national seedbeds for the reproduction of their men’s seed. Men as the planters of their seed resulting in the formation of fruit or offspring (Farwell, 2004, p. 394-395), provides the identity of the ‘fruit’; the biological father determines the nationality or ethnicity of children. Women impregnated by their enemies will therefore give birth to children of the ethnicity or nationality of their enemies; this is referred to as genetic imperialism (Card, 1996, p. 5, 7). These patriarchal notions of women being the passive recipients of male seed renders rape a particularly useful and meaningful weapon. Women are subsequently regarded as little more than incubators, ‘national wombs’ or vessels for childbearing (Enloe, 2000a, p. 54; Salzman, 1998, p. 365; Copelon, 1994, p. 206).



Thirdly, theories regarding procreation, chastity and honour are intrinsic to the functioning of patriarchal societies, and often result in protectionist values which claim that women are the property of men, and in need of their protection. Farwell (2004, p. 394-395) argues that men, who regard women as the mothers of their nation, feel duty-bound to protect the honour of their women. As a result of such protectionist values, the raping of women has come to symbolize the dishonouring, infiltration and destruction of a nation. It symbolizes the inability of a particular nation's men to prove their manhood by protecting their motherland or nation; their inability to protect their women's chastity (Forster-Towne, 2011, p. 43; Haeri & Puechguirbal, 2010, p. 119; Baaz & Stern, 2008, 67; Pettman, 2005, p. 680; Pettman, 1996, p. 100-101; Copelon, 1994, p. 200-201).

Many feminists would suggest that it is not only a culture of patriarchy, but one of militarization, which leads to the use of rape as a weapon. The nature and policies of militaries are masculine and legitimize the use of violence (Baaz & Stern, 2008, p. 66). Military institutions dictate how conflicts in the home and society should be resolved. It teaches that conflict resolution necessitates the use of violence, which often manifests itself in sexual and domestic violence against women (Kelly, 2000, p. 49). Militaries teach soldiers that their masculinity must be shown by acts of aggression and that all things feminine are to be devalued (Meger, 2011, p. 105). Militaries hence reinforce gender relations, patriarchy and hierarchies of power; which consequently establish the roles women should play in societies (Enloe, 2000a, p. 12-13). Women are relegated to the realm of the domestic, child-bearing, child-caring, and all things which are not masculine; as discussed previously.

It can therefore be said that gender norms regarding how women should behave also inform how they should be treated both in times of peace and war. Women also contribute to the construction of these norms regarding their role and treatment in society by maintaining the status quo and adhering to cultural practices regarding marriage, domestic life and child-bearing (Pettman, 1996, p. 30; Farwell, 2004, p. 395). Furthermore, Menon and Bhasin, cited in Farwell (2004, p. 394), argue that the use of rape during conflict is a mere extension of pre-existing gender roles and relations, as well as socio-cultural dynamics. They claim that it is the values and meanings attached to the bodies of women during times of peace, and the toleration of gender-based violence during times of peace, which make rape such an effective tool during armed conflict. War-time rape, particularly strategic rape, is merely an intensification or extreme iteration of the sexual violence that exists in societies during times of peace (Farwell, 2004, p. 394).

Farwell (2004, p. 394) adds that, “Patriarchal hierarchies and values interact and intersect with militarization, fuelling the construction of gender relations that underlie war rape”. It may thus be deduced that the construction of rape as a weapon of war is a process during which national, ethnic, cultural and religious constructs combine with patriarchy to create the conditions in which rape acquires specific meaning. This constructed meaning then results in its use as a weapon during armed conflicts. Social constructivists further argue that war-time rape represents the domestication of one group of men by another (Card, 1996, p. 7). Masculinised identities are ascribed power and feminized identities are ascribed inferiority and weakness (Skjelsbaek, 2001, p. 226). The national or ethnic identity of the perpetrator is masculinised when raping the women of another nation or ethnic group, while the national or ethnic identity of the victim is feminized when she/he is raped by their enemy as noted above. This logic subsequently results in particular groups or a particular gender being targeted in armed conflicts; the subject of the following section.

The following are some of the ‘ends’, intended purposes or reasons for using war-time rape.

#### *3.3.4.1. Strategic rape for genetic imperialism, ethnic cleansing and genocide*

As mentioned above, rape may be used as a weapon during conflicts for the purpose of genetic imperialism and to realign the loyalties of future generations (Card, 1996, p. 5, 8; Copelon, 1994, p. 205). According to Card (1996, p. 8), war-time rape seeks to “undermine national, political and cultural solidarity, changing the next generation’s identity, confusing the loyalties of victimized survivors”. Once women have been raped and impregnated, the bloodline of that particular nation has been defiled (or cleansed).

Rape is also used as a tool for genocide (Buss, 2009, p. 150; Farwell, 2004, p. 395; Copelon, 1994, p. 204). Many women and girls are killed after they have been raped, leading to mass murder. A combination of mass murder and forced impregnation is used to wreak havoc within a nation or ethnic group. Both of these occurrences contribute to destroying a particular group’s identity, which is essentially what genocide constitutes (Card, 1996, p. 8-9).

Furthermore, by raping the women of a particular ethnic group or nation, the ‘enemy’ seeks to dismantle the family and community structure of that ethnic group or nation. According to Card (1996, p. 8) and Forster-Towne (2011, p. 25, 44) war-time rape is used to cause chaos and instil

a sense of fear in members of a particular group. Nordstrom cited in Clifford (2008, p. 3) adds that rape is an attack on the body-politic of a nation, with its main goal to cripple the social-political processes of a nation and attack its cultural identity. Moreover, war-time rape is usually carried out in public, and due to the stigma and shame attached to rape, women who have been raped are usually rejected, resulting in the division of family and community ties. This is particularly the case in patriarchal societies, in which talk of sex, virginity, sexuality and sexual abuse are considered taboo (Haeri & Puechguirbal, 2010, p. 117; Clifford 2008, p. 6-7). In such communities, raped women are regarded as being defiled, dirty, damaged, traitors and promiscuous. In the event that rape victims fall pregnant, their babies serve as a constant reminder of their nation's defilement and shame.

Thus, it may be said that the rape victim suffers twice: first by being raped and then by being condemned and ostracized by patriarchal communities (Forster-Towne, 2011, p. 46; Haeri & Puechguirbal, 2010, p. 120; Diken & Laustsen, 2005, p. 113; Salzman, 1998, p. 371). Family members and neighbours are also often forced to rape one another or to watch as other family members and neighbours are raped and killed (Haeri & Puechguirbal, 2010, p. 119; Clifford, 2008, p. 5; Diken & Laustsen, 2005, p. 118; Salzman, 1998, p. 359); further contributing to the dismantling of the family and community structure. War-time rape may also be carried out in rape camps in which women are repeatedly raped until it can be confirmed that they are pregnant, and where they may be detained to ensure that they do not abort their 'enemy' babies (Haeri & Puechguirbal, 2010, p. 117; Diken & Laustsen, 2005, p. 112; Copelon, 1994, p. 204).

#### 3.3.4.2. *Strategic rape to display dominance*

War-time rape is also used to communicate dominance; it serves as a "cross-cultural language of male domination" (Card, 1996, p. 7). By raping the women of a nation, the 'enemy' seeks to feminize and dishonour the men of that nation as discussed above. One apparent example is the Rwandan genocide. Hutu men brutally killed Tutsi men to show their ethnic superiority over them. They also raped and killed Tutsi women, cutting off their sexual organs and putting them on sticks placed where everyone could see, as a sign of their masculinity and superiority (Voices from Rwanda, n.d.). Goldstein (2001, p. 362) and Diken & Laustsen (2005, p. 116) suggest that the rape of a nation's women by 'enemy' soldiers is seen as the ultimate humiliation and a stamp of total conquest. Rape is meant to represent the impotence of the men of a particular nation and their inability to prove their manhood by protecting their women or nation (Haeri &

Puechguirbal, 2010, p. 119; Alison, 2007, p. 80; Sulzman, 1998, p. 365). It represents their failure as masculine men, warriors and protectors (Baaz & Stern, 2009, p. 515; Copelon, 1994, p. 201).

Moreover, in patriarchal societies the virginity of unmarried women and the fidelity of married women are considered to contribute to the wealth of men. The more wives a man has the wealthier he is deemed to be (Diken & Laustsen, 2005, p. 117). As the wealth of men, women are thus considered to be in need of protection. The word rape is derived from the Latin word '*rapere*' which means to steal, seize or carry away without permission to do so (Macnamara, 2002, p. 2). By raping civilian women, the 'enemy' is hence perceived as stealing the wealth of the men of that nation or ethnic group; and thus dishonouring them. Rape also renders women unfit for marriage and motherhood in patriarchal societies; and many rape survivors fear being further abused or killed by their spouses and families (Forster-Towne, 2011, p. 45; Parpart, 2010, p. 3-4; Clifford, 2008, p. 7; Diken & Laustsen, 2005, p. 113; Puechguirbal, 2003, p. 1274).

#### 3.3.4.4. *Strategic rape for the creation of a brotherhood and a sense of social belonging*

While rape splinters family relationships and alliances, it simultaneously creates a sense of solidarity amongst the perpetrators (Parpart & Thompson, 2012, p. 184-185; Forster-Towne, 2011, p. 35, 42-43; Kivlahan & Ewigman, 2010, p. 468; Alison, 2007, p. 77; Diken & Laustsen, 2005, p. 112, 124). It is used for this strategic purpose by those in positions of power, authority and command, and it has thus become a political institution (Card, 1996, p. 9). Those who actually perpetrate the rape may be ignorant of the reason why they are doing it; but those in command assign a particular purpose to rape.

It is a violation of the international rules of war to give soldiers and other perpetrators direct instructions to rape women.<sup>16</sup> Yet, they may be encouraged to do so by those in command, who offer them higher ranking positions, financial rewards and protection. Stetz cited in Meger (2011, p. 104) states that rape in conflict often increases when perpetrators believe that they are acting with the approval of those in higher positions of the military or government. There have however been cases in which soldiers have been forced to rape women in order to prove their

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<sup>16</sup> The international norms concerning the use of rape and sexual violence during armed conflicts will be discussed in the following chapter.

manhood and their loyalty to their commanders (Clifford, 2008, p. 7). Failure to rape may result in these soldiers themselves being killed, jailed or raped by their fellow soldiers, or their family members being raped or killed in front of them (Diken & Laustsen, 2005, p. 112; Card, 1996, p. 10). In such cases perpetrators are as much victims as the women who are raped and the children born from these rapes.

Rape is often highly praised and encouraged and it creates a sense of community and unity amongst perpetrators. Sow cited in Forster-Towne (2011, p. 42), adds that soldiers are particularly praised when they rape certain types of women (pregnant, virgin or pygmy), as this is regarded as the ultimate sign of masculinity, and believed to render them invincible in war. Those in command then turn a blind eye to the rape of 'enemy women' due to the greater purpose that this rape serves; destroying the masculinity of the enemy. This culture of turning a blind eye is perpetuated by the culture of patriarchy in many societies, where rape is regarded with great disdain and victims are often cast aside. Hence, the sexual violation of women continues to occur, as is seen in the case of the DRC, South Sudan, Mali, the CAR and numerous other African states.

#### *3.3.4.4. Strategic rape, underdevelopment and resource conflict*

Up to now, rape has primarily been discussed as a weapon to achieve military-political objectives in war. According to Meger (2011, p. 100), economic development and globalization are also factors contributing to the increased use of rape as a weapon of war. Developed countries, despite their military capabilities, have shifted their focus to the development of their economic capabilities. This shift in focus to trade and economic development has resulted in rapid globalization, leaving many developing countries lagging behind; particularly African countries (Buthelezi, 2001, p. 161-162). Developed countries clamour for scarce resources that are chiefly found in developing countries. Domestic contenders have become aware of this demand and thus resort to whatever means necessary to trade in the international economy. International actors are often so keen on attaining scarce resources that they are willing to procure them from whichever domestic actors may be able to provide them. This desperation for trade (on the part of both international and domestic actors) has resulted in the emergence of a

process called “shadow globalization”, characterized by illegal networks and economies, which actors can exploit for personal gain (Meger, 2011, p. 108)<sup>17</sup>.

Various national or ethnic groups (domestic actors) within developing countries often go to war for the sake of staking their claim on scarce resources, and the power to trade these resources for personal financial gain. Thus it is seen that African countries which are rich in mineral and scarce resources, are plagued by civil war, warlordism, violence and instability; this is also known as the “resource curse” (Meger, 2011, p. 109). Kaldor (2006, p. 10) asserts that economics forms a central part of new wars because armed groups finance their endeavours through the sale of minerals, drugs, and arms. She claims that in numerous instances, civil wars have been protracted primarily because of funding provided by international donors. These international funders have a vested interest in keeping civil wars going for as long as possible, so that they may continue to acquire the scarce resources they need for their own economic development.

Meger (2011, p. 113) and Baaz and Stern (2008, p. 75-76) argue that there is a distinct relationship between sexual violence and the economic objectives of rebel groups. Violence against civilians has become a pattern in contemporary conflicts. Rebel groups use violence and force to gain control over and extract the resources various communities may possess; they rape in order to secure financial gains. In the DRC for instance, the general population derives little, if any, benefit from natural resources, while rebel groups profit primarily from the extraction of these resources (Baaz & Stern, 2009, p. 500). Meger (2011, p. 113) argues that rebel groups use rape as a weapon particularly because it “reinforces norms of hegemonic masculinity (exploited by military institutions) and exploits core social themes of honour, shame, family, and identity, has proven an effective method of maintaining a generalized state of violence and terror, under the cloak of which armed groups are free to pursue their economic agendas”. Rape also destroys the social cohesion in communities (as previously mentioned), leaving communities demoralized, which makes it easier for rebel groups to gain control over the scarce resources that communities may possess.

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<sup>17</sup> In the DRC for example, the shadow economy has grown and been institutionalised to such a great extent that the entire country is reliant on the illegal trade of resources and minerals; thus chaos is maintained to enable armed groups to exploit the country’s economic resources (Meger, 2011, p. 109).

Additionally, African armed conflicts or ‘new wars’ are fought primarily by young men who are looking for social status and a sense of social belonging. War-time rape “is largely a group activity, providing a powerful sight for performing masculinity, for providing one’s credentials as ‘real’ men to fellow soldiers and demonstrating loyalty to the group/band of brothers involved in the fighting” (Parpart & Thompson, 2012, p. 185). In many African cultures a man’s ability to financially provide for himself and his family portray his manhood or masculinity. It dictates his social ranking and value in the community. Baaz and Stern (2009, p. 507) explain that an African man’s economic stability and ability to provide financially represents his adult manhood, authority and power, independence, social recognition, and whether he will have access to a bride, and subsequently, a family. This logic has been particularly pervasive in violent cattle raids in South Sudan; rebels attack communities to steal their cattle in order to pay the bride price required to attain/secure wives (Lacey, 2013).

Moreover, conflicts are engaged not only for the purpose of breaking down a particular system, but also to create a new system that benefits a particular group socially, economically and politically. “War has become a business which many young recruits, and their leaders, have no desire to stop” (Parpart & Thompson, 2012, p. 184). Men’s desperation to prove their masculinity, social worth and heterosexuality, as well as militarized language and practices, often encourages extreme sexual violence (Parpart & Thompson, 2012, p. 184-185).

Women face further insecurities when it comes to negotiating new forms of political legitimacy. “As armed groups negotiate and construct social, political and economic relations in their favour, these are also the people most likely to hold authority after peace accords are signed, which exacerbates women’s disadvantages as victims of war” (Meger, 2011, p. 14). When women are not included in peace negotiations they are, more often than not, left more impoverished and exploited than before; these new forms of political legitimacy further limit their access to basic rights, resources and wealth.

Thus the cycle of gendered discrimination is perpetuated. In instances where war-time rape has not been addressed (by means of providing justice to those who have been raped by ensuring the punishment of rapists) for the sake of brokering peace deals and reconciliation, peace-time rape and sexual violence once again become a normalcy for many African women.

African women are however not always or only victims of sexual violence during armed conflicts. They may very well be perpetrators of violence who perpetuate the use of rape as a weapon of war. Thus the following section will discuss the agency of women (and men) to demonstrate that they (men and women) do not neatly fall into the stereotypes ascribed to them; the intersection between gender, war and sexual violence is an inherently complex relationship.

### **3.4. The agency of women in armed conflicts**

Gender stereotypes, which are informed by notions of patriarchy, masculinity and femininity, often render women invisible in the international system. The association of men with war, strength and agency, and women with weakness, vulnerability, peace, compassion, and passivity continually dictates the roles men and women should play in war. Patriarchy continues to inform and exploit gender dichotomies such as protector-protected, strong-weak, active-passive, subject-object and violent-peaceful which inform men and women about the roles they should play in society; what is considered natural and gender-acceptable behaviour (Petersen, 1992, p. 48). Women who enter the military for example are expected to fulfil gender-acceptable, supportive positions; such as missionary teachers, nurses, cooking staff and administrators (Bubbenzer & Lacey, 2013, p. 4; Baaz & Stern, 2009, p. 505; White, 2008, p. 148; Ekiyor, 2002; Enloe, 2000, p. 46-48; Whitworth, 1997, p. 15). However, women do not necessarily assume these acceptable gender roles. Neither do women necessarily assume the role of victims in armed conflicts, despite being represented as such in the international policy response to war-time rape.

Internationally women have displayed their agency in various ways, such as protesting and holding public awareness campaigns in condemnation of the policies of their government (or foreign governments). A more unconventional means of agency has been silence; when alternatives are limited or non-existent. Liberal feminists generally argue that silence is detrimental to the empowerment of women or the attainment of gender equality. Parpart (2010, p. 2, 3, 5, 7) however suggests that this is not always the case. Women have deliberately chosen (and employed) silence as a means to resist and criticize patriarchal norms. In some instances, women have kept silent or not spoken out about injustices or inequality for fear of their safety; fear for their very lives.

In conflict and post conflict situations, especially where masculinist practices such as gender-based violence and rape are prevalent, publicly challenging leaders or powers may be foolish



and extremely dangerous (Parpart, 2010, p. 2). The World Health Organization (WHO) (2002, p. 95) points out that women's silence in these situations are a "calculated assessment of what is needed to survive". Thus they display agency by choosing silence. Women have also chosen silence as a means of 'speaking out' against oppressive regimes and institutions. Examples include Muslim women wearing white socks, nail polish, make-up, jewellery and western clothes under their traditional garb, as a silent rebuke to the Taliban; Afghan women in exile in India refusing to wear their veils in public; and Muslim women living in France wearing revealing clothing and outrageous make-up to challenge patriarchal authority (Parpart, 2010, p. 7).

Further examples include Argentinean women (mothers) holding quiet vigils across from the presidential palace, during which they wore white scarves representing the diapers of their lost children; Kurdish mothers holding silent vigils in public spaces to rebuke the state and Kurdish patriarchal practices; and Israeli and Palestinian women dressed in black (part of the organization called Women in Black) holding vigils in major traffic intersections to condemn the militaristic policies of various states (Parpart, 2010, p. 6). While silence and vigils may seem inadequate to meet the challenge of gender inequality and sexual abuse, they may, however, contribute to incremental changes, as silence provides spaces for renegotiating gender practices (Parpart, 2010, p. 5, 7).

Moreover, women do not always seek to challenge patriarchal or oppressive regimes; they may very well choose to support these regimes. Women have also employed violent means of demonstration in the international system. Chechen women, for example, have chosen to act as suicide bombers in the conflict between Russia and Chechnya; they are commonly referred to as 'Black Widows' (Sjoberg, 2010b, p. 62). These women also play active roles in the leadership of armed groups. In Palestine women comprise seven percent of suicide bombers, while in Iraq they comprise less than one percent (Sjoberg, 2010b, p. 63). However, there remains contestation around whether these women choose their actions or are manipulated and forced by male family members.

These international examples demonstrate that women are not necessarily more peaceful than men, as the UN resolutions which will be discussed in the following chapter or liberal feminists would suggest. For example, Indira Gandhi and Margaret Thatcher both took their states into wars (Pettman, 1996, p. 117). More ancient examples of women who led their nations into war

include the Chinese military leader Fu Hao, the ancient British queen Boudicca, Queen Zenobia of Palmyra and Jeane D'Arc (Joan of Arc) who led France into battle (Herrmann & Palmieri, 2010, p. 20; Sjoberg, 2010b, p. 53-54). In some instances women are also the perpetrators and perpetrators of violence during conflicts. Women's presence and participation in war is not something unusual or new (Sjoberg, 2010b, p. 57; Coulter, 2008, p. 56; White, 2008, p. 138; Utas, 2005, p. 404-405; Petersen, 1992, p. 48). This is evinced by the increasing number of women actively participating in militaries and conflicts around the world (Haeri & Puechguirbal, 2010, p. 110; Herrmann & Palmieri, 2010, p. 20; Lindsey, 2000; Pettman, 1996, p. 126, 142).

Yet, women's participation in conflicts both disturbs and complicates conventional perceptions about war and the military (Coulter, 2008, p. 65). This is because women are regarded as the 'givers of life' and not the takers thereof (Herrmann & Palmieri, 2010, p. 20; Peterson & Runyan, 1993, p. 82). Men who find the agency of women in wars unsettling often believe that peace will bring a return to 'traditional' or 'normal' gender roles; a return to patriarchal life (Parpart & Thompson, 2012, p. 187). However, war is not, and has never been, the business of men alone (Herrmann & Palmieri, 2010, p. 19; Coulter, 2008, p. 58; Pettman, 1996, p. 89). Classifying women solely as victims in war limits and conceals the diverse roles played by women during armed conflicts (Parpart & Thompson, 2012, p. 183; Coulter, 2008, p. 66; White, 2008, p. 138; Higate, 2004, p. 486). This allows patriarchal stereotypes to persist. It also inadvertently implies that because a woman is the victim of a violent event, she becomes incapable of having agency to change the situation she finds herself in. The word victim has become synonymous with a 'lack of agency' (Coulter, 2008, p. 66).

However, agency is essentially about having choice; the choice to participate and how to participate (Gouws, 2005, p. 83). Hence, despite the reality that African women are particularly targeted during armed conflicts, they remain actors in their own right (Byanyima, 2008, p. 320). African women possess agency because they can still choose to act in certain ways; however limited these choices may be (Parpart, 2010, p.1; Coulter, 2008, p. 68). Shaw in Coulter (2008, p. 68) conversely argues that the "agency of those who deploy 'weapons of the weak' (such as protesting or silence), is very different from the agency of those whose authority allows them to act upon the world through control of the apparatus of domination".

There is a difference in agency and power, and in African conflicts, women do not necessarily have the power to change their political system or their circumstance. They do however have the agency to exploit the very notions of patriarchy that are used against them, for their own benefit. This is seen in the case of women who have been raped and abducted choosing to become rebels or the girlfriends of rebels. Aretxaga, cited in Coulter (2008, p. 68), adds that this is a 'choiceless decision' as the only alternative women have to becoming lovers or fighters, is death. Agency becomes a matter of bare survival. Women use the means available to them to ensure their survival; this in itself being a demonstration of agency.

#### 3.4.1. Examples of African women's agency

One example, which is generally not discussed in literature on women and armed conflicts, is the agency of women in the Rwandan genocide. Women played active roles in the extermination of the Tutsi population (Brown, 2013, p. 1; Haeri & Puechguirbal, 2010, p. 111; Hogg, 2010, p. 70). Hutu women committed acts such as murder, participated in stealing and looting, reported where Tutsi people were hiding, offered financial support to the military and provided food to Hutu militias. Hutu women in prominent, leadership positions used their influence to propagate genocide. Examples include Agathe Kanziga (the widow of former Rwandan President Habyarimana) and Pauline Nyiramasuhuko (former Minister of Family Affairs and Women's Development) who ordered the abductions, murder, torture and rape of members of the Tutsi population (Brown, 2013, p. 12; Hogg, 2010, p. 90-92). Other prominent women such as Rwandan radio personality Valerie Bemeriki, used their public platform to incite hatred and violence (Brown, 2013, p. 12). Hutu women also raped young Tutsi men, to represent the humiliation and inferiority of their tribe's men (Brown, 2013, p. 12; Hogg, 2010, p. 92).

The war in Sierra Leone serves as another example where women employed their agency. During this war, an estimated 35% of fighters were children, while 25% of these children were estimated to be girls (McKay & Mazurana, 2004, p. 92). Save the Children cited in Coulter (2008, p. 58) contests that the percentage of girl fighters was as high as 40%. Some female ex-combatants interviewed by Coulter (2008, p. 55) relay stories of being abducted and raped. However, many girls actively chose to join fighting forces, as opposed to becoming street children or dying from starvation (McKay & Mazurana, 2004, p. 22).

These women became what were commonly known as 'bush wives'. These 'bush wives' were also fighters, spies, cooks, sex slaves and labourers – whatever was needed by the rebels during

the war (McKay & Mazurana, 2004, p. 24). Female rebels and soldiers were regarded as barbarians, monsters and more cold blooded and cruel than male rebels by the civilian population (Coulter, 2008, p. 63). There were cases where women were sent to the frontline to fight with the rebels or to head dangerous missions (Coulter, 2008, p. 59). Thus it is seen that women were active agents in the Sierra Leone war.

During the Liberian Civil War, women soldiers were as fierce as their male counterparts and committed just as many atrocities (Utas, 2005, p. 405; Ekiyor, 2002). According to Ellis in Utas (2005, p. 405), one out of ten soldiers were women during this war. These women rose to the ranks of generals, commanders and senior intelligence officers. One such soldier was Agnes Taylor, the ex-wife of former Liberian President Charles Taylor. At one point, all Charles Taylor's body guards were women (Ekiyor, 2002). Women combatants and rebels participated in torturing pregnant women, organizing forced sex rinks and holding women down to be raped by their male counterparts (Ekiyor, 2002).

The physical strength and ferocity of these women soldiers provides a sharp contrast to the images of weak, fragile, African women or victims of armed conflicts (Utas, 2005, p. 405). It also goes against stereotypes that describe women as givers of life as opposed to takers of life (Ekiyor, 2002). However, many of these women soldiers experienced violence at the hands of their fellow male soldiers and commanders. Even in rebel groups, women were still beaten and raped despite their participation in the groups' violence. "Women are reminded that whatever additional roles and status they may have attained in the movement does not relieve them from their 'traditional' roles as providers of sex" (Ekiyor, 2002).

Thus, some Liberian women chose to exercise their agency by exploiting their 'traditional' role as sex providers through participating in a practice known as 'girlfriending'. Girlfriending entailed dating high ranking military commanders (Utas, 2005, p. 424). These commanders would provide protection to their girlfriends in exchange for their loyalty and sexual favours. In addition to protection, these commanders often gave their girlfriends money, clothes, cars, social status and weapons to protect themselves with. Girlfriending also provided women with the opportunity to loot villages that soldiers went to fight in. One of the main incentives for Liberian women to participate in girlfriending the army or rebel groups was the spoils of war (Utas, 2005, p. 416). The spoils obtained by means of looting and the money obtained from boyfriends would in many instances be used to support their families.

Other Liberian women however chose to deliberately present themselves as vulnerable victims in order to secure humanitarian aid (Schroven, 2011, p. 11-12; Utas, 2005, p. 409). A young woman speaking on the reason for exploiting humanitarian aid organizations stated that, “We need this project and the income, even if it isn’t much. Otherwise we have to be friends with those sugar daddies again. They provide for us, but that means they buy us. And we don’t want to do that. But the other option is prostitution; that is even worse” (Schroven, 2011, p. 11). Thus women have showed agency by exploiting notions of female victimhood in order to navigate their new positions in civilian life, with the aim of improving their daily living conditions.

Women in the Ugandan war also did not passively assume the role of victims, but played active roles after being abducted. The war in Uganda started in 1988, when spiritual leader Joseph Kony assembled a guerrilla force, the Lord’s Resistance Army (the LRA). The LRA began abducting women to serve as servants, fighters and wives within its ranks. These women were neither passive victims nor regular fighters; their tasks included nursing, midwifery, radio communication, record-keeping, and logistical support (Annan, Blattman, Mazurana & Carlson 2008, p. 8). They also served as porters, farmers, childminders, cooks and spies. According to Renn and Johnson-Sirleaf cited in Annan et al. (2008, p. 2), women had critical perspectives on their circumstances and made choices about how they would react to these circumstances.

#### WESTERN CAPE

However, many women were forced to become wives of rebels and the mothers of their children; being subject to severe sexual abuse at the hands of their rebel husbands. Some of the women interviewed by Annan et al. (2008, p. 8) related that their secondary role to that of wife and mother was fighter. They reported committing the same or worse violent acts as their male counterpart, including killing civilians, soldiers, or friends and family (Annan, et. al., 2008, p. 9). Clearly all women were not vulnerable victims alone, but active participants in the Ugandan war (Annan, et. al., 2008, p. 3).

Women (just as men) do not necessarily fight for the benefit of their country or to empower women in their society. In most cases, they fought for their own survival as fighting with rebel groups provided better opportunities to gain access to food, clothing and shelter. Some women may also participate in war because they prefer the action of fighting to life in a refugee camp (Utas, 2005, p. 427). They may participate in war not only to gain access to resources and weapons, but as the result of fear for their military commanders. According to Coulter (2008, p.

61), “Survival and control was an issue for some [women rebels]; for many others it was fear, anger and even resignation, but there were some who mentioned the prestige and resources involved in being a fighter as their prime motivator”.

For many women, having been abducted and raped, the power and prestige enjoyed by fighters must have been a welcome change. For example, White (2008, p. 151) relates a story of a young girl named Rufaro, who upon being abducted by the guerrilla soldiers of the Zimbabwe People’s Revolutionary Army, insisted upon receiving military training and participating in combat. Joining rebel groups may be for many women a means to escape their vulnerability and give them a sense of control over their lives as they gained access to weapons and were taught how to fight. These women exercised their agency by using violence and weapons as a means to escape the violence of men (Coulter, 2008, p. 62).

Furthermore, Afisi (2010, p. 230) adds that historically African women were not the vulnerable victims as they were (and are) depicted. Neither do they want to be pitied or depicted/studied as vulnerable victims (White, 2008, p. 160). Women from traditional African cultures have played integral roles in social, economic and political development of their societies. Afisi (2010, p. 230) argues that not only do women pass on their language and culture to their children, provide food for their families and communities, use their extensive knowledge of herbs and medicines for the survival of their communities, but they are revered and respected for doing so.

An example of one such traditional African society is that of the Urhobo in Nigeria. According to Ikperha in Afisi (2010, p. 232), “Women have played a significant role in the Urhobo culture. They are highly respected and adorned in many fashions throughout several clans. Essentially, the women’s role is not only that of caretaker, but extends to other forms. In art the Urhobo woman has been portrayed in several ways: procreator, goddess, mother, ancestor and sage”.

Towns (2010, p. 142) concurs that women have not only been chiefs in Nigeria, but have historically played active roles in agriculture, industrialization, commerce and governance across the African continent. Although African women have been “fully engaged with the economic and social tasks in the traditional sectors of African life” these contributions have often been overlooked or ignored (Towns, 2010, p. 142). Thus African women have paradoxically been portrayed as uneducated, poor, vulnerable and in desperate need of help from Western states. Towns (2010, p. 5) argues that in many contemporary contexts it has become the persistent

presumption that the empowerment of women has been a Western or European phenomenon. Yet many African states have shown significant gains with regards to the social status or equality of women; such as South Africa, Angola, Mozambique, Seychelles, Tanzania and Uganda (Ghosh, 2012; Byanyima, 2008, p. 324).

This misconception has been the result of Western, developed states portraying themselves as 'civilized', while non-Western states are portrayed as 'barbaric' and 'uncivilized'.<sup>18</sup> They subsequently mandate themselves with the responsibility of teaching these 'uncivilized' states how to behave in the international system and more importantly, how to empower women (Towns, 2010, p. 8). There has been a persistent correlation between modernization, development and industrialization and the status of women. Some feminists have even gone as far as to suggest that Western states are the best guarantors of women's rights and empowerment due to their level of development (Towns, 2010, p. 6).

Towns (2010, p. 7-9), however, argues that many of these developing states are not as 'uncivilized' as they have been portrayed with regards to women's empowerment, as women have historically played influential roles in these societies. Towns (2010, p. 123) further adds that many socialist states, such as those in Latin America, have had active women's movements and provided for the equality of women long before the empowerment of women came to Western states. Thus it is seen that women in developing countries have been active agents in their states, particularly Latin American and African women (Towns, 2010, p. 142).

Afisi (2010, p. 232) conversely states that despite the agency of women in African cultures, men are generally the heads of the family structure and controlling agents in society. African societies have been persistently patriarchal in nature and women have subsequently been expected to play supportive and complementary roles; as opposed to the important social, economic and political responsibilities held by men (Afisi, 2010, p. 232). Afisi (2010, p. 233-234) believes that these supportive roles have been exacerbated by the discriminatory character of colonialism and colonial education.<sup>19</sup> As a result of women not being included in the construction of roads and

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<sup>18</sup> This construction is related to the way African men are often portrayed as unable to control their 'insatiable sexual urges', savage, violent and voracious. African men are thus regarded as unfit for political and economic leadership. Western intervention in African affairs is hence deemed as imperative.

<sup>19</sup> Pettman (1996, p. 7) and Towns (2010, p. 73) explain that the colonization of states and nations were meant to represent their feminization and subsequent inferiority. The logic of colonialism stated that 'uncivilized' states (by

industries, political life or the economy, they do not have the same skills as many African men, and are thus relegated to the domain of the domestic in the post-colonial era.

Therefore, many African women are forced to play the role of wife, mother and caretaker in the family, and may find themselves susceptible to various forms of abuse in both the home, the military and workplace (Afisi, 2010, p. 236). Even where women played active roles in nationalist conflicts against colonizers their concerns and 'issues' remained side-lined and their contribution soon forgotten (Pettman, 1996, p. 126; White, 2008, p. 158). At the end of these conflicts, discriminatory customary laws returned, as women's agency did not equate a structural change in patriarchy and its subsequent gender inequalities.

The same may be said of contemporary African conflicts. Despite women's active participation in these conflicts, few gain access to influential and high ranking positions in post conflict situations and sexually exploitative and patriarchal relationships persist (Herrmann & Palmieri, 2010, p. 23; White, 2008, p. 158).<sup>20</sup> Enloe (2000a, 62-63) adds that gender equality is often placed on the 'back seat' in favour of attaining the goals of liberation struggles; those seeking gender equality are told 'not now, but later'. Women remain regarded as the providers of sex to men who regard themselves as entitled to sexual gratification; resisting sex (and rape) is often considered as an act of insubordination or disobedience (White, 2008, p. 149-150, 152-153).

WESTERN CAPE

Moreover, men statistically remain the largest percentage of perpetrators of violence during armed conflicts (Coulter, 2008, p. 88; Alison, 2007, p. 75) and despite their agency in war and armed conflicts women are still more susceptible to sexual abuse during these periods (Haeri & Puechguirbal, 2010, p. 111; Coulter, 2008, p. 61; White, 2008, p. 151; Alison, 2007, p. 89). For example, one former military trained cadre of the African National Congress (ANC) relates the story of being tortured and repeatedly raped by her fellow combatants (White, 2008, p. 154). Similarly grotesque stories are told by women who have participated in various African conflicts (White, 2008, p. 151).

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Western standards) could only benefit and learn from Western, developed, 'civilized' states; thus rendering developing states dependent on developed states.

<sup>20</sup> By keeping women out of top level decision-making and policy development positions, patriarchy, traditional gender roles and stereotypes have been re-inscribed (White, 2008, p. 148).



Simply put, involvement in the military and rebel groups does not necessarily liberate women. If women combatants remain susceptible to sexual violence, civilian women are even more so. The numerous examples discussed above suggest that civilian women remain susceptible to the use of rape as a weapon of war during armed conflicts, despite the agency of women during armed conflicts; this is as a consequence of deep rooted patriarchy.

#### 3.4.2. The agency of men (soldiers and rebels) in African armed conflicts

In a patriarchal international system that is portrayed as dangerous, masculine men are expected to protect themselves, their families and their communities from security threats (Enloe, 2000, p. 12-13). Men are expected to be brave, suppressing all fears, to defend women and children whom they perceive to be weak and vulnerable. Tickner (1992, p. 6) argues that this notion of male power and the glorification of the male warrior, in other words 'real men', produces a gender dichotomy that does not necessarily exist in reality. The stereotype of powerful, strong and masculine men simply does not fit or apply to all men.

Moreover, men do not necessarily assume the role of protector ascribed to them in the documents discussed above; just as women do not necessarily assume the role of victims. Men may choose to prey on the people whom they are socially expected to protect, i.e. women and children. The findings of Baaz and Stern's study provide particularly insightful understanding of the ways men choose to exercise their agency during armed conflicts. Baaz and Stern (2008, p. 67, 68) found that male soldiers may very well choose to exploit highly sexualized notions of gender for their own benefit; in order to prove or establish their own masculinity. They use their understanding of notions of masculinity and femininity to explain their use of violence against civilians, particularly women and children. Thus it is seen that men in African conflicts move between two primary stereotypes: the supposed protectors of women and children on the one hand and the perpetrators of sexual violence on the other.

These stereotypes are over simplified. There are often complex conditions at play, which affect how men choose to act out their agency. Their choices may in fact be significantly limited just as women's choices. For example, there are soldiers in the Congolese army who cited their dissatisfaction and frustration with their living conditions as the impetus of violence against civilians (Baaz & Stern, 2008, p. 64, 75). A common phrase used by Congolese soldiers is, "the civilian is the cornfield of the military" (Baaz & Stern, 2008, p. 65). State army soldiers are also poorly paid; they are amongst the poorest members of society.

Not only is their income low, but their salaries are often delayed or looted by senior officials (Baaz & Stern, 2008, p. 64-65). Numerous soldiers relayed stories of living in severe poverty, having to pay for their own uniforms, not being able to send their children to school and not being able to afford much needed health care for themselves or their families (Baaz & Stern, 2008, p. 64). Subsequently, soldiers lack loyalty and respect towards their superiors in the army, as they regard these individuals as being responsible for their living conditions (Baaz & Stern, 2008, p. 64).

Young men who join the military, do so in hopes of gaining an education and a better quality of life, but are often disappointed. According to Baaz and Stern (2008, p. 71), “their choice to join the armed forces was never presented as a vengeful call for violence or retribution but, instead, as a last fall-back option arising out of the dearth of other opportunities”. Without any military or educational training, they remain illiterate and poor. Soldiers thus opt to join rebel groups, which offer more economic and social prospects. They also support themselves and their families by means of illegal activities such as selling arms, taxing citizens and stealing from citizens. This hampers the military power of the army and is a significant source of insecurity within the state (Baaz & Stern, 2008, p. 64).

Military officials and soldiers, who are unable to read, cannot reasonably be expected to understand AU peace and security and human rights protocols, much less implement them. However, despite their inability to read and write, there seemed to be a common understanding amongst the Congolese soldiers interviewed that rape is morally and socially wrong. These soldiers stated that rape remains an unacceptable practice.<sup>21</sup> One male soldier interviewed by Baaz and Stern (2008, p. 75) was quoted saying:

Rape is forbidden. It is forbidden to us soldiers. In the centres they tell us that, we cannot take other people's things and we cannot take other people's women... Also in the *Reglement Militaire*<sup>22</sup> it says that if you have needs, if you have not been with a woman for a long time and there is no

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<sup>21</sup> The examples of rape discussed here include strategic rape and rape that occurs as a result of the widespread sexual violence, poverty and ill-discipline during conflict periods.

<sup>22</sup> The *Reglement Militaire* are the rules of the military; rules which instruct soldiers to act with dignity, order and discipline. These rules require soldiers to protect their nation and the people thereof, as well as their assets (Baaz & Stern, 2008, p. 72-75).

woman, you must use the soap (masturbate). We are not supposed to take other people's women. That is bad.

This statement, despite highlighting soldiers' understanding that rape is an unacceptable practice and a human rights violation, is alarming in that it also highlights the belief that women are the property of men. It highlights deep-rooted patriarchal notions of male ownership of women. The rape of women is not regarded as wrong or bad because it violates women's rights, but because it exploits men's 'rights': their right to own and control women. Rape is not seen as a crime against women, it is seen as an injustice to men.

Copelon (1994, p. 200) adds that this has traditionally been the case; that rape "has been condemned as a violation of a man's honour and exclusive right to sexual possession of his woman/property". Baaz and Stern (2008, p. 75) also point out that statements such as these are rather strange in light of the level of human rights violations in the DRC. The soldiers interviewed did not regard themselves as deviant, violent or the abusers of human rights; they regarded themselves as disciplined soldiers and victims of their circumstances. They believe themselves to be the protectors of their nation, its people and the possessions of these people (Baaz & Stern, 2008, p. 75).

Poverty, suffering and frustration, mixed with notions of what is considered masculine and feminine behaviour by society, have informed the roles men play in civilian, military and private spheres of life (Baaz & Stern, 2008, p. 78). As the ability to provide financially for oneself and one's family is directly linked to the masculinity and manhood (as mentioned above), men who are unable to provide financially are often regarded as 'failed men'; as are men who display feminine characteristics (Parpart & Thompson, 2012, p. 184-185). The soldiers interviewed explained that this inability to provide financially often results in their wives not loving them and seeking financial support from other men; thus they rape in order to satisfy their sexual 'needs' (Baaz & Stern, 2008, p. 78).

Soldiers thus portrayed women as unreliable and opportunistic, only capable of loyalty when men supply them with money. Their articulated suspicion and frustration of "not being able to be a real man and provide for the family" and "keep the woman faithful" perpetuate negative, sexualized images of women (Baaz & Stern, 2008, p. 78). These sexualized stereotypes were not

only articulated by male soldiers, but by female soldiers as well. One female soldier interviewed by Baaz and Stern (2008, p. 78) stated:

If (a male soldier) likes a women (he) gives her, her 1000 FC [US\$2]. Just look at the Zimbabweans when they were here, all the women were following them, because they have money- dollars.

These gender discourses illustrate how men (and women) make sense of, and justify, violent behaviour towards civilians, particularly the rape of women and girls. Furthermore, soldiers distinguished between two types of rape regarding both as forbidden. The first is need/lust rape, which arises from a man not being with a women sexually for a few months; the result of a man being driven by his libido. This type of rape is somewhat understandable and tolerable, as it is regarded as normal for a man to satisfy his need to be with a woman sexually. The soldiers interviewed expressed the belief that it is better for a man to pay a prostitute for sex, but if he does satisfy his needs by raping a woman, it is almost morally acceptable.

The second is 'evil' rape, which is a result of the spirit of war, and is intended to humiliate another nationality. This type of rape is an expression of anger and rage. This type of rape is the worst kind, according to the soldiers, as it is meant to sully, dishonour and destroy women. This distinction feeds into the definitions of war-time rape provided in this chapter; rape as a by-product of war and strategic rape. By this distinction men articulate a difference between rapes that are believed to be more morally and socially acceptable, ethically palatable and 'okay' and rapes that are evil and unacceptable, yet 'understandable' in the context of war (Baaz & Stern, 2009, p. 497). This is significant in that soldiers recognize or seem to have some understanding of both constructions of rape referred to in this study.

Thus men display agency by choosing whether or not they will engage in sexual abuse during war-time; either to satisfy their sexual needs or as a strategic weapon. They choose whether or not to accept and act out patriarchal traditions or customs. Men's choices are demonstrated by the manner in which they regard and treat women; whether they support notions of masculinity and femininity which regard men as superior and women as inferior. Although men's choices may be limited, especially in scenarios of armed conflict (as discussed above), the use of rape as a weapon should not be accepted or tolerated. Furthermore, it is clear from the discussion above that men do not necessarily interpellate and enact the roles and responsibilities prescribed to

them in the narrative of international policies which will be discussed in the following chapter. This may be attributed to a number of reasons, particularly the notions of patriarchy and the inability to read and understand these documents as in the case of the DRC soldiers. They may however choose to exploit the notions of patriarchy which ensconce these documents to their own benefit.

### **3.5. Conclusion**

The purpose of this chapter has been to establish the relationship between patriarchy and the use of rape as a weapon, especially during African armed conflicts. This has been done to determine whether patriarchy contributes to the creation of a situation in which rape becomes likely to be used with a military purpose in mind. This discussion will inform the investigation into whether patriarchy infuses the narratives used within the AU peace and security and human rights protocols, thus providing the context for rape as a weapon of war.

It has been asserted that African societies are particularly patriarchal; even where matriarchy is practiced men still wield significant amounts of privilege and power. Patriarchy constructs or informs gender relationships, which see men being regarded as superior and women as inferior. Furthermore, women are regarded as the property and wealth of men, to be disposed of or used as they choose. Patriarchal societies are also inherently violent and women have very few, if any rights, particularly pertaining to their bodies and sex. Women's chastity, virginity and sexual behaviour (chosen or forced) are highly regarded and wield much symbolism. These socially constructed meanings are what render rape such an effective weapon during African armed conflicts; conflicts may also be informed by patriarchal claims on land and resources. Although rape occurs in societies during peace-time as a criminal phenomenon, during war-time rape acquires a new set of meanings.

War-time rape has been used to represent the feminization of one group of men by another group of men. It is a sign of domination. It has further been used to destroy the social cohesion in communities and to create a sense of community or brotherhood amongst perpetrators. Thus it is seen that there is a distinct relationship between patriarchy and war-time rape. This is evinced by women being the primary targets of war-time rape. Due to the wide-ranging meanings attached to rape, it has been used in wars and conflicts not only in Africa but throughout the international system. This widespread use of this weapon has resulted in it being considered an inevitable

consequence or by-product of war. This study, however, argues that rape is not inevitable, but a deliberate tactic that military officials and policy makers employ with military objectives in mind, a practice made ‘intelligible’ as a result of patriarchy.

The next chapter will explore international responses to war-time rape before the study turns to an examination of AU documents in particular and the extent to which they delegitimise rape as a weapon in war.



## **CHAPTER 4: THE RESPONSE OF THE INTERNATIONAL COMMUNITY TO RAPE AS WEAPON OF WAR**

### **4.1. Introduction**

Patriarchy has rendered rape an effective weapon to destroy community or ethnic identities and displaying the dominance of one group of men over another. It has rendered the bodies of women a means of communication between men, and countless women have subsequently succumbed to the use of rape as a weapon during armed conflicts, particularly in Africa. Policy responses by the international community include humanitarian law, declarations, conventions, resolutions and protocols. These documents ensconce liberal feminist views that regard the inclusion of more women in various institutions as the solution to gender inequality; and subsequently the cessation of sexual violence. These documents support the notion that women should be included on the basis that they have been historically excluded and because they are believed to be inherently peaceful. This is not necessarily true, as women have always played active roles, even if unrecognised, in the international system, including in armed conflicts (Enloe, 2000a, p. 7-11); as discussed in the previous chapter. These roles may, however, differ from the roles of men, and are thus often ignored on the basis of their association with femininity and inferiority.

With the international policy response to weapons considered inhumane, such as anti-personnel landmines and chemical weapons, as background, this chapter will scrutinize the international policy response to the use of rape as a weapon. It will do this with several goals in mind, namely, to establish what the international norm regarding war-time rape is, how women and men are depicted, especially in UN documents that relate to war-time rape, and finally how these international instruments find expression in the daily lives of African citizens.

### **4.2. International response to chemical weapons and anti-personal landmines**

The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, and the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* will now be discussed as means of providing examples of international instruments that are characterized by strong international campaigns and stern narratives, successfully delegitimizing weapons

considered inhumane, namely chemical weapons and anti-personnel landmines. This discussion serves to provide insight to the international response to the use of rape as a weapon of war. In addition, these treaties provide an appropriate model to which the AU narrative on war-time rape may be compared.

#### 4.2.1. The Chemical Weapons Convention

The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (1993, Article 2) defines chemical weapons as toxic chemicals and their precursors, munitions and devices which are meant to cause death or other forms of harm, such as temporary incapacitation or permanent damage, to humans and animals. The purpose of the Chemical Weapons Convention (CWC) is to prohibit the development, manufacturing, stockpiling, sale and use of chemical weapons. It also calls for the destruction of all chemical weapons production facilities. This Convention became necessary in light of the humanitarian consequences of these weapons during various wars.

According to the United Nations Office for Disarmament Affairs (UNODA) (n.d.), chemical weapons were used by both sides of the conflict during World War I, and caused approximately 100 000 deaths. These weapons comprised poisonous gases which caused choking, severe burns to the skin, and inflicted suffering. This resulted in an international out-cry and condemnation. The Geneva Protocol of 1925 (known as the *Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*) was consequently adopted. However, during World War II chemical weapons were once again used; the most prominent example was the mass extermination of Jews in Nazi concentration camps. The Cold War also witnessed the widespread development, manufacturing and stockpiling of chemical weapons. Since World War I, more than one million casualties have occurred internationally as a result of the use of chemical weapons; however, the use of these weapons has become less prominent since World War II (UNODA, n.d.).

The Geneva Protocol of 1925 states that “the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world”. The use of these weapons is deemed uncivilized and inhumane and hence may not under any circumstances be used during conflicts. The use of chemical weapons violates the *jus in bello* principles provided in the *UN Charter*: proportionality, military necessity, distinction and humanity. Chemical weapons do not make a



distinction between combatants and civilians in a war and the effects of chemical weapons are also disproportionate to the military objective. In light of these provisions the CWC was adopted in 1992, after 12 years of debate, which demands stringent compliance from state parties. The CWC was opened for signature in 1993 and came into force in 1997. It was the first disarmament agreement negotiated within a multilateral framework that “provided for the elimination of an entire category of weapons of mass destruction under universally applied international control” (UNODA, n.d.).

The preamble of the CWC (1993) declares that state parties shall act decidedly towards the achievement of “complete disarmament under strict and effective international control” with the aim of ensuring the “prohibition and elimination of all types of weapons of mass destruction”. It further adds that, in accordance with the Geneva Protocol of 1925, the use of chemical weapons will be “condemned”. States should be “determined for the sake of all mankind” to “exclude completely the possibility of the use of chemical weapons”. The CWC argues that the “complete and effective prohibition” of the development and use of chemical weapons will contribute to the achievement of common objectives or peace in the international system. It further adds in Article 22 that this treaty will not be subject to reservations. With this in mind, Article 1 of the CWC (1993) declares that state parties commit “never under any circumstances”:

- “To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
- To use chemical weapons;
- To engage in any military preparation to use chemical weapons;
- To assist, encourage or induce, in any way, any one to engage in any activity prohibited to state parties under this Convention”.

The CWC (1993) further provided for the establishment of a watch-dog body, the Organisation for the Prohibition of Chemical Weapons (OPCW). This organization is responsible for ensuring the compliance of states in the implementation of the CWC. It works to ensure that all chemical weapons and manufacturing facilities are destroyed, provides protection and assistance to states which are under threat of chemical weapons, and encourages the peaceful use of chemistry in the international system (ICRC, 2012; UNODA, n.d.). The OPCW is mandated to conduct routine inspections of declared chemical production sites and reports on these. Inspection teams may also be dispatched to states suspected of non-compliance. The OPCW may restrict or suspend

non-compliant state parties' rights and privileges, recommend collective measures to be undertaken (such as sanctions), request advisory opinions from the International Court of Justice (ICJ), while serious violations are reported to the UN General Assembly and Security Council (James Martin Center for Nonproliferation Studies, 2013, p.1-2).

The OPCW has made significant strides in fulfilling its mandate. As of January 2013, approximately 81% of the globally declared stockpile of chemical weapons has been destroyed (OPCW, 2013b). Moreover, as of October 2013, 190 states have agreed to be bound by the CWC (United Nations, 2013).<sup>23</sup> Israel and Burma have signed but not ratified the Convention as yet (James Martin Center for Nonproliferation Studies, 2013, p.1), while Angola, North Korea, Egypt and South Sudan have not acceded to the Convention (Arms Control Association, 2012).<sup>24</sup> The OPCW however acknowledges that much work remains to be done; certain powerful states (such as the US and Russia) continually fail to meet their disarmament deadlines (BBC News, 2013). The international response to the recent use of chemical weapons in Syria provides evidence of how serious the use of these weapons is taken. The US government threatened military strikes, arguing that a 'red line' had been crossed. It was only a deal brokered by Russia that warded off severe punishment of the Assad government. Syria has since agreed to be bound by the Convention and to the complete destruction of its chemical weapons by the first half of 2014 (OPCW, 2013a). The OPCW has subsequently received the 2013 Nobel Peace Prize for its efforts to eliminate chemical weapons. Thorbjørn Jagland, the chairman of the Norwegian Nobel Committee, praised the work of the OPCW stating that "the conventions and the work of the OPCW have defined the use of chemical weapons as a taboo under international law" (BBC News, 2013).

#### 4.2.2. The Anti-Personal Landmine Treaty

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (1997, Article 2) (the Mine Ban Treaty), defines this weapon as "a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons". Landmines are specifically

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<sup>23</sup> According to the Arms Control Association (2012), 189 states acceded to the CWC by 2012; therefore Syria's accession in 2013 has brought the total number of states to 190.

<sup>24</sup> Refer to Addendum B for a list of states that have not yet ratified, signed or acceded to the CWC.

designed to shatter the limbs of soldiers who step on it. It does not, however, have the ability to distinguish between soldiers and civilians, which is a requirement according to international humanitarian law (ICRC, 2007). As a result, the use of anti-personnel landmines causes civilian casualties long after armed conflicts have ended; posing a profound medical, human and social crisis (ICRC, 2007). The use of these weapons thus also violates the *jus in bello* principles of distinction, proportionality, military necessity and humanity. Therefore, the purpose of this treaty is to ensure the destruction of existing landmines and stockpiles, prevent future use, stockpiling, production, development and trading of these weapons, in order to prevent civilian injuries and deaths.

The Mine Ban Treaty was the outcome of the International Campaign to Ban Landmines (ICBL). This campaign was launched in October 1992 and witnessed non-governmental organizations, international organizations, UN agencies and governments working together to broker a solution to the global landmine problem (ICBL, n.d.). The six non-governmental organizations instrumental in forming this campaign was the Handicap International, Human Rights Watch, Medico International, Mines Advisory Group, Physicians for Human Rights and Vietnam Veterans of America Foundation. These organizations worked in Africa, Asia, the Middle East and Latin America and thus had direct knowledge of the effects of landmines on civilians and communities. They realized a comprehensive international solution was needed and thus worked to this end (ICBL, n.d.). The ICBL, jointly with its coordinator Jody Williams, won the 1997 Nobel Peace Prize for its role in the adoption of the Mine Ban Treaty. The ICBL continues to advocate for the universal implementation of the treaty, and works toward ensuring landmine survivors have access to their socio-economic and human rights (ICBL, n.d.).

The purpose of the ICBL and Mine Ban Treaty remains to “stigmatize” the use of anti-personnel landmines (ICRC, 2007) or to create a “global norm” against mine use (Landmine and Cluster Munition Monitor, 2012, p. iv).<sup>25</sup> The Preamble of the Mine Ban Treaty (1997) declares that by accepting the “call for a total ban on anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other nongovernmental organizations around the world”, member states demonstrate the value placed on the principle of humanity. The Mine Ban Treaty further emphasizes “the desirability of attracting the adherence of all States to this

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<sup>25</sup> The ICBL also urges non-state armed groups or militias to abide by the spirit of the Mine Ban Treaty (Land Monitor, 2012, p. iv).

Convention”, and the need for these states “to work strenuously towards the promotion of its universalization”. It stresses that states do not have the right to employ unlimited methods of warfare and “prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants”. Hence, Article 1 of the Mine Ban Treaty (1997) declares that state parties commit “never under any circumstances”:

- “To use anti-personnel mines;
- To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
- To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention;
- Each State Party undertakes to destroy or ensure the destruction of all antipersonnel mines in accordance with the provisions of this Convention”.

State parties to the treaty were thus required to destroy their landmine stockpiles within four years (Article 4), declare all mined areas clear within ten years (Article 5), provide assistance to landmine survivors and run mine-awareness programs to reduce the incidence of mine-related injuries or deaths (Article 6), and prosecute persons who participate in activities prohibited by the treaty (Article 9). Article 8 further provides that state parties are obligated to “consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance”. State parties are also subject to mandatory fact-finding missions to their territory. Finally, Article 19 provides that this treaty will not be subject to any reservations.

The Landmine and Cluster Munition Monitor (‘The Monitor’) is the *de facto* monitoring regime for the Mine Ban Treaty (as well as the Convention on Cluster Munitions), and provides research and monitoring reports to the ICBL (Landmine and Cluster Munition Monitor, 2012, p. iv). It monitors to what extent the Mine Ban Treaty has been implemented; what progress and problems states parties have encountered. It is, however, not a technical verification system or a formal inspection regime. The Monitor’s main contribution to the ICBL is the ‘Landmine and Cluster Munition Monitor Report’ which was published in 2010; an attempt to hold states parties accountable to their obligations by reporting on current mine activity and promoting and

advancing discussion on implementation of the treaty (Landmine and Cluster Munition Monitor, 2012, p. v). The Monitor also publishes an annual report called the 'Landmine Monitor', which addresses "mine ban policy, use, production, trade, and stockpiling in every country in the world" (Landmine and Cluster Munition Monitor, 2012, p.v).

With the ICBL celebrating its twentieth anniversary in 2012, the Landmine Monitor reported that the Syrian government continued to use anti-personnel landmines, while Israel, Libya, and Myanmar had used these weapons during 2011 (Landmine and Cluster Munition Monitor, 2012, p. 1-2). Non-state armed groups in Afghanistan, Colombia, Myanmar, Pakistan, Thailand, and Yemen had also used landmines during 2012. It was further reported that a total of 4 286 new casualties from antipersonnel landmines and other explosive remnants of war had occurred during 2011; this is a rate of approximately 12 casualties per day, a steady decrease from the 32 casualties per day in 1997 at the start of the ICBL. The past decade has seen 1,700km<sup>2</sup> of land being released through clearance or survey and over 3.1 million mines have been removed from the ground. The trade in antipersonnel landmines has decreased to the extent that there are no recorded transfers of this weapon in recent years. The Monitor however suspects that India, Burma, Pakistan and South Korea continue to produce landmines, while China, Cuba, Iran, North Korea, Russia, Singapore, the US, and Vietnam reserve the right to produce these weapons. As of October 2012, the Mine Ban Treaty had 161 states parties, while 36 states have not yet acceded.<sup>26</sup>

### **4.3. International response to the use of rape as a weapon of war**

In light of the above discussion, this study acknowledges that there is no world government and no one body responsible for addressing the use of rape as a weapon of war. Neither is there a specific treaty addressing the prohibition of war-time rape. The United Nations (UN) has, however, been a key agent in addressing this issue. It has also played a pivotal role in post-war development initiatives addressing women's empowerment and changes in gender relationship throughout the international system (Schroven, 2011, p. 4). Amongst these initiatives have been numerous conventions and resolutions to promote women's rights, including, the Convention on the Elimination of All Forms of Discrimination against Women (1981), The Beijing Declaration

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<sup>26</sup> A complete table of the states and non-states parties to the Mine Ban Treaty may be viewed in Addendum C, on the UN Treaty Collection website ([http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-5&chapter=26&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-5&chapter=26&lang=en)) or on the ICBL website (<http://www.icbl.org/index.php/icbl/Universal/MBT/States-Parties>).

and Plan of Action, the UN Security Council Resolution 1325 on Women, Peace and Security, the UN Security Council Resolution 1820 on Sexual Violence in Conflict, and the UN Security Council Resolution 1888 on Sexual Violence against Women and Girls during Armed Conflicts.

The UN resolutions are the formal expression of the UN's opinion and stance on various matters which affect the international community. Although there are numerous documents which may be considered, this chapter will be limited to the aforementioned resolutions and declarations. Resolutions are generally divided into two parts: the preamble, which expresses the UN's opinion on particular matters, and the operative part, which states how the UN will set about achieving its objectives regarding these matters. Recently, gender mainstreaming has also become a popular and prominent program of UN institutions (Schroven, 2011, p. 4). I will briefly discuss gender mainstreaming, as well as the above mentioned UN policy responses to the persistent occurrence of sexual violence and the use of rape as a weapon of war during armed conflicts.

#### 4.3.1. Gender mainstreaming

Gender mainstreaming is the official policy of the UN to address gender inequalities, discrimination and abuse. It is enshrined by the belief that the inclusion of greater numbers of women in international institutions (such as the UN) as well as state institutions and state departments will subsequently result in a more 'gender-friendly' international system. The principles of this policy draw significantly on liberal feminism. Numerous feminist scholars of different feminist streams have provided insight into what gender mainstreaming entails and what its proposed or hoped for outcomes are. These will now be considered.

According to Byanyima (2008, p. 319), gender mainstreaming is the process during which the impact of gender on any planned action, policy or legislation is considered with the ultimate goal of gender equality. De Waal (2006, p. 210) concurs that gender mainstreaming "is the deliberate, planned, intended strategy to transform the gender order throughout society, including organisations, programmes, and projects".

Gender mainstreaming is undertaken from the premise that not all men and women have access to the same resources and opportunities. Hence, gender mainstreaming is "a strategy for making the concerns and experiences of women and men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social

spheres so that women and men benefit equally” (Byanyima, 2008, p. 319). This policy was adopted by the UN at the Fourth World Conference in Beijing; it resulted in the Beijing Declaration and Platform for Action. It is the strategy for including gender perspectives in all the work of the UN and aspects of development (de Waal, 2006, p. 209; Whitbread, 2004, p. 41).

Gender mainstreaming seeks to transform gender relations in society; the ‘normal’ relations which have predominantly benefitted men. Essentially, it seeks to reverse gender inequality. Gender mainstreaming is not an end in itself, but a means to achieve gender equality (de Waal, 2006, p. 210; Gouws, 2005, p. 78; Whitbread, 2004, p. 41). Moreover, gender mainstreaming relates to the creation of a new norm in the international system. It is based on the principle that gender ‘norms’ or the gender order of a society can be rearranged by means of deliberate and focused initiatives (de Waal, 2006, p. 210). The patterns of gender relations in society are socially constructed, just as gender itself is socially constructed; thus it can be changed to form new ‘norms’ or gender regimes (de Waal, 2006, p. 210). True cited in Gouws (2005, p. 76) thus states that gender mainstreaming initiatives “balance the goal of gender equality with the need to recognize gender differences to bring about transformation of masculine-as-norm institutional practices in state and global governance”.

Gender mainstreaming therefore entails the endeavour to reconstruct social norms and values pertaining to gender, in such a way that these norms are more favourable to women and remedy inequality. According to Moser, cited in de Waal (2006, p. 209), the outcome of gender mainstreaming initiatives may be measured either by the number of women included in an institution, program or project (quantitatively) or by the extent to which gender relations have been transformed and women have benefitted from institutions, programs or projects (qualitatively). However, the success of gender mainstreaming initiatives as with any other program, remain open to interpretation and criticism due to their being socially constructed. No single definition of gender mainstreaming will be accepted for this study; rather description provided by the various scholars above will be used to inform this study and provide insight into the UN’s official position regarding the pursuit of gender equality in the international system.

#### 4.3.2. Convention on the Elimination of All Forms of Discrimination against Women

Another major endeavour by the UN to promote and achieve international gender equality is the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). During 1965, the UN Commission on the Status of Women (CSW) embarked on preparing the

Declaration on the Elimination of Discrimination Against Women – a policy response to its previously failed initiatives to ensure international gender equality. However, this Declaration had no legally binding force on states despite its moral force (Maluleke, 2006, p. 73). The CWS thus developed the CEDAW, which was adopted by the General Assembly of the UN in 1979. The CEDAW declares that all human beings are born free and equal with dignity and rights. Therefore all men and women are equal despite distinctions based on sex. CEDAW emphasizes the importance of women's equal participation in political and public life. It has since its establishment come to be regarded as the international Bill of Rights for women (Maluleke, 2006, p. 45).

The CEDAW (1979, p. 3) defines discrimination against women as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. It states that discrimination against women not only violates the principles of equality and human rights, but obstructs women's ability to participate in the economic, social, cultural, and political lives of their countries. This in turn hampers the growth and prosperity of society and families within these countries.

The CEDAW declares that the full and complete development of a country, as well as the welfare of the world, is dependent on the extent to which women are afforded equal participation with men – in the private and public spheres of life. It also emphasizes the importance of both parents in the management of the family and welfare of children; a role traditionally relegated to women. Hence it advises that a change in the traditional roles of men and women are required in order to achieve full equality between men and women.

By signing the CEDAW, state parties have made a commitment to prohibit discrimination against women in all its forms, and to pursue policy initiatives which eliminate discriminatory practices; including enshrining gender equality in their national constitutions and legislation. They also agree to refrain from engaging in acts of discrimination against women and to ensure that public authorities and institutions do the same. State parties further consent to eliminate discriminatory prejudices and customs (based on notions of superiority and inferiority) by modifying social and cultural patterns of behaviour of men and women. State parties shall take



all the necessary measures to eradicate all forms of trafficking and prostitutions and exploitation of women. State parties are tasked with the responsibility to take appropriate measures to eliminate discrimination against women in the fields of education, employment, recruitment and training, remuneration, safety in work conditions, healthcare, and social security (in the form of welfare grants and state services). Further areas requiring state intervention to ensure that discrimination does not occur include marriage, family, and family planning.

Having agreed to all these provisions, state parties must undertake to submit reports on the legislative, judicial, administrative or other measure they have undertaken to ensure equality between men and women. These reports are to be submitted once every four years, or upon the request of the Committee on the CEDAW; these reports may include challenges affecting the degree of the fulfilment of the CEDAW.

#### 4.3.3. Beijing Declaration and Platform for Action

Building on its existing human and women's rights architecture, the UN adopted the Beijing Declaration and Platform for Action at the Fourth World Conference on Women in 1995. The UN member states who signed this document agreed to advance the international goals of equality, development and peace for all women. The UN reported that the social status of some women had improved over the previous decade; however, major challenges and inequalities remained between men and women (United Nations, 1995, p. 1). In recognition of the CEDAW, this Declaration enshrines the equal rights and human dignity of women and men, and urges member states to ensure the full implementation of human rights and fundamental freedoms. It also reiterates the call of the CEDAW to prevent and eliminate all forms of violence against women and girls.

The Declaration noted that in the post-Cold War era there was a significant increase in nationalist and ethnic conflicts during which women faced grave violations of their human rights, including murder, torture, systematic rape, forced pregnancy and forced abortion; in particular under policies of 'ethnic cleansing' (United Nations, 1995, p. 8). The Declaration hence stresses that women's rights are human rights, and more importantly, that effective action should be taken against those who violate the human rights and fundamental freedoms of women and girls (United Nations, 1995, p. 3).

The Declaration also calls for the full participation of women in all spheres of society, including decision-making processes, access to power, development and peace initiatives on the basis of their inalienable human rights. The Declaration further supports the belief that women are intrinsically peaceful and their advancement at local, national, regional and global levels will subsequently lead to the attainment of lasting peace at all levels of the international system (United Nations, 1995, p. 3). It thus argues that it is imperative to reinforce gender-sensitive policies and programs to foster the empowerment and advancement of women.

The Declaration states that peace and security are preconditions for economic and social progress, and their participation in conflict prevention and resolution initiatives is essential to lasting global peace (United Nations, 1995, p. 10). Furthermore the maintenance of peace and security and the avoidance of ethnic conflicts are crucial for protection of the human rights of women and girls, especially their protection from systematic rape (as well as torture, murder, forced pregnancy and forced abortion) as weapon of war (United Nations, 1995, p. 8).

The Platform for Action on the other hand is the framework proposed to mainstream gender and implement the commitments made by member states in terms of the Declaration; the practical steps to be taken to empower women and ensure the protection of their human rights. One of the main areas of concern addressed by the framework is *Women and Armed Conflicts* (United Nations, 1995, p. 52).<sup>27</sup> The Platform for Action repeats several times that the violation of human rights in armed conflicts is a violation of international human rights and humanitarian law. It adds that the systematic use of rape and other forms of sexual violence is a serious impediment to women's enjoyment of human rights around the world and that these "abhorrent practices are strongly condemned and must be immediately stopped, while perpetrators of such crimes must be punished" (United Nations, 1995, p. 52).

The Declaration also acknowledges that sexual violence is often met with unconcern by perpetrators and political leaders, despite victims facing life-long social, economic and psychological trauma. At the ten year review of the Beijing Declaration and Platform for Action it was established that some progress had been made internationally (in the form of this document adding to the existing policy response to the need for international gender equality). Further progress had been made in Africa (in the form of increased school enrolment for girls,

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<sup>27</sup> There are 12 areas of concern, however, only the one which is of significance to the study will be discussed.

awareness campaigns around women's human rights, the increase of women in various parliaments and this document recognizing that poverty is a major contributor to gender inequality). However, significant challenges remained; women remain seriously disadvantaged (Chingwete, Richmond & Alpin, 2014, p. 3; Ruzvidzo & Tiagha, 2005, p. 29). The challenge of gender-based violence, the abuse of women's human rights in various forms and the use of rape as a weapon of war have persisted not only in Africa but across the international system as discussed in the two preceding chapters of this study.

In 2010, at the 15-year review of the Beijing Declaration and Platform for Action, it was found that the same challenges persisted. This may be attributed to the continued under-representation of women in key decision-making positions (UNDPI, 2010). Despite gender mainstreaming initiatives women have remained excluded or under-represented in peace negotiations, peacekeeping, peacebuilding and reconstruction, which has limited the implementation of gender friendly policies and perspectives. The UNDP (2010) states that negative gender stereotypes based on societal beliefs and attitudes contribute to the limited role played by women in society, confining women to domestic work and care-giving.

#### 4.3.4. United Nations Security Council Resolution 1325

In 2000 the United Nations Security Council (UNSC) passed Resolution 1325 which proposed a framework to address the insecurity faced by women at all levels of the international system. This resolution declares that women and children are most vulnerable in situations of conflict, and that they form up to 80% of the 40 million refugees and internally displaced persons across the world (Fakier, 2006, p. 6). Women and children are increasingly targeted by rebel groups and armed forces, which the UNSC recognizes has a consequent impact on efforts to establish and maintain peace and reconciliation.

Resolution 1325 therefore stresses the importance of women's equal participation in the decision-making processes relating to the prevention and resolution of armed conflicts (UNSC, 2000, p. 1). In similar vein to the CEDAW, it urges member states to promote women's participation in public spheres of life by increasing the number of women in national, regional and international institutions. It further seeks to involve the UNSC, UN member states and civil society in a project to integrate gender perspectives into peace-keeping operations, to protect women from gender-based violence and human rights abuses during armed conflicts and increase gender mainstreaming in the work of the UN.

Essentially, Resolution 1325 seeks to motivate governments and all other vested bodies to sincerely work towards the goal of gender equality across the world. It states that peacekeeping personnel should receive specialized training which will enable them to be cognisant of and sensitive to, the needs and human rights of women and girls affected by armed conflicts (UNSC, 2000, p. 2). It urges member states to increase its financial, technical and logistical support of these training programs and emphasizes their responsibility to address the culture that accepts and tolerates sexual violence by prosecuting perpetrators; these individuals or groups should not receive amnesty during reconciliation processes.

It further calls for participants of armed conflicts to respect international law and human rights, and to cease their use of gender-based sexual violence, particularly the use of rape, during conflicts. The resolution ends by stating the UNSC's willingness to engage with local and international women's groups, and other organizations, to protect women and girls affected by armed conflicts (UNSC, 2000, p. 3).

#### 4.3.5. United Nations Security Council Resolution 1820

Due to the persistence of sexual violence during armed conflicts, the UN Security Council in 2008 passed Resolution 1820. This Resolution explicitly recognizes sexual violence as a weapon of war, further describing it as a war crime and an act of genocide. Resolution 1820 is a reiteration of the CEDAW and Resolution 1325 and thus contains similar provisions. It reaffirms the resolve of the UNSC to eliminate all forms of sexual violence against women and girls expressed in the CEDAW, and the lack of punishment (impunity) which facilitates the perpetuation of this violence.

The Resolution states (as Resolution 1325 does) that the vast majority of civilians affected by armed conflicts are women and girls as they are particularly targeted by rebel groups. It adds that sexual violence is intentionally used as a tactic for humiliation, domination, to instil fear and disperse members of a certain community or ethnic group (UNSC, 2008, p. 1). It expresses grave concern that, despite the repeated condemnation of sexual violence against women and children in situations of armed conflict (as expressed by the CEDAW and Resolution 1325), "such acts continue to occur, and in some situations have become systemic and widespread, reaching appalling levels of brutality" (UNSC, 2008, p. 2).

Resolution 1820 also affirms the importance of women's involvement in international institutions (such as the UN, IMF, WHO), as well as national institutions. The Resolution expresses concern about the persistent challenges to the inclusion of women in peacebuilding and peacekeeping efforts. Women who want to participate are often intimidated and discriminated against, thus decreasing their participation in post-conflict public life. Their exclusion also has a negative effect on national peace, security and reconciliation (UNSC, 2008, p. 2).

Furthermore, the Resolution has declared that states are primarily responsible for ensuring the equal participation of women in various institutions and that these women's human rights are protected in accordance with international law (UNSC, 2008, p. 2). The Resolution goes on to explain that the continued use of sexual violence exacerbates situations of armed conflict and impedes efforts geared towards sustainable peace and development. The Resolution argues that effective steps taken towards the prevention of sexual violence in armed conflicts, significantly contributes to international peace and security (UNSC, 2008, p. 2).

One of the initiatives undertaken by the UN to address the widespread use of sexual violence is a project called the 'United Nations against Sexual Violence in Conflict'. This project aims not just to create awareness around the use of sexual violence in conflict and post-conflict situations, but to eradicate this practice. It is a practical step taken by the UN towards achieving the provisions made in the CEDAW and Resolution 1325. This project in light of Resolution 1820, as well as Resolution 1325, demands the immediate and complete cessation of the use of sexual violence as a weapon against civilians (UNSC, 2008, p. 2).

The Resolution further calls for the debunking of masculine myths that fuel the use of rape as a weapon (UNSC, 2008, p. 3). The Resolution argues that impunity proves that women and girls do not have equal protection and access to justice under the law. This Resolution urges the Secretary-General to promote and strengthen a zero-tolerance policy pertaining to use of rape and other forms of sexual violence; declaring rape and other forms of sexual violence as a war crime and a crime against humanity (UNSC, 2008, p. 3).

Finally, Resolution 1820 stresses the importance of the Peacebuilding Commission's<sup>28</sup> role, stating that it should play an active role in advising states on ways to address the persistent use of sexual violence during armed conflicts (UNSC, 2008, p. 4). It urges all UN member states, UN bodies and financial institutions to support national judicial systems, health care systems, as well as local civil society organizations, in order to provide sustainable assistance to the victims of sexual violence.

According to Lawson and Steinberg cited in Schroven (2011, p. 5), Resolution 1820 has been criticised by some analysts as weak, yet for others this resolution holds high expectations due to its more explicit wording of the political action needed. While Resolution 1325 speaks about equal rights for women and the roles they play in peace and conflicts, Resolution 1820 stresses the victimhood of women during armed conflicts and the destructive effects it has on them and the wider community (Schroven, 2011, p. 5). However, similar to Resolution 1325, through Resolution 1820 the UNSC once again emphasizes the centrality of promoting women's right to ensuring peace and stability in the international system.

#### 4.3.6. United Nations Security Council Resolution 1888

In 2009 the UN Security Council passed Resolution 1888. This Resolution was a reaffirmation of the UN's commitment to the attainment of gender equality as expressed in the CEDAW and Resolution 1325 and 1820. It expresses the UNSC's concern regarding the lack of progress made in ending sexual violence during armed conflicts. Despite its repeated condemnation of all forms of sexual violence and calls for the cessation of these acts (as in Resolution 1820), parties of armed conflicts continue to use rape and other sexual violence as a weapon. Thus Resolution 1888 emphasizes states' responsibility to end impunity regarding acts of sexual violence committed during war (Meger, 2011, p. 103).

The Resolution reiterates that women and children are afforded protection by international humanitarian law, and that it is the primary responsibility of states to end impunity and bring perpetrators to justice (UNSC, 2009, p. 3). It is realistic by acknowledging that the justice

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<sup>28</sup> "The Peacebuilding Commission (PBC) is an intergovernmental advisory body that supports peace efforts in countries emerging from conflict, and is a key addition to the capacity of the International Community in the broad peace agenda" (United Nations Peacebuilding Commission, 2012). It brings together relevant actors, such as international donors, international financial institutions, governments, troop contributing countries; ration resources to conflict zones; and advises on integration strategies for post-conflict peace building initiatives.

system of conflict and post-conflict states may be weak. It however adds that if states do not demonstrate the commitment and political will to end impunity and enforce accountability, they send the message that sexual violence is tolerated, making it difficult to negate such abuses in the future (UNSC, 2009, p. 2).

This Resolution emphasizes the importance of including women from the beginning of peace and mediation processes, to promote stability, empower women and promote their equal representation and participation in these processes (UNSC, 2009, p. 2). This Resolution repeats the call of Resolution 1820 for all states to honour its responsibility to protect the human rights of its citizens, in accordance with international humanitarian law; the immediate and complete cessation of war-time rape and other forms of sexual violence; military discipline and the debunking of myths that exacerbate sexual violence; and that states undertake comprehensive legal and judicial reforms to ensure that perpetrators are brought to justice and survivors receive redress for their suffering.

Furthermore, this Resolution encourages and welcomes all efforts by various UN bodies to facilitate the effective implementation of Resolution 1325 and 1820, as well as the promotion of gender mainstreaming; which is a theme throughout the resolutions discussed above. It also continues to encourage close cooperation between the UN and civil society organizations (UNSC, p. 5). Hence, this Resolution requests that the UN Secretary-General enlists the help of a Special Representative, who will bear the responsibility of providing coherent and strategic leadership to all UN mechanisms relating to sexual violence during armed conflicts (UNSC, 2009, p. 4).

This representative is to engage in advocacy efforts with governments, civil society and military and judicial representatives. This representative is also tasked with promoting cooperation and coordination amongst all relevant stakeholders and ensuring the functioning of the 'United Nations Action Against Sexual Violence on Conflict'. The Resolution also calls on the Secretary-General to rapidly deploy teams of experts to situations of particular concern; these teams are to work with host governments to strengthen respect for the rule of law, by providing recommendations on how to improve the functioning of legal and judicial systems (UNSC, 2009, p. 5). The Resolution also notes with concern the under-representation of women in formal peace processes such as mediation and peace talks (UNSC, 2009, p. 2).

This Resolution expresses the decision to include in all peacekeeping operations, women's protection advisors, gender advisors and human rights protection units. The Resolution also encourages all states, and the international community at large, to increase access to health care services, psychological support services, legal support services and socio-economic reintegration services, for victims of sexual violence (UNSC, 2009, p. 5). It expresses the UNSC's intention to engage more with local women and women's organizations during its field visits, to gain insight into their daily experiences. The Resolution encourages national, local and religious leaders to play more active roles in educating communities about gender-based sexual abuse, and ensuring that victims of sexual violence are not stigmatized or marginalized. It urges that issues of sexual violence be acknowledged in all the work of the UN.

Furthermore it promotes the inclusion of greater numbers of female soldiers to be deployed as peacekeeping troops and that all troops are adequately trained to carry out their responsibilities (UNSC, 2009, p. 6).

#### 4.4. Shortcomings of international instruments and UN policy responses to rape as a weapon of war

Although these policy responses are needed and welcomed within the international system, they are not without criticism or shortcomings. It has been found that the narrative used within the documents discussed in some cases exploit notions of masculinity and femininity by stereotyping men and women. Men and states are portrayed as fierce fighters and responsible for the protection of women and girls. Women are conversely portrayed as poor vulnerable victims in need of male and state protection. Their inclusion is argued for on the basis of this weakness and vulnerability, and because of their perceived inherent peacefulness.

It has further been found that these documents use gender neutral language, referring to women's rights as human rights and casting all women into one generic group, despite significant differences experienced by various groups of women throughout the international system. This would suggest that the category 'women' cannot be regarded as an all encompassing or generic group. Neither do women necessarily interpellate and enact the roles or stereotypes ascribed to them in the documents discussed above. They do not necessarily view themselves, or act like, vulnerable victims. The responses of various groups of women to the challenges they may encounter, particularly during armed conflicts, are rich and diverse. Thus it is important to consider the agency of women in African armed conflicts to gain a deeper



understanding of how they respond to and are affected by sexual violence and war-time rape. Apart from classifying women as vulnerable victims, these international policy responses reinforce patriarchy by emphasizing the need for men (in the form of peacekeepers and soldiers) and states to ensure the protection of women and girls during armed conflicts. However, soldiers, peacekeepers and states do not always accept or fulfil these roles.

The resolutions and treaties that call for the inclusion of more female soldiers may not necessarily avert the use of sexual violence as they these women are susceptible to sexual violence. Moreover, women may themselves organize against other women or contribute to the values and institutions which oppress other women (Enloe, 2000, p. 46, 60; Pettman, 1996, p. 118), as is seen in the case of female combatants who hold other women down to be raped (Ekiyor, 2000). Women soldiers may also not necessarily identify with the women in the civilian population where they serve or feel a bond of so called 'womanhood' or 'sisterhood' with these women, and subsequently contribute to the status quo of discrimination.

In addition to the international instruments being grounded in liberal feminism, as well as the continued stereotyping of gender roles, it may be said that another shortcoming of the international instruments relating to war-time rape is that it does not treat the act of raping as a weapon akin to an inhumane weapon. Rape is rather framed as a war crime. Even though a war crime is considered as a grievous offense in the international system (and perpetrators carry individual criminal responsibility for committing war crimes) it is different from banning an abhorrent weapon (rape as a crime against an individual woman rather than an abhorrent strategy of war). This study argues that the banning treaties present better ways to respond to rape than the current international instruments, in that its emphasis is on stigmatising the use of a weapon under any condition – there are thus no military objectives that can justify the use of these weapons and no circumstance in conflict either. Such an approach is needed to address the persistent use of rape as a weapon in African and international armed conflicts. With this response, the use of the weapon will eventually become unimaginable and unthinkable. Any state or person daring to use rape as a weapon will be ostracised and will face the severest and surest consequences that can be visited on that state or person. I will use this aspect of the banning treaties when considering the policy response of the AU to the use of rape as a weapon

#### **4.5. Conclusion**

This chapter discusses the banning treaties (anti-personnel landmines and chemical weapons) as a way to juxtapose the narrative of legal instruments that ban inhumane weapons with the international instruments relating to sexual violence and rape during war-time. The international policy response to sexual violence during war-time includes gender mainstreaming, the Convention of Elimination of all forms of Discrimination Against Women, the Beijing Declaration and Platform for Action, and UNSC Resolutions 1325, 1820 and 1888. Gender-mainstreaming remains the UN's primary responses to persistent gender inequalities and the use of sexual violence during armed conflicts. This policy calls for the inclusion of more women in national, regional and international institutions in the belief that an increased visibility of women will result in a more gender-friendly international system. Thus gender mainstreaming has been included in the CEDAW, Beijing Declaration and has been promoted through UNSC Resolutions 1325, 1820 and 1888; they serve as the instruments through which gender mainstreaming is to be implemented. However, this is in essence a liberal feminist response that itself may be said to negate the diversity of women generally and agency of women in conflicts specifically. Moreover, the instruments perpetuate patriarchy by calling on states and (male) soldiers to protect women (portrayed as weak victims) from rape. Drawing on the successes that the ban treaties have had to delegitimise inhumane weapons, this study argues that the narratives in these treaties can be models for the international response to rape as weapon of war. The next chapter investigates the AU's policy and legal responses, asking whether they delegitimise rape in African conflicts and what AU policy-makers can learn from the ban treaties to strengthen the narrative against strategic rape.

## CHAPTER 5: PATRIARCHY AND THE NARRATIVE USED IN AFRICAN UNION (AU) PROTOCOLS

### 5.1. Introduction

In light of the international community's (particularly the UN) policy response to the occurrence of sexual violence and rape during armed conflict, and how patriarchy and militarized masculinity manifest and influence gender relations in the international system (Chapter Three), this chapter will address the AU's policy response to war-time rape. The AU Peace and Security and Human Rights protocols, particularly the narrative used in these documents, provide significant insight in how this continental institution regards rape. In this chapter, I will consider whether the narratives used have overtly recognized rape as a weapon of war, or merely regard rape as a by-product of armed conflicts. The intent is to ascertain whether the AU narratives have proven sufficient to delegitimize rape as a weapon of war. This chapter will further address whether the AU's Peace and Security and Human Rights protocols have served to empower women, or have rendered them invisible by reinforcing patriarchal norms, as the UN narratives discussed in the previous chapter have been argued to do. It will consider how narratives, like the banning treaties (anti-personnel landmines and chemical weapons) may be better suited to ensure that rape is delegitimized as a weapon of war.

The first part of this chapter will comprise a discussion or description of each AU narrative – the *Constitutive Act*, the *Solemn Declaration on Gender Equality in Africa*, the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, the *Protocol relating to the Peace and Security Council* and the *African Women's Decade*. In the second part of this chapter, I will analyse the meanings narratives using the framework of articulation-interpellation-enaction that was outlined in chapter 2.

### 5.2. The African Union

Understanding the broader context to this study requires a brief discussion of the AU, as well as the African Charter on Human and People's Rights which provides for the African Court on Human and People's Rights, and the Peace and Security Council (PSC).

The African Union is the successor of the Organisation of African Unity (OAU) and provides African states with a platform to co-ordinate its strategy for the development of the continent, address international matters and defend continental interests (Parker, 2012). The administrative capital of the AU is Addis Ababa in Ethiopia, and the body comprises of 54 member states; with South Sudan being its newest member. The AU's vision is to build "an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena" (African Union, n.d.). The AU seeks to quell or address the numerous challenges which inhibit the continent's development; particularly on-going conflict and human rights abuses.

Member states of the AU have responsibilities and obligations to fulfil; such as paying membership fees regularly to ensure the up-keep of the organization and assisting in conflict prevention, conflict resolution, post-conflict reconstruction and the maintenance of peace. Moreover, member states have the responsibility of ensuring that the human rights and sanctity of the lives of all their citizens are respected and protected at all times, especially during armed conflicts. In addition to the Constitutive Act, policies such as the African Charter on Human and Peoples' Rights and the Protocol relating to the Peace and Security Council further inform states of their responsibilities towards their citizens.

### 5.2.3. African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights, adopted by the OAU in 1981, speaks specifically to the rights of African people. According to Article 2 of the Charter (1981, p. 2), it seeks the complete liberation of African peoples by dismantling all forms of discrimination; especially discrimination based on race, ethnicity, colour, language, religion, political opinion and sex.

Article 18(3) of the African Charter (1981, p. 6) stipulates that member states "shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions". Some commentators argue that this Charter is a progressive document and clearly displays the AU's commitment to upholding the civil, political and economic rights of all African people (Motala, 2008, p. 272). Others however have criticized it as being characterized by numerous shortcomings, such as making certain rights subject to the domestic laws of member states. Numerous articles in the Charter speak to the right of a state or community to adhere to its

tradition in specific matters, which may inhibit the endeavours of the Charter to protect human rights.

This Charter makes provision for the African Court on Human and Peoples' Rights (the African Court) and the African Commission on Human and Peoples' Rights (the African Commission). The purpose of the African Court is to ensure that the human rights of all African people are protected; and to ensure that those who abuse the human rights of any group of African citizens are held accountable. It aims to bring a glimmer of hope to the millions of African citizens who for decades have had their human rights abused (Motala, 2008, p. 271).

In addition to the African Court, the African Commission has been established. It is a mechanism designed to alert the AU and the African Court to the occurrence of any human rights abuses. It is tasked with the responsibility of identifying emergency cases, and composing factual reports including findings and recommendations, to assist the African Court and AU Executive in its work. The African Court and the AU Executive are then tasked with resolving the human rights violations. Each state is to submit a report to the AU executive every second year, stating what legislative measures it has undertaken to ensure that the rights provided in the African Charter have been guaranteed to its citizens.

The African Commission's decisions and recommendations are however not binding on member states, and are thus often ignored with no consequences for such actions; this is partly as a result of states being unwilling to surrender part of their sovereignty to the continental court (Motala, 2008, p. 273-274; Wachira, 2008, p. 2). Additionally, the progress of the African Court has been slow. Ten years after the adoption of the Protocol to the African Charter Establishing the African Court on Human and Peoples' Rights (Protocol to the African Charter), the court was still plagued with logistics and the negotiation of bureaucratic arrangements, with no real issues or cases having been addressed (Wachira, 2008, p. 2).

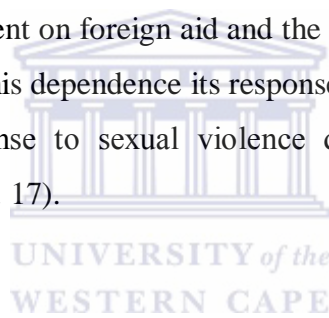
#### 5.2.4. The Peace and Security Council (PSC)

Recognizing the need to establish its own security and governance architecture to address conflict on the continent, the AU established the Peace and Security Council (PSC); in addition to the legal architecture discussed above. The PSC is a 15 member body which would sanction military and diplomatic intervention in African states (Murithi & Ndinga-Muvumba, 2008, p. 6). The AU believes that peace and security are prerequisites for the attainment of economic

development across the continent. Thus the PSC would particularly intervene in cases of war crimes, genocide, gross violations of human rights, unconstitutional changes in government, and when instability in a country threatens the stability of its region (Murithi & Ndinga-Muvumba, 2008, p. 6).

In the act of establishing the PSC, African leaders were committing themselves to “the promotion of a stable, secure, peaceful, and developed Africa” and expressing their “desire to maintain a greater role in the maintenance of peace and security in Africa” (Mwanasali, 2008, p. 41). The PSC is thus meant to serve “as a standing decision-making organ for the prevention, management and resolution of conflicts, and a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa” (PSC Protocol, 2002, p. 4). It should also ensure that peace agreements are adhered to by the relevant parties’ concerned (Mwanasali, 2008, p. 43).

The PSC is however largely dependent on foreign aid and the commitment of AU member states to contribute peacekeepers; due to this dependence its response to armed conflicts has often been slow. Moreover, the PSC’s response to sexual violence during armed conflicts has been characteristically slow (ISS, 2010, p. 17).



### **5.3. Narrating gender-based sexual violence in AU protocols**

With the transition of the OAU to the AU in 2002, the leaders of member states expressed their commitment to the promotion of gender equality. As a token of this commitment, five female and five male Commissioners were appointed to represent gender parity in the AU (Byanyima, 2008, p. 318). In 2004, at a meeting of the African ministers responsible for women and gender affairs in Addis Ababa, Ethiopia, it was acknowledged that up to that point, women’s issues had been treated as separate AU projects. Although member states had implemented gender mainstreaming mechanisms, these had performed rather poorly. Lacking funding and political will, these mechanisms experienced little success and gains made were more the exception than the norm (Byanyima, 2008, p. 317). Two of the critical areas that remain particularly resistant to the integration of women and their perspectives are economic policy and conflict resolution (Byanyima, 2008, p. 326).

Despite the legal framework intended to promote the gender equality agenda and ensure women's representation, only a limited number of women have gained access to key decision-making positions (Byanyima, 2008, p. 324). The African continent has had only three female presidents (Liberian President Ellen Johnson-Sirleaf, Malawian President Joyce Hilda Banda and the Central African Republic's interim president Catherine Samba-Panza) and the AU now for the first time in its 10 year existence has elected a female Chairperson (South African Dr Nkosazana Dlamini-Zuma). However, in spite of the inclusion of these women in high ranking positions within their states and the AU, civilian women and girls have continued to be the targets of strategic rape during armed conflicts.

With this background in mind, some of the AU's key policy responses to gender inequality; particularly those which should address the occurrence of war-time rape. The AU policies which will be discussed include the *Constitutive Act of the African Union*, the *Solemn Declaration on Gender Equality in Africa*, the *Protocol to the African Charter on Human and People's Rights on the Rights of Women (ACHPRWA)* and finally the *Protocol relating to the Peace and Security Council*. The *African Women's Decade*, one of the more recent policies pertaining to women adopted by the AU, will also be discussed briefly.

### 5.3.1. The Constitutive Act of the African Union

*The Constitutive Act* of the AU was adopted in July 2000 in Lomé, Togo. The preamble of the Act states that the AU is inspired by the ideals of Pan-Africanism, which seeks to unite African states and people in solidarity, cohesion and cooperation. The AU is guided by a vision of a united and strong Africa; therefore it resolves to establish lasting partnerships with civil society, women, youth and the private sector. It is also determined to overcome the multifaceted social, economic and political challenges facing the continent and its people by promoting human and people's rights, respect for the rule of law and consolidating strong democratic institutions which ensure good governance. The AU is, however, conscious that the scourge of armed conflicts in Africa is a major impediment to the development of the continent. Thus it seeks to promote peace, security, and stability as a prerequisite for Africa's economic, political and social development; as mentioned above.

According to the Constitutive Act, the AU seeks to achieve the following objectives<sup>29</sup>:

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<sup>29</sup> Only the objectives that are of relevance to the study have been included in this discussion.

- “Greater unity and solidarity between the African countries and the peoples of Africa;
- Defend the sovereignty, territorial integrity and independence of its Member States;
- Encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- Promote peace, security, and stability on the continent;
- Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments”.

In Article 4 of the Act, the AU makes provision for the sovereign equality of member states, respect for their borders, and the independence of member states. It also prohibits the use of force and threat to use force amongst member states and commits to the peaceful resolution of conflicts between member states by means of a common defence policy (the Peace and Security Council). Article 4(g) provides for non-interference by any member state in the internal affairs of another member state. Article 4(h) however provides the AU with the right to intervene in the affairs of member states in the event of grave circumstances, such as war crimes, genocide and crimes against humanity.

By adopting the Constitutive Act, member states have agreed to peaceful co-existence, acknowledging the right of all member states to peace and security. Thus Article 4(j) provides member states with the right to request intervention from the AU in conflicts, to restore peace and security. Furthermore, Article 4(l) states that the AU will promote gender equality in its work. Article 4(m) provides for the respect for democratic principles, human rights, the rule of law and good governance, while Article 4(n) demands that member states respect the sanctity of human life, condemn and reject impunity and political assassination, acts of terrorism and subversive activities. Finally, Article 4(p) rejects unconstitutional changes in governments by member states.

The Constitutive Act forms the basis for all other policy responses (declarations, protocols or agreements) enacted by the AU. They are the means by which the AU brings into operation its agenda. These policy responses (particularly those pertaining to the use of gender-based sexual violence) provide great insight into the level of importance the AU places on the cessation of rape during armed conflicts and in general. It further provides insight into what the AU has done, and is doing, to promote and attain gender equality across the African continent.



### 5.3.2. The Solemn Declaration on Gender Equality in Africa

In July 2004, the heads of state and government ministers belonging to the AU adopted the *Solemn Declaration on Gender Equality in Africa* (SDGEA). The Declaration is claimed to be a reaffirmation of the AU member states' commitment to gender equality and women's empowerment as provided for in the Constitutive Act, CEDAW, UN Resolution 1325 on Women, Peace and Security, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Declaration is also a reaffirmation of the AU's commitment to expanding and accelerating efforts promoting gender equality and gender parity at all levels (national, regional and continental). It is an expression of the AU's determination to continue addressing issues that are of major concern to the women of Africa.

The Declaration recognizes that there are significant challenges to gender equality which require strong leadership to resolve. It is deeply concerned about the low status of women around the continent, as well as the negative impact that HIV/AIDS, poverty, conflict, harmful traditional practices, and illiteracy has on these women. The Declaration states that the AU is concerned that women and children are most affected by conflicts and internal displacement, as well as rapes and killings. Women are also largely excluded from conflict prevention, peace-negotiation, and peace-building processes in spite of African women's experience in peace-building. The Declaration hence provides a framework for member states to report on when measuring their progress made in implementing the Declaration's provisions. These provisions are guided by various regional, continental and international instruments relating to women's rights and gender issues (Musyimi-Ogana, 2011).

The member states who choose to ratify the Declaration agree to<sup>30</sup>: ensure that women effectively participate and are represented in conflict prevention, resolution and management, as well as post-conflict reconstruction initiatives; systematically prohibit the trafficking and recruitment of women and girls as sex slaves; initiate public campaigns to address gender-based violence; and reinforce legal mechanisms to protect women and end impunity of crimes committed against women.

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<sup>30</sup> Only the provisions or points that are of relevance to the study have been listed.

All AU member states were also expected to have submitted a base-line report on the SDGEA by January 2007 (Musyimi-Ogana, 2011). Thus far only seven member states have submitted reports on the progress made in their countries (Bubbenzer & Lacey, 2013, p. 7). Furthermore, only 34 member states have ratified the Declaration.<sup>31</sup> This is significant considering that states such as the DRC, Sudan and Somalia have had the highest incidences of the use of rape and sexual violence as a weapon during armed conflicts (Hom, 2011; Robertson, 2008; Adentunji, 2007; Weibel, 2007).

### 5.3.3. The Protocol to the African Charter on Human and People's Rights on the Rights of Women (ACHPRWA)

*The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (ACHPRWA)* was adopted in Maputo during July 2003; the drafting of this protocol started in March 1995 in Lomé, Togo. Before the Protocol could be brought into effect, it had to be ratified by 15 AU member states (Article 29). Ten years later on the 26 October 2005, Togo became the fifteenth country to ratify the Protocol and the Protocol came into force a month later on 25 November 2005. This Protocol was established in accordance with Article 66 of the African Charter, which states that special protocols or agreements may be introduced to supplement the goals of the African Charter. It was also established in consideration of Article 2 of the African Charter, which enshrines the principle of non-discrimination on the basis of "race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status". This Protocol, known as the AU Women's Protocol or the Maputo Protocol also takes into consideration Article 18 of the African Charter, which calls on member states of the AU to eliminate all forms of discrimination against women and to ensure the protection of their human rights.

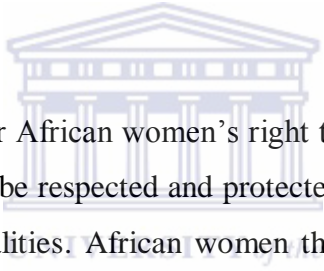
This Protocol was established in recognition of other international instruments aimed at empowering women, such as the CEDAW and the UNSC Resolution 1325 (2000) on women, peace and security. The Protocol subsequently seeks to promote gender equality and encourage all member states to ensure the full participation of women as equal partners in the development

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<sup>31</sup> These include Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Cote d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, the Gambia, Ghana, Lesotho, Liberia, Libya, Mali, Mauritius, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Senegal, Seychelles, South Africa, Swaziland, Togo, Tunisia, Uganda, Zambia and Zimbabwe. Amongst the member states which have not yet ratified the Declaration are the Democratic Republic of Congo (DRC), Somalia, Sudan, Southern Sudan, Tanzania, Sierra Leone, Eritrea, Guinea-Bissau, Guinea, Kenya, Madagascar, Malawi, Mauritania, Mozambique, and Sao Tome and Principe.

of Africa. It expresses the AU's concern that, despite the ratification of various international human rights instruments, African women continue to be victims of discriminatory and harmful practices. The Protocol states that such practices hinder and endanger the normal physical and psychological growth and development of women and girls. Such practices should be condemned and eliminated to ensure that women and girls fully enjoy their human rights.

Member states that have ratified the Protocol should thus combat all forms of discrimination at all levels, and in all fields of society. They should enshrine women's rights in their constitutions, clearly stipulating that women and men are equal and have equal rights. Member states should implement laws that punish the perpetrators of harmful practices against women. They should also actively participate in initiatives aimed at the eradication of all forms of discrimination. The Protocol states that these initiatives ought to include public education, adult education and mass communication. Furthermore, member states should ensure that women's opinions are taken into account when decisions are made pertaining to the villages, suburbs, cities and states they live in.



Article 3 of the Protocol provides for African women's right to dignity. The Protocol states that all African women have the right to be respected and protected as human beings, which include respect for their bodies and personalities. African women thus have the right not be sexually harassed, beaten, raped, have their genitals removed or be used for sex trade (prostitution). Article 4 adds to these rights by providing for African women's life, integrity and security.

The Protocol adds that women should be entitled to respect for their lives, as well as protection in their homes, family, society and country; no one has the right to perpetrate acts which are intended to humiliate women. Member states, by ratifying this Protocol, are thus committing themselves to enact laws that prohibit the use of violence against women, especially in the form of physical violence, verbal abuse and sexual harassment, and rape – in the home, workplace or any other place. Article 5 of the Protocol declares that states should endeavour to eradicate traditional and cultural beliefs which discriminate against women, through education and social communication, and justly punish the perpetrators of violence against women. Member states should additionally condemn and prevent trafficking in women and girls, punishing persons or parties who are found sexually and economically exploiting and trafficking in women and girls. Female genital mutilation, removing body parts of women and girls, as well as scarring them, are to be prohibited by law.

Article 11 of this Protocol speaks specifically of the protection of women in armed conflicts. The Protocol states that member states should respect and conform to international humanitarian law, especially during periods of armed conflict. It declares that State Parties should protect civilians, particularly asylum seeking women, refugees, returnees and internally displaced persons. These vulnerable women should be protected against all forms of violence, including rape and sexual exploitation. Finally, perpetrators of genocide, war crimes and crimes against humanity should be punished by the state.

The Protocol further makes provision for women to have rights pertaining to marriage, employment, equality before the law, health care, inheritance, housing, food security and reproduction. However, this Protocol does not specifically speak to the prohibition of rape as a weapon of war or the delegitimization of rape as a weapon of war. This Protocol too is characterized by the use of vague and general terms. The Protocol speaks about unwanted or forced sex, harmful practices against women and gender violence, which serves as euphemisms to replace words such as brutal rape, war-time rape, and rape as a weapon of war. In addition to this, the AU leaves the justice of perpetrators to the criminal jurisdiction of states, expressing that state parties should ensure that perpetrators are brought to justice before a competent criminal jurisdiction.

Article 2(2) and Article 4(2) of this Protocol are however worth commending. Article 2(2) pronounces that states should commit themselves to modifying “the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men”. Article 4(2) adds that states should take appropriate and effective measures (legislative, administrative, social and economic) to prohibit violence against women in the form of unwanted or forced sex in both the private and public sphere, and actively promote education to eliminate “traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women”. This shows that the AU is cognisant of the traditional factors which impede the development and realization of women’s rights; rights relating to the way women are treated in the private and public spheres of life, as well as the positions they are allowed to fulfil in these spheres. These provisions also demonstrate that the AU realizes the need for patriarchal

traditions (with its subsequent stereotypes) to be eliminated in order for women to be treated as equals to men.

AU member states, however, do not always demonstrate the political will to eliminate patriarchal traditions mentioned in Article 2(2) and 4(2). This is evinced by the slow pace of ratification of this Protocol; meetings to discuss this Protocol were frequently cancelled or postponed by member states (Wandia, 2005, p. 50). This suggests that member states considered other matters more pressing and significant than ensuring the attainment of gender equality. The process was thus primarily driven by civil society organizations, such as Women in Leadership and Development in Africa (WiLDAF), the African Centre for Democracy and Human Rights Studies (ACDHRS), the International Commission of Jurists (ICJ), Equality Now and the African Women's Development and Communication Network (FEMNET) to mention a few (Wandia, 2005, p. 49-50).

Furthermore, some states signed or ratified this Protocol with significant reservations. Mauritius, for example, stated in its reservations that it would “not take any legislative measures that the minimum age of marriage for women shall be 18 years and that monogamy is encouraged as the preferred form of marriage”, and that it furthermore not “take any legislative measures ensuring the right of women to choose any method of contraception” as this may lead to an increase in abortions (Wandia, 2005, p. 52). These reservations illustrate that states may very well choose to favour the patriarchal privileges espoused in their national legislation above the promotion of women's rights. It may hence be argued that some member states cannot be depended upon to fulfil their responsibility to promote women's rights. States that uphold patriarchal, male privilege cannot be relied upon to prosecute perpetrators of sexual violence (particularly war-time rape) as many of these states have been implicated in the use of rape as a weapon; as previously stated.

#### 5.3.4. Protocol relating to the Peace and Security Council (PSC)

The *Protocol relating to the Peace and Security Council* was adopted in Durban during July 2002 in consideration of the AU Constitutive Act and the UN Charter. Mindful that the UNSC bears the primary responsibility of maintaining international peace and security, the Protocol calls for closer cooperation between the AU and the UN to promote peace and security on the African continent. The Protocol declares the concern of the AU regarding the continued prevalence of armed conflicts in Africa, stating that these conflicts not only undermine the

economic, social and political development of the continent, but deprives millions of civilians (including women and children) of their human dignity.

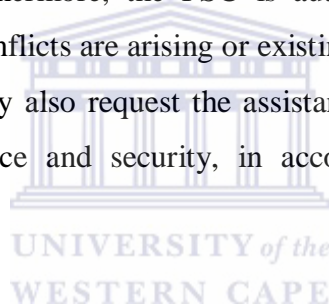
The Protocol further expresses concern regarding the scourge of landmines and the illicit proliferation, circulation and trafficking of small arms and light weapons. It states that such practices undermine the living conditions of African people and constitute a serious impediment to the development of Africa. The Protocol acknowledges that these impediments can only be overcome by well coordinated continental cooperation and the development of strong democratic institutions. Thus it is determined to work towards enforcing the observance of human rights and the rule of law, in an effort to end to the scourge of armed conflicts on the continent.

Article 2 of the Protocol makes provision for the establishment of the Peace and Security Council (PSC), in accordance with Article 5(2) of the AU Constitutive Act. The PSC will act as a “standing decision-making organ for the prevention, management and resolution of conflicts”. The PSC will facilitate the AU’s response to conflict and crisis on the continent and will comprise of a Panel of the Wise, a Continental Early Warning System (CEWS), an African Standby Force (ASF) and a Special Fund. Article 11 of this Protocol states that the Panel of the Wise will comprise five highly respected African personalities who have been drawn from various sectors of society and who have made exceptional contributions to the pursuit of peace, security and development across the continent. The Panel will advise the PSC and AU Commission on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa. Article 12 of this Protocol provides for the CEWS, to facilitate the prevention of conflicts on the African continent. The CEWS will comprise an observation and monitoring centre, which will be located in the Conflict Management Directorate of the AU. This centre will enlist the help of the UN, its institutions, research organizations, academic institutions and NGOs to ensure its effective functioning. Article 13 provides for the establishment of the ASF that will assist the PSC perform the objectives set out in Article 4 (h) and (j) of the Constitutive Act. The ASF is to comprise of five brigades from each of Africa’s sub-regions (Gomes, 2008, p. 125). These brigades are to be ready for rapid deployment at all times.

Some of the key objectives of the PSC, according to Article 3 of the Protocol, will be to: promote peace, security and stability in Africa to ensure the protection and preservation of life, property and well-being of African citizens; ensure conditions for sustainable development; as

far as possible prevent and resolve conflict; promote democracy and good governance; and promote respect for international humanitarian law and the sanctity of life.

Furthermore, Article 4 of the Protocol states that the PSC will be guided by principles enshrined in the AU Constitutive Act, the Charter of the UN and the Universal Declaration of Human Rights. These principles include the peaceful settlement of conflicts; responding to disputes speedily to prevent them from becoming full-blown conflicts; respect for the rule of law, human rights and the sanctity of life; and respect for the sovereignty of AU member states and the borders of these states. The AU, however, reserves the right to intervene in the affairs of member states in the event of grave circumstances such as genocide, gross violations of human rights, instability that threatens regional stability and unconstitutional changes in government (Murithi & Ndinga-Muvumba, 2008, p. 6). The AU reserves the power to institute sanctions against a member state in the event of an unconstitutional change in government in accordance with Article 7(c) of this Protocol. Furthermore, the PSC is authorized to deploy peace support missions to member states where conflicts are arising or existing, in accordance with Article 7(g) of this Protocol. Member states may also request the assistance of the PSC and the AU in its efforts to restore or maintain peace and security, in accordance with Article 4(j) of the Constitutive Act.



In article 15(1) of the PSC Protocol, it is stated that the Council will take active part in humanitarian endeavours during periods of armed conflict and natural disaster, in order to return the lives of citizens to 'normalcy'. The PSC will work with regional mechanisms and the United Nations Security Council (UNSC) to attain and maintain peace and security on the continent. The PSC Protocol declares that the Council will form a firm relationship with the African Commission on Human and Peoples' Rights, in a bid to alleviate the abuse of human rights in Africa. The PSC further aims to work with civil society organizations, such as non-governmental and community-based organizations, to gain their insights on matters pertaining to peace and security. Article 20 of the Protocol expresses the PSC's desire to work particularly with women's groups, and have them address the Council on security matters which affect their daily lives.

### 5.3.5. The African Women's Decade: 2010-2020

The AU's most recent policy endeavour to address gender inequality is the African Women's Decade. The idea of a Women's Decade was first initiated by the UN at the First World Conference on Women, held in Mexico City in 1975. In 2008, the AU Ministers of Women Affairs urged the AU to declare 2010 to 2020 as the *African Women's Decade* (AWD). Their proposal was subsequently adopted by the AU. According to the Women, Gender & Development Directorate (WGDD) (2009, p. 3) this framework presents the AU with a new opportunity to work towards the improvement of women's participation in continental affairs. It is their belief that the increased participation of women in decision-making and gender related matters is imperative to achieving gender equality in Africa.

This new framework was developed out of the need to ensure compliance and commitment to existing AU policies and protocols relating to gender equality and women's rights; ensuring that member states implement key regional and global agreements pertaining to women's rights and development. Some of the other motivations for this new framework include: the need to find best practices for enforcing existing protocols; developing ways to track the performance of gender departments or mechanisms; and ensuring that member states report on the implementation of policies and protocols.

The AWD is centred around ten specific themes: fighting poverty and promoting economic empowerment of women entrepreneurship; agriculture and food security; health, maternal mortality and HIV/AIDS; education, science and technology; environment, climate change and sustainable development; peace, security and violence against women and girls; governance and legal protection; finance and gender budgeting; and women and decision-making; and mentoring youth (men and women) to be champions of gender equality. The ultimate goal of the AWD is to increase the execution of member states commitments to gender equality and women's empowerment at all levels; grassroots, regional and continental. It is to advance and reinforce partnerships between men and women between 2010 and 2020.

The AWD will be implemented in two phases: the first phase spans from 2010 to 2015, at which point a review will be conducted; the second phase will start in 2015 culminating in 2020.

The objectives of the AWD include: preserving and building on African women's strengths and achievements for the advancement of all African women; providing leadership to African women, particularly the youth; and, to maintain efforts to provide resources to African women to



empower them. Yet, no mention is made of sexual and gender based violence, particularly strategic rape, which has become a daily reality for many African women. Neither does it address whether the AU considers rape to be a purposeful or strategic weapon of war, or how war-time rape will be addressed during the African Women's Decade.

The AU Commission's Director of Gender and Women's Empowerment, Litha Musyimi-Ogana (2011), claims that the Assembly of Heads of State of the AU has provided consistent leadership and support to the promotion of gender equality on the continent. She cites the Constitutive Act of the AU, the Protocol of the African Charter on Human and People's Rights on the Rights of Women in Africa and, the Solemn Declaration on Gender Equality in Africa as evidence of this commitment.

However, research indicates that these instruments have yielded poor results and African women remain significantly marginalized (Parpart & Thompson, 2012, p. 181-182; Byanyima, 2008, p. 326-327). The WGDD (2009, p. 6) acknowledges the challenges to achieving gender equality and the advancement of women, attributing these barriers to performance to a lack of technical capability in tracking the performance of gender instruments, and the diverse socio-cultural settings on the continent. Consequently, this framework focuses on influencing cultural stereotypes and unfavourable gender power structures; this will be done through various education and media initiatives which will dependant on donor funding.

Furthermore, each AU member state is expected to set up national committees, including individuals drawn from all sectors of society. These committees are to propose one good practice project per year, relating to one of the focus topics of the AWD framework. With 53 projects being carried out over the period of 10 years, it will result in 530 projects being undertaken by the end of the decade. These committees will comprise of ten members, representing one theme each. At a regional level, a ministerial working committee should be established, comprising of ten members who will work closely with regional economic communities (RECs). Finally, at a continental level, a working group of 30 people will be established, comprising from one person per region in the AU (African Union, 2010).

The framework, however, does not state what the consequences for non-compliance by member states will be. The narrative used in the framework is much the same as other AU and UN documents relating to gender; they primarily call for the inclusion of more women in national

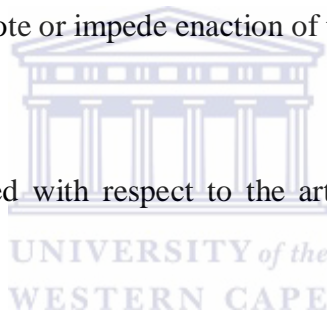
and international institutions, seeing this as the core solution to gender inequality. Nevertheless, the gender equality agenda remains largely under-achieved in Africa as little progress has been made in gender main-streaming efforts; AU member states remain reluctant to integrate gender into development and resource allocation processes (WGDD, 2009, p. 7).

#### **5.4. Analysis**

The framework of articulation, interpellation and articulation will be used to conduct a feminist discourse analysis of the AU instruments outlined above. The analysis considers firstly how the AU narratives are articulated; what is said, what is not said, what meanings are fixed (to rape and women) and what meanings are not fixed. I will particularly consider whether the AU narratives portray rape to be an unfortunate by-product of war, or a strategic and deliberately used weapon. This will be done by highlighting the predominant themes that have emerged from the AU narratives. The analysis secondly addresses the interpellation of these narratives. Lastly, I consider the factors that may promote or impede enaction of these AU narratives.

##### **5.4.1. Articulation**

The following themes have emerged with respect to the articulation of meanings in the AU documents analysed in this study.



##### **5.4.1.1. *Soft/palatable narrative***

When reading the AU Constitutive Act, the SDGEA, the Protocol relating to the Peace and Security Council and ACHPRWA, the sense is that these documents were written in such a manner as not to offend any person, state, or group of people. It seems that the narrative is meant to be non-confrontational. The occurrence of rape is dealt with broadly, by the use of vague and euphemistic descriptions and definitions. The AU Constitutive Act in Article 4(h) for example speaks of “war crimes” and “crimes against humanity”. It also refers to “gender equality” in Article 4(l) and the “sanctity of human life” in Article 4(o). However, the words *rape as a weapon of war* or *strategic rape* is at no point explicitly stated or defined. Rape is not acknowledged as a strategic weapon of war. In Article 4(o) & (p) the AU states that it condemns and rejects impunity, political assassination, terrorism and unconstitutional changes in government. This may be the most appropriate place in this Act to acknowledge the use of rape

as a weapon, and the AU's condemnation and rejection of this practice. However, strategic rape is not included in this list of crimes the AU declares as gravely offensive.

Neither is strategic rape included in Article 23(1), which states that the Assembly may impose sanctions on member states which default on their membership payments. These states may subsequently be denied the "right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments therefrom". Article 30 adds that states which come into power by means of unconstitutional changes in government may be suspended from the AU. There is however no provision that states who use rape as a weapon of war or which practice and tolerate impunity with regards to its use will be condemned in the same way as those which participate in or tolerate terrorism, political assassination and unconstitutional changes in government. The severity of the use of rape as a weapon of war could be raised if it was considered with the same severity as unconstitutional changes in governments for example; especially in instances where AU member states are implicated in the use of this weapon. The explicit rejection and condemnation of strategic rape, as articulated regarding the above mentioned crimes, would demonstrate the seriousness with which the AU regards this crime/weapon.

This vague or soft narrative is continued in the SDGEA (2004, p. 2), which uses phrases such as "issues that are of major concern to women", "gender equality", "violence against women", and "harmful gender practices". It also speaks of the "systematic prohibition" of recruitment of child soldiers, sex slaves and trafficking in women and girls (SDGEA, 2004, p. 3). Although this document broadly acknowledges rape and the fact that it is perpetrated particularly against women during armed conflicts, it does not explicitly acknowledge that rape is used as a strategic weapon of war; or what measures will be taken to delegitimize it. The ACHPRWA (2003, p. 3-4) also uses vague words and phrases such as "discrimination against women", "harmful practices" and "violence against women". It is worthwhile noting that Article 11(3) of the ACHPRWA (2003, p. 12) does declare states responsible for ensuring that practices such as rape are considered as acts of genocide. This is, however, all that is said on the matter. Hence it is seen that this protocol also does not sufficiently address the construction and use of rape as a weapon of war. Furthermore, no distinction is made between rape which occurs during peacetime and rape that occurs during war-time, with its subsequent meanings.

The *Peace and Security Council Protocol* is also vague on the issue of the perpetration of sexually violent acts during armed conflict, such as genital mutilation, sexual slavery and rape. It does not highlight the importance and urgency of delegitimizing strategic rape, as it does the use of landmines and the trafficking of weapons. In fact, this Protocol does not acknowledge that rape is used as a deliberate and strategic weapon during armed conflicts. Consequently, it does not address how it intends to eradicate the scourge of rape during armed conflicts. During 2010 the PSC for the first time recognized the need to address the gender dimension of armed conflict (ISS, 2010, p. 17); this despite the widespread use of rape as a weapon during numerous African armed conflicts and civil wars. The PSC is now for the first time since its establishment seeking to establish the root causes of gender-based sexual abuse in armed conflict and ways to mitigate the risks faced by women during these conflict situations.

Moreover, the *African Women's Decade* document completely fails to address rape as a weapon of war, particularly its continued use in recent African armed conflicts. This is significant as this framework is currently the AU's official plan for improving the conditions which African women face on a daily basis. As war-time rape is a daily reality for many African women, it is imperative that a planned strategy to delegitimize rape as a weapon be included in this framework; yet it is not. Unless the use of rape as a weapon of war is deliberately and systematically addressed it will continue to be used. Its exclusion from this framework further suggests that the delegitimization of this weapon is not a priority for the AU and its member states, and that rape is regarded as an unavoidable by-product of armed conflict. This research project argues that a specific policy, framework or protocol is needed to address this weapon and its delegitimization.

The AU's vague or soft narrative may be attributed to AU policy-makers being cautious not to construct documents in such a way that they contain graphic descriptions of rape which will repulse or shock readers. Once put off, people may be reluctant to engage in discussions on the issue at hand. Conversely, graphic descriptions or definitions of war-time rape may also arouse certain people and incite further violence against women. These graphic descriptions may be understood as "warnography" or "disaster pornography" (Pettman, 1991, p. 104-105).

Another reason for the AU's palatable narrative may be cultural consideration of member states. The AU may construct narratives so that they are not offensive to the cultural beliefs and traditions of member states; to prevent leaders and their states feeling uncomfortable. The AU

allowing Mauritius to enter reservations (in a bid to protect its national patriarchal, cultural traditions) before adopting the ACHPRWA serves as an example (Wandia, 2005, p. 52-53). Such reservations reflect tolerance of patriarchal notions regarding strategic rape; as opposed to the Chemical Weapons Convention and Mine Ban Treaty which do not admit any reservations. The AU may thus be said to be tolerating and upholding patriarchal notions regarding women and the cultural meanings attached to their bodies, by means of its vague narrative. This brings me to the next theme found in the AU documents used in this study, namely culture.

#### 5.4.1.2. *Culture*

As discussed in Chapter Three, African societies are particularly characterized by patriarchy. Even where matriarchy is practiced, men still wield significant power and influence in society. This persistent culture of patriarchy results in a gap between what AU protocols state (the rights and privileges it claims or attempts to provide to women) and what happens in practice (the apparent lack of implementation and continued occurrence of war-time rape). The mechanisms intended to promote gender equality across the continent continue to perform poorly due to a lack of political will (Parpart & Thompson, 2012, p. 181-182; Byanyima, 2008, p. 317) and women subsequently remain the targets of sexual violence during peace-time and armed conflict (ISS, 2010, p. 17; Coulter, 2008, p. 61; White, 2008, p. 151). The AU is certainly cognisant of the impact that culture has on the implementation of its policies and protocols, as culture is specifically and repeatedly addressed in the documents discussed above.

The *ACHPRWA* and the *AWD* are particularly vocal on the impact of culture. Article 1(g) of the *ACHPRWA* refers to “attitudes and/or practices” that may be harmful to women and negatively affect their right to life, health, dignity and education. These attitudes may be understood as patriarchal cultures and traditions which persist in African societies, which often result in the perpetration and tolerances of practices such as genital mutilation, virginity testing, spousal inheritance and sexual abuse (Forster-Towne, 2011, p. 45; Kambarami, 2006, p. 4; Farwell, 2004, p. 395). Article 4(d) also addresses culture, declaring that AU member states are to “actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women”. Article 2 specifically addresses discrimination against women on the basis of culture, stating that member states are to commit themselves to the modification of “social and cultural patterns of conduct” and the

elimination of “cultural and traditional practices” which exploit notions of inferiority and superiority of sexes and stereotyped gender roles.

The *AWD* hence seeks to support the rights provided to women in the *ACHPRWA*. It aims to do this by influencing “cultural stereotypes” and “unfavourable gender power structures” (WGDD, 2009, p. 6). Gender equality remains largely under-achieved in Africa as a result of these persistent stereotypes and tokenisms (WGDD, 2009, p. 6). The AU seeks to correct these by means of education and media initiatives. It would also seem that the AU seeks to create a culture of respect for human life and rejection of impunity, as stated in Article 4(n) of the AU *Constitutive Act*. However, despite the AU’s right to intervene upon the occurrence of war crimes, crimes against humanity and genocide, numerous African states have been seen to persistently use strategic rape, or to be implicated in gender-based sexual violence during armed conflicts (Parpart & Thompson, 2012, p. 183; Forster-Towne, 2011, p. 14; Baaz & Stern, 2009, p. 495).

This suggests that a culture of ‘non-interference’ (which contributed to the failure of the OAU) still persists in the work of the AU. This culture may impede efforts to promote gender equality and delegitimize rape as a weapon of war as it sends the message that state sovereignty is supreme. A culture of non-interference often slows down the response of the AU during armed conflicts, as is evinced by the AU’s response to the recent (2012-2013) conflict in Mali. Despite rape being used as a weapon to terrorize communities by armed forces and the rising number of civilian casualties, the AU stood by the principle of non-interference, allowing the Malian government time to resolve its own internal issues (France-Presse, 2013; Murithi, 2013; Vesperini, 2013). This suggests that the AU (despite its recognition of culture) places greater value on state security and sovereignty, than human security. Moreover, it gives the impression that the AU is only paying lip-service to the international community. It implies that the AU regards it as ‘good-enough’ to simply have these documents, while the implementation thereof remains slow.

However, the AU member states may also be responsible for this slow pace of implementation. The gap between policy and reality may be ascribed to their reluctance to part with patriarchal cultures which render women susceptible to the use of rape as a weapon of war. At a Global South Dialogue seminar (personal communication, 10 May 2012), held at the University of the Western Cape, Professor Jane Parpart explained that states are often reluctant to engage in

discussion on rape because it is regarded as an attack on black men and their masculinity. They believe it reinforces stereotypes about black men being hyper-sexual and barbaric. They hence regard talk about rape statistics as anti-patriotic, racist and biased. Thus African leaders or states remain unwilling to recognize that rape is used as a strategic weapon and by extension fail to ensure its delegitimization. They simply do not acknowledge rape, much less strategic rape, as a problem. The responsibility of member states will be the next theme in this discussion.

#### *5.4.1.3. State responsibility*

The AU places the responsibility of ratification, implementation and monitoring of its protocols on its member states. The SDGEA (2004, p. 4) declares that “State Parties” are tasked with “domesticating and implementing the Protocol as well as other national, regional and international instruments on gender equality”. Furthermore, Article 2(1) of the ACHPRWA provides that “State Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures”. This includes enacting and implementing legislation that prevents the abuse of women in private and public spheres, and correcting past injustices and discriminatory policies. Article 2(2) adds that “State Parties” are responsible for modifying social and cultural patterns, correcting gender stereotypes through education and eliminating traditional practices which harm women; as previously stated. Article 3(3) also states that “States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women” while Article 4 pronounces that “State Parties” are responsible for providing women with security from cruel, inhumane, exploitative and degrading practices.

Most importantly, Article 4(2)(a) & (e) declares that “State Parties” are responsible for prohibiting “unwanted or forced sex” whether in private or public places, and “punish(ing) the perpetrators of violence against women”. Article 5 adds that “State Parties” are to ensure the fulfilment of women’s human rights in accordance with international standards. This provision is further supported by Article 11, which tasks states with protecting women during armed conflicts, irrespective of their ethnicity or culture and from all forms of violence. States are to “respect and ensure respect for the rules of international humanitarian law applicable in armed conflict, which affect the population, particularly women”. Furthermore, states are to ensure that all forms of sexual exploitation, such as rape, are considered “war crimes, genocide and/or crimes against humanity” and that “perpetrators are brought to justice”.

Article 7(1)(m) of the PSC reiterates the responsibility of “Member States” to protect civilians and ensure that their human rights are protected by promoting democratic practices, good governance and respect for the rule of law. Article 7(2), (3) & 4) provides that “Member States” must implement the decisions of the PSC and fully cooperate to ensure the prevention, management and resolution of conflict. In fulfilment of this responsibility, “Member States” are to contribute troops to assist and support peacekeeping initiatives, as in accordance with Article 13(7)(a) & (b) of said protocol. However, despite these provisions numerous states have been seen to neglect their responsibilities. African states present a history of perpetrating sexual violence against women and engaging in armed conflict without much regard for or even deliberately causing civilian casualties. Examples include:

- The Rwandan genocide (April to July 1994) during which the Hutu-led government sought to exterminate the Tutsi population, killing over 800 000 people within a few weeks (Forster-Towne, 2011, p. 12-13);
- The genocide in Burundi (1972 and 1993 to 2006) and on-going instability as a result of ethnic tensions and disputes between the Burundian government and the National Forces for Liberation, which has resulted in civilian casualties and widespread sexual violence (Forster-Towne, 2011, p. 11-12);
- The on-going ethnic conflict (since 1998) in the DRC (particularly in the Eastern provinces) in which rape has been used as a weapon against thousands of women by both rebels and government soldiers (Forster-Towne, 2011, p. 13-14; Baaz & Stern, 2009, p. 496-497; Wakabi, 2008; Gettleman, 2007);
- The civil war during 1987 and 2006, and on-going conflict (2008 to present) in Uganda (a spill over from the conflict in the DRC) during which women were particularly targeted by Ugandan government militia and the Lord’s Resistance Army (LRA) (Forster-Towne, 2011, p. 15-16);
- The civil war in Sierra Leone during 1991 and 2002, in which approximately 250 000 girls and women were abducted and raped (Coulter, 2008, p. 58);



- The civil war in Liberia (1991 to 2002) during which widespread human rights abuses were committed including the use of rape as a weapon, for which Charles Taylor was recently convicted, in addition to the role he played in the civil war in Sierra Leone (Human Rights Watch, 2012; Utas, 2005, p. 410-412);
- The rape of civilian women by government officials and soldiers in chronically unstable Somalia, with the UN reporting that 70% of rapes in this country are perpetrated by men wearing military uniforms (Aljazeera, 2013; Elbagir, 2013; IRIN News, 2013);
- The use of rape as a weapon of war by rebels and government soldiers in Sudan (particularly in Darfur), and the continued perpetration of sexual violence after South Sudan's 2011 referendum and consequent secession from Sudan (Amnesty International, 2012; Hogan, 2012); and,
- Former Libyan president Colonel Muammar Gaddafi and his son Said al-Islam being issued with warrants of arrest from the International Criminal Court (ICC) for committing human rights abuses (murder and persecution) against Libyan civilians, and allegedly using rape as a weapon of war; rape continues to be used as a weapon in the ensuing instability (McBain, 2013; Sherlock, 2013; BBC, 2011).

Although some of these examples predate the policies and protocols addressed in this study, they are still meaningful and insightful. These documents fail to explicitly recognize conflicts such as the Rwandan genocide, where rape was used as weapon, in their preambles. Thus they do not express the AU's commitment to preventing the recurrence of such incidents. These examples further demonstrate that AU (previously OAU) member states often display a lack of political will and commitment to implementing the policies of the continental institution, and subsequently fail to meet their responsibilities. They particularly fail to meet their responsibility to promote gender equality, eradicate sexually violent practices such as strategic rape and to create respect for the sanctity of human life. What is more, some of the member states of the AU continue to use (or ignore) rape and violence against women to pursue their political and economic agendas; despite their expressed commitment to the mechanisms and policies of these institutions. Recent examples include South Sudan, Mali and the CAR. It seems that even

African officials see rape as a ‘justified weapon’ when seeking to defeat their enemy, win the war and safeguard their own security.<sup>32</sup>

Many African governments are still inherently patriarchal (ISS, 2010, p. 17). The SDGEA (2004, p. 2) hence recognizes that “major obstacles and challenges” remain which impede gender equality and the quality of life enjoyed by African women. It further acknowledges that these obstacles require “concerted and collective leadership” from AU member states. This criticism is supported by the WGDD (2009, p. 7), which in the AWD policy document laments that “the gender equality agenda still remains largely under-achieved” and “AU Member States are still very reluctant in integrating gender” into their work. States which do not regard the protocols and policies of the AU with much seriousness will continually fail to meet their responsibility (as provided for in said protocols and policies) towards their citizens. Thus, African states sustain an environment in which gender-based sexual violence, particularly the use of rape as a weapon of war, is allowed to persist.

#### 5.4.1.4. *Patriarchal approach*

The AU has repeatedly expressed the belief that peace, security and stability are prerequisites for the growth and development of the continent (PSC, 2002, p. 2). Peace and security are also prerequisites for the implementation of the AU’s economic and social integration agenda; fundamental to the attainment of its Pan-African vision of a strong, united and prosperous continent (Constitutive Act, 2000, p. 2-3). The AU’s primary or key means to address persistent armed conflict has been the Peace and Security Council, with its respective bodies – the CEWS, the Panel of the Wise and the ASF. In light of its task, the PSC has expressed concern that millions of civilians have been internally displaced, become refugees and deprived of human dignity and hope; with “women and children” being particularly affected by armed conflicts (PSC, 2002, p. 2).

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<sup>32</sup> Further examples of African leaders who have used strategic rape (or are accused of using this weapon) include former vice-president of the DRC Jean-Pierre Bemba, former CAR president Ange-Felix Patasse, and Kenyan president Uhuru Kenyatta. Additional examples of African states being implicated in the use of sexual violence would include the Zimbabwean government’s (ZANU-PF) youth members (Green Bombers) being ordered to rape women who support the opposition (see: Parpart & Thompson, 2012, p. 183) as well as the cruel and mass acts of sexual violence perpetrated by government forces in the DRC (Baaz & Stern, 2009, p. 495; Forster-Towne, 2011, p. 14).

Article 14 (3)(e) declares that “women” as “vulnerable persons” need special assistance. The word vulnerable reinforces stereotypes that claim women are weak, poor, helpless, destitute and thus dependent on male and state protection. Military power and masculinity are thus emphasized as necessary for the protection of women, with men and states subsequently being attributed with superiority and strength. This contrasts to the supposed inferiority and weakness attributed to women. Although women may be marginalized and bear the brunt of armed conflict and poverty in many African societies, they have in numerous instances displayed active agency despite the dire circumstances in which they find themselves as discussed in Chapter Three. Women have been rebels, soldiers and perpetrators of violence during armed conflicts, as opposed to being depicted as vulnerable victims. Women have also contributed to the use of rape as a weapon, by holding ‘enemy women’ down to be raped. These roles are however frequently overlooked, and policies which relate to the rights of women during armed conflicts often perpetuate stereotypes which marginalize women.

Furthermore, the PSC in Article 15(1) states that the PSC’s initiatives will be carried out with the aim of returning the lives of civilians to “normalcy”. Patriarchy and male privilege have historically been the ‘norm’ in African societies. Hence this restoration of normalcy may very well mean a return to patriarchal traditions and gender inequality, with the subsequent relegation of women to the realm of the domestic. In many African countries, patriarchal norms continue to restrict women’s rights and the tangible attainment of equality between men and women (Byanyima, 2008, p. 327).

Apart from being ‘vulnerable victims’, little is said in the PSC protocol on whether women are to be involved in peacekeeping initiatives; to what extent and in what capacities. It does however in Article 20 express the intention of the PSC to engage with “civil society organizations, particularly women’s organizations” in an endeavour to promote peace, security and stability in Africa. This is, however done in the belief that women are inherently more peaceful than men, which is not always the case. The PSC furthermore adds in Article 13(13) that it will provide training on “International Humanitarian Law and International Human Rights Law, with particular emphasis on the rights of women and children” to its peacekeeping personnel. The depth and length of this training is not spoken of, nor whether this training will be compulsory. It is also unclear to what extent this training deals with, and whether or not it seeks to make peacekeepers cognisant of notions of masculinity and femininity and how training may come to

influence the behaviour of peacekeepers towards civilians, particularly women. It is not said whether this training will seek to debunk patriarchal myths and stereotypes. When these issues are not dealt with sufficiently, it fosters an environment in which gender-based sexual violence, particularly rape, may persist.

The PSC (2002, p. 3) states that “landmines and the illicit proliferation, circulation and trafficking of small arms and light weapons” have continued to impede its pursuit of peace, security, social and economic development, and the integration of the continent. It further states that this issue can only be addressed by means of “coordinated continental cooperation” (PSC, 2002, p. 3). However, the persistent and widespread use of rape as a weapon of war is not recognized or addressed at all. This may be attributed to the AU considering rape as a by-product of war, and not as a deliberate and meaningful weapon as mentioned above. Considering the intention with which rape is used in African armed conflicts (for genocide, national humiliation, the creation of a brotherhood of perpetrators, and economic gain) it is evident that perpetrators intend to inflict harm-similar to the use of weapons, such as landmines and small and light arms. Strategic rape however is not classed with these weapons which are regarded as impediments to democracy, peace, security and development.

Similar to the use of landmines and light arms, strategic rape predominantly affects civilians. Moreover, and rape as a weapon has significant social and economic implications for survivors, just as the use of both landmines. Landmine survivors are often unable to work to secure an income due to the loss of their limbs; while war-time rape survivors often suffer from debilitating fistulas, the loss of limbs and rejection by their families and communities. The AU documents articulate an imperative that the provisions made in documents such as the UN Charter and resolutions of the UNSC are adhered to by the AU and its member states. This emphasis on adherence to international standards informs the following theme.

#### *5.4.1.5. Liberal feminist approach*

The AU’s policy response to the persistent use of gender-based sexual violence during armed conflicts has been much the same as the international community. The Constitutive Act in Article 3(e) states that the affairs of the AU will be undertaken in due consideration of the “Charter of the United Nations and the Universal Declaration of Human Rights” while the SDGEA (2004, p. 1) and the ACHPRWA (2003, p. 1-2) state that they serve in support of

policies such as the CEDAW, Beijing Declaration and Platform for Action and UNSC Resolution 1325. Article 4(c) of the PSC protocol further adds that the activities of this body will be carried out in respect for “international humanitarian law”. These AU (with the exception of the PSC protocol) and international policies argue that the remedy to the persistent sexual violence (particularly in armed conflicts) is the inclusion of more women in peace initiatives and leadership positions on the basis of them being inherently more peaceful than men. However, the inclusion of more women, albeit imperative, is not sufficient to change patriarchal structures within society and international institutions. Only when patriarchal power structures are questioned with the intention of changing them, will the inclusion of more women make a meaningful difference.

Furthermore, the SDGEA (2004, p. 2), asserts this relationship between women and peace by stating that African women continue to “bear the brunt of conflicts and internal displacement, including rapes and killings” as a result of their not being included in “conflict prevention, peace-negotiation, and peace-building processes” despite their experience in “peace-building”. AU member states who have ratified this document agree to ensure the “full and effective participation and representation of women in peace processes including the prevention, resolution, management of conflicts and post-conflict reconstruction in Africa”. The ACHPRWA (2003, p. 2) adds that women should be included in “promoting peace and security” in accordance with UNSC Resolution 1325, and that women have a crucial role to play in preserving African values, such as “peace” and “justice”. Finally, the concept of an AWD was taken from the UN’s First World Conference in 1975 and subsequent Women’s Decade (WGDD, 2009, p. 5). The AWD argues that making women more visible globally by including them in decision-making positions will lead to women’s empowerment and the attainment of gender equality in Africa.

These provisions are ensconced in liberal feminism, which claim that gender equality can be achieved by simply placing more women in the existing national and international decision-making structures, subsequently eliminating sexual violence (Whitworth, 1997, p. 16). The logic presented in these documents is further supported by the logic that women are inherently more peace-loving and nurturing than men, and thus are less likely to support violence and war (Whitworth, 1997, p. 18). However these assumptions are not necessarily accurate, as history presents examples of women who have taken their countries to war (Enloe, 2000a, p. 7; Pettman,

1996, p. 117) and women who have participated in the perpetration of sexual violence towards other women (Annan, et. al., 2008, p. 9; Coulter, 2008, p. 63; Utas, 2005, p. 405; Ekiyor, 2002).

Moreover, when women are included in the decision-making positions in international organizations, they do not necessarily have the desire or power to influence and change discriminatory policies. This is particularly so when patriarchal cultures have permeated the institution for a long time. For example, despite Dr Nkosazana Dlamini Zuma being appointed as the Chairperson of the AU Commission, the institution's response to the conflict in Mali (during which war-time rape was perpetrated) was not faster or more 'women-friendly' than its response to any other armed conflict. Women thus often have to adhere to the pre-existing cultures of the institutions they enter into. Women may also be expected to adopt masculine characteristics in order to be taken seriously in their positions, which further reinforce notions of male superiority and privilege (Coulter, 2009, p. 63; Baaz & Stern, 2008, p. 66-69; Pettman, 2005, p. 671; Ekiyor, 2002; Enloe, 2000a, p. 7; Whitworth, 1997, p. 13; Pettman, 1996, p. 19; Peterson, 1992, p. 45).

Furthermore, despite women's inclusion into the national, regional or international institutions, they may still be expected to fulfil domestic roles in their homes and communities (Parpart & Thompson, 2012, p. 186; Afisi, 2010, p. 236). Also, the inclusion of more women in decision-making positions does not necessarily translate into fewer incidences of rape being used as a weapon. Although the inclusion of women is imperative and necessary due to their historic discrimination and exclusion, inclusion may not be sufficient to ensure gender equality. The power relations and hierarchies which persist within institutions, and within states, need to be questioned, to uncover why gender-based violence persists. As Whitworth (1997, p. 14) suggests, when male privilege or patriarchy is not questioned, the prevailing power structures are inadvertently accepted as legitimate.

An understanding of power hierarchies allows us to understand why men and women have historically been type-casted into certain roles. It gives us insight on why cultures of patriarchy and the subsequent use of rape as a weapon of war have persisted. The next part of this analysis will thus address power hierarchies and how they are reinforced or perpetuated by AU protocols and policies relating to sexual violence during armed conflicts; the interpellation of what the AU narratives articulate.

#### 5.4.2. Interpellation

As discussed in Chapter Two, narratives cause certain opinions or impressions to be transmitted in society, which later become accepted as reality or fact; narratives result in causation and normalization. Norms are thus understood as the things or relationships that societies consider normal or acceptable – a prescription of behaviour in society (Pretorius, 2008, p. 111). As norms are socially constructed, they may consequently be reconstructed. Moreover, persons, groups or institutions (such as the AU) in positions of power are particularly able to reconstruct existing norms to form more acceptable social practices. Although the AU vaguely addresses rape as a war crime in its protocols and policies, this narrative does not contribute to the creation of new power arrangements between men and women or a new norm. It does not explicitly or sufficiently acknowledge the use of rape as a strategic weapon, and by extension does not demand its delegitimization. This begs the question of how weapons are delegitimized; how their use become accepted legitimate or illegitimate.

Pretorius (2008, p. 107) explains that social thoughts or practices become legitimate by their constantly being stated, but more importantly, accepted/internalized as such. Thus articulation and interpellation go hand in glove. By constant articulation, the meanings of narratives and social practices are fixed, and by interpellation these meanings are accepted. Interpellation is when actors choose to adopt a socially constructed meaning or norm, as their reality or as a fact. By means of interpellation the character is showing that they accept the meaning of a narrative as truth (Muppidi, 1999, p. 125-126). Thus, by constantly representing rape as an unfortunate by-product of armed conflict, it has come to be interpellated and accepted as just that. Moreover, by ignoring the use of this weapon, the AU inadvertently accepts it as legitimate. When certain behaviours (or weapons) are not explicitly addressed and condemned as illegitimate, it is accepted as legitimate.

Parpart and Thompson (2012, p. 185) add that rape is legitimated when it is accepted and explained as a necessary disciplinary tool; which is often the case in patriarchal societies. Thus, the occurrence of rape, and by extension war-time rape, has for a long time been accepted as 'normal' in Africa (Gettleman, 2007). War-time rape is seen as collateral damage and an inevitable consequence of armed conflict (Enloe, 2000b, p. 134). The AU hence fails to conceptualize rape as a strategic weapon in its narrative (ie. contribute to the creation of a new international norm) and declare its use to be morally repugnant and completely unacceptable; a weapon *never under any circumstances* to be used. This failure to articulate rape as a strategic weapon shows that the AU and its member states have not internalized this reality.

Although it is doubtful that an international institution would deliberately set out to accept rape as a legitimate weapon of war, considering the existing international humanitarian law, I am suggesting that by means of its vague and euphemistic narrative the AU allows for the perpetuation of existing patriarchal norms and consequently strategic rape.<sup>33</sup> Some would argue that mere words could not possibly prevent the occurrence of strategic rape and that this is an unrealistic expectation of the AU's narrative; as rape has for centuries been a ubiquitous feature of warfare (Griffiths, 2005, p. 851). However, what is said and how it is said is important (Shepard, 2010, 145). Nothing has a material reality prior to language and everything gains meaning through articulation and interpellation (Shepard, 2010, p. 146, 147). Shepard (2010, p. 148) explains that:

All words carry meaning and have value; the process of writing value into policy document is therefore inescapable, but it has profound implication for interpretation and therefore implementation of that document.

Thus it is imperative to question and challenge the silent norms that pervade policies and shape reality (Shepard, 2010, p. 148). This study has sought to do this; to challenge the patriarchal notions which allow for the persistent use of rape as a weapon. Moreover, narratives can convey either strong or subtle feelings or opinions on various issues (Abbott, 2008, p. 36). The success of the international campaigns to ban the use of chemical weapons and landmines are testament to the power of words, especially when these words are interpellated. Narratives possess the ability to change what is accepted as legitimate means of warfare. Chemical weapons and anti-personnel landmines were both delegitimized by strong, stern and decisive narratives which conveyed a strong sense of dissuasion and deterrence. These narratives significantly contributed to the creation of new norms which consider the use of these weapons as unacceptable as discussed in Chapter Four. These narratives were further adopted by states parties as applying to themselves and subsequently supported by robust international campaigns and a serious demonstration of political will. Rape as a weapon of war demands the same policy response, as women continue to be targeted and killed during African armed conflicts.

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<sup>33</sup> This study acknowledges the enormity of the task undertaken by the AU, as well as the numerous challenges it encounters in the pursuit of a united, democratic and prosperous continent.



As discussed in Chapter One, the *Basic rules of the Geneva Conventions and their Additional Protocols* declare that combatants are “prohibited to employ weapons, projectiles and methods and materials of warfare of a nature to cause superfluous injury, particularly those which are intended to cause, or can be expected to cause widespread, long-term and severe damage to the natural environment”. By this definition, rape should be understood to be an illegitimate weapon because it causes superfluous injury to women and girls; not to mention families and communities. Yet, despite the widespread use of rape as a weapon of war in African armed conflicts, the AU’s policy response has been characterized by a soft and palatable narrative. This soft or vague narrative may be attributed to African leaders and men regarding gender equality as Western imperialism and not in line with African culture (Clarke, 2008, p. 104; Ratele, 2004, p. 1). Talk about rape is also seen as an attack on black men and anti-patriotic (Moffet cited in Partpart & Thompson, 2012, p. 190). It is on this premise that I argue that the AU not only fails to explicitly and meaningfully delegitimize strategic rape, but rather inadvertently contributes to the perpetuation of the use of rape as a weapon by not robustly engaging with the issue.

Thus it is seen that patriarchy not only influences articulation, it may also impede the interpellation and enactment of a new norm pertaining to strategic rape. As mentioned above, interpellation is when actors regard themselves as acting out a script or narrative (Pretorius, 2008, p. 107). It is when an actor is compelled by a narrative (Muppidi, 1999, p. 125-126) and they choose to accept the narrative as their own (Larkin, 2001, p. 47). I would like to suggest that patriarchy impedes the process of interpellation; it prevents rape being recognized and treated as an illegitimate and strategic weapon. African leaders and men may choose not to accept or act out this new norm as it challenges their ‘right’ to power.

Ratele (2004, p. 2) adds that maleness is often conflated with power, knowledge and privilege. African men are thus reluctant to share power with women as it requires giving up social and economic privileges (Ratele, 2004, p. 2). This requires treating women with respect and as equal to men, something African men are unlikely to have grown up with. Culture is thus employed to sustain unequal power relations between men and women, as the idea of a non-sexist society is hard to digest. Simply put, African men fear and resist equality with women (Ratele, 2004, p. 2). They refuse to interpellate gender equality. Men thus need to develop a willingness to interrogate the relationship between masculinity and violence, and be willing to give up their power and privilege. Fakier (2006, p. 27) concurs that, “identifying and transforming the widely-held ‘norms’ underlying the relations between men and women is a necessary precondition for

altering discriminatory attitudes and practices that disadvantage women and deny them their human rights”.

This resistance to relinquish power (or interpellate gender equality) is evinced by the poor political will demonstrated by the AU and its member states. Policies such as the SDGEA and the ACHPRAW for example, have been characterized by slow ratification and implementation. Civil society organizations have thus become the instruments in promoting and ensuring women’s rights (Wandia, 2005, p. 49-50). Rivalry between AU institutions further slows down the realization of gender equality (Wachira, 2008, p. 2). Moreover, the WGDD (2009, p. 7) concedes that AU member states remain reluctant to integrate gender into development processes. As a result of this poor political will, gender machineries across the continent continue to perform poorly (Lowe-Morna in Parpart & Thompson, 2012, p. 182-183; Byanyima, 2008, p. 326-327). It may be for this reason (poor political will and a failure to interpellate gender equality) that the PSC only recently recognized that gender-based sexual violence during armed conflict demands urgent attention; that rape is used to subjugate women and undermines their social, economic and political well-being (ISS, 2010, p. 17). Despite this acknowledgement, rape continues to be used across the continent, by both AU member states and rebel forces. This would suggest the AU’s failure to decidedly enact policy initiatives (existing and new) with the serious and determined intention to eradicate gender inequality and gender-based sexual violence in conflict; the next topic of discussion.

#### 5.4.3. Enaction

The final step in meaning fixing is *enaction* or social doing. During this step the character begins to demonstrate their acceptance of a narrative by enacting the norms put forth therein or their role therein (Pretorius, 2008, p. 107). By acting out the narrative, its meaning is reinforced and the narrative is sustained as normal, natural or true. Enaction and norms can be sustained by powerful elites and officials, as well as grassroots leaders and everyday citizens.

Although the AU reserves the right to enact its narratives (as well as new norms) by intervening in the event of grave circumstances such as war crimes, crimes against humanity and genocide, its’ response to strategic rape (which constitutes all three types grave circumstances) remains slow and dictated by political correctness. This is evidenced by the AU’s response to the recent and on-going conflict in South Sudan. Despite the death, displacement and strategic rape of thousands of civilians, the mediation process has been characteristically slow; the AU has not

yet deployed any peacekeepers to support the UN peacekeeping mission in South Sudan (Gordon, 2014). Moreover, the organization continues to relate to rape as a by-product of conflict and not as a strategic weapon. There are however numerous other factors, apart from patriarchy and poor political will, which may impede the interpellation and enactment of a new norm pertaining to strategic rape and the existing AU narratives studied in this thesis. These include *impunity*, the *lack of effective legal mechanisms* and a *lack of resources*. Although these are not the only impediments that exist, I will limit the following discussion to these.

#### 5.4.4.1. *Impunity*

Widespread impunity provides another explanation for the prevalent use of rape as a weapon. Ertürk in Baaz and Stern (2009, p. 503) argues that due to the outbreak of conflict often characterized by complete impunity, sexual violence becomes normalized. In fact, the SDGEA and the PSC Protocol recognize the need to end impunity and promote the rule of law; as it impedes not only conflict prevention, peace-negotiation and peace-building processes, but the attainment of human rights and Africa's development agenda. Soldiers interviewed by Baaz and Stern (2008, p. 79-80) concur, stating that adequate/severe punishment and public humiliation would deter rape crimes. They believe that only extreme measures would return societies to a "form of normality" that existed before war began (Baaz & Stern, 2008, p. 80).

This is particularly masculine way to deal with rape. Some social psychologists and constructivist theorists suggest that this 'carrot and stick' approach to inculcating norms is not very effective, as the root cause for the behaviour is not addressed. When norms are enforced through rewards and punishment, it is not always likely to bring about private acceptance or the internalization of norms; it only ensures outward compliance (Smith & Mackie, 2007). For example, rape would only be less likely to occur where people have internalized a sense that it is unacceptable and morally repugnant. However, it is also difficult (if not impossible) for societies to monitor and enforce all norms on all its citizens all of the time (Smith & Mackie, 2007). Thus, cultural approaches may perhaps be more effective in ingraining a new norm and changing the way rape is perceived.

Moreover, Amnesty International cited in Baaz and Stern (2009, p. 501) add that lack of effective legal mechanisms contribute to the serious human rights abuses committed by rebels and soldiers. This brings me to the next impediment to enactment.

#### 5.4.4.2. *Lack of effective legal mechanisms*

Numerous African states are characterized by weak and ineffective legal mechanisms, corrupt governments and continued human rights abuses (Akokpari, 2008, p. 3-5, 8-10; Murithi & Muvumba, 2008, p. 6-7). States endeavouring to meet the challenges of poverty, health, unemployment and political insecurity often do not have the capacity to ensure that their legal mechanisms function effectively. They are thus unable to provide justice to their citizens; particularly women who have been raped. Moreover, the AU does not have one strategic, coherent policy document on strategic rape, or sexual violence in general for that matter. Economically and politically unstable states do not have the resources/capacity to ensure the implementation of a multitude of protocols and policies relating to rape. With regard to the continental legal framework, the progress of the African Court has been slow, plagued with logistics and bureaucratic arrangements, with no real issues or cases having been addressed (Ndulo, 2008, p. 200; Wachira, 2008, p. 2). States also remain unwilling to surrender part of their sovereignty to the continental court (Motala, 2008, p. 273-274; Wachira, 2008, p. 2). Further hampering the performance of the continental court is its rivalry with the African Commission; this rivalry has prevented meaningful cooperation between these two institutions, and subsequently deterred the fulfilment of their functions (Wachira, 2008, p. 2). It is also worthwhile noting that the African Commission's decisions and recommendations are not binding on member states, and are thus often ignored with no consequences for such actions.

#### 5.4.4.3. *Lack of resources*

Some African states (such as Somalia, Burundi, Chad, the DRC and the Central African Republic) are characterized by poor infrastructure and low levels of human development. These countries struggle to maintain well-functioning governments and to provide basic services to their citizens. They are plagued with poverty, unequal distribution of wealth, disease and corruption. Paradoxically, these countries are rich in natural resources. It has been argued that it is these very resources that lead to conflict and civil war, as numerous actors strive to gain control over these commodities (Meger, 2011, p. 109). Corrupt government officials also exploit international aid intended for infrastructure. Hence, very little resources remain for the implementation of AU policies. The interpellation and enactment of AU documents is simply not a priority to the warlords, insurgency groups and corrupt government officials exploiting natural resources for personal gain. Another challenge to the implementation of AU policies and

protocols is illiteracy. Due to a lack of resources soldiers and government officials are often unable to obtain an education, are subsequently exploited by their superiors and live in abject poverty (Baaz & Stern, 2008, p. 64). These soldiers and government officials thus exploit and abuse civilians, participate in illegal taxation, theft, fraud and weapons trafficking to supplement their income. They are ill-equipped (due to their poverty and illiteracy) to understand the values espoused in international human rights law or ensure the implementation of AU policies and protocols.

## **5.5. Conclusion**

In this chapter I have discussed the AU's narratives; namely the *AU Constitutive Act*, the *Solemn Declaration on Gender Equality in Africa*, the *Protocol to the African Charter on Human and People's Rights on the Rights of Women* and the *Protocol relating to the Peace and Security Council* and the *African Women's Decade*. This chapter has particularly sought to understand how these AU narratives address the occurrence of strategic rape during conflicts. It has sought to establish whether these narratives empower women, but more importantly, whether they sufficiently and explicitly acknowledge and delegitimize rape as a weapon of war. It has found that despite these provisions made in these narratives, the promotion of gender equality and cessation of gender based sexual violence remains slow. A lack of political will and funding has resulted in these mechanisms experiencing poor performance and little success.

Conflict resolution in particular has remained resistant to the integration of gender equality perspectives. Moreover, the AU's peace and security protocols and policies address rape rather vaguely, subsequently failing to acknowledge and delegitimize rape as a strategic weapon of war. It is also seen that affirmative action, gender quotas and gender mainstreaming are important for the inclusion of women in decision-making structures, but it is not sufficient to transform discriminatory, patriarchal practices and perceptions. These very documents which are intended to promote gender equality and women's rights are conversely seen to reinforce stereotypes which undermine women and their agency.

Although the AU regards rape as a war-crime or a crime against humanity, it does not explicitly recognize it as a strategic and deliberately used weapon that can and should be delegitimized. It may thus be said that the AU regards rape as an unfortunate by-product of conflict; that it attributes the occurrence of rape to the breakdown of societies during conflict. Its use of vague

and euphemistic narratives further contributes to this perception that rape is an inevitable by-product of war.



## CHAPTER 6: CONCLUSION AND FUTURE RESEARCH

### 6.1. Introduction

I have sought to establish whether the narratives used by the AU in its peace and security and human rights protocols is sufficient and explicit enough to delegitimize rape as a weapon used during armed conflicts in Africa. I have argued that the narrative used in the *Protocol relating to the Peace and Security Council* and the *Protocol to the African Charter on Human and People's Rights on the Rights of Women* (two of the AUs most significant policy responses to rape and sexual violence during conflicts), inadvertently allows for the perpetuation of war-time rape or strategic rape. The narrative used in the *Solemn Declaration on Gender Equality in Africa* and the *African Women's Decade* has been found to be much the same.

These protocols and policy documents deal with war-time rape in very vague and euphemistic terms, speaking of gender discrimination, sexual violence, exploitation and harmful practices against women. Delegitimizing rape as a weapon of war is however not specifically addressed, which has left room for varying interpretations of said protocols. These include interpretations which have diminished the severity of war-time rape; rape has come to be primarily regarded as an unfortunate by-product of armed conflict. I have further argued that the vague narrative within these protocols have perpetuated a deep-rooted culture of patriarchy, which in turn has propagated a culture of impunity towards war-time rape in Africa. Thus an environment conducive to the perpetuation of rape as a weapon of war has been sustained, with the AU failing to contribute to the creation of a new international norm – which deems rape as an illegitimate weapon, never under any circumstances to be used.

### 6.2. Looking back

This study has suggested that war-time rape consists of two main constructions: (1) rape as by product of violence, the breakdown of values and ill-discipline, and (2) rape as a weapon of war or strategic rape. This study has primarily focused on the second construction; the use of rape as a weapon. It has argued that framing rape as only as a by-product of violence is a limited and dishonest account of how rape is employed in war zones and what it represents. This limited framing of rape as an inevitable by-product of armed conflict is insufficient to address the problem. Therefore this study has proposed that rape be understood as a deliberate strategy or

weapon in war to fight the enemy. Due to its contravention of international humanitarian law, strategic rape should be considered an unacceptable and morally repugnant weapon to use. Hence this study has proposed that when a distinction is made between these two constructions, it is possible to delegitimize rape as a weapon of war.

This study has further argued that the rhetoric of a narrative is its power, and a means to distribute power. It may also be used to convey strong or subtle feelings or opinions on certain issues. Thus, texts possess the ability to convey both strong feelings of urgency, or feelings of disinterest and apathy. I have argued that the AU peace and security narratives are characterised by a lack of urgency due to its vagueness and use of euphemisms; it is characterized by a soft and palatable narrative which seeks not to offend member states. The AU narrative does not contribute to rape being considered a strategic weapon which demands urgent attention. It instead perpetuates the belief that women are weak and vulnerable victims and that rape is an inevitable by-product of armed conflict. Patriarchal power relationships which render women particularly susceptible to war-time rape, particularly strategic rape, are sustained by means of this vague and euphemistic narrative.

The relationship between narratives and norms has been demonstrated by the international campaigns to delegitimize chemical weapons and anti-personnel landmines. Both the *Chemical Weapons Convention* and *Mine Ban Treaty* are characterized by narratives which relay strong feelings of repugnance towards the use of these weapons, and a serious demand for the respect of human rights. It constantly states the use of chemical weapons and anti-personnel landmines as unacceptable and illegitimate behaviour. It has thus become an international norm that the use of these weapons is not to be tolerated. I acknowledge that although chemical weapons (as seen in the case of Syria) and landmines might still be used, its use has however been reduced significantly. The use of these weapons is also met with immediate international condemnation. Thus it is seen that the narrative used within said *Chemical Weapons Convention* and *Mine Ban Treaty* have created a new international norm.

This study proposes that the decisive narrative characterising the CWC should be adopted in the narrative relating to the use of rape as a weapon of war. The AU narrative should demand that states 'exclude completely the possibility of the use of rape as a weapon of war'. A decided effort should be made to define and declare strategic rape, as with chemical weapons, to be a taboo in the international system; a weapon 'never under any circumstances' to be used. This



study acknowledges that the implementation of such a narrative would require time and a commitment of resources; as is demonstrated by the adoption and implementation of the CWC. This study, however, proposes that the delegitimization of rape as a weapon of war warrants the same determination and resolve as demonstrated in the international community's endeavour to ban and destroy all chemical weapons. This study furthermore proposes the need for a special watch-dog body to perform a similar work as the OPCW; to investigate incidences of war-time rape, assist groups who are susceptible to the use of rape as a weapon of war, and ensure that perpetrators are brought to justice. This body should be allowed to refer cases to the ICJ, the ICC and the African Court, to demonstrate the severity with which strategic rape is regarded.

This study also proposes that AU narrative on strategic rape should, as with the Mine Ban Treaty, seek to attach 'stigma' to states, militia groups or any other parties who use rape as a weapon of war. The AU should, by means of a strongly-worded narrative, seek to contribute to creating a 'global norm' that regards the use of this weapon as unacceptable. The narrative should demand that all African states 'work strenuously towards' the delegitimization of rape as a weapon of war.

The treaty law on chemical weapons and landmines has significantly contributed to these weapons being considered unacceptable, inhumane and morally repugnant. Both treaties strongly advocate respect for human life and human rights. This has been achieved not only through stern and decisive narratives, but a demonstration of strong political will by various actors in the international system (states, NGOs, the UN, the OPCW and ICBL). This study therefore argues that if a similarly stern and decisive narrative and political will were to be developed for war-time rape, which explicitly recognized that rape is used as a strategic weapon of war, a new norm could be created. This requires strong leadership and decisive effort not only from the AU, but the international collective; as demonstrated by the *International Campaign to Stop Rape & Gender Violence in Conflict* and the *Weapons Discrimination Project* mentioned in Chapter One.

This new, decisive and stern narrative on the delegitimization of strategic rape could also draw from Geneva Conventions for the creation of a norm. The *Basic rules of the Geneva Conventions and their Additional Protocols* declare that combatants are expected to conduct themselves in a correct manner during hostilities and that the methods or means of warfare are not unlimited. It provides that combatants are "prohibited to employ weapons, projectiles and

methods and materials of warfare of a nature to cause superfluous injury, particularly those which are intended to cause, or can be expected to cause widespread, long-term and severe damage to the natural environment". I have argued that by this definition rape should be understood to be an illegitimate weapon, as it causes unnecessary injury to women by using their bodies as instruments of warfare. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment". It further states that "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". These provisions further suggest that the use of strategic rape comprises an illegitimate weapon. Yet, there is not a specific treaty which recognizes and bans the use of rape as an illegitimate weapon of war.

The international community, particularly the UN's response to war-time rape has been characterized by a liberal feminist approach. It believes that the inclusion of more women into decision-making structures and peace-keeping forces will lead to the cessation of war-time rape. This approach is called gender-mainstreaming, and its ultimate goal is to transform gender relations and reverse relations which have predominantly benefitted men. Amongst the UN's initiatives have been the Convention on the Elimination of All Forms of Discrimination against Women (1981), The Beijing Declaration and Plan of Action, the UN Security Council Resolution 1325 on women, peace and security, the UN Security Council Resolution 1820 on sexual violence in conflict, and the UN Security Council Resolution 1888 on sexual violence against women and girls during armed conflicts. Despite the call in these documents to mainstream gender perspectives into the work of the UN, increase the number of women in decision-making positions and women in peace-keeping forces, women remain underrepresented; increases have been marginal (Mrkić, Johnson & Rose, 2010, p. 122).

Feminist IR theorists therefore argue that simply including women or changing previously discriminatory legislation cannot secure gender equality (Whitworth, 1997, p. 24), much less the cessation of sexual violence during armed conflicts. An investigation into how men and women are represented in international legislation is needed, to understand how notions of femininity and masculinity sustain and legitimize gender inequality and discriminatory practices. This may explain the UN's poor performance in achieving gender equality and the cessation of sexual violence during armed conflicts. The UN has not fundamentally changed the way women are

perceived and the power they wield, especially women in armed conflicts. This is partly because it has not challenged patriarchy and investigated how patriarchy influences its work and mitigates gender equality. The UN documents considered in this study continually stereotype women as poor, vulnerable and weak; despite their display of agency (as fighters, girlfriends, cooks, camp followers) during various African conflicts.

The AU seems to have adopted this same liberal feminist approach. Despite these UN documents failing to bring about gender equality and the cessation of sexual violence during armed conflicts, the AU has modelled its women's rights architecture on these documents. All the AU protocols and policies (with the exception of the PSC protocol) argue that the remedy to the persistent sexual violence (particularly in armed conflicts) is the inclusion of more women in peace initiatives and leadership positions. This is advocated in the belief that women are inherently more peaceful than men. The *SDGEA* (2004, p. 2) for example asserts this relationship between women and peace by stating that African women continue to "bear the brunt of conflicts and internal displacement, including rapes and killings" because they are not included in "conflict prevention, peace-negotiation, and peace-building processes" despite their experience in "peace-building". This belief is further espoused by the *ACHPRWA* and the *AWD*.

The *PSC protocol* also declares women to be "vulnerable persons" in special need of assistance; reinforcing patriarchal stereotypes that claim women to be weak and in need of male/state protection. The AU documents by their soft/palatable narrative, over-reliance on patriarchal African states that have a history of sexual violence, and adopting a masculine/military approach, in addition to liberal feminist principles, have failed to debunk these patriarchal stereotypes. I have argued that patriarchal stereotypes (just as sex, security, narratives and norms) are socially constructed, and may thus be reconstructed. However, patriarchy continues to find expression in the AU's human rights and peace and security narratives. Moreover, I have shown that stereotypes become a reality when they are constantly stated as being 'normal'. Women have remained marginalized and susceptible to war-time rape because of these stereotypes (Peterson & Runyan, 1999, p. 126). Due to these stereotypes women are continually used as a reason or excuse to fight wars (Sjoberg, 2010, p. 61). When women are treated as the property of men (which they need to protect) they remain susceptible to strategic rape; as men continually seek to prove their masculinity by devaluing the men of other nations by raping 'their' women. Therefore, I have suggested that the use of rape as a weapon will persist as long as the AU narratives perpetuate/reinforce patriarchal stereotypes and power hierarchies.

Enloe (2007, p. 101) states that when considering the power hierarchies prevalent in the international system, or any society, it is imperative to question “what forms power takes, how exactly is it wielded, who wields power, who gains by it and who is silenced by it, or excluded, marginalized or oppressed by it, and who is able to contest and resist those uses of power, and how”. Shepard (2010, p. 157) adds that narratives give us insight into the thinking of international institutions and their policy-makers and helps us to understand why documents are written in the manner that they are; what power relations they seek to sustain. These statements have proven useful for understanding how the debate in AU protocols and policies relating to rape during armed conflicts is framed, how the narrators of these documents wield or demonstrate power and to what end, and whether the narrative used in AU protocols and policies empower men or women.

Questioning how the debate in the AU narratives is framed, has allowed me to gain an overall sense of what these documents highlight. The manner in which the debate is framed emphasizes what the AU considers to be important. It may thus be deduced that matters that are not emphasized are not considered weighty or significant enough to be addressed. The debate in the AU documents seems to be characterized by two overarching trends; how (1) war-time rape and (2) security/insecurity are perceived.

I have found that the debate is framed in such a manner that rape is described as a crime against humanity or a war crime. However, no distinction is made between rape that occurs during peace-time and rape that occurs during war-time. Neither are the meanings that are attached to war-time rape addressed. Rape is not acknowledged or portrayed as a strategic weapon of war that is deliberately used during African armed conflicts. Rather, rape is vaguely grouped with a number of other forms of gender-based sexual violence which are considered by-products of conflict. Strategic rape is not considered as an imperative to curbing violent conflicts across the continent as is the delegitimization of small and/or light arms and landmines. Rape is not perceived as contributing to insecurity across the continent, but rather as a consequence of this insecurity.

Gender and its role in the construction of insecurities is also overlooked or excluded from the AU narratives discussed, despite the fact that war and peace are gendered sites requiring feminist

analysis (Parpart and Thompson, 2012, p. 177-178). The debate in these protocols and policies is framed in such a way that depicts men and states as primarily responsible for the protection of women and children. Nothing is said concerning how insecurities come to exist or how these insecurities are exploited to construct rape as a weapon. It is only said that states are responsible for resolving threats to security. Moreover the role played by AU member states in creating and sustaining insecurities is not addressed. Security is viewed in a rather narrow sense. Conflict is understood in the traditional IR sense of disputes between states, or between states and rebels. As a result a 'self' and 'other' dichotomy is sustained. States are depicted as saviours and protectors of women, while rebels are depicted as the sole proponents of insecurity, instability and rape during armed conflicts. It is unclear what qualifies states which have been implicated in sexual violence to be responsible for ensuring women's security; as in the case of the DRC. These protocols and policies are also unclear on what the repercussions are for states implicated in acts of sexual violence.

The supposed goal of the AU narratives discussed is gender equality, peace and stability; peace and security being presented as prerequisites for the eradication of gendered inequalities. Conversely, the AU narrators or policy-makers attribute power to states which are inherently patriarchal (ISS, 2010, p. 17). These patriarchal states are expected to drive the pursuit of gender equality. In a bid to provide African solutions to African problems, these states are responsible for promoting societies which value men and women equally. However, the cultures practiced within these states are often resistant to gender equality. Women and men are regarded as having their separate positions (often unequal) and roles to play in society, the home and the government. Herein lays the challenge, getting African states to accept protocols and policies which espouse values that they do not necessarily identify with or support.

Furthermore, although the AU acknowledges that culture can be an impediment to the attainment of gender equality, it does not specifically mention or address *patriarchy* in its protocols and policies. Moreover, culture as it pertains to the AU itself is not addressed. The narrative is vague on how institutional patriarchy impedes the work of the AU, and how the AU leadership will endeavour to address this culture. Byanyima (2008, p. 328) suggests that one of the greatest impediments to the attainment of gender equality on the African continent is the old and deeply entrenched work methods of the AU. These work methods are characterized by vertical hierarchies which make it challenging to insert a gender perspective into the activities of

various AU departments or subsidiary bodies. Furthermore, peace and security initiatives on the continent remain particularly resistant to the integration of gendered perspectives; thus they often fail to meaningfully articulate the conceptual importance of transforming gender relations (Byanyima, 2008, p. 326).

The AU narratives may thus be understood to empower men not women. It silences women and ignores their agency. Moreover, this narrative cannot be expected to delegitimize strategic rape when it does not empower women. As long as the narratives ascribe power to men and represent women as dependant on the services and protection offered them by men, the practice of strategic rape (and war-time rape in general) will persist.

### **6.3. Looking forward**

Although the UNSC for the first time in 2008 acknowledged that rape is used for strategic purposes by armed forces, the AU has not yet done so. It has not explicitly recognized that rape constitutes and is used as a meaningful weapon during African armed conflicts. By extension the AU does not contribute to the construction of a new international norm which regards strategic rape as illegitimate and morally repugnant. Its narrative is not stern enough to delegitimize rape as a weapon of war. Perhaps this is because strategic rape is an issue that primarily affects women (as opposed to men), and thus is not deemed to warrant immediate and decisive action. 'Issues of major concern to women' as the Solemn Declaration phrases it, are not considered as serious issues. The trafficking of small and light arms and the use of landmines (weapons that affect both men and women) are considered as serious impediments to the development of the continent. The use of rape as a weapon of war however is not. The AU furthermore condemns and rejects impunity, political assassination, terrorism and unconstitutional changes in government. However, the occurrence of war-time rape has not been met with the same condemnation and outright rejection. This would suggest that the AU does not consider war-time rape to be crime that is gravely offensive, but rather an unfortunate by-product of conflict.

I have also argued that the AU's vague and euphemistic narrative may be attribute to it not wanting to offend its member states; especially those which are implicated in impunity and the use of rape as a weapon. It was found that African leaders often do not acknowledge that rape is a serious concern, as this acknowledgement is regarded as unpatriotic and believed to feed into

perceptions Western imperialist notions that African men are hyper-sexual, irrational and insatiable (Parpart & Thompson, 2012, p. 190). It is believed to cast the AU in a bad light; as inefficient and unsuccessful in attaining its vision of a Pan-African, democratic and developed continent. While the AU refuses to acknowledge the severity of this issue, rape continues to be used as a weapon in countries such as the Central African Republic, Mali and the Democratic Republic of the Congo (IRIN News, 2013; InterAction, 2013; Omari, 2013; Hirsch & Wolfe, 2012).

This lacklustre response may also be attributed to poor political will, as demonstrated by the slow drafting and adoption of the ACHPRWA. AU member states seem to regard other matters more pressing than the attainment of gender equality. Thus they do not demonstrate the leadership and commitment needed to ensure women's human rights (as espoused in the Geneva Conventions discussed in this study) are respected and upheld during armed conflicts. This poor political commitment may be attributed to a deep-rooted culture of patriarchy. Violence against women is the universal by-product of patriarchy or male dominance (Pettman, 1996, p. 209; Charlesworth, 1995, p. 103), thus women's human rights continue to be abused on the very basis of their gender (Bunch, 1995, p. 12). Thus AU officials and member states must be willing to interrogate and question patriarchy, in order to attain gender equality.

This may prove challenging in that patriarchy is deeply-rooted in many African cultures. Patriarchy dictates understandings and practices relating to family, marriage, childbearing, social responsibilities and the functioning of communities. Thus challenging this social relationship, or male privilege, may meet significant resistance. African men and women may not want to change this aspect of their culture (Schroven, 2011, p. 7). Some would even argue that it is unrealistic to change (or demand the change of) patriarchal gender relations, as patriarchy is intrinsic to and pervades domestic and international relationships and institutions. Moreover, post-conflict societies often revert to their previous patriarchal gender dispensations. Women and men return to the traditional roles (gender acceptable roles) they played prior to the war. The agency of women during the war, as well as promises of equality after the war, is soon forgotten (White, 2008, p. 158; Enloe, 2000a, p. 62-63). This study has argued that as long as male privilege persists and men in positions of power continually regard women as mere victims of conflict, social transformation and the attainment of gender equality will not be attained. As Feminist IR theorist would suggest, it is imperative to question and challenge patriarchy in order

to change gender relations in societies and international institutions; as this study has sought to do.

Hence the AU, in order to make any significant contribution to the attainment of gender equality and the delegitimization of strategic rape, must acknowledge patriarchy and its role in the construction and use of rape as a weapon. This critique of patriarchy (as the call for gender equality) may be seen as Western imperialism. Furthermore, international models for women's empowerment (as espoused by the CEDAW and Beijing Declaration) are not necessarily unanimously welcomed by African communities. Despite a breakdown in values and culture during conflict, men and women may feel that gender designated roles should be returned to once peace is secured; people may want to live in patriarchal societies (Schroven, 2011, p. 7). In addition to AU failing to address patriarchy and articulate a new norm, this new norm may very well not be interpellated and enacted by member states that are reluctant to challenge patriarchy. The non-compliance of AU member states presents yet another serious challenge; numerous states remain unwilling to surrender part of their sovereignty to the continental institution (Motala, 2008, p. 273-274; Wachira, 2008, p. 2). The AU's endeavour to build a peaceful, democratic and united continent can only be achieved when member states themselves learn to respect this institution (du Toit & Murithi, 2013). In similar vein, strategic rape can only be delegitimized if AU member states comply and respect a policy which renders rape an unacceptable weapon.

The AU should further seek to strengthen the African Court and African Commission, so that perpetrators (state leaders, rebels or soldiers) may be brought to justice, without referring strategic rape cases to corrupt, patriarchal states with inept justice systems. As mentioned above, I propose that AU narrative on war-time rape should, in similar vein to the Mine Ban Treaty, seek to attach 'stigma' to states, militia groups or any other parties who use rape as a weapon of war; as stated above. Non-compliant AU member states should also face a penalty when implicated in war-time rape (strategic or other); be it the suspension of their membership or the imposing of economic sanctions. Although the above mentioned proposals may be challenging due to the notable complexity of the issues being dealt with and the vast mandate of the AU, the continental institution may latch onto the work of the *International Campaign to Stop Rape & Gender Violence in Conflict* and the *Weapons Discrimination Project*. In supporting these campaigns it may make significant strides towards delegitimizing rape as a weapon of war and contributing towards the creation of a new international norm.



The final challenge I wish to speak to is the fact that the primary instrument to perpetrate war-time rape (the penis), cannot be removed from body. However, not only the penis is used; bayonets, knives, corn cobs, tree branches and broken glass bottles, as well as boiling water and acid are also used (Forster-Towne, 2011, p. 38, Gettleman, 2007 & Wakabi, 2008). There is a need to address the culture of sexual violence that is attached to conflict and epitomized by war-time rape (strategic and other). Men's believed right to sex and the inherent violence of patriarchy requires questioning and challenging.

Although this study has identified the shortcomings of how war-time rape is narrated in AU documents, it does not necessarily question that the AU is committed to end sexual violence. The questions that have been raised here are not necessarily an indictment of the AU's vision of a united, democratic and peaceful continent and its coding of this vision in its documents, including the well-meaning narrative of documents that focus on women and their security challenges, or the inclusion of women in strategic positions.

This study also acknowledges that some would argue that the existing AU narratives have not impacted on the lives of everyday African citizens. Thus a stronger worded narrative may have as little impact, particularly because structural challenges remain deeply entrenched in African countries. A stronger narrative may be insufficient or ineffectual in addressing the root causes of conflict and gender-based sexual violence; states and rebel groups will continue to fight over resources, land and political power. Numerous African states continue to struggle with poverty, unemployment, drought and food insecurity, poor state infrastructure and failing health care systems. When fighting to secure resources and the power to manage these resources, states and rebel groups may very well choose to ignore a new or stronger narrative on rape. In the grand scheme of things, ensuring the delegitimization of rape as a weapon may not be regarded as all that important.

Furthermore, a stronger narrative does not necessarily increase the state's capacity (or willingness) to implement such a policy/document. Poor legal infrastructure is one of the primary reasons for states failing to prosecute those responsible for sexual and gender-based violence during conflict; some states simply do not have the capacity to deal with these atrocities. This may render a new or stronger narrative futile, if states are unable to implement it. States may also not be willing to engage in such an honest account/narrative of war-time rape

because it requires admitting their own perpetration of sexual violence, particularly rape. It would require that they make themselves subject to the law, which would mean forfeiting their power and privilege; they may simply not be willing to engage in this debate. State leaders may further regard this new narrative as further western imperialism, as much talk and policy initiatives on gender equality and sexual and gender based violence are perceived as. Thus some states may demonstrate resistance, especially to curbing something (sex and men's perceived right to sex) so intrinsic to many African cultures.

Some would also argued that the AU, particularly the African Court, does not have the capacity to drive the conceptualization, implementation and monitoring of a narrative that delegitimizes strategic rape. Such a narrative may thus render the AU member states (more) dependent on the International Criminal Court (ICC) for ensuring the prosecution of individuals who contravene this policy. This relationship (between the AU and ICC) is already fraught with tension and AU leaders may display further resistance to the work of the ICC; moreover, resistance to stand trial before the ICC or refer individuals for prosecution. Hence this document may become regarded as just another addition to the international human rights architecture. It could also be argued that it is quite challenging (if not impossible) to keep track of every instance of strategic rape; especially when rape is still regarded with stigma in many societies. In such societies women remain reluctant to come forward and report rape. Thus prosecuting every perpetrator of war-time rape (especially those who use rape as a weapon) will continue to remain a challenge to the AU, its member states and the ICC. It can hence be argued that despite the presence of a narrative that delegitimizes rape during war-time, some women would still be subject to the use of this weapon, and be deprived of justice for the atrocities they have experienced.

This study however proposes that (despite these impediments to the implementation of a new narrative), strategic rape should be considered an unacceptable and morally repugnant weapon which demands urgent delegitimization due to its contravention of international humanitarian law. It is in light of the above considerations that I would like to conduct further research on the following issues or topics. This research would help me gain a deeper understanding of strategic rape and how it can be addressed by the international community. Moreover, how it can be delegitimized as a strategic weapon of war.

### 6.3.1. Future research

I recognize that the delegitimization of rape as a weapon of war is a complex issue, particularly due to the intrinsic role played by patriarchy in the social construction and use of this weapon. I would thus like to do further research on weapons decommissioning programs in various countries. I believe that the lessons and insights gained from the study of these programs may in some way be applied to my research topic. I believe a case study of weapons decommissioning programs would allow me to further understand the complexities of delegitimizing and decommissioning weapons, to ensure that they are ‘never under any circumstances’ used again. Landmines and chemical weapons are manufactured, transported, employed, banned and decommissioned as technologies outside the body. However, the genitals that make rape physically possible are biological; they cannot be separated from the body without causing injury. This raises the question: how does one decommission the penis or vagina, or sexuality for that matter?

It is thus worth considering the difference between the body and the weapon, especially in instances when the body itself is used as a technology of war. A future study could draw on notions of the “political technology of the body”, which Michel Foucault describes in the chapter “The body of the condemned”.<sup>34</sup> He puts forth that the body is directly involved in the political field. Power relations have an immediate effect on the body, as different actors try to control the body by attacking it, marking it, forcing it to do labour, and performing ceremonies on it (Foucault, 1977, p. 25). The body thus becomes a political instrument that is used in a meticulous and calculated way. The body is especially used (as a weapon for example) by those who have “knowledge of the body” or who understand the “political technology of the body” (Foucault, 1977, p. 26). The body thus becomes (or is used as) a useful instrument for attaining political objectives.

These notions of political technology of the body provide insight on how those who have knowledge of the body’s workings (including sexual functioning) construct discourses that make war-time rape possible as a strategy and weapon of war. This knowledge of the body may also be employed to sustain patriarchal constructions of rape in society, institutions and AU narratives. Thus I believe that exploring the body as a form of technology employed for political

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<sup>34</sup> This chapter can be found in his book: *Discipline and punish: the birth of the prison* trans: Alan Sheridan. New York: Pantheon Books, 1977.

power may well render insights that can be drawn on for the delegitimization of rape as weapon in war.

Furthermore, the past three years (2012-2014) have witnessed an increase in policies and campaigns (social responses) by the international community to address the persistent sexual and gender based violence during conflict.<sup>35</sup> Some of these social responses include the *ICC Draft Policy on Sexual and Gender Based Violence*, the *Declaration of Commitment to End Sexual Violence*, the *UN Stop Rape Now Campaign* and the *International Campaign to Stop Rape and Gender Violence in Conflict*. These policies, declarations and campaigns would suggest that the international system (states and international civil society organizations) realize the urgent necessity of delegitimizing rape as a weapon of war.

The *ICC Draft Policy on Sexual and Gender Based Violence*, the *Declaration of Commitment to End Sexual Violence* was released in January 2014 and is quite progressive in that it is the first document of its kind.<sup>36</sup> Article 72 of the draft policy acknowledges that although rape and other sexual and gender based crimes are often widespread, it can also be used as “a systematically as a tool of war or repression” (OTP, 2014, p. 25). The draft policy adds that although rape may occur due to lack of military discipline and impunity, sexual and gender based crimes may also be “committed by organised structures as a result of direct, explicit orders or they may be a foreseeable result of broader instructions given by commanders and superiors” (OTP, 2014, p. 25). The ICC, particularly the Office of the Prosecutor (OTP), intends to examine the power dynamics between men and women, which shape gender roles, particularly in conflict situations. The OTP will specifically consider these gender dynamics in its approach to reparations, recognizing that women and children are more susceptible to harm during conflict (Article 15). Sexual and gender based crimes will thus be considered among the gravest offenses under the *Rome Statute*.

Although the ICC draft policy does not provide victims with legal rights (Article 9), it seeks to transform the internal working of the OTP and the way sexual and gender based crimes are

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<sup>35</sup> By social responses I mean documents or campaigns which are not yet legally binding, but seek to transform the international system and ensure the cessation of war-time rape.

<sup>36</sup> Refer to Addendum D for the executive summary of the *ICC Draft Policy on Sexual and Gender Based Violence*, the *Declaration of Commitment to End Sexual Violence*.

prosecuted. It seeks to prosecute war-time rape according to its various and distinct constructions; as a by-product of conflict and as a strategic weapon. The OTP will work to include a gendered analysis in all aspects of its work. The OTP further aims to undertake various measures to ensure that the psychological well-being, dignity and privacy of victims are protected. It seeks to reverse the culture of shame that many rape victims face. The Office will thus endeavour to find and use innovative ways to collect evidence and ensure the inclusion of charges for rape and other sexual crimes, “wherever there is sufficient evidence to support such charges” (Article 66). This draft policy is in essence a commitment by the ICC to enhance its institutional capacity to address sexual violence and ensure that sexual and gender based crimes are effectually put to an end.

The ICC has opened the draft policy up for public comment. Numerous international civil society organizations such as the Refugee Law Project, Redress and the International Federation for Human Rights have welcomed this draft policy and made insightful suggestions to the ICC on what could be included to make this document more meaningful.<sup>37</sup> Thus it is anticipated that this policy, once finalized, will transform the way strategic rape is prosecuted.

The *Declaration of Commitment to End Sexual Violence* was adopted by member states of the UN in 2012. This Declaration concurs that the widespread use of rape and other forms of sexual violence during armed conflicts present one of the greatest and most persistent impediments to justice and human rights. It however states (in similar vein to this study) that rape and sexual violence are “not an inevitable consequence of war” (United Nations, 2012). It goes on to declare that those who experience rape during conflict seldom receive justice, assistance or support from their states. The Declaration thus seeks to eradicate the culture of shame attached to rape and ensure that there perpetrators are brought to justice for their human rights abuses. This Declaration also acknowledges that men and boys are often/also victims of this crime, as they are forced to rape their family members or watch as their family members are raped. Thus it demands that the UN’s efforts to address sexual violence in conflict be strengthened and that conflict-affected states should be supported in “strengthening their capacity to prevent and respond to sexual violence in conflict and implement national security sector and justice reform programs” (United Nations, 2012).

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<sup>37</sup> Please refer to Redress (2014), Refugee Law Project (2014) and International Federation for Human Rights (2014).

High profile persons such as British Foreign Secretary William Hague and Special Envoy for the UN High Commissioner for Refugees Angelina Jolie, have also added their voices to the call to cease strategic rape.<sup>38</sup> They will convene a global summit during June 2014 to “create a sense of irreversible movement towards ending the use of rape and sexual violence in conflict” (United Kingdom Government, 2014). The *Global Summit to End Sexual Violence in Conflict* will be the biggest global meeting on this topic convened to date and will emphasize the need to “remove rape and sexual violence from the world’s arsenal of cruelty” (Agence France-Presse, 2014). The new *International Protocol on the Investigation and Documentation of Sexual Violence in Conflict* will also be launched at this global summit.

There seems to be a gradual shift in the thinking regarding the occurrence of war-time rape; that rape can occur widespread during conflict and that it can be used as a strategic weapon, as this study has argued. I would like to do further research on the impact of these initiatives on the conceptualization of rape as a strategic weapon of war and the creation of a new international norm which regards the use of this weapon and morally repugnant and unacceptable – much like chemical weapons and landmines. It would be intriguing to see whether these initiatives lead to the eventual delegitimization of rape as a weapon of war.

I would also like to do further research on the *UN Stop Rape Now Campaign*, the *International Campaign to Stop Rape & Gender Violence in Conflict*, which seeks to see rape delegitimized as a weapon of war. A similar campaign is the *Weapons Discrimination Project* which seeks to see rape treated as an illegal weapon. This campaign seeks accountability and respect for survivors’ human rights. It works towards the “dismantling the patriarchal and discriminatory political and legal structures that foster impunity for perpetrators of sexual violence in conflict and block avenues of justice for victims to seek redress” (Radhakrishnan, 2013). I wish to learn more about the successes and challenges encountered by these projects thus far, and apply these findings to my research topic. These findings would also inform my proposals on how the AU may join and contribute to these campaigns, to ensure the delegitimization of rape as a strategic weapon of war.

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<sup>38</sup> Refer to Addendum E.

Another issue which is significantly under-researched and that I would like to address in my future research is the rape of men and boys during armed conflicts. Rape is a multifaceted and complex weapon, thus it can be used against men and women alike. The Refugee Law Project (2014, p. 10) explains that in recent conflicts men and boys have been attacked and subjected to:

oral rape, as well as rape using objects; having ropes tied to the genitalia and being pulled around by these; having electric wires attached to the genitalia and shocks administered; being made to have sex with holes in the ground/trees/objects; being forced to have sex with others who are also in detention; being forced to have sex with some family members while being watched by others; extended sexual slavery; castration and other forms of mutilation of the genitalia.

These acts too can be understood as representing the feminization of a group of men and their failure to protect themselves. However, it could also be attributed to the ‘craziness’ of war and the breakdown of morals. Thus I would like to do further research to understand the complexities of rape being used as a weapon against men, why this topic is largely under addressed and whether the socially constructed meanings attached to the strategic rape of men differ (if at all) from that of women.

Finally, I would like to do further research on how the AU may improve its stakeholder engagements. I understand that navigating the process of compiling one specific policy document which recognizes and delegitimizes the use of rape as a weapon may prove challenging as evinced by the slow drafting, ratification and implementation of the ACHPRWA. It is evident that the AU needs to find more strategic ways to engage with its member states and to muster political will. It also needs to find more constructive ways to engage with stakeholders such as civil society, academic institutions and ordinary citizens to ensure that the continental organization is constantly moving towards the attainment of its vision and mission. Its stakeholder engagements should be carried out in recognition that collective leadership and collective intelligence are needed to resolve the complex issues facing the African continent. Thus I wish to do further research on the value of stakeholder engagement and collective leadership, and how the AU may use these approaches to ensure the delegitimization of rape as a weapon of war.

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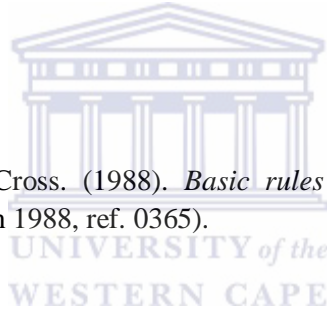
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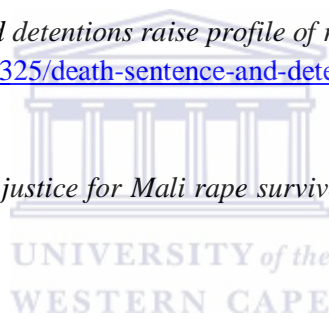
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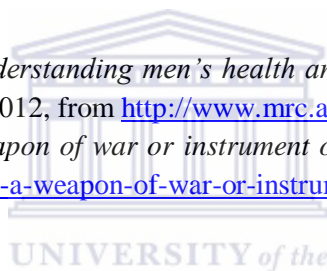
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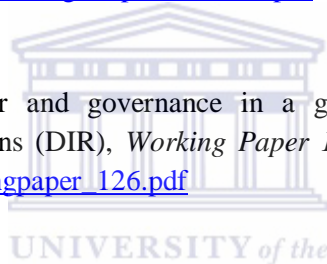
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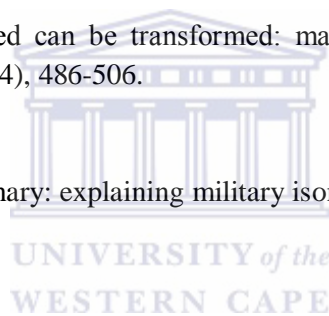
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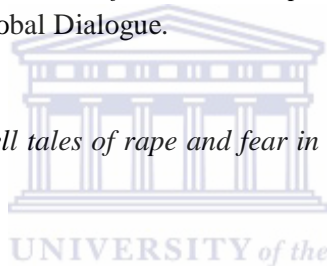
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## ADDENDUM: A

The following is an overview of weapons that are regulated by International Humanitarian Laws (IHL) treaties:

Weapon	Treaty
Explosive projectiles weighing less than 400 grams	Declaration of Saint Petersburg (1868)
Bullets that expand or flatten in the human body	Hague Declaration (1899)
Poison and poisoned weapons	Hague Regulations (1907)
Chemical weapons	Geneva Protocol (1925)
	Convention on the prohibition of chemical weapons (1993)
Biological weapons	Geneva Protocol (1925)
	Convention on the prohibition of biological weapons (1972)
Weapons that injure by fragments which, in the human body, escape detection by X-rays	Protocol I (1980) to the Convention on Certain Conventional Weapons
Incendiary weapons	Protocol III (1980) to the Convention on Certain Conventional Weapons
Blinding laser weapons	Protocol IV (1995) to the Convention on Certain Conventional Weapons
Mines, booby traps and "other devices"	Protocol II, as amended (1996), to the Convention on Certain Conventional Weapons
Anti-personnel mines	Convention on the Prohibition of Anti-Personnel Mines (Ottawa Treaty) (1997)
Explosive Remnants of War	Protocol V (2003) to the Convention on Certain Conventional Weapons
Cluster Munitions	Convention on Cluster Munitions (2008)

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## ADDENDUM: B

### States Parties to the Prohibition of Chemical Weapons Treaty:

#### *Signatory States which have **not yet** ratified the Chemical Weapons Convention*

No.	<u>State</u>	Signature
1	Israel	13/01/1993
2	Myanmar	14/01/1993

#### *States that have **neither signed nor acceded** to the Chemical Weapons Convention*

No.	<u>State</u>
1	Angola
2	Egypt
3	North Korea
4	South Sudan

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## ADDENDUM: C

### States Parties to Mine Ban Treaty:

States Parties	Ratification or Accession	Entry into Force	Stockpile Destruction Deadline if Applicable	Mine Clearance Deadline if Applicable
Afghanistan	11-Sep-02	1-Mar-03	completed	1-Mar-23
Albania	29-Feb-00	1-Aug-00	completed	completed
Algeria	9-Oct-01	1-Apr-02	completed	1-Apr-17
Andorra	29-Jun-98	1-Mar-99		
Angola	5-Jul-02	1-Jan-03	completed	1-Jan-18
Antigua and Barbuda	3-May-99	1-Nov-99		
Argentina	14-Sep-99	1-Mar-00	completed	1-Mar-20
Australia	14-Jan-99	1-Jul-99	completed	
Austria	29-Jun-98	1-Mar-99	completed	
Bahamas	31-Jul-98	1-Mar-99		
Bangladesh	6-Sep-00	1-Mar-01	completed	
Barbados	26-Jan-99	1-Jul-99		
Belarus	3-Sep-03	1-Mar-04	1-Mar-08	
Belgium	4-Sep-98	1-Mar-99	completed	
Belize	23-Apr-98	1-Mar-99		
Benin	25-Sep-98	1-Mar-99		
Bhutan	18-Aug-05	1-Feb-06		completed
Bolivia	9-Jun-98	1-Mar-99		
Bosnia and Herzegovina	8-Sep-98	1-Mar-99	completed	1-Mar-19
Botswana	1-Mar-00	1-Sep-00		
Brazil	30-Apr-99	1-Oct-99	completed	
Brunei Darussalam	24-Apr-06	1-Oct-06		
Bulgaria	4-Sep-98	1-Mar-99	completed	completed
Burkina Faso	16-Sep-98	1-Mar-99		
Burundi	22-Oct-03	1-Apr-04	completed	<a href="#">see Landmine Monitor</a>
Cambodia	28-Jul-99	1-Jan-00	completed	1-Jan-20
Cameroon	19-Sep-02	1-Mar-03	completed	
Canada	3-Dec-97	1-Mar-99	completed	

Cape Verde	14-May-01	1-Nov-01	completed	
Central African Republic	8-Nov-02	1-May-03		
Chad	6-May-99	1-Nov-99	completed	1-Jan-14
Chile	10-Sep-01	1-Mar-02	completed	1-Mar-20
Colombia	6-Sep-00	1-Mar-01	completed	1-Mar-21
Comoros	19-Sep-02	1-Mar-03		
Congo, Democratic Republic of	2-May-02	1-Nov-02	completed	1-Jan-15
Congo, Republic of	4-May-01	1-Nov-01	completed	completed
Cook Islands	17-Mar-06	1-Sep-06		
Costa Rica	17-Mar-99	1-Sep-99		completed
Cote d'Ivoire	30-Jun-00	1-Dec-00		
Croatia	20-May-98	1-Mar-99	completed	1-Mar-19
Cyprus	17-Jan-03	1-Jul-03	completed	1-Jul-16
Czech Republic	26-Oct-99	1-Apr-00	completed	
Denmark	8-Jun-98	1-Mar-99	completed	completed
Djibouti	18-May-98	1-Mar-99	completed	<a href="#">see Landmine Monitor</a>
Dominica	26-Mar-99	1-Sep-99		
Dominican Republic	30-Jun-00	1-Dec-00		
Ecuador	29-Apr-99	1-Oct-99	completed	1-Oct-17
El Salvador	27-Jan-99	1-Jul-99	completed	completed
Equatorial Guinea	16-Sep-98	1-Mar-99		
Eritrea	27-Aug-01	1-Feb-02		1-Feb-15
Estonia	12-May-04	1-Nov-04		
Ethiopia	17-Dec-04	1-Jun-05	completed	1-Jun-15
Fiji	10-Jun-98	1-Mar-99		
Finland	9-Jan-12	1-Jul-12	1-Jul-16	
France	23-Jul-98	1-Mar-99	completed	completed
Gabon	8-Sep-00	1-Mar-01	completed	
Gambia	23-Sep-02	1-Mar-03		
Germany	23-Jul-98	1-Mar-99	completed	<a href="#">see Landmine Monitor</a>
Ghana	30-Jun-00	1-Dec-00		
Greece	25-Sep-03	1-Mar-04	1-Mar-08	completed
Grenada	19-Aug-98	1-Mar-99		

Guatemala	26-Mar-99	1-Sep-99		completed
Guinea	8-Oct-98	1-Apr-99	completed	
Guinea-Bissau	22-May-02	1-Nov-01	See Landmine Monitor	completed
Guyana	5-Aug-03	1-Feb-04		
Haiti	15-Feb-06	1-Aug-06		
Holy See	17-Feb-98	1-Mar-99		
Honduras	24-Sep-98	1-Mar-99	completed	completed
Hungary	6-Apr-98	1-Mar-99	completed	<a href="#">see Landmine Monitor</a>
Iceland	5-May-99	1-Nov-99		
Indonesia	20-Feb-07	1-Aug-07	completed	
Iraq	15-Aug-07	1-Feb-08	completed	1-Feb-18
Ireland	3-Dec-97	1-Mar-99		
Italy	23-Apr-99	1-Oct-99	completed	
Jamaica	17-Jul-98	1-Mar-99		
Japan	30-Sep-98	1-Mar-99	completed	
Jordan	13-Nov-98	1-May-99	completed	completed ( <a href="#">see Monitor</a> )
Kenya	23-Jan-01	1-Jul-01	completed	
Kiribati	7-Sep-00	1-Mar-01		
Kuwait	30-Jul-07	1-Jan-08	completed	
Latvia	1-Jul-05	1-Jan-06	completed	
Lesotho	2-Dec-98	1-Jun-99		
Liberia	23-Dec-99	1-Jun-00		
Liechtenstein	5-Oct-99	1-Apr-00		
Lithuania	12-May-03	1-Nov-03	completed	
Luxembourg	14-Jun-99	1-Dec-99	completed	
Macedonia	9-Sep-98	1-Mar-99	completed	completed
Madagascar	16-Sep-99	1-Mar-00		
Malawi	13-Aug-98	1-Mar-99		completed
Malaysia	22-Apr-99	1-Oct-99	completed	
Maldives	7-Sep-00	1-Mar-01		
Mali	2-Jun-98	1-Mar-99	completed	
Malta	7-May-01	1-Nov-01		
Mauritania	21-Jul-00	1-Jan-01	completed	1-Jan-16
Mauritius	12-Mar-97	1-Mar-99	completed	

Mexico	6-Sep-98	1-Mar-99		
Moldova, Republic of	8-Sep-00	1-Mar-01	completed	<a href="#">see Landmine Monitor</a>
Monaco	17-Nov-98	1-May-99		
Montenegro	23-Oct-06	1-Apr-07	completed	<a href="#">see Landmine Monitor</a>
Mozambique	25-Aug-98	1-Mar-99	completed	1-Mar-14
Namibia	21-Sep-98	1-Mar-99	completed	<a href="#">see Landmine Monitor</a>
Nauru	7-Aug-00	1-Feb-01		
Netherlands	12-Apr-99	1-Oct-99	completed	
New Zealand	27-Jan-99	1-Jul-99	completed	
Nicaragua	30-Nov-98	1-May-99	completed	completed
Niger	23-Mar-99	1-Sep-99		
Nigeria	27-Sep-01	1-Mar-02	completed	completed
Niue	15-Apr-98	1-Mar-99		
Norway	9-Jul-98	1-Mar-99	completed	
Palau	18-Nov-07	1-May-08		<a href="#">see Landmine Monitor</a>
Panama	7-Oct-98	1-Apr-99		
Papua New Guinea	28-Jun-04	1-Dec-04		
Paraguay	13-Nov-98	1-May-99		
Peru	17-Jun-98	1-Mar-99	completed	1-Mar-17
Philippines	15-Feb-00	1-Aug-00	completed	<a href="#">see Landmine Monitor</a>
Poland	27-Dec-12	1-Jun-13	1-Jun-17	
Portugal	19-Feb-99	1-Aug-99	completed	
Qatar	13-Oct-98	1-Apr-99		
Romania	30-Nov-00	1-May-01	completed	
Rwanda	8-Jun-00	1-Dec-00		completed
Saint Kitts and Nevis	2-Dec-98	1-Jun-99		
Saint Lucia	13-Apr-99	1-Oct-99		
Saint Vincent and Grenadines	1-Aug-01	1-Feb-02		
Samoa	23-Jul-98	1-Mar-99		
San Marino	18-Mar-98	1-Mar-99		
Sao Tome and Principe	31-Mar-03	1-Sep-03		
Senegal	24-Sep-98	1-Mar-99		1-Mar-16
Serbia	18-Sep-03	1-Mar-04	completed	1-Mar-14
Seychelles	2-Jun-00	1-Dec-00		



Sierra Leone	25-Apr-01	1-Oct-01	completed	
Slovakia	25-Feb-99	1-Aug-99	completed	
Slovenia	27-Oct-98	1-Apr-99	completed	
Solomon Islands	26-Jan-99	1-Jul-99		
Somalia	16-Apr-12	1-Oct-12	<a href="#">see Landmine Monitor</a>	1-Oct-22
South Africa	26-Jun-98	1-Mar-99	completed	
South Sudan	11-Nov-11	9-Jul-11	9-Jul-15	9-Jul-21
Spain	19-Jan-99	1-Jul-99	completed	
Sudan	13-Oct-03	1-Apr-04	completed	1-Apr-14
Suriname	23-May-02	1-Nov-02	completed	completed
Swaziland	22-Dec-98	1-Jun-99		completed
Sweden	30-Nov-98	1-May-99	completed	
Switzerland	24-Mar-98	1-Mar-99	completed	
Tajikistan	12-Oct-99	1-Apr-00	completed	1-Apr-20
Tanzania	13-Nov-00	1-May-01	completed	
Thailand	27-Nov-98	1-May-99	completed	1-Nov-18
Timor-Leste	7-May-03	1-Nov-03		
Togo	9-Mar-00	1-Sep-00		
Trinidad and Tobago	27-Apr-98	1-Mar-99		
Tunisia	9-Jul-99	1-Jan-00		completed
Turkey	25-Sep-03	1-Mar-04	completed	1-Mar-14
Turkmenistan	19-Jan-98	1-Mar-99	completed	
Tuvalu	13-Sep-11	1-Mar-12		
Uganda	25-Feb-99	1-Aug-99	completed	completed
Ukraine	27-Dec-05	1-Jun-06	1-Jun-10	
United Kingdom	31-Jul-98	1-Mar-99	completed	1-Mar-19
Uruguay	7-Jun-01	1-Dec-01	completed	
Vanuatu	16-Sep-05	1-Mar-06		
Venezuela	14-Apr-99	1-Oct-99	completed	completed
Yemen	1-Sep-98	1-Mar-99	completed	1-Mar-15
Zambia	23-Feb-01	1-Aug-01	completed	completed
Zimbabwe	18-Jun-98	1-Mar-99	completed	1-Jan-15

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## **ADDENDUM: D**

### **ICC DRAFT Policy Paper on Sexual and Gender Based Crimes**

#### **Executive Summary**

1. Over the last decades, the international community has taken progressive steps to put an end to impunity for sexual and gender based crimes. The Statute of the International Criminal Court is the first international instrument to expressly include various forms of sexual and gender based crimes as underlying acts of both crimes against humanity and war crimes committed in international and non-international armed conflict. The Rules of Procedure and Evidence and the Elements of Crimes also consolidate important procedural and evidentiary advancements to protect the interests of victims and enhance the effectiveness of the work of the Court. Recognising the challenges and obstacles to effective investigation and prosecution of sexual and gender based crimes, the Office of the Prosecutor has elevated this issue to one of its key strategic goals in its strategic plan 2013 - 2015. The Office commits to integrating a gender perspective and analysis in all its work, to being innovative in the investigation and prosecution of these crimes, to adequately train staff, and to give special attention to how staff interacts with victims and witnesses.

2. The Office will pay particular attention to the commission of sexual and gender based crimes in all stages of its work: preliminary examination, investigations and prosecutions. Within the scope of its mandate, the Office will carefully apply a gender analysis to all crimes within its jurisdiction, examining the differences between women and men and the power dynamics which shape gender roles in a specific context, and how these differences may have played a role in the crimes and their consequences.

3. It will seek to enhance the integration of a gender perspective and expertise in all aspects of its operations: during preliminary examinations, in the development of the case hypotheses and investigation and prosecution strategies, in the analysis of crime patterns and command structures, in the screening, selection, interview and testimony of witnesses, during sentencing and reparation stages, in its submissions on appeal and witness protection, including after the conclusion of the proceedings.

4. The Office will consider sexual and gender crimes among the gravest under the Statute for purposes of its analysis during the preliminary examination phase, prioritisation of its activities during investigation and prosecution phases, and sentencing.

5. In addition to general challenges to investigations by the Office, such as security issues related to investigations in situations of on-going conflict and a lack of cooperation, the investigation of sexual and gender based crimes presents its own specific challenges. The Office will consider specific means to address these challenges, such as prioritisation from the earliest stages and to the extent possible, on the collection of different types of evidence, including forensic and documentary and insider evidence.

6. Article 68(1) of the Statute obliges the Office to take various measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses,

particularly during its investigation and prosecution activities with regard to sexual and gender based crimes and crimes against children. Good practices related to how the Office manages its interaction and relationship with victims and witnesses of such crimes have been incorporated into the Operations Manual.

7. The Office will ensure the inclusion of charges for sexual and gender based crimes, wherever there is sufficient evidence to support such charges. In appropriate cases, the Office will charge acts of sexual and gender based violence as different categories of crimes within the Court's jurisdiction (war crimes, crimes against humanity, genocide), describe, inter alia, the nature, manner of commission, intent and context of each act. The Office will also seek to actively highlight the gender aspects of other crimes within its jurisdiction, including e.g. the recruitment of child soldiers, and enslavement.

8. At trial, the Office will argue for sentences which give due consideration to the sexual and gender dimensions of the crimes charged, including their impact on victims, as an aggravating factor and reflective of the gravity of the crimes committed.

9. The Office supports a gender-inclusive approach to reparations, taking into account the gender-specific impact, harm and suffering of the victims affected by the crimes for which an individual has been convicted. Effective cooperation is crucial in order to ensure that the Office and the Court are able to carry out their mandate. The Office actively engages with States and other relevant stakeholders in order to improve the effectiveness of its actions, including with regard to sexual and gender based crimes. It also includes a gender perspective in its public information activities which seek to maximise awareness and impact of its work.

10. As part of its positive complementarity approach, the Office encourages and supports efforts of States to carry out their primary responsibility of investigating and prosecuting crimes, including sexual and gender based crimes.

11. The Office will continue to enhance its institutional capacity to investigate and prosecute sexual and gender based crimes, more effectively, with the assistance of its Gender and Children Unit (GCU) and the Special Gender Advisor to the Prosecutor.

12. Staff training is an important component towards ensuring effective investigation and prosecution of sexual and gender based crimes. The Office will endeavour to ensure that all members of the joint/trial teams and any other relevant staff members have the necessary competencies to perform their functions effectively in relation to sexual and gender based crimes.

13. By making this policy commitment and adopting all the specific measures included in this paper, the Office intends to fulfil its duties under the Statute and contribute most effectively to put an end to impunity for sexual and gender based crimes of concern to the international community as a whole.

## ADDENDUM: E

### William Hague calls for end to rape as weapon of war

British Foreign Secretary William Hague has called for an end to rape as a weapon of war. Speaking in Washington, where he received an award from Hillary Clinton for promoting women's rights, **Mr Hague said the issue "should shame all men"**.

These acts be removed "from the world's arsenal of cruelty", he added. He announced that a global summit in London in June would ask 140 nations to write action against sexual violence into military training and doctrine.

#### 'Invisible presence'

Mr Hague said sexual violence was the last thing to be taken into account by those ending wars or rebuilding nations.

"On this occasion we must acknowledge that it is still considered unusual for a man and a politician to raise these issues". He cited the estimated 50,000 women who were raped in Bosnia two decades ago, virtually none of whom have received justice.

"We need to turn women's invisible presence in many countries around the world into a visible force in every society - with women represented in every peace process, in every government, in all walks of life," he said. "In my view it is impossible to achieve that aspiration in a world in which the use of rape as a weapon of war goes unchallenged."

He said "many men and boys" were also victims of these crimes, adding that "their plight too must be brought out of the shadows".

"But sexual violence in armed conflict disproportionately affects women and is part of the crushing weight holding back women's development," he added.

Mr Hague said that eradicating sexual violence was a responsibility the world, and men in particular, had shirked for too long. "On this occasion we must acknowledge that it is still considered unusual for a man and a politician to raise these issues," he said.

"But rape and sexual violence are crimes overwhelmingly committed by men and that they should happen while the world did too little should shame all men. Indeed, to shy away from talking about these facts is in itself unmanly."

Calling for an end to the use of sexual violence as a weapon, he said: "If women are still treated in this abhorrent way in times of war they will never be treated as equals in times of peace and that cannot be tolerated."

"We know that the world is capable of agreeing that, even during war, certain actions are unacceptable and we must remove rape and sexual violence from the world's arsenal of cruelty."

Mr Hague received his award at Georgetown University's annual Hillary Rodham Clinton Awards for Advancing Women in Peace and Security.

He said the summit on rape in war, to be held in London from 10-13 June, would be the largest such gathering and would bring together legal experts, police units and armed forces. It will be co-hosted by Hollywood actress Angelina Jolie.

Last March, Mr Hague and Jolie - a special envoy for the United Nations High Commissioner - visited a rescue camp for women in the Democratic Republic of Congo to highlight concerns over sexual violence. And, in May, she spoke at the London launch of a UK government initiative aimed at tackling sexual violence in war zones across the world.

BBC News. (2014b). *William Hague calls for end to rape as weapon of war*. Retrieved February 26, 2014, from <http://www.bbc.com/news/uk-politics-26349198>

