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Article (Published Version)

Gilani, Sabrina (2010) Transforming the ‘perpetrator’ into ‘victim’: the effect of gendering violence on the legal and practical responses to women’s political violence. *Australian Journal of Gender and Law*, 1. ISSN 1836-9723

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## Transforming the ‘Perpetrator’ into ‘Victim’: The Effect of Gendering Violence on the Legal and Practical Responses to Women’s Political Violence\*

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A great deal of international effort has been devoted to the issue of women’s rights. This has culminated in a growing number of legal declarations and conventions in which States have pledged their sincerity to addressing and opposing incidents of violence against women; it has also resulted in significant developments amongst non-governmental organisations, focused on alleviating the plight of women internationally, and ensuring the protection of women’s human rights. There has been extensive research dedicated to understanding the causes and effects of gendered violence, such as rape, genocide, and trafficking, and a plethora of evidence has been amassed with respect to outlining, supporting, proving and chronicling violence committed against women’s bodies and minds. Indeed, when it comes to acknowledging and confirming women’s status as ‘victims’ in violence, the international community faces no shortage of examples. It is clear that women’s role as victims in violence has become cemented in not only our perceptions, but also in international legal instruments, as well as judicial and State practice. However, this conception of women’s eternal ‘victimisation’ becomes extremely problematic in those situations where women are clearly not the victims of violence, but rather its perpetrators. It is during these incidents that the international community experiences great difficulty in reconciling its image of women as victims of violence with the realisation that women can be, and are, as capable of brutality as men.

This article exposes the connection between social perception and international legal practice, and does so within the context of women’s involvement in internationalised examples of political violence. By unravelling and examining the threads of testimonies, assumptions, and observations that interweave in our popular accounts of women’s political violence, it is possible to assemble a more thorough picture of how violent women (and the havoc they sometimes instigate) are commonly perceived. In addition, and more remarkably, this assemblage of narratives - extracted from various academic, media and literary sources - illustrate the permanence and influence of these perceptions not only in how we conceptualise women’s engagement in violent behaviour, but also how we legally and publicly *manage* and *respond* to such conduct.

The current article is premised on a tripartite thesis. First, it argues that gender stereotypes that function as normalised aspects of society, the assumptions that are often described as “rooted in biology and confirmed in history”,<sup>1</sup> shape the way we view and interpret women’s participation in political violence. Second, it maintains that this gendering of violence (differentiating between the violence of men and that of women) results in explanations that portray women perpetrators as ‘victims’, and describe their acts of brutality as apolitical, irregular, and lacking agency. Third, this paper verifies how this theoretical conception of women as ‘victims in violence’ affects the international responses to political violence in a manner that has tremendous implications for the human rights protection of various actors in global politics.

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\* This paper has benefited tremendously from contributions made by Professor Thérèse Murphy and Dr. Christiane Wilke, and from the assistance and editing provided by both Racha Al-Abdullah and Vanja Hamzić.

<sup>1</sup> Cynthia Cockburn (2005), “The Gendered Dynamics of Armed Conflict and Political Violence”, in Caroline O.N. Moser and Fiona C. Clark eds., *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence*, London: Zed Books, p 14.

The ideas put forth and presented in this paper unequivocally demonstrate the association between social perception and legal practice, and confirm that the assumptions that the international community makes about women, about femininity, and about the primacy and naturalness of patriarchy, are very much entrenched within the legal framework that shapes and controls our lived realities. In so doing, the conclusions drawn in this essay cast suspicion on the neutrality of international law, and the limits of its capacity for addressing concerns in a manner that places women on equal footing to men. However, to balance the somewhat sombre landscape of the arguments, this paper also evaluates certain 'victories' that law has achieved, some of which elicit a degree of optimism for the future management of political violence internationally.

Selecting a slightly extended focus than previous literature on the subject, the current article tackles the gap between international theory and practice in four stages. First, chapter two introduces the three conceptual models underpinning the central arguments: the concept of political violence, the idea of gender stereotypes and gender models, and the notion of victimhood.

Second, chapter three and four examine the most common narratives about women's political violence to exhibit how widespread perceptions of women's brutality continue to be predicated on gender stereotypes and conventional gendered norms of conduct. These two sections undertake an analysis of two of the most explosive and appalling expressions of women's political violence - terrorism and genocide. The third chapter, on terrorism, analyses accounts about Palestinian women's involvement in suicide terror and the women members of the *Rote Armee Fraktion* (RAF). Similarly, the fourth chapter on genocidal violence, also includes two different case studies. This chapter explores the various narratives that materialise concerning the violence of two convicted genocidaires, Biljana Plavšić (Republika Srpska) and Pauline Nyiramasuhuko (Rwanda).

Third, by drawing on the narratives presented in the preceding two chapters, chapter five examines what the 'gendering' of violence means for our understanding of women's political violence. The primary argument is that by gendering violence we cast women as 'victims' in violence even when they are, clearly, the perpetrators. This, in turn, results in constructing women's violence in a manner that differentiates it and pathologises it in comparison to men's more 'natural' violence.

And fourth, chapter six investigates how the conclusions drawn in the preceding sections hinder the protection of human rights during the legal and practical management of political violence at the international level. This chapter discusses the rights-related implications by separating them into three aspects of international public life: international criminal justice, international peace and reconciliation, and international security. As a final note, it is important to state that although the paper sometimes employs the phrase 'women's violence' the term is used interchangeably with 'women's political violence' as this essay only considers violent women in global politics and the public arena, and not women's violence in the private sphere.

## **2. Developing the Theoretical Foundations**

### ***2.1 DEFINING POLITICAL VIOLENCE***

The concept of political violence is widely contested with “boundaries and meanings that shift depending on cultural and community-specific circumstances”.<sup>2</sup> Nonetheless, there is general consensus that, first, such expressions of violence can involve both State and non-State actors,<sup>3</sup> and, second, that it involves the threat or use of physical or psychological force to either institute change, or demonstrate resistance.<sup>4</sup> For this reason, the concept of power becomes a defining feature of most discussions on political violence. In its most general sense, power is the capacity to use physical coercion to control activities, or to resist control by others.<sup>5</sup>

The politics of ‘power’ appear to become further pronounced by the disparate outcomes that result from sanctioning an act of violence as ‘political’ versus ‘personal’. When an act is identified as ‘political’, individuals and groups confer upon it an aura of legitimacy. In most societies, the patriarchal nature of the prevailing system ensures that men decide the “boundaries between political and personal violence”.<sup>6</sup>

A feature shared by all expressions of political violence is its very ‘public’ character. Political violence, by virtue of its objectives (these can be either ideological or value-oriented goals that the agent feels are best realised through a resort to force), is directed at the general public because its commission relies not only on physical brutality, but also on creating a spectacle of legitimacy and power.<sup>7</sup> The dynamics of political violence almost always involve a level of political or ideological affiliation (i.e. it is rarely a single-handed undertaking), and usually a number of individuals work in concert to achieve a mutually valued objective.

Encompassing the above concepts and ideas in a more precise and synthesised manner yields a definition of political violence that has four main components. First, political violence involves the threat or use of force by State or non-State actors in order to further a political, ideological or religious objective. Second, it may be utilised as a method of enforcing decisions that have a wider social importance, or as a means to resist any attempts of control; but in either situation it involves the desire (be it conscious or unconscious) to acquire or maintain power. Third, it is typically used by a group of individuals - though sometimes executed by only one - within the public sphere and on the general population. Fourth, since the determination of whether an act is considered ‘political’ or ‘personal’ is very much a product of power, the granting or withholding of such recognition can result in either legitimating an act of violence, or condemning it as unlawful.

Similarly, terrorism is also a phenomenon with countless competing definitions, many of which are “politically loaded and reflect the interests and the power of the defining entity.”<sup>8</sup> This paper will use Hoffman’s definition of terrorism: the “deliberate creation and exploitation of fear through violence or the threat of

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<sup>2</sup> Fionnuala Ní Aoláin (2006), “Political Violence and Gender During Times of Transition”, 15 *Columbia Journal of Gender and Law*, p 832; For a more comprehensive analysis of the meanings and expressions of terrorism see, Martha Crenshaw (2000), “The Psychology of Terrorism: An Agenda for the 21<sup>st</sup> Century”, 21:2 *Political Psychology*.

<sup>3</sup> Gopal Singh, (1976), “Politics and Violence”, 4:6 *Social Scientist*, p 59; also see, Virginia Held (2008), “How Terrorism is Wrong”, New York: OUP, p 129.

<sup>4</sup> Caroline O.N. Moser and Fiona C. Clark, (2001), “Introduction”, in Caroline O.N. Moser and Fiona C. Clark eds., *Victims, Perpetrators or Actors: Gender, Armed Conflict and Political Violence*, London: Zed Books, p 6.

<sup>5</sup> Gopal Singh, *supra* note 3, p 59.

<sup>6</sup> Aoláin, *supra* note 2, p 833-4. This idea seems reminiscent of the Foucauldian analysis of discourse and the role of power in maintaining a certain discourse, where it is argued that those that possess the greatest degree of relative power have the greatest influence over the formation of a discourse. See, Michel Foucault (1972), *The Archaeology of Knowledge*, New York: Pantheon Books.

<sup>7</sup> Ingo W. Schröder and Bettina E. Schmidt (2001), “Violent Imaginaries and Violent Practices”, in Ingo W. Schröder and Bettina E. Schmidt eds., *Anthropology of Violence and Conflict*, London: Routledge, p 5.

<sup>8</sup> D. Boyns and J.D. Ballard (2004), “Developing a Sociological Theory for the Empirical Understanding of Terrorism”, 35:2 *American Sociologist*, p 6.

violence in the pursuit of political change”.<sup>9</sup> Terrorism qualifies as an act of political violence because it has political aspirations, sometimes alluded to by the women engaging in the acts themselves (the primary subjects of the current paper),<sup>10</sup> but almost always noted by the organisation on whose behalf they perpetrate their acts of terror. The act is (in relation to the current analysis) executed by non-State actors in order to express resistance to control, operationalised by a group of individuals affiliated with a particular organisation and/or ideology,<sup>11</sup> and inflicted or perpetrated upon the general public (although some groups/institutions are targeted more than others).

The acts of genocidal violence discussed during the course of this article have been widely documented as ‘genocides’ in international law, and satisfy the conditions identifying such acts as laid out in the Genocide Convention of 1948.<sup>12</sup> Genocide also fulfils the criteria that determine whether certain conduct qualifies as ‘political violence’. It is an act that is perpetrated by State actors for clear political purposes – primarily the annihilation of a particular social/ethnic group, or the realisation of an ‘ethnically pure’ citizenry. It is also an act of violence directed at the public at large (not at particular individuals), though the destruction of one particular social/ethnic group is often the primary focus.

## **2.2 Gender Stereotypes and Models of Femininity**

Gender is a socially constructed category that carries with it a set of underlying assumptions about masculinity and femininity. Its contribution to society lies in its ability to dictate what sorts of conduct, roles, and activities fall within the acceptable range for those perceived to be men and those perceived to be women.<sup>13</sup> Wholly manufactured, and espousing a set of expected norms of behaviour (gender stereotypes), these unitary tropes of masculinity and femininity generate an image of women that is typically pacifist, compassionate, nurturing, and generally benign. Men, on the other hand, trumpeted as antithetical to women, become warring, ruthless, naturally competitive and aggressive.<sup>14</sup> Described as never overlapping and completely distinct, this inflexible binary completely fails to acknowledge any possibility that individuals may embrace an identity that does not prescribe to this sort of strict male/female gender construct.

Gender models have become entrenched in many aspects of public life. They are internalised by the societies in which they function, and preserved through categorising non-conforming behaviour (i.e. gender transgressions) as unacceptable and threatening.<sup>15</sup> Since these behaviours represent aberrant conduct, and because there is a general consensus that understanding abnormalities helps to control them,<sup>16</sup> it is these modes of conduct which become isolated objects of study and deconstruction.

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<sup>9</sup> Bruce Hoffman (1998), *Inside Terrorism*, New York: Columbia University Press, p 43.

<sup>10</sup> Terri Toles Patkin (2004), “Explosive Baggage: Female Palestinian Suicide Bombers and the Rhetoric of Emotion”, 27:2 *Women and Language*, p 84-5.

<sup>11</sup> In the Palestinian context, in particular, Toles Patkin notes that suicide attacks are rarely the actions of ‘lone, crazed’ individuals, but, rather, they involve careful planning by many members of terrorist organisations. See, Toles Patkin, *ibid*, p 79.

<sup>12</sup> *UN Convention on the Prevention and Punishment of Genocide* (1948), GA Resolution 260 (III) A, art. 2.

<sup>13</sup> Candace West and Don H. Zimmerman (1987), “Doing Gender”, 1:2 *Gender and Society*, p 126-30. Also see, Judith Butler (1990), *Gender Trouble*, New York: Routledge.

<sup>14</sup> Simone de Beauvoir (1989), *The Second Sex*, H.M. Parshley Trans., New York: Alfred A. Knopf, p xxi; also see, Jacobs, Susie, et al. eds. (2000), *States of Conflict: Gender, Violence and Resistance*, New York: Zed Books, p 13.

<sup>15</sup> Grigat and Carrier discuss the classification of behaviour that contravenes gender norms as a threat to established institutions of power by using the example of the trial of Joan of Arc, in which gender transgressions was described as heretical. See, Daniel Grigat and Gregory Carrier (2007), “Gender Transgression as Heresy: The Trial of Joan of Arc”, 13 *Past Imperfect*, no page.

<sup>16</sup> Bevir claims that individuals police themselves by determining whether they, and others, conform to a certain concept of normality, which is developed by those that have the greatest power (which can include gender). See, Mark Bevir (1999),

Consequently, the countless narratives that focus on interpreting and explaining women's violence do so largely because such behaviour challenges and contravenes conventional gender ideals of women as gentle and peace loving. These various narratives, therefore, inevitably engage in the 'gendering' of violence – differentiating between the violence of women and that of men. As a result, the international system becomes privy to numerous accounts that juxtapose and contrast the violence of each, rather than recognising the synonymy of both.

### 2.3 Recognising Victimhood

Perhaps it is due to its 'we know it when we see it' character that the notion of victimhood fails to possess a typological 'checklist' against which victims can be identified with a degree of certainty and consistency. Despite the fact that little has been written on victimhood - as a concept on its own and disconnected from ideas such as crime, violence, law, culture, etc – the term brings to mind, at the very least, an assumption of innocence. In so far as an individual is recognised as innocent with respect to a particular action, we can, at minimum, be certain of three things. First, that they have "not exercised [their] will"<sup>17</sup> in relation to the said conduct, the implication being that their behaviour is involuntary and, perhaps, coerced.<sup>18</sup> Second, they were powerless to prevent the commission of such an act (because the possession of power to prevent one's victimisation would essentially negate the notion of victimhood all together). And third, because their conduct was both involuntary and unpreventable (by the agents themselves) individuals that are 'innocent' cannot be considered completely culpable or responsible for the commission of the said act. Hence, in identifying an individual as a 'victim' we, at least, prescribe to them a degree of innocence - incorporating a level of powerlessness, lack of agency, and a measure of blamelessness in relation to their conduct.

The collective recognition of victimhood, however, is qualified. It is rare that individuals are recognised as *absolute* victims (i.e. those who cannot be blamed at all for their victimisation). Occurring along a continuum, victimhood positions the *absolute* victim and the guilty victim (i.e. those who may be at least partially or at most completely responsible for their victimisation) at opposing ends.<sup>19</sup> There have been very few instances where absolute victimhood is jointly and commonly acknowledged, other than perhaps those situations involving children. Minors are frequently considered absolute victims by virtue of their age and the ideas associated with childhood (i.e. vulnerability and dependency). Even with the Holocaust, an emblematic event polarising the victim/perpetrator relationship, we find that there exists at least some literature that positions partial blame for the Jews' victimisation squarely on the shoulders of Jews, themselves.<sup>20</sup> Even women are not absolute victims. There is frequent and marked mention of victimised women, notably in the context of sexual violence, bringing about their victimisation by being overly

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"Foucault and Critique: Deploying Agency Against Autonomy", 27 *Political Theory*, p 66; also see, Michel Foucault (1978), *History of Sexuality: An Introduction*, New York: Random House.

<sup>17</sup> Joanne Faulkner (2008), "The Innocence of Victimhood Versus the 'Innocent of Becoming'", 35 *Journal of Nietzsche Studies*, p 73; also see, Robert Elias (1986), *The Politics of Victimisation: Victims, Victimology and Human Rights*, New York: OUP, p 13.

<sup>18</sup> Irving Thalberg (1964), "Freedom of Action and Freedom of Will", 61:14 *J. of Philosophy*, p 405-15.

<sup>19</sup> Schafer refers to the latter set as either "provoker victims" (someone who provokes his/her own victimisation) or "imprudent victims" (someone who induces his/her own victimisation). See, Stephen Schafer (1974), "The Beginnings of Victimology", in Israel Drapkin and Emilio Viano eds., *Victimology*, Lexington, Mass: Lexington Books, p 19.

<sup>20</sup> Arendt alluded to Zionist collaboration in the Nazi Holocaust. See, Hannah Arendt (1994), *Eichmann in Jerusalem*, New York: Penguin Books, p 117. This is also an argument fronted by rightwing Christian groups, who claim that the Holocaust was God punishing the Jewish people for 'rebellious against God' and failing to move to the 'promised land'. See, Sam Stein (May 21, 2008), "McCain Backer Hagee Said Hitler was Fulfilling God's Will", *Huffington Post* <[www.huffingtonpost.com/2008/05/21/mccain-backer-hagee-said\\_n\\_102892.html](http://www.huffingtonpost.com/2008/05/21/mccain-backer-hagee-said_n_102892.html)> accessed on 14 July 2009.

provocative or overly emotional.<sup>21</sup> Consequently, it is safe to say that in most instances the designation of victimhood does not entail *absolute* innocence, but *relative* innocence.

Nevertheless, victim discourses challenge the idea of relative blame/innocence by creating rigid dichotomies that often result in exclusive claims being made by groups that seem to vacillate between absolute victim and absolute victimiser, but seldom lend themselves to a position somewhere in between the victim/perpetrator binary. Consequently, it is crucial to acknowledge that victimhood is not a unitary 'all or nothing' category, and that the victimised are, in reality, positioned somewhere in between these two very distinct poles.

As Wilke states, victimhood may be recognised as a status or an identity. 'Victim-identity' describes an individual's self-identification as victim (or a collective identity based on shared victim status), or the imposition of a victim label on a social group that shares a historical experience of exclusion.<sup>22</sup> Conversely, 'victim-status' denotes the overall and widespread recognition of an individual's victimhood. Whilst victim-identity depends on 'subjective' feelings of injustice, victim-status is entirely reliant on the ability to authenticate an 'objective' "breach of norms to the detriment of the 'victim'".<sup>23</sup> Thus, there is the possibility that an individual can possess a victim-identity at any moment based on their perceived or real long-term oppression, or exclusion, even when an injurious breach of expectations cannot be found at that particular point in time.

Within the context of violence, typically a violent act is not considered a *product*, but rather a *cause*, of victimhood. For instance, going back to the Holocaust, we perceive the genocide perpetrated by the Nazis as bringing about the victimisation of German Jewry rather than the violence being triggered by the Nazis' own victimisation. It is largely uncontroversial to make the claim that most perpetrators of political violence are seldom considered victims. However, this is because most perpetrators are men. In those rare instances when women become agents of political violence, they are perceived very differently than men who engage in brutality. It may be somewhat contentious, but nonetheless accurate, to make the claim that when a woman commits an act of violence she is rarely regarded as an agent of violence, and more often considered a victim herself. Women's motivation to violence is frequently and consistently attributed to her own victimisation, rather than being regarded as a free and autonomous choice made by the women themselves.

If putting this claim to the test we should expect that, if common perceptions of women's political violence were investigated, there would be a general consensus regarding women's (at least partial) innocence in reference to such acts. This should include viewing women's violence as devoid of agency, the women themselves as powerless, and, in some cases, treating or managing such violence in a manner that would suggest that these women were less culpable for their acts of brutality than men in similar or comparable situations.

### **3. Common Social Perceptions: Narratives about Women's Terrorist Violence**

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<sup>21</sup> Elias, *supra* note 17, p 16.

<sup>22</sup> Christiane Wilke (2007), "Recognising Victimhood: Politics and Narratives of Rehabilitation in Germany", 6 *J. of Human Rts*, p 481. The identity need not be "rooted in the voluntary choice of individuals" and can be the product of society ascribing a set of properties (not chosen by the members themselves) to a particular social group. See, Carolin Emcke (2000), "Between Choice and Coercion: Identities, Injuries and Different Forms of Recognition", 7:4 *Constellations*, p 483.

<sup>23</sup> Wilke, *ibid*, p 481-2.

The proceeding two sections undertake an analysis of the dominant narratives that appear in order to make sense of women's participation in terrorism. Two case studies have been isolated for study, Palestinian suicide terrorists and the *Rote Armee Fraktion*.

### **3.1 Providing the Context: Palestinian Women Suicide Terrorists**

Emerging against the backdrop of the first *intifada*, suicide missions first became a feature of the Palestinian struggle against Israeli occupation in 1987. Despite the ascertainable tactical advantages of employing women for such assignments,<sup>24</sup> Palestinian female suicide terrorists were virtually invisible until the attack carried out by Wafa Idris in 2002.<sup>25</sup> Since Idris, numerous Palestinian women have enlisted in self-destructive operations, at least fifteen of whom have been successful in carrying out such missions, with many more being apprehended during the process.<sup>26</sup> In statements made by these women, both prior to an attack (i.e. in martyrdom videos), or after they have been detained, a diverse set of reasons have been reported as motivating factors, including the reinstatement of honour,<sup>27</sup> quests for self-empowerment,<sup>28</sup> and desire for vengeance.<sup>29</sup>

### **3.2 Dominant Narratives about Women Suicide Bombers in Palestine**

Most common accounts that explain Palestinian women's involvement in suicide terror usually emphasise the oppressive nature of Muslim culture. Consequently, many of the stories that circulate about women suicide terrorists typically illustrate a preoccupation with honour – protecting it, reinstating it, and avenging it. Premising their arguments almost entirely on the fact that these women reside in an 'oppressive' Muslim society - one that imposes an intense burden upon them to conform to a strict set of standards - these narratives claim that Palestinian women become terrorists because they are victims of a repressive culture which drives them to violence by erecting strict gender standards that these women may be unable or unwilling to fulfil.<sup>30</sup>

References to violent women's personal histories (the majority of which confirm their unmarriageable status) are endemic to countless academic and media accounts of female suicide terrorists in Palestine. To illustrate, inconspicuously planted amidst the brief fragments of narrative that acknowledge Wafa Idris' ambulatory work with the Red Crescent, her "patriotic zeal", and her resentment of the Israeli occupation,<sup>31</sup> there is regular mention of Wafa's status as a barren and divorced Palestinian woman – a status that, according to some, confined her to the "lowest social economic strata of society".<sup>32</sup> In this way, Wafa's violence becomes symbolic of the plight of all Palestinian women that have either never been able to, or have been unwilling to satisfy the roles prescribed to them by their oppressive

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<sup>24</sup> Karla J. Cunningham, (2005), "Countering Female Terrorism", 30 *Studies in Conflict & Terrorism*, p 113-29; also see, p 15-6.

<sup>25</sup> Barbara Victor (2003), *Army of Roses: Inside the World of Palestinian Women Suicide Bombers*, London: Constable & Robinson Ltd., p 2-3.

<sup>26</sup> Israeli Security Forces (2002), "The Role of Palestinian Women in Suicide Terrorism", *Israel Ministry of Foreign Affairs Website*, <[www.mfa.gov.il/mfa/go.asp?MFAH0n210](http://www.mfa.gov.il/mfa/go.asp?MFAH0n210)> accessed on 22 July 2009.

<sup>27</sup> Mia Bloom (November 29, 2005), "Terror's Stealth Weapon: Women", *LA Times*, <<http://articles.latimes.com/2005/nov/29/opinion/oe-bloom29>> accessed on 3 July 2009.

<sup>28</sup> Mia Bloom (2005), *Dying to Kill: The Allure of Suicide Bombing*, New York: Col. Univ. Press, p 146-50.

<sup>29</sup> Hala Jaber (September 7, 2003), "The Avengers", *London Times Online*, <<http://www.timesonline.co.uk/tol/news/article1035967.ece?>> accessed on 3 September 2009.

<sup>30</sup> Victor, *supra* note 25, p 42-5; also see Jaber *ibid*.

<sup>31</sup> Victor, *supra* note 25, p 40.

<sup>32</sup> In the opinion of Palestinian psychiatrist, Dr. Tzoreff. See, Victor, *supra* note 25, p 47.



society. Confirming the impracticality of moving away,<sup>33</sup> these narratives argue that women are compelled into violence as a result of undue pressure from a society that affords them no alternative role to wives and mothers, nor offers them the choice of physical escape from the conditions of their subjugation.

According to some narratives, the pressures associated with a traditionally oppressive society are capitalised on by men who compel or encourage already desperate women to engage in violence on their behalf. In Wafa's case, several accounts achieve this by casting doubt on her level of agency in her violence. By juxtaposing her femininity – confirmed by giving due regard to her nurturing work as a paramedic – alongside the brutality of her crimes, these stories create an image of Wafa that is paradoxical and incongruent to widespread notions about women's 'nature'. This inconsistency is made more obvious in those accounts which note that, although Wafa did not belong to a terrorist organisation, she did have three brothers who were active members of Fatah.<sup>34</sup> Though these accounts never go as far as fully blaming Wafa's brothers for her violence, they do successfully cast suspicion on the intentionality and wilfulness of her act, and thereby insinuate that her desperation (as an unmarriageable Palestinian woman) may have been exploited for the political purposes of the men in her life.

Conversely, there are other stories that claim that women's unfortunate circumstances are not only *manipulated* by men, but also *perpetuated* by them. Women, like Andalib Suleiman,<sup>35</sup> are portrayed as becoming the unsuspecting recruits of cruel men who specifically target them. In these accounts, women's participation in violence is ensured by male operatives who specifically seduce them, impregnate them, and later recruit them as suicide terrorists by declaring martyrdom a viable alternative to the humiliation and ostracism that awaits women who become pregnant outside of marriage; a methodical process that Dershowitz offensively refers to as "terrorist abortions".<sup>36</sup> In these narratives women become mere pawns of men's violence – 'human bombs' that are essential but expendable.<sup>37</sup> Men, on the other hand, become the self-aware agents of violence who are the only ones capable of politically-motivated acts of their own volition.

Invoking the idea of the partially 'guilty victim', several accounts purport that Palestinian women's exploitation by men is facilitated by women's natural proclivities for emotionality and a desire for male affection and belonging. According to these narratives women enlist in terrorist organisations to seek out relationships with men in a society where consorting between the sexes is typically impermissible.<sup>38</sup> Emphasis of women's natural inclinations also permeate those accounts that claim that Palestinian women engage in terrorism because it is a male-dictated form of atonement for women's sexual indiscretions,<sup>39</sup> or because their culture designates it as a honourable way to seek forgiveness for permitting their sexuality to 'run wild'.<sup>40</sup>

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<sup>33</sup> Dr. Tzoreff confirms the 'reasons' why simply picking up and leaving is not an option for these women. See, Victor *supra* note 25, p 47.

<sup>34</sup> BBC News (January 30, 2002), "Female Bombers Mother Speaks Out", *BBC World News*, <[http://news.bbc.co.uk/1/hi/world/middle\\_east/1791800.stm](http://news.bbc.co.uk/1/hi/world/middle_east/1791800.stm)> accessed on 7 August 2009.

<sup>35</sup> As in the case of Andalib Suleiman. See, "The Involvement of Women in Suicide Bombing Attacks" (2004), *Intelligence and Terrorism Information Centre of the CSS*, <[www.terrorism-info.org.il/malam\\_multimedia/html/final/eng/sib/6\\_04/women.htm](http://www.terrorism-info.org.il/malam_multimedia/html/final/eng/sib/6_04/women.htm)> accessed on 26 July 2009.

<sup>36</sup> Alan M. Dershowitz (2003), *The Case for Israel*, New Jersey: John Wiley and Sons, p 131

<sup>37</sup> Debra D. Zedalis (2004), *Female Suicide Bombers*, Hawaii: University Press of the Pacific, p 16.

<sup>38</sup> Anat Berko (2007), *The Path to Paradise: The Inner World of Suicide Bombers and their Dispatchers*, Elizabeth Yuval Trans., USA: Praegar Security International, p 4-5.

<sup>39</sup> Such as the case of Reem al-Riyashi. See, Berko, *ibid.*, 1-2; Caron E. Gentry (2009), "Twisted Maternalism", 11: 2 *Int'l Fem. J. of Politics*, p 246.

<sup>40</sup> Berko *supra* note 38, p 2.

These narratives imply that violence is an inevitable consequence of a woman failing to conform to her prescribed gender norms.

When little association can be made between a woman's violence and the men in her life, various narratives draw attention to the likelihood that women are driven to violent behaviours by their desire for self-empowerment in a society that has traditionally oppressed them. In this way, their violence becomes symbolic of their overall resistance to subjugation. Occasionally these conclusions are drawn from the statements of women terrorists themselves. However, in some instances it is extremely clear that there may be a discrepancy between what these women actually claim and what these accounts and reports *want* them to claim. For instance, in a well-publicised statement by Hamas operative, Leila Khaled, she declares that:

*Violence was a way of levelling the patriarchal society through revolutionary zeal – the woman would demonstrate that their commitment was no less than those of their brothers, sons or husbands. Strategically women [terrorists] are able to gain access to areas where men had greater difficulty because the other side assumed that the women were second-class citizens in their own society – dumb, illiterate perhaps, and incapable of planning an operation.*<sup>41</sup> [Emphasis added]

From the above statement it is quite evident that self-empowerment was not Khaled's primary reason for pursuing violence. She makes this very clear in the three words that are barely given a second glance in the article in which her statement is reprinted, "through revolutionary zeal". Khaled's violence was, first and foremost, a product of her political aspirations for 'revolution' – to incite political change - the success of which was possible because men did not expect women to be capable of operationalising a mission of that calibre. Thus, in her mind, it was the *success* of her politically motivated operation that 'levelled the patriarchal society'.

The sexualisation of women – the transformation of women from individuals to sexual objects – also becomes a prominent aspect of many narratives about women suicide terrorists in Palestine. A disproportionate level of emphasis is devoted to deconstructing and evaluating every aspect of a violent woman's physical appearance; aspects which are, at times, considered more important than her "ideas, policies and position".<sup>42</sup> These accounts luridly comment on the shape of the women's bodies, the colour of their hair, their manner of dress, and whether they would be considered 'pretty' by common standards.<sup>43</sup> As "beautiful female victims [...] often win [...] sympathies more easily than others",<sup>44</sup> presenting these women as attractive was crucial to the narratives' overall construction of women as fragile and incapable of instigating acts of brutality.

### **3.3 Providing the Context: Women Members of the Rote Armee Fraktion**

The brainchild of Ulrike Meinhof, Andreas Baader and Gudrun Ensslin, the *Rote Armee Fraktion*, began as a pacifist organisation aimed at protesting the American involvement in Vietnam (1968). However, soon after its inception, terrorism became the primary instrument of resistance against the allegedly exploitive liberal, democratic, capitalist order, both in Germany and beyond.<sup>45</sup> At its zenith, the RAF

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<sup>41</sup> Mia Bloom (2005), "Mother, Daughter, Sister, Bomber", 61:6 *Bulletin of the Atomic Scientists*, p 57.

<sup>42</sup> Brigitte L. Nacos (2005), "The Portrayal of Female Terrorists in the Media: Similar Framing Patterns in the News Coverage of Women in Politics and Terrorism", 28 *Studies in Conflict and Terrorism*, p 438-41.

<sup>43</sup> Claudia Brunner (2007), "Occidentalism Meets the Female Suicide Bomber: A Critical Reflection on Recent Terrorism Debates: A Review Essay", 32:4 *Signs*, p 959; also see, Nacos, *ibid*, p 435.

<sup>44</sup> Elias, *supra* note 17, p 16.

<sup>45</sup> Gerd Koenen (2008), "Armed Innocence or 'Hitler's Children' Revisited", in Gerrit-Jan Berendse and Ingo Cornils eds., *Baader-Meinhof Returns: History and Cultural memory of German Left-Wing Terrorism*, Amsterdam: Rodopi, p 23-40; also see, David J. Whitaker ed. (2003), *The Terrorism Reader Second Edition*, New York: Routledge., p 195-206.

boasted a 40% female membership rate and participated in some of the most heinous acts of kidnapping, vandalism and murder.<sup>46</sup> After being apprehended in 1972, first Meinhof, and later Ensslin were found hanged in their cells.<sup>47</sup> Although ultimately ruled suicides, some members of the RAF have always maintained that the German government was responsible for the deaths of both women.<sup>48</sup>

### **3.4 Dominant Narratives about the Women Members of the RAF**

Even in describing women's involvement in violence in a society that does not necessarily possess an oppressive culture, and seems to espouse democratic and liberal ideals, prevailing narratives continue to explain women's violence by resorting to women's shared experiences of oppression and subjugation. In accounts about the Rote Armee Fraktion, violent women are described as victims of patriarchy, their own feminine nature, and suspected psychological and neurological abnormalities, all of which are described as factors that compel their resort to violence.

Pursuit of violence as a method of self-empowerment becomes a potent theme permeating many reports and articles on women members of the RAF. Frequently these narratives criticize women's violence as "excessive" - the measure of 'excessive' determined through a comparison with men's more 'temperate' violence.<sup>49</sup> Sometimes, the perceived disproportionate level of ruthlessness of female RAF members is described as being demonstrative of a woman's need to compensate for her femininity.<sup>50</sup> Such narratives suggest that women may be coerced into violence by a patriarchal system that erects men as the 'ideal', and therefore makes it necessary that women mimic men to empower themselves<sup>51</sup> and be considered men's 'equals'.

Yet in other stories, women RAF members are represented as slaves of their passions and emotions, with their decision to enrol in the organisation portrayed as being entirely for 'the sake of love'.<sup>52</sup> Women featured in these narratives are allegedly lured into violent organisations because their male intimate partners are active members.<sup>53</sup> More interestingly, in other cases, women's violence is understood as having stemmed from their personal need to come to terms with the end of a past relationship. This became a central premise of those accounts that drew parallels between Gudrun Ensslin's involvement in the RAF, and her relationship with former lover Bernward Vesper.<sup>54</sup>

Women members of the RAF were also perceived as having been drawn into violence by instances of extreme emotional distress, further aggravated by women's

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<sup>46</sup> Bernard A. Cook (2006), *Women and War: A Historical Encyclopaedia from Antiquity to the Present, Volume 1*, California: ABC-CLIO, p 485.

<sup>47</sup> Sarah Colvin (2008), "Ulrike Marie Meinhof as Woman and Terrorist: Cultural Discourses of Violence and Virtue", in Gerrit-Jan Berendse and Ingo Cornils eds., *Baader-Meinhof Returns: History and Cultural memory of German Left-Wing Terrorism*, Amsterdam: Rodopi, p 84.

<sup>48</sup> Jeremy Varon (2004), *Bringing the War Home: The Weather Underground, the Red Army Faction, and Revolutionary Violence in the Sixties and Seventies*, London: University of California Press, p 99-100.

<sup>49</sup> Linda Grant de Pauw (1998), *Battle Cries and Lullabies: Women in War from Prehistory to the Present*, Norman: University of Oklahoma Press, p 287; also see, Carole Garrison, (2006), "Sirens of Death: Role of Women in Terrorism Past, Present and Future", 34 *Journal of International Justice and Security*, p 333.

<sup>50</sup> Paige Eager (2008), *From Freedom Fighters to Terrorist: Women and Political Violence*, USA: Ashgate Publish., p 4.

<sup>51</sup> Mia Bloom, *supra* note 28, p 143.

<sup>52</sup> Nacos, *supra* note 42, p 440.

<sup>53</sup> The case of Petra Schlem. See, Cook *supra* note 46, p 486; also see, Nacos, *supra* note 42, p 441.

<sup>54</sup> Implied by Jillian Becker when she suggested that Ensslin's involvement in the RAF could be attributed to her former relationship with Vesper, who belonged to the family of possible Nazi-sympathisers. Becker's hypothesis insinuates that Ensslin enlisted in the RAF (on organisation that vehemently condemned Nazi policies) because she subconsciously associated the Nazis with her former lover. Hence, by participating in a resistance against Nazi ideologies and principles Ensslin could finally come to terms with the dissolution of her intimate and sexual relationship with her former lover. Berendse, Gerrit-Jan and Ingo Cornils eds., (2004), *Baader-Meinhof Returns: History and Cultural Memory of German Left-Wing Terrorism*, Amsterdam: Rodopi, p 11.

overtly emotive nature. In some cases this was attributed to women's inability to engage in behaviours that are considered to be part of women's nature (i.e. motherhood). This was exemplified by the oral contraception theory once made public to explain the violent behaviours of female RAF members.<sup>55</sup> Other times women's violence was imputed to past traumatic experiences that induced feelings of alienation<sup>56</sup> or, in Meinhof's case, left these women suffering from low self-esteem.<sup>57</sup> In both instances, the argument being made by these narratives was that women were driven to violence by either emotional or psychological irregularities.

A particularly noteworthy narrative that materialised during Meinhof's trial attributed her violence to brain damage that she may have sustained during a routine procedure several years prior to her involvement in terrorist activity. In order to verify this theory, several experiments were conducted on Meinhof's brain post-mortem. An extremely insidious aspect of the verification process was that Meinhof's results were compared to the brain of a known serial killer,<sup>58</sup> leading one to assume that her motivations for engaging in violence were considered to be equivalent to those that prompted a serial killer to behave violently.<sup>59</sup>

#### **4. Common Social Perceptions: Narratives of Women's Genocidal Violence**

Following the format of the preceding chapter, the current one will undertake an examination of the most dominant narratives that discuss and interpret women's genocidal violence. Two case studies will be the objects of inquiry in this section: the violence of genocidaires Biljana Plavšić and that of Pauline Nyiramasuhuko.

##### **4.1 Understanding the Culprit: Biljana Plavšić and the Conflict in the Balkans**

The Balkan crisis reached its zenith in 1992 when Bosnian demands for secession from the former Yugoslavia drove Serbian forces to occupy the territory and instigate a campaign of genocide aimed at quashing the secessionist movement. Torture, murder and rape became prominent features of the Bosnian wartime experience. Rape, in particular, was employed to such a magnitude that it was legally documented as a deliberate and intentional strategy used by the Serbian State in order to bring about the social destruction of the Muslim population of Bosnia (Bosniaks).<sup>60</sup>

At the time of the atrocities, Biljana Plavšić was the 'hard-line deputy' to Serbian leader, and indicted genocidaires, Radovan Karadžić. For her participation in the conflict, Plavšić was indicted by the *International Criminal Tribunal for the Former Yugoslavia* (ICTY)<sup>61</sup> on charges of genocide, crimes against humanity and war

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<sup>55</sup> The violence of women RAF members was described as having arisen from their use of oral contraception, which made it impossible for them to exercise their 'natural' and instinctual roles as mothers, thereby making them more prone to engage in violent behaviours. The theory was later abandoned because it was found that most women members did, in fact, have children, thereby invalidating the central thesis of this argument. See, Colvin, *supra* note 47, p 87

<sup>56</sup> Toles Patkin, *supra* note 10, p 80.

<sup>57</sup> In Pearlstein's opinion this may have been the reason for Meinhof's resort to terrorism. See, Richard Merrill Pearlstein (1991), *The Mind of the Political Terrorist*, Wilmington: Scholarly Resources Inc., p 7, 104.

<sup>58</sup> Colvin, *supra* note 47, p 84-5.

<sup>59</sup> Colvin, *supra* note 47, p 84-5.

<sup>60</sup> For a more detailed and thorough historiography of the Balkan Crisis, see Deborah L. Ungar (1998), "Tadić War Crimes Trial: The First Criminal Conviction Since Nuremberg Exposes the Need for a Permanent War Crimes Tribunal", 20 *Whittier Law Review*, p 678-85.

<sup>61</sup> The ICTY is an ad hoc criminal tribunal established by the international community and mandated by the Security Council of the UN. Its primary objective is to bring to justice those individuals that were involved in perpetrating and facilitating the genocide and other war crimes that took place during the conflict in the Balkans, but an important secondary aim of the tribunal is also to provide a platform upon which victims are able to "voice the horrors they witnessed and experienced". See, "About the ICTY" (n.d.), *UN ICTY Website*, <<http://www.icty.org/> sections /AbouttheICTY> accessed on 1 September 2009.

crimes,<sup>62</sup> but was eventually only charged and convicted for committing crimes against humanity.<sup>63</sup>

#### 4.2 Dominant Narratives about Biljana Plavšić

Inspecting the various stories in relation to the violence of Biljana Plavšić reveals that the common perception amongst most scholars, media experts and authors is that Plavšić's brutality could predominantly be attributed two things; first, to the men in Serbian politics; and second, to Plavšić's unsound 'state of mind'.

In many reports about her violence, Plavšić is regularly portrayed as an innocuous and naïve woman, caught up in a 'man's game' (i.e. politics). Frequently, this is achieved by emphasising her status as a 'moderate' within the international community, and focusing on the centrality of her role in the overall implementation of the Dayton Agreement that helped Bosnia make the shift from conflict to peace.<sup>64</sup> The narratives highlight Plavšić's femininity by portraying her as a pacifist who genuinely wanted to end the conflict in the Balkans. Though this was certainly a description of her that was severely contested by many survivors of the crisis,<sup>65</sup> by presenting her as cooperative and peaceful these narratives succeeded in constructing an image of Plavšić that gave the impression that she was a woman who was unsuspectingly exploited by, first, her male colleagues, and later by the international criminal tribunal when she was indicted for crimes against humanity, genocide and war crimes.<sup>66</sup>

According to these narratives, Plavšić's male colleagues were the primary 'movers and shakers' within the region, and she, only nominated to political office because she was thought to be easily manipulated.<sup>67</sup> Plavšić is portrayed as almost pitiable, misled into mistaking men's deception for camaraderie, and her political success as symbolic of her entry into the 'boys club'.<sup>68</sup> This is an idea that Plavšić allegedly internalises in those accounts that either claim that she sometimes referred to herself as 'a man',<sup>69</sup> or those that report on her vehement refusal to testify against any of her male colleagues.<sup>70</sup> Furthermore, in many narratives that describe Plavšić's reaction to the ICTY indictments, she is depicted as having 'sacrificed herself' to an international tribunal that used legal pressure to compel her to testify against indicted men.<sup>71</sup> In this way, Plavšić is presented as 'doubly' victimised –

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<sup>62</sup> *Prosecutor v. Plavšić* (2000), ICTY, Sentencing Judgment, Case No.IT 00-39&40/1.

<sup>63</sup> She later recanted on her 'confession' of crimes, claiming that her decision to plead guilty was largely opportunistic. See, Daniel Uggelberg Goldberg (January 26, 2009), "Bosnian War Criminal: 'I Did Nothing Wrong'", *The Local: Sweden's News in English*. <[www.thelocal.se/17162/20090126/](http://www.thelocal.se/17162/20090126/)> accessed on 12 July 2009. For a more thorough and in-depth history of the conflict in Bosnia see, Misha Glenny (1992), *The Fall of Yugoslavia: The Third Balkan War*, London: Penguin.

<sup>64</sup> Marcus Tanner (June 29, 1997), "Foreign Office to Welcome Serbian 'Nazi'", *The Independent*, <[www.independent.co.uk/news/world/foreign-office-to-welcome-serbian-nazi-1258627.html](http://www.independent.co.uk/news/world/foreign-office-to-welcome-serbian-nazi-1258627.html)> 27 June 2009.

<sup>65</sup> Plavšić was frequently cited as being at odds with Karadžić, a political colleague and collaborator in the Bosnian Genocide, whom she frequently referred to as a 'weak-kneed' moderate. See, Tanner, *ibid*.

<sup>66</sup> Milkica Milojević (January 12, 2001), "Biljana Plavšić in the Hague", *Alternativna informativna mreža (AIM Press)*. <<http://www.aimpress.ch/dyn/trae/archive/data/200101/10112-002-trae-sar.htm>> accessed 17 August 2009. Also see, Slavenka Drakulić (2004), *They Would Never Hurt a Fly: War Criminals on Trial at the Hague*, London: Abacus, p 158.

<sup>67</sup> Milojević, *ibid*; also see, Drakulić *ibid*.

<sup>68</sup> Illustrated by the fact that Plavšić refused to collaborate with the tribunal to testify against other male colleagues being indicted; an act of 'solidarity' among the 'boys'. See, Anes Alić (2003), "The Hague: Iron Lady Behind Bars", *Transitions Online*, <[www.ceeol.com](http://www.ceeol.com)> accessed on 7 August 2009; also see, Drakulić also alludes to this idea when she describes the reasons that may have led Plavšić to pursue politics in the first place. See, Drakulić *supra* note 66, p 158-160.

<sup>69</sup> Joshua Hammer (January 22, 2001), "The 'Empress' Deposed: The Indictment of Biljana Plavšić for Genocide Ratchets up the Pressure on her Cronies. Whose Next?", *News Week Online*, <[www.newsweek.com/id/153711](http://www.newsweek.com/id/153711)> accessed on 22 July 2009.

<sup>70</sup> "The Hague Tribunal and Balkan Reconciliation No 332/333" (2006), *Institute for War and Peace Reporting*, p 6 <[www.globalpolicy.org/component/content/article/163-general/29368.pdf](http://www.globalpolicy.org/component/content/article/163-general/29368.pdf)> accessed on 30 August 2009; also see, Ian Black (February 28, 2003), "Ex-President of Bosnian Serbs Jailed", *The Guardian Online*, <[www.guardian.co.uk/world/2003/feb/28/warcrimes.ianblack](http://www.guardian.co.uk/world/2003/feb/28/warcrimes.ianblack)> accessed on 22 July 2009.

<sup>71</sup> Milojević, *supra* note 66; also see, Drakulić, *supra* note 66, p 158; also see, Paul Watson (January 11, 2001), "Bosnian Serb Charged with War Crimes", *Los Angeles Times*, <<http://articles.latimes.com/2001/jan/11/news/mn-11034>> accessed on 7 August 2009.

once by the men that implicitly 'coerced' her into violence, and second by the international community that used her as a scapegoat for the crimes of men.

However, in another set of stories, Plavšić's state of mind becomes the primary reason she is said to have engaged in violence. This is typically achieved by emphasising those behaviours that fail to correspond to the ideals we typically associate with 'normal' women, and by interpreting this failure as 'proof' of her unsound state of mind.

Discussions relating to Plavšić's scandalous relationship with warlord Željko Ražnjatović "Arkan" are prevalent in most media reports about her role in the Bosnian genocide. Several articles and periodicals have embedded within their commentaries some mention of one exceptionally notorious incident where Plavšić steps over the body of a slain Bosniak to plant a kiss on Arkan's cheek.<sup>72</sup> This particular display of affection purportedly occurred, after she witnesses Arkan's "grisly handiwork" in the town of Bijeljina, amidst the slaughter of civilians.<sup>73</sup> These narratives insinuate that Plavšić's attraction to the murderous warlord hinged on an errant sexuality that somehow found brutality attractive. Moreover, some media reports also claim that after kissing Arkan's cheek she uttered the words "my child" into his ear.<sup>74</sup> In contrasting her sexuality alongside her capacity for motherhood, these narratives create an altogether iconic representation of Plavšić as one who forges a relationship with a brutal murderer that teeters on the brink of being incestual.<sup>75</sup> Such accounts imply that Plavšić's genocidal violence may have been a symptom of an underlying psychological ailment (substantiated by her overtly deviant sexuality) – and give the impression that, "female sexuality at its worst is violent and brutal".<sup>76</sup>

#### **4.3 Understanding the Culprit: Pauline Nyiramashuko and the Rwandan Crisis**

After years of hostility mounting between the two primary clans present in Rwanda, the Hutus and the Tutsis, the Rwandan conflict peaked in 1994 after the Hutu interim government claimed that the Tutsi-dominated RPF party was responsible for shooting down the plane of the Rwandan President, Juvénal Habyarimana. Between April 7 and July 4 of 1994, guerrilla forces made-up of mostly civilians, including women and children, slaughtered almost one million Tutsis and Hutu moderates.<sup>77</sup>

During the hostilities, Pauline Nyiramashuko, a Hutu, was appointed as the Minister of Family and Women's Affairs. It is claimed that she was involved in instigating some of the most heinous acts of rape and murder against Tutsi civilians (the majority of which were women) In addition to being indicted by the *International Criminal Tribunal for Rwanda (ICTR)*,<sup>78</sup> for crimes against humanity and genocide,

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<sup>72</sup> Andrew Gumbel (July 31, 1997), "West Gives its Tacit Support to Bosnian 'Traitor' Plavšić", *The Independent*, <[www.independent.co.uk/news/world/west-gives-its-tacit-support-to-bosnian-traitor-plavsic-1253408.html](http://www.independent.co.uk/news/world/west-gives-its-tacit-support-to-bosnian-traitor-plavsic-1253408.html)> accessed on 18 July 2009; also see, Paul Watson *ibid*; also see, Goldberg, *supra* note 63.

<sup>73</sup> Tanner, *supra* note 64.

<sup>74</sup> Emir Suljagić (October 17, 2003), "Kisses as Bosnian War Kicked Off", *Institute for War & Peace Reporting*, <[www.iwpr.net/index.php?apc\\_state=hen&s=o&q=p=tri&l=EN&s=f&q=163907](http://www.iwpr.net/index.php?apc_state=hen&s=o&q=p=tri&l=EN&s=f&q=163907)> accessed on 14 July 2009.

<sup>75</sup> Laura Sjoberg and Caron E. Gentry (2007), *Mothers, Monsters, Whores: Women's Violence in Global Politics*, London: Zed Books, p 156.

<sup>76</sup> Linda Sjoberg (n.d.), "Women and the Genocidal Rape of Women", *Virginia Tech Department of History*, p 4, <[www.history.vt.edu/Ewing/Sjoberg\\_GRIST\\_Paper.pdf](http://www.history.vt.edu/Ewing/Sjoberg_GRIST_Paper.pdf)> accessed 14 July 2009.

<sup>77</sup> A more detailed and comprehensive history of the Rwandan crisis see, Gérard Prunier (1995), *The Rwandan Crisis, 1959-1994: History of a Genocide*, London: C Hurst & Co Publishers Ltd.

<sup>78</sup> The ICTR is an ad hoc tribunal established by a UN Security Council mandate. Its primary purpose is to ensure that all those responsible for committing international crimes during the course of the conflict in Rwanda are brought to justice. However, in addition, the tribunal is also concerned with facilitating the process of reconciliation and maintaining peace in the region. See, "General Information" (n.d.), *International Criminal Tribunal For Rwanda Website*, <<http://www.ictor.org/default.htm>> 1 September 2009.

Nyiramasuhuko was also the first woman to be tried and convicted of genocidal rape for inciting and encouraging men under her command to brutally rape Hutu women.<sup>79</sup> Allegedly, one of the most horrifying examples of her depravity was that Nyiramasuhuko frequently encouraged her own son to commit acts of violence, and regularly persuaded him to rape and kill the women and children of villages they attacked.<sup>80</sup>

#### **4.4 Dominant Narratives about Pauline Nyiramasuhuko**

Perhaps the most prevalent image we get of Pauline Nyiramasuhuko from the assorted accounts written about her violence is that she was a sexually deviant and psychologically unbalanced woman. A series of narratives claim that Nyiramasuhuko frequently commanded the Interahamwe to rape Tutsi women before slaughtering them; ordering the rebel fighters to, especially target those young women who were “too proud of themselves”.<sup>81</sup> These narratives assemble an image of Nyiramasuhuko’s brutality that seems to cast doubt on the political nature of her violence. They achieve this by insinuating that if she was, indeed, motivated by her political objectives for a more ‘ethnically pure’ and therefore, in the minds of many Hutus, a more just Rwandan society,<sup>82</sup> she would not have ordered the women to be raped at all, but only killed. Thus, Nyiramasuhuko’s incitement of rape becomes auxiliary to the actual political goal of annihilation. In this way, her violence is portrayed as the work of someone who enjoyed degradation and torture.<sup>83</sup> By casting her as a sadist, these narratives succeed in portraying brutality as an artefact of psychological pathology.

Other stories that have surfaced about Nyiramasuhuko’s violence seem to suggest that she may have effectively been coerced into violence by a traditionally patriarchal system that required her to adopt a level of brutality and ruthlessness – equal to or exceeding that of men (hypermasculinity) – as a pre-requisite for entry and participation in the traditionally male dominated public/political sphere (i.e. Rwandan politics).<sup>84</sup> Nyiramasuhuko’s desire to ‘masculinise’ herself is confirmed by making use of witness accounts that claim that she swapped her colourful, feminine garb for army fatigues and a machine gun,<sup>85</sup> and by frequently mentioning her decision to transgress her role as Minister for the Advancement of Women, opting instead to embrace the role of genocidaire.<sup>86</sup>

According to several accounts, Nyiramasuhuko’s violence may also have been provoked by her personal feelings of inadequacy and an unnatural proclivity for sexual competition. Reports concerning the Rwandan genocide describe

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<sup>79</sup> Genocidal rape can be described as rape that is intended to destroy the group being targeted in whole or in part. See, *UN Convention on the Prevention and Punishment of Genocide*, *supra* note 12, Art.2. See, *Prosecutor v. Pauline Nyiramasuhuko and Shalom Ntahobali* (1997), International Criminal Tribunal for Rwanda, Trial Judgment, Case No. ICTR-97-21-T.

<sup>80</sup> Carrie Sperling (2005), “Mother of Atrocities: Pauline Nyiramasuhuko’s Role in the Rwandan Genocide”, 33 *Fordham Urban L. J.*, p 650.

<sup>81</sup> Though the arrogance of Tutsi women was a sentiment that was both popular and widespread throughout Rwandan society, certain accounts construe Nyiramasuhuko’s statements as if the idea were foreign and not pervasive at all. Peter Landesman (September 15, 2002), “A Woman’s Work”, *New York Times*, <<http://www.nytimes.com/2002/09/15/magazine/a-woman-s-work.html>> accessed on 3 September 2009.

<sup>82</sup> Rwandan society had been rife with civil unrest and political upheaval for many years prior to the crisis. Before the 1994 massacre, the Tutsi elites were known to oppress, terrorise and brutalise the Hutu agrarian class. See, Prunier, *supra* note 77, p 5-40; also see, Sperling *supra* note 80, p 640-2.

<sup>83</sup> Ansah describes this as ‘sadistic rape’ or ‘rape unto death’. See, Tawia Ansah (2004), “Genocide and the Eroticization of Death: Law, Violence and Moral Purity”, 14 *Southern California Interdisciplinary L. J.*, p 201.

<sup>84</sup> Landesman, *supra* note 81.

<sup>85</sup> Landesman, *supra* note 81.

<sup>86</sup> Bouwknegt (April 22, 2009), “Prosecutors Wrap Up Longest Rwanda Genocide Trial”, *Radio Nederland Wereldomroep Online*; also see, “Prosecution Claims Mother, Son Raped and Kill Tutsis” (April 21, 2009), *The Arusha Times Online*, <<http://static.rnw.nl/migratie/www.rnw.nl/internationaljustice/tribunals/ICTR/090422-rwanda-Nyiramasuhuko-redirected>> accessed on 3 September 2009.

Nyiramasuhuko's violence in a manner that suggests that she had a personal vendetta against Tutsi women because she thought Hutu men found them more attractive and alluring.<sup>87</sup> The explanation is supported by recurrent mention of Nyiramasuhuko's demand for the rape of Tutsi women who were "too proud of themselves",<sup>88</sup> and her insistence that the militia "kill the old" and "rape the virgins"<sup>89</sup> – the implication being that she targeted virgins because they are often perceived as being more appealing to men.

By focusing on her role as Minister for the Family and Advancement of Women, and contrasting that with the extreme and horrific details of her incitement of sexual violence, these narratives construct Nyiramasuhuko as an abomination, a woman who possesses the capacity for both compassion (exemplified by her role as Minister), *and* brutality (illustrated by the descriptions of her crimes). By pathologising Nyiramasuhuko, these accounts reify universal feminine stereotypes and reinforce the common dyadic 'victim/perpetrator' model of political violence that essentially claims that individuals can be either victims, or perpetrators, but never both.

### **5. Women's Victim-Identity and Repercussions for Women's Political Violence**

Two important presumptions are generally implicit in all investigations of women's violence. First, it is automatically assumed that women's violence is different than men's. If it were not, there would be no reason to study the phenomenon separately – women's capacity for violence would be considered identical to men's capacity for violence. Thus no independent and distinct analysis of one, over the other, would be necessary. Second, there is an implied presumption that women's violence is atypical; for if it were not, there would be no need to isolate it as an object for further study because it would be within the parameters of acceptable and expected conduct for women. Nevertheless, putting these two presumptions aside, if we look strictly at the narratives themselves, how they are constructed, what they say, and the underlying assumptions that they make, it is easily discernable that these stories constantly and consistently draw upon gender norms in their explanations of violent women and the brutality they perpetrate.

In order to explain the violence of Wafa Idris, most narratives refer to her nurturing work as a paramedic to confirm her femininity. In so doing, her violence becomes classified as irregular (because natural women are nurturers, but not violent). This makes it possible for these narratives to draw on other potential motives for her brutality – namely her brothers, and her oppressive culture. Similarly, narratives that discussed the violence of Biljana Plavšić repeatedly mention her integral role in implementing the Dayton Agreement, an undertaking that confirms her naturally pacific and non-violent nature as a woman, and thereby rendering her violence atypical. In Plavšić's case, the narratives made sense of her brutality by attributing it to her male colleagues in the government.

The problem that arises, however, is that in the process of making sense of these particular instances of women's violent behaviours, these narratives generate a whole set of assumptions about women's political violence in general. First, because women's violence is construed as involuntary, her acts fail to acquire the same level of agency as men's acts of violence. Second, since women's brutality is attributed to factors beyond her control (i.e. the men in her life, her society, her psychopathology), her violent tendencies are typically considered as being inspired by non-political

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<sup>87</sup> Peter Landesman (September 21, 2002), "The Minister of Rape", *Toronto Star*, p K1.

<sup>88</sup> Ansah, *supra* note 83, p 199.

<sup>89</sup> Sperling *supra* note 80, p 650.



factors (i.e. for the 'sake of love' or because of sexual competition). Third, as already noted, because women's violence is interpreted by relying on feminine gender stereotypes, female brutality becomes categorised as irregular and aberrant.

A further implication of the way in which women's violence is envisaged is that brutal women are frequently portrayed as being powerless to control their violent actions, and thus somewhat absolved of the degree of responsibility that normally attaches to a wilful and intentional act of violence. In situations where women act violently because of an alleged psychological abnormality, their violence becomes the product of an innate and unavoidable biological defect. Likewise, when women behave violently in order to empower themselves, the blame for their desire to want to do so shifts to a patriarchal social system that has historically marginalised women and erected masculinity as the 'ideal'. In each situation, women become characterised as helpless and defenceless.

Going back to the second chapter of this article and the ideas associated with recognising victimhood, casting women's violence as less blameworthy, lacking agency, and being the product of women's powerlessness, certainly appears to qualify women as victims – at least in the context of political violence. Consequently, it is accurate to make the claim that we continue to, perhaps subconsciously, perceive women as victims even in those instances where they are clearly the perpetrators of violence. The implications of this recognition of victimhood, however, become far more pronounced and amplified when we take a look at how we respond to political violence at the international level. In these instances, continuing to perceive women as possessors of a persistent status of victimhood has profound consequences for the human rights protections of both violent women, as well as a number of other actors in global politics who might occupy a space in between and beyond the very absolute categories of 'victim' and 'perpetrator'.

## **6. Methods of Violence-Management and the Protection Of Human Rights**

This section of the article assesses how the gendering of violence influences the legal management of political violence at the international level. It limits its examination to the two types of political violence that have been previously discussed: terrorism and genocidal violence, and bases its investigation on three different aspects of international public life: international criminal justice, international peace and reconciliation, and international security.

It is undeniable that the current ways in which we respond to violence at the international level illustrates an unqualified acceptance of women's victim-identity. In the past this acceptance has affected judicial recognition of the possibility that violent women can be fully responsible for their acts of brutality (and should therefore be punished accordingly). Moreover, additional problems also begin to surface in those situations when women's victimhood is considered axiomatic, particularly in the context of gendered crimes. Nonetheless, this article does not confine its analysis to only the human rights implications of past methods of violence management, but delves a little deeper to look at what sorts of problems a 'women as victims' response will have on the future management of political violence, including the possibility that refusing to see women as political agents (or agents of violence), bars them from future peace processes within their communities, as well as poses problems for international security and the unfair targeting of all women.

### **6.1 International Criminal Justice**

Drawing on the discipline of international criminal justice (ICrimJ), this section investigates not only the legal inadequacies that plagued the international trial of Biljana Plavšić, but also draws attention to what sorts of jurisprudential victories the court's decision in *Nyiramasuhuko* represented. However, staying true to the actual discipline of ICrimJ,<sup>90</sup> this section of the paper does not merely highlight the juridical oversights and triumphs of the courts, but also considers the problems associated with the development of the positive law that governs certain crimes (i.e. gendered crimes), grounding both in the human rights implications that surface as a result. In this context then, the link that is identified is that gendering violence affects not only the courts' responses to such violence, but also the development of crimes in international law. Both, in turn, contribute to the victims' overall opinion of justice having been delivered (or not). In undertaking this inquiry, it is found that the law is very much entangled with social perception (in this case, those relating to gender) and impressions of social justice.

### 6.1.1 *The International Courts and the Prosecution of Violent Women*

Victimhood occurs along a continuum. This means that victims are not necessarily and categorically innocent, and, therefore, they can be considered at least partially, or at most largely (but never entirely), responsible for their commission of crimes.<sup>91</sup> Denying a perpetrator agency in their crime has tremendous influence on their degree of culpability and responsibility for such actions. With respect to handling women's participation in atrocity, denying women agency in their brutality has had two important consequences for legally managing their acts of violence. First, occasionally it has led to the courts all together rejecting women's blameworthiness for acts that have been attributed to them. And second, it has led the courts to mete out disproportionately lower sentences to women as compared to men perpetrators committing similar acts of violence. We can identify both consequences quite clearly in *Plavšić*.

Despite the fact that Plavšić's initial indictment specifically listed her as having been involved in "planning, instigating, ordering or committing [...] or aiding and abetting"<sup>92</sup> the commission of sexual violence against Bosniaks, this element of her crime received little attention during the prosecution and sentencing process. Although 'sexual violence' was subsumed under her overarching charge of persecution including cruel and inhumane treatment, Plavšić was never explicitly indicted for committing or facilitating rape in detention centres like the ones in Zvornik at the Ekonomija farm and the Čelopek camp.<sup>93</sup> Part of this can be attributed to the fact that the definition of sexual violence is quite ambiguous. However, there is also a strong possibility that the failure to consider the charge arose from widespread perception that women cannot be perpetrators of sexual violence, only its victims.

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<sup>90</sup> Roberts' maintains that ICrimJ not only includes international criminal law (including the institutions and mechanisms charged with its practice), but also includes the philosophical, historical and normative frameworks that underpin how the international community deals with international crime. Thus, its concerned with not only 'meting out justice', but also with victims' perceptions of justice having been served. In this respect, ICrimJ is an enterprise that encompasses both the institutionalised aspects of justice (i.e. courts, tribunals, etc), but also the less institutionalised components of justice – truth-telling, collective memory-making (the political functions of justice). See, Paul Roberts (2007), "Comparative Law for International Criminal Justice", in Esin Orucu and David Nelken eds., *Comparative Law: A Handbook*, Portland, USA: Hart Publishing, 339-365.

<sup>91</sup> If they were entirely responsible for their crimes, they would fail to be 'victims', in the general sense of the term.

<sup>92</sup> *Prosecutor v. Plavšić*, *supra* note 62, pp.21(c).

<sup>93</sup> Angela M. Banks (2005) "Sexual Violence and International Criminal Law: An Analysis of the *Ad Hoc* Tribunal's Jurisprudence & The International Criminal Court's Elements of Crime", *The Hague: Women's Initiatives for Gender Justice*, p 28, <<http://web.wm.edu/law/faculty/documents/banks-969-7375.pdf>>, accessed on 3 September 2009. It has also been argued that 'inhumane treatment' is a more ambiguous charge, and can have different meaning than a charge of rape. See, Julie Mertus and Olja Hocevar Van Wely (2004), "Women's Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina", *Women Waging Peace Policy Commission*, p 19, <[http://www.loc.gov/rr/frd/pdf-files/Soc\\_Psych\\_of\\_Terrorism.pdf](http://www.loc.gov/rr/frd/pdf-files/Soc_Psych_of_Terrorism.pdf)> accessed on 22 August 2009.

Additionally, failing to recognise women's agency in her violence, and continuing to perceive women as victims in political violence, also resulted in the courts dropping Plavšić's most egregious charges (those of genocide), despite her admission of guilt. As a consequence of both these oversights, Plavšić received a lesser sentence than other admittedly guilty men who had committed less severe crimes and occupied less powerful positions of authority.<sup>94</sup>

Commending Plavšić for her confession of guilt, the courts premised the severity of her sentence (or lack thereof) on the transformative potential of her admission of guilt.<sup>95</sup> However, despite the courts' emphasis on the need to see the tribunals' work as facilitating reconciliation through truth-telling and the acceptance of responsibility, the severity of sentences handed down to admittedly guilty *men* seem to cast serious suspicion on the court's proclaimed reasoning.<sup>96</sup> In other trials of the same calibre (i.e. *Kambanda*, *Babić*, and *Nikolić*) professions of guilt yielded life, thirteen years, and twenty-seven years of imprisonment, while Plavšić's admission of guilt yielded only eleven. Why was a contribution to reconciliation considered a mitigating factor in her sentencing, but not in the sentencing of other, less culpable male genocidaires?<sup>97</sup> Apart from the idea that Plavšić's gender (and not the guilty plea) may have been the primary mitigating factor, the trial chamber's decision also implies that men's admission of guilt is considered indicative of their status as wilful and rational agents, while Plavšić's (and by extension women's) is not. This inconsistency was particularly prominent in the court's analysis of the relationship between guilt and remorse, one in which gender becomes a crucial factor in the court's overall reasoning.

In *Kambanda* the tribunal's court maintained that remorse and admission of guilt are unrelated, and that the latter cannot automatically give rise to the former. As such they insisted that both guilt and remorse be considered separately during the prosecution/sentencing process.<sup>98</sup> However, in *Plavšić* the judges ruled against this claim, and insisted that mitigation for remorse was *connected* with mitigation arising from a guilty plea – suggesting that in her case (unlike in the cases of men who pled guilty), an admission of guilt was *inherently* linked to an experience of remorse.<sup>99</sup> Thus, in *Plavšić* the defendant's (and by extension, women's) confession of guilt

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<sup>94</sup> *Prosecutor v. Kambanda* (1998), ICTR, Trial Chamber Judgment and Sentence, Case No. ICTR 97-23-S; also see, *Prosecutor v. Babić* (2004), ICTY, Trial Judgment, Case No. IT-03-72-S; also see, Ralph Henham and Mark Drumbl (2005), "Plea Bargaining at the International Criminal Tribunal for the Former Yugoslavia", 16 *Criminal Law Forum*, p 52-8. The authors also mentioned that Babić's sentence was higher than what was recommended by the prosecution, while Plavšić's was much lower than the recommended 15 to 25 years by the prosecution. Furthermore, during the prosecution and sentencing of her offences, there was frequent mention of Plavšić's 'lesser' involvement in the crime (though it was often stated that she wholeheartedly supported it). Certainly her involvement in the crime could be considered of greater significance than that of those following her command (considering that their violence was entirely dependent on her complicity and her encouragement of such conduct) – yet, those that were merely carrying out the orders being prescribed were given far longer and more severe sentences than her (Nikolić and Babić). Also see, *Prosecutor v. Nikolić* (2003), ICTY, Trial Judgment, Case no. IT-02-60/1-S; also see, *Plavšić*, *supra* note 62, pp 13; The prosecution in *Plavšić*, and *Kambanda* have reiterated the fact that leadership positions should be considered 'aggravating factors' in the perpetration of crime, demonstrating that complicity in genocide (particularly complicity in the highest echelons of power) is generally perceived as extremely important to the degree of blameworthiness that attaches to the perpetrators of such crimes. See, *Plavšić*, *supra* note 62, pp 54-5. Also see, *Kambanda*, *ibid*, pp 35.

<sup>95</sup> Ralph Henham (2005), "The Ethics of Plea Bargaining in International Criminal Trials", 26 *Liver. L. Rvw*, p 214.

<sup>96</sup> This was particularly evident when comparing *Nikolić* and *Plavšić*, where both defendants' indictments for aiding and abetting rape were subsumed by an overall charge of persecution as a crime against humanity. In this case, one would rightfully expect that their sentences would be somewhat similar in range. Instead, Nikolić, who pled guilty to *all* his charges was given a sentence of twenty-seven years, while Plavšić (who pled guilty to only one of her charges) was given only eleven years. See, *Prosecutor v. Nikolić*, *supra* note 94, pp 65-117; also see, *Prosecutor v. Plavšić*, *supra* note 62.

<sup>97</sup> Less culpable in the sense that some of the men indicted (i.e. Babić) were charged with less serious crimes and were lower in rank, while others (like Nikolić) were charged with more isolated (rather than widespread) crimes. See, Henham and Drumbl, *supra* note 94, p 57; This was a critique that was also picked up by his defence during his appeal. Also see, *Prosecutor v. Babić* (2005), ICTY, Appeals Chamber, IT-03-72A, pp 27b.

<sup>98</sup> *Kambanda*, *supra* note 94, pp 52.

<sup>99</sup> Henham and Drumbl, *supra* note 94, p 59-60; see, "Case Information Sheet: Biljana Plavšić" (2003), *ICTY Website*, p 6, <[www.icty.org/x/cases/plavsic/cis/en/cis\\_plavsic.pdf](http://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic.pdf)> accessed on 2 August 2009.

became symbolic of her regret and remorse – an idea that is somewhat discredited by the many statements Plavšić has made following her indictment and prosecution.<sup>100</sup> The court, in this instance, considered femininity *intrinsically* linked to emotionality, in which case Plavšić's confession of guilt became symbolic of her overall 'feelings' of remorse.

In comparison, when looking at Nyiramasuhuko's judgment, we find that the notion of women's victim-identity also becomes an extremely important element during her prosecution. However, while the courts drew on women's victim-identity in Plavšić's trial, in Nyiramasuhuko's trial, the accused herself attempted to verify her innocence by appealing to this classification.<sup>101</sup>

The primary line of defence pursued by Nyiramasuhuko's attorneys rested on exploiting common gender stereotypes that essentially claimed that women were naturally inclined to peace. It was argued that her status as a 'mother' guaranteed, without a doubt, that Nyiramasuhuko could not have committed the crimes for which she was being indicted; maintaining that brutality was not in women's maternal *nature*, that women who were mothers could not be both the 'bearers of life', and its takers.<sup>102</sup> Nyiramasuhuko intended to capitalise on the common social perception (or misperception) that mothers are incapable of being murderers.<sup>103</sup> In a final attempt to prove her innocence, Nyiramasuhuko also appealed to her victim-identity as a woman by claiming that she was being used as a scapegoat for men's violence, and that she was essentially a victim of sexism and was targeted by men as a result of her position as a powerful and educated woman in Rwandan society.<sup>104</sup> Pauline Nyiramasuhuko's self identification as a 'victim' is illustrative of the fact that that it is an identity that is not only projected onto women by men, but also internalised and capitalised on by women themselves.

The fact that Nyiramasuhuko's entire defence relied on proving her innocence by appealing to an idealised gender model and widespread notions of what is not only acceptable conduct for women, but also *natural* conduct for women, says a great deal about just how thoroughly entrenched ideas about gender have become. It also confirms that women's victimhood has become both a very significant aspect of their identity, as well as an expected and accepted facet of femininity in general. It is a construction that pervades not only the private sphere, but invades political life and has a tremendous influence on the development of legal norms and conduct.

Trials conducted at the international tribunals serve two important functions. The first is not difficult to discern: they are meant to administer justice and put an end to the culture of impunity that prevails during episodes of conflict. In addition, however, tribunals also serve a second, political (societal) function.<sup>105</sup> Considered exercises in peace and reconciliation, the cases that filter through the tribunal courts are important for providing closure for the victims of violence; are necessary for developing a collective memory of individual experiences of atrocity; and are meant to deter future violence by discrediting the perpetrators and ending the culture of

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<sup>100</sup> Plavšić claims that she 'sacrificed herself' for the Serbian people. She also mentioned that she had been encouraged to accept the guilty plea because it would lead to the prosecution dropping her charges of genocide. Thus, her motivations appear to be more opportunistic than altruistic. See, Goldberg, *supra* note 63.

<sup>101</sup> This does not mean that Plavšić never appealed to her 'victim identity', because in the transcripts of the case it is certainly apparent that she did, however, in Nyiramasuhuko's case her victimhood was described as being an extension of her femininity, while in Plavšić's case she recognised her victimhood as linked to nationality (the Serbs as victims). See, *Prosecutor v Plavšić*, *supra* note 62, pp 51.

<sup>102</sup> Landesman, *supra* note 81; also see, Sperling, *supra* note 80, 651.

<sup>103</sup> Sjoberg and Gentry, *supra* note 75, p 165.

<sup>104</sup> Sperling, *supra* note 80, p 650.

<sup>105</sup> Rachel Kerr (2004), *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics and Diplomacy*, Oxford: OUP, p 2-3; also see, *Prosecutor v. Nikolić*, *supra* note 94, pp.120.

impunity that prevails during episodes of conflict.<sup>106</sup> For some, building a collective memory is crucial for creating a common post-conflict national identity and establishing social solidarity among citizens.<sup>107</sup> It is undeniable that the judgment in *Plavšić* failed on both accounts.

First, the disproportionate sentence that Plavšić received in comparison to other men having committed less serious crimes has had a profound effect on her victims' perceptions of justice. Furthermore, the leniency of her punishment could certainly be considered an affront to their sense of dignity, and certainly damaged the credibility of the tribunal in the eyes of those most harmed during the conflict.<sup>108</sup> Plavšić's sentence confirmed the widespread belief that the crisis was able to occur with relative impunity.<sup>109</sup> Second, failing to prosecute Plavšić for both genocide and war crimes charges has effectively created a gap in the historical (factual) record of those crimes – at least in terms of her involvement in them. The tribunal's decision to discount Plavšić's involvement in these crimes halted any hopes for internationalised forms of justice in which victims may be able communicate their experiences of war to build a shared memory of the crimes perpetrated against them.

Creation of a communal memory of atrocity, and the ability to voice one's experiences of the horrors of war, is an important aspect for the preservation of human rights because it helps to deter future conflict and the human rights violations that go along with it by creating a common notion of a shared national identity premised on the humanity (and thus equal right to citizenship) of all participants. Not only do these trials serve a therapeutic purpose for the victims, but they also help to build the foundations upon which parties to an ending conflict can build mutual respect for each other through the recognition of each other's place within the regional/national community. An enduring transition to peace is cultivated only by forging an improved relationship, where the 'victim' parties have the satisfaction of knowing that justice has been served, and where the 'victimisers' (to use a very inflexible dichotomy for the sake of clarity) are made to realise that future acts of violence and persecution will not go unnoticed and unpunished.

### 6.1.2 Defining, Identifying and Managing Gendered Crimes

Interpreting women's victimhood as axiomatic has been particularly problematic for defining and managing certain crimes that appear to affect only women, but in reality, also significantly affect men. At times, women have been recognised as "occupy[ing] a biologically determined victim status in sexual violence".<sup>110</sup> Though this has now been proven to be untrue (as recently women have been identified as perpetrators of such violence), contemporary methods of managing such violations suggest that we may still be holding on to this misconception. The concept of gendered crimes is a good example of where the

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<sup>106</sup> Jenia Iontcheva Turner (2008), "Defence Perspectives on Law and Politics in International Criminal Trials", 48:3 *Virginia J. of Int'l L.*, p 536-43.

<sup>107</sup> John D. Brewer (2006), "Memory, Truth and Victimhood in Post-Trauma Societies", in Gerard Delanty and Krishan Kumar eds., *The Sage Handbook of Nations and Nationalisms*, London: Sage Publications, p 216-8.

<sup>108</sup> Amra Kebo (2003), "Regional Report: Plavšić Sentence Divides Bosnia", *Inst. for War and Peace Reporting*, <[http://www.iwpr.net/?p=tri&s=f&o=166268&apc\\_state=henitri2003](http://www.iwpr.net/?p=tri&s=f&o=166268&apc_state=henitri2003)> accessed August 24 2009.

<sup>109</sup> Kebo, *ibid.* The need for sentencing to convey to all parties (victims and perpetrators alike) that "globally accepted laws and rules have to be obeyed by everybody" was an idea also iterated by the judges in *Nikolić* – illustrating the centrality of its role in sentencing procedures. Thus, the sentencing in *Plavšić* failed to, firstly, raise the 'legal awareness' of the perpetrator (that everyone is subject to the law), and secondly, failed in its aim to "foster the internalisation of these laws...in the minds of the general public". In this way, the courts also did not succeed in fulfilling another one of the primary objectives of sentencing – that of 'deterrence'. *Prosecutor v. Nikolić*, *supra* note 94, pp 133, 139.

<sup>110</sup> Schafer, *supra* note 19, p 20.

absolute acceptance of women's status as the victims of violence was incorporated into the legal definition of the crime, and ultimately had a significant impact on how the international system handled its commission.

Gendered crimes are those crimes that target specific individuals based on their actual or perceived gender. Including, among others, rape, sexual violence, domestic violence and sexual harassment, gendered crimes are typically misogynistic crimes that are usually perpetrated by men against women.<sup>111</sup> As such, the way in which certain gendered crimes, like rape, have been defined in international law veils the fact that these crimes can be, and are very much, part of men's wartime experiences. Furthermore, these established legal definitions have also made women's commission of gendered crimes against other women, legally impossible. For instance, rape has been legally defined as 'non-consensual sexual intercourse',<sup>112</sup> which meant that women (because of their anatomical limitations) could never be held legally or criminally liable for raping other women. It is irrefutable that such definitions fail to recognise the realities of war and conflict, and encompass the view that women's classification as victims is absolute in the context of sexual violence.

One of the problems that arise with these very ambiguous characterisations of gendered crimes is that, more often than not, the courts are extremely reluctant to push the parameters of, and reformulate, these very murky definitions. This was particularly evident in Plavšić's case and the ICTY's failure to charge Plavšić with sexual violence.<sup>113</sup> The way in which gendered crimes have historically been constructed and socially perceived has, in turn, had significant influence on the groups of people that can be legitimately held responsible for committing such crimes. Hence, if gendered crimes like genocidal rape are, "the most extreme site of women's marginalisation, a key threat to women's security, a communication of domination, and an integral part of the system ensuring the maintenance and subordination of women"<sup>114</sup> – how can we possibly make sense of women's perpetration of such crimes? If genocidal rape is really a form of gendered violence, then cases like Plavšić's and Nyiramasuhuko's would literally be instances of "gendered oppression [being] committed *by* the oppressed *on* the oppressed".<sup>115</sup> Seen from this angle, it is hardly surprising that the ICTY chose not to become entangled in reformulating the meaning and definition of sexual violence as a gendered crime and opted to disregard Plavšić's involvement in sexual violence, electing instead to indict her for violations that were more 'precise' and, therefore, easily verifiable and far less contentious.<sup>116</sup>

Comparatively, the ICTR's decision in *Nyiramasuhuko* has therefore been nothing short of groundbreaking. The recognition that women can be held legally

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<sup>111</sup> Miranda Alison (2007), "Wartime Sexual Violence, Women's Human Rights and Questions of Masculinity", 33 *Review of International Studies*, p 78.

<sup>112</sup> Sita Balthazar, (2006), "Gender Crimes and the International Criminal Tribunals", 10:1 *Gonzaga Journal of International Law*, p 45-6.

<sup>113</sup> Although Plavšić did not explicitly incite sexual violence against Bosnian Muslims detained or captured, the initial indictment listed her involvement as "planning, instigating, ordering or committing...or aiding and abetting" the commission of sexual violence against Bosniaks. See, *Prosecutor v. Plavšić*, *supra* note 62, pp 21(c). Plavšić was charged with persecution leading to crimes against humanity. The underlying acts of the charge included cruel and inhumane treatment. However, Plavšić was never charged with participating in rape, as Nyiramasuhuko was, nor was she charged explicitly or specifically for sexual violence.

<sup>114</sup> Sjoberg, *supra* note 75, p 3.

<sup>115</sup> Sjoberg, *supra* note 75, p 5.

<sup>116</sup> Ansah maintains that we use legal concepts to prevent ourselves from having to grapple with the ambiguities of the act itself, the act as a unique and singular event. The problem associated with this practice is that, for the benefit of legal expediency, all events that fail to conform to these very restricted boundaries of 'the legal definition', often get sidelined by lawyers in an attempt to indict perpetrators for the one crime that may 'stick', rather than making serious attempts to reformulate and reconstitute these very narrow legal definitions. See, Ansah, *supra* note 83, p 190-2.

culpable for rape against other women has profound significance for the human rights of both current and future victims of genocidal rape. Perhaps the most important of these is the fact that it has paved the way for greater awareness and recognition of wartime man-on-man sexual violence – an experience that appears to be extremely prevalent in contemporary wars, yet continues to be somewhat understudied.<sup>117</sup> Moreover, the ICTR's general move to reformulate the idea of rape from simply a violation that involves physical intercourse, to a definition which is more comprehensive and inclusive of practices like the use of inanimate objects for penetration, and the imposition of non-physical sexual behaviours (e.g. undressing in public when such behaviour is intolerable in the victim's own culture),<sup>118</sup> can be considered more appropriate for addressing the wartime experiences of both men and women.

This move towards recognising women's violence as representative of the human capacity for violence has, in the case of gendered crimes, led to a more comprehensive definition of genocidal rape, one that takes into account more fully the realities of war. Furthermore, the shift towards a broader definition can also be considered meaningful because it represents a move away from an unwavering acceptance of women's victim-identity in the context of violence, and perhaps, marks a turning point in the need to employ inflexible binary (men/women) gender categories to explain and respond to expressions of political violence. Indeed, the latter can be considered a victory for the women's rights movement with reference to future prospects for equal recognition for men and women, or even for the 'women's rights as human rights' movement in their endeavour to promote the "humanity" of women and to acquire acknowledgement of women's rights as a set of universal and inalienable 'human rights'.<sup>119</sup>

In spite of this progress, however, successful future prosecutions of women perpetrating genocidal rape or sexual violence may be impeded by feminist critics who have demonstrated a degree of ambivalence in response to this shift away from gendering crimes. They claim that reformulating wartime rape from its current status as a gendered crime to one in which both men and women can be considered both perpetrators and victims, fails to acknowledge women's differently situated position in patriarchal society.<sup>120</sup> In reality, however, rape carries with it a social stigma that can be considered injurious for all its victims, men and women. If violated women are emblematic of men's inability to protect their communities, then the violated bodies of men is a far more compelling symbol of men's powerlessness in the face of their enemies.

## 6.2 International Peace and Reconciliation

Perhaps the most important feature of political violence is that it is motivated by a 'political objective'. The general perception (extracted from the various

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<sup>117</sup> Sandesh Sivakumaran (2007) "Sexual Violence Against Men in Armed Conflict", 18:2 *EJIL*, pp 253-276; also see, Adam Jones (2002), "Gender and Genocide in Rwanda", 4:1 *J. of Genocide Research*, p 65-94; also see, Valerie Oosterveld (2005), "Prosecution of Gender-Based Crimes in International Law", in Dyan Mazurana et. als. eds., *Gender, Conflict and Peacekeeping*, p 70-1.

<sup>118</sup> *Prosecutor v. Akayesu* (1998), ICTR, Trial Judgment, Case No. ICTR-96-4-T. This more expansive definition was also found in later cases in the ICTY, particularly in *Kunarac*. See, *Prosecutor v. Kunarac* (2001), ICTY, Trial Judgment, Case No. IT-96-23.

<sup>119</sup> Charlotte Bunch (1990), "Women's Rights as Human Rights: Toward a Revision of Human Rights", 12 *Human Rights Quarterly*, p 486-98.

<sup>120</sup> Essentially that women's experience of rape that carries with it a "profound social stigma" that results in the "weakening of familial and social bonds", and may result in the further marginalisation and degradation of women by their communities and families. Susana Sácouto (2007), "Advances and Missed Opportunities in the International Prosecution of Gender-Based Crimes", 15 *Michigan State Journal of International Law*, p 150-1; also see, Karen Engle (2008), "Judging Sex in War", 106:6 *Michigan Law Review*, p 941-2.

narratives examined in chapter three and four) is that women cannot be considered legitimate agents of their own acts of political violence. In situations where they are merely the pawns of men's brutality, it is the men that become the 'formulators' of the underlying political objectives of the act. In instances where women's political violence is facilitated or motivated by their psychological abnormalities, they are generally seen as losing the capacity to make informed and rational decisions – and therefore incapable of devising the political aspirations underpinning such acts of violence. On these occasions women's violence is described as personally motivated and, often, unnatural. This poses many problems for the continued respect for women as reasonable political agents. Failing to see women as rational political actors presents some very significant challenges for women's engagement in peace and reconciliation initiatives and their access to greater decision-making power, both of which are regularly considered to be important post-conflict empowerment strategies for men and women residing in previously conflict-laden regions.

### 6.1.1 *Restricting Women from Peace Initiatives*

An essential element of post-conflict peace initiatives is the allocation of and access to power. On the surface, peace agreements have a human rights component because they frequently address concerns relating to minority rights and self-determination.<sup>121</sup> However, less noticeable are the rights-related opportunities that these agreements present for addressing structural inequalities, particularly those relating to gender. Despite the fact that many international instruments have emphasised the right of women to full and equal political participation in public life, including the *Beijing Platform for Action*,<sup>122</sup> and the landmark Security Council 'Resolution 1325' in 2000,<sup>123</sup> women continue to remain absent from the majority of peace initiatives being concluded internationally.<sup>124</sup> Because post-conflict peace processes symbolise a 'new beginning' for all actors in conflict, they present an ideal forum for bridging the public/private divide, and for "expos[ing] the politics inherent in the traditional primacy of civil and political rights".<sup>125</sup> In this way, they can be considered essential and crucial elements for addressing the rights of women in any society.

Central to the process of peace negotiations is the decommissioning of violence and encouraging warring factions to substitute peaceful debate for violent contestation over sensitive and disputed issues. This presumes that historical instances of violence were aimed at achieving political goals and that States and groups can achieve peace by offering violent groups concessions in order to meet those objectives.<sup>126</sup> However, since women's participation in violence is regularly perceived as being motivated by personal (and not political) reasons the absence of women from peace initiatives and negotiations can at least partly be attributed to the fact that women's violence is never understood as a potential hindrance to reconciliation processes. Women's engagement and cooperation is, therefore, deemed inconsequential by the parties that are trying to achieve and maintain peace.

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<sup>121</sup> Christine Bell (2003), *Peace Agreements and Human Rights*, New York: Oxford University Press, p 293.

<sup>122</sup> *Beijing Declaration and Platform for Action* (1995), Fourth World Conference on Women, A/Conf.177/20, Strategic Objective E.1.

<sup>123</sup> *Women, Peace and Security* (2000), SC Resolution 1325, art.1 and art.8(b).

<sup>124</sup> Elisabeth Porter (2003), "Women, Political Decision-Making and Peacebuilding", 15:3 *Global Change, Peace & Security*, p 245-62.

<sup>125</sup> Bell, *supra* note 121, p 34.

<sup>126</sup> Aolain, *supra* note 2, p 846; also see, Margaret E. McGuinness (2007), "Women as Architects of Peace: Gender and The Resolution of Armed Conflict", 13 *Michigan State Journal of International Law*, p 63-84.



Accordingly, women continue to occupy spaces on the periphery of global politics, with their voices being effectively silenced from the decisions that will supposedly move their communities from episodes of violence to ones of relative stability.

This issue is particularly relevant when one takes into consideration the various peace initiatives that have taken place in, for instance, Palestine, from which women have been completely absent.<sup>127</sup> Owing to restrictive cultural sanctions, Palestinian women are typically barred from public life and are, therefore, unable to participate in peace initiatives as part of legitimate political organisations.<sup>128</sup> However, while men's involvement in terrorism has frequently resulted in greater decision-making power - premised on the belief that negotiation may suppress further violence - women's violence has not achieved a similar reaction.<sup>129</sup> It can certainly be argued that part of the trouble may well be that women's violence is rarely ever considered indicative of the *human* capacity for violence. Hence, the gendering of violence has prevented women's participation in atrocity from being considered regular, possible and natural, and therefore influential to maintaining lasting peace. In this respect, it is usually the men of a society that are regularly regarded as having the greatest degree of power to prevent further violence – a view that has resulted in women being permanently sidelined in peace-building initiatives.

As Chinkin notes, involving women in public life, including decision-making during peace negotiations, is “demanded by human rights standards for equality and fairness”, and is a commitment that almost all States have conceded to when ratifying the ‘Women’s Charter’ (CEDAW).<sup>130</sup> If violence and conflict are seen as “windows of opportunity” for traditionally marginalised groups to exert influence over the shaping of the world,<sup>131</sup> then continuing to view women as only victims in political violence tends to reject the possibility that they can be powerful and significant political actors in the move to peace. In these instances, women run the risk of being as oppressed in their commission of brutality, as they have been in situations in which they are the primary victims of violence.

Nonetheless, it is important to note that the idea of placing women in leadership roles will quell their desire for violence<sup>132</sup> is also far too simplistic, and does not quite capture the dynamic nature of women's violence. Women are not, themselves, monolithic blocs who are identically inspired into behave violently. Thus, greater involvement in peace initiatives does not necessarily guarantee that all women will discontinue engaging in violence, but it does ensure that women will

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<sup>127</sup> Rola Hamed (2004), “Palestinian Women in Israel”, *Coalition of Women*; also see “Charter of Principles” (2005), *International Women’s Commission*, <[http://coalitionofwomen.org/home/english/articles/palestinian\\_women\\_in\\_israel\\_1004/](http://coalitionofwomen.org/home/english/articles/palestinian_women_in_israel_1004/)> accessed on 17 July 2009; also see, Bassem Eid (2003), “Women’s Life Under Occupation”, *Palestinian Human Rights Monitoring Group*, <<http://www.phrmg.org/articles/Women.htm>> accessed on 24 July 2009; also see, Mira Tzoref (2006), “The Palestinian *Shahida*: National Patriotism, Islamic Feminism or Social Crisis”, in Yoram Schweitzer ed., “Female Suicide Bombers: Dying for Equality?”, Memorandum No. 84, *The Jaffee Centre For Strategic Studies*, <[http://www.eprism.org/images/memo84\\_Female\\_suicide\\_bombers\\_-\\_Jaffee\\_Center\\_-\\_Aug06.pdf](http://www.eprism.org/images/memo84_Female_suicide_bombers_-_Jaffee_Center_-_Aug06.pdf)> accessed 22 July 2009, p 16-17.

<sup>128</sup> Joost R. Hilterman (1998), “The Women’s Movement During the Uprising”, in Suha Sabbagh ed., *Palestinian Women of Gaza and the West Bank*, Indiana: Indiana University Press, p 45-6. Usually women are involved in peace processes through the mobilisation of NGOs, which often have less bargaining power than actual political organisations like the Palestinian Authority.

<sup>129</sup> Chinkin claims that this is largely because women have not wielded the same degree of power as men to perpetrate and orchestrate violence. See, Christine Chinkin (2002), “Lecture: Gender, Human Rights and Peace Agreements”, 18 *Ohio State J. of Disp. Resolution*, p 871.

<sup>130</sup> Chinkin, *ibid.*, p 872; also see, *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), 1249 U.N.T.S 13, art.8.

<sup>131</sup> Judy El-Bushra (2000), “Transforming Conflict: Some Thoughts on a Gendered Understanding of Conflict Processes”, in Susie Jacobs, Ruth Jacobson and Jennifer Marchbank eds., *States of Conflict: Gender, Violence and Resistance*, New York: Zed Books, p 67; also see, Anton Blok (2000), “The Enigma of Senseless Violence”, in Göran Aijmer and Jon Abbink eds., *Meanings of Violence: A Cross Cultural Perspective*, Oxford: Berg Publishers, p 24

<sup>132</sup> Bloom claims that suicide terror will never be a problem in the West because women are encouraged and permitted to occupy positions of power, which allows them to have a voice in decisions that are made about their futures. Bloom (2005), *supra* note 28, p 165.

continue to have a space available for the peaceful negotiation of those demands and rights that may have prompted them to violent behaviour in the past.

### **6.3 International Security**

An unfortunate consequence of perceiving women as the 'eternal victims in violence' is that we tend to construct women's brutality (when it occurs) as unusual and abnormal. Inherent in this construction is the idea that since the occurrence is not *natural*, and because it disrupts current models of socially accepted behaviours for women, it must unarguably be more dangerous and threatening than natural expressions of violence – men's violence. The problem with this sort of categorisation of women's brutality is that it has historically been prone to exploitation by States in order to justify both the excessive use of force against violent women, as well as the targeting of civilian women.

#### **6.3.1 Magnifying Women's Dangerousness**

Prominent historical examples illustrate that there have been instances where States have adopted counter-violence procedures that construct violent women as more threatening merely because their status as 'warriors' is difficult to ascertain (i.e. femininity is used to disguise dangerousness). One particularly significant instance occurred during the Russian occupation of Chechnya and the subsequent targeting of all Chechen women as possible combatants.<sup>133</sup> It was claimed by Russian forces that because it was difficult to determine between women who were part of the *shakhidki* (black widows) and those that were genuine civilians, the military had to be particularly vigilante and consider *all* women possible combatants until they could prove otherwise. In this way, the Russian militia was able to institute 'shoot first, think later' counter-insurgency strategies against all Chechen women, prompting their removal from the sphere of civil immunity, and resulting in the targeting of innocent civilians.<sup>134</sup> By using gender stereotypes to illustrate the irregularity of violent women, and constructing women's brutality as particularly threatening and menacing, the military was able to evade legal responsibility for their targeting of civilians and their violations of international humanitarian law.<sup>135</sup>

Similarly, contemporary American counter-terrorism strategies and security measures have also employed gender stereotypes in order to transform *all* women into possible combatants. The Department of Homeland Security has isolated pregnant women as possible security threats by stating that women terrorists may use pregnancy prosthetics in order to smuggle bombs across airport checkpoints.<sup>136</sup> By considering all women potential combatants masquerading as benign and submissive would-be mothers, States have invented a perpetual 'state of emergency' that necessitates 'extreme vigilance' in identifying and thwarting the attacks of vicious terrorists that may be disguised as beguiling and innocent females. As a result, measures that would otherwise be an infringement on the rights of those being

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<sup>133</sup> The *Shakhidki*, ('holy warriors'), were a band of Chechen women that perpetrated acts of terror in order to protest the Russian occupation and to promote Chechnya's secession. See, Leela Jacinto (2002), "Chechen Black Widows Bring New Fears: Hell Hath No Fury like Chechnya's ruthless 'Widows of War'", *ABC News Int'l*, <<http://abcnews.go.com/International/story?id=79819>> accessed on 12 July 2009.

<sup>134</sup> Sjoberg and Gentry, *supra* note 75, p 92-5.

<sup>135</sup> Sjoberg and Gentry, *supra* note 75, p 92-3.

<sup>136</sup> James Popkin (February 11, 2008), "DHS: Bombers May Use Pregnancy Prosthetics", *MSNBC News Online*, <<http://deepbackground.msnbc.msn.com/archive/2008/02/11/656670.aspx>> 18 August 2009.

targeted (i.e. pregnant women) are now being seriously contemplated and put to use. Claims such as these function by implying that the inability to tell between women who are genuinely pregnant and those who are feigning pregnancy makes women, as a group, a much greater threat to international security. Accordingly, procedures such as invasive physical searches and even documented medical evidence to verify pregnancy - requirements that would normally be considered a breach of women's right to privacy and dignity - may very well become part of standard airport protocol in the future. Such discriminatory measures unfairly and disproportionately target women as a group, and construct all women as likely threats to international security.

The problem lies not in the actual 'profiling' of terrorists (although that in itself is fraught with its own set of challenges), but that such activities discriminate against a particular social group (i.e. pregnant women). Also, because the widespread perception is that suicide terrorists are typically not the blond-haired, blue eyed, westernised woman, pregnant women of Arab descent, or with 'Muslim-sounding' names, and traditional Islamic attire will be doubly effected by the intersection between terrorism stereotypes and gender. Human rights experts have vehemently criticised the racial profiling of potential terrorists, claiming that the practice contravenes international human rights standards - that it is discriminatory<sup>137</sup> and an infringement of individual civil liberties.<sup>138</sup> However, this particular example of profiling can be seen as particularly problematic because it involves not only racial profiling, but gender profiling as well – so that women of a particular race and culture are doubly harmed by such measures.

There are at least two principle assumptions that render the profiling of women terrorists additionally unacceptable and discriminatory. First, the prevailing views on women's violence consider it irregular, and sometimes the product of a psychological abnormality. Thus, as indicated by both the Russian and American examples, women are more likely to be construed as far more menacing than men terrorists: first, because their violence is considered to be the product of some sort of pathology that renders them 'unreasonable; and second, as a result of the idea that violent women are more ruthless than men because they need to, in some way, 'compensate for their femininity'.<sup>139</sup> As a result, the use of excessive force may become more justified when security threats involve women. This may be further problematised in communities stricken with conflict (e.g. Israel), where the identification of possible terrorists may serve both a human security function, but also a political function (e.g. illustrating the 'inhumanity' of Palestinians). In these situations, women become additionally vulnerable under State-instituted security procedures. Secondly, Muslim women are frequently thought of as bastions of family honour and reputation, and restrictions on their sexual conduct are described as necessary precautions to preserve that honour.<sup>140</sup> Due to cultural notions of modesty, invasive search procedures at airport checkpoints may be especially problematic for protecting the right to dignity and security of person in reference to women belonging to communities that ascribe to a strict set of cultural ideals about proper/improper conduct for women.

On the other end of the spectrum, however, there are also security experts who claim that gender stereotypes have clouded State judgment in relation to

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<sup>137</sup> Fitzpatrick, Joan (2003), "Speaking Law to Power: The War Against Terrorism and Human Rights", 14:2 *European Journal of International Law*, p 255.

<sup>138</sup> Michael Welch (2003), "Trampling Human Rights on the War on Terror", 12 *Critical Criminology*, p 5-8.

<sup>139</sup> Garrison, *supra* note 49, p 333-4.

<sup>140</sup> Sana Al-Khayyat (1990), *Honour and Shame: Women in Modern Iraq*, London: Saqi Books.

women's involvement in and capacity for terrorism.<sup>141</sup> They emphasise past instances in which women have been able to bypass security by strapping bombs to their bodies and feigning pregnancy, like the case of Hanadi Jaradat,<sup>142</sup> or discuss other situations in which women have been able to smuggle bombs through checkpoints by either refusing to undergo intrusive searches for cultural reasons, or by 'Westernizing' their appearance to avoid arousing suspicion.<sup>143</sup> Security experts are claiming that States are too focused on these near-universal gender stereotypes of women as naturally non-violent and benign, and that this may be preventing State from exercising the level of caution needed in order to prevent women from engaging in atrocities that lead to many civilian casualties. According to this view, terrorists pose a threat to the human rights protections of civilians, including the right to life, and the "human dignity of the individual person not to be used as the instrument of another's ideology".<sup>144</sup>

#### **6.4 Synthesising the Problems of Public Life: Outlining the Limits of the Law**

The Human Rights Movement employs the language and the institutions of law to limit the harm that the powerful inflict on the vulnerable.<sup>145</sup>

If the human rights movement, as Fitzpatrick claims, relies on law to propagate its values, ideals, and ideologies, to enhance the protection of the 'vulnerable' against the 'powerful', then this chapter has illustrated the limits of law for the realisation, respect, and preservation of individual human rights. Indeed, the law is not infallible. By virtue of the fact that humans defend and shape the law, the legal framework is as much linked to occasionally unsound social opinions, as it is to the overarching and altruistic ideals of the perfect utopian world. Accordingly, it is as susceptible to individual biases, discriminatory conduct, and fallacious reasoning as any human-developed institution. As a result, mitigating episodes of women's political violence through the law can present many challenges for a neutral and non-discriminatory approach to managing women's brutality.

It has clearly been demonstrated that interpreters of the law (e.g. judges, international organisations, human rights activists) certainly have their own presumptions and prejudices. In *Plavšić* the court's perception of women, in general, had significant influence over how the accused was finally sentenced and punished for her crimes. As such, regardless of the substantive rules prescribed in law, those that interpret and defend it seem to have a great deal of power in shaping the way those rules control conflict. Sometimes, social biases and assumptions are implicit in the development of the law itself. This was particularly prominent during the discussion about defining and managing gendered crimes. In other situations, though the law has been developed through conscientious and painstaking emphasis on remedying the subjugation of a marginalised group (i.e. women), unquestioning acceptance of the social group's oppressed state and overall powerlessness sometimes impedes the inclusion of the group in decision-making that may directly (or indirectly) affect its members. This issue has been particularly relevant to the

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<sup>141</sup> Eli Ben Tura (2004), "Statement made by Israeli Representative", *United Nations: Commission on the Status of Women Forty-Eighth Session*, <<http://www.peacewomen.org/un/ecosoc/CSW/BenTuraIsraelCSW48.pdf>> accessed on 2 July 2009; also see, Karla J. Cunningham *supra* note 24, p 113-29.

<sup>142</sup> Jaradat was a law student from Jenin who killed 19 civilians in a restaurant in Haifa by strapping explosives to her body and feigning pregnancy. See, Bloom, *supra* note 41, p 55.

<sup>143</sup> Garrison, *supra* note 49, p 335-6.

<sup>144</sup> Fitzpatrick, *supra* note 137, p 243.

<sup>145</sup> Fitzpatrick, *supra* note 137, p 242.

incorporation (or lack thereof) of women into post-conflict peace processes. Recognition of women's typical role as 'victims' in violence, helpless and apolitical, has led to them being completely marginalised from initiatives aimed at preventing future conflict. This has occurred despite the many legal declarations and conventions advocating and promoting women's participation in all aspects of public life. However, despite the numerous examples of women's capacity for brutality, this emphasis on 'involving women' seldom appears to extend to negotiations relating to the cessation of violence.

The law has also played a significant role in endeavours to thwart future expressions of political violence. In this case, recognition of women's capacity for violence, has led security experts and institutions to vilify all women, and to manipulate the law in order to justify its decision to do so. Gender stereotypes that have consistently proclaimed that women are naturally inclined towards peacefulness, tolerance and compassion have immense influence over how the international system constructs various expressions of women's violence. Cast as atypical and aberrant, these examples of violent behaviour are depicted as all the more alarming and menacing. As such, the implementation of State policies that illustrate a flagrant disregard for women's human rights are explained as being justified in the face of this 'new threat'.

## **7. Drawing Conclusions and Making Connections**

This article set out to substantiate three primary claims. First, gender stereotypes shape the way we understand women's political violence. Second, the gendering of violence (differentiating between men and women's violence) results in an interpretation of women's brutality that presents women as victims, rather than agents, of their acts of violence. Third, these theoretical impressions of women's violent conduct affect how the international system legally and practically manages expressions of women's political violence, much of which erects a whole set of human rights challenges for the protection of both violent women, and other actors in global politics.

Countless articles, media reports, academic accounts and popular literature have employed the use of gender stereotypes in order to render women's violence more comprehensible. Frequently, this shed light on women's political violence by contrasting it with men's more 'natural' violence, but also construed it in a manner that presented it as far more perplexing and inexplicable. Sometimes this was done subtly, for instance, by mentioning that a violent woman had men in her life that were actively engaged in violent conduct, thereby implying that men may have been partly responsible for her resort to violence. Other times the use of gender stereotypes to understand women's violence occurred in a manner that was far more conspicuous. In these instances, women's violence was directly compared to men's and determined to be more 'excessive' and ruthless. According to these accounts, violent women were rendered more puzzling specifically because they engaged in behaviour that was not only out of character for women, but did so in a manner that surpassed the brutality of men - who are frequently perceived as the more brutal, callous and uncompassionate of the two. In both sets of narratives, presenting women's violence as paradoxical aberrations - those that either defy or revolt against the very essence of femininity - these narratives portrayed violent women as merciless, soulless, and absolutely corrupted individuals.

Despite these very ominous characterisations of women's violence, the women protagonists in the narratives that materialise are seldom considered wilful administrators of their own acts of brutality. Imputing their violent behaviour to culture, patriarchy, society and pathology, these reports and articles cast doubt on women's capacity for engaging in violence voluntarily and intentionally. In essence, brutal women were construed as powerless and unthinking victims. As a result, these women became less culpable and responsible than would be expected in comparable situations that featured men as the primary agents of violence. Women's victim-identity became thoroughly entrenched in the overall perception of women - a stereotype that attached itself to all women generally. Even in the absence of a verifiable contravention of norms, women's brutality continued to be interpreted in a manner that assumed *a priori* victimhood. As such, breaches were regularly manufactured (e.g. psychological abnormalities) in order to *validate* women's victimisation rather than to establish it.

Remarkably, the only time it seems that we have a tendency to doubt women's victimhood is when an instance is identified in which the primacy of women's victim-identity needs to be subverted in order to make room for men 'victims'. This has become apparent in recent attempts to put the spotlight on men's experiences of sexual violence, in the process of which some academics counter-argue that women's political violence has historically shown many signs of being completely consensual and not at all coerced.<sup>146</sup> Reinforcing the absolute nature of the common 'victim/perpetrator' model of political violence, this claim sustains the idea that individuals can be either solely the victims of violence or its perpetrators, but never both. While achieving greater recognition of men's experiences of wartime sexual violence and their status as *bona fide* victims, these declarations imply that we need to somehow undermine the victimhood of women in order to recognise the victimhood of men.

The gendering of violence did not only confine itself to how we *perceived* women's political violence, but how we *managed* and *responded to* expressions of such violence as well. Since law presents the most oft pursued method of violence management (because in most societies it is usually perceived as the most legitimate, authoritative and impartial), this article considered both the legal and political channels employed by the international community in response to women's involvement in genocidal violence and terrorism. Particular attention was devoted to verifying the human rights challenges that arose from the ways in which the international system managed such examples of political violence. In particular, it was revealed that, at least in the areas of international criminal justice, international peace and reconciliation, and international security, the gendering of violence had a tremendous influence over the protection of the rights of men and women, perpetrators and victims, and those occupying a space in-between these very unitary categorisations.

This article has, at its heart, endeavoured to invoke three important realisations in relation to political violence. Perhaps, most significant, is that it aimed to bring to the forefront the recognition that gender biases, stereotypes and gender identities, though socially-constructed, are very powerful and influential components of our overall perceptions of violence and victimhood. Second, it has hopefully sparked a renewed interest in investigating how the law interprets and defends these examples of political violence – in particular looking at gender-neutrality in the areas international criminal justice and the punishment of international crimes. Last, and

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<sup>146</sup> Jones, *supra* note 117, p 83.

perhaps most meaningful, this article was primarily prompted by the desire to cultivate an understanding of political violence that transverses gender boundaries. It is anticipated that the article will spark interest in looking at instances of political violence in a manner uninhibited by the perpetrator's gender. Furthermore, it is hoped that the international system not only *realises* that women can be, and are, perpetrators of violence, but that it also interprets and responds to their expressions of violence using approaches that do not presume, right at the outset, that violent women are either unnatural and abnormal, or victims of circumstances beyond their control. It is expected that, if anything, the article motivates the international community to finally view women's participation in violence in a similar vein to men's involvement in violence – as an autonomous choice clearly indicative of the *human capacity* for violence.

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