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Restorative Justice for the Girl Child in Post-conflict Rwanda

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Abstract

The girl child suffers from both sexism and "childism" for she is at the intersection of women's rights and children's rights. The question of her fate in post-conflict Rwanda is particularly crucial for during the Rwandan genocide in 1994, she suffered egregious sexual violence based on gender regardless of her age. Not only were two-year old girls raped, but there was a clear intention to make women and girls suffer differently from men and boys: while the latter were killed rapidly with a single shot or machete stroke, girl children and women were mutilated, tortured and left to die slowly. However, to focus solely on the sexual abuse of girl children in conflict hinders other aspects of the discrimination they undergo in numerous areas of their daily lives. Our hypothesis is that the sexual violence suffered by girl children during the genocide can be seen as emblematic of a general pattern of sexual discrimination in Rwandan society which was unleashed by the exacerbation of the ethnic conflict. Based on this premise, Rwanda will be studied as a case in point by defining the girl child in that specific context and suggesting a restorative approach to her fate. First, this article will study the status of the girl child in international law. Second, it will examine her status in Rwanda before and during the genocide, as well as in the transitional or post-conflict society she dwells in today. Finally, this article will provide recommendations for her healing through a "childered" and gendered approach to recovery by establishing a restorative paradigm in terms of safety, remembrance, and reconnection.

Keywords: girl child, Rwanda, restorative justice

The girl child of today is the woman of tomorrow.
The skills, ideas and energy of the girl child
are vital for full attainment of the goals of
equality, development, and peace.
(Beijing Declaration and Platform for Action 1995: 41)

Introduction

There is no official definition of the "girl child" for no international binding convention or national legislation specifies her status. One can only postulate that she is both a female and a child. Although the "girl" component is self-explanatory, the "child" component has different delimitations under international, regional and national law.

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Since the purport of this article is the girl child in Rwanda, we shall look at all three categories of legislation that afford protection to children.

In international law the concept of the girl child comes under the heading of "child" as defined under article 1 of the 1989 *Convention on the Rights of the Child*: "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." This signifies that as long as a child is a minor and under 18 years old, s/he is entitled to the special protection afforded by the *Convention*. One can wonder whether child provisions still hold, if in certain countries majority is attained "later", as the wording of article 1 reads "earlier." This question is pertinent in the case of the Rwandan girl child and will be discussed below.

In regional law, the 1990 *African Charter on the Rights and Welfare of the Child*, under article 2, sets a higher standard than the United Nations Child *Convention* in not allowing any exceptions: "a child means every human being below the age of 18 years." The issue of majority is not mentioned which signifies that the provisions of the *Charter* are applicable to all children under 18 years of age.

Rwandan law states that majority is attained at 21 under article 360 of the 1988 Rwandan *Civil Code*. A child therefore retains its status for three years more than the international and regional age standards. However, if a child gets married before 21, s/he is automatically emancipated under article 426 of the same *Civil Code*. Minors must however obtain the consent of their parents as well as of the Minister of Justice under article 171 of the *Civil Code* if they want to marry before 21. Since the minimum age for marriage is 15 years for girls and 18 years for boys, a Rwandan girl can stop being considered a child between 15 and 21 years of age.

The varying definitions of children in Rwandan law and the international and regional human rights instruments can be explained by the fact that the latter do not have precedence over national legislation. Once they are ratified by presidential decree they become a part of the internal legal system and have the same force of law as domestic laws (Committee on the Rights of the Child, Rwanda, 1994: 4,51). This entails odd discrepancies, for instance article 3 of the recent Organic Law 29/2004 on nationality reads: "Under this organic law, the majority age is fixed at eighteen (18) complete years of age." Clearly, this age barrier only applies to nationality, but it is inconsistent with the provisions of the *Civil Code*. When there is a discrepancy between a convention and national legislation or two laws within the latter, the matter is decided by Parliament who is sovereign (p. 34,58). Since no amendments to Rwandan laws have been made to bring Rwandese legislation into line with the provisions of the *Convention* and the *Charter*, under Rwandan legislation a child is a minor until 21 years of age.

Thus, for the purposes of this article, the working definition of the girl child in Rwanda will follow suit with the Rwandan *Civil Code* and encompass all female children under 21 years of age, unless majority is attained earlier through marriage. The terms "girl child", "female child" and "girl" will be used interchangeably.

The particularity of the status of the girl child is that she is both a woman in terms of gender and a child in terms of age and thus at the intersection of women's rights and child rights. This could be an advantage if all the rights of both groups were conferred on her, but as a minor, most provisions for women do not apply to her, and as a girl, most gender neutral provisions for children do not address the specific discriminations she suffers on the grounds of her gender. As Kirsten Backstrom explains:

> … no one denies that throughout the world female children suffer abuses based on their gender. Female excision, bride burning, female infanticide, sex slavery and tourism, and servile marriage all affect the female child because she is female and a child─both positions of vulnerability in many societies. (1996-1997: 542)

This ambiguity, which entails her double victimization signifying "dual discrimination, based on her gender and her age" (542), makes the girl child a victim of both sexism and "childism." As Priscilla Alderson and Mary Goodwin, who modeled childism on sexism, argue, thereby demonstrating that feminist tools are of great use when examining childism:

> Numerous meetings supposedly devoted to children's rights actually promote adults' rights. An analogy would be 100 years ago, when men gathered to discuss 'the women's rights problem'. Women would be absent as children are today. The men would … resolve to care for women … mutually reinforcing their sexism. The same often happens today when adults discuss children; childism is so endemic and accepted that we do not yet have a word for it. (1993: 309)

Indeed, the current welfare approach focuses on children's needs rather than their interests, confining them to mere human becomings, or objects of the law.

The question of the fate of the girl child in post-conflict Rwanda was raised by the discovery that during the Rwandan genocide in 1994, she suffered egregious sexual violence based on gender regardless of her age:

> … almost every woman and adolescent girl who survived the genocide was raped. While the ages of women and girls raped ranged from as young as *two years old to over fifty*, most rapes were perpetrated against young women between the ages of sixteen and twenty-six. The survey of 304 rape survivors conducted by the Ministry of Family and Promotion of Women in collaboration with UNICEF found their average age to be twenty-four years old. Among them, *28 percent were under eighteen years*; 43.75 percent were between nineteen and twenty-six, 17.1 percent were between twenty-seven and thirty-five; 8.55 percent were between thirty-six and forty-five, and 1.6 percent were over forty-five. (Human Rights Watch/Africa 1996: 14; emphases added)

Gilles Courtemanche further added that:

> The men were killed skilfully and accurately with a single shot or machete stroke, but the *women* didn't have the right to a quick, clean death. They were mutilated, tortured, raped, but not finished off as killers would have done with wounded animals. (2003: 218; emphasis added; Courtemanche only refers to "women" thus evicting girl children from the tragedy. This problem of not specifically addressing the girl child in situations which eminently concern her is another instance of the discrimination she suffers under her double status.)

From this quote, one can infer that there was a clear intention to make women and girls suffer differently from men and boys. However, to focus solely on the sexual abuse of girl children in conflict hinders other aspects of the discrimination they undergo in numerous areas of their daily lives. Indeed, our hypothesis is that the sexual violence endured by female children during the genocide can be seen as emblematic of a general pattern of sexual discrimination in Rwandan society which was unleashed by the exacerbation of the ethnic conflict.

Based on this premise, this article will suggest a restorative approach to their fates by studying Rwanda as a case in point. Yet restorative justice of the girl child in Rwanda cannot be examined in a vacuum, thus the fundamental part played by ethnic strife will be kept in perspective. This article is threefold. First, it will study the status of the girl child in international law. Second, it will examine her status in Rwanda before and during the genocide, as well as in the transitional or post-conflict society she dwells in today. Finally, this article will provide recommendations for her healing through a holistic i.e. multidisciplinary approach to restorative justice, understanding that all aspects of her life must be addressed to endow her with the same rights as boys and men.

The status of the girl child in international law

The major problem confronted by the girl child in relation to her status is the following: *when* is a girl considered a woman and thus under the protection of legal instruments referring to the latter. Is it when she marries and/or gives birth, which means that at least 15 million girls aged 15 to 19 would be considered women (*Beijing Declaration* 1995: 268) or when she is raped and/or infected by HIV which can occur at any age? Thus can one contend that "women" also include "girls" in specific cases? Or is the girl child only protected by child legal instruments which do not cover the discrimination on the basis of sex that she encounters "from the earliest stages of life, through her childhood and into adulthood"? (259)

Listening to the silence

To answer these questions, two feminist tools are of great use. The first, devised by Marilyn Waring in relation to women, is called "listening to the silence" and the second, formulated by Katherine Bartlett, is called "the woman question." Both are eminently applicable to the girl child.

> The first tool is worded by Waring in the following terms:
> You notice, you hear, and one of the tricks of the questions of gender and international law is to hear what is in the silence, because international law and the law of human rights concerning gender is about silences. That is what we are listening for. (1992: 178)

The silence regarding the girl child is evidenced by the fact that no binding human rights instruments specifically name her. Gender neutral terminology prevails in the mainstream international treaties, namely "all human beings, human family, everyone, anyone, no one, every individual, every citizen" and although they do specify "without distinction of sex", "age" is never mentioned. This is particularly serious in two conventions which one would expect to do so, namely the 1979 *Convention on the Elimination of All Forms of*

Discrimination Against Women and the 1989 *Convention on the Rights of the Child*. In fact, only two recent major international non-binding instruments incorporate girls: the 1995 *Beijing Declaration* which precisely enumerates the human rights violations they undergo under paragraphs 259-271, and the 2000 United Nations Resolution 1325 which reaffirms women's and girls' rights to protection in conflict.

The girl child question

The second tool is a question, the woman question, which one could call "the girl child question," modeled on Katherine Bartlett's feminist legal methods:

> In law, asking the woman question means examining how the law fails to take into account the experiences and values that seem more typical of women than of men, for whatever reason, or how existing legal standards and concepts might disadvantage women. (1990: 837)

In analyzing "existing legal standards" with respect to the girl child question, two main issues stand out: recognition of sexual violence and political rights. Strikingly, they are intertwined, the former indicating a weakness in the latter. Indeed, sexual abuse stems from the sexist paradigm in society whereby the perception of the "other" as "different"─in this case girls and women─justifies their being relegated to a second rate status. Those who have no rights, or less rights, are thus more likely to be abused.

Sexual violence

Among the four main international instruments relating to women, three of which are binding, merely two apply to the girl child, notably as regards physical, sexual or psychological violence. To wit: the non-binding 1993 *Declaration on the Elimination of Violence against Women* "whether occurring in public of private life" (art. 1) and the 1998 *Statute of the International Criminal Court* which recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and sexual violence as war crimes. Clear evidence of how the struggles of women have been of use to girl children is that rape and sexual violence gained recognition as regards girls and women in the *Prosecutor* v. *Jean-Paul Akayesu* trial in 1998. One can argue that this was made possible by the only woman judge on the International Criminal Tribunal for Rwanda (*Statute 1994)* hearing the case, Judge Navanethem Pillay, who managed, being herself a woman, to gain the trust of two female victims. Thus, Witness J stated that three *Interahamwe* raped her six-year-old daughter when they came to kill her father, and also that she had heard that young girls had been raped at the *bureau communal* of the Taba Commune which was under the authority of Jean-Paul Akayesu (*Akayesu* 1998: ¶ 416-417). The amendment of the indictment of Akayesu to charge rape or sexual violence after these two testimonies was a landmark in engendering international jurisprudence. As Rhonda Copelon stated: "*Akayesu* was … the first judgment to recognize rape and sexual violence as constitutive acts of genocide, and the first to advance a broad definition of rape as a physical invasion of a sexual nature." (2000: 227) The International Criminal Tribunal for Rwanda was following suit to the International Criminal Tribunal for the Former Yugoslavia (*Statute 1993)* which had reconceptualized sexual violence as a form of torture in the Foca indictment whereby it was disclosed that both girls and women had

been subjected to sexual violence in the rape camp (*Prosecutor* v. *Gagovic et al*.; *Gojko Jankovic et al.; Anto Furundzija; Zejnil Delalic).* The jurisprudence of both tribunals as well as the militancy of feminists enabled the International Criminal Court in 1998 to codify crimes of sexual and gender violence as part of the jurisdiction of the Court with no age discrimination, thus implicating the rights of the girl child (Copelon 2000: 227). It is of interest to note that the small portion afforded to girl children in the international legal framework mainly focuses on sexual abuse. One can contend that this is the case as it is the most striking form of discrimination they suffer. Yet the blindness as to the roots of sexual violence prevents truly putting an end to it. Indeed, if women and children truly had rights, sexual violence perpetrated against the girl child would not be endemic.

Political Rights

Women's political rights are protected by two binding conventions, the 1952 *Convention on the Political Rights of Women* as well as the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women*, but their application to female children is limited, as most of the rights obtained are political and thus refused to minors (Backstrom 1996-1997: 572).

The *Convention on the Rights of the Child*, under articles 12, 13 and 14, does provide for freedom of expression and thought, but only to express views in matters affecting them personally. Also, since it applies indiscriminately to boys and girls as evidenced by the constant use of his/her, it is gender neutral and thus blind to the specific responsibilities girl children assume and which prevent them in many ways from participating in the public world. First, it never mentions early marriage, often forced marriage, and young motherhood, unless one reads article 24(1)(d): "To ensure appropriate pre-natal and post-natal care for mothers" as applicable to the girl child mother. Second, under article 31 on the right "to rest and leisure," it does not take into consideration the fact that since girl children are often required to care for siblings or bear the burden of family responsibilities, they do not have equal access to leisure, while also being denied empowerment in terms of educational and economic opportunities (Goonesekere 1992: 15). Neera Sohoni, in her book entitled *The Burden of Girlhood*, addresses these two problems, denouncing what she calls the "*reproductive and productive burdens ... shared inequitably by the girl*" (1995: 12). The former evidenced by early marriage which "leads to *children bearing children*" (12-13) and the latter by her "*unenumerated, unremunerated* work" (13) whether in the home or outside such as in agricultural labour. Finally, in comparison with other human rights instruments, the *Convention on the Rights of the Child* offers little enforcement protection to children as no optional protocol provides them with a direct means of redress as is the case with other treaties, namely the 1966 *Optional Protocol to the International Covenant on Civil and Political Rights,* and the 1999 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*. Yet these two protocols are of no use to the girl child since she is neither mentioned nor considered in both, her status as a minor precluding her from being covered by them. The 1966 *International Covenant on Civil and Political Rights*, and by extension its *Optional Protocol*, went as far as wilfully giving no rights to the child, as evidenced by the fact that the drafters of the *Covenant* considered that all its rights and freedoms could not be exercised fully by children (Van Bueren 1998: 21).

It thus becomes more and more evident that the girl child is "twice denied" (Sohoni 1995: 1) on account of both her age and gender and urgently needs specific legal provisions. The *Beijing Declaration* gives a sensitive account of her plight:

> In some areas of the world, men outnumber women by 5 in every 100. The reasons for the discrepancy include, among other things, harmful attitudes and practices, such as female genital mutilation, son preference—which results in female infanticide and prenatal sex selection—early marriage, including child marriage, violence against women, sexual exploitation, sexual abuse, discrimination against girls in food allocation and other practices related to health and well-being. … Girls are often treated as inferior and are socialized to put themselves last, thus undermining their self-esteem. Discrimination and neglect in childhood can initiate a lifelong downward spiral of deprivation and exclusion from the social mainstream. (1995 259-260)

In fact, her negated status is quite comparable to the unacknowledged status of children and women before they were empowered with rights by binding treaties such as the *Convention on the Rights of the Child* and the *Convention on the Elimination of All Forms of Discrimination Against Women*. Shelley Wright explains this phenomenon in relation to the understanding of men's rights as including women in her analysis of the "Historical Development of Human Rights": "the phrasing of the rights as rights of men based on the assumption of inherent theoretical equality, have shaped, for better or for worse, the adoption and interpretation of 'human rights' to this day" (1992: 244), which can be replaced by "the phrasing of the rights as rights of women based on the assumption of inherent theoretical equality" between girls and women or that of "the rights of children based on the assumption of inherent theoretical equality" of girls and boys. Indeed, the rights of children and women enumerated in the major instruments relating to them do not automatically encompass those of girl children.

The girl child in Rwanda: past and present status

Situation of the girl child in Rwanda before and during the 1994 genocide

In order to understand the violence girls suffered during the genocide, it is important to examine their status in the pre-colonial, colonial and post-colonial Rwandan societies. Indeed, the tragedy of the 1994 genocide is the result of a series of discriminating customs and policies under all three regimes, with the aggravating factor of the ethnic discrimination devised by the Belgian colonizer and backed by the influential Catholic Church to divide and conquer Rwanda by pitting the two main ethnic groups, the Tutsi and the Hutu, against each other. First by favouring the Tutsi (1926-1959) then the Hutu (1959-1960) who remained in power until 1994 (Prunier 1995). Abundant literature has tried to account for the monstrous proportions of the 1994 massacre, our purport here is to explain the particular lot of girls in the genocide. Feminist activist Charlotte Bunch comes close to answering this question in her statement on gender violence:

> Victims are chosen because of their gender. [...] Contrary to the argument that such violence is only personal or cultural, it is profoundly political. It results from the structural relationships of power, domination, and privilege between men and *women* in society. (1990: 490-491; emphasis added; once again, "women" should be read as encompassing girls)

To which Judith Gardam and Hilary Charlesworth added, thus revealing how the Rwandan ethnic conflict can be read as vitally integral to the girl child problem: "armed conflict often exacerbates inequalities … that exist in different forms and to varying degrees in all societies and that make women [and girls] particularly vulnerable when armed conflict breaks out" (2000: 150).

Pre-colonial era

In pre-colonial Rwanda, families were patrilineal, polygamy was practiced, and men were the heads of the family as well as entrusted with public governance. Women, who were in charge of the private sphere with its concomitant nurturing responsibilities, had to be subservient to them (Ntampaka 1997; Vanhove 1940). As for children, they belonged to the extended family which had the duty to discipline them until majority was reached. Girls were expected to remain next to their mothers to help in domestic and agricultural work (AVEGA 1999: 3.2). Their education was essentially centered on the qualities of a good wife, i.e. please their future husband in being obedient, faithful and hard-working. Any infringement of these expectations was severely punished. Thus a girl who became pregnant before marriage was attached to a heavy stone and thrown into a river to drown. Abortion was not even considered as traditional beliefs were strongly opposed to it. Girls did not have the right to know their future spouses since traditional marriages as well as the dowry were negotiated between the two families represented by men (Vanhove 1940: 23). Once married, they had to respect their in-laws, especially their father-in-law. They then belonged to their in-laws who gave them protection. If the husband died, his younger brother or even his father married the widow. Forced marriages were also a current practice, whereby a man could take a coveted girl to make her a wife without the parents' knowledge and without the girl's consent, making amends subsequently by paying a fine but still without eliciting the girl's views (19). Also, since in traditional law marriage was indissoluble, in the event of a separation, the children had to remain in their father's family and were not allowed the freedom to express their views on this matter. Men owned the land and daughters had no right to immovable property, whereas sons could inherit from their fathers (60). This inequality between boys and girls, as well as men and women, was enforced by customary law which continued to be applied to native Rwandans during the Belgian colonial rule, with the exception of the *Congo Penal Code* which was made effective within Ruanda-Urundi in 1940 (Schabas and Imbleau 1997: 5).

Notably, violence during wartime, i.e. "militarized patriarchal culture," which according to Rhonda Copelon accounts for rape by both sides in Europe and the Far East during World War II (2000: 221-222), seems not to have been the rule in Rwanda prior to 1994 as documented in *Shattered Lives*: "in attacks on Tutsi before 1994, women and children were generally spared" (Human Rights Watch/Africa 1996: 21). However, Jean-Pierre Chrétien, who wrote an extensive research on both ethnic and gender hate

propaganda before and during the genocide, reports that rape started as soon as 1990, confirming that the escalating ethnic tensions had already begun to corrode former Rwandan wartime customs (1995: 36). It is also worthy of note that, according to Gérard Prunier, an eminent historian on Rwanda: "there is no trace in its [Rwanda's] precolonial history of systematic violence between Tutsi and Hutu as such." (1995: 36). Robert Edgerton, another historian, adds that during the pre-colonial era women did have rights when physically abused by their husbands: "Although men dominated women in most of these societies, women had rights to deal forcibly with husbands who mistreated them. They were allowed to bring complaints against them in native courts or before councils of elders." (2002: 7) Stef Vandeginste, who analyzed the traditional Rwandan gacaca tribunals in view of justice, reconciliation and reparation after the genocide confirms female participation in the "gacaca" in disputes between husbands and wives, but specifies that this was exceptional and that their participation in the gacaca was virtually non-existent (1999: 17).

Colonial era

In many respects, the destinies of girls became worse during the colonial era under the Belgian rule (1916-1960) for the preceding German overseer (1894-1916) did not interfere with existing domestic institutions and relied on the traditional royal oligarchy in place prior to colonization (Schabas and Imbleau 1997: 4). On the one hand, in the private sphere, the Catholic Church imposed religious marriages and concomitantly married girls did not benefit from their in-laws' protection anymore. The prohibition of abortion was reinforced by the Catholics as they rejected the practice, only allowing it if the life of the future mother was endangered. This policy still holds true today, both for traditional and religious reasons, even in the case of rape, as evidenced by article 327 of the 1977 *Penal Code*. In addition, family planning was not allowed, even though Rwanda is known to have one of the highest birth rates in the world, with an average number of children per woman of 8.6 before the genocide (Population Policy Data Bank 2000). This systemic subordination of women and girls inevitably engendered domestic abuse, perceived as common and normal (Human Rights Watch/Africa 1996: 12-13). As Bunch explains: "Female subordination [is] a politically constructed reality maintained by patriarchal interest, ideology, and institutions" (1990: 490). In Rwanda, patriarchy, which treats women and children as minors without rights (Vanhove 1940: 9), stemmed from customary law and was compounded during the colonial rule.

On the other hand, in the public sphere, a telling example of this state of affairs in colonial Rwanda was that education, which is an empowering tool, was reserved to boys. The first admission of girls to schools occurred 40 years after boys, and they were mainly instructed in household subjects (Republic of Rwanda, *Sectorial Policy* 1999: 5). However, every commune in Rwanda had a *foyer social*, a formal women's organization responsible for collective child care, firewood collection, health issues, care of the aged, which evidences the important role females played in society (Turshen and Twagiramariya 1998: 114), but again the participation of girls is not mentioned, unless married girls are considered on a par with women.

Postcolonial era

Under the first Republic in 1961, women started to enter the administrative system, both in teaching and political capacities, as evidenced by the first woman

minister, the Minister of the Family (AVEGA 1999: 33). All four Constitutions (1961, 1978, 1991, 2003) affirm equality before the law, and the last three explicitly mention equality of the sexes, but notably "age" is not included in the list of any of the non-discriminatory articles. Concurrently, law remained discriminatory be it only because under articles 93(2) of *Constitution 1978* and 98(2) of *Constitution 1991*, both enacted before the genocide: "Custom shall remain applicable inasmuch as it was not replaced by laws or is not contrary to the Constitution, laws, regulations, public order or morals." Indeed, until the enactment of Law No. 22 of 12 November 1999, the 1988 *Civil Code* "lack[ed] chapters dealing with estates (*successions*) and marriage contracts, subjects which remain[ed] covered by customary rules which developed over the centuries in Rwanda." (Schabas and Imbleau 1997: 65) William Schabas confirms that discriminatory customs prevailed in Rwanda upon stating that: "despite recognition of the fundamental norm of equality and non-discrimination, there are many provisions of Rwandan law that are incompatible with these principles." (1997: 181) For example, although the *Civil Code* recognized equality of men and women [including married girls] in the household, contradictory provisions declared that the man was the natural head of the household and his opinion must prevail (art. 206). Uncontested divorce was only allowed for couples after five years of marriage (art. 258), and filing for a divorce required three more applications during the following ten months (art. 265), which meant that intolerable marital life, with its concomitant repercussions on the girl child wife and her children, was difficult to terminate.

One striking law which still holds true is that there is a punishment prescribed for adultery in the *Penal Code*, which is greater for girls and women than for men (articles 353-354). Fortunately, custody of the children is ordered in view of their best interests, so one can infer that they are not automatically entrusted to the father as in customary law (*Civil Code*: art. 282). However, since in 1997 Charles Ntampaka stated that "people continue to follow some of the now abrogated customary rules, so creating a division between codified law and what happens in practice" (415), one is entitled to believe that codified law is not always applied when it comes to decide who will be granted child custody.

In the area of education, slow progress came about for girls in the 1980s, whereby their presence in primary schools reached 45%, although in secondary schools, boys outnumbered girls by 9 to 1, and in universities, by 15 to 1 (Human Rights Watch/Africa 1996: 13). Indeed, when faced with financial difficulties, parents primarily removed their daughters from school, and with the onset of puberty, girls remained in the home preparing for marriage. The result is that illiteracy among girls, and by extension women, was very high, amounting to 55% in 1996 (Republic of Rwanda, *Sectorial Policy* 1999: 5). If one considers that women raise girls, how can they empower their daughters if they themselves are divested of any form of power, be it legal or educational?

Lastly, although Rwanda ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* in 1981 and the *Convention on the Rights of the Child* in 1990, gendered and childered[2] changes were hard to effect in postcolonial Rwanda as

[2] Gendered justice is a broad concept that Anne-Marie Goetz defines as: "the ending of, and if necessary the provision of redress for inequalities between men and women that result in women's subordination to men," 13-14 November 2003; the neologism "childered" is a coinage derived from "gendered."

the country was experiencing great political turmoil which hampered their implementation.

The 1994 genocide

During the 1994 genocide, contrary to former customs in wartime, women and girls were explicitly targeted, partly because of their ethnicity, but often regardless of their ethnicity or political affiliation (Human Rights Watch/Africa 1996: 20), thus only because of their gender, whereby "their bodies [were] used as the figurative and literal sites of combat" (Bunch and Reilly 1994: 38). This hate against women and girls was orchestrated during the 1990s to annihilate the enemy and it was enacted by both sides of the conflict, Hutu and Tutsi alike. Ethnic hatred was so virulent, to wit four of the perverted "Ten Hutu Commandments" modeled on the Judeo-Christian Ten Commandments were blatant gender hate propaganda (Human Rights Watch/Africa 1996: 11; Amicus Curiæ Brief 2001), that even Hutu wives of Tutsi men as well as Hutu daughters of Tutsi women were not protected by their fathers' lineage as they traditionally should have been (Human Rights Watch/Africa 1996: 33). As Colleen Duggan explained in the paper she read at the International Conference held by the Canadian Centre for Developing Area Studies in Montreal on 5 February 2004:

> Various forms of sexual violence during political conflict, particularly rape, are now recognized as strategic weapons of political violence that serve both military and political strategies. The pain and humiliation inflicted by the perpetrators dominates and degrades not only the individual victim, but also destroys cultural values and wider community relationships. This linkage is particularly evident in the context of ethnic or identity-based conflicts. (4-5)

The differentiated violence experienced by women and girls since men and boys were killed while the former were left to die explains why the great majority of "survivors" are girls and women, physically maimed and psychologically traumatized. Thus after the genocide, 70% of the Rwandan population was female, of which 80.9% was traumatized and 66.7% infected with HIV (AVEGA 1999: 26 and 24). As Meredeth Turshen and Clotilde Twagiramariya explain:

> Rwandan victims of rape are now suffering the worst time of their lives; they are being isolated by their own communities in spite of the mental and physical pain they endured and are still enduring. Most survivors of violence are faced with overwhelming problems such as health complications, children born of rape, social isolation and ostracism. (1998: 109-110)

Healing of the girl child: restoration and reconstruction

For the purpose of this article, restorative justice for girl children will be apprehended in a holistic i.e. multidisciplinary approach taking into account psychology, sociology, and law. John Braithwaite's and Heather Strang's concept of restorative justice as a values conception will be of particular use:

> … it is values that distinguish restorative justice from traditional state punitive justice. Restorative justice is about healing (restoration) rather than hurting. … The idea is that the value of healing is the key because the crucial dynamic to foster is healing that begets healing. … In our view it is best to see restorative justice as involving a commitment to both restorative processes and restorative values. (2001: 1-2)

They advocate the "Conflict, Acknowledgement, Transformation" model to achieve restoration (10). However, restoration requires some form of retribution which can be viewed broadly in terms of possible lustration, civil suits or state compensation. Otherwise, as Esther Mujawajo declared in *Shattered Lives*, the female victims of the genocide "will die of sadness" as told by the men who refused to kill them and left them alive to "remain the living dead" (Human Rights Watch/Africa 1996: 38).

To address this fundamental issue of restoration, Dr. Judith Herman's research on sexual and domestic violence, as well as on combat veterans and victims of political terror, is invaluable. In her book entitled *Trauma and Recovery*, the psychiatrist suggests three stages of recovery from trauma:

> Recovery unfolds in three stages. The central task of the first stage is the establishment of safety. The central task of the second stage is remembrance and mourning. The central task of the third stage is reconnection with ordinary life. (1992: 155)

Moreover, the generosity showed to the survivor adds a further component to this type of therapy:

> Repeatedly in the testimony of survivors there comes a moment when a sense of reconnection is restored by another person's unaffected display of generosity. Something in herself that the victim believes to be irretrievably destroyed—faith, decency, courage—is reawakened by an example of common altruism. Mirrored in the actions of others, the survivor recognizes and reclaims a lost part of herself. At that moment, the survivor begins to rejoin the human commonality. (214)

Examining whether the three stages apply to the girl child in Rwanda will entail a research called the test of adequacy.

Rwanda, a post-conflict society?

In order to contemplate restorative justice for the girl child in Rwanda, it is pressing to start by examining the transitional or post-conflict society she dwells in today. Rwanda is officially a post-conflict society since the Arusha Accords were implemented after the genocide on 19 July 1994. However, in 1999, Vandeginste still contended that the internal armed conflict had only seemingly come to and end, explaining that "Rwanda has not been without an armed conflict situation since October 1990. Therefore Rwanda cannot be seen as a typical post-conflict situation and this has a serious impact on the potential use of international, national, statal or indigenous justice and reconciliation mechanisms." (3) Indeed, the power is now in the hands of the victorious Tutsi from the

Rwandan Patriotic Front (RPF) whose main concern is to keep it at all costs: "As of late 2002, the President of the Republic, twelve of fifteen ministers (and most of the secretary-generals of ministries), the chief judges on the Constitutional Court and the Court of Cassation, the Prosecutor General of the Republic, eleven of twelve governors, thirteen of fifteen ambassadors, seven of nine heads of security services, and nineteen of seventy-four assembly members … were members of or affiliated with the RPF" (Human Rights Watch, Rwanda, 2003: 2). Reconstruction in view of providing for at least minimal conditions of survival to the suffering population, namely safety, is largely shouldered by the female population in spite of constant insecurity, while the ethnic conflict has not as yet been settled by the male population who is still predominant in the sphere of political power.

Under these conditions, the situation of children in Rwanda is particularly critical, as explained in 1999 by Stephen Lewis from UNICEF:

> What kind of childhood can those children possibly have thereafter? What kind of adult life will those children lead? How will they overcome that kind of past, in an entirely traumatised society? How will they cope, especially, in Rwanda, where today there are between 65,000 and 80,000 *child-headed* households? Where tiny morsels of youngsters ―10, 11, 12, 13 years old, and mostly girls― are trying desperately just to keep what's left of their families together? (1999: 8)

Four years later, in 2003, an updated report submitted by Rwanda to the Committee on the Rights of the Child states that there are now 1,444,050 orphan children, i.e. 17% of the population, thus making Rwanda the country with one of the highest percentages of orphans in the world, and that more than 160,000 households have boys and girls heading them (319). A study of their situation published in 2001 specifies that 70% of these orphans are girls (ACORD 2001: 26).

Recovery and reconstruction for the girl child: a titanic task

Only a childered and gendered approach to recovery, i.e. an examination of whether there are now new models of child and gender relations in Rwanda, can establish a restorative paradigm in terms of safety, remembrance and reconnection. Since all the areas affecting the girl child cannot be covered, "safety" on the basis of legal provisions for rape (personal security),[3] "remembrance" in terms of publicly denouncing past victimization, and "reconnection" *via* rights, namely inheritance (economic security) and political participation (socio-political security) will be examined.

Safety

As Herman contends, "The first task of recovery is to establish the survivor's safety. This task takes precedence over all others." (1992: 159) Rape which greatly undermines safety thus calls for both retributive and restorative justice, the former under the form of punishment and eviction of the culprits thus ensuring the safety of victims,

[3] The three indicators of personal security, economic security and socio-political security were devised by Myriam Gervais to assess the impacts of aid agency interventions on women's and girls' security, 2003: 545.

the latter as regards acknowledging that rape is a crime therefore creating definite legal provisions, and facilitating means to obtain redress.

Law reform in Rwanda has allowed for the prosecution of rape as a crime under three justice systems: the international system through the International Criminal Tribunal for Rwanda-ICTR (*Statute 1994*), the Rwandan governmental system through Rwandan courts, and the traditional Rwandan system through gacaca. The ICTR, which excludes the death penalty, recognized rape in the *Akayesu* trial in 1998, and under the four categories of crimes established by the 1996 Rwandan Organic Law, rape falls under category 1(d) which condemns sexual torture with the death penalty, excluding those who fall under it of the possibility of confession-based plea agreements. The gacaca tribunals, when dealing with category one suspects, transfer them to the commune gacaca tribunal from where they are transferred to the prosecutor's office, submitting them to the jurisdiction of the Organic Law (Vandeginste 1999: 19).

Considered a crime under article 360 of the *Penal Code*, rape is punishable of 5 to 10 years of imprisonment. More specifically, rape of a child of less than sixteen years is punishable by twenty years of imprisonment and sentences are increased where the victim is a relative of the offender, or where there is a relationship of power or authority, as in the case of teachers or employers (art. 361). Also, Law No. 27/2001 of 28 April 2001 concerning the rights of the child and protection of children against all forms of abuse was enacted after the Children's Assembly requested in 1998 that a law protect them against sexual abuse and under-age forced marriage (Committee on the Rights of the Child, Rwanda, 2003: 52(a).

These are the *de jure* provisions, but the *de facto* reality is that the means of prevention and redress for rape remain in the distant future. First, young girls lack authority in their own households and are the preys of "drunkards, vagrants or any other men who may decide to enter their shelter and force them into sexual relationships" (ACORD 2001: 26). In 2003, Gervais could still state that, in a school in Kigali, a survey revealed that 60% of the girls had been raped (545). Safe zones within the communities should therefore be created, with women in the police force patrolling districts to make sure no sexual abuse is taking place. Second, the stigmatization of rape is so important that victims are reluctant to file a complaint (Human Rights Watch/Africa 1996: 47-48). Third those who do file a complaint fear reprisals if the perpetrator lives nearby. Finally, the lack of female judicial investigators precludes the eliciting of rape testimonies in a climate of privacy and trust. In this respect, there is a dire need of a transformation of the legal profession to include women.

Remembrance

Again, even though under the Rwandan justice system victims can testify and denounce the crimes they suffered it is very difficult for victims, particularly children, to recount the traumatic experience of rape, torture and murder. Forcing them to do so can provoke what Ronda Bessner calls "double-victimization":

> The "double-victimization" of the abused person is another important obstacle to a successful criminal prosecution. Some victims of abuse are not willing or are not psychologically able to undergo the rigours of a criminal trial. Reliving traumatic childhood events for police investigators and for judges at preliminary inquiries

> may be psychologically devastating for the complainant. Cross-examination, face-to-face confrontation with the alleged abuser, and repetition of details of the abusive acts at the criminal trial is a difficult undertaking for a complainant. (1998: 81)

As Martha Minow explains, this issue is so serious with respect to children that the "TRC [Truth and Reconciliation Commission] decided not to take testimony from anyone under eighteen years old, but to hear from adults who could report on their experiences as children." (1998: 85) However, not to elicit testimony from children who themselves experienced and witnessed atrocities can also "mean missing important stories and denying children the potentially affirming experience of being heard and believed." (85) To address this issue, the 2004 ECOSOC Resolution offers *Guidelines on Justice for Child Victims and Witnesses of Crime* that set forth ten key principles to ensure the protection of children from justice process hardship:

1. The right to be treated with dignity and compassion
2. The right to be protected from discrimination
3. The right to be informed
4. The right to express views and concerns and to be heard
5. The right to effective assistance
6. The right to privacy
7. The right to be protected from justice process hardship
8. The right to safety
9. The right to reparation
10. The right to special preventive measures

The *Guidelines* also devised three modes of implementation which could be actual ways of enforcing new laws protecting girls so they become *de facto*, namely 1) training professionals in order to deal effectively and sensitively with child victims and witnesses; 2) making professionals cooperate on the implementation of these *Guidelines* so that child victims and witnesses are dealt with efficiently; and 3) monitoring the implementation of the *Guidelines*. Implementing these Guidelines in Rwanda would enable girl children to accomplish the process of remembrance in a protected environment.

Reconnection

For the girl child to effect the transition from victim to survivor, she needs economic and socio-political security. She can only engage actively in the world and experience reconnection if she obtains the tools that will allow for her reintegration with ordinary life.

Economic security

A first step to economic security for the girl child would be her right to inherit. As more than 90% of the active population in Rwanda work in the agricultural sector (Committee on the Rights of the Child, Rwanda, 2003: 24), the issue of land ownership is a key factor to girls' empowerment. In 1992, the Family Code finally allowed her to

inherit property from her father (Schabas and Imbleau 1997: 115), and in 1999 a new inheritance law enshrined equal rights for inheritance and succession (Law No. 22/99: articles 43 and 50). Nevertheless, as Rwanda is not truly a post-conflict society, girls are often chased from the family property as was the case in customary law (Human Rights Watch/Africa 1996: 43). In the 2003 Rwanda Report under paragraph 109, one still reads that "some women and girls in rural areas nevertheless continue to suffer the burden of tradition when it comes to succeeding a dead father or husband. In these cases disputes are settled 'amicably' by some local authorities not yet familiar with the new law." (Committee on the Rights of the Child) The new inheritance law must thus be implemented *de facto* under high surveillance, with government officials supervising their implementation in the districts. This is already the case through NGO projects which work with local authorities to enable women and girls to sign contracts and be "recognized as owners of their homes. These programmes also contributed to the recognition of the right of women and girls to hold property, and gave legitimacy to their role as heads of families." (Gervais 2003: 546)

Socio-political security

The situation in terms of socio-political participation for the girl child is still quite inadequate. In being a child till the age of 21, she is divested of political rights, and always under the protection of the family or the state within a context of control and dependence. This holds true on an international scale, as stated by Geraldine Van Bueren: "It is this unwillingness by UNICEF and many others to place as high a value on the child's present autonomy which has hindered the international protection of the rights of the child." (1998: 15) As Van Bueren explains, this is evidenced by their absence in the Committee on the Rights of the Child (389).

Nevertheless, huge improvements have been made for women and children in Rwanda which both have an impact on the girl child's participatory rights. In the case of women, as stated by Turshen and Twagiramariya: "The civil war changed the roles of Rwandan women, forcing them into what traditionally were men's roles, and many of them are demonstrating remarkable ability to handle the problems of the aftermath." (1998: 114) Indeed, *Constitution 2003* under article 9(4) provides for the representation of women in decision making organs. As of now, there are 39 women out of 80 who hold seats in Parliament and this is the largest female representation in the world: 48.8 % (Rwanda: seats in Parliament held by women 2004). Furthermore, article 99 of *Constitution 2003* allows a woman to run for presidency while under article 22 of *Constitution 1961* only males could do so. Now that women are dominant due to the crisis, there are a "growing number of women's organizations emerging to deal with the broad spectrum of issues faced by women. Rwandan women have organized themselves to provide trauma counselling groups, credit unions, legal advice centers, housing construction groups, survivor support groups, medical centers and other services." (Human Rights Watch/Africa 1996: 36) As for children, article 188 of *Constitution 2003* implemented a National Youth Council which allows for youth in all provinces of the country to elect two youth representatives in Parliament, and article 45 of Law No. 42/2000 stipulates that a third of seats be reserved for young people's representatives at the level of executive committees of cells, sectors, districts and towns. However, as under both laws "young people" encompass the age range of 15 to 35, there is a risk that

children under 18 may be underrepresented, even though they amount to 54.61% of the total population (Committee on the Rights of the Child, Rwanda 2004: 1(a). The wording of the 2003 Rwanda Report expresses this concern in stating that only: "some children aged from 15 to 18" (Committee on the Rights of the Child: 53) will be elected in the committees.

With respect to obtaining legal redress, *Constitution 2003* provides for an Ombudsman who can receive complaints from individuals under article 182(3). In addition, the regional *African Charter on the Rights and Welfare of the Child* does allow for an individual complaints mechanism under article 44, and since it was ratified by Rwanda in 2001, children in Rwanda can now file claims to this Committee. Moreover, the African Union recently adopted a *Protocol* establishing an African Court on Human Rights which can enforce the African Child *Charter*, but since it only entered into force in January 2004, it is too early to assess its impact on children's rights.

Recognizing the girl child's right to participation and empowerment is the most viable way of preventing future abuse**.** Both short-term and long-term recommendations should be taken into account. In the short-term, the girl child should have the right to the integrity of her body. She should have access to contraception, namely to prevent the transmission of HIV-Aids, and abortion ought to be legalized for it is still punishable under articles 325-328 of the *Penal Code*. Teaching in schools should provide seminars on the prevention of gendered violence and promote respectful relationships between boys and girls (Berman and Jiwani 2002: 38-43). In this perspective, seminars on human rights could be added to the curriculum to analyze the link between daily-routine violence and large scale violence, namely crimes against humanity. This would provide students with the opportunity to discuss the causes of such abuses and the means of avoiding them in the future. The inclusion of human rights in school curricula is already underway by the National Human Rights Commission (Committee on the Rights of the Child, Rwanda 2004: 8).

In the long-term, more women should be present in all key positions, such as the judiciary, to combat gender discrimination. In addition, since 50.71% of children in Rwanda are girls, the government ought to include an important percentage of girl children in official policies and legislation, and invite them to participate in committees to plan prevention strategies and programs such as those exploring the gendered/childered nature of violence. Further, one should ensure that girl children are equally represented in the Youth National Council. Lastly, young girls' councils could be created to effect networking and solidarity between girls.

Truly, in Rwanda, girl children have demonstrated their ability to exercise participatory rights many times over. They have undertaken the responsibility of heading households and have often shown great courage as evidenced by their decision in Gisenyi on 28 April 1997 whereby when they were ordered to separate themselves─Hutus from Tutsis, they refused stating that they were all Rwandans and were shot indiscriminately (Gourevitch 1998: 352-353). What greater proof of their competence and merit can one require to empower them with participatory rights?

Conclusion

Many recommendations for the recovery of the empowerment of the girl child in Rwanda must be effectuated under international, regional and national law. In international and regional law, the "girl child" ought to be integrated in all conventions as recommended in the *Beijing Declaration* under paragraphs 272-285 which cover all the discriminations she undergoes. In Rwandan law, the necessary improvements can be divided into two categories. First, the *de jure* provisions, such as the prosecution of rape and inheritance laws, need vigorous implementation procedures in order to become *de facto* and counter customary law, especially in rural areas. Second, law reform is very much called for, be it to harmonize Rwandan legislation with the provisions of human rights instruments where there is a discrepancy, for instance by lowering the age of majority to 18, or by enacting new laws to establish cardinal rights for girls, such as contraception and abortion. These new laws will also require close monitoring to be effective.

If one goes by Theodor Meron's observation on the belated recognition of rape as crime under international humanitarian law, whereby "calamitous circumstances are needed to shock the public conscience into focusing on important, but neglected, areas of law, process and institutions" (1993: 424), one can purport that the terrible crisis Rwanda underwent should enable it to engender positive changes, *inter alia* as regards the girl child. If these changes were instigated, they could have worldwide repercussions for her discriminated status in Rwanda is not unique.

Recognizing the status of the girl child, tomorrow's woman, and endowing her with rights and a voice could be a restorative opportunity to build a new Rwanda, and by extension a new world, whereby "[t]he skills, ideas and energy of the girl child [would be acknowledged as] vital for full attainment of the goals of equality, development, and peace." (*Beijing Declaration* 1995: 41)

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