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CHALLENGING POLITICAL BOUNDARIES IN POST- CONFLICT STATES

ANGELA M. BANKS*

1. INTRODUCTION

Constitution making in post-conflict states is in the midst of a conceptual transformation. Traditionally these constitutions have been viewed as power maps that are products of elite-brokered deals, often written by foreign experts.¹ The process generally takes place outside of the public eye with no input from average citizens or civil society. Such constitutions tend to regulate the distribution of political, economic, and social power in ways that address the concerns and interests of the elite drafters. This has led to the adoption of constitutions that entrench the political power of the elite drafters, limit the development of competitive political opposition, and fail to create institutional and procedural mechanisms for addressing existing and future political, economic, or social conflicts.

Rwanda adopted a different approach, a participatory approach.² The Legal and Constitutional Commission ("LCC"),

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¹ See, e.g., H.W.O. Okoth-Ogendo, *Constitutions without Constitutionalism: Reflections on an African Political Paradox*, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 65 (Douglas Greenberg et al. eds., 1993) (conceptualizing constitutions as power maps).

² This approach was undertaken in an effort to implement participatory constitution-making. The Legal and Constitutional Commission ("LCC") sought public involvement in the process because it viewed the opinions of each citizen as vital for making the constitution a "common denominator of all Rwandans." Republic of Rwanda Legal & Const. Comm'n, *The Commission Started Gathering Views on the Draft Constitution* (Jan. 15, 2002), <http://www.cjcr.gov.rw/eng/news001.htm> (last visited Oct. 21, 2007) [hereinafter *The Commission Started*].

the body responsible for drafting Rwanda's 2003 Constitution, traveled throughout the country to discuss the state's future constitution with Rwandan citizens.³ The LCC members attended public meetings in which citizens had the opportunity to share their concerns, ideas, and recommendations.⁴

The literature on participatory constitution making contends that citizen participation facilitates democratization by grounding the state's governance system in a set of principles and practices for which there is a national consensus.⁵ The process by which the

Gathering Views]; see also Republic of Rwanda Legal & Const. Comm'n, *Give Us Your Suggestions*, <http://www.cjcr.gov.rw/eng/suggestions.htm> (last visited Oct. 21, 2007) [hereinafter *Give Us Your Suggestions*] ("In order to establish the Constitution that suits all Rwandans, we call upon every person who will go on this site internet to give advice and views which will be considered while elaborating the Constitution."). The resulting Constitution is, however, remarkably similar to those drafted exclusively by elites with one notable exception—women's political participation. The Constitution requires thirty percent of the members of both legislative houses to be women, which led to the election of 39 women to the Chamber of Deputies (the lower house of Rwanda's parliament) in 2003. THE CONSTITUTION OF THE REPUBLIC OF RWANDA art. 62, 76, 82; Inter-Parliamentary Union, *Women in National Parliaments: World Classification*, Sept. 30, 2003, <http://www.ipu.org/wmn-e/arc/classif300903.htm> (last visited Oct. 21, 2007) (48.8% of the members of the Chamber of Deputies are women). This represents the largest percentage of women, 48.8%, sitting in a lower or single legislative house. Inter-Parliamentary Union, *Women in National Parliaments: World Classification*, Jan. 31, 2007, <http://www.ipu.org/wmn-e/arc/classif310107.htm> (last visited Oct. 21, 2007). Women make up 45.3% of Rwanda's national parliament (both chambers), ranking second to Sweden's single chamber parliament, which is 47.3% female. *Id.*

³ Throughout this article, I use the term "citizen" to refer to an individual residing within the post-conflict state rather than a narrower legal category of individuals entitled to particular rights and benefits within a given state.

⁴ The LCC accepted both oral and written communication from citizens. Verbal communication took place at the public meetings and written communication occurred in the form of responses to the LCC-issued questionnaires or independently drafted recommendation reports.

⁵ See generally Vivien Hart, *Constitution-Making and the Transformation of Conflict*, 26 PEACE & CHANGE 153, 159–60 (2001) [hereinafter *Constitution-Making*] (stating that in recent constitutional experiences, citizens have criticized constitutions written solely by elites and instead have demanded a constructive role in the constitution drafting process); HASSEN EBRAHIM, KAYODE FAYEMI, & STEPHANIE LOOMIS, PROMOTING A CULTURE OF CONSTITUTIONALISM AND DEMOCRACY IN COMMONWEALTH AFRICA (Commw. Human Rights Initiative, Background Paper to accompany CHRI's Recommendations to CHOGM 1999) (1999), available at http://www.humanrightsinitiative.org/publications/const/constitutionalism_booklet_1999.pdf; VIVIEN HART, DEMOCRATIC CONSTITUTION MAKING 3–4 (2003), available at <http://www.usip.org/pubs/specialreports/sr107.pdf> [hereinafter DEMOCRATIC CONSTITUTION] (arguing that a democratic constitution "is made in a democratic process."); Otiye Igbuzor, *Constitution Making in*

constitution is adopted is as important as the substance of the document. Public dialogue and deliberation are thus essential components of the process.⁶ Rwanda used a participatory constitution-making process, and it adopted a Constitution that enjoys a high level of domestic support, is deemed legitimate by the citizens, and effectively addresses a variety of issues important to women.⁷ Despite these noteworthy achievements, it is equally noticeable that the Constitution regulates political parties in ways that entrench the *ex ante* power configuration. For example, the 2003 Constitution prohibited political parties from operating offices at the local level, which limited the development of local constituencies.⁸ The Constitution also states that political parties can be banned for engaging in divisive behavior. The vague definition of divisive behavior has had a chilling effect on the development of robust political parties.⁹

Nigeria: Lessons for Making a People's Constitution (Aug. 19-24, 2001) (unpublished discussion paper presented at the Conference on Constitutional Development, Kibuye, Rwanda), available at <http://www.cdd.org.uk/cfcr/constitutionlessons.htm> (noting that a people's constitution reflects the "wishes and aspirations of the people."). Otive Iguzor is the Secretary for the Citizen's Forum for Constitutional Reform, an organization founded through a Centre for Democracy and Development project.

⁶ See IRIS MARION YOUNG, INCLUSION AND DEMOCRACY 50 (2000) ("In a society where there are social group differences and significant injustice, democratic politics ought to be a process of struggle. Far from a face-off in enemy opposition, struggle is a process of communicative *engagement* of citizens with one another."); *Constitution-Making*, *supra* note 5, at 157-61 (conceptualizing constitution-making as a negotiation, part of the conflict transformation process). Participatory constitution-making draws heavily on participatory and deliberative democratic ideas about the normative and instrumental value of citizen participation and public dialogue. See, e.g., *Constitution-Making*, *supra* note 5 (describing the role of constitution-making in transforming conflict); Kirsti Samuels, *Post-Conflict Peace-Building and Constitution-Making*, 6 CHI. J. INT'L L. 663 (2006) (discussing the importance of democratic constitution-making in promoting peace and good governance).

⁷ See Samuels, *supra* note 6, at n.26 (noting that the consultative process in drafting Rwanda's Constitution resulted in a highly popular document); PRISCILLA YACHAT ANKUT, INT'L INST. DEMOCRACY & ELECTORAL ASSISTANCE, THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: CASE STUDY RWANDA 17-18 (2005), available at <http://www.idea.int/conflict/cbp> (highlighting the factors that make the Rwandan Constitution popular amongst its constituents).

⁸ However, the text was modified in 2005 to state that political parties may establish offices at the national level. See Amendment No. 2 of Aug. 12, 2005, CONST. OF THE REPUBLIC OF RWANDA art. 2, OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA (indicating that change).

⁹ A potentially significant opposition party, the *Mouvement Démocratique Républicain* (Democratic Republican Movement) was disbanded by the

Within the growing literature on participatory constitution making in post-conflict or transitional societies, there has been insufficient analysis of issues related to institutional and procedural design. This literature makes normative and instrumental claims about the benefits of participatory constitution making without analyzing the relationship between institutional and procedural design decisions and the quality and quantity of citizen participation. Just as there are a variety of electoral systems that reward and penalize different types of electoral behavior,¹⁰ there are different types of participatory systems and they differ in their capacity to facilitate or frustrate citizen participation. This Article introduces the concepts of external and internal participatory systems to assist in analyzing the different types of participatory systems used to draft constitutions in post-conflict states. This binary provides a mechanism for identifying the institutions and procedures that are most effective in achieving the normative and instrumental goals of participatory constitution making.

External participatory systems exclude citizens from the forums in which substantive drafting decisions are made. The drafting body is generally small and appointed by the government. Citizens are only given the opportunity to interact with the

Transitional National Assembly in 2003, just before the first national elections under the new Constitution. See *infra* text accompanying notes 191-94.

¹⁰ Scholars have examined how to encourage a diverse range of candidates to run so that citizens would have meaningful choices; how to create an environment in which citizens feel comfortable voting for their candidate of choice; what rules or procedures might limit the electoral success of extremist candidates; and whether or not particular governance systems discourage extremism. See generally DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (1985) (analyzing theoretical, political, and military aspects of ethnic conflict, and discussing strategies for conflict resolution); DONALD L. HOROWITZ, *A DEMOCRATIC SOUTH AFRICA? CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY* (1991) (discussing the challenges of constitution-making in a racially divided context); AREND LIJPHART, *PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES* (1999) (describing majoritarian and consensual governance structures in different contexts); AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* (1977) (comparing experiences in democracies in heterogeneous societies); Arend Lijphart, *Consociational Democracy*, 21 *WORLD POL.* 207 (1969), *reprinted in* *CONSOCIATIONAL DEMOCRACY: POLITICAL ACCOMMODATION IN SEGMENTED SOCIETIES* 79 (Kenneth D. McRae ed., 1974) (describing workable forms of democratic governance in divided societies); Ben Reilly, *The Alternative Vote and Ethnic Accommodation: New Evidence from Papua New Guinea*, 16 *ELECTORAL STUD.* 1 (1997) (examining the effects of the alternative vote system in Papua New Guinea).

drafting body through public meetings and written submissions. Additionally there are few, if any, rules or guidelines ensuring that the drafting body will systematically review and consider the public's feedback. The alternative to this type of participatory system is an internal system in which individuals participate, directly or through representatives, in the drafting forums in which substantive decisions are made. Furthermore, the agenda-setting and decision-making rules facilitate drafters reviewing and deliberating a wide variety of proposals.

Based on a case study of gender equity advocates in Rwanda, external participatory systems only enable those individuals who mobilize, obtain influential allies, and implement an effective framing strategy¹¹ to make substantive contributions to the constitution-making process. These factors increase the likelihood that public comments and recommendations will be reviewed and deliberated. Rather than opening the floodgates to democratic governance, external participatory systems provide narrow political opportunities that only a limited segment of the population is able to utilize effectively. Such narrow opportunities during the early reconstruction years in a post-conflict state can play an important role in entrenching a commitment to democratic governance. They do not, however, facilitate broad citizen participation in substantive discussions and deliberations that is necessary for achieving one of the fundamental goals of participatory constitution making—developing a national consensus for a set of governance principles and practices.¹²

¹¹ See ERVING GOFFMAN, *FRAME ANALYSIS* 21 (1974), where the term "frame" was first introduced to refer to "schemata of interpretation" that allow an individual "to locate, perceive, identify, and label a seemingly infinite number of concrete occurrences . . ."; see also David A. Snow & Robert D. Benford, *Master Frames and Cycles of Protest*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY* 133, 137 (Aldon D. Morris & Carol McClurg Mueller eds., 1992) (stating that the term "frame" is used within the sociological literature on social movements to refer to "an interpretive schemata that simplifies and condenses the 'world out there' by selectively punctuating and encoding objects, situations, events, experiences, and sequences of actions within one's present or past environment Collective action frames not only perform this focusing and punctuating role; they also function simultaneously as modes of attribution and articulation.").

¹² Scholars examining participatory decision-making, and advocates of such processes, often discuss three instrumental benefits of participatory decision-making: legitimacy, public support, and effective decisions. See, e.g., E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 64 (1988) (noting that procedural preferences linked to fairness impact citizen satisfaction and support for legal institutions); YOUNG, *supra* note 6, at 5–6 (arguing that the "legitimacy of a democratic decision depends on the degree to which those

This Article is divided into four sections. Section 2 introduces the distinction between external and internal participatory systems. This section then discusses the participatory constitution-making process used in Rwanda, identifying the modes of citizen participation, the procedures governing citizen participation, and the drafter's use of citizen comments, recommendations, and proposals. Section 3 conceptualizes participatory constitution making as a tool for creating democratic states by increasing political inclusion. Social movements are a key instrument for bringing about such changes within a society. Using the sociological literature on social movements, this section identifies the factors relevant for the emergence, sustainability, and success of social movements. These factors are instructive in analyzing who within a society is able to successfully utilize external participatory constitution-making processes. Section 3 also argues that Rwanda's constitution-making process exemplifies an external participatory system in which most citizens were unable to contribute to, or participate in, the discussions, debates, or deliberations in which substantive decisions regarding the constitution were made. Access to, and influence within, these decision-making forums were limited to those that mobilized, obtained influential allies, and implemented effective framing strategies. Section 4 discusses the ability to achieve internal inclusion in Rwanda. This argument is developed through an analysis of gender equity advocates' quest for constitutional

affected by it have been included in the decision-making processes and have had the opportunity to influence the outcomes."); Seyla Benhabib, *Models of Public Space*, in HABERMAS AND THE PUBLIC SPHERE 73, 87 (Craig Calhoun ed., 1992) (noting that deliberation among political equals is the basis of democratic legitimacy because it enables "those affected by [the general] social norms and collective political decisions [to] have a say in their formulation, stipulation, and adoption."); Archon Fung & Erik Olin Wright, *Deepening Democracy: Innovations in Empowered Participatory Governance*, 29 POL. & SOC'Y 5, 10 (2001) (exploring ways, based on previous documented efforts, to empower citizens to participate in the political process); Igbuzor, *supra* note 5 (arguing for participatory decision-making in Africa); Samuels, *supra* note 6, at 665 (arguing that the "adoption of participatory democratic governance structures is best able to ensure peace and legitimacy."); DEMOCRATIC CONSTITUTION, *supra* note 5, at 11 (offering lessons learned to make democratic constitution-making genuine); EBRAHIM ET AL., *supra* note 5 (advocating the need for inclusive processes for the democratic betterment of the Commonwealth); see also David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1764 (2005); Devra C. Moehler, Public Participation and Support for the Constitution in Uganda 26 (2003) (unpublished paper, on file with author) (testing the claim as to whether participation in constitution-making results in more popular support for the resulting constitution).

provisions regarding women's political participation and gender equity in public and private life.

2. PARTICIPATORY CONSTITUTION MAKING

Many international actors and constitution drafters in post-conflict states have adopted a new participatory perspective on constitution making. Drawing on the normative claims of participatory democratic theory, these actors start from the premise that a democratic constitution must not only create a democratic state but must also be created and adopted through democratic processes.¹³ Such a process must enable those who will be governed by the constitution to participate in the drafting process, and the process should be transparent and accountable to the people.¹⁴ Constitution making in post-conflict states serves a variety of functions. First, it produces a constitution that creates the state's governance framework, which provides for the allocation of executive, legislative, and judicial functions, details citizens' rights, and regulates access to power and resources. Second, it becomes a forum for discussing and negotiating divisive or contested issues that are often related to the recent armed conflict. Third, it serves as a public resource for democratic education, and it potentially enables a consensus-based vision of the state's future to develop.¹⁵ Finally, it facilitates the adoption of a document that is both constitutive and transformative.¹⁶

¹³ See Samuels, *supra* note 6, at 667–68 (noting that how a constitution is drafted and adopted impacts the resulting state structure); *Constitution-Making*, *supra* note 5, at 156–57 (arguing that “new constitutionalism” or constitution-making as a participatory process is necessitated by the intrastate nature of recent conflicts); DEMOCRATIC CONSTITUTION, *supra* note 5, at 3–4 (emphasizing that a constitution for diverse groups of people should be made through a democratic process); Angela M. Banks, *Expanding Participation in Constitution Making: Challenges and Opportunities*, 49 WM. & MARY L. REV. (forthcoming 2007) (discussing participatory democratic theory and participatory constitution-making); Guido Galli, *The Role of Constitution-Building Processes in Democratization* (May 29, 2005) (working paper on file with Int’l IDEA).

¹⁴ See DEMOCRATIC CONSTITUTION, *supra* note 5, at 4 (arguing that norms of transparency and accountability in daily political decision-making are now also demanded of the constitution-making process).

¹⁵ See Samuels, *supra* note 6, at 667 (discussing the potential of participatory constitution-making to provide a forum for negotiation and to begin a process of healing and reconciliation); *Constitution-Making*, *supra* note 5, at 156–57 (arguing that maintaining an open conversation in constitution-making deters renewed conflicts).

¹⁶ Kirsti Samuels, *State Building II: Issues of Design and Implementation: State-*

Efforts to make the constitution-making process more democratic have focused on ensuring that citizens have the opportunity to participate in the meetings, deliberations, discussions, or debates regarding the content of the constitution. The goal has been to decrease external exclusion—the ways in which individuals are prevented from participating in the decision-making forums.¹⁷ The assumption has been that increasing participation will facilitate the introduction and discussion of a variety of perspectives that will lead to innovative and effective governance systems, significant public support for the constitution, and domestic legitimacy for the state's governance system. Research on recent constitution-making processes in post-conflict and transitional states has found that more representative and more inclusive constitution-making processes resulted in constitutions that favored free and fair elections, greater political equality, more social justice provisions, human rights protections, and mechanisms for accountability.¹⁸ This study, conducted by the International Institute for Democracy and Electoral Assistance, examined twelve cases of constitution making during transitional moments from either civil conflict or authoritarian rule.¹⁹

Building and the Political Transition After Conflict, 99 AM. SOC'Y INT'L L. PROC. 171, 172 (2005).

¹⁷ See YOUNG, *supra* note 6, at 55 (outlining the means by which individuals can be excluded). Mitigating external exclusion is an important task. As Doug McAdam has noted, "excluded groups, or challengers, face enormous obstacles in their efforts to advance group interests. Challengers are excluded from routine decision-making processes precisely because their bargaining position, relative to established polity members, is so weak." DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970*, at 40 (1982).

¹⁸ Samuels, *supra* note 6, at 668.

¹⁹ See *id.* (analyzing the twelve case studies covered in: CAROLYN MCCOOL, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: AFGHANISTAN CASE STUDY* (2004), A.A. MOHAMOUD, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: BAHRAIN CASE STUDY* (2005), J. ESTEBAN MONTES & TOMÁS VIAL, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: CHILE CASE STUDY* (2005), IVÁN MARULANDA, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: COLOMBIA CASE STUDY* (2004), RANDALL GARRISON, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: EAST TIMOR CASE STUDY* (2005), JILL COTTRELL & YASH GHAI, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: FIJI CASE STUDY* (2004), RODDY BRETT & ANTONIO DELGADO, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: GUATEMALA CASE STUDY* (2004), ANDREA MEZEI, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: HUNGARY CASE STUDY* (2005), EDWARD SCHNEIER, INT'L IDEA, *THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: INDONESIA*

Participatory processes were also found to broaden the constitutional agenda and prevent former combatants from dividing state power and resources amongst themselves.²⁰ Constitutions that were created through constitution-making processes that were dominated by one interest or party favored the dominant interest or party. Those that resulted from elite pacts²¹ undermined social and economic equality and “empowered actors for whom democracy was not a priority.”²² Participatory

CASE STUDY (2005), JILL COTTRELL & YASH GHAI, INT’L IDEA, THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: KENYA CASE STUDY (2004), JOHN SIMPKINS, INT’L IDEA, THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: NIGERIA CASE STUDY (EXTERNAL PERSPECTIVE) (2004), PRISCILLA YACHAT ANKUT, INT’L IDEA, THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION: RWANDA CASE STUDY (2005), *all available at* <http://www.idea.int/conflict/cbp>.

²⁰ See Samuels, *supra* note 6, at 670 (arguing that power should not be limited to elites and that more inclusive constitution-making increases the chance for sustainable democracy).

²¹ An elite pact is an “explicit, but not always publicly explicated or justified, agreement among a select set of actors which seeks to define (or, better, to redefine) rules governing the exercise of power on the basis of mutual guarantees for the ‘vital interests’ of those entering into it.” GUILLERMO O’DONNELL & PHILIPPE C. SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 37 (1986).

²² Samuels, *supra* note 6, at 669. See O’DONNELL & SCHMITTER, *supra* note 21, at 42 (arguing that socioeconomic change can make it increasingly difficult for an elite cartel to maintain power). Peace agreement constitutions and political power-sharing agreements ensure that the negotiating parties will not be permanently excluded from political power or exposed to political abuse in the future. BARBARA F. WALTER, COMMITTING TO PEACE: THE SUCCESSFUL SETTLEMENT OF CIVIL WARS 27–28 (2002); Caroline Hartzell & Matthew Hoddie, *Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management*, 47 AM. J. POL. SCI. 318, 321 (2003). Unsurprisingly, such agreements rarely address issues or interests other than those important to the parties to the agreement. As such, democratic reforms are incorporated to the extent that they advance the interests of the negotiating combatants. The desire for domestic and international legitimacy can serve as an impetus for democratic reforms, but such reforms are likely to be restricted. For example, agreements may include provisions requiring elections at some point in the future, but they are rarely used to determine the participants in the first post-conflict government. See, e.g., Protocol Between the Government of Sudan (GOS) and the Sudan People’s Liberation Movement (SPLM) on Power Sharing, art. 1.6.2.11, May 26, 2004 (expressing the right to vote); Political Negotiations on the Peace Process and on Transition in the DRC: Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo, Dec. 16, 2002 at 3–5 (outlining plans for elections after the transitional period); Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Power-Sharing within the Framework of a Broad-Based Transitional Government, arts. 48–63, Jan. 9, 1993 [hereinafter Rwanda Power-Sharing Agreement] (outlining the resolution of the war). *But see* General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, 33

constitution making also served an educational function. It provided an opportunity to initiate democratic education in societies that had little political freedom and few past opportunities for citizens to participate in shaping the state's governance framework.²³ Insufficient attention, however, has been paid to internal exclusion and the role of institutional design decisions in creating or facilitating such exclusion.²⁴

In post-conflict states a significant barrier to effective participatory decisionmaking is exclusion. There are three components of participation that are relevant to a discussion of exclusion and participatory constitution making: attendance, contribution, and engagement.²⁵ Attendance refers to whether or not individuals are physically present at the participatory forum. Attendance can be hindered despite rules allowing all members of the community to participate. Social conventions may require or suggest that only men, the educated, the well-off, or those appropriately dressed participate in such forums. Absent outreach work to address these social conventions, participation may be

I.L.M. 75 (1996) (providing for elections in 1995 but supporting, if not indirectly guaranteeing, the electoral success of the nationalist parties).

²³ See Gianpaolo Baiocchi, *Participation, Activism, and Politics: The Porto Alegre Experiment and Deliberative Democratic Theory*, 29 POL. & SOC'Y 43, 56-57 (2001) (discussing the bolstering effect of participatory governance on civil society in Brazil); Fung & Wright, *supra* note 12, at 29 (discussing evidence that participatory decision-making allowed ordinary citizens to gain political wisdom through experience rather than through the media); Samuels, *supra* note 6, at 669 (arguing that the participatory process of constitution-making empowered people who have not previously had the opportunity to shape the governance of their state in the past).

²⁴ Internal exclusion refers to the ways in which "people lack effective opportunity to influence the thinking of others even when they have access to fora and procedures of decision-making." YOUNG, *supra* note 6, at 55.

²⁵ In discussing democratic debate, Young states:

I prefer to call to the normal condition of democratic debate a process of *struggle*. In a society where there are social group differences and significant injustice, democratic politics ought to be a process of struggle. Far from a face-off in enemy opposition, struggle is a process of communicative *engagement* of citizens with one another. People of differing social positions or interests must struggle to raise issues because others may be threatened by those issues or they may simply think that different issues are more important.

YOUNG, *supra* note 6, at 50.

low.²⁶ Second, individuals may attend the participatory forum, but not contribute to the discussions. As with physical presence, participation could be constrained as a result of social conventions that address not only who can participate, but also how people should participate.²⁷ Expressing different, dissenting, or conflicting opinions, thoughts, ideas, or proposals may be seen as inappropriate and result in social sanctions.²⁸ Creating an environment in which dissent and conflict are accepted is a critical part of inclusive participatory processes. Finally, individuals may attend and contribute to the discussion even though their opinions, thoughts, ideas, or proposals are in tension with dominant cultural or political norms. Participants may, however, dismiss and not engage such contributions because they do not fit within an accepted conception of the common good or a common norm.²⁹ Yet participatory communicative decisionmaking is premised on the idea that participants will advance proposals in ways that can persuade all participants. This requires rooting one's comments in an accepted notion of some common goods or norms. While participants are supposed to be open to considering reasons and justifications that conflict with their antecedent preferences and interests, it will be difficult for them to examine and reevaluate their conceptions of common goods or norms.³⁰ Thus identifying

²⁶ See Archon Fung, *Recipes for Public Spheres: Eight Institutional Design Choices and Their Consequences*, 11 J. POL. PHIL. 338, 347–48 (2003) (suggesting outreach work as a means of alleviating participation bias based on socioeconomic class).

²⁷ See *infra* text accompanying notes 159–65 for a discussion of the effect of social conventions on women's participation in Rwanda's national constitutional conference.

²⁸ Cf. JANE J. MANSBRIDGE, *BEYOND ADVERSARY DEMOCRACY* 295 (1983) ("When the assumption of common interest makes conflict illegitimate, a polity may no longer tolerate dissent.").

²⁹ See *id.* at 293–98; CASS R. SUNSTEIN, *DESIGNING DEMOCRACY: WHAT CONSTITUTIONS DO* 26 (2001) (discussing social conformity and the mechanisms of group polarization); Seyla Benhabib, *Toward a Deliberative Model of Democratic Legitimacy*, in *DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL* 67, 73 (Seyla Benhabib ed., 1996) [hereinafter *Toward a Deliberative Model*] (arguing that deliberative democracy requires equal and symmetrical participation and the right to question both topics of conversation and discourse procedure). Limited attendance and limited contributions by those in attendance constrain the information available to participants and the types of arguments available for consideration.

³⁰ See *Toward a Deliberative Model*, *supra* note 29, at 71 (stating that the challenge to democratic rationality is arriving at a common good despite inevitable societal value-pluralism); Joshua Cohen, *Procedure and Substance in*

and working with prevailing conceptions of common goods and norms become important aspects of communicating effectively within participatory forums.³¹

The framers of participatory constitution-making processes generally work to limit exclusion in the first two components of participation: attendance and contribution. Outreach work is often undertaken by local government, non-governmental organizations, inter-governmental organizations, and local social movement organizations to encourage citizens to attend and contribute during the participatory forums.³² Less work, however, is put toward addressing the lack of engagement experienced by many individuals and organizations. Minimal engagement in Rwanda appears to be one of the more significant ways in which individuals and organizations were denied an opportunity to influence the LCC deliberations.³³

2.1. External and Internal Participatory Systems

Analytically it is useful to distinguish amongst the various participatory constitution-making systems currently being utilized. Recent efforts to include the public in constitution-making

Deliberative Democracy, in DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL 95, 100 (Seyla Benhabib ed., 1996).

³¹ See *infra* Section 3 (discussing framing and the importance of SMOs using frames that resonate with relevant decision-makers and the broader public).

³² Social movement organizations can similarly play a role in mitigating exclusion that results from a failure to engage. They can mobilize, organize, and strategically frame their arguments, ideas, and proposals in ways that are congruent with dominant conceptions of the common good or common norms. Such framing enables the arguments, ideas, or proposals to be critically engaged within the participatory forums of the constitution-making process.

There may in fact be times in which particular segments of a society are interested in advancing ideas and proposals that cannot be linked to any aspect of dominant conceptions of the common good or common norms. In such cases, strategic framing will not be useful. It is my contention, however, that social movement organizations seeking to deepen democratic reforms in post-conflict states will in fact be able to link their goals to dominant conceptions of common norms or a common good. Norms regarding equality, justice, and freedom are prevalent, in great part as a result of the diffusion of international human rights norms. Conflicts regarding the implementation of such norms will exist and they will manifest themselves differently in different societies. It is for these types of conflicts that social movement organizations can utilize strategic framing to facilitate engagement within participatory forums to assist in the resolution of such conflicts.

³³ See text accompanying notes 60–64 (discussing the limited number of public comments reviewed by the LCC).

processes have employed various combinations of the following three-stage process, which focuses on addressing external exclusion. First, the government arranges public meetings throughout the country in which individuals discuss what they believe the current political system does well, explain their concerns with the current political system, identify new matters for the constitution to address, and develop innovative ideas for addressing the concerns and new matters that have been raised. Second, a national committee or commission reviews the feedback received during the consultation process and drafts a new constitution. Third, the draft constitution is put to a national referendum for approval. Each stage provides for different types of participation in terms of quantity and quality. Institutional design decisions regarding which stages to utilize and how to implement them influence the capacity of individuals and organizations to experience internal inclusion.

The ability of participatory constitution making to achieve the normative and instrumental goals its adherents articulate varies based on the modes of participation provided, the method by which the drafters are selected, the manner in which the drafting body makes decisions, and how the public information is utilized in the drafting process. Participatory constitution-making systems as a category address external exclusion, but they vary in the extent to which they facilitate internal inclusion due to process design choices regarding the above-noted factors.

The typology of participatory constitution-making systems introduced below assists in better analyzing the effects of utilizing participatory constitution making in post-conflict states. Based on the importance of facilitating internal inclusion, there are two broad categories of participatory systems: external participatory systems and internal participatory systems.³⁴ External

³⁴ Rwanda provides a good case for examining constitution-making in Africa because the Rwandan process mirrors the most frequent type of participatory process utilized in Africa. The key features of that process are that the drafting body has fewer than fifteen key decision-makers, the members of the drafting body are appointed by the government, a national approval referendum is held, and there are no initial negotiations to create the constitution-making process. See JENNIFER WIDNER, *CONSTITUTION WRITING AND CONFLICT RESOLUTION* 10, 12 (U.N. Univ. World Inst. for Dev. Econ. Research ed., 2005), available at <http://www.wider.unu.edu/publications/rps/rps2005/rp2005-51.pdf> (explaining the styles of participation utilized by different countries and regions). Twenty-four of the eighty-four African countries reviewed utilized this type of participatory process. *Id.* Rwanda's process is also representative of other

participatory systems exclude the public from the forums in which substantive decisions about the constitution are made, but allow the public to interact with the drafting body in a consultative capacity. This is often accomplished through public meetings and written submissions. Internal participatory systems include citizens in the substantive decision-making forums directly or through representatives, and the agenda-setting and decision-making rules facilitate the review and consideration of a wide variety of proposals.

External participatory systems are also characterized by a predominant focus on gathering support for, and increasing the legitimacy of, a specific governance system. In such systems political elites envisage a particular governance system, and they consult the public in an effort to gain support for their vision. The public consultation process is likely to involve a significant amount of civic education and information about the benefits and disadvantages of various constitutional options. The process will also enable individuals to discuss concerns and offer ideas or proposals. The level of openness to such recommendations or proposals will depend upon how they fit with the governance system envisioned by the elite. In internal participatory systems political elites seek public involvement in creating the governance system. Public participation facilitates the development of a national consensus for a set of principles and practices regarding political participation and resolving political, economic, and social conflicts. External participatory systems focus on obtaining support for an elite-designed governance system while internal systems seek to engage the public in creating that system.

These goals influence the institutional and procedural choices made when designing and implementing a participatory system for constitution making. In external systems political elites maintain control over access to the drafting body and information regarding the process. Such control is often exercised by creating a drafting body comprised of representatives of specific interests within the country deemed important by the government, appointing members of the drafting body, and providing general

processes in Africa because of the extensive public consultation with ordinary people that took place during the preparation of the draft. Widner finds that 43.2% of the African countries reviewed consulted the public during the preparation of the initial draft and 41.3% of such countries provided opportunities for ordinary citizens to participate. *Id.* at 12-13.

rather than specific information to the public about substantive developments in the process. Citizen participation is channeled toward consultative activities such as public meetings, which serve two purposes. First, public meetings enable government officials to educate the public about the role of a constitution and the governance options available. Second, they provide an opportunity for individuals to share their ideas, grievances, or proposals with the members of the drafting body and fellow participants. These modes of participation convey the government's interest in citizen opinions, which is an important development in a state's democratization process.³⁵ Despite widespread public consultation being a critical aspect of external participatory systems, there are few rules or procedures governing how the drafting body should review and consider the information received from the public. For example, Rwanda's Legal and Constitutional Commission ("LCC") issued an action plan in which it stated its intention to create a database cataloging individual responses to the LCC-issued questionnaire. The database, however, was only to include seven percent of the returned questionnaires selected at random.³⁶ The internal LCC rules required the LCC members to consult the public and gather ideas about the type of constitution that would best suit the country, but the rules only required the members to furnish reports about their individual participation in public consultation forums.³⁷ There are no guidelines for recording ideas or proposals offered during the public meetings or for reviewing them and presenting them to the LCC as a whole.³⁸

³⁵ Many post-conflict states have long histories with authoritarian regimes in which citizen concerns and opinions were disregarded. *See, e.g.,* CLAUDE AKE, *DEMOCRACY AND DEVELOPMENT IN AFRICA* 4-5 (1996) (explaining how African countries transitioning to post-colonial authority failed to empower common citizens).

³⁶ REPUBLIC OF RWANDA LEGAL & CONST. COMM'N, *TOWARDS A CONSTITUTION FOR RWANDA: ACTION PLAN 2002-2003*, at 15 (Apr. 2002) [hereinafter *ACTION PLAN*].

³⁷ REPUBLIC OF RWANDA LEGAL & CONST. COMM'N, *INTERNAL RULES FOR THE LEGAL AND CONSTITUTIONAL COMMISSION* art. 9 (Mar. 21, 2001).

³⁸ The focus on legitimacy and support in external participatory systems is exemplified in the requirement that LCC members are to defend the positions of the LCC. *Id.* Rather than engage in critical discussions with the public and amongst themselves about the elite-created governance system in an effort to create the most effective system for the society as a whole, LCC members were required to defend it.

In what I term internal participatory systems, there is a broadly representative drafting body representing all citizens within the state. The representatives to this body are freely chosen by their constituents. There are mechanisms for the representatives to ascertain the ideas, grievances, or proposals of their constituents and be accountable to them. The process also facilitates public dialogue amongst citizens and between citizens and members of the drafting body. Finally, rules regulate how the drafting body responds to proposals from citizens. This type of system enables more citizens to contribute to the substantive discussions and deliberations regarding the constitution. Rather than seeking mere public support for an elite-created governance system, internal participatory systems seek to give individuals residing in a post-conflict state the opportunity to influence the substance of the constitution.³⁹

2.2. Participatory Constitution Making in Rwanda

On December 13, 1999, Rwanda's Transitional National Assembly ("TNA") enacted legislation creating the Legal and Constitutional Commission. The LCC was tasked with preparing a draft constitution, drafting bills for laws to govern during the transition period, and reconciling all laws with the new constitution. In undertaking these tasks the LCC was to obtain the views of the population, make use of examples from other countries, and explain what a constitution is to the general population.⁴⁰ Rwanda's constitutional review process was initially proposed in the 1993 Arusha Peace Agreement ("APA" or "Arusha Agreement"), which was negotiated to end the armed conflict in Rwanda that had begun in October 1990 when fifty members of the Rwandan Patriotic Army crossed into Rwanda from Uganda near

³⁹ See, e.g., YOUNG, *supra* note 6, at 5-6 ("The normative legitimacy of a democratic decision depends on the degree to which those affected by it have been included in the decision-making processes and have had the opportunity to influence the outcomes."); Lani Guinier, *More Democracy*, 1995 U. CHI. LEGAL F. 1, 16 (1995) ("Democracy is about participating. Participation matters. It matters because the decisions that governments make affect everyone. Respect for those decisions, including those with which we disagree, demands meaningful participation in the decision making process.").

⁴⁰ See ACTION PLAN, *supra* note 36, at 3 (laying out the initial charge of the Legal and Constitutional Commission); Republic of Rwanda Legal & Const. Comm'n, *Our Mission and Objectives*, <http://www.cjcr.gov.rw/eng/mission.htm> (last visited Oct. 22, 2007) (outlining Commission objectives).

Kagitumba and opened fire on Rwandan border guards.⁴¹ The APA was never fully implemented before the Spring 1994 genocide in which approximately 800,000 individuals were killed.⁴² When the Rwandan Patriotic Army successfully ended the genocide and took control of the state's government, it decided to implement the APA.⁴³

The LCC had twelve commissioners who were elected by the Transitional National Assembly.⁴⁴ Eight members represented the eight officially registered political parties, one represented the army and national police, two represented civil society, and one represented the private sector.⁴⁵ The composition of the TNA was based on the Arusha Agreement, which gave each of the then-existing political parties and the military a set number of seats. Each party was responsible for appointing its own TNA Deputies.⁴⁶ The LCC was a mirror of the political interests represented in the negotiated legislative body.⁴⁷

⁴¹ See GÉRARD PRUNIER, *THE RWANDA CRISIS 1959-1994: HISTORY OF A GENOCIDE* 93 (1995) (describing the attack that marked the beginning of the civil war in Rwanda).

⁴² *Id.* at 265.

⁴³ A modified version of the Arusha Peace Agreement ("APA") was implemented. Provisions providing for the political participation of the *Mouvement Républicain National pour la Démocratie et le Développement* (National Republican Movement for Democracy and Development) ("MRND"), former President Habyarimana's party, were not implemented.

⁴⁴ The TNA selected the twelve members from a slate of fifteen candidates. See Republic of Rwanda Legal & Const. Comm'n, *About Our Commission*, <http://www.cjcr.gov.rw/eng/about.htm> (last visited Oct. 22, 2007).

⁴⁵ See NAT'L UNITY & RECONCILIATION COMM'N, *REPORT OF THE NATIONAL SUMMIT ON UNITY & RECONCILIATION* 52 (2002), available at <http://www.grandslacs.net/doc/2998.pdf> [hereinafter *UNITY & RECONCILIATION REPORT*].

⁴⁶ Rwanda Power-Sharing Agreement, *supra* note 22, art. 60.

⁴⁷ The APA distributed Transitional National Assembly ("TNA") seats to the MRND, which were redistributed amongst the remaining political parties after the genocide when the Rwandese Patriotic Front ("RPF") assumed control of the government. At the time the APA was negotiated the various political parties had been in existence for several years, but they had yet to stand for an election. Commentators on Rwandan politics have described the parties as "'democrats' who were not always of the purest type, but who had the support of a large segment of the population for whom democracy meant peace, an end to political corruption, financial accountability by the government and freedom of expression." PRUNIER, *supra* note 41, at 133. Others have noted that "[i]t is clear that only the parties who were willing allies of the ruling RPF could make the final shortlist for the Constitutional Commission's membership." ANKUT, *supra* note 7, at 16.

The LCC adopted internal rules of practice and procedure and developed an action plan to implement its mandate. The LCC's early tasks included meeting with governance experts throughout the world and participating in a conference on constitutional

Political turmoil in Rwanda began before the October 1990 armed attacks by the RPF. By July 1990, President Habyarimana was facing considerable domestic and international pressure to open up the political system, which he and his party, the MRND, had controlled since 1973. See ALISON DES FORGES, HUMAN RIGHTS WATCH, LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA 47 (1999), available at <http://www.hrw.org/reports/1999/rwanda/index.htm> [hereinafter LEAVE NONE TO TELL THE STORY] (describing the pressure from various sources for political and economic reforms). In June 1991 President Habyarimana accepted a constitutional amendment that made multiple political parties legal. He eventually agreed to incorporate the major opposition parties into a coalition government. The parties in that coalition government were the MRND, the *Mouvement Démocratique Républicain* (Democratic Republican Movement) ("MDR"), the *Parti Social Démocrate* (Social Democratic Party) ("PSD"), the *Parti Libéral* (Liberal Party) ("PL"), and the *Parti Démocratique Chrétien* (Christian Democratic Party) ("PDC"). *Id.* at 52.

Several months after the coalition government was formed, the United States and France orchestrated peace talks between the Rwandan Government and the RPF, which were conducted by the Organization of African Unity. The talks continued through July 1993 and the Arusha Accords were signed on August 4, 1993. President Habyarimana was stripped of the majority of his presidential powers as a result of the power-sharing arrangement that called for the creation of the Broad-Based Transitional Government ("BBTG"). The BBTG was to consist of the RPF, the MRND, the MDR, the PSD, the PL, and the PDC. Within the executive branch Habyarimana remained President and Faustin Twagiramungu of the MDR became the Prime Minister. The MRND and the RPF each received five portfolios, the MDR four portfolios, the PSD and the PL three portfolios each, and one portfolio for the PDC. See Rwanda Power-Sharing Agreement, *supra* note 22, art. 55 (discussing portfolios which refer to state ministries like foreign affairs, education, or defense). The seventy-member Transitional National Assembly was divided to give the MRND, RPF, MDR, PSD, and PL eleven seats each, the PDC four seats, and one seat to other registered parties. *Id.* art. 62. Registered political parties had to sign a political code of conduct pledge.

Efforts to implement the Arusha Peace Agreement faltered and eventually collapsed in April 1994 after Habyarimana died in a plane crash and the genocide of more than 1 million Tutsi and moderate Hutu. See Gilbert M. Khadiagala, *Implementing the Arusha Peace Agreement on Rwanda*, in ENDING CIVIL WARS: THE IMPLEMENTATION OF PEACE AGREEMENTS 463 (Stephen John Stedman et al. eds., 2002) (describing the collapse of efforts to implement the APA). The genocide took place over the course of three months and ended in July 1994 when the RPF military forces, the Rwandan Patriotic Army ("RPA"), took Kigali, the capital of Rwanda. The RPF set up an interim government, the Government of National Unity ("GNU"), with ministers that had been previously selected for the BBTG with the exception of the MRND representatives. A national assembly was also formed with representatives from the RPF, MDR, PSD, PL, PDC, *Parti Démocratique Islamique* (Islamic Democratic Party), *Parti Socialiste Rwandais* (Rwandese Socialist Party), the *Union Démocratique du Peuple Rwandais* (Democratic Union of the Rwandese People), and the RPA.

development attended by constitutional experts.⁴⁸ Before moving into the public consultation phase of the process, the LCC created a booklet entitled *Fundamental Ideas on a Constitution*.⁴⁹ This document provided information on the role of a constitution in addressing five categories of issues: political power, social problems, economic matters, human rights, and other matters. Examples are provided from different countries and questions specifically relevant to Rwanda are posed. For example, the section on political power outlines three types of political regimes: a presidential system offering the United States as an example, a parliamentary system describing England and Ethiopia, and a mixed or semi-presidential system providing France and Mali as examples.⁵⁰ The publication was intended to provide Rwandan citizens with information that would enable them to participate in public discussions about the constitution, offer proposals, and determine whether the final constitution was suitable.⁵¹

Based on this document, the LCC prepared a handbook for commissioners and other officials involved in facilitating the public meetings. The *Education and Awareness Manual on Constitutional Matters* is a condensed version of the *Fundamental Ideas on a Constitution*.⁵² This handbook is divided into two sections with the first section outlining the necessary features of a constitution and providing examples from other countries. The second section outlines Rwanda's constitutional history and Rwanda-specific problems, such as the genocide, that the new constitution must acknowledge and resolve.⁵³ This second section identifies divisive politics as a significant factor contributing to the genocide and notes that to resolve the problems that caused the genocide, the

⁴⁸ REPUBLIC OF RWANDA LEGAL & CONST. COMM'N, CONFERENCE ON CONSTITUTIONAL DEVELOPMENT PROCEEDINGS (Aug. 19-24, 2001) (on file with author).

⁴⁹ Republic of Rwanda Legal & Const. Comm'n, *Les Idées Fondamentales d'une Constitution* [Fundamental Ideas on a Constitution], <http://www.cjcr.gov.rw/idees.pdf> (last visited Oct. 22, 2007).

⁵⁰ *Id.* at 20-28.

⁵¹ *Id.* at 2.

⁵² Republic of Rwanda Legal & Const. Comm'n, *Module de Formation et de Sensibilisation en Matière Constitutionnelle* [Education and Awareness Manual on Constitutional Matters], <http://www.cjcr.gov.rw/module.htm> (last visited Oct. 22, 2007) [hereinafter *Module de Formation et de Sensibilisation*].

⁵³ *Id.*

country needs good governance,⁵⁴ justice, unity and reconciliation, Rwandan participation in public life, a state founded upon respect for human rights, and responsible political parties.⁵⁵

This handbook was used at the district level meetings that were held throughout the country between January and June 2002.⁵⁶ The session facilitators explained the role of a constitution within a society and matters such as the various options available for organizing political power and protecting civil, political, and social rights.⁵⁷ The LCC reported that turnout at the meetings averaged 90,000 people.⁵⁸ LCC literature states that discussions on a specific topic at a meeting were closed when an opinion was agreed upon by all present or, in the absence of total agreement, when a majority agreed as determined by a vote. It appears that dissenting views were to be noted "so as to be discussed" at a later time.⁵⁹

The LCC also developed a sixty-item questionnaire covering issues that the LCC saw as potentially controversial, such as land issues, marriage, and divorce. The questionnaire was given to citizens for completion and group discussions facilitated by the LCC were used to gather the opinions of the illiterate portions of

⁵⁴ The factors giving rise to good governance are identified as governance founded on public participation, a government in which citizens chose their representatives, transparent governance, adherence to the rule of law, and governance founded on the equality of all citizens. *Id.* at *24-*25.

⁵⁵ *Id.* at *24-*26, The section on political parties specifically states:

Political parties should, in their own way, rectify or change the bad behaviour attributed to them by the population; the parties must disclose their political beliefs and the real platform that shows how they will contribute to solving the country's problems; the parties must avoid sowing the seeds of divisionism among Rwandans; the parties must accept that electoral defeat will not be a source of insecurity or the destruction of the country; the behaviour of party leaders should set an example to their members and all Rwandans.

INT'L CRISIS GROUP, RWANDA AT THE END OF THE TRANSITION: A NECESSARY POLITICAL LIBERALISATION 7 (2002), available at http://www.crisisgroup.org/library/documents/report_archive/A400817_13112002.pdf (translating *Module de Formation et de Sensibilisation*, *supra* note 52, at *24).

⁵⁶ *The Commission Started Gathering Views*, *supra* note 2.

⁵⁷ *Module de Formation et de Sensibilisation*, *supra* note 52; see also ANKUT, *supra* note 7, at 17 (describing the process of facilitating public discussion about societal issues in a constitutional framework).

⁵⁸ ACTION PLAN, *supra* note 36, at 8.

⁵⁹ Cf. *The Commission Started Gathering Views*, *supra* note 2 (noting that the Commission will take into account minority and individual views).

the population.⁶⁰ The LCC pooled the questionnaire responses and sorted them.⁶¹ Each answer was graded “according to pertinence and where it came from (an individual person, a group of persons, an expert in a specific area, an institution or a department []).”⁶² After cross-checking the accuracy of the public’s feedback, the LCC began drafting the constitution. In September 2002, the LCC issued a booklet presenting a summary of the information gathered during the LCC’s consultation with the public.⁶³ The foreword to the publication states that it “was prepared with the help of ideas contributed by all citizens. Its publication is a deliberate intention to present to all people their constitution ideas after analysing them. Most of the ideas are those contributed by the majority.”⁶⁴

The LCC prepared a draft constitution that it presented to a select group of individuals at a three-day national conference in November 2002.⁶⁵ The conference is reported to have been attended by 500 to 800 individuals. These individuals were selected for different purposes; some were international experts whose participation was to ensure that the draft constitution conformed to international standards, while others represented specific interests within Rwandan society.⁶⁶ Subsequent drafts were circulated in December 2002 and February 2003. The February 2003 draft was presented to the Council of Ministers and the TNA. Various parliamentary committees discussed the draft

⁶⁰ See ANKUT, *supra* note 7, at 16–17 (detailing LCC Chair Tito Rutaremara’s description of the process).

⁶¹ ACTION PLAN, *supra* note 36, at 15. It is unclear exactly how many questionnaires were coded, but the 2002–2003 Action Plan anticipated randomly selecting seven percent of the questionnaires to review.

⁶² UNITY & RECONCILIATION REPORT, *supra* note 45, at 53.

⁶³ Republic of Rwanda Legal & Const. Comm’n, *Fundamental Ideas on the New Constitution* (Sept. 2002), <http://www.cjcr.gov.rw/eng/fundamentalIdeas.doc> (last visited Oct. 22, 2007) [hereinafter *Fundamental Ideas Report*].

⁶⁴ *Id.* at 1.

⁶⁵ ANKUT, *supra* note 7, at 18; *c.f.* U.N. Dev. Fund for Women [UNIFEM], *UNIFEM Action and Analysis*, in Issue Brief on Justice (Nov. 2002), http://www.womenwarpeace.org/Portals/0/Documents/justice_archive.pdf (last visited Oct. 22, 2007) [hereinafter UNIFEM Justice Brief] (recognizing the inclusion of women at November’s national drafting conference).

⁶⁶ The Rwandan government selected the participants for this national conference. See ANKUT, *supra* note 7, at 18; see also UNIFEM Justice Brief, *supra* note 65 (“In November 2002, the government called a national conference to review the draft constitution. At this time, UNIFEM successfully lobbied for the increase of the percentage of women at the conference to be increased from 6% to 20%.”).

constitution with the LCC in March 2003 and a parliamentary debate was held in April 2003.⁶⁷ The TNA amended the draft, which the LCC presented to the public during a televised and radio-broadcasted town meeting on May 18, 2003.⁶⁸ The referendum was held on May 26, 2003, and was overwhelmingly approved by 93.4% of the voters.⁶⁹ Eighty-seven percent of the population participated in the referendum.⁷⁰ The Supreme Court approved the new constitution on June 2, 2003, and President Kagame signed it on June 4, 2003.⁷¹

The participatory system utilized in Rwanda did not allow citizens to participate in the substantive drafting deliberations directly or through freely chosen representatives. Those sessions were limited to LCC members, who were selected by an appointed legislative body. The LCC mirrored the delicate political balance of the TNA and its members were political allies of the Rwandese Patriotic Front ("RPF").⁷² In contrast to internal participatory systems, citizens attempting to participate in an external participatory system must have an ally on the drafting committee, someone who is able and willing to promote their ideas and advocate their positions during the drafting deliberations. This can be a hard relationship to develop when the members of the drafting body are not mandated to advance the interests of any particular segment of the society. In Rwanda, the LCC members were selected to represent the broad categories of civil society, the private sector, and the political interests of political parties that had no firmly established constituents.⁷³ Citizens did not have a

⁶⁷ ANKUT, *supra* note 7, at 18.

⁶⁸ See Republic of Rwanda Legal & Const. Comm'n, *Le Président de la République a Promulgué la Nouvelle Constitution* [The President of the Republic Approved the New Constitution] (June 4, 2003) <http://www.cjcr.gov.rw/actualite015.htm> (last visited Oct. 22, 2007) [hereinafter *Nouvelle Constitution*] (mentioning the participatory structure in the constitution-making process); Republic of Rwanda Legal & Const. Comm'n, *Current Status of the Commission* (May 18, 2003), <http://www.cjcr.gov.rw/eng/news005.htm> (last visited Oct. 22, 2007) ("On Sunday 18th may [sic] 2003 members of the Legal and Constitutional Commission conducted a live talk show on the national TV and radio.").

⁶⁹ *Nouvelle Constitution*, *supra* note 68.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See ANKUT, *supra* note 7, at 16 (noting that only "willing allies" of the RPF were ultimately granted membership to the Constitutional Commission).

⁷³ See *infra* text accompanying note 79 (discussing the development of Rwandan political parties and noting that these parties had never stood for an election).

specific drafting body member responsible for representing their interests in the way that they do when the drafting body is an elected assembly. The LCC encouraged citizens to approach the LCC as a single entity accessible to all rather than to seek out specific representatives for particular interests. For example, the LCC website invited citizens to direct their comments to the President, Vice President, and Executive Secretary of the LCC rather than directing civil society matters to the civil society representatives or military issues to the army and national police representative.⁷⁴

While citizens generally face challenges getting legislative representatives to advance their specific interests or proposals, most citizens in an external participatory system have no dedicated representative. They are left to convince one or more of the appointed drafters that their interests and concerns are worth advancing or that they have a responsibility to do so. Women's organizations in Rwanda were successful at this task, but it entailed mobilizing gender equity advocates,⁷⁵ developing and implementing an effective framing strategy, and obtaining influential allies. This required framing their claims for constitutionally protected political participation rights for women in a way that was consistent with the LCC's and RPF's governance frames.

Incorporating the ideas of the citizenry to make the constitution a "common denominator" amongst all citizens is common rhetoric for government officials utilizing participatory constitution making.⁷⁶ Yet, as discussed in Section 2.1, the immediate goal of

⁷⁴ This strategy is in no doubt related to the RPF's anxiety about the political representation of specific interests. See *infra* text accompanying note 191 (expressing Paul Kagame's concerns about localized elections and the strong ethnic identities of political parties in Rwanda).

⁷⁵ Mobilization is "[t]he process by which a group goes from being a passive collection of individuals to an active participant in public life." *DICTIONARY OF SOCIOLOGY* 420 (John Scott & Gordon Marshall eds., 3d ed. 2005).

⁷⁶ See, e.g., *The Commission Started Gathering Views*, *supra* note 2 (reporting that LCC President Rutaremara "emphasized that views of each Rwandan are vital so as that constitution will be a common denominator of all Rwandans."); *accord Give Us Your Suggestions*, *supra* note 2 ("In order to establish the Constitution that suits all Rwandans, we call upon every person who will go on this site internet [sic] to give advice and views which will be considered while elaborating the Constitution."); cf. Ahmed Issack Hassan, *Introductory Document on the Whole Process* (Sept. 15, 2001) (on file with the University of Pennsylvania Journal of International Law) (discussing means by which the voices of Kenyan citizens were incorporated in the constitutional review process in Kenya).

most officials is to obtain support for a specific governance system and have it deemed legitimate domestically and internationally. The fragility of the new democratic institutions, the nascent civil society, and the uncertainty over the goals of other communities or political organizations within the state induce anxiety about releasing total control to the citizenry to create the state's new governance system. Thus external participatory systems are more likely to be implemented. Such systems, however, pay insufficient attention to one of the most important instrumental benefits of participatory decisionmaking—developing a national consensus for a set of governance principles and practices. This benefit requires that citizens either participate in (directly or via representatives) or contribute to the discussions and deliberations in which substantive decisions about the constitution are made. Realizing this benefit requires the use of internal participatory systems.

2.3. *Exclusion in Rwanda*

Rwanda's participatory system for constitution making emphasized widespread consultation rather than inclusive deliberation. Consequently, only the ideas, concerns, and proposals of select interests within the society were seriously discussed and deliberated by the LCC. The deliberative aspects of participatory democratic theory suggest that deliberative forums in which individuals exchange and challenge ideas and proposals regarding a state's constitution with the use of arguments, narratives, greetings, or rhetoric will enable drafters to identify the most appropriate and effective constitutional provisions for creating an inclusive governance system. This process took place in Rwanda but the breadth of interests, groups, and societal segments participating was much narrower than that advocated by deliberative and participatory democratic political theorists.⁷⁷

One of the essential ideas within deliberative and participatory democratic theory is that those who will be affected by a decision should participate in the decision-making process.⁷⁸ Yet the forums in which substantive decisions about the constitution were made—the LCC meetings—were limited to LCC members. This body comprised individuals selected to represent the eight political

⁷⁷ See Banks, *supra* note 13.

⁷⁸ See, e.g., Young, *supra* note 6, at 5–6; Guinier, *supra* note 39, at 16.

parties, the military and national police, civil society, and the private sector. Citizens did not participate in designing the constitutional review process or the process for selecting the individuals that would draft the constitution. Both tasks were undertaken by the TNA, whose members were representatives of political parties that came into existence in 1991 but had never stood for an election.⁷⁹

Widespread citizen participation was channeled toward public meetings where citizens were educated about constitutions, given the opportunity to share their opinions, and informed that they could submit written comments and proposals to the LCC. Certain citizens had the opportunity to participate in a national conference to review an early draft of the constitution.⁸⁰ Finally, there was a national referendum for citizens to approve or reject the constitution.

Despite statements from government officials indicating that the consultative process would “arouse discussions from which constructive views on the constitution will be [drawn]” and would include debates on matters such as the role of political parties after the transition, public opinion was incorporated based on its prevalence and relevance.⁸¹ A grading system was used to analyze a portion of the feedback received, perhaps as little as seven percent.⁸² Expert opinions on a specific issue received two points, opinions offered by interest groups received three points, and detailed memoranda presented by groups received four points.⁸³ The ideas, concepts, and proposals incorporated in the constitution are reported to be those that “prevailed over the rest, by their number and their pertinence.”⁸⁴

⁷⁹ PRUNIER, *supra* note 41, at 122, 124–25. The TNA created the LCC, selected thirteen of fifteen candidates to be the LCC members, and designed the constitution review and drafting process.

⁸⁰ Reports indicate that between 500 and 800 individuals took part in this conference. ANKUT, *supra* note 7, at 18; *see also* UNIFEM Justice Brief, *supra* note 65 (discussing the participation of the Forum of Rwandan Women in the national conference to review the drafted constitution).

⁸¹ *The Commission Started Gathering Views*, *supra* note 2; ANKUT, *supra* note 7, at 14.

⁸² ACTION PLAN, *supra* note 36, at 15 (specifying that seven percent of the feedback received from regional questionnaires would be randomly selected for analysis).

⁸³ *See* ANKUT, *supra* note 7, at 18 (describing the process of assigning point values to feedback received from various sources).

⁸⁴ UNITY & RECONCILIATION REPORT, *supra* note 45, at 55.

Rwandan citizens had direct access to the constitution drafters but unlike cases in which a national assembly is convened to draft the constitution, citizens did not have appointed representatives within the LCC. When the drafting body met to discuss, deliberate, and draft, the only citizens whose proposals were considered were those who successfully mobilized to submit a detailed memorandum as a group and obtained an advocate within the drafting body. Citizens interested in influencing the substance of the new constitution had to devise strategies for obtaining the attention and support of the drafters.⁸⁵ The organizing efforts of gender equity advocates suggest the elements of a successful strategy—mobilizing, cultivating influential allies, and framing proposals in ways that are consistent with the governance frames of the country's political elites.⁸⁶

3. SOCIAL MOVEMENTS AND CONSTITUTION MAKING

Participatory constitution making in post-conflict states is part of a larger effort to create a democratic state. It provides an opportunity for excluded groups to solidify their political participation through legal guarantees. Taking advantage of that opportunity requires significantly more than submitting proposals or recommendations to the constitution-drafting body.

Adopting the conception of political power outlined in Doug McAdam's political process theory, political power in post-conflict states is concentrated in the hands of a few, and most individuals within the society are deprived of the opportunity to influence major decisions affecting their lives.⁸⁷ This power, however, is not

⁸⁵ Processes that utilize national assemblies enable a potentially wide range of citizens to have advocates participating in the drafting process because citizens elect the members and there are hundreds of participants. The power or strength of the representatives will undoubtedly vary considerably, which will require citizens to devise strategies for obtaining the support of other citizens and their representatives.

⁸⁶ I would not expect these strategies to be of trivial importance in internal participatory systems, but they would not be necessary for individuals and organizations to access the forums in which substantive decision-making occurs. A key distinction between external and internal systems is the degree to which the drafting body is regulated in how it reviews and considers public-derived proposals and recommendations. When this process is completely unregulated, mobilizing, obtaining allies, and strategic framing become necessary for obtaining access to the substantive decision-making forums. When the process is regulated, these strategies can be useful in persuading decision makers or fellow citizens, but they are not necessary for achieving internal inclusion.

⁸⁷ MCADAM, *supra* note 17, at 36.

absolute. Political elites do not exercise “virtually unlimited power in politico-economic matters” rendering excluded groups functionally powerless.⁸⁸ Most groups within post-conflict states have some “latent political leverage.”⁸⁹ Exercising that leverage is often hampered by a failure to recognize its existence. As noted by McAdam, “mass political impotence may as frequently stem from shared perceptions of powerlessness as from any objective inability to mobilize significant political leverage.”⁹⁰

Successful attempts by excluded members of society to obtain political, economic, or social inclusion is related to political opportunities that are made available by elites, recognition by the excluded of their transformative power, and framing their reform proposals in ways that resonate with political elites and the public at large. Participatory constitution making offers a new political opportunity, but it is an opportunity within a context of conservative elite control. According to Charles Tilly this conservatism encourages elites to “resist changes which would threaten their current realization of their interests even more than they seek changes which would enhance their interests.”⁹¹ Further, they

fight tenaciously against loss of power, and especially against expulsion from the polity. They work against admission to the polity of groups whose interests conflict significantly with their own.

Existing members tend to be more exacting in their demands of contenders whose very admission would challenge the system in some serious way.⁹²

⁸⁸ *Id.* at 37.

⁸⁹ *See id.* (noting that excluded groups’ political leverage “comes from the ‘structural power’ that their location in various politico-economic structures affords them”).

⁹⁰ *Id.* at 37–38; *see also* KURT SCHOCK, UNARMED INSURRECTIONS: PEOPLE POWER MOVEMENTS IN NONDEMOCRACIES 27 (2005) (“For the oppressed to engage in collective action, there must first be cognitive liberation, that is, a diminution of fatalism coupled with a perception that conditions are unjust, yet subject to change through collective action.”).

⁹¹ CHARLES TILLY, FROM MOBILIZATION TO REVOLUTION 135 (1978) [hereinafter *MOBILIZATION*].

⁹² *Id.*

This approach not only applies to individuals and organizations advocating goals contrary to the interests of the political elites, but it also applies to those with moderate goals "who simply pressure for membership in the competitive establishment. For any change in the makeup of the polity is inherently disruptive of the institutionalized status quo and thus something to be resisted."⁹³

Rwanda's constitution-making experience suggests that the use of participatory constitution making does not eradicate political elite conservatism, rather it highlights the conservatism. Excluded groups can use participatory constitution-making processes to obtain greater political, economic, and social inclusion, but only when they engage in sustained and highly coordinated collective action. Such action entails identifying useful political opportunities beyond the constitution-making process, such as influential allies; obtaining access to resources that assist in facilitating mobilization and legitimizing the organizations' goals; and framing the organizations' target goals in ways that are congruent with the goals of the political elites and resonate with the general public. These strategies assist excluded groups in obtaining internal inclusion during a participatory constitution-making process.

Internal inclusion occurs when individuals have an "effective opportunity to influence the thinking of others . . . when they have access to fora and procedures of decision-making."⁹⁴ Young contrasts internal inclusion with internal exclusion, which occurs when

[h]aving obtained a presence in the public, citizens sometimes find that those still more powerful in the process exercise, often unconsciously, a new form of exclusion: others ignore or dismiss or patronize their statements and expressions. Though formally included in a forum or process, people may find that their claims are not taken seriously and may believe that they are not treated with equal respect. The dominant mood may find their ideas or

⁹³ MCADAM, *supra* note 17, at 39. As noted by William Gamson, "[t]he competitive establishment is boundary-maintaining." William A. Gamson, *Stable Unrepresentation in American Society*, AM. BEHAVIORAL SCIENTIST, Nov.-Dec. 1968, at 15, 20.

⁹⁴ YOUNG, *supra* note 6, at 55.

modes of expression silly or simple, and not worthy of consideration.⁹⁵

Internal exclusion can be mitigated by channeling individual participation through social movement organizations. Social movement organizations are complex or formal organizations that work to implement a set of goals that mirror the preferences of a social movement or countermovement.⁹⁶ A social movement is sustained collective action by individuals with "preferences for changing some elements of the social structure" who make new or unaccepted claims upon the state.⁹⁷ Such movements are comprised of individuals who lack regular access to state institutions and behave in ways that fundamentally challenge society and/or authorities.⁹⁸ Social movement organizations use a

⁹⁵ *Id.* William Gamson makes a similar distinction between members and challengers within political society. WILLIAM A. GAMSON, *THE STRATEGY OF SOCIAL PROTEST* 140 (2d ed. 1990) [hereinafter *SOCIAL PROTEST*] ("The central difference among political actors is captured by the idea of being inside or outside of the polity. Those who are inside are *members* whose interest is vested—that is, recognized as valid by other members. Those who are outside are challengers. They lack the basic prerogative of members—routine access to decisions that affect them.").

⁹⁶ John D. McCarthy & Mayer N. Zald, *Resource Mobilization and Social Movements: A Partial Theory*, 82 AM. J. SOC. 1212, 1217 (1977).

⁹⁷ *Id.* at 1218 (noting that a countermovement is "a set of opinions and beliefs in a population opposed to a social movement."); see also SIDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* 3 (2d ed. 1998) (describing collective action "used by people . . . who act in the name of new or unaccepted claims, and who behave in ways that fundamentally challenge others or authorities.").

⁹⁸ See TARROW, *supra* note 97, at 2–4; McCarthy & Zald, *supra* note 96, at 1217–18 (describing a social movement as individuals seeking to change some elements of social structure and/or reward distribution); see also MCADAM, *supra* note 17, at 37 (discussing social movements as "rational attempts by excluded groups to mobilize sufficient political leverage to advance collective interests."); William A. Gamson & David S. Meyer, *Framing Political Opportunity*, in *COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS: POLITICAL OPPORTUNITIES, MOBILIZING STRUCTURES, AND CULTURAL FRAMINGS* 275, 283 (Doug McAdam, John D. McCarthy, & Mayer N. Zald eds., 1996) [hereinafter *COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS*] (defining a social movement as "a sustained and self-conscious challenge to authorities or cultural codes by a field of actors (organizations and advocacy networks), some of whom employ extrainstitutional means of influence."); David S. Meyer & Sidney Tarrow, *The Social Movement Society: Contentious Politics for a New Century*, in *THE SOCIAL MOVEMENT SOCIETY: CONTENTIOUS POLITICS FOR A NEW CENTURY* 1, 4 (David S. Meyer & Sidney Tarrow eds., 1998) (noting that the social movement repertoire of contention has become institutionalized in advanced industrial democracies); Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105 COLUM. L.

variety of institutional and non-institutional strategies to make their claims and sustain their interaction with political officials, legal decision makers, and the general public.⁹⁹ They also provide individual citizens with the resources, strategies, and support that facilitate internal inclusion in an external participatory constitution-making process.

In many post-conflict states the creation and implementation of a participatory constitution-making process is controlled by political elites. These individuals have generally obtained their elite status through victory in an armed conflict or a negotiated peace settlement. As with political elites in other political environments, in post-conflict states this ruling class has a conservative approach to maintaining the boundaries of the political system.¹⁰⁰ While considerable incentives exist for these elites to create and implement some nominal participatory constitution-making process, there are significantly fewer incentives to seriously review and deliberate on the comments, proposals, or recommendations offered by most individuals or organizations within the society.¹⁰¹

REV. 1436, 1503 (2005) (defining a social movement as individuals engaged in a "sustained, interactive campaign that makes sustained, collective claims for relief or *redistribution* in response to social marginalization, dislocation, change, or crisis."); McCarthy & Zald, *supra* note 96, at 1217-18 (defining a social movement as "a set of opinions and beliefs in a population which represent preferences for changing some elements of the social structure and/or reward distribution of a society.").

⁹⁹ Institutionally based strategies target political and legal decision makers by utilizing methods like lobbying and pursuing legal challenges. Non-institutionally based strategies are generally employed when advocates have limited access to political and legal institutions and/or make claims that are incapable of being recognized within political and legal institutions. See TARROW, *supra* note 97, at 3 (arguing that while most collective action occurs within institutions, it becomes contentious when used by people who lack regular access to institutions). These strategies include activities like demonstrations, marches, and community education. See McCarthy & Zald, *supra* note 96, at 1218-19 (discussing the use of social movement organizations during the civil rights movement to represent and shape the broadly-held preferences of the social movement); see also Brown-Nagin, *supra* note 98, at 1504-05 (enumerating the collective activities engaged in by members of social movements).

¹⁰⁰ See WALTER, *supra* note 22, at 29-30 (discussing the tendency of post-war factions to "insulate themselves from future harm and to prevent their rival from consolidating power."); SOCIAL PROTEST, *supra* note 95, at 20 (characterizing political mobilization as a response to crises in the achievement of a group's collective goals).

¹⁰¹ Government officials utilizing external participatory systems are predominantly focused on gathering support for and increasing the legitimacy of

Becoming a core participant in an externally inclusive participatory constitution-making process requires inclusion. Inclusion entails having an “effective opportunity to influence the thinking” of the drafters, which requires being treated as an equal and having one’s claims taken seriously. Inclusion does not necessarily follow from formal access to the drafting body. Social movements and social movement organizations are mechanisms that can facilitate core participation within externally inclusive participatory systems.¹⁰²

Social movement organizations provide individuals with resources, strategies, and support that assist in the quest to become core participants. The involvement of such an organization does not guarantee substantive success, but it significantly increases the likelihood that its members will obtain inclusion. Absent organized participation, there is a significant risk that an individual’s contributions, proposals, or recommendations will not be reviewed and deliberated by the constitution drafting body.

Three main theoretical approaches have emerged in the sociological study of social movements. Theorists examining the emergence and sustainability of social movements have alternatively focused on the availability of political opportunities, access to mobilizing resources, and framing strategies. These three factors not only influence the ability of social movement organizations to emerge, but also the extent to which they are sustainable and successful in obtaining their desired outcomes. The desired outcomes of interest in this article are constitutional solutions to the problems identified by the social movement organizations. For example, gender equity advocates in Rwanda sought equal protection and non-discrimination clauses in addition to provisions guaranteeing gender equity in matters relating to marriage and children and guaranteed representation for women within the state’s legislative bodies.

Sidney Tarrow, a leading social movement scholar, contends that social movements emerge as a result of new political

a specific governance system. In such systems political elites envisage a particular governance system and they consult the public in an effort to gain support for their vision. *See supra* Section 2.1.

¹⁰² Other scholars such as Iris Marion Young focus on modes of political communication to respond to internal exclusion. *See* YOUNG, *supra* note 6, at 56–57 (noting the importance of communication in establishing trust and motivating action).

opportunities.¹⁰³ Political opportunities refer to “consistent—but not necessarily formal or permanent—dimensions of the political environment that provide incentives for collective action by affecting people’s expectations for success or failure.”¹⁰⁴ The political opportunity framework identifies increases in political access, influential allies, divided elites, and declining state repression as the factors providing the incentives.¹⁰⁵

¹⁰³ TARROW, *supra* note 97, at 71–85. The applicability of the political opportunity structure in non-democratic studies has been questioned. Kurt Schock examined the relevance of political opportunities to the emergence and success of social movement organizations in the Philippines and Burma. He concluded that the theoretical framework has explanatory power in non-democratic societies. Kurt Schock, *People Power and Political Opportunities: Social Movement Mobilization and Outcomes in the Philippines and Burma*, 46 SOC. PROBS. 355, 370–71 (1999).

¹⁰⁴ TARROW, *supra* note 97, at 76–77 (“[M]ost opportunities and constraints are situational, and cannot compensate for long for weaknesses in cultural, ideological, and organizational resources.”).

¹⁰⁵ See *id.* at 71 (showing the importance of political opportunity factors in the emergence of social movements); SCHOCK, *supra* note 90, at 27–30 (discussing requisites for collective action); see also Doug McAdam, *Conceptual Origins, Current Problems, Future Directions*, in COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS, *supra* note 98, at 23, 26–29 (outlining the dimensions of political opportunity); Schock, *supra* note 103, at 356–57 (explaining the relevance of the political opportunity framework for social movements in the Philippines and Burma).

The political opportunity framework has been critiqued as being biased toward developed democracies, yet recent studies have demonstrated its applicability in non-democratic contexts. For example, a study of democratization movements in the Philippines and Burma found that elite divisions and influential allies affected the movements’ success.

Political access, the institutionalized points of access to political decision makers in the executive, legislative, or judicial branches of government, can be particularly difficult in non-democratic states. In such states political power is generally centralized within the executive branch such that legislatures and judiciaries have little independent power. See Schock, *supra* note 103, at 361 (explaining limited points of access in non-democratic societies); see also AKE, *supra* note 35, at 3–5 (noting the prevalence of leadership amassing and centralizing political power in post-colonization Africa); Samuels, *supra* note 6, at 679–80 (explaining the inability of other branches in a fledgling government to appropriately check and balance the executive).

Influential allies provide organizational expertise, financial assistance, and leadership, and can lower the power discrepancy between the ruling political elites and civil society. See Schock, *supra* note 103, at 361; see also Sidney Tarrow, *States and Opportunities: The Political Structuring of Social Movements*, in COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS, *supra* note 98, at 41, 55–56 (noting the importance of influential allies in the American farm workers movements and movements resisting Eastern European socialist regimes). Members of the international community, foreign governments, non-governmental organizations, and inter-governmental organizations play a

Participatory constitution-making advocates focus exclusively on the creation of one type of political opportunity: increased access to political institutions. An unstated assumption within this literature is that broadening the political space within a state will provide a sufficient incentive to increase citizen participation and for government officials to actively engage citizens. Such citizen involvement and government responsiveness requires more. Increased political access, in this case a participatory constitution-making process, is but one type of political opportunity that is necessary to increase individual participation through the emergence and sustainability of social movement organizations.

The use of participatory constitution making offered a new point of institutional access for Rwandan citizens. The public meetings and the acceptance of written comments by the LCC provided citizens with an opportunity to engage the constitution drafters. The LCC's engagement with the public represented a significant break from Rwanda's authoritarian past. Rwanda had been a one-party state for approximately twenty years and the

significant role as influential allies in non-democratic states. These states often lack robust and active political parties, professional associations, labor unions, and other similar organizations, and when they do exist they are generally controlled by the state, which limits the existence of local influential elites. Schock, *supra* note 103, at 361.

Division amongst elites can provide an incentive for less empowered civil society actors to mobilize. Such divisions can widen "the circle of conflict" to include the civil society actors and give them marginal power as a result of some elites taking on the role of "tribune of the people" to increase their political influence. TARROW, *supra* note 97, at 56. In post-conflict states such divisions could be more harmful than helpful in successfully designing and implementing democratic reforms. The negotiation of a peace agreement amongst the main combatants provides a degree of certainty and comfort to these parties. If that certainty is undermined by significant elite divisions regarding the state's form of political rule, armed conflict could resume. Schock found that elite divisions, particularly divisions within the military, influenced whether repression successfully deterred civil society activity or whether it provided a basis for civil society mobilization. Schock, *supra* note 103, at 361, 369.

In non-democratic states repression is often used indiscriminately against the entire population, and Schock found that it decreased the legitimacy of the governing regime. Yet in Burma the state's repression also suppressed the democratization movement. He concludes that the presence or absence of other aspects of political opportunities influences the effect that repression will have. The existence of elite divisions, particularly in the military, and the free flow of alternative information, facilitated civil society mobilization in both countries. When the elite division was reduced, influential allies did not exist, and alternative flows of information were not available, state repression demobilized the democratization efforts. *Id.* at 368.

regime has been characterized as a dictatorship that consistently coerced, repressed, and violated the rights of Rwandan citizens.¹⁰⁶ Having LCC commissioners move throughout the country to discuss the state's new constitution represented a break from traditional Rwandan politics. Yet, the extent to which the use of participatory constitution making was perceived as a new political opportunity depended upon the problems that one sought to have addressed and how one sought to have them addressed.¹⁰⁷ For example, advocates interested in advancing the interests of specific ethnic groups were silenced due to the government's position that ethnic-based claims undermined the state's unity and reconciliation goals.¹⁰⁸

External participatory processes increase institutional access, but they do so differentially. The usefulness of this opening will depend on other political opportunities like influential allies, divisions within elites, declining repression, and shifting political alignments. Tarrow contends that the instability of political alignments encourages contention. "[T]he changing fortunes of government and opposition parties create uncertainty among supporters, encourage challengers to try to exercise marginal power, and may even induce elites to compete for support from outside the polity."¹⁰⁹

The RPF's desire for broad appeal throughout Rwanda provided an opportunity for gender equity advocates to trade their political support for gender equity constitutional provisions. Taking advantage of such shifts in political alignments often

¹⁰⁶ See PRUNIER, *supra* note 41, at 61, 80-90, 211-12 (documenting President Habyarimana's reign before the genocide in Rwanda); LEAVE NONE TO TELL THE STORY, *supra* note 47 (outlining Rwanda's oppressive past).

¹⁰⁷ See TARROW, *supra* note 97, at 77 (noting that political opportunities "may not be apparent all at once to all potential challengers.").

¹⁰⁸ The politically repressive environment in Rwanda during the constitution-making process significantly affected who was able to successfully organize and mobilize. See *infra* text accompanying notes 113-14 for discussion of state repression and political opportunities.

¹⁰⁹ TARROW, *supra* note 97, at 78; see also SCHOCK, *supra* note 90, at 30 (noting that "political opportunities may be even more important for challenges in nondemocracies than in democracies, since opportunities for dissent are less common and therefore any signs of political opportunity are likely to generate opposition."); TARROW, *supra* note 97, at 78-79 (pointing out that "[i]n less-than-democratic regimes, the lack of routinized competition makes any sign of political instability a signal and a source for contention.").

requires the support of influential allies.¹¹⁰ In non-democratic states where social movement organizations have fewer internal resources, influential allies are particularly important.¹¹¹ Allies provide resources for social movement organizations such as legitimacy, access, and material resources such as office space or office equipment.¹¹²

Finally, state repression hinders the emergence and sustainability of social movement organizations. Charles Tilly defines repression as “any action by another group which raises the contender’s cost of collective action. An action which lowers the group’s cost of collective action is a form of facilitation.”¹¹³ Repressive techniques are more likely to be used against social movement organizations (“SMOs”) that seek fundamental changes within a society that threaten the political, social, and economic power of the elite. Social movement organizations seeking modest changes within the society are less likely to experience such repression even within authoritarian or repressive environments.¹¹⁴

Another major theoretical perspective within the sociological study of social movements focuses on the availability of mobilizing resources. The level of action that an SMO can direct toward achieving its target goals is argued to be a function of the resources that the SMO controls.¹¹⁵ Resources relevant for SMO emergence

¹¹⁰ William Gamson’s research demonstrates a correlation between movement success and influential allies. In the fifty-three “conflict groups” he examined, success was closely related to the presence or absence of political allies. *SOCIAL PROTEST*, *supra* note 95, at 64–66.

¹¹¹ TARROW, *supra* note 97, at 80; *see also* SCHOCK, *supra* note 90, at 34 (noting that “in nondemocracies, the Catholic Church, religious workers, development workers, and human rights organizations and the international networks in which they are embedded have provided crucial support for the oppressed in their challenges to the state.”).

¹¹² *See* SCHOCK, *supra* note 90, at 33–34 (providing examples of the importance of third party allies in political movements); TARROW, *supra* note 97, at 79.

¹¹³ *MOBILIZATION*, *supra* note 91, at 100 (emphasis omitted).

¹¹⁴ TARROW, *supra* note 97, at 80. The state’s response to individuals and organizations seeking political participation in Rwanda exemplifies the differential use of state repression depending upon the nature of the claims made against the state. Political parties that the state thought were seeking political participation by organizing around ethnicity were declared illegal and their leaders were charged with criminal offenses. *See infra* text accompanying notes 191–94. Gender equity advocates that sought guaranteed political representation for women had a much different experience. They achieved internal inclusion within the constitution-making process and the government more broadly.

¹¹⁵ John D. McCarthy, *Constraints and Opportunities in Adopting, Adapting, and*

and success in achieving its target goals are legitimacy, money, facilities, and labor.¹¹⁶ McCarthy and Zald, the leading proponents of the resource mobilization perspective on social movements, contend that SMOs have two broad categories of people and organizations from whom they can obtain support—adherents and constituents. “Adherents are those individuals and organizations that believe in the goals of the movement” while constituents provide resources for the movement.¹¹⁷ These two categories can be further divided based upon the amount of resources the individuals or organizations control. McCarty and Zald use the adjective *mass* to refer to those individuals and organizations that control a limited pool of resources, and *elite* for those that “control larger resource pools.”¹¹⁸ Another important distinction to make amongst potential resource providers is whether or not they will directly benefit from the SMO achieving its target goals. Those that will are termed potential *beneficiaries*, while those that will not are described using the adjective *conscience*, such as conscience adherents or conscience constituents.¹¹⁹ SMOs that focus their attention on beneficiary adherents for resources are classic SMOs, in contrast to professional SMOs that direct their efforts toward conscience adherents.¹²⁰ In Rwanda, gender equity advocates represent a mixed classic-professional SMO. Through the umbrella organization Collectif Pro-Femmes/Twese Hamwe (“Pro-Femmes”), gender equity advocates worked with locally-based women’s organizations to transform bystanders into adherents¹²¹

Inventing, in COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS, *supra* note 98, at 141; McCarthy & Zald, *supra* note 96, at 1221 (noting that “resources must be controlled or mobilized before action is possible.”).

¹¹⁶ McCarthy & Zald, *supra* note 96, at 1220; *see also* SCHOCK, *supra* note 90, at 29 (stating that mobilizing structures are the “networks through which the mobilization of tangible resources, people, and organized collective action occurs.”).

¹¹⁷ McCarthy & Zald, *supra* note 96, at 1221.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1221–22. William A. Gamson makes a similar distinction, referring to social movement organizations with goals that help nonconstituents as universalistic and those SMOs whose goals focus on constituents as nonuniversalistic. SOCIAL PROTEST, *supra* note 95.

¹²⁰ McCarthy & Zald, *supra* note 96, at 1223.

¹²¹ This process of transforming bystanders into adherents generally involved persuading individuals that they were potential beneficiaries. Madeline Mukarwigema, a member of Duhozanye, a locally-based women’s organization in Save district, Butare, noted that

and to utilize beneficiary adherents and elite conscience adherents like the Rwandan Forum of Women Parliamentarians, the Ministry of Gender, Family and Social Affairs ("MIGEPROFE"), and the United Nations Development Fund for Women ("UNIFEM").

Government authorities play a significant role in either frustrating or enabling SMO resource mobilization.¹²² They can influence the readiness of bystanders, adherents, and constituents to provide resources. Such actors played a significant role in the ability of Rwandan political organizations to mobilize around ethnic identities. In 2002, the Mouvement Démocratique Républicain (Democratic Republican Movement) ("MDR"), a prominent political party, was disbanded by the Transitional National Assembly for engaging in divisionism.¹²³ On the other hand, government authorities aided gender equity advocates in their mobilization efforts. For example, the LCC worked with UNIFEM to organize gender sensitization workshops for local government officials throughout Rwanda before the commission began its public consultation activities.¹²⁴

UNIFEM and other international organizations also assisted Rwandan gender equity advocates by providing another significant resource—a collection or inventory of successful strategic tactics. Social movement scholars refer to this as a social movement organizations' repertoire of contention or collective action repertoire.¹²⁵ When engaging in contentious politics, social

[w]e never took gender into consideration.... Before we received training in gender, we thought that we had arrived at the summit of sexual equality because we were doing jobs and tasks which had previously been reserved for men only, like masonry, milking cows etc.... After the training, we saw that we had an incomplete understanding of gender.

WOMEN FOR WOMEN INT'L BRIEFING PAPER, WOMEN TAKING A LEAD: PROGRESS TOWARD EMPOWERMENT AND GENDER EQUITY IN RWANDA 17-18 (2004), available at <http://www.womenforwomen.org/nrrwpap.html> [hereinafter WOMEN TAKING A LEAD].

¹²² SCHOCK, *supra* note 90, at 30-31; McCarthy & Zald, *supra* note 96, at 1222.

¹²³ See *infra* notes 193-96 for further discussion of this event.

¹²⁴ Republic of Rwanda Legal & Const. Comm'n, *Rapport d'activités et financier du projet: Contribution des femmes dans l'élaboration de la prochaine Constitution Rwandaise dans les Provinces de Kibungo-Umutara-Gitrama-Gikongoro*, [Business and Financial Report: Women's Contribution to the Development of the Rwandan Constitution in the Kibungo-Umutara-Gitrama-Gikongoro Provinces] at *1, <http://www.cjr.gov.rw/rapportFemmes.doc> (last visited Oct. 22, 2007).

¹²⁵ CHARLES TILLY, *POPULAR CONTENTION IN GREAT BRITAIN 1758-1834*, at 43 (1995) [hereinafter POPULAR CONTENTION]; Karen Beckwith, *Gender Frames and*

movement organizations utilize a narrow set of learned and shared routines based on past successful actions.¹²⁶ They are aware that certain actions are more successful than others in mobilizing supporters and enabling SMOs to achieve their target goals.¹²⁷

Rwanda's gender equity advocates received significant assistance regarding strategic tactics from their domestic and international elite adherents, primarily UNIFEM, the Rwandan Forum of Women Parliamentarians, and MIGEPROFE. Pro-Femmes primarily utilized institutional strategies.¹²⁸ The Rwandan Forum of Women Parliamentarians was able to advise Pro-Femmes on effective strategies for lobbying members of the Transitional National Assembly. MIGEPROFE did so with regard to the RPF and other executive officials. UNIFEM offered a more global perspective on the general types of activities that Pro-Femmes should be engaged in to transform government officials into conscience constituents or adherents.

Decisions regarding strategic tactics are not only relevant for the SMOs' ability to interact successfully with decision makers, but they play a significant role in the SMOs' ability to mobilize individuals and organizations to act. The institutional or non-institutional strategies utilized by a social movement organization will influence whether bystanders are transformed into adherents and whether adherents will become constituents. A social movement organization's selection of tactics that resonate with individuals and organizations as strategies that could make a

Collective Action: Configurations of Masculinity in the Pittston Coal Strike, 29 POL. & SOC'Y 297, 299 (2001).

¹²⁶ POPULAR CONTENTION, *supra* note 125, at 43 (defining "repertoires of contention" as "the established ways in which pairs of actors make and receive claims bearing on each other's interests."). A repertoire of contention is comprised of "sets of learned behaviors that participants call upon and employ in specific social movement situations, and are manifested in 'well-defined forms [of political participation] already familiar to the participants.'" Beckwith, *supra* note 125, at 299 (quoting MOBILIZATION, *supra* note 91, at 143); see also John D. McCarthy, *Constraints and Opportunities in Adopting, Adapting, and Inventing*, in COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS, *supra* note 98 (referring to "agreed upon ways of engaging in collective action" as a mobilizing resource).

¹²⁷ Beckwith, *supra* note 125, at 299-300; see also CHARLES TILLY, THE CONTENTIOUS FRENCH 390 (1986) ("[P]eople tend to act within known limits, to innovate at the margins of existing forms, and to miss many opportunities available to them in principle.").

¹²⁸ See *supra* note 99 for a discussion of institutional and non-institutional strategies for contentious politics.

difference will affect the SMO's recruitment efforts.¹²⁹ Getting individuals and organizations to believe that through collective action they can achieve their desired goals is an important function of SMOs. As noted earlier, the availability of political opportunities influences whether SMOs will emerge, but political opportunities are relative, and SMOs often spend a great deal of time and energy debating whether an open moment exists and whether institutional or non-institutional strategies are most appropriate.¹³⁰ Consequently, deploying frames that "define people as potential agents of their own history" and that suggest the possibility of changing an undesirable situation through collective action plays a significant role in mobilization.¹³¹

The role of strategic framing in social movement emergence and sustainability is the third significant theoretical approach to studying social movements. Framing is one way that SMOs attempt to align their definition of a problem and proposed solutions with the interpretive framework of other members of the society in order to gain adherents and constituents.¹³² Alignment requires enabling individuals to see that some set of their interests, values, and beliefs are congruent and complementary with the SMO's activities, goals, and ideology.¹³³ Two components of a framing strategy are the diagnostic frame and the prognostic frame. Diagnostic framing identifies the problem and attributes blame.¹³⁴ This process focuses the target audience's attention on a specific issue and helps determine how the issue will be perceived, which helps to focus attention on the desired outcome.¹³⁵

¹²⁹ David A. Snow et al., *Frame Alignment Processes, Micromobilization, and Movement Participation*, 51 AM. SOC. REV. 464, 470 (1986) (noting that participation in SMO activities "is more likely" when there is a positive connection "between beliefs about the object of action and the nature of that action.").

¹³⁰ Gamson & Meyer, *supra* note 98, at 283-84.

¹³¹ *Id.* at 285.

¹³² See discussion of framing and social movements *infra* Section 4.2.

¹³³ Snow et al., *supra* note 129, at 467 (defining frame alignment as the conjunction of individual and SMO interpretive frameworks); Doug McAdam, *The Framing Function of Movement Tactics: Strategic Dramaturgy in the American Civil Rights Movement*, in COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS, *supra* note 98, at 340; see also Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 615 (2000) (viewing collective action frames as negotiations of shared understandings).

¹³⁴ Benford & Snow, *supra* note 133, at 615.

¹³⁵ Daniel M. Cress & David A. Snow, *The Outcomes of Homeless Mobilization: The Influence of Organization, Disruption, Political Mediation, and Framing*, 105 AM. J. SOC. 1063, 1071 (2000).

Prognostic framing addresses what is to be done about the problem articulated by the diagnostic frame. It is "a proposed solution to the problem, or at least a plan of attack, and the strategies for carrying out the plan."¹³⁶

Successful frame alignment requires that the SMO frames resonate with the broader culture and existing values to enable the frame to appear natural and familiar.¹³⁷ SMOs draw on a variety of cultural norms and values in constructing their frames. Gender equity advocates in Rwanda successfully utilized international norms and legal commitments as the substance of their prognostic frame but also relied on RPF-articulated norms and values for their general framing strategy. Pro-Femmes argued that it was necessary to protect gender equity in family and political life in the Constitution, not only to address women's marginalization, but to

¹³⁶ Benford & Snow, *supra* note 133, at 616.

¹³⁷ MYRA MARX FERREE ET AL., *SHAPING ABORTION DISCOURSE: DEMOCRACY AND THE PUBLIC SPHERE IN GERMANY AND THE UNITED STATES* 70 (2002) [hereinafter *SHAPING ABORTION DISCOURSE*] ("In all public arenas . . . social problems that can be related to deep mythic themes or broad cultural preoccupations have a higher probability of competing successfully." (quoting Stephen Hilgartner & Charles L. Bosk, *The Rise and Fall of Social Problems: A Public Arenas Model*, 94 AM. J. SOC. 53, 71 (1988))); Benford & Snow, *supra* note 133, at 619-22, 624 (identifying types of collective action frames and the factors affecting resonance); Rita K. Noonan, *Women Against the State: Political Opportunities and Collective Action Frames in Chile's Transition to Democracy*, 10 SOC. FORUM 81, 94 (1995).

For every resonating theme there is a competing theme that draws on language that appears similarly natural and familiar. *SHAPING ABORTION DISCOURSE*, *supra* at 70 ("Themes and counterthemes are paired with each other so that whenever one is invoked, the other is always present in latent form, ready to be activated with the proper cue." (quoting WILLIAM A. GAMSON, *TALKING POLITICS* 135 (1992))); see also Benford & Snow, *supra* note 133, at 625-27 (describing framing contests among competing viewpoint groups). Themes are carried by organizational actors who have different levels of access to decision-making processes and decision makers. This is another basis upon which frames are advantaged or disadvantaged. The field in which the framing contest takes place is not constant; it is "full of hills and valleys, barriers, traps, and impenetrable jungles." *SHAPING ABORTION DISCOURSE*, *supra* at 62.

[T]he contours of the playing field can change suddenly in the middle of the contest because of events that lay beyond the control of the players; and players can themselves sometimes change the contours through actions that create new discursive opportunities. This complex playing field provides advantages and disadvantages in an uneven way to the various contestants in framing contests.

Id. Part of the complicated field of constitution-making processes in post-conflict states is the significant amount of power held by political elites.

promote peace, unity, and reconciliation in Rwanda.¹³⁸ The RPF's governance frame named peace, unity, and reconciliation as the targeted goals, and identified divisionism as a barrier to these goals. Pro-Femmes aligned gender equity with the attainment of these goals and created a framing strategy that did not contradict, but was actually congruent with the RPF's governance frame.

4. ACHIEVING INTERNAL INCLUSION IN RWANDA

Women have been actively involved in identifying ways to promote peace, unity, and reconciliation within Rwanda. Much of this activity has taken place through grassroots and national women's organizations. These organizations have a long history in Rwanda. During Rwanda's early post-colonial years, the government supported social centers for women in each prefecture. Rural women were encouraged to meet and discuss common problems at these centers that were staffed by young female social workers.¹³⁹ After Juvénal Habyarimana became president, an increasing number of grassroots organizations, cooperatives, NGOs, and church-related groups appeared throughout Rwanda. A 1985 survey of 133 NGOs found that the support offered to rural women emphasized domestic responsibilities but did not address agrarian, commercial, intellectual, or political activities.¹⁴⁰ In 1987, out of 1,457 civil society organizations, 143 were registered as women's NGOs and these organizations sought to focus attention on the conditions facing women and the need for women's participation in development.¹⁴¹

After years of war and genocide, women in Rwanda faced shattered communities in which the men had been killed or had fled. Women had to find ways to survive in these new environments. They had to cope with the physical and psychological harm they suffered; find food, shelter, and clothing; and care for their children, orphans, and other relatives. The state

¹³⁸ See *infra* text accompanying notes 182-98 for further discussion of Pro-Femmes' framing strategy.

¹³⁹ Catharine Newbury & Hannah Baldwin, *Confronting the Aftermath of Conflict: Women's Organizations in Postgenocide Rwanda*, in *WOMEN AND CIVIL WAR: IMPACT, ORGANIZATIONS, AND ACTION* 97, 98 n.1 (Krishna Kumar ed., 2001).

¹⁴⁰ *Id.* at 99 n.4 (citing INADES FORMATION RWANDA, *INVENTAIRE O.N.G.* 1985, at 17-18 (1985)).

¹⁴¹ *Id.* at 99.

lacked the resources to address the material needs of the citizenry so women began organizing to address their common problems by building on previous rural organizations that provided economic and social support.¹⁴² In Kigali, women who had been active in national women's organizations before 1994 began meeting, offering each other support, and voicing their concerns about the challenges facing women and children.¹⁴³ Joined by women returning to Rwanda from exile,¹⁴⁴ these women began to rebuild the member organizations of the umbrella group, Pro-Femmes, which existed before the war. As the women met and discussed their challenges, they sought new ways to meet their needs. Out of these discussions the women drafted the Campaign for Peace as a blueprint for addressing Rwanda's social and economic problems with a particular focus on the critical needs of women and children. The Campaign for Peace proposed new ways to involve women in promoting reconstruction and reducing social tensions.

Organizations like Pro-Femmes received a lot of international support, which provided an important source of funding. These resources enabled national women's organizations to undertake large-scale ambitious projects. Women's organizations also obtained the support of the Government of National Unity ("GNU"), Rwanda's interim government. A Ministry of Gender, Family and Social Affairs¹⁴⁵ was included in the GNU from the

¹⁴² *Id.* at 98.

¹⁴³ *Id.*

¹⁴⁴ Within Rwanda, distinctions are made between recent returnees and "old caseload refugees." Recent returnees are the Rwandans that fled the country after the genocide, contrasted with the "old caseload refugees," who left Rwanda in 1959 and the early 1960s in response to widespread violence against Tutsi Rwandans, and who returned to Rwanda after the RPF victory. WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN DELEGATION, RWANDA'S WOMEN AND CHILDREN: THE LONG ROAD TO RECONCILIATION *5 (1997) (assessing the protection and assistance needs of Rwandan women and children) [hereinafter THE LONG ROAD]. The Women's Commission for Refugee Women and Children reports that

[f]ew of the projects supported by the Rwandan Women's Initiative or other international organizations are benefiting refugee returnee groups or Hutu-run associations. In fact, it was difficult for the Women's Commission to interview recent returnees, as most of the programs are set up to assist genocide survivors or are run by "old caseload" refugees, people of Tutsi background who returned in the last three years from Burundi, Kenya, Uganda and other countries.

Id. at *16.

¹⁴⁵ This ministry was divided into the Ministry of Social Affairs and the Ministry of Gender and Promotion of Women's Development in 1999. I will use

beginning, and its first minister, Aloisea Inyumba, was a founding member of the RPF.¹⁴⁶ She was born and raised in Uganda and arrived in Rwanda in 1990. She was the youngest member of the GNU and the only woman. Through the Ministry of Gender, Family and Social Affairs, Inyumba organized national women's networks to address women's problems similar to the projects undertaken by Pro-Femmes.¹⁴⁷

All of these activities caused a dramatic increase in the number of women's organizations throughout the country. A 1997 study estimated that there was an average of 100 women's associations in each of the country's 154 communes.¹⁴⁸ These organizations target different populations. For example, organizations focus on widows, orphans, girls, rural women, or women caring for orphans. They are also involved in a range of activities, which include shelter projects that assist female heads of households repair damaged homes and build new ones; microcredit lending programs; promoting women's legal rights, for example lobbying to revise inheritance laws to remove gender discriminatory provisions and assisting women and children in claiming their rights in court; promoting education for girls; vocational training and civic education for women; and medical assistance, both physical and psychological.¹⁴⁹ These activities made the organizations relevant in the lives of women across the country.

the acronym MIGEPROFE (Ministere du Genre et de la Promotion de la Femme) to refer to the ministry both before and after the split.

¹⁴⁶ The Arusha Peace Agreement had included a similar ministry, the Ministry of Family Affairs and Promotion of the Status of Women, and it was given to the MRND. Rwanda Power-Sharing Agreement, *supra* note 22, art. 56.

¹⁴⁷ Her program, the Rwanda Women's Initiative, is a national network of women's organizations at the grassroots level. The initiative brings together Hutu, Tutsi, and Twa women to talk about their common needs and was funded by the United States State Department and the U.N. High Commissioner for Refugees. Inyumba has stated that, "[t]he first meetings were very difficult . . . I organized week-long workshops for reconciliation. At the first sessions the [Hutu, Tutsi, and Twa] women sat in separate corners, but they had to share sleeping mats, soap, food. Finally, they had to acknowledge that they needed each other." By the end of the workshop Inyumba noted that the women "opened up to the possibility of working together to solve their common problems." Jane Ciabattari, *From Rwanda's Ashes, Women Are Building Anew*, WOMEN'S ENEWS, Oct. 2, 2000, <http://www.womensenews.org/article.cfm?aid=290> (last visited Oct. 22, 2007).

¹⁴⁸ Newbury & Baldwin, *supra* note 139, at 100. A commune is a former territorial administrative unit. Rwanda was divided into twelve prefectures, which in turn were divided into 154 communes.

¹⁴⁹ *Id.* at 100-11.

The network of women's organizations throughout Rwanda provided a foundation for mobilizing and developing a constituency that would support a multi-faceted campaign to have Rwanda's new constitution address gender equity.

4.1. Obtaining Influential Allies

Within Rwanda's political environment, a key facet of the campaign was obtaining influential allies. The structure of the public consultations gave gender equity advocates access to the drafting body through public meetings and written submissions. The cultivation of influential allies significantly increased that access qualitatively and quantitatively. Women's organizations developed strategic relationships with international organizations like the UNIFEM, the Rwandan Forum of Women Parliamentarians, and MIGEPROFE, the Rwandan ministry responsible for gender issues.¹⁵⁰ These various relationships enabled gender equity advocates to assist in setting the agenda for several LCC public meetings and to contribute to the LCC substantive deliberations.

UNIFEM partnered with the LCC to organize sensitization workshops throughout the country. These workshops took place before the general LCC public consultation process began. One UNIFEM-sponsored workshop in 2001 was for the LCC members and other provincial government officials to provide information about the general principles of the Convention on the Elimination of Discrimination Against Women ("CEDAW") and the role of UNIFEM in Rwanda.¹⁵¹ The other workshops took place in four different provinces and were attended by at least one LCC member. Rwanda's CEDAW obligations were also discussed in these workshops. Questions raised during these workshops covered topics such as marriage, polygamy, divorce, alleviating

¹⁵⁰ The Forum of Women Parliamentarians is a caucus for women members of parliament that was created with international funding and support. It seeks to enable women parliamentarians to work together on issues across party lines. Through the Forum, women parliamentarians review existing laws and propose amendments to discriminatory laws, examine proposed legislation "with an eye to gender sensitivity," liaise with women's organizations, and organize meetings and training sessions to raise awareness about gender issues. INT'L INST. DEMOCRACY & ELECTORAL ASSISTANCE, WOMEN IN PARLIAMENT: BEYOND NUMBERS 160 (Julie Ballington & Azza Karam eds., 2005), available at <http://www.idea.int/publications/wip2/> [hereinafter WOMEN IN PARLIAMENT].

¹⁵¹ Republic of Rwanda Legal & Const. Comm'n, *supra* note 124, at 1.

women's poverty, women's representation in parliament, education for girls, and the regulation of political parties.¹⁵² By holding these workshops before the LCC public consultation program began, UNIFEM assisted gender equity advocates in placing gender on the LCC agenda and having government officials and citizens throughout the country begin thinking about gender equity and the constitution.¹⁵³

These efforts were complemented by the earlier work by MIGEPROFE. This ministry had been involved in sponsoring gender mainstreaming workshops for government officials since 1999.¹⁵⁴ MIGEPROFE also held workshops with religious communities to discuss gender considerations in development.¹⁵⁵ These workshops along with those sponsored by UNIFEM supported the grassroots consultation work undertaken by Pro-Femmes. As a result of Pro-Femmes' consultation work, women throughout the country were able to gain information about the relationship between their concerns and gender equality, the role of the constitution in promoting and protecting gender equality, and various ways that gender equality can be promoted.¹⁵⁶ Participants in the workshops were also able to identify the issues they felt were important to women, express their opinions and ideas about those and other non-gender issues, and to propose and discuss recommendations for addressing the problems identified.¹⁵⁷ Finally, these workshops provided a forum for organization leaders and government officials to encourage women to participate in consultative forums on the constitution, like the November 2002 national conference on the draft constitution.¹⁵⁸ Part of encouraging women to participate in the national forum included providing training on how to be effective

¹⁵² *Id.* at 2-4.

¹⁵³ See *infra* text accompanying notes 211-12 for a discussion as to how these sessions influenced the comments and suggestions made during the January to June 2002 consultation.

¹⁵⁴ ELIZABETH POWLEY, STRENGTHENING GOVERNANCE: THE ROLE OF WOMEN IN RWANDA'S TRANSITION 19 (2003), available at http://www.huntalternatives.org/download/10_strengthening_governance_the_role_of_women_in_rwanda_s_transition.pdf.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*; WOMEN TAKING A LEAD, *supra* note 121, at 17-18.

¹⁵⁷ POWLEY, *supra* note 154, at 19; WOMEN TAKING A LEAD, *supra* note 121, at 17-18.

¹⁵⁸ POWLEY, *supra* note 154, at 26.

in the mixed gender forum. Traditional norms did not support women speaking about their needs in public when men were present.¹⁵⁹ Women were instructed to: "[s]peak in a clear voice and don't forget to introduce yourself before your comment;" "[l]et's not make men think, as they've always thought, that women talk too much: be brief;" and "[t]ry not to complain about what we do not have but ask for what you need by making it a suggestion."¹⁶⁰

This type of assistance in addition to female parliamentarians serving as legal advisors informing the women about what to expect and encouraging participation has been credited with enabling women "to submit their ideas on equal footing with men," which "made it difficult for those who were resistant to women's contributions to dismiss them."¹⁶¹

Pro-Femmes' relationship with the Forum of Women Parliamentarians and MIGEPROFE was critical in ensuring that proposals regarding women's political representation were

¹⁵⁹ Newbury & Baldwin, *supra* note 139, at 112; WOMEN IN PARLIAMENT, *supra* note 150, at 157.

¹⁶⁰ POWLEY, *supra* note 154, at 26.

¹⁶¹ *Id.* While some readers may find the advice given to women participating in the national conference troubling because it suggests that women must speak and behave "like men" in order to participate, it must be understood within the context of a campaign that sought integration and inclusion rather than political transformation. The women's organizations in Rwanda were not seeking to radically reconstruct or transform politics and governance in Rwanda. Their strategy was based on a basic acceptance of the governance system and political structure created by the RPF. They prioritized inclusion within the RPF-led government and as such focused on framing their needs, concerns, ideas, and proposals in ways that fit within the status quo. This approach extended to forms of communication and ways of making claims. The ability of gender equity advocates to effectively convey the diverse range of their needs and concerns may have been hampered by their strategic choices. See YOUNG, *supra* note 6, at 37 (discussing individuals' ability to convey their needs, concerns, and ideas if they are limited to particular forms of communication).

It does not appear that there were significant debates or discussions amongst the various actors within the Rwandan women's organizations about the appropriate approach for addressing gender issues. It is possible that there were advocates for both the moderate inclusion approach and a more radical transformation approach. Both approaches have short-term and long-term costs that play a role in the collective action frames utilized by SMOs and their evaluation of the availability of political opportunities. See MCADAM, *supra* note 17, at 37-39 (evaluating distinctions between inclusive and radical approaches to social change); SCHOCK, *supra* note 90, at 27-28 (discussing factors relevant for determining the availability of political opportunities); text accompanying notes 132-34.

carefully reviewed and seriously considered by the LCC. The three entities submitted a joint policy paper to the LCC with specific proposals. The joint approach gave the proposals more political weight than recommendations in individual submissions.¹⁶² When the draft constitution was presented to the TNA, the members of the Forum of Women Parliamentarians actively reviewed it to ensure that matters relating to gender equity and women's political participation were acceptable.¹⁶³ The relationship between the women's organizations and Judith Kanakuze, one of the LCC civil society representatives, was also important. Kanakuze became the LCC gender expert and supported the proposals put forward by women's organizations, the Forum of Women Parliamentarians, and MIGEPROFE. Despite not having an official representative within the LCC, women's organizations were able to create one with Kanakuze. Her presence and support ensured that proposals regarding women's political participation would be raised during the LCC's deliberations.¹⁶⁴

Pro-Femmes not only relied on these relationships to have topics discussed during the LCC deliberations, but also to monitor the entire process. Berthe Mukamusoni, a parliamentarian, recalled that "[w]hen writing the constitution, gender started off as a separate chapter. We refused and said that it had to be integrated."¹⁶⁵ The gender equity advocates had to monitor the process to ensure that their proposals were included in various drafts of the constitution and to see whether potentially problematic text had been inserted. The gender equity advocates' influential allies played an important role in providing the advocates with the information necessary for effective monitoring.

Monitoring enables SMOs to conduct an ongoing assessment of the constitution-making process. Such an assessment involves gathering general information about the progression of the process, how the rules governing the process are being adhered to, whether there have been changes to those rules, and what influence

¹⁶² This is particularly so since the LCC weighted the submissions it received and a detailed memorandum by a group received the most points. ANKUT, *supra* note 7, at 18.

¹⁶³ See, e.g., Commission Juridique et Constitutionnelle du Rwanda [Legal & Const. Comm'n], *Actualité*, 2003, <http://www.cjcr.gov.rw/actualite.htm> (last visited Oct. 22, 2007) (noting the review of the constitution by various parliamentary committees).

¹⁶⁴ POWLEY, *supra* note 154, at 26.

¹⁶⁵ Women Taking a Lead, *supra* note 121, at 16.

participants have had during the public consultation stage. Disseminating the gathered information facilitates the mobilizing function of SMOs. Adherence to the process as planned or departures from it provide incentives for the public to participate in subsequent activities, such as an approval referendum.¹⁶⁶

Influential allies assisted gender equity advocates in getting their proposals and recommendations reviewed and considered by the LCC, but the substance of those proposals and recommendations was critical. What gender equity advocates sought and how they framed their requests played a significant role in their ability to obtain influential allies. In a post-conflict context in which democratic political institutions and civil society are embryonic, there will be significant hesitation to internally include individuals or organizations that seek to challenge or undermine the governance system advanced by the political elites.¹⁶⁷ The differential access and success of organizations

¹⁶⁶ See text accompanying notes 205–09 for a discussion of the monitoring role that civil society organizations played in Kenya.

Approval referenda provide the last opportunity for the public to participate in the constitution-making process. Mobilizing citizens to vote in the referendum can provide a check on the drafting body's power by protecting the ideas, concerns, and opinions of the public. When the draft inadequately addresses concerns raised during the public consultation process, the referendum allows the public to reject the draft and prevent the government from claiming the benefits of a participatory process and enacting an unacceptable constitution.

Civil society organizations effectively performed this function in Zimbabwe. President Mugabe established a Constitutional Commission in response to demands from civil society organizations to revise the constitution. CTR. FOR DEMOCRACY & DEV., *THE ZIMBABWE CONSTITUTIONAL REFERENDUM: THE REPORT OF THE CENTRE FOR DEMOCRACY AND DEVELOPMENT OBSERVER MISSION 35* (2000), [hereinafter *ZIMBABWE CONSTITUTIONAL REFERENDUM*]. When the draft was put before the public it was rejected. *Id.* at 54. The public was overwhelmingly concerned that the draft ignored the concerns raised during the public consultation process and that President Mugabe tried to use a democratic constitutional review process to gain legitimacy for a marginally democratic constitution. *DEMOCRATIC CONSTITUTION*, *supra* note 5, at 9; *ZIMBABWE CONSTITUTIONAL REFERENDUM*, *supra*, at 43–44, 54. While the public's efforts were not successful in enacting the desired constitution, they were successful in preventing political elites from using a participatory constitution review process to ratify their uncompromised political arrangements. Civil society organizations were able to influence not only the thinking of the general public and certain political actors, but also the final decision. The effectiveness of the public's participation was facilitated by a public sphere that did not overwhelmingly hamper the existence and work of civil society organizations.

¹⁶⁷ See, e.g., Angela M. Banks, *Moderating Politics in Post-Conflict States: An Examination of Bosnia and Herzegovina*, 10 *UCLA J. INT'L L. & FOREIGN AFF.* 1, 41–58

seeking gender equity versus those seeking robust multi-party democracy suggest that successful proposals and recommendations must be framed in ways that are consistent with the political elite's governance frame and do not undermine the existing distribution of political power.

4.2. Framing Constitutional Conversations

Individuals exist within a particular cultural context that is comprised of "diverse, often conflicting symbols, rituals, stories, and guides to action."¹⁶⁸ Culture is thus like a tool kit or repertoire that individuals select from when making decisions.¹⁶⁹ Frames help individuals organize the diverse symbols, images, and ideas available within their repertoire into a coherent set of idea elements.¹⁷⁰ This is done by linking the diverse information to an underlying organizing idea that signals what is at stake on a given issue. Frames affect what participants identify as problematic, who they blame for such problems, and how they believe the problems should be resolved. Frames also influence how individuals evaluate claims made by other people, including who is qualified to speak on particular issues and what type of knowledge or information is valuable.¹⁷¹ Through strategic framing, SMOs

(2005) (examining resistance by Bosnian nationalist government officials to political participation by moderate politicians).

¹⁶⁸ Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 AM. SOCIOLOGICAL REV. 273, 277 (1986).

¹⁶⁹ See *id.* (characterizing culture as a "tool kit" for constructing "strategies of action."); Michael Moody & Laurent Thévenot, *Comparing Models of Strategy, Interests, and the Public Good in French and American Environmental Disputes*, in RETHINKING COMPARATIVE CULTURAL SOCIOLOGY: REPERTOIRES OF EVALUATION IN FRANCE AND THE UNITED STATES 229, 275 (Michèle Lamont & Laurent Thévenot eds., 2000) [hereinafter RETHINKING COMPARATIVE CULTURAL SOCIOLOGY] (examining the strategic use of different "cultural repertoires."); Laurent Thévenot, Michael Moody & Claudette Lafaye, *Forms of Valuing Nature: Arguments and Modes of Justification in French and American Environmental Disputes*, in RETHINKING COMPARATIVE CULTURAL SOCIOLOGY, *supra*, at 238 (setting out the notion of "repertoires" of cultural resources used in the "justification, preparation, or explanation of action.").

¹⁷⁰ SHAPING ABORTION DISCOURSE, *supra* note 137, at 105 (frames are the "central organizing ideas that provide coherence to a designated set of idea elements."); Benford & Snow, *supra* note 133, at 614 (citing Goffman's definition of frames as schemes of interpretation that "enable individuals 'to locate, perceive, identify, and label' occurrences within their life space and the world at large."); Noonan, *supra* note 137, at 85.

¹⁷¹ Framing thus privileges "certain meaning elements at the cost of others" and creates a "built-in preference structure." SHAPING ABORTION DISCOURSE, *supra*

attempt to align their definition of a problem and proposed solutions with the interpretive framework of other members of the society. This requires enabling individuals to see that some set of their interests, values, and beliefs are congruent and complementary with the organization's activities, goals, and ideology.¹⁷²

Framing and framing contests take place within a society's discursive opportunity structure. This is a society's framework of ideas and "meaning-making" institutions, which can be divided into three broad categories: political, socio-cultural, and mass media.¹⁷³ It is part of the broader political opportunity structure of a society.¹⁷⁴ The political components include the government and the role of the state and political parties within the society.¹⁷⁵ The

note 137, at xii-xiii; *see also* Benford & Snow, *supra* note 133, at 614 (arguing that frames help to render events meaningful and function to organize experience and guide action); Snow et al., *supra* note 129, at 464 ("By rendering events or occurrences meaningful, frames function to organize experience and guide action, whether individual or collective."). There is usually a predominant direction that a frame favors and it is generally used to support that direction. SHAPING ABORTION DISCOURSE, *supra* note 137, at 106. The same frame can be used to support different policy positions although it is "easier for an actor to be in line with the built-in preference structure of the frame chosen." *Id.* at xiii. For example, Ferree, Gamson, Gerhards, and Rucht's work on abortion discourse in the United States and Germany demonstrates that while the "Fetal Life" frame can be used to support pro-life, pro-choice, and neutral positions, its predominant direction is that of pro-life. *Id.* at 106. Frames should not be conflated with policy positions because despite the predominant direction of a frame, it can support alternative policy positions. For example, the "Fetal Life" frame can be used to support a variety of policy positions. Pro-life advocates would contend that "Life begins at conception," while pro-choice supporters would state that "Life begins at birth," and individuals neutral on the matter would state that "the real issue is when life begins." *Id.*

¹⁷² Benford & Snow, *supra* note 133, at 615; McAdam, *supra* note 133, at 340; Snow, et al., *supra* note 129, at 467.

¹⁷³ SHAPING ABORTION DISCOURSE, *supra* note 137, at 62; *see also* Michèle Lamont & Laurent Thévenot, *Introduction: Toward a Renewed Comparative Cultural Sociology*, in RETHINKING COMPARATIVE CULTURAL SOCIOLOGY, *supra* note 169, at 8; Swidler, *supra* note 168, at 277 (examining culture tool-kits and repertoires in action); Laurent Thévenot, Michael Moody & Claudette Lafaye, *supra* note 169, at 238 (discussing framing in the context of social movements).

¹⁷⁴ *See supra* note 108 for further discussion of political opportunities.

¹⁷⁵ SHAPING ABORTION DISCOURSE, *supra* note 137, at 64. Ferree et al., developed this typology studying the United States and Germany. Consequently, their conception of the discourse opportunity structure is rooted in the experiences of developed western democracies. The specific details of each component will vary in post-conflict states, particularly the political and mass media components. For example, political parties may be non-existent and there may be few mass media resources at the disposal of individuals and civil society

socio-cultural components include the worldviews, values, norms, ways of thinking, practices, and resources within a society and the rules that support these elements.¹⁷⁶ The socio-cultural components “provide a pool of potential legitimating devices for particular ways of framing an issue and justifying one’s position on it.”¹⁷⁷ Finally, the mass media includes journalistic outlets like newspapers, television, and radio.

Some frames are advantaged because the ideas and language of the frame “resonate with the broader culture[,]” which makes the frame appear natural and familiar.¹⁷⁸ Credibility and salience are two interacting factors that affect frame resonance. Credibility is a function of three factors: frame consistency, empirical credibility, and the credibility of those advancing the frame.¹⁷⁹ Frame consistency refers to the congruency between an organization’s beliefs, claims, and actions. Contradictions or inconsistencies can exist between an organization’s beliefs or claims, or they can exist between an organization’s framing and its tactical actions.¹⁸⁰ Greater and more apparent contradictions decrease frame resonance and negatively affect frame acceptance. Empirical credibility relates to the fit between the proffered frame and the target audience’s understanding of events in the world. The more culturally believable the evidence is and the more of it there is, the more credible the frame and the broader its appeal. Finally, the more credibly a speaker is regarded, the more persuasive he or she will be. The greater the target audience perceives the status and experience of a frame articulator and the organization he or she represents to be, the more resonant and plausible the frame and claims will be.¹⁸¹

Salience is the other factor that affects resonance, and it has three dimensions: centrality, experiential commensurability, and

organizations. The basic framework, however, is useful in sketching the framework of ideas and meaning-making institutions within a society.

¹⁷⁶ *Id.* at 70.

¹⁷⁷ *Id.* They also offer varying opportunities to competing framers as they try to link their framing of an issue to broader “cultural symbols, themes, and narratives.” *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Benford & Snow, *supra* note 133, at 619; David A. Snow & Robert D. Benford, *Ideology, Frame Resonance, and Participant Mobilization*, 1 INT’L SOC. MOVEMENT RES. 197 (1988).

¹⁸⁰ Benford & Snow, *supra* note 133, at 620; Snow & Benford, *supra* note 179.

¹⁸¹ Benford & Snow, *supra* note 133, at 620–21.

narrative fidelity. Centrality is a measure of how essential the beliefs, values, and ideas of the organization's frame are to the lives of the target audience. Whether or not the frames are congruent or resonant with the everyday personal experiences of these actors reflects the second dimension. If the frames are too abstract or distant, they will have little salience. Finally, a link between particular frames and cultural narratives, myths, or inherent ideology supports cultural resonance.

In their efforts to ensure that the particular needs of women and children were addressed during the reconstruction of Rwanda, gender equity advocates sought to increase women's political participation. Accepting the GNU's desire to foster peace, unity, and reconciliation, gender equity advocates proclaimed that achieving this common good could not be attained without the active participation of women in politics. The gender-focused frame stated that because of women's skills, their unifying activities after the genocide, the significant number of women heading households, and the majority female population after the genocide, they were necessary for the social, political, and economic reconstruction of Rwanda.¹⁸² Gender equity advocates were able to frame their concerns regarding the hardships facing women and children and gender equity as consistent with concerns underlying the quest for unity and reconciliation.

The ability of civil society organizations to obtain their desired outcomes is partially contingent upon developing coherent and well-articulated accounts that define the problem, assign blame, and determine what should be done to remedy the identified problem.¹⁸³ Two core framing functions, diagnosis and prognosis, assist in developing the necessary accounts.¹⁸⁴

¹⁸² WOMEN IN PARLIAMENT, *supra* note 150, at 157-60; *see also* ANKUT, *supra* note 7, at 14 (describing the arguments of women's organizations); POWLEY, *supra* note 154, at 15-17 (discussing social belief in the importance of women in Rwanda's peace building and reconciliation efforts); Newbury & Baldwin, *supra* note 139, at 98, 104-05 (describing growth of women's political organizations in Rwanda).

¹⁸³ Cress and Snow found that the successful attainment of desired outcomes by homeless social movement organizations required viable organizations with articulate diagnostic and prognostic framing. These two factors were necessary, but not sufficient for the successful attainment of outcomes. Other factors were present and necessary under different conditions. Cress & Snow, *supra* note 135, at 1096.

¹⁸⁴ *See supra* text accompanying notes 134-36 for additional information on diagnostic and prognostic frames.

Gender equity advocates developed a frame that identified the unique predicaments of women and children in post-conflict Rwanda as not only public problems in need of political solutions, but as threats to the state's unity and reconciliation.¹⁸⁵ This frame also advanced women's political participation as a means for addressing the identified problems. Gender equity advocates were able to align their gendered frame with the GNU's unity and reconciliation frame by bridging the two.¹⁸⁶

Connecting gender equity issues and women's political participation to unity and reconciliation in Rwanda was an important move in a political climate where differentiated political representation was disfavored. Multi-party democracy was significantly limited out of fear that party mobilization might promote ethnic divisionism. Despite the fact that claims for women's guaranteed political participation and multi-party democracy both sought to broaden the public's choices for political representation, the socio-cultural components of the discursive opportunity structure in Rwanda challenged proponents of multi-party democracy in ways that did not challenge women's organizations, but actually supported them. Gender was not perceived as a social difference that could divide the society in the same way and to the same extent that ethnicity had in the past. Rwanda's past experiences with mass violence were episodes in which ethnic-based hatred was fostered and exploited. Gender differences had never led to similar incidents of mass expulsions and violence. Incidentally, in post-genocide Rwanda gender differences were often perceived as beneficial for women. Many members of society viewed women as symbols of moderation as a result of being less involved in the 1994 genocidal violence, less corrupt and more attentive and accessible to their communities, and willing and able to play key roles in the state's reconstruction.¹⁸⁷

¹⁸⁵ These problems included the financial and social challenges for female-headed households; lack of suitable shelter, care for orphans, and medical needs; and limited access to food production resources.

¹⁸⁶ Frame bridging links "two or more ideologically congruent but structurally unconnected frames regarding a particular issue or problem." Snow et al., *supra* note 129, at 467; see, e.g., Tracey Skillington, *Politics and the Struggle to Define: A Discourse Analysis of the Framing Strategies of Competing Actors in a 'New' Participatory Forum*, 48 BRIT. J. SOC. 493, 498 (1997) (exemplifying frame-bridging in the environmental policy context).

¹⁸⁷ POWLEY, *supra* note 154, at 15-17; WOMEN TAKING A LEAD, *supra* note 121, at 12-13; see also Noonan, *supra* note 137, at 91-98 (1995) (examining how women

Domestic support for multi-party democracy was not as strong or as organized as that for women's political participation. Claims advocating multi-party democracy could not be ignored because the international community, which had been the initial impetus for change in 1991, endorsed such claims.¹⁸⁸ Support from political actors and within the society at large was mixed because political parties, ethnic divisions, and mass violence were strongly connected for many people.¹⁸⁹ Historically political parties in Rwanda were ethnic parties and the parties that developed in the 1990s followed that pattern. The parties that participated in the GNU had specific ethnic identities even though such matters were not discussed openly.¹⁹⁰ In 1995, Kagame feared that multi-party local elections would undermine the development of national unity.¹⁹¹ The MDR, the party with the most to gain through multi-

in Chile used dominant cultural and political themes regarding gender roles to create a frame that legitimated their protests).

¹⁸⁸ See PRUNIER, *supra* note 41, at 89-90 (discussing France's push for multi-party democracy in Rwanda). International or world polity norms can be particularly influential in shaping the decisions a state makes regarding its governance structure, the rights it protects, and the manner in which it protects those rights. See, e.g., Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887 (1998) (reviewing norms and ideational phenomena in the international context); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004) (discussing ways in which states influence the behavior of other states); Ryan Goodman & Derek Jinks, *Toward an Institutional Theory of Sovereignty*, 55 STAN. L. REV. 1749 (2003) (examining the ways in which global social constraints empower and constrain institutional and state actors); John W. Meyer, John Boli, George M. Thomas & Francisco O. Ramirez, *World Society and the Nation-State*, 103 AM. J. SOC. 144 (1997) (analyzing nation-states as institutions shaped by worldwide cultural and associational processes).

¹⁸⁹ See, e.g., *Rwanda: Finally an Election*, AFR. CONFIDENTIAL, June 13, 2003, at 1, 4-5 (noting the importance of ethnic divisions in recent elections); *Fundamental Ideas Report*, *supra* note 63 (suggesting that constitutional limits be placed on the number of political parties in Rwanda).

¹⁹⁰ See, e.g., PRUNIER, *supra* note 41, at 121-26 (examining the existence of multi-party politics); Newbury & Baldwin, *supra* note 139, at 113-14 (discussing women's political organizations in post-genocide Rwanda).

¹⁹¹ President Kagame asked:

Multi-partyism in African societies, what does it mean? I use any tactic to distinguish myself from my neighbour in order to get more votes than him. In this game, it does not really matter if I lie. In the current process, if you authorise elections, at this present time, you will never build that country. You will never have a united country. We won't have democracy: people are going to rush on one another.

party democracy as arguably the strongest opposition party, also had a lot to maintain under the existing regime. The party was a significant participant within the GNU and it did not engage in the same sort of organization, strategic framing, and mobilizing as the gender equity advocates. The MDR supported the vague rules governing divisionism and political parties and as a party did not aggressively contest the Transitional National Assembly's decision to disband the MDR. For example, when Prime Minister Bernard Makuza, an MDR member, was asked about the banning of MDR, he stated:

It is regrettable that MDR had ample time to modify its message and public perception of it. There was so much effort on my part to reform the party but I failed. Parliament made an inquiry and referred the matter to cabinet, which in turn referred it to the courts. That is the rule of law. There is consensus in government and parliament to ban the party. And we must all accept the rule of law and the principles of democracy.¹⁹²

A parliamentary commission was created to examine claims of divisionism by the MDR in 2002. Before the commission began its work, a leading figure within the MDR who was close to the RPF believed the party would be abolished.¹⁹³ The party was suffering from internal divisions, which likely contributed to the lack of MDR-generated mobilization to prevent its dissolution and to support multi-party democracy.¹⁹⁴

In the absence of strong organized domestic mobilization around the importance of multi-party democracy and the importance of political opposition, the predominant fears associated with multi-party democracy prevailed. In accordance

INT'L CRISIS GROUP, "CONSENSUAL DEMOCRACY" IN POST-GENOCIDE RWANDA: EVALUATING THE MARCH 2001 DISTRICT ELECTIONS, AFRICA REPORT NO. 34, at 4 (2001), available at <http://www.crisisgroup.org/home/index.cfm?id=1647&l=1>.

¹⁹² *Rwanda: A Country Profile—Prime Minister Talks About Progress over the Years*, DAILY MONITOR (2003), <http://www.monitor.co.ug/specialincludes/mplsups/rwandasup/rwsup5.php> (last visited Feb. 8, 2006) (Ugandan newspaper online).

¹⁹³ HUMAN RIGHTS WATCH, PREPARING FOR ELECTIONS: TIGHTENING CONTROL IN THE NAME OF UNITY 4-5 (2003), available at <http://hrw.org/backgrounder/africa/rwanda0503bck.pdf>.

¹⁹⁴ *Id.* at 5. Some members of the MDR joined the RPF, which gave them a political future without having to fight for the existence of the MDR.

with international norms regarding democratic governance, the Constitution states that "[a] multi-party system of government is recognized."¹⁹⁵ The 2003 Constitution, however, limited political parties to maintaining offices at the national and provincial levels,¹⁹⁶ and subjected political parties to a law on political organizations, which together with the Constitution, enabled the Senate to refer a political party to the High Court of the Republic for promoting divisionism.¹⁹⁷ Divisionism is not defined in the Constitution or in the law governing political parties.¹⁹⁸ All of these factors reduce the likelihood that robust opposition parties will develop in Rwanda.

While supporters of multi-party democracy did not organize in the same way that gender equity advocates did, gender equity advocates needed more than effective framing strategies. They had to convince fellow citizens of the appropriateness of their proposals and mobilize citizens to vote in the approval referendum.

4.3. *Mobilizing*

The development of a frame that was consistent with the RPF's governance frame was important for gender equity advocates' success. It enabled advocates to present proposals regarding gender equity in ways that LCC members and other political elites could "hear" and accept as non-threatening to their political power. As women's organizations used their influential allies, such as Kanakuze and UNIFEM to obtain LCC support, they also worked to expand their grassroots support throughout Rwanda. The Constitution had to be approved in a national referendum before it could be adopted. Developing a national constituency for

¹⁹⁵ CONST. OF THE REPUBLIC OF RWANDA art. 52.

¹⁹⁶ This provision was amended in December 2005 to state that political parties may establish offices at the national and provincial level. They are no longer prohibited from establishing offices at the local levels of territorial administration. Amendment No. 2 of Aug. 12, 2005, CONST. OF THE REPUBLIC OF RWANDA art. 2, OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.

¹⁹⁷ CONST. OF THE REPUBLIC OF RWANDA art. 55; Organic Law Governing Political Organizations and Politicians, No. 16/2003 art. 42, OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA art. 42, No. 42 special (June 27, 2003).

¹⁹⁸ The MDR was dissolved based on a finding by a parliamentary committee that it promoted divisionism. The process used to dissolve the MDR was not included in either the Constitution or organic law. The investigation into the MDR began before the adoption of the new Constitution or the promulgation of organic law governing political parties.

constitutional provisions advancing women's political participation and representation was important for two reasons. First, it provided women's organizations with leverage when presenting proposals to the LCC. With substantial support behind their proposals the organizations could suggest that any constitution put to an approval referendum that did not adequately address women's political participation and representation would likely be defeated. In 2002, women were 52.3% of the total population and 54.1% of the population aged 20 to 64.¹⁹⁹ Mobilizing a significant portion of the female population could be instrumental in determining whether an approval referendum would be successful.²⁰⁰ Additionally, women's organizations likely played a significant role in shaping the public's perception of the legitimacy and fairness of the constitution-making process. Moehler's research on Uganda's constitution-making process found that citizens lacked the necessary information to independently evaluate the constitution-making process and the constitution, so they relied on information from local elites. When the local elites were supportive of the process, citizens described the process as fair and legitimate; however, when the local elites were antagonistic, they conveyed messages of bias and unfairness to the public.²⁰¹ Thus messages

¹⁹⁹ U.N. DEP'T OF ECON. & SOC. AFFAIRS, 2003 DEMOGRAPHIC YEARBOOK at table 7, U.N. Doc. ST/ESA/STAT/SER.R/34, U.N. Sales No. E/F.06.XIII.1 (2006) (Population by age, sex and urban/rural residence: latest available year, 1994–2003) (Rwanda data from 2002).

²⁰⁰ Without essentializing women and suggesting that all women would support the gender equity advocates' proposals, I note the percentage of women voters because the "women are necessary" frame targeted all women regardless of class or ethnicity. The advocates pursuing the constitutional provisions sought to unify women across all lines of potential cleavage and saw the quest for women's political participation as universal for all women. Many of the activities organized by the gender ministry and the various women's organizations sought to enable women to see their commonality and focus on that in improving the lives of all women. This was difficult at times because some of the women's organizations were ethnically homogeneous in practice, but this was something that was not openly discussed. See Newbury & Baldwin, *supra* note 139, at 105. This approach to gender is reflected in the block of women's seats reserved in the Chamber of Deputies. Women do not run as members of political parties or as formal representatives of any interest other than women's interests.

²⁰¹ See Moehler, *supra* note 12, at 26 (explaining how the opinions of local leaders shaped citizens' evaluations of the constitution). Moehler found that the relationship between citizen participation and support for the Constitution was weak; as citizen participation increased, support for the Constitution did not increase significantly. *Id.* at 23. She concludes that the views of local elites were

from Rwandan women's organizations to their constituents that their concerns were being ignored or that the process was biased or unfair could have been detrimental to the adoption of the Constitution as it was in Kenya.

Public concern over the substance of the constitution presented to the Kenyan public for approval led to its defeat.²⁰² The Kenyan Parliament enacted a law, the Consensus Act, which altered the constitutional review procedures set out in the Constitution of Kenya Review Act.²⁰³ The Constitution of Kenya Review Commission was to conduct, promote, and facilitate civic education to stimulate public discussion and awareness of constitutional issues; set up district-level documentation centers; create a constituency constitutional forum; conduct public hearings to collect public views; and prepare a report and recommendations based on the views obtained that would serve as the basis for debate at a National Constitutional Conference.²⁰⁴ The national conference participants included 223 members of parliament, 210 district representative, 126 representatives from civil society and other interest groups, and 41 representatives of political parties.²⁰⁵ The conference was held in Bomas, Kenya, beginning on April 30, 2003, and lasted approximately one month. The draft constitution

more influential in shaping how individuals evaluated the constitution-making process and the resulting Constitution. *Id.* at 30.

²⁰² See James A. Gathii, *Popular Authorship and Constitution Making: Comparing and Contrasting the DRC and Kenya*, 49 WM. & MARY L. REV. (forthcoming 2007).

²⁰³ Parliament enacted the Constitution of Kenya Review Act in 2000 to facilitate a comprehensive review of the constitution. The act called for the public's participation in the review process, providing the first opportunity for everyday Kenyans to take part in reviewing the constitution. See Hassan, *supra* note 76 (providing the first comprehensive review of Kenya's constitution since the Lancaster House Constitution was adopted in 1963). Kenya's constitution was amended significantly between 1965 and 1967 to centralize powers that had been decentralized in the Lancaster House Constitution. The two major Kenyan parties, KANU and KADU, agreed to a decentralized system because they favored a regional-based system that provided for an equitable distribution of the country's resources. See Joseph Martin Shikuku, *Building on the Lancaster House Experience* (Sept. 15, 2001), available at <http://www.commonlii.org/ke/other/KECKRC/2001/5.html> (last visited Oct. 24, 2007) (paper presented to the Constitution of Kenya Review Commission Workshop on the Interpretation of its Mandate) (providing a brief history of the development of the Kenya Constitution).

²⁰⁴ Hassan, *supra* note 76, at *2.

²⁰⁵ *Id.*; see NAT'L CONST. CONFERENCE HANDBOOK (2003). The twenty-nine Constitution of Kenya Review Commissioners would be appointed by parliament and the president, but would not vote at the conference.

agreed upon in Bomas—the Bomas Draft—significantly curtailed presidential powers and introduced an elected prime minister who would chair cabinet meetings, coordinate the work of the government ministries, and prepare legislation.²⁰⁶

The Consensus Act authorized Parliament to unilaterally revise the draft constitution prepared during the National Constitutional Conference. Civil society organizations were actively involved in publicizing the fact that Parliament was considering the act and the effect it would have on the constitutional review process. Despite the protests that ensued, Parliament passed the Consensus Act and relied on it to revise the Bomas Draft. The Parliament-revised constitution, the Kilifi Draft, strengthened presidential powers and retained the prime minister position, but made it a position appointed by the president rather than an elected position. Civil society organizations were unsuccessful in preventing Parliament from revising the Bomas Draft, but it undoubtedly helped civil society organizations mobilize their communities to ensure that the internal inclusion achieved during the National Constitutional Conference would not be destroyed by approving the Kilifi Draft. They were successful in this effort. The Kilifi Draft was rejected in the November 21, 2005, referendum with 43% of voters supporting the draft and 57% rejecting it.²⁰⁷

The second reason developing a national constituency that supported constitutional provisions regarding women's political participation and representation was important was to respond to counterarguments potentially advanced by other citizens or civil society organizations. Many of the accounts about the quest for constitutional provisions addressing women's political participation note the tensions between traditional Rwandan norms regarding women in public spaces and the calls for women's independent representation and participation within a national legislative body.²⁰⁸ To address the inevitable

²⁰⁶ These revisions address the concerns Kenyans expressed during the CKRC's public hearings. It has been reported that "the majority of Kenyans prefer the powers of the president trimmed and shared out with a proposed office of the prime minister to guard against abuse of power." Joyce Mulama, *Challenges 2005–2006: Kenya's New Constitution in Limbo*, INTER PRESS SERVICE, Dec. 16, 2005, <http://www.ipsnews.net/news.asp?idnews=31456>.

²⁰⁷ Nixon Ng'ang'a & Ben Agina, *Resounding No*, THE STANDARD, Nov. 23, 2005, http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=32609.

²⁰⁸ Louis Rusa, director of the Division of Gender, Health, and Social Affairs for Kigali-Ngali Province stated that he tries to "train men and women to 'show

counterarguments and the development of public support for those arguments it was important for gender equity advocates to disseminate their "women are necessary" frame in public. Just as significant public support for women's political participation provisions could lead to a veto of an unresponsive constitution, a responsive constitution could cause rejection by opponents.

International organizations concerned about women's issues played a significant role in focusing Rwandan NGO attention on governance matters and financially supporting the domestic mobilization effort.²⁰⁹ The success of this collaboration is reflected in the LCC report, *Fundamental Ideas on the New Constitution*, presenting the results of the public consultation process. With regard to gender the report states that citizens thought that gender equity was achievable if individuals are equal before the law. Furthermore, gender-based affirmative action should be provided by law, protected in decision-making bodies, education, and the economy.²¹⁰ These statements reflect the content discussed at the sensitization workshops organized by international organizations like UNIFEM to educate the population about Rwanda's international legal obligations regarding gender.

As discussed at the beginning of this Section, there was a proliferation of women's organizations throughout Rwanda after the genocide to provide women with concrete support in reconstructing their lives. These organizations were critically important in enabling international organizations like UNIFEM and local NGOs like Pro-Femmes to form a national network.

them the benefits of the promotion of women, that they can contribute to the family, [and] that development cannot come from men only," but that "some men are 'very resistant [to the inclusion of gender issues and women in government] because of culture.'" POWLEY, *supra* note 154, at 19-20 (alterations in the original). Berthe Mukamusoni, a female parliamentarian, noted that, "[i]n the history of our country and society, women could not go in public with men. Where men were, women were not supposed to talk, to show their needs. Men were to talk and think for them." *Id.* at 21.

²⁰⁹ The influential role that international women's organizations, like UNIFEM, were able to play in Rwanda through financial and political support demonstrates the power that women and feminist ideas have and are gaining in international settings. See Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335 (2006) (discussing the growth of Governance Feminism or the "the installation of feminist and feminist ideas in actual legal-institutional power.").

²¹⁰ *Fundamental Ideas Report*, *supra* note 63.

Through this network they were able to develop national support for constitutional provisions guaranteeing women's political participation and representation. The process of developing such support began with the gender sensitization workshops. Madeline Mukarwigema was a member of Duhozanye—an organization that worked to respond to the urgent needs of 330 widows and widowers—through which she received gender training. Mukarwigema reported that before the training she and other Duhozanye members never realized the gendered nature of their struggles.

We never took gender into consideration. We saw ourselves as widows who were trying to get by. . . . Before we received training in gender, we thought that we had arrived at the summit of sexual equality because we were doing jobs and tasks which had previously been reserved for men only, like masonry, milking cows etc. . . . [.] After the training, we saw that we had an incomplete understanding of gender.²¹¹

The sensitization workshops and other meetings and interactions with women throughout the country used the “women are necessary” frame to discuss the problems facing women in post-genocide Rwanda and offered women's political representation and participation as a solution. Not only were women told that political representation and participation were important aspects of gender equity, the gender equity advocates also reinforced the prevalent belief amongst women that women were critically important for the reconstruction of post-genocide Rwanda.²¹² The organizations argued that constitutionally guaranteed political representation was necessary to ensure that women would be able to play the roles they desired in planning and implementing the state's reconstruction.²¹³

²¹¹ WOMEN TAKING A LEAD, *supra* note 121, at 17–18 (second omission in the original).

²¹² See, e.g., *id.* at 25–28 (explaining the process and importance of gender education and training in Rwanda).

²¹³ See, e.g., *id.* at 27 (arguing the importance of women in elected positions); see also Heather B. Hamilton, *Rwanda's Women: The Key to Reconstruction*, J. HUMANITARIAN ASSISTANCE, Jan. 10, 2000, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/OCHA-64CR56?OpenDocument>; Jeanne Izabiliza, *The Role of Women in Reconstruction: Experience of Rwanda 2–4*, Presentation Delivered at Empowering Women in the Great Lakes Region: Violence, Peace, and

Gender equity advocates were successful in obtaining their desired constitutional guarantees as a result of their collective action. Through Pro-Femmes, these advocates successfully mobilized, obtained elite allies, and created and implemented an effective framing strategy. It was these factors that enabled gender equity advocates to make substantive contributions in a constitution-making system that limited internal inclusion to political elites and their allies. Rwanda adopted an external participatory system. Rather than opening the floodgates of participatory democratic governance, the use of this system severely limited who within the society would be able to make substantive contributions. This opportunity was limited to those who became political insiders, which was not equally available to all citizens and required tightly orchestrated collective action.²¹⁴

Women's Leadership Conference (June 2005) (*available at* http://portal.unesco.org/shs/en/ev.php-URL_ID=9184&URL_DO=DO_TOPIC&URL_SECTION=201.html) (advocating for an increase in female participation in decision-making and policy implementation as the most effective means of contribution to reconciliation efforts).

²¹⁴ Soon after the war and genocide ended in Rwanda, women's organizations reappeared to help women deal with the unique challenges they were facing as widows, mothers, and heads of households. Through meetings and activities to address practical challenges like access to income-generating activities, shelter, food production resources, and the care of orphans, women began to discuss the need for political solutions and political representation. *See, e.g.,* Newbury & Baldwin, *supra* note 139, at 98 (explaining the development of informal and formal women's organizations after the 1994 genocide); *see* POWLEY, *supra* note 154, at 19 (discussing the Rwandan Ministry of Gender and Women in Development programs for women's empowerment); WOMEN TAKING A LEAD, *supra* note 121, at 17-18 (providing narratives of Rwandan women who have become involved in gender work). Through collaborations with female members of parliament and the ministry in charge of gender issues, sensitization workshops were held throughout the country.

Pro-Femmes worked closely with MIGEPROFE, the Forum of Women Parliamentarians, and the LCC to ensure that their concerns were adequately addressed in the draft constitution. *See* WOMEN IN PARLIAMENT, *supra* note 150, at 143, 146 (describing decision-making process); WOMEN TAKING A LEAD, *supra* note 121, at 16. Once Pro-Femmes was satisfied that its issues were sufficiently reflected in the draft constitution, the organization implemented a mobilization campaign to encourage women to support the draft constitution in the national referendum. *See* WOMEN IN PARLIAMENT, *supra* note 150, at 146 (explaining how Pro-Femmes publicized the relevant changes to the draft constitution); WOMEN TAKING A LEAD, *supra* note 121, at 16 (discussing the inclusion of women and women's issues in the drafting of the new Rwandan constitution). Through their member NGOs and the network established during the sensitization process, Pro-Femmes was able to access women throughout the country and follow up on their earlier education and consultation work to encourage women to vote in support of the constitution in the national referendum. The positive reports from Pro-

5. CONCLUSION

Gender equity advocates successfully obtained their desired outcomes—constitutional provisions guaranteeing women's political participation and representation, and gender equity in public and private life—through an external participatory system. Their success resulted from engaging in sustained collective action that entailed mobilizing, obtaining influential allies, and implementing an effective framing strategy. The Rwandan case study suggests that the use of external participatory systems has the potential to assist in implementing moderate democratic reforms. The focus of these systems on gaining legitimacy and public support provides an opportunity for organized constituencies to successfully lobby for democratic reforms that are consistent with the elite-created governance plan. The quest for legitimacy and public support is, however, balanced with a desire to implement a specific governance system that maintains a particular balance of power.

Historical experiences with politics and political power being a zero-sum game cause many new political leaders in post-conflict states a great deal of anxiety about the prospect of losing political power. The loss of political power would mean not only losing political influence, but becoming vulnerable to political, economic, and social marginalization. Creating a public-driven governance system and constitution is likely to be seen as a risky venture that other political organizations within the state could take advantage of to gain exclusive political power. The security conditions, nascent political institutions, and civil society in post-conflict states make this likelihood a distinct possibility. Thus external participatory systems are likely to prevail in post-conflict states. They enable the governing elites to create the blueprint for the state's constitution and governance system, obtain public support, and develop domestic legitimacy. The institutions, procedures, and modes of participation utilized in an external participatory system focus on obtaining support and legitimacy for a specific governance plan at the expense of engaging the public in creating a long-term effective governance system. Participatory constitution making is supported by numerous states, inter-governmental

Femmes and other women's organizations regarding the legitimacy and fairness of the process and the substance of the Constitution undoubtedly played a significant role in the overwhelming support for the Constitution amongst citizens concerned about gender equity. See Moehler, *supra* note 12, at 26-27.

organizations, and non-governmental organizations because it is seen as having the potential of facilitating national conversations about the endemic political, economic, and social problems facing the society. The conversations, discussions, and deliberations are seen as providing forums in which workable solutions can be identified, agreed upon, and memorialized in a constitution. External participatory systems do not, however, enable these challenging conversations and deliberations to take place within the decision-making forums. Public support and legitimacy are important aspects of democratic governance, but they will be difficult to sustain if the government does not effectively address political, economic, and social exclusion.

The challenge facing international legal scholars and practitioners is how to assist the governments of post-conflict states in transitioning from the use of external participatory systems to internal participatory systems. This transition involves citizens and political elites seeing politics and political power as something other than a zero-sum game and viewing disagreement and dissent as necessary components of democratic dialogue. Recognizing the differences in the intent of the designers of such systems and the institutions and procedures utilized provides a starting point for thinking about how to structure such a transition.