

# Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post-Conflict Systems

Best Practices and Recommendations from the Great Lakes  
Region of Africa



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## ACKNOWLEDGEMENTS

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This toolkit was written and designed by Julie L. Arostegui with collaboration from Veronica Eragu Bichetero. Research support was provided by Esther Wambi, Bernard Oguti and Victoria Acen of EDG Venture Consult, Kampala. Peer review was performed by Jolynn Shoemaker, independent consultant in Washington, DC and Pamela Angwech of GWED-G in Gulu, Uganda. Chantal de Jonge Oudraat and Masha Keller of SIPRI North America and WIIS provided valuable support to the project.

This project was funded by the United States Institute of Peace and supported by SIPRI North America and Women in International Security (WIIS).

Uganda and Rwanda were included as case studies and stakeholder meetings were also held in South Sudan and Sudan. Many institutions, organizations and individuals graciously gave their time and insights. These are listed individually in Annex Two.

The authors are deeply grateful to all of individuals, organizations and institutions that have provided support for this project.

The views contained in the toolkit are those of the authors and do not necessarily represent those of SIPRI North America, the U.S. Institute of Peace or WIIS.

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## ABBREVIATIONS

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<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>AU</b>	African Union
<b>CAP</b>	Community Action Plan
<b>CAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CBO</b>	Community Based Organization
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organization
<b>CSW</b>	Commission on the Status of Women
<b>DDR</b>	Disarmament, Demobilization and Reintegration
<b>DEVAW</b>	Declaration on the Elimination of Violence Against Women
<b>DRC</b>	Democratic Republic of Congo
<b>FDLR</b>	Democratic Liberation Forces of Rwanda
<b>FFRP</b>	Rwanda Women Parliamentary Forum
<b>FGM</b>	Female Genital Mutilation
<b>FIDA-UGANDA</b>	Uganda Association of Women Lawyers
<b>GBV</b>	Gender-based violence
<b>GRB</b>	Gender responsive budgeting
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICGLR</b>	International Conference on the Great Lakes Region
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for the Former Yugoslavia
<b>IDP</b>	Internally Displaced Person
<b>KKA</b>	Ker Kwa Acholi
<b>LRA</b>	Lord's Resistance Army
<b>MDGs</b>	Millennium Development Goals
<b>NAP</b>	National Action Plan
<b>NGO</b>	Nongovernment Organization
<b>NRM</b>	National Resistance Movement (Uganda)
<b>NWC</b>	National Women's Council
<b>RFP</b>	Rwandan Patriotic Front
<b>SDGEA</b>	Solemn Declaration on Gender Equality in Africa
<b>SGBV</b>	Sexual and gender-based violence
<b>SNJG</b>	National Service of Gacaca Jurisdictions
<b>TOT</b>	Training of Trainers
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UHRC</b>	Uganda Human Rights Commission
<b>ULRC</b>	Uganda Law Reform Commission
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNSCR</b>	United Nations Security Council Resolution

## EXECUTIVE SUMMARY

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*Local, national, regional and global peace is attainable and is inextricably linked with the advancement of women, who are a fundamental force for leadership, conflict resolution and the promotion of lasting peace at all levels.*

- Beijing Declaration and Platform for Action, 1995

*Sustainable peace requires an integrated approach based on coherence between political, security, development, human rights, including gender equality, and rule of law and justice activities.*

- UN Security Council Resolution 2122 (2013)

With the passage of United Nations Security Council Resolution 1325 in 2000, the Security Council for the first time not only recognized the disproportionate impact of conflict on women, it also mandated that the UN and all member states increase women's participation in all peace processes, establish enforceable protections and ensure justice for women. Along with its companion Resolutions 1820, 1888, 1889, 1960, 2106 and 2122, which further clarify its requirements, UNSCR 1325 provides a strong framework and mandate for advancing gender equality and empowering and protecting women. It incorporates binding international law on the rights and protection of women and children such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Geneva Conventions and many others. Using the 1325 Women, Peace and Security framework as a synthesis of existing international law on the rights and protection of women in conflict and transition provides powerful tools to build inclusive and sustainable peace and security.

It is important that practitioners and advocates at all levels, including participants in peace processes, women leaders, government officials, political party leaders, legal professionals, civil society advocates, grassroots groups, and traditional and religious leaders understand the concepts contained in 1325 and the international human rights law that it incorporates and be able to leverage them. It is also critical to take a holistic approach to advancing gender equality and women's empowerment through the rule of law.

In 1995, the Beijing Declaration and Platform for Action for the first time specifically addressed the effects of conflict on women and recognized that peace is inextricably linked to equality between men and women and development. It provided a broad roadmap for gender equality and the advancement of women. Governments, in taking steps to achieve the goals of the Beijing Platform, recognize that all human rights – civil, cultural, economic, political and social – including the right to development – are universal, indivisible and interdependent and are essential for realizing gender equality, development and peace in the 21<sup>st</sup> Century.<sup>1</sup> The critical role of women and gender equality is also increasingly recognized in international development. The Millennium Development Goals (MDGs) include the promotion of gender equality and women's empowerment, and groups are advocating for a post-2015 approach to sustainable development grounded in the principles of human rights, gender equality and nondiscrimination.

In implementing the women, peace and security framework we must look at a broader picture for peace. As we move forward with the review of Beijing+20 and more emphasis is put on rights issues in the post-2015 framework, we need to look at the totality of instruments available to societies to promote gender equality. The issue of gender equality is particularly key for countries in conflict and post-conflict situations. This toolkit provides practical guidance on how to integrate principles of gender equality into legal systems and how this has been done. The analyses and recommendations in the toolkit are based mainly on experiences in the Great Lakes Region of Africa, specifically on case studies performed in Uganda and Rwanda as well as consultations and workshops held in South Sudan and Sudan, but are applicable to practitioners broadly.

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<sup>1</sup> Resolution adopted by the UN General Assembly during its twenty-third special session in 2000, A/RES/S-23/3, 17-18.

## Summary of Recommendations

The main challenges found in implementing the women, peace and security framework include: Lack of knowledge of the framework and principles at all levels; the need to change the perceptions of institutions and educate them about gender issues; the existence of plural legal systems – state and customary - that often hinder access to justice for women; and working with traditional cultures that have deeply embedded discriminatory practices and attitudes regarding gender roles. In order to overcome these barriers, practitioners and advocates should:

- 1. Know the framework.** Familiarity with UNSCR 1325, and especially the fact that it is based on binding international law, is lacking at all levels. Advocates and practitioners must be armed with practical knowledge of the international and regional instruments and domestic obligations so that they can advocate for laws that further implementation. It is important to stress the *universality* of human rights and the fact that 1325 resulted largely from advocacy by women's groups in non-western states who had experienced conflict. Successful advocates consistently cite the Universal Declaration of Human Rights (UDHR), CEDAW, 1325 the Beijing Platform and other international and regional norms contained in the framework in advocating for gender equality and women's rights. **The more that citizens at all levels advocate and remind their governments of their obligations, the more they will become a reality.**
- 2. Link gender equality and women's rights to development and stress the role of development in security.** There is a growing awareness among governments that including women in their development schemes benefits everyone, as allowing women to be productive boosts the economy and improves the conditions of all society. In addition to being human rights issues, gender-based violence and women's poverty, illiteracy and lack of health care due to discrimination have serious consequences for development, and this can be a very effective argument when dealing with policymakers. The effects of violence and discrimination often keep women out of school and out of the workplace, which affects the economy as well as the family. There are also serious health consequences that not only harm the population but also drain national resources. A healthy, productive citizenry that includes women and men equally benefits everyone and fosters an environment of security. **The link between human rights and development has become a very powerful advocacy tool. Advocates should use both legal frameworks and developmental arguments to advocate for adequate laws to ensure the rights of women.**
- 3. Advocate for a holistic and specific set of laws that address gender equality and women's rights.** It is critical to embed principles of gender equality and women's right into national constitutions, laws and institutions in order to carry out the principles of the women, peace and security framework. These include political participation; all forms of gender-based violence including rape, assault, harassment, domestic violence, harmful traditional practices and human trafficking; family laws that ensure freedom and equality in marriage, divorce and child custody; socio-economic rights guaranteeing equality in property rights, education, health and employment; children's rights; citizenship and nationality laws; and refugee and IDP laws and policies. Countries should also develop 1325 National Action Plans, which not only serve as guidelines for coordination and implementation of 1325, but are also tools for advocates to hold governments accountable and press for related legislation.
- 4. Harmonize justice systems and empower them to address gender issues.** It is important to establish a functioning, independent and accessible formal justice system in which laws related to gender are upheld and justice sector personnel are knowledgeable about international, regional and national obligations and have the capacity to address cases of gender equality and women's rights. It is also critical in many countries to take into account the traditional justice systems that operate at the community level. Where customary justice systems are recognized, constitutions and legislation should make clear what kinds of cases can be handled by the customary courts and how they are to interact with the state system. Resources should be invested to improve their effectiveness and strengthen their capacities to carry out justice according to constitutional and human rights principles. Any customary practices that are against international, regional or domestic principles of human rights and women's



rights must be prohibited, and traditional and cultural leaders that administer the systems must be sensitized to gender equality and women's rights principles, applicable domestic laws and regional and international instruments.

5. **Work with communities.** Instituting adequate laws that are properly implemented are a key element in achieving the women, peace and security framework's goals of participation, protection and prevention of conflict. Doing this requires taking a holistic approach to the rule of law. **This means not only working at the level of law and policy, but also working at the grassroots level to educate people on their rights and to change the cultural and institutional perceptions that have allowed discriminatory practices to persist.**
- Sensitize and train traditional, cultural and religious leaders on gender issues, women, peace and security and the 1325 framework, gender related laws and mediation of cases related to women's rights.
  - Work with leaders to link international human rights norms to cultural and religious principles in ways that are relevant to the particular community.
  - Include women in traditional and religious group leadership.
  - Work with leaders to sensitize communities to issues related to gender equality and women's rights including gender-based violence, land rights and women's economic empowerment.
  - Work with leaders to address the underlying issues of gender inequality, including discriminatory attitudes, harmful practices, land rights issues and more recent post-conflict phenomena such as alcoholism, which leads to other abuses such as domestic violence and assault.
  - Establish grassroots structures for capacity building on women's rights and peace building in order to educate women on their rights and how to access them and advocate for them, including the 1325 framework and other regional, national and local obligations. This should include community education programs, training workshops and peer mentoring and training.
  - Empower women to participate in politics, decision-making and community activities related to peace building through training on tools including the 1325 framework and CEDAW.
  - Engage men to support laws promoting gender equality and women's rights and change perceptions in communities.
  - Use community dialogues to educate women and men on women's rights and related laws and promote peace and equality within communities.
  - Developing Community Action Plans as multi-sector, institutionalized approaches that bring together all stakeholders in the community to address gender issues and violations of women's rights and promote peace and security within communities.

# INTRODUCTION

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## Why is this toolkit important?

Sustainable peace cannot be achieved without women's involvement. Women have the right to participate in processes that have direct consequences on their lives. Women leaders, government and civil society actors should know these rights and be able to articulate them using established international and domestic legal principles. It is important to prepare women in conflict-affected countries so that they can participate in peace and security discussions and help establish inclusive legal systems. It is also critical to engage and educate men on these issues to ensure that processes are inclusive.

United Nations Security Council Resolutions provide an international framework recognizing the important role of women in peace and security. However, practitioners widely recognize the need to closely connect this framework to legal instruments and the rule of law in order to make a real difference in the lives of women in conflict-affected countries. Political rhetoric needs to be turned into binding legal frameworks, laws and policies that ensure equal treatment of women.

**UN Security Council Resolution 2122 (2013)** emphasizes the importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peace building, recognizing that “sustainable peace requires an integrated approach based on coherence between political, security, development, human rights, including gender equality, and rule of law and justice activities....”

The post-conflict period is a key time for countries to build inclusive and lasting peace. Utilizing the women, peace and security framework is important in achieving that. As the UN Women's Progress of the World's Women 2011-2012 report stated:

[W]omen have seized the post-conflict moment to reshape societies and advance women's rights. In Sub-Saharan Africa, for example, some of the most significant changes with respect to women's rights have occurred where there are opportunities to “rewrite the rules” of the political order, often after major civil conflicts.<sup>2</sup>

The question to ask is *how* has this been done – what arguments have been successful in advocating for change, and how can these arguments be used by others? How can the principles be embedded in constitutions, in the laws subsequently created, and through the courts? As leading experts have noted, “additional measures are needed to turn the rhetoric into reality in the lives of women most at risk. Linking the provisions of the resolutions to legal instruments and the rule of law is an important step in that direction.”<sup>3</sup> Collecting best practices and specific instances where these principles have been applied in legal contexts is important for practitioners, policymakers and civil society operationalizing the framework.

## What does the toolkit cover?

The toolkit provides practical guidance on holistic approaches to integrating international principles on gender equality and women's rights into post-conflict legal systems in order to build sustainable peace, and offers suggestions for linking the women, peace and security framework to the rule of law through:

1. **Clarifying and demystifying international legal principles and national obligations** with respect to women, peace and security.
2. **Identifying legal tools** that can assist policymakers, legal practitioners and civil society in operationalizing principles of gender equality and women's rights in post-conflict processes.
3. **Providing guidance** on how to ensure that equality principles are included in **constitutions**, how to create **national legal frameworks** that advance women, peace and security and how to advance gender equality and women's rights in **justice systems**.

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<sup>2</sup> UN Women, *In Pursuit of Justice: 2011-2012 Progress of the World's Women*, (New York, 2011) 100.

<sup>3</sup> Sanam Anderlini, *Translating Global Agreement into National and Local Commitments*, WOMEN AND WAR, Kuehnast, de Jonge Oudraat, and Hernes eds., (Washington, D.C., United States Institute of Peace Press, 2011) 21.

4. **Offering strategies for working with communities** to tie the 1325 framework to the rule of law and bridge the gaps on the ground.
5. **Sharing best practices and lessons learned** in the Great Lakes Region of Africa for incorporating international standards on gender equality and women's rights into post-conflict legal systems in order to advance the women, peace and security agenda.

Part One provides a primer on the women, peace and security framework: the UN Security Council Resolutions and the International Human Rights and Humanitarian Law embodied in the framework. Part Two discusses strategies for linking the women, peace and security agenda to the rule of law, specifically through constitutions, laws and policies and the justice system. Part Three discusses ways to work with communities as a critical part of ensuring that laws are actually implemented. The analyses and recommendations in the toolkit are based on experiences in the Great Lakes Region of Africa, specifically on case studies performed in Uganda and Rwanda as well as consultations and workshops held in South Sudan and Sudan.

Both the Republic of Uganda and the Republic of Rwanda are members of the United Nations, the African Union and the International Conference of the Great Lakes Region. They have both ratified all of the UN Human Rights Conventions included in the 1325 framework and thus have made binding international commitments to adhere to the standards laid down in these universal human rights documents. These include equality, security, liberty, integrity, and dignity of women and the protection of women from physical, sexual and psychological violence. Both countries have shown themselves to be progressive by adopting the international and regional instruments intended to consolidate the protection of these rights as well as passing national laws that facilitate implementation of such instruments.

In Uganda, women have played a strong role in conflict resolution and peace building. They lobbied intensively to have gender perspectives included in peace processes. Uganda is a signatory to several international and regional instruments that advance gender equality and women's empowerment and has taken various measures to promote and protect women's rights. It has a gender sensitive constitution and has passed legislation on land rights, inheritance and gender-based violence.

Rwanda has made great strides addressing gender issues in the post-genocide period. Its 2003 Constitution calls for equality between men and women and requires that women occupy at least thirty percent of posts in decision-making organs. At fifty-six percent in 2013 it has the highest number of women in Parliament in the world. Women have played a positive role in lobbying for the repeal and revision of discriminatory laws and play a critical role in the country's development.

Sudan was engaged in a long civil war of twenty-one years until 2005 when the parties concluded peace negotiations and signed a Comprehensive Peace Agreement (CPA). The south, under a self-determination clause in the CPA, chose overwhelmingly to separate from the Republic of the Sudan ("the Sudan") in a referendum held in January 2011, and subsequently became independent in July 2011. South Sudan observes all of the treaties, conventions and regional obligations that were in place before independence and during its period of self-rule from 2005 to 2011, and has incorporated women's rights into its interim and transitional constitutions. It is improving and developing its own frameworks including those international treaties and conventions that were not signed by the Sudan. It is critical that the country continues these practices as it moves forward with its constitutional and legislative processes. The Constitutional Committee is currently in the process of writing a permanent constitution, with a draft scheduled to be adopted in 2015, when elections are also scheduled to be held.<sup>4</sup>

In the north, the Sudan is under pressure from citizens and civil society as well as international and regional bodies to ratify critical and outstanding treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and develop action plans on 1325. It is also currently developing a permanent constitution. Compared to Sudan's past constitutions, the Interim National Constitution,

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<sup>4</sup> Unfortunately in December of 2013 internal conflict arose in South Sudan that has disrupted all political and humanitarian processes and continues as of the writing of this toolkit. The current timeline therefore is unclear. However, it is critical that gender issues remain in the forefront so that progress is not lost.

developed as a result of the 2005 CPA, provides the strongest constitutional framework on gender equality and its promotion through affirmative action. Organizations across Sudan have seized the opportunity to establish forums to discuss key constitutional reforms that would entrench these principles permanently.

Considering the experiences of Uganda and Rwanda in incorporating the international principles of gender equality and women's rights into their post conflict systems – including how this was done, how the laws are being implemented, and the challenges that still exist in both countries – as well as the processes that have been underway in the two Sudans offers valuable best practices and lessons learned for conflict- affected countries in the Great Lakes region and elsewhere.

### **Who should use this toolkit?**

This toolkit looks at how law can be used to empower women, especially in conflict-affected countries. It is useful to all practitioners and advocates whether or not they work specifically within the legal sector. Participants in peace processes, women leaders, government officials, political party leaders, legal professionals, civil society advocates, youth, grassroots groups and traditional and religious leaders will benefit from understanding the laws and rights involved, and how to use them to advocate for inclusive post-conflict systems that ensure gender equality and protect the rights of women.

## **METHODOLOGY**

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The information included in the toolkit is based on the experience and expertise of the project team, research conducted and personal interviews, consultations and workshops carried out with key stakeholders.

Uganda and Rwanda were chosen for the initial case studies. For both countries, background research was carried out regarding the conflicts and analysis was performed of peace agreements, constitutions, institutions, legislation and jurisprudence to determine where gender issues have been addressed. Indicators included:

1. Provisions related to women in peace agreements
2. Inclusion of provisions related to gender equality and women's rights in constitutions
3. Presence and strength of institutions charged with carrying out policy related to women
4. Laws and policies related to gender equality and the rights of women
5. Access to justice for women

In-country interviews were then performed with a range of stakeholders including national and local government officials, legal practitioners, civil society groups, peace mediators and community and religious leaders that have been involved in each country's peacemaking, constitutional, legislative and legal processes. The purpose of the interviews was to obtain first-hand testimonies of:

1. How legal and rights based arguments were used to incorporate women, peace and security principles into rule of law frameworks
2. How the frameworks are being implemented

Through the qualitative research and personal interviews the project team determined what strategies and arguments have been made for inclusion of gender principles and the empowerment of women during the post-conflict processes in Uganda and Rwanda; the challenges that have been faced; how the challenges have been overcome; how the laws and policies are being implemented on a daily basis; whether implementation has been successful; and what gaps remain. Where available, quantitative data was also used to determine how laws are being implemented. The research and interviews were carried out between November 2012 and June 2013.

As a part of this project, training workshops were held in Khartoum, Republic of Sudan and Juba, South Sudan in July 2013. Both countries are currently in the process of establishing their post-conflict systems. Pre-

workshop interviews were held with stakeholders in both countries in April 2013 to determine current needs and challenges. The workshops included sessions on the international, regional and national obligations involved in the women, peace and security framework and included best practices and lessons learned from the case studies and experiences in the region. Workshop participants in both Juba and Khartoum held discussions and made recommendations for incorporating the women, peace and security principles into their countries' constitutional processes, and these have been included in the analysis for the toolkit.

**Part One: A Primer on the Women, Peace  
and Security Framework**

# THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

## Background

In recent decades the nature of war has changed dramatically, with internal conflicts being waged by opposing armed groups, often divided along ideological or ethnic lines, that increasingly target civilians and wreak havoc on society - with severe physical, psychological, social, political and economic consequences. Conflict is no longer merely about securing borders and maintaining sovereignty; it is also about human security. Nations cannot be secure if their people are not secure. Where there is inequality and discrimination, violence, poverty, lack of education, lack of economic opportunity, political oppression and other destabilizing factors, there is a risk of conflict. Women and girls are especially affected in modern armed conflicts by extreme sexual violence, abductions and slavery. It is commonly said that women's bodies have now become battlefields in conflicts between armed groups.



At the same time, women have played major roles as peacemakers and peace builders.

The civil wars that waged in the 1990s brought to the eyes of the world how conflict was transforming. The genocide in Rwanda and the rape camps of Bosnia proved that the nature of conflict and its ravaging effects on women needed to be addressed urgently. At the 1995 UN sponsored Fourth World Conference on Women in Beijing, women from around the world came together and for the first time there was a concerted focus on women's experience in war. This resulted in a dedicated chapter on Women And Armed Conflict in the Beijing Declaration and Platform for Action. It was a turning point and a call to action for women. In the years that followed, a global network of women, especially those who had been affected by conflict, worked at local, national and international levels to call for peace and security for women. In 2000, a global group of nongovernment organizations (NGOs) launched a worldwide appeal for the UN Security Council to formally recognize women's rights, to promote their participation in all peace and security processes and to protect them in times of conflict. With the support of UN Secretary General Kofi Annan and the governments of Bangladesh, Jamaica, Canada and eventually the United Kingdom, women's advocacy resulted in the Security Council's passage of Resolution 1325 on Women, Peace and Security.

### CHALLENGING THE NOTION OF "WESTERN CONCEPT"

**It is important to note that:**

- (1) The women, peace and security framework is the result of the efforts of women's groups and especially those affected by conflict; and**
- (2) That it was an effort supported by women and governments from around the world, and thus is not just a "western" concept.**

This second point is especially important in advocacy, to counter any arguments that these are precepts being imposed by the West, or of cultural relativism.

The passage of UNSCR 1325 was a milestone for women's rights. For the first time the UN Security Council not only recognized the disproportionate impact of conflict on women, it also mandated that the UN itself and all member states establish enforceable protections, ensure justice for women and increase women's participation in all peace processes. Along with successive Resolutions 1820, 1888, 1889, 1960, 2106 and

2122 it provides a powerful framework and mandate for empowering and protecting women in conflict-affected countries. The 1325 framework applies to all UN member states and reinforces international laws on the rights and protection of women and children that is legally binding on states that are parties to them. (Note: herein reference to 1325 means all of the women, peace and security resolutions together, unless otherwise specified.)

## Binding Effect

As member states of the UN, all states are obligated to uphold resolutions of the Security Council. This principle is enshrined in the UN Charter, which states that, “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter” (Article 25). The Security Council is the most powerful body in the UN and has mechanisms that can be used to enforce resolutions such as sanctions, military force and peacekeeping and observer forces.

The Security Council itself has made clear, by passing six women, peace and security resolutions, that it is issuing a direct call to action to states, the UN and all parties. 1325 expresses the serious concern of the Security Council for the issue of women and peace and security, making it a distinct priority for the Secretary General.

Security Council resolutions have moral and political power, and impose responsibility on all member states that have an obligation to report on how they are fulfilling the requirements of the resolution. International treaties and conventions have direct legal power and application among ratifying countries. 1325 combines both, as it specifically calls on member states to adhere to international law protecting the rights of women. **Although implementation of the resolutions has been slow due to a lack of accountability mechanisms, recognizing that they are tied to binding international law and demanding adherence to legal obligations is a key to advancing implementation.**

It is critical to remember that **the UN Security Council resolutions build on existing international legal obligations.** The resolutions specifically refer to international law on the rights and protection of women and children, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Geneva Conventions, the Convention on the Rights of the Child, the Refugee Convention and the Rome Statute of the International Criminal Court, which specifically recognizes sexual violence as war crimes and crimes against humanity. All are treaties that legally bind signatory states. **It is important, then, to always emphasize this point when advocating for implementation of the 1325 principles.**

International law is a powerful tool for promoting gender equality. It is not just for lawyers; all practitioners should know how it works, in order to use international law to campaign for gender equality, and to understand specific obligations and how to fulfill them. This is especially important in the context of women, peace and security, as 1325 specifically calls on all actors to respect international human rights and humanitarian law with regards to women. **Using the 1325 framework and the international norms included in it provides powerful, legally binding tools to move the gender equality agenda forward in the peace and security context.**



## The Resolutions

**UNSCR 1325** (2000) is the cornerstone of the women, peace and security framework. It is the first formal document from the Security Council that requires parties in conflict to respect women's and girls' needs and ensure their participation in peace negotiations and post- conflict reconstruction. The resolution also emphasizes the protection of women and girls during and after conflict. **It calls at all times and for all parties in conflict to respect all international law applicable to the rights and protection of women and girls.** It consists of four pillars: participation, protection, prevention, and gender mainstreaming.

1. **Participation:** Increase the participation of women at all levels of decision-making, including:
  - In national, regional, and international institutions
  - In mechanisms for the prevention, management and resolution of conflict
  - In peace negotiations
  - In peace operations as soldiers, police and civilians
  - As Special Representatives of the UN Secretary General
2. **Protection:** Promote the protection of women and girls from sexual and gender-based violence, including:
  - In emergency and humanitarian situations, such as in refugee and internally placed person (IDP) camps
  - Respecting the civilian and humanitarian nature of camps
  - Taking into account the particular needs of women and girls in the design of camps and settlements such as the need for separate facilities, etc.
  - Through training peace operations personnel on the rights of women and effective protection measures
3. **Prevention:** Improve the prevention of violence against women, including by:
  - Prosecuting those responsible for violations of international law
  - Strengthening women's rights under national law
  - Supporting local women's peace initiatives and conflict resolution processes
4. **Gender Mainstreaming:** Considering the special needs of women in all processes including:
  - Conflict prevention
  - Peace negotiations
  - Peacekeeping and peace building activities
  - Humanitarian responses
  - Repatriation and resettlement of refugees and IDPs
  - Measures to ensure the protection of and respect for the human rights of women and girls, especially in constitutions and laws, elections, police and the judiciary
  - Disarmament, demobilization and reintegration (DDR)<sup>5</sup>
  - Post-conflict reconstruction and governance

Although UNSCR 1325 clearly laid out a framework for the participation and protection of women in conflict, implementation was slow, and several years later the Security Council passed four more resolutions to reiterate the issues and focus implementation efforts.

**UNSCR 1820** (2008): Identifies sexual violence as a matter of international peace and security by recognizing that acts of sexual violence can exacerbate situations of armed conflict and can impede the restoration of peace and security.

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<sup>5</sup> DDR is an integral part of peace processes. It involves the collection of arms and weapons, the dissolution of fighting units and discharge of combatants, and reintegration of ex-combatants into society and civil life. DDR programs often overlook the roles and needs of women during and after conflict.

1820 recognizes that women and girls are particularly targeted for sexual violence as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate members of a community or ethnic group. It calls on all parties to address sexual violence in conflict through:

- Demanding the immediate and complete cessation of all acts of sexual violence against civilians
- Prohibiting amnesty for all forms of sexual violence
- Ensuring the prosecution of perpetrators and access to justice for all victims
- Demanding an end to impunity
- Training troops on preventing and responding to sexual violence
- Deploying more women to peace operations
- Enforcing zero-tolerance policies for peacekeepers with regards to acts of sexual exploitation or abuse
- Supporting national institutions (especially judiciary and health) and civil organizations to assist victims of sexual violence
- Enacting measures to protect women and girls in refugee and IDP camps
- Implementing regional policies, activities and advocacy to benefit women and girls affected by sexual violence in armed conflict

**UNSCR 1888** (2009:) Provides specific measures to strengthen the implementation of Resolution 1820. It calls for action to address sexual violence through:

- Calling upon states to comply fully with their obligations under international law with regards to women
- Training mediators and monitors on dealing with sexual violence
- Strengthening of rule of law institutions by undertaking comprehensive legal and judicial reform when necessary to conform with international law in order to ensure prosecution of perpetrators and access to justice for victims
- Coordinating international and national efforts to combat sexual violence
- Building the capacity of national authorities in the judicial and law enforcement systems to address sexual violence
- Identifying gaps and improve national responses to sexual violence
- With the help of the international community, improving access to legal, health, social and economic support to victims
- Ensuring criminal and military accountability for acts of sexual violence
- Deploying teams of experts to critical conflict areas to investigate concerns of sexual violence
- Improving monitoring and reporting on conflict trends and perpetrators

**UNSCR 1889** (2009): Addresses obstacles to women's participation in peace processes through:

- Strategies for increasing the participation of women in all decision-making and peace processes
- Development of global indicators to track implementation of UNSCR 1325
- Improvement of international and national responses to needs of women in conflict and post-conflict settings
- Improved provision of holistic services including legal, health, social and economic services

**UNSCR 1960** (2010): Recognizes that few perpetrators of sexual violence have been brought to justice and reiterates the need to implement effective measures to end to sexual violence in armed conflict.

- Calls for further measures for ending impunity through zero tolerance policies and training
- Includes additional measures to strengthen UN monitoring and reporting on sexual violence and suspected perpetrators, including data collection, sanctions and naming suspected perpetrators

In 2013, the UN Security Council has taken additional steps to reiterate its commitment to the women, peace and security agenda and recognize the need to strengthen implementation by *all* parties with the adoption of two additional resolutions:

**UNSCR 2106** (2013): Reiterates sexual violence in conflict as a war crime and calls on the **UN, states, donors** and **all parties** to:

- End impunity
- Address sexual violence in national legislation
- Take a comprehensive approach to transitional justice, using a full range of judicial and non-judicial measures, as appropriate
- Address sexual violence in all peace agreements
- Help states address sexual violence in disarmament, demobilization and reintegration (DDR), security sector reform and justice sector reform
- Strengthen the capacity of states to provide comprehensive health and multi-sectoral services
- Recognize and increase the role of women at all levels
- Increase deployment and utilization of Women Protection Advisors, gender advisors, and UN Teams of Experts

**UNSCR 2122** (2013): Puts in place stronger measures to enable women to participate in conflict resolution and recovery, stressing the role of the **UN Security Council**, the **UN, regional organizations** and **member states** in removing obstacles to women's participation. It includes concrete measures such as:

- Developing and deploying technical expertise for peacekeeping missions and UN mediation teams
- Improving access to timely information regarding the impact of conflict on women and women's participation in conflict resolution in reports and briefings to the Council
- Strengthening commitments to consult as well as include women and civil society directly in peace talks, peacekeeping missions and all peace processes
- Providing access to all sexual and reproductive services to women who are pregnant as a result of rape during conflict
- Ensuring the participation of women in efforts to combat and eradicate the transfer and misuse of small arms and light weapons
- Recognizing the importance of economic empowerment of women in achieving sustainable peace
- Recognizing the vulnerability of displaced women due to unequal citizenship rights, gender-biased asylum laws and difficulties in accessing identification documents
- **Emphasizing the importance of rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peace building**

# THE INTERNATIONAL LAWS

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One of the most important concepts for all groups to understand, in order to effectively implement the women, peace and security framework, is that it is a synthesis of existing binding international law because **it calls on all parties at all times to respect all international law applicable to the rights and protection of women and girls**. Therefore, it is important to be familiar with this body of law, which includes international human rights and international humanitarian law. This is binding law that imposes duties on the nations that are parties to it. Through education and knowledge about these obligations, governments and international actors such as donors and international agencies can more easily understand their responsibilities, and practitioners and advocates at official, professional and grassroots levels can put pressure on governments to comply with their international treaty obligations. **The more these tools are used, the more powerful they become.**

## A Note on International Law

**International Human Rights Law** refers to the body of international law that addresses issues of human rights – rights that belong to all people just by virtue of being human. Human rights involve duties and obligations for both states and individuals. **International Humanitarian Law** is the law that regulates the conduct of nations and parties during armed conflict. The rights at issue in the women, peace, and security framework come from human rights and humanitarian law.

**Treaties, conventions, and covenants:** Treaties, sometimes also called conventions or covenants, are agreements between nations that are intended to have binding legal effect on the governments that have formally agreed to them. Treaties can be global, such as the United Nations treaties. They can also be regional, for instance signed among nations of a certain region such as the African Union or the Inter-American or European Systems. Treaties can also be **multilateral**, meaning among various nations. Or they can be **bilateral**, meaning between two nations.

States become parties to a treaty generally through **signature** by a Head of State or dignitary. Once a state signs a treaty it agrees to be bound by that treaty.

After signature, states generally have their own internal procedures that they must follow in order to give final approval to a treaty. Once a treaty is **ratified** it has **legally binding** effect on the signatory nation, which is referred to as a **state party**.

**Reservations:** A state may sign a treaty with **reservations**, specifying certain provisions that it does not agree to, thereby excluding such provisions of the treaty from having legal effect on that state.

**Optional Protocols:** Once a treaty has been completed, additional legal articles may be added to it. These are called **optional protocols**. Optional protocols are not automatically binding on states that are parties to the original treaty; rather, states must separately decide whether to agree to the optional protocols.

**Enforcement:** Treaties generally establish bodies and procedures to monitor implementation of and compliance with the treaty, including procedures for receiving and investigating complaints against states regarding violations of the treaty. Although these treaty-monitoring bodies often lack the ability to enforce their decisions or recommendations, states will often comply either out of a sense of obligation, pursuant to diplomatic efforts or because there is a threat of shame if they do not.

*To see whether your country has ratified a treaty, visit the treaty's website.*

## The United Nations Charter

Most international human rights and humanitarian law comes from the United Nations. The founding document of the United Nations is the UN Charter, signed in San Francisco on June 26, 1945. Article 1 of the Charter defines the purposes of the UN as to maintain international peace and security; encourage the friendly relations of nations based on the principle of equal rights; achieve international cooperation on economic, social, cultural and humanitarian issues; and to promote and encourage respect for human rights and fundamental freedoms. The UN Charter is the highest source of international law. It is binding on all parties, and overrides any other treaties that parties sign. Every country in the world (except the Holy See) has signed the Charter and is legally bound by it.

## International Bill of Rights

Today there is a body of global documents of rights to which all human beings are inherently entitled. They are referred to as the **International Bill of Rights**.

**Human rights** are those fundamental rights to which every human being living in any part of the world is entitled by virtue of being human.

## The Universal Declaration of Human Rights

On December 10, 1948 the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), the first international declaration of human rights principles recognizing that human rights and fundamental freedoms apply to everyone, everywhere.

**Although it is not a treaty and thus is not binding international law, the UDHR is considered the global standard for human rights.** It is the basis of more than 60 treaties, and many countries have included human rights modeled on the UDHR in their national constitutions and laws.

The UDHR has 30 articles that cover a wide range of political, social and economic rights, including the rights to:

- Freedom from discrimination of any kind based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status
- Life, liberty and security of person
- Equal protection of the law and right to legal remedy for violations of rights
- Freedoms of expression, peaceful assembly, association, religious belief and movement
- Protections from slavery, arbitrary detention, imprisonment without fair trial and invasion of privacy
- Right to marry freely and have equal say in marriage
- Right to education, healthcare and social services, with special rights for mothers and children

Based on the principles contained in the UDHR, in 1966 the UN adopted two international treaties to formalize these human rights into binding international law: the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**. Along with the UDHR, these three instruments constitute the **International Bill of Human Rights** that apply to **all people**.

## International Covenant on Civil and Political Rights

The ICCPR contains the principles on civil and political rights outlined in the UDHR. It commits states to respect the civil and political rights of individuals, including the rights to self-determination; life; freedom of speech; freedom of religion; freedom of assembly; electoral rights; rights to a fair trial; right to equality before the law; freedom from discrimination; prohibition of slavery; prohibition of cruel, inhuman and degrading

treatment; right to marry freely; rights of children; and others.

Denial of participation in politics and elections, discriminatory laws, lack of access to justice, inequality in marriage rights and subjection to cruel and inhuman treatment such as sexual violence and slavery have all traditionally left women disenfranchised and disempowered. **The ICCPR is an important tool in advocating for the most basic rights of women to take part in society and to be protected from discrimination and violence.**

### **International Covenant on Economic, Social and Cultural Rights**

The ICESCR contains the socio-economic principles enshrined in the UDHR. It commits states to work toward achieving economic, social and cultural rights for individuals. These rights include labor rights and the rights to health, education and an adequate standard of living.

The denial of women's equal rights to property and inheritance, discrimination against women and girls in the fields of health, education and employment, denial of women's reproductive and sexual rights and women's restricted access to water and food security all perpetuate inequality in society and prevent women from enjoying their civil and political rights. **The ICESCR has proven to be an important tool in advocating for women because economic, social and cultural rights give them control and economic independence, facilitating their enjoyment of other rights and empowering them to challenge stereotypical roles and broaden their role in society.**

## **Women's Rights**

### **Convention on the Elimination of All Forms of Discrimination against Women**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 is considered the International Bill of Rights for women and is the principal advocacy tool specifically for women's rights. CEDAW contains 30 articles that provide a practical blueprint to promote women's rights. It is specifically named in UNSCR 1325.

By accepting the Convention, states parties commit themselves to undertake measures to end discrimination against women in all forms, which includes:

1. Incorporating the principle of equality of men and women in their legal systems
2. Abolishing all discriminatory laws
3. Adopting appropriate laws prohibiting discrimination against women
4. Promoting women's rights

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice, and are also committed to submitting national reports every four years on measures they have taken to comply with their treaty obligations.

To date, 187 out of 193 countries have ratified CEDAW. Only the United States, Iran, Sudan, Somalia, Palau and Tonga have not.

It is important to be familiar with all of the principles contained in CEDAW, which are:

1. **Discrimination:** The definition of discrimination against women covers all facets of human rights and fundamental freedoms.
2. **Laws:** Countries must eliminate discriminatory laws, policies and practices in their national legal frameworks.
3. **Equality:** Women are fundamentally equal with men in all spheres of life. Countries must take measures to uphold women's equality in the political, social, economic and cultural fields.
4. **Temporary special measures:** Countries may implement temporary special measures such as quotas to accelerate women's equality.
5. **Prejudice:** Countries must modify or eliminate practices based on assumptions about the inferiority or superiority of either sex.
6. **Trafficking:** Countries must take steps to suppress the exploitation of prostitution and trafficking in women.
7. **Political and public life:** Women have an equal right to vote, hold public office and participate in civil society.
8. **International work:** Women have the right to work at the international level without discrimination.
9. **Nationality:** Women have equal rights with men to acquire, change or retain their nationality and that of their children.
10. **Education:** Women have equal rights with men in education, including equal access to schools, vocational training and scholarship opportunities.
11. **Employment:** Women have equal rights in employment, without discrimination on the basis of marital status or maternity.
12. **Health:** Women have equal rights to affordable health care services.
13. **Economic and social life:** Women have equal rights to family benefits, financial credit and participation in recreational activities.
14. **Rural women:** Rural women have the right to adequate living conditions, participation in development planning and access to health care and education.
15. **Equality before the law:** Women and men are equal before the law. Women have the legal right to enter contracts, own property and choose their place of residence.
16. **Marriage and family:** Women have equal rights with men in matters related to marriage and family relations.

### **CEDAW Optional Protocol**

The Optional Protocol, adopted in 1999, contains two procedures:

- (1) A communications procedure that allows individual women, or groups of women, to submit claims of violations of rights to the UN Committee on the Elimination of All Forms of Discrimination against Women if all domestic remedies have been exhausted; and
- (2) An inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

**Although CEDAW is the most important international advocacy tool specifically for women, it is important to know and utilize all of the other international instruments in advocating for women's rights and implementation of the women, peace and security agenda.**

## **Humanitarian Law**

### **The Geneva Conventions**

The Geneva Conventions set standards in international law for the humanitarian treatment of civilians during war and conflict. They comprise four treaties and three additional protocols. The first three treaties were adopted between 1864 and 1931 and deal with the humane treatment of wounded and sick soldiers, sailors and prisoners of war. The fourth treaty was drafted in 1949 after the Second World War and includes the

protection of civilians. In 1977, two Protocols supplementary to the Geneva Conventions were adopted to give greater protection to victims of both international and internal armed conflicts. In 2005, a third protocol was added establishing an additional protective sign for medical services. The Conventions are specifically named in UNSCR 1325.

The four conventions and their protocols are legally binding on states parties. Members of the armed forces who violate the rights in the conventions can be found guilty of war crimes. The four conventions have been universally ratified. Furthermore, in 1993, the UN Security Council ruled that the Geneva Conventions had passed into the body of customary international law<sup>6</sup>, making them binding on everyone – both signatories and non-signatories to the Conventions – whenever they engage in armed conflicts.

The Fourth Convention of 1949 and the Protocols of 1977 contain extensive protections for civilians during conflict, with special attention to the needs of women and children, related to:

- Personal safety
- Protection from sexual violence
- Provisions for displacement
- Freedom of movement
- Food, essential household items and adequate shelter
- Protection of sources of livelihood
- Provision of humanitarian aid
- Access to health services
- Preservation of family links
- Access to education and information
- Respect for religious and cultural practices
- Conditions of internment and respect for the special needs of women

Amongst these general considerations, there are provisions that apply specifically to women. **They especially protect women from sexual violence and ensure that women receive necessary health and humanitarian care. Those who violate these provisions may be guilty of war crimes, and this has been used as an advocacy tool in the development of international criminal law related to women's rights.**<sup>7</sup>

## Sexual and Gender-Based Violence

### Rome Statute of the International Criminal Court

The identification of sexual violence during armed conflict as a war crime began with the work of international courts established during the 1990s, as the widespread use of sexual violence came to the attention of the international community. The International Tribunal for the Former Yugoslavia (ICTY) at The Hague and the International Criminal Tribunal for Rwanda (ICTR) at Arusha, Tanzania were established by the UN Security Council in 1993 and 1994 respectively to address the horrific crimes that had occurred during the conflicts in those countries. The UN also established a special court jointly with the government of Sierra Leone to try crimes committed during the Sierra Leone Civil War.

The work of international tribunals has been key in developing international criminal law regarding sexual violence in conflict. Although the system is still developing, international criminal law has become one of the most important tools for addressing impunity for sexual violence.

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<sup>6</sup> Customary international law consists of international norms that have become standard through practice, whether formalized in a written treaty or not, and are thus considered binding on everyone.

<sup>7</sup> For more information on the provisions relating specifically to women, see *Addressing the Needs of Women Affected by Armed Conflict*, International Committee of the Red Cross, 2004, <http://www.icrc.org/eng/resources/documents/publication/p0840.htm>.



The experience with these special courts gave way to a general agreement in the international community that there was a need to establish an independent permanent court to try individuals for the most serious crimes against humanity. On July 17, 1998 the Rome Statute of the International Court established the International Criminal Court (ICC). The ICC is based in The Hague and is not a part of the UN, although the Security Council may refer cases to the ICC and initiate investigations.

The Rome Statute is the first international treaty to identify crimes against women as crimes against humanity, war crimes and in some instances, genocide. The Statute recognizes rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilizations, gender-based persecutions, trafficking of persons, particularly of women and children, and sexual violence as crimes under its jurisdiction.

The Rome Statute, which came into force on July 1, 2002, defines the four types of crimes to be addressed by the Court, which are:

1. **Genocide:** The deliberate destruction of an ethnic, racial, religious or national group, which **can include forced sterilization and rape when it is meant to cause the destruction of a group.**
2. **Crimes Against Humanity:** Systematic and widespread crimes that may be perpetrated by state or non-state actors, or that result from government policy or are tolerated or condoned by government or others in authority, whether in peacetime or in conflict. These include **murder, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity, enslavement including trafficking in persons, torture and persecution based on gender.**
3. **War Crimes:** Crimes committed during conflict that violate the laws of war, which can include **torture or inhuman treatment, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence and recruiting children under 15 into armed forces or conflict.**
4. **Crimes of Aggression:** The planning, preparation, initiation or execution of the use of force by one state against another state without the justification of self-defense or authorization by the UN Security Council. *\*This provision is not yet defined and will not be effective until 2017.*

The Statute also contains provisions for the procedural protection of victims and witnesses in order to ensure the rights and protection of women that come forward to participate in cases.

The ICC has jurisdiction over the countries that have signed the Rome Statute, which are currently 120. In addition, states that are not party to the Rome Statute may accept the ICC's authority in regards to specific situations by making a declaration to this effect. The Court also has authority over individuals from a non-state party, if they commit crimes that fall under the jurisdiction of the Court.

The ICC is a court of last resort. It is the responsibility of states to investigate and prosecute offenders for crimes committed under the Rome Statute. The Court will only act if the country where the crime was committed does not take action against accused perpetrators, or acts too slowly. Actions may be initiated by the opening of an investigation by the ICC prosecutor or upon referral from the UN Security Council. The Court relies on national police forces to arrest accused individuals.

Although the ICC has been critical to the development of international criminal law for women, the process is slow and it is meant to try only the highest level of war criminals. Therefore, as will be discussed later, **it is also important to address impunity in regional and national justice systems.**

**The Rome Statute is an important advocacy tool because it shows that sexual violence is used widely as a weapon of war and constitutes war crimes that must be punished. States must be held accountable to live up to their obligations to fight impunity. Even if a country is not a party to the Statute, advocates can press for national legislation that adopts some of its provisions, including the prosecution of perpetrators and avenues for redress to victims, by citing other international obligations.**

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The Convention Against Torture (CAT), adopted in 1987, prohibits torture by public officials or any person acting in an official capacity for the purposes of confession or punishment, or based on discrimination of any kind. States parties must take effective measures to prevent torture and it must not be permitted in any circumstances whatsoever, including war, threat of war, political instability, public emergency, terrorist acts, violent crime or any form of armed conflict. The Convention has been ratified by 151 states.

Although there are several other instruments that specifically cover sexual and gender-based violence, **the Convention Against Torture can be used as a further advocacy tool to ensure that laws are implemented to address those who have committed such acts upon women, as much of the sexual violence that takes place both during and after conflict can be considered torture.**

### **Convention on the Prevention and Punishment of the Crime of Genocide**

Although the Rome Statute of the International Criminal Court now includes genocide as a crime, it was first outlawed by the Genocide Convention passed in 1948 after the genocides of World War II. The Convention defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Such acts include killing, causing serious bodily or mental harm, inflicting living conditions intended to destroy, imposing measures intended to prevent births and removing children from one group to another. It declares genocide a crime under international law whether committed during war or peacetime, and binds all signatories of the Convention to take measures to prevent and punish any acts of genocide committed within their jurisdiction. States must enact appropriate legislation to criminalize genocidal acts and provide appropriate penalties for violators. Individuals suspected of genocide may be tried by a national tribunal in the country where the acts were committed or by a properly constituted international tribunal whose jurisdiction is recognized by the states involved.

The Convention has been ratified by 142 states.

**The Genocide Convention is an additional tool for advocating for justice where genocidal acts, including sexual and gender-based violence, have been committed against women.**

### **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)**

This protocol to the UN Convention Against Transnational Organized Crime, passed in 2000, was the first international instrument to specifically address the global problem of trafficking in persons, which includes the exploitation of individuals through prostitution, sexual exploitation, forced labor or services, slavery, and the removal of organs, through force, threat of force, or coercion; or the exploitation of a child under 18 for any purpose. It has been ratified by 155 states.

The Protocol has as its purpose:

- To prevent and combat trafficking in persons, paying particular attention to women and children
- To protect and assist the victims of such trafficking, with full respect for their human rights
- To promote cooperation among states parties in order to meet those objectives
- To ensure the prosecution of traffickers

Under the Protocol, States are obligated to:

- Adopt laws criminalizing trafficking in persons
- Take measures to protect victims of trafficking through appropriate legal procedures and social services

- Assist in the return of victims to their countries when necessary, or allow them appropriate immigration status
- Establish policies and programs to prevent and combat trafficking in persons and to prevent women and children in particular from revictimization
- Strengthen training and cooperation of law enforcement and immigration officials

Although the Trafficking Protocol is not specifically named in 1325, it is a part of international law relating to the rights of women. Women and children are especially vulnerable to trafficking in conflict-affected areas. **It should thus be used to advocate for the inclusion of anti-trafficking provisions in post-conflict systems in order to protect women and children and maintain peace and stability.**

## Children

### Convention on the Rights of the Child

Because modern conflict has an increased effect on children, both in terms of the destruction of families and communities as well as the use of child soldiers and slaves in armed conflict, it is important to understand the rights that are specifically emphasized for children. The Convention on the Rights of the Child (CRC) is specifically named in UNSCR 1325.

The CRC was adopted in 1989 and came into force in September 1990. All member states of the UN General Assembly have ratified it, except the United States and Somalia. It draws on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and emphasizes states' obligations with respect to children. The CRC specifically grants to children the civil, political, economic, social and cultural rights contained in the other treaties. In addition, it grants children:

- Protection from all forms of physical or mental violence or maltreatment
- Right to humanitarian aid
- Protection from all forms of sexual exploitation and abuse
- Protection from international abduction, sale and trafficking
- Protection by international humanitarian law in conflict and war
- Protection from being recruited into or taking part in hostilities

**It is critical to take into account the special needs of children and especially girls during and after conflict and to advocate for inclusion of their rights and protection in all systems, and to ensure justice for those whose rights are violated.**

In 2000, the UN General Assembly adopted two Optional Protocols to the Convention to increase the protection of children from involvement in armed conflicts and from sexual exploitation:

- The **Optional Protocol on the Involvement of Children in Armed Conflict** establishes 18 as the minimum age for compulsory recruitment and requires states to do everything they can to prevent individuals under the age of 18 from taking direct part in hostilities.
- The **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography** draws special attention to the criminalization of these violations of children's rights and emphasizes the importance of public awareness campaigns and international cooperation in efforts to combat them.

## Refugees and Internally Displaced Persons

### Convention Related to the Status of Refugees

People who are forced to flee their homes due to persecution, whether on an individual basis or as part of a mass exodus due to political, religious, military or other problems, are known as *refugees*. The 1951 Convention Related to the Status of Refugees and its 1967 Protocol protects such individuals. It is specifically named in UNSCR 1325.

A refugee is defined as a person who is:

1. Outside his or her country of nationality or habitual residence;
2. Has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership in a particular social group or political opinion;
3. And is unable or unwilling to avail him or herself of the protection of his or her country, or to return there, for fear of persecution.

The Convention sets out the rights to which individuals are entitled once they have been recognized as refugees, which include, among others:

- Freedom from discrimination based upon race, religion or country of origin
- The right to identity papers and travel documents
- Free exercise of religion and religious education
- Free access to the courts, including legal assistance
- Access to elementary education
- The right to employment
- The right to labor protections and employment benefits
- Access to public relief and assistance
- Equal treatment by taxing authorities
- The right to belong to trade unions
- The right to belong to other non-political nonprofit organizations
- The right to own property
- Access to housing
- Access to higher education
- The right to choose place of residence
- The right to move freely within the country

**These obligations are important in promoting and protecting the rights of women and girls who have become refugees in other countries, whether in or outside of refugee camps, who are often especially vulnerable and dependent on humanitarian aid.**

### Guiding Principles for Internally Displaced Persons

Although 1325 does not specifically mention the Guiding Principles, and they are not a treaty and therefore not technically binding international law, it is important to include them in the framework. The nature of recent conflicts has led to an increasing number of Internally Displaced Persons (IDPs). These are persons or groups of persons who have been forced to leave their homes as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, but remain in their own countries. They often stay in camps established specifically for IDPs, and women and girls especially have been vulnerable to abuse and sexual violence in camp settings.

The UN has developed Guiding Principles for IDPs based on international human rights and humanitarian law and analogous refugee law to serve as an international standard to guide governments and international humanitarian and development agencies in providing assistance and protection to IDPs.

The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection

and assistance during displacement including protection from violence and set forth guarantees for safe return, resettlement and reintegration.

Displacement must be avoided to the extent possible. However, when there are no feasible alternatives to displacement, certain protections must be in place for those who are displaced, including:

- Protection of life, dignity, liberty and security
- Proper accommodations including satisfactory conditions of safety, nutrition, health and hygiene
- Right of families to stay together
- Right to liberty and freedom of movement and to freely move in and out of camps and settlements
- Right to humanitarian assistance
- Assistance with return, reintegration or resettlement, without discrimination and with equal access to public services

Especially with regards to women:

- Efforts must be made to ensure the full participation of women in the planning and distribution of supplies
- Special attention should be paid to the health needs of women, including access to female health care providers, reproductive health care and appropriate counseling for victims of sexual and other abuse
- Women shall have equal rights to legal documentation and have it issued in their own names
- Every person has the right to education and special efforts should be made to ensure the participation of women and girls

**These principles, in addition to other international human rights and humanitarian law, should be used to ensure that governments protect the rights of women and girls who have been displaced.**

## Other Relevant International Commitments

### Beijing Declaration and Platform for Action

In its preamble UNSCR 1325 recognizes the principles contained in the Beijing Declaration and Platform for Action. Adopted at the Fourth World Conference on Women in 1995, the Platform for Action is an agenda for gender equality and women's empowerment that aims to remove all obstacles to women's active participation in public and private life through a full and equal share in economic, social, cultural and political decision-making. It declares that "[e]quality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace." The Platform outlines specific actions to be taken by governments, political parties, trade unions, academic institutions, government and nongovernment organizations, international institutions, the UN and other bodies to address areas critical to women including:

1. Women and poverty
2. Education and training of women
3. Women and health
4. Violence against women
5. Women and armed conflict
6. Women and the economy
7. Women in power and decision-making
8. Institutional mechanisms for the advancement of women
9. Human rights of women
10. Women and the media
11. Women and the environment
12. The girl-child

**The Beijing Declaration is a powerful advocacy tool for illustrating the commitments that the 189 participating governments have made to gender equality and the advancement of women's rights. It also offers a broad and concrete roadmap of actions that should be taken to ensure the empowerment of women in all areas of public and private life, all of which are critical to development, peace and security. The Beijing +20 review occurring in 2015 offers an opportunity to review progress and further actions for implementation of its objectives, which are also critical to implementing the women, peace and security agenda.**

States report on progress under the Beijing Declaration annually to the UN's Commission on the Status of Women (CSW). A global review occurs every five years, with the 20-year review to occur in 2015.

### **Declaration on the Elimination of Violence Against Women**

The UN General Assembly adopted the Declaration on the Elimination of Violence against Women (DEVAW) in December 1993. It was the first international human rights instrument to specifically address violence against women. A result of the advocacy of NGOs and women's groups, one of the aims of the resolution was to overturn the prevailing governmental stance that violence against women was a private domestic matter not requiring state intervention. Although not a binding treaty, it is applicable to all UN member states.

DEVAW contains a broad definition of violence against women including "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." It recognizes that violence against women violates women's rights and fundamental freedoms and poses an obstacle to women's social, economic and political equality. It calls on states and the international community to work toward the eradication of violence against women.

### **Millennium Development Goals**

The Millennium Development Goals (MDGs) are eight international development goals that were established following the UN Millennium Summit in 2000. **Goal Three is to promote gender equality and empower women and Goal Five focuses on maternal health.** All 193 member states of the UN have agreed to achieve these goals by the year 2015. The MDGs are:

1. To eradicate extreme poverty and hunger
2. To achieve universal primary education
3. To promote gender equality and empower women
4. To reduce child mortality rates
5. To improve maternal health
6. To combat HIV/AIDS, malaria, and other diseases
7. To ensure environmental sustainability
8. To develop a global partnership for development

**The MDGs have been a useful tool in advocating a gender perspective in development, and for promoting gender equality and the empowerment of women in certain areas such as education and health. Human development is critical to peace and security.** However, results have been mixed. While including gender perspectives in development is increasingly recognized as beneficial to all society, women are still often left behind. **The review process that is underway to establish a post-2015 development agenda provides an opportunity to build upon the original MDGs and fill critical gaps in the advancement of gender equality and women's empowerment. The post-2015 framework should be grounded in human rights and the principles of equality and nondiscrimination. This should include maintaining gender equality and women's empowerment as a stand-alone goal, as well as establishing gender-specific targets and indicators in the other goals, so that gender is a crosscutting issue through all of the development framework.**

## REGIONAL INSTRUMENTS

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Regional systems are sources of treaties and law that are applicable to member states in their regions. Regional bodies in Africa, Europe and the Americas have mechanisms that address human rights and have adopted instruments on women's rights.

Because this toolkit is based on case studies of Uganda and Rwanda, the relevant guiding regional instruments for these countries are considered here. Both the African Union (AU) and the International Conference of the Great Lakes Region (ICGLR) have strong legal frameworks addressing the rights of women. They are African frameworks developed by African nations themselves, specifically based on the experience of conflict in the region and recognizing the urgency of addressing the needs of women. They also recognize obligations under international law, including the 1325 framework, CEDAW, the UDHR, ICCPR, ICESCR and all other international and regional human rights instruments.

**The frameworks of both the African Union and the International Conference of the Great Lakes Region provide excellent models for practitioners everywhere for tying the 1325 principles to the rule of law.**

### African Union

The African Union (AU) is a union of 54 African states established in 2001 to replace the Organization of African Unity, with the aim to bring together the continent to promote integration, development, peace and cooperation amongst African states. It has in place a human rights system that includes the African Charter on Human and People's Rights and other instruments, the Commission on Human and People's Rights, and the African Court of Human and People's Rights.

#### **Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)**

In 2003, after being pushed by women's groups to recognize that women's rights were still marginalized within the context of human rights, the AU adopted a Protocol to the African Charter on Human and Peoples' Rights to address the rights of women. It is Africa's own statement of its vision of rights for women. Known as the Maputo Protocol, it is a groundbreaking legal instrument for women's rights that expands and reinforces the rights provided in CEDAW and other human rights instruments, produced by Africans for African women. The Protocol guarantees comprehensive rights to women including, among others:

- Access to justice and equal protection before the law
- Political participation
- Social and political equality with men
- Protection from violence and elimination of harmful practices
- Control of reproductive health
- Education
- Economic and social welfare rights
- Rights in marriage, inheritance and divorce

Informed by the experiences of women in countries affected by conflict, the Maputo Protocol also contains specific provisions on the participation of women in peace processes and the protection of women in armed conflicts, including requiring states to:

- Promote the rights of women to a peaceful existence and to participate in the promotion and maintenance of peace
- Ensure the increased participation of women in the structures and processes for conflict prevention, management, and resolution at local, national, regional, continental and international levels
- Respect international humanitarian law to protect all civilians in conflict situations, particularly women
- Protect asylum seeking women, refugees, returnees and internally displaced persons against all forms of violence, rape and other forms of sexual exploitation
- Ensure that all such acts of violence against women are considered war crimes, genocide, and/or crimes against humanity and that perpetrators are brought to justice
- Prohibit the participation or recruitment of all children, especially girls under 18, in armed conflict

**The Maputo Protocol therefore not only promotes the civil, political, economic, social and cultural rights of women as contained in other human rights instruments, but specifically incorporates principles of 1325 and the Rome Statute to ensure that women in conflict-affected countries are protected from harm and violators of their rights are punished. It is a very powerful tool for promoting the rights of women and advancing the women, peace and security agenda in the countries who have ratified it and thus are legally bound by it.**

Of the 54 states of the African Union, 46 states have signed the Protocol and 28 have ratified it.<sup>8</sup> **In those countries that have not ratified it advocates should urge their governments to do so.**

### **Solemn Declaration on Gender Equality in Africa**

Following adoption of the Maputo Protocol, reaffirming their commitment to gender equality and their obligations under regional, continental and international instruments, and recognizing the challenges that still existed for women especially due to conflict, in July 2004 the Heads of State and Government of the AU adopted the Solemn Declaration on Gender Equality in Africa (SDGEA). Through the Solemn Declaration, heads of state and government agree to, among other things:

- Combat gender-based violence
- Prevent the recruitment of child soldiers and girls and women as sex slaves
- Combat HIV/AIDS
- Promote the participation of women in all peace processes
- Protect and promote all human rights of women and girls
- Report annually on progress towards gender equality

**The Declaration is an important instrument for promoting gender equality and women's empowerment and maintains awareness of the issue at the highest political level in Africa.**

In addition, the Chairperson of the AU Commission is expected to submit an annual report to the AU Assembly on progress made in the implementation of the Solemn Declaration as well as on the state of gender equality and gender mainstreaming at the national and regional levels.

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<sup>8</sup> African Commission on Human and People's Rights, <http://www.achpr.org/instruments/women-protocol/>.



## **African Charter on the Rights and Welfare of the Child**

Africa is the only continent with a regional child rights instrument. Adopted by the OAU in 1990, the **African Charter on the Rights and Welfare of the Child (ACRWC)** is an important tool for advancing children's rights. While building on the same basic principles as the UN Convention on the Rights of the Child, the **AU Children's Charter highlights issues of special importance in the African context.** Some of these include:

1. Expressly stating that the Charter is higher than any custom, tradition, cultural or religious practice that does not fit within the rights, duties and obligations of the Charter
2. Defining a child as a person under the age of 18
3. Prohibiting child marriages or betrothals
4. Prohibiting harmful or discriminatory cultural or religious practices
5. Prohibiting the recruitment of children in armed conflict
6. Promoting affirmative action for girls' education
7. Granting girls the right to return to school after pregnancy
8. Protecting internally displaced and refugee children

All member states of the AU have signed the Charter, and all but eight have ratified it.<sup>9</sup>

## **International Conference on the Great Lakes Region (ICGLR)**

The International Conference on the Great Lakes Region (ICGLR) is a sub-regional inter-governmental organization that began in 2000 when the UN Security Council called for an international conference on peace, security, democracy and development in the region, based on the recognition that political instability and conflicts in countries in the region were intertwined and thus required a concerted effort in order to

**The ICGLR has a strong, legally binding framework that specifically names and addresses the principles of 1325 on the protection and promotion of the rights of women and children as critical to peace and security, and is being used as leverage by advocates in the region. It is a strong example of how 1325 can specifically be tied to the rule of law, and can serve as a model for countries both in and out of the region that are developing laws and policies.**

promote sustainable peace and development. The UN and the AU officially established the organization in 2003. It is composed of eleven member states: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo (DRC), Kenya, Uganda, Rwanda, Sudan, Tanzania and Zambia.

**The prominence of gender issues results from the input and advocacy of women leaders, women's groups and civil society.** The ICGLR especially views sexual and gender-based violence (SGBV) as a priority, crosscutting issue affecting peace, security, development and good governance.

## **The Great Lakes Pact**

The Pact on Security, Stability and Development in the Great Lakes Region serves as the ICGLR's legal framework with the aim of creating the conditions for security, stability and development between the member states. It was adopted by the heads of state and government of the ICGLR member states in Nairobi

<sup>9</sup> Those that have not yet ratified are Central African Republic, DRC, Sahrawi Arab Democratic Republic, Somalia, Sao Tome and Principe, Swaziland, South Sudan and Tunisia. African Committee of Experts on the Rights and Welfare of the Child, <http://acerwc.org/ratifications/>.

in December 2006 and entered into force in June 2008. It includes ten protocols that are legally binding, several of which address issues of gender equality and SGBV.

**The Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children** is a key instrument for combating sexual violence in the region and has as its objectives:

- To provide protection of women and children from sexual violence
- To strengthen the legal framework for prosecuting and punishing perpetrators
- To provide for the establishment of a regional mechanism for providing legal, medical and social assistance to survivors

Other ICGLR protocols that specifically address principles of gender equality and women's rights as laid out in 1325 include:

- Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination
- Protocol on Democracy and Good Governance (inclusion of women)
- Protocol on the Protection and Assistance to Internally Displaced Persons
- Protocol on Judicial Cooperation (impunity)
- Protocol on Management of Information and Communication
- Protocol on the Property Rights of Returning Persons
- Protocol on Non-Aggression and Mutual Defense

There are two other ICGLR instruments that are also critical tools for advocacy in the region:

### **Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region**

At the High Level Regional Consultation on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region held in Goma, Democratic Republic of the Congo (DRC) in June 2008, member states of the ICGLR, civil society organizations, religious and traditional leaders, international development partners and UN agencies committed themselves to eradicate all forms of gender-based violence, especially sexual violence, and to take appropriate measures for the empowerment and equal representation of women and girls. Reaffirming the provisions of regional and international human rights instruments that protect women and children and recognizing that the ICGLR Sexual Violence Protocol provides an adequate framework for the prevention and fight against SGBV and the prosecution and punishment of perpetrators, the Declaration lays out very specific actions to be taken at the national, regional, and international levels in order to strengthen responses to SGBV.

### **Declaration of Heads of State and Government of Members States of the ICGLR on Sexual and Gender Based Violence**

At the Fourth Annual Summit of the Heads of State and Government and Special Session on Sexual and Gender Based Violence in 2011, recognizing the persistence of SGBV despite the existence of international regional frameworks, the heads of state of the ICGLR made further commitments to take steps to prevent SGBV, end impunity and support victims.

## USING THE INTERNATIONAL AND REGIONAL INSTRUMENTS

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The creation of the international and regional instruments pertaining directly to women's rights have been largely the result of the advocacy of women's groups, and show the power that women's voices can have. These frameworks are important foundations for advocacy at national and regional levels. It is critical that states ratify these international and regional treaties and use them as guidance for writing their constitutions and crafting their laws. This is the first step in protecting human rights.

Countries apply international law in two ways:

1. It is considered "above" all domestic law and can be applied on its own (*monist* countries, generally civil law systems based on the legal systems of the European continent). In such countries, international instruments on their own can serve as the basis for litigation and legal decisions; or
2. It must be specifically integrated through domestic legislation and it not applied on its own (*dualist* countries, generally common law systems based on the English legal system). However, legal arguments have successfully been made using international law in such countries even where it has not specifically been implemented.

**Under either system, countries must adhere to their obligations under international law, and advocates can use international law to strengthen their claims for rights and equal treatment and ensure that governments comply in their domestic legal systems.** It is important, then, that practitioners – whether they are judges, lawyers, civil society advocates, politicians, community leaders or others – understand how to use these principles.

### Leveraging the International Framework

An international framework around women peace and security is clearly in place, and can be a very effective tool for promoting the rights of women and building sustainable peace and security. In fact, if used properly, it can be one of the strongest tools that we have for advocacy. **Therefore continuous education and training around the framework is critical, for governmental and non-governmental actors alike, at every level. There is an expressed need for more practitioners who can articulate and use the frameworks.**



The UN, despite its flaws, is a powerful force in the world. It is the source of the most important global human rights principles. For countries that have experienced years of repression under colonial rule, being independent states in their own right that can join the UN and sign treaties is an important privilege, and they take their obligations seriously. When governments sign an international treaty, they are bound by its provisions, and this must never be forgotten, neither by the government nor its people.

International obligations are strong, especially when they are domesticated through constitutions and laws. This happens when all parties involved in peacemaking, constitution making, legislation writing, institution building and justice know the 1325 framework and the international laws that it embodies and can advocate for them, holding their governments accountable to include binding principles on gender equality and women's rights in their legal systems.

The experiences of Uganda and Rwanda demonstrate that regional instruments are also very strong advocacy tools. One step closer from the realm of international law, regional instruments have been developed and signed by the countries within a region, and thus reflect the principles held in that region. In particular, the AU's Maputo Protocol and the ICGLR framework have been very influential both on governmental and nongovernmental efforts, and reflect an African concept of women, peace and security.

The state ultimately has responsibility for implementation of 1325. Civil society must work with political and government leaders to constantly remind them of their obligations.

## Recommendations

The state has primary responsibility for implementing international and regional human rights instruments, especially through enacting and enforcing legislation in line with international obligations. But practitioners, advocates and civil society need to provide guidance and put pressure on governments to fulfill their obligations. All parties should:

1. **Know the framework.** Familiarity with 1325, and especially the fact that it is based on binding international law, is lacking at all levels. Without knowledge there can be no real power.
2. **Constantly refer to the international instruments.** Domestic laws and principles related to human rights often derive from international standards. Successful advocates consistently cite the UDHR, International Bill of Rights, CEDAW, 1325 and other international and regional norms.

*One cannot talk about human rights without talking about the international instruments.*

*- George Ufofuru, Uganda Human Rights Commission<sup>10</sup>*

3. **Stress the universality of human rights – they are not just a western concept.** The UDHR is acknowledged around the world as the global standard for human rights. All nations in the world have signed the UN Charter, which includes human rights principles. Most countries have signed at least some of the human rights treaties. Therefore, it cannot be argued that human rights are a western principle.
  - a. **Know what treaties your country has signed and use these principles.**
  - b. **Discuss the history of 1325.** It came from non-western countries and movements where women had experienced the effects of conflict. It was crafted by women for women, globally - further proof that it is not just a Western concept.
  - c. **Discuss regional instruments.** For instance, the AU and the ICGLR have adopted their own policies on women's rights and women, peace and security. These are regional and are not imported and are very strong frameworks that include principles of women, peace and security.

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<sup>10</sup> Interview with George Ufofuru, Director of Regional Services, Uganda Human Rights Commission, Kampala, December 17, 2012.

4. **Use the duty to report.** Governments have to report to UN and regional treaty bodies on how they are complying with their obligations. Pressure can be put on governments to show actual implementation through reporting. NGOs can also do “shadow” reports, which are separate reports that they compile on their own and often provide a more accurate picture of what is happening on the ground.
5. **Empower the Ministry of Foreign Affairs.** This ministry is tasked with ensuring that the government is complying with all regional and international obligations. This must include all commitments relating to women, peace and security and relevant staff should be thoroughly trained on the framework. Practitioners and advocates should also collaborate with Ministry personnel to ensure that all provisions of international and regional law related to gender are being implemented. The same should be done with a country’s **Ministry of Gender or Women’s Affairs**, which is also generally involved in implementation of CEDAW, 1325 and regional obligations related to gender equality and women’s rights, as well as the **Human Rights Commission**, if the country has one, which usually also shares responsibility for overseeing the implementation of international treaties.
6. **Show what makes 1325 as powerful as CEDAW.** Many people now understand the provisions of CEDAW and it has been a strong advocacy tool. All training and education related to 1325 must stress that it is **based on binding international law** including CEDAW and others treaties.
7. **Use international obligations strategically.** CEDAW is not the only international instrument that can be cited for women’s issues. For instance, gender-based violence or female genital mutilation can be considered under discrimination, torture, right to life or children’s rights; many treaties may apply. Where a country has not ratified a relevant treaty, point to others that may be applicable, or refer to universal principles such as the International Bill of Rights, which provides broad human rights protections.
8. **Relate rights, laws and policies to human security.** Human security is critical to maintaining peace and preventing conflict. The evolving body of international and regional law shows an understanding of this. It is time for domestic lawmakers and policymakers to understand it.
9. **Use constant advocacy.** Governments are bound by their obligations. Democratic governments must answer to their people. The more that citizens at all levels advocate and remind their governments of their obligations, the more they will become a reality.

*When you drum something into people’s minds over and over it’s bound to stick.*

*– George Ufoyuru*

**Part Two: Best Practices and Strategies for  
Linking the Women, Peace and Security  
Agenda to the Rule of Law**

*The Government of Rwanda, inspired by the philosophy behind the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which it ratified in 1981, committed to translate the 1995 Beijing Declaration and Platform for Action into action and to achieve the Millennium Development Goals (MDGs), has put in place national instruments and mechanisms to ensure that existing gender inequalities are successfully addressed.*

- Gender Monitoring Office, *Gender Best Practices in Rwanda 1995-2010*

The most effective way to ensure the implementation of international obligations is through domestication – that is, the specific inclusion of international human rights principles in domestic legal systems. It is important to embed principles of gender equality and women’s rights into national laws and institutions in order to carry out the principles of the women, peace and security framework.

This part looks at ways to do that and make recommendations based upon best practices and lessons learned from the case studies.

## CONSTITUTIONS

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A country’s constitution is its legal foundation and lays out the basic principles by which the country will guide itself. It is the supreme law of the land and all laws derive their authority from the constitution. When a country is writing a new constitution, or going through a constitutional review process to reform an old one, groups should take the opportunity to ensure that principles of gender equality and women’s rights are embedded in the constitution.

Constitutions such as Uganda’s contain a Bill of Rights that read almost directly from the **International Bill of Rights**, and have provisions on women’s rights, including the right to equal treatment and respect and the right to affirmative action. Rwanda’s constitution focuses on the fight against genocide and crimes against humanity, stresses equality among all Rwandans and includes a specific 30% quota for women at all levels of decision-making.

**Once gender principles are embedded in the constitution, any and all groups and individuals can and should always cite to these principles in any advocacy or arguments on behalf of women, as nothing is stronger or more basic at the national level than a nation’s constitution.**

Parties involved in constitution making should be knowledgeable about the women, peace and security framework and international obligations and advocate for their inclusion. Rights contained in the constitution should specifically reflect the rights of women outlined in **CEDAW** and the **Maputo Protocol** above, including:

- Social, political and economic equality with men
- Access to justice and equal protection before the law
- Political participation
- Protection from violence and elimination of harmful practices
- Access to health services and control of reproductive health
- Education
- Economic and social welfare rights
- Equal employment opportunity
- Equal rights in marriage, inheritance and divorce
- Citizenship rights

The experiences of Uganda and Rwanda illustrate best practices for inclusive constitution writing processes that specifically utilized international norms and resulted in gender sensitive constitutions.

### Constitution Making in Uganda

When democracy was restored in Uganda in 1986, due to the populist nature of the National Revolutionary Movement (NRM) government, the country's turbulent experiences of the prior two decades of conflict, and the grave human rights abuses and lack of democratic governance by previous governments, the NRM sought to create an inclusive, democratic and safeguarded constitution. A constitutional commission was formed that included a wide variety of experts. The Commission carried out extensive consultations and educational activities throughout the country and with special interest groups including women, youth, people with disabilities, the elderly, religious groups and the kingdoms of Uganda, in order to draft a constitution based on the views of the people.<sup>11</sup>

One of the first tasks of the reconstruction process was for the government to regain international legitimacy. In doing so, it looked to international law, recognizing international human rights standards and integrating these standards into the country's legal framework. Consultations with the people also indicated their agreement with international treaties that advanced their rights and national interests, and the need to incorporate them in the constitution.<sup>12</sup> As a result, the Constitution is a virtual replica of the Universal Declaration of Human Rights and the subsequent human rights treaties to which Uganda is a party.

**The inclusion of two strong, knowledgeable women lawyers<sup>13</sup> on the Constitutional Commission and the additional advice of expert lawyers who were familiar with the international conventions were key to the outcome of the constitutional process, as these individuals were able to successfully articulate Uganda's international obligations and advocate for a constitution that included human rights and women's rights.**

Women's organizations facilitated the involvement of women in the constitution building process by holding "gender dialogues" and participating in workshops held by the Constitutional Commission. Women expressed concern about their right to own and inherit property and to have custody of their children, about violence against women and children and their lack of access to education, credit, land and employment. **Women working on proposals for the new Constitution referred specifically to CEDAW's concepts of equality to advocate for inclusion of these principles, and this is reflected in a number of key provisions in the Constitution.**

The recommendations of the Constitutional Commission were reviewed and voted on by the Constituent Assembly, of which fifty-two (18%) of the delegates were women who, supported by the women's movement, were instrumental in ensuring that key gender provisions were included in the constitution.<sup>14</sup> Although they faced resistance at times, they used several strategies including having men introduce their proposals, and boycotting the Assembly when they did not get their way.<sup>15</sup>

A constitutional review was completed in 2003 to deal with some of the unresolved issues of the 1995 Constitution. **Women's groups were consulted during the process and, having seen the workings of CEDAW and further armed with UNSCR 1325, were further able to advocate for women's rights.** Thus a key amendment was included that established 18 as the minimum age for marriage and provided that women and men have equal rights at marriage, during marriage and at the dissolution of marriage.

<sup>11</sup> Interview with George Ufoyuru.

<sup>12</sup> Report of the Constitutional Commission of Uganda, 1995.

<sup>13</sup> Miria Matembe, former Minister of Ethics and Integrity and Mary Maitum, retired High Court Judge.

<sup>14</sup> Anne Marie Goetz, "No Shortcuts to Power: Constraints on Women's Political Effectiveness in Uganda", *The Journal of Modern African Studies*, Volume 40, No. 4 (Cambridge University Press December 2002), 556.

<sup>15</sup> Interview with Professor Sylvia Tamale, Makerere University School of Law, Kampala, December 5, 2012.



### Following the Ugandan Model – Constitution Making in Rwanda

Rwanda followed the model of Uganda in its constitution making process. In 2003 a Constitutional Commission was established to write a permanent constitution. Out of the 12 members of the Commission, three were women.<sup>16</sup> The process was comprehensive and included widespread consultations, mobilization and civic education. Given the deep ethnic divides that had caused the conflict and genocide, the main priorities in establishing the Constitution were: equitable power sharing; establishing a pluralistic democratic regime; fighting against genocidal ideology and all its manifestations; eradication of ethnic and regional divisions and promotion of national unity; equality among Rwandans and between men and women; establishment of a government committed to citizen welfare and social justice; and the resolution of conflict through dialogue and consensus.

The participatory approach adopted by the Constitutional Commission allowed significant input by women and women's organizations. The women's movement actively mobilized to ensure that equality was a cornerstone of the document. The umbrella organization, Collectifs Pro Femmes/Twese Hamwe and its member NGOs worked with women parliamentarians and the Ministry of Gender and Women in Development to advocate for women's issues.<sup>17</sup> These organizations not only carried on a lobbying campaign but also worked to disseminate information about the draft constitution to women's organizations throughout the country, holding consultations, meetings and trainings on the proposed provisions. They advocated strongly for the inclusion of principles of equality and women's rights for a gender sensitive constitution, integrating gender policy and the inclusion of women in decision-making processes into the constitution. **In their lobbying efforts women leveraged international instruments such as the International Bill of Rights and CEDAW, stressing the government's obligations as states parties and their duties to report under these instruments.**<sup>18</sup> **The result is a constitution that incorporates the principles of gender equality and the elimination of all forms of discrimination against women and provides a strong legal framework for mainstreaming gender, with specific reference to CEDAW.**

### Recommendations

Parties involved at any level of the constitution making process should use the following principles:

1. **Advocate for the inclusion of women and gender experts in Constitutional bodies.** Constitutional Commissions or bodies that draft constitutions should include experts knowledgeable about international law and women's rights, including women who can articulate them. This often comes about as a result of lobbying by women's groups. Constitutional Assemblies or bodies that vote on draft constitutions should also include women delegates.
2. **Advocate for an inclusive process.** The constitution writing process should be an inclusive one, holding consultations and educational activities throughout the country with special interest groups including women, carried out both by official commissions, NGOs and women's groups. This will ensure that the constitution reflects the needs and will of the country's citizens.
3. **Hold gender dialogues.** Women's organizations should hold community dialogues to allow grassroots women express their needs to constitution making bodies. The needs expressed during these dialogues can then be communicated to constitutional bodies; or if there is opportunity, such dialogues can include members of constitutional bodies.

<sup>16</sup> Marie-Therese Mukabalisa, Domitille Mukantaganzwa, who later became Executive Secretary of the National Gacaca Courts, and Judith Kanakuze, a representative of civil society with a long history of activism.

<sup>17</sup> During the nine-year period of post genocide transitional government from 1994-2003 the number of women's representation in parliament had reached 27.7% (by appointment) and a Ministry for Gender had been established.

<sup>18</sup> Interview with Christine Tuyisenge, National Women's Council, Kigali, December 11, 2012.

4. **Hold women's conferences.** National women's conferences, often hosted by local or international NGOs, provide opportunities for women advocates from across the country to come together and make recommendations. Such a conference was recently held in Juba, South Sudan in May 2013, with recommendations presented to the country's president.
5. **Mobilize the grassroots to create awareness.** In order to have truly inclusive and successful constitution making, it is important to mobilize the grassroots in order to educate citizens on the process and about their rights, involve their voices in the process and garner their support. Women's organizations, community based organizations, traditional and religious leaders, politicians and constitutional commissions all have roles to play in this.
6. **Stress the importance of international law and belonging to the international community.** Recognizing international human rights standards and integrating these standards into the country's legal framework is an important way for a country to gain international legitimacy.
7. **Leverage regional instruments.** Utilize regional instruments to advocate for the inclusion of gender equality and women's rights. In Africa, the Maputo Protocol and the ICGLR instruments are strong frameworks for advocacy.
8. **Recognize international law in the constitution.** Most constitutions contain provisions on how international treaties are to be treated domestically. Rwanda's Constitution places international law at the highest level, even above domestic law. In Uganda, international treaties must be domesticated. However, both constitutions recognize the importance of international obligations and their governments' commitments to them.

## LAWS

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Subsequent to its writing or reforming its constitution, a country must enact **enabling legislation** that ensures that the principles contained in the constitution are specifically enforceable through the law and in the courts. In addition, international law mandates that countries enact laws in line with their treaty obligations. A key part of the **prevention** pillar under 1325 (that is, preventing abuse and violation of women's rights) is **strengthening women's rights under national law**. Including laws related to gender equality and women's rights are an important way of embedding the women, peace and security framework into the rule of law.

In advocating for laws, politicians, government officials, legal practitioners, civil society advocates and other activists should constantly refer to international, regional, and constitutional obligations to promote and protect the rights of women, utilizing all of the international instruments that are applicable in the country, and referring to universal principles such as **1325** and the **International Bill of Rights** where the relevant treaties have not been ratified.

It is important to perform a comprehensive review of legislation to see where gaps are and where new laws need to be enacted. Passing and reforming laws is up to parliament and the executive branch of government; however many groups can support the process, including special parliamentary committees, local governments, NGOs, advocates and traditional and religious leaders.

## Law Reform in Uganda

The Ugandan Law Reform Commission (ULRC) is the main institution responsible for the planning, preparation and presentation of new bills. Established as a department of the Ministry of Justice in 1975, it later became an autonomous body and was entrenched in the 1995 Constitution. The ULRC has a broad mandate to review and update laws “in line with the social, cultural and economic needs and values of the People of Uganda.” It plays a specific role in implementing **CEDAW**’s obligations to reform discriminatory legislation and monitors the government’s progress in this regard.

NGOs have also taken a lead role in advocating for legal reform to increase protection for women’s rights, including the passage of several GBV related laws in 2009 and 2010. They are also working to keep pending bills such as the Marriage and Divorce Bill and Sexual Offences Bill on Parliament’s agenda. **CEDAW** and **1325** have been powerful tools for civil society advocacy.

**Laws related to the women, peace and security framework include:**

### Political Participation Laws

1325 is meant to increase the participation of women at all levels of decision-making in order to ensure that the needs of women and girls are met and thus a more stable environment maintained. The **ICCPR** guarantees to all people the right to vote and be elected to public office. **CEDAW** guarantees women’s equality in all spheres including political and public life, and states that countries may implement special measures to accelerate women’s equality. The **Beijing Platform** sets 30 percent as the standard. Most recently, **UNSCR 2122** stresses the importance of states conducting post-conflict electoral processes and constitution reform to continue efforts to ensure women’s full and equal participation in all phases of electoral processes. Both the **Maputo Protocol** and the **ICGLR’s Protocol on Democracy and Good Governance** require states to take affirmative action to ensure women’s political participation.

One of the most successful ways of ensuring that women are included in decision-making structures has been to enact laws related to political participation, including quotas. The strongest laws will be broad reaching, including both national and local levels of governance, as well as political parties. Gender quotas have been adopted in many countries around the world of various political and socio-economic backgrounds. As of 2013, gender quotas have been legislated in 77 countries. An additional 32 countries have voluntary quotas adopted by political parties.<sup>19</sup>

The success of the quota system rests not only on having laws in place, but also on effective enforcement and sanctions for non-compliance. It also requires the grassroots mobilization of women and the active participation of women’s organizations in order to make sure that women are effectively participating in political life.

There are generally two types of quotas: either legislated candidate quotas – where a certain number of candidates must be women - or reserved seats – where a certain number or percentage of seats in parliament or other bodies are reserved for women. The types of quotas used generally depend on the type of electoral system in place in a country. Both Uganda and Rwanda have led regarding reserved seats.

<sup>19</sup> quotaProject: Global Database of Quotas for women, [www.quotaproject.com](http://www.quotaproject.com).

### Political Participation Laws in Uganda

Under Uganda's Constitution, each of its 112 districts must have at least one woman representative to Parliament. Its electoral law includes 112 District Women; 10 Uganda People's Defense Forces Representatives, of whom 2 must be women; 5 Youth Representatives, of whom 1 must be a woman; 5 Representatives of Persons with Disabilities, of whom 1 must be a woman; and 5 Representatives of Workers, of whom 1 must be a woman.

According to parliamentary rules, all committees are to have 30% women representation.

#### Numbers

- Uganda has had a woman Speaker of Parliament since 2011<sup>20</sup>
- In 2012, 30 percent (9) of senior ministers were women and 32 percent (15) of junior ministers were women
- Women were appointed to head key ministries of Finance, Planning and Economic Development, Education, Health, Energy and Minerals and Trade and Industry
- The number of women in Parliament steadily increased to 35% in 2012, mainly due to affirmative action and an increase in the number of districts<sup>21</sup>

### Political Participation Laws in Rwanda

Rwanda's Constitution requires that 30% of all posts in official decision making organs be reserved for women, which includes all levels from the Cabinet to Parliament to District Councils. In addition, 24 seats in the lower chamber of Parliament are reserved for women, to be elected by women through a joint assembly of members of local authority councils and of the executive committees of women's organizations at the local level.

Rwanda's law ensures that women make up 30% in governance and in political parties and provides that women have equal rights as men to stand in presidential elections.

**Rwanda stands out globally as the nation with the highest percentage of women in Parliament, at 56% in 2013. The higher levels of government, including ministers and permanent secretaries also reach well over the 30% quota.**

Gender quota systems can be controversial. Some arguments that are made against them include:

- They give women preference over men.
- Voters should decide who is elected.
- Women will be elected solely based on their gender and not on their qualifications.
- Women do not want to be elected just because they are women.

However, there are strong arguments in favor of gender quotas and **advocates and practitioners should be able to articulate these arguments:**

- Quotas are allowed by **CEDAW** and **other international and regional instruments** as temporary measures to ensure that women are given equal opportunity as men to participate in public and political life.

<sup>20</sup> As of May 2014 the Speaker of Parliament is the Rt. Hon. Rebecca Alitwala Kadaga.

<sup>21</sup> Center for Women in Governance (CEWIGO), Uganda Country Report, *Women Count 2012: Civil Society Monitoring of UNSCR 1325*, Global Network of Women Peacebuilders 2012.

- The **Beijing Platform** calls for a 30% quota, which is generally considered the standard.
- They do not discriminate; rather they compensate for barriers that have prevented women from political participation.
- Women may be just as qualified as men but their qualifications have been minimized or overlooked in patriarchal systems.
- Women may not have had the same educational and economic opportunities as men and thus need additional support to make their situations equal.

### **Preparing Women Leaders**

Numbers are a start. However, just having women in government seats does not necessarily mean change. In many countries, women in parliament still face several challenges in working to pass laws that face obstacles due to the patriarchal nature of societies that are deeply entrenched in culture and religion, in addition to difficulties in gaining support from male members of parliament and funding for their activities. Many women also lack adequate knowledge of gender issues and advocacy skills. At local levels, while there are increasing numbers of women, few of them are in leadership positions and their influence remains low. In some communities, people complain that women in government are part of the elite and are out of touch with what is happening at the grassroots level and either unaware or unconcerned with the women's agenda.

*It was reported that during council meetings, women councilors tended to keep silent most of the time due to lack of confidence and limited knowledge of the subject being discussed.*

– CEWIGO UNSCR 1325 Monitoring Report Uganda 2012

**It is absolutely critical that women leaders be educated about the 1325 framework and about gender equality and women's rights principles.**

#### **Ways to do this include:**

- 1. Establish parliamentary groups.** In addition to establishing political participation quotas, creating women's parliamentary groups helps to engender the legislative process and ensure that legislation helps advance the women, peace and security agenda.

#### **The Rwanda Women Parliamentary Forum**

The Rwanda Women Parliamentary Forum (FFRP) has had a good deal of success due to its strength in numbers, political support both from President Kagame as well as other men in politics, and the gender sensitivity and preparedness of its members. Its biggest challenges remain those that Parliament faces in general including overall lack of funding and resources and related challenges in implementing laws.

- 2. Build the capacity of women legislators.** Just having women there is not enough. They also need to know the international, regional and domestic frameworks related to women, peace and security in order to introduce legal reforms that effectively address gaps in legislation for women. Both local and international NGOs have played a critical role in training women in politics.
- 3. Establish National Women's Councils.** Establishing a National Women's Council that coordinates the functioning of Women's Councils throughout the country can serve as a critical forum to

empower women for their effective participation in leadership in leadership and national development. Rwanda, for example, has a strong National Women's Council that functions under the Office of the Prime Minister.

## Laws Addressing Gender-Based Violence

Protecting women from sexual and gender-based violence (SGBV) is a key element of the 1325 framework, as the issue has become so acute in conflict-affected countries. In order to have peace and stability, it is critical to establish a safe environment for women and girls.

***We need to have legal instruments in order to advocate for rights- otherwise our work is meaningless. There are groups working on the issues of gender-based violence and women's rights violations but the problem is the absence of law - perpetrators are not being punished.***

- South Sudan Human Rights Commission<sup>22</sup>

SGBV is widespread in countries of the Great Lakes Region mainly due to cultural norms, discriminatory practices and the economic disempowerment of women. During conflicts in the region women have suffered abductions as sex slaves, brutalization during raids on villages and violence in IDP camps that include rape and domestic violence. Sexual violence has been used as a weapon of war and has taken many forms, including individual rape, gang rape, rape with objects including guns, sexual enslavement, forced marriage, sexual torture and mutilation.

The medical, physical and psychological effects of sexual violence are enormous. Unwanted pregnancies, intentionally transmitted HIV/AIDS, permanent physical scarring and medical trauma, emotional trauma and stigma are all results of the sexual and physical violence perpetrated against women. In countries such as Uganda where the clan system is strong, the community often shuns women who were abducted and impregnated by rebels and their children are left without a clan.

After conflict women continue to suffer spousal violence, sexual abuse, rape, physical assault and violence and psychological abuse. Economic violence is often included under the rubric of GBV. This includes denial of access to food and property, husbands withholding resources for family care, inheritance disputes between a widow and her husband's family over his property, as well as acute economic dependence of women on their husbands. Many women are unable to support themselves and are less able to escape violent relationships. Sexual violence has been a major factor in the spread of HIV/AIDS. Women who are HIV positive are also at a greater risk of becoming victims of domestic violence.

GBV has a major effect not only on women but also on families, communities and on national development. The effects of violence often keep girls out of school or keep women from participating in the community or the workplace.

Conflict-affected environments are also ripe for human trafficking, an opportunistic crime that takes advantage of conflicts, humanitarian disasters and the vulnerability of people in situations of crisis. For instance, in Uganda reports show that women and children from war-torn areas of Northern Uganda and Karamoja are being trafficked within the country and across borders into South Sudan and to other East African countries and beyond for purposes of forced labor and sexual exploitation. There have also been reports of Karamojong women and children being sold routinely at cattle markets.

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<sup>22</sup> Interview Juba, April 14, 2013.

The international and regional instruments have been important in advocating for the principle of equality and dignity for women, and especially in advocating for laws addressing violence against women. Lawyers, judges and advocates familiar with the instruments are able to pull from them and use them continuously to remind the government of its obligations, which have also been domesticated through the countries' constitutions. Several international instruments specifically relate to GBV including **CEDAW**, the **Rome Statute**, the **Palermo Protocol**, the **Convention on the Rights of the Child**, the **Torture and Genocide Conventions**, **DEVAW**, and regional instruments such as the **Maputo Protocol** and **ICGLR** framework. **UNSCR 1820** stresses the need to implement policies for those affected by sexual violence in conflict and **UNSCR 2106** reinforces the need to address sexual and gender-based violence in national laws. National governments, the UN and donors all have roles to play in ensuring that this happens. Advocates, NGOs and civil society have been instrumental in advocating and pressuring gender-based violence laws.

All international and regional commitments applicable in the country should be used, in addition to any relevant constitutional provisions, in advocating for passage of laws related to GBV.

Laws addressing gender-based violence include:

1. **Sexual violence laws** including rape and other sexual assault that are up to date and include currently accepted definitions of rape. It is widely recognized that rape has become a weapon of war, but rape and other sexual assault also continue after conflicts and lead to continued insecurity and instability. It is critical to have adequate measures in place to protect women from widespread sexual violence. The rape and sexual assault laws in many countries are outdated. International jurisprudence has provided internationally accepted definitions of rape and assault, and national laws should be reformed accordingly.<sup>23</sup> In addition, mass numbers of rapes during and after conflict have led to the – often intentional - spread of HIV/AIDS in many communities, and there has been a need to address this intentional act as a criminal act.
2. **Laws providing for prosecution of sexual violence during conflict.** One of the biggest challenges in ending sexual violence in conflict has been widespread impunity. The perpetrators are not held accountable. Most recently **UNSCR 2106** stresses the importance of including the full range of crimes of sexual violence in national penal legislation – including as a crime against humanity, war crime or where applicable, crime of genocide as recognized by the international courts.
3. **Domestic violence laws.** In many societies, and especially traditional communities, domestic violence has been seen as an issue of the home, not to be dealt with in public. However, it is critical to recognize that it is a form of violence against women that must be dealt with under the law. Furthermore, the rate of domestic violence tends to be very high after conflicts as societies and families are disrupted, gender roles change, and men often lack the psychosocial support they need to reintegrate into their home life. Alcoholism and disenfranchisement have especially exacerbated the issue.
4. **Laws prohibiting harmful cultural practices.** In many traditional societies cultural practices such as Female Genital Mutilation (FGM) and early marriage have oppressed women and left them disempowered. There must be provisions against laws, cultures, customs and traditions that are against the dignity, welfare or interest of women.
5. **Anti-trafficking laws.** Human trafficking, including sexual exploitation and forced labor, is a crime that preys on vulnerable individuals. Women and children are especially vulnerable during and after times of conflict, and conflict-affected areas tend to be easy targets for traffickers. It is therefore important to have laws and processes in place to prevent trafficking, protect victims, and prosecute perpetrators.

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<sup>23</sup> See the Akayesu Case, Case No. ICTR-96-4-T, Trial Judgment, ¶¶ 685–696 (Sept. 2, 1998), <http://www.unict.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf>.

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## Case Study: Uganda

In line with its international obligations under **1325, CEDAW, the Maputo Protocol and the ICGLR Framework**, and its **National Action Plan on UN Security Council Resolutions 1325 and 1820 and the Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region**, in 2010 Uganda enacted several laws addressing GBV. Prior to passage of these laws, prosecutions relied only on the outdated Penal Code Act of 1950, which included rape, defilement (sex with a minor), indecent assault and prostitution. These new laws include:

- **Domestic Violence Act (2010):** Provides for the protection and relief of victims of domestic violence; remedies for the punishment of perpetrators; procedures and guidelines for courts for protections and compensation of victims; court authority to issue protection orders and enforcement of court orders; empowers family and children's courts to hear cases of domestic violence.
- **Prohibition of Female Genital Mutilation (FGM) Act (2010):** Criminalizes all procedures involving partial or total removal of the external female genitalia and criminalizes discrimination against females who have not undergone FGM. Persons who carry out FGM or procure, aid, induce, threaten or fail to report the practice are guilty of the crime and subject to imprisonment, fine or both.
- **Anti-Trafficking in Persons Act (2009):** Prohibits trafficking in persons and body parts and creates a framework for prosecution and punishment of outlined offenses.
- **International Criminal Court Act (2010):** Allows Ugandan courts to try crimes against humanity, war crimes and genocide, including sexual violence as defined under the Rome Statute. Accordingly, an International Crimes Division attached to the High Court has been established and tasked with applying the Act to crimes committed during the conflict and to enable domestic investigations and prosecutions to hold perpetrators accountable.

Civil society advocates continue to press for passage of additional bills that would provide protections to women including a **Marriage and Divorce Bill**, which seeks to provide a comprehensive law that address injustice and discrimination against women in all family relations including marriage and divorce, and a **Sexual Offences Bill** sanctioning sexual violence. The bills have faced opposition especially from religious leaders and communities. Key to garnering support for the bills is awareness raising among the grassroots, religious and community leaders and parliamentarians.<sup>24</sup>

Although FGM has been outlawed, studies have shown that the practice continues especially in border areas with Kenya, where communities will merely carry out the practice across the border. In addition, other harmful practices continue to be prevalent, including early and forced marriage, abduction of girls, polygamy, widow inheritance, wife sharing and bride price.

Comprehensive data regarding sexual and gender based violence is lacking. However, CEWIGO's UNSCR 1325 Civil Society Monitoring Report of 2012 indicates that domestic violence and defilement (rape of young children) are prevalent in post-conflict districts.

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<sup>24</sup> FIDH, *Women's Rights in Uganda: Gaps Between Policy and Practice*, February 2012, 12.



### **Cases investigated and prosecuted in 2011**

<b>Crime</b>	<b>Investigated</b>	<b>Prosecuted</b>	<b>Convictions</b>	<b>Acquittals</b>	<b>Dismissed</b>	<b>Pending</b>
Rape	520	261	5	-	13	243
Defilement	7690	3733	386	44	279	3024
Trafficking in Persons	5	3	0			

*Source: Uganda Police Annual Crime and Traffic/Road Safety Report 2011, CEWIGO 1325 Monitoring Report 2012, U.S. Department of State Trafficking in Persons Report 2012. Data was unavailable for cases of domestic violence and FGM. No cases have yet been brought under the ICC Act.*

### **Case Study: Rwanda**

In response to the epidemic of gender-based violence, the Rwanda Women Parliamentary Forum drafted a bill based on extensive research in the country, consultation with grassroots women about the type of violence they and their children face and statutes from other African countries. Rwanda is party to several international conventions obligating it to combat gender-based violence whose principles are reinforced by the Rwandan Constitution, which recognizes the importance of gender equality and the need for specific legal provisions ensuring women's equal protection under the law. In light of this and to protect women from GBV, in 2008 the Rwandan Government passed the **Law on Prevention and Punishment of Gender Based Violence**.

The law specifically recognizes the Government's obligations under the ICCPR, ICESCR, CEDAW, African Charter on Human and People's Rights and Maputo Protocol, the Convention on the Rights of the Child and domestic code. It defines gender-based violence as any act that results in bodily, psychological, sexual or economic harm to somebody just because they are female or male. This violence may be exercised within or outside the household. The protections under the law are extensive and include, among other provisions:

1. Prohibition of polygamy
2. Conjugal rape
3. Protection of children against gender-based violence
4. Prohibition of sexual slavery, sexual torture and human trafficking
5. Criminalization of the intentional transmission of a terminal disease
6. Protections against discrimination in employment or education based on pregnancy or maternity
7. Establishment of gender-based violence as a cause for divorce

According to the 2012 UNSCR 1325 Civil Society Monitoring Report, the number of gender-based violence related cases reported has remained somewhat constant during monitoring periods. However, in early 2013 a report of the Rwanda National Police did report a 3.9% decline in the number of cases reported during 2012. A total of 3,444 cases of GBV were reported. Defilement (1,648), assault (578) and rape (255) were the top three types of cases reported. The Rwandan police attribute the drop in the number of cases to increased awareness of gender-based violence issues.<sup>25</sup> Information on the number of cases actually investigated, prosecuted and penalized were not available at the time of the writing of this toolkit.

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<sup>25</sup> Maria Kaitesi, *Rwanda: Gender Based Violence Cases Down 3.9 Percent*, allAfrica, January 23, 2013, <http://allafrica.com/stories/201301230033.html>.

## Challenges

Many of the challenges in passing GBV laws have to do with traditional cultural perceptions. In some cultures women may be blamed for rape or bear the shame and thus laws prohibiting rape and holding perpetrators accountable are weak. After conflict, amnesty agreements or political bargaining among former warlords inhibits support for prosecutions. Several of the identified root causes of gender-based violence in the Great Lakes Region are traditional social and gender norms, limited awareness of human rights, silence due to stigma, limited dialogue on sexuality and gender-based violence, imbalance of power, poverty and alcohol abuse.<sup>26</sup> There is also a persistence of domestic violence and limited legal assistance for victims. Access to justice is also a critical barrier for women and will be further discussed in the next section under Justice.

There is a need for capacity building of both official and civil society actors to address gender-based violence; sensitization of law enforcement and public officials; human rights education, especially to counter negative attitudes and practices and make women aware of their rights; and to educate all parties so that they understand the effect that GBV has on women, families, communities and development.

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## Family Laws

Family laws, which set out rights and obligations regarding the family, including marriage, dissolution of marriage and child custody are critical in protecting women's rights. The **International Bill of Rights**, **CEDAW** and the **Maputo Protocol** all guarantee women equal protection with regards to family. The **African Charter on the Rights and Welfare of the Child (ACRWC)** prohibits child marriage. However, in practice women have suffered due to discriminatory laws, traditional and religious practices that give them subordinate status to men and limit their legal rights in marriage. Obstacles that women face which family laws must address include:

1. **Marriage age:** In many cultures, early marriage is common. Child marriage generally leads to lack of education, lack of economic opportunity, vulnerability to abuse and health problems due to early pregnancy. According to the **CRC** and the **ACRWC**, a child is anyone under the age of 18.
2. **Forced marriage:** In some traditional and religious cultures, families may make choices regarding marriage without the consent of the woman or girl to be married.
3. **Dowry/Bride Price:** Some cultures require the payment of a dowry or bride price by the groom's family to the bride's family – whether it is in money, cattle or other property. This often in effect makes the woman the “property” of the man, who considers that he has certain rights over her because of it. In addition, in post-conflict areas where poverty and lack of opportunity is common, men and boys are facing increased pressure to come up with the bride price in order to marry, which can lead to problems such as violence, cattle raiding, stealing etc. In addition, the practice of bride price can lead to parents forcing daughters to marry simply to collect a bride price and girls being removed from schools and forced into early marriages.
4. **Divorce:** Often discriminatory divorce laws – whether under formal or customary marriage systems - leave women with few or little rights in divorce – meaning that they may lose their rights to property or custody of their children if they try to divorce their husbands. This leaves women with little options at divorce and often leads them to stay in abusive situations.
5. **Customary marriages:** In some countries customary marriages are prevalent, and may or may not be recognized by the country's formal system. When the state does not legally recognize such marriages, women are denied their marital rights including property, maintenance and inheritance rights.
6. **Polygamy:** Polygamy – the right to have more than one wife – is practiced in many traditional and religious cultures and gives women subordinate status in marriage.

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<sup>26</sup> Mary Balikungeri and Immaculee Ingabire, Report on the Republic of Rwanda, in *Women Count: Security Council Resolution 1325 Civil Society Monitoring Report 2012*, Global Network of Women Peacebuilders 2012, 8.

### **Current Issues in South Sudan**

In South Sudan there is a critical need to establish legal frameworks to protect women and girls. However, there is a great deal of resistance because of customary law. Early marriage and dowry have been identified by stakeholders interviewed as two of the greatest obstacles facing women in the country. According to the Human Rights Commission, much of GBV in the country is based on dowry and it needs to be outlawed.<sup>27</sup> The HRC and women's groups are advocating for the permanent constitution to address equality in family law for women. They are also lobbying the parliament and the public to ensure the enactment of family law, especially establishing rights in divorce, which until now has been handled in traditional and cultural ways, outlawing dowry or at least creating uniform dowry law, establishing a minimum marriage age and guaranteeing women the right to be involved and consulted in marriage processes including negotiations and marriage agreements.

### **The Challenges of Family Law in Uganda**

The Ugandan Constitution provides that women and men have equal rights in marriage and its dissolution. However, currently there is no comprehensive legislation covering family law, which leaves significant gaps in protection. Although the Constitution fixes the minimum marriage age at 18, under customary practice many girls are married at much younger ages. Polygamy is allowed under customary and Islamic laws and women in such marriages have no protections in the event of dissolution. In some cultures, men may inherit the widows of their deceased brothers. The law provides that both parents are responsible for their children, however under customary and religious laws men have sole parental authority, leaving women without rights.

The proposed Marriage and Divorce Bill of 2009 is meant to bring existing legislation into compliance with the Constitution and with Uganda's international obligations. It:

- Sets the minimum legal age for marriage at 18
- Grants women the right to choose their spouses
- Grants women the right to divorce spouses for cruelty
- Prohibits the practice of widow inheritance
- Defines marital property and provides for equitable distribution of property at divorce
- Recognizes some property rights for couples who cohabit
- Does not prohibit dowry but provides that it is non-refundable, which makes it financially easier for a woman to divorce her husband
- Prohibits marital rape

The Bill contains separate provisions governing Christian, Hindu, Customary and Baha'i marriages but does not cover Muslim marriages due to objections from the Muslim community, which opposed provisions that they considered to be contrary to Sharia law.<sup>28</sup> This leaves Muslim women without the same protections and violates international human rights and constitutional law prohibiting discrimination based on sex or religion. The Bill was originally part of a comprehensive Domestic Relations Bill. However, due to the opposition by the Muslim community, the Bill was withdrawn and divided into three bills: The Domestic Violence Act, which passed in 2010, the Marriage and Divorce Bill and a separate bill on the Administration of Muslim Personal Law, which has been set aside for later agreement.<sup>29</sup>

Women's groups and women parliamentarians have been active in advocating for the bill. However, although the bill in various forms has been pending for over 14 years, it has still not been passed and was

<sup>27</sup> Interview with South Sudan Human Rights Commission.

<sup>28</sup> FIDH, *Women's Rights in Uganda: Gaps Between Policy and Practice*, 11.

<sup>29</sup> Ibid.

recently rejected yet again by Parliament in September 2013. The bill faces challenges mainly due to traditional and cultural values. There has been resistance from religious leaders and at the community levels. Further awareness raising is required with faith-based organizations and communities. In addition, there is resistance from many male members of Parliament, who consider it a “women’s bill” and would likely be affected by it themselves.

## Children

The 1325 framework is concerned especially with the effects of conflict on women and children. The **Convention on the Rights of the Child** and the **African Charter on the Rights and Welfare of the Child** obligate states to promote the civil, political, economic, social and cultural rights of children and to protect them from any harm, violence, exploitation or participation in hostilities.

Children suffer enormously in modern conflicts. In the Great Lakes Region, thousands of children have been abducted as child soldiers. Girls have also been abducted as sex slaves for rebels and soldiers. Girls, like women, are especially vulnerable to sexual abuse in IDP and refugee camp settings. Children remain vulnerable after conflict. Many are left as orphans. There is often a lack of educational opportunities as the system has been destroyed, and children – especially girls – become more vulnerable to attack when they are out of school, or have to walk long distances to school. A lack of economic opportunity for older children also leads to vulnerability as they seek ways to support themselves.

### Issues for Children in South Sudan

The current situation in South Sudan exemplifies many of the issues facing children after conflict:

- Violence against children
- Harmful traditional practices that include child marriage and forced marriage
- Children without care are especially vulnerable to sexual violence, rape and prostitution
- Young people are being abducted and being forced to participate in cattle raids between hostile communities
- There are many runaways, because at home they are being beaten and/or their parents are alcoholics – often the after-effects of conflict – and these children become vulnerable to abuse on the streets
- Lack of educational opportunities
- Lack of employment opportunities

Girls also need justice. For instance, in some cases girls are in detention because they have run away from child marriage, but instead of being protected are being accused of adultery as an excuse for being arrested. Efforts are being made to push for ratification of the CRC, include provisions on child protection in the constitution and work with communities to change perceptions and practices. According to UNICEF, state building initiative are important in ground child protection in legal and policy frameworks.<sup>30</sup>

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<sup>30</sup> Interview with Fatuma Ibrahim, UNICEF Chief of Child Protection, Juba April 15, 2013.

### Protection of Children in Uganda

Children and girls suffered enormously during the twenty-year conflict in Northern Uganda, with the LRA infamous for recruiting child soldiers and abducting girls. The Constitution's bill of rights is applicable to children, and the Constitution additionally contains specific provisions related to the rights of children. The **1997 Children Act** puts into effect the constitutional provisions on children and emphasizes the protection of the child by upholding the rights, protection, duties, and responsibilities as contained in the **Convention on the Rights of the Child** and **African Charter on the Rights and Welfare of the African Child**. The law was enacted to provide for the care, protection and maintenance of children, provide for local authority support for children, establish the Family and Children Court and make provisions for children charged with offences and for other related purposes.

### Protection of Children in Rwanda

The 1994 genocide had an extreme effect on children. Those that survived the genocide were often physically and emotionally scarred. More than 95,000 children were orphaned. AIDS also ravaged the country, causing more than 264,000 children to lose one or both parents.<sup>31</sup> Rwanda ratified the **Convention on the Rights of the Child** in 1990, obligating it to protect its children. **During the transition period women played a significant role in advancing the 2001 Law on Rights and Protection of the Child Against Violence**. The law defines a child as anyone under the age of 18 and covers a wide range of rights. It criminalizes murder, rape, the use of children for "dehumanizing acts," exploitation, neglect and abandonment, and forced or premature marriage (under the age of 21).

## Social and Economic Empowerment

The **International Covenant on Economic, Social and Cultural Rights**, **CEDAW** and the **Maputo Protocol** ensure equality in socio-economic rights for women and men, including in property rights, education, health and employment. Economic, social and cultural rights are essential for women's livelihoods. **UNSCR 1889** especially recognizes the importance of empowering women and increasing their physical security through improving their socio-economic conditions. The increased economic power of women not only reduces poverty but also promotes equality at both the household and community levels, which contributes to peace and security in communities.<sup>32</sup>

Socio-economic rights have traditionally been given less importance than other rights, and especially for women. However, there is a growing awareness among governments that including women in their development schemes benefits everyone, as allowing women to be productive boosts the economy and improves the conditions of all of society. **The link between human rights and development has become a very powerful advocacy tool. Advocates should use both legal frameworks and developmental arguments to advocate for adequate laws to ensure the rights of women in these areas.**

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<sup>31</sup> Yale Law School, *Representing Children Worldwide: How Children's Voices Are Heard in Child Protective Proceedings*, December 2005, [http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/rwanda/frontpage.htm#\\_edn4](http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/rwanda/frontpage.htm#_edn4).

<sup>32</sup> Republic of Rwanda Gender Monitoring Office, *Gender Best Practices in Rwanda 1995-2010*, Kigali, June 2010, 16.

## Gender Mainstreaming: the Rwandan Model

Mainstreaming gender into all government institutions, programs, and budgets is critical in embedding the women, peace and security framework and ensuring the implementation of laws. **The most effective way to ensure that this happens is to link human rights and development.** That is, to argue that excluding women is not just a violation of human rights, but leads to the disempowerment of women, which hinders national development because they cannot contribute.<sup>33</sup> When women contribute, everyone wins. In addition, economic security is a critical element of human security and thus important to national security.

*Rwanda Government prioritizes gender and women's economic empowerment, which has long since been recognized as a human rights and development issue. The Government is fully aware that investing in women contributes to the achievement of critical social objectives like decreased fertility and infant mortality, improved child health status and improved productivity.*

- East African Community Secretariat<sup>34</sup>

Rwanda has been an excellent example of successful mainstreaming of women into development. Due to the participation of women in the conflict and post-conflict processes, and advocacy by women's groups, President Kagame himself has realized the centrality of gender equality in national development. One of Rwanda's greatest successes has been the inclusion of women in development and its focus on the economic empowerment of women, which are important factors in maintaining human security. In line with its international obligations, the Government of Rwanda has identified gender as a priority in its constitution and as a crosscutting issue in all of its national legal and policy frameworks including its development policies and national gender policy. In addition, Rwanda has established a **Gender Responsive Budgeting** framework for all of the country's development agendas and processes, coordinated by a Gender Responsive Budgeting Unit in the Ministry of Finance and Planning.

**Note on Gender Responsive Budgeting:** Gender-responsive budgeting (GRB) is government planning, programming and budgeting that contributes to the advancement of gender equality and the fulfillment of women's rights. It identifies and incorporates necessary interventions to address gender gaps in sector and local government policies, plans and budgets. GRB initiatives seek to create enabling policy frameworks, build capacity and strengthen monitoring mechanisms to support accountability to women.<sup>35</sup>

## Land Rights

Several international and regional instruments including **CEDAW** and the **Maputo Protocol** guarantee women equal access to land. Access to land and security of land tenure have been considered a paramount condition for socio-economic development of countries and of citizens' welfare.<sup>36</sup> The **ICGLR Protocol on the Property Rights of Returning Persons** specifically recognizes the need to protect the land rights of returning women, girls, widows and orphans and calls for the elimination of all discrimination in land rights

<sup>33</sup> Comments of Hon. Miria Matembe, Panel Discussion of the Monitoring Findings and Strategies for NAP Financing, CEWIGO Launch of the Monitoring Report on the Implementation of UNSCR 1325, 1820 and the Goma Declaration, Imperial Royale Hotel, Kampala, December 6, 2012.

<sup>34</sup> East African Community Secretariat, *Gender and Community Development Analysis in Rwanda*, January 2009, 43.

<sup>35</sup> UN Website on Gender Responsive Budgeting, <http://www.gender-budgets.org/>. The website provides governments, non-governmental organizations, parliaments and academics with resources for understanding and applying GRB.

<sup>36</sup> Ernest Uwayezu and Thoedmir Mugiraneza, *Land Policy Reform in Rwanda and Land Tenure Security for all Citizens: Provision and Recognition of Women's Rights over Land*, paper presented at FIG Working Week 2011, "Bridging the Gap Between Cultures," Marrakech, Morocco, May 18-22, 2011, [http://www.fig.net/pub/fig2011/papers/ts04g/ts04g\\_uwayezu\\_mugiraneza\\_4914.pdf](http://www.fig.net/pub/fig2011/papers/ts04g/ts04g_uwayezu_mugiraneza_4914.pdf).

for women and recognition of their right to own property equally as men.

However, land rights remain one of the most challenging issues facing women in many conflict-affected countries. Under many customary systems, women have traditionally not been able to own land. Land generally belongs to the family or clan and is held by men, though women may have the right to live on the land and farm it. Often, although women do most of the work, they own very little of the land. This leaves them disempowered and vulnerable. As experienced in Northern Uganda, economic abuse has been a major form of gender-based violence and land conflicts often lead to other problems including domestic violence, assaults, and murder. If left unmitigated, land related disputes have the potential for widespread violence. Especially after conflict, women's access to land is critical for the livelihoods of families and children, especially for those women who have been widowed. **It is critical, therefore, to establish appropriate land administration systems that provide land tenure security for all citizens without discrimination, and to ensure that women and female orphans have the same right to own and inherit land as men.**

### **The Challenge of Land Rights in Uganda**

Land rights are one of the most emotive, culturally sensitive, politically volatile and economically central issues in Uganda.

Uganda's **Land Act of 1998** and **Land Amendment Act of 2004** provide the legal framework through which the fundamental rights of women are to be protected to redress gender disparity in access to and control over economically significant resources and benefits. Amendments made to the law with respect to women's rights were a result of advocacy by women's groups. The Land Act as amended provides a system for the tenure, ownership and management of land and decentralization of administration and prohibits decisions affecting customary land that deny women access to ownership, occupation or use of any land or in any way violate any constitutional provisions affecting women. It also requires that at least one-third of members of Communal Land Management Associations and District Land Boards are female and that the Uganda Land Commission and parish level land committees have at least one woman. It confers the right to security of a spouse to occupy and use the family home during marriage, though it stops short of granting spousal co-ownership.

In general, customary practices in some areas of the country continue to override statutory law in recognition and enforcement of women's land rights. Attempts to redress this situation by outlawing discriminatory customs and practices in land ownership, occupation, and use in the Constitution and the Land Act have not been effective due to failure in implementation and enforcement. The **National Land Policy of 2013**, recently enacted, will attempt to address these issues by reviewing and regulating customary practices, reforming discriminatory statutory law, domesticating all international treaties addressing the rights of women and children, and ensuring the participation of women in all decision making structures and process in access to and use of land.

In addition to cultural obstacles, another challenge is that in many countries, including Uganda and Rwanda, land rights are connected to marriage and succession regimes. Thus there are no provisions for women who are not married. **Land rights laws should therefore also address the rights of unmarried women.**

## Protecting Women's Land Rights in Rwanda

One of the earliest, and most successful, results of women's advocacy efforts in Rwanda was the **1999 Law on Matrimonial Regimes, Liberalities, and Successions**, commonly referred to as the Law on Succession or the Law on Inheritance, which established, for the first time, women's right to inherit land. In advocating for the law, women parliamentarians worked closely with the Women's Ministry and women's civil society organizations. In the aftermath of the genocide, which destroyed and scattered families, women's right to inherit land was critical – not just as a matter of women's rights, but because it had a direct impact on issues such as food production and security, the environment, settlement patterns, and the livelihoods of families and children left behind.<sup>37</sup>

The Matrimonial Regime is a body of rules governing the agreement between spouses on the management of their property and what happens to it upon death of a spouse or dissolution of marriage. It gives equal rights to men and women, boys and girls. It provides that upon entering marriage, spouses shall choose one of the following matrimonial regimes, which determine how property is to be considered during marriage and at death or dissolution:

1. Community of property (joint ownership of all property);
2. Limited community of acquests (designating which is community and which is separate); or
3. Separation of property (all property is considered separate).

In 2004, a new **Land Policy** was enacted and the government embarked on a land reform process motivated by the desire to provide tenure security to all Rwandans as one of the strategies for attainment of national unity and reconciliation, the promotion of economic growth and the social welfare of all citizens. It complements the Constitution and Inheritance Law.

The land regimes are used to safeguard, protect and enforce the land rights of women and female orphans in different regions of Rwanda. Women and widows have the same rights as men to inherit land and female orphans equally share their parents' land with their brothers. In practice, the implementation of land related laws and policy allows women and female orphans to repossess and take control over their land for which they were deprived under the old and traditional system of administration.

Following the new land law and land policy, local leaders have helped widows and children in reclaiming land from which they were evicted. A 2011 survey performed by the Gender Monitoring Office also showed that there has been a positive application of the law in local courts to solve succession disputes in Rwanda. Women were more willing to safeguard their family property after passage of the law, because they were legally assured of a share of family property. However, some shortcomings highlighted included limited knowledge of the law, lack of knowledge of where to report violations and lack of resources to do so.<sup>38</sup> In addition, a large number of Rwandan women enter into informal partnerships, and without a legal marriage have no claim on their partner's land for themselves or their children.

## Education Laws

The 1325 framework recognizes the importance of access to education for girls in protecting their rights and promoting peace and stability, and all of the international instruments guarantee equality in education. Knowledge is power and education is critical in both empowering women and increasing their economic opportunities. Under the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, free primary education is a right that needs to be implemented immediately and without discrimination. The **CRC** emphasizes the right to education for children. **CEDAW**, the **Maputo Protocol** and the **African Charter on the Rights and Welfare of the Child** guarantee women and girls equal rights to men and boys in education.

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<sup>37</sup> Elizabeth Powley, *Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families*, UNICEF 2006, 12.

<sup>38</sup> Emma Prince, *Gender office evaluates marriage, succession regimes*, The New Times, June 29, 2011, <http://www.newtimes.co.rw/news/index.php?i=14671&a=42689#>.



The **MDGs** aim to achieve universal primary education by 2015. Many constitutions now include education as a right and provide for free primary education. It is important to enact laws that ensure that girls will enjoy this right equally with boys.

When girls are uneducated, they have little economic opportunity and little opportunity for independence, but many opportunities for their rights to be abused.

Girls face challenges in access to education due to cultural norms, gender insensitivity of teachers and curricula, lack of separate facilities, discrimination, early pregnancy and competing pressures from family and household chores. Additionally, girls in rural areas who have to walk miles to school are often at risk of violence.

Education laws must provide for free and compulsory education for all children without discrimination, including in rural areas, and should also promote secondary and higher education, which should be progressively provided free of charge as state resources are available.<sup>39</sup> In order to address the additional barriers that girls face, it is also important to establish education policies that not only guarantee universal primary education, but also promote the participation of girls, sensitize school personnel on gender issues, sensitize families on the importance of education for girls, provide adequate facilities and safe environments for girls and provide sexual education.

**Advocates should work with lawmakers to ensure that they understand their obligations and the importance of implementing education policies for girls. They should also work with families and communities so that they understand the importance of keeping girls in school, including the benefits to girls, their families and their communities, and to empower women and girls to access their rights.**

### **Health Care Laws**

The 1325 framework also recognizes the critical role of health services in promoting peace and security for women. Women who have been victims of violence in conflict need special access to health care services. **UNSCR 1889** recognizes the need for improved holistic services for women and children including health care. Most recently **UNSCR 2122** specifically calls on states to provide access to all sexual and reproductive services to women who are pregnant as a result of rape during conflict. Access to health care is also critical in peacetime. **ICESCR** provides for the right to health without discrimination. **CEDAW** and the **Maputo Protocol** guarantee the health and reproductive rights of women. The **MDGs** aim to improve maternal health and reduce child mortality.

In conflicted-affected countries, lack of resources and facilities, prevalence of HIV/AIDS, harmful traditional practices, and lack of access to family planning services and contraception are often challenges for women.

The right to health includes the rights to accessible and quality health facilities, goods and services on a non-discriminatory basis; provision of essential medicines; access to shelter, housing and sanitation, an adequate supply of safe drinking water and minimum essential food which is healthy and safe; healthy occupational and environmental conditions; protection against epidemic diseases; and access to sexual and reproductive health services.

States should adopt appropriate legislation and devote the necessary and available financial resources to ensure the right to health for women. Laws and policies should:

1. Ensure the availability of adequate and facilities, trained personnel and essential drugs and services for women.
2. Take measures to improve maternal and child health.
3. Provide sexual and reproductive services and family planning without discrimination.
4. Disseminate information and promote good health and preventive care.
5. Provide information and counselling on health-related issues such as HIV/AIDS, domestic violence and substance abuse.

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<sup>39</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR).

## Health for Development in Rwanda

Rwanda has recognized health as a key pillar in its vision of development. Through its **Health Sector Policy** (2005) and its **Health Sector Strategic Plan**, Rwanda has made enormous efforts in recent years to improve health services, which have benefitted women as well as men. These have included improving child and maternal health practices; preventing and treating HIV/AIDS, which has been one of the most critical health and social issues facing the country; improving and expanding reproductive health services, including family planning; improving prevention of infectious diseases such as malaria; and providing community health insurance to cover medical costs for the poor, which has especially benefitted women due to their specific reproductive health needs.

## Employment Laws

Women everywhere have faced discrimination in employment, and economic vulnerability leaves women open to all types of abuses, especially after conflict when they are left to provide for themselves and/or have been displaced and are in need of livelihoods. **ICESCR**, **CEDAW** and the **Maputo Protocol** guarantee women equal rights in employment. The **Geneva Conventions** and the **Refugee Convention** protect the employment rights of those affected by armed conflict. Employment laws should prohibit any type of discrimination in the workplace based on sex, ensure the rights of women to equal opportunity and equal pay for equal work, prohibit sexual harassment in the workplace, protect women against discrimination based on pregnancy or motherhood and provide for maternity leave. Refugees should also be equally protected in employment. Employment policies should also provide equal training and vocational opportunities for women and men.

## Citizenship and Nationality Laws

Citizenship and nationality laws are extremely important for women because they define who is considered a citizen and thus entitled to the benefits that accompany citizenship. In many places citizenship laws discriminate against women by recognizing citizenship only through paternal lines, which often makes a woman's citizenship status dependent on her husband and her marital status and deprives women of their nationality, their ability to change their nationality and their ability to pass citizenship on to their children. In addition, as **UNSCR 2122** recognizes, displaced women are often vulnerable due to unequal citizenship rights, as they become dependent on their husband's nationality and they can lose their own nationalities upon marriage, divorce or death of a husband. The **International Bill of Rights** guarantees to all people equality before the law. The **ICCPR** guarantees to everyone the right to marry freely. **CEDAW** specifically states that women have equal rights with men to acquire, change or retain their nationality and that of their children. Legislation should give women equal rights regarding all aspects of citizenship and nationality, including the rights to pass on their citizenship to their children, regardless of the nationality of their husbands.

## Uganda's Citizenship Laws

Uganda's citizenship laws provide an example of legislation that protects women and gives them equal status to men. The Constitution provides that every person born either in or outside of Uganda who has one parent or grandparent that is a Ugandan citizen is considered a Ugandan citizen by birth. Thus citizenship can be determined both through the father and the mother. Under Ugandan law:

- Both a man and a woman can pass on citizenship to their child or grandchild
- A Ugandan husband or wife can pass on citizenship to their spouse
- Any person who has gained Ugandan citizenship through marriage can retain citizenship after divorce
- Any person can regain their Ugandan citizenship if they lost it through marriage to a person in another country where they were not allowed to keep their Ugandan citizenship

## Refugee and Internally Displaced Person Laws and Policies

1325 specifically recognizes that women and children account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons (IDPs). It refers to the **Refugee Convention** and mandates that parties protect women and girls in humanitarian situations in settlements such as refugee camps and IDP camps, and take into account their needs. **UNSCR 2122** recognizes the vulnerability of displaced women due to unequal citizenship rights, gender-biased asylum laws and difficulties in accessing identification documents. The **Maputo Protocol**, in its specific provisions related to the protection of women in armed conflicts, requires states to protect asylum seeking women, refugees, returnees and internally displaced persons against all forms of sexual violence and exploitation. The **ICGLR Protocol on the Property Rights of Returning Persons** protects the property rights of returning refugees and IDPs, especially women, girls, widows and orphans.

Although much of the responsibility for assisting refugees falls to the UN and humanitarian agencies, states are also responsible for enacting laws and policies related to refugees that will protect their rights according to international norms, and especially protect women and girls who are the most vulnerable. Within camps, women and girls are exposed to abuse and sexual violence due to their insecure environments, as they struggle to take care of themselves and provide for their families. They are often subject to abduction, rape and assault, both by military forces and individuals within the camps. States need to ensure that military and other parties attending to camps protect women rather than harm them, and that camps are established with the needs of women and children in mind. Outside of camps, refugees must find safety and security living in a foreign society and women and children remain especially vulnerable. It is important to have laws and policies that protect them from discrimination and ensure their civil, economic, cultural and social rights as outlined in the **Refugee Convention**. Women should also be included in decision-making processes regarding refugees and protected from gender discrimination.

## Protecting Refugees in Uganda

Uganda is host to thousands of refugees from neighboring countries, including Burundi, the Democratic Republic of the Congo, Kenya, Rwanda, the Sudan and South Sudan. In 2012, the UN High Commissioner for Refugees (UNHCR) office in Uganda counted more than 190,000 registered refugees and asylum-seekers.<sup>40</sup>

In 2006, Uganda adopted refugee legislation that was regarded as a model for Africa, recognizing the right of the country's refugees to work, move around the country and live in the community, rather than in special camps. The legislation clearly enumerates the rights of refugees, as well as their obligations in Uganda. It defines who is a refugee and it is gender sensitive. **Importantly for women, refugees include those with a well-founded fear of being persecuted for reasons of sex in their own country, and those who for failure to conform to gender discriminating practices are compelled to leave their country to seek refuge in another country.**

With the help of UNHCR, community-driven assessments that take into consideration age, gender and diversity are used to provide refugees with targeted health care, primary education, legal aid for victims of SGBV and subsistence allowances for the chronically ill or incapacitated. UNHCR is working with the Office of the Prime Minister, the Refugee Eligibility Commission, the newly created Refugee Appeals Board and district governments to build their institutional capacity to deal with refugee issues. It is also urging the Government to consider providing refugees with the options of naturalization or indefinite residency status.<sup>41</sup>

## Internally Displaced Person Policies

Recent conflicts have resulted in an increasing number of internally displaced persons (IDPs). Approximately two-thirds of the world's forcibly uprooted people are displaced within their own country. There were 28.8 million IDPs around the world in 2012 with Sub-Saharan Africa the region with the largest total number of IDPs, at 10.4 million.<sup>42</sup> The two-decade conflict in Northern Uganda caused the displacement of an estimated two million people, with the height of displacement in 2003-2004.

Women and girls are especially vulnerable in these situations. As in refugee camps, women and girls are often subjected to abduction, rape and sexual assault in the insecure camp environments. It is therefore important for countries whose populations have been displaced, in order to maintain stability and order, to establish policies that will create an environment that will protect those who have been displaced, especially women and girls; address the causes and effects of internal displacement; assist in the safe return of the displaced; and develop programs to reintegrate the displaced with social and economic support. Uganda is one of the few countries in the world to have adopted a national IDP policy. **This is an area where advocacy needs to be developed in line with 1325 and the UN's Guiding Principles for Internally Displaced Persons.**

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<sup>40</sup> UNHCR 2013 Country Operations Profile – Uganda, <http://www.unhcr.org/pages/49e483c06.html>.

<sup>41</sup> Ibid.

<sup>42</sup> UNHCR, Internally Displaced Person Figures, <http://www.unhcr.org/pages/49c3646c23.html>.

## Uganda's National Policy for Internally Displaced Persons

The National Policy was developed in August 2004 primarily to address the needs of those displaced by the conflict, but also to address those displaced by natural or human-made disasters. The policy's objectives are to minimize internal displacement and its effects by providing an enabling environment for upholding rights and entitlements of the internally displaced; to promote integrated and coordinated response mechanisms to address the causes and effects of internal displacement; to assist in the safe and voluntary return of the internally displaced; and to guide the development of sectoral programs for recovery through rehabilitation and reconstruction of social and economic infrastructure in support of the return and resettlement of IDPs. The Office of the Prime Minister, Department of Disaster Preparedness and Refugees is the lead agency for the protection and assistance of IDPs. Multi sectoral planning mechanisms are established at the National, District and Sub-County levels to address the protection and provision of humanitarian assistance of IDPs.

The Ugandan Policy, drawing from the **UN's Guiding Principles on Internal Displacement**, approximates a comprehensive policy, addressing all causes of internal displacement.

Provisions of note include:

- Acquisition of private property for the well being of the internally displaced
- Development of a database on internally displaced persons
- Consultation and participation mechanisms
- Recognition of the right to voluntary return or resettlement
- Replacement of lost or destroyed documents
- Acquisition of legal interests or certificates of customary ownership in land
- Recognition of the right to family unification
- Community involvement in land identification and distribution
- Tax exemption for the internally displaced

The policy has faced challenges in effective implementation, including lack of capacity of local and central level government officials; the continuing insecurity and lack of protection in and around IDP camps; the role of the military and police forces; the need for greater access to humanitarian assistance; the importance of increased consultations with IDPs; land issues and other arrangements for IDP returns; and financial resources to carry out the policy.

## National Action Plans

The UN and advocates have called for countries to create 1325 National Action Plans (NAPs) in order to address implementation of the 1325 framework. These are national policy documents that detail how government bodies and stakeholders tasked with security, foreign policy, development, and gender equality will actually carry out the 1325 principles both within their own countries and in their foreign policies, during times of both peace and conflict. Although they do not carry the weight of law, they offer a tool for governments to articulate priorities and coordinate the implementation of 1325 and outline specific steps that countries will take, and thus are important guidelines for governments as well as strong tools for advocates to hold their governments accountable. In addition, once in place they can be used as leverage to lobby lawmakers to pass the legislation necessary to carry out the goals of the NAP and make them permanent, legally binding obligations (as seen previously in the case of Uganda, which created a NAP on UNSCR 1325,1820 and the Goma Declaration on Sexual Violence in 2008 then subsequently passed several laws related to GBV.)

Civil society has played a strong role in working with governments to create national action plans. As of the end of 2013, 43 countries have implemented national action plans.<sup>43</sup>

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<sup>43</sup> For a list of NAPS, see <http://www.peacewomen.org/naps/list-of-naps>.

Civil society groups should work closely with the appropriate government agencies to develop a comprehensive NAP. Those who have been directly affected by the conflict should also be included in the process. Advocates and practitioners that work on the NAP should be able to clearly articulate the elements of the framework and international obligations. Comprehensive NAPS should:

- Establish a multi-sector strategy for implementation of the 1325 framework and assign specific responsibilities to government bodies, civil society organizations, private sector institutions, and development partners.
- Cover the four pillars of 1325: participation, protection, prevention, and gender mainstreaming.
- Provide for the coordination, follow-up and evaluation of implementation activities.
- Include budget estimates for activities to be integrated into institutional plans of actions and budgets. Civil society should advocate for the funding of NAP activities in order to ensure that they are carried out.

### Institutions

Government institutions are essential in carrying out law and policy. One of the major challenges identified in the case studies include educating institutions on gender issues. In order for the women, peace and security framework to become and remain embedded, institutions must be established to promote and be vigilant for the laws and policies that will include and protect women and advocate for gender equality. **Ministries of gender, foreign affairs, land, defense, human rights commissions, law reform commissions, parliamentary institutions, and others are key in implementation of the women, peace and security framework.** The framework must be embedded in their policies and personnel must be adequately trained. Institutions must have the capacity to address gender issues, which includes training and thorough knowledge of international, regional, and domestic obligations related to women, peace and security. Institutions should be entrenched to the extent possible in the country's constitution in order to give them teeth and empower them to address gender issues.

**Ministries of Gender:** Establishing a ministry especially dedicated to gender ensures that gender issues are given priority and improves coordination amongst government agencies on gender issues. **Such ministries must additionally be empowered through adequate personnel, funding, and authority.**

## Recommendations

In addition to the specific recommendations made under each area of law above, the following are general strategies that policymakers, practitioners and advocates should use in advocating for laws and policies:

1. **Know and use the 1325 framework.** Lawmakers, advocates, NGOs and grassroots communities must be educated on the international framework around GBV and other women's rights as outlined above. All of the country's international, regional and national obligations should be used to press for passage of GBV and gender related bills.
2. **Articulate the effects of gender-based violence and discrimination against women and girls on individuals, families, communities and national development.** In addition to being human rights issues, gender-based violence and women's poverty, illiteracy and lack of health care due to discrimination have serious consequences for development, and this can be a very effective argument when dealing with policymakers. The effects of violence and discrimination often keep women out of school and out of the workplace, which affects the economy as well as the family. There are also serious health consequences that not only harm the population but also drain national resources. A healthy, productive citizenry that includes women and men equally benefits everyone.

3. **Garner support for bills through awareness raising.** In order to overcome barriers in passing what can be controversial bills, lawmakers and advocates need to raise awareness about gender issues and human rights principles and obligations throughout the country in order to gain support for proposed legislation. This includes:
  - Grassroots communities, who can apply pressure to their representatives
  - Religious and community leaders, who are key to changing cultural perceptions and practices
  - Parliamentarians, who must understand the effects of GBV and discrimination and the need for related legislation
4. **Counter cultural arguments.** In many communities, culture is used to justify discrimination and violence against women. **International and regional law make it clear that discrimination against women and sexual violence are wrong and not to be permitted under any circumstance.** Although customary law is recognized in countries such as Uganda and Rwanda, it is only permitted to the extent that it does not violate constitutional principles or statutory law, including discrimination or harm against women. Arguments that women’s rights are a “western concept” are to be countered by showing that both regional and domestic mechanisms have developed their own frameworks around women’s rights and their critical role in establishing sustainable peace.
5. **Engage in human rights education.** Advocates should educate communities about their human rights, especially to counter negative attitudes and practices and make women aware of their rights.
6. **Advocate for funding mechanisms.** Without funding, laws will not be implemented. Practitioners and advocates need to leverage government obligations, including all relevant domestic, regional and international obligations to carry out these laws, to get them into the budget. The best way to do this is through gender responsive budgeting.
7. **Establish effective monitoring mechanisms.** Monitoring mechanisms are also critical in ensuring that laws are implemented. This includes establishing the proper institutions with adequate capacity. Civil society also plays an important role in monitoring government activity and disseminating reports. Utilizing the government’s obligation to report on its compliance with international and regional treaties can be an important monitoring tool and pressure point for civil society.

# JUSTICE

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The justice sector is key in advancing the women, peace and security framework, as it is through the courts that laws are enforced. However, it tends to be one of the sectors most in need of rebuilding after conflict. Both Uganda and Rwanda experienced the dual challenges faced by many conflict-affected countries: the destruction of the formal justice system, and the existence of strong customary justice systems. Through guaranteeing equality in constitutions and ratifying international and regional instruments such as **CEDAW** and the **Maputo Protocol**, governments signal their commitments to ensuring that women can access justice no matter what kind of legal systems are in place.



Policymakers, practitioners and advocates and international organizations and donors must understand these obligations and both press governments to fulfill their obligations and assist them in establishing and building a justice system that will be independent, equitable and accessible to women and men equally.

## Access to Justice

In order to improve access to justice for women in post-conflict systems, legal practitioners, government officials, civil society advocates and local leaders should use the principles contained in the **1325 framework**, the **International Bill of Rights**, **CEDAW**, regional instruments such as the **Maputo Protocol** and **constitutional provisions** on discrimination, equality, women's rights and access to justice to advocate for the necessary elements of justice that will be discussed in this chapter.

In addition to having a functioning justice sector, it is also critical that women have access to the justice system, with adequate and appropriate protections and reparations. **CEDAW**, the **Maputo Protocol**, and **all of the UN Women, Peace and Security resolutions** stress the need for equality before the law and access to justice for women, including:

- Ending impunity
- Ensuring the prosecution of perpetrators and access to justice for all victims
- Supporting national institutions – especially the judiciary and health sector – and civil society organizations to assist victims of sexual violence
- Strengthening rule of law institutions by undertaking comprehensive legal and judicial reform when necessary to conform with international law in order to ensure prosecution of perpetrators and access to justice for victims
- Prohibiting amnesty for all forms of sexual violence
- Improving provision of holistic services for women including legal, health, social and economic services

Several obstacles to access to justice for women in conflict-affected countries in the region have been identified, including:

1. Lack of a fully functioning system
2. Patriarchal dominance
3. Ignorance of new laws
4. Lack of human-rights based approach to administration of justice
5. Lack of strategy or policy for addressing war-related violence
6. Ineffective police intervention/lack of police protection
7. Burdensome costs



8. Distance of courts
9. Corruption
10. Convoluted processes placing time, transportation, money and evidence burdens on women
11. Backlogs

There are pre-existing challenges in the region preventing access to justice that have not been addressed, including the costs associated with the complaint process and medical examinations in the case of violence, and the physical inaccessibility to courts for many in rural areas. There is a lack of sensitization among the judiciary and law enforcement. The majority of law enforcement officers such as the police, local councils, health workers, community development officers, and probation officers are not trained on the new laws and the prevention of gender-based violence, and there is little privacy or protection for victims. Women are still accorded low status in many areas and have inadequate knowledge and information about their legal rights and the working of the legal system.

The enforceability of rights also depends on access to courts. Courts are often inaccessible to ordinary people, who may not be familiar with the court system and may be too poor to actually access them. Therefore human rights commissions and alternative dispute resolution mechanisms such as mediation or arbitration<sup>44</sup> – including local and traditional mechanisms - can be very important to defend rights. Some countries have experimented with mobile courts, which with the proper structure and monitoring can be effective ways of reaching remote communities. In many communities, traditional justice has been used to promote reconciliation. However, these systems tend to be male dominated and thus reinforce women's marginalization.

In **South Sudan**, where the justice sector is currently in the process of being rebuilt after years of conflict and the country's birth as a new nation, only psychosocial and health services exist for women and victims SGBV. Access to justice is part of a multi-sectoral approach that has not even been addressed.<sup>45</sup> In addition, legal assistance is rarely available.<sup>46</sup> There is a need to advocate for women in both formal and traditional courts.

## The Role of NGOs

**Non-government organisations (NGOs) have been instrumental in helping individuals and groups seek enforcement of their rights.** They help to empower women through the law by educating women, judges, lawyers and other practitioners on international and regional laws and 1325, along with domestic laws. They also provide legal services. In some instances, they provide direct legal aid to individuals either before courts or in alternative dispute resolution. For example, FIDA Uganda has established legal aid clinics in Northern Uganda where clients pay only case registration fees and are assisted with mediation or, if necessary, court filings.<sup>47</sup> This includes mobile clinics that go out to communities to register and, where possible, mediate cases. In other instances they engage in strategic litigation or public interest litigation, which involve cases brought on behalf of the public or a broad group of people alleging rights violations and seeking legal reform.

Establishing holistic aid centers where women can access comprehensive services including legal advice, health care, and other support have proven to be successful models. The Rwanda Women Network has established several Polyclinics of Hope throughout Rwanda, adopting a holistic approach to the plight of women survivors of sexual and gender-based violence by addressing their health, psychosocial, shelter and socio-economic needs in the aftermath of the 1994 genocide. Beneficiaries include current cases of sexual and gender-based violence, widows, orphaned and vulnerable children, and people living with HIV/AIDS.<sup>48</sup>

<sup>44</sup> Mediation involves negotiations between parties facilitated by an impartial third party; arbitration is when each party to a case presents evidence to an impartial third party arbitrator, who then makes a decision on the case.

<sup>45</sup> Interview with Caroline Nyamayemombe, GBV Specialist, United Nations Population Fund (UNFPA), Juba, April 16, 2013.

<sup>46</sup> This was a common theme shared amongst all of the stakeholders interviewed.

<sup>47</sup> Interview with staff of FIDA-Uganda Gulu Office, Gulu, April 23, 2013.

<sup>48</sup> Interview with Mary Balikungeri, Founder and Executive Director of Rwanda Women Network, Kigali, December 12, 2013.

It is important to empower women lawyers' organizations and improve legal aid services to help women understand their rights and navigate the court system, and help bear case costs.

However, outside of a few NGOs working with women's legal rights, there is little knowledge of international law among lawyers working in the region. **Arming lawyers with the power of these instruments along with domestic law would provide them with further strategies for advocating for the legal rights of women.**

**Training paralegals** has also been a critical aspect of bringing access to justice to women. Local paralegals play an essential role in ensuring that women know their rights and can help them navigate both the formal and informal justice systems. When paralegals are based in the community, their understanding of local social and political structures enables them to offer advice with a full understanding of the context. They are also able to reach out to more women in the community.

**International NGOs, multilateral institutions, donors and policymakers should recognize the important roles of NGOs and work to build their sustainable capacity.**

## Justice Sector Reform

Establishing, or re-establishing, a strong national justice system is critical to the rule of law. Post-conflict legal systems must include the creation of a formal, independent judiciary, which should be entrenched in the constitution. In many countries affected by conflict or transitioning to democracy, the judiciary has traditionally been tied to the ruling regime. Cultures of corruption and impunity have prevailed, preventing women from seeking justice and allowing perpetrators of crimes and violence against women to go free.

The 1325 framework stresses the need to end impunity and ensure access to justice for women in order to maintain peace and security. It is a recurrent theme throughout the resolutions, especially in relation to sexual violence. Most recently **UNSCR 2106** stresses the need for justice sector reform and calls on states to undertake initiatives including legislative and policy reforms that address sexual violence; training in sexual and gender-based violence of justice and security sector professionals and the inclusion of more women at professional levels in these sectors; and judicial proceedings that take into account the distinct needs and protection of witnesses as well as survivors of sexual violence in armed conflict and post-conflict situations, and their family members, in order to ensure safe court environments for women to come forward and seek justice.

In order to comply with the principles of 1325 and international obligations relating to women's participation in decision-making, and to safeguard women's interests and maintain security and stability, judiciaries must include women. Furthermore, judges, lawyers and other court personnel must be adequately trained on gender equality and women's rights principles, including international law.

***At the end of the day, even if prosecutors and lawyers know the laws, it will not matter if the judges handling the cases are not gender sensitive.***

- Jonathan Muwaganya, State Attorney of the High Court of Gulu, Uganda<sup>49</sup>

Experience shows that it is often the judges who bring aspects of international law and human rights into the courtroom.

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<sup>49</sup> Interview Gulu, April 23, 2013.

## Judicial Activism: Applying International Law in Ugandan Courts

In terms of international law in Uganda, it generally comes into play through judges. Under the Ugandan Constitution, international treaties must be ratified then domesticated through national law; however, nothing prohibits courts from referring to them. Because the Constitution is so firmly aligned with universal human rights principles, it is widely accepted that the Constitution and domestic laws should be interpreted in compliance with international obligations. Although there is no common practice, some courts have relied on international treaties to interpret domestic law, including **CEDAW, UDHR, ICCPR and CRC**.<sup>50</sup> In addition, some judges have been progressive in citing directly to **CEDAW** to protect the rights of women.<sup>51</sup> It is therefore important to train judges on human rights and international instruments.

The practice in Uganda complies with the **Bangalore Principles**, which were established by a group of chief justices mainly from former commonwealth countries in 1988. According to these principles, judges in dualist countries (where international law is not directly applied but has to be domesticated through national law), judges may use international law to help interpret national constitutions, legislation or common law. These principles have influenced judges throughout the world.<sup>52</sup> **Advocates in dualist countries can use these principles to urge judges to use international treaties such as CEDAW to interpret law in domestic courts.**

It is important also for **prosecutors** to be knowledgeable about women's rights and especially about the laws that they should be applying in court. In Uganda, for instance, many prosecutors at the local levels have not been trained on the country's new laws on domestic violence and female genital mutilation and thus rely on outdated provisions of the Penal Code.<sup>53</sup>

### Recommendations

NGOs, women judges and lawyers organizations and civil society advocates should work with policymakers and justice sector personnel to:

1. **Establish a formal, independent judiciary that includes women.** The inclusion of women will be made easier if the constitution and quota laws reach all sectors of decision-making, including the judiciary. In Rwanda, for example, where the 30% quota pertains to all levels of government, women are well represented in the judiciary. This often results from lobbying by women's groups.
2. **Empower judges.** Judges must be sensitized on gender issues and trained on human rights principles including international human rights law and domestic law, and how to use them in the courtroom. They often have the greatest ability to bring these principles into the courtroom.
3. **Empower prosecutors.** They must be sensitized and trained on new laws. As witnessed in Uganda, many prosecutors at the local levels have not been trained on the country's new laws on domestic violence and female genital mutilation and thus rely on outdated provisions of the Penal Code.<sup>54</sup>
4. **Create safe court environments for women.** Sensitize court personnel on how to deal with women victims of violence including issues of privacy and avoiding revictimization through insensitive or abusive behavior. Establish effective procedures to protect the safety, privacy, and welfare of women in order to encourage them to bring their cases to court.
5. **Sensitize law enforcement on gender issues.** This including training on how to deal with women who have been victims of violence; human rights principles; current laws; and effective investigation techniques.

<sup>50</sup> Manisuli Ssenyonjo, *The Protection of Women's Human Rights by Domestic Courts in Africa: A Perspective from Uganda*, THE AFRICAN REGIONAL HUMAN RIGHTS SYSTEM: 30 YEARS AFTER THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS, Manisuli Ssenyonjo ed. (Leiden, The Netherlands, Martinus Nijhoff Publishers, 2012), 364.

<sup>51</sup> Interview with Sylvia Tamale. See, for instance, *Uganda v. Peter Matovu, Cr. Case No. 146 of 2001*.

<sup>52</sup> Global Justice Center, *Legal Tools for the Establishment of Gender Equality through International Law*, 7, at [http://worldpulse.com/files/upload/2411/legal\\_tools.pdf](http://worldpulse.com/files/upload/2411/legal_tools.pdf).

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

6. **Strengthen formal institutions** through advocating for additional resources and providing capacity building, and educating them on the women, peace and security framework and obligations.
7. **Empower lawyers.** Lawyers should be knowledgeable about women’s rights and the women, peace and security framework, including international, regional, and domestic obligations.

## Constitutional Courts

Many constitutions establish a **Constitutional Court**, which hears claims of constitutional violations and review Acts of Parliament, bills or statutory instruments to determine whether they comply with the Constitution. These are specialized courts where judges who are experts in constitutional law and human rights interpret constitutions and decide claims of violations, and often develop human rights jurisprudence where legislation does not exist. In fact, change can often be brought more rapidly and effectively through the courts than through legislation. Constitutional courts in countries such as Uganda have been instrumental in defining and enforcing women’s rights. In many developing countries undergoing processes of legal and social reform, a new, independent and impartial judiciary is often necessary to provide the judicial activism and leadership necessary to help bring about the social transformation envisioned by new constitutions.

## Strategic Litigation

Strategic litigation (sometimes referred to as public interest litigation) involves cases brought before a court, on behalf of the public or a broad group of people, alleging rights violations and seeking legal reform. Along with political lobbying and mobilizing social movements, it is a method that advocates have used to challenge gender discrimination and raise awareness of women’s rights.<sup>55</sup> A growing body of jurisprudence throughout African countries and globally shows that strategic litigation can bring about reform where lawmakers have been slow, unable or unwilling to act. Successful cases, where court decisions identify gaps or change laws that violate constitutional or human rights – such as provisions of law that discriminate against women - can often motivate government action and lead to swifter legal reform on key issues pertaining to women’s equal rights before the law. Such cases can serve to:

- **Advance the legal understanding of women’s rights under international human rights law and confirm that they are enforceable at the national level**
- Enforce or clarify laws already in place
- Challenge laws that should be repealed
- Create new laws

Globally, strategic litigation has resulted, for instance, in decisions that marital rape is a crime (Nepal)<sup>56</sup>; women have the right to be free from sexual harassment in the workplace (India)<sup>57</sup>; customary inheritance laws must comply with guarantees of equality (South Africa)<sup>58</sup>; discriminatory citizenship laws are incompatible constitutional guarantees of equality (Botswana)<sup>59</sup>; women have the right to an abortion in certain circumstances (Colombia)<sup>60</sup>; and that reparations for women should be aimed at transforming the underlying gender inequalities that give rise to GBV (Inter-American Court of Human Rights in regards to Mexico)<sup>61</sup>. Most of these cases considered the government’s obligations both domestically under the country’s constitutions and internationally under **CEDAW**.

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<sup>55</sup> UN Women, *In Pursuit of Justice*, 16.

<sup>56</sup> *Meera Dhungana on behalf of FWLD v HMG*.

<sup>57</sup> *Vishaka v State of Rajasthan*.

<sup>58</sup> *Bhe v Khayelitsha Magistrate*.

<sup>59</sup> *Unity Dow v Attorney General of the Republic of Botswana*.

<sup>60</sup> *Women’s Link Worldwide on Behalf of Martha Solay, Judgment of the Constitutional Court of Colombia*.

<sup>61</sup> *Gonzales and others v Mexico*.

## Strategic Litigation in Uganda

The use of strategic litigation by NGOs assisted by private lawyers is a strong advocacy tool in Uganda. Several landmark constitutional cases have been decided in recent years challenging discriminatory provisions of Ugandan law and clarifying women's rights.

In 2003, FIDA Uganda (the Association of Women Lawyers) and five petitioners filed a constitutional petition seeking declarations to the effect that several sections of the Divorce Act violated the Constitutional rights of non-discrimination, equality before the law and equal rights in marriage and its dissolution.<sup>62</sup> The Divorce Act gave various rights and advantages to men in divorce proceedings that it did not give to women. The court held that the relevant provisions of the law were unconstitutional. The decision was a milestone in upholding women's rights and subsequent divorce cases have upheld the ruling.

In 2007 a case was brought before the Constitutional Court challenging the constitutionality of the customary practice of demand for and payment of bride price.<sup>63</sup> Petitioners alleged that demanding bride price as a condition for marriage and a demand for repayment as a condition for dissolution should be declared unconstitutional. They argued that a demand for bride price by parents of the bride from prospective sons in law as a condition precedent to valid customary marriage perpetuates conditions of inequality between the husband and wife in violation of Article 31(3) of the Constitution which states that marriage shall be entered into with the free consent of the man and woman intending to marry, as well as Article 33(6), which provides that laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited, and Article 24 requiring for respect for humanity and protection from inhuman treatment.

The court held that the practice of bride price in itself should not be declared unconstitutional because in many cases of customary marriages it represents an agreed arrangement and is considered a gift between families. However, in cases where a couple does not agree to such an arrangement, or cannot provide the bride price or dowry and thus have no way to marry, their constitutional right to enter into marriage by consent has been violated. The court also agreed that demand of refund of the bride price upon dissolution of the marriage in fact undermines the dignity of a woman and violates her rights to equality in marriage and upon dissolution. In such cases, the aggrieved party should be able to file criminal proceedings or a civil action before a relevant court. Although the petition was dismissed, it was at least a clarification that neither a woman or a man should be forced to pay or refund a bride price in order to marry or divorce.

Also in 2007 the Constitutional Court declared provisions of the Penal Code Act concerning the crime of adultery to be unconstitutional because it treated women differently from men. Under the law, a married man could have an affair with an unmarried women but a married woman could not have an affair with an unmarried man. In the same case the Court also ruled several provisions of the Succession Act unconstitutional for discrimination against women, giving preference to men and preventing women from receiving inheritance.<sup>64</sup>

The decisions regarding the Divorce Act and Penal Code Act are still awaiting law reform to give them full effect. The Law Reform Commission is currently working on revising legislation based on the decision regarding the Succession Act.

**In 2010 the Court ruled that the practice of female genital mutilation (FGM) violated both the Constitution and the international law to which Uganda is a party, taking into account the UN Interagency Statement on Elimination of FGM stating that FGM violates a series of well-established human rights principles including equality and non-discrimination and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment.<sup>65</sup> During the pendency of the case,**

<sup>62</sup> *Uganda Association of Women Lawyers & Others v Attorney General, Constitutional Petition No. 2 of 2003.*

<sup>63</sup> *MIFUMI Uganda LTD & Others v Attorney General and Kenneth Kakuru, Constitutional Petition No. 12 of 2007.*

<sup>64</sup> *Law and Advocacy for Women in Uganda v Attorney General, Constitutional Petitions No. 13/05 and 05/06.*

<sup>65</sup> *Law and Advocacy for Women in Uganda v Attorney General, Constitutional Petition No. 08 of 2007.*

which was filed in 2007, Parliament had rejected a bill outlawing FGM; however, by the time the case was decided, a bill had been passed.

Although in African countries rights tend to be enforced more through NGOs rather than individuals, NGOs often lack capacity and funding. In addition, there can be problems in implementation in the absence of law reforms implementing such decisions. The most impact is achieved when cases are part of wider campaigns for social change that provoke public debate and discussions in the media, to help ensure that progressive decisions are embraced by all of society.<sup>66</sup>

## Human Rights Institutions

Human rights institutions can play an important role in promoting and protecting human rights principles and monitoring compliance with international standards. Especially in countries that have experienced conflict, **Human Rights Commissions (HRCs)** are important in addressing human rights abuses. Duties of HRCs may include:

- Receiving and investigating complaints of human rights violations. Some Commissions, such as Uganda's, have the power to decide cases; others such as Rwanda's refer cases to courts when it finds so applicable.
- Monitoring jails, prisons and other places of detention.
- Monitoring government compliance with international human rights treaties.
- Sensitizing government institutions regarding international human rights treaties and integrating them into existing national law.
- Submitting reports to relevant international human rights treaty monitoring bodies.
- Publishing reports on its findings.
- Submitting reports to parliament on the state of human rights and freedoms in the country.
- Establishing human rights education programs and raising public awareness of human rights and constitutional protections.

However, HRCs tend to lack focus and resources.

### Uganda Human Rights Commission

One of the most important elements in Uganda's institutional framework has been its Human Rights Commission. Critically, the Commission is entrenched in the Constitution and an outgrowth of Uganda's turbulent past characterized by arbitrary arrest, detention without trial, torture and brutal repression with impunity on the part of security organs. In 1986, the NRM government formed a Commission of Inquiry into Human Rights Violations committed by all of the regimes of government from 1962 until the NRM took over in 1986, and to consider possible ways of preventing such violations. The 1994 report of the Commission recommended establishing a permanent truth and reconciliation body or institution addressing issues of human rights. Members of the Commission, headed by a judge of the Court of Appeals, used the UN's Paris Principles – the international framework for establishing human rights institutions – to argue that the body should be entrenched in the supreme law of the land in order to have teeth. In addition, heeding the Ugandan people's overwhelming support for the protection and promotion of rights of women, the family, children and people with disabilities and to redress the historical and cultural injustices done to those important sections of society, the Constitutional Commission recommended a constitutional provision for a permanent and independent Human Rights Commission which would be easily accessible to all.

A majority of the Commission's cases have related to torture, liberty, property and child maintenance, brought against the police, military, private individuals and the Uganda Prisons Services. The Commission has been successful in outreach especially in rights education for the police and army, and in helping the public become more aware of their rights. In 2012 the UHRC won the award for best national human rights

<sup>66</sup> UN Women, *In Pursuit of Justice*, 16.

institution in Africa from The African Commission on Human and Peoples' Rights.

However, in relation to women's rights cases, the Commission's impact has been limited. A vast majority of the cases brought before the UHRC by women relate to child maintenance. Only a very limited number of complaints relate directly to violations of women's rights such as domestic violence, gender-based violence or land tenure. The Commission generally refers these types of cases to legal service NGOs.<sup>67</sup> The Commission's ability act in favor of women's rights has been constrained by a lack of financial resources due to inadequate government funding, its broad mandate and the prevalence of discriminatory traditions and customs, which require long-term human rights education and awareness raising to reform.<sup>68</sup>

**In addition, although the Commission is tasked with monitoring compliance with international human rights treaties and has been involved with CEDAW review and reporting, it has little knowledge of UNSCR 1325. This, along with the Commission's constraints as noted above, represent a missed opportunity for advancing the women, peace and security framework, especially as it is working in conflict areas and has done much to harmonize relations between the military and civilian population.<sup>69</sup>**

## Recommendations

1. **Entrench Human Rights Commission in constitutions.** To the extent possible HRCs should be entrenched in constitution in order to give them real power.
2. **Empower Commissions to deal with women's rights violations.** Advocates and politicians should advocate for adequate funding and resources for the HRC to hear cases of women's rights violations other than maintenance and custody. Commissions and the NGOs to which they pass women's rights cases should join together to advocate for more resources for the Commission.
3. **Educate Commission staff on UN Security Council Women, Peace and Security Resolutions.** This will increase their awareness of their obligations and how protecting women's rights is an important part of maintaining peace and security, which they can then use in their awareness raising activities in the field. NGOs and advocates can play critical a role in this in providing trainings on 1325. Officials in charge of overseeing the functions of the Commission should make such training mandatory.

## Customary Justice

In many countries, it is also important to take into account the customary law or traditional justice systems that operate at the community level. After conflict, the formal systems have often been destroyed or left with little capability, while it is the customary systems that continue to function. In post-conflict reconstruction, rule of law must be established through the government structure; however, in order to be effective, formal legal systems must adequately address and/or incorporate customary law. In countries where systems of customary or religious law exists alongside formal state law, constitutions should address whether it is to be recognized and to what extent. Where recognized, customary law or religious law should be prohibited when it goes against fundamental or constitutional rights including women's rights. Although arguments of "cultural relativism" – meaning certain practices even when discriminatory are acceptable in certain cultures but not others – or women's rights as a "western concept" are often used to justify discriminatory traditional or religious practices, both international and regional norms as developed globally and by non-western states themselves shows that these arguments have in fact been rejected at the policy level. The **International Bill of Rights** outlaws any form of discrimination based on sex. **CEDAW** requires that countries eliminate all discriminatory laws, policies and practices against women. The **Maputo Protocol** specifically protects women from harmful traditional practices, as do national constitutions and laws.

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<sup>67</sup> Such as The Uganda Association of Women Lawyers - FIDA Uganda, which provides legal services and assist with strategic litigation.

<sup>68</sup> FIDH, *Women's Rights in Uganda: Gaps Between Policy and Practice*, 8-9.

<sup>69</sup> Interview with George Ufoyusu.

Customary law often is the primary reference for the regulation of the lives of many in respect to basic activities and relationships including family life, property rights, land and livestock, and is often the forum for settlement of civil disputes. In building justice systems it is critical to understand the local perceptions of law and justice. It is important, however, to address from the beginning how and to what extent customary law is to be recognized, and how it will be harmonized with the formal justice system. Traditional or community law mechanisms have many advantages, including filling gaps where formal legal systems are not functioning; making law more accessible, especially to those in rural areas; and being focused on more conciliatory types of actions. They tend to focus on restorative rather than punitive justice, seeking to repair social harmony in the community, restoring relations between the perpetrators and victims and providing some sort of reparations for victims.

However due to traditionally patriarchal systems, they also tend to be gender biased. It is critical, then, that the constitution and enabling laws prohibit any customary law that curtails women's rights as specified under national, regional and international instruments. It is also important to work with traditional leaders and sensitize them to gender issues including all national, regional and international obligations.

In addition, laws and policies must address what types of cases will be under the jurisdiction of customary courts; what the appeals process will be; and how decisions might be appealed to or authorized/recorded by formal courts. Even where customary justice is used at the community level, cases should be recorded or approved by the local government court, in order to build local jurisprudence.

### **Addressing Customary Justice in Uganda**

In establishing its post-conflict legal system, Uganda had to tackle the issues that many conflict-affected countries must face: the destruction of the formal justice system and the existence of strong customary justice systems. During the constitutional process, people expressed concern about the administration of justice and the little relevance that formal courts had in the lives of most ordinary people.<sup>70</sup> In pre-colonial Uganda the kingdoms had administered the law. Such laws sought amicable dispute resolution through compensation, reconciliation or restitution. The aim was to create peace, stability, harmony and cooperation, all of which were regarded as indispensable to society. The administration of justice was clearly understood by everyone because it evolved out of their own practical and historical experiences. The colonial law imposed by Britain was often not in harmony with these customs and practices, was distant and inaccessible to people in rural areas and understood only by a privileged few such as lawyers. After decades of war, the institutions of Uganda were in tatters and the people were left with few alternatives for justice either between formal or informal systems. Recognizing the importance of the rule of law and a strong formal justice system, the Constitution established a formal, independent judiciary. However, customary systems and practices are allowed to exist as long as they are not in conflict with any constitutional principles including equality and nondiscrimination against women. Further, the Judicature Act provides that customary law shall be applicable in courts of law only if it is not repugnant to justice, morality and good conscience.

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<sup>70</sup> Report of the Constitutional Commission of Uganda, 1995.



## Challenges in Harmonization in South Sudan

Harmonization of the two justice systems can be a challenge at any time, but is especially so after conflict, when state institutions have often been destroyed. For instance in South Sudan, before the conflict there was a system in place that laid out how the two systems would work together, and how customary courts would interact with the judiciary. The Chief Justice was the sole authority to establish both types of courts. That was undone during the years of conflict. The judiciary no longer has supervision over local courts, but rather most local courts are acting through local government or traditional authorities, which results in a lack of a coherent system and situations in which customary courts are often overstepping their boundaries and hearing cases that should be beyond their jurisdiction, such as rape. In some communities, the system has been successfully reestablished. However, in others, the judiciary has not yet succeeded in working with local governments to harmonize the two systems.

## Recommendations

1. **Harmonize formal and informal justice systems.** Where customary justice systems are recognized, the constitution and enabling laws should make clear what can be under the jurisdiction of customary courts, and how the customary system is to interact with the state system.
2. **Where applicable, strengthen customary justice systems.** Where customary justice systems are to be utilized, resources should be invested to improve their effectiveness and strengthen their capacities to carry out justice according to constitutional and human rights principles.
3. **Prohibit discriminatory practices.** Prohibit any customary practices that are against international, regional or domestic principles of human rights and women's rights.
4. **Sensitize traditional and religious leaders.** Civil society should work with traditional, cultural and religious leaders to sensitize them to gender equality and women's rights principles, applicable domestic laws, and regional and international instruments. This will be discussed in Part Three.

## Transitional Justice

It is imperative to establish systems that adequately address justice for perpetrators of gender-based crimes before, during and after conflict. Impunity has been one of the greatest obstacles to sustainable peace. **UNSCR 2106** highlights the importance of a comprehensive approach to transitional justice in conflict and post-conflict situations, encompassing the full range of measures as appropriate.

Transitional justice refers to the set of judicial and non-judicial measures that are implemented in order to redress legacies of massive human rights abuses during a country's transition from conflict or authoritarian rule, address and heal divisions in society, provide justice to victims and accountability for perpetrators, create a historical record and restore the rule of law and promote co-existence and sustainable peace.<sup>71</sup> These measures include criminal prosecutions, truth commissions, reparations programs (which generally involve monetary or other compensation) and various kinds of institutional reforms – for instance reform of the judiciary, legal, police, penal and military sectors to promote the rule of law and end human rights violations and systematic discrimination.<sup>72</sup> It can also consist of more community-based programs, either run by the government or by civil society groups, which promote peace and reconciliation.

<sup>71</sup> International Alert and the Initiative for Inclusive Security, *Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action*, 2004, Ch. 4, p. 1.

<sup>72</sup> International Center for Truth and Justice (ICTJ), *What is Transitional Justice*, <http://ictj.org/about/transitional-justice>.

## **Rwanda's National Unity and Reconciliation Commission**

The Rwandan Government established the National Unity and Reconciliation Commission to promote peace, unity and prosperity in Rwanda, through the preparation and coordination of national programs aimed at building national unity and reconciliation amongst all Rwandans. The Commission was made permanent by the 2003 Constitution. It carries out its functions through civic peace education programs, leadership programs, national summits, trainings and research. The Commission has made progress mainly through intensive mobilization, training and grassroots partnership with citizens in peace building and solving social conflicts.

Transitional justice is an approach to justice that seeks to balance the need for accountability and recognition of victims' suffering with the desire to achieve a lasting peace and true reconciliation. There are two underlying values involved:

1. Justice
2. Reconciliation

Transitional justice is an important part of the healing and reconstruction process. For women, this often means seeking justice for the sexual violence, displacement and loss of property that they suffered during conflict, as well as reparations for such crimes and lack of access to social services and other entitlements due to discriminatory policies or practices.

There is no "one size fits all" approach to transitional justice. While there will be common elements in the construction of a path towards justice and reconciliation, the individual nature of a society and its history will frequently determine the precise nature of the transitional justice process.

Transitional justice may take place at the international level in international courts. As discussed in Part One, international tribunals have played an important role in the development of international criminal law on sexual violence. Rwanda had its own international tribunal established in the ICTR. The Ugandan Government referred the situation in the north to the ICC in 2005, resulting in arrest warrants for rebel leader Joseph Kony and other LRA leaders.

In addition to the international tribunals, some special courts have been established – with the help of the UN - in conflict-affected countries to try war crimes, crimes against humanity, genocide and criminal offenses such as murder, rape and torture. These are mixed tribunals that combine international and national elements. Such courts have been established in Sierra Leone, Kosovo, Cambodia, Timor-Leste, Bosnia-Herzegovina and Lebanon.

However, the international justice mechanisms try only the highest officials and have largely not been directly effective for women on the ground. In addition, while they address justice, they do not address reconciliation. Most transitional justice must occur at the national and local levels, and both formal and customary systems have been important in transitional justice in post-conflict countries. In these contexts, customary processes have been helpful as complementary or alternative processes to international or national systems in addressing transitional justice and establishing stability at the community level. Traditional justice procedures take place at the community level and involve traditional or religious leaders, elders, local officials or other respected community members.

## Transitional Justice in Rwanda

*In 1994 there was no choice but to make peace aggressively.*

- Sheick Saleh Habimana, Rwanda Governance Board<sup>73</sup>

Rwanda has pursued an ambitious justice and reconciliation process with the ultimate goal of all Rwandans once again living side by side in peace. In the years following the genocide, more than 120,000 people were detained and accused of bearing criminal responsibility for their participation in the killings. In addition, over 250,000 women had been raped.<sup>74</sup> To deal with such an overwhelming number of perpetrators, a judicial response was pursued on three levels:

1. International criminal tribunal
2. National court system
3. *Gacaca* courts

### International Criminal Tribunal for Rwanda (ICTR)

In the wake of the genocide Rwanda looked to the international community for help. The government felt that rule of law was critical in ending the culture of impunity that had existed in the country since independence, and felt that justice was the path to national reconciliation.<sup>75</sup> The UN Security Council established the Tribunal in Arusha, Tanzania in November 1994 to prosecute the highest level perpetrators for the genocide and crimes against humanity committed in Rwanda between January 1 and December 31, 1994. The ICTR has been instrumental in developing international criminal law around sexual and gender-based violence and the violation of women's rights. The Tribunal completed the trial phase of its mandate in December 2012. Of the 93 persons indicted for genocide, crimes against humanity and war crimes, 83 have been arrested with 75 of them prosecuted to judgment; 65 of those tried were found guilty and convicted, while 10 of the accused have been acquitted. Nine accused are still at large. The ICTR is expected to conclude its work by the end of 2014.

### National Court System

Although the ICTR was set up to try the highest level perpetrators, the vast majority of the genocide cases had to be handled at the national level. In terms of transitional justice, Rwanda's national courts prosecute those accused of planning the genocide or of committing serious atrocities, including rape and sexual violence. The 1996 Organic Law on the Organization of Prosecutions Constituting the Crimes of Genocide or Crimes Against Humanity Committed since October 1990 recognizes the importance of women and the severity of crimes committed against them by placing crimes of rape and other sexual torture under Category 1, the most serious category of crimes. The task facing the courts, however, was daunting, due to the sheer number of individuals accused, the destruction of the system and the fact that most prosecutors and judges had been targeted and killed during the genocide, leaving the court system with little capacity.

### *Gacaca* Courts

As the national court system struggled to deal with the number of genocide cases that needed to be tried, and seeing that in many ways the punitive justice of the ICTR and national system was not working in terms of justice and reconciliation at the grassroots level, the government looked to the traditional system of community-based *gacaca* courts to promote restitution and national reconciliation. Human Rights Watch deemed it "one of the most ambitious transitional justice experiments in history, blending local conflict-resolution traditions with a modern punitive legal system to deliver justice for the country's 1994 genocide."<sup>76</sup>

<sup>76</sup>

*Gacaca*, meaning "judgment on the grass" in Kinyarwanda, offered a pragmatic and community-based solution to the challenges facing the Rwandan government. Traditionally *gacaca* was intended to restore harmony and social order through truth telling, retribution, compensation to victims and reintegration of the

<sup>73</sup> Interview with Sheick Saleh Habimana, Rwanda Governance Board, December 13, 2012.

<sup>74</sup> Outreach Programme on the Rwanda Genocide and the United Nations, *Background Information on the Justice and Reconciliation Process in Rwanda*, at <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>.

<sup>75</sup> Kaley Nash, "A Comparative Analysis of Justice in Post-Genocidal Rwanda: Fostering a Sense of Peace and Reconciliation," *Africana*, Vol. 1, No. 1, 2007, 73.

<sup>76</sup> Human Rights Watch, *Justice Compromised: Legacy of Rwanda's Community-Based Gacaca Courts*, 2011, 1.

perpetrator into the community. In 2002, the government launched a contemporary form of *gacaca* to try genocide cases and the courts were included in the 2003 Constitution.

In the *gacaca* system, communities at the local level elected lay judges from the community to hear the trials of genocide suspects accused of all crimes except those listed in Category 1. The courts gave lower sentences if the person was repentant and sought reconciliation with the community. As a community-based institution, participation was mandatory for everyone and legal professionals generally were not involved in the proceedings. Judges were provided basic training by the National Service of Gacaca Jurisdictions (SNGJ, the state institution that oversaw the courts), and the community at large served as the General Assembly. From the community's reports, dossiers were compiled about what transpired in a particular community during the genocide, and judges relied on these dossiers to conduct hearings.

In terms of participation, women benefitted from government support in *gacaca* courts, comprising approximately 30% of the judges. Some *gacaca* courts had women presidents. This was a significant advancement, as traditionally only men were allowed to serve as *gacaca* judges. A woman, Domitille Mukantaganzwa, headed the SNGJ. The process also empowered women by allowing them to participate and share their stories, and engage with communities.

Due to the slow pace of the national courts, in May 2008 the Rwandan Government passed a new law that transferred most of the remaining Category 1 cases to the *gacaca* courts, including cases of sexual violence. Just over 8,000, or 90 percent of these cases, involved rape or sexual violence.<sup>77</sup> The law provided that such cases would be heard behind closed doors in order to protect the victims' privacy. However, even with this provision, the community-based nature of the *gacaca* system often made it impossible to protect victims' identities. Many questioned whether this was an appropriate forum for trying cases of rape and sexual assault, and there were serious concerns regarding protecting women from invasions of their privacy, reprisals from the accused and from the community and biases by judges with ties in the community.

Reviews of the *gacaca* have been mixed. It was able to bring a swifter justice to the community, allow for more restorative justice and provide for the participation of women. However, there were many issues in implementation and clear challenges in trying cases related to sexual violence. Between 2005 and 2012, more than 12,000 community-based courts tried over 1.2 million cases throughout the country. The *gacaca* courts officially closed on May 4, 2012. Domestic prosecution of genocide cases is becoming increasingly important because the special mechanisms created to bring accountability for the Rwandan genocide are concluding their work.

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<sup>77</sup> Ibid at 113.

## Transitional Justice in Uganda

### The International Crimes Division

In order to ensure compliance with the Rome Statute and in an effort to enforce accountability for the crimes committed during the conflict in Northern Uganda, in 2010 the Government of Uganda passed the International Criminal Court (ICC) Act. The law allows Ugandan courts to try crimes against humanity, war crimes and genocide as defined under the **Rome Statute**. Accordingly, an International Crimes Division attached to the High Court has been established and tasked with applying the Act to crimes committed during the conflict and to enable domestic investigations and prosecutions to hold perpetrators accountable. However, very few cases have been brought before the ICD, and to date none have been brought on behalf of women and girls. One major obstacle to functioning of the court has been Uganda's amnesty law, which provided amnesty for any rebel who "renounces and abandons involvement in the war or armed rebellion." The Amnesty law was repealed in 2012.

### The Acholi Traditional Justice System

In the north, the traditional system has played an important role in transitional justice. Traditional justice in Acholi culture is restorative rather than punitive, seeking to repair social harmony of a community rather than establish individual innocence or guilt. In Acholi, one person's crime extends to the entire family and the community. Crimes are handled in open courts and held at different levels according to the nature of the conflict. Serious conflicts involve elders at the clan or inter-clan level, whereas elders and peers at the familial, sub-clan or clan level can handle less serious crimes.

The Acholi traditional justice system was recommended by the Acholi and their cultural leaders to the Ugandan government during the 2006 peace talks as a way to deal with LRA rebels. The Acholi traditional justice mechanism of *Mato Oput* requires that the offenders admit guilt and ask their victims for forgiveness. It aims to restore relations between the perpetrators and survivors. This has been a particularly sensitive issue in Acholi land, as many of the perpetrators of crimes during the conflict were members of the community who had been abducted by the LRA as children; thus the challenge is how to reintegrate them back into the community. However, *Mapo Oput* it is meant to deal at the community level, and not at the larger scale level of the conflict and those bearing most responsibility for abuses. Nor do traditional systems deal with capital offenses such as rape, mutilation, abduction, disappearances etc., although local women's groups are working with traditional leaders to help mediate cases of gender-based violence.<sup>78</sup>

In addition, although the traditional systems can be useful in dealing with disputes at the local level, especially where the formal justice structures are weak, they are based on strongly patriarchal systems and often discriminate against women. Working to sensitize traditional leaders has been important in improving justice for women.

## Recommendations

As recognized in **UNSCR 2106**, policymakers, the judicial and legal sectors, advocates and traditional and religious leaders should work together to use a wide array of methods to address justice and reconciliation at national and local levels and address justice for women in order to bring peace and stability to the country.

1. **Empower national courts.** National courts must deal to the extent possible with transitional justice matters, especially the prosecution of perpetrators of violations against women. As discussed previously, this includes sensitizing court personnel, educating them on human rights principles, enacting appropriate reform and ensuring that national legislation conforms to international norms and adequately protects and provides justice for women. Special divisions dealing with war crimes can be useful if they have adequate resources, expertise and mechanisms for handling crimes against women.

<sup>78</sup> Interview with UN Women Gulu Office, April 23, 2013.

2. **Utilize traditional systems.** When applicable, traditional processes can be very useful in transitional justice and reconciliation. However, their jurisdiction must be made clear and proper protections and procedures must be put in place for the protection of women against discriminatory practices.
3. **Advocate for the adoption of international laws in transitional justice processes.** The **Rome Statute** defines sexual violence as war crimes and states are responsible for prosecuting them. In addition, international and regional instruments such as **CEDAW**, the **International Bill of Rights**, the **Maputo Protocol** and the **ICGLR Pact** not only require access to justice for women but also address issues of discrimination and guarantee equality in all political, civic, economic, social and cultural spheres.
4. **Ensure the participation of women.** Women should be part of all levels of transitional justice processes, including participating in the planning and design of mechanisms to ensure that they are gender-sensitive and acting as judges.
5. **Advocate against amnesty.** Amnesty laws have often prevented justice for women and perpetuated a culture of impunity.
6. **Engage in public awareness-raising activities.** Engaging the public in transitional justice processes, and especially on gender issues, will help garner support for the process as a whole and for women's rights in particular.

**Part Three: Strengthening the Rule of Law  
and Access to Justice for Women Through  
Working with Communities**

**Instituting adequate laws that are properly implemented are a key element in achieving the women, peace and security framework's goals of participation, protection and prevention of conflict. Doing this requires taking a holistic approach to the rule of law. This means not only working at the level of law and policy, but also working at the grassroots level to educate people on their rights and to change the cultural and institutional perceptions that have allowed discriminatory practices to persist. Practitioners must take both a top-down and bottom-up approach, bringing the two together.**

Having laws on the books is just a first step. Without proper implementation, they remain words on paper and do not change the lives of women and men on the ground. Two of the biggest overall challenges identified in the case studies include changing perceptions and educating institutions and working with traditional cultures. In order to truly bring about change and establish lasting peace and security in a country, it is critical to use the rule of law to advocate at the most local of levels. There is often a gap between law and cultural attitudes, which prevents the laws from actually being implemented and creating change. In addition, cultural attitudes are often the source of conflict. Patriarchal power structures, attitudes about the roles of women and the disempowerment and abuse of women are all factors that lead to insecurity. Having laws in place is important but they will not work unless there are changes in the structural and institutional forces that bring about inequality in the first place.<sup>79</sup> Working at the cultural and grassroots levels is critical in preventing conflict and promoting rights, and in connecting the law to the people.

This part looks at some of the programs and strategies identified in the case studies that have been successful in working with communities to implement laws on gender equality and women's rights.

## **WORKING WITH TRADITIONAL, CULTURAL AND RELIGIOUS LEADERS**

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*The enforcement of human rights in Uganda is still hampered by cultural traditions that are detrimental to the human rights culture.*

-- Margaret Sekaggya, Chairperson,  
Uganda Human Rights Commission, 2007

Many conflict-affected countries have strong traditional cultures. In these contexts, traditional, cultural and religious leaders are the gateways to the community. People respect and follow them. They are often the decision makers in conflicts and disputes within the community. If they do not agree with the laws, the laws do not work. It is critical, then, to work with these leaders in implementing laws in order to:

1. Ensure that they know and understand their – and their communities' - legal obligations.
2. Sensitize them to gender and human rights issues.
3. Work with them to sensitize their communities and change discriminatory attitudes.

Conflict, especially when it is prolonged for decades as it was in Northern Uganda, leads to the breakdown of families and societies, displacement, loss of culture, shifts in gender roles and difficulties in reintegrating societies peacefully. Traditional and religious leaders can play an important role in restoring order and peace in their communities.

The experience of conflict and war has been key to gaining the support of traditional and religious leaders on gender issues. Conflicts leave behind a vast number of widows and orphans, and leaders cannot close their eyes to them. If they are to make community peace, leaders must include these women and girls. After conflict traditional leaders receive an overwhelming number of cases that have a gender dimension. Thus they can no longer remain rigid in their traditional gender perspectives.<sup>80</sup>

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<sup>79</sup> Interview with Professor Sylvia Tamale.

<sup>80</sup> Interview with Kenneth Oketta, Prime Minister of Ker Kwaro Acholi, Gulu, April 24, 2013.



In working with traditional and religious cultures, it is important to put law and human rights principles in terms that they can understand. **Two concrete examples from Uganda show how working with traditional and religious leaders can link law directly to culture and make gender concepts more understandable and accessible to everyone.**

In Northern Uganda, **FIDA Uganda, the Association of Women Lawyers**, has been working with local elders in the Acholi districts to address sexual and gender-based violence in their communities, training chiefs in the mediation of disputes and supporting principles to help work with them at the grassroots level to handle cases of gender-based violence and sensitize communities on gender issues. Working with the **Ker Kwaro Acholi (KKA)**, a legal-cultural institution of 54 traditional leaders who head various clans, FIDA created a set of **cultural gender principles**. With the common goal of promoting women's rights in the region, FIDA and the Paramount Chief of the KKA appointed a task force that worked to document local cultural practices. They also held extensive legal education sessions to raise community awareness of women's rights and mechanisms for justice. This resulted in the drafting of the gender principles, which drew from the Constitution, the Domestic Relations Bill, and international human rights instruments. Joining local practices and human rights norms, the gender principles provide recommendations on the definition of marriage, regulation of polygamy, sexual rights, property rights, divorce and separation, violence against women and inheritance and property rights. The gender principles are meant to serve as a guide to the KKA leaders in deciding cases relating to women's rights.

The process has also resulted in an important and continuing dialogue between activists and traditional leaders on enhancing women's rights and access to justice. FIDA is currently developing a toolkit on how traditional leaders handle cases of transitional justice, which will include best practices and lessons for improvement. There are also plans to develop community by-laws with traditional leaders to address critical issues in the community including depression and alcoholism, which has become a major source of domestic violence.<sup>81</sup>

Importantly, the KKA, in addition to sensitizing and training traditional leaders on gender issues, also has a local leadership structure that includes women. Each community has a traditional woman leader, called a *Rwodi Akoro*, who works with women in the community to help resolve social issues and disputes, bringing them before the court if necessary.

The **Uganda Muslim Supreme Council** has developed training toolkits that link human rights to concepts in Islam, putting the principles in a framework that the Muslim community can understand. According to the Supreme Council's National Coordinator for the Women's Desk, teaching human rights through the context of the Koran, and not just relying on international principles, is important, otherwise the community will often refuse them as a "western concept."<sup>82</sup> She therefore tasked Muslim scholars in the community to write part of a training toolkit on Islam and Human Rights that deals specifically with violence against women. The toolkit outlines international human rights law instruments, and then utilizes Koranic verses to discuss specifically how Islam approaches these fundamental rights. Training workshops have helped Muslim leaders and members of the community learn about these fundamental rights and understand that violence against women is not acceptable under Islam. It is a good example of how religious precepts that have often been used to discriminate against and subjugate women can be used in just the opposite way – to show that there is in fact no justification for violence against women.

Although working with rigid traditional societies and changing perceptions can be one of the greatest challenges for women and gender equality advocates, these two examples illustrate methods that advocates can use to engage cultural principles, rather than just work against them, to gain support and begin to change minds.

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<sup>81</sup> Interviews with FIDA Kampala office December 3, 2012 and FIDA Gulu office April 23, 2013. Similar efforts are also underway in some areas of South Sudan, where post-conflict issues in the community are following similar patterns. Interview with Paramount Chief of Magwi, Magwi County, Eastern Equatoria, South Sudan, April 18, 2013.

<sup>82</sup> Interview with Nageeba Hassan, National Coordinator of Women's Desk, Uganda Muslim Supreme Council, Kampala, December 4, 2012.

## Recommendations

Legal practitioners, civil society and other activists should work closely with traditional, cultural and religious leaders to:

1. Sensitize and train leaders on gender issues.
2. Train leaders on women, peace and security and the 1325 framework.
3. Train leaders on gender related laws and mediation of cases related to women's rights.
4. Link international human rights norms to cultural and religious principles in ways that are relevant to the particular community.
5. Include women in traditional and religious group leadership.
6. Work with leaders to sensitize communities to issues related to gender equality and women's rights including gender-based violence, land rights and women's economic empowerment.
7. Work with leaders to address the underlying issues of gender inequality, including discriminatory attitudes, harmful practices, land rights issues and more recent post-conflict phenomena such as alcoholism, which leads to other abuses such as domestic violence and assault.

## EMPOWERING COMMUNITIES

The **legal empowerment of women** at the grassroots level is critical in operationalizing the women, peace and security agenda, in order to ensure that laws relating to their rights actually reach them and make a difference in their lives. **Taking a holistic approach to law means bringing the law to the people and empowering them to advocate for themselves and use law to bring about change.**

It is important to build grassroots structures for capacity building on women's rights and peace building. Education is power. Women must know their rights in order to access them. 1325 has been a powerful tool for advocacy when women have had the knowledge to use it. Armed with knowledge of the framework and the international obligations, women and grassroots advocacy groups can put pressure on local and national governments to fulfill their obligations. In addition, women must understand their rights under the law and mechanisms for redress of violations in order to be empowered to access justice.

NGOs have been especially instrumental in training women at the grassroots levels, and more training is needed for sustainability and maximum impact. One of the best ways to do this is not only by holding trainings, but also by identifying women who can then be trained to train their peers – thus having a multiplier effect. This is referred to as training of trainers (TOTs).

Women are often leaders in community peace building. It is important to empower them to participate in politics, decision-making, and community activities related to peace building. In Northern Uganda, for example, Gulu Women's Economic Development and Globalization (GWED-G) has been training grassroots women on peace building tools including the **1325 framework** and **CEDAW**, and on their role in politics and decision making processes.<sup>83</sup> The concrete results have been the election of grassroots women to political positions.

One major gap identified by several civil society organizations is the **need to connect grassroots activities to the international community in order to truly empower grassroots women.** There is a disconnect between international advocates and what is actually happening on the ground. Bridging this gap will help equip women to carry out the mandates of 1325. **More grassroots women need to be brought into high level consultations with the UN and other international agencies and donors; in addition, international advocacy groups should highlight the activities of groups on the ground and promote the sharing of best practices.** Regional networking is also important. The Rwanda Women Network (RWN), for example, promotes exchanges of women from 11 countries throughout the region to observe

<sup>83</sup> Interview with Pamela Angwech, Executive Director, GWED-G, Gulu, April 23, 2013.

RWN's programs and especially its Polyclinics of Hope,<sup>84</sup> share best practices, network and connect their experiences with **1325** and **CEDAW**.<sup>85</sup>

It is also critical to engage men in order to change power structures and promote gender equality and peace within communities. Men generally control institutional, governmental and community structures, and thus are important allies for women to gain access to power and decision-making. In addition, working with men at the grassroots level helps them to understand the value of treating women as equals and changes perceptions and practices. Identifying males in the community that support women allows them to serve as role models to change family dynamics, sensitize their peers through understanding of gender issues and women's rights and support the economic empowerment of women, which in the end benefits both families and communities.

### Engaging Men

Successful programs run by organizations such as CARE, Promundo, and the Rwanda Men's Resource Centre (RWAMREC) in the region have programs targeted specifically at men that aim to deconstruct typical ideas of masculinities and educate men on gender equality and women's rights. CARE works to involve men in joint strategies with their wives to manage resources and share domestic, parenting and income earning roles.<sup>86</sup> Role model families show their communities that they are living well because they have equality and peace in their homes. In several countries, including Rwanda, Promundo has carried out the International Men and Gender Equality Survey (IMAGES), a comprehensive household questionnaire on men's attitudes and practices – along with women's opinions and reports of men's practices- on a wide variety of topics related to gender equality, which has been used to inform programs to engage men in gender equality and GBV prevention, including in post-conflict settings. Promundo has also implemented a program that promotes men's support of women's economic empowerment.<sup>87</sup> RWAMREC mobilizes men to change perceptions of masculinities and promote gender justice through programs of men-to-men education, community mobilization, radio programs, working with religious leaders and through programs engaging men to support women in microfinance.<sup>88</sup>

**Community dialogues** have been successful strategies in educating both women and men on women's rights and promoting peace and equality within communities. GWED-G holds community dialogues in villages throughout Northern Uganda that bring together women and men to discuss and debate new laws and community perceptions relating to women's rights.<sup>89</sup> These are informal, accessible gatherings that often take place sitting under a tree. Using theater, dance and music have also been successful ways to teach communities about principles of peace and women's rights. Many groups are also using media such as print and radio advertisements, radio talk shows and mobile texting to get information to communities about women's rights issues. These are effective ways to demystify laws and teach communities about international, regional and domestic laws and human rights principles in terms with which they can relate.



<sup>84</sup> An international award-winning program that provides holistic services to survivors of GBV and HIV patients.

<sup>85</sup> Interview with Mary Balikungeri, Founder and Director of Rwanda Women's Network, Kigali, December 12, 2012.

<sup>86</sup> Interview with David Labeja, CARE Uganda, December 4, 2012.

<sup>87</sup> Discussions with Promundo staff based in Washington, DC and Kigali, Rwanda, between October 2012 and April 2013.

<sup>88</sup> Interview with Fidele Rutayisire, RWAMREC Chairperson, Kigali, December 14, 2012.

<sup>89</sup> Community dialogue session attended in Bobi sub-county, Gulu, April 25, 2013.

**Psychosocial support** for both men and women is an important element in making the rule of law work at the local level. Experience in the Great Lakes Region indicates that depression and alcoholism have been high in communities affected by conflict, as those who have been involved in the conflicts struggle to reintegrate into society and adjust to changes that occurred while they were gone, including changes in gender roles within household. Women become the breadwinners and men often return unemployed, disenfranchised and frustrated. These underlying issues must be addressed otherwise laws will be ineffective and the threat of conflict will remain. One of the successful strategies for doing this has been to engage traditional leaders, as discussed previously, to engage men on these issues and to **use legal frameworks, including community by-laws, to sensitize the community and change behaviors.**

In addition, **Community Action Plans (CAPS)** have shown to be effective strategies in the region for bringing together all stakeholders in the community to develop plans to address women's rights, access to justice and to services and promote peace and security. These are a concerted effort of women, men, civil society organizations (CSOs), legal professionals, service providers, community leaders and relevant government agencies to develop strategies to address issues within the community and coordinate services. They include:

- Facilitating access to legal, medical and psychosocial support.
- Providing training, capacity building, and awareness raising with duty bearers including government, lawyers, paralegals, judges, magistrates, law enforcement, CSOs and service providers in order to equip them with the skills and positive approaches necessary to address women's rights violations.
- Building the capacity of women to access their rights.
- Monitoring the implementation of the CAPs.

In South Sudan, communities are traumatized and need services and support from the government but do not know how to get them. Community Action Plans provide a way for people to connect with their local governments and get the services that they need.<sup>90</sup>

Groups should advocate for CAPS to be included in local government development plans, so that the activities will be institutionalized, budgeted, resourced, and sustainable.

## Recommendations

Practitioners and advocates should work with communities to:

1. Establish grassroots structures for capacity building on women's rights and peace building in order to educate women on their rights and how to access them and advocate for them, including the 1325 framework and other regional, national and local obligations. This should include community education programs, training workshops and Training of Trainer (ToT) programs for maximum impact and sustainability.
2. Simplify international and legal instruments and translate them into local languages.
3. Empower women to participate in politics, decision-making and community activities related to peace building through training on tools including the 1325 framework and CEDAW.
4. Promote regional and international networks and exchanges to build the capacity of women leaders and share best practices.
5. Bridge the gap between grassroots advocates and international advocates.
6. Engage men to support laws promoting gender equality and women's rights and change perceptions in communities.
7. Use community dialogues to educate women and men on women's rights and laws and promote peace and equality within communities.

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<sup>90</sup> Interview with Paramount Chief of Magwi.

8. Utilize theater, dance, music and media to sensitize communities on gender issues and relevant laws and promote peace.
9. Address the underlying issues in the community that lead to conflict including alcoholism, shifts in gender roles, unemployment and land rights issues by using legal frameworks to engage traditional leaders, men, and communities and promote behavioral change.
10. Develop Community Action Plans as multi-sector, institutionalized approaches that bring together all stakeholders in the community to address gender issues and violations of women's rights and promote peace and security within communities.

# **ANNEXES**

# ANNEX ONE: COUNTRY BACKGROUNDS

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## Uganda

### History of the Conflict

Uganda has had a history of civil conflict since its independence from the United Kingdom in 1962 - triggered by political instability and a series of military coups between groups of different ethnic and ideological composition that resulted in a series of dictatorships. Between 1971 and 1979 Idi Amin Dada led the country through a regime of terror under which many people lost their lives. In 1981 a five-year civil war broke out led by the current president, Yoweri Kaguta Museveni and the National Resistance Army (NRA), and the regime of Milton Obote. The NRA finally succeeded in overthrowing the Obote government in 1986 and Museveni became president, establishing democracy in the country.

The longest and most devastating conflict, however, has been the conflict in Northern Uganda, in the land of the Acholi people.<sup>91</sup> It has been long and complicated, and its root causes are embedded in Uganda's troubled past. The official starting point, however, was resistance in Northern Uganda to the NRA's overthrow of the Obote government in 1986. The resistance was led mainly by Joseph Kony and the Lord's Resistance Army (LRA). Attacks on the civilian population by the LRA were frequent, resulting in the large scale internal displacement of communities, gross human rights violations including the abduction, rape, maiming and killing of civilians, massive recruitment of child soldiers, abduction of girls for sex slavery and widespread sexual violence.

The conflict in Northern Uganda lasted almost 20 years and caused the displacement of an estimated two million people. The height of displacement was in 2003-2004. Every household in Northern Uganda has suffered the effects of the conflict in terms of abduction, death, displacement, poverty, sickness, and other problems. An entire society was systematically destroyed physically, culturally, emotionally, socially and economically.

In recent years, the situation in Northern Uganda has steadily improved as a result of government commitment to end the 20-year old war, increased pressure on the LRA, demands from the international community and the ongoing peace process in the South Sudan Capital of Juba. Peaceful resolution was the most crucial step to be sought by all parties to the conflict. Although the parties were able to draw up a Cessation of Hostilities Agreement in 2006, Kony refused to sign the final agreement. However, the Government of Uganda is implementing the Agreements.

Joseph Kony remains at large and the LRA has continued to terrorize populations in the DRC, South Sudan and the Central African Republic. In the Karamoja region in the east, currently 165,000 people remain displaced in camps due to insecurity caused by cattle rustling and the killing of civilians by Karamojong warriors.

### Role of Women

Despite the years of conflict and its disproportionate impact on women in all areas of Uganda, Ugandan women have had a major role in conflict resolution and peace building.

With the return of democracy in the 1980s, in terms of women's interests, it was the right moment for them to be included. Women had become empowered for several reasons:

- Globally, there was a vocal women's movement, with the "decade of the woman" beginning in Mexico City with the UN's World Conference on Women in 1975. African women participated in subsequent Women Conferences in Copenhagen (1980), Nairobi (1985) and Beijing (1995). Those women who were part of the educated and well traveled elite knew about the movement and the frameworks that were being created.

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<sup>91</sup> The Acholi are an ethnic group from Northern Uganda and South Sudan. Approximately 1.17 million Acholi were counted in the Uganda census of 2002, and 45,000 more were living in South Sudan in 2000.

- Many women participated in the Nairobi conference and came back inspired and ready to organize.
- Women began to realize they were organized and had importance to society.
- Organizations such as FIDA Uganda (the Uganda Association of Women Lawyers) and widows' organizations were being created to support women after the years of conflict.
- Women were empowered economically – during the conflict, men stopped being the sole providers. Women sustained families, beginning with the disappearances and killings of men under the Amin regime and continuing with the conflict in the north.
- Politically – women were becoming organized and advocating for their rights.
- Political will – the government realized that it needed to win the support of women. Museveni had recruited many women into the liberation movement. He realized that in order to win their support politically he had to listen to them. The government also realized the efficiency of channeling resources through the women's organizations that were forming.
- National and local women's organizations were able to take advantage of this new political space and bring women's concerns into institution building.

It was also women who advocated for peace. Betty Bigombe, a member of the Ugandan Parliament, was the chief point person in talks between the Government of Uganda and the LRA. Ugandan women developed women's associations, pressed for negotiations and advocated for gender sensitive peace agreements. During the 2006 Juba peace process, although not officially represented, they formed a Women's Peace Coalition that was present and lobbied for women's interests, and were thus able to influence the outcomes of the peace agreements.

Uganda has a strong legal framework in place addressing gender equality and women's rights that with proper implementation should be able to further the women, peace and security agenda. Women are active in politics and civil society and continue to be instrumental in advocating for new laws to advance gender equality and women's rights and to call for implementation of the country's obligations under 1325, international laws, constitutional principles and domestic laws. Civil society organizations (CSOs) and particularly women's civil society organizations are active in building capacity, educating communities and engaging in high-level policy discussions on gender, peace and security issues. There is strong representation of women in public leadership. Much is being done by the Ministry of Gender, Labour and Social Development, Ministry of Foreign Affairs and CSOs to address gender-based violence and promote the women, peace and security agenda. The Human Rights Commission has been a strong institution working for human rights, and to the extent possible for women's rights, and the Law Reform Commission is addressing discriminatory laws. For these groups, international obligations and corresponding domestication have been key.

However, challenges still remain, including a lack of resources and capacity and traditional discriminatory attitudes. In order for Uganda's strong legal framework around gender equality and women's rights to be thoroughly implemented, it is necessary to:

- Continue to empower women in leadership and build the capacity of women in politics and governance to advocate for gender equality and women's rights principles.
- Disseminate the laws and policies and educate citizens on their rights.
- Continue to work with communities and leaders to eliminate traditionally negative perceptions and practices in order to empower women and increase their access to justice.
- Improve legal aid services for women and support and build the capacity of organizations already providing such services.
- Sensitize law enforcement and government officials on gender issues and new gender laws.
- Strengthen the capacity of institutions to address gender issues and rights violations.
- Advocate for government to allocate sufficient resources to implementation of laws and policies related to gender.
- Sensitize men on gender issues.
- Work with practitioners, civil society and cultural leaders to provide additional psychosocial support to address post-conflict issues such as depression and alcoholism.



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## Rwanda

### History of the Conflict

The conflict in Rwanda in the 1990s, which included the Civil War that began in 1990 and the genocide that took place during three months in 1994, was based on ethnic differences between Hutus and Tutsis, which had been exacerbated since colonial times. Due to historical resentments, Hutu extremists within Rwanda's political elite blamed the minority Tutsi population for the country's increasing social, economic, and political pressures. Tutsi civilians were also accused of supporting a Tutsi-dominated rebel group, the Rwandan Patriotic Front (RPF), which invaded Rwanda in 1990 from Uganda in an effort to unseat the government of President Juvénal Habyarimana. A ceasefire agreement was reached in July 1992, and the war officially ended on August 4, 1993 with the signing of the Arusha Accords. However, despite the accords and the agreement on power sharing, tensions persisted between Hutu and Tutsi factions.

Through the use of propaganda and constant political maneuvering, then President Habyarimana and Hutu extremists increased divisions between Hutu and Tutsi. Hutu extremists began targeting women with the 1990 "Hutu Ten Commandments,"<sup>92</sup> which portrayed Tutsi as the enemy and Tutsi women as their instruments.

The assassination of President Habyarimana on April 6, 1994 when his plane was shot down near Kigali unleashed terror against the Tutsis, who were blamed for the incident. Under the cover of war, Hutu extremists launched their plans to destroy the entire Tutsi civilian population. Tutsi and people suspected of being Tutsi or Tutsi sympathizers were killed. Women were systematically and brutally raped and many were left as widows. It is estimated that some 200,000 people participated in the perpetration of the genocide, and that within three months between 800,000 and one million men, women, and children perished. The civil war and genocide ended when the Tutsi-dominated rebel group, the RPF, defeated the Hutu regime and President Paul Kagame took power.

Rwanda has emerged from the 1994 genocide and its devastating impact and has moved on as a progressive post-conflict country with notable development initiatives that have played a role in peace building and reconciliation along with substantial progress for women.

### Role of Women

Women have played a very strong role in peace building and nation building in Rwanda. They were a part of the liberation struggle, and supported communities and families while men were away or were killed. After the genocide, so many were left as widows that they had to come together to find a way forward. As in Uganda, Rwandan women were buoyed by the international women's movement that was flamed by the 1995 Beijing Conference as well as political will within their country. In 1996 they began to establish women's structures – forums for women to come together and share ideas instead of being isolated. Through their advocacy, the government established funds for women to access credit and loans, as well as the Beijing Secretariat to monitor progress on the Beijing Declaration and Platform for Action, which eventually became the Gender Monitoring Office.

Between 1996 and 1998 women were instrumental in ending the insurgence in the north by telling on or persuading their sons and husbands in the FDLR and other rebel groups to end their armed conflict against the government. Women currently serve as facilitators in peace building and reconciliation programs run by the National Unity and Reconciliation Commission, which bring together genocide survivors and women whose husbands have been jailed for participation in the genocide. Currently, the Rwandan Parliament has the highest participation of women of any country in the world. Women have become very strong advocates for and participants in peace and development in Rwanda.

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<sup>92</sup> A document published in the December 1990 edition of *Kangura*, an anti-Tutsi newspaper in Kigali. The Hutu Ten Commandments are often cited as a prime example of anti-Tutsi propaganda that was promoted by extremists in Rwanda following the 1990 invasion by the RPF and prior to the 1994 genocide.

The Rwandan Government, specifically the ruling RPF, has made women's inclusion a hallmark of its program for post-genocide recovery and reconstruction. The government has recognized the roles that women played both during and after the genocide and conflicts. The policy of inclusion owes much to the RPF's exposure to gender equality issues in Uganda, where many of its members spent years in exile.<sup>93</sup>

Rwanda has been aggressive in implementing its international obligations and gender frameworks, and as a result the country has made great strides in terms of economic development as well as gender equality, all of which contribute greatly to peace and human security. The country has benefitted greatly from strong post-conflict political will to create an inclusive society. Its institutions are strong and gender is mainstreamed into every aspect of planning. Significantly, the government has mainstreamed gender into its development policies and this has not only allowed women to be empowered politically but also economically. Emphasis on the education and health sectors has also greatly benefitted women.

Some of the main challenges in Rwanda remain in reaching the grassroots levels. In order for the country's strong legal framework around gender equality and women's rights to be thoroughly implemented at all levels, it is necessary to:

- Strengthen awareness programs on gender equality, especially aimed at opinion leaders and communities.
- Strengthen the capacity of civil society to advocate at the grassroots level.
- Provide land rights for women who are unmarried.
- Strengthen advocacy efforts to ensure that all stakeholders meet their obligations to provide the necessary services at the local levels.
- Increase legal assistance for victims of gender-based violence.
- Provide rights awareness education.
- Increase community dialogue on gender-based violence.
- Sensitize men on gender issues.
- Build the capacity of government officers to perform gender analysis and gender budgeting.
- Fully fund national policies and legislation to ensure implementation at all levels, including the grassroots level.

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<sup>93</sup> Elizabeth Powley, "Case Study Rwanda: Women Hold up Half the Parliament," in *Women in Parliament: Beyond Numbers*, IDEA 2005, 159.

## ANNEX TWO: INSTITUTIONS, ORGANIZATIONS AND INDIVIDUALS INTERVIEWED

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### Uganda

<b>Acholi Religious Peace Initiative</b>	Loum Patrick, Programme Coordinator
<b>CARE International</b>	David Labeja, Program Officer Rose Nakato, Social Protection Specialist, Gulu Office
<b>Directorate of Public Prosecutions</b>	Jonathan Muwaganya, State Attorney
<b>FIDA Uganda</b>	Stella Biwaga, Program Officer Margaret Atim, Project Coordinator, Gulu Office
<b>GWED-G</b>	Pamela Angwech, Executive Director
<b>Ker Kwaro Acholi</b>	Kenneth Oketta
<b>Makerere University</b>	Professor Sylvia Tamale, Makerere University School of Law Dr. Tom Ogwang Patrick Atyan
<b>Ministry of Foreign Affairs</b>	Robert B. Mugimba, Foreign Affairs Officer
<b>Ministry of Gender, Labour and Social Development</b>	Ida Kignya, Principal Women in Development Officer
<b>Office of the Prime Minister</b>	Mayanja Gonzaga, Asst. Commissioner for Northern Uganda
<b>Uganda Catholic Secretariat</b>	Monsignor John Baptist Kauta
<b>Uganda Muslim Supreme Council</b>	Tegulwa Nageeba Hassan, National Coordinator Women's Desk
<b>Uganda Human Rights Commission</b>	Gordon Mwesigye, Commission Secretary George Ufoyuru, Director of Regional Services Abalo Fiona Opoka, Human Rights Officer, Gulu Office
<b>UN Office of the High Commissioner for Human Rights</b>	Patrick Amihere, District Team Leader/Human Rights Officer Howard Ayo, Programme Assistant
<b>UN Women Gulu</b>	Gerald Loum, Program and Knowledge Management Officer

### Rwanda

<b>ICGLR Women's Forum</b>	Immaculee Ingabire, Chair
<b>Ministry of Foreign Affairs</b>	Michel Makuza, Director of Multilateral Cooperation and ICGLR National Coordinator
<b>National Women's Council</b>	Christine Tuyisenge, Executive Secretary

<b>Promundo</b>	Henny Slegh, Regional Project Coordinator, Great Lakes Region Joseph Vess, Senior Program Officer
<b>Rwanda Governance Board</b>	Sheick Saleh Habimana, Head, Political Parties, NGOs & FBOs
<b>Rwanda Men's Resource Centre</b>	Fidele Rutayisire, Chairperson
<b>Rwanda Women's Network</b>	Mary Balikungeri, Founder and Director

## South Sudan

<b>American Refugee Committee (ARC)</b>	Laura Canali, GBV Program Coordinator
<b>ARC Magwi Office</b>	Charles Okech
<b>Creative Associates</b>	Leila Bogoreh, Chief of Party
<b>International Rescue Committee (IRC)</b>	Erin Gerber, WPE Senior Manager
<b>Ministry of Gender, Child and Social Welfare</b>	Esther Ikere Eluzai Ladu, Undersecretary
<b>Ministry of Justice</b>	Hon. Jeremiah Swaka, Undersecretary
<b>Norwegian People's Aid</b>	Edla Muga, Program Coordinator
<b>Paramount Chief of Magwi</b>	Magwi County, Eastern Equatoria
<b>South Sudan Employees Justice Chamber</b>	Hon. Sylvia Michael Lugor, Deputy Chairperson
<b>South Sudan Human Rights Commission</b>	Charles Laute
<b>South Sudan Women's Empowerment Network</b>	Paleki Matthew Obur, Director
<b>South Sudan Women General Association</b>	Sarah James, Executive Director Michael K. Joz, Consultant
<b>UN Population Fund (UNFPA)</b>	Caroline Nyamayemombe, Gender/GBV Specialist
<b>UN Children's Fund (UNICEF)</b>	Fatuma Ibrahim, Chief of Child Protection
<b>UN Women</b>	Julius Otim, Gender and Security Specialist Firas Gharaibeh, Country Representative
<b>US Agency for International Development (USAID)</b>	Annette Giriayang, Gender Point Person Marianne Yayi Kajokaya, Program Management Specialist, Office of Transition & Conflict Mitigation John Ganako, Program Assistant, Education & Health
<b>US Department of State/Bureau of International Narcotics and Law Enforcement Affairs (INL)</b>	Tim Ecklund, Team Leader, Juvenile Justice Program

## **Sudan**

### **Women Center for Peace and Development**

Suaad Dishol Muhmoud, Manager

### **Women Peace and Security**

Mrs. Nazik Hassan Bashir