

# Claiming space

## Reconfiguring women's roles in post-conflict situations

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“Seeing with eyes that are gender aware, women tend to make connections between the oppression that is the ostensible cause of conflict (ethnic or national oppression) in the light of another crosscutting one: that of gender regime. Feminist work tends to represent war as a continuum of violence from the bedroom to the battlefield, traversing our bodies and our sense of self. We see that the ‘homeland’ is not, never was, an essentially peaceful unitary space.”<sup>1</sup>

### INTRODUCTION

Many African countries are in the process of democratising their states and societies. These periods of transition, often from violent conflict situations, provide opportunities for political reorganisation that can result in human security for all, but particularly for women and girls. Armed conflicts in Africa have predominantly been intrastate, and men, women and children have succumbed in large numbers. For those who survived, their lives and livelihoods have often been severely damaged.

A feature of these conflicts is that the civilian population is increasingly ‘caught up’ in the conflict or even deliberately targeted by parties to the conflict. In this context women and girls are often exposed to acts of violence, including death and injury from indiscriminate military attacks and the prevalence of mines, lack of basic means of survival and health care, and limitations to their means of supporting themselves and their families. During armed conflict, women and children are more likely to be subjected to disappearances, hostage-taking, torture, imprisonment, sexual- and gender-based violence, forced recruitment into the armed forces and displacement.

The paper explores the possibilities of using the institutional frameworks of the United Nations (UN) and the African Union (AU) to include women in

peace negotiations, peace-building and post-conflict reconstruction efforts. It contends that women on the African continent have the benefit of using these international rights-based frameworks in their political efforts to achieve equality and political representation. The paper focuses on the violence that women experience in conflict situations and on state policies and practices as corrective measures for gender inequities, cognisant that this is not the only locus of struggle, because women’s realities are shaped by multiple social hierarchies and gendered power relations are deeply rooted in our societies.

For example, Hudson locates the reasons for gender-based violence in the social hierarchies that women occupy, arguing that:

“The high incidence of violence against women in Africa can be attributed to an interconnected range of cultural/religious, economic, political, military and criminal factors. Culture or customary law is the first factor that influences the physical security of women. The subservient status of women, particularly rural women, in many African countries is deeply rooted in tradition.

Through various marriage rituals, most of these women are objectified. Rituals such as lobola (bridewealth), (female) child pledging, and the tradition of inheriting women (being regarded as the property of fathers, uncles, husbands and older brothers) depersonalise women. These practices set the stage for inflicting harm on women such as beatings by husbands, marital rape, femicide, sexual harassment, and genital mutilation. In the name of tradition, different moral standards often apply to men and women.”<sup>2</sup>

Although this paper does not explore the complex issues involved in transitions that are ultimately unique to each national situation – issues that are usually characterised by the manner in which the previous

**Women and girls are often exposed to acts of violence, including death and injury from indiscriminate military attacks**

regime broke down, the degree of security and confidence of the regime's elites, the presence or absence of financial resources, and the prevailing international trends that provide legitimacy to certain forms of transition – it suggests that these issues are crucial to the ways in which women are included in negotiations and decision-making structures. While it argues for women's inclusion in political processes on the continent, the paper draws primarily on examples from Southern Africa and suggests that the multifaceted ways in which women and children, particularly girls, are affected by armed conflict urgently need to be recognised and appropriately redressed.

### Engaging the state

Jessop observes that the "state arms men and disarms women".<sup>3</sup> In discussing a feminist perspective on human security in Africa, Hudson notes that:

"... the state has been depicted as one of the main sources of women's insecurity. But the analysis is, in fact, more complex. While it is true that men benefit more from the African state than women, it is also correct to point out that, in the context of a continent in crisis, where corruption, undemocratic government procedures, and lack of political accountability exist, and where élites control civil and economic power, both men and women are left insecure. On the one hand, a weakened state can be equated with an insecure state. But in theory, on the other hand, weak states offer the chance for robust social movements to shape their own security."<sup>4</sup>

Post-conflict states in transition also offer opportunities for engagement by political parties and social movements outside the state apparatus.

Commenting on the transition to democracy in South Africa and the opportunity that it provides for changes in gender relations at state institutional level, Hassim notes that:

"Transitions to democracy do not only result in a re-shaping of the formal institutions of the state. They also have the potential to radically alter the relationship between the state, political parties and social movements. From the perspective of relatively weak women's movements, such as in South Africa, these relationships to state, parties and other social movements are crucial in delimiting political possibilities and shaping ideologies and strategies for change. Changes in what social movement theorists refer to as

political opportunity structures and universes of political discourse thus have profound impacts on the nature of gender politics."<sup>5</sup>

Periods of transition provide all marginal groups with the opportunity of engaging the state and having the national agenda altered in their favour. Women in Africa today have the benefit of transnational networks that provide support for national as well as localised campaigns. These transnational networks have been very powerful in the development of an international rights-based framework that favours equality for women with men. These instruments can be used to advocate for and achieve equality in law. This is important because, thus far, gender has not been "... central to the African analysis of politics and security ... [M]ost African governments have failed to integrate women into policy formulation, partly as a result of a lack of understanding of gender issues and how to translate these into policy and also because of a reluctance on the part of male power-holders to lose or share deeply entrenched privileges."<sup>6</sup> Women's agency in relation to the state becomes especially

important with the odds so heavily stacked against them. While globalisation offers opportunities for legal reform, it also places limitations on the state's ability to make economic decisions that will benefit all its citizens. It remains imperative that women engage with the state because:

"In many African countries, the state is the only equalising power in society. It is the only institution with the capacity to provide for the needs of all citizens, and takes equality among citizens as a given according to the prevailing democratic norms.

It is therefore important that the state should not retreat from its social obligations to the citizens, but rather deepen its commitment to social spending and development. The state has to be capacitated and strengthened to meet these challenges and obligations through its organs and institutions."<sup>7</sup>

However, globalisation is increasingly changing the form and content of national politics and policy qualitatively. There is a powerful and persistent push across the globe for the human rights of marginal groups to be recognised and enshrined in constitutions and other national legislation. The period of negotiation provides the space for women and other excluded groups to have their issues and concerns prioritised.

### Reconfiguring justice in post-conflict situations

"Rape is used in armed conflicts to intimidate, conquer and control women and their

### Most African governments have failed to integrate women into policy formulation

communities. It is used as a form of torture to extract information, punish and terrorize. Contempt for the 'enemy' and for women finds expression in rape and other forms of sexual violence. Propaganda portrays women as embodying the honour of a community and an attack on women is seen as an attack on an entire community. Women are raped in front of their families to deepen their sense of shame. In violence focused on women's role as mothers of the next generation, women's bodies are mutilated and fetuses destroyed. The survivors of rape and other forms of sexual violence often do not speak out. They may be at risk of harsh punishment or even death for bringing 'dishonour' on the family. Others may be infected with HIV/AIDS and face social rejection. Access to health care may be manipulated for political reasons. Most never receive justice for the crimes against them."<sup>8</sup>

Post-conflict situations pose a number of challenges to the reconstitution of justice, which encompasses the set of norms and principles that assign rights and duties, and guarantees appropriate distribution of benefits and burdens among societal members. Effective justice ensures due process, engenders a sense of fairness, and forms a basis for public law and order. The breakdown of these can be a major source of conflict. The attainment of justice and reconciliation guarantees the rule of law and the protection of private and collective property. Challenges relating to retribution, restoration and/or healing in post-conflict situations are compounded when viewed through a gendered lens.

Justice systems and structures are usually among the first institutions to collapse in war and conflict situations. Thus, while conflict is raging, members of conflict-ridden societies do not have access and recourse to legal systems for crimes committed against them. Women and girls have been victims of war crimes in "... all major African conflicts from Liberia, Sierra Leone, Democratic Republic of the Congo (DRC), Rwanda, Burundi, Northern Uganda, and Southern Sudan to Somalia"<sup>9</sup> in the past decade. So, for instance in the DRC,

"Despite the considerable progress made on the political front in the DRC since the end of 2002, with the ratification of various peace accords and the establishment of a transitional government in June 2003, political and administrative reunification has not been fully achieved. The security situation remains worrying in the east of the country, where

acts of sexual violence are still taking place. There have been reports of many cases of rape following the brutal events that shook South Kivu in May-June 2004."<sup>10</sup>

Cockburn notes that war encompasses various forms of violence, with a "continuum of violence from the bedroom to the battlefield".<sup>11</sup> Women and girls on the African continent have been the victims of various forms of gender-based violence during these conflicts. These acts of violence include rape, physical violence, assault and sexual assault. Action Alert has identified the following forms of rape and sexual violence perpetrated against women in South Kivu in the DRC for the period 1996 to 2003: individual rape, gang rape, forced rape between victims, rape involving the insertion of objects into the victim's genitals and planned rape.<sup>12</sup>

The gender-based violence and other crimes committed against women in times of war and armed conflict have been documented in various reports outlining these crimes. Jobson writes:

"... women witness the destruction of their homes and communities and the devastating disruption of their own lives and those of close family members. Many women are raped in their homes or while they are fleeing, by men from government or rebel forces, by fellow internally displaced persons, and even by members of the military and humanitarian services, tasked with protecting them. Pregnant women have had their abdomens pierced with sticks or guns, while adolescent girls have been most at risk because they are believed to be safe targets as they are assumed

to be virgins and therefore free of HIV/AIDS. While many women give birth to children as a result of rape, others seek out risky terminations of their pregnancies through 'back street abortion' procedures, because reproductive health care services are usually non-existent in these situations. Some women survive through becoming sexual slaves, while those who escape and manage to return to their families may be rejected and treated with disdain."<sup>13</sup>

Women, whether as refugees or internally displaced persons, experience destitution and prolonged physical and psychological insecurity emanating from the loss of social networks and protection. In extreme situations, women have been targets of war, and have been regarded as part of the spoils of war.

Attainment of justice in post-conflict situations can only be possible if women and girls have the benefit

### Justice systems and structures are usually among the first institutions to collapse in war and conflict situations

of such justice. This would necessitate that gender-based violent crimes committed during war should be conceived as war crimes. This is provided for in the Rome Statute of the International Criminal Court (ICC). The ICC has jurisdiction over 'crimes against humanity'. These include enslavement, sexual slavery, and enforced prostitution or any other form of sexual violence of comparable gravity when committed as part of a widespread or systematic attack directed against any civilian population. The court then has jurisdiction over the widespread gender-based violence that has been committed against women and children as part of the war efforts in parts of the continent. If the crimes committed against women are not dealt with as war crimes, this could have the effect of normalising attitudes and behaviours that are harmful to women. Failure to do so meaningfully not only increases the vulnerability of women in times of 'peace', but also means that violations against women can continue unabated. Furthermore, efforts to deal with injustices committed during, or after, wars are complicated by the serious character and nature of violence perpetrated against women.

Efforts aimed at addressing justice for women victims of war crimes need to focus on two levels. First, they should address issues that set out the norms, principles, standards and benchmarks that guarantee justice. The choice of normative framework will determine the justice remedies that women have access to. It is imperative that women effectively participate in determining the national choice; otherwise reconstruction runs the risk of excluding a large section of the population. A second set of issues relates to transforming institutions in ways that enable women to take full advantage of opportunities presented by reconstruction agendas. Member states of the AU have the potential to reinforce both of these levels of engagement in all aspects and activities of post-conflict reconstruction.

### A history of struggle and exclusion

The exclusion of African women from reconstruction efforts in post-conflict situations – or, in some instances, their limited participation in such efforts – is not a recent phenomenon. On the African continent, women's experiences of peace-building and reconstruction are varied and encompass a range of situations from colonial wars to civil strife and political unrest.

During the liberation struggles, women participated in the political armed struggles that characterised the battles against colonialism from the 1960s to the 1990s. As women fought side by side with men,

they took on new roles that challenged gender and generational stereotypes. A statement issued by the Frelimo Central Committee in 1972 characterised the female Mozambican freedom fighter thus:

"The Mozambican woman stands up as a political, armed element [of the struggle] ... but at the same time she presents herself as an agent of new ideas, through the mobilising work she is doing among the people, as well as by the very example of her own active presence, which is contributing to the eradication of many myths regarding the inferiority of women."<sup>14</sup>

Some women combatants in the Zimbabwean war of independence were also viewed as having been liberated from former constraints. In a speech in 1979 Robert Mugabe, leader of the Zimbabwe African National Union (ZANU), said:

"Women have demonstrated beyond all doubt that they are as capable as men and deserve equal treatment, both in regard to training and appointments. It is because of their proven performance that we have agreed to constitute a Women's Detachment with its own High Command. It is also necessary ... that ... we should promote more women to the High Command."<sup>15</sup>

Women's participation in liberation struggles in some Southern African countries freed them from their traditional roles. They became aware of their oppression and so emerged from the anti-colonial wars with high expectations for future nation states in which women and men would be equal in all spheres of society. However,

women's inclusion in war efforts and affirmations of their equality by male leaders did not mean that women's liberation was automatically on the cards. In some liberation movements it was "almost taboo to talk about women's emancipation".<sup>16</sup> For women who had participated in the war efforts during the liberation struggles this posed some difficulties as "... it was always argued that the national liberation struggle was supreme ... and that the emancipation of women would come naturally and automatically with its triumph".<sup>17</sup> A difficulty that arose from this was how to overcome gender differences and antagonisms. For women to organise around their own concerns during the transition posed a number of difficulties, because articulating their own concerns would be seen as undermining efforts at national reconstruction. Consequently women did not present themselves as an oppressed group with rights to equal treatment and fairness. They did not openly oppose the state in transition and embark on campaigns that would

## Gender-based violent crimes committed during war should be conceived as war crimes



ensure equality, equal treatment and fairness. With regard to South Africa Chukwu states:

"Following the dismantling of the Apartheid government in the early 1990s, black South African women are now beginning to find their place in the development process of the country. Even then South African women have to struggle against male chauvinism and retrogressive cultural traditions to be able to make their contributions respected by their male counterparts in the nation's democratic setting."<sup>18</sup>

Urdang suggests that in the early 1980s, when several liberation struggles were still being waged in Southern Africa, the visible enemy and tensions of life in a war zone helped to break down barriers – ethnic, class, religious and gender – in order to build unity. However, the barriers that had existed before the conflict re-emerged in peacetime, when the visible enemy of the war was no longer a threat. This means that the struggle to achieve unity and bring an end to all forms of oppression and exploitation – including those of women – was in many ways harder after independence.<sup>19</sup>

Drawing on examples from Angola, Mozambique and Zimbabwe, where struggles for national liberation were waged through guerrilla warfare, Nio Ong illustrates that women's struggles were continually subordinated to national political struggles. This, it is argued, is because women's organisations were often tied to party and state and therefore fulfilment of their programmes was subject to the whims of party bureaucracies.<sup>20</sup>

Today, Southern Africa faces challenges in respect of women and peace that are different from those of the post-independence era. War and conflict are now less about national liberation and more about power, control, political loyalty and ethno-nationalism. These are all elements in the formation of political identities and these political identities are also gendered. Children, and girls in particular, are part of combat forces, for example in the DRC, where Save the Children, a children's rights organisation, recently reported that "... some 12,500 girls currently belong to government and non-government forces in the DRC and a programme to disarm, demobilise and reintegrate all militias into society is failing them".<sup>21</sup> In 2005 UNICEF estimated that in North Kivu province of the Congo, about 33,000 children were associated with the various fighting forces at the time and that 40 per cent of these were girls.<sup>22</sup> According to Refugees International, at the Centre for Transit and Orientation

only two girls have been among the 165 child soldiers demobilised since the centre opened in Goma in April 2002.<sup>23</sup>

Most countries in the Southern African region have experienced freedom from war for the past decade. However, peace efforts are still necessary in Angola and the DRC. But men still dominate peace processes and negotiations in these situations, despite the formation of peace organisations by women in both of these countries. In the DRC, women's participation in the peace dialogue did not "... happen through any commitment of the negotiators to include women in the process. Rather, it came about through the efforts of women themselves to ensure that they were not entirely sidelined in the process of the peace negotiations, in these efforts."<sup>24</sup>

In a recent statement to the 48th session of the UN Commission on the Status of Women, the Angolan Vice Minister for Family and the Promotion of Women, Julio Helder Lucas, stated:

"Despite the recognition given to Angolan women for their efforts and their involvement in peace promotion, they seldom have equal participation in decisions that lead to peace. Nor do they participate in conflict resolution. Even so, women are often the first to reach across ethnic and religious divides in order to rebuild communities and families torn apart due to violence."<sup>25</sup>

Thus while the nature of the struggles has changed, women's positions post-conflict and their limited ability to promote their own gendered agendas to secure peace and equality largely remain unchanged. A significant difference is that whereas women of the anti-colonial struggles had to rely mostly on their own resources, women in post-conflict situations today have the benefit of using international rights-based frameworks to assist in their cause of equality. For women to achieve this requires engagement with the existing or emerging state apparatus as well as challenging societal norms and values that are often deeply patriarchal.

With the emergence of transnational networks, which are generally made up of non-state actors, predominantly women's organisations and UN agencies, there has been increased diffusion internationally of policies and the establishment of state mechanisms that accommodate and promote gender mainstreaming policies. Those who advocate for the establishment of gendered state machinery that is biased in favour of women and women's inclusion in decision-making rely on international rights-based frameworks and

### Women are often the first to reach across ethnic and religious divides in order to rebuild communities and families

governments' commitments to give expression to the provisions of these instruments.

However, the increase in insecurity and conflict in parts of Africa often means that the collapse of law and order systems, the breakdown and dispersal of communities and support networks, and the struggle for mere survival make it virtually impossible to implement these gender-sensitive measures. Women and children are often adversely affected by conflict and do not have access to the law or legal channels to ensure relief or justice. It is therefore important that we investigate women's involvement in post-conflict situations and establish how the various international rights-based instruments can benefit women and bring about more egalitarian societies.

A number of such instruments can assist women in their efforts:

- The UN Convention on the Elimination of All Forms of Discrimination against Women;
- The Protocol on the Rights of Women in Africa – Protocol to the African Charter on Human and People's Rights;
- United Nations Security Council Resolution 1325 on women's inclusion in peace processes; and
- The Southern African Development Community (SADC) Declaration on Women and Development.

### **African commitments to women's inclusion in peace-building and reconstruction**

"Feminist human rights advocates insist that human rights must be seen in holistic terms. Human rights for women extend beyond the granting of the right to vote and to govern, to the private domain where marital rape, domestic violence, and even unfair employment practices are often the cause of grave insecurity. 'Needs fulfilment' must therefore be seen as an intrinsic human right that is essential to the achievement of security. But while the granting of political rights does not necessarily lead to the recognition of socio-economic rights the obverse is also true: women's economic and social rights are impeded because their political rights are denied. Failure of attempts at development can partly be attributed to the omission of women's participation in policy-making and the lack of a perspective on human needs."<sup>26</sup>

Various governments and regional structures on the continent have made commitments to women's inclusion in peacekeeping and reconstruction efforts. While a number of states have been found wanting in

giving expression to these commitments, it is important for women's interest groups to take cognisance of these commitments, since they collectively provide a comprehensive rights-based framework. This rights-based framework acknowledges that women have a right not only to representation on structures concerned with peace, but also to equality with men in other spheres of society.

On its tenth anniversary in Namibia, the United Nations Transitional Assistance Group (UNTAG) acknowledged that "... women have been denied their full role in these [peace] efforts, both nationally and internationally, and the gender dimension in peace processes has not been adequately addressed".<sup>27</sup> The declaration continues:<sup>28</sup>

- Equal access and participation by women and men should be ensured in the area of conflict at all levels and stages of the peace process.
- In negotiations for a ceasefire and/or peace agreements, women should be an integral part of the negotiating team and process. The negotiating team and/or facilitators should ensure that gender issues are placed on the agenda and that those issues are addressed fully in the agreement.

In the case of Namibia, peace then is viewed as inextricably linked with equality between women and men. There are therefore affirmations that equal access to and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security.

This is a particularly important aspect in reconstruction. While entire communities and countries suffer the consequences of armed conflict, women and girls are particularly affected. The ethnic clashes in Kenya in 1992 and more recent religious clashes in Nigeria have left thousands of women suffering.<sup>29</sup> Women and girls also count among the continent's refugees and internally displaced persons. Hudson points out that "by 1994, it was estimated that women and children constitute eighty per cent of the 22 million internally and externally displaced Africans".<sup>30</sup> A joint study conducted by Save the Children Alliance, Oxfam and UNICEF found that 30 per cent of the 4,000 girl street children on the streets of Ombara and Khartoum in Sudan were internally displaced.<sup>31</sup>

While some women have begun to play important roles in conflict resolution, peacekeeping and peace-building, they are still under-represented in decision-making with regard to conflict. In the Great Lakes

### **Human rights for women extend beyond the granting of the right to vote and to govern, to the private domain**

Region, for instance, women in Burundi, Rwanda, the DRC and Uganda have been included in peace talks, but the potential for change may be constrained by the overall political climate and extent of democratisation. Even with political will at the top and pressure from women's movements from below, as in Uganda, legislative changes advancing women's rights can be slow in coming as a result of competing societal pressures that are wedded to customary practices. Moreover, the impact of legislation is generally only the first step because entrenched practices do not disappear overnight.

If women are to play an equal part in security and maintaining peace, they must be empowered politically and economically, and represented adequately at all levels of decision-making: at the pre-conflict stage, during hostilities and at the point of peacekeeping, peace-building, reconciliation and reconstruction.

In times of armed conflict and the collapse of communities, the role of women should thus be seen as crucial to preserving the social order. Women also have important roles to perform as peace educators in their families and their communities. Women could perform an important role in fostering a culture of peace in strife-torn communities and countries while conflict is raging. The following observations were made about women's inclusion in peace processes in Angola.

"We soon recognized that we were missing a key opportunity to lay the groundwork for post-conflict equality and reconstruction by bringing women to the table to plan for emergency assistance; using women's NGOs to distribute relief; assigning gender advisors to prevent domestic violence as ex-combatants returned to their homes; and ensuring women a seat at the table in the peace talks themselves. It is a sad reality that as an international aid donor, you are never as flush with resources as in the middle of a crisis, and you must use those resources to build the social structures that will empower women to play their full role in post-conflict reconstruction."<sup>32</sup>

Despite women's low representation in peace processes and public life generally, and opposition to women's increased involvement in affairs of community and state in many African countries, the Heads of State and Government of the member states of the AU made the following statement at the Third Ordinary Session of the AU Assembly in Addis Ababa:<sup>33</sup>

"[We reaffirm] our commitment to the principle of gender equality as enshrined in Article

4 (l) of the Constitutive Act of the African Union, as well as other existing commitments, principles, goals and actions set out in the various regional, continental and international instruments on human and women's rights, including the Dakar Platform for Action (1994), the Beijing Platform for Action (1995), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)), the African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999); the Outcome Document of the Twenty-third Special Session of the United Nations General Assembly Special Session on the Implementation of the Beijing Platform for Action (2000); UN Resolution 1325 (2000) on Women, Peace and Security; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) ..."

This statement delineates the international legislative framework that should direct the efforts of African states to ensure full and equal participation of women in all spheres of public life. But there is no blueprint to ensure such equality. Whether women will enjoy the rights afforded them in these instruments is dependent on the domestication of the instruments and the nature and form of such domestication. Nonetheless, women's interests groups can use these statements and international instruments to campaign for such legislation to be enacted and upheld. For women peace activists and women emerging from conflict situations it is especially important to note that the Heads of State and Government also

expressed concern that "... while women and children bear the brunt of conflicts and internal displacement, including rapes and killings, they are largely excluded from conflict-prevention, peace-negotiation, and peace-building processes in spite of African women's experience of peace-building".<sup>34</sup>

The Heads of State and Government then agreed to "... ensure the full and effective participation and representation of women in peace processes, including the prevention, resolution, managements of conflicts and post-conflict reconstruction in Africa as stipulated in UN Security Council Resolution 1325 (2000) and to also appoint women as Special Envoys and Special Representatives of the African Union".<sup>35</sup>

The rights-based framework was given added strength with the coming into force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which took effect

**If women are to play an equal part in security and maintaining peace, they must be empowered politically and economically**

on 25 November 2005. Article 10 of this protocol emphasises the right to peace. It states:

- 1 Women have the right to peaceful existence and the right to participate in the promotion and maintenance of peace.
- 2 State Parties shall take all appropriate measures to ensure the increased participation of women:
  - a) In programmes of education for peace and a culture of peace;
  - b) In the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;
  - c) In the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;
  - d) In all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;
  - e) In all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.
- 3 State Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

Five years after the adoption of United Nations Resolution 1325 in October 2000 (which acknowledges that "... the impact of conflict on women is different than it is on men"<sup>36</sup>) the United Nations Security Council stressed the importance of accelerating implementation of the landmark measure.

The resolution provides protection for women who are victims of war and determines that women should play a significant role as peacemakers. In a presidential statement adopted after a daylong debate on the issue that saw the participation of more than three dozen speakers, including representatives of states and members of civil society organisations, the Security Council reaffirmed its commitment to Resolution 1325, while acknowledging that more must be done to help women caught in the maelstrom of war.<sup>37</sup> Romanian Ambassador Mihnea Motoc, president of the Security Council, said that member states and the Secretary General were encouraged to maintain regular contacts with local women's organisations and networks and to ensure their involvement in reconstruction, "particularly at the decision-making level".<sup>38</sup>

The SADC Declaration on Gender and Development (adopted in 1997) is the primary instrument for gender equality and women's empowerment within Southern Africa. It commits governments to "... [e]nsuring the equal representation of women and men in the decision-making of member states and SADC structures at all levels, and the achievement of at least thirty per cent target of women in political and decision-making structures by year 2005".<sup>39</sup> However, the conference report on ten years of democracy in SADC, produced in 2004 by the Institute for Democratic Alternatives (IDASA), points out that most national gender machineries in the region are under-resourced; that they are not strategically located or given adequate status;<sup>40</sup> that there is a general lack of commitment to gender parity by political parties;<sup>41</sup> and that an often difficult relationship continues to exist between customary law and certain government policies.<sup>42</sup>

These commitments will have little effect if governments on the continent do not give expression to them and ensure women's participation in peace and reconstruction processes. Currently, in Africa, institutional mechanisms that favour women's advancement in spheres of public life are weak or poorly implemented. This applies both to countries that are not experiencing conflict and those in the throes of warfare or armed combat, but the situation in the latter is especially dire. State machinery and mechanisms that should be in place to give effect to women's empowerment are seldom well resourced, and policies and programmes are not integrated. Most states have established machinery, either in the form of ministries or departments, to oversee government initiatives for the empowerment of women. However,

in Addis Ababa in October 2004, at the ten-year review of the Beijing Declaration and Platform for Action, considerable concern was raised about the performance of these machineries. In particular it was noted that their capacities to spearhead the women's rights agenda are extremely limited owing to severe (and often disproportionate) cuts in budget allocation and human resources.<sup>43</sup> Given that it is this machinery that will largely be responsible for monitoring the process of domestication and implementation of legislation giving effect to these rights-based instruments, it is of major concern that these ministries and departments will not be in a position to do so effectively.

Change is usually a slow process and involves numerous contending positions by various actors. This is particularly so at legislative and policy levels. Countries on the continent have different legal systems and this means different processes, which in turn

### The SADC Declaration on Gender and Development is the primary instrument for gender equality and women's empowerment within Southern Africa



will affect the ability of women's interest groups to campaign across national boundaries for women's empowerment. If the past example of CEDAW is anything to go by, many of the countries that have ratified CEDAW have so far failed to incorporate these standards into national law. This is complicated by the existence of dual legal systems in much of the continent. In many African countries, the coexistence of customary and religious law and statutory law often means that women's rights are compromised.<sup>44</sup> When drafting legislation on matters relating to women's rights, customary and religious law is often given precedence. Legal provisions that challenge discriminatory cultural and religious norms and practices are likely to meet with resistance and actually be undermined as a result of this duality of legal systems.

The failure to promote a culture of constitutionalism and respect for the rule of law has implications for the entrenchment of women's rights to equality and justice. Recent developments in a number of countries, such as Uganda, Ethiopia, Togo, Zimbabwe and Chad, indicate a direct correlation between the failure of governments to respect the rule of law and their failure to protect the human rights of citizens. As governments subvert constitutions and compromise the rule of law in order to entrench their power bases, there is a concomitant increase in cases of arbitrary detentions, curtailed media freedoms and harassment of political opponents. The state apparatus is used to violate citizens' human rights and to silence the voices of dissent. In such instances, the priority will not be to implement laws and regulations that promote rights, particularly those of women.

A lack of awareness, especially at local levels, of international rights-based instruments and what they seek to address will also influence the effectiveness of women's interest groups to have such instruments domesticated in national legislation. Because all these instruments seek women's participation in peace and reconstruction processes, it is imperative for the success of initiatives that seek to include women that women at local (town and village) levels should be included. It is these women who often bear the brunt of conflict. Failure to include them and seek their support will not advance the cause of women's empowerment and equality at national level. Since one of the most effective ways of effecting change is to have a critical mass of public support, this aspect of the campaign for the domestication of rights-based instruments should not be ignored. Because these instruments set out to protect those women and other groups who are especially vulnerable to violations, it is imperative that efforts are made to engage

these groups in the processes aimed at peace and reconstruction during national peace negotiations.

However, the increase in religious fundamentalism and conservatism that is evident on the continent is likely to seriously threaten any campaign for the domestication of these rights-based instruments. There is increasing resistance to progressive measures to protect the rights of women. Rights-based instruments aim to promote a number of measures, which for some time have been resisted in various national and local contexts. In particular, those aspects prohibiting harmful traditional and cultural practices that seek to promote sexual and reproductive rights and property ownership rights are likely to be challenged.

The AU Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council both provide the AU with a framework for promoting justice, including justice for women, in post-conflict situations. Article 5(2) of the AU Constitutive Act provides for the establishment of a Peace and Security Council. This council is a standing decision-making body with responsibilities for prevention, management and resolution of conflicts, including post-conflict reconstruction.

### The coexistence of customary and religious law and statutory law often means that women's rights are compromised

As part of its efforts for preventing conflicts, the Peace and Security Council must:<sup>45</sup>

- promote and implement peace-building and post-conflict reconstruction activities;
- consolidate peace and prevent resurgence of violence;
- promote and encourage democratic practices, good governance and the rule of law; and
- protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law.

In practice this would involve:

- restoration of the rule of law;
- establishment and development of democratic institutions;
- consolidation of peace agreements;
- reconstruction of the societal and governmental institutions;
- executing disarmament and demobilisation;
- reintegration of refugees and internally displaced persons; and
- humanitarian action and disaster management.

The manner in which these activities are conceived and implemented has implications for the extent to which women can claim and access justice in post-conflict situations.

The on-going work of crafting an AU framework for post-conflict reconstruction provides an opportunity for the AU to promote justice for women. Because war impacts women and men differently and large numbers of women have experienced violence that leaves physical and emotional scars, it is necessary to address issues of justice for women. The reconstitution of a society, including its justice systems and practices, may require new and innovative frameworks and structures that differ from those that were in place before the outbreak of conflict. Institutions and structures that were in existence prior to the outbreak of conflict might not be suitable or equipped to provide opportunities for redress.

There are examples of nation states across the continent that point to a willingness to promote justice for women and address inequalities, especially in the area of participation in decision-making. This is more evident "... in SADC where women's participation in political decision-making has increased from 17 per cent to 19.4 per cent in the last decade. To date, Southern Africa ranks among the top regions as far women's participation in parliament is concerned, coming second only to Scandinavian countries."<sup>46</sup>

While this is important and needs to be pursued, it is critical to note that war-transformed societies and communities seldom return to their exact pre-war order. Reconstruction should thus be considered an opportunity for the innovative reconstitution or creation of structures that open up new horizons for women's empowerment and enhance justice for women.

Engaging the state on women's rights has been an extremely difficult struggle with varying degrees of success. Historically, the state has been at worst hostile and at best extremely slow to respond to advancing the rights of women. It has entrenched this practice with a regime of discriminatory laws and policies. Even in those countries that have managed to enshrine the principles of equality and non-discrimination in the supreme law, the constitution, the process of domestication – of aligning and framing national laws to reflect these principles – has been wanting. For example, in Uganda, in spite of an extremely progressive constitution, efforts to effect a law that protects the rights of women in marriage, separation and divorce has yielded no results in over 40 years. Similarly, given African governments' past record for not giving effect to internationally agreed standards, in domestic legislation there is little reason to believe that the protocol will be regarded differently. Hudson noted that, "As long as African governments continue to pay lip-service to basic democratic principles, the military will remain largely

a sectarian and undemocratic institution founded on the principles of the protection of dominant racial, class, ethnic, and gender groupings."<sup>47</sup>

There is no doubt that advancements have been made, the most significant of which has been increasing access for women and girls to public spaces, especially local and national politics, education and the business sector. Similarly, there has been a great deal of initiative at policy level to take into account the interests of women and other marginalised groups. However, this investment has not translated into a fundamental change for the better for the vast majority of African women. In 2005 Rosa Namise of the Congress of Democrats political party in Namibia said at a parliamentary debate on violence against women and children that, "We need a strengthening of the rights culture in this country, the understanding that rights are not divisible, they apply equally to everyone at all times and that all citizens are entitled to protection and equal treatment in terms of those rights."<sup>48</sup>

She added:

"Namibia is enveloped in a litany of violence by way of an undeclared war daily being waged against innocent women and children, something that has become a norm rather than an exception ... Women expected to become equal partners to men after independence, but this did not happen. Instead we have a daily war being waged against us and our children through rape, brutal killings and public beatings by the very same men that they love and live with."<sup>49</sup>

## Reconstruction should be considered an opportunity for the reconstitution of structures for women's empowerment

Women then continue to face the same antagonism that characterised women's positions in post-independence countries. With the advent of transnational networks and the increasing successes that women's interest groups have had internationally with policy diffusion, especially in gender mainstreaming, it is no longer necessary for women's groups to feel isolated. The struggle has been made somewhat easier and international support easier to garner. There are now international monitoring frameworks by which to assess the progress and success of processes aimed at improving women's positions and ensuring their participation.

## Concluding remarks

"As an official, though relatively autonomous discourse of the state, law plays a role in legitimating unequal power relations, as well as in challenging these unequal power relations. While it is a hegemonic discourse, its relative autonomy from other branches of the state

creates the possibility of its operating as a counter-hegemonic discourse. The legitimacy of law resides in its purported objectivity and universality, and to sustain this legitimacy, the rule of law must appear to be equally applicable to all of its subjects. These values of legal liberalism create law's counter-hegemonic potential."<sup>50</sup>

Hudson observes: "The prognosis for the achievement of political security on the African continent is poor. The euphoria in the aftermath of the peaceful settlements on the continent, such as in Namibia, Mozambique, Benin, Zambia and South Africa soon made room for more cautious assessments."<sup>51</sup> Hudson points out that "... in comparison with the experience of Poland and Brazil where democracy evolved over a period of time" African regime transitions seemed frantically hurried. Insofar as democratisation involves the institutionalisation of procedures for popular government, precious little time was available for such procedures to take root, implying that the consolidation of democratic institutions in Africa will be problematic in years to come."<sup>52</sup>

However, transitions in government and state do provide opportunities for women's interest groups and indeed women's movements to make gains in the sphere of equality in the law, at least as the example of South Africa shows. The processes of instauration and eventual consolidation of political democracy are desirable goals. Women's interest groups engaging the state during these periods must be sensitive to the fact that such engagement will carry with it trade-offs that will impact on opportunities for achieving greater economic and social justice.

International rights-based instruments that provide for the protection of women's political, social, cultural and economic rights are likely to meet with opposition from those interest groups that have vested interests in women's inequality and oppression. It is thus critical that African governments and civil society organisations ensure that support for these rights is as broad as possible, and that the standards set out in these instruments are applicable at all levels of governance. In addition, given that these instruments address many context-specific violations, their application throughout the continent would go a long way towards ensuring that women are able to exercise their rights. However, because these instruments seek to redress the power equation in relations between women and men, and to significantly alter the status quo, resistance to it on all levels is to be expected.

With globalisation, non-state actors and women's interest groups are increasingly affecting the ability of governments to set their own policies, and to promote and protect human rights in general and women's rights in particular. This is usually articulated within

the paradigm of gender mainstreaming – a process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. It is a strategy for making women's concerns and experiences, as well as men's, an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality. This paper has provided a window into the variety of key documents that highlight the importance of ensuring that gender issues should be mainstreamed in all aspects of peace and reconstruction efforts.

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## About this paper

This paper argues for the use of existing institutional frameworks to include women in peace negotiations, peace-building and post conflict reconstruction efforts. Instruments developed by, for example, the UN and AU acknowledge that women have a right not only to representation on structures concerned with peace, but also to equality with men in other spheres. These instruments need to be domesticated and popularised at the local level for they do provide opportunities for innovative reconstitution of the societies.

## About the author

KARIN KOEN has worked as a researcher in the non-government sector and has covered areas such as women and mainstreaming, and women in local government. Her primary focus area, however, is children in difficult circumstances. She has done work in the areas of children in domestic work, child sexual exploitation and trafficking in children.

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